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TURINYS

	Psl.
Mariia BIELOBORODOVA, Svitlana BESSONOVA, Anna BESSONOVA.....	3
MONITORING THE SUSTAINABILITY OF SMALL AND MEDIUM BUSINESS IN THE REGIONS OF UKRAINE BASED ON THE RESOURCE APPROACH TRANSPORTATION	
Gediminas BUČIŪNAS, Dalia JASEVIČIENĖ.....	16
NUSIKALSTAMOS VEIKOS AUKOS IR NUKENTĖJUSIOJO TEISINĖ PADĖTIS: POKYČIAI, AKTUALIJOS IR SPRENDIMAI LEGAL STATUS OF THE VICTIMS OF THE CRIMINAL ACTS: CURRENT SITUATION, CHALLENGES AND PERSPECTIVES	
Oksana CHENCHAK, Nijolė PETKEVIČIŪTĖ.....	30
KEY FEATURES AND ESSENCE OF SELF-MANAGEMENT APPLICATION: THEORETICAL ASPECT	
Viktoriya GONCHAR, Kateryna POLUPANOVA.....	44
DEVELOPMENT OF ECONOMIC SECURITY OF ENTERPRISES IN THE CONDITIONS OF TRANSFORMATIONS	
Erika GREIČIŪTĖ, Giedrė PAURIENĖ.....	59
ETINIAI KRIMINALINĖS ŽVALGYBOS ASPEKTAI ETHICAL ASPECTS OF CRIMINAL INTELLIGENCE	
Aurelijus GUTAUSKAS, Žaneta NAVICKIENĖ.....	74
NEAPYKANTOS NUSIKALTIMAI IR NEAPYKANTOS KALBA: KUR PRASIDEDA IR KUR BAIGIASI SAVIRAIŠKOS LAISVĖS RIBOS? HATE CRIMES AND HATE SPEECH: WHERE DOES THE LIMITS OF FREEDOM EXPRESSION BEGIN AND END?	
Oleksandr KALININ, Nikita PONOMARENKO.....	93
THE IMPACT OF PUBLIC POLICY ON THE CIRCULAR ECONOMY AND ENVIRONMENTAL SECURITY	
Svitlana KALININA, Olga KUSHNARENKO.....	105
TRANSFORMATION OF THE WORLD LABOR MARKET IN THE CONTEXT OF GLOBALIZATION	
Mukhammadjon KHIKMAT, Nijolė PETKEVIČIŪTĖ.....	116
MANAGEMENT OF NATURAL RESOURCES IN THE CENTRAL ASIAN REGION	
Julija KRAVČENKO, Asta SAVANEVIČIENĖ.....	128
RETHINKING INDUSTRY-SPECIFIC CHARACTERISTICS OF IDIOSYNCRATIC DEALS	

Inga KURIENĖ	136
COVID 19 ĮTAKA LIETUVOS ĮMONIŲ EKONOMINIAM SAUGUMUI THE IMPACT OF COVID 19 ON THE ECONOMIC SECURITY OF LITHUANIAN ENTERPRISES	
Serhii LYNDIUK	149
CONCEPTUAL PRINCIPLES OF ENSURING SOCIETAL SECURITY IN THE CONTEXT OF SOCIAL CHANGE	
Rūta PETKUVIENĖ, Artūras PETKUS	157
CIVILINĖS SAUGOS KONCEPCIJOS ĮGYVENDINIMAS VALDANT, NAUDOJANT IR DISPONUOJANT VALSTYBĖS IR SAVIVALDYBIŲ TURTU IMPLEMENTATION OF THE CIVIL PROTECTION CONCEPT THROUGH THE MANAGEMENT, USE AND DISPOSITION OF THE STATE AND MUNICIPAL PROPERTY	
Valeriya PODUNAY, Vladyslav KALININ	172
FORMATION OF TRANSNATIONAL LABOR FLOWS IN CONDITIONS OF THE LABOR MARKET GLOBALIZATION: CONCEPTUAL DISCOURSE	
Oleksandr RUZHYNŠKAS	187
TRANSFORMATION OF UKRAINE'S FOREIGN TRADE POLICY IN THE CONTEXT OF THE FREE TRADE AGREEMENT WITH THE EU	
Borys SAMORODOV, Roman GALYCH, Viktoriia SHEVCHENKO, Dmytro DANILETS	199
FISCAL OPERATIONS ON THE WAY OF ENSURING BUDGET SECURITY OF UKRAINE IN CRISIS	
Lenka SCHEU	213
RACIAL PROFILING IN THE CZECH REPUBLIC	
Karolina VAITKEVIČIŪTĖ, Rasa DOBRŽINSKIENĖ	220
FACTORS FORMING THE IMAGE OF THE POLICE OFFICER	
Jiří VÍŠEK, . David DLOUHÝ, Jan BAJURA, Petr KROUPA, Lukáš HABICH	231
LAW AS AN INSTRUMENT FOR ENSURING PUBLIC SECURITY	

MONITORING THE SUSTAINABILITY OF SMALL AND MEDIUM BUSINESS IN THE REGIONS OF UKRAINE BASED ON THE RESOURCE APPROACH

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Abstract. *The features of small and medium business in Ukraine require an integrated approach to sustainability management, which includes taking into account the positions of key stakeholders and their resource contribution to business activities. The main guideline in sustainability provision is the detection and scanning of social requirements, as well as adequate and timely response to the stakeholders' requests. The purpose of the research is to monitor the level of imbalance of resource exchange between small and medium business and its key stakeholders in the regions of Ukraine. Based on the results of modeling the resource interaction of small and medium business with the main stakeholders, the vectors of the "ideal" and "real" resource exchange structure were constructed. The difference in the structures of these vectors reflects the imbalance of the existing resource exchange in the system, which can be expressed by the ratio of imbalance. The smaller the value of this ratio, the more balanced is resource exchange. It is proved that small businesses have an increased need for strong personal relationships with the local community and authorities. It is important for companies to identify the importance of stakeholders according to their resource contribution. To form a strategy of sustainability it is necessary to understand which of the stakeholders' groups make the greatest contribution to the imbalance between the "ideal" and "real" resource exchange structure.*

Keywords: *stakeholders, sustainability, social responsibility, business management, resource exchange.*

Formulation of the problem

As a result of the current socio-economic situation, scientists, economists and managers are largely interested in the problem of deep understanding of corporate social responsibility within the framework of a stakeholder approach. Also, the scope of their interests includes the development of effective methods and tools for stakeholder management, the study of complex measures to implement the model of socially responsible business behavior. Stakeholder theory

has evolved significantly in recent years. Stakeholder management is based on the processes of establishing links, developing relationships and maintaining effective interaction between business entities and key stakeholders. Stakeholder groups that directly or indirectly affect business operations may not interact with each other, but they influence as an informal coalition.

In a competitive market environment, it becomes obvious that it is necessary to study and analyze the influence of stakeholders on the activities of a particular business entity. The main goal of identifying stakeholders and forming aggregated stakeholder types is to strengthen the social responsibility of organizations and improve its quality and, as a result, increase financial results.

Analysis of recent studies and publications

A significant contribution to the development of certain aspects of stakeholder relationship management, which determine its theoretical and methodological basis, was made by such foreign scientists: F. Ackermann, C. Eden [1], H. Aguinis, I. Villamor, K.P. Gabriel [2], R. Borghesi, H. Houston, S. Naranjo [3], A. B. Carroll, A. K. Buchholtz [4], S. Draper [6], O. Farooq, D.E. Rupp, M. Farooq [7], A. Fletcher, J. Guthrie, P. Steane, G. Roos, S. Pike [8], A.O. Laplume, K. Sonpar, R.A. Litz [11], R.K. Mitchell, B.R. Agle, D.J. Wood [12], M. Sciarrelli, M. Tani [14] etc. At the same time, it can't be said that the issue of stakeholder analysis is new for Ukrainian science, O. V. Nagornova investigated theoretical issues and applied aspects of stakeholder diagnostics [13], Yu. Sharov, I. Chikarenko, T. Mamatova [15] considered tools for analyzing stakeholders in the activities of administrative authorities and local governments; in the work of Huseva O.Yu., Voskoboeva O.V., Khlevitskaya T.B. [9] study about transforming a company from one that focuses on the requirements of suppliers to one that builds its activities depending on the needs of the consumer. Scientists have determined the content and place of the theory of stakeholders in the system of views on the business entity, formulated its basic concepts, and quite widely covered the issues of determining the main stakeholders and the range of their interests. At the same time, the insufficient development of the theoretical point of this theory and approaches to its practical application today still leaves space for discussion, which determined the focus of the research, its purpose and objectives.

Formulation of the goals of the article. The **purpose** of the research is to monitor the level of imbalance of resource exchange between small and medium business and its key stakeholders in the regions of Ukraine. The following **methods** were used in the research: focus groups survey, statistical generalization, correlation-regression analysis, linear modeling, and graphical method.

Presentation of the main material of the study

Social responsibility today is not only a global fashion, but also a long-term trend in the politics of modern business organizations, reflecting the emergence of a new type of social policy, led not only by government, but also by international and business structures. Accordingly, in the new institutional environment, the concept of social policy has also received a broader interpretation, including not only the state guarantee of the social rights of citizens, but also the requirements for more active involvement of business in social policy. Given this, the social responsibility of business entities has become the conceptual and ideological basis for a new type of social policy.

An important stage in the implementation of the stakeholder approach is the identification of the main stakeholders of the business, then the prediction and minimization of risks that may be caused by the non-fulfilment of the interests of certain participants.

The specifics of small and medium businesses require an integrated approach to managing social responsibility from the perspective of key stakeholders. An integrated approach implies that the focus of social responsibility is shifted to understanding the needs of stakeholders. The main guideline here is the identification and scanning of social requirements, as well as an adequate and timely response to stakeholder requests. An integrated approach considers the concept of social responsibility as a tool for gaining legitimacy, authority and prestige.

Table 1. Comparative characteristics of the social responsibility of small and medium businesses

Elements of social responsibility of small business	Regional practice in Ukrainian regions	International practice
The prevailing vector	Personnel development, domestic investment. Stimulating charitable and volunteer activities of own employees. Lack of environmental and economic motives, low operational indicators do not bring visible benefits from the introduction of socially responsible behavior	Europe: local environmental investment, “smart” social innovation and investment. USA: support of external charitable actions, work with internal stakeholders. Developing countries: poverty reduction, investment in education and development of staff and business (humanitarian component)
Aspects of impact on stakeholders	Due to the effectiveness and responsibility of the company (quality of services and products). By creating a positive image of the company.	Equal importance of social responsibility for both internal and external environment of the company. There is a positive impact of social responsibility on the operating results of the business.
Social responsibility policy	Stereotypical thinking and the lack of administrative apparatus leads to weak effects from the introduction of social responsibility. Social responsibility policy depends on the personal features and interests of entrepreneurs.	Support and uniform requirements at the government level, there are common standards, business culture is formed around socially responsible forms of doing business.
Similar features	The “paradox of corporate social responsibility”: is small and medium-sized businesses able to integrate the benefits of corporate social responsibility? Lack of technology, managerial experience, financial resources to realize the possibility of long-term benefits from social responsibility for both the internal environment of the organization and for its external component.	

Note: Compiled by Draper (2000) [6].

Suppose, that small businesses in Ukraine (on the example of the Dnipropetrovsk region) and foreign countries still focus on several key issues of social responsibility, and this focus is manifested in solving local problems. Small businesses are characterized by “quiet” responsibility, that is, the emphasis is on a specific business domain and key stakeholders, and not on the

disclosure of non-financial indicators for a wide range of stakeholders, which are relevant, for example, for large transnational corporations or other corporate structures. Small businesses face the “paradox of corporate social responsibility” and are often unable to integrate relevant benefits.

Table 1, based on a review of studies, formalizes some features of domestic regional and foreign practice of social responsibility in small business. The choice of specific forms of social responsibility depends on the analysis of social problems at different levels, on the capabilities, purposes and scale of the business. In addition, it is important to note that in order to support and increase the competitiveness of small businesses, the choice of forms of social investment is important.

The interests of the main stakeholders of the company can be aligned based on a procedure called Pareto-optimality, since stakeholder expectations can be represented as multiple optimization problems – in other words, there is no best solution in all parameters, but there is the best available. Pareto-optimal balance means that it is impossible to increase the utility of one group of stakeholders without decreasing the utility of another group. Pareto-optimal balance should be on the possible utility curve.

Therefore, having achieved Pareto-optimal balance in the process of mutual agreements and compromises, where the established relationships are acceptable to both sides, these stakeholder groups can work with the company for a long period and get effective results. As a result, the interests of the company and all stakeholder groups will be aligned.

In order for an organization to effectively build and implement a strategy for a specific stakeholder group, it first needs to understand which other groups contribute the most to the imbalance. To do this, we can subtract from each other the elements symmetrical to the main diagonal from the satisfaction matrix. The resulting items will reflect the differences in satisfaction with the exchange of resources between groups. Note that these differences (their absolute value) will be indicators of the imbalance in the exchange of resources. If all satisfactory situations were equal (if there were fewer of them), both resource exchange structures would coincide [10].

Within the framework of the objectives of this study, we consider it expedient to build a model of resource interaction between stakeholder groups and socially responsible business to use the linear model of resource exchange widely used in economic science.

Let there be n groups S_1, S_2, \dots, S_n (the organization, its stakeholders and the “others” group, which includes side who are not the stakeholders of the organization itself, but have an indirect impact on small business). Each group, based on its strategic goals, forms its resource base. Denote a_{ij} by the share of the necessary resource base of the group S_j , which it receives from the group S_i .

Consider a square matrix $A = (a_{ij})_{i,j=1}^n$ in which the sum of the elements of each column is equal to one. This matrix reflects the “ideal” or “optimal” structure of resource exchange between groups.

Let be y_j - the conditional relative “value” of the resource base of the j -th group. $y_j = 1$ will correspond to the resource base of the j -th group, exactly corresponding to its goals.

Table 2 conditionally presents an ideal resource exchange structure for small businesses and other stakeholder groups. The quantity and quality of resources actually received by each of the

groups in the process of resource exchange among themselves, as a rule, differs from the required one (given by matrix A). This is evidenced about the dissatisfaction of one group with another.

Let's input the matrix $B = (b_{ij})_{i,j=1}^n$. This matrix will reflect the satisfaction with the resource exchange between small business and its stakeholders and, as a result, the level of real social responsibility of small business. Denote $b_{ij} \in [0,1]$ due to the satisfaction of the group S_j with the resources coming from the group S_i . With $b_{ij}=1$, the group S_j receives the necessary resources from the group S_i in full volume.

Consider the matrix $C = (c_{ij})_{i,j=1}^n$, each element of which has the form $c_{ij} = \frac{a_{ij} \cdot b_{ij}}{\sum_{i=1}^n a_{ij} \cdot b_{ij}}$, while

$$y_j = \sum_{i=1}^n a_{ij} \cdot b_{ij} \leq 1 \quad (j=1,2,\dots,n)$$

This matrix reflects the structure of real resource exchange between groups, taking into account satisfaction with the quantity and quality of the received resources.

Table 2. “Ideal” structure of resource exchange between small business and its stakeholders

Stakeholder groups	Business entity	Customers	Employees	Government authorities	External partners	Business environment	Local community	Others
Business entity	a_{11}	a_{12}	a_{13}	a_{14}	a_{15}	a_{16}	a_{17}	a_{18}
Customers	a_{21}	a_{22}	a_{23}	a_{24}	a_{25}	a_{26}	a_{27}	a_{28}
Employees	a_{31}	a_{32}	a_{33}	a_{34}	a_{35}	a_{36}	a_{37}	a_{38}
Government authorities	a_{41}	a_{42}	a_{43}	a_{44}	a_{45}	a_{46}	a_{47}	a_{48}
External partners	a_{51}	a_{52}	a_{53}	a_{54}	a_{55}	a_{56}	a_{57}	a_{58}
Business environment	a_{61}	a_{62}	a_{63}	a_{64}	a_{65}	a_{66}	a_{67}	a_{68}
Local community	a_{71}	a_{72}	a_{73}	a_{74}	a_{75}	a_{76}	a_{77}	a_{78}
Others	a_{81}	a_{82}	a_{83}	a_{84}	a_{85}	a_{86}	a_{87}	a_{88}
y_j	1	1	1	1	1	1	1	1

Let be x_j – the conditional absolute “value” of the resource base of the j -th group (measured, for example, in cost indicators, taking into account the importance (utility) of resources for this particular group, based on its goals).

Show in the following formula that

$$x'_i = c_{i1}x_1 + c_{i2}x_2 + \dots + c_{in}x_n, \quad (1)$$

where x'_i – the new absolute “value” of the resource base, obtained as a result of resource exchange for any group S_i ($i = 1, 2, \dots, n$).

For a balanced exchange it is necessary that the new absolute “value” of the resource base was not less than the primary resource base:

$$x'_i \geq x_i, \quad (2)$$

where x_i – the “value” of the primary resource base of the stakeholder group.

If assume that condition (2) is met, we obtain a system of inequalities:

$$\begin{cases} a_{11}x_1 + a_{12}x_2 + \dots + a_{1n}x_n > x_1, \\ a_{21}x_1 + a_{22}x_2 + \dots + a_{2n}x_n > x_2, \\ \dots & \dots & \dots & \dots \\ a_{n1}x_1 + a_{n2}x_2 + \dots + a_{nn}x_n > x_n. \end{cases} \quad (3)$$

Adding all the inequalities of the system, we obtain the expression:

$$x_1(a_{11} + a_{21} + \dots + a_{n1}) + x_2(a_{12} + a_{22} + \dots + a_{n2}) + \dots + x_n(a_{1n} + a_{2n} + \dots + a_{nn}) > x_1 + x_2 + \dots + x_n. \quad (4)$$

Considering that the expressions in brackets are equal to 1, we arrive at a contradictory inequality:

$$x_1 + x_2 + \dots + x_n > x_1 + x_2 + \dots + x_n. \quad (5)$$

Thus, inequality (5) is impossible, and this condition takes the form of equality:

$$x'_i = x_i \quad (6)$$

From here, we obtain the matrix equation:

$$AX = X, \quad (7)$$

where X – is the matrix-column of vector coordinates.

Thus, the problem was to find the eigenvector of the matrix A , which would correspond to an eigenvalue λ , equal to one.

As an objective function, we input the sum of resource bases of all stakeholders, which should reach a maximum:

$$F = x_1 + x_2 + \dots + x_n \rightarrow \max \quad (8)$$

The system of restrictions will be:

$$\begin{cases} a_{11}x_1 + a_{12}x_2 + \dots + a_{1n}x_n = 0, \\ a_{21}x_1 + a_{22}x_2 + \dots + a_{2n}x_n = 0, \\ \dots \\ a_{n1}x_1 + a_{n2}x_2 + \dots + a_{nn}x_n = 0, \\ x_1 + x_2 + \dots + x_n \leq S. \end{cases} \quad (9)$$

To solve this linear programming task, can be used the add-in of MS Excel “Solution search”. In this case, onto the cell of objective function entered the formula of the sum of all stakeholder

resource databases and the constraint formulas reflect the above-mentioned system of constraints for the corresponding stakeholder.

The result of the decision will be the vector of the structure of the “ideal” resource exchange X^U . Partially replace the matrix C with a matrix A , that is, solve the problem with other restrictions, we will get the vector of the structure of the “real” resource exchange X^P . The difference in the structures of these vectors will indicate the imbalance of the existing resource exchange in this system. In this case, the relative difference for each separate coordinate (unbalance factor) will be equal to:

$$k_i = \frac{|x_i^P - x_i^U|}{x_i^U} \quad (10)$$

The imbalance ratio indicates the imbalance of the resource exchange of this fixed group with others. The lower the value of this ratio for a group, the more balanced its resource exchange with others, and vice versa. In order for a small business to effectively build and implement a strategy for this group of stakeholders, it is necessary, first of all, to understand which other groups make the greatest contribution to the imbalance. To do this, in the satisfaction matrix, you can subtract from each other the elements that are symmetrical relatively to the main diagonal. The received elements will reflect the differences in satisfaction with the resource exchange of groups among themselves. Note that it is these differences (their absolute value) that will be indicators of resource exchange imbalance.

In order to a resource exchange to be effective for both sides, it is necessary that the stakeholders be equally satisfied with the resources they receive. On the other hand, the interaction will be effective for both sides if neither of them wants to change anything in the existing relationship. Such relations will be called balanced.

Under the balance of relations should be understood such a state in which neither the business nor the stakeholders want to change something in them. And since there is no need to change anything in the relationship, it means that mutual requests are satisfied enough. The balance state is Pareto-optimal. If a business establishes balanced relations with all groups of its stakeholders, then this will mean that the relations are effective and the business is socially responsible.

The practical application of the described method for determining the significance of stakeholder groups of socially responsible small and medium businesses was tested on the example of the Dnipropetrovsk region. To improve the reliability of the data obtained, stakeholders from the external environment of small businesses in the region were involved in the assessment process: representatives of the public organizations, regional businesses, regional regulatory and executive authorities, as well as representatives of the scientific staff of such major universities in Dnipro as

Table 3. “Ideal” structure of resource exchange between small business and its stakeholders in the Dnipropetrovsk region

Stakeholder groups	Business entity	Customers	Employees	Government authorities	External partners	Business environment	Local community	Others

Business entity	0	0,21	0,26	0,11	0,28	0,15	0,12	0
Customers	0,14	0	0,16	0,07	0,21	0,19	0,16	0,1
Employees	0,26	0,07	0	0,06	0,09	0,07	0,04	0,07
Government authorities	0,24	0,16	0,18	0	0,18	0,22	0,24	0,27
External partners	0,03	0,07	0,15	0,06	0	0,05	0,11	0,09
Business environment	0,25	0,22	0,08	0,22	0,08	0	0,19	0,18
Local community	0,08	0,18	0,1	0,31	0,14	0,17	0	0,29
Others	0	0,09	0,07	0,17	0,02	0,15	0,14	0
y_j	1	1	1	1	1	1	1	1

Note: compiled by the authors

Table 4. Satisfaction with resource exchange between small business and its stakeholders in Dnipropetrovsk region

Stakeholder groups	Business entity	Customers	Employees	Government authorities	External partners	Business environment	Local community	Others
Business entity	0	0,75	0,8	0,67	0,81	0,51	0,85	0
Customers	0,64	0	0,76	0,64	0,78	0,49	0,81	0,75
Employees	0,72	0,71	0	0,58	0,7	0,55	0,84	0,72
Government authorities	0,53	0,65	0,57	0	0,64	0,52	0,61	0,71
External partners	0,84	0,69	0,83	0,61	0	0,64	0,79	0,65
Business environment	0,58	0,54	0,59	0,65	0,61	0	0,67	0,68
Local community	0,67	0,73	0,75	0,74	0,72	0,76	0	0,75
Others	0	0,7	0,71	0,66	0,69	0,65	0,71	0

Note: compiled by the authors

Table 5. “Real” structure of resource exchange between small business and its stakeholders in Dnipropetrovsk region

Stakeholder groups	Business entity	Customers	Employees	Government authorities	External partners	Business environment	Local community	Others
Business entity	0	0,23	0,28	0,11	0,31	0,13	0,14	0
Customers	0,14	0	0,17	0,07	0,22	0,16	0,18	0,1
Employees	0,3	0,07	0	0,05	0,09	0,07	0,05	0,07

External partners	0,2	0,16	0,14	0	0,16	0,2	0,2	0,27
Business environment	0,04	0,07	0,17	0,05	0	0,06	0,12	0,08
Local community	0,23	0,18	0,07	0,21	0,07	0	0,18	0,17
Others	0,08	0,19	0,1	0,34	0,14	0,22	0	0,3
External partners	0	0,09	0,07	0,17	0,02	0,17	0,14	0

Note: compiled by the authors

NTU “Dnipro Polytechnic”, Oles Honchar DNU, University of Customs and Finance. As a result, the following results were obtained (tables 3-5).

Based on the initial data presented in the tables, the vector of the structure of the real resource exchange (11) and the vector of the structure of the “ideal” resource exchange (12) were calculated:

$$1) X^P = (0,139; 0,126; 0,090; 0,160; 0,075; 0,145; 0,171; 0,094) \quad (11);$$

$$2) X^U = (0,130; 0,124; 0,084; 0,178; 0,070; 0,159; 0,161; 0,095) \quad (12).$$

The difference in structures indicates the imbalance of the existing resource exchange in this system. At the same time, the relative difference for each coordinate (the imbalance coefficient) indicates an imbalance in the resource exchange of this fixed group with others. The lower the value of this coefficient for a group, the more balanced its resource exchange with others, and vice versa. For small businesses in the Dnipropetrovsk region, the following coefficients are calculated (table 6).

Table 6. The coefficients of imbalance in the resource exchange of small business and its stakeholders

Groups	Business entity	Customers	Employees	Government authorities	External partners	Business environment	Local community	Others
k_i	0,068	0,014	0,071	0,099	0,070	0,086	0,067	0,012

The table below shows that the highest imbalance rate was obtained for the “Government authorities” group.

In this study, a correlation-regression analysis of the dependence of the coefficient of imbalance of resource exchange between small businesses and the stakeholder group “Government authorities” on the total amount of funding for regional target programs for small and medium business development during 2015-2021 (table 7).

Table 7. Initial data for the analysis of the dependence of the imbalance of resource exchange and the total cost of stimulating small business

Period	Dnipropetrovsk region	
	Total costs of regional target programs to support small and medium businesses in prices of 2021, thousand UAH	Unbalance ratio for the group “Government authorities”

2015	3 378	0,026
2016	3 210	0,032
2017	3 034	0,051
2018	2 971	0,055
2019	2 865	0,022
2020	3 201	0,070
2021	2 997	0,099

Note: compiled on the basis of the Development Programs for small and medium-sized enterprises in the Dnipropetrovsk region (2021) [5]

To identify the best prediction for each constructed model, characteristics and main estimates were determined. A comparative evaluation of the regression equations was carried out by the values of the adjusted coefficient of determination R^2 , forecast error, standard errors of the regression coefficients, and also by the values of the sum of squares of the remains. Also, in the research, confidence intervals of the forecast (rather narrow) were obtained, which indicates the accuracy of the models.

Forecasting has the form of a polynomial dependence of the second degree. Because changes in the estimated level of imbalance can have delayed effects, modeling was performed at different time intervals, namely without time lag and lag indicators at 1 and 2 years to determine the most significant impact.

The dependence equation will have the form of a polynomial of the second degree:

$$y = ax^2 + bx + c \quad (13),$$

where $c > 0$ is a constant level of imbalance, independent of the level of small business financing, and $a < 0$, the branches of the parabola are directed downwards, as increasing the level of stimulation of small business leads to reduce the level of imbalance in the group "Government authorities".

Correlation analysis for the Dnipropetrovsk region showed that the closest relationship between the studied indicators is observed in the presence of a time lag of 1 year ($R=0,69$). In the study of correlations without a time lag, the correlation coefficient was 0,32, and with a time lag of 2 years, the correlation coefficient was 0,53. Thus, the most adequate model describing the dependence under study is a model with a time lag of 1 year. The model with a time lag of 1 year has the form:

$$y = -16470x^2 + 7650,41x + 3804,52 \quad (14)$$

Its graphical interpretation is shown in graph.

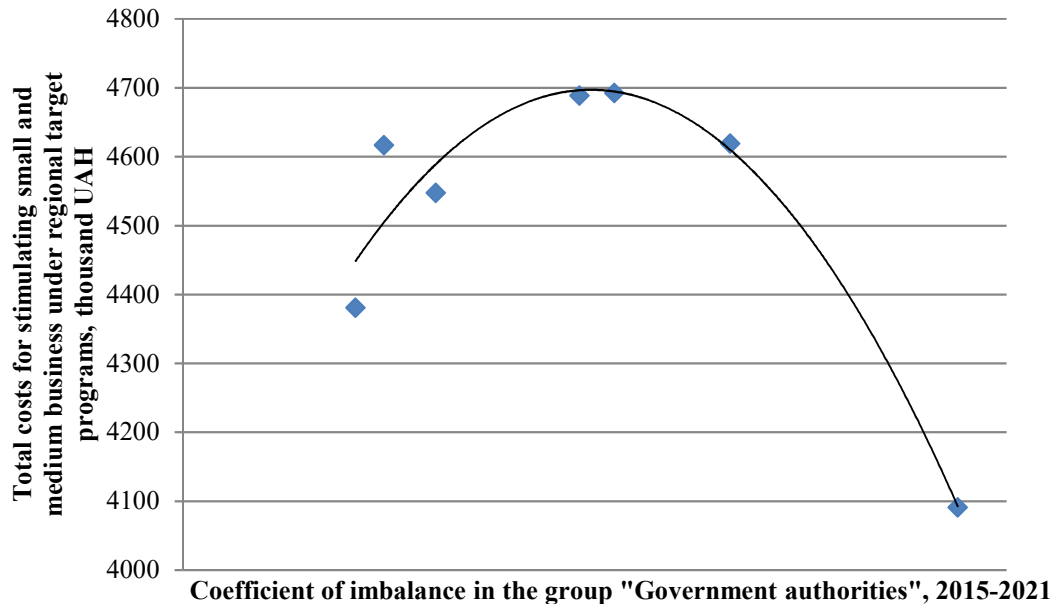


Figure 1. Dependence of the imbalance coefficient for the group “Government authorities” on the amount of funding of targeted regional programs to stimulate small and medium businesses (time lag 1 year)

The coefficients of determination for the obtained regression model $R^2=0,48$ has a significance level $\alpha = 0,03$, hence the reliability of the model $\gamma = 1 - \alpha = 0,97$. Thus, with an error probability of no more than 0,03, the regression equation has a reduced form. At the same time, the level of significance of the model parameters indicates the reliability of certain coefficients. The calculated value of the Fisher criterion $T_{\text{calcul}}=19,3$ is greater than the critical value $T_{\text{crit}}=2,95$, so the regression equation is statistically significant and can be used for forecasting.

As you can see, according to the above chart, an increase in the amount of funding for targeted regional programs to stimulate small and medium businesses leads increasing in the imbalance of resource exchange between small businesses and government authorities up to 4,700 thousand UAH per year. A significant effect on reducing the level of imbalance is achieved after passing this level.

Conclusions

The study shows that social responsibility is important not only for the internal policy of the business entity, but also when interacting with external environment, with stakeholders, both private and government, business partners. Only a responsibility for own and partner activities at each stage of communication can guarantee further synergy of results.

Regional features of social development processes require appropriate measures of administrative regulation aimed at creating appropriate conditions for stimulating the social activity

of small and medium businesses. The main direction of development of the modern regional development strategy is the priority of public needs.

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NUSIKALSTAMOS VEIKOS AUKOS IR NUKENTĖJUSIOJO TEISINĖ PADĖTIS: POKYČIAI, AKTUALIJOS IR SPRENDIMAI

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Anotacija. Nukentėjusiojo teisinė padėtis yra labai konkrečiai apibrėžta baudžiamajame procese, tačiau nusikalstamos veikos aukos statusas teisine prasme vis dar išlieka miglotas. Praktikoje vis dažniau susiduriama su problematišku virsmu iš nusikalstamos veikos aukos į nukentėjusį. Dėl statistinių rodiklių ar dėl kitų aplinkybių ikiteisminiai tyrimai nėra pradedami, tai yra atsisakant pradėti ikiteisminį tyrimą ar tiesiog nepriimant pareiškimo/pranešimo, ar prašant pateikti papildomų dokumentų, patikslinančios informacijos. Nusikalstamos veikos auka šiuo metu faktiškai neturi teisinių įrankių, kurie užtikrintų savalaikį ir teisiškai pagrįstą ikiteisminio tyrimo pradėjimą ir nukentėjusiojo statuso gavimą. Kitaip tariant, pagrindinė problema yra tai, kad asmuo, patyręs žalą dėl nusikalstamos veikos ir dėl to kreipęsis į ikiteisminio tyrimo įstaigą, dažniausiai į policijos įstaigą, nevisada nesulaukia reikiamos pagalbos. Tokiais atvejais kvalifikuota nemokama teisinė pagalba irgi nėra teikiama.

Todėl šio mokslinio darbo tikslas yra įvertinti, ar šiuo metu Lietuvoje dažnai kyla problema dėl nepagrįsta nepradedamo ikiteisminio tyrimo per turtinio pobūdžio nusikalstamų veikų prizmę. Tai atliekama analizuojant statistinius duomenis apie registruotas turtinio pobūdžio nusikalstamas veikas, priimtus procesinius sprendimus, gyvenimiškas situacijas, teisės aktus. Šiam tyrimui atlikti autoriai pasitelkė dokumentų analizę, lyginamosios analizės ir kitus tyrimo metodus. Atlikus tyrimą nustatyta, kad nusikalstamos veikos aukoms, išskyrus prekybos žmonėmis ir smurtą artimoje aplinkoje patyrusias, nėra suteikiama išsami informacija apie galimas teisinės ir kitokios pagalbos būdus, formas ir tokia pagalba teikiančias institucijas. Ikteisminio tyrimo institucijų, dažniausiai policijos įstaigų pareigūnai ne tik neinformuoja nusikalstamų veikų aukų, pvz., turtinio pobūdžio nusikalstamų veikų kategorijoje apie valstybės garantuojamą teisinę apsaugą, bet ir iškelia papildomus reikalavimus nuo nusikalstamos veikos nukentėjusiajam asmeniui. Pvz., tiesiog nepriima pareiškimo/pranešimo apie galimai padarytą nusikalstamą veiką, ar iš anksto formuoja nuomonę nusikalstamos veikos aukai tapusiam asmeniui, kad ikiteisminis tyrimas yra neperspektyvus, kaltininko nepavyks nustatyti ir žala nebus atlyginta, ar reikalauja pateikti papildomus dokumentus, kurie neva patikslintų jau pateiktą informaciją arba pateikti nuosavybės teisę patvirtinančius dokumentus į pagrobimą turtą, arba priima nepagrįstus procesinius sprendimus atsisakyti pradėti ikiteisminį tyrimą. Pagrindinis argumentas tokioprocėsinio sprendimo - įvykyje nėra nusikalstamos veikos sudėties požymių, Tokiu būdu tam tikruose visuomenės sluoksniuose, ypač tarp asmenų darančių turtinio pobūdžio nusikalstamas veikas plinta itin virusas žinia, jog padarius turtinio pobūdžio nusikalstamas veikas, jie gali būti iš vis nebaudžiami.

Pagrindinės sąvokos: nusikalstama veika, nusikalstamos veikos auka, ikiteisminio tyrimo įstaiga, ikiteisminis tyrimas, nukentėjusysis.

Aš tikiu tik ta statistika, kurią pats suklastoju. (Vinstonas Čerčilis)

Ivadas

Jau daugiau nei trisdešimt metų Lietuvos Respublikoje vystoma baudžiamojo persekiojimo tendencija ne tik nubausti kaltą, tačiau ir apginti nukentėjusiojo interesus. Į tai atkreipia dėmesį Lietuvos Respublikos baudžiamojo proceso kodekso 1 str. 1 d., skelbianti, 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*. O kaip gi tai viskas vyksta realiam gyvenime? Esminės kryptys susijusios su nukentėjusiojo patirtos žalos kompensavimu ir procesinių teisių užtikrinimu lyg ir vystomos, tačiau dėl optimizacijų ir kitais terminais įvardijamu nesibaigiančių reformų teisėsaugos institucijose, susidūriama su vis dar gaju ir aukštinamu sovietinio baudžiamojo persekiojimo efektyvumo palikimo rudimentu – aukštais statistiniais rodikliais apie nusikalstamų veikų atskleidimą. Šio tyrimo autoriai ir nesiruošia paneigti šio teisėsaugos institucijų veiklos efektyvumo matavimo vieneto svarbą, kuris yra vienas iš įrankių vertinant teisėsaugos institucijų veiklą užtikrinant viešąją tvarką, visuomenės saugumą. Kita vertus, kaip rodo realus gyvenimas, šis statistinis rodiklis tampa vos ne vieninteliu teisėsaugos institucijų veiklos efektyvumo matavimo vienetu, užgožiantis kitus. Gana dažnai pastebime viešajame gyvenime teisėsaugos institucijų vadovams pristatant institucijos metines veiklos ataskaitas, duodant interviu spaudai, viešuose pareiškimuose apie nusikalstamumo būklę šalyje akcentuojamą nusikalstamų veikų atskleidimo rodiklį. Vienos nusikalstamos veikos ar atskirų kategorijų nusikalstamos veikos ištiriamos ir atskleidžiamos daug lengviau nei kitos. Pvz., smurto artimoje aplinkoje atvejai, o kitos, pvz., turinio pobūdžio nusikalstamos veikos tiriamos ir asmenis padarę šias nusikalstamas veikas nustatomi žymiai sunkiau. Tai sąlygoja pakankamai žema šios kategorijos nusikalstamų veikų atskleidimo rodiklį. Tuo pačiu tai paveikia ir ikiteisminio tyrimo įstaigos prestižą ir pasitikėjimą ja visuomenėje, gadina statistinį nusikalstamų veikų atskleidimo paveikslą.

Šią problemą dėl nepagrįstai nepradedamų ikiteisminių tyrimų iškėlė, analizavo ir teikė kardinalius pasiūlymus visų pirma P.Ancelis, dar 2003m. Jo pastangų dėka įkurta Nusikaltimo aukų rėmimo asociacija leido teikti pasiūlymus tobulinant įstatymus nukentėjusiojo teisinės padėties gerinimo vardu. Veliau šia tema yra pasisakę R.Burda, S.Kuklianskis, G.Sakalauskas. O pastaruoju metu palyginus kategorišką nuomonę palaiko R.Merkevičius.

Šiame straipsnyje autoriai neanalizuoja, ar pradėjus ikiteisminį tyrimą asmenys savalaikiai yra pripažįstami nukentėjusiais, neanalizuojamas sąvokų “nusikalstamos veikos auka”, “nukentėjusysis” turinio bei esmės, šių sąvokų genezės tarptautinių ir nacionalinių teisės aktų kontekste. Straipsnio autoriai jau daugelį metų dirbantys praktinį darbą baudžiamosios justicijos srityje, per praktinius, gyvenimiškus pavyzdžius atveria sunkumus, kuriuos tenka įveikti asmeniui nukentėjusiajam nuo nusikalstamos veikos padarymo jo atžvilgiu momento iki procesinio statuso “nukentėjusysis” įgijimo vienoje iš baudžiamojo proceso stadijų – ikiteisminiame tyrime. Tai apima procesinių sprendimų priėmimo fazes. Pirma, ikiteisminio tyrimo pareigūnas turi teisę nuspręsti ar pranešime/pareiškime apie nusikalstamos veikos padarymo faktą yra nusikalstamos

veikos požymiai ar ne; gali pareikalauti pateikti patikslinančios informacijos. Antra, priimti vieną iš šių procesinių sprendimų: pradėti ikiteisminį tyrimą ar atsisakyti jį pradėti. Ir galiausiai, jei priimtas procesinis sprendimas pradėti ikiteisminį tyrimą, tai tik tada ikiteisminio tyrimo pareigūnas turi teisę nuspręsti ar pripažinti asmenį nukentėjusiuoju konkrečioje ikiteisminio tyrimo byloje ar ne. Taigi, asmenims nukentėjusiems nuo nusikalstamų veikų, ypač turtinio pobūdžio nusikalstamų veikų padarymo atvejais, tam, kad įgytų procesinį nukentėjusiojo statusą ikiteisminio tyrimo byloje tenka susidurti su tam tikromis kliūtimis.

Šiame straipsnyje bus nagrinėjamas atvejis, kai asmuo praneša apie padarytą nusikalstamą veiką, tačiau ikiteisminis tyrimas nepradedamas. Autoriai siekdami tyrimo tikslo pasirinko atlikti šį mokslinį tyrimą turtinio pobūdžio nusikalstamų veikų kontekste, nes nepaisant šalies priskyrimo vienai ar kitai teisinei sistemai, minėtos kategorijos nusikalstamos veikos yra vienos iš labiausiai paplitusių visuose pasaulio kontinentuose.

Straipsnyje nagrinėjamas klausimas ar asmenims, kurie kreipiasi į policiją pranešdami apie galimai įvykdytas nusikalstamas veikas jų atžvilgiu, yra poreikis valstybės mastu suteikti nemokamą teisinę konsultaciją. Straipsnyje nagrinėjamas tokios problemos aktualumas: jei galimai vagystės auka tapo finansiškai nepasiturinti auka, tarkim žemesnio išsilavinimo ar silpnesnės sveikatos, kuriai yra per nelyg sudėtinga tiek kreiptis advokato pagalbos dėl finansinio klausimo, nes tikimybė atgauti pagrobtą turtą yra labai maža, o tuo taip tik papildomai atsiranda finansinė našta, tiek ir valstybės garantuojamos teisinės pagalbos, nes reikiamų dokumentų surinkimas fiziškai yra sudėtingas, reikalaujantis laiko. Akivaizdu, kad gavus atsisakymą pradėti ikiteisminį tyrimą retas kuris pilietis, neturintis teisinio išsilavinimo gali tinkamai motyvuoti skundą per 7 dienas. Todėl autorių nuomone tokiose situacijose asmenims yra reikalinga pagalba. Ta pagalba turi būti kvalifikuoto teisininko. Be to ji turėtų būti valstybės garantuojama, nemokama. Tik tokiu būdu gali būti užtikrinamas teisingas procesas nuo pirmųjų dienų. Šiuo metu tokia reikalinga, nemokama kvalifikuota ir kompleksinė pagalba yra teikiama, tačiau tik smurto artimoje aplinkoje ir prekybos žmonėmis aukoms.

Ikiteisminio tyrimo pareigūnų veiksmai ir procesiniai sprendimai dėl kurių yra nepradedami ikiteisminiai tyrimai ne tik mažina visuomenės pasitikėjimą ikiteisminio tyrimo institucijomis, bet ir tuo pačiu sukuria nebudžiamumo iliuziją asmenims galimai linkusiems daryti nusikalstamas veikas. Iškelta problema autoriai analizuos keturiais aspektais, siekiant atsakant į iškeltus šiame tyrime klausimus:

1. Kaip kinta šios problemos paplitimo tendencijos?
2. Kokios yra šio reiškinio priežastys?
3. Kokiais būdais, pagal praneštą ikiteisminio tyrimo įstaigai apie padarytą nusikalstamą veiką yra nepradedami ikiteisminiai tyrimai?
4. Kokios galimos priemonės nukentėjusiųjų teisių apsaugos kontekste, siekiant sumažinti nepagrįstų atsisakymų pradėti ikiteisminių tyrimų skaičių?

Tiriamoji dalis

Visas tiesas lengva suprasti, kai jos atrastos. Svarbu jas rasti. (Galilėjus Galilėjas)

Nusikaltimų latentškumas suprantamas, kaip faktiškai padarytu, tačiau nepatekusių į apskaitą, ar neužregistruotų arba neatskleistų nusikaltimų (nusikalstamų veikų) visumos raiškos

procesai (G.Babachinaitė, 2009). Tai yra, ji sudaro dvi dalys: nusikaltimai apie kuriuos nukentėję asmenys nepraneša ir tokie, apie kuriuos teisėsaugos institucijoms yra žinoma, tačiau jie visvien lieka neatskleisti. Nusikaltimų latentškumas gali būti matematiniais modeliais suskaičiuojamas, įvertinamas. *Latentinį nusikalstamumą iš esmės lemia dvi priežastys: nuo nusikalstamų veikų nukentėję arba kiti asmenys, kurie sužino apie nusikalstamą veiką, nepraneša policijai, o pati policija dėl įvairių priežasčių neregistruoja jai praneštų nusikalstamo elgesio atvejų* (G. Sakalauskas, 2011). Vis dėlto yra labai sudėtinga išskirti šių priežasčių tarpusavio santykį. Taigi tikslinga apžvelgti statistinius rodiklius, kurių dėsningumą visuma padėtų tiksliau atsakyti ar latentškumo apraiškos susijusios su asmens „nenoru“ pranešti, ar su pareigūno „negebėjimu“ priimti pranešimo ir įvertinto aplinkybių kaip nusikalstamos veikos.

Ikiteisminis tyrimas pradamas esant atitinkamų procesinių ir faktinių prielaidų visumai:

1) kai yra pakankamai informatyvos (tikėtinos) informacijos apie galbūt rengiamą, daromą ar padarytą nusikalstamą veiką;

2) kai nėra aplinkybių, dėl kurių procesas negalimas.

Taigi ikiteisminio tyrimo pradėjimo pagrindas – pakankami duomenys (pakankamai informatyvi, tikėtina informacija) apie rengiamą, daromą ar padarytą nusikalstamą veiką. Ar duomenų pakanka ikiteisminiam tyrimui pradėti, kiekvienu konkrečiu atveju sprendžia prokuroras arba ikiteisminio tyrimo įstaigos pareigūnas, kuriam įstatymu suteikti įgaliojimai pradėti ikiteisminį tyrimą.

Ikiteisminis tyrimas pradamas:

1) gavus skundą, pareiškimą, pranešimą;

2) ikiteisminio tyrimo pareigūnui, prokurorui patiems nustatčius esant nusikalstamos veikos požymių ir surašius tarnybinį pranešimą;

3) ikiteisminio tyrimo pareigūnui, prokurorui priėmus iš asmens (taip pat ir savanoriškai atvykusio pranešti apie savo padarytą nusikalstamą veiką) žodinį pranešimą ir surašius protokolą -pareiškimą;

4) „<...> kai nutarimas atsisakyti pradėti ikiteisminį tyrimą panaikinamas ikiteisminio tyrimo teisė jo ar teismo sprendimu, kuriame nurodyti galimai padarytos nusikalstamos veikos požymiai. (G. Bučiūnas, E. Gruodytė, M. Šalčius, 2017).

Lietuvoje yra kelios nusikalstamų veikų kategorijos, grupės, kurių aukoms yra skiriama daug dėmesio, organizuojama kompleksinė pagalba. Tai smurto artimoje aplinkoje ir prekybos žmonėmis tausios aukos. Straipsnio autorių nuomone, šis klausimas – ar asmenys nukentėję nuo nusikalstamos veikos, pvz., smurto artimoje aplinkoje atvejais efektyviai išnaudoja visas teikiamos pagalbos priemones – yra sprendtinas kituose teisiniuose diskursuose. Šiame moksliniame darbe autoriai pasirinko analizei gana dažnai gadinantį nusikalstamų veikų atskleidimo rodiklį – turtines nusikalstamas veikas, kurių didžiausia dalis yra susijusi su vagystėmis, t. y. su nusikalstama veika, minima Lietuvos Respublikos BK 178 str.

Oficialioji statistika rodo tendenciją, kad užregistruojamų vagysčių skaičius kas metai vis mažėja, nors vagystės išlieka dominuojančia nusikalstama veika ir sudaro apie penktadalį visų policijos užregistruojamų nusikalstamų veikų. Autoriai savo tyrimui pasirinko užregistruotų vagysčių kitimą nuo 2010 m. iki 2022 m. Tokį platų laikotarpio pasirinkimą šiam moksliniam tyrimui lemė kelios priežastys. Visų pirma, pastarųjų dviejų metų (2020 – 2021 m.) policijos registruojamų įvykių skaičiaus dinamikai gali daryti įtaką pandemio laikotarpio ir įvairių visuomenės judėjimo suvaržymų. Taigi tokios tendencijos, kokias galima būtų įžvelgti per

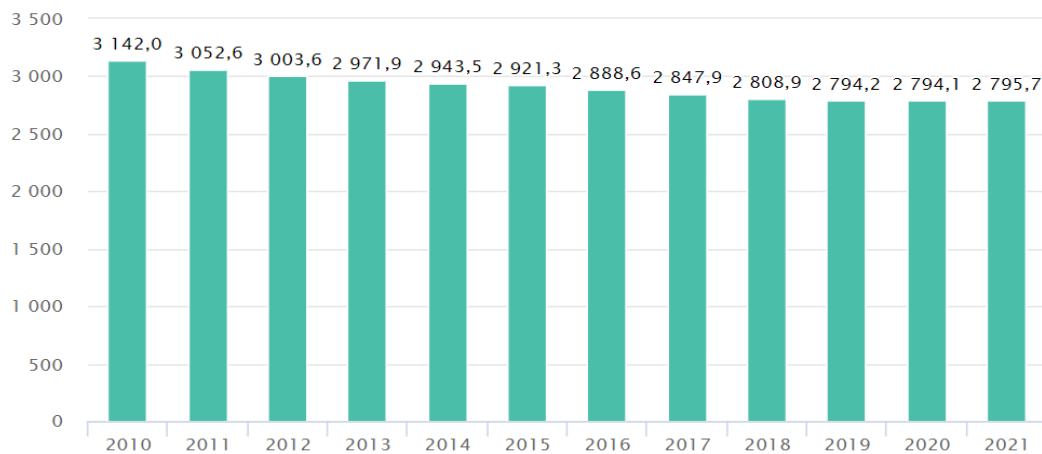
pastaruosius, tarkim, penkerius metus, neatitiktų statistiniams duomenims keliamų reikalavimų ir daryti išsamias išvadas būtų labai sudėtinga. Platesniu laikotarpiu nagrinėjama situacija yra išsamiau ištiriama ir įvairios trumpalaikės fluktuacijos, pavyzdžiui dėl valstybės ekonominių svyravimų turės daug mažesnę įtaką esminėms tendencijoms.

Policija kaip didžiausia ikiteisminio tyrimo įstaiga užregistruoja daugiau nei 90% iš visų šalyje užregistruotų nusikalstamų veikų. Taigi šiame straipsnyje bus analizuojami Policijos Departamento pateikiami statistiniai duomenys.

Pradžiai tikslinga nustatyti kiek procentų sumažėjo Lietuvos gyventojų per nagrinėjamą laikotarpį.

Nuolatiniai gyventojai 2010–2021 m.

Metų pradžioje, tūkst.

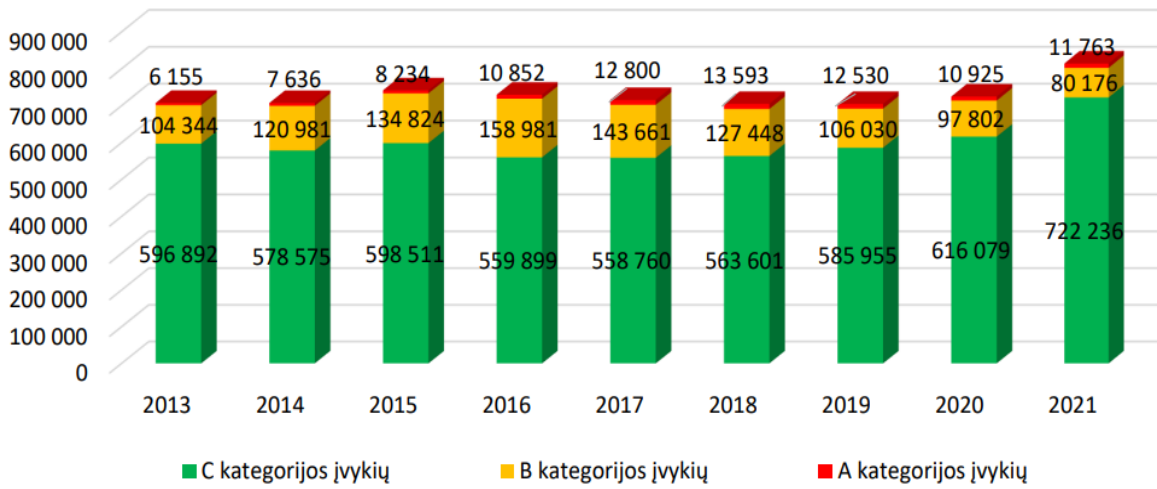


1 pav.

Pateikta Lietuvos oficialios statistikos portale.

Kaip matyti iš duomenų pateiktoje lentelėje, nuo 2010 m. iki 2021 m. Lietuvos Respublikoje nuolatinių gyventojų skaičius sumažėjo 11% (nuo 2013 m. - 5,9%). Nors Lietuvos Respublikos Statistikos departamentas teigia, kad 2019 - 2020 m. dėl natūralios migracijos į Lietuvą sugrįžo daugiau nei 30 tūkstančių gyventojų, tačiau ryškaus pokyčio mažėjančiai registruotų nusikalstamų veikų tendencijai tai nesudarė. Be to, atkreiptinas dėmesys, kad Jungtinei Karalystei išstojus iš Europos Sąjungos, Lietuvos Respublikos piliečiai, kurių biografijose figūravo kriminaliniai įrašai neturėjo teisėtos galimybės likti toliau gyventi Jungtinėje Karalystėje. Tai dalis tokių asmenų buvo priversti grįžti į Lietuvą.

Kitas svarbus rodiklis siekiant šio tyrimo tikslo yra gaunamų pranešimų apie įvykius skaičius policijos įstaigose. Turint omenyje, kad nuo 2013 m. Lietuvos gyventojų kasmet sumažėjo apie 6 %, tikėtina, kad analogišką situacija turėtų būti stebima ir policijos pateikiamuose duomenų suvestinėse.



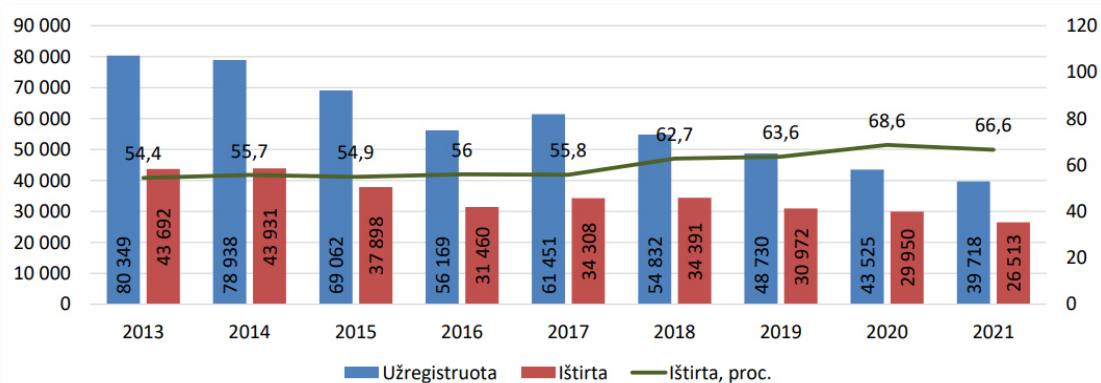
2 pav.

Sudaryta remiantis Lietuvos Policijos portalo duomenimis.

Policijos departamentas skelbia, kad pastaraisiais metais 17,2 % padaugėjo pranešimų apie “C” kategorijos įvykius, o būtent apie koronaviruso infekcijos (Covid-19) valdymo priemonių pažeidimus ir pačių valdymo priemonių taikymo (atliekant saviizoliavimo patikrinimus) pažeidimus. Atkreiptinas dėmesys, kad pranešimai apie turtinio pobūdžio nusikalstamą veiką - vagystę taip yra priskiriami “C” kategorijai.

Taigi, nuo 2013 m. iki 2019 m., kol Lietuvos Respublikos Policijos registruojamų įvykių statistikos Covid-19 pandemija niekaip nedarė įtakos, “C” kategorijai priskiriamų pranešimų sumažėjo 1,8%. Tačiau dar labiau svyravo registruotų pranešimų skaičius 2013 m. ir 2014 m. arba 2018 m. ir 2019 m., todėl įvardinti 1,8% pokytį kaip tendencingą mažėjimą negalima.

Kitas klausimas, kiek pakito užregistruotų nusikalstamų veikų skaičius.



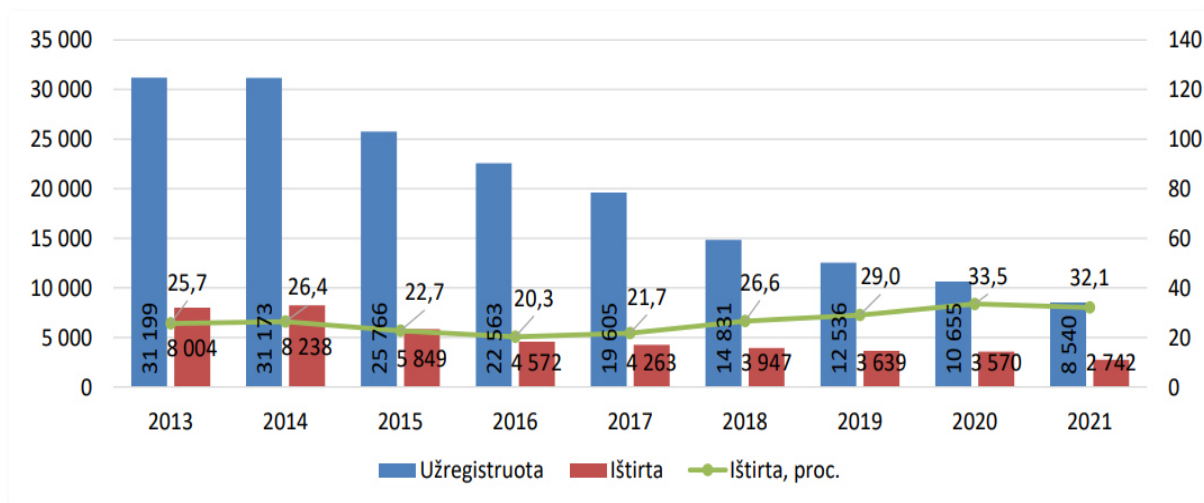
3 pav.

Sudaryta remiantis Lietuvos policijos portalo duomenimis.

Iš pateikiamų duomenų matyti, kad per laikotarpį nuo 2013 m. iki 2021 m. visų nusikalstamų veikų skaičius sumažėjo 50,5%. Iš policijos išskiriamų nusikalstamų veikų kategorijų ir palyginus šiuos statistinius duomenis su Europos Sąjungos statistiniais duomenimis (Eurostat) apie registruotas nusikalstamas veikas, pastebėta, kad:

1. Sunkių ir labai sunkių nusikaltimų skaičius Lietuvoje sumažėjo apie 40%.
2. Sukčiavimų Lietuvoje sumažėjo 26%.
3. Nusikalstamos veikos susijusios su smurtu artimoje aplinkoje staiga mažėti pradėjo Lietuvoje tik nuo 2017 m. ir laikotarpiu nuo 2017 m. iki 2021 m. sumažėjo daugiau nei 50 %.
4. Plėšimų Lietuvoje sumažėjo maždaug 80%, o ES vidutiniškai sumažėjo tik 40%.
5. Vagysčių, panašiai kaip ir plėšimų, sumažėjo labai ženkliai Lietuvoje - net 72%, o kai tuo tarpu ES vidutiniškai sumažėjo tik 16%.
6. Užpuolimų skaičius ES nežymiai padidėjo – iki 9%,.
7. Nužudymų skaičius Lietuvoje sumažėjo 57%, o ES sumažėjo 32%. Vis dėl to čia atkreiptinas dėmesys į tai, kad pagal ES duomenis nužudymų skaičiaus tenkančio 100 000 gyventojų Lietuva ir Latvija pirmąja ES.
8. Seksualinių nusikaltimų ES padaugėjo 29%.
9. Nusikalstamų veikų susijusių su disponavimu narkotinėmis ir/ar psichotropinėmis medžiagomis padaugėjo 30%, tuo tarpu ES tokių veikų užregistruojama apytikriai du kartus daugiau, t.y. padaugėjo 100%..

Kadangi šiame moksliniame tyrime nagrinėjama tema per turtinio pobūdžio nusikalstamos veikos prizme, o būtent vagystės, todėl šios nusikalstamos veikos registracija, analizuojama detaliau.



4. pav.

Užregistruotos vagystės, sudaryta remiantis Lietuvos policijos portalo duomenimis.

Šioje diagramoje matyti keli labai aktualūs duomenys: užregistruotų veikų (vagysčių) tendencingas mažėjimas nuo 2014 m.; vagysčių išaiškinamumo procento tendencingas didėjimas nuo 2016 m. ir pasiekta net 33,5 % riba. Policijos departamentas teigia, kad vagystės yra viena sunkiausiai tiriamų ir atskleidžiamų nusikalstamų veikų, tačiau pastaraisiais metais, skyrus

papildomo dėmesio „tamsioms“, sisteminiams vagystėms tirti, pavyko pasiekti reikšmingai teigiamą vagysčių tyrimo pokytį (Policijos departamentas).

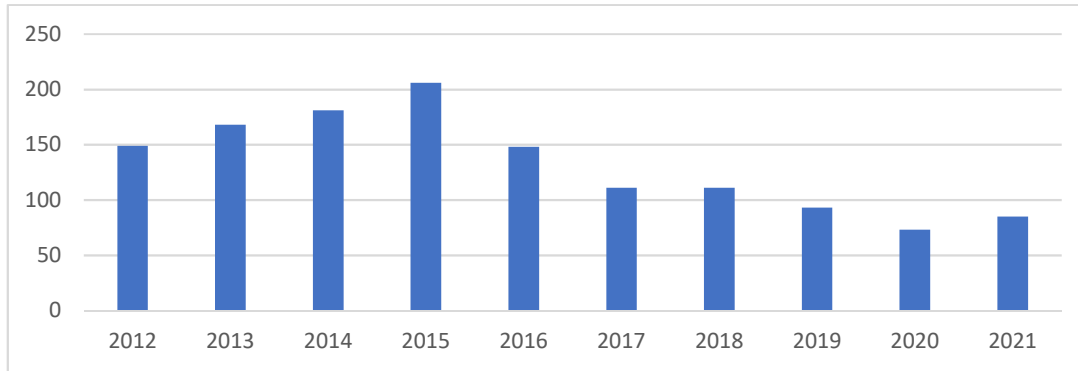
Vis dėlto atkreiptinas dėmesys į Eurostat duomenis, kurie parodo, kad Europos Sąjungoje pastebimas vidutiniškai tik 16% užregistruojamų vagysčių sumažėjimas. Tai kyla pagrįsta abejonė dėl Lietuvoje pasiekto daugiau nei 70% vagysčių sumažėjimo per tą patį laikotarpį. Be to, atkreiptinas dėmesys į tai, kad vagysčių išaiškinamumas pasiekė net 33%. Ar tai atitinka realiai situacijai ar tai tik žaidimai su statistiniais duomenimis bei jų pateikimu? Tai galėtų būti atskiro mokslinio tyrimo tema.

Pastarosios policijos sistemos reformos iš esmės pakeitė pareigūno atliekančio šios veikos įtariamą paiešką darbo vieta, ji buvo centralizuota (kriminalinė žvalgyba), o realios galimybės nustatyti įtariamąjį sumenko dėl kriminalinės žvalgybos subjekto (pareigūno) atitolinimo nuo įvykio vietos ir tuo pačiu bendradarbiaujančių asmenų pergrupavimas iš esmės sumažino jų skaičių kelis kartus (Policijos departamentas).

Didelis žygis prasideda nuo pirmo žingsnio (Kinų patarlės ir priežodžiai. Senovės kinų išmintis)

Policijos pareigūnai, po sistemos reorganizacijos, reaguoja į įvykį pagal taisyklę „**arčiausiai esantys**“. Visgi policijos ekipažų teisiųjų žinių bazė yra labai skirtinga. Dažniausiai ekipaže dirba profesinę kompetenciją turintys darbuotojai, kurių teisės studijas sudarė vos keliasdešimt valandų. (Lietuvos Policijos Mokykla). Taigi dažnai, artimiausias ekipažas atvykstantis pagal pranešimą yra nepakankamai pasirengęs tinkamai spręsti kilusią teisinę problemą. Atvykęs policijos pareigūnas ne visada sugeba tinkamai suprasti nusikalstamos veikos aukos paaiškintą situaciją. Be to, pastebimos ir netinkamai vertinamų aplinkybių taikymo, interpretavimo apraiškos. Pavyzdžiui, policijos pareigūnai reikalauja, kad asmuo, pranešdamas apie pavogtą turtą turės pagrįsti patirtą turtinę žalą, todėl jie šią įstatymo normą interpretuoja kaip aplinkybę, kurią tuoj pat turi įvykdyti nusikalstamos veikos auka. Asmenims, neturintiems galimybės iškart pateikti žalą įrodančių ir pagrindžiančių dokumentų dažnai yra paaiškinama, kad ikiteisminis tyrimas nebus inicijuojamas. Šiuo atveju reikia suprasti ir kitą pusę – pareigūnus. *Lietuva bausmių griežtumu išsiskiria tarp Europos Sąjungos ir kitų demokratinių šalių – laisvės atėmimo bausmė skiriama beveik 10 kartų dažniau negu kitose ES valstybėse. Baudžiamoji atsakomybė plačiai taikoma ir už palyginti nedidelio pavojingumo veikas, pavyzdžiui, už 250 eurų vertės daikto vagystę jau galima skirti net iki 3 metų laisvės atėmimo bausmę (Vyriausybė pritarė valstybės baudžiamosios politikos sisteminei pertvarkai. 2020-05-03)*. Be to, siekiant atskirti teisinės atsakomybės rūšis, labai svarbus požymis yra pagrobto turto vertė. Lietuvos Respublikos Seimo priimtos 2014 12 18 įstatymu Nr. XII-1481 Lietuvos Respublikos BK 190 str. pataisos, kurios įsigaliojo nuo 2015 01 01 nustatė 3 MGL (dabar bazinė socialinė išmoka) riba, nuo kurio kyla baudžiamoji atsakomybė. Nuo 2022-01-01 bazinė socialinė išmoka yra 42 Eur. (Pagrindiniai socialiniai rodikliai). Taigi, nuo 2022-01-01 pagrobto turto vertei viršijus 126 Eur. kils baudžiamoji atsakomybė, todėl pareigūnai ir stengiasi išsiaiškinti pagrobto turto vertę. Praktinės situacijos parodo, jog pareigūnai kartais reikalauja pagrobto turto įgijimo dokumentų, pvz., dviračio. Nors, kaip taisyklė, didžioji dauguma asmenų tokių dokumentų nekaupia ir nelaukia ilgą laiką pas save. Jeigu turtas draustas, tai dažniausiai problemų su informacijos apie nusikalstamos veikos padarymą priėmimu, ikiteisminio tyrimo pradėjimu beveik nekyla. Atkreiptinas dėmesys, kad pareiškėjas, pranešęs apie padarytą

nusikalstamą veiką, yra įspėjimas dėl baudžiamosios atsakomybės pagal Lietuvos Respublikos BK 236 str. dėl melagingo įskundimo ar pranešimo apie nebūtą nusikaltimą. Duomenis apie pradėtus ikiteisminius tyrimus pateikiami žemiau lentelėje Nr. 5.



5. pav.

Užregistruotos LR BK 236 str. veikos, sudaryta remiantis Lietuvos policijos portalo duomenimis.

Kita vertus, nusikalstama veika yra padaroma ir neturtinė žala, į kurią nekreipiama dėmesio turtinio pobūdžio nusikalstamų veikų padarymo atvejais.

Kita priežastis, kuri jau daugiau nei 30 metų yra įvardijama kaip pagrindinė, kodėl pareigūnai dažnai nepagrįstai atsisako priimti pareiškimus/pranešimus apie padarytas turtinio pobūdžio nusikalstamas veikas arba pradėti ikiteisminius tyrimus yra ikiteisminio tyrimo įstaigose dominuojantis vadovybės požiūris į turtinio pobūdžio nusikalstamas veikas kaip gadinančias statistinius rodiklius, menkinančius policijos pasiekimus kovoje prieš nusikalstamumą. Laikui bėgant pareigūnai randa vis naujų ir įmantresnių būdų kaip nepriimti pareiškimo/pranešimo ar nepradėti ikiteisminio tyrimo, t. y. atsisakyti pradėti ikiteisminį tyrimą grindžiant tai nevisai logiškais motyvais.

Dar viena priežastimi laikytinas ir bendrojo pagalbos telefono darbuotojų netinkamai perteikta/pateikta informacija. Kaip pavyzdys iliustruojantis netinkama informacijos perteikimą, paminėtinas 2019 m. vykęs pokalbis tarp pranešėjo o tiksliau nukentėjusio nuo nusikalstamos veikos ir bendrojo pagalbos centro operatoriaus, kurio stenogramos ištrauka pateikiama žemiau:

- <...>Gelbėkit, mane užpuolė dviese, atėmė telefoną.<...>
- Ar Jūs pažįstate tuos vyrus?
- Taip, jie dažnai prie parduotuvės sėdi. <...>

Bendrojo pagalbos centro operatorė į įvykio vietą nukreipė medikus, o policiją informavo tokiu tekstu „moteris pranešė, kad susipyko su pažįstamu, kuris iš jos paėmė telefoną“. Tačiau po kelių parų buvo pradėtas ikiteisminis tyrimas pagal fabulą: <...>18.30 val. iš priekio eidamas vyriškis vieną kartą sudavė pil. A.P. į veidą, dėl ko ji parkrito aukštiekninka, tuomet dūrė jai 4 kartus peiliu į pilvą, tuo atimdama galimybę priešintis ir iš jos kelnų kišenės ištraukė telefoną ir piniginę (Ikiteisminio tyrimo Nr. 01-1-16598-19 medžiaga). Moteris apklausos metu nurodė, kad operatorė jos paklausė ar ji pažįsta užpuolusius asmenis, o ji paaiškino, kad dažnai juos mato prie prekybos centro, ir nors niekada nėra su jais bendravusi, tačiau gali juos atpažinti. Ikiteisminio tyrimo metu buvo nustatyti įtariamieji, kurie buvo teisiami ne pirmą kartą už 16 plėšimo epizodų,

įvykdytų per 3 savaites. Atkreiptinas dėmesys, kad bendrojo pagalbos centro operatoriai nėra kvalifikuoti teisininkai, apie nusikalstamas veikas ir jų kvalifikavimą nėra instruktuojami.

Būdai, kaip pagal praneštą nusikalstamą veiką, nepradedama ikiteisminio tyrimo

Tikslinga išskirti du praktikoje sutinkamus atvejus – kai nepriimamas pareiškimas/pranešimas ir kai pareiškimas/pranešimas priimamas, tačiau atsisakoma pradėti ikiteisminį tyrimą.

Policijos pareigūnai, atvykę į įvykio vietą sprendimus priima savarankiškai ir ne visais atvejais yra kontroliuojami jų pasisakymai, veiksmai. Taigi ir šiuo metu vis dar pasitaikanti policijos pareigūno reakcija yra kritiška nusikalstamos veikos aukos tapusio asmens atžvilgiu ir niekaip neatitinkanti policijos reprezentuojamos politikos „**saugoti, ginti, padėti**“. Pvz., 2022 m. vasario mėnesį V.B. kreipėsi į policiją pranešdama, kad ji paliko lengvąjį automobilį Vilniuje autoservise ir šiuo metu jo neberanda, o autoserviso patalpose nieko nėra, o meistras, kuriam buvo paliktas lengvasis automobilis jau kuris laikas yra nepasiekiamas. Atvykusi pas moterį pareigūnė paaiškino, jog faktas, jog moteris neranda savo lengvojo automobilio ir paties serviso toje vietoje, kur paliko remontui lengvąjį automobilį niekaip nereiškia, kad policija turėtų kištis, nes meistras nėra įpareigotas taisyti lengvojo automobilį būtent toje vietoje ir pareiškimo nepriėmė, motyvuodama, kad tai ne policijos darbas ieškoti, kur persikėlė autoservisas. Tuomet moteris situaciją aprašė pareiškime, nurodydama, kad lengvasis automobilis buvo paliktas servise, kuris pagal Registrų centro duomenis registruotas daugiabučio bute Zarasuose. Į šį pranešimą moteris gavo atsakymą „**Dėl policijos gaunamų dokumentų**“ 1.1.2.4 punktu (gavus pranešimą, prašymą ar pareiškimą, kuriame išdėstytos akivaizdžios aplinkybės, nurodančios tik drausminės, administracinės atsakomybės požymius, arba aprašomi civilinio proceso tvarka nagrinėti ginčai ir nėra jokių duomenų apie galimai padarytą nusikalstamą veiką) nutarimas atsisakyti pradėti ikiteisminį tyrimą nesurašomas. Nagrinėjamu atveju Jūs galite kreiptis pas teismo antstolius dėl faktinių aplinkybių konstatavimo (jūsų lengvojo automobilio buvimo vietos nustatymo), taip pat pas nepriklausomus ekspertus dėl žalos dydžio nustatymo.“ (Medžiaga Nr. M-2-02-00168-22) Tokio pobūdžio atsakymas net procesiškai neskundžiamas, nes tai ne procesinis sprendimas. Vis dėl to jis neužkirto kelio kreiptis į prokuratūra, ir ikiteisminis tyrimas buvo pradėtas.

Vis dėlto reikia atkreipti dėmesį į Lietuvos gyventojų (ir juolab svečių-turistų iš užsienio šalių) teises žinias, kurių stoka gali būti lemiamu aspektu neskundžiant nepagrįstų ir neteisėtų ikiteisminio tyrimo įstaigų priimtų procesinių sprendimų. O teisinės konsultacijos tokiais atvejais iš esmės yra tik mokamos. Tikėtina, kad net ir ne finansinis klausimas yra pagrindinė kliūtis asmenims neskusti tokių sprendimų, o pareigūnų įtikinamas ir atkaklus paaiškinimas be jokių teisinių argumentų, kad asmens skundas yra nepagrįstas. Taip pat praktikoje pasitaiko atvejai, kai reikalauja pateikti papildomų dokumentų, kurie nėra būtini.

Kitas būdas nepradėti ikiteisminio tyrimo yra procesinio sprendimo atsisakyti pradėti ikiteisminį tyrimą priėmimas, kartais net su absurdiškais motyvais. Nors ir šiame straipsnyje dažniausiai pavyzdžiu nagrinėjamos vagysčių situacijos, tačiau smurto prieš mažametį atveju taip pat galima nepradėti ikiteisminio tyrimo. Tokį procesinį sprendimą atsisakyti pradėti ikiteisminį tyrimą turi įvertinti ir prokuroras, tačiau kartais prokurorai neįsigilina į įvykio aplinkybes ir palieka galioti nepagrįstą ir neteisėtą procesinį sprendimą. Pavyzdys iš praktikos, 2020 m. vasarą 9 metų

vaikas K.J. buvo paliktas pas kaimynę, kol mama nuėjo į parduotuvę. Kaimynė vaikui pasiūlė maisto, o kai šis atsisakė (ne pakankamai mandagiai), ėmė vaiką tampyti už plaukų ir sudavė jam kelis kartus kumščiu į petį. Tuo metu pas kaimynę atėjo vaiko motina, o vaikas pro praviras duris pabėgo pas kitą kaimynę, kuriai viską papasakojo. Kauno apylinkės prokuratūros prokurorė surašė: „ji tyčia rankomis už plaukų tampė mažametį K. J., ir tyčia ne mažiau kaip 5 kartus rankomis sudavė į kairę veido pusę, taip jam sukėlė fizinį skausmą. Vaikas nurodė, kad skausmą vertina 6 balais iš 10.“ Tačiau „ir nors toks drausminimo būdas – fizinės jėgos panaudojimas mažamečio atžvilgiu negali būti pateisinamas, tuo pačiu pripažintina, jog tokie veiksmai buvo nukreipti ne į pavojaus gyvybei, sveikatai ar raidai sukėlimą, o auklėjimo tikslais. Taigi, tokie veiksmai negali būti prilyginami tyčiniam smurto panaudojimui ir rodo esant mažesnę jų pavojingumą. Todėl nepadaryta veika turinti 140 str. požymių“ (Ikiteisminio tyrimo Nr. 01-1-29443-20 medžiaga).

Norint geriau apsaugoti asmens nukentėjusiojo nuo nusikalstamos veikos teises, jo teisėtus interesus ir užkirsti kelią jo pakartotinei viktimizacijai, kai atsisakoma priimti pareiškimą/pranešimą apie padarytą nusikalstamą veiką arba priimamas procesinis sprendimas nepradėti ikiteisminio tyrimo, būtina atlikti korekcijos teisės aktuose dėl pranešimų apie įvykius galimai turinčius nusikalstamos veikos požymių registracijos efektyvesnės kontrolės. Pvz., suteikiant daugiau įgaliojimų prokurorams. Kitas alternatyvus prokurorinei kontrolei mechanizmas padėsiantis apginti nusikalstamos veikos aukas galėtų būti nevyriausybinių organizacijų dalyvavimas pranešimų apie įvykius registracijos proceso kontrolėje. Analogiškai šiuo metu veikiančiai kompleksinei pagalbai smurto artimoje aplinkoje aukoms, galima būtų sukurti teisinius pagrindus, įgalinančias nevyriausybines organizacijas pakartotinai bendrauti nusikalstamos veikos aukomis tapusiais asmenimis, nustatant jų lūkesčius ir įvykio registracijos procedūrų atitikimą teisės normoms.

Autorių nuomone, svarbiausiu leitmotyvu, keičiant požiūrį į šiame straipsnyje keliamą problemą būtų statistinio rodiklio apie atskleistų nusikalstamų veikų, ypač turto pobūdžio nusikalstamų veikų segmente svarbos ir reikšmės vertinant policijos darbą traktavimas. Šis rodiklis (nusikalstamų veikų atskleidimo) yra tik vienas iš policijos darbo efektyvumo, visuomenės saugumo jausmo vertinimo skalėje, o ne pagrindinis ir svarbiausias policijos ir kitų ikiteisminio tyrimo įstaigų, prokuratūros veikloje. Taip pat turėtų būti kreipiamas didesnis dėmesys į žemiausios grandies policijos pareigūnų rengimo/mokymo procesą.

Išvados

Nemažėjant pranešimų apie įvykius skaičiui ir atvirksčiai, nuosekliai mažėjant pradėtų ikiteisminių tyrimų skaičiui, vis daugiau nusikalstamų veikų lieka nuošalyje, tampa latentinėmis.

Lietuvos Respublikos įstatymai nuosekliai ir kompleksiskai gina tik atskiras asmenų nukentėjusiųjų nuo nusikalstamų veikų grupes – smurto artimoje aplinkoje ir prekybos žmonėmis tapusias aukas. O asmenys, nukentėję nuo turinio pobūdžio nusikalstamų veikų lieka tarsi nuošalyje nuo valstybės pozityviosios pareigos ginti nuo nusikalstamų veikų, nepaisant kėsinosi objekto.

Būtina sustiprinti prokurorinę kontrolę, suteikiant įgaliojimus prokurorams kontroliuoti pranešimų apie nusikalstamų veikų registracijos procesą.

Vertinant ikiteisminio tyrimo įstaigos veiklą itin sureikšminama statistinio rodiklio apie

atskleistas nusikalstamas veikas svarba. Tai galimai sąlygoja ir požiūrį į turtinio pobūdžio nusikalstamų veikų registravimą, ikiteisminio pradėjimą, kaip gadinanti statistinius rodiklius ir ikiteisminio tyrimo įstaigos pasiekimus tiriant bei atskleidžiant nusikalstamas veikas.

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LEGAL STATUS OF THE VICTIMS OF THE CRIMINAL ACTS: CURRENT SITUATION, CHALLENGES AND PERSPECTIVES

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Summary

This research paper profoundly analyses status of a person who became a victim due to commission of a criminal act against him/her and a victim's status in the criminal procedure. In practice, we are witnessing increasing a problem of the transition from a person, who suffered from a criminal act conducted against him/her to him/her recognition as a victim in a criminal case. In order to have good statistical indicators, official who is in charge for checking information, pre trial investigations sometimes does not initiate pre-trial investigations by refusing to accept a statement/notification about commission of a criminal act, or they are requested to provide additional documents in order to clarify information or even refuses to start a pre-trial investigation.

At present time, a person who became the target of a criminal act does not have any legal tools to protect his/her rights during registration of the event containing features of a criminal act and initiation of a pre-trial investigation, with aim to later to acquire a victim's status at the pre trial investigation. In other words, the main problem is that a person who had suffered harm as a result of a criminal act has been committed against him/her and who had been applied to a pre-trial investigation body, usually to the police station, he/she does not always receive the necessary and adequate assistance from a pre trial investigation body, a state. Free legal aid is also not provided in such cases for a person who suffered from a criminal act, because he/she wasn't granted the status of a victim in the criminal case.

The aim of this scientific research is to identify issues related to the acquiring a status of a victim due to commission of a criminal act. The authors of this paper going to achieve the aim of this paper by analyzing statistical data on registered property criminal acts, other statistical data closely related with the topic of this research, and other relevant documents.

The novelty of this paper is that the authors of this paper analyzes examples from real events, presents the means how the officials of a pre trial investigation body not going to initiate a pre trial investigation and the reason behind why they still do it.

Keywords: *a criminal act, a person who suffered from a criminal act, a pre trial investigation body, pre trial investigation, a victim.*

KEY FEATURES AND ESSENCE OF SELF-MANAGEMENT APPLICATION: THEORETICAL ASPECT

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Abstract. *The majority of the existing self-management literature is devoted to medical definitions of self-management. In fact, self-management has a much broader concept than we might think. Everyone on the planet must determine what their life's main purpose is, as well as what their most important goals and objectives have always been. It is the most important aspect of self-management because it is the behavior that must be accepted in order for desired changes to occur in one's life and workplace. It could be mentioned, that it is very important for personal career development. This should become a habit, which can be accomplished through extensive self-improvement, resilience development, and the ability to think rationally. There are numerous management styles, but we must start with ourselves, with an understanding and knowledge of self-management. Today's emphasis on teamwork, new opportunities, and self-governing working groups, and also self-management, provides people with the advantage of being able to take care of themselves at work and in general. Personnel self-government and self-development are becoming important factors in the survival of the economy in market conditions, strengthening the position of management in various countries. In different nations, self-government and personnel development are becoming important factors in the economy's survival in market conditions, strengthening management positions. The purpose of the article is to investigate various research studies in order to demonstrate the importance of self-management. The paper investigates the characteristics and essence of various approaches to self-management, emphasizing their importance in the workplace and in daily life in order to assist potential employees in achieving their goals. It enables you to assess ethics, social responsibility, and emotions in relation to self-management development. The research relied on theoretical data gathered from international scientists as well as online resources. Several scientific research methods were used in the study, such as literature analysis and synthesis, the monographic method, and content analysis.*

Keywords: *Self-management, development, emotions, own growth, success.*

Introduction

Self-management as a new direction in modern management arose in response to changes in the management situation in the world (Yershova, 2019):

- the growth of the scale and dynamism of changes in entrepreneurship and business require to learn new approaches and management skills, combat the possibility;
- increasing uncertainty, pressure and tension in various forms of life of organizations and related stresses require to be able to manage yourself;
- the transformation of the creative potential of the employee into the most valuable capital of the organization requires the preservation and development of this potential, in particular by the employees themselves;

- exhaustion of many traditional schools and management methods puts in front of the need to master modern management techniques to reassess their potential and work on its development.

In fact, self-management has much broader concept than we might think. Everyone in the world needs to figure out what their life's main purpose is and what their most important goals and objectives have always been.

This should become a habit, which can be attained through extensive self-improvement, the development of resilience, and the ability to think rationally. It could be mentioned the importance of self-management for personal career development too. There are many different types of management, but we must begin with ourselves, with an understanding and knowledge of self-management.

Self-management is a difficult science to master, and a young leader must begin with self-education to acquire knowledge and put it into practice. To improve your skills in this area, however, you must be aware of each of their actions, analyze them, and objectively assess their own capabilities. Only by learning to manage oneself will a person be able to achieve success and maximize their potential.

Many people want to make work more efficient, high-quality, and low-cost and power-consuming. Self-management, in all of its components, aids in achieving the best results, reducing workload, and feeling much better and more successful in all aspects.

Self-management, on the other hand, implies that people control their own behavior by establishing personal standards, assessing their work against those standards, and self-managing consequences based on their self-esteem (Sajeevanie, 2020, p. 4123).

The emergence of self-management as such is dictated by the country's objectively developed management environment, accelerated pace of life, and increasing pressure from the external management environment; we can also note the impact of constantly updated management technologies, techniques, and psychological science discoveries.

The problem is that a lack of understanding of the process of self-management and its skills can negatively affect people's lives, their career and also stop their desire to improve and succeed in personal and professional activities.

The aim of the paper is to investigate various research studies in order to demonstrate the importance of employees' self-management. The research relied on theoretical data gathered from international scientists as well as online resources.

The **tasks** of this paper:

- to analyze and clarify the theoretical part of understanding and importance of self-management for success in personal life and professional career;
- to investigate the extent essence and evolution of self-management in organizations;
- to explore necessary conditions for the implementation of employees' self-management;
- to appraise the role of emotions in the development of self-management;
- to analyze the key skills of effective self-management.

The **research's** novelty stems from points of increasing competition. The various scales of change in entrepreneurship, businesses that require the development of new skills, and the coexistence of different types of management combat the possibility of self-retardation. So self-management is required for labor-market survival. You must be able to manage yourself in order to succeed.

Several scientific research **methods** were used in the study, including literature analysis and synthesis, the monographic method, and content analysis.

Self-management theories' origins and evolution

The beginning of scientific understanding of the problem of self-management in the domestic and sociological literature can be attributed to the mid-90's. In one of the first publications on this topic, Karpichov (1994) made an attempt to "introduce into the problem" of self-management, put forward for discussion some outlines of the model of self-management. Somewhat earlier, the concept of "self-management" was introduced into scientific circulation by Seivert (2005), head of the Institute for the Rational Use of Time in Germany. Interest in this problem is not accidental. It is due to the logic of the development of managerial knowledge.

A very important fact is that the need to motivate the creative potential of each employee and the inability to satisfy it within the framework of traditional management. The efforts of the organizations themselves gave rise to the process of socialization and psychologization of management, on the wave of which the direction of self-management emerged, opening up prospects for research and practical implementation individual business career.

The basis for the development of research on self-management at the level of the production team is that many scientists, like Bondarenko, Woodcock, Seivert, Kolpakov, Linman, Lukashevich, Francis, Khrolenko, Shapoval, Yashkina and etc., have studied various aspects of this phenomenon (Babchynska & Midliar, 2016).

Labor efficiency largely depends on appropriate efforts to improve their activities and self-management. It allows employees to improve their ability to work more efficiently and rationally.

There are three stages in the development of self-management (Figure 1):

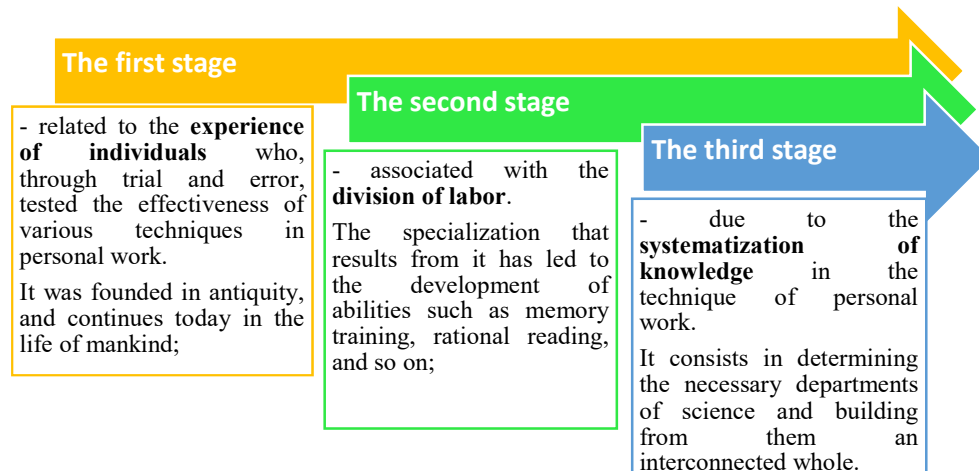


Figure 1. Three stages in the development of self-management

Source: Babchynska & Midliar, 2016

The first stage is related to the experience of individuals who, through trial and error, tested the effectiveness of various techniques in personal work. It was founded in antiquity, and continues today in the life of mankind.

The emergence of the second stage is associated with the division of labor. The specialization that results from it has led to the development of abilities such as memory training, rational reading, and so on. Today, the division of labor in self-management continues

to deepen. Developments such as the ability to have a business telephone conversation, control their emotions, the art of listening to the interlocutor, etc.;

The third stage is due to the systematization of knowledge in the technique of personal work. It consists in determining the necessary departments of science and building from them an interconnected whole (Figure 1).

Today, the division of employees in self-management is becoming more pronounced. It is important to develop the ability to control their emotions during a business telephone conversation, the art of listening to the interlocutor, and so on (Babchynska & Midliar, 2016).

When we consider and study self-management theories, we come across two main explanations: operant and cognitive.

In the early 1990s, Hughes and Lloyd (1993) mentioned Skinner as the first theorist to offer an operant view of the self-management paradigm. Skinner, Rachlin, and others who use operant principles to research self-government usually concentrate on the controlling and concomitant controlled reactions of individuals (Hughes & Lloyd, 1993; Sajeevanie, 2020).

The cognitive explanation of self-management, on the other hand, assumes two steps: first is the assessment and decision to control one's behavior, and second is the actual self-control reaction (Hughes & Lloyd, 1993).

These researchers explained that self-management is a process that starts with monitoring and evaluating one's behavior and progresses to bettering one's performance.

As Hughes and Lloyd (1993) explain, both perspectives arose from a behavioral perspective rather than from a psychoanalytic or other non-empirical tradition. Furthermore, they emphasized that self-government is not a personality trait and that people can be given more opportunities to exercise it (Hughes & Lloyd, 1993).

The essence of self-management is financial and economic independence, full responsibility for activities, high self-organization, self-discipline, coherence, and legal protection; it is also critical to participate in monitoring decisions, conflict resolution, contradictions, the desire for innovation, and group risk (Ghali, Miri & Hamzah, 2018, p.47).

Thus, management, as a management system and organizational subsystem, is a collection of management processes integrated into a single mechanism. Any system, including management, considers, calculates, and forecasts various systems, situational tasks, and processes before responding appropriately (Ghali, Miri & Hamzah, 2018, p.48).

Management-related changes raise the bar for managers' professionalism, training, and retraining. As a result, maintaining constant growth and development becomes a requirement for every manager, which self-management facilitates.

Necessary conditions for the implementation of self-management

Laloux (2014) covers necessary conditions for the change and insists that employees must be ready to take responsibility in order to exercise their right to self-management. They should always understand the organization's requirement in order to see it in their own work and be emotionally connected to it. People have to have confidence and trust in leaders to make the right decision to implement self-management (Laloux, 2014).

Organizational change is frequently perceived as a threat. Those in positions of power, in particular, are likely to oppose the changes because they will have to relinquish their former positions and find new roles within the organization. One of the most difficult aspects of transitioning to self-management is determining how to deal with an organization's various hierarchical layers. Many organizations have implemented self-management practices in order to overcome resistance (Laloux, 2014).

Laloux (2014) identifies various ways of teaching self-management (Figure 2):

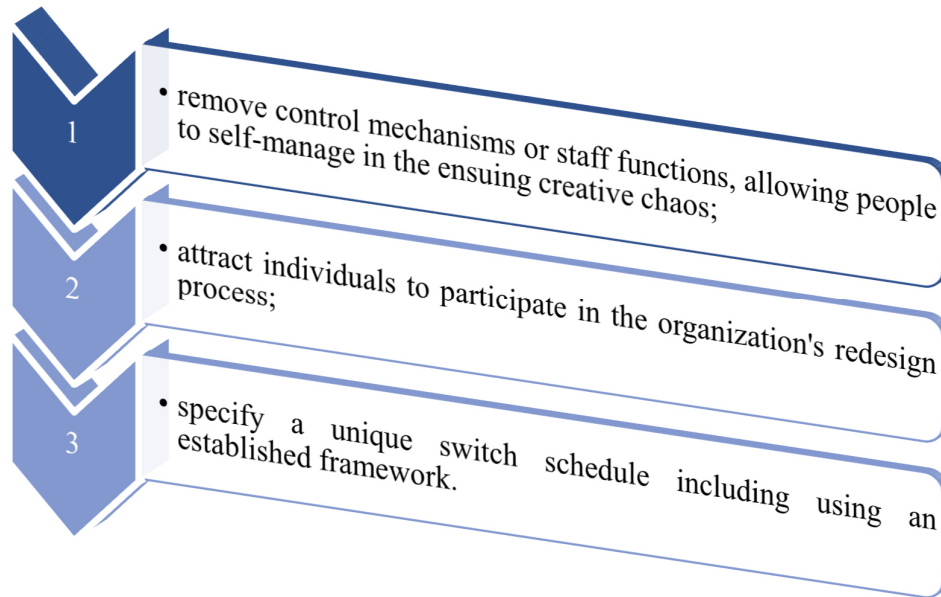


Figure 2. Ways of teaching self-management

Source: Laloux, 2014

✓ One option is to simply remove control mechanisms or staff functions, allowing people to self-manage in the ensuing creative chaos. People who have a strong psychological attachment to their work are more likely to succeed in this situation because they do not want to disappoint anyone.

✓ The second option is just to attract individuals to participate in the organization's redesign process. In the above way, you can incorporate people's knowledge and experience with the organization. External instigators, such as coaches, can also assist with the change process. People need clarity about their future prospects before the process begins because their previous jobs will be eliminated and replaced by new roles.

✓ The third way should be to specify a unique switch schedule including using an established framework that includes a direct new structure and practices that can be implemented. Besides, a great deal of knowledge and expertise is shared on internet platforms and at events centered on self-management and teal organizations (Laloux, 2014).

Self-organization includes not only conscious but also instinctive and possibly other principles, necessitating a more detailed definition of its essence, content, and modes of implementation. Self-organization is immediately visible in the type of leadership and coaching philosophy that the employee employs in practice. And this has a significant impact on both the outcome of his activities and the organization's overall functioning (Lee & Edmondson, 2017).

The mechanism of self-organization is genetically unique to each individual. Such a mechanism is the foundation for ensuring a person's existence, action construction and implementation, formation of a worldview, and interaction implementation.

To ensure our own survival, as well as to set and achieve specific goals, each of us first organizes independently, and only then (as a result of this self-organization) purposefully mobilizes and uses our own capabilities to build interactions with others. In this sense, self-organization describes a person as a constructively formed, adequately thinking, self-sustaining,

and purposefully developing subject, prepared for effective interaction with others (Efron, 2014).

Self-organization is especially important for the development and implementation of the organization's most diverse personnel interaction. Realizing himself, his role in the organization, and the role of the organization as a whole, he associatively represents the behavior of others in a specific situation and develops a plan of future actions on this basis (Sajeevanie, 2020).

Self-development is linked to the general technical and social skills required for modern life or at any level of work, especially in today's world. Cunningham (2004) also believes that self-development is more important now than it was ten or twenty years ago.

Self-development is a natural part of the career management process. The changing personality of the staff is capable of broadening their own experience and is constantly focused on discovering and understanding their intellectual capabilities, finding meaning, and determining their place in the world (Cunningham, 2004).

The process of self-development frequently necessitates changing one's thinking and behavior toward one's work and oneself in order to improve one's ability to be flexible and tolerant of the unknown, to demonstrate an ability to take risks, and to develop in the field in which one works.

Individual failures were once understood by management and society, and repeated errors were tolerated. Time has become a critical factor in today's workplace. As a result, in order to be successful at work, you must develop and learn something new on your own, and self-development equates to greater individual power (Cunningham, 2004).

Individuals' ability to identify their own learning needs, define their learning goals, identify the sources from which they need to learn, select and apply appropriate learning strategies, and evaluate learning outcomes without the assistance of others is referred to as self-learning in its broadest sense. Self-study, as defined by Merriam et al. (2007), is a process in which individuals take primary responsibility for planning, sustaining, and evaluating their learning experience.

Learning focuses on the knowledge and skills that are required by all people, regardless of age. According to the literature, twenty-first-century skills are being considered and are becoming increasingly important in the information society. Self-learning is a critical component of these skills.

Many authors argue that self-management and lifelong learning are inextricably linked. Greveson and Spencer (2005) argue that self-management is required for lifelong learning, whereas Candy (1990) emphasizes the link.

Self-learning, according to this viewpoint, is both the meaning and the outcome of lifelong learning. Lifelong learning and self-learning are intertwined concepts that build on one another.

Nothing is more difficult or important than honest, objective self-evaluation. It is difficult to exert impartial control over their behavior and the consequences of their actions. Because psychophysiological potential is heavily influenced by innate genetic predispositions, higher nervous activity type, and emotional-volitional sphere, it is even more difficult to objectively assess one's place in society, one's abilities. However, in order to experience spiritual and moral development, systematic and rigorous introspection is required (Balbaster, 2005).

Self-assessment is an important component of formative assessment because it involves thinking about the quality of one's own work rather than relying solely on someone for evaluative judgments. Self-assessment is a formative assessment process in which they reflect

on the quality of their work and evaluate how well it reflects clearly defined goals or criteria (Balbaster, 2005).

In order to learn to manage yourself effectively, you need to make an effort and spend a lot of effort and time. Keenan (2015) a certified psychologist, proposes the components of effective self-management (Figure 3):

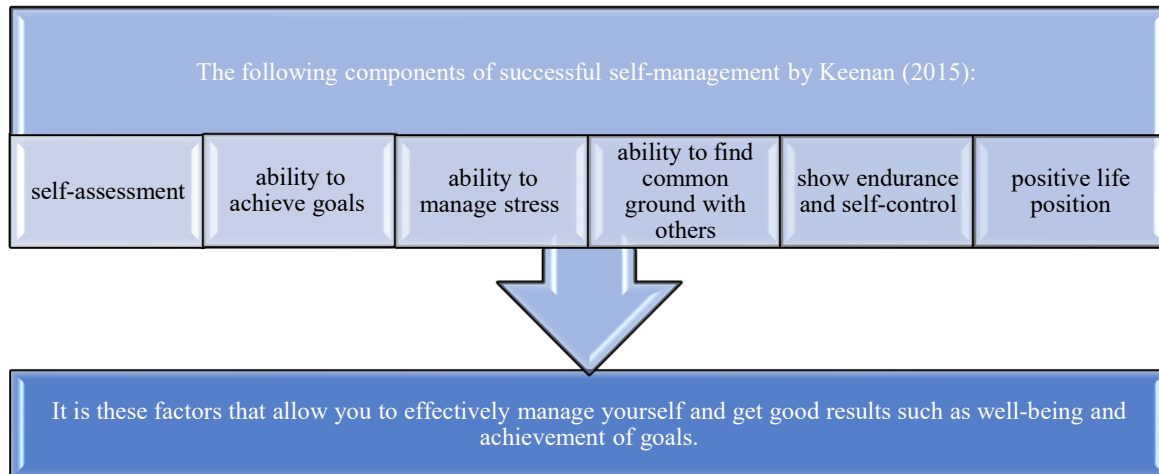


Figure 3. Components of successful self-management

Source: Keenan, 2015

From this point of view, you can show the key skills of effective self-management (Keenan, 2015):

- the ability to manage oneself - the ability to make full use of one's time, energy, skill, the ability to cope with stress.
- reasonable personal values, clear, adequate to modern reality.
- clear personal goals: clarity in matters of business and personal life, realistic goals in life.
- emphasis on continuous personal growth
- problem-solving skills: having effective decision-making strategies and the ability to solve contemporary problems.
- creativity and the ability to innovate: ingenuity, the ability to generate enough ideas to solve a problem.
- high ability to influence others: to provide support and participation, to influence their decisions.
- knowledge of modern management approaches
- ability to lead, ability to train and develop subordinates
- the ability to form and develop effective working groups.

It is extremely difficult to achieve the goals set, either with great effort or not at all. We are motivated by some needs that are not ours, but are imposed on us by our relatives, friends, teachers, acquaintances, and others. We move in a stream, unaware that we are a full-fledged unit of the Universe and the world. And then we find ourselves engulfed in a slew of problems, difficulties. The individual has everything he or she needs to live, develop, improve, and assist themselves in dealing with their problems. Everyone is designed to be self-sufficient (Keenan, 2015).

Emotions and their role in the development of self-management

The distinctiveness of effective self-government is also found in the need to consider socio-psychological needs and personality traits in the course of labor activity. Often, approaches based on traditional economic incentives not only fail, but also have a negative impact on the outcome. Thus, the role of psychological methods of self-government is increasing, based on the study of the parameters of the psychological portrait of a person and decision-making taking into account these parameters, including emotions (Nesbit, 2014).

Emotions such as excitement are useful for a manager because they stimulate activity, empathy (sympathy) is useful because it makes communication humane, and interest and curiosity are useful because they allow you to master new areas and move forward.

The following behaviors can be used as an antidote to stress and self-control (Nesbit, 2014):

- Investigate and accept yourself as you are;
- Develop close and trustworthy relationships with others;
- Seek out a challenge: success improves your ability to use your energy.
- Accept your failures calmly and learn from them;
- Be both realistic and optimistic about your chances.

Emotions and feelings play a large and diverse role in human life today. They act as a regulator and stimulator of human behavior and activity, as well as providing diagnostic and prognostic information. Emotions stimulate human labor, aid in communication, and foster positive relationships, but they also create conflict situations (Antoniadou & Crowder, 2021).

Emotions play a very important role in people's lives. The emotional sphere of a person is a wide range of their experiences and feelings. It performs a number of functions, such as stimulating, regulating, and eliminating the lack of information, the main one being evaluation. A person who experiences a certain emotional state - joy, sadness, anger undergoes certain changes not only in their internal organs but also in their appearance.

Emotions make people aware of their needs and the things they are targeting. Another common feature of emotions that you need to pay attention to is their help in meeting needs and achieving certain goals. Because any emotion is positive or negative, a person can judge the achievement of a goal (Holovska, 2020).

Thus, it can be concluded that emotions are most directly related to the regulation of human activity. But they have an impact on self-management. The purpose of this is not to show your emotions on the outside, so you need to know them and learn how to control them to be more confident and develop self-management (Holovska, 2020; Antoniadou, 2021).

Emotions are what we experience as feelings that motivate, organize, and direct perception, thinking, and action.

In brief, emotions are feelings which come up during the education process as a result of cognitive processing of events and experiences. Emotions influence behavior because they draw attention to events and experiences, and they are accompanied by knowledge that mediates the nature of emotional reactions and behavior (Plutchik, 2001).

As we all know, when managers try to improve their develop self-management, a variety of emotions are likely to arise. These emotional reactions have the potential to either support or confuse and distract self-development efforts. As a result, how leaders manage their emotions is likely to have a significant impact on the effectiveness of their self-learning efforts (Plutchik, 2001).

Consideration of the role of emotions in self-learning situations is likely to help advance theoretical understanding of the process of self-development, which is still in its early stages.

Although emotions are clearly present in the process of self-development, particularly during self-reflective assessments, emotions are unlikely to have a direct impact on learning behavior. Emotions, on the other hand, are important because they influence current knowledge, which has direct implications for motivating and enacting self-regulation behaviors. Thus, during the self-development process, managers must actively manage both cognitive and affective aspects that arise during the self-development and self-management training (Simpson & Marshall, 2010).

According to Koole and Salovey and Grewal, the extensive literature on emotion regulation provides opportunities for theoretical development of the literature on self-development, as well as a practical understanding of strategies that can be included in self-management learning processes (Koole, 2009; Salovey & Grewal, 2005).

Peculiarities of self-management in different cultures

The most important tasks of self-management is to ensure proper organizational culture and social harmony on the part of not only the leader, but also with the participation of each employee of the organization. According to some studies, the completion of this task is only a dream of the owners and the managers who represent them, and behind the paternalistic game on the psychology of hired workers there is only one method of labor intensification - direct pressure or liberalism, which the owner has used since time immemorial in the struggle for own interests (Makkonen, 2016).

The relationship between wage workers and employers, on the one hand, and workers and managers, on the other hand, is frequently strained. By resolving any conflict issue, each side attempts to cause as much harm to the other as possible. In addition, if the latter are not owners, a special relationship develops between them. The conviction that current profit - at any cost, numbers are more important than people - dominates the minds of the heads of foreign corporations.

The achievement of internal corporate governance perfection and the spontaneity, uncertainty, and unpredictability of the external environment of the socioeconomic environment of industrially developed countries are in objective contradiction, as evidenced once again by the example of so-called exemplary corporations. Until now, management tools in the United States have pushed owners and managers to rationalism and underestimation of innovation in manufacturing systems (Manz, 1992).

Self-management necessitates not only the achievement of the material well-being of the company and its employees, as well as the manager himself, on the part of the organization's leaders, but also the facilitation of the process of adaptation of employees to their activities, working conditions, and organizational rules of conduct. However, it was discovered that the majority of businessmen and managers were unable to break free from tyranny, over-analysis, and narrow rationalism. In recent years, American managers have emphasized analytical impartiality and methodological elegance at the expense of experiential intuition. A professional manager frequently sees himself as a judge who says yes or no to new ideas. A senior executive believes that his job is to make judgments, to veto a new idea, as it is supposedly always impractical, to formulate a negative argument rather than put forward a constructive one (Manz, 1992).

Managers in Japan and West Germany are beginning to outperform their American counterparts in terms of professionalism, flexibility, enterprise, and determination. Americans lag behind because business schools are overburdened with unnecessary knowledge; professional managers lack a clear perspective; managers do not identify with what their firm

does; they do not show sufficient interest in their employees; and top managers and their staff are locked into analytical issues and undervalue the impact of the external environment.

When a person gets a job, it is important to understand whether he sees a defense in the group or goes into it as a team of like-minded people. The leader should analyze this so that he does not have a conflict with the group. The ability to clearly delegate responsibilities between employees is one of the most important functions of a manager. In foreign organizations, there is a clear structuredness, formalization of tasks, an assessment of each individual employee, and the ability to quickly identify an individual who does something bad or well, because the foundation of work is an individual task and individual responsibility. As a result, group work is more effective.

Effective self-management is impossible without the assumption of certain obligations and responsibilities by individual employees. And this is work primarily in the interests of the system, and not their own. Americans have a predominant desire to take responsibility (Manz, 1992). It is very important to create an environment in the system in which an irresponsible person would feel uncomfortable. The entrepreneur, the one who created the company (and it is impossible to create it, if you do not take responsibility), knows how to do it, he has practical experience. And his duty is to help his subordinates learn to create. Most of the training takes place at work. A normal leader spends up to 40% of his time working with people, training subordinates. After all, responsibility is possible only when a person is trained, competent and not afraid to make decisions (Sacks, 2017).

Employee self-motivation - their ability to do without external positive reinforcement for an extended period of time in many difficult and responsible situations - is one of the most striking indicators of management and organizational success. The main incentive for such people is often self-realization, which corresponds to their "motivator map," which is a set of personal priorities for each person. On the one hand, it is convenient for the leader because he does not need to make significant efforts for additional motivation; on the other hand, an employee frequently becomes poorly managed, especially with a partial or complete loss of interest in work, and he easily leaves the company in a situation where self-realization becomes impossible.

In the practice of Western companies, there are some management techniques that contribute to the development of self-motivation skills in an employee in such a way that they will play a positive role in his life (Sacks, 2017).

Modern authors, who publish various manuals and textbooks on self-management, advise to take care of yourself, provided that if a person is really interested in it, otherwise it's just a waste of time. It is recommended to indulge in nice things, such as a bath, nice music, as well as advice on sports. Experts advise to arrange two-day vacations (sanatorium, sea cruise, skiing, etc.). But at present, these tips and suggestions are not widely used, among the reasons for this in many countries is the lack of financial resources to "work for demolition", which is not included in the practice of self-management. In addition, often even a short rest, travel cause a negative reaction from subordinates, colleagues. Due to the inability of many managers to alternate work and rest, they remain the forces of physical activity, active recreation, which, of course, has a negative impact on human health.

It is not always possible for a person to react correctly to the problems that have arisen and find a rational way out of a difficult situation. In most Western countries, instead of solving this with the help of self-management, workers can shift the blame on others and, of course, circumstances are always to blame. But it is necessary to get rid of this self-deception (Sacks, 2017).

Self-management in most countries, perhaps only in China and some American states, requires development, motivation, in defining clear life and work goals that play a role in quality work. You need to learn self-motivation, you need to learn goal-setting at work. Perhaps because a large number of people do not want to find a job that would be their favorite, often do not have the opportunity to find it, self-realization is not one of the main values. A rarity for the employee is job satisfaction, both morally and materially (Makkonen, 2016). In the west, a person, getting from the work environment to the home, leaves all work problems at the door of his organization.

Self-management involves the adaptation of change too. For example, in Japan, a person annually learns various innovations, improves their skills and knowledge with a break from work for 1-3 months. And training is at the expense of the organization, that is, here we are dealing with investment in man as a resource of production. In most countries, and especially in Ukraine, there are not many job advertisements where free training of a new employee is provided. Therefore, a person should motivate himself to constantly study new technologies, methods and so on (Jung, Takeuchi, 2017).

Implementation of self-management of employees in organizations

To maximize the effectiveness of various approaches to planning, their logical relationships must be demonstrated. A strategic goal can be visualized as a converging funnel aimed at a specific goal (Figure 4).

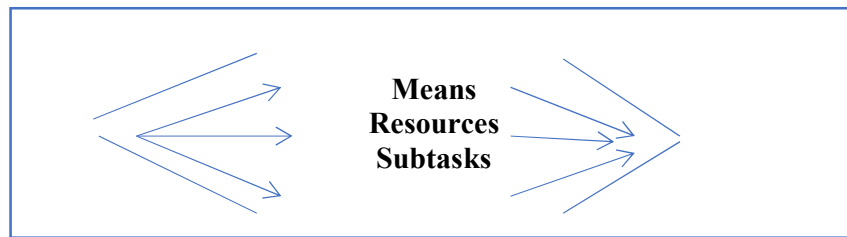


Figure 4. Program for Strategic Goal Achievement
Source: Author compiled

The arrows represent the means, resources, and subtasks that lead to this goal.

The arrows represent the internal and external possibilities that define the permissible movement directions from the starting point.

This program is useful in problem situations, such as when there is a general direction of movement but no clear idea of the desired result.

A personal strategic plan created using the attention structuring method is an example of such a program. The further away from the center of attention the pointers to deeds contained in the system become, the less "projected" they become, and the more ideas, over-goals, and so on appear. Structures that do not specify a specific outcome, but rather a set of possible directions of movement and self-development, none of which is destined to become a reality (Chaykina, 2016).

The presence of these factors enables us to correlate the opportunities provided by the external environment with our own desires and capabilities, and choose the best path for future movement; specifically, to formulate specific goals for the near future.

Figure 5 depicts the operational level of the program, which is close to the initial planning stage and is filled with distinct projects (interrelated in the calendar resource schedule).

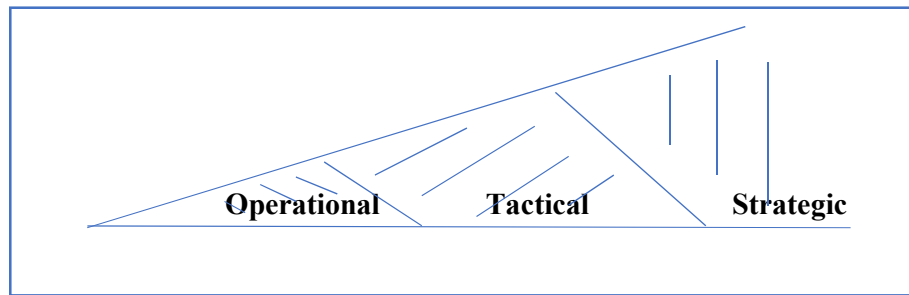


Figure 5. Self-management Approaches

Source: Author compiled

More distant projects in the zone of "strategic preconsciousness" are frequently not yet formalized; these are most likely just ideas. It is only defined by rather abstract super-goals and key areas, as well as, possibly, a strategic goal (Chaykina, 2016).

Thus, strategies for the development of personal management in their approaches to improving organizational efficiency should be long-term in nature:

- providing managers with information on what is expected of them
- providing an opportunity to compare the goals against which managers' performance will be evaluated, and to identify areas of inconsistency in which competence must be improved;
- identify managers with potential, encourage them to develop and implement personal development plans, and create conditions for providing the necessary development, training, and experience to prepare managers for more complex individual and organizational tasks;
- establishing conditions for maintaining leadership succession and developing a system to regulate and control this process (Chaykina, 2016).

Conclusions

Self-management is the main instrument for achieving the unity of goals and the attitude of staff to them on a social, economic and moral basis. It is the relationships of people that shape their levels of behavior, activity and mood.

Employees have now be able to complete an increasing number of tasks in a short period of time in order for the company to succeed. One of the concepts of self-management is the application of a set of tried and true methods and skills in everyday life to maximize time efficiency.

Follow a few simple guidelines: set specific goals, plan ahead of time, use the proper decision-making process, implement and organize, and maintain control.

When a result is received, it is compared to the goal; if the result matches the goal, the labor process is on track; if it does not, adjustments must be made during the labor process, or the goals must be reviewed.

Self-management requires the ability to extract, store, develop, and rationally use one's own resources for being more successful and self-sufficient. Self-managed organizations are more efficient and creative, as well as fairer and have greater degrees of autonomy. The research supports the conclusion that self-management is superior to more traditional types of management.

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DEVELOPMENT OF ECONOMIC SECURITY OF ENTERPRISES IN THE CONDITIONS OF TRANSFORMATIONS

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***Abstract** The economic activity of enterprises in real time is carried out in a transformational environment, characterized by reforms in the political, economic, social spheres of life and the formation of a new worldview on the development of economic systems. In such conditions, the security system of the enterprise becomes especially important. The analysis of theoretical and methodological approaches of the disclosure of the essence of economic security of an enterprise in a turbulent environment and digitalization of the economy has identified six vectors of modern scientific achievements deal the economic security of the enterprise. The main factors of economic security of the enterprise are: a) planning; b) external and internal environment monitoring; c) diagnosis in order to implement actions to respond the threats; d) improvement of the system on the control basis. The security of the economic space of enterprises under the conditions of transformations is due to general economic destabilizing factors, factors of industrial development and business security factors. It is proved that the economic security of enterprises is influenced by transformation processes at three levels of government: 1) at higher levels of the economy (macro); 2) external, where transformations are often imposed on the enterprise and have a revolutionary character (meso); 3) internal processes, which called by the requirements of modern market economy and are evolutionary (micro). At the same time one of the condition for an enterprise sustainable development and its competitive position maintaining is the improvement of the information security system. Therefore the mechanism of economic security is characterized as a set of means, methods and tools of influence of subjects of economic security on processes of objects for the purpose of their regulation in the conditions of transformation.*

Keywords: economic security, transformation, digital economy, levels of government

Introduction

The economic activity of enterprises in real time is carried out in a transformational environment, characterized by reforms in the political, economic, social spheres of life and the formation of a new worldview on the development of economic systems. At the same time, the enterprise, as an open system, suffers from the destructive impact of threats and risks of transformation processes, which requires the creation of an effective mechanism of economic protection and its adaptation to functioning in conditions of significant change.

The necessity of improvement of the theoretical and methodological basis of the economic security of enterprises is also caused by the disorder and inconsistency of reforms in the national economy, the lack of industrial policy in Ukraine, which is able to protect domestic business from threats of internal and external environment and by European integration transformations and processes of world globalization and increasing competition.

Many scientific works are devoted to the study of the problems of transformation processes and their destructive impact on economic security, among which the works of Buzgalin, Denisov, O.E., Diamescu, M. A, Ioan-Franc, V., Franchuk, V.I., Gromyko, O.I., Osberg, I., Sharpe, A., Soraya Sedkaoui, Voynarenko M.P. However despite the fact of wide range of scientific research, adapting of the economic security system of the enterprise, its mechanisms and technologies to work in an economically unstable environment remains an urgent unsolved problem.

Statement of the problem is to substantiate and develop theoretical and methodological provisions and scientific and practical recommendations for the development of economic security of enterprises in the conditions of transformations.

The need to achieve this goal led to the formulation and solution of the following tasks: to conduct a critical analysis of the scientific and theoretical basis of the system of economic security of the enterprise, to clarify the content of its main definitions; to develop theoretical and methodological bases of development of the system of economic safety of the enterprise adapted to operate in the conditions of transformations; systematize the threats of priority transformations of enterprises and determine their destructive consequences; to substantiate proposals on the directions of adaptive development of the system of economic security of enterprises in the conditions of transformational changes.

The **object** of research are processes of formation and functioning of the system of economic security of the enterprises adapted to conditions of transformational changes.

Subject of research is a set of theoretical, methodological, scientific and methodological aspects and scientific and applied tools for the development of economic security of enterprises in the conditions of transformational changes.

Research **methodology**. Theoretical and methodological basis of research are the fundamental provisions of modern economic theory, general and special methods, techniques and principles of knowledge in the field of economic security, including: morphological analysis, abstraction and logical awareness (to clarify the conceptual and categorical apparatus in economic security), system analysis and synthesis (to determine the relationships), monographic and review-analytical (for the study of scientific views and concepts, abstract-logical generalization - to form goals, objectives, justification of relevance and concepts, formulation of conclusions and proposals).

Theoretical and methodological developments and **proposals** are based on empirical and dialectical study of scientific works of leading domestic and foreign authors on the application and development of economic security.

Scientific novelty of the obtained results consists in substantiation of theoretical and methodological provisions and development of practical recommendations on formation of system of economic security of the enterprise in the conditions of transformational changes. The scientific results, characterized by novelty, are the following provisions: conceptual and categorical approbation of research of transformation processes due to application of the category "priority transformations", which is based on empirical research of preconditions of transformational changes, factors of influence on the transformation environment; proposals to improve the system of economic security of enterprises, within which a comprehensive conceptual approach is recommended, which provides for political, legal, economic and institutional measures and allows to achieve a synergistic effect of reforming the economic security system at different levels of the economy; the mechanism of technologies utilization of system of economic safety maintenance of the enterprise with use of basic technologies of identification, testing, estimation and protection and technologies of maintenance of their adaptation to use in the conditions of transformational changes.

The authors must make a clear statement of the purpose of the paper and the research questions or objectives. It is also necessary to indicate the research design and methodology in the introduction or as a separate chapter of the paper. The relevant literature review must be provided in the introduction part or in a chapter part of the main body of the paper.

Theoretical and methodological basis formation of the system of economic security of enterprises

Permanent changes and transformations in various environments influence over economic processes, highlighting the goals of ensuring a sustainable, secure economy and equalizing the impact on a number of multi-vector factors. Moreover the urgent needs of economy, which is constantly transformed, need an immediate solution of the problems of continuous management improvement and rapid adaptation to current day management challengers. Modern market relations require a number of tasks. The management and assessment of economic security of the business structure are on the top of particular importance. Therefore, in order to have a clear understanding of efficiency in economic activity, it is necessary to study the economic category of "economic security of the enterprise."

Security and development of economy are two main dimensions of the existence of humanity in common and modern communities in particular. The problems of the economy security is the field of researchers of number of the leading foreign and domestic scientists: Blank I (2014), Garry J. Schinasi (2014), Gromyko, O.I (2016), Kozachenko (2003) , Emil J. Kirchner (2013) Kenyon-Rouvinez D. (2017) Luciani, G. (1988). However, the permanent transformation of economy encourages entrepreneurs to constantly monitor changes in their areas of activity, the parameters of markets and competitors.

Sustainable development of enterprises activity requires improvement of the economic security management system. Therefore, there is a need for a critical analysis of the scientific and theoretical basis of the system of economic security of business in order to clarify the content of its basic definitions.

The importance of the concept of economic security is also seen in the fact that researchers give it an important role in national security, as the economy is the driving force of planning, organizing and focusing on the best use of resources aimed to provide basic livelihoods and to the improvement of citizenship. National and international economic security has been studied in the same way as the security of the individual, because in today's globalized world there is no completely independent country (Muntiian, V. (1999), .Nemchenka V.V. (2018)).

In the human development report, "economic security" is one of the factors, which influence over human security. "Economic security" is provided as the basic income of each citizen from their own work as a contribution to society in this report (Human Development Report, (2020)).

Almost all researches on economic security to a greater or lesser extent provide an interpretation of this category. Every author's interpretations has the right to the existence, as it corresponds to the goals and objectives of a particular scientific study. But this does not solve the problem of the need to formulate a unified approach to awareness of economic security category.

Analysis of scientific sources shows that there are several approaches to nail down the definition of "economic security of the enterprise". To conduct a detailed analysis, there is a need to systematize of scientific approaches to this issue, provided by other scientists. It should be noted that each of the scientific views is based on the functional purpose of the system of

economic security. The main functional tasks of economic security are (Kryvov'yazuk I.V., (2013):

- ensuring high level of the financial efficiency, financial stability and independence of the enterprise;
- ensuring technical independence and achieving high competitiveness of the technical potential of the facility;
- achieving a high level of staff qualification and its intellectual potential, proper efficiency of R&D;
- minimization of the destructive impact of the results of production and economic activities on the environment;
- high-quality legal protection of all aspects of the enterprise (organization) ;
- ensuring the protection of the information field, and achieving the required level of information support for the work of all departments of the enterprise and departments of the organization;
- effective organization of security of the enterprise' human resources, its capital, property and commercial interests "(Kryvov'yazuk I.V. (2013):

A review of scientific publications for the period 2010-2021 such authors as Shulga I.P. (2011), Lyashenko O.M., (2012), Gnylytska L.V. (2013) and Sosnovska I.M. (2015) allowed to systematize chronologically the approaches of the economic security category. The review identifies several such approaches:

- 1) providing conditions for the safety of commercial confidential information;
- 2) as protection against the negative impact of the external environment;
- 3) as protection of economic interests of the enterprise;
- 4) as protection of a particular aspect (type) of activity;
- 5) as protection of a certain type of business entity;
- 6) as a complex of economic relations.

This systematization, in our opinion, gives an idea of economic security as a complex of relations to protect the enterprise, its interests and activities from disclosure of commercial confidential information and threats to the environment. The authors shows how scientific interests regarding the objects of economic security have evolved over time (Figure 1):

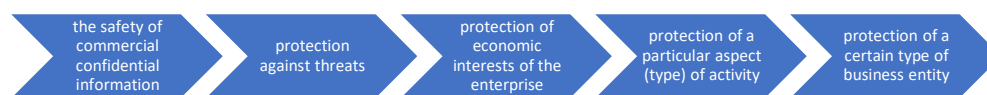


Figure 1. Evolution of approaches to the interpretation of the category "Economic security of the enterprise"

Source: created by the author, based on the systematization of the previous research

The result of the review of the existing systematizations of scientific approaches to the definition of the category "economic security of the enterprise" allows highlighting four logically ordered groups of approaches, namely:

- 1) Economic security of the enterprise as a state of protection from threats to the internal and external business environment (activities) and corporate interests.
- 2) Economic security of the enterprise as a state of safety of commercial confidential information and property.

- 3) Economic security of the enterprise as a state of use of corporate potential.
- 4) Economic security of the enterprise as its identification with the management system of the enterprise.

Basing of the result of the review of the existing systematizations of scientific approaches it possible to provide the following conclusions:

1) There are several approaches to defining the definition of "economic security of the enterprise" in scientific research, which are appears in the scientific literature and base on the objectives of scientific research and the preferences of their authors.

2) We consider that the most rational approach to the definition of this category based on the main function of the economic security system is protection against threats.

3) The definition of terminology is only the beginning of painstaking scientific work in the research areas of the economic security of the enterprise. At the same time, the system of enterprise management should deal with the issues of ensuring the realization of economic interests.

Similarly, the system of economic security can not provide competitive advantages of the enterprise, but can protect them. As for protection against economic crimes, in the system of economic security of enterprises it should be considered as a component of protection against internal and external threats.

Thus, the system of economic security cannot "replace" the management system of the enterprise, performing its functions. This understanding should be reflected in the interpretation of the category of "economic security of the enterprise".

As the analysis of the definition of "economic security of the enterprise" has shown, this definition becomes more complicated with each new research. Each next authors tries to add and bring elements of novelty in the interpretation of this category. On the one hand, it reveals in more detail the individual structural components of the category, which allows to expand the boundaries of the worldview of users. On the other hand, it complicates the perception of information about the essence of the category, because it contains too much information.

In our opinion, the interpretation of the category should be concise, short-spoken and most certainly provide the main message to the user. That is why we propose in the interpretation of this category to separate the essence of security from the need to provide appropriate management functions.

We believe that the most significant content load is borne by such structural components that most accurately reflect the main task of the economic security of the enterprise: to protect the economic interests of the enterprise from threats of various sources.

Thus, the economic security of the enterprise - a state of protection from external and internal threats in the economic space of the enterprise, which are caused by reasons of different sources, which are connected to the realization of its economic corporate interests.

Diagnosis and assessment of economic security of the enterprises in the conditions of transformation

Transformational transformations for a modern enterprise are significant, large-scale and profound changes that occur in the transformation environment of the enterprise under the influence of endogenous and exogenous factors, lead to significant transformations of type, form, content, functions and corporate policy. In a crisis economy, the most common transformations are forced ones, because such kind of economic transformations arise from changes in existing legislation.

Classification of modern enterprise' transformations is a basis for formation of the effective mechanism of maintenance of the identification processes of threats of transformational processes, an estimation of negative influence of their consequences, formation of an investment portfolio of protection measures. Priority features of classification of transformations in view of their influence on the level of economic security of the enterprise presented in table 1.

Table 1. Priority features of classification of transformations in view of their influence on the level of economic security of the enterprise

Source: created by the author, based on the systematization of the previous research

Criteria for the effectiveness of the system of economic security of transformations	Basic characteristics of transformational transformations	Classification features of transformations
Ability to predict (predict) transformation processes and their threats	The period and timing of the transformation Probability of its implementation	Probability of prediction Duration Cyclicality Nature of influence
Ability to identify current threats in a timely manner	Objects of transformation Priority directions of transformation processes The main features of transformations	Transformation objects Priority Duration Cycle The nature of the impact Initiatives
Ability to assess the level of negative impact	Consequences and types of negative impact of transformations	The results of the impact on business security
Ability to form an effective mechanism for ensuring the security of transformations	Objects of transformations The purpose of transformations	Objects of transformations The purpose of transformations
Ability to promptly implement protection measures	Types of economic danger Probable consequences of negative impact	Types of economic danger Consequences of negative impact
Ability to implement preventive measures	Motives of transformation processes and factors (reasons) that caused them	The purpose of implementation

The following conceptual bases shows the author's vision of rationale of the enterprise of a choice of priority directions of transformations:

1. Possessing the prerequisite conditions for transformations. Such objective prerequisite conditions, in our opinion, are:

- consequences of world economic crises of the period of independence of non-European countries (Ukraine);

- reforming the economic management system of the number of the countries of the post-Soviet space in order to build market relations – such as Ukraine's integration into international cooperation, focusing on cooperation with the European Union;

- the purpose and goals of economic development of the enterprise itself.

2. The existence of an objective reason for the implementation of transformations. We believe that the transformation of the enterprise may be caused by the need to:

- elimination of the consequences of crisis processes or events (losses);

- ensuring a stable condition;

- ensuring sustainable development;

- ensuring economic breakthrough;
- compliance with current legislation in other cases.

3. Availability of financial and resource potential, special institutions and tools for transformational processes. Transformations, which represent a qualitative change in the form and depth of structural elements of the system and the content of the system itself, require not only the need and desire to change something for the better. Nevertheless, they also need the real resource opportunity, manifested in the presence of appropriate production, human and financial potential, specific institutions (design bureaus, problem laboratories and business incubators) and relevant tools.

4. Theoretical consent of the owners of the enterprise to carry out the transformation. Any entrepreneur in accordance with the classical provisions of economic theory (A. Smith, J. Schumpeter), aims to generate income (in the modern sense - profit) and to achieve this goal is able to innovate and develop new technologies. These theoretical principles of entrepreneurial activity are inherent in modern industrial enterprise. Thus, business owners should theoretically be ready for innovative changes, changes in outdated forms and methods of organization and management of basic economic processes, that is for transformations. However, such theoretical agreement occurs only in cases where the transformation contributes to the realization of the main goal of the enterprise (obtaining additional profits, strengthening the financial condition, increasing the level of competitiveness, etc.) and is not coercive in nature. There are cases of unforeseen force majeure (natural disaster, man-made accident, hostilities, economic crisis), when the owners of the enterprise agree to the transformation compulsorily. According to the above, in our opinion, we can highlight three types of the consent of business owners to carry out transformations. They can be voluntary, forced and compulsory. At the same time, events related to changes in economic policy at the state level are forced.

5. Ensuring economic security of transformational processes. Diagnosis of risks and threats that may be caused by transformations, assessment of the level of economic danger and development of measures to address, eliminate or prevent threats of such danger and eliminate their consequences.

Thus, we believe that transformations at the enterprise are carried out with the appropriate prerequisites and consent of the owners, due to objective reasons, the availability of financial capacity and resource potential, special institutions and appropriate tools in the presence of economic security.

Possible research directions- development of technologies, which insure economic security of transformations at the enterprise

The system of economic security of the enterprise is a set of principles, goals, methods, technologies, tools and measures aimed at the effective functioning of the economic security of business, achieving these goals and objectives of economic activity given the need to implement corporate interests and protect against internal and external threats. external environment. Under such conditions, the use of effective innovative technologies is an important area of the research. The mechanism of economic security of a modern enterprise has the appropriate tools, which include technologies, tools and protection measures.

Despite the above, we believe that the algorithm for the application of technology is not considered completed. In addition, information on economic security technologies of the enterprise requires systematization.

Technologies in the system of economic security, in our opinion, are a set of certain orderly actions (steps), which are carried out using certain technical, organizational and

methodological means to achieve the goal. In our opinion, an effective system of economic security should operate with such groups of basic technologies as "technology for threat identification, technology for testing the system of economic security of the enterprise; technologies for assessing the hazard class from probable threats; technologies of protection against threats and dangers Shulga, I.P (2011)

The use of the above basic technologies guarantees the implementation of the main tasks of the economic security of the enterprise:

- 1) detection and identification of threats and dangers of the enterprise;
- 2) assessment of the degree of risks and dangers;
- 3) assessment of the capacity of the economic system of the enterprise;
- 4) protection of the economic system of the enterprise from real threats to the external and internal environment and their consequences.

The novelty of this research is to expand the scientific understanding of the application of technologies in the economic security of modern enterprises through the introduction of basic technologies, the functional task of which is to ensure the main goal of economic security, and security technologies whose functional task is to ensure the implementation of basic technologies.

«Receptions, the order, regulations of performance of process of management. Management technology consists of informational, computational, organizational and logical operations performed by managers and specialists of different profiles (Vlasiuk, O. S., 2017)

The model of security technology, which can be considered basic, according to the author's vision, includes:

- 1) Formulation of the purpose (functional task) of the technology, the formulation of which depends on the formation of all other components of the model. Note that the purpose of basic technologies - to ensure the implementation of the main task of the economic security system, the purpose of security technologies - to ensure the effective application of basic technologies.
- 2) Definition of constituent elements at the input and their parameters. The correct definition of input information and rational selection of its parameters allows to achieve the expected result at the output.
- 3) Choice of means of support (technical, methodical, organizational, personnel) and requirements for their application. Technologies in the system of economic security are provided with appropriate equipment, special equipment, computer equipment and software; methodical tools (methods and instructions), qualified specialists, organizational charts and maps.
- 4) Compilation of a description of the algorithm of the selected technology, which is a list of sequential actions that are performed to achieve the goal.
- 5) Defining the range of responsible persons, which should be limited to prevent the possibility of unauthorized dissemination of information about this technology.
- 6) Trade secret protection measures, including: restriction of access to information constituting a trade secret; concluding non-disclosure agreements with the staff and heads of divisions; conducting preventive explanatory work among the staff on the preservation of trade secrets and responsibility for its disclosure; application of a system of penalties for disclosure of confidential data and damage to the image of the enterprise.
- 7) The expected result at the output and its parameters. Which is planned and adjusted for the purpose of applying the technology.

Using the model of security technology, which can be considered basic, according to the author's vision, you can provide a description of any technology in the system of economic security of the enterprise and build its algorithm (Figure 2):

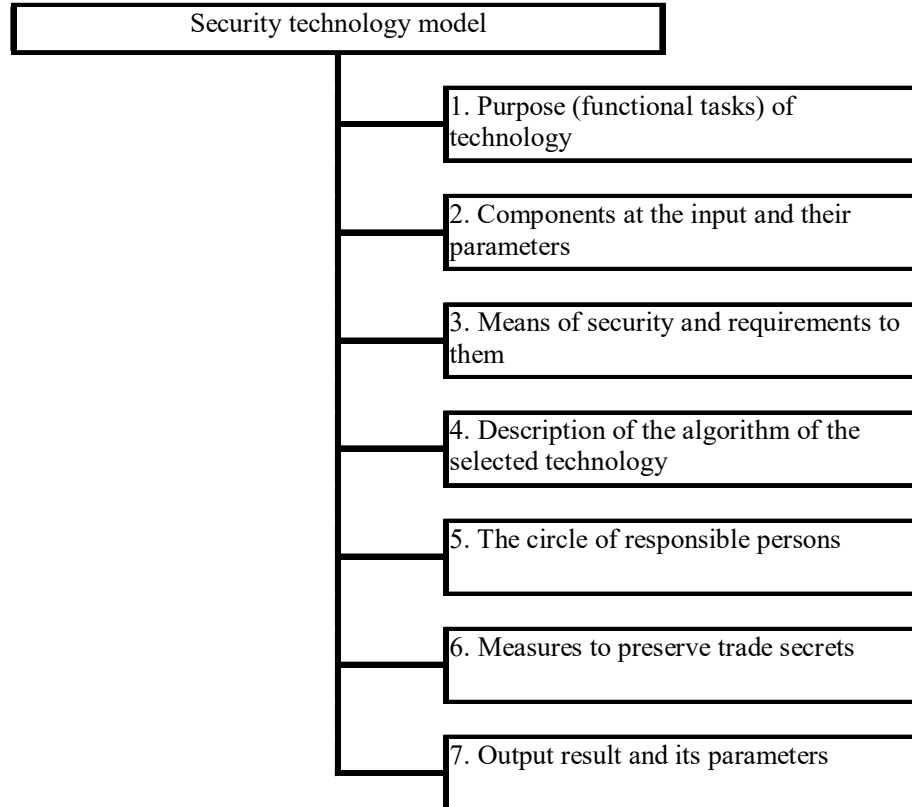


Figure 2. Model of technology to ensure the economic security of the enterprise
Source: created by the author, based on the systematization of the previous research

In the table. 2 presents the main purpose (functional tasks) and main actions (steps) of basic technologies and support technologies.

Table 2. Functional characteristic technologies systems software economic security of the enterprise

Source: created by the author, based on the systematization of the previous research

Types of technologies	Functional task (implementation goal)	List of ordered actions (steps) (technology algorithm)
1	2	3
1. Basic technologies		
1.1. Threat identification technologies	Identification of real risks, threats and dangers and their identification	<ul style="list-style-type: none"> - monitoring of risks, threats and dangers - data accumulation and their current systematization - identification of threats in the set of standard projected threats - systematization of data on unpredictable threats

1	2	3
1.2. EBP system testing technologies	Assessment of the ability of the economic security system of the enterprise to ensure the required level of business security	<ul style="list-style-type: none"> - diagnostics of threat monitoring system - diagnostics capacity informational communication system - diagnostics of the ability to quickly assess the financial condition of the enterprise - diagnostics capacity systems internal control - analysis of innovation of security technologies and the state of their provision - diagnostics of the adaptive mechanism - analysis of the availability and effectiveness of remedies
1.3. Hazard class assessment technologies	Rating state and level of economic security of the enterprise	<ul style="list-style-type: none"> - calculation of indicators - comparison their value with defined parameters - calculation of generalizing indicators - assessment of the level of danger
1.4. Technologies for protection against threats and dangers	Protection of the economic system of the enterprise from the negative impact of real threats and risks and their destructive consequences	<ul style="list-style-type: none"> - list of actions under conditions of raider capture - under conditions of seizure (abduction) of employees - threats to the lives and freedoms of employees and their relatives - penetration of unknown persons into places of storage of information and property - unforeseen failure in the accounting and information system
2. Support technologies		
2.1. Technologies of accounting and analytical support	Providing accounting and analytical information for the functioning of the adapted economic system enterprise security	<ul style="list-style-type: none"> - organization of primary and consolidated (synthetic and analytical) accounting of operations and processes (including transformational), and related assets, capital and liabilities for monitoring threats and dangers - organization of reporting in the EBP system - conducting analytical calculations of indicators of analysis of economic activity and financial condition - processing, accumulation, storage and transmission of accounting and analytical data in the EBP management system
2.2. Technologies of internal economic control	Control of efficiency of administrative decisions in system of economic safety of the enterprise	<ul style="list-style-type: none"> - control of observance of corporate policy of EBP - control preservation property and others corporate resources - control of observance of safety technologies - control of trade secrets - monitoring the effectiveness of protection measures.
2.3. Technologies of information and communication support	Digitization and automation of data collection, accumulation, storage and transmission, as well as external and internal communications	<ul style="list-style-type: none"> - automation of collection, accumulation and transfer of information on threats and dangers of business processes and transformational transformations - automation information and accounting and analytical system - automation systems internal control - digitization of confidential information - digitalization of the system of provision and current management of EBP

1	2	3
2.4. Management technologies	Ensuring the effectiveness of the economic security of the enterprise	<ul style="list-style-type: none"> - development of corporate security policy - forecasting the probability of transformational transformations and the probability of risks and threats - organization of security activities - planning and organization of economic security - monitoring the effectiveness of innovative technologies, mechanisms and security tools - prevention of the destructive effects of threats, leakage of confidential information and application damage to the reputation of the enterprise

The choice of means of support (technical, methodological, organizational, personnel) and requirements for their use is also an important aspect of the application of technologies of the economic security system, which is significantly affected by the resource capabilities of the enterprise.

Technical support includes the availability of appropriate hardware and software for the collection, processing and transmission of information in the process of identifying threats, their assessment and application of protective measures, as well as technical means of physical and property security. The quality of technical support guarantees the probability of successful digitization of processes and creates a material basis for the protection of trade secrets.

Methodological support is a set of methods, instructions, explanations, descriptions of algorithms and regulations, the use of which allows to apply economic security technologies in almost real time. The methodological support includes standard instructional materials and those developed at the enterprise. In our opinion, their development is the prerogative of the security department of the enterprise.

Organizational support, as a function of the economic security management system of the enterprise, involves planning, administration, budgeting and control of the process of development and application of technology.

Staffing means the implementation of management measures for the selection and special training of personnel capable of using appropriate technologies. Security should also be added to this category systematic professional development, promotion of digital literacy and appropriate psychological support.

The results of the conducted research of technologies have a practical orientation and can be used in the formation of an adapted system of economic security of the real sector of the economy.

Conclusions

According to the results of the researches of approaches to the definition of the categorical apparatus in the system of economic security, the concept of "economic security of the enterprise" has been clarified. The economic security of the enterprise in the conditions of transformations is considered as a state of protection from external and internal threats to the stability of the economic space of the enterprise, which are caused by transformational processes of different origin, in relation to its corporate interests.

It is determined that the development of the modern system of economic security of enterprises consists in its adaptation to application in the conditions of transformations. The theoretical basis of formation of the adapted system of economic safety of the enterprise is

formed, the basic principles of adaptation are formulated; the main stages of adaptation are highlighted; a structured model of the adapted system of economic security of transformations of enterprises is developed. The content of the category "adapted system of economic security of the enterprise" is formulated.

The main threats of priority transformations in view of the levels of economic interests and resource-functional determinants (constituent elements) of economic security of the enterprise are highlighted.

The constructive and destructive consequences of these threats to ensure the economic security of the enterprise are identified

According to the results of the study, the scientific understanding of the application of technologies in the system of economic security of a modern enterprise through the introduction of basic technologies has been expanded. The functional task of such technologies is to ensure the implementation of the main goal of the economic security of the enterprise, and support technologies, the functional task of which is to ensure the implementation of the tasks of basic technologies.

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ETINIAI KRIMINALINĖS ŽVALGYBOS ASPEKTAI

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Anotacija. Straipsnyje teoriniu ir empiriniu lygmeniu analizuojami etiniai kriminalinės žvalgybos aspektai. Tyrimo problema konkretizuojama šiais klausimais: Ar kriminalinės žvalgybos veikla nepažeidžia žmogaus teisių ir laisvių taikant procesines prievartos priemones? Kaip kriminalinės žvalgybos pareigūnai supranta profesinės etikos svarbą tarnyboje? Tyrimo objektas: etiniai aspektai kriminalinės žvalgybos srityje. Tyrimo tikslas: atsižvelgiant į kriminalinės žvalgybos veikimo būdus, išanalizuoti etinius aspektus kriminalinės žvalgybos srityje. Tyrimo uždaviniai: 1) atskleidus kriminalinės žvalgybos sampratą, aptarti kriminalinės žvalgybos veikimo būdus, susiduriančius su etinėmis problemomis; 2) ištirti ir įvertinti kriminalinės žvalgybos pareigūnų nuostatas į profesinės etikos svarbą tarnyboje. Tyrimo metodai: mokslinės literatūros ir teisės aktų analizė, teismų praktikos analizė, apibendrinimas, kokybinio tyrimo duomenų rinkimo metodas – apklausa (struktūrinis interviu), duomenų analizės metodas – aprašomoji-interpretacinė analizė.

Kriminalinė žvalgyba, vykdydama savo funkcijas atlieka ir procesinių prievartos priemonių taikymą. Būtent dėl šių priemonių, dažniausiai žmonių yra piktinamasi ir ieškoma tiesos, ar nebuvo pažeistos žmogaus konstitucinės teisės. Taip pat procesinių prievartos priemonių vykdymo metu, tokių kaip – nusikalstamos veikos imitavimo veiksmai, slapta sekimas, stebima, ar nebuvo peržengtos etiško elgesio ribos. Kriminalinės žvalgybos darbuotojai, vykdydami savo funkcijas, jas atlieka teisėtai, t. y. vadovaujantis teisės aktais. Kiekvienas teisės aktas gina žmogaus konstitucines, prigimtines teises. Tačiau pateikiamos ir išimtys, kad šios teisės gali būti pažeidžiamos, jeigu to reikalauja siekis sustabdyti nusikaltimą, apsaugoti valstybę ar žmogaus teises ir laisves. Kriminalinė žvalgyba yra vedama gėrio, o gėrio siekimas įveikiant blogį yra svarbiau, nei leisti blogiui plisti. Kiekvienas kriminalinės žvalgybos veikimas laikytinas moraliu, jei jis nepažeidžia teisių normų. Atsižvelgiant į gautus empirinio tyrimo rezultatus, darytina išvada, kad kriminalinės žvalgybos pareigūnai suvokia profesinės etikos svarbą savo profesijoje. Pareigūnai išskiria svarbiausius principus, kuriais reikia vadovautis jų darbe, nurodydami, kad tai – tolerancijos, sąžiningumo, pagarbos kitiems, ištikimybės, nešališkumo, tarnavimo visuomenei ir kt. principai. Tačiau nebuvo paminėtas vienas svarbiausių kriminalinės žvalgybos profesinės etikos skiriamųjų bruožų – konfidencialumas. Šios profesijos atstovams pasiekti gerų rezultatų padeda ne tik gerai išmanomi teisės aktai, tačiau ir jų vidinės vertybės, vedančios padėti kitiems – apsaugoti žmogaus prigimtines teises.

Pagrindinės sąvokos: kriminalinė žvalgyba, etika, operatyvinė veikla, etinės problemos.

Įvadas

Šiuolaikinėje visuomenėje nusikaltimai yra atliekami naudojant naujus metodus, nusikaltimų atlikimo būdai yra vis labiau apgalvoti ir atliekami pasitelkiant naujas technologijas, kurios padeda nusikaltimą atlikti nepaliekant didelių žymių. Bet kuris nusikaltimas pažeidžia visuomenės ir jos narių teises ir laisves, o vienas iš teisėsaugos pareigūnų uždavinių - apsaugoti žmogaus prigimtines teises ir laisves. Kriminalinė žvalgyba - tai būdas kovoti su nusikalstamumu, tačiau šios profesijos etika nėra plačiai aptarta literatūroje,

kur kas daugiau mokslinės literatūros Lietuvoje parašyta apie operatyvinę veiklą (Laurinavičius, 2001; Mulevičius ir Petrošius, 2005; Gutauskas, 2008), kuri 2013 m. sausio mėn. 1 d. buvo pervardinta į kriminalinę žvalgybą. Šių sąvokų pateikimas pasikeitė ne tik pavadinimu, tačiau ir reglamentavimo funkcijoje. Tačiau būtent etika taip ir liko daugiausiai minima operatyvinės veiklos šaltiniuose. Etika tampa tarsi trūkstama kriminalinės žvalgybos sampratos dalis, nors akivaizdu, jog etika turi aiškų ryšį su kriminaline žvalgyba. Palidaukaitės (2011) pateikta valstybės tarnautojų profesinės etikos standartų apžvalga, padeda išryškinti kriminalinės žvalgybos pareigūnų profesinės etikos aspektus. Mulevičius ir Petrošius, gvildeno moralinius etinius vertinimus susijusius su operatyvinėje veikloje naudojamomis specialiomis priemonėmis bei metodais, taip pat su tam tikrais žmogaus teisių bei laisvių apribojimais, galimais atliekant tam tikrus operatyvinius veiksmus. Istorinius faktus operatyvinėje veikloje – kriminalinėje žvalgyboje, aptaria Anušauskas (2014), plačiai apžvelgdamas istorinius faktus. Taip pat Gutauskas (2018) gilinasi į tai, kiek kriminalinės žvalgybos naudojamos priemonės gali teisėtai skverbtis į privatų žmogaus gyvenimą. Temomis apie kriminalinės žvalgybos aspektus iš etinės pusės kalbama nepakankamai, todėl temos naujumas grindžiamas poreikiu išsamiau aptarti etikos svarbą kriminalinės žvalgybos pareigūno tarnyboje. Šiame straipsnyje sutelktas dėmesys į etikos vaidmenį kriminalinėje žvalgyboje bei apžvelgiami kriminalinės žvalgybos veikimo būdai, susiduriantys su etinėmis problemomis. **Tyrimo problema** konkretizuojama šiais klausimais: Ar kriminalinės žvalgybos veikla nepažeidžia žmogaus teisių ir laisvių taikant procesines prievartos priemones? Kaip kriminalinės žvalgybos pareigūnai supranta profesinės etikos svarbą tarnyboje?

Tyrimo objektas: etiniai aspektai kriminalinės žvalgybos srityje.

Tyrimo tikslas: atsižvelgiant į kriminalinės žvalgybos veikimo būdus, išanalizuoti etinius aspektus kriminalinės žvalgybos srityje.

Tyrimo uždaviniai:

1. Atskleidus kriminalinės žvalgybos sampratą, aptarti kriminalinės žvalgybos veikimo būdus, susiduriančius su etinėmis problemomis;
2. Iširti ir įvertinti kriminalinės žvalgybos pareigūnų nuostatas į profesinės etikos svarbą tarnyboje.

Tyrimo metodai: mokslinės literatūros ir teisės aktų analizė, teismų praktikos analizė, apibendrinimas, kokybinio tyrimo duomenų rinkimo metodas – apklausa (struktūrinis interviu), duomenų analizės metodas – aprašomoji-interpretacinė analizė.

Kriminalinės žvalgybos samprata

Kriminalinės žvalgybos sampratą galima rasti teisės aktuose, kuriuose įtvirtina sąvoka ir nustatytos kriminalinės žvalgybos normos, kurios yra įgyvendinamos remiantis žvalgybos pareigūnų etikos kodeksu. Svarbu paminėti, kad kriminalinės žvalgybos tyrimas atliekamas, kai turima informacijos apie rengiamą, daromą ar padarytą labai sunkų ar sunkų nusikaltimą arba apie apysunkius nusikaltimus, numatytus Lietuvos Respublikos Baudžiamajame kodekse, taip pat, kai pasislepia įtariamasis, kaltinamasis arba nuteistasis, dingsta be žinios asmuo, vykdoma asmenų apsauga nuo nusikalstamo poveikio.

Kriminalinės žvalgybos sąvoka reglamentuota „Lietuvos Respublikos kriminalinės žvalgybos įstatyme“, kuriame nurodoma, kad „*kriminalinė žvalgyba – kriminalinės žvalgybos subjektų veikla renkant, fiksuojant, vertinant ir panaudojant turimą informaciją apie kriminalinės žvalgybos objektus, vykdoma šio įstatymo nustatyta tvarka.*“ Kriminalinė žvalgyba kelia socialinius tikslus, tokius kaip: visuomenės saugumo užtikrinimas, piliečio konstitucinių teisių ir laisvių užtikrinimas (asmuo, orumas, privatumas, nuosavybė), įsitikinimai, politinė

valia, valstybės valdomo turto apsauga. Kriminalinė žvalgyba pasižymi svarba visai visuomenei, kadangi žvalgybos paskirtis – užkirsti daromus kriminalinio pobūdžio nusikaltimus bei juos atskleisti ir išaiškinti. Kaip ir kiekviena institucija, taip ir kriminalinė žvalgyba veikia pagal iš anksto suformuotas užduotis, kurios atskleidžia nuo kokių teisės pažeidimų yra ginamos žmogaus teisės ir laisvės. Lietuvos Respublikos kriminalinės žvalgybos įstatyme pateikti šie kriminalinės žvalgybos uždaviniai: “1) nusikalstamų veikų prevencija; 2) nusikalstamų veikų išaiškinimas, taip pat rengiančių, darančių ar padariusių nusikalstamas veikas asmenų nustatymas; 3) asmenų apsauga nuo nusikalstamo poveikio; 4) asmenų, kurie slapstosi nuo ikiteisminio tyrimo ar teismo, nuteistų, taip pat dingusių be žinios asmenų paieška; 5) daiktų, pinigų, vertybinių popierių, kito turto, susijusio su nusikalstamų veikų padarymu, paieška; 6) kriminalinės žvalgybos subjektų vidaus saugumo užtikrinimas.”

Vykdamas kriminalinės žvalgybos uždavinius itin svarbu tikslumas ir kompetencija, uždaviniai privalo būti vykdomi vadovaujantis nurodytais principais bei pernelyg nenutolstant nuo teisinio reglamentavimo. Lietuvos Respublikos kriminalinės žvalgybos įstatyme teigiama, kad „kriminalinė žvalgyba grindžiama teisėtumo, žmogaus teisių ir laisvių užtikrinimo, viešojo intereso apsaugos, konspiracijos, konfidencialumo, viešų ir slaptų veiksmų derinimo principais“. Teisėtumo principas yra universalus teisės principas, kuris būdingas visai teisės sistemai, taikomas kiekvienoje teisės šakoje. Šis principas nėra tiksliai apibrėžtas konkrečioje teisės normoje, todėl jis yra pritaikomas ir įgyvendinamas pritaikant prie analizuojamų teisės aktų. Kriminalinėje žvalgyboje svarbu užtikrinti žmogaus teises bei laisves, kad šios nebūtų peržengiamos, pastarasis principas nurodo, kad kiekvienas pilietis turi savo teises ir laisves į savo mintis, asmenybę ir orumą, privatumą, būsto neliečiamumą, religines bei politines pažiūras, žodžio laisvę, nuosavybės neliečiamybę. Visomis šiomis teisėmis ir laisvėmis žmogus gali naudotis neperžengiant įstatymų, žmonės yra apsaugoti nuo blogio prieš jų valią; pajutus, kad žmogaus teisės ir laisvės yra pažeistos žmogus turi teisę apskųsti šį teisių pažeidimą ir gintis savo teises ir laisves

Taikant neviešo pobūdžio procesines prievartos priemones, visada egzistuoja tikimybė, kad gali būti atskleisti priemonės vykdytys subjektai, jų naudojamos specialios techninės priemonės. Todėl Bučiūnas (2014) teigia, kad siekiant sumažinti atskleidimo riziką, ikiteisminio tyrimo ir kriminalinės žvalgybos subjekto pareigūnai pasirenka konspiracijos principą, kuris pasireiškia tuo, kad ikiteisminio tyrimo metu atliekant neviešo pobūdžio procesines prievartos priemones, naudojami tokie elgesio modeliai, priemonės, kurios leidžia išvengti arba sumažinti galimybę slaptų ikiteisminio tyrimo veiksmų taikiniu tapusiam objektui suvokti, kad jis yra paslapčia stebimas, renkama informacija apie jo atliekamus veiksmus, vykstančius aplink jį ar su juo siejamus procesus, reiškinius. Tyrimo metu informacijos rinkimui naudojamos maskavimosi priemonės, būdai neturi kelti grėsmės žmogaus gyvybei ar sveikatai, įžeisti orumą, garbę.

Pateikdamas konfidencialumo principo paaiškinimą ir svarbą kriminalinėje žvalgyboje, Bučiūnas (2014) nurodo, kad konfidencialumas yra neatsiejamas nuo kriminalinės žvalgybos užduočių įgyvendinimo, todėl šis principas yra labai svarbus, kad tiriant nusikalstamą veiką surinkta informacija ikiteisminio tyrimo veiksmų pagalba, tiek fiksuota procesine forma, tiek neturinti neprocesinės formos bus prieinama tik autorizuotiems vartotojams ir informacija, tame tarpe konfidenciali, bus nedelsiant sunaikinta įstatymo nustatyta tvarka, jeigu ji nėra nesusijusi su tiriamu įvykiu. Iš to peršasi išvada, kad konfidencialumo principas įpareigoja prokurorą, ikiteisminio tyrimo pareigūną, laikytis įstatymo ir etikos normų. Reikia kruopščiai saugoti surinktą informaciją ir imtis priemonių, užtikrinančių, kad informacija, kuri nesusijusi su tiriamu įvykiu, nebus paskleista viešojoje erdvėje, pastebi Bučiūnas (2014). Žvalgybos pareigūnui renkant, fiksuojant slaptą informaciją tenka susidurti su deviantinio elgesio

asmenimis ir ieškoti bendro kompromiso norint užmegzti santykį, tenka prisitaikyti prie asmens, iš kurio bus gaunama naudinga informacija ir tarp pareigūno bei asmens susiklosto konfidencialūs santykiai. Todėl yra svarbu, kad pareigūnas dalyvaujantis tokiuose santykiuose tinkamai remtųsi teisės aktais ir etikos normomis. Kriminalinės žvalgybos pareigūnai atlieka tiek viešus (apie kurių atlikimą supranta aplinkiniai), tiek slaptus, pašaliniam asmeniui nematomus, veiksmus, kurie yra grindžiami viešų ir slaptų veiksmų derinimo principu. Principai teisiniuose aktuose reikalingi norint atskleisti valstybės ginamas vertybes, pamatines nuostatas, tikslus – ko yra siekiama bei uždavinius – kaip tai bus pasiekama. Pabrėžtina, kad tai nėra galutiniai principai, kuriais remiasi kriminalinė žvalgyba, jų yra ir daugiau.

Kriminalinėje žvalgyboje yra nustatyti objektai, prieš kuriuos galima atlikti kriminalinės žvalgybos tyrimą. Lietuvos respublikos prokuratūros tinklalapyje teigiama, kad „kriminalinės žvalgybos objektai – galimai rengiamos, daromos ar padarytos nusikalstamos veikos, jas rengiantys, darantys ar padarę asmenys, šių asmenų aktyvūs veiksmai neutralizuojant kriminalinę žvalgybą, kiti su valstybės nacionaliniu saugumu susiję įvykiai ir asmenys.“ Ši norma nurodo, kad tyrimas bus pradėtas tik būtent prieš tokius požymius turinčius asmenis, tačiau asmuo gali ir neturėti jokio tiesioginio ryšio su nusikalstama veika, bet tyrimas prieš asmenį gali būti pradėtas.

Taigi kriminalinė žvalgyba yra teisėta ir reglamentuota teisės aktais (akcentuotinas Kriminalinės žvalgybos įstatymas), tai kriminalinės žvalgybos subjektų veikla renkant, fiksuojant, vertinant ir panaudojant turimą informaciją apie kriminalinės žvalgybos objektus. Kriminalinės žvalgybos pareigūnai negali apleisti teisės aktuose reglamentuotų veiksmų etikos aspektų. Viešai žinoma, kad šios profesijos atstovai, siekdami paveikti blogį, pasirenka amoralių elgesį, kaip pvz., melą, legendų kūrimą. Nors tai pažeidžia moralės ir dorovės ribas, tačiau taip veikiama siekiant aukštesnio gėrio, t. y. stengiantis apsaugoti valstybės bei visuomenės interesų teises ir laisves.

Kriminalinės žvalgybos veikimo būdai, susiduriantys su etinėmis problemomis

Prevencinės prievartos priemonės yra vienas iš būdų, kaip galima sustabdyti nusikalstamos veikos pasirošimą ar vykdymą. Neviešo pobūdžio veiksmų atlikimas pasitelkiamas norint atskleisti efektyviau nusikalstamas veikas. Skiriant slaptų priemonių veikimo metodus prieš asmenį, kuris vykdo nusikalstamą veiką, svarbu atkreipti dėmesį į etikos ir moralės klausimus, kurie gali būti pažeisti vykdant kriminalinės žvalgybos slaptuosius veiksmus. Prievartos priemonių skyrimas reikalauja ypač atidaus pasirošimo, veikimo ir vertinimo. Todėl skiriant griežtas prievartos priemones svarbu atkreipti dėmesį į tai, kad viso slaptųjų veiksmų veikimo metu yra paliečiamos žmogaus teisės ir laisvės.

Kriminalinė žvalgybos pareigūnai vykdydami griežtas, slaptas prievartos priemones tokias, kaip nusikalstamos veikos imitavimo veikimas ar slaptas sekimas susiduria su žmogaus prigimtinių teisių pažeidimu. Pabrėžtina, kad šiuos išvardintus slaptus veiksmus gali atlikti ne tik savo tapatybės neatskleidžiantis pareigūnas tačiau ir asmuo, kuris sutinka prižiūrimas pareigūnų atlikti jau pradėtas nusikalstamas veikas ir jas vėliau tęsti su priežiūra. Nusikalstamos veikos imitavimo veiksmai (NVIV) bei slaptas sekimas pažeidžia žmogaus, prieš kurį atliekamas tyrimas, teises ir laisves, tačiau šie veiksmai yra veikiami aukštesnio gėrio, kuriuo siekia apginti visuomenę nuo nusikalstamo pasaulio. Svarbu paminėti, kad šios prievartos priemonės skiriamos norint atskleisti nusikaltimų darymą, o ne imituojant nusikalstamus veiksmus, sukurti nusikaltimus. Pasitaiko, kad teismų praktikoje baudžiamosiose bylose yra pateikiami skundai dėl galimos pareigūnų provokacijos, atliekant slaptus veiksmus.

Leidimas atlikti nusikalstamą veiką imituojančius veiksmus. Lietuvos Respublikos kriminalinės žvalgybos įstatymas numatytą veikimą – nusikalstamos veikos imitavimą apibūdina, kaip vieną iš kriminalinės žvalgybos informacijos rinkimo būdų, formaliai turintį nusikalstamos veikos ar kitokio teisės pažeidimo požymių, nusikalstamos veikos imitavimą, atliekamą siekiant apginti objektą nuo nusikalstamo pasikėsimo. Nusikalstamą veiką imituojančius veiksmus sankcionuoja prokuroras pagal kriminalinės žvalgybos subjekto vadovo ar įgalioto vadovo pavaduotojo motyvuotą teikimą. Šis informacijos rinkimo būdas susiduria su galima provokacija, kuri pažeidžia žmogaus prigimtines teises.

Gutauskas (2018), apžvelgiantis kriminalinės žvalgybos ir privatų asmens gyvenimą, gilindamasis į procesinių prievartos priemonių skyrimą, pabrėžia, kad taikant procesines prievartos priemones svarbiausias kriterijus yra formalusis teisėtumas. Minėtas mokslininkas nurodo, kad detalizuojant tokių priemonių taikymo formalųjį teisėtumą, tam yra būtina: teisėta priežastis; tinkamas sankcionavimas; sankcionuoto veiksmo ribų laikymasis ir draudimas provokuoti. Galima pritarti, kad šie ypatumai yra svarbiausi taikant procesines prievartos priemones, nes būtent pateikus šių keliamų reikalavimų argumentus procesinės prievartos priemonės yra atliekamos teisėtai.

Atkreiptinas dėmesys, kad nusikalstamos veikos imitavimo veiksmus (NVIV) gali atlikti savo tapatybės neatskleidžiantys pareigūnai, pagal BPK (158 str. 2 d.) bei ypatingais atvejais, kai nėra kitų galimybių nustatyti nusikaltimus darančius asmenis, tyrimą gali atlikti ir asmenys, kurie nėra ikiteisminio tyrimo pareigūnai, pagal BPK (158 str. 6 d.). Pažymima, kad prieš pradėdant vykdyti NVIV pagal Lietuvos Respublikos generalinio prokuroro rekomendacijas (2012 m. gruodžio 31 d.), asmuo, kuriam leidžiama atlikti nusikalstamą veiką imituojančius veiksmus, privalo būti pasirašytinai supažindintas su ikiteisminio tyrimo teisėjo nutartimi, kurioje nurodomi konkretūs veiksmai, kuriuos leidžiama tam asmeniui atlikti. Svarbu yra tai, kad asmuo imituodamas nusikalstamą veiką gali atlikti tik tuos veiksmus, kurie yra patvirtinti, todėl būtent tai užkerta kelią provokacijos atsiradimui ir asmui negali imtis savo iniciatyvą sugalvotų veiksmų, kurie ir paskatintų provokacijos atsiradimą.

Žmogų nuo teisės ir laisvės pažeidimų prieš jį, saugo įstatymai. „Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencija“ gina žmogaus prigimtines teises, šios konvencijos straipsniai asmenį gina ir nuo slaptų veiksmų prieš jį. Šioje konvencijoje nurodoma, kad kiekvienas žmogus turi teisę į laisvę ir asmens neliečiamybę bei kiekvienas turi teisę į tai, kad būtų gerbiamas jo asmeninis ir jo šeimos gyvenimas, buto neliečiamybė ir susirašinėjimo slaptumas. Tačiau straipsniai yra papildomi išėitimis, kada pareigūnai gali įsikišti į šias teises, siekdami užkirsti kelią teisės pažeidimams ar nusikaltimams, taip pat gyventojų sveikatai ar dorovei arba kitų žmonių teisėms ir laisvėms apsaugoti. Įstatymai apsaugo žmogaus prigimtines teises, tačiau kiekvienu atveju, jeigu asmuo pasirenka blogo elgesio modelį pažeidžia ne tik savo, bet ir likusios visuomenės dalies etikos vertybes, kurios yra susijusios su žmogaus vidiniais įsitikinimais, papročiais, ydomis bei visomis kitomis prigimtinėmis teisėmis, kurias asmuo saugo. Svarbu pridurti, kad Konstitucinis teismas yra pabrėžęs, kad asmuo, darydamas nusikalstamus veiksmus, pažeidžia teisės saugomus interesus, daro žalą visai visuomenei ir tokius veiksmus padaręs asmuo neturi ir negali tikėtis, kad jo privatus gyvenimas bus saugomas lygiai taip pat, kaip ir asmenų, kurie nepažeidžia įstatymų (pgl. „Nutarimas „Dėl Lietuvos Respublikos pataisos darbų kodekso 41 straipsnio 2 dalies (1997 m. liepos 2 d. redakcija) atitikties Lietuvos Respublikos Konstitucijai“. LRS). Įstatymų paskirtis yra užtikrinti žmogaus prigimtinių teisių saugumą ir jas puoselėti, todėl vykdant nusikalstamų veikų imitavimo veiksmus yra svarbu atidžiai rinktis veiksmus, kad šie neperžengtų etikos normų ir asmens neišprovokuotų atlikti naujų nusikalstamų veikų.

Nusikalstamos veikos imitavimo veiksmai kaip procesinės prievartos priemonės yra vykdomos prieš asmenis tik tuo atveju, kai yra atmetamos visos kitos lengvesnės prievartos priemonės. Kiekvienas pareigūnas, dirbdamas darbą, turi įsipareigojimus tai atlikti sąžiningai, atsakingai ir kompetentingai pagal savo profesiją bei kliautis etikos vertybėmis, atsižvelgti į žmogaus prigimtines teises. Europos Žmogaus Teisių Teismas (EŽTT) jurisprudencijoje nurodo, kad policijos kurstymas yra tada, kai pareigūnai, nepaisant to, ar jie būtų saugumo pajėgų atstovai, ar asmenys, veikę pagal savo instrukcijas, neapsiriboja iš esmės pasyviu dalyvavimu tiriamoje nusikalstamoje veikoje, bet daro subjektui tokią įtaką, kad sukursto nusikaltimo, kuris antraip nebūtų padarytas, padarymą, kad galėtų įrodyti nusikaltimą, t. y. pateikti įrodymus ir pradėti baudžiamąjį persekiojimą prieš asmenis (pgl. „Europos Žmogaus Teisių Teismo 2008 m. vasario 5 d. sprendimas byloje Ramanauskas prieš Lietuvą (Nr. 74420/01)“). Todėl yra svarbu, kad skiriant šią prievartos priemonę, asmuo, vykdamas šį imitavimą, suvoktų provokacijos veikimą.

Analizuojant NVIV, svarbu atsižvelgti į provokacijos reglamentavimą ir šios nebuvimo argumentavimus teismų praktikoje. Pagal Lietuvos Respublikos baudžiamojo proceso kodekso 159 str. 3 d, atliekant NVIV, draudžiama provokuoti asmenį padaryti nusikalstamus veiksmus. Galima pastebėti teismų praktikoje pateikiamus skundus dėl NVIV atlikimo proceso metu įvykdytų provokacijų, todėl svarbu apžvelgti, kaip teismų praktika argumentuoja bylose su NVIV susijusius provokavimus. 2020 m. vasario 27 d. Lietuvos Aukščiausiasis Teismas (LAT) priėmė nutartį, kurioje teismo posėdyje kasacine rašytinio proceso tvarka išnagrinėjo baudžiamąją bylą su nuteistųjų pateiktais skundais. „*Kiteisminis tyrimas byloje pradėtas 2014 m. spalio 20 d., pasitvirtinus gautai informacijai apie tai, kad R. D. galimai platina psichotropinę medžiagą – metamfetaminą. <...> Pagal atskirą šio teismo nutartį R. D. taip pat minėtu laikotarpiu leista realizuoti BPK 158 straipsnyje nurodytą procesinės prievartos priemonę prieš D. K., J. L. ir jų galimus bendrininkus, užmezgant kontaktus, gauti duomenis apie prekybą psichotropinėmis ir narkotinėmis medžiagomis, slapta daryti tokius veiksmus fiksuojančius garso ir vaizdo įrašus, panaudojant visų rūšių technines priemones tokiems įrašams daryti.*“ (pgl. „Lietuvos Aukščiausiojo Teismo nutartis byloje (Nr. 2K-1-719/2020)“). Iš pateiktos bylos medžiagos matyti, kodėl paskiriamas NVIV ir nurodomas asmuo, kurio veikimu bus atliekama procesinė prievartos priemonė.

Tačiau procesinės prievartos taikymas truko ilgą laiką tarpą ir tuo argumentuodami pareiškėjai pateikia skundą, kuriame nurodo, kad nusikalstamos veikos imitavimas buvo pasiremiamas pareigūnų įsikišimu ir provokacija bei tai tęsėsi per ilgą laiką tarpą, kas ir privertė disponuoti narkotikais vis didesniais kiekiais ir dėl to buvo esmingai pasunkinta kasatoriaus teisinė padėtis, t. y. NVIV buvo realizuoti netinkamai (pgl. LAT nutartį byloje Nr. 2K-1-719/2020). Pridedama, kad į tyrimą buvo įtraukti asmenys, kurie anksčiau neturėjo intereso pažeisti teisės aktų. Tačiau reikia suprasti, kad asmenys, kurie neturi nieko bendro su nusikalstamu pasauliu nėra baudžiami ar sekami, todėl NVIV metu visi įtraukti asmenys nėra atsitiktiniai ir turėjo savo vaidmenį šioje byloje. Vilniaus apygardos prokuratūros Organizuotų nusikaltimų ir korupcijos tyrimo skyriaus prokuroras Uldukis atsiliepimu į kasacinius skundus prašo juos atmesti ir prokuroras atsiliepime pateikia savo sprendimo argumentus. Prokuroras, argumentuodamas skundus, pabrėžia bylos faktus ir juos išaiškina įrodydamas, kad pareigūnų atliktas darbas yra teisėtas ir nusikalstamos veikos imitavimas nebuvo vedantis prie provokacijos. Prokuroras argumentuoja, kad „*Pagrindinis NVIV atlikimo tikslas, pasitelkiant R. D., buvo <...> nustatyti asmenis, kurie organizuotu hierarchiniu lygmeniu stovėjo aukščiau už kitus grupės narius ir iš kurių jie gaudavo psichotropines ir narkotines medžiagas, bei kitus bendrininkus, kurių ilgą laiką nebuvo galimybių nustatyti.*“ (pgl. LAT nutartį byloje Nr. 2K-1-719/2020). Nurodytas tikslas buvo pasiektas ir NVIV pasiteisino, nes buvo atskleisti asmenys,

kurie jau anksčiau platino narkotikus ir psichotropines medžiagas bei vykdė kitus nusikaltimus, tačiau nebuvo identifikuoti. Būtent ilgas laiko tarpo veikimas ir leido atskleisti asmenis, kurie prisidėjo prie šių nusikalstamų veikų atlikimo. Todėl negalima sakyti, kad laiko trukmė nėra svarbi bandant išsiaiškinti ne tik bylos aplinkybes, tačiau ir visus jos dalyvius, nustatant tikslų jų vaidmenį nusikaltimų atlikime. Svarbus bylos faktas yra, kad ilgo laiko tarpui įtaką darė ir patys dalyviai savo elgesiu, kadangi jų buvo daug, o siekta atskleisti visus, todėl tai užėmė laiko. Taip pat kiekvienu atveju visų dalyvių veiksmai yra vertinami, analizuojama jų atlikimo seka ir nustatoma, ar dalyviai galėjo būti išprovokuoti atlikti nusikaltimą ar ne. Šioje byloje dalyviai elgėsi savarankiškai, vykdė savo užduotis ir pareigūnų provokacija nebuvo nustatyta.

Kasacinės instancijos teismo teisėjų kolegija, išnagrinėjusi baudžiamąją bylą, taip pat atmetė skundus. Teisėjų kolegija, atsižvelgdama į bylos faktus ir skundus dėl galimos provokacijos atliekant nusikalstamų veikų imitavimą, per ne lyg ilgo laiko tarpo skyrimo šiai prievartos priemonei, proporcingumo principo netaikymo byloje išvadose nurodo, kad *„Tiek procesinių prievartos priemonių šioje byloje taikymo apimties aspektu, tiek konkrečios procesinės prievartos priemonės – nusikalstamą veiką imituojančių veiksmų aspektu procesinių prievartos priemonių naudojimo šioje byloje proporcingumas buvo išlaikytas, nusikalstamų veikų vadinamojo tiražavimo požymių, galinčių lemti pasyvios provokacijos nustatymą, nekonstatuotina. <...> Taip pat pažymėtina, kad teismai, darė išvadą, kad <...> aktyvumas ir suinteresuotumas kuo didesnio kiekio pardavimu kilo pačiam J. L. Iš to, kas išdėstyta, darytina išvada, kad nei aktyvios (lenkimo, skatinimo disponuoti dideliais narkotinių ir psichotropinių medžiagų kiekiais), nei pasyvios (nusikalstamų veikų tiražavimo) provokacijos tiriant šią baudžiamąją bylą, taikant NVIV, nenustatyta“* (pgl. LAT nutartį byloje Nr. 2K-1-719/2020). Iš pateiktų išvadų galima suprasti, kad šioje baudžiamajoje byloje nusikalstamos veikos imitavimo veiksmai buvo būtini atlikti teisėtai pritaikant ilgesnį laiko tarpą, norint atskleisti, kuo daugiau nusikalstamos veikos veikimo faktų ir identifikuoti asmenis. Nors ir išsiaiškinus, kad NVIV nebuvo vykdomas pasitelkiant provokaciją, reikia atkreipti dėmesį, kad tyrimą atlikę pareigūnai realiai suvokė tiek profesinės etikos, tiek etikos bendras normas ir pasirinko sąžiningą, teisingą elgesį, dorą bei atsakingą, kad būtų kuo konkrečiau atskleistos visos tyrimo detalės.

Pateikti teoriniai argumentai bei teismų praktikos pavyzdys leidžia suprasti, kad nusikalstamos veikos imitavimo veiksmai susiduria su galima provokacija siekiant atskleisti nusikalstamas veikas. Įvertinus galimas rizikas atliekant nusikalstamos veikos imitavimo veiksmus, darytina išvada, kad teismai turi nuosekliai vertinti visą proceso vykdymo tvarką, nuo prievartos priemonės taikymo iki jos nutraukimo. Derėtų akcentuoti, kad nusikalstamos veikos imitavimo veiksmų atlikimą atliekantys pareigūnai ar pavieniai asmenys turi pasitelkti savo profesinę kompetenciją, apimančią ir etinę kompetenciją, suprasti prigimtines žmogaus teises ir jas puoselėti vykdant nusikalstamos veikos imitavimo veiksmus.

Slaptas sekimas. Kriminalinė žvalgyba turi ne vieną informacijos rinkimo būdą, kurio metu yra gaunama vieša ar slapta informacija iš objektų, galinčių būti susijusių su nusikalstama veika arba nieko bendro neturinčių su tyrimu. Nagrinėjant etikos aspektus kriminalinėje žvalgyboje, svarbu įsigilinti į slaptą sekimą, kuriuo metu sekamas objektas apie pastarąjį nėra informuotas, ir dėl to iškyla problema dėl galimų žmogaus teisių ir laisvių pažeidimų. Vykiant slaptą sekimą, renkant svarbią informaciją, kurią reikia užfiksuoti, pasitelkiamas techninių priemonių naudojimas. Naudojamos tokios techninės priemonės, kaip slapto pasiklausymo priemonės, vaizdo užfiksavimo technika.

Svarbu pabrėžti, kad slaptas sekimas, kaip tokia sąvoka Kriminalinės žvalgybos įstatyme nėra reglamentuojamas, slapto sekimo sąvoka pateikiama LR Baudžiamojo proceso kodekse. Kriminalinės žvalgybos įstatymas reglamentuoja, jog sekimas – tai kriminalinės žvalgybos

informacijos rinkimo būdas, kai informacija gaunama išskiriant, atpažįstant ar stebint objektą. Įstatymo leidėjas sekimą apibūdina kaip vieną iš informacijos gavimo būdų ir įvardija, kokie procesiniai veiksmai reikalingi, kad sekimas būtų taikomas objektui. Kaip jau šiame straipsnyje minėta, kriminalinėje žvalgyboje objektu yra laikoma galimai rengiamos, daromos ar padarytos nusikalstamos veikos, jas rengiantys, darantys ar padarę asmenys. Taigi iš Kriminalinės žvalgybos teisės akto suprantama, kad sekimas yra atliekamas prieš asmenis, kurie yra vienaip ar kitaip susiję su nusikalstamu pasauliu. Tačiau toliau teisės akte yra minimos transporto priemonės, patalpos, vietovės, asmenys bei daiktai prieš kuriuos taip pat yra galimybė taikyti šią proceso prievartos priemonę. Reikėtų atsižvelgti į LR Baudžiamojo proceso kodekso pateikiamą slapto sekimo sąvoką, kurioje teigiama, kad sekimas atliekamas prieš asmenis, transporto priemones arba objektą. Akivaizdu, kad esama reikšmingos sąsajos tarp šių dviejų teisės aktų pateiktos informacijos dėl slapto sekimo, tačiau LR Baudžiamojo proceso kodeksas, aiškindamas sąvoką, iš anksto suteikia daugiau aiškumo prieš ką gali būti atliekamas slaptas sekimas, papildant transporto priemonėmis, asmenimis bei atskirais objektais. Bučiūnas (2012), išanalizavęs slapto sekimo ypatumus, pateikia slapto sekimo sąvokos reikšmę, kad tai, ne tik informacijos rinkimo būdas, neviešo pobūdžio procesinė prievartos priemonė, kuri atliekama teisėtai bei pasinaudojant techninėmis priemonėmis gaunamai informacijai fiksuoti, tačiau priduria, kad tai ir veikimas, laikantis pagarbos prigimtinėms žmogaus teisėms ir laisvėms bei tai vykdoma laikantis Žvalgybos pareigūnų etikos kodekso, Konstitucijos bei įstatymų. Tikslinga pabrėžti, kad slaptas sekimas siejasi su asmens laisvėmis.

Kita vertus, reikėtų paminėti, kad slaptas sekimas yra neatsiejamas nuo techninių priemonių panaudojimo, be kurių nepavyktų tiksliai užfiksuoti gaunamos informacijos. Techninių priemonių naudojimas yra minimas tiek Kriminalinės žvalgybos įstatyme, tiek LR Baudžiamojo proceso kodekse. Reikėtų atkreipti dėmesį į tai, kad Kriminalinės žvalgybos įstatyme prie pateiktų techninių priemonių panaudojimo aprašo specialia tvarka yra priduriama, kad apie veiksmų taikymą ir vykdomą kontrolę objektas, prieš kurį tai taikoma, viso to nežino ir tai vykdoma įstatymų nustatyta tvarka apribojant žmogaus teisę į privataus gyvenimo neliečiamumą. Svarbu paminėti, kad techninių priemonių panaudojimas atliekant sekimą yra labai svarbus, juk būtent jomis naudojamos norint nustatyti buvimo vietą, taip suteikiama tikslesnė informacija ir galimybė stebėti objekto judėjimą. Naudojamos ir kitomis techninėmis priemonėmis, kurios padeda užfiksuoti pokalbius, stebėti, kas vyksta aplink sekamą objektą bei tokiais techninėmis priemonėmis, kurių valdymą reikia išmanyti taip, kad sekamas objektas neįtartų, jog jis yra sekamas.

Kiekvienas žmogus yra saugomas nuo neteisėtų veiksmų prieš asmenį atlikimo, todėl teisės aktai užtikrina nesikišimą į privatų asmeninį gyvenimą, saugo asmens garbę ir orumą, siekia apsaugoti nuo neteisėto klausymosi, susirašinėjimo sekimo. Lietuvos Respublikos Konstitucijoje įtvirtinta, kad „*žmogaus privatus gyvenimas neliečiamas. Asmens susirašinėjimas, pokalbiai telefonu, telegrafo pranešimai ir kitoks susižinojimas neliečiami. Informacija apie privatų asmens gyvenimą gali būti renkama tik motyvuotu teismo sprendimu ir tik pagal įstatymą. Įstatymas ir teismas saugo, kad niekas nepatirtų savavališko ar neteisėto kišimosi į jo asmeninį ir šeimyninį gyvenimą, kėsینimosi į jo garbę ir orumą.*“ Privatų asmens gyvenimą saugo ir tarptautiniai teisės aktai, kuriuos Lietuva ratifikavimu, vienas iš jų yra Visuotinės žmogaus teisių deklaracijos 12 straipsnis, kuriame nurodoma, kad „*niekas neturi patirti savavališko kišimosi į jo privatumą, šeimos gyvenimą, buitį ar susirašinėjimą arba kėsینimosi į jo garbę ir reputaciją. Kiekvienas turi teisę į įstatymo apsaugą nuo tokio kišimosi arba kėsینimosi.*“ Kitas tarptautinis teisės aktas – Tarptautinis pilietinių ir politinių teisių paktas, kurio 17 str. reglamentuoja, kad „*1. Niekas neturi patirti savavališko ar neteisėto kišimosi į jo asmeninį ir šeimyninį gyvenimą, jo būsto neliečiamybę, susirašinėjimo slaptumą,*

neteisėto kėsinišimo į jo garbę ir orumą. 2. Kiekvienas asmuo turi teisę į įstatymo apsaugą nuo tokio kišimosi arba tokių pasikėsinių.“ Iš trumpos tarptautinių teisės aktų apžvalgos darytinas apibendrinimas, kad žmogaus asmeninį gyvenimą saugo ne tik nacionaliniai, bet ir tarptautiniai įstatymai, kurie vienodai gina asmenis nuo neteisėto kišimosi į asmeninį gyvenimą.

Tikslinga būtų pastebėti, kad kiekvienas teisės aktas, minėdamas apie asmeninį gyvenimo saugumą, priduria, kad informacija apie privatų asmens gyvenimą gali būti renkama tik motyvuotu teismo sprendimu ir tik pagal įstatymą. Tai patvirtina ir Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 8 str., kad „*kiekvienas turi teisę į tai, kad būtų gerbiamas jo asmeninis ir jo šeimos gyvenimas, buto neliečiamybė ir susirašinėjimo slaptumas. 2. Valdžios pareigūnai neturi teisės kištis į naudojimą šia teise, išskyrus įstatymo numatytus atvejus ir kai tai būtina demokratinėje visuomenėje valstybės saugumo, viešosios tvarkos ar šalies ekonominės gerovės interesams, siekiant užkirsti kelią teisės pažeidimams ar nusikaltimams, taip pat gyventojų sveikatai ar dorovei arba kitų žmonių teisėms ir laisvėms apsaugoti.*“ Akivaizdu, kad yra pripažįstama, jog valstybėms nedraudžiama naudotis procesinėmis prievartos priemonėmis kovoje su nusikalstamumo mažinimu ir minimas slaptas sekimas neprieštaruoja Konvencijos 8 straipsniui. Svarbu paminėti, kad tokiais metodais leidžiama naudotis tais atvejais, kai žmogaus teisių ir laisvių suvaržymai yra pateisinami ir valstybė laikosi nurodytų teisės aktų reikalavimų.

Nereikia pamiršti ir to fakto, kad baigus slaptą sekimą, asmuo yra informuojamas apie prieš jį taikytas procesines prievartos priemones jam nežinant. Lietuvos Respublikos Baudžiamojo proceso kodeksas 161 str. nurodo, kad „*asmeniui, kuriam buvo taikoma proceso prievartos priemonė jam nežinant, baigus tokią priemonę taikyti turi būti pranešta apie ją. Pranešti būtina iškart, kai tai įmanoma padaryti nepakenkiant tyrimo sėkmei.*“ Tai gali pareikalauti laiko, kol bus užtikrinta, kad šis pranešimas nepakenks tyrimo tolimesnei eigai. Slaptas sekimas turi savo, prieš asmenį teisiškai patvirtintą pradžią ir teisėtumu pagrįstą pabaigą.

Kiekviena procesinė prievartos priemonė, kad ji būtų tinkama tiriamai bylai, turi atitikti ne tik visus keliamus reikalavimus, kad ji būtų priskiriama vykdymui, bet svarbu ir procesinės prievartos priemonės veikimas pagal principus. Reikia pridurti, kad žmogaus teises ir laisves gina ne vienas teisės aktas, taip visuomenei suformuojamas teigiamas požiūris į privatų gyvenimą ir suteikiama galimybė ginti savo pažeistas teises. Tiek Lietuvos teisės aktuose, tiek tarptautinėje teisėje įtvirtintas požiūris į privatų asmeninį gyvenimą išreiškia pagarbą prigimtiniams žmogaus teisėms.

Išanalizavus kriminalinės žvalgybos vykdomų procesinių prievartos priemonių vykdymą, atsiskleidžia žmogaus teisių ir laisvių užtikrinimo problema. Todėl nusikalstamos veikos imitavimo veiksmai bei slaptas sekimas reikalauja kruopštaus pareigūnų atidumo, teisės aktų išmanymo bei dorovių puoselėjimo. Apginti žmogaus teises ir laisves yra labiausiai saugoma visuomenės vertybė. Taikant NVIV ar slaptą sekimą, kiekvienu atveju turi būti puoselėjamos etinės nuostatos, kaip ir prigimtinių žmogaus teisės bei laisvės.

Tyrimo metodologija

Šis straipsnis remiasi atlikto empirinio tyrimo duomenimis, kurio metu, taikant struktūruotą interviu, siekta sužinoti, kaip kriminalinės žvalgybos pareigūnai supranta pamatinius etikos principus ir jų taikymą savo profesijoje. Informantų išsakyta nuomonė suteikė įžvalgų apie profesinės etikos svarbą kriminalinėje žvalgyboje bei atskleidė pareigūnų nuostatas į Žvalgybos pareigūnų etikos kodekse numatytas elgesio normas.

Tyrimo imtis. Pasirinkti 4 informantai, laikytini savo srities ekspertais. Savo profesinėje veikloje vykdydami užduotis jie susiduria su etikos problemų klausimais. Tyrimo dalyvių

atrankos būdas – tikslinė atranka. Tyrime dalyvavo skirtingų kvalifikacijų ir turintys skirtingas patirtis kriminalinėje žvalgyboje veikiančios informantai. Kokybiniam tyrimui neaktualus tiriamųjų skaičius, o aktualus gauto interviu teksto turinys – jo gilumas, išsamumas, nauja informacija.

Tyrimo instrumentas. Empiriniam tyrimui atlikti pasirinktas struktūruotas interviu elektroniniu paštu, kurį sudarė devyni atviro tipo klausimai. Kokybinio tyrimo instrumentu – interviu siekta atskleisti pareigūno, susijusio su kriminalinės žvalgybos veikla, patirtį, susiformavusią nuomonę. Atsakymai į atvirus klausimus sudarė galimybę surinkti patikimą informaciją. Bendras interviu raštu pranašumas – iš karto formuojamas interviu išrašas, tyrimo dalyvio informacija užfiksuojama tiksliai taip, kaip jis pats pateikė.

Tyrimo organizavimas. Interviu atliktas pateikiant interviu klausimus elektroniniu paštu minėtiems informantams. Tyrimas vyko 2022 metų balandžio 6-12 dienomis, visi informantai į pateiktus klausimus atsakė. Pokalbis elektroniniu paštu vyko asinchroniškai, t. y. pasitaikė ilgesnių ar trumpesnių laiko tarpų tarp klausimų uždavimo (išsiuntimo) ir atsakymų gavimo. Susirašinėjimas elektroniniu paštu yra gana paplitusi ir įprasta bendravimo forma, kuri tyrimo dalyviams nekėlė papildomų sunkumų.

Kokybinio tyrimo etikos principai. Tyrime buvo laikomasi geranoriškumo principo. Buvo užtikrintas laisvanoriškas tiriamųjų dalyvavimas tyrime. Laikantis pagarbos asmens orumui principo, prieš pateikiant interviu klausimus, tiriamiesiems buvo nurodytas tyrimo tikslas, nevarojant tyrimo objektą identifikuojančių sąvokų, nes jos tiesiogiai gali daryti įtaką tiriamųjų pateikiamiems atsakymams į užduotus tyrėjo klausimus. Teisingumo principas įvykdytas tiriamiesiems pristatant, pagal kokius kriterijus jie parinkti konkrečiam tyrimui dalyviais ir kodėl būtent jie pakviesti dalyvauti tyrime. Klausimyne, kuris pateiktas tiriamiesiems, nėra asmeninės informacijos, kuri leistų atpažinti konkretų asmenį bei organizaciją, kurią asmuo atstovauja ar kurioje dirba. Laikomasi anonimiškumo, užtikrinama, kad tyrimo dalyvių atsakymai bus konfidencialūs, jų tapatybė bus užkoduota (pvz., B1 - X miesto AVPK X skyriaus viršininkas, B2, B3, B4).

Rezultatų pateikimas: interviu metu gauti duomenys susisteminti, atlikta jų aprašomoji-interpretuojamoji analizė ir pateiktas empirinio tyrimo apibendrinimas.

Empirinio tyrimo rezultatai ir jų apibendrinimas

Tyrimo dalyviai patvirtino profesinės etikos reikšmingumą kriminalinėje žvalgyboje pridurdami, kad „*kaip ir visose kitose srityse profesinė etika yra neatsiejama darbo dalis*“ (B2; B4). Pažymėta, kad etika reikalinga, nes „*turi būti pagarbos principas ir žmogiškumas su visais asmenimis vienodas*“ (B3). Ši mintis remiasi Žvalgybos pareigūnų etikos kodekso 3 str., kuriame pabrėžiami etiniai principai, kaip nešališkumas, pagarbos ir lojalumo valstybei principas bei pagarbos žmogaus teisėms, teisėtiems interesams ir laisvėms principas.

Iš pateiktų atsakymų suprantama, kad profesinė etika yra svarbi, todėl informantų buvo prašoma nurodyti argumentus, kuriais remiasi pateikdami savo sprendimą. Žvalgybos pareigūnų etikos kodeksas 1 str. nurodo „*profesinės etikos normas ir elgesio principus, kurių žvalgybos pareigūnas privalo laikytis tarnybos ir ne tarnybos metu tam, kad būtų užtikrintas tinkamas žvalgybos pareigūno tarnybinių funkcijų atlikimas, didinamas visuomenės pasitikėjimas žvalgybos institucija, saugomas bei puoselėjamas žvalgybos pareigūno vardas*.“ Pareigūnai, pateikdami argumentus nurodė, kad profesinės etikos normos yra svarbios „*siekiant gauti kuo geresnį rezultatą tiek su asmenimis, tiek darbinėje aplinkoje*“ (B1); „*kadangi dirbama kolektyve ir su žmonėmis, tiesiogiai su jais kontaktuojant*“ (B3). Taigi akcentuojamas profesinės veiklos kokybės tarnybos metu bei bendravimo su asmenimis ne tarnybos metu ir etikos ryšys. Pastebima, kad profesinės etikos svarba pasireiškia tuo, jog „*kiekvienas pareigūnas turi gerbti*

kiekvieną žmogų, jo teises, teisėtus interesus ir laisves, netrukdyti ar neteisėtai neapsunkinti kitam asmeniui įgyvendinti savo teises ar vykdyti pareigas, vykdydamas savo funkcijas vengti asmens orumą žeminančių veiksmų“ (B2), nes „net nedidelis incidentas, susijęs su žvalgybos institucijų veikla, ar netinkamas jos darbuotojų elgesys sukelia ryškų rezonansą visuomenėje, (...). Žvalgybos veiklos efektyvumas yra tiesiogiai susijęs su žvalgybos pareigūnų elgesiu ir priklauso nuo jų moralinių nuostatų bei vertybių sistemos“ (B1). Minėti teiginiai atskleidžia, kad žvalgybos pareigūnai supranta profesinės etikos vaidmenį, kad tai yra norma, kuria bandoma pasiekti gerų rezultatų nepažeidžiant moralės normų.

Atsakymuose, koks yra pagrindinis skiriamasis bruožas žvalgybos pareigūno profesinėje etikoje, išryškėja pasikartojančios temos - „Konfidencialumas“, „Slaptumas“. Tai atliepia Kriminalinės žvalgybos įstatymo 3 str. 2 dalį, kuri nurodo, kad „*kriminalinė žvalgyba grindžiama teisėtumo, žmogaus teisių ir laisvių užtikrinimo, viešojo intereso apsaugos, konspiracijos, konfidencialumo, viešų ir slaptų veiksmų derinimo principais.*“ Pareigūnas nurodo, kad „*žvalgybos pareigūnas turi saugoti tarnybos metu sužinotą informaciją ir nenaudoti jos kitais tikslais nei tarnybos interesai*“ (B3), tai patvirtina, kad konfidencialumas atskiria šią profesiją nuo kitų. Antrasis, ne ką mažiau svarbus bruožas yra slaptumas, nes „*darbas kriminalinėje žvalgyboje vyksta su žmonėmis, duomenų apie asmens privatų gyvenimą rinkimu, jų analizavimu ir kaupimu*“ (B4); „*skiriamasis bruožas – tai žvalgybinės veiklos slaptumas, susijęs su darbo specifika. Saugoti kriminalinės žvalgybos slaptųjų dalyvių ir kitų kriminalinės žvalgybos veikloje dalyvaujančių asmenų teises ir teisėtus interesus ir garantuoti slapto bendradarbiavimo konfidencialumą – viena iš svarbiausių kriminalinės žvalgybos subjektų pareigų.*“ (B2). Informantų atsakymai rodo, kad kriminalinėje žvalgyboje profesinės etikos išskirtinumas yra konfidencialumas. Šiuo principu vadovaujamosi atliekant savo darbo funkcijas ir taip yra užtikrinamos teisės bei laisvės žmogaus, įtraukto į kriminalinės žvalgybos tyrimą.

Tyrimas atskleidė, kad nors Žvalgybos pareigūnų etikos kodekso 11 str. 1 d. nurodo, kad žvalgybos pareigūnai tarnybos metu turi „*laikytis duotos žvalgybos pareigūno priesaikos*“, tačiau „*ne visi pareigūnai jos laikosi*“ (B4). Informantų atsakymai rodo, kad Žvalgybos pareigūnų etikos kodekse trūkumų nepastebi, kad Žvalgybos pareigūnų etikos kodeksas gerina darbo kokybę - „*žvalgybos pareigūnų etikos kodeksas nustato pagrindines Lietuvos Respublikos žvalgybos pareigūnų profesinės etikos normas ir elgesio principus, kurių žvalgybos pareigūnas privalo laikytis tarnybos ir ne tarnybos metu*“ (B3); „*kiekvienam ir visur yra apibrėžti elgesio rėmai. Tinkamai elgdamasis, gali reikalauti iš kitų to paties*“ (B2). Tačiau pastebima ir tai, kad „*ne visi pareigūnai yra su juo susipažinę, dėl to kartais nukenčia darbo kokybę*“ (B1).

Apžvelgus kriminalinės žvalgybos pareigūnų asmeninį požiūrį į Žvalgybos pareigūnų etikos kodeksą, svarbu suprasti, kokiomis vertybėmis pareigūnai vadovaujasi savo profesijoje. Anot Palidauskaitės (2011), viešojo sektoriaus atstovų vertybės yra „*politinis neutralumas, procedūrinis teisingumas, teisėtumas, sąžiningumas, viešumas, lygybė bei tarnavimas visuomenės interesams*“. Informantų įvardintų vertybių tarpe sutiktos tik dvi vertybės – *sąžiningumas* ir *tarnavimas visuomenei* atliepia Palidauskaitės (2011) minimas vertybes. Kad žvalgybos pareigūnai nenurodė *viešumo* kaip vertybės, laikytina savaime suprantama, nes, kaip jau kalbėta šiame straipsnyje anksčiau, jų profesinėje veikloje svarbiausi principai – konfidencialumas ir slaptumas. Kitos pareigūnų minimos vertybės – tai tolerancija, nešališkumas, nesavanaudiškumas, ištikimybė, pagarba kitiems, geranoriškumas, atsakomybė, pažadų laikymasis („*nežadėk to, ko negali ištesėti*“ (B3)), pareigingumas. Pareigūnai priduria, kad šios asmeninės vertybės jiems padeda tarnyboje - „*turimos vertybės atsispindi geruose poelgiuose, o tai „užkrečiama“, kas motyvuoja ir kitus kolegas*“ (B2).

Kriminalinės žvalgybos pareigūnai nėra pastebėję savo profesinėje veikloje konflikto tarp asmeninių ir profesinių vertybių - „*pasirinkęs tokia profesija tu esi 24/7 pareigūnas ir šiomis vertybėmis tu gyveni visą laiką, tai gyvenimo būdas*“ (B3). Žvalgybos pareigūnų etikos kodekse nėra minima apie vertybių konfliktus, tačiau kodekso 11 str. 7 d. yra nustatyta, kad žvalgybos pareigūnai tarnybos metu turi „*vengti viešųjų ir privačių interesų konflikto, visus kylančius konfliktus spręsti teisės aktų nustatyta tvarka, taip, kad būtų apginti viešieji interesai*“. Iš tyrimo rezultatai rodo, kad pareigūnai tinkamai pritaiko asmenines vertybes savo profesijoje, siekiant ne tik savo tarnybos funkcijas atlikti teisėtai.

Apibendrinant empirinio tyrimo rezultatus, teigtina, kad dauguma informantų atsakymų savo turiniu yra panašūs. Pareigūnai tinkamai supranta savo teisinės pareigas bei funkcijas, kurių turi laikytis norint pasiekti efektyvių rezultatų tarnyboje. Pasak interviu dalyvavusių informantų galima suprasti, kad yra svarbu, kad kiekvienas kriminalinės žvalgybos pareigūnas laikytųsi etikos kodekso. Kriminalinės žvalgybos pareigūnai puikiai supranta, kad etikos kodeksas nustato elgesio taisykles, kurių turima laikytis, nes tai gerina tarpusavio kolegų bendravimą bei darbo kokybę. Pareigūnai, vykdydami savo funkcijas, pasikliauja ne tik griežtais teisės aktų rėmais, tačiau atsižvelgia ir į Žvalgybos pareigūnų etikos kodeksą, kuris tinkamai suformuoja etišką pareigūnų vaidmenį. Žvalgybos pareigūnų etikos kodeksas taip pat prisideda prie gero pareigūno įvaizdžio kūrimo.

Ne tik teisės aktai ar darbo patirtis padeda siekti gerų rezultatų darbe, tačiau svarbų vaidmenį atlieka ir tinkamai suformuotos asmeninės vertybės, tampančiomis profesinėmis vertybėmis. Interviu atsiskleidė asmeninės kriminalinės žvalgybos pareigūnų vertybės, kurios yra svarbios profesijoje. Asmeninės vertybės kiekvienu atveju parodo asmens požiūrį į valstybę, visuomenę bei gebėjimą puoselėti savo asmenines vertybes konfliktinėse situacijose. Kriminalinės žvalgybos pareigūnai įvardindami savo asmenines vertybes, leidžia suprasti, kad kiekvienas iš jų nori siekti savo tarnybą atlikti sąžiningai, kiekvieną asmenį gerbti ir užtikrinti žmogaus prigimtines teises ir laives. Būtent tinkamos profesinės vertybės leidžia savo darbe jaustis gerai, nes ne tik pareigūnas kaip asmenybė, siekia gėrio, tačiau visa komanda, supanti pareigūną, siekia lygiai to paties.

Išvados

Lietuvai atgavus nepriklausomybę, pradėtas skirti vis didesnis dėmesys žmogaus teisių ir laisvių gynybai. Patirti skaudūs istoriniai faktai, demokratinės valstybės kūrimasis padarė įtaką Lietuvos Respublikos operatyvinės veiklos pavadinimo pakeitimui į Lietuvos Respublikos kriminalinės žvalgybos pavadinimą. Pakeisto teisės akto vertybės išliko tos pačios – apsaugoti žmogų nuo nusikaltimo. Šiuo principu vadovaujamosi ir veikiama iki šių dienų. Kriminalinė žvalgyba, vykdydama savo funkcijas atlieka ir procesinių prievartos priemonių taikymą. Būtent dėl šių priemonių, dažniausiai žmonių yra piktinamosi ir ieškoma tiesos, ar nebuvo pažeistos žmogaus konstitucinės teisės. Taip pat procesinių prievartos priemonių vykdymo metu, tokių kaip – nusikalstamos veikos imitavimo veiksmai, slaptas sekimas, stebima, ar nebuvo peržengtos etiško elgesio ribos. Kriminalinės žvalgybos darbuotojai, vykdydami savo funkcijas, jas atlieka teisėtai, t. y. vadovaujantis teisės aktais. Kiekvienas teisės aktas gina žmogaus konstitucines, prigimtines teises. Tačiau pateikiamos ir išimties, kad šios teisės gali būti pažeidžiamos, jeigu to reikalauja siekis sustabdyti nusikaltimą, apsaugoti valstybę ar žmogaus teises ir laisves. Kriminalinė žvalgyba yra vedama gėrio, o gėrio siekimas įveikiant blogį yra svarbiau, nei leisti blogiui plisti. Kiekvienas kriminalinės žvalgybos veikimas laikytinas moraliu, jei jis nepažeidžia teisinių normų.

Atsižvelgiant į gautus empirinio tyrimo rezultatus, darytina išvada, kad kriminalinės žvalgybos pareigūnai suvokia profesinės etikos svarbą savo profesijoje. Pareigūnai išskiria

svarbiausius principus, kuriais reikia vadovautis jų darbe, nurodydami, kad tai – tolerancijos, sąžiningumo, pagarbos kitiems, ištikimybės, nešališkumo, tarnavimo visuomenei ir kt. principai. Tačiau interviu nebuvo paminėtas vienas svarbiausių kriminalinės žvalgybos profesinės etikos skiriamųjų bruožų – konfidencialumas. Šios profesijos atstovams pasiekti gerų rezultatų padeda ne tik gerai išmanomi teisės aktai, tačiau ir jų vidinės vertybės, vedančios padėti kitiems – apsaugoti žmogaus prigimtines teises.

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ETHICAL ASPECTS OF CRIMINAL INTELLIGENCE

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Summary

The article analyzes the ethical aspects of criminal intelligence at a theoretical and empirical level. The problem of the investigation is specified by the following questions: Do criminal intelligence activities not violate human rights and freedoms through the use of coercive procedural measures? How do criminal intelligence officers understand the importance of professional ethics in the service? The object of research: ethical aspects in the field of criminal intelligence. The aim of the research is to analyze the ethical aspects in the field of criminal intelligence, taking into account the ways in which criminal intelligence operates. Objectives of the research: 1) after revealing the concept of criminal intelligence to discuss the ways in which criminal intelligence operates with ethical problems; 2) to investigate and evaluate the attitudes of criminal intelligence officers towards the importance of professional ethics in the service. Research methods: analysis of scientific literature and legal acts, analysis of court practice, generalization, method of qualitative research data collection - survey (structural interview), method of data analysis - descriptive-interpretative analysis.

In the performance of its functions, criminal intelligence also performs the application of procedural coercive measures. It is because of these measures that people are often outraged and seek the truth about whether human constitutional rights have been violated. Also, during the execution of procedural coercive measures such as actions of imitating a criminal act, and covert surveillance it is monitored whether the limits of ethical conduct have not been exceeded. Criminal intelligence officers, in the performance of their duties, perform them lawfully, e. i. in accordance with the law. Every legal

act protects the constitutional, natural rights of a person. However, there are exceptions that these rights may be violated if it is required to stop the crime, protect the state or protect the human rights and freedoms. Criminal intelligence is driven by good intentions, and the pursuit of good overcoming evil is more important than allowing evil to spread. Every act of criminal intelligence is considered moral if it does not violate legal norms. Based on the results of the empirical study, it can be concluded that criminal intelligence officers are aware of the importance of professional ethics in their profession. Officials set out the most important principles to be followed in their work as tolerance, honesty, respect for others, loyalty, impartiality, service to society, and other values. However, one of the most important features of the professional ethics of criminal intelligence was not mentioned - confidentiality. Therefore, not only do well-known legislations help to achieve good results in this profession, but also their intrinsic values that help others to protect their natural rights.

Keywords: *criminal intelligence, professional ethics, operational activities, procedural coercive measures.*

NEAPYKANTOS NUSIKALTIMAI IR NEAPYKANTOS KALBA: KUR PRASIDEDA IR KUR BAIGIASI SAVIRAIŠKOS LAISVĖS RIBOS?

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Anotacija. Saviraiškos teisė – kiekvienos demokratinės valstybės realizuojama žmogaus teisė aktualiais valstybės ir visuomenės klausimais ir kitomis svarbiomis aktualijomis. Tačiau šios teisės įgyvendinimas negali būti beribis, jos realizavimas gali būti ribojamas atsižvelgiant į kitus saugomus interesus, gėrį ir pamatines vertybes, kuriems gali būti padaroma didesnė žala nei pati realizuojama saviraiškos laisvė. Šiuo straipsniu fokusuojamas dėmesys į leistino ir draudžiamo veiksmo takoskyrą, remiantis nacionaline ikiteismine ir teismine, taip pat Europos Žmogaus Teisių Teismo (toliau – EŽTT) praktika, diskutuojama – kur yra ribos tarp baudžiamosios atsakomybės, kuomet pripažįstamas saviraiškos teisės pažeidimas, ir vienos iš demokratijos vertybių – žodžio laisvės.

Atliktų ikiteisminių ir teismų sprendimų dėl neapykantos nusikaltimų ir neapykantos analizė parodė, kad diskrecija nustatant saviraiškos ribas sudaro galimybę interpretuoti neapykantos kalbos ir saviraiškos laisvės ribas, taigi, ne visada aiškiai, labiau net dviprasmiškai traktuoti ir taikyti baudžiamojo įstatymo nuostatas, skirtingai vertinant patį saviraiškos veiksmą, pabrėžiant neapykantą kurstančios kalbos pavojingumo laipsnį, pateikiant argumentaciją dėl informacijos paskleidimo būdų, neteisėtų veiksmų intensyvumo ir pan. Gryninant neapykantos nusikaltimų bei neapykantos kalbos ir saviraiškos laisvės takoskyrą, siūlytinas administracinės atsakomybės taikymas ir prevencinių veiksmų aktyvinimas.

Pagrindinės sąvokos: neapykanta, neapykantos kalba, saviraiškos laisvė.

Įvadas

Tyrimo aktualumas. Asmens saviraiškos laisvė yra saugotina demokratinės visuomenės teisinė vertybė, tačiau ji nėra ir negali būti absoliuti. Todėl net ir diskutuojant visuomenėje svarbiais bendrojo intereso klausimais, turi būti gerbiamos kitų asmenų teisės, jų garbė ir orumas, dalykinė reputacija. Be to, kinta visuomenė, žmonės, aplinka, bendravimo ir nuomonės sklaidos priemonės. Išsiplėtė ir viešosios erdvės suvokimas, keičiasi žmonių mentalitetas bei jų suvokimo lygis.

Laivē reikšti mintis yra įtvirtinta tiek Lietuvos Respublikos (toliau – LR) Konstitucijos 25 str. 1 d., tiek Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 10 str. 1 d. Tačiau saviraiškos teisės įgyvendinimas negali būti beribis, saviraiškos teisės realizavimas gali būti ribojamas atsižvelgiant į kitus saugomus interesus ir vertybes, kuriems dėl saviraiškos teisės įgyvendinimo gali būti padaroma didesnė žala ir tai gali sukelti visuomenėje neigiamus padarinius.

Laisvė reikšti įsitikinimus ir skleisti informaciją nesuderinama su nusikalstamais veiksmais – tautinės, rasinės, religinės ar socialinės neapykantos, prievartos ar diskriminacijos kurstymu, šmeižimu ar dezinformacija (LR Konstitucijos 25 str. 4 d.). Žmogaus įsitikinimais negali būti pateisinamas nusikaltimas ar įstatymų nevykdymas (LR Konstitucijos 27 str.). Įgyvendindamas savo teises ir naudodamasis savo laisvėmis, žmogus privalo laikytis LR Konstitucijos ir kitų įstatymų, nevaržyti kitų žmonių teisių ir laisvių (LR Konstitucijos 28 str.). Šie panašūs teiginiai ypač akcentuojami mokslo darbuose, taip pat taikomuosiuose tyrimuose, kuriuose nagrinėjami neapykantos nusikaltimų ir neapykantos kalbos aktualijos. Pastarojo laikotarpio Lietuvoje nagrinėtinus šios srities klausimus sąlyginai galima skirstyti į tris pagrindines grupes: pirma, kompleksinius, skirtus teisėsaugai ir visai visuomenei¹; antra, edukacinius, skirtus teisėsaugos pareigūnų gebėjimams, reikalingus neapykantos atpažinimui, kvalifikavimui ir tyrimui, ugdyti²; trečia, teisinius, apimančius tokių veikų kvalifikavimo, įrodinėjimo, nacionalinių teismų sprendimų tarpusavio sinchronizavimui, taip pat šių teismų sprendimų atitikties EŽTT praktikai³. Būtent ši paskutinė klausimų grupė akcentuojant ir 170 str. taikymo aktualijas, ypač turėtų dominti mokslininkus ir praktikus – mat priimama naujausia EŽTT praktika labai svarbi ikiteisminio tyrimo subjektų (tyrėjų, prokurorų), taip pat ir teismų būsimiems sprendimams. Todėl šiame tyrime bus siekiama išryškinti teisinius taikymo aspektus. Pažymėtina ir tai, kad atskleidžiant neapykantos nusikalstamas veikas, svarbus vaidmuo tenka specialistui ir jo teikiamoms išvadoms, ikiteisminio tyrimo tyrėjo užduodamų specialistams klausimų tikslingumui ir turiniui. Kaip praktika rodo, dažnai specialisto išvados pateikiamos abejotino pobūdžio, o tai silpnina surinktus įrodymus ir padarytos nusikalstamos veikos pavojingumą. Kai kada specialisto išvados pateikiamos ir prieštaringos. Todėl specialių žinių panaudojimo tiriant neapykantos nusikaltimus ir neapykantos kalbos atvejus irgi yra ta vertintina sritis, kuri turėtų sulaukti deramo mokslininkų ir praktikų dėmesio.

Tyrimo naujumas. Lietuvoje, manytina, kad neapykantos kurstymo veikos teisinis reguliavimas vis dar vystosi. Todėl labai svarbus mokslininkų indėlis analizuojant ir vertinant teismų sprendimus ir juose pateikiamus argumentus šios kategorijos bylose, taip pat nustatant kriterijus/konceptualizuojant pagrindines neapykantos kurstymo veikos teisinio reguliavimo dimensijas, kurios padėtų suprasti saviraiškos laisvės ribas, taip pat aiškiai išgryninti kriterijus dėl 170 str. taikymo praktiką. Pažymėtina, kad Lietuvoje nuolat grįžtame prie svarstymų dėl Stambulo konvencijos ratifikavimo, ypatingai suaktyvėjusi neapykanta grįstų idėjų sklaida prieš LGBT bendruomenę. Štai 2020 m. sausio 14 d. paskelbtas sprendimas byloje BEIZARAS IR LEVICKAS

¹ Neapykantos nusikaltimai ir neapykantos kalba: situacijos Lietuvoje apžvalga. 2020. [žiūrėta 2022-02-12]. Prieiga internetu: <http://hrmi.lt/wp-content/uploads/2021/02/NEAPYKANTOS-NUSIKALTIMAI-IR-NEAPYKANTOS-KALBA-SITUACIJOS-LIETUVOJE-AP%C5%BDVALGA.pdf>

² Plačiau žr. Navickienė Ž., Miliūnė K. Pareigūnų veiksmai neapykantos nusikaltimų atvejais ir prevencinė veikla užkardant neapykantos nusikaltimus. Mokymo ir metodinė priemonė. Kaunas: Lietuvos žmogaus teisių centras. 2020. P. 1-243. Taip pat žr. Velička V., Gutauskas A., Navickienė Ž., Laužikas L. Institucijų atsakai į neapykantos kalbą ir neapykantos nusikaltimus. Mokymo metodologija. Vilnius, 2022.

³ Bilius M., Navickienė Ž., Velička V. Hate crimes: evaluation of Lithuanian courts' decisions in the light of the practice of the European Court of Human Rights. Vytauto Didžiojo universitetas. Baltic Journal of Law & Politics. 2021, 14 (1). P. 22-47.

prieš Lietuvą (peticija Nr. 41288/15)⁴. Šioje byloje EŽTT nusprendė, kad Lietuvos valdžios institucijoms atsisakius pradėti ikiteisminį tyrimą dėl neapykantos kurstymo, pareiškėjai buvo diskriminuojami dėl jų seksualinės orientacijos. Todėl teismas konstatavo, kad Lietuva pažeidė Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos (toliau – Konvencija) 14 str. (diskriminacijos uždraudimas), taikomą kartu su 8 str. nuostatomis (teisė į privataus ir šeimos gyvenimo gerbimą)⁵. Taip pat teismas nusprendęs, kad pareiškėjai skųsdamiesi dėl diskriminacijos seksualinės orientacijos pagrindu neturėjo veiksmingos vidaus teisinės gynybos priemonės, nustatė atskirą Konvencijos 13 str. (teisė į veiksmingą teisinės gynybos priemonę) pažeidimą. Kitaip tariant, šios bylos kontekste buvo suformuluoti BK 170 str. taikymo homofobinės neapykantos kalbos nusikaltimuose standartai – pamatas tolimesnei 170 str. taikymo praktikai.

Šio straipsnio **tikslas** – išanalizuoti neapykantos nusikaltimų ir neapykantos kalbos ir saviraiškos laisvės takoskyrą kaip būtiną elementą baudžiamosios atsakomybės už minėtas nusikalstamas veikas apibrėžčiai.

Realizuojant šį tikslą, keliami keturi pagrindiniai **uždaviniai**:

Identifikuoti esmines su saviraiškos laisvės ir neapykantos nusikaltimų ir neapykantos kalbos ribomis susijusias aktualijas.

Įvertinti ikiteisminių tyrimų dėl neapykantos kalbos nutraukimo ypatumus.

Įvertinti neapykantos kalbos bylų užbaigimo baudžiamuoju įsakymu ypatumus.

Pasiūlyti sprendimus, galinčius padėti išspręsti problemines aktualijas dėl saviraiškos laisvės ir neapykantos nusikaltimų ir neapykantos kalbos takoskyros.

Tyrimo metodai. Tyrimo metu buvo išanalizuota 12 aktualių nacionalinio lygmens sprendimų (5 nacionalinių teismų sprendimai, 6 prokuratūros sprendimai, vienas policijos nutarimas atsisakyti pradėti ikiteisminį tyrimą) ir 4 aktualūs EŽTT sprendimai. Tyrime naudotas sisteminės analizės metodas taikytas nagrinėjant ir apibendrinant pagrindines su neapykantos nusikaltimų bei neapykantos kalbos ir saviraiškos laisvės atribojimu susijusias problemas. Kritinės analizės metodu buvo siekiama pateikti sisteminį požiūrį į ikiteisminio tyrimo ir teismų sprendimų priėmimo aktualijas neapykantos nusikaltimų ir neapykantos kalbos bylose. Dedukcijos ir indukcijos metodai panaudoti išskiriant svarbiausias su šiuo tyrimu susijusias nuostatas ir apibendrinant gautus tyrinėjimo rezultatus.

Diskusiniai neapykantos nusikaltimų ir neapykantos kalbos aspektai

Diskrecija dėl saviraiškos ir veikos pavojingumo ribų nustatymo kelia daug diskusijų ir neleidžia suformuoti vieningos ikiteisminės ir teisinės praktikos bylose dėl neapykantos nusikaltimų ir neapykantos kalbos. Todėl natūralu, kad esminis klausimas: kur yra saviraiškos ribos? Ribos tarp baudžiamosios atsakomybės ir vienos iš demokratijos vertybių – žodžio laisvės. Kaip nustatyti, kad vieno asmens teisės įgyvendinimas netaptų kitų asmenų teisių ar kitų saugomų vertybių pažeidimu?

⁴ Europos Žmogaus Teisių Teismo 2020-01-14 sprendimas byloje Beizaras ir Levickas prieš Lietuvą (peticijos Nr.4128/150). [žiūrėta 2022-01-17]. Prieiga internetu: http://lrv-atstovas-eztt.lt/uploads/BEIZARAS_ir_Levickas_2020_sprendimas.pdf

⁵ Europos Žmogaus teisių ir pagrindinių laisvių apsaugos konvencija, Roma, 1950 metų lapkričio 4 diena. [žiūrėta 2022-04-22]. Prieiga internetu: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.19841>

Taikant baudžiamosios teisės priemones už neigiamus komentarus kitų asmenų atžvilgiu būtina atsižvelgti į konkuruojančius interesus: viena vertus, asmens teisę į saviraiškos laisvę pagal Konvencijos 10 str. ir, kita vertus, homoseksualių asmenų teisę į privatų gyvenimą, garantuojamą pagal Konvencijos 8 str. Šiuo požiūriu reikšmingas EŽTT 2020 m. birželio 11 d. sprendimas byloje Lilliendahl prieš Islandiją (peticijos Nr. 29297/18)⁶. Šioje byloje į EŽTT kreipėsi ne neapykantos nusikaltimo auka, o asmuo, nubaustas už savo komentarus homoseksualios orientacijos asmenų atžvilgiu, kuris teigė, jog toks nuteisimas pažeidė Konvencijos 10 str. garantuojamą jo saviraiškos laisvę. EŽTT šioje byloje konstatavo, jog viešai pareiškėjo paskelbti homoseksualius asmenis įžeidžiantys ir niekinantys komentarai, pagrįsti išankstiniu nusiteikimu ir netolerancija, nebuvo pateisinami. Šioje byloje teismas priminė, jog pagal EŽTT praktiką neapykantos kalbos sunkiausios formos patenka į Konvencijos 17 str., uždraudžiančio piktnaudžiavimą teisėmis, taikymo sritį ir neturi apsaugos pagal Konvencijos 10 str., ginantį saviraiškos laisvę.

Pagrindinis klausimas EŽTT Z.B. prieš Prancūziją byloje⁷ buvo santykis tarp saviraiškos laisvės ir visuomenės interesų. Primintina, kad saviraiškos laisvė, inter alia, įtvirtinta Konvencijos 10 str. Šio straipsnio pirmoji dalis teigia, kad „kiekvienas turi teisę į saviraiškos laisvę. Ši teisė apima laisvę turėti nuomonę, gauti bei skleisti informaciją ir idėjas valdžios institucijų netrukdomam ir nepaisant valstybės sienų“. Nors iš pirmo žvilgsnio gali pasirodyti, kad ši laisvė yra absoliutaus pobūdžio, tačiau skaitant minėtos teisės normos tekstą, akis užkliūva už 2 d., kurios dispozicijoje nurodoma, kad „naudojimasis šiomis laisvėmis, kadangi tai yra susiję ir su pareigomis bei atsakomybe, gali būti priklausomas nuo tam tikrų formalumų, sąlygų, apribojimų ar sankcijų, kurias nustato įstatymas ir kurios demokratinėje visuomenėje yra būtinos valstybės saugumo, teritorinio vientisumo ar visuomenės apsaugos, siekiant užkirsti kelią viešos tvarkos pažeidimams ar nusikaltimams, apsaugoti žmonių sveikatą ar moralę, taip pat kitų asmenų garbę ar teises, užkirsti kelią įslaptintos informacijos atskleidimui arba užtikrinti teisminės valdžios autoritetą ir bešališkumą“. Kitais žodžiais tariant, Konvencijos nuostatos neįtvirtina saviraiškos laisvės kaip absoliučios teisės, kurios negalima riboti jokiais atvejais. Priešingai – Konvencija numato galimybę riboti šią teisę. Vis dėlto, Teismas šioje byloje brėžia ribą, kas priimtina kaip Europos gyventojų saviraiškos laisvė, o kas ją peržengia. Terorizmas, kaip ir genocidas, panašu, yra pernelyg jautrios temos Europoje, taigi ir saviraiškos laisvė šiose srityse vertinama griežčiau.

Pagal EŽTT praktiką artistinės saviraiškos laisvė, įgalinanti dalyvauti keičiantis visų rūšių kultūrine, politine ir socialine informacija bei idėjomis, patenka į laisvės gauti ir teikti informaciją ir idėjas, įtvirtintos Konvencijos 10 str., sąvoką⁸. Nuomonės gali būti išreikštos ne tik artistiniu darbu, bet ir per elgesį (2014 m. spalio 21 d. sprendimas byloje Murat Vural prieš Turkiją, peticijos Nr. 9540/07; 2014 m. spalio 30 d. sprendimas byloje Shvydka prieš Ukrainą, peticijos Nr. 17888/12, 37–38 punktai). Ši laisvė, atsižvelgiant į apribojimus, nustatytus Konvencijos 10 str.

⁶ Europos Žmogaus Teisių Teismo 2020-05-20 sprendimas byloje Carl Jóhann Lilliendahl v. Iceland (application no. 29297/18). [žiūrėta 2022-01-17]. Prieiga internetu: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203199%22%5D%7D>

⁷ Europos Žmogaus Teisių Teismo 2021-09-02 sprendimas byloje Affaire Sanchez c. France (application no. 45581/15). [žiūrėta 2022-01-17]. Prieiga internetu <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-211599%22%5D%7D>

⁸ Europos Žmogaus Teisių Teismo 2018-07-18 sprendimas byloje *Mariya Alekhina ir kiti prieš Rusiją*, peticijos Nr. 38004/12). [žiūrėta 2022-01-18]. Prieiga internetu: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-184666%22%5D%7D>

2 d., taikytina ne tik „informacijai“ ar „idėjoms“, kurios priimamos palankiai arba laikomos nekaltomis ar nereikšmingomis, bet ir toms, kurios žeidžia, šokiruoja ar trikdo (2018 m. liepos 17 d. sprendimas byloje Mariya Alekhina ir kiti prieš Rusiją, peticijos Nr. 38004/12; 2018 m. sausio 30 d. sprendimas byloje UAB „Sėkmadienis“ prieš Lietuvą, peticijos Nr. 69317/14). Pagal Konvencijos 10 str. 2 d. nuostatas, naudojimas šiuo straipsnyje įtvirtintomis laisvėmis, kadangi tai yra susiję ir su pareigomis bei atsakomybe, gali būti priklausomas nuo tam tikrų formalumų, sąlygų, apribojimų ar sankcijų, kurias nustato įstatymas ir kurie demokratinėje visuomenėje yra būtini valstybės saugumo, teritorinio vientisumo ar visuomenės apsaugos interesais, siekiant užkirsti kelią viešosios tvarkos pažeidimams ar nusikaltimams, apsaugoti žmonių sveikatą ar moralę, taip pat kitų asmenų garbę ar teises, užkirsti kelią įslaptintos informacijos atskleidimui arba užtikrinti teisminės valdžios autoritetą ir nešališkumą.

Štai visuomenėje didelio atgarsio sulaukęs įvykis, kuomet aktoriai bažnyčioje atliko performansą, taip panaudodami metaforą, kuria buvo siekiama sukelti visuomenės diskusiją apie pedofiliją tarp dvasininkų. Lietuvos Aukščiausiasis Teismas, nagrinėdamas bylą kasacine tvarka konstatavo, kad bažnyčioje nuteistųjų atlikti veiksmai laikytini saviraiška. Savo turiniu tai buvo komercinio šou renginio reklama. Tokio tikslo – sukelti visuomenės diskusiją apie pedofiliją tarp dvasininkų – šie veiksmai, arba performansas, neatspindėjo, bent jau tokios sąsajos objektyviai iš šalies neįžiūrimos. Tačiau net jei toks nuteistųjų tikslas ir buvo, tai jo įgyvendinimas, atsižvelgiant į pasirinktą laiką ir vietą, nebuvo proporcingas kitų žmonių konstitucinių teisių pažeidimo atžvilgiu. Pažymėtina, kad asmenys nuteisti ne už pačią saviraišką, jos idėją, pasirinktą išraiškos formą ir būdą kaip tokius, bet už viešosios tvarkos pažeidimą, kuriuo sutrikdytos religinės išskilmės ir apeigos⁹.

Neapykantos kalbos sąvokos tiesiogiai įtvirtintos įstatymuose ar kituose teisės aktuose nėra. Jos iš esmės neapibrėžia ir konvencijos ar tarptautinės sutartys. Tai nėra įprasta nusikalstama veika, kuri būtų aiškiai apibrėžta baudžiamajame įstatyme, kaip kad vagystė ar išžaginimas. Jokia tarptautinė sutartis neįtvirtina neapykantos nusikaltimą (angl. hate crime) apibrėžimo. Europos saugumo ir bendradarbiavimo organizacijos Demokratiškos institucijų ir žmogaus teisių biuras yra suformulavęs „darbinį“ apibrėžimą: nusikalstama veika ir neapykantos motyvacija sudaro neapykantos nusikaltimą, taigi tai nusikalstama veika, atlikta turint išankstinį nusistatymą prieš asmenį (nužudymas, užpuolimas, turto sugadinimas ir kitos veikos), ir neapykantos motyvas, kurį reikia įrodyti, yra lemiamas¹⁰. Neapykantos nusikaltimai bendriausia prasme apima tas nusikalstamas veikas, kurių motyvas yra neapykanta „kitokiems“ žmonėms dėl jų priklausymo tam tikrai - socialinei, religinei, tautinei, etninei, ideologinei ar kitai grupei¹¹. Atkreipiamas dėmesys į tai, jog yra ir tipinių neapykantos nusikaltimų sudėčių – neapykantos kurstymas, gali būti ir nužudymas ar sveikatos sutrikdymas dėl neapykantos arba kapų išniekinimas. Šios veikos priklauso nuo nusikaltimų ar nusižengimų sudėčių įtvirtinimo konkrečios valstybės įstatymuose. Iš esmės būti bet kuri nusikalstama veika, jei padaroma dėl neapykantos motyvų, bendriausia ir plačiausia prasme gali būti laikoma neapykantos nusikaltimu¹².

⁹ Lietuvos Aukščiausiojo teismo 2021 m. balandžio 27 d. nutartis Baudžiamajame byloje Nr. 2K-56-511/2021.

¹⁰ Manual on Joint Hate Crime Training for Police and Prosecutors. OSCE/ODIHR 2018. P. 19. [žiūrėta 2022-03-01]. Prieiga internetu: <https://www.osce.org/files/f/documents/3/b/402296.pdf>

¹¹ Isokaitė I. Neapykantos kalbos: saviraiškos laisvės ribų beiškant. Lietuva Europos Taryboje: dvidešimt narystės metų. Recenzuotų mokslinių straipsnių ir pranešimų rinkinys. Vilnius: Spauda, 2014. P. 223.

¹² Ten pat.

Galiojančiame baudžiamajame įstatyme yra draudžiamas neapykantos kurstymas įžeidžiančiais, niekinančio pobūdžio veiksmais, neapykantos kurstymas viešoje erdvėje (pvz., internete) neretai nesiekia tokio pavojingumo lygmens baudžiamojo įstatymo saugomoms vertybėms. Be to, baudžiamoji atsakomybė demokratinėje visuomenėje turi būti suvokiama kaip kraštutinė, paskutinė priemonė (ultima ratio), naudojama teisinių gėrių, vertybių apsaugai tais atvejais, kai švelnesnėmis priemonėmis tų pačių tikslų negalima pasiekti. Atsižvelgiant į tai, jog šiuo metu vyrauja pozicija, kad vienas lakoniškas neetiškas komentaras nesukelia grėsmės įstatymo saugomoms vertybėms, kad būtų galima taikyti baudžiamąją atsakomybę, asmenys lieka apskritai nenubausti. Kita vertus, jeigu ikiteisminio tyrimo pareigūnai tokio ikiteisminio tyrimo medžiagą perduotų į teismą, manytina, kad rezultatas būtų aiškus. Žinoma, kad šių nusikalstamų veikų neišaiškinimas ar netinkamas jų kvalifikavimas skatina nukentėjusiųjų nepasitikėjimą teisėsaugos institucijomis. Kartu šie nusikaltimai daro didesnę žalą ir nukentėjusiojo asmens psichologinei būklei.

Tad teismui tenka sunki užduotis – suderinti dvi lygiavertes vertybes – teisę į saviraišką ir teisę į lygiateisiškumą, o kartu rasti ir apibrėžti takoskyrą tarp šių dviejų vertybių. Nėra nei aiškių kriterijų, nei vieningos teismų praktikos, todėl sunku orientuotis ir ikiteisminio tyrimo pareigūnams. Akivaizdu, jog gatvėje nustatyti neapykantos apraiškas lengviau nei internetinėje erdvėje, nes vienus ar kitus atliktus veiksmus viešoje vietoje galima traktuoti ir kaip viešosios tvarkos pažeidimą. Internete tai padaryti sunkiau. Be to, reikalinga ir specialisto pagalba. Kitaip tariant, įstatymų leidėjas, kriminalizuodamas neapykantos kalbą, paliko pareigą įstatymo taikytojui byla po bylos formuoti praktiką, konstatuojant, kokie konkretūs veiksmai gali būti laikomi tiek pavojingais, kad būtų galima už juos taikyti griežčiausią atsakomybės formą – baudžiamąją atsakomybę.

Ikiteisminiai tyrimai dėl neapykantos kalbos: jų nutraukimo ir atnaujinimo ypatumai

Dažnai praktikoje, viena vertus, dėl neapykantos nusikaltimų susiduriama su situacijomis, kuomet Žurnalistų etikos inspektorius tarnyba prašo pradėti ikiteisminius tyrimus pagal BK 170 str., pateikdama įvairius neapykantos kalbos komentarus apie homoseksualius asmenis, paskelbtus po vaizdo įrašais socialiniame tinkle „Facebook“ ar vaizdo įrašų dalinimosi platformoje „YouTube“. Kita vertus, ikiteisminio tyrimo pareigūnai atsisako pradėti ikiteisminį tyrimą, remdamiesi BPK 168 str. 1 d. ir 3 str. 1 d. 1 punkte numatyta aplinkybe, jog nepadaryta veika, turinti nusikaltimo ar baudžiamojo nusižengimo požymių. Tarp atsisakymo pradėti ikiteisminį tyrimą motyvų dažniausiai akcentuojama tai, kad: 1) visi šie komentarai yra negatyvūs ir įžeidūs, juose išdėstytas pasipiktinimas, neigiama nuomonė yra nekorektiški; 2) šiuose asmenų komentaruose yra reiškiamas tik kritiška nuomonė ir juose nėra raginimo tiesiogiai smurtauti, taip pat nėra raginimo tiesiogiai kurstyti kitus asmenis niekinti, žeminti, įžeidinėti, diskriminuoti tam tikrą žmonių grupę ar atskirus šios grupės narius. Todėl jie savo pavojingumo laipsniu neatitinka BK 170 str. numatyto nusikaltimo; 3) aplinkybė, jog komentarus galėjo matyti daug asmenų, nereiškia, kad kurstoma nesantaika, o BK 170 str., nors ir apriboja asmens laisvę skleisti informaciją, tačiau neuždraudžia asmens teisės į saviraiškos laisvę, kuri yra vienas iš esminių demokratinės visuomenės pagrindų ir viena svarbiausių jos pažangos bei kiekvieno individo tobulėjimo sąlygų; 4) baudžiamoji teisė - paskutinė teisinė priemonė ir kaip atsakomybės forma taikytina tik išimtiniais atvejais. Tai reiškia, kad esant galimybei kilusį ginčą ir atsakomybės

klausimą išspręsti kitomis teisinės atsakomybės priemonėmis (civilinės, administracinės teisės priemonėmis ar taikant drausminę atsakomybę), baudžiamosios atsakomybė klausimas nesvarstomas¹³. Apskundus atsisakymą pradėti ikiteisminį tyrimą aukštesniajam prokurorui, paprastai šis sprendimas paliekamas galioti, detalizuojant tam tikrus šio ikiteisminio tyrimo nepradėjimo aspektus, tarp kurių akcentuojama, jog socialinėje medijoje pateikti vieši komentarai buvo parašyti suvokiant veikos pavojingumą ir norint paskatinti visuomenės neigiamą reakciją į homoseksualius asmenis bei kurstant juo diskriminuoti ir smurtauti prieš juos. Todėl tokie pasisakymai negalėjo sukelti realios grėsmės aptariamo baudžiamojo įstatymo saugomoms vertybėms, t. y. pažeisti seksualinių mažumų lygiateisiškumą, jų, kaip bendruomenės, orumą ta apimtimi, kuria orumas ginamas pagal BK 170 str., taip pat šie prieštaraujantys moralei pareiškimai negalėjo realiai sukurstyti skaitytojų smurtauti prieš šią žmonių grupę. Be to, pažymima ir tai, jog nors seksualinių mažumų teisių tema Lietuvoje yra aktuali, ją supa tam tikra socialinė įtampa, tačiau bendras socialinis kontekstas nėra toks įtemptas, kad savaime pateisintų griežtesnius su juo susijusio saviraiškos laisvės ribojimus ir baudžiamosios atsakomybės kaip ultima ratio (paskutinės priemonės) taikymą. Akcentuojama, kad laisvė reikšti savo mintis ir įsitikinimus yra vienas svarbiausių demokratinės visuomenės principų, o demokratinėje visuomenėje vietos yra visokioms nuomonėms. Todėl vien tai, kad asmenys savo nuomonę reiškė emociškai, pikta, neetiškai bei galima tokiu būdu įžeidė tam tikros grupės atstovus, nereiškia, kad į tokius jų veiksmus privalo būti reaguojama baudžiamosiomis teisinėmis priemonėmis.

Ikiteisminio tyrimas nepradedamas ir pateikiant skundus tiek ikiteisminio tyrimo teisėjui, tiek ir aukštesniajam teismui. Tarp atsisakymo motyvų dažnai pažymima, jog sprendžiant iš socialiniuose tinkluose paskelbtų komentarų matyti, kad jie išreiškia neigiamą komentarų autorių požiūrį į seksualines mažumas (gėjus), pats komentarų turinys yra neigiamas, niekinančio pobūdžio, nukreiptas prieš homoseksualių žmonių grupę, o komentarų autoriai saviraiškos laisvę įgyvendino netinkamai. Tačiau sprendžiant iš komentarų turinio, nėra pagrindo išvadai, jog pateikdami šiuos viešus komentarus asmenys veikė suvokdami savo veikos pavojingumą ir norėdami paskatinti visuomenės neigiamą reakciją į homoseksualius asmenis bei kurstė juos diskriminuoti ir smurtauti prieš juos. Dažnai atkreipiamas dėmesys į tai, kad seksualinių mažumų teisių tema Lietuvoje yra aktuali, ją supa tam tikra socialinė įtampa, tačiau tai savaime nepateisina griežtesnių su tuo susijusių saviraiškos laisvės įgyvendinimo ribojimų ir baudžiamosios atsakomybės kaip ultima ratio taikymo. Taip pat pažymima, kad komentarai yra lakoniški, nekonkretūs ir detaliau nemotyvuoti, t. y. apie smurtą komentuose kalbama tik abstrakčiai. Be to, dauguma komentarų pateikiami kaip retoriniai klausimai, ką rodo šauktukų ir klaustukų vartojimas. Todėl tai, kad komentuose vartojami žodžiai yra labiau žeminančio, neigiamo negu smurtauti skatinančio pobūdžio, suteikia pagrindą išvadai, kad šie pasisakymai negalėjo sukelti realios grėsmės aptariamo baudžiamojo įstatymo saugomoms vertybėms, taip pat jais socialinio tinklo „Facebook“ ir vaizdo bei įrašų dalinimosi platformos „YouTube“ skaitytojai realiai negalėjo būti sukurstyti smurtauti prieš šią žmonių grupę. Papildomai konstatuojama, kad autoriai parašė po vieną, daugiausia trumpą komentarą, kas rodo, jog komentarai buvo rašomi ne sistemingai, siekiant paveikti, įtikinti, paskatinti neigiamą visuomenės reakciją į homoseksualus, sukurstyti iš tikrųjų

¹³ Vilniaus apskrities vyriausiojo policijos komisariato Kriminalinės policijos Nusikaltimų nuosavybei tyrimo valdybos I - ojo skyriaus vyresniosios tyrėjos 2019-07-08 nutarimas atsisakyti pradėti ikiteisminį tyrimą medžiagoje Nr. M-1-01-43801-19.

panaudoti smurtą minėtus asmenis, o jų autoriai atsitiktinai po vieną kartą išreiškė savo nuomonę. Tai rodo, jog nėra pakankamo pagrindo baudžiamajai atsakomybei taikyti. Aukštesnysis teismas dar konstatuoja ir tai, kad tolimesnis proceso tęsimas baudžiamojo proceso tikslų atžvilgiu būtų beprasmiu, reikštų nereikalingą lėšų bei proceso dalyvių laiko švaistymą.

Nepaisant to, kad skundai dėl ikiteisminio tyrimo nepraėjimo praeina visą baudžiamojo proceso apskundimo mechanizmą, neapykantos nusikaltimų atvejais praktikoje ryškėja ir nauja tendencija. Vyriausiasis prokuroras savo iniciatyva, vadovaudamasis Konvencijos 46 str., 1995 m. balandžio 27 d. įstatymo Nr. I-865 „Dėl Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos, jos ketvirtojo, septintojo ir vienuoliktojo protokolų ratifikavimo“ 3 str. 2 d., EŽTT 2020-01-14 sprendimu byloje Beizaras ir Levickas prieš Lietuvą (peticijos Nr.4128/15) bei BPK 2, 168, 169,170, 174 ir 217 str. nuostatomis, naikina tyrėjų ir žemesnių prokurorų priimtus nutarimus atsisakyti pradėti ikiteisminį tyrimą ir pats pradeda ikiteisminį tyrimą pagal požymius nusikaltimų, numatytų Baudžiamojo kodekso 170 str. 2 ir 3 d. Tokiu būdu vyriausiasis prokuroras pažymi, jog ikiteisminio tyrimo pareigūno ir žemesnio prokuroro procesiniais sprendimais be pakankamo pagrindo suabsoliutinama asmens teisė į saviraiškos laisvę. Labai svarbu tai, kad vyriausiasis prokuroras pirmiausia tarp svarbiausių motyvų pradėti ikiteisminį tyrimą, akcentuoja EŽTT 2020 m. sausio 14 d. sprendimo byloje Beizaras ir Levickas prieš Lietuvą (peticijos Nr.4128/15)¹⁴ svarbą ir jame suformuluotus BK 170 str. taikymo homofobinės neapykantos kalbos nusikaltimuose standartus¹⁵. Šiame kontekste aukštesnysis prokuroras papildomai atkreipia dėmesį ir į ikiteisminio tyrimo pareigūnams ir prokurorams proceso veikloje privalomas Generalinio prokuroro 2020 m. kovo 30 d. įsakymu Nr. 17.9.-4265 patvirtintas „Ikiteisminio tyrimo dėl neapykantos nusikaltimų ir neapykantą kurstančios kalbos atlikimo, organizavimo ir vadovavimo ypatumų metodinės rekomendacijos“. Jose nurodyta, jog neapykantos kurstymas nebūtinai turi reikšti raginimą atlikti smurtą ar kitas nusikalstamas veikas. Konkrečių gyventojų grupių agresyvus įžeidinėjimas, pajuoka, žeminimas valdžios institucijoms turi būti pakankamas pagrindas kovoti su neapykantą kurstančia kalba. Net ir pavienių neteisėtų veiksmų (komentarų) atvejais veika gali užtraukti baudžiamąją atsakomybę atsižvelgiant į tokių veiksmų (komentarų) pobūdį (kraštutinumą, aiškų diskriminacinį pobūdį, akivaizdų raginimą diskriminuoti, smurtauti, kėsintis į asmenų fizinį ir psichinį vientisumą ir pan.). Net ir į vieno neapykantos komentaro, kuriame išreikštas grasinimas nužudyti, paskelbimą socialinėje paskyroje reikėtų žiūrėti rimtai¹⁶. Be to, atkreipiamas dėmesys ir į kiekybinės paskelbtų komentarų išraiškos svarbą bei tai, jog tik nedidelė dalis komentarų sąrašė nurodytų komentatorių naudoja slapyvardžius. Šių komentarų sąrašė yra nuorodos į daugumos komentatorių naudotus asmeninius profilius, kurių pavadinimus sudaro ir fragmentai iš šių vartotojų vardų bei pavardžių, taip pat yra ir daugumos tokius komentarus rašiusių vartotojų vardai ir pavardės. Nors kai kurios jos yra transkribuotos nenaudojant lietuviškų rašmenų (ą, č, è, š, ū, ž raidžių), tačiau vien tai nėra aplinkybe, esmingai

¹⁴ Europos Žmogaus Teisių Teismo 2020-01-14 sprendimas byloje Beizaras ir Levickas prieš Lietuvą (peticijos Nr.4128/150).

¹⁵ Vilniaus apygardos prokuratūros 2020-10-08 nutarimas panaikinti nutarimą atsisakyti pradėti ikiteisminį tyrimą ir pradėti ikiteisminį tyrimą. Ikiteisminio tyrimo Nr. M-1-01-43801-19.

¹⁶ Lietuvos Respublikos generalinio prokuroro 2020-03-30 įsakymu Nr. 17.9.-4265 patvirtintas „Ikiteisminio tyrimo dėl neapykantos nusikaltimų ir neapykantą kurstančios kalbos atlikimo, organizavimo ir vadovavimo ypatumų metodinės rekomendacijos“. Žr. https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos_nusikaltimu_tyrimo_metodines_rekomendacijos.pdf

kliudančia be abejonių identifikuoti tokių asmenų tapatybes. Dar vienas problemiškas šių ikiteisminių tyrimų aspektas – detaliam neapklausiama patys nukentėjusieji asmenys.

Teisėsaugos institucijų praktikoje dėl neapykantos kalbos pasitaiko ir kitokių baudžiamojo proceso aspektų, kuomet pradėti ikiteisminiai tyrimai nutraukiami, o vėliau aukštesniojo prokuroro nutarimu atnaujinami. Ikitėisminis tyrimas buvo pradėtas dėl to, jog socialinio tinklo paskyroje „Facebook“ jo savininkas nuo nepažįstamo asmens iš jo socialinio tinklo „Facebook“ paskyros gavo jam adresuotą asmeninę žinutę su tekstu: „susikisk y sikna ranksluosti kad sudai nebyretu“; „suka akmenim uzmetysiu jei pamatysiu“¹⁷. Pareiškėjo teigimu, žinutės autorius tokiais žodžiais tiesiogiai ragino jį nužudyti (užmėtyti akmenimis), tyčiojosi, niekino, skatino neapykantą ir kurdė diskriminuoti jį ir konkrečią žmonių grupę dėl homoseksualios orientacijos. Šis ikiteisminis tyrimas buvo nutrauktas, konstatavus, kad nepadaryta veika, turinti nusikaltimo ar baudžiamojo nusižengimo požymių. Pagrindiniais nutraukto ikiteisminio tyrimo motyvais laikytina tai: 1) šiuo komunikacijos aktu išsakoma asmeninė nepakanti nuomonė apie kitą konkretų asmenį. Ir nors šiuo pasisakymu skleidžiama panieka bei įžeidimai konkrečiam „Facebook“ paskyros turėtojui, tačiau ji kilo ne tik ir ne tiek dėl jo seksualinės orientacijos, o dėl jo elgesio bei atitinkamai dėl įsitikinimų ir pažiūrų. 2) nors komentaras „Facebook“ paskyroje vertintinas kaip aštrus, neetiškas, įžeidus ar žeminantis bei viešai matomas, tačiau negali būti vertinamas kaip kurstantis smurtą ir diskriminaciją ar skatinantis neapykantą asmenų grupėms ar jų atstovams. Kitaip tariant, komentarų autorius įgyvendino savo saviraiškos laisvę ir negalėjo sukelti realios grėsmės baudžiamojo įstatymo saugomos vertybėms. 3) prokuroras vertino ir specialisto išvadoje pateiktus argumentus, jog šiuo komunikacijos aktu neskatinama kaip nors diskriminuoti homoseksualus kaip žmonių grupę ar jokių atskirus asmenis, skiriamus seksualinės orientacijos pagrindu, nekurstoma prieš juos smurtauti ar fiziškai su jais susidoroti. Taigi šis komunikacijos aktas socialinio tinklo vartotojų atžvilgiu nelaikytinas skatinamuoju ir negali būti sėkmingas ar nesėkmingas. Juo tiesiog išsakoma asmeninė nepakanti nuomonė apie kitą konkretų asmenį. 4) komentaras pagal savo objektyvių ir subjektyvių požymių turinį, jų pasireiškimą nėra tokio pavojingumo laipsnio, kad vertinant jį pagal protingumo, proporcingumo, teisingumo ir kitų bendrųjų teisės principų nuostatas būtų pagrįstas represinių baudžiamojo proceso, baudžiamosios teisės priemonių (ultima ratio) taikymu.

Tuo tarpu aukštesnysis prokuroras, atnaujindamas nutrauktą ikiteisminį tyrimą akcentuoja tai, jog nėra aiškūs šio nutraukto ikiteisminio tyrimo argumentai, jie neatitinka priimtam procesiniam sprendimui keliamų pagrįstumo standartų. Pirmiausiai pažymima, kad paties nukentėjusiojo elgesio internete viešinant neapibrėžtam skaitytojų ir komentatorių ratui šias jam privačiai kaltininko siūstas žinutes motyvai ir priežastys nebuvo išsiaiškinti, nes nukentėjusysis apie šias aplinkybes nebuvo apklaustas. Taip pat ikiteisminio tyrimo metu nebuvo išsiaiškinta ir tai, ar nukentėjusiajam žinutes siuntes asmuo šių žinučių taip pat nepaviešino savo iniciatyva. Be to, ikiteisminiame tyrime nebuvo atlikta jokių veiksmų, siekiant patikimai nustatyti žinutes siuntesio asmens tapatybę ir jo buvimo vietą ir jį apklausti arba patikimai jį identifikuoti. O taip pat kaltininko tikslia ir motyvai siunčiant nukentėjusiajam tokio turinio žinutes ikiteisminio tyrimo metu nebuvo nustatyti.

Pastebima dar viena tendencija, susijusi su BK 170 str. nuostatų taikymu praktikoje. Ikitėisminis tyrimas buvo pradėtas dėl to, kad ant Vilniaus choralinės sinagogos sienos iš Plačiosios

¹⁷ Vilniaus apygardos prokuratūros 2021-01-19 ikiteisminio tyrimo Nr. 02-2-00052-21 medžiaga.

gt. pusės yra užrašai rusų kalba: „Žydai sužlugdė antrąjį pasaulinį Vokietijai paliko Staliną juos ir Putiną sužiaurinti liaudį kalėjimais kam?¹⁸“. Taigi ikiteisminis tyrimas buvo pradėtas esant pagrįstai prielaidai, kad ant sinagogos sienos buvo rasti antisemitinio pobūdžio užrašai. Tačiau specialisto tyrimas nenurodė, kad užrašų tekstu yra skatinama neapykanta prieš žydų tautybės asmenis, todėl ikiteisminis tyrimas buvo nutrauktas. Tuo tarpu aukštesnysis prokuroras savo iniciatyva susipažino ir įvertino ikiteisminio tyrimo medžiagą bei prokuroro nutarimo nutraukti šį ikiteisminį tyrimą teisėtumą ir pagrįstumą, nutarimą nutraukti ikiteisminį tyrimą panaikino ir jį atnaujintino. Tokį procesinį sprendimą aukštesnysis prokuroras priėmė šiais pagrindais ir motyvais: 1) byloje buvo surinkti duomenys apie asmenį, kuris šiuos užrašus ant sinagogos sienos užrašė, tačiau dėl nežinomų priežasčių jis BPK numatyta tvarka ikiteisminio tyrimo metu nebuvo apklaustas ir nesiaiškinta, ar tai šis asmuo užrašė šiuos antisemitinio pobūdžio užrašus ant Vilniaus sinagogos sienos, jei taip, kodėl tai padarė, ką norėjo tuo pasakyti, kokie buvo tokio jo poelgio tikslai ir motyvai. 2) aukštesniojo prokuroro nuomone, šios bylos nagrinėjimo dalyku esantys atisemitiniai užrašai ant žydų maldos namų - Vilniaus choralinės sinagogos sienos, vertinant juos aktualios Lietuvos Aukščiausiojo Teismo jurisprudencijos ir Generalinio prokuroro rekomendacijų dėl neapykantos nusikaltimų kontekste, pagal savo turinį ir jų atsiradimo vietą – ant žydų (litvakų) maldos namų sienos, gali būti BK 170 str. 2 d. numatyto nusikaltimo dalyku, nes yra tokie, kuriomis niekinama žmonių grupė ir skatinama neapykanta dėl jų tautybės, o jų diskriminacinis pobūdis yra akivaizdus¹⁹. Taigi šiais pagrindais ir motyvais aukštesnysis prokuroras atnaujino nutrauktą ikiteisminį tyrimą.

Dar vienas įdomus atvejis, kuomet ikiteisminis tyrimas buvo pradėtas dėl to, jog internetiniame puslapyje www.youtube.com yra paskelbtas vaizdo įrašas pavadinimu rusų kalba „Самый кошерный переворот! Вильнюс, перед посольством РБ 2009“ (liet. „Labiausiai košerinis perversmas“), kuriame šio vaizdo įrašo autorius išsako antisemitizmą ir tautinę nesantaiką kurstančius teiginius, viešai kursto diskriminuoti žmonių grupę, skiriamą religiniu ir tautiniu pagrindu, viešai tyčiojasi iš žydų tautybės asmenų, išreiškia neigiamą požiūrį į žydus, juos niekina, įžeidžia²⁰. Tačiau šis ikiteisminis tyrimas prokurorės nutarimu buvo nutrauktas, konstatavus, kad nepadaryta veika, turinti nusikaltimo ar baudžiamojo nusižengimo požymių. Prokurorės nutarime nurodoma, jog ikiteisminio tyrimo metu nustatytas faktines aplinkybes išanalizavus aktualių teisės normų bei jų turinį atskleidžiančius nacionalinių ir tarptautinių teismų sprendimų kontekste darytina išvada, kad vaizdo įrašė išsakyti teiginiai žydų atžvilgiu neužtraukia baudžiamosios atsakomybės pagal BK 170 str. 2 d., o prisistatęs asmuo šiame vaizdo įrašė išsako savo asmeninę nepakančią nuomonę žydų tautinės ir religinės grupės atžvilgiu. Be to, prokurorės nutarime pažymėta ir tai, kad pastaruoju metu LR nėra su žydų tautine ir religine mažuma susijusios įtemptos socialinės ar politinės situacijos, kurią viešas neigiamos nuomonės apie žydus reiškimas galėtų paaštrinti, eskaluoti ir tokiu būdu keltų realų pavojų žydų tautinės ir religinės grupės ar atskirų jai priklausančių asmenų saugumui, lygiateisiškumui ar kitoms teisėms bei laisvėms. Aukštesnysis prokuroras, susipažinęs su nutrauktu ikiteisminiu tyrimu, priėmė nutarimą atnaujinti

¹⁸ Vilniaus apygardos prokuratūros Vilniaus apylinkės prokuratūros 2021-03-30 ikiteisminio tyrimo medžiaga byloje Nr. 02-2-00056-21.

¹⁹ Vilniaus apygardos prokuratūros 2021-05-14 nutarimas panaikinti nutarimą nutraukti ikiteisminį tyrimą bei atnaujinti ikiteisminį tyrimą Nr. 02-2-00056-21.

²⁰ Vilniaus apygardos prokuratūros 2021-04-02 ikiteisminio tyrimo Nr. 01-1-42153-20 medžiaga.

nutrauktą ikiteisminį tyrimą²¹. Pagrindiniais jo argumentais buvo tai, kad: 1) būtent tokio pobūdžio antisemitinė neapykantos kalba yra šio ikiteisminio tyrimo dalykas ir šioje kalboje buvo tyčiojama, niekinama, skatinama neapykanta, taip pat ir diskriminacija žmonių grupei dėl jų tautybės; 2) išskyrus Baudžiamąjį kodeksą, nei šuo metu galiojančiame Administracinių nusižengimų kodekse, nei kituose teisės aktuose nėra numatyta jokios atsakomybės už veiksmus, padarytus reiškiant neapykantą asmeniui (asmenims) dėl rasės, tautybės, kalbos, kilmės, tikėjimo, įsitikinimų, pažiūrų ar kitais pagrindais. Esant tokiam teisiniam reglamentavimui, kiekvienu atveju vertinant, ar asmens veika laikytina nusikaltimu, ypatingas dėmesys skirtinas šios veikos pavojingumo laipsniui. Remiantis teismų praktika, vertinant neapykantą kurstančios kalbos pavojingumo laipsnį, didžiausias dėmesys skirtinas dvejoms aplinkybėms - informacijos paskleidimo būdai ir neteisėtų veiksmų intensyvumui; 3) prokurorės nutarime nutraukti ikiteisminį tyrimą remiamasi ir tuo, kad išsakomą asmeninę neigiamą nuomonę apie žydus kalbėtojas iš dalies grindžia tikrai įvykusiais istoriniais įvykiais ir faktais, „tačiau dėl jų pateikia savas interpretacijas ir versijas“, kalba apie įvykius, kurie yra kelių šimtų metų senumo, jų „iš esmės“ nesiejant su šiandiena. Vertinant kalbą šiuo aspektu pastebima, kad ja nėra siekta propaguoti istorijos, ar aiškinti istorinių įvykių priežastis ir pasekmes. Šioje kalboje manipuluojama įsisenėjusiais istoriniais mitais ir stereotipiniais teiginiais apie įsivaizduojamą buvusią ir esamą žydų įtaką. Šia kalba nėra siekiama jokio teisėto ir pozityvaus tikslo (informuoti, šviesti, mokyti, etc.), o tik skleidžiamos neapykantos idėjos apie žydų tautinę grupę. Todėl prokurorės nutarime grindžiant išvadą dėl ikiteisminio tyrimo nutraukimo paminėti istorikų straipsniai, kuriuose pristatomi mokslinių tyrimų apie antižydiškas nuotaikas LDK laikais ir juos diskriminuojančius sprendimus rezultatai, yra panaudoti ne itin korektiškai; 4) šiuo metu Lietuvoje egzistuojantis socialinis, istorinis ir net politinis kontekstas yra toks, jog žydai, kurie istoriškai Lietuvoje yra patyrę diskriminaciją bei neapykanta motyvuotus nusikaltimus, dėl savo tautybės yra laikytini išskirtinės teisinės apsaugos reikalaujančia asmenų grupe nuo bet kokių antisemitizmo apraiškų.

Taigi, šioje byloje esanti antisemitinė kalba, skleidžiant iškreiptus ar tendencingai parinktus duomenis apie žydų tautos Lietuvoje istoriją, kultūrą, tradicijas, tikėjimą, įvykius, žeidžiančius tautinę žydų grupę, t. y. duomenis, kuriuose slypi pasityčiojimas, pasibjaurėjimas ir panieka žydų tautai ir jų tikėjimui, yra tokio pavojingumo laipsnio, kad užtraukia baudžiamąją atsakomybę. Atsižvelgiant į visas šias aplinkybes, tokius veiksmus padariusio asmens veiksmų pavojingumo laipsnis yra pakankamai didelis ir pakankamas baudžiamajai atsakomybei pagal BK 170 str. 2 dalį kilti.

Baudžiamojo proceso užbaigimas baudžiamuoju įsakymu

Teisėsaugos institucijų praktikos analizė rodo, jog vis dažniau dėl BK 170 str. numatyto nusikaltimo baudžiamasis procesas užbaigiamas prokuroro pareiškimu dėl teismo baudžiamojo įsakymo priėmimo. Antai pilietis E.K. buvo pripažintas kaltu padaręs nusikalstamą veiką, numatytą BK 170 str. 3 d. dėl to, kad jis viešai elektroninėje erdvėje, socialiniame tinkle „Facebook“ po įkeltų vaizdo įrašų „Baltic Pride eitynės Vilniuje“ iš savo paskyros parašė žeminantį ir niekinantį homoseksualių asmenų grupę dėl jų seksualinės orientacijos komentarą bei viešai propagavo

²¹ Vilniaus apygardos prokuratūros 2021-06-01 nutarimas panaikinti nutarimą nutraukti ikiteisminį tyrimą bei atnaujinti ikiteisminį tyrimą Nr. 01-1-42153-20.

fizinio smurto idėją ir kurstė smurtauti, fiziškai susidoroti su žmonių grupe ar jai priklausančiu asmeniu dėl jo seksualinės orientacijos²². Pagrindiniai teismo motyvai dėl padarytos nusikalstamos veikos siejami su asmens prisipažinimu padarius nusikalstamą veiką, jo tapatybės identifikavimu bei specialisto išvada. Konkrečiu atveju pats nuteistas asmuo teisinosi tuo, jog yra tradicinės orientacijos ir tokios homoseksualių asmenų eitynės jam pasirodė nepriimtinos, jis pasikarščiavo ir norėdamas išreikšti savo nuomonę po vaizdo įrašų parašė komentarą. Specialistas savo išvadoje dėl parašyto komentaro konstatavo, jog homoseksualūs asmenys įvardijami žeminančiu žargonu „pi...“, kuriuos derėtų deportuoti iš šalies, t. y. ištremti. Taip pat vulgariai įvardijant vyrišką lytinį organą išsakomas palankus požiūris į homoseksualių asmenų kastraciją. Taigi, komentaru yra viešai žeminama, niekinama homoseksualių asmenų grupė dėl jų seksualinės orientacijos bei viešai propaguojamos fizinio smurto idėjos, nukreiptos prieš homoseksualių asmenų grupę dėl jų seksualinės orientacijos.

Kitu atveju asmuo buvo nuteistas pagal BK 170 str. 3 d. už tai, kad viešai kurstė smurtauti ir fiziškai susidoroti su žmonių grupe dėl jos seksualinės orientacijos. „Savo „Facebook“ paskyroje pamatęs įkeltą vaizdo įrašą, kuriame buvo demonstruojamos homoseksualių asmenų eitynės, po vaizdo įrašų parašė komentarą „Šaudyt šlykštynes²³“. Pilnai prisipažindamas dėl padarytos nusikalstamos veikos nuteistasis pažymėjo, jog gailisi dėl to, supranta, kad toks komentaras galėjo įžeisti homoseksualius asmenis, daugiau komentarų nerašo. Atkreiptinas dėmesys, jog po šio komentaro vartotojo „Facebook“ paskyra buvo užblokuota mėnesiui laiko. Be to, specialistas savo išvadoje tokį komentaro turinį įvardijo kaip homoseksualius asmenis žeminantį, jog komentaru išsakoma deklaratyvi pozicija, kad su jais derėtų fiziškai susidoroti šaudant. Taigi, tokiu komentaru yra viešai žeminama, niekinama homoseksualių asmenų grupė dėl jų seksualinės orientacijos bei viešai propaguojamos fizinio smurto idėjos, nukreiptos prieš homoseksualių asmenų grupę dėl jų seksualinės orientacijos.

Panaši situacija taip pat susijusi su kurstymu smurtauti prieš žmonių grupę dėl seksualinės orientacijos. Savo „Facebook“ paskyroje pilietis po vaizdo įrašų, kuriame pamatė kaip bučiuojasi du tos pačios lyties asmenys parašė komentarą – „Apmist ir padegt!!!!²⁴“ Anot nuteistojo, jis nėra nusiteikęs prieš homoseksualius asmenis, tačiau toks vaizdas jį papiktino, jog jie viešai tai demonstruoja. Jis pasikarščiavo, nenorėjo pažeminti homoseksualių asmenų grupės, nesiekė kurstyti nesantaikos ar kitaip su jais susidoroti. Padegti taip pat neketino ir ateityje neketina to daryti. Asmuo gailisi dėl savo poelgio, supranta, jog šis komentaras galėjo įžeisti homoseksualius asmenis, todėl daugiau komentarų nerašo. Specialistas savo išvadoje konstatuoja, kad komentare jo autorius deklaratyviai, šūkio forma išsakė savo poziciją, kad su homoseksualiais asmenimis reikia fiziškai susidoroti, prieš tai juos pažemintus, t. y. apšlapinti ir padegti. Tokią komentaro autoriaus poziciją sustiprina naudojami keturi šauktukai. Tokiu būdu teismas konstatavo, kad tokiais savo veiksmais pilietis viešai kurstė smurtauti prieš žmonių grupę dėl seksualinės orientacijos.

Dar vienas asmuo buvo pripažintas kaltu dėl to, kad savo veiksmais viešai žemino, niekino homoseksualių asmenų grupę dėl jų seksualinės orientacijos bei viešai propagavo fizinio smurto idėją ir kurstė smurtauti, fiziškai susidoroti su asmenų grupe ar jai priklausančiu asmeniu dėl jo

²² Vilniaus miesto apylinkės teismo 2021-05-24 baudžiamasis įsakymas baudžiamojoje byloje Nr. e1-1726-957/2021.

²³ Vilniaus regiono apylinkės teismo 2021-05-25 baudžiamasis įsakymas baudžiamojoje byloje Nr. e1-790-927/2021.

²⁴ Vilniaus regiono apylinkės teismo 2021-05-25 baudžiamasis įsakymas baudžiamojoje byloje Nr. e1-791-834/2021.

seksualinės orientacijos. „Savo „Facebook“ paskyroje pamatęs įkeltą vaizdo įrašą, kuriame buvo demonstruojamos homoseksualių asmenų eitynės, po vaizdo įrašu parašė komentarą – „naikinti kaip žiurkes juos reikia. Išsigimėlių nereikia Lietuvoje!²⁵“ Nuteistasis nuoširdžiai gailisi savo poelgio, supranta, kad rašydamas tokio pobūdžio komentarą galėjo įžeisti homoseksualius asmenis. Daugiau tokių komentarų nerašo ir nerašys. Anot jo, pamatytas vaizdas jį supykė, kadangi yra tradicinės orientacijos, tokios homoseksualių asmenų eitynės jam nepriimtinos ir jis norėjo tokiu būdu išreikšti savo nuomonę. Pažymėtina, jog po komentaro parašymo buvo užblokuotas jo „Facebook“ profilis. Specialisto išvadoje konstatuojama, jog komentaro autorius homoseksualius asmenis prilygina žiurkėms ir išsako savo poziciją, kad su jais derėtų elgtis kaip su graužikais kenkėjais, t. y. naikinti. Be to, homoseksualūs asmenys įvardijami žeminančiu epitetu „išsigimėliai“. Taip išsakomas požiūris, kad jie Lietuvoje nereikalingi. Teismas padarė išvadą, jog komentaro turinys ir jame vartojami žodžiai patvirtina, jog šis asmuo viešai kurstė smurtauti prieš žmonių grupę dėl seksualinės orientacijos.

Kitame baudžiamajame procese asmuo socialiniame tinkle „Facebook“ savo paskyroje ties dviejų besibučiuojančių vyrų nuotrauka parašė įrašą „zudyt“ ir tokiu būdu skatino neapykantą.²⁶ Komentaro autorius prisipažino dėl to, kad skatino neapykantą prieš žmonių grupę dėl seksualinės orientacijos. Savo poelgio motyvą aiškino tuo, jog jis gyveno mažame Lietuvos miestelyje, vadovavosi stereotipais, suprato, kad žmonės turi mažai tolerancijos, visi taip elgiasi ir jis taip pasielgė. Kartu jis suprato, jog nuotraukoje pavaizduoti vaikinai siunčia žinutę, kuri turėtų baigtis priešprieša tarp netradicinės orientacijos žmonių. Tokio komentaro neturėjo rašyti ir neturi savo poelgiui logiško paaiškinimo. Tiesiog užvaldytas emocijų parašė komentarą, nenorėjo tų vaikinų nužudyti ar kas nors kitas juos nužudytų. Nukentėję vaikinai teismui aiškino, jog dėl šio komentaro patyrė šoką bei neigiamus išgyvenimus, labai jautriai į tai reagavo. Specialistas komentaruose pavartotą žodį „zudyt“ savo išvadosse konstatavo kaip nukreiptą į konkrečią žmonių grupę – homoseksualius asmenis, o pats pavartotas žodis „zudyt“ atskleidžia išskirtinai agresyvią komentaro autoriaus reakciją į dviejų besibučiuojančių vyrų nuotrauką. Taigi toks komentaras yra skatinantis neapykantą homoseksualiems asmenims. Taigi, teismas, pasiremdamas byloje surinktais įrodymais konstatavo, jog komentaro autorius skatino neapykantą prieš žmonių grupę dėl seksualinės orientacijos ir padarė nusikaltimą, numatytą BK 170 str. 2 d.²⁷

Apibendrinant teismų praktikos atvejus, akivaizdi neapykantos nusikalstamų veikų tendencija – rašomi komentarai internetinėje erdvėje ir socialiniuose tinkluose prieš homoseksualius asmenis. Įvertinant baudžiamojo proceso užbaigimą baudžiamuoju įsakymu atvejus, ryškėja ir pačio neapykantos nusikalstamą veiką padariusio asmens portretas. Tai jauni, dažniausiai vyriškos lyties asmenys, nevedę, vidurinio išsilavinimo (pavieniai atvejai ir su aukštesniu išsilavinimu), dirbantys ir turintys teistumą (dažniausia už nesunkias nusikalstamas veikas) asmenys. Baudžiamąjį procesą užbaigiant baudžiamuoju įsakymu pagrindiniais įrodymais yra paties asmens prisipažinimas, tokio asmens tapatybės identifikavimas ir specialisto išvada. Prisipažinimai dažniausiai grindžiami tuo, jog asmuo yra tradicinės orientacijos, o kitos orientacijos žmonės jiems nepriimtini, todėl pasikarščiavo ir parašė nepadorų komentarą norėdami tik išreikšti savo nuomonę. Asmenys paprastai sutinka, kad rašant komentarus pasirinko per grubius išsireiškimus, nesiekė kurstyti

²⁵ Vilniaus miesto apylinkės teismo 2021-05-27 baudžiamasis įsakymas baudžiamojoje byloje Nr. e1-1727-992/2021.

²⁶ Vilniaus miesto apylinkės teismo 2021-05-19 nuosprendis baudžiamojoje byloje Nr. 1-1245-990/2021.

²⁷ Vilniaus miesto apylinkės teismo 2021-05-19 nuosprendis baudžiamojoje byloje Nr. 1-1245-990/2021.

nesantaikos, susidoroti ar smurtauti, gailisi dėl to ir pasižada daugiau taip nesielgti. Pats tokio poelgio motyvas aiškinamas tuo, jog gyvena nedideliame miestelyje, vadovaujasi susiformavusiu elgesio stereotipu, bandos jausmu – „visi kalba, rašo komentarus, tai ir aš taip padariau“ arba tiesiog neturi logiško paaiškinimo. Pažymėtina ir tai, jog po neapykantos komentarų patalpinimo tokių asmenų „Facebook“ paskyra užblokuojama ir tik ištrynus komentarus atblokuojama. Teismai, vertindami asmenų veiksmus dėl neapykantos kalbos, dažniausia akcentuoja šiuos nusikaltimo požymius: viešą žeminimą, niekinimą homoseksualių asmenų grupės dėl jų seksualinės orientacijos; fizinio smurto idėjos propagavimą arba kurstymą smurtauti.

Manytume, kad net ir ikiteisminio tyrimo nutraukimas asmeniui dėl neapykantos kalbos yra tolygus jo nubaudimui prevencine prasme, suteikiant jam didelius procesinius suvaržymus bei nepatogumus. Be to, ikiteisminių tyrimų nutraukimo bei užbaigimo baudžiamuoju įsakymu viešinimas, manytume, taip pat pasitarnautų kaip prevencinė veikla.

Administracinė atsakomybė ir prevenciniai veiksmai kaip tikslinės priemonės, padedančios suformuoti saviraiškos laisvės ribas

Statistiškai tokių nusikalstamų veikų, kurios sietinos su 170 str. požymiais, nėra daug. Tačiau reikia turėti omenyje, jog ši nusikalstama veika priskiriama latentinėms veikoms, todėl realiai statistika neatspindi tikrosios situacijos. Geriausias būdas stabdyti neapykantos nusikaltimų plitimą – prevencija. Štai elektroninėje erdvėje pradėjęs „patruliuoti“ virtualus patrulis, kurio pagrindinė užduotis – nusikalstamų veikų ar administracinių nusižengimų prevencija elektroninėje erdvėje. Trys dirbantys pareigūnai turi užduotį atlikti preventyvius veiksmus, siekiant išvengti pažeidimų elektroninėje erdvėje, todėl jų veiksmai pirmiausia yra ne bausti, o įspėti, kad asmenys nutrauktų galimai neteisėtus veiksmus, o jų nenutraukus – jau vėliau renkama medžiaga, registruojama ir perduodama atitinkamam policijos padaliniiui tolimesniam tyrimui.

Nuo virtualaus policijos patrulio darbo pradžios, t. y. nuo 2021 m. balandžio mėn. iki 2021 m. pabaigos virtualus patrulis sulaukė 2725 pranešimų (Facebook gauti pranešimai – 2963 ir el. paštu gauti pranešimai – 417), 102 (iš jų 62 pačių identifikuota) policijos medžiagos buvo perduotos aplinkybių patikslinimui, tame tarpe 15 iš jų dėl neapykantos kurstymo²⁸.

Kitas dalykas – būtina šviesti, mokyti visuomenę, ugdyti jaunimą orientuojant juos į tolerancijos nuostatas, pagarbą kitai nuomonei, kitai žmonių socialinei grupei, santarvės suvokimą, skatinant pačią visuomenę būti sąmoninga ir supratinga, kad saviraiškos laisvė nėra absoliuti, jog taip pat patiems būtina „jausti“ saviraiškos laisvės ribas. Ypač tai pažymėtina keičiantis socialiniam kontekstui, esant tam tikrų įtampų regimybėi. Pavyzdžiui, dėl Rusijos ir Baltarusijos karinės agresijos prieš Ukrainą Teisingumo ministerija išplatino atmintinę dėl baudžiamosios atsakomybės už neapykantos kurstymą ir karo nusikaltimų neigimą ar viešą pritarimą jiems²⁹. Tokio pobūdžio

²⁸ Remiantis virtualaus patrulio duomenimis, per 2021 m. 8 mėnesius buvo pradėta 20 administracinių nusižengimų teisenų, 23 ikiteisminiai tyrimai, praversti 5 prevenciniai pokalbiai, dėl 12 atvejų tikslintos aplinkybės, taikyti 54 vieši įspėjimai. Plačiau žr. Policijos virtualus patrulis. [žiūrėta 2021-12-01]. Prieiga internetu: <https://www.facebook.com/policijosvirtualuspatrulis/>

²⁹ Visuomenei primenama apie baudžiamąją atsakomybę už neapykantos kurstymą ir karo nusikaltimų neigimą ar viešą pritarimą jiems. [žiūrėta 2022-03-01]. Prieiga internetu: <https://tm.lrv.lt/lt/naujienos/visuomenei-primenama-apie-baudziamaja-atsakomybe-uz-neapykantos-kurstyma-ir-karo-nusikaltimu-neigima-ar-viesa-pritarima-jiems>

išplatinta atmintine siekiama priminti visuomenei būti pilietiškai, o savo pasisakymais nepažeisti teisinių nuostatų.

Vienas iš galimų sprendimų, kurie padėtų išgryninti takoskyrą tarp saviraiškos laisvės ir neapykantos kalbos kaip nusikaltimo – administracinė teiseną. Pažymėtina, jog šiuo metu administracinė atsakomybė už neapykantos kurstymą apskritai nėra numatyta. Tam tikri neapykantos kurstymo veiksmai, kurie yra akivaizdžiai amoralūs, neetiški ir pažeidžia tam tikrų visuomenės grupių lygiateisiškumą nesulaukia atsako, nes nesiekia tokio pavojingumo, kurio reikalauja baudžiamoji teisė. Neapykantos kalbos daroma žala sunkiai pamatuojama ir nepagrįstai nuvertinama. Nors už tai yra numatyta baudžiamoji atsakomybė, tačiau sankcijose įtvirtintos bausmės numatytos pakankamai švelnios (pvz., tiek BK 169 str., tiek ir 170 str. maksimali laisvės atėmimo bausmė įtvirtinta iki 3 metų), o patys nusikaltimai laikomi nesunkiais. Tai gal jie ne tokie ir pavojingi? Manytume, jog nepagrįstai pamiršamas administracinių nusižengimų kodeksas, kurį dažnai vadiname „mažuoju baudžiamuoju kodeksu“. Perkeliant į Administracinių nusižengimų kodeksą tyčiojimosi ir niekinimo požymius, būtų galima lengviau identifikuoti tokių veiksmų pavojingumo laipsnį. Žinoma, tiesioginį neapykantos skatinimą ir raginimą diskriminuoti žmonių grupę paliekant baudžiamajame kodekse. Panašios išvalgos teiktos ir Teisingumo ministerijos aiškinamajame rašte, teigiant, kad „egzistuoja tam tikras nebaudžiamumo fenomenas, kuriuo yra piktnaudžiaujama. Tais atvejais, kai neapykantos kurstymas nesiekia pavojingumo, kurio reikalauja baudžiamasis įstatymas bei suformuota teismų praktika, neapykantą kurstantys asmenys apskritai išvengia bet kokios atsakomybės“³⁰. Aiškus atsakomybės diferencijavimas leistų apibrėžti atsakomybę tiek baudžiamajame kodekse, tiek administracinių nusižengimų kodekse, o administracinė atsakomybė asmeniui ir jam nuobaudos paskyrimas būtų laikoma efektyvia priemone. Asmuo, susimokėjęs vieną kartą baudą, kitą kartą jau tokio pobūdžio veikų nedarytų. Tokiu būdu būtų aktyviai realizuojamas ir atsakomybės neišvengiamumo principas.

Išvados

Saviraiškos laisvė yra svarbi žmogaus teisė, kuria realizuojama galimybė laisvai keistis idėjomis, nuomonėmis ir informacija apie valstybei ir visuomenei svarbias problemas ir aktualijas. Saviraiškos laisvės ribojimas galimas tik įstatymo numatytais pagrindais apsaugant kito asmens teises arba visuomenės, kaip visumos, vertybes. Dabartiniuose ikiteisminiuose ir teisminiuose sprendimuose įžvelgiama diskrecija nustatant saviraiškos ribas, o tai sudaro galimybę interpretuoti neapykantos nusikaltimų bei neapykantos kalbos ir saviraiškos laisvės ribas, neaiškiai ir dviprasmiškai traktuoti ir taikyti BK nuostatas.

Atlikta nutrauktų ikiteisminių tyrimų sprendimų dėl BK 170 str. taikymo analizė parodė, kad suformuoti tokių sprendimų pagrindiniai argumentai sietini su neapykantą kurstančios kalbos pavojingumo laipsniu, informacijos paskleidimo būdu sukeltam tam tikras socialines įtampas ir neteisėtų veiksmų intensyvumu. Socialinės įtampos reiškiant neapykantą asmeniui (asmenims) dėl rasės, tautybės, kalbos, kilmės, tikėjimo, įsitikinimų, pažiūrų ar kitais pagrindais savaime nepateisina griežtesnių su tuo susijusių saviraiškos laisvės įgyvendinimo ribojimų ir baudžiamosios

³⁰ Lietuvos Respublikos teisingumo ministerijos aiškinamasis raštas dėl Lietuvos Respublikos administracinių nusižengimų kodekso papildymo 83(1) straipsniu ir 589 straipsnio pakeitimo įstatymo, Lietuvos Respublikos baudžiamojo kodekso 60, 129, 135, 138, 169, 170 ir 170(1) straipsnių pakeitimo įstatymo.

atsakomybės kaip ultima ratio taikymo. Iš esmės pripažinus tokių veikų pavojingumo laipsnio, dėl kurio galima baudžiamoji atsakomybė, nebuvimą, pagrįstai formuojasi prielaidos administracinės teisenos taikymui.

Baudžiamojo įsakymo priėmimu argumentai šios kategorijos bylose dažnu atveju remiasi padariusio veiką asmens prisipažinimu, dėl ko iš esmės gali formuotis prielaidos dvejopai įrodinėjimo praktikai – asmeniui, neprisipažinus tokios veikos padarymu, tolimesnio sprendimo argumentai sietini su argumentais, aptartais nutraukimo atveju: neapykantą kurstančios kalbos pavojingumo laipsniu, informacijos paskleidimo būdu sukeltam tikram socialines įtampas ir neteisėtų veiksmų intensyvumu. Todėl pagrįstai manytina, kad nepriklausomai nuo asmens reiškiamos pozicijos dėl padarytos veikos, turėtų būti taikomi vienodi vertinimo argumentai galutiniam sprendimui priimti.

Teisinių ir švietimo instrumentų taikymas padėtų sėkmingiau išgryninti neapykantos kalbos ir saviraiškos laisvės ribas. Siūlytina Administracinių nusižengimų kodekse numatyti atsakomybę už veiksmus, padarytus reiškiant neapykantą asmeniui (asmenims) dėl rasės, tautybės, kalbos, kilmės, tikėjimo, įsitikinimų, pažiūrų ar kitais pagrindais, t. y. perkelti BK 170 str. 1 d. nuostatas į Administracinių nusižengimų kodeksą, o minėtame straipsnyje numatant atsakomybę už neapykantos kurstymą, taip realizuojant atsakomybės neišvengiamumo principą. Aiškų atsakomybės diferencijavimas ir prevencinių veiksmų vienovė padėtų užtikrinti sklandžią saviraiškos laisvės ir neapykantos ribų takoskyrą.

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HATE CRIMES AND HATE SPEECH: WHERE DOES THE LIMITS OF FREEDOM EXPRESSION BEGIN AND END?

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Summary

The right to self-expression - the human right exercised by every democratic state on topical issues of the state and society and other important issues. However, the implementation of this right cannot be unlimited. Its realization may be restricted in the light of other protected interests, goodness and fundamental values, that may suffer more harm than the freedom of expression itself. This article focuses on the distinction between permissible and prohibited acts, based on national pre-trial and judicial practice, as well as the case law of the European Court of Human Rights (ECHR), it is discussed where the boundaries between criminal liability for violating the right to self-expression and one of the values of democracy are freedom of expression.

Analysis of the decisions of terminated pre-trial investigations on Art. 170 has shown that the main arguments for such decisions are related to the degree of danger of hate speech, causing certain social tensions and the intensity of illegal activities through the dissemination of information. Social tensions

against a person (s) on the grounds of race, nationality, language, origin, religion, belief or other reasons do not in themselves justify stricter restrictions on the exercise of freedom of expression and the application of criminal liability as an ultima ratio. In principle, the recognition of the absence of a degree of danger which may lead to criminal liability, in such acts justifiably creates preconditions for the application of administrative justice.

Arguments for the adoption of a criminal order in this category of cases are often based on the confession of the person who committed the act, which may in principle give rise to a dual practice of proving the offense. It is therefore reasonable to assume that the same reasoning should apply to the final decision, regardless of the individual's position on the act committed.

The use of legal and educational instruments would be more successful in clearing the boundaries of hate speech and freedom of expression. It is recommended that the Code of Administrative Offenses provide for liability for acts of hatred against a person (persons) on the grounds of race, nationality, language, origin, religion, belief, opinion or other grounds, i. y. transferring Art. 170 of the Criminal Code. 1 d. provisions of the Code of Administrative Offenses, while Art. 170 providing for liability for incitement to hatred, thus realizing the principle of the inevitability of liability. A clear differentiation of liability and unity of preventive action would help to ensure a smooth demarcation line between freedom of expression and hatred.

Keywords: *hate crime, hate speech, freedom of expression.*

THE IMPACT OF PUBLIC POLICY ON THE CIRCULAR ECONOMY AND ENVIRONMENTAL SECURITY

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Abstract. *To target a negative trend of people polluting the environment, governments around the globe are actively introducing legislations to discourage usage of damaging products and encourage citizens towards more environmentally friendly behavior. However, it is still not clear how and if such policies affect citizens' behavior in other domains – whether there exists any positive/negative spillover effect from governmental sustainable policies on consumers' purchasing patterns. In this article, we explored this issue using the example of Western European countries, where a ban on the use of free plastic bags has been introduced since 2016. We implemented difference-in-difference analysis between two groups of citizens: those who live in provinces where local government takes an active environmental role and those – where local government does not. In addition, we differentiated on the citizens' environmental motivation: whether they are concerned about environmental issue and claim to actively take actions in reducing harm towards the planet or not. By comparing the monthly shares of products in plastic packaging sales before and after the ban, we found that spillover happened only among low environmentally oriented consumers. The spillover showed to be negative, indicating that, on contrary to the intended goal, introduction of governmental ban increased the purchases of plastic products. In addition, we found a clear spillover evidence only for flavored drinks category, confirming that the spillover does not take place beyond products/actions which are closely associated with the ban.*

Keywords: *Behavior, circular economy, environmental security, plastic.*

Introduction

People's behavior and their consumption patterns have a direct impact on the surrounding natural environment (Stern, 2000). A trending emphasis on convenience, constant overconsumption, and increased usage of single-use products for the past decade brought to one of the most pressing issues nowadays – plastic pollution. With more than 8 million tons of plastic ending up yearly in the oceans (Jambeck et al., 2015), the damage caused by this pollution is ubiquitous: from clogging drains and causing floods during rains (United Nations, 2018) to decaying into toxic microplastics and penetrating people through food, water, and air (Dris et al., 2015). With an estimated yearly cost of 8 billion USD due to plastic pollution (Jambeck et al., 2015), actions targeting to change consumer behavior are needed to be taken.

One of the pivotal players in shaping consumption patterns is the government (Pape, Rau, Fahy & Davies, 2011; Dawkins et al., 2019). With an access to wide array of tools such as informational campaigns, research grants, restrictions on manufacturing, and taxation and bans, governments can contribute significantly to the resolution of plastic pollution topic. Starting from the 2000s, governmental focus has been actively targeted on reduction of plastic bags - one of the three most important sources of plastic pollution (United nations, 2018). With more

than 125 countries having implemented diverse plastic-bags-related policies, its effectiveness in reducing targeted behavior is undoubtful. For instance, introduction of plastic bag charge has led to 70% reduction in plastic-bags usage in Wales (Poortinga, Whitmarsh, and Suffolk, 2013), 94% usage reduction in Ireland (Convery, McDonnell & Ferreira, 2007), and 71% in the Netherlands (Government of the Netherlands, 2017). However, this picture does not explain the interconnectedness of actions and possible spillover effects underlying consumers' behaviors in following government interventions. The question of how and if such sustainable policies influence other consumers' actions remains open.

A behavioral spillover effect is an activation of pro-environmental behaviors not targeted by the specific policy (Poortinga et al., 2013), which is actively entering discussion of pro-environmental literature. Current research brings mixed conclusions on the possibility of spillover effect of sustainable policies on pro-environmental behaviors, with some studies finding a spillover effect (Thomas, Poortinga & Sautkina, 2016; Truelove & Nugent, 2020), and others not (Poortinga et al., 2013; Martinho, Balaia & Pires, 2017).

The article shows the effect of the recent introduction of a ban on free plastic bags in the Netherlands (Government of the Netherlands, 2016); that is, whether such policy can affect consumers' shift towards more sustainable consumption. Using longitudinal data over four years (two years before and two years after ban introduction), we investigate if there is any spillover effect from a decreased usage of plastic bags on purchase of other unsustainable products. When analyzing the behaviors, we moderate relations with customers' environmental motivation (high, moderate-high, moderate-low, low) and similarity of products to plastic bag (flavored drinks – closely associated with plastic waste, and packaged pasta – remotely associated with plastic waste). Thus, the general research question is: How do governmental sustainable policies affect non-targeted consumer behaviors, based on the consumers' environmental motivation and product's similarity to the policy? From an academic standpoint, this research contributes to the further understanding of spillover effect in governmental policy field and expands literature on person's motivation influence on pro-environmental actions. This research is also beneficial from a managerial perspective, as it provides insights not only on how governmental actions can shift consumer behaviors towards (un)sustainable products but also on how these behavioral shifts may differ between diverse subsets of consumers.

The main body of the paper

The term behavioral spillover (also referred to as response generalization, Ludwig, 2002) has been actively used in the existing psychology literature (e.g., Brügger & Höchli, 2019; Poortinga et al., 2013). In general terms, Truelove et al. (2014, p.127) define behavioral spillover as “the effects of an intervention on subsequent behaviors not directly targeted by the intervention”. This definition can be applied to the environmental context as well, where an intervention refers to any governmental action aimed to encourage pro-environmental behavior (i.e., regulatory policies, taxation, educational campaigns), and subsequent behaviors refers to citizens' response to it (Thøgersen & Crompton, 2009). One example of pro-environmental behavioral spillover is a reduction of overall consumer-generated waste resulting from an electronic waste (e-waste) policy introduction (Dhanorkar & Muthulingam, 2020).

The spillover effect can take two forms: positive and negative. A positive spillover occurs when there is a positive relationship between two events: an increase (decrease) in one behavior leads to an increase (decrease) in another one (Thøgersen and Crompton, 2009). As in Dhanorkar and Muthulingam's (2020) example, a decrease in the level of e-waste led to a decrease in the overall level of waste. On the contrary, negative spillover has a negative

relationship between two events: an increase (decrease) in one behavior leads to a decrease (increase) in another one (Thøgersen & Crompton, 2009). For instance, a decrease in energy prices led to an increase in energy use (Truelove et al., 2014). For brevity, in this paper, we refer to the term behavioral spillover as an all-encompassing term for both negative and positive spillover in environmental settings.

Several psychological mechanisms have been proposed to explain the drivers of behavioral spillover. For instance, both Thøgersen and Crompton (2009) and Nilsson, Bergquist, and Schultz (2017) appeal to cognitive dissonance, self-perception theories (in particular, foot-in-the-door effect), and action-based learning to explain positive spillover. In explaining the possible drivers of a negative spillover, Lanzini and Thøgersen (2014) refer to moral licensing and single-action bias as the underlying mechanisms. In an overview of environmental and psychological literature, Truelove et al. (2014) summarize behavioral spillover mechanisms under the following categories: positive spillover being driven by an identity effect and a motivation to behave consistently, while negative spillover is driven by single-action bias, rebound, and moral licensing effects. In the following paragraphs, we expand on what the literature has established in relation to spillover-driving mechanisms.

Current research of possible behavioral spillover from plastic policies on other behaviors is rather scarce and brings ambiguous results. One example is Poortinga et al., (2013) research on introduction of single-carrier bag charge of 5 cents in Wales. This policy, the same as numerous similar policies around the world (Plastic Bags Laws, 2021), showed to be a success in terms of plastic-bags usage reduction in Wales by 70%. At the same time, Poortinga et al. (2013) found only a slight support of behavioral spillover brought by this policy: researchers found only occurrence of change in self-reported environmental identity, which they assumed might lead to positive spillover in the future. The absence of possible spillover was hypothesized to be explained by a short period of observation as well as national-level rather than individual-level data aggregation. In a similar vein, Martinho et al., (2017) showed that an introduction of plastic carrier tax in Portugal lowered the plastic bags consumption by 74% but did not change the perception of marine litter or plastic bags' impact on environment and health. A further investigation of single-carrier bag charge policies in Wales though showed that increase in bringing own bags to stores led to a slight increase in other behaviors (turning off the tap when brushing teeth, wearing warmer clothes indoors, and using public transport), indicating a positive behavioral spillover effect (Thomas et al., 2016). The presence of only weak spill over effect is consistent with what has been found in previous literature (Austin, Cox, Barnett & Thomas, 2011; Thøgersen & Crompton, 2009).

On the other hand, several studies showed the occurrence of a positive spillover effect from pro-environmental activity to the environmental policy support, indicating a possible relation between behaviors. For instance, Truelove et al. (2016) showed that engaging people into recycling, led to stronger support for a pro-environmental campus green fund. At the same time, Truelove and Nugent (2020) found that encouraging people to reduce straw usage (a similar idea to encouraging people to reduce plastic bags usage) had a positive spillover effect on other pro-environmental behaviors. To sum up, despite previous research of environmental spillover from policies into behaviors (or reverse) being rather limited, it gives insights on possibility of spillover occurrence from governmental policies.

Introduction of single-use plastic bags policies in numerous countries around the world (e.g., the Netherlands, Wales, Portugal, China) showed positive results, lowering single-use plastic bags usage on average by 70% (Poortinga et al., 2013; Martinho et al, 2017; Government of the Netherlands, 2017). However, these policies might not only have played direct role in reducing the number of single-use carrier bags but have also created a spillover effect on other

pro-environmental behaviors, as was supported by findings of Thomas et al. (2016), Truelove et al. (2016), and Truelove and Nugent (2020) studies.

The underlying mechanism of spillover occurrence from introduction of single-use plastic bags charge might be explained from two sides: economic and psychological (Poortinga et al., 2013). From economic perspective, by bringing their own reusable shopping bags to the store, citizens have additional disposable income saved, and thus can spend it on other products or activities. This process is supported by the indirect rebound effect literature (Gillingham, Rapson & Wagner, 2016). From psychological perspective though, the mechanism is more complex. By introducing the single-use plastic bags charge, governments create an additional step in consumers' minds –whether to bring own bag or buy a bag in the store – which was not part of the consumers' decision journey before. This, in turn, discontinues a previous (possibly unconscious) habit of 'grabbing the bag on the way out of the store' and activates citizens' self-environmental perception (Verplanken, Walker, Davis, & Jurasek, 2008). Based on the activated self-perception, citizens start thinking of other actions beyond plastic bags purchases, and alter them according to their attitudes (Bem, 1972) and goals. Thus, by introducing plastic bags charge, governments bring consumers to the new 'shopping' context, making them think of their actions beyond plastic bags purchases and act differently. This makes us hypothesize:

H1: There is a behavioral spillover effect from introduction of governmental sustainable policy to other areas of sustainable consumption.

H2: There is a higher positive (negative) spillover effect for environmentally motivated (unmotivated) people than for environmentally neutral and unmotivated (motivated) people.

For this articles, we used data provided by AiMark foundation: the center for advanced international marketing knowledge, supporting researchers with an access to consumer behavior data mainly in FMCG market across 54 countries (AiMark, 2021). Out of the data available, we used two secondary data datasets as main means of analysis: 1) a 2019- year survey of Dutch households on their attitudes towards sustainability, and 2) international households scanner data from 2008 to 2018.

To understand what types of products Dutch consumers were purchasing with our scanner data, and to select dependent variables for spillover effect, we used a supplementary barcodes dataset. The dataset contained a total of 925 003 of diverse barcodes for products within 717 different categories. While selecting the product category for the dependent variable, we used the following criteria:

1) there should be substantial number of respondents as well as observations (i.e., the total number of purchases per respondent) made within a product category to observe trends and conduct analysis;

2) the product should be related to environmental concerns (e.g., causing damage by plastic packaging);

3) there should be (i) substitutes of the products available on the market that are visible within the dataset (e.g., glass/paper substitutes for plastic) or that it is plausible that an increase/decrease in purchase behavior is attributed to a spillover effect from the intervention, and (ii) that the product demand is not inelastic in its current form, as this will simply reflect the (lack of) sensitivity to price;

4) products within the category as well as a product's harm to the environment should be easily compared with each other (i.e., have a comparable unit of measurement) to be able to quantify the spillover effect;

5) the product should be used by all demographic segments (for instance, make-up would automatically exclude almost all males from the selection, which skews findings towards

females only, while oysters (or other exotic category) analysis will be limited to high-income consumers).

As a result of barcodes dataset analysis, we selected the sales of two categories as dependent variables: flavored drinks (consists of three subcategories: soft drinks, iced tea, and juices), and packaged pasta (consists of three subcategories: pasta in different shapes, pasta spaghetti, pasta macaroni).

Observing sales of packaged pasta showed how the free plastic bags ban affects the sales of other plastic-related products rather than bottles (flavored drinks), which is one of the most directly associated categories with plastic waste (Becerril-Arreola & Bucklin, 2021). Worth mentioning that we did not include ‘mineral water’ category, which is even closer associated with plastic waste than flavored drinks, since on average 98% of mineral water sales were in plastic. Thus, the variance of monthly share changes was not big enough to spot the differences.

This is explained by the fact that, on contrast to the selected categories, there is not a lot of mineral water products available in non-plastic bottles yet.

The selected categories flavored drinks and packaged pasta satisfy all criteria mentioned:

1) flavored drinks and packaged pasta categories had 3 955 and 869 barcodes respectively, which upon merging of all datasets and data cleaning resulted in 288 590 sales of flavored drinks made by 4 277 respondents, and 42 554 of packaged pasta drinks made by 3688 respondents per selected period from 2014 to 2017;

2) all products have plastic packaging, which causes harm to the environment;

3) flavored drinks have substitutes available in terms of aluminum “metaal/aluminium”, carton “karton” or glass “glas” cans, while packaged pasta is available in carton “karton/papier” boxes.

4) flavored drinks can be easily compared within categories by using the same size of bottles in ml, and packaged pasta has the same size of packaging in grams. Moreover, it can be assumed that the environmental harm caused by each product corresponds to the size of its bottle/packaging, making the products’ damage to the environment comparable within each category;

5) selected categories are equally purchased by all genders and widely available for diverse income and geographical segments.

To investigate a possible spillover effect, we were interested to see how the sales of items in plastic packaging changed over time in comparison with the sales of items in non-plastic packaging for the selected product categories. The best representation of this measure is the percentage of sales of items in plastic packaging (further referred to as plastic sales) in the total volume of sales. To extract these values, we calculated total monthly sales per respondent (total volume sales) and total monthly plastic sales per respondent (i.e., total volume sales of items with plastic packaging only) and divided the second value over the first one. Thus, the final dependent variable of the research is the share of plastic sales per respondent i at month t , which ranges from 0 to 1 (i.e., 0% to 100%). We expect that this value will decrease in case of a positive spillover effect and increase in case of a negative spillover effect

After joining all datasets and fixing missing values and outliers, the working datasets flavored drinks and packaged pasta, aggregated on monthly sales per respondent, contained a total of 102 289 and 32 689 rows respectively. Minimum and maximum values of the dependent variable (share of items in plastic packaging sales) were 0% and 100% (i.e., did not purchase products in plastic at all and purchased only products in plastic) for both datasets. Mean values were 60% of products in plastic packaging for flavored drinks and 81% for packaged pasta. Statistics on the main variables are given in Table 1.

Table 1. Summary of main numerical variables from datasets

Category	Mean	Min	Max	Sd
Flavored drinks				
Total unit sales (units)	2.38	1	36	2.36
Total volume sales (liter)	2.68	0.15	54	2.62
Price per unit (EUR/liter)	0.85	0.3	8.45	0.45
Packaged pasta				
Total unit sales (units)	1.24	1	10	0.57
Total volume sales (kg)	0.63	0.15	5	0.329
Price per unit (EUR/kg)	2.05	0.28	17	1.62

Observing time trends of the share of products in plastic packaging shows that on the general level there was a slight dip in the shares around the time of the introduction of the plastic ban intervention, with a subsequent increase in shares of sales several months later. However, the shares of sales for flavored drinks in plastic packaging constantly increased over time, while the shares of sales of packaged pasta in plastic packaging deviate around the same mean, making the analysis of differences interesting. The picture becomes more intriguing as we look at different environmental segments, described in the following parts.

Based on demographic characteristics, on average, environmentally friendly people tend to be slightly younger, have lower household size, come from a higher social class (in the Table 2), the lower the number – the higher the social class), and purchase more expensive items. However, these differences do not vary significantly. Demographic characteristics for all segments are summarized in Table 2. The combination of these demographic characteristics may have a common underlying variable – that is, education. Since more educated people tend to know more about the environmental issues and are also more environmentally cautious (Meyer, 2015) and at the same time have higher income. Those on the higher spectrum of income, in turn, tend to belong to a higher social class and are more likely to purchase more expensive items.

Table 2. Demographic description of segments

Category \ Env.segment	Low	Moderate-low	Moderate-high	High
Flavored drinks	336 (6%)	1107 (22%)	1769 (35%)	1065 (22%)
Age (average)	50	52	51	49
Household size (avg)	2.6	2.5	2.4	2.1
Social class (avg)	4.2	4.2	4.0	4.0
Price per unit (avg EUR/liter)	0.83	0.85	0.83	0.88
Packaged pasta	268 (7%)	950 (26%)	1541 (41%)	929 (26%)
Age (average)	50	52	51	49
Household size (avg)	2.7	2.6	2.5	2.2
Social class (avg)	4.2	4.2	4.0	4.0
Price per unit (avg EUR/kg)	1.91	1.99	2.03	2.19

On a more general level, we can see from Table 2 that the data sample average age category is 50-54 y/o (which is corresponding to category 7 in the coding), household size of 2-3 people, and a social class category 4 (lower middle class).

When it comes to the share of purchases of products in plastic packaging, the environmental segments show slightly different behaviors (especially for the *packaged pasta* dataset). However, for the *packaged pasta* dataset, the picture is slightly different, where ‘moderate motivation’ segments have the lowest share of plastic sales, ‘high motivation’ segment the second biggest share of plastic sales, and ‘low motivation’ segment the highest. In addition, the shares of plastic sales for all environmental segments besides ‘low’ deviate similarly around the mean (within the 15% range), while the ‘low’ segment has a significant variation of shares of plastic sales from month to month.

Lastly, Table 2 depicts average differences in the share of plastic sales by segment before and after the introduction of the free plastic bags ban in the Netherlands. The positive sign means that the average share of plastic sales increased after the introduction of the ban. Overall, the share of plastic sales for *flavored drinks* increased on 11% (from 50% to 61%), and for *packaged pasta* by 8% (from 62% to 70%). When partitioning at the segment level (see Table 3), the highest increase was seen for ‘low’ environmentally motivated respondents, and the lowest for ‘high’ motivated respondents. It is worth noting that these numbers show an overall picture of sales without splitting respondents based on the ‘treatment’ and ‘control’ groups.

Table 3. Difference in average plastic shares % after the ban introduction

Category \ Env.segment	Low	Moderate-low	Moderate-high	High
Flavored drinks	15%	13%	11%	8%
Packaged pasta	10%	11%	7%	6%

Using difference-in-difference approach, we were able to compare two groups of respondents who had different levels of governmental involvement in tackling environmental issue, and thus to observe if spillover occurred. Based on the Wallaart & Kusse (2019, p. 28) analysis of sustainability initiatives per province, the two selected groups were five Dutch provinces with active governmental involvement in tackling environmental issues (Flevoland, Gelderland, Utrecht, Groningen, and Friesland) as a treatment group, and the rest – as control group. We also compared the magnitude of spillover effects between respondents with different levels of environmental motivation, and across two different product categories.

With the first hypothesis (H1) we predicted that there should be an overall spillover effect from the introduction of sustainable policy. However, the analysis of the data did not show evidence to support a spillover effect from the plastic bag intervention in the Netherlands in 2016. These findings correspond with previous studies of plastic-reduction policies, such as the implementation of a charge on single-carrier bags in Wales (Poortinga et al., (2013) and Portugal (Martinho et al., 2017) A plausible explanation for this result is that different consumer segments behave in different ways; that is, one segment showed a positive spillover effect (decreased the number of purchases of products in plastic packaging after the ban introduction), whereas other segments showed the opposite effect (increased the number of purchases of products in plastic packaging after the ban introduction), leading to a null effect at the aggregate level.

However, the clear distinction between our research and previously mentioned ones is that both studies by Poortinga et al., (2013) and Martinho et al., (2017) used survey responses, whereas this thesis also uses observational data of consumers' real purchase behaviors. This made the analysis more reliable since people's claimed behavior and actual behavior might differ. For instance, while responding to a survey, respondents might be biased to respond more environmentally friendly due to societal expectations of 'correct behavior', known as a 'desirability bias'. Observing actual purchase behaviors is more likely to be a true reflection of one's attitudes and beliefs about environmental issues.

With the second hypothesis (H2) we predicted that the direction and strength of spillover would differ based on the person's environmental motivation. We tested this hypothesis with splitting respondents on four segments, based on their environmental motivation (High, Moderate-high, Moderate-low, and Low). Out of the four segments constructed in this analysis, we found the presence of a spillover effect only for the lowest environmentally motivated segment ('Low'). For this segment of respondents, the spillover effect was found to be negative: a decrease in single-use plastic bags after ban's introduction led to increase in the share of purchases of products in plastic packing. This finding goes in the opposite direction of those found in one previous study on a spillover effect from the introduction of a single-carrier bag charge policy of five cents in Wales (Thomas et al., 2016). This discrepancy might be due to differences in the measurement methods used, with respondents in the survey used in Thomas et al.'s (2016) study claiming to be more environmental than they are. Moreover, Thomas et al. (2016) measured spillover to distant behaviors such as turning off the tap when brushing teeth, wearing warmer clothes indoors, and using public transport, while we looked at behaviors closely associated with the new governmental policy. However, the spillover effect that was detected for the 'Low' segment in this study was not very strong (8%), which is consistent with previous findings (Thomas et al., 2016; Thøgersen & Crompton, 2009).

The underlying reason for the occurrence of negative spillover effect might be moral licensing or single-action bias effects. After the free plastic bags ban introduction in the Netherlands, people reduced the purchase of plastic bags by 70% (Government of the Netherlands, 2017), meaning that they started bringing more often their own shopping bags with them to the store. For the low environmentally motivated people, this action might have allowed them to feel 'morally licensed' to purchase more products in plastic packaging since they already reduced their plastic consumption by bringing their own bag to the store. This also goes in line with Gneezy et al.'s (2012) argument of moral licensing effect occurrence when the initial behavior is cheap – the price of reusable bags is not high. At the same time, for more environmentally motivated people introduction of plastic bags ban did not change their perception of plastic damage. The possible explanation for absence of spillover in that group is that environmentally motivated people were already believing in or practicing pro-environmental behaviors (e.g., were already bringing their own reusable bags to the store) before the ban introduction and thus did not experience a 'context' change.

At the same time, this research is beneficial from a managerial standpoint, since it gives insights to managers how governmental policies can influence their customers' actions. The findings show that in case with free plastics bag ban in the Netherlands, only low environmentally motivated customers changed their behavior, increasing the purchases of plastic packaged products. However, this is not a 'call to inaction' to the business since introduction of other (stricter or different type of) policies can activate the (opposite) response from the rest of customer segments as well.

Conclusions

In this article we investigated if the introduction of a sustainable governmental policy, has a spillover effect on consumer behavior. This thesis focused on one such example of a sustainable government policy, a ban on single-use plastic bags at supermarkets, for the Dutch market. The ban on free plastic bags was introduced on Jan 1st, 2016, where we analyzed the period before and after the introduction of the plastic bag ban to see if there was any change in consumer purchasing patterns. Of particular interest was if the plastic bag intervention led to a change in the purchases of plastic packaged products, which have alternative environmentally friendly packaging (flavored drinks and packaged pasta). For the analysis, we used panel dataset of supermarket purchases for over 4 000 respondents over the period of four years (two before and two after the introduction of the ban) and their responses to a survey seeking to understand their pro-environmental tendencies (e.g., concerns, actions, perception of who is responsible to address climate change issues) that was conducted in 2019.

Using difference-in-difference approach, we were able to compare two groups of respondents who had different levels of governmental involvement in tackling environmental issue, and thus to observe if spillover occurred. Based on the Wallaart & Kusse (2019, p. 28) analysis of sustainability initiatives per province, the two selected groups were five Dutch provinces with active governmental involvement in tackling environmental issues (Flevoland, Gelderland, Utrecht, Groningen, and Friesland) as a treatment group, and the rest – as control group. We also compared the magnitude of spillover effects between respondents with different levels of environmental motivation, and across two different product categories.

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However, the clear distinction between our research and previously mentioned ones is that both studies by Poortinga et al., (2013) and Martinho et al., (2017) used survey responses, whereas this thesis also uses observational data of consumers' real purchase behaviors. This made the analysis more reliable since people's claimed behavior and actual behavior might differ. For instance, while responding to a survey, respondents might be biased to respond more environmentally friendly due to societal expectations of 'correct behavior', known as a 'desirability bias'. Observing actual purchase behaviors is more likely to be a true reflection of one's attitudes and beliefs about environmental issues.

With the second hypothesis (H2) we predicted that the direction and strength of spillover would differ based on the person's environmental motivation. We tested this hypothesis with splitting respondents on four segments, based on their environmental motivation (High, Moderate-high, Moderate-low, and Low). Out of the four segments constructed in this analysis, we found the presence of a spillover effect only for the lowest environmentally motivated segment ('Low'). For this segment of respondents, the spillover effect was found to be negative: a decrease in single-use plastic bags after ban's introduction led to increase in the share of

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Looking at the literature on environmental spillover effects more broadly, the presence of a negative spillover was seen in other studies related to the governmental actions. For instance, Truelove et al. (2016) found that a negative spillover effect from water bottle recycling on pro-environmental policy acceptance. In addition, both Weber (1997) and Hansen, Marx, and Weber (2004) found evidence that when farmers changed their production techniques to withstand climate change, they were later less supportive of long-term based carbon emission policies (negative spillover).

The underlying reason for the occurrence of negative spillover effect might be moral licensing or single-action bias effects. After the free plastic bags ban introduction in the Netherlands, people reduced the purchase of plastic bags by 70% (Government of the Netherlands, 2017), meaning that they started bringing more often their own shopping bags with them to the store. For the low environmentally motivated people, this action might have allowed them to feel 'morally licensed' to purchase more products in plastic packaging since they already reduced their plastic consumption by bringing their own bag to the store. This also goes in line with Gneezy et al.'s (2012) argument of moral licensing effect occurrence when the initial behavior is cheap – the price of reusable bags is not high. At the same time, for more environmentally motivated people introduction of plastic bags ban did not change their perception of plastic damage. The possible explanation for absence of spillover in that group is that environmentally motivated people were already believing in or practicing pro-environmental behaviors (e.g., were already bringing their own reusable bags to the store) before the ban introduction and thus did not experience a 'context' change.

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TRANSFORMATION OF THE WORLD LABOR MARKET IN THE CONTEXT OF GLOBALIZATION

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Abstract. *The aim of the study is to analyse trends in the global labor market and identify transformational manifestations in the global labor market in the context of globalization. Methods that were used in the study: of comparative analysis; analysis and synthesis method; method of system generalization; methods of statistical analysis and structural analysis.*

It is emphasized that the transformation of the world labor market is one of the important forms of globalization, as the international labor market is a world economy's subsystem and directly affects the dynamics of economic growth and macroeconomic balance. The preconditions for the transformation of the world labor market in connection with demographic and migration processes have been studied. Significant territorial differences in the population's reproduction in the regional context, historical and current factors in the development of international migration were studied. The dynamics of employment and unemployment in countries with different levels of economic development, structural and vocational transformations in the world labor market are analyzed. It is concluded that the formation of migration models is due to the manifestations and forms of economic growth. The probability of complicating the structure of economic migration due to the increase in the share of highly skilled workers in the overall structure of labor migration flows has been established.

Basic employment trends are formed under the influence of structural transformations in the world economy and development of innovation processes. This changes the role of employee in the economic outcome, causing demand for highly skilled workers in the interdisciplinary field.

Was made the conclusion that labor migration creates the preconditions for rational use of human resources in the world labor market and prevent deepening inter-Ukrainian labor disparities. This was based on the fact that the functioning of the world labor market is dominant in global socio-economic changes through the international migration's intensification.

Keywords: *world labor market, globalization, international migration, employment, unemployment.*

Introduction

The current stage of world economic development is characterized by the globalization's intensification, which has led to the complication of economic ties at the supranational level and has led to significant transformational changes in the world labor market. The development of international economic relations in the context of globalization is accompanied by the international labor division's transformation and the world labor market's transformation into the most important element of a globalized economy. Transformational changes in the world labor market in the context of globalization determine the need for fundamentally new approaches and levers of influence on its development.

The aim of the study is to analyse trends in the global labor market and identify transformational manifestations in the global labor market in the context of globalization.

Objectives:

- 1) to study the preconditions for the world labor market’s transformation in connection with demographic and migration processes;
- 2) to analyse the dynamics of employment and unemployment in the world labor market;
- 3) to identify structural and vocational transformations in the global labor market.

The object of the study is process of transformation of the world labor market in the context of globalization.

Study methods: method of comparative analysis; analysis and synthesis method; method of system generalization; methods of statistical analysis and structural analysis.

Demographic Prerequisites for the Activation of International Labor Migration

Transformation of the world labor market is one of the important forms of globalization, as the international labor market is a subsystem of the world economy and it directly affects the dynamics of economic growth and macroeconomic balance. This requires analysis of the relevant transformational preconditions in relation to other processes of economic development - demographic, migration, etc. Thus, according to UN estimates, the world's population by 2100, according to the median forecast, will be 11.2 billion people, compared with 2.5 billion in 2050 and 7.6 billion in 2020. (fig. 1).

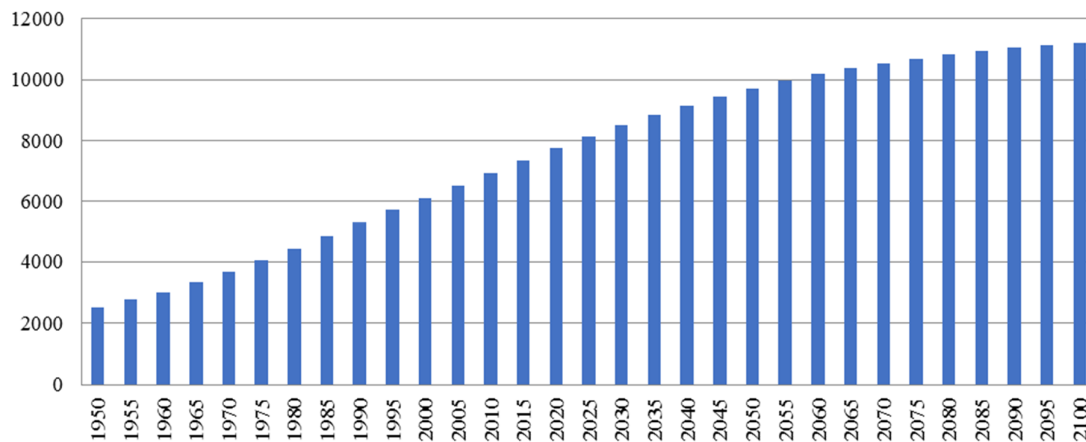


Fig. 1. Dynamics of the world's population in 1950–2050 *, million people
*2020–2050 – forecast (Population pyramid, 2020)

The largest population growth is projected in Asia and Africa (Fig. 2), which will inevitably affect the intensification of migration processes due to differences in economic development between these regions and more economically developed regions of Europe and North America.

Indeed, as the world's population grows and globalization deepening lead to international migration processes’ intensification, involving broad global economic, social, political and technological transformations that address a wide range of issues and underpin global labor market transformations.

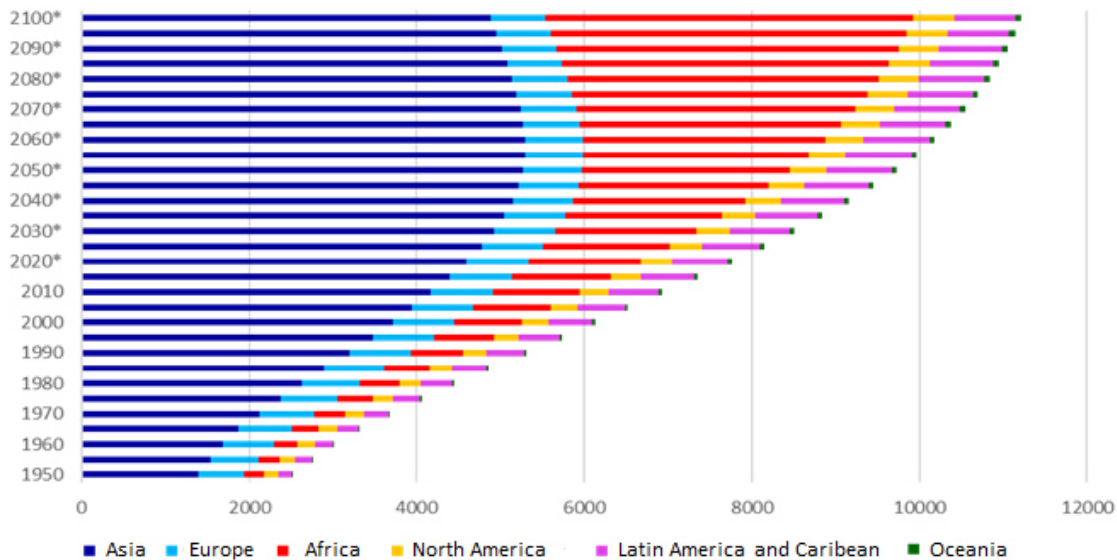


Fig. 2. Population dynamics by regions of the world in 1950–2100 *, million people (Population pyramid, 2020)

Migration Transformations in the Global Labor Market

The general migration process should distinguish between historical (migration takes place in a long-term social and economic context, resulting in strong inertial flows that form the traditional space of international labor migration) and modern (deep global transformations that create an environment in which international migration is taking place) factors that act equally in the global economic space, shaping the development of the world labor market.

Today, the number of international migrants in the world is estimated at 272 million (Fig. 3), with two-thirds of them being labor migrants. Almost every international migrant is a potential worker as a result of the world economy internationalization, the improvement of international economic relations, and the differences in the economic potential of national labor markets of origin and destination (significant inter-country welfare gaps and natural population growth, etc.).

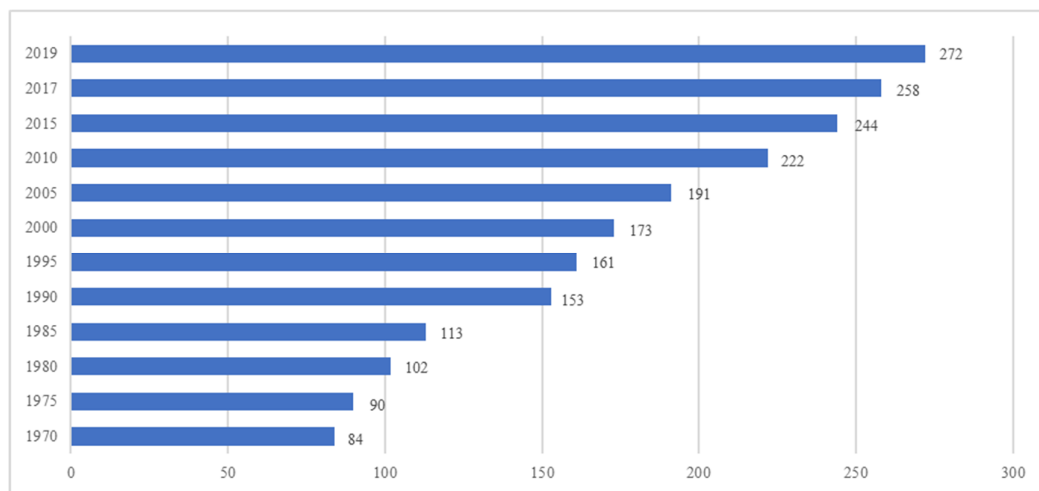


Fig. 3. Dynamics of international migration in 1970–2019, million people (IOM, 2020)

Although the share of international migrants is only a small part of the world's population - about 3.5% (Fig. 4). So the vast majority of the world's population (96.5%) live in the countries where they were born - this figure is growing steadily, and the share of international migrants already exceeds previous estimates for 2050, which were lower (2.6% or 230 million people (IOM, 2003). In general, the number of migrants in the world is expected to increase by 2050 compared to 2020, almost twice - up to 450 million people (Population pyramid, 2020).

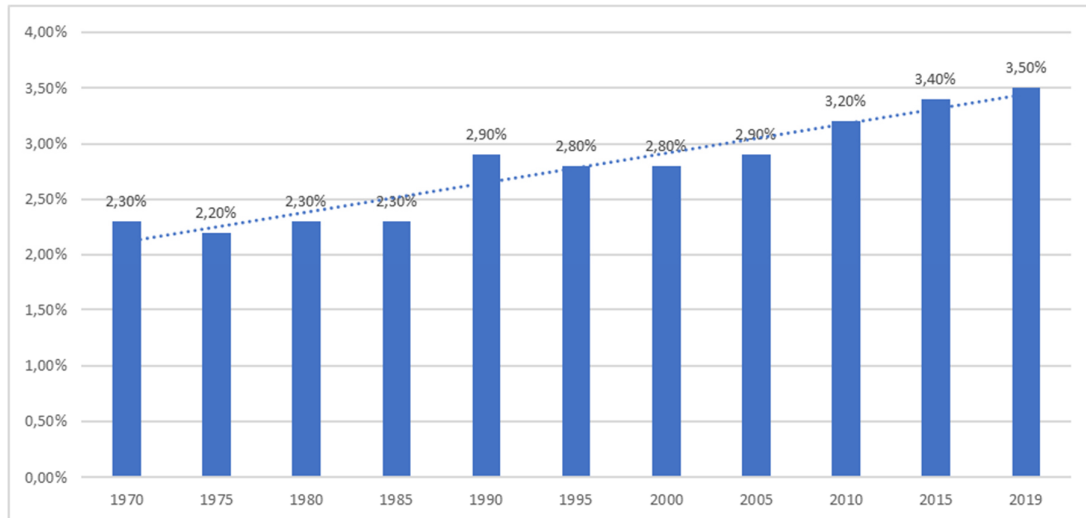


Fig. 4. The share of international migrants in the total population of the world in 1990-2019,% (IOM, 2020, p. 26)

Over the last 20 years, the number of international migrants has increased by 85%, the largest decrease in the number of migrants during 2014-2019 was observed in high-income countries (from 112.3 million to 111.2 million), the largest increase - in countries with above-average income (from 17.5 million to 30.5 million) (Fig. 5) (IOM 2003, p. 4).

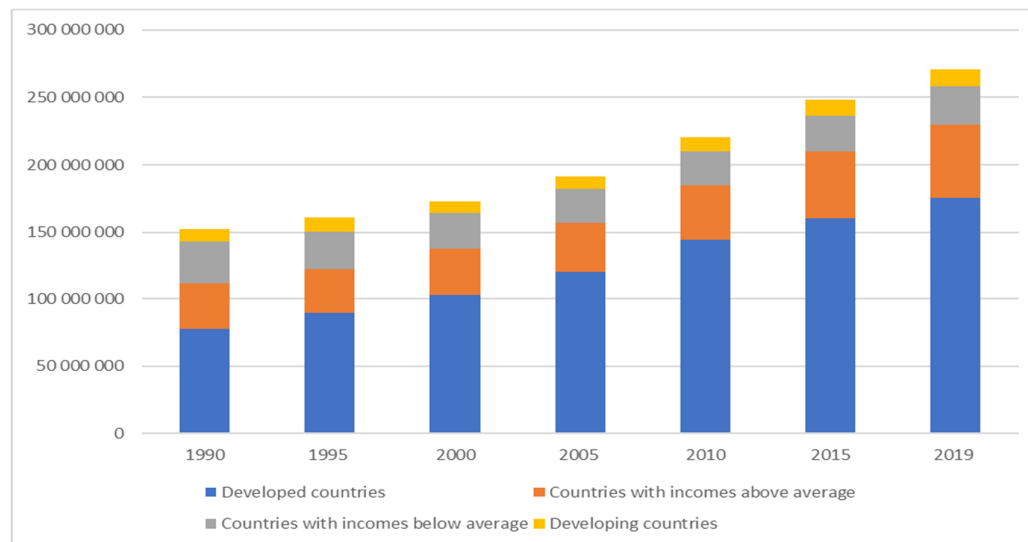


Fig. 5. Dynamics of the number of international migrants by main groups of countries in 1990-2019, persons (United Nations Department of Economic and Social Affairs, Population Division, 2020).

Obviously, due to the international migration trends depending on the income level of countries, this picture will remain unchanged in the long run. Moreover, during the coming decades in some subregions and developing countries population growth is projected and that will exert migratory pressure on future generation (United Nations Department of Economic and Social Affairs, Population Division, 2020).

Today, more than half of international migrants live in only 20 countries (51 million in the United States, 13 million in Germany and Saudi Arabia, 12 million in Russia, 10 million in the United Kingdom, 10 million in the United Arab Emirates, 9 million in Canada, 8 million Australia and France each, 6 million people in Italy), every seventh migrant is under 20 years old. In regional terms, the leaders in the number of migrants were Europe in 2019 (82 million people), North America (59 million people), Western Asia (49 million people).

The main share of international migration movements is labor migration. There were approximately 169 million migrant workers in the world in 2019, which is 60% of the total contingent of international migrants. Among international migrants of working age, the share of labor migrants is 70% (ILO, 2014).

At the same time, according to current forecasts, the growth rate of the labor force in developed economies will slow sharply by the 2030 (ILO, 2014, p. 10). This will have a negative impact on economic growth prospects and lead to further intensification of international labor migration in countries with a lower level of economic development. In fact, we can talk about the formation of a new phenomenon in the global economy, when economic growth in developed countries is largely provided by constant immigration.

Thus, the formation of social preconditions for globalization is objective process, which should lead to the working conditions' unification in the world economy. International migration have large-scale effects on key sectors due to involving migrant workers. This being felt both in the countries of origin of migrants and in the host countries. The complex dynamics of migration is difficult to assess and to regulate, which makes it important to assess the manifestations of the world labor market's transformation at the stage of globalization.

Globalization Trends in the Context of the World Labor Market Development

Unemployment is a serious manifestation of globalization in the context of the world labor market's development. More than 61 million people lost their jobs since the global economic crisis in 2008.

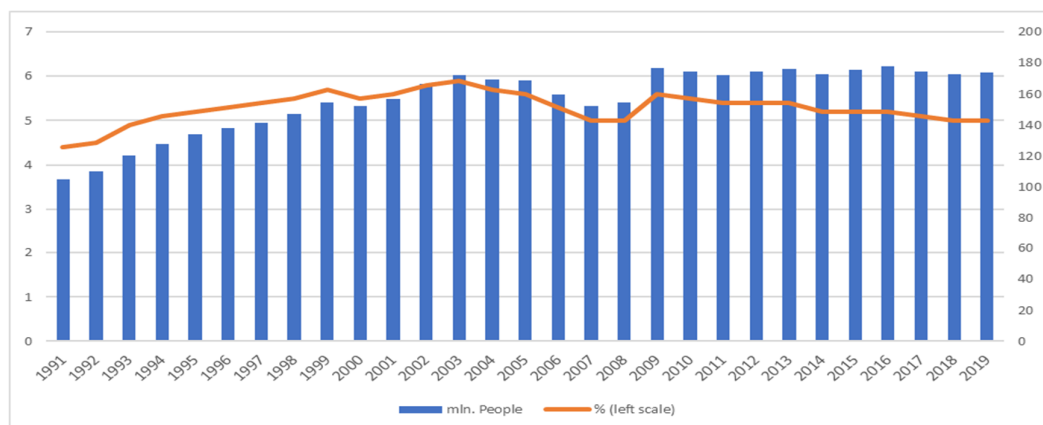


Fig. 6. Dynamics (million people) and the level (%) of unemployment in the global economy in 1991-2019 (ILO, 2020).

Thus, with the decline in unemployment in the world economy in general over the past decade (Fig. 6), as of 2019 to solve this problem (registered and unregistered unemployment) the world economy needed to create 280 million jobs

At the same time, the professional qualification structure of employment is changing due to the influence of globalization, which promotes the rapid spread of new technologies. According to current estimates, new technologies are expected to replace 47% of jobs in the US, 50% in Sweden, UK and France, 60% in Bulgaria, Romania and Croatia over the next 20 years. According to McKinsey & Company, it can be automated from 20% to 50% of job positions the world by 2036, this figure could increase to 96% and by 2056). This actualizes the permanent task of lifelong learning in order to prevent the growth of technological unemployment.

The structural changes in the world labor market reflects the employment's dynamics, the nature of which is different from the unemployment's dynamics: despite the growth in employment in the world economy (1.4% annually since 2011), employment rate is declining (Fig. 7).

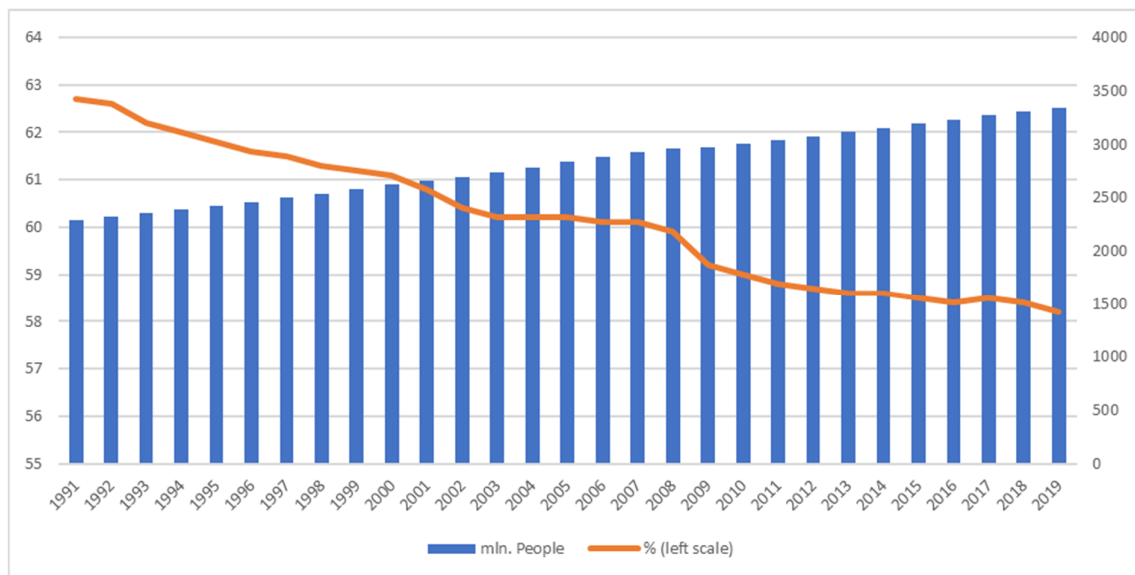


Fig. 7. Dynamics (million people) and level (%) of employment in the global economy in 1991-2019 (ILO, 2020)

In addition, new technologies and changes in the labor and production organization, acting as key factors in structural changes in the economy and labor relations, contributing to the spread of employment's new forms. At the modern stage of economic development's globalization there is a transition from the standard model of employment, in which people are paid as employees in employment relationships with employers, have stable jobs and work full time (currently employed less than 25% employees under the conditions of this model) (ILO, 2020b).

Structural Transformations in the Global Labor Market

The development of globalization processes affects the structure of employment, which is a real reflection of structural changes in the world economy and the corresponding

transformations under the influence of new technological processes, increasing the share of high-tech industries, declining production and services. Significant structural changes in employment occur in the service sector (Fig. 8). Thus, agriculture accounted for 44% of employees, industry - 22%, services - 34% in 1991, but the distribution was radically different in 2019 - 28%, 23%, 49%, respectively. At the same time, the picture is even more revealing in developed countries: the share of people employed in services ranges from 67.8% in Italy to 83.5% in the UK.

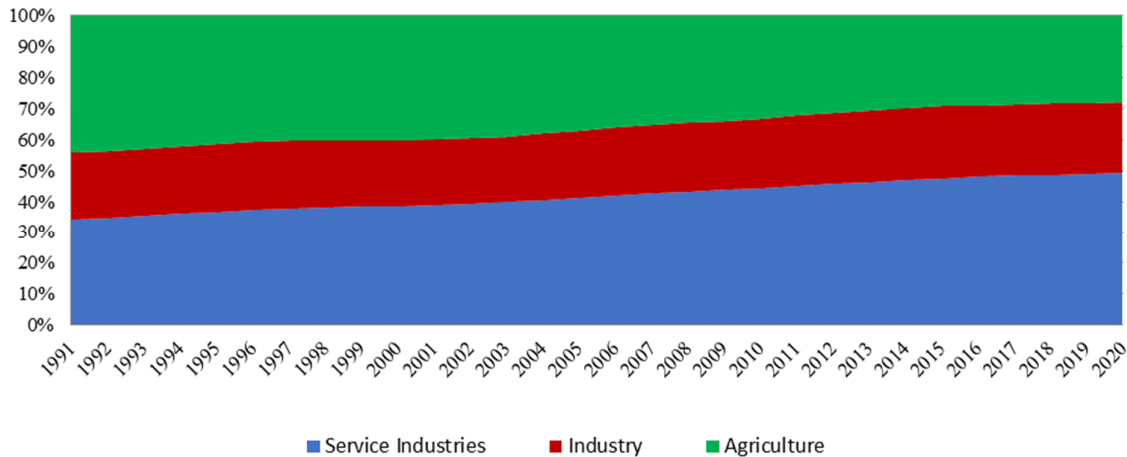
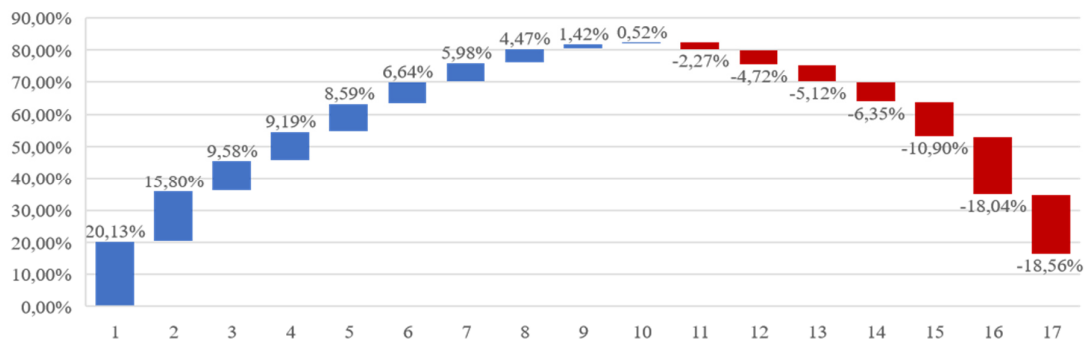


Fig. 8. The structure of employment by sectors of the world economy in 1991-2020,%
* Calculated on (ILO, 2020a)

In general in the EU countries during 2015-2025 employment is expected to decrease in such sectors as coal mining (by 18%), energy and gas industry (by 10%), agriculture (by 18%); employment growth - in science and technology (by 20%), administrative and support services (by 15%), education (by 10%) (Fig. 9) (Danylyshyn, B., 2016).



1	Real estate, science and technology	10	Transportation and storage
2	Administrative activities, support services	11	Construction
3	Education	12	Art, recreation
4	Information and communication	13	Industry
5	Health care and social work	14	Water supply, sewerage, waste management
6	Finance and insurance	15	Electricity, gas, air conditioning
7	Provision of housing and food	16	Agriculture, forestry and fishing
8	Trade	17	Coal mining and quarrying
9	Public administration and protection		

Fig. 9. Changes in the structure of employment in the EU in 2015-2025 (forecast) (PwC, 2020)

At the same time, structural changes at the sectoral level have deep innovative and human-centered demonstrations. The overall increase in employment in the world economy is expected at 3% by 2029, but employment in some industries, according to estimates, will increase much more: in the air turbines maintenance - by 61%, solar energy - by 51% and so on. In case of a significant shift towards human-centered industries: health care - by 52%, rehabilitation - by 35%, home care - by 34%, etc.; or information activities: statistics - by 35%, information security - by 31%, mathematics and database analysis - by 31%, etc.).

In total, due to digital technology is expected to disappear over 5,000 of the nearly 50,000 job positions during next 10 years. But nearly the same amount ones emerging from new technologies, new products and marketing. According to the McKinsey Global Institute, from 20% to 50% of production functions can be automated by 2036, and this figure may be from 46% to 96% by 2066 (McKinsey, 2020).

The Impact of Information Technology on the World Labor Market Transformation

The development of Internet technologies has had a profound effect on employment and working conditions, working hours, hiring and firing conditions, wage opportunities, etc. First of all, distance employment began to develop actively.

According to the International Labor Organization (ILO), the number of people working remotely globally is growing by 20-30% annually and currently accounts for 17% of the total number of employees. The share of teleworkers in Japan and the United States is 40%, in Finland - more than 30%. Leading countries in the field of remote employment are the United States, Canada, Finland, Denmark and Sweden. According to Growth from Knowledge Group and Flexjobs, the share of employees who will work remotely will be from 50% to 75% in these countries in the coming years (Apple, IBM, American Express, General Electric, etc.). (Bagley, R., Buchinska T., 2019, p.6).

Distance employment has contributed to the development of freelance when the freelancer is outside the company's staff and has the opportunity to work simultaneously with different employers. Thus, there are more than 57 million freelancers in the United States today. Their contribution to the economy is \$ 1.4 billion USD. At the same time, the average annual growth rate of employment is 2.6% per year in the USA, but the growth rate of the number of freelancers is 8.1%. (Bagley, R., Buchinska T., 2019, p.7).

Remote employment in a globalized economy has also resulted in the intensive development of international outsourcing, the spread of which changes the work's methods and labor's organization in the global labor market, opens for companies and countries the opportunity to benefit from the international division of labor by positioning in the labor market as outsourcing services' supplier and as its' customer. According to the American Outsourcing Institute, 89% of companies delegate some of their business processes to external providers in the United States. In Europe, more than 83% of companies outsource business processes (87% in Germany and 88% in France). (Bagley, R., Buchinska T., 2019, p.7-8).

In general, India and China are the leaders among the countries performing outsourcing services (Fig. 10), receiving orders from Europe, the USA and Japan. At the same time, there are some changes in this market: the United States is gradually shifting to outsourcing in its own country (onshoring), Japan is increasing orders for outsourcing services to China, customers from Europe are mostly contractors from Eastern and Central Europe, China, India (Statista, 2019).

The global market for outsourcing services was estimated at 92.5 billion USD in 2019.

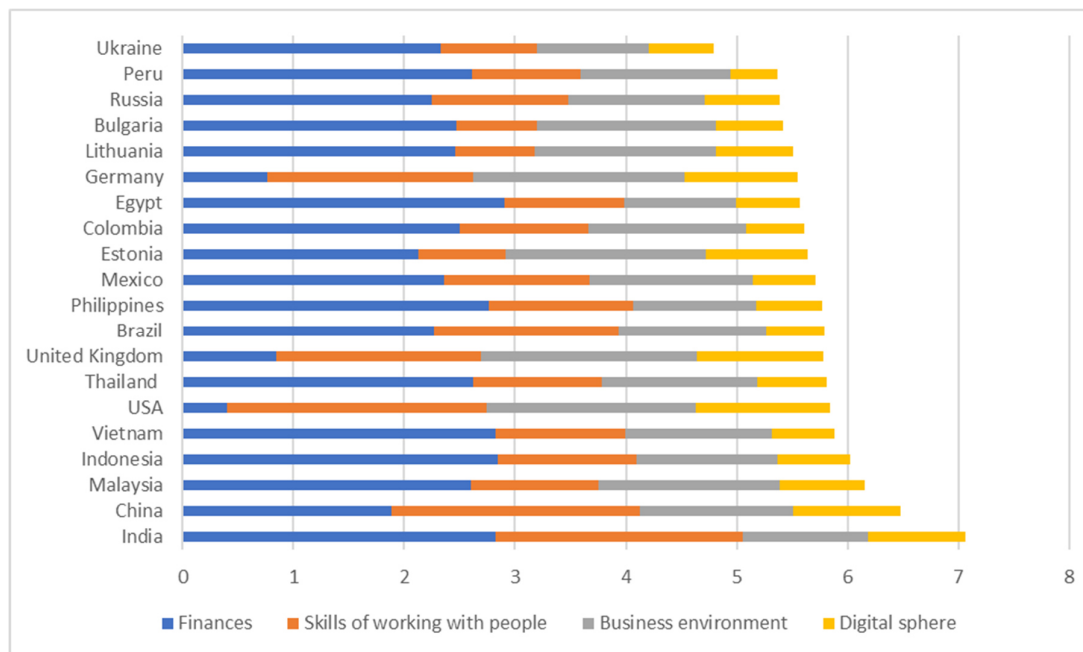


Fig. 10. Top 20 countries according to the ISG 2020 Global Outsourcing Index (ISG, 2020)

It was an increase compared to 2018 by 7 billion USD. The profit of the global outsourcing industry in 2019 amounted to 26 billion USD. The largest share of global revenue from outsourcing was in North and South America - 62 billion USD in 2019. The leading companies in the global outsourcing market are ISS World (digital and financial security) and Accenture (IT, human resources outsourcing, consulting) (Statista, 2020).

Based on the above, it can be argued that the basic trends in the world labor market are formed as a result of structural transformations in the economy, the development of innovation processes and information technologies and so on. Structural and innovative shifts in the world labor market intensify structural shifts in the labor markets of almost all countries. This changes the role of employee in creating economic results, leads to demand for highly skilled workers of interdisciplinary profile, which will complicate the structure of economic migration. Accordingly, the formation of migration models in the globalization context is in consequence of the manifestations and forms of economic growth.

CONCLUSIONS

Transformation of the world labor market is one of the important forms of globalization, as the international labor market is a subsystem of the world economy and it directly affects the dynamics of economic growth. As the world's population grows and globalization deepening lead to international migration processes' intensification, involving broad global economic, social, political and technological transformations. The main share of international migration movements is labor migration as a result of the world economy internationalization, the improvement of international economic relations, and the differences in the economic potential of national labor markets of origin and destination. Due to the international migration trends depending on the income level of countries, this picture will remain unchanged in the long-time perspective. In fact, we can talk about the formation of a new phenomenon in the global

economy, when economic growth in developed countries is largely provided by constant immigration.

Based on the fact that the functioning of the world labor market is dominant in global socio-economic changes through the international migration's intensification, labor migration creates the preconditions for rational use of human resources in the world labor market and prevent deepening inter-Ukrainian labor disparities.

Thus, the formation of social preconditions for globalization is objective process, which should lead to the working conditions' unification in the world economy.

In the context of globalization, basic employment trends are formed under the influence of structural transformations in the world economy and development of innovation processes, changing the role of employee in the economic outcome, causing demand for highly skilled workers in the interdisciplinary field. In addition, new technologies and changes in the labor and production organization, acting as key factors in structural changes in the economy and labor relations, contribute to the spread of employment's new forms, intensify the spread of international outsourcing and crowdsourcing as forms of international division of labor.

The transformation of migration into global phenomena will complicate the structure of economic migration. The formation of migration models in the globalization context is in consequence of the manifestations and forms of economic growth and determines the formation of global migration policy as a condition for ensuring a positive contribution of migration to economic development at the global and national levels.

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MANAGEMENT OF NATURAL RESOURCES IN THE CENTRAL ASIAN REGION

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Abstract. *The term "natural resources" refers to both the natural and socio-economic realms. Natural resources - bodies and forces of nature - are linked to ensure close interaction in the process of nature management. Currently, this specific region has some vulnerable issues such as biodiversity loss and land degradation that are connected with poor resource management. The activities of modern society are followed by enormous changes in nature, which are reflected in the Earth's exterior appearance as well as the states of geosystems. Modern production is distinguished by the inclusion of significant reserves of natural resource potential. However, its participation and application are ineffective. Sustainable development necessitates the management of natural resources in a sustainable and integrated manner. The main tasks of the paper are: to discuss the theoretical aspects of natural resources and to analyze the natural resource potential of the Central Asian region. Research period: is modern economy of recent years 2011-2021. Research methods: analysis, observation and secondary data collection. Research problem: mismanagement of natural resources in the Central Asian region and economic evaluation of it. The paper introduces the analysis of scientific literature and observe the management strategies of natural resources in the Central Asian region. The scientific research methods that were used are: scientific literature analysis and synthesis, observation and secondary data collection. The novelty of the study is the analytical discussion about the mismanagement of natural resources in a specific region.*

Keywords: *management, natural resources, development, potential, social economics.*

Introduction

The concept of "natural resources" belongs to both the natural and socio-economic spheres. By linking these areas, natural resources - bodies and forces of nature, ensure their close interaction in the process of nature management. Natural resources - space-time category; their volume is different in different regions of the world and at different stages of the socio-economic development of society. Central Asia is a dynamic and diverse region that is experiencing steady economic growth and new development possibilities. Smart management of the region's energy and water resources is critical to the region's continued growth, prosperity, stability, and well-being. Despite the fact that Central Asia is becoming more globalized, national aspirations such as food security and reliable energy services continue to drive development decisions.

The aim of the present paper is to investigate the main natural resources of the Central Asian region and to analyze the cost of poor management. The first part of the paper deals with the concept of natural resources potential. The second part introduces the classification of main resources in this specific region. The main tasks of the paper are: to discuss the theoretical aspects of natural resources and to analyze the natural resource potential of the Central Asian region. Research period: is modern economy of recent years 2011-2021.

Research methods: analysis, observation and secondary data collection

Research problem: mismanagement of natural resources and economic evaluation of it.

The concept of natural resource potential

The natural resource potential of the territory is the totality of the natural resources of the territory that can be used in the economy, taking into account the achievements of scientific and technological progress. The natural resource potential of the territory is the most important economic factor, one of the qualities by which the economic and geographical position is assessed. The most important basis for the economic development of any region and one of the main conditions for the location of productive forces on its territory is the set of natural conditions and resources characteristic of it. The quantity, quality, and spatial combination of resources, the degree of supply is the most important factor in the location of the population and its economic activity (Kerimov, Gagaeva, 2018).

Any type of resource is beneficial for the economy of the region and rises the potential of natural resources of any specific country (Figure 1).

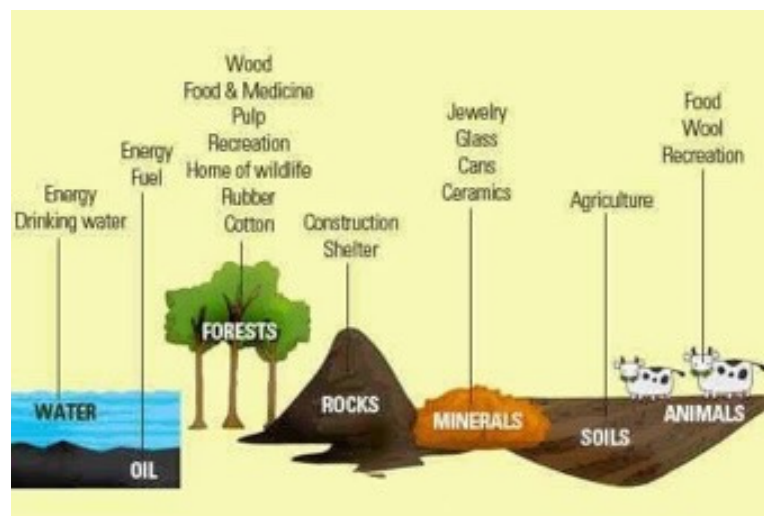


Figure 1. Types of natural resource potential

The functioning of national economies and the entire world economy is based on economic resources (factors of production) - natural, labor, capital (in the form of real capital, i.e. in the form of means of production, and financial, i.e. in monetary form), entrepreneurial, as well as scientific (scientific and technical, information knowledge). Taken together, economic resources form the potential of a national economy or a region of the world or the entire world economy.

Central Asia is a dynamic and diverse region that is experiencing steady economic growth and new development possibilities. Smart management of the region's energy and water resources is critical to the region's continued growth, prosperity, stability, and well-being. Despite the fact that Central Asia is becoming more globalized, national aspirations such as food security and reliable energy services continue to drive development decisions (World Bank, 2022).

The purpose of the work is to investigate the main natural resources of the Central Asian region, to show the cost of poor management.

The structure of the paper is management of resources in the Central Asian region. The first part deals with the theoretical aspects of socio-economic importance of natural resources. The second - is devoted to analyze natural resources of the Central Asian region.

Socio-economic importance of natural resources

The natural environment serves as the natural basis for human economic activity. All human production activity can be represented as a process of transforming nature into forms that are acceptable for use. From the point of view of the needs of society, all bodies and forces of nature can be conditionally subdivided into two groups: those directly involved in material production and the sphere of non-material services (natural resources) and all the rest (usually referred to as natural conditions). Natural conditions are elements of nature that are not directly used in the production process but affect the lives of people. The dependence on the natural conditions of agriculture, the mining industry, certain types of transport, recreational activities, etc. is especially strong. Natural conditions can be favorable (optimal temperature regime, sufficient air humidity, etc.) or negatively affect human economic activity. Alpine relief, harsh climate, permafrost, swamps, deserts complicate the economic development of the territory.

The use of renewable resources has the character of "resource turnover", its scale is determined by the annual "productivity", and the problem of rational use is to ensure the continuity of this circulation, increase its volume, and ensure conditions for the restoration of natural resources. Non-renewable resources have a certain finite stock, and this dictates the need for their more complete extraction, careful use, and comprehensive use of the extracted raw materials. Land, biological, and water resources are renewable, but in some sources (separate regions) their complete depletion or depletion may occur.

Overall, we struggle to value ecosystem functions, but we feel the economic consequences of degraded ecosystems when fisheries decline, soil fertility decreases, and deserts expanded. Ecological systems also provide chances for culturally valuable activities such as aesthetic enjoyment, education, and scientific research.

Classification of resources

Furthermore, according to Päivi Lujala (2003), if resources are not properly grouped, the results of any analysis may be diluted because different natural resources may affect the dependent variable (risk of conflict, duration, economic growth, etc.) differently and even in opposite directions. It is possible, for example, that some natural resources will actually shorten the duration of a conflict while others will prolong it. Similarly, some resources may increase the risk of conflict onset, whereas others may have no effect on the risk of conflict onset (Lujala, 2003).

Natural resources are classified basically under only three categories. Namely:

1. Classification based on origin
2. Classification based on availability.
3. Classification based on level of development.

1) *Classification of Natural Resources Based On Origin.*

Biotic and abiotic resources.

- **Biotic Resources:** The term "bio" refers to life. Biotic resources are natural resources that contain life and are derived from living organisms. All plant and animal species, microorganisms, fossil fuels, and so on are examples.

- Abiotic Resources: These are resources that do not contain life or are derived from non-living organisms. Water, air, soil, rocks, minerals, and so on are all examples.

Table 1. Difference between biotic and abiotic resources

Biotic Resources	Abiotic Resources
Definition	
Biotic factors include all the living components present in an ecosystem	Abiotic factors refer to all the non-living, i.e. physical conditions and chemical factors that influence an ecosystem
Examples	
Examples of biotic resources include all flora and fauna	Examples of abiotic factors include sunlight, water, air, humidity, pH, temperature, salinity, precipitation, altitude, type of soil, minerals, wind, dissolved oxygen, mineral nutrients present in the soil, air and water, etc.
Dependence	
Biotic factors depend on abiotic factors for survival and reproduction	Abiotic factors are completely independent of biotic factors
Origin	
Biotic components originate from the biosphere	Abiotic components originate from the lithosphere, hydrosphere and atmosphere

The two primary factors responsible for shaping the ecosystem are biotic and abiotic. All living beings present in an ecosystem are referred to as biotic factors, while non-living components such as physical conditions (temperature, pH, humidity, salinity, sunlight, etc.) and chemical agents (different gases and mineral nutrients present in the air, water, soil, etc.) are referred to as abiotic factors (Table 1). As a result, both abiotic and biotic resources influence the survival and reproduction processes (EnvironmentGo).

2) *Classification of natural resources based on availability*

Renewable and non-renewable resources.

- Natural resources that can be replenished are referred to as renewable resources. The rate at which they can be replenished outpaces the rate at which they can be depleted. As a result, they are always available. Solar energy, water, wind, and other forms of renewable energy are examples.

- Non-renewable Resources: These resources are limited and can be depleted. It takes millions of years for them to form. Examples include fossil fuels, coal, and endangered organisms.

Is the availability of the resource limited to geographically small areas or does it extend over a larger area? For example, forests cover large areas and are thus regarded as diffuse resources. Point resources are highly concentrated and do not cover a large area on a map. Many minerals, for example, occur in small areas and are represented as points on a map. The point-diffuse distinction has been used in some empirical studies to assess the impact of natural resources on conflict. To assess the scope of conflict, Buhaug and Gates (2002)

define activities like oil drilling and pit mining as point resources, whereas timber, drug cultivation, and alluvial diamonds are considered "more widely available (Lujala,2003).

3) *Classification of natural resources based on development*

Potential, reserved, stock, and actual resources.

Potential Resources: These are resources that exist but have not been quantified and can be used in the future. Wind energy, for example, exists in some areas but has not been used to generate energy.

- Wind, for example, or nuclear minerals.

Reserved Resources: These are natural resources that have been identified and quantified but have yet to be exploited because they have been set aside for future use.

- Example rivers.

Stock Resources: These are resources that have been discovered and quantified but have yet to be utilized due to insufficient technology.

- Example the element hydrogen.

Actual resources are those that have been discovered, quantified, harnessed, and are in use.

- Examples include crude oil and forests.

This is a basic classification of natural resources in a nutshell. All known and unknown natural resources must fall into one of these classes and then into one of the subclasses (EnvironmentGo, 2021).

Table 2. Combination of natural resource classification, geographical concentration and regeneration rate
Source: Lujala,2003.

	Renewable	Non-renewable
Diffuse	<ul style="list-style-type: none"> • Vegetation, soil, forest, corps • Animals • Water 	<ul style="list-style-type: none"> • Peat • Some substances found in Earth's crust like gravel and sand
Point	<ul style="list-style-type: none"> • Some crops/animals that require very specific conditions 	<ul style="list-style-type: none"> • Many ores, like gold

The scarcity approach is mostly concerned with the resources in the upper left corner of the table (renewable diffuse resources), whereas abundance-oriented conflict literature tends to blame resources in the lower right corner (non-renewable point resources) for conflict propensity (Table 2). This could imply that the two approaches – one claiming scarcity of natural resources is causing conflicts and the other accusing abundance – are not mutually exclusive.

In his conflict typology, Le Billon (2001) considers the distinction between point and diffuse resources. He assesses the relative location of resource areas in relation to state capital, which is used as a proxy for state control, in addition to dividing resources into point and diffuse resources. He contends that point resources near the capital are associated with coup attempts, whereas point resources on the outskirts motivate violent secession conflicts. Diffuse resources, in turn, are associated with riots when located close to the capital, and with wardlordism when located further away, as several armed groups may violently claim their share of natural riches. Economic research can also provide examples of natural resource classifications. Sachs and

Warner (1995) discover that natural resource abundance is detrimental to growth in their influential empirical study on resource abundance and growth. While Sachs and Warner are not interested in estimating whether different resource types have different effects on growth, they do test the effect of mineral resource production on growth separately – as part of their robustness checking.

Others, such as Auty and Gelb (2001), Isham et al. (2002), and Murshed and Perälä (2001), argue that revenues from point resources will most likely be captured by the government and elite. They argue that the significant revenues generated by these point resources alienate the government/elite from the population because they do not rely on the population's support to raise funds through a taxation system. It is implicit in these arguments that governments/elites who are not directly accountable to the general population will use resource rents for their own, short-sighted benefit and will use the revenues inefficiently due to corruption and poor policy decisions. Agriculture, on the other hand, benefits growth because the revenues are less likely to be captured by the elite and the government is more dependent on the population to which it is linked through taxation (Lujala, 2003).

Several research studies on resource abundance and economic growth attempted to distinguish between point and diffuse resources. According to Isham et al. (2002), countries are classified into four categories based on their export structure, with countries primarily exporting diffuse, point, coca and coffee, and manufactured products. They define resources such as oil, diamonds, and plantation crops as point resources, and they define agricultural products such as wheat, rice, and animals as diffuse agricultural products. They separate coffee and cocoa because they can be grown by small-scale farmers as well as on plantations. Murshed and Perälä (2002) appear to use a dummy variable to distinguish between countries that have point resources and those that have diffuse resources.

There also appears to be little effort in the economic literature to investigate whether some subset of natural resources is more negatively related to growth. However, as long as all natural resources are deemed harmful to growth, there appears to be little room for policy recommendations – countries would be better off leaving their natural resource base unexploited. If we knew which resources could have the greatest negative impact on growth and under what conditions, it would be much easier to design measures to mitigate the negative effects of resource abundance and to target them correctly.¹

Central Asia is rich in various energy resources, incl. fossil fuels (oil, gas, coal) and, in particular, renewable (hydro, wind and solar energy). These resources can be used to support growing agriculture, and their volumes can exceed domestic demand. The operation, observation, mitigation, and adaptation of ecological and environmental problems have received more attention in natural resource management than their theoretical design. Although osmosis with contingency planning is desirable, natural resource management is primarily based on the consideration of the relationship between humanity, culture, and natural processes, with science being applied to solve any problems that arise. Presently, natural resource degradation causes environmental pressures such as qualitative and quantitative impacts on water resources, overexploitation, desertification, soil erosion, deforestation, and environmental degradation.

¹ Lujala, P. (2003). Classification of Natural Resources. Retrieved on 10 of December, 2021 from https://www.researchgate.net/profile/Paeivi-Lujala/publication/228422462_Classification_of_natural_resources/links/5613987608aede13b5cec3d/Classification-of-natural-resources.pdf?origin=publication_detail

Natural resources of the Central Asian region

Central Asia, once shrouded in secrecy and famed for its trans-Asian trade via the Silk Road, is now an open, dynamic region connecting Eastern Europe and West Asia. It is a region rich in natural resources, such as oil and gas, and home to a diverse range of animals and plants. Central Asia, which includes Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, is a vast land mass that separates Eastern Europe and the Caucasus from East and South Asia (Organization for economic co-operation and development, 2011).

The area of Central Asian region is big enough that can be seen on the map in (Figure 2).



Figure 2. Map of Central Asia with bordering countries
According: People International

Kazakhstan has the most land (2,724,900 square kilometers) and the second largest population in the region (17.5 million). Uzbekistan has the most people (31.3 million), as well as the third largest territory (447,400 sq. km). Turkmenistan has the second largest land area (488,100 square kilometers), but it is the least populated (5.4 million). Kyrgyzstan and Tajikistan, the two remaining countries, have the smallest territories (less than 200,000 square kilometers) and populations of 6.0 and 8.5 million, respectively.

Central Asia's geography and geopolitics are detrimental to the region's economic development for a variety of reasons. For starters, the region is remote from the world's major economic centers: North America, Western Europe, and East and South East Asia. Furthermore, all countries are landlocked (Kazakhstan is the world's largest landlocked country, and Uzbekistan is double landlocked, bordering only landlocked countries), with limited transportation connections both within and outside the region. During the Soviet era, main Central Asian road network crossed and recrossed the borders of Soviet republics. The transformation of already intra-Soviet administrative borders into borders between newly independent Central Asian states, with border and customs controls and, in some cases, visa requirements, posed a significant challenge to intra-regional trade and domestic movement of

people and goods within individual countries, particularly in the densely populated Fergana Valley shared by Kyrgyzstan, Tajikistan, and Uzbekistan.

Oil and gas production in the region has grown at 2.7 percent and 0.2 percent per year, respectively, over the last five years (Figure 3). Although Kazakhstan produces some gas, the majority of it is reinjected to boost local oil recovery. On the contrary, Turkmenistan and Uzbekistan export the majority of their gas to China, Russia, and Azerbaijan. The produced gas can also be exported to neighboring European countries such as Turkey and Georgia, as well as India and Pakistan in Asia.

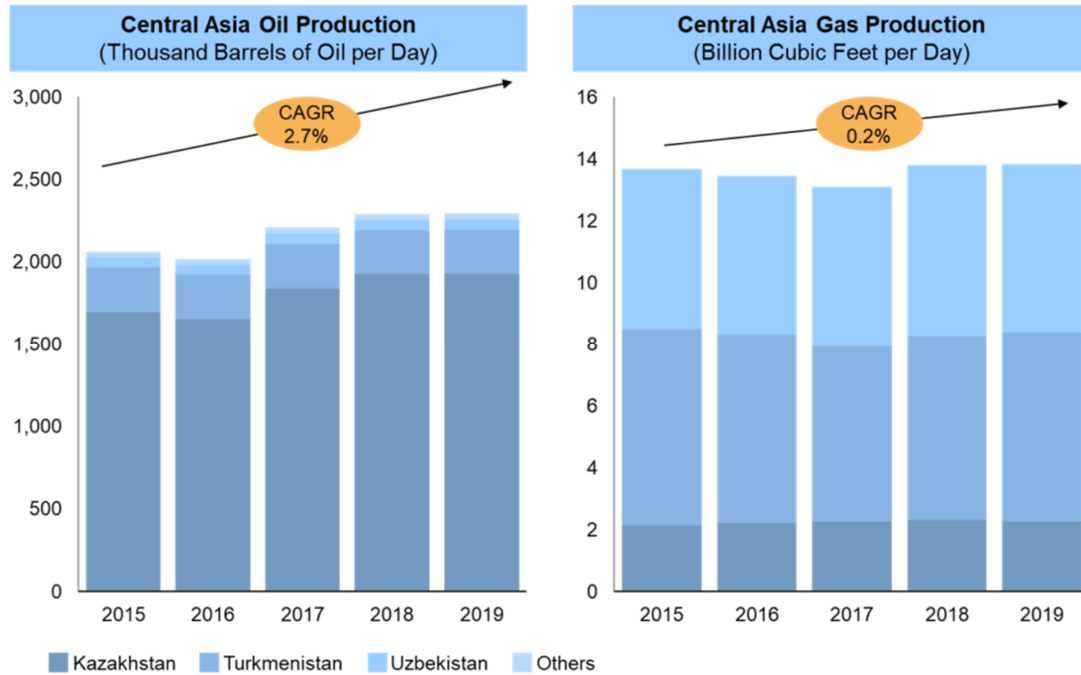


Figure 3. Oil and gas production in Central Asian region in the period of 2015-2019

Source : AdiAnalytics, 27 of May, 2022.

Central Asia is rich in energy resources. Kazakhstan, Uzbekistan and Turkmenistan, located in the lower reaches of the rivers, have significant reserves of oil, gas and coal, as well as significant potential in the field of generating wind and solar energy. The upper reaches of Tajikistan and the Kyrgyz Republic have significant, but not fully utilized, hydropower potential (Dabrowski, Batsaikhan, 2017). The presence of such diverse energy systems implies the possibility of meeting the seasonal demand of all countries for electricity in the most economical and environmentally friendly way: with the maximum use of inexpensive hydropower in the summer and reliable sources of thermal energy in the winter when the climate is cold, limits the production of hydropower. At the same time, countries can build capacity to develop sources of wind and solar energy in the future (Kulov,2010).

Agriculture is a major sector of the Central Asian economy. As a result, sustainable agricultural land use is critical to economic growth, human well-being, social equity, and ecosystem services. Agriculture is currently an important sector in Central Asia's economy, accounting for 5.2 percent of GDP in Kazakhstan, 7.5 percent in Turkmenistan, 18.5 percent in Uzbekistan, 20.8 percent in Kyrgyzstan, and 23.3 percent in Tajikistan (Abdullaev 2014; Bobojonov and Aw-Hassan 2014). During the transition period that followed, the crop production industry began to develop. In Kazakhstan, cropland area was drastically reduced,

and monoculture wheat production followed, with producers only recently beginning to include food legumes such as dry peas and chickpeas. Kyrgyzstan was known for its alfalfa seed, potatoes, and maize. Wheat area was doubled during the transition period. In the current market economy, the irrigation of dry beans is increasing. Tajikistan was previously known for its cotton production. The wheat area has doubled, but yields are low. Turkmenistan now produces a respectable amount of bread wheat, though this amount is low for irrigated land. Self-sufficiency in bread wheat grain has been a major achievement of agricultural restructuring in Uzbekistan in recent years (Helming, Hamidov, 2016).

The five Central Asian countries are highly agrarian, with agriculture accounting for over 45 percent of total employment and nearly 25 percent of GDP on average, and 60 percent of the population living in rural areas. Kazakhstan, despite its strong energy sector, is less agrarian than the average Central Asian country, accounting for only 8% of GDP (but still 33 percent of total employment). It is closer to the core CIS countries of Russia, Ukraine, and Belarus in this regard, where agriculture contributes around 10% of GDP and agricultural employment averages 15%.

Central Asia's agricultural land is mostly desert and mountain pastures. Arable land suitable for crop production accounts for approximately 20% of total agricultural land (and as low as 4 percent in Turkmenistan). In Russia and Ukraine, on the other hand, arable land accounts for 60-80% of agricultural land. As a result, pasture-based livestock production has grown in popularity in Central Asia comparing to other core CIS countries.

Cotton played a key role in Central Asia's industrialization and collectivization programs, particularly in Uzbekistan. Uzbekistan has the most share of cotton production among other countries of Central Asia. Moreover, in accordance with international quality parameters, approximately 86% of Uzbek cotton fiber can be attributed to fiber with high tenacity. In Uzbekistan, the agri-food sector, containing of agriculture, food and light industries (textile, garment, apparel, and leather industry), plays a vital role in the domestic economy. In 2019, it was the largest contributor to GDP (41 percent) and producer of export revenue (19 percent) (ICTSD 1st December, 2021).

Today, agriculture alone generates 28 percent of GDP and employs more people than any other industry—27 percent of the entire labor force, or over 3.65 million people. Despite the severe implications of the COVID-19 pandemic, Uzbekistan's agri-food sector remains an important driver of economic growth and export. It is projected to grow by 2.8% in 2020, compared with 0.6% growth in national GDP (Zorya, Htenas, 2020).

It is proposed to actively introduce green technologies in all areas, increase energy efficiency by 20 percent, and reduce emissions of harmful gases into the atmosphere by 10 percent. For example, by 2026 it is planned to increase electricity production by another 40 billion kWh, bringing the total to 110 billion kWh. In addition, the government intends to save about 3 billion cubic meters. natural gas by increasing the share of renewable energy in total energy production to 25 percent by 2026. In this regard, reducing emissions of harmful gases into the atmosphere by 8 million tons is also a priority (Tulyakov, 2022).

The cost of poor resource management

Mismanagement and inferior technology are the primary causes of Kazakhstan's environmental problems, which include toxic waste (often radioactive), water pollution, and industrial pollution. Previous nuclear tests' radiation levels, as well as vast geological uranium deposits and uranium mining waste, pose significant environmental and health risks. More social issues, such as poverty and security, which both leads to environmental degradation, must

be addressed in Kyrgyzstan. Lack of governance, ethnic conflicts, and poverty wreak havoc on already vulnerable ecosystems (often mountainous). In comparison, it appears that the Kyrgyz government is the only one in Central Asia that explicitly states in its policies the link between environmental stress, poverty, and security risks.

The main issues in Tajikistan are a lack of safe drinking water and continuous land degradation. Notwithstanding the fact that the country does not have general water resource issues, ecologic emergency cases are induced by the country's poor water infrastructure, reliance on hydropower, and agricultural production. Moreover, the country suffers from a slew of social issues and is extremely vulnerable to natural disasters (high seismic activity).

The major environmental impacts in Turkmenistan are a lack of available water and pollution levels in bodies of water, both of which are primarily caused by agricultural and industrial activities. "However, the relatively prosperous economy stands in contrast with severely limited political and civil liberties, a lack of transparency, and virtually no participatory elements in policy-making." Cotton monoculture and pervasive pesticide use are the primary causes of environmental problems in Uzbekistan, including soil erosion, contamination, and widespread salinity. Tensions between Uzbekistan and its downstream neighbors should be mentioned as well, owing primarily to the allocation of critical water supplies and the Aral Sea issue. The worst and scariest issue that mismanagement of natural resources can cause in the Central Asian region is the natural disasters and environmental problems that already exist there. Central Asia's environmental issues are diverse. The collaboration of the Central Asian Republic can be advanced further by addressing environmental concerns. The environmental issues in Central Asia are various. The Aral disaster, as well as biodiversity loss, are two global issues. The degradation of land is severe, and water resources are diminishing and degrading in quality. Climate change is a new threat. Droughts, heat waves, and mudslides are becoming more common. Some issues that should be addressed are as follows: Social adaptation to such changes is becoming increasingly difficult; economically, we must spend significantly more resources to produce the same amount of crop in drought and water-stressed conditions. Conservation and maintenance of nature are financially viable.

Exploitation of high-value natural resources such as oil, gas, minerals, and timber has frequently been cited as a key factor in igniting, ratcheting up, or perpetuating violent conflicts around the world. Land and natural resource management is one of the most pressing issues confronting developing countries today. Moreover, competition for reducing renewable resources such as land and water is increasing. This is made worse by environmental degradation, population growth, and climate change.

Demographic changes place increasing and, at times, unsustainable demands on land, water, fisheries, and other natural resources. Mismanagement of land and natural resources is fueling new conflicts and impeding negotiated settlement of existing ones. Besides that, environmental degradation increases competition for scarce resources, which is exacerbated by climate change. Evaporation of renewable resources, alone or in combination with political, economic, and social factors, has the ability to disrupt livelihoods, harm ecosystems, and undermine peace and development. Access to scarce resources challenges are causing some groups to migrate in search of more reliable access to essential resources, while others engage in conflict – or, as is often the case, a combination of both migration and conflict. The difficulties in preventing, managing, and resolving conflicts over natural resources may come to define global peace and security in the twenty-first century. Demographic shifts, increased consumption, environmental degradation, and climate change are all putting significant and potentially unsustainable strains on the availability and usability of natural resources such as

land, water, and ecosystems. When natural resource grievances intersect with political, economic, cultural, or social dynamics, they have the potential to escalate into destructive, potentially violent conflict, with serious consequences for life and livelihood.

When parties disagree on how to manage, distribute, and protect natural resources and related ecosystems, natural resource conflicts arise. When parties are unable or unwilling to engage in a constructive process of dialogue and conflict resolution, conflicts can escalate into destructive relationships and, eventually, violence. Societies lacking the institutional arrangements for constructive conflict resolution can be drawn into intractable cycles of conflict and violence, particularly when political systems are fragile and oppositional party divisions are extreme (United Nations, 2012).

Conclusions

The low level of intraregional trade in Central Asia, which accounts for less than five percent of the total trade, makes the region one of the least economically integrated regions in the world and prevents the stream of investment.

There are still persistent problems in the area of development. The relatively small and in most cases rather undiversified Central Asian economies are highly dependent on foreign trade.

Most Central Asian countries perform below average in the J2SR Export Sophistication Index, which measures the diversification of a country's exports and is one of the key markers of an economy's complexity and resilience to economic shocks. With the exception of Kazakhstan, Central Asian countries export to a narrow range of markets, making the region vulnerable to external shocks.

Recommendations

In the future, the governments of the countries of Central Asia need to increase the volume of foreign investment by providing favorable tax rates and maintaining good transport and infrastructure network, in order to increase the volume of gas and oil production, as the region is abundant with these resources.

If foreign capital is not attracted, especially technology, local companies will not be able to extract gas at great depths. So the government should also make sure that new technologies are also attracted as an investment in the country. By this way the precious resources will be extracted from even great depths.

The ministries of transportation of Central Asian states need to establish a unified system of transportation networks connecting Asia and Europe, with the participation of Central Asian states, necessitates the formation of a cost-effective mechanism for the transportation of goods required for competitive transit. This action will make the region more attractive for foreign investors.

The governments of Central Asian countries must modify border procedures for goods, completely remove monopolies in the transportation sector, reduce import excise taxes, and simplify visa regimes in order to perform the development of transport corridors. By this way developed foreign companies will get more chance to enter the market. The ministries of the states of this region need to cooperate more as production sphere in Central Asia is not as developed as in Western countries. It will result as getting a higher profit from natural resources, and the production sphere in the economy will be more elaborated.

Switch to the use of solar energy more as most of the days in the year are sunny, solar energy is one of the best options for producing energy. There should be support from the

government for the businesses that will be based on the use of solar energy. This action will take the load from energy sources and it can cost less for the users.

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RETHINKING INDUSTRY-SPECIFIC CHARACTERISTICS OF IDIOSYNCRATIC DEALS

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Abstract. *Idiosyncratic deals (i-deals) are becoming an increasingly popular human resource management approach in various industries to attract, retain, and motivate personnel. They are non-standard work arrangements in which employees bargain with supervisors or managers to obtain resources or conditions that are personally desirable (e.g., flexibility in scheduling work, special assignments or training opportunities). According to the most recent i-deals' literature reviews, around one-third of i-deal articles were generalizability studies, which did not provide explicit hypotheses concerning contextual variables but frequently incorporated them to understand the findings. Despite growing interest in the concept, little is known about how and if i-deals differ amongst industries. This is a significant loss as i-deals are embedded in teams' and companies' social and organizational contexts, which vary in industries, affecting individual and collective outcomes. This paper aimed to distinct industry-specific aspects of idiosyncratic deals in the hotel, R&D and manufacturing, healthcare, higher education, and local government sectors. All reviewed articles were initially categorized into single-industry, multi-industry or mixed sample studies. Mixed studies were eliminated, and the remaining articles were examined. According to the research results, the cross-industrial i-deals research is still in the very early phase, but there could be some essential differences. Task, career, and incentive i-deals were proven to impact organization-based self-esteem in the hospitality industry positively. A significant positive relationship between different i-deals and psychological empowerment was discovered in high-tech organizations. Also, a positive relationship between task and work responsibilities i-deals and flexibility i-deals to employee innovative performance was noted. Local authorities in England were notorious for redeployment i-deals. I-deals in higher education had a positive association with psychological empowerment. I-deals had varied effects on job characteristics linked to different outcomes in the healthcare industry. Future research should focus on distinguishing these differences in more detail and consider industry-level influences when examining the nature of the relationship between i-deals and their outcomes.*

Keywords: *Idiosyncratic deals, i-deals, industry-specific traits, human resource management*

Introduction

In the framework of a unique society, employees are increasingly stressing autonomy and self-fulfilment. As a result, employees increasingly highlight the importance of tailoring working conditions to specific needs and preferences. Negotiating a customised agreement with their employer is one option for this. An idiosyncratic deal (i-deal) is a unique employment contract made between the employee and the employer, benefiting both parties.

I-deals have been investigated for nearly two decades. Initially, Rousseau and Heinz (2003) advocated categorizing i-deals into developmental, flexibility and reduced workload i-deals. Individually tailored opportunities to improve individual skills and abilities to accomplish their job or professional progression goals are known as developmental ideals.

Flexibility i-deals assist employees in compensating for their professional and personal lives to create the best circumstances for long-term productivity. As the theoretical study progressed, researchers abandoned reduced workload i-deals in favour of task i-deals based on a job design perspective. Task i-deals are individualized arrangements and negotiations with individual employees to make their work more exciting and enjoyable. On this basis, Rosen et al. (2013) integrated developmental i-deals and task i-deals and proposed task and work responsibilities i-deals, as well as flexibility i-deals and financial incentives i-deals. Additional duties and job activities that better match employee talents, strengths, and preferences are included in task and work responsibilities i-deals. They offer employees the opportunity to grow, develop knowledge, skills and adapt to work (Rosen et al., 2013). Rousseau and Kim (2006) divided i-deals into ex-ante i-deals and ex-post i-deals. Ex-ante i-deals are negotiated and designed during the hiring phase, while ex-post i-deals involve workplace transformation and are negotiated after the employee is hired.

Although the i-deal is widely recognized as a win-win situation for both employers and employees, it is believed that the success of this procedure is contingent on the complexity of the environmental work context and its associated expenses. Because little is known about which i-deals create the best results in different working sectors, comparisons between sectors are both inadequate and important (Ng and Feldman, 2015). I-deals also could be categorized into soft and hard. Hard i-deals, such as flexibility i-deals, are concrete, objective, and measurable agreements (Davis, 2018). Soft i-deals, such as developmental i-deals, are more symbolic and subjective (Bal et al., 2012). Developmental i-deals are considered more concrete and universal than the substituted career development/employability (task) i-deals, such as learning from project work or varied tasks that depend on the parties involved (Davis, 2018). I-deals have elicited favourable attitudes (satisfaction, personal initiative, commitments, etc.) and actions (organizational civic behaviour, positive behaviour, job performance, etc.) in numerous industries (Wasti, 2022). Limited research has shown that i-deals improve engagement, motivation, work engagement, and the citizenship of an organization.

Despite the growth of the i-deals literature, a significant gap that has not been investigated to date remains. Due to differences in the labour market and the industry in which the negotiations occur, they can vary greatly (Katou, 2021). According to the most recent i-deals' literature review (Wasti, 2022), around one-third of i-deal articles were generalizability studies, which did not provide explicit hypotheses concerning contextual variables but frequently incorporated them to understand the findings. The evidence suggests that future research on the meaning, content and prevalence of i-deals in various situations could be worthwhile. There has been very little research on i-deals in specific industries (Sun, 2020). Prior research has focused on the individual level analysis and disregarded other potential aspects of i-deals (Bal, 2017), such as specific industries. This is a significant loss as i-deals are embedded in teams' and companies' social and organizational contexts, which vary in industries, affecting individual and collective outcomes (Rousseau, 2005).

Furthermore, as Conway and Coyle-Shapiro (2015) pointed out, existing i-deals research is characterized by cross-sectional, self-report, single-source approaches. Therefore, it is still premature to select i-deals for firms based on various individual factors (one of which may be industry-specific needs). As a result, it is critical to distinguish between various i-deals in different industries and investigate their effects. Our study aims to contribute to the distinct industry-specific aspects of idiosyncratic deals in the hotel, R&D and manufacturing, healthcare, higher education, and local government sectors. We emphasize that different industries have varied i-deals preferences and that additional research should be done to understand better and individualize them. This study contributes to the literature on i-deals in

two important ways. First, we look into whether i-deals have industry-specific characteristics and, as a result, whether they contribute differently to organizational performance in different industries, improving our knowledge of the consequences of i-deals in diverse operating fields.

Methodology

The search covered English-language journals using the keywords idiosyncratic deals and i-deals. Then the articles analysing various sorts of i-deals and indicating the industries in which the research was undertaken were selected, resulting in 45 articles in total. All articles were first coded for their references, whether they were single-industry, multi-industry (data collected from different industries but not compared), or mixed (combination of different industries) sample studies, which industries were investigated, and their substantive i-deals research topic. Mixed studies were eliminated after this phase. The remaining articles were analysed and divided into one of two groups: those that explicitly incorporated the industry-specific context of the study setting into the research questions or design, and those that did not.

Results

Before presenting the results of our analysis, some general observations are worthy of reporting. Only five studies purposively incorporated the industry-specific context of i-deals into the research questions or design (Dhiman, 2017; Huang, 2021; Michail, 2016; Sun, 2020; Sun, 2021). For the final data analysis, after literature review and inspection to see whether satisfactory or acceptable reliability information was provided regarding the researched i-deals industry, 14 studies were included in the results of this article. Table 1 summarizes the articles in terms of their information about i-deals in different industries they provided.

Table 1. I-deals, analysed in different industries

Type of i-deal	Sector				
	Hospitality	R&D and manufacturing	Local authorities	Education	Health-care
Flexibility	x	x	x	Specifics were not provided	x
Task	x	x			x
Career	x	x	x		x
Financial	x				
Redeployment			x		

Hospitality sector

The hospitality industry includes housing, food and beverage service, event organizing, travel and tourism. In the hospitality sector, employee turnover is a significant administrative issue. High employee turnover results in both direct and indirect costs, such as the hiring and training of new personnel and the loss of organizational expertise and culture (Park, 2020). The headquarters standardized and supervised the hotel manager's workflow and conduct in such a system (Sun, 2021). Furthermore, many hotel managers are stressed out by the duty to report financial and operational difficulties regularly to headquarters, stating that this requirement limits their professional autonomy and flexibility. Task, career, and incentive i-deals positively impacted organization-based self-esteem in the study. However, hotel managers' organization-based self-esteem is severely affected by flexibility i-deals (Dhiman, 2017). Flexibility i-deals

mask the shadow labor on the payee's site and make it difficult for hotel employers to recognize or rate the payee. Furthermore, the findings imply that ex-ante negotiating is more strongly linked to flexibility i-deals than task and career i-deals. On the other hand, ex-post negotiation has a positive but stronger relationship with career i-deals than task and flexibility i-deals (Dhiman, 2017).

R&D and manufacturing

Employee creativity is critical to a company's long-term survival and growth. Employees must be flexible in their thinking and relentless in promoting and executing new ideas to innovate. The traditional employer-employee relationship is deteriorating. Employees are more likely to express their opinions on important subjects, and they place a higher value on achieving their objectives in this era of uniqueness. Such background nourishes idiosyncratic deals. I-deals researchers emphasize the necessity of paying attention to boundary conditions, particularly in the context of aging and the information society, and the impact of age on the success of i-deals in the R&D sector (Bal and Boehm, 2017). For example, Wang and Long (2018) found a significant positive relationship between different types of i-deals (i.e., skills training, flexible scheduling, financial incentives, development opportunities, skills training) and psychological empowerment among 237 employees working in Chinese high-tech organizations. Knowledge and abilities in the field are beneficial to R&D workers in producing unique ideas and promoting their innovative performance i-deals for the task and work duties do this and signal the organization's appreciation of the employee's competence and value (Ho and Kong, 2015).

Moreover, task and work responsibilities i-deals make work characteristics more challenging and autonomous, qualities that are positively correlated with employees' innovative performance (Dediu, 2018). According to research, two types of i-deals (task and work responsibilities i-deals and flexibility i-deals) are favourably associated with employees' inventive performance (Huang, 2021). Unfortunately, neither the moderated mediation effects of vitality on the connection between flexibility i-deals and employees' inventive performance nor the moderating effect of chronological age on flexibility i-deals and vitality were significant. The reason for this could be that R&D employees have a strong desire for work-life balance, and the value of this resource is highly valued, therefore, chronological age had no significant moderating effect on the i-deal flexibility mechanism (Huang, 2021).

Local authorities

Employability/career development (task), flexibility, and redeployment are the most popular i-deals in the public sector (Davis, 2018). When concrete and universal resources (e.g., pay) were made available to a specific level, the difference (e.g., adaptive resources like a pay raise, external training) was replaced by more particularistic resources (e.g., flexibility and developmental i-deals). Employees discussing alternative employment (including location and/or job/task responsibilities) when their previous post is removed or withdrawn are referred to as redeployment i-deals. Employability/career development was significant to both professional and nonprofessional employees in local governments, possibly reflecting that job uncertainty makes employability more important for individuals with either a career or instrumental orientation (Davis, 2018). Within this sample, managers only had flexibility i-deals, most likely because they have already achieved their (present) career goals. Furthermore, the study's outcomes suggest that the flexibility of i-deals facilitated a social exchange for some

participants while also facilitating an economic transaction for others. As a result, it's possible that the personal reason for the i-deal's approval is more important than the i-deal's content.

Higher education

Even though the world recognizes the importance of the notion of "job engagement," there is a lack of study in the higher education sector. This lack of concentration and studies has led to many issues, including increased absenteeism and a desire to leave higher education institutions, indicating their disengaged status (Shams, 2021). This lack of studies might be counter-productive in labour-intensive service sectors like higher education, which rely more on employees' dedication and engagement levels. One study (Shams, 2021), which gathered data from academicians working in Pakistan's main public sector higher education institutions, found a favourable association between the i-deals construct and psychological empowerment construct. Initiating i-deals will result in fostering work engagement, based on the findings of this study and earlier studies, and taking into account the personal and professional demands of academicians in public higher education institutions. As a result, public higher education institutions should make academicians' employment more meaningful by offering a variety of i-deals tailored to their personal and professional needs. Researchers advise higher education administrators and policymakers to emphasize the value of i-deals for academicians in public sector higher education institutions in enhancing their psychological empowerment and, as a result, their work engagement.

Health-care industry

Globally, the health-care sector is confronted with a number of critical concerns, including employment flexibility (Mihail and Kloutsiniotis, 2016). Tasks, work schedules, and geographical flexibility among health-care workers can better meet the demands of their patients. As a result, health-care research on i-deals and their antecedents should support the application of some i-deal results from other industries to the health-care service industry. Beyond employee health and income-related characteristics like education and employment level, the researchers found that i-deals impact employee motivation to continue working. Flexibility i-deals contribute to the increased incentive to continue working regardless of the unit work climate, according to multi-level assessments of 1083 employees (Bal et al., 2012). However, for development i-deals to contribute to better motivation to continue operating, the unit climate must be such that older personnel are not pressured to leave their jobs and retire early (i.e., using a high accommodative environment).

At the same time, they must be encouraged to grow and put their expertise and experience to good use. Another study (Hornung, 2014) discovered that the three forms of i-deal had varied effects on job characteristics linked to different health-care outcomes. Task i-deals were beneficial in making an individual's work more personally inspiring and pleasurable and favourably coupled with job autonomy, which mediated a favourable effect of task i-deals on supervisor judgments of job performance. Finally, having more flexibility in work hours was linked to less job overload and less emotional and cognitive annoyance. According to another study's findings (Phan, 2016), idiosyncratic transactions in the health-care system consisted of development and flexibility i-deals. According to the researchers, leader consideration was found to have a beneficial impact on idiosyncratic deals connected to professional growth and working time flexibility. Furthermore, i-deals have been assumed to be mutually beneficial for both employees and employers by improving individuals' and jobs' appropriateness.

Table 2 presents a summary of in terms of their research areas of i-deals in different industries. It shows that i-deals in different industries make impact on different aspects – personality, performance (general and innovative in case of R&D and manufacturing), psychological empowerment, work climate and how employees react to it. Furthermore, this impact is achieved by different types of i-deals, described in Table 1.

Table 2. I-deals impact in different industries

I-deal impact on:	Sector				
	Hospitality	R&D and manufacturing	Local authorities	Education	Health-care
Personality	x				
Performance		x		x	x
Empowerment		x		x	x
Work climate	x		x	x	

Conclusions

The paper reviews recent literature and investigates what field-specific traits of i-deals may be found in the industries of hospitality, R&D and manufacturing, health-care, higher education and local authorities. Task i-deals and career and incentive i-deals were proven to have a beneficial impact on organization-based self-esteem in the hospitality industry. On the other hand, hotel managers' organization-based self-esteem is severely affected by flexibility i-deals. A significant positive relationship between different types of i-deals (i.e., skills training, flexible scheduling, financial incentives, development opportunities, skills training) and psychological empowerment was discovered in high-tech organizations, as well as a positive relationship between task and work responsibilities i-deals and flexibility i-deals to employee innovative performance. Local authorities in England were notorious for redeployment i-deals. Furthermore, both professional and nonprofessional employees required employability/career development, but only flexibility i-deals were observed at the management level. Furthermore, the findings of the same study suggest that in municipal governments, flexibility i-deals facilitated social exchange for some participants and economic exchange for others. In the field of i-deals in higher education, just one study was found, and it did not divide them into different groups. Nonetheless, it revealed a positive association between the i-deals model and psychological empowerment. More research is needed to support these conclusions in the higher education sector. Three forms of i-deal had varied effects on job characteristics in the health-care industry, and each was linked to different outcomes. More research is needed to differentiate between different values in different businesses and investigate each impact in depth. The limitations of our study should be considered when applying its findings in the future. The reviewed material came from various cultural backgrounds and was used in various businesses. The findings of this study may still be relevant in all national cultures and work sectors if they were applied with due regard for national culture and any other appropriate contextual circumstances.

Future research and recommendations

The study's outcomes imply insufficient and inconsistent research on i-deals across various industries. More research is needed to determine how cultural and industrial variables affect certain types of i-deals. According to the research results, it seems that the cross-industrial i-deals research is still in the very early phase, but there could be some essential differences.

We see this as a significant omission and a missed opportunity. Wasti (2022) noted that future research might benefit from exploring whether i-deals manifest specific operationalization. We believe that including the industry aspect and adjusting to it would increase the benefits of the i-deals both for the employee and employer.

Research linking i-deals to industry-level outcomes is sparse. Still, it is important to consider the labour market and other industry-level influences when examining the relationship between i-deals and their outcomes. Future research could challenge the meaning or construal of i-deals in the industry context. For example, the literature has largely overlooked the potential disadvantages of the i-deals for co-workers (Yang, 2020). Some previous studies showed that those disadvantages and factors which are considered while deciding whether employees should receive i-deals are likely to be context-specific (Rousseau, 2005), could depend on national or regional factors (Wasti, 2022), benefiter's personality traits (Popoola, 2022) and other aspects, including, in our opinion, specific industry. Future research should focus on distinguishing these differences and understanding their relationships.

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COVID 19 ĮTAKA LIETUVOS ĮMONIŲ EKONOMINIAM SAUGUMUI

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Anotacija. COVID 19 pandemija atnešė nemažai pokyčių kiekvienos šalies ekonomikai. Nuolat augantis ligos atvejų skaičius, įrangos ir atsargų trūkumas, gamybos bei paslaugų tiekimo sutrikimai skatino imtis griežtų priemonių viruso plitimui sustabdyti. Pandemija paveikė ne tik sveikatos sistemą, bet ir regionų stabilumą, socialinį ir ekonominį gyvenimą. Taip pat turėjo politinių ir saugumo padarinių, sutrikdė švietimą, mobilumą, turizmą ir laisvalaikį. Atsirado naujų vartotojų elgsenos ir vartojimo modelių. Neregėtai maža arba stubbinančiai didelė, priklausomai nuo kategorijos, paklausa, iškreiptos tiekimo grandinės, pasikeitęs darbas, socialinis atsiribojimas, visi šie pokyčiai, įskaitant draudimus ir suvaržymus, buvo varomieji veiksniai, privertę įmones peržiūrėti savo organizacijų strategijas. Pagrindinis šio straipsnio tikslas - išanalizuoti, kaip COVID 19 pandemija paveikė Lietuvos įmonių, kurios yra pagrindinė ekonomikos varomoji jėga, ekonominį saugumą. Kokį poveikį pandemija turėjo Lietuvos ekonomikai bei organizacijų verslo dinamikai. Ekonominio saugumo svarba ir vaidmuo kiekvienos valstybės veikloje. Straipsnyje taip pat aptartos pagrindinės priemonės pandemijos poveikiui švelninti. Pasitelkiant tyrimo metodus, mokslinę literatūrą bei statistinius duomenis, atlikta lyginamoji analizė vertinant COVID 19 pandemijos poveikį Lietuvos organizacijoms. Remiantis tyrimo rezultatais galima teigti, kad Europos Sąjungos kontekste Lietuva būtų mažiausiai pandemijos paveikta šalis. Nors 2021m. pradžioje buvo daug neapibrėžtumo dėl tolimesnės pandemijos eigos bei jos valdymo, tačiau ekonomika augo sparčiau nei buvo tikėtasi. Didėjo pramonės produkcijos apimtis, augo mažmeninė ir tarptautinė prekyba. Nepaisant pandemijos augimą išlaikė apdirbamosios gamybos bei didmeninės ir mažmeninės prekybos sektoriai. Labiausiai pandemijos įtaka buvo juntama paslaugų sektoriuje – apgyvendinimo ir maitinimo paslaugų, meninėje, pramoginėje ir poilsio organizavimo, aptarnavimo bei administracinėje veiklose. Pandemija turėjo nemažai įtakos ir veikiančių įmonių veiklos stabilumui. Karantino paskelbimas, organizacijų veiklų sustabdymas ar apribojimas įtakoją įmonių pajamas, pelną, veiklos tęstinumą. Lietuvoje 2021m., nors šalis buvo veikiamą pandemijos, veikė 816 ūkio subjektais daugiau (neįskaitant fizinių asmenų, užsiimančių ekonomine veikla), nei 2020m. Pagal ūkio sektorius, daugiausia ūkio subjektų veikė paslaugų sferose, pramonėje, statyboje ir žemės ūkyje. Didžioji dalis veikiančių ūkio subjektų buvo mažos įmonės, kuriose dirbo 0-4 ar 5-9 darbuotojai. Nuo 2020m. iki 2021m., per metus veikiančių įmonių skaičius paaugo 0,8 proc., kai tuo tarpu 2019m. – 2020m. laikotarpiu šis skaičius siekė 2,18 proc. Didžiausią teigiamą įtaką pastarųjų metų augimui darė smulčiausių įmonių, turinčių 0-4 darbuotojus skaičiaus augimas, tuo tarpu neigiamą poveikį darė stipriai sumažėjęs 5-9 darbuotojus turinčių įmonių skaičius. COVID – 19 pandemijos akivaizdoje juridinių asmenų steigimas toliau augo. Per 2020 m. smulkių ir vidutinių įmonių (nefinansinių įmonių be fizinių asmenų, vykdančių individualią veiklą) skaičius padidėjo 6 proc. Per tą patį laikotarpį buvo išregistruota gerokai mažiau – 27 proc. įmonių.

Pagrindinės sąvokos: COVID 19 įtaka, ekonominis saugumas, pandemijos įtaka ekonominiam saugumui.

Įvadas

Netikėtai pasaulį užklupusi COVID 19 pandemija atnešė didelių pokyčių įvairiose pramonės šakose. Tai veiksnys, paskatinęs socialinius ir ekonominius neramumus. Siekdamas išlaikyti ekonominį saugumą, įmonės turėjo greitai prisitaikyti prie pakitusios aplinkos. Pandemija paveikė sveikatos sistemą, regionų stabilumą, socialinį ir ekonominį gyvenimą. Taip pat turėjo politinių ir saugumo padarinių, sutrikdė švietimą, mobilumą, turizmą ir laisvalaikį. Atsirado naujų vartotojų elgsenos ir vartojimo modelių. Neregėtai maža arba stubbinančiai didelė, priklausomai nuo kategorijos, paklausa, iškreiptos tiekimo grandinės, pasikeitęs darbas, socialinis atsiribojimas, visi šie pokyčiai, įskaitant draudimus ir

suvaržymus, buvo varomieji veiksniai, privertę įmones peržiūrėti savo organizacijų strategijas.

Ekonominius pokyčius visada greičiausiai pajunta smulkusis ir vidutinis verslas. Manoma, jog koronaviruso pandemija lems dar didesnes ekonomines pasekmes negu 2008-2009 metų ekonominė krizė. Lietuvos smulkaus ir vidutinio verslo įmonių vertinimu, didžiausią poveikį turėjo karantino įvedimas, tuo tarpu kaimyninės šalys pagrindine problemų priežastimi laiko ekonomikos sulėtėjimą.

Mokslininkai jau analizuoja pandemijos poveikį teikdami rekomendacijas, ką daryti ar nedaryti krizės metu. Ankstesnių ekonominių krizių ir nuosmukių pamokas galima pritaikyti pandemineje situacijoje, atsižvelgiant į specifinius COVID-19 ypatumus. Taip pat jau atlikta keletas tyrimų su naujomis išvalgomis, daugiausia dėmesio skiriant pasikeitusiam vartotojų elgesiui.

Šio tyrimo objektas - COVID 19 įtaka Lietuvos įmonių ekonominiam saugumui.

Tyrimo tikslas - išanalizuoti, kaip COVID 19 pandemija paveikė Lietuvos įmonių, kurios yra pagrindinė ekonomikos varomoji jėga, ekonominį saugumą.

Tyrimo metodai. Mokslinės literatūros bei statistinių duomenų analizė, lyginamoji analizė vertinant COVID 19 pandemijos poveikį Lietuvos įmonių ekonominiam saugumui.

Ekonominio saugumo svarba ir vaidmuo

Ekonominio saugumo teorija yra viena svarbiausių ekonomikos mokslo dalių. Kiekvienos valstybės veikloje ekonominio saugumo problema yra svarbi ir prioritetinga. Žmogaus veikla pasižymi tam tikromis grėsmėmis ir rizikomis, kurias būtina įvertinti įgyvendinant visuomenės, verslo, asmens tikslus. Neįvertinus saugumo ir ekonominių reformų pasekmių žmogui, visuomenei, valstybei, gali būti patiriamos skaudžios nesėkmės, kurios gali net sužlugdyti valstybę, visuomenės gyvybingumą (Simanavičienė, 2018).

Pasak Kunz (2021), ekonominis saugumas yra sąlygos, užtikrinančios valstybėje gyvenančios visuomenės išlikimą, klestėjimą, tvarų vystymąsi bei sklandų funkcionavimą. Tai valstybė, kurioje galima darniai plėtoti ekonomiką ir užtikrinti tinkamą piliečių gyvenimo lygį per netrukdomą prieigą prie žaliavų, rinkų, kapitalo, modernių technologijų ar informacijos. Verta pažymėti, kad čia svarbus atspirties taškas yra valstybės ekonominis potencialas. Tai gali būti impulsas socialinei ir ekonominei plėtrai bei viena pagrindinių sąlygų šalies galiai ir prestižui tarptautinėje arenoje.

Šimašius (2006) ekonominį saugumą tapatino su gerais makroekonominiais rodikliais, nuosavybės saugumu, individo socialiniu saugumu, pavyzdžiui, tam tikru pragyvenimui būtinų pajamų lygiu, užimtumu, užtikrintomis darbo vietomis ir įmonių pelnu.

Gana plačiai ekonominio saugumo sampratą savo monografijoje išnagrinėjo Simanavičienė (2018), kuri teigia, kad „atlikta mokslininkų ekonominio saugumo sampratų analizė rodo, kad visais atvejais yra įvertinama ekonominė plėtra ir stabilumas. Todėl tokia pozicija leidžia apibrėžti ekonominį saugumą kaip ekonomikos ir valdžios būseną, kada užtikrinama nacionalinių interesų apsauga, šalies plėtra visumoje, pakankamas gynybos potencialas. Dabartiniu metu praktiškai niekam nekyla abejonių dėl kiekvienoje vidutinėje ar stambioje įmonėje ekonominio saugumo sistemų sukūrimo. Įmonės ekonominis saugumas tai tokia teisinių, gamybinių, organizacinių santykių, materialinių ir intelektinių įmonės resursų sistema, kuriai esant užtikrinamas jos veikimo stabilumas, finansinė ir komercinė sėkmė, pažanga“.

Tsvetkov ir kt. (2019) pabrėžė, kad įmonės ekonominio saugumo sistema tiesiogiai priklauso nuo jos gamybinės veiklos išsivystymo lygio ir struktūros, turimų išteklių

panaudojimo efektyvumo, darbuotojų kvalifikacijos, vyraujančių aplinkos, ypač konkurencinės, sąlygų. Norėdama užtikrinti tvarią veiklą ir plėtrą, įmonė turi sukurti savo apsaugos sistemą. Įmonės ekonominio saugumo sistema – tai teorinių požiūrių ir praktinės veiklos rinkinys, kuriuo siekiama kuo labiau apsaugoti gyvybinius įmonės interesus nuo grėsmių, kurias gali sukelti įmonės vidiniai verslo procesai ir išorinė aplinka.

COVID – 19 pasaulinė pandemija šalių ekonomikose sukėlė beprecedentę situaciją, kurios pasaulis neregėjo nuo ispaniškojo gripo laikų. Jei įprasta ekonominė krizė paveikia vieną socialinės – ekonominės sistemos dalį ir tik po tam tikro laiko padaro įtaką likusiai visai sistemai, tai COVID – 19 pandemija paveikė visą socialinę – ekonominę sistemą iš karto, t.y. visa ekonomika pradėjo funkcionuoti epidemiologinio modelio sąlygomis, pradedant nuo valstybės ir centrinių bankų, baigiant įmone ir vartotoju. Šalių vyriausybės iš karto susidūrė su iššūkiais formuodamos ne tik sveikatos politiką ir žmonių gyvybes saugančias priemones, bet ir ekonomikos politiką bei priemones, skirtas palengvinti ir padėti verslui įveikti ekonominį šoką (Norvaišienė ir kt., 2021). Pasak Baldwin, Weder di Mauro (2020), COVID – 19 pandemiją ir jos padarytą įtaką ekonominiam saugumui galima palyginti su kitomis pasaulį paveikusiomis pandemijomis. Išvelgiami panašumai su 1957m. Azijos gripu (H2N2), 1968m. Hong Kong gripu (H3N2), 2002m. sunkiu ūminiu kvėpavimo sindromu (SARS), 2009m. Paukščių gripu (N1H1) ar net antrąja Ebola (EVD) viruso banga praūžusia 2014-2016m. Tačiau COVID – 19 sparčiai išplito po visą pasaulį esant dideliame žmonių judėjimui, kas labai greitai paveikė visų šalių ekonomikas.

Goodell (2020) išskyrė keletą veiksnių, darančių įtaką valstybių ekonominiam saugumui:

- „šlubuojančios“ sveikatos priežiūros sistemos, tiek viešosios, tiek privačios, išlaidos, susijusios su užsikrėtusių asmenų medicininis gydymu ir protrūkio kontrole; sveikatos sistemų įtampa dėl nesugebėjimo kartu spręsti įprastesnių sveikatos problemų protrūkių metu;

- darbo našumo sumažėjimas;
- socialinis atsiribojimas, trikdančias ekonominę veiklą;
- poveikis turizmui bei tiesioginėms užsienio investicijoms;
- sumažėjęs vidaus vartojimas neapibrėžtumo sąlygomis;
- ilgalaikis poveikis įmonių finansavimui ir kapitalo sąnaudoms;
- įmonių apyvartumo, likvidumo bei pelningumo sumažėjimas.

COVID-19 krizė buvo netikėtas įvykis, turintis milžiniškų pasekmių beveik kiekvienam mūsų kasdienio gyvenimo aspektui. Be anksčiau paminėtų pandemijų, kilusių labai skirtingame socialiniame ir ekonominiame kontekste, nėra istorinių paralelių, artimų dabartinei krizei, todėl prognozuoti ar numatyti ateitį yra sudėtinga užduotis.

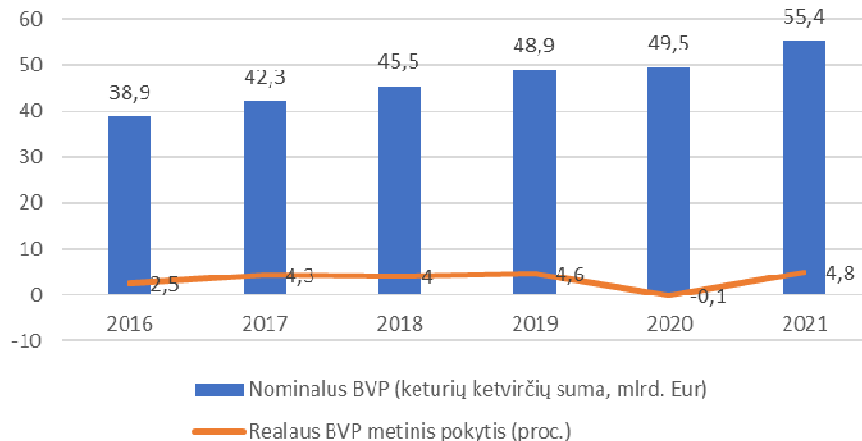
Pandemijos protrūkio metu šalims buvo ypač svarbu išlaikyti ekonominę saugumą, siekiant tolesnės ekonomikos plėtros ir suteikti tikrumo jausmą bei garantijas, kad bus ieškomi sprendimai plintančiai infekcijai įveikti (Kozicki ir kt., 2020).

COVID 19 įtaka Lietuvos ekonomikai

COVID-19 viruso pandemijos sukeltas šokas 2020 m. pradžioje visiškai pakeitė pasaulio ir ES bloko šalių, kuriai priklauso ir Lietuva, ekonominės raidos perspektyvas. 2020 m. ES-27 šalių realusis BVP per metus sumenko 6,1 proc., infliacija stabilizavosi ties 0,7 proc. riba, o nedarbo lygis padidėjo iki 7,1 proc. 2021 m. prasidėjus vakcinacijos procesui bei

didelio fiskalinio impulso pagalba didžiosiose pasaulio ekonomikose ir ES šalyse situacija kardinaliai pasikeitė (Versli Lietuva, 2021).

Apžvelgiant praėjusių metų rezultatus galima teigti, kad Europos Sąjungos kontekste Lietuva būtų mažiausiai pandemijos paveikta šalis. Nors 2021m. pradžioje buvo daug neapibrėžtumo dėl tolimesnės pandemijos eigos bei jos valdymo, tačiau ekonomika augo sparčiau nei buvo tikėtasi. Remiantis socialinių ir ekonominių padarinių Baltijos šalyse apžvalga (2020), ekonomikos tempas kaimyninėse valstybėse lėtėjo jau 2019m. antrą pusmetį, tačiau jau 2021 m. Lietuvos BVP sudarė 55,4 mlrd. EUR to meto kainomis. Palyginti su 2020 m., realusis BVP pokytis, pašalinus sezono ir darbo dienų skaičiaus įtaką, buvo 5,1 proc. (nepašalinus sudarė 4,8 proc.). 2020m. realiojo BVP pokytis, palyginti su 2019 m., sudarė – 0,1 proc., 2019 m. BVP siekė 48,9 mlrd. EUR ir, lyginant su ankstesniu laikotarpiu, augo 4,6 proc.



1 pav. Visos šalies BVP 2016-2021 m.

Šaltinis: Sudaryta autorės, remiantis Lietuvos Statistikos departamento duomenimis, 2022.

Remiantis Lietuvos Statistikos departamento duomenimis galima teigti, kad didėjo pramonės produkcijos apimtis, augo mažmeninė ir tarptautinė prekyba. Praėjusiais metais beveik penktadaliu išaugo pramonės produkcija. Jos parduota už 28,4 mlrd. EUR to meto kainomis, tai 19,4 proc. palyginamosiomis kainomis daugiau nei 2020 m. Labiausiai padidėjo gamyba: chemikalų ir chemijos – 45,6 proc., variklinių transporto priemonių, priekabų ir puspriekabių – 39,9 proc., kitų transporto priemonių ir įrangos – 34,9 proc., pagrindinių metalų – 28,9 proc., kompiuterinių, elektroninių ir optinių gaminių – 28,2 proc. COVID-19 pandemijos įtaka 2020 m. atskiroms ekonominės veiklos rūšims buvo labai nevienoda. Žemės ūkio, miškininkystės ir žuvininkystės (10,3 proc. 2019 m. ir 9,4 proc. 2020 m.) bei informacijos ir ryšių (atitinkamai 11,9 proc. ir 7,2 proc.) veiklose fiksuotas tolesnis spartus pridėtinės vertės augimas. Nepaisant pandemijos, 2020 m. augimą išlaikė ir didžiausią lyginamąjį svorį kuriant pridėtinę vertę turintys apdirbamosios gamybos (4,0 proc. 2019 m. ir 1,1 proc. 2020 m.) bei didmeninės ir mažmeninės prekybos sektoriai (3,0 proc. 2019 m. ir 1,4 proc. 2020 m.). Labiausiai pandemijos įtaka 2020 m. buvo juntama paslaugų sektoriuje – apgyvendinimo ir maitinimo paslaugų (–30,9 proc.), meninėje, pramoginėje ir poilsio organizavimo (–16,5 proc.), kitoje aptarnavimo (–7,5 proc.) bei administracinėje ir aptarnavimo (–7,0 proc.) veiklose fiksuotas didžiausias pridėtinės vertės kritimas. Neigiama pandemijos įtaka 2020 m. atsispindi visuose komponentuose – bendrojo pagrindinio kapitalo

formavimas mažėjo 1,8 proc. (2019 m. 6,6 proc. augo), namų ūkių galutinio vartojimo išlaidos – 2,1 proc. (2019 m. +3,0 proc.), prekių ir paslaugų importas – 4,4 proc. (2019 m. – +6,1 proc.), o prekių ir paslaugų eksportas, sparčiai augęs 2019 m. (9,9 proc.), išlaikė nedidelį augimą ir 2020 m. (0,4 proc.). 2020 m. fiksuotas atlygio darbuotojams spartaus augimo sulėtėjimas: 2019 ir 2020 m. jis didėjo atitinkamai 11,2 ir 5,8 proc. (to meto kainomis). Mokesčiai gamybai ir gaminiam augo atitinkamai 7,5 ir 2,0 proc., o subsidijų pokyčiuose ryškiausiai atsispindi pandemijos valdymo priemonių įtaka – 2020 m. jų skirta 2,3 karto daugiau nei 2019 m. (atitinkamai 1 879 mln. EUR ir 829 mln. EUR).

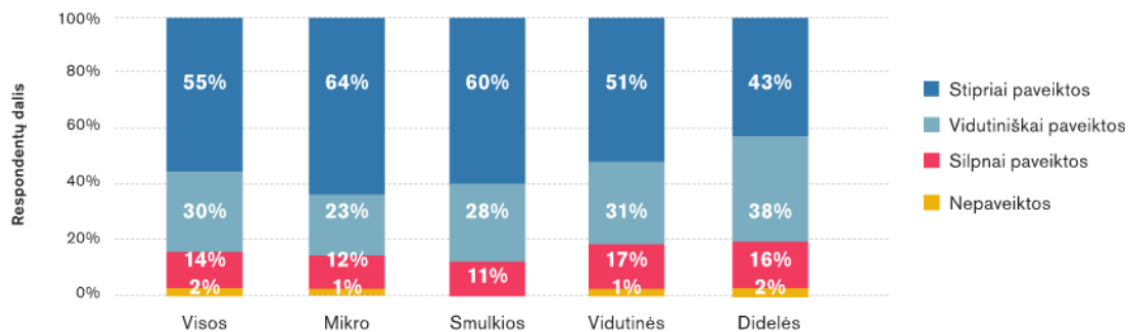
Pandemijos poveikis Lietuvos įmonių verslo dinamikai

COVID-19 pandemija sukėlė daugybę neramumų ekonomikoje ir iškėlė daug naujų iššūkių tiek įmonėms, tiek darbuotojams. Su virusu susijusiu sumaišties laikotarpiu verslininkai buvo priversti apriboti savo veiklą arba keisti jos vykdymo būdus, taip pat panaudoti iki šiol nenaudotus teisinio ir mokestinio pobūdžio instrumentus (Kunz, 2021).

Remiantis Šontaite-Petkevičiene ir kt. (2021), siekdamas susidoroti su krize, organizacijos turėjo pasitelkti inovacijų procesus: pirmiausia pakeisti tuos dalykus, kurie tuo metu buvo daromi, tada apibrėžti ir plėtoti, o galiausiai – transformuoti. Pandemija daugiau ar mažiau paveikė visas organizacijų funkcijas, todėl jos turėjo tapti judrios ir pertvarkyti savo atliekamas funkcijas, t. y. pandemijos metu reikėjo mąstyti naujoviškai.

Verslas – visos ekonomikos variklis, jo sėkmė priklauso nuo gero planavimo, rinkos išmanymo ir įvairių ekonomikos procesų suvokimo, o pasak Elyta ir kt. (2020), jis yra labiausiai įtakojamas išorinių neigiamų veiksnių.

COVID 19 pandemija, paveikusi įvairių šalių ekonomikas, turėjo nemažai įtakos ir veikiančių įmonių veiklos stabilumui. Karantino paskelbimas, organizacijų veiklų sustabdymas ar apribojimas įtakojo įmonių pajamas, pelną, veiklos tęstinumą. Kaip teigia Norvaišienė ir kt., (2021), dėl pasauliniu mastu kilusios pandemijos įvesti įmonių veiklos apribojimai ypač stipriai paveikė smulkaus ir vidutinio verslo įmones. Atliktas tyrimas parodė (žr. 2 pav.), kad net 55 proc. visų apklaustų įmonių pajuto stiprų pandemijos poveikį verslui. Labiausiai, net 64 proc., krizė paveikė mikro įmones (darbuotojų skaičius yra iki 4 žmonių), tuo tarpu didelių įmonių skaičius sudarė 43 proc.

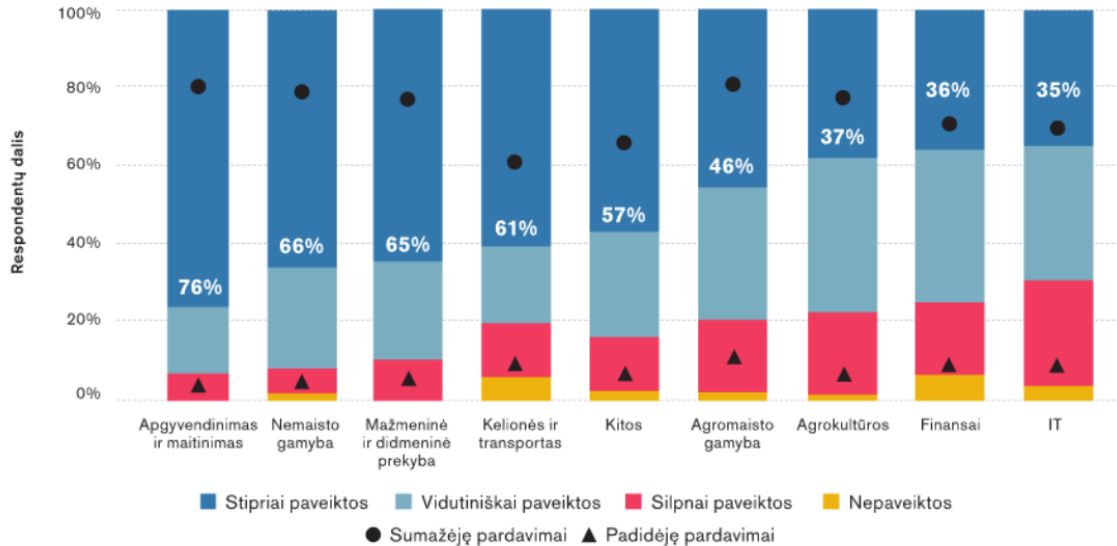


2 pav. COVID 19 poveikio skirtingo dydžio įmonėms visame pasaulyje mastas

Šaltinis: Norvaišienė ir kt., 2021.

Vertinant pandemijos poveikį verslui pagal ekonominės veiklos sektorius, labiausiai nukentėjo apgyvendinimo ir maitinimo sektorius (net 76 proc.), stiprų poveikį turėjo ne

maisto gamyba (66 proc.), mažmeninė ir didmeninė prekyba (65 proc.), kelionės ir transportas (61 proc.), tuo tarpu mažiausiai buvo paveiktos IT sektoriaus įmonės (35 proc.). Remiantis apklausos rezultatais, beveik visos įmonės patyrė pajamų sumažėjimą ir tik nedidelės dalies įmonių pajamos šiek tiek padidėjo.

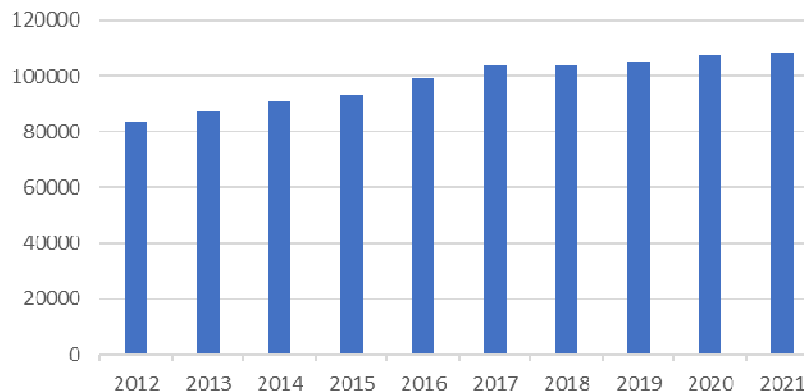


3 pav. COVID 19 poveikio skirtingiems sektoriams visame pasaulyje mastas

Šaltinis: Norvaišienė ir kt., 2021.

Jau beveik du metus Lietuvoje besitęsianti COVID-19 pandemija pakeitė visos šalies gyvenimą ir pakoregavo ekonominį paveikslą. Iš pirmo žvilgsnio gali pasirodyti, kad naujoji realybė ir padidėjusi nežinomybė dėl ateities galėjo pristabdyti kai kuriuos procesus, tačiau kartu tai atvėrė ir naujas galimybes. Būtent tai liudija ir per pastaruosius metus išaugęs naujai įsteigtų bendrovių ir organizacijų skaičius.

Remiantis Lietuvos Statistikos departamento duomenimis, 2021 m. sausio 1d., nors šalis buvo veikiama pandemijos, Lietuvoje veikė 108258 ūkio subjektai (neįskaitant fizinių asmenų, užsiimančių ekonomine veikla), jie sudarė 45 proc. visų Juridinių asmenų registre įregistruotų ūkio subjektų. Tai yra 814 įmonėmis daugiau, lyginant su praėjusiu laikotarpiu.



4 pav. Veikiantys ūkio subjektai 2012-2021m.

Šaltinis: Sudaryta autorės, remiantis Lietuvos Statistikos departamento duomenimis, 2022.

Pasak Benedetti Fasil ir kt., (2020), labai tikėtina, kad ateityje COVID-19 krizė gali stipriai paveikti neseniai įsikūrusias įmones, dėl to steigimosi rodiklis kiek sumažės, o išregistruotų įmonių skaičius padidės, sulėtės jų augimas. Remiantis ES skaičiavimais, dėl to gali sumažėti bendras užimtumas, 2021–2030 m. laikotarpiu gali siekti iki 74 tūkst. Visiškas atsigavimas gali užtrukti daugiau nei dešimtmetį, net jei per vienerius metus pradinė veikla atsigaus iki prieškrizinio lygio.

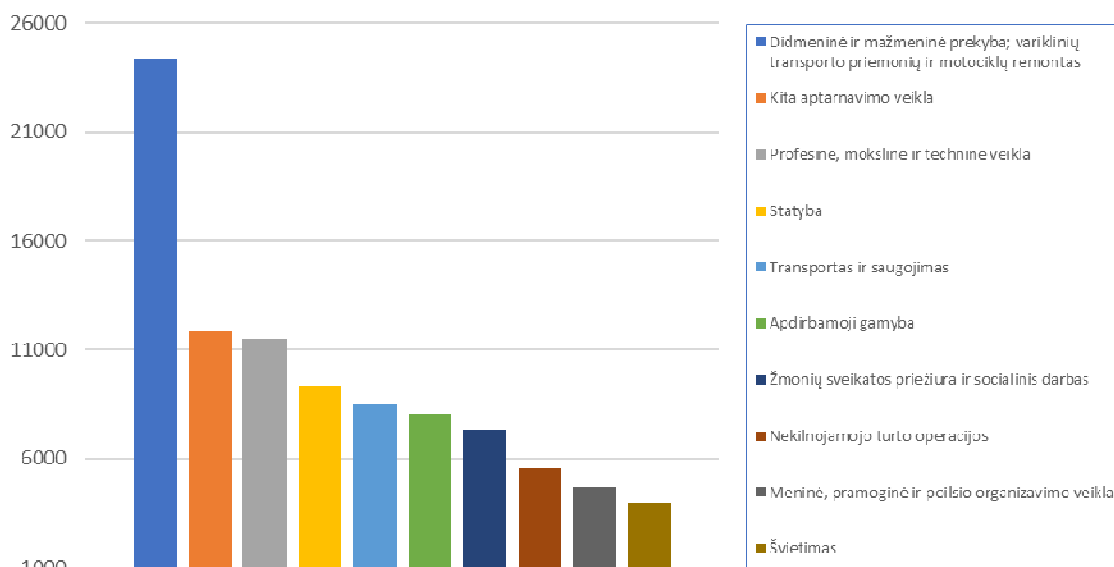
Pagal ūkio sektorius, daugiausia ūkio subjektų (81 proc.) veikė paslaugų sferose, pramonėje (9 proc.), statyboje (8 proc.) ir žemės ūkyje (2 proc.).

1 Lentelė. Veikiančių įmonių struktūra

Šaltinis: Sudaryta autorės, remiantis Lietuvos Statistikos departamento duomenimis, 2022.

	Žemės ūkis	Pramonė	Statyba	Didmeninė ir mažmeninė prekyba	Profesinė, mokslinė ir techninė veikla	Transportas ir saugojimas	Nekilnojamo turto operacijos	Apgyvadinimo ir maitinimo paslaugų veikla	Administracinė ir aptarnavimo veikla	Kita
Įmonių skaičius, tūkst.vnt.	2318	9522	9364	24398	11524	8501	5581	3791	3805	33054
Dalis (nuo visų ūkio subjektų skaičiaus), proc.	2,07	8,51	8,37	21,81	10,30	7,60	4,99	3,39	3,40	29,55

Esant sudėtingoms ekonominėms sąlygoms, paslaugų sektoriuje didžiausia dalis teko didmeninei ir mažmeninei prekybai (22 proc.), profesinei, mokslinei ir techninei veiklai (10 proc.) bei transportui ir saugojimui (8 proc.). Pramonėje daugiausia įmonių veikė apdirbamojoje gamyboje (7 proc.). žr. 5 pav.

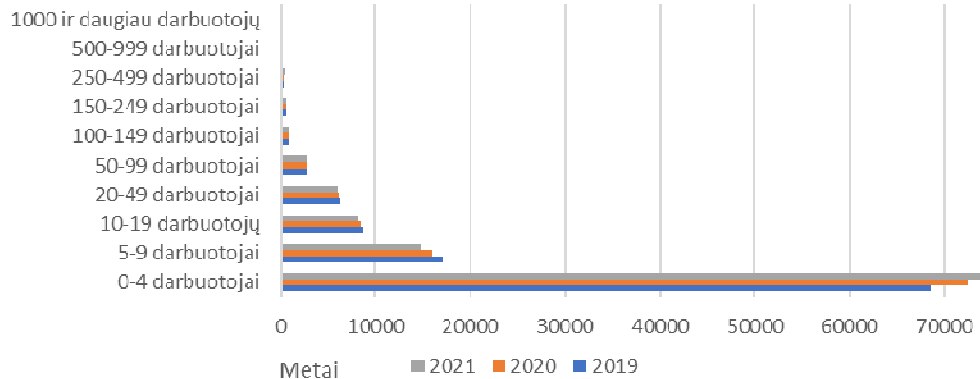


5 pav. Veikiantys ūkio subjektai pagal ekonominės veiklos rūšis 2021m.

Šaltinis: Sudaryta autorės, remiantis Lietuvos Statistikos departamento duomenimis, 2022.

Didžioji dalis (82,6 proc.) veikiančių ūkio subjektų buvo mažos įmonės, kuriose dirbo 0-4 ar 5-9 darbuotojai. Nuo 2020m. iki 2021m., per metus veikiančių įmonių skaičius paauogo 0,8 proc. (arba 816 įmonėmis), kai tuo tarpu 2019m. – 2020m. laikotarpiu šis skaičius siekė 2,18 proc. (arba 2351 naujai įregistruotos įmonės). Didžiausią teigiamą įtaką pastarųjų metų

augimui darė smulkesnių įmonių, turinčių 0-4 darbuotojus skaičiaus augimas (išaugo 1,6 proc.), tuo tarpu neigiamą poveikį darė stipriai sumažėjęs 5-9 darbuotojus turinčių įmonių skaičius (sumažėjo 1,2 proc.).

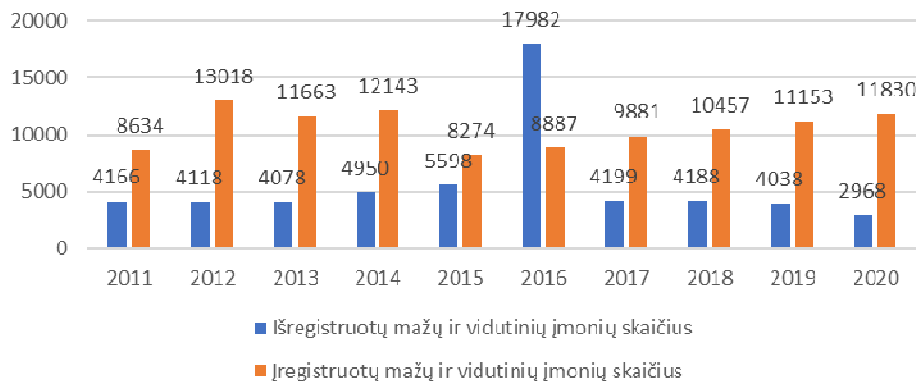


6 pav. Veikiantys ūkio subjektai pagal darbuotojų skaičiaus grupes 2019-2021m.
Šaltinis: Sudaryta autorės, remiantis Lietuvos Statistikos departamento duomenimis, 2022.

Stebint įregistruotų ir išregistruotų smulkių bei vidutinių įmonių skaičiaus tendenciją, galima teigti, kad net ir COVID – 19 pandemijos akivaizdoje juridinių asmenų steigimas toliau augo.

Per 2020 m. smulkių ir vidutinių įmonių (nefinansinių įmonių be fizinių asmenų, vykdančių individualią veiklą) skaičius padidėjo 6 proc. Remiantis Lietuvos Statistikos Departamento duomenimis, 2020m. buvo įregistruota 11830 tūkst. naujų smulkių ir vidutinių įmonių, tai 677 vnt. daugiau, nei 2019m. Per tą patį laikotarpį buvo išregistruota gerokai mažiau - 1070 įmonių, kas sudarė 27 proc.

Daugiausia – 82,3 proc. įmonių sudarė labai mažos (0–9 dirbantieji) įmonės. Mažos įmonės siekė 13,5 proc. (10–49 dirbantieji), vidutinės (50 ir daugiau dirbančiųjų) – 4,2 proc.



7 pav. Per metus įregistruotų ir išregistruotų mažų ir vidutinių įmonių skaičius 2011-2020m.
Šaltinis: Sudaryta autorės, remiantis Lietuvos Statistikos departamento duomenimis, 2022.

Smulkių ir vidutinių įmonių apyvarta siekė beveik 64,2 mlrd. EUR ir, palyginti su 2019 m., sumažėjo 0,9 proc. 37 proc. apyvartos uždirbo mažos įmonės, 36 proc. – vidutinės. Labai mažų įmonių apyvarta sudarė 27 proc.

Smulkios ir vidutinės įmonės uždirbo 3,9 mlrd. EUR grynojo pelno, t. y. beveik 0,6 mlrd. EUR, arba 17,1 proc. daugiau nei ankstesniais metais. Šių įmonių grynas pelningumas siekė 6,1 proc. (2019 m. – 5,2 proc.). Pelningiausiai dirbo labai mažos įmonės, kurių pelningumas siekė 8,5 proc.

Pagalbos priemonės verslui pandemijos poveikiui švelninti

Kaip teigia Kunz (2021), COVID – 19 pandemijos sukelta krizė yra daug rimtesnė nei 2007–2008 m. finansų krizė, nes ji vienu metu smogė namų ūkiams, įmonėms, finansų įstaigoms ir rinkoms visame pasaulyje. Epidemijos ekonominis poveikis truko daug ilgiau, nei manyta iš pradžių. Prekių ir paslaugų tiekimas buvo ribotas, nes buvo uždarytos gamyklos ir biurai, o gamyba sumažėjo.

Mikroekonominio ir makroekonominio mastu pandemija sukėlė tokius padarinius:

- Įmonių ir namų ūkių pajamų mažėjimas;
- Privačių investicijų mažėjimas;
- Gamybos problemos;
- Problemos darbo rinkoje
- Gamybos veiksnių kainų augimas;

Pasak Mogaji (2020), būtent vyriausybei tenka didelė pareiga teikti paramą savo piliečiams ir įmonėms sprendžiant šios pandemijos padarinius. Pagrindiniai rodikliai, tokie kaip šalies BVP augimo tempai, pajamų pasiskirstymas tarp piliečių, nedarbo lygis, infliacija ir namų ūkių skolos lygis, turi įtakos jos piliečių pažeidžiamumui.

Remiantis socialinių ir ekonominių padarinių Baltijos šalyse apžvalga (2020), Lietuvos Vyriausybė priėmė Ekonominių ir finansinių veiksmų planą, kuriame buvo penkios pagrindinės sritys, tokios kaip būtinų išteklių suteikimas veiksmingai sveikatos ir socialinės apsaugos sistemų veiklai, darbo vietų ir pajamų išsaugojimas, verslo likvidumo palaikymas ir ekonomikos skatinimas. Lietuvos veiksmų planas susilaukė kritikos, nes buvo pernelyg bendras ir naudojo standartines priemones ypatingomis aplinkybėmis, todėl sekė kelios plano koregavimo priemonės.

Įvestas karantinas ir dauguma ribojimų privertė verslą greitai reaguoti į susidariusią situaciją pakeičiant verslo modelius ir operacijų valdymą. Daugeliui tai buvo naujos galimybės, įmonės prisitaikė prie besikeičiančios aplinkos ir prisitaikė prie COVID 19 pandemijos poreikių: elektroninė prekyba, gyvybiškai svarbių medicininių prekių ar įrangos transportavimas, nuotolinis darbas, virtualus bendravimas ir pan.

Remiantis Norvaišienė ir kt., (2021), naudingiausios paramos verslui priemonės yra atleidimas nuo mokesčių arba laikinas jų atidėjimas ir įvairios finansinės programos. Taip pat naudingos būtų subsidijos nuomai, piniginiai pervedimai (žr. 8 pav.).

2021 m. mokesstinės paramos įmonėms gavėjų skaičius siekė 42 tūkst., o subsidijų – 38 tūkst., tai sudarė beveik 40 proc. visų įmonių. Vienam gavėjui teko nuo 16 iki 19 tūkst. EUR mokesstinės paramos. Vidutinė subsidija vienai įmonei sumažėjo nuo 22 iki 19 tūkst. EUR.

Mikroįmonėms		Mažoms įmonėms		Vidutinėms įmonėms		Didelėms įmonėms	
Finansinės programos	59 proc.	Atleidimas nuo mokesčių arba laikinas jų atidėjimas	64 proc.	Atleidimas nuo mokesčių arba laikinas jų atidėjimas	70 proc.	Atleidimas nuo mokesčių arba laikinas jų atidėjimas	71 proc.
Atleidimas nuo mokesčių arba laikinas jų atidėjimas	54 proc.	Finansinės programos	61 proc.	Finansinės programos	63 proc.	Finansinės programos	64 proc.
Parama savarankiškai dirbantiems	36 proc.	Nuomos subsidijos	34 proc.	Užimtumo programos	37 proc.	Užimtumo programos	39 proc.
Nuomos subsidijos	31 proc.	Pinigų pervedimai	33 proc.	Nuomos subsidijos	29 proc.	Nuomos subsidijos	28 proc.
Užimtumo programos	27 proc.	Parama savarankiškai dirbantiems	29 proc.	Parama savarankiškai dirbantiems	22 proc.	Importuojamų medžiagų tarifų sumažinimas	27 proc.
Pinigų pervedimai	24 proc.	Užimtumo programos	28 proc.	Importuojamų medžiagų tarifų sumažinimas	21 proc.	Pinigų pervedimai	17 proc.
Importuojamų medžiagų tarifų sumažinimas	16 proc.	Importuojamų medžiagų tarifų sumažinimas	15 proc.	Pinigų pervedimai	19 proc.	Parama savarankiškai dirbantiems	15 proc.
Kitos	6 proc.	Kitos	4 proc.	Kitos	4 proc.	Kitos	4 proc.

8 pav. Verslo įmonėms naudingiausias paramos priemonės
 Šaltinis: *Norvaišienė ir kt., 2021.*

Remiantis Lietuvos Statistikos departamento duomenimis, parama verslui padėjo stipriai sušvelninti neigiamą COVID-19 poveikį ekonomikos augimui. Daugiau nei trečdalis įmonių gavo nukentėjusiesiems nuo COVID-19 skirtą valstybės paramą. 2020 m. mokestinė pagalba siekė 609 mln. EUR, o 2021 m. – 788 mln. EUR. 2020 m. subsidijos viršijo 1 mlrd. EUR, o 2021 m. – 730 mln. EUR.

Išvados

Ekonominio saugumo teorija yra viena svarbiausių ekonomikos mokslo dalių. Kiekvienos valstybės veikloje ekonominio saugumo problema yra svarbi ir prioritetinga. COVID – 19 pasaulinė pandemija šalių ekonomikose sukėlė beprecedentę situaciją ir paveikė visą socialinę – ekonominę sistemą iš karto. COVID-19 krizė buvo netikėtas įvykis, turintis milžiniškų pasekmių beveik kiekvienam mūsų kasdienio gyvenimo aspektui. Pandemijos protrūkio metu šalims buvo ypač svarbu išlaikyti ekonominį saugumą, siekiant tolesnės ekonomikos plėtros.

Remiantis praėjusių metų rezultatais galima teigti, kad Europos Sąjungos kontekste Lietuva būtų mažiausiai pandemijos paveikta šalis. Nors 2021m. pradžioje buvo daug neapibrėžtumo dėl tolimesnės pandemijos eigos bei jos valdymo, tačiau ekonomika augo sparčiau nei buvo tikėtasi. Didėjo pramonės produkcijos apimtis, augo mažmeninė ir tarptautinė prekyba. Nepaisant pandemijos augimą išlaikė apdirbamosios gamybos bei didmeninės ir mažmeninės prekybos sektoriai. Labiausiai pandemijos įtaka buvo juntama paslaugų sektoriuje – apgyvendinimo ir maitinimo paslaugų, meninėje, pramoginėje ir poilsio organizavimo, aptarnavimo bei administracinėje veiklose.

Pandemija turėjo nemažai įtakos ir veikiančių įmonių veiklos stabilumui. Karantino paskelbimas, organizacijų veiklų sustabdymas ar apribojimas įtakojo įmonių pajamas, pelną, veiklos tęstinumą. Lietuvoje 2021m., nors šalis buvo veikiamą pandemijos, veikė 816 ūkio subjektais daugiau (neįskaitant fizinių asmenų, užsiimančių ekonomine veikla), nei 2020m. Pagal ūkio sektorius, daugiausia ūkio subjektų veikė paslaugų sferose, pramonėje, statyboje ir žemės ūkyje. Didžioji dalis veikiančių ūkio subjektų buvo mažos įmonės, kuriose dirbo 0-4 ar 5-9 darbuotojai. Nuo 2020m. iki 2021m., per metus veikiančių įmonių skaičius paaugo 0,8 proc., kai tuo tarpu 2019m. – 2020m. laikotarpiu šis skaičius siekė 2,18 proc. Didžiausią teigiamą įtaką pastarųjų metų augimui darė smulkiausių įmonių, turinčių 0-4 darbuotojus skaičiaus augimas, tuo tarpu neigiamą poveikį darė stipriai sumažėjęs 5-9 darbuotojus turinčių įmonių skaičius. COVID – 19 pandemijos akivaizdoje juridinių asmenų steigimas toliau augo. Per 2020 m. smulkių ir vidutinių įmonių (nefinansinių įmonių be fizinių asmenų, vykdančių individualią veiklą) skaičius padidėjo 6 proc. Per tą patį laikotarpį buvo išregistruota gerokai mažiau - 27 proc. įmonių.

COVID-19 krizė informuoja investuotojus, politikos formuotojus ir plačiąją visuomenę, kad stichinės nelaimės gali padaryti iki tol neregėto masto ekonominę žalą. Kitaip nei įvykiai, tokie kaip pasaulinis branduolinis karas, kurio neįmanoma išgyventi ir dėl to nereikia didelių išlaidų, arba tokie įvykiai kaip klimato kaita, kurie vyksta daug lėčiau, arba vietinės nelaimės, sukeliančios šalutinį poveikį ir rinkos reakcijas, COVID-19 pandemija sukelia tiesioginį poveikį ekonominiam saugumui.

Siekiant užtikrinti įmonių ekonominį saugumą, didelį dėmesį reikėtų skirti įmonės veiklos efektyvumo gerinimui, o tai lemia naujų darbo vietų kūrimą, geresnį užimtumo lygį, geresnį gyventojų pragyvenimo lygį, šalies ekonomikos augimą, geresnę visuomenės apsaugą nuo socialinių ir ekonominių grėsmių.

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THE IMPACT OF COVID 19 ON THE ECONOMIC SECURITY OF LITHUANIAN ENTERPRISES

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Summary

The COVID 19 pandemic has brought a lot of changes to each country's economy. The ever-increasing number of cases, the lack of equipment and supplies, and the disruption of production and services have led to strong measures to stop the spread of the virus. The pandemic affected not only the health system but also the stability, social and economic life of the regions. It has also had political and security consequences, disrupting education, mobility, tourism, and leisure. New patterns of consumer behavior and consumption have emerged. Unprecedentedly low or staggeringly high demand, depending on the category, distorted supply chains, changed jobs, social isolation, all these changes, including bans and restrictions, have been the driving forces for companies to rethink their organizations' strategies. The main purpose of this article is to analyze how the COVID 19 pandemic affected the economic security of Lithuanian companies, which are the main driving force of the economy. What impact did the pandemic have on the Lithuanian economy and the business dynamics

of organizations? The importance and role of economic security in the activities of each state. The article also discusses key measures to mitigate the effects of the pandemic. Using research methods, scientific literature and statistical data, a comparative analysis was performed to assess the impact of the COVID 19 pandemic on Lithuanian organizations. Based on the results of the study, it can be stated that in the context of the European Union, Lithuania would be the country least affected by the pandemic. Although in 2021. There was a lot of uncertainty at the beginning of the year about the future course of the pandemic and its management, but the economy grew faster than expected. The volume of industrial production increased, retail and international trade grew. Despite the pandemic, growth was maintained in the manufacturing, wholesale, and retail sectors. The impact of the pandemic was felt most in the services sector - accommodation and food service activities, arts, entertainment and recreation, service and administrative activities. The pandemic also had a significant impact on the stability of existing businesses. The announcement of quarantine, suspension or restriction of the activities of organizations affected the income, profit and business continuity of companies. In Lithuania in 2021, although the country was affected by a pandemic, there were 816 more economic entities (excluding natural persons engaged in economic activities) than in 2020. By economic sector, most entities were active in the service sector, industry, construction, and agriculture. Most of the operating entities were small enterprises with 0-4 or 5-9 employees. From 2020 By 2021, the number of enterprises operating during the year increased by 0.8%, while in 2019. - 2020 During the period, this figure was 2.18 percent. The growth of the smallest enterprises with 0-4 employees had the largest positive impact on the growth of the last year, while the number of enterprises with 5-9 employees had a negative impact. In the face of the COVID - 19 pandemic, the establishment of legal entities continued to grow. During 2020 The number of small and medium-sized enterprises (non-financial enterprises without natural persons engaged in individual activities) increased by 6%. During the same period, the number of deregistration's was significantly lower - 27 percent. companies. To ensure the economic security of companies, great attention should be paid to improving the efficiency of the company's activities, which leads to the creation of new jobs, better employment, better living standards, economic growth, better protection of society from social and economic threats.

Keywords: *Impact of COVID 19, economic security, impact of pandemic on economic security.*

CONCEPTUAL PRINCIPLES OF ENSURING SOCIETAL SECURITY IN THE CONTEXT OF SOCIAL CHANGE

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Abstract. *In the conditions of social change, new articles of opportunities for societal security appear, according to which new social archetypes are formed, which set the parameters of the innovative model of societal security system, which will not only overcome existing problems and threats, but also will promote the development of tools of prejudice, protection of society from their occurrence. The purpose of the study is to substantiate the theoretical basis of the conceptual foundations of societal security, which will allow the development of new approaches to societal security in order to preserve the livelihood of society. It has been studied that the conceptual foundations of societal security address issues such as identity, social cohesion, inclusion, exclusion and the security dilemma. The research areas of the concept of “societal security” are highlighted: the first studies the subjective construction and protection of identity, the second develops according to objectivist ontologies focused on imminent external threats and the importance of protecting social systems that support life. The methodological contribution is a clear and systematic design of the study to promote transparency, structure and understanding of future research on the conceptual foundations of societal security. New ideas and dimensions for the concepts of societal security in the context of social change are offered. The concept of “societal security”, in contrast to the existing ones, is considered by us as a holistic system of interconnected elements, built on the relationship of social system and environment to prevent negative effects of social risks and reduce hazards and ensure the absence of social threats to human security. state, society and protection of their social interests, values and needs. According to the results of the study, the concept of “societal security” is comprehensive, contains economic, political, social, humanitarian and value aspects, reflects everything that affects life, including the human environment, quality of life, makes society sustainable, capable of development.*

Keywords: *societal security, human security, national security, social policy, threats to social security*

Introduction

Relevance of the study. Modern transformational processes in public life give rise to new theoretical approaches and forms of conceptualization. Investigating the diversity of security, you can not bypass its social component. Social problems are the key systemic foundations of society. In today's conditions there is an increase in challenges and exacerbation of threats to social societal security. Therefore, the problem of societal security is one of the key to modern science.

The social sphere is connected with almost all areas of human life and is a very diverse, uneven object of study. Therefore, we consider it important to delineate the boundaries of societal security and place emphasis on its subject field.

Modern social changes create new opportunities for societal security, which form new social archetypes that set the parameters of the innovative model of the system of societal security. Such a system should not only ensure the overcoming of existing problems and threats, but also, first of

all, promote the development of tools to prevent and protect society from their occurrence. Therefore, it is important to substantiate the theoretical basis of the conceptual foundations of societal security, which will allow the development of new approaches to societal security in order to preserve society.

The research subject is the conceptual principles of ensuring societal security in the context of social change

The objective is of the article is to substantiate the theoretical basis of the conceptual foundations of societal security, which will allow the development of new approaches to societal security in order to preserve the livelihood of society.

Research methods: The study used a set of scientific methods (empirical and theoretical), which allowed to achieve this goal and confirm the original hypotheses. Among the empirical methods used content analysis of normative and other sources, comparison, description, generalization and classification, elements of the modeling method for analysis of previous research on this issue, as well as to identify and illustrate the subject. In order to consider the system as a whole, as well as its components, the methods of theoretical research were used - analysis and synthesis, system method. In order to comprehend the information obtained, conceptualization was used in the study to structure scientific knowledge about societal security and develop new concepts. The comparison made it possible to establish the similarities and differences of knowledge about the societal security system, as well as to identify quantitative and qualitative characteristics of the object under study, to determine its content. The method of analysis allowed to divide the object of study into its constituent elements and parts in order to study its structure, individual features, properties, internal connections, relationships, ie to determine the essence of the studied phenomena and societal security processes. The research also used the methods of induction and deduction - during the study of the concept of “societal security”, which is reflected in the conclusions and recommendations of the study.

Main content

Scientists use different ontological and epistemological positions to study societal security. Therefore, we used the following areas of research on the concept of “societal security”: the first studies the subjective construction and protection of identity, the second develops according to objectivist ontologies focused on imminent external threats and the importance of protecting social systems that support life.

In order to define the conceptual foundations of societal security, it is important to find answers to two questions: the first “what is the object of societal security?” and the second “for whom is societal security?”.

A social system is an organizational dynamic system created by people to achieve certain goals. Such systems are closely linked to their environment. They seem to grow out of it, function in it, and the results of this functioning, in turn, change the environment. Therefore, in the process of development of organizational systems, the structuring and development of the environment take place at the same time by introducing a certain order into it. Such an order in this case can be considered as a defining prerequisite for ensuring the stability of certain oriented elements of the environment, one of the elements of which is the social system (Abramov B. et al., 2016, p. 65).

Table 1. The main elements of the concept of "societal security"

Source: Koval, O. (2016) supplemented by the author

Basic concept elements "societal security"	Positive essence (subject)		<ul style="list-style-type: none"> • state (level) of protection; • security; • ability of public institutions (to resist, neutralize); • absence (threats, dangers); • set of conditions (measures); • prevention; • the social ideal of a stable society; • certain characteristics of the system and its main components; • timely resolution of emerging conflict
	Object of influence	Negative essence	<ul style="list-style-type: none"> • threats; • negative impact (consequences); • danger; • external factors; • challenges; • risks
		Orientation	<ul style="list-style-type: none"> • interests (social, vital); • social values; • social needs; • life, health, well-being, education, cultural
	Beneficiary		<ul style="list-style-type: none"> • society (society, population); • social actors (groups); • person (individual, citizen, person)
Subject of influence	The essence of influence		<ul style="list-style-type: none"> • neutralization; • collateral; • protection; • provision
	Subject of influence	state non-state	<ul style="list-style-type: none"> • society; • the state; • public institution
	Auxiliary sign		<ul style="list-style-type: none"> • the result of the implementation of social policy; • achieving social harmony and integrity in society; • guaranteeing the possibility of meeting basic needs; • preservation of social perspective; • preservation of the viability of man, society, state, etc.
	Principles of formation and provision of societal security		
	Goal		harmonious and comprehensive human development; ensuring the satisfaction of growing needs, achieving a decent standard of living
	mechanisms and instruments of state policy to ensure societal security		
	Result		achieved a decent standard of living

In today's conditions it is important to recognize the fact that the real content of the general understanding of the concept of societal security and bring it to practical implementation is possible

only if comprehensive consideration of all components and elements of societal security (see Table 1).

The complex transformation of the concept of “security” in the modern world has resulted in the replenishment of security discourse with the concept of “human security”, which means shifting the emphasis from the state to individuals and communities. The state-centric notion of “national security” is being changed and supplemented with a more humanistic, micro-oriented notion of “human security”.

Due to the globalization, the line between the security of society and the state is gradually blurring. Threats that have traditionally been linked to societal security and the competence of public authorities tend to have increasingly subnational roots, consequences and solutions.

Comparing the concepts of traditional, societal, national security and human security, we can see fundamental differences. The scale and nature of threats in the concept of human security, in contrast to traditional security, includes not only the threat to the physical existence of the state, but also threats to other, relatively new types of security: economic, environmental, socio-cultural and so on. The main subject of societal security in its traditional perception is the state, while the concept of human security involves the effective involvement of other actors: non-governmental organizations, international organizations, local communities and more.

The difference between the societal security system and other subsystems is that it is always a combination of material and ideal, objective and subjective, spontaneous and planned, random and natural. This is due to the fact that in society, in contrast to nature, there are people endowed with consciousness and will, their actions are always purposeful (Ilyash O., 2011, p. 27).

Summarizing the approaches of scientists to the definition of societal security, we can say that it primarily guarantees the protection of society from various threats. Its components generally cover all spheres of human life as a member of society - social, economic and natural-ecological, which forms the general field of social activity. That is, societal security in its components as a whole reflects the structure of sustainable development and in this context determines the consistency of factors that affect the relevant processes (Kutsenko V. et al., 2019, p. 14).

Societal security has become a part of the political, military, and economic security agenda. Securitization has added to societal tensions in almost every area of everyday life, when ethnic groups in the country are threatened. One of the ideas common in all studies on societal security is related to the coherence of society. The ability of any country to protect itself from external provocations and internal instability largely depends on the coherence of its society and its ability to reduce potential risks and vulnerabilities hidden in social structures (Ozoliņa, Ž. 2016).

It is almost impossible to neglect relevant factors for societal security issues in the future, such as resilience, societal resilience, securitability (building individual and group security strategies based on central human capabilities), inclusion–exclusion, and, most importantly, the societal security dilemma (Ozoliņa Ž., 2016).

Traditional concepts need to be revised in order to form a comprehensive and evidence-based public policy, which could replace failed or stagnant social integration strategies (Ozoliņa Ž., 2016).

The formation of a new, modern vision of societal security is difficult, because for many years security in our country was perceived solely as its protection from external threats of political and military orientation. Societal security, despite the severity of social problems and the danger

of their consequences, has not found adequate development in the system of protection of national security of Ukraine. In the circle of priority national interests determined by law, social interests are not sufficiently systematized, they are not related to economic and political interests (Gnybidenko I. et al., 2006, p. 8, 16). However, the post-Copenhagen school development illustrated that societal security can become a referent object in its own right. Eventually, as noted by Vitkus in this volume, societal security has the potential to become “a dominant security policy referent object of top priority, to which all the other sectors, including national security, are subordinated”(Aaltola M. et al., 2018).

Conceptual principles of societal security in the context of social change address the following issues (see Figure 1).

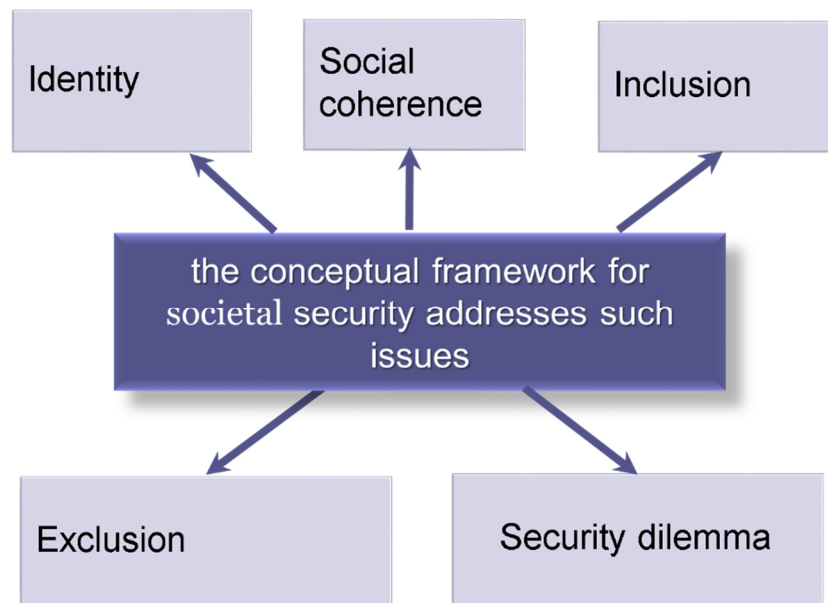


Figure 1. Main directions of societal security in the conditions of social changes
Source: Created by the author

Researchers at the Copenhagen School have shown that societal security has become synonymous with “identity security”, which is achieved by preserving the key features of society (Rhinard M., 2020). The concept of societal security of this school determines mainly the resistance to non-military threats, the subject is not the state (national security), not the person in it (human security, security), but society (Hough R., 2004).

In O. Weaver's updated concept of B. Buzan's theory, it is stated that the societal security of society concerns only threats to the identity of society (if a society loses its identity, it will not survive as a society) (Waever et al.1993, p. 23). “Social security refers to the ability of society to maintain its basic character under changing conditions and possible or real threats”. This security is under threat when “society perceives the threat in terms of identity” (Waver et al. 1993, p, 23). I. Chiufu defined societal security as dealing mainly with the preservation and affirmation of the

society's identity and cohesion of society's members defining societal security (Aaltola M. et al., 2018).

Societal security is provided in the process of transformation of public, in particular social relations. The main components of social relations are welfare, income, wages, health, employment, demographic situation, socio-class differentiation, social protection, pensions and more. It depends on socio-economic development, the availability of human, material and natural resources. Without developed social relations there can be no stable societal security of man, society, and the latter largely determines the development, maturity of the processes of social development.

The object of protection is the societal security of man and citizen, society and the state. Human security is ensured through the enshrinement of social rights in the law and the creation of an effective mechanism for guaranteeing these rights. The security of individual social groups and society as a whole is shaped by the state apparatus and civil society institutions by creating favorable conditions for their existence and development. State security presupposes the successful implementation of the functions of the welfare state by the state apparatus and the prevention of social problems that lead to the destabilization of the existing system (Stashkiv B., 2007, p. 34).

The state must ensure the combination of the interests of the individual, the nation and even humanity based on the fact that a priori there is a system of universal values. Public administration in the field of societal security is characterized by patterns, features and characteristics of intersectoral and functional management, as a continuous process of subject-object relations, in the process of which is the performance of functions and tasks aimed at realizing national interests.

The main purpose of these managerial influences is forecasting, timely detection, neutralization of threats to sustainable development of man, society and the state (especially their vital interests) and prevention.

Ensuring societal security should contribute to the clear functioning of all components and elements of the country's security system, as well as the implementation of appropriate state policy in this area. The latter is ensured through purposeful activities of state authorities, local governments and civil society institutions to prevent, identify and eliminate threats to the security of individuals, society and the state and counteract them as a mandatory and indispensable condition for protecting national interests of Ukraine.

In the system of effective public administration, societal security of society should be an important priority and provided with appropriate implementation mechanisms (legal, institutional, economic, financial, organizational, managerial, informational, personnel, etc.).

It is important to create conditions for institutional support for the practical implementation of societal security, constructive and coordinated actions of institutions of all branches of government to eliminate (minimize) social threats in the formation and implementation of state and regional social policy. Societal security should be ensured in such a way that it covers all those categories of actions intended to hinder unwanted events or conditions and to reduce the consequences should these occur (Burgess J. et al., 2007).

It is necessary to promote the formation of constructive solidarity and mutually responsible relations between the main social actors - citizens, society, state, government, business. Joint and several responsibility should become the main basis of public relations in Ukraine to ensure social security.

Conclusions

Given the above, new ideas and dimensions for the concepts of societal security in the context of social change are proposed. It is substantiated that the content of societal security policy largely depends on the choice of conceptual approach to its provision.

The concept of “societal security”, in contrast to the existing ones, is considered by us as a holistic system of interconnected elements, built on the relationship of social system and environment to prevent negative effects of social risks and reduce hazards and ensure the absence of social threats to human security. state, society and protection of their social interests, values and needs. According to the results of the study, the concept of “societal security” is comprehensive, contains economic, political, social, humanitarian and value aspects, reflects everything that affects life, including the human environment, quality of life, makes society sustainable, capable of development.

The conceptual foundations of societal security address issues such as identity, social cohesion, inclusion, exclusion and the security dilemma.

Societal security as an object of protection is a specific phenomenon, primarily associated with threats of systemic destructive effects of external or internal origin, as well as natural or man-made disasters.

The modern system of societal security of Ukraine should become not just a set of interacting institutional elements, but also a process of formation of the legal field, values and ideological principles of state building, ideological and political strategy of national interests and relevant political decisions. At the same time, a necessary prerequisite for the proper validity and practical implementation of the chosen conceptual approach should be a clear delineation of political, administrative and operational functions of public administration in this area.

Developed human potential, decent work, high quality of working life, social responsibility, social justice, public control, etc. are the main conditions and opportunities for societal security. Achieving this will provide conditions for social development of man, society and the state, the foundation of state independence, achieving a decent standard and quality of life and overcoming poverty, protecting the social interests of the individual, society, state from internal and external threats.

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CIVILINĖS SAUGOS KONCEPCIJOS ĮGYVENDINIMAS VALDANT, NAUDOJANT IR DISPONUOJANT VALSTYBĖS IR SAVIVALDYBIŲ TURTU

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Anotacija Šiame straipsnyje atskleidžiama, kaip yra valdomas valstybei priklausantis turtas, kurio paskirtis – užtikrinti visuomenės saugumą, naudojant slėptuves. Pristatomas pasikeitęs teisinis reguliavimas dėl gyventojų apsaugos ekstremalių situacijų atvejais ir karo metu. Straipsnyje analizuojama, ar kolektyviniai apsaugos statiniai gali būti prilyginti slėptuvei, kaip specialiosios paskirties statiniui. Pastebima, kad, esant karui ar kitai ekstremaliai situacijai, valstybės polinė valia yra orientuota į galimus gyventojų evakavimo maršrutus, o jei reikia, iki kol bus vykdoma evakuacija, suteikti laikiną apsaugą kolektyviniuose apsaugos statiniuose. Pagal aktualų teisinį reguliavimą nėra numatyta, kokia minimali įranga turi būti laikoma kolektyvinės apsaugos statiniuose. Teisės aktuose taip pat nėra imperatyviai nurodyti specifiniai statybos reikalavimai statiniams ir patalpoms, kurie parenkami, siekiant ekstremaliuose situacijose ar karo metu gyventojus apsaugoti nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių. Straipsnyje atskleidžiama, kad valstybė neturi teisinio mechanizmo, užtikrinančio veiksmingą slėptuvių valdymą. Pastebima, kad aukščiausių valstybės politikų nevienodas požiūris į gyventojų saugumą karo Ukrainoje kontekste, mažina subjektyvų gyventojų saugumo jausmą. Straipsnyje tiriama, koks yra santykis tarp valstybės pareigos pasirūpinti visuomenės saugumu ir gyventojų pareigos elgtis apdairiai ir rūpestingai.

Pagrindinės sąvokos: slėptuvė, kolektyvinės apsaugos statinys, ekstremali situacija, saugumas, valstybės turto valdymas, naudojimas ir disponavimas.

Įvadas

Dar šaltojo karo laikotarpiu Lietuvoje buvo įrengta slėptuvių, skirtų gyventojams pasislėpti ekstremalių situacijų arba karo atveju. Tačiau iki karo Ukrainoje visuomenei tokių patalpų likimas nebuvo aktualus. Tad pastarųjų įvykių Ukrainoje kontekste kyla klausimas - kuris iš mūsų galėtų pasakyti, kurioje vietoje mieste, kuriame jau daugelį metų gyvena, yra slėptuvė, galinti apsaugoti nuo pavojaus karo metu, arba kolektyvinės apsaugos statiniai, skirti gyventojų apsaugai nuo žalingo aplinkos poveikio¹.

Lietuvos Respublikos civilinės saugos įstatymo (toliau – Civilinės saugos įstatymas) 24 straipsnio 1 dalyje numatytos dvi sąvokos, kuriomis apibrėžiami statiniai ir patalpos, skirti

¹ Vidaus reikalų ministrė Agnė Bilotaitė Vyriausybėje 2022 m. kovo 1 d. surengtoje spaudos konferencijoje nurodė, kad Lietuvoje šiuo metu yra pakankamas slėptuvių, galinčių apsaugoti gyventojus karo atveju, skaičius. Tačiau visuomenės reakcija į tokio turinio viešą pranešimą buvo neigiama (<https://m.kauno.diena.lt/naujienos/lietuva/salies-pulsas/karo-gresmes-bilotaitė-tikina-kad-lietuvoje-yra-pakankamai-sleptuviu-1066303>).

fizinei asmenų apsaugai: slėptuvė ir kolektyvinės apsaugos statinys. Kolektyvinės apsaugos statiniai yra specialiai pažymėti statiniai ar patalpos, kuriuos ekstremaliųjų situacijų ar karo metu galima pritaikyti gyventojų kolektyvinei apsaugai nuo atsiradusių gyvybei ar sveikatai pavojingų veiksmų. Slėptuvės – specialiosios paskirties statiniai arba specialiai įrengtos patalpos, kad ekstremaliųjų situacijų metu valstybės tarnautojai ir darbuotojai, vykdamys valstybės ir savivaldybių institucijoms ir įstaigoms nustatytus uždavinius ir funkcijas, galėtų apsisaugoti nuo gyventojų gyvybei ar sveikatai gresiančių pavojingų veiksmų (Lietuvos Respublikos civilinės saugos įstatymas (Žin., 1998, Nr. 115-3230; 2009, Nr. 159-7207).

Šio straipsnio tikslas – atskleisti, kiek yra veiksmingos visuomenės saugumui užtikrinti skirtos teisinės priemonės ekstremaliųjų situacijų ar karo metu. Siekiant šio tikslo nagrinėjamos problematikos aspektu pristatomi teisinio reguliavimo ypatumai dėl slėptuvės, kaip nekilnojamojo turto objekto, teisinio režimo pakeitimo. Bendrais bruožais taip pat pristatomi pagrindiniai sprendimai dėl valstybės ir savivaldybių turto valdymo, naudojimo ir disponavimo, turintys poveikį visuomenės saugumo užtikrinimui. Vertinama, ar tinkamai įstatymų leidėjas reaguoja į teisinę tikrovę, kai reikia naujo pozityviosios teisėkūros įsikišimo, reguliuojant nepaprastosios padėties atvejus. Ieškoma atsakymų, ar valstybė turi absoliučią pareigą užtikrinti gyventojų saugumą ekstremaliųjų situacijų ar karo metu.

Lietuvos teisės moksle buvo mažai nagrinėti klausimai dėl valstybės pareigos užtikrinti gyventojų saugumą ekstremaliųjų situacijų ar karo metu. Gyventojų saugumo padėtį iki šiol Lietuvoje daugiausia analizavo ne teisininkai, o vadybos ir viešojo administravimo mokslų specialistai. Birutė Pitrenaitė (Pitrenaitė, 2006, p. 90-101), tirdama valdymo proceso etapus, rašė apie nepaprastą ir karo padėtį. Straipsnyje naudojamosi Vaičiūčio Vaidoto A. mokslinėmis išvargomis apie specialiuosius teisinius režimus Lietuvos teisinėje sistemoje, Pitrenaitės B., Astrausko A., Mikulskienė B. atlikta studija apie saugios savivaldybės organizacinės valdymo struktūros kūrimą, Tumulavičiaus V. mokslo studija apie viešojo saugumo užtikrinimo teisinius aspektus Lietuvoje ir kt.

Tyrimo metodai. Straipsnyje taikomi loginės, sisteminės analizės, lyginamasis, analitinis kritinis, istorinis empirinis mokslinio pažinimo metodai. Tyrime pasitelktas lyginamasis ir istorinis teisės aiškinimo metodas siekiant atskleisti teisinio reguliavimo turinio pokyčius dėl gyventojų saugumo užtikrinimo ekstremaliųjų situacijų arba karo metu. Analizuojant slėptuvių privatizavimo procesą parodomas nekilnojamojų daiktų teisinio režimo pasikeitimas. Straipsnyje kritiškai analizuojamas dabartinis teisinis reglamentavimas dėl gyventojų saugumo užtikrinimo. Nagrinėjama problematika atskleidžiama remiantis teismų praktika, valstybės turto privatizacijos proceso atvejų analize.

Visuomenės saugumas kaip sudedamoji teisės ir teisingumo sampratos dalis

Visuomenės saugumas lyg būtų ir valstybės bendros politikos dalis, tačiau 2022 m. kovo 25 d. Priešgaisrinės apsaugos ir gelbėjimo departamente vykusioje spaudos konferencijoje nuskambėjo žinutė, jog saugumu rūpintis turime kiekvienas². Visuomenėje, žiniasklaidoje, politikų ir teisininkų bendruomenėse gana intensyviai diskutuojama, kokia yra valstybės

² Vidaus reikalų viceministras Vitalij Dmitrijev konferencijoje nurodė, kad „Priešgaisrinės apsaugos ir gelbėjimo departamentas kartu savivaldybėmis atliko skaičiavimus dėl kolektyvinės apsaugos statinių ir inventorizavo šias patalpas. Šalyje yra beveik 2 tūkst. kolektyvinės apsaugos statinių, kilus grėsmei juose galėtų slėptis apie 40 proc. šalies gyventojų, o jų rūsiuose ir cokoliniuose aukštuose – 10 proc. Vidaus reikalų viceministras Vitalij Dmitrijev taip pat pabrėžė, kad šiandien Lietuvoje tokios grėsmės nėra. Ateityje numatoma peržiūrėti kai kuriuos teisės aktus civilinės saugos ir kolektyvinės apsaugos statinių bei krizių valdymo sistemos stiprinimo klausimais“ (<https://www.lt72.lt/?p=13684>).

pareigos pasirūpinti gyventojų saugumu, esant karo grėsmei ar valstybėje susidarius ekstremaliai situacijai, apimtis. Reikia pasakyti, kad karo Ukrainoje situacija, susijusi su kilusios grėsmės visuomenei suvaldymu, iškėlė daug teisės politikos klausimų, kurie skirtingai interpretuojami aukščiausių valstybės politikų.

Galima teigti, kad valstybės politikų nevienodas požiūris į karo Ukrainoje situaciją mažina subjektyvų gyventojų saugumo jausmą. Dėl to tikslinga Vidaus reikalų viceministro Vitalij Dmitrijev viešai išsakytą teiginį, kad Lietuvoje nėra karo grėsmės, patikimumo prasme patikrinti analizuojant Lietuvos Respublikos Prezidento 2022 m. vasario 24 d. dekreto Nr. 1K-872 „Dėl nepaprastosios padėties paskelbimo“ (TAR, 2022-02-24, Nr. 2022-03442) turinį. Minėtame teisės akte nurodyta, kad Prezidentas, atsižvelgdamas į tai, kad Rusijos Federacijos ir Baltarusijos Respublikos teritorijose sutelktos didelio masto Rusijos Federacijos ir jai paklūstančios Baltarusijos Respublikos karinės pajėgos, atsižvelgdamas taip pat į tai, kad tokia situacija sudaro palankias sąlygas Rusijos Federacijos ir Baltarusijos Respublikos valdžios institucijų nurodymu ir (ar) su jų žinia vykdyti hibridines atakas ir bet kokio pobūdžio provokacijas prieš Lietuvos Respubliką, ypač teritorijose prie Lietuvos Respublikos valstybės sienos, atsižvelgdamas ir į tai, kad tokia situacija kelia grėsmę pirmaciliams Lietuvos Respublikos nacionalinio saugumo interesams, be kita ko, susijusiems su patikima valstybės sienos, sudarančios ir Europos Sąjungos išorinės sienos dalį, kontrole ir apsauga, įveda nepaprastąją padėtį visoje Lietuvos Respublikos teritorijoje laikotarpiu nuo 2022 m. vasario 24 d. 13 valandų 00 minučių iki 2022 m. kovo 10 d. 24 valandos 00 minučių. Taigi dekretu konstatuota aplinkybė dėl grėsmės pirmaciliams saugumo interesams ir viešai Vidaus reikalų ministerijos atstovo išsakomas jai prieštaraujantis teiginys, kad Lietuvoje nėra karo grėsmės, gali sukelti didesnio masto visuomenės subjektyvaus saugumo jausmo praradimą. Kita vertus, nepaprastosios padėties paskelbimas tapo priežastimi išanalizuoti, kokios yra numatytos teisinės priemonės, galinčios padėti apsaugoti gyventojus nuo žalingo aplinkos poveikio.

Nepaprastosios padėties įstatymo 3 straipsnio 1 dalyje numatyta, kad nepaprastoji padėtis gali būti įvedama, kai dėl valstybėje susidariusios ekstremalios situacijos ar krizės kyla grėsmė Lietuvos Respublikos konstitucinei santvarkai ar visuomenės rimčiai ir šios grėsmės neįmanoma pašalinti nepanaudojus Konstitucijoje ir šiame Įstatyme nustatytų nepaprastųjų priemonių (Žin., 2002, Nr. 64-2575). Kaip teigia Vainorienė, žmogaus teisių apsaugos, kaip teisinės vertybės, akcentavimas yra vienas iš pagrindinių konstitucinių vertybių apsaugos nepaprastosios padėties metu modelio (toliau – vertybių apsaugos modelis) bruožų (Vainorienė, 2018, p. 149). Vaičaitis nurodo, kad Konstitucija *expressis verbis* numato tik vieną specialųjį (ypatingą) teisinį režimą – nepaprastąją padėtį, tačiau nedraudžiama įstatymų leidėjui numatyti ir kitus specialiuosius teisinius režimus. Vaičaitis pažymi, kad Konstitucijos sisteminė analizė leidžia teigti, kad taikos metu nepaprastoji padėtis yra pats griežčiausias specialusis teisinis režimas, kuris, kaip *ultima ratio*, gali būti įvestas valstybėje, kilus pavojingiausiems kriziniais įvykiams arba realiai grėsmei tokiems įvykiams įvykti (Vaičaitis, 2020, p. 82).

Mokslinėje literatūroje, tiriant nepaprastosios padėties įvedimo atvejus, didžiausias dėmesys yra skiriamas gyventojų teisių ir laisvių apsaugai nuo valstybės savivalės. Pastebėtina, kad lygiai taip pat yra svarbu įvertinti valstybės pozityvios pareigos turinį pagal Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 2 straipsnį, kuris gina vieną pamatinių vertybių demokratinėje visuomenėje – žmogaus teisę į gyvybę. Europos Žmogaus Teisių Teismas, aiškindamas Konvencijos 2 straipsnį, ne kartą pabrėžė, kad valstybė turi imtis atitinkamų priemonių, siekiančių apsaugoti jų jurisdikcijoje esančių asmenų gyvybes. Teismas nurodė, kad šiame kontekste valstybei tenkanti pozityvioji pareiga apima ir būtinybę imtis atitinkamų

priemonių, siekiant užtikrinti žmonių saugumą viešosiose vietose. Taigi konstatuotina, kad valstybė ekstremalios situacijos atveju yra įpareigota užtikrinti gyventojų saugumą.

Kita vertus, šiuo atveju gali kilti pagrįstų abejonių, ar, netgi esant aiškiai įpareigojančiam teisiniam reguliavimui, valstybė būtų pajėgi užtikrinti visų piliečių aprūpinimą kolektyvinės saugos statiniais. Šiuo atveju svarstytinas solidaraus atsakomybių paskirstymo tarp valstybės, verslo ir visuomenės modelis. Jo esmė – valstybės institucijos prisiimtų pareigą adekvačiai įvertinti rizikas ir grėsmes, pagal tai parengti techninius reikalavimus kolektyvinės saugos statiniams bei jų kiekiui, o per mokesčių politiką prisiimtų dalį finansinės naštos. Verslas ir gyventojai, vykdydami viešosios bei privačiosios paskirties statinius, įrengtų patalpas gyvenamosios paskirties statiniuose arba jų priklausiniuose, tinkamas kolektyvinei saugai. Tokiu būdu visuomenė prisidėtų prie savisaugos priemonių kūrimo ir tai darytų koordinuotai per valstybės vykdomą gyventojų civilinės saugos politiką.

Kaip matyti iš viešų Vidaus reikalų ministerijos atstovų pasisakymų, skirtų visuomenei informuoti, terminas „slėptuvė“ bendrai naudojamas apibrėžiant ir kolektyvinės apsaugos statinius. Tačiau tai nėra tikslu, nes kolektyvinės saugos statiniai yra skirti surinkti evakuojamuosius gyventojus arba juos laikinai apgyvendinti, esant pavojui. Pastebėtina, kad vienas svarbiausių vaidmenų, paskelbus ekstremaliąją situaciją, suteikiamas Priešgaisrinės apsaugos ir gelbėjimo departamentui, kuris, esant oro pavojui per tiesioginį priešo užpuolimą, siūlo slėptis rūsiuose ar kitose priedangose. Interaktyvus kolektyvinės apsaugos statinių žemėlapis pateikiamas Priešgaisrinės apsaugos ir gelbėjimo departamento valdomoje interneto svetainėje lt72.lt ŽEMĖLAPIS³. Atkreiptinas dėmesys, kad siūlymas slėptis rūsiuose, cokoliniuose aukštuose, požeminėse pėsčiųjų perėjose ir panašiai, nėra pakankamas, nes, pirma, reikia turėti rūšį, priedangą, o, antra, šios patalpos turėtų turėti bent minimalius reikalavimus, tai yra kapitalinę konstrukciją, oro padavimo sistemą, vandens tiekimą ir kt.

Slėptuvės kaip viešosios nuosavybės teisės objektai

Slėptuvės, kaip ir kiekvieno nekilnojamojo turto objekto, teisinį režimą reguliuoja įstatymai. Nekilnojamųjų daiktų teisinis režimas dėl jų svarbos turi ypatumų. Nekilnojamųjų daiktų registracija viešame registre (Lietuvos Respublikos nekilnojamojo turto registro įstatymo 1 straipsnis), reikalavimas notarine tvarka sudaryti sandorius dėl nekilnojamųjų daiktų ir juos registruoti (Lietuvos Respublikos civilinis kodeksas (toliau – CK) 1.74 straipsnio 1 dalies 1 punktas), turi užtikrinti galimybę apskaityti turta, kontroliuoti sudaromus sandorius (viešojo intereso apsauga). Taigi Lietuvoje iš Nekilnojamojo turto registro⁴ mes galime bet kada gauti duomenis, kiek ir kokios būklės (Nekilnojamojo turto registre žymimas fizinio nusidėvėjimo procentas) yra patalpų, kurios turi slėptuvės paskirtį.

³ LT72 yra Lietuvos pasirengimo ekstremalioms situacijoms interneto svetainė. Ji skirta gyventojų švietimui. Svetainėje pateikti patarimai, kaip elgtis ne tik kilus gamtinės, techninės ar socialinės kilmės pavojams, bet joje yra ir informacija, kaip elgtis esant oro pavojui (<https://www.lt72.lt/>). Svetainėje nurodyta, jog „Oro pavojus“ skelbiamas visiems gyventojams, kai „kyla tiesioginė priešo užpuolimo grėsmė. Išpėjamas balsu skelbiamas signalas „Oro pavojus“ perduodamas Lietuvos Respublikos kariuomenės vadovybės sprendimu gresiant oro antpuoliui. Oro pavojus. Oro pavojus. Oro pavojus. Gresia oro antpuolis. Gyventojai, slėpkitės rūsiuose ar kitose priedangose, įsijunkite Lietuvos radiją ar televiziją, laukite nurodymų“.

⁴ Lietuvos Respublikos nekilnojamojo turto registro įstatymo 2 straipsnyje numatyta, kad Nekilnojamojo turto registras steigiamas nekilnojamesiems daiktams, nuosavybės bei kitoms daiktinėms teisėms į šiuos daiktus, šių teisių suvaržymams, įstatymų nustatytiems juridiniams faktams registruoti, oficialiai informacijai apie registre sukauptus duomenis teikti.

Valstybei ir savivaldybėms perduotas turtas yra būtinas gyvybiškai reikšmingoms šalies funkcijoms vykdyti: valstybei aprūpinti kuru, vandeniu, kai kuriomis žaliavų rūšimis, pašto, telefono radijo ir kitų komunikacijų rūšių paslaugoms, taip pat vystyti automobilių kelius, geležinkelių, oro ir vandens transportą, plėtoti mažai pelningą socialinę – ekonominę infrastruktūrą (Baranauskas, Laurinavičius, Pakaniškis, Vasarienė, 2000, p. 140). Valstybė ir savivaldybės taip pat valdo patalpas, skirtas gyventojus apsaugoti nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių. Tokių patalpų poreikį šalyje nustato Lietuvos Respublikos Vyriausybė (toliau – Vyriausybė).

Siekiant atskleisti, kaip kito valstybės politikos įgyvendinimas dėl gyventojų apsaugos, tikslinga ištirti šios srities teisinį reguliavimą istoriniu metodu. Lietuvos Respublikos Vyriausybės 1992 m. birželio 5 d. nutarimo Nr. 430 „Dėl kai kurių priemonių gyventojams apsaugoti ekstremalių situacijų atvejais“ 1.1 papunktyje buvo nutarta iki 1992 m. liepos 1 dienos inventorizuoti visas turimas kolektyvinės apsaugos patalpas (slėptuves su visa įranga), taip pat sukauptas individualios apsaugos priemonės, radiacinės ir cheminės žvalgybos bei dozimetrinės kontrolės prietaisus (Žin., 1992, Nr. 22-661). Atsižvelgiant į tai, kad šalyje buvo prasidėjęs valstybės turto privatizacijos procesas, to paties Vyriausybės nutarimo Nr. 430 2.2. papunktyje buvo numatyta, kad kolektyvinės ir individualios apsaugos priemonės, kurios, privatizuojant objektus, atiteko steigiamoms įmonėms, turi būti naudojamos šių įmonių darbuotojų arba, jeigu tai numatyta 1.2 punkte nurodytuose planuose, ir kitų gyventojų apsaugai. Pastebėtina, kad, siekiant užtikrinti gyventojų saugumą, nurodyta, jog miestų, rajonų valdybos gali parduoti Lietuvos Respublikos įmonėms, įstaigoms ir organizacijoms, taip pat Lietuvos Respublikos gyventojams saugomas rezerve šių valdybų balanse esančias individualios apsaugos priemonės (bet ne daugiau kaip 20 procentų bendro jų kiekio), jeigu už gautas lėšas bus įsigyjamos naujos individualios apsaugos priemonės (Vyriausybės 1992 m. birželio 5 d. nutarimo Nr. 430 2.3 papunktis). Vėlesni šio teisės akto pakeitimai vyko orientuojantis į gyventojų apsaugos reikalavimą, tačiau suteikta teisė kolektyvinės apsaugos patalpas (slėptuves) naudoti komercinei–ūkinei veiklai, šias patalpas rekonstruoti, keisti jų inžinerinę įrangą, taip pat individualios apsaugos priemonės naudoti ne pagal paskirtį arba parduoti gavus Priešgaisrinės apsaugos ir gelbėjimo departamento prie Vidaus reikalų ministerijos leidimą (Lietuvos Respublikos Vyriausybės 2005 m. spalio 29 d. nutarimas Nr. 1158 „Dėl Lietuvos Respublikos Vyriausybės 1992 m. birželio 5 d. nutarimo Nr. 430 „Dėl kai kurių priemonių gyventojams apsaugoti ekstremalių situacijų atvejais“ pakeitimo“ (Žin., 2005, Nr. 131-4707).

Didesnis požiūris į gyventojų apsaugą ekstremalių situacijų atvejais ir karo metu pasikeitimas įvyko, kai buvo priimtas Vyriausybės 2010 m. rugsėjo 22 d. nutarimas Nr. 1368 „Dėl slėptuvių poreikio nustatymo“. Minėto Vyriausybės 2010 m. rugsėjo 22 d. nutarimo Nr. 1368 1.1 punkte buvo numatyta, kad slėptuvės įrengiamos siekiant apsaugoti nuo ekstremaliųjų situacijų ar karo metu atsiradusių gyvybei ar sveikatai pavojingų veiksnių valstybės tarnautojus ir darbuotojus (Žin., 2010, Nr. 116-5928), kurie ekstremaliųjų situacijų atvejais užtikrina valstybės ir savivaldybių veiklą, bendrojo pagalbos centro nenutrūkstamą veiklą. Tuo tikslu slėptuvės ekstremaliųjų situacijų valdymui turėjo būti įrengtos visose 60 savivaldybių. Šis Vyriausybės nutarimas priimtas įgyvendinant Civilinės saugos įstatymo 24 straipsnio 1 dalį (Žin., 1998, Nr. 115-3230; 2009, Nr. 159-7207).

Pastebėtina tai, kad vietoje to, jog būtų siekiama įgyvendinti galiojusį reikalavimą užtikrinti slėptuvių įrengimą ar įrengtų slėptuvių naudojimą pagal paskirtį, 2018 m. vasario 3 d. Vyriausybė pakeitė ankstesnę nuostatą dėl slėptuvių poreikio ir nustatė, kad slėptuvė turi būti įrengta tik Valstybės ekstremaliųjų situacijų operacijų centro veiklai užtikrinti (Lietuvos

Respublikos Vyriausybės 2010 m. rugsėjo 22 d. nutarimas Nr. 1368 „Dėl slėptuvių poreikio nustatymo“ (TAR, 2018-02-02, Nr. 2018-01681). Nurodyto pakeisto teisinio reguliavimo pasekmė – 9 savivaldybėse yra visiškai įrengtos slėptuvės⁵, o naujai slėptuvės įrengiamos tik tuo atveju, jei savivaldybė patenka: a) į pavojingo objekto galimo pavojaus zoną, b) Ignalinos atominės elektrinės, kurios eksploatavimo nutraukimas vykdomas, zoną, c) 100 km nuo Baltarusijos Respublikoje statomos (eksploatuojamos) atominės elektrinės zoną. Kitais atvejais tik nuo savivaldybės administracijos direktoriaus sprendimo priklauso, ar bus įrengta slėptuvė.

Plačiausia prasme saugumas suprantamas kaip vienas esminių žmogaus poreikių (Astrauskas, Mikulskienė, Pitrėnaitė, 2011, p. 643). Objektivus saugumas reiškia realią saugumo būklę (Tumalavičius, 2017, p. 28). Tačiau teisės aktuose nebėra numatytas slėptuvių įrengimo atvejis – siekis apsaugoti gyventojus karo metu nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių. Liko tik laikinam gyventojų prieglobsčiui suteikti skirti kolektyviniai apsaugos statiniai.

Kolektyviniai apsaugos statiniai negali būti prilyginti slėptuvei, kaip specialiosios paskirties statiniui. Slėptuvei taikomi kiti projektavimo ir projekto ekspertizės reikalavimai (Lietuvos Respublikos aplinkos ministro 2016 m. spalio 27 d. įsakymas Nr. D1-713 „Dėl statybos techninio reglamento STR 1.01.03:2017 „Statinių klasifikavimas“ patvirtinimo“ (TAR, 2016-11-21, Nr. 2016-27168). Priešgaisrinės apsaugos ir gelbėjimo departamento prie Vidaus reikalų ministerijos direktoriaus 2011 m. vasario 8 d. įsakymo Nr. 1-52 „Dėl Slėptuvių parinkimo ir įrengimo reikalavimų aprašo patvirtinimo“ (Žin., 2011, Nr. 18-909) 7 punkte nurodyti reikalavimai slėptuvei: 1) pastatas, kuriame yra parinktos patalpos, turi atitikti statybos techninio reglamento STR 2.01.01(1):2005 „Esminis statinio reikalavimas „Mechaninis atsparumas ir pastovumas“, patvirtinto Lietuvos Respublikos aplinkos ministro 2005 m. rugsėjo 21 d. įsakymu Nr. D1-455⁶), reikalavimus, pirmenybė teikiama mūriniuose, monolitiniuose statiniuose esančioms patalpoms su gelžbetoninėmis konstrukcijomis, rūsiams, pusrūsiams, cokoliniams aukštams, eksploatuojamoms slėptuvėms, statinio patalpoms, kurias prireikus būtų galima greitai užsandarinti, 2) parinktos patalpos turi atitikti gaisrinę saugą, visuomenės sveikatos saugą, gyventojų apsaugą įvykus radiacinei ar branduolinei avarijai, aplinkos apsaugą, apsaugą nuo triukšmo, energijos taupymą, šilumos išsaugojimą, darbuotojų saugą ir sveikatą darbe nustatančių teisės aktų reikalavimus, 3) parinktose patalpose turi būti užtikrintas ryšys, nenutrūkstamas elektros energijos ir vandens tiekimas, 4) patalpų parametrai (temperatūra, natūralus ir dirbtinis apšvietimas, triukšmo lygis), evakuavimo(s) keliai ir evakuaciniai išėjimai turi atitikti teisės aktuose nustatytus reikalavimus.

Kolektyvinės apsaugos statiniai nėra įtraukti į Visuomenei svarbių statinių (jų dalių) sąrašą⁷. Be kita ko, iki Vyriausybės 2010 m. rugsėjo 22 d. nutarimo Nr. 1368 „Dėl slėptuvių poreikio nustatymo“ priėmimo, teisės akte buvo numatyta, kad kolektyvinės apsaugos patalpos yra slėptuvė su visa įranga. Šiuo metu galiojantis Kolektyvinės apsaugos statinių poreikio

⁵ Civilinės saugos mokymo centro tinklapyje nurodyta, kad iki 2018 metų vasario 3 d. Lietuvoje iš 60 savivaldybių tik 9 savivaldybės turėjo gerai įrengtas slėptuves ir 35 – turėjo slėptuves, iš dalies atitinkančias nustatytiems reikalavimams (<https://civsauga.lt/ekstremaliuju-situaciju-valdymas/sleptuves/>).

⁶ STR 2.01.01(1):2005 „Esminis statinio reikalavimas „Mechaninis atsparumas ir pastovumas“, patvirtinto Lietuvos Respublikos aplinkos ministro 2005 m. rugsėjo 21 d. įsakymu Nr. D1-455 (Žin., 2005, Nr. 115-4195) 7.4 papunktyje numatyta, kad statinio normatyviniuose saugos ir paskirties dokumentuose turi būti įvertinti veiksniai, dėl kurių poveikio statiniui ar jo dalims atsirastų nukrypimų nuo esminių reikalavimų. Veiksniai gali būti mechaniniai, cheminiai, biologiniai, šiluminiai ir elektromagnetiniai.

⁷ Žr. Lietuvos Respublikos aplinkos ministro 2016 m. spalio 27 d. įsakymas Nr. D1-713 „Dėl statybos techninio reglamento STR 1.01.03:2017 „Statinių klasifikavimas“ patvirtinimo“ 4 priedas.

nustatymo tvarkos aprašas (toliau – Aprašas) reglamentuoja konkrečių esamų statinių ar patalpų, kuriuos ekstremaliųjų situacijų ar karo metu galima pritaikyti gyventojų kolektyvinei apsaugai nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių, poreikio nustatymo procedūrą (Žin., 2010, Nr. 56-2756). Aprašo 8 punkte yra nurodyti kriterijai, pagal kuriuos yra parenkami statiniai ir patalpos, kuriuos ekstremaliųjų situacijų ar karo metu galima būtų pritaikyti gyventojams apsaugoti nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių⁸. Apraše nėra nurodyta, kokia turi būti laikoma minimali įranga kolektyvinės apsaugos statiniuose.

Vadinasi, esant karui ar kitai ekstremaliai situacijai, valstybės polinė valia yra orientuotis į galimus gyventojų evakavimo maršrutus, o jei reikia, iki kol bus vykdoma evakuacija, suteikti laikiną apsaugą kolektyviniuose apsaugos statiniuose⁹. Pastebėtina, kad Slėptuvių parinkimo ir įrengimo reikalavimų aprašo 1 punkte nurodyta, jog specialiosios paskirties statiniai ir patalpos yra „skirti gyventojams, kurie užtikrina valstybės ir savivaldybių institucijų ir įstaigų veiklą ekstremaliųjų situacijų ar karo metu, apsaugoti nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių (cheminių, radiacinių pavojų, teroro aktų padarinių, riaušių, neramumų, diversijų, griūčių ir kt.)“. Tai nėra tikslu, nes slėptuvės nėra skirtos gyventojams. Slėptuvės skirtos valstybės tarnautojams ir darbuotojams, kurie ekstremaliųjų situacijų metu vykdo valstybės ir savivaldybių institucijoms ir įstaigoms nustatytus uždavinius ir funkcijas (Civilinės saugos įstatymo 24 straipsnio 1 dalis).

Slėptuvių kaip nekilnojamojo turto teisinio režimo pasikeitimas, vykdant jų privatizaciją (slėptuvių privatizacijos proceso kai kurie ypatumai)

Vyriausybė, kaip valstybės turto savininko funkcijas įgyvendinantis subjektas, gali perduoti slėptuves savivaldybių nuosavybėn pagal įstatymus arba perduoti viešo aukciono būdu.

Vyriausybė, vadovaudamasi Lietuvos Respublikos valstybės ir savivaldybių turto valdymo, naudojimo ir disponavimo juo įstatymo 6 straipsnio 2 punktu ir 20 straipsnio 1 dalies 5 punktu, Lietuvos Respublikos vietos savivaldos įstatymo 6 straipsnio 3, 4, 12, 15, 17, 26, 29, 31, 36, 38, 41 ir 46 punktais, įgyvendindama Valstybės turto perdavimo patikėjimo teise ir savivaldybių nuosavybėn tvarkos aprašą, patvirtintą Lietuvos Respublikos Vyriausybės 2001 m. sausio 5 d. nutarimu Nr. 16 „Dėl valstybės turto perdavimo patikėjimo teise ir savivaldybių

⁸ Apraše yra nurodoma, kad atsižvelgiama į statinio ar patalpų talpumą, teikiant pirmenybę patalpoms, tinkamoms apsaugoti 100 ir daugiau gyventojų, statinio ar patalpų konstrukcijas, teikiant pirmenybę tvirtoms (betoninėms, monolitinėms) konstrukcijoms, statinio ar patalpų sandarumą, teikiant pirmenybę statiniams su mažesniu ertmių (langų, durų, vėdinimo šachtų) plotu, patalpų vietą statinyje, teikiant pirmenybę vidinėms statinio patalpoms; netinkamos tos patalpos, kurios ribojasi su sprogomis ar gaisringomis gamybinėmis ar sandėliavimo patalpomis ar per kurias nutiesti magistraliniai dujų, garų, perkaitinto vandens ar suslėgto oro tinklai, atstumus iki evakavimo punktų, teikiant pirmenybę arčiau evakavimo punktų esantiems statiniams, privažiavimą prie statinio, teikiant pirmenybę privažiavimui su kietąja kelio danga, automobiliams stovėti tinkamomis aikštelėmis, materialines ir finansines statinio ar patalpos pritaikymo kolektyvinei gyventojų apsaugai sąnaudas, teikiant pirmenybę statiniams ar patalpoms, kurioms pritaikyti reikia mažesnių sąnaudų.

⁹ Pasikeitusį teisinį reguliavimą visuomenės informavimo priemonės įvertino trumpai: „slėptuvės – valdžiai, visiems kitiems – rūšiai“ (<https://www.lrt.lt/naujienos/lietuvoje/2/63163/sleptuves-valdziai-visiems-kitiems-rusiai>).

nuosavybėn“, perduoda ne tik įprastas slėptuves¹⁰, bet ir tokius pastatus kaip pabūklų slėptuvė¹¹. Vyriausybė, perduodama savivaldybėms pastatus, nenustato apribojimų dėl perduotų patalpų naudojimo, valdymo, disponavimo (pavyzdžiui, draudimo pakeisti slėptuvės paskirtį į kitos paskirties statinį).

Taigi Vyriausybė perduodavo slėptuves savivaldybėms, tačiau savivaldybės jų nevaldė pagal paskirtį¹² bei nevykdė Vyriausybės 2010 m. rugsėjo 22 d. nutarimo Nr. 1368 „Dėl slėptuvių poreikio nustatymo“ (Žin., 2010, Nr. 116-5928). Tokio teisinio reguliavimo ir jo įgyvendinimo pasekmėje *de jure* slėptuvės vis dar egzistuoja, tačiau *de facto* jose nėra galimybės pasislėpti¹³. Šiuo metu vyksta intensyvus specialios paskirties statinių ir patalpų – slėptuvių, privatizavimo procesas¹⁴.

Privatizavimo savybių specifika yra ta, kad valstybės turtas turi būti parduotas kuo palankiausiomis sąlygomis. Privatizavimo sandoris – tai sutartis, pagal kurią privatizavimo valdytojas valstybės ar savivaldybė – įsipareigoja perduoti privatizavimo objektą pirkėjo nuosavybėn, o galimas pirkėjas įsipareigoja sumokėti sutartyje numatytą pinigų sumą ir įvykdyti kitus sutartyje numatytus įsipareigojimus (Baranauskas, Laurinavičius, Pakaniškis, Vasarienė, 2000, p. 162). Už valstybės turto privatizavimą yra atsakingas VĮ Turto bankas¹⁵, nes šis juridinis asmuo patikėjimo teise valdo valstybės nekilnojamąjį turtą. Savivaldybės taip pat perduoda nekilnojamąjį turtą per jų įsteigtas įmones, tačiau parduodant slėptuves VĮ Turto bankas veikia kaip atskiros savivaldybės atstovas.

Vyriausybės 2015 m. vasario 11 d. nutarimu Nr. 163 „Dėl Viešame aukcione parduodamo valstybės nekilnojamojo turto ir kitų nekilnojamųjų daiktų sąrašo patvirtinimo“ (TAR, 2015-02-24, Nr. 2015-02883; 2015-10-14, Nr. 2015-15165) patvirtino parduodamų daiktų sąrašą, kuriame yra įtrauktos slėptuvės, išsidėsčiusios įvairiose savivaldybėse. Ištyrus sąrašą, galima spręsti, kad buvo atsiakyta ir slėptuvių, kurios yra Šiaulių rajone. Darytina prielaida, kad slėptuvių gausa Šiaulių rajone paaiškinama dėl veikusio Šiaulių aerodromo dar prieš II

¹⁰ Pvz., žr. Lietuvos Respublikos Vyriausybės 2017 m. rugsėjo 13 d. nutarimas Nr. 740 „Dėl nekilnojamojo ir kito ilgalaikio materialiojo turto Kaune, Europos prospekte, perdavimo Kauno miesto savivaldybės nuosavybėn“ (TAR, 2017-09-15, Nr. 2017-14730). Priedas Nr. 1 ((TAR, 2017-09-15, Nr. 2017-14730).

¹¹ Pvz., žr. Lietuvos Respublikos Vyriausybės 2022 m. vasario 23 d. nutarimas Nr. 150 „Dėl valstybės nekilnojamojo turto perdavimo savivaldybių nuosavybėn“. Priedas Nr. 150 (2022-02-25, Teisės aktų registras, 2022, Nr.: 2022-03661).

¹² Nekilnojamojo turto paskirtis – teisės aktais leidžiama, nuosavybės dokumentuose nurodyta arba faktiškai vykdoma teisėta viena ar keletas veiklos rūšių, vykdomų nekilnojamojo turto objektuose (Lietuvos Respublikos aplinkos ministro 2013 m. vasario 20 d. įsakymas Nr. D1-150 „Dėl Nekilnojamojo turto objektų, kurių savininkas arba įgalioti asmenys privalo mokėti nustatytą rinkliavą arba sudaryti komunalinių atliekų tvarkymo paslaugos teikimo sutartį, rūšių sąrašo patvirtinimo“ (Žin., 2013, Nr. 22-1072)

¹³ Žurnalistė Buidovaitė Kristina, atlikusi nekilnojamojo turto rinkos apžvalgą, pastebėjo, kad daugelis slėptuvių yra privačios: čia veikia pabėgimų kambariai, sporto klubai, barai, tad slėptis, vargu, ar jose pavyktų (<https://www.lrytas.lt/bustas/nekilnojamas-turtas/2022/03/31/news/lietuvoje-jau-parduota-beveik-pusantr-simto-sleptuviu-viena-siuloma-ir-vilniaus-centre-tik-kaina-gluminanti-22906049>).

¹⁴ NT agentūra „Vilniaus turtas“ neseniai skelbė, kad praduodama privati slėptuvė (164.11 kv.m. adresu: Vasario 16-osios g. Vilniaus m. sav. Vilniaus m. Naujamiestis Vilniaus centre), kuri buvo skirta miesto gyventojams slėptis nuo bombų atakų ir joje išgyventi. Siekiant pritraukti pirkėjus, reklamuojama, kad „tai proga užsitikrinti savo saugumą dabar! Patalpas puikiai galima išnaudoti įvairiai komercinei veiklai taikos metu!“ . NT brokeris Vilius Drevnickis portalui lrytas.lt pasakojo, jog ši slėptuvė tokia, kokia ir turi būti: joje įrengtos dvigubos durys, tualetai, vandentiekio, kanalizacijos sistemos, autonominė oro padavimo sistema. Iki parduodant slėptuvė nebuvo naudojama, tad čia galima rasti dujokaukių, instrukcijų.

¹⁵ Lietuvos Respublikos centralizuotai valdomo valstybės turto valdytojo įstatymas (TAR, 2014-04-03, Nr. 2014-04033) numato, kad centralizuotai valdomo valstybės turto valdytojas yra teisės aktų nustatyta tvarka įregistruota valstybės įmonė, turinti antspaudą su Lietuvos valstybės herbu ir savo pavadinimu.

pasaulinį karą. Po II pasaulinio karo sovietų armijai užėmus oro uostą, buvo pastatyti du paraleliniai kilimo-tūpimo takai, o atgavus nepriklausomybę įsteigtas Tarptautinis Šiaulių oro uostas. Karo Ukrainoje kontekste svarstyti, ar buvo tikslinga perleisti slėptuves Šiaulių rajone, nes agresyvūs aplinkinių totalitarinių valstybių veiksmai visuomet buvo keliantys abejones dėl saugumo.

VĮ Turto banko 2019 m. kovo 14 d. tinklapyje esantys skelbimai¹⁶ parodo, kad Vyriausybė intensyviai vykdė ir dabar vykdo slėptuvių privatizaciją. VĮ Turto banko turimais duomenimis, iki šiol yra parduotos 144 slėptuvės: VĮ Turto bankas pardavė septynias (po dvi Kaune ir Vilniuje, tris kitose Lietuvos vietovėse), viešoji įstaiga Valstybės turto fondas (iki sujungimo su Turto banku 2014 metais) pardavė 77 slėptuves, daugiau nei 60 iš jų Kaune. Vilniaus miesto savivaldybė pardavė 56 slėptuves. Likusias – kitos savivaldybės¹⁷.

Taigi slėptuvės yra parduodamos tiek suformuotuose jas aptarnauti žemės sklypuose, tiek be daiktinių teisių į žemę, yra įvairaus baigtumo. Sudarius galimybę pakeisti slėptuvių paskirtį, po to, kai buvo supaprastinti reikalavimai dėl gyventojų saugos, jos tampa paklausiu turtu. Pastebėtina, kad daugelis slėptuvių yra netoli miestų centro, senamiesčiuose¹⁸.

Įsigijus statinį ar patalpas, atsiranda galimybė ne aukciono tvarka nuomotis valstybei priklausantį žemės sklypą, kuris yra skirtas aptarnauti statinius. Taigi nauda yra akivaizdi, nes, privatizavus slėptuvę, yra skaičiuojama palankesnė nuomos mokesčio kaina už valstybei priklausančią žemę, atsiranda galimybė savo nuožiūra naudotis patalpomis. Kita vertus, visiems žinoma teisinė tikrovė, kad, pakeitus slėptuvės kaip statinio (patalpos) paskirtį, vietoje buvusios slėptuvės galima pastatyti daugiabutį gyvenamąjį namą, komercinės paskirties statinius, išlaikant galimybę ne konkurso tvarka nuomotis valstybei priklausančią žemę iki stovės

¹⁶ Pvz., sąraše skelbiama, kad parduodamos tokios patalpos: slėptuvė 1O1T, unikalus numeris 4400-2644-2159, užstatytas plotas 23,00 kv. m), slėptuvė 2O1T (unikalus numeris 4400-2644-2164, užstatytas plotas 20,00 kv. m), slėptuvė 3O1T (unikalus numeris 4400-2644-2191, užstatytas plotas 22,00 kv. m), slėptuvė su dalimi bendro naudojimo patalpos pažymėtos R-1 ((1/2 nuo 6,07 kv. m), unikalus numeris 4400-0984-3598:8346, bendras plotas 45,91 kv. m.) . VĮ Turto bankas 2016 m. lapkričio 8 d. skelbė, kad praduoda 3 slėptuves (unikalus numeriai 9195-8018-8034, 9195-8018-8123, 9195-8018-8212, plotai 43,79 kv. m, 39,47 kv. m, 32 kv. m, pažymėjimai plane 4H1P, 18H1B, 27H1B), 2016 m. rugpjūčio 11 d. skelbė, kad praduoda slėptuvę 1O0B (unikalus numeris 3498-6025-0012, plotas 329,1 kv. m), slėptuvę (unikalus numeris 4195-8025-7182, plotas 163,46 kv. m, pažymėjimas plane 22O1B) ir 0,0500 ha žemės sklypą, slėptuvę 2O1P (unikalus numeris 4400-1815-6131, bendras plotas 118,22 kv. m (fiziškai pažeista, baigtumas 59 proc.), slėptuvę 2H1B (unikalus numeris 9195-6013-9024, bendras plotas 19,25 kv. m) ir 0,0457 ha žemės sklypą.

¹⁷ Šaltinis BNS ([//www.15min.lt/naujiena/aktualu/lietuva/lietuvoje-jau-parduota-beveik-pusanthro-simto-sleptuviu-56-1661292?copied](http://www.15min.lt/naujiena/aktualu/lietuva/lietuvoje-jau-parduota-beveik-pusanthro-simto-sleptuviu-56-1661292?copied)).

¹⁸ Pavyzdžiui, VĮ Turto bankas viešame elektroniniame aukcione pardavinėjo valstybei nuosavybės teise priklausančius nekilnojamuosius daiktus, esančius Kaune, Taikos pr. 116L, Kaunas: slėptuvę 1O1t (unikalus numeris 4400-2644-2159, užstatytas plotas 23,00 kv. m), slėptuvę 2O1t (unikalus numeris 4400-2644-2164, užstatytas plotas 20,00 kv. m), slėptuvę 3O1t (unikalus numeris 4400-2644-2191, užstatytas plotas 22,00 kv. m), šaudymo lizdą 4O1t (unikalus numeris 4400-2644-2204, užstatytas plotas 41,00 kv. m. Skelbime nurodyta, kad pastatai yra įrašyti į Lietuvos Respublikos nekilnojamųjų kultūros vertybių registrą (Pirmojo pasaulinio karo Palemono–Narėpų gynybinių įtvirtinimų linijos prie Kauno tvirtovės statinių kompleksas, kodas 36265). Jo naudojimas ir tvarkymas (statybos, tvarkybos, restauracijos, rekonstrukcijos, remonto darbai) reglamentuojami Lietuvos Respublikos statybos ir Nekilnojamojo kultūros paveldo apsaugos įstatymais bei jų įgyvendinamaisiais teisės aktais . VĮ Turto bankas viešame elektroniniame aukcione 2020 m. rugsėjo 24 d. pardavinėjo slėptuvę (bendras plotas 690,67 kv. m) Kaune, Savanorių pr. 225, už 104,400,00 Eur , kurios Lietuvos Respublikos Vyriausybės 2015 m. vasario 11 d. nutarime Nr. 163 „Dėl Viešame aukcione parduodamo valstybės nekilnojamojo turto ir kitų nekilnojamųjų daiktų sąrašo patvirtinimo“ kaina nurodyta 11 017,03 Eur.

statinys¹⁹. Taip slėptuvės virsta komercinės, gyvenamosios paskirties pastatais, patalpomis, pastatytais ant valstybei priklausiančios žemės.

Minėta, Civilinės saugos įstatymo 24 straipsnio 1 dalyje numatyta, kad ekstremaliųjų situacijų metu valstybės tarnautojai ir darbuotojai, vykdančys valstybės ir savivaldybių institucijoms ir įstaigoms nustatytus uždavinius ir funkcijas, nuo gyventojų gyvybei ar sveikatai gresiančių pavojingų veiksnių apsaugomi slėptuvėse. Kad būtų galimybė įgyvendinti šio Įstatymo 24 straipsnio 1 dalį, to paties įstatymo 3 dalyje numatyta, jog Vyriausybės nustatytos valstybės ir savivaldybių institucijos ir įstaigos savivaldybės administracijos direktoriui teikia duomenis apie savivaldybėje esančias slėptuves, jų atitiktį įstatymų nustatyta tvarka patvirtintiems statybos techniniams reglamentams ir kolektyvinės apsaugos statinius. Taip buvo sukurta duomenų apie slėptuves ir būklę gavimo tvarka.

Dėl valstybei ir savivaldybei priklausiančių slėptuvių apskaitos didesnių problemų neįyla. Tačiau, kaip jau buvo nurodyta, dalis slėptuvių buvo privatizuota. Vadinas, viešosios nuosavybės teisės objektai tapo privačios nuosavybės objektu, ir tik nuo naujo turto savininko valios priklauso, ar jis laikysis turto teisinio režimo reikalavimų, o jei ir laikysis, tai kokia apimtimi. Lietuvos teismuose yra nagrinėjamas ne vienas ginčas, kai ieškovas VĮ Valstybės turto fondas prašo priverstiniu būdu įpareigoti privatų juridinį asmenį sudaryti slėptuvių apsaugos ir priežiūros sutartis. Ši problematika yra sena, bet teisinis reguliavimas dėl viešosios nuosavybės teisės objekto perdavimo į privačią nesikeičia. Pavyzdžiui, VĮ Valstybės turto fondas 2008 m. balandžio 22 d. kreipėsi į Vilniaus miesto 1 apylinkės teismą su ieškiniu, prašydamas įpareigoti atsakovę UAB „Nekilnojamojo turto valdymas“ per 30 (trisdešimt) dienų nuo teismo sprendimo priėmimo dienos įvykdyti privatizavimo sutarčių Nr. 17-07 (2007 m. vasario 22 d.), Nr. 53-07 (2007 m. balandžio 27 d.) bei Nr. 63-07 (2007 m. birželio 7 d.) 7 straipsnio reikalavimus – sudaryti slėptuvių apsaugos ir priežiūros sutartis su Kauno apskrities priešgaisrine gelbėjimo valdyba. Byloje buvo nustatyta, kad atsakovė viešo aukciono būdu įgijo iš ieškovės tris valstybei priklausiusius nekilnojamojo turto objektus, viešame registre įregistruotus kaip specialiosios paskirties (slėptuvės) objektai. Atsakovė ne tik nesudarė sutarčių, bet ir nesudarė galimybės Civilinės saugos departamento darbuotojui patekti į slėptuves, jas apžiūrėti ir slėptuvių faktinei būklei nustatyt, surašant apžiūros aktus²⁰. Taigi civilinės saugos įstatymo 24 straipsnio 3 dalies reikalavimas tapo sunkiai įgyvendinimu.

Tokiu būdu atsiranda viešojo ir privataus intereso priešprieša. Privatus juridinis asmuo, įsigydamas slėptuvės patalpas, tikrai neketina jų naudoti pagal paskirtį, nes tai neatitiktų jo veiklos esmės (CK 2.34 straipsnio 3 dalis, numatanti, kad privatieji juridiniai asmenys yra juridiniai asmenys, kurių tikslas – tenkinti privačius interesus). Kaip jau nurodyta, privatus interesas yra nukreiptas į tikslą pakeisti slėptuvės paskirtį, rekonstruojant patalpas ar statinį. Vilniaus apygardos teismo apeliacine tvarka išnagrinėtoje civilinėje byloje Nr. 2A-747-464/2010 atsakovas UAB „Nekilnojamojo turto valdymas“ nurodė, kad jis neturi pareigos sudaryti sutarčių dėl slėptuvių apsaugos bei priežiūros, nes ieškovas pardavė patalpas

¹⁹ Lietuvos Respublikos Vyriausybės 1999 m. kovo 9 d. nutarimas Nr. 260 „Dėl naudojamų kitos paskirties valstybinės žemės sklypų pardavimo ir nuomos“ (Žin., 1999, Nr. 25-706; 2004, Nr. 167-6128; 2011, Nr. 53-2551). Minėto teisės akto 41¹ punkte nustatyta, kad valstybinės žemės nuomininkas, pageidaujantis statyti naujus statinius ir (ar) rekonstruoti esamus statinius ar įrenginius iki statybą leidžiančio dokumento išdavimo, o jeigu statybai statybą leidžiantis dokumentas nereikalingas, – iki naujų statinių ar įrenginių statybos ir (ar) esamų rekonstravimo pradžios valstybinės žemės nuomos procedūrą vykdančiai institucijai pateikia: kai statomas naujas ar rekonstruojamas esamas statinys, – statinio projektą, kai statomas naujas ar rekonstruojamas esamas įrenginys, – įrenginio techninį projektą, taip pat ne senesnius kaip dviejų metų statinių, įrenginių ir žemės sklypo kadastro duomenų bylas.

²⁰ Vilniaus apygardos teismo 2010 m. rugsėjo 7 d. nutartis civilinėje byloje Nr. 2A-747-464/2010.

neatitinkančias slėptuvėms keliamų reikalavimų, o trečiasis asmuo Civilinės saugos departamentas, atsisakė bendradarbiauti tikslinant sutarties sąlygas dėl slėptuvės funkcinės paskirties išsaugojimo.

Vilniaus apygardos teismo apeliacine tvarka išnagrinėtoje civilinėje byloje Nr. 2A-747-464/2010 pastebėtini du svarbūs aspektai: pirma, jei atsakovas pasirašytų slėptuvių apsaugos bei priežiūros sutartis dėl privatizuotų objektų, jis privalėtų užtikrinti jų būklę tokią, kad būtų galima panaudoti karo ar ekstremalios situacijos metu. Vadinasi, reikėtų investuoti privačias lėšas dėl viešojo intereso apsaugos. Antra, jei būtų sudarytos slėptuvių apsaugos bei priežiūros sutartys, atsakovas negalėtų pakeisti patalpų paskirties, todėl negalėtų jų naudoti savo nuožiūra (pvz., rekonstruoti ir įrengti komercinės paskirties objektą ir pan.). Teismas civilinėje byloje Nr. 2A-747-464/2010 šią situaciją išsprendė argumentuodamas tuo, kad atsakovas, neabejotinai žinodamas sąlygas, kuriomis parduodami šie objektai, žinodamas esamą patalpų būklę, jų paskirtį, jų pradinę pardavimo kainą, ženkliai mažesnę, nei vidutinė rinkos kaina (nekilnojamojo turto registro duomenys), būdamas verslininkas, turėjo galimybę įvertinti sandorių naudą būsimų įsipareigojimų aspektu ir laisvai apsispręsti, ar jam šios sąlygos yra jam priimtinos, turėjo diskrecijos teisę veikti ir arba pasirašyti už beveik pradinę pardavimo kainą privatizuotų slėptuvių pirkimo–pardavimo sutartis būtent šiomis sąlygomis, arba sutarčių nepasirašyti ir, jo požiūriu, nepriimtinių įpareigojimų neprisiimti. Tačiau šioje situacijoje kyla pasvarstymai, ar privatus asmuo privalo perimti valstybės pareigą užtikrinti gyventojų saugumą, kai Konstitucijos 46 straipsnio 1 dalis numato, jog Lietuvos ūkis grindžiamas privačios nuosavybės teise, asmens ūkinės veiklos laisve ir iniciatyva.

Fizinis asmuo taip pat nėra subjektas, kuris naudos slėptuvę, siekdamas užtikrinti viešąjį interesą. Atvirkščiai, fiziniai asmenys, kurie turi butus daugiabučiame name, kuriame yra įrengta slėptuvė, siekia patalpas panaudoti savo privatiems tikslams. Lietuvos Aukščiausioje Teisme kasacine tvarka buvo peržiūrėta civilinė byla, kurioje daugiabučio namo butų savininkai prašė pripažinti slėptuvę jų butų priklausiniu. Byloje buvo nustatyta, kad namo gyventojai naudojami viso rūšio, neišskiriant ir buvusios slėptuvės, patalpomis – laikė ir sandėliavo ten savo buitines, ūkio daiktus, dviračius, prižiūrėjo patalpas, naudojami skalbimo mašina, jose yra įrengta džiovykla rūbams džiovininti, ir niekas niekada jiems netrukdytų naudotis visomis rūšio patalpomis. Kadangi patekimas į buvusias slėptuvės patalpas yra per namo gyventojams priklausančią bendro naudojimo patalpą, savivaldybės atstovai be gyventojų pagalbos netgi neturėjo galimybės patekti į šias patalpas. Kauno miesto savivaldybė nurodė, kad slėptuvė yra nuo 2003 m. spalio 1 d. SĮ „Santakos butų ūkis“ sąskaitoje esančio turto apraše, tačiau negyvenamos patalpos yra savavališkai užimtos. Pastebėtina, kad namo gyventojai ir toliau būtų naudojęsi savavališkai užimta slėptuve, jei VĮ Turto bankas nebūtų 2021 m. lapkričio 15 d. pradėjęs viešame elektroniniame aukcione turto pardavimo procedūros dėl valstybei nuosavybės teise priklausančios slėptuvės su dalimi bendro naudojimo patalpų, kurių bendras plotas 45,91 kv. m, esančių Kaune, Dainavos g. 14-R1²¹. Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos 2022 m. kovo 23 d. nutartis civilinėje byloje Nr. e3K-3-68-403/2022 patvirtina ne tik neatsakingą valstybei priklausančio turto valdymo, naudojimo ir disponavimo atvejį, bet ir parodo, kad valstybės apskaitoje esančiu turto negalėtų pasinaudoti gyventojai, jei iškiltų poreikis pasislėpti. Primintina, kad slėptuvės patalpos, be kita ko, turėjo turėti ir specialių žymėjimą.

²¹ Žr. 2022 m. balandžio 14 d. svetainėje: <https://m.aruodas.lt/patalpos-kaune-zaliakalnyje-dainavos-g-vi-turto-bankas-im-k-112021042-buveine-3-312263/>.

Ištyrus Lietuvos Respublikos Vyriausybės 2022 m. vasario 23 d. nutarimo Nr. 165 „Dėl Lietuvos Respublikos Vyriausybės 2015 m. vasario 11 d. nutarimo Nr. 163 „Dėl Viešame aukcione parduodamo valstybės nekilnojamojo turto ir kitų nekilnojamųjų daiktų sąrašo patvirtinimo“ pakeitimo“²² turinį nustatyta, kad jame vis dar yra numatyta viešame aukcione parduoti slėptuves. Parduodamų nekilnojamųjų daiktų sąrašas nuolat yra papildomas. Taigi nepaisant kilusio gyventojų prarasto subjektyvaus saugumo jausmo, kurį atspindi visuomenės informavimo priemonių inicijuojamos diskusijos dėl poreikio pasislėpti, valstybės valia organizuoti gyventojų apsaugą mažai keičiasi.

Išvados

Aktualiame teisiniame reguliavime yra numatytos dvi sąvokos, skirtos apibrėžti statinius ir patalpas, skirtus fizinei asmenų apsaugai: slėptuvė ir kolektyvinės apsaugos statinys. Kolektyvinės apsaugos statiniai yra specialiai pažymėti statiniai ar patalpos, kuriuos ekstremaliųjų situacijų ar karo metu galima pritaikyti gyventojų kolektyvinei apsaugai nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių. Slėptuvės – specialiosios paskirties statiniai arba specialiai įrengtos patalpos, kad ekstremaliųjų situacijų metu valstybės tarnautojai ir darbuotojai, vykdanys valstybės ir savivaldybių institucijoms ir įstaigoms nustatytus uždavinius ir funkcijas, galėtų apsisaugoti nuo gyventojų gyvybei ar sveikatai gresiančių pavojingų veiksnių.

Lietuvoje iš 60 savivaldybių tik 9 savivaldybės turėjo gerai įrengtas slėptuves ir 35 – turėjo slėptuves, iš dalies atitinkančias nustatytiems reikalavimams.

Teisės aktuose nebėra numatytas slėptuvių įrengimo atvejis – siekis apsaugoti gyventojus karo metu nuo atsiradusių gyvybei ar sveikatai pavojingų veiksnių. Terminas „slėptuvė“ bendrai naudojamas apibrėžiant ir kolektyvinės apsaugos statinius. Tačiau tai nėra tikslu, nes kolektyvinės saugos statiniai yra skirti surinkti evakuojamuosius gyventojus arba juos laikinai apgyvendinti, esant pavojui.

Kolektyvinės apsaugos statiniai negali būti prilyginti slėptuvei, kaip specialiosios paskirties statiniui. Slėptuvei taikomi kiti projektavimo ir projekto ekspertizės reikalavimai. Kolektyvinės apsaugos statiniai nėra įtraukti į Visuomenei svarbių statinių (jų dalių) sąrašą. Šiuo metu galiojantis Kolektyvinės apsaugos statinių poreikio nustatymo tvarkos aprašas nereglamentuoja, kokia turi būti laikoma minimali įranga kolektyvinės apsaugos statiniuose. Pabrėžtina, kad kolektyvinės saugos statinių tinklo plėtra (padalinant tokių objektų įrengimo atsakomybę tarp valstybės, verslo ir gyventojų) ne tik sustiprintų subjektyvų saugumo jausmą visuomenėje, bet ir sudarytų sąlygas realiai apsaugoti (bent laikinai) žmonių sveikatą bei gyvybes nuo žalingo poveikio ekstremaliųjų situacijų arba karo metu.

Esant karui ar kitai ekstremaliai situacijai, valstybės polinė valia yra orientuotis į galimus gyventojų evakavimo maršrutus, o jei reikia, iki kol bus vykdoma evakuacija, suteikti laikiną apsaugą kolektyviniuose apsaugos statiniuose.

Vyriausybė, kaip valstybės turto savininko funkcijas įgyvendinantis subjektas, gali perduoti slėptuves savivaldybių nuosavybėn pagal įstatymus arba parduoti viešo aukciono būdu. Šiuo metu vyksta intensyvus slėptuvių privatizavimo procesas. Už valstybės turto privatizavimą yra atsakingas VĮ Turto bankas. Daugelis slėptuvių yra netoli miestų centro, senamiesčiuose, todėl jos yra patrauklūs verslui objektai. Slėptuvėse, tiek pakeitus jų paskirtį,

²² Lietuvos Respublikos Vyriausybės 2022 m. vasario 23 d. nutarimas Nr. 165 „Dėl Lietuvos Respublikos Vyriausybės 2015 m. vasario 11 d. nutarimo Nr. 163 „Dėl Viešame aukcione parduodamo valstybės nekilnojamojo turto ir kitų nekilnojamųjų daiktų sąrašo patvirtinimo“ pakeitimo“ (TAR, 2022-02-28, Nr. 2022-03956).

ties ir nepakeitus, yra įrengiami pabėgimų kambariai, sporto klubai, barai. Privatūs asmenys nėra likę veikti viešais pagrindais, todėl negalima būti tikėtis, kad slėptuve pavyktų pasinaudoti, nes šios patalpos, statiniai yra rakinami, siekiant apsaugoti privačią nuosavybę.

Įsigijus statinį ar patalpas, kurių paskirtis yra slėptuvė, atsiranda galimybė ne aukciono tvarka nuomotis valstybei priklausantį žemės sklypą, kuris yra skirtas aptarnauti statinius. Privatizavus slėptuvę įgyjama pirmenybės teisė į valstybei priklausančią žemę, taip pat yra skaičiuojama palankesnė nuomos mokesčio kaina. Visiems žinoma teisinė tikrovė, kad, pakeitus slėptuvės kaip statinio (patalpos) paskirtį, vietoje buvusios slėptuvės galima pastatyti daugiabutį gyvenamąjį namą, komercinės paskirties statinius, išlaikant galimybę ne konkurso tvarka nuomotis valstybei priklausančią žemę iki stovės statinys.

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IMPLEMENTATION OF THE CIVIL PROTECTION CONCEPT THROUGH THE MANAGEMENT, USE AND DISPOSITION OF THE STATE AND MUNICIPAL PROPERTY

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Summary

The aim of this article is to analyse and disclose the management of state assets, dedicated to ensure public safety through the use of shelters. The changes of the legal regulation on the protection of the population in cases of emergency as well as during the war is presented. The article analyses whether collective security structures can be equated to a shelter as special-purpose structures. It is observed that in the event of war or other emergency, the political will of the state is to focus on possible routes for the evacuation of the population and, if necessary, provide the temporary collective protection structures to the society until the evacuation will be conducted. The current legal regulation does not specify the requirement for the minimum equipment, to be provided in the collective protection structures. The legislation also does not impose specific requirements on construction of buildings and premises, which are dedicated to protect people from life-threatening or health-threatening factors in cases of emergency or during war. The article identifies shortfalls in the efforts of the state establishing effective legal framework for the management of shelters. It is observed in the article, that the unequal treatment of the population's security policy by the Government in the light of war in Ukraine, is a primary factor, reducing subjective sense of security within the population. The article also examines the relationship between the duty of the state to take care of public security and the duty of the population to act prudently and diligently.

Keywords: *shelter, collective defense building, emergency, security, management, use and disposition of the state property.*

FORMATION OF TRANSNATIONAL LABOR FLOWS IN CONDITIONS OF THE LABOR MARKET GLOBALIZATION: CONCEPTUAL DISCOURSE

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Abstract. *The article considers the formation of international labor flows at the stage of the labor market globalization. The formation of the global labor space as the basis for the world economy development is certified.*

The aim of the study is to analyze the role of transnational corporations in the formation of the global labor space and to determine the features of the formation of transnational labor flows in the globalization of the labor market.

The role of transnational corporations in the development of the world labor market is highlighted. It is established that the globalization of labor supply of the economy is a manifestation of the labor market transnationalization: transnational structures form a separate segment of the world labor market with its own patterns of labor movement, causing the phenomenon of labor flows transnationalization.

It's stated that segmentation of the world labor market indicates the peculiarities of demand for labor resources, their skills and the international labor division - the labor force in the world labor market is diverse and differs from the one which appears only in national markets, it is characterized by high mobility and adaptability employers.

The concentration of human resources of the required quality, knowledge and experience within TNCs, as well as the global organization of management allow such companies to optimally locate structural units on a global scale. Taking advantage of the transnational structure, they can benefit from international differences in the business cycle, productivity, characteristics of demand, taxation, etc.

It is emphasized that a special segment of the transnational labor space is highly qualified workers. It is substantiated that in the long run transnational corporations will play a crucial role in generating requirements for quality labor force indicators worldwide.

The formation of the phenomenon of labor flows transnationalization is characterized, the emergence of the self-organization effect of these labor flows is stated. It is concluded that the activities of transnational corporations lead to the phenomenon of labor world economic division, in which human capital is positioned as a source of companies' competitiveness.

Keywords: *international labor market, transnational labor flows, globalization, international migration, transnational corporations.*

Introduction

The current stage of world economic development features determine the need to rethink the mechanism of the labor market as a basis for labor supply of the world economy. The

analysis of transformational tendencies of the international labor market development as a system-forming component of labor flows internationalization becomes important.

The international labor market rapid development affects the intensification of economic cooperation between countries, which contributes to the formation of stable international economic relations and leads to the system's formation to meet the demand for labor on a global scale. The globalization of the world economy and the activities of transnational corporations leads to the formation of new forms of labor support on a global scale.

The world labor market is not only a set of multilevel markets, but also a qualitatively new stage of labor market development in the global dimension in the context of growing production transnationalization and diversification of communications between national economies. Transnationalization creates changes in the international division of labor, acting as one of the most important prerequisites for the labor supply internationalization of the economy. Covering all subsystems of the world economy, the labor component through the international labor division becomes the main condition for balanced development of the globalized economy.

At the same time, the mechanisms of the economic activity transnationalization's influence on the formation of transnational labor flows in the context of globalization remain insufficiently studied by economics and require further research, which led to the choice of the topic of this article.

Analysis of recent research and publications. Issues of the impact of globalization on the international labor market development are considered in the works of N. Grazhevskaya (Grazhevskaya, 2008), Y. Kozak, D. Lukyanenko, Y. Makogon (Kozak, Lukyanenko, Makogon, etc., 2004) Kalinina (Kalinina, Hetmanenko, Olivko, Takhtarova, Gaidash and Kushnarenko, 2015; Kalinina, Mykhailyshyn, Korovchuk, Savchenko, 2021), general transformational aspects of the world market are studied in the scientific works of V. Sidorov, A. Medova (Sidorov, Medova, 2014) etc. However, the transnational aspect of labor market development in the context of globalization needs further study.

The aim of the study is to analyze the role of transnational corporations in the formation of the global labor space and to determine the features of the formation of transnational labor flows in the globalization of the labor market.

The objectives of the study are:

- to determine the role of international labor migration in the the world labor market's formation;
- to study the formation of the transnational segment of the global labor market;
- to identify the features of the formation of transnational labor flows in the context of globalization.

Research methods used to perform the tasks:

- dialectical method of scientific knowledge - to determine the role of the international labor market as a new level of labor use in globalization;
- method of system analysis - to determine the impact of the transnationalization process on the formation of international labor flows;
- segmentation method - to highlight the specific features of the transnational segment of the global labor market;
- method of complex analysis – to analyse the peculiarities of the transnational labor flows' formation in the world labor market.

In the context of globalization, the international labor market is a new level of development of the labor market, which strengthens ties between countries. The development of the world economy has led to increased participation of countries in meeting the world economies' needs in labor force, regardless of place of residence. (Starostenko, Kozar, 2015, p. 25).

In the process of globalization there are two main ways of forming the world labor market: (Petrenko, Pigul, 2015, p. 38).

- unification of labor markets of individual countries, when any barriers (social, cultural, administrative) to the market are eliminated (Schengen Agreement of the single labor market);
- migration of labor resources of the country (formation of international labor flows). In this aspect consider both physical movement and virtual movement, using new methods of communication.

International labor migration is determined by:

- the factors of internal economic development of each individual country;
- external factors: the state of the international economy as a whole and economic ties between countries.

There is no internationally accepted statistical definition of labour migration. However, the main actors in labour migration are migrant workers, which the International Labour Organization (ILO) defines as: "... all international migrants who are currently employed or unemployed and seeking employment in their present country of residence." (ILO, 2015).

The United Nations Statistics Division (UN SD) also provides a statistical definition of a foreign migrant worker: "Foreigners admitted by the receiving State for the specific purpose of exercising an economic activity remunerated from within the receiving country. Their length of stay is usually restricted as is the type of employment they can hold. Their dependents, if admitted, are also included in this category." (UN SD, 2017).

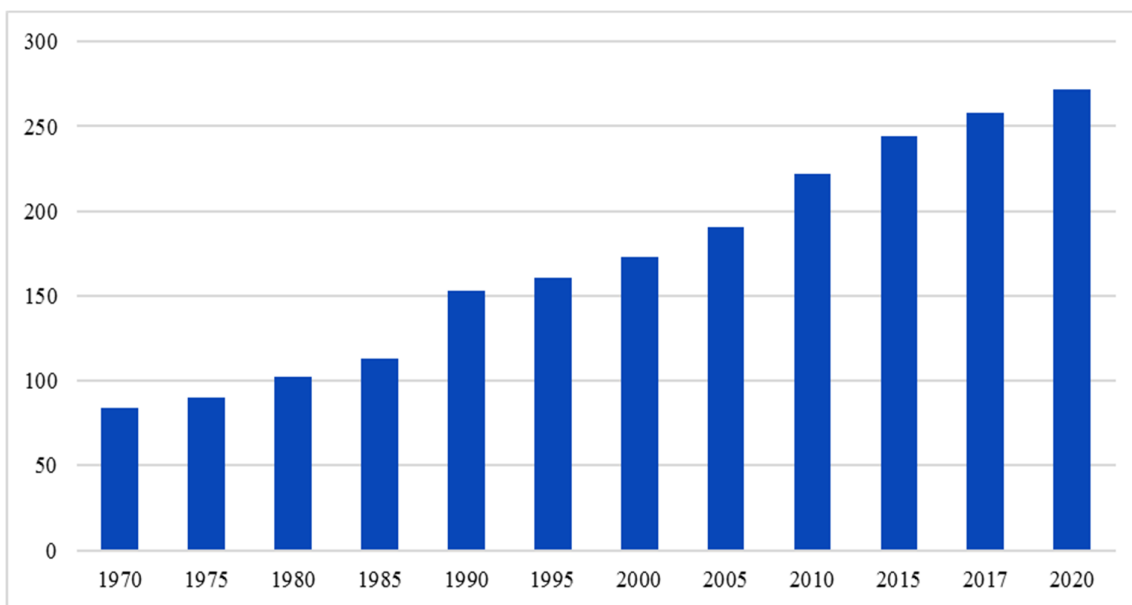


Figure 1. Dynamics of international migration in the world in 1970–2019, million people.

Source: International Organization for Migration

While migrant workers are often also international migrants, not all are (see table below). It is important to note the difference between the definition of a foreign migrant worker and an international migrant. An international migrant is defined as: “any person who changes his or her country of usual residence” (UN DESA, 1998).

International labor migration (Fig. 1) is influenced by factors of internal economic development of each country and external factors: the state of the international economy as a whole and economic relations between countries. In certain periods, political, military, religious, national, cultural, family and other social factors may also be the driving forces of international labor mobility (Kozak, Lukyanenko, Makogon et al., 2004, p. 170).

In general, international labor migration covers the whole world - both its developed part and less developed periphery (Fig. 2). This phenomenon is one of the objective reasons for the formation of a holistic world economic system.

The predominant number of migrants are labor migrants - their share is estimated at over 75%, mostly they go to developed countries. In general, the share of developed countries that encourage labor migration is growing: in 1996 only 2% of countries took appropriate measures, then at the beginning of 2020 there were already 25% such countries, and the share of countries that encourage highly skilled labor, estimated at 75% (OECD, ILO, World Bank, 2015).

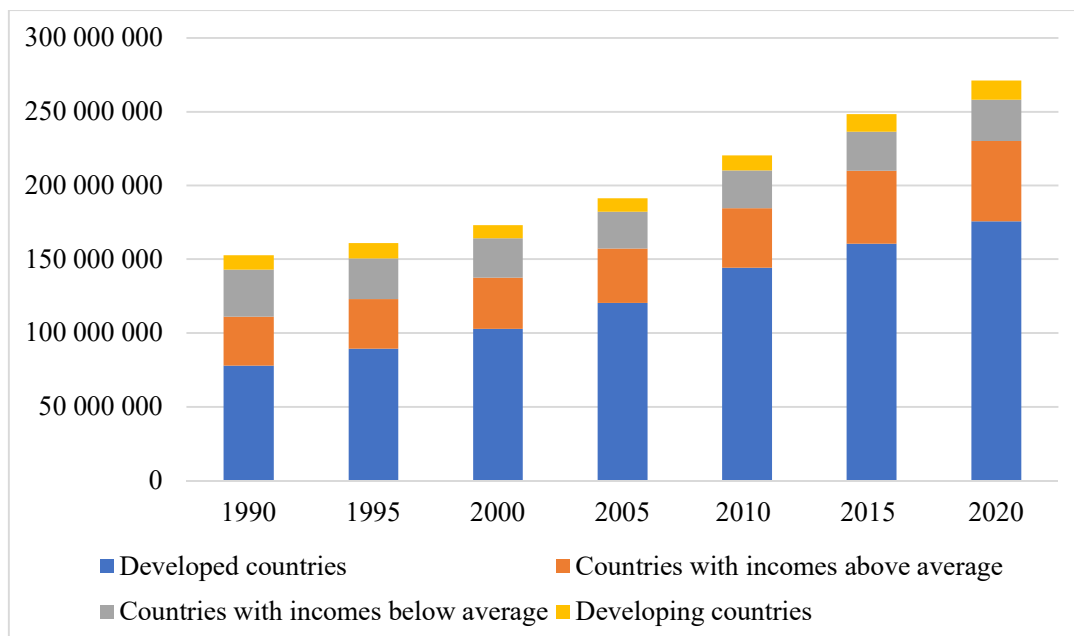


Figure 2. Dynamics of the number of international migrants by major groups of countries in 1990-2019.
Source: International Organization for Migration

Traditionally, the economic cause is the main reason for international labor migration, so it is related to the scale, pace and structure of capital accumulation (Petrenko, Pigul, 2015, pp. 170-171):

- 1) differences in the capital's accumulation rate cause differences in the forces of labor attraction or expulsion in different regions of the world economy, which ultimately determines the direction of movement of this production factor between countries;

- 2) the level and scale of capital accumulation have a direct impact on the level of working population's employment and, as a result, on relative overpopulation (unemployment) size, which is the main source of labor migration;
- 3) the pace and size of capital accumulation depend on the level of migration. This dependence is that the relatively low wages of immigrants and the ability to reduce wages of domestic workers can reduce production costs and thus increase capital accumulation. This goal is also achieved by organizing production in countries with cheap labor. In order to accelerate the accumulation of capital, transnational corporations either use the movement of labor to capital, or move their capital to redundant regions;
- 4) the reason for the labor movement is changes in the structure of production caused by scientific and technological progress. Reducing production or eliminating some obsolete industries is freeing up labor that is seeking employment in other countries.

Thus, international labor migration is, firstly, a form of movement against the surplus population from one center of capital accumulation to another. This is the essence of the economic nature of the formation of international labor flows and their main reason (ILO, 2020).

The connection between globalization and labor migration is mutual. The first acts as the latest stimulus to migration and a source of new types and forms of human movement, and migration processes are one of the globalization's demonstration, as well as its stimulus or limiter (Yuskiv, 2009, p. 167). Fig. 3.

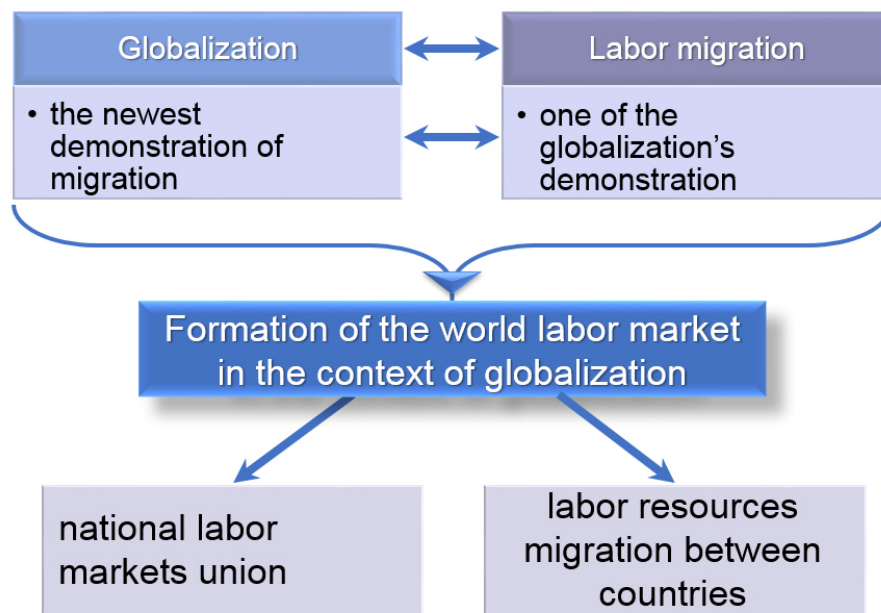


Figure 3. The connection between globalization and labor migration

Source: systematized by the author

In addition, globalization significantly changes the nature of migration:

1. the process of globalization makes the nature of modern human movements latent, and the time and geographical framework of movement - unclear;

2. globalization blurs the parameters of migration identification - time, distance, meeting the needs of migration actors, etc.

That is, globalization is one of the factors that influences the development of current migration trends, as well as determines the specifics of the global labor market (Starostenko, Kozar, 2015, p. 25).

Exchange forms of migration, such as cross-border migration and migration, which is based on the international contracts for the provision of individual services or the implementation of a foreign firm tasks, are developing dynamically. The first form is one of the types of pendulum migration and involves the movement of labor with the simultaneous functioning of the migrant in at least two countries - the country of origin and country of work. The second form of exchange is developing mainly in connection with the deregulation and liberalization of the world economy. Moreover, this form is connected to the growing freedom of economic activity, the independence of the individual as an economic unit from a particular society (country). It is typical for territories that are economically and geographically connected and that are interested in it (for example, the EU or NAFTA), fig. 4. (Starostenko, Kozar, 2015, p. 24).

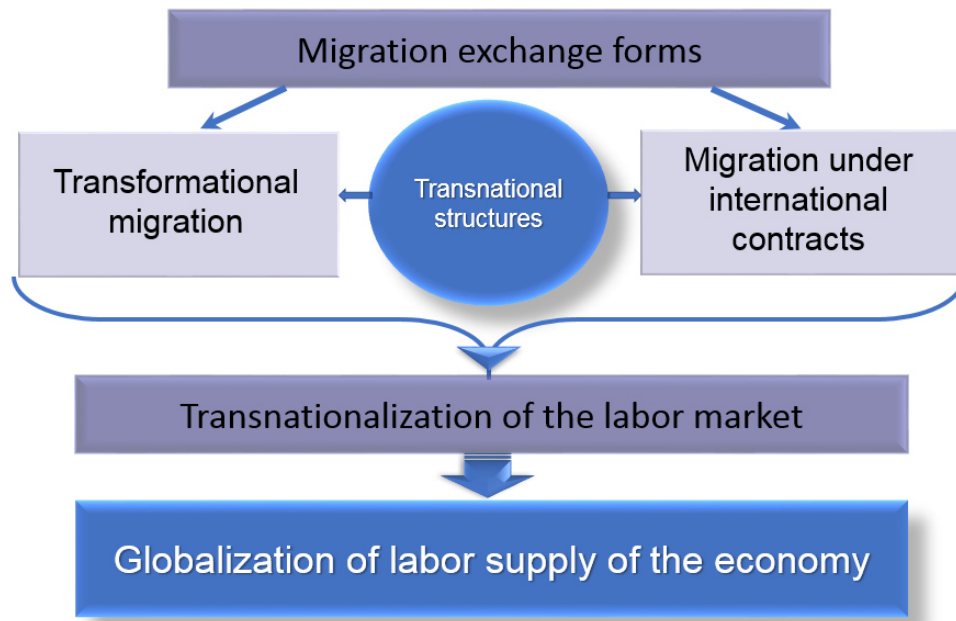


Figure 4. Connection between migration forms and labor globalization

Source: systematized by the author

Transnational corporations play an important role in the development of the world labor market, as they operate on the basis of scientific, technical and commercial enterprises' cooperation of any organizational and legal form and regardless of the activity operate in the markets of two or more countries. policy through several decision-making centers (Petrenko, Pigul, 2015, p.39).

As a result of the objective economic processes that takes place in the world economy, TNCs are penetrating high-tech, science-intensive industries that require huge investments and highly skilled workers (staff) (Dadalko, 2001, p. 549).

Transnational companies shape international demand for certain occupational groups and their career expectations, directly and indirectly influencing global employment parameters (Kirichenko, 2008). Thus, the globalization of labor resources of the economy is a manifestation of the formation of labor market transnationalization.

The current stage of international economic relations' development is characterized by rapid growth of production factors' world markets, which forms the basis for combining local reproduction processes into a single system. It is also determines the global labor space formation as a basis for sustainable development of the world economy. At the same time, the relationship between the global and micro levels of the world economy is provided by transnational structures, whose activities, as was noted, have become global due to the freedom of capital, technology and human resources movement.

Global TNCs have become the driving force of the innovation and investment process in the world economy. At present, TNCs define and direct world production, which is developing on the basis of modern technologies, knowledge, information and global transport networks. It can be argued that today TNCs are leaders in education and research, training professionals and forming leadership-type managers, who in turn provide flexibility, dynamism and resilience to TNCs themselves (Shook E., Knickrehm M. 2018).

Transnational structures form a separate segment of the world labor market, distinguished by their own patterns of labor resources movement (Table 1).

Table 1. Segments of the modern world labor market

Source: Petrenko, Pigul, 2015

<i>TNCs</i>	<i>Medium and small enterprises of developed countries</i>
Privileged workers ICT workers, programmers Specialists with secondary qualification Highly qualified groups of workers Female workforce (young single women) Labor force that supplied from areas with low levels of development Migrant workers Scientists	Specialists with secondary qualification Female workforce (young single women) Labor force that supplied from areas with low levels of development Migrant workers Scientists
<i>Entrepreneurs of developing countries</i>	<i>International organizations</i>
Privileged workers ICT workers, programmers Specialists with secondary qualification Highly qualified groups of workers Female workforce (young single women) Labor force that supplied from areas with low levels of development "Exported" workers from Asia Illegal workers	ICT workers, programmers Specialists with secondary qualification Scientists

Objective opportunities for private capital attracting labor force of different nationalities are connected with the development of TNCs. Companies deployed large-scale international production with hierarchical division of different groups of employees, who, living and working in different countries, integrated into a single production system. Within TNCs, over time, there is an internal labor market, which is characterized by frequent movements of different

categories of workers (especially management) from one country to another (Starostenko, Kozar, 2015, p.39).

Within the transnational segment of the labor market, it is also possible to distinguish certain segments of the labor force: by age and professional characteristics, cultural characteristics, national and other characteristics. A special segment consists of highly qualified workers (scientists, analysts, engineers, IT specialists, etc.), the growth of demand for which is due to the rapid growth of world trade in services. The specificity of this segment of the transnational labor market is that due to the information technology development, a certain part of the intelligent workforce can participate in the production process remotely.

Thus, according to a study by Top\$dev (a service for programmers and IT recruitment that include 29 countries, almost 170 thousand developers, more than 1.5 million projects), at the beginning of 2020 the market for orders for IT freelancers from Eastern Europe was divided between the United States (54.5%), Great Britain (10.5%), Australia (7.0%), Canada (5.2%), Germany (3.2%) (Fig. 5). That is, digital technologies make the labor market truly global, forming a number of advantages of digital employment - non-standard forms of employment, global mobility, a decent level of wages (Kalinina, Mykhailyshyn, Korovchuk, Savchenko, 2021), and unifying the conditions of use of labor within TNCs.

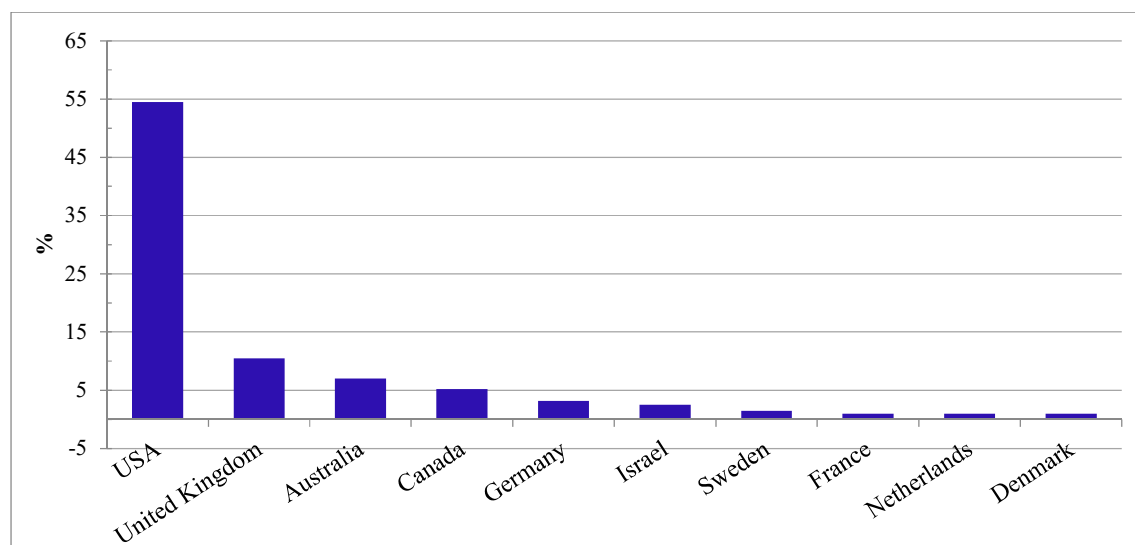


Figure 5. Countries-customer of services of IT freelancers from Eastern Europe at the beginning of 2020, share in volume, %

Source: Kalinina, Mykhailyshyn, Korovchuk, Savchenko, 2021

Segmentation of the world labor market indicates the peculiarities of demand for labor resources, their skills and the international division of labor. The labor force in the world labor market is diverse and differs from that which appears only in national markets, it is characterized by high mobility and adaptability employers (Petrenko, Pigul, 2015, p.39).

On the one hand, the world labor market has a significant impact on economic growth and macroeconomic environment, on the other - the international labor market is influenced by the dynamics of the world economy and certain socio-economic factors influencing the formation of transnational labor flows:

- international division of labor;

- scientific and technological progress, informatization and communication;
- development of international transport infrastructure;
- international competition;
- international capital mobility;
- structural changes in the economy;
- price liberalization;
- international migration (Petrenko, Pigul, 2015, p.39).

Thus, the generally recognized center of attraction for ready professionals is the United States, which, along with other countries (Table 2), implements a targeted policy to attract highly qualified personnel. Among immigrants leaving for the United States, there is a predominance of scientists and highly skilled workers. It is estimated that thanks to the involvement of highly qualified foreign experts, during 1965-2000 the United States managed to save about \$ 200 billion (Starostenko, Kozar, 2015).

At the same time, transnational companies have proven to be more effective in improving the workforce quality within the system than in stimulating international labor migration (Kirichenko, 2008). Their concentration on high-tech (innovative) sectors that require higher-level skills (capable of generating competitive advantage) means that TNCs will play a crucial role in generating quality workforce requirements globally in the long run.

The crucial role of human resources in the global economy is formed due to the decisive influence of innovation processes on the formation and development of international business modern forms. This involves both major firms and separate divisions of TNCs located in different countries and linked by a single technological cycle. This led to the phenomenon of labor flows transnationalization as a determining factor of the international economic activity development at the corporate, sectoral, national and global levels, which has a long-term impact on both TNCs and national economies development.

At the same time, the activities of TNCs lead to the phenomenon of world economic division of labor, which in contrast to the international (global) division of labor (division of labor between countries), is a division of labor between transnational corporations (*intracorporate division of labor*).

Like the international division of labor, the world division of labor is extraterritorial in nature, but unlike the first, the world division of labor is a technological one in the production process and based on a single division (internal to multinational corporations) in the form of transnational specialization and cooperation production (a single production process is divided into operations carried out in different countries). A partial product made in a country has no consumer value outside the transnationally organized production process (Dadalko, 2001, p. 17).

Within the global division of labor, multinational companies are an effective tool for transferring skills to local workers. As a rule, employees working in structural units of TNCs have a higher level of skills compared to employees of local firms and a higher level of wages. Transnational companies are not interested in converging wage levels in the international economic system because of the benefits they receive from relatively lower earnings in non-TNC companies, but paying higher wages than purely local enterprises (because their requirements to the labor force are higher) (Kirichenko, 2008), thus TNCs solve the problem of labor supply.

Table 2. Policy priorities and strategies for highly qualified migrants

Country	Political conditions	Strategy	Conclusions and issues that need attention
Canada	Migration as an element of the overall development strategy for professionals with a certain level of qualification. Migration that compensates for scarce specialties.	Selection of highly qualified immigrants with a family for permanent residence in the country. Assistance to foreign students.	Goals are generally achieved. Some problems with retraining newcomers without an invitation to work.
Australia	Migration as an element of the overall development strategy for professionals with a certain level of qualification. Migration that compensates for scarce specialties. Assistance to foreign students. Goals are generally achieved.	Selection of highly qualified migrants with a family for permanent residence in the country.	Some problems with retraining newcomers without an invitation to work.
USA	Protection of local workers when considering employers' applications to hire a foreign worker. Prevent the migration of low-skilled people and restrict immigration in general. Quotas for the most qualified categories.	An invitation to work is required. Extensive program for temporary residence. A little help for foreign students. A huge number of applicants for existing programs, a long queue of applicants.	Return to the issuance of temporary visas (exchange, resettlement under special program etc).
United Kingdom	Maximum free resettlement. Permission for highly qualified personnel to restrict the migration of low-skilled people. Rating system for processing entry applications from highly qualified migrants, no quotas.	List of scarce specialties that require high qualifications. Possibility of entry of foreign students of scarce specialties.	Goals are generally achieved.
France	Protection of local workers when considering employers' applications to hire a foreign worker. Increasing economic migration.	Careful study of the labor market and the list of professions.	Immigration restrictions.
Netherlands	Restrictions on the migration of people with low qualifications and insufficient knowledge of the Danish language. Exemption from labor market research and language exams for highly qualified migrants and with high wages.	Satisfactory use of entry permits for highly qualified workers.	Some employers still use the standard job invitation.
Germany	Permission for highly qualified personnel to enter, while restricting the immigration of low-skilled people. Compete with other countries for highly qualified staff.	Permanent residence for foreigners with a high level of qualification and salary. Strict restrictions for other categories. A number of opportunities for university graduates.	Restrictions on immigration, the possibility of changing the status of stay for students. The flow of migrants does not meet expectations.
Norway	Protection of local workers when considering employers' applications to hire a foreign worker. Free resettlement to meet the needs of employers. An invitation to work is required.	Quotas for the most qualified categories.	Existing quotas exceed the number of applicants.
Japan	Admission of highly qualified personnel while limiting the immigration of low-skilled people.	Strict demarcation of specialties that require a high level of qualification. Permission for international students to look for work.	Low level of migration of highly qualified personnel, despite openness. Some students stay in the country to work.
Czech Republic	Assistance to Czech employers in hiring foreign highly qualified employees.	Accelerated acquisition of the right of permanent residence for foreign workers with a high level of qualification.	The flow of migrants is less than expected.

The activities of transnational corporations as an organizational form of the world labor division (transnational economy) provides regular circulation on a global scale of goods, services, financial and raw materials, human resources, and with them - knowledge, technological and managerial experience (Kozak, Lukyanenko, Makogon et al., 2004, p.18). Thus, the formation of transnational labor flows is a direct consequence of TNCs in the world economy globalization, as evidenced by the formation of TNCs' intercorporate cooperation (R&D cooperation, cooperation with science parks, etc.), which is based on knowledge and skills as a basis for international competitive advantages, which are carried by human resources.

Labor flows transnationalization allows us to consider the world economy as a single supranational world economic space, which through the world division of labor forms a transnational level of world economic relations, within which there are unified economic, technological, legal and socio-cultural requirements for production and commercial quality. Forces (Hooijdonk van R., Hewlett M. *The Future of Work*, 2017).

At the same time, multinational companies are one of the most complex forms of international business. Such a company uses an international approach to the issue of production location, which is built into the global business philosophy, which provides for economic activities both within the country and abroad. It is clear that the location of TNCs' structural units abroad takes into account the full range of economic factors: the availability of natural resources, production infrastructure, skilled labor (including its cost), the markets' potential, tax conditions, etc.

In conditions when the corporations' effectiveness is ensured by highly skilled labor, the required quality labor resources' availability is the main factor in deciding on TNCs' structural units' location in certain countries. Taking the cost indicator into account, the labor force in countries with a lower level of economic development is an attractive factor for TNCs of potential host countries. On the other hand, the formation of a quality component at the corporations' request takes time to direct the highly skilled professionals' flow of TNCs. Improving the workers' quality characteristics leads to the reorganization of the host countries' economies with the help of national staff, thereby helping to increase the level of their economic and technological development.

Thus, at the level of transnational corporations, the labor factor is considered as the leading situational factor of the corporation, while labor needs are met in two ways:

- 1) satisfaction of needs at the expense of own labor resources (home country);
- 2) by attracting the best workers from different countries.

An important factor in the labor flows' transnationalization is also the informatization of world economic development. It influences not only the geographical boundaries of hiring, but also the requirements for the potential employees' characteristics. In terms of demand for flexible workers with broad skills, preference is given to those who are capable of continuous training - the transition from one set of knowledge and skills needed by the corporation to another. That is, human capital is positioned as a source of companies' competitiveness, to use the opportunities of which the unified goals of TNCs are as follows:

- providing opportunities for training, retraining and development of company employees;
- retraining of people who lost their jobs due to the transition to new technologies, products, production methods;
- exchange of ideas and experience in the field of staff training and development;

- support for national and local programs aimed at increasing employee participation in management.

It can be argued that in achieving the goals of TNCs, the main problems do not arise in terms of profit, but in connection with ways to achieve it (Kozak, Lukyanenko, Makogon, etc., 2004, p.463), which are driven by existing human resources of the company, able to ensure long-term prospects of economic activity through the provision of stable productivity.

The concentration of human resources of the required quality, knowledge and experience within TNCs, as well as the global organization of management allow such companies to optimally locate structural units on a global scale. Taking advantage of the transnational structure, they can benefit from international differences in the business cycle, productivity, characteristics of demand, taxation, etc.

At the same time, it should be noted that transnational structures can arise outside the traditional corporate framework - the so-called flexible megastructures. Thus, according to estimates, the number of cooperation agreements in the US TNCs in the 90s XX century was 4 times more than the number of controlled subsidiaries. This was contributed by the rapid development of telecommunications and information technology, creating conditions for operational regulation of enterprises, regardless of their location, which changed the possible forms of employment (PwC, 2017).

Today there is a trend of TNCs' decapitalization, their transformation into cloud firms, which are actually a brand's shell for coordination the network of external structures. We can talk about the emergence of the phenomenon of transnational corporate relations (interconnected community of TNCs) as a factor in the formation of a new center of economic power in the world economy. The formation of transnational corporate networks testifies to the formation of the latest integrated form of international business, which, thanks to information technology, changes the mechanisms of labor supply in the context of the world economic space globalization.

Information technologies functionally provide the appropriate direction of human capabilities in the process of TNCs' labor support. This affects the value of such an economic indicator as the level of productivity. With the help of information technology, TNCs make advanced choices of production directions and intensity and technological activities in conjunction with the socio-economic cycle through targeted modeling of results and determining the means to achieve them. That is, today the activities of TNCs are in the coordinates of "information base - labor (intellectual) support - innovation".

Based on the above, at the present stage, information and knowledge are the basis of TNCs' labor resources. Respectively, the formation of transnational labor flows occurs around the above coordinates, determining the multidimensional subject-object nature of these flows.

Global regularity, which is to accelerate the formation of the network structure of TNCs, provides TNCs with a wide range of tools for employment through informatization. This mean from the educational and qualification requirements' unification worldwide to the advanced formation of quality characteristics of the existing workforce. The organizational basis of such tools are planetary communication systems as an information basis for the formation of global labor space, which meets the needs of TNCs in employees and determine the global nature of the transnationalization process.

TNCs are in close contact with the territories where their activities are located, expanding the network of labor resources through information technology, overcoming the so-called

"island effect" of labor space (availability of qualified personnel only in large cities of TNCs) and promoting such way of including countries in the global labor market.

Given the above, in fact, as a result of TNCs' activity there is an effect of self-organization of transnational labor flows, the driving force of which is, on the one hand, globalization, and on the other - the informatization of labor space (fig. 3).

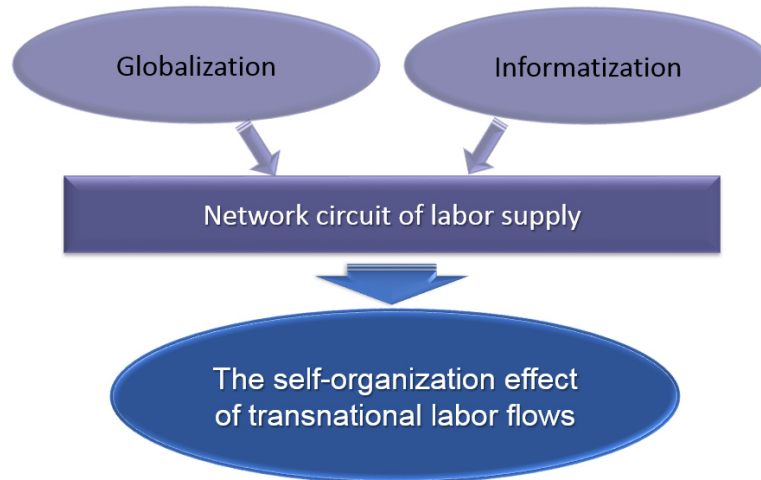


Figure 6. The sources of the self-organization of transnational labor flows
Source: systematized by the author

At the same time, the transnationalization of labor resources is characterized by certain contradictions (Kirichenko, 2008):

- labor relations are built in such a way that employees are incorporated into the global structure, with priority given to the company's interests, which may become a source of conflict in the future;
- work organizing through team building techniques, team briefings and direct communication in combination with the creation of workers' committees instead of trade unions can create some tension in the team, as it requires exceptional loyalty from employees.

In order to overcome these contradictions, organizational and managerial components of the world labor market transformation process is embodied in the activities of states and supranational organizations. They have a regulatory impact on social transformation through coordination, coordination and streamlining of subsystems and elements of multilevel socio-economic systems (Grazhevskaya, 2008).

Conclusions

The modern world economy is developing under the influence of a number of factors, among which the most important is the labor market globalization as a reflection of the process of interpenetration of national systems of labor support, deepening the international division of labor. The leading direction of the labor market globalization is the transnationalization of labor flows - transnational structures form a separate segment of the world labor market with its own

patterns of labor movement, causing the effect of self-organization of transnational labor systems.

Acting as a driving force of innovation and investment process in the world economy, transnational structures form a separate segment of the world labor market with its own laws of labor movement. This cause the phenomenon of labor flows transnationalization as a determining factor in international economic activity and lead to the emergence of the phenomenon of world economic division of labor - the division of labor between transnational corporations. Accordingly, the formation of transnational labor flows is a manifestation of the TNCs' activities as an organizational form of world economic division of labor.

Transnationalization of labor flows allows us to consider the world economy as a single supranational world economic space, in which the long-term prospects of economic activity are determined by the available human resources of the required quality in the company. At the same time, due to the IT technologies' development, the network contour of the TNC's labor supply is significantly expanding, promoting the countries' inclusion to the global labor market. In fact, as a result of the TNCs' activities there is an effect of self-organization of transnational labor flows, the driving force of which is, on the one hand, globalization, and on the other - the informatization of labor space

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TRANSFORMATION OF UKRAINE'S FOREIGN TRADE POLICY IN THE CONTEXT OF THE FREE TRADE AGREEMENT WITH THE EU

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Abstract. *The article analyzes the current trends in global trade flows. The aim of the study is to determine the directions of transformation of Ukraine's foreign trade policy in the context of the free trade agreement with the EU. The place of the European Union in world trade is determined, it is noted that the basis of the EU foreign trade policy is openness to the markets of developing countries. The paper analyzes the transformation of Ukraine's foreign trade flows in the context of the Association Agreement with the European Union. The progress of Ukraine in fulfilling the terms of the Agreement on the Free Trade Area was analyzed. The commodity and geographical structure of foreign trade is determined, the degree of diversification and concentration of Ukrainian exports and imports is analyzed. The current problems of Ukraine's foreign trade at the present stage are identified. As a result of the study, the structural deformation of Ukraine's foreign trade and its imbalance are substantiated. This necessitates the stimulation of Ukraine's foreign trade activities, changes in the exports' raw material orientation and the Ukrainian producers' integration into global value chains. Also, it was determined that it is expedient to use the experience of EU countries to determine further directions of Ukraine's foreign trade policy transformation. Conclusions that were made: Ukraine need urgent steps to stimulate foreign economic activity to overcome the accumulated socio-economic problems. On the other hand, any further prospects could not be made because of Russian invasion of Ukraine and this influence industrial facilities, agricultural fields and human factor due to the huge number of refugees. This situation affects not only Ukrainian economy and foreign trade policy, but also this affects global supply chains and food security around the world.*

The following methods were used: historical-logical method – to determine the objective prerequisites transformation of Ukraine's foreign trade policy; method of comparative analysis – to conduct a comparative analysis of Ukraine's international trade dynamic and structure; analysis and synthesis method – to systematize the directions of Ukraine's foreign trade policy transformation; method of system generalization – to generalize the results of the study.

Keywords: *International trade, foreign trade policy, Ukraine, European Union, free trade agreement*

Introduction.

The intensification of international competition and the deepening of the international labour division necessitate the national economies' effective involvement in global trade flows. In these circumstances, the traditional paradigm of state's foreign trade policy does not meet the geopolitical requirements of countries because they usually covers only the standard tools for regulating export and import operations. This issue is especially relevant for developed countries, as competition for leadership positions on the world stage is high. In addition, digital transformations and the transition to sustainable development require changes in foreign trade policy.

For Ukraine, trade relations with the EU are an additional step towards joining the European Union and an opportunity to open new markets. Free trade will give Ukraine the opportunity to: increase exports by entering a new market; to compete on equal terms with other

countries; to expand the range of partners and diversify supplies to reduce risks in case of access decrease to CIS markets; attracting new technological and innovative solutions from EU countries; reduce non-tariff barriers in trade; to improve access to quality imported equipment, seeds, plant protection products, etc; to preserve sovereignty in the implementation of foreign economic policy (Razumkov Center, 2021).

Foreign trade is an important component of Ukraine's economy. In addition, in the context of strengthening integration processes, the development of the foreign trade sphere is one of the main factors in the competitiveness of the national economy. It should be noted that exports play a significant role in the economy: its share in Ukraine's GDP fluctuates in different years, amounting to about 50%. It is important that Ukrainian exports have a significant share of imported components. Thus, imports also play a significant role in the activities of many enterprises. In recent years, there have been significant changes in foreign trade, the consequences of which have a multi-vector impact on the economy of our country. Thus, with the entry into force of the free trade zone with the European Union, Ukrainian exporters and importers have been able to integrate even more actively into world trade flows and European production networks. The European Union is one of the world's largest economies. It is the most important trading partner for 80 countries (for comparison: the United States is the first trading partner for about 20 countries). In particular, the EU actively trades with developing countries, importing more than the United States, Canada, Japan and China combined (European Commission, 2017). The EU is also interested in maintaining a stable and harmonious environment that promotes its prosperity.

For the European Union, foreign trade is one of the most powerful tools for development. It is a driver of Europe's economic prosperity and competitiveness, boosts the internal market and emphasizes the power of foreign policy. Thanks to the openness of the European trade regime, the EU is the world's largest trader in agricultural and industrial goods and services, ranked first in exports and imports of international investment. Thanks to the coordinated foreign trade policy of the member states, the EU is the only player on the world stage, which also adds weight to the global economic space. Global transformations of the economic space are characterized by considerable depth and speed. In order to meet these current challenges, the country's foreign trade policy must be flexible and relevant and support the country's geopolitical interests.

Scientific problem of the paper is that within the framework of the Free Trade Agreement between Ukraine and the EU, the structure of Ukraine's foreign trade is being transformed, which is unprofitable for the country in the long term. Therefore, Ukraine's foreign trade policy should be changed to be not only financially beneficial, but also to promote the development of the national economy, develop modern technologies, industrial production and discourage the low-tech export structure.

The **aim** of the study is to determine the directions of transformation of Ukraine's foreign trade policy in the context of the free trade agreement with the EU. The obtained conclusions will allow us to determine what exactly needs to be done in the direction of consolidating the existing achievements, as well as further development of bilateral and regional cooperation mechanisms.

The following **methods** were used: historical-logical method – to determine the objective prerequisites transformation of Ukraine's foreign trade policy; method of comparative analysis – to conduct a comparative analysis of Ukraine's international trade dynamic and structure;

analysis and synthesis method – to systematize the directions of Ukraine’s foreign trade policy transformation; method of system generalization – to generalize the results of the study.

Research tasks:

- determine current trends in Ukraine's foreign trade with the EU countries in the context of the Free Trade Agreement with the EU;
- analyze the structure of Ukraine's foreign trade;
- study the main problems of foreign trade policy of Ukraine;
- propose solutions to these problems.

Studies of leading Ukrainian economists is devoted to the study of national peculiarities of countries’ foreign trade policy, its principles of functioning and tasks. Theoretical principles of foreign trade and problems of its regulation, features of foreign trade in services are the focus of scientists such as A. Mazaraki, T. Melnyk (Mazaraki, Melnyk, Iksarova, 2016), O. Melykh (Melykh, 2020); to the issue of transformation of Ukrainian foreign trade at the present stage devoted research of O. Mylashko (Mylashko, 2021) and G. Duginets (Duginets, 2018); research of T. Ostashko and I. Kobuta is focused on trade policy changes in the COVID-19 pandemic conditions (Ostashko, Kobuta, 2020). The issue of foreign trade policy directions and measures’ transformation in modern conditions is analyzed in publication of such European scientists: M. Akguc (Akguc, 2021), G. Grevi (Grevi, 2019), S. Anghel, B. Immenkamp etc. (Anghel, Immenkamp, Lazarou, Saulnier, Wilson, 2020) and other scientists.

Foreign trade plays a significant role in solving many problems of socio-economic development of the state. Its statistical study begins with the analysis of the trade balance, which consists primarily of exports and imports of goods and services (Mylashko, 2021). The dynamics of international trade is an important background for development, especially in the current context of economic instability caused by pandemics and local conflicts. Since 2005 the volume of international trade of goods has increased dramatically. However, growth has slowed down significantly in the last few years, virtually stopping after 2018, and declining in 2020 as a consequence of the COVID-19 pandemic. In major economies, both imports and exports volumes continued to grow during the last 15 years. In 2020, imports and export volumes have been increasing for China but have declined for the United States and the European Union (fig. 1) (UNCTAD, 2022). The COVID-19 pandemic has revealed the EU’s external dependencies and deepened existing vulnerabilities, leading to a major health crisis and consequent socioeconomic challenges. Similarly, increasing infection rates and subsequent lockdown measures have led to disruptions in supply chains, impacting the manufacturing of critical goods and products in a wide range of sectors, ranging from pharmaceutical to industrial machinery production (Akguc, 2021).

The first reaction to the pandemic was the use of protectionist measures by many governments. The first wave of protectionist measures is related to bans or restrictions on the export of medicinal products or bans on the import of potentially dangerous goods of animal origin from countries where the coronavirus has spread. The second wave of protectionist measures is related to bans or restrictions on food exports in order to ensure food security in their countries (Ostashko, Kobuta, 2020). The policy of protectionism in the modern world is used more and more often, despite certain shortcomings. Purposeful protection of domestic producers is carried out through the use of state institutions a number of tools: import and export duties, subsidies, quotas, certification systems, etc. (Melykh, 2020)

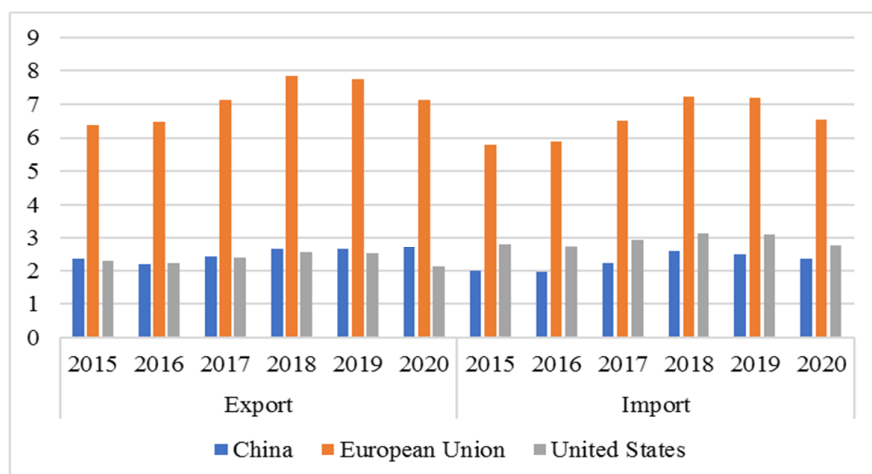


Figure 1. International trade of goods and services, China, EU, USA (current U.S. dollars, trillion), 2015-2020

Source: World Bank Group, 2022

While import volumes have been growing relatively more than export volumes for developing countries, the opposite has happened for developed countries. The relatively larger increase in the volumes of imports can be explained by the increase in consumer demand in developing countries. Growth in trade volumes has slowed down substantially in the last few years, especially for developing countries. During 2020, most growth rates for volumes of imports and exports for the largest economies were close to zero, or even negative in the case of the United States of America. In contrast, trade volumes from China kept increasing both in relation to imports and exports (UNCTAD, 2022).

The European Union is an important player at the world stage. The EU is the largest economy in the world. Although growth in 2021 is projected to be slow, the EU remains the largest economy in the world with a GDP per head of €25 000 for its 500 million consumers. It is the world's largest trading block and the world's largest trader of manufactured goods and services. The European Union is the top trading partner for 80 countries. By comparison the US is the top trading partner for a little over 20 countries. The EU is the most open to developing countries. Excluded, the EU imports more from developing countries than the USA, Canada, Japan and China put together. It benefits from being one of the most open economies in the world and remains committed to free trade (Anghel, Immenkamp, Lazarou, Saulnier, Wilson, 2020). The average applied tariff for goods imported into the EU is very low. More than 70% of imports enter the EU at zero or reduced tariffs. The EU's services markets are open and the EU has arguably the most open investment regime in the world. Trade under existing EU trade agreements keeps growing (European Commission, 2022a).

The basic principles of the EU's functioning are internal and external openness. On the one hand, it is the largest exporter and importer of goods and services worldwide. Compared to the world's largest economies, the EU accounts for a larger share of GDP. In 2020, EU exports provided 35 million job positions in the EU, compared to 20 million in 2000 (Eurostat, 2021). The EU's increased openness to imports since 1995 has increased its revenue and increased the share of foreign trade in the European Union's GDP accordingly (fig. 2) (World Bank Group, 2022).

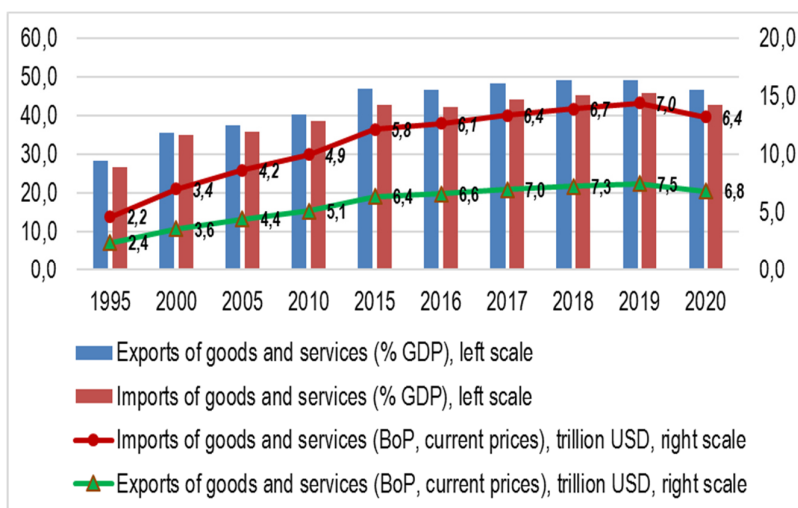


Figure 2. Dynamics of current trade in the EU and its part of GDP, bln. USD, %, 1995-2020
Source: World Bank Group, 2022

To carry out its geopolitical ambitions on a global scale, the EU needs to diversify its relations and build alliances with like-minded people, including through a wide network of trade agreements. This network is important for every current and future agreement that strengthens the relationship with partners (Grevi, 2019). The EU's Free Trade Agreements are a platform for enhanced cooperation that pursues our values and interests. They are the basis for interaction with important markets and countries around the world, in particular in the Asia-Pacific region, Latin America and the Caribbean.

The Association Agreement, including a Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine, was negotiated between 2007 and 2011 and signed on 21 March and 27 June 2014. The DCFTA has been provisionally applied since 1 January 2016 and the Association Agreement formally entered into force on 1 September 2017 following ratification by all EU Member States (European Integration Portal, 2022a).

The Association Agreement is the main tool for bringing Ukraine and the EU closer together: it promotes deeper political ties, stronger economic links and the respect for common values. The EU granted Autonomous Trade Measures (ATMs) for Ukraine, topping up the concessions included in the Association Agreement/DCFTA for several industrial goods and agricultural products from October 2017 for a period of three years (European Integration Portal, 2022b). Confident conclusion about the positive effects of trade liberalization is argued by numerous empirical studies: in foreign-oriented countries, economic growth rates are higher than in the closed ones (Mazaraki, Melnyk, Iksarova, 2016),

At the early stages of the implementation of the Free trade area between the EU and Ukraine, expectations were mostly positive. The advantages for consumers was: a wide range of products and reduced prices, increased competition between producers and sellers; higher quality products on Ukrainian domestic market; increasing of jobs' number and investments in Ukraine; higher level of social protection, social security, environmental requirements, etc (Duginets G., 2018).

It was planned that Ukrainian business will receive the following benefits: preferential treatment for entering the EU market (no tariffs on the world's largest market), increased export supplies; improve access to third country markets through the harmonization of Ukrainian

legislation with EU law and, consequently, the transition to world-renowned standards, as well as better legal protection of intellectual property rights and the application of new rules in practice, which will bring higher profits to inventors and artists; the domestic investment and business climate will improve (European Integration Portal, 2022a).

Negative consequences were also expected. These include: adaptation and changes in legislation require funding; ousting small and medium-sized businesses through competition, as well as high costs from the state budget and from small and medium-sized businesses to modernize production; manufacturers' costs would increase due to improving the quality of compliance with standards; competitive pressure would increase for certain industries in the domestic market, which could lead to its disappearance; due to the increase in exports of raw materials and semi-finished products, the negative balance of trade could increase, decline of domestic light industry, especially small and medium-sized businesses; due to the export reorientation of domestic producers it could be a shortage of domestic goods; insecurity of new sectors of the economy that do not have the required level of competition.

Some of these expectations came true, and some did not. In fact, the results of the 5-year term of the Free Trade Area are as follows.

At the present stage, the EU Association Agreement with Ukraine is a new model of association based on two elements:

1) advanced political association (political dialogue, cooperation in the field of foreign and security policy, as well as in the field of internal affairs and justice);

2) deepened economic integration (a free trade agreement that gives Ukraine access to the EU's single internal market and extends European legislation to it) (European Integration Portal, 2022a).

The Association Agreement is a guide and program of Ukrainian reforms in various sectors and sectors, and the level of its implementation is an indicator of the effectiveness of the European integration course of the Ukrainian government. The agreement provides the implementation of European standards in the field of food production, sanitary and phytosanitary standards, transport safety, environmental requirements and other reforms that transfer the fundamental objectives of the Agreement to the sectoral and operational levels and bring living standards closer to European (Razumkov Center, 2021).

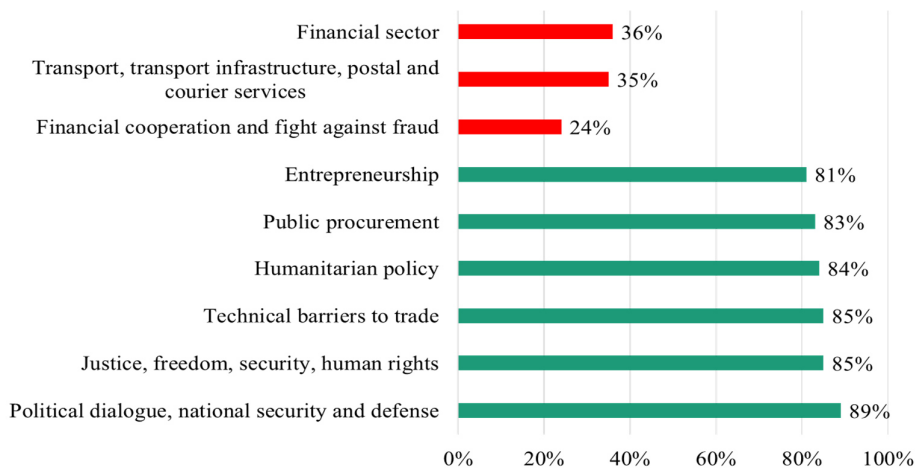


Figure 3. The largest and smallest progress of Ukraine in the areas throughout the implementation of the Association Agreement, 2020
Source: Razumkov Center, 2021)

The implementation of the Association Agreement with the EU envisages the implementation by the Ukrainian side of huge amount measures within the framework of more than 2,000 tasks (fig. 3).

The greatest progress during the implementation of the Association Agreement has been made in the following areas:

- Political dialogue, national security and defense - 89%
- Justice, freedom, security, human rights - 85%
- Technical barriers to trade - 85%
- Humanitarian policy - 84%
- Public procurement - 83%
- Entrepreneurship - 81%

At the same time, there are areas in which Ukraine is significantly behind schedule. In particular, the least progress has been made in the following sectors:

- Financial cooperation and fight against fraud - 24%
- Transport, transport infrastructure, postal and courier services - 35%
- Financial sector - 36% (European Integration Portal, 2022a)

It was Identified specific issues that complicate the implementation of the Agreement. First of all, it is low efficiency of the public administration system in Ukraine, inadequate interdepartmental coordination, personnel problems, the lack of optimal planning of the implementation process. Other problems include systemic weaknesses in business management and low awareness of the Agreement.

Trade flows between Ukraine and the EU have always played a role in Ukraine's international trade. However, if we compare the data for 2012 and 2021, exports to the European countries accounted for slightly more than a quarter of total, and imports - almost a third. In 2021, the share of the EU increased significantly (fig. 4).

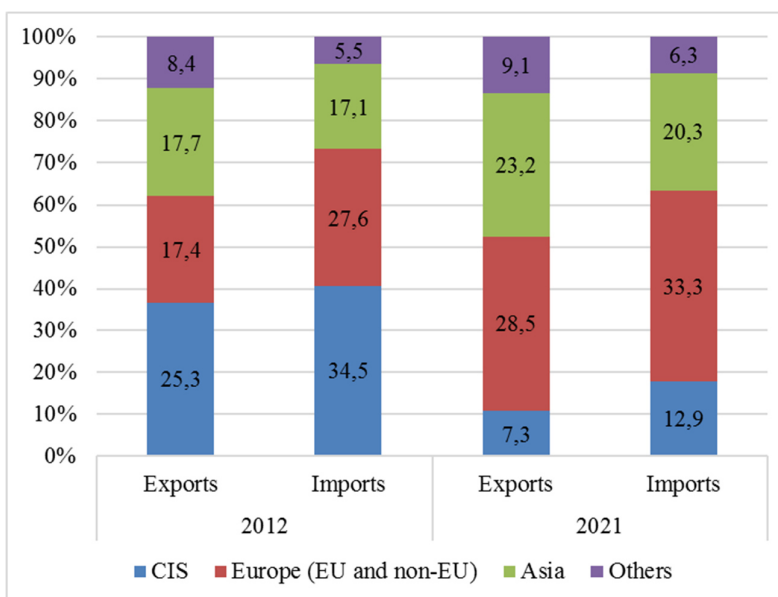


Figure 4. Geographical structure of foreign trade in Ukraine, bln. USD and %, 2012-2021
Source: State Statistics Service of Ukraine, 2022

It should be noted that the reorientation of our country's foreign trade flows during last years took place not only due to the intensification of integration cooperation with the EU. The main determinants were restrictions on Ukrainian exports to the markets of the Custom Union, primarily by the Russian Federation. This has led to a decrease in Ukrainian exports to the CIS countries. The military actions and occupation in Donetsk and Luhansk oblasts also had a negative impact, as a result of which production has been suspended at most enterprises whose products are exported. The total contribution of these regions was 46% of the total rate of decline in exports (Duginets G., 2018).

The positive dynamics of the increase in foreign trade between Ukraine and the EU indicates an increase in the level of cooperation and the availability of potential for further cooperation. At the same time, the qualitative and structural characteristics of Ukraine's foreign trade with the EU indicate the existence of serious problems in this area that need to be addressed urgently. This is primarily about the existing disparity in foreign trade between Ukraine and the EU.

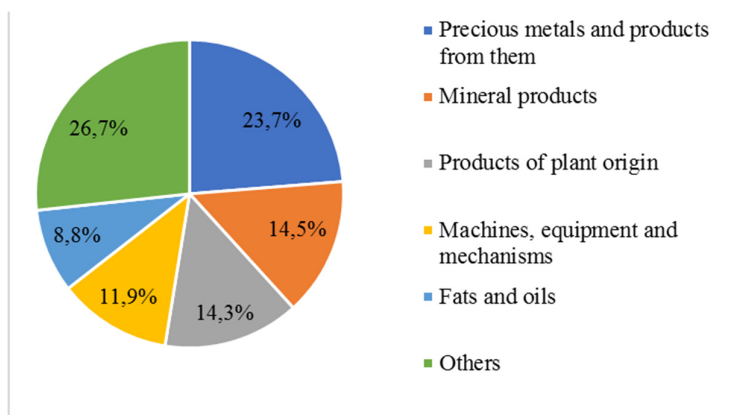


Figure 5. Commodity structure of Ukraine's exports to the EU, 2021
Source: State Statistics Service of Ukraine, 2022

According to the Ukrainian State Statistics Committee, in the last years the largest volumes of exports to the EU had agricultural products (cereals and oilseeds), mineral products and metals (fig. 5), and imports - high-tech goods and complex chemical compounds (fig. 6).

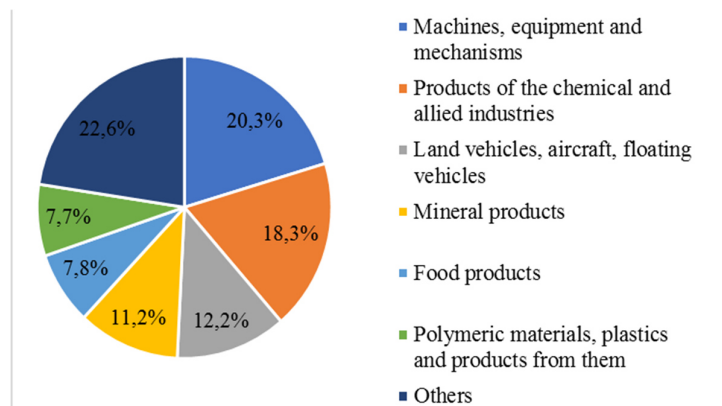


Figure 6. Commodity structure of Ukraine's imports from the EU, 2021
Source: State Statistics Service of Ukraine, 2022

This chart shows that the Ukrainian agribusiness and food industry benefited the most from the opening of the European market, as they were able to double exports by food group and increase exports by almost 2.5 times in the group of animal and vegetable oils and fats (mainly sunflower oil).

Liberalization of mutual access to markets has been considered as the most obvious advantage of the concluded Association Agreement and the creation of a Ukraine-EU free trade area. It should be noted that the liberalization schedules set out in the Agreement have been stretched over time, and are more common and longer in relation to EU exports to Ukraine - which is generally considered a favourable factor for Ukraine as it gives Ukraine some time to adapt to competition in a number of sensitive sectors.

However, this formal asymmetry of the liberalization schedule is neutralized by two unfavourable for Ukraine regimes. The first is tariff quotas application to a significant number of Ukraine's agri-food exports to the EU and the second is high technical barriers to EU access to Ukraine's industrial products. The first of these obstacles slightly hinders the development of Ukrainian exports to the European market and the second really creates a situation where the benefits of trade tariff liberalization for Ukraine are largely offset by the impossibility or difficulty of entering the EU market due to technical regulation (Razumkov Center, 2021).

At the same time, the representatives of Ukrainian ferrous metallurgy made only limited use of the tariff opening of the EU market, which is primarily explained by the structural imbalance (excess of supply over demand) in the world market of ferrous metals. Successes in the European market of Ukrainian producers of machinery and various finished products seem to be steadily growing, but in general they are rather moderate in volume: they do not compensate for losses in the Russian direction caused by long trade wars and policies of purposeful ousting of Ukraine from Russian markets.

Due to such an asymmetric impact of the process of trade liberalization on various sectors of the economy, the dynamics of Ukrainian exports to the EU in 2021 was quite different in the sectoral context.

It should be noted that such a commodity structure of export-import transactions with the EU is an indicator of the Ukraine's foreign trade dependence on changes in the external environment. In general, imports from EU countries remain much more high-tech and broad in scope than exports to these countries.

Ukraine is losing markets for high value-added goods and expanding supplies of low-grade raw materials and products. This allows us to say that for Ukraine the issue of diversification of the export basket is a strategically important task.

The European Union is Ukraine's leading trading partner because of the Free Trade Agreement. Currently, we see a deficit in trade of Ukrainian goods with European countries due to high share of goods with high added value in import.

The Ukrainian economy, has also undergone significant changes, which, along with the acceleration of European integration processes, have influenced the transformation of foreign trade flows. The main problems are: the annexation of country's part and the long anti-terrorist operation in the east. The consequences of this were: slowing down the processes of structural restructuring of the domestic economy and a high level of economy's import dependence; the deformation of the commodity structure of imports and exports, as well as their imbalance, which indicates the need for urgent steps to stimulate foreign economic activity to overcome the accumulated socio-economic problems. One of the ways to change the raw material orientation of our country's exports is integration into global value chains.

Conclusions

Summing up the results of the study of Ukraine's foreign trade policy in the context of the free trade agreement with the EU we can conclude, that

1. there is increasing the EU's share in Ukraine's foreign trade;
2. deformation and imbalance of the commodity structure of Ukraine's imports and exports;
3. fixation of raw materials orientation of Ukraine's exports.

Recommendations. Research results provided by the author testify to the need to transform the commodity structure of Ukraine's exports to the EU countries. The directions of transformation of Ukraine's foreign trade policy in the context of the free trade agreement with the EU are next:

- Ukraine should step up the process of implementing the Association Agreement, as delays in Ukraine constrain the potential of a Free Trade Area with the EU and, as a result, constrain investment and economic growth;
- attracting investment in the agricultural sector and processing industry will reduce the raw material orientation of Ukraine's exports; as part of the implementation of the Association Agreement, it will also help to meet the technical requirements for products;
- the priority is integration into the EU Digital Single Market; development of e-government and e-services, harmonization of our legislation are also areas in which actions should be intensified;
- in order to stimulate foreign economic activity to overcome the accumulated socio-economic problems and to change the raw material orientation of our country's exports, Ukraine also need to integrate into global value chains.

The main part of the study were made before the Russian invasion of Ukraine. So, it is very difficult to make any forecasts today due to the hostilities on the territory of Ukraine:

- every day industrial facilities are destroying,
- agricultural fields are mined or are under the control of the occupiers,
- the human factor is also at risk due to the huge number of refugees.

This affects global supply chains and food security around the world.

That is why all proposals and recommendations make sense in the event of an early end to hostilities on the territory of Ukraine.

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FISCAL OPERATIONS ON THE WAY OF ENSURING BUDGET SECURITY OF UKRAINE IN CRISIS

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Abstract. *Ukraine, like many other countries in the world, aims to ensure sustainable economic growth by comprehensive socio-economic reform. At the same time, the factors that impede the effectiveness of its implementation pose a threat to financial security due to the loss of its stability. Such multifaceted factors include the spread of globalization and digitalization, which, along with new opportunities, create new challenges and threats, which in turn require a reliable economic foundation and support for financial stability, centralized funds and long-term financial resources. An important tool, among others, is budget policy, which combines regulatory and fiscal functions of the budget process. It optimally and continuously supports the creation of resources for the reduction of threats and development of the economy through budget expenditures, and an indicator of its effectiveness is budget security. Thus, the unresolved issues of budget security, as a strategic direction of financial security, in the relationship and interaction with fiscal sustainability led to the choice of research subject, its purpose and objectives. Paying tribute to the contribution of scientists, we should note that the issue of improving budget security in terms of considering the impact of fiscal sustainability on it requires further research. The purpose and objectives of the study are to generalize and systematize the theoretical foundations and methodological approaches to budget security, impact assessment and development of proposals for strengthening budget security by improving budget and fiscal policy, strengthening fiscal sustainability. To achieve this goal, the following tasks were defined: the theoretical foundations of budget security were generalized; the role and importance of fiscal policy and fiscal sustainability in ensuring budget security were described; the diagnostics of budget security in Ukraine were carried out; the level of fiscal sustainability was analyzed and its impact on Ukraine's budget security was assessed; the practical recommendations for strengthening budget security by fiscal sustainability reinforcement were developed.*

Keywords: *budget security, fiscal policy, fiscal security, state debt.*

Introduction

Ukraine, like many other countries in the world, aims to ensure sustainable economic growth by comprehensive socio-economic reform. At the same time, the factors that impede the effectiveness of its implementation pose a threat to financial security due to the loss of its stability. Such multifaceted factors include the spread of globalization and digitalization, which, along with new opportunities, create new challenges and threats, which in turn require a reliable economic foundation and support for financial stability, centralized funds and long-term financial resources. An important tool, among others, is budget policy, which combines regulatory and fiscal functions of the budget process. It optimally and continuously supports the creation of resources for the reduction of threats and development of the economy through budget expenditures, and an indicator of its effectiveness is budget security. Thus, the unresolved issues of budget security, as a strategic direction of financial security, in the relationship and interaction with fiscal sustainability led to the choice of research subject, its purpose and objectives.

Analysis of recent research and publications. Theoretical and methodological principles of financial safety, including budgetary safety as its structural component, are given in scientific works of domestic and foreign scientists, in particular, O. Baranovsky, O. Baraetska, I. Babets, V. Bilous, Z. Varnaliia, S. Glazieva, K. Errou, O. Kolisnyk, S. Kuznetsova, J. Stiglitz, S. Fischer, R. Peroti, A. Thornell, R. Haussman, P. Hellier and others. Paying tribute to the contribution of scientists, we note that the issue of improving budget security in terms of considering the impact of fiscal sustainability on it requires further research.

The purpose and objectives of the research. The purpose and objectives of the research are to generalize and systematize the theoretical foundations and methodological approaches to budget security, impact assessment and development of proposals for strengthening budget security by improving budget and fiscal policy, strengthening fiscal sustainability.

To achieve this goal, the following objectives are defined:

- to generalize the theoretical foundations of budget security;
- to describe the role and importance of fiscal policy and fiscal sustainability in ensuring budget security;
- to diagnose the budget security of Ukraine;
- to analyze fiscal sustainability and assess its impact on Ukraine's budget security;
- to develop practical recommendations for strengthening budget security by fiscal sustainability reinforcement.

The object of research is the process of ensuring budget security.

The subject matter of research is theoretical, methodological and applied aspects of fiscal sustainability as a factor influencing budget security.

The methods of scientific research. The reliable methodological basics of the research are the statements of modern financial and economic science and methods of scientific knowledge: abstract and logical methods for goals and objectives; the methods of systematic and logical generalization, scientific abstraction, synthesis – the research of budget security and fiscal sustainability, the development of practical recommendations; analytical method; the method of factorial and comparative analysis – the identification of factors and threats; economic and statistical, calculation and analytical, tabular and graphical methods – the calculations and final results of the diagnostics of budget security and fiscal stability.

The information base of the research contains regulatory legal acts, informational and analytical reviews, analytical and statistical information, monographs, scientific articles, Internet resources on the theory, foreign and domestic practice of budget security, fiscal policy.

Scientific novelty of the obtained results. Some statements of the work have elements of scientific novelty. Thus, the interpretation of the concept of "budget security" due to the synthetic approach, the essential characteristics of fiscal stability have been further developed.

The practical significance of the obtained results lies in the outcomes of diagnostics of Ukraine's budget security, in determining the level of fiscal sustainability and assessing its impact on budget security, in developing practical recommendations for strengthening budget security in a COVID-19 pandemic through fiscal incentives, introduction of digital technologies to improve tax administration.

Theoretical approaches to budget security

Budget security is an important component of state financial security. The achievement of the financial well-being of society, the competitiveness of the economy and the national security of the state depend on the degree of its provision. The new reality of financial security resulted from the risks associated with global processes, firstly, political tensions caused by dissatisfaction with economic change and political instability amid growing information openness, mobility and political activity, as evidenced by the spread of protests against government policy. Secondly, there are risks connected with growing stratification of society and the inability of governments to overcome poverty and ensure high quality of life because of chronic budget deficits and rising public debt. Thirdly, there are risks of monopolistic use of technological and financial innovations and the latest digital technologies, the digitalization of the economy and the financial sector with simultaneous growth of vulnerability to failures and cyber threats.

The critical analysis of the scientific discussion provided an opportunity to generalize and present the authors' interpretation of the concept of "budget security": *a synthetic category of economics, finance theory and political science, which is related to the concepts of economic and financial security as their foundation and material basis, financial and budgetary policy as a mechanism and indicator of their implementation, economic pressure and financial stability as a system of countering challenges and threats in order to preserve national interests, strengthen economic independence and financial stability, sustainable socio-economic development.*

For complete disclosure of characteristic features, it is advisable to take into account the components of budget policy (revenue and expenditure policy, debt policy, budget risk management) and a set of factors and political, economic, man-made, environmental, competitive and other threats.

The concept of fiscal sustainability is related to fiscal policy and public debt dynamics. In our opinion, *fiscal sustainability is a policy that, in accordance with current legislation and political decisions, determines the evolution of tax and expenditure ratios, which allows not interfering with the tax system and cost model to prevent debt accumulation over the long term.*

It is obvious that almost all areas of the national economy are marginal under the influence of exogenous and endogenous threats and destructive macroeconomic processes, which introduce a high degree of uncertainty and unpredictable consequences. In turn, it requires measures to strengthen financial stability and ensure sustainable dynamics of economic growth

at the sectorial and regional levels, and the country as a whole. A reliable basis for state budget security is formed by the revenue budget and program-target budgeting in terms of hierarchy and relationship between the implementation of national and regional strategic goals, mission and objectives of financial security, as well as the goals of economic entities achieved by the rational administrative structure for managing the budget process.

Assessing the impact of fiscal stability on budget security

There is the assessment of fiscal sustainability according to the methodological approach of the European Commission (*European Commission. Fiscal Sustainability Report, 2012*), the formalization of the main indicators in Table 1.

Table 1. Main indicators of fiscal sustainability of the European Commission
Source: Pashkevich, 2017; European Commission. Fiscal Sustainability Report, 2012

	Indicator	Calculation formula
1	Short-term objectives are assessed with the indicator S0 (early-detection index of "fiscal stress")	Eleven indicators covering the main sources of macroeconomic imbalances (Roy, Heuty and Letouze, 2007): <ul style="list-style-type: none"> - three-year moving average of the current account of the balance of payments as a percentage of GDP with thresholds of 6 and -4%; - net international investment position as a percentage of GDP with a threshold of -35%; - five-year percentage change in export market share with a threshold of -6%; - three-year percentage change in the nominal value of labor per unit of output with thresholds of 9% for euro area countries and 12% for non-euro area countries; - three-year percentage change in the real effective exchange rate based on the HICP and CPI deflators compared to other industrialized countries (41 countries) with thresholds - / 5% for euro area countries and - / 11% for non-euro area countries; - private sector debt (consolidated) as a percentage of GDP with a threshold of 133%; - the flow of private sector loans as a percentage of GDP with a threshold of 15%; - annual change in house prices taking into account consumption deflator of Eurostat, the threshold value is 6%; - total public sector debt as a percentage of GDP with a threshold of 60%; - three-year moving average unemployment rate with a threshold of 10%; - annual change in aggregate liabilities of the financial sector with a threshold of 16.5%.
2	Medium-term objectives are assessed on the basis of a modified indicator S1 ("fiscal gap")	Quantitative assessment of the necessary budget adjustment to achieve 60% of the threshold value of public debt in 2030. The following indicator values are used for assessment: <ul style="list-style-type: none"> - if the value is less than zero, the country is low-risk; - if the value is between 0 and 3 (which requires a structural adjustment of the primary balance to 0.5 percentage points of GDP per year until 2020), the average level of risk is assigned; - if the value is more than 3 (which means the need for structural adjustment of more than 0.5 percentage points of GDP per year), a high level of risk is assigned

3	Long-term problems are assessed using indicator S2 (fiscal risks related to population aging).	It shows the adjustment of the current structural primary balance needed to match the interim budgetary constraint of the infinite horizon when current and future government revenues, including public debt, correspond to future expenditures, including additional expenditures related to population aging. The following indicator values are used for assessment: - if the value of the indicator is less than 2, then a low risk is assigned; - if the value is between 2 and 6, then the average risk is assigned; - if the value is more than 6, then a high risk is assigned.
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The fiscal gap indicator S1 is an indicator of fiscal sustainability and determines the percentage increase in government revenue or decrease of its expenditures needed to balance public finances over the long term. It is based on the forecasts of economic growth, interest rates and budget balances (Pashkevich, 2017). The initial data for calculating the selected analyzed period 2009-2023 are in Table 2.

Table 2. Research data
Source: Pashkevich, 2017

Indicator	2015	2016	2017	2018	2019	2020	2021	2022	2023
Gross debt,% of GDP	79,1	80,9	17,8	60,9	50,3	68	64,6	60	55
Share of debt denominated in foreign currency,%	64,3%	64,2%	64,4%	58,0%	59,5%	59,5%	59,5%	59,5%	59,5%
US dollar exchange rate	24	27,19	28,07	27,46	28,95	27,0	28,9	28,6	31,0
The growth index of the US dollar to the previous year	1,522	1,133	1,032	0,978	1,054	0,931	1,061	1,010	0,923
Nominal GDP	1979458	2383182	2982920	3558706	3974564	3835,4543	4505,9	5089,4	5689,7
Nominal GDP index to the previous year	1,263	1,204	1,252	1,193	1,117	0,965	1,175	1,129	1,118
Average public debt service rate,% per annum	7,75	7,35	6,5	7	7,3	7,4	8,6	7,2	7,2
Average public debt service rate, in index format	1,0775	1,0735	1,065	1,07	1,073	1,074	1,086	1,072	1,072

According to the results of calculations of the fiscal gap indicator S1 for Ukraine (Table 3) according to the period 2015-2019 - 5.91% of GDP, 2019-2023 - -1.08% of GDP.

Table 3. The calculations of fiscal gap indicator S1 for Ukraine
Source: The state budget of Ukraine. Ministry of Finance of Ukraine, 2021

Indicator	Periods		
	2009-2013	2014-2019	2019-2023
Starting year of fiscal adjustment	2009	2014	2019
Number of years of fiscal adjustment	5	6	5
Desired level of debt at the end of the period,% of GDP	60	60	55
Denominator of components:	7,857	9,853	7,895
A (starting debt burden),% of GDP	2,9397	3,8978	-0,581
B (availability of the target level of debt),% of GDP	-0,687	2,01979	-0,477
C (tax policy),% of GDP	0,007025	-0,002	-0,028
Fiscal gap (A + B),% of GDP	2,252	5,918	-1,058
Fiscal gap (A + B + C),% of GDP	2,259	5,916	-1,085
The level of fiscal risk	average	high	low
Annual amount of fiscal adjustment (A + B)	0,452	0,986	-
Annual amount of fiscal adjustment (A + B + C)	0,452-	0,986	-

The positive values of component A in the first two periods of 2.94% of GDP and 3.898% of GDP indicate unfavorable macroeconomic conditions for service, while in 2019-2023 the negative value (-0.581% of GDP) debt service conditions are gradually becoming more favorable. The positive value of component B (2.02% of GDP) indicates an additional structural burden on public finances to decrease (approximate) of public debt to a safe target level (60%) and, thus, increase the financial stability of the state. Fiscal policy has had a positive effect on the fiscal gap since 2014.

The decrease (+) or increase (-) of the budget revenue is due to the changes in fiscal legislation (tax rates, expansion of the tax base, improvement of tax administration, etc.), and the decrease (up to 0.02% of GDP) in 2015-2017 was due to military action in the East, in 2020 (0.03% of GDP) - COVID-19 pandemic.

The results show that during 2009-2013 the fiscal risk was average, which implies an adjustment of the primary balance to 0.5 percentage points per year till 2013, namely by 0.452% of GDP. Instead, in 2014-2019 the risk was high, which implies an adjustment of the primary balance of more than 0.5 percentage points per year till 2019, namely by 0.986% of GDP.

The components of the current burden index of debt service indicate that the most significant deterioration in debt service occurred in 2014-2015 during the economic crisis. It was a consequence of fiscal dominance (subordination of monetary policy to current goals and objectives of fiscal policy). Through the issue and sale of IGLBs, the government financed the solution of certain problems (debt repayment of VAT, increase of authorized capital of banks, capitalization of NJSC Naftogaz, social benefits, etc.). That hidden emission led to the accumulation of imbalances, which were realized during the crisis of 2014-2015.

Thus, the fiscal gap indicator in Ukraine shows a high degree of instability of public finances in the medium term. The sources of destabilization are high levels of public debt, declining economic potential, high spending on defense and social security, etc..

For determining the impact of fiscal sustainability on budget security, we calculate the index of fiscal vulnerability, which makes it possible to assess the fiscal situation in the country, summarizing the selected fiscal indicators, to assess the degree of deviation from "historical standards", which are stated as 10-year averages (Baldacci, McHugh and Petrova, 2011). According to the methodology, fiscal indicators are divided into: 1) key fiscal variables; 2) long-term fiscal trends; 3) management indicators (Table 4).

Table 4. Indicators for calculating fiscal vulnerability index

Source: Baldacci, McHugh and Petrova, 2011

Indexes	Subindexes
The ratio of the public debt service rate and the growth rate of nominal GDP	Key fiscal indicators (F1)
Gross debt,% of GDP	
Structural primary balance,% of GDP	
Short-term debt / Total debt	Management indicators (F2)
Debt share in national currency,% of GDP	
Debt share in foreign currencies,% of GDP	
External debt / Gross debt	
Total fertility rate	Long-term fiscal trends (F3)
Long-term forecasts of changes in government spending on healthcare,% of GDP	
Long-term forecasts of changes in government pension expenditures,% of GDP	
Indicator of the nation's aging	

The first group of indicators reflects the compatibility of public debt dynamics with fiscal sustainability, the second one assesses the duration of economic challenges, related to the demographic situation, affect predictable fiscal variables and solvency/sustainability, and management indicators assess the structure of government assets and liabilities to increase or decrease the refinancing risk.

Table 5. Calculation indicators of fiscal vulnerability index for the integrated indicator of budget security during 2009-2020 *Source: Author, 2022*

Indexes	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Key fiscal indicators (F1)	4,7	1,1	0,61	2,8	3,2	7,1	9,1	8,8	1,2	6,2	7,7	8,5
Management indicators (F2)	7,7	8,5	9,2	9,2	2,2	0,6	5,5	4,6	5,2	4,2	1,2	1,8
Index of Fiscal Vulnerability	6,2	4,8	4,9	6	2,7	3,85	7,3	6,7	3,2	5,2	4,45	5,15
Integral indicator of Budget Security (Budget security)	59,6	56,9	67,1	57,8	57,6	55,8	64,3	61,8	63,8	54,8	55,5	42,1

Considering the limit and lack of data, only two groups of indicators are calculated, namely key fiscal indicators (F1) and management indicators (F2), which determine the index of fiscal vulnerability as the arithmetic mean (Table 5).

The obtained values of the fiscal vulnerability index indicate a high level of vulnerability if it is close to 10, normal if it is close to 5. The analysis of sub-indices of fiscal vulnerability discloses the problems with managing public debt structure and increasing risk during 2009-2012, which was due to an increase in the share of short-term debt (by 37.6%) and an increase in the share of debt in national currency (by 35%). In 2014-2016, during the economic crisis, gross debt increased by 75% and the burden on its service grew. It increased the degree of fiscal vulnerability. In 2019-2020, there was an upward trend in gross debt to GDP (50.3% in 2019 and 68% in 2020), which together with a slowdown in GDP growth (more than 40%), changes in the structural primary balance, the growth of its expenditure part, led to an increase in the sub-index F1, the value of which was above average and exposed the growth of fiscal vulnerability in this period.

In 2020, there was a decrease in GDP, budget revenues and an increase in budget expenditures for social needs, which are largely due to the crisis caused by COVID-19 pandemic. However, the impact of these factors can be observed in more detail when calculating the F3 sub-index, which reflects long-term fiscal trends.

Considering the purpose of the research, namely to determine the impact of fiscal variables that characterize fiscal sustainability on budget security, the level of budget security was calculated on four indicators for 2009-2020 (*Methodical recommendations for calculating the level of economic security of Ukraine, 2013*). The obtained normalized values of the indicators were adjusted to the weights for the calculation of the integrated indicator of the level of budget security. The relationship between the level of budget security and indicators of fiscal sustainability, namely the sub-indices of fiscal vulnerability (F1, F2) and the index of fiscal stability in the medium term (S1), was determined by building a multifactor regression model:

$$I_{BS} = 48,02 + 1,85 * S_1 + 1,11 * F2 - 0,49 * F1$$

where I_{BS} is an integrated indicator of budget security, S_1 is an indicator of fiscal gaps, and $F2$, $F1$ are sub-indices of fiscal vulnerability.

According to the obtained calculations, the model is adequate, as evidenced by the value of the coefficient of determination ($R^2 = 0.71$), the value of the normalized R-square ($R^2_{adj}=0,60$), a significant F-criterion, and the model parameters are statistically significant at 1% and 5% significance levels except for indicator F1, which is insignificant. According to the results, there are the following conclusions: 1) the variation in the level of budget security of Ukraine for 2009-2020 by 71% is explained by changes in fiscal sustainability indicators; 2) there is a direct relationship between the level of budget security and fiscal stability, namely if there is an increase of 1 percentage point in both the fiscal gap indicator and the fiscal vulnerability sub-index, the level of budget security will increase by 1.85 percentage points and 1.11 percentage points in accordance. The growth of indicator S1 demonstrates an increase in revenue or a decrease in government expenditure needed to balance public finances, which in turn leads to an increase in the level of budget security. The growth of indicator F2 to the normal level of fiscal vulnerability also increases the level of fiscal security.

Implementing the practice of maintaining fiscal stability to ensure fiscal security in a crisis

According to the pragmatic approach, fiscal sustainability implies stability and flexibility of fiscal rules (debt, budget balance, structural balance, expenditures and revenues), which determine long-term constraints, serve as guidelines and incentives for budget and fiscal policy. Their implementation makes it possible to increase the fiscal responsibility of the government, to exert targeted regulatory impact on the formation and control over the implementation of the state budget as a guarantee of budget security.

The pandemic of COVID-19 caused the need for new approaches of fiscal policy, rules and incentives, depending on the dynamics of its spread and adaptive response to phases of the economic cycle, to the goals of optimizing fiscal policy in the context of fiscal security along with, in particular, measures such as the effective use of regulatory capacity to mobilize budget revenues, the increase of fiscal efficiency of the tax system through a system of leverages to revive economic activity, the reforms of the budget system to ensure the effectiveness of the expenditures, systemic public debt management. The pandemic disclosed that anti-crisis measures increased budget expenditure (in some countries they reached 4% of GDP), which may cause rising risk of public debt growth and loss of sustainability. The system of such measures intensifies fiscal incentives as a composition of fiscal norms and rules that adaptively and flexibly ensure fiscal efficiency with minimal discrimination of economic interests of economic entities and maintaining confidence in fiscal authorities and the state as a whole.

The comparative analysis of the experience of anti-crisis measures in terms of fiscal incentives showed that countries around the world implement and adjust their packages depending on the phases of pandemic. The unity of approaches is as follows: 1) support for small and medium-sized businesses - soft loans (*Thailand*) (*Thailand Issues New COVID-19 Stimulus Package to Accelerate Investments*, 2021), write-off of tax debt not exceeding 3060 UAH, short-term exemption from single tax, deferred repayment of tax debt of taxpayers (individuals) (Ukraine) (*Law of Ukraine*, 2020); 2) tax benefits and transfers to employers, employees, students (USA, Canada) (Cohn, 2020), one-time financial assistance for citizens, one-time financial assistance for business to save jobs, one-time business compensation to pay single social contribution for employees (Ukraine) (*Law of Ukraine*, 2020; Ambroziak, et al, 2020), waiver of the requirement or reduction of social security contributions (Greece, Spain); 3) state support for certain industries that have a significant share in the structure of GDP, in particular, tourism (Thailand), exemption of services from VAT indefinitely and full reimbursement for enterprises that provide protection and localization of the pandemic (China) (Lewis, 2020), exemption from VAT on medicines and medical equipment needed to fight against the pandemic (Ukraine), speed up the return, simplify the VAT threshold increase (Colombia, Korea, New Zealand); 4) business tax - for example, decrease to 10% (vs. 25%) for 2020-2022 (Chile), increase in the income limit for the single tax (Ukraine), deferral (EU countries) (Haroutunian, 2021); 5) investment support - zero tax rate for 10 years for new investments or decrease to 15% (against 24%) for 15 years for companies with fixed assets over 114 million dollars USA, fiscal benefits for startups for 3 years after launching (Malaysia) (*China announces tax relief measures to tackle coronavirus disruption*, 2020), extension of investment tax credit for 2 years and production tax credit for one year for investments in environmentally friendly energy and energy efficiency (USA); 6) for affordable housing loans - a minimum loan rate of 4% for tax relief on housing for low-income citizens (USA), deferred interest on mortgage (Spain); 7) tax credits and discounts for new markets, health insurance,

employment (USA); 8) tax on land and real estate - short-term deferral of payment (Ukraine); 9) change in deadlines for filing tax returns (China), extension of deadlines for filing financial statements (Ukraine); 10) suspension of fiscal inspections and postponement of tax reforms (Canada, Great Britain, Poland (*Special Feature: Tax and fiscal policy responses to the COVID-19 crisis*, 2020)).

The fiscal stimulus package adopted in Ukraine (*Law of Ukraine*, 2020) is a COVID-19 Emergency Response Package. In our opinion, it can be supplemented by: 1) a temporary change in the depreciation rules for 2021-2022, namely 100% depreciation of the asset value in the year in when they were acquired or 50% per year when the asset is used, 100 % amortization of intangible assets; 2) development of a staff retention scheme, return of laid-off workers on a part-time basis and creation of new jobs for young workers at the expense of tax benefits and wage subsidies; 3) support for households by extending remittances validity for workers in the informal economy and self-employed persons suffered as a result of the pandemic; 4) expanding the preferential tax regime to stimulate investment and health care reform; 5) support for digital economy through a 50% exemption from income tax for three years for companies that implement digital technologies and develop software in the field of artificial intelligence, big data analysis and machine learning. This will strengthen business activity and ensure the recovery of Ukraine's economy.

Realizing the need for anti-crisis measures to overcome the consequences of the pandemic and ensure the recovery of Ukraine's economy in the post-pandemic period, to strengthen fiscal security, it is necessary to make efforts to solve problems that have become chronic. This, in turn, should include: the achievement of a balanced public financial policy, including through the formation of an effective fiscal space and budget security management; a scientifically grounded and publicly legal approach to the preparation and implementation of the budget; strengthening the income base and decreasing the debt of households; optimization of state budget expenditures and tax burden; development of budget and tax decentralization, etc.

Note that the "golden rule" of public finance should be implemented in practice through the introduction of fiscal policy principles of the Code of Tax and Budget Stability in compliance with the principles (transparency, sustainability, accountability, fairness between generations and efficiency) (Kopits, 2001). It is important to obey strictly fiscal rules that capital expenditures must exceed the budget deficit, the increase in current expenditures is limited by the average nominal GDP growth in previous years, restrictions are not applied in exceptional cases (economic crises, man-made disasters, wars, etc.), setting medium-term target indicators of debt and its adjustment are coordinated with short-term policy guidelines, improvement of institutional mechanisms for compliance with fiscal rules and monitoring mechanisms, incentives and sanctions to ensure the stability of the debt-to-GDP ratio at less than 60%.

Thus, almost all the proposed areas of improving budget security are in the area of fiscal policy of the state, the immediate implementation of which will improve the fiscal space and form a fiscal basis for post-pandemic recovery of the national economy and GDP growth for the medium term.

Recommendations for the introduction of digital technologies to ensure budget security

Based on the research of challenges and threats to financial security in the digital economy (Panteleieva, 2020), it is necessary to substantiate the potential of the multifaceted impact of digital technologies and financial innovations on budget security based on them.

Thus, the challenge with significant potential transformative effect for budget security is cryptocurrency, namely the transformation of savings into high-risk investments through the conversion of fiat money, the formation of illegitimate financial flows and their use in the shadow economy, which creates new risks and reduces tax base and budget revenues.

Without going into the technical essence of cryptocurrency and lack of unity of approaches to its legalization and status, it is necessary to note in the subject matter of the study the importance of accounting and taxation of cryptocurrency. Today, there is a positive step for Ukraine in the adoption of the Draft Law of Ukraine "On Virtual Assets" by the Verkhovna Rada in the first reading (revised in September 2020) (*Draft Law of Ukraine "On Virtual Assets"*, 2020), where the virtual asset means: "a set of data in electronic form, which has a value and exists in the system of virtual assets. May be an independent object of civil turnover, as well as certify property or non-property rights, in particular, the right of claim to other objects of civil rights". This definition raises many questions, as it focuses more on the institutional and legal aspects of administration than on financial and economic, which is not in line with the approaches of other countries and international financial organizations and to some extent blocks the introduction of virtual assets in Ukraine. For example, the ECB in EU Directive /2018 / 843 of 30.05.2018 considers that it is "digital representation of value, which is not owned and guaranteed by the central bank or other public authority, it is not legally recognized as currency or money, but is accepted by physical and legal entities as a means of exchange, can be transmitted, stored and traded electronically" (*Directive (EU) 2018/843 of the European Parliament and of the Council*, 2018). The countries around the world have already developed approaches to standardizing cryptocurrency accounting and taxation, in particular, for miners, investors of cryptocurrency exchanges, consumers of cryptocurrencies (USA, Germany, Canada, India, Singapore, South Korea, Kyrgyzstan, etc.). This is evidence of developments in the transformation of national tax systems and tax legislation, new approaches to tax control and increase financial discipline in the digital economy.

We believe that the authoritative position of the International Accounting Standards Board (IASB) and the Accounting Standards Board (AcSB), as well as the experience of Belarus, which developed the National Accounting and Reporting Standard "Digital Signage (Tokens)" can be useful for Ukraine. Belarus has introduced fiscal incentives for the development of the digital economy and the crypto industry, in particular, the value added tax and profit from mining, creation, acquisition, alienation of tokens are not removed. This approach does not contradict the world practice, where capital gains tax on cryptocurrency exchange transactions for money (USA) and wealth (Norway, Finland, Germany), income tax on cryptocurrency purchase and sale transactions (Australia) and cryptocurrency transactions (UK) are not collected. On the other hand, in the draft laws amending the Tax Code, proposals on taxation cannot be considered acceptable due to contradictions in modern international practice.

Digital technologies have the potential to manage public finances and administer taxes. Such technologies include blockchain and smart contracts based on them, artificial intelligence and machine learning, big data. We believe that the introduction of Big Data technology is a new stage in the evolution of the domestic tax administration system, as it allows tracking and taxing digital business activity in a rapidly growing number of transactions by accumulating and processing VAT data, taxes on goods and services for daily and monthly reports, their exchange within the rules of information disclosure to increase the transparency of taxation, identifying trends and carrying out forecast analysis of its models. The use of artificial

intelligence can be the basis of a new tax strategy in terms of managing financial and reputational risks, increase efficiency and effectiveness.

Conclusions.

Budget security is an important component of financial security, its foundation and material basis. Ensuring budget security is the exclusive prerogative of the state in fiscal policy and its constant monitoring, implementation of fiscal rules and incentives. The conducted scientific research made it possible to formulate a number of theoretical-methodical and practical conclusions, which ensured the achievement of this goal.

Theoretical generalization of the scientific literature on the essence of budget security made it possible to determine its characteristics in the formation of a new reality of financial security, which is due to certain risks. The subject-object essence, subject matter and objectives of budget security are revealed, and the critical analysis of scientific discussion made it possible to form the author's interpretation of this concept, which, unlike the existing ones, emphasizes its synthetic nature from the standpoint of economics, finance theory and political science through relationship between concepts of economic and financial security, economic press and financial stability, economic independence and financial stability. Factors and threats to budget security are summarized.

The role and importance of fiscal policy and fiscal sustainability in ensuring budget security are described. The author's point of view on fiscal sustainability is substantiated, relying on the essence, preconditions and factors of fiscal space and fiscal policy.

The work diagnoses the budget security of Ukraine through the analysis of the dynamics of taxes and fees to the state budget in terms of payments during 2017-2020; the assessment of budget security by indicative approach according to the Guidelines for assessing economic security of Ukraine was performed. The critical and unsatisfactory value of indicators led to the conclusion that certain threats to budget security may cause a systemic crisis and destabilize the national economy.

The level of fiscal sustainability according to the methodological approach of the European Commission during 2014-2023 is analyzed by calculating the indicator of fiscal gap in Ukraine. A high degree of instability of public finances in the medium term is set. An assessment of the impact of fiscal sustainability on Ukraine's budget security is given, namely: 1) the variation of its level during 2014-2020 by 71% is explained by the change of fiscal stability indicators, there is a direct dependence between its level and budget security, i.e., with 1 p.p. increase of both the fiscal gap indicator and the fiscal vulnerability subindex, the level of budget security increases by 1,85 p.p. and 1,11 p.p. correspondingly. The growth of fiscal sustainability index S1 indicates an increase in revenues or a decrease in government expenditures needed to balance public finances, which in turn leads to the growth of budget security. The growth of fiscal vulnerability indicator F2 to the normal level also increases the level of budget security.

The results of a comparative analysis of anti-crisis measures in terms of implementing fiscal incentives in a pandemic, showed their flexibility and adaptability in accordance with the phases of the economic cycle and the dynamics of its spread. Recommendations are developed to supplement the package of fiscal incentives to strengthen Ukraine's budget security, including the introduction of changes to depreciation rules, staff retention and job creation,

household support, expanding preferential tax treatment to stimulate investment and health care reform, and support the digital economy.

The peculiarities of digital transformation and potential opportunities of digital technologies for public finance management and tax administration are substantiated. It is proved that cryptocurrency has the maximum potential effect on budget security, taking into account, which it is expedient to standardize the approaches of its accounting and taxation, based on positive foreign experience. The need for balanced implementation of digital technologies for tax purposes is emphasized.

Thus, it is necessary to emphasize that ensuring budget security requires supporting balanced growth of tax revenues, where fiscal stability is important as a priority and basis of financial policy, optimization of the state borrowing and efficient allocation of budget resources for fulfilling the obligations by the state timely.

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RACIAL PROFILING IN THE CZECH REPUBLIC

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Abstract. *Racial profiling is currently in the Czech Republic relatively an unknown term or a term connected with negative connotations. Profiling is a standard method of policing, however, it is also necessary to draw attention to the facts when this method may lead to racial or ethnic profiling. Unless relevant reasons are given for racial and ethnic profiling, this may be a discriminatory practice by the police authorities. In the Czech Republic, the issue of racial profiling is given rather negligible attention. There are only a few professional articles that do not address the issue of racial profiling as a complex phenomenon. Profiling itself can be seen as a legitimate and useful tool in identifying people who may be committing crimes, for example by concealing prohibited articles or likely to commit crimes in the future. This way of profiling must be based on professional assumptions resulting from behavioral training, not on racial, ethnic, or religious characteristics. Members of specific security forces can thus work with profiles that allow them to search for people who repeatedly visit specific places or, for example, make large purchases exclusively for cash. In the case of purely profiling, the profiles are less likely to be assessed as discriminatory based on race, ethnic origin, or religion.*

Keywords. *racial profiling, ethnic profiling, discrimination, public security*

Introduction

In 2018, the European Union Agency for Fundamental Rights (FRA) published a handbook in which it explicitly emphasized the degree of discrimination against people of minority ethnic origin in police checks. Profiling activity is a consequence of technological developments and is used in many areas of human activities, such as marketing, employment, law enforcement, and border controls. Profiling tools are used in law enforcement and border management. Profiling is a common and legal tool used by police authorities to investigate and prosecute crime, as well as to detect illegal immigration. However, illegal profiling can weaken trust in the relevant authorities, especially the police, and can stigmatize certain communities. This tension can in turn escalate relations between communities and relevant government agencies. (FRA, Guide, 2018, pp 15-40).

The **aim** of this article is to identify the main characters of racial profiling and its effects on police work. The colleration of racial profiling and negative effect on the society will be mentioned as well. In this paper, we want to briefly explain what racial profiling is and outline possible problems that arise in practice. The **research** objective and it's aim is to provide the reader with brief overview of the question what is racial profiling and what negative consequences this practice may have. As stated above, racial profiling is no research question in the Czech Republic. The information introduced are affected by the lack of any proffessional literature, police statistics or any relevant collection of the data relating to racial profiling. Thus the author must rely on descriptive methods and review of foreign sources and experience. The

question of why there are no statistics of racial profiling in the Czech police practice may remain open for further discussion.

Profiling

In general, we encounter the concept of profiling in terms of categorizing individuals according to pre-defined characteristics, which can be either fixed (gender, age, ethnic origin, etc.) or variable (shopping habits and preferences and other elements of behavior). An example of profiling can be the procedure of the insurance company in assessing the amount of premiums according to risks or the procedure of marketing companies, which, based on the results of profiling, target the sale of specific products to certain groups of end customers. The following text will address the profiling activities carried out by the police in the context of crime prevention activities. Police authorities can resort to profiling at virtually any time in the context of identity checks, pedestrian and vehicle searches, arrests and detentions, tracing operations, and automated data collection. The profiling of potential criminals is thus based on the use of various physical characteristics of the individual or appearance and behavior (or, for example, ethnic origin, method of dress, etc.). Profiling itself can be seen as a legitimate and useful tool in identifying people who may be committing crimes, for example by concealing prohibited articles or likely to commit crimes in the future. This way of profiling must be based on professional assumptions resulting from behavioral training, not on racial, ethnic, or religious characteristics. Members of specific security forces can thus work with profiles that allow them to search for people who repeatedly visit specific places or, for example, make large purchases exclusively for cash. In the case of purely profiling, the profiles are less likely to be assessed as discriminatory based on race, ethnic origin, or religion. And it is profiling that can easily become problematic, or even discriminatory at a time when there is no specific operational information to identify the suspect and where the profiles are based not on behavior but general characteristics such as race, ethnicity, or religion. Using profiling in a way that can be racially discriminatory is not only illegal but also not an effective means of combating crime. Discriminatory profiling can occur at both the organizational and operational levels, with the latter being less pronounced as individual police officers use stereotypes or generalize based on race, ethnic origin, or religion. Such behavior may be consciously motivated by personal prejudices or unconscious stereotypes. An example of discriminatory searches and profiling is the German police's computer search that aimed not to find so-called "sleeping terrorists" in 2001-2003 who had been trained in preparation for a future attack but had so far been integrated into society and engaged in no suspicious activity. Profiling consisted of determining the age range and Muslim origin (family or country of birth). During this process, data from 200,000 to 300,000 people were stored in a database. However, profiling did not lead to a single arrest. In 2006, the German Federal Constitutional Court ruled that this search based on a given profile was illegal and violated the individual's right to decide on his or her own personal data (FRA, 20210). Ethnic profiling can generally be defined as an activity that consists in institutionalized racism and consists in the discriminatory use of characteristic attributes (race, color, origin, language) as the only basis for police control (e.g., identification) (Dossier, 2016). The use of targeted ethnic attributes in profiling necessarily leads to disproportionate sanctions against minorities. This is contrary to the principle of equal treatment and may lead to illegal stereotyping and the generalization of criminal activity by members of this group. This in turn affects affected individuals, as they feel stigmatized as criminals and may feel excluded in their own country. Discriminatory profiling takes place not so much based on scientific procedures

but rather based on prejudice associated with the ethnic element of the profiled group of people. For ethnic profiling to be justified, the ethnic element must be only one of several characteristics of the profile (Sûva, 2011, pp 1-4). Profiling is a legitimate means of prevention and is part of the police's investigative work. Profiling must follow the principles of the presumption of innocence and impartiality. The indicators leading to the creation of a profile must therefore be based on evidence relating to a specific case. If there is no evidence and the profile is created only based on constant properties in the form of skin color or presumed migration background, that is a form of discrimination. Then there is talk of either 'ethnic profiling' or 'racial' profiling' (Dossier, 2016). Racial profiling is one of the most visible forms of structural racist violence, as inspections are carried out in public places. Racial profiling is also visible because people of a different color are "clearly" affected by it, and this police practice is not recognized as racism by much of society. Those who point to ethnic profiling argue that the discriminatory power of a state institution that has a monopoly on the use of force remains unquestioned. In general, racial profiling is based on physical, religious, or cultural differences in identifying dangers. Dealing with racial profiling also makes it possible to monitor how racial practices are changing. The fact that different people are affected by racial profiling can also be seen in the opposition to these police practices. Recently, new resistance movements such as the Black Lives Matter have formed not only in the United States and Canada but also in Western Europe. As the authors of the study "Racial Profiling and Anti-Racist Justice" (Wa Baile et al, 2019, pp 9-38) rightly point out, it is important that we are able not only to answer the questions of who is to blame, who is responsible, and who must answer, but also the public and the right to ask them. It is also necessary to ask why racist practices are recognized and encouraged.

Ethnic profiling became a phenomenon in the United States in the 1990s when the number of traffic checks for "non-white" drivers increased disproportionately. In September 2001, ethnic profiling moved to the area of religious categorization. The assignment to the religious category began to be used after the attacks in Madrid and London and Europe (Dossier, 2016). The European Code of Police Ethics contains guidelines for police conduct in the areas of police actions and interventions, police accountability, and police supervision. He emphasized the general principle that: "The police shall carry out their tasks in a fair manner, in particular by the principles of impartiality and non-discrimination". Separating individuals through the use of a single or determining factor in their race, ethnic origin, gender, sexual orientation, religion, or disability violates fundamental rights. Discriminatory profiling can reflect both individual and institutional prejudices. In addition to personal prejudices, stereotypes and discriminatory behavior towards individuals may stem from specific policing practices. Transparency of institutional procedures and practices can help address discrimination. When checking individuals, police officers often associate the reason for choosing one particular person with a "sense of intuition." This may be based on a combination of expertise and previous experience, but it may also reflect the conscious or subconscious bias of the police officer. To prevent illegal profiling, the competent authorities and individual police officers must consider whether their decision is justified by objective information (FRA, Guide, 2018, pp 15-40).

Following concerns about the role of race in police misconduct in investigating Stephen Lawrence's (Stephen Lawrence was a British black teenager who was assassinated on April 22, 1993 in a racially motivated assault) racist murder in the UK, the UK government has launched a large-scale investigation to identify "lessons to be learned about investigating and prosecuting racially motivated crimes." The investigation report, published in 1999, highlighted the problem of "institutional racism" in the metropolitan police, including differences in the number of stops and searches. The survey's recommendations, from racism awareness training to incident

reporting and recording, have been embedded in the overall demand for greater openness, accountability, and restoring confidence in the police service. Reviews published in 2009, ten years after the investigation, highlighted improvements in the way police interact with ethnic minority communities and investigate racially motivated crimes. However, they warn that blacks are much more likely to be stopped and searched than whites (FRA, Guide, 2018, pp 15-40). For example, the search form („stop nad search“ form) used by the West Midlands Police in the United Kingdom shows that the detainee is asked to identify himself or her as belonging to one of these ethnic categories, including 'other' options. The police officer performing the stop can add his findings if he does not agree with the identification of the stopped person. The Code of Exercise Powers states that police officers should explain to detainees that ethnicity information “is required to obtain a true picture of detention and inspection activities and to improve ethnic monitoring and address discriminatory practices (FRA, Guide, 2018, pp 15-40).

According to Professor del Carmen, who has dedicated his more than 20 years of training to police officers, there is very little research into how to identify racial profiling. There is some disagreement about how the relevant institutions can identify racist police officers. In addition to the glaring and obvious manifestations of racism, there is often a misconception that racial profiling can be easily identified in the law enforcement profession by simply checking video or audio records. However, according to Professor del Carmen, nothing could be further from the truth. In fact, it is very difficult to identify racism in law enforcement. The problem may be the fact that attention is paid to the so-called macro-level of the law enforcement, because they show patterns across the whole spectrum of given powers and, at the same time, it can hide shortcomings at the individual level. The most effective way to identify racism among police officers is to analyze the data at an individual level. The problem, for example, is that most laws that require law enforcement authorities to report traffic or motor vehicle data rarely or almost never require data at the level of individual police officers. In cases where an individual police officer appears to make more traffic stops (without legitimate legal justification) for blacks than for whites, and in addition, the police officer is found to have posted racist or insensitive comments on social media and is known in the department to be less tolerant of minorities, then there may clearly be strong indicators that this policeman should be the focus of the police itself (del Carmen and Brown, 2021, pp. 105-106).

Current issues of racial profiling in the Czech Republic

In practice, the results of police profiling are reflected in particular in the police officer's decisions "to stop, to ask to prove their identity, to whom to ask questions, to whom to carry out a personal search and sometimes to detain". Based on the FRA survey, that was conducted in all 27 EU countries and its base of respondents was 23,500 immigrants and ethnic minorities, the following results were derived for the Czech Republic concerning the Roma ethnic group: 66% of respondents stated that they were not checked by the police at all, 16% of respondents were checked, but they do not believe that the reason for this should be their ethnicity and 18% of respondents were checked and at the same time believed that this was done based on ethnic profiling. As mentioned above, the profiling and follow-up of selected persons are also reflected in the level of trust of these persons in the police, or in the willingness of these persons and members of minorities to cooperate with the police. The result can also be the inability of the police to perform their tasks effectively in a given social community. As an important moment,

it is necessary to mention the effective training¹ of police officers, that should also include anti-discrimination legislation, the issue of stereotypes and should also draw attention to the possible consequences of discriminatory behavior (Sůva, 2011, pp 1-4).

In the Czech Republic, the topic of ethnic and racial profiling in police practice is rather a marginal topic. The professional literature rather deals with the general phenomenon of discrimination, except for the article "The role of security forces in the protection of fundamental rights on the example of the so-called ethnic profiling" from 2017 (Tomoszek, 2017, pp 155-164). The issue of ethnic profiling was also dealt with by the representative of the Office of the Public Defender of Rights, Mgr. Eva Nehudková, who, however, focuses on foreign rather than domestic practice.² According to foreign literature (Stone, 2005) the most important moment of interaction between the police and the affected communities is building trust. One of the most important lessons learned from the first attempts to confront racial profiling was that success depends on how the police tried to correct the problems rather than whether they eliminated statistical differences. At the same time, it is crucial to involve members of the community in shaping the various strategies dealing with this phenomenon. The function of the so-called "police assistant" is also marginally related to the issue of profiling. On 22 January 2003, by Resolution No. 85, the Government of the Czech Republic adopted a draft National Strategy for the Work of the Police of the Czech Republic in Relation to Ethnic and National Minorities.³

The Strategy is an elementary conceptual material that touches on the issue of the relationship between minorities and the police in the Czech Republic and promotes the principles of modern policing in a multicultural society. The concept of the Strategy is based on the prioritization of preventive mechanisms of police work. The Strategy emphasizes that members of the Police of the Czech Republic have sufficient skills for policing in a multicultural society and proposes ways to involve members of national minorities in policing. The result of the Strategy was a project entitled "Assistant Police of the Czech Republic for Combating Usury in Socially Excluded Roma Communities". As part of this project, the function of the so-called "police assistant" was introduced into the institutional reality of the Czech Police, whose main task is to act in the community as a representative of the Czech Police and inform community members about the opportunities offered by cooperation with the police. The project is implemented in several regions of the Czech Republic. However, it must be stated that this Strategy is aimed at preventing specific criminal activity that members of the minority may commit in selected localities. This is not purely a question of profiling, but rather of cooperation between the Police of the Czech Republic and the given community, of establishing trust and providing assistance.

Conclusion

¹ E.g. in 2012, 684 police officers were trained in minority issues in the South Bohemian Region. See Zpráva o činnosti styčných důstojníků pro menšiny a jejich pracovních skupin za 2. pololetí roku 2012. Ministerstvo vnitra ČR, Odbor bezpečnostní politiky. Praha. 2013. Available at: <https://www.google.cz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjsoNz0p5j3AhXJNOwKHX2jDjQQFnoECAUQAQ&url=https%3A%2F%2Fwww.mvcr.cz%2Fsoubor%2Fzprava-o-cinnosti-stycnych-dustojniku-pro-mensiny-pdf.aspx&usg=AOvVaw2ptuKg4ZK1ho3oJRoxJB5H> (Accessed: 28. 5. 2022).

² Czech Television report from 13. 3. 2017. Available at: <https://ct24.ceskatelevize.cz/nazory/2056144-je-v-poradku-kdyz-policie-cilene-kontroluje-romy-nebo-afroamericy-jen-vyjimcne> (Accessed: 28. 5. 2022).

³ Available at: <https://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/asistent-policie---cheb-5740/> (Accessed: 28. 5. 2022)

Profiling is a usual tool used by police authorities to prevent and investigate crime. However, it is crucial that profiling is designed on the basis of objective and relevant criteria that will not be discriminatory. Members of the police are under the scrutiny of the public, and any mistake will sooner or later become known to the public. In the Czech environment, relatively little space is devoted to this issue. When ethnic profiling is mentioned by the media, it is more of a presentation of foreign experience and practice. Even in the professional literature, this phenomenon is not paid attention to, with a few exceptions. It is a question of what is the cause. Several isolated cases dealing with discriminatory profiling can be found in case law. That is the case, for example, when the police demanded proof of the identity of the passengers on the train without a legal reason.⁴ But in the area of profiling, there are no available data in the Czech Republic that could be further analyzed and possibly verify the thesis that profiling occurs or not (Tomoszek, 2017, pp 155-164). The author assumes that if ethnic (discriminatory) profiling took place on a regular basis, the matter would resonate in society as well. That is the case, for example, in Austria, wherein the last few months, there have been growing voices following the establishment of an independent body to investigate the violence perpetrated by police officers, especially in the form of the use of coercive forces. The impetus for these efforts was several incidents from 2021. Some of these cases have already been heard in court, although others are still under investigation. What they have in common is the fact that, in the future, they could end up in front of a new office that would investigate police officers' mistakes and their allegations of ill-treatment. In such cases, the police are, in fact, investigating themselves, and critics often point to the fact that only a minor number of relevant allegations lead to prosecution or even conviction. Pertinent international requirements for effective investigations should be taken into account when proposing the establishment of an independent control body, in order to ensure a rapid, thorough, competent, impartial, and independent investigation and, if necessary, to prosecute allegations of abuse by the police officer.

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⁴ Judgment of the Regional Court in Brno from 24. 9. 2015, n. 30 A 17/2015-60.

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FACTORS FORMING THE IMAGE OF THE POLICE OFFICER

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Abstract *The article analyses the overall attitude that society holds towards serving police officers who swear an oath to serve the law and humans. On this basis, officials must maintain a close relationship with the public and foster a positive image in its eyes. Due to the dynamic social changes taking place in society, the image and its determinants need to be constantly explored. Otherwise, the work of police officers with the population will be meaningless and unsuccessful. Failure to reach this goal could negatively affect the performance of the police force, the stability of our societal norms may also be at risk. An image is generally seen as a set of factors that affect emotions, behavior, relationships, and include communication and personal feelings when evaluating an organization. A positive image increases the public trust, support and willingness to cooperate. Public relations are considered as one of the most important factors shaping the image.*

The object of the article is the image of a police officer, the main object of this thesis is to reveal the overall image of a modern police officer and unveil factors that affect it. To achieve this aims the thesis set out three tasks: to examine the concept of the image and its importance to public relations, identify the factors influencing the image of police officers, and investigate how society values police officers. The methods of systematic-structural analysis of scientific literature, questionnaire and mathematical analysis, as well as generalization are applied in the thesis.

The article has concluded that the public holds a positive overall image of police officers. The image of officers is formed by personal, relatives and friends experiences, media reports, and by legal acts and normative documents regulating police activities. Also, the personal qualities, legal competence, appearance in the service, corruption and conduct on and off duty. Quantitative research participants opinion the formation of the image in society works strongly is: first of all, the personal qualities of officials, followed by the competence, work knowledge and professionalism of officials.

Keywords: *image, police officer, society, factors of image*

Introduction

Modern police officers represent the interests of the population, serve for the law and the human. A police institution that has become a provider of social services must understand that the main evaluators of its activities are the population of the country. As a result, officials must maintain a close relationship with the public and foster a positive image in its eyes. According to R. Mikailienė, the creation of a positive image is one of the most important factors that help to create and maintain good relations with the society, strengthen the reputation and favorable opinion¹. Therefore, this aspiration is also relevant for the police authority. “Close interaction

¹ Rita Mikailienė, „Viešieji ryšiai ir muziejaus įvaizdžio formavimas“, *XXI amžiaus muziejinių kompetencijos ir gebėjimų ugdymas*, (2008): 50, https://museums.lt/wp-content/uploads/XXI-amz-muziejnininku-kompetenciju_leidinys_2008.pdf.

between the police and the population, i. y. mutual positive effect and assistance, mutual cooperation, is one of the most important indicators of effective law enforcement in the country and security and public order of the population”. According to R. Tidikis, “public opinion of citizens, like the image of the police, is not unchanged. It is formed and is shaped by various social factors. However, without examining the degree and direction of its formation, it is impossible to cooperate closely and rely on the help of the population.”² Due to the dynamic social changes taking place in society, the image and its determinants need to be constantly explored in order to build close relationships and a positive image.

The image of police officers in modern society is poorly analyzed. Both in Lithuania and abroad, there are studies conducted by the police institution by C. Meier-Welser (1984), J. Ashcroft and others. (2003), K. Kasciukevičius (2009), E. Vaidelytė and G. Žvaliauskas (2010), C. L. Rusa and others. (2012), M. Krasauskas (2016), but the image of the police has not been systematically studied. In Lithuania the most researches is conducted on trust in the police institution and officers, and the image is mentioned only as an indicator of trust, so its focus are not studied in detail. The peculiarities of the formation of the image of police officers in Lithuania are also relatively little studied. However, in order to form, maintain or improve an image, one must know what criteria to focus on first. In order to create and maintain a positive image of police officers, it is necessary for the police authority to be aware of the factors that affect the formed image of police officers. Based on this, the crucial *problematic question* of this work is – what factors can maintain a stable positive image of police officers in modern society?

In this content, the **subject** of this article is the image of a police officer and the factors that shape it.

The **purpose** of the article is to analyze the factors that determine the image of a police officer.

The following **tasks** are set in the work:

1. To review the concept, importance and connection of image with public relations.
2. Identify factors that affect (both positive and negative) the image of police officers.
3. To study the evaluation of the image of police officers in society and the factors determining it.

In order to implement the set goal and tasks, the methods of systematic-structural analysis of scientific literature, questionnaire, mathematical analysis and generalization were applied.

The concept of image and its importance to the police authority

The term image is used in the scientific literature in various senses. According to G. Drūteikienė, the concept of image is widely studied in various fields of science - marketing, strategic management, marketing, graphic design, personnel management and organization, psychology, communication (Drūteikienė, 2003). There is no single and precise definition of image, as each branch of science applies it differently. Some authors use the term image when talking about a person's individual characteristics, clothing, and behavior, while others emphasize the importance of an organization's image (Marčinskas et al., 2015). Such an application of that definition reveals its ambiguity.

N. Lukianskaitė and J. Kartašova state that an image is “variously understood, more or less structured - the totality of ideas, feelings, perceptions and imaginations that a person or a

² Rimantas Tidikis, „Policijos mokslų sisteminimo metodologinės prielaidos“, *Jurisprudencija* 35, 27 (2002): 11, <https://ojs.mruni.eu/ojs/jurisprudence/article/view/3495/3288>.

group of persons have for a certain phenomenon or object” (2015). The above-mentioned author reveals the image as a consequence of the cognitive process. S. Lakačauskaitė expresses a peculiar approach to this phenomenon, who explains that “an image is an organization formed through a communication process, its services perception in society (externally)” (2012). She emphasizes the importance of communication in image building. The definition of G. Drūteikienė's image highlights several tendencies. According to her, image is the totality of ideas, feelings, perceptions and imaginations that a person or their group has in relation to an organization, which is influenced by the tangible and intangible elements of the organization, communication, personal and social values. This definition includes both the cognitive and communicative process (2003). The given definitions of image allow us to assume that an image is a set of ideas, feelings, impressions, perceptions and imaginations about an object, person or organization, the formation of which is determined by the external environment, communication and personal values.

The image is also assessed from a psychological point of view. According A. Diržytė et al., an image is “a particular psychological image that affects our emotions, behaviors, and relationships with other individuals or groups” (2012). M. Taljūnaitė agrees with these authors and adds that the image is a socio-psychological phenomenon (2001).

Besides, the image can be changed, it is not stable, static. The image can be both positive and negative. A negative image is not purposefully formed, it occurs spontaneously (e.g., without meeting public expectations), and creating a positive image is a complex process. However, both a negative image can be replaced by a positive one and a positive image can turn into a negative one due to certain events that are viewed unfavorably in society. This variability in image reveals that planning can create a positive image that is important to all organizations, but takes a lot of effort and time to form.

A positive image is considered to be one of the key factors that help to gain public support and trust in a particular institution and its staff. As a result, image formation should not be left to its own devices, as people more often believe in the image formed than in reality. Thus, a positive image of an organization cannot be accidental, it must be created and managed together, and it must be borne in mind that the result of image creation does not appear immediately, it takes time.

The positive image of the police authority and officers is important for a number of reasons. According to G. Valickas et al., a positive image can help attract the best candidates to a police force that can successfully address emerging issues and achieve significant performance. Secondly, the successful performance of the functions assigned to them by police officers requires the cooperation of the public and their voluntary support, which is linked to the perceived fairness and legitimacy of their actions. Thirdly, the image of the police and officials is also important from an organizational point of view, as a positive image can be associated with greater self-confidence and job satisfaction, which can increase the efficiency and quality of their work (2015). Thus, in order for the police to be able to properly perform the functions assigned to them, a positive image of officials must be formed in society. The image is also important for public safety. A positive attitude towards the police encourages greater cooperation between citizens in reporting violations of the law and criminal offenses. And this helps to prevent crimes and violations of the law. By the way, according to G. Valickas et al. the resulting attitude of the people towards the police may be related to the attitude towards other state authorities (2015). Thus, by creating and maintaining a positive image of its institution, the police at the same time foster the image of other law enforcement institutions in society.

Closely related to the image of the police in society and playing an important role is the public relations function. Every organization should engage with the public in shaping its image and use it to inform the public about its activities. Public relations is one of the most important tools for shaping the image of an organization and its importance is extremely important, as public relations also include the means of mass communication, i. At the same time, it informs a large audience, on the evaluation of which the image of the organization depends. This is especially important for the police authority, as the main evaluator of the activity is the state. The Internet is an effective communication channel, according to the Official Statistics Portal, in 2020 83 percent of the population aged 16-74 used the Internet (Skaitmeninė ekonomika ir visuomenė Lietuvoje, 2021). First of all, the Lithuanian Police publishes information about itself and the results of its work on the website of the Police Department under the Ministry of the Interior *www.policija.lrv.lt*. On this website you can find a lot of publicly available information, such as the structure of the Lithuanian police, contacts, areas of activity, administrative and legal information, services provided, police advice, news. The police also started using social networks in their activities, and the Lithuanian police created their *Facebook* and *Instagram* accounts. On these social media, the police provide relevant information to the public, publish preventations, raids, upload various photos and videos from the police service, thus enabling the state to see the daily day of the police service. In this way, the Lithuanian police maintains relations with the public, raises information about the activities of officers, shows the service of a police officer up close, and presents its position in the event of certain events that cause public dissatisfaction.

Thus, the police focus not only on improving their activities, increase the security of the population, but also on developing their image. Thanks to its image and public relations, the image of the police is improving; the public is better informed about police activities, which leads to greater public confidence in the police.

According to E. Vileikienė (2017), the data of 2016 research provided 67 % of the respondents trusted the Lithuanian police, 78 % of the respondents rated the work of the police as good, and 17 % as bad. According to the 2020 According to the survey data, it can be seen that 78 % of the respondents said they trusted the Lithuanian police, 48 % considered the police work prestigious and 79 % of the respondents rated the police work as “very good and good” and only 15 % “rated it as bad and very bad” (Vileikienė, 2021). Based on such survey data, policing performance and trust indicators are rising, but it is important to identify what, in addition to the public relations already discussed, the laws governing police activities and the media shape the positive or negative impact of police work image in society.

G. Paurienė (2019) writes, “sociological research and the media form the opinion that the morality and culture of an official are qualities that are expected and highly valued by all, and it can be said that they are often more important to people than even legal competence”. It is difficult to disagree with this, because it is natural that the opinion of the country's population about officials is formed from the very beginning by the official's communication with them, their communication culture, and then only by legal competence. Therefore, first of all, it is appropriate to reveal which aspects of communication between police officers are perceived positively and negatively by the public.

“The image of an official may be determined by individual actions, decisions, language and inappropriate appearance, clothing, disregard for ethical principles in the service and at other times. Many public sector codes contain an obligation not to humiliate, not to discriminate against the name of the state, an official, a service both in the service and in the free service, to set an example for others in accordance with generally accepted moral norms” (Seniutienė et al., 2017). Thus, the factors that shape the image of police officers include in-service and out-

of-service actions. Every immoral behavior of a police officer has a strong resonance in society, which damages the reputation and trust of the entire police institution. Any unethical behavior by police officers destroys the image of the police and undermines public confidence in the institution. The actions of police officers taken out of office also shape the image of the police, so officers must act in accordance with generally accepted rules of conduct, not violate the law, and not degrade their name and leave the police officer. The image of police officers is positively influenced by the assistance provided by officers during and out of service, such as police assistance to the mother to reach the hospital³, the officials help and assistance to people in outside of duty, such as the a police officer saved a woman's life⁴.

Factors that shape the image of police officers include the appearance of police officers in the service. According to K. Vitkauskas (2015) wearing a tidy uniform in the service raises not only the self-confidence of officials but also the image of the police in society.

Another factor is corruption. The positive public image created by police officers is being undermined by corruption in the police. According to J. Tankebe (2010), the manifestations of corruption in the police undermine the public's attitude towards its credibility, procedural justice and efficiency. In order to improve the image of the officers, the police authority has started to develop prevention programs, to encourage the population not to bribe police officers and to report incidents when they are provoked to give them.

It is clear that the image of police officers in society depends on many different factors. The image can be formed by the communication aspects of the officials, their competence, knowledge of the work, actions performed both in the service and in their free time, the appearance of the officials and manifestations of corruption.

Analysis of the image of police officers

In Lithuania, surveys of the Lithuanian population are launched every year, in which the most frequently asked questions are: do you trust the police, how do you assess the activities of the police? However, general questions presented in public surveys do not reveal or identify what factors affect the image of officials in society. Therefore, this article presents an analysis of the image of police officers and identifies the factors that affect the image.

The image of police officers is a constantly evolving phenomenon, so the purpose of quantitative research is to determine how modern society values the image of police officers and to reveal what police officers should do to improve their image. Therefore, it is important to examine which general factors, in the opinion of the public, have the strongest influence on the formation of a positive and negative image of an official.

A quantitative survey method - a questionnaire - has been chosen to investigate the image of police officers. As the aim of this study was to examine the image in society, the selected questionnaire survey helped to collect a larger number of respondents' responses. The method of mathematical analysis was used to systematize the data results.

75 % of women and 25 % of men participated in the study (see Table 1). It should be noted that the majority of respondents were women, and this gender distribution shows that women appear to be more likely to participate in surveys than men.

³ „Trakų r. pareigūnai sėkmingai palydėjo gimdyvę į ligoninę: už tai sulaukė padėkų“, 15min, 2021 m. rugsėjo 21 d., <https://www.15min.lt/video/traku-r-pareigunai-sekmingai-palydejo-gimdyve-i-ligonine-uz-tai-sulauke-padeku-208554>.

⁴ „Pareigūnė ne tarnybos metu išgelbėjo moters gyvybę“, Lietuvos policija, žiūrėta 2021 m. rugsėjo 27 d., <https://policija.lrv.lt/lt/naujienos/pareigune-ne-tarnybos-metu-isgelbejo-moters-gyvybe>.

Table 1. Respondent demographics

Gender	WOMEN			MEN	
	75 %			25 %	
Age	18–25	26–35	36–45	46–55	56 and more
	50,3 %	18,8 %	11,8 %	10,7 %	8,4 %
Education	Basic	Secondary	Professional	Higher non-university	Higher University
	3,1 %	29,8 %	12,6 %	18,5 %	36 %

The majority of respondents aged 18 to 25 participated in the survey by age - as many as 50.3 %, from 26 to 35 - 18.8 %, from 36 to 45 - 11.8 %, from 46 to 55 - 10.7 % and 56 and older - 8.4 % of respondents. The largest share of respondents to the survey has a university degree, 36 %. The other 29.8 % of respondents have completed secondary education, 18.5 % have completed non-university education, 12.6 % have vocational education and 3.1 % of the respondents have completed basic education.

The survey found that a majority of respondents (98 %) agree that a positive public image is crucial for police officers. Only 1.7 % disagreed, with 0.3 % not answering this question. Thus, it can be argued that a positive public image is particularly important for police officers, and the degree and directionality of their image needs to be examined.

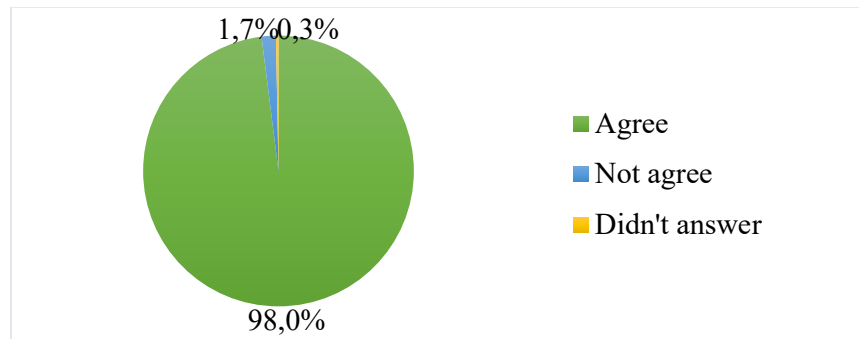


Figure 1. The importance of image for police officers

Respondents not only claim that their own image is important to the police, but also consider it to be positive.

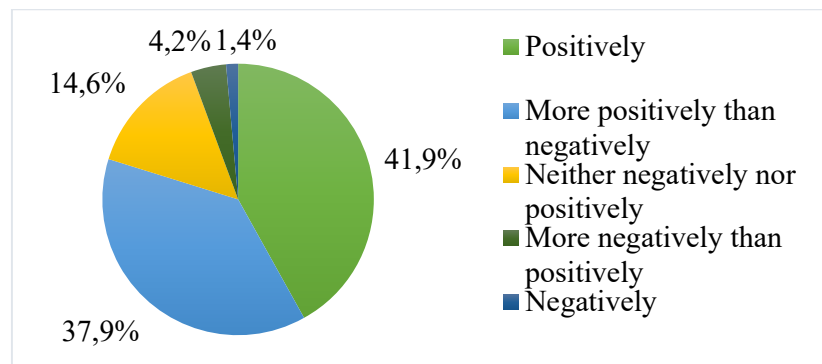


Figure 2. Assessment of the image of Lithuanian police officers

The obtained data reveal that 41.9 % of respondents evaluate the image of Lithuanian police officers positively, a similar percentage of respondents (37.9 %) evaluate the image of police officers more positively than negatively, and 14.6 % of respondents are neutral - neither positive nor negative. The image of officials is assessed more negatively than positively by 4.2 % and only 1.4 % negatively. Thus, if we sum up the answers “positively” and “more positively than negatively” and “more negatively than positively” and “negatively”, we would get the following results: 79.8 % of the respondents who participated in the survey tend to evaluate the image of Lithuanian police officers positively and only 5, 6 % tend to view it negatively.

The image is usually determined and shaped by certain external factors. The image of the police is also shaped in society by certain actions that the public experiences or is informed about. Thus, the image of police officers formed by 31 % of respondents is shaped by their own personal experience (see Figure 3). It should be noted that a similar percentage of respondents indicated that the image is formed by the experience of relatives, friends - 24.1 % and the media - 23.9 %. A smaller share (20.7 %) of respondents stated that their opinion about the image of officials is formed by social networks. Only 0.4 % of the respondents, answering this question, chose the answer “other” and stated that the image is formed by the image formed by each person when confronted with them. Consequently, the strongest source of the image of police officers is the personal experience of the residents themselves when meeting with police officers.

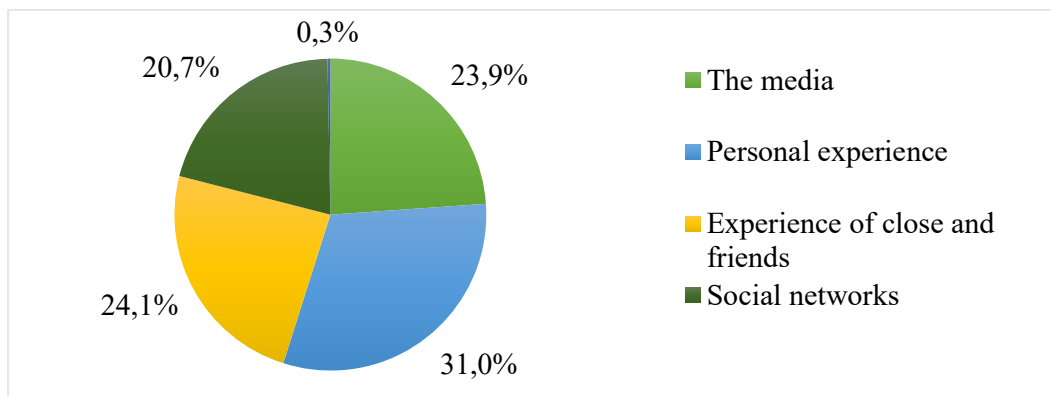


Figure 3. Sources form respondents' opinions about police officers.

It remains to be seen what factors influence the image of a police officer, which is formed by the public mostly from their own experience. The analysis of the results showed (see Figure 4) that the same percentage of respondents, that is 25.2 % each, equivalently evaluates the positive personal qualities of officials and the competence, professionalism and work knowledge of officials. Such data reveal that it is important for the public that police officers not only be knowledgeable and competent in their work, but also that they have positive personal qualities - being polite, understanding and sincere.

Part of the respondents (13 %) indicated (see Figure 4) that adherence to ethical principles contributes to the formation of a positive image of police officers, and 12.1 % of respondents attributed the assistance provided by police officers during their service to the strongest factors forming a positive image, such as assistance. a woman to change an exploded car tire on the road. As mentioned earlier, the image of the police is shaped not only by the actions taken by the officials during the service, but also by the actions taken by the officials in their free time - 10.2 % of the respondents indicated that the positive image of the officers is formed by the assistance provided by the police officer.

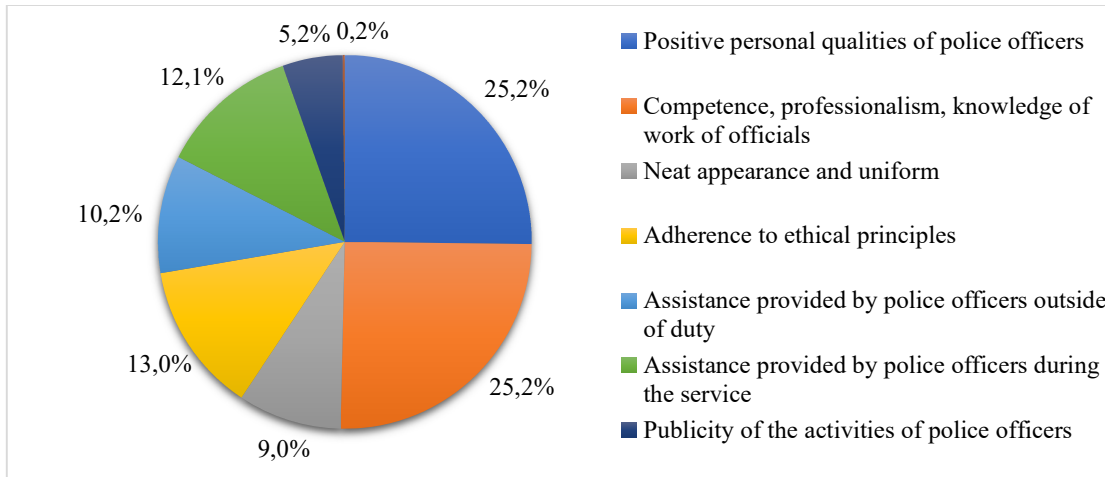


Figure 4. Factors influencing the image of police officers

Also, 9 % of respondents mentioned a neat appearance and uniform, and 5.2 % said that a positive image is most strongly formed by the publicity of police officers' activities. 0.2 % of respondents who chose the answer “other” stated that all the given answers have a strong influence on the formation of a positive image of police officers.

Similarly, respondents were asked to indicate no more than three factors that had the greatest impact on the formation of a negative image of police officers (see Figure 5). A review of the results showed that the majority, 21.9 % of respondents, chose negative personal characteristics of police officers as the strongest negative factor. It should be noted that a negative share of respondents - 17 % - chose the lack of competence and unprofessionalism as negative factors, as opposed to the positive ones. The third most negative factor, according to the respondents, is bribery (14.9 %), followed by police offenses committed by police officers (12.4 %) and abuse of the law (12.4 %)., 2 %) and unlawful behavior of police officers outside office (8.6 %). 3.1 % of respondents chose a messy appearance and uniform as a negative factor in the image of the police. Respondents who chose the answer “other” stated that the image of officials is negatively affected by: impunity, lack of motivation to perform their duties properly, use of status as a police officer for personal purposes or aspirations that may harm others, and one respondent image formation.

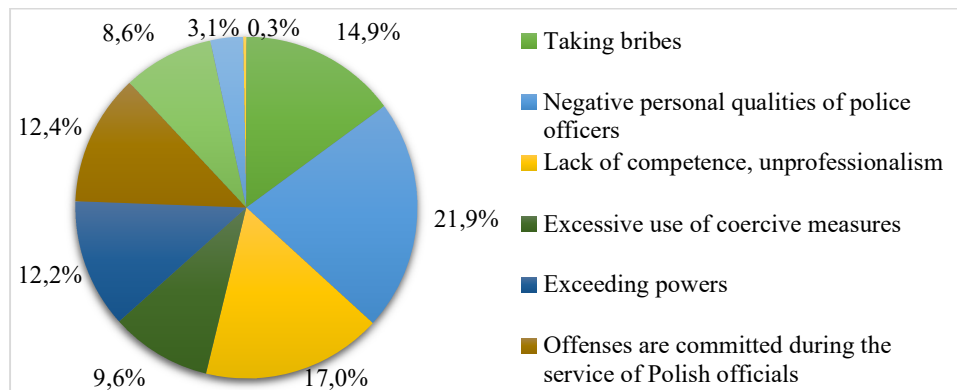


Fig. 5 Factors negatively affecting the image of police officers

Thus, the formation of both positive and negative image is strongly influenced by the personal qualities of officials and their competence, knowledge and professionalism, but in assessing negative factors, negative personal qualities of officials received more votes than incompetence and unprofessionalism of officials. Therefore, it can be assumed that the population tends to value the personal qualities of officials more than their professionalism and competence. Whether the public agrees with this assumption was asked further in the study.

Respondents had to choose between two statements - "people value the personal qualities of police officers (courtesy, sincerity, etc.) rather than professionalism and competence" and "the immoral behavior of one police officer has a strong impact on society". with whom they agree or disagree; partly agrees and partly disagrees.

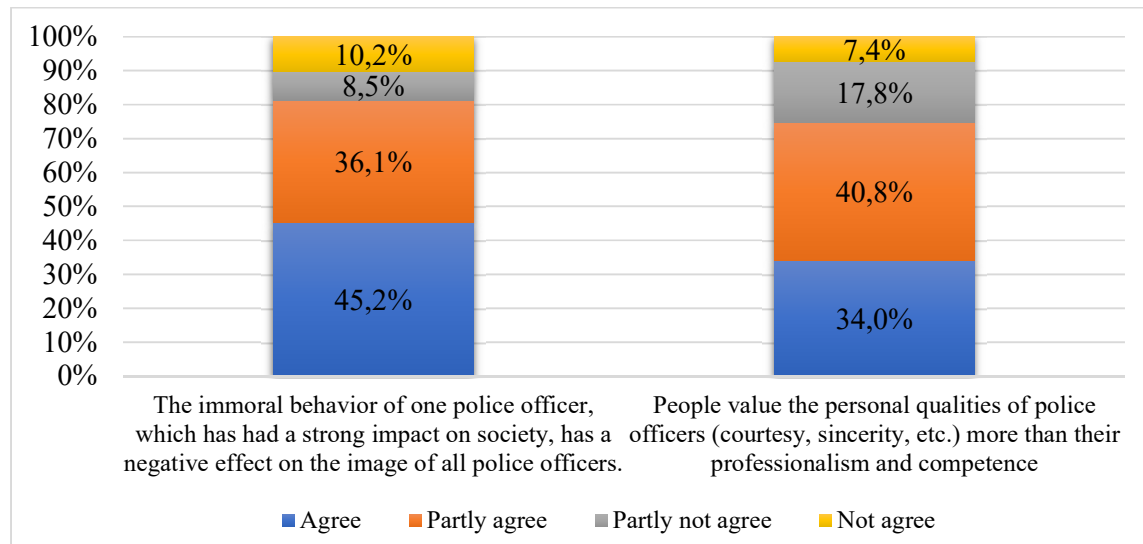


Figure 6. Allegations about the image of police officers

The results of the survey showed (see Figure 6) that 34 % of respondents agreed with the statement that people value the personal qualities of officials more than their professionalism and competence, 40.8 % partially agreed, 17.8 % partially disagreed and disagreed. 7.4 % of respondents to the study. Summarizing the answers “positively” and “partially positively” and “partially negatively” and “negatively”, it can be said that people tend to agree with the assumption that the population values the personal qualities of officials more than their professionalism and competence.

The aim was also to find out what impact the immoral behavior of one police officer had on public opinion. 45.2 % of respondents agreed with the statement that it has a negative effect on the overall image of the police, 36.1 % tended to agree only partially, 8.5 % partially disagreed and 10.2 % tended to disagree. In summary, it can be said that the personal qualities of police officers are one of the most important factors in a positive image of a police officer, so that every police officer must adhere to the principles of proper communication and ethics, as well as knowledge of their work. Behavior can simply ruin the image of police officers in society as a whole.

Conclusions

Perception of an image as a result of a cognitive or communicative process and in a psychological aspect determines its evaluation as a set of factors affecting emotions, behavior,

relationships, and encompassing communication and personal feelings in evaluating an organization. A positive image leads to officers' self-confidence, improved quality of work, public confidence, willingness to cooperate and support for police officers. All this strengthens the close relationship.

The sources of image formation of police officers are: personal, experiences of relatives, friends and media reports. The formation of a positive and negative image of officers in society is influenced by: legal acts and normative documents regulating police activities and other general factors: personal characteristics of police officers - personal qualities, legal competence, appearance at work and behavior during and out of work.

The results of the investigation, it can be stated that the image of Lithuanian police officers is assessed positively by the majority of the population participating in the investigation. The obtained results suggest that police officers are valued well in modern society. The formation of such indicators is mainly influenced by the personal qualities of police officers, followed by their competence, professionalism and knowledge of work. Thus, although the image of police officers is considered to be quite positive, the public believes that in order to achieve even better indicators, police officers should pay more attention to maintaining closer relations with the public and improving their communication skills. It can also be mentioned that the competence and professionalism of officials should be improved, as these are among the strongest indicators influencing the formation of a positive and negative image.

So the image of police officers is shaped by personal experience, and the strongest influencing factors are, first of all, the personal qualities of the officers (courtesy, understanding, sincerity), and only then are competence, work knowledge and professionalism mentioned.

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LAW AS AN INSTRUMENT FOR ENSURING PUBLIC SECURITY

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Abstract: *Public security is closely linked to the concept of public authority. Law is understood as one of the important instruments for ensuring public security and in its modern form it is not conceivable or functional without addressing the issues of formal publication. The legal order as a whole is subject to a number of pressures that ultimately reduce the necessary degree of stability of the law. The belief in the almost unlimited possibilities of legal regulation is at odds with the real possibilities of legislative action. The volume of legislation regulating the activities of public authorities and the public security segment is steadily growing and is becoming difficult to be understood and grasped by the stakeholders. The paper concludes by outlining the problematic cases encountered by public authorities in the Czech Republic. The recent state of crisis legislation in the legal and security environment of the Czech Republic is also mentioned.*

Keywords: *Court, Charter, Freedom, Law, Limits, Security.*

Introduction

In this article, the authors want to define a very topical issue faced by public authorities in the Czech Republic and abroad. At present, due to COVID-19 pandemic and conflict in

Ukraine, there is a great instability, which state authorities in all EU Member States have to fight. In this article, we will try to describe each instrument in more detail.

Aim of the paper

The presented professional article reflects the scientific research activities performed in the framework of the scientific sub-task No. 3/1 entitled “*Analysis and expected development of competencies of the Police of the Czech Republic and police security entities in selected areas*”, as well as the ongoing scientific project entitled “*Optimization of state crisis management*”. The project focuses on a review of crisis legislation with regard to current security threats. The aim of the paper is to inform foreign partners about current developments in the Czech Republic.

Protection of human rights while ensuring public security

Ensuring public security is undoubtedly one of the fundamental assumptions of the full and uninterrupted exercising of the entire range of human rights and freedoms. History has convincingly showed us many times that human rights and freedoms without restrictions cannot be fully implemented in a comprehensive range or to the required minimum standard. The protection of human rights (including freedoms) (Authors’ note) in European countries is now based on a comprehensive system of multi-level legislature, which combines international law, EU, and national constitutional levels. Human rights are traditionally incorporated into many international treaties, including the European Convention on the Protection of Human Rights and Fundamental Freedoms, and constitutional documents such as the Charter of Fundamental Rights and Freedoms of the Czech Republic (as part of the constitutional order of the Czech Republic) (Authors’ note). In the scope of European Union law, the main reference framework since the entry in to force of the Lisbon Treaty is the Charter of Fundamental Rights of the European Union, which in terms of the case law of the Court of Justice of the European Union both synthesizes international and national standards for human rights and also strengthens the autonomy and unity of the legal order of the European Union (SCHEU, 2019, p. 3).

In the context of ensuring public security, it is necessary to mention the key features of the current concept of protection of human rights and freedoms, which can be considered as follows: (Author’s comment: We must understand these contexts as being key in relation to the protection of human rights. It is a relationship whereby the more the security (the more human rights restrictions), the more the human rights (the less security).

a) Complexity of legal regulation - legal regulation addresses human rights and freedoms in the necessary scope and respects the need to prepare rights for other possible situations and circumstances, which bring about the accelerated development of human society. This process will never be entirely completed, and the list of necessary legal limits will at no time be exhaustive and without the possibility of further expansion and refinement.

b) Multi-level regulatory assistance - the practical and ever-increasing need for communication across countries, international organizations, and groups, as well as the rational demand for global discussion and communication on key issues, puts pressure on the requirement to functionally link international, national, and other (e.g., EU) levels of legislation.

c) Mutual respect - between the various levels of legislation in the protection of human rights and freedoms. Last but not least, the effort to eliminate as much as possible the existing differences in valid and effective legislation on the individual levels of regulatory assistance.

d) Harmonization - of the whole system of multilevel regulatory assistance covering the protection of human rights and freedoms, including mechanisms and institutions for dispute settlement.

e) Instruments for the interpretation and application of legal norms - effort is aimed at achieving a situation where multi-level regulatory assistance will not be burdened by diametrically different interpretations or applications of specific legal norms, especially by judicial authorities. It cannot be overlooked that the existence of a multilevel structure for the protection of human rights and freedoms carries risks in their creation, interpretation, and application.

Different interpretations of different sources by different judicial bodies at an international, EU, and national level may theoretically jeopardize not only the consistent application of human rights in Europe, but also their transparency and authority. Therefore, the professional literature usually points to the need for dialogue between the different courts (SCHEU, 2019, p. 3).

Subjective right to ensure public security?

In areas where the term public security is used, other terms are also frequently encountered. These are always accompanied by interconnections and blurred boundaries. They include, for example, national security, internal and external security, public order, security situation, and others. In our opinion, consideration of whether and to what extent public security limits human rights and freedoms is essential. We believe that:

a) Ensuring public security is a collective interest. The consequence of this claim is the need to implement a proportionality test to balance this collective interest against the interests of the individual (e.g., freedom of movement, personal freedom, and others). This assumption is understood routinely and without major reservations.

b) Public security can also be understood as the subjective right of an individual, as a subjective human right. However, case law (e.g., settled in the European Court of Human Rights) tends to suggest that an independent, individually tailored right to security does not exist.

c) Reluctance to understand the right to safety as the subjective law of the individual stems from the fear that it may claim specific protective mechanisms from responsible subjects (i.e., executive and legislative authorities).

Here, it is important to determine the entity to whom the obligation to ensure public security is bestowed. Existing relationships and strategies can be demonstrated, for example, as follows:

It is clear from the definition of the competencies of the European Union and the Member States that competence in the field of public security remains with the Member States themselves. Pursuant to Article 4(2) of the Treaty on the European Union, the Union respects the basic functions of the state, in particular those related to the provision of territorial integrity, maintaining public order, and national security. There is no doubt that the European Union does

not have the power to adopt legislative or executive measures ensuring public security in the individual Member States or in the Union as such (SCHEU, 2019, p. 8).

Therefore, it is clear that:

a) If a structure (model) is accepted whereby the right to security is recognized as a separate subjective right, then this obligation must be borne by the Member State of the European Union. On the one hand, it is limited by the boundaries of the security of society as a whole, and on the other hand the boundaries of the security of the individual.

b) In cases where there is no link to European Union law and thereby a Member State does not apply European Union law within the meaning of Article 51 of the Charter of Fundamental Rights of the European Union, Article 6 of the Charter of Fundamental Rights of the European Union shall not apply at all, and such rights cannot be evoked before a national court or the Court of Justice of the European Union (SCHEU, 2019, p. 9).

c) Setting the environment for functional public security is considered a legitimate requirement from the point of view of modern democratic and legal states. The second generally accepted pillar recognizes the need to establish a system for the protection of human rights and freedoms. Both requirements seemingly stand against each other. It is true that in times of crisis, it is often necessary to restrict human rights and freedoms. However, for practical reasons, a lower standard of protection of human rights and freedoms must be seen as a temporary solution. Security, and human rights and freedoms are always two sides of the same coin. In an environment where an adequate level of security is not ensured, human rights and freedoms cannot be well applied without the absence of significant restrictions.

d) No measures of an executive, legislative, technical, economic, or other nature have the potential to create a system of absolute security. From the above, it is clear that the solution is always a compromise, both from the point of view of the individual components of state authority and the relationship between the individual and the state. This compromise is necessary as it keeps public security at the required level and ensures the ability to deal with real and external excesses.

e) Regulatory assistance in the area of public security often relies on the institution of public authority. We also find links between the exercise of public power, public authorities, and others. The Constitutional Court gives the necessary definition in the conditions of the Czech Republic as follows: “Public authority is a power that authoritatively decides on the rights and obligations of subjects, either directly or indirectly. An entity whose rights or obligations are decided by a public authority is not on an equal footing with it and the content of the decision of that authority does not depend on the will of the entity” (Ruling of the Constitutional Court from 10 November 1998, file number I ÚS 229/98/ č. 138/1998 Sb. N. U. US). Therefore, public authority can be understood to mean (albeit with a certain degree of simplification) activity of the superior authority, the focus of which lies in authoritative decision-making on rights and obligations. This process is equipped with a strengthening mechanism, namely the superior position of a public authority over the entity whose rights and obligations are being decided upon. This mechanism ensures the enforcement of decisions in a situation where the entity does not submit to the public authority voluntarily (apart from cases of illegal and unjust decisions). A similar opinion can be found in Czech theory as well as in the works of other authors. For example, Prof. Gerloch states that, “Public authority is the ability to impose a will expressing the public interest on individuals, social groups, and society as a whole or as a community” (GERLOCH, 2009, p. 1078). An apparent exception is the judgment of the Supreme Administrative Court of the Czech Republic of 24 November 2011,

Ref. No. 7 As 66/2010. In this judgment, the exercise of public authority is not strictly tied to the activities of the superior authority (this requirement is absent in the above definition by Prof. Gerloch – authors' note), but rather to the requirement to exercise public authority by public law. However, in a detailed comparison, we must conclude that the opinions of the Constitutional Court of the Czech Republic and the Supreme Administrative Court of the Czech Republic are not in logical contradiction. There is only the requirement that certain situations and specific cases dealt within them can also use the extended definition. The presented matter also touches on the concept of public authority as a category covering state authority in the classical concept, and so-called residual public authority. This is a situation where public authority is exercised by the state authorities and residual public authority is exercised by non-state public corporations.

A direct reference to the norms of the constitutional order of the Czech Republic in relation to public authority can be found in the valid and effective Constitution of the Czech Republic, which enshrines the possibility of submitting a constitutional complaint against a decision or other intervention of a public authority in constitutionally ensured fundamental rights and freedoms (Constitutional Act 1/1993 Coll., Constitution of the Czech Republic, No. 87, 1d, as amended). The Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms use the term state authority in other provisions, although it clearly means public authority in general (Cf., e. g. Constitutional Act 1/1993 Coll., Constitution of the Czech Republic, as amended, and Charter of Fundamental Rights and Freedoms as part of the constitutional order). The term public authority can be found in a number of legal regulations at the level of common law (For example, Act 500/2004 Coll., Code of Administrative Procedure, Act 111/2009 Coll., the Basic Registry Act, Act 300/2008 Coll., on electronic acts and authorized conversion of documents). The situation here is not facilitated by the common practice of legislators to choose other vague definitions for certain entities (sometimes only on the basis of the fact that they have a public status). For example, public law originators (Cf. Act 499/2004 Coll., on archiving and records management) or public law signatories (Cf. Act 297/2016 Coll., on trust services for electronic transactions, as amended by Act 183/2017 Coll.). However, it is true that legal practice has learned to work with public authority, distinguish between public authorities, and work within the fundamental limits of the exercise of public authority.

With the necessary degree of generalization, it can be stated that the legislator (sometimes the constitutional legislator) intends to bind legal norms (such as generally binding rules of conduct) and legal facts in certain cases to situations where a body or official exercises public law competence (established by law) or acts by virtue of its function. In these cases, the term public authority is used.

A confusing legal framework for public security?

One of the conditions for the establishment, functioning, and provision of a functional model of public security is the legal framework. Within its boundaries, legal norms are created in the area of public security, and institutions, and mechanisms of their functioning and provision are formed. Law plays a key role here.

Modern society has become accustomed to the relative advantages of the process and results of legal regulation. In particular, the possibility of state coercion (coercion by the public authorities) strengthens the belief in its unlimited abilities and possibilities. This belief

sometimes borders on absolutization. The graded inflation of legal regulations places increasing demands on all recipients of legal norms. We forget that each regulation (including legal) has its limits, which cannot be exceeded permanently and without adverse consequences. The recipients of legal norms cannot be overloaded with such a large number of legal regulations (such as a model and required rules of conduct and behavior) that they are not able to absorb and subsequently transform into real life (VÍŠEK, KROUPA, 2020, p. 177).

Promises of politicians to steadily reduce the volume of legislation, simplify, and minimize the legal order, and clean up unused but still valid and effective legal norms appear regularly before each election.

This creates a situation where certain legal regulations are often no longer complied with, no one is able to effectively control their compliance and resolve cases of violations, and the recipients of legal norms are not really able to familiarize themselves with them and comply with the prohibitions and orders contained within them, or exercise their rights effectively. Positive laws and the state as their monopolistic creator lose authority through this process. General disrespect for the law is rampant in society, and legal liability is being replaced by legal irresponsibility. Legally limited rights and freedoms of man and citizens are pushed out of their natural position. The environment of general legal uncertainty leads to the politicization of law and the strengthening of the repressive function of the state (VÍŠEK, KROUPA, 2020, p. 178).

In extreme cases, appropriate repression and regulated legal violence as the last resort of the state are replaced by the same elements, but used by entities outside the effective control of the state and the public. Public security is increasingly affected by the illegal activities of coercive, lobbying, criminal, and elitist organizations, which, although unelected, participate in de facto public authorities, including public security.

A modern legal state cannot completely relinquish legal responsibility for the uninterrupted exercising of rights and freedoms. On the other hand, it has the right to require a person (citizen) not to expose him or herself to increased danger and meet basic requirements in this area, not to violate established legal orders and prohibitions, and not to exceed the limits of legal permission (VÍŠEK, KROUPA, 2020, p. 178).

The need for legal certainty also plays a key role in public security. If a law should create order in society, it must play a stabilizing role. However, it is exposed to legitimate pressures on the need for certain dynamics in response to reasonable movements in society. The stability of law and the need to respond to accelerating societal developments are at odds. Only the passage of time can reveal the degree of efficiency here (GERLOCH, 2013, pp. 264-265).

The demands of some on the stability of the legal order and the achieved level of the legal environment regularly and repeatedly come into conflict with the interests of others, who, on the other hand, for different reasons require different dynamics of social relations and different dimensions of the legal order. Ever increasing advances in human society legitimately promotes even more sophisticated technologies for enforcing powers, particularly in the field of public security.

By defining the area of freedom, the law also guarantees it. In today's society, the task of authority behind the law is to protect the freedom of everyone. An essential component of guaranteeing freedom is the setting of its legal limits. If the boundaries of freedom are not clear, there will be no freedom (GERLOCH, 2013, p. 261).

There are several available models of legal certainty. However, it is possible to acknowledge the following conclusions:

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- a) The stability of the law has a major impact on its level of knowledge and compliance.
 - b) Awareness of what is or is not permitted under the law may also prevent infringements in the field of public security.
 - c) Considering the current rapidly changing social relations in the field of public security, the stability of the law cannot be confused with the requirement to preserve the existing legal regulation.
 - d) Legal certainty and legal stability must represent important limits and objectives of law-making. Together with other mechanisms, they can then work together effectively to prevent breaches of public security law.
 - e) If a law has been violated, then high-quality and unambiguous legislation is the basis for a speedy, fair, and socially justifiable solution of an appropriate type and degree of intensity, with an appropriate preventive and repressive effect.
 - f) Other instruments, political, economic, technical, and others, must also coordinate their activities with the law.
 - g) Legislative activity in the field of public security undoubtedly has certain limits. These do not concern the limitation of the amount of legislation, where the legislator has a free field. The only limitation is a rational consideration of how many legal rules can be directed towards their recipients, without the risk of a dysfunction of the legal framework of public security as a whole. Anthropological limits are inherent in humans as a biological species. In general, the law should regulate only those social relations that are not accidental (they repeat), are certain (we can know their content), and are legally regulated (i.e., they can be regulated by law).

The modern legal state must be assessed primarily as a state guaranteeing security in the extent mainly bounded by fundamental human rights and freedoms. A material legal state conceived in this way is confronted with the requirements of the formal legal state. The concept of a formal and material legal state is expressed in the concentrated form of the convergent propensity of the development of jusnaturalism and juspositivism after World War II. The current legal state reflects in the basic principles of its core postulations of both legal positivism and jusnaturalism, and together with recent legal theory it is characterized by an effort to achieve a certain synthesis of jusnaturalism and juspositivism (VEČEŘA, 1998, p. 7).

Even in the area of public security, the legal state explicitly recognizes, and lawfully enshrines and protects human rights and freedom at least within the scope of adopted international standards. Any reduction must only be made under predetermined conditions, and limited in time until its objective is achieved. Similar requirements must be created as a failsafe in the event of emergency situations and conditions. The setting up of remedies and ensuring a public control mechanism also play an important role.

Legal orders are not and cannot be built ad infinitum in terms of a framework of procedural means for the protection of rights, or the organization of review courts. Each legal order is accompanied by a certain number of errors. The purpose of review proceedings or review bodies is to minimize such errors, and not to eliminate them entirely. The framework of review courts is, therefore, the result of balancing efforts to achieve the rule of law on the one hand, and the effectiveness of decision-making and legal certainty on the other (Judgment of the Constitutional Court of the Czech Republic dated 31 October 2001, Ref. No. Pl. ÚS 15/01).

Hypertrophy of the legal system (including the area of public security) has an impact on orientation in valid and effective legislation. Reality largely relativizes the possibility of

consistent implementation of the rule, “*Ignorance of the law does not excuse, or the principle of legal license*” (Cf. e. g. Constitutional Act 1/1993 Coll., Constitution of the Czech Republic, as amended. Similarly, the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic). The promulgation of legislation is the cornerstone of the process of mediating rights and an elementary requirement for fulfilling the requirement of legal certainty. Historically, the principle of material publication, whereby the recipient of the legal norm had to really encounter the source of the law, worked for a long time. Collections of laws only fulfilled an archiving function. This was replaced by the principle of formal publication, which assumes the promulgation of legislation in a legally established manner. Hence, the promulgation of a legal act in a specific charter or electronic collection of laws, expressly determined for this purpose by law. Another way of promulgation is excluded under the standard security situation.

Conclusion - what next?

a) The law gives way to a turbulent security environment

Unfortunately, it must be said that the current need to ensure security has led democratic governments to take certain unavoidable measures, and which are legally questionable at least. An example is the blocking of websites spreading disinformation in connection with the conflict in Ukraine. On Friday, 25 February 2022, the CZ.NIC association removed eight such websites from zone.cz. Only three hours later, through a request from the National Center for Cyber Operations (NCKO), Czech operators were asked by the Director of the NIX.CZ association to block another 22 websites, which were identified by NCKO and the Hybrid Threat Center as spreading disinformation and propaganda. Many operators subsequently heard NCKO’s calls and blocked pro-Kremlin disinformation websites. Almost immediately, voices condemned the move as an unprecedented violation of freedom of speech. This procedure has no support in the Czech legal system. The public authorities justified this act as a form of necessary defense, as they wanted to protect public security in the Czech Republic in order to prevent demonstrations, etc.

The legal aspects of the “shutting down” of websites in the Czech Republic described by the public authorities as spreading disinformation. This is associated with a number of legal controversies. It can be divided into two groups. The first consists of the actions of public authorities and the second the actions of CZ.NIC and NIX.CZ.

As far as the first matter is concerned, the controversy lies primarily in the existence of a law that would allow public authorities to ask private law persons to perform the described intervention. It must be recalled that under Article 2(3) of the Constitution of the Czech Republic and Article 2(2) of the Charter of Fundamental Rights and Freedoms, state authorities may do only what the law expressly requires them to do in the manner provided by law. The principle of *praeter legem* cannot be applied, and it is directly unconstitutional.

This statutory limitation also appears in relation to the present case in Article 17(4) of the Charter, as the inaccessibility of websites means an interference with freedom of expression, but also the right to free access to information. The right to conduct a business may also be affected, see Article 26 of the Charter. It is also possible to consider an interference with property rights pursuant to Article 11 of the Charter. Here, too, restrictions are possible, but again subject to legal grounds.

The prohibition set out in Article 17(3) of the Charter, i.e., the prohibition of censorship, is fundamental. The measure can be considered to have had the characteristics of censorship. If this were proven, then intervention would not be possible even with legal grounds, because the existence of such a law is prohibited.

In this context, a problem arises with the interpretation of the term “state security”, on which a possible law allowing the inaccessibility of websites would be substantiated. The term “state security” has so far been interpreted in the sense that it is a threat to the very existence of the state, or its functioning. In a broader sense, it may be concluded that blocking these disinformation websites has an impact on the safe functioning of the Czech Republic. If we were to think in a broader sense of “state security”, it would be possible to apply the provisions of Article 12(a) of Act 2/1969 Coll.

The second issue focuses on the conduct of the above-mentioned associations, and this may also be considered legally disputed. It is doubtful that eight inaccessible websites would endanger the operation of the Czech Internet or be a threat to cyber security. Their problems were of a different nature.

From the above, it can be concluded that this is not a standard intervention. It is a question of whether it is a violation of the constitutional order of the Czech Republic, and only judicial practice will find an answer.

b) *The need to optimize state crisis management on a legal basis*

First of all, it should be mentioned that, among other things, this issue is addressed by the scientific project of the Police Academy of the Czech Republic in Prague entitled “*Optimization of State Crisis Management*”. The output of the project will be a number of relevant recommendations for optimizing state crisis management. The aim of the project is to identify and analyze management processes related to state crisis management, including setting critical places in the decision-making process, as well as identifying factors that are critical to optimizing the security system of the Czech Republic, based on an explorative factor analysis, and contextual interviews. The project responds to the basic socio-political uncertainties and the task of the Government from 2015. Its results will be included in the documents for optimizing the security system of the Czech Republic. Optimization is needed in connection with the change in threats and risks that modern states in general, and the Czech Republic in particular are facing. We perceive many shortcomings in the solution to the COVID-19 (VÍŠEK, KROUPA, 2022, pp. 479-499) pandemic and a number of other shortcomings related to the Ukrainian refugee crisis in 2022. In this context, we want to emphasize that the Czech Republic has elaborated a range of crisis or emergency situations. An action plan focusing on a large-scale migration wave only takes into account 20,000 people arriving to the Czech Republic in one month. However, experience has shown that as of 10 April 2022, a total of 300,000 people had arrived in the Czech Republic from Ukraine. Therefore, it is clear that, in this sense, the prepared concept materials cannot be completely relied upon, and such documents or legislation will need to be transformed, so that they are more flexible and adaptable to specific situations. Another example may be that a valid concept for deciding on a state of emergency, including the legal framework, has been adopted at a time of another type of state of emergency. Constitutional regulation of a state of emergency assumes an attack by regular armed forces. It requires sufficient time for decision-making and assumes normal functioning of all state authorities, including the Parliament of the Czech Republic. A state of emergency can only be declared by Parliament. The adoption of a resolution on the declaration of a state of emergency must be approved by an absolute majority of all senators. A declared

state of emergency is followed by certain necessary steps, e.g., declaration of mobilization, approval of a war budget, adoption of economic measures for the emergency situation, etc. Without declaring a state of emergency not everything can be performed. The global transformation of threats and risks means that a state of emergency may occur inadvertently, so there may not be time for decision-making, as the current legislation envisages. There will be no time for the government to submit a proposal and for both chambers of Parliament to discuss it. Parliament may also not be able to come to a decision, e.g., it may not be able to meet in person, or a potential cybernetic attack may prevent meeting remotely. These are selected aspects that domestic legal and security instruments do not take into account. It should be noted that non-state actors have a significant competitive advantage in this respect and better adapt to the possibilities arising from globalization, especially from the use of information and communication technologies, transport, and trade. Therefore, it is time for the Czech government to wake up to a new method of decision-making during a state of emergency, which will require updating strategic documents and legislation. This new method of decision-making must be more flexible, fast, and comprehensive in order to encompass the entire security system. In a democracy, there is a crucial legality of decision-making, i.e., responsibility, who bares it and why. Legitimacy is based on the universal consent of all those concerned. Citizens should be able to identify with the new method of decision-making, and it is important to ensure that the change in speed, flexibility, and complexity will not deny the principles of the rule of law.

List of used abbreviations

CR – Czech Republic
EU – European Union
NCKO – National Center for Cyber Operations
PA ČR – Police Academy of the Czech Republic in Prague
UN – The United Nations
USA – United States of America

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