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Editorial Forward

It is never too much to talk about security in a modern world. The twenty-first century is changing pre-existing security concepts, therefore research on sustainable security, indivisible into external and internal ones, is extremely relevant and timely.

Today, both among academics and among public policymakers there is a widespread tendency to single out security sectors such as “military”, “economic”, “ecological”, “social” and “political” security, in recent years the “information” and “cyber” security sectors are also singled out, not forgetting the paradigms of personal and public security.

Therefore, it is obvious that public security deserves discussions on different levels, scientific research, constantly revision of legal norms, modern management. This situation also creates new obligations for educational institutions, as it becomes clear, that new challenges for future law enforcement require new competencies, and we are responsible for education corresponding to changing geopolitical, economic, social, demographic environment at macro and micro levels.

Annual scientific forum “Networking on Sustainable Security”, held by Mykolas Romeris University (Republic of Lithuania), General Jonas Žemaitis Military Academy of Lithuania (Republic of Lithuania), Czech Police Academy (Czech Republic) scientific forum each year contributes in delivering scientific as well as practical approaches towards different security issues, sharing insights about risks for security (global as well as private), prevention, legal regulation, human resources management for a safe and secure society.

This issue of the scientific journal “Public Security and Public Order” reflects the most interesting presentations given at the forum on topical areas related to various aspects of security, based on which scientific articles were prepared. We expect that this issue will raise new debates and discussions on the perspectives of future development in security sciences.

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TURINYS

Kateryna BAGATSKA, Yelena MATUSOVA	6
FINANCING OF CAPITAL INVESTMENTS IN ENSURING ECONOMIC SECURITY OF NON-FINANCIALS CORPORATIONS IN UKRAINE	
Asta BALČIŪNAITIENĖ	17
EXTENSION OF CROSS –CULTURAL AND SUSTAINABILITY COMMUNICATION COMPETENCES IN EFL CLASSES AT UNIVERSITY	
Gediminas BUČIŪNAS, Dalia JASEVIČIENĖ	25
NARKOTINIŲ IR/AR PSICHOTROPINIŲ MEDŽIAGŲ PLATINIMO VIETOS: IDENTIFIKAVIMO IR JŲ “UŽDARYMO” PROBLEMOS PLACES OF DISTRIBUTION OF DRUGS AND PSYCHOTROPIC SUBSTANCES: PROBLEMS OF IDENTIFICATION AND CLOSURE	
Robertas BULKEVIČIUS	45
NENUGALIMOS JĖGOS (FORCE MAJEURE) INSTITUTO TAIKYMAS COVID 19 ATVEJU APPLICATION OF THE INSTITUTE OF FORCE MAJEURE IN THE CASE OF COVID 19	
Gulbakhyt DINZHANOVA	55
THE ROLE OF HUMAN CAPITAL AND INNOVATION IN ECONOMIC GROWTH: EVIDENCE FROM KAZAKHSTAN	
Rasa DOBRŽINSKIENĖ, Aušra STEPANOVIENĖ	71
LITHUANIAN LANGUAGE POLICY IN MULTILINGUAL EUROPE: LEGAL AND SOCIAL ASPECTS	
Cruz GARCÍA-LIRIOS, Javier CARREÓN-GUILLÉN, Juan Antonio SÁNCHEZ- GARZA	81
MODELING THE PERCEPTION OF PUBLIC SAFETY	
Laura JEFIMOVAITĖ, Milita VIENAŽINDIENĖ	93
MODELING THE IMPLEMENTATION OF GREEN LOGISTICS PRINCIPLES: THEORETICAL ASPECT	
Olena KHADZHYNova, Mariia KHADZHYNova	108
BENCHMARKING AS A TOOL FOR MANAGING INDUSTRIAL ENTERPRISES	
Roberta KASARAUSKAITĖ, Milita VIENAŽINDIENĖ	119
CHALLENGES OF RAW MILK TRANSPORTATION AND POSSIBILITIES OF THEIR SOLUTIONS: A CASE OF LITHUANIAN DAIRY COOPERATIVES	

Ondřej KOLÁŘ, Štěpán STRNAD	128
CHARACTERISTICS OF APPROACHES TO THE PLACEMENT OF PRISONERS IN CONNECTION WITH POSSIBLE RADICALISATION	
Justyna MAJCHRZAK-LEPCZYK	139
VALUE FOR THE CUSTOMER IN E-COMMERCE	
Ivo PANCHENKO	149
THE INFLUENCE OF PERSONNEL POLICY ON THE STRATEGY OF THE ENTERPRISE	
Elitsa PETROVA, Kristina MIKALAUŠKAITĖ-ŠOSTAKIENĖ	156
INFLUENCE OF ACADEMIC AND MILITARY TRAINING ON LEARNERS' ESTABLISHMENT AS MILITARY AND CIVILIAN LEADERS	
Birutė PRANEVIČIENĖ, Deimantė LUKOŠEVIČIENĖ	166
IŠŠŪKIAI ASMENS DUOMENŲ APSAUGAI SVEIKATOS PRIEŽIŪROS ĮSTAIGOSE THE CHALLENGES FOR THE PROTECTION OF PERSONAL DATA IN THE HEALTHCARE SECTOR	
Birutė PRANEVIČIENĖ, Aistė VIERAITYTĖ	184
TEISINĖ ATSAKOMYBĖ UŽ ŽIAURŲ ELGESĮ SU GYVŪNAIS LEGAL LIABILITY FOR CRUELTY TO ANIMALS	
Živilė STANKEVIČIŪTĖ, Svetlana KUNSKAJA	202
TOWARDS TO SUSTAINABLE DEVELOPMENT: THEORETICAL RESEARCH	
Eglė ŠTAREIKĖ	221
ASSURANCE OF THE RIGHT TO PRIVACY AND THE PROTECTION OF PERSONAL DATA IN LABOUR RELATIONS	
Eglė ŠTAREIKĖ, Sigita KAUSTEKLYTĖ-TUNKEVIČIENĖ	236
HEALTH DATA PROTECTION AS A MEASURE OF REALIZING AN INDIVIDUAL'S RIGHT TO PRIVACY	
Dominika TUMOVÁ, Martina BLAŠKOVÁ	250
THE INFLUENCE OF SUPPORTING UNIVERSITY EMPLOYEES' MOTIVATION AND CREATIVITY ON THE EDUCATIONAL INSTITUTIONS' SUCCESS AND THE DEVELOPMENT OF SOCIETY	
José Luis VÁZQUEZ-BURGUETE, M. Isabel SÁNCHEZ-HERNÁNDEZ, María P. GARCÍA MIGUÉLEZ, Ana LANERO-CARRIZO	264
A GENERAL OVERVIEW OF THE FIELD OF INTERNAL SOCIAL RESPONSIBILITY WITHIN SUSTAINABILITY	

FINANCING OF CAPITAL INVESTMENTS IN ENSURING ECONOMIC SECURITY OF NON-FINANCIALS CORPORATIONS IN UKRAINE

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Abstract. *The purpose of the research is to define the place of capital investments financing sources in ensuring economic security of non-financial corporations in terms of transition the Ukrainian economy to the Industry 4.0. Dialectical cognition method, methods of complex analysis of economic phenomena, logical generalization, as well as financial analysis of business processes were used in the investigation. The concept of capital investments financing sources was analysed from the point of view of modern national and foreign scientists. The peculiarities of capital investments financing in current conditions of economic development of Ukraine are determined according to the sources of their formation and fields of economic activity of non-financial corporations. The dominance of own sources in the capital structure were revealed. Such a structure indicates the financial capacity of enterprises to invest, on the other hand, the extremely low level of external financing, which does not increase over the years, indicates limited opportunities for renovations and accelerated growth for the Ukrainian non-financial sector. The place of depreciation fund in the capital investments financing was underlined due to possibilities of transition the Ukrainian economy to the Industry 4.0. The level of financing of innovations and its share in GDP of the country were analyzed and the correspondence of such kind of financing with possibilities of ensuring the economic security of the country and its digitalization was identified. As a results of the conducted research it was determined that the main sources of financing capital investment by non-financial corporations in Ukraine is equity and companies should pay attention to increasing external sources; the high level of tangible assets depreciation lead to spending all financing of capital investment into repair in order to keep the operational activity on the necessary level, that why companies do not have the opportunity to develop themselves through increasing financing of innovations; in such conditions there is no opportunity to support transformation of the country to the Industry 4.0 by non-financial corporations and level of economic security of the country could be considered as low.*

Keywords: *Capital investment, financing, non-financial corporation, depreciation, net profit, loan, economic security*

Introduction

The rapid development of new technologies and digitalization, both with the spread of production processes and business processes automatization are confidently changing the structure of the real (non-financial) sector of economy in a post-industrial society.

Overcoming the crisis in the Ukrainian economy, ensuring the transition of Ukrainian non-financial corporations to the era of a new technological system and creating an environment conducive to their growth in the context of globalization and the European vector of development, require permanent investment. We believe that first of all investments are necessary for production processes, namely the fixed assets of the real sector of the economy,

which forms 93% of Ukraine's GDP. Since capital investment in the acquisition and renewal of the real sector fixed assets to ensure accelerated modernization is the only way to maintain the Ukrainian economy at a developed level, the study of the funding sources structure remains a topical issue of modern financial science.

Theoretical and practical aspects of the study of the typology, composition and structure of capital investments financing sources have received considerable attention of foreign scientists and Ukrainian researchers. The main works under the topic are focused on three theories of investment financing explaining its reasons: pecking order theory and capital structure theory.

According to Modigliani and Miller (1958), different sources of finance are perfect substitutes only in a perfect capital market, whereby the market value of a firm is given by its assets. But in developing economies such as Ukrainian capital market is not perfect and from the point of view of a firm, different financial sources are not perfect substitutes (Mikóczyová, 2010). This can also be concluded from the pecking order theory by Myers and Majluf (1984) and Myers (1984), according to which firms follow a certain pecking order when they need to raise new capital for their investments. Pecking order theory addresses the order in which an organization seeks funding, starting with internal sources, then debt, and then equity (Aabi, 2014). The theory explains it by information asymmetry between managers and potential investors (Serrasqueiro, Nunes, & Armada, 2016).

At the same time capital structure theory is considered not applicable to Ukrainian economy. Capital structure theory proponents explained how firms finance investments using different sources of funds, such as short-term debts, long-term debts, common stock, and preferred equity (Daskalakis, Eriotis, Thanou, & Vasiliou, 2014). However, the financial market of Ukraine is not developed for using common stock and preferred equity financing of investment.

Investment financing is considered a crucial to enhance growth and productivity in economies (Pacheco, 2017). Nevertheless, due to the importance of investment to the ensuring the growth path of the economy and its economic security, researchers analyze the investment behaviour from a macroeconomic perspective (Poirson, 1998; Volos, 2014) and studies focused on the firm-level point of view are scarce. The present paper is not focused on the ensuring economic security through the investment determinants from a macroeconomic point of view but rather on the firm-level determinants.

During the Post-Soviet period ensuring economic security of Ukraine is also discussed widely by national scientists. Despite of the fact that there are plenty of scientific papers on economic security of innovative enterprises (Illyashenko, 2005; Labunska, 2015), on the relationship of investments and innovative development of Ukrainian economy (Paranchuk & Korbutyak, 2013), there is lack of researches on identifying connection of financial recourses, innovative development and economic security.

In addition to scientific approach Ukrainian government pays great attention to the innovative development and increasing Ukrainian innovative potential nowadays. The Cabinet of Ministers of Ukraine (2018) has adopted "The Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020" and is working under "The Strategy "Industry 4.0". The key assumptions of the Strategy are as follows: it will help to increase competitiveness of the country; it will influence the innovative development and realize the growing innovative potential; it will lead to changes in infrastructure of the economy. Thus, government efforts are focused on increasing economic security of the country through innovative development.

In this connection the study of investment financing peculiarities of Ukrainian non-financial corporations, their relation to economic security of the country will allow to empirically test the pecking order theory of financing and the ability of the country to move to the Industry 4.0.

The purpose of the study is to define the place of capital investments financing sources in the context of the pecking order theory; to substantiate the significance of the long-term assets financing sources in ensuring economic security of non-financial corporations in terms of transition the Ukrainian economy to the Industry 4.0.

Materials and Methods. The methodological basis of our research is combination of theoretical studies with comparative statistical information that have been obtained from the Ukrainian Government Statistics website. Statistical data analysis was provided by descriptive methods, such as logical generalization. Dialectical cognition and retrospective method were used to analyze scientific publications.

The main body of the paper

The development of the Ukraine's economy real sector is significantly influenced by such important external factors as the industrial revolution and technological change, on the one hand, and Russia's aggression (annexation of part of the territory with enterprises, hostilities, destruction of industrial facilities and infrastructure, market closures and termination of cooperation, etc.).

As Sobkevych, Sevchenko and others (2017) noted, compared with global trends in economic development, manifested primarily in the rapid growth of technological innovation and the departure from the dominance of the industrial sector in favor of high-tech, the development of the Ukrainian economy real sector is still focused on low-tech production and export of raw materials, and the factors of ensuring its competitiveness are traditional factors, such as the availability of labor, natural resources, capital. Therefore, the real sector needs to stimulate advanced development on a new technical-technological and innovative basis, which seems possible by overcoming the dependence of a number of industries on Russian markets and changing the vector of economic policy to expand cooperation with the European Union, creation of new productions, maintenance of sustainable inclusive economic growth.

We agree with V. Zymovets and N. Sheludko (2017) statement that in the case of slowing down the modernization of the real sector economy Ukraine will not be able to raise the productivity level of the use of production factors, and hence, in the long run – its final transformation into raw materials the appendage of developed countries and the market for their high-tech goods.

Thus, the investment needs of the real sector are growing, and in the actual absence of the stock market and the collapse of the credit market in the last 4 years, the research of domestic investment potential is becoming increasingly important.

According to the State Statistics Service, Ukrainian non-financial corporations has been financing its capital investments for the last 10 years mainly from internal sources of financing (own funds of enterprises and organizations), as can be seen from Table. 1. And some sources of financing are represented on the fig.1

On the one hand, the dominance of own equity funds in the structure of funding sources indicates the financial capacity of enterprises to invest, on the other hand, the extremely low level of external financing, which does not increase over the years, indicates limited opportunities for expanded reproduction and accelerated growth of the real sector. These facts create some treats for our economic development.

Table 1. Dynamics of capital investments according to the sources of financing, mln. EUR
Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

Item	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	16587	21215	25890	22920	13566	11006	12425	14678	17673	19258
state budget funds	970,6	1566,6	1585,9	581,9	174,3	285,6	327,4	509,8	709,8	969,1
%	5,9%	7,4%	6,1%	2,5%	1,3%	2,6%	2,6%	3,5%	4,0%	5,0%
local budgets funds	544,1	698,4	833,0	640,5	376,6	588,6	947,9	1385,3	1566,6	1775,1
%	3,3%	3,3%	3,2%	2,8%	2,8%	5,3%	7,6%	9,4%	8,9%	9,2%
enterprise equity funds	10017,1	12765,9	15950,7	14996,0	9443,6	7342,7	8521,5	10065,5	12411,2	12478,3
%	60,4%	60,2%	61,6%	65,4%	69,6%	66,7%	68,6%	68,6%	70,2%	64,8%
bank loans and bonds	2173,0	3304,4	3867,8	3273,1	1383,3	856,0	958,1	986,2	1394,6	2113,1
%	13,1%	15,6%	14,9%	14,3%	10,2%	7,8%	7,7%	6,7%	7,9%	11,0%
foreign investments	353,5	454,3	477,5	402,5	358,9	337,8	347,5	206,9	55,9	146,6
%	2,1%	2,1%	1,8%	1,8%	2,6%	3,1%	2,8%	1,4%	0,3%	0,8%
investments in homebuilding programs	1793,0	1585,8	2198,1	2268,4	1403,9	1320,1	1058,0	1093,3	1077,9	1019,0
%	10,8%	7,5%	8,5%	9,9%	10,3%	12,0%	8,5%	7,4%	6,1%	5,3%
other sources	736,0	839,6	976,7	757,3	425,7	275,5	264,9	431,3	457,5	756,5
%	4,4%	4,0%	3,8%	3,3%	3,1%	2,5%	2,1%	2,9%	2,6%	3,9%

Thus, the negative trend is the reduction the share of loans as a source of financing capital investments. At the same time, due to the budget decentralization reform in Ukraine, since 2015, there has been a slight increase in the share of local budgets in the financing of fixed capital, which is certainly a positive trend. But the growth is very slight, not strong.

One of the conditions for successful economic development is the rapid renewal of fixed assets of non-financial corporations. A low share of the capital investment external financing for the emerging country economy may be justified if the fixed assets as a whole are not very worn out. However, the statistics reflect the opposite picture.

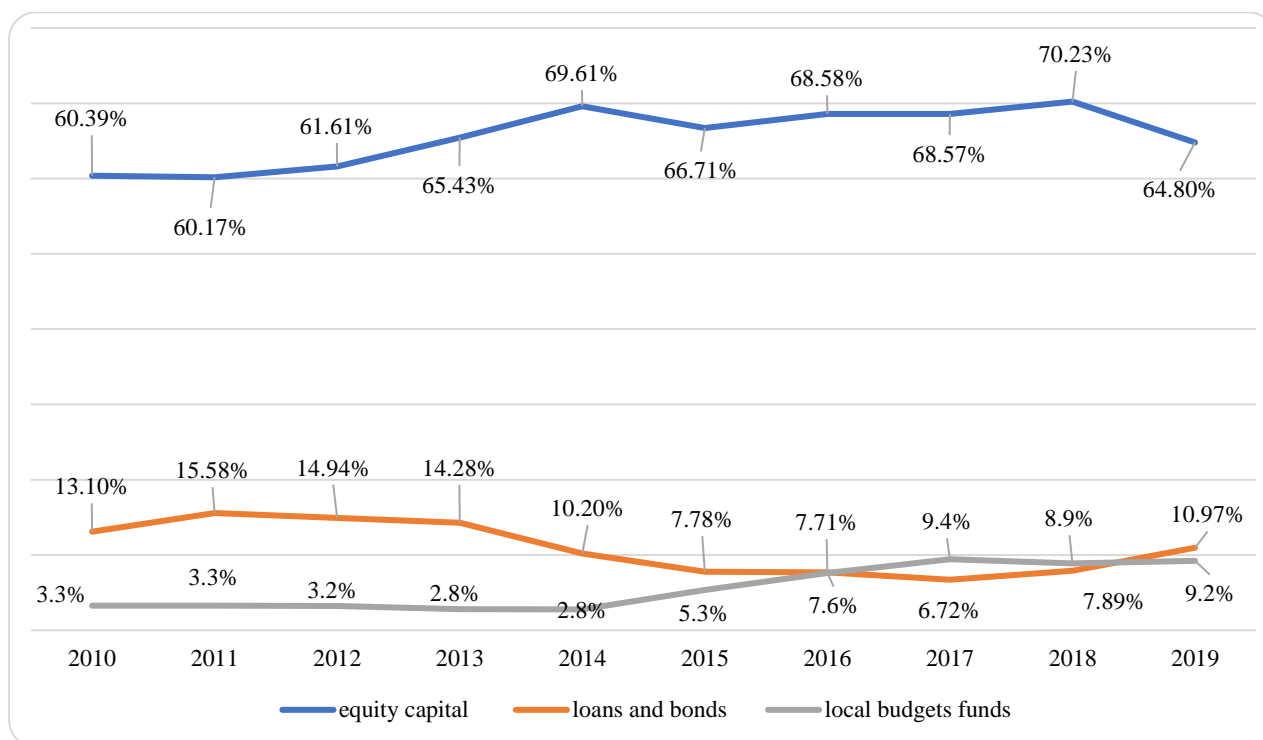


Figure 1. Dynamics of some capital investment financing sources, %

Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

According to the State Statistics Service, the level of the fixed assets depreciation is 64,05% at the end of 2019, which is higher than the previous 4 years but less than 2014, when the depreciation of fixed assets was the maximum for the last 17 years and amounted to 83.5%.

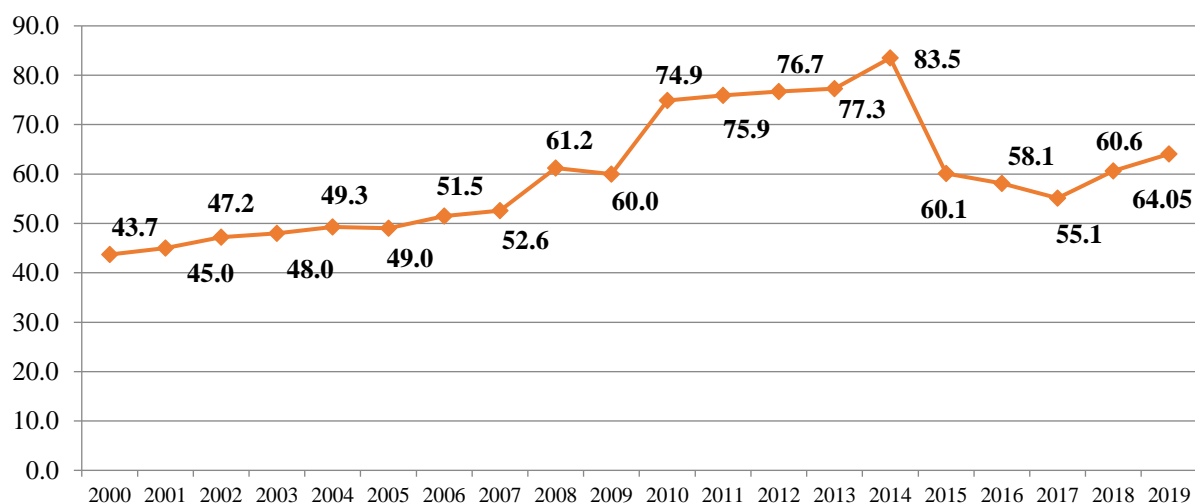


Figure 2. The level of the total fixed assets depreciation, %

Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

Net profit and depreciation costs are the main internal sources of fixed assets renovation. So we analyzed the correspondence between the level of capital investments (their amount) and the amount of such internal sources of financing as net profit and depreciation (Figure 3).

And this chart demonstrates the dominance of the internal sources amount under the amount of the capital investments, which mean that our domestic companies have the possibility to invest in renovation and modernization but they prefer to spend their gains or to take the profits to offshores. So in conditions of the limited external financing this trend is also defined as a treat to economic security.

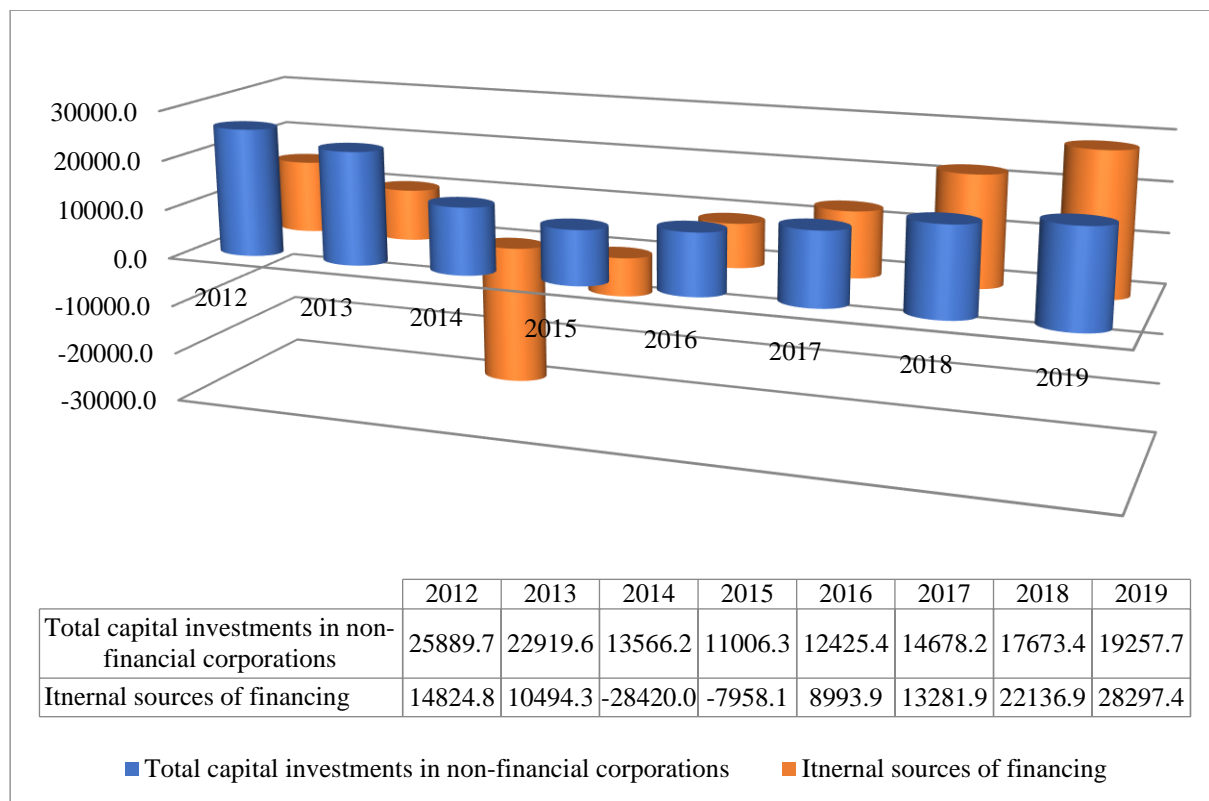


Figure 3. Correspondence of the capital investments and internal sources of their financing, mln EUR
Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

Thus, described analytical data allow us to conclude that the state of capital investments financing of non-financial corporations in Ukraine can be considered as a threat to economic security. After all, given the high level of depreciation of property, which is the fixed capital of the real sector, the property renewal is mainly due to the internal sources of funding, which limits the possibilities of expanded reproduction. At the same time, even the existing internal sources have not been fully used since 2017. This means that company management prefers to derive profits and "erode" depreciation in current expenses.

Current investigation determines that there is a direct link between security, transition to the industry 4.0 and capital investment. The structure and ability to finance properly capital investment in Ukraine identifies the ability of security ensuring and ability of innovative transformation the economy of the country.

After the world financial crises of 2007–2009 the total volume of capital investment was increased steadily from 16 592 mln EUR in 2010 to 25891.2 mln EUR in 2012 (fig. 4).

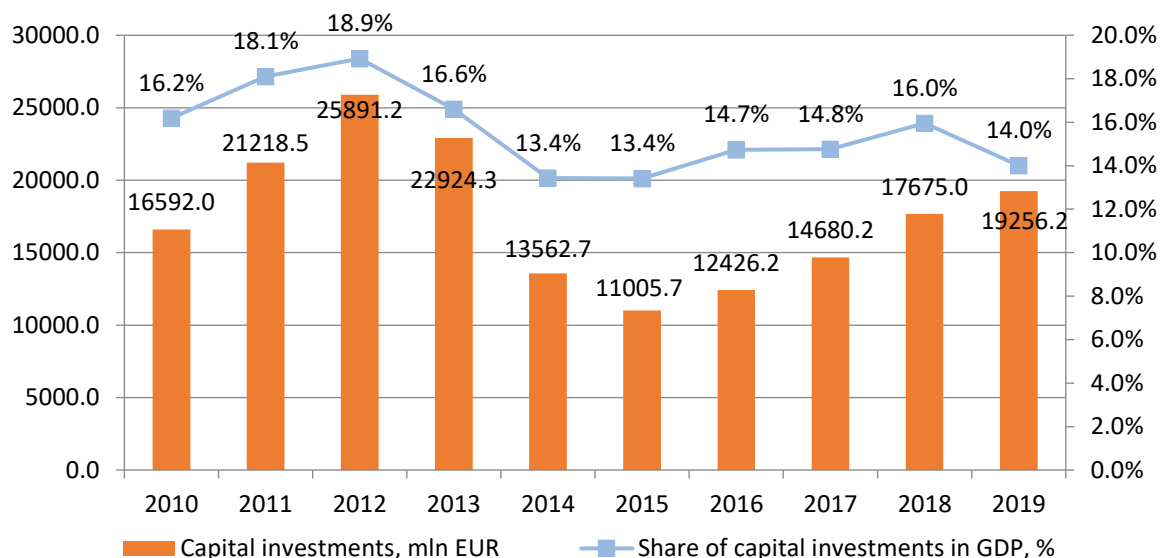


Figure 4. Capital investments and its share in GDP of non-financial corporations in Ukraine

Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

The military conflict and economic instability in the country reduced the ability of enterprises to finance its development in 2014–2015 but starting from 2016 enterprises recover their ability to finance capital investment. Analyzing depreciation of fixed assets and its level dynamics we could expect that enterprises should pay great attention to financing fixed assets. And till 2012 the share of capital investment in GDP increased with total amount of capital investment. The share of capital investment in GDP has the same trend as the total amount of capital investment in 2010–2018. However, in 2019 it rapidly decreased and in the period of 2014–2019 is not higher than 16%. Such kind of level of capital investment is not enough for the industrial development as well as for the ensuring economic security and it is used for repairing the existing fixed assets without stable capacity to change them into new one.

Correspondence of financing tangible assets and financing innovations in total volume of capital investment also identifies low capability of non-financial corporations to move Ukraine to the Industry 4.0 (fig. 5). Industry 4.0 is the stage in the digital transformation of enterprises accompanied by the accelerated introduction of technologies and corporations have to increase innovations financing in order to achieve the expected results of moving to it. According to the official statistics financing of innovations by non-financial corporations has approximately the same trend as the total volume of capital investment. However, the total volume of financing of innovations is much lower than the total volume of financing of tangible assets. The difference between financial support of tangible assets and innovations varies from more than 10 to more than 30 times in 2010–2019 and in 2019 the volume of financing of tangible assets is 25 times more than financing of innovations. Such trends of financing of innovations explain the inability of non-financial corporations to become leaders in digital transformations in Ukraine.

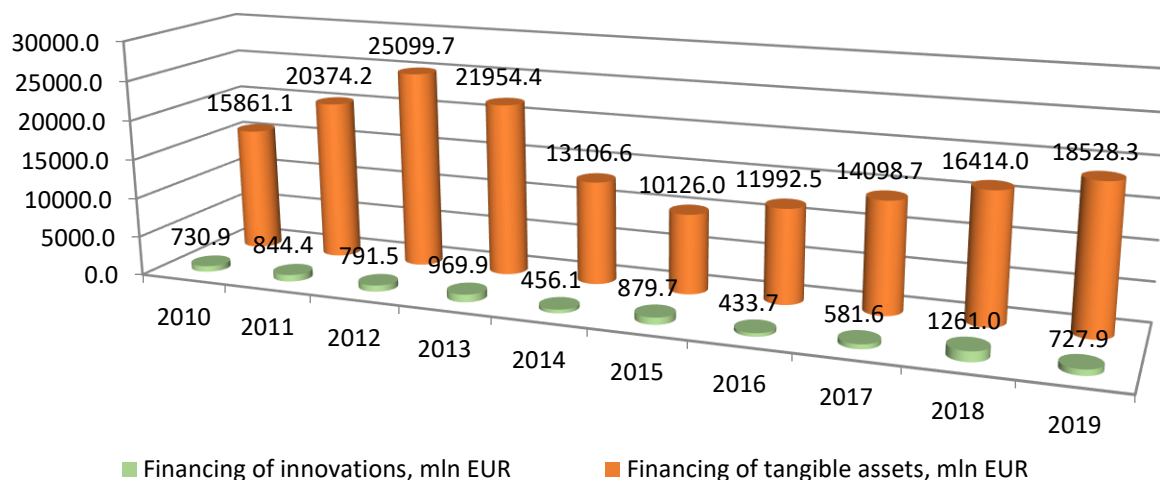


Figure 5. Financing of tangible assets and innovations of non-financial corporations in Ukraine

Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

The same conclusion refers to the ability of non-financial corporations to support increasing economic security of the country through introduction innovations (fig. 6).

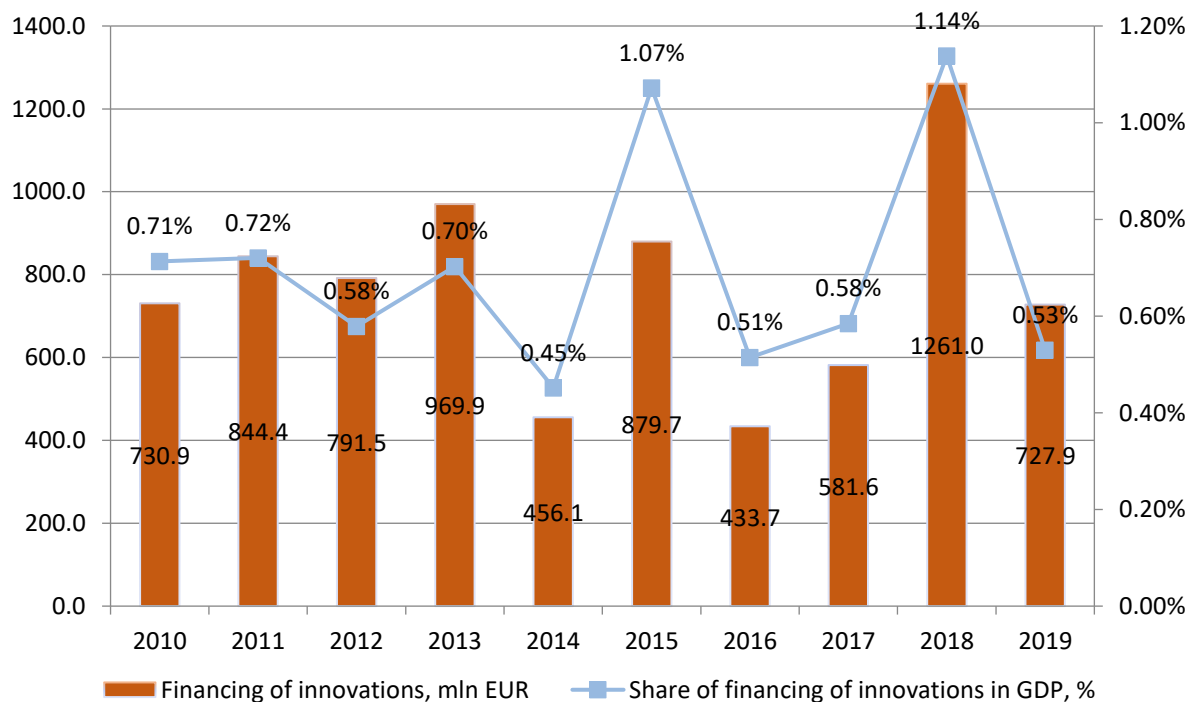


Figure 6. Financing of innovations and its share in GDP of non-financial corporations in Ukraine

Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

The share of financing of innovations in GDP is extremely low: during 2010–2019 it is not higher than 1% and was 1.14% in 2018 only. For the country with huge industrial potential and rapid growth of IT field this level of financing of innovations in GDP cannot be considered

as significant factor of digital transformation. It is certainly not enough for building Industry 4.0, moreover, it will lead to dependence of the country from innovative development of world leading countries in Internet of Things, Artificial Intelligence and other modern technologies. As a result the country's level of economic security will totally decrease.

In order to analyze the impact of financing of innovations on the processes of Ukrainian development it was made a comparison between share of enterprises with losses in Ukraine and share of financing of innovations in GDP (fig. 7).

In general innovations are considered the factor for positive changes in the economy of the country. They usually help to improve the industrial performance, to increase labor productivity and profitability of operational activity, to advance working conditions and to lead society to the progressive development. Thus, non-financial corporations should increase financing of innovations to achieve such effects.

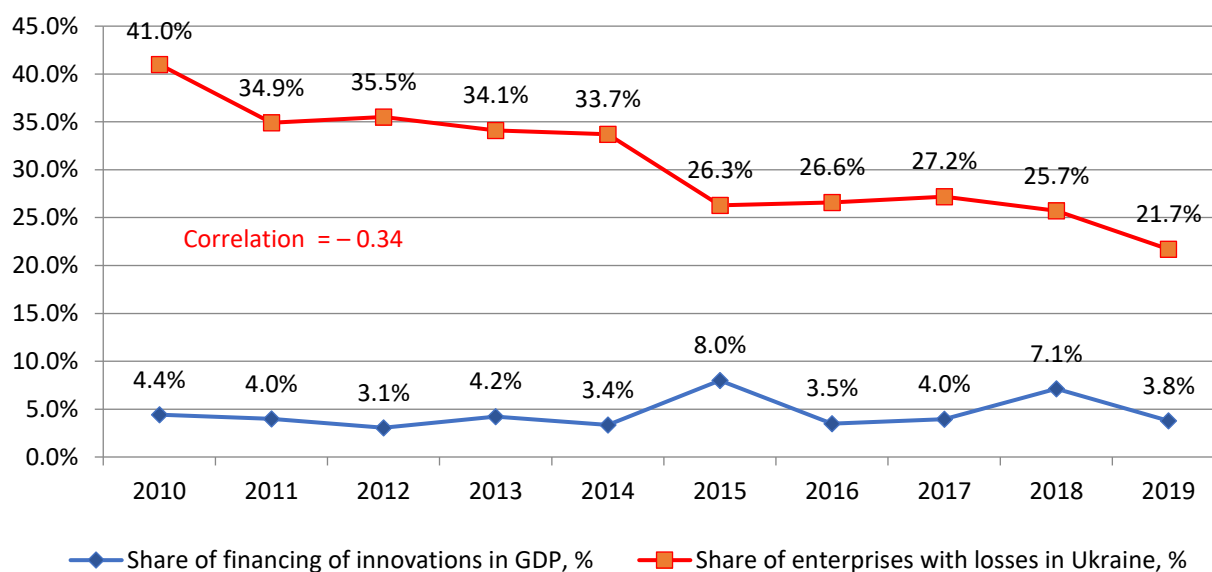


Figure 7. Shares of financing of innovations and enterprises with losses in Ukraine

Source: Ukrainian State Statistic Service: www.ukrstat.gov.ua

According to the data of the State Statistic Service of Ukraine there is a stable trend of decreasing the share of enterprises with losses in total number of enterprises in 2010–2019 from 41% to 21.7% respectively. At the same time there is no stable increasing trend of the share of financing of innovations in GDP at the same period. Thus, financing of innovations is not the main factor which leads to positive changes in the Ukrainian economy and there is no significant influence of it to the share of enterprises with losses. This is also proved by the correlation ratio calculated for identification the relation between the share of enterprises with losses and the share of financing of innovations in GDP. Its level is -0.34 . It indicates that there is the direct link between increasing of financing of innovations and decreasing of share of enterprises with losses. At the same time the correlation ratio is low and proves the previous conclusion that there is no significant influence of innovations to positive changes in non-financial corporations' performance. Nowadays the economic security of Ukraine and non-financial corporations' development are not supported by the results of innovative progress.

Conclusions

Capital investments play important role in the company's performance. Due to them corporations can increase their productivity, competitiveness on the market, level of economic security of a country and welfare of the society. According to the official statistical data financing of capital investment in Ukraine has certain peculiarities: the greatest share in financing belongs to internal resources (equity) and there is limited opportunity to use other resources, so companies operate in conditions of permanent shortage of investment resources; net profit with depreciation amount exceed the capital investment total amount and companies can increase their investment potential but in case of unstable economic situation due to COVID pandemic and national economic issues they prefer to save some free money for ensuring their own economic security; there is the low influence of financing of capital investment on transition the economy of Ukraine to the Industry 4.0 and corresponding low influence the ensuring economic security of the country. Considering the correlation ratio of the share of innovations financing in GDP and the share of enterprises with losses in the total number of enterprises, taking into account governmental efforts to promote and support transition to the Industry 4.0 we suggest to establish collaborative relations between non-financial corporations and governmental institutions, between non-financial corporations and financial intermediations in order to find out the ways of increasing companies' opportunity to use more external sources of financing and to finance innovations.

Thus, according to aim of the study, we can conclude that financing of capital investments of Ukrainian non-financial corporations corresponds to the context of the pecking order theory. However, the predominance of domestic sources in financing development significantly slows down and even prevents the intensive development and transformation of the real sector into a post-industrial economy. Therefore, in order to increase the share of external investment financing, it is necessary to intensify efforts at the state level.

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EXTENSION OF CROSS –CULTURAL AND SUSTAINABILITY COMMUNICATION COMPETENCES IN EFL CLASSES AT UNIVERSITY

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Abstract. *The article aims to analyze the interrelation and extension of cross- cultural and sustainability communication competences at universities. Foreign language learning offers exclusive opportunities not only to develop basic foreign language skills, but also develop cross-cultural and sustainability communication competences. The article overviews the importance of cross- cultural and sustainability communication on the theoretical level as well as introduces their manifestations on the empirical level via students' answers. The research performed in Vytautas Magnus university, in which the respondents studying English (B1 – C1 level) expressed their opinions on the importance of the development of cross- cultural and sustainability communication competences. The results of the research demonstrate that students need more knowledge about cross - cultural and sustainability communication competences during their EFL classes at university. Moreover, it is challenging for pedagogues to embed cross – cultural and sustainability communication content, strategies and innovative methods of teaching/learning in foreign language classrooms. The research findings demonstrate the importance to search for innovative ways how to implement cross – cultural and sustainability communication discourse in EFL classes at universities.*

Keywords: *cross-cultural and sustainability communication, competence, English as a Foreign Language (EFL), university*

Introduction

Foreign Language learning at university plays a significant role in the attainment and manifestation of cross – cultural communication skills which helps to achieve desired results for communication and personal development. The interactions taking place between people in the globalised world testifies to the fact that culture dimension plays a crucial role for successful communication to take place. There has been an ongoing discussion on how to help students be more adaptable to the new environment and more focused on sustainability discourse and cross – cultural communication. What is more, any society expects its education system to prepare people for living in an internationalized culture and globalised economy in which the acquisition of cross - cultural communication competence is clearly desirable. Highlighting the place of EFL in achieving this goal it can be stated that EFL requires an understanding of the role that language and culture play in the construction of environmental, social, economic, institutional, cultural, religious and emotional systems. Furthermore, cross- cultural communication refers to person's ability to understand people from various cultures and to engage with them in effective cross- cultural communication. Developing skills and attitudes acquiring certain knowledge can enable to increase understanding with people from different cultures. In order to achieve one's notion of the sustainability communication it might be referred to the necessity and desire to fulfil the needs of extension of competences aiming to professional career, social status, and/or other personal achievements. Drawing on the concept of sustainability communication, which is based on learners' needs, facing the challenges in the professional and personal life and highlighting the fact what are individuals' aims, as well as

on how sustainably learners act to reach their foreseen goals, it is significant to figure out if learners, who have some targets, are able to establish a possession of certain level of cross – cultural and sustainability competences to communicate and overcome obstacles in order to reach their goals. This need, ability, capacity and activity well as moral values are essential components related to an inner part of a competence, which combined together could enable a successful performance and communication possible. Therefore, it is important not to limit the development of competences to their cognitive elements, but learners should be informed about internal elements of a desired competence, too. Therefore, pedagogues have a very important mission to do in empowering learners to contribute to a more sustainable world while equipping them with the ideas of sustainability and cross-cultural communication as a forceful and useful tool. The sustainable development paradigm ensures a concrete context of university mission and vision signifying a new stage of study quality achievement. Following Talloires' Declaration in 1990¹ a sustainable university was defined, and since 1990 several declarations and innovations on the conception of a sustainable university in which a sustainable development and sustainability communication curriculum at higher education system have been formulated and agreed. Moreover, based on developments by European Commission (2017)² and researchers' on sustainability communication (Godeman, Michelsen, 2011)³ and social constructivism (Filho, Caeiro, Jabbour, Azeiteiro 2013; Wiek, Iwaniec, Childers, 2014)⁴, (Filho, 2015)⁵ studies in which activities of institutions, their structure, formal rules and informal rituals as well as interrelations between higher education institutions and their importance were analyzed. A university is an organizational unit which foresees and ensures university sustainable development via sustainability communication at all institutional levels. The university carries out social, economical, environmental policy and performs other activities related to the improvement of infrastructure and the learning environment for students and staff.

Theoretical framing of cross-cultural and sustainability communication

Aiming to equip students with the possibility to extend their cross – cultural and sustainability communication competence is a big challenge of universities. When presenting the study programmes it is important to introduce students with the concept of cross – cultural and sustainability communication competence, its elements, teaching methods and learning

¹Talloires Declaration (1990) 21/04/2021 ulsf.org/wpcontent/uploads/2015/06/TD.pdf

² European Commission (2017) Recent Developments in European Higher Education Systems. European Commission staff working documents (SEC, 1063 final). Retrieved 21/04/2021 from <http://ec.europa.eu/education/pub/pdf/higher/modernisation.pdf>

³ Godeman, J.; Michelsen, G. (2011) Sustainability Communication – an Introduction. *Sustainability Communication*. 3 – 39. Springer International Publishing.

⁴ Filho, L.W.; Caeiro, S.; Jabbour, Ch.; Azeiteiro, U., M. (2013) *Sustainability Assessment Tools in Higher Education Institutions*. Springer International Publishing.

⁴Wiek, A.; Iwaniec, D.M.; Childers D. (2014) Studying, teaching and applying sustainability visions using systems modelling. *Sustainability*. ISSN 2071 – 1050, No. 6, 4452-44695 doi:10.3390/su6074452.

⁵ Filho, L.W. (2015) Education for Sustainable Development in Higher Education. *In Transformative Approaches to Sustainable Development at Universities*, 3 – 10. Springer International Publishing.

strategies that could be used to provide effective cross-cultural communication competence development through sustainability discourse in EFL learning processes. Drawing on Flowerdew (2013)⁶ the content of sustainability communication discourse is connected with communicative (native and foreign language skills), cross-cultural (foreign language skills and knowledge about different cultures) personal (ability to manage internal and external elements), as well as core competences (IT, mother tongue, mathematics and etc.). Therefore, cross-cultural and sustainability communication components are strongly influenced by social and mass media and has a variety of characteristics which are demonstrated interacting with people from different cultures. It is obvious that communication is the act made by one or more persons by sending and receiving messages that are showing respect, tolerance and empathy, occur within a context have some effects and provide some opportunity for feedback.

Moreover, „the following professional competences demonstrated by the executives in labour market especially knowing of foreign languages, possession of global vision, and creative attitude towards situation” are highly emphasized and valued (Blaskova, Adamoniene & Petrauskiene, 2017, p. 51)⁷. Therefore, cross-cultural communication, whether it is intrapersonal (with oneself), interpersonal (with one or two others), with small or big groups of people refers to of how a message is made. Moreover, the manifestation of cross-cultural communication can be very diverse, e.g. when a Lithuanian student communicates with a Russian student in English or a Russian student communicates with an Italian student in Russian there are so many ways to express the message and to be understood correctly, too. Therefore, extension of cross-cultural and sustainability communication competence could be seen contribution at the individual level to societal well-being; for example, by facilitating a policy of multiculturalism, antiracism by improving the integration of ethnic minorities, people with disabilities, and thus by supporting social cohesion. Cross-cultural communication refers to culture, traditions, mentality, history and innovations in modern life of any society. For this reason, it could be claimed that there are some perspectives that can help deal with cross-cultural and sustainability communication challenges in EFL classes keeping in mind that language, being one of the most important elements of culture, is not static, it changes together with languages of different nations. Moreover, it could be stated that learning foreign languages and cultural modes of life of various nations should be a life long learning activity.

EFL teaching has the medium and a long-term goal to assist students not only to improve their foreign language skills, but also to acquire basic knowledge about cross-cultural and sustainability communication, its ideas, interrelations and, what is crucial, the translation them into actions. Teaching EFL at university aims at developing and enhancing cross-cultural communication via sustainability discourse that would allow students to improve their cross-cultural communicative competence interacting in both private and working life.

Methodology

The research was planned and performed in Vytautas Magnus university, in which 107 respondents studying English (average age of participants was 22 years old) in various levels (B1–C1) expressed their attitudes on cross-cultural communication and sustainability

⁶ Flowerdew, J. (2013) *Discourse in English Language Education*. NY: Routledge.

⁷ Blaskova, M.; Adamoniene, R.; Petrauskiene, R. (2017) Appliance of public senior executives competences for municipality activity efficiency development // *Engineering economics = Inžinerinė ekonomika*. Kaunas : Technologija. ISSN 1392-2785. eISSN 2029-5839. 2017, Vol. 28, iss. 5, p. 575-584. DOI: 10.5755/j01.ee.28.5.17743. [Scopus; CEEOL – Central and Eastern European Online Library; Social Sciences Citation Index (Web of Science); IBSS; Business Source Complete] [Citav. rod.: 0,709, bendr. cit. rod.: 1,766, kvartilis: Q3 (2017, InCites JCR SSCI)] [CiteScore: 0,94, SNIP: 0,589, SJR: 0,341, kvartilis: Q2 (2017, Scopus)]

communication as well as about the methods which could be useful for their cross – cultural and sustainability communication competence development. Students’ view point on the importance of cross-cultural and sustainability communication discourse was analyzed, after quantitative research had been performed at Vytautas Magnus university (VMU) in 2020. The data obtained from the questionnaire survey was made using SPSS (Statistical Package for Social Sciences). Following the statistical analysis, the findings of the study were investigated, synthesized and summarized using descriptive analysis.

The respondents were students, who were learning the English language in the Bachelor and Master study programs at VMU. The aim of the study was to find out students’ opinions and feelings about cross- cultural and sustainability communication as well as to express their ideas about its purposefulness and usefulness during the EFL studies at Vytautas Magnus university. Totally, 107 respondents were mostly first year female (60%) and male (37%) students. Most of the students were 18-21 (57%) year-old studying in bachelor study programme, and 22-25 (37%) 26 (9%) year old students from Master study programme. The students were asked to answer about their demographic data and 5 closed questions about: the ways and methods of their communication, the most often used language of communication, cross – cultural communication barriers, feelings and emotions that hinder communication, the most often used means of communication and the most useful topics aiming to find out students’ opinions about cross – cultural and sustainability communication in EFL classes at university. The question about demographic data also included info about students native country. The results of the study show that the majority of the students come from Europe (72%.) France, Italy, Spain, from Asia (15%) China, India, Japan, Kazakhstan, South Korea, as well as other countries (10%) Afganistan, Brazil, Nigeria, Rusia, and Ukraine. The results show that 72% of students communicate with other students in English, 15% of the respondents – Russian, 9% of the students use the Spanish language for communication, and only 1% communicate in other languages - Chinese, Japanese and Korean.

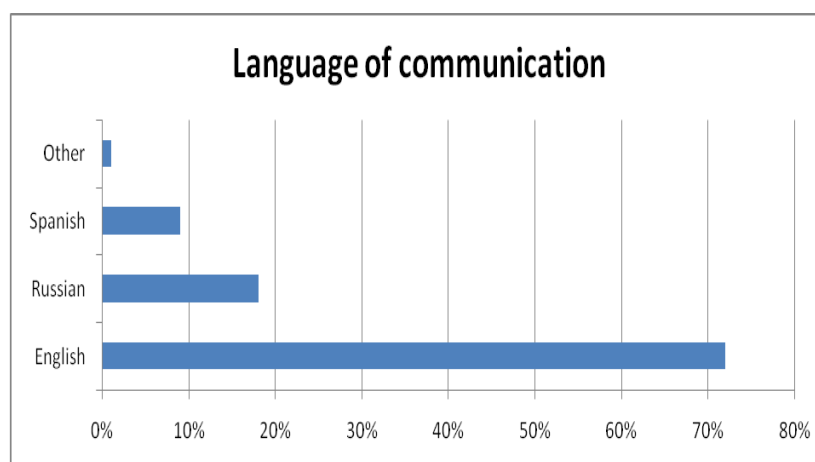


Figure 1. Students’ answers about the language of communication

The answers about cross – cultural communication barriers show that students’ communication is hindered basically due to the lack of linguistic intelligence. This is an interesting finding that main cross – cultural communication barriers are related to cultural, cognitive and linguistic proficiency which are three significant pillars in learning languages.

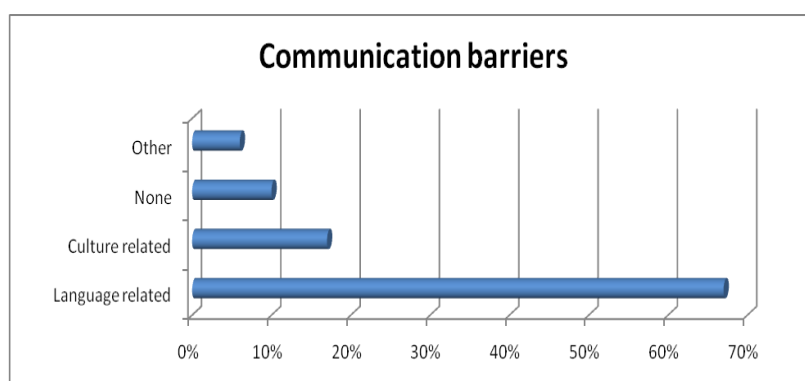


Figure 2. Students' cross- cultural communication barriers

The majority of the students (57%) state that cross - cultural communication barriers arise mainly because of the lack of the language skills: such as active listening and speaking. The students indicate that the main barrier of speaking is being afraid of making grammar and pronunciation mistakes. The minority (17%) of the students indicate that culture-related issues complicate the process of communication, which may be due to different cultural aspects and behaviour. For example, some students from China prefer a silent way of learning and do not like to be asked to share their opinions in front of all the group. Similarly, 10% percent of the students claim that they have no barriers in cross- cultural and sustainability communication, which means that students feel free to express their attitudes and are not afraid of speaking and having some cultural misunderstanding. Only 6%, of the students indicate that there are other personal - psychological communication issues such as speech impediment, hearing problems and etc. which hinder their linguistic performance and communication.

To the question about the most popular communication methods used in EFL classes, the results show that students prefer smart phones and text-messaging for communication. The use of smart phones is the fastest and smartest way of communication nowadays and are widely used in online classes lately. 91% of the students choose smart phones as their main media for communication, 80% of the students prefer texting as they enjoy having a 24/7 access to their phones and find it very easy to type messages instead of speaking directly to someone. Only 5% of the students use regular letters of communication and, although this way of communication is considered to be old-fashioned, there are still students who like it. A similar result can be seen in the case of email usage that has been chosen by 69% of the students as they also prefer this method of communication for their academic and work career purposes.

Table 1. Students' answers about social media tools for communication

Answer	Yes	No	Other
Internet	45%	22%	33%
Viber	68%	9%	23%
TV	8%	59%	33%
Video games	26%	30%	44%
Youtube	36%	43%	21%

The table 1 shows students cross –cultural and sustainability communication using technologies, which is explicit that Viber (68%) is one of the most popular means for communication, because majority of students can have video communication with their friends

and family members in every part of the world for free. Youtube and video games, such as Kahoot, have been indicated by 36% and 26% of the students as a useful way of sending a video clip, a game or song to everyone to whom they wish to communicate. The least popular way of social communication media is TV (8%) because now students find and share all necessary information using their smart phones whenever they need.

To the question how students feel while communicating in different cultural environment, the results show that they feel self- confident (44%), whereas some are afraid to speak in public (37%), because of cross-cultural misunderstanding and failures in front of others. 10% of the students say that while communicating cross- culturally with people from different countries they can understand verbal, but can't comprehend nonverbal language. 9% of the students indicate that during cross – cultural communication they experience feelings such as embarrassment, shame, fear and guilt. Therefore, extension of sustainability communication competence in this respect would be a useful tool to overcome those obstacles.

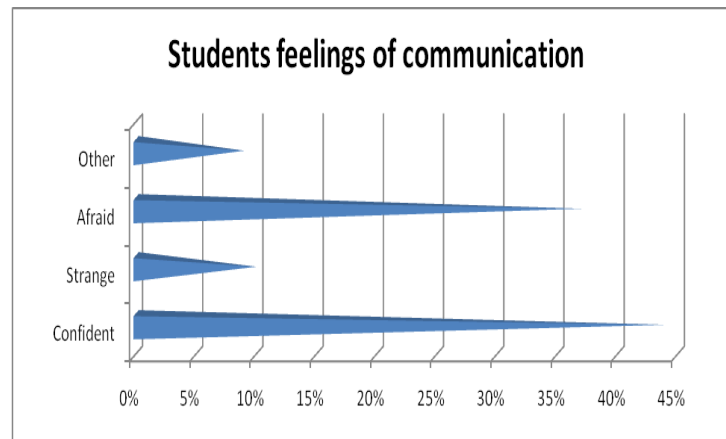


Figure 3. Students' feelings experienced in the process of communication

The last question in the survey was what people students find the most difficult to communicate with, and the results are also similar to the previous question. 42% of the students answered that the most difficult is to communicate cross- culturally with people, whom they don't know, not only in social media, but also in classes, because during the lockdown there's no face-to- communication. They indicate that they feel uncertainty, fear and anxiety that they might be misunderstood and misinterpreted.

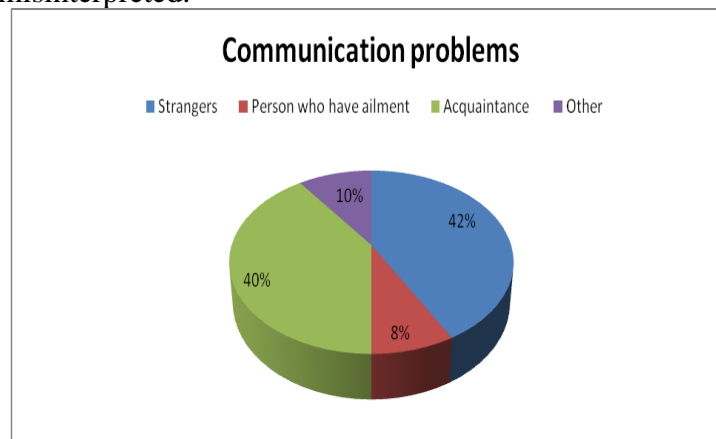


Figure 4. Students opinions about cross-cultural and sustainability communication

For the same reasons even 40% of the students find it challenging to communicate with acquaintances as the topics about cross- cultures and sustainability are rather difficult to talk about to them. The study shows that 8% of the students have problems communicating with people who have psychological, speech impediment and other problems, 10% of students indicated that they do not have enough knowledge about cross – cultural and sustainability communication as well as competences development.

Interpretation of findings

Those most important findings, which were defined, revealed that education of cross – cultural and sustainability communication is not the phenomenon which is taken for granted, but on the contrary, has to be developed by pedagogues and supported by students at universities. Moreover, the acquisition of cross-cultural and sustainability communication competences via English language instruction and learning is the privileged experience gained while studying at universities. Therefore, a favourable impact of foreign language learning with integrated content of cross-cultural and sustainability materials and teaching/learning methods into English A1 – C1/C2 level curriculum could be viewed as an innovative approach to foreign language instruction at university. The theoretical significance of the study lies in that the education of cross- cultural and sustainability communication is interrelated and interdisciplinary which expands the spectrum of foreign (English) language pedagogy and promotes extension of students‘ cross-cultural and sustainability communication competences. The practical significance of the research is that it addresses students‘ needs not only for the education of cross – cultural and sustainability communication, but also its practical implementation in the pursuit of their academic and personal careers. The results obtained during the research treatment of the integrated cross – cultural and sustainability communication into the syllabus of English A1 –C1/C2 level at VMU validate the necessity of cross-cultural and sustainability competence development. Embedding sustainability communication content and using innovative methods of EFL (English) instruction, pedagogues are encouraged to update their teaching strategies with innovative cross – cultural and sustainability communication approach.

Conclusions and recommendations

The findings of the conducted study reveal the interrelation of cross- cultural and sustainability communication as well its complexity, diversity and multidisciplinary.

The findings demonstrate the necessity of the extension of cross – cultural and sustainability communication competences.

The findings of conducted study reveal that EFL, English learning in particular, makes a positive impact on students‘ understanding of the significance of cross-cultural and sustainability communication competence acquisition.

The findings of the conducted study show that students comprehend cross-cultural and sustainability communication competences as invaluable assets and necessary tools to take away from university which are useful for their personal and career development.

The findings of the conducted study show the importance of students and language teachers‘ involvement in cross- cultural and sustainability communication development activities.

The findings of conducted study enable us to recommend updating EFL A1- C1 level syllabus with cross-cultural and sustainability communication elements that would be a way forward for greater achievements in this endeavour.

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NARKOTINIŲ IR/AR PSICHOTROPINIŲ MEDŽIAGŲ PLATINIMO VIETOS: IDENTIFIKAVIMO IR JŲ “UŽDARYMO” PROBLEMAS

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Anotacija. Nepaisant nuolatinių teisėsaugos institucijų pastangų užkardyti narkotinių ir psichotropinių medžiagų platinimą bei jų vartojimą, nuo 2013 m. užregistruotų nusikalstamų veikų, susijusių su neteisėtu disponavimu narkotinėmis ir/ar psichotropinėmis medžiagomis, skaičius tik didėjo. Lietuvos Policijos veiklos ataskaitoje 2019 m. nurodoma, kad per 2013-2019 m. užregistruotų nusikalstamų veikų skaičius išaugo net 30,33 proc. (2013 m. buvo užregistruotos 1955 nusikalstamos veikos, o 2019 m. buvo užregistruotos jau 2548 nusikalstamos veikos (Lietuvos Policijos veiklos ataskaita, 2019 m.) dėl neteisėto disponavimo narkotinėmis ir/ar psichotropinėmis medžiagomis.

Ikiteisminio tyrimo įstaigų pareigūnai nuolat susiduria su iššūkiais tiek identifikuojant narkotinių ir/ar psichotropinių medžiagų platinimo vietas, tiek jau minėtų uždraustų medžiagų platinimo vietų tolimesnės veiklos nutraukimo plotmėje. Gana dažnai prekyba uždraustomis medžiagomis net ir po platintojo sulaikymo, ir toliau tęsiama toje pačioje geografinėje vietoje.

Lietuvos Respublikos Seimo nutarimu 2018 m. buvo patvirtinta Valstybinė narkotikų, tabako ir alkoholio kontrolės ir prevencijos programa 2018-2028 m., kurios vienas iš prioritetinių uždavinių yra laikomas narkotinių ir/ar psichotropinių medžiagų pasiūlos mažinimas. Iki šiol siūlytos priemonės nebuvo veiksmingos, todėl siekiant pasiūlos mažinimo būtina peržiūrėti esamas problemas platinimo vietų nustatymo, jų veiklos nutraukimo ir užkirtimo tolimesniam veiklos atnaujinimui plotmėje.

Šio darbo tikslas yra išsamiai išanalizuoti narkotinių ir/ar psichotropinių medžiagų platinimo vietų nustatymo ir jų veiklos nutraukimo problemas, pasiūlant galimus jų sprendimo būdus.

Siekiant tyrimo tikslo buvo:

- analizuojami 2019-2020 metų laikotarpiu priimti Lietuvos teismų sprendimai (291 teismo nuosprendis, nutartis priimti įvairių pakopų teismų) baudžiamosiose bylose dėl neteisėto disponavimo narkotinėmis ir/ar psichotropinėmis medžiagomis.
- apklausti interviu būdu įvairių institucijų: policijos, prokuratūros, savivaldybių socialinės rūpybos skyrių, Narkotikų, tabako ir alkoholio kontrolės departamento prie Lietuvos Respublikos Vyriausybės, Vaiko teisių apsaugos tarnybos ir ekspertinių įstaigų darbuotojai.
- atlikta anoniminė asmenų vartojančių ar vartojusių narkotines ir/ar psichotropines medžiagas apklausa.

Gauti duomenys buvo išanalizuoti, susisteminti ir apibendrinti.

Pagrindinės sąvokos: Teisėsaugos institucijos; narkotinės ir psichotropinės medžiagos bei jų platinimo vietų („taškų“) nustatymas; tarp institucinis bendradarbiavimas.

Įvadas

Kiekvieno žmogaus gyvybė reikalauja besąlygiškos pagarbos. Žmogaus gyvybės ir

sveikatos apsauga akcentuojama daugelio pasaulio šalių pagrindiniuose įstatymuose, Konstitucijose. Pvz., Lietuvos Respublikos visuotinio referendumo priimtos Konstitucijos 19 str. skelbia, kad „žmogaus teisę į gyvybę saugo įstatymas.“ Narkotinių ir psichotropinių medžiagų neteisėtas platinimas daro didelę žalą jas vartojančių asmenų sveikatai, kelia grėsmę jų gyvybei ar net nusineša gyvybes (Lankauskas, M., (2017), p. 26).

Lietuvos Respublikoje kasmet pradama šimtai ikiteisminių tyrimų susijusių su neteisėta narkotinių ir psichotropinių medžiagų apyvarta. Lietuvos teismuose išnagrinėjama po kelis šimtus bylų per metus, susijusių su disponavimu narkotinėmis ir/ar psichotropinėmis medžiagomis, turint tikslą jas platinti (Gutauskas, A. (2018), p. 191). Narkotikų, tabako ir alkoholio departamento duomenimis nuo 2013 metų skaičius tikslinės grupės asmenų nors kartą gyvenime bandžiusių narkotines ar psichotropines medžiagas beveik padvigubėjo, o iš kitų statistinių rodiklių matyti, kad šios problemos mastai nemažėja.

Taigi, labai svarbu nustatyti narkotinių ir/ar psichotropinių medžiagų platinimo vietas, surasti draudžiamas įstatymu medžiagas atliekant ikiteisminio tyrimo veiksmus, bei parinkti tinkamas prevencines priemones tolimesnio minėtų platinimo vietų funkcionavimo sustabdymui, t. y., kad vėl platinimo „taškai“ neatnaujintų savo neteisėtos veiklos.

Šio mokslinio tyrimo naujumas ir originalumas yra tas, kad šio tyrimo autoriai, turėdami nemenką darbinę patirtį tiriant minėtos kategorijos nusikalstamas veikas, atliko anoniminių interviu asmenų vartojančių ar vartojusių narkotines ir/ar psichotropines medžiagas įvairiose Lietuvos Respublikos vietovėse, siekiant nustatyti, kokias klaidas daro ikiteisminio tyrimo pareigūnai bandydami nutraukti neteisėtą narkotinių ir/ar psichotropinių medžiagų platinimo veiklą. Interviu buvo atliktas vadovaujantis etikos ir anonimiškumo principais bei socialinių tyrimų metodologija priimtina pasaulinėje praktikoje. Anonimiškai apklausiant šiuos asmenis buvo siekiama gauti išsamią informaciją šioms tyrimo kryptims:

- ✓ Vartojamų medžiagų pobūdis, vartojimo būdai ir kaina;
- ✓ Įstatymu uždraustų medžiagų slėpimo būdai platinimo vietose;
- ✓ Policijos pareigūnų daromos „klaidos“ identifikuojant platinimo „taškus, bei atliekant ikiteisminio tyrimo veiksmus, pvz., kratą.

Toks netradicinis tyrimo būdas, o būtent betarpiškas bendravimas su asmenimis, kurių dalis platina ar platino narkotines ir/ar psichotropines medžiagas, šio mokslinio tyrimo autorių nuomone padės tobulinti nusikalstamų veikų susijusių su neteisėta narkotinių ir/ar psichotropinių medžiagų apyvartos tyrimo metodiką per asmenų, įtrauktų į minėtos kategorijos nusikalstamos veikos darymą vertingus pastebėjimus, kas ir kaip turi būti tobulintina ikiteisminio tyrimo įstaigų pareigūnų veikloje. Be to, buvo bendrauta (interviu) su savivaldybių socialinės rūpybos ir būstų skyrių darbuotojais, vaikų teisių apsaugos specialistais, policijos pareigūnais, prokurorais siekiant nustatyti tarp institucinio bendradarbiavimo problemas tiek atskleidžiant narkotinių ir/ar psichotropinių medžiagų platinimo vietas, tiek taikant prevencines priemones siekiant nutraukiant platinimo vietų tolimesnę veiklą.

Interviu metu gauti atsakymai iš asmenų vartojusių ar vartojančių narkotines ir/ar psichotropines medžiagas nubrėžė kryptis, į kurias turėtų būti atsižvelgiama keliant ikiteisminio tyrimo pareigūnų kompetenciją užkardant ir tiriant neteisėtą narkotinių ir/ar psichotropinių medžiagų apyvartą, ypač rengiant prevencinių priemonių planą kovai su minėtu socialiniu reiškiniu.

Taip pat, atlikus tyrimą, buvo nustatytas sisteminis tarp institucinio bendradarbiavimo nepakankamumas, siekiant tvaraus narkotinių ir/ar psichotropinių medžiagų platinimo vietos veiklos tolimesnio nutraukimo. Identifikuotas poreikis parengti mokomąją priemonę pareigūnams ir esant galimybei vykdyti jų mokymus apie narkotinių ir/ar psichotropinių

medžiagų platinimo vietų kriminalistinę charakteristiką, tvaraus platinimo vietos veiklos nutraukimo metodus ir priemones, skiriant didelį dėmesį pasikeitusioms vartojimo tendencijoms.

Tyrimo tikslai:

- ✓ Neteisėto narkotinių ir/ar psichotropinių medžiagų platinimo vietų nustatymo būdai ir problematika;
- ✓ Heroino pakaitalo - karfentanilio aptikimo specifika;
- ✓ Neteisėto narkotinių ir/ar psichotropinių medžiagų platinimo vietų veiklos tęstinumo problema;
- ✓ Tarp institucinio bendradarbiavimo trūkumai;
- ✓ Prevencija platinimo “taškų” pakartotinei veiklai užkirsti.

Tyrimo objektas - Neteisėto narkotinių ir/ar psichotropinių medžiagų platinimo vietų nustatymo būdai ir jų tolimesnės veiklos užkardymo/uždarymo problematika.

Tyrime sprendžiami uždaviniai:

- išanalizuoti neteisėto narkotinių ir/ar psichotropinių medžiagų platinimo vietų nustatymo būdus ir veiksnius įtakojančius jų efektyvumą;
- atskleisti jau minėtų draudžiamų medžiagų paieškos platinimo vietose atliekamų kratų metu rezultatyvumui įtaką darančius faktorius;
- išanalizuoti karfentanilio – heroino pakaitalo aptikimo problematiką, atliekant ikiteisminio tyrimo veiksmus, pvz., kratą;
- identifikuoti tarp institucinio teisės saugos institucijų, savivaldybių socialinių paslaugų teikimo įstaigų, vaiko teisių apsaugos tarnybos ir kitų institucijų bendradarbiavimo kryptis užkardant neteisėtą narkotinių ir/ar psichotropinių medžiagų platinimą;
- nustatyti priežastis, sąlygojančias tolimesnę narkotinių ir/ar psichotropinių medžiagų platinimo “taško” neteisėtos veiklos atnaujinimą ir tęstinumą;
- pateikti pasiūlymus dėl prevencinių priemonių plano, siekiant sumažinti narkotinių ir/ar psichotropinių medžiagų pasiūlą tobulinimo.

Darbe buvo naudojami šie metodai: apklausos, interviu, dokumentų analizės ir kiti tyrimo metodai.

Šio tyrimo metu 2020 m. birželio – 2021 m. sausio mėn. buvo atlikta struktūrizuota apklausa žodžiu pagal parengtą klausimų sąrašą. Apklausoms atlikti atsitiktine tvarka buvo pasirinkti 28 Lietuvos Respublikos kriminalinės policijos pareigūnai, 5 Lietuvos Respublikos Policijos kriminalistinių tyrimų centro cheminių tyrimų specialistai, 2 Lietuvos teismo ekspertizės centro ekspertai, 2 prokurorai, 1 Valstybinės teismo medicinos tarnybos ekspertas, 6 savivaldybių administracijos socialinės rūpybos ir būsto skyrių darbuotojai, 9 Vaiko teisių apsaugos tarnybos darbuotojai, 8 Narkotikų, Tabako ir Alkoholio Kontrolės departamento prie Lietuvos Respublikos Vyriausybės darbuotojai. Be to buvo apklausti anoniminio interviu būdu 167 asmenys vartojantys ar vartoję narkotines ir/ar psichotropines medžiagas (toliau – respondentai). Prieš atliekant apklausas, respondentams buvo atskleistas šio tyrimo tikslas, iškelti uždaviniai, supažindinti su klausimynu. Respondentams sutikus dalyvauti apklausoje, jiems buvo užduoti klausimai ir jie pateikė atsakymus į klausimus žodžiu. Dėl visiško anonimiškumo garantavimo garso įrašai interviu metu nebuvo daromi.

Kiti šiame tyrime minimi moksliniai tyrimo metodai buvo naudojami interviu pasirengimui su policijos pareigūnais, valstybės tarnautojais, prokurorais, ekspertais, asmenimis vartojusiais ar vartojančiais narkotines ir/ar psichotropines medžiagas ir interviu metu gautų atsakymų, teismo sprendimų, mokslinės literatūros, statistinių duomenų, teisės aktų išsamiai analizei, duomenų susistemimui, apibendrinimui bei tyrimo išvadų pateikimui.

Negalima per dažnai kautis su tuo pačiu priešu, antraip išmokysi jį viso savo karo meno. (Napoleonas, 1818)

Narkotinių ir/ar psichotropinių medžiagų platinimo vietų nustatymas

Lietuvoje prekyba narkotinėmis ir/ar psichotropinėmis medžiagomis vyksta ne visai taip, kaip pavyzdžiui maisto produktais ar šalyse, kur narkotinių medžiagų rinka yra liberali, dekriminalizuota kai kurių į narkotinių medžiagų sąrašą įtrauktų augalų auginimas, jų laikymas ir vartojimas savo reikmėms. Tuo tarpu Lietuvoje pagrindinis prekybos narkotinėmis ir/ar psichotropinėmis medžiagomis (toliau – uždraustos medžiagos) modelis yra paremtas abipusio pasitikėjimo principu, tiksliau pažįstamų tarpininkavimu /rekomendavimu įsigyjant draudžiamas medžiagas. Pvz., naktiniuose klubuose uždraustų medžiagų galima įsigyti tik iš tam tikrų asmenų ir pašaliniam asmeniui niekas tokių medžiagų nepasiūlys, neparduos, saugodamiesi ikiteisminio tyrimo institucijų dėmesio (Ancelis, P., Bučiūnas, G., ir kt. (2016), p. 332).

Šio tyrimo metu buvo atliktas interviu su 28 Lietuvos Policijos kriminalinės policijos padalinių pareigūnais, tiriančiais nusikalstamas veikas susijusias su neteisėta narkotinių ir/ar psichotropinių medžiagų apyvarta. Interviu metu buvo akcentuojamos problemos, su kuriomis susiduria pareigūnai tiriantys neteisėtą prekybą uždraustomis medžiagomis. Lietuvos Policijos kriminalinės policijos padalinių pareigūnai nurodė, kad daugumoje atvejų minėtų civilinėje apyvartoje uždraustų objektų ar objektų kurių civilinė apyvarta yra ribota galimos platinimo vietos yra nustatomos taikant kriminalinės žvalgybos informacijos rinkimo metodus, atliekant kriminalinės žvalgybos tyrimą pagal Lietuvos Respublikos kriminalinės žvalgybos įstatyme, kt. teisės aktuose nustatytas procedūras. Respondentų nuomone (policijos pareigūnų) efektyviausi kriminalinės žvalgybos informacijos rinkimo būdai yra: agentūrinė veikla, apklausa, sekimas, slaptoji operacija, kontrolinis patikrinimas, nusikalstamos veikos imitavimas. Dažniausiai naudojamas būdas yra agentūrinė veikla, kurio esmė atskleidžiama Lietuvos Respublikos kriminalinės žvalgybos įstatymo 2 str. 1 p. skelbiančiame, kad agentūrinė veikla - „*kriminalinės žvalgybos informacijos rinkimo būdas, kai informacija gaunama įgyto pasitikėjimo pagrindu panaudojant kriminalinės žvalgybos slaptuosius dalyvius ir (ar) naudojantis kitų asmenų pagalba*“ (Lietuvos Respublikos Kriminalinės žvalgybos įstatymas (20120)).

Interviu metu respondentai atkreipė dėmesį į tą faktą, kad praėjus tam tikram laiko tarpui, jau anksčiau nustatytos narkotinių bei psichotropinių medžiagų platinimo vietos (dar kitaip vadinamos terminu „taškas“) vėl atnaujina savo neteisėtą veiklą, dažniausiai jau su naujais dalyviais (prekeiviais). Kitaip tariant geografinė vieta tampa „recidyvia“. Taip iškyla platinimo „taško“ veiklos nutraukimo arba kitaip tariant „likvidavimo“ problema.

Atliekant ikiteisminius tyrimus irgi dažniausiai remiamasi kriminalinės žvalgybos informacijos rinkimo būdų pagalba surinktais duomenimis, kurie ir buvo faktinis pagrindas pradėti ikiteisminį tyrimą. Ikiteisminio tyrimo metu duomenų rinkimui taikomi tyrimo veiksmai išakmiai išvardinti Lietuvos Respublikos baudžiamojo proceso kodekse (toliau Lietuvos Respublikos BPK), dažniausiai šie slapti tyrimo veiksmai reglamentuoti Lietuvos Respublikos BPK 154 str., 158 str., 159 str. ir 160 str.

Tuo pačiu respondentai (Lietuvos Policijos kriminalinės policijos padalinių pareigūnai), o būtent ikiteisminio tyrimo pareigūnai atliekantys ikiteisminį tyrimą atkreipė dėmesį į gaunamos kriminalinės žvalgybos tyrimo metu gautos iš apskričių vyriausiųjų policijos komisariatų kriminalinės žvalgybos valdybos darbuotojų informacijos skurdumą. Kitas paradoksas yra tas, kad ikiteisminio tyrimo pareigūnai (pagal specializaciją tiriantys neteisėtą

narkotinių ir/ar psichotropinių medžiagų apyvartą) negali vykdyti kriminalinės žvalgybos, bet iš jų yra reikalaujama išaiškinti per kalendorinius metus bent vieną prekybos narkotinėmis ir/ar psichotropinėmis medžiagomis vietą

Atliekant interviu su asmenimis, vartojančiais ar vartojusiais narkotines ir/ar psichotropines medžiagas buvo atkreiptas dėmesys į padažnėjusius kriminalinės žvalgybos padalinio pareigūnų, atsakingų už kriminalinės žvalgybos tyrimą, komunikavimą su informacijos šaltiniais, netinkamai atliekama finansinės apskaitos dėl apmokėjimo už suteiktą informaciją tvarkymo atvejus. Respondentai, kurie teikdavo kriminalinės žvalgybos veiklą vykdančiam pareigūnui informaciją už atlygį apie atskirų kategorijų nusikalstamas veikas, pastebėjo, kad iki kriminalinės žvalgybos reformos Lietuvos Policijoje, jie geriau bendradarbiavo su apskrities vyriausiojo policijos komisariato ar teritorinio policijos komisariato kriminalinės policijos pareigūnais atliekančiais kriminalinę žvalgybą ir dėl iškilusių neaiškumų apmokant už suteiktą vertingą informaciją, jie galėdavo ir turėjo realią galimybę tiesiogiai kreiptis į policijos komisariato kriminalinės policijos ar kriminalinės policijos skyriaus vadovą.

Atlikus kriminalinės policijos pajėgų performavimą, reformavus kriminalinės žvalgybos padalinius, pakeitus jų veiklos organizavimo kai kuriuos principus, kriminalinės žvalgybos padalinių organizacinę struktūrą ir kriminalinės žvalgybos tyrimo atlikimo tvarką, pareigūnų komunikavimo būdus su informacijos šaltiniais (slaptaisiais bendradarbiais), buvo siekiama patobulinti informacijos surinkimą, jos susisteminti, ir apdoroti bei pakelti slaptųjų bendradarbių apsaugos lygį nuo galimo informacijos apie jų tapatybę „nutekėjimo“ ir pan.. Tokios reformos metu, pasak respondentų, teikusių informaciją kriminalinei policijai, greta teigiamų pokyčių atsirado sklaidaus ir efektyvaus komunikavimo trūkumai. Pvz., asmenys sutikę bendradarbiauti su apskrities VPK kriminalinės žvalgybos valdybos pareigūnu dažniausiai nėra supažindinami nei su pareigūnu, kuris komunikuos su jais tiesioginiu viršininku nei su kriminalinės žvalgybos valdybos viršininku, nesuteikiama informacija apie tai, kaip spręsti iškilusius ginčus dėl atlygio už suteiktą vertingą informaciją gavimą. Kaip žinoma, dar nuo praeito amžiaus pabaigos pasitaikydavo policijos pareigūnų, atlikusių operatyvinį tyrimą vėliau pavadintą kriminalinės žvalgybos tyrimo terminu aplaidaus finansinių lėšų apskaitos atvejų. Pvz., neteisingai būdavo apskaitomos lėšos skirtos slaptųjų bendradarbių pateiktos vertingos informacijos apmokėjimui ir tai leisdavo pagrįstai manyti, kad dalis lėšų skirtų operatyviniam/kriminalinės žvalgybos tyrimui būdavo panaudojamos ne pagal tiesioginę paskirtį. Taip pat egzistavo mechanizmas, leidžiantis policijos slaptiesiems bendradarbiams apginti savo finansinį interesą, o būtent, nesutariant dėl atlygio dydžio už suteiktą vertingą informaciją arba negavus jokie atlygio buvo galima kreiptis į teritorinio policijos komisariato kriminalinės policijos vadovą. Pastaruoju metu, pasikeitus kriminalinės žvalgybos veiklos organizavimo principams, suformavus Lietuvos Policijos Kriminalinės žvalgybos valdybas centriniame ir apskričių VPK lygmenyje, visas funkcijas ir priemones pavedus taikyti tik per minėtą kriminalinės žvalgybos padalinį iškilo komunikavimo sunkumai ir ginčytinų situacijų išsprendimas. Respondentai (informacijos teikėjai) akcentavo, kad atlygio už suteiktą vertingą informaciją netinkamo išmokėjimo arba neišmokėjimo atvejų padaugėjo. Pavyzdžiui, kai kurie respondentai interviu metu nurodė, kad per pastaruosius penkerius metus jie gavo tik 70 Eurų atlygį, nors informaciją, kuri pasitvirtino vėliau, jie teikė ne rečiau nei kartą per mėnesį.

Pareigūnai į klausimus dėl finansinio atlygio už atskleistus labai sunkius ir sunkius nusikaltimus nesumokėjimo arba nepakankamos sumos sumokėjimą informacijos šaltiniams, nurodė, kad tik teritoriniam policijos komisariatui patvirtinus informacijos vertingumą apie nusikalstamos veikos padarymo aplinkybes, yra sprendžiami atlygio mokėjimo ar

nemokėjimo, jo dydžio nustatymo klausimai. Dėl atlygio sumos ar jos negavimo, kuri pasak informaciją teikiančių asmenų nuomone yra vertinga ir padėjo atskleisti nusikalstamos veikos padarymo aplinkybes, ją padariusį ar padariusius asmenis, dalis galimų informacijos teikėjų toliau nebeteikia vertingos informacijos apie platinimo “taškus”. Dalis respondentų interviu metu teigė, kad norėtų ir toliau tęsti bendradarbiavimą su Lietuvos Policijos kriminalinės žvalgybos pareigūnais.

Policijos komisariato kriminalinės policijos pareigūnai atliekantys ikiteisminį tyrimą interviu metu akcentavo, kad gavę nepakankamą informaciją apie narkotinių ir/ar psichotropinių prekybos vietą, imasi visų galimų įstatyme leidžiamų tyrimo veiksmų nustatyti esmines nusikalstamos veikos padarymo aplinkybes, tačiau jiems draudžiama užsiimti kriminaline žvalgyba, tiesiogiai palaikyti ryšius su informacijos teikėjais, o esant būtinybei skubiai susitikti su jais betarpiškai ir duoti užduotį dėl papildomos informacijos apie nusikalstamos veikos padarymo aplinkybes surinkimo.

Atliekant policijos reformą buvo teigiama, kad slaptieji bendradarbiai galės gauti didesnes išmokas, priklausomai nuo pateiktos informacijos. Lietuvos Respublikos Vyriausybės nutarime „Dėl Lietuvos Respublikos Narkotikų, tabako ir alkoholio prevencijos tarpinstitucinio veiklos plano patvirtinimo“ pakeitimo 4.3.7. punkte numatytos priemonės - „*vykdyti neteisėtą narkotinių ir psichotropinių medžiagų, jų pirmtakų (prekursorių), tabako ir alkoholio gabenimo ir (ar) disponavimo jais kriminalinę žvalgybę, užkardyti, atskleisti ir tirti šias veikas*“. Priemonėms vykdyti kasmet skirti atitinkamus finansinius asignavimus, nesusijusius su kriminalinės žvalgybos padalinių pareigūnų algomis, kuriuos galima panaudoti apmokėjimui slaptiesiems bendradarbiams už jų suteiktą vertingą informaciją.

Ikiteisminį tyrimą pradėję kriminalinės policijos pareigūnai (ikiteisminio tyrimo pareigūnai) bendrauti su slaptais informacijos teikėjais gali tik per tarpininką – kriminalinės žvalgybos valdybos padalinio pareigūnus, betarpiškai tiesiogiai komunikuojančiais su informacijos teikėjais. Kitą vertus, būtent Lietuvos Policijos kriminalinės žvalgybos padalinio pareigūnai nežino pradėto ikiteisminio tyrimo aplinkybių, tyrimo niuansų, informacija yra keičiamasi per tarpininką (kriminalinės žvalgybos valdybos darbuotoją), ir tai įtakoja informacijos turinio kokybę, apsikeitimo operatyvumą Pradedant kriminalinės žvalgybos tyrimą ar ikiteisminį tyrimą ypač svarbus yra žemiau pateikiama klausimynas, kuriuo yra siekiama gauti duomenų galinčių vainikuoti tyrimo sėkmę.

1. Kokiomis narkotinėmis ir/ar psichotropinėmis medžiagomis prekiaujama;
2. Kaip dažnai gaunamas minėtų medžiagų papildymas, koku būdu ir iš kokių asmenų, komunikacijos ir atsiskaitymo už pateiktą prekę būdai, kontaktai;
3. Kam parduodamos minėtos medžiagos (ar tik apibrėžtam asmenų skaičiui, ar ir kitiems pažįstamiems, ar ir visai nepažįstamam asmeniui, kuris tik pasako, kad yra vieno iš klientų pažįstamas);
4. Kokius kiekius įstatymo draudžiamų medžiagų ir kur laiko, saugo jomis prekiaujantis asmuo;
5. Ar prekiaujantis asmuo pats narkotines ir/ar psichotropines medžiagas paruošia pardavimui, išdalina jas dozėmis, prideda papildomų medžiagų, ar prekiautojas jau gauna supakuotas ir paruoštas platinimui dozėmis narkotines ir/ar psichotropines medžiagas;
6. Ar prekiaujantis asmuo yra susijęs su minėta nusikalstama veika tik pats asmeniškai, ar į šią neteisėtą veiklą yra įtraukti platintojo šeimos nariai, artimieji, kiti asmenys;
7. Kaip ir koku būdu susitariama dėl narkotinių ir/ar psichotropinių medžiagų pardavimo, atsiskaitymo už jas, kaip ir kur pasiimamos ar pristatomos minėtos medžiagos.
8. Kokioje konkrečiai patalpos vietoje yra laikomos uždraustos medžiagos.

Atlikus interviu su respondentais vartojusių ar vartojančių draudžiamas medžiagas buvo gauti šie atsakymai į aukščiau paminėtus klausimyną klausimus:

Tyrimo metu, atliekant respondentų interviu, nustatyta, kad dažniausiai platinimo „taškuose“ prekiaujama kanapėmis, amfetaminu, karfentaniliu, rečiau kokainu, nes ši medžiaga yra daug brangesnė. Kokaino viena dozė gali kainuoti nuo 50 Eur. iki 150 Eur. priklausomai nuo aktyvios medžiagos procentinio kiekio dozėje, kai tuo tarpu kitų medžiagų viena dozė gali kainuoti apie 5 Eur. Apytikriai prieš metus Lietuvoje ėmė plisti ir nauja amfetamino atmaina, kurioje gausu specifinių priemaišų, dėl kurių, visų pirma poveikis akių vyzdžiams, sumažėjo. Minėtos medžiagos poveikio trukmė pavartojusiam asmeniui apie 30 valandų, o kainuoja vos 5 Eur.

Narkotinių ir/ar psichotropinių medžiagų papildymas į platinimo „taškus“ gaunamas kartą per savaitę ar dažniau, priklausomai nuo paklausos vienos ar kitos įstatymu draudžiamos platinti medžiagos. Pats platintojas tiesiogiai arba per kitus abiem pusėms patikimus asmenis pasiima medžiagas iš tiekėjų. Pasitaiko, kad į platinimo „tašką“ draudžiamos medžiagos pristatomos lengvaisiais automobiliais, senesnių modelių, vairuojamas vidutinio ar vyresnio amžiaus moterų. Tai vienas iš maskuotės būdų, siekiant nepritraukti policijos ir kitų teisėsaugos institucijų, kitų asmenų dėmesio.

Narkotinės ir/ar psichotropinės medžiagos yra parduodamos tik pažįstamiems asmenims, kurių ratas laikui bėgant nuolat plečiasi. Išskirtinos pagrindinės dvi neteisėto narkotinių ir/ar psichotropinio medžiagų platinimo vietos: medžiagų laikymo vieta (patalpa, dažniausiai butas) arba medžiagos išnešamos iš jų laikymo/saugojimo vietos ir pagal iš ankstinį susitarimą perduodamos viešojoje vietoje: gatvėje, viešojo transporto stotelėje, parke ar prekybos centro priegose ar pan.

Šio tyrimo metu, iš respondentų gauti atsakymai apie galimas narkotinių ir/ar psichotropinių medžiagų laikymo vietas patalpose leido įvertinti į kokias aplinkybes turėtų atkreipti pareigūnai ikiteisminio tyrimo atliekamo dėl nusikalstamų veikų padarymo pagal Lietuvos Respublikos BK 259 str. ir 260 str. numatytus požymius metu. Paprastai pagrindinis prekiautojų „pelnas“ susidaro būtent iš to, kad jie skiedžia narkotines ir/ar psichotropines medžiagas įvairiais priedais. Tyrimo metu buvo atkreiptas dėmesys, kad amfetaminas dažnai skiedžiamas gliukoze, soda, paracetamoliu. Asmenys, nuolat vartojantys narkotines ir psichotropines medžiagas, paprastai gali lengvai atskirti kokių priemaišų buvo jų gautoje dozėje. Pavyzdžiui, jei amfetaminas buvo skiestas gliukoze, nepaisant paties amfetamino poveikio – apetito praradimo, dėl gliukozės poveikio atsiranda apetitas. Asmuo, ką tik pavartojęs tokio mišinio gali labai norėti valgyti. Heroinas yra skiedžiamas dažniausiai sportui skirtais papildais (kreatinu, proteinu). Kokaino vartojimo būdas - įtrynimasis į danteną, todėl platinimo vietoje kokaino pirkėjui pateikiamos vartojimui paruoštos baltos spalvos sutrintos tabletės (paracetamolis, analginas ir kitos) apipurkštos lidokainu. Šio tyrimo metu gauti duomenys, leidžia teigti, kad dalis draudžiamų medžiagų platintojų skiedžia gautą medžiagą. Kitą vertus, ir šioje „juodojoje rinkoje“ galioja rinkos dėsniai: jei narkotinė ir/ar psichotropinė medžiaga praskiedžiama labai daug ir nebesuteikia vartotojui norimo efekto, tai jis kitą kartą jau rinksis kitą parduotą/platintą.

Taigi, atliekant tyrimo veiksmus, kuriais siekiama surasti uždraustas įstatymu medžiagas, būtina atkreipti dėmesį į jau aukščiau paminėtų medžiagų, naudojamų praskiedimui buvimo faktą.

Bendraujant tiek su teisėsaugos pareigūnais, tiek su asmenimis, vartojančiais ar vartojusiais narkotines ir/ar psichotropines medžiagas buvo pastebėta, kad jei asmuo prekiauja savo gyvenamojoje vietoje, tai jis draudžiamas medžiagas laiko namų valdoje. Pvz., bute,

name. Apie tai visi šeimos nariai, gyvenantys kartu dažniausiai žino arba pagrįstai įtaria apie neteisėtą veiklą ir jie dažnai aktyviais veiksmais prisideda prie šios nelegalios veiklos.

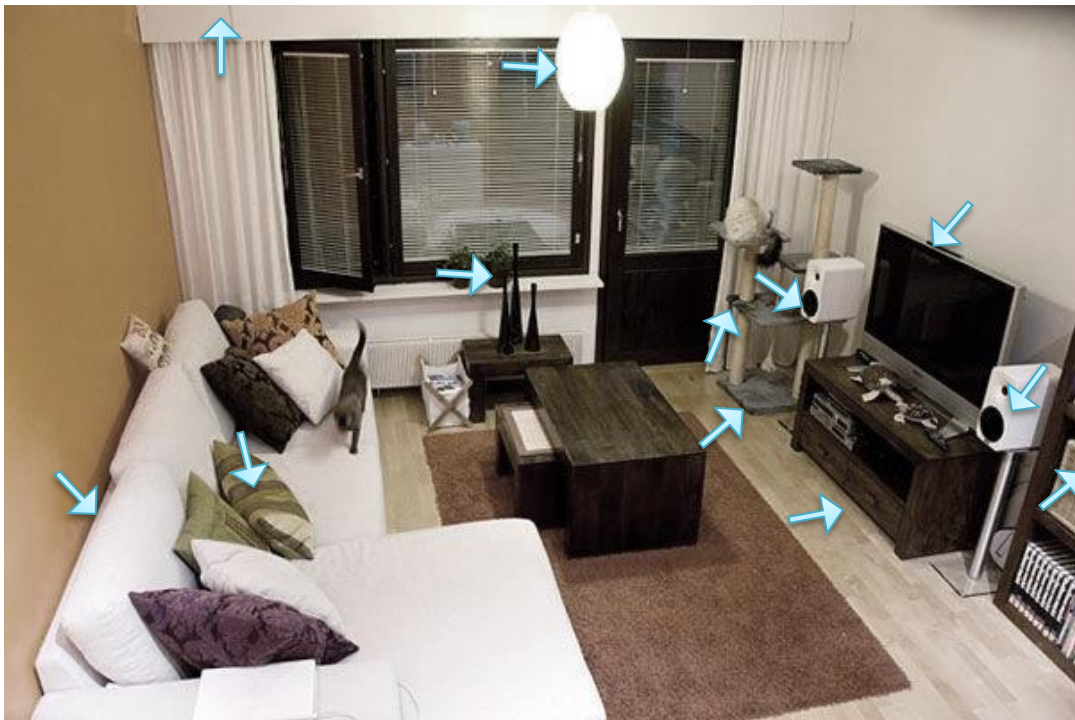
Respondentų pateikta, tyrimo autorių surinkta, susisteminta, išanalizuota ir apibendrinta informacija leidžia teigti, kad platinti draudžiamas medžiagos neretai aktyviai padeda ir vienas iš partnerių (santuoka neregistruota, tik vedamas bendras ūkis), rečiau sutuoktinis/ė. Prekyba užsiimančių asmenų partnerės ar sutuoktinės gana dažnai pačios yra priklausomos nuo neteisėtai prekiaujamų medžiagų, aktyviai dalyvauja jų platinime, o būtent: padeda paslėpti, atveža jų papildymus, duoda savo mobiliojo ryšio telefonų aparatus komunikacijai, o nesant platintojo pačios parduoda pirkėjui draudžiamas medžiagas. Vis dėlto sulaikant tokius asmenis, jų šeimos nariai paprastai apklausiami liudytojais, kurie sutinkamai su šalies Konstitucijos ir Lietuvos Respublikos BPK nuostatomis turi teisę atsisakyti duoti parodymus prieš savo šeimos narius.

Respondentų, (tiek vartojusių ar vartojančių medžiagas, policijos pareigūnų) interviu metu gauti atsakymai dėl nusikalstamos veikos tęsimo toje pačioje vietoje atskleidžia tokią realybę. Laikiniai sulaikius, paskyrus griežčiausią kardomąją priemonę – kardomąjį suėmimą fiziniam asmeniui prekiaujusiam uždraustomis medžiagomis, tame pačiame platinimo “taške” jau kitas asmuo, dažniausiai partneris/ė, ar šeimos narys tęsia neteisėtą veiklą. Priežastys, motyvai tęsti tokią veiklą yra įvairios, pradedant nuo to, kad liko įsiskolinimas narkotinių ir/ar psichotropinių medžiagų tiekėjui, tai yra pragyvenimo šaltinis, silpnoka prevencinė veikla, teismo proceso metu „išmoktos pamokos“ leidžia neteisėta veikla nusprendusiems užsiimti asmenims patobulinti veiklos proceso atskirus elementus, daugiau maskuojant šią veiklą ir tikintis, kad jau šį kartą policija tikrai jų neužklups netikėtai ir nesulaikys už neteisėtą, baudžiamuoju įstatymu draudžiamos veikos padarymą.

Susitarimas įsigyti narkotines ir/ar psichotropines medžiagas vyksta dažniausiai ryšio priemonių pagalba – išmaniuoju telefonu, naudojant įvairias komunikavimui skirtas programas. Populiariausios yra šios: „Messenger“, „Viber“, „WhatsApp“, „Discord“, „Skype“, „Telegram“. Bendraujant su asmenimis buvo nustatyta, kad komunikavimui skirta taikomoji programa „Telegram“ yra labai paplitusi tarp pataisos namuose atliekančių paskirtą terminuotą laisvės atėmimo bausmę asmenų. Ši taikomoji programa priimtina dėl šios priežasties: vienai pokalbio šaliai ištrynus tarpusavio susirašinėjimą, jis išnyksta abiejų kontakto šalių mobiliojo ryšio telefonų aparatuose.

Apibendrinus iš respondentų vartojančių ar vartojusių gautą informaciją interviu metu, galima teigti, kad asmenys laikantys ir platinantys uždraustas medžiagas paprastai jas laiko matomose, lengvai prieinamose vietose. Šis klausimas yra vienas esminių atliekant ikiteisminio tyrimo veiksmus. Uždraustų medžiagų slėpimo vietos parenkamos taip, kad jas būtų galima lengvai ir greitai pasiekti, prieiti be jokių kliūčių.

Išanalizavus, susisteminius ir apibendrinus 2019-2020 metų Lietuvos Respublikos bendrosios kompetencijos teismų sprendimus, interviu metu gautus atsakymus rezultatus buvo išskirtos tokios galimos draudžiamų medžiagų laikymo/saugojimo/slėpimo vietos: šviestuvo gaubtas, elektros rozetės, gėlių vazonas po augančiomis gėlėmis, karnizas, lovos rėmas, pagalvės, po virtuvine spintele, garso kolonėlės, buitinių prietaisų vidus arba jų nugarinė dalis, laiptų įrengtų bute, name ar laiptinėje konstrukciniuose elementuose, po kačių draskykle ar po kačių kraiku ar net jame, nes šiuo atveju ir kinologas gali suklysti, ar tarnybinis šuo domisi katės kvapu ar ieškomų medžiagų kvapu.



1 pav. Galimos narkotinių ir/ar psichotropinių medžiagų laikymo, slėpimo vietos kambaryje.

Kartais narkotinės ir/ar psichotropinės medžiagos slepiamos jas maskuojant kitomis medžiagomis, daiktai. Pvz., įdedant uždraustas medžiagas į stiprius kvapus skleidžiančias medžiagas. Pvz., pipirai, tabakas. Kita dažnai pasitaikanti draudžiamų medžiagų laikymo/saugojimo/slėpimo vieta, siekiant užmaskuoti nuo galimo jų suradimo kratos metu yra birių maisto produktų indelius kartu su kitais maisto produktais.

Kartais naudojami elementarūs ir tuo pačiu originalios slėpimo vietos. Pvz., draudžiamas medžiagas laikant termiškai neapdorotoje mėsoje, ar po ja, arba tiesiog tarp vaisių.

Nustačius, kad asmuo prekiauja narkotinėmis ir/ar psichotropinėmis medžiagomis, atliekant kratą jo gyvenamosiose patalpose nėra tikslinga paimti visų cukrinių ir druskinių turinius, šiukšliadėžės turinį, ir siųsti į Lietuvos Policijos Kriminalistinių tyrimų centrą narkotinių ir/ar psichotropinių medžiagų paieškai. Prieš tai būtina nuodugnai apžiūrėti objektus ir tik kilus pagrįstam įtarimui dėl uždraustų medžiagų buvimo fakto objekte, šį materialaus pasaulio objektą paimti įstatymo nustatyta tvarka ir pateikti tolimesniam tyrimui atlikti. Kita vertus, jei kyla neaiškumų, ikiteisminio tyrimo pareigūnas visuomet turi galimybę, prieš siųsdamas objektus tyrimui specialisto užduočiai gauti, susisiekti su tyrimą atliksiančia institucija ir pasikonsultuoti dėl tyrimui pateikiamų objektų. Bendraujant su Lietuvos Policijos Kriminalistinių tyrimų centro darbuotojais buvo nustatyta aplinkybė, kad vis dar pasitaiko tokių užduočių. Pvz., pateikiama užduotis ištirti 40 kg. birių maisto medžiagų, supakuotų originaliose pakuotėse, arba 50 l. šiukšliadėžės turinį, ieškant narkotinių ir/ar psichotropinių medžiagų pėdsakų. Respondentų (tyrimo centro ekspertų) teigimu, tokie tyrimai, kaip taisyklė, jokių naudingų rezultatų neduoda, o atima daug laiko iš specialisto, sueikvojamas nemažas kiekis brangių cheminių reagentų.

Narkotikų, tabako ir alkoholio kontrolės departamento prie Lietuvos Respublikos Vyriausybės metinio pranešimo, Lietuvos bendrosios kompetencijos teismų sprendimų bei gautų respondentų atsakymų susisteminimas, analizė ir apibendrinimas leidžia teigti, kad nuo

2017 m. Lietuvoje sparčiai pradėjo plisti nauja uždrausta medžiaga, heroino pakaitalas – karfentanilis, kuris po truputį juodojoje rinkoje keičia heroiną. Karfentanilis yra labai koncentruota medžiaga, t. y. labai nedidelis kiekis, prilyginamas trims cukraus grūdeliams, yra žmogui mirtina dozė. Taigi, šios medžiagos aptikimas atliekant kratas yra ypatingai komplikuoatas, nes dažniausiai ši medžiaga yra skiedžiamas įvairių rūšių tirpia arbata (Jasevičienė, D., (2021), p. 172). Taigi ir slepiama atitinkamai – tirpios arbatos maišeliuose ar dėžutėse. Dalis asmenų karfentanilį parduoda jau ištirpintą, tad jį laiko kaip tirpios arbatos likučius, kartais tiesiog puodelyje ant stalo ar lentynoje. Karfentanilį yra labai svarbu ne tik aptikti kaip miltelius ar skystį – t. y. pačią medžiagą, bet ir atpažinti ją kaip tik pavartojusį asmenį, nes net praėjus 30 minučių laiko tarpui po karfentanilio pavartojimo, gali bet kuriuo momentu staiga pasireikšti asmeniui perdozavimo požymiai ir gali tekti tokiam asmeniui skubiai teikti medicininę pagalbą (Corey, D and others, (2015), p. 1530). Nepaisant to, kad ši medžiaga sukelia mieguistumą, jas asmenys linkę vartoti net ir viešose vietose (gatvėse, stotelėse), todėl tikslinga būtų apsvarstyti galimybę policijos pareigūnams, ypač policijos patrulių, kurie pirmieji atvyksta į įvykio vietą, aprūpinti medžiaga – naloksonu (Badaras, Kajokas, Jovaiša, (2009), p. 131), kuris yra vaistas, neutralizuojantis opioidų, pvz., morfino, karfentanilio perdozavimo sukeltą poveikį, t. y. gyvybei pavojingą centrinės nervų bei kvėpavimo sistemos slopinimą (kvėpavimo pasunkėjimą).

Apibendrinant galima teigti, kad efektyviausias kriminalinės žvalgybos informacijos rinkimo būdas yra agentūrinė veikla, padedanti nustatyti draudžiamų medžiagų platinimo vietas. Gaunamos kriminalinės žvalgybos informacijos skurdumą sąlygoja nepakankamai gerai sutvarkyta atlyginimo už suteiktą informaciją tvarka ir apribotos galimybės ar net jų nebuvimas kreiptis dėl iškilusio ginčo dėl atlygio, jo sumos išmokėjimo.

Sklandus ir operatyvus informacijos keitimasis įmanomas tik tada, kai užduoties davėjas (ikiteisminio tyrimo pareigūnas) turėtų galimybę atskirais atvejais, siekiant tyrimo sėkmės tiesiogiai perduoti užduotį slaptajam bendradarbiui/informacijos teikėjui. Tam tikslui galima svarstyti kelis pasiūlymų variantus pagerinti informacijos apsikeitimą tarp ikiteisminio tyrimo pareigūno ir informacijos teikėjo, o būtent: atskiras kriminalinės žvalgybos veiklos dalis leisti atlikti ir teritorinių policijos komisariatų kriminalinės policijos padalinių (nesančios kriminalinės žvalgybos valdybos organizacinėje struktūroje) pareigūnams arba sudaryti galimybę ikiteisminio tyrimo pareigūnams tiesiogiai kontaktuoti ryšio priemonių pagalba su slaptais bendradarbiais/informacijos teikėjais pateikiant jiems užduotį ar gaunant surinktą informaciją. Tuo pačiu, siekiant užtikrinti informacijos šaltinio visapusišką apsaugą nuo jo tapatybės atskleidimo, komunikavimo metu panaudoti naujausių technologijų pasiekimus, pvz., balso keitiklius ir pan.

Narkotinių ir/ar psichotropinių medžiagų platinimo vietų veiklos nutraukimas

Nustaćius, kad jei fizinis asmuo dažnai savo gyvenamojoje vietoje turi draudžiamų medžiagų, policijos pareigūnai, jau atlikdami ikiteisminį tyrimą taiko slaptus turimo veiksmus, o tiksliau, kompleksą priemonių, reglamentuotų Lietuvos Respublikos BPK 154 str., 158-160 str. Tai gana giliai į asmens privatų gyvenimą įsibraunančios procesinės prievartos priemonės ir reikalaujančios nemažai finansinių, materialinių ir laiko resursų. Dėl nepakankamai informatyvios ir skurdžios informacijos, gautos kriminalinės žvalgybos tyrimo metu, padaromos esminės klaidos, kurios suteikia galimybę neteisėta veikla užsiimantiems asmenims išvengti baudžiamojo persekiojimo.

Efektyviausias ikiteisminio tyrimo rezultatas pasiekiamas tuomet, kai ikiteisminio tyrimo pareigūnai, dėka sureguliuoto kriminalinės žvalgybos informacijos rinkimo proceso,

taikydami ikiteisminio tyrimo metu leistinus kriminalinės žvalgybos informacijos rinkimo būdus, kurie nereikalauja teismo leidimo, savalaikiai gautu patikimą informaciją iš slaptųjų bendradarbių/informacijos teikėjų apie tai, kada ir koks įstatymų draudžiamos medžiagos bus atgabenamos, siekiant papildyti jau senkančias ar pasibaigusias atsargas, kur jos slepiamos ir pan. Tai leistų taikyti kitus ikiteisminio tyrimo veiksmus mažiau įsibraunančius į asmens privatų gyvenimą.

Vienas iš efektyviausių ikiteisminio tyrimo veiksmų tiriant minėtos kategorijos nusikalstamas veikas yra krata (Gruodytė, E. (2004), p. 260.) Kita vertus, šio tyrimo veiksmo veiksmingumas, naudingumas reikalauja tam tikrų specialių žinių, tinkamo pasirengimo jo atlikimui, apimančiam tiek patekimą į patalpą, kurioje gali būti laikomos/slepiamos draudžiamos medžiagos, tiek jų suradimą. Pasirenkant momentą, kada galima pradėti aktyvius veiksmus – patekimą į patalpas, būtina remtis išanalizuota, susisteminta ir apibendrinta informacija iš kelių informacijos šaltinių, gautų atliekant skirtingus savo pobūdžiu tyrimo veiksmus. Pvz., elektroniniais ryšiais tinklais perduodamos informacijos kontrolės ir slapto sekimo metu gautų duomenų. Jau prieš pat patenkant į patalpas, ikiteisminio tyrimo pareigūnui būtina žinoti apie šias aplinkybes:

1. Ar patalpos išorinė teritorija ir patekimas prie jos stebimas vaizdo kameromis?
2. Kiek patalpose gyvena asmenų?
3. Kur yra sanitariniai mazgai, praustuvai, virtuvė, greičiausias patekimas prie šių svarbių mazgų siekiant atskirti asmenis, kurie gali greitai atsikratyti medžiagomis?
4. Ar patalpose yra ar gyvena moterų?
5. Ar patalpose yra naminių gyvūnų ir kokių?
6. Ar patalpose yra vaikų?

Tai tik dalis aspektų, į kuriuos turi būti gauti atsakymai, prieš planuojant atlikti kratą.

1. Jei teritorija yra stebima vaizdo kameromis reikia įvertinti, kiek yra aktualus netikėtumo momentas (Bučiūnas, G., (2014), p. 181) Jei tai iš tiesų labai svarbu – galima taikyti kriminalinės žvalgybos įstatyme numatytus būdus, dėl ko platintojas galėtų galvoti, kad vaizdo signalas dinga atsitiktinai.

2. Priklausomai nuo patalpose esančių asmenų skaičiaus, reikalinga pasirinkti taktinės komandos dydį, nes iš esmės, bet kuris kartu su platintoju patalpoje gyvenantis asmuo, nepaisant jo lyties, amžiaus, fizinio ir psichinio įgalumo gali imtis aktyvių veiksmų paslėpti ar sunaikinti draudžiamas medžiagas. Todėl kiekvieną asmenį patalpų kratos atlikimo metu nuolat turi stebėti pareigūnas ir dar turi būti bent vienas papildomas pareigūnas. Čia galima ieškoti analogijos konvojavimo taisyklėse, kur numatytas konvojuotojų ir konvojuojamųjų skaičiaus santykis.

3. Asmenys, supratę, kad policijos pareigūnai imasi tam tikrų veiksmų, gali stengtis nedelsiant pašalinti iš patalpų visas draudžiamas medžiagas. Vienas dažniausių būdų yra uždraustų įstatymu medžiagų išmetimas į kanalizaciją. Todėl organizuojant tyrimo veiksmą – kratą patalpoje, būtina nustatyti, kur yra sanitariniai mazgai ir tik patekus į patalpas imtis tų mazgų kontroliavimo, neleidžiant jokiems patalpoje esantiems asmenims be nuodugnios asmens kratos bei asmens apžiūros naudotis sanitariniais mazgais iki tol, kol nebus atlikta jų kruopšti ir nuodugni apžiūra. krata.

4. Kitas gana paplitęs būdas slėpti draudžiamas medžiagas yra minėtų medžiagų paslėpimas įvairiose kūno ertmėse, dažniausiai tai pasitaiko moteriškos lyties asmenų tarpe. Taigi, prieš darant kratą patalpoje būtina žinoti ar patalpose gyvena moteriškos lyties asmuo, įtraukti į šio tyrimo veiksmo atlikimą moteriškos lyties pareigūnes.

5. Šuns, katino/katės buvimas patalpose blaško ir labai trikdo kinologų bei tarnybinių šunų darbą bei sudaro puikias galimybes sukurti chaosą patalpose kratos darymo metu, kurio

metu asmenims, esantiems patalpose, darosi daug lengviau paslėpti laikomas draudžiamas medžiagas. Taigi įvertinus tai, kad patalpose laikomas šuo ar kitas naminis gyvūnas, būtina spręsti klausimą apie naminio gyvūno išvedimą iš patalpų, kad jis netrukdytų tinkamai, sistemingai ir kompleksiskai atlikti visų patalpų nuodugnią kratą. Praktikoje pasitaiko dažni atvejai, kai prekiaujantys narkotinėmis ar psichotropinėmis medžiagomis tam tikslui laiko patalpose šunis. Kartais draudžiamas medžiagas slepia šuns guolyje, teisindamiesi, kad kinologo šuo loja, nes reaguoja į kito šuns kvapą. Dar kiti asmenys, laikantys šias medžiagas siekia, bet koku būdu sukelti sąmyšį, dirbtinai sukelti konfliktą su pareigūnais, pasipriešindami jiems net fiziškai, kurio metu gali bandyti paslėpti ar išmesti draudžiamas įstatymo medžiagas ar sudaryti galimybę, sąlygas kitiems asmenims visai tai padaryti.

6. Vaikų buvimas patalpose visais atvejais reikalauja Vaikų teisių apsaugos institucijos specialisto dalyvavimo, atliekant procesinius veiksmus, siekiant užtikrinti, kad vaikų teisės nebūtų pažeistos. Tiesa yra tam tikrų ypatybių šio pobūdžio nusikalstamų veikų tyrime. Šio tyrimo metu sukauptą informaciją leidžia teigti, kad kai kurių etninių grupių moteriškos lyties asmenys, ypač kurie dar nepasiekė amžiaus, nuo kurio galima baudžiamoji atsakomybė, gali slėpti medžiagas apatiniuose drabužiuose.

Pastebėta, kad reorganizavus Lietuvos Policijos kriminalinės žvalgybos padalinių darbą, įgyti asmenų, galinčių teikti vertingą informaciją, pasitikėjimą tapo daug sunkiau, todėl dėl šios priežasties ir ne tik, narkotinių ir/ar psichotropinių medžiagų platinimo vietos tapo sunkiau identifikuojamos. Be to, nustatyta, kad teismui pripažinus asmenis kaltais dėl neteisėto narkotinių ir/ar psichotropinių medžiagų platinimo, skiriant griežčiausią kriminalinę bausmę – terminuotą laisvės atėmimo bausmę, gana dažnai minėtų medžiagų platinimo vieta lieka ir toliau „veikti“. Pastebima, kad vis dar nėra tinkamo ir efektyvaus tarpinstitucinio koordinavimo ir bendradarbiavimo mechanizmo, galinčio padėti kompleksiskai spręsti jau pripažinto teismo nuosprendžiu kaltu narkotinių ir/ar psichotropinių medžiagų platinimo šeimos narių ar kitų su nuteistuoju artimais ryšiais susijusių asmenų, neteisėtos veikos tęstinumą.

Draudžiamų medžiagų platinimo vietų veiklos nutraukimas

Dažnai asmenys, kurie platino narkotines ir/ar psichotropines medžiagas ir buvo teismo sprendimu buvo pripažinti kaltais už šias veikas, savo „darbo“ vietą gana dažnai perleidžia šeimos nariams, pažįstamiems, kuriais jie pasitiki. Nuteisti asmenys, net ir atlikdami jiems paskirtą teismo sprendimu terminuotą laisvės atėmimo bausmę, sugeba perduoti tokio „verslo“ subtilybes, kurias geriausiai išmanė, likusiems namiškiams. Kaip parodė šio tyrimo metu gauti duomenys, yra didelė tikimybė, kad šeimos nariai ar kiti asmenys susiję su nuteistuoju ir/ar gyvenantys toje pačioje gyvenamojoje patalpoje svarsto ar tęsti neteisėtą veiklą toliau, kokios pasekmės gali kilti, kaip maskuoti veiklą ir kt. klausimus. Nepaisant akivaizdžiai matomos policijos grėsmės, jie neretai priima sprendimą toliau tęsti nusikalstamą veiką. Tokių asmenų apsisprendimą gali sąlygoti visuma priežasčių ir motyvų:

- ✓ Neretai kratos metu yra nesurandamos ir nepaimamos visos įstatymu draudžiamos medžiagos;
- ✓ Nuolat lankosi „pirkėjai“ ir prašo/reikalauja parduoti narkotinių ir /ar psichotropinių medžiagų;
- ✓ „Platinimo taškas“ įgijo tam tikrą žinomumą tarp atitinkamo visuomenės segmento narių;
- ✓ Prekyba uždraustomis medžiagomis tampa dažnai vieninteliu pragyvenimo šaltiniu;

- ✓ Propaguojamas būtent toks gyvenimo stilius ir subkultūra;
- ✓ Išmoktos „pamokos“ per teisinį procesą, kaip patobulinti neteisėtos veiklos metodus, maskavimo būdus, policijos taikomus metodus atskleidžiant prekybos „taškus“, padarytų klaidų leidusių policijai sėkmingai atlikti tyrimo veiksmus išsami analizė leidžia sumažinti tikimybę būti sugautiems su įkalčiais;

- ✓ Likusi skola uždraustų medžiagų tiekėjui.

Šios ir kitos priežastys, motyvai lemia asmenų pasirinkimą tęsti artimojo pradėtą neteisėtą veiklą. Šio platinimo vietos recidyvo užkardymas yra labai svarbus kovojant su narkotinių ir/ar psichotropinių medžiagų platinimu. Šiuo metu, kaip jau buvo pastebėta, labai trūksta tarpinstitucinio bendradarbiavimo, siekiant tvaraus platinimo taško veiklos nutraukimo. Tik esant pakankamai tarpinstitucinei komunikacijai galima būtų galima tikėtis ir glaudesnio bendradarbiavimo tarp institucijų, organizacijų ir jų narių:

1. Policijos pareigūnų;
2. Probacijos tarnybos specialistų;
3. Savivaldybės administracijos socialinių paslaugų skyriaus darbuotojų;
4. Vaiko teisių apsaugos tarnybos specialistų;
5. Savivaldybės administracijos socialinio būsto administravimo darbuotojų;
6. Policijos rėmėjų ir kitų visuomeninių organizacijų, vietos bendruomenių.

Šio tyrimo vienas iš uždavinių buvo nustatyti koks tarpinstitucinis bendradarbiavimas yra galimas siekiant tvaraus platinimo vietų veiklos nutraukimo. Tyrimo metu gauti, išanalizuoti ir apibendrinti duomenys leidžia teigti, kad įvairių pagal savo paskirtį institucijų koordinuota prevencinė veikla galėtų mažinti narkotinių ir/ar psichotropinių medžiagų pasiūlą, vartojimą. Šio tyrimo autoriai sugrupavo atskiras galimas prevencinės veiklos kryptis:

1. Policijos patruliai vykdami į maršrutus turėtų būti papildomai instruktuojami apie galimas mieste, vietovėje narkotinių ir/ar psichotropinių medžiagų platinimo vietas, atkreipti jų dėmesį į tose vietose besilankančius asmenis. Tikslinga esant ir menkiausiam įtarimui, kad vyksta neteisėta įstatymu uždrausta veika pasinaudoti Lietuvos Respublikos Policijos įstatymo 22 str. numatytais teisėmis. Policijos patrulių maršrutų koregavimas, sudarymas kriminogeninių vietų interaktyvius žemėlapius, įvedant į juos adresus ar vietas, kur dažniausiai vykdavo/galimai vyksta neteisėta prekyba narkotinėmis ir/ar psichotropinėmis medžiagomis.

2. Probacijos tarnybos specialistai, atlikdami teismų sprendimų vykdymo kontrolę, turi teisę lankytis asmenų, kuriems buvo paskirta terminuota laisvės atėmimo bausmė ir jos vykdymas buvo pakeistas, įpareigojant nuteistąjį asmenį, laikantis teismo nurodymų. Suteikti teisę probacijos tarnybos pareigūnui pareikalauti patalpoje esančių kitų asmenų, kurių elgesys, būseną kelia pagrįstų įtarimų dėl galimo jų dalyvavimo teisės pažeidime, pateikti asmens tapatybę patvirtinančius dokumentus, juos fotografuoti ir/ar filmuoti, jei jie nepateikia jokių tapatybę patvirtinančių dokumentų.

3. Savivaldybių administracijos socialiniai paslaugų skyriaus darbuotojai neretai būna priskirti šeimoms, kurių nariai platina narkotines ir/ar psichotropines medžiagas. Jų apsilankymo rizikos grupei priskiriamai šeimoje metu taip pat gali būti vykdomi prevenciniai veiksmai. Be to, šie darbuotojai turi galimybę skatinti šeimą keisti savo propaguojamą gyvenimo būdą.

4. Vaiko teisių apsaugos tarnybos specialistų daroma įtaka šeimoms, kurios augina vaikus yra ypatingai didelė, kadangi ši institucija savo ruožtu turi nuostatais patvirtintus veiklos planus susidedančius iš kompleksinės pagalbos tėvams. Šios pagalbos rėmuose galima tikėtis labai efektyvių rezultatų, ypač bendradarbiaujant su ikiteisminio tyrimo įstaiga,

atliekančia tyrimą dėl vieno iš šeimos nario dalyvavimo narkotinių ir/ar psichotropinių medžiagų platinime.

5. Narkotinių ir/ar psichotropinių medžiagų platinimas laikytinas neteisėta, įstatymo draudžiama ūkine – komercine veikla, iš kurios akumuliuojamas pelnas. Sutinkamai su Lietuvos Respublikos Socialinės apsaugos ir darbo ministro 2019 m. rugsėjo 27 d. įsakymu Nr. A1-559 „Dėl socialinio būsto nuomos sutarties pavyzdinės formos patvirtinimo“ pagal socialinio būsto nuomos sutarties sąlygas – verstis ūkine komercine veikla nuomojame būste draudžiama. Taigi, ar socialinis būstas yra naudojamas pagal tiesioginę jo paskirtį, kontroliuoja nuomos sutartį sudariusi vietos savivaldybė. Todėl tikslinga šiai institucijai pateikti informaciją apie socialiniame būste veikusį draudžiamų medžiagų „platinimo tašką“.

6. Skatinti viešo stebėjimo kamerų įrengimą netoli buvusių narkotinių ir/ar psichotropinių medžiagų platinimo vietų. Lietuvoje gana sėkmingai vykdomas „saugi kaimynystė – tvirta bendruomenė“ projektas, padedanti užkardyti galimas nusikalstamas veikas. Vadovaujantis principu „žinoti tik tiek, kiek yra būtina“ svarstyti, kokia apimtimi ir kiek suteikti informacijos projekto „saugi kaimynystė- tvirta bendruomenė“ projekto vykdytojams, vietos seniūnijos atsakingiems asmenims apie jų veiklos teritorijoje buvusią narkotinių ir/ar psichotropinių medžiagų „platinimo tašką.“ Be to, tikslinga pasitelkti ir policijos rėmėjų, visuomeninių organizacijų, vietos bendruomenės pagalbą, atkreipiant jų dėmesį į egzistuojančias kriminogenines problemas.

Vietos švietimo įstaigos (mokyklos, gimnazijos) bendruomenės įtraukimas gali padėti nustatyti ar mokiniai, gyvenantys netoli draudžiamų medžiagų platinimo „taškų“ netampa šių medžiagų platintojais, išnešiotojais dar kitaip vadinamu terminu „kojomis“.

Taigi, sutelkus visų institucijų, organizacijų galimybes ir koordinuotai siekiant konkretaus tikslo – tvaraus narkotinių ir/ar psichotropinių medžiagų platinimo vietos veiklos nutraukimo, galima tikėtis efektyvaus rezultato mažinant draudžiamų medžiagų pasiūlą, vartojimą.

Išvados

Išanalizavus narkotinių ir/ar psichotropinių medžiagų platinimo vietų nustatymo būdus buvo vienareikšmiai nustatyta, kad geriausi rezultatai gaunami taikant kriminalinės žvalgybos informacijos rinkimo metodus.

Įvertinus teisėsaugos pareigūnų galimybes nustatyti narkotinių ir/ar psichotropinių medžiagų platinimo vietas, pastebėta, kad reorganizavus Lietuvos Policijos kriminalinės žvalgybos padalinių darbą tapo sudėtinga efektyviai pasinaudoti, apsikeisti žvalgybinio pobūdžio informacija;

Draudžiamų medžiagų paieškos rezultatyvumui didžiausią įtaką daro Lietuvos Policijos kriminalinės žvalgybos padalinių pareigūnų gaunamos žinios iš slaptųjų bendradarbių/ informacijos teikėjų apie platinimo „taško“ ypatumus, policijos pareigūnų profesinė kompetencija, apsikeitimo informacija su kitais kriminalinės policijos padaliniais vykdančiais ikiteisminį tyrimą operatyvumas;

Rekomenduoti, kad tarp institucinio bendradarbiavimo vektoriai, užkardant neteisėtą narkotinių ir/ar psichotropinių medžiagų platinimą būtų sietini: A) su policijos sudaromu jų veiklos teritorijos kriminogeniniu žemėlapiu; B) policijos patrulių patruliavimo maršrutų koregavimu, atsižvelgiant į minėtą žemėlapi;

Nepakankamas tarp institucinio bendradarbiavimo mechanizmo funkcionavimas yra vienas svarbiausių veiksnių, dėl kurio neužtikrinamas tvarus platinimo „taško“ neteisėtos veiklos nutraukimas.;

Savivaldybės administracijos socialinių paslaugų skyriaus darbuotojų aktyvesnis bendradarbiavimas keičiant šeimos propaguojamą gyvenimo būdą;

Vaiko teisių apsaugos tarnybos specialistų neatidėliotina kompleksinė pagalba šeimai, orientuojantis į esančią situaciją, kai vienas iš šeimos narių įgyja įtariamojo statusą narkotinių ir/ar psichotropinių medžiagų platinimo byloje;

Savivaldybės administracijos socialinių būstų administravimo darbuotojų informavimas apie socialinio būsto nuomos sutarties sąlygų pažeidimą;

Policijos rėmėjų, visuomeninių organizacijų, vietos bendruomenės pagalba atliekant buvusių platinimo „taškų“ stebėseną;

Lietuvos Respublikos Kriminalinės žvalgybos padalinių teikiamos informacijos skurdumas ir ikiteisminio tyrimo pareigūnų žinių stygiumi apie draudžiamų medžiagų platinimo vietų veiklos ypatybes, jų slėpimo vietas;

Narkotinių ir/ar psichotropinių medžiagų platinimo vietos veiklos nutraukimo tvarumui turi įtakos šios priežastys: kratos metu ne visada surandamos ir paaimamos visos medžiagos; nuolatinis buvusių „pirkėjų“ pageidavimas gauti draudžiamų medžiagų; platinimo vietos žinomumas tarp atitinkamo visuomenės segmento; neteisėtas platinimas draudžiamų medžiagų tampa pragyvenimo šaltiniu atskiriems asmenims ir tuo pačiu savotišku gyvenimo būdu.

Pasiūlymai

Tikslinga parengti metodinę priemonę (pavyzdžiui, lankstinuką) policijos pareigūnams arba rekomenduoti papildomai instruktuoti policijos pareigūnus apie narkotinių ir/ar psichotropinių medžiagų rūšis, pavidalą, laikymo ir slėpimo būdus.

Siekiant efektyvesnio platinimo vietų nustatymo svarstytinas klausimas dėl informacijos apsikeitimo tarp ikiteisminio tyrimo pareigūno ir informacijos teikėjo tobulinimo ir siūlytina: atskiras kriminalinės žvalgybos veiklos dalis leisti atlikti ir teritorinių policijos komisariatų kriminalinės policijos padalinių (nesančios kriminalinės žvalgybos valdybos organizacinėje struktūroje) pareigūnams arba sudaryti galimybę ikiteisminio tyrimo pareigūnams tiesiogiai kontaktuoti ryšio priemonių pagalba su slaptais bendradarbiais/informacijos teikėjais pateikiant jiems užduotį ar gaunant surinktą informaciją. Tuo pačiu, siekiant užtikrinti informacijos šaltinio visapusišką apsaugą nuo jo tapatybės atskleidimo, komunikavimo metu panaudoti naujausių technologijų pasiekimus, pvz., balso keitiklius ir pan

Siekiant tvaraus uždraustų medžiagų platinimo vietų veiklos nutraukimo tikslinga:

- Pakoreguoti policijos patrulių patruliavimo maršrutus, įtraukiant ir buvusių platinimo „taškų“ adresus.
- Pastoviai vesti švietėjišką veiklą apie narkotinių ir/ar psichotropinių medžiagų žalą tokio platintojo šeimos nariams ir artimiesiems pagal parengtą programą.
- Sustiprinti socialinių būstų naudojimo pagal jų tiesioginę paskirtį kontrolę.

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PLACES OF DISTRIBUTION OF DRUGS AND PSYCHOTROPIC SUBSTANCES: PROBLEMS OF IDENTIFICATION AND CLOSURE

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Summary

This research paper „**Places of distribution of drugs and psychotropic substances: problems on identification of places for illegal activity and issues related with “closure”**” it profoundly analyses illegal activity on distribution of drugs, psychotropic substances, namely, methods for identification above mentioned places, the most popular banned substances, hideouts for them, phenomena as the continuity of the activity of illegal activity at the same place despite the fact that criminal proceedings were conducted.

The novelty of this paper is that the authors of this paper chose original way to conduct this research: to obtain information from lips of drug addicted persons. The authors conducted interview of 167 drug users, with police officers, social workers and child rights protection service specialists and other public servants. Analysis of information received during interview reveals that one of the main issues related with identification of places where is illegal activity on distribution of drug and/or psychotropic substances occurred is insufficient quality of information from non-public sources, mainly informants. This research reveals how important methodology is as a tool for successful police investigations on conduction search activity on drug related criminal cases. It is worth to develop a methodological tool for officers on how to conduct specific search with aim to find storage and concealment of narcotic drugs and psychotropic substances. Also, to prevent overdose death rate from illicit substance – carfentanil, police officials should have a special medicament – naloxone – at their disposal, which would help to revive the unconscious people due to opiate overdoses in a timely manner.

In order to prevent from continuity illicit activity of “old drug distribution points” must be strengthened preventive activity by different bodies not only police. Set of preventive measures should include different tools by its nature starting from corrections at police patrol routes with indications former “distribution points/places of illicit substances”, educational activities on the harm of drugs till control strengthens over the usage of social housing according to its purpose.

Keywords: law enforcement agencies, drugs and psychotropic substances, illicit distribution places, inter institutional collaboration and cooperation.

NENUGALIMOS JĖGOS (FORCE MAJEURE) INSTITUTO TAIKYMAS COVID 19 ATVEJU

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Anotacija. Straipsnyje analizuojamas privatinės teisės nenugalimos jėgos (toliau – force majeure) instituto taikymas Covid 19 pandemijos atveju. Aptariamos force majeure sąlygų: nenugalimumo, nenumatomumo, nekontroliuojamumo ir rizikos neprisiėmimo, teisinis reguliavimas bei teismų praktika Lietuvoje bei lyginama su tarptautinės negriežtosios teisės (angl. soft law) teisiniu reguliavimu bei teisės doktrina. Šio teisės instituto sąlygos vertinamos Covid 19 pandemijos atveju, siekiant išaiškinti tinkamą šio instituto panaudojimą, kilus visuotinei pandemijai, kuri turėjo didelę įtaką sutartinių įsipareigojimų vykdymui. Straipsnyje siūloma atsižvelgti į tarptautinės negriežtosios teisės reguliavimą ir doktriną taikant force majeure institutą Lietuvoje.

Reikšmingi žodžiai: nenugalima jėga, force majeure instituto taikymas, neįmanomumas.

Straipsnio tikslas – atskleisti force majeure instituto taikymą Covid 19 pandemijos atveju.

Tyrimo metodai.

1. Sisteminės analizės taikomas analizuojant ir aiškinant teisės aktų turinį ir teismų praktiką kaip vieningą sistemą. Aiškinant teisės normas yra atsižvelgiama į kitas teisės, teisės šakų ir institutų teisės normas.
2. Lyginamasis analizės metodas taikomas sugretinant Lietuvos Respublikos teisinį reguliavimą su tarptautinės negriežtosios teisės normomis. Taip pat aptariant užsienio ir Lietuvos teisės doktriną.
3. Teleologinis ir lingvistinis metodas taikomas aiškinant teisės normų turinį ir tikruosius teisės aktų kūrėjo ketinimus.
4. Apibendrinamasis metodas taikomas apžvelgus ir palyginus mokslinę teisinę literatūrą, teismų praktiką ir teisės aktus darant išvadas bei prielaidas.

Įvadas

Sutarčių teisėje vyrauja kertinis privatinės teisės principas – sutarčių reikia laikytis (*pacta sunt servanda*). Tačiau tam tikrais atvejais, siekiant ekonominių santykių stabilumo, įgyvendinant sąžiningumo, protingumo, teisingumo principus, šis vienas iš svarbiausių sutarčių teisės principų yra netaikomas. Viena iš tokių išimčių yra *force majeure* instituto taikymas, kurio tikslas yra atleisti šalį nuo sutartinės atsakomybės dėl aplinkybių, kurių šalis negalėjo numatyti, kontroliuoti ir išvengti, jei ji nebuvo prisiėmusi šios rizikos sutarties sudarymo metu.

Prasidėjus visuotiniai Covid 19 pandemijai kilo didelis iššūkis ekonominių santykių tvarumui, dėl įvairių priežasčių sutarties šalys negali įvykdyti sutartyje įsipareigotų prievolių. Vienas iš būdų išspręsti susidariusią situaciją yra nutraukti sutartį pasinaudojus *force majeure* institutu. Kadangi ši institutą taikant sutartis yra nutraukiama vienašališkai, todėl yra labai svarbu preciziškai įvertinti visas *force majeure* instituto taikymo sąlygas, nes kyla grėsmė, kad teismas gali pripažinti vienašalį sutarties nutraukimą neteisėtu, o dėl to sutartį nutraukusi šalis patirs dar didesnių neigiamų pasekmių.

Force majeure kaip privatinės teisės institutas

Force majeure teisės instituto užuomazgų galima rasti jau romėnų teisėje, niekas negali būti įpareigotas atlikti tai, kas negali būti atlikta (*lot. Impossibilium nulla obligatio es*) (Dambrauskaitė, 2009). Neįmanomumas buvo suprantamas, kaip fizinis (pvz., išsemti visą vandenį iš jūros, perduoti objektą, kuris arba apskritai neegzistuoja gamtoje) ir teisinis (daikto, išimto iš apyvartos, pardavimas (Dambrauskaitė, 2009)). Šiuo metu šis institutas yra gana plačiai paplitęs ir įtvirtintas tarptautiniuose dokumentuose, pavyzdžiui Jungtinių Tautų konvencijoje dėl tarptautinių prekių pirkimo-pardavimo sutarčių (toliau – CISG) 79 str. įtvirtinta, kad „Šalis neatsako už bet kurios iš savo prievolių neįvykdymą, jeigu įrodo, kad jis buvo sąlygotas kliūties, kurios ji negalėjo kontroliuoti ir kad nebuvo galima protingai iš jos tikėtis sutarties sudarymo momentu numatymo kliūties arba išvengimo ar įveikimo tos kliūties ar jos pasekmių.“, nors pats straipsnio pavadinimas yra atleidimas nuo atsakomybės, iš esmės atitinka *force majeure* apibrėžimą. Taip pat *force majeure* institutas yra įtvirtintas UNIDROIT tarptautinių komercinių sutarčių principuose (toliau – Unidroit), 7.1.7 str. įtvirtinta, kad sutartį neįvykdžiusi šalis yra atleidžiama nuo atsakomybės, jeigu įrodo, kad sutartis buvo neįvykdyta dėl nuo šalies nepriklausančios valios, atsiradusių aplinkybių negalėjo kontroliuoti ir negalėjo tikėtis bei išvengti tokių aplinkybių sutarties sudarymo metu, ar tokių pasekmių. Europos sutarčių teisės principų (*angl. Principles of European contract law*, toliau – PECL) VI.3 str. įtvirtinta, kad sutarties neįvykdžiusi šalis yra atleidžiama nuo atsakomybės jeigu: 1. tai sukėlė aplinkybės, kurių šalis negalėjo kontroliuoti; 2. aplinkybės atsirado po sutarties sudarymo ir jų šalis negalėjo pagrįstai numatyti; 3. ta aplinkybė egzistavo, bet šaliai nebuvo žinoma, ir tokiomis pačiomis aplinkybėmis nebūtų žinojęs kitas protingas žmogus ir šalis negalėjo išvengti kliūties arba jos įveikti; 4. šalis sutartyje ar kitaip neprisiėmė tokios rizikos (tiesiogiai ar netiesiogiai), kliūčių buvimo ar atsiradimo.

Force majeure institutas yra įtvirtintas Lietuvos Respublikos civilinio kodekso (toliau – CK) XVII skyriuje „Sutarčių neįvykdymo teisinės pasekmės“, 6.212 str. įtvirtinta, kad „Šalis atleidžiama nuo atsakomybės už sutarties neįvykdymą, jeigu ji įrodo, kad sutartis neįvykdyta dėl aplinkybių, kurių ji negalėjo kontroliuoti bei protingai numatyti sutarties sudarymo metu, ir kad negalėjo užkirsti kelio šių aplinkybių ar jų pasekmių atsiradimui. Nenugalima jėga nelaikoma tai, kad rinkoje nėra reikalingų prievolei vykdyti prekių, sutarties šalis neturi reikiamų finansinių išteklių arba skolininko kontrahentai pažeidžia savo prievoles.“. Teisinėje literatūroje yra išskiriamos keturios *force majeure* sąlygos: 1. Sudarius sutartį atsiranda aplinkybės, kurių nebuvo sutarties sudarymo metu ir šalis jų negalėjo protingai numatyti. 2. Dėl atsiradusių aplinkybių sutarties objektyviai neįmanoma įvykdyti. 3. Šalis, neįvykdžiusi sutarties, tų aplinkybių negalėjo kontroliuoti ar negalėjo joms užkirsti kelio. 4. Šalis nebuvo prisiėmusi tų aplinkybių atsiradimo rizikos (Mikelėnas ir kt., 2003). Kaip matome, turi egzistuoti visuma sąlygų, kad galėtume taikyti *force majeure* institutą. Tokios pozicijos laikosi ir Lietuvos Aukščiausias Teismas (toliau – LAT) išskirdamas, kad “nenugalimos jėgos aplinkybes kvalifikuoja tokie požymiai: 1) aplinkybių nebuvo sudarant sutartį ir jų atsiradimo nebuvo galima protingai numatyti; 2) dėl susidariusių aplinkybių sutarties objektyviai negalima įvykdyti; 3) šalis, neįvykdžiusi sutarties, tų aplinkybių negalėjo kontroliuoti ar negalėjo užkirsti joms kelio; 4) šalis nebuvo prisiėmusi tų aplinkybių ar jų padarinių atsiradimo rizikos. Nesant šių kriterijų visumos, faktinės aplinkybės negali būti pripažintos nenugalima jėga” (LAT nutartis e3K-3-38-248/2021).

Tačiau *force majeure* Lietuvoje yra reglamentuojamas ne tik įstatymo galią turinčiu teisės aktu, bet ir poįstatymiais teisės aktais. Viena iš tokių teisės aktų yra Vyriausybės nutarimas „Dėl atleidimo nuo atsakomybės esant *force majeure* aplinkybėms taisyklės“, šiame teisės akte

įtvirtinta: 1. kad šalis nėra finansiškai atsakinga už įsipareigojimų nevykdymą, jeigu nesugebėjo įvykdyti įsipareigojimų dėl nepriklausančios nuo jos kliūtis; 2. negalima tikėtis, jog sutarties sudarymo metu ji galėjo numatyti tą kliūtį ir jos poveikį gebėjimui vykdyti įsipareigojimus; 3. ji negalėjo išvengti ar nugalėti kliūtis ar bent jos poveikio. Taip pat šiame teisės akte pabrėžiama, kad atsiradus tokioms aplinkybėms šalis turi kuo skubiau pranešti kitai šaliai apie susidariusią situaciją. Prasidėjus Covid 19 pandemijai, buvo taikomi ribojimai ūkinei komercinei veiklai, žmonių susibūrimams, todėl renginių organizatoriai siekdami išsaugoti surinktas lėšas, neleido klientams nutraukinėti sutarčių ir rėmėsi minėto teisės akto 8 p., kuris numato, kad „įsipareigojimų vykdymas atidedamas priimtinau laikotarpiui, be to, kitai šaliai nesuteikiama teisė nutraukti ar anuliuoti sutartį“. Tačiau CK 6.127 str. 1 d. numatyta, kad prievolės pabaiga siejama su tuo, kad jos neįmanoma įvykdyti dėl *force majeure*, už kurią skolininkas neatsako. Būtų galima remtis CK 6.212 str. 2 d. norma, kuri numato, kad jeigu aplinkybė, dėl kurios neįmanoma sutarties įvykdyti, laikina, tai šalis atleidžiama nuo atsakomybės tik tokiam laikotarpiui, kuris yra protingas atsižvelgiant į tos aplinkybės įtaką sutarties įvykdymui. To paties straipsnio 4 d. numatyta, kad „šio straipsnio nuostatos neatima iš kitos šalies teisės nutraukti sutartį arba sustabdyti jos įvykdymą, arba reikalauti sumokėti palūkanas“, todėl darytina išvada, kad jeigu viena šalis remiasi *force majeure* institutu nevykdant sutarties atidėti sutarties įvykdymą, kita šalis visais atvejais turi teisę nutraukti sutartį, reikalauti atlyginti nuostolius. Be to, atkreiptinas dėmesys, kad nagrinėtas Vyriausybės nutarimas „Dėl atleidimo nuo atsakomybės esant *force majeure* aplinkybėms taisyklių patvirtinimo“ įsigaliojo 1996-07-20, dar prieš priimant naująjį CK, kuris buvo priimtas 2000 m., šio nutarimo nuostatos taikomos tiek, kiek tai neprieštarauja civiliniam kodeksui ir kitiems įstatymams. Taigi, šalis, kurios atžvilgiu kita šali remiasi *force majeure* ir nevykdo sutarties, kita šalis visais atvejais turi teisę reikalauti nutraukti sutartį.

Kitas teisės aktas reglamentuojantis *force majeure* institutą yra Vyriausybės nutarimas „Dėl nenugalimos jėgos (*force majeure*) aplinkybės liudijančių pažymų išdavimo tvarkos aprašo patvirtinimo“, šio teisės akto 2 p. įtvirtinta, kad pramonės ir amatų rūmai pagal veiklos zonas išduoda pažymą dėl *force majeure* aplinkybių, kurios atsirado ir egzistuoja ar egzistavo Lietuvos Respublikos teritorijoje. Tačiau tokia pažyma nesukelia jokių teisinių padarinių. Tai yra konstatavęs ir LAT, savo nutartyje nurodė, kad prekybos, pramonės ir amatų rūmų išduota *force majeure* aplinkybės liudijanti pažyma, nesukuria materialinių teisinių padarinių. Materialinius teisinius padarinius, t. y. atleidimą nuo atsakomybės už sutarties neįvykdymą, civilinės atsakomybės netaikymą lemia *force majeure* aplinkybių buvimas, bet ne jas liudijančios pažymos išdavimas. *Force majeure* aplinkybės liudijanti pažyma turi tik procesinę teisinę reikšmę, nes vertintina tik kaip įrodymas civilinėje byloje dėl sutartinių įsipareigojimų vykdymo ar civilinės atsakomybės taikymo (LAT nutartis 3K-3-69/2013). Norint tinkamai pritaikyti *force majeure* institutą tiek įprastai, tiek Covid 19 pandemijos atveju, būtina aptarti visas *force majeure* sąlygas.

Nenumatomumo sąlyga

Kaip jau minėta, taikant *force majeure* institutą siekiant atleisti šalį nuo sutarties įvykdymo yra būtina sąlyga, kad nebuvo tokių aplinkybių sutarties sudarymo metu ir jų šalis protingai negalėjo numatyti, dėl kurių šalis negali įvykdyti sutarties. Tačiau pačios nenumatomumo definicijos nėra įtvirtinta pagrindiniuose privatinės teisės tarptautiniuose dokumentuose: CISG ir Unidroit. Nenumatomumo *force majeure* sąlyga yra vertinama atsižvelgiant į šalies asmens rizikos sritį (Kiraz ir Ustan, 2020). Nenumatomumo apibrėžimas nėra įtvirtintas ir Lietuvos teisės aktuose. Teisinėje literatūroje, civilinio kodekso komentare

aiškinama, kad šalis negali gintis *force majeure*, jeigu aplinkybės, dėl kurių sutarties šalis negali įvykdyti, buvo sutarties sudarymo metu, ir pateikia pavyzdį: jeigu sudarant sutartį buvo požymių, kad valstybėje, kur reikės vykdyti sutartį gali kilti karas ir šią aplinkybę buvo galima numatyti, kilęs karas negali būti laikomas *force majeure* (Mikelėnas ir kt., 2003). Nenumatomu įvykiu yra laikomas toks įvykis, kurio negalėjo numatyti kiekvienas protingas asmuo tokiomis aplinkybėmis, kurios buvo sudarant sutartį (McKenrick, 1995). LAT keliose bylose pasisakė dėl numatomumo sąlygos. LAT nagrinėjo bylą, kurioje buvo nustatyta, jog gamtinės sąlygos atsakovui išauginti reikiamą kiekį ir reikiamos kokybės pasėlius buvo itin nepalankios, tai sąlygojo liūtys, kruša, t. y. priežastys, nepriklausančios nuo atsakovo valios, tačiau konstatavo, kad „Lietuvos klimatinės sąlygos yra tokios, jog būna ir liūtys, ir audros, dėl kurių gali žūti derlius, tačiau tai savaime nėra radikalų, netikėtą ar nenuspėjama“, todėl buvo laikoma, kad sutarties šalis galėjo tokias kliūtis numatyti (LAT nutartis 3K-3-83/2004). CISG sekretoriato komentare sakoma, kad didžioji dauguma įvykių vienu ar kitu laipsniu yra numatomi, tokios kliūtys kaip karai, uraganai, gaisrai, valdžios embargai, tarptautinių vandens kelių uždarymas, toki įvykiai praeityje buvo, todėl galima jų tikėtis ir ateityje (Secretariat Commentary, 1978). Jeigu vertintume pagal visus įvykius įvykusius praeityje *force majeure* institutas taptų beprasmis, kadangi jau minėtiems įvykiams šio instituto pritaikyti nebūtų galima. Šio instituto nebūtų galima taikyti ir Covid 19 pandemijos atveju, kadangi jau praeityje, dar visai neseniai turėjome panašių pandemijų: „Spanish flue“, „Asian flue“, „Hong Kong flue“ (Euro.who.int., Past pandemics). Todėl taikydami šį institutą turime remtis protingo žmogaus kriterijumi ir vertinti pasaulį dabartinėmis sąlygomis, o ne vien tik tai, kas buvo praeityje. Nagrinėjant *force majeure* nenumatomumo sąlygos taikymą Covid 19 pandemijos atveju, kyla klausimas, kada buvo tas momentas, kai jau protingas žmogus galėjo numatyti, jog dėl pandemijos, ko pasekoje bus suvaržyti verslai, prievolės įvykdymas taps neįmanomas?

Nors dabar jau visuotinai žinoma, kad pirmieji Covid 19 viruso atvejai buvo 2019 metų pabaigoje, Pasaulio sveikatos organizacijos duomenimis, tik 2019 gruodžio pabaigoje Wuhan savivaldybė pranešė grupinius pneumonijos atvejus, ko pasekoje, buvo nustatytas Covid 19 (Who.int. Listings of WHO's response to COVID-19). Manytina, kad protingas žmogaus standartas, neturėtų būti laikomas su pirmaisiais Covid 19 viruso atvejais, o turėtų būti laikoma, kai jau Covid 19 virusas buvo išplitęs po kitas valstybes, dėl šios priežasties buvo nustatyti judėjimo per sieną ir šalies viduje apribojimai. Šalys, viena po kitos, pradėjo nustatyti judėjimo per sieną ir šalies viduje ribojimus kovo mėnesį. 2020-03-09 griežtus judėjimo per sieną ir šalies viduje ribojimus nustatė Italija, 2020-03-10 Albanija ir Omanas, 2020-03-11 Kataras, Turkija, Norvegija, El Salvadoras, Estija, 2020-03-12 Bulgarija, Kanada, Danija, Lenkija, 2020-03-13 Monakas, Slovėnija, Ispanija, 2020-03-15 Jamaika, Hondūras, Filipinai, Puerto Rika, 2020-03-16 Austrija, Čekija, Lietuva, Nyderlandai, Peru ir Slovakija (Auravision.ai, Global Covid-19 Lockdown tracker). Kiekvieną dieną valstybių vis daugėjo, kurios nustatė griežtus judėjimo per sieną ir šalies viduje ribojimus. Šis laikotarpis yra ypatingai svarbus vertinant *force majeure* nenumatomumo sąlygą, kadangi protingas asmuo, jau šiuo laikotarpiu, esant tokiai situacijai ir atsižvelgiant į mokslininkų išvadas, kad virusas tik plis, jau tikėtina, kad galėjo numatyti, kad tai gali būti kliūtis sutarties neįvykdymui. Pavyzdžiui, galėjo suvokti, kad dėl uždarytų sienų negaus tam tikrų produktų, įvedus karantiną, negalės pagaminti produkcijos ir jos eksportuoti ir pan. Tad šiuo laikotarpiu sudarytas sutartys turi būti ypatingai atidžiai vertinamos, ar protingas žmogus tokiomis aplinkybėmis jau būtų numatęs tokias aplinkybes.

Nenumatomumas Covid 19 pandemijos kontekste turi būti siejamas su šalies galėjimu numatyti, kad dėl Covid 19 pandemijos, atsiradusių aplinkybių šalis negalės įvykdyti sutarties, laikotarpis, kai šalys galėjo numatyti, kad pandemija bus tokio masto, kad negalės įvykdyti sutarties, gali būti laikoma, kai: 1. Dauguma valstybių taikė pilną šalies uždarymą. 2. Buvo

išplatinta masiškai žiniasklaidoje 3. Suvaržyta ūkinė komercinė veikla ir taikomi žmonių judėjimo ribojimai (Unidroit.org, Note of the unidroit secretariat on the unidroit principles of international commercial contracts and the covid-19 health crisis. Šių visų sąlygų visuma turi būti taikoma su protingo žmogaus elgesio standartu – kad analogiškoje situacijoje protingas, atidus ir rūpestingas žmogus būtų numatęs, kad atsiras aplinkybės dėl kurių sutarties nebus įmanoma įvykdyti. Toks laikotarpis galėtų būti laikomas apytiksliai 2020 metų kovo mėnuo.

Neįmanomumo sąlyga

CK 6.212 str. 2 d. įtvirtinta, kad „Jeigu aplinkybė, dėl kurios neįmanoma sutarties įvykdyti, laikina, tai šalis atleidžiama nuo atsakomybės tik tokiam laikotarpiui, kuris yra protingas atsižvelgiant į tos aplinkybės įtaką sutarties įvykdymui“. Iš šio straipsnio kyla *force majeure* neįmanomumo sąlyga. Teisinėje literatūroje laikomasi nuomonės, kad dėl aplinkybių turi būti objektyviai neįmanoma įvykdyti ir nurodoma, kad jeigu dėl tų aplinkybių yra tik sunkiau, bet objektyviai šalis gali įvykdyti sutartį, tai šalis negali remtis šiuo straipsniu (Mikelėnas ir kt., 2003). Tokios nuostatos laikosi LAT, kad dėl susidariusių aplinkybių sutarties objektyviai negalima įvykdyti (LAT nutartis 3k-3-931/2003). Kaip matyti, objektyviu neįmanomumu laikoma, kad asmuo negali fiziškai įvykdyti sutarties (perduoti sudegusio namo, importuoti ar eksportuoti prekių, jeigu valstybė uždraudžia). Tačiau yra skiriamas ir ekonominis neįmanomumas. Ekonominis neįmanomumas suprantamas, kai sutartį fiziškai įvykdyti įmanoma, tačiau ekonominiu požiūriu ją vykdyti yra nenaudinga, neprotingai didelės išlaidos (McKenrick, 1995). Ekonominį neįmanomumą sukelia „pernelyg sunkus“ sutarties vykdymas, nes sutarties vykdymo išlaidos didėja. Ekonominėmis kliūtimis laikoma kainų didėjimas rinkoje, staigūs valiutų šuoliai, ekonominės krizės. Tačiau paprasti ekonominės veiklos sutrikimai, kainų šuoliai, prekių stoka, nelaikoma *force majeure* neįmanomumo sąlyga (Brunner, 2015)

Nors CK 6.212 str. 3 d. numatyta, kad *force majeure* nelaikoma tai, kad rinkoje nėra reikalingų prievolei vykdyti prekių, sutarties šalis neturi reikiamų finansinių išteklių arba skolininko kontrahentai pažeidžia savo prievoles, tačiau tokių nuostatų nėra įtvirtinta Unidroit. PECL VI.3 komentare pateikiama, kad vien tai, kad sutarties vykdymas tampa ekonomiškai labiau apsunkintas ar komerciškai mažiau patrauklus vienai šaliai nelaikoma *force majeure*, nors pačios aplinkybės galėjo sukelti lėšų trūkumą. Ekonominių ar rinkos sąlygų pasikeitimas, turintis įtakos sutarties vykdymo pelningumui ar įsipareigojimų vykdymo paprastumui nelaikomas *force majeure*. Tačiau lėšų trūkumas gali būti laikomas *force majeure*, jeigu dėl ekonominės veiklos apsunkinimo yra fiziškai beveik neįmanoma įvykdyti sutartį ar jeigu šalys sutartyje išplėtė *force majeure* taikymo sritį ir ji apima tokį atvejį. Panašios nuostatos laikosi ir Europos sąjungos teisingumo teismas byloje Interkontinentale Fleischhandels-gesellschaft mbH & Co. KG prieš Europos Bendrijos Komisiją teismas konstatavo, kad „nesant specialių aplinkybių specifinėse srityse, *force majeure* samprata ypatingai apima nepaprastas aplinkybes, dėl kurių negalima vykdyti veiksmų, kurie turėtų būti vykdomi. Nors tai ir nereiškia, kad turi būti absoliutus negalimumas tokiems veiksams, nepaisant to, turi būti nenormalūs sunkumai, kurie nepriklausytų nuo suinteresuoto asmens, ir būtų neišvengiami net jeigu ir buvo imtasi visų rūpestingumo priemonių“ (ESTT sprendimas C-68/77).

Taikant *force majeure* institutą Covid 19 pandemijos atveju reikėtų vadovautis aukščiau aptarta *force majeure* neįmanomumo sąlyga, kuri gali reikšti objektyvųjį neįmanomumą arba ekonominį neįmanomumą, kuris yra arti objektyvaus neįmanomumo. Šiaulių apygardos teismas nagrinėjo bylą, kurioje ieškovė ir atsakovė sudarė pirkimo-pardavimo sutartį, kurios pagrindu ieškovė įsipareigojo sutartyje numatyta tvarka perduoti prekes, o atsakovė įsipareigojo priimti

prekes ir sumokėti prekių kainą. Atsakovė pažeidusi prievolę gynėsi, kad sutarties neįvykdė dėl *force majeure*, kadangi dėl Vyriausybės 2020 m. kovo 16 d. nutarimo, ji negalėjo vykdyti fizinės veiklos parduotuvėse ne maisto prekėmis, todėl klientai vėlavo atsiskaityti, buvo sustabdyti prekių įsigijimai iš esamų klientų. Teismas nurodė, kad nors Covid 19 pandemija iš dalies galėjo turėti įtakos atsakovės veiklai ir atsiskaitymui su ieškove, tačiau vien ši priežastis nelaikytina *force majeure* aplinkybe, atsižvelgiant į apeliančios veiklos pobūdį (prekyba statybinėmis medžiagomis, priemonėmis). Aplinkybė, kad sutarties šalis neturi reikiamų finansinių išteklių, negali būti vertinama kaip *force majeure* (Šiaulių apygardos teismo nutartis e2A-9-856/2021). Vienas iš pavyzdžių *force majeure* galėtų būti, kai Jungtinių Amerikos Valstijų prezidentas Donald Trump išleido įsakymą (Mayerbrown.com, Covid-19 and the US defence production act: latest developments), kuriuo apribojo gamintojams medicininių apsaugos priemonių: veido kaukių, pirštinių, specialių kombinezonų, eksportą į kitas šalis, kol Covid 19 pandemija nepasibaigs. Tokiu atveju, sutarties šalis, negali fiziškai įvykdyti sutarties, kadangi tai teisės aktai draudžia.

Nekontroliuojamumo sąlyga

Kaip jau minėta, viena iš *force majeure* sąlygų yra tai, kad šalis, neįvykdžiusi sutarties, tų aplinkybių negalėjo kontroliuoti ar negalėjo joms užkirsti kelio. Teisinėje literatūroje pateikiamas toks pavyzdys, kad nebus laikoma *force majeure*, jeigu streikas, kuris kilo dėl sutartį neįvykdžiusios šalies kilo dėl įstatymų pažeidimo arba šalis galėjo išvengti šio streiko derėdamasi su darbuotojais (Mikelėnas ir kt., 2003). CK nepateikia pavyzdinio sąrašo, kokios kliūtys gali būti laikomos nekontroliuojamomis. Tokių kliūčių nepateikia ir CISG, kas laikoma *force majeure* nekontroliuojamomis kliūtimis.

Kalbant apie neįmanomumą Covid 19 pandemijos atveju svarbu aptarti ir aplinkybes, kokiomis gali atsirasti *force majeure*. Tarptautinių prekybos rėmų leidinyje *force majeure* nekontroliuojamumo sąlyga nurodoma, kad paprastai *force majeure* įvykiai yra laikomi: 1. karas (paskelbtas arba nepaskelbtas), karo veiksmai, invazija, užsienio priešų veiksmai, plati karinė mobilizacija; 2. civilinis karas, riaušės, maištas ar revoliucija, karinė ar uzurpuota valdžia, sukilimas, terorizmas, sabotažas ar piratavimas; 3. valiutos ir prekybos draudimai, embargas, sankcijos; 4. valdžios teisėti ar neteisėti veiksmai, įstatymų ar Vyriausybės įsakymų laikymasis, nusavinimas, darbų areštas, rekvizavimas, nacionalizavimas; 5. maras, epidemija, gaivalinė nelaimė ar ekstremalūs gamtos įvykiai; 6. sproginimai, ugnis, įrangos sunaikinimas, ilgalaikis transporto, telekomunikacijų, informacinių sistemų ar energijos sutrikimas (Iccwbo.org, ICC force majeure and hardship clauses). Tokios pačios aplinkybės yra numatytos Vyriausybės nutarime „Dėl atleidimo nuo atsakomybės esant *force majeure* aplinkybėms taisyklės“. Tik šiame teisės akte šių aplinkybių įvardijama yra mažiau, tačiau šio nutarimo 3.6 p. numatyta, kad gali būti ir kitos kliūtys, kurios laikomos nekontroliuojamomis. Iš tokio teisinio reguliavimo matyti, kad kliūtys dėl kurių gali atsirasti *force majeure* aplinkybės, gali būti įvairios, o Lietuvos Respublikos teisės aktuose yra įtvirtintas ne baigtinis jų sąrašas.

Visuotinai žinoma, kad Covid 19 pandemija yra pripažinta tarptautine pandemija, kas pažodžiui aiškinant gali būti kaip kliūtis, dėl kurių atsirado *force majeure* aplinkybės. Kaip jau minėta, ICC leidinyje laikoma, kad epidemija gali būti pripažinti kaip *force majeure* kliūtimi, kuri nekontroliuojama, o pandemija yra daug platesnio masto epidemija. Nors šiame leidinyje sąvoka epidemija nėra išplėtotą ir ne kiekviena epidemija būtų laikoma tokia kliūtimi, tačiau viską reikia vertinti kitų *force majeure* sąlygų kontekste ir atsižvelgti į tai, kad valstybės griežtai riboja judėjimą per sieną ir šalies viduje, buvo apribota ūkinė komercinė veikla, buvo tam tikrų produktų stygius, transporto ribojimai, todėl manytina, kad tai galima laikyti kliūtimi.

Atsižvelgiant į Vyriausybės nutarimą „Dėl atleidimo nuo atsakomybės esant *force majeure* aplinkybėms taisyklės“, būtų galima taikyti 3.6. p. kitos nenugalimos jėgos priskiriant visuotinę pandemiją arba 3.5 p. teisėti ar neteisėti valstybės valdymo institucijų veiksmai, atsižvelgiant į tai, ar sutarties įvykdymo kliūtis atsirado dėl valstybės priimtų sprendimų ar visuotinės pandemijos. Nors iš esmės tai susiję dalykai, kadangi dėl pačios pandemijos ir ėmėsi valstybės ribojimų, Vyriausybės nutarimu „Dėl karantino Lietuvos Respublikos teritorijoje paskelbimo“, taikė judėjimo ribojimus užsieniečiams atvykti į Lietuvos Respubliką ir Lietuvos Respublikos piliečiams išvykti iš Lietuvos Respublikos su tam tikromis išimtimis, buvo ribojamas keliaujančiųjų tarp miestinio ir priemiestinio reguliaraus susisiekimo keleivinio transporto maršrutais intensyvumas, buvo draudžiamas kruizinių laivų patekimas į Klaipėdos valstybinę jūrų uostą, buvo draudžiamas kultūros, laisvalaikio, pramogų, sporto įstaigų lankymas ir fizinis lankytojų aptarnavimas, visi atvirose ir uždaroje erdvėse organizuojami renginiai bei susibūrimai, viešojo maitinimo įstaigų, restoranų, kavinių, barų, naktinių klubų ir kitų pasilinksminimo vietų veikla, parduotuvių, prekybos ir (arba) pramogų centrų, grožio, mokymo paslaugų ir kt. Taigi, dėl šių ribojimų, šalis negalėjo įvykdyti sutartinių įsipareigojimų, kadangi tai buvo uždrausta, todėl tai atitiktų nekontroliuojamumo sąlygą, kad šalis neįvykdė savo įsipareigojimų dėl teisėtų valstybės valdymo institucijų veiksmų. Taip pat tiktų jau minėtas pavyzdys, kai Jungtinių Amerikos Valstijų prezidentas Donald Trump savo įsakymu apribojo, kad Jungtinių Amerikos Valstijų gamintojai, medicininių priemonių: kaukių, pirštinių, specialių kombinezonų, negalėjo eksportuoti į kitas valstybes, kol Covid 19 pandemija nepasibaigs (Mayerbrown.com, Covid-19 and the US defence production act: latest developments). Tokiu atveju, sutarties šalis negali daryti jokios įtakos tokio sprendimo priėmimui.

Rizikos neprisiėmimo sąlyga

Dar viena *force majeure* sąlyga yra tai, jog sutarties šalis neprisiėmė tokios rizikos. LAT praktikoje, tai reiškia, jog šalis nebuvo prisiėmusi tų aplinkybių ar jų padarinių atsiradimo rizikos (LAT nutartis 3k-3-10-421/2015). Teisinėje literatūroje nurodoma, kad jeigu tam tikrų prekių rinkos kaina labai svyruoja, tačiau šalis jas vis vien perka už konkrečią kainą, o sudarius sutartį staiga gerokai padidėja, tai negalima laikyti *force majeure*, nes šalis tokią riziką prisiėmė (Mikelėnas ir kt., 2003). Tikėtina, kad panašių situacijų gali pasitaikyti ir Covid 19 pandemijos atveju, kadangi kaip kurių prekių kainos išaugo kelis kartus, pavyzdžiui, medicininių veido kaukių ir dezinfekcinio skysčio. Unidroit pateikia pavyzdį: 1. Jeigu įmonė A parduoda branduolinę energiją įmonei B, kuri yra kitoje šalyje Y pagal sutarties sąlygas dešimčiai metų, jeigu po penkerių Y šalies valiuta nuvertėja 1% pardavėjo šalies valiutos atžvilgiu, tai įmonė B nėra atleidžiama nuo atsakomybės, nes tokią riziką šalis prisiėmė mokėjimo nuostatomis. 2. Jeigu po penkerių metų urano rinkoje dėl spekuliantų uranas pasaulinėje rinkoje išbrangsta iki 10 kartų palyginus su sutarties kaina, įmonė A nėra atleidžiama nuo urano pristatymo, nes tai buvo rizika, kurią galima numatyti sudarant sutartį. Kaip matome, šalis gali prisiimti riziką tai numatydama sutartyje arba pagal aplinkybes sąlygojančias tuo metu civilinėje apyvaroje.

Covid 19 pandemijos kontekste svarbu aptarti šalies rizikos prisiėmimą, kai sutarties šalis negali įvykdyti savo prievolės sulygto pagal sutartį dėl to, kad kontrahentai pažeidė sutartį ir neįvykdė savo prievolės. CK 6.212 str. įtvirtinta, kad „Nenugalima jėga nelaikoma tai, kad rinkoje nėra reikalingų prievolei vykdyti prekių, sutarties šalis neturi reikiamų finansinių išteklių arba skolininko kontrahentai pažeidžia savo prievoles.“. Tokios nuomonės laikosi ir LAT, byloje buvo nustatyta, kad Rusijos Federacijos kompetentinga institucija uždraudė įvežti Ukrainos įmonės produkciją, kuri buvo reikalinga vagonams gaminti. Todėl vagonų gamintojas (Rusijos Federacijos įmonė) negalėjo pagaminti prekių vagonų, kuriuos ieškovas pagal sutartį

buvo įsipareigojęs parduoti atsakovui. Teismas rėmėsi CK 6.212 str. ir konstatavo, kad „rinkoje gali nebūti prekių, reikalingų prievolei įvykdyti, arba kontrahentai gali pažeisti sutartį, pagal CK 6.212 straipsnio 1 dalies nuostatas nelaikoma *force majeure* aplinkybėmis ir įmonė (verslininkas), sudarydama sutartį, tai privalo žinoti bei prisiima riziką dėl tokių aplinkybių atsiradimo“ (LAT nutartis 3K-3-10-421/2015).

Teisinėje literatūroje laikomasi tokios pačios nuomonės „kontrahentų padarytų pažeidimų (pagal CK 6.38 str. 4 d., 6.246 str. 2 d. ir 6.257 straipsnius šalis atsako ir už trečiųjų asmenų veiksmus) ar dėl finansinių arba materialinių išteklių stokos. Tokia taisyklė nustatyta todėl, kad šioms aplinkybėms nėra būdingi išvardyti *force majeure* požymiai.“ (Mikelėnas ir kt., 2003). Tačiau tarptautinėje praktikoje yra laikomasi ir kitokios pozicijos. Sutarties šalis gali remtis *force majeure* institutu, jeigu kitos šalies kontrahentas neįvykdo savo sutartinės prievolės dėl *force majeure* sąlygų, tačiau tik tiek, kiek gali būti taikoma sutarties neįvykdžiusios šalies kontrahentui. CISG 79 str. 2 p. numatyta, kad jeigu šalis negali įvykdyti savo prievolės dėl trečiojo asmens, kuris neįvykdė savo prievolės, tai ši šali atleidžiama nuo atsakomybės, jeigu: 1. Šalis atleista pagal *force majeure* institutą. 2. Trečiasis asmuo būtų atleistas nuo atsakomybės taikant *force majeure* institutą.

Taigi, manytina, kad taikant *force majeure* institutą neturėtų būti laikomasi taisyklės, kad šalis prisiėmė riziką, jeigu šalis, negali įvykdyti sutartinės prievolės dėl *force majeure*, jeigu šalis neįvykdo prievolės dėl trečiojo asmens, kuriam taip pat gali būti taikomas *force majeure* institutas.

Išvados

Visos *force majeure* sąlygos turi būti taikomas taikant *force majeure* institutą bylose susijusiose su Covid 19 pandemija, t. y.: 1) šios aplinkybės nebuvo sudarant sutartį ir šios aplinkybės atsiradimo nebuvo galima protingai numatyti; 2) dėl Covid 19 pandemijos ar su ja susijusių aplinkybių sutarties objektyviai negalima įvykdyti; 3) šalis, neįvykdžiusi sutarties, aplinkybių negalėjo kontroliuoti ar užkirsti joms kelio; 4) šalis nebuvo prisiėmusi rizikos dėl atsiradusių aplinkybių dėl Covid 19 pandemijos ar jos padarinių atsiradimo rizikos.

Taikant *force majeure* sąlygą, ar šalis negalėjo numatyti Covid 19 pandemijos, taikomas protingo žmogaus elgesio standartas – ar analogiškoje situacijoje protingas, atidus ir rūpestingas žmogus būtų numatęs. Tai vertinant reikia atsižvelgti į tai: 1. Kada dauguma valstybių taikė pilną šalies uždarymą. 2. Kada tai buvo išplatinta masiškai žiniasklaidoje. 3. Kada buvo suvaržyta ūkinė komercinė veikla ir taikomi žmonių judėjimo ribojimai.

Vertinant *force majeure* neįmanomumo sąlygą, ar šalis negalėjo įvykdyti sutarties, tiek paprastai taikant šį institutą, tiek Covid 19 pandemijos kontekste turėtų būti laikomasi, kad neįmanomumas nėra tik objektyvus, o gali būti ir ekonominis, kuris yra arti objektyvaus neįmanomumo, kai vis dar sutartį objektyviai įvykdyti įmanoma.

Dažniausiai *force majeure* nekontraliuojamumo sąlyga yra laikoma karai, valstybės intervencijos, nelaimės, sprogimai. Vertinant Covid 19 pandemijos išplitimo mastą ir dėl šios pandemijos taikytus valstybių veiksmus, gali būti laikoma kaip nekontraliuojama kliūtimi, kadangi dauguma sutartinių santykių dalyvių negalėjo daryti įtakos Covid 19 pandemijos plitimui ir valstybių sprendimų priėmimui.

Nustatant ar šalis prisiėmė riziką dėl atsiradusių aplinkybių dėl Covid 19 ar jų padarinių atsiradimo rizikos, reikia vertinti, kokias rizikas prisiėmė sudarydamos sutartį. Be to, neturėtų būti laikoma, kad šalis prisiėmė riziką, jeigu šalis negali įvykdyti savo prievolės dėl trečiojo asmens neįvykdytos sutartinės prievolės, kai jam taikomas *force majeure* institutas.

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APPLICATION OF THE INSTITUTE OF FORCE MAJEURE IN THE CASE OF COVID 19

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Summary

The article analyzes the concept of force majeure, compares the concept of force majeure conditions in the legal system of the Republic of Lithuania with international legal regulation. The article offers suggestions on how the institute of force majeure should be applied in the case of covid 19.

The purpose of this article reveals the application of the institute of force majeure in the case of the Covid 19 pandemic.

The force majeure institute in the Republic of Lithuania is applied quite rarely and differently compared to foreign countries. This article also compares the doctrine of law and legal regulation of the Republic of Lithuania with foreign legal regulation and international soft law. The conclusion is made that the application of the institute of force majeure in the Republic of Lithuania in the case of covid 19 should take into account international soft law.

Keywords: *force majeure, application of the institute of force majeure, impossibility.*

THE ROLE OF HUMAN CAPITAL AND INNOVATION IN ECONOMIC GROWTH: EVIDENCE FROM KAZAKHSTAN

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Abstract. *This article investigates the role of human capital and innovation in economic development of the country. Aim of the research is to investigate theoretical and methodological basis of the role of human capital and innovation in economic growth, evaluate current state of human capital and innovation activities, and develop scientific and applied recommendations to strengthen capacity and improve competitiveness of human capital in the developing countries.*

This paper contributes to the literature by fulfilling a theory of human capital development in the knowledge economy, revealing the relational mechanism between human capital development, innovation, and economic boundary of these relationship. It also contributes to the further understanding of the role of human development and innovation in economic development. This study result implies to strengthen capacity and improve the competitiveness of human capital, draft human capital development policy.

We used statistical data analysis, index calculation method, method of UNDP, and method of correlation and regression analysis. The sample mean method is used in the calculation of average national test results.

The analysis of the existing researches and debates is made. We defined the current state of human capital and innovations in Kazakhstan. According to analysis of the coverage of pre-school education half of children don't have access to education. Moreover, Preschool enrollment in Almaty, Zhambyl, Mangystau, Atyrau regions, and Almaty, Nur-Sultan, Shymkent cities are below the republic average line. In the most of regions the rate has increase for about 0,1 indicator, while in Aktobe, Atyrau, Kostanay regions, and Nur-Sultan city the difference of base period and 2019 is negative. The quality of secondary education became worse year by year. Youth from the regions are migrating within the country to get higher education especially in the nearby regions as Almaty, Akmola, Zhambyl, Turkistan regions.

Analysis of current state of innovative activity showed that Kazakhstan had the low productivity in patents, creations, and publicity activity.

Keywords: *economic growth, human capital, innovation, human development, new technologies, education coverage, education quality*

Introduction

Oil industry is aiming to its end, while the economy of Kazakhstan directly depends on this resource. The attempts to diversify economy has started in the middle 2000's, however, still in the progress. Innovational development strategy is becoming the only way to achieve economic safety of the country.

Output of human capital is new technologies and patents, while they are driving force of economy. Humans are not only an aim but a resource in social and economical development. Human factor is becoming more important as an object of investment than fixed assets and technologies (K. Sagadiev, 2012). Therefore, countries are interested in developing human resources to get a labour force to implement low skilled and high skilled jobs.

On the other hand, in the process of developing technologies low skill job offers are decreasing. According to the forecast of World economic forum 85 million people lose their jobs in 2025 because of division work between humans and machines and developing

technologies, while demand for new professions will be 97 millions. In other words, employment market is changing and requiring the new quality of human capital.

According to the index of human development, Kazakhstan took 50 place, with rating 0,817 out of 10 among 189 countries, and counted as a country with a very high level of human development. However, in the knowledge economy sector worked only 11% of the population according to state statistics. Meanwhile, the global innovation rating with ranking 77 is quite low (28,56 score out of 100), which is twice lower than in the developed countries as Switzerland (66,08), Sweden (62,47), the USA (60,56). Moreover, the innovation output Kazakhstan (14,34 score) is behind the following post-Soviet countries as Armenia (27,15), Russian Federation (24,62), Belarus (21,23), Georgia (19,66), Azerbaijan (15,29). Lack of qualification and low qualification of human capital could be a challenge for the economic growth of the country.

Developing technologies are driven force of economic growth. Historically, developed countries reached their peak with introducing new technologies that increase the productivity. New ideas and technologies are developed and applied, generating greater output with the same input.

Researches are shown scientific interest in human capital development and quality issues. However, there are not all conclusions and results are suitable for the reality of Kazakhstan. This issue is not investigated enough in Kazakhstan and required to analyze it. This research will reveal theoretical and methodological basis of human capital development, economical analysis of current state of human capital, and mechanism of developing human capital. This work is significant to evaluate impact of human capital and innovation on economic growth.

Aim of the research is to investigate theoretical and methodological basis of the role of human capital and innovation in economic growth, evaluate current state of human capital and innovation activities, and develop scientific and applied recommendations to strengthen capacity and improve competitiveness of human capital.

This paper uses estimates of innovation and human capital stocks to examine evidence on the determinants of economic growth. Indication and regression methods are used.

This paper contributes to the literature by fulfilling a theory of human capital development in the knowledge economy, revealing the relational mechanism between human capital development and innovation, and economic boundary of these relationship. It also contributes to the further understanding of the role of human development and innovation in economic development. The outcomes may be the basis for the following research of human capital trends development and quality issues in Kazakhstan.

First, we review the literature in order to gain an understanding of the existing researches and debates.

Second, we define the current state of human capital and innovations in Kazakhstan. It helps to understand and evaluate the current situation of human capital and new technologies issues. In the results of this research, we could develop the ways to increase accumulation of human capital to achieve sustainable growth.

Third, we defined the interrelationship of innovation, human capital and GDP in multiple regression analysis.

This study result imply to strengthen capacity and improve the competitiveness of human capital, draft human capital development policy.

Literature review

One of the first researches of impact of innovation on economic growth was Joseph Schumpeter (2003) where he described the process of development innovations and their driving force in the enterprises, that effects on economy of the whole country consequently. Also, he mentioned the role of human in the implementation and introduction of new technologies in productive process. Based on the research it could be concluded that the innovations lead to the qualitative changes in economy and transferring to the next level of development.

In the paper 'A Contribution to the Theory of Economic Growth' R. Solow (1956) investigated neoclassical model of growth and indicated that new technologies are the key factor of economic growth, also pointed on human capital factor. Denison (1967) in his classification of economic growth made attempts to quantify the contribution of human capital to a country's rate of economic growth.

However, evolution of endogenous growth theory in 80's is broaden the knowledge of the role of innovation and human capital in the economic growth. Romer (1986, 1990), Lucas (1988), and Mankiw et al. (1992) focused on the role of human capital as a factor of production and fulfilled and extended neoclassical growth model. Lucas (1988) also pointed out a second role of human capital, i.e., the level of human capital as a source of positive externality to have an impact on growth.

On the other hand, Nelson and Phelps (1966) specified that human capital is not only a factor input in the production function. They stressed on the role of human capital as a tool of local innovation and technology. According to Nelson and Phelps, people with education are the bearers of human capital, which helps in local innovation, technology development and also helps to adapt the foreign technology. Moreover, it is defined that technology adoption for advanced economies demands the educated and digital skilled workforce. Sustainable and innovative economy cannot be achieved without the adoption of technology (Salam et al., 2019).

The increasing the productivity effects of human capital on economy. As a result, the economic growth of countries depends on the level of human capital (Aghion& Howitt, 1992). The quality of human capital is important in order to adopt technologies (Vandenbussche et al., 2006) that enhance the economic growth of the country (Teixeira et al, 2016). Lahiri and Ratnasiri (2012) pointed out that human capital, R&D, and economy of country is important in adoption technology that emerge economic development.

P. Agion and P. Howitt (1992) and Charles Jones (1995) pointed out that human capital is the main factor of production of new knowledge and innovation.

Based on the research of the model of technology dissemination of R.Barro and H.Sala-i-Martin (1992), proved the possibility of faster economic growth with new technologies.

It is concluded the assumption that impact of technical and technological changes on marcoeconomic dynamics depends on level of human capital development (Benhabib, 1994). The emerging innovative activity in the economy which lead to the increasing the pace of growth directly depends on financing education system (Ivasenco et al., 2009).

Papageorgiou (2003) defined that difference in relative contributions of human capital to technology adoption and final-goods production seem to vary by country wealth. Human capital in the high-income countries are facilitators of innovation and imitation of technology. While, low-income countries the role of human capital is as an input of final output production and as a facilitator of imitation. That means that the country should reach some level of development before the returns of R&D activities become significant. Coe et al (1997) and Engelbrecht

(2002) revealed that developing countries could get economic output through diffusion of developed countries technologies.

Hongxing Peng et al. (2020) discovered that human capital mitigates the negative effect of financial constraints on innovation investment persistence. They have found the mechanism through which human capital at the management and employee levels affects innovation investment persistence. They indicated that management human capital affects innovation investment persistence through the expectation of authorised patents, while employee human capital affects the persistence through salary stickiness. Furthermore, management human capital contributes to an increase in future granted patents through persistent innovation investment.

‘Absorptive capability’ plays an important role in accelerating the technological catch-up (increase in the efficiency) but not on the technological changes (Mastromarco, C.& Simar, L., 2021). This result seems to confirm the theoretical hypothesis that countries benefit from new technology (technological catch-up) only when they have the ability to exploit it, hence only when they have high level of absorptive capability.

According to Rahman (2016) the developing countries should diversify economic relations with many developed countries because they can serve as a technological leader in the catch-up process. The role of human capital in technological catch-up is significant and developing countries should take pro-education policies to speed technological catch-up.

Zhou, H., Qu, S., Yang, X., & Yuan, Q. (2020) showed that regional credit and technological innovation are important impacts to economic growth, whereas the interaction of regional credit and technological innovation has a negative effect on provincial economic growth. That proves the importance of rationally allocation of regional credit resources, strengthen technological innovation capabilities, and boost the integrated development of regional credit and technological innovation.

Human capital speeds up the creation of new technologies (Ehrlich, 2007) and economic growth is possible with uninterruptedly technological progress. Investment in human capital defines the ability of national economy to generation of new knowledge, and effective transfer foreign technologies, that increase growth pace of national economy. However, it is complicated to measure the impact of innovation on the economic growth. At the period of 4th technological revolution the key factor for sustainable growth is human capital.

Methods

Index method is used to analyze the current state of human capital in Kazakhstan. As indicators of human capital, we have considered education, health, and living standards.

Index of education consist of 2 part: 1) education coverage. 2) quality of education. We have calculated education coverage including the pre-school, primary school, secondary school, and higher education from 2015 to 2019 with methodology of OECD dimension index formula (1)

$$\text{Dimension index} = \frac{\text{actual means} - \text{minimum}}{\text{maximum} - \text{minimum}} \quad (1),$$

where minimum is 0, while maximum is 100.

Quality of education is more complicated, because of lack of statistical data. We have considered the regional average National test points with the same OECD formula (1), where considered minimum as 0, however maximum as 125 points for the year 2015,2016, while 140 for the following years, because of change of the format of testing.

Indicator of health index is expectancy of life. We used dimension index (1) to compute health index, where minimum is 20 and maximum is 85 (OECD)

In the index of living standards, in this calculation, we will replace GNI per capita with GDP, due to the lack of statistical data in Kazakhstan.

$$\text{Index of living standards} = \frac{\ln(\text{actual value}) - \ln(\text{minimum})}{\ln(\text{maximum}) - \ln(\text{minimum})} \quad (2),$$

where minimum value is 100, and maximum is 75000.

$$HDI = \frac{\text{education index} + \text{health index} + \text{index of living standards}}{3} \quad (3)$$

Quantitative method used in order to evaluate the dependence of the human capital and innovations. Governmental statistical data from the period 1991 to 2019 is observed in the research. Human development index, volume of innovative products, and GDP are included into calculations. At the specification stage, multiple linear regression were selected. Its parameters are estimated using the enter method.

The current state of human capital and innovation

Kazakhstan oriented to the high goals to sustainable economy according to Strategy 2025. First of all, they are new quality of human capital and technological renewal and digitalization.

World is in the struggle because it should prepare human to specialties that don't exist. Technologies are developing rapidly, and most of the workplaces will disappear in the close future. Therefore, educational institutions have to teach students to the universal skills as critical thinking, work with big data, teamwork, and ability to work in the changing world.

The pandemic COVID-19 showed that Kazakhstan wasn't ready to change education model. Governments had to close schools, as a result it has been one year that pupils don't receive full range of education. Increasing level of inequality in access to the quality education has risen that increase the gap among students. Probably distant learning would be less effective to all students, although students from vulnerable population would be even less effective. Only students who have a good connection and the required number of computers and other devices could use the opportunities of online learning.

Moreover, distance learning makes a challenge for teachers and lecturers, who don't have the required qualification in online teaching, and for students, who don't have access to the internet and computers. For instance, students and teaching staff faced cyberattacks, low speed of internet, and freezing of study platforms. In addition, distance learning effects on quality of education, because of an insufficient level of education, which lead to the economic losses in the future (World Bank, 2020). As a result of the pandemic, the negative effect of education might lead to the growing quantity of functionally illiterate students. Skills of graduates will be lower, that might effect on their future employment. Negative impact on education and reducing years of learning, lead to diminish expected income on 2.9%. Economic loses would be up to \$1.9 bln. (World bank, 2020).

Innovations and new technologies are changing labour market. Gap in skills is increasing. Companies and corporations require high-skilled employees, while the education system is not ready to supply human capital with desirable skills. As a result of developing machine learning and artificial intelligence, some professions niche is reducing (administrative

and supporting personnel, typist, etc.).

Government gave academic freedom to universities. Universities offer new education courses to perspective students as Cyberphysical system, Biocomputing, Business Journalism, SMM and PR, and etc. However, the content of study didn't change.

The results the index of human development in 2019 in Kazakhstan is 0,7(Figure1), which is considered as high. However, in the last 5 years there is not significant change in the dynamic. It has risen 0,02 points for the whole period, but it decreased in 2019 in comparison with 2018 because of index of education (Figure2). The coverage of pre-school education (Figure4) and higher education are quite low (Figure7), while primary (Figure5) and secondary education (Figure6) is 1 or almost 1.

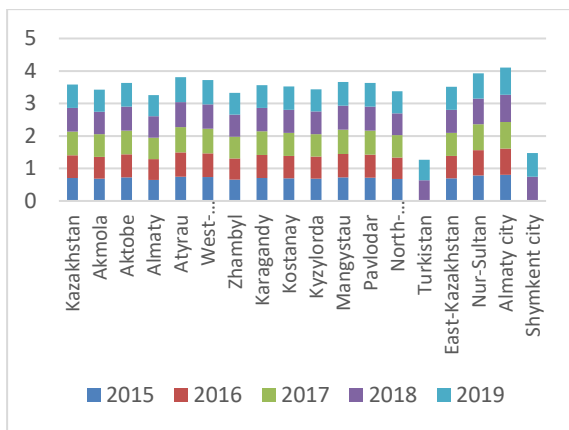


Figure 1. Index of human development.

Source: Compiled by author

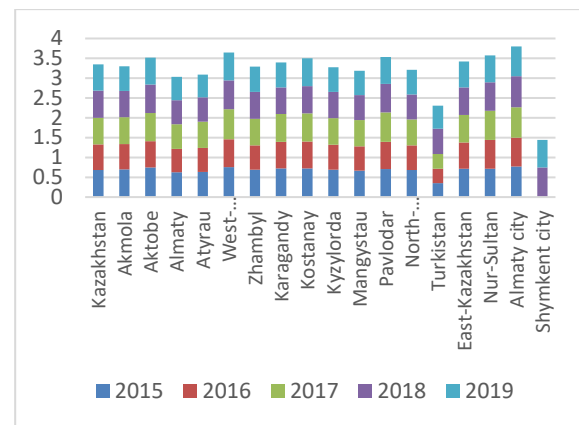


Figure 2. Index of education.

Source: Compiled by author

Firstly, level of education differ region to region, however average Kazakhstan's education index is 0,66 in 2019. At the beginning of the period the index was. 0,68 In the period of 2015 -2019 there is downward trend in this index with a fluctuation in 2016 (0,64) (Figure 2).

The coverage of pre-school education in Kazakhstan is rising from 0,46 to 0,53 in the given period. Preschool enrollment in Almaty, Zhambyl, Mangystau, Atyrau regions, and Almaty, Nur-Sultan, Shymkent cities are below the republic average line, that means that almost half of children are not able to get preschool education. In the most of regions the rate has increase for about 0,1 indicator, while in Aktobe, Atyrau, Kostanay regions, and Nur-Sultan city the difference of base period and 2019 is negative. Government should pay more attention to the preschool enrollment, because it affects to the future study outcomes at school (Figure 3).

Primary education covered 98, 1% in the base period and reached 99,64% in 2019, and 1 for secondary education which is considerably high indicator. That means that almost 100% of children and able to write and read (Figure 4, 5).

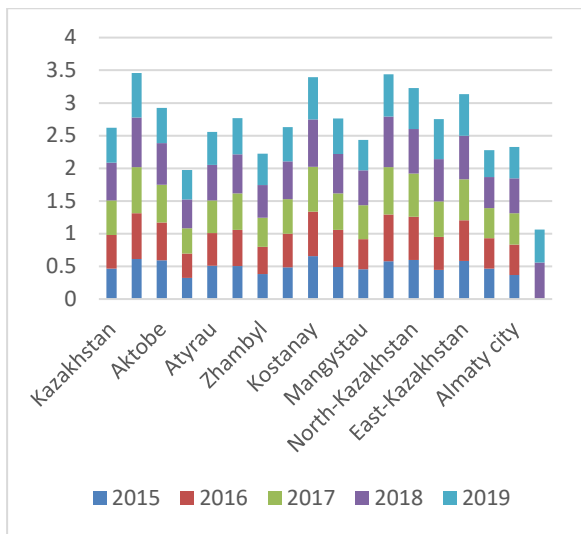


Figure 3. Index of pre-school coverage
Source: Compiled by author

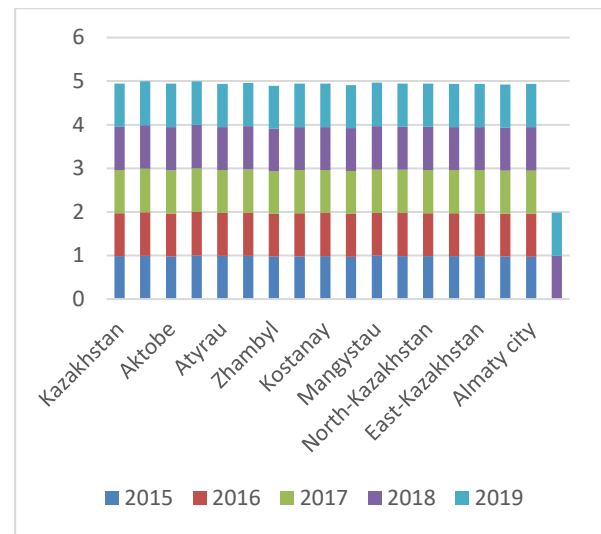


Figure 4. Index of primary education coverage
Source: Compiled by author

Higher education coverage is rising from 0,48 to 0,67 in the period of 5 years. However, the youth education in the regions is low, it may be because of the lack of universities. Also, it is seen that in Almaty, Nursultan, and Shymkent cities this indicator covers 100%. Youth from the regions are migrating within the country to get higher education especially in the nearby regions as Almaty, Akmola, Zhambyl, Turkistan (Figure 6).

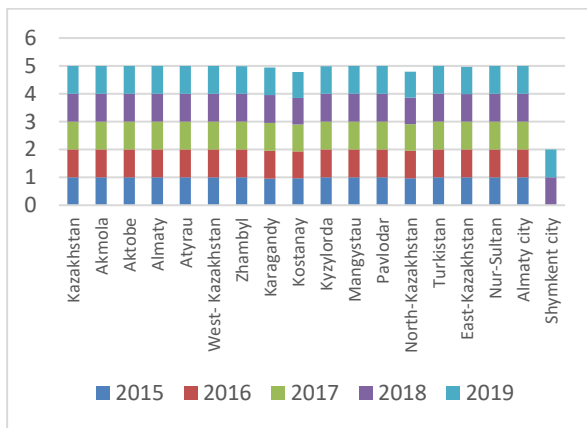


Figure 5. Index of coverage of secondary education.
Source: Compiled by author

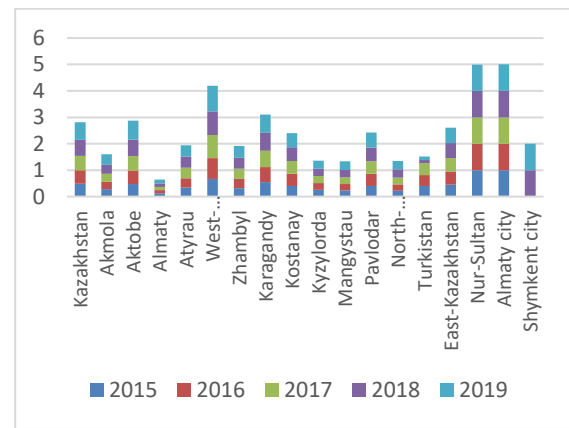


Figure 6. Index of coverage of higher education.
Source: Compiled by author

Figure 7 indicated the quality of education where we have considered average points in the National test among school graduates. The educational outcome of students is showing downward trend with fluctuation. At initial period national results index was 0,63, and fell up to 0,52 in 2016. The years 2017-2018 it rose to 0,59, however dropped in 2019 again to 0,52. The decreasing of average point may be as a result of modifying the format of test that occurs in the period. The most noticeable change had happened in Karaganda region with falling off 0,23 in comparison with base period, while in Kostanay region, Almaty, Nur-Sultan cities the least significant change with lowering 0,07.

PISA test results were not included into index calculation because of lack of regional data. However, there the decreasing level of performance is seen. Moreover, average results is lower than OECD countries with up to 100 point difference.

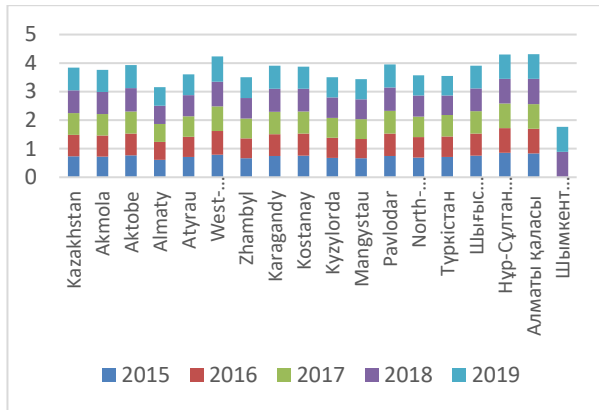


Figure 7. Index of coverage of education quality.
Source: Compiled by author

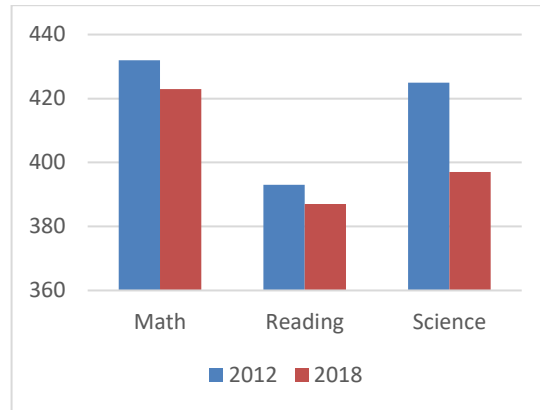


Figure 8. PISA results (2012,2018)
Source: Compiled by author based on OECD data

Gross regional product (GRP - hereafter) per capita has risen from 0,638 to 0,653 in the period between 2015 -2019. Standards of life differ from region to region. The lowest index in Almaty and Zhambyl regions, while the highest in Atyrau region, Almaty and Nur-Sultan cities (Figure 9). However, Almaty and Nur-Sultan cities have better standards of life in comparison with other regions, the indicator of GRP per capita remains at the level of 2015 with insignificant growth. GRP of Atyrau region (0,89) is twice higher than the same indicator of Turkistan region (0,49). The low level of life in Turkistan region also may be one of the reasons of low education index in the region.

The state of health of the population is becoming better, and the index has risen to 0,02 points from 0,80 to 0,82 in Kazakhstan. According to Figure 10, health index in the regions is high (0,78 - 0,85). Considerably lower than average in the country is in Akmola (0,79) and North-Kazakhstan (0,78) regions. The highest index is in Nur-Sultan and Almaty cities, which is 0,87 and 0,85 respectively. North Kazakhstan region and Almaty city's indicator didn't change in the past 5 years.

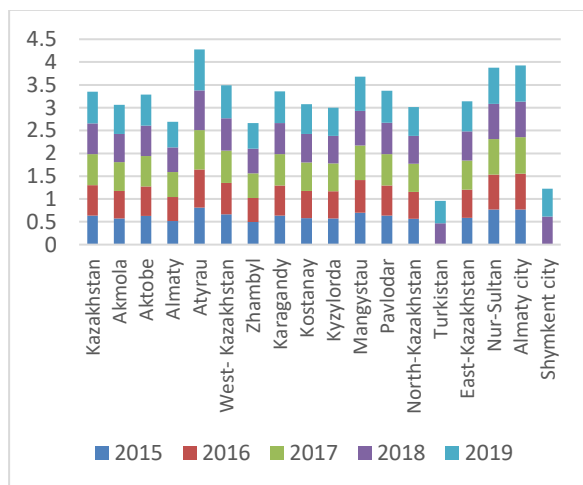


Figure 9. Index of life standard.
Source: Compiled by author

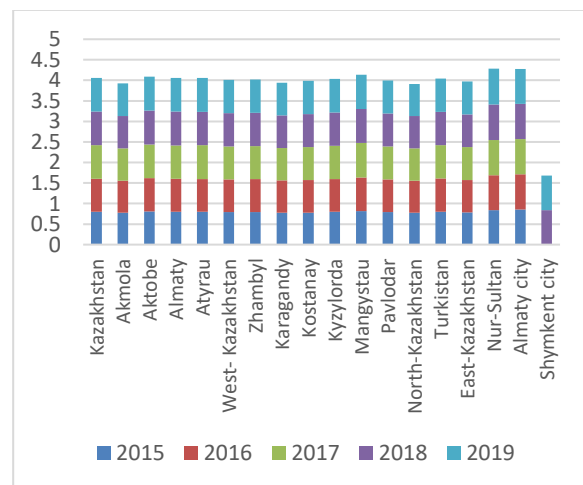


Figure 10. Index of health.
Source: Compiled by author

The aim of country is achieving sustainable development with innovational activity. Therefore, Tech Garden or Park of innovative technologies and Astana Hub projects appear in 2016 to develop innovational clusters. They are state projects of acceleration that help to develop innovational ideas, supply infrastructure, financial support, mentoring, access to investors and opportunities to experience exchange with foreign innovators. Cluster Park of innovative technologies include 23 Higher education institutions, 25 Research institutions, 2 technoparks and 1 institute of development. 175 enterprises are supported by Tech Garden at the moment. Astana Hub is international technopark of IT startups.

Other indicators of innovation activity are patenting (Figure 11) and scientific publications (Figure 12). The ratio of productivity is 0.08 patents and protective documents and 0.28 publication in Scopus base for each scientist in Kazakhstan. Granted protective papers on innovation is reduced twice in comparison from 1504 to 730 with initial period.

Low productivity may be as a result of underfunding of R&D. R&D expenditure for 2019 is 82333.1 mln KZT, which is 0.11% of GDP. In comparison with developed high income countries where R&D expenditure is more than 2% of GDP (Israel 4.95%; South Korea 4.81%; the USA 2.83). Average salary per month is 146599,216 KZT, which is about US \$350, that is comparatively low.

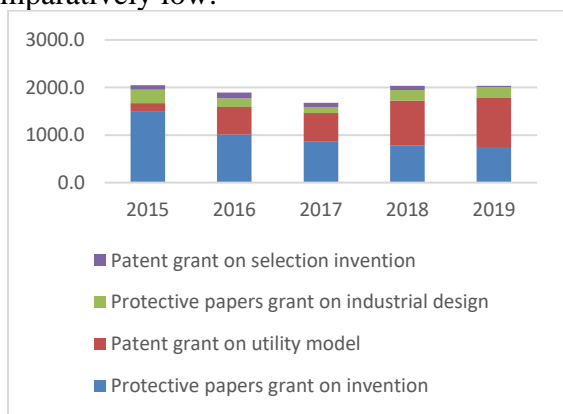


Figure 11. Output of innovative activities
Source: Compiled by author

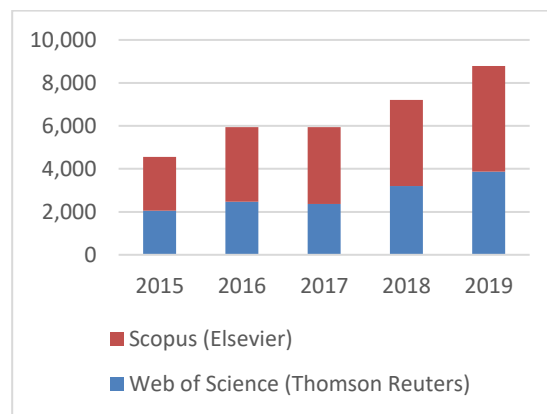


Figure 12. Output of innovative activities
Source: Compiled by author

Table 1. Indicators of innovative activities of R&D

	Number of R&D employees	Web of Science (Thomson Reuters)	Scopus (Elsevier)	Labour costs, mln KZT	Share of innovative production (comodities, services) to GDP , %	Key figures of innovative enterprise activities, all types of innovations
2015	24735,0	2 048	2 502	35730,0	0,9	2585,0
2016	22985,0	2 473	3 470	31889,9	1,0	2879,0
2017	22081,0	2 362	3 583	31564,1	1,6	2974,0
2018	22378,0	3 200	4 005	34823,2	1,7	3230,0

2019	21843,0	3 872	4 909	38426,0	1,6	3206,0
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The number of innovative active enterprises are increasing rapidly. The number of innovative companies and the volume of innovation commodities correlated very weakly (0,19). The most significant growth is in Karaganda, East Kazakhstan regions, and Almaty, Nur-Sultan cities. The highest innovative activities are in Pavlodar, East- Kazakhstan, and Kostanay regions.

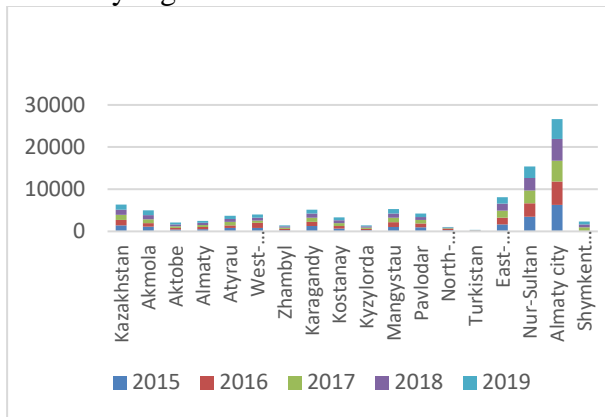


Figure 13. Research and development personnel per million population

Source: Compiled by author

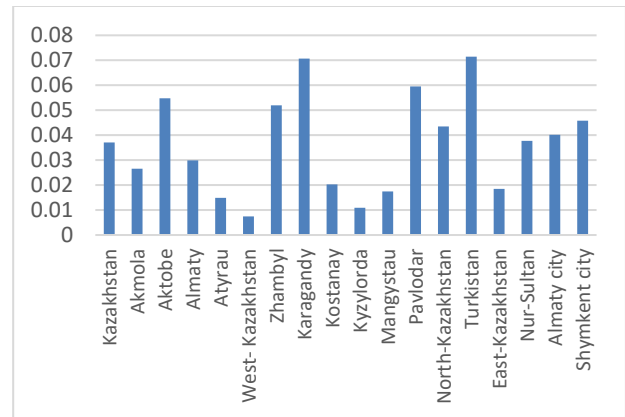


Figure 14. Productivity of research and development, patent applications, 2019

Source: Compiled by author

R&D personnel is decreasing for 9% in the last 5 years from 726,3 to 667,62 per million overall in Kazakhstan (in average calculation we have exclude Almaty and Nur-Sultan cities). Almaty city has the highest number of R&D staff per million population (4687,89 in 2019), which is equal to developed countries level as France – 4715,31, UK- 4603,31, Portugal – 4537,53. Nur-Sultan city also has high density of researchers (2733, 75 in 2019). East Kazakhstan region has twice more researchers than average in the country, while Turkistan has only 90,99 scientists per million.

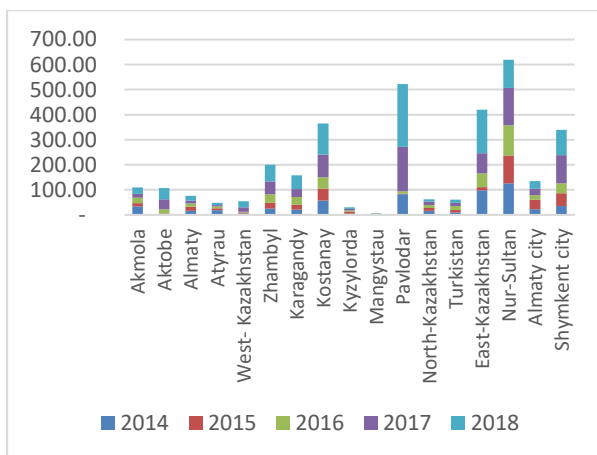


Figure 15. Volume of innovative production, bln KZT

Source: Compiled by author

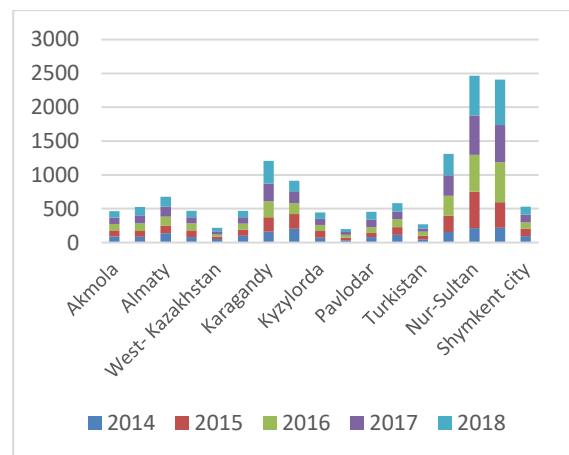


Figure 16. Innovative active enterprises

Source: Compiled by author

The number of innovative enterprises is increasing in the country. However, Kostanay region reduced the number of innovative enterprises from 204 to 163, which is almost 20%.

The rapid growth of innovational companies is in Almaty (+451), Nur-Sultan(+369) cities, Karaganda (+177), and East Kazakhstan (160) regions. More than half of innovative companies are located in Almaty, Nur-Sultan cities, Karaganda, and East Kazakhstan regions. However, the largest amount of innovative production was produced by Nur-Sultan, Pavlodar region. Almaty city’s production is lower than expected. Therefore, the volume of innovative activity contradicts the number of active enterprises, researchers, and patent productivity and it didn’t correlate.

In the aspect of productivity of R&D Turkistan and Karaganda regions have the highest ratio, that is equal to 0,07, while the lowest activity is in West Kazakhstan, Kyzylorda, and Atyrau regions.

Regression analysis

Quantitative method used in order to evaluate the dependence of the human capital and innovations. Governmental statistical data from the period 2003 to 2019 is observed in the research. Human development index, volume of innovative products, and GDP are included into calculations.

Table 2. Variables Entered/Removed^a

Source: Compiled by author on SPSS

Model	Variables Entered	Variables Removed	Method
1	volume of innovative products, human development index ^b		Enter

a. Dependent Variable: GDP

b. All requested variables entered.

Table 3. Model Summary

Source: Compiled by author on SPSS

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	R Square Change	Change Statistics		
						F Change	df1	df2
1	.986 ^a	.972	.968	3531807.83260	.972	229.414	2	13

Table 3 shows the coefficient of determination (R^2) as a whole, the regression does an extreme high modeling of GDP. The coefficient of determination (R^2) indicates that 97,2% of the variance in GDP can be predicted from the variables Human development index and volume of innovative products.

Table 4. Model Summary

Source: Compiled by author on SPSS

Model	Change Statistics		Durbin-Watson
	Sig.	F Change	
1	.000		1.020

a. Predictors: (Constant), volume of innovative products, human development index

b. Dependent Variable: GDP

The Durbin Watson test reports that there is a positive autocorrelation in data.

Table 5. ANOVA^a
Source: Compiled by author on SPSS

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	5723260537965907. 000	2	2861630268982953. 500	229.414	.000 ^b
	Residual	162157665363493.7 20	13	12473666566422.59 4		
	Total	5885418203329401. 000	15			

a. Dependent Variable: GDP

b. Predictors: (Constant), volume of innovative products, human development index

The ANOVA table reports p-value is .000, that's less than .05 or 5% therefore the overall model is a statistically significant.

Table 6. Coefficients^a
Source: Compiled by author on SPSS

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.	95.0% Confidence Interval for B
		B	Std. Error	Beta			Lower Bound
1	(Constant)	-	53046567.95		-5.961	.000	-430822721.102
		316222578.35 9	5				
	Human development index	432988861.43 9	70508970.82 9	.605	6.141	.000	280663490.860
	Volume of innovative products	23.448	5.639	.410	4.158	.001	11.267

The coefficients in table 5 shows that model fit looks positive. The regression intercept takes value 53046567.955 while the regression slope for human development index takes value 70508970.829 and the slope for WEALTH takes value 5.639. Volume of innovative products has a small coefficient compared to human development index that contributes more to the model because it has a larger absolute standardized coefficient, where volume of innovative products is highly important than human development index.

There are two standardised slopes with the slope for human development index taking value .605 and the slope for Volume of innovative products taking value .410.

For human development index the slope has t statistic 6,141 and the p value (quoted under Sig.) is .000 (reported as $p < .001$) which is less than 0.05. We therefore have significant evidence to reject the null hypothesis that the slope on human development index is zero. For volume of innovative products the slope has t statistic 4.158 and the p value (quoted under Sig.) is .000 (reported as $p < .001$) which is less than 0.05. We therefore have significant evidence to reject the null hypothesis that the slope on volume of innovative products is zero. For the intercept the t statistic is -5.961 and the p value (quoted under Sig.) is .000 (reported as $p < .001$) which is less than 0.05. We therefore have significant evidence to reject the null hypothesis that the intercept is zero.

Table 7. Coefficientsa
Source: Compiled by author on SPSS

Model		95.0% Confidence Interval for B
		Upper Bound
1	(Constant)	-201622435.617
	Human development index	585314232.017
	Volume of innovative products	35.630

a. Dependent Variable: volume of innovative products

The confidence intervals for the coefficients and so a 95 percent confidence interval for the intercept takes values between -430822721.102 and -201622435.617.

Similarly a 95 percent confidence interval for the slope for human development index takes values between 280663490.8 and 585314232.017. Here we see the confidence interval does not contain 0 which corresponds to the fact we could reject the null hypothesis that the slope was 0.

Table 8. Residuals Statisticsa
Source: Compiled by author on SPSS

	Minimum	Maximum	Mean	Std. Deviation	N
Predicted Value	5941194.000 0	64939424.00 00	31244983.613 7	19533322.874 80	16
Residual	- 4101688.000 00	5633004.500 00	.00000	3287934.1575 3	16
Std. Predicted Value	-1.295	1.725	.000	1.000	16
Std. Residual	-1.161	1.595	.000	.931	16

a. Dependent Variable: GDP

Conclusions

Using data of 14 regions and 3 cities in Kazakhstan from 2015 to 2019, this paper establishes that human capital is considerably high, however there is no significant improvement in the last 5 years. Education, health, and well-being components were considered in order to get more details. According to Gemmell (1995) the school enrolment rates captured the level, rather than the growth, of human capital. Education policy of country should be reconsidered to increase the coverage of pre-school education, because according to results about half of children don't have access to it while it is considering as important period of human capital development (Frumin, 2018, Dürdane Şirin Saraçoğlu & Deniz Karaoğlu, 2018). Other words, early development assists to increase the education outcomes and it the basis of perspective human capital. Preschool enrollment in Almaty, Zhambyl, Mangystau, Atyrau regions, and Almaty, Nur-Sultan, Shymkent cities are below the republic average line, that means that almost half of children are not able to get preschool education. In the most of regions the rate has increase for about 0,1 indicator, while in Aktobe, Atyrau, Kostanay regions, and Nur-Sultan city the difference of base period and 2019 is negative.

Other issue is the quality of secondary education, that is decreasing year by year despite the fact of content and structure changes in assessing the knowledge of students. Increasing students' knowledge should be one of the priorities of development. Special measures should be accepted for regions with lower indices than republic average.

Considering the fact of higher education enrollment is increasing, they should supply necessary labour force in the future. The youth tertiary education in the regions is low, it may be because of the lack of universities. Also, it is seen that in Almaty, Nursultan, and Shymkent cities this indicator covers 100%. Youth from the regions are migrating within the country to get higher education especially in the nearby regions as Almaty, Akmola, Zhambyl, Turkistan regions.

Analysis of current state of innovative activity showed that Kazakhstan had the low productivity in patents, creations, and publicity activity. Low productivity may be as a result of underfunding of R&D.

Human development index and innovative activity is highly correlated with GDP, in other words these indicators are significant for economic growth. The coefficient of determination (R^2) indicates that 97,2% of the variance in GDP can be predicted from the variables human development index and volume of innovative products.

To conclude the above-mentioned factors the following recommendations should be considered:

- 1) Supply children with pre-school education by building the kindergartens and supplementary education centers;
- 2) Increase the quality of secondary education and teach students how to apply their knowledge;
- 3) Involve more students in the regional universities and provide high-quality education;
- 4) Increase R&D expenditure to stimulate innovative activities
- 5) Stimulate researchers and scientists to inventions and publications by increasing the salary and status.
- 6) Reconsider the list of innovative enterprises

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LITHUANIAN LANGUAGE POLICY IN MULTILINGUAL EUROPE: LEGAL AND SOCIAL ASPECTS

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Abstract. *The Lithuanian language has rapidly established itself in modern multilingual Europe. The current policy of the Lithuanian language covers many fields of activity. However, the reality still raises fundamental questions about the existence and dissemination of language related to the assessment and implementation of the status of the national language, the concept of language and society relations, and the prestige of language. These are also important topics for other European countries. Therefore, the aim of the paper is to review the situation of the Lithuanian language in the context of European languages policy. In order to achieve the aim the following objectives have been raised: 1) to review legal regulations of the Lithuanian language and changes of the use in important areas of life; 2) to reveal the situation of Lithuanian language policy and prestige in Lithuania; 3) to discuss the situation of the Lithuanian language in the policy of EU languages.*

In conclusion, public education must be promoted, as well as assistance provided, the public debate on language and targeted language attitudes must be developed. It is very important to adopt and timely update the legal foundations of the language - not only the legal acts regulating separate areas, but also the constitutional Law on the State Language promulgating the main provisions of the language policy.

Keywords: *language policy, language prestige, language planning, multilingual Europe.*

Introduction

Lithuanian has rapidly established itself in multilingual contemporary Europe. The current policy of the Lithuanian language encompasses numerous areas of activity. However, the reality is still posing essential questions due to language existence and dissemination related to the national language status and assessment as well as implementation of language conception and society relations. Moreover, it is an important issue for other European countries. The world becoming more and more global, numerous challenges are emerging when making decisions concerning such non-material phenomena as language and its policy. It is not enough to have only legal measures regulating the use of a language. A significant attention must be paid to language policy, improvement of language planning and promoting the language prestige. Both foreign and Lithuanian scientific literature has not purified the concepts of language policy, prestige and planning. Different definitions of terminology are prevailing and authors base their ideas on insights and theories of different researchers-originators of these concepts. In Lithuania language policy has been studied by Zabarskaitė, Smetonienė. Vaišnienė has discussed the issue significantly as well. Language policy conception is analysed rather extensively and is applied when referring to individual national languages, minority languages and multilingualism. It is a widely applied concept. Language planning is the term provoking most arguments, used to assess possibilities and ways of language planning. Miliūnaitė has

discussed the aspects of Lithuanian planning whereas language planning determines prevalence of language prestige in the society. This aspirational factor is closely related to values acceptable in the society and undoubtedly state's actions aimed at introducing appropriate attitude of the society towards the importance of its language and fostering its security. According to Eco, "each language is a certain world model, a semiotic world conception system" (Eco, 2001, p. 308). However, various reasons affect the system: changing reality and society needs, migration or even politics. (Jakštienė, 2013).

Thus, **the aim of the paper** is to review the situation of the Lithuanian language in the context of European languages policy.

The following **objectives** have been raised:

1. To review legal regulations of the Lithuanian language and changes of the use in important areas of life.
2. To reveal the situation of Lithuanian language policy and prestige in Lithuania.
3. To discuss the situation of the Lithuania language in the policy of EU languages.

The selected methods: this work was carried out using methods of analysis and synthesis of the scientific and legal literature as well as the application of logical and analytical methods in the analysis of key issues related to the role of Lithuanian language policy.

Legal status of the Lithuanian as the national language

Globalization is given more and more significance in role. It strongly affects not only economy and technological advance, but also social relations. Society is becoming more and more consumption-oriented whereas eternal values (morality, faith, nationality) are pushed to the background or replaced by temporary ones, relevant only for a certain period. Thus, a question arises what the role of a language in different countries is in the age of globalization. Do global unions and policy encompassing different areas have impact on change of separate country's language and don't languages lose national identity role? According to Vaišnienė (2013), we themselves can make the decision which position is closer to us – the possibility to preserve and foster our native language in all areas of life expressed by EU political conceptions to encourage translation and learning of all official languages or reasonably provided data concerning insufficient economic grounds of language diversity and negative impact of national language use on science, business and other areas. As she states, representatives of less used languages might agree that even politically undeclared these conceptions occasionally determine consumer-based and reasonable administrative decisions when multilingualism is perceived and introduced as acknowledgement and learning of several or frequently one language of international communication. However, it is reminded that the idea of linguistic unity has not been implemented since Latinization of Europe in the Middle Ages and development of Esperanto up to nowadays' global information society. One should not forget that a language of a country is closely related to its inhabitants' national identity. (Vaišnienė, 2013). Identity is what every person is, that is his/her individuality (Rovira, 2008).

First of all, when discussing the existence of the Lithuanian language, two terms should be distinguished, namely national language and standard language. As Šukys claims (2006), standard language is a historically formed and consciously processed variety of a national language used to satisfy the needs of all nation in communication, mindset, political, economic and cultural life as well as to express national identity and representation. In short, standard language is a commonly accepted variety of a language having formed due to certain conditions over the centuries. Standard Lithuanian has formed relatively late, only at the conjunction of 19th and 20th centuries though it is one of the oldest languages in the world. However, its

development has been strongly affected by various historic periods, when Lithuania was under control of certain countries. At one moment it was even thought that the Lithuanian language was going to die out but after more than 200 years it still exists. Thus, standard language is like a living organism, which is constantly changing. On the one hand, it is determined by emergence of new objects, technologies and phenomena, which need to be named. On the other hand, some standards that formed before change regarding realities of a period. Thus, codified standards of a language established in grammar, dictionaries and reference books are developed. A codified variety of a language (standard language) must meet all functions of a public language in areas of administration, legislation, society information, science, education, culture, etc. Then only the last stage of standard language development remains, i.e. to acknowledge the standardized language prestige and use it by respecting its standards. Nevertheless, development of a standard language, as it was mentioned above, is only the commonly acceptable variety of a language, established in grammar books and dictionaries while in order to legally acknowledge a language in a state its establishment by legal acts is needed. Thus, a national language is perceived as the language used officially in public sphere of life legalized by laws. The Lithuanian language was first established as a national language only in 1922 in the first Constitution of Lithuania. Later it was revised in Constitutions of 1928 and 1938. Having restored independence, in 1922 Article 14 of Lithuania's Constitution declares that "national language is Lithuanian", i.e. the new status of Lithuanian as that of a national language was established. Provisions establishing the language status are included in constitutions of other countries, for example, Estonia's Constitution, Article 6 says „National language of Estonia is Estonian”; Latvia's Constitution, Article 4 declares that “The Latvian language is the national language”; Polish Constitution, Article 27 states that “In the Republic of Poland the national language is Polish”. On the other hand, for example, in the USA English is not declared as the national language due to tolerance issues not to violate immigrants' rights (Vainiutė, 2010). It is, however, true that until national language establishment, several legal acts were adopted. Even in 1988 on November 18 the Lithuanian Soviet Socialist Republic (LSSR) adopted the law „To add Article 771 to LSSR Constitution (The main law)”, which declares that the national language of Lithuania's SSR was the Lithuanian language. On January 25 of 1989 the law of Lithuania's SSR Supreme Council was issued „On the use of LSSR national language“, which states that „following Lithuania's SSR Constitution, the Lithuanian language is considered the national language of the Republic“, and in order to „ensure education and functioning of Lithuanian in state and society's life without violating constitutional right of inhabitants speaking other languages to use their native language“, it was decided to define that „Lithuanian is national and the main means of official communication in the Republic”. The Lithuanian language following this law was supposed to be used in all areas of state's life; legal acts were declared in Lithuanian, etc. Inhabitants were supposed to have conditions to learn the Lithuanian language and gain certain education in this language (Vainiutė, 2010).

Apart from legalisation of the Lithuanian national language in Lithuania's Constitution, one more important legal act was the law of the national language of the Republic of Lithuania concerning public spheres of life adopted on January 31 of 1995. It defines the most important areas of using the national language in public. In addition, its security and control are regulated. However, according to M. Vainiutė (2010), by adopting the law, it was not possible to foresee all challenges that Lithuanian might face and assess their consequences and, therefore, it must be improved. Moreover, it includes legal liability in the Code of Administrative Offences, Articles 497-507. They define issuing fines from 60 to 400 Euros for various violations: for not using the national language in stamps, forms, boards, names of products and services, descriptions, for non-compliance with resolutions of the State Commission of the Lithuanian

language concerning the use and correctness of the language and not following instructions of the officials of the State Commission, for not using the national language when performing official duties, in record keeping and correspondence in the Republic of Lithuania, for providing the documents in the other language (not the national one), for failing to translate television and radio programmes into the national language as well as not using authentic and official places names of Lithuania. Over the time numerous legal acts have appeared, which were designed to regulate the use of the Lithuanian language. Each of them is intended to discuss certain cases when the Lithuanian language is supposed to ensure Lithuanian inhabitants' right to the information provided in the national language so that it could be understood by any citizen of the country.

Language policy in Lithuania

Such introduction of the language in the country shows that open language policy is prevailing, which clearly defines rights of different linguistic groups to use their languages in all areas of life where there is the real necessity. In addition, this policy strictly applies principles of political tolerance (transparency, peculiarity, legality). In Lithuania incentive language policy is being partly implemented, encouraging certain language use by constitution, administration and legal guarantees: it provides and ensures resources for a language. The policy of the Lithuanian language is defined by the law of National language. Language policy is perceived as decisions made by the state concerning the language status, use, areas of use and language users' rights. The primary goal of the language policy is to affect the development of the language so that the society could perceive its value and would not feel disappointed by its power. The basis of language policy implementation is language planning, encompassing language status (designing and improving the legal base of language use), language system and use, language teaching. In a general sense language policy includes all languages existing in linguistic field whereas in the narrow sense it encompasses the issues of the standard language and related decisions. According to Vainiute (2010, 35), „by planning the future of the language, language policy must well examine the external situation of a language and its internal state to define as well as to evaluate conditions and circumstances of its functioning, to design a specific activity plan and to predict its executors”. The first such plan was introduced by designing the guidelines of National Language Policy 2003-2008. However, the guidelines of National Language Policy 2009-2013 remained unapproved by the Parliament and the project is announced only on the website of the State Commission of the Lithuanian Language. These guidelines were later developed for the period of 2018-2022. The primary aim of national language policy indicates to preserve language heritage and encourage language development to ensure functionality of the Lithuanian language in all areas of public life whereas the main aim of the language policy is to affect the development of the national language in a planning and creative way so that the society could perceive the value of its language and would not be disappointed by its power. Thus, nationality of the Lithuanian language is in reality sufficiently defined though one should not forget the issues of language policy and prestige, practical implementation of which can differ from theoretical aspects defined by legal acts.

Language prestige is closely related to language planning. The latter is crucially important and necessary during the change of historic events and in the current globalization. The very concept of language planning in works of world sociolinguists appeared in the second half of the 20th century while in Lithuania it was started to be mentioned in the last decades by prioritising the concepts of language contacts, language(s) policy, etc. The first one to use it was Einar Haugen, an American linguist of Norwegian origin. Language planning as a branch

of sociolinguistics emerged from a practical need to solve the issues of languages which arose after World War II by establishment of national states (Miliūnaitė, 2010). Slightly later the problematics of language contacts became significant whereas the aspects of human rights related to language use have become relevant since the last decade of the 20th century. In Lithuania language planning was first clearly defined in the guidelines of National Language Policy 2003-2008: “The basis of language policy implementation is language planning, encompassing the following areas: language status (designing and improving the legal base of the language), language system and use, language teaching”. The same definition, only slightly extended, was transformed into the new version of National language policy guidelines: “The basis of language policy implementation is language planning encompassing the following areas: language status (developing the legal basis of language use and its improvement, enhancement of language prestige, language dissemination), language system and use. All areas of language planning are closely interrelated while language system and use as well as language teaching are significantly affected by language status”. (Valotka, 2015, 94). In other words, language planning must be regarded as a never-ending process, because every living language and its sociolinguistic situation are changing while language standardization in reality never reaches the end.

Since the end of the 20th century during macro-socio-political world changes political and social conditions have started to change in certain countries of Western Europe. Language planning was reconsidered as well. (Ricento 2000). The conception that language planning is just the measure to establish and standardize national languages and is only a part of modernization and nation creation was abandoned. The position stating that the most important peculiarity of language planning concept development is language prestige emerged. Thus, language planning gains a new dimension, i.e. language prestige. (Miliūnaitė, 2010).

“For planning the language prestige the common activity of various institutions and single individuals is of crucial importance. This idea has been naturally established in Lithuania as well: it is perceived that to maintain prestige of the Lithuanian language in the society one needs interaction of the state and society”. (Miliūnaitė, 2010, p. 246). Concerning the ways of enhancing prestige of the Lithuanian language listed in “Gairės” project, the conception to develop linguistic awareness of the society bears special significance since only internal motivation of the society to use the Lithuanian language and to prioritize it against other languages and their expressions is the basis for maintaining the language prestige. The language must become attractive and important to use for the society. However, it is becoming difficult to do due to reorientation of society’s values in recent years. Value-based linguistic orientation is inseparable from the entire changing range of society’s values: patriotism deterioration, disappointment with the common nation idea, high emigration rate and changing attitude towards numerous basic traditional values as well as levelling of nations and languages affected by globalization. Regarding these ideas, it is claimed that the state should not limit its activity only by designing the laws and allocating funding for language prestige matter but propaganda is also necessary. According to Laurinaitis, (2010), propaganda should encompass long-term programmes which would aim at changing society’s values and attitudes; if one wishes some changes in the society, adequate actions must be planned in advance. „Propaganda (by its real but not distorted meaning), must become a part of language prestige planning – it must be not straightforward, banal and annoying, but thoughtful, subtle and psychologically affected. Otherwise nihilistic ideas will start to prevail in the society spread by the youth maintaining that it is useless to learn the Lithuanian language because it is going to die out”. (Miliūnaitė, 2010, p. 249). Society must have what to focus on. Language planning practice shows that one cannot leave language or its variety prestige to drift: it is included in a deliberate process of

language change and development regulation. Thus, acknowledging that in Lithuania language policy is based on language planning, the prestige of the Lithuanian language must be regarded as a planning object as well. There must be a clear aim of nation and language survival, oriented towards reinforcement of Lithuanians' unity in all over the world, and specific tasks, namely to enrich resources of the Lithuanian language and to create favourable environment to foster it so that society instead of diminishing it would enhance its prestige in our country and all around the world in their common efforts. Learning from world experience, numerous ways can be found for this activity. However, it is the work not only of language specialists. Overall activity of different institutions of various areas and levels as well as individual persons is most important for language prestige planning.

Existence of the Lithuanian language in the Context of European Union Language Policy

After the Lithuanian language had established itself as the official language of the European Union, the field of implementing national language policy has extended as well in political and administrative EU structures. By translating legal acts and other documents new varieties of administration language are being formed, terminology of different areas is arranged, and Lithuanian is included in multilingual infrastructures of science and language technologies. Thus, the Lithuanian has rather fast established itself in contemporary multilingual Europe. However, new reality still poses new essential issues in existence and dissemination of the Lithuanian language related to assessment and implementation of national language status, language and society relations, language prestige conception. These include topics relevant for other European states, i.e. promoting internationalisation by extending the use of the English language, language changes in the environment of the other language, its existence in the digital space as well as needs of a language and information dissemination regarding contemporary communication media, the problems of scientific communication in national languages, etc. Solidarity bonds between states speaking "small" European languages – both older and new EU members – have formed and perception that restriction of one less frequently used language will determine restriction of other linguistic rights over the time has emerged. This solidarity of small states is crucially important for the aim to preserve Europe's linguistic variety (Bradley, Vigmo, 2014).

All EU official languages are equal and have the same rights. Even the first EU regulations (approved by the Council in 1958) were designed not for some other matter but for languages. It defines the obligation for EU institutions to translate legal EU acts into all official EU languages and answer citizens' queries in the same language the question was asked (European Community Establishment Contract, Article 21, Part 3). Thus, all official languages of EU states have the status of an official language in the EU as well (Language Policy; National Language Policy).

Regarding this fact in the EU there are a lot of translators, linguists, including Lithuanians. Translators, lawyers-linguists, specialists of the Lithuanian language, whose efforts are concentrated on translating legal acts into Lithuanian work in the European Union. Interinstitutional manual of translation into the Lithuanian language was created, the purpose of which is to serve as style guide and facilitate the translation of standard phrases into Lithuanian in the same appropriate way (not only the standard ones). The essence of the common interinstitutional translation manual is to combine regulations of the main translation manuals, namely Practical Guide of Designing Community Legal Acts, Precedent Guide of Acts designed in EU Council, Manual of Designing Institutional Publications, and to encompass relevant practical issues of translation, especially as far as grammar, spelling and

style are concerned. European dictionary “Eurovoc” was compiled, which is a systemic list of words and their combinations. Its purpose is to accurately reflect the content of the documents existing in the document system and the conceptions in search. It is a multilingual dictionary originally compiled to process information of European Community documentation. It is intended for use in European institutions’ libraries, document services, data bases and their users. It all facilitates work of language experts while translating and editing common legal acts in the EU. All this procedure of document translation directly affects the Lithuanian language itself because being a living organism, it cannot stay unaffected by rigorous requirements of text translation against deviation from the original text. It determines the changes of Lithuanian administration style. (National Language Policy).

One should also mention that EU policy of national languages has not been discussed in any EU legal act, i.e. it is not regulated. However, indirectly some issues related to the language are discussed in legal acts regulating other areas. European Community Establishment Contract, Article 149, Parts 1 and 2 indicate that the Community contributes to good education quality by promoting cooperation of member states and supporting as well as complementing their actions if needed, at the same time totally acknowledging responsibility of member states for education content and organization of education systems and respecting a variety of their cultures and languages. The Community by its actions seeks to develop the European direction in the field of education, especially teaching the language of member states and promoting their popularity (Kėvalienė, 2007). Thus, more attention is paid to multilingualism rather than maintenance and preservation of separate languages because multilingualism in reality sometimes negatively affects native languages. Ambitious nature of EU language policy initiative does not guarantee likewise ambitious and multifaceted implementation in all member states and, thus, every member state decides how actively and what initiatives to undertake, how much time and financial resources to devote in order to implement EU language policy aims in the national level.

It is asserted that by evaluating the situation of the Lithuanian language in the context of EU, dual attitude is encountered towards language value and functions. Firstly, in the consumer society affected not only by Europe unification but also other globalization processes language diversity is considered as an obstacle rather than value. It can be explained by a very narrow and limited conception of a language indicating that language is merely a means of communication. Therefore, one looks for one language that could become the global means of communication. Economy and efficiency principles which encourage assessment of languages through the function of communication are applied for this language. Secondly, Europeans still regard a language as the main feature of individual and collective identity since a language is cognitive tool as well. (Kėvalienė, 2007). “Words, language, have the power to define and shape human experience. It is because of a language that I can name my experiences” (Rovira, 2008, p. 63).

Thus, by planning language policy attention is primarily paid to the areas which face the biggest threat to lose priority of national language use. One of them is the goal to maintain the Lithuanian language in electronic space by Lithuanianizing it. As life is being transformed into electronic space, its issues should not be abandoned as well. However, it took time to understand it, as if trying not to lose against the running time. Over the years it was understood that the existing gap must be immediately mended and, as a result, there are significant results, namely digitalized high-volume publications, numerous other tasks undertaken in order to spread the Lithuanian language in electronic space. The other problematic discussion area is public records, mostly related to trading and service as well as advertising. A part of the issues in the field have been solved but one must admit that global development of technology and its

novelties make a significant impact. Establishing relations in education and employment fields are important as well when favourable conditions to spread cosmopolitanism and English are created by restricting the use of the Lithuanian language without sufficient basis. Moreover, it encourages the youth to use more anglicisms which are transformed from domestic use into the public area. (Vainiute, 2000).

One more area where threats for the Lithuanian language are encountered is science, when scientific works written in a foreign language are ranked higher than those in the Lithuanian language. Thus, conditions for Lithuanian scientific style to disappear are created. One should acknowledge that we are going to face multilingualism and rather fast bilingualism future. However, we should accept it not as an unavoidable situation but rather perceive the limits of our identity and the role of language use. In addition, we should understand that EU nations are multilingual but not English-speaking and, thus, Lithuanian and English bilingualism should not be assessed more than Lithuanian-German, Lithuanian-French or any other bilingualism. In general more acceptable language use direction for Lithuania should be emphasized as well as resistance to unfounded narrowing of the fields where Lithuanian is used should be developed. Therefore, it is very difficult to predict the subsequent development of the Lithuanian language and that is why positions of the Lithuanian language in multilingual Europe's conditions must be enhanced in all possible ways. We must understand that protection of the status of the Lithuanian language as that of a national language as well as language use issues depend on us. We must perceive its importance because, as M. Daukša wrote, "Language is the common bond of love, mother of unity, father of citizenship, guardian of a state. Destroy it and you will destroy harmony, unity and welfare. (Vainiutė, 2010).

One of such challenges is the situation of language education in Lithuania. Education language policy is a part of country's general policy. In this situation Lithuanian, the same as other European languages having fewer users, is threatened with establishment of one foreign language in the most important areas of the society – English is getting its way into higher education, technologies, scientific research. Bologna process is affected by international tendency to regard education not as public but rather as market service competing with international institutions and payment for studying as a norm. Today European universities compete for foreign students by providing courses in English. This process has started in Lithuania as well. Several education languages are distinguished in the national level too. Priority is given to scientific publications in languages other than Lithuanian. Obviously, there are certain science fields, projects of exact and natural sciences where Lithuanians and specialists of other fields from all over the world are pursuing their activity and in this case it is acceptable that articles are written and communication occurs in the language upon agreement. It is undoubtedly true that Lithuanian scientists cannot restrict themselves with Lithuanian scientific journals. Motivation to study in Lithuanian is diminished by general European education space developed on the basis of English. Lithuanian education needs international perspective but its development should not violate Lithuanian society's interest and, thus, state institutions must regulate the ratio of languages used in education by legal and financial measures.

However, Baltic centres worldwide contribute to the prestige of the Lithuanian language. These are non-traditional sources of education in Lithuanian. Education language policy can be developed indirectly. Policy of Lithuania with regard to world Baltic centres indirectly adds to the development of Lithuanian language education because world Baltic centres play a positive role in the development of Lithuanian education. Internationality of Baltic (Lithuanian) scientific research enhances exchange of scientific ideas, extends scientific discussions, encourages new Baltic (Lithuanian) discoveries in world archives and also makes a positive

impact on language education development in Lithuania. In various documents of national institutions it is claimed that currently in the world (mostly in Europe) there are 30 such centres where Lithuanian language (Baltic languages) and cultures are investigated and taught from one to more than a dozen people. (Zabarskaitė, Smetonienė, 2012).

Social and cultural relations of linguistic communities formed due to historic and political circumstances both connect and destroy European space. None of contemporary European languages can avoid contacts with neighbouring languages or the English language occupying more and more business, academic and even personal space. In times of smart communication technologies and global network one cannot create isolated monolingual media and limit from external impact, either it is introducing single loan words into a language or establishing attitudes to give priority to a foreign language in certain fields of life. New tendencies of language dissemination and use as well as regulations of national language policy must be assessed regarding experience of other European countries' language planning and management and general EU language policy regulations. The policy of EU multilingualism and internationalisation promotion creates new environment of national language development, encourages to look for more creative and flexible ways to find the place for a national language in the most vulnerable areas of public life.

Conclusions

Summarizing what has been said, by analysing the policy, planning and prestige of the Lithuanian language in the context of European languages, it is claimed that legal regulation of the Lithuanian language is sufficient so that society could access any information in its national language. However, the impact of other languages is unavoidable living in a global world. Thus, apart from legal regulation, it is important to appropriately develop language policy and planning, and raise its prestige, which largely depends on society's attitude to the language itself and its significance in life. As well as this, a state must take care of this by providing opportunities and conditions for society to feel the necessity and importance of its language to preserve national identity. In the context of EU policy, though it regulates a national language of each member state as a very significant aspect, numerous legal acts are created to promote and develop bilingualism. In addition, there are opinions that such multilingualism is economically useless. Apart from these challenges, Lithuanian language policy and prestige are threatened with problems due to changes in education language policy, digitalization of Lithuanian, transforming of publications and other resources into electronic space, works of using the Lithuanian language in electronic space. However, one can see the benefits of Baltic centres arranged in all over the world, which develop and publicize not only the language itself but also undertake scientific research with other countries.

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MODELING THE PERCEPTION OF PUBLIC SAFETY

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Abstract. *Studies related to employment expectations after a change in the political regime show a prevalence contrary to pro-government policies. The objective of this work has been to explore the structure of categories focused on expectations towards governments, entrepreneurship and training reported in the literature. A documentary study was carried out with information sources indexed to international repositories, considering the keywords of model, employment and expectations, as well as their publication in the period from 2010 to 2021. A spurious relationship was observed between the informative extracts and the categories and between the latter, but also a trend towards the structure of the relationship between training and employment expectations, excluding the expectations of employment policies, which suggests the extension of the same to a category that the literature identifies as income expectations and price inflation.*

Keywords: *Specifications, model, culture, management, mediation determinants.*

Introduction

Until May 2021, the pandemic has claimed the lives of three million, although under-records are recognized for asymptomatic cases that could reach up to six million deaths associated with Covid-19 globally (WHO, 2021). This same case is that of Mexico, the authorities recognize 230 thousand, but the excess mortality from atypical pneumonia reaches the figure of 600 thousand cases (PAHO, 2021). In this scenario, the mitigation strategy has consisted of social distancing and confinement, emerging the perception of public safety as a central issue on the public agenda (OECD, 2020). It is estimated that violence against women has increased, as well as robberies, extortion and fraud (INEGI, 2020). In this way, security expectations have increased the asymmetries between the rulers and the governed with respect to the health crisis.

The objective of this work is to establish a model to explain the incidence of the work culture in the management of the organization. Based on a review of the theoretical, conceptual and empirical frameworks, logical routes are encouraged for the administration to predict demands that exceed resources and optimization (García et al., 2019).

Are there significant differences between the safety reported in the literature with respect to the observations made in the present work?

The premise that guides this research refers to the fact that the strategy of confinement and social distancing has generated expectations of insecurity centered on the pandemic as a scene of crimes of the common and federal jurisdiction (Aldana, 2018). In the process of confinement and social distancing, the differences between the parties involved are exacerbated (Arteaga, 2020). The spiral of violence begins with overcrowding, which exacerbates the asymmetries between the actors. Such discrepancies generate expectations of trust in the authorities. The need for social protection coupled with the media diffusion of the phenomenon increases those expectations, but very soon citizens generate despair when they observe the increase in infections, diseases and deaths related to the health crisis. The spiral reaches its peak with the convergence of long-awaited protection and learned helplessness. This civil dilemma before its authorities leads to a detonating phase of distrust in the government.

Literature review

Theory of perception of security

Organizational culture is understood as a process of dependency relationships between external variables with respect to the internal variables of the organization. This is a scheme in which technology, structure, values, norms and needs determine the motivational variables (affiliation, power, utility) and these in turn affect the resulting variables: leadership, management, entrepreneurship, innovation, productivity, satisfaction, turnover, absenteeism, accidents, adaptation, innovation, reputation- (García, 2004). In this process, the theory argues that workplace culture is the consistent determining values and standards of variables through mediating and moderating variables (Sales et al., 2016).

Moderator variables are those that reduce or increase the negative or positive effect of external variables for the organization (Juárez, 2017). This is the case of knowledge, while lower values when autocratic affect the commitment of workers, or increase the influence of democratic values when they have an impact on cooperation between employees (Anicijevic, 2013).

Mediating variables are those that transfer the effects of values and rules only on consequent variables. This is the case of attitudes and intentions that not only link norms and values with behaviors, but also give a cultural sense. That is, autocratic behavior when linked to the values of obedience and conformity are mediated by unilateral attitudes (Carreón et al., 2017).

Therefore, the theory of organizational culture explains variable scenarios of autocratic or democratic values and norms (García, 2006). The work culture involves indicators that correspond to the characteristics of the consequent variables (García, 2016a). In this sense, the management culture indicated by self-efficacy, hope, resilience and optimism implies a values and autocratic process of emerging leadership and, therefore, a management specialist (Vázquez et al., 2016). In the opposite case, the absence of leadership and management is determined by depersonalization, exhaustion or frustration in relation to unilateral tasks, objectives and goals (Carreón et al., 2017). Therefore, the theory of work culture explains the emergence of management only if the norms and values indicate an autocratic process from which decisions and strategies are focused on a specialized management leader (Quintero et al., 2016).

However, organizational management is more specific than those explained by the theory of the work culture process. As management is specific, the work culture, values and norms must be more specific to be linked to the objectives and goals of management.

Studies of the perception of security

In general terms, human capital are paradigms from which knowledge networks acquire a sense of training, assimilation, technology, detachment, motivation and social mobility (García, 2019). This is the instrument of rational choice of human capital, it is limited to a generalized educational system where the individual generates their own opportunities and develops skills and knowledge in terms of the usefulness and benefit of their decisions (Acar and Acar, 2014). In this sense, knowledge networks explode human capital to give their legitimacy and transparency to discuss and agree on the decisions that will benefit an academic, scientific and technological group or community (García et al., 2014).

The competition and cooperation involved in the formation of human capital determine the knowledge networks, since it is these that outline the strategies for balancing demands and resources (García, 2017a). Once the innovations are established, knowledge networks determine the symbols, meanings, and forms relevant to collaboration and conflict resolution within groups. Innovations such as smart systems and nurturing technological change organizations must adjust their entrepreneurial capabilities to new knowledge (Saansongu and Ngutor, 2012). The opportunities that arise from the dynamics of innovative networks will shape the development of skills and knowledge. It is a process of value creation of an individual, group, collaborative and innovative organization (García, 2007). Although human capital highlights the importance of individual decisions regarding innovation groups, the management culture goes beyond this synergy, since it represents a balance between the values of the company and the capacity of the leader (García, 2016). Therefore, the specification of a model for the study of knowledge management culture through collaborative networks explains such complexity (Pérez et al., 2018).

Organizational management, unlike work culture, is a specific process, since it involves definable, measurable and comparable objectives and goals (Martínez, 2018). In this sense, organizational management refers to a process of indicators linked to the systematic monitoring and evaluation of processes, strategies and behaviors (Arellano, 2017). Under organizational management it is guided by innovative values and standards, it is a process of systematic and constant change, according to the contingencies of the environment, and therefore contrary to the vertical and unilateral structure of the autocratic culture where dependence on a leader (Cruz et al., 2016).

However, the organizational management resulting from the autocratic culture historically assumed different objectives and goals in the face of specific innovations and changes (Carreon, 2017). As organizational management intensifies and intensifies, the autocratic culture is minimized and gives way to a more participatory culture (García, 2017b). Consequently, organizational management is a competition on proposals and monitoring and evaluation (Hernández and Valencia, 2016).

It is due to these differences between cultures and managements that the theory of organizational management explains the advent of an innovation and a change in the interaction between unilateral power (decisions and vertical structures that produce obedience and conformity in the majority and influence), intentions change from minority innovations (Carreón, 2018b). That is, who make decisions are restricted to relationships of power and influence as the objectives and goals are more specific, but if both are not changed to achieve success, then it is an autocratic culture (Robles et al., 2016). Therefore, transformational leadership is associated with variables related to the processes of influence instead of power, since the motivation for effectiveness, satisfaction and effort signify traits of joint management

between the leader and followers (Mendoza et al., 2016). Or, when communication, cohesion and support negatively correlate with attrition, depersonalization and dissatisfaction, but positively affect commitment, then we are witnessing a scenario in which the autocratic culture of the majorities interacts with minority participation (Carreón, 2018a). Organizational management theory explains the advent of the relationship between power relations, leaders who decide on the behavior of followers and influence, talent relationships, and knowledge generation opportunities.

From both theories, work culture and organizational management, you can specify consistent explanatory variable logical paths.

Model of the perception of security

Unlike the study of culture and workforce management, where fatalistic or optimistic scenarios are predicted on the basis of correlations between external variables with respect to internal variables to the organization, the specification of a model includes variables. For its systematic study it is possible to infer paths of dependency relationships (Mejía, 2016). The specification of the model is a review of the dependency relationships established in the studies that predict a process, strategy or behavior. The explanatory variables are assumed to predict the variables to form a logical system known as nomological network paths (Mendoza, 2017). In this sense, the paths of dependency relationships explain the nomological networks established based on a literature review for a period of time (García et al., 2016).

However, the specification of a model to be based on a sufficient number of studies on a process, strategy or behavior is a preponderant path that studies have not always demonstrated (Quintero, 2017). Therefore, it is necessary to apply dependency relationships that have been established not logically or empirically, creativity or intuition apply the relationships as feasible between the revised variables or variables are not applied conceptualized and weighted by the state of knowledge.

In the case of relationships that are not established in the literature, inferring from studies in which the variables are conceptualized and / or weighted in order to account for other similar or different processes, strategies or behaviors, it is possible that the intention to explain (Siche, 2020). Finally, in the case of the variables used in the studies of a process, strategy or organizational behavior, it is possible to infer from the correlations between indicators.

The specification of a model is made from 1) include empirical relationships demonstrated by the literature reviewed and 2) propose that the variables and relationships are not established by the state of knowledge (Wang et al., 2019). In this sense, studies of culture and labor management have shown that values and norms are external to the relations of power and influence in the variables of an organization.

However, the norms and values when interacting with the contingencies of the environment, the association with the processing of the available information known as beliefs and perceptions (Omotayo and Adenike, 2013). Therefore, the variables or external determinants would be, values, norms, beliefs and perceptions that explain the consequent variables, such as; entrepreneurship, innovation, satisfaction, productivity, competitiveness and counteracting variables such as turnover, absenteeism, dissatisfaction, lack of productivity, compliance or obedience.

However, when the variables determining indicators of the general processes that will affect the specific variables that must be mediated or moderated by variables such as attitudes, skills, opportunity, intent, knowledge or emotions (Rincón, 2018). Mediators and moderates do not as variables allow you to specify and intensify the effect of key variables on outcome

variables. Therefore, the knowledge management culture model includes six explanatory paths of hypotheses, logical relationships between variables that determine and manage motivation, attitude, intention, skills and mediated knowledge (Luiselli, 2020). These are studies on traditional styles and transformational leadership explaining the difference between external demands and resources for the tunable talent leader, but reducing participation to a function of expectation.

Studies on knowledge networks as a result of the interaction between market demands and the optimization of resources based on information from possible scenarios. These are studies of opportunities and capabilities as a result of a participatory and competitive culture, since each opportunity corresponds to a skill (Lima et al., 2020). In this research, the effects of the surrounding information regarding culture and management are explained by the interaction of the determining variables with leadership styles, opportunities, capabilities, goals and objectives. The plausible scenarios proposed by the administration are studied from the intentionality of its objectives and goals based on the information in the balance between demands and resources. The formation of knowledge networks is explained from the norms, values, beliefs and talents perceptions, as well as the motivation of the leaders, the training of skills, knowledge and attitudes on planned and systematic decisions.

Method

Six explanatory paths of knowledge management organizations are specified that tend to balance opportunities and capabilities through motivational leadership processes. A non - experimental and documentary study was carried out with a selection of sources indexed and registered in ISSN-DOI. From the dependency relationships theoretical, conceptual and empirical model frameworks between variables that determine - norms, values, beliefs and perceptions - with respect to the management of the specified knowledge. According to the model, the balance between power relations and influence between the leader and the followers is explained, including the mediating variables of the motivational order - an attitude, intention, ability and knowledge. In relation to the state of knowledge proposals and the literature reviewed, the relevance of the model compared to other more diverse and comprehensive proposals discussed (see Table 1).

Table 1 . Descriptive of the informative sources.

Source: Elaboration with data study.

	Model	job	Expectations
Dialnet	24	21	17
Latindex	21	18	15
Publindex	20	15	13
Redalyc	18	10	11
Scielo	16	8	8
Scopus	13	55	44
WoS	10	3	2

The Delphi technique was used in three rounds of sentence qualification that synthesized the findings reported by the literature regarding the models of job expectations: -1 for unfavorable or negative information, 0 = for unrelated information and +1 for positive or negative data. favorable (see Table 2).

Table 2. Variables operation
Source: Elaboration with data study.

	Concept	Indicator	Weighing	Interpretation
Model	It refers to a representation of the relationships between indicators with respect to latent phenomena.	Data on the specification, testing or extension of proposals in a period determined by the researcher and based on demonstrable and comparable objectives.	-1 for unfavorable or negative information, 0 = for unlinked information and +1 for positive or favorable data	High scores refer to a specific model based on theoretical discussions and empirical evidence.
job	It refers to a system of demands and capacities in a period determined by the researcher and based on observable indicators such as search, hiring, performance, training, training, accidents and illnesses, accessions and treatments, rewards, sanctions, dismissals and rehiring. .	Data referring to employment indicators, as well as other sources of observation, processing and interpretation of figures related to the intervention or not of the State in the generation of the phenomenon.	-1 for unfavorable or negative information, 0 = for unlinked information and +1 for positive or favorable data	High scores imply a public agenda focused on the discussion of the problem and the scope of the proposal and the alternatives for reflection and eventual solutions in the short, medium and long term.
Expectations	It refers to the wishes and hopes of permanence or change in a remuneration and benefits system under some contract or informal agreement between the parties involved.	Accessible data in studies of organizations dedicated to counting and data processing and that refer to the aforementioned concept.	-1 for unfavorable or negative information, 0 = for unlinked information and +1 for positive or favorable data	High scores refer to a persuasive system in which emotions are managed and managed.

The information was processed in the qualitative data analysis package version 4.0 considering the non-parametric distribution of data such as mean, deviation, bias, skewness, kurtosis and chi square.

Results

Table 3 shows the values that indicate the non-parametric distribution of the experts' ratings regarding the categories and extracts of bullying reported in the consulted literature, observing a trend towards spurious but systematic relationships from the first round of evaluation.

Table 3. Descriptive data information
Source: Elaboration with data study.

E	M	S	W	K	A	C1	C2	C3
R1								
e1	803	101	134	145	132	X2 = 23.43 (10 df) p <.05)		
e2	921	109	107	108	142			
e3	863	108	176	165	167			
e4	841	176	108	135	108		X2 = 12, 26 (14 df) p <. 05)	
e5	805	154	146	165	156			X2 = 17,21 (10 df) p <. 05)
R2								
e1	861	189	143	107	146			
e2	804	109	136	165	121			
e3	852	165	108	137	145		X2 = 16,34 (19 df) p <. 05)	
e4	761	132	160	132	187			
e5	873	107	137	180	108			X2 = 12,4 4 (15 df) p <. 05)
R3								
e1	767	145	146	175	106			
e2	856	164	196	145	154	X2 = 14.08 (12 df) p <. 05)		
e3	796	180	124	158	146			
e4	845	103	146	103	137		X2 = 16.07 (16 df) p <. 05)	
e5	807	154	187	142	152			

E = Abstract, R = Round, M = Mean, S = Standard deviation, W = Oscillation, K = Kurtosis, A = Asymmetry, C = Category: C1 = Expectations towards employment policies, C2 = Expectations towards entrepreneurial skills, C3 = Expectations towards job training

It is possible to observe a concentration established from the first round and systematic in the second and third rounds with respect to the differences between the categories and the synthetic extracts of the findings reported in the literature. That is, the expert judges who rated this information seem to coincide in terms of expectations towards government, entrepreneurship, and training. This suggests that all three categories are part of a labor governance between the parties involved.

In order to observe the structure of trajectories and relationships between extracts and categories, both established by the qualifications of expert judges on the issues, a structural network was estimated (see Figure 1).

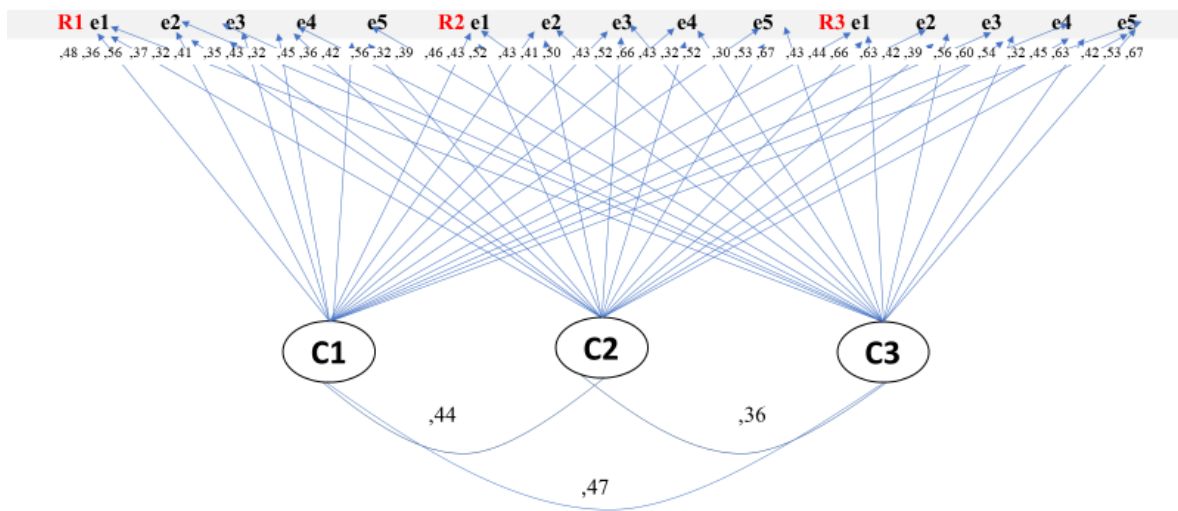


Figure 1. Exploratory category structure
Source: Elaboration with data study.

E = Abstract, R = Round, C = Category: C1 = Expectations towards employment policies, C2 = Expectations towards entrepreneurial skills, C3 = Expectations towards job training

A prevalence of relations tending to zero is observed that suppose the independence of the categories and the antecedent and the consequent relations between them. It is also appreciated that the expectations of the employment policies do not imply expectations of entrepreneurship, but they seem to be related to the expectations of training. In other words, expert judges seem to suggest an employment management and administration system focused on entrepreneurship and training rather than on state subsidies, such as unemployment insurance or support for vulnerable sectors.

Discussion

The contribution of this work to the state of knowledge is the specification of the relationships and logical routes between variable cultures that determine knowledge management through the intervening variables.

However, the possible relationships between the variables included in the model require an additional explanation that can be compared with what has been established. In this sense, the debate on the direct determination of the management of norms, values, beliefs and perceptions contrasts with the specification of this model, as mediating variables can be erased and autocratic organizations diversify into participatory organizations.

Therefore, the specification of the model explains the culture and organizational management balanced between its demands and resources, opportunities and capabilities, power and influence.

In contexts of uncertainty, scarcity and risk, organizations tend to be more participatory and require more diverse, specific and innovative cultural and management models.

However, organizations, even if their environment is uncertain, have based their emergence and persistence on the balance between their processes. The objectives and goals of organizations not only reflect their culture, but also base their human essence, since leaders and followers are the central elements of their intentions and products.

The literature that studies the phenomenon of job expectations suggests that these are built before authoritarian governments or one-person democracies rather than in parliamentary and neoliberal political systems. In the present work, it has been observed that before a left-wing political regime, the judges surveyed seem to observe a prevalence of full employment based on entrepreneurship, microfinance and training for the labor market or the consolidation of micro-enterprises rather than the subsidy for income. job. or the guarantee of benefits based on employment insurance or salary positioning against inflation.

Conclusion

The objective of this work has been to explore the categorical structure of informative extracts or synthesis of findings reported in the literature regarding categories of analysis related to expectations towards governments, entrepreneurship and training, but the research design limited the findings to the research scenario, suggesting the extension of the work to other samples of actors involved in the process of management and administration of full employment, challenges and challenges in the face of the demands and contingencies of the local market.

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MODELING THE IMPLEMENTATION OF GREEN LOGISTICS PRINCIPLES: THEORETICAL ASPECT

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Abstract. During the past few decades, there has been a growing interest and need for logistics businesses to become more environmentally friendly in their operations, products and services. Summarizing scientific literature analysis, it could be stated, that Green logistics is defined as a good management practice that promotes the preservation of the environment and the application of green practices to mitigate the environmental impact of logistics operations by reducing CO₂ emissions, noise, conserving natural resources, and so on. The aim of the article is to present a model for implementing green logistics principles. Research methodology includes comparative analysis and synthesis of scientific literature, modelling.

The authors of the paper present theoretical model of green logistics principles implementation that takes into account of the stakeholders for green logistics principles application, green logistics initiatives and practices, stages of green logistics implementation, and finally implementing benefits. The application of the principles of green logistics in logistics companies is not only in the interests of the environment itself, but the need comes from the society, suppliers, national government and politicians, business partners and investors. Theoretical model depicts green logistics activities such as green transport, green packaging, green warehousing, green logistics data management, waste management, which represent a wide range of practices of application of green logistics principles. A company that has implemented green logistics principles would clearly benefit and improve its activity by improving the company's image, obtaining a financial return on investment, meeting government environmental requirements, increasing supply chain efficiency, reducing risk, improving investor and partner relations, and suppliers and consumers and increase their competitiveness in the market.

Keywords: Green logistics, green transportation, green warehousing, implementation stages, benefits, green logistics principles.

Introduction

Logistics is one of the most important and significant sectors for the Lithuanian economy. According to the contribution of the transport and storage sector to the Lithuanian budget, which accounts for about 13% of the country's gross domestic product (GDP), half of this figure falls on road freight transport (Verslo žinios, 2021). According to data for the 2020 provided by the Lithuanian statistical department, revenues of companies in the transport and storage services sector rose systematically: in 2018 compared to 2017 a revenue grew by 18%, and in 2019 compared to 2018 a growth was 12.8%. But in 2020 revenues fell by 6%, however, recent years were not common in Lithuania and worldwide, due to the COVID-19 pandemic, therefore, business sector has suffered, but still remains one of the main economy drivers. Although sales revenues for services of transport and storage companies have fallen in recent years, freight turnover has not been affected so much. Based on the preliminary data for the 2020, freight turnover in all modes of transport in Lithuania has increased by 2.4% in recent years. This leads

to the conclusion that flows in the transport and storage sectors are increasing, while the logistics potential is still untapped and is growing steadily. At the same time, this is thought-provoking, because logistics is already one of the most polluting sectors and poses pressing environmental problems that need to be addressed. One of the solutions proposed by the scientific community is a widespread application of the principles of green logistics in the logistics sector, which are essentially linked to the concept of sustainability, ecological friendliness and reducing negative environmental impacts (Radavičiūtė, Jarašūnienė, 2019).

According to Kumar (2015), green logistics can be defined as a sustainable production and distribution of goods, taking into account environmental and social factors. Hutomo et al. (2018) extend that green logistics is an economic activity aimed at serving customers and social development by linking suppliers and customers, overcoming space and time barriers to the efficient and rapid movement of goods and services. Often in scientific discussions (Wang et al., 2019; Golroudbary et al., 2019; Dukkanci et al., 2019; Khan et al., 2019, Rakhmangulov et al., 2018) the expression of green logistics principles is based on the integration of social, economic, and environmental dimensions in logistics. However, the implementation of the principles of green logistics in enterprises is difficult and complicated enough. The authors C. Malesios, P. K. Dey and F. B. Abdelaziz (2018), argue that the main obstacle to the application of green logistics principles in enterprises is that the tools necessary are generally considered as expensive, even if they emphasize the benefits of cost reduction. In addition, some companies do not even know how environmental measures work and that application of green logistics principles can improve company's efficiency, reduce costs, risks and create new opportunities for the company. The obstacles to the implementation of green logistics were also described in their study by B. Roxas, N Ashill and D. Chadee (2017). The authors stated that small and medium-sized enterprises in particular often lack the resources, finances, time, and knowledge to implement measures for environment improvement. The authors assume that it is easier for larger companies to invest in corporate social responsibility and its long-term benefits. Active debate and growing interest in the principles of green logistics have led to a broader theoretical analysis of the principles of green logistics and the factors that promote and hinder their implementation, and to the development of a model that will facilitate the implementation of green logistics principles by companies in the business.

The aim of the article is to present a model for implementing green logistics principles. **Research methodology** includes comparative analysis and synthesis of scientific literature, modelling.

The first part of this article reveals the concept of green logistics, presents general characteristics. The second part identifies and comments more broadly on the principles of green logistics, the impact of their application and the factors that encourage and hinder implementation. The last part presents a theoretical model and conclusions of the implementation of the principles of green logistics developed by the authors.

Concept and general characteristics of green logistics

It is widely acknowledged that logistic activities not only bring appropriate benefits, but also have an unavoidable impact on the environment. One of the logistic processes that have a significant impact on the environment is a transportation, where carbon dioxide (CO₂) and other greenhouse gases from cars, aircraft and cargo ships are one of the main effects of global warming. In addition, logistic activities contribute significantly to water and air pollution and increase waste disposal and fuel consumption. In order to minimise the seriousness of these problems, green logistics is applied, the concept of which has been developed to describe

logistics systems using state-of-the-art equipment and technology to reduce environmental damage by increasing the use of assets. According to the authors A.F.R. Lew, B.C. Chew and S.R. Hamid (2017), green logistics is a concept of sustainable development that can solve environmental problems while maintaining the effective operation of the organization and the economy of the country, in the processes of exchange of goods and services.

According to the author P.K. Patra (2018), green logistics can be defined as a whole set of efforts by organizations to measure and reduce the environmental impact of logistics activities. The author distinguishes that one of the main reasons why companies choose greenness is to increase the competitive advantage. Other reasons may include: a striving to control pollution, saving costs in the long term. Analysing the scientific literature, it was found that green logistics is defined differently by authors. The authors Su-Young Kwak, Woo-Sung Cho et al. (2020), argue that green logistics is the logistics that takes into account logistic impact on the transport and environmental sectors in a joint action process. In the narrow sense, green logistics refers to activities related to the reduction and management of pollutants, for example, reduction of air pollution and emissions in freight transport. However, in a broad sense, the concept of green logistics covers not only the environment affected by logistics, but also all logistics processes. The author K. Zowada (2018) describes green logistics as a concept of material flow management, which is accompanied by information flow from the very beginning of the organization and thus contributes to the achievement of the economic and ecological goals set. Meanwhile, T. Athanasios (2018) identified green logistics as an environmentally responsible system involving the implementation of "preliminary" logistics processes such as: acquisition of raw materials, production, packaging and distribution of goods and reverse logistics procedures – reverse logistics, packaging recycling. Having analysed the authors' definitions of green logistics, it can be stated that green logistics is a form of logistics, implementation of which focuses on reducing the negative environmental impact of logistics in all logistic processes.

The author X. Wang (2018) states that green logistics is a planning, organizing, coordinating, and controlling by assessing all logistic operations to achieve customer satisfaction. X. Wang (2018), K. Zowada (2018), T. Athanasios (2018) and others distinguish four areas of activity in which the principles of green logistics are actively expressed:

1. Designing of green logistics products – an environmental impact of most products is determined by the product designer/ designer. Environmental impact can be general and specific. General is a common standard, e.g., a lower or higher use of energy resources in production. Specific is a selection of special active substances. From the point of view of the production company, good design of organic products or the project itself can make sufficient use of current resources, such as the use of economical and environmentally friendly raw materials, reasonable use of production equipment, consideration of the use of packaging materials and circulation of product development and processing, etc.
2. Green distribution - the green logistics system of modern enterprises should control pollution during logistical distribution, namely, a scheme to reduce environmental pollution should be adapted as far as possible to the planning and adoption of the logistical distribution system and operation plan. For example, to avoid traffic jams, save fuel and reduce emissions of hazardous gases, freight cars with a lower maximum load should be used, and smaller loads should be consolidated into one or deliveries should be done at night. As an option, companies can also cooperate with third-party logistics companies to reduce distribution costs and improve logistics efficiency, service level. Thus, it is necessary to optimise routes, which helps to exploit fuel and reduce mileage, to exploit the capacity of the container, to

evaluate the use of alternative fuels, for example, natural gas, instead of gasoline and diesel, this could reduce transportation costs, reduce greenhouse effect in the future.

3. Green warehouses - warehousing and transport are two major and important logistics chains, and with reasonable planning of warehouse management, shortening the warehousing time of goods and improving cargo turnover, the company is an effective tool to improve logistics efficiency and customer service levels. In addition, taking into account waste reduction in the warehouse, eco warehousing, as well as cyclical use of containers and pallets, application of the latest loading methods and safety stock application in conjunction with containers and other equipment, active processing of long-term non-living stock, and other content not only help to reduce warehouse costs, but also reduce the impact on the environment.
4. Green packaging - stimulates reduction of layers of packaging, promotes recycling. In general terms, the tare used should be sustainable. Sustainability should consist of operational and technical level covering the design and assessment of sustainable containers, structures, etc.

According to X. Wang (2018), execution of logistics processes by providing "green" criteria will have a positive impact on all processes of logistics activities. The author distinguished a decline in logistics costs and increasing customer satisfaction with services. Meanwhile, according to the author P. K. Patra (2018), there are four fundamental benefits of why it is important for organizations to practice green logistics:

- Reducing carbon dioxide emissions;
- Cost reduction in the long-term prospect, because in the initial prospect - green solutions also require significant investment;
- Control of air pollution and noise, environmental pollution;
- Business diversification, management of additional directions (reverse logistics).

To achieve these benefits, P. K. Patra (2018) depicted the flow of green logistics processes (see Fig.1)

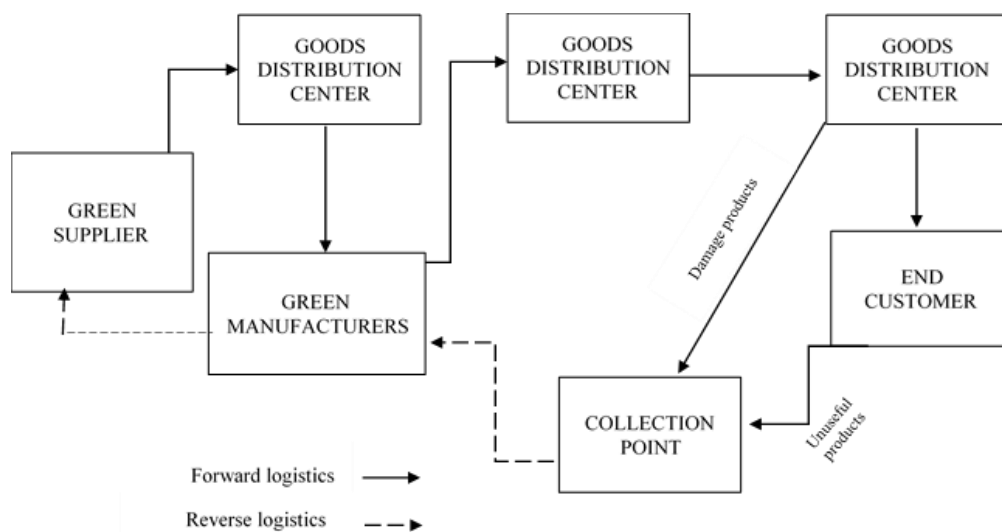


Fig.1 Flow of green logistic processes

(compiled by the authors, based on P.K. Patra 2018)

The author P. K. Patra (2018), while describing the flow of green logistics processes he formed, distinguishes that this process is formed to make green logistics efficient. The author suggests that more intermediate distribution centres (after the supplier and manufacturer stages) should be provided in the flow of green logistics processes, as this would reduce the likelihood of goods damage or release of spoilage to trade, given that in green logistics packaging is of greater importance, due to its greening. Such methodology would help green logistics to increase its efficiency and promote sustainability at the same time.

Analysing broader benefits of green logistics processes for the overall organization, P. Trivellas, G. Malindretos and P. Reklitis (2020) in their research described the impact of green logistics on the sustainable development of the organisation (see Fig.2).

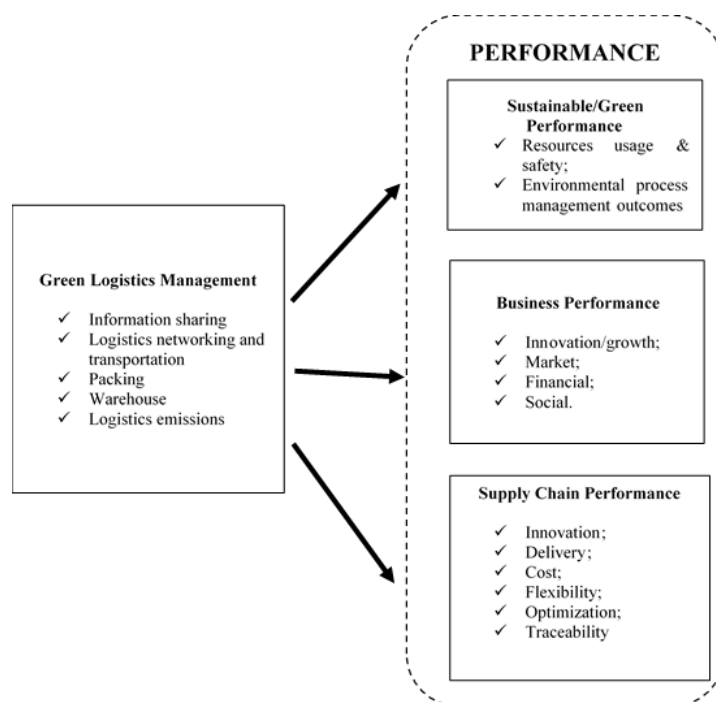


Fig.2. The concept of the benefits of the principles of green logistics for the organization
(compiled by the authors on the basis of P. Trivellas G. Malindretos and P. Reklitis 2020)

Based on figure 2, the authors point out that management of logistics information network and logistics processes in the fields of transportation, warehousing and packaging are the main indices that determine the benefits of green logistics for the development of organisation, both in promoting sustainability and in the overall development of business and supply chain management.

Thus, it can be concluded that green logistics are logistic processes that help organisations to reduce their costs and increase their profitability, and also to maintain a positive environmental impact and improve sustainability of the company's activities. As environmental concerns grow, companies need to take greater care of logistics activities related to climate change, air pollution and accidents, by adapting the concept of green logistics, fundamentally transforming organisation's objectives in enterprises, which not only would help to achieve successful business management results but also minimise negative environmental impacts.

Principles of green logistics and their implementation in organizations

By analysing directly applicable green logistics practices, the scientific literature foresees the logistic processes and activities, adaptation of which in organizations helps to reduce negative environmental impact of logistic processes.

Compared to traditional logistics, the field of green logistics defines more objectives, more specifically speaks about the economic and environmental objectives that organisation should set for its implementation and which determine the process of management of material and information flows. The authors K. Zowada and K. Nistrój (2019) describe economic objectives as a reduction in the cost of the processes implemented due to increased cost efficiency and improved image as well as competitive advantage. The authors identify as ecological objectives the reduction of the burden of generally understood logistic processes on the natural environment through less pollution and a more rational use of fewer resources.

Although green logistics has been studied for more than 25 years, the importance of green logistics in organisations is still poorly recognised. In many cases, the reason for this is that the managers of the companies lack the knowledge of the assumptions of the concept itself and the methods of its implementation. Thus, in order to facilitate the application of environmentally friendly solutions in practice, the literature on this topic identifies four stages in the implementation of green logistics in business operations (Zowada, Nistrój, 2019) (see Fig.3).

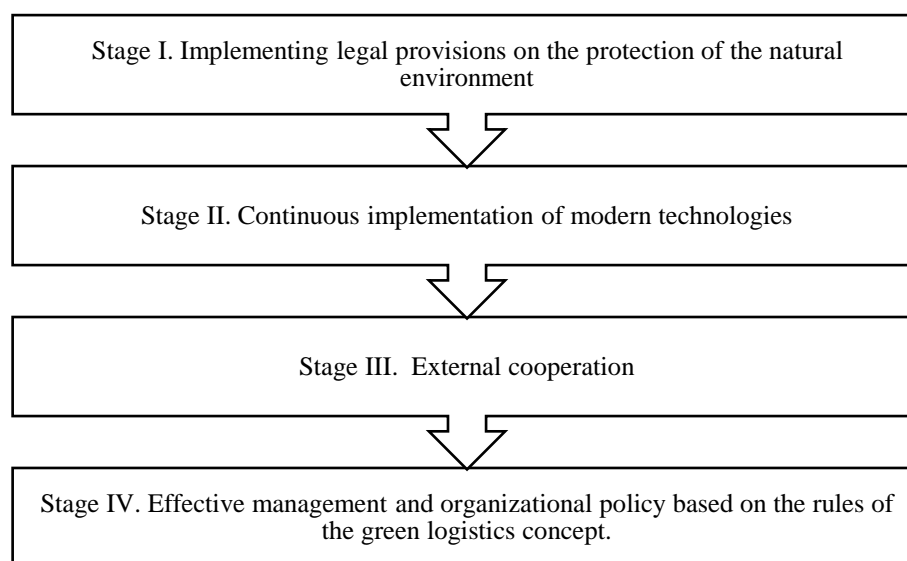


Fig.3. Stages of implementation of green logistics in the organization
(compiled by the authors according to K. Zowada, K. Nistrój, 2019)

The authors K. Zowada and K. Nistrój (2019) describe and distinguish the stages of the implementation of green logistics in organisation in such a way that during the first stage, organisations implement environmental provisions laid down by the management of the country in which they operate or the organization's management. In the second step, the actions are carried out related to the introduction of modern technologies in the organization, which increase the "degree of greening". These are, for example, IT solutions that allow better use of the company's transport fleet, more efficient management of warehouse premises, etc. These solutions include modern vehicles as well as the purchase of less polluting cars that meet the

highest standards. Thus, it should be noted that the development of green logistics in business operations is impossible without investment in modern technologies.

The third step is defined by the provision that a high level of greening of the enterprise is unattainable without cooperation with external entities. In practice, many logistics processes are carried out involving another participant in the supply/distribution chain. It is argued that the implementation of "green" logistics is only insufficient at the company level, as there is a need to review the processes of the entire supply chain – greening of raw materials, sustainable packaging, efficient warehousing, etc. The last step is performed when the organization's management is based on the principles of green logistics. (Zowada, Niestrój, 2019)

Company's policies supported by the principles of green logistics are often linked to the company's standards of quality management under implementation. The main ones are:

- ISO 9000 series – "Quality management standards of ISO 9000 series are internationally recognised standards whose purpose is to ensure that the products (results of activities or processes) provided to consumers meet certain quality requirements. To achieve this objective, it is necessary to establish and document a quality management system based on standards. The number of consumers of these standards are constantly increasing in both the private and public sectors" (Nakrošis, Černiūtė, 2010, p. 67);
- ISO 14001 is an international standard for environmental management based on the concept that efficiency of environmental protection can be achieved by systematically identifying and managing relevant aspects, taking into account the needs of interested parties (customers, public, public authorities, etc.) to ensure a sustainable development of the organization (Ciravegna Martins da Fonseca, 2013);
- OHSAS 18001 - occupational safety and health management standard. In order to facilitate integration of quality, environmental and occupational safety and health management systems in organisations, the standard has been designed to comply with ISO 9000 (quality) and ISO 14001 (environmental) management system standards (Ciravegna Martins da Fonseca, 2013);

The author K. Zowada (2018), based on global literature, distinguished 10 the most applicable principles of green logistics in an organization:

- Use of recyclable packaging;
- Use of alternative fuels;
- Improving fleet facilities for greening;
- Route optimization;
- Use of intermodal transport;
- „Eco-driving“;
- Upgrading warehouse machinery and technologies for efficient use of energy;
- Optimisation of warehouse area;
- Reduction of paper documents (digitisation);
- Adaptation of "green" criteria while choosing suppliers / business partners.

Adaptation and management of green logistics is an economic activity aimed at serving customers and carrying out social development by linking suppliers and customers, overcoming space and time barriers to the efficient and rapid movement of goods and services. Green logistics reduces environmental damage of logistics processes and thus makes full use of available resources in enterprise practice (Hutomo, Mohd Saudi, Sinaga, 2018).

The author N. Karia (2016) presented the benefits of green logistics and the impact it has on organisations (see Table 1).

Table 1. Impact of the principles of green logistics
(Compiled by the authors, based on Karia, 2016)

Areas of green logistics	Impact of green logistics principles
Green packaging	Reduces negative environmental impact, greenhouse effect; reduces layers of packaging used; Recyclable packaging; reduction of packaging costs due to materials used.
Green warehousing	Optimization and efficient exploitation of the place reduce the movement in the warehouse, increase the productivity of the enterprise by reducing costs and increasing profits. However, due to more sustainable technologies in warehouse, logistics services will be relatively more expensive.
Green transportation	Route optimization maximizes fuel consumption, reduces mileage, empty kilometres. In the future the use of alternative fuels (e.g., natural gas instead of gasoline or diesel) will help reduce transportation costs. In the field of transportation, it helps to reduce costs, increases competitiveness, increases speed/ reduces transportation time, reduces pollution, increases safety of workers.
Green logistics management system	The commitment of top managers to implement the environmental sustainability strategy and to involve all employees of the organisation strengthens staff's morale to practice and facilitate work and application of green logistics principles. Economic indicators are important in the development of the enterprise - this is the value of money, assets, debts, and investments. To improve these indicators, green logistics gives the opportunity to reduce costs associated with a sustainable environment, for example, reduction of energy consumption, minimization of waste, processing, environmental taxes. Environmental efficiency is measured in terms of energy savings and emissions of pollutants, reduction of waste reducing negative environmental impacts, e.g., sulphur dioxide concentration, nitrogen oxides concentration, greenhouse gas emissions and fossil fuel consumption.
Green logistics data collection and management	The organization implements information technology, transport or warehousing management systems, innovative management, use of electronic documents instead of paper.

The principles of green logistics include all attempts to measure and reduce negative environmental impact of logistics operations. Green packaging, transportation, warehousing, management system itself are among the most important processes in the logistics system portfolio. The main objective of green logistics practices is to avoid any activity that causes unnecessary carbon dioxide emissions, to look constantly for opportunities to reduce the environmental impact of your business, such as trying to use office stationery made of recycled materials, optimising fuel use, reducing waste, optimising routes, and applying sustainable distribution practices.

The implementation of green logistics in an organization is a complex of all logistics processes that are carried out in accordance with the principles of green logistics and thus achieve economic and ecological objectives of the organization, which increase the competitive advantage in the market. However, green logistics is diverse in its implementation process – businesses face not only the benefits of green logistics, but also certain obstacles. Organizations view green logistics positively only if the company's sustainability and greening indicators improve and costs decrease or remain the same (Mckinnon, Browne, Whiteing and Piecyk, 2015). The main factors of green logistics are optimization of logistics flows, improvement of the company's image, reduction of logistics costs, compliance with standards, customer

requirements, differentiation from competitors and development of alternative business directions (Gommel, Westerberg, 2016).

In general, customers and the need to satisfy customers are considered to be one of the main factors driving green logistics, but it is often noted that implementation of the principles lacks the real commitment of organizations (Colicchia, Marchet, Melacini and Perotti, 2013).

The authors A. Mckinnon and others (2015) define a number of key factors of logistics and supply chains sustainability encouragement. The main factors of green logistics are improving public relations, achieving a financial return on investment, meeting government requirements, increasing supply chain efficiency, reducing risk and improving relations with investors. Costs are considered to be both a driving force and an obstacle - a desire to be leaders in sustainable development, increasing energy and fuel costs, increasing competitive advantage and differentiation, complying with current or envisaged legislation, and relatively rising transport costs. These factors are both stimulating the development of green logistics, but also holding back.

H. Pålsson and O. Johansson (2016) distinguished four types of obstacles that interfere with the implementation of green logistics, i.e., cost and nuances of delivery (flexibility, time, quality). According to the authors, logistical barriers are information technology or lack of motivation, which are organisational barriers; conflicting national laws and regulations and the working environment are external barriers; and finally, lack of infrastructure, technical knowledge or commercial solutions are technical barriers. Other authors (K. Mathiyazhagan, K. Govindan, A. Noorulhaq and Y. Geng, 2013) as external barriers to the implementation of green logistics named legal regulations, poor obligations of suppliers and barriers of specific industry, and costs and lack of legitimacy as internal obstacles.

Thus, Table 2 presents the factors and obstacles to the implementation of green logistics, divided into internal and external factors covering five areas: cost, productivity, image, customers, competitors, and compliance with the rules.

Table 2. Factors promoting and hindering the implementation of green logistics

(compiled by the authors based on Gommel, Westerberg, 2016; Pålsson and Johansson, 2016; Mathiyazhagan et al., 2013; Sarmiento et al., 2018)

Green logistics	Internal / external	Area	Description
Promoting factors	Internal factors	Financial costs	Cost reduction, financial return on investments, decreasing fuel costs
		Efficiency	Sustainable development, optimised logistic flows, developing alternative business directions, increasing operational efficiency
	External factors	Image	Social responsibility, improving image of organisation
		Clients and users	Advantage enhancing competitiveness, meeting customer and consumer needs, improving investor relations
		Legislation	Compliance with legal acts and recommendations
Obstacles / hindering factors	Internal factors	Financial costs	Initial financial investments
		Efficiency	Technical capabilities, competence, information technology, lack of knowledge and experience, flexibility and quality assurance
	External factors	Image	-
		Clients and users	Disadvantages of communication and coordination, lack of public attention to ecology, specifics of industry
		Legislation	Differences in legal requirements between parties

H. Gommel, J. C. Westerberg (2016) discussed that based on the principles of green logistics, it would be possible to achieve industrial development in different sectors, while at the same time protecting the environment through innovation and technological change.

Literature analysis revealed that green logistics is a diverse concept due to the factors that stimulate implementation and interference. It can be concluded that logistics companies that are interested in green logistics and want to achieve higher earnings must innovate in their business culture by adopting new business models, collaborating with other companies, using non – traditional solutions to deliver services or develop new products. As stated by G. Pinčilingis (2018), first of all, it is important to assess the efficiency of the energy used, to distribute and rationalize properly logistics, and inevitably, together with the rationalisation of the company, to adopt innovations. In order to properly adapt the principles of green logistics, it is important to involve all employees in order to achieve communication with employees at different levels, this will improve the accuracy of the information transmitted, and the adaptation and improvement of new business models are possible across all employee chains. In the long term, the principles of green logistics will contribute to greater transparency, appropriate adaptation of the principles of sustainable development at environmental, economic, and social level, and it is essential that sustainability is integrated with the management of business risks and the diversification of business models.

Theoretical model of implementation of the principles of green logistics

Implementation of green logistics is a complex of actions that contribute to business development in line with the principles of sustainable development and reduce the environmental impact of logistics. Based on a systematic analysis of the scientific literature on the concept of green logistics and its characteristics, principles of green logistics, application areas, factors that stimulate and hinder implementation of the principles, the authors present a theoretical model for the implementation of green logistics principles in Figure 4.

According to the model presented in Figure 4, it can be stated that the application of the principles of green logistics in logistics companies is not only in the interests of the environment itself, but the need comes from the society, suppliers, national government and politicians, business partners and investors. Theoretical model depicts green logistics activities such as green transport, green packaging, green warehousing, green logistics data management, waste management, which represent a wide range of practices of application of green logistics principles. For the principles of green logistics to be implemented in business practice, it is essential to make policy decisions inside the companies and to set out a vision, strategic objectives related to sustainable development and environmental values. In addition, enterprises must constantly improve their use of information technologies, develop them in order to meet modern tendencies and increase the degree of "greening".

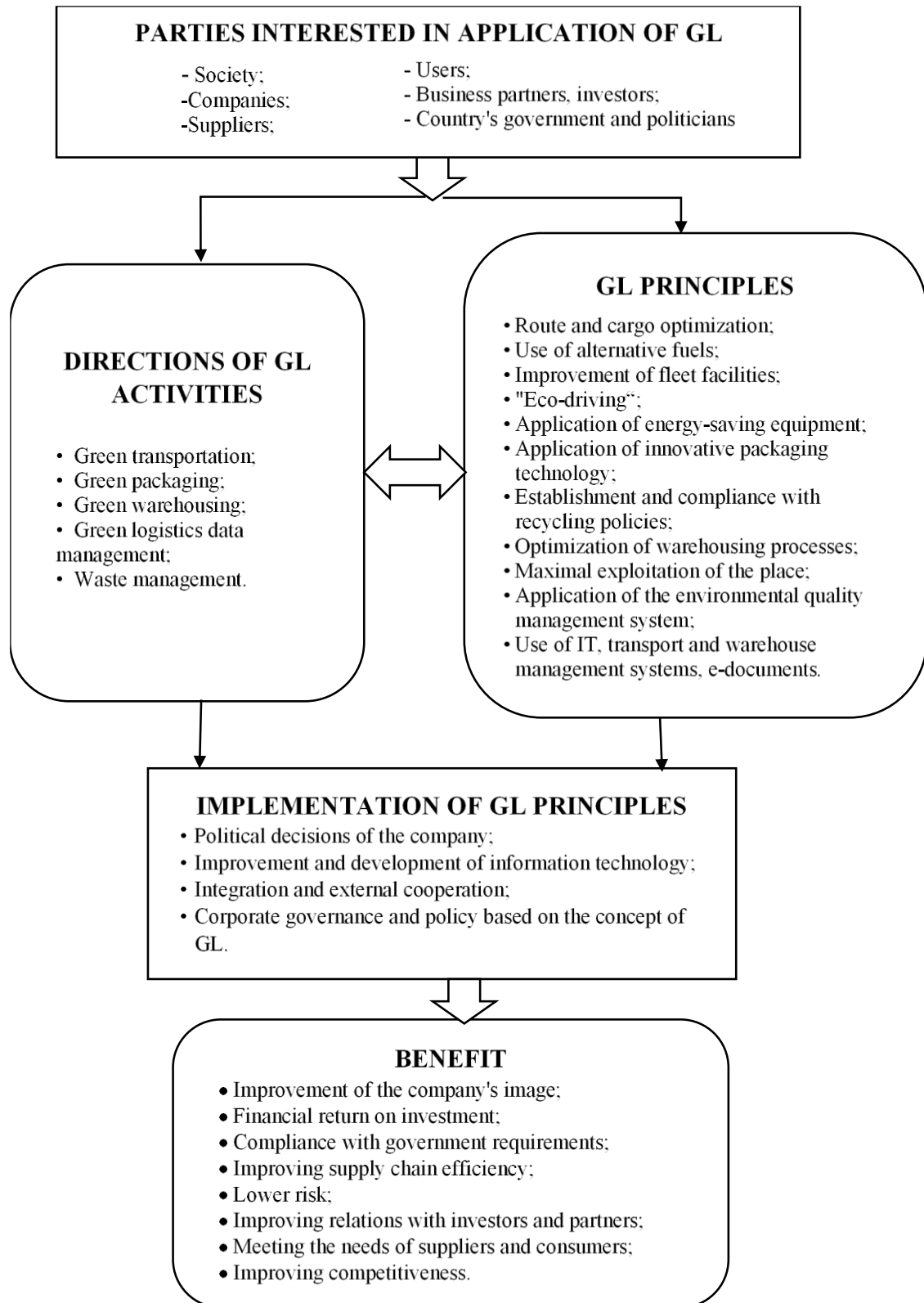


Fig.4 Theoretical model of implementation of the principles of green logistics
(compiled by the authors)

Comprehensive implementation of the principles of green logistics and a high level of coherence between organisations is not achievable without integration and cooperation with

external subjects relevant to the activities of logistics companies, i.e., participants of the entire supply chain. Finally, company's management and policies must be constantly based on the principles of green logistics and the increase of their expression. In the long-term prospect, monitoring and control of environmental and financial benefits is essential, in line with the principles of green logistics. In summary it can be stated that a company that has implemented green logistics principles would clearly benefit and improve its activity by improving the company's image, obtaining a financial return on investment, meeting government environmental requirements, increasing supply chain efficiency, reducing risk, improving investor and partner relations, and suppliers and consumers and increase their competitiveness in the market.

Conclusions

Reducing harmful effects on the environment is one of the major challenges in the world and the most important for sustainability today. In the logistics sector, environmental issues have become more severe due to the increase in logistics activities worldwide, including Lithuania. Statistics show a significant increase in both the revenue earned in the sector and the volume of goods transported. The main reason for this is that a growing economy led to a huge consumption of goods, and globalization led to mass flows of goods all around the world. This has led to the area of logistics being one of the most contributors to environmental pollution. One of the solutions to reduce environmental pollution is to apply actively the principles of green logistics in the field of logistics. Green logistics is associated with environmental friendliness and reduction of negative environmental impacts, as it emerged from the description of logistics systems that use state-of-the-art equipment and technologies to reduce environmental damage while conserving resources. In summary it can be stated that green logistics is defined as good management practices that promotes preservation of the environment and sustainable development practices in order to reduce the environmental impact of logistics operations, reducing CO₂ emissions, noise, conserving natural resources, etc.

Studies of the scientific literature have revealed that there are some internal and external obstacles to the implementation of green logistics principles, however, recognizing the benefits of applying green logistics principles can make a significant contribution to reducing environmental damage and making full use of resources available. The main factors of implementation of green logistics principles are improving public relations, achieving a financial return on investment, meeting government requirements, striving to increase supply chain efficiency, reducing risk, and improving relations with investors. Implementation of green logistics in enterprises is a complex of actions in logistics processes that are carried out in accordance with the principles of green logistics and thus achieve the economic and environmental objectives of the enterprise, which increase the competitive advantage in the market. Summing up the implementation of the principles of green logistics in logistics companies, it is worth noting that it is not only the companies themselves who are concerned about the environment, but the need comes from the public, suppliers, national government and politicians, business partners and investors. For the principles of green logistics to be implemented in business practice, it is essential to make political decisions inside the companies and to set out a vision, strategic objectives related to sustainable development and environmental values. In the long-term prospect, monitoring and control of environmental and financial benefits is essential, in line with the principles of green logistics.

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BENCHMARKING AS A TOOL FOR MANAGING INDUSTRIAL ENTERPRISES

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Abstract. *The theoretical bases of benchmarking are investigated in the article. Its main characteristics and components, as well as methods of application and types, in particular, internal, competitive, joint, process and strategic, are determined. A detailed analysis of each type and examples of practical application in the marketing activities of industrial enterprises, taking into account foreign experience. Emphasis is placed on the main problems of benchmarking in the marketing activities of domestic industrial enterprises and suggested ways to eliminate them.*

Keywords: *benchmarking, industrial enterprise, efficiency of marketing activity, types of benchmarking, marketing activity, management.*

Introduction

In today's economic environment of unstable external environment, in conditions of constant global competition, only those industrial enterprises that are able to constantly improve their characteristics and optimize all their internal capabilities have the ability to create and maintain competitive advantages. The ambiguous aspect of this problem has led to the emergence of new forms, methods and appropriate tools to achieve and form a competitive advantage of the enterprise. One of the most effective tools that allows the company to continuously increase productivity, improve the quality of its results, outperform competitors, is benchmarking technology. In practice, benchmarking is used as a kind of lever that can break the inefficient structure of the enterprise, the way of carrying out production activities, while focusing on the best results and experience of other enterprises. Unfortunately, the use of benchmarking in industrial enterprises of Ukraine is quite limited. Therefore, the problem of introducing the basic elements of benchmarking in the activities of industrial enterprises and determining its impact on the effectiveness of marketing activities, using foreign experience, is quite relevant today.

At the present stage of development of the market economy of Ukraine for most industrial enterprises the formation of an effective economic strategy for development and operation becomes a priority. To do this, it is necessary not only to create the necessary methodological tools for quantitative and qualitative assessment of the proposed economic strategy, but also to develop an appropriate mechanism for its implementation. In particular, it is worth focusing on benchmarking as one of the main tools. Therefore, the main task of the study is to determine the main features of benchmarking in the management of marketing activities of domestic

industrial enterprises, to analyze barriers to its use, as well as to develop practical recommendations for its implementation in practice.

Theoretical aspects of benchmarking

As practical experience shows, classical marketing, which is based on known components: Product, Price, Place, Promotion, is far from exhaustive, as it does not reflect the relationship of the processes of interaction of all actors in the market system. Recently, other areas of marketing activities (marketing interaction, strategic orientation of marketing, etc.) have appeared and began to be put into practice, one of the most effective and popular was and remains benchmarking, which appeared in the early 70's (from English benchmark - bench (level, height) and mark (mark)).

The application of benchmarking consists of four consecutive actions: understanding the details of their own business processes, analyzing the business processes of other companies, comparing the results of their processes with the results of the analyzed companies and the implementation of the necessary changes to reduce the gap.

There are currently a large number of definitions benchmarking, which necessitates their analysis. The most common is to define a concept that belongs to Robert Kemp: "Benchmarking is a search and the company's application of a practice that is a reference for this industry and its result is improvement activities ". Another, no less well-known, is the definition given by Michael Spendolini: "Benchmarking is a continuous systematic process of evaluating the products, services and production processes of organizations that are recognized as representing "best practice" in order to improve their own organization".

Well-known specialist in the field of strategic practice Gregory R. Reiter believes that "benchmarking is an activity by which a firm studies the "best" products and the marketing process that used by direct competitors and firms operating in other similar industries to identify possible ways for the firm to improve her own methods."

As for modern domestic sources, then the opinions of their authors on the concept of benchmarking somewhat diverge. Yes, some support the point view, according to which benchmarking is a product of the evolutionary development of the concept of competitiveness, which involves the development of improvement programs product quality. Others argue that benchmarking is an alternative method of strategic planning and analysis not from what has been achieved, but from to the achievements of competitors, ie the reference point in the development of strategic plans is not their own achievements, and the best practice of competitors. At the same time there is an opinion that benchmarking can be considered as research of technologies, technological processes and methods of organizing the production and sale of products at the best companies of partners and competitors in order to increase the efficiency of their own enterprise. We propose to consider benchmarking as a special tool to study the experience of the best market players, which has a positive effect on efficiency marketing activities of their own enterprise, for conditions for qualitative analysis and correct application of the obtained results [2].

In our opinion, the goals of benchmarking of the enterprise are the following provisions (fig. 1.1.) [1].

There are principles of implementation of the concept of benchmarking in the management of enterprises presented in fig. 1.2. Adherence to the principles of benchmarking is the basis for creating an effective and efficient economic strategy of the enterprise and provides a certain stage of implementation.

1. Information accessibility - for the implementation of benchmarking and its use as a separate method of management requires access to information about the work of other entities, certain aspects of their activities. It is especially difficult to find data on certain areas of work of the analogue company, which should include innovative developments, customer base.

2. Information openness - this principle is very similar in content to the principle of information accessibility, but its observance is directly related to ensuring intellectual property rights, openness of data collection on the work of the business entity, which may occur through inquiries, meetings, involvement on a paid basis of specialists of the analogous enterprise. In this case, the whole process of data accumulation must be completely transparent.

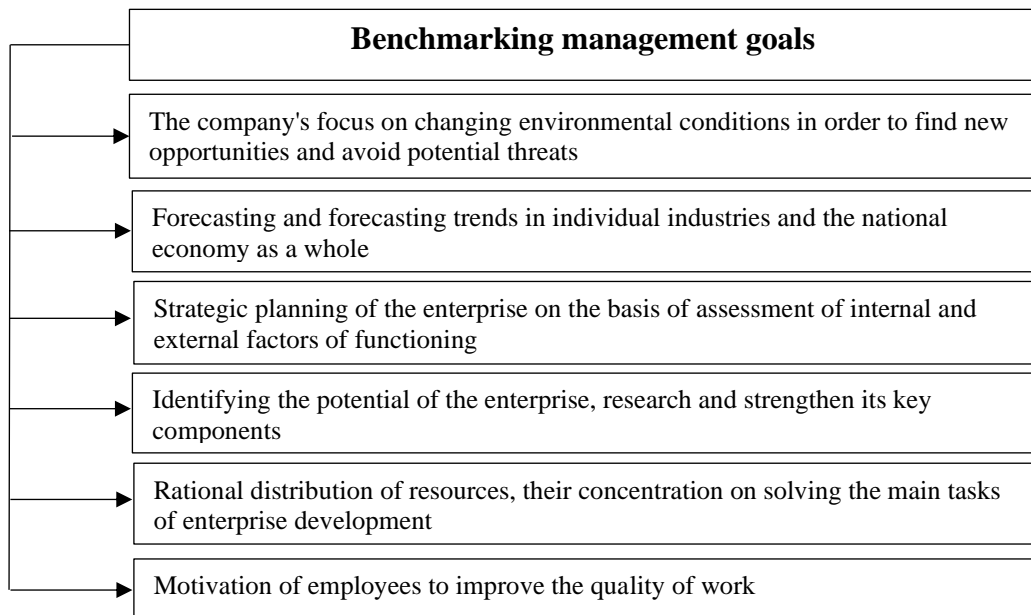


Figure 1.1. Benchmarking management goals

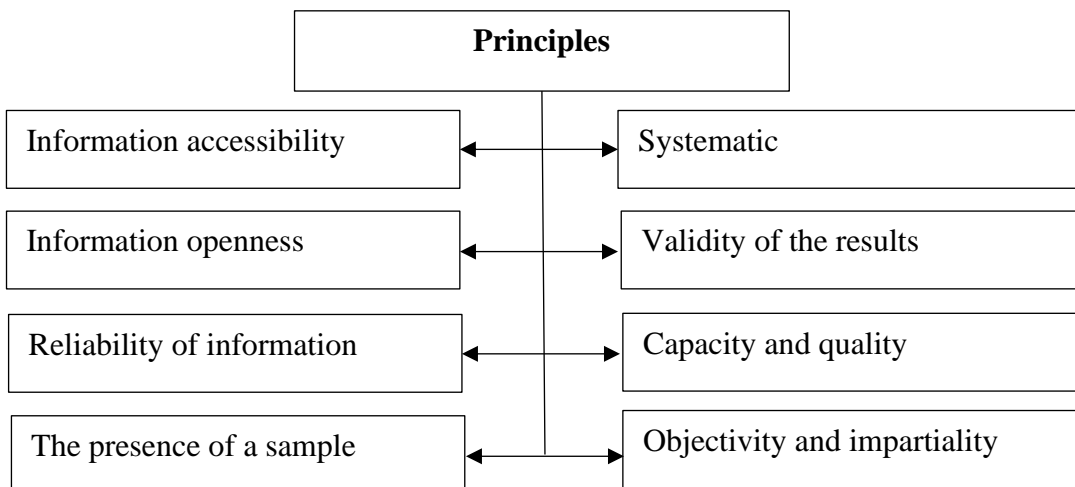


Figure 1.2. Principles of benchmarking

3. Reliability of information - the essence of this principle of benchmarking is to ensure the effectiveness of this method only on the basis of having reliable information. The veracity of the data is the basic guarantee of the rational use of benchmarking as a way to improve the quality of management in the enterprise.

4. The presence of a sample - one of the fundamental principles of benchmarking management is the existence of an analogue enterprise, which also carries out very similar economic activities in relation to the basic business entity, the work of which needs to be improved. It is quite difficult to find such an entity if the scope of its operation is significant and a large number of similar enterprises operate in it. For innovative enterprises that are actively developing, introducing modern technologies both in the management system and in the system of production of goods and provision of services, the use of benchmarking can be complicated, because such an entity and may be an analogous enterprise. In this case, this method is possible if necessary use only to borrow the experience of organizing individual processes in the enterprise, given the more positive and successful experience of other competitors.

5. Systematic - the essence of this principle is to use a comprehensive approach to the use of benchmarking as a method of management, which is to identify weaknesses in order to find measures to address them. The principle of systematization is realized through four basic components:

- systematic analysis of the enterprise, identification of problems and bottlenecks in its development;
- research of the market in which the enterprise operates, identification of leaders and the most developed business entities in this niche;
- search for an analogue of a set of criteria that must be developed by the company to select the best model of operation;
- search and systematization of information about the enterprise-analogue, separation of those methods that may be useful to the entity, a detailed description of the mechanisms for their implementation.

In fact, the principle of systematicity should be used at all stages of the application of benchmarking, as each of them must end with grouping and systematization of the received information for the better understanding of the general condition and making effective decisions.

6. Validity of the results - the essence of this principle is to determine those quantitative and qualitative indicators, the change of which should occur as a result introduction of new, borrowed, directions of increase of efficiency of management.

This approach makes it possible to assess the correctness of the use of benchmarking, the effectiveness of the use of the experience of other entities and in general to assert the achievement of this goal.

7. Capacity and quality - the essence of this principle is the need to ensure the appropriate level of quality of benchmarking. It is clear that the use of such a method is associated with the need for a thorough economic analysis of individual economic systems. Among them, among other subjects management, it is advisable to include certain sectors and areas of the national economy, analysis of which is also an important component of effective use of benchmarking. Exactly therefore, to carry out such a study, employees of the enterprise may not have the appropriate qualifications of employees. Sometimes it is advisable in this case to involve external consultants to conduct relevant research and develop recommendations for the

customer. The use of financial advisors has a significant amount advantages, which include experience and speed of obtaining the necessary data.

8. Objectivity and impartiality - this principle should be considered in two aspects. First of all, objectivity is required by the research process itself, which should be based on the analysis of reliable information, the correct assessment of competitors. On the other hand, objectivity also consists in correctly determining the state work of own divisions. It is possible that some of them may work better than their counterparts, and their mechanism of operation should not be drastic changes. Also in this case, the subjective attitude should be minimized to the work of individual employees, the effectiveness of their work. In this case, the involvement of external experts is also appropriate.

Note that the process of implementing benchmarking as a separate method of improving the efficiency of enterprise management is complex and multi-stage. This, in turn, and determines the presence of a significant number of principles, compliance with which affects the correct use of the mechanism of such a method and the quality of the results obtained. Accordingly, taking this into account, we determine what are the general advantages and disadvantages of using benchmarking by different companies.

Types of benchmarking

The advantage of benchmarking is its ability to enrich the researcher with ideas, especially when companies from other industries are considered the best. The problem with the use of benchmarking is the threat of limiting the researcher's ideas to the established limits of success in the industry, ie benchmarking is effective if you focus on the strategy of imitation, rather than on the strategy of leadership in competition.

Based on the definitions of benchmarking and from our generalizations, we can say that there are several types of benchmarking activities, which differ in the complexity of the tasks (simple and complex), the direction (internal and external), the level at which benchmarking (strategic and operational).

In our opinion, it is necessary to distinguish between types of benchmarking by object and subject, which are selected for comparison. In Table 1.1 we provide generalized information about the types of benchmarking depending on the object selected for comparison, and in tab. 1.2 – types of benchmarking by subject of comparison.

Table 1.1 Characteristics of types of benchmarking by the object selected for comparison

Type of benchmarking	Definition and characteristics	Conditions under which it is used	Benefits	Difficulties in use
Internal	Comparison of the nature, quality and methods of work of related units within one enterprise. An attempt to find within the company a similar, most successful action.	After studying the Benchmarking process. Before conducting external (industry, intersectoral, international) benchmarking.	Relative openness and availability of information.	Existence of clear leaders and / or outsiders among the structural units of the enterprise, secrets or other obstacles to the exchange of information with other enterprises in the industry. Lack of experience in benchmarking. Limited resources and time.

External benchmarking				
Competitive	Comparison of the nature, quality and methods of work and implementation of certain activities of the enterprise with its competitors in the market.	Decreased or low level of relative efficiency in key industries or activities compared to 3 other companies in the same sector (industry). The need to find ways to close the gap in efficiency	It can be carried out both in cooperation and exchange of information with a direct competitor, and without him	It is difficult to obtain the reliable information needed for analysis
Joint (associative)	Several organizations what is or is not competitors, enter into an agreement on information exchange in within a closed group (benchmarking alliance)	Joining forces several companies for exchange information when potential partners (pre-selected) have high enough standards	Enables explore the best practices	Provides information only for team members who do not necessarily use best practice
Sectoral	Comparison of the nature, quality and methods of work and conduct of certain activities of the enterprise with enterprises that belong to the same industry, but are not direct competitors	Joining forces of several companies to exchange ideas and information in order to form options for joint solutions	Forming a network or bank of "best practices"	The benchmark practice that has developed in the industry can to be transformed into an inviolable standard, which limits the search for new approaches to improving the activities of enterprises
Intersectoral	Comparison of the nature, quality and methods of work and implementation of certain activities of the enterprise with enterprises that belong to different industries and are not direct competitors	Study of the best practices of world leaders in various branches of economy and adaptation of their experience to activity of own enterprise.	Study of the best practices of world leaders in various branches of economy and adaptation of their experience to activity of own enterprise.	Study of the best practices of world leaders in various branches of economy and adaptation of their experience to activity of own enterprise.
International	Identification and analysis of reference practices around the world due to the fact that there may not be enough benchmarking partners in the middle of the country.	Used when best practices are implemented abroad and / or the number of companies operating in the field within the country is insufficient to obtain reliable information.	Globalization processes and the development of information technologies increase the opportunities of international projects.	It may take more time and resources to ensure and implement, and its results require detailed analysis in the light of national, cultural and religious differences.

There are many types of benchmarking that can be used by businesses. But before starting a comparative analysis, it is necessary to determine which type of benchmarking is rational to

use in this case, because each type requires a certain level of financial costs and must be economically justified and, accordingly, effective.

The choice of a particular type of benchmarking by the company is determined by the following conditions:

- the nature of the tasks to be solved and the aspects of the problem under consideration;
- available resources and time for benchmarking;
- experience of benchmarking;
- sufficiency of resources for the implementation of measures to implement the economic strategy [3].

First-time benchmarking companies often choose internal benchmarking to gain and gain experience. After mastering the practice of conducting internal benchmarking, companies move to external, functional or process and strategic benchmarking.

Table 1.2 Characteristics of types of benchmarking by the object selected for comparison

Type of benchmarking	Definition and characteristics	Conditions under which it is used	Benefits	Difficulties in use
Performance results	The results of activities are compared (most often those that can be expressed in quantitative terms)	The need to compare data for a certain period (price and cost; time of processing the customer's order; delivery time; delivery costs; the level of profitability of certain activities)	Formation of a base for comparison	Not all indicators of enterprise activity can be quantified
Functional	1. The process of comparing the characteristics of certain functions performed at different enterprises of a similar profile. 2. Search for reference practices in different sectors or areas of activity, which helps to improve similar functions or processes	The need to improve activities, goods or services for which there are no analogues (competitors) in the market	Innovation is often transferred from one industry to another, which leads to a significant increase in the efficiency of the enterprise	There are various difficulties (unavailability of information, resistance of competitors, etc.) 3 benchmarking in their industry. Inefficiency (extremely low efficiency) of activity or impossibility of further development, which requires radical changes in business, introduction of innovations

Strategic	A systematic process aimed at evaluating alternatives, implementing strategies and improving performance through the study of successful strategies of partner companies	Aimed at the long term and manifested in the development of a new product or service. The need to replace the existing strategy, which has become ineffective in certain circumstances: the emergence of fundamentally new technologies, changing working conditions in the market, radical changes in customer requirements, etc.	Answers the question of what strategic changes are needed implement to improve the company's market position and increase its market share compared to the reference company. Contains prospects of the highest level: key competencies, development of new goods and services, changes in the balance of operations; increasing resistance to changing conditions	Large expenditure of time and resources. The result of the implementation can be seen only after a long period
Process	The study of the practice of building business processes, as a rule, in organizations that are not direct competitors of the enterprise, but have similar basic business processes.	Emphasizes the improvement of specific processes and operations, often helps to increase short-term profitability. The use of benchmarking methodology in projects to improve business processes of the enterprise will have the best result.	Requires creativity.	Deficiencies in individual elements or in the whole production process (sales, logistics, etc.), which do not allow to achieve high production efficiency. The need for rapid improvements in key business processes

There is no "best" kind of benchmarking. Each of the different types (internal, external competitive, external industry, external cross-industry, and combined external and internal) has its own advantages and disadvantages that need to be taken into account.

Regardless of which type of benchmarking a company chooses, its management and implementation team must clearly understand the research objectives. Above was a number of typical benchmarking goals. Some of them can be formulated even at the stage of internal benchmarking, others are chosen at the stage of preparation for conducting external research. But some of the goals of benchmarking can be finally clarified only in the process of its implementation. It should be borne in mind that the organization has the right to limit itself to conducting only internal or only external benchmarking, or to outline the conduct of benchmarking studies of both types. Either way, the goals of benchmarking should be determined by the implementation team or other responsible persons before the start of the study and can subsequently be refined during its conduct.

The main reason for such infrequent use of benchmarking is that most domestic companies go through a period of formation. Its implementation depends on how structured an enterprise is, how standardized its own business processes are, and the pace of market development stimulates it to benchmarking. When a certain level of development of the enterprise is reached, it is faced with the question of studying and using the best experience gained in this field. And benchmarking is a saving of time and resources.

So, first of all, before you start studying competitors, you need to clearly define your own goals and understanding of what we are researching and what our indicators are. After analyzing the collected information, it is necessary to develop a plan of change and only then benchmarking will bring the desired result.

Problems of implementation of benchmarking in management of industrial enterprises and their solutions.

Industrial enterprises of Ukraine, implementing benchmarking in marketing activities, often face a number of problems and barriers, which, in turn, often stand in the way of successful use of this tool and the effective functioning of the enterprise as a whole. Thus, we propose to consider these problems with an emphasis on their economic essence and ways to eliminate them [3].

Problems of benchmarking implementation:

1. Benchmarking - a check of marketing activities (such a check can give useful calculations of the financial activities of the enterprise, the effective interpretation of which can determine what place it occupies among other enterprises in the industry).
2. Existing and approved "baseline" parameters can be used without change (it is necessary to find such partners for benchmarking, and explore what is achievable and whether the company can achieve a similar level of operation; as a result - a change in basic parameters, such as, for example, the price of the product).
3. Inconsistency (implementation of benchmarking as a process that contradicts the strategy of the enterprise or hinders its other initiatives; it is necessary to control and direct the process of implementation of benchmarking at the level of strategy).
4. Insufficient partner research (it is very important not to waste company time or benchmarking partner time; information or answers to questions arising in the process of mutual activity should be known before the implementation of benchmarking to achieve effective results).
5. Lack of a basis for benchmarking (search for partners and information about them started before the analysis of own process of activity; benchmarking assumes that the process of activity of the enterprise and its parameters are precisely known and by the end of research).
6. Benchmarking - a comprehensive tool (benchmarking of the entire system - a costly, lengthy and inefficient process, so it should be implemented only in part of this system (for example, in marketing activities)).

Currently, there are few professionals who have sufficient experience to implement a benchmarking project. There are also some restrictions on access to information, without which benchmarking is impossible. The main disadvantage that distinguishes benchmarking from other methods is that benchmarking, as a method, is relatively young. However, the advantages of benchmarking and the positive effect of its implementation compensate for possible shortcomings and problems.

Guided by the generalization of known approaches to benchmarking analysis, the following sequence of benchmarking in marketing activities at an industrial enterprise is proposed:

- definition of the object of analysis;
- assessment of the company's own activities;
- selection of benchmarking partners;
- collection of information;
- comparison of own activity with activity of the partner enterprise;

- information analysis;
- development of a plan for the implementation of the experience gained;
- implementation of the obtained results in the practice of marketing activities;
- control over the benchmarking process.

Conclusions

Thus, benchmarking is a special tool to study the experience of the best market players, which has a positive effect on the effectiveness of marketing activities of their own company, provided a qualitative analysis and proper application of the results. The culture of entrepreneurial activity will be focused on such values as the ability to increase their own potential, which, in turn, serves as an impetus for enterprise development. The use of benchmarking in the practice of domestic industrial enterprises is quite limited, so it is necessary to develop a methodological framework for its implementation. As a result, enterprises of mechanical engineering, electric power, coal, aviation industry - enterprises with a high share of science-intensive products will receive the following benefits: the ability to adjust the parameters of the enterprise in accordance with market requirements; the ability to systematically identify and eliminate inconsistencies that are barriers to enterprise development; adaptation of high-tech innovations; borrowing the best methods of further development; motivation of employees; gaining an advantage in competition; achieving an increase in the degree of satisfaction of end users.

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CHALLENGES OF RAW MILK TRANSPORTATION AND POSSIBILITIES OF THEIR SOLUTIONS: A CASE OF LITHUANIAN DAIRY COOPERATIVES

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Abstract. Logistics plays an important role in various fields. In this case agriculture is not an exception. The discussed branch of agriculture in this article is dairy farming. The importance of logistics in dairy sector is undeniable. The main participants in dairy sector are milk producers, dairy cooperatives and milk processing plants. The main challenges related to raw milk transportation in dairy cooperatives and the possibilities to solve them are presented in this article. It is important to identify the main challenges in raw milk transportation and find ways to solve problems that arise in order to avoid losses of raw milk and ensure a more efficient path of raw milk from milk producers to the finished production. The authors of the article present a theoretical model of raw milk transportation in dairy cooperatives improvement, in the presented model not only the problematic aspects in raw milk transportation are pointed out, but also possible technological and innovative solutions are provided. After applying a questionnaire survey and a semi-structured interview, the results of an empirical research, that confirmed the existence of challenges in raw milk transportation identified in the theoretical part, are presented.

Keywords: raw milk, dairy cooperatives, transportation of raw milk, challenges of transportation, solution, technological solutions, innovations.

Introduction

One of the oldest and significant branches of agriculture in Lithuania is dairy farming. Lithuania stands out in terms of raw milk production and processing of dairy products in comparison with other Baltic countries. Moreover, considering the volume of dairy products export and the diversity of countries to which the dairy products are exported, dairy sector significantly contributes to Lithuania's prosperity in economic aspect. Milk producers, dairy cooperatives and milk processing plants play an important role in dairy sector, although in this article the attention is paid particularly to dairy cooperatives. These days, logistics play an important role in dairy sector as well as in the other business areas. Dairy cooperatives often face logistical challenges related to raw milk transportation.

Raw milk transportation is analyzed in the scientific literature from various aspects. Indicators of raw milk quality can be related not only to such aspects as raw milk collection and storage, but also, as Roman (2018) states, to raw milk transportation. It can be said, that considering the specific qualities of raw milk, it cannot be stored or transported for a long time. As Roman (2018) found out one of the problems, specifically in the dairy sector, is the transportation of raw milk. Paraffin, Zindove and Chimonyo (2018) as well analyze the aspect of raw milk transportation. While analyzing the factors influencing the contamination of raw milk, authors as one of the factors name transportation (Paraffin, Zindove & Chimonyo, 2018).

Daud, Putro and Basri (2015) state, that poor conditions of transportation in the agribusiness are one of the serious problems in raw milk transportation. The special transport with a refrigeration system is required while transporting perishable products (raw milk) that as well are very sensitive to contamination and temperature changes. Certain problems associated with vehicles during raw milk transportation can cause raw milk losses (Daud, Putro & Basri, 2015). Zhang, Cheng, Chen, Guo and Gao (2018) state, that to dairy products the control of raw milk quality is important, the quality of raw milk is affected by the temperature, taking into account this fact, the authors think, that in the dairy sector the temperature monitoring system for raw milk transportation would be useful.

The issues of raw milk transportation are actively discussed in the scientific literature. The transportation of raw milk can affect both the quality of raw milk and it's further processing. It is necessary to identify the main challenges faced by the Lithuanian dairy cooperatives and assess the possibilities for their solution in order to avoid losses of raw milk and ensure a more effective transportation of raw milk.

The goal of this article is to identify the main challenges that are faced during raw milk transportation in Lithuanian dairy cooperatives and present possible solutions to solve the identified challenges.

Research methods: analysis and synthesis of scientific literature, analysis of legislation and regulations, the method of quantitative research – questionnaire survey, qualitative research method – semi-structured interview.

Role of logistics in dairy sector

Logistics processes play an important role in the daily activities of various industries and organizations whether they are practiced less frequently or more often. Various activities such as market research and forecasting of demand for specific types of products, purchasing material resources necessary for production, organization of material flows in production, organization of goods distribution: selection and packaging of finished products, their transportation to the destination, delivery of products to the consumer and registration of necessary documentation can be attributed to the logistics (Kurbatova, Aisner & Mazurov, 2020, p.2). Moreover, the importance of logistics in agriculture is undeniable. Logistics in agriculture covers a wide range of topics: flow of resources, its management and optimization, minimizing risks, use of outsourcing, IT applying in logistics systems, impact of state policy, infrastructure (Radžele-Šulce, 2011, p.73). Agricultural logistics can be defined as a branch of industry and an important part of agricultural production and management activities for the sustainable development of the agricultural economy. Dairy logistics involves the transport of milk, cheese and other dairy products. The goal in dairy logistics is to keep the product clean, keep the product cold and keep the product moving (Robbins, 2019). Taking into consideration the mentioned definition, during raw milk transportation it is important to ensure that raw milk is not damaged during the transportation process and to assure that raw milk meets the quality requirements set out in legislation and regulations.

The main peculiarities of raw milk transportation and emerging challenges

Dairy farms, dairy cooperatives, milk processors or other entities relating their activity with dairy sector face various challenges and difficulties. Regulations and statutory requirements, qualitative indicators of raw milk, purchase prices for raw milk, perspectives and situation of dairy sector are the most common and most widely discussed problems in the

scientific literature. Furthermore, one of the already mentioned problems also could be raw milk transportation. In dairy sector human factor, environment and transport system can be distinguished as causes of dairy products losses (Lipińska, Tomaszewska & Kolozyn-Krajewska, 2019). Like other agricultural sectors presently challenged by environmental constraints, the dairy sector is also pushed to move towards environmental sustainability and is urged to change practices (Munsch-Alatossava & Alatossava, 2019). Analysis of the scientific literature revealed that in the dairy sector various aspects and spheres can be improved. One of those mentioned spheres could be raw milk transportation.

As the literature studies revealed such elements as load, vehicles and transport roads play an important role in raw milk transportation. Certain challenges and the problematic aspects in raw milk transportation can be associated with the earlier mentioned elements. Based on the analysis of the scientific literature and in view of the evolving world these days, problematic aspects in raw milk transportation can be solved with the help of technological solutions and innovations. After the systemization of the scientific literature analysis, the authors presented the theoretical model of raw milk transportation and its improvement in dairy cooperatives depicted in the Figure 1.

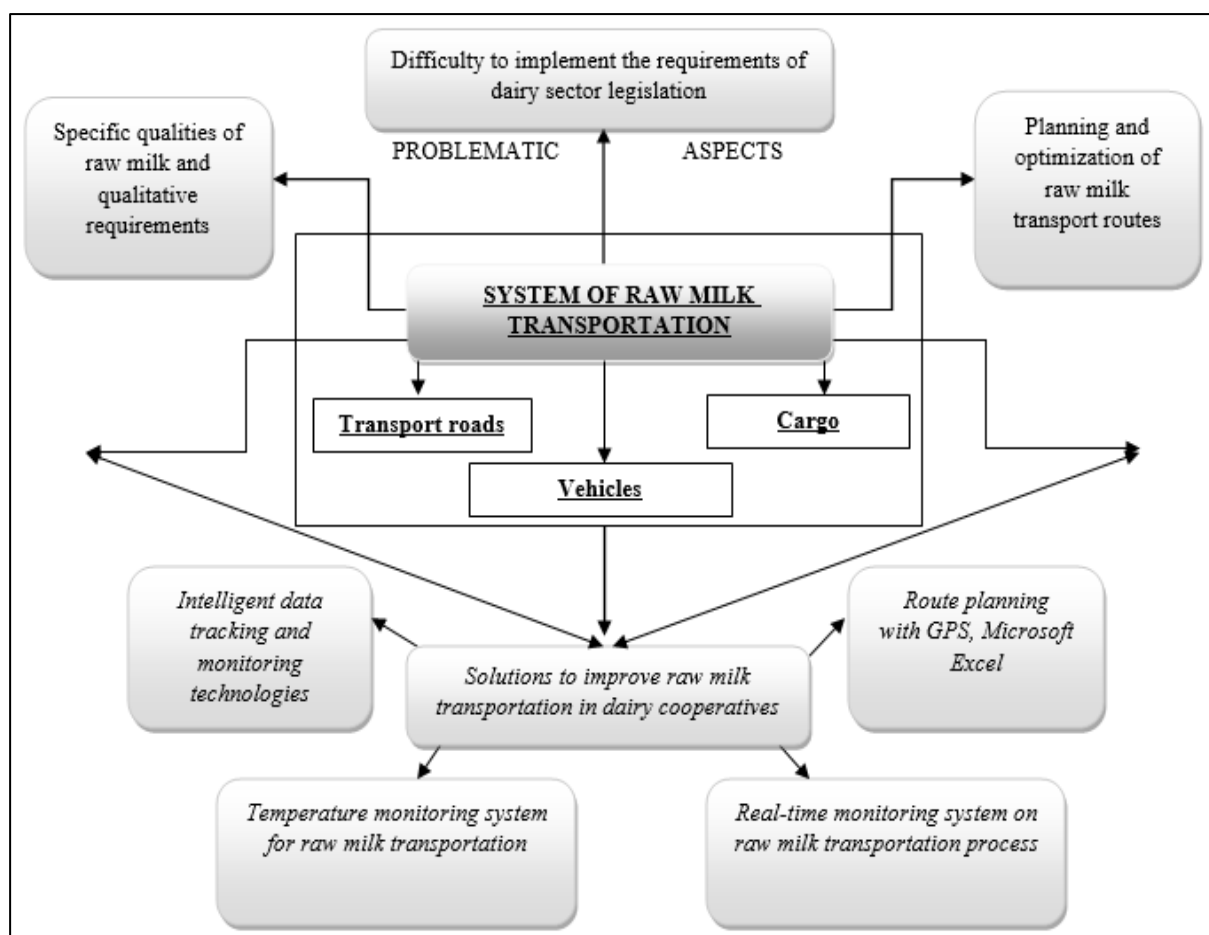


Figure 1. Theoretical model of raw milk transportation and improvement in dairy cooperatives

As a cargo raw milk has a number of different characteristics. Firstly, raw milk as well as the other agricultural products has biological qualities. The maintenance of the suitable temperature and assurance of proper hygiene are important elements to raw milk. Taking into

account the mentioned fact, raw milk can be defined as a specific cargo requiring special conditions of carriage and storage. It can be assumed, that as a cargo raw milk causes difficulty in the further raw milk transportation. To be more specific, it is complicated to decide how the cargo should be transported, which vehicle should be used as well as to plan and optimize the transport routes of raw milk.

Transport roads is also one more important element in raw milk transportation. Raw milk is transported by road transport taking into account it's specific and other biological qualities in order to preserve the high quality of raw milk more efficiently and to deliver raw milk to certain place in time. It is most convenient to transport raw milk by road due to such reasons as speed, safety, greater opportunities to reach less developed areas or roads.

The final important element in raw milk transportation is vehicles. In order to choose the most suitable vehicle to transport raw milk attention should be paid to such elements as amount of raw milk transported, the geographical location of the area, accessibility, and the cost of transportation for cargo (Dairy technology, 2014). Considering the specific qualities of raw milk, the most suitable vehicle for raw milk transportation using road transport are milk tankers. Raw milk is transported by milk tankers, as they are a relatively fast vehicles, have a lower cost with higher milk volumes, provide better temperature control, a lower risk of raw milk contamination and time advantage when loading / unloading cargo (Dairy technology, 2014).

Cargo, transport roads and vehicles can be associated with the main problematic aspects in raw milk transportation in dairy cooperatives. These include difficulty to implement the requirements of dairy sector legislation, specific qualities of raw milk and qualitative requirements and planning and optimization of raw milk transport routes.

In accordance with the procedure established by the laws of the Republic of Lithuania, the conditions of raw milk transportation ensure, that raw milk complies with the established quality requirements. The importance of the deadline for the delivery of raw milk to the required point is also highlighted in foreign scientific literature. Raw milk selected by the dairy cooperatives must be delivered to the set point within a specific time limit or it will be considered spoiled, so every transport route needs to be considered very carefully (Polat & Topaloğlu, 2019). In order to ensure raw milk quality and temperature regime during raw milk transportation in Lithuania certain requirements and restrictions were introduced in the raw milk transportation in 2011 (Lietuvos Respublikos žemės ūkio ministerija, 2019). Legislation of dairy sector requirements poses challenges in planning transport routes of raw milk, ensuring raw milk quality, and making it difficult to select and maintain vehicles for raw milk transportation.

Specific qualities of raw milk and qualitative requirements also cause challenges in raw milk transportation. Most agricultural products are perishable so in order to preserve the quality and freshness of agricultural products, it is important to pay attention to such aspects as short shelf life, high requirements for storage and transportation (Zhang, Qiu & Zhang, 2017). In order to preserve the specific characteristics and high quality of raw milk, vehicles used for the raw milk transportation should be a closed type, protect the transported raw milk from extreme temperature changes, dust or other adverse conditions and factors (Regulation (EC) No 853/2004 of the European Parliament and of the council). The specific qualities of raw milk make it difficult to transport, because raw milk cannot be transported with regular vehicles, special milk tankers are required for its transportation.

Finally, another problematic aspect of raw milk transportation, which is most often highlighted in the scientific literature, is the planning and optimization of raw milk transport routes. The problem of transport routing is a common problem in various fields of activity. As in any other areas of logistics, the '7Rs' principle can be applied in agricultural logistics: the

right product, the right quality, the right quantity, the right time, the right place, the right customer, the right price (Wajszczuk, 2016). While transporting raw milk it is important to maintain and preserve suitable quality of raw milk. In order to avoid losses and to deliver the required cargo of the right quality and at the right time as quickly and efficiently as possible it is important to think and plan carefully each transport route. The type of problems related to designing of raw milk transport routes include the fact that rural road network may not be adequately designed for the large tankers, requirements to transport fresh and high-quality raw milk, the need to reroute because of traffic (Callaghan, O'Connor & Goulding, 2018).

The main challenges faced by the Lithuanian dairy cooperatives during raw milk transportation

In order to investigate, whether in the case of Lithuanian dairy cooperatives, the challenges and problematic aspects singled out in the scientific literature are faced, a quantitative research method – questionnaire survey, and a qualitative research method – semi-structured interview were used. The aim of quantitative research was to elucidate the expression of problems singled out in the scientific literature related to raw milk transportation in dairy cooperatives. A questionnaire survey consisted of 17 questions. In this article only a part of research results is presented. The research was conducted in January-March of 2021, questionnaire survey was sent to 28 dairy cooperatives by email.

The results of quantitative research showed, that Lithuanian dairy cooperatives during raw milk transportation face challenges because of such factors as geographical location of dairy farms, peculiarities of road transportation, dislocation of milk processors which also complicate the planning and optimization of raw milk transport routes. Other challenges arise because of the difficulty to implement the requirements of dairy sector legislation, to maintain high quality of raw milk, meet the requirements of delivery deadlines to the relevant point in accordance with the established regulatory enactments. Moreover, the challenges are faced because of short shelf life of raw milk, maintenance and assurance of the right temperature (see Figure 2).

Qualitative research method – semi-structured interview was used to evaluate raw milk transportation in dairy cooperatives in the point of view of other dairy sector participants – milk processing plant. Any concrete problems faced by dairy cooperatives during raw milk transportation were not identified by the results of qualitative research, as the informant's cooperation with dairy cooperatives is based on purchase and sale agreements, that protect against possible raw milk delivery deadlines or quality violations. Although, the informant did not name any concrete problems, that could cause challenges for Lithuanian dairy cooperatives during raw milk transportation, informant does not contradict that technological solutions and innovations are necessary and would improve the process of raw milk transportation.

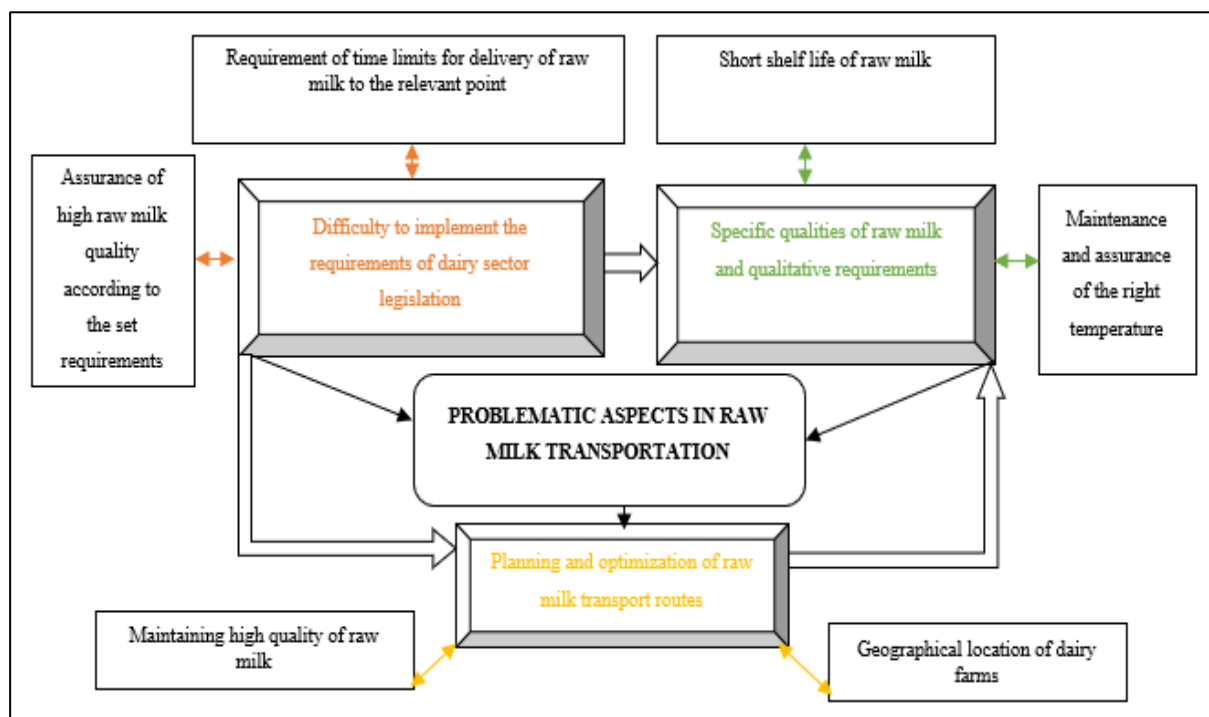


Figure 2. The main challenges of raw milk transportation in Lithuanian dairy cooperatives

Possibilities of solving challenges in raw milk transportation in Lithuanian dairy cooperatives

More efficient and faster raw milk transportation in Lithuanian dairy cooperatives could be assured using technological solutions and innovations. In dairy sector are already known and used such innovations as supercooling technology, which enables fresh dairy products to travel long distances by ship. As well such innovation as mastitis detection technology is known in order to avoid financial losses due to poor milk quality (Burrell, 2020). Certain technological solutions and innovations could be indeed useful in raw milk transportation, and the Lithuanian dairy cooperatives, who participated in quantitative research, themselves tend to invest in technological solutions and innovations according to the need and agree that the potential improvement solutions depicted in Figure 1 could serve in raw milk transportation. The mentioned solutions are intelligent data tracking and monitoring technologies, temperature monitoring system for raw milk transportation, real-time monitoring system on raw milk transportation process, route planning with GPS, Microsoft Excel.

Each technological solution or innovation cost no only time, but also investments and financial resources. Raw milk transportation in Lithuanian dairy cooperatives is unimaginable without special equipment, detailed planning and organization of raw milk transportation processes, but still considering today's modern world, Lithuanian dairy cooperatives could consider the importance of technological solutions and innovations to assure even more efficient and reliable raw milk transportation process.

It can be assumed, that temperature monitoring system for raw milk transportation would be useful for Lithuanian dairy cooperatives as the biggest challenges for Lithuanian dairy cooperatives today are related to high quality of raw milk maintenance. Temperature monitoring system for raw milk transportation in the case of Lithuanian dairy cooperatives would provide such advantages as more reliable assurance and maintenance of raw milk high

quality, lower losses of raw milk during transportation process, more effective implementation of the requirements of the laws regulating the dairy sector (in terms of quality), faster and more efficient decision making and the organization of work in the raw milk transportation.

Although, Lithuanian dairy cooperatives face the greatest challenges in maintaining high quality of raw milk, Lithuanian dairy cooperatives should take into account the problematic aspect of planning and optimizing transport routes in order to improve raw milk transportation. It is quite difficult to plan and optimize raw milk transport routes in such a way that the raw milk transport route would be as short as possible and the cost of transport is kept to a minimum without the use of smart technologies or innovations. In Lithuanian dairy cooperatives, the problem of planning and optimization of raw milk transport routes could be solved with the help of intelligent route planning systems that would facilitate transportation and decision-making in raw milk transportation. One of such systems could be Milk Movement. Milk Movement system would facilitate planning and optimization of raw milk transportation routes, as it allows to constantly monitor data related to raw milk collection and its delivery to the certain location, track and obtain information on the amount of raw milk collected, it's temperature, distance of raw milk transport route, speed of vehicle.

Conclusions

In Lithuania, dairy farming is one of the most important branches of agriculture, which plays an important role in creating economic added value for the country and creating jobs. Most of the Lithuanian dairy products are exported to various countries. The dairy sector, like other branches of agriculture practiced in Lithuania, contributes to the country's prosperity. In order to avoid raw milk losses and to assure an efficient journey of raw milk from milk producers to finished products, it is important to pay attention to challenges of raw milk transportation.

Dairy cooperatives face challenges and problematic aspects such as difficulty to implement the requirements of dairy sector legislation, specific qualities of raw milk and qualitative requirements, planning and optimization of raw milk transport routes.

These days it is difficult to implement the requirements of dairy sector legislation because of such challenges as requirement of time limits for delivery of raw milk to the relevant point, assurance of high raw milk quality according to the set requirements, specific qualities of raw milk and qualitative requirements are complicated because of the short shelf life of raw milk, maintenance and assurance of the right temperature. Finally, because of such challenges as maintaining high quality of raw milk and geographical location of dairy farms it is difficult to plan and optimize transport routes of raw milk. The analysis of the empirical research revealed, that the biggest challenges for Lithuanian dairy cooperatives are posed by the factors related to the preservation of raw milk high quality.

These days, technological solutions and innovations are often used to improve certain processes or to overcome the challenges that arise in daily activities. In order to improve the transportation of raw milk and maintain the high quality of raw milk, Lithuanian dairy cooperatives are proposed to apply a temperature monitoring system for raw milk transportation, which would assure constant monitoring of raw milk temperature and more efficient preservation of raw milk high quality. Despite the fact that these days planning and optimization of transport routes is not one of the main challenges for Lithuanian dairy cooperatives, another proposal to improve raw milk transportation in Lithuanian dairy cooperatives is a smart transport route planning system Milk Movement with the help of which it would be easier to predict possible failures during raw milk transportation (traffic disruptions)

and, where possible, more easily change the raw milk transport route so that raw milk is delivered to the appropriate point in time.

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CHARACTERISTICS OF APPROACHES TO THE PLACEMENT OF PRISONERS IN CONNECTION WITH POSSIBLE RADICALISATION¹

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Abstract. *The article is not only focused on work with inmates, but mainly on monitoring of radicalization of inmates, same like possibilities of their placement in frame of prisons facilities in the Czech Republic. It provides a basic awareness about models of implacement radicalized person so these models are used in other EU states which have a huge experience in this field. Every from described model has advantages and disadvantages. It is not easy to say which model is the best for using. The most important factor which must be take account of inmates placement is respect the law mainly the Law of imprisonment.*

It is obvious that Prison service of the Czech Republic has not so many radicalized inmates which they would need specific treatment plans in this area, on the other hand, it is necessary to be prepared for future possibility that a problem with radicalization of inmates would will be on higher level than today. Very important role in monitoring of radicalization tendencies among inmates plays education of prison staff mainly professional staff Department of imprisonment. In Czech Republic is this type of education provided on Police Academy of the Czech Republic in Prague where was prepared three day course for employees of Prison service of the Czech Republic. The course is focused on manifestations of extremism and radicalization process inside prison facilities and lecturers of this educational programme obtain not only basic information about these problems but they will acquire knowledge how to work with analytic tool SAIRO (summary analyse of indicators inmate's radicalization). Currently is SAIRO used in every prison facility. This tool is result of good cooperation between academic and practical level primarily National central against organized crime, Prison service and Police academy in Prague.

Prisons are very vulnerable environment and knowledge about radicalization there will play important role during incarceration of persons especially for prison staff which is responsible for fulfilling their treatment plans.

Keywords: *Radicalization, analytic tool SAIRO, incarceration, models of placement, inmates.*

Introduction

The issue of radicalization and deradicalization resonates in professional, public and political discourse for several years in a pan-European context. The primary security issue is the early identification of radicalizing people and the ability of security forces to detect those who pose a security threat in the form of involvement in violent extremist and terrorist groups.

In Europe, the topic of radicalization has emerged in academic discussions following the Madrid (2004) and London (2005) bombings. In this regard, it should be noted that the term radicalization and violent radicalization is not synonymous with terrorism, we should also distinguish between radicalization, extremism and terrorism. Radicalization is a more open term, while extremism and terrorism are more closed terms and are at some distance from mainstream political thought and are also more closely linked to violence against civilians.

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Radicalization has become one of the key words of our time, it is the focus of countless media, scientific, political and social discourses. Today, there are different concepts of radicalization, but also of research approaches and models. Experts also differ on the identification of the causes and developmental stages of the radicalization process. This often leads to confusion or overlap of the above concepts, which causes frequent misunderstandings and problems of further research. At the same time, they are multidisciplinary concepts, as they are explored by different approaches from different areas of the social sciences, which results in very inconsistent terminology and the very perception of radicalization. At the same time, the problem of radicalization is reduced only to the terrorist threat, which considerably narrows the space and possibilities of prevention against terrorist attacks. Indeed, one can work more effectively against radical and extreme views and ideologies than against terrorism itself.

At present, we encounter a wealth of literature focusing on the reasons and nature of the violent radicalization of individuals, which can be, and in some cases is, the cause of terrorist behavior. We encounter a number of different models trying to capture the roots of social radicalization from the perspective of the social science disciplines of their authors. The common denominator of these models is the description of the process of social radicalization of the individual. Attention is paid to a set of identifiers, signals, factors, etc., whatever they are called, that shape personal attitudes, group perceptions, group following, and violent behavior.

A wide range of actors deal with the issue of the radicalization process, from civic initiatives, think tanks, academic institutions, international organizations, national state institutions and security organizations. In the European context, let us mention, for example, the European Union project SAFIRE, COPPRA, RAN, as well as academic institutions such as the Danish Center for International Studies and Human Rights (DCISM) or the London Center for the Study of Radicalization and Political Violence (ICSR). One of Europe's major think tanks is the Dutch The International Center for Counter-Terrorism - The Hague (ICCT).

The issue of radicalization and its process is currently resonating in the field of security policy of states not only in Europe, but globally. Due to the close link between radicalization and political violence, including terrorism, today the attention of securitization is mainly focused on the radicalization process at the micro level (individual). Many European Union countries are making significant efforts in this area, developing specialized policies and programs to neutralize radicalization and preventive and deradicalisation programs. There are already a number of programs, some of which have been criticized for their lack of empirical evidence regarding the questionability of the applicability of their scope and the nature of the radicalization process. However, we encounter positively evaluated diagnostic tools and mechanisms for recognizing groups and individuals that could pose a security threat.

The issue of radicalization represents a challenge for public policy makers in the area of practical and terminological issues. It is academic research in this area that should contribute to deepening and refining the theoretical understanding of the issue, which is reflected in a more effective operational dimension of dealing with the phenomenon of radicalization. The definition and classification of radicalization, stages of the radicalization process, contributing factors, etc. differ for individual experts, workplaces and institutions. This theoretical and methodological plurality in the field of conceptualization, terminology and phenomenon diagnostics from the point of view of various scientific disciplines offers a wide range of explanations, which, however, may partially overlap, supplement or completely exclude. However, the current state of research into the phenomenon of radicalization already offers an extensive base of theoretical and practical knowledge that contributes to further scientific progress and reflection on the functioning of the practical approaches used and methods of intervention and prevention of radicalization.

The work is based on the experience of selected countries of the European Union. It seeks to combine academic knowledge, empirical findings and safety practice. It is based on reports

and analyzes of academic institutions, expert networks and think tanks, state security authorities and intelligence services.

The main task of this article is to describe basic models of placement radicalized inmates which is used in EU countries and give readers the idea of these models. Every model has some benefits and disadvantages. Which is the best from these possibilities is hard to say and application depends on a lot of specific factors. Next part of this article is targeted to specific tool to detect the process of radicalization and extremization, with an emphasis on the prison environment and reflection on Czech anti-extremist, anti-radicalization and deradicalization policy.

The multidisciplinary nature of the researched phenomenon requires that the theoretical framework of the research of the thesis be based on the approaches of sociology, criminology, political science, psychology, penology and law in particular. Therefore, the theoretical and methodological approaches of the work are based mainly on the research of extremism and radicalism, intergroup violence, negative identity, social deprivation, identity crisis or crisis of legitimacy.

The basic method of work is a comparison of the concept of extremism from a political, sociological and criminological approach. The main methodological approach is the use of radicalization theory, especially using sociological and psychological approaches. The authors compare individual models of radicalization, evaluating their application positives and negatives and draws attention to their specific aspects of practical applicability of security prison practices. These theoretical and methodological starting points are applied to the issue of radicalization in Czech prisons and work identifiers of radicalization are formulated, which became the basis for the creation of the diagnostic tool SAIRO.

Tools of detection

A number of proclamations have been emerging over the last few years, especially in the various media, that in the radicalization process prison environments are highly vulnerable, and it is in them that this process is not only activating but also deepening. Prisons, as a total environment, provide lively supportive views and ideological tendencies that can ultimately lead to the radicalization of persons. It can be associated not only with religion and the associated attacks in the countries of Western Europe, but also with the radicalization of the political scene that encompasses the right-wing extremism or left wing extremism scene. Radicalization can also be monitored at a societal level, linking it to mainstream society, which often comes into being in the context of various electoral activities, whether local, regional or national (Malthaner, 2017, p. 369 – 376).

In examining this phenomenon, it is important to draw attention to the fact that radicalization is not only linked to a societal problems, and therefore to approaches to its examination, but to a wide range of influences. That is, we are talking about it at micro-level, meso-level and macro-level. We are talking about micro-level radicalization in relation to an individual and its internal perception of how it responds to external incentives, how it processes and evaluates them itself. The interaction between the person and the environment (the peer group, the environment in which the individual lives etc.) and the macro-level influences relate to the overall situation in society. Here we can talk about the security climate in the country, the effects of the media and other actors on society, etc. Each of these levels is specific and concerns to different side of the hearing and holding of a person. It is therefore also necessary to accept that the issue of radicalization and approaches to its examination cannot be addressed and defined in isolation, but in the context of a wide range of scientific disciplines entering the process. It is therefore evident that the process itself is multidisciplinary and, if the professional public tries to unify approaches to radicalization and its monitoring, this initiative is often not

successful. There may be a number of mistakes that devalue both the findings themselves and the data analysis and subsequently develop approaches to working with such individuals.

This article is focused on radicalization in the prison environment, on approaches to its monitoring and, last but not least, on the approaches of professional staff of the prison facilities, who are designated in the job to be responsible for the reintegration activities of persons during their incarceration. The article also aims to draw attention to other circumstances that may be linked to radicalization in the prison environment, such as the use of mobile phones, drug-related activities and, last but not least, expressions of violence among prisoners. If the prison environment is perceived as being susceptible to the acceptance of radicalization tendencies and expressions, it is important that the prison staff should also be aware of the speeches and be able to participate in the monitoring of radicalization in prisons. The specific course, prepared by the Police Academy of the Czech Republic in Prague, is also used for this purpose. It also includes the training of prison staff in the using of the SAIRO analytic tool, which was developed precisely for the needs of the Prison service of the Czech Republic.

In connection with the radicalization of persons, prison facilities, which have been called such “incubators of radicalization” (DeKerchove, 2015) are increasingly cited, an environment in which radicalization tendencies play important role. Furthermore, radicalization in prisons can also be reflected in the behaviour of a person after being released from a prison facility, and by its subsequent activity may carry out some exposed act, as the company was able to become acquainted between 2015 and 2019.

The imposition of a sentence is in itself a circumstance that can evoke in an individual the notions of unfair punishment and its amount. Especially when he encounters cases in prison, which he sees as similar in his view, but with different punishments. Here it is important to add that prisoners often distort information about their crime, whatever the reasons. Another fact perceived by the individual is the different approaches in employee behaviour towards the inmates. While there are standards governing employees' behaviour, they are not always strictly observed. Another important circumstance related to radicalization in a prison facility may be to try to belong to a number of people, to be part of a group of prisoners, to be under some protection, or to obtain some benefits within the prison group. Another decisive event in such an environment may be a meeting with a charismatic person (Kolář, 2016, p. 26 – 30), his opinion proclamations etc. Moreover, taking into account other circumstances such as inefficient science

Speaking of the prison environment, it is important to realise that the environment itself, as a total institution (Goffman, 2017, p. 7 – 11), constitutes a very appropriate basis for radicalization activities, since it really assumes that the persons placed in it can consider their presence to be an effort by the system to break their faith, belief, struggle, resistance to institutions and state organizations etc. (Kolář, 2020, p. 2 – 3).

The circumstances of radicalization tendencies can also be linked to the security climate in a particular prison or throughout the incarceration system in that country (Kolář, 2020, p. 2 – 3).

First and foremost, this is a climate linked to interpersonal relations between inmates. It is precisely the relationships have a major impact on the functioning of the entire community of them, not only on the sections on which they are staying, but also on the various workplaces, transfers to other parts of the prison (dining room, work zone etc.), between prison facilities etc. There is quite a lot of knowledge of the sentiment associated with the position of a person in a prison subculture, defines a certain hierarchy etc. The fact that such hierarchy can be the source of problematic interpersonal situations in prisons should not be kept secret by professional personnel in the system, as only good preventive work will result in a possible reduction of the negative activities associated with the specific ones in the section, their higher social status within the group.

Knowledge of the environment and people by personnel is also important in terms of limiting the emergence of different “prison gangs”, which are often discussed and which the Lay public has the idea that they operate on the same basis as foreign ones, especially in the US. It should be noted here that the system of prison gangs does not have representation in the Czech prison system (Vegrichtová, 2017, p. 142 – 146) and, if there is talk of the illegal activity of the prisoners, there is often only the personal profit of the individual or group behind this activity (Kolář, 2016, p. 23 – 25). On the other hand, profit is certainly part of the activities of prison gangs, but the fundamental difference is between the degree of organization and structure of individual members and different levels, as well as the extent of interference outside prison facilities and participation in illegal activities in the civilian environment.

Another important part of the overall security climate in the prisons is the relationship between employees and inmates and vice versa. Therefore, this relationship can no longer be equivalent from the logic of the matter, but it should not lack elements of respect and decency and behaviour. In the context of the relationship between prison staff and inmates, the transfer of competences from employees to inmates may seem very dangerous. It includes, for instance, various administrative acts involving the carrying out of visits to convicts, telephone calls to convicts, recruitment of convicts etc. These administrative tasks are, of course, in the diction of the staff of the Department of Execution of the Punishment, usually of the custodians of the various departments.

It is common practice that these activities are delegated to inmates, usually to those for whom the term ‘liaison’ is used in prisons. This term refers to a inmates who serves as a contact person between prison officials holding regular meetings with them on the one hand and the inmates themselves on the other hand. However, often such a position is “abused”, both by inmates in their own favour and by employees. Ultimately, the risk that the transfer of power to a incarcerated persons may involve a significant strengthening of the influence of such a person on other co-convicts and thus a greater position in the hierarchy of the prison subculture. It is precisely a higher position in the hierarchy of prisoners that can play an important role in the radicalization tendencies associated with the residence of persons in the execution of imprisonment.

Another important factor linked to the security climate of the prison facilities is the erudition of the personnel themselves, who enter into daily interaction with the prisoners. This concerns not only the degree of educational attainment, but also the education provided to them by the Prison Service of the Czech Republic. This is mainly a basic training which should not be the only educational activity offered to the employees of the Prison Service of the Czech Republic. Among other educational activities on which this security corps should be involved are events held by academic workplaces outside the Prison Service of the Czech Republic, but with which this security corps has concluded a bilateral cooperation agreement. They can be educational events in the framework of lifelong learning, vocational placements and seminars, participation in conferences, etc.

The project of education prison staff between Police academy of the Czech Republic in Prague and Prison service of the Czech Republic (Vejvodová & Kolář, 2019)

At the beginning of the establishment of a programme of training of prison staff in the areas of extremism and radicalization in prisons, the analysis carried out by the National Central against organized crime, the Terrorism Section and extremism, National contact point for terrorism in cooperation with VS CR. The one of the analyse results was that the employees of the VS CR do not have knowledge of the expressions of extremism, extremist symbols, their activation potential etc. Their knowledge was confined only to the most basic ones that were part of annual training for prison staff. This training is carried out in each organizational unit,

but the time subsidy is very limited (usually around 20 minutes) and the level of information transmitted varies according to the relationship of each trainer who is normally a member of the Prevention and Complaints Department. It is these who are in charge of organizational units to conduct training in this area.

The above elements have therefore contributed to the development of an educational module which would enable prison staff to bring the issue of extremism and radicalization more closely closer, including in prison facilities. Following the request of the Directorate-General of the Prison Service of the Czech Republic, a three-day course was prepared and it was agreed that it would be designated in its first phase primarily for members of the Prevention and Complaints Department. However, with the further development of training in this area, it appeared and continues to be desirable to include mainly professional staff in these activities in the Department of Imprisonment. The reason is that it is they who enter into a more intimate interaction with the prisoners.

The course was called “the manifestations of extremism in prisons and the monitoring of radicalization manifestations.” The Police College of the Czech Republic was selected for its implementation because it was best suited to the requirements of the Prison Service of the Czech Republic for the interconnection and sharing of information between the academic sector and this security level. In addition, the location of the academic institution also played its role here. The topics were selected to correspond not only to the situation in the civil sector which may affect, and as a rule, affect, the prison environment, and to the expressions of right-wing extremism, left wing extremism and the radicalization process. In addition, this part was supplemented by foreign experience in access to radicalized prisoners. The purpose of the education was also to approximate the author’s work of the National Central against organized crime and the Prison Service of the Czech Republic, i.e. the SAIRO analytic tool. Its purpose is to carry out basic screening of prisoners in connection with their possible radicalization.

It can be noted that the course was started in 2016 and up to now it has been possible to train around 600 employees of the Prison Service of the Czech Republic, mainly members of the Prevention and Complaints Department, as well as professional staff from the Department of Imprisonment. One of the basic requirements raised by the participants in the course was the requirement for printed educational material which would be distributed to the organizational units of the Prison Service of the Czech Republic and where it would serve as a teaching tool in training all employees in the course of professional training.

It remains to be added that another observation that emerged from the course evaluation was that this training should continue, expand and enrich it with new knowledge in the above areas. The advanced course, however, could not yet be implemented due to the ongoing COVID-19 pandemic, is therefore currently being prepared. However, it has severely restricted the possibility of organizing this educational activity. New approaches to the training of prison staff are currently being sought, and one of them is, for example, an effort to prepare an e-learning training platform. If there is a realization, it will depend on many circumstances, such as IT means, which would be compatible and would have both the Police Academy of the Czech Republic and the Prison Service of the Czech Republic with them.

New challenges of SAIRO analytic tool

This analytic tool has been established by the staff of the National Contact Point for Terrorism, The section on terrorism and extremism, National central against organized crime in cooperation with the Prison Service of the Czech Republic and representatives of the academic community at the Police Academy of the Czech Republic. After its entry into full service, data related to the expressions of extremism of the prisoners and their possible radicalization were entered. An important feature in the work in this tool is that it is not a single

entry of information without the possibility of further work with such person and the information obtained, but it is a longitudinal tool where the evolution of the radicalization tendencies of the monitor can be monitored over a longer period of time. It should also be added that this is by no means a repressive but preventive programme in order to better map the manifestations of extremism and the radicalization tendencies of people in an environment that is highly vulnerable to these tendencies.

This analytic tool has been adapted several times on the basis of the requirements of the security corps itself. An upgrade of it is currently under way, which should address other aspects related to work with prisoners. One of the essential requirements for working with the SAIRO is the monitoring and ongoing evaluation of the age of registered information. It seems desirable to adopt an internal regulation here, where not only the period of work with the tool will be established, but also the persons who will monitor and evaluate the information, as well as the ongoing assessment of the risks associated with the possible radicalization of the prisoners. It is also necessary for information to appear in the programme as to whether an intervention meeting has taken place with the prisoner, to what extent or with what result. This activity should be in the section of Department of imprisonment, and its guarantors should be primarily psychologists in organizational units.

An important area of work with imprisoned persons is always the creation of a treatment plan which will best fulfill the purpose of the execution of the sentence and which, in its content, will contribute to the successful reintegration of the imprisoned person back into society after its release. The preparation of a specific programme connected with the above speeches is also a challenge not only for the professional staff of the Prison Service of the Czech Republic, but also for the security corps itself.

Placement of radicalized inmates

Placement of prisoners so that all the basic conditions for their successful reintegration back into society are fulfilled is one of the basic activities of the Prison Service of the Czech Republic. The placement of the convicts is, in general terms, included primarily in the law on the enforcement of imprisonment, but also in other fraudulent measures and internal acts of procedure by which the security force is obliged to follow. Convicted women and men, smokers from non-smokers, first-time residents from multiple convicts must be housed separately². However, it is important to take into account other factors when placing people who may be linked, for example, to attacks against state organizations, security forces etc. One may be the assumption that the imprisoned person, by his behaviour, conduct and activity in the section, could influence other convicts, convince them of the correctness of his procedure, the advocacy of his action etc. It is therefore important to reflect these facts in the placement of convicts and, where appropriate, to include:

Prison systems in European countries are currently differentiated into two basic headings in relation to acts against persons in the execution of a custodial sentence which could, or are radicalized, radicalizers (influencers) or persons convicted of serious terrorism-related crime. It is important to draw attention to the fact that even the Western European countries are not united in their action against the above-mentioned persons as regards their placing in prison facilities. Nevertheless, it can be noted that the so-called diffusion model, or a combination of the both, is currently being used (Council of Europe, 2018, p. 63 – 66). Even experience abroad does not suggest that the placement of prisoners is essential for the use of one of the above models for the execution of imprisonment. For example, the separation model is used in

² The Law of imprisonment No. 169/1999 Col.

Holland and Spain, a diffusion model in Belgium and Germany and combined in the UK (Rushchenko, 2019), for instance.

As far as the position of the Prison Service of the Czech Republic is concerned, it is important to mention above all the fact that up to now our prisons have not had more extensive experience of radicalization in prisons. Therefore, even the question of using any of these concepts to place radicalized convicts has not been addressed by senior management. So what are the basic characteristics of the models cited:

Separation model

Separating or placing in a high security prisons (maximum security prisons) would be primarily for those jailed who pose a major and permanent risk of planning, preparing or committing terrorist attacks (violent extremist acts). Where appropriate, they would be persons who pose a significant risk of recruiting additional persons or personnel in order to participate in illegal activities leading to the commission of a serious crime. Separation does not in any way mean a separate location, solitary confinement. In accordance with human rights and prison rules, as well as psychological, emotional and psychological effects, using a location in so-called solitary confinement would not be an effective tool for the reintegration process of a prisoner.

The reason for placing prisoners separately, in specialized sections of prisons or in specialized prisons, is, on the one hand, better monitoring of changes in their behaviour, attitudes and the possibility of intervention on the part of specific prison staff, leading to the possibility of placing them in the normal prison population. In this model, suspects and convicts for serious crime are placed together in a special section of the prison, segregated from other prisoners and prison influences. The potential benefits may appear to be that all such prisoners are continuously monitored, their contacts with other prisoners on the section being monitored.

Another advantage may appear to be their limited ability to influence other prisoners. Working with a prisoner can be an individual or group – small therapeutic group. As far as staff training entitlements are concerned, they are high, but on the other hand, there is no need to train a large number of people. However, even in this model, a number of disadvantages can be found, which clearly include the fact of strengthening self-belief among like-minded people, strengthening mutual ties and cooperation after the execution of a custodial sentence.

Restricting social contacts can create problems within interpersonal relationships following release from prison sentences, perception of unfair sentencing and society. By being placed in a given section or in a specific prison as part of the application of this model, prisoners may feel stigmatized. Ultimately, however, the placement of the prisoners in this way may lead to the strengthening of their own exceptionality and exclusivity from other persons in the exercise of a custodial sentence.

It is evident that all the advantages and disadvantages of the system cannot be affected, but at least the so-called separation model had to be brought closer to the framework.

Diffusive model

As the title already suggests, persons who have been indicted or convicted of committing, supporting, preparing, etc., a terrorist attack are placed in the normal prison population and in a standard prison, depending on the seriousness of the actual offence. This does not mean, however, that they are placed on a normal partition. The location shall be determined on the evaluation of a risk assessment. The main advantages of this model are that prisoners themselves do not regard themselves as a marginalized group and perceive that they pose no greater threat to society than other prisoners.

Other advantages include the fact that the prison subculture is highly variable and can interact with groups from a completely different social spectrum, not just relationships with the future promise of further crime. However, a major disadvantage for this model is the fact that these persons are often employed by less trained staff or by staff whose knowledge of the issue is minimal. The possibility of radicalizing other convicts is also a serious risk. This may also concern prison staff, who may also be radicalized, or may be intimidated, blackmailed, etc. The possible interconnection of these persons with other criminal groups in prisons also plays an equally important role (Council of Europe, 2018, p. 66).

Combined model

This is essentially a combination of the two above models, and based on an initial assessment of the risk factors, it is decided by the professional staff of the prison whether the prisoner will be placed in the normal prison population or segregated from others in a specific part of the prison or in a specific prison as such. One of the very fundamental advantages is a specifically “designed” treatment programme for a prisoner, which is a combination of risk factors and the needs of a convicted person to work on. After screening has been carried out and a treatment programme has been established, the prisoner may be transferred to a regime best suited to his / her needs. By contrast, one of the major drawbacks is the education of a large number of prison staff, as well as the need for a relatively large tool to assist in identifying the risks and needs of the prisoner (Council of Europe, 2018, p. 66).

As can be seen from the above, the location of convicts is a problem which must be addressed in the context of the radicalization of prisoners. On the one hand, it must be remembered that if convicts are segregated from others on some specific sections, it may give them a sense of some exclusivity. It is then able to stimulate radicalization tendencies to a much greater extent, as only like-minded persons will be on the section. There will be much more concerted attempts to interact, and if the person of some charismatic leader is to add to that, this way of placement will seem very counterproductive.

This may also be linked to the efforts of other prisoners to be a member of such groups, especially if it is found that there is a section where fewer persons are involved and the conditions for the execution of a custodial sentence are more favourable, for example as regards the capacity of the section, the possibility of leisure, the use of sports and other activities, etc. Yet this model is used in some European countries, but it is due to a higher number of radicalized people, or those who have committed a terrorist act, on the basis of ideological convictions.

However, if the prisoners are watered down among the normal prison population, there is a risk of radicalizing more people. However, such a risk is much less, which is due to the diversity of the convicts themselves and their crime. However, this assumes a greater knowledge of the various manifestations that may be related to the radicalization process than the previous model. It is therefore necessary for more training activities for employees to be carried out when this model is applied.

It should be noted that radicalization is a multifactorial problem, so experts from psychologists, educators, sociologists, etc. should also participate in education. However, the prison service of the Czech Republic does not have a number of experts who would be able to educate employees in these areas. For this reason, it is necessary for academic experts to enter into educational activities, who will not only be able to speak in a meaningful way on the subject, but who will be willing to participate in the training and share information with representatives of the security corps. Sometimes, however, sharing information and experience between security forces may seem problematic, mainly because of various security checks.

Conclusions

Working with persons in the execution of a custodial sentence is one of the most important activities which the professional staff of the Prison Service of the Czech Republic devote to. In the context of this article, it is also important that these employees prepare themselves for the fact that their attention will also need to be focused on working with radicalized individuals. There is currently a lack of a comprehensive programme to focus in this direction, but experience from other European countries confirms that any underestimation of work with these people may ultimately pose a threat to society as a whole.

It is also necessary to accept the fact that the placing of such persons in prison facilities plays a key role in the possible influence of other prisoners. There are several views focused on their location, both in specific sections and in the normal prison population. The article therefore focuses on the difference in the positioning approaches of persons in relation to their possible radicalization. Last but not least, it is also important to draw attention to education in this area, as well as to the possibility of using the SAIRO analytical tool, which provides basic screening for people, with the possibility of better setting rules for the professional treatment of prisoners.

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VALUE FOR THE CUSTOMER IN E-COMMERCE

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Abstract. *Electronic commerce in Europe records regular growth every year. An additional stimulus prompting the willingness to make e-purchases is undoubtedly the Covid-19 pandemic. The closure of economies has caused a clear revival in online shopping and a closer look at this phenomenon is worth taking. The dynamic development of e-commerce means that entities operating in this market have to face the challenges resulting from the conditions of modern realities. It is very difficult for enterprises to effectively compete only by means of the product quality, so they look for optimal solutions that will help them attract customers, building their satisfaction.*

The study is based on the analysis of available literature sources and current industry reports. Moreover, the considerations are based on our own experiences and observations, but above all, the source basis is the data presented in the reports of the PastNord organization, which studies the e-commerce market in selected European countries. By analyzing the available data obtained through online interviews with e-customers in Europe, differences in customer preferences were examined.

The purpose of the article is to show how e-customers' behaviors are evolving and what determines them. In addition, an attempt will be made to indicate customer value in e-commerce. The considerations taken will allow to identify the reasons for changes in customer attitudes, as well as the factors with which e-entities build their competitiveness, adjusting their offers to customer expectations.

Keywords: *e-commerce, value, customer, covid-19, customer behavior, competitiveness, development*

Introduction

Nowadays, when managing an enterprise, especially in e-commerce, it becomes necessary to guarantee customers high-quality logistics services. Taking care of the service becomes one of the key factors in building the competitiveness of e-companies.

By analyzing the available data, it can be observed that the quality of service is influenced by many factors that differentiate the country of origin of a given e-customer. Logistic service, especially e-commerce, is a research area very susceptible to changes, especially of a technological nature. This increases the need to constantly adapt to emerging trends, and their turbulence is undoubtedly a key challenge for logistics services.

The considerations will take into account selected factors shaping the value for e-customers, which are worth knowing and differentiating according to the country of origin from the perspective of companies operating in e-commerce.

The importance of e-commerce

E-commerce is a dynamically developing distribution channel, which for many companies has started to constitute the main source of income and contact with the customer, initially being only an additional way of selling products. E-commerce is constantly evolving, offering solutions that respond to the diverse needs of consumers. An undoubted advantage is the development of digitization, which allows more and more companies to participate in e-commerce. However, it should be remembered that it is not enough just to offer a product and make it available through many channels, since logistics services are extremely important, especially the ones related to the delivery process.

Numerous reports and market studies indicate that the Covid-19 epidemic has led to an increase in online purchases across Europe. However, as Ecommerce Europe [2020] points out, the picture of this impact will not have been fully visible until the next year. The report shows that Western Europe continues to be the most developed e-commerce market in Europe, accounting for 70% of the total value of e-commerce in the region. Western Europe also has the highest percentage of online shoppers (83%).

E-commerce worldwide is growing both in volume and in the number of customers making purchases. Figure 1 presents data on global e-commerce retail sales.

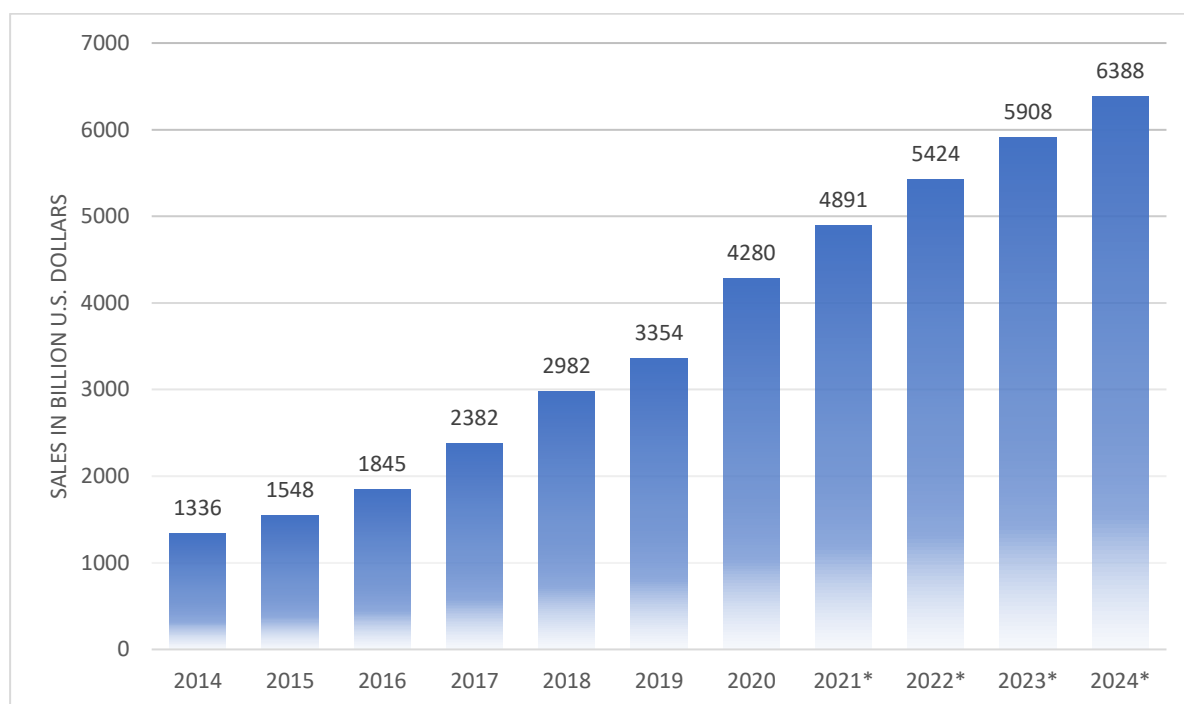


Figure 1 E-commerce retail sales around the world

Source: Statista, 2021

Global retail sales in e-commerce in 2020 amounted to USD 4.28 trillion, and the recent forecasts indicate that retail revenues are likely to increase to almost USD 6.4 trillion in 2024.

The above figures clearly show that online shopping is becoming more and more popular around the world.

As far as Europe is concerned, the PastNord report (2020) shows that 293 million European consumers shop online. In 2019, this figure was 286 million customers (Figure 2). In 2020, EUR 269 billion was spent on purchases made in e-commerce, which is an increase of nearly 13% compared to the previous year.

Among the countries surveyed, Germany and the United Kingdom are the largest e-commerce markets. France is the third largest e-shopping market, followed by Spain and Italy. Online shopping is the most popular in the UK and the Netherlands - 95% of consumers aged 15 to 79 do so. It is followed by Spain - 90% and France - 89%. In Poland, 83% of consumers shop online.

The largest percentage of online sales is generated by clothing and footwear purchased by more than half of European customers. The proportion of European consumers shopping abroad has also risen to 220 million, up from 217 million a year earlier. The sum spent by Europeans in 2020 in e-commerce trade amounted to EUR 269 billion, compared to EUR 235 billion a year earlier.

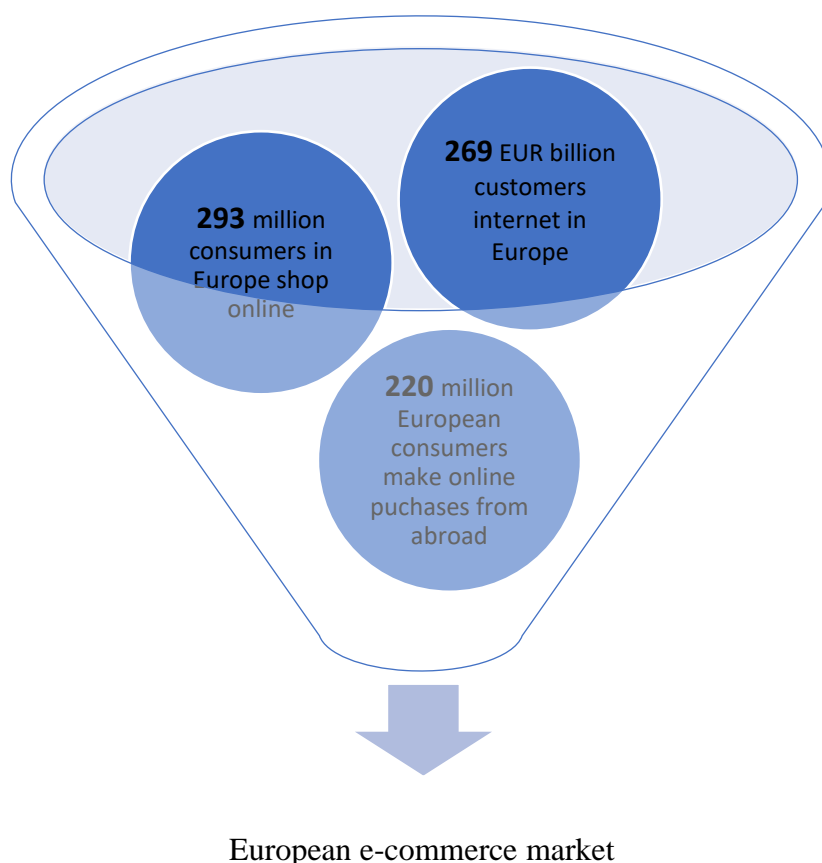


Figure 2. E-commerce in Europe

Source: PastNord, 2020

The largest increases in electronic purchases occur in Eastern Europe, mainly in Romania and Bulgaria, where the recorded rise is of around 30%. It should be emphasized, however, that these are still the two countries with the lowest level of customers making online purchases.

The Dutch (95%) and Poles (94%) are most interested in online shopping at home and abroad.

The indicated increases in e-commerce in 2020 were influenced, among others, by the prevailing pandemic. Especially in the spring, when borders were closed, increases in sales figures were evident. Customers fearing for their own health and valuing their own safety increased their purchasing activity on the Web (Figure 3). In each of the surveyed European countries, customers indicated that their online shopping activity rose during this time. The highest percentage of customers reporting increases in e-shopping was recorded in Spain - 43%, followed by Belgium - 41%, Italy - 33%, and Poland and the Netherlands with indications of 33% each. The increased interest in e-shopping took different dimensions, but in each of the countries they were of significant importance.

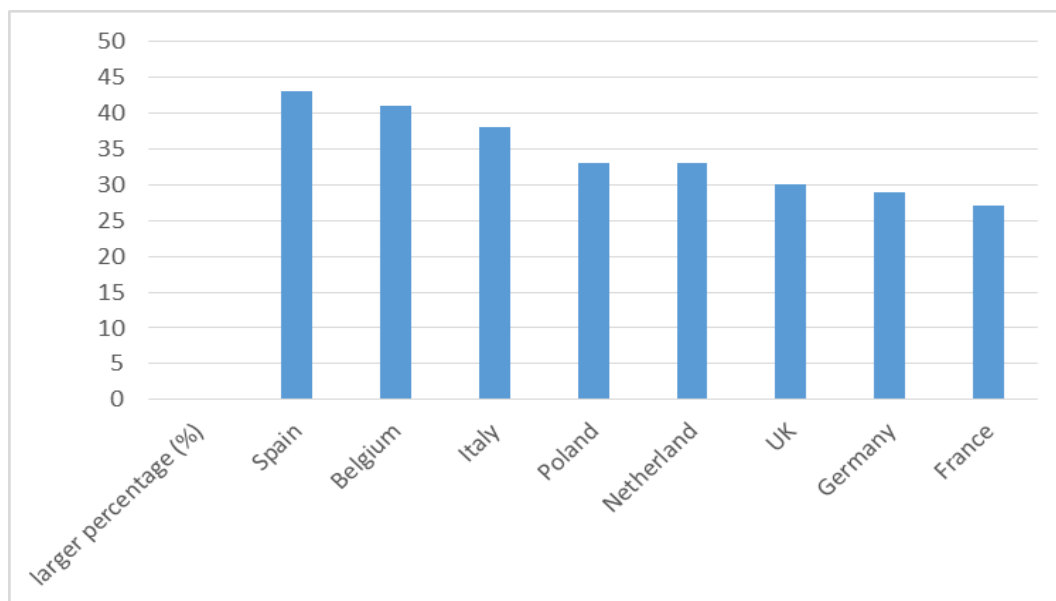


Figure 3 Percentage increase in online shopping spending in 2020

Source: PastNord, 2020

With such optimistic forecasts, it is worth taking a look at the evolving expectations of e-customers in selected European markets.

Factors influencing the e-shopping choices of Europeans

The source of the subsection are the reports of the PastNord organization (2018, 2019, 2020), which are based on interviews conducted among approximately 12,800 consumers aged 15-79 in selected European countries.

The considerations come down to the assessment of key factors influencing not only the competitive position of enterprises, but also determining the behavior of e-customers. Meeting the highest standards in terms of lead time, flexibility, reliability and return handling efficiency is the goal of modern e-enterprises.

The analyzed data cover the years 2018-2020 and show that there are clear differences in the preferences of customers shopping online in the European market. When looking for the features of the European e-commerce market, the analysis provided selected factors, such as:

- price,
- speed of delivery,
- the ability to change the date and time of delivery,
- clarity of return procedures
- using mobile devices when e-shopping – Table 1.

The presented countries are characterized by great diversity in terms of the development of e-commerce, population size or territorial area. For example, Italy, Spain and Poland are relatively large markets, but these countries have not achieved a very high level of online development, in comparison to countries such as Germany or the United Kingdom.

In each of the analyzed countries, it can be clearly seen that the importance of price as a decisive criterion for e-purchase is regularly declining. The price is the most important for the Spaniards - 46%, and the least for the Germans - 33%.

In none of the analyzed European markets, the price is the most important factor determining the willingness to make e-purchases. This is a clear signal for e-commerce, because

the amount to be paid for a given product is no longer the main distinguishing feature of purchases, whereas other aspects related to logistics service play a key role.

By observing the behavior of e-customers since the outbreak of the pandemic, it can be assumed that although price was not the most important criterion for product selection in 2020, it may become more important in the coming years. Some clients have lost their jobs, other groups have changed contract terms to less favorable ones, inflation in many countries is higher than before the pandemic. Certainly these are only forecasts, but given the occurring phenomena these forecasts may become real. Over the past year, safety and convenience of shopping have undoubtedly gained importance. Currently the security of online shopping has a slightly different dimension than until recently, because traditional shopping is associated with the risk of contracting the coronavirus.

The preferences among European customers related to the maximum waiting time for the delivery of the ordered product in e-commerce are varied.

In 2020 consumers in Poland, Spain and Italy were the most demanding in terms of the speed of delivery within maximum of three days. These countries have clearly higher requirements related to the speed of delivery than other European countries. It is Poles who attach the greatest importance to this criterion and for 52% of e-shoppers the lead time is the key. There may be several reasons for such expectations. Preferences may result from the patterns practiced by e-commerce leaders, such as Amazon or Zalando, which make customers aware that the delivery time is very important and that every effort should be made to shorten this process. Both of these entities are also the most dynamically operating in Europe. They are also most often mentioned by customers as their shopping choices. Another argument in favor of the requirements for the speed of delivery may be the constantly developing infrastructure or the expansion and higher capacity related to the 5G network. These arguments undoubtedly allow online sellers to reach customers even faster and more efficiently with the delivery. Another benefit is probably the development of digitization and new implementations of logistics operators and courier companies. Increases in purchases have revived the market of parcel collection points, especially in relation to parcel lockers. The largest number of them is in Poland - 11,000, followed by Spain - 10,000 and Germany - 7,000 (Ecommerce News Europe, 2021).

Courier deliveries to the indicated address are not always perceived as convenient, due to the need to stay at the place of delivery during a predefined time window until the courier arrives. Thus, deliveries to the pick-up and shipment points indicated by the buyer are becoming extremely popular. The reason is probably also the pandemic situation and the elimination of interpersonal contacts. In addition, indicating a specific pickup point is related to the convenience and comfort of the time of picking up the parcel. The client chooses locations that are close to their home or workplace.

The requirements of European e-customers are rising, especially in terms of conditions guaranteeing fast and convenient (changeable date / time) delivery. There are large differences in the willingness to be charged extra for faster delivery in the analyzed countries. In almost all countries, the willingness decreases with the subsequently analyzed year. And although Poland remains the most restrictive country in this respect, in which e-customers are most willing to pay extra for even faster delivery, the percentage of people declaring such a willingness is dropping, compared to previous years - from 46% in 2018-2019 to 37% already in 2020. It should be noted that the willingness of Polish customers to pay for fast delivery is greater than among customers in the most developed e-markets: British (29%) and German (30%). On the other hand, an upward trend in 2020 was demonstrated in Belgium (from 14 to 22%) and in Germany (from 28 to 30%).

Table 1. Factors shaping logistic customer service of e-commerce in selected European countries (in%)

Source: Own study based on (Postnord, 2018, 2019, 2020)

Country	Price as a decisive purchase criterion			Delivery speed max. three days			Will to pay for a quick delivery			Option to change the date / time of delivery			Clear return procedure			Using mobile devices to buy		
	2018 year	2019 year	2020 year	2018 year	2019 year	2020 year	2018 year	2019 year	2020 year	2018 year	2019 year	2020 year	2018 year	2019 year	2020 year	2018 year	2019 year	2020 year
Great Britain	42	44	36	41	37	32	41	41	29	38	36	36	46	45	43	65	65	67
Germany	37	35	33	37	35	34	28	28	30	40	39	32	51	45	47	56	58	81
France	41	41	35	42	41	33	31	31	26	52	54	42	54	54	52	57	60	65
Italy	53	50	45	42	47	42	37	38	35	59	60	50	67	60	64	66	76	83
Spain	51	48	46	47	49	45	38	37	36	67	67	52	60	65	58	71	77	83
Poland	39	42	40	52	53	52	46	46	37	71	68	45	50	53	53	53	62	78
Netherlands	38	41	35	39	42	34	24	24	21	55	53	46	46	49	45	58	61	77
Belgium	42	42	35	37	38	29	14	14	22	27	27	34	50	49	41	46	54	72

The possibility to change the date / time of delivery is the most important factor among Spaniards (52%) and Italians (50% of declarations). This factor is the lowest value for Germans - 32% of German customers consider it significant.

In each of the surveyed countries the clarity of the returns procedure plays an important role. This is every consumer's right and the possibility to take advantage of it. The most important factor for Italians is the transparency of returns (64% of responses). For this nation, it is the most important factor determining the willingness to buy. For Spaniards, clear return procedures are also very important - 58% and Poles - 53%. Among the analyzed countries return procedures are the least important for Belgians – 41% of responses.

The least significant factor among the analyzed countries are the returns for Belgians - 41% of responses, although for this nation it is still the most significant factor of all that were surveyed. It should be noted that it is difficult for e-enterprises to estimate the predictability of returns. The customer sometimes deliberately uses larger purchases with the assumption that the return will be made. Another reason for returns may be: improper adjustment of the product (size / color), receiving a product other than the one ordered, or its damage. The importance of returns, however, is clearly increasing, which also translates into greater consumer awareness, and for enterprises, for the need to have adequate warehouse facilities.

The last of the analyzed factors is the use of mobile devices for purchasing purposes. For several years, there has been a clear interest in mobile devices, the sale of which is clearly increasing, and the number of applications adapted to these devices is growing rapidly. When it comes to mobile shopping, each of the analyzed countries recorded an increase in the use of mobile devices for shopping purposes in 2020. However, they are most appreciated in Italy and Spain, where such a declaration was made by as many as 83% of buyers. Compared to the previous years, the largest increase in 2020 in using smartphones or tablets for e-shopping was recorded in Germany (by 23% increase) and Belgium (by 18%). It should be emphasized that the analysis of Mobile (2021) shows that 2020 became the best year for mobile commerce so far, and approximately \$ 115 billion was spent in the world through this channel. In 2014 already, changes related to the way customers think were called *mobile mind shift* (Schadler, Bernoff and Ask, 2014). The authors already decided that needs come down to the will to immediately meet them, as soon as they arise. This behavior also explains the readiness to be charged higher (additional) costs in order to obtain fast delivery. Mobile devices, accompanying us almost every day, enable constant access to being online. The use of mobile devices increases year by year in each of the analyzed European countries, while exerting pressure to shorten delivery times. Therefore, one should expect a decreasing pressure related to this area of logistics services. At the same time, mobile technologies are a kind of catalyst, thanks to which it is possible to develop the e-commerce supply network, improve business processes while meeting the needs of modern consumers (Majchrzak-Lepczyk and Łupicka, 2019).

Logistic e-customer service in Europe

Logistic customer service has always played an important role, and due to the constantly changing market and innovative development solutions, becomes an extremely important area of building the competitiveness of enterprises. The nature of the transformations taking place is a great challenge. Therefore, it is necessary to constantly analyze the factors influencing purchasing choices. The logistics of e-commerce customer service is significantly evolving. A few years ago, the delivery of the ordered products was possible within a few days of purchase,

currently the optimal time is 24-48 hours. Thus, the cooperation of many entities is necessary to be able to meet market expectations and make on-time deliveries.

The most important customer of logistics services is its end user, who in the presented considerations is a physical consumer who satisfies his purchasing needs in e-commerce. Logistic customer service is most often associated with the activity of enterprises related to delivery, but before it happens, there are a number of other activities and processes throughout the entire supply chain (Ying et al., 2016). It was assumed after D. Kempny (2008, p. 11) that logistic service is the result of the functioning of the company's logistic system and the supply chain, with the aim of providing functional, economic and psychological benefits. The common element is the relationship that occurs between the seller and the customer during the purchase process.

Logistic customer service is shaped by many factors, therefore their diagnosis and the ability to meet consumer needs and expectations become a value. Defining the factors influencing e-customer satisfaction is the subject of many studies of various nature. The research area is very wide, including considerations from a comparative analysis of the behavior of European e-customers (Majchrzak-Lepczyk and Łupicka, 2019); shaping relations (Hryhorak, Trushkina, Popkowski and Molchanova, 2020); to service areas related to sustainable development (Tian et al., 2021).

Customer purchasing experience and increasing interest in electronic purchases determine the growth of e-sales. Customers are becoming more and more aware, but also demanding in terms of delivery, where its speed is considered as a key factor in satisfaction with logistics services. On the other hand, the ability to choose the method, date and place of delivery of ordered products is important for all European consumers. The indicated areas are only necessary guidelines to be applied in order to build a competitive position in e-commerce.

Conclusions

The considerations present the key factors influencing the degree of customer satisfaction which are a specific value for him. Differences in the perception of logistics services in selected European countries were also indicated. Meeting the highest standards in terms of delivery time or return handling efficiency is the value of modern e-commerce.

Until recently, the competitive advantage of e-stores compared to brick-and-mortar outlets were lower prices. Currently, such a strategy of reaching the customer no longer works. The path to success in e-commerce is not easy and requires a lot of analysis and strategic decisions.

Undoubtedly, mobile shopping is an important factor in the strong progress in e-commerce, which is indicated by the analyzed data.

Each year electronic commerce is more popular among e-customers. It is very likely that shoppers who currently buy online to avoid the risk of virus contraction will look favorably on e-commerce even after the pandemic has passed. The current economic situation is a huge challenge for all groups - enterprises, employees, customers and state structures. Long-term maintenance of the pandemic may lead to permanent changes in the purchasing behavior of e-customers and it will be necessary to include them in the operating strategies of many companies.

Interest in purchases by means of mobile devices in Europe will be growing, but in a different way. On the other hand, the increasing availability of mobile devices and the increasing access to the Internet is likely to compensate for these differences.

It is impossible to comprehensively analyze all the factors influencing the value for the e-customer in a short study. Several of them have been intentionally selected to present a fragment of the differences in logistics services in individual European countries. However, it should be clearly emphasized that only comprehensive care for all elements of the purchasing process gives a chance for success in e-commerce. This determines the necessity of constant observation and research on the trends that allow us to identify and satisfy the needs of customers. Only in this way is it possible to shape the offer expected by customers.

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THE INFLUENCE OF PERSONNEL POLICY ON THE STRATEGY OF THE ENTERPRISE

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Abstract. *Personnel policy is closely related to all areas of the organization's economic policy. On the one hand, decision-making in the field of personnel policy occurs in all complex functional subsystems: management of scientific and technical activities, production management, management of economic and foreign economic activities, personnel management of the organization. On the other hand, decisions in the field of personnel policy influence decisions in these complex functional subsystems. Since the task of personnel policy is to provide these functional subsystems of management and production of the organization with the necessary workers, it is obvious that decisions on recruitment, assessment, labour adaptation, incentives and motivation, training, certification, organization of labour and workplaces, the use of personnel, planning of promotion for service, management of the personnel reserve, management of innovations in personnel work, safety and health of employees, release of personnel, determination of the management style strongly influence decision-making in the field of economic policy of the organization, for example: in the areas of scientific and technical, production, economic activity, etc. [3].*

Keywords: *personnel policy, management, economic policy, environment, staff, enterprise.*

Introduction

The article is devoted to the research of theoretical aspects of the formation and implementation of effective personnel policy at Ukrainian enterprises under the current conditions of market development. On the basis of this, the questions are solved of the essence and content of the personnel policy of the modern enterprise, its main tasks and components. The factors are revealed, which influence the formation and implementation of personnel policy, defined the main stages of its creation and principles of functioning. The requirements are established for the formation of an effective personnel policy of the enterprise. The main problems are revealed of the formation of effective personnel policy and proposed possible ways of their solution. It is revealed that the formation of personnel policy of the enterprise is influenced by factors of the external and internal environment. Among the factors inherent in the internal environment, one can distinguish goals and strategy of the enterprise, style of personnel management, financial resources, personnel potential, conditions and level of remuneration, motivation of work, motivational culture. In addition to the main stages of the formation of an effective human resources policy of the enterprise (standardization, programming and monitoring of personnel), the stages of official approval of personnel policy, informing the staff and improving personnel policy are added. At the last stage of personnel policy formation, an analysis of the effectiveness of its implementation at the enterprise should be carried out. In order to eliminate the main problems in the formation of personnel policy it is necessary to form a certain mechanism for its implementation, which is a system of plans, norms, organizational, administrative, social, economic and other measures aimed at solving personnel problems and meeting the needs of the enterprise in the personnel.

Formulation of the problem.

Due to the modern development of the market economy and scale globalization and transformational processes has greatly increased the relevance of research and developing new approaches to solving problems of formation, development and effective use unique human resources of high quality, which today is one of the main factors ensuring the competitiveness of the enterprise and its resulting and productive functioning and development. Effective use of human resources can be achieved through formation and implementation of an effective personnel policy of the enterprise, which is considered today the most important competitive advantage and a means of achieving the success of any modern enterprise.

The key to the success of this policy is, first of all, a well-established creative team of like-minded people. Effective personnel policy is, first of all, a personnel policy that corresponds to the concept of development enterprises, so personnel policy should be developed taking into account the overall development strategy the latter. However, it should be noted that the choice of personnel policy does not only depend on the overall goal activities of the enterprise, but also from the methods and means of achieving this goal. Personnel policy enterprises must be developed on the basis of a certain system of rules, procedures, traditions, which directly related to the implementation of recruitment processes, their placement, use, retraining, stimulation, motivation, career growth, etc.

Analysis of recent research and publications.

A large number of scientific works of both foreign and domestic scientists are devoted to the study of personnel policy, its principles, conditions and factors of formation and implementation. Thus, a significant contribution to the study of the formation and implementation of effective personnel policy has been made by such scientists as W. Blank, D. Gibson, P. Drucker, E. Mayo, F. Taylor, M. Friedman, D. Goddess, O. Grishnova, M. Grachev, V. Gurne, A. Kolot, O. Krushelnytska, A. Mazaraki, Kibanov A.[] Ya., Samigin S.I,[] A. Maslow, D. Melnychuk, O. Yegorshin and many others, but, nevertheless, the problem needs further research and solution.

The purpose of this article is to study the peculiarities of the formation and implementation of effective personnel policy as a competitive advantage of Ukrainian enterprises in modern conditions of operation and development market, as well as identifying the main problems of its formation and providing recommendations for its effectiveness implementation.

The work uses **methods** of grouping, economic, managerial analysis in the field of human resource management.

Presentation of the main research material.

Under modern conditions of rapid market development, for which characterized by a high level of global competition, for modern enterprises their priority development was the development of measures for effective personnel management, because it is the staff with high level of creativity, activity, creativity, is the main strategic resource (a kind of intellectual capital) of any enterprise that provides it with competitiveness in the market. Usually, fulfilment of goals and objectives for effective personnel management in the enterprise is carried out through personnel policy. Accordingly, personnel policy should be considered the core of the management system staff at the enterprise. Usually, when we talk about personnel policy, it

means a certain system of ideas, rules, procedures on the basis of which people operate in the enterprise or a set of certain rules and regulations that outline the main content and areas of work with the team, its methods and forms. Based on the analysis scientific literature devoted to defining the essence of personnel policy, we concluded that personnel policy is the defining direction of personnel work of the enterprise, the basic principles, methods and techniques in working with staff to create and develop human resources, which necessary to achieve the main goals and objectives of the enterprise in the process of its activities. The purpose of the personnel policy of the organization is to ensure a balance between economic and social efficient use of personnel, creating conditions for effective use and development human resources of the enterprise, meeting the social and economic interests of employees. Personnel policy is aimed at consolidating a unified corporate culture, effective motivation and professional development of employees of the organization [5].

The main components of personnel policy are the policy of recruitment, selection and placement of personnel, wage policy, education policy, employment incentive and motivation policy, social policy relations, development and training policy, etc. Personnel policy is formed by the top management of the enterprise, implemented through personnel service while its employees perform their respective functions. The object of personnel policy is directly the staff of the enterprise, and the subject - the formed personnel management system, which includes managers at all levels, as well as human resources. In particular, the personnel service is given perhaps the most important role in the formation and implementation of personnel policy of the enterprise, after all it develops targeted programs, constantly monitors the situation and makes certain adjustments to execution of programs in case of change of parameters of external and internal environment of functioning.

Personnel policy is the most generalized form of expression of the interests of the personnel of an enterprise, including the interaction of the entire complex of conditions affecting its activities and development, that is, financial and technical policy, commercial, innovative and other types of activities of the organization. The personnel strategy is based on a systematic analysis of the external and internal environment and reflects its general concept of personnel development and the enterprise as a whole [4]

The analysis of the external environment consists of two parts:

1) analysis of the macroenvironment: the state of the economy and general trends in the labour market; legal regulation and management in the field of labour and social security; political processes and trade union movement; social and cultural components of society; scientific and technical development; infrastructure development and other general trends;

2) analysis of the immediate environment: analysis of the local labour market; the policy of regional and local authorities in the field of labour, employment and social security; trade unions in which the employees of the enterprise are members; personnel policy of competitors [4].

Analysis of the internal environment reveals the state and prospects for the development of human resources; organization of production and communication; principles, methods, management style; prospects for the development of technology and technology of the company; company finances; personnel marketing; organizational culture and the needs of its change. The most important element of the analysis of the internal environment in strategic personnel management is the analysis of the mission and goals of the organization.

The mission of the company expresses in a concentrated form the meaning of existence, the purpose of the organization. It forms the basis of the firm's strategy. The task of the analysis is to determine how the mission reflects on the personnel management strategy and what necessary elements the personnel management strategy should contain in order not to contradict

the mission. The mission of the company is revealed in the system of strategic, medium-term and short-term goals of the organization, which are the basis for setting strategic, medium-term and short-term goals of personnel management. Therefore, it is necessary to analyse the goals of the organization in order to ensure their achievement through the system of private goals of the personnel management subsystem [6].

The analysis ends by identifying:

1) the weaknesses and strengths of the personnel and the development of measures to eliminate weaknesses and weaknesses, the effective use of strengths in the economic activities of the organization;

2) the capabilities of the personnel and the threats of the organization that the external environment conceals by developing plans for the most effective implementation of opportunities and the elimination or levelling of external threats [4].

Among the main tasks of personnel policy of the enterprise are the following:

- timely provision of the enterprise with employees of appropriate quantity and quality, taking into account strategies of its development;

- creating appropriate conditions for implementation, creating an environment in which everyone the employee had the opportunity to develop, assert itself, self-realization, etc.;

- rational use of staff;

- introduction of effective methods of personnel selection and placement;

- stimulating the desire of employees to achieve the goal;

- constant support of effective work of the enterprise and others [7].

After a brief study of the nature and content of personnel policy of the enterprise, we move on directly to the processes of its effective formation and implementation in modern economic conditions. The mechanism of personnel policy formation is a set of actions of subjects aimed at development human resource management systems and the formation of their potential.

It is quite important for the company in the formation and implementation of effective personnel policy to take into account the list of certain principles on which it will be based. Among such principles are complexity and sequence of its implementation, scientificity, system, efficiency, social justice, professionalism, balanced representation of experienced and young workers, taking into account gender equality, accounting for complex results, continuity of staff training. When forming a personnel policy it is necessary to agree on certain nuances [5]:

- personnel development policy - providing development programs, individual promotion planning, team building, training and further training;

- development of general principles of personnel policy, definition of priority tasks;

- financial policy - establishing the principles of allocation of funds, ensuring an effective system labour incentives;

- organizational policy - generalization of labour needs, creation of structures and personnel, appointments, reserves, transfers;

- information policy - creation and support of the movement of the personnel information system [1].

In order to form an effective personnel policy, it is also important to take into account the factors that inherent in the external and internal environment of the enterprise and which have a direct impact on its functioning and development. When choosing a personnel policy, factors specific to the external and internal environment of the enterprise are taken into account, such as:

Production requirements, enterprise development strategy;

Financial capabilities of the enterprise, the allowable level of personnel management costs determined by it;

- Quantitative and qualitative characteristics of the available personnel and the direction of their change in the future, etc.;
- The situation on the labour market (quantitative and qualitative characteristics of labour supply by professions of the enterprise, the conditions of supply);
- Demand for labour from competitors, the emerging level of wages;
- Influence of trade unions, rigidity in defending the interests of workers;
- Requirements of the labour legislation, the accepted culture of work with hired personnel, etc.[2].

The general requirements for personnel policy in modern conditions are as follows:

1. Personnel policy should be closely linked with the development strategy of the enterprise. In this regard, it represents the staffing of this strategy.

2. Personnel policy should be flexible enough. This means that it must be, on the one hand, stable, because it is stability that is associated with certain expectations of the employee, on the other - dynamic, i.e. to be adjusted according to change of tactics of the enterprise, a production and economic situation. Those aspects of it that are focused on the interests of staff and are relevant to the organizational culture of the enterprise should be stable.

3. Since the formation of a skilled workforce is associated with certain costs for the company, personnel policy must be economically justified, i.e. proceed from his real financial capabilities.

4. Personnel policy should provide an individual approach to its employees [2].

Thus, the personnel policy is aimed at the formation of such a system of work with personnel, which would focus on obtaining not only economic but also social effect, subject to compliance with applicable law.

As a rule, the process of forming a personnel policy at the enterprise goes through several stages. Most scientists distinguish three such stages: rationing, programming and monitoring of personnel:

Personnel rationing. Coordination of principles and goals of work with personnel with the principles and goals of the enterprise as a whole, strategy and stage of its development

Personnel programming. Development of programs, ways to achieve the goals of personnel work, specified with taking into account the conditions of current and possible changes in the situation (development of personnel technologies)

Personnel monitoring. Development of procedures for diagnosis and forecasting of the personnel situation (program development continuous diagnostics and the mechanism of application of measures for personnel development) [1].

However, in our opinion, this list of stages is incomplete, so we propose to continue it. After carrying out the above stages should be followed by the stage of official approval of personnel policy enterprises. Later, carry out the stage of informing the team, which is to create a system promotion and delivery of personnel information to the staff, acquaintance of employees with the approved personnel policy and at the end of this stage to collect feedback and ideas on what is possible improving personnel policy. And at the last stage of personnel policy formation should be carried out evaluating the effectiveness of its implementation by analysing financial resources for the implementation of a certain type personnel strategy, evaluation of the effectiveness of the system of work motivation and the principles of allocation of funds to staff.

In modern conditions, personnel policy will be considered effectively formed in the event that it will meet such requirements [6]:

- personnel policy should be linked to the company's development strategy. In this she represents staffing the implementation of this strategy;
- personnel policy must be flexible enough, i.e. it must be stable on the one hand, on the other - dynamic;
- personnel policy must be economically sound, i.e. based on real financial capabilities of the enterprise;
- personnel policy should provide an individual approach to employees.

It should be noted that the personnel policy will be effective in the case of staff enterprises use their potential to the maximum, perform the tasks set before them. It is also important to explore a number of current issues that arise in the formation of personnel policies in the enterprise. Among the most common problems are the following[6, p.214]:

1. Lack of skilled workers, which in turn leads to low quality performed works;
2. High staff turnover at the enterprise. The main reason for staff turnover is dissatisfaction with their position. In particular, dissatisfaction with existing wages is disrespectful attitude on the part of management, lack of opportunity for self-realization and self-affirmation, lack of conditions for rest, weak system of stimulation and motivation, etc.
3. The problem of organizing the selection and hiring of personnel. This problem is directly caused oversaturation of the labour market with labour, so the company's management must create all the conditions to attract such personnel in which their personal characteristics, skills, knowledge will best match the purposes of the enterprise.

The personnel policy of the enterprise is a holistic personnel strategy that combines various forms of personnel work, the style of its conduct in the organization and plans for the use of labour. Personnel policy should increase the capabilities of the enterprise, respond to changing technology and market requirements in the near future. Personnel policy properties: 1. Connection with strategy. 2. Orientation to long-term planning. 3. The importance of the role of cadres. 4. The range of interrelated functions and procedures for working with personnel [4].

Based on the above, we will offer some recommendations for addressing the above problems in the formation of personnel policy of the enterprise, which may be an integral part mechanism for implementing personnel policy:

- formation of strategic approaches and methods for the organization of selection and hiring of personnel, which are to develop a two-tier staff structure, which will include a "staff core", the most valuable and skilled workers and the "peripheral" workers who perform less significant and responsible functions at the enterprise;
- organization of training and retraining, advanced training of workers;
- creation of all necessary conditions for the development of human potential in the enterprise, which in the result will provide it with corporate competitiveness in the market;
- development of approaches to effective personnel management as a condition for effective and rational placement, use and provision of employees, which will provide professional growth;
- development of social and labour relations between staff and management in relation to the functioning and development of labour personnel, employment conditions and social protection;
- the creation of an effective system of incentives for staff, which includes moral and material incentives and the most important areas of work to motivate staff, etc. [5].

Because one of the main tasks of personnel policy of any enterprise is involvement fully employ the full potential of employees, so special attention is paid to enterprises namely the formation of an effective system of staff motivation, which helps to increase productivity

and profitability of the organization as a whole. In modern conditions the most effective and quite often the motivation system used is "motivation for the result".

Conclusions

Summarizing the above, we can conclude that an important role in personnel management of the enterprise is played by personnel policy. Personnel policy is an integral part of all management activities and production policies of the organization. It aims to create a cohesive, responsible, highly developed and highly productive workforce. Personnel policy should create not only favourable working conditions, but also ensure the possibility of career advancement and the necessary degree of confidence in the future. Therefore, the main task of the personnel policy of the enterprise is to ensure that the interests of all categories of workers and social groups of the work collective are taken into account in the daily personnel work.

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INFLUENCE OF ACADEMIC AND MILITARY TRAINING ON LEARNERS' ESTABLISHMENT AS MILITARY AND CIVILIAN LEADERS

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Abstract. *The world is constantly changing in all areas. Education is no exception. Students are focusing more on hands-on skills or finding information themselves. Therefore, the challenge for educators is to explain the skills. This study is devoted to the problems of motivation and the subsequent motivation salience of the learners in the process of training. The leader has a significant influence on the behaviour of the other participants in the overall activity. His authority is based on his personal qualities and contribution for achieving group goals, on his abilities and the possibility to take a consent of those who are influenced. The scientific work presents empirical research in a real environment focusing on the influence of academic and military training at the university for the establishment of learners as military and civilian leaders.*

Keywords: *leader, leadership, motivation, academic and military training, military and civilian leaders*

Introduction

Educational shifts are dynamic, diverse and non-linear. Especially so now, as the world appears to be moving rapidly due to technological advances and increased interconnectedness between countries and cultures, given the persistence (or even increasing) of differences in educational results within nations, races, and disparities in privilege. Is academia shifting away from the traditional learning and on to the - age learning? In today's age, students are focusing more on hands-on skills, or finding information themselves, in order to boost their knowledge so they can later use in their lives. Therefore, the challenge for educators is to explain the skills and switch from broad statements of intent to more detailed discussions on educational practice.

The leader has a significant influence on the behaviour of the other participants in the overall activity. His authority is based on his personal qualities and contribution for achieving group goals, on his abilities and the possibility to take a consent of those who are influenced. The study is a part of a large-scale research, which is devoted to the problems of motivation and the subsequent motivation salience of the learners in the process of training. The scientific work presents empirical research in a real environment focusing on the influence of academic and military training at the university for the establishment of learners as military and civilian leaders. The study, which is offered to the esteemed audience, is a small part of a research in the period 2013-2019, which ends with a successful defence of the degree "Doctor of Science" in the field of "Security and Defence" at the National Military University in Bulgaria. This part has not been published so far, so the author allows himself to present the results to the scientific community.

The successes and failures of an individual organization depend on its leadership

The successes and failures of an individual organization depend to a large extent on its leadership which represents one of the most important parameters defining organizational appearance, development, and functioning. Everything depends on the individual and what he or she is going through in their life. This is how one of the interviewed servicemen answered the question what would motivate him to join the army today. Nowadays, both the army and other state institutions face the challenge of recruiting and retaining qualified personnel. This calls for a study of the causes and motives that make people enrol in the armed forces. (Grigorov, 2020)

While management is rather guiding and coordinating the work of team members, leadership can be defined as the process of influencing an organized group that would make it strive for achieve its goals. (Dzonev, 1997) The manager is officially appointed, but if he wants to be a leader, he must influence not only by means of the legal, awarding, and coercive powers given to him by a formal organization, but also by means of expert and reference power based on his personal abilities. It can be considered that the leadership is informal, regulated, obligatory and implemented on the laws and mechanisms of organizational psychology. Management is one of the functions of governance with an institutionalized, formal and rational nature. It does not contain informal components. (Semerdzhiev, 2007)

According to the terminology generally accepted by the scientific community, the leader is a person who: has recognizing his leadership followers; takes to lead and manage the activity of the followers by motivating them; gives a vision and shows the true direction and direction of the effort; stands out as the first among his followers with their common sense, honesty, responsiveness and concern for others; confirms and articulates values, standards and expectations; serves as an example and role model; listens, explains and involves other people in decision-making; represents the organization. (Semerdzhiev, 2007) A typical definition for the leader is that he/she directs and influences others to achieve the overall goal. He/she really give direction, but also has to maintain the people's conviction that knows where the organization is going. According to Drucker, leadership is an elevation of human imagination to higher heights, the pursuit of higher standards of fulfilment, the formation of the person beyond its normal outlines. (Drucker, 1992) According to Dzonev, leadership is a phenomenon of group dynamics where, as a result of the action of members in the performance of a common activity, one rises to organize the group in solving a particular task. (Dzonev, 1997)

The other members of the group accept the leader voluntarily and build their own attitude towards him as a leader, and towards themselves as followers. The leader is a member of the group that has a major impact on the behaviour of other actors in the overall activity. The status of authority is mandatory. His authority is based on his personal qualities the contribution. A leader must be accepted as such, and the influence needs the consent of those who are influenced. Why is it so essential and why the question of increasing the percentage of female officers within the armed forces ranks is arisen with so much sharpness. (Zhekova, 2013) Obviously, both power and influence are not characteristic of leaders and managers. The people at all levels of the organization and out of the organization as clients and suppliers may influence the behaviour and attitude of others, they have power. The authority, on the other hand, is the power given in a certain position. So, although people at all levels of an organization may have power to influence others, those with a formal position have authority only. (Ștefănescu, 2010) As Ștefănescu points out leaders are characterized by self-confidence and generating of powerful emotionally reactions in those who follow them. They have the capacity of transforming their followers, the organizations, the society and they can even

change the history progress. The leaders have a special relationship with their followers. They have charisma and they are determined to change the world. (Ștefănescu, 2011)

Academic and Military Training at the University for Building Students as Military and Civil Leaders - Experimental Study

The dynamics in the unprecedented transformation of society at the beginning of the 21st century caused significant changes in the concepts of organizations, the views of their mission and the organizational culture of their management. New research in this field has led to changes in the theory and practice of management, becoming the guiding principle for all processes of good governance based on a scientific basis. (Marinov, 2018)

Academic and military training at the university to build trainees as military leaders must provoke young people to think critically, to create, to solve problems and to be proactive. These are the skills needed to build successful entrepreneurs, business leaders and active and responsible citizens. Through practical activities they turn their ideas into reality, embedding creativity and innovation in their work, take risks and achieve their goals. Main goal of National Military University is to prepare highly qualified officers and specialists with higher education, who are capable to carry out active cognitive activity, with confirmed positive moral and volitional qualities, with developed intellectual and physical options and with knowledge and skills for management on human and material resources. The fulfilment of the main goal of the National Military University in Bulgaria has been reflected in the officially adopted training documentation - detailed, agreed with the users and established qualification characteristics, curricula and programs for bachelor's degree in the Professional Field of Military Affairs in the Specialties of the Regulated Profession "Officer for Tactical Level of Management".

In this respect, Doncheva writes on a new way of thinking about training and educating trainees. The learning process is a complex and multi-layered phenomenon. It has different aspects: more generally or more closely psychological, sociological, historical, etc. that are explored by different sciences. Thus, it (the educational process) is generally subject to many scientific fields. Each one, fulfilling its purpose, examines a certain aspect of it, which, in its summary form, constitutes its subject. The very realization of the process of forming personal readiness for life is a matter of technology, algorithm, choice and application of ways and means, a question of methodology. (Doncheva, 2017)

The present scientific work is part of a large study currently being conducted at the National Military University, Bulgaria and which is dedicated to the problems of motivation and subsequent motivational expression of students and cadets in the learning process.

During the basic stage of the study the following were examined:

- Basic groups - cadets who graduated in the academic years 2013/2014, 2014/2015, 2015/2016, and 2016/2017 – total 155 respondents.

- Control group for comparison included first-year cadets who started their training in 2013/2014 – 77 respondents.

- Control group for comparison included first-year civilian students who started their training in 2013/2014 – 88 respondents.

The control groups in the study included first year cadets and students in the 2013/2014 academic year. We believe that the use of such a comparison is relevant and indicative of whether there are differences in the perception of the individual elements studied by the motivation excellence in diverse groups of learners.

292 people studied in the first year of their education in the 2013/2014 academic year at the Land Forces Faculty of the Vasil Levski National Military University. 237 of them are men and 53 of them are women. The control group for the study consists of 77 cadets and 88

students, who occupy respectively 47% and 53% of the total number of respondents, achieving control group's balance. At this stage, a distribution of military specialization / civilian control groups was also carried out. The control group "cadets 1st course of education 2013/2014" is characterized by the following distribution - 77 people, of which 68 men and 9 women. The control group "full-time students 1st course of education 2013/2014" is characterized by the following distribution - 88 people, including 64 men and 24 women. The gender breakdown is common and not surprising given the military organization being explored. It is important to admit, that the first steps in this respect have been taken, as all higher education courses and professional positions for women in the armed forces in Bulgaria have already been opened. (Zhekova, 2013a)

Training in a military higher education institution and the preparation of cadets and students for future leaders in society - comparison and levels of agreement on the 5-point Likert scale

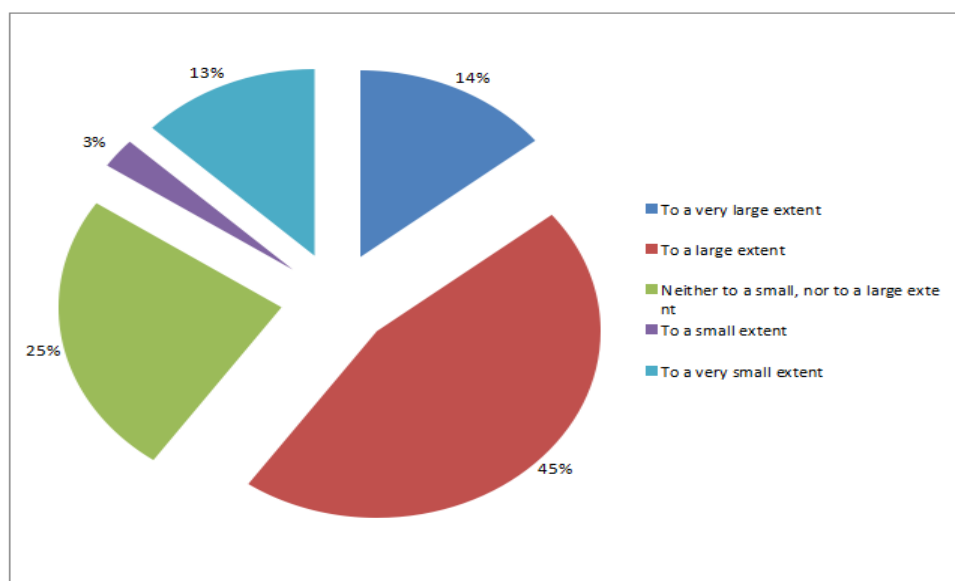


Figure 1. To what extent do you think military training will prepare you for a future military leader? cadets 1st course of education 2013/2014

To the question "To what extent do you think military training will prepare you for a future military/civilian leader?" the answers of the respondents from a control group of 1st course cadets 2013/2014 formed the following distribution - 14% of the respondents responded that military and university education prepares trainees to become future /military/ leaders to a very large extent, 45% say it is into a large extent, which accounts for 59%. Indirectity was found in 25% of respondents. They say the answer "neither to a large extent nor to a small extent". The response "to a small extent" is reported by 3% of the respondents, and the "to a very small extent" is indicated by 13% of respondents. (Fig. 1)

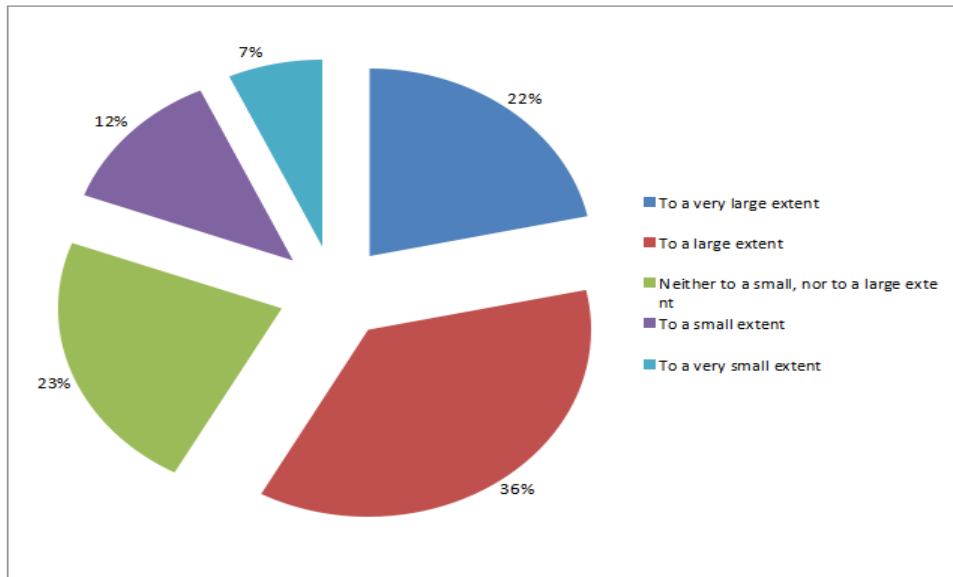


Figure 2. To what extent do you think that university education will prepare you for a future leader? (full-time students 1 course 2013/2014)

Respondents from the first group of respondents had the following distribution: 22% of respondents first responded that military / university education was preparing trainers for future / military / leaders to a very large extent, 36% said it was to a large extent, which formed a total of 58% agreement with the statement. Indirectity was found in 23% of respondents. They say the answer "neither to a large extent nor to a small extent". The answer "to a small extent" is indicated by 12% of the respondents, and the answer "to a very small extent" is indicated by 7% of respondents. (Fig.2)

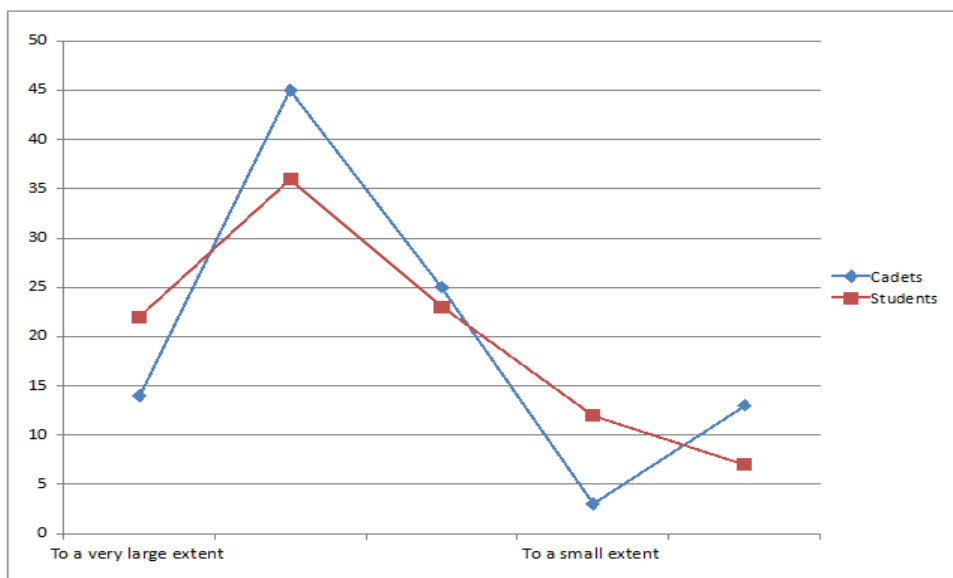


Figure 3. Comparison of levels of agreement with the statement that military / university education prepares learners for future /military/ leader. (control groups first course of education)

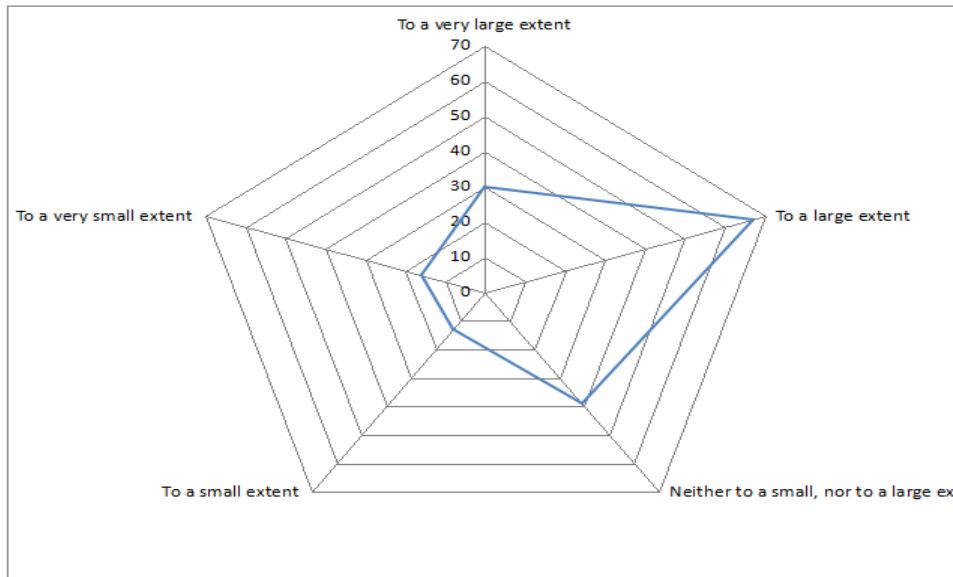


Figure 4. Measuring levels of agreement with the statement that military / university education prepares learners for future /military/ leaders. (common presentation of control groups first course of education)

Examining the overall performance of the two control groups that are in the first year of study during the academic year 2013/2014, we find that respondents are united around the answer "to a large extent" they believe that military / university education prepares learners for future /military/ leaders. Data shows an agreement found in over half of respondents and low rates of disagreement. (Figures 3 and 4)

When comparing the levels of agreement with the assumption that military / university education prepares the students for future /military/ leaders for the two control groups, we do not detect statistically significant differences with respect to the assertions, as the control group of cadets shows 60% agreement and only 15% dissent, and the control group of students shows 58% agreement and 19% disagreement with the statement. (Fig.5)

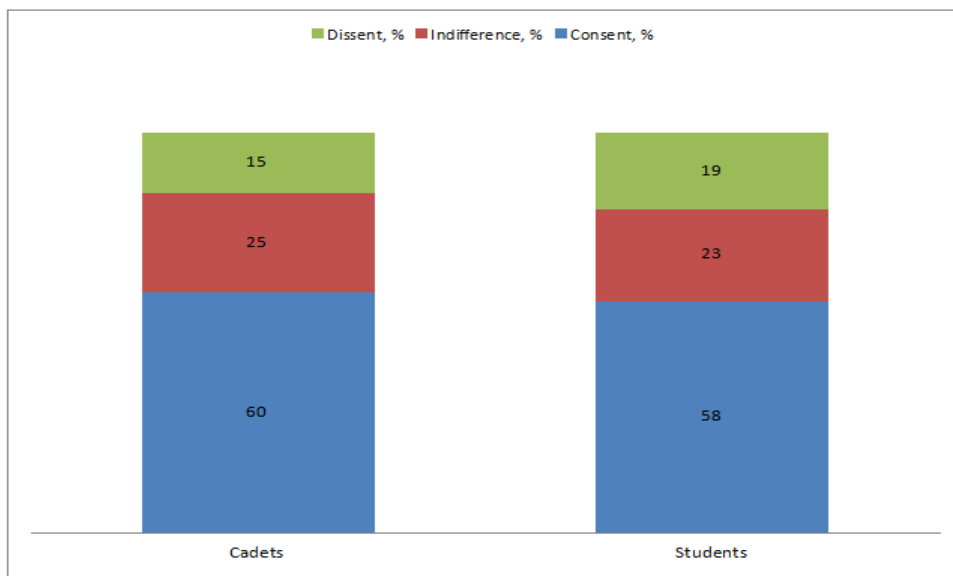


Figure 5. Comparison of levels of agreement with the statement that / military / university education prepares learners for future / military / leaders in control groups first course.

Table 1. Introduce levels of agreement with the statement that military / university education prepares learners for future /military/ leaders, based on a 5-stage Likert's scale for the 2013/2014 academic year

To a very large extent	Largely	Not to a large extent or to a small extent	To a lesser degree	To a very small extent	
14	45	25	3	13	cadets
22	36	23	12	7	students
2	64	23	11	0	Alumni 2013/2014

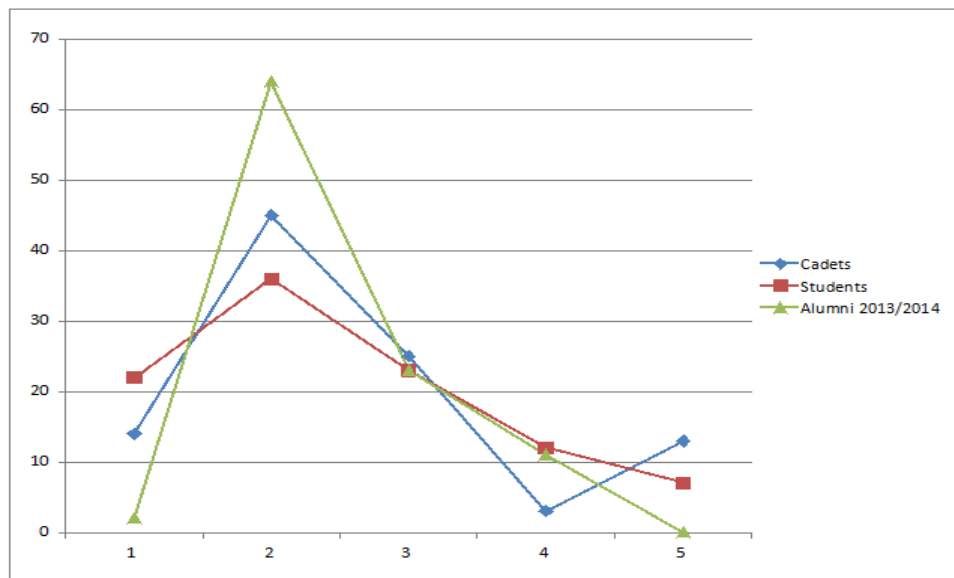


Figure 6. Visual representation of the levels of agreement with the statement that military / university education prepares students for future /military/ leaders in respondents from the 2013/2014 academic year in %

By comparing the levels of agreement with the statement in five-stage Likert's scale between the 2013/2014 class and the control groups, there is a consensus about the answer "neither in large nor in small degree". Among the other responses of respondents surveyed for the academic year 2013/2014, we find the following differences - academic year 2013/2014 academic year showing only 11% dissent and 56% and 19%. (Figs. 6) No statistically significant differences were found, as evidenced by a chi-square analysis in which $\text{ChiSquare}(4) = 1.788$; $p\text{-value} = 0.775$.

Table 2. Presenting the levels of agreement with the statement that military / university education prepares trainees for future /military/ leaders in three-stage Likert's scale.

Respondents	Consent, %	Indifference, %	Dissent %
1 course cadets 2013/2014	60	25	15
1 course students 2013/2014	58	23	19
Alumni cadets 2013/14	66	23	11
Alumni cadets 2014/15	61	9	30
Alumni cadets 2015/16	53	21	26
Alumni cadets 2016/17	32	29	39

In presenting the levels of agreement with the statement in three-stage scale Likert for all respondents of the survey ascertain levels of consent from 53% to 66%, the lowest they are for the 2016/2017 academic year curriculum, similar levels of indifference fluctuating mostly around 23% and differences in levels of disagreement with the claim ranging from 11% to 30% in the graduate classes of the 2014/2015 academic year. (Fig.7)

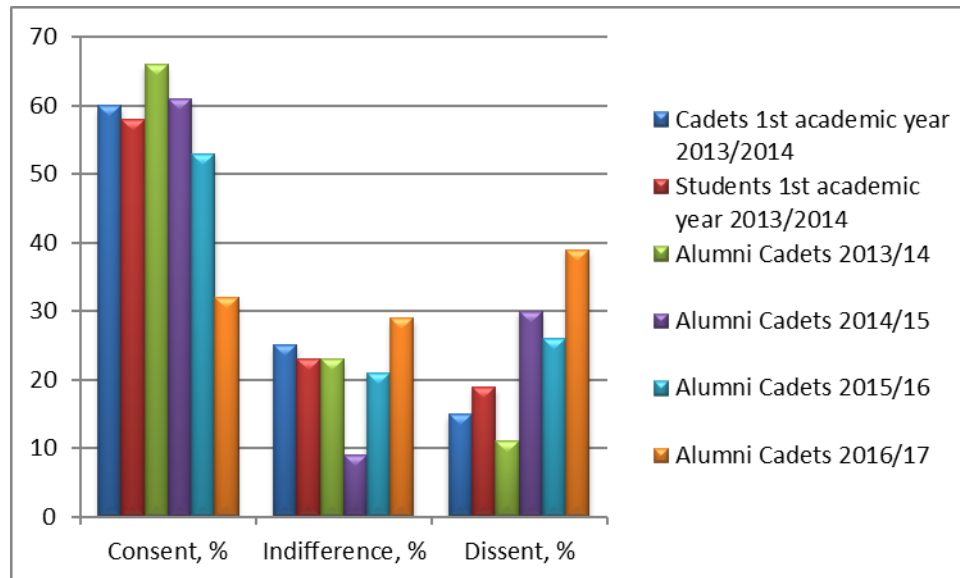


Figure 7. Presentation of the levels of agreement with the statement that / military / training at the university prepares students for future /military/ leaders in three-stage Likert’s scale.

Summary analysis and recommendations

We should point out some results:

Both control groups of students are aware of the immense importance and importance of their training at the National Military University of Bulgaria in their construction as future leaders, as evidenced by interviews of respondents that the military training at the university prepares trainees for future leaders to a very large or large extent.

When comparing the levels of agreement with the statement that military / university education between the 2013/2014 grade and the control groups, there is a similar level of agreement with the claim of all respondents and similar levels of indifference. Among the heterogeneous groups of trainees, statistically significant differences are found, as evidenced by the chi-square analysis. When presenting the levels of agreement with the statement that military / university education prepares the trainees for future / military / Leader leaders on three-step scale for all survey respondents, we find high levels of agreement in all respondent groups, with the exception of the 2015 student class / 2017 academic year. This, on the one hand, is a good attestation of the education and quality of education at the National Military University but it poses questions about future research and corrections in the problematic areas.

Conclusion

“Have you ever thought about a career in the Army? It is more than just a well-paid state job, it is about the honour to serve. It will also teach you how to be more disciplined, to improve your qualification. Moreover, you will be a part of something bigger and more important, you will serve our country, just like me and your grandfather.” This is an example

of a conversation between many fathers and their grown-up children in searching of the “right way” on the path of life. However, what is the reason for choosing that career – “defender of the fatherland”, may say only those who have chosen to service in the Army. In today’s complex and changing security environment, we seek and apply purposefully methods, techniques and means to hire skilled, high motivated and loyal military staff, who is able to realize the organizational goals set. Solving this problem is not very easy because in today's globalized world there are a lot of opportunities for the young people. (Grigorov, Grigor, Svilen Spiridonov, 2018)

A man in all his development strives to be a person who can inspire others and follow him. The theory of the subject no longer speaks of a leader and subordinates, but of a leader and followers, here hiding the key to understanding leadership - that is the purely human ability to inspire the people we manage. Being a leader is a form of spirit, behaviour, cultural expression. It should have nothing to do with "forcing" and "coercing". It is a consequence of the development of her personality acquiring knowledge, experience, skills - how to manage yourself and others by giving them a personal example. Being a leader is evolution - the next step up in human relationships. Leadership is directly related to the need for a person of authority, as one of the needs that needs to be met in order for the person to move on to the satisfaction of others so that he can feel complete, approved, and followed by others.

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IŠŠŪKIAI ASMENS DUOMENŲ APSAUGAI SVEIKATOS PRIEŽIŪROS ĮSTAIGOSE

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Anotacija. Straipsnyje pristatomos problemos, kylančios asmens duomenų apsaugai sveikatos apsaugos srityje. 2019 metais prasidėjusios koronaviruso infekcijos (toliau – ir COVID-19) pandemijos metu asmens duomenų apsaugos užtikrinimo klausimai visuomenėje tapo dar aktualesni. Ekstremali situacija Lietuvoje ir visame pasaulyje, susiklosčiusi dėl spartaus infekcijos plitimo, sveikatos priežiūros paslaugų teikimas nuotoliniu būdu, sergančių asmenų duomenų konfidencialumo garantavimas tapo dideliu iššūkiu tiek valstybinėms institucijoms, tiek gydymo įstaigoms. Straipsnyje atskleidžiamos asmens duomenų, asmens sveikatos duomenų sampratos, pristatomi pagrindiniai principai ir reikalavimai, taikomi asmens sveikatos duomenų tvarkymui, aptariamas asmens sveikatos duomenų konfidencialumas ir jų teikimo tretiesiems asmenims ypatumai. Taip pat pristatomos problemos, susijusios su asmenų, sergančių ŽIV ir AIDS duomenų apsauga.

Pagrindinės sąvokos. Duomenų apsauga, asmens duomenys, sveikatos apsaugos sistema, asmens sveikatos duomenys

Įvadas

Šiuolaikinėse visuomenėse asmens duomenų apsauga yra vienas iš svarbiausių pastarųjų dienų žmogaus teisių klausimų, kuriam skiriamas ypatingai didelis dėmesys. Asmens duomenų apsaugos teisė yra formuojama asmens teisės į privatų gyvenimą garantijos pagrindu, todėl abiejų teisių turinys ir įgyvendinimo ypatumai yra pagrįsti panašiais principais ir teisės normų sistema.

Teisė į asmens duomenų apsaugą yra minima Europos Sąjungos pagrindinių teisių chartijoje, Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijoje (toliau – EŽTK), apie privataus gyvenimo neliečiamumo teisę minima ir Lietuvos Respublikos Konstitucijoje. Asmenų teisė į sveikatos duomenų neliečiamumą ir apsaugą yra reglamentuota Europos Tarybos Konvencijoje Dėl žmogaus teisių ir orumo apsaugos biologijos ir medicinos taikymo srityje, nacionaliniuose įstatymuose: Lietuvos Respublikos sveikatos sistemos įstatyme, Lietuvos Respublikos sveikatos priežiūros įstaigų įstatyme, Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatyme, Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatyme bei kituose įstatymuose ir poįstatyminiuose teisės aktuose.

Iš esmės visa informacija apie asmens privatų gyvenimą privalo būti gerbiama ir saugoma, tačiau duomenys apie sveikatą yra priskirtini prie ypatingų duomenų, itin jautrios informacijos, kurios rinkimui, tvarkymui ir apsaugai keliami papildomi reikalavimai, todėl sveikatos priežiūros sektorius privalo užtikrinti, jog tokie duomenys būtų apsaugoti nuo atsitiktinių ir neteisėtų asmens duomenų tvarkymo atvejų.

2019 metais prasidėjusios koronaviruso infekcijos (toliau – ir COVID-19) pandemijos metu asmens duomenų apsaugos užtikrinimo klausimai visuomenėje tapo dar aktualesni. Ekstremali situacija Lietuvoje ir visame pasaulyje, susiklosčiusi dėl spartaus infekcijos plitimo, sveikatos priežiūros paslaugų teikimas nuotoliniu būdu, sergančių asmenų duomenų konfidencialumo garantavimas tapo dideliu iššūkiu tiek valstybinėms institucijoms, tiek gydymo įstaigoms. BDAR reikalavimų užtikrinimo būtinumas sukėlė didelį visuomenės susirūpinimą, identifikavo naujas problemas pacientų duomenų apsaugos srityje bei paskatino sveikatos priežiūros įstaigas atkreipti dėmesį į svarbiausius, iki tol menkai analizuotus, asmens duomenų apsaugos klausimus.

Dėl kintančių ir vis daugiau skaitmenizuojamų asmens duomenų tvarkymo sistemų, iškilo poreikis analizuoti asmens duomenų apsaugos klausimus sveikatos priežiūros sektoriuje. Tokių tyrimų jau yra atlikę užsienio šalių mokslininkai, tačiau Lietuvoje duomenų apsaugos sveikatos priežiūros sektoriuje klausimai iki šiol tyrinėti tik fragmentiškai. Apie asmens duomenų apsaugos sampratą problematiką, sveikatos duomenų konfidencialumo ribas ir dėl to kylančias problemas moksliniame straipsnyje rašė prof. Justina Januševičienė (2018). Duomenų apsaugos pareigūno instituto sampratą analizavo ir svarbą sveikatos priežiūros įstaigose siaurai aptarė Julius Zaleskis (2017), duomenų tvarkymo iššūkius ekstremalios situacijos metu analizavo Vaida Petkevičienė, Paulius Pakutinskas ir Virginijus Bitė (2020). Asmens sveikatos duomenų ir privatumo klausimus, jų saugumo užtikrinimo elektroninėje aplinkoje įvairiais aspektais tyrinėjo L.O.Gostin, S.F.Halabi ir K.Wilson (2018); D.B. Lafky, T.A. Horan (2011), J. Li (2015), Carrión Señor I, Fernández-Alemán J, Toval A (2012). D. Daghli and N. Archer (2009), S. Haas, S. Wohlgemuth, I. Echizen, N. Sonehara, G. Müller (2011), P. Lobato de Faria, J. Valente Cordeiro (2014) ir daugelis kitų.

Šio straipsnio **tikslas** – atskleisti problemas, kylančias asmens duomenų apsaugai pastaruoju laikotarpiu sveikatos apsaugos srityje.

Rengiant straipsnį buvo analizuojami nacionaliniai ir užsienio šalių teisės aktai, susiję su asmens duomenų apsauga. Siekiant atskleisti asmens duomenų apsaugos problemas bei identifikuoti iššūkius, kylančius sveikatos apsaugos sektoriuje taip pat buvo analizuota mokslinė literatūra ir atliktas empirinis tyrimas – ekspertų interviu bei taikant meta-analizės metodą tirti jau atlikti tyrimai, susiję su nagrinėjama tema.

Asmens duomenų apsaugos sveikatos priežiūros įstaigose teoriniai aspektai

Asmens duomenų samprata

Analizuojant asmens duomenų apsaugos sveikatos priežiūros įstaigose teorinius aspektus, būtina aptarti pačių asmens duomenų sąvoką, jų sampratą ir turinio ypatumus. Asmens duomenų apsaugos turinys yra susijęs su asmens teise į privataus gyvenimo neliečiamumą, kuri yra reglamentuota nacionaliniuose ir tarptautiniuose teisės aktuose.

Asmens duomenys yra suprantami, kaip įvairi, nuo konkrečios situacijos priklausanti informacija apie tam tikrą asmenybę, jos privatų gyvenimą ir leidžianti jį identifikuoti, kaip konkretų asmenį (Žmogaus teisių gidas). Viename iš pagrindinių duomenų apsaugos teisės šaltinių – BDAR asmens duomenys yra apibrėžiami kaip bet kokia informacija apie fizinį asmenį, kurio tapatybė nustatyta arba kurio tapatybę galima nustatyti (Bendrasis duomenų apsaugos reglamentas). Europos Komisija nurodo, jog prie tokios informacijos gali būti priskiriamas asmens vardas, pavardė, asmens kodas, gyvenamosios vietos adresas, interneto (IP) adresas bei kiti asmens fizinės, fiziologinės, ekonominės, socialinės, kultūrinės ar kitos srities tapatybės požymiai, pagal kuriuos galima nustatyti konkretų asmenį, o iš EŽTT praktikos

matyti, jog informacija, iš kurios galima identifikuoti konkretų asmenį, gali būti tiek tiesiogiai, tiek netiesiogiai su juo susijusi (Europos Žmogaus Teisių Teismo 2000 m. vasario 16 d. sprendimas byloje Amann prieš Šveicariją).

Europos Komisija yra nurodžiusi, jog pseudoniminiai duomenys, kuriais yra užšifruojama asmeninė informacija, tačiau pagal kuriuos galima nustatyti individo tapatybę, taip pat laikomi asmens duomenimis. Bet anoniminiai asmens duomenys, kurių anonimiškumas yra užtikrinamas negrižtamai, ir pagal kuriuos asmens tapatybė neaiški ir negali būti nustatyta, nėra laikomi asmens duomenimis.

Lietuvos mokslinėje literatūroje asmens duomenys yra suprantami labai panašiai. Petraitytė (2013) pažymi, jog tai yra įvairi informacija, susijusi su gyvu asmeniu, taip pat užšifruoti ar pseudoniminiai duomenys, pagal kuriuos galima identifikuoti konkretų asmenį. Civilka ir Šlapimaitienė (2015) teigia, jog prie asmens duomenų gali būti priskiriama ne tik objektyvi informacija ar faktai, tačiau ir subjektyvi nuomonė, vertinimai.

Svarbu paminėti, jog tarptautiniuose teisės dokumentuose yra minima ir ypatingų duomenų sąvoka bei išskiriamos šios specialios asmens duomenų kategorijos:

- asmens duomenys, kurie atskleidžia rasinę arba etninę kilmę;
- asmens duomenys, kurie atskleidžia politines, religines ar kitokias pažiūras;
- asmens duomenys apie sveikatą ar intymų gyvenimą (Konvencija dėl asmenų apsaugos ryšium su asmens duomenų automatizuotu tvarkymu (ETS Nr. 108) su Europos Tarybos Ministrų Komiteto priimtomis pataisomis).

Analizuojamam klausimui didžiausią reikšmę turi ypatingųjų duomenų, t. y. duomenų, disponuojamų sveikatos priežiūros įstaigose ir susijusių su asmens sveikata, užtikrinimo ypatumai. BDAR yra pažymėta, jog sveikatos duomenys yra „asmens duomenys, susiję su fizine ar psichine fizinio asmens sveikata, įskaitant duomenis apie sveikatos priežiūros paslaugų teikimą, atskleidžiantys informaciją apie to fizinio asmens sveikatos būklę“.

Taigi, apibendrinant galima teigti, jog *asmens duomenys* yra bet kokia, įvairaus pobūdžio (fizinio, psichologinio, ekonominio, fiziologinio, socialinio, kultūrinio ir kt. pobūdžio) informacija apie fizinį asmenį (objektyvi, subjektyvi ir nebūtinai teisinga), išreikšta įvairiomis formomis (raštu, žodžiu, grafinais vaizdais, elektroninėse laikmenose ir kt.), tiesiogiai arba netiesiogiai susijusi su asmeniu, kurio tapatybė yra nustatyta, arba kurio tapatybę galima nustatyti pasinaudojant tokiais duomenimis.

Asmens sveikatos duomenų samprata

Su informacijos apie fizinius asmenis tvarkymu susiję visuomeniniai santykiai yra labai įvairūs. Asmens duomenų apsaugos teisė reglamentuoja santykius tiek tarp fizinių asmenų, tiek tarp fizinių ir juridinių asmenų. Susiklosto įvairaus pobūdžio ir turinio santykiai, išsiskiriantys savo tikslais. Europos Sąjungos narėse 2010 metais atliktos reprezentatyvios apklausos duomenimis gyventojai vienais iš svarbiausių asmens duomenų yra linkę laikyti sveikatos duomenis – ligos istorijos įrašus ir visą informaciją apie asmens sveikatos būklę – taip pasisakė net 66 proc. apklaustųjų.

Paprastai asmens duomenys apie sveikatą yra suprantami kaip informacija apie asmens sveikatos būklę ir jam skirtą medicininį gydymą (Žmogaus teisių gidas), reprodukcinę sveikatą, patologijas, priklausomybes, mirties priežastis (Segen, 2006, p. 121). Lietuvos Respublikos biomedicininų tyrimų etikos įstatymo 2 straipsnio 1 dalyje yra nurodyta, jog „asmens sveikatos informacija yra duomenys apie asmens sveikatą, ligas ir sveikatos sutrikimus, jų priežastis, išorės veiksnius, diagnozę, eigą, prognozę, gydymą, išėitis, mirtį, paveldimumą ar bet kuri kita su asmens sveikata susijusi informacija“ (Lietuvos Respublikos biomedicininų tyrimų etikos

įstatymas). BDAR 4 straipsnio 15 punkte reglamentuota, jog „sveikatos duomenys yra asmens duomenys, susiję su fizine ar psichine fizinio asmens sveikata, įskaitant duomenis apie sveikatos priežiūros paslaugų teikimą, atskleidžiantys informaciją apie to fizinio asmens sveikatos būklę“ (Bendrasis duomenų apsaugos reglamentas).

Nepriklausomos ES 29 straipsnio darbo grupės 2015 m. vasario 5 d. rašte Europos Komisijai pabrėžiama, jog asmens sveikatos duomenų samprata yra platesnė nei medicininių duomenų samprata. Su individo sveikata susijusiais duomenimis turi būti laikom tokie duomenys kaip: asmens ūgis, svoris, klinikinės diagnozės, informacija apie alergijas, priklausomybes, duomenys apie asmens narystę tam tikrose pacientų palaikymo grupėse (pvz. anoniminių alkoholikų grupės), kurios veikia sveikatos priežiūros ar prevencijos tikslais ir kt. (29 straipsnio darbo grupės 2015 m. vasario 5 d. raštas Europos Komisijai dėl mHealth).

Europos Sąjungos Teisingumo Teismas byloje C-101/01 *Göta hovrätt (Švedija) prieš Bodil Lindqvist* priimtame prejudiciniame sprendime konstatavo, jog informacija apie tai, kad asmuo susižeidė koją ir yra laikinojo nedarbingumo atostogose, taip pat laikytina duomenimis apie asmens sveikatą ir pažymėjo, jog „žodžių junginį „duomenys apie asmens sveikatą“ reikia aiškinti plačiai, kaip apimančią su visais tiek fiziniais, tiek ir psichiniais aspektais susijusią informaciją apie asmens sveikatą“ (Europos Sąjungos Teisingumo Teismo 2003 m. lapkričio 6 d. sprendimas byloje C-101/01 *Göta Hovrätt (Švedija) prieš Bodil Lindqvist*).

2018-2020 metais Valstybinė duomenų apsaugos inspekcija ir Mykolo Romerio universitetas vykdė Lietuvos aukštųjų asmens duomenų apsaugos standartų skatinimo projektą SolPriPa, kurio tikslas – didinti visuomenės informuotumą apie duomenų apsaugos problemas, skatinti organizacijas didinti veiklos valdymą asmens duomenų apsaugos srityje ir kt. Projekto metu buvo parengta daug metodinės medžiagos, organizuoti mokymai asmens duomenų apsaugos klausimais įvairioms tikslinėms grupėms. Projektas daug dėmesio skyrė ir sveikatos priežiūros sektoriui, jame kylančioms asmens duomenų apsaugos problemoms (Valstybinė duomenų apsaugos inspekcija, 2021). SolPriPa projekto parengtose asmens duomenų apsaugos gairėse sveikatos priežiūros sektoriui apibendrintai nurodyta, kad asmens duomenys yra sveikatos duomenys, kai:

1. „duomenys iš esmės (aiškiai) yra medicininiai duomenys;
2. „duomenys yra neapdoroti prietaisų, jutiklių pagalba gauti duomenys, kuriuos galima naudoti atskirai arba kartu su kitais duomenimis, norint padaryti išvadą apie faktinę asmens sveikatos būklę ar pavojų jų sveikatai“;
3. „daromos išvados apie asmens sveikatos būklę ar pavojų sveikatai“.

Apibendrinus analizuotą literatūrą ir teisinį reguliavimą, galima daryti išvadą, kad *asmens sveikatos duomenys* yra informacijos, siejamos su fizinio asmens sveikatos būkle, visuma, išreikšta įvairiomis formomis (raštu dokumentuose, informacinėse sistemose, duomenų bazėse, fiziškai užfiksuota įvairiuose mėginiuose, išreikšta žodžiu ir kt.), iš kurios galima identifikuoti konkretų asmenį. Neabejotina, jog asmens sveikatos duomenys yra priskirtini ypatingiesiems duomenims bei laikytini individo privataus gyvenimo sudedamąja dalimi.

Lietuvoje yra numatyta anoniminių sveikatos priežiūros galimybė. Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatymo 2 straipsnyje reglamentuota, jog anoniminių sveikatos priežiūra yra „sveikatos priežiūros paslaugų teikimas pacientui, kai asmens duomenys, leidžiantys nustatyti jo asmens tapatybę, nenurodomi medicinos dokumentuose“. Pacientų teisė į anoniminių sveikatos priežiūrą numatyta to paties įstatymo 10 straipsnyje, kur numatyta, kad „teisę į sveikatos priežiūros paslaugas, neatskleidžiant asmens tapatybės, turi ne jaunesni kaip 16 metų pacientai, sergantys Vyriausybės ar jos įgaliotos institucijos nustatyto sąrašo ligomis.“ (Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatymas). Lietuvos Respublikos sveikatos apsaugos ministro įsakyme yra išskirtas

ligų, kuriomis sergantys asmenys turi teisę į anonimines sveikatos priežiūros paslaugas, sąrašas. Pažymėtina, jog šis sąrašas yra baigtinis ir gana trumpas, jame numatyta 16 susirgimų, tarp kurių – lytiškai plintančios ligos (sifilis, AIDS, ŽIV), depresija, alkoholio ir kitų psichiką veikiančių medžiagų sukelti sutrikimai ir kt. (Lietuvos Respublikos sveikatos apsaugos ministro 2010 m. vasario 22 d. įsakymas Nr. V-164) Labai svarbu paminėti, jog anoniminių sveikatos priežiūros paslaugų teikimo metu pacientui yra suteikiamas identifikacinis kodas, kuris tampa pagrindiniu paciento žymeniu įstaigoje. Pastebėtina, jog nors dokumentacijos metu naudojamas tik kodas, tačiau anoniminių sveikatos priežiūros paslaugų teikimo tvarkos apraše yra numatyta, kad „*Sutikimo dėl sveikatos priežiūros paslaugų teikimo formoje vietoj paciento asmens duomenų įrašomas pacientui suteiktas kodas ir patvirtinamas paciento parašu.*“ (Lietuvos Respublikos sveikatos apsaugos ministro 2010 m. kovo 4 d. įsakymas Nr. V-178). Kyla abejonė, ar asmens sutikimo patvirtinimas parašu yra tinkama priemonė, kadangi asmens parašas yra unikalus simbolis, iš kurio galima nustatyti konkretaus asmens tapatybę, todėl tokio patvirtinimo būdas turėtų būti keistinas arba parašas privalo būti laikomas atskirai nuo visų paciento duomenų, taip užtikrinant asmenybės konfidencialumą. Anoniminiai duomenys yra duomenys, kurie buvo surinkti apie konkretų asmenį, tačiau juos sukaupus anonimizuoti (užšifruoti kodais, nuasmeninti, pakeisti kitomis reikšmėmis), užtikrinat, kad po šios procedūros neliktų galimybių identifikuoti konkretų asmenį. Manytina, jog anoniminės sveikatos priežiūros institutas yra asmenų, sergančių visuomenėje itin prieštarinčiai vertinamomis ligomis, teisių garantas.

Pagrindiniai principai ir reikalavimai, taikomi asmens sveikatos duomenų tvarkymui

Kaip jau minėta anksčiau, asmens sveikatos duomenys Europos Sąjungos teisėje yra priskiriami prie specialių kategorijų asmens duomenų, kurių netinkamas tvarkymas gali sukelti itin dideles neigiamas pasekmes duomenų subjektams, todėl tokios informacijos apsaugai yra keliami tikslesni ir griežtesni reikalavimai. BDAR yra numatyta, jog valstybės narės privalo įgyvendinti visas atitinkamas technines ir organizacines priemones, kuriomis apsaugotų asmenų duomenis nuo neteisėto jų tvarkymo, tyčinio ar netyčinio jų praradimo, sunaikinimo ar sugadinimo bei užtikrintų duomenų subjektų teises ir laisves (Bendrasis duomenų apsaugos reglamentas).

Pagal BDAR, asmens duomenų tvarkymas laikytinas teisėtu tada, kai tam yra teisėtas pagrindas (asmens sutikimas arba kitas teisiniu reglamentavimu numatytas motyvas), o sąžiningu ir skaidriu tik tada, kai fiziniam asmeniui aiškiai ir paprasta kalba yra pranešta apie duomenų tvarkymo faktą ir tikslus, t. y. asmens duomenų subjektas yra informuotas apie informacijos tvarkymą jo atžvilgiu. Be to, kiekvienas naujas duomenų apie fizinį asmenį tvarkymo tikslas privalo būti pagrįstas aiškiais teisiniu pagrindu (Bendrasis duomenų apsaugos reglamentas).

BDAR 9 straipsnyje reglamentuota, jog asmens sveikatos duomenis tvarkyti yra draudžiama, tačiau yra numatytos tam tikros išimtys, kada šis draudimas nėra taikomas.

Teisėtam ypatingųjų duomenų tvarkymui keliami konkretesni reikalavimai. Šiuos duomenis galima tvarkyti, jeigu tvarkymas atitinka vieną iš šių sąlygų:

- yra aiškus duomenų subjekto sutikimas;
- siekiama apsaugoti gyvybinius duomenų subjekto interesus;
- siekiama apsaugoti kitų asmenų gyvybinius interesus;
- duomenys tvarkomi dėl svarbaus viešojo intereso.

Paminėtina, jog Europos Sąjungos Teisingumo Teismas (toliau – ir ESTT) yra pažymėjęs, jog teisė į duomenų apsaugą nėra absoliuti (Europos Sąjungos Teisingumo Teismo 2010 m.

lapkričio 9 d. sprendimas byloje Volker und Markus Schecke ir Hartmut Eifert prieš Land Hessen) ir turi būti derinama su kitomis asmenų teisėmis ir laisvėmis. EŽTT ir ESTT ne vienoje byloje yra pažymėjęs, jog aiškinant EŽTK 8 straipsnį būtina užtikrinti teisės į duomenų apsaugą ir kitų teisių pusiausvyrą, atsižvelgti į privačių ir viešų asmenų bei visuomenės interesus (Europos Žmogaus Teisių Teismo 2012 m. vasario 7 d. sprendimas VON Hannover prieš Vokietiją).

Pagal EŽTK valstybės gali nustatyti teisės į duomenų apsaugą ribojimus, tačiau jie gali būti pateisinami tik esant šioms sąlygoms:

- apribojimais atitinka įstatymą;
- apribojimu siekiama teisėto tikslo;
- apribojimas būtinas demokratinėje visuomenėje (Europos duomenų apsaugos teisės vadovas, p. 63).

Nors medicininiai asmens duomenys yra priskiriami ypatingajai duomenų kategorijai, tačiau gali būti suvaržyti atsižvelgiant į aukščiau paminėtus pateisinamo ribojimo reikalavimus pagal EŽTK. Byloje *Y. prieš Turkiją* pareiškėjas teigė, jog buvo pažeista jo teisė į duomenų apsaugą, kadangi greitosios medicinos pagalbos darbuotojai, gabenę jį į ligoninę, informaciją apie jam diagnozuotą ŽIV perdavė ligoninės personalui, o tokiu būdu atskleidė jo asmeninius duomenis ir pažeidė jo privatumą. EŽTT pažymėjo, jog tokios informacijos perdavimas buvo būtinas siekiant užtikrinti tinkamą paciento gydymą ir ligoninės personalo saugumą ir yra pateisinamas teisės ribojimas EŽTK prasme (Europos Žmogaus Teisių Teismo praktikos apžvalga, 2018).

Lietuvos vyriausiasis administracinis teismas (toliau – LVAT) yra pažymėjęs, jog asmens teisė į medicininių duomenų konfidencialumą ir neliečiamumą gali būti suvaržyta tik esant realiam pavojui paties duomenų subjekto ar kito fizinio asmens sveikatai arba gyvybei. Ribojimai gali būti pateisinami tik vienkartinio pobūdžio, išskirtinėse, neprognozuojamose situacijose, kurioms pasiruošti iš anksto neįmanoma (Lietuvos vyriausiojo administracinio teismo 2020 m. liepos 8 d. sprendimas administracinėje byloje Nr. eA-2837-968/2020). Taigi, galima teigti, jog asmens sveikatos duomenų kaupimas, tvarkymas ir atskleidimas galimas tik laisva valia išreikšto duomenų subjekto sutikimo pagrindu, kitais atvejais duomenų tvarkymas negalimas. Išimtis taikoma tik ekstraordinariųjų situacijų metu, kai tvarkymas negali būti pagrįstas kitu teisiniu pagrindu.

Apibendrinant galima teigti, jog asmens duomenų, ypač medicininių, apsauga ypatingai svarbi asmens teisei į privataus ir šeimos gyvenimo gerbimą. Ypatingųjų kategorijų duomenų išsaugojimas yra būtinas demokratinėje visuomenėje, todėl asmens duomenų tvarkytojai ir valdytojai privalo visomis įmanomomis, teisėtomis techninėmis ir organizacinėmis priemonėmis užtikrinti, jog informacija apie asmenų sveikatą nebūtų neteisėtai perduodama ar atskleidžiama, kadangi tai nesuderinama su tarptautiniuose ir nacionaliniuose teisės aktuose numatytais asmenų teisių garantijomis.

Asmens sveikatos duomenų konfidencialumas ir jų teikimo tretiesiems asmenims ypatumai

2018 m. Valstybinės duomenų apsaugos inspekcijos (toliau – ir VDAI) užsakymu atlikto Lietuvos gyventojų tyrimo apie asmens duomenų apsaugą metu buvo nustatyta, jog gyventojų nuomone, griežčiausia asmens duomenų apsauga turėtų būti taikoma sveikatos priežiūros įmonėse ir įstaigose (Valstybinė duomenų apsaugos inspekcija, 2018). Tokie tyrimo rezultatai rodo, jog asmenims ypač rūpi jų sveikatos duomenų apsauga ir konfidencialumo užtikrinimas.

EŽTT 2008 m. lapkričio 25 d. yra pažymėjęs, jog pagarba sveikatos duomenų konfidencialumui yra esminis valstybių teisinių sistemų principas (Europos Žmogaus Teisių Teismo 2009 m. vasario 25 d. galutinis sprendimas byloje Biriuk prieš Lietuvą). Įpareigojimas užtikrinti asmens sveikatos duomenų privatumą yra reglamentuotas ir tarptautiniuose teisės aktuose, pavyzdžiui, Konvencijoje dėl žmogaus teisių ir orumo apsaugos biologijos ir medicinos taikymo srityje (III skyrius) bei nacionaliniuose teisės aktuose, tokiuose kaip: Lietuvos Respublikos sveikatos priežiūros įstaigų įstatyme, kuriame nustatoma sveikatos priežiūros įstaigų pareiga saugoti paciento medicininę paslaptį, Lietuvos Respublikos sveikatos sistemos įstatyme, kuriame numatytas asmens sveikatos informacijos viešumo ribojimas, Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatyme, kuriame plačiai aptarti pacientų teisės į privataus gyvenimo neliečiamumą ypatumai ir kituose.

Asmens sveikatos informacijos konfidencialumo principas įtvirtina nuostatą, jog asmens duomenys apie sveikatą yra neliečiami, o informacija gali būti renkama ir atskleidžiama tretiesiems asmenims tik su paciento sutikimu. ESTT yra pažymėjęs, jog asmens duomenų apsaugos institutas, kaip teisės į privatumą garantas, draudžia platinti asmens duomenis tretiesiems asmenims, įskaitant visą visuomenę bei viešosios valdžios institucijas, nebent informacija yra atskleidžiama įstatymų nustatyta tvarka (Europos Sąjungos Teisingumo Teismo 2010 m. lapkričio 9 d. sprendimas byloje Volker ir Markus Schecke, Hartmut Eifert prieš Land Hessen). Konfidencialumas sudaro prielaidą teigti, jog individas turi teisę į tai, kad informacija apie jo sveikatą būtų nutylėta, o įpareigojimas saugoti paslaptį kyla iš supratimo, jog nepagrįstai atskleidus duomenis asmuo patirs nepatogumus ir tam tikrą žalą (Stanislovaitytė, 2014, p. 13-20).

Visgi, asmens teisė į duomenų apsaugą, o šiuo atveju ir į sveikatos duomenų konfidencialumą, nėra absoliuti ir gali būti apribota. Tačiau konfidencialumas ir duomenų apsauga privalo koreliuoti su teisingumo, proporcingumo ir protingumo principais. Pagal G. Mozūraitį (2011), konfidencialumo principas gali būti ribojamas esant teisiniam ir faktiniam pagrindui. Faktiniais pagrindais, ribojančiais paciento sveikatos informacijos konfidencialumą, anot G. Mozūraičio, būtų galima laikyti grėsmę kito asmens sveikatai ir gyvybei, užkrečiamųjų ligų kontrolę bei mokslinius tyrimus (Mozūraitis 2011, p. 1141). Tokiems asmens duomenų apie sveikatą konfidencialumo ribojimo pagrindams pritaria ir užsienio mokslininkai, pabrėždami, jog konfidencialumo principo ribojimas galimas įvertinus paciento ir kitų asmenų ar visos visuomenės teisių ir teisėtų interesų pusiausvyrą, kylančias grėsmes ir pasekmes atitinkamų sveikatos duomenų neatskleidus ar neinformavus visuomenės apie galimą pavojų (Gilbar, 2004). Pritartina, jog sveikatos duomenų privatumo ribojimas yra neišvengiamas atliekant žmonijai reikšmingus mokslinius tyrimus, siekiant suvaldyti masines pandemijas (neabejotinai tai susiję ir su COVID-19 atveju), kuomet asmenų sveikatos informacija panaudojama su tikslu išsaugoti visuomenės sveikatą (Deapen, 2006).

BDAR 5 straipsnio 1 dalies f punkte reglamentuotas asmens duomenų konfidencialumo ir vientisumo principas suponuoja valstybėms narėms pareigą imtis visų techninių ir organizacinių priemonių, kad asmenų duomenys nebūtų atskleisti asmenims, neturintiems teisinio pagrindo su prašomais asmens duomenimis susipažinti (Bendrasis duomenų apsaugos reglamentas). Asmens sveikatos duomenys gali būti atskleidžiami tik su jo raštišku sutikimu – tai nustato informacijos konfidencialumo principas ir asmens teisė į privataus gyvenimo neliečiamumą ir slaptumą.

Sisteminė Lietuvos Respublikos įstatymų ir poįstatyminių teisės aktų analizė sudaro galimybę išskirti atvejus, kada asmens sveikatos duomenys gali būti atskleidžiami tretiesiems asmenims ir be jo sutikimo. LR Sveikatos apsaugos ministro patvirtintose taisyklėse numatoma, jog sveikatos duomenys apie asmenį gali būti atskleidžiami be jo sutikimo:

- sveikatos priežiūros įstaigoms, kuriose asmuo yra ar buvo gydomas, slaugomas, atliekama jo sveikatos ekspertizė, o taip pat jei asmuo yra užsiregistravęs tam tikroms sveikatos priežiūros paslaugoms gauti;
- institucijoms, atliekančioms sveikatos priežiūros paslaugų teikimo kontrolę;
- neveiksnių asmenų būklės peržiūrėjimo komisijoms jų funkcijoms vykdyti;
- teismui, prokuratūrai, ikiteisminio tyrimo įstaigoms, Valstybės vaiko teisių apsaugos ir įvaikinimo tarnybai ir kitoms valstybinėms institucijoms įstatymų nustatytais atvejais (Lietuvos Respublikos sveikatos apsaugos ministro 2001 m. vasario 1 d. įsakymas Nr. 65).

Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatyme numatyta, jog informacija apie asmens sveikatą gali būti atskleidžiama be paciento sutikimo sutuoktiniui, sugyventiniui (partneriui), tėvams (įtėviams), pilnamečiams vaikams, broliams, seserims, vaikaičiams, seneliams jų prašymu tik tuo atveju, jeigu pacientas negali būti laikomas gebančiu protingai vertinti savo interesus ir sveikatos būklę (Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatymas).

Prieš atskleidžiant asmens sveikatos duomenis, būtina nustatyti, ar duomenų atskleidimo tikslas neprieštarauja teisės aktams, yra išsamus ir aiškus, atitinka teisėto asmens duomenų tvarkymo sąlygas. Neabejotina, kad svarbu kritiškai įvertinti, ar asmuo, prašantis atskleisti informaciją, turi teisę ją gauti, o, nusprendus duomenis atskleisti, būtina vadovautis proporcingumo, duomenų kiekio mažinimo principais ir duomenis atskleisti tik ta apimtimi, kuri yra būtina numatytam teisėtam tikslui pasiekti (Valstybinė duomenų apsaugos inspekcija 2020). Svarbu pažymėti tai, jog informacija tretiesiems asmenims gali būti atskleidžiama tik įvertinus ar asmens sveikatos duomenų atskleidimas nepakenks paciento (asmens, kurio sveikatos informacija viešinama) interesams.

Taigi, apibendrinant galima teigti, jog teisinis asmens sveikatos duomenų konfidencialumo principas įpareigoja valstybę visomis teisinėmis priemonėmis užtikrinti itin jautrių sveikatos duomenų apsaugą ir privataus asmens gyvenimo neliečiamumą. Minėtas principas nėra absoliutus, todėl gali būti suvaržytas, atsižvelgiant į teisinius ir faktinius pagrindus. Teisinis pagrindas numato pateisinamo ribojimo esmę, remiantis konkrečiais teisės aktais ir juose nustatytais reikalavimais, o faktiniai pagrindai, tokie kaip kylanti reali grėsmė kitų asmenų sveikatai ar gyvybei, užkrečiamųjų ligų kontrolė bei mokslinių tyrimų būtinumas taip pat gali būti laikomi pagrindu riboti asmens sveikatos informacijos asmeniškumą, tačiau turi atitikti proporcingumo, protingumo, pacientų teisių apsaugos ir sąžiningumo principus. Būtina pabrėžti, jog asmens sveikatos duomenų konfidencialumas ir galimi jo ribojimai privalo būti aiškiai reglamentuoti nacionalinėje teisėje, kad teisinis neapibrėžtumas nesudarytų sąlygų asmenų, kurių sveikatos duomenimis disponuojama, teisių pažeidimams.

Asmens duomenų apsaugos įgyvendinimo problematika sveikatos priežiūros sektoriuje

Valstybinės duomenų apsaugos inspekcijos duomenimis 2020 metais iš viso gauti 1083 skundai, iš jų 28 atvejais buvo skundžiamasi dėl sveikatos priežiūros įstaigų teikiamų paslaugų, 9 atvejais būtent dėl galimų pažeidimų tvarkant sveikatos duomenis. Iš 28 skundų išnagrinėti 25 ir nustatyta, jog pagrįsti iš jų yra 4. Dviem atvejais duoti nurodymai dėl pažeidimų ištaisymo, o dviem atvejais skirti papeikimai. Kaip matyti iš 2020 metų duomenų, į VDAI dėl galimo netinkamo asmens duomenų tvarkymo sveikatos priežiūros sektoriuje kreipėsi labai nedidelis skaičius asmenų, tačiau negalima teigti, jog pažeidimų šioje srityje nėra. Tokių asmenų pasyvumą gali lemti mažas BDAR žinomumas ir menkas asmenų informuotumas asmens duomenų apsaugos klausimais. Nepaisant to, kad tokios įstaigos, kaip VDAI, bent kol kas

sulaukia nedaug asmenų skundų dėl duomenų apsaugos pažeidimų sveikatos priežiūros įstaigose, tačiau neatitikimų šioje srityje yra pakankamai. Probleminiai klausimai apima asmens duomenų apsaugos įgyvendinimą COVID-19 pandemijos metu, itin jautriai ir negatyviai visuomenėje vertinamų ŽIV ir AIDS sergančių pacientų privataus gyvenimo neliečiamumo klausimus. Iš teismų praktikos, žiniasklaidos priemonėse skelbiamos informacijos, tyrimų ir apklausų statistinių duomenų matyti, jog asmens sveikatos duomenų apsaugos problemos sveikatos priežiūros sektoriuje dažniausiai kyla dėl netinkamai pasirinktų organizacinio ir techninio pobūdžio saugumo priemonių, neteisingo jų naudojimo ar visiško jų neįgyvendinimo.

COVID-19 pandemijos metu kylančių asmens sveikatos duomenų apsaugos problemos ir jų analizė

COVID-19 pandemija Lietuvoje sukėlė daug problemų tiek privačiame, tiek viešajame gyvenime, neišskiriant ir sveikatos priežiūros sektoriaus. Nors sveikatos priežiūros įstaigoms, kaip duomenų valdytojui, prasidėjus pandemijai kilo daug iššūkių, tačiau duomenų apsaugos priežiūros institucija – Valstybinė duomenų apsaugos inspekcija nurodo, jog asmens duomenų tvarkymas pandemijos metu neabejotinai privalo būti suderinamas su BDAR numatytais reikalavimais ir bendraisiais duomenų apsaugos principais, t. y.:

- tikslo apribojimo principu;
- vientisumo ir konfidencialumo principais;
- atskaitomybės principu (Bendrasis duomenų apsaugos reglamentas).

Labai svarbu pažymėti, kad siekiant užtikrinti, jog nebūtų pažeistas BDAR ir jame įtvirtintas duomenų kiekio mažinimo principas, pandemijos metu darbdaviams, ugdymo ar gydymo įstaigoms ar kitoms viešosioms institucijoms galima tvarkyti tik šią informaciją:

- ar asmuo buvo išvykęs į „rizikos valstybę“ (t. y. valstybę, kurioje yra pandemijos protrūkis, vyrauja viruso atmainos);
- ar asmuo kontaktavo su sergančiu COVID-19 asmeniu arba asmeniu, grįžusiu iš „rizikos valstybės“;
- ar asmuo privalo laikytis karantino režimo namuose (nenurodant priežasties);
- ar asmuo serga (nenurodant konkrečios diagnozės) (Sveikatos apsaugos ministerija 2020).

Remiantis Valstybinės duomenų apsaugos inspekcijos Teisės skyriaus vedėjo Egidijaus Verenio, Priežiūros skyriaus vedėjos Daivos Tamulionienės pranešimais, visuomenės informavimo priemonėse aptariama problematika, galima išskirti šias duomenų apsaugos užtikrinimo problemas Lietuvoje COVID-19 pandemijos metu:

1. padidėjęs tvarkomų asmens duomenų mastas;
2. skaidrumo reikalavimų ir atvirumo principo ne visiškai įgyvendinimas;
3. kovai su COVID-19 naudojamų mobiliųjų programėlių trūkumai;
4. darbdavių tvarkomų darbuotojų asmens duomenų neapibrėžtumas (Verenius, 2020);
5. asmenų, aptarnaujamų sveikatos priežiūros įstaigose nuotoliniu būdu, identifikavimo sunkumai (Tamulionienė, 2020).

Neabejotina, jog pasaulinės pandemijos metu išaugo informacijos apie privačius asmenis (duomenis apie jų sveikatos būklę, išvykimus į kitas valstybes, kontaktus ir pan.) perdavimo srutai. Itin didelę reikšmę pandemijos suvaldymui ir jos sukeltų padarinių identifikavimui bei sumažinimui turi informacija, susijusi su užsikrėtimų, mirčių, sergančiųjų gydymo ligoninėse statistika ir analize. Doc. dr. Dangis Gudelis (2020) pažymi, jog vienas pagrindinių pandemijos suvaldymo uždavinių yra užsikrėtusiųjų asmenų greitas ir tikslus nustatymas tam, kad būtų

užtikrinta jų izoliacija ir užkirstas kelias viruso plitimui. Nepaisant padidėjusio tvarkomų duomenų srauto, privačių asmenų asmeniniai duomenys gali būti tvarkomi tik aiškiai apibrėžtais tikslais, apie bet kokią asmeninės informacijos tvarkymo faktą informuojant jos subjektą (Europos duomenų apsaugos valdyba, 2020). Pavyzdžiui dėl COVID-19 testuojamas asmuo turi būti aiškiai informuojamas, kokie jo asmeniniai duomenys bus renkami, kokių tikslų, kam jie bus perduodami, kiek laiko jie bus kaupiami ir pan. Žurnalistų etikos inspektorė pažymi, jog duomenys apie asmens sveikatos būklę, jam taikomą (taikytą) gydymą, diagnozes yra laikytini žmogaus privataus gyvenimo sudedamąja dalimi, kurią viešinti galima tik su duomenų subjekto sutikimu, tačiau Lietuvoje yra padažnęjė tokios informacijos skelbimo žiniasklaidoje atvejai, kuriems nepritartina (Žurnalistų etikos inspektoriatas, 2020).

2020 m. balandžio mėnesį Lietuvoje buvo sukurta ir įdiegta iki tol precedento neturinti mobiliųjų įrenginių programėlė „Karantinas“, kurios tikslas buvo identifikuoti susirgusius COVID-19 asmenis ir informuoti su jais kontaktą turėjusius žmones apie galimą susirgimo riziką, tokiu būdu vykdant epidemiologinę priežiūrą ir stebėseną. Deja, tų pačių metų gegužės mėnesį Valstybinė duomenų apsaugos inspekcija priėmė sprendimą sustabdyti programėlės veiklą ir pradėti tyrimą dėl galimo BDAR 5 str. 2 d. įtvirtinto atskaitomybės principo pažeidimo ir programėlės neatitikties kitiems BDAR 5 str. 1 d. numatytiems bendriesiems asmens duomenų tvarkymo principams (Valstybinė duomenų apsaugos inspekcija, 2021). 2021 m. vasario mėn. Nacionaliniam visuomenės sveikatos centrui (NVSC) skirta 12 tūkst. eurų bauda už BDAR 5, 13, 24, 32, 35 ir 58 straipsnio 2 dalies f punkto nuostatų pažeidimus, o programėlę kūrusiai įmonei 3 tūkst. eurų bauda už nustatytus BDAR 5, 13, 24, 32 ir 35 straipsnių pažeidimus. Buvo nustatyta, jog buvo pažeisti atskaitomybės, skaidrumo, teisėtumo principai, kadangi programėle buvo neteisėtai surinkti ir tvarkomi šie 677 asmenų duomenys: „identifikacijos numeris, platumos ir ilgumos koordinatės, šalis, miestas, savivaldybė, pašto kodas, gatvės pavadinimas, namo numeris, vardas, pavardė, asmens kodas, telefono numeris, adresas, 2-asis adresas, ar gyvenamoji vieta deklaruota Lietuvoje ir kita informacija“ (Valstybinė duomenų apsaugos inspekcija, 2021). Kaip matyti, ne visada praktiniame asmens duomenų apsaugos įgyvendinimo procese yra laikomasi BDAR reikalavimų, kas gali lemti duomenų subjektų teisių pažeidimus.

Siekiant tiksliai ir pagrįstai identifikuoti asmens duomenų apsaugos problemas sveikatos priežiūros įstaigose COVID-19 pandemijos metu bei gauti kokybinį tiriamos problemos supratimą, taikytas pusiau struktūruotas interviu metodas. Respondentas – Lietuvos sveikatos mokslų universiteto Kauno ligoninės Juridinio skyriaus vadovė, kuriai ligoninės generalinio direktoriaus įsakymu yra pavesta atlikti asmens duomenų apsaugos pareigūno funkcijas. Pokalbio su specialiste metu identifikuotos šios problemos, susijusios su duomenų apsaugos pažeidimais:

- asmenų identifikavimo problemos;
- asmens sveikatos priežiūros įstaigų darbuotojų mokymų trūkumas.

Anot asmens duomenų apsaugos pareigūnės, COVID-19 pandemijos metu daugiausiai problemų kilo teikiant sveikatos priežiūros paslaugas nuotoliniu būdu. Įstaigos darbuotojams yra itin sudėtinga identifikuoti telefonu skambinančių asmenį, o nenustačius jo tapatybės informacijos teikimas negalimas. Labai daug skambinančių ir informacijos besiteiraujančių asmenų atsirado tada, kai gydymo įstaigose buvo uždraustas pacientų lankymas, todėl įstaigai teko pradėti taikyti naujus, iki tol netaikytus, asmenų identifikavimo būdus, o tai atskleidė dar vieną problemą – sveikatos priežiūros specialistų kompetencijos trūkumą. Apibendrinus respondentės pateiktą informaciją galima teigti, jog asmens sveikatos priežiūros įstaigų darbuotojams, ne tik duomenų apsaugos pareigūnams, bet ypatingai medicinos personalui, trūksta mokymų asmens duomenų apsaugos tematika. Pažymėtina, jog 2020 metais Lietuvos

sveikatos mokslų universiteto Kauno ligoninės darbuotojams (įskaitant ir duomenų apsaugos pareigūną) nebuvo organizuota jokių mokymų šia tema, todėl darbuotojų kompetencijos trūkumas šioje srityje gali lemti įvairias asmens duomenų apsaugos įgyvendinimo problemas ir pacientų kitų teisių pažeidimus sveikatos priežiūros sektoriuje.

AIDS ir ŽIV sergančių asmenų sveikatos duomenų apsaugos probleminiai aspektai

Sveikatos duomenys gali būti įvairaus pobūdžio – nuo faktų, jog asmuo lankėsi pas gydytoją iki aiškių asmens sveikatos būklės diagnozių. Manytina, kad išskirtinai jautria informacija galima laikyti sergančiųjų užkrečiamosiomis ligomis duomenis, o ypač lytiškai plintančių infekcijų – ŽIV ir AIDS asmeninę informaciją. Lietuvos žmogaus teisių centro ir VšĮ Psichikos sveikatos perspektyvos duomenimis ŽIV ir AIDS sergantys asmenys, bijodami socialinės atskirties, garbės ir orumo pažeidimų, yra linkę slėpti savo diagnozę ir asmeninius duomenis (Lygių galimybių plėtros centras; Psichikos sveikatos perspektyvos; Lietuvos žmogaus teisių centras, 2014), todėl galima pagrįstai teigti, jog asmens duomenų apsauga šioje srityje turėtų būti prioritetinga.

Lietuvos Respublikos žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymo sisteminė analizė leidžia teigti, jog sveikatos priežiūros sektorius privalo užtikrinti asmenų, sergančių šiomis užkrečiamosiomis ligomis, konfidencialumą ir asmens sveikatos duomenų apsaugą (Lietuvos Respublikos žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas). Kokybinio tyrimo Lietuvoje duomenimis nustatyta, kad nors teisinis reglamentavimas laiduoja užsikrėtusių asmenų konfidencialumą, tačiau praktikoje matomas atotrūkis tarp formalių įsipareigojimų laikytis konfidencialumo ir realaus šios principo įgyvendinimo (Kokybinis tyrimas dėl žmonių, užsikrėtusių ŽIV / sergančių AIDS, pažeidžiamumo įvertinimo Lietuvoje, 2009). Tyrimo metu taikytu anoniminiu interviu būdu sergantys asmenys buvo apklausti apie diskriminacijos ir konfidencialumo užtikrinimo problemas, kilusias dėl jų ligos. Vienas ŽIV užsikrėtęs asmuo nurodė, jog šeimos gydytojas, negavęs sergančiojo sutikimo atskleisti jo diagnozės tretiesiems asmenims, informavo jo motiną apie sūnui nustatytą diagnozę. Toks mediko elgesys padarė neigiamą poveikį sergančiajam ir jo gyvenimo kokybei, kadangi šeimoje įsivyravo atskirtis, šeimos nariai jautė tarpusavio įtampą, prie sergančiojo mama net bijojo prisiliesti. Kitas asmuo teigė „<...> *amžiną atilsį moteris gulėjo vienoj klinikoje <...> kada išėjau į koridorių, asmeniškai išgirdau, kada dvi močiutės stovėjo ir sako: „čia guli infekuota narkomanė“. Tai, matyt, močiutės ne „iš lubų paėmė“*, iš jo pasakymo akivaizdu, jog duomenys apie sergančiojo diagnozę sveikatos įstaigoje buvo atskleisti kitiems asmenims (manytina, jog tai padaryta be sergančiojo sutikimo). Viena tyrimo dalyvė interviu metu pažymėjo, kokią neigiamą įtaką konfidencialumo pažeidimas gali padaryti sergantiesiems: „*Mes gyvenam nedideliame mieste. <...> žino vienas žmogus – žino visas miestas. Ne todėl, kad slėpčiau savo ŽIV statusą. Saugau save ir savo vaiką nuo nemalonumų.*“ ((Kokybinis tyrimas dėl žmonių, užsikrėtusių ŽIV / sergančių AIDS, pažeidžiamumo įvertinimo Lietuvoje, 2009). Iš aptartųjų atvejų matyti, jog asmens duomenų konfidencialumo užtikrinimas AIDS ir ŽIV sergantiems asmenims yra pagrindinė jų teisių ir laisvių įgyvendinimo prielaida.

To pačio tyrimo metu apie AIDS ir ŽIV sergančių asmenų sveikatos duomenų apsaugos problemas pasisakė ir gydymo įstaigų specialistai. Akcentuotinas vienas gydytojos pasisakymas: „*Taip. Problema yra įstaigose. <...> sveikatos sistemose yra asmens sveikatos istorijos, gydymosi stacionare istorijos, kurios yra prieinamos visiems. Pilna ta žodžio prasme. Ir problema yra tame, kad jau ne vieną kartą teko su tuo susidurti, kada yra asmens sveikatos istorija, ir viršuj, ant pirmo puslapio dedami žymenys. Žalia – tai visa poliklinika žino, kad tai yra ŽIV'as. Geltona <...> susitarimo reikalas. <...> kartais būna ir parašyta. Tai dabar, bet*

kuris žmogus, paėmęs šitą asmens sveikatos istoriją, tarkim, ar slaugytoja, ar registratūros darbuotojas... ten yra pavardė, vardas, asmens kodas, adresas ir plius visa eilė šitų žymenų. Ir prašau – visas dosjė. O dar, neduok Dieve, pamatysi, kad čia mano kaimynas, ar čia mano pažįstamas ir tu, žiūrėk, kokie skaičiukai surašyti...“ (Kokybinis tyrimas dėl žmonių, užsikrėtusių ŽIV / sergančių AIDS, pažeidžiamumo įvertinimo Lietuvoje, 2009). 2018 metais atlikto ŽIV užsikrėtusių asmenų stigos indekso tyrimo Lietuvoje metu sergantysis asmuo nurodė: „Kai atėjau su infektologo siuntimu į savo rajono polikliniką išsirašyti kompensuojamų vaistų nuo AIDS, šeimos gydytoja atsisakė tai padaryti – liepė važiuoti į Kauną. Po mėnesio, kai atėjau dėl blogos savijautos į registratūrą, darbuotoja garsiai paklausė, ar dėl AIDS noriu patekti pas gydytoją. O dar pamačiau, kad ant mano kortelės didelėmis riebiomis raudonomis raidėmis užrašyta „AIDS“. Pasijutau, kaip raupsuotasis, kad galiu pakenkti kitiems vien atėjęs į polikliniką. Džiaugiuosi, kad Kaune gydytojos, sesutės ir registratorės taip nesielia.“ (Koalicija „Galiu gyventi“, 2018). Iš aptartųjų atvejų galima daryti išvadą, jog asmens duomenų apsaugos problemas ŽIV ir AIDS pacientų atžvilgiu lemia prasta sveikatos priežiūros specialistų kompetencija, sveikatos duomenų konfidencialumo neužtikrinimas ir netinkamos techninių organizacinių duomenų saugumo priemonių taikymas.

ŽIV ir AIDS sergančių asmenų teisių užtikrinimo problematika plačiai analizuota ir EŽTT praktikoje. Gausu bylų, kuriose teismas nustatė EŽTK 8 str. (teisės į privataus ir šeimos gyvenimo gerbimo) pažeidimus, susijusius su asmenų sveikatos duomenų apsaugos neužtikrinimu, todėl tiriamai problemai identifikuoti būtina aptarti keletą šio tarptautinio teismo bylų. Bylose *Biriuk prieš Lietuvą* ir *Armonienė prieš Lietuvą* EŽTT konstatavo EŽTK 8 str. numatytos teisės į privatą gyvenimą pažeidimus, kadangi buvo nustatyta, jog vieno iš Lietuvos laikraščių publikacijose buvo atskleista informacija apie pareiškėjams diagnozuotus ŽIV atvejus, t. y. konfidencialūs asmenų sveikatos duomenys, itin jautrūs ir asmeniniai privataus gyvenimo aspektai. Šiose bylose analizuoti ir teisės į privataus gyvenimo neliečiamumą ir teisės į saviraiškos laisvę suderinamumo aspektai, EŽTT pažymėjo, jog, ieškant šių teisių pusiausvyros, pirmiausia privalo būti atsižvelgiama į teisės į privatumą institutą.

Apibendrinus, galima pagrįstai teigti, jog sveikatos priežiūros sektoriuje susiduriama su ŽIV ir AIDS sergančių asmenų sveikatos istorijų saugumo ir neprieinamumo problemomis, informacija apie diagnozes yra pažymima sveikatos istorijų pirmuose lapuose, visam ligoninės personalui (ar netgi pašaliniams asmenims) matomoje vietoje. Asmens duomenų konfidencialumo pažeidimai sudaro sąlygas ŽIV ir AIDS stigos ir diskriminacijos formavimuisi visuomenėje, negatyvus žmonių požiūris į šias lytiškai plintančias ligas sukelia sergantiesiems baimę likti vieniems, o medikų empatijos stoka šių pacientų atžvilgiu lemia tai, kad sergantieji vengia lankytis gydymo įstaigose ir atsisako kvalifikuotos pagalbos. Akivaizdu, jog asmens duomenų konfidencialumo principas yra vienas pagrindinių teisinės valstybės principų, todėl jo įgyvendinimui ir apsaugai būtina imtis visų įmanomų teisėtų priemonių.

Išvados

Asmens duomenys yra bet kokia, įvairaus pobūdžio (fizinio, psichologinio, ekonominio, fiziologinio, socialinio, kultūrinio ir kt. pobūdžio) informacija apie fizinį asmenį (objektyvi, subjektyvi ir nebūtinai teisinga), išreikšta įvairiomis formomis (raštu, žodžiu, grafinais vaizdais, elektroninėse laikmenose ir kt.), tiesiogiai arba netiesiogiai susijusi su asmeniu, kurio tapatybė yra nustatyta, arba kurio tapatybę galima nustatyti pasinaudojant tokiais duomenimis.

Asmens sveikatos duomenys yra informacijos, siejamos su fizinio asmens sveikatos būkle, visuma, išreikšta įvairiomis formomis (raštu dokumentuose, informacinėse sistemose, duomenų bazėse, fiziškai užfiksuota įvairiuose mėginiuose, išreikšta žodžiu ir kt.), iš kurios

galima identifikuoti konkretų asmenį. Neabejotina, jog asmens sveikatos duomenys yra priskirtini ypatingiesiems duomenims bei laikytini individo privataus gyvenimo sudedamąja dalimi.

Lietuvoje yra numatyta anoniminės sveikatos priežiūros galimybė, kurią įgyvendinant pacientui yra suteikiamas identifikacinis kodas, kuris tampa pagrindiniu paciento žymeniu įstaigoje. Ir nors dokumentacijoje, fiksuojančioje sveikatos priežiūros paslaugų teikimą naudojamas tik kodas, tačiau anoniminių sveikatos priežiūros paslaugų teikimo tvarkos apraše yra numatyta, kad *sutikimo dėl sveikatos priežiūros paslaugų teikimo formoje vietoj paciento asmens duomenų įrašomas pacientui suteiktas kodas ir patvirtinamas paciento parašu*. Priinama išvados, kad asmens sutikimo patvirtinimas parašu nėra tinkama priemonė, kadangi asmens parašas yra unikalus simbolis, iš kurio galima nustatyti konkretaus asmens tapatybę, todėl tokio patvirtinimo būdas turėtų būti keistinas arba parašas privalo būti laikomas atskirai nuo visų paciento duomenų, taip užtikrinant asmenybės konfidencialumą.

Teisinis asmens sveikatos duomenų konfidencialumo principas įpareigoja valstybę visomis teisinėmis priemonėmis užtikrinti itin jautrių sveikatos duomenų apsaugą ir privataus asmens gyvenimo neliečiamumą. Minėtas principas nėra absoliutus, todėl gali būti suvaržytas, atsižvelgiant į teisinius ir faktinius pagrindus. Teisinis pagrindas numato pateisinamo ribojimo esmę, remiantis konkrečiais teisės aktais ir juose nustatytais reikalavimais, o faktiniai pagrindai, tokie kaip kylanti reali grėsmė kitų asmenų sveikatai ar gyvybei, užkrečiamųjų ligų kontrolė bei mokslinių tyrimų būtinumas taip pat gali būti laikomi pagrindu riboti asmens sveikatos informacijos asmeniškumą, tačiau turi atitikti proporcingumo, protingumo, pacientų teisių apsaugos ir sąžiningumo principus. Būtina pabrėžti, jog asmens sveikatos duomenų konfidencialumas ir galimi jo ribojimai privalo būti aiškiai reglamentuoti nacionalinėje teisėje, kad teisinis neapibrėžtumas nesudarytų sąlygų asmenų, kurių sveikatos duomenimis disponuojama, teisių pažeidimams.

Išanalizavus jau atliktus tyrimus asmens duomenų sveikatos priežiūros įstaigose apsaugos klausimais, taip pat atlikus empirinį tyrimą, prieita išvados, kad ne visada praktiniame asmens duomenų apsaugos įgyvendinimo procese, ypač dėl COVID-19 pandemijos nulemtų iššūkių sveikatos apsaugos sistemai, kuomet tiek informaciją apie artimųjų sveikatos būklę, tiek ir konsultacijos teikiamos telefonu, yra laikomasi BDAR reikalavimų, kas gali lemti duomenų subjektų teisių pažeidimus. Nustatyta, kad darbuotojų kompetencijos trūkumas šioje srityje gali lemti įvairias asmens duomenų apsaugos įgyvendinimo problemas ir pacientų kitų teisių pažeidimus sveikatos priežiūros sektoriuje, tačiau sveikatos priežiūros įstaigos visomis įmanomomis techninėmis ir organizacinėmis priemonėmis siekia užtikrinti duomenų subjektų asmens duomenų apsaugą.

Atlikus meta-analizę, prieita išvados, kad asmens duomenų apsaugos problemas ŽIV ir AIDS pacientų atžvilgiu lemia prasta sveikatos priežiūros specialistų kompetencija, sveikatos duomenų konfidencialumo neužtikrinimas ir netinkamos techninių organizacinių duomenų saugumo priemonių taikymas. Sveikatos priežiūros sektoriuje susiduriama su ŽIV ir AIDS sergančių asmenų sveikatos istorijų saugumo ir neprieinamumo problemomis, informacija apie diagnozes yra pažymima sveikatos istorijų pirmuose lapuose, visam ligoninės personalui (ar netgi pašaliniams asmenims) matomoje vietoje.

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THE CHALLENGES FOR THE PROTECTION OF PERSONAL DATA IN THE HEALTHCARE SECTOR

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Summary

The article presents the problems arising from the protection of personal data in the field of health care. During the coronavirus infection (COVID-19) pandemic that started in 2019, the issues of ensuring the protection of personal data in the society became even more relevant. The extreme situation in Lithuania and around the world, due to the rapid spread of the infection, the provision of health care services at a distance, and guaranteeing the confidentiality of the data of sick people has become a major challenge for both state institutions and medical institutions. The article reveals the concepts of personal data and personal health data, presents the main principles and requirements applicable to the processing of personal health data, discusses the confidentiality of personal health data and the peculiarities of their provision to third parties. Issues related to data protection for people living with HIV and AIDS are also presented.

Keywords: *Data protection, personal data, healthcare sector, personal health data*

TEISINĖ ATSAKOMYBĖ UŽ ŽIAURŲ ELGESĮ SU GYVŪNAIS

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Anotacija. Straipsnyje analizuojama žiaurus elgesio su gyvūnais samprata bei gyvūnų teisių apsaugos problematika. Lietuvoje jau keletą metų iš eilės registruojama nuo 50 iki 100 įvykdytų nusikalstamų veikų, numatytų Lietuvos Respublikos Baudžiamojo kodekso 310 straipsnyje, numatančiame atsakomybę už žiaurų elgesį su gyvūnais, taip pat virš 100 administracinių nusižengimų, susijusių su žemės ūkio, veterinarijos veikla ir gyvūnų globa (į šį skaičių patenka ir bylos dėl žiaurus elgesio su gyvūnais). Tiek oficialūs statistiniai duomenys, tiek žiniasklaidos ir gyvūnų gerovės organizacijų viešinami žiaurus elgesio su gyvūnais atvejai leidžia daryti prielaidą, kad žiaurus elgesys su gyvūnais yra itin aktuali problema.

Problemiška šioje srityje yra tai, kad žiaurus elgesio su gyvūnais ir jų kankinimo sąvokos yra labai plačios, o Lietuvos Respublikos įstatymai nepateikia šių sąvokų definicijų, tačiau pateikia sąrašą veiksmų, kurie laikomi žiauriu elgesiu su gyvūnais ir jų kankinimu. Straipsnyje taip pat diskutuojama dėl įstatymuose įtvirtintų veiksmų, nelaikytinų žiauriu elgesiu, sąrašo, prieinama išvados, kad tiek skirtingose visuomenėse, tiek ir toje pačioje visuomenėje egzistuoja prieštaringos nuomonės dėl žiaurus elgesio su gyvūnais, todėl žiaurus elgesio su gyvūnais samprata yra kultūriškai determinuota ir nuolat kintanti.

Straipsnyje pristatoma teisinės atsakomybės už žiaurų elgesį su gyvūnais taikymo praktikos bei lyginamoji teisinio reguliavimo, nustatančio atsakomybę už žiaurų elgesį su gyvūnais, analizė.

Pagrindinės sąvokos: gyvūnų teisės, žiaurus elgesys su gyvūnais, teisinė atsakomybė.

Įvadas

„Gyvūnų gerovės atstovų "pasiekimai" per paskutinius 20 metų buvo visiškai Beverčiai, tiek stengiantis pakeisti gyvūnų kaip nuosavybės statusą, tiek bandant sumažinti jų kančią. Iš tikro, aš manau, kad gyvūnų gerovės judėjimas prisidėjo prie to, jog visuomenė jaučiasi patogiau dėl gyvūnų išnaudojimo.<...> Jei rimtai žiūrėtume į gyvūnus, nustotume juos traktuoti kaip savo išteklius, kaip savo nuosavybę“ .

Gary L. Francione

Šie amerikiečių teisės filosofo ir gyvūnų teisių abolicionistinės teorijos kūrėjo Gary Lawrence Francione žodžiai, kritiškai vertinantys Vakarų visuomenėse dominuojantį pastarojo laikotarpio požiūrį į gyvūnų teisių apsaugą, verčia susimąstyti, ar tikrai gyvūnų gerovė yra suprantama adekvačiai, ar teisinis reguliavimas, skirtas užtikrinti gyvūnų teisių apsaugą ir kriminalizuoti žiaurų elgesį su gyvūnais, yra tinkamas ir iš tiesų saugantis gyvūnus nuo žiaurus elgesio ir kankinimo?

Siekiant papildyti mokslines diskusijas šia tematika, tikslinga plačiau padiskutuoti žiaurus elgesio su gyvūnais sampratos klausimu, taip pat gyvūnų teisių apsaugos problematika.

Tai, kad nagrinėjimui pasirinktas klausimas yra pakankamai aktualus, liudija statistiniai duomenys: Lietuvoje jau keletą metų iš eilės registruojama nuo 50 iki 100 įvykdytų nusikalstamų veikų, numatytų Lietuvos Respublikos Baudžiamojo kodekso 310 straipsnyje, numatančiame atsakomybę už žiaurų elgesį su gyvūnais, taip pat kasmet registruojama virš 100 administracinių nusižengimų, susijusių su žemės ūkio, veterinarijos veikla ir gyvūnų globa (į šį skaičių patenka ir bylos dėl žiauraus elgesio su gyvūnais). Tiek oficialūs statistiniai duomenys, tiek žiniasklaidos ir gyvūnų gerovės organizacijų viešinami žiauraus elgesio su gyvūnais atvejai leidžia daryti prielaidą, kad žiaurus elgesys su gyvūnais yra itin aktuali problema.

Gyvūnų gerovės ir apsaugos užtikrinimo problemos nėra dažnai nagrinėjamas klausimas Lietuvos teisės mokslininkų darbuose. Gyvūnų gerovės klausimas dažniausiai viešai pasisako įvairių nevyriausybinų organizacijų atstovai (Delfi, Muitinės sprendimas išparduoti konfiskuotus šunis papiktino gyvūnų gynėjus: šitaip negalima elgtis), tuo tarpu iš mokslinės perspektyvos gyvūnų gerovės klausimai dažniausiai tirti veterinarijos ir biomedicinos mokslininkų (J. Kučinskienės, V. Ribikausko, B. Bakučio, S. Biziulevičiaus ir kt). Dalis mokslininkų nagrinėjo gyvūnų gerovės klausimą filosofijos ir etikos mokslų bendrame kontekste (pavyzdžiui, K. Akošas „Ar gyvūnai mąsto?“, K. V. Trainys „Ar gyvūnai protauja?“ (2000 m.). Tačiau teisiniu požiūriu gyvūnų gerovės užtikrinimo klausimai, teisinės atsakomybės už žiaurų elgesį su gyvūnais klausimai Lietuvoje iki šiol nuosekliai nebuvo tyrinėti, nors teisinis reguliavimas šioje srityje per pastaruosius 30 metų keitėsi ženkliai.

Problemiška šioje srityje yra tai, kad žiauraus elgesio su gyvūnais ir jų kankinimo sąvokos yra labai plačios, o Lietuvos Respublikos įstatymai nepateikia šių sąvokų definicijų, tačiau pateikia sąrašą veiksmų, kurie laikomi žiauriu elgesiu su gyvūnais ir jų kankinimu. Lietuvos Respublikos įstatymai taip pat įtvirtina veiksmų, nelaikytinų žiauriu elgesiu, sąrašą. Tačiau kyla klausimai, ar įstatymų nuostatos koreliuoja su visuomenėje nusistovėjusiomis nuomonėmis, kas laikytina žiauru elgesiu su gyvūnais ir kas laikytina gyvūnų kankinimu?

Šio straipsnio tikslas – atskleisti žiauraus elgesio su gyvūnais sampratą ir pristatyti teisinės atsakomybės už žiaurų elgesį su gyvūnais taikymo praktikos bei lyginamąją teisinio reguliavimo, nustatančio atsakomybę už žiaurų elgesį su gyvūnais, analizę.

Rengiant straipsnį buvo analizuojami nacionaliniai ir užsienio šalių teisės aktai, susiję su gyvūnų gerovės įtvirtinimu ir atsakomybės už žiaurų elgesį su gyvūnais nustatymu. Siekiant atskleisti žiauraus elgesio su gyvūnais sampratos turinį taip pat buvo analizuota mokslinė literatūra. Teismų praktikos analizė leido atskleisti dažniausiai praktikoje pasitaikančias problemas, susijusias su teisinės atsakomybės taikymu žiauraus elgesio su gyvūnais atvejais.

Žiauraus elgesio su gyvūnais samprata

Žodynuose sąvoka „žiaurus“ apibūdinama kaip: šiaurus, žvarbus, šaltas (apie vėją, orą), piktas, griežtas, bejausmis; puolus, agresyvus; baisus, siaubingas; nuožmus, negailestingas; šiurkštus; aštrus, rėžiantis (apie kalbą, žodžius); pasižymintis išskirtinėmis savybėmis (Lietuvių kalbos žodynas). Mokslinėje literatūroje pateikiamos tokios žiauraus elgesio sąvokos, kaip visuomenės netoleruoti veiksmai, kuriais išreiškiamas nepateisinamas negailestingumas ir savivalė, arba kaip veikimas ar neveikimas, sukeltantis nukentėjusiajam fizinį ar psichinį skausmą (Grinevičiūtė K. 2008).

„Draudžiama žiauriai elgtis su gyvūnais ir juos kankinti, bet kokiomis priemonėmis tiesiogiai ar netiesiogiai propaguoti ir skatinti žiaurų elgesį su gyvūnais, jų kankinimą, kurstyti smurtą prieš gyvūnus“ – toks draudimas įtvirtintas Lietuvos Respublikos gyvūnų gerovės ir apsaugos įstatymo (toliau – LR Gyvūnų gerovės ir apsaugos įstatymas) 4 str. 1 d. Draudimo

nesilaikymas, t. y. žiaurus elgesys su gyvūnais bei jų kankinimas, užtraukia administracinę arba baudžiamąją atsakomybę (LR Gyvūnų gerovės ir apsaugos įstatymas 1997 (Valstybės žinios Nr. 108-2728). Šiuo metu yra vis dažniau girdima sąvoka „žiaurus elgesys su gyvūnais“, tačiau iškyla klausimas, ką vadiname tokiu elgesiu?

Nors žiaurus elgesys su gyvūnais užtraukia atitinkamai administracinę ar baudžiamąją atsakomybę, o teisės normų dispozicijose vartojamos sąvokos tokios, kaip „žiaurus elgesys su gyvūnu“ (LR Administracinių nusižengimų kodeksas 2015 (TAR Nr. 11216) ir LR Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas 2000 (Valstybės žinios, Nr. 89-2741)), „gyvūno kankinimas“ (LR Administracinių nusižengimų kodeksas 2015 (TAR Nr. 11216)), nei Lietuvos Respublikos administracinių nusižengimų kodekse (toliau – LR ANK) nei Lietuvos Respublikos baudžiamajame kodekse (toliau – LR BK) žiauraus elgesio su gyvūnais sąvoka tiesiogiai nėra įtvirtinta. Šios sąvokos įtvirtinimo pasigendama ir LR Gyvūnų gerovės ir apsaugos įstatyme (*Suvestinė redakcija nuo 2020-07-10 iki 2021-04-30*), tačiau šio įstatymo 4 str. 2 d. nurodomi veiksmai, kurie laikytini žiauriu elgesiu su gyvūnais ar jų kankinimu, tai:

- „1) sąmoningas gyvūnų padarymas bešeimininkiais ar beprižiūriais;
- 2) veterinarinės pagalbos nesuteikimas, kai gyvūnams tokia pagalba būtina;
- 3) gyvūnų gąsdinimas, sužeidimas ar nužudymas, išskyrus teisės aktuose numatytus atvejus;
- 4) gyvūnų naudojimas taikiniams;
- 5) gyvūnų kovų ar kovų su gyvūnais organizavimas, gyvūnų treniravimas kovoms;
- 6) zoofiliniai veiksmai su gyvūnais;
- 7) gyvūnų skerdimas jų neapsvaiginus, išskyrus teisės aktuose numatytus atvejus;
- 8) gyvūnų operavimas jų nenuskausminus, išskyrus teisės aktuose numatytus atvejus;
- 9) veterinarinės procedūros, siekiant pakeisti gyvūnų išvaizdą ar gyvūnų fiziologines funkcijas (ausų, barzdelių, skiauterių, snapų, uodegų trumpinimas, balso stygų, ragų, nagų, sparnų, kanopų ir ilčių pažeidimas ar pašalinimas, plunksnų išpešimas ar pašalinimas kitu būdu ir kt.), pažeidžiant gyvūnų kūno dalių, minkštųjų audinių ar kaulų struktūrą, išskyrus gyvūnų kastravimą ir kitus teisės aktuose numatytus atvejus arba veterinarines procedūras, atliekamas veterinarijos gydytojo sprendimu dėl gyvūno sveikatos;
- 10) gyvūnų galimybes stimuliuojančių medžiagų, didinančių gyvūnų produktyvumą, darbingumą, sportinius rezultatus, naudojimas, išskyrus teisės aktuose leidžiamų medžiagų naudojimą ar kitus teisės aktuose numatytus atvejus;
- 11) gyvūnų sveikatai žalingų ar erzinančių cheminių medžiagų bei kitų priemonių ir įrenginių, sukeliančių gyvūnams baimę, stresą, kančias ar žalingas pasekmes jų sveikatai ir gerovei, naudojimas;
- 12) gyvūnų mokymas ir dresavimas, sukiant jiems skausmą ir baimę, naudojant dirbtinai žalojančias ar skausmą, kančią sukeliančias priemones;
- 13) gyvūnų agresijos kitų gyvūnų ar žmonių atžvilgiu skatinimas dresuojant gyvūnus, išskyrus tarnybiniais tikslais naudojamų gyvūnų dresavimą;
- 14) gyvūnų veisimas, sukiantis žalingas pasekmes gyvūnų sveikatai ir gerovei;
- 15) gyvūnų laikymas jų rūšies, amžiaus, fiziologijos ir elgsenos neatitinkančiomis teisės aktuose nustatytomis sąlygomis;
- 16) netinkamų, žalingų gyvūnų laikymo, priežiūros ar darbo įrenginių taikymas gyvūnams;
- 17) nepakankamas gyvūnų šėrimas ar girdymas;
- 18) poilsio laiko gyvūnams nesuteikimas, atsižvelgiant į jų fiziologinius poreikius;
- 19) gyvūnų naudojimas kitiems gyvūnams šerti, išskyrus atvejus, kai šiuos gyvūnus

būtina šerti gyvūnais pagal gyvūnų biologiją ir jų neįmanoma šerti kitaip (visais atvejais gyvūnų augintinių naudojimas gyvūnams šerti draudžiamas);

20) gyvūnų vežimas, pažeidžiant gyvūnų gerovę vežimo metu reglamentuojančių teisės aktų reikalavimus;

21) gyvūnų naudojimas reklamai, filmavimui, fotografavimui, parodose ir kituose renginiuose, jeigu dėl to gyvūnams sukeliamas skausmas, baimė, kančia, gyvūnai verčiami pranokti jų įgimus gebėjimus ar yra luošinami;

22) laukinių gyvūnų, kurie buvo prižiūrėti žmogaus, paleidimas į laisvę, jeigu šie gyvūnai nebuvo tinkamai paruošti gyventi natūralioje aplinkoje;

23) gyvūno savininko ar laikytojo sutikimas atlikti šios dalies 1–22 punktuose nurodytus veiksmus ar sąlygų atlikti tokius veiksmus sudarymas

24) kiti veiksmai, sukiantys gyvūnų žūtį, skausmą, kančią, pavojų gyvūnų sveikatai ar gyvybei, išskyrus teisės aktuose nustatytus atvejus“ (LR Gyvūnų gerovės ir apsaugos įstatymas 1997 (Valstybės žinios Nr. 108-2728).

Iš šios teisės normos paskutinio punkto matyti, kad pateiktas veikslių sąrašas nėra baigtinis, todėl ir kiti neišvardinti veiksmai, sukiantys atitinkamus padarinius, galėtų būti laikomi žiauriu elgesiu. Nuo 2021 m. gegužės mėn. 1 d. įsigalios LR Gyvūnų gerovės ir apsaugos įstatymo Nr. VIII-500 2, 4, 7 ir 10 straipsnių pakeitimo įstatymo projektas, kuris numato svarbius pakeitimus, analizuojant šį veikslių sąrašą. Visų pirma, aukščiau paminėtas sąrašas pasipildys nauju 24 punktu „gyvūno augintinio savininko nesutikimas bendradarbiauti su šio įstatymo vykdymą kontroliuojančių institucijų pareigūnais, informacijos apie jo laikomų gyvūnų gerovę, sveikatos būklę, buvimo vietą ar kitas svarbias aplinkybes nesuteikimas“ (LR gyvūnų gerovės ir apsaugos įstatymo Nr. VIII-500 2, 4, 7 ir 10 straipsnių pakeitimo įstatymo projektas 2020 (Reg. Nr.: XIIP-5174(2))). Antra, numatomas dabartinio 14 punkto pakeitimas nauju „gyvūnų veisimas nesilaikant teisės aktuose nustatytų reikalavimų ir (ar) sukiantis žalingas pasekmes gyvūnų sveikatai ir gerovei“. Svarbu paminėti ir tai, kad naujai įsigaliojusioje redakcijoje bus įtvirtinta ir gyvūno suluošinimo sąvoka, „gyvūno suluošinimas – veiksmai ar neveikimas, dėl kurių atsiranda gyvūno kūno dalių ir (ar) organų sužalojimas, sukiantis žalingus gyvūno fizinei ir (ar) psichinei sveikatai liekamuosius reiškinius“ (LR gyvūnų gerovės ir apsaugos įstatymo Nr. VIII-500 2, 4, 7 ir 10 straipsnių pakeitimo įstatymo projektas 2020 (Reg. Nr.: XIIP-5174(2))). Panašių veikslių sąrašus galima rasti ir kitų valstybių gyvūnų gerovės įstatymuose, pavyzdžiui, Šveicarijoje (Fedlex, Tierschutzgesetz), Vokietijoje (Tierschutzgesetz), Norvegijoje (Government.no, Animal Welfare Act.), bet taip pat, kaip ir Lietuvos Respublikos teisės aktuose įstatymų leidėjas žiauraus elgesio sąvokos neįtvirtina. Tačiau toks „žiauraus elgesio su gyvūnais“ sąvokos neįtvirtinimas, kaip pažymi autorė K. Grinevičiūtė (2008), nagrinėdama žiauraus elgesio su vaiku sampratą baudžiamojoje teisėje, „palieka laisvę teismui pripažinti ar nepripažinti elgesį žiauriu, kita vertus, galiojant tokiai normai kiekvienas neįprastas ir gana pavojingas elgesys vaiko atžvilgiu gali būti tinkamai teisiškai įvertintas“. Šis teiginys tikėtų ir žiauraus elgesio su gyvūnu atveju, kadangi taip užtikrinama teisinė apsauga ne tik įstatyme išvardintais atvejais.

Įdomu tai, kad kiekviena valstybė žiauraus elgesio su gyvūnais sąvoką apibrėžia skirtingai: tiek pagal įtvirtintus draudžiamus veiksmus, tiek pagal saugomų gyvūnų kategorijas (Dedel., K. 2012). Pavyzdžiui, medžiojamieji gyvūnai, kai kurie ūkiniai gyvūnai, graužikai ir kt. dažnai yra žudomi ar patiria kančias, tačiau šių gyvūnų kategorijai teisės aktai, numato išimtis (LR Gyvūnų gerovės ir apsaugos įstatymas 1997 (Valstybės žinios Nr. 108-2728)). Būtent anksčiau minėto LR Gyvūnų gerovės ir apsaugos įstatymo 5 str. 1 d. yra nurodomi veiksmai, nelaikytini žiauriu elgesiu su gyvūnais ir jų kankinimu:

„1) akvakultūros gyvūnų gaudymas, vadovaujantis teisės aktų reikalavimais;

- 2) gyvūnų medžiojimas, vadovaujantis teisės aktų reikalavimais;
- 3) pagal su savivaldybės administracija suderintas kačių kastravimo programas laisvėje sugautų ir kastruotų bešeimininkių kačių paleidimas į laisvę;
- 4) gyvūnų kastravimas;
- 5) netyčinis gyvūno sužeidimas ar nužudymas;
- 6) gyvūnų nužudymas likviduojant gyvūnų užkrečiamąsias ligas, visuomenės sveikatos, gyvūnų sveikatos ir gerovės, aplinkos apsaugos tikslais, vadovaujantis teisės aktų reikalavimais;
- 7) gyvūnų nužudymas neatidėliotinais atvejais, kai būtina nutraukti sunkiai sužeisto gyvūno kančias;
- 8) kitų poveikio priemonių, pašalinančių grėsmę, taikymas gyvūnams ar jų nužudymas, kai gresia realus pavojus žmogui ar kitam gyvūnui;
- 9) gyvūnų nugaišinimas, naudojant tik veterinarinius vaistus, kiti nugaišinimo būdai yra draudžiami;
- 10) graužikų, kenksmingų vabzdžių ir erkių naikinimas jiems naikinti skirtais metodais ir priemonėmis;
- 11) bandymų su gyvūnais atlikimas, turint Valstybinės maisto ir veterinarijos tarnybos išduotą leidimą;
- 12) ūkinių gyvūnų skerdimas, prieš tai jų neapsvaiginus, religinėms apeigoms atlikti būtinais metodais, jeigu šie gyvūnai skerdžiami skerdykloje“ (LR Gyvūnų gerovės ir apsaugos įstatymas 1997 (Valstybės žinios Nr. 108-2728)).

Šioje teisės normoje matomas pateiktas baigtinis sąrašas veiksmų, nelaikytinų žiauriu elgesiu ar kankinimu. Atsižvelgiant į veiksmų sąrašus, matyti, kad, LR Gyvūnų ir gerovės įstatymo teisės normos yra daugiau nukreiptos į naminių gyvūnų apsaugą, kadangi, nors kančias gali patirti tiek naminiai gyvūnai, tiek kiti gyvūnai, ne naminio gyvūno apsauga reglamentuojama kitais teisės aktais, pavyzdžiui, Lietuvos Respublikos laukinės gyvūnijos įstatymas, Lietuvos Respublikos medžioklės įstatymas ir kt. Tačiau dėl didėjančio visuomenės susidomėjimo gyvūnų teisių apsauga, matomi ir kitų teisės aktų pakeitimai, įtvirtinantys žiauraus elgesio draudimus ir su laukiniais gyvūnais, pavyzdžiui, patvirtintas Lietuvos Respublikos laukinės gyvūnijos įstatymo Nr. VIII-498 pakeitimo įstatymas (įsigalios 2021 m. gegužės 1 d.), kuriuo „draudžiama naudoti laukinių žinduolių, paukščių, roplių ir varliagyvių rūšių gyvūnus cirkuose [...]“ (LR Laukinės gyvūnijos įstatymo Nr. VIII-498 pakeitimo įstatymas 2020, (TAR Nr. 21146)). Būtent laukinių gyvūnų draudimo cirkuose Lietuvoje iniciatyva kilo po šiauriečių piketo prieš Čekijos cirką, kuriame pastebėtas keistai besielgiantis dramblys bei jo laikymo pažeidimai (Sputnik, Laukiniai gyvūnai pasirodymų metu patiria didžiulį stresą, kuris gali sukelti įvairių psichikos sutrikimų ar net mirtį, tvirtina pataisų iniciatoriai).

Nors yra įtvirtintas veiksmų, nelaikytinų žiauriu elgesiu, sąrašas, visgi visuomenėje diskutuojama, ar tie veiksmai nėra suprantami kaip žiaurus elgesys? Pastaruoju metu keičiasi požiūris į medžioklę, akvakultūros gyvūnų gaudymą, bandymus su gyvūnais ir pan.

Kalbant apie bandymus su gyvūnais, kurie dažniausiai atliekami mokslininkų, medikų ir kitų profesijų atstovų, kuriais visuomenėse tradiciškai pasitikima, todėl giliau nesusimąstoma, kokie bandymų veiksmai atliekami su gyvūnais. Į gyvūnų odą trinami, į akis lašinami įvairūs išbandomų gaminių ingredientai, išbandomi skalbimo milteliai, tualetų valikliai, vaistai ir t.t. Bandymai su gyvūnais yra reglamentuojami regioniniais teisės aktais (2009 m. lapkričio 30 d. Europos Parlamento ir Tarybos reglamentas (EB) Nr. 1223/2009 dėl kosmetikos gaminių, 2010 m. rugsėjo 22 d. Europos Parlamento ir Tarybos direktyva 2010/63/ES dėl mokslo tikslais naudojamų gyvūnų apsaugos) ir nacionaliniais (Lietuvos Respublikos gyvūnų gerovės ir

apsaugos įstatymas, įsakymas „Dėl Mokslo ir mokymo tikslais naudojamų gyvūnų laikymo, priežiūros ir naudojimo reikalavimų patvirtinimo“ ir kt.), tačiau egzistuojantis reglamentavimas yra pakankamai abstraktus ir kelia klausimų, ar jis užtikrina bandomųjų gyvūnų gerovės apsaugą, ar juos apsaugo nuo žiauraus elgesio, juk į leidžiamų bandomų gyvūnų sąrašą įtraukti ne tik graužikai ar zuikiai, bet ir šunys, katės?

Įvairių diskusijų pastaruoju metu galima pastebėti ir medžioklės klausimu: ar tai gyvūnų žudymas, pramoga, o gal tik gyvūnų gausos reguliavimo būdas? Nors medžioklė teikia biologinę naudą, visuomenėje nuomonės išsiskiria. Yra manančių, kad medžioklė - tai betikslis gyvūnų žudymas, amoralus elgesys, „elito“ laisvalaikio praleidimo būdas. Nenuostabu, kad medžioklė susilaukia neigiamų vertinimų, juk kartas nuo karto paviešinami faktai apie įvykius medžioklėse, kurie sukrečia visuomenę: pvz. Seimo narys nušovė vieną labiausiai saugotinių gyvūnų Lietuvoje – stumbro patelę (Lrytas.lt, Stumbro patelę nušovusiam valstiečiui – protokolas: užmušė vieną labiausiai saugomų gyvūnų.), buvo neteisėtai sumedžiotas elnias (15min.lt., Skandalingą elnio medžioklę policija narsto uoliai: dėl Ukmergės pareigūnų rolės neturi likti jokių abejonių) ir kiti panašūs įvykiai.

Nevienareikšmiškas požiūris yra ir gyvūnų sterilizavimo klausimu. Kai kurių visuomenės narių požiūriu, gyvūno sterilizavimas – ne kas kita, kaip žiaurus elgesys su gyvūnu ir jo kankinimas. Kiti gi mano, kad visgi humaniškiau gyvūnus sterilizuoti ir tokiu būdu kontroliuoti jų dauginimąsi. Pastebima, kad visuomenės požiūris keičiasi ir vis dažniau pastebimas, kad tai, kas maždaug prieš 10 metų buvo laikoma normaliu elgesiu su gyvūnais, dabar yra nebepriimtina, ir atvirkščiai: geriausias pakitusio požiūrio pavyzdys – požiūris į gyvūno sterilizaciją. Panašiai kinta požiūris į laukinių gyvūnų naudojimą cirkuose. Jeigu anksčiau ilgą laiką tai buvo vertinama kaip morali pramoga ir puikus laisvalaikio praleidimo būdas, tai po paviešintų vaizdo įrašų, nuotraukų, kuriuose parodomi, kaip dresuojami, kaip vežami ir laikomi cirko gyvūnai, žmonių nuomonė pradėjo keistis. Ir toks susidomėjimas šiuo klausimu bei pakitęs visuomenės požiūris galėjo nulemti teisinio reguliavimo pokyčius: šiuo metu įtvirtintas laukinių gyvūnų draudimas cirkuose (LR Laukinės gyvūnijos įstatymo Nr. VIII-498 pakeitimo įstatymas 2020, (TAR Nr. 21146)). Dauguma Europos valstybių taiko tam tikrus apribojimus dėl gyvūnų išnaudojimo cirkuose. Graikijoje, Maltoje, Kipre, Bosnijoje ir Hercegovinoje cirko pasirodymuose draudžiamas visų gyvūnų naudojimas (Four Paws in Australia, Worldwide bans on wild animals in circuses). Laukinių gyvūnų naudojimo cirke draudimas įtvirtintas Austrijoje, Belgijoje, Bulgarijoje, Kroatijoje, Danijoje, Estijoje, Anglijoje (nuo 2020 m.) ir kitose (Four Paws in Australia, Worldwide bans on wild animals in circuses), o „pavyzdžiui, Prancūzijoje, šiuo metu taip pat siūloma įtvirtinti gyvūnų gerovės įstatymo pakeitimus, siekiant uždrausti laukinių gyvūnų naudojimą keliaujančiuose cirkuose (FRANCE24, French parliament debates ban on wild animals in circuses).

Prieinama išvados, kad skirtingose visuomenėse skirtingais laikmečiais egzistuoja prieštaringos nuomonės dėl žiauraus elgesio su gyvūnais, todėl žiauraus elgesio su gyvūnais samprata yra kultūriškai determinuota ir dinamiška.

Darytina prielaida, kad šiuo metu visuomenėje nėra vieningo žiauraus elgesio su gyvūnais sąvokos supratimo ir tai matoma ne tik viešuose visuomenės pasisakymuose, bet ir tais atvejais, kuomet asmenys tiesiogiai dirba srityse, susijusiose su gyvūnų gerovės užtikrinimo klausimais. Kaip matyti iš STT atliktos korupcijos analizės pateiktų pavyzdžių apibendrinimo: „nustačius netinkamo dydžio narvus ūkiuose, vienais atvejais gyvūnų savininkai ar laikytojai buvo traukiami atsakomybėn pagal ANK 346 straipsnio 1 dalį – tai yra už gyvūnų gerovės reikalavimų pažeidimus, kitais atvejais pagal ANK 346 straipsnio 16 dalį – už žiaurų elgesį su gyvūnais“. Taigi, nesant vieningo supratimo žiauraus elgesio su gyvūnais sąvokos, atsiranda problemų taikant teisinę atsakomybę, o taip pat pastebima didesnė korupcijos atsiradimo rizika.

Žiaurus elgesio sampratas siekė pateikti tokie autoriai, kaip R. Agnew (1998), žiaurų elgesį yra apibrėžęs kaip bet kokį veiksma, prisidedantį prie gyvūno skausmo ar mirties, o anot F. Ascione (1993), žiaurus elgesys su gyvūnais, tai socialiai nepriimtinas elgesys, sukeliantis skausmą, kančias ar mirtį gyvūnams.

Dažniausiai žiaurus elgesys skirstomas į nepriežiūrą ir tyčinį žiaurumą (Shah, P. 2014), tačiau literatūroje galima rasti papildomai išskiriamą nepriežiūros rūšį – „gyvūnų kaupimas“ (Dedel., K. 2012). Nepriežiūra – labiausiai paplitusi žiaurus elgesio su gyvūnais forma, kuri dažniausiai pasireiškia vandens, maisto, veterinarinių paslaugų trūkumu ar gyvūno judėjimo suvaržymu (Shah, P. 2014). Kai tokių sąlygų savininkas nesuteikia gyvūnams, kuriuos jis „kaupia“, tuomet tai vadinama „gyvūnų kaupimu“ (Dedel., K. 2012). Tyčiniai veiksmai, kuriais sukeliamas skausmas ar kančios, pasireiškia įvairiais tiesioginiais fiziniais veiksmais: mušimas, dusinimas, spardymas, dūriai, šaudymas, lytinis santykiavimas ir t. t. (Dedel., K. 2012. Nacionalinėje teismų praktikoje laikytina, kad „žiaurus elgesys su gyvūnais pasireiškia visuomenėje netoleruotinais ir būtinumu nepagrįstais veiksmais, kuriais išreiškiamas nepateisinamas negailestingumas ir savivalė gyvūnų atžvilgiu. Ši veika gali pasireikšti tiek teštiniais veiksmais, tiek ir vienkartinio poelgiu, pavyzdžiui, veiksnu, kuriuo gyvūnui tiesiogiai atimama gyvybė arba jis suluošinamas.“ (Kauno apygardos teismo nuosprendis Nr. 1A-234-658/2020).

Apibendrinant, darytina išvada, kad nors ir nėra tiesiogiai įtvirtintos žiaurus elgesio su gyvūnais sąvokos nacionaliniuose teisės aktuose, bet Lietuvos Respublikos Gyvūnų gerovės ir apsaugos įstatyme yra įtvirtintas veiksma, laikytinu žiauriu elgesiu, sąrašas, kuris nėra baigtinis. Nors šis įstatymas labiau akcentuotas į naminių gyvūnų apsaugą, vis labiau keičiasi žmonių požiūris į laukinių gyvūnų apsaugą ir įstatymuose numatomi pakeitimai, užtikrinantys apsaugą ir kitiems gyvūnams, kaip pavyzdžiui, įtvirtintas laukinių gyvūnų draudimas cirkuose. Labai svarbu pabrėžti ir tai, kad žiaurus elgesio sąvokos neįtvirtinimas užtikrina teisinę apsaugą ne tik įstatyme išvardintais atvejais. Veiksma, laikytinu žiauriu elgesiu, sąrašas atsispindi ir kitų užsienio valstybių gyvūnų gerovės įstatymuose bei dalis veiksma atsispindi autoriams apibrėžiant žiaurus elgesio sąvoką, o tai tik patvirtina, kad sąvokos neįtvirtinimas teisės aktuose yra neatsitiktinis. Teisiškai žiaurus elgesio sąvokos neįtvirtinimas atrodo teisingas, tačiau apžvelgiant visuomenės nuomones, korupcijos analizes, darytina prielaida, kad kiekvienas žiaurus elgesio sąvoką interpretuoja skirtingai, o tai būtent daro tiesioginę įtaką teisinės atsakomybės netinkam taikymui, korupcijos apraiškos atsiradimui.

Teisinės atsakomybės už žiaurų elgesį su gyvūnais taikymo praktikos analizė

Pastaraisiais metais Lietuvoje visuomenės dėmesio sulaukė įvykiai (Tiesa, Nelegalios šunų veisyklos – apsileidimas ar milijoninis verslas?), tokie kaip nelegalios veisyklos-daugyklos, kuriose gyvūnai laikomi antisanitarinėmis sąlygomis, nėra maitinami, užfiksuoti tyčiniai gyvūnų kankinimo atvejai, parodė, jog nacionalinis teisinis reglamentavimas gyvūnų gerovės ir apsaugos klausimais nėra tinkamas arba nėra tinkamai įgyvendinamas. Nors visi anksčiau minėti įvykiai laikomi žiauriu elgesiu su gyvūnais, o „už žiaurų elgesį su gyvūnais ir gyvūnų kankinimą asmenys traukiami administracinėn ar baudžiamojon atsakomybėn“ (LR Gyvūnų gerovės ir apsaugos įstatymas 1997 (Valstybės žinios Nr. 108-2728)), dažniausiai šie asmenys atsiperka minimaliomis bandomis, neatgrasančiomis nuo pakartotinių veiku darymo. Tai matyti iš tokiu pavyzdziu kaip, „daugintoja A. P. buvo pripažinta padarius administracinį nusižengimą, numatytą Lietuvos Respublikos administraciniu nusižengimu kodekso 346 straipsnio 18 dalyje (18. Žiaurus elgesys su gyvūnu, gyvūno kankinimas, kai dėl to gyvūnams gresia žūtis ar suluošinimas) ir paskyrė jai administracinę nuobaudą – 700 EUR (septynių šimtu

eurų) baudą, be gyvūnų konfiskavimo“ (Lrytas.lt, Jonavos teisėja pasmerkė gyvūnus grįžti į daugyklą, bet daugintojai skyrė baudą), taip pat „jau žinoma, kad šios veisyklos savininkė net neturi teisės vertis gyvūnų veisimu, o praėityje už tokią nelegalią veiklą jau bausta“ (Lrytas.lt, Toliau šokiruoja vaizdai iš daugyklų – Širvintų veisėjui gali grėsti baudžiamoji atsakomybė), „be gyvūnų konfiskavimo administracinės nuobaudos tikslai J. N. atžvilgiu nebus pasiekti. Administracinių nusižengimų registro išrašo duomenys (b. l. 27–31) patvirtina, kad J. N. jau yra baustas už tokio pobūdžio administracinius nusižengimus (pagal ANK 346 straipsnio 1 dalį, 346 straipsnio 3 dalį), tačiau jokių išvadų nepadarė, savo kaltės dėl žiaurus elgesio su gyvūnais nepripažįsta ir savo elgesio neigiamai nevertina, atsakomybės neprisiima“ (Kauno apygardos teismo nutartis Nr. AN2-288-966/2019). Už žiaurų elgesį su gyvūnais baudžiamoji atsakomybė įtvirtinta Lietuvos Respublikos Baudžiamojo Kodekso (toliau – ir BK) 310 str., o administracinė atsakomybė – Lietuvos Respublikos Administracinių nusižengimų kodekso (toliau – ir ANK) 346 str. 16-19 d.

Toliau nagrinėjant teisinės atsakomybės už žiaurų elgesį su gyvūnais aspektus, tikslinga išanalizuoti praėjusių metų statistinius duomenis (1 pav.). Remiantis Informatikos ir ryšių departamento duomenimis, nusikalstamų veikų, numatytų BK 310 str., o tai yra žiaurus elgesys su gyvūnais, Lietuvoje užregistruota: 2020 m. – 70, 2019 m. – 64, 2018 m. – 57, 2017 – 81 (Duomenys apie nusikalstamas veikas, padarytas Lietuvoje 2017-2020 metais). Dėl administracinių nusižengimų, susijusių su žemės ūkio, veterinarijos veikla ir gyvūnų globa (į šį skaičių patenka ir bylos dėl žiaurus elgesio su gyvūnais) Lietuvos Respublikos pirmos instancijos teismuose 2020 m. gauta 109 bylos, 2019 m. – 118, 2018 m. – 122, 2017 m. – 117 (Administracinių bylų nagrinėjimo ataskaita pirmos instancijos teismuose už 2017- 2020 metus).



1 pav. 2017 – 2020 m. statistika.

Ypatingai didelis dėmesys šiuo metu skiriamas BK 310 str. „Žiaurus elgesys su gyvūnais“, kuriame nurodyta:

„1. Tas, kas žiauriai elgėsi su gyvūnu, jį kankino, jeigu dėl to gyvūnas žuvo arba buvo suluošintas,

baudžiamas viešaisiais darbais arba bauda, arba areštu, arba laisvės atėmimu iki vienerių metų.

2. Už šiame straipsnyje numatytą veiką atsako ir juridinis asmuo“ (LR Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas 2000 (Valstybės žinios, Nr. 89-2741)).

Šioje teisės normos dizpozicijoje nurodytos alternatyvios veikos: žiaurus elgesys su gyvūnu ir gyvūno kankinimas, už kurių nors vienos padarymą kyla teisinė atsakomybė (Klaipėdos apylinkės teismo nuosprendis Nr. 1-549-890/2020). Tačiau svarbu tai, kad šios veikos yra materialiosios, o tai reiškia, kad baudžiamoji atsakomybė atsiranda tik tuomet, kai kyla normoje nurodyti padariniai, t. y. „jeigu dėl to gyvūnas žuvo arba buvo suluošintas“ (LR Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas 2000 (Valstybės žinios, Nr. 89-2741)). Ankstesnėje, iki 2015 m. liepos 15 d. BK 310 str. galiojusioje redakcijoje buvo numatyta „tas, kas žiauriai elgėsi su gyvūnu, jeigu dėl to gyvūnas žuvo arba buvo suluošintas, arba kankino gyvūną, baudžiamas viešaisiais darbais arba bauda, arba areštu, arba laisvės atėmimu iki vienerių metų“ (LR Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas 2000 (Valstybės žinios, Nr. 89-2741)). Šioje straipsnio redakcijoje „buvo numatyta baudžiamoji atsakomybė už dvi alternatyvias veikas – arba žiaurų elgesį su gyvūnu, arba gyvūno kankinimą, tačiau už žiaurų elgesį su gyvūnu baudžiamoji atsakomybė atsirasdavo tik kilus straipsnio dispozicijoje nurodytiems padariniams – kai dėl kaltininko žiauraus elgesio gyvūnas žūna arba būna suluošinamas, o antruoju atveju, kai gyvūnas kankinamas, kokių nors pasekmių dėl tokio elgesio kilimas nebuvo būtinas baudžiamajai atsakomybei atsirasti, pakako nustatyti patį gyvūno kankinimo faktą“ (Kauno apygardos teismo nutartis Nr. 1A-612-317/2015). Toks teisės normos įtvirtinimas buvo gan neaiškus, kadangi buvo sunku atriboti baudžiamosios bei administracinės atsakomybės taikymo ribas.

Šiuo metu galiojančioje įstatymo redakcijoje „yra numatyta bendra žiauraus elgesio su gyvūnais dispozicija, neišskiriant nusikaltimą kvalifikuojančių, t. y. sunkesnių, atvejų, kuomet ši nusikalstama veika yra vykdoma komerciniais tikslais, taip pat bendrininkaujant“ (Aiškinamasis raštas dėl įstatymų projektų Reg. Nr. XIIP-5179(2), XIIP-5180(2) 2020 (Dokumento Nr. XIIP-5179(2)). Kadangi, teisės normoje nėra įtvirtintų kvalifikuojančių požymių, šis žiauraus elgesio su gyvūnais reglamentavimas priskirtinas prie nesunkių nusikaltimų. 2020 m. rugsėjo mėn. 16 d. buvo įregistruotas BK 310 str. pakeitimo įstatymo projektas, kuriuo siūloma nurodyti kvalifikuojančius požymius, padidinti sankcijas (Baudžiamojo kodekso 310 straipsnio pakeitimo įstatymo projektas 2020 (Reg. Nr.:XIIP-5179(2)), tačiau šis projektas atmetas, nurodant šias priežastis: protingumo ir racionalumo principų neatitikimas, prieštaravimas siekiui sumažinti įkalinamų ir bausmę atliekančių asmenų skaičių, siektinas efektyvus šiuo metu galiojančių bausmių užtikrinimas, neaiškumas pritaikant teisės normas praktikoje (Lietuvos Respublikos Vyriausybės 2020 m. lapkričio 18 d. nutarimas Nr. 1304 „Dėl Lietuvos Respublikos baudžiamojo kodekso 310 straipsnio pakeitimo įstatymo projekto Nr. XIIP-5179(2) ir Lietuvos Respublikos kriminalinės žvalgybos įstatymo Nr. XI-2234 8 straipsnio pakeitimo įstatymo projekto Nr. XIIP-5180(2)“ (TAR, 24741)). Siūlomas BK 310 str. pakeitimas:

„1. Papildyti 310 straipsnį nauja 2 dalimi:

„2. Tas, kas šio straipsnio 1 dalyje numatytus veiksmus atliko komerciniais tikslais, baudžiamas areštu arba laisvės atėmimu iki trejų metų.“

2. Papildyti 310 straipsnį 3 dalimi:

„3. Tas, kas su bendrininkų grupe atliko šio straipsnio 2 dalyje numatytus veiksmus, baudžiamas laisvės atėmimu iki ketverių metų.“

3. Buvusią 310 straipsnio 2 dalį laikyti 4 dalimi.“ (Baudžiamojo kodekso 310 straipsnio pakeitimo įstatymo projektas 2020 (Reg. Nr.:XIIIP-5179(2)).

Kaip minėta anksčiau, ši nusikalstama veika priskiriama prie nesunkių nusikaltimų, o tai reiškia, kad skiriamas baudos internavalas yra „nuo 50 iki 2000 MGL dydžio“ (LR Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas 2000 (Valstybės žinios, Nr. 89-2741)). Remiantis Lietuvos Respublikos socialinės paramos išmokų atskaitos rodiklių ir bazinio bausmių ir nuobaudų dydžio nustatymo įstatymo 5 str. 2 d., „teisės aktuose, reglamentuojančiuose nusikalstamų veikų ir administracinių nusižengimų kvalifikavimą bei bausmių ir nuobaudų dydžių apibrėžimą ir apskaičiavimą, vartojamas rodiklis „minimalusis gyvenimo lygis“, arba „MGL“, yra tapatus ir lygus baziniam bausmių ir nuobaudų dydžiui“. Nutarimu „Dėl bazinio bausmių ir nuobaudų dydžio patvirtinimo“ patvirtinta, jog bazinis bausmių ir nuobaudų dydis – 50 eurų, o tai reiškia, kad ir vienas MGL yra 50 eurų. Taigi, už žiaurų elgesį su gyvūnais baudžiamajame kodekse numatoma sankcija: viešieji darbai arba bauda nuo 2500 iki 100 000 eurų, arba areštas (nuo 15 iki 90 dienų), arba laisvės atėmimas iki 1 metų (LR Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas 2000 (Valstybės žinios, Nr. 89-2741)).

Daugėjant ne tik nusikalstamų veikų prieš gyvūnus, bet ir administracinių nusižengimų, dėmesys skirtinas ir ANK 346 str. 16-21 d. ANK 16 d. numatyta „žiaurus elgesys su gyvūnu, gyvūno kankinimas“ užtraukia baudą nuo 50 iki 1200 eurų. Pakartotinis nusižengimo, įtvirtinto 346 str. 16 d., padarymas užtraukia nuo 1200 iki 1750 eurų (LR ANK 346 str. 17 d.). To paties straipsnio 18 d. atsakomybė kyla tuomet, kai dėl žiauraus elgesio ar kankinimo gyvūnams gresia žūtis ar suluošinimas, o už tai numatyta bauda – nuo 300 iki 1750 eurų, šio nusižengimo pakartotinis padarymas užtraukia baudą nuo 1750 iki 2300 eurų (ANK 346 str. 19 d.). Už šių straipsnio punktų numatytus administracinius nusižengimus gali būti skiriamas gyvūnų konfiskavimas (ANK 346 str. 20 d.). Taip pat, už šiuos nusižengimus „gali būti skiriama ir administracinė poveikio priemonė – įpareigojimas dalyvauti alkoholizmo ir narkomanijos prevencijos, ankstyvosios intervencijos, sveikatos priežiūros, resocializacijos, bendravimo su vaikais tobulinimo, smurtinio elgesio keitimo ar kitose programose (kursuose)“ (LR Administracinių nusižengimų kodeksas 2015 (TAR, Nr. 11216)).

ANK 346 str. 16-19 d. dispozicijos yra blanketinės, kadangi atsakomybei pagal šio straipsnio dalis reikia konstatuoti pažeidimus numatytus LR Gyvūnų gerovės ir apsaugos įstatymo 4 str. 2 d. 1-24 p.

Atsakomybė už žiaurų elgesį buvo numatyta ir anksčiau galiojusiam Lietuvos Respublikos administracinių teisės pažeidimų kodekso 90 str., kuris numatė analogišką sankciją, t. y. bauda nuo 50-1200 eurų su gyvūno (gyvūnų) konfiskavimu arba be konfiskavimo. 2020 m. rugsėjo mėn. 7 d. buvo įregistruotas administracinių nusižengimų 346 str. pakeitimo įstatymo projektas, kuriuo siekiama padidinti sankcijas straipsnio 16-19 dalyse bei įtvirtinti privalomą konfiskavimą už nusižengimų, įtvirtintų 17-19 d. padarymą (LR Administracinių nusižengimų kodekso 346 straipsnio pakeitimo įstatymo projektas 2020 (Reg. Nr. XIIIP-5147)). Už ANK 346 str. 16 d. norima įtvirtinti baudą, kuri siekia nuo 150 iki 3600 eurų, už to paties straipsnio 17 dalį – 3600 iki 5250 eurų, už 346 str. 18 d. – 900 iki 5250 eurų, o 346 str. 19 d. – 5250 iki 6900 eurų (LR Administracinių nusižengimų kodekso 346 straipsnio pakeitimo įstatymo projektas 2020 (Reg. Nr. XIIIP-5147)). Tokiam 346 str. pakeitimo įstatymo projekto siūlymui iš esmės yra pritarta, tačiau dėl pernelyg didelių baudų siūlymo atsiranda teisės normų kolizija, kuri šiuo metu yra taisytina.

Nors už žiaurų elgesį atitinkamai kyla administracinė arba baudžiamoji atsakomybė, praktikoje dėl teisinės atsakomybės taikymo kyla sunkumų. Dažnu atveju neįrodoma, kad asmuo žiauriai elgėsi su gyvūnu, kaip matyti Kauno apygardos teismo baudžiamojoje byloje

Nr. 1A-173-810/2019 „[...]Kitaip tariant, žemesnės instancijos teismas konstatavo, jog ikiteisminio tyrimo bei bylos nagrinėjimo metu surinkti duomenys neleidžia daryti išvados, jog būtent A. N. atliko veiksmus, sukėlusius kaltinime nurodytus padarinius – gyvūno žūtį“ (Kauno apygardos teismo nuosprendis Nr. 1A-173-810/2019), taip pat kitoje baudžiamojoje byloje – „[...]D. K. pagal Lietuvos Respublikos baudžiamojo kodekso 310 straipsnio 1 dalį atleisti nuo baudžiamosios atsakomybės ir baudžiamąją bylą šioje dalyje nutraukti“ (Kauno apygardos teismo nuosprendis Nr. 1A-234-658/2020). Pažymėtina ir tai, kad už žiaurų elgesį su gyvūnais, pažeidėjams skiriamos minimalios bausdos be gyvūnų konfiskavimo, o ateityje nėra draudžiama vėl įsigyti gyvūnų. Tai puikiai iliustruoja administracinės bylos kaip, Šiaulių apygardos teismo 2021 m. vasario 10 d. administracinė byla Nr. AN2-25-744/2021, kurioje teismas nutarė panaikinti nutarimą dėl gyvūnų konfiskavimo („Atsižvelgus į nurodytas aplinkybes, [...] skundžiama Šiaulių apylinkės teismo Šiaulių rūmų 2020 m. gruodžio 21 d. nutartis keistina dėl administracinio poveikio priemonės skyrimo A. Ž.“) (Šiaulių apygardos teismo nutartis Nr. AN2-25-744/2021). Toliau aktualu apžvelgti kitose valstybėse taikomą teisinę atsakomybę už žiaurų elgesį su gyvūnais.

Teisinė atsakomybė už žiaurų elgesį su gyvūnais kitose valstybėse

Aktualu palyginti kitų valstybių gyvūnų gerovės teisinį reguliavimą ir baudžiamuosiuose teisės aktuose už žiaurų elgesį su gyvūnais įtvirtintas sankcijas. Vokietijos gyvūnų gerovės įstatyme už draudimo žiauriai elgtis su gyvūnu, t. y. didelio skausmo ar kančios sukėlimu gyvūnui, pasikartojančio skausmo ar kančios sukėlimu bei gyvūno užmušimu be priežasties, asmuo gali būti baudžiamas bauda arba laisvės atėmimu iki 3 metų, o už administracinius nusižengimus, nurodytus įstatymo 18 str. tam tikrose dalyse bauda gali siekti 25 000 eurų (Tierschutzgesetz). Pavyzdžiui, už Gyvūnų gerovės įstatymo 17 straipsnio 2a dalį asmeniui buvo paskirta 2100 eurų bauda (Rechtsindex, Tierschutz: Geldstrafe gegen 40-Jährigen wegen Tierquälerei im Schlachthof) arba už žiaurų elgesį su gyvūnais teismas paskyrė 20 000 eurų baudą ir uždraudė visam laikui laikyti gyvūnus (PNP.de., Berufungsverfahren: Nur noch Bewährungsstrafe für Tierquäler). Latvijoje atsakomybę už žiaurų elgesį su gyvūnais numato baudžiamojo kodekso 230 str., numatantis laisvės atėmimo bausmę iki 3 metų, laisvės suvaržymo bausmę, viešuosius darbus arba pinigę baudą (LIKUMI, Legal acts of the Republic of Latvia). Pabrėžtina, kad Latvijoje baudžiamojo kodekso 230 str. nurodytas veiką kvalifikuojantis požymis – jei veiksmai atlikti viešoje erdvėje, dalyvaujant nepilnamečiams asmenims, arba jei tais veiksmais padaroma didelė žala, asmenys jau baudžiami laisvės atėmimo bausme iki 5 metų, viešaisiais darbais arba pinigine bauda (LIKUMI, Legal acts of the Republic of Latvia). Nors piniginės bausmės dydis Latvijos baudžiamajame kodekse nenurodytas, tačiau remiantis maisto ir veterinarijos tarnybos duomenimis minimali bausdos riba yra 100 eurų, kuri fiziniam asmeniui gali siekti 2000 eurų, o juridiniam asmeniui – 3500 eurų (LSM.LV, Animal abuse might be punished more harshly in Latvia). Nyderlanduose gyvūnų gerovės įstatyme už žiaurų elgesį su gyvūnais numatyta laisvės atėmimo bausmė iki 3 metų ir pinigine bauda, kuri gali siekti 19 000 eurų (Overheid.nl., Wet dieren). Maždaug apie 100 bylų kiekvienais metais nukeliauja į Nyderlandų teismą dėl žiauraus elgesio su gyvūnais ir asmenims yra paskiriamos maksimalios bausmės, o kitais atvejais, pavyzdžiui, už žiaurų elgesį su gyvūnais asmuo nubaustas 56 valandoms viešųjų darbų ir jam uždrausta metus įsigyti kitą augintinį, kadangi teigiama, jog iš viešųjų darbų žmonės labiau pasimoko nei iš baudų (The New York Times, When Animals Are at Risk, Special Netherlands Police Force Defends Them). Prancūzijos baudžiamasis kodeksas už analogišką veiką nustato laisvės atėmimo bausmę iki 2 metų arba baudą iki 30 000 eurų (Legifrance, Code pénal), tačiau svarstoma apie griežtesnės

bausmės įtvirtinimą (LCI, Maltraitance animale: "Les peines de prison ferme se comptent encore sur les doigts d'une main").

Taigi, teisinė atsakomybė už žiaurų elgesį su gyvūnais nacionalinėje teisėje įtvirtinta tiek LR BK, tiek LR ANK. Analizuojant šių įstatymų straipsnių, t. y. LR BK 310 str., LR ANK 346 str. 16-19 d., nuostatas, svarbiausia tinkamai įvertinti ne tik pačios veikos neteisėtumą, bet ir padarinius, kadangi būtent padariniai nulemia kokia teisinė atsakomybė asmeniui bus taikoma (Lietuvos Aukščiausiojo Teismo nutartis Nr. 2K-197-489/2019). Taip pat nagrinėjant šiuos straipsnius svarbi dalis tenka teisės normos sankcijai, kadangi pagal įregistruojamus teisės aktų projektus siūlomi sankcijų griežtinimai, kurie galėtų sumažinti žiauraus elgesio su gyvūnais atvejų skaičių. Apžvelgiant kitų valstybių teisinės atsakomybės taikymą už žiaurų elgesį su gyvūnais, matyti, kad bausmės gyvūnų gerovės įstatymuose ir baudžiamuosiuose įstatymuose yra žymiai griežtesnės lyginant su Lietuva.

Išvados

Skirtingose visuomenėse skirtingais laikmečiais egzistuoja prieštaringos nuomonės dėl žiauraus elgesio su gyvūnais, todėl žiauraus elgesio su gyvūnais samprata yra kultūriškai determinuota ir dinamiška.

Žiauraus elgesio su gyvūnais sąvoka neįtvirtinta nei nacionaliniuose, nei kitų užsienio valstybių teisės aktuose. Lietuvos Respublikos gyvūnų gerovės ir apsaugos įstatyme pateiktas veiksmų, laikytinų žiauriu elgesiu su gyvūnais, sąrašas. Tokių veiksmų, laikytinų žiauriu elgesiu su gyvūnais, panašūs sąrašai įtvirtinami ir kitų valstybių gyvūnų gerovės įstatymuose. Darytina prielaida, kad žiauraus elgesio sąvokos neįtvirtinimas yra neatsitiktinis, kadangi ir veiksmų sąrašas įstatyme nėra baigtinis. Toks įstatymo leidėjo pasirinkimas leidžia užtikrinti gyvūnų apsaugą ne tik įstatyme numatytais atvejais. Svarbu ir tai, kad įstatymų leidėjas, atsižvelgdamas į žiauraus elgesio su gyvūnais sąvokos supratimo pokyčius visuomenėje, papildė ir keičia teisės normas, susijusias su gyvūnų gerovės ir apsaugos klausimais.

Už žiaurų elgesį su gyvūnais baudžiamoji atsakomybė numatyta BK 310 str., o administracinė – ANK 346 str. 16-19 d. Dėl dispozicijų panašumo pagal ankstesnes įstatymų redakcijas buvo sunku atriboti administracinę atsakomybę nuo baudžiamosios. Šiuo metu galiojančiose redakcijose baudžiamosios atsakomybės atribojimo nuo administracinės atsakomybės pagrindinis kriterijus – padariniai, kadangi nenustačius padarinių kyla ne baudžiamoji, o administracinė atsakomybė, numatyta Lietuvos Respublikos administracinių nusižengimų kodekse. Tai, kad nėra nusistovėjusio vieningo supratimo žiauraus elgesio su gyvūnais sąvokos, atsiranda problemų taikant teisinę atsakomybę, o taip pat pastebima didesnė korupcijos atsiradimo rizika.

Lyginamoji kitų valstybių teisinės atsakomybės už žiaurų elgesį su gyvūnais analizė leidžia daryti išvadą, kad kitose valstybėse įstatymais saugomos vertybės yra panašiai suprantamos. Iš analizuotų pavyzdžių, matyti, kad dauguma Vakarų valstybių yra apribojusios gyvūnų išnaudojimą cirkuose: vienos uždraudusios visų gyvūnų draudimą cirkuose, kitos, įtvirtinusios draudimus dėl laukinių gyvūnų išnaudojimo ir t. t. Tačiau kiekvienos valstybės nacionalinis teisinis reglamentavimas priklauso tik nuo toje valstybėje susiformavusios gyvūnų gerovės ir apsaugos samprata. Ne visose valstybėse laikomasi vienodos nuomonės, kas yra žiaurus elgesys su gyvūnais, atitinkamai ne visų valstybių teisinis reguliavimas atitinkamą elgesį. Prieinama išvados, kad gyvūnų gerovės samprata yra reliatyvistinė, priklausanti nuo konkrečios visuomenės vertybių, o tai, savo ruožtu, nulemia gyvūnų gerovės klausimų teisinio reguliavimo įvairovę. vieningo supratimo žiauraus elgesio su gyvūnais sąvokos, atsiranda problemų taikant teisinę atsakomybę.

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LEGAL LIABILITY FOR CRUELTY TO ANIMALS

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Summary

The article analyzes the concept of cruelty to animals and the problem of protection of animal rights. Official statistics of criminal and administrative cases and facts of cruelty to animals published by the media and animal welfare organizations shows that cruelty to animals is a relevant issue in Lithuania.

The purpose of this article is to reveal the concept of cruelty to animals, to analyze the legislation providing for legal liability for cruelty to animals and to present the problems arising in practice in the field of application of legal liability.

The problem in this area is that the concepts of animal cruelty and torture are very broad, and the laws of the Republic of Lithuania do not provide definitions of these concepts, but provide a list of actions that are considered cruelty to animals and torture. The article also discusses the list of activities that are not considered cruel treatment. The conclusion is made that there are conflicting views on animal cruelty in different societies and in the same society, so the concept of cruelty to animals is culturally determined and constantly changing.

Keywords: *animal rights, cruelty to animals, legal liability*

TOWARDS TO SUSTAINABLE DEVELOPMENT: THEORETICAL RESEARCH

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Abstract. *The purpose of this article is to analyse the opportunities for change (scientific assumptions) that determine the transformations of consumer behaviour in the context of sustainable development needs. The article describes the dilemma of consumption and sustainability, since the increasing scale of consumption, as one of the major purposes of the well-being of the society, organisations and the state, is also one of the major risk factors to the environment, equality and health. That is why the article provides an overview of the influence of consumption on ecology, health, social aspects and inequality, also discussing the positions of the consumer, the company and the government, as well as their opportunities to transform the unsustainable consumer behaviour into sustainable consumer behaviour. The authors believe that a framework, based on interdisciplinary understanding and collaborative knowledge, is needed to identify and relate research questions, theories, and conclusions. Therefore, it must be a result of an integrated attitude, because efficient advancement in the field of sustainable and productive consumption may be achieved only by joint effort of producers and consumers and by including the interested groups of the consumption and production system. Such cooperation would promote changes in the consumer and producer behaviour.*

Keywords: *sustainability, sustainable consumption, responsible consumption, sustainable development.*

Introduction

The statement on the negative sides of the consumer society, made by Vance Packard (1960) forty years after the post-war economic upturn, was probably the first warning sign (Robins, 1999). In his book *The Waste Makers*, Packard (1960) drew attention to serious social, economic and environmental outcome, caused by uncontrollable growing consumption (Robins, 1999). A few noticed his criticism at the time, but now, several decades later, the need to transform the current consumption model into sustainable became one of the major topics and tasks of the global environmental and development agenda (Robins, 1999; *EU Sustainable Consumption and Production and Sustainable Industrial Policy. Action Plan*, 2008; *Sustainable Development Agenda 2030*, 2015).

Sustainable consumption in the broad sense is related to the efforts of promoting more efficient consumption and gradual development of energy and natural resource saving habits. It is argued that sustainable development promotion should be focused on areas that are most affected by consumption, i.e. transport, housing, energy and food consumption, as well as seek for deeper systemic change (O'Rourke and Lollo, 2015). To meet the scale of the sustainability challenges we face, interventions and policies must move from relative decoupling via technological improvements, to strategies to change the behaviour of individual consumers, to

broader initiatives to change systems of production and consumption (O'Rourke and Lollo, 2015).

Different authors claim that consumer behaviour is influenced by a number of elements of the socio-cultural system and the interaction between socio-cultural, economic, technological and other factors; therefore, in order to ensure that the consumer choices are more favourable to the environment, it is necessary to change their attitude in shaping the need for environmentally friendly products and services (Krantz, 2010; Assadourian, 2013). Scientists also emphasize the enormous influence of companies in ensuring advancement of sustainable development, because the corporative sector carries the responsibility of promoting sustainable consumption by implementing proper product and service development, production, distribution and supply, but the problems in the majority of the sustainable development fields remain too complex for companies to be able to tackle them on their own (Santolaria, et al., 2011; Sakarya et. al., 2012). It should be noted that besides the support from central and local authorities, achieving significant change in the entire system of production and consumption would be difficult (Stevens, 2010). Therefore, effective advancement in sustainable production and consumption could be achieved only by united effort of the producers and consumers by ensuring the involvement of the interested groups of the consumption and production system. Such cooperation would encourage the consumers and producers to change their behavioural patterns (Seuring and Gold, 2013).

Therefore, sources of information that influence change in the behaviour, as well as structural interventions and sustainability promotion measures must be integrated into sustainable innovations through universal education and sustainable consumption efforts (O'Rourke and Lollo, 2015).

The purpose of this research is to analyse the opportunities for change (scientific assumptions) that determine the transformations of consumer behaviour in the context of sustainable development needs.

The research object is the transformations of consumer behaviour with regards to sustainable development needs.

Research methods – critical scientific literature analysis, abstraction, synthesis.

The objection of sustainable consumption

We face a deep cultural and social dilemma, because the growing scale of consumption as one of the purposes of the well-being of the society, business organisations and the state, is also one of the greatest risk factors to the environment, equality and health (O'Rourke and Lollo, 2015). However, according to William Greider (1997), the industry's continuous growth according to its current model will put us all in danger (Robins, 1999; O'Rourke and Lollo, 2015). And yet, if the industrialisation cannot develop, the majority of the world's population would have to make do with lower living standards, being unable to get the manufactured products to ensure a comfortable life simply because there will not be anything to choose from (Robins, 1999). Previous concerns regarding the so-called limited growth, which could be described as an internal conflict of striving for infinite growth on a finite planet, keep increasing, reinforced with increasing realisation that the consumption-led growth keeps failing to meet the goals of the human and societal development (O'Rourke and Lollo, 2015). The tendencies of global demographic development and consumption clearly point at the increasing risks of environmental and health issues should the scale of consumption and production not be reduced (O'Rourke and Lollo, 2015).

The effect on the environment. Greater consumption determines production scale, which requires greater energy and material consumption, generating more waste and by-products (Jonkutė, 2016). Increased volumes of natural resource extraction and use, accumulating waste and pollution damages the environment and could hinder economic activity in the long run (Jonkutė, 2016). Since the 1980s, the world has exceeded many key ecological indicators (O'Rourke and Lollo, 2015). The recent scale of species going extinct has been outpacing the normal rates hundreds and even thousands of times and the condition of about 60 per cent of the world's ecosystems show significant deterioration or even overexploitation (O'Rourke and Lollo, 2015). A study, conducted in 2009 by Johan Rockström and his colleagues, has shown that three out of nine of our planet's interrelated boundaries have already been exceeded (Rockström et al., 2009). The boundaries, indicated in the study, including biodiversity, climate change and the disruption of the nitrogen cycle, leads to processes of environmental degradation, which pose a threat to many species (Rockström et al., 2009). In recent couple of centuries the climate system has become much more complex (decreasing forest areas, expanding arable land and urban territories, rapid change in the gaseous composition of the atmosphere, increasing greenhouse effect, soil and water pollution, changing ecosystems (increasing frequency of droughts, heat and cold waves, changes in the thickness of snow cover, soil frost line, more frequent and violent storms)), while the climate change data is staggering in a negative sense (Rimkus et al., 2006; Keršytė et al., 2015; O'Rourke and Lollo, 2015; Bukantis et al., 2016; Feltona et al., 2016). After the 1990s, which was marked by the largest number of environmental agreements signed, global emissions increased by at least 60 per cent, while the consumer-related annual pollution began increasing by nearly 3 per cent every year (O'Rourke and Lollo, 2015). The human footprint on the climate change manifests in significant changes of the air temperature in the late 20th-early 21st century, influenced by an increasing effect of the pollutants, generated by factories, power plants, boilers, arable land and transport (Rimkus et al., 2006; Feltona et al., 2016). The effect of the climate change will become even stronger (Keršytė et al., 2015). According to Brad Ewing (2010) and others that share his opinion, in 2007, human consumption was equal to 1.5 of the amount of the natural resources, while natural resources were used faster than they could generate (Jonkutė, 2016). We began consuming in credit to the future. That is why it is necessary to introduce fundamental changes into the system of production and consumption.

The effect on health, social aspect and inequality. In turn, growing production influences increasing environmental pollution, while the latter – the human health (Oželienė, 2019). Facing environmental challenges, prosperous states increasingly suffer from the so-called ailments, caused by good living, such as obesity, heart diseases, type two diabetes and other health issues (O'Rourke and Lollo, 2015). While people in underdeveloped countries suffer hunger due to a lack of food, the society in economically-developed and developing countries consumes a lot of food, containing fats, salt and sugar (Eičaitė, 2013). Nutritional changes were followed by reducing energy costs for various activities (Ramonaitytė, 2011), determined by sedentary lifestyle, motorised transportation, devices that replaced manual labour in factories and at home, while free time usually involves entertainment that does not require much physical activity (Ramonaitytė, 2011). Predominant consumerism, where consumption, instead of being a necessity and a moderate benefit, turns into a demonstration of social status and competition between people, causes more and more stress and dissatisfaction (Jackson, 2009). However, although the growth of consumption is closely-related with individual well-being, while the increasing GDP symbolises the well-being and success of the state, it has recently been noticed that the measurement of the economic growth in GPD is a poor representation of the well-being and harmony of the society (Costanza et al., 2013). The reason is that the economic growth

often contributes to the deteriorating condition of the environment, waste of resources, increasing inequality and other reasons (Gedvilaitė, 2019), while the hypothesis that happiness and life satisfaction is related to increasing revenue is not always true (Jonkutė, 2016), for example, the contribution of human relationships is much more important to their life quality (Ivanauskaitė, 2012). Some scientific literature also describes indices, which show a worsening life quality, caused by infinite economic growth (Easterlin, 1974; Jackson, 2009). Tim Jackson (2009) states that consumers' conscious decision to reduce consumption would not take away their well-being – on the contrary. People that consume less feel a greater respect to the environment and other people, while their subjective well-being shows a significant increase by strengthening their family stability, friendships and community. Doing an extensive study of the necessity to limit consumption, the importance of changing the modern-day consumer thinking, the ideas of sustainable economics and looking for answers to the major issue of harmonising a good life with limited natural resources, Jackson (2009) claims that belief in the economic growth as the source of well-being is a self-deception. That is why we could say that, on one hand, increasing consumption is an expression of increasing well-being, on the other – it is also detrimental from environmental and psychological perspective (Sheth et al., 2011). Researchers of environmental justice have also recorded an unequal distribution of the negative side-effects, highlighting the necessity to ensure that the benefits of the economic growth are justly and equally distributed among all communities instead of witnessing uneven distribution of the benefits on both national and international contexts, including several different generations (Martinez-Alier, 2012). Joan Martinez-Alier (2012) states that the distribution of the benefits we receive from economic development, disposed material property etc., as well as the costs of pollution, waste, hazardous labour, etc., including waste of resources, is unjust. That is why Sustainable Development Agenda (2015) has raised 17 goals, the list of which begins with an obligation to eliminate all forms of poverty, famine, ensure a healthy life, equal and high-quality lifelong education, gender equality, eliminating inequality between countries and inside countries, etc. These goals can be achieved only by joint effort of all members of the society. According to the data of Sustainable Development Goals report (2016), 836 million people of the world live in extreme poverty (under 1.25 dollar per day) (Jonkutė, 2016). The share of the residents living in relative poverty in economically-developed countries is 16 per cent. Obviously, social issues and social gap in the world have been increasing even under economic growth (Oželienė, 2019).

Sustainable consumption, leading to sustainability

More and more attention is recently focused on sustainable consumption. Increasing consumption and the spread of consumer culture is one of the factors that contribute to the degrading environment (Dagiliūtė, 2011).

The participants of the international conference, which took place in Oslo in 1995, have defined the concepts of sustainable development and sustainable production, claiming that the goods and services, consumed to ensure the basic needs and a better life quality, should focus on using less of the natural resources and avoiding dangerous substances, waste and pollutants, generated during their life cycle thus seeking to preserve the planet for the future generations (Giulio et al., 2014). It was also agreed that the level of sustainable consumption also depends on appropriate behaviour of the people, contributing to the development of the general sustainable conditions for the entire humanity so that it could satisfy its objective current and future needs (Giulio et al., 2014).

The UN summit, which took place in Johannesburg in 2002, discussed the course of implementing sustainable development provisions focusing on technological advancement and development of environmentally-efficient products, services and infrastructure, as well as highlighting that sustainable development is much dependent on changing production and consumption methods and habits (Dagiliūtė, 2011).

The Johannesburg Plan of Implementation and the subsequent Marrakech Process highlighted the importance of changing production and consumption attitudes and habits in seeking for sustainable development (Dagiliūtė, 2011).

Changes in production methods and consumer behaviour, as one of the major goals of sustainable development, are listed in the EU Sustainable Development Strategy (2006). Based on this strategy, the European Commission presented the Sustainable Consumption and Production and Sustainable Industrial Policy (2008), which helps to identify and overcome the current obstacles that prevent sustainable consumption and production, to ensure a more efficient integration of related fields of policies, increase the awareness in the society and change consumption habits.

In 2011, the Organisation for Economic Co-operation and Development presented the Green Growth Strategy and, in 2012, the United Nations Rio+20 Conference on Sustainable Development focused on the 'green economy', attempting to solve the issue of sustainable consumption (Barbier, 2012). Although the concepts of green development (growth), green economy and sustainable consumption may seem different, all of the initiatives, related to sustainable development, focus on a single goal – the least negative impact on the environment possible and the best economic efficiency in order to make sure that the decisions made benefit both the economy and the environment (O'Rourke and Lollo, 2015).

The increasing community of researchers and practitioners, gathered to discuss the current issues and characterised by a variety of attitudes, strongly supports sustainable development (O'Rourke and Lollo, 2015).

The studies of this field contribute to the basis of analytical assessment, where the economy is pictured in the society and both of them – in the nature (Costanza et al., 2013). This basis is supported by systems, thus, the aim of sustainable consumption analysis is to examine the tension, rising between environmental, economic and social priorities, attempting to develop strategies, which balance efficiency, adequacy and flexibility. Based on the above, researchers have examined the current governmental structures, making a direct assessment of the levels and forms of abundance, arriving at a fairer distribution of consumption in parallel with technological progress and more efficient consumption (Jackson, 2009; Kallis et al., 2012; Lorek and Spangenberg, 2014).

Another group of scientists identify reforms and processes that will stop unsustainable consumption, contributing to the perspective of the systems. Therefore, weak forms of sustainable consumption are observed in the environment that is most harmful to the environment – transport, housing and food sector. Research shows that the EU household consumption directly and indirectly (through products and services) determines up to 70 per cent of the impact on the environment (Dagiliūtė, 2011). The impact of an individual household on the environment is relatively small, but the total effect of the household sector determines such environmental issues as climate warming, air and water pollution, accumulating waste, etc. (Dagiliūtė, 2011). Therefore, considering the above, researchers suggest clear political insights, decoupled from technology-driven innovation. They promote a theory that social and political processes and innovations will contribute to a rapid decrease in vehicle use and meat consumption (Druckman and Jackson, 2010; Allievi et al., 2015), talk of development that targets transit, decreased food waste, greater scale of recycling, reparation, sharing and reusing

(Druckman and Jackson, 2010; Barrett and Scott, 2012; Girod et al., 2014), and a more just distribution of consumption levels in the developing world (Di Giulio et al., 2014; Spangenberg, 2014).

The changing of consumer behaviour

As the majority of researchers, analysing sustainable consumption in communities, have established the need for sustainable development, the issue of achieving these changes in a way that is most promising from political, social and economic perspective, became the major research object (Druckman and Jackson, 2010; Speth, 2012; Costanza, 2014; Fuchs et al., 2015). The modern-day society, which is interested in increasing scales of consumption, is not inclined to buy a sustainable development system. Economic advancement has deeply rooted in social standards, personal habits, decision-making, governmental structures, legislation and cultures. Therefore, researchers of sustainable development make convincing arguments regarding a clearer understanding on the parties that participate in this process, i.e. consumers, business and governmental representatives, their logic and the decision-making processes (Trencher et al., 2014).

Once these issues and structure are clarified, it is possible to formulate more efficient and flexible interventions or processes that would help to move towards sustainable development (Lorek and Fuchs, 2013; Spangenberg, 2014).

Consumer perspective. Consumer attitude towards sustainable lifestyle and sustainable behaviour is still indifferent (Prothero et al., 2011). Sustainable behaviour includes purchasing and using green or environmentally-friendly products, which have the least negative impact on the environment throughout their life cycle: production, use and disposal (Dong, Yang and Li, 2012; Biswas and Roy, 2015). Sustainable development is also related to additional investments into more environmentally-friendly technology, fair trade and other important aspects. A conscious and responsible consumer is a 'client' of fair trade (fair trade that does not involve abusing third world people and children) and environmentally-friendly goods, able to influence certain production methods and, at the same time, the circulation of the goods in the market (Jusčius and Šneiderienė, 2013; Jurgelėnas, 2014); however, international surveys have shown that, although the majority of the consumers in developed and developing countries try not to purchase goods that are related to environmental pollution, deforestation, worker abuse and other environmental or social damage, changes in consumption behaviour are very slow (Zhao et al., 2014), because consumers are inclined to resist the changes in consumption and lifestyle habits due to lack of understanding and awareness, selfishness and costs related to such changes (Niemeyr, 2010; Welfens et al., 2010).

A detailed analysis of the market research, also consumer and target group survey data on changing individual behaviour showed that the majority of consumers prefer greener, healthier and more sustainable products, and would prefer buying them, but there is a consistent discrepancy between the statements of preference to sustainable products and the actual purchases made by the consumers (O'Rourke and Lollo, 2015). This behaviour should be regarded as a gap between the attitude and the behaviour (Jackson, 2005). For this reason, the analysis of the consumption tendencies requires not only considering the technological and economic aspects, related to the use of natural resources, but also a more in-depth analysis of the advancement of the humanity and the nature of its well-being from a number of economic, sociological, psychological and environmental perspectives (Wang et al., 2014).

Individual consumption habits are influenced not only by personal needs for food, clothes, housing and transport, but also aspirations to innovation, status, social comparison and respect

(Jackson, 2009; Soron, 2010; Sheth et al., 2011; Leary et al., 2014). It is argued that this so-called positional consumption may create a self-sustaining cycle, when an increasing consumption rate becomes a norm and it becomes necessary to keep consuming in order to maintain one's position (Assadourian, 2010; Sekulova, et al., 2013). Persons, attempting to switch from consumer lifestyle, experience serious financial, emotional and social conflicts in part because of lack of tangible alternative lifestyle options, which would give them an equivalent status, self-esteem, etc. (Jackson, 2009; Markkula and Moisander, 2012).

The studies, conducted in recent twenty years in the fields of consumer behaviour, social psychology and behavioural economics have given several important insights on decision-making. One of the most acknowledged study conclusions (Simonson, 2014) is that people are not fully rational participants. Consumer decisions are influenced by psychological processes, such as habits, social norms, limited rationality (when the decisions are limited by our own cognitive limits and access to information), the effect of the fear of losses (when the fear of losses is stronger than the motivation to achieve the benefit), cognitive exhaustion (limited potential of self-control and will), temporary limitations (when the decision-making is distorted by the pressure of the lack of time), the anchor effect (when the decision is influenced by the information received first) or peer influence. Attempts to understand the possible lack of rationality in the consumers, behavioural interventions were introduced, such as choice editing (when the scope of choice is actually limited) or planned choice (when the planned option is the most sustainable or healthiest choice). The purpose of that is either to limit cognitive bias or to use the bias to promote sustainable actions (O'Rourke and Lollo, 2015). To control these limitations, several behavioural interventions were developed (see Table 1).

Table 1. Behavioural interventions

Source: compiled by the authors

Behavioural interventions	Result
Eco-branding, the purpose of which is to create simple and important indicators for decision-making.	Eco-branding could be effective and is needed, but it must be integrated better and related with the context in the environment of the major decision-making (Thøgersen, 2010). Ideally, sustainable consumption information should be adapted to the situation or individually (Eppel et al., 2013), and formulated in an understandable and specific way (Sunstein, 2015).
Anchor effect.	Information is provided carefully, limiting unsuitable choice and directing towards better options, for example, using rating or pricing systems (Ölander and Thøgersen, 2014).
Focus on social influence (Salazar et al., 2013).	As already mentioned before, a general motive of consumption is a social public concern regarding status, thus, following 'what everyone is doing' could have a significant impact, even if the effect on regression is not as significant (Ölander and Thøgersen, 2014).
Forbidden norms.	Forbidden norms of what people 'should be doing', also shows the potential of directing people towards the right direction (Thomas and Sharp, 2013).
Intervention through friends, family, colleagues or trusted intermediaries (e.g. NGO or famous people), depending on whom specific groups trust and whom they identify with (Salazar et al., 2013).	Consumers make their decisions based on personal understanding, emotions, motivation, values, cultural associations and their choices are influenced by the opinion of their family members, friends, peers, social groups and people around (Hutter et al., 2010; Soron et al., 2010).
Collecting feedback on the actions.	Feedback on others' actions and effect could be useful in seeking to show the joint responsibility and social norms (Antal et al., 2012).

Developing a default choice could be an effective way of using the status quo bias (when people want to buy a ‘normal’ product) (Sunstein, 2015) without limiting the choice. However, researchers of social influence are not sure if this does not lead to forming a co-called ‘cattle’ as opposed to a continuous and transforming social education (Salazar et al., 2013). Although forming ‘cattle behaviour’ could be useful in times of crisis, social education is important in developing long-term standards (Salazar et al., 2013).

The possibility of being rewarded for a sufficiently large benefit from one-time events (e.g. purchasing an electric vehicle or installing a solar battery on the roof) can still be considered, but research has shown that the benefits of one-time interventions are often very small, compared to synchronous behaviour (O’Rourke and Lollo, 2015). Thus, synchronous behaviour should be examined further. Although this makes any intervention even harder, eventually it could increase the efficiency of integrated policy (Antal et al., 2012). Moreover, because the behavioural interventions are so complex, the key purpose of behavioural studies is to identify the interventions, which continue or manifest in different behaviour (Thomas and Sharp, 2013). Behaviour formation studies have shown that ‘if this, then that’ plans applied during the ‘moments of change’ could create new behavioural models (Duhigg, 2012; Eppel et al., 2013).

Consumers can contribute to sustainability by changing their daily habits – reusing, recycling, saving natural resources, choosing a more environmentally-friendly transportation and encouraging those around them to engage in similar behaviour (Jonkutė, 2016). In addition to that, based on scientific studies, Gintė Jonkutė (2016) states that certain consumer behaviour can create the greatest external pressure on companies, demanding and encouraging producers and production processes to introduce sustainable innovations, applying new effective technology, also encouraging competition in terms of sustainability achievements. Small daily choices of the consumers could determine significant changes in the entire life cycle of the product, e.g. pressure on suppliers could reduce their footprint on the environment, moreover, consumers could influence producers’ market image, e.g. boycotting and protesting (Jonkutė, 2016).

Company perspective. Being the driving force of the economy and development in the world, business organisations carry the responsibility of promoting sustainable development by conducting appropriate product and service development production, distribution and supply (Jonkutė, 2016). Increasing public concern regarding the issues of sustainability results in an increasing concern of the companies regarding their own sustainability, encouraging them to aim for sustainable development, which includes economic, environmental and social aspects. Business organisations realise that their competitiveness and profit are inseparable from sustainable development achievements, while environmental and social aspects become as important as other usual economic goals (Gold et al., 2010; Ramos et al., 2013; Gomes et al., 2014).

Although the majority of companies, operating in different fields of industry, acknowledge the necessity of sustainability, the majority of them do not yet have a clear understanding of such activity and its effect, considering it more of a risk factor than an opportunity (Venselaar et al., 2010). However, initial research has shown that risk could become the major lever in changing the business, because, e.g. discussions on assets, stuck in fossil fuel portfolios and the effect of climate change on global companies show their concern regarding possible losses (Robins, 2014). Moreover, the pressure of external interested parties, which threatens the reputation of individual employees and targets the company management, seems to be effective in motivating companies to change (O’Rourke and Lollo, 2015).

Seeking to improve the environmental and social operations of the supply chains, companies can also require higher environmental and social standards from their suppliers and even subcontractors (Kovács, 2008), and impose sanctions for non-compliance (Mont et al., 2010). The risk to company's reputation, supply chain and the market could also encourage companies to create more sustainable processes and products (Seuring and Gold, 2013), thus resulting in encouraging stricter regulations, giving them a relative advantage.

Another major sustainability intervention involves the preparation and implementation of sustainability reports and accounting, or environmental profit and loss reports. However, in order to introduce stricter accountability, companies will need to internalise external factors and optimise their production, considering depleting resources and environmental issues (O'Rourke and Lollo, 2015). In this case it would encourage companies to improve the efficiency of their resource use by introducing and developing new, more environmentally-friendly technology, evaluating the entire supply chain, properly realising recycled or used products and raw materials, and also minimising the amount of waste generated (Daub and Ergenzinger, 2005; Staniškis and Stoškus, 2008). This would also help to change the business accounting method, when decisions seem to be correct in theory thus changing the type of risk as well (Antal et al., 2012). Integrated indices and greater reporting transparency could enable the society and investors to pressurise companies to raise their business goals with respect to environmental protection (O'Rourke and Lollo, 2015). The aim of the latest legal changes, such as the establishment of beneficiary organisations, is to support and protect sustainability-oriented companies from the shareholder pressure to maximise the profits (Kanig, 2012). These changes create an opportunity of adjusting high level sustainability goals with companies' internal decision-making processes, but it is crucial to conduct more research in this field (O'Rourke and Lollo, 2015).

Recognizing that the issue of sustainability is often rooted in consumption and that a technological approach alone will not suffice, it becomes clear that the decision-making strategy should focus on promoting more environmentally-friendly consumption (Kolandai-Matchett, 2009). Since it is impossible to have a full control of the consumer demand for goods and services, it is important for companies to keep increasing the supply of sustainable goods, thus making a direct influence on the choice of the consumers (Michaelis, 2003).

It should be noted that not all consumers understand their rights and responsibility or have enough knowledge on the effect the goods and services they purchase make on the environment and thus business organisations, being able to communicate directly with the majority of the consumers, could have a greater influence than any other institution, combining marketing with the means of education and introducing informative campaigns. Thus becoming educators, companies could increase the consumer awareness, offering information on environmental and social meaning of consumption and its outcome – greater awareness could influence the buyers' decisions (Nash, 2009; Stevens, 2010).

Companies seeking for sustainability can adjust their actions by focusing more attention on energy, water, waste, etc. management. Also to their location, transport and logistics. Considering the fact that the employees and their family members are consumers too, their inclusion into the implementation of the sustainability measures could determine greater positive changes in the society thus increasing environmental awareness and changing consumer habits (Hutter et al., 2010). Producers should also make sure to provide clear, easy to understand and precise information on the results of their sustainable development.

Governmental perspective. Seeking to move away from consumption growth trends, governments face enormous challenges (Hobson, 2002; Anderson and Bows, 2011). The narrative of economic growth by promoting consumerism prevails from the most developed to

the poorest countries in the world. Although central and local authorities depend on taxes, generated by consumption, geopolitical power, economic and social stability, reducing poverty and even social advancement is regarded as dependent on economic growth rather than merely state funding (Jackson, 2009; Martínez-Alier, 2012; Knight et al., 2013). Changes in the consumption or production system are hardly achievable without the intervention of central or local authorities, because the government holds all the opportunities for developing policy guidelines. Governments are also capable of indirect promotion of sustainable development by becoming the catalyst of sustainable production, application of legal and economic measures to companies – changing the relative prices of raw materials and initiating technical production changes. The Table 2 lists several governmental incentives that influence sustainable consumption.

Table 2. Governmental incentives and their influence on sustainable consumption

Source: compiled by the authors

Incentives	Result
Limits for resource use and emissions, as well as penalties for exceeding them.	Encourages companies to improve the general environmental efficiency and introduce environmentally-friendly practices, which motivate polluters to change their behaviour (Stevens, 2010).
Prohibition of certain products that contain harmful materials, etc.	Encourages producers to remove improper products from the market, thus directly limiting consumer choices (Stevens, 2010).
Distribution of environmental taxes among producers and consumers by considering all the environmental and social costs of the goods and processes and including them into the final prices.	Promotes the development and implementation of environmentally-friendly innovations at companies and more sustainable ways of consumption (Geng et al., 2007; Mont and Power, 2010).
The topics of sustainable consumption, integrated into formal and informal education for all age and social groups, include not only children's education, but also adult education.	Increase consumer awareness and, at the same time, sustainable consumption (Gadenne et al., 2011; Wang et al., 2014).
Various informative sustainable consumption campaigns.	Filling consumer knowledge gaps on sustainable consumption (Liu et al., 2012; Vaishnavi et al., 2014; Zhao et al., 2014).
Development of sustainable infrastructure: waste management systems and public transport systems, energy-efficient services, product maintenance, repairation and reuse systems, etc.	Ensures and promotes sustainable lifestyle opportunities (Krantz, 2010; Wang et al., 2014).

Increasing citizen awareness and understanding about the effect of their daily activities, the government also encourages them to take further action in seeking for sustainable lifestyle (Watson et al., 2010). Growing numbers of educated and aware consumers would increase the demand for environmentally-friendly goods and services, as well as expand the markets for these goods and services (Stevens, 2010; Vaishnavi et al., 2014).

Governments are perceived as engaged in their own dynamics, limited rationality, interested persons, political battles between competing systems, bias, short-term social stability, short-sightedness, inertia and lack of accountability (Antal et al., 2012). Therefore, certain researchers have suggested higher transparency and participation at political processes as strategies, the goal of which is to facilitate the issues of public accountability and law enforcement at least in part (Antal et al., 2012; Costanza et al., 2013). It is necessary to conduct more research to assess, how these strategies could affect the bias, attitudes and values of the government officials. New indicators of progress and development could be regarded as the key

factors, helping the governments to move away from consumption-based decision-making processes (O'Rourke and Lollo, 2015).

Should the society's attitudes towards the policy makers be partially based on the rising or falling indices, such as the GDP, then the new indices, such as the Genuine Progress Indicator (Bagstad et al., 2014), Index of Sustainable Economic Welfare (Van den Bergh and Antal, 2014), combined biophysical and social indices (O'Neill, 2012), and the Gross National Happiness (GNH) index (Brooks, 2013) could provide the governments with an opportunity to demonstrate progress in developing reorganisation policies (O'Rourke and Lollo, 2015). Although these indices are widely different, they clearly comprise of the values of inequality, biodiversity and greenhouse effect emissions (O'Rourke and Lollo, 2015). Thus short-term problems could be balanced more efficiently with clear indices of the long-term goals that the governments could be responsible for. Moreover, these new measures enable to evaluate political strategy, which could contribute to public communication and adaptive management (O'Neill, 2012). Regardless, solving complex variable problems and making these indices more efficient for policy-makers requires a lot of studies, although, despite the fact that several governments have already started experimenting with the 'happiness', 'welfare' and sustainability monitoring together with the GPD, they do not see if these measures are closely related to the policy development and practical implementation (O'Rourke and Lollo, 2015). Moreover, it remains a challenge to assess such qualitative values as 'welfare' and 'prosperity' (Akenji and Bengtsson, 2014; Van den Bergh and Antal, 2014).

Initiatives promoting sustainable consumption

In recent 25 years, the issue of consumption and sustainability has been tackled by initiatives, promoting sustainable consumption. International, state and local sustainable consumption initiatives develop by firstly focusing on manufacturing and production processes, based on sustainable materials and energy resources, aiming for sustainable economic growth, posing the least threat to the environment possible and saving natural and energy resources (O'Rourke and Lollo, 2015).

The efficiency of technological processes and saving energy. Innovations, aimed at improving the efficiency of technological processes, are described as shifting from dematerialisation of a product to replacing it with a more environmentally-friendly option, decarbonisation, more efficient energy consumption, intensifying more sustainable production, improving the level of service, etc. (O'Rourke and Lollo, 2015). The purpose of all of these shifts is to promote sustainable consumption and reducing the negative effect on the environment (O'Rourke and Lollo, 2015).

Many international companies have taken responsibility for improving environmental efficiency, particularly in those areas that show economic benefit, such as reducing energy costs, water consumption, reducing packaging and waste in their production processes and products (O'Rourke and Lollo, 2015). Based on P. H. Gleick (2003), S. Meyers, J. McMahon and M. McNeil (2005), B. Schoettle and M. Sivak (2013), J. H. Ausubel (2015), researchers Dara O'Rourke and Niklas Lollo (2015) state that corporate activities and government-level programs have made a substantial contribution to reduced vehicle fuel consumption, more efficient use of energy and reduced water costs. In recent discussions on ecomodernism, researchers have provided convincing evidence of saving in food production and consumption systems, water consumption, mineral and oil extraction, pollutant emissions, etc.

The green market. A significant role in practical and theoretical levels of sustainable consumption is played by intermediary sustainability initiatives – with the promotion of the

green economy this role focuses on supporting market mechanisms that encourage sustainability innovation (O'Rourke and Lollo, 2015). According to its main thesis, the purchases of 'rational' consumers are deliberate, thus encouraging the emergence of innovation, which promotes sustainability (O'Rourke and Lollo, 2015).

Keeping to the market theories, policy makers and non-governmental organisations must firstly focus on providing timely information for consumers on the negative and positive effect of the products introduced and circulating in the market (O'Rourke and Lollo, 2015). The key component of this strategy is to make a better assessment of how the product supply chains and the product life cycle affects the environment. These fields show a significant improvement, for example, the development of carbon footprint detection, life cycle impact calculators, virtual waster cost calculations and industry-specific assessment measures, e.g. the Higg Index standard for the clothing industry (O'Shea, Golden, Olander, 2013).

The next step towards greener economy would be the company costs, allocated to encourage innovation helping to save natural and energy resources, reduce fuel costs, pollution and waste (O'Rourke and Lollo, 2015).

In some areas technological innovations and socio-economic tendencies have bred innovative business models, e.g. service rent instead of buying products. Table 3 provides a short introduction of such innovations, describing their forms that support the current sustainability strategies.

Table 3. Innovations, supporting current sustainability strategies

Source: compiled by the authors

Incentives	Result
Collaborative consumption	Collaborative consumption refers to the variety of business models, such as distribution systems, sharing resources, etc. Although collaborative consumption, better known as 'sharing economy', has been present throughout the history, recently it has begun embracing increasingly advanced technologies that are making sharing activities more and more efficient. These systems offer opportunities for a less resource-intensive economy, which, in turn, increases the access to the needed products. New online services become strong secondary markets for goods and services. New companies have introduced a completely new so-called hospitality industry, where people as if 'share' their homes, welcoming guests, while other companies have introduced systems for exchanging, sharing or donating things. We can only guess if the sharing economy truly contributes to saving resources, but, at least in theory, it looks like a beginning of a way to a smaller and not as intensive product consumption (Schor, 2014).
Circular economy	Circular economy is the latest name for an initiative, which focuses on closed cycle production and consumption systems. Its goal is to reshape the value chains and encourage the flow of materials in circular systems, where products and infrastructure are redesigned for possible reusing, recycling and renewal. Here the legislation, which focuses on greater producer responsibility and requires companies to design their products with regard to end-of-life and other environmental aspects, play an important role (Korhonen et al., 2018; Geissdoerfer et al., 2018).

Such innovations have turned out to have more potential for a more effective distribution, use and final disposal of goods, once they reach the end of the consumption cycle (O'Rourke and Lollo, 2015).

Conclusions

Considering the current tendencies of consumption growth, it becomes clear that we are approaching a sustainability policy crisis. Strong sustainable consumption refers to a transformation of consumer behaviour in the context of sustainable development, which ranges from changes in private lifestyles to changes in business organisations, central and local authorities.

Consumer influence on the environment is enormous, thus current consumption models have a negative impact on both the environment and the public welfare. Seeking to evade consumption's negative outcome on the environment and the society itself, individuals are encouraged to transform their consumption behaviour according to the needs of sustainable development. Sustainable consumer behaviour is regarded as satisfying individual needs in different areas of consumption by purchasing, using and disposing of goods and services with the aim of leaving no negative impact on satisfying other people's needs and posing no threat to the future generations. Weak sustainable consumption is observed in the areas that leave the most negative impact on the environment – transport, housing and food sectors, thus making it necessary to focus the effort towards integration, which combines these challenges and a new attitude towards agricultural, policy action plans and programmes, with an emphasis on shifting to sustainable consumption models.

Numerous researchers assume that an effective progress in transforming unsustainable consumer behaviour in the context of sustainable development can be achieved by ensuring the involvement of private persons, business organisations, central and local authorities.

Consumer behaviour transformations in the context of sustainable development require new structures, tools, interventions, etc., the purpose of which is to make the transfer to the future systems and support them. While implementing changes in sustainability policies, it is important to focus different fields of research, ranging from social psychology to ecological economics, on new theories, strategies and innovations to transform the current unsustainable consumption and production into sustainable consumption and production. That is why it is necessary to keep developing and improving the scientific research and practice in this field, which would be later integrated, tested and implemented.

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ASSURANCE OF THE RIGHT TO PRIVACY AND THE PROTECTION OF PERSONAL DATA IN LABOUR RELATIONS

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Abstract. *Daily work activities of employees and performance of their job functions are inseparable from ensuring the right to privacy and the protection of personal data. The recent era and adaptation to new working conditions such as remote work, difficulty of separating corporate and private life, and use of new IT tools pose new challenges to employee privacy and protection of personal data. Monitoring of employees, checking of correspondence, collecting information about employees, storage of such information, and its transfer to third parties concern both the right to privacy of employees and protection of their personal data.*

Object of the article – assurance of employee rights to privacy and protection of personal data.

The purpose of the article is to analyse the content of employee right to privacy and protection of personal data and to identify the main problems related to violations of these rights in order to properly understand and comply with the legal framework.

The relevance of this research paper is linked with the assurance of the employee right to personal data protection and privacy requirements, appropriate personal data processing of employees, identification of the nature of violations, and provision of recommendations seeking to avoid them.

Keywords: *right to privacy, protection of personal data, labor relations, GDPR.*

Introduction

Numerous everyday tasks of employees such as performance and fulfilment of work functions and duties pertain to data protection and processing and simultaneously encompass the right to private life. Employee data are often processed in the course of labour relations and quite often before they even start – during recruitment and sometimes even after the labour relations have ended. Covid-19 pandemic, globalisation processes, development of information technologies and new data processing methods, spreading of remote work as a work organisation form, and blurring of boundaries between professional and personal life pose new challenges to the right of employees to privacy and implementation of personal data protection assurance.

From the European perspective, there are no specific mandatory legal acts that would entrench particularly the protection of employee's privacy and personal data in labour relations. Breach of the right to personal data protection simultaneously results in the breach of the person's privacy. Personal data processing at workplaces and the right of employees to privacy are applied the general data processing rules and principles provided for in the legal framework of the European Union and of the Council of Europe, when employees have the same rights as those guaranteed for the data subjects. More specific rules governing personal data protection in the context of labour relations have to be sought in national legal acts as well as recommendations and guidelines of the European Union and of the Council of Europe.

It is noteworthy that the legal governance of both the European Union and Council of Europe (encompassing both the binding legislation and the rules of recommendatory nature) represent two separate legal frameworks that are nonetheless closely interrelated and

supplement each other in order to establish and ensure the employee right to privacy and personal data protection.

The relevance of this research paper is linked with the assurance of the employee right to personal data protection and privacy requirements, appropriate personal data processing of employees, identification of the nature of violations, and provision of recommendations seeking to avoid them. Object of the article – assurance of employee rights to privacy and protection of personal data. The purpose of the article is to analyse the contents of employee right to privacy and the protection of personal data and to identify the main problems related to violations of these rights in order to properly understand and comply with the legal framework.

In the research paper, the following theoretical and empirical methods have been used: comparative analysis, logical-analytical method, and system analysis. The comparative analysis method was applied seeking to compare the contents and legal regulation of the employee right to personal data protection and the right to privacy. Logical-analytical method was used to analyse the requirements posed to employee personal data processing seeking to ensure the employee privacy. The same method was also invoked for the analysis of principles for the processing of employees' personal data as manifestation of the right to privacy. The logical-analytical method and system analysis method were used for disclosure of the relationship between the legal acts and legal doctrine, and different legal rules, for the summing up of the research paper, disclosure of the key problems, provision of recommendations, and formulation of conclusions.

Legal regulation context ensuring the employee right to personal data protection and privacy

Common legal acts of the European Union applied for the personal data protection in labour relations include the Charter of Fundamental Rights of the European Union and General Data Protection Regulation (hereinafter – GDPR).

Article 7 of the Charter of Fundamental Rights of the European Union (*Charter of Fundamental Rights of the European Union* (CFR), OL 7.6.2016, C 202/391) accentuates a person's right to private and family life stating that everyone has the right to respect for their private and family life, inviolability of their home and secrecy of correspondence. Article 8 of the same enshrines the protection of personal data where everyone has the right to the protection of personal data concerning them, whereas such data must be processed appropriately and used only for specified purposes and only with the consent of the person concerned or on other legitimate grounds laid down by the law (Article 8 of the CFR).

As of 25 May 2018, European Union member states started applying the GDPR that has repealed Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data that had been used as the basis for personal data processing in the EU member states. The objective of GDPR to ensure real personal data protection, to protect the rights of individuals in the digital space, and to reinforce the fight against crimes is cited as an incentive to have a uniform and updated legal act in all European Union member states for the governing of personal data protection. The key goals of the personal data protection reforms included strengthening the rights of the data subjects, including employees, establishing the responsibility of data processors and subprocessors, and ensuring transparent and reliable personal data regulation and processing (*Štareikė, Kausteklytė-Tunkevičienė, 2018*).

Besides the general data protection provisions, article 9(2) of the GDPR embeds a possibility for the employer to process special data of the employees when processing is

necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services. Article 88 of the GDPR prescribes that member states may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context (*Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR)*).

Furthermore, although the explanations of the Article 29 Working Party, replaced following the coming into force of GDPR by the European Data Protection Board, laid down in the Opinion 2/2017 on data processing at work are not binding, they are, nonetheless, important. This opinion supplemented earlier publications of the Article 29 Working Party – Opinion 8/2001 on the processing of personal data in the employment context (*Article 29 Working Party – Opinion 8/2001 on the processing of personal data in the employment context*, 5062/01/EN/Final, WP 48, 2001 (Article 29 Working Party – Opinion 8/2001)) and Working Document on the surveillance of electronic communications in the workplace (*Article 29 Data Protection Working Party, Working Document on the surveillance of electronic communications in the workplace*, 5401/01/EN/Final, WP 55, 2002 (Article 29 Working Party – WP 55)).

Protection of employee data and the right to privacy are also governed by the European Union legal acts and documents of recommendatory nature. Among the most important of them is the European Convention for the Protection of Human Rights and Fundamental Freedoms (*European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*, Council of Europe, Rome, 1950). Article 8 of the ECHR embeds the individual's right to the respect for private and family life: (i) everyone has the right to respect for his private and family life, his home and his correspondence; (ii) there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Another important international document, the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108), was opened for signature yet back in 1981, well before the era of internet and electronic communications. The development of technologies and globalisation of information posed new tasks and highlighted the existing problems in the field of personal data protection. In 2018, the modernised Convention (i.e. Convention 108 modified by the amending Protocol) has a uniform scope of application for all Parties to the Convention, without the possibility to fully exclude sectors or activities from its application. It thus covers all types of data processing under the jurisdiction of the Parties, in both the public and private sectors.

The amending Protocol significantly increases the level of data protection afforded under Convention 108. Notably, the modernised Convention further specifies the principle of lawful processing, further strengthens the protection of special categories of data and also strengthens the rights of the data subjects, especially with regard to transparency and access to data (*Proposal for a Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)*, 2018).

The Council of Europe Modernised convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data with the amendments adopted by the Committee of Ministers of the Council of Europe (*Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data*, 128th Session of the Committee of Ministers, Elsinore, Denmark 17-18 May 2018 (Convention 108+)) is a legally binding multilateral agreement in the field of personal data protection. The aim of the Convention is the protection of the right to privacy when processing personal data automatically, respect for the rights of each individual, simultaneously those of employees, and fundamental freedoms in the territories of all states, irrespective of their nationality and place of residence, regulation of international data transmission and, most importantly, assuring the right of the individuals to privacy.

European Social Charter (revised) (*European Social Charter (revised)*, Strasbourg, 1996 (ESC)) is yet another important legal regulation document of the Council of Europe. It establishes the rights of employees, including the right to information and consultation (Article 21 of ESC).

Noteworthy are other documents of the Council of Europe that have no binding legal power. Recommendation CM/Rec(2015)5 on the processing of personal data in the context of employment (*Recommendation CM/Rec(2015)5 of the Committee of Ministers to member States on the processing of personal data in the context of employment* (Recommendation CM/Rec(2015)5)) defines specific rules for data processing in the context of employment relations. Moreover, Recommendation No R(86) 1 on the protection of personal data (*Recommendation No. R (86) 1 of The Committee of Ministers To Member States on the Protection of Personal Data Used for Social Security Purposes*) used for social security purposes establishes the respect for the privacy of individuals when collecting, using, transferring, and storing personal data used for social security purposes. It also prescribes appropriate controls sufficient for assuring data protection in each social security institution.

The Law on Legal Protection of Personal Data of the Republic of Lithuania (hereinafter – LLPPD) (*Official Gazette* 1996, No. 63-1479), is one of the most important national legal acts in the field of data protection. Article 5 establishes the criteria for the processing of personal data pertaining to labour relations. First, it prohibits the processing of personal data relating to the record of conviction or criminal acts of a candidate applying to the position or function, or those of employee, except in the cases where such personal data are necessary in order to verify that the person satisfies the requirements for the position or function provided for in the laws and implementing legislation. The law also establishes that a prospective employer or company may collect the personal data of a candidate applying to the position or function pertaining to their qualification, professional skills, or work-related personal qualities from former employers after notifying the candidate and from the current employer – only with the candidate's consent (Article 5 of LLPPD). State Data Protection Inspectorate also draws up numerous helpful recommendations in the context related to labour relations, for instance, the recommendation on personal data processing of employees when organising remote work.

Article 27 of the Labour Code of the Republic of Lithuania (hereinafter – LC) (*Official Gazette*, 2016, No. 2016-23709). provides for the duty of the employer to respect the employee's right to privacy and ensure protection of their personal data.

In summary, it can be concluded that the right of employees to personal data protection and privacy in the context of labour relations is governed by the general legal acts of the European Union and Council of Europe. The frameworks of both the Union and Council of Europe contain special non-binding documents (rules, opinions, and recommendations)

governing exclusively the rights of employees. Naturally, the right to privacy and personal data protection in the context of labour relations is further specified in national legal acts.

Principles for the processing of personal data as expression of the employee's right to privacy in the context of labour relations

The right of employees to privacy and the right to personal data protection are closely interrelated and even overlap; however, these are not identical rights (despite them defending similar values – employee dignity, right to personal and family life privacy etc.). According to the ECHR, the right to personal data protection is an expression of the right to privacy. However, the scope, possibilities for restriction, and supervision authorities of the right of employees to privacy and of the right to personal data protection differ.

According to T. Bagdanskis and P. Sartatavičius (2012), an employee has the right to inviolability of their privacy encompassing:

1. Informational privacy which in the labour context can be described as knowing what information gathered about employee by the employer is being used and where;
2. Physical privacy (includes bodily integrity – it is forbidden to perform medical or scientific experiments without the consent of the subject);
3. Communicational privacy – in labour context it means that employee's right to communicate with others not associated with labour relations must be respected;
4. Territorial privacy (inviolability of personal integrity and private territory).

In the meantime, the right of employees to personal data protection includes and protects the personal data associated with any information about the natural person who has been or could be directly or indirectly identified, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The right to employee's personal data protection is exercised immediately, as soon as personal data processing starts, irrespective of what these are (given name, surname, bank card number, telephone number, residential address, email address etc.) and whether they belong to the data of special categories (membership in trade unions, biometrical data, health data etc.). Undeniably, unlawful processing of employee personal data might disclose information about their family and personal lives and simultaneously breach the person's right to privacy. Consequently, a breach of employee's personal data protection results in a breach of their right to privacy. ECHR explained in the case of *Niemietz v. Germany* that it is not necessary to try to define the notion of private life comprehensively. Respect for personal life also includes the right to build and develop relations with other people. Moreover, there are no grounds to infer why the perception notion of private life should not include professional or business activities. After all, in their working lives, the majority of people have a significant if not greatest opportunity to build relations with the outer world. The court clarified that the word "domicile" has a broader connotation than the word "home" and may extend, for example, to a professional person's office (*Decision of the European Court of Human Rights* of 16 December 1992, Case of *Niemietz V. Germany*).

When analysing the employee's right to data protection it should be emphasised that an employee is equated with a data subject, whereas the employer is the data controller. The General Data Protection Regulation has established seven key rights of the data subjects also held by every employee in the field of data protection. Four of those had been known and were regulated yet before the Regulation came into force (and were eventually transposed to the

Regulation), including the right to be informed, the right of access, the right to rectification, and the right to object to processing. Furthermore, three entirely new rights for the data subjects were established, namely: the right to erasure (“the right to be forgotten”), the right to restrict processing, and the right to data portability (*Štareikė, Kausteklytė-Tunkevičienė, 2018*). The employer must ensure that the personal data of employees should be processed seeking for the development of normal labour relations and business, and for the balance of interests between the private interests of employees and legitimate interests of employer.

Article 88 of the General Data Protection Regulation states that Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the following purposes:

1. recruitment;
2. employment contract performance;
3. management, planning and organisation of work;
4. equality and diversity in the workplace;
5. health and safety at work;
6. protection of employer's or customer's property;
7. for the purposes of the exercise and enjoyment, on an individual basis, of rights and benefits related to employment;

8. termination of the employment relationship (*Article 29 Data Protection Working Party, Opinion 2/2017 on data processing at work, WP249, 2017* (Article 29 Data Protection Working Party, Opinion 2/2017)).

In line with Article 88(2) of the GDPR, those rules shall include suitable and specific measures to safeguard the employee's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity, and monitoring systems at the work place (Article 88(2) of the GDPR). Employee as a person has the right to private life and a reasonable expectation that this right will not be breached even in their workplace. However, there are numerous reasons forcing the employers to monitor and control the employees in their workplace via information technologies. Scientific literature identifies the following key reasons: 1) striving to ensure work procedure and discipline of employees; 2) striving to improve the employee productivity and effectiveness; 3) striving to save employer's financial resources; 4) striving to protect employer's good reputation; 5) striving to meet the requirements for computer system safety and efficiency (*Lukacs, 2020*).

However, employers' lawlessness has been restricted and they are obliged to process the personal data of employees following the data processing principles embedded in Article 5 of the GDPR: process the data lawfully, fairly and in a transparent manner in relation to the employee; collect the employee data for specified, explicit and legitimate purposes and not further process them in a manner that is incompatible with those purpose; implement the data minimisation principle; ensure that the data are accurate and, where necessary, kept up to date; take every reasonable step to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay; implement the storage limitation principle; ensure that the personal data of employees are processed in a manner that ensures appropriate security of the personal data, including assurance of suitable personal data security, using appropriate technical or organisational measures. Further, the key principles of personal data processing are discussed in the context of labour relations.

Principle of lawfulness, fairness and transparency

First, personal data must be processed lawfully, fairly and in a transparent manner in relation to the employee (principle of lawfulness, fairness and transparency). Lawfulness in the context of labour relations is understood as proportionality and necessity of employee's personal data processing, for example, when data are processed on the basis of employment contract or law (when a duty is prescribed for the employer to submit data to the State Tax Inspectorate, State Social Insurance Foundation Board etc.). Opinion 2/2017 on data processing at work of the Article 29 Working Party (WP29) recommends that consent should not be treated as legal grounds in labour relations due to the subordination between the employer and employee. Attention is drawn to the fact that employees almost never have any possibilities to give, refuse or withdraw consent voluntarily, seeing the relations of employer and employee determine dependency. Due to the imbalance of power, employees are capable of giving consent voluntarily only under exceptional circumstances, when the employees do not experience any consequences pertaining to the acceptance or rejection of an offer (*Article 29 Data Protection Working Party, Opinion 2/2017*).

Guidelines 05/2020 on consent under Regulation 2016/679 of the European Data Protection Board dated 4 May 2020 uphold the same position and emphasise that the imbalance of power appears in the context associated with employment relations. Due to the dependency inherent to the relations of employer and employee, it is not likely that an employee might be able to refuse consent to their employer to process their data without fear or real risk of experiencing negative effects due to their objection. It is likely that an employee would be unable to refuse to give consent of their free will, when their employer asks for it, for instance, to object to the use of surveillance systems in the workplace without feeling any pressure associated with negative consequences, if they object. The European Data Protection Board emphasised that the employer' basing on consent for the personal data processing of current or prospective employees poses problems seeing that consent of such nature would not be given of their own free will. Due to the nature of the employer's and employee's relations, in many cases of such data processing at work, the consent of employees could not and should not comprise legitimate grounds for employee data processing at work (*Guidelines 05/2020 on consent under Regulation 2016/679 of the European Data Protection Board, 2020*). This notwithstanding, if the consent comprises legitimate grounds for employee data processing, it should be given of employee's own free will, informed, specific and unambiguous, while no negative consequences may arise to the employee due to their objection.

Article 5 of the Law on Legal Protection of Personal Data of the Republic of Lithuania also embeds the principle of lawfulness, by committing the employer to collect the personal data of candidates applying to the position or function pertaining to the qualification, professional skills, or work-related personal qualities from former employers after notifying the candidate and from the current employer – only with the candidate's consent (Article 5 (2) of LLPPD).

State Data Protection Inspectorate of the Republic of Lithuania also emphasized the importance of principle of lawfulness, fairness and transparency in their recommendation on personal data processing of employees when organising remote work that organisation of remote work per se does not imply the duty for the employer to assume the employee surveillance measures (e.g. monitor the correspondence by email, record calls etc.), but it also does not mean that such measures are necessary or proportionate. Although surveillance of the acts of employees carried out using the resources provided by the employer during the working time should not be treated as a breach per se, it should be carried out in line with the GDPR

requirements. European Court of Human Rights noted, that ECHR Member States must be granted a wide margin of appreciation in assessing the need to establish a legal framework governing the conditions in which an employer may regulate electronic or other communications of a non-professional nature by its employees in the workplace. Nevertheless, the discretion enjoyed by States in this field cannot be unlimited. The domestic authorities should ensure that the introduction by an employer of measures to monitor correspondence and other communications, irrespective of the extent and duration of such measures, is accompanied by adequate and sufficient safeguards against abuse (*Decision of the European Court of Human Rights of 5 September 2017, Case of Bărbulescu v. Romania*). Before starting the surveillance of any specific employee, the employer should:

(i) Assess the proportionality of the employee surveillance to the objectives sought and determine whether the interests of employer override the employee's interests and fundamental rights and freedoms. Following Article 6(1)(f) of the GDPR, the condition of lawful data processing obliges the data controller to perform a test of interest balance and to assess whether his interests override the interests and fundamental rights and freedoms of the employee.

(ii) The employer has to perform an assessment of the impact on data protection when the employees' personal data are processed for the purposes of employee surveillance or control (processing of video and audio personal data in the workplace and in the employer's premises or territories, where his employees work; processing of personal data related to the surveillance of employees, communication, behaviour, location, or movement). If upon completion of the assessment of the impact on data protection it is concluded that data processing would pose a high risk unless the employer assumed measures to reduce it, the employer should apply to the State Data Protection Inspectorate for a prior consultation.

(iii) The employer has to draw up a procedure for the surveillance of employees and familiarise the employees obtaining signatures corroborating the familiarisation. The procedure must be clear, i.e. employees should understand the scope and consequences of processing of their data in the employer's activities so that eventually the ways their personal data are used would not be unexpected for them, thus ensuring proper implementation of the transparency principle (*Recommendation for employee data management by remote working*, 2020).

Purpose limitation principle in employee data processing

Purpose limitation principle obliges to collect the personal data of employees for the specified, explicit and legitimate purposes and not further process them in a manner that is incompatible with those purposes. Consequently, the personal data processing of employees when the purposes are not specified or not limited or collection of data expecting that various information and data about the employee will come handy in the future are unlawful. The employer must be frank and clearly state the purposes for which the personal data of employees are processed (*Personal Data Protection Guidelines for Startups*, 2019).

Article 5(3) of the Law on Legal Protection of Personal Data of the Republic of Lithuania establishes that the processing of video and/or audio data in the workplace and employer's premises or territories where his employees work, and processing of personal data pertaining to the surveillance of employee behaviour, location, or movement require informing them thereof with signature to confirm it or in another way corroborating the fact of informing providing them with information specified in parts 1 and 2 of Article 13 of Regulation (EU) 2016/679 (Article 5(3) of LLPPD). It is important to note that the purpose of employee personal data processing must be legitimate; the method for future data processing, for instance, video surveillance, must be necessary for attaining legitimate interests of the employer. The use of

information technologies allowing for monitoring, surveillance and collection of information about the employee violate their privacy and shape the appropriate behaviours of employees, prevent them from relaxing and exert pressure to comply with requirements, so that no things are detected that could be perceived as abnormalities (*Article 29 Data Protection Working Party*, Opinion 2/2017). Considering the above, proper balance between the legitimate interests of employer and fundamental rights and freedoms of employees (*Decision of the European Court of Human Rights of 5 October 2010, Case of Köpke v. Germany*) should be ensured and employee privacy should be protected. The progress of technologies should be also emphasised, when threat arises that the employees may not be aware altogether of them being subjected to surveillance or which personal data are processed and for what purposes.

A flawed practice should be mentioned when due to the possibility to correspond and gain free access to employee profiles in social networks, as the new analytical technologies develop, the employers have the technical opportunity to constantly check on their employees collecting information about their family members, relatives or friends as well as opinions, beliefs, interests, habits, location, attitude, and behaviour, thus recording their data, including sensitive data about the employee's private and family life.

Although social profiles of employees should not be checked in the context of labour relations, even more so, the employer should not request access to information shared by the employees with other persons in social networks, however, certain clauses are established for the employers, when the purpose of collecting such information can be justified: for example, upon conclusion of an additional agreement on non-competition. During the agreement validity period, the employer is provided an opportunity to monitor, for instance, the LinkedIn profile of their former employee (considering that this is one of the most popular social networks in the context of labour relations). The objective of such monitoring should pertain only to the information how the employee complies with the terms of the agreement on non-competition.

Data minimisation objective in labour relations

This principle states that the personal data of employees should be processed using the appropriate measures only when the purpose of personal data processing cannot be attained through other measures. If the employer reasonably cannot achieve the purpose without processing the personal data of employees, then he should select the least quantity of personal data necessary for the attainment of the purpose sought. To make sure that the personal data are adequate, suitable and non-redundant, the employer should assess the purpose sought through the processing of the employee personal data and determine the specific personal data required to attain it (*Personal Data Protection Guidelines for Startups*, 2019).

In its decision adopted on 02-04-2020, the Supreme Administrative Court of Lithuania examined whether the collection of biometrical data of employees was compatible with the data minimisation principle and noted that the necessity and proportionality of the data processed must be rigorously assessed as well as the possibility to attain the planned purpose by measures that are less-restrictive to privacy. When assessing the proportionality of the biometrical system installed in the workplace, the first thing that needs to be taken into account is whether the system is indeed necessary to meet the identified need. In other words, it is necessary to assess whether the system is essential for meeting the need and not selected due to convenience or cost-efficiency. Furthermore, it is important to assess whether the loss of employee privacy will match the benefit planned to receive. If the benefit is not particularly substantial and rather pertains more to greater convenience for the employer or small savings of funds, then the loss of privacy is not acceptable. Moreover, when assessing the suitability of the biometrical system,

it has to be considered whether the desired objective could be reached by means less limiting the employee privacy. For this purpose, the employer should determine whether the data processing and its mechanisms, categories of data to be collected and processed, and transfer of the information contained in the database are necessary and unavoidable (*Decision of the Supreme Administrative Court of Lithuania* of 2 April 2020).

Another example to mention, the Hamburg Commissioner for Data Protection and Freedom of Information imposes a 35.3 million euro fine for data protection violations at H & M's Service Center after violations related to improper processing of employees' personal data and violation of the right to privacy were identified. The investigation showed that the surplus data of employees were collected without a specific purpose, as well as special categories data were collected about the employees health condition, illness, vacation, family, religious beliefs (*European Data Protection Board*).

One more example deals with the processing by employer of special category data of employees, such as health data. The employer should take into account and collect only the necessary data. If the employee got ill (e.g. coronavirus infection) and that threatens the safety of health of other employees, the employee should inform the employer of having this disease and only notify the employer of the fact of illness. In other words, to comply with the data minimisation principle, the employer is provided only the information that would oblige the employer to enable the employee to work remotely. By submitting a suggestion to perform the working functions remotely, the employer should not specify the disease of the employee as the cause of such work mode. Quite the opposite, the employer should specify and disclose a cause that violates the employee privacy to a lesser extent, for instance, ensuring health protection for other employees (*Processing of employee health data following the entry into force of the amendments to the Labour Code concerning quarantine, 2020*). To sum up, when processing the employee data, especially those ascribed to special categories, the employer should only process the necessary data of employees seeking to implement the data minimisation principle.

Principle of accuracy

The implementation of the principle of accuracy in the context of labour relations requires that the personal data are accurate and brought up-to-date, if appropriate. The employer should assume all reasonable measures to ensure that that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (*Personal Data Protection Guidelines for Startups, 2019*). The GDPR obliges the employer to assume reasonable measures to ensure that the personal data are accurate, and to set the terms for deletion or revision of personal data. For instance, upon determining, that the data of former employees are no longer necessary, the employer should take all reasonable measures to ensure that such personal data are deleted. Article 5 of the Law on Legal Protection of Personal Data of the Republic of Lithuania also prohibits to process the personal data relating to the record of conviction or criminal acts of a candidate applying to the position or function, or those of employee, except in the cases where such personal data are necessary in order to verify that the person satisfies the requirements for the position or function provided for in the laws and implementing legislation (Article 5 of LLPPD).

Principle of storage limitation

The principle of storage limitation establishes that the personal data should be processed and stored no longer than necessary for the purposes for which they are being processed. Hence,

when implementing this principle, the employer has to ensure a minimum retention period of employees' personal data. The employer should take into account the personal data processing purpose, seeing as it will determine the types of personal data processed by the employer and the requirements of the national legislation stipulating the storage periods of specific data, i.e. personal data processing of employees is also governed by legal acts of other domains establishing specific periods for retention of documents and simultaneously personal data.

It has already been discussed that numerous everyday tasks of employees such as performance and fulfilment of work functions and duties pertain to data protection and processing and simultaneously concern the right to privacy. However, also relevant is the fact that the personal data processing of employees does not start after agreeing on the essential terms of employment and concluding an employment contract; it also includes pre-contractual labour relations, i.e. recruitment. It is important that the data collected in the course of recruitment process should be generally deleted as soon as it becomes clear that a job offer will not be made or the person does not accept it (*Article 29 Data Protection Working Party, Opinion 2/2017*). The individual concerned should also be duly informed of such data processing before starting to participate in the recruitment process. In the cases when the employer wishes to retain the data in order to have the opportunity to offer the candidate a vacancy later, as the position becomes vacant, the candidate should be properly informed and provided the opportunity to object to such further data processing; in this case, the data should be erased (*Recommendation CM/Rec(2015)5*).

Principle of integrity and confidentiality

The principle of integrity and confidentiality obliges the employer to process the employee data in such a way that the appropriate technical or organisational measures applied ensured adequate security of personal data, including protection against unauthorised or unlawful data processing and against accidental loss, destruction, or damage. This principle obliges the employer to introduce appropriate safety measures to protect the personal data being processed.

Recommendations for data processing in the context of labour relations seeking to avoid violations

As already mentioned, seeing that unlawful processing and storage of personal data simultaneously violates the employee right to private life, each time when starting to process the personal data of employees the employer should provide for appropriate and specific measures to avoid violations and protect the human dignity, legitimate interests and fundamental rights of employees, in particular focusing on the following:

(i) legitimate interest in processing the personal data of employees; considering the subordination between the employer and employee inherent to the labour relations, the employer should not use the employee consent as legal grounds for processing their personal data;

(ii) transparency of employee data processing, especially by informing the employees that the workplace or equipment provided by the employer contain surveillance (video and audio, car tracking or location) systems as well as performing an assessment of the impact on data protection to determine whether the use of such measures is lawful and based on the balance of interests of the employer and employee. The employer should also inform the

employees if their emails and other correspondence tools (for instance, Teams, Hangout, Zoom, Telegram etc.) are monitored and inform them about consequences for inappropriate use of such tools etc.;

(iii) principle of data storage limitation, for example, by drawing up the rules for the processing of personal data of employees and familiarising the employees with them;

(iv) minimisation and proportionality of personal data of employees, by not collecting redundant data about the employees, especially those pertaining to special categories: health, biometrical data, information about the person's sexual orientation, religious or philosophical attitudes, data about personal or family life, opinions, statements in social networks etc. The employer should take into account that data processing at work should be a proportionate response to the hazards experienced by the employer. For example, instances of inappropriate use of the internet can be detected not necessarily by identifying the contents of websites, where the inappropriate use could be prevented by installing internet filters;

(v) principle of integrity and confidentiality of the personal data of employees, by obliging the employer to introduce appropriate technical or organisational safety measures to protect the personal data of employees being processed against unauthorised access, accidental loss, destruction, or damage.

Conclusions

The right of employees to personal data protection and privacy in the context of labour relations is guaranteed by the general legal acts of the European Union and Council of Europe, which ensures the protection of fundamental human rights. The frameworks of both the Union and Council of Europe contain special non-binding documents governing exclusively the rights of employees. The right to privacy and personal data protection in the context of labour relations is further specified in national legal acts.

The right of employees to privacy and the right to personal data protection are closely interrelated and even overlap. However, these are not identical rights. According to the ECHR, the right to personal data protection is an expression of the right to privacy. However, the scope, possibilities for restriction, and supervision authorities of the right of employees to privacy and of the right to personal data protection differ. The right of employees to privacy encompassing informational privacy, physical privacy, communicational privacy and territorial privacy. Meanwhile, the right of employees to personal data protection includes and protects the personal data associated with any information about the natural person who has been or could be directly or indirectly identified.

The right of employees to personal data protection includes these aspects in the labour context: recruitment; employment contract performance; management, planning and organisation of work; equality and diversity in the workplace; health and safety at work; protection of employer's or customer's property; purposes of the exercise and enjoyment, on an individual basis, of rights and benefits related to employment.

The key principles which must be taken into account by the employer in order to ensure employees' personal data processing and right to privacy in the context of labour relations are: principle of lawfulness, fairness and transparency; purpose limitation principle; data minimisation objective principle; principle of accuracy; principle of storage limitation; principle of integrity and confidentiality.

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HEALTH DATA PROTECTION AS A MEASURE OF REALIZING AN INDIVIDUAL'S RIGHT TO PRIVACY

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Abstract. *The quality protection of the fundamental right to privacy cannot be achieved without sufficient protection of personal data. The General Data Protection Regulation provides special rules for the processing of health data as a special category of personal data which is considered to be sensitive by its nature. In this article we aim to investigate the legal regulation for the processing of health data and to show the connection of this legal regulation with the individual's fundamental right to privacy. And vice versa – it's important to determine what impact the right to privacy has had on the law of personal data protection. In order to achieve those goals, there will be discussed the origins of the right to privacy and its enshrining into the international and local law. The article will analyze not only the legal regulation of health data protection, but also reveal the connection between individual's right to privacy and the personal data protection system.*

Keywords: *right to privacy, health data processing and protection, reformation of right to privacy and health data protection, GDPR.*

Introduction

The rapid technological progress and use of information technology across numerous domains of society, the COVID-19 pandemic and processes of globalization have highlighted the importance of personal data protection and privacy. At the same time it has led to re-examination of problems, arising from inappropriate processing of personal data, when the pursuit to protect individual's privacy is no longer sufficient.

The system of personal data protection was created in order to protect not only personal data, but also individual's right to privacy. Violation of the right to personal data protection also initiates a violation of right to privacy. The focus of personal data protection on the protection of privacy determines both the content of the legal provisions and their implementation in the field of personal data legal regulation. So the purpose of General Data Protection Regulation is to create a secure basis for fundamental human rights and freedoms and it does it through imposing a uniform data security law in all European Union which provides a higher level of personal data protection. The need to ensure privacy and personal data protection is set both in the legal systems of European Union and The Council of Europe, that are closely interrelated in ensuring the protection of fundamental human rights.

So the article defines personal data protection as the safeguarding of the privacy right of individuals in relation to the processing of personal data. The relation between personal data protection and right to privacy as well as the influence of this relation on the structure and the content of law on personal data protection is analyzed in the article too.

The first part of article is dedicated to analyze the relation between privacy and personal data protection, to discuss the legal regulation of those rights, to determine the values protected by those rights and to estimate the limitations of absoluteness. The next two parts of the article introduce the concept of health data as the special category of personal data and analyze the requirements for health data processing. There are also discussed health data processing breaches as an infringement of the right to privacy.

The relevance of this scientific article is related to identification of requirements for ensuring personal data processing and privacy and also the nature of violation.

The aim of this scientific article to analyze the legal regulation of health data processing and to identify the connection between this legal regulation and fundamental individual right to privacy.

The object of the scientific article is the processing of health data and responsibility for data processing breaches.

Methodology of the Research – method of comparative analysis, methods of logical – analytical and systematic analysis. The method of comparative analysis is applied to compare the content and legal regulation of the right to privacy with the right to personal data protection. The analysis of requirements for health data processing and the analysis of the nature of violations are based on a logical-analytical method. Methods of logical – analytical and systematic analysis are used to reveal the relationship between legal acts, legal doctrine and different legal norms, also to summarize the article, to disclose the main problems and to submit conclusions.

The right to the protection to the protection of personal data as an expression oh the right to privacy

COVID-19 pandemic prompted states to take various restrictive measures of human rights to stop the spread of the virus and to protect human health and lives. The fight against the new coronavir has led to the collection of personal data and further highlighted issues related to privacy and the right to protection of personal data. The pandemic situation has resulted not only in the processing and collection of comprehensive data related only to health disorders, but also in other domains on subjects' behavior, relationships, personal lives, in an attempt to control the spread of the virus at all costs (Milaj, 2020). The threat not only to the protection of personal data but also to the right of privacy has again raised the question of the relationship between these two rights.

The right to privacy and the protection of personal data are guaranteed by the legal framework of both the European Union (hereinafter - the EU) and the Council of Europe (hereinafter - the CE), which ensures the protection of fundamental human rights. The right to privacy and the protection of personal data are closely interlinked, sometimes even overlapping rights, but they are not identical rights (although they defend similar values - human dignity, the right to autonomy, the secrecy of private life, etc.). There is an indisputable link between these two rights, but there is still no general consensus on the relationship between these two rights. However, an analysis of international and national documents suggests that data protection and privacy are not considered synonymous (Lukacs, 2020).

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right of the individual to respect for his or her private and family life: (i) everyone has the right to respect for his private and family life, his home and his correspondence; (ii) there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Council of Europe, Rome, 1950).

Modernised convention for the protection of individuals with regard to automatic processing of personal data (Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, 128th Session of the Committee of Ministers, Elsinore, Denmark 17-18 May 2018 (Council of Europe Convention 108+)), is the only legally binding multilateral agreement on personal data protection. The purpose of the Convention is to protect the right to privacy through automatic processing of personal data, to respect the rights and fundamental freedoms of everyone, regardless of their nationality or place of residence, to regulate international data transfers and, above all, to guarantee individuals' right to privacy.

According to the General Data Protection Regulation (hereinafter - GDPR), personal data are understood as (i) any information relating to an identified or identifiable natural person (data subject); (ii) an identifiable natural person is a person who can be identified, directly or indirectly, in particular by reference to an identifier such as name, personal identification number, location and internet identifier, or to one or more identifiers of that natural person; characteristics of a person's physical, physiological, genetic, mental, economic, cultural or social identity (Regulation (Eu) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, hereinafter - GDPR).

The link between the use of the term is enshrined in most basic international and national legislation as the concept of the right to privacy, which often includes the protection of personal information. In addition, these concepts, although not identical, are closely interlinked: ensuring a person's right to privacy also guarantees the protection of his or her personal data, while guaranteeing the protection of personal data also protects the right to privacy. Information about persons that allows the identification of a person (for example, a person's name, surname, place of residence, health data, etc.) is understood as personal data (Malinauskaitė, 2015).

Meanwhile, Article 7 of the Charter of Fundamental Rights of the European Union (hereinafter EU Charter) (Charter of Fundamental Rights of the European Union (CFR), OL 7.6.2016, C 202/391) distinguishes between the right to private and family life, where everyone has the right to respect his or her private and family life, the inviolability of home and secrecy of the communications. And Article 8 of the EU Charter regulates the protection of personal data, giving everyone the right to the protection of their personal data, which must be properly processed and used only for specific purposes and only with the consent of the person concerned or on other lawful grounds (Article 8 of CFR).

The Article 29 Working Party (the European Data Protection Board, after implementation of GDPR) also stated in its opinion that on the one hand, it has to be considered that the concept of private and family life is a wide one, according to the European Court on Human Rights in the case *Amann v Switzerland* of 16.2.2000, §65 : "[...] the term "private life" must not be interpreted restrictively. In particular, respect for private life comprises the right to establish and develop relationships with other human beings; furthermore, there is no reason of principle to justify excluding activities of a professional or business nature from the notion of "private life"[...]. On the other hand, the rules on protection of personal data go beyond the protection of the broad concept of the right to respect for private and family life. The Article 29 Working Party also emphasized that the Charter of Fundamental Rights of the European Union distinguishes data protection as an autonomous right and separates it from the right to privacy

(Article 29 Data Protection Working Party, Opinion 4/2007 on the concept of personal data, 01248/07/EN, WP 136 (Article 29 Working Party)). Meanwhile, according to the ECHR, the protection of personal data is to be considered as an expression of the right to privacy.

According to some scholars, such as P. De Hert and S. Gutwirth (2006), three main elements justify the separation of the right to privacy from the right to data protection. First, data protection clearly protects values that are not at the heart of privacy, such as the requirements of fair, lawfulness, consent to the processing of personal data. Secondly, the separation and recognition of the right to data protection and the right to privacy respects the different constitutional traditions of Europe. Separating the two rights was also expressed in the framework of the consultative meetings for modernising Convention 108 (Council of Europe Convention 108+). Third, the need for personal data protection has increased particularly in response to new information technology challenges, so it was no longer appropriate to attribute these new challenges and problems to privacy breaches. Ensuring the right to privacy as a fundamental human right has become a challenging task in the age of advanced technology. According to M. Civilka (2001), such situation was caused by the fact that information related to the private life of individuals becomes a commodity of high commercial value. The ability to analyze information about customer and consumer habits and needs determines the competitive advantage of companies.

It can also be noted that the scope and wording of the right to privacy and the protection of personal data differ, as the possibilities of restriction, the supervisory authorities. It can be assumed that the right to data protection as a separate right has developed as one of the components of a person's private life. There are differences in the material scope of the right to privacy and the right to the protection of personal data, i.e. data protection covers only information that allows the identification of individual persons. The genesis of the right to data protection can also be distinguished: the first stage was the development of data protection rules, the second stage regulated the emergence of international personal data protection regimes and the third stage no longer emphasized the collection of personal data but the lawful transfer of data to third parties. The right to privacy requires that the state and its actors do not interfere in a person's private life, giving the person the right to self-expression, freedom of religion, freedom of association, and so on. Meanwhile, the right to data protection provides legitimate means of implementing control mechanisms whenever personal data are processed, so that the state or its institutions and private entities process personal data in accordance with the established rules. Thus, these two rights differ in the scope of their protection and the actors involved. However, although different, the two rights can be very closely linked and even overlap. In this case, one violation - can violate both rights at the same time (Milaj, 2020).

The right to the protection of personal data applies as soon as personal data are processed, regardless of what they are (name, surname, bank card number, e-mail address, etc.) or belong to special categories of data (personal racial data, or ethnic origin, political views, religious beliefs, trade union membership, genetic data, biometric data, health data, data on a person's sexual orientation). Thus, in terms of the application of the law, it can be said that the protection of personal data is broader than the right to privacy. Illegal processing of personal data can reveal information about person's family and personal life, while violating a person's right to privacy. However, in order to prove a personal data breach, it is not necessary to prove that a person's right to privacy has been violated. Disclosure of specific data, such as personal health data on infection of HIV/AIDS, sexual life, can have a significant impact on a person's private life, professional activities, reduce opportunities for communication in society.

Another important aspect is that both the right to privacy and the protection of personal data are not absolute, so restrictions on these rights are possible in order to strike a balance while ensuring other human rights.

Convention no. 108+ of Council of Europe restricts the exercise of individuals' rights where they can be justified by overriding interests, such as the protection of state security, public security, the protection of the public financial interests, the prevention of crime, the protection of data subject or the rights and freedoms of other individuals (Council of Europe Convention 108+). The Charter of Fundamental Rights of the European Union establishes that personal data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or on some other legitimate basis laid down by law. Also, everyone has the right of access to data which has been collected concerning him or her, and the enforcement of such a right must be monitored by an independent authority.

Meanwhile, the right to privacy prohibits the conduct itself, which would violate such individual right, unless a restriction of the right to privacy is possible in order to protect other values. The exercise of the right to data protection does not restrict the right itself, but creates binding conditions that must be met in order to ensure proper data protection management.

Independent institutional oversight can be described as another moment of separation between the right to privacy and data protection. All violations related to the right to privacy are defended in the national courts of the states (for example, in Lithuania - in courts of general jurisdiction), and the European Court of Human Rights becomes the final instance in order to protect the right to privacy.

When analyzing personal data protection law, an independent supervisory authority operating in a specific state (for example, in Lithuania - State Data Protection Inspectorate) occupies a very important role when applying for and filing an initial complaint and in order to defend one's violated right.

Both EU and EC legislation oblige states to establish a national supervisory authority in accordance with their national law for the efficient processing and supervision of personal data. According to GDPR Article 51 each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union. Each supervisory authority shall perform these functions in its territory:

- (i) monitor and enforce the application of this Regulation;
- (ii) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention;
- (iii) advise other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights;
- (iv) promote the awareness of controllers and processors of their obligations under this Regulation;
- (v) handle complaints lodged by a data subject and other (Articles 51, 57 of GDPR)

Also in accordance with both GDPR and the Council of Europe Convention no. 108+ the following powers of the independent supervisory authority could be presented in a systematic way:

- (i) notify the controller or processor of suspected personal data breaches;
- (ii) warn the controller or processor that the intended processing operations may infringe the provisions of the data processing rules;

- (iii) make reprimands to the controller or processor where the processing operations have infringed the provisions of the data processing rules;
- (iv) impose an administrative fine;
- (v) order the rectification or erasure of personal data, restrict their processing or prohibit the processing of personal data, etc. (Article 58 of GDPR; Council of Europe Convention 108+).

In conclusion, the analysis of the legal regulation of the European Union and the Council of Europe leads to the conclusion that the right to privacy and the right to the protection of personal data are not identical rights, but are closely interrelated. The scope of the right to privacy and the protection of personal data, wording, possibilities of restriction, supervisory authorities differ. Advances in information technology, globalization processes, Covid-19 pandemic have highlighted in particular the importance of the right to data protection and the challenges that arise when the pursuit of an individual's right to privacy is no longer sufficient. Violation of one right may also lead to violation of another right. With this in mind, the next part of the scientific article will analyze the significance of health data protection through the prism of realizing a person's right to privacy. Further analysis reveals the circumstances or the unlawful processing and disclosure of personal health data violates the privacy of individuals. Also what are the requirements for the processing of personal data and what are the most common nature of breaches.

The concept of health data and basis for processing

Analysis of international and Lithuanian legal acts establishing the protection of privacy and examination of the concept of the right to privacy established in legal acts and legal doctrine show us, that information about natural person and adequate protection of this information is considered to be a part of privacy.

As personal data considered as one of elements of the privacy content, it is clear that collection, processing and the use of such data can have an impact on a person's privacy. Assurance of person's right to privacy also ensures the protection of personal data and vice versa – only the an adequate level of data protection will ensure the proper protection of private life. So one of the main goals and tasks of personal data protection law is to create and set standards of conduct which would be considered not violating the privacy.

The provisions governing personal data protection law can be divided into two groups (Petraitytė 2011):

- the first group include the rules, which set standards for the behaviour respecting an individual's right to privacy when the personal data are being processed,
- the second group include the rules, which are setting out the measures, that a natural person may take to protect or defend his privacy as far as it is concerned to the processing of his personal data.

Regulation (EU) 2016/679 of the European Parliament and of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation – GDPR - Regulation (EU) 2016/679) had made a fundamental reform of European Union data protection legislation. GDPR not only repealed Data Protection Directive 95/46/EC which was the basis of personal data processing rules in European Union. General Data Protection Regulation implemented the objective of the Member States of the European Union to reconcile fundamental human rights and freedoms, protection of privacy, technological progress and public security in the field of personal data protection.

General Data Protection Regulation recognizes data concerning health as a special category of data, which is considered to be sensitive by its nature. Processing is prohibited (Article 9(1) of GDPR) unless exceptions apply such as:

- the provision of the individual's explicit consent,
- processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent,
- processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services;
- processing is necessary for compliance with a legal obligation to which the controller is subject;
- processing relates to personal data which are manifestly made public by the data subject;
- where processing is necessary for achieving purposes in the public interest, scientific or historical research purposes or statistical purposes (State Data Protection Inspectorate, Recommendations on personal data protection aspects providing remotely healthcare services).

Requirements for the health data protection and confidentiality are implemented in Lithuanian national legislation. Article 2.23(2) of the Civil Code of the Republic of Lithuania states, that publication of data about person's health condition in violation of the procedure established by law, shall be considered as a violation of privacy. Article 8 of the Law on the Rights of Patients and Compensation of the Damage to their Health establishes not only the patient's right to the inviolability of his private life, but also determines the obligation to collect health data under the legal acts regulating of personal data and to ensure the protection of privacy when handling health data. However this law applies only to institutions, companies and other subjects providing health care services. In addition it should be mentioned, that none of the above specified national legislation, neither EU Charter of Fundamental Rights or The European Convention on Human Rights provide a concept of definition of health data.

Therefore General Data Protection Regulation, not only introduces a definition of health data, but also expands the concept of health data in two important aspects: content and the source of data (Januševičienė 2018).

The GDPR clarifies that health data covers not only the data concerning health, i.e. data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about that person's health status. The Regulation considers that health data may include information about the person collected in the course of the registration for, or the provision of, health care services, a number, symbol or particular assigned to a natural person to uniquely identify that person for health purposes, information derived from the testing or examination of a body part including from genetic data and biological samples or any information/conclusion on, for example, a disease, disease risk (i.e. data concerning the potential future health status of an individual), disability, medical history or the clinical treatment of the physiological or biomedical state of an individual, even independent of its source and the purpose of use (Clause 35 of Preamble of GDPR). Under the Regulation (EU) 2016/679 the purpose of the health data processing is not necessarily related to health protection – for example the pharmacist's information about the antihypertensives, sold to their loyal clients, the results of assessments of child's maturity to study in primary education programs and etc.

Another important point is related to the source of health data. Health data are collected and processed not only in the way of providing healthcare, but also in life sciences industry, biological banks, insurance companies, pharmacies, at schools, in sports clubs, apps of smartwatches that records the activity and health status of data subject, in the State Social Insurance Fund Board under the Ministry of Social Security and Labour and etc. So the GDPR does not establish an exhaustive list of sources from which the health, physical or medical condition of data subject can be predicted. Accordingly to this, the requirements and restrictions in GDPR for health data processing are mandatory not only for healthcare professionals, but for the whole subjects that process personal data corresponding to the content of health data.

Requirements for health data protection and processing and responsibility for violation of GDPR rules

The quantity and the type of health care information and so amount of health data have increased in recent years because of expanding numbers of available technologies for diagnosis and therapy and even the leisure. It means that the details now not only are but must be recorded and thus become available for inspection by the others. Further, information on lifestyle (e.g., use of tobacco or alcohol), family history, and health status have become of greater interest and relevance as we learn more about the relationship of these factors to overall health and well-being. In addition, genetic data are becoming more readily available, not only for prenatal testing but also for assessing an individual's degree of risk for an inherited condition Health Data in the Information Age: Use, Disclosure, Privacy, 1994).

Data subjects (patients) generally understand that, with consent, information about their medical records or other kind of data concerning health will be shared widely within a health care center, hospital or within any other organization or institution. They also expect that data concerning health collected about them will be used only for the purpose of the initial collection and those data will not be shared with people or organizations not authorized to have such information and about which data subject must be informed.

Personal health data is by far the most sensitive category of personal data, which is increasingly becoming a target of cyberattacks and according to the Dutch Data Protection Authority's deputy chair Monique Verdier confirmation, „*the healthcare sector has consistently been in the top 3 sectors with the most data breaches in the past few years. And we're talking about a sector that stores a lot of highly sensitive personal data*“ (Dutch DPA, 2021).

The Regulation obliges data controllers and processors to take as much responsibility as possible for the processing of personal data, and Article 5(2) of the Regulation is particularly important and significant in this context because of setting out the principle of accountability. The essence of this principle is that the data controller and data processor are not only responsible for compliance with data protection requirements, but must also be able to prove that the processing is carried out in accordance with the requirements of the GDPR.

Not only the establishment of the principle of accountability, but also the level of sanctions for data protection breaches is to be considered as another effective tool to promote the importance of the security of personal data. Article 83 of the Regulation lays down the criteria according to which the supervisory authority carries out the assessment and decides on the imposition/non-imposition of a fine and its amount. Depending on the nature of the infringement and other circumstances specified in the Regulation, the amount of the fine is differentiated and may reach up to 10 million EUR or up to 20 million EUR (or 2% or 4% from the total annual worldwide turnover of the previous financial year; whichever amount is higher)

(Article 83 of GDPR). Additionally it should be noted that the payment of the fine does not in any way protect neither data processor nor data controller from the obligation to compensate the individual pecuniary and non-pecuniary damage (Article 82(1) of GDPR).

Having examined the Regulation measures for ensuring data security, firstly it should be noted that each healthcare provider (and all other entities processing personal data relating to personal health) must comply with the general data processing principles set out in Article 5 of the Data Protection Regulation: lawfulness, fairness and transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality and accountability.

In order to ensure the lawfulness of data processing, it is necessary to choose rightfully purpose of health data processing and to indicate the ground for data processing. The Regulation stipulates that personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing of data for archival purposes of the public interest, for scientific or historical research purposes or for statistical purposes in accordance with Article 89 (1) shall not be considered incompatible with the original purposes (Article 5(1)(b) of GDPR).

State Data Protection Inspectorate indicates, that in most cases and depending on the circumstances, health data are processed on one or more grounds, i.e. Article 6(1) (a) (patient consent), (b) (contractual obligation), (c) (legal obligation) or (d) (vital interests of the person) and one or more grounds of Article 9(2) (a) (patient consent), (c) (vital interests of the person) of the GDPR, (h) (provision of health care) and (i) (public interest in the field of public health).

Each health data processor and health data controller must select and establish appropriate technical and organizational measures to ensure compliance with the requirements of the GDPR. There are many different technical and organizational measures for ensuring personal data security, but in order to set or select an appropriate measure, it is recommended to evaluate the risks arising from data processing.

In accordance with Article 35(1) of the GDPR, where the type of processing (in particular when innovative technologies are used and taking into account the nature, scope, context and purposes of the processing) impose the risk for the rights and freedoms of natural persons, there must be the requirement to prepare the data protection impact assessment ('DPIA'). The DPIA is an important reporting measure as it helps data controllers not only to comply with the GDPR, but also to demonstrate that appropriate measures have been taken to ensure compliance with the Regulation. However, it is not necessary to carry out a DPIA for each processing operation. The list of data processing operations subject to data protection impact assessment was approved by Order No. 1T-35 (1.12.E) of 14 March 2019 of the Director of the State Data Protection Inspectorate.

Records of processing activities is another innovation introduced by the GDPR which is actual for handling of special categories of data and where the data processing operations must be described in details. These records can be considered as an internal data processing register of a company or organization, which describes all categories of processed data and processing operations.

Article 37(1) of the Regulation stipulates that the Data Protection Officer must be appointed in any case where:

- the processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
- the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or;

- the core activities of the controller or the processor is the large-scale processing of specific categories of data or the large-scale processing of personal data on convictions and criminal offenses.

Thus, health care companies/institutions must appoint a DPO, while other institutions or bodies must assess the amount and content of the processed personal data.

The online website <https://www.enforcementtracker.com/> contains information about fines and penalties which data protection authorities within European Union have imposed under the GDPR.

Under decision of Data Protection Authority Rheinland-Pfalz made on the 3rd of December in 2019 the University hospital of the Johannes Gutenberg University in the German Region Rheinland-Pfalz had to pay a fine of 105,000 EUR for the insufficient technical and organizational measures to ensure information security (GDPR Enforcement tracker). The hospital had violated the Article 32 of GDPR multiple times during a mix-up of a patient at the admission of the patient. This resulted in incorrect invoicing and revealed structural technical and organizational deficits in the hospital's patient management.

For the same type of violation the Dutch Data Protection Authority impose a fine of 440,000 EUR on Dutch Haga hospital on the 18th of June 2019 (GDPR Enforcement tracker). The investigation of Dutch Data Protection Authority followed when it appeared that dozens of hospital staff had unnecessarily checked the medical records of a well-known Dutch person. The Dutch DPA concluded that the Haga Hospital had taken insufficient security measures with respect to authentication and the control of logging, which constitutes a violation of Article 32 of the GDPR.

The Spanish data protection authority on the 25th of February 2020, issued a resolution and fining HM Hospitales 1989, S.A. 48,000 EUR for violating Articles 5(1)(a) and 6(1)(a) of the General Data Protection Regulation – for insufficient legal basis for data processing (GDPR Enforcement tracker). In particular, the Resolution outlines that a complainant argued that at the moment of his admission in the hospital he had to fill a form including a checkbox indicating that, in case he did not tick the same, he agreed to the transfer of his data to third parties. In addition, the Resolution highlights that the form provided by HM was not compliant with the GDPR since consent was obtained through the inaction of the data subject.

On the 1st of December 2020 the Estonian DPA fined three online pharmacies 100,000,- EUR each for processing personal data without the consent of the data subjects - for insufficient legal basis for data processing (GDPR Enforcement tracker). The data in question are prescriptions for medicines of the data subjects. Third parties were able to view another person's current prescriptions in the e-pharmacy environment without their consent, based only on access to their personal identification code. The DPA highlighted that while it must be possible to purchase prescription drugs for other people, it is the responsibility of the company to ensure that the the prescription information is accessed with the consent of the prescription holder.

On the 17th of July 2018 Centro Hospitalar Barreiro Montijo has been fined 400,000 EUR by Portuguese Data Protection Authority for three violations of GDPR. Investigation revealed that the hospital's staff, psychologists, dietitians and other professionals had access to patient data through false profiles. The profile management system appeared deficient – the hospital had 985 registered doctor profiles while only having 296 doctors. Moreover, doctors had unrestricted access to all patient files, regardless of the doctor's specialty (GDPR Enforcement tracker). So first was a violation of Article 5(1)(c), a minimization principle, by allowing indiscriminate access to an excessive number of users, and a violation of Article 83(5)(a) a violation of the processing basic principles. For those, the fine was 150,000 EUR. The second, a violation of integrity and confidentiality as a result of non-application of technical and

organizational measures to prevent unlawful access to personal data under Article 5(1)(f), and also of Article 83(5)(a), a violation of the processing basic principles. There, the fine was 150,000 euros. Finally, the hospital fined for 100,000 EUR under Article 32(1)(b), the incapacity to ensure the continued confidentiality, integrity, availability and resilience of treatment systems and services as well as the non-implementation of the technical and organizational measures to ensure a level of security adequate to the risk, including a process to regularly testing, assessing and evaluating the technical and organizational measures to ensure the security of the processing.

On the 26th of February 2021 Lithuanian Data protection Authority (DPA) imposed a fine of 12,000 EUR on the Lithuanian National Health Service (NVSC) for violation Articles 5, 13, 24, 32, 35, 58 (2) and 3,000 EUR on the company 'IT sprendimai sėkmei' violation Articles 5, 13, 24, 32, 35 of the General Data Protection Regulation. The DPA had opened an investigation regarding a quarantine app introduced in Lithuania during the COVID-19 pandemic in spring 2020. The company 'IT sprendimai sėkmei' had developed the app, which was then used by the NVSC. In the course of the investigation, the DPA found that during the app's period of use, the data of a total of 677 individuals had been processed in varying degrees. The app was able to collect data such as the name, address and phone number of the data subjects. The DPA concluded that the controller had not taken sufficient technical and organizational measures to protect the data processing. Furthermore, a data protection impact assessment was not carried out, although this would have been necessary in particular because the app also processed special categories of personal data including health data. The DPA further stated that the controller had provided non-transparent and incorrect information in the app's privacy policy.

On the 11th of February 2021 The Dutch data protection authority, imposed a fine of 440,000 EUR on the Amsterdam hospital OLVG (GDPR Enforcement tracker). The Dutch DPA constituted a violation of Article 32 of the GDPR, as the hospital had taken insufficient measures between 2018 and 2020 to prevent access by unauthorized employees to medical records. This resulted, among others, in working students and other employees being able to access patient files without this being necessary for their work. Besides medical records, the patient files also contained, the social security numbers, addresses and telephone numbers of the data subjects.

After considering different decisions and the amounts of imposed fines for health data processing, it must be concluded, that data protection authorities are being particularly vigilant in the field of the handling of health data. It is not just because of the particular sensitivity of these data, but also for seeking to improve health data protection and to remind that requirements of GDPR for data processing are not just formality.

Conclusions

The right to privacy and the protection of personal data are guaranteed by the legal framework of both the European Union and the Council of Europe, which ensures the protection of fundamental human rights. Both the right to privacy and the protection of personal data are not absolute, so restrictions on these rights are possible in order to strike a balance while ensuring other human rights.

The right to privacy and the protection of personal data are closely interlinked, sometimes even overlapping rights, but they are not identical rights (although they defend similar values - human dignity, the right to autonomy, the secrecy of private life, etc.). According to the ECHR, the protection of personal data is to be considered as an expression of the right to privacy.

Quality protection of privacy is not possible without the protection of personal data, including legal regulation of health data. General Data Protection Regulation redraws the limits of liability for compliance in data protection law and increases importance of personal data protection and privacy issues. The data controller must prove that the correct technical and organizational measures have been taken to protect the data and that the data processing complies with the GDPR. Because of the analysis and organization of processes related to the processing of personal data, substantial progress was made in health data protection having in mind the particular sensitivity of data. Information about the imposed fines confirms, that the requirements of GDPR for health data processing are not formal and declarative – they also contribute directly to the protection of privacy.

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THE INFLUENCE OF SUPPORTING UNIVERSITY EMPLOYEES' MOTIVATION AND CREATIVITY ON THE EDUCATIONAL INSTITUTIONS' SUCCESS AND THE DEVELOPMENT OF SOCIETY

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Abstract. *The aim of the article is to reveal the interrelationships between the processes of motivation and creativity in the academic environment which could be used to support the success of the educational institution, and thus in the development of society.*

For the purpose of obtaining information, a questionnaire survey was carried out in 2019 focused on decisions on academic motivation and creativity. The sample consisted of $n = 90$ respondents working at one of the universities in Slovakia. The main finding was the confirmation of hypothesis HA: The development of creativity and motivation is influenced by similar factors.

The output of the article is a proposal for a model of connecting key elements of effective decision-making on the development of creativity and motivation in the academic environment which would reflect on the rapidly changing environment. The educational institution can be described as creative only if the individual elements and processes in the university environment are creative. Members of the academic environment thus directly influence not only the development of the institution but also the development of young people and thus society.

Keywords: *academic motivation, academic creativity, teachers and managers, research, development of society.*

JEL Code: *M12 Personnel Management, I23 Higher Education.*

Introduction

Motivation is generally a complicated phenomenon (Reeve, 2009; Kim & Chu, 2011; Beck, 2021). It touches, it forms respectively, the basis of the personality of each individual and each (social) group. Scientists and practitioners from all over the world devote attention to it for many decades, trying to reveal its matter of fact and better understand the mechanisms of its functioning. Namely, „motivation or internal states play an important role in initiating behaviour, selecting actions to perform, and orienting the actions to achieve desired goals” (Alarcón, 2021).

Motivation is a reflection and explanation of internal cognitive-energetic events, giving the behaviour of human beings a dimension of justification, pro-social significance, and usefulness. Motivation is the basic force starting, maintaining, and completing the effort of each individual. Because the motivation of employees and managers of organizations, companies, firms, institutions, communities, etc. generates performance and all purposeful efforts throughout the economy, motivation needs to be improved. In doing so, the basis of effective motivation is an efficient motivating of individuals and groups. However, motivating is not easy because: „Employees of different positions differed in terms of motivation and motivational profiles“ (Kcharchenko, 2021, p.156).

Especially in difficult periods, when it is necessary to motivate new ideas, bold solutions, unique values, i.e., to motivate for creativity, the topic of correct *motivation and creativity of higher education staff* emerges. In fact, motivated university teachers, scientists, and managers are able to pass their enthusiasm and creative thinking patterns to their students. In this way, they can gradually disseminate motivation and creativity to the whole economy.

Creativity, as the second phenomenon explored in the article, represents a unique concept, property, skill, talent, process, as well as the result of the creative activity of individuals and groups. There is an increasing awareness of the importance of fostering creativity and innovation in higher education due to higher education's critical role in individuals' information age (Abu Shokeedem, 2020). Like motivation, creativity is full of different meanings and contradictions too. According to Panja: „Being creative in one's profession often holds its objective treatment to the concept of creativity which is understood to be an expression of the individual talent in a form which is not controlled by the individual itself; rather it is understood to be performed by somebody who is beyond the individual” (Panja, 2018).

Usually, the literature devotes sufficient research space to the creativity of higher education students. However, the creativity of higher education staff is much less explored. Even, the study of the motivation of academy staff in relation to their creativity is absent in the literature. For this reason, *the article's aim* is to analyse, synthesize and generalize theoretical views on both research concepts, related to the environment of a modern university.

Methodology of the Research: The empirical part presents the results of a questionnaire survey conducted on a sample of $n = 90$ academic employees and managers. It focuses on exploring the interdependencies between perceived motivation and creativity. The article concludes with two partial models that are designed as recommendations for more meaningful motivation for creativity in higher education.

Motivation and creativity in the academic environment

When considering *academic motivation*, scientific studies are the most strongly devoted to student motivation (e.g., Kiliç, Kiliç & Akan, 2021), their demotivation (e.g., Dörnyei & Ushioda, 2021), or a-motivation (e.g., Ratelle et al., 2007).

However, more and more attention is being paid also the motivation of pedagogical, scientific, administrative, and managerial staff of higher education. In this view, the motivation to teach (Dörnyei & Ushioda, 2021) and motivation to research (Hermida, 2021) is often searched. Currently, also the motivation to philanthropy and donor (Conley & Shaker, 2021), motivation to sustainability in higher education (Blašková et al., 2019), teacher's motivational role, and motivational practices (Yang & Wyatt, 2021), etc. are searched.

Wasserman & Wasserman introduce a new concept, i.e., potential motivation: “It is the maximum effort an individual would be willing to exert to satisfy a motive and is distinguished from motivation intensity which refers to the amount of effort actually expended to reach a goal or satisfy a motive... the expenditure of effort in obtaining the same goal can vary considerably” (Wasserman & Wasserman, 2020, p.85). It can be deduced that just the possible, available will and preparedness of academic staff, i.e., their overall motivation capacity decides how much energy the lecturers and scientists input to the teaching and research. It determines the amount of personal insert, non-traditional methods, and creativeness they transfer to the work done.

This means that **linking the motivation with the creativity** of higher education staff is extraordinarily important. *Academic creativity* can be considered the process of introducing new knowledge or ideas (Wang & Netemeyer, 2004) implemented in teaching and research

(Rahimnia et al., 2019). According to Shah et al., creative work performance in higher education is related to higher on-the-job or off-the-job organizational support (Shah et al., 2020).

Universities as intellectual and creative organizations have to put their managerial emphasis on developing an atmosphere and conditions characteristic by/for the “academic freedom concept and phenomenon“ (Ponomareva & Ponomarev, 2021). Even, Marginson deals with the radical-creative imagination and identifies the core elements of academic self-determination as agency freedom, freedom as power, and freedom as control (Marginson, 2008). Because creative thinking and creative behaviour are affected by skills, attitudes, motives, and personality traits (Hooi Lian & Awawdeh, 2020), academic creativity has to be supported by appropriate leadership (Youngquist, Line & Pyle, 2019).

Standardly, academic creativity can be explained or measured in many ways and approaches. For example, the number and impact factor of publications are standardly accentuated (by ministries of many countries, especially when providing the new accreditation for a study program, faculty, or university). Paradoxical is when evaluating and getting various national or international grants or funds for scientific efforts (projects), the future, i.e., potential scientific creativity and responsibility are judged that is based on the number and quality of previous scientific outputs.

On the other hand, Mould, Vorley & Roodhouse consider with emphasized the commercialization and technology transfer of academic research in England: „Entrepreneurial university... seeks to protect and commercialize creative intellectual property“ (2009). In this view, also Moraru highlighted that the number of academic papers and citations is less important than the creative involvement of teachers and students in solving industry problems (2018).

University teachers can create an engaging environment that encourages students to take a deep approach to learn – in this way, they help students in developing their cognitive skills, competencies, and practices that are essential for professional practice (Hermida, 2021). However, the essential creative work – mission – of the academic staff itself is probably the most complicated, i.e., effort/work of creative practitioners (Strange, Hetherington & Eaton, 2016) within the university (e.g., writers, constructors, disclosers). To produce the creative outputs in higher education (papers, studies, books, monographs, models, patents, etc.) needs the strong motivational reviving; the creativity has to be motivated, i.e., increased, improved, appropriately oriented, and harmonized with other ‘gifts’, intelligences or competences of the individual.

In this perspective, the academic staff’s motivation and the academic staff’s creativity are linked mutually and connected closely. Simply stated: they have to be searched commonly.

Methodology

For the purposes of this article, the authors defined several research questions focused on the area of motivation and creativity, from which the H_A hypothesis subsequently emerged. The questions were abbreviated to QM (questions about motivation) and QC (questions about creativity). These issues include:

- QM1: What factors influence the academic environment members’ motivation?
- QM2: What factors positively influence the academic environment members’ motivation?
- QM3: Which factors are the most important for the academic environment members in terms of effectiveness in supporting motivation?

QC1: What factors influence the academic environment members' creativity?

QC2: What factors positively influence the academic environment members' creativity?

The main hypothesis focused on examining the interrelationships between factors influencing motivation and those influencing creativity. The authors' assumption was related to a similar influence of these factors on both processes (motivation and creativity). *Figure 1* shows the link between the defined questions, the hypothesis, and also the problem of low motivation to be creative in the university environment. The wording of the hypothesis is as follows:

HA: The development of creativity and motivation is influenced by similar factors.

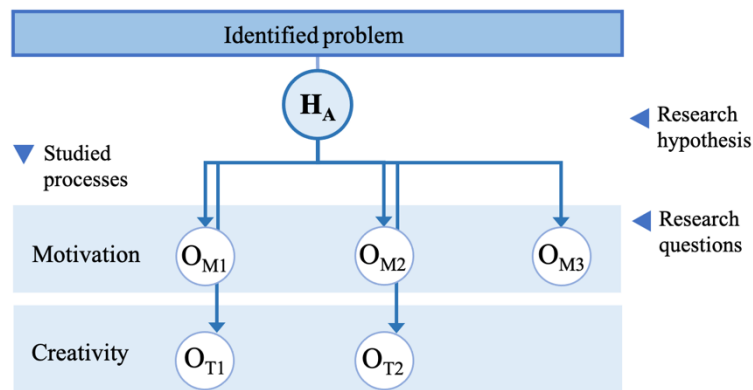


Figure 1. Relationships between research questions and hypotheses

Source: own elaboration

As was mentioned above, the research questions were examined using the method of sociological questioning, via the questionnaire survey technique. This survey was conducted in 2019. The basic sample consisted of university teachers and research staff. In order to be able to confirm the defined authors' assumptions in a short time, the selection of the real research sample was narrowed down to those respondents who work at the University of Žilina in Žilina, specifically at the Faculty of Management Science and Informatics. All employees or managers were contacted at this workplace without any difference. From this research, specific findings emerged that can be used as a basis for future in-depth analysis on a larger, expanded sample.

The size of the basic sample was determined based on documents from the personnel department of the Faculty of Management Science and Informatics – the number of employees to 1 January 2021, the number represents 124 employees. The real research sample size (answers obtained) is 90 respondents with a tolerable error of 5.43% (Raosoft, 2020). The created questionnaire survey contained 20 questions, which included closed questions with a scale or defined options, as well as open questions where respondents could express their opinion or suggestions for improvement. For the purposes of evaluation, several questions were selected, the essence of which was related to the process of motivation, creativity, and decision-making. The analysis of specific questions was chosen in relation to the defined research questions.

Results – Descriptive statistics

In the initial examination, respondents were divided into several categories according to basic characteristics (*Table 1*). The sample consisted of 61.11% men and 38.89% women, the

most represented was education at the level of PhD., the average age of respondents was 48 years and the average number of years of experience was 23 years.

Table 1. Basic characteristics of respondents

Source: own elaboration

Characteristics		[%]
Sex	Male	61.11%
	Female	38.89%
Education	Vocational school	0.00%
	Secondary education	10.00%
	Higher education – first and second degree	15.56%
	PhD.	43.33%
	doc.	21.11%
	prof.	10.00%
Average age		48
Average number of years of experience		23

QM₁ and QM₂: Following the first research question, the respondents' opinions on the elements influencing their motivation were evaluated from the point of view of frequency (Table 2). The university managers and employees chose the pre-defined elements that contributed the most to the change in their motivation (positive or negative). The factor „gradual maturation and personality development” was the ranked highest with a frequency of 43.33%.

Regarding the second research question, we noticed that some of the factors may have a negative effect on respondents' motivation. This is exactly the factor „long-term fatigue, stress, and burnout” that was ranked second in with frequency of 34.44%. This finding can also be interpreted through the following model situation: if the motivation of teachers is significantly influenced by this negative factor, it is important that the faculty and university focus on creating an environment and processes that will minimize these impacts.

The third place in terms of frequency is occupied by the factor „health and state of health”. Its impact on motivation can be analysed in terms of both positive and negative impacts (31.11%). The model situation can be defined as follows: if the health of a member of the academic environment (manager, employee) is “broken”, such a person will be stressed, and his motivation will decrease. On the other hand, it can be assumed that if the health condition of a member of the academic environment is in order, he will have enough energy and his motivation will be supported.

Table 2. The frequency of elements that contributed the most to the change in the motivation of teachers

Source: own elaboration

Options	Frequency	[%]
1. Gradual maturation and development of one's personality	39	43.33%
2. Long-term fatigue, stress, and burnout	31	34.44%
3. Health and health condition	28	31.11%
4. Significant success at work	23	25.56%
5. Awareness of one's qualities and benefits	22	24.44%

QM₃: In an effort to answer the third research question, we decided to focus on the analysis of the real application of motivational tools in relation to their effectiveness. Respondents from the point of view of the tools' application for the support of motivation in the largest representation marked the factor „*providing personal bonuses and rewards*” (with a frequency of 75.56%). Subsequently, the factor „*providing space for independence*” came at second place (with a frequency of 67.78%). Respondents consider „*applying threats and sanctions*” to be the least used motivational tool in the academic environment, which is a positive element of this environment (*Table 3*).

In third and fourth place in the ranking of the tools that were applied in real environment, are „*correctness from the superiors and management; and creating good relationships and atmosphere*”. These two factors were simultaneously identified as the most effective. It can be stated that the respondents consider „*the correctness from the superiors and the management*” as the most effective motivational tool, which received 700 points in the total score. Based on a comparison of the actual application and effectiveness of motivational tools in the academic environment (*Table 3*), it can be stated that the first four most effective motivational tools were and are applied in the academic environment according to the respondents.

Table 3. Really applied motivational tools and their effectiveness

Source: own elaboration

Options		Application of tools		Effectiveness of tools – Frequency
		Frequency	[%]	
1.	Providing personal bonuses and rewards	68	75.56%	667
2.	Providing space for one's independence	61	67.78%	662
3.	Creating good relationships and atmosphere	54	60.00%	699
4.	Correctness from the superiors and management	53	58.89%	700
5.	Expressing a praise	50	55.56%	535
6.	Expressing an interest in one's opinions	46	51.11%	549
7.	Option of further development and education	44	48.89%	439
8.	Providing the necessary information	44	48.89%	523
9.	Enabling career growth	39	43.33%	423
10.	Involving employees in decision-making	32	35.56%	438
11.	Criteria for evaluating one's work performance	30	33.33%	410
12.	Applying threats and sanctions	6	6.67%	422

However, in further examining the effectiveness of the motivational factors, the most important tools can also be mentioned among those that have already been identified as effective (*Table 4*). In this case, „*creating good relationships and atmosphere*” (109 points) and „*correctness from the superiors and management*” (106 points) are in the first two places of the order of importance. The following were included: granting personal allowance and rewards; providing space for your independence; and a compliment.

Table 4. The order of the most important factors in terms of effectiveness, sorted by frequency

Source: own elaboration

Options		The number of most important factors			Total score
		The highest	Medium	The lowest	
1.	Creating good relationships and atmosphere	15	23	18	109
2.	Correctness from the superiors and management	21	15	13	106
3.	Personal bonuses and rewards	26	4	15	101
4.	Providing space for one's independence	10	11	14	66
5.	Expressing a praise	4	9	4	34

OT₁ and *OT₂*: In relation to creativity and the factors that influence it in the academic environment, the opinions of the respondents were also surveyed (Table 5). The most important factors influencing the change of university staff's creativity were: „pleasant working environment” with a percentage of 75.56%, „good relationships and teamwork at work” (52.22%), and „important person” (48.89%).

Table 5. The frequency of elements that contributed the most to the change in teachers' creativity

Source: own elaboration

Options		Frequency	[%]
1.	Pleasant working environment	68	75.56%
2.	Good relationships and teamwork at work	47	52.22%
3.	Important person (parent, teacher, friend)	44	48.89%
4.	Harmonious family life	43	47.78%
5.	Good friends	32	35.56%
6.	Long-term fatigue, stress	28	31.11%
7.	Health problems	26	28.89%

Results – Relationship analysis

H_A: When examining the interrelationships, it was necessary to create a uniform categorization of factors from the perspective of the established hypothesis. The questions in the questionnaire survey were divided into separate areas, which i.e., included the area of motivation and creativity. Within the area of motivation, respondents had to evaluate the motivational effects (Table 2) and in the area of creativity, they had to evaluate the influences that affect their creativity (Table 5). To ensure clarity for respondents, the names of the factors were different, but for comparison purposes, it was necessary to create a new categorization based on the significance in which potential correlations were revealed.

The first step in creating the presented categorization was to define five categories, in which, according to their importance, two factors from two selected areas of influence (motivation and creativity) were included. These categories include: (1) a pleasant working environment and success at work; (2) failures and negative impact of the environment; (3) friends and family; (4) stress, fatigue, and health problems; (5) personal development.

Subsequently, for the two factors falling into one category, values representing their designation or non-designation by the respondents (values 0 or 1) were calculated, thus expressing the sum for the specified category. The resulting recalculation contained values of 0, 1, or 2, with a value of 2 indicating the designation of both factors by the respondent, a value of 1 indicating only one of the two factors, and a value of 0 expressing no designation in the

given category. These values were evaluated as *the strength of the influence of the given category* on motivation or creativity, where value 2 represented the strongest influence.

After the presented step, the relationships between categorized factors were examined. Using the statistic software, the calculation of the chi-square test was performed with a permissible error of 5% and a confidence interval of 95%, while the dependence was confirmed if $\chi^2 > c$; $c = 9.488$ at $\chi^2 (4)$. The dependence between all categories and their influence on motivation and at the same time on creativity was statistically significant (Table 6).

Table 6. Statistical significance of the influence of categorized factors on motivation and creativity – from the teachers' point of view

Source: own elaboration

Impact on motivation	Chi-square test	Impact on creativity
Pleasant working environment and success at work	χ^2	9.556
	P-value	0.049
	Significance	yes
Failures and negative impact of the environment	χ^2	23.469
	P-value	<0.001
	Significance	yes
Friends and family	χ^2	15.926
	P-value	0.003
	Significance	yes
Stress, fatigue, and health problems	χ^2	32.263
	P-value	<0.001
	Significance	yes
Personal development	χ^2	10.103
	P-value	0.039
	Significance	yes

81.48% of respondents from those who stated that the first categorized factor „*pleasant working environment and success at work*” affects their motivation, are inclined to the fact that it also affects their creativity. Taking a specific view of the respondents who stated that the presented factor has the strongest influence on their motivation (frequency at value 2), up to 75% of them stated that this factor has the strongest influence on their creativity.

The overwhelming majority of respondents stated that the second categorized factor „*failures and negative impact of the environment*” do not have a positive effect on supporting their motivation (75 respondents). As many as 78.67% of respondents are inclined to the fact that this factor does not affect the support of their creativity. Although the above statement concerning the second factor is reversible compared to the findings of the first factor, it supports the assumption that respondents' motivation and creativity are influenced by similar factors.

Among the respondents who are motivated by the factor „*friends and family*”, up to 73.68% stated that this factor also affects their creativity. A statistically significant difference was identified in comparison with those respondents who are not affected by this factor. Regarding the fourth categorized factor, which is „*stress, fatigue, and health problems*”, 43 respondents stated that it affects a negative change in their motivation. 65.12% of respondents are inclined to the fact that the same factor also affects the negative change in their creativity.

The significance of the relationship between the category of factors „*personal development*” and its impact on motivation and impact on creativity was also statistically confirmed. In the case of employees, this category includes two separate factors, which are: *sufficient leisure time and an art school, course, or training*. In a detailed examination of this categorized factor, it can be stated that 67 respondents out of the total number ($n = 90$) do not consider this factor to be important for increasing their motivation. 85.07% of respondents, whose motivation is not influenced by this factor, are inclined to the fact that it does not affect the support of their creativity.

The above findings, resulting from a detailed analysis of the frequency of individual responses, *confirms the validity of the H_A hypothesis* for those factors where the statistical significance of the dependencies was confirmed (*Table 6*),

Discussion

The key importance of the creative environment is also supported by Anjum et al., who argues that it is the university environment that can create unique conditions that inspire members of this environment to increase their enthusiasm and creativity (Anjum et al., 2021).

An integral part of the presented recommendations is also *the mutual relations between individual elements and processes*. These relationships can be described as continuous and bidirectional feedback. The opinions of many authors also agree that providing quality feedback is a multifaceted and complex activity. Bi Ying et al. describe the constructive feedback of teachers as a crucial element in promoting the students’ authenticity, autonomy, competencies, and motivation (Bi Ying Hu, 2021).

From the perspective of the success of the organization as a whole, Urdan and Kaplan also argue that it is essential to support employees in discovering new contexts and developing new skills. As a result, members of the academic environment will be encouraged to have an inner understanding of success and are more likely to be more involved in the implementation of the solution and more determined to overcome potential obstacles (Urdan & Kaplan, 2020).

Conclusions

The aim of the present article was to identify the interrelationships between the processes of motivation and creativity within the academic environment. The intention was to use these links to support members’ motivation for creativity of the university environment. The development of employees should subsequently lead to the support of the success of the educational institution, which will thus bring higher value to end customers (in this case students), thus supporting the development of the company.

In order to reveal the mentioned relationships between the processes, a detailed analysis was performed. By studying literary sources, conducting interviews, as well as a questionnaire survey directly in the university environment, it was possible to draw the main findings. Based on the examined relationships and the results of the analyses, it can be stated that the H_A hypothesis was confirmed. This finding can be used *to support motivation and creativity*, where similar factors could be chosen when deciding to support these processes. Thus, it is clear that in a university environment, there should be support for motivation to be creative, which can be realized by appealing to a series of pre-selected factors.

That is why we further focused on a procedural view that would help to involve these aspects in the functioning of university practice. The partial models created so far (concerning the interrelationships between the processes of motivation, creativity, and decision-making), which have been analysed through previous research, have been logically linked. This could

create a model of linking key elements of effective decision-making on the development of creativity and motivation in the academic environment (Figure 2).

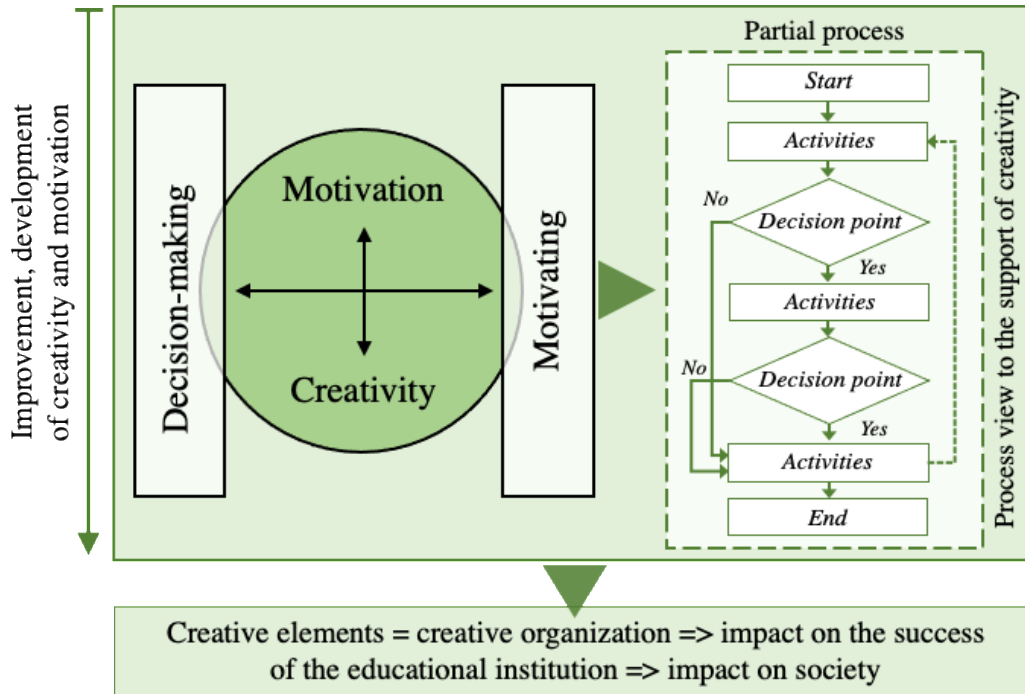


Figure 2. Linking key elements of effective decision-making on the development of creativity and motivation in the academic environment

Source: own elaboration

The model above is the authors' recommendation for *promoting creativity in the academic environment*. The identified relationships between the elements will contribute to the improvement and development of this environment members' creativity and motivation. It will be possible to characterize the individual elements as creative, which will make the organization as a whole more creative, and thus the premise of its future success will be fulfilled.

The proposed model also includes the generally illustrated partial process. This process is an example of *the logical sequence of steps* that should be used in the actual implementation of decisions to support motivation and creativity. Therefore, this section was elaborated in detail using a recommendation in the form of a model called *Recommended process of the support of creativity* (Figure 3).

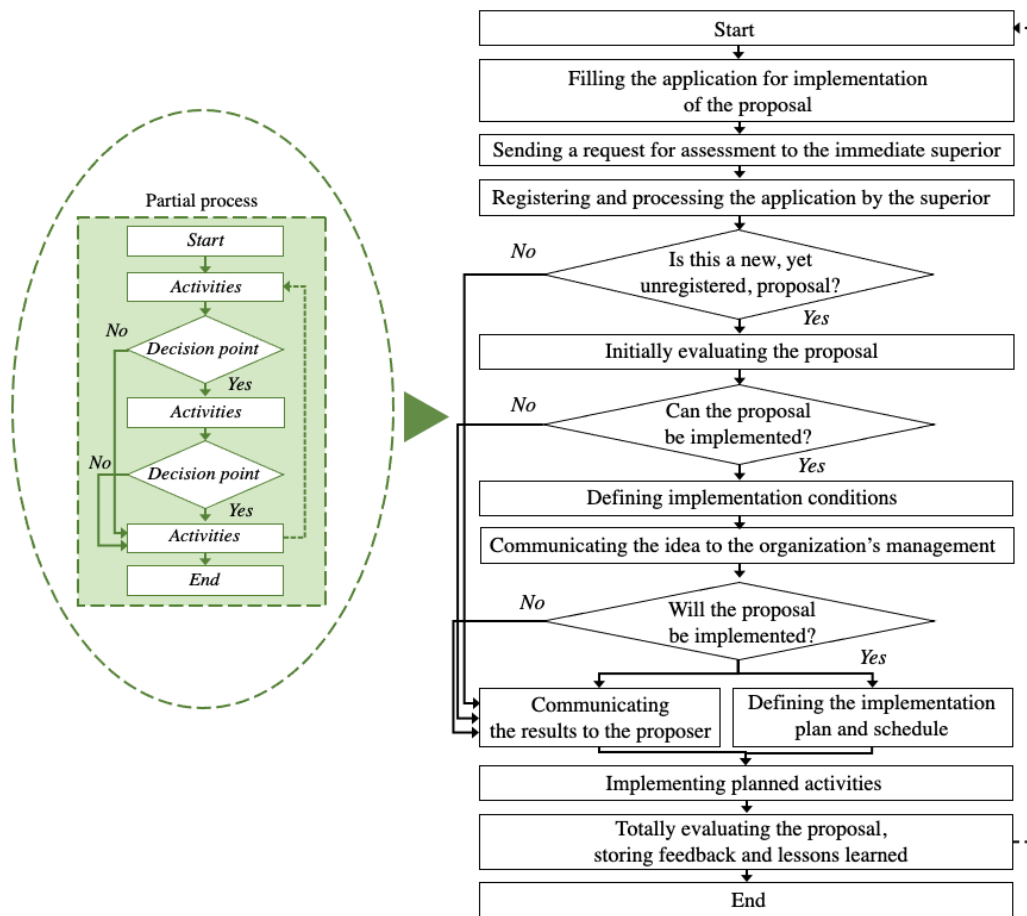


Figure 3. Recommended process of the support of creativity

Source: own elaboration

In conclusion, the university should focus on supporting the motivation of its employees to enrich and support its environment, increase the productivity and gain a competitive advantage. As the factors supporting motivation are directly linked to the factors that support creativity, it is clear that there will also be indirect support for creativity. However, this indirect effect on the promotion of creativity should be used and the promotion of creativity should also be set up through targeted decision-making.

In this way, through the direct support to members' creativity and motivation of academic environment, as well as through a well-thought-out decision-making process, *a motivating impact on students will be achieved*. It is assumed that students, as young people who focus on their first work experience during this period of their lives, will support the development of society as a whole with their enhanced creativity.

However, the future focus of the presented research could also focus on the expansion of the research sample across other universities in Slovakia. Furthermore, the extended results could be compared with other countries in order to fulfil the objective generalization of results internationally.

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A GENERAL OVERVIEW OF THE FIELD OF INTERNAL SOCIAL RESPONSIBILITY WITHIN SUSTAINABILITY

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Abstract. *More and more companies and institutions claim day by day to be committed to sustainability, a multidisciplinary concept comprising social, environmental, and economic issues, as well as directly reflected in terms of people's welfare, quality of life and security. As a result, sustainability appears as a concept closely linked to social responsibility –or to corporate social responsibility in case of organizations– and, consequently, as a very difficult concept to be concisely defined.*

In this sense, and even when sustainability involves both internal and external dimensions, most sustainable policies and actions have been –and still are– aimed at external target audiences. Meanwhile, evidence of the incorporation of sustainable and responsible principles into internal management in organizations are not so common, even when this same evidence also shows that most effective external actions are supported by the prior commitment of employees to responsibility and sustainability (just as in case of internal marketing or internal corporate social responsibility regarding their external counterparts).

Similarly, the content of the contributions in the academic literature has been mostly devoted to the external aspects of corporate responsibility and sustainability and –although an increasing number– a few of them have focused on their internal dimensions, then suggesting that there is still much to be done.

On the above, once approached the concepts of internal marketing and internal social responsibility, and based on the academic literature, this paper aims to analyse the relationship between corporate social responsibility and human resource management. Then, with an exploratory purpose, a first and general overview about the number of contributions published in the field is intended, as well as about the way in which academic literature discusses and analyses how sustainable principles are being adopted in human resource management in organizations. This way, using the publications included in the Google Scholar database as a reference, we can conclude a preliminary idea of how this topic has been contributing and can contribute in the near future (reinforced by the current relevance of the UN Sustainable Development Goals –and specifically the SDG 8 on decent work and economic growth–) to the achievement of successful sustainable practices, as a starting point for further research and developments.

Keywords: *Corporate Social Responsibility, Human Resource Management, Sustainability, Employees, Internal Marketing, Internal Social Responsibility.*

Introduction

After the unexpected and harsh first impact of the COVID-19 pandemic and associated confinement in 2020, day by day more and more companies and institutions claim to be to some extent committed to sustainability, a multidisciplinary concept comprising social, environmental and economic issues (see e.g. Alhaddi, 2015), as well as directly reflected in terms of people's welfare (e.g. DiMaria, 2019), quality of life (e.g. Fuchs et al, 2020; Grum and Grum, 2020) and security from different views, as food security (e.g. Michalk et al, 2019; Schleifer and Sun, 2020; Subramaniam, Masron and Azman, 2020), energy security (e.g. Axon and Darton, 2021; Balezentis et al, 2021), etc. In this last sense, a relationship between sustainability and its promotion through security and safety education has also been claimed (Gawlik-Kobylnska, 2021). As a result, sustainability appears as a concept closely linked to social responsibility –or to corporate social responsibility in case of organizations– and, consequently, as a very difficult concept to be defined (Taticchi and Demartini, 2020).

What is more, sustainability involves internal and external dimensions (Spallini et al, 2021) and practices, but most sustainable policies and actions have been –and still are– aimed at external target audiences. Evidence of the incorporation of sustainable and responsible principles into internal management in organizations is not so common, even when most effective external actions seem to be supported by the prior commitment of employees to sustainability (e.g. Low, 2016; Buell and Kalkanci, 2021), just as in case of internal marketing (Sánchez-Hernández and Grayson, 2012) or internal corporate social responsibility regarding their external counterparts (Sánchez-Hernández et al, 2016).

Similarly, the content of the contributions in the academic literature has been mostly devoted to the consideration of external aspects of corporate responsibility and sustainability and –although there is an increasing number of such contributions– a few of them have focused on internal dimensions, then suggesting that there is a gap in the existing literature as well as still much to be done, starting by shedding light on the situation of the research in this field up to the present time.

On the above, and based on existing contributions, the purpose of this paper is twofold: firstly, we aim to explore the linkage of the concepts of internal marketing and internal social responsibility in the literature on Human Resource Management (HRM); secondly, we also aim to determine the potential stages in the evolution of the number of publications connecting Corporate Social Responsibility (CSR) and HRM practices, putting the seed to the development of the different aspects of internal CSR.

At this purpose, the next section approaches the concepts of internal marketing and internal social responsibility as a continuation or development of the theories on human resource management, as well as the inclusion of the concerned issues in an Integral Corporate Social Action Plan. Then, the third section shows, with an exploratory aim, a first and general overview about the number of contributions published in the field, by using the publications included in the Google Scholar database up to 2020 (and specifically in the period 2000-2020) as a reference. The way in which academic literature focuses on how sustainable principles are being adopted in human resource management in organizations is also discussed and a proposal on the stages in the evolution in the number of publications in the field is suggested. The fourth section includes a consideration on the relevance of the UN Sustainable Development Goal 8 (SDG 8) to the development of future research linking CSR and HRM practices. Finally, conclusions are presented.

Internal marketing and internal social responsibility as a continuation of HRM theories

Practices related to systems and techniques of personnel organization and management –albeit more or less consciously considered and conducted– go back to the time when people began to consider the achievement of goals by working together. However, it was not until the beginning of the twentieth century, once the Second Industrial Revolution was consolidated, when the basis was settled to properly begin to talk about a real theory of organization and management of human resources (Vázquez-Burguete and García-Miguélez, 1999 and 2017).

In such context, Frederick Winslow Taylor’s “Principles of Scientific Management” constituted a “revolution” in systems and techniques of personnel organization and management when published in 1911, just as technical advances revolutionized working conditions and work itself.

Changes in market circumstances and requirements were reflected in the application, modification or substitution of Scientific Management principles, thus giving chance to new models or theories in HRM, such as Theories X and Y. Specifically, Theory X appeared when Douglas McGregor (1960) intended to name his assumptions on “traditional” approaches related to human nature and, specifically, to the nature of workers. To be precise, he chose the term “X” as preferring a “neutral” terminology to characterize and define such principles, so avoiding other terms with negative or pejorative connotations, but keeping in mind the idea of defining a frame representing the “old”, “antiquate” or “obsolete” face in HRM, all within a context of rigid, static and markedly pessimistic work. The classical topic in Labour Law about the “class struggle” between rights and commitments of those who “order” and those who “obey” was around at the time, that is, the antithesis of interests between “maximization of benefit” vs. “minimization of effort”.

In contrast with Theory X, McGregor also suggested the postulates of Theory Y. This was also a “neutral” terminology aimed to clearly define what he considered positive or laudable principles characterizing “new”, “current”, “good”, “flexible” or “up-to-date” and “successful” approaches in practices dealing with HRM and administration. The working context was presented as dynamic, flexible and optimistic, clearly stressing the desirability of having motivated and satisfied workers at disposal and encouraging self-control and free initiative (within limits).

In the 50s, while the abundance of workforce in Western countries allowed the development of mass production and consumption, the situation in Japan after the big World War was pretty different, thus leading to the transformation of Taylorism with quite different parameters. The new working approach was known as Toyotism (as mainly attributed to Toyota’s founder, Sakichi Toyoda, together with his son Kiichiro Toyoda and the engineer Taiichi Ohno), and aimed the maximization of efficiency due to the need of producing relatively small quantities of many products, so being designed to be very flexible and to face difficult diversification circumstances (Coriat, 1995) increasing productivity through effective management and combined work, a step forward from mechanization and individualism that characterized Taylorist and Fordist processes. Later on, Toyotism would evolve into Lean Manufacturing and other hybrid approaches to work management in Western countries.

Some years later (in the 70s and 80s) the first postulates of Theory Z appeared in personnel management (then this terminology being considered as preferable to that of “human resource”), based on different contributions by Japanese authors as Ouchi (1981) or Amako (1982). Performing accordingly to this reasoning, higher levels of commitment in all involved workers would be assured, regardless of their specific tasks or positions in

hierarchical scales. While corporate philosophy and values would be in charge of guiding and directing the personnel management practices, a comprehensive approach to working in organizations would be advocated and encouraged in contrast to the risk of a hypothetical loss of personal identity of the individual in favour of corporate identity. Workers were considered as having an immense imaginative and creative potential, which could be exploited when pursuing collective goals far away from outdated reductionist identification of workers as merely another productive factor.

More recently, influenced by the evolution of economic, social, labour, legal, demographic and other environmental circumstances, personnel management methods and strategies had to face the adaptation to increasingly competitive environments, thus leading to discuss on the desirability of designing and implementing new models in accordance with requirements at any time. The new paradigm, perceived as a step forward when compared to Theory Z, was internal marketing (Vázquez-Burguete and García-Miguélez, 1999 and 2017).

On the basis of pioneer conceptual attempts in academic literature (Arndt 1983, Grönroos, 1984; Levionnois, 1987), this marketing branch, located halfway between the departmental functions of marketing and human resource management, and using similar tools to those of its external counterpart, aims at motivating all people in the staff or working somehow with the organization, thus guiding them to accomplish the broad objective of profitability and subsistence in the market. Internal marketing focuses on personnel management and considers employees as part of a target market to be analysed, segmented and offered an adequate and attractive product, transcending and going beyond a mere job and a wage to fulfil as much as possible individuals' desires for self-realization, while achieving higher performance and integration levels according to the philosophy and objectives in the organization (Vázquez-Burguete and García-Miguélez, 1999 and 2017).

As also highlighted from the very beginning in the contributions on the topic, three are the main areas of impact or “sensitive” areas in the organization which, after being affected, should be adapted to the new personnel assessment and management (Barranco, 1993):

1. Labour relationships must be reoriented towards a new style, considering workers as people with a virtually unlimited creative potential which the organization could take advantage of, and not as only a “human resource” to be optimized through guided exploitation without any margin for personal initiative or freedom of action. The new approach appears much more as a qualitative than as a quantitative one.

2. Organizational structures must increase their adaptation possibilities to changing needs in markets, which in most cases imply suppressing essentially rigid and hierarchical systems for the higher levels of flexibility achieved by moving responsibilities closer to operational positions at the basis of the pyramid of command.

3. Management systems (taking the concept in a general sense and specifically when related to the personnel area) should also be readapted to stimulate the participation of each and every member of the staff through the adequate design and implementation of those incentives which appear as most appropriate at any time to encourage the initiative of the whole organizational group.

This way, it is easy to perceive that internal marketing is to be closely linked to CSR, thus becoming a key element in the application of internal CSR. To be precise, CSR can be approached as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with the stakeholders on a voluntary basis” (EU Green Paper, 2001, p.7), and the integration of internal marketing and CSR implies (Sánchez-Hernández, 2008; Vázquez-Burguete and García-Miguélez, 1999):

1. Simultaneous consideration of external (economic, legal, ethical, philanthropic) and internal (processes, management policies...) dimensions.
2. Development of trust and confidence to external audiences based on trust and commitment with internal target groups.
3. Direct and explicit involvement of staff in external actions of CSR and corporate social marketing.

At this purpose, references to remuneration and incentive systems deserve further consideration and analysis, requiring the design and implementation of an Integral Corporate Social Action (ICSA) Plan, which appears as a document within the overall strategy of the organization, where CSR goals and strategies are formulated, required resources are determined, and the consequent budget for incomes, expenses and expected benefits is established (Vázquez-Burguete, Licandro-Goldaracena and Lanero-Carrizo, 2014).

Summarily, such document will consist of: i) an introduction or delimitation (including target audiences in reference to both internal and external stakeholders); ii) information search, analysis and diagnosis; iii) definition of objectives and strategies, considering both internal and external dimensions or perspectives; and iv) quantification and budgeting of intended actions.

When specifically detailing internal objectives and strategies, to six different categories could be considered:

- a) issues dealing with labour risk prevention (what, according to rules in force in a number of countries, could imply a proper plan –as a specific document– for prevention of occupational hazards);
- b) issues dealing with continuous training at promotion at work (what, also according to rules in force in different countries, could imply a proper plan, specifically in case of continuous training);
- c) issues dealing with equality at work (more and more countries also including in their labour legislation the requirement of a specific plan);
- d) issues dealing with conciliation of work and family life (sometimes considered as issues dealing with equality at work, as usually including co-responsibility aspects, according to rules in force);
- e) issues dealing with social volunteering actions (thus aiming not only organizations' corporate citizenship, but also that of their employees);
- f) any other issues dealing with CSR and personnel management.

In summary, “obsolete” and closed payment systems structured on predefined elements must evolve to more open and flexible models aiming at the motivation and integration of the staff members through the combination of wages with other factors, also positively valued by people, such as recognition (congratulations on a well-done job or positive initiatives), stability (chance to remain in the job for those who have performed accordingly to expectations), safety (dealing with the implementation of sanitary and labour risk prevention measures as required and appropriate) and training (either as abilities for a proper performance at the time of recruitment or as recycling opportunities to continue successful performing).

So, as stated by some authors (e.g. Jürgens, Malsch and Dohse, 1993), Taylor's model could be considered as exhausted by the 60s or 70s, specifically in developed countries, and the situation would be similar with Theories X, Y and Z. However, reality in labour practice is quite different: chain work remains and there are also other possibilities.

Far from being considered an obsolete or exhausted model, some new forms of neo-Taylorism remain fully in force in productive organizations. Globalization has significantly

contributed to new market conditions that have changed working schemes in productive organizations, market requirements being more and more focused on aspects dealing with quality, flexibility, leading to time reduction and satisfaction of an increasing diversity of clients and tastes (Günsel and Yamen, 2020). To face this new context, organizations are not following a single direction. An example of the new approaches is Digital Taylorism or New-Taylorism, a system based on the global organization of the “knowledge work” that characterizes the information or third industrial revolution (Brown, Lauder and Asthon, 2011). The main hypothesis is that even when new jobs are much more related to workers’ qualifications and abilities, tasks are subject to the same scientific management processes that craft and chain work experienced once in time when reconsidered under the original principles of Taylorism.

Under the postulates of Digital Taylorism, creative and intellectual tasks –until recently considered as “non-machinable”– are subject to the same process as chain work. Once they have been codified and digitalized, the human capacity for decision and judgment can be replaced by automatic programs with computerized decision protocols. As processes can be easily relocated due to technical mobility possibilities -as proper of computerized global connections- jobs are easy to export, change or replace.

The effects of Digital Taylorism (where concrete forms of teleworking could also be included) are more visible in developed countries as computerized tasks are increasing day by day there, while in developing and underdeveloped countries wages remain at lower levels.

What is more, some other approaches dealing with Taylor’s principles may appear even when not so obviously or systematically applied, but being as much or even more effective in their results. So, within a generic category of “other forms of neo-Taylorism”, we could refer to a number of practices in organizations aiming at the reduction of time and resources in productive processes through maximization of efficiency, the basic principles that constituted the starting point to develop Taylor’s postulates. Among these practices, the aim of increasing value in customer service through reducing waiting time has led to single-queuing systems not only in customs, passport control or security access systems, but also in all other organizations which could experience a number of customers at a time (Vázquez-Burguete and García-Miguélez, 2017). As a clear example, nowadays it is not rare entering a single-queue to pay in large supermarkets or hypermarkets, allowing not only to reduce waiting time to customers (which not always are fully convinced of the benefits of the new system) but simultaneously to decrease the number of staff workers in cash line and their idle time virtually to zero.

Another example of neo-Taylorism deals with the extension of “effective” working time beyond the “formal” working hours, not only through overtime but involving workers in issues related to the organization up to 24 hours a day (what can be also linked to Digital-Taylorism, giving rise to the claim of the right to “digital disconnection” of workers). The origins of these practices are also in Japanese culture (e.g. arranging collective activities for employees during weekends or encouraging development of teamwork projects after working hours).

One of the most well-known cases applying this philosophy is the Internet giant Google. Together with high wages, the company provides its employees all sorts of “extra benefits”, such as corporate transport, breakfast, lunch or dinner facilities, gyms and a wide range of activities for relaxation and leisure. At the first sight this can be perceived as a “maximum development” of the principles of internal marketing (up to the extent that Google occupies year after year top leading positions in the rankings of “most desired companies” when seeking for a job), but it may be also interpreted as the overexploitation of the imaginative

and creative potential of a highly qualified personnel (thus dealing with Digital Taylorism) whose lives take place almost entirely in the working place and its immediate surroundings, day and night sharing talks, comments, activities and experiences with colleagues in a very restricted affective circle where everything is related to the company, its projects and problems (Vázquez-Burguete and García-Miguélez, 2017).

Although economic conditions may be attractive and perception on other incentives may be favourable, the reality is that employees devote in one way or another 24 hours a day, 7 days a week and 365 days a year to the organization.

Therefore, we could not conclude but Taylor's principles remain fully in force. Of course, we are not specifically –or only– talking about their application in assembly lines or work chains, but about the usefulness and validity of general statements dealing with the maximization of efficiency through reduction of time and resources in production (something also closely related to current positions regarding sustainability of productive activity).

Additionally, we should also remember that internal marketing approaches are dynamic and, far away to come to a standstill focusing in solving troubles at a concrete time, they are characterized by being involved in a non-stop evolution contributing to new and creative solutions at any time based on the changes in the environment for their application field. As a concrete example of such evolution, we could refer to the recent and increasing inclusion among internal marketing principles of some new issues dealing with job training, safety and stability, some of them above mentioned. Most relevant, another example deals with the recent and increasing implementation of sustainability principles at personnel management, thus giving chance to internal sustainability.

At his point, we must keep in mind that, knowing that the sustainability purpose is collective and requires consistency between external and internal issues (on an ideological level), thus nurturing a sense of internal sustainable purpose. In other words, purpose-driven organizations should take a closer look at the internal dimension of sustainability (Dupret and Pultz, 2021).

An overview on the literature linking CSR and HRM

From the content of the previous section, it is easy to conclude (or at least to intuit) that contributions in the academic literature on CSR and/or sustainability have been mostly focused on the consideration of their external issues or dimensions. Aiming a deeper knowledge on this fact, Voetglin and Greenwood (2016) conducted a systematic review of academic literature linking CSR and HRM published prior to December 2014, based in 11 EBSCO online databases and concluding that, although the clear increasing in the number of such contributions in most recent years, in percentage terms only a few of them have focused on internal dimensions, then suggesting that there is still much to be done.

Obtained results are summarized in Figure 1. According to authors, three phases or stages can be identified in this evolution (contributions in 2015 are not representative, as the paper was written when the total figure for that year was not yet available):

- Stage 1: an early incubation phase from the earliest article retrieved (1975) to 2002 (a minimum figure of papers being published every year).
- Stage 2: a phase of incremental growth from 2003 to 2008 (the number of published papers increases year by year and “stabilises” at the end of the period).
- Stage 3: a phase of rapid growth between 2009 and 2014 (a new and higher increase in the number of published papers).

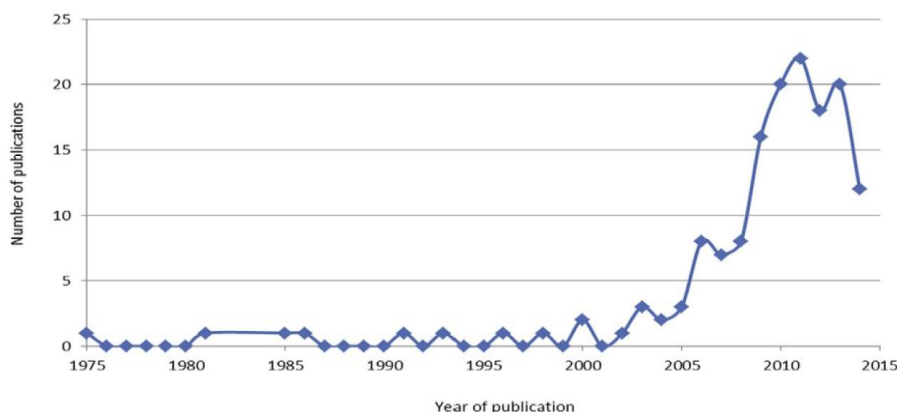


Figure 1. Evolution of publications linking CSR and HRM in selected EBSCO databases (1975-2014)

Source: Voetglin and Greenwood, 2016, p.184

Aiming a broader scope, as well as with an exploratory purpose, a first and general overview about the number of contributions published in the field can also be obtained if considering the publications included in the Google Scholar database as a reference for the intended analysis.

Then, and assuming that presence of publications in academic literature prior to 2000 (a total figure of 217) can be considered as testimonial (just as previously indicated in the research by Voetglin and Greenwood in 2016), the investigation has been focused on the time period 2000-2021.

Table 1 shows the total figure of papers that were published every year and included in Google Scholar, as well as the respective percentages of increase (or decrease) registered each year regarding the figure of papers published in the previous year (2021 was not included in the analysis, as having only a partial figure for the period from January 1st to April 15th when conducting the research –a little more than a trimester–, which was 539). Such percentages in the table reflect the trend in the evolution of the series, which can also be graphically appreciated in Figure 2.

Table 1. Evolution of publications linking CSR and HRM in Google Scholar (2000-2020)

Source: own elaboration based on Google Scholar results at 15 April 2021

Year	Publications		Year	Publications	
	Abs.	Δ%		Abs.	Δ%
Bef. 2000	217	--.--	2010	450	+35.95%
2000	30	--.--	2011	560	+24.44%
2001	37	+23.33%	2012	698	+24.64%
2002	44	+18.92%	2013	835	+19.63%
2003	63	+43.18%	2014	997	+19.40%
2004	96	+52.38%	2015	1030	+3.31%
2005	126	+31.25%	2016	1180	+14.56%
2006	179	+42.06%	2017	1360	+15.25%
2007	177	-1.12%	2018	1420	+4.41%
2008	269	+51.98%	2019	1820	+28.17%
2009	331	+23.05%	2020	2040	+12.09%

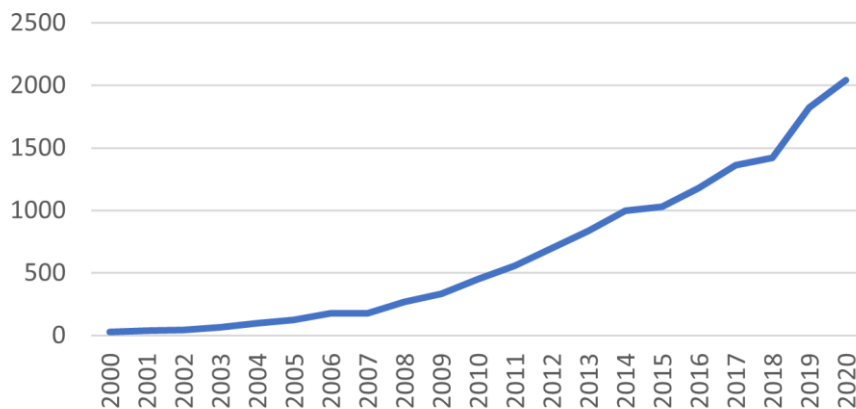


Figure 2. Evolution of publications linking CSR and HRM in Google Scholar (2000-2020)

Source: own elaboration based on Google Scholar results at 15 April 2021

From the data in the above table we can also –with slight adjustments– identify the three stages suggested by Voetglin and Greenwood, as well as to consider two additional ones in the period 2016-2020. Such five stages would be as follows:

- Stage 1: an early incubation phase up to 2002, with a minimum (testimonial) number of papers being published every year.
- Stage 2: a phase of incremental growth from 2003 to 2007, with an increase in the number of papers published every year until a stabilization at the end of the period.
- Stage 3: a phase of rapid growth between 2008 and 2015, with a new increase in the number of published papers until a new stabilization.
- Stage 4: a phase of consolidation, with a continuous (and not so rapid) growth in 2016 and 2017, and some certain stabilization in 2018.
- Stage 5: a phase of re-boosting starting in 2019, with a new increase in the number of published paper, thus consolidating or accelerating the increase tendency from stage 3 on (we should be cautious with the figure for 2020, as new papers are being added to the Google Scholar database day by day and this figure could increase).

Additionally, and without going into greater detail, from a first analysis on contents it is also worth noting the identification of the same three research trends pointed out for Voetglin and Greenwood (2016), and so:

- In some contributions HRM is considered as a component of CSR, either as an antecedent (workers –HRM– develop CSR practices, as e.g. Fenwick and Bierema, 2008) or a subset (HRM facilitates or enables CSR practices, just as in case of other factors, as e.g. Chen, Patten and Roberts, 2008). These contributions, which are more frequent in the first ones of above stages, taking CSR as the main research focus.
- At the other end (we could say nearly as just opposite), in some other contributions, CSR is seen as a component of HRM, either enabling a “responsible” (e.g. Bhattacharya, Sen and Korschun, 2008) or “effective” HRM (e.g. Deakin and Hobbs, 2007). In these cases, also more frequent in early stages, HRM constitutes the main research focus.
- Finally, what is more frequent in the last stages, CSR and HRM are seen as mutually dependent topics, either parallel (e.g. Smith and Langford, 2011) or interactive or overlapped (e.g. Westermann-Behaylo, Berman and Van Buren, 2014). Both of them are considered focus of the research.

The relevance of SDG 8 to the development of future research linking CSR and HRM

Nowadays, both CSR and HRM must face different challenges from a competitive and global point of view, the UN Sustainable Development Goals appearing as a mandatory reference. Among those objectives, the SDG 8 appears as especially relevant: *promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all* (Figure 3). “Decent” and “sustainable” work is understood as that which provides a fair income, security in the workplace and social protection for families, thus offering better prospects for personal development and favouring social integration. All women and men should have equal opportunities in the workplace and governments can work to build dynamic, sustainable, innovative and people-centred economies, specifically promoting youth employment and women’s economic empowerment, as well as decent work for all, as the continuing lack of decent work opportunities, scarce investment and low consumption erode the basic social contract underlying democratic societies, that is, that we all should benefit from progress.



Figure 3. The UN Sustainable Development Goal 8 (SDG8)
Source: UN (2021)

The International Labour Organization (ILO), as a specialized agency of the United Nations, has also endorsed SDG 8 and its goals, in accordance with its motto of “*advancing social justice, promoting decent work*” (ILO, 2021a). Such endorsement reached even a greater emphasis even if possible after the virtual World Summit on COVID-19 and the World of Work held between July 1 and 9, 2020 to build a better future of work after the coronavirus crisis, in which strategies were discussed so that in the world of work, after the COVID-19 pandemic, the vulnerabilities revealed by the virus outbreak, in particular the lack of social protection, the informal economy, inequality and climate change, are addressed (ILO, 2021b).

It should also be noted that during the ILO World Summit in July 2020, several proposed strategies were discussed aiming the amendment of concrete vulnerabilities in the world of work that, although already pre-existing, have been highlighted as a result of the pandemic. In particular: i) the needs of people who carry out their work without social protection or in the informal economy; ii) the promotion of full and productive employment and sustainable enterprises; iii) the adoption of measures aimed at guaranteeing that the reduction of poverty, the promotion of equality and the fight against climate change are essential elements of the recovery process; and iv) the measures that the international community can take to promote compliance with the United Nations 2030 Agenda for Sustainable Development.

It is, finally, evident in view of all the above, that there have been –and there are– many reflections that have taken place at the international level on the future of work and what should be, in logical consequence, the evolution of internal responsibility and sustainability.

What is more, as a result of these reflections, we now find ourselves with a wide catalogue of challenges that academic research will have to face. We must not forget that academia uses to be some way “daughter of its time” over the years, and in recent times it was adapting to the requirements of a model of economic development based on large-scale production, consumerism and profit maximization, which, in the vast majority of cases, was detrimental to the interests of the worker and social conquests that had taken many decades to achieve.

Just summarizing, a promising future for internal CSR and internal sustainability arises.

Conclusions

Even when they have been intended with an exploratory character, and in order to settle the basis for further research and developments, some conclusions can be drawn from previous pages. To be precise:

1. Talking on the first of the intended objectives, that is, the linkage of the concepts in the development of theories in human resource management, internal marketing and internal social responsibility can be considered as a “step forward” regarding previously suggested Theories X, Y and Z, parallel in recent times to new forms of Taylorism (or neo-Taylorism) in a globalized and highly competitive context. However, consciousness on sustainability – especially after the unexpected and harsh first impact of the COVID-19 pandemic associated confinement in 2020– has stressed the significance of internal sustainability as a new conjoint approach to HRM and (internal) CSR.

2. Regarding the second objective, and up to date, published academic contributions focusing on internal sustainability are scarce if compared to those focused in the external dimension –although there is an increasing number of such contributions–, just as it occurs in case of actions and practices in organizations. An overview on the situation allows the consideration of different stages in the evolution of the number of publications (specifically in the 21st century) as well as different research trends.

3. However, the relevance of the UN Sustainable Development Goal 8 (SDG 8) and the current way in which academic literature focuses on how sustainable principles are being adopted in human resource management in organizations gives rise to think on a promising future for research dealing with internal CSR and internal sustainability issues.

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