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SOLUTIONS FOR THE USE OF SMART TECHNOLOGY IN TRANSPORTATION

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Abstract: *The focus of this study is the impacts of smart-technology motorcycle-taxi services in some parts of Nigeria. The purpose of the study is to evaluate the socio-economic impacts of the smart-technology transportation and logistics operators in the selected study areas in order to improve their service delivery. The study was motivated by the public complaints around the informal motorcycle-taxi arrangements in the study areas and the subsequent introduction of modern smart-technology assisted transportation models, with the intension to advance the public transportation in the areas under consideration. The target smart-technology companies under investigation are GOKADA, SafeBoda and KONGA. This work will analyze the opinions, preferences and demographic characteristics of five categories of the stakeholders involved in the smart-technology businesses under focus. The stakeholders are regular passengers, irregular/occasional passengers, regular order recipients, irregular order recipients, and bike drivers.*

The empirical data collection of this study consists of survey and interviews of participants with a profound understanding of the smart-technology transportation. A survey was conducted among two hundred and thirty end-users and operators of smart-technology motorcycle-taxi system in the two commercial cities of Lagos and Ibadan, Nigeria. The sharing proportions of questionnaires among the respondents in the study areas was informed by the preliminary information and recommendations of stakeholders, as follows; Ibadan (45%), Lagos (55%). The survey was conducted using structured and unstructured questionnaires. All the interviews were transcribed, analyzed, compared with other existing cases, presented through descriptive statistics and conclusions drawn using PEST and SWOT analyses. The results from this study will give an understanding of the activities and impacts of the three smart-technology based motorcycle-taxi companies in the selected study areas, towards the sustainable transportation and logistics services.

The results from this work show that the introduction of smart-technology motorcycle-taxi system has helped businesses grow in the study areas and should be given support by the government. Youth participation in the smart-technology transport system will boost the economy and provide jobs for the teaming youths. Women involvement and confidence in the new transport arrangement is a welcome development and is commendable. In view of the foregoing, more research work should be conducted on the activities of other smart transport companies for more positive impacts. The service providers are implored to extend their services to other high impact areas like health and accident related ones.

Keywords: *Smart technology, smart transportation, ICT applications; urban public transport; transport user preferences; travel behavior; sustainable city; transport ICTs.*

Introduction

Transportation constitutes one of the major features of the economic development of Nigeria. Over the years, scholars have debated on a number of issues related to the exact role of transportation in economic development such as the timing of the investment in transport infrastructure, how it works, the amount of transport investment needed for a specific level of development and many other aspects. The answers to these questions are not very easy to obtain because the demand for transportation is a "derived demand" while transport affects and is affected by many other sectors of the economy. While the debate on the role of transportation on economic development continues, some scholars emphasize that where a nation is lacking in the factors conducive to growth, no amount of transport investment can produce economic development. Fortunately, Nigeria is not lacking in resources and other factors conducive to growth. A wide range of transport facilities already exist in Nigeria and may range from primitive footpaths and dirt roads with human or animal haulage, super highways or expressways, railways, airways and lately to modern smart-technology based transportation arrangements (Onakala and Olajide, 2020). Today more than half of the population in the world lives in cities or urban areas (Sampaio et al. 2019). Therefore, logistics demand a well-integrated and well-functioning transportation solution. The fast growing population and urbanization requires new business models and innovative solutions for cities to be profitable, yet sustainable. To be sustainable and profitable one needs to allocate their resources the most efficient way. The new trends in logistics for cities are private smart transportation arrangements that aims to develop a more sustainable and economical solution. Together with the development of smart technology and the ubiquity individualism of smartphones, the shift to new transport model is trending (Sampaio et al. 2019).

Smart technology can be introduced even in cities, which are not fully digitalized; however, some enablers need to be in place. First, there is need for technology that allows for ICT to be in operation and for users to access it. With the development of the smartphone, the main access mode to ICTs was firmly established. Second, there must be a certain acceptance level among users. While the first condition can be now easily met with smart phones and internet connection, being an everyday feature of urban life, the second is not that obvious, especially regarding transport users. Research indicates that there seems to be a surprisingly large group of users who are not interested in any form of smart technology. There is as well a certain group of users who are not willing to switch to public transport regardless of what improvements are made. The choice is caused either by their preference of use of the private car or due to public transport quality being simply inadequate to them. Some of these users are inclined to use a private car due to laziness, medical purposes (Dobbs 2005), or simply comfort. This results in a tendency that cannot be met by even the most perfect public transport system (Steg et al. 2001). Smart technology can therefore also influence more rational use of car- based transport solutions (as seen in Bolt, Uber and others). The target groups of smart-technology based policies are those users who actually can be attracted to public transport by a better offer. Smart-technology can be a tool in making public transport sufficiently good to meet the demand of those end-users (Bak and Borkowski 2015). The economic potential of smart technology for transport providers is enormous. Technology should help to better manage transport networks and vehicle fleets. Meanwhile, in urban smart transport arrangements, the most direct positive effects on costs reduction yet to have been reported include: cargo transport (Mason et al. 2003) and fleet management (Button et al. 2001) but not passenger transport in the

real sense of it. Outside of the service provider, cost benefit analysis, from a societal point of view, benefits point to urban sustainability that considers the many positive effects due to smart transport system are numerous.

Relevance of the topic: The purpose of smart technology is to sustain and obtain services that improve the citizens' movement and socio-economic well-being through a combination of a developed transportation services and smart technology. Thus, this work is designed to make the motorcycle-taxi transportation in the selected study areas of Nigeria easier, more sustainable, and more impactful. The goal is to evaluate the socio-economic impacts and create an understanding of what could be expected of motorcycle-taxi with the aid of smart technology. It also aims to create an understanding of what could be done with the support of smart technology by sampling the opinions of the players and understand their preferences. This thesis will positively increase the understanding of the influences of smart technology in motorcycle-taxi in public transportation and discover what could be done, to improve the service delivery.

Practical problem: The emergence of informal commercial motorcycle operations, known as Okada in Nigeria, came as a big relief to the prevailing transportation and unemployment problems with other advantages such as curbing loss of economic man hour, lateness to work, and other challenges associated with traffic jam; nevertheless, the problems associated with its operations among other issues are enormous. Therefore, to guide against the recurrence of negativities of informal motorcycle-taxi sector, the evaluation of socio-economic impacts of smart-technology based transportation and logistics service provisions is necessary. This will go a long way at solving myriads of challenges associated with the informal transportation arrangements. This current study therefore aims at investigating the socio-economic performances of smart technology-based transport arrangements found in some Nigerian cities in order to fine-tune a way forward.

Object: solutions for the use of smart technologies in Nigeria's transportation system.

Aim. The aim of this work was to evaluate the socio-economic impacts of motorcycle-taxi services of (GOKADA, SAFEBODA and KONGA), operating in South-western Nigeria cities of Ibadan and Lagos.

Objectives. Specific objectives therefore include the following:

i. To perform a trend analysis of smart technology solutions and identify key issues;
ii. To analyze smart technology solutions from a theoretical point of view;
iii. To evaluate solutions for the use of smart technologies in logistics companies; and
iv. To suggest strategies for improving smart technologies in logistics service in Nigeria.

Research questions. The following questions will give a better insight into the problems this research project attempt to resolve:

1. What are the demographic characteristics and responses of smart-technology motorcycle-taxi stakeholders (end-users and bike drivers) and their socio-economic implications?
2. What are the socio-economic impacts of smart technology on motorcycle-taxi transport and logistics services on end-customers?
3. What are the socio-economic impacts of smart technology motorcycle-taxi services on motorcycle drivers?

Research Methods. This research task was approached in multiple stages as highlighted below:

1. **Desk research** -- This phase included documents review and conversations with some stakeholders in smart-technology based transport companies and those in informal transport and logistics services such as stakeholder and business owners in the transport sector, to figure out the approach to use and the categories of target**.**
2. **Quantitative research with motorcycle drivers/drivers and end-customers** -- The mainstream of this study focused on quantitative research with participating drivers and end-customers of each company. This was done through research collaborator/moderator, survey using open and close ended questionnaires administered to motorcycle taxi drivers, passengers and order individuals.

PEST and SWOT analysis – The responses gathered during the survey were analyzed and inferences drawn using PEST and SWOT analyses.

The Problems and Importance of Solutions for the Use of Smart Technologies in Nigeria Transportation System

Rapid economic growth and urbanization is leading to intolerable congestion in Lagos where residents already spend over four hours per day commuting (weetracker.com). This congestion threatens the country's economic progress, and is compounded by high rates of accidents, which are approaching a national health epidemic. Nigeria has one of the highest rates of road traffic accidents and fatalities in the world -- already the country's third-leading cause of overall death and the most common cause of disability (ncbi.nlm.nih.gov). These accidents also take a major toll on the economy. A 2010 study estimated that Nigeria loses over 80 billion Naira from road traffic accidents (Juillard *et al*. 2010). In this regard, calls for adoption of more coordinated transportation systems and adoption of smart technology are a timely intervention.

The urban transport problem in Nigerian cities manifests in the form of poorly constructed and maintained urban road network, road complementary facilities and ineffective transport management. Onokala (2001) discussed urbanization and urban transportation problems in Nigeria cities. Nigeria cities are dominated by paratransit or intermediate modes of transport. The most common types are small 14–18-seater buses, shared-fare taxis and motor cycles and tricycles which provide main, collector and feeder services between different parts of the city. Onokala (2000) discussed the implications of the adoption of small buses for "mass Transit" on the Transport Policy of Nigeria. After struggling with many ways of handling the urban transportation problem of Lagos State without making any progress, the Lagos State Government introduced the use of big buses for the Bus Rapid Transport (BRT) System in Lagos, Nigeria on 17th March, 2008 using Public Private Partnership (PPP). The government provided the major infrastructure while the private sector provided the buses. BRT was well received in Lagos, and LAMATA (2016) claims that thousands of Lagos resident queue up daily to make use of the buses to enjoy lower transport fares and to beat the gridlock in the city due to their use of dedicated lanes

The logistics network in Nigeria is seen as complex and difficult to grasp due to the challenges and peculiarities of the Nigerian environment. It has made many individuals and businesses opt to outsource the logistics arm of their operations while concentrating on their core strength. The crux for logistics is ensuring that products are delivered in the right quantities, to the correct location, in a cost-effective manner, at the right time. As easy as this may sound, statistics have shown that 67% of deliveries do not meet the above definition in Nigeria. This could be

attributed to the global evolution of the traditional logistics structure and management framework, which has had little or no impact in the Nigerian market (e.g. tracking and real-time reporting). It can also be argued that certain factors have hampered digitization in the supply chain. They include infrastructural issues, network challenges, poor regulation and ineffective digital solution in the Nigeria environment. Hence, the long-awaited disruption in the logistics and supply sector has not been able to revolutionalise the logistics industry in Nigeria.

According to a study carried out in 2019, the critical challenges for logistics operations in Nigeria include visibility, infrastructural decay, increasing customer demands dynamics, risk management, insecurity and cost optimisation. The competitiveness of logistics operations is determined by many different factors with attention to networks, knowledge management and environment. These components are either internal or external to the supply chain. They can be classified as belonging to the following realms of contributors to the functioning of the supply chain: Suppliers, Customers, Labour and Finance.

Nigeria businesses migrate goods and services across the entire nation; this is because each geopolitical zone specialises in a specific product due to their climate. Despite the importance of the logistics industry in the Nigerian economy, the focus on this sector is still insignificant. With the ever-growing demand, there is a limited number of large logistic companies that can meet this demand. In some cases, some industry does not have the right transportation infrastructure in place. A simple point in time will be the transportation of perishable goods from Maiduguri to Lagos, or Sokoto to Onitsha, on a regular truck as against a temperature-controlled truck.

Companies are faced by a great challenge of acting as efficiently as possible. Material flows and intra-logistics processes must be optimally coordinated with each other at all times. If there is a problem at one point, this impacts the entire value chain – and thus also competitiveness. Intelligent sensors and networked systems ensure efficient logistics processes. Data is collected and processed in real time. This then forms the basis for decisions in autonomous and controlled processes. The continuous traceability of goods and processes in combination with intelligent systems allows processes to be optimized independently.

Smart Transportation

Smart transportation is a term that is being used more and more frequently nowadays. Rosa M Arce writes that cities are in an revolution; like smartphones and smart TV we also want our cities and transport system to be smart. Smart cities and transportation are classified by 6 different topics; Government, Mobility, Environment, Economy, People and Living (Giffinger, 2007). They are reflecting on the fact that Smart transportation plays an bigger role in the urban growth than before, and that the utilization of an smart public transportation system can solve many issues. As well as H.K Liu are they on to the path that crowdsourcing can be the answer to innovation issues, as the development of the public transportation system to be sustainable through technology and engagement from the citizens. The focus in Smart mobility is to develop the infrastructure in cities through integrated ICT. This smart mobility could be a useful tool to make cities more sustainable and make the traffic run more smoothly through supporting logistics in congested cities (Cledou et al.2017)

Use of Smart Technology in Transportation and Logistics

While smart technology as an idea is an extension of an IT concept (Ketchum 2018), the term "ICT" is very frequently used together with the discussion of the smart city, green city, etc. (Thomopoulos et al.2015). Many empirical studies have been already conducted on the impact of ICT on social activity and travel patterns in different parts of the world, for example in the Netherlands (Technische Universiteit Eindhoven 2012), China (Yuan et al. 2012), and India (Lila and Anjaneyulu 2016). Additionally, some conceptual studies explored how ICT influences geographical accessibility (Van Wee et al. 2013 or Dijst 2004) and leisure activities (Mokhtarian et al. 2006). Moreover, research has been done on the conceptualization of interrelationship of ICT with transport behavior (Gössling 2017). This indicates that a high level of integration of ICT in an urban context is necessary to achieve sustainable development of the urbanized area. As the International Telecommunication Union put it "a smart sustainable city is a city that leverages ICT infrastructure in an adoptable, reliable, scalable, accessible, secure, safe, and resilient manner" (ITU 2014). The core element of this definition is the association between ICT and the sustainable mobility paradigm. ICTs can be perceived as a tool which makes public transport or non-motorized transport options more usable and more user-friendly (it concerns especially bike-sharing systems). In order to increase their use, the service should be designed in a way that accommodates the levels of service required by customers (Beirão and Cabral 2007). New technologies can offer answers to customer needs and allow users to use transport options more efficiently. For car user to consider public transport, a certain basic accessibility and reliability needs to be provided. ICTs can be helpful, for example, by providing access to direct on-line information reducing the risk of unforeseen delays and by providing new opportunities to procure means of transport, particularly in rural areas. Car users expect additional value from public transport. The habit-interrupting transport policy measures can succeed in encouraging car users to try public transport (PT) services initially while latter attributes connected to the individual perceptions, motivations, and contexts must be maintained (Redman et al. 2013). An important research question is can ICTs provide these attributes? A more environment-friendly urban transport means that at least part of the transport flows needs to be transferred into non-mechanized means of movement (e.g., biking and walking). Modern ICTs unlock these modes as well. Finally, most of the car traffic is made by single users. The average occupancy rate of a car is less than two (European Environment Agency 2015) and ICT solutions used in car-pooling systems may help to increase this rate. Since single occupancy car use is recognized as a major policy problem, the search for tools which might help to induce more car drivers to public transport is one of the more important issues in transport decision making as indicated by international institutions (Van Dender and Clever 2013; Transport & Environment 2018). Hence, the possibility to influence the modal structure of transport given by ICTs should not be overlooked.

The change in the modal structure of transport is universally recognized as a key objective of transport policy. On the international level it is visible for instance in the EU's commitment to reduce use of road transport as presented in the European Commission White Paper on transport (EC 2011). This problem of overuse of passenger cars is however mostly not in long distances but in short legged urban travels. Existing urban transport systems for decades seem to be persistently resistant to modal shift with dominating road transport prevailing (Khisty and Ayvalik 2003). The share of road-transport in transport activities has not been reduced during the past decade regardless

of the policies applied, for example pricing and taxation adjustments or infrastructure investments in railways (ECMT/OECD 2003). However, new ICT technologies could be perceived as disruptive technologies threatening major change (Kane and Whitehead 2017) and as such can enable what has not been achievable before.

While existing transport contribution is 25% of the total emissions, it is obvious that to achieve a stabilization of greenhouse gas emissions from transport, behavioral change brought about by policy is required (Chapman 2007). The expected profit of ICT use in urban areas is mainly visible through change in transport use patterns with resulting diminished emissions and congestion (Tafidis et al. 2017). While congestion costs could be sometimes considered beneficial in inducing change in behavior there are also considerable business costs caused by congestion (Weisbrod et al. 2003) which might be eliminated if ICTs effectively reduce car traffic. The success in re-orienting urban transport can only be achieved through persistent long term commitment to promoting environment friendly transport modes. So far this has been achievable only over long periods of time and only when external forces outside the remit of the city authorities exercised their power to enforce change. (Bratzel 1999). We argue the necessary time can be substantially reduced with ICT implementation. Moreover, it could be argued, ICTs might offer usability making them the preferred choice for users.

Some of the sustainable transport concepts were initially introduced over a 100 years ago (i.e. metro, transit oriented development plans date back to London or New York in the late 1800s) but surprisingly many ideas are relatively new developments. Hidalgo and Zeng (2013) composed a list of sustainability developments in cities around the world. Accordingly, low emissions zones were introduced in Tokyo in 2003, congestion pricing in Singapore in 1975, followed by vehicle quota systems in 1990. Bus rapid transit originated in Curitiba in 1974 and two-way car-sharing in 1987 in Lucerne and Zurich. Bike sharing is a very young idea introduced in Amsterdam in 1965 (and supplemented by ICT only in 1998 in Rennes). Smart ticketing originated in several cities (mainly Swiss) in the early 1990s. Those sustainable solutions could be brought to new levels of efficiency if overlaid with transport smart technologies.

Methodological approach for the empirical work

Methodology ahs to do with the specific procedure or means adopted in a research endeavour in order to identify, gather, process and refine data for a given task. On this note, the aim of this work is to evaluate the socio-economic impacts of motorcycle-taxi services of (**GOKADA, SAFEBODA and KONGA**), operating in South-western Nigeria cities of Ibadan and Lagos.

- **Research Design**

The study employed descriptive survey as the research design. The study is descriptive cognizant of the fact that it aims to assess independent variables of overall performances of the motorbike taxi system in the study areas of Lagos and Ibadan, of Southwest zone of Nigeria. In other words, this thesis adopted both quantitative, dynamic approach to achieve the research goal. This was conducted through a comprehensive study of the socio-economic impacts of three selected smart-technology motorcycle-taxi operators (Gokada, Safeboda, and Konga) on the end-customers and the operators. Face-to-face interview was conducted using structured and unstructured interview questions.

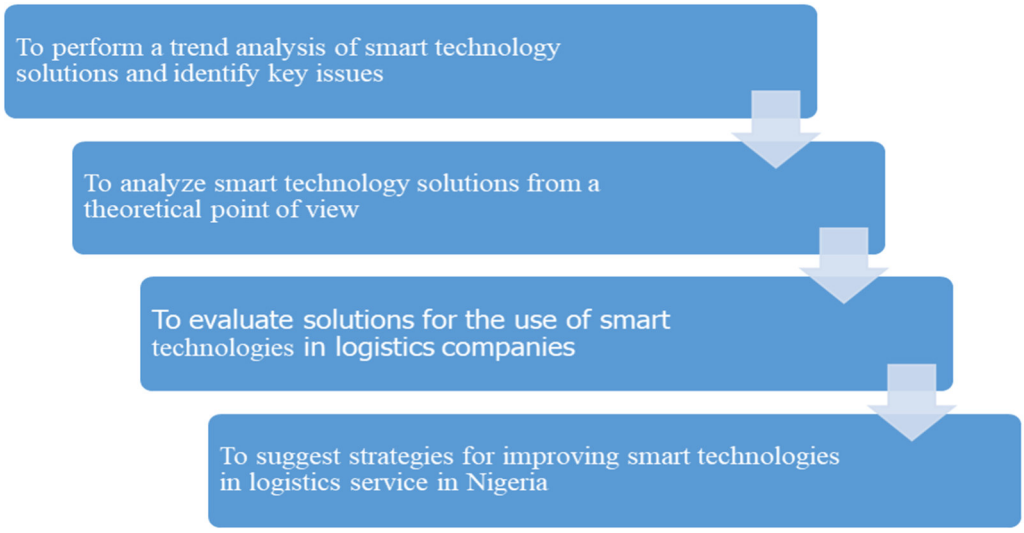

Figure 1. Logical sequence for empirical research for solutions for the use of smart technologies in transportation. *Source: Author 2021*

- **The Study Area/Population and Sample**

This study was done within the predominantly Yoruba states of Nigeria's Southwest Geo-political zone, comprising Lagos, Oyo and states. That is, the population of the work is composed of people in Lagos and Oyo states who patronize the service of smart transportation. The choice of the two states (Lagos and Oyo) resulted from their population and performance of smart-technology based transportation system. Lagos and Ibadan are two major commercial cities in the Southwest zone of Nigeria; therefore the choice of the two states as study area was appropriate based on the findings from the literature review. The zone, Yoruba or Southwestern Nigeria, is one of the six geopolitical zones of Nigeria. It has about 25 million people, a landmass of about 76852 km², and has control of about 60% of Nigeria's industrial capacity. Also, it is a national and intercontinental economic hub and home to two of the three largest cities in Nigeria; Ibadan and Lagos (AOAV and NWGAV, 2013).

- **Sample and Sampling Technique**

In all, at a total of 230 respondents, being users and operators of smart-technology based transportation and logistics system in the two states of Lagos and Oyo were sampled to answer the questionnaire for the empirical section of this research. Purposive random sampling technique was however adopted to sample respondents for this research on the strength that it allows the researcher to, through a research assistant to highlight people with definitive use of smart transportation.

- **Data Collection Technique**

The quantitative research method was accomplished by way of survey and questionnaire was adopted comprising both opened and closed ended questions as the research instrument (appendix 1). Two research assistants, one in Lagos another the other in Oyo, who have a clear picture of the areas worked on and well briefed about the goal of the research, were engaged to help in selecting

participants and to administer the questionnaire. For the interview, the respondents having been identified were connected with the researcher; interview was then conducted online, as scheduled.

In sharing the questionnaire, Ibadan 90 respondents (40%), Lagos 138 respondents (60%). The sharing proportions of questionnaires among the respondents in the study areas were informed by the preliminary information and recommendations of stakeholders. The questionnaire consists of both opened and closed ended questions. This is done to ensure that a full-orbed was elicited following the approach of Thomas (2001), Keith (2002), and Priscilla (2005). The first part of the questionnaire dealt with the pattern of preferences, by the stakeholders, in the smart transportation arrangement; the second part was comparison and opinions on existing and smart-technology based transportation arrangements; while the third was on the respondents' profile. After the pilot survey and ratification of questionnaire contents, they were administered and the completed questionnaires collected by hand. Observation of activities on the field was also conducted. At the long run, a total of 211 completed questionnaires were received, and sorted.

Two hundred of the completed questionnaires were found good for the study and were used for the analysis. The remaining 11 discarded on the ground that they are either uncompleted or mutilated questionnaires. The total completed questionnaires fell among the respondents in the quota proportions of 40%, 30%, 16%, 10% and 4% for regular passengers, regular order recipients, occasional passengers, occasional order recipients, and bike drivers, respectively. Due to the large population size, a sample size of 200, at 95% confidence level, ±5 confidence interval and 50% per cent level were used under *CRS* (2016). The non-probabilistic sampling techniques used during the data collection survey were judgment technique, convenience technique, and quota technique, respectively (Mugara, 2013). After data collection, they were edited and coded using SPSS statistical package (Daniel, 2014). They were then analyzed and presented using descriptive statistics.

- **Validity of the Instrument**

An instrument must be valid to yield accurate information and inform decision making. Validity concerns whether an instrument is measuring what is intended. Schmidt, (2001) stated that before an instrument can be recommended for application, its measurement properties of validity should be assessed, hence the validation of the questionnaire for this study was done in order to collect evidence to support its meaningfulness and usefulness. In achieving this, first after drafting the questionnaire, the researchers presented to it a scholar in the field of transport and logistics after it was vetted and corrected, the researcher tendered same to the supervisor; adjustments were then made where necessary.

- **Field Testing of the Instruments**

The field testing of the instrument was carried out to ensure appropriateness of its contents and understanding of the questions by the participants beforehand. The questionnaires were pilot-tested on twenty prospective respondents in Apete, Ibadan, Oyo State. Careful attention was however paid to it that those selected were not part of the main or final study. The questionnaires were administered on stakeholders without any time allocated to its completion. They were chosen for their daily activities in the smart-technology based transportation system. Also, their perceptions, information and daily experiences on the field are crucial in the present study.

- **Procedure for Data Analysis**

To analyse the closed ended questionnaire, for the quantitative empirical part of this study, data were analysed descriptively using simple percentage ably represented in tables. Consequently, analysis of qualitative data was done thematically attended with both data being attended with discussion and detail explanations. The thematic analysis for the opened questionnaire was done by identifying, analyzing and presenting the collected data. Deductive way of reasoning through reading, rereading, intuiting, analyzing and synthesizing of respondents' views were done.

For the closed ended questionnaire data, the summary of the whole data collection exercise followed the use of descriptive statistics of frequency counts and percentages for the demographic data. At the long run, a comparative study of the responses was conducted since it was found that perceptions of the respondents were based on geographical areas, experience and educational level. The responses were analysed using PEST and SWOT approach.

- **Ethical consideration**

Concerns for ethics in research include ensuring the willingness of research participants to participate as well as issues bordering on laws, rights and privacy of the respondent. It also borders on can have a trust in the researcher that he will not use the data more than as it was plotted to them. To this end, the researcher ensured that all participants were those that willingly participated and it was also plotted to them that data will only be used purely for academic purpose. Similarly, information from secondary sources were outlined and acknowledged by way of referencing.

- **Limitation of research**

No gainsaying the fact that there are always factors that inhibit the generalization of every research endeavours. Against this background the following are likely factors that may inhibit the generalisation of this work:

1. The fact that there is a go-between as epitomized by the research assistants could have created some lacuna in the process of administering the questionnaire;
2. It should be noted that the focal point of the work are just two states in Nigeria; Lagos and Oyo. Thus, if the research has been situated in other states of Nigeria, tendencies abound that different result might have emerged.
3. One other challenge was that it proved really difficult to get the needed respondents on time as many proved they were not interested in answering any questionnaire.
4. Moreover, the work was also demanding financially, as researcher had to engage research assistant to help gather data which involves transportation among other necessities.

All these put together is capable of limiting the level of generalization of the findings of this work.

Results and Discussion

Quantitative Analysis

- **Research Question 1**

What are the demographic characteristics of smart-technology stakeholders (end-users and bike drivers) and their economic implications?

- **Respondents' Demographic Characteristics of and their Effects**

This section explains the effects of smart technology motorbike services on the socio-economic well- being of all the stakeholders and the study areas in particular. It gives an idea of what could be expected as the influence of the smart services in the areas under consideration. Table 3.1 shows the respondents' demographic characteristics in the survey conducted on the evaluation of the performance of smart-technology based transport systems used in two Nigerian South-western states of Oyo and Lagos. From the Table, 51.0% of the entire sample population was male, and 49.0% were female. The dominant age categories of the respondents were 18-24 years and 25-34 years. However, 33% of the population was between 18 and 24 years, 30% between 25 and 34 years, 23% between 35 and 44 years, and 14% between 45 and 54 years of age. This finding implies that active users of smart-technology based transport model in the region were predominantly youth between the ages of 18-24, and 35-44 years.

Table 1: Demographic Characteristics of Respondents

Profile	Description	Regular Passenger	Irregular Passenger	Regular Order Recipient	Irregular Order Recipient	Bike Driver	**TOTAL (%)**
Gender	Male	22	8	8	4	9	**51**
	Female	30	2	12	4	1	**49**
Age	18-24	23	3	4	2	1	**33**
	25-34	15	3	8	2	2	**30**
	35-44	8	2	6	2	5	**23**
	45-54	6	2	2	2	2	**14**
Education	None	-	-	-	-	-	**-**
	Primary Education	-	-	-	-	-	**-**
	Secondary Education	7	2	5	1	4	**19**
	NCE/Diploma	10	3	4	2	3	**22**
	OND/HND/B.Sc	20	3	6	3	2	**34**
	Postgraduate Degree	15	2	5	2	1	**25**
Marital	Married	11	4	6	2	7	**30**
	Single	36	6	12	2	2	**58**
	Divorced	5	-	1	3	1	**10**
	Widowed	-	-	1	1	-	**2**
Weekly Patronage	< 1 time	-	-	-	-	-	**-**
	1-5 times	2	8	4	7	-	**21**
	6-10 times	20	2	6	1	-	**29**
	>10 times	30	-	10	-	10	**50**
Period of Interaction/ Patronage	< 1 month	4	5	3	1	2	**15**
	2-5 months	3	2	4	2	1	**12**
	6-10 months	15	2	10	2	3	**32**
	>10 months	30	1	3	3	4	**41**

This is a pointer to the fact that the transport model should be supported by the relevant authorities (Government) in order to provide more sustainable services and jobs for the teaming youth.

Also, the educational qualification of respondents indicated that about 34% of the entire population had formal education above high school (B.Sc), 25% had postgraduate education, 19% had secondary education, and 22% had NCE/Diploma. Equally, 29% of the respondents were married, 58% were single, 10% divorced, while 2% widowed. However, 21% of the respondents had up to 5-times weekly patronage of smart-technology based services, 29% employed the services between 6 and 10 times in a week, while 50% employed the smart services more than ten times in a week. Similarly, 15% of the respondents had just started interacting with the smart technology services in the last one month, 12% started between the last 2 - 5 months, 32% between 6 -10 months, and 41% had more than 10-month experience with the smart-technology services.

The entire findings show that the smart technology based transport model is being patronized mostly by educated youth of both gender, and should be given the required attention.

However, diverse opinions on informal (ETA) and smart-technology (MSSP) by the respondents were recorded during the survey, as shown in (Table 3.2). About 89% of the respondents agreed that MSSP is far better than the existing transport arrangement in the two study areas in terms of customer services, 3% was in disagreement, and 8% was indifferent. Also, 84% was of the opinions that MSSP had more robust billing arrangements that are a bit elitist, while 16% of them responded otherwise. Consequently, 53% of the respondents agreed that MSSP were generally better than the ETA, while 47% disagreed about the claim. Similarly, 60% of the respondents were in agreement with the fact that ETA were cheaper than the MSSP, while 40% were in disagreement with the notion.

Similarly, 63% of the respondents agreed that ETA were more available in the market than the MSSP, while about 37% of them disagreed. Whereas 54% of the respondents supported the continuous existence of MSSP in the study areas, while 46% of the respondents desired otherwise. Considering the level of attractiveness of the transport systems and their respective facilities, about 59% of the respondents were of the opinion that MSSP were more generally attractive in their carriage and facilities than the ETA, while 41% were in disagreement about the claim.

Concerning the service delivery, about 71% of the respondents agreed that MSSP service delivery was very good and should not be compared with the ETA, 23% thought otherwise, and 6% of the respondents was indifferent. Also, 89% of the respondents agreed that MSSP had diverse innovative services, while 8% thought contrary and 3% was indifferent about it. Generally, MSSP was rated higher and better in terms safety, welfare, innovative service delivery and welfare. Generally, the socio-economic benefits of the smart technology are discussed broadly under the successive sub-headings:

- **Elimination of Poverty and Provision of Employment**

Except Konga which is mainly on order deliveries, both SafeBoda and GOKADA set out to intensely improve the affordability, accessibility, and safety of motorcycle taxi transportation in study areas. The three companies invest greatly in training drivers and monitoring their performance to achieve these goals. These on-demand transportation options reduces trip complexity (allowing for door-to-door travel), extends end-customer opportunities (education, health, employment, social, family) into new geographies, and opens up the potential to work

longer or later hours via reduced perception of night travel risks. All of these are contributing to the social and economic opportunities of the study areas.

Table 2. Opinions on Modern Smart-Technology Services and Existing Transport Arrangement

S/N	Questions	Agreed (%)	Disagreed (%)	Indifferent (%)
1	ETA are better than MSSP in customer services?	3	89	8
2	ETA and MSSP have the same charges/rate?	16	84	-
3	MSSP are better than the ETA?	53	47	-
4	ETA are cheaper than MSSP?	60	40	-
5	ETA are more available than MSSP?	37	63	-
6	MSSP should be banned from operating in cities?	46	54	-
7	MSSP are more attractive than ETA?	59	41	-
8	MSSP has dominated the transport system in Southwest cities?	35	65	-
9	ETA and MSSP have the same service delivery?	23	71	6
10	MSSP has more innovative services?	89	8	3

Shorter travel times are particularly important for business and livelihood related activities since people can increase their deliveries and reduce their travel time, with end-customer respondents. indicating that GOKADA and SafeBoda services lower their daily transport costs by an average of 35%-50%. These models are also starting to unlock new economic opportunities that build off of ride-hailing -- i.e. food and product delivery can create new small shop and restaurant opportunities that simply never existed before.

- **Establishment of good Health and General Well being**

Road safety is a major development obstacle in most emerging economies, stressing public health budgets, removing productive members from the workforce. Accidents can impact household economics in many ways: the direct cost of emergency treatment and hospital costs, time away from productive work, as well as the indirect costs of the stress caused by a family member's injury. Poor people are likely at greater risk for such accidents because they tend to walk and a high proportion of road traffic accidents involve pedestrians. Limited and inefficient transportation options constrain movement in and around urban areas, making it difficult and

expensive for people to connect with employment, education, and training opportunities, as well as essential public services.

Road traffic accidents are also a major health issue, with over 1.25 million people killed each year from crashes, and another 20-50 million injured. More than 90 percent of road fatalities happen in low- and middle-income countries -- even though these countries are home to less than 50% of the world's working vehicles. By 2030, road accidents are projected to kill more people than HIV/AIDs, tuberculosis, and malaria combined. (1) Road traffic accidents predominantly impact the working age population, and have already become the single largest cause of death among 15-29 year olds. (2) The high costs of medical care and lost wages from accidents alone can impede a family's progress out of poverty. All the identified disadvantages of informal arrangement have therefore been taken care of by the operations of smart-technology aided services.

- **Equal Gender Participation**

Inefficient, limited, and unsafe mobility can significantly impact gender equality and participation by limiting women's empowerment and economic opportunities, and exposing them to security risks. The International Labour Organization findings show that "limited access to safe transport is the greatest obstacle to women's participation in the labor market in developing countries." Urban travel for women in emerging markets often requires long and unsafe walks, high cost trips in unsafe vehicles, and long waits between poorly connected transportation services. Particularly in urban areas, women and girls are often the targets of sexual assault and abuse in transportation, leading many to limit their daily transportation or avoid trips altogether. Women also generally have less money to spend on transportation, and are less able to change their schedules to accommodate more efficient transport modes or trips so face higher costs to poor mobility options. Furthermore, since women have greater responsibility for household maintenance, family health care, and children's education, any transportation delays and inefficiencies also reduce the time they have for economic opportunities.

This research found that GOKADA and SafeBoda are making major progress in reducing constraints to women's and girls' movement and gives them freedom of action to travel at their own convenience. Female end-customers felt that these services have eliminated their exposure to the type of violence and harassment they would otherwise face with public or informal transportation options. Well-trained drivers tend to follow the speed limit, listen and oblige when asked to slow down, and are generally more trusted by women clients. By significantly reducing these safety concerns, women and girls now feel more confident in pursuing economic and education ambitions. Both companies (GOKADA and SafeBoda) also deliver more direct and faster transportation options, which in most cases leads to a reduction in transport costs which women overwhelmingly use to the benefit of the family. By facilitating over 150,000trips per day, GOKADA and SafeBoda are enabling up to 75,000 women to more safely, efficiently, and cost effectively reach their jobs, access essential services for themselves and their families, and contribute to their independence and ability to pursue new productive opportunities.

- **Creation of Decent Work and Economic Growth**

Sustainable economic development will require not only significant job creation, but also a focus on ensuring employment opportunities are of high quality, offer fair incomes, and are available equally to women, men, and youth. Traditionally, being a motorcycle taxi driver has

meant long hours weaving in and out of congested urban environments, daily exposure to the risk of an accident, frequent run-ins with police and other authorities, and multiple safety issues related to transacting in cash. The society typically looks down on motorcycle taxi drivers, viewing them as uneducated and dangerous, and there are no systems in place to protect them from exploitation and harassment on a day-to-day basis. Most motorcycle drivers in the informal economy lack driving licenses, and have extremely limited access to training and educational opportunities that could improve their productivity and road safety.

Drivers participating in smart-technology's networks face a reality that is different in almost every way. First, the ride-hailing model formalizes gig economy activity for drivers, creating formal records and data on performance, income, and savings. These drivers receive training in road safety upon joining the companies, and can often access additional up-skilling opportunities throughout their journey with the companies to diversify their roles and further their personal development.

Real-time matching of supply and demand through the digital platform leads to improved income predictability and higher take-home incomes for most drivers, as well as contributing to their sense of job security. By providing access to insurance and financial services these companies also support the social protection of drivers and their families. As large population of drivers tend to be under 30 years of age, the companies under consideration are creating a channel for reducing the proportion of youth not in employment.

- **Research Question 2**

What is the socio-economic impact of smart-technology taxi services on end-customers?

- **Socio-Economic Impacts on End-Customers**

Safe and efficient urban transportation is a critical component of economic and social development, enabling people to access education and jobs, markets, essential services, and family. Unfortunately, significant barriers are slowing the transition to sustainable transportation, and serve to widen the movement opportunity gap between the rich and poor. People face limited work opportunities given the limited reach of public transportation and high costs of private vehicle ownership. Security risks and concerns over driver safety also cause women and girls to limit the times they travel, and leading them to forego opportunities altogether. Poorly managed intersections and congested streets make regular business related trips time consuming and expensive, causing businesses to miss deadlines.

This section however, presents a summary of qualitative research findings with current and former Konga, GOKADA and SafeBoda customers, and is also informed by additional conversations with local transport stakeholders (i.e. motorcycle mechanics and traffic police officers). Respondents were selected in conjunction with each company based on a few key criteria: gender, service usage level, and whether they were active or dormant.

- **Safer Transportation Arrangement**

End-customers interviewed were generally motivated to patronize the three smart companies for road safety, cost, and convenience, in that order. Given the high incidence of road traffic injuries and deaths in both Lagos and Ibadan, and the high proportion of accidents involving motorcycles, it's not surprising that safety is a top concern. Respondents were particularly drawn to these

services based on an understanding that approved drivers were trained and insured, wore helmets and had them available for customer use, and were incentivized to drive more safely. Over half of the respondents in each study area noted that the platform drivers would slow down and drive more carefully when asked, and most indicated that drivers in their experience almost always follow the traffic rules. While customer accident data before and after signing up for these services was not available for this study, the perceived improvement in safety emerged as an overwhelming benefit across both end-customer groups.

The core motorcycle-taxi software gives end-customers visibility into driver ratings and performance, and allows them to track driver location during both the pickup and the trip processes. Customers also expressed confidence and a keen sense of security through the additional data (driver name and ID, prior performance, location, etc.) that are available through the platform and smartphone app, as well as the ability to avoid using cash altogether if preferred.

- **More efficient Transport System**

SafeBoda and GOKADA services deliver time savings through more direct and faster transportation, and in many cases, a reduction in transport costs. This starts with reduced time and complexity in finding a ride, ensuring the driver knows your destination, and avoiding having to negotiate a price. All of these steps are done by the smartphone app. As motorcycle taxis can more easily navigate congested areas and travel on smaller and often dirt roads, most passengers described GOKADA and SafeBoda as much faster as compared to alternatives. Respondents also pointed to an increased ability to predict travel times as helping them in overall schedule and time management – reaching school classes, appointments, and jobs on time, reliably.

Shorter travel times are particularly important for business and livelihood-related activities since people can increase their deliveries and reduce their travel time (i.e., a photographer delivering orders in Lagos, a catering and food delivery business in Ibadan) and lower their daily transport costs by an average of 35%-50%. As these companies diversify into product / food deliveries and other related services this will likely create new entrepreneurial opportunities for restaurants and small shops that otherwise wouldn't have delivery options. Respondents described being able to complete additional business activities, and thus increase revenue from the time saved, which they were able to pump back into the business as working capital. These mobility enterprises are also beginning to extend access to new opportunities for end-customers.

While examples were limited, some respondents indicated that safer, on-demand transport from Konga, GOKADA and SafeBoda is making it easier to think about and explore new education and income generating opportunities in parts of the city that would otherwise be too expensive or unsafe to reach. The three companies extend people's reach beyond urban centers, so customers living in city outskirts and nearby rural areas can connect with urban markets since motorcycles can go beyond concrete roads and along village paths that trucks and cars cannot navigate.

- **Safety and Comfort for Women**

In addition to improved safety while on the road, the services have reduced overall transportation security risks for women and girls. Women and girls are frequently exposed to violence and harassment in transportation, whether it's walking, taking public transport, or riding in a private car or motorcycle taxi. Half of the female GOKADA respondents in Lagos reported being not just verbally insulted, but frequently physically abused while using okadas in the informal

market. Not a single respondent in either study area has experience with abuse of any kind under the service providers, and have not heard of others experiencing these issues. Most of them also describe the trained drivers as courteous and approachable. As women typically travel on a much lower budget compared to men, the lower cost of ride hailing services may also boost women's ability to take additional and longer trips. Most female respondents noted that they are now taking more trips and over longer distances as compared to their previous options.

In Nigeria, it's common for informal motorcycle taxis to make adjustments to their bike seat, extending the length and increasing the angle in order to create space to carry more than one passenger at a time. These changes also lead to an uncomfortable travel experience for women as the bike seat angle forces them to sit against the driver's back. Several GOKADA customers expressed appreciation that the company's bike seats are not adjusted, and allow for a comfortable amount of space between the passenger and driver.

Qualitative Analysis

This section presents findings from the open-ended questionnaire which is qualitative in nature. The analyses were done topically on respondents' opinions presented textually.

- **Research Question 3**

What is the socio-economic impact of smart-technology taxi services on motorcycle drivers/drivers?

- **Creation of Gracious and Inclusive Employment**

For the large population of young men operating independent motorcycle-taxi services, it is a largely cash-based income generating activity fraught with physical safety and financial risks. Operating exclusively in the informal economy, these individuals have little to no income security and predictability, do not qualify for or cannot access insurance services, and are a broken part, illness, or injury away from having no way to financially support themselves. Moreover, the informal motorcycle market in both Ibadan and Lagos has a reputation for being unprofessional, dangerous, and often chaotic.

The combinations of technologies and services offered by the companies have served to formalize the drivers' role, transforming the public's view of the occupation and creating social networks to support the drivers. They (drivers) stand out from the crowd of informal drivers, and operate with a renewed confidence in their own capabilities to navigate the roads safely. The three companies have invested heavily in developing a highly visible brand, intensive driver training for safety, and ongoing monitoring of performance to build trust in the local market, and make drivers feel confident being part of a formal entity. This brand association gives drivers a sense of dignity where society would otherwise look down on them as being uneducated, cheats, and thieves.

Drivers in both study areas also enjoy working with a network of fellow drivers from whom they can learn (often via WhatsApp groups), with many drivers in both study areas indicating that "making lifelong friends" is a primary benefit from participating in the service. As most younger drivers have recently relocated from semi-urban and rural to urban areas to work as motorcycle taxi drivers, this internal network can make this transition easier, creating opportunities for

mentorship and guidance from fellow drivers, and in some cases leading to the establishment of a formal motorcycle taxi cooperative.

- **Availability of More Sustainable and better work**

Respondents in both study areas spoke highly of their increased ability to control the direction of their lives, with lower daily stress through flexible working hours, a wider geographic reach for client acquisition, and less time spent tracking down new clients. Prior to joining the, drivers were highly dependent on customers who could be acquired in-person at a particular location (stage) where they are based. Under the informal model drivers would typically spend over half of the day waiting at their stage for potential customers, a time cost and location dependency that is largely eliminated with the platforms, which connect them with trips around the city. In Lagos, drivers have also been able to expand the geographies they serve as the company-financed motorcycles meet the engine speculations required to travel on national highways, which are often out of reach for informal okadas.

Findings in both studies showed that participating drivers take home ~25% more than similar taxi drivers in the informal market as they repay bike loans, and 50% more once they own their own bikes. This increase in take-home income and asset ownership can be transformational, enabling drivers and their families to eat more and better quality food, and providing capital to build a home for the drivers and their family members back in a rural village and reliably pay school fees for children. Most drivers use the new income to either improve their home or invest in income diversification, establishing small retail shops or mobile money agent businesses for a family member to run.

The three companies' software platforms create formal records and data on driver performance, earnings, and a transactions history as since they participate in in-house savings and credit schemes. The companies are leveraging this data to offer financial products internally, such as short-term loans and savings. The package of benefits and financial services serves as a gateway to greater financial inclusion and financial health**.** To start, these companies often facilitate the opening of bank and mobile money accounts for drivers, and support their registration for national identification and driving license documents.

SafeBoda recently launched an internal "cashless" wallet that enables both drivers and customers to electronically store value, pay for rides, purchase mobile airtime, send funds to other customers or drivers, and acquire goods and services from partners; all within the SafeBoda smartphone application. All SafeBoda drivers participating in this study were recently enrolled to the cashless option, with most seeing it as a savings tool where they can accumulate funds electronically and keep it away from the temptation to spend.

Conclusions and Recommendations

The socio-economic impacts of smart technology-based transportation and logistics companies of GOKADA, SafeBoda, and KONGA express, operating in Ibadan and Lagos cities of southwestern Nigeria have been evaluated with a view to improving their service delivery. Therefore, the following conclusions are drawn from the study.

In view of the first objective of work, which is to perform a trend analysis of smart technology solutions and identify key issues, the findings of this work, both theoretical and empirical, have

shown that the application of smart technology solutions in transportation has the potential of turning around the fortunes of Nigeria's SMEs for good as well as being a great source of IGR and adding to GDP. On this note, if all that is needed are put in place. After much of critical review it was discovered that, though the smart tech transportation system is full of potential in consideration of its numerous advantages, yet its current state in Nigeria is marred by some inhibiting factors as inadequate infrastructure, absence of robust internet facility among others.

Similarly, the study was able to examine and highlight and analyze smart technology solutions from a theoretical point of view conception vis-à-vis those factors that affect it.

Moreover, pursuant of its task to undertake a survey in order to evaluate solutions for the use of smart technologies in logistics companies, findings from both qualitative and quantitative empirical research of this study suggest that there are inhibitions to smart technologies in logistics companies and this in turns is having negative impacts on the operations in Nigeria.

And in view of the need to suggest strategies for improving smart technologies in logistics service in Nigeria, likely suggestions for improvement, in the logistics parlance generally and smart tech transportation particularly, were highlighted and discussed; such as good legislation, credit facility, data-driven policies, etc.

On a finally, in keeping with the standard best practices, PEST and SWOT analyses were done, and it was revealed that smart tech transportation in has a lot of potentials yet still fraught with many challenges. Factors as political, social, legislation, technological and economic are seeing as affecting Nigeria's smart tech transportation system with regards to PEST analysis. On the other hand, the SWOT revealed certain factors with regards to strengths, prevailing weaknesses, available opportunities and threats to smart tech transportation in Nigeria.

In view of the forgoing, deliberate efforts need to be injected into this sector of the economy. Thus, stakeholders as private corporations, the government, etc have undeniable roles to play in order to stem the current challenges in the smart tech transportation service in Nigeria towards an effective operation.

In view of the foregoing, more research work should be conducted on the activities of the transport system in order to improve its efficiency. The service providers are implored to extend their services to other high impact services like health and accident-related ones.

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SEVERAL REMARKS ON TERRORISM

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Abstract. *The author is going to overview and analyse main strategies on terrorism through legal segment point of view. If you have right direction and right tools you can achieve your destination. Similar saying we can apply when we are analysing legal segment of strategy targeting terrorism.*

The main figure in the terror act is a human being on choosing the direction of attack. One of descriptor's on terrorism is object, or in military language – a target. The author is going briefly overview targets of terrorists and measures taken to condradict their violent plans.

The novelty of this article is that this type of research has not yet been carried out in depth in Lithuania.

Keywords**:** *Threat, terrorism, strategy, legal side of strategy, a target, strategic object.*

"I want to say, with great humility, that terrorism is bad! It is bad in its origins and it is bad in its results. It is bad because it is born of hate, and it is bad in its results because it does not construct, it destroys! May all people understand that the path of terrorism does not help. The way of terrorism is fundamentally criminal"(Pope Francis)

Introduction

Terrorism is one of the oldest social phenomenon which accompany human beings through all circles of their existence. The appearance of above mentioned social event were facilitated by external and internal factors. We can analyze terrorism in two dimensions: as the social phenomena or as the threats. The author of this article is going to focuse on as a threat which are following mankind from the very beggining and has a long history of evolution as a statehood, a state. **Main topics** of this article are two. Firstly, legal segment of strategy targeting terrorism. Secondly targets of terror attacks and means of usage to attack the target.

The aims of this paper are:

- to overview, analyse and present legal segment of strategy targeting terrorism;
- to overview, analyse targets of terror acts and countermeasure taken by state to protect the most valuable object;
- to analyze means in usage by terrorists to hit targets and measures to prevent it from happening taken by the state institutions;

The author of this article is going to use **research methods** such as: data collection, data analysis, descriptive research, analytical research, logical analysis to explore the topic. The research of this topic will allow us:

- to have broader view on legal segment of strategy targeting terrorism;
- to have clear view on the targets of terrorism and means to conduct the terror acts.
- to understand essence of some measures restricting some movement in some areas, additional security precaution measures to diminish possible risk to be targeted.

Legal segment of strategy targeting terrorism

Strategy originated from the necessity of peoples to defeat their enemies. Without enemies, the need for strategy is non-existent. Strategy is about shaping the future (M. Mckeown, 2011, p. 22). So, we need to know our enemies – in given case, terrorism in details. For example, motivations join to terrorist groups, age of terrorist. The goal of strategy is to present vision, directions how to cope with terrorism.

The strategy on terrorism should involve not only repressive measures reflected in the criminal laws and criminal procedure laws, special laws, but also oriented into search ways for peaceful resolution of conflict. For example, The Irish Peace Process to end civil conflict and brought stability in Northern Ireland since 1998.

Building strategy on national security, on counter-terrorism strategy two approaches can be in usage – soft and tough. The biggest challenge for international players, national lawmakers to find proper balance between strict measures and soft power dealing with terrorism. A lot of internal and external factors should be taken into account in preparing strategy, later amendments to already existing laws or introducing new laws in this field. Factors can be varying from cultural till political. Good examples could be Italy's and The Netherlands experience fighting with terror. According to USA based **research center Pewforum** data, despite large Muslim community in the countries, around 5 % of population of Italy and 7% - in The Nertherlands, whese countries didn't faced cruel attacks from terrorists side as experienced France, The United Kingdom, The Russian Federation.

Terrorist organizations calculate the risk of disclosure their activiy. The risk of interception correlates with expenditure on public order and safety as a fraction of GDP. The GDP also correlates with the population size and thus to the amount of police, other LEA, intelligent service resources available to protect any human target. Expenditures of totalitarian states for internal security are disproportionately large relative to the GDP, and indeed terrorist organizations have a lot of difficulties operating there (Kock Wiil, U., 2011, p. 40).

The United Nations General Assembly adopted the **Global Counter-Terrorism Strategy** on 8 September 2006. The strategy is a unique global instrument to enhance national, regional and international efforts to counter terrorism. All Member States have agreed the first time to a common strategic and operational approach to fight terrorism and making it a living document attuned to Member States' counter-terrorism priorities. The General Assembly reviews the Strategy every two years. The Global Counter-Terrorism Strategy in the form of a resolution and an annexed Plan of Action (A/RES/60/288) composed of 4 pillars:

1. Addressing the conditions conducive to the spread of terrorism
2. Measures to prevent and combat terrorism
3. Measures to build states' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard;
4. Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

The European Council adopted **EU Counter-terrorism strategy in 2005**, which commits the Union to combating terrorism globally, while respecting human rights and allowing its citizens to live in an area of freedom, security and justice. It is built around four pillars:

1. **Prevent** people from turning to terrorism and stop future generations of terrorists from emerging;
2. **Protec**t citizens and critical infrastructure by reducing vulnerabilities against attacks;
3. **Pursue and investigate** terrorists, impede planning, travel and communications, cut off access to funding and materials and bring terrorists to justice;

4. **Respond in a coordinated** way by preparing for the management and minimisation of the consequences of a terrorist attack, improving capacities to deal with the aftermath and taking into account the needs of victims.

The harmonization of EU and EU Member States' counter-terrorism laws and strategies is pursued through several types of legislation. Some are legally binding on Member States and others are of a recommendatory nature. Binding EU legislation takes precedence over Member States' national law, which requires Member States to ensure that their national law is harmonized with EU law. The author of this chapter presents the list some of legal acts targeting terrorism in different ways: "Internal security strategy for the European Union Towards a European security model" adopted in 2010, "The Stockholm Programme - an Open and Secure Europe Serving and Protecting Citizens" adopted in 2010, "The European Agenda on Security" adopted in 2015 and steps on implementing it, The renewed EU Internal Security Strategy 2015-2020, "The EU Code of conduct on countering illegal hate speech online" adopted in 2016, Recommendation "on measures to effectively tackle illegal content online" in 2018.

The EU Commission launched "The Radicalisation Awareness Network" which brings together practitioners from all Member States to develop practices and equips them with the skills they need to address violent extremism. In 2015, the EU Commission launched the EU Internet Forum, which brings together governments, Europol, and the biggest technology and social media companies to ensure that illegal content, including terrorist propaganda, is taken down as quickly as possible. In 2017, the EU Commission set up a High-Level Commission Expert Group on radicalisation. In 2006 the European Parliament and the Council of the European Union adopted Directive 2006/24/EC "**on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks**". The aim of the Directive was to harmonise the EU Member States' provisions concerning the obligations of communications providers with respect to the retention of certain data, in order to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime. It applies to traffic and location data on both legal entities and natural persons and to the related data necessary to identify the subscriber or registered user.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 "On the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. On 15 March 2017, the EU adopted the Directive on **combating terrorism,** Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 "**on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/**EU etc. There is part of legal acts adopted by the EU institutions on terrorism.

The author of this article provides list of legal acts (not full) targeting terrorism in the Republic of Lithuania: The CC of the Republic of Lithuania, The Law of the Republic of Lithuania on the Basics of National Security, the National Security Strategy approved 2017 by the Seimas of the Republic of Lithuania, The State Progress Strategy "Lithuania's Progress Strategy "Lithuania 2030" approved by the Seimas of the Republic of Lithuania, the Plan for Drafting of Long-term State Programmes for the Strengthening of Security approved by the Seimas of the Republic of Lithuania , Strategic action plan of Police Department under Ministry of Internal Affairs of the Republic of Lithuania etc. In all legal acts, terrorism considers to be a threat to national security and measures to cope with it must be in place.

Financial Action Task Force (FATF) and MONEYVAL preparing guidelines on international level on money laundering, terrorism financing and states implemented provision into national law.

Three institutions responsible for the prevention of terrorist financing in the Republic of Lithuania. the Bank of Lithuania and the Financial Crime Investigation Service under The Ministry of the Interior of the Republic of Lithuania have the right to impose fines and impose sanctions on a financial institution or a branch of a foreign financial institution. Third – State Security Department of the Republic of Lithuania. Power and mandate enshrined in laws on Financial Crime Investigation Service and State Security Department of Lithuania who has the right to receive information from the said institutions free of charge, performs analysis of information related to terrorist financing. Financial Crime Investigation Service is connected to the EU Financial Intelligence Unit Information Exchange Network (FIU.NET), belongs to the Egmont Group, an organization uniting financial intelligence units.

Law of the Republic of Lithuania on Prevention of Money Laundering and Terrorist Financing.

Law of the Republic of Lithuania on provision of information to the public. For example, article 19.

Order No 52-V of 24 February 2014 on Supervision of proper implementation of the international sanctions within the limits of competence of the Financial Crime Investigation Service under the Ministry of the Interior

Order No 1B-372 of 1 July 2011 of the Director General of the Customs Department under the Ministry of Finance approving the procedures of declaration of the cash brought from EU Member States to the Republic of Lithuania, from the Republic of Lithuania and through its territory to other EU Member States and of origin control

Article 25 Criminal Code of the Republic of Lithuania (hereinafter referred as to "**CC**") on forms of Complicity states that "*1. Forms of complicity shall be a group of accomplices, an organized group or a criminal association….4. A criminal association shall be one in which three or more persons linked by permanent mutual relations and division of roles or tasks join together for the commission of a joint criminal act – one or several less serious, serious and grave crimes. An anti-state group or organisation and a terrorist group shall be considered equivalent to a criminal association*).

National lawmaker didn't include into Article 39 (1) of CC of the Republic of Lithuania on Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organized Group or a Criminal Association **the members of terrorist group**. It could be valuable to include into it.

Hate crime: Article 170 of Criminal Code (hereinafter – CC) of the Republic of Lithuania. Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons. Punishment – a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to three years.

Article 170 (1.) of CC of the Republic of Lithuania. Creation and Activities of the Groups and Organizations Aiming at Discriminating a Group of Persons or Inciting against It. Soft punishments - a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to one year.

Article 216 of CC of the Republic of Lithuania. Laundering of Crime-Related Property, articles 250-252 of CC of the Republic of Lithuania.

The laws of the Republic of Lithuania allow the usage of intelligence information for criminal proceedings. Although the Republic of Lithuania doesn't have the Law on the prevention of terrorism act.

The case law of the Republic of Lithuania in this area is poor, only a few cases were considered in court: Eglė Kusaitė (case 2K-46-677/2016229) and Michael Campbello (case 1A-4-398 / 2017230).

According to the levels provided in the standard operation procedure for determining, announcing and preparing for the Terrorist Threat Level, the level of the terrorist threat in Lithuania is currently low. The author's opinion each European Union Member State has to have National Counter-terrorism strategy, Action plan and Road map.

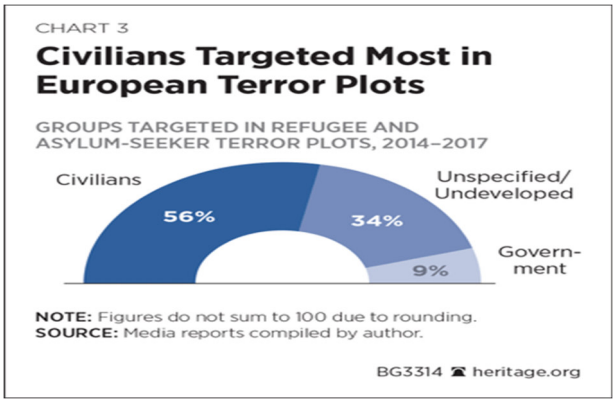
Cooperation of organized crime groups and terrorist groups. Due to new technologies for communication, encryption your messages, secure channel for communication made easier live for terrorist groups on cooperation with organized crime groups in such areas as fake documents, weapons, explosive material. Nowadays, it is possible to do directly through the Internet anonymously. It is dangerous tendency the convergence between criminal and terrorist groups. Earlier, communication between organized crime groups and members of terrorist groups on acquisition of fake documents, weapon, other banned items were direct in many cases. There was high risk that country's intelligence agencies can fix contacts. It prevented some organized crime group for cooperation with terrorist organizations in some areas, mainly in acquisition of firearms, ammunition, fake documents. Despite this factor, the organized crime groups and terrorist groups successfully cooperated in drug trafficking from South America to Europe, from Asia to Europe.

To sum up, legal segment of strategy in respect of **terrorism, national lawmakers** has to be focused on prevention of terrorism oriented crimes by effective and comprehensive social policy, balanced legal instruments and sufficient financial, human resources, flexible and effective organizational means, management culture of agencies tackling with above mentioned threat etc., factors.

Before launching strategy, action plan and road map into implementation phase, we should consider existing difficulties on choosing proper prevention measures, instruments, quality of statistical data.

Targets of terrorism and means in usage to attack

According to research and educational institution "**Heritage foundation**" based in USA civilians were, are the most targetted object during terrorist attacks



In accordance with data of organization "**Visionofhumanity**" the most frequent forms of terrorism in 2018 were hostage takings and armed assaults, together comprising 84 % of attacks.

Bombings and armed assaults have been the most common type of terrorist attack over the past two decades. Recent attacks in Europe, Israel present new tendency of terrorists in choosing means to carry oy terror acts such trucks, vehicle, reconstruction technigue, knife, daggers, axes, gas ballons, flamable liquids and other civilian devices freely accesible, designed to other goal, tasks but might be use to harm, kill people, damage property. Improvised weapon, such as knives and vehicles, are the weapons of choice with which recent attacks were carried out. These weapons, except for explosive devices, do not require much preparation or special skills to be employed in terrorist attacks, which are either carefully prepared or carried out spontaneously.

EU took prevention measure in the arm market by tightening provisions on firearms control and obtaining them. EU adopted Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of firearms. The directive obliges EU Member States to bring their national laws provisions into line with EU standards on the traceability of all firearms and essential components, obliges them to label even replaceable firearm components, and restricts the rights of firearms owners to modify firearms themselves. According to provisions of above mentioned Directive Member States *shall take all appropriate measures to prohibit the acquisition and possession of the firearms, the essential components and the ammunition classified in category A,* also requirements were set up for amount of amunition for owners of firearms.

The directive is a mandatory, binding legal act for EU Member States. It lays down only minimum measures in the field of firearms control. EU Member States may introduce more stricter firearms control measures. In Lithuania, this area is regulated by the Law on the Control of Weapons and Ammunition of the Republic of Lithuania.

In the EU strengthening the protection of public spaces, airports, other strategic objects is one of the priority areas on combating with terrorism. EU issued binding and no-binding character legal acts on protection of strategic objects and requirements for protection of such objects. For example, Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002.

European Commission Joint Research Center presented review on vehicle barrier protection guidance in 2017. It follows after deadly terror attacks carried by terrorists using vehicles in Nice, Berlin London, Stockholm, Barcelona. Recommendation focuses on procedures for the design, testing and installation of vehicle barriers to protect public areas and areas with so-called "**soft targets**" from terrorist attacks using a vehicle as the weapon. Attention is drawn to public places in all EU cities with a high concentration of people, such as pedestrian areas, fairs, tourist sites, an outdoor market and town squares. Potential terrorists can refuse an act of terrorism simply because there is a high probability that it will fail. Although so-called "**soft targets**" are the most appropriate target if there is no reliable protection. It leads to conclusion that terrorists use cold-blooded calculation before they conduct an attack.

The Republic of Lithuania took appropriate methods and measures to protected public areas, strategic objects. For example, according to the **Republic of Lithuania Law on the protection of objects of importance to ensuring national security** all objects (enterprises, facilities, property and economic sectors) are divided into categories according to their importance for national security. Different state and private institutions are in charge for protection of objects of importance to ensuring national security. For example, Dignitary Protection Service of the Republic of Lithuania, Public Security Service under the Ministry of

Interior of the Republic of Lithuania, Police Department at the ministry of Interior of the Republic of Lithuania, etc.

Part 1 of article 66 of the Aviation Law of the Republic of Lithuania states that *Airports and carriers shall ensure aviation security. These undertakings must have aviation security ensuring programmes approved by the CAA and plans to establish respective services (appoint a responsible staff member (members). Other entities operating inside the controlled area of the airport must have plans of aviation security and unconditionally implement the requirements of the services, which ensure the security of civil aviation. 2. The personnel of the services, which ensure the security of aviation, shall have the right within the scope of their competence, to conduct personal inspection and checks of articles, apprehend and hand over to law enforcement institutions persons who have violated the requirements of aviation security and also, the baggage, goods and postal parcels, which contain articles and substances which are prohibited in air transportation.*

In accordance with provision of above-mentioned law additional aviation security measures might be impose based on information on the increase level of threat of a terrorist act. Three levels of quality control on aviation safety and several layers of security exist in the international airports of Lithuania. It allows to reduce level of threat and minimize the risk of persons who in charge for security of strategic object to be penetrate by terrorists. For example, to receive sensitive date on security measures at airport from staff by using different methods, including violent.

Conclusions

The strategy on terrorism should involve not only repressive measures reflected in the criminal laws and criminal procedure laws, special laws, but also oriented into search ways for peaceful resolution of conflict, it has to include non repressive measures.

Legal segment of strategy in respect of **terrorism, national lawmakers** has to be focused on prevention of terrorism oriented crimes by effective and comprehensive social policy, balanced legal instruments and sufficient financial, human resources, flexible and effective organizational means, management culture of agencies tackling with above mentioned threat etc., factors. Before launching national counter terrorism strategy into implementation phase, we should consider existing difficulties on choosing proper prevention measures, instruments, find proper balance between repressive and non-repressive measures targeting such social phenomenon – as terrorism.

The Republic of Lithuania needs the Law on the prevention of terrorism act.

Bombings and armed assaults have been the most common type of terrorist attack. Civilians were, are the most targetted object during terrorist attacks.

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IMPROVEMENT OF SUPPLY CHAIN MANAGEMENT IN THE FASHION INDUSTRY

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Abstract: *Everyday, the fashion industry turns out millions of garments. Increasing garment manufacturing costs and the cost of both imported and domestic raw materials are two of the toughest issues facing this industry and for this reason, supply - chain management is crucial in the fashion industry. Another issue is that while many of us are familiar with the concept of supply chain management, they are unsure of how to put it into practise or how to properly plan for it. Complete understanding of the SCM and its role in fashion industry in Nigeria. This reseqrch work helps to increase enviromental awareness and policies and also investigate the supply chain management approach for fashion retail store*
This research was achieved through extensive literature review and emperical data analysis. The survey design of the research involves a set of questions and statements to which participants give answers

Keywords*: Supply chain, management, fashion industry, environmental impact, quality, system*

Introduction

Globally, the fashion industry employs over 75 million people and generates over US$2.5 trillion in revenue each year. The industry has grown rapidly in the last two decades, with production doubling between 2000 and 2014. People are buying 60% more clothing in 2014 than they did in 2000, but they only wore it for half as long (David , et al., 2009). As the fast - fashion industry grows at a percent per annum of 21.9% from 2020 to 2021, the industry is expected to expand $30.58 billion in sales by then . As a result of the recovery from the COVID-19 impact, companies have resumed operations and are adapting to a new normal while recovering from the operational challenges caused by social distance, remote working, as well as the closure of commercial activities, which had previously led to limiting containment measures. The market is anticipated to grow at a 7% CAGR until 2025 to reach $39.84 billion. In the fast-fashion industry, clothing and accessories are sold in line with current trends, along with services that support them. When clothing moves quickly from catwalk to the store, it is said to be fast fashion. Fashion Week serves as a springboard for fast fashion designers' clothing collections. Because of low living wages as well as unsanitary working condition and as result fast fashion is struggling. Workers in the fashion industry, particularly women (nearly 80% of a world's textile workers are women), are paid pitifully little. As with men, women are also subjected to harassment and discrimination at work. Fast fashion garment workers in Asia, as per the Global Labor Justice survey, face exploitation and mistreatment, including poor working conditions and low pay as well as excessive overtime that reduces productivity. As a result, the fashion industry will be despised by the majority of people. The expansion of the fast - fashion industry is therefore harmed by the low wages and the appalling working conditions. The fast fashion industry was propelled by the growing number of young people who wanted

fashionable but affordable clothing. As estimated by the United Nations, there will be 1.2 billion young people in the world in 2019 and that number will rise by 7.9% to 1.35 million by 2030. Clothes that are one-of-a-kind, trendy, and affordable are particularly popular among the youth population. As a result, clothing manufacturers are putting their efforts into bringing customers the latest fashions from New York Fashion Week. As the population of young people grows, so does their affordability for fast fashion clothing. Despite the fact that the fashion business is on the rise, greater attention has been paid to the wide range of environmental harms for which the industry is primarily responsible. Fashion production is responsible for ten percent of all human carbon emissions, as well as depleting freshwater supplies and polluting rivers and streams. Furthermore, according to (McFall-Johnsen, 2020) , every year, 85% of textiles end up in landfills, and clothing washing releases massive volumes of microplastics into the ocean.

The performance indicator developed in Nigeria by EPI (Anon., 2018) highlighted the fact that we have not yet fully implemented the sustainability policies in the monthly report on green production and sustainable waste management. Nigeria will be close to achieving the goals of the ecosystem and the environment, if it works well on the goal of sustainable development.

Table 1.Environmental performance index of Nigeria (Anon., 2018)

Sl. No	Measurement index	Current rank	Current score (%)
1	Air quality	152	48.08
2	Water and sanitation	168	7.75
3	Heavy metals	60	61.39
4	Biodiversity	102	71.64
5	Forests	-	-
6	Fisheries	21	69.17
7	Climate and energy	10	73.85
8	Air pollution	15	84.51
9	Water resources	134	30.76
10	Agriculture	72	32.93

Problems/limitation of the study

The research encountered the issue of lack of appropriate technical support. Also, there was the issue of lack of knowledge about standards such as the environment protection agencyand ISO standard to support the green supply chain

Research tasks to achieve the aim

To achieve the aim of the research certain tasks are needed to be carried out. They includes:

Complete understanding of the SCM and its role in fashion industry.

Reviewing the earlier literature or research work already done in this field, in order to get an idea about the loopholes yet present in this research area.

Studying about the several International and national organizations that are working for the environmental sustainability in fashion industry. We will also focus on government initiatives taken in this direction earlier and the changes that are needed to be addressed in this field.

Preparing a research methodology, to understand the public awareness regarding this problem via set of questionnaires. Since, no matter how many steps are taken by government or organization but the real change can be done by the common public only.

Suggesting several ways for tackling this situation and analyzing public feedback on this matter.

Providing research data results and providing suggestions and recommendations.

Research design

For analyzing the SCM in fashion industry, we will focus on Quality Management System (QMS) being adopted by this industry to survive in the competitive environment. This analysis will provide a broader perspective of the SCM in fashion industry and measures required regarding ecological impacts. QMS can help producers standardize processes, adopt best practices in the industry and improve percentages directly (rework). To face the challenge, mode manufacturers are exploring QMS techniques like TQM, ISO & Six - Sigma Quality Systems more and more. It has been noted that the firefighting environment and the slow adaptation of best practices make it very difficult with in fashion industry to maintain the quality management system. In contrast to traditional product standardization quality control systems, the ISO system places emphasis on process standardization. The system emphasizes process parameter documentation (process KPI) and input indicators (fabrics, trims, utility and workforce) as well as measuring and analytical variables (audits & corrective/preventive actions) to improve production processes. It aims to control process indicators (by standardizing the processes) while monitoring input - indicators (raw material). The implementation of ISO QMS is based on four phases in apparel production: define, document, document - control, & measurement and analysis to improve the process. This analysis will provide overview of fashion industries. Now, for the research work, survey research design will be used. Survey design can be seen as a non-experimental research design used to describe an individual or a group of individuals by administering a survey or a questionnaire. The survey design of the research involves a set of questions and statements to which participants give answers. The survey design was also demonstrated as a survey or self-report, since many surveys specifically contain questions about themselves in which participants report.

For these reasons, the survey research - design will be adopted:

1 Survey data have been collected from many individuals at relatively low costs and relatively fast, based on the survey design.

2 The survey conducted by the researchers is very attractive if sample generalization is a research objective.

3 Survey studies conducted here are often the only way to develop a representative overview of the attitudes & characteristics of a huge population.

The questionnaire was mainly structured to consist of closed questions and Likert-types in order to generate feedback from the respondents about their experiences with the fashion supply chain.

In Section A of questionnaire, the demographic component is obtained, providing general information on respondents, including age, gender, occupation and education. In Section B, dependent as well as independent variables are examined.

Proposed data analysis method

In this research data were analysed using descriptive and inferential data analysis methods. Descriptive analysis is a collection of concepts and methods used to organise, summarise, table and describe data gatherings. It gives an overview of what took place in the study. This study included descriptive statistical analysis.

Distribution of frequency: The most common method of summarising data is to calculate frequency distribution & percentage distribution. It includes data and graphs to describe various types of variables. Researchers can label frequency or percentage charts. It also gives a clear picture of the population and the general section.

Supply chain management in fashion industry in Nigeria

Definition of Supply Chain :

A global network, to deliver products and services, starting from providing raw material to the consumers using an organized flow of information, physical distribution and payment. Currently it includes also networks for disposal and recycling.

Supply Chain Management:

A network of connected and interdependent organizations mutually and co-operatively working together to control, manage and improve

Goals of SCM :

1. Effective deployment of Supply Chain
2. Synchronizing of supply and demand
3. Global Measurement of Performance
4. Greater value
5. Establishment of a competitive infrastructure

Nigeria's fashion industry plays an important role in revitalizing the economy, attracting foreign direct investment and sustaining the livelihood of the public. However, due to the rapid growth of the industry and the lack of awareness of environmental management in the supply chain, the disposal practices of Nigerian manufacturers are of major concern. The disposal method used by manufacturers in Nigeria is simple disposal by incineration or landfill. It releases acid gases, dioxins and dust particles that are harmful to humans and the environment. The purpose of this document is to identify the drivers, factors and methods needed to implement sustainable supply chain management in the Nigerian garment industry. The method is based on an extensive literature review focusing on barriers to recycling and waste reduction, environmental performance indicators, factors contributing to the achievement of a sustainable supply chain, and the types of waste generated by the Nigerian garment industry. The review shows that Nigerian apparel manufacturers must implement sustainable supply chain management to achieve sustainability and profitability. By this research is needed on the environmental impact of reuse and recycling in Nigeria's fashion industry. Comprehensive research into environmental supply chain management can be key to promoting sustainable development and overall environmental performance across Nigeria's manufacturing sector.

In a series of efforts to revive the economy and attract direct foreign investment, the Nigerian government has divided its economy into a manufacturing sector similar to the clothing industry. The clothing industry today is one of the most lucrative, popular and fast-growing businesses among Nigerians. The Nigerian commodity business contributes continuously to economic development, direct foreign investment, and livelihoods (about 60%) in the manufacturing sector. (ZO., 2014)

Therefore, Nigerian textile and textile firms are part of small and medium enterprises that require the concept of supply chain (suppliers, services and asset management) in their operations. Clothing workers worldwide are estimated at 26.5 million people with a trade value of US $ 1.7 trillion in 2012 according to the International Labour Organization's production statistics database (Anon., 2012).

In order to achieve lasting competitive advantage in the garment industry, there must be a constant demand for textile products supported by population growth and economic development. Over the years, there are growing concerns about disposal techniques or recycling methods used by clothing manufacturers in Nigeria. Most of the waste identified during production includes; Fabric and wool debris, defective pieces caused by ironing and other damage to the assembly, box boxes, zippers, buttons, cords, and stickers.

Frequency distribution in terms of percent

For each data point or collection of data points, a percentage frequency distribution shows the number of observations that are present as a percentage of the total. When describing the relative frequency of survey replies or other data, this is a very helpful way to do so. Tables, bar graphs, and pie charts are frequently used to show percentage frequency distributions.

Data analysis

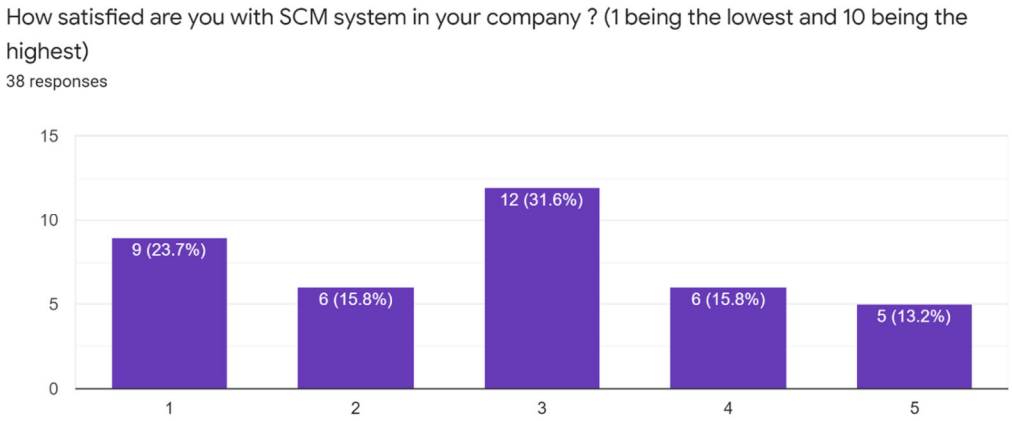

Figure 1.Analysis of rating of SCM in Fashion Industry (Anon., 2021)

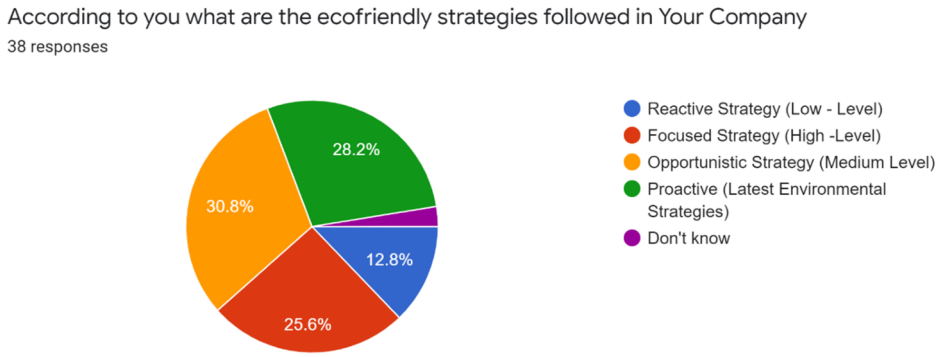

Figure 2. Analysis of opinion about ecofriendly strategies in Fashion Industry (Anon., 2021)

The above pi diagram show the percentages of respondent's experience about ecofriendly strategies in the field of fashion industry in Nigeria and the obesevation are as follows

Conclusions

Fast fashion lowers the cost of clothing while increasing the environmental impact. Fashion has been the second-largest consumer of freshwater in the world, accounting for 10% of global carbon emissions. Flying internationally, using single use plastic bags, and even commuting to or from work are all well-known environmental blights of modern living. Though less evident, climate change has less of an impact on the things we wear. Fashion industry characterised by fast changes in trends as well as, with short product life-cycles and by large assortments, demands responsive/demand led Supply Chain focusing on items availability, actual information sharing & speed in meeting customers' requests. In this perspective, this thesis proposes alternative studies and models that, combined in an effective Decision Support System, can allow firms to optimise performance of their Supply Chains. During a preliminary risk assessment of the overall framework of a traditional supply chain operating in this industry, it became clear that the most important goal is the ability to respond to market fluctuations, i.e. the correct time management, and the most important process to perceive this goal is the product distribution to the system of directly run stores, often known as replenishment. This thesis offers a solution to these issues by outlining a supply chain performance optimization in fashion industry. It's hard to predict what will happen to the garment supply chain in the future. Retailers in the fashion industry must devise innovative inventory management and supply chain management solutions. As retailers continue to explore for solutions to these prevalent problems, more helpful technologies will be included into the process and wider issues with in fashion industry will be addressed, such as sustainability. As a result, customers seek out cruelty-free items in greater numbers. It will be critical to meet this demand.

As people all over the world buy more garments, the expanding market for low-cost items and trendy new designs is having an adverse impact on the environment. More people bought clothing in 2014 than in 2000, a rise of 60% on average. As much as 10% of all carbon emissions come from the fashion industry's water use and pollution of our rivers and streams.

Furthermore, every year, 85 percent of all textiles are disposed of in landfills. To top it all off, washing some garments releases huge amounts of plastic into the environment. Here are some of the most severe environmental consequences of the fast fashion industry.

As a result, the fashion business is unquestionably expanding in a fast-paced atmosphere. Apparel makers and retailers would have benefited greatly from knowing what influences consumer interest in and intention to buy clothes. In light of it's critical for manufacturers to be competitive in the garment & retail industries. Retailers, marketers, and other relevant stakeholders must work more to acquire and keep customers. Relevant to the potential clients' wants and demands. Recognizing the things that pique your interest. Their target market's interest in apparel can help them segment their customers more precisely and effectively promote the brand and build customer loyalty. The study's conclusions are particularly relevant now, given the increased inflow of overseas brands of clothing. Thus, this research have examined the environmental damages caused by fashion industry and reasons behind it. This is very alarming situation for the sustainability of our environment. This research focuses on major areas causing environmental damage and steps should be taken immediately to combat this problem.

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REDUCTION OF HOMICIDES IN PORTO ALEGRE: FIGHTING CRIMINAL FACTIONS

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Abstract. *The homicide rates rose sharply in the city of Porto Alegre between the years 2011 and 2016. This situation was compared to the "Barbarian Age" by the local press. However, due to the actions conducted in the public security sector from 2017 onward, the homicide rate went down 19% in the municipality and maintained this reduction throughout 2018 and 2019. Thus, this article aims to present the actions that were taken to fight the high homicide rates in Porto Alegre, mostly by describing Operation Firm Hand (Operação Pulso Firme), which took place in July of 2017. With this in mind, the exploratory study used bibliographic and documental review techniques and took into account scientific articles and media publications from public agencies and from the local press. The article exposes the main actions that were implemented in order to modify the scenario, comparing them with other successful cases in Brazil and internationally, presenting the aspects that had to do with actions focused on repressing criminal factions, thus reducing homicide rates.*

Keywords: *Homicides, Public Policies, Public Management, Public Security.*

Introduction

The issue of public security is one of the main worries for Brazil's population, considering the reality of high rates of criminality and violence. Thus, it is fundamental to conduct research on the matter in search of solutions and actions that reverse this scenario, which is a complex issue due to the various factors it involves.

Therefore, public security has shown itself to be a vital element for life in society. Its insufficiency causes fear, shifting people's attention from their activities to protecting their own integrity. This condition leads to social chaos, with a constant conflict pitting all against all [1]. In this sense, homicide rates are the main index for measuring public security [2] and they have recently undergone a large increase in our country, leading to generalized fear.

In the state of Rio Grande do Sul, especially in its capital, Porto Alegre, there was a significant increase in the number of homicides between 2011 and 2016, generating a feeling of insecurity in the population and ample repercussion in the press so much that on October 8th, 2016, one of the city's main newspapers, Zero Hora, published a special feature with the headline "Porto Alegre in the Age of Barbarism" [3]. However, the homicide rate underwent a reduction from 2017 onward thanks to various actions conducted by the public security agencies.

Thus, this study used the dialectic inductive method, considering the knowledge based on experiences and generalizations stemming from concrete cases and sought to conduct a dynamic and ample interpretation of reality since social facts, in this case the occurrence of homicides, must not be considered separately. As for the study's nature, it is applied research, which consists of using knowledge to solve specific problems present in reality [4].

Regarding its objectives, this study is exploratory and uses technical bibliographic and documental review procedures [4] in order to identify the measures that were developed to avoid the occurrence of homicides, considering the statistical data and the references for the containment actions used in the public security sector.

Public Security and the Homicide Issue

Public security is one of the "conditions for the development of human personality" and its object is public order, which is defined by a situation of "peaceful social coexistence", with the preservation of political, social, economic, moral, and even religious values and principles [1].

According to Gussi, public security is security in its most mundane aspect, being one of the first functions of the Modern State regarding the maintenance of constitutional order since "in the end, public security's whole purpose is to avoid social disturbance par excellence: crime. (…) we can see that Penal Law contains a basic nucleus that has to do with three values: life, freedom and property" [5]

However, in the recent years, crime and fear have become routine events in the Brazilian population's life, especially in the large urban centers. They have become "omnipresent and omnipotent" in each person's life, stemming from the "fear of being the victim of a violent crime" and amply disseminating generalized fear [6]. Within this scope, Murray *et al.* [7] emphasize that crime and violence have generated social costs with intense impacts in peoples' quality of life, such as injuries, fear and psychological health problems.

Waiselfisz states that although defining violence is a difficult task due to an expansion of its comprehension, two of its essential elements can be defined: the notion of coercion or strength and the damage it causes to an individual or a group thereof. Thus, "there is violence when, during an interaction, one or many actors act (…) causing damage to one or more people in varying degrees (…)" [2].

In this aspect, there is the matter of how the press treats the issue of public security. Regarding this, Dias and Morigi [8] point out that "the feeling of insecurity in urban centers, the strengthening of certain violent actors, the increase in common criminal practices, new categories of crime and delinquency, and impunity" have stimulated and worsened a "social non-conformity", making the theme a priority for Brazilian society and, thus, for the press.

In this context of insecurity and growing violence and criminality, there is an emphasis on sharing the increase in homicides, a crime that is used as a "public security indicator", since "violent death is the most cruel expression of the violence that occurs at the level of individual or collective interpersonal relationships" [9].

Furthermore, Waiselfisz exposes two main arguments as justification for using homicide rates as a "general violence index" for studying violence. The first one is that death counts as violence of extreme gravity, so much that the potential damage of an epidemic is usually determined by the number of deaths it causes: "also, the intensity of various types of violence is strongly related to the number of deaths caused" [2]. The second argument is that the statistical coverage of other types of violence is limited due to the under-registration of police reports.

A report published by the United Nations Organization (UNO) on global violence prevention contained the alarming fact that 10% of the homicides committed around the world that year had occurred in Brazil [10]. Similarly, according to the "2016 Atlas of Violence" from the Institute for Applied Economic Research, there were 59627 homicides in the country in 2014, corresponding to a rate of 29.1 homicides per every 100 thousand inhabitants [11].

A study mentioned by Murray [7] that had the purpose of establishing the number of years lost by the population due to violence highlights that the largest number of healthy years of life lost was in Brazil. In the year of 2004 alone, approximately 2.5 million years of life were lost, since most of the homicide victims were young.

The repercussion of homicides in the country brings damaging consequences to "health, the demographic dynamics and, consequently, to economic and social development" [12]. The author points out that in 2014, 46.4% of deaths in men with ages between 15 and 29 years were due to homicides and the percentage becomes even more relevant when examining the deaths of men between 15 and 19 years of age, since 53% of the deaths in this age group were caused by homicide. It is important to note that young people between 15 and 29 years of age represented, in 2014, approximately 26% of the Brazilian population; however, 60% of firearms-related homicides occurred within age group [13].

Therefore, with the problem's identification through statistical data and the description of reality, it is vital to identify the causes of the large number of homicides and the resulting population insecurity.

The Main Causes of Homicides in Brazil

To establish the main causes for homicides is, in its own right, a large task. However, various studies have sought to comprehend the individual motivations and the processes that lead to committing crimes, especially homicides, based on statistical analysis [10, 11, 14]. In this sense, it is a complex phenomenon and the analysis must identify "certain statistical regularities that vary according to the region and criminal dynamics, in particular" [15].

Following the same line, the study conducted by Frota [9] states that "there are many factors linked to homicides. However, we cannot stop seeing them as being interconnected because although they are part of a vast context, they also possess particular aspects", pointing out that most of the available studies focus on social, demographic and economic indicators, with an emphasis on social inequality as an influencing factor for the increase in the number of homicides.

In this context, a study published by the Ministry of Justice considers some sets of macro causes for homicide in Brazil, of which the highlights are: transversal factors (firearm availability and the accumulation of social vulnerability); gangs and drugs (illicit drug consumption and trafficking, especially crack; a high percentage of young people compared to the total population; sexual abuse and domestic violence; rivalries and violent conflict resolution patterns); property violence; interpersonal violence (accumulation of vulnerabilities, urban disorder, violent sociability, absence of mediation and peaceful conflict resolution, potentializing agents – alcohol and drugs, hate crimes); domestic violence, conflicts between civil society and the police; and the scarcity of State presence [10].

From the analysis of the conditioning factors presented in the aforementioned study, despite the identification of groups of factors and causes, it is necessary to consider the dynamics of criminality in a systemic manner, as proposed by Cerqueira *et al.* [16], who point out the existence of "a strongly structural component" in face of the enormous socioeconomic vulnerabilities and inequalities associated with impunity, due to the "failure of the criminal

justice system". Therefore, the study mentions five "key elements" in the "Brazilian hyper-criminality" process: 1) the growth of urban population, 2) exclusion allied with socioeconomic inequality, 3) the proliferation and indiscriminate use of firearms, 4) the virtual failure of the criminal justice system, and 5) the historic absence of a consistent public security policy.

Gelinski Neto and Silva [17] summarize the literature on which their research is based, citing a list of the five main causes of criminality: (a) unemployment, (b) education, (c) income, (d) age, and (e) drugs. Thus, it is possible to note that the studies connect crimes and homicides to the aspects of social inequalities and vulnerabilities and the gangs/firearms/drugs relationship as well as the deficiency of the criminal justice system (due to impunity and the system's inefficiency). Table 1 summarizes the findings of Cerqueira, Gelinski Neto and Silva and Engel et al. regarding homicide causes.

Table 1. Main homicide causes

Cerqueira (2005)	Gelinski Neto and Silva (2012)	Engel *et al.* (2015)
1) growth of urban population; 2) socioeconomic inequality; 3) indiscriminate firearm use; 4) failure of the criminal justice system; 5) absence of a consistent public security policy.	1) unemployment; 2) education; 3) income; 4) age; 5) drugs.	1) Transversal factors; 2) gangs and drugs; 3) property violence; 4) interpersonal violence; 5) domestic violence; 6) conflicts between civil society and the police; 7) scarce presence of the State.

Source: Created by the authors.

It is important to point out that the available research highlights the existence of a victim profile for intentional homicide throughout the past few years: "the average homicide victim in this country lives in a large urban center, is male, has black or brown skin, is between 15 and 29 years old, has a low education level, was wounded by a lightweight firearm and murdered in a public throughfare" [14]. Besides the profile, there is also the location of the facts in big cities, highly concentrated "in areas with high social vulnerability, little or no provision of public services and intense urban deterioration" [14].

Along with this reality of homicide concentration in poorer regions and neighborhoods, there is also the addition of youth involvement in gangs and illegal armed groups. According to Frota [9], in big cities, most homicides occur due to the presence of criminal organizations as was the case in Colombia in the 1990s, where the connection between homicides and criminal organizations reached 93% in 1995.

Furthermore, the author emphasizes that the drug trafficking market "would be present in precisely those areas where poverty, the drug manufacturer and distributor, was located near wealth, the consumer" [9], describing that in Colombia, the rapid evolution of violence occurred due to organized crime, leading to the drug traffickers' dominance.

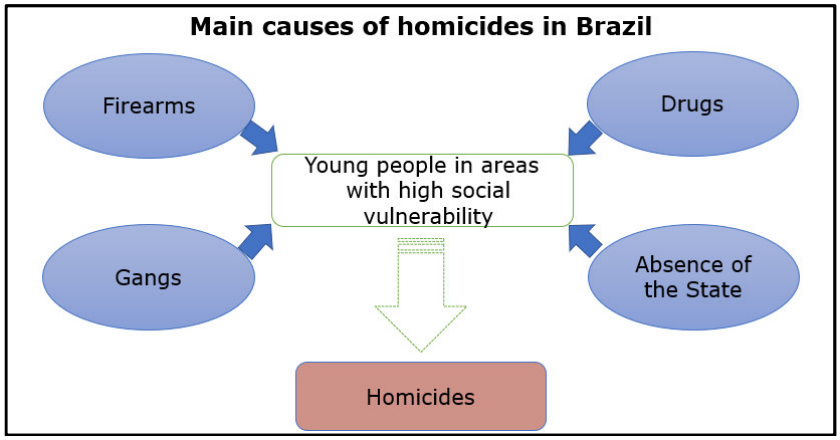
> (…) ultimately, this implies that violent crime, especially homicides, is strongly associated with drug trafficking and linked to the social aspect, perpetuating a perverted scale of values that will be accepted by the community as morally acceptable behavior, which will tend to perpetuate the violence (SCHNEIDER apud FROTA, 2014, p. 75).

For Zaluar *apud* [17], "the main reason why young people in particular commit homicide is due to drug trafficking and firearms" an issue that, added to the scenario of extensive unemployment, low education levels, the absence of social programs and family breakdown, presents itself as the available pathway. This agrees with the vision of Goldstein (*apud* [18]), in which there are three contexts for the connection between drugs and homicide: the

psychopharmacological effect of drugs, the formation of economic compulsion, and systemic violence. The author further mentions, as a factor in the relation between drugs and violence, the "effect of community disorganization", adding that "the rules and standards of conduct that are typical for drug trafficking tend to influence attitudes and behaviors", culminating in the "violent solution of everyday conflicts" [18].

In addition, Zilli and Beato cite, when referring to the use of violence by young gang members that "violence is not only a means of action that is regulated by the ends that one wishes to achieve (…) it is a principle that commands the action itself and the relationships between subjects, becoming an end itself, unable to be separated from its fundamental function as a resource for action" [14]. In the same scope, Engel *et al.* [9] consider that "a part of the deaths end up having an adversarial culture and violent conflict resolution patterns as background, making deaths caused by gangs and by drugs similar, in various aspects, to deaths caused by interpersonal conflicts". In short, it is possible to present a summary of the mentioned aspects in the following figure:

Figure 1.



Source: Created by the authors

Next, the article goes on to investigate actions geared towards reducing the amount of homicides, mainly considering recognized success cases, such as the measures taken in Colombia, in the United States, in Minas Gerais, Pernambuco and São Paulo.

Successful Cases of Actions Taken to Reduce Homicides

It is possible to note that in the past few years, public security agencies have sought to conduct a result-oriented management, perfecting the previous administration pattern [19]. As such, the "Sou da Paz" (I'm with Peace) Institute conducted an analysis of result-oriented management experiences in the field of public security in Brazilian states, identifying five common elements in the analyzed experiences:

> the establishment of specific objectives and priorities; defining goals based on performance indicators; specifying goals and plans of action based on integrated territories; strengthening statistical production and criminal analysis; the monitoring, by the leadership, through systematic analysis and accountability meetings [20] (p. 36).

Thus, at the end of the study, the aforementioned institute presents twelve proposals, from which it is possible to highlight the ideas for prioritizing operational and integrated plans; integration with agencies from the social domain, the Prosecutor's Office and the Judiciary; the use of goals; and the use of a results system with a methodology for the definition and monitoring of indicators and goals [20]. Beato Filho, in turn, points out that some modifications in police activities do not have to do with "structural macro solutions", but actually with alterations "in the habitual working style" within the institutions [21].

Through an ample analysis, it is possible to perceive that efficient and efficacious public security actions cannot consider simplistic measures, but must instead seek to comprehend the circumstances that involve the objective of public security promotion. Faced with the complex treatment of this subject, Cerqueira states that it is possible to develop efficacious and efficient public security policies and programs based on socioeconomic prevention and an efficient criminal justice system with coordinated, organized and directed actions, considering a precise diagnostic in order to properly apply the resources [16].

The comprehension of this manner of seeking homicide reduction measures can be perceived in various national and international examples. Although each case is different, the studies pertaining to successful experiences in confronting homicides demonstrate that there must be a clear strategy in order to develop the actions, with short and long-term goals, focusing on the places, the people and the behaviors that are related to the police reports, reducing the risks of urban violence [17].

The Colombian case

One of the most emblematic reduction processes occurred in Colombia, where the applied actions focused on two different but complementary dimensions: repressive actions and social prevention. In this sense, punishment and penalty invigoration measures were implemented and, simultaneously, an ample program consisting of social improvements and youth inclusion was developed to serve the population living in the city's outskirts [15, 17].

Based on these guidelines, various actions were developed in Bogota, with an emphasis on the mediation and conciliation units and on the domestic violence committees, from which specific actions resulted, such as the reoccupation of public parks, the establishment of a closing time for nightclubs, a disarmament program, and the creation of a vast criminal and violence data analysis system [17].

The good practices employed in Bogota made the homicide rate per 100 thousand inhabitants decrease from 89.99 in 1993 to 22.8 in 2004 [15]. It is important to note that the measures stemmed from institutional stability and citizen coexistence. The Citizen Culture Program, formalized in 1995, established a new culture of preventing and fighting criminality that contained 16 essential topics, from which it is possible to highlight: a) the use of trustworthy criminality and violence information, b) the institutional management of the issue at a municipal level, c) the recovery of public spaces, d) strengthening the Metropolitan Police, e) community participation, f) restricting the consumption of alcoholic beverages (in specific places and times), g) the disarmament plan, h) giving attention to the youth involved in violence and drug consumption, and i) combating police corruption [15, 17].

Some local cases in the United States

It is possible to perceive many models of homicide containment actions that consider aspects used in the Zero Tolerance Program, which was developed in New York and was also

based on having the population reoccupy the public spaces by dealing with petty crime and gang action [17].

Furthermore, another contribution of the model that was developed was the use of criminal statistic analysis instruments that guide police action planning towards points with higher crime rates, introduced in New York through the use of computerized statistics (Compstat), an effective police work management tool that compiles data from criminal statistics [15]. It is necessary to point out that information is a fundamental product for planning public security policies and actions in order to achieve the goal of reducing violent crime [22].

Beyond this, Cerqueira summarizes some crime prevention practices that are considered the best, which were applied in five north-American cities resulting in higher reductions in violent crime rates per 100 thousand inhabitants (between 1986 and 1996). The author presented the measures applied in Fort Worth, New York, Hartford, Denver and Boston. Among the main actions, it is possible to identify: (a) supervising and advising juvenile offenders and youth that are at risk, (b) combating gangs and arresting their leaders, policing the neighborhoods and conducting community outreach actions, (c) the statistical analysis of criminal dynamics and (d) fighting drugs in schools and in the surrounding areas [15].

The cases of Minas Gerais, Pernambuco and São Paulo

Although the number of homicides in the country is still alarming, there were some successful experiences in Brazil, especially in the reduction of this type of crime, including actions to recover urban spaces with the establishment of integrated data systems to identify areas with criminal occurrences, activities directed towards the vulnerable youth and a community approach with solutions for citizen security [23].

Among the successful models, the case of Belo Horizonte comes to mind, with the implementation of the "Fica Vivo" (Stay Alive) project. The project is based on "two operational pillars": the first one takes into account the execution of police actions concentrated in the zones with the highest crime rates, focusing on arresting organized crime leaders, apprehending firearms and inhibiting open drug trafficking; the second focuses on the development of social inclusion activities for youth in a situation of social vulnerability, especially those aged between 12 and 14 years with a history of criminal practices [18, 23]. Also, an important aspect is the involvement of different agencies in a coordinated and integrated manner in which the coordination is divided among "two main groups in charge of operating Fica Vivo": one for community mobilization and social inclusion and the other for strategic police intervention [23].

The actions that were developed were fundamental for reducing the ammount of homicides in the capital of Minas Gerais, despite the scenario of drug trafficking dissemination.

> The available evidence points to a self-regulation of violence within the crack trafficking structure, stemming from the decisions made by the bosses and managers of various crack house networks to avoid murdering as much as possible (…) The succession of homicides began to attract police presence to the main clusters, which directly affected the profitability of illegal drug sales. Stronger police presence near places where drugs are sold is not desired by the crack house bosses and managers. [18] (p. 65).

In Pernambuco, the "Pacto pela Vida" program (Pact for Life), launched in 2007, "a public security policy that is transversal and integrated, constructed in the form of a pact with society" that articulates with agencies from different spheres, led to a plan that aimed to reduce the occurrence of intentional violent and lethal crimes (intentional homicide, larceny and

physical harm followed by death). The program adopts "six lines of action: (a) the qualified repression of violence, (b) institutional improvement, (c) knowledge information and management, (d) education and training, (e) social prevention, and (f) democratic management", involving the participation of various agencies [20, 24].

The Pernambuco program "contemplates strategic actions and management procedures inspired by experiences that led to a steep decrease in violence and crime rates in places such as Belo Horizonte, New York and Bogotá" [20, 24], focusing on fighting "violent death production networks, such as gangs and vigilante groups" through integrated and articulated actions led by the criminal justice system agencies. This occurred in such a way that 27 months after the program's implementation, an accumulated 39.22% reduction in homicides was observed in Recife, the capital of Pernambuco.

Another relevant case is that of the state of São Paulo where, between 1999 and 2010, the number of homicides went down 66.7% [25]. During that time period, various measures were employed, with an emphasis on the intensive use of technology, operational management improvement (through indicators) and municipal participation in the search for public security solutions (through legislation and through the action of the local municipal guard chapters). Furthermore, a series of actions was developed in the social domain, with the use of a criminal georeferencing system with Business Intelligence (BI) resources for managing and employing police resources based on statistics, as well as the deployment of efficient measures by public security agencies, neutralizing the main criminal organization [25].

Table 2. Actions for homicide reduction

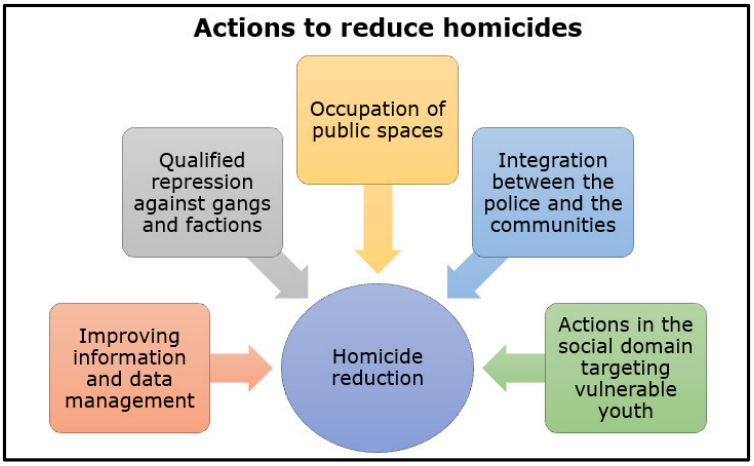
Location	Main actions
United States [15]	a) Supervising and advising juvenile offenders and at-risk youth; b) combating gangs and arresting their leaders; c) neighborhood policing and community outreach; d) statistical analysis of criminal dynamics; e) fighting drugs in schools and in the surrounding areas.
Colombia [15, 17]	a) using trustworthy criminality and violence information; b) institutional management at the municipal level; c) public space recovery; d) reinforcing the Metropolitan Police; e) community participation; f) restricting the consumption of alcoholic beverages; g) disarmament plan; h) giving attention to youth involved with drug consumption and violence
Minas Gerais [18, 23]	a) Qualified repression in the zones with the highest crime rates; b) social inclusion activities for vulnerable youth; c) urban space recovery and community-based approach; d) establishing integrated criminal indicator data systems.
Pernambuco [20, 24]	a) qualified repression of violence; b) institutional improvement; c) information and knowledge management; d) education and training; e) social prevention; f) democratic management, with the participation of various agencies.
São Paulo [25]	a) intensive use of technology; b) operational management improvement; c) municipal participation in public security; d) actions in the social domain.

Source: Created by the authors.

It is important to note that Justus *et al.* conducted a study rejecting the hypothesis that the decrease of homicides in São Paulo could be related to the establishment of a "cartel" by the criminal organization Primeiro Comando da Capital (Capital First Command), thanks to an analysis of various factors and variables. On the other hand, the authors consider other studies that indicate reasons for the reduction of crime rates, correlating the following factors: improvements in the job market, demographic changes, the use of the Infocrim tool, a reduction in firearm circulation (Disarmament Statute), an increase in school attendance and the introduction of the Dry Law (which restricted the sale of alcoholic beverages) [25].

Despite the complexity of the matter, policies, programs, projects and actions were developed in various locations with diverse realities and generated a decrease in crime and violence, including homicides. Although the measures were adapted to the specific circumstances present in the locations, many of the actions are similar, as shown in Table 2 and Figure 2.

Figure 2.



Source: Created by the authors.

Homicides In The Municipality Of Porto Alegre

Porto Alegre, the capital of Rio Grande do Sul, has exhibited an increase in crime rates during the last few decades, especially homicides, with the number of reports climbing 78% between the years of 2011 and 2016, according to data from the State Department of Public Security. Between the end of 2016 and the beginning of 2017, the problem was more emphatically exposed by the media due to the worsening crime scenario.

In September of 2016, Veja magazine, one of the country's main magazines with national distribution, published the headline "Gaucho disaster: airport murder exposes the crisis in RS" on its cover. The report covered the murder that occurred on September 19th of that year in the Salgado Filho Airport's lobby and discussed the conflict between criminal factions in the state's capital as well as the sensation of impunity:

> What is certain is that the execution by gunshots in the lobby of the Salgado Filho, the first crime of the sort occurring in an airport, conferred unbearable dimensions upon the epidemic of insecurity that has been going on for at least ten years in Rio Grande do Sul and has led to an overflow in fear levels. The large caliber message was understood by 10 out of 10 gauchos: the criminals now act anywhere, anytime and even on the eve of the most

> important date for gauchos, September 20th, which celebrates the beginning of the Farroupilha Revolution [26].

In October of the same year, the newspaper Zero Hora produced a special series with the headline "Porto Alegre in the Age of Barbarism". The feature mixed the reports of homicide and larceny cases with analyses conducted by specialists, who emphasized the actions' increase in brutality and violence, with the actions of criminal groups becoming increasingly evident in relation to the phenomenon.

> Decapitated heads, an execution at the airport, mothers killed in front of their children, a body run over and dragged through the streets of Cidade Baixa: crime has exploded not only in quantity, but also in brutality and the savagery has spilled over to the entire city of Porto Alegre [3].

The factions' activity, especially stemming from their organization in the old Porto Alegre Central Prison (currently Porto Alegre Public Jail), can be observed beyond the reports, in studies on the subject. In Cipriani's work about criminal factions in Porto Alegre, the author states that with the increase in conflicts among the criminal groups, the "community loyalty" relationship has come to an end and the leaderships (from other communities) began to gain space through the use of force and threats. In addition, there is the multiplicity of criminal groups which have, within the jails, which are one of their focuses of expression and in the neighborhoods, the other focus, intensified the logic of the territorial expansion sought by the factions, using "explicit violence as a central method" [27].

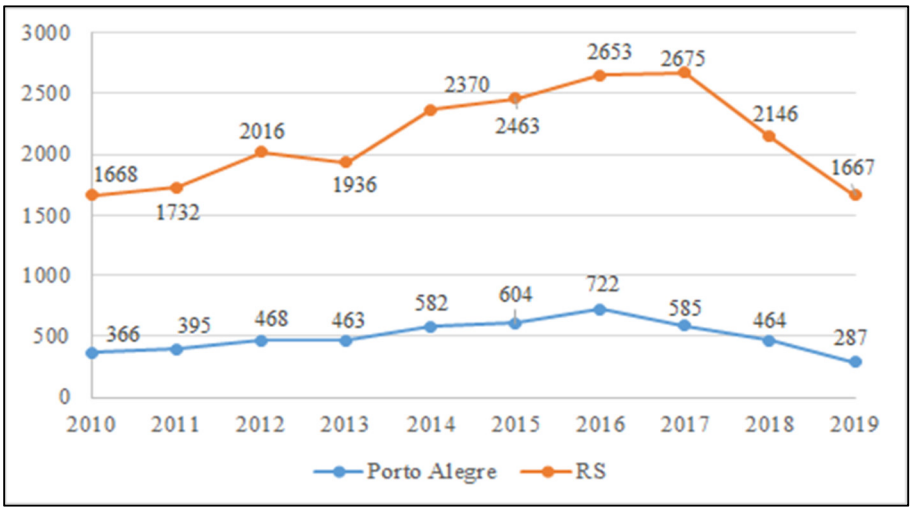
However, it is important to consider the role played by the media in spreading and amplifying the climate of insecurity. In a study regarding the thematic axes and the most recurrent sources on public security in Porto Alegre covered by the main newspapers circulating in the city, Dias and Morigi identified that the local press identifies the capital as a city that has major urban security problems. Thus, "it is possible to observe that there is a news construction that reinforces the sensation of insecurity and leads people to believe in the imminent risk of becoming victims of the criminality, as well as in a geolocation of violence". In addition, they point out that the media prioritizes issues that involve violence, criminality and imprisonment. Thus, they barely divulge the positive actions stemming from the security agencies, projects and criminality prevention and repression programs [8].

Upon analyzing the information from homicide reports in absolute numbers provided by the Department of Public Security (Graph 1), it is possible to note the increase in occurrences over the last decade. The numbers demonstrate a 97% increase in the occurence of homicide events in the Municipality of Porto Alegre between the years 2010 and 2016.

However, on taking the previous year into account, the increase did not occur gradually. In 2011, there was an 8% increase, with an 18% increase in 2012, 25% in 2014, 4% in 2015 and 20% in 2016. In 2013, there was a 1% decrease when compared to the numbers from the previous year.

Thus, there was an accumulated increase of 59% between 2010 and 2014 and the number of homicides climbed 24% between 2014 and 2016. However, Graph 1 demonstrates that in 2017, the number of homicide occurrences did not follow the increasing trend in the municipality of Porto Alegre, with a reduction of 19% in the number of cases when compared with 2016, bringing the numbers close to the levels reported in 2014, although the statistics continued to climb at the state level. Also, said reduction continued throughout 2018 (21% decrease) and 2019 (38%).

Figure 1. Total homicide occurrences in Porto Alegre and Rio Grande do Sul – 2010-19



Source: Public Security Observatory-SSP-RS (2020).

Upon taking a closer look at the numbers, it is notable that even in 2017, the homicide numbers had a tendency to increase in the gaucho capital. According to data from the Department of Public Security, there were 226 reports registered in the first three months, 13% more than the 200 occurrences registered during the same period in 2016.

Faced with this situation shown by the general occurrence numbers, the following section contains an analysis of the actions that were adopted with the intent to reduce homicide numbers in Porto Alegre in 2017 and in the following years, contradicting the trend shown in the previous years and in the first few months of 2017.

Actions Taken to Reduce Homicides – Operation Firm Hand ("Operação Pulso Firme")

As demonstrated, 2017 showed a reduction in homicide cases compared to 2016 and this decline is even more representative because the numbers returned to the levels shown in 2014 after a series of constant increases throughout the current decade. Thus, this study goes on to analyze the measures that were conducted by the public security agencies in 2017, based on exploratory documental research, official information and data from the press.

First, it is important to observe that there was no publicity regarding any strategic or systematic public security planning that was effectively implemented, despite the fact that the execution of activities focusing on reducing the amount of homicides was obvious, as described below. Various actions were adopted in accordance with different axes, many of which have already been noted in models that showed efficiency and efficacy in the previously mentioned cases. Thus, it is possible to note the execution of qualified repression actions, as well as those directed towards management improvement (result-oriented management), social prevention and integration.

However, the main actions promoted by the public security agencies during that time period can be associated with the line of qualified repression actions. The work of the state public security agencies alongside the National Public Security Force, which culminated in the Firm Hand Operation, stood out according to the State Department of Public Security and the press.

The National Force arrived in Porto Alegre in August of 2016 after a request from the state government due to a series of violent crimes, with the objective of fighting crime in the gaucho capital [28]. In January of 2017, the Ministry of Justice announced the implementation of the National Public Security Plan, which would be tested in the municipalities of Aracaju (Sergipe), Natal (Rio Grande do Norte) and Porto Alegre, beginning in February of that year. The plan put forward its principles as being integration, cooperation and collaboration, with the objective of reducing intentional homicides, feminicides and violence against women, rationalizing the penitentiary system and the integrated fight against transnational organized crime. One of the goals was a 7.5% annual reduction in the number of homicides [29].

Nevertheless, only the National Public Security Force acted effectively, numbering 200 police officers at the time, focusing on the locations with the highest rates of violent, lethal crimes against life. In 2017, the Minister of Justice was changed three times and measures were not put into action due to the change in focus towards the establishment of a long term national public security policy [30].

In light of this situation, the Rio Grande do Sul Department of Public security put into action a series of measures to modify the scenario of increasing homicides. In the beginning of March 2017, 400 military police officers from the Special Operations Battalions located in the state's countryside (Santa Maria and Passo Fundo) were relocated to the capital with the objective of conducting crime-fighting operations in the conflicted areas of Porto Alegre alongside the soldiers from the National Force [31].

Thus, one can identify the intent to occupy the conflicted areas and the reinforcement of the qualified response officers to fight the existing and amply reported scenario of violence, as mentioned beforehand. Subsequently, in March 2017, an operation was conducted to transfer a leader of one of Porto Alegre's criminal factions from the High Security Charqueadas Prison (PASC) to the Campo Grande Federal Prison (PFCG) in Mato Grosso do Sul. The justification cited a dispute between criminal organizations with the occurrence of various barbaric crimes involving decapitated victims in Porto Alegre and its Metropolitan Area in which the transferred convict was supposedly involved [32]. As stated by authorities, the police reinforcement in Porto Alegre that occurred days before the operation was "vital for choosing the adequate moment to proceed".

In July 2017, it was made public that this series of actions was a part of an even more complex measure for combating criminal factions. On July 14th, 2017, a search operation was conducted in the Porto Alegre Public Jail (previously known as Central Prison) involving more than 400 police officers. This operation was announced by the press as being one of the largest operations conducted in the prison in the previous years: "MB conducts the largest detailed search in the Central Prison in the past 22 years" [33] after the occurrence of friction and provocations between members from rival factions distributed among different pavilions in the State's largest penitentiary.

On July 28th, 2017, Operation Firm Hand was finally put into action by the Rio Grande do Sul Department of Public Security (SSP-RS), being singled out as the largest integrated operation ever conducted in the State, with the involvement of over three thousand police officers and agents from nineteen institutions, culminating in the transfer of twenty seven highly dangerous prisoners considered to be the leaders of the State's criminal factions to federal penitentiaries.

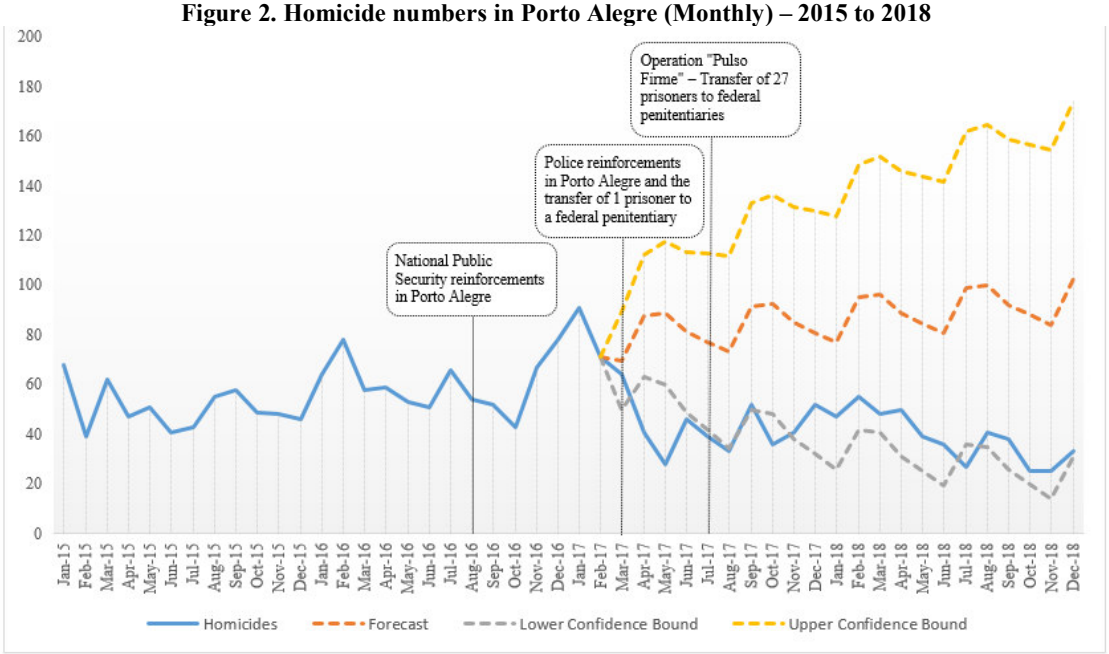
As reported, the action was structured beginning in March 2017 with the perception that the violent crimes mostly stemmed from the faction leaders that were being held in the prisons. The request was put out to transfer forty six prisoners, but the transfer was only permitted for 27 [31, 34]. For this operation, those selected were defined by a joint collaboration between the

Department of Public Security and the intelligence sectors in state and federal security agencies by identifying the criminals with the most influence and command inside and outside of the prison system.

Thus, the action was prepared in stages: 1st stage – bringing in reinforcements of military police officers from the Military Brigade from the countryside to the capital and conducting operations with the Civil Police and agents from the National Force; 2nd stage – launching the Integrated Security System Alongside the Municipalities (SIM-RS), strengthening intelligence and training operations and perfecting technological systems; 3rd stage: the graduation of new civil and military police officers and firefighters, bringing in 1500 new agents; 4th stage – breaking up the faction leaderships through the transfers to federal prisons and operations in their areas of action [31].

In this context, the press highlighted the action as an inflection point in the fight against crime. "Government faces the factions" was the first page headline on Zero Hora, a Porto Alegre newspaper with statewide circulation on July 29th, 2017. The article showcased the operation as "the greatest offensive on crime by the State". The first page of the Correio do Povo newspaper, another periodical with statewide circulation, portrayed the action as a "historic operation", with the headline "Dangerous Prisoners from RS go to other states". It is important to note that the maneuvers needed for the transference were completed thanks to the use of barriers and the area's saturation by the Military Brigade, especially in Porto Alegre, as well as through warrant fulfillment operations performed by the Civil Police, focusing on breaking up criminal organizations that specialized in property crimes, drug trafficking, homicides and money laundering [31].

Figure 2. Homicide numbers in Porto Alegre (Monthly) – 2015 to 2018



Source: Created by the authors

It is possible to find on the official websites for state security agencies as well as in the media that other actions occurred throughout the year with the objective of combating the factions, and the strategy that was used was mainly established and detailed through the previously mentioned operation. Furthermore, besides qualified repression, other measures were also put into action focusing on social prevention, data management and integration,

aiming to reduce the crime rates in the State and, thus, in Porto Alegre, as shown in Graph 2, in which the amount of homicide events per month between 2015 and 2018 is shown alongside the predictions made with Microsoft Excel software and the main actions that led to the operation's onset.

It is possible to observe that this qualified repression strategy that emphasized combating the factions with Operation Firm Hand and other police operations is similar to those found in other successful programs that were mentioned: combating gangs and arresting their leaders (United States), qualified repression in the zones with the highest crime rates (Minas Gerais), qualified repression of violence (Pernambuco), perfecting operational management (São Paulo).

Final Considerations

Public security has shown itself to be highly complex and, simultaneously, highly relevant to life in society. Thus, the national scenario demonstrated, during the analyzed period, a progression in criminality thanks to the actions of criminal organizations that were mostly related to drug and firearm trafficking, generating a context of criminal practices and conflicts that had homicides, which are used as one of the main indicators of violence, as one of their most damaging consequences.

Furthermore, it is possible to identify the main causes of homicides in the country, which take into consideration the profile of youths in a socially vulnerable position in areas dominated by gangs or factions, involvement with drug trafficking, the availability of firearms and the absence of the State. Also, regarding measures taken to fight homicide, it was possible to note their similarity, especially when analyzing effective interventions taking into account qualified repression actions, with the occupation of areas with higher crime rates and the containment of criminal organizations, integration activities, perfecting the data management systems and monitoring social prevention activities and results in the risk areas.

In this scope, the high number of violent homicides in Porto Alegre led to fear and insecurity in the population. The factors involved in this issue are similar to those identified nationally, such as social vulnerability, the availability of firearms, drug trafficking and the action of criminal factions; in Porto Alegre's case, the dispute between factions. However, in light of the increasing homicide rates, in 2017 the public security agencies adopted various measures to fight these incidents, leading to a reduction in the indicators with a 19% decline in homicides when compared to 2016. Also, the reduction sustained itself in the following years, generating a new trend.

Among the actions were the development of a qualified repression operation in higher risk areas (considering the criminal analysis), the strategies for confronting the factions, the transfer of the criminal group leaders to federal prisons and the triggering of integrated operations to repress the groups' actions in their territories. These measures gained more visibility with the beginning of Operation Firm Hand in July 2017 when the tactics were publicized after the activities began.

These were the actions that differed from the other social prevention program development measures considering at-risk regions and youth, the improvement of criminal information management and the structuring of an integrated system involving agencies from federal, state and municipal levels as well as society. These measures proved to be, in the short term, necessary and efficient to break a historic trend of elevation.

Upon verifying that many crimes were directly linked to the conflicts between factions, which acted on their leaders' orders from inside the state penitentiary system, the state sought

to cut off the orders to commit violent crime that were coming from the leaders of said organizations.

However, there was no systematization of the policies, programs and actions on a specific level containing strategies, processes and indicators; that is, there were measures conducted that are supported by previously conducted programs, but that lack the establishment of a security plan and policy, which does not exist, even at a national level, although there have been attempts to establish one. With this in mind, the conclusion is that the actions adopted to change the scenario of insecurity were effective, although there is a need to structure and organize the actions, as well as to establish a plan that takes into consideration the diverse axes that are necessary to control crime through preventative and repressive measures in an integrated and coordinated manner so as to deal with the issue.

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LINKS AND INTERSECTIONS BETWEEN RHETORIC AND LAW

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Abstract *The roots of rhetoric and legal sciences go back to ancient times and at certain stages of evolution, rhetoric and law had both links and intersections. At different times, their union was treated differently - sometimes it was encouraged, and sometimes - not at all. In the long run, however, it has been understood that legal dogmas alone do not describe all life events, so it is necessary to take certain circumstances into account each time, and rhetoric can help to articulate and convince the court of them. Its art of persuasion has always been associated with wise and reasonable speaking, giving the one explaining a certain point the right and freedom of speech allowing to explain legal norms, evaluate and interpret them and persuade listeners of them. So the objective of the article is to analyse the origin and development of the relationship between rhetoric and law. Used analysis and synthesis of scientific literature and analytical methods helped to analyse the main links and intersections of rhetoric and legal sciences at different stages of their development and assess the differences and circumstances of said stages that led to them. A review of the origins and development of rhetoric and law shows that each of them have their own history of origin, but in certain periods of their development, obvious links and intersections, determined by certain historical changes, could be noticed. In view of the diverse environment in which rhetoric and legal interfaces and intersections are treated, it must be acknowledged that each of them is a separate science with points of contact, but it must be acknowledged nonetheless that rhetoric was recognized as important to law as a representative of democracy and freedom of speech, and the main task of rhetoric — to persuade the listeners in wise and reasonable language, and help maintain the unity of law and justice. Thus, modern rhetoric teaches speakers to be effective persuasors in courtrooms, using both legal facts and the art of eloquence in a broad sense.*

Keywords: *rhetoric, law, intersection, interface.*

Introduction

The roots of rhetoric and legal sciences go back to ancient times. While their origins and evolution date back thousands of years and each has its own history, but at certain stages of evolution, rhetoric and law had both links and intersections. At different times, their union was treated differently - sometimes it was encouraged, and sometimes - not at all. Accordingly, all this had an impact on the science of rhetoric, which managed to survive the ups and downs. The main feature of rhetoric - convincingness, or persuasion, that used to help people in the times of the Sophists to defend themselves in courts, was later seen as synonymous with empty, though embellished language, and as a result rhetoric became an undesirable ally of the law. In the long run, however, it has been understood that legal dogmas alone do not describe all life events, so it is necessary to take certain circumstances into account each time, and rhetoric can help to articulate and convince the court of them. After all, every person's truth is different, and thus can be challenged. In reality, rhetoric has never presented itself as the art of empty, embellished language. On the contrary, its art of persuasion has always been associated with wise and reasonable speaking, giving the one explaining a certain point the right and freedom of speech allowing to explain legal norms, evaluate and interpret them and persuade listeners of them (Koženiauskienė, 2006). To this day, however, the links between rhetoric and legal sciences are subjects of much debate, and scholars are divided into two groups, but this is now the subject of scientific debate and said links are no longer categorically denied. Hence the problem posed in this article: can the branches of rhetoric and law have mutually beneficial

links that lead to mutually beneficial cooperation; does rhetoric distort the functioning of practical law? An overview of the origins and evolution of law and rhetoric, and an analysis of the intersections and links between these disciplines, should help to provide answers to the raised questions. An overview of the development of rhetoric and legal sciences reveals their closer cooperation in certain historical periods, i.e., links, and in certain periods - their difference, a radical separation and reassessment of what is considered in this article as the intersection of these sciences.

Thus, the **objective** of the article is to analyse the origin and development of the relationship between rhetoric and law.

To reach said objective, the following **tasks** are set:

1. To give an overview of the origin and development of rhetoric and legal sciences.
2. To reveal the intersections these sciences.

The article uses the following **research methods**: analysis and synthesis of scientific literature and analytical methods that help to analyse the main links and intersections of rhetoric and legal sciences at different stages of their development and assess the differences and circumstances of said stages that led to them.

Genesis of rhetoric and its links with law

The rhetoric and legal sciences seem different at first glance and seemingly have nothing in common with each other, as they may be perceived like areas that define and analyse different objects and are applied in different life situations. Rhetoric is usually associated with eloquence, persuasion, and law - with norms and measures to ensure justice. However, these two disciplines also have commonalities, and the link between certain aspects of rhetoric and law reveals the possibility of looking at these two areas in an interdisciplinary way (Gagarin, 2017). First of all, we are enabled to do so by the relationship between these fields dating back to ancient times, when the theoretical and practical application of each of them was formed. Of course, each field has its own history of origin and development, but when looking at certain periods the links between them seem undeniable. The relationship between law and rhetoric is particularly evident in ancient Greece, when the link between these areas was close, complex, and controversial (Gagarin, 2017). This shows that rhetoric and law have common historical roots. Both fields of science developed at the same time, both dealt with certain challenges of that time, which they could overcome only by cooperating together and separately creating the scientific foundations of their individual field, as well as the main dogmas that later expanded, changed over time, and were determined by various historical and political factors. First of all, law has played a key role in the development of oratory since the beginning of the science of rhetoric, which dates back to the 5th century BC in Sicily. The law also influenced Plato's and Aristotle's views on rhetoric, however different they may be, as well as rhetorical theory and practice in Hellenistic and Roman periods. Second of all, oratory was a major component of Greek law from Homer's active period until the 4th century BC, when the rhetorical ability of litigants - or their logographers (speech writers) - has had a significant impact on the nature and outcome of the cases (Gagarin, 2017). This was due to certain historical-social circumstances, as the Greeks had to be lawyers themselves when defending their rights in the courts, i.e., the defendants had to be able to defend themselves in court. Understandably, not every ordinary Greek citizen was able to 'advocate' for himself, so they hired so-called sophists logographers, who wrote defence speeches for them, taking into account the nature of the case, the audience of judges, as well as the client's age, education and personality. Clients would then have to learn the speech by heart and say it in court. Thus, rhetoric arose from legal practice, the realities

of life and the need to speak in a people's court in such a way as to persuade and influence judges who had no legal training, followed only their sense of justice, and whose verdicts were often in favour of those who managed to sound more eloquent (Koženiauskienė, 2005). However, in the long run, there were some undesirable consequences of such an intersection between law and rhetoric, when rhetoric started to play the central role in the legal system of Athens. Plato then began to condemn rhetoric in law for its corrupt role in cases, as instead of legal persuasion based on facts and arguments, persuasion based on the eloquence of language began to prevail, bringing rhetoric closer to the concept of empty, though embellished language, which is still seen by some scholars as a negative side of the concept of rhetoric (Koženiauskienė, 2005).

Thus, the foundations of the theory of rhetoric were laid in the 5th century BC in Sicily by the aforementioned Greek Sophists, who taught young people to think and speak according to the following ideal of language: *the language must be beautifully wise and wisely beautiful*. It should come as no surprise that due to the frequent court proceedings, the sophists worked a lot and were paid significant amounts of money (they would get about one-sixth of the court costs). Such a situation allowed them to create schools of rhetoric, in which the norms of public life were formed: first and foremost, students were taught legal norms, and with that also came the social, political and ethical norms. It was believed that 'the teaching of rhetoric helps to develop a wise and honest person - a full-fledged citizen of the state' (Koženiauskienė, 2005, p. 42). Sophists, who liked to argue, reason and discuss things, did not want to accept preconceived legal and other kinds of dogmas literally and interpreted those dogmas in different ways in order to remain rational, strengthen the will of the students and persuade the listeners in any way they could. The tricks of the Sophists and their thought-provoking questions did not mean that they taught or encouraged the curious students to lie or deceive. Instead, they sought to send out a wise citizen into the world who would be able to defend his opinion, think logically and would also be witty, able to recognize the opponent's tricks, and defend himself against twisted and manipulative ways of speaking (Koženiauskienė, 2005).

Even the mythological genesis of rhetoric suggests that coercive persuasion is inseparable from rhetoric. In his tragedy 'Oresteia', famous poet and playwright Aeschylus mentions the goddess Peitho (in Greek, *peitho* means the ability to convince, persuade, speak in such a way that listeners believe in what is being explained and said; if translated literally, her Latin name *Suada* means *persuasion*, which has become an international word), who uses her eloquence to help resolve a great conflict between the old and the new gods that has arisen in court. Long before Aeschylus, the Greek poet Hesiod listed the nine daughters of Zeus in his 'Theogony', including the fiery and strong goddess of rhetoric *Calliope* with a helmet on her head and a beautifully embroidered cloak on her shoulders. It is assumed that it is the same goddess Peitho, except referred to by her nickname - her most important characteristic (in Greek, *Calliope* means one who speaks beautifully) (Koženiauskienė, 2005). Inspired by the aforementioned myths, the old iconography also shows Rhetoric as Peitho - a girl full of life and energy with a helmet and a sword in her hand. Most of the inscriptions in iconography proclaim that Rhetoric is *Regina artium*, i.e., the queen of all arts. This emphasizes not only the supremacy of Rhetoric, but also the fact that it could not exist without other sciences - law, philosophy, logic, psychology, grammar and ethics.

Following one of the concepts of a myth, saying that myths are not the history of gods but that of people who were deified at a later time, today's scholars draw a number of conclusions that are directly relevant to the science of legal rhetoric: rhetoric, as an oral text, emerged out of a natural desire and need to persuade judges; language can win against the use of physical force or violence, injustice and lies; it turns arguments into agreements, affects the

mind, feelings and will, and receives the support and approval of the listeners (Dilytė, 1998; Koženiauskienė, 2005).

The legal nature of rhetoric and the significance of argument-based persuasion are also evidenced by the etymology of the word *rhetoric* itself. *Reo* in ancient Greek (eventually replaced by the word *lego* in classical Greek) means *to speak accurately, clearly*, that is, according to the established legal norm *Rieton*, valid for those who accepted it as truth. However, the young and rebellious thought of an educated, unsuperstitious Greek or his freedom to believe in various gods, was not constrained by dogmas or catechisms, as such a person raised questions instead of blindly following someone's truth without proof and verification. Every person's truth is different, and thus can be challenged. The reference point of all things is a person, not a dogma (Koženiauskienė, p. 34). The Greeks called a speaker who could interpret *Rieton* (in Latin, *Justum* - a legal norm) creatively and, most importantly - one who managed to fully convince the crowd of the unconditional nature of a legal norm that has never been changed before, a *rector*; the Romans then literally translated the word into an *orator* (one asking for permission to speak publicly), and the technique of such persuasion - the art of rhetoric, or rhetoric (Koženiauskienė, 2005, p. 35). Thus, rhetoric has been associated with persuasion, or coercive persuasion, since its inception. 'Coercive persuasion is a synthesis of intellectual, moral and emotional elements of language' (Koženiauskienė, 2005, p. 22), therefore not only beautiful eloquence is important for rhetoric, but also the content of language itself, as well as moral values. Even the oldest definition of rhetoric, dating back 2,500 years, from ancient Greece, calls this field of science the 'art of persuasion'. According to Regina Koženiauskienė, the word 'persuasion' also prevails in many later definitions of rhetoric, as its forms or synonyms can be found in the definitions provided by Palazzi (*The art that teaches how to convincingly express our thoughts and feelings in words is called stylistics, or rhetoric*, 1969), Perelman (*Rhetoric is the theory of persuasive communication (1987)*, and Kennedy (*Rhetoric is the energy of mind, spirit, and feelings used to persuade listeners*, 1994) (2005)). In order for these definitions not to give the false notion that rhetoric is merely a means to persuade the listener and be understood, the concept of persuasion is later supplemented by the concept of believing, or harmony, as seen in today's definitions of rhetoric, stating the following: *well-spoken people are those who can convey their thoughts clearly, use the arguments that are most appropriate for a particular situation and audience, and are able to give their words an emotional tone that is compelling at a particular moment* (Koženiauskienė, 2005).

Lithuanian linguistics also explains the Lithuanian links between law and rhetoric. Law and rhetoric are linked by the concept of *case*. The word *case* (in Lithuanian - *byla*; the word comes from the verbs *prabilti* (speak) and *byloti* (testify)), used to mean the same thing as speech, speaking. Later, it meant public speaking in court, and then was started to be used as legal terminology and began to mean the whole court proceedings, e.g., civil proceedings (compare this the following French words and/or phrases: *parle* Parliament - *place where laws are passed)* (Koženiauskienė, 2005, p. 22). Consequently, the ultimate goal of a lawyer is to make his 'case' in such a way as to influence the actions and assessment of judges, and convince them. By *influence,* it is not just any effect that is meant, but an effect that has gone beyond the power of evidence. It is an attempt to influence the conscious thinking of the listeners by legitimate means. According to Justickis, 'The most obvious methods of psychological influence are used in the speeches of lawyers and prosecutors. Their legal status indicates that they must "convince" the court' (2003, p. 259), and convincing, or persuasion, is exactly the main goal of rhetoric. Thus, during the court process, opposing sides both pursue their goals not only by legal, but also by rhetorical (psychological) means.

Hence, the historical, etymological and mythological genesis of rhetoric is based on the same basis: the model of wise and harmonious (beautiful) speech. Only by speaking can a lawyer really 'act' in court, because his work mostly consists of activity 'constructed' in a professional language. Although the value and understanding of the science of rhetoric has changed over the centuries, the rhetorical ideal of the courts, formed in the homeland of free speech and democracy, Greece, remains relevant in democracies to this day.

Intersections between rhetoric and law

The obvious links between rhetoric and law in ancient times, however, have not been continuously developed to this day. An opposite opinion about the role of rhetoric in law soon emerged, as Plato was already outraged by the abuse of rhetoric: he defined it as the persuasion of ignorant masses in courts and assemblies (Legal rhetoric, 2019). In Europe, the rhetoric that originated in Greece, was continued by the Roman Cicero and Quintilian, and became an indicator of legal education, was later suppressed by the rise of rationalism in the 17th and 18th centuries (Harrington et al., 2019), and Plato's position is also supported in the work of today's scholars, although there is also an opposition to it stating that rhetoric is an inevitable component of any legal system (Gagarin, 2017). The intersection of rhetoric and law to this day has had to endure considerable trials, changes in attitudes towards their links, different positions of scholars in assessing the significance of rhetoric in law. From the 17th century onwards, rhetoric began to fade, becoming more and more often presented as an additional skill that people can develop and work on. In the works of Tom Hobbes, Jeremy Bentham and John Rawls, there was an opinion contrary to the meaning of rhetoric, offering instead the theories of sovereignty, legislation, political morality, and so on. The nature of rhetoric was also condemned by J. Lock, who argued that eloquence and figurative language only have the purpose of 'instilling' wrong ideas, causing arguments and, thus, leading to wrong decisions. Therefore, according to the authors of the time, the immorality of rhetoric contradicts natural law, which sought to establish legal considerations in some higher order (Harrington et al., 2019). Rhetoric remains only as a separate scientific legal field. Modern legal theory considers law to be an ideal system of rules that is pre-determined and whose meaning must be determined through exegesis, rather than being actively developed through arguments as it was done in ancient Greek or Roman times. Despite various authors treating the relationship between rhetoric and law differently, the closeness of rhetoric to the social context allowed it to return to the field of law and help it with its own strengths. Over time, it has been understood that classical rhetoric provides an excellent set of tools for the analysis of persuasive effects. This includes instances of speaking (i.e., speaking in court, reasoning or giving a celebratory speech); canons of rhetoric (discovery, layout, style, presentation and memory); figures of speech (metaphor, metonymy, synecdoche, etc.) and part of speech (introduction, narrative, proof, denial, and conclusion). All of this can help to read the legal material carefully, while the main components of rhetoric, i.e., *logos, pathos* and *ethos*, help to properly shape legal arguments (Harrington et al., 2019). People started to understand that information is a resource, not just 'empty words' as an antithesis of 'action' (Amilevičius, 2011). Finally, Luhman points out that rhetoric can participate in law, which is understood as a system of separate textual and oral episodes with legal validity, culturally and politically. Each case can be analysed as an attempt to convince a diverse audience of the legal validity and appropriateness of the facts. However, instead of applying indisputable principles, the law must look at and pay the most attention to sound arguments and specific situations, and rhetoric must be understood not as a pleasantry or a linguistic 'caress', but as the essence of democratic life allowing one to express

one's arguments, which as elements of judicial debate should help to clarify each case individually and find a suitable solution. Thus, there was a return to the concept of the link between democratic rhetoric and law that was popular in ancient Greece, which, although valued by scholars in two ways, is nevertheless recognized and no longer ignored in modern times.

In view of the diverse medium of treatment of links and intersections between rhetoric and law, it must be acknowledged that each of them is a separate science with points of contact. In other words, rhetoric and law are interdisciplinary sciences, and not just in terms of their interrelationship. Each of these sciences is interdisciplinary in their own way: rhetoric combines philology, logic, philosophy, psychology, ethics, and neorhetoric; reborn in the middle of the twentieth century, rhetoric is also based on new sciences - communication theory, psycholinguistics, sociolinguistics, hermeneutics, semantics and semiotics, i.e., sciences that regard rhetoric as their forerunner. The science of law is also not isolated from other sciences and is actually based on them (e.g., on philosophy, philology, logic, psychology, sociology, etc.). This situation in the aforementioned fields of science is determined by their social context - both sciences are for society and analyse aspects related to people as a collective, i.e., speech and legal decision making. In law and rhetoric themselves, the boundaries of individual disciplines are generally blurred: both theoretical and practical methodological elements of the disciplines permeate each other. Also, the links between law and rhetoric do not need to be understood and assessed in a straightforward way, and just the spheres occupied by each of them need to be properly distinguished. For example, rules of legal reasoning are developed by legal theory, but they can only be effective if they are not limited to said legal theory and are seen in the broader context, i.e., the knowledge and achievements of other disciplines are applied (Mikelėnienė, Mikelėnas, 1999). So, a lawyer must have a good command of the language, think logically, be a good psychologist and have a strong ethical foundation. A lawyer must also be a hermeneutic who is able to mediate between a letter of the law and the addressee who wants to understand it and see that justice is done. Law and rhetoric have much in common with hermeneutics: rhetoric teaches the creation of a text, and hermeneutics teaches us to understand and interpret it. A lawyer needs both of these sciences, because he needs to understand the text of the law, be able to interpret the opponent's perception of the law and create his own text at the same time. Thus, the studies of law and rhetoric provide a wide range of information and have much in common in their universality: by combining jurisprudence and eloquence, they develop logical thinking and, at the same time, creative speaking (Koženiauskienė, 2005). In other words, the interdisciplinary nature of the science of rhetoric allows for the meaningful use of the latest theoretical and methodological achievements of many disciplines (Brūzgienė, 2006).

So, modern rhetoric teaches speakers to be effective and persuasive in courtrooms, using both legal facts and the art of eloquence in a broad sense. A lawyer must have a good command of the language, know the logic, be a good psychologist, have a strong ethical foundation. The studies of law and rhetoric provide a wide range of information and have much in common in their universality: by combining jurisprudence and eloquence, they develop logical thinking and, at the same time, creative speaking. A lawyer must also be a hermeneutic who is able to mediate between a letter of the law and the addressee who wants to understand it and see that justice is done. Law and rhetoric have much in common with hermeneutics: rhetoric teaches the creation of a text, and hermeneutics teaches us to understand and interpret it. A lawyer needs both of these sciences, because he needs to understand the text of the law, be able to interpret the opponent's perception of the law and create his own text at the same time. In other words, rhetoric proposes measures to link law to the social context without losing various legal nuances

(Harrington et al., 2019). The fact that the closeness of rhetoric and law is also recognized in science is evidenced by the development of the field of legal rhetoric, which was singled out by Aristotle as one of the types of a public talk, and argumentation, as a part of rhetoric, is studied not only in a linguistic sense, but also by assessing paralinguistic elements - the volume of speech, intonations (Kjeldsen; Eckstein), or even the influence of non-verbal language on the strength of argumentation (Gelang), not to mention argumentation theories (Rapp, Wagner). This shows that science is becoming more and more modern, is constantly evolving, and does not limit itself to fundamental dogmas. Consequently, it is noticeable not only a clear affirmation of the links between rhetoric and law, but it is even being developed. It can therefore be concluded that each field of science needs to be analyzed in detail, delving into all its aspects in order to find out and discover what is most appropriate to link it to another field of science that can help other sciences. Only comprehensive and varied research can reveal this. Therefore, it is recommended to study the fields of science in as many different aspects as possible, as well as to keep in mind the mutual benefits of interdisciplinary research, which helps to reveal the similarities and differences of several fields of science, their mutual benefits. The results of such research often show unexpected results that are useful in developing the concept of science in each field of it and in general.

Conclusions

The rhetoric and law, mentioned in various sources since ancient times, each have their own history of origin, but in certain periods of their development, obvious links and intersections, determined by certain historical changes, could be noticed. Eventually, however, rhetoric was recognized as important to law as a representative of democracy and freedom of speech, and it was not the manipulative aspects, but the real task of the science of rhetoric — to persuade the listeners in wise and reasonable language, and help maintain the unity of law and justice — that were finally taken into account. The development of neorhetoric as a field of science, associating it with the influence that paralinguistic elements and non-verbal language have on speech, and research on legal rhetoric shows that rhetoric and law have remained interdisciplinary to this day, and that they have common objects of research which can be studied in various aspects.

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VIOLATION OF THE HONOUR AND DIGNITY OF A POLICE OFFICER: PREVALENCE OF THE PHENOMENON AND ITS ETHICAL ASPECTS

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Abstract*. The police are nothing more than an institution created by society to meet its own needs for security. Therefore, the issue of honour and insult of a police officer is very important to ensure security and stability in the state. The issue of insulting the honour and dignity of a police officer is a topical issue, because in order for officers to perform their duties properly (defend, protect, assist), they need to feel safe in the performance of their official duties. The purpose of this article is to reveal the ethical aspects of insulting the honour and dignity of a police officer and the prevalence of this phenomenon. Object of investigation: insult to the honour and dignity of a police officer. The two tasks of the article are singled out: to discuss the concepts of honour and dignity by revealing their ethical aspects, and to assess the prevalence of the phenomenon of collisions of police officers with insults to honour and dignity. Research methods used: analysis of scientific literature, analysis of documents, generalization, questionnaire survey, statistical descriptive analysis, descriptive interpretive analysis. After evaluating the empirical research, it was concluded that the honour and dignity of officers are violated throughout the state of Lithuania constantly, at least several times a week. The honour and dignity of police officers are most often offended by antisocial, intoxicated individuals who can be said to have fewer social skills and are less educated. The honour and dignity of officers are violated in a variety of ways, including words, gestures and actions aimed at belittling, insulting or humiliating an officer. It is argued that the legal regulation of the protection of the honour and dignity of officers is insufficient, for this reason officers do not feel safe in the performance of their duties.*

Keywords: *honour, dignity, insult of a police officer, ethics.*

Introduction

We live in a democratic world, where every person can freely express their opinion (freedom of speech), freedom of public information, freedom of expression, these freedoms are enforced in Article 25 of the Constitution of the Republic of Lithuania. However, very often the abuse of all these rights causes problems regarding the insult of honour and dignity, as that can be seen in the 2020 public consultation. In court statistics, “from the beginning of 2017 to the end of 2019 288 civil cases were initiated in the courts of first instance for protection of the honour and dignity of a person “. The Universal Declaration of Human Rights (Article 12), adopted in 1948 states that " no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.".

Article 21 of the Constitution of the Republic of Lithuania enforces a provision that guarantees “that the honour and dignity of a person are inviolable, as well as the laws protect and forbid the humiliation of a person”. The scientific literature examines respect for human dignity in health care (Kuznecovienė and others, 2020; Badaugaitė, 2018), protection of human

dignity in Lithuanian court practice (Malūkienė, 2020), reveals the universality of human dignity and vocation to holiness in the socio-legal context (Rimkienė, 2020), conditions of imprisonment degrading human dignity in the jurisprudence of the European Court of Human Rights (Šanteriova, 2018), dignity during a pandemic is discussed (Mažeikis, 2020).

The protection of personal honour and dignity is a specific right of people, protected by the norms of civil law and public law. It is a property of a person that is inviolable, in accordance with Article 1 of the Charter of Fundamental Rights of the European Union, which states that "human dignity is inviolable. It must be respected and protected". However, citizens abuse the freedoms granted to them and police officers are often insulted, although the laws of the Republic of Lithuania prohibit it. The Supreme Court of Lithuania (order in criminal cases No. 2K-421) of 19 June 2007 states that "words or actions aimed at humiliating, hurting or damaging a person's moral prestige shall be considered insulting", as well as liability for insulting a police officer under Article 508 of the Code of Administrative Offenses of the Republic of Lithuania - "Statutory Civil Servant, humiliation of the honour and dignity of a military police or intelligence officer, expressed in words, gestures, abusive, arrogant, provocative or other conduct, shall be punishable by a fine of ninety to one hundred and forty euros." The problematic question is whether such a defence of the honour of a police officer is sufficient or whether sanctions need not be tightened to prevent police officers from being insulted. The issue of defending the honour and dignity of a police officer and the choice of the method of defending these values is becoming more and more important. There is a lack of analysis of the scientific literature, case law, analytical articles on insults to the honour and dignity of an official.

The aim of this research: to reveal the ethical aspects of insulting the honour and dignity of a police officer and the prevalence of this phenomenon.

Research object: insult directed towards the honour and dignity of a police officer.

Research tasks:

1. To discuss the concepts of honour and dignity by revealing their ethical aspects.
2. To assess the prevalence of the phenomenon of clashes between the police officers and insults directed towards their honour and dignity.

Research methods: analysis of scientific literature, analysis of documents, summary, questionnaire survey, statistical descriptive analysis.

Concepts of The Protection of Personal Honour and Dignity and Their Ethical Aspects

Problems of the concept of personal dignity. In order to properly reveal the concept of personal dignity, it should first be noted that there are two different concepts of dignity in international and national law, namely human dignity and personal dignity. The question therefore arises as to whether the concepts of person and human dignity are identical or different.

The International Covenant on Civil and Political Rights (1992) declares that "every member of the human community has an inherent dignity, and human dignity is the most important source of rights, since human rights derive from the inherent dignity of the person." The resolution of the Constitutional Court of the Republic of Lithuania on December 9, 1998 notes that "the international community separates human life and dignity from natural rights. Human life and its dignity form the integrity of the personality, it means the essence of man. Life and dignity are inalienable human qualities and therefore cannot be treated in isolation." Thus, the life and dignity of man, expressing the integrity of man and his extraordinary essence,

is above the law. In this regard, human life and dignity are valued as special values. The purpose of the Constitution is to ensure the protection and respect of these values.

According to Venskiene (2009), the protection of human dignity is an effort to protect a human being that goes far beyond individual life. The right to the dignity of the person is the ability to realize natural qualities in society, thus creating social value, and the violation of human dignity is a blow to the values of society, therefore the right to dignity is absolute and unrelated to other public or personal interests. Meanwhile, Vaišvila (2014) notes that dignity is understood as a human value that arises from a person's ability to properly adapt and live-in society and distinguishes two levels of human value: the first level is the value that arises from formal recognition of the person as a right because it is acquired from society itself without personal effort (performance of personal duties). The second level is the individual social value of a person, which a person can create only by performing duties that require the retroactive efforts of society. Depending on the levels, the right to dignity is divided into two ways of existence: legal and subjective rights.

Human dignity determines human rights to health, liberty, personal integrity, protection. It is a universal right that everyone has, regardless of religion, gender, race, citizenship, education, and therefore human dignity is not an individual human characteristic.

Doubtful descriptions of personal dignity can also be found in the scientific literature, for example, according to Jovaišas (2004, p. 73), “personal dignity is an assessment of one's abilities, spiritual and moral qualities, social status, and one's personality”. Such an assessment of a person's dignity is only partially correct, because each person has an opinion about himself. Therefore, one person may value himself very highly and another may not, and this may lead to conflicts over insulting dignity, as one person may accept a word he or she dislikes as an insult and another person may ignore the same speech. Dignity is understood as self-esteem, which is determined by the evaluation of the person of society, as Meškauskaitė (2018) observes, dignity is not only a subjective self-evaluation. The main criterion for this assessment must be public opinion about the person. The law protects the honour and dignity of the person as a moral assessment of the person, but such protection guarantees to the person only the assessment that the person has earned by his actions and not the kind that the person imagines. According to Meškauskaitė (2018), in this case the object of legal protection is the right of a person to demand that public opinion about a person be formed according to the person's actual data, actions, moral assessment corresponds to reality and norms in the society where the person lives.

Summarizing the presented concepts, it can be stated that the dignity of the person and human dignity can be distinguished according to the fact that human dignity is violated when one of the natural rights of life, liberty, inviolability is violated, and personal dignity is violated by other people. Also, a person's dignity does not depend at all on individual qualities, such as education or position, but a person's dignity can also depend on these qualities.

The concept of honour and its features. The current dictionary of the Lithuanian language provides the following definition of the term honour - “it is a publicly recognized respect for merit; glory, good name”. The case law of the Supreme Court of Lithuania provides a definition: “honour is a public positive opinion about a person, a good name of a person.” Although this definition was formulated back in 1998 in the resolution of the Senate of Judges of the Supreme Court of Lithuania No 1, it is still consistently followed in studying law cases today.

According to Venckienė (2009, p. 46), honour is related to the positive reactions of others to certain human actions: "honour does not depend on one's own judgment, nor can it be abandoned, because society decides which human behaviour is right and which personality is

honourable". According to Jovaišas (2004, p. 73), “honour is a positive social assessment of a person’s spiritual and moral qualities, intellect and behaviour, relationships with other people”, emphasizing social i. e. external evaluation of the person.

In his commentary on the provisions of the Civil Code of the Republic of Lithuania (2002), Mikelėnas states that a person's honour is a publicly recognized respect for merits and a good person's name. Synonym of personal honour is the business reputation of a legal person. Meškauskaitė also supports her opinion, stating that the term “personal reputation” - can be considered synonymous with the term “personal honour”. However, according to Meškauskaitė (2018), these concepts are not completely identical, because a person's reputation can be described as a public opinion about a person based on a person's social relations, and a person's social characteristics are more related to position, social status, moral values.

In all the given definitions of “honour”, one common feature of honour can be observed, which manifests itself in the fact that honour is not the self-esteem of a person, but the evaluation and opinion of other individuals about a particular person. It is not a subjective self-assessment; it is a public assessment. The law protects a person’s honour and dignity, but it defends the way it deserves to be defended, not according to how the person imagines it. The main differences between these concepts can also be distinguished. All authors emphasize differently what human honour is valued: in terms of a person’s reputation, in terms of a person’s spiritual and moral relationships, and in terms of positive actions. Differences do not specify exactly what criteria society uses to accurately assess whether a person is honourable, as the concepts refer to different criteria and each person chooses a description of honour that is appropriate for him or her.

Considering the described concepts of honour, the following features of honour can be distinguished: 1) it is a public opinion; 2) positive opinion; 3) opinion about the person. The first hallmark of honour - public opinion - means that opinion must be formulated in an environment i.e., by other people and that those people have to belong to a social group no lower than the person himself. However, an opinion formulated by a friend or relative about a particular person cannot be considered an honour because it is only the opinion of that one person and not the public. The second sign - a positive opinion - means that the opinion that is formed must be positive, a negative opinion is not considered an honour. The third feature - opinion about a person - means that an opinion must be formed about a particular person, not a group. Thus, honour is a person's non-property right, which is understood as the public's positive opinion of a particular person. It is vulnerable when untrue facts are spread about a person that degrade the person's image in the eyes of society.

Ethical aspects of the concepts of protection of personal honour and dignity. People are often in a hurry to live and seek the material well-being that is so important to them that they simultaneously forget the morals and essential aspects of life that complement human beings and allow them to live in harmony. According to Schweizer (1989), a certain way of social thinking has emerged that distracts the individual from humanity. The innate sensitivity of a person to a neighbour disappears. In its place, absolute indifference is obscured by various manners. Society has ceased to recognize human value and human dignity. In the decision of the Supreme Court of Lithuania of 27 January 2015 in civil case No 3k-3-1-2019 states that “an unethical, unfair opinion expressed without any arguments or facts or by omitting certain facts may be found to be detrimental to a person’s honour and dignity.” This Supreme Court ruling also states that a person’s honour and dignity is inseparable from adherence to ethical principles, non-compliance with which may be recognized as an insult to the honour and dignity of the individual. It is also stated that “the court (...) must examine and assess, first, whether the evidence in the text containing the opinion, the evidence provided by the defendant to the court

is sufficiently reliable to form the opinion expressed by the defendant, and second, whether the opinion is ethically and did not unreasonably insult or degrade the applicant's honour and dignity". Therefore, for citizens, even those who do not pursue a career in law enforcement, ethical behaviour is an important quality that needs to be demonstrated. A person's honour and dignity are often compromised due to a lack of understanding of ethical behaviour.

The concept of ethics includes two other concepts - morality and morals (Laurinavičius, 2001). In philosophy, Hegel was the first to distinguish between the concepts of morality and morals. According to Hegel (2000), morality refers to human responsibilities to a community in which customs are already established and take the form of norms of behaviour, and the word morality is associated with personal behaviour and the evaluation of other people's individual behaviour. Summarizing the differences in terms presented by Hegel, it is observed that the term morality refers to the social aspect of human behaviour and its evaluation, while the term morals refer to the personal aspect of human behaviour and its evaluation. It can also be said that morals are how the individual (individual conscience) evaluates his own and other people's behaviour, and morality is what the family, nation, society observes in the same behaviour, that is, socially valid norms.

Etymologically, the words ethics, morality, and moral behaviour are related. In addition to the term morality, the word often used is moral behaviour, which means the obligation to behave in one way and not the other, and also means such character traits as kindness, justice, honesty, etc. (Kanišauskas and Juozelis, 2018). These and similar qualities are called virtues. A virtuous and decent person is described as a person who abides by accepted norms of behaviour and commitments, does what everyone thinks should be done. Ethics, morality, and morals are associated with the customs, traditions, behavioural habits, personal characteristics, character, life attitudes, virtues, or flaws that have developed in the human community.

The principles of ethical behaviour are most often acquired in the family, and they are further implemented in schools and universities, in the workplace. The goal is considered to be achieved when the concepts of virtue become figures of consciousness that guide thinking and language, when moral and ethical feelings and attitudes control motivation and behaviour, when the ethical personality of man itself is strengthened and the virtuous character is established. From the descriptions provided, it can be seen that ethical behaviour, which consists of the principles of a person's morality and morals, are the core principles by which a person will be guided by a good, decent, and ethical personality. Ethical behaviour is the observance of the basic moral principles prevailing in society. If individuals adhered to these principles, then violations such as insults to honour and dignity would be reduced.

Presentation of the Course OF Empirical Research

In order to assess the prevalence of the phenomenon of clashes of police officers with insults to honour and dignity, a quantitative study was conducted - representatives of different ages and genders were interviewed about clashes of insults to honour and dignity. The method of questionnaire survey was chosen for the research, interviewing the respondents and asking them standardized questions. The choice was determined by the large volume of the available quantitative survey, the high degree of feedback and the need to ensure anonymity. Nominal scales were used to mark the answers to the specifically formulated questions, questions with the possibility to choose one and several answer options were presented. The used online survey system https://apklausa.lt/ systematizes the obtained data automatically. Because the number of respondents is odd, the system rounds the results, expressed as a percentage, to tenths, resulting in an error of 0.1%. A quantitative method was used to analyse the data - statistical descriptive

analysis of the data. The study data were processed in Excel. In most cases, the usual methods of descriptive statistics (absolute and relative frequencies) were used, i. e. the percentage frequency of each answer to the questionnaire is analysed, which is obtained by dividing the number of variants of each answer by the total number of respondents.

The survey sample. The survey involved 103 respondents, of whom 42% were women and 58% men. Police officers from Vilnius County CPC (Chief Police Commissariat), Kaunas County CPC, Klaipeda County CPC, Šiauliai county CPC, Alytus County CPC, Utena county CPC, Telšiai county CPC participated in the survey. The interviewed officers work in various structural units of the police: in the Activity Department of Police Commissariats, in the Response Department, in the patrol team, in the Crime registration Department, in the Immunity Department, in the Operational activities department. As the number of interviewed respondents is too small to reflect the opinion of all Lithuanian police officers, the survey should be considered as a pilot.

Analysis of Empirical Research Results

According to the results of the demographic part of the study, the main participants in the study were chief patrols (39 persons), investigators (24), and chief investigators (19). The survey was posted on the Facebook page, a group that only officers have access to.

Another question in the questionnaire concerned the work of officers, as is often the case with officers having to communicate directly with citizens. According to the data provided, the vast majority, i.e. 75% of respondents face offenders, applicants, witnesses, etc. daily. Respondents appear to be targeted, as those who work with citizens, their honour and dignity may be violated more often than those who rarely work with citizens.

As many as 86% of the police officers answered in the affirmative when asked whether the honour and dignity of a police officer had been violated at least once during their entire service. The data show that the honour and dignity of police officers are being violated. As many as half of the respondents state that the honour and dignity of a police officer is violated frequently, at least once a week, 24% of respondents said that the honour and dignity of a police officer are violated on a daily basis, 18% said that the honour and dignity of a police officer are violated infrequently, once a month and 6% stated that very rarely, once a year. The results of the survey show that the honour and dignity of officers are very often degraded, such a distribution of respondents' answers is probably due to the fact that most respondents work and communicate with citizens every day (applicants, offenders, witnesses, etc.).

Intoxicated persons are most likely to violate the honour and dignity of police officers - 35% of respondents, 27% are uneducated, and 22% are antisocial. Such individuals are generally unaware of their actions and are not social, unable to communicate with the public, all the more so with police officers, and are unaware of their actions and the basic axioms of ethical behaviour mentioned above, are of low morale and lack moral values. For these reasons, such individuals tend to insult police officers and others.

Adults are most likely to violate the honour and dignity of an official and only 8% of respondents indicated minors. The data show that adults are more likely to insult because they believe they have sufficient rights to do so, and the results mentioned above show that officers are most often insulted by antisocial individuals. Minors are less likely to insult, as it can be said that they are afraid of their parents and guardians, who will have to answer for such a minors' behaviour. Men are the most likely to insult the honour and dignity of police officers, as many as 93% of respondents said so, and only 7% of respondents said that women were more

likely to insult the honour and dignity of police officers. Such a division of opinions is possible due to the fact that officers work in different fields and interact with different individuals.

According to 69% of respondents, the main reason why the honour and dignity of police officers is often insulted is the preconceived notion. A total of 27% of respondents believe that this is due to individuals' willingness to appear in front of others. Respondents were also given the opportunity to submit their preferred version of the answer. 4% of respondents gave other reasons for insulting the official's honour and dignity: "Lack of awareness of the possible consequences, elementary educational gaps and a general culture of intolerance; too little responsibility for degrading the honour and dignity of an official; intoxication, mental disorders". The results show that the main circumstance that often degrades the honour and dignity of a police officer is a negative prejudice. This can lead to individuals often being anti-official and believing that all officers tend to be punished. Especially now, during a pandemic, the public tends to see police officers in the role of punishers.

As many as 57% of respondents have drawn up an administrative offence report for insulting the honour and dignity of a police officer, and 43% of respondents have not drawn up a report. This can be due to many factors, such as the reluctance to waste time or simply the attitude that the officer's well-being and the fact of insult itself will not be improved, eliminated, and so on. The study did not aim to identify these factors. In addition to this question, officers were asked another question about the extent to which officials have drawn up reports of administrative misconduct for insults to the honour and dignity of officers during their term of office. 60% of respondents answered this question, other respondents abstained. Officers mostly drew up 1 to 5 administrative offense reports during their entire term of office, with 43% of respondents responding.

As many as 80% of officers do not turn to other institutions to defend the honour and dignity of an officer. Only 20% of respondents applied to other instances. Respondents were also given the opportunity to comment on which instances they had applied to defend their honour and dignity. Respondents indicated that in case of insult to the honour and dignity of a police officer, they most often applied to the Immunity Board of the Police Department under the Ministry of the Interior of the Republic of Lithuania. One of the main objectives of this service is to "improve the system for protecting police officers from illegal external influences". According to the data obtained, it should be noted that officers are reluctant to turn to assistive services for insults to honour and dignity, which may mean that officers are reluctant to defend their honour or dignity or are simply frustrated with the honour and defence system and think that recourse and trial defending will not change anything. The majority of respondents - 47% - said that drawing up an administrative protocol or going to the immunity service or to court only partially protects the honour and dignity of a police officer. 41% of respondents believe that such an act does not protect the honour and dignity of an officer at all, and only 12% of respondents believe that they do. More than half (55%) of the respondents believe that the legal regulation of the protection of the honour and dignity. 33% of respondents believe that the legal framework for insults to honour and dignity is partially adequate. For this reason, officials are reluctant to defend their honour and dignity. The main legal act regulating and protecting the honour and dignity of a police officer is Article 508 of the Code of Administrative Offenses of the Republic of Lithuania. However, the Supreme Court of Lithuania has stated that public persons (including officials) must be more tolerant of criticism and insults, and it is more important for them not to pay non-pecuniary damage, but to punish the offender.

Summary of Empirical Research Results

According to the results of the empirical study, it is observed that the topic of insulting the honour and dignity of an officer is quite sensitive. Police officers from various Lithuanian cities took part in the investigation, therefore it can be noticed that the issue of insulting the honour and dignity of an officer is relevant throughout Lithuania. The findings of the empirical study show that the honour and dignity of officers can be violated continuously, at least several times a week, and the empirical study found that the honour and dignity of officers were violated at least once during the entire period of service. The honour and dignity of police officers are most often insulted by antisocial, intoxicated men who are thought to have less social skills as well as lower education, which is why individuals tend to use more uncensored words or disrespectful gestures because they only know how to express their own or other gestures and emotions. Usually, insulting a police officer is caused by a person's prejudice against the officer, individuals believe the officer is evil and tends to only punish. It is also a common case of insulting the honour and dignity of a police officer, failure to comply with the lawful demands of a police officer, if an officer gives an oral remark to a person, a person refuses to comply with the officer, a conflict that usually results in insulting and non-compliance.

The right of the individual to dignity is governed not only by national law but also by international law. In national legal acts, the right to personal honour and dignity is enshrined in the Constitution of the Republic of Lithuania (Article 21 (2), Article 22 (4), Article 25 (3)), the Civil Code of the Republic of Lithuania (Article 2.24), in the Law on Information (Articles 13, 15). In international law, the right to honour and dignity is guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 3, 10 (2)), the Universal Declaration of Human Rights (Articles 1, 5, 12), the International Covenant on Civil and Political Rights. and the Covenant on Political Rights (Articles 10 (1), 17 (1)), the Charter of Fundamental Rights of the European Union (Article 1). The data of the empirical research revealed that the law regulating the protection of the dignity and honour of an officer is separately Article 508 of the Code of Administrative Offences of the Republic of Lithuania. shall incur a fine of between ninety and one hundred and forty euros. The majority of respondents said that they had drawn up a protocol of administrative misconduct at least once throughout their service, insulting the honour and dignity of an officer, but only in exceptional cases where the officer's honour and dignity were grossly violated, in milder cases limited to verbal warning. Another circumstance why officers are reluctant to defend their honour and dignity in every case is that the offender is sent to court and the officer must be present in court. Unfortunately, the current case law is that the limits of criticism for an officer (public person) are wider and the defence narrower. A public person must be more tolerant of criticism, and it must be more important for him to punish the offender (in this case an administrative fine) than non-pecuniary damages. It takes quite a long time for officers to take part in the trial, as the court has to determine whether the allegations made are true; or degrades the claimant's honour and dignity; whether the person who disseminated them acted in good faith; what the permissible limits of the plaintiff are. Only if all the circumstances are proven and disclosed, the offender will be punished. However, the courts tend to concede offenders and excuse liability because the insult (according to the offender's words) is considered by the court to be insufficient for the offense. For all of these reasons, officers are reluctant to go to court or often punish offenders for insulting honour and dignity. The results of the empirical study show that the legal regulation of the protection of the honour and dignity of officers is insufficient, so more than half of the respondents said that people so often insult the honour and dignity of the

officer and officers do not feel safe during the service because the regulation of official protection is rather weak.

Conclusions

The honour and dignity of the individual is an inalienable and absolute non-property right of the individual, protected by both national and international law. Dignity can be divided into human and personal dignity. Human dignity is violated when one of the natural rights of life, liberty, inviolability is violated, and personal dignity is violated when other persons abuse their freedom of speech. Dignity is an assessment of a person determined by public opinion. Honour is a non-property right of a person, which is understood as the public's positive opinion of a certain person, honour is violated when untrue facts are spread about a person, which degrades the image of a person in the eyes of society. Dignity is morals and morality; and the human behaviour depends on the obeyance of these principles.

The honour and dignity of officers are violated throughout the state of Lithuania constantly, at least several times a week, and some officers are even more often insulted. The honour and dignity of police officers tend to be insulted by antisocial, intoxicated individuals who are thought to have fewer social skills as well as lower education. The honour and dignity of officers are violated in a variety of ways, including words, gestures and actions aimed at belittling, insulting or humiliating an officer. The legal regulation of the protection of the honour and dignity of officers is insufficient, for this reason officers do not feel safe in the performance of their duties.

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MANAGERS DEVELOP MANAGEMENT OF EMPLOYEES IN SERVICE INDUSTRIES

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Abstract. *Managers Develop Management of Employees in Service Industries is a scientific article. Management of employment is a serious problem in service industries, a new problem is management of employees in service industries. The aim is to analyze; the tasks for the analysis are two: to analyze employment management development, to suggest the applied measures of the management of employees in service industries. The analysis has conclusions, results, suggestions, and recommendations. The theory of the management relations was applied in order to analyze. The solutions to the eight factors are important. Methods for the research were descriptive for analysis, generalizations and suggestions. A contemporary management is important. The results revealed that management of employment is important, managers can develop management in service industries because the factors and management relations are important. Gintaras Kavarskas – Master of Management, strategic projects management, risk management and management of international projects, employment, employment management, evaluation of management quality of human resources, international management of employment, international employment, international management, employment management direction to countries, management systems, management innovations to countries, assessment of innovations management, emergency and crisis management theories.*

Keywords: *management development, employment management, human resources, unemployment management, service industries.*

Introduction, problem, aim, object, tasks, theory, methods, usage at universities

Managers Develop Management of Employees in Service Industries is the academic research article on the development of the management of **human resources**. How do managers develop management of employees in service industries, the management of employment in service industries, is a question in this scientific article. The understanding of the solutions to the management of employees in service industries can be of sheer importance; there has not been an analysis *pro tanto*. Suggestions are creating a comprehensive synthesis about solutions which are of strategic importance to managers because a modern administration is necessary in institutions of the local municipalities; the author of the article claims that managers ought to look *nunquam retrórsus* and have all the important strategic solutions in advance in order to solve crises in the management of the unemployment in the world; the author of the article admits that an advanced management is possible and this is a contemporary development of management. Managers Develop Management of Employees in Service Industries is the scientific article which will improve managers to develop a contemporary management of employees in service industries. It is generally agreed that a contemporary management is of great importance.

The new and important problem is the management of employees in service industries. This scientific problem is very important since managers will improve management of employees, get higher qualifications and recommendations at work. Other reasons are that the management of employees is important these years, later when there is a rising unemployment in a country, and during a high unemployment in a country. That is a scientific problem and question to be answered. Hypothesis is of sheer importance because according to the research

problem, there is a research question of how managers could develop management of employees in service industries if they apply the theory of the management relations. A research question can be answered at the end of the analysis of the eight factors. The author of the article made all the eight factors which are important to understand because they are improving managers' solutions to be developed these years and during a rising unemployment in an unforeseen future. *A posteriori*, there are eight factors developed by the author's of the article arguments for this research article. It is necessary to ascertain all the eight factors in order to develop management, improve managers' jobs. If there were or is a high unemployment in a country, it ought to be necessary to develop the management of employees in service industries, it is ascribed to all the eight factors in an attempt of the aim of this article. This scientific article is of particular importance to countries in the world from today and to the management success of the next decade; this research article is a breakthrough because it improves management of employees in service industries in countries in the world nowadays and in the future, the characterization in all the eight factors are of consequence of conservation of a low unemployment.

The object is the eight factors of the employment management in service industries. The main aim is analysis on how managers could develop the management of employees in service industries. For the analysis it is necessary to classify factors into the main features and to characterize the most significant factors, to describe, to deduce a conclusion, to come up with suggestions and recommendations, they are of great importance so as to improve management of employees in service industries. The tasks for the analysis are two: 1. To analyze employment management development and measures because these must be examined by countries. It is important to analyze the management of employment since managers develop the management of employees in service industries. 2. To suggest the applied measures of the management of employees in service industries, for instance, to propose eight factors as because these must be being examined by countries before a crisis in an unforeseen future. Having analyzed countries' strategic solutions as the core factors in this scientific research, it is necessary to conclude, suggest, and recommend.

The management relations theory will be applied in order to analyze. Solutions to a rising unemployment are necessary, the eight factors can be helpful for the solutions. Contemporary management systems will solve a wide variety of other issues in crisis of a high unemployment. A research methodology is descriptive and analytic; methods for the research are descriptive for analysis, generalizations and suggestions. The reasons for applying these methods are the eight factors; the qualitative data of the eight factors will be interpreted and analyzed for the research. Analysis of the management of employees in service industries will help with solutions to an unemployment crisis during a rising unemployment in an unforeseen future; the analysis is for the methodology. If the methods are applied, the management of employees in service industries could be developed and the unemployed will be employed. The analysis before a crisis in an unforeseen future and the suggestions will definitely guarantee the best solutions in the local municipalities in countries; therefore managers can better develop management of employees in service industries these years and prepare for solutions to problems before an unforeseen future.

The research article is very important to universities' scientists, managers, and the article may be quoted by scientists at universities, managers working in institutions and companies of the local municipalities in countries in the world. Therefore, managers in countries would be better prepared to develop management of employees in service industries and to solve a crisis – danger and insecurity – during a rising unemployment in an unforeseen future.

Managers Develop Management of Human Resources, Management of Employees

Although the eight factors are important to employment management, the eight factors are important to a rising and high unemployment management in an unforeseen future. There are eight factors for managers to develop management of employees in companies and institutions in service industries in the contemporary world and to the management success in the next decade. A further future might possibly have more differences from the contemporary world. If managers work successfully these years in the contemporary world, there will not be a rising unemployment these years and in the further future in the next decade. In general, there are eight factors to help managers in institutions.

In the scientific book there was mentioned "training and development, career development"[1] (Krishnaveni, 2008, p. 38), however, nowadays it is necessary that managers could develop them by using the factors. In another scientific book there was also emphasized "training and motivating"[2] (Snell, *et al.*, 2014, p. 4). Also, in another scientific book there was argued that employees target training [3] (Reid, *et al.*, 2004, p. 28). These are because employment of employees is important to the development of management and relations in management, it is important to have a solved problem of the unemployment so as to improve management and relations in management. In the scientific article Local and international projects management direction to strengthen country, the author Kavarskas (2020, p. 208) emphasized that "It is necessary to often assess all enterprises and institutions in order to decide how many employees should work there"[4]. All the eight factors are important to employment management in a country, all the eight factors solve unemployment in a country, all the eight factors solve a rising and high unemployment in a country; that is why, all the eight factors are important according to circumstances in a country and in the territories of the local municipalities in order that countries' universities and the local municipalities could apply this article on Managers Develop Management of Employees in Service industries. This is a contemporary article which might help with solving problem of a rising unemployment in an unforeseen future.

Social security is important to all people; every country ought to guarantee the social security to the citizens. There was signed the Directive 1152 by the European Parliament The President A. TAJANI and the Council The President G. CIAMBA; in Chapter V, Final Provisions, Article 23, Review by the Commission, there was emphasized the fact that "By 1 August 2027, the Commission shall, after consulting the Member States and the social partners at Union level and taking into account the impact on micro, small and medium-sized enterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments"[5] (DIRECTIVE (EU) 2019/1152, p. 120). Employment and social security must certainly be guaranteed according to the laws in a country. The European Union has a large number of laws which might be used for discussions in other countries. Discussions are one of the methods before creating and updating laws in a country. Great examples might be helpful for other countries too. There was mentioned the European Labour Authority in the Chapter I, Principles, Article 1, Establishment, subject matter and scope, "2. The Authority shall assist Member States and the Commission in their effective application and enforcement of Union law related to labour mobility across the Union and the coordination of social security systems within the Union"[6] (REGULATION (EU) 2019/1149, 28). Management solutions are changed according to the situations in a country and the local municipalities.

Management solutions in an institution or company are updated, managers are responsible for the development of solutions and strategies in order to guarantee a contemporary management. Contemporary solutions are necessary to the employment management.

Professions are changing and a strategy is applied to remain valid for the future; in the Directive's Article 12, Review 1, there was emphasized that "By 18 January 2024 and every five years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation and performance of this Directive, including, among other aspects, its scope and its effectiveness"[7] (DIRECTIVE EU 2018/958, p. 33). The data can be used for improving management solutions. Managers as well as employees are responsible for the data security. Managers as well as employees have their responsibility for the data-protection management.

To run an experiment is not an easy task as the management of employees in the contemporary world in companies and institutions or a new management has some risk; therefore, managers develop a traditional management and do not improve the system of management in order to create a new management for the success in the management of planning, the management of control. Nevertheless this, success in management is being developed by managers with some risk to changes in planning and control of situations in companies and institutions in the contemporary world; therefore, the management of employees would be positively and effectively being developed. Whenever there is a possibility, two teams of managers should work with the management of employees, one team works traditionally, another team come in on a management scheme, for example on sheets of papers, then both teams compare the results, possible results and finds differences in order to develop the understanding of the management of employees for other projects in the future. Formal meetings of managers so as to develop the understanding of the management of employees are effective in companies and institutions in service industries in the contemporary world.

Employment management in projects posts and other types of employment must be contemporary according to the laws in a country. Managers in institutions are responsible for the development of social security and the employment management. In some countries there is no rise in unemployment in the current year, however there can be solutions to the problems in advance. Service industries are difficult to manage because they depend on contemporary factors in a country. Some types of posts belong to projects, some types of jobs can create projects so as to increase numbers of posts in institutions and companies in a country. A rising unemployment might be in one type of the industry more frequent than in other types of industries, however, this type of rise of the unemployment is difficult to manage. There ought to be solutions to the problem of a rising unemployment in a country. The eight factors can be helpful for the management development.

A first factor is that management of projects in service industries can be specific in the world. In the European Union it is difficult to manage employees in service industries. In order to manage employees working in service industries, managers ought to develop the understanding of the main qualities; this is a factor. Three of the main qualities are illustrated in the figure 1 (see Figure 1).

Service industries are important to manage professionally because companies, institutions, firms in the local municipalities develop projects to improve services in territories of the local municipalities. The figure 1 shows the main qualities for management of employees in service industries. The local municipalities ought to give opportunities to people to gain knowledge in the contemporary world for a contemporary welfare of all people. *Me judice*, unemployment management is necessary and it is seen in all the social systems, quantitative and qualitative changes – developments – in countries social affairs are overlapped with environment of economic affairs. A second important factor is difficulty in employment prospects when the unemployment keeps rising. The second factor is also necessary to know when there is a low unemployment.

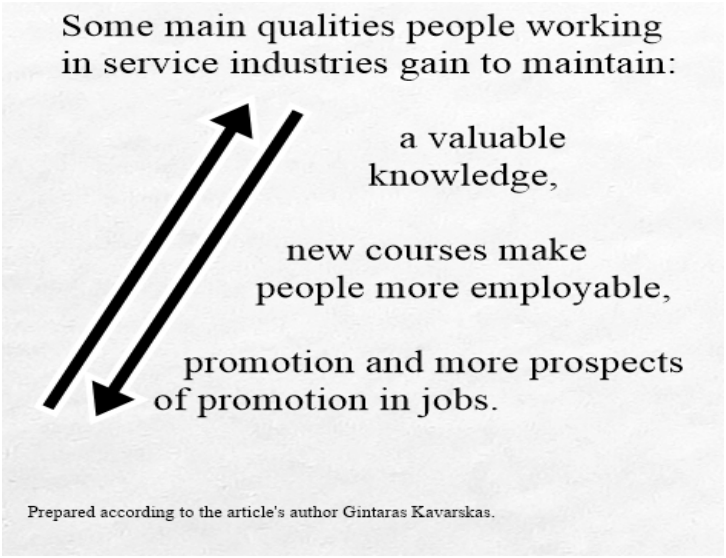

Figure 1. Some main qualities to maintain
Prepared according to the article's author Gintaras Kavarskas

The second significant factor is difficulty in prospects for employment (see Figure 2).

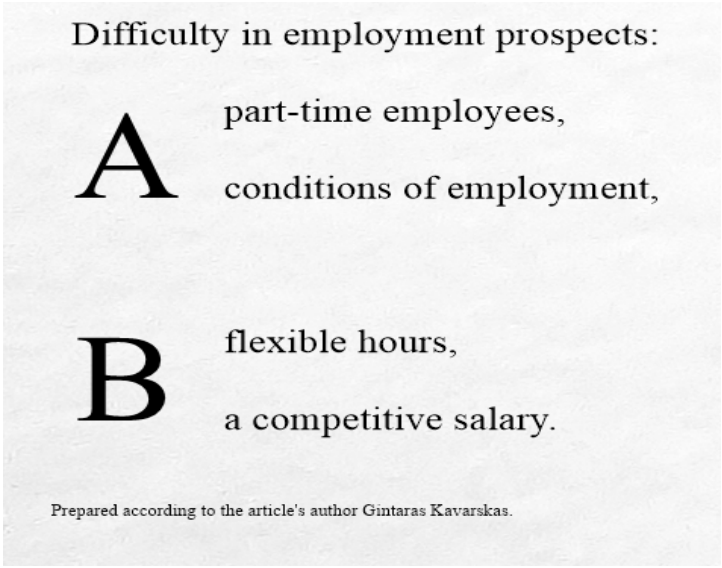

Figure 2. Difficulty in employment prospects
Prepared according to the article's author Gintaras Kavarskas

It is necessary to review prospects to offer them to managers in institutions and companies of the local municipalities so as to solve the main issue of the employment management. A contemporary difficulty or complexity of the employment is the main issue; examination of human resources must be known in countries of the European Union and in the whole world in order to prepare for solutions to the employment management, and a rising or a high unemployment crisis management. It is necessary to come up with a feasible solution to this difficulty. The factor is shown in the figure 2.

Managers develop the employment in service industries. A variety of projects provide services. The figure 2 gives A and B features for the management of employees in service industries. The local municipalities constantly find the solutions to the part-time employment for the welfare in all the territories. A rising unemployment or a high unemployment crisis could probably pose a threat to people in the territories; in such a crisis, managers' actions must be masterly-planned actions in advance in order to work efficiently. A third factor gives more features for the management of employees.

A third necessary factor is on some features for the development of the management of employees.

The third factor is functionally important to managers in service industries.

Managers improve service industries; employees can improve team management, projects management. The figure 3 gives more features for management of employees in service industries; employees ought to have the opportunity to communicate with others in the institutions' formal meetings with employees, for instance, during the meetings employees can develop their techniques. In the academic research article More effective strengthening to govern the country in municipalities, the author emphasized that "Each citizen is important to the country and to the management effectiveness in the country"[8] (Kavarskas, 2020, p. 246). Well-planned solutions to a high unemployment must be made by managers. The factor is shown figure 3 (see Figure 3).

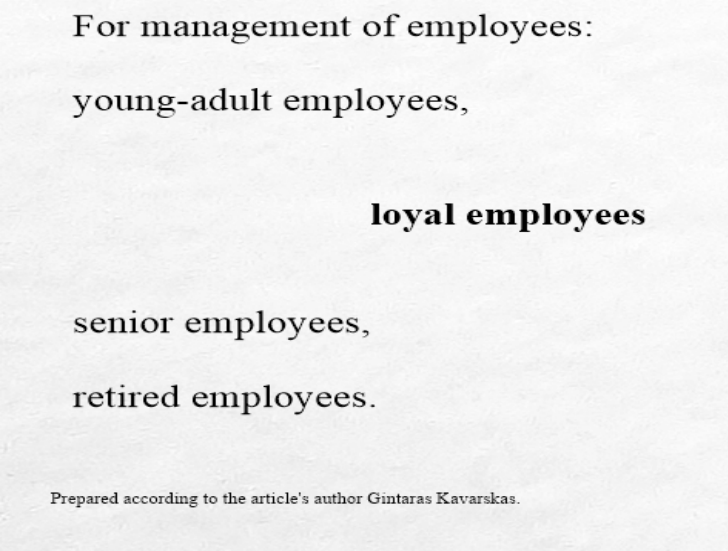

Figure 3. Some features for management of employees
Prepared according to the article's author Gintaras Kavarskas

Managers will be capable to manage the unemployment crisis in an unforeseen future in a country. Another important factor is on a high unemployment effects.

A fourth necessary factor, it is necessary to develop solutions to a high unemployment effects. This is obviously important to managers in service industries. The factor is shown in the figure 4.

Different cycles during a year need individual solutions. The figure 4 presents the idea that management of employees in service industries can be efficient if managers know some of the needs of their employees. In the European Parliament and the Council Directive 1158, Article 9, Flexible working arrangements, there was emphasized that "2. Employers shall

consider and respond to requests for flexible working arrangements"[9] (DIRECTIVE (EU) 2019/1158, p. 88). (see Figure 4)

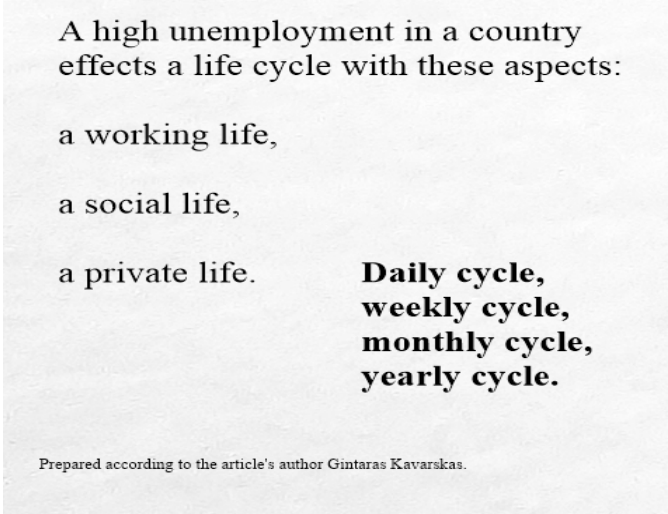

Figure 4. A high unemployment effects
Prepared according to the article's author Gintaras Kavarskas

The Directive's document that was quoted is also important to parents in the local municipalities for the welfare of the people. Different cycles during a year need individual solutions. Employees in service industries are responsible for their solutions to the management of their cycles.

It is necessary to emphasize that an additional solution to the problem of the management of the employees individual needs during a high unemployment can be made by the local municipalities, institutions that care for the social security of employees in a country. A fifth important factor is about opportunities in employment.

A fifth necessary factor is given in the figure 5 on employment opportunities for permanent and temporary posts. The factor is important to managers as well as employees in service industries since they develop their understanding of these opportunities in order to manage employment (see Figure 5).

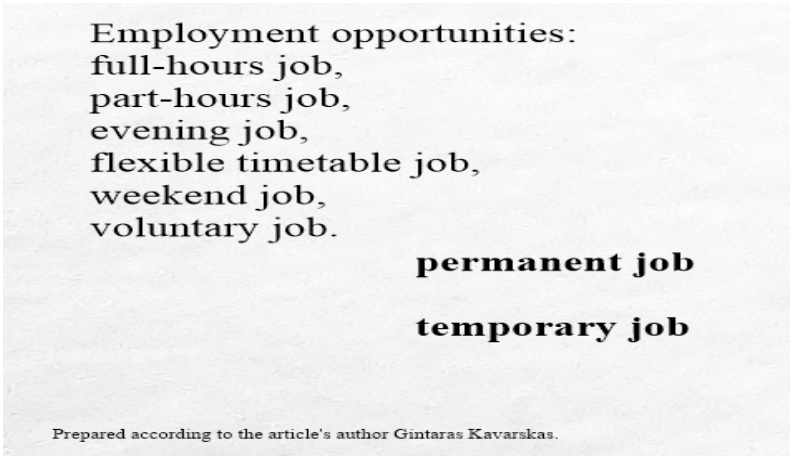

Figure 5. Employment opportunities
Prepared according to the article's author Gintaras Kavarskas

The study of the factor in the figure 5 shows that there are different opportunities for employees in service industries. The local municipalities usually have managers in order to develop management for seasonal and temporary jobs. It is necessary to have a legal employment, that is why a formal documentation is required, in the Directive's Chapter II, Conditions of Admission, Article 10, Obligation of cooperation, there was emphasized the fact that "Member States may require the employer to provide all relevant information needed for issuing, extending or renewing the authorisation for the purpose of seasonal work"[10] (DIRECTIVE EU 2014/36, p. 384). In case of a high unemployment crisis and an insecurity of countries, managers in institutions, the local municipalities ought to have efficient instruments for swift actions. Managers ought to have solutions to the development of the unemployment, solutions how to balance a rising unemployment as a crisis. A sixth important factor is on more perspectives in a country.

A sixth necessary factor is on perspectives of the employment management (see Figure 6).

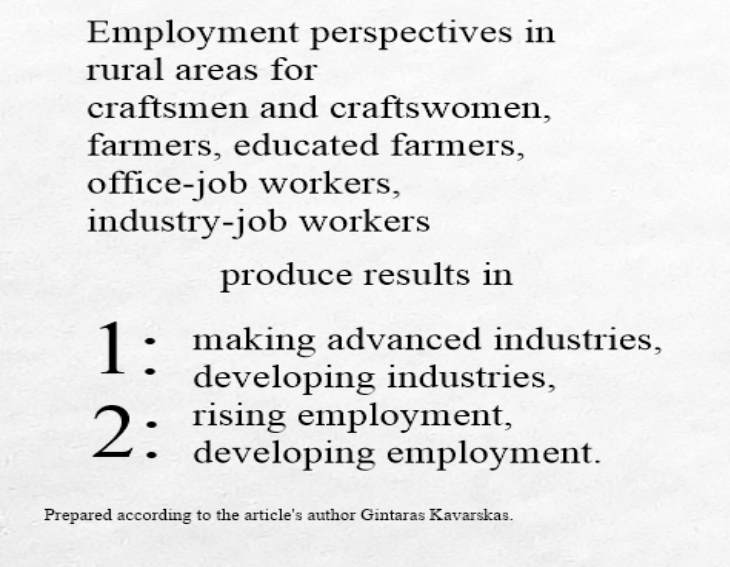

Figure 6. Employment perspectives in rural areas produce results
Prepared according to the article's author Gintaras Kavarskas

It is necessary to develop perspectives in employment; this is strategically important to managers in service industries since the local municipalities are responsible for the development of the industries in the local territories. The factor can be seen in the figure 6.

Managers in rural areas develop service industries when they understand the management of the perspectives; the figure 6 gives the employment perspectives to produce results. The local municipalities could hold control over projects while caring for the welfare of the local people. Another factor is that the necessary developments of changes in the employment management in rural areas, a rising unemployment or a high unemployment crisis might also be an obstacle for planning actions on time; managers' strategic solutions might need a new review and a further examination in rural areas. In the end, managers should develop their understanding of finding effective solutions to dynamic situations, processes of management which are being worked now and in advance, and might possibly be being worked during a crisis. A seventh important factor is on three contemporary aspects in a job management in industries.

Seventh, some aspects in a job management in industries is a modern factor. It is necessary

to develop management of employment since this is vitally important to the employees in service industries. The factor is shown in the figure 7 (see Figure 7).

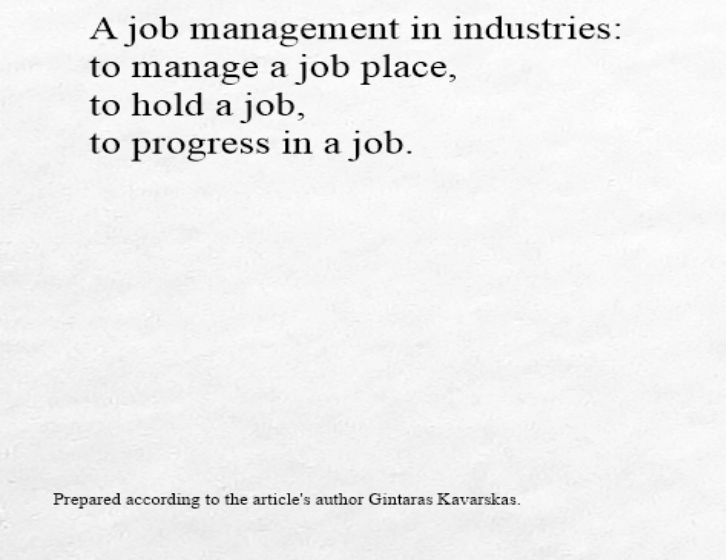

Figure 7. Some aspects in a job management in industries
Prepared according to the article's author Gintaras Kavarskas

The factor is important because the features might be concurrent whenever it is possible in conjunction with the collaboration. The figure 7 gives features of a job management, the consideration is very important to the managers in an institution, a company, and the local municipalities for the management of the employees in service industries. The managers in companies of the local municipalities ought to give consideration to the features mentioned in the figure 7 for the welfare of the country. Four times every year, the employment can be analyzed by the local municipalities inasmuch as information about a rising unemployment crisis is important in advance, in principle, in order to care for the social systems in the country. The local municipalities must have managers to tackle a problem of a rising unemployment, solutions to problems must be analyzed in order to develop the best relations with other municipalities in the same country and in different countries. A last important factor is on progress for countries during a rising unemployment.

Eighth, last but not least, progress in countries is a real advantage (see Figure 8).

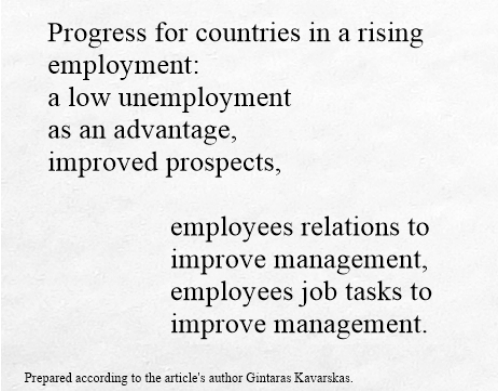

Figure 8. Progress for countries during a rising employment
Prepared according to the article's author Gintaras Kavarskas

Progress for countries during a rising employment is the factor which is shown in the figure 8. A country can easier solve a problem of a rising unemployment when good examples from other countries are very helpful for the development of the solutions of a rising unemployment. A variety of projects provide services. These years, it is a fundamental necessity to protect countries from a rising unemployment in the countries in the European Union and in the other countries in the world.

The development of employment in service industries, in projects' posts and in other types of posts, develop managers' understanding of the provided services. The results of the figure 8 demonstrates two ways to improve management. Furthermore, the local municipalities can have more information on Eurofund, this was emphasized in the Regulation Chapter V, General Provisions, Article 30, Cooperation with third countries and international organisations: "3. The Management Board shall adopt a strategy for relations with third countries and international organisations concerning matters for which Eurofound is competent"[11] (REGULATION (EU) 2019/127, p. 87). This is for the good welfare of citizens in a country. One significant implication of the assumption is that ministries and the local institutions, municipalities, ought to guarantee the effectiveness of the solutions to the management of a rising unemployment crisis.

The article gives conclusions with results, suggestions and recommendations to managers and scientists to develop management of employees in service industries. The author of the article studied the newest sources.

Conclusions and results, suggestions and recommendations

The new problem was management of employees in service industries. The tasks were to analyze employment management development, to suggest the applied measures of the management of employees in service industries. The article was the analysis. For the investigation of how managers can develop management of employment in service industries, the author of the article applied the theory of the management relations to help with the resolution of the management of employment and unemployment. Countries strategic solutions are important in order to solve the problem of management of employees in service industries and to further develop preparation for solving a problem of a rising unemployment and a high unemployment since managers develop management of employees in service industries every year. All the eight factors in the analysis are necessary to develop in order that managers could develop the management of employees in service industries and to avoid a deep-rooted crisis of unemployment in a country in an unforeseen future.

From a social science of management point of view, the author of the article carried out not only analysis, but also synthesis in this article as there was created a model of solving a crisis, the factors; therefore, all the eight factors are important to the development of the employment management in service industries in a contemporary these years and in an unforeseen future. The research proved that there are unsolved strategic solutions of a rising unemployment. Countries' strategic solutions must be effective. Countries must improve all the necessary factors and schemes. All the eight factors should be based on the regulations of the local municipalities in a country.

There was applied a theory of the management relations. Talking of research methodology, the effects were from the qualitative aspects: difficulties of managing employment in service industries. Qualitative aspects of the factors were found. The results revealed that the management of the employment is important, managers can develop management in service industries because the factors and management relations are important.

Quite apart from the fact that unemployment is an unforeseen crisis, there was proved how countries can in advance be efficiently prepared to solve a crisis in an unemployment in order to employ citizens in a country. One of the main solution was that managers should develop management of employees in service industries these years to improve management techniques. The research proved the unsolved problem in advance before a crisis. Countries must improve all the necessary long-term schemes. Countries will be prepared for the management of the unemployment.

If there are innovations in the management science, then a rising unemployment will be analyzed in advance. I recommend the following actions. First, managers should develop management of employees in service industries, countries should have schemes to solve a rising and a high unemployment in a country. Before an unforeseen crisis of an unemployment, countries' strategic solutions for the management of the employment must be updated as many times as it is important every year. Second, countries must have the management relations for the employment management in service industries and be prepared to cooperate on time. The management relations will develop the understanding of solutions to know-how, the management relations can improve the schemes and strategies. Furthermore, countries must analyze dynamics of a crisis. Countries managers ought to have a successful technique of a crisis resolution in order to be prepared for solutions to a crisis. For a greater effectiveness, the management development can help. Countries must have clear schemes for an unforeseen crisis in a rising unemployment, strategic solutions must be updated, countries must have good relations with a country to cooperate on time and to be aware of dynamics of a crisis, prepare for the management relations. Since the management relations is of great importance, international commitments must be met, people who should work ought to be employed.

The figure 1 gave the main qualities for management of employees in service industries. The local municipalities ought to give opportunities to people to gain knowledge in the contemporary world for a contemporary welfare of all people. The figure 2 gave A and B features for the management of employees in service industries. The local municipalities should constantly find the solutions to the part-time employment for the welfare in all the territories. The figure 3 gave more features for management of employees in service industries; employees ought to have the opportunity to communicate with others in the institutions' formal meetings with employees to develop their techniques. The figure 4 presented the idea that management of employees in service industries could be efficient if managers knew some of the needs of their employees. The figure 5 was on employment opportunities for permanent and temporary posts. Another factor, the necessary developments of changes in the employment management in rural areas, a rising unemployment or a high unemployment crisis might also be an obstacle for planning actions on time; managers' strategic solutions might need review and further examination in rural areas. The figure 7 gave features of a job management, the consideration was very important to others and to the managers in an institution, a company, and the local municipalities for the management of the employees in service industries. The last factor, good examples from other countries was helpful for the development of the solutions of a rising unemployment. The development of employment in service industries, in projects' posts and in other types of posts, develop managers' understanding of the provided services. To sum up, the local municipalities should every year analyze and develop these strategic solutions: first, the social changes which extend to environment of social affairs in a country, second, management of the employment progress towards solving the unemployment issues of a possible crisis in a country, countries in the European Union, third, managers capabilities to regulate solutions to issues of a crisis, management solutions to steps of a crisis and the necessary responses. The study of factors shows that the development of management is necessary in order to solve issues

of a rising or high unemployment; a rising unemployment is known in countries in the contemporary world.

There was evidently suggested all the eight factors, another evidence suggests that eight factors are increasingly important to managers in order to develop the understanding of the management in service industries; managers develop the management of employees. There is known to have been the important problem of the management of employees these years; consequently, the research proves that improvements are recommended and they are necessary. For instance, all the eight figures suggest the new improvement in management of the management of employees in service industries. The new management presents no risk to successfully plan and control projects, tasks, and goals in companies and institutions. Changes are positive due to the fact that the management of employees in service industries is managed; changes come into effect positively if there is discovered no risk to the successful management of planning and control of situations in companies and institutions. When managers come up against a problem, they can come up with a good solution. Every change should be estimated and developed if necessary; solutions to problems should be in time and on time in companies and institutions in service industries.

There was run the experiment to make provision for the management of employment in service industries to tackle a problem of the employment management. It has been necessary to research into the employment management in order that countries could be prepared for solutions of unemployment problems during a rising unemployment as well as a high unemployment. The local municipalities should take the welfare of the local people into consideration. Collaboration of managers can be useful for the development of the management science. Hence, managers ought to be interested in the suggested eight factors in management if managers want to work according to the newest requirements in management; moreover, it is considered that managers should develop the understanding of the management of employees in service industries. There were suggested eight pictures in the scientific article so as to recommend managers to develop the management of employees in service industries according to the contemporary requirements in the management of employees and they might work in times of a low and high unemployment since in the years of a low unemployment managers also develop the understanding of the management of employees in service industries *ad hoc*. The local municipalities should affect development in the management of employees every year now and during the next decade with a further development.

The research article can be used at universities, for instance, students and scientists can cite the article, managers can also quote the article, universities and managers may use the article, the article is useful to universities in order to develop the management science at institutions and companies of the local municipalities in countries in the world. Therefore, managers in countries would be better prepared to develop management of employees in service industries and to solve a crisis – danger and insecurity – during a rising unemployment in an unforeseen future.

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VARTOTOJŲ ELGSENA ELEKTRONINĖJE PREKYBOJE PRIVATUMO PARADOKSO KONTEKSTE

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Anotacija. *Elektroninėje prekyboje vartotojų duomenys yra būtini ne tik produktų įsigijimui ir apmokėjimui, bet padeda pardavėjams geriau suprasti vartotojų elgseną, panaudoti juos marketingo tikslais, įgyti konkurencinį pranašumą. Trims ketvirtadaliams Lietuvos žmonių teisė į duomenų apsaugą yra tokia pat svarbi kaip saviraiškos laisvė, tačiau neretai jie nėra linkę imtis veiksmų, kurie apsaugotų jų duomenis ir privatumą, ir netgi priešingai, juos dažnai atskleidžia, norėdami greitai ir sklandžiai apsipirkti, neskirdami pakankamai laiko ir dėmesio tinkamai susipažinti su informacija, susijusia su jų duomenų rinkimu, privatumu. Įsigaliojęs Bendrasis Duomenų Apsaugos Reglamentas (BDAR), kylantys duomenų nutekinimo skandalai atkreipia vartotojų dėmesį į duomenų apsaugą bei sudaro sąlygas kisti vartotojų įpročiams ir elgsenai perkant prekes ar paslaugas internetu. Todėl straipsnio tikslas – išanalizuoti vartotojų elgseną elektroninėje prekyboje privatumo paradokso kontekste. Tikslui pasiekti naudoti mokslinių šaltinių analizės, lyginimo, sintezės, apibendrinimo, kiekybinės apklausos metodai. Tyrimo rezultatai parodė, jog dauguma respondentų jaučiasi saugiai apsipirkdami internetu. Vis tik dauguma vartotojų Lietuvoje neskaito privatumo politikos, dažniausiomis priežastimis nurodant per ilgą privatumo politikos tekstą ir nenorą tam skirti laiko. Nors respondentams svarbu išlaikyti privatumą, beveik trečdalis vartotojų nesiima jokių veiksmų privatumui apsaugoti. Jeigu elektroninėje prekyboje yra prašoma atskleisti daugiau duomenų nei reikia - tai gali kelti vartotojams nepasitikėjimą. Dauguma vartotojų Lietuvoje yra linkę atskleisti duomenis įvertinę patiriamą naudą ir galimą riziką, o nauda, kurią labiausiai norėtų gauti už duomenų atskleidimą, yra nuolaidos. Taip pat rezultatai atskleidė, kad vartotojams yra aktualūs suasmeninti pasiūlymai. Labiausiai vartotojai linkę atskleisti kontaktinius ir demografinius duomenis. Apibendrinant daroma išvada, kad vartotojų požiūris į jų privatumą ne visai atitinka jų elgseną, atliekamus veiksmus, kurie apsaugotų privatumą ir užtikrintų mažesnį duomenų atskleidimo kiekį. Elektroninės prekybos pardavėjams rekomenduojama pateikti sutrumpintą, struktūrizuotą privatumo politiką, vengti naudoti mygtuką „Sutinku su visais“, kuomet prašoma sutikti su slapukais. Pardavėjai prašydami tam tikrų vartotojų duomenų, galėtų jiems pasiūlyti naudą, pvz. nuolaidą, specialų pasiūlymą, labiau išnaudoti vartotojų duomenis personalizacijos įgyvendinimui, skirti didesnį dėmesį renkamų duomenų analizei. Pasitikėjimą rekomenduojama stiprinti investuojant į technologijas, kurios užtikrintų duomenų saugumą.*

Pagrindinės sąvokos: *privatumo paradoksas, privatumas, vartotojų duomenys, vartotojų elgsena, elektroninė prekyba.*

Įvadas

Tobulėjant technologijoms, gebėjimas priimti sprendimus remiantis vartotojų duomenimis tampa konkurenciniu pranašumu, tačiau norint to pasiekti, pirmiausia, ypatingos svarbos klausimu bet kurioje organizacijoje tampa vartotojų duomenų rinkimas ir valdymas. Nuo 2018 m. gegužės 25 d. visoje Europos Sąjungoje vartotojų duomenys turi būti tvarkomi pagal Bendrąjį duomenų apsaugos reglamentą (BDAR) (angl. GDPR) (Europos Parlamento ir Tarybos reglamentas, 2016). Asmens duomenimis įvardinama informacija, kuri yra susijusi su fiziniu asmeniu, „kurio tapatybė yra nustatyta, arba gali būti nustatyta“ (Europos Parlamento ir

Tarybos reglamentas, 2016). Tačiau nepaisant galiojančio BDAR, vartotojai vis dar yra pažeidžiami dėl kylančios grėsmės jų privatumui ir duomenų apsaugai, ypač skaitmeninėje erdvėje, socialiniuose tinkluose, perkant prekes ar paslaugas internetu. Vartotojų, perkančių prekes ar paslaugas internetu, Lietuvoje nuolat daugėja: 2020 m. 53,8 proc. 16–74 metų amžiaus gyventojų bent kartą per 12 mėn. pirko ar užsakė prekes ar paslaugas internetu, 41,6 proc. – bent kartą per pastaruosius 3 mėn., lyginant su 2011 m. atitinkamai tokių vartotojų buvo 15,7 proc. ir 10,4 proc. (Lietuvos statistikos departamentas, 2020). Tai leidžia teigti, kad vartotojų duomenų rinkimas, valdymas ir saugumas aktualus didelei daliai vartotojų, kurie yra aktyvūs skaitmeninėje erdvėje.

Remiantis Žmogaus teisių stebėjimo instituto (2016) atliktu tyrimu, trys ketvirtadaliai Lietuvos gyventojų teigia, kad teisė į duomenų apsaugą jiems yra tokia pat svarbi kaip saviraiškos laisvė, tačiau tik nedidelė dalis yra tvirtai pasiryžę imtis konkrečių veiksmų, pavyzdžiui, sumokėti mokestį už papildomą duomenų apsaugą, kad ją geriau užtikrintų. Taip pat, tik 28 proc. respondentų visada ar dažniausiai susipažįsta su duomenų tvarkymo sąlygomis/ privatumo politika, sudarydami sutartis su prekių ar paslaugų tiekėju. Reiškinys, kuomet vartotojo požiūris į privatumą neatitinka jo elgesio, susijusio su privatumu, yra vadinamas privatumo paradoksu (Kokolakis, 2017). Kitaip tariant, privatumo paradoksas reiškia neatitikimą tarp ketinimų atskleisti asmeninius duomenis ir faktinio duomenų atskleidimo elgesio, atsirandančio dėl privatumo internete (Lee ir Rha, 2016). Teoriniame lygmenyje privatumo paradoksas nėra nagrinėtas plačiai, tačiau analizuojamas Kokolakis (2017); Lee ir Rha (2016); Liyanaarachchi (2021); Bandara, Fernando, ir Akter (2020) ir kituose darbuose.

Remiantis rinkos tyrimų, konsultacinių bendrovių atliktais tyrimais, apibendrintais Forbes (2020), galima teigti, kad vartotojai yra linkę atskleisti savo duomenis: 88 proc. vartotojų teigia, kad jų noras atskleisti duomenis priklauso nuo pasitikėjimo įmone (PwC), 90 proc. vartotojų yra linkę atskleisti duomenis, kad jų patirtis būtų lengvesnė ir pigesnė (Smarter HQ), vartotojai ypač linkę atskleisti duomenis siekiant gauti personalizuotą patirtį - 83 proc. (Accenture), 64 proc. neprieštarauja jog pardavėjai išsaugo jų pirkimo istoriją ir pageidavimus, jei jiems vėliau tai leidžia užtikrinti personalizuotą patirtį (BRP Consulting), daugiau nei 50 proc. linkę dalintis informacija apie jiems patinkančius produktus, kad gautų personalizuotus pasiūlymus (Retail TouchPoints).

Taigi, nors vartotojai nerimauja dėl savo privatumo, tačiau neretai jie nėra linkę imtis veiksmų, kurie apsaugotų jų duomenis ir privatumą ir netgi priešingai, juos dažnai atskleidžia, norėdami greitai ir sklandžiai apsipirkti, neskirdami pakankamai laiko ir dėmesio tinkamai susipažinti su informacija, susijusia su jų duomenų rinkimu, privatumu. Šis vartotojų elgsenos fenomenas skatina atlikti papildomus tyrimus, todėl **problema** formuluojama klausimu - kaip vartotojai elgiasi elektroninėje prekyboje privatumo paradokso kontekste?

Vertinant, kad BDAR įsigaliojo 2018 m. ir kad dauguma vartotojų – 2018 m. – 71 proc., o 2019 m. - 72 proc. yra girdėję, kas yra BDAR (Valstybinė duomenų apsaugos inspekcija, 2020), o Žmogaus teisių stebėjimo instituto tyrimas atliktas 2016 m., vartotojų požiūris ir elgsena, susijusi su privatumu ir duomenų atskleidimu galėjo kisti. Be to, 2018 m. Cambridge Analytica skandalas, 2021 m. duomenų nutekinimas Citybee atveju Lietuvoje, nors ir ne vieninteliai, tačiau didelio atgarsio susilaukę įvykiai atkreipia vartotojų dėmesį į duomenų apsaugą bei sudaro sąlygas kisti vartotojų įpročiams ir elgsenai perkant prekes ar paslaugas internetu, kas patvirtina problemos aktualumą.

Straipsnio tikslas – išanalizuoti vartotojų elgseną elektroninėje prekyboje privatumo paradokso kontekste.

Tyrimo metodai: mokslinių šaltinių analizė, lyginimas, sintezė, apibendrinimas, kiekybinė apklausa.

Vartotojų duomenys marketinge

Šiandien, pažangių technologijų dėka, įmonės gali rinkti ir apdoroti didelius vartotojų duomenų kiekius. Remiantis CMA ataskaita apie komercinį vartotojų duomenų naudojimą (2015) yra daug vartotojų duomenų tipų: kontaktiniai, demografiniai, finansiniai, vietos, sandorio, elgsenos, komunikacijos, socialiniai, dokumentiniai, naudojimo, techniniai, sutartiniai, viešai prieinami duomenys, o visus juos galima grupuoti į asmeninius, t. y. leidžiančius tiesiogiai ar netiesiogiai identifikuoti asmenį ir neasmeninius, neleidžiančius identifikuoti asmens. Teisingai pasirinkti vartotojų duomenys gali būti svarbūs marketingo strategijos pasirinkimui, naujų produktų kūrimui, produktų tobulinimui, produktų pristatymui, rinkodaros komunikacijai ir rinkodarai iš lūpų į lūpas (Krafft ir kt., 2021). Be to, vartotojų duomenų naudojimas leidžia suasmeninti produktų pasiūlymus ir rekomendacijas, nuolaidas, nemokamas paslaugas ir tinkamesnę rinkodaros komunikaciją bei žiniasklaidos turinį – rinkodaros specialistai gali suteikti papildomos naudos vartotojams, nes jie sugeba veikti efektyviau ir gauti geresnę informaciją (Martin ir Murphy, 2016). Pardavėjams tampa aktualu rinkti vartotojo duomenis, o pats duomenų atskleidimas, pasak Krafft ir kt. (2021), įvyksta prekybininkui prašant juos atskleisti, pačiam vartotojui inicijuojant duomenų atskleidimą ar pasyviai atskleidžiant duomenis. Nepaisant galimo didelio duomenų kiekio, pardavėjai turi rūpintis tinkamu duomenų rinkimu, panaudojamu ir užtikrinti, kad nebūtų pažeistas vartotojų privatumas, tuo pačiu laikantis 2018 m. gegužės 25 d. įsigaliojusio BDAR.

Privatumo paradoksas

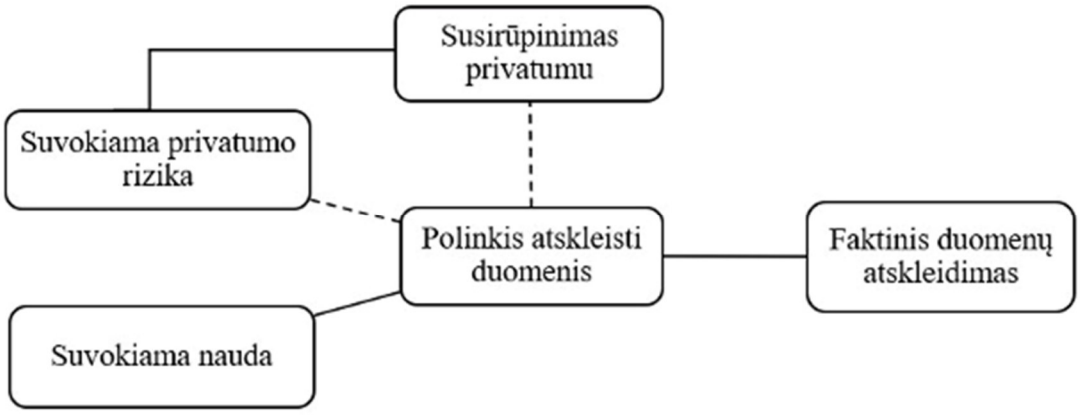
Privatumas skiriamas į tris grupes: teritorinį (fizinis), asmeninį ir informacinį privatumą (Chen ir Cheung, 2018). Būtent pastarasis dėl XX a. antroje pusėje prasidėjusios skaitmeninės revoliucijos sulaukia didelio mokslininkų dėmesio. Informacinis privatumas – asmenų teisė kontroliuoti informacijos srautą apie juos (Baruh, Secinti ir Cemalcilar 2017). Pasak Martin ir Murphy (2016), privatumas - tai absoliuti teisė, kontrolė ir ribota prieiga prie asmens informacijos. Informacinis privatumas nurodo asmens turimą kontrolę atskleidžiant duomenis apie save, įskaitant jų rinkimą, neteisėtą panaudojimą, netinkamą prieigą (Smith ir kt., 1996, cit iš Keith ir kt., 2013). Dėl informacinio privatumo turimos įtakos ne tik finansiniam saugumui, bet ir asmens gerovei, jis gali būti konceptualizuotas kaip asmeninė teisė, kuri yra paveikiama teisėsaugos ir kaip prekė, kuri gali būti panaudojama prekyboje (Keith ir kt., 2013).

Vartotojai dažnai išreiškia susirūpinimą savo privatumu, tačiau elgesio požiūriu jie nėra pakankamai atsargūs atskleisdami informaciją apie save (Jeong ir Kim, 2017). Daugelis vartotojų rodo teorišką susidomėjimą savo privatumu ir ketinimą apriboti duomenų atskleidimą, palaiko teigiamą požiūrį į privatumo apsaugos elgesį, bet retai tai paverčia faktiniu apsauginiu elgesiu ir dažnai atskleidžia daugiau duomenų (Barth ir Jong, 2017). Šis neatitikimas tarp ketinimų atskleisti asmeninius duomenis ir faktinio duomenų atskleidimo elgesio, atsirandančio dėl privatumo internete, vadinamas privatumo paradoksu (Lee ir Rha, 2016). Privatumo paradoksas pasireiškia dėl įvairių priežasčių: vartotojų nesupratimo, kokiu mastu panaudojami jų duomenys (Martin ir Palmatier, 2020, Žmogaus teisių stebėjimo institutas, 2016), klaidingų vartotojų nuostatų, aplinkinių žmonių elgesio, kultūrinių ir socialinių normų sąlygoto konteksto, patiriamos rizikos ir naudos (Žmogaus teisių stebėjimo institutas, 2016), patirties, susijusios su privatumo pažeidimų neigiamais padariniais neturėjimo (Baruh, Secinti ir

Cemalcilar, 2017), privatumo raštingumo stokos (Robinson, 2017). Organizacijų, kuriančių privatumo politiką, tikslas turėtų būti informuoti vartotojus apie tai, ką ir kodėl įmonės daro, rinkdamos duomenis (Strahilevitz ir Kugler, 2016), tačiau to pasėkoje privatumo politikos tampa ilgos ir vartotojai jų neskaito (BenShaharas ir Schneider, 2014, cit. iš Strahilevitz ir Kugler, 2016).

Vartotojų elgsena privatumo paradokso kontekste

Privatumo paradoksas dažnai mokslininkų yra siejamas su pasitikėjimu arba sąnaudų/ patiriamos rizikos ir naudos santykiniu skaičiavimu (Mohammed ir Tejay, 2021). Rizikos ir naudos santykis apsprendžia kokius duomenis, kam ir kada jie gali atskleisti (Robinson, 2017), vartotojai racionaliai apskaičiuoja arba ieško kompromiso, tarp galimai patiriamos naudos ir nuostolių, dalindamiesi savo informacija (Bandara, Fernando, ir Akter, 2020). Vartotojų elgsena yra paaiškinama privatumo apskaičiavimo teorija (Keith ir kt., 2013), t. y. vartotojai prieš atskleisdami duomenis, racionaliai apskaičiuoja, kaip naudinga ar rizikinga tai gali jiems būti (Chellappa ir Sin, 2005) (1 pav.).



1 pav. Privatumo apskaičiavimo teorija
Šaltinis: Keith ir kt., (2013)

Remiantis privatumo apskaičiavimo teorija, suvokiama privatumo rizika polinkį atskleisti duomenis veikia neigiamai, o suvokiama nauda – teigiamai. Individualus asmens susirūpinimo privatumu lygis, priklausomai nuo konteksto, daro įtaką jo suvokiamai privatumo rizikai ir mažina polinkį atskleisti duomenis (Keith ir kt., 2013). Pasak Lee, Park ir Kim (2013), žmonės bando ieškoti naudos, vengia rizikos ir tai lemia jų elgseną. Apskaičiavimo proceso metu, ekonominė, socialinė nauda, personalizavimas gali sumažinti susirūpinimą privatumu ir vartotojai dažniausiai sutelkia dėmesį į naudą, o ne į anksčiau išsakytą susirūpinimą ir apskaičiuotą galimą riziką ateityje (Kokolakis, 2017). Patiriamomis naudomis gali būti dovanos, nuolaidos, specialūs pasiūlymai, mėginiai, narystės, kaupimo taškai, dovanų kuponai, personalizuoti produktai ar reklamos, teikiamos elektroninės prekybos pardavėjų (Liyanaarachchi, 2021, Zhu ir kt., 2017), ir ypač daug dėmesio skiriama personalizacijai. Kaip teigia Kokolakis (2017), vartotojai linkę dalytis privačia informacija mainais į vertę ir personalizuotas paslaugas. Tai sąlygojo personalizacijos privatumo paradokso termino

atsiradimą. Privatumo paradoksas ir personalizacijos privatumo paradoksas pasireiškia vienodai, esminis skirtumas tas, kai kalbama apie patiriamą naudą, privatumo paradokso kontekste personalizavimas yra įvardijamas kaip viena iš galimų naudų, o apibūdinant personalizacijos privatumo paradoksą, nauda yra įvardijama ta, kurią vartotojas gauna personalizacijos metu.

Privatumo rizika yra vertinama kaip piktnaudžiavimo, netinkamo duomenų naudojimo pasekmės. Galimas privatumo pavojus gali būti tapatybės vagystė, grėsmė asmens saugumui, grėsmė orumui, invazija į privatumą, neteisingas elgesys ar finansiniai nuostoliai (Oomen ir Leenes, 2008). Šių rizikų suvokimas skiriasi, atsižvelgiant į paties asmens vertybes, patirtį. Visgi tikėtina, jog galima nauda, o ne patiriama rizika, turės didesnį poveikį vartotojui, jo ketinimui atskleisti duomenis (Lee, Park ir Kim 2013, Kokolakis, 2017, Zhu ir kt., 2017).

Vis didėjantis skaitmeninių technologijų pritaikymas fizinėje ir elektroninėje prekyboje lemia kylančius klausimus ir problemas, susijusius su vartotojų privatumu (Pizzi ir Scarpi, 2020). Vienas esminių skirtumų tarp prekybos fizinėje ir elektroninėje erdvėje, privatumo kontekste, yra tai, jog elektroninėje erdvėje yra paliekami skaitmeniniai pėdsakai – tai leidžia pardavėjams susieti paliekamus duomenis ir sukurti pakankamai tikslius vartotojų profilius (Chellappa ir Sin, 2005, Liyanaarachchi, 2021).

Elektroninės prekybos kontekste, vartotojai susiduria su esminiu kompromisu – jie priversti pateikti bent minimalų kiekį informacijos sandoriui įvykdyti ir priimti galimą riziką, susijusią su jų informacijos atskleidimu (Boritz ir No, 2011), todėl būtinybė interneto vartotojams atskleisti paskyrą su savo asmenine informacija, kad įsigytų prekių ir paslaugų, yra neišvengiama (Bandara, Fernando, ir Akter, 2020). Neužtikrintumas atskleidžiant duomenis, norint gauti internetines paslaugas, vartotojams kelia psichologinę dilemą nustatant optimalų informacijos atskleidimo lygį (Adorjan ir Ricciardelli, 2019, cit. iš Liyanaarachchi, 2021). Jorstad (2001, p. 1524) teigia: „kadangi privatumo paradoksas iš esmės yra neišsprendžiamas, jokia privatumo politika niekada nebus tinkama“.

Taip pat pastebima, kad polinkis atskleisti duomenis priklauso nuo asmenybės. Asmenys, turintys aukštą galios atstumo įsitikinimą (galios atstumo įsitikinimas – kiek visuomenė priima ir mato kaip neišvengiamą ar vykstančią žmogaus nelygybę valdžioje, gerovėje ar prestiže (Oyserman, 2006, cit. iš Zhang, Winterich, ir Mittal, 2012)), rečiau išreiškia norą dalintis asmenine informacija, būti atviriems, lyginant su vartotojais, turinčiais žemesnį galios atstumo įsitikinimą (Jain ir Jain, 2018); turintys aukštą galios atstumo įsitikinimą, galimą piktnaudžiavimą informacija laiko kylančia grėsme dėl elektroninės prekybos naudojimo (Liyanaarachchi, 2021). Remiantis Didžiojo Penketo asmenybės modeliu taip pat pastebimas asmenybės tipo santykis su privatumu. Skirtingomis savybėmis pasižymintis asmenys skirtingai reaguoja į privatumą (Azam, Qiang ir Sharif, 2013, Bansal ir kt., 2016, Pentina ir kt., 2016). Lyties požiūriu autorių nuomonės nesutampa. Sheehan (1999, cit. iš Smith, Dinev ir Xu, 2011) nustatė, kad moterys labiau susirūpinusios dėl privatumo pažeidimo, kuomet pardavėjai prašė pateikti asmeninę informaciją, tuo tarpu Lee ir kt. (2019), nustatė, jog vyrai yra labiau susirūpinę privatumu, nei moterys. Manoma, jog amžius neturi didelės įtakos polinkiui atskleisti duomenis, visgi pasak Smith, Dinev ir Xu (2011), Rainie, Kiesler, Kang ir kt. (2013, cit. iš Lee ir kt., 2019) jaunesni žmonės išreiškia mažesnį susirūpinimą privatumu. Smith, Dinev ir Xu (2011), Lee ir kt. (2019) taip pat teigia, kad mažiau išsilavinę vartotojai yra mažiau susirūpinę dėl privatumo.

Apibendrinant galima teigti, kad vartotojų polinkis atskleisti duomenis yra sąlygojamas rizikos/naudos santykio, susirūpinimo privatumu, kuris yra veikiamas asmenybės tipo, amžiaus, lyties ir net išsilavinimo. Būtent šis polinkis, priklausomai nuo įvardintų veiksnių leidžia pasireikšti skirtingai vartotojų elgsenai privatumo paradokso kontekste.

Tyrimo metodologija

Tyrimo **tikslas** – išanalizuoti vartotojų elgseną elektroninėje prekyboje privatumo paradokso kontekste.

Kiekybiniam tyrimui pasirinkta anketinė apklausa. Pasak Kardelio (2016), kiekybinio metodo būdu yra sumažinamos atsakymų klaidos, kurios gali kilti respondentui pateikus netikslius atsakymus į užduodamus klausimus, ar dėl jo nenoro, negebėjimo tinkamai atsakyti į klausimus. Anketą sudaro 21 skirtingo tipo klausimas – vieno pasirinkimo, kelių galimų variantų klausimai bei klausimai-teiginiai, kuriuos buvo prašoma įvertinti pagal 5 balų Likerto skalę. Anketos klausimais buvo siekiama sužinoti vartotojų pirkimo internetu įpročius, ar vartotojai perskaito privatumo politiką ir informaciją apie renkamus slapukus pardavėjo internetinėje svetainėje, jeigu ne – dėl kokių priežasčių, ar vartotojai buvo susidūrę su neigiama, privatumą pažeidusia situacija internete ir kaip šis įvykis pakeitė vartotojų įpročius, kaip saugiai respondentai jaučiasi apsipirkdami internetu, vartotojų požiūrį į privatumą, kokių veiksmų respondentai imasi, siekdami apsaugoti savo privatumą, kokie veiksniai labiausiai kelią susirūpinimą, kokia elgsena duomenų atskleidimo atžvilgiu labiausiai būdinga respondentams. Taip pat buvo prašoma pasirinkti svarbiausią naudą, kurią respondentai norėtų gauti, atskleidę savo duomenis, išsiaiškinti, kiek aktualu jiems būtų gauti suasmenintus pasiūlymus bei ar jie būtų linkę atskleisti duomenis ir kokius, jeigu gautų už tai naudą. Anketinė apklausa vykdyta 2021 m. balandžio mėn.

Apskaičiuojant imties dydį buvo pasirinkta 95 proc. tikimybė, 7 proc. paklaida, gaunant 196 respondentų imtį. Iš viso anketą pildė 205 respondentai, iš kurių 96,1 proc. perka prekes ar paslaugas internetu, todėl toliau buvo analizuojami 197 respondentų duomenys. Moterys sudarė 63,5 proc., vyrai – 36,5 proc. Pagal amžių respondentai pasiskirstė taip: 47,7 proc. priklauso 19-25 m. amžiaus grupei; 24,4 proc. – 26-35 m. respondentų, 10,7 proc. - 36-45 m., vienodas skaičius - 7,1 proc., sudaro respondentai iki 18m. bei priklausantys 46-55 m. grupei. Mažiausiai, 3 proc., apklausoje dalyvavo respondentų, kuriems yra virš 56 m.

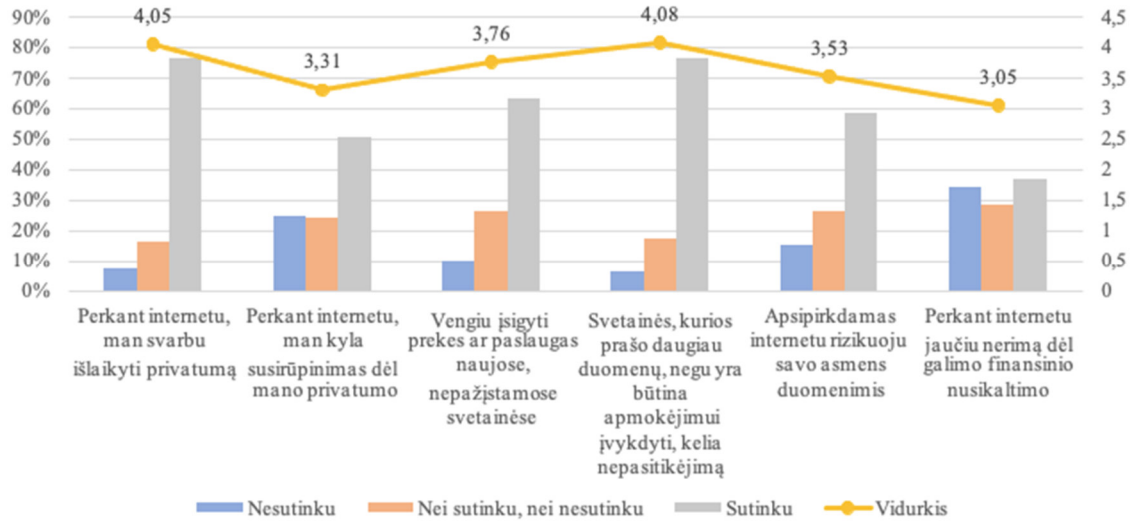
Tyrimo rezultatai

Remiantis apklausos duomenimis, daugiau nei pusė respondentų yra linkę dažnai (46,2 proc.) ir labai dažnai (16,8 proc.) apsipirkti internetu, kas sumoje sudaro 63 proc. 23,9 proc. atsakė, jog kartais užsako prekes ar paslaugas internetu, o likę 13,2 proc., tai daro retai ir labai retai. Beveik pusė respondentų (49,7 proc.) prieš įsigydami prekes ar paslaugas nesusipažįsta su privatumo politika, kartais tai daro 32 proc. ir tik 18,3 proc. teigė, kad perskaito privatumo politiką. Gautus rezultatus galima palyginti su Žmogaus teisių stebėjimo instituto (2016) atliktu tyrimu, kuriame teigiama, kad tik 28 proc. respondentų visada ar dažniausiai susipažįsta su duomenų tvarkymo sąlygomis / privatumo politika, sudarydami sutartis su prekių ar paslaugų tiekėju. Tai leidžia daryti išvadas, kad didžioji dalis vartotojų neskiria laiko ir pakankamai dėmesio išsiaiškinimui su kuo jie sutinka įsigydami prekes ar paslaugas internetu. Kaip pagrindinę priežastį, dėl kurios respondentai neperskaito privatumo politikos, didžioji dalis, 67,3 proc. įvardijo, jog politikos tekstas yra per ilgas, 57,1 proc. nenori skirti tam laiko. Rezultatai sutampa su Ben-Shaharas ir Schneider (2014, cit. iš Strahilevitz ir Kugler, 2016)

pateikiamais argumentais, jog elektroninėje prekyboje privatumo politika yra per ilga, dėl ko vartotojai jos neskaito. Taip pat, tyrimo rezultatai atskleidė, kad beveik trečdalis lietuvių, 32,7 proc., nesusimąsto apie nesusipažinimo su privatumo politika priežastis, o kiek daugiau nei penktadalis, 22,4 proc. respondentų pažymi, jog nesupranta pateiktos informacijos, 11,2 proc. respondentų tai nėra aktualu. 2 respondentai nurodė išplėstines priežastis, argumentuodami, kad reikalavimai yra visiems vienodi, kiekvieną kartą skaitant privatumo politiką ir informaciją, apie slapukus, sugaištų daug laiko, o pateikiami tekstai dažnai yra ilgi, nuobodūs ir prastai suprantami. Tik 11,7 proc. respondentų, internetinėje svetainėje pasirodžius informacijai apie naudojamus slapukus perskaito informaciją prieš spaudžiant „Sutinku“. Kartais, priklausomai nuo svetainės, puslapio, su šia informacija susipažįsta 45,2 proc. ir net 43,1 proc. spaudžia „Sutinku“ neperskaitę informacijos. Pastebėta, kad moterys yra dažniau linkusios sutikti su renkamais slapukais prieš tai nesusipažinus su informacija (47 proc. lyginant su 36 proc. vyrų), tuo tarpu, vyrai nors ir kartais, bet labiau yra linkę iš pradžių perskaityti informaciją, prieš patvirtinant (54,2 proc. lyginant su 40 proc. moterų). Pagrindinės priežastys, kodėl neperskaitomos šios sąlygos yra panašios: nenorėjimas tam skirti laiko 61,2 proc., per ilgas pranešimo tekstas – 56,5 proc., o taip pat respondentai nesusipažįsta su informacija, nes pranešimo langelis uždengia puslapį ir trukdo jame naviguoti (56,5 proc.).

Didžioji dalis (81,7 proc.) tyrime dalyvavusių respondentų nėra turėjusių neigiamos, privatumą pažeidusios patirties internete, pvz. tokios kaip duomenų nutekinimas. Vertinant turėjusių neigiamas patirtis atsakymus, pastebima, jog po šios patirties, 52,8 proc. respondentų pateikia tik būtiną apmokėjimui informaciją, taip pat vengia užsakyti prekes ar paslaugas nepažįstamose internetinėse svetainėse (36,1 proc.). 25 proc. respondentų apsipirkimo įpročių tai nepakeitė, o 16,7 proc. atsakė, jog rečiau perka, užsako prekes ar paslaugas internetu bei 13,9 proc. respondentų pažymėjo, jog jie stengiasi pirkti ne internetu. Nors respondentų, susidūrusių su neigiamomis situacijomis ir nebuvo daug, galima daryti prielaidą, kad neigiamas įvykis, kuris pažeidė vartotojų privatumą, gali lemti jų polinkį atskleisti mažesnį duomenų kiekį, t. y. minimalų, tik būtiną apmokėjimui įvykdyti, ir taip daryti įtaką vartotojų pasitikėjimui elektronine prekyba – jie vengs užsakyti prekes ar paslaugas naujose internetinėse svetainėse, kurios yra nepažįstamos ir dėl to keliančios nepasitikėjimą. Tyrimo rezultatai taip pat rodo, kad 52,3 proc. jaučiasi saugiai pirkdami internetu, 18,3 proc. – labai saugiai, 27,4 proc. – nei saugiai, nei nesaugiai, 2 proc. – nesaugiai. Bendras vidurkis, atspindintis, kaip saugiai respondentai jaučiasi pirkdami internetu, siekia 3,87 vertinant 5 balų Likerto skalėje. Moterys jaučiasi saugiau nei vyrai, t. y. moterų atsakymų vidurkis aukštesnis nei vyrų – 3,93 atitinkamai lyginant su 3,76. Saugumo klausimas aktualus ne tik duomenų apsaugai, tačiau tai prisideda ir prie vartotojų lojalumo. Kaip teigia Forbes (2020), 84 proc. vartotojų yra labiau lojalūs įmonėms, kurios griežtai kontroliuoja saugumą, o pasak Gupta ir Dubey (2016), lojalumas yra glaudžiai susijęs su pasitikėjimo lygiu.

Siekiant sužinoti respondentų požiūrį į privatumą elektroninėje prekyboje, vertinant 5 balų Likerto skalėje, galima pastebėti, kad perkant internetu respondentams svarbu išlaikyti privatumą (4,05 vidurkis), privatumas jiems kelia susirūpinimą (3,31 vidurkis). Svetainės, kurios prašo daugiau duomenų negu yra būtina apmokėjimui įvykdyti, kelia nepasitikėjimą (4,08 vidurkis), respondentai vengia įsigyti prekes ar paslaugas naujose, nepažįstamose svetainėse (3,76 vidurkis). Nors vertinant vidurkį – 3,53 galima teigti, kad respondentai sutinka, jog apsipirkdami internetu rizikuoja savo asmens duomenimis, mažiausiai nerimą kelia galimi finansiniai nusikaltimai (3,05 vidurkis) (2 pav.).



2 pav. Respondentų požiūris į privatumą, perkant, užsakant prekes ar paslaugas internetu

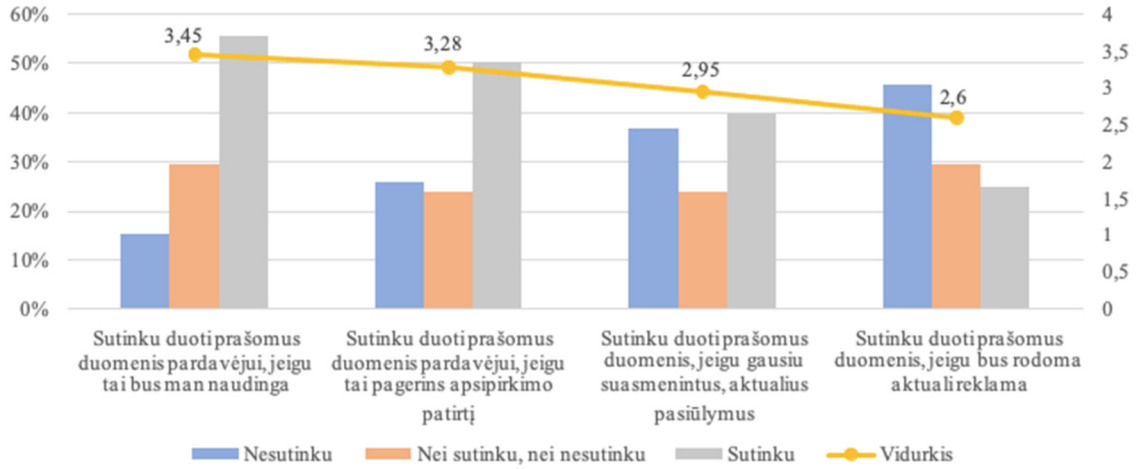
Analizuojant minėtus teiginius, pastebima, kad vyrai labiau yra susirūpinę dėl savo privatumo, pirkdami prekes ar paslaugas internetu, nei moterys. Tai leidžia teigti tokie tyrimo rezultatai: 61,2 proc. vyrų, sutiko ir visiškai sutiko, jog jiems kyla susirūpinimas dėl jų privatumo perkant internetu, lyginant su moterimis - 44,8 proc. Beveik dvigubai daugiau moterų (22,4 proc.) nesutiko, kad kyla susirūpinimas, lyginant su vyrais (11,1 proc.). Taip pat įvertinimo vidurkis rodo, jog vyrai (3,56) labiau sutiko, jog elektroninėje prekyboje kyla susirūpinimas dėl privatumo, nei moterys (3,16).

Detali analizė atskleidė, kas labiausiai kelia nerimą dėl privatumo elektroninėje prekyboje. Pagrindiniais nerimą keliančiais veiksniais buvo įvardinta duomenų vagystė (29,9 proc.), duomenų nutekinimas (23,4 proc.), neteisėtas duomenų perdavimas (13,7 proc.), galimybė pašaliniams asmenims rasti asmens duomenis internete (13,7 proc.), netinkamas duomenų panaudojimas (12,7 proc.). Norint įvertinti kiek šie veiksniai kelia nerimą, visi veiksniai buvo įvertinti kaip stipriai keliantys nerimą: duomenų vagystė (vidurkis 4,41), duomenų nutekinimas (vidurkis 4,31), neteisėtas duomenų panaudojimas (vidurkis 4,22), galimybė pašaliniams asmenims rasti asmens duomenis internete (vidurkis 4,06), netinkamas duomenų panaudojimas (vidurkis 4,09).

Siekiant apsaugoti asmens duomenis, privatumą elektroninėje prekyboje, didžiausia dalis respondentų (37,6 proc.) pažymėjo, jog po apsipirkimo atsijungia iš savo paskyros, o 28,4 proc. reguliariai trina naršymo istoriją. Kiek mažiau, 21,8 proc., reguliariai trina slapukus, 16,2 proc. respondentų naudoja atskirą banko kortelę ir atskirą elektroninį paštą, skirtą apsipirkimui internetu. 15,7 proc. respondentų pažymėjo, jog jie naršo privačiuoju režimu, 11,2 proc. keičia slapukų nustatymus, o 9,6 proc. pažymėjo, jog pateikia netikrus duomenis (pvz. vardas, amžius, lytis). Taip pat, du respondentai atsakė, jog naudoja VPN ir išsiaiškina svetainės legalumą, siekdami apsaugoti savo privatumą. Tačiau beveik trečdalis, 29,9 proc. respondentų nesiima jokių veiksmų.

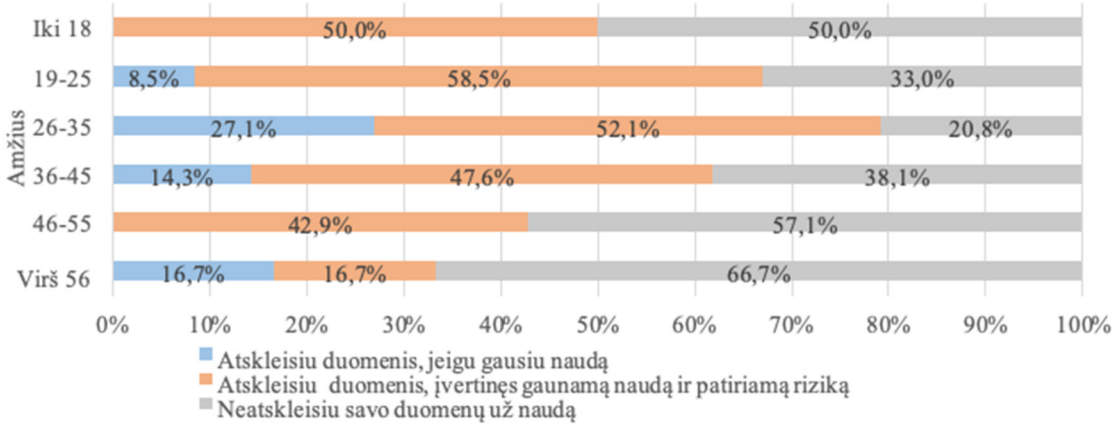
Vertinant respondentų požiūrį į duomenų atskleidimą, galima daryti išvadą, kad patiriama nauda už duomenų suteikimą gali būti skatinančiuoju veiksniu (3 pav.). Tokią išvadą leidžia daryti 3,45 vidurkis respondentams atsakant, jog sutinka duoti prašomus duomenis pardavėjui, jei tai bus naudinga. Respondentai taip pat yra linkę atskleisti duomenis už pagerintą patirtį (3,28 vidurkis). Vis tik netikėtas rezultatas, jog už suasmenintus, aktualius pasiūlymus, kas šiandieninėse organizacijose, yra siekiamybė, sutinka duomenis atskleisti mažiau respondentų

– sutikimo su teiginiu vidurkis 2,95. Mažiausiai respondentai duomenis atskleisti yra linkę už rodomą aktualią reklamą (vidurkis 2,6).



3 pav. Respondentų požiūris į duomenų atskleidimą, perkant, užsakant prekes ar paslaugas internetu

Siekiant nustatyti ne tik požiūrį, bet ir elgseną, respondentų buvo prašoma pasirinkti vieną iš trijų teiginių, labiausiai apibūdinančių jų elgseną. Daugiau nei pusė respondentų, 52,8 proc., pažymėjo, jog jie atskleis duomenis, įvertinę gaunamą naudą ir patiriamą riziką, tai leidžia teigti, kad respondentai remiasi privatumo apskaičiavimo teorija, t. y. prieš atskleisdami duomenis įvertina siūlomą naudą ir galimą riziką, atskleidus duomenis. 34,5 proc. atsakė, jog jie neatskleis savo duomenų už naudą, ir vos 12,7 proc. respondentų sutinka atskleisti duomenis, jeigu gaus naudą. Gautus tyrimo rezultatus verta palyginti su Westin (2003, cit. iš Zhu ir kt., 2017) rezultatais, kuriuose teigiama, kad 20 proc. visuomenės nėra susirūpinę saugumu ir noriai pateikia duomenis, 25 proc. yra privatumo fundamentalistai ir nėra linkę atskleisti duomenis, 55 proc. yra privatumo pragmatikai ir vertina duomenų atskleidimo/naudos santykį.



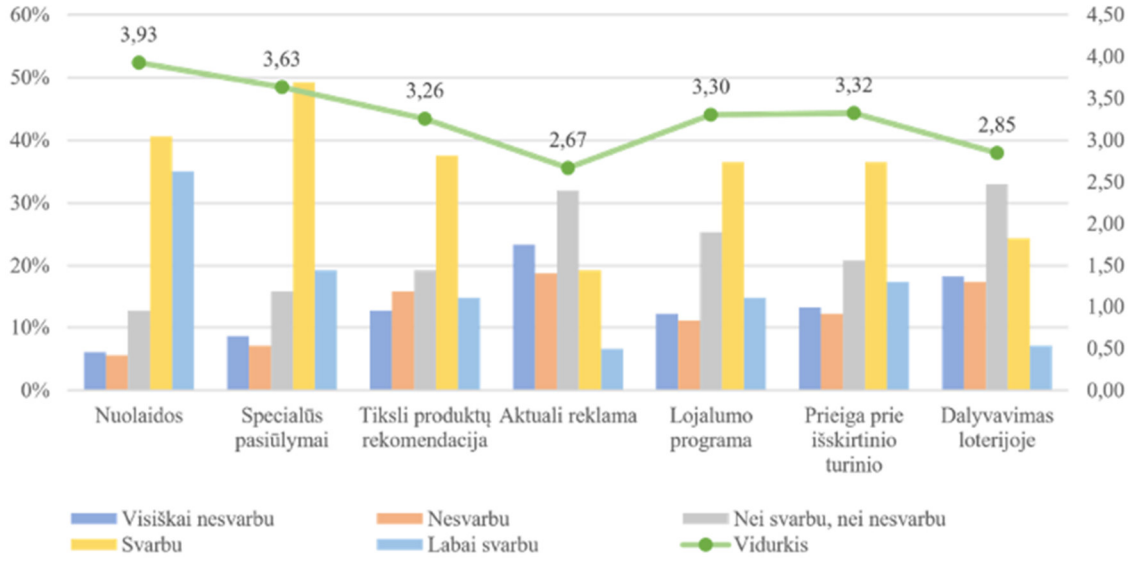
4 pav. Respondentų pasiskirstymas pagal amžių vertinant jų elgseną duomenų atskleidimo atžvilgiu

Lyginant su straipsnio autorių atlikto tyrimo duomenimis, pastebima, kad Lietuvoje privatumo pragmatikų yra panaši dalis, kaip teigiama užsienio tyrimuose, daugiau yra privatumo fundamentalistų bei mažiau linkusių lengvai atskleisti duomenis. Taip pat straipsnio

autorių atlikto tyrimo rezultatai rodo, jog elgsena duomenų atskleidimo atžvilgiu skiriasi amžiaus grupėse. Daugiausiai respondentų, 27,1 proc., priklausantys 26-35 amžiaus grupei, labiausiai atskleistų duomenis, jeigu gautų naudą, tuo tarpu respondentai virš 56 m. labiausiai nėra linkę atskleisti duomenų dėl naudos (4 pav.).

Sumoje vertinant linkusių atskleisti duomenis, nepriklausomai nuo to, kad bus/nebus vertinama nauda, galima daryti išvadą, kad didžioji dalis vartotojų yra linkę atskleisti duomenis ir šis polinkis mažėja vyresnėse amžiaus grupėse. Tad kaip teigia Barth ir Jong (2017), nors vartotojai išreiškia ketinimą riboti duomenų atskleidimą, jie nesiima veiksmų ir atskleidžia daugiau duomenų pardavėjams elektroninėje prekyboje. Tai patvirtina tyrimo rezultatai, ypač jei už duomenų atskleidimą galima gauti naudos.

Pagrindine nauda už tai, kad pasidalintų duomenimis, respondentai norėtų nuolaidų (40,1 proc.), taip pat nurodomos kitos pageidaujamos naudos: prieiga prie išskirtinio turinio (17,3 proc.), specialūs pasiūlymai (16,2 proc.), lojalumo programa (16,2 proc.), tiksli produktų rekomendacija (7,6 proc.), aktuali reklama (2 proc.), dalyvavimas loterijoje (0,5 proc.). Kiekvienos naudos svarba pateikiama 5 pav.



5 pav. Naudų, kurias respondentams svarbu gauti, jeigu pasidalintų duomenimis, svarba

Svarbos vertinimas patvirtina rezultatus, kad nuolaidos yra laikoma svarbiausia nauda (vidurkis 3,93), o mažiausiomis – aktuali reklama (vidurkis 2,67) ir dalyvavimas loterijose (2,85 proc.). Vertinant tik suasmenintų pasiūlymų aktualumą, daugiau nei pusė respondentų (53,8 proc.) atsakė, jog jiems būtų aktualu ir labai aktualu gauti pardavėjo suasmenintus pasiūlymus, 24,9 proc. yra neutralūs suasmenintų pasiūlymų atžvilgiu, o 21,4 proc. pažymėjo, jog jiems visiškai neaktualūs ar neaktualūs personalizuoti pasiūlymai. Pagal įvertinimo vidurkį, personalizuoti pasiūlymai elektroninėje prekyboje labiausiai būtų aktualūs respondentams, kuriems yra virš 56 m. (4,16). Kitose amžiaus grupėse vidurkiai yra žemesni – 36-45 m. vidurkis 3,66, 46-55 m. - 3,57, 26-35 m. – 3,56, 19-25 m. – 3,18, iki 18 m. – 3,35.

Tyrimo rezultatuose pastebėta, kad respondentai ne visus duomenis linkę vienodai atskleisti, jei gautų naudą. Labiausiai respondentai būtų linkę atskleisti kontaktinius (71,1 proc.) ir demografinius duomenis (61,9 proc.). Šie rezultatai sutampa su Valstybinės duomenų apsaugos inspekcijos (2020) atlikto tyrimo duomenimis, kad mažiausiai privačiais duomenimis respondentai laiko namų adresą ir telefono numerį. Straipsnio autorių atlikto tyrimo

rezultatuose taip pat pastebima, kad respondentai būtų linkę palikti atsiliepimus (33 proc.). Mažiau respondentai sutiktų, jog pardavėjas rinktų sandorio duomenis (31 proc.), elgsenos duomenis, tokius kaip naršymo istorija, veikla pardavėjo puslapyje - 20,8 proc., kitus, kaip slapukai, IP adresas – 5,1 proc.

Apibendrinant tyrimo rezultatus, galima daryti išvadą, jog vartotojams apsiperkant internetu Lietuvoje pasireiškia privatumo paradoksas. Didžioji dalis vartotojų pažymi, jog jiems yra svarbu išlaikyti privatumą bei kyla susirūpinimas privatumu elektroninėje prekyboje. Yra svarbi duomenų apsauga, svarbu kaip yra tvarkomi jų duomenys ir jie mažai pasitiki pardavėjais, tačiau dauguma neperskaito privatumo politikos, kurioje yra aprašoma, kaip yra tvarkomi jų duomenys, nes nenori skirti tam laiko. Mažiausiai vartotojai yra linkę atskleisti tokius duomenis, kaip slapukai, tačiau dalis spaudžia „Sutinku“ neperskaičius informacijos ir tik nedidelė dalis keičia slapukų nustatymus. Vadinasi, vartotojų požiūris į jų privatumą ne visai atitinka jų elgseną, atliekamus veiksmus, kurie apsaugotų privatumą ir užtikrintų mažesnį duomenų atskleidimo kiekį.

Išvados

Vartotojų duomenų panaudojimas elektroninėje prekyboje yra vienas iš konkurencinio pranašumo įgijimo būdų. Pardavėjų renkami duomenys padeda identifikuoti vartotojų poreikius, kurti personalizuotus pasiūlymus, geriau iškomunikuoti produktą, tobulinti jį bei kurti geresnę apsipirkimo patirtį vartotojui. Pardavėjai privalo užtikrinti etišką duomenų rinkimą ir panaudojimą ir pasirūpinti, kad nebūtų pažeidžiamas vartotojų privatumas. Tuo tarpu vartotojai dažnai išreiškia susirūpinimą savo privatumu, tačiau reali jų elgsena skiriasi. Neatitikimas tarp vartotojų išreiškiamo susirūpinimo privatumu, ir realios elgsenos, apsaugančios jų privatumą, dėl ko jie gali atskleisti daugiau duomenų, nei ketina yra vadinamas privatumo paradoksu. Privatumo paradoksas gali kilti dėl vartotojų nesupratimo, kokiu mastu panaudojami jų duomenys, klaidingų vartotojų nuostatų, aplinkinių žmonių elgesio, kultūrinių ir socialinių normų sąlygoto konteksto, patiriamos rizikos ir naudos, patirties, susijusios su privatumo pažeidimų neigiamais padariniais neturėjimo, privatumo raštingumo stokos. Vartotojų elgsena elektroninėje prekyboje, atskleidžiant duomenis, gali būti paaiškinama privatumo apskaičiavimo teorija – vartotojas įvertina patiriamą riziką ir gaunamą naudą, atskleidus duomenis pardavėjui. Kaip pagrindinės naudos, atskleidus duomenis, yra įvardijami personalizuoti pasiūlymai, nuolaidos, pardavėjo lojalumo programa ar specialūs pasiūlymai ir kt. Vartotojų polinkis atskleisti duomenis yra sąlygojamas ne tik rizikos/naudos santykio, bet ir jo susirūpinimo privatumu, kuris yra veikiamas asmenybės tipo, amžiaus, lyties ir net išsilavinimo. Būtent šis polinkis, priklausomai nuo įvardintų veiksnių leidžia pasireikšti skirtingai vartotojų elgsenai privatumo paradokso kontekste.

Ištyrus vartotojų elgseną elektroninėje prekyboje privatumo paradokso kontekste Lietuvoje, galima daryti išvadas, kad nors dauguma vartotojų dažnai ir labai dažnai apsiperka internetu, tačiau labai maža dalis prieš įsigydami prekes ar paslaugas, susipažįsta su privatumo politika, ar prieš sutikdami, perskaito informaciją apie renkamus slapukus. Vartotojai nenori skirti tam laiko, nes pateikta informacija yra per ilga ar trukdo jų apsipirkimo patirčiai. Didžioji dalis vartotojų jaučiasi saugiai apsipirkdami internetu ir nebuvo susidūrę su neigiama, jų privatumą pažeidusią situacija. Taip pat, moterys apsipirkdamos internetu jaučiasi saugiau, ir patiria mažesnį susirūpinimą privatumu, nei vyrai. Visgi, internetinės svetainės, kurios prašo daugiau duomenų, nei yra būtina apmokėjimui įvykdyti ar yra nepažįstamos vartotojams, kelia jiems nepasitikėjimą ir šie vengia įsigyti jose prekes ar paslaugas. Vartotojai mažiausiai yra linkę atskleisti duomenis, susijusius su jų elgsena, slapukais, tačiau beveik trečdalis nesiima

jokių veiksmų, kad apsaugotų savo duomenis. Vartotojai prieš atskleisdami duomenis įvertina, ar tai jiems bus naudinga – didžioji dalis vartotojų yra linkę įvertinti gaunamą naudą ir patiriamą riziką juos atskleidus. Pagrindinė gaunama nauda vartotojams yra pardavėjo suteikiama nuolaida, o labiausiai susirūpinimą dėl privatumo elektroninėje prekyboje kelia duomenų vagystė. Taip pat, dauguma vartotojų pažymi, jog apsiperkant internetu, jiems yra aktualu gauti pardavėjo suasmenintus pasiūlymus, yra linkę atskleisti kontaktinius ir demografinius duomenis, jeigu pardavėjas suteiks jiems naudą – šie duomenys gali padėti pardavėjams geriau suprasti vartotojus ir kurti personalizuotus pasiūlymus. Apibendrinant daroma išvada, kad vartotojų požiūris į jų privatumą ne visai atitinka jų elgseną, atliekamus veiksmus, kurie apsaugotų privatumą ir užtikrintų mažesnį duomenų atskleidimo kiekį.

Atsižvelgiant į tyrimo rezultatus, elektroninės prekybos pardavėjams rekomenduojama pateikti struktūrizuotą, sutrumpintą ir aiškiai išdėstytą informaciją, siekiant, kad ji netrukdytų apsipirkimo patirčiai, naviguoti internetinėje svetainėje. Dėl to, kad vartotojai jaučia susirūpinimą privatumu apsipirkdami internetu ir mažiau pasitiki pardavėjais, būtų rekomenduojama vengti naudoti mygtuką „Sutinku su visais“, kuomet prašoma sutikti su slapukais. Pardavėjai galėtų pateikti laukelį su galimybę pasirinkti, su kokiais slapukais vartotojai sutinka, ir juos parinkus, laukelis automatiškai dingtų, vietoj to, kad vartotojams reikėtų pereiti į kitą nuorodą, kurioje galima keisti slapukų nustatymus. Tokiu būdu būtų keliamas pasitikėjimas elektroninėje prekyboje, nes būtų užtikrintas skaidrumas ir vartotojai iš karto žinotų, kokius duomenis jie pateikia pardavėjui ir kaip jie bus tvarkomi. Tyrimo rezultatai parodė, jog dauguma vartotojų prieš atskleisdami duomenis elektroninėje prekyboje, įvertina patiriamą riziką ir gaunamą naudą. Todėl pardavėjai prašydami tam tikrų vartotojų duomenų, galėtų jiems pasiūlyti naudą, pvz. nuolaidą, specialų pasiūlymą. Atsižvelgiant į tai, kad daugiau nei pusė vartotojų pareiškė, jog jiems būtų aktualu gauti personalizuotus pasiūlymus ir jie labiausiai yra linkę atskleisti kontaktinius, demografinius duomenis, rekomenduojama labiau išnaudoti šiuos duomenis personalizacijos įgyvendinimui. Taip pat rekomenduojama skirti dėmesį renkamų duomenų analizei ir tinkamai įvertinti kaip, kokiems ir kokiu dažnumu vartotojams reikėtų rodyti reklamą elektroninėje erdvėje, nors vartotojai mažiausiai linkę atskleisti duomenis už tinkamai parinktą reklamą. Vis tik, tai gali būti pasitikėjimą kuriantis faktorius. Taip pat pasitikėjimą rekomenduojama stiprinti investuojant į technologijas, kurios užtikrintų duomenų saugumą, nes vartotojams elektroninėje prekyboje kelia susirūpinimą galima neigiama patirtis, pvz. duomenų vagystė.

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CONSUMER BEHAVIOR IN E–COMMERCE IN THE CONTEXT OF THE PRIVACY PARADOX

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Summary

In e-commerce, consumer data is necessary for products purchase and payments, as well as it contributes to sellers understanding consumer behavior better, is used for marketing purposes, and gaining a competitive advantage. For three-quarters of Lithuanians, the right to data protection is as important as freedom of expression, however, they often tend not to take actions that protect their data and privacy, and might easily disclose data in order to experience effortless shopping, without devoting sufficient time and attention to read the information regarding data collection and privacy. The General Data Protection Regulation (GDPR), emerging data leakage scandals spotlight consumers' attention to data protection and can impact their behavior, changes of habits when purchasing goods or services online. Therefore, the aim of the article is to analyze consumer behavior in e-commerce in the context of the privacy paradox. Methods of scientific literature analysis, comparison, synthesis, generalization, quantitative survey were used to achieve the aim. The results of the study show that most respondents feel safe when shopping online. The majority of consumers do not read the privacy policy. The main reasons not to read it are the too-long text of the privacy policy and consumers reluctance to take time to do that. While maintaining privacy is important to the respondents, nearly a third of consumers take no action to protect their privacy. If there are requests to disclose more information in e-commerce than is necessary, it can cause mistrust. Most users tend to disclose data after assessing the benefits and potential risks. The benefit they would like to get most for data disclosure is a discount. The results also revealed that personalized offers are important to consumers. Users are more likely to disclose contact and demographic data. In conclusion, consumers' attitudes towards their privacy are not entirely in line with their behavior. It is recommended for e-commerce sellers to provide an abbreviated, structured privacy policy and to avoid using the "Accept all cookies" button when asking to accept cookies. Sellers, when request consumers for a certain data, should offer benefits, e.g., discount, special offer, make more use of user data to implement personalization, focus more on the analysis of collected data. It is recommended to strengthen investment in technologies that ensure data security in order to increase trust in e-commerce.

***Keywords**: privacy paradox, privacy, consumer data, consumer behavior, e-commerce.*

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POLICIJOS PAREIGŪNŲ DISKRECINĖS VALDŽIOS VIEŠAJAME ADMINISTRAVIME ETINIAI ASPEKTAI

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Anotacija. *Straipsnyje teoriniu aspektu analizuojamos policijos pareigūnų diskrecinės valdžios viešajame administravime turinys, šios valdžios ribos, o temos naujumas grindžiamas tuo, jog ypatingas akcentas tenka etiniams policijos pareigūnų diskrecinės valdžios aspektams. Tyrimo objektas - policijos pareigūnų diskrecinės valdžios viešajame administravime etiniai aspektai. Tikslas – atskleisti policijos pareigūnų diskrecinės valdžios viešajame administravime turinį ir ribas, akcentuojant etinius aspektus. Straipsnio uždaviniai: 1) apibūdinti diskrecinės valdžios sampratą, požymius; 2) išryškinti policijos pareigūnų diskrecinės valdžios ribas; 3) atskleisti policijos pareigūnų diskrecinės valdžios viešajame administravime etinius aspektus. Tyrimo metodai: mokslinės literatūros analizė, teisės aktų analizė, Lietuvos Respublikos teismų praktikos analizė, dedukcinis, indukcinis, sisteminimas, apibendrinimas.*

Policijos pareigūno diskrecinė valdžia suprantama kaip pareigūno, priklausančio policijos institucijai ir turinčio tam tikrus teisės aktais suteiktus įgaliojimus, asmeninis gebėjimas savarankiškai priimti teisėtus sprendimus arba atlikti teisėtus veiksmus, kuomet reikalaujama atsakingo pasirinkimo iš keletos alternatyvių galimybių ir kartu supratimo apie kas yra teisėta, teisinga ir išmintinga. Diskrecinė valdžia nėra absoliuti, o įgyvendinama teisės aktų ribose; ji turi būti grindžiama objektyviais faktais bei bendraisiais teisės principais; turi būti laikomasi esminių teisinės valstybės, policijos įstaigų tarnavimo žmonėms, atsakingo administravimo principų. Policijos kompetencija įgyvendinant administracinę ir baudžiamąją teisę, naudojant teisės pažeidimų prevencijos priemones bei užtikrinant viešąją tvarką; efektyvus socialinės kontrolės vykdymas, leidžiantis derinti teisėtvarkos institucijų taikomas priemones ir žmogaus teisių, laisvių ir teisėtų interesų garantijų sistemą, lemia, jog policijos pareigūnai turi plačią diskrecinę valdžią viešojo administravimo sistemos kontekste, t. y. kiek jų neriboja imperatyvios teisės aktų normos. Diskrecinė valdžia kartais apibūdinama kaip protingas tarnybinis bendravimas ir vadovavimas, sąžiningas įžvalgumas, protingi veiksmai ir panašiai. Šiame apibūdinime įžvelgiame diskrecijai būdingus etinius aspektus. Juk diskrecija – tai policijos pareigūno laisvė pasirinkti vieną iš daugelio galimų sprendimų variantų nepažeidžiant įstatymų, o jo sprendimus, veikimą ar neveikimą, be abejo, lemia etinės nuostatos.

Pagrindinės sąvokos: *viešasis administravimas, diskrecinė valdžia, policijos pareigūnas, etika.*

Įvadas

Įstatymai apibrėžia policijos pareigūnų teises ir pareigas bei suteikia atitinkamas diskrecines teises viešajame administravime. Tačiau jokios valdžios institucijos teisės ir valdžia nėra absoliuti. Demokratinėje valstybėje diskrecinė valdžia visada turi tam tikras ribas. Kaip nurodė Lietuvos vyriausiasis administracinis teismas (LVAT) (2016), viešojo administravimo subjektai turi diskrecines ribas tiek, kiek jų neriboja imperatyvios teisės aktų normos. Atitinkamai ir policijos pareigūnų diskrecinė valdžia turi ribas, tačiau sekant vien įstatymo raide jos ne visada yra aiškios.

Užtikrinant policijos pareigūnų veiksmų teisėtumą svarbi jų diskrecinės valdžios kontrolė. Tai, jog viešojo administravimo subjektai ir jų veiklos teisėtumas yra kontroliuojami, yra svarbus viešojo administravimo subjektų diskrecinės valdžios ribų aspektas. Policijos

pareigūnų diskrecinės valdžios kontrolė ypač aktuali dėl to, jog, kaip pastebi Mečkauskas (2005, p. 77), „policijos pareigūnų atliekami veiksmai tiesiogiai arba netiesiogiai susiję su žmogaus teisėmis ir jų apsauga, vadinasi, ir su policijos veiksmų teisėtumo kontrole“. Teisės aktai griežtai reguliuoja ir ribas, kiek gali reikštis policijos pareigūnų įgaliojimai bei apibrėžia policijos pareigūnų veiksmų kontrolės būdus, tačiau vis dar lieka neaiškumo, kaip praktikoje, atskirose situacijose reikėtų interpretuoti policijos pareigūnų diskreciją ir jos ribas.

Siekiant aiškumo problemiškumui atskleisti, teigtina, kad praktikoje kyla etiniai policijos pareigūnų diskrecinės valdžios klausimai, kai policijos pareigūnai turi ne tik laikytis įstatymo raidės, bet ir „teisės dvasios“, kuriai būdingi etiniai reikalavimai, numatantys, kaip policijos pareigūnai turi elgtis visuomenėje. Policijos pareigūnams naudojant diskrecinę valdžią, gali kilti etinių dilemų, kurių suvokimui bei sprendimui būdingas subjektyvumas, kuomet pareigūnams savo nuožiūra tenka vykdyti ar susilaikyti nuo konkrečių valdingų veiksmų. Diskrecinė valdžia, anot Laurinavičiaus (2001), apibūdinama kaip protingas tarnybinis bendravimas ir vadovavimas, sąžiningas įžvalgumas, protingi veiksmai ir pan. Ši samprata tiesiogiai siejasi ir su pasitikėjimu ir patikimumu. Šiai sąvokai priskiriami santykiai, kurie negali būti neparemti pareigūno profesionalumu ir net tam tikromis asmens savybėmis. Straipsnyje keliami **probleminiai klausimai:** kaip pasireiškia policijos pareigūnų diskrecinės valdžios ribos Lietuvos Respublikos viešajame administravime; kaip policijos pareigūnų diskrecinėje valdžioje atsiskleidžia etiško elgesio svarba?

Policijos pareigūnų diskrecinės valdžios viešajame administravime sampratą ir specifiką Lietuvos mokslinėje literatūroje vienas pirmųjų analizavo Laurinavičius (1998). Vėliau šią tematiką nagrinėjo Urmonas ir Pranevičienė (2002), Mečkauskas (2005), Žilinskas (2006), Usačiovas (2009), Misiūnas (2010), Valeckas (2013), Danišauskas (2013) ir kt. Naujausiuose moksliniuose straipsniuose gilinamasi į valstybės tarnautojų profesinę diskreciją aptarnaujant valstybinės įdarbinimo tarpininkavimo agentūros klientus (Pivoras ir Gončiarova, 2017), aptariama diskrecijos sąvoka Lietuvos viešojoje teisėje (Bakševičienė, 2017), atliktas empirinis tyrimas, nagrinėjant probacijos pareigūnų diskreciją individualizuojant sprendimus dėl probuojamų pažeidimų (Nikartas ir Rinkevičiūtė, 2018) Užsienio mokslinėje literatūroje paminėtini šie autoriai, kaip Dong (2014), Chandler (2014), Erdos ir Kecskemeti (2014), Spire (2020), Brunetto ir kt. (2020), Olanescu (2021), kurių įžvalgomis bus remiamasi šiame straipsnyje. Minėtose publikacijose aptariami policijos pareigūnų įgaliojimų esmė ir turinys, jų ribos, bet gana siaurai paliečiami etiniai aspektai. Straipsnyje teoriniu aspektu analizuojamos policijos pareigūnų diskrecinės valdžios viešajame administravime turinys, šios valdžios ribos, o temos naujumas grindžiamas tuo, jog ypatingas akcentas tenka etiniams policijos pareigūnų diskrecinės valdžios aspektams. Terminas *diskrecija* darbe suprantamas kaip *diskrecinė galia, valdžia* ir vartojamas sinonimiškai.

Darbo objektas - policijos pareigūnų diskrecinės valdžios viešajame administravime etiniai aspektai.

Darbo tikslas – atskleisti policijos pareigūnų diskrecinės valdžios viešajame administravime turinį ir ribas, akcentuojant etinius aspektus.

Darbo uždaviniai:

1. apibūdinti diskrecinės valdžios sampratą, požymius;
2. išryškinti policijos pareigūnų diskrecinės valdžios ribas;
3. atskleisti policijos pareigūnų diskrecinės valdžios viešajame administravime etinius aspektus.

Tyrimo metodai: mokslinės literatūros analizė, teisės aktų analizė, Lietuvos Respublikos teismų praktikos analizė, dedukcinis, indukcinis, sisteminimas, apibendrinimas. Mokslinės literatūros analizės metodas naudotas analizuojant teorinę literatūrą, formuluojant teorines

koncepcijas; teisės aktų bei Lietuvos Respublikos teismų praktikos analizė - nagrinėjant tiriamų klausimų reguliavimą Lietuvos Respublikos teisės aktuose ir teismų praktikoje. Dedukcijos pažinimo metodas naudotas siekiant pereiti nuo bendros teorijos prie atskirų jos koncepcijų, t. y. nuo bendro prie atskiro. Samprotavime dedukcija yra neatsiejama nuo indukcijos. Jos viena kitą papildo. Sisteminimo, apibendrinimo metodai straipsnyje naudoti analizuojant, apjungiant, sisteminant skirtingus faktus, darant iš jų išvadas, formuluojant apibendrinimus.

Diskrecinės valdžios viešajame administravime samprata ir požymiai

Kalbant apie policijos pareigūnų diskrecinės valdžios viešajame administravime turinį ir ribas, akcentuojant etinius aspektus, pirmiausia reikia apibrėžti diskrecinės valdžios viešajame administravime sampratą. Mokslinėje literatūroje aptinkama diskrecinės valdžios sąvokų įvairovė. Keletą aktualių apibrėžimų pateikiama 1 lentelėje.

1 lentelė. Diskrecinės valdžios samprata mokslinėje literatūroje

Autorius	Apibrėžimas
Spire (2020)	Diskrecinės valdžios terminas reiškia galimybę naudoti laisvą pasirinkimą, suvaržytą tik teisinių ribų.
Dong (2014)	Diskrecinės valdžios terminas apibūdina „autonomijos sferą“, kurioje valstybės pareigūnams leidžiama priimti sprendimus pagal savo asmeninį sprendimą ir vertinimą, su sąlyga, kad jie neperžengia įstatymo ribų.
Chandler (2014)	Diskrecijos valdžia atsiranda, kai yra daugiau teisėtų teisinės problemos sprendimų ir subjektas turi pasirinkti vieną iš šių teisėtų sprendimų, tačiau toks pasirinkimas negali būti subjektyvus, nepagrįstas ir savavališkas.
Olanescu (2021)	Diskrecinė valdžia yra tam tikra valdžia pasirinkti iš turimų teisėtų galimybių.

Šaltinis: sud. aut.

Kaip matyti iš lentelėje pateiktų diskrecinės valdžios apibrėžimų, diskrecinė valdžia asocijuojasi su pareigūno ar institucijos, turinčio tam tikrus teisės aktais suteiktus įgaliojimus, galia savarankiškai priimti sprendimus arba atlikti teisėtus veiksmus, atsižvelgiant į teisės aktuose nustatytas tokių sprendimų priėmimo ar veikimo ribas.

Lietuvos Vyriausiojo administracinio teismo 2006 m. gruodžio 18 d. nutartis administracinėje byloje Nr. A415-2203/2006 nurodo, jog „administracinės institucijos diskrecijos teisė suprantama kaip galia, suteikianti administravimo subjektui tam tikrą veiklos laisvę priimant sprendimus, įgalinanti jį iš keleto teisiškai galimų elgesio variantų pasirinkti tą, kuris, jo nuomone, yra tinkamiausias“. Taigi Lietuvos Vyriausiojo administracinio teismo pateikiamas diskrecijos teisės apibrėžimas panašus į mokslinėje literatūroje pateikiamus apibrėžimus, akcentuojant, jog pareigūnas turi teisę priimti sprendimą, pasirinkdamas vieną galimybę veikti iš keletos alternatyvių galimybių.

Teisėje diskrecinė valdžia gali būti laikoma, pavyzdžiui, teisėjo galia vertinti sprendimus, susijusius su įrodymų pašalinimu nagrinėjant bylą. Vieni tokį sprendimą, priimamą teisėjui naudojantis savo diskrecine galia, gali vertinti kaip neigiamą, o kiti – kaip teigiamą.

Diskrecinė valdžia siejama su gebėjimu priimti sprendimus, kas reikalauja atsakingo pasirinkimo ir kartu supratimo apie kas yra teisėta, teisinga ar išmintinga, taip pat pastebima Lietuvos Vyriausiojo administracinio teismo 2006 m. gruodžio 18 d. administracinės bylos Nr. A415-2203/2006 nutartyje. Teisinėje sistemoje diskrecija dažnai apibrėžiama kaip teisėjo galimybė pasirinkti, kur, kaip ir kokio griežtumo nuteistasis gali būti nubaustas. Asmuo pasirenka pasinaudoti savo pasirinkimo galimybes ir nusprendžia, kuria iš jų naudoti, ar tai yra

policijos pareigūnas, sulaikantis ką nors gatvėje (baudžiamoji byla), ar evakuojantis iš buto (civilinė byla), ar kuris nors iš šių dviejų.

Anot Olanescu (2021), yra keletas argumentų, kad diskrecijos įgyvendinimas naikina arba susilpnina teisinę valstybę, tačiau įstatymas negali būti parašytas nepasinaudojant diskrecija, todėl teisės viršenybė vadovaujasi visuomenės lūkesčiais, jos taisyklėmis ir iš dalies viešuoju interesu. Chandler (2014) teigimu, diskrecinės galios, valdžios samprata yra iš esmės susijusi su teisinės kalbos miglotumu. Sociologinis požiūris į šią galią, valdžią yra socialinių kriterijų, supančių šį „teisinį neapibrėžtumą“ ir jos sukeliamų padarinių, išryškinimas.

Teisiniu požiūriu diskrecinė valdžia reiškia autonomijos sritį, kurioje valstybės tarnautojams leidžiama patiems priimti sprendimus įgyvendinant įstatymą. Ši diskrecinė valdžia yra tokia pati kaip biurokratija, nes įstatymai visada turi nustatyti bendruosius principus, kuriuos reikia iš naujo interpretuoti. Žvelgiant iš šios perspektyvos, diskrecinė valdžia reiškia dviejų tipų reiškinį (Spire, 2020):

- Viena vertus, diskrecinė valdžia reiškia teisės aiškinimą, kuris įkūnija dekretus ir norminius tekstus. Šią valdžią turi aukšto rango valstybės tarnautojai, specialiai paskirti vyriausybės, kad paaiškintų gatvės lygio biurokratams, kaip interpretuoti teisinius tekstus. Tai savotiška biurokratinė politika, kurią galima suprasti kaip kelių veikėjų, hierarchiškai išdėstytų administracijos viršuje, derybų rezultatą. Šio tipo diskrecinės valdžios plėtra buvo paskatinta nuo 1945 iki 1975 m. Prancūzijoje. Vidinių taisyklių diskrecijos, taikymo sritis buvo apribota teismine kontrole.
- Kita vertus, diskrecinė valdžia reiškia atskirą sprendimą, priimtą įgyvendinant teisės normą konkrečiu atveju, pavyzdžiui, kai reikia duoti įgaliojimą arba suteikti tam tikras lengvatas ar palankumą.

Diskrecinė valdžia nereiškia įsakymo: faktų konstatavimas nurodo kryptį, o teisėtumas visada nustato sprendimo ribas. Pavyzdžiui, kaip pastebi Chandler (2014), teisėjas, naudodamasis savo diskrecine valdžia ir norėdamas teisingai pasirinkti, negali būti savavališkas, jis turi atskleisti situaciją ir laikytis aiškinimo metodų.

P. Kantas (cit. pgl. Erdos ir Kecskemeti, 2014, p. 13–27) išskyrė tris diskrecinės valdžios tipus (žr. 2 lentelę).

2 lentelė. Diskrecinės valdžios samprata mokslinėje literatūroje

Diskrecijos tipai	Apibūdinimas
Diskrecija su įrodymais	Tai yra labiausiai nusistovėjusi diskrecijos rūšis. Pati sąvoka ir faktų konstatavimas yra vienareikšmiai, todėl diskrecijos sfera yra ribota, nes teisėjo sprendimas turi būti derinamas su taisyklėmis kaip ir nutartis. Nors ir yra taisyklės, kaip teisėjas turi vertinti įrodymus, nepaisant taisyklių, diskrecija vis tiek pasireiškia: teisėjas ir kiti teisiniai instrumentai turi įvertinti ir išanalizuoti visus įrodymus. Tai nėra mechaninis procesas, reikia tam tikro patikrinimo, vertinant reikia reikalauti diskrecijos galios.
Privaloma diskrecija	Tai tas atvejis, kai priimti sprendimą iš institucijos ar pareigūno reikalauja įstatymas, t. y. pareigūnas turi privalomą diskreciją tam tikroje srityje. Tačiau priimami sprendimai turi būti pagrįsti.
Diskrecija su leidimu	Tai yra tikrosios diskrecijos tipas. Šiuo atveju teisės aktai nustato tam tikras diskrecinės valdžios panaudojimo ribas. Kai kuriais atvejais diskrecinė valdžia gali tapti subjektyviai interpretuojama. Atskirais atvejais ji gali atrodyti kaip savivalė.

Šaltinis: sud. aut. remiantis Erdos ir Kecskemeti (2014, p. 13–27)

Kalbant apie diskrecinę valdžią, reikia atsakyti į klausimą, kaip galima apibūdinti laisvę ar apribojimą, siejamą su diskrecine valdžia. Diskrecinės valdžios sąvoka dažniausiai yra siejama su teisėjais, tačiau diskrecijos galimybė suteikiama ir kituose segmentuose – ne tik

vykdant teisingumą (Erdos ir Kecskemeti, 2014). Diskrecijos teisė garantuojama ir viešajame administravime (Chandler, 2014).

Įstatymų leidžiamoji valdžia neabejotinai suteikia diskreciją teisėjams, prokurorams ir kitiems viešojo administravimo subjektams. Teisės aktų normos nurodo alternatyvas arba suteikia jiems teisę priimti teisėtą sprendimą pagal tam tikras aplinkybes, tam tikroje situacijoje. Svarbu suvokti, anot Dong (2015) jog diskrecija nereiškia savavališkos laisvės – teisės aktuose įvardintos normos dažnai nurodo aiškią diskrecinės valdžios pasireiškimo kryptį, o valstybės pareigūno veiksmai turi neperžengti nustatytų ribų.

Diskrecinė valdžia gali būti nagrinėtina ir per administracinės teisės struktūrą. Administraciniai įstatymai numato keletą metodų, susijusių su viešuoju administravimu. Jie reguliuoja administracinių procedūrų kompetencijos ir pretenzijų maržas, tačiau pati procedūra nėra ribojama, tokiu atveju teisinės sistemos subjektai turi daugiau laisvės veikti ir priimti sprendimus. Jų veikla nulemta tik tam tikrais atžvilgiais, jie turi pasirinkti vieną iš galimų teisinių galimybių, todėl gali praktikuoti diskreciją. Chandler (2014) teigia, kad viešojo administravimo, teisinių institucijų subjektų veikla yra reguliuojama. Jų veiksmai yra teisiškai apibrėžti, įstatymo esmė yra tiksli ir apibrėžta, šios taisyklės turi vyrauti. Teisinis reguliavimas turi prisitaikyti prie viešojo administravimo sferų, todėl reguliavimo poreikis jose nėra vienodas, jis turi būti atitinkamai platesnis arba apribotas.

Yra keletas tipiškų viešosios administracijos diskrecinės valdžios požymių (Erdos ir Kecskemeti, 2014):

a) Administracinis subjektas turi pasirinkti vieną iš tinkamų teisinių alternatyvų, kurias nustato įstatymų leidžiamoji valdžia, kad visos galimybės taip pat būtų teisėtos. Aplinkybės taip pat turi būti įvertintos ir nustatytos įstatymų. Šio metodo sudėtingumas yra teisingas aiškinimas, jo negalima atmesti dėl viešojo administravimo proceso ypatumų, tačiau jį gali palengvinti įstatymo reikalaujamos aplinkybės.

b) Tam tikri standartai, laiko intervalai ir kitos sąlygos sprendimams priimti taip pat yra nustatyti įstatyme ir teisiniai instrumentai turi jų laikytis, jie niekaip negali skirtis.

c) Tam tikros įstatymais neapibrėžtos sąvokos suteikia platesnes sprendimo galimybes viešojo administravimo subjektams – pavyzdžiui, viešasis interesas ar ekonominis interesas. Šių neapibrėžtų teisės sąvokų turinys nėra paaiškinamas.

Kadangi viešasis administravimas apima visas valstybės ir valdžios veiklos rūšis, diskrecinė valdžia atsiranda visuose šiuose segmentuose. Kaip pastebi Erdos ir Kecskemeti (2014), iš to išplaukia, kad diskrecinė valdžia turi būti garantuota kiekviename lygyje – tai reiškia, kad tokiu paskirstymu diskreciją gali praktikuoti ir administratorius bei vadovas, todėl jų diskrecijos teisė nepriklauso nuo jų rango lygio. Reikalavimas tas pats: teisingai diskrecinės valdžios praktikai reikia rekvizitų ir garantijų, nes teisiniai instrumentai turi būti pagrįsti tam tikromis teisinėmis sąlygomis.

Lietuvos Vyriausiojo administracinio teismo 2012 m. sausio 12 d. nutartyje administracinėje byloje Nr. A62-3/2012 yra išaiškinta, jog „kiekvienas viešojo administravimo subjektas, spręsdamas įstatymų leidėjo pavestus uždavinius, turi diskrecijos teisę, nepažeisdamas imperatyvių teisės aktų reikalavimų, veikti (*inter alia* tvarkyti savo struktūrą) tokiu būdu, kad tie uždaviniai būtų įgyvendinti laiku ir tinkamai, laikantis efektyvumo, objektyvumo bei kitų viešojo administravimo principų“.

Remiantis Lietuvos vyriausiojo administracinio teismo praktika (2016), taikant Lietuvos respublikos viešojo administravimo įstatymo normas, diskrecinė valdžia turi šiuos požymius:

- Diskrecinė valdžia teisinėje valstybėje nėra absoliuti.
- Diskrecinė valdžia yra įgyvendinama teisės aktų ribose: „Diskrecijos teisė neturi būti aiškinama kaip absoliučiai nemotyvuotas ir niekuo nesaistomas pasirinkimas. Viešojoje

teisėje veikiantys administravimo subjektai diskrecijos teisę realizuoja teisės aktų nustatytose ribose“

- Diskrecijos teise besinaudojantys subjektai yra suvaržyti bendrųjų teisėtumo principo reikalavimų ir kriterijų.
- Diskrecija turi būti pagrindžiama objektyviais faktais bei bendraisiais teisės principais – įstatymo viršenybės, objektyvumo, proporcingumo, nepiktnaudžiavimo valdžia, efektyvumo, numatytais Viešojo administravimo įstatymo 3 straipsnyje.
- Realizuojant diskreciją, neturi būti paneigiami esminiai teisinės valstybės, valdžios įstaigų tarnavimo žmonėms, gero administravimo, atsakingo valdymo (teisėtumo, objektyvumo, nepiktnaudžiavimo valdžia, asmens dalyvavimo priimant atitinkamus sprendimus, skaidrumo ir kt.) reikalavimai. Šių reikalavimų paisymas sąlygoja teisinio tikrumo, aiškumo principų įgyvendinimą, teisės į gynybą užtikrinimą.
- Suteikta diskrecija galima tik įstatymo nustatytose ribose ir ja naudojantis turi būti atsižvelgiama į įstatymo nustatytus reikalavimus, kad nebūtų pažeidžiami bendrieji teisės principai, konstitucinės žmogaus teisės.
- Nurodytu būdu suteiktos diskrecijos įgyvendinimas suponuoja teisinio tikrumo ir aiškumo principų įgyvendinimą.

LR Viešojo administravimo įstatyme 1999 m. birželio 17 d., Europos Tarybos Ministrų Komiteto 1980 m. kovo 11 d. rekomendacijoje Nr. 80(2) „Dėl administravimo subjektų diskrecinių galių įgyvendinimo“ 2 str. nurodoma, jog įgyvendindamos diskrecines galias viešojo administravimo institucijos turi nepiktnaudžiauti joms suteiktais įgaliojimais, laikytis objektyvumo ir nešališkumo, lygybės prieš įstatymą ir proporcingumo principų.

Apibendrinant, teoriniu požiūriu diskrecinė valdžia asocijuojasi su pareigūno ar institucijos, turinčio tam tikrus teisės aktais suteiktus įgaliojimus, galia savarankiškai priimti sprendimus arba atlikti teisėtus veiksmus, atsižvelgiant į teisės aktuose nustatytas tokių sprendimų priėmimo ar veikimo ribas. Lietuvos Vyriausiojo administracinio teismo pateikiamas diskrecijos teisės apibrėžimas panašus į teorinius, akcentuojant, jog pareigūnas turi teisę priimti sprendimą, pasirinkdamas vieną galimybę veikti iš keletos alternatyvių galimybių. Diskrecinė valdžia siejama su gebėjimu priimti sprendimus, kas reikalauja atsakingo pasirinkimo ir kartu supratimo apie kas yra teisėta, teisinga ar išmintinga. Skiriami trys diskrecijos tipai: diskrecija su įrodymais, privaloma diskrecija, diskrecija su leidimu. Pirmasis diskrecijos tipas yra imperatyviausias. Remiantis Lietuvos Vyriausiojo administracinio teismo išaiškinimais, diskrecijos teisė turi tokius bruožus: ši valdžia nėra absoliuti, ji yra įgyvendinama teisės aktų ribose, subjektus; besinaudojančius diskrecine teise; varžo bendrieji teisėtumo principo reikalavimai ir kriterijai; ji turi būti grindžiama objektyviais faktais bei bendraisiais teisės principais – įstatymo viršenybės, objektyvumo, proporcingumo, nepiktnaudžiavimo valdžia, efektyvumo; diskreciją realizuojant, turi būti paisoma esminiai teisinės valstybės, valdžios įstaigų tarnavimo žmonėms, gero administravimo, atsakingo valdymo principų.

Policijos pareigūnų diskrecinės valdžios ribos

Kalbant apie policijos pareigūnų diskrecinę valdžią, pasireiškia du aspektai: viena vertus, policijos pareigūnų, kaip darbuotojų, diskrecinė valdžia, pasireiškianti organizacinėje sistemoje, antra vertus, policijos pareigūnų, kaip viešojo administravimo ir teisėsaugos sistemos pareigūnų, diskrecinė valdžia, suteikta teisės aktų.

Pirmu atveju, kaip pastebi Chan ir Lam (2011), diskrecinė valdžia nulemia, kiek darbuotojams suteikiama diskrecinės galios atlikti jiems nustatytas darbo užduotis. Šiuo atveju diskrecinė valdžia geriausiai suprantama kaip dalis platesnės įgalinimo sampratos, apimančios

procesą, skatinantį dalytis valdžia ir ištekliais, o tai savo ruožtu turi įtakos tam, kaip darbuotojai suvokia savo savarankiškumą, ir, anot Brunetto ir kt. (2020), skatina daugiau įdėti pastangų į profesinę veiklą.

Antruoju atveju policijos pareigūnų diskrecinės vadžios klausimas aktualus dėl to, jog teisėsaugos veikla yra viena iš pagrindinių veiklos rūšių, neatsiejama valstybės institucijų funkcionavimo sąlyga (Brunetto ir kt., 2020). Teisėsauga yra sudėtinga sistema, reikalaujanti aukšto jo įgyvendinimo subjektų profesionalumo, jos sistemos efektyvumas siejamas su visuomenei reikšmingų visuomeninių ryšių ir ryšių įgyvendinimo skatinimu bei atskirų asmenų, jų asociacijų, visuomenės ir valstybės interesų pusiausvyros užtikrinimu. Teisėsaugos pareigūnas, remdamasis faktinių bylos aplinkybių ir teisės normų analize, suformuoja savo poziciją ir priima konkretų sprendimą. Šio tradicinio teisėsaugos modelio rėmuose konkrečių veiksmų vykdymas ir elgesio linijos pasirinkimas svarstant konkretų klausimą dažnai priklauso nuo jo diskrecijos, teigia Erdos ir Kecskemeti (2014), kai jis gali laisvai pasirinkti faktinės ir teisinės medžiagos tyrimo seką.

Analizuodami teisėsaugos pareigūnų diskrecinius įgaliojimus, Chan ir Lam (2011) teigia, kad pastarieji veikia kaip bendra teorinė ir teisinė sąvoka. Jie tarytum reprezentuoja valdžios institucijų, jų pareigūnų ir kitų viešųjų juridinių asmenų elgesio modelį, siekdami efektyviai vykdyti savo veiklą teisinio neapibrėžtumo sąlygomis. Valstybės valdžios institucijos, kurių veikla nukreipta viešai įvaldyti esminius visuomenės interesus, turi specialius įgaliojimus, kurie yra esminis šių įstaigų ir jų pareigūnų teisinio statuso elementas. Įstatyme nustatyti valdžios organų įgaliojimai, būtini jiems pavestoms funkcijoms atlikti, sąlyginai gali būti vadinami nepaneigiamais įgaliojimais. Nenuginčijamų galių pagalba realizuojamas valstybės organų ir jų pareigūnų gebėjimas daryti įtaką visuomenei, siekiant užtikrinti žmogaus ir piliečio teises ir laisves, visuomenės ir valstybės interesus. Jos vykdomos vykdant įvairias valdžios institucijų funkcijas, atspindinčias pagrindines jų veiklos kryptis. Nenuginčijami įgaliojimai turi specifinį pobūdį ir yra įgyvendinami įstatymų numatytomis formomis, taip pat ir įgyvendinant teisėsaugos veiklą (individualių teisės aktų išleidimą). Esant bet kokiam teisiniam neapibrėžtumui teisėsaugos procese, jį vykdantis subjektas reikalauja panaudoti kitokio pobūdžio – diskrecinius – įgaliojimus. Jie nėra tiesiogiai įtvirtinti įstatyme, išplaukia iš pačios valdžios institucijų prigimties ir yra naudojami veiksmingai teisėsaugai užtikrinti .

Diskrecinė valdžia, atstovauja ypatingai galių grupei, turi ypatingą ir kartais išskirtinį charakterį. Specialūs diskrecijos įgaliojimai suteikia teisėjui teisę veikti savo nuožiūra, kuri kyla iš taikomos taisyklės turinio. Išskirtinius diskrecijos įgaliojimus teisėsaugos pareigūnas įgyvendina remdamasis konstituciniais ir bendraisiais teisės principais, kai yra galiojančių teisės normų trūkumų ar spragų, esant netipinėms nagrinėjamo klausimo faktinėms aplinkybėms. Jie negali būti susieti su konkrečia valstybės organų veiklos sritimi ar konkrečiomis funkcijomis. Šie įgaliojimai laikytini specialia teise, kuri gali būti naudojama teisėsaugos veiklos procese vykdant valstybės institucijų funkcijas. Įstatymiškai jie nėra išskiriami kaip atskiri valdžios subjektų įgaliojimai. Tačiau teisėsaugos praktikoje egzistuoja diskreciniai įgaliojimai, kurie tarsi „susieti“ su konkrečiais teisėsaugos subjekto įgaliojimais, įtvirtintais įstatyme.

Galimybė naudotis diskreciniais įgaliojimais yra nulemta teisėsaugos institucijų teisiškai nustatytų tikslų ir uždavinių bei išplaukia iš bendro konstitucinių ir teisinių principų, kurie turi būti įgyvendinami ir kurių jų veikloje laikomasi, visumos. Skirtingai nuo nepaneigiamų įgaliojimų, kurie suteikiami valstybės institucijoms ir jų pareigūnams kaip valdžios atstovams, diskreciniai įgaliojimai jiems priklauso būtent kaip teisėsaugos subjektams.

Policija yra atsakinga už tam tikrą teisėsaugos sritį, t. y. privalo: garantuoti, kad būtų laikomasi įstatymų; užkirsti kelią nusikalstamumui; palaikyti viešąją tvarką ir teikti

humanitarines-socialines paslaugas įvairių nelaimingų atsitikimų, stichinių nelaimių atvejais (Usačiovas, 2009). Tokiu būdu policija atlieka svarbų vaidmenį užtikrinant viešąjį saugumą, kuris apibūdinamas kaip „asmens (piliečio), visuomenės ir valstybės teisėtų interesų apsauga nuo nusikalstamų kėsinimųsi, taip pat nuo gaisrų, technologinių avarijų ar gaivalinių nelaimių“ (Ruževičius ir Kasperavičius, 2008) . Policija įpareigojama valstybės vardu nutraukti neteisėtus veiksmus, keliančius pavojų visuomenei. Istorijoje yra nemažai įrodymų, jog neefektyvi policijos veikla kelia baimės ir nesaugumo jausmą, griauna piliečių pasitikėjimą valstybinės valdžios ir valdymo institucijų atstovais. Jei teisinio valstybės reguliavimo įgyvendinimas sukelia tam tikrų prieštaravimų, ieškoma, kaip pastebi Kalesnykas (2002) tiesioginių piliečių apsaugos būdų, taip pat ir būdų tvarkos užtikrinimo srityje. Taigi policijos pareigūnams vykdant savo įgaliojimus svarbu yra išlaikyti diskrecinės valdžios ribas, jų neperžengiant.

Tai, kokią diskrecinę valdžią turi policijos pareigūnai, priklauso ir nuo policijos organizavimo pobūdžio. Skiriami du šiuolaikinės policijos organizavimo „aukštos“ veiklos modeliai (Raipa ir Smalskys, 2006, p. 81):

1) anglosaksiškasis, paremtas piliečių įtraukimu į policijos veiklą (pasitikėjimo tarp policijos ir piliečių skatinimas, informacijos iš piliečių gavimas) ir
2) tvarkos įgyvendinimas.

„Žema“ policijos veiklos forma laikoma ta, kur akcentuojama tik įstatymų įgyvendinimas, tai būdinga epochai iki XX amžiaus, teigia Raipa ir Smalskys (2006). Dabartiniu laikotarpiu išsivysčiusių valstybių policija į nusikaltimų prevenciją stengiasi įtraukti didelę dalį bendruomenės. Anglosaksų valstybės pirmosios suvokė, kad policija nėra valdžia, o socialinė paslauga, kurios veikimas yra paremtas pagarba individui ir jo teisėms. Tokioje sistemoje policijos diskrecija yra griežtai kontroliuojama piliečių.

Kiekvienos viešojo administravimo institucijos paskirtis ir kompetencija nustatoma įstatymais bei kitais teisės aktais. Policijos misiją valstybėje nustato LR Policijos veiklos įstatymo 5 straipsnis, kuriame įtvirtinti pagrindiniai policijos uždaviniai ir kiti teisės aktai. Policijos misija – saugoti ir gerbti asmens teises ir laisves, užtikrinti viešąją tvarką ir visuomenės saugumą, pagal kompetenciją kurti saugią aplinką, bendradarbiaujant su visuomene ir atsiskaitant jai, efektyviai ir racionaliai naudojant turimus žmogiškuosius, finansinius bei materialinius išteklius įgyvendinti veiksmingą nusikalstamų veikų ir kitų teisės pažeidimų kontrolės ir prevencijos politiką. Kaip matyti, į policijos misiją valstybėje imta žiūrėti šiek tiek kitaip – kaip į tam tikrą valstybės valdžios paslaugą visuomenei. Anot Mečkausko (2005), policijos veikla turi būti orientuota ne į tam tikrų formalių taisyklių, užduočių vykdymą, o nukreipta į aiškiai apibrėžtų tikslų, rezultatų siekimą.

Raipos ir Smalskio (2006) požiūriu, policija yra ne tik valdžią įgyvendinanti instituciją, bet ir socialines paslaugas teikianti institucija. Derinantis prie modernios viešosios vadybos, pažangiose šalyse policijos misija tampa tokia: teikti paslaugas piliečiams (visuomenei) ir rodyti mažiau valdžios saugant piliečių teises ir laisves, saugoti ir kelti demokratines vertybes, gerinti veiklos kokybę, bendruomenės gyvenimo kokybę, aprūpinti ją teisine paslauga, gerinti profesionalumą. Tuo siekiama strateginių tikslų: orientuotis į gyvenimo kokybės palaikymą bendruomenėje, į kriminalinę prevenciją, teisės taikymą, tarnybos aprūpinimą bei skatinti gerbti žmogaus teises ir laisves. Urmono (cit. pgl. Valeckas, 2013) teigimu, policijos orientavimasis į socialines profesines paslaugas gali suartinti policiją ir visuomenę. Policijos ir visuomenės suartinimas yra labai svarbus siekiant didesnio policijos darbo efektyvumo; tradiciškai policija yra tarsi supriešinama visuomenei; mat policija pirmoji imasi aktyvių veiksmų prieš fizinius ar juridinius asmenis, pažeidusius įstatymą, ji susiduria ir su didžiausiu nusikalstamo pasaulio pasipriešinimu, bet nesulaukia reikiamo visuomenės ar konkrečios bendruomenės palaikymo.

Šiuo metu Lietuvoje policija vykdo dualinę funkciją: 1) išaiškina nusikaltimus; 2) palaiko viešąją tvarką ir užtikrina viešąjį saugumą, t. y. saugią gyvenamąją aplinką. Ši dualinė funkcija šiandien suprantama kaip socialinė paslauga. Pagrindinė policijos funkcija – užtikrinti teisėtvarką. Kaip pastebi Kalesnykas (2002), palaikydama viešąja tvarką ir užtikrindama viešąjį saugumą policija taip pat sprendžia socialinę užduotį. Pasak Valecko (2013), policijos atliekama dualistinė funkcija pasireiškia, kaip įstatymų įgyvendinimas, nusikaltimų ir viešosios netvarkos užkardymas, humanitarinės ir socialinės pagalbos siūlymas gyventojams. Tad galima teigti, jog policijos pareigūnų diskrecinė valdžia viešajame administravime siejama su ypatinga šių pareigūnų misija visuomenės atžvilgiu, išskirtiniais įgaliojimais teisėsaugos sistemoje.

Policijos sistemos įstaigų administracinės veiklos turinį sudaro policijos veiklos teisinis reguliavimas, veiklos principai, uždaviniai, organizacinė struktūra, bendradarbiavimas su gyventojais, visuomeninėmis organizacijomis, savivaldybių bei kitomis institucijomis pagrindai, taip pat policijos pareigūnų įgaliojimai, teisės ir pareigos, socialinės garantijos, atsakomybė bei prievartos panaudojimo teisėtumo sąlygos, policijos įstaigų finansavimo šaltiniai, formos ir kt. Policija turi kompetenciją įgyvendinti administracinę ir baudžiamąją teisę bei teisės pažeidimų prevencijos priemones, užtikrinti viešąją tvarką (Valeckas, 2013). Šiuolaikinė policija, kaip valstybės tarnyba, yra įpareigota tinkamai atstovauti valstybės interesams visuomenėje, įvairiose bendruomenėse. Policijos darbe pirmenybė turėtų būti teikiama socialinei kontrolei, kurios efektyvus vykdymas leidžia derinti teisėtvarkos institucijų taikomas priemones ir žmogaus teisių, laisvių ir teisėtų interesų garantijų sistemą (Usačiovas, 2009). Visa tai lemia, jog policijos pareigūnai turi plačią diskrecinę valdžią viešojo administravimo sistemos kontekste, šiai valdžiai paklūsta tiek viešojo, tiek privataus sektoriaus subjektai, fiziniai ir juridiniai asmenys.

Policijos pareigūnų diskrecinės valdžios etiniai aspektai

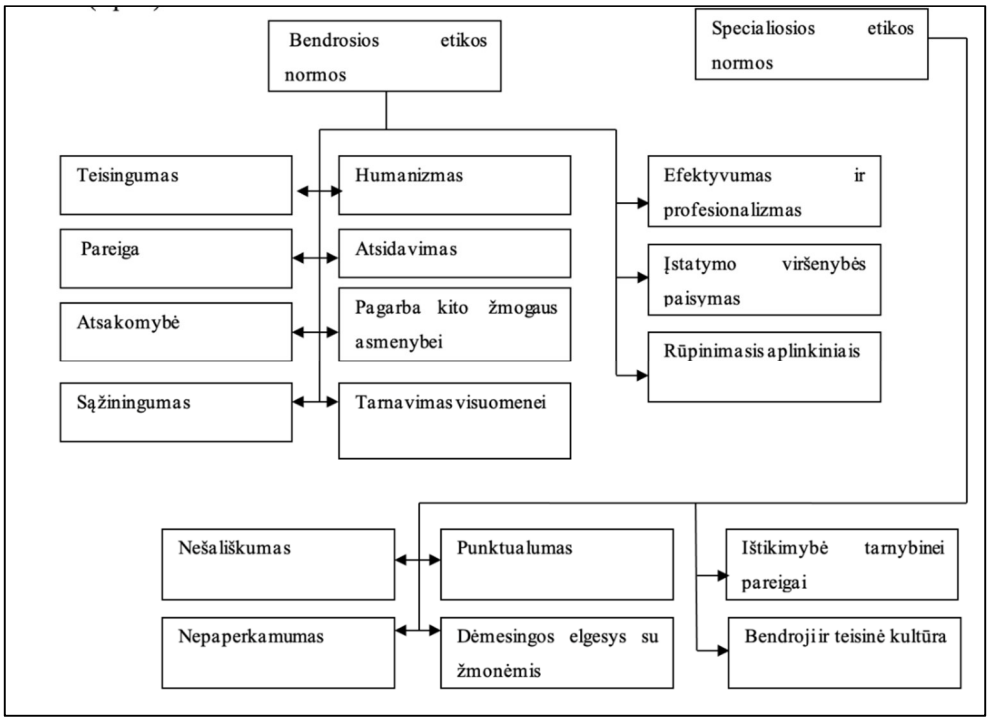
Policijos darbo specifika, sudėtingos darbo sąlygos, siaura riba tarp etiško ir netiško, teisėto ir neteisėto elgesio, dažnai pasitaikančios stresinės situacijos, kurių metu panaudojama jėga, sąlygoja etikos pažeidimus. Dėl darbo specifikos ir pobūdžio policijos pareigūnų profesinės etikos normos yra griežtesnės, užtikrinamos administracinėmis sankcijomis. ES šalyse policijos pareigūnų profesinė etika reglamentuojama etikos kodekso, kurio nesilaikymas gali tūrėti neigiamas pasekmes pasireiškiančias policijos pareigūno atleidimu iš darbo (Ermošina, 2010). Policijos pareigūnų profesinė etika apjungia tiek bendrąsias, tiek specialiąsias etikos normas (žr. 1 pav.).

Bendrieji ir specialieji etiniai reikalavimai policijos pareigūnams reguliuoja ne tik profesinę jų veiklą, bet ir skirti formuoti aukštas asmenines etines ir moralines normas, policijos pareigų atsparumą ir stabilumą neigiamų išorinių veiksnių poveikiui (Barker, 2011). Galima teigti, etiniai reikalavimai policijos pareigūnams tiesiogiai daro įtaką jų atliekamo darbo kokybei ir efektyvumui. Atitinkamai etinių reikalavimų laikymosi užtikrinimas yra labai svarbus kiekvienai demokratinei valstybei.

Dėl šių priežasčių etinių reikalavimų paisymas yra privalomas policijos pareigūnams. Atitinkamai policijos pareigūnai susiduria su vidiniu ir išoriniu spaudimu, skatinančiu etinių reikalavimų pažeidimus kasdieninėje veikloje (Ermošina, 2010). Tai šiuolaikinės visuomenės problema, kurioje santykis tarp teisių ir etikos, teisių ir moralės normų yra vienas iš svarbiausių šiuolaikinės visuomenės gyvenimo veiksnių.

Etinių reikalavimų užtikrinimo policijoje problema ES šalyse sprendžiama ilgiau nei dešimtmetį, pastaraisiais metais ypatingas dėmesys yra skiriamas tarnybinės policijos etikos

vystymui siekiant suformuluoti tam tikrą teorinę bazę, kurios pagalba ugdyti aukštos moralės policijos pareigūnus (Delattre, 2009). ES šalių patirtis, sprendžiant etinių reikalavimų užtikrinimo policijoje problemas, atskleidžia, kad siekiant užtikrinti šių reikalavimų laikymąsi, aktyviai formuojami ir diegiami etikos principai, kurių turi laikyti policijos pareigūnai savo veikloje.



1 paveikslas. Etiniai reikalavimai policijos pareigūnams
Šaltinis: sud. aut. pgl. Valeckas (2013)

Spire (2020) aptaria siekį, kad policijos pareigūnai savo veikloje vadovautųsi tokiais pagrindiniais etikos principais:

- policijos pareigūnai turi pasirinkimo teisę priimant sprendimus, susijusius su piliečių gyvybės, laisvės ir nuosavybės klausimais;
- policijos pareigūnai tiesiogiai atsakingi už tvarkos palaikymą ir saugojimą;
- policijos pareigūnai privalo ginti piliečių teises;
- policijos pareigūnai, kaip visuomenės tarnautojai ir jos interesų gynėjai, privalo laikytis aukščiausių elgesio standartų (sąmoningumo, teisingumo, objektyvumo, aukštų moralės normų);
- policijos pareigūnai turi teisę naudoti neviešus, operatyvius paieškos metodus, kuriuos taikant konfidencialios informacijos panaudojimas pilnai priklauso nuo pareigūno asmeninių savybių;
- policijos pareigūnai turi suvokti, kad etninių mažumų atstovai dažnai juos traktuoja kaip visų lygių valdžios atstovus;
- nekvalifikuoti ir neteisėti policijos pareigūnų veiksmai padaro tiesioginę žalą visai teisėsaugos sistemai.

Šie etikos principai įtvirtinami ir išplėtojami daugelio šalių policijos etikos kodeksuose. Etiniai reikalavimai policijos pareigūnams Lietuvoje apibrėžiami Lietuvos policijos darbuotojų

etikos kodekse, patvirtintame Lietuvos policijos generalinio komisaro 2018 m. rugpjūčio 2 d. įsakymu Nr. 5-V-706.

Lietuvos policijos darbuotojų etikos kodekso 4 str. įvardyta visa eilė etikos principų, priskirtinų bendražmogiškiems etikos principams: pagarba žmogui ir valstybei, teisingumas, atsakomybė, nesavanaudiškumas, sąžiningumas, padorumas, pavyzdingumo. Kiti principai - lojalumas, nešališkumas, politinis neutralumas, viešumas ir skaidrumas - laikyti išskirtinai policijos darbuotojų profesinės etikos - profesinės veiklos ir elgesio - principais.

Vadovaujantis visais minėtais veiklos ir elgesio principais, šio kodekso 6 str. suformuojamos nuostatos, kurių policijos pareigūnas privalo laikytis tarnybos ir ne tarnybos metu. Aptarsime keletą šių principų pateikdami pavyzdžius.

Pagarbos žmogui ir valstybei etikos principas įtvirtinamas Lietuvos policijos pareigūnų etikos kodekso 6 str. 6.1.- 6.3. poskyriuose, kuriuose nurodoma, kad policijos pareigūnas vykdydamas savo pareigas privalo „gerbti ir ginti kiekvieno žmogaus garbę ir orumą bei pagrindines teises ir laisves, netoleruoti žeminančio elgesio“ , „būti humaniškas, stengtis padėti kiekvienam asmeniui, kuriam reikalinga pagalba, suteikti žmonėms objektyvią ir visapusišką informaciją apie jų teises, pareigas, galimybes, nedarydamas įtakos galimam apsisprendimui ir interesams“; „laikytis bendravimo kultūros, vykdydamas tarnybines (darbo) pareigas bendrauti dalykiškai ir santūriai, visais atvejais išlikti mandagus ir taktiškas, elgtis pagarbiai“. Visuose 6.1 ir 6.2 poskyriuose akcentuojama sąvokos „kiekvieno žmogaus, kiekvienam žmogui“. Šis etinis reikalavimas policijos pareigūnams įtvirtina kitą svarbų „lygybės prieš įstatymą“ teisinį principą, remiantis kuriuo įstatymai gina visų piliečių teises ir laisves, kaip ir tai, kad prieš įstatymą yra lygūs visi piliečiai nepriklausomai nuo jų socialinio statuso, tautybės ir kt. skirtumų.

Nešališkumo principas įtvirtintas Lietuvos policijos pareigūnų etikos kodekso 6 str. 6.2 poskyryje, teigiant, kad policijos pareigūnas suteikia „žmonėms objektyvią ir visapusišką informaciją apie jų teises, pareigas, galimybes, nedarydamas įtakos galimam apsisprendimui ir interesams“; 6.4 poskyryje – reiškiant savo asmenines politines pažiūras ir įsitikinimus, „neskatinti policijos bendruomenės, kitų socialinių grupių ir visuomenės supriešinimo, nesantaikos kurstymo“; 6.5 poskyryje – teikiant „oficialius ir (ar) viešus komentarus policijos įstaigos(-ų) vardu apie policijos veiklą, uždavinių įgyvendinimą, nereikšti asmeninės nuomonės, jeigu ji yra nesuderinama su policijos įstaigos (-ų) tikslais, pozicija ar interesais“; 6.6 poskyryje – būnant tolerantišku „viešai nereikšti asmeninių simpatijų ar antipatijų vadovams, pavaldiniams, kolegoms, visuomenės veikėjams, visada išlikti objektyvus ir nešališkas“; 6.7 poskyryje – priimant sprendimus „būti teisingas ir nešališkas, užtikrinti, kad jo priimami sprendimai būtų teisėti ir objektyvūs, asmeniškai už juos atsakyti ir būti pasirengęs pateikti jų priėmimo motivus”.

Teisingumo principas įtvirtintas Lietuvos policijos pareigūnų etikos kodekso 6 str. 6.2, 6.7, 6.8 poskyriuose, teigiant, kad policijos pareigūnas turi suteikti žmonėms objektyvią ir visapusišką informaciją apie jų teises, pareigas, galimybes, kad priimdamas sprendimus, jis turi būti teisingas, kad jis neturi piktnaudžiauti policijos pareigūno statusu. Taip pat nurodoma, kad policijos pareigūnas turi visuose veiksmuose bei sprendimuose „saugoti profesinę garbę ir elgtis taip, kad savo elgesiu ar veiksmais nediskredituotų savo vardo, policijos pareigūno (...) statuso ir policijos autoriteto“ (7.1 poskyris).

Policijos pareigūnams keliami griežti etiniai reikalavimai kalbant apie sąžiningumą, jiems neleidžiama piktnaudžiauti policijos pareigūno statusu (6.8 poskyris), toleruoti „kolegų daromų teisės pažeidimų ir elgesio nesuderinamo su šio Kodekso ar kitų teisės aktų reikalavimais“ (6.9 poskyris).

Padorumo principas įtvirtintas Lietuvos policijos darbuotojų etikos kodekso 6 str. 6.10 – 6.11. poskyriuose, kuriuose nurodoma, kad policijos pareigūnas turi „asmeniškai informuoti kolegas apie pastebėtas jų daromas ar padarytas klaidas, savo pastabas pateikti korektiškai, esant poreikiui, suteikti pagalbą arba pateikti konstruktyvius siūlymus“; „neskatinti ir netoleruoti konfliktinių situacijų kolektyve, kilusius nesutarimus spręsti diplomatiškai, aptariant juos tarpusavyje arba kreipiantis į kompetentingus subjektus, galinčius padėti”.

Atsakomybės principas reikalauja, kad policijos pareigūnas atsakingai bendrautų su asmenimis, t. y. jis turėtų „laikytis bendravimo kultūros, vykdydamas tarnybines (darbo) pareigas bendrauti dalykiškai ir santūriai, visais atvejais išlikti mandagus ir taktiškas, elgtis pagarbiai“ (6.3 poskyris); taip pat vengti viešų ir privačių interesų konflikto (6.8 poskyris). Atsakomybės principas persipina su viešumo ir skaidrumo principu, kuriam keliami tokie pagrindiniai reikalavimai: „suteikti žmonėms objektyvią ir visapusišką informaciją apie jų teises, pareigas, galimybes, nedarydamas įtakos galimam apsisprendimui ir interesams“ (6.2 poskyris); „nereikšti asmeninės nuomonės, jeigu ji yra nesuderinama su policijos įstaigos (-ų) tikslais, pozicija ar interesais“ (6.5 poskyris).

Išsamūs reikalavimai keliami pavyzdingumo principo užtikrinimui, kurie yra skelbiami Lietuvos policijos pareigūnų etikos kodekso 7 str. 7.1 – 7.2. poskyriuose. Šiuose reikalavimuose nurodoma, kad policijos pareigūnas privalo „saugoti profesinę garbę ir elgtis taip, kad savo elgesiu ar veiksmais nediskredituotų savo vardo, policijos pareigūno (...)statuso ir policijos autoriteto“; „visada atminti, kad savo elgesiu ir veiksmais jis rodo pavyzdį ir kad pagal jo elgesį bei įvaizdį sprendžiama apie visą policijos sistemą, jos pareigūnus ir kitus darbuotojus.“

Lojalumo principą pagrįstume 6.5 poskyriu, kur teigiama, kad „teikdamas oficialius ir (ar) viešus komentarus policijos įstaigos (-ų) vardu apie policijos veiklą, uždavinių įgyvendinimą“, pareigūnas negali reikšti asmeninės nuomonės, „jeigu ji yra nesuderinama su policijos įstaigos (-ų) tikslais, pozicija ar interesais“ bei 6.6 poskyriu – „ (...) viešai nereikšti asmeninių simpatijų ar antipatijų vadovams, pavaldiniams, kolegoms, visuomenės veikėjams (...)“.

Politinio neutralumo principas neturi kodekse išsamesnio paaiškinimo, priešingai 6.4 poskyryje minima, kad policijos pareigūnas gali reikšti „asmenines politines pažiūras ir įsitikinimus“, tik negali kurstyti nesantaikos.

Policijos pareigūnų diskrecinės valdžia remiasi etiniais principais, bet ir policijos darbuotojų veiklos etikos principuose galime įžvelgti diskrecijos teisę, kuomet Policijos darbuotojų etikos kodekse teigiama – „policijos darbuotojas, laikydamasis aptartų nuostatų, taip pat nuostatų, kurios nėra įsakmiai įvardytos, tačiau konkrečioje situacijoje pagal visuotinai priimtinas elgesio normas turėtų būti pasirenkamos kaip teisingo ir etiško elgesio modelis, turi vadovautis šiais moraliniais orientyrais“ (7 skyrius).

Išnagrinėjus Lietuvos policijos darbuotojų etikos kodekse keliamus reikalavimus policijos pareigūnams galima teigti, kad jie grindžiami tiek bendraisiais etikos principais, tiek profesinės etikos principais. Suformuotas Lietuvos policijos darbuotojų etikos kodeksas formuoja ir reguliuoja policijos pareigūnų etišką elgesį, formuoja moralines vertybes, bet ir palieka diskrecijos teisę pasirinkti savo nuožiūra teisingo ir etiško elgesio modelį, vadovaujantis nurodytomis etikos nuostatomis kaip moraliniais orientyrais. Profesinės etikos kodekse yra apibrėžtos etikos normos, kurių turi paisyti policijos pareigūnai, o jų išpildymas yra siejamas su tinkamu policijos pareigūno pareigų atlikimu. Taigi policijos pareigūnas, priimdamas tam tikrus sprendimus, turi ne tik atsižvelgti į tai, ar įstatymas jam suteikia galią priimti tam tikrus sprendimus, bet ir į tai, ar tai neprieštarauja etinėms normoms.

Išvados

Policijos pareigūno diskrecinė valdžia suprantama kaip pareigūno, priklausančio policijos institucijai ir turinčio tam tikrus teisės aktais suteiktus įgaliojimus, asmeninis gebėjimas savarankiškai priimti teisėtus sprendimus arba atlikti teisėtus veiksmus, kuomet reikalaujama atsakingo pasirinkimo iš keletos alternatyvių galimybių ir kartu supratimo apie kas yra teisėta, teisinga ir išmintinga. Diskrecinė valdžia nėra absoliuti, o įgyvendinama teisės aktų ribose; ji turi būti grindžiama objektyviais faktais bei bendraisiais teisės principais; turi būti laikomasi esminių teisinės valstybės, policijos įstaigų tarnavimo žmonėms, atsakingo administravimo principų.

Policijos kompetencija įgyvendinant administracinę ir baudžiamąją teisę, naudojant teisės pažeidimų prevencijos priemones bei užtikrinant viešąją tvarką; efektyvus socialinės kontrolės vykdymas, leidžiantis derinti teisėtvarkos institucijų taikomas priemones ir žmogaus teisių, laisvių ir teisėtų interesų garantijų sistemą, lemia, jog policijos pareigūnai turi plačią diskrecinę valdžią viešojo administravimo sistemos kontekste, t. y. kiek jų neriboja imperatyvios teisės aktų normos.

Diskrecinė valdžia kartais apibūdinama kaip protingas tarnybinis bendravimas ir vadovavimas, sąžiningas įžvalgumas, protingi veiksmai ir panašiai. Šiame apibūdinime įžvelgiame diskrecijai būdingus etinius aspektus. Juk diskrecija – tai policijos pareigūno laisvė pasirinkti vieną iš daugelio galimų sprendimų variantų nepažeidžiant įstatymų, o jo sprendimus, veikimą ar neveikimą, be abejo, lemia jo etinės nuostatos.

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ETHICAL ASPECTS FOR THE DISCRETIONARY POWER OF POLICE OFFICIALS IN PUBLIC ADMINISTRATION

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Summary

The article theoretically analyses the content of the discretion of police officers in public administration, the limits of this power, and the novelty of the topic is based on the fact that special emphasis is placed on the ethical aspects of the discretion of police officers. The object of the research is the ethical aspects of the discretionary power of police officers in public administration. The aim is to reveal the content and limits of the discretion of police officers in public administration, emphasizing ethical aspects. Objectives of the article: 1) to describe the concept and features of discretionary power; 2) to highlight the limits of the discretion of police officers; 3) to reveal the ethical aspects of the discretionary power of police officers in public administration. Research methods: analysis of scientific literature, analysis of legal acts, analysis of court practice of the Republic of Lithuania, deductive, inductive, systematization, generalization.

The discretionary power of a police officer is understood as the personal ability of an officer who is a member of a police authority and has certain statutory powers to make lawful decisions or take legal action on his or her own, when a responsible choice of several alternatives is required, together

with an understanding of what is legal, just and wise. Discretionary power is not absolute but is exercised within the limits of the law; it must be based on objective facts and general principles of law; the basic principles of the rule of law, the administration of the police and the responsible administration of the people must be observed. Competence of the police in the implementation of administrative and criminal law, in the use of measures to prevent violations of the law and in ensuring public order; the effective exercise of social control, which makes it possible to reconcile the measures taken by law enforcement authorities with the system of guarantees of human rights, freedoms and legitimate interests, means that police officers have a wide discretion in the context of the public administration system, e. i. to the extent that they are not limited by mandatory legal norms. Discretionary power is sometimes described as intelligent official communication and leadership, honest foresight, intelligent actions, and the like. In this description, we see the ethical aspects inherent in discretion. After all, discretion is the freedom of a police officer to choose from a number of possible solutions without violating the law, and his decisions, actions or omissions are, of course, determined by his ethical provisions.

***Keywords**: public administration, discretionary power, police officer, ethics.*

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PAVIENIŲ NUSIKALSTAMŲ VEIKŲ IR NUSIKALSTAMŲ VEIKŲ DAUGETO TEISINIO VERTINIMO IR KVALIFIKAVIMO PROBLEMINIAI KLAUSIMAI TEISĖSAUGOS VEIKLOJE

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Anotacija. *Tiriant nusikalstamas veikas ypatingą reikšmę turi kvalifikavimo procesas. Teisingas kvalifikavimas sudaro prielaidas įgyvendinti baudžiamojo kodekso ir baudžiamojo proceso kodekso keliamus tikslus, uždavinius, įstatymų numatytas procesines teises. Adekvatus kvalifikavimas padeda teisingai nustatyti kaltinimo apimtį, įrodinėjimo ribas, įtariamojo ir kaltinamojo teises žinoti, kuo jis įtariamas ir kaltinamas, suteikia aiškumą, nuo ko gintis, sudaro prielaidas taikyti baudžiamojo įstatymo numatytas lengvatas, padeda užtikrinti nukentėjusiojo ir kitų proceso dalyvių teises, sąlygoja trumpesnį, sklandų, ekonomišką procesą. Kvalifikavimo procesas nėra aprašytas įstatymuose, jis paliktas teisėsaugos ir teismų praktikai, teismas kiekvienoje byloje, priimdamas nuosprendį privalo pasisakyti dėl kvalifikavimo teisingumo. Kaip rodo praktika, kyla nemažai keblių kvalifikavimo situacijų. Šios situacijos visų pirma susiję su veikos turinio ir tapatumo nustatymu: ar kvalifikuojama pavienė nusikalstama veika, ar nusikalstamų veikų daugetas. Pavienės nusikalstamos veikos formos turi esminės įtakos kvalifikavimui, kadangi nuo jų priklauso nusikalstamos veikos baigtumo laikas. Kai kuriais atvejais, nuo veikos padarymo aplinkybių priklauso, ar veika turi būti laikoma paviene nusikalstama veika, ar nusikalstamų veikų daugetu. Teorijoje stebima tendencija supaprastinti pavienės nusikalstamos veikos sampratą, rūšis, jos formomis laikant tik tęstinę, trunkančiąją ir sudėtinę veiką. Daugeto požiūriu tiek teorijoje, tiek praktikoje įsišaknija dvi nusikalstamų veikų daugeto formos – idealioji ir realioji sutaptis. Vertindamas nuomones ir mokslinę diskusiją šioje srityje, autorius teikia siūlymus, dėl aktualių pavienės veikos ir daugeto klausimų.*

Pagrindinės sąvokos: *kvalifikavimas, nusikalstamų veikų kvalifikavimas, inkriminavimas, pavienė veika, daugetas.*

Įvadas

Teisingas baudžiamojo įstatymo pritaikymas sudaro pagrindą teisingam nusikalstamos veikos teisiniam įvertinimui. Teisingas kvalifikavimas yra ir procesinių teisių užtikrinimo pagrindas, nes baudžiamojo proceso metu padeda teisingai nustatyti kaltinimo apimtį, įrodinėjimo ribas, įtariamojo ir kaltinamojo teisę žinoti, kuo jis įtariamas ir kaltinamas, suteikia aiškumą, nuo ko gintis, padeda užtikrinti kitų proceso dalyvių teises, sąlygoja trumpesnį ir sklandų, ekonomišką procesą. Teisingas kvalifikavimas – raktas į teisingą bylos išsprendimą.

Nusikalstamų veikų kvalifikavimas - kompleksinis procesas. Nors tai kasdienė teisėsaugos praktika, pasitaiko situacijų, kurių teisinis kvalifikavimas sudėtingas. Baudžiamasis įstatymas abstraktus, nepateikia atsakymų į visus aktualius klausimus. Baudžiamosios teisės bei nusikalstamų veikų kvalifikavimo teorija nevienareikšmė ir turi neišbaigtumo. Baudžiamasis įstatymas keičiasi, sukuria iki tol nebuvusių situacijų, nepageidautinos normų konkurencijos ar net kolizijų. Kaip pastebėta teoretikų, nusikalstamų veikų kvalifikavimo taisyklės Lietuvos teisės šaltiniuose retai kada formuluojamos ir net nebandomos pateikti kaip

baigta susisteminta visuma (Bieliūnas, 2017, p. 8). Kvalifikavimo teorijos šaltiniai gana seni,[1] o teismų praktikos aiškinimai kartais susiaurina teoriją.

Kaip rodo praktika, nėra baigtinių atsakymų visiems kvalifikavimo atvejams ir kartais prireikia kelių instancijų teismų norint rasti tinkamiausią įstatymo normą. Todėl sprendžiant kvalifikavimo klausimus labai svarbi Aukščiausiojo Teismo (kasacinio teismo) praktika. Kartu labai svarbios teorinės įžvalgos ir argumentai, analizuojant šią praktiką ir siūlant pokyčių įstatymų leidybai. Svarbios teorinės nuostatos bei taisyklės, padedančios teisėsaugos pareigūnams išspręsti kvalifikavimo klausimus. Šios taisyklės aktualios ir metodiniu požiūriu, studijuojant materialiąją teisę. Ypatingai svarbūs esminiai klausimai susiję su kvalifikavimu: ar inkriminuotina pavienė veika, ar kelios veikos; koks santykis tarp jų. Svarbios pavienės veikos atmainos ir jų kvalifikavimas; pavienės veikos atskyrimas nuo nusikalstamų veikų daugeto ir jo atmainų, normų konkurencijos įveikimo klausimai.

Tyrimo naujumas. Apie kvalifikavimą įsigaliojus naujiems baudžiamiesiems įstatymas rašė E. Bieliūnas. Apie daugetą nemažai rašė A. Nevera, T. Girdenis. Mokomojoje literatūroje pateikiamos gerokai pasenę nuostatos. Vis dar trūksta vieningos kvalifikavimo teorijos, aiškų kvalifikavimo taisyklių. Todėl straipsniu siekiama pildyti kvalifikavimo teorijos spragas, padaryti įžangą į sistemingos kvalifikavimo teorijos kūrimą.

Tyrimo objektas – kvalifikavimas, kaip veikų įvertinimo procesas, pavienės nusikalstamos veikos rūšys, nusikalstamų veikų daugeto rūšys, ir jų įtaka nusikalstamų veikų kvalifikavimui.

Tyrimo tikslai. Siekiant tobulinti kvalifikavimo teorijos nuostatas, sisteminti šiuo klausimu parašytus darbus, keliamas tikslas aprašyti kai kurias specifines nusikalstamų veikų kvalifikavimo situacijas ir joms taikytinas taisykles, pateikti samprotavimų, kas yra pavienė veika ir jos rūšys, kokia jos įtaka kvalifikavimui; taip pat pateikti teorines pozicijas, kas yra nusikalstamų veikų daugetas ir kuo jis svarbus kvalifikavimo požiūriu, atribojant pavienę nusikalstamą veiką ir daugetą. Taip pat siekiama aprašyti problemines kvalifikavimo situacijas kai susiduriama su pavienės veikos ir daugeto atribojimu, inkriminavimu, komplikuotų situacijų kvalifikavimu. Straipsnyje nenagrinėjami kiti probleminiai kvalifikavimo klausimai, tokie kaip konkurencijos rūšys ir jos įveikimas, bendrininkų padarytų veikų kvalifikavimo klausimai, kvalifikavimas pasikeitus įstatymui, kvalifikavimo teisme keitimas, žmogaus teisių doktrinos ir sąžiningo proceso problemos, susiję su kvalifikavimu, taip pat bausmių skyrimo klausimai, kuriems turi įtakos nusikalstamų veikų daugeto rūšys.

Tyrimo metodai. Tyrimo metu panaudoti šie tyrimo metodai: indukcija, dedukcija, sisteminės analizės, dokumentų turinio analizės metodai.

Kvalifikavimo samprata, reikšmė ir kai kurios probleminės situacijos baudžiamojo teisingumo sistemoje

Baudžiamojoje teisėsaugoje svarbus teisėtumas, efektyvus ir kokybiškas įstatymo taikymas. „Kvalifikavimo“ sąvoką tiesiogiai įtvirtina baudžiamojo proceso įstatymas, nors jos neapibrėžia. Baudžiamojo proceso kodekso (BPK) 115 str. 1 d., 256 str. 2 d., 299 str. 2 d., 305 str. 1 d. 3 p., 4 d., 369 str. 2 d., nurodo kvalifikavimą, o šio kodekso 255 str. 2 d, 256 str. 2 d., 362[1] str. 4 d., 451 str. 5 p. – perkvalifikavimą.[2] Proceso įstatymai nurodo kvalifikavimą kaip

[1] Paminėtini: Klimka, A. Nusikaltimų kvalifikavimas. Vilnius: Vilniaus universitetas 1970; Apanavičius, M.; Pavilonis, V. Nusikaltimų kvalifikavimo procesas ir jų atribojimas. Vilnius: Vilniaus universitetas, 1983.

[2] Proceso įstatymai nurodo kvalifikavimą, šios sąvokos tiesiogiai neįvardijant, pvz. BPK 187 str. 1 d. „Pranešime apie įtarimą, prokuroro nutarime ar ikiteisminio tyrimo teisėjo nutartyje pripažinti įtariamuoju turi būti nurodyta nusikalstama veika (padarymo vieta, laikas, kitos aplinkybės) ir baudžiamasis įstatymas, numatantis tą nusikalstamą veiką, taip pat išvardytos įtariamojo teisės“; taip pat ir BPK 219 str. 5 p.

procesą ir kaip rezultatą. Baudžiamojo proceso kokybė ir įrodinėjimo kokybė didele dalimi priklauso nuo kvalifikavimo. Kvalifikavimo proceso praktinius reikalavimus įtvirtina Generalinio prokuroro rekomendacijos dėl pranešimo apie įtarimą parengimo ir nusikalstamų veikų perkvalifikavimo ikiteisminio tyrimo metu patvirtinimo (Generalinio prokuroro įsakymas, 2014).

Baudžiamasis kodeksas nenumato kvalifikavimo sąvokos ar tvarkos, tačiau būtent baudžiamoji materialinė teisė yra ta sritis, kuriai kvalifikavimas svarbiausias, nes reikia tinkamai pritaikyti materialiąsias normas. Kvalifikavimas – konkrečios normos parinkimas asmens padarytai veikai arba tapatumo tarp padarytos veikos ir nusikaltimo sudėties, aprašytos BK specialiosios dalies normoje, nustatymas bei įtvirtinimas teisės normos taikymo akte (Pavilonis et al., 2000, p. 19-20). Kvalifikavimą sąlyginiai galima skaidyti į tris dalis – baudžiamosios (draudžiančiosios) normos požymių nustatymą, konkretaus atvejo požymių nustatymą, ir atvejo bei normos sulyginimą (Piesliakas, 2006, p. 194-196).

Kvalifikavimo reikšmė – adekvatus teisinis įvertinimas: tai ir teisinga bausmė, teisingumas, teisingas nukentėjusiojo teisių įgyvendinimas; tai ir teisingo teisinio santykio tarp nusikaltusio asmens ir visuomenės nustatymas, galimybių taikyti įstatymo numatytas lengvatas kaltininkui užtikrinimas.[3] Geras kvalifikavimas turi ir politinę reikšmę, nes sukuria teisėtumą, nustato pažeistų teisių šalies, pažeidėjo ir kaltintojo pozicijos teisingą santykį, atkuria teisėtumo atmosferą, suteikia subjektyvaus pasitenkinimo teisėsauga įspūdį ir teisėtumo atmosferą.

Kvalifikavimui artima ir kita – inkriminavimo sąvoka,[4] turinti savitą atspalvį ir taip pat plačiai naudojama socialiniame diskurse aptariant nusikalstamų veikų įvertinimą. Kadangi kvalifikavimo sąvoka numatyta įstatymuose, plačiai vartojama praktikoje, ši sąvoka laikytina pagrindine baudžiamosios teisenos sąvoka.

Kvalifikavimas yra santykinai autonomiškas teisės reiškinys, kompleksinis tarpšakinis teisės institutas, aktualus baudžiamojo proceso, baudžiamajai, konstitucinei teisei (Bieliūnas, 2008b, p. 11). Kvalifikavimo klausimas nuolatos aktualus, nes įstatymas keičiasi, atsiranda naujų iki tol nepažintų situacijų, „pasitaiko sudėtingesnių bylų, kai reikia ieškoti originalių kvalifikavimo sprendimų“ (Bieliūnas, 2004, p. 31-32), o „kvalifikavimo reiškinys apima ir diskrecinio pobūdžio sprendimus, kai teisę taikančiam subjektui įstatymas leidžia ir netgi primeta pareigą pačiam vertinti faktus, vadovaujantis tokiomis normomis, kurios neturi griežtų formaliųjų ribų“ (Bieliūnas, 2008a, p. 21). Be to, teorinės pastangos svarbios „kvalifikavimo praktikai, teikdamos naujų tikslesnių tokios veiklos rekomendacijų.“ (Bieliūnas, 2008b, p. 11).

Dėl abstraktaus įstatymo, jo teisinės technikos kvalifikavimas ne visada aiškus. Kvalifikavimas gali būti neaiškus, kai vertinamos kelios veikos ir neaiškūs šių veikų, santykiai. Taigi, kvalifikavimas neatsiejamas nuo baudžiamojo įstatymo konstrukcijos ir konkrečių sudėties požymių, įtvirtintų specialios dalies straipsnyje.

Pirmas esminis kvalifikavimo žingsnis teisiniu požiūriu – pavojingos veikos, aprašytos BK specialiosios dalies straipsnyje esmės nustatymas, jos tapatumo atskleidimas. Po to seka

[3] Tik kvalifikavus pagal kai kurias normas galima taikyti atleidimą nuo baudžiamosios atsakomybės. Kvalifikavimas pagal sunkesnę norma atima galimybę kaltininkui tikėtis lengvatų, atitinkamai nebelieka galimybės tikėtis lengvo ir greito proceso.

[4] Inkriminuoti (*lot. incriminare)* – priskirti kam nusikaltimą, laikyti nusikaltusiu. „Interleksis“, kompiuterinis tarptautinių žodžių žodynas. UAB „Fotonija“, „Alma litera“. Vilnius, 2003. Taip pat ir: inkriminãvimas (lot. *in* – į + *crimino* – kaltinu), asmens apkaltinimas nusikalstamos veikos padarymu ar konkrečios nusikalstamos veikos, aprašytos baudžiamojo kodekso tam tikrame straipsnyje, jam priskyrimas. Inkriminavimo terminas teisės aktuose nevartotinas. Visuotinė lietuvių enciklopedija, sk. aut. A. Nevera, https://www.vle.lt/straipsnis/inkriminavimas/. Taip pat ir: inkrimin‖úoti *, ~úoja, ~ãvo* primesti kaltę, įtarti nusikaltus, apkaltinti. ~ãvimas: *teis.* skirti prie kurios rūšies, kategorijos, vertinti: *K. nusikaltimą. Kaip k. tokį elgesį* Dabartinės lietuvių kalbos žodynas / vyriausiasis redaktorius Stasys Keinys. – 7-as patais. ir papild. leid. – Vilnius: Lietuvių kalbos institutas, 2012, XXVI, 969 p., ISBN 978-609-411-079-5; elektroninis variantas, 2015 (atnaujinta versija, 2017), ISBN 978-609-411-151-8. – lkiis.lki.lt. https://ekalba.lt/dabartines-lietuviu-kalbos-zodynas/kvalifikuoti,%20~~avimas?paieska=kvalifikuoti&i=f2223957-9231-4a0e-8d9d-beb1064e3828

straipsnyje aprašyto padarinio (padarinių) nustatymas ir pavojingos veikos padarymo laiko nustatymas. Tik atskleidus šiuos požymius paprastai sprendžiama apie subjektyviuosius požymius ir jų įtaką kvalifikavimui, jei šie požymiai įsakmiai nenurodyti normoje. Gyvenimiško atvejo aplinkybių nustatymas svarbus, be ne pats svarbiausias dalykas, nes kai kurios iš šių aplinkybių gali būti nesvarbios; tik dalis bylai reikšmingų faktų, sudarančių tą ar kitą veiką, panaudojami kvalifikuojant (Bieliūnas, 2017, p. 11). Kai kurie faktai tiesiogiai susiję su teisiniu vertinimu ir įstatymo požiūriu į juos (Bieliūnas, 2017, p. 11). Kvalifikuojant svarbūs ir egzistuojantys pagrindai teisiniam persekiojimui.[5]

Sprendžiant apie nusikalstamos veikos tapatumą labai svarbus veikos struktūros ir rūšies nustatymas. Todėl pagal esmę ir aprašymo būdą įstatyme, svarbi pavienė veika, jos rūšys, įtaka kvalifikavimui. Taip pat svarbūs pavienės veikos skirtumai nuo specifinių teisinio vertinimo situacijų - nusikalstamų veikų daugeto, atskirų jo rūšių, normų konkurencijos. Kaip rodo ikiteisminio tyrimo ir teismų praktika, susiduriama su situacijomis, kai neaišku, kaip reikia įvertinti veiką: kaip pavienį tęstinį nusikaltimą ar nusikalstamų veikų sutaptį; ar kaip savarankiškos veikos turi būti inkriminuoti alternatyvūs požymiai, ar pakanka juos laikyti vienos tęstinės veikos dalimi; ar galima vienam vertinamajam įvykiui pritaikyti kelis baudžiamojo kodekso straipsnius, numatančius atskiras nusikaltimų sudėtis. Šie klausimai reikalauja motyvuotų atsakymų, tikslaus teisinio vertinimo ir teorinio pagrindimo.

Kaip rodo bylos, ypatingai svarbus kvalifikavimo procese pavienės tęstinės veikos ir kelių nusikalstamų veikų (daugeto, realiosios sutapties, pakartotinumo) atribojimas ir kvalifikavimas. Neteisingas kvalifikavimas ir veikos tapatumo nustatymas veda prie neteisėtumo ir asmens teisių ribojimo. Negalima matyti nusikaltimo ten, kur jo nėra; negalima inkriminuoti daugiau veikų, negu padarė kaltininkas; negalima sukurti naujos kokybės, vieną nusikaltimą išskaidant į kelias normas ir jas inkriminuoti. Negalima kvalifikuoti veikos iš esmės neišsprendus normų konkurencijos klausimo.

Nusikalstamų veikų rūšys ir jų reikšmė nusikalstamų veikų kvalifikavimui

Kvalifikavimo proceso prielaida – baudžiamųjų normų konstrukcijos išmanymas. Tam padeda baudžiamosios normos esmės analizė. Norma aprašyta kaip sudėtis, kaip tam tikra teisinė konstrukcija. Svarbiausi nustatytini dėmenys – pavojinga veika ir pavojingi padariniai. Su veikos padarymu ir/ar padarinių kilimu siejama esminė nusikalstamos veikos savybė: baigtumas. Baudžiamasis įstatymas sukonstruotas taip, kad visos veikos yra pavienės, padarytos vieno asmens. Negalima absoliutinti šio teiginio ir manyti, kad baudžiamasis įstatymas sukonstruotas pavienės veikos įvertinimui: įstatymas universalus, o jį papildo teorija.

Dažnos situacijos, kai kvalifikuojant reikia nustatyti, ar veiką sudarantys veiksmai atitinka pavienę veiką, ar sudaro kelias veikas: pavyzdžiui, asmuo, atliekantis laisvės atėmimo bausmę kartu su bendrininku paskambina trims skirtingiems asmenims, nurodydamas nukentėjusiajam apgaulingas aplinkybes ir reikalavimą sumokėti, o bendrininkas laisvėje iš vieno asmens paima 2000 eurų, iš antro – 8000 eurų, o trečiasis perveda į bendrininko sąskaitą 3000 eurų. Galimi keli kvalifikavimo variantai, sukelsiantys skirtingas teisines pasekmes: tai trys savarankiško sukčiavimo atvejai, kiekvienas kvalifikuojamas pagal BK 182 str. 1 d.; arba tai vienas tęstinis didelės vertės sukčiavimas, kvalifikuojamas pagal BK 182 str. 2 d. Nuo pasirinkto kvalifikavimo priklausys veikos sunkumas, baigtumo momentas, bausmės skyrimas, senaties terminų skaičiavimas, t.y. teisinės pasekmės.

Pavienė nusikalstama veika ir jos kvalifikavimas. Pavienė nusikalstama veika yra tokia, kurią apibūdina objektyvių ir subjektyvių požymių visuma, ji atitinka vieną BK straipsnį

[5] BPK 3 str. numato aplinkybes, kada procesas negalimas. Nors veika gali būti kvalifikuojama, procesas negalimas.

ar jo dalį ir kuriai kvalifikuoti pakanka vieno BK specialiosios dalies straipsnio ar jo dalies. Jei tiriant faktus paaiškėja, kad padarytos kelios pavienės veikos, kiekviena jų kvalifikuojama pagal vieną BK straipsnį, privalomai nurodant šį straipsnį ir jo dalį.

Pavienei veikai būdingas objektyviųjų ir subjektyviųjų požymių bendrumas (Švedas et al., 2019, p. 390). Galima sutikti su teiginiu, kad pavienė veika yra vienos konkrečios baudžiamojo kodekso normos saugomos tiesioginės vertybės ar vertybių visumos pažeidimas, sujungtas vieningu kaltės turiniu (Girdenis, 2010, p. 31). Tai nusikaltimas (arba baudžiamasis nusižengimas), kurį sudaro pavojinga veika (formalios sudėtys) arba pavojinga veika ir pavojingas padarinys (materialiosios sudėtys). Pavienės veikos rūšimis teorijoje laikomos paprasta, tęstinė, trunkančioji (trunkamoji) ir sudėtinė (Abramavičius et al., 1998, p. 309).

Mokslo šaltiniuose galima rasti nevisiškai logikos ir baudžiamojo įstatymo taikymo požiūriu taikomą klasifikaciją, išskiriant pavienę, tęstinę, trunkamąją, sudėtinę veiką (Švedas et al., 2019, p. 390-394). Tai netikslu logikos bei metodiniu požiūriu. Ir tęstinė, ir trunkančioji, ir sudėtinė veika yra pavienės veikos atmainos. Pavienės veikos klasifikavimas ir pažinimas turi būti pradedamas nuo to, kad pavienės veikos yra paprastos ir sudėtingos. Ir tik sudėtingos pavienės veikos rūšimis galima laikyti tęstinę, trunkamąją ir sudėtinę (Girdenis, 2010, p. 29). Lietuvos Aukščiausiojo Teismo 2016 m. balandžio 28 d. Teismų praktikos nagrinėjant baudžiamąsias bylas dėl sudėtingų pavienių nusikalstamų veikų ir nusikalstamų veikų sutapčių apžvalgoje (LAT, 2016) be pagrindo pamirštama ir neakcentuojama pavienė paprasta veika. Teisės normų konstravimo požiūriu, teorijos nuoseklumo požiūriu negalima pritarti pavienės veikos koncepcijai, kurią sudaro tik tęstinė, trunkančioji ir sudėtinė veika. Tokiai pozicija svarbi ir BK 3 str. 1 d. nuostata: nusikalstamos veikos padarymo laikas yra veikimo (neveikimo) laikas arba baudžiamojo įstatymo numatytų padarinių atsiradimo laikas. Jei veikimą sudaro vienas veiksmas, sukeliantis vieną padarinį, tokia veikta yra baigta kilus padariniui. Ji yra pavienė paprasta veika ir nėra tęstinė, trunkančioji ar sudėtinė. BK 3 str. 1 d. implikuoja būtent parastos, aiškiai laike apibrėžtos veikos sampratą. Nusikalstamos veikos padarymo laikas yra aplinkybė, kuri privalomai nurodoma kaltinamajame akte (BPK 219 straipsnio 3 punktas), todėl toks laikas turi būti aiškus.[6]

Pavienė paprasta veika. Pavienė paprasta veika yra tokia, kurią sudaro viena veika, arba viena veika ir vienas padarinys. Tokios veikos baigtumo momentas – faktinis veiką sudarančio veiksmo atlikimas arba padarinio kilimo momentas. Kvalifikuoti tokią veiką paprasta, nes jai taikomas vienas BK SD straipsnis ir šio straipsnio dalis, numatanti veikos dispoziciją (pvz. šūvis į žmogų ir šio mirtis – BK 129 str. 1 d.). Priklausomai nuo dispozicijos rūšies ir veikos aprašymo, formuluojamas įtarimas, aprašant kaltininko faktinius pavojingus veiksmus arba neveikimą. Todėl kvalifikavimo logikos neatitinka situacijos, kai vienam nusikaltimui įvertinti pasitelkiamos dvi normos, pvz., žmogaus gyvybės atėmimas vienu smūgiu kvalifikuojamas kaip du nusikaltimai - sveikatos sutrikdymo ir neatsargaus gyvybės atėmimo sutaptis (Piesliakas, 2009, p. 18-19).

Pavienė tęstinė veika. BK 63 str. 10 d. nurodoma: „Nelaikoma, kad asmuo padarė kelias nusikalstamas veikas, jeigu jis padarė tęstinę nusikalstamą veiką.“ Įstatymas nepateikia tęstinės veikos apibrėžimo, tą palikdamas teorijai ir praktikai. Pavienės tęstinės veikos padarymo laikas yra paskutinio ją sudarančio veiksmo atlikimo laikas, o ji kvalifikuojama pagal vieną BK specialiosios dalies straipsnį ar jo dalį. Tęstinės veikos pavyzdys įstatyme – BK 129 str. 2 d. 5 p. „dviejų ar daugiau žmonių nužudymas:“ inkriminuojamas vienas straipsnis jo dalis ir punktas, jei kaltininkas nužudė du ar daugiau žmonių, turėdamas tokį sumanymą.

[6] Atitinkamai veikos padarymo laikas procesiniame dokumente turi būti nurodomas kiek įmanoma konkrečiau. Dėl tyrimo galimybių laikas kartais lieka neaiškus, aprašomas kaip apytikslis laikas („nuo.. iki... “, „ne vėliau kaip...“).

Nuo seno sutariama, kad „tęstiniu nusikaltimu laikoma veika, kuri susideda iš tapačių veiksmų, esant vieningai kaltei ir siekiant vieningo rezultato“ (Abramavičius et al., 1998 p. 311). Tačiau ilgainiui apibrėžimas tiek teorijoje (Švedas et al., 2019, p. 391), tiek praktikoje susiaurėjo ir tęstinės veikos skiriamuoju bruožu laikoma ne viena kaltė, o „vieninga tyčia.“ To priežastys – praktikoje pasitaikančios veikos dauguma atvejų tyčinės, kaltininkas veikdamas aktyviai, t.y. tęsdamas savo nusikalstamus veiksmus iš esmės visada veikia kryptingai, taigi, tyčia. Neveikimo atvejai gerokai retesni.

Kaip nurodoma Aukščiausiojo Teismo aiškinime, „Tęstine pripažįstama tokia nusikalstama veika, kuri susideda iš dviejų ar daugiau tapačių ar vienarūšių veikų, iš kurių kiekviena, vertinant atskirai, atitinka to paties BK specialiosios dalies straipsnyje numatyto nusikaltimo ar baudžiamojo nusižengimo objektyviuosius požymius, tačiau jos visos yra jungiamos vieningos tyčios (kasacinės nutartys Nr. 2K-P-412/2007, 2K-307/2007, 2K-743/2007, 2K-232/2010, 2K-474/2010, 2K-650/2010 ir kt.“ (LAT, 2016).

Teismų praktikoje ilgainiui išplėtota ir „vieningos tyčios“ samprata: „Vieningai tyčiai, jungiančiai atskirus nusikalstamus veiksmus, būdinga tai, kad pats kaltininkas šiuos savo veiksmus suvokia kaip vientisą nusikalstamą veiką ir, darydamas pirmą veiksmą, jau turi susiformavusį (pradinį) sumanymą ir dėl kito nusikalstamo veiksmo. Todėl tais atvejais, kai tyčia padaryti kitą nusikalstamą veiką kyla jau po pirmosios veikos, šios veikos paprastai kvalifikuojamos kaip pakartotinės (LAT, Nr. 2K-671/2001, 2K-181/2007, 2K-717/2007, 2K-605/2007, 2K-12/2009). Praktika akcentuoja tyčią, kaip kriterijų, skiriantį pavienę tęstinę veiką nuo savarankiškų nusikaltimų pakartojimo, arba realiosios sutapties – daugeto atmainos.

Kaip nustatoma vieninga tyčia? Bylose laikoma pakankama, kad asmuo tiesiog suvoktų, kad ir toliau darys tą patį, kad tai - ne vienkartinis aktas. „Nustatant vieningą tyčią vertinamas ne tik kaltininko prisipažinimas padarius nusikalstamą veiką, bet ir, be kita ko, išsiaiškinama, kaip jis suvokė ir įvertino savo daromų veikų pobūdį, kokios paskatos lėmė nusikalstamos veikos padarymą ir kokių padarinių šia veika buvo siekiama. Subjektyvieji nusikalstamos veikos požymiai, be nurodytų aplinkybių, nustatomi atsižvelgiant ir į išorinius (objektyviuosius) nusikalstamos veikos požymius: atliktus veiksmus, jų pobūdį, intensyvumą, būdą, situaciją, kuriai esant šie veiksmai buvo padaryti, ir pan.“ (LAT, 2016). Praktikoje pažymima, kad tyčia gali būti nebūtinai veikti nusikalstamai. Gali būti ir administracinių teisės pažeidimų kartojimas: asmuo sumano pagrobti statybinių medžiagų iš statybų aikštelės ir savo sumanymą realizuoja per kelis kartus, kai kiekvieną kartą užvaldytas vagystės dalykas sudaro iki 1 MGL. „Nusikalstama veika gali būti laikoma tęstine ir tais atvejais, kai viena ar kelios atskiros veikos atitinka administracinio teisės pažeidimo (administracinio nusižengimo) požymius, tačiau jų visuma vertintina kaip viena nusikalstama veika (LAT, Nr. 2K-307/2004; LAT, 2016).

Kaip savarankiškas kriterijus nustatyti vieningą tyčią naudojamas ir objektas, nes jis atspindi kaltininko tyčios kryptingumą. Iš kasacinio teismo praktikos įvairių kategorijų baudžiamosiose bylose matyti, kad vieningo objekto interpretavimui įtakos turi padarytos nusikalstamos veikos specifika, jos mechanizmas, taip pat byloje nustatytos kitos tęstinį nusikalstamos veikos pobūdį nurodančios aplinkybės (LAT, 2016).

Akivaizdu, kad teismų praktika susiaurino tęstinės veikos sąvoką, ją siedama tik su tyčia. Kadangi reikalavimas tyčios, o ne kaltės kildinamas ne iš įstatymo, o iš praktikos, praktika keistina. Fedosiuk jau senokai pastebėjo, kad tęstiniai nusikaltimai gali būti padaromi ne tik tyčia, bet ir neatsargiai, to pavyzdys – BK 223 str. taikymo praktika (Fedosiuk, 2002, p. 156); tokia pat savybe pasižymi ir BK 229 str. taikymas. Šiaip pozicijai pritaria Girdenis „Reikėtų pritarti kai kurių baudžiamosios teisės mokslininkų nuomonei, kad tęstinis nusikaltimas gali būti padaromas ir neatsargiai“ (Girdenis, 2007, p. 32).

Siūlytina baudžiamosios teisės teorijoje grįžti prie vienos kaltės, tęstinės veikos apibrėžimą siejant ne su „vieninga tyčia“, o su viena kalte. Kaip tyčinės veikos bruožas, kriterijus, gali būti vartojamas ir „bendras nusikalstamas sumanymas“.

Svarbus klausimas, susijęs su tęstine veika – ar padaryti neteisėti veiksmai (pavojingos veikos) turi būti tapatūs, ir kiek tapatūs. Kaip nurodoma kasacinio teismo praktikoje, „Tęstine veika taip pat gali būti pripažįstamos situacijos, kai pasikartojantys veiksmai nėra tapatūs ar vienarūšiai, tačiau jais įgyvendinamas tas pats veikos požymis (kasacinės nutartys baudžiamosiose bylose Nr. 2K-84/2011, 2K-269/2011) arba alternatyvūs veikos požymiai (kasacinės nutartys baudžiamosiose bylose Nr. 2K-124/2007, 2K-322/2008). Veiksmai, kuriais įgyvendinami alternatyvūs veikos požymiai, paprastai pripažįstami tęstine nusikalstama veika, jei juos jungia vieninga kaltininko tyčia ir jie yra padaryti dėl to paties nusikalstamos veikos dalyko“ (LAT, 2016). Vadinasi, veiksmai neturi būti visiškai vienodi. Šios išvados labai svarbios sprendžiant, ar galima veiksmus laikyti tęstiniais. „Veikos pripažinimas tęstine priklauso nuo rūšinių padarytos nusikalstamos veikos sudėties požymių, todėl atskirų kategorijų baudžiamosiose bylose gali būti atsižvelgta į skirtingas aplinkybes, patvirtinančias arba paneigiančias veikos tęstinumą“ (LAT, Nr. 2K-P-267/2011).

Kitas svarbus klausimas – ar tęstinei veikai taikytina „vieno šaltinio“ arba „to paties turto šaltinio“ kategorija. Vieno šaltinio sąvoka kilo iš tęstinių turtinių veikų kaip papildomas vieningą tyčią nurodantis požymis. Laikoma, kad turto užvaldymas iš to paties šaltinio rodo vieną nusikalstamą sumanymą. Iš tiesų vieno šaltinio sąvoka nors kai kuriais atvejais padeda, nėra būtina. Kaip nurodo kasacinis teismas, „to paties turto šaltinio“ požymis sukčiavimo bylose yra svarbus, bet neabsoliutus (LAT, Nr. 2K-192-788/2017). Be to, tęstinėmis veikomis gali būti ne tik turtinės, bet ir kitos veikos (gyvybei, sveikatai, pan.). Tokių veikų atveju vienas šaltinis negali būti išskiriamas. Tęstiniu nusikaltimu gali būti iš esmės bet koks tyčinis nusikaltimas, kurį kaltininkas sumanė iš anksto (pvz., sumanė nužudyti tris žmones skirtingu laiku). Tačiau būtina atkreipti dėmesį, kad tęstinumas, kaip veikos esmės požymis savaime būdingas kai kuriems nusikaltimams, kurie išreiškia procesą, pvz. apgaulingos apskaitos tvarkymas, piktnaudžiavimas. Aprašant kaltininko veiksmus procesiniame dokumente, sukuriančiame jo procesinį statusą, paprastai vartojama formuluotė „tęsdamas savo nusikalstamus veiksmus.“

Kvalifikavimui svarbus nusikalstamos veikos padarymo laikas. Tęstinės veikos padarymo laikas yra paskutinio veiką sudarančių veiksmų grandinės veiksmo laikas. Būtent šis laikas nurodomas kaip veikos padarymo laikas (būtinas kvalifikavimo ir nusikalstamų veikų įtvirtinimo procesiniame dokumente momentas).

Pavienė trunkančioji veika. Pavienė trunkančioji veika yra tam tikra nusikalstama būklė (būsena), kuri atsiranda padarius dažniausiai neteisėtą veiksmą ir kuri trunka, kol nutraukiama, pvz. asmuo neteisėtai įgyja ginklą, suklastotą dokumentą, netikrą pinigą, narkotikus, vaikų pornografiją, kitą neteisėtą dalyką, ir jį laiko. „Trunkamoji nusikalstama veika yra tada, kai kaltininkas tam tikrą laikotarpį nepertraukiamai yra nusikalstamos būsenos, kuri susidaro nevykdant teisinės pareigos arba padarius tam tikrą kitą neteisėtą veiksmą.“ (LAT, Nr. 2K-P-267/2011). Kaip nurodo kasacinis teismas, „trunkamoji nusikalstama veika apibūdinama nuolatiniu, nepertraukiamu atitinkamos nusikalstamos veikos sudėties, numatytos BK straipsnyje, realizavimu tam tikrą laiką (pavyzdžiui, BK 164, 242, 243, 316 straipsniai) (LAT Nr. 2K-7-68/2009, 2K-P-267/2011). Nustatant trunkamosios nusikalstamos veikos padarymo laiką svarbu tai, kad šiuo laiku pripažįstamas visas laikas, kai asmuo darė baudžiamajame įstatyme numatytą veiką, tačiau tokia veika kvalifikuojama pagal baudžiamąjį įstatymą, galiojusį nusikalstamos veikos pasibaigimo/nutraukimo metu. Vadinasi, kvalifikuojant trunkančią veiką svarbus jos nutraukimo (pabaigimo) metu galiojęs baudžiamasis įstatymas ir

jo redakcija, nes tokios veikos padarymo laikas – veikos nutraukimo laikas. Trunkančioji veika kvalifikuojama pagal vieną specialios dalies straipsnį ir jo dalį. Kaip nurodo Aukščiausiasis Teismas, trunkamosios veikos atveju nusikaltimo padarymo laikas yra tokios veikos nutraukimo laikas. Svarbu tai, kad trunkamas pobūdis turi būti nustatomas pavojingai veikai, o ne padariniams. Negalima laikyti, kad veika padaryta, o padariniai trunka (pvz., savavaldžiaujant sudarytos kliūtys naudotis daiktu ir tokios kliūtys nepašalintos labai ilgą laiką, nes savavaldžiavimas nėra nei trunkamas, nei tęstinis, jis paprastas nusikaltimas) (LAT Nr. 2K-P-267/2011).

Nei įstatymas, nei praktika, nei teorija nekelia trunkančiajai veikai kaltės formos reikalavimo – ji gali būti ir tyčinė, ir neatsargi. Trunkamoji nusikalstama veika kvalifikuojama kaip pavienė veika. Atskiri jos laikotarpiai negali būti kvalifikuojami kaip atskiros veikos. Laiko nustatymas svarbus nusikalstamos veikos kvalifikavimui, baudžiamojo įstatymo galiojimo laiko atžvilgiu nuostatų (BK 3 straipsnis), apkaltinamojo nuosprendžio priėmimo senaties terminų (BK 95 straipsnis) taikymui, taip pat *non bis in idem* (draudimo bausti du kartus už tą pačią nusikalstamą veiką) principo reikalavimų įgyvendinimui.

Pavienė sudėtinė veika. Sudėtinė nusikalstama veika yra sudaryta iš kelių nusikalstamų veikų sudėčių, kurių kiekviena, vertinama atskirai, atitinka savarankišką nusikalstamą veiką, tačiau dėl sudėtinės nusikalstamos veikos konstrukcijos tokios veikos kvalifikuojamos pagal vieną BK straipsnį ar jo dalį. Sudėtinės nusikalstamos veikos išskyrimą lemia nusikalstamos veikos sudėties konstrukcija, kai vienoje sudėtyje nurodytas kelių nusikalstamų veikų junginys (plėšimo sudėtį BK 180 str. 1 d. sudaro turto pagrobimo ir smurto junginys; turto prievartavimas, susijęs su neteisėtu laisvės atėmimu, BK 181 str. 2 d.). Sudėtinė veika paprastai kvalifikuojama kaip pavienė veika. Išimtis turėtų būti situacija, kai sudedamoji dalis būtų baudžiama griežčiau nei pati sudėtinė veika (normos-visumos ir normos-dalies konkurencijos situacija; šis klausimas plačiau straipsnyje nenagrinėjamas).

Įdomu tai, kad kartais vertinant nusikalstamų veiksmų visumą gali paaiškėti, kad veika yra ir tęstinė, ir trunkančioji, pvz. BK 259 str., 260 str.: asmuo neteisėtai įsigijo narkotinę medžiagą, ją gabeno, o po to laikė ilgesnį laiką; įsigijimas, gabenimas ir laikymas yra alternatyvieji tos pačios tęstinės veikos požymiai, o laikymas yra trunkančioji veika.

Nusikalstamų veikų daugeto įtaka kvalifikavimui. Daugeto ir pavienių veikų atribojimo probleminiai atvejai

Kvalifikuojant daugeto klausimas ypač svarbus (Bieliūnas, 2008b, p. 19), turi esminės reikšmės kvalifikavimui (Baudžiamoji teisė, 2019, p. 397). Ar vertinamoji situacija sudaro daugetą, are pavienę tęstinę veiką yra esminis klausimas, kurį privalo atsakyti kvalifikuojantis veiką asmuo. Teismų praktika daugetą aiškiną kaip sutaptį - situaciją, kai asmuo padaro dvi ar daugiau nusikalstamų veikų (nusikaltimų ar baudžiamųjų nusižengimų) iki apkaltinamojo nuosprendžio už bent vieną iš jų priėmimo ir nėra teisinių kliūčių už jų padarymą taikyti baudžiamąjį įstatymą (LAT, 2016).

Skirtingi daugeto klausimu rašę autoriai pateikia originalių nuomonių, grindžiamų baudžiamųjų įstatymų, teorijos analize, sisteminiu ir lingvistiniu aiškinimu (Nevera, 2003; 2006; Girdenis 2006; 2009; 2010). Dominuojanti doktrina ir praktika rodo, kad vadovaujamasi tradicinėmis, bet nevisiškai esmę atitinkančiomis, teisiniu žargonu tapusiomis ar net klaidinančiomis sąvokomis (pvz., „realioji sutaptis“). Tai neigiamai atsiliepia ir teisės studijoms, ir praktikai.

Manau, daugeto klausimas, tokiu pavidalu, kokiu egzistuoja, nėra išbaigtas, teisingas, adekvatus ir pakankamas. Negerai tai, kad daugeto rūšies – realiosios sutapties pavadinimas yra

klaidinantis ir orientuojantis neteisingai, o tai ypač nepageidautina metodiniu, teisės studijų požiūriu. Bandymas į daugetą žiūrėti konceptualiai, pasiūlyti paprastą ir logišką daugeto sampratą bei sistemą įsigaliojus naujam BK (Nevera, 2003) platesnio palaikymo nesulaukė. Bandymai teorijoje susisteminti ir atskleisti daugeto problemą (Girdenis, 2010) gana riboti, nes nepateikia atsakymų į esminius klausimus dėl daugeto formų įvardijimo,[7] jų reikalingumo, santykio su baudžiamojo įstatymo reikalavimais, vietos baudžiamosios teisės sistemoje, santykio su pažangia Vakarų teisės tradicijos patirtimi.

Kaip sumanyta rengiant baudžiamąjį įstatymą, daugeto problema sietina išimtinai su bausmės skyrimo klausimu. Pagal besiklostančią praktiką daugetas yra kvalifikavimui ir bausmės skyrimui įtaką turintis veiksnys. Kvalifikuojant nusikalstamas veikas, kai susiduriama su keliais savarankiškais veiksmais svarbiausias klausimas – ar faktiniai kaltininko (kaltininkų) veiksmai sudaro pavienę veiką ar nusikalstamų veikų daugetą – nusikalstamų veikų sutaptį. Antras klausimas - kokia ši sutaptis: realioji ar idealioji. Šie klausimai turi principinės reikšmės, nes nuo inkriminuoto BK specialios dalies straipsnio (straipsnių) priklauso visas spektras teisinių baudžiamosios atsakomybės ypatumų ir padarinių: veikos baigtumo laikas, bausmės skyrimo taisyklės, baudžiamosios atsakomybės senaties taikymas, veikos sunkumas.

Nusikalstamų veikų sutaptis, jos formos ir įtaka kvalifikavimui. Nusikalstamų veikų sutaptis pagal kasacinio teismo praktiką – tai situacija, kai asmuo padaro dvi ar daugiau nusikalstamų veikų (nusikaltimų ar baudžiamųjų nusižengimų) iki apkaltinamojo nuosprendžio už bent vieną iš jų priėmimo ir nėra teisinių kliūčių už jų padarymą taikyti baudžiamąjį įstatymą (pavyzdžiui, LAT Nr. 2A-7-4-699/2015, 2K-385/2014, 2K-P-78/2012). Sutapties nustatymas turi esminės reikšmės padarytų nusikalstamų veikų kvalifikavimui ir bausmės už jų padarymą skyrimui. Kaip teigiama Aukščiausiojo Teismo aiškinime, galimos dvi sutapties formos – ideali ir reali. Nepakanka konstatuoti tik patį sutapties faktą – būtina nustatyti ir atitinkamą jos formą. Baudžiamajame įstatyme realios ir idealios nusikalstamų veikų sutapčių sąvokos neatskleistos. Kiekvienu atveju tik atsižvelgęs į bylos aplinkybes teismas gali konstatuoti, kad nusikalstamų veikų sutaptis yra reali ar ideali (LAT Nr. 2A-7-4-699/2015, 2K-144-489/2015, 2K-385/2014, 2K-P-78/2012). Vadinasi, sutapties rūšies nustatymas priklauso nuo teismo ir šios rūšys nebūtinai iš anksto aiškios. Manau, tai sukuria praktinę problemą, nes tokiu atveju teismų vertinimas gali būti skirtingas ir tik aukščiausios kategorijos teismas byloje pateiks sutapties vertinimą.

Kvalifikavimo požiūriu, tiek realiąją, tiek idealiąją sutaptį sudarančios nusikalstamos veikos kvalifikuojamos kiekviena atskirai pagal atskirą baudžiamojo kodekso straipsnį ir jo dalį.

Realioji nusikalstamų veikų sutaptis teismų praktikoje yra tada, kai asmuo savarankiškomis veikomis, paprastai esant tarp jų laiko tarpui, realizuoja dviejų ar daugiau nusikalstamų veikų sudėčių požymius, numatytus skirtinguose ar tuose pačiuose BK straipsniuose ar jų dalyse (LAT, 2016). Reali nusikalstamų veikų sutaptis kasacinio teismo praktikoje, be kitų, yra apibrėžiama ir padarytų nusikalstamų veikų savarankiškumo požymiu, kuris yra aktualus atribojant šią sutaptį nuo pavienės tęstinės nusikalstamos veikos. Nustačius kiekvienos iš kelių padarytų veikų esminius skirtumus, paprastai yra paneigiamas šių veikų tęstinumas – tokios veikos nelaikomos tęstinės nusikalstamos veikos epizodais (LAT, 2016).

Kaip minėta aukščiau, vien tik nusistovėjusia tradicija galima paaiškinti terminą „realioji sutaptis.“ Tai situacija, kai asmuo, padaręs vieną nusikalstamą veiką pakartoja nusikaltimą – arba tokį patį, arba bet kokį kitą. Nors būtų teisingiau ir logiška tokią situaciją vadinti

[7] Kodėl reikalinga „realiosios sutapties“ sąvoka ir ką šis terminas atspindi? Kaip paaiškinti tariamą nusikalstamų veikų „sutapimą“, kai dažniausiai nesutampa nei veikos, nei jų padarymo laikas, būdas, aplinkybės; paaiškinimas, kad vertinamos to paties asmens veikos yra neteisingas, nes vertinamos veikos ir jų santykis, o ne jų priskyrimas kaltininkui.

„pakartotinumu“ (nusikalstamos veikos pakartojimu) (Nevera, 2003, p. 43), praktikoje tai įvardijama realiąją sutaptimi. Teorijoje nesimato pastangų aiškinti pakartotinumą pagal galiojantį įstatymą, jis aiškinamas kaip praeities įstatymo kategorija, reiškusi kvalifikuojantį požymį – kokio nors nusikaltimo padarymą pakartotinai, kai tas nurodyta kvalifikuotoje sudėtyje (Švedas et al., 2019, p. 400-402). Manau, toks praeities modelių kartojimas nėra pageidautinas ar pažangus. Svarstytina galimybė reformuoti tokią daugeto formą, jos terminą derinant su bendraisiais aiškumo reikalavimais teisei.

Idealioji nusikalstamų veikų sutaptis yra tokia situacija, kai asmuo darydamas nusikaltimą (atlikdamas baudžiamojo įstatymo uždraustą veiką) realizuoja keliuose baudžiamojo kodekso straipsniuose numatytas sudėtis, t.y. darydamas vieną nusikaltimą tuo pat metu padaro kelis. Tokios situacijos susiklosto ne dėl tyčios, asmens norų, sumanymų (nors ir taip gali nutikti), tačiau dėl įstatymo konstrukcijos – kai kurie veiksmai išskaidyti į kelis straipsnius, arba dėl įvykių raiškos objektyvioje tikrovėje (padėjus sprogmenį po transporto priemone, sunaikinamas turtas ir nužudomas žmogus). Idealioji sutaptis gan gerai suvokiamas dalykas, nes sąvokos „idealioji sutaptis“ ganėtinai tikslai atskleidžia situaciją – viename veiksme sutampa keletas nusikaltimų. Toks idealiosios sutapties aiškinamas pripažįstamas teorijoje ir praktikoje. Idealiosios sutapties veikos kvalifikuojamos kiekviena stikrai, pagal jas atitinatį BK SD straipsnį ir jo dalį.

Pagal kasacinio teismo praktiką idealioji sutaptis konstatuojama tada, kai asmuo viena veika (veikimu arba neveikimu) tuo pačiu laiku padaro du ar daugiau nusikaltimų ar baudžiamųjų nusižengimų, numatytų skirtinguose BK straipsniuose (LAT Nr. 2K-412/2010, 2K-361/2011, 2K-37/2011, 2K-P-78/2012, 2K-385/2014, 2K-144-489/2015, 2K-345-507/2015, 2A-7-4-699/2015). Kaip teigiama Aukščiausiojo Teismo, išsamus vieningą veiką sudarančių faktų teisinis įvertinimas neišvengiamai reikalauja taikyti daugiau negu vieną, t. y. dvi ar daugiau nusikaltimo ar baudžiamojo nusižengimo sudėčių, iš kurių kiekviena turi skirtingą, savarankišką raišką baudžiamojo įstatymo tekste (LAT, 2016). Gali būti vieno tęstinio nusikaltimo ir kito paprasto nusikaltimo idealioji sutaptis. Gali būti kelių tęstinių nusikaltimų idealioji sutaptis, pvz., K. A. ir K. V. nuteisti pagal BK 207 str. 2 d. ir 300 str. 1 d. už tai, kad suklastojo tikrus dokumentus, pagamino ir panaudojo netikrus dokumentus ir apgaule UAB „E “ naudai įgijo tikslinę paramą (10 346,68 Eur), finansuojamą iš ES ir LR biudžeto lėšomis; visame nusikalstamame procese buvo suklastota daugybė vairių bendrovės dokumentų ir ataskaitų, tai tęsėsi gana ilgą laiką (LAT Nr. 2K-P-31-788/2021).

Idealiosios nusikalstamų veikų sutapties sampratos plėtojimas kasacinio teismo praktikoje. Aukščiausiojo Tesmo praktika, siekdama racionalaus įstatymo taikymo, kartais nukrypsta nuo idealiosios sutapties vertinimo teorijoje ir iš esmės išplečia idealiosios sutapties sampratą. Kasacinio teismo praktikoje yra konstatuota, kad nusikalstamų veikų sutaptį galima laikyti idealia ir tuo atveju, jei, įgyvendinant vieningą sumanymą, padaromos kelios skirtinguose BK straipsniuose numatytos nusikalstamos veikos, kurios iš esmės yra neatskiriamos (būtinos) viso kaltininko sumanymo įgyvendinimo dalys, šios veikos padaromos viena po kitos, per sumanymui įgyvendinti būtiną laiko tarpą (LAT, Nr. 2K-92/2005, 2K-516/2005, 2K-477/2008, 2K-355/2009, 2K-P-78/2012, 2K-207/2013). Teismas šią idealią nusikalstamų veikų sutaptį gali konstatuoti atsižvelgdamas į byloje nustatytų aplinkybių visumą. Teismas sprendžiant apie idealiąją sutaptį įveda „nedidelio laiko tarpo taisyklę“: „... Kai kuriais atvejais sutaptį galima laikyti idealia ir tuo atveju, kai kelios veikos padarytos viena po kitos, per trumpą laiko tarpą, įgyvendinant vieningą sumanymą“ (LAT Nr. 2K-7-92/2005, 2K-516/2005, 2K-437/2006, 2K-477/2008, 2K-355/2009, 2K-196-788/2017). „Jei asmuo su nukentėjusiuoju lytiškai santykiavo ir iš karto po to tenkino lytinę aistrą arba atvirkščiai, padarytos veikos sudaro idealiąją iššaginimo ir seksualinio prievartavimo nusikaltimų sutaptį“

(LAT senato nutarimo dėl teismų praktikos iššaginimo ir seksualinio prievartavimo baudžiamosios bylose 2004 m. gruodžio 30 d., 17 punktas, LAT, 2004). Pozicija grindžiama tuo, kad iššaginimo ir seksualinio prievartavimo sudėtys atskirtos dirbtinai, kaip teisinė konstrukcija, šios veikos dažnai organiškai susiję, taip pat nenoru sunkinti kaltininko atsakomybės. Tokią poziciją galima suprasti ir jai pritarti.

Tačiau priešingai nei vertinant seksualines veikas, nusikalstamo susivienijimo narių padarytos veikos, dalyvaujant susivienijimo veikloje laikomos ne idealiąją sutaptimi, bet realiąją sutaptimi. Nors tokių veikų santykis visiškai atitinka idealiosios sutapties apibrėžimą – darant vieną tęstinį nusikaltimą (dalyvaujant susivienijimo veikloje, jam vadovaujant) tuo pat metu padaromas kitas (kiti), laikoma, kad tokios veikos turi būti baudžiamos griežčiau. Teismų praktikoje pripažįstama, kad nusikalstamo susivienijimo (BK 249 straipsnis) nusikalstama veika ir atskiros nusikalstamo susivienijimo narių padarytos nusikalstamos veikos „... sudaro ne idealiąją, bet realiąją nusikalstamų veikų sutaptį“ (LAT, Nr. 2K-209-699/2017, 2K-31-511/2018, 2K-281-942/2018, 2A-7-1-788/2020).

Kebli situacija – baudžiamojo įstatymo naujovės, kuriomis sukurtos itin sudėtingos juridinės konstrukcijos, sudarančios sudėtines nusikalstamas veikas, pasižyminčias alternatyviomis pavojingomis veikomis, tuo pat metu kvalifikuotomis sudėtimis, numatančiomis dar daugiau pavojingų veikų ir papildomus padarinius, kurių neapima pagrindinės sudėties pavojingos veikos. Tokia situacija galima laikyti BK 250 str. 2 d. numatytą gyvybės atėmimą teroro akto metu, kai šis padarinys nebūtinai susijęs su pavojingomis veikomis, numatytomis šio straipsnio pirmojoje dalyje. Tokia situacija nėra pavienė tęstinė veika, nes ją sudarančios alternatyvios veikos ir padariniai yra visiškai savarankiški, atitinka visiškai savarankiškų sudėčių požymius. Nors remiantis minėtais sutapčių apibrėžimais, tokia situacija turėtų būti realioji sutaptis, tačiau iš esmės tokia sutaptis yra idealioji sutaptis (Pakštaitis, 2016).

Aptariant idealiąją sutaptį galima numatyti ir papildomus požymius, ją apibrėžti kaip situaciją, kai viename veikime (veikoje) idealiai sutampa keli nusikaltimai, arba kai teisinis vertimas dėl situacijos ypatybių leidžia spręsti apie veikų neatskiriamumą, tapatumą, vieno nusikalstamo sumanymo įgyvendinimą, tapačios, vienos tyčios buvimą. Manau, būtų tikslinga koreguoti praktikos poziciją dėl nusikalstamo susivienijimo narių padarytų veikų vertinimo, tokią sutaptį laikant idealiąją.

Išvados

Kvalifikavimas – konkrečios normos parinkimas asmens padarytai veikai, tapatumo tarp padarytos veikos ir nusikaltimo sudėties, aprašytos BK specialiosios dalies normoje, nustatymas bei įtvirtinimas teisės taikymo akte. Adekvatus teisinis įvertinimas užtikrina teisingumą, nukentėjusiojo teisių įgyvendinimą, teisingo santykio tarp nusikaltusio asmens ir visuomenės nustatymą. Kvalifikavimas yra kompleksinis tarpšakinis teisės institutas, aktualus baudžiamojo proceso, baudžiamajai, konstitucinei teisei.

Kvalifikuojant reikia nustatyti taikomos normos struktūrą, turinį ir vertinamo atvejo turinį, ar veiką sudarantys veiksmai atitinka pavienę veiką, ar sudaro kelias veikas. Pavienė nusikalstama veika yra tokia, kurią apibūdina objektyvių ir subjektyvių požymių visuma, ji atitinka vieną BK straipsnį ar jo dalį ir kuriai kvalifikuoti pakanka vieno BK SD straipsnio ar jo dalies. Pavienės veikos gali būti paprastos, kvalifikuojamos pagal vieną straipsnį. Jei tiriant faktus paaiškėja, kad padarytos kelios pavienės veikos, kiekviena jų kvalifikuojama pagal vieną BK straipsnį, privalomai nurodant šį straipsnį ir jo dalį. Pavienė tęstinė, trunkančioji ir sudėtinė veika yra pavienės veikos atmainos, kurios kvalifikuojamos pagal vieną straipsnį ir jo dalį.

Daugeto klausimas, tokiu pavidalu, kokiu egzistuoja, nėra išbaigtas, adekvatus ir pakankamas. Daugeto rūšies – realiosios sutapties pavadinimas yra klaidinantis ir orientuojantis neteisingai, o tai ypač nepageidautina metodiniu, teisės studijų požiūriu. Reikalingi bandymai į daugetą žiūrėti konceptualiai, siūlyti ir įtvirtinti paprastą, logišką daugeto sampratą. Daugeto klausimas svarbus atribojant jį nuo pavienės tęstinės veikos. Pavienė tęstinė veika kvalifikuojama pagal vieną BK straipsnį ir jo dalį, o daugeto veikos kvalifikuojamos kiekviena atskirai, pagal savarankišką straipsnį ir jo dalį.

Kasacinio teismo praktika, siekdama racionalaus įstatymo taikymo nukrypsta nuo idealiosios sutapties vertinimo ir iš esmės išplečia idealiosios sutapties sampratą. Kasacinio teismo praktikoje yra konstatuota, kad nusikalstamų veikų sutaptį galima laikyti idealia ir tuo atveju, jei, įgyvendinant vieningą sumanymą, padaromos kelios skirtinguose BK straipsniuose numatytos nusikalstamos veikos, kurios iš esmės yra neatskiriamos. Aiškinant idealiąją sutaptį galima nurodyti papildomus požymius ir nurodyti kai viename veikime (veikoje) idealiai sutampa keli nusikaltimai arba kai teisinis vertimas dėl situacijos ypatybių teismui leidžia spręsti apie veikų neatskiriamumą ir tapatumą, vieno nusikalstamo sumanymo įgyvendinimą, vienos tyčios buvimą. Manau, būtų tikslinga koreguoti praktikos poziciją dėl nusikalstamo susivienijimo narių padarytų nusikalstamų veiksmų, juos laikant padarytus idealiosios sutapties forma.

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PROBLEMATIC ISSUES OF EVALUATION AND QUALIFICATION OF INDIVIDUAL AND MULTIPLE CRIMINAL ACTS IN LAW ENFORCEMENT ACTIVITIES

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Summary

The qualification process is of particular importance in the investigation of criminal offenses. Correct qualification creates preconditions for achieving the goals and objectives of the Criminal Code and the Code of Criminal Procedure. Adequate qualification helps to correctly determine the scope of the charge, the limits of evidence, the rights of the suspect and the accused, provides clarity on the scope of the defense. Correct qualification also creates preconditions for the application of the benefits provided by criminal law. The qualification process is not described in the law. The qualification process is mentioned in the Code of Criminal Procedure however the implementation of such process is left to law enforcement and court practice. The law provides that the court must rule on the fairness of the qualification in each case. According to Lithuanian laws and theory of criminal law individual forms of crime have a significant impact on qualification, as they determine the time of completion of the

crime. In theory, there is a tendency to simplify the concept and types of a single criminal offense, considering only continuous, long-term and complex offenses as its forms. From the point of view of many, only two forms of multiple criminal acts take root in both theory and practice i.e. the ideal and the real coincidence. The article deals with the problems of qualification of offenses and delimitation process of the singular and multiple criminal acts as well as delimitation of aforementioned coincidences. Relevant situations in the investigation are addressed and particular examples of criminal cases are analyzed.

Keywords: *Qualification, qualification of criminal offenses, incrimination, single criminal act, multiple criminal acts.*

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MODELLING LEADERSHIP IN THE COVID-19 ERA

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Abstract. *Broadly speaking, the establishment of a scientific and technological agenda is an intention of state management around which a conflict or difference with society is resolved. In this sense, the academy is subject to the evaluative guidelines of the quality of its processes and products. As an institution sponsored by the State, the public university continues to follow the agenda, but at the same time it undertakes the formation of talents that the State hopes to institutionalize as opinion and knowledge leaders. The objective of this work is to model the axes and central themes of the agenda to show the management and incubation of talent. A documentary study was carried out with a selection of sources indexed: Academia, Copernicus, Dialnet, Ebsco, Frontiers, Latindex, Redalyc, Scielo, Scopus and Zenodo. There are lines of research on entrepreneurship based on the establishment of the scientific and technological agenda.*

Keywords: *Institutionalism, agenda, entrepreneurship, talents, training.*

Introduction

Regarding indicators management talent, Mexico achieved a higher position on cooperation in around patent management, but their areas of opportunity are in training talents in science and technology (Pérez et al., 2018). In this way, the training of talents is a challenge and challenge for the Mexican educational system, since the conditions for the development of human capital are not optimal if the items related to the management, production and transfer of knowledge are considered.

In the case of higher education institutions in strategic alliance with organizations producing knowledge, management of human capital lies in the formation academic, professional and employment, highlighting collaboration as an indicator of the development of patents (Carreon et al., 2017). In this regard, public universities that establish systems of professional practices and social service organizations that produce knowledge, emphasize the training continued, specialized and updated as axes and avenues of discussion, agreement and shared responsibility between the parties involved in managing the knowledge.

Professional training, in its field of research, involves scientific and technological entrepreneurship, but this limits the observation of factors external to HEIs, since society establishes themes that are reflected in theses, books and academic journals (Fierro et al., 2018). In this way, HEIs are limited to the processes of media influence that in society are

known as the establishment of an agenda. The issues disseminated by the media not only indicate the degree of credibility and verifiability of the information that is established between communicators and audiences, but also its relationship with initiatives, programs and political strategies aimed at local development.

Therefore, the **objective** of this work is to model the management and incubation of talents, considering a review of the literature in the Covid-19 era, as well as an evaluation by expert judges on the subject and the most relevant findings.

Are there significant differences between talent management and incubation structure reported in the literature regarding the evaluation of expert judges in the field?

The premises that guide this work allude to the approaches of knowledge networks that arise as a result of conflicts within Higher Education Institutions (Aguilar et al., 2020). These are asymmetries in the management and incubation of talents that can inhibit the academic, professional and labor training of human capital, but the literature addresses them as a requirement for entrepreneurship, innovation, competitiveness and even job satisfaction (Sánchez et al., 2020). In this way, management is understood as a process of codification of demands, knowledge and skills that guide decisions towards efficiency, effectiveness and effectiveness (García, 2019). Derived from this knowledge transfer system, the incubation of talents will be the product of the strategic communication of objectives, tasks and goals oriented to the requirements of the environment, as well as from the resources available within the knowledge-producing organizations and in alliance. with public universities (Quiroz & García, 2021). Therefore, it is expected to observe significant differences between the case studies or the comparisons of findings in the literature regarding the evaluation of these results by expert judges on the issues (García et al., 2021). This is so because knowledge networks are prone to risk situations such as pandemic, modifying and innovating their purposes and tasks.

This paper includes a review of the literature on agenda setting in the field of talent management and incubation. The following are studies related to the situation. Subsequently, the fundamentals of data processing are exposed, as well as the findings and discussion with the reviewed literature.

Theory of Talent Management and Incubation

The public agenda that is established in society reflects an academic agenda that in turn is by institutional means. If the schedule reflects society interests economic, political and social, academic agenda reflects the administrative interests and teachers regarding student proposals (Ardevol, 2015). It is due to such circumstances that an academic agenda is composed of issues that arise from public opinion influenced by the media, which in turn is considered by academics and codified in technical language with the advice of researchers and the workforce. of the students. In this way, a knowledge work is processed by institutional, academic and technical phases that will define the areas of knowledge, academic bodies and lines of research, as well as theses, works, articles or any academic production.

In the establishment of the public agenda, the media generate information that a critical sector of society will contrast with the scientific and technological advances reported by the academy, but in the case of the construction of a university agenda, the institutional media follow the guidelines of technical advice, bodies collegial and academic bodies (McCombs and Valenzuela, 2007). The verifiability of the public agenda and the academic agenda is very similar in that each sample shows verifiable content, but when such a process is aimed at non-specialized audiences, the construction of the agenda follows a quite probable path that consists of the emotional categorization of the information. Consequently, uneducated

audiences of the contents of an agenda reproduce the information to participate in the discussion and academic consensus, but the lack of questioning places them in a position external to the initiatives.

If the vertical construction of an agenda is based on the verisimilitude of its contents as they are transferred from actor to actor, then the horizontal construction of the agenda is the result of the concatenation of information, assumptions and experiments that will define and specify a theoretical structure. corpus (Godson, 2014). The construction of an agenda whatever it is, public, academic, scientific or technological includes two processes: 1) The information disseminated in the media generates a need and a motivation to search and process your data. It is a logic of verifiability, where positions are contrasted before a topic of discussion; 2) refers to the favorable disposition towards the source, emerging a verisimilitude effect that lies in accepting the contents because they are considered linked to people, objects or constant processes.

However, this does not imply a reflection of the content, but a transfer of the phrases and the incorporation of the images in the decisions and actions of entrepreneurship or training (Rivera et al., 2013). The quality of the messages is not always in doubt since, if the images are persuasive enough, the sentences will only complement the educational intentionality, but if the contents do not have a representation, then their meaning will not affect the decisions confining in memory. (Weaver, 2007).

The establishment of research topics refers to the convergence of institutional guidelines regarding beliefs, attitudes and intentions of the audience. It is a process in which the actors become aware of their discursive or creative abilities oriented towards institutional objectives, tasks and goals. In the school environment, the means of dissemination of the established topics are the actors provided that a structure of transfer and reproduction of knowledge defines the quality of the contents in educational training and scientific entrepreneurship. The models used for training, entrepreneurship and the agenda reveal the limits of institutional actors with respect to school actors. That is, teachers, administrators and students confined to institutional support and recognition generate an enterprise adjusted to a call. On the other hand, the models that explain the initiatives, agreements, co- responsibility and participation of the bulk of the population, specify trajectories of dependency relationships between variables indicative of training, entrepreneurship and agenda, but do not clarify the relationship between opportunities and capabilities (García et al., 2016). At least it is necessary to describe the findings on entrepreneurship based on the asymmetries between demands and resources, as well as with respect to opportunities and capacities.

Incubation and Talent Management Studios

The process after professional and research training is known as scientific and technological entrepreneurship. It is a logic in which entrepreneurship acquires a strategic sense. It is a process in which individual and organizational capacities converge in a strategic management of resources, the application of proposals and the development of innovative solutions as demands intensify and force greater competitiveness in initiatives (Sánchez et al., 2011). The production of knowledge, as research training suggests, is determined by the concatenation between organizations and talents. It is to adhocratic structure from which the collaborative learning that emerges as a result of asymmetries between opportunities and capabilities, but also between demands and resources. In the transformational entrepreneurship model, decisions are preferably horizontal, but with a vertical intention, no

longer in the authoritarian or unilateral sense, but in the motivational sense. In other words, the leader generates stimuli that foster the creativity of talent without losing sight of equity and co-responsibility around objectives, tasks and goals (Wopner, 2012).

However, in local educational development contexts, entrepreneurship implies the inclusion of environmental factors that affect the performance of higher education institutions (HEIs) with a view to protecting species and conserving resources. In this model of sustainable responsibility, entrepreneurship is the result of the interrelation between the availability of resources and the capacities to face the stressful situation. While the corporate responsibility model is part of sustainable organizational development, it does not specify competitive advantages between individual and resource interrelationships, as well as between groups and nature.

In the case of collaborative networks, it is possible to notice that entrepreneurship is already determined by a group dynamic in which tasks prevail over interpersonal relationships. This implies a vertical structure in which decisions are assigned from top management, but unlike authoritarian approaches, the manager does not decide based on his experience, but rather considers the relationship between demands and resources (De la Fuente et al., 2012).

An increase in demands means an increase in task relationships with respect to interpersonal relationships. Not only do talents focus on objectives, tasks and goals, but also on proposals, as demands are exacerbated and resources are increasingly scarce. Therefore, the entrepreneurial responsibility model focuses its attention on the agreements between leaders and talents, since the viability and effectiveness of the initiatives is considered a fact, but coordination and collaboration are not entirely guaranteed (Acosta, 2012). That is, the forms of cooperation depend on the motivation for creativity to emerge. The collaborative entrepreneurship model remedies the vicissitudes of the transformational model and the lack of the responsibility model.

While the transformational model pursues the quality and efficiency of the processes that distribute benefits among leaders and talents, the co-responsibility model addresses only equity and diffusion of tasks in a way that allows the inclusion, claim or recognition of capabilities in accordance with the opportunities, but both models rule out the differences between individuals and groups with respect to the establishment of objectives and the achievement of tasks, as well as the achievement of goals (Duarte and Ruis , 2009).

In essence, the collaborative model is highly motivating and focused on the discourse of leaders and talents in the face of a contingency in the environment, not only in the sense of transforming their opportunities and capabilities, of seeking equity and trust, but in the sense of establishing provisions and alliances. between stakeholders on achievements and failures, merits and shortcomings.

The collaborative model goes beyond the objectives, tasks and goals, for its motivational period , it is an undertaking no longer to obtain benefits, but as an end for the subsistence of the actors with respect to the specific demands or demands and each one more time. dispersed resources (Carreón et al., 2015).

In sum, entrepreneurship in scientific and technological terms would not only be focused on the resolution or dissemination of the problem, but also on the promotion of collaborative relationships free of violence, although its structure is predominantly vertical, but not in the authoritarian sense, but rather with a cumulative meaning of knowledge, skills and experiences aimed at the reproduction of a system of training talents and leaders in the face of contingencies external to higher education institutions.

Method

Design. Since the studies related to the management and incubation of talents address the need and processing of information, a documentary, retrospective and comparative research was carried out with a selection of sources indexed to international repositories: Academia, Copernicus, Dialnet, Frontiers, Latindex, Redalyc, Scielo, Scopus and Zenodo, considering the keywords "management", "incubation" and " talent " (see Table 1).

Table 1. Description of the sample

Repository	Management			Incubation		
	2019	2020	2021	2019	2020	2021
Academy	3	2	2	3	4	2
Copernicus	2	1	4	2	3	1
Dialnet	4	1	3	2	2	4
Ebsco	5	3	2	1	5	5
Frontiers	3	2	1	3	4	3
Latindex	2	4	2	4	3	4
Redalyc	1	3	3	2	1	2
Scielo	3	1	2	3	2	3
Scopus	2	3	4	2	1	2
Zenodo	4	2	1	1	1	1

Note: Prepared with the study data

Show. A selection of abstracts was made, considering the relationship between talent management and incubation during the pandemic in order to evaluate their contents using the Delphi technique (see Table 2).

Table 2. Description of the sample

Abstract	Repository	Author	Year	References	Modeling
e1	Academy	Aguilar et al.,	2020	43	Management ➔ Training
e2	Copernicus	Sánchez et al.,	2020	23	Management ➔ Training
e3	Dialnet	Garcia	2019	36	Management ➔ Training
e4	Ebsco	Quiroz & Garcia	2021	33	Management ➔ Entrepreneurship
e5	Frontiers	García et al.,	2021	25	Management ➔ Training

Note: Prepared with the study data; ➔formative relationship ➔reflective relationship

Process. The Delphi technique was used with expert judges in talent management and incubation during three rounds of analysis: a) Score where a value of -1 was assigned for the management and incubation of talents at risk and +1 for engagement in a post-pandemic situation; b) Feedback when comparing the grades with the average; c) reconsideration now the judge issued a new qualification, or reiterated his criteria.

Analysis. The data were processed in the statistical analysis package for social sciences (SPSS 20), as well as in the NetMiner software version 3.0 and Amos 4.0, considering the parameters of non-parametric normal distribution, contingency, probability ratio, fit and residual.

Results

The values reached the minimum normal distribution requirements, as well as the contingency relationship statistics to contrast the hypothesis of significant differences and the probability ratio parameters that establish the risk thresholds (see Table 3) .

Table 3. Description of the instrument

E	M	SD	I1	I2	I3	I4	I5
R1							
e1	, 659	, 135					
e2	, 672	, 178	, 46 8,21, 49)				
e3	, 562	, 109	, 54 (, 32, 67)	, 54 (, 24, 59)			
e4	, 674	, 143	, 56 (, 34, 78)	, 52 (, 24, 78)	, 46 (, 21, 58)		
e5	, 782	, 172	, 57 (, 21, 58)	, 43 (, 29, 76)	, 32 (, 26, 58)	, 21 (, 18, 43)	
R2							
e1	, 603	, 135					
e2	, 671	, 121	, 56 (, 23, 67)				
e3	.683	, 178	, 43 (, 29 (, 22, 60)	, 36 (, 21, 67)			
e4	, 793	, 198	, 54 (, 32, 58)	, 11 (, 10, 19)	, 35 (, 24, 54)		
e5	, 624	, 135	, 65 (, 32, 68)	, 21 (, 18, 39)	, 35 (, 20, 44)	, 32 (, 27, 40)	
R3							
e1	, 650	, 132					
e2	, 635	, 124	, 34 (, 25, 40)				
e3	, 651	, 165	, 32 (, 21, 44)	, 45 (, 25, 49)			
e4	, 698	, 190	, 43 (, 27, 39)	, 32 (, 20, 46)	, 21 (, 32, 76)		
e5	, 624	, 167	, 56 (, 25, 67)	, 37 (, 21, 50)	, 32 (, 25, 67)	, 32 (, 25, 43)	

Note: Prepared with the study data; E = extract, e1 = Aguilar et al., (2020), e2 = Sánchez et al., (2020), e3 = García (2019), e4 = Quiroz & Garcia (2021), e5 = Garcia et al., (2021), R = Round, R1 = Qualification, R2 = Feedback, R3 = Reconsideration, I = Indexing, I1 = Academy, I2 = Coperniicus, I3 = Dialnet, I4 = Ebsco, I5 = Frontiers, M = Mean, SD = Standard Deviation, QR = Probability Ratio, ( ) = Confidence Interval

Once the contingency relationships between the categories of talent management and incubation had been established, as well as the risk thresholds perceived by the expert judges in the field, we proceeded to observe the structure of axes, trajectories and relationships between the elements with the purpose anticipating risk scenarios (see Figure 1).

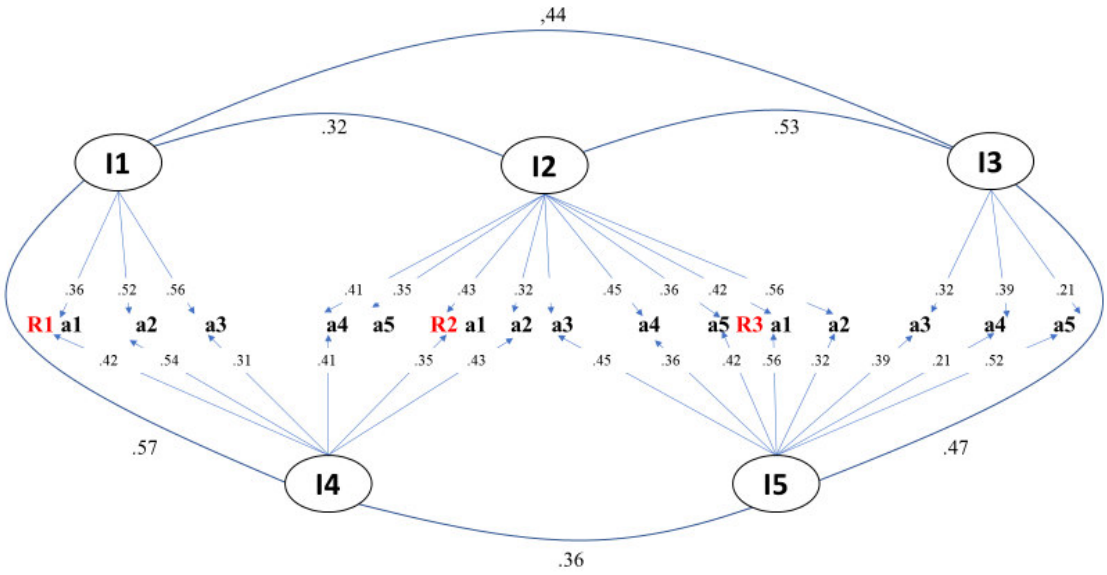

Figure 1. Structural Categorial Modelling

Note: Prepared with the study data; E = extract, e1 = Aguilar et al., (2020), e2 = Sánchez et al., (2020), e3 = García (2019), e4 = Quiroz & Garcia (2021), e5 = Garcia et al., (2021), R = Round, R1 = Qualification, R2 = Feedback, R3 = Reconsideration, I = Indexing, I1 = Academy, I2 = Coperniicus, I3 = Dialnet, I4 = Ebsco, I5 = Frontiers, M = Mean, SD = Standard Deviation, QR = Probability Ratio, ( ) = Confidence Interval

The resulting structure shows that both categories: management and incubation are related to the modeling proposals in the five findings extracts rated by the judges. The adjustment parameters and residuals $\lceil \chi 2 = 13.24\ (12\ \text{gl})\ p > .05; \text{CFI} = .997; \text{NFI} =, 990; \text{RMSEA} = .008 \rfloor$ suggest the norm of the null hypothesis relative to the significant differences between the theoretical structure with respect to the empirical test of the model.

Discussion

The leadership and talent incubation process includes three phases: individual - self-perceived skills -; group management and motivational communication, problem and conflict resolution; institutional - inclusion, responsibility, happiness, sustainability.

Often the incubation process includes five stages; vision, action, impact, connection and management, but it is commitment and skills that generate a culture of directed and shared success (McCleskey, 2014).

However, the leadership training process involves the establishment of skills related to learning processes, management skills, group dynamics, and strategies.

In this sense, the competencies focus on management and control, emotional intelligence, influence in negotiation and systems thinking. They will develop emerging leadership skills such as relationship building, decision making, work teams, productive motivation and training, while strategic thinking, communication and the will to change indicate social responsibility and innovation.

It is an emerging leadership model because it describes the nature of the differences between talents and leaders, as well as the transformation of the former into the latter, but not in a planned sense. Therefore, leadership training is linked to the emergence of skills and knowledge, but essentially to the practice of management (Melchar and Bosco, 2010).

The formation of talents who will become leaders with the practice of directing a system includes three determinants.

Unlike the emerging leadership model, the authenticated leadership model focuses its interest on the internal factors of the individual rather than professional training, posits that it is an unprecedented personal decision and a style or background that can shape it (Kumar and Jain, 2013).

The identity of the leader can be linked to group or system factors, but it is his values, beliefs, emotions and abilities that determine the self-formation of a leader. Based on his attributes and virtues, the leader will complement his self-fulfilling prophecy with the requirements imposed by an institution (Meru and Ogbonna, 2013).

However, both models, emerging and authenticated, exclude the participation of talents or followers of leaders. The integral leadership model explains the conjugation of the individual elements with respect to the expectations of the group of followers.

The integral leadership model anticipates the emergence and authenticity of other leadership styles. It is possible to establish a balance and prospective leadership based on the relationship between the latter and the talents or followers. This is because personal history is correlated with the history of group management (Datta, 2015).

A balance of the personal curriculum serves to favor the transformation of the personal situation in a collective setting. In turn, the leader not only recovers his virtues, but also warns of new skills that he will require in the future. It is even possible to notice the effects of leadership style on current followers and predict their formation as talents and leaders (Harper, 2012).

Conclusions

Models' ad pouring of virtues and attributes centered on the individual, given their potential and perceived capabilities, build management styles based on their skills and knowledge of management, administration and as well as in relation to the demands and resources.

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UNACCOMPANIED MINOR ALIENS: THE CASE OF LITHUANIA

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Abstract. *This article analyzes the situation of unaccompanied minors, asylum seekers and non-asylum seekers, coming to the Republic of Lithuania from third countries. Outside the scope of the investigation are unaccompanied minors who are: citizens of the European Union, a Member State of the European Free Trade Association or other persons who exercise the right of free movement of persons in accordance with the legal acts of the European Union, or family members of a citizen of the European Union, a Member State of the European Free Trade Association or a person exercising the right of free movement in accordance with European Union legislation, or third country nationals legally present in the Republic of Lithuania. The article also presents the legal and social aspects of the entry of unaccompanied minors into the Republic of Lithuania. The aim is to identify the activity of the institutions through the involvement and implementation of procedures (appointment of a legal representative, accommodation, interviewing, age determination, search for family members or other legal representatives, granting asylum procedures, etc.), when the arrival of an unaccompanied minors is established, identify problems and propose possible solutions. This theme was chosen because of the end of May, 2021 over 1,000 migrant minors entered the country illegally.*

Keywords: *unaccompanied minors, migration processes, asylum.*

Introduction

The free movement of persons is one of the fundamental principles of the European Union, the observance of which it ensures. All citizens of the European Union have the right to travel, reside, study, work, settle or provide services in other Member States without discrimination on grounds of nationality, race, religion, membership of a particular social group, or political option.

The processes of globalization and various conflicts have led to an intensification of migration around the world: migration flows, directions and volumes have changed. “As various statistics show, most European countries are facing a particularly rapid and marked increase in international migration and, in particular, in illegal immigration. The ever-increasing flows of immigrants to European countries over the last decade inevitably have an impact and encourage states to review their migration policies, regulatory instruments and adapt them to these influenced processes” (King, 2020, p.3). In order to improve the management of migration processes, the Member States of the European Union are committed to effectively managing the crossing of external borders, tackling migration difficulties and addressing future threats at those borders, thus contributing to the fight against serious crime with a cross-border dimension and a high level of internal security in the European Union. It must be emphasized, that all action must be taken with full respect for fundamental rights and the free movement of persons within the European Union.

It has to be stated, that migration processes often do not take place in accordance with the existing procedures or rules, for various reasons individuals leave their countries and choose the direction of migration to more developed geographical regions or the like (Shields, 2017, p. 24). Immigrants often cause resistance in the country, stimulate political, legal or even social debates, create fears, often incite various radical positions, demonstrate open racism and create

a lack of social solidarity (Laso, 2020, p. 12). In addition to migration flows, trafficking networks, work or sexual exploitation, poor or illegal living conditions, despair and frustration are often found. Unaccompanied minors account for a significant share of the overall flow of illegal immigrants. Lithuania is no exception, during the last half of this year more than 4 thousand illegal immigrants crossed the border of the Republic of Lithuania; more than 1,000 minors currently live in the camps of immigrants.

The article, using the analysis of scientific literature and legal acts, aims to assess the aspects of legal regulation and the general situation regarding unaccompanied minors, to identify problematic aspects, and to suggest possible solutions.

Aspects of International and regional protection unaccompanied minors

The General Assembly of the United Nations at 1989 concerned, that the situation of children in many parts of the world remains critical due to unequal social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disease, and convinced of the need for immediate and effective action at national and international level called on States to join and contribute the implementation of the provisions of the Convention on the Rights of the Child. States Parties to the Convention undertakes "to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures".

Particular attention is paid to children who have lost their environment for one reason or another. The Convention on the Rights of the Child states that: "A child who has temporarily or permanently lost his or her family environment or who is unable to be in that environment because of his or her interests is entitled to special protection and assistance provided by the State" (The Convention on the Rights of the Child, 1989).

The Convention on the Rights on the Child also states: "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties." (The Convention on the Rights of the Child, 1989).

Considering the ideas and content of the Convention on the Rights of the Child in 2005 published by the United Nations General Comment No. 6 (2005) states, what: „Unaccompanied minors outside their country of origin or residence are increasingly encountered". There are varied and numerous reasons for a child being unaccompanied or separated, ranging from: persecution of the child or the parents; to international conflict and civil war; to trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities". (General Comment No. 6, 2005, p.4)

Based on the content of the General Comment, it should also be noted that unaccompanied minors are at higher risk, *inter alia*, of possible sexual exploitation or abuse, military recruitment, child labor, etc. Unaccompanied minor girls are at particular risk of gender-based violence. In some cases, it is noted, that it is sometimes particularly difficult for border guards to identify the age of unaccompanied minors; sometimes they are not allowed to take part in asylum procedures or their asylum applications are not processed due to insufficient age or gender.

The number of unaccompanied minors in the European Union is also growing significantly. In 2020 there were 13,600 asylum applications for unaccompanied minors in the European Union; 9.6% of all minors were unaccompanied (see Figure 1). In some Member States of the European Union, the share of unaccompanied minors in 2020 was less than 50 percent. Five Member States recorded higher rates: Portugal (50.0%), Slovakia (56.3%), Romania (62.2%), Bulgaria and Slovenia (both - 71.0%).

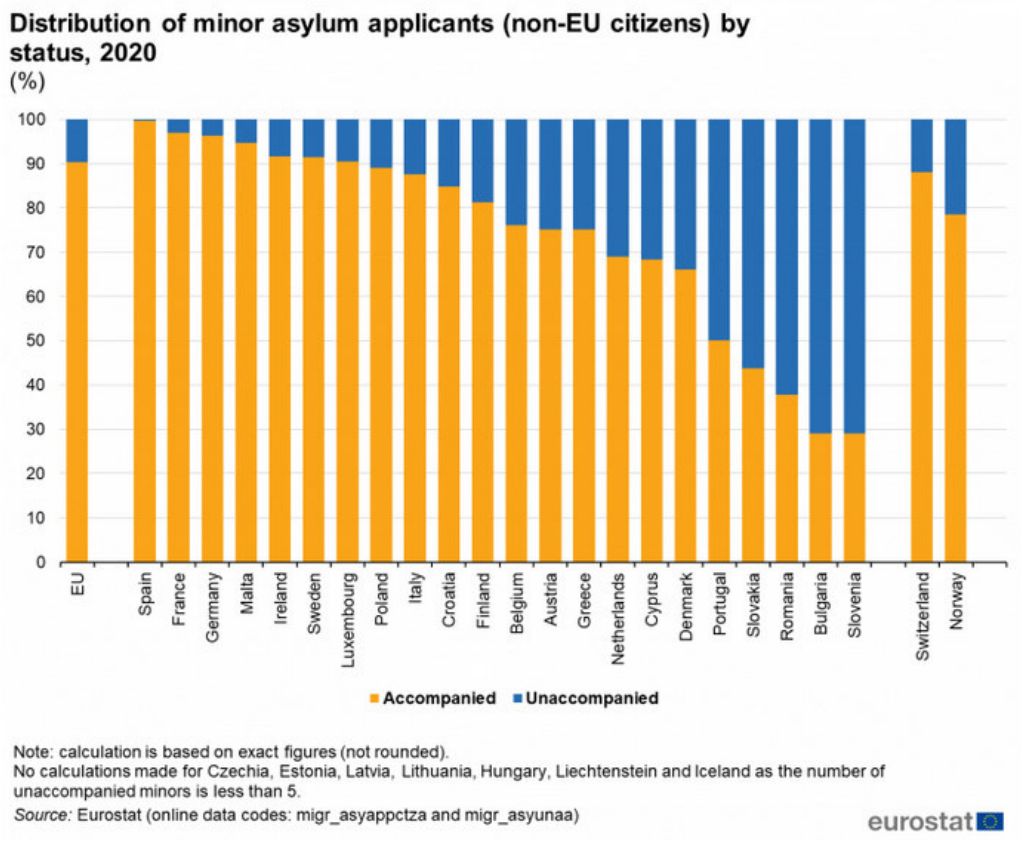

Figure 1. Distribution of minor asylum applicants (non-EU citizens) by status, 2020
Source: Eurostat, 2020, p.8

Unaccompanied minors - the case of Lithuania

Until now, the numbers of both illegal immigrants and unaccompanied minors in Lithuania have not been significant, but currently Lithuania is no exception, especially the numbers have increased since the end of May 2021. According to the data of the Department of Statistics, this year in Lithuania until September 2021, more than 4 thousand immigrants came to Lithuania illegally crossing the border. After the introduction of reversal procedures, 2,576 illegal migrants were not allowed to enter Lithuania as they tried to cross the Lithuanian border from the Republic of Belarus.

It is also announced, that one in four migrants who arrive to Lithuania is a minor. About 500 children under the age of 10 and about 850 minors between the ages of 10 and 18 came to Lithuania (see Figure 2) from May to October of 2021 (Department of Statistics, 2021).

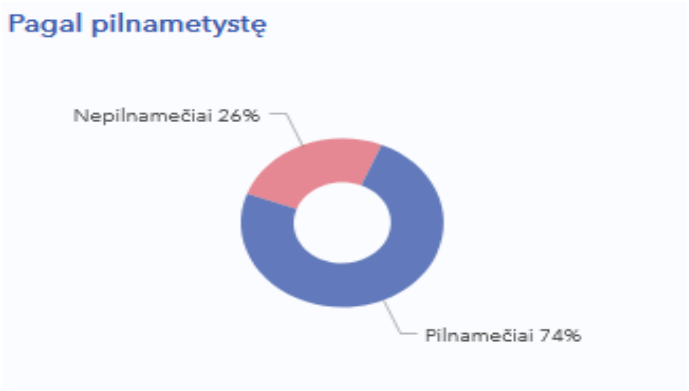

Figure 2. Minor imigrants (%), 2021
Source: State Data Management IS, 2021

The main legal act regulating the legal status of all aliens in the Republic of Lithuania is the Law on the Legal Status of Aliens. Article 32 of the said law regulates the legal status of all unaccompanied minors, distinguishes this group of aliens as vulnerable and establishes special admission procedures (establishment of temporary custody) and rights (to education, medical assistance, legal aid).

On 23 April 2014 regulation on "Unaccompanied minor aliens who are not asylum seekers established in the Republic of Lithuania the procedure for age identification, accommodation and other procedural actions and provision of services to them" was confirmed by the order of the Minister of Social Security and Labor, the Minister of the Interior and the Minister of Health (current wording No. A1-538 / 1V-780 / V-1067 of 18 September 2019).

Procedure for entry into the Republic of Lithuania. Entry to the Republic of Lithuania legally through border control points is mandatory. The general conditions for entry into the Schengen area are set out in Article 5 of the Schengen Borders Code: "External borders may be crossed only at border crossing points and during the fixed opening hours. Border crossing points that are not open 24 hours a day must clearly indicate the opening hours. By way of derogation from the obligation to cross the external borders only during the opening hours of the border crossing points, exceptions may be granted to: (a) persons or groups of persons in particular need required by national law, without prejudice to the interests of public policy and internal security of the Member States. Member States may lay down specific arrangements in bilateral agreements; (b) for persons or groups of persons in unforeseen emergencies (…)".

Under the provisions of the Schengen Borders Code, Member States have the right, in accordance with their national law, to impose effective, proportionate and dissuasive sanctions for the unauthorized crossing of external borders at non-designated border crossing points and during non-designated opening hours.

Article 77 of the Law on the Legal Status of Aliens, Paragraph 3 stipulates, that unaccompanied minor asylum seekers may not be refused entry. They must in all cases be granted temporary territorial asylum. Unaccompanied minors who have not lodged an application for asylum may be refused entry if they do not comply with the provisions of Article 5 of the aforementioned Schengen Borders Code. In these cases, the state decides on a case-by-case basis. However, there is always a risk that an unaccompanied minor at high risk will be left without protection.

Who is that unaccompanied minor? According to the legal regulation of legal status of aliens of the Republic of Lithuania: "An unaccompanied minor alien is an alien under the age of 18 who entered the Republic of Lithuania without parents or other legal representatives or

who remained in the Republic of Lithuania without them until those persons began to take effective care of him." (Legal act of Republic of Lithuania „Legal Status of Aliens“, 2021).

Unaccompanied minor aliens, regardless of the legality of their stay in the territory of the Republic of Lithuania, shall be immediately appointed a representative during their stay in the territory of the Republic of Lithuania.

During their stay or residence in the Republic of Lithuania, unaccompanied minors have the following rights:

- ✓ be provided with free accommodation and be maintained in the Republic of Lithuania;
- ✓ study according to a general education or vocational training program;
- ✓ to receive necessary medical care free of charge;
- ✓ free access to social services;
- ✓ use state-guaranteed legal aid;
- ✓ to contact representatives of non-governmental or international organizations of the Republic of Lithuania. (Legal act of Republic of Lithuania „Legal Status of Aliens“, 2021).

Upon receipt of information on an identified unaccompanied minor alien, the Migration Department, together with the authorized institutions and organizations and the representative of the unaccompanied minor alien, shall immediately organize a search for his / her family members and issue him / her alien registration certificate no later than within 2 working days. (Legal act of Republic of Lithuania „Legal Status of Aliens“, 2021).

Asylum procedures. Asylum applications in Lithuania may be submitted to the Migration Department (if the alien is already in the territory of the Republic of Lithuania), the State Border Guard Service (border control points of the Republic of Lithuania or the territory of the Republic of Lithuania where the border legal regime applies) or the Aliens Registration Center. The request may be made in writing or orally (if the request is made orally, the text of the request must be recorded by the official). (Legal Status of Aliens, 2021).

The requested authority shall inform the territorial unit for the protection of the rights of the child, which shall appoint a temporary guardian of the child. At the same time, the requested authority shall perform initial actions (initial actions are performed in the presence of an authorized representative and a representative of the child protection institution):

- ✓ accepts the request,
- ✓ interviews,
- ✓ take fingerprints (at least 14 years old),
- ✓ takes pictures,
- ✓ sends the collected information to the Migration Department.

All actions must be completed within 24 hours. (Legal Status of Aliens, 2021).

Migration Department within 48 hours decide on the admission of the unaccompanied minor and start examining the application on the merits. Asylum applications must be processed within a period of 3 months, but applications from unaccompanied minors are processed more quickly in practice. Unaccompanied minors are accommodated in the Refugee Reception Center (under the Ministry of Social Security and Labor) during the examination of the application. After accommodating an unaccompanied minor (whether applying or not applying for asylum) at the Refugee Reception Center, the Centre's officials organize not only the accommodation of minors, but also education, health care and other services. Unaccompanied minors receive a food allowance of EUR 60 per month and a pocket allowance of EUR 10.

However, an unaccompanied minor who arrive does not always applie for asylum. If an unaccompanied minor does not apply for asylum, the already mentioned provisions of Article 32 of the Law on the Legal Status of Aliens (concerning unaccompanied minors) apply to all minors without exception. It should be noted that until 2014, there was no detailed regulation of unaccompanied minors who did not apply for asylum. Therefore, the reception and accommodation practices of this group were different. At 23 of April of 2014 procedures have been adopted governing the age determination, accommodation, definition and harmonization of the procedures applicable to these minors.

The age of all unaccompanied minors is determined from documents or from the words of an alien during the interview. An age determination examination (X-ray examination) may be performed only when there are reasonable doubts about the age of an unaccompanied minor alien and only with his or her consent. The conclusion of the X-ray examination provides for an error of up to two years. In the event of an error, the person is considered to be a minor. When it was mentioned, unaccompanied minors are accommodated in the Refugee Reception Center where they have unrestricted freedom of movement. Unaccompanied minors who do not apply for asylum and whose main purpose of entry is transit through Lithuania, in the vast majority of cases leave the Refugee Reception Center and are likely to go to other European Union countries to reunite with their family or for financial reasons.

The situation of unaccompanied minors over the age of 18 is changing as they become adults. In practice, only unaccompanied minors granted asylum receive adulthood and live in a Refugee Reception Center. If such a person continues to fulfill the conditions for asylum, he or she shall have additional protection every year and his or her temporary residence permit shall be amended. However, there may be cases where eighteen-year-olds can be returned or expelled if they can no longer stay legally in the country.

Law on the Legal Status of Aliens Article 129 provides that an unaccompanied minor who is illegally in Lithuania may be "returned only if he or she is properly cared for in the foreign state to which he or she will be returned, taking into account his or her needs, age and level of independence". If it is not possible to identify the parents of an unaccompanied minor who has not applied for asylum, he or she shall be issued a temporary residence permit. In resolving the issue of return of an unaccompanied minor alien, co-operation is established with foreign states and international organizations in accordance with concluded international agreements. Cases of return or transfer of unaccompanied minors have not been statistically recorded in Lithuania so far.

Conclusions

An analysis of the legal provisions on unaccompanied minors leads to the conclusion, that the legal framework covers all possible procedures required for the arrival of an unaccompanied minor, but unaccompanied minor aliens are not guaranteed full protection and best interests, as the freedom of movement of unaccompanied minors accommodated in the Refugee Reception Center is not restricted and they always have the opportunity to leave the center at the desired time. This means, that the freedom of movement of an unaccompanied minor may also tempt him or her to leave the country and continue his or her journey to other states, where the unaccompanied minor can easily become a victim of trafficking, slave labor or sexual exploitation.

No data are available about detained unaccompanied minor aliens after they have left the Refugee Reception Center, so it can also be concluded that the current practice of the protection of unaccompanied minors and the best interests of the child properly implemented.

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THE ROLE OF PUBLIC OPINIONS ON SOCIETY SECURITY: A SOCIO-CULTURAL APPROACH

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Annotation. *Public opinion is a very important phenomenon of expression of democracy, which is relevant in times of crisis and extreme situations. Emerging challenges in times of crisis and extreme situations have an unavoidable impact on national and society security. Currently, the Lithuanian state and society are struggling with the spread of COVID-19 disease as a global pandemics. This struggle is reflected in various sections of public opinion. Public opinion can both strengthen and weaken the subjective security of society members.*

The article analyzes the social role of public opinion on society security from a socio-cultural point of view. Therefore, the definition of society security from a socio-cultural point of view is detailed, and the content of the psychological and informational-communicative aspects of the impact of public opinion on public consciousness and behaviour is revealed. These methodological tools are designed to examine the dissemination of the content of public opinion during of the fight against COVID-19 disease.

A socio-cultural approach is an interpretation of human relations, their interaction and expression of activity on the basis of respect for natural rights. It is the respect for natural rights – the life, health, freedom and property of the individual - that is the fundamental basis of being independent people. Based on the data of the study conducted, it can be stated, that politicised and polarised public opinion not only influences a deceleration of vaccination rates, but also can be seen as an additional source of subjective insecurity among society members and as a starting point for the formation of a new system of values.

Keywords. *Public opinion, society security, socio-cultural point of view, social order, extreme situation.*

Introduction

Public opinion is a very important phenomenon of democracy, which has become entrenched in Lithuanian society thanks to the opportunities provided by the electronic space. Now public opinion can be formed by various subjects. The emergence of social networks is gradually evolving into a social power that can equate the power of the state and municipal institutions as well as businesses and NGOs in terms of social psychology and communication. Public opinion at different levels of formalisation can have very different social powers, which are particularly relevant in times of crisis and extreme situations.

Relevance of the study. Emerging challenges in times of crisis and extreme situations have an unavoidable impact on national and public security. Currently, the Lithuanian state and society are struggling with the spread of COVID-19 disease as a global pandemics. This struggle is reflected in various sections of public opinion. Public opinion can both strengthen and weaken the subjective security of society members and their decision to vaccinate against the coronavirus disease. Studies of the content of public opinion on the course, prospects of the fight against COVID-19 disease and the attitudes of society members towards vaccination are therefore very important to strengthen the society's subjective security.

The research subject is the dissemination of public opinion during the extreme situation regarding the fight against the COVID-19 pandemic and its consequences.

The objective is to reveal the role of public opinion on society security from a socio-cultural point of view. Public opinion inevitably affects the consciousness and behaviour of society members, their subjective assessment of their own safety. Therefore, we also aim to

reveal methodological perspectives of the socio-cultural point of view as a study of the content of public opinion.

Definition of Society Security from a Socio-Cultural Point of View

A socio-cultural point of view is the interpretation of human relations, their interaction and expression of activity on the basis of respect for natural rights. It is the respect for natural rights – the life, health, freedom and property of the individual - that is the fundamental basis of being independent people. Therefore, it is no coincidence that section II of the Constitution of the Republic of Lithuania "The relationship between human and the state" begins with the Article 18, which emphasizes that "human rights and freedoms are natural".

Socio-cultural interpretation of human interaction can cover various aspects of human being, including security. This approach combines two terms - "social" and "cultural" and covers all former and existing spheres of human activity. R. Nisbet revealed that the referent of" sociality " was almost always a community (Nisbet, 2000, p.101). As St. Thomas Aquinas states, a human by nature is destined to live in a community (Anzenbacher, 1992, p. 229). Therefore, he is characterized not only by the natural (primary) nature, but also by the secondary - cultural nature, which he forms in the process of socialization by taking over the culture of a particular community. Since the nature of the socio-cultural point of view is twofold, it can be used to interpret the expression of the material and spiritual reality of any community (society, its group), its understanding of the realization of basic human needs.

Culture is understood in two ways: 1) objectively it is the products of activity created by human and society, its forms and systems, the functioning of which allows the creation, use and transmission of material and spiritual values; 2) from the subjective point of view it is a degree of perfection achieved by a person in a field of science or activity; literacy. Therefore, it can be stated that the socialization of the individual occurs in a socio-cultural context, in which a person becomes a socio-cultural personality. Two socio-cultural contexts are distinguished: (1) social interaction that transmits cultural knowledge and ways of thinking, and (2) participation in daily activities, cultural practices and cultural measures that embody goals and meanings to achieve those goals that are valued in culture (Gauvain, 2013, p. 425-444). It can be stated that only the harmony of both contexts determines the strength of personality socialization.

Thus, a human is both a social and a cultural being at the same time: individuals are connected in the society by a variety of social ties and relationships. This is determined by the dual nature of the individual: on the one hand, he is an autonomous individual, but on the other hand, an individual can not become a personality without the relations with other people. Individuals communicate and cooperate, in most cases not in a random way, but in accordance with their respective rights and obligations, which constitute the content of various social contexts, which are linked by their fundamental characteristic - respect or disrespect for natural rights. Although human relations and relationships are regulated and predictable through respect for their rights and responsibilities, their sustainability is not determined by the potential power of the subjects, but by their respect for natural rights. On the other hand, the quality of universal observance of rights and obligations is based on the corresponding socio-cultural context, which we call a social order.

A social order is a set of characteristics of community relations and relationships that occur and develop in individual societies or social groups, the practice of which helps to survive and achieve a higher standard of living for as many members of the society or social group as possible. Together, people create their own living environment (cultural and psychological structures) and it is important for them to increase security of their community and freedom of

its members, without increasing the oppression of the authorities. Therefore, in this most extensive historical process, natural rights must inevitably have been formed and their socio-cultural expression institutionalised as the basis of the cohesion of the socio-cultural contexts of individual communities and the integrity of their members. It can therefore be assumed that compliance with the rules of the general social order guarantees the safety of individuals and social groups.

Security is a state of protection and protection against dangers and confidence in one's own knowledge. This threefold interpretation of the meaning of security is due to the fact that security itself expresses a relationship in which there are no threats to the participants in the relationship. There can be a variety of relations: a person himself with himself, with other people, their groups and between them, with the objects of nature, with work and its tools, with God. The reasons for the occurrence of threats may also be various: 1) subjective, such as subjective interpretation of the behavior of the participant(s) in the relationship as posing a threat; 2) the emergence and functioning of objective threats that are independent of, for example, the will of the participants in the relationship; 3) mixed relationships, such as those arising from a subjective desire to control threats, generate new threats. Security therefore includes both objective security and a sense of security (subjective security) and confidence in security (lack of doubts).

Security is one of the basic human needs, the need for satisfying which is beyond doubt. It was the constant desire of the primary communities to control the state of security that led to the formation and development of social control as a mechanism for social regulation. It is therefore no coincidence that the creator of humanistic psychology A. Maslow outlined the main human needs in hierarchical order and stressed that "these needs, or values, are hierarchically and evolutionarily related in terms of strength and priority. For example, security is more powerful and stronger, more urgent, previously emerging, more vital need than love, and the need for food is usually stronger than every other. In addition, all these needs can be seen as steps along the time path to general self-actualization, which includes all basic needs" (Maslow, 1989, p. 343). It is therefore reasonable to say that security is or must be implied in all socio-cultural contexts and human activities of society.

The socio-cultural contexts of human and public life presuppose natural, social, economic, political, legal, cultural, social-psychological, information-communicative conditions. Their interaction is the engine of the development of social order and constantly creates changing socio-cultural contexts of human life, to which individuals not only seek to adapt, but also manage to change them through their individual and collective activities. This constant interaction of socio-cultural contexts of human life and its activities is not only a dynamism of the social order, but also the main source of human insecurity, which it is impossible to neutralize. Therefore, when dealing with security, we face problems in the protection of various values.

Protecting some of the values, such as human life, health, status, well-being, freedom, is very difficult, because losing them is difficult, and in some cases even impossible to restore them. In order to protect them, the world community has legally obliged all legal entities to protect human rights and freedoms internationally. Thus, it can be summarized that human and societal security are socio-cultural living conditions that do not or do not pose a threat to human life, health, liberty, honor and property. And the pursuit of constant security, which is inherent in the need of all people, guarantees the unification of the people and the demand for respect for natural rights.

When the development of socio-cultural living conditions poses not only an individual but also a social threat to the existence of groups of people and society, we move on to public

and state national security. The state of society security and its development are determined by the interaction between the institutions of the state political regime and active (civic) groups of society, forming and transforming social phenomena that directly and indirectly affect the confidence of individuals and society in security. The nature of this interaction is conditioned by the political regime of the state.

In a liberal democracy, society security is closely linked to the civic status of the society and national security. In the broadest sense, national security is a state of protection of people, society and the state against internal and external threats, in which public authorities can ensure a constitutional democratic order, a standard of living that respects human rights and freedoms, social sovereignty and territorial integrity, and its sustainable development, defense and security. Thus, the state is the main subject of national security.

At the level of national security, political, economic, military, social, legal, informational, and spiritual and moral aspects of security are distinguished most often. The basis of all these aspects is individual security: "although <...> basically it is subordinated to higher-level political structures, i.e., the state and the international system. ... 'but' the pursuit of individual security has a multifaceted effect on national security. Where there is a strong conflict between the state and the citizens, the internal mess can threaten the coherence of the state in such a way that it is problematic to apply the concept of national security in general“ (Buzan, 1997, p. 91).

Therefore, it can be stated that the value-normative state of society is the primary source of national security/insecurity. This means that from the socio-cultural point of view, when examining national security, it is very important to pay attention to the tendencies of the development of the value-normative state of the social groups. They are most noticeable when examining the interaction of groups of society in the public sphere.

Public Opinion and Its Impact

Public opinion is the views, assessments and decisions of various social groups about the events of social life, the activities (behavior) of individual personalities, organizations and parties, important social, political, cultural problems of society. The majority of society is usually not directly involved in political processes. Therefore, their social activity is most often manifested in public opinion, which can be expressed by commenting on the texts of authors of electronic media and communicating in social networks. Public opinion on specific actions and acts of public subjects shall be expressed in their approval or in their condemnation. The more members of society have their opinion and express an active civic position, the stronger and more effective public opinion is formed.

Public opinion is not only a self-generated, but a purposefully formed social phenomenon. Public communication through the media and social networks has a decisive influence on the existence of modern society as a whole. Free movement of information through the media system and social networks helps members of the public to form their views on the events taking place in society, to orient themselves towards real and potential like-minded fellows, and to find a reference group with which to show solidarity. As a result, public opinion is, in most cases, socially differentiated and therefore has a limited social role.

Public opinion, as a social phenomenon, has its own structure, which distinguishes three main components: rational, emotional, and volitional. In terms of practical implementation, public opinion has two structural aspects: public appreciation and public will. The expression and interaction of these aspects may be different. For example, there may be a very clear public assessment of a particular social problem, but there may not be enough public will to pressure the relevant authorities to act on the expressed assessment. However, it may also be that public

opinion is deliberately shaped as a contradiction to public social order and takes the form of social polarisation. In this case, the social role of public opinion is strengthened, which can generate serious challenges to society security and even to the constitutional order of the state. Therefore, socially polarized public opinion is a potential source of society insecurity.

It is very important to note that public opinion has several effects on the consciousness and behaviour of society members. Psychological and communicative effects of public opinion can be distinguished. The psychological effect of public opinion is the effect on the behavioural motives of individuals and groups of society. Motives are incentives of activity related to satisfaction of the needs of the individual. To them can be attributed all that stimulates human activity: needs and interests, urges and emotions, preferences and ideals. Public opinion has a psychological effect on the behavioural motives of subjects in two main ways – motivating and restraining motives.

The result of the psychological impact of public opinion is the creation of images about reality or its particular sphere, about various social entities and their relations in a generalized and emotionally shaded form. The image of any area of reality and of social subjects and their relationships that exists in society is a distinctive and particular copy of the consciousness of society and its groups. Undoubtedly, the psychological impact of public opinion on the evaluation of the activities of state institutions influences the formation of image of area of reality or social entities and their relations. But this is only one aspect of creating an image of reality or social entities and their relations. Another aspect of creating this image is related to the imagination and perception of groups in society: how do facts and opinions differ?; what is the difference between knowledge and faith?; what should be the reasoned public opinion? The strength of the psychological impact of public opinion can also be guaranteed by its orientation towards the relevant historical memory and experience of society and its groups. As a consequence of the interaction of these phenomena, a corresponding social psychological climate of mutual trust between society and its groups is created, providing opportunities for various actors to manipulate public opinion.

The information-communication effect of public opinion is a transmission of public information through various communication networks, a formation of appropriate attitudes of society members and a promotion of feedback. The development of the appropriate approach to public opinion is influenced by information of a threefold nature: 1) rational information, which is implicit in the presentation of facts; 2) information that arises from the interpretation of facts; 3) information that is presupposed by opinions and their interaction. A positivist understanding of public opinion emphasizes the rational role of public opinion based on facts and arguments for their interpretation. The content and nature of the information spreading from the facts and arguments undoubtedly influence the formation of the attitude of the individual, the social group and the whole society towards public opinion. Rational information must help social subjects to understand the content of the fact, the circumstances of its occurrence and to embrace the ways of its interpretation and critical thinking.

In addition to this information, there is a continuous flow of information created by the interaction of public opinion with other social factors, phenomena and processes of public life. The content of this information is presupposed by several interactions: 1) the interaction of public opinion with the knowledge (education), value orientations and stereotypes of society and its groups; 2) the interaction of public opinion with social change; 3) the interaction of the rational beginning (presentation of facts) of public opinion with the social irrational beginning arising from communicative barriers. Communication barriers are psychological obstacles that prevent dissemination and acceptance of information. These obstacles are caused by various causes: people's superstition, their social, moral and other differences (such as differences in

the source of information and its addressee), and the degree of distrust in public institutions. Thus, the information resulting from the interaction of facts and the social environment is of particular importance, as it determines the final functioning of public opinion.

Public opinion is an important source of society security and formation of legal culture in a liberal democracy, which has so far been under-examined and under-evaluated. An infinite understanding of the pluralism of opinions and their expression as inconsistent with the nature of liberal democracy has become entrenched in certain sections of society. This is not only a misunderstanding of it, but also completely inconsistent with the orientations of the doctrine of modern liberalism. It emphasizes that as the emancipation of the individual's will prevail, it is necessary to create common rules for social coexistence that will lead to peace and tranquility (Beniton, 2009, p. 71-72). This is a fundamental challenge in modern-day politics, and the answer to which lies in the ever-changing socio-cultural context. The relationship between the emancipation of the individual's will and the creation of rules of social behavior is possible if it is based on the cooperation of all stakeholders for the achievement of social peace.

Public opinion, which promotes cooperation between social subjects on social peace, also plays a very positive role in the processes of forming and shaping the legal culture of society, as the legal culture of civil society is the basis of the connection between society and national security. A cultured, enterprising and full-fledged citizen is the most important and smallest self-governing element of the social system. This means that the formation of civil society is inextricably linked to the idea of recognizing the value of individual freedom as an individual and to the obligations of the individual to society (the citizen). It is very important to understand the causal relationship between them. It is obvious that individual freedom is needed to spread individual autonomy. It must be such that it promotes the self-realization of the individual and does not become a destructive force on the lives of other individuals. It is the personality that is the real subject of legal culture and legal behavior, in the personal culture of which the legal and political cultural traditions of society are internalized to one degree or another (Šlapkauskas, 2018, p.21).

Polarization of Public Opinion - a Source of Subjective Insecurity Among Society Members During Extreme Situations

Joonhong Ahn and co-authors who developed a new paradigm for nuclear safety state that “a situation is called ‘extreme’ when conditions are radically different from those of so-called ‘normal’ life and are unusually intense, becoming excessive, or even unbearable. Dealing with the extreme situation pushes people to their limits; to the edge of the abyss. The individual, group, organization, company, or more simply, the system is faced with extreme violence, a radical shake-up of life as they know it. The extreme situation leads to the destruction of identity, the loss of benchmarks and frames of reference. The explanation is simple; identity is shaped or manufactured by external relationships (specifically, compliance) with current social norms, adherence to common and therefore shared values, responses to social expectations, and dependency or even subordination between actors in the system. From the moment the (existing) value system is shattered, a change occurs—and a new system appears”. (Joonhong Ahn and others, 2017).

The spread of COVID-19 as a global pandemic in the territory of Lithuania caused the formation of a particularly extreme situation. Dry facts of extreme situation's intensification sound threatening: the first case of COVID-19 disease in Lithuania was confirmed in February 28, 2020, but because of the sharp increase in the number of patients on February 26 the extreme situation was declared in the country, and since March 16 for two weeks there was

introduced the first quarantine that continued till June 17; the second wave of the pandemic began in the country in autumn and in November 4 the second overall quarantine was introduced again, which lasted until July 1, 2021 (COVID-19 pandemija Lietuvoje). Vaccines against COVID-19 have been developed around the world at an accelerated pace, and this has given a hope of survival. In December 27, 2020 a vaccination of the Lithuanian population against COVID-19 disease started. A total of 6293 people have died from COVID-19 since the start of the pandemic, according to statistics. Almost every seventh of them died in the past month, during the country's fourth wave of infection (Kas septintą gyvybę COVID-19 pasiglemžė per mėnesį: kuo šį šuolį aiškina medikai?).

Upholding J. Ahn's and his colleagues' point of view, it can be assumed that the value system currently in the process of managing the global pandemic of COVID-19 is in the process of collapse and a new system is forming in the context of its deepening. The contours of the emergence of this system can already be seen by comparing public opinion in different societies on the challenges of managing a pandemic.

The features of consciousness and behavior of individuals and groups of society are most evident during crisis periods, especially during extreme situations. We have been living in such conditions for almost two years. Unequivocally, it can be said that society faced a special "enemy", against which no country in the world had an efficient weapon. Only the conscious and active obedience of members of each society to the requirements of quarantine could help to survive until universal vaccination. Talking about gaining universal immunity against COVID-19 by going through the illness was not the right message. COVID-19 disease without vaccination usually causes particularly painful death. Therefore, it is no coincidence that there are members of society who have not acknowledged that their lives and health are in particular danger. For them, the most important challenge was not protecting their own health and that of other members of society but promoting freedom of movement and thoughts. This is clearly evidenced by the analysis of data on administrative infringement cases in which the plaintiffs contravened the fines imposed by officials:

1) the plaintiffs contravened the fines for non-compliance with the rules on the irregular wearing of masks and restrictions on movement during quarantine (LITEKO[1] - Lithuanian court information system);

2) the plaintiffs challenged fines for violating the restriction of meetings during the extreme situation (LITEKO[2] - Lithuanian court information system);

3) the plaintiffs challenged the fines for violating the restriction of direct contact (LITEKO[3] - Lithuanian court information system).

It should be noted in particular that the applicants sought to justify their disregard for the restriction on movement, assembly and direct contact with freedom of expression. However, L.Jakulevičienė, who analyzed the restrictions on freedom of movement in Lithuania during the COVID-19 pandemic from the point of view of international law, rightly states that "taking into account that the ban in Lithuania was based on the fact that Lithuanians are more likely to move around the country during the Easter period, thus increasing the likelihood of the virus spreading outside major cities during the pandemic, such a restriction was necessary in the current situation. As the restriction was applied for a very short period and the risk of virus spread was higher, it can be considered proportionate" (Jakulevičienė, L).

Unfortunately, the alleged restriction of freedom of expression prior to the vaccination process was not only underestimated in public opinion, but also the freedom of expression subsequently promoted led to the spread of freedom of belief in the threat of the vaccine to the life and health of the patient, which later became the freedom to distribute and form an anti-vaccination opinion, the freedom to refuse vaccination, the freedom to die free without a

vaccine. "The fear of death has somehow disappeared, the anti-waxers are not afraid of death, I do not understand", - political scientist Vytautas Dumbliauskas wondered on "Žinių radijas" (Sejonienė – apie skiepytis atkalbinėjančius medikus: jiems turėtų būti panaikintos licenzijos).

Gradually, public opinion on vaccination against the spread of COVID-19 acquired a politicizing dimension, which has been actively shaped by representatives of position and opposition. In this confrontation, the Presidency's position, which is both in favor of the need for vaccination and in terms of the freedom not to vaccinate, seems strange. An analysis of the public discourse of politicians on the fight against COVID-19 and their comments on the media and social networks, as well as the opinions of specialists and their articles, revealed that public opinion is not only politicized but also polarized. The message that neither vaccination nor non-vaccination will save from COVID-19 disease has become increasingly apparent in the public domain. "This topic, states politician I. Pakarklytė, it's just a choice of whether you're responsible for yourself and your environment and getting vaccinated or behaving differently and hoping to ride that bus without a ticket, to be a "fare dodger." This is simply a promotion of the fare dodger's mentality“ (Pradėję atmetinėti Nausėdos veto valdantieji nedžiūgauja: panašu, kad tai karas).

Such polarization of public opinion on vaccination is fundamentally wrong. There are still attempts to explain the flaws of the conflict of polarized opinions and to find a way out of this polarization. "It seems to me, states L. Kukuraitis, that there is a very destructive way to enable society to focus on fighting a common enemy. Now the impression is that they have moved from fighting a common enemy to fighting each other: who has a National Certificate, who does not have, who is unvaccinated, who works remotely or not (Tokių mirtingumo skaičių Lietuva nematė beveik 20 metų: įvardijo, kodėl taip atsitiko). „There is only regret, says A. Ambrozaitis, that so many die, but let it lie on the conscience of people who do not fulfill the civil duty to vaccinate, who think that their egoism is above the public interest. Until they understand this, we can't end the pandemic. <...> we pay a huge price for people's faith in conspiracy theories, not experts, medics or the state. They believe they don't have to believe anything because everything is a lie and a fraudulence“ (Kas septintą gyvybę COVID-19 pasiglemžė per mėnesį: kuo šį šuolį aiškina medikai?).

It has been a long time coming, but recently it has become more and more clear that public opinion on the inevitability of vaccination is being formed on the basis of facts: "if you are vaccinated, there is a fivefold lower risk of getting sick, a 10-fold lower risk of going to hospital, and a 25-fold lower risk of dying. This is proved by scientific research. This vaccine is not intended to reduce morbidity, but to prevent a person from becoming ill in severe form, being resuscitated and dying“(Kas septintą gyvybę COVID-19 pasiglemžė per mėnesį: kuo šį šuolį aiškina medikai?). Only with a sharp recent increase in the number of deaths from COVID-19, which accounts for about 90 percent of non-vaccinated deaths, the Seimas decided not to tolerate the alleged equivalence of testing and vaccination any more. These methods are completely unequal in the struggle for the lives of members of our society. Let us hope that this legal decision of the Seimas will help groups of society to get out of the state of polarization of public opinion, which has become the source of legalization of insecurity for all of us.

CONCLUSIONS

The socio-cultural study of the state of society security emphasizes the importance of analyzing two socio-cultural contexts: (1) social interactions in the transfer of cultural knowledge and ways of thinking, and (2) participation in everyday activities, cultural practices and cultural means.

Public opinion has a psychological and communicative effect on the consciousness and behavior of members of society. Analysis of the internal structure of these effects reveals that public opinion not only transmits cultural knowledge and forms ways of thinking, but also promotes relevant cultural practices. It can therefore be reasonably stated that public opinion and the involvement of relevant subjects in its formation and dissemination are a very important attribute of the life of modern society and cover both socio-cultural contexts mentioned above.

Public opinion can perform both positive and negative functions. In an extreme situation, the unrestricted spread of negative public opinion can become an additional source of insecurity. The spread of the COVID-19 global pandemic caused the formation of a particular emergency situation in the territory of the Lithuania. A study of the presentation and commentary of public information on the management of the spread of COVID-19 revealed that public opinion formation is politicized and has become polarized in the vaccination process. Therefore, in general it can be stated that politicized and polarized public opinion not only contributes to the slowdown in vaccination coverage, but can also be seen as an additional source of subjective insecurity in society and as a starting point for the formation of a new value system.

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TEISĖS ATITIKTIES VALDYMO SISTEMŲ TEISINIS REGULIAVIMAS UŽKERTANT KELIĄ KORUPCIJAI IR JŲ VAIDMUO NUSTATANT JURIDINIŲ ASMENŲ BEI JŲ VADOVŲ CIVILINĘ IR BAUDŽIAMĄJĄ ATSAKOMYBĘ

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Anotacija. *Korupcijos žala valstybės ekonomikos plėtrai yra neginčijama ir kartu sunkiai apibrėžiama, nes ji sklinda paslapčia, ir tik jos pasekmės išnyra į paviršių. Šešėlį korupcijai suteikia viešojo ir privataus sektoriaus organizacijų, būtinų šiuolaikinės visuomenės funkcionavimui, vidinės ir tarporganizacinės procesų grandinės – jeigu jos yra netinkamai sudėliotos ir prižiūrimos. Žiūrint iš bendrinių valstybės interesų perspektyvos, galima teigti, kad korupcija kelia grėsmę normaliam jos funkcionavimui. Kova su korupcijos reiškiniais turi būti vienu iš pagrindinių valstybės uždavinių, siekiant užtikrinti viešąjį saugumą, todėl Lietuva priima tam tikrus įstatymus ir programas, pvz., Lietuvos Respublikos nacionalinės kovos su korupcija programa 2015–2025 m. Tačiau jų realizavimas reikalauja „imtis visapusiškos ir ilgalaikės kovos su korupcija kampanijos“, kaip tai nurodė 2020 m. Ekonominės laisvės indekso sudarytojai (žr. žemiau). Taigi, straipsnio autorė pateikia hipotezę, kad viena iš veiksmingų priemonių kovoje su korupcija yra pavienių viešų ir privačių organizacijų, kaip vienos visuomenės procesų grandinės dalių, vadovų atsakomybės už organizacijos rizikų, tai pat ir korupcinių rizikų, valdymą įteisinimas.*
Straipsnio tikslas yra parodyti, kad, pirma, teisės atitikties valdymo sistemos tampa privalomomis elgesio taisyklėmis vis didesniam skaičiui žmonių, sukurdamos naują reguliavimo sferą, standartų rinkinį, papildantį tradicines normatyvines sistemas, tokias kaip įstatyminė teisė, o, antra, baudžiamosios teisės požiūriu teisės atitikties valdymo sistemos tampa svarbia įmonės nusikaltimų, įskaitant korupciją, prevencijos priemone, galinti padėti atskirti, kam panaikinti ar sušvelninti juridinių asmenų ir jų vadovų civilinę ar baudžiamąją atsakomybę dėl netinkamos įmonės priežiūros ir kontrolės.
Siekiant šio tikslo, buvo atliktos teisinių dokumentų ir mokslinės literatūros analizė, panaudoti alternatyvų ir loginės analizės bei atskirų šį klausimą reglamentuojančių teisinių normų palyginimo metodai.
Straipsnyje pristatoma Vokietijos praktika, taikanti prevencines priemones, užtikrinančias efektyvų viešojo ir privataus sektoriaus dalyvių darbą: teisinis reikalavimas implementuoti teisės atitikties valdymo sistemas įmonėje, siekiant minimizuoti su korupcija susijusias rizikas, bei iš to kylanti juridinių asmenų ir jų vadovų atsakomybė dėl netinkamos priežiūros, taip pat aptartas klausimas, kad Lietuvoje egzistuoja panašios teisinės galimybės formuoti tokią praktiką. Atsižvelgiant į Vokietijos ir tarptautinį patirtį, Lietuvos teisės aktų leidėjui siūloma apsvarstyti galimybė dėl įstatymų projektų, susijusių su skaidrumo viešajame ir privačiame sektoriuje nuostatomis, įpareigojančiomis tiesiogiai per įstatymus ar teismų praktiką reikalauti įsteigti teisės atitikties valdymo sistemas organizacijoje, siekiant sumažinti riziką, įskaitant ir su korupcija susijusią riziką, ir tuo užtikrinti priežiūros ir kontrolės funkcijas, bei numatyti vadovo atsakomybę už tokių sistemų neimplementavimą ar nepakankamą įmonės priežiūrą.

Pagrindinės sąvokos: *korupcija, korupcijos prevencija, teisės atitikties valdymo sistemos, teisinis reguliavimas, vadovų ir juridinių asmenų atsakomybė.*

„Dažnai tie, kurie nieko nedaro, daro irgi neteisybę. Tas, kas nedraudžia neteisybės, kai gali - tas liepia“.

Markas Aurelijus

Įvadas

Apie korupcijos sampratą galime kalbėti iš įvairių mokslų pozicijų (ekonomikos ir valdymo, teisės, sociologijos ar kriminologijos) arba pažvelgti per tarptautinės ir įvairių nacionalinių teisės sistemų prizmes. Šiais klausimais turime aibę nuomonių, pozicijų, koncepcijų ir net teorijų (plačiau žr. Šatienė, 2009). Tačiau galima vieningai sutarti (žiūrint iš bendrinių valstybės ir visuomenės raidos interesų perspektyvos), kad korupcija visomis savo formomis yra žalinga šalies ir tarptautinei ekonominei plėtrai. Neigiamos pasekmės gali būti jaučiamos ir daugelyje kitų visuomenės sričių, tokiose kaip bendra gyvenimo kokybė, švietimas, sveikatos apsaugos sistema, politinių institucijų veikimas, teisinės valstybės užtikrinimas, aplinkos apsauga; visuomenėje gali formuotis demokratinių vertybių nevertinimas, visko leistinumo ir nebaudžiamumo jausmas. Tai net gali turėti įtakos šalies politiniam stabilumui ir viešajam ar nacionaliniam saugumui (plačiau žr. Chêne, 2014; OECD, 2015; Heldman, 2017; Sullivan, 2006). Lietuvos Respublikos nacionalinėje kovos su korupcija 2015–2025 metų programoje (Nutarimas dėl Lietuvos Respublikos nacionalinės kovos su korupcija 2015–2025 metų programos patvirtinimo) korupcija apibūdinama kaip viena iš nacionalinių grėsmių valstybei, o Nacionalinio saugumo strategijoje, 18 straipsnyje, tarp kitų Lietuvos Respublikos nacionalinio saugumo politikos prioritetų ir ilgojo ir vidutinio laikotarpių uždavinių išvardintas - viešojo saugumo stiprinimas, kas apima organizuoto nusikalstamumo ir korupcijos keliamų grėsmių visuomenės saugumui, valstybės ekonominiam ir politiniam gyvenimui mažinimą. Tam Lietuvos Respublika yra užsibrėžusi sau tikslą įgyvendinti kompleksines kovos su korupcija ir korupcijos prevencijos priemones, orientuotas į skaidrumo ir atsakomybės viešajame sektoriuje didinimą, teisėkūros ir sprendimų viešumą, nereikalingo reglamentavimo šalinimą, tobulins korupcijos nusikaltimų tyrimo ir sankcijų taikymo priemones (Dėl Nacionalinio saugumo strategijos patvirtinimo).

Taip pat Lietuvos Respublikos generalinės prokuratūros 2021-2023 metų strateginiame veiklos plane (Lietuvos Respublikos generalinės prokuratūros 2021-2023 metų strateginis veiklos planas, patvirtintas Lietuvos Respublikos generalinio prokuroro 2021 m. kovo 1 d. įsakymu Nr. I-42) pabrėžta, kad korupcinio pobūdžio nusikalstamų veikų tyrimas yra ir prokuratūros prioritetinė veiklos sritis, ir ji savo ruožtu dalyvauja įgyvendinant Lietuvos Respublikos nacionalinę kovos su korupcija 2015-2025 metų programą. Atsižvelgiant į tai, autorės nuomone, straipsnis prisidės prie užsibrėžtų tikslų ir valstybės prioritetų ir pristatys naują kovos su korupcija veikų kontrolės ir prevencijos sistemos modelį, apimantį ne tik viešąjį, bet ir privatų sektorius.

Vis dėlto iškyla klausimas, jei korupcijos žala yra akivaizdi ir visiems suprantama, tai kodėl tokie reiškiniai egzistuoja net šalyse, turinčiose ilgas demokratijos tradicijas ir dešimtmečius ar šimtmečius funkcionuojančią rinkos ekonomiką? Vienareikšmiško atsakymo į šį klausimą neturime. Tarp veiksnių, lemiančių tokią situaciją, galima būtų paminėti ir pereinamojo iš planinės centralizuotos į rinkos ekonomikos rudimentus, ir besiformuojančios verslininkų vertybių sistemos nebrandumą, ir teisinės sistemos spragas, ir pakankamai didelį visuomenės pakantumą korupcijai, ir dalies žmonių „savęs neidentifikavimą su valstybe“ ir pan. Savo įtaką daro ir nepakankamai kokybiškas šių nusikalstamų veikų tyrimas, nes mes žinome, kad tik greitas ir efektyvus šių nusikaltimų ištyrimas ir kaltininkų nuteisimas yra veiksmingiausia profilaktinė priemonė.

Dabartinis korupcijos reiškinys, žiūrint tiek iš ekonomikos, tiek ir iš baudžiamosios teisės pozicijos, nėra būdingas tik viešajam sektoriui, bet apima ir verslą - privatų sektorių, t. y. kai korupcija pagal konkrečioje veikloje dalyvaujančius subjektus vyksta tarp šių grupių: privatus-privatūs sektoriai, privatus sektorius – vidinė korupcija, viešasis-privatūs sektoriai, kai

piktnaudžiavimas įgaliojimais arba pažeidžiamos elgesio taisyklės vyksta privačiame sektoriuje. Viena vertus, kalbant apie korupciją privačiame sektoriuje galima manyti, kad šalyse, kuriose egzistuoja būtiniausios laisvosios rinkos ekonomikos sąlygos, t. y. kur ūkio subjektai iš esmės gali laisvai spręsti, su kuo ir kaip jie užsiima verslu, reguliavimo bandymai, esant nukrypimams nuo visuotinai priimtų taisyklių, kaip reikia vystyti verslą, kelia klausimą dėl valstybės kišimosi į privataus sektoriaus reikalus. Todėl yra pagrįstų nuomonių, kad privatus sektorius pats turi spręsti savo vidaus problemas, ir papildomai kištis į jų veiklą valstybiniu lygmeniu nereikia. Autorė nepalaiko šios nuomonės, atkreipdama dėmesį į tyrimus/nuomones(plačiau žr. - Transparancy International , 2018; Department for international development, 2015, Forgues-Puccio, 2003), kad dažniausiai korupcijos aukos yra vartotojai ir visuomenė, kurių teises ir teisėtus interesus valstybė privalo apginti. Privataus sektoriaus subjektai, užsiimantys korupcija, gali daryti įtaką visai ekonomikos grandinei: iškreipia rinkas, mažina konkurenciją, padidina įmonių sąnaudas; užkerta kelią sąžiningam ir efektyviam privačiam verslui; pablogina produktų ir paslaugų kokybę, didina jų savikainą; lemia, kad privatus sektorius dažnai netenka verslo galimybių (plačiau žr. - Transparancy International , 2018; Department for international development, 2015, Forgues-Puccio, 2003). Korupcijos pasekmės: ardoma verslo aplinka - plečiasi „šešėlinės ekonomikos“ sfera, provokuojami kiti finansiniai nusikaltimai, didinama pinigų plovimo rizika ir t. t., kenčia vartotojai, kenčia akcininkai ir įmonių savininkai, mažėja įmonių pajamos, blogėja įmonių reputacija, atbaidomi užsienio investuotojai, formuojama neigiama šalies reputacija (plačiau žr. - Transparancy International , 2018; Department for international development, 2015, Forgues-Puccio, 2003).

Tradiciškai kova su korupcija apima tris kryptis: teisminis persekiojimas, korupcijos prevencija ir antikorupcinis švietimas. Šio straipsnio **objektas** yra korupcijos prevencijos galimybės, konkrečiau:

— Teisės atitikties valdymo sistemos kaip prevencinė priemonė kovoje su korupcija bei jų įtraukimas į juridinių asmenų bei vadovų civilinės ir baudžiamosios atsakomybės, už netinkamą įmonės priežiūrą ir kontrolę, leidžiančią pasireikšti korupcijai įmonėje, vertinimą.

Gilesnei analizei pasirinkta kontinentinės teisės tradicijos valstybė Vokietija, nes ji buvo viena pirmųjų šalių, kuri dar 1901 metais į savo teisinę sistemą įtraukė korupcijos privačiame sektoriuje kriminalizavimą (Teixeira, 2018) ir kuri pagal „Transparency International“ Korupcijos suvokimo indekso tyrimą 2020 m. turi itin gerus rezultatus, surinkusi 80 balų ji yra 9 vietoje (Teixeira, 2018). Todėl, autorės nuomone, Vokietijos strategija kovoje su korupcija apskritai bei su korupcija privačiame sektoriuje gali būti naudinga Lietuvos įstatymų leidėjams, teisės taikytojams ir moksliniam pasauliui.

Pristatomo straipsnio **tikslas** – parodyti, kad (1) teisės atitikties valdymo sistemos tampa privalomomis elgesio taisyklėmis vis didesniam skaičiui žmonių, sukurdamos naują reguliavimo sferą, standartų rinkinį, papildantį tradicines normatyvines sistemas, tokias kaip įstatyminė teisė, (2) baudžiamosios teisės požiūriu teisės atitikties valdymo sistemos tampa svarbia įmonės nusikaltimų, įskaitant korupciją, prevencijos priemone.

Autorė užsibrėžė šiuos **uždavinius**: (1) Vokietijos pavyzdžiu parodyti, kaip teisės atitikties valdymo sistemos galėtų būti panaudojamos kaip prevencinė priemonė kovoje su korupcija, (2) išanalizuoti Lietuvos teisinį pasiruošimą perimti užsienio šalių praktiką, kuri reikalauja iš įmonių teisės atitikties valdymo sistemų įsteigimą.

Siekdama šio tikslo, autorė naudojo teisinių dokumentų, mokslinės literatūros analizės, alternatyvų, loginės analizės **metodus** bei atskirų šį klausimą reglamentuojančių teisinių normų palyginimo **metodą**.

Autorės nuomone, šiuolaikinė teisė turėtų reaguoti į įvairius kitus mokslo pokyčius ir naujoves ir judėti kartu su jais. Šiame kontekste reikia pabrėžti, kad straipsnis nušviečia problematiką tarpdisciplininiškai, vienijant civilinės ir baudžiamosios teisės ir ekonomikos bei kriminologijos disciplinas. Teisės ir ekonomikos judėjimas yra siejamas su efektyvumo (naudingumo) siekimu, tai pabrėžia jų bendradarbiavimo svarbą (Valančienė , 2012) tiriant įvairias problemas ir pokyčius, kurie yra aktualūs visuomenei.

Korupcijos žalos ir būdų statistika

Kad korupcijos privačiame sektoriuje lygis yra aukštas ir kad korupcijos atvejai įvairesniais būdais paveikia vis daugiau bendrovių nei bet kada anksčiau, patvirtina „PwC“ kompanijos 2020 m. atliktas Pasaulio ekonominių nusikaltimų tyrimas (PWC, 2020) Tyrime per 24 mėnesius buvo apklausta daugiau nei 5 000 respondentų - įmonių 99 teritorijose, apie jų patirtį ekonominių nusikaltimų srityje. Antimonopolija, prekyba viešai neatskleista informacija, mokesčių sukčiavimas, pinigų plovimas, kyšininkavimas ir korupcija pagal šį tyrimą buvo dažniausios problemos, įmonėms sukeliančios tiesioginius nuostolius, kuriuos papildomai dar padidino nemažos sutvarkymo išlaidos ir teisėsaugos baudos. Be to, tyrimas pabrėžia, kad nusikaltimai, įvykdyti įmonės viduje pačių darbuotojų, yra potencialiai daug žalingesni nei iš išorės įvykdytas nusikaltimas. 43% praneštų atvejų, dėl kurių įmonėms kilo nuostoliai virš 100 mln. USD, buvo įvykdyti įmonės darbuotojų. Tyrimas rodo, kad kyšininkavimas ir korupcija (tyrime vartojamos angl. *Bribery and corruption* sąvokos) išlieka didelis iššūkis įmonėms - trečdalis visų respondentų - privačių įmonių teigia, kad jų buvo paprašyta sumokėti kyšį arba jie prarado verslo galimybę konkurento naudai, kuris, jų manymu, sumokėjo kyšį. Pastebima, kad 6 iš 10 organizacijų, dalyvavusių tyrime, neturėjo jokių sistemų, vertinančių riziką, susijusią su korupcija. Beveik pusė visų respondentų nevykdė jokio rizikos vertinimo, o jei ir vykdė, tai tik formaliai. Pusė visų respondentų arba neatlieka, arba atlieka labai formaliai rizikos vertinimą, susijusį su trečiųjų šalių ar partnerių patikrinimu ir stebėsena. Mažiau nei 3 iš 10 apklaustųjų įmonių atlieka ribotą kontrolės sistemų veiklos efektyvumo testavimą, o 12 proc. respondentų neatlieka jokių testavimų.

Remiantis šiuo tyrimu, įmonės, įgyvendinančios specialias teisės atitikties programas, paprastai turi mažiau išlaidų (palyginus su pajamomis) reagavimui, ištaisymui ir baudoms: įmonės, turinčios specialią teisės atitikties programą, turėjo 42 proc. mažiau reagavimo išlaidų ir 17 proc. mažiau ištaisymo išlaidų, nei tos, kurios neturėjo programų; kyšininkavimo ar korupcijos atveju, įmonės, vykdydamos specialią sistemą ar programą, vertinančią riziką, susijusią su kyšininkavimu ir korupcija, turėjo 58 proc. mažiau ištaisymo išlaidų. Tyrimas taip pat pabrėžia, kad reguliavimo institucijos vis daugiau dėmesio skiria teisinių reikalavimų laikymosi programoms. Kai kurios reguliavimo institucijos netgi pradeda prašyti bendrovių pateikti įrodymus, rodančius, kad jų atitikties programos yra veiksmingos (PWC, 2020).

Lietuvai ši tema irgi tampa vis aktualesnė, nes, nepaisant to, kad Lietuva tik maždaug prieš 25 metus įsiliejo į pasaulio ekonomiką, tačiau Pasaulio banko (angl. *World Bank*) duomenimis (A World Bank Group , 2019), šalis jau yra viena iš 20 pirmaujančių pasaulio šalių (2020 m. ataskaitos duomenimis Lietuva užima 11-tą vietą iš 190 šalių), turinčių „labiausiai verslui palankų teisinį reglamentavimą“, tai reiškia, kad privatus sektorius Lietuvoje sparčiai auga – o su juo ir organizacinių vidinių ir tarporganizacinių procesų grandinės. Tokia Lietuvos patirtis galėtų būti pavyzdžiu kitoms valstybėms, siekiančioms įtvirtinti modernią rinkos ekonomiką.

2020 metų Ekonominės laisvės indekso („Economic Freedom Index 2021“) (The Heritage Foundation, 2021) reitingų lentelėje Lietuva užima 15 vietą iš 180 pasaulio šalių.

Tačiau reitingų autoriai pažymėjo, kad tam, kad šalis patektų į ekonomiškai laisvų šalių gretas, Lietuva turėtų daugiau dėmesio skirti teismų nepriklausomybės stiprinimui bei imtis visapusiškos ir ilgalaikės kovos su korupcija kampanijos (pabraukta šio straipsnio autorės, siekiant pabrėžti reitingų autorių pastabos svarbą).

Reikia pažymėti, kad nors Lietuva ir užima labai aukštas ekonomikos laisvės indeksų ir reitingų pozicijas, tačiau kita vertus, remiantis 2020 m. sudaryto Lietuvos korupcijos žemėlapio duomenimis (LR specialiųjų tyrimų tarnyba, 2020), patys privataus sektoriaus atstovai Lietuvoje korupciją vertina kaip vieną iš kliūčių verslui vystyti (pabraukta šio straipsnio autorės, siekiant pabrėžti reitingų autorių pastabos svarbą). 73 proc. apklaustų įmonių vadovų nurodė, kad korupcija yra didelė kliūtis ar greičiau didelė kliūtis verslui vystyti. Tyrime nediferencijuojama tarp korupcijos privačiame ir viešajame sektoriuje.

Taip pat remiantis „Transparency International“ Korupcijos suvokimo indekso tyrimu (Transparency International , 2020), bendra situacija kovoje su korupcija Lietuvoje yra prasta (tyrime neskiriama tarp korupcijos privačiame ir viešajame sektoriuje). 2020 metais Lietuvai skirta 60 balų iš 100 galimų (tyrime dalyvavo 180 valstybių. KSI įverčiai rikiuojasi šimto balų skalėje, kur 100 balų žymi labai skaidrią valstybę, 0 – labai korumpuotą. Ekspertai pabrėžia, kad vertinant korupcijos suvokimą konkrečioje šalyje reikia žiūrėti būtent į KSI balus, o ne į valstybių sąraše užimamą vietą) ir ji yra 35 lentelės vietoje, labai atsilikdama nuo pavyzdžiu laikomų Skandinavijos šalių ar net Estijos. Šis korupcijos barometras išliks svarbus Lietuvai, nes 2020 m. naujai suformuota Vyriausybė yra nusprendusi savo sėkmę mažinant korupciją matuoti ir pagal pokyčius KSI. 2015–2025 m. Lietuvos Respublikos nacionalinės kovos su korupcija programoje (Dėl Lietuvos Respublikos nacionalinės kovos su korupcija 2015–2025 metų programos patvirtinimo) nurodytas tikslas – 2024 metais pasiekti 70 balų.

Apibendrinant visus anksčiau išvardintus tyrimų duomenis, reitingus ir ataskaitas, darytina išvada, kad yra poreikis ir toliau tirti korupcijos aplinkybes, siekiant sukurti efektyvesnį teisinį reguliavimą bei užtikrinti tinkamas korupcijos prevencijos privačiame sektoriuje priemones.

Viena iš svarbiausių ES valstybių – Vokietija, kuri yra ne tik demokratijos bet ir rinkos ekonomikos etalonas, turi būti mums pavyzdžiu ir kovos su korupcija srityje. Vokietijoje skiriama daug dėmesio teisės atitikties valdymo sistemų ir jų sąsajų su vadovo ir juridinių asmenų atsakomybe, tyrimams ir diskusijoms. Šią temą aktyviai nagrinėja teisininkai K. Filbinger (Filbinger, 2018), O. Hein (Hein, 2015), M. Beckmann (Beckmann , 2014), D. Kaiser (Kaiser, 2017), C. Nave ir T. Tauber (Nave & Tauber, 2007), verslo konsultantų bendrovės: KPMG (KPMG, 2017), Diligent (Hautli, 2019), mokslininkai: G. Wecker ir H. van Laak (Wecker & van Laak, 2009), M. Kort (Kort , 2010), S. Behringer (Behringer, 2011), S. Behringer (Behringer , 2012), J. Gogarn (Gogarn , 2015), C. E. Hauschka (Hauschka , Moosmayer, Lösler, 2016), H. Brettel (Brettel , 2016) ir kt. Lietuvoje ši tema yra mažai nagrinėjama tarp teisininkų (Rapolas, 2020): E. Rapolas diskutuoja apie tai, ar įmonės atsakomybę galima perkelti jos vadovui, tačiau nediskutuojama pareiga implementuoti teisės atitikties valdymo sistemas, o mokslinių darbų, susijusių su teisės atitikties valdymo sistemomis, kaip korupcijos prevencijos priemonė, surasti nepavyko.

Straipsnyje keliami probleminiai klausimai nebuvo nagrinėjami Lietuvos baudžiamojoje ar dar plačiau – teisinėje - literatūroje ir tebėra beveik nepastebimi, tai ir lemia straipsnio naujumą. Kadangi iki šiol Lietuvoje nebuvo akademinių diskusijų šiuo klausimu, kai visame pasaulyje šios temos jau pritraukia mokslininkų susidomėjimą, straipsnis gali tapti platesnės mokslinės diskusijos pagrindu, kas savo ruožtu yra aktualu ir naudinga įstatymų leidėjui ir teisę taikantiems subjektams, formuojant baudžiamosios teisės ir proceso politiką, tobulinant teisinį reguliavimą ir praktiką bei formuojant ir vykdant korupcijos privačiame sektoriuje prevencinę

veiklą. Straipsnis yra novatoriško pobūdžio, nes apima globalizacijos procesų, atitikties ir korupcijos apmąstymų derinį.

Teisės atitikties valdymo sistemų (angl. Compliance Management Systems) reglamentavimas ir praktinis naudojimas

Teisės atitikties valdymo sistemos yra viena iš teisinių pažeidimų ir kitas įmonės rizikas užkardančių priemonių, kurias sudaro integruota rašytinių vidinių tvarkų, procesų, atsakomybių, įrankių, funkcijų ir kontrolių visuma. Vadovas, įdiegęs efektyvią teisės atitikties valdymo sistemą, užtikrina, kad vidiniai procesai yra vykdomi pagal nustatytus principus, kad darbuotojai veikia apibrėžtuose rėmuose ir kad rizikos yra pastebimos ir stebimos. Tokia sistema neleidžia įmonei korumpuoti kitų įmonių ar subjektų ir užtikrina, kad išoriniai bandymai korumpuoti įmonę neliks nepastebėti. Praktikoje teisės atitikties valdymo sistemos efektyvumas gal nebus absoliutus ir negarantuos visiškos apsaugos. Tačiau tokios sistemos neįdiegimas tikrai sudarys sąlygas korupcinei aplinkai. Todėl teisės atitikties valdymo sistemos įvedimas yra ir vadovo bei juridinio asmens atsakomybės klausimas, kuris, autorės nuomone, turėtų būti teisiškai reglamentuotas – tam, kad suteiktų teisinę apsaugą atsakingumą puoselėjantiems vadovams ir kad įteisintų atsakomybę jos vengiantiems vadovams, taip apsaugant savininkų, darbuotojų ir kitų suinteresuotų šalių teises.

Egzistuoja net toks terminas "atitikties gynyba" (angl. *compliance defence*), kuris *inter alia* reiškia juridinių asmenų gynybą nuo baudžiamosios, administracinės ir net civilinės atsakomybės, kai organizacija yra nustačiusi atitikties procedūras, kad užkirstų kelią galimiems pažeidimams organizacijoje. Kitaip tariant, užtikrinant atitiktį daroma prielaida, kad vertinant, ar juridiniam asmeniui už pažeidimą turėtų būti skiriamos baudos ir kokia apimtimi, turi būti atsižvelgiama į organizacijoje nustatytus pažeidimų prevencijos mechanizmus, kurių buvo laikomasi. Pažymėtina, kad argumentai, susiję su organizacijoje galiojančiomis atitikties procedūromis, priklausomai nuo aplinkybių, gali būti gynybos dalis net ir tuo atveju, jei įtarimai pareikšti fiziniams asmenims, užimantiems vadovaujančias pareigas organizacijoje (Stępniewska, 2014).

Nors dabartinė tendencija rodo vis augančią tokių teisės atitikties valdymo sistemų paplitimą įmonėse, kai įmonių valdymo organai imasi atitinkamų veiksmų, kad nusikaltimų ir nusižengimų, tarp jų ir korupcijos rizika įmonėje būtų sumažinta, diegdami įmonėje antikorupcinę aplinką (pvz., Elgesio kodeksas, Antikorupcinė politika, Dovanų politika, Viešųjų ir privačių interesų derinimo politika ir kt.) ir užtikrindami jos laikymąsi, tačiau teisinis tokių sistemų reglamentavimas ir jo privalumai ar minusai nėra iki galo ištirti. Tokie vidiniai dokumentai ir juose esančios korupcijos prevencijai skirtos nuostatos vis dėlto yra svarbūs ir yra pripažįstami tiek tarptautinėse konvencijose:

— Jungtinių Tautų konvencijos prieš korupciją (Jungtinių Tautų Konvencija prieš korupciją, Valstybės žinios, 2006-12-14, Nr. 136-5145) 12 straipsnyje 1 dalyje nustatyta, *kad kiekviena valstybė, šios Konvencijos Šalis, pagal pagrindinius savo nacionalinės teisės principus imasi priemonių užkirsti kelią korupcijai privačiame sektoriuje, sustiprinti apskaitos ir audito standartus privačiame sektoriuje ir prireikus nustato veiksmingas, proporcingas ir atgrasančias civilines, administracines ar baudžiamąsias sankcijas už tokių priemonių nesilaikymą“*, kur 2 dalyje kaip viena iš priemonių papildomai nurodyta: „*užtikrinti, kad privačios įmonės, atsižvelgiant į jų struktūrą ir dydį, turėtų pakankamą vidaus audito kontrolės mechanizmą, kuris padėtų užkirsti kelią korupcijai ir nustatytų korupcijos atvejus“*.

— Europos Tarybos Baudžiamosios teisės konvencijos (Baudžiamosios teisės konvencija dėl korupcijos, Valstybės žinios, 2002-03-01, Nr. 23-853) dėl korupcijos 18 straipsnyje 1 dalyje „Juridinio asmens atsakomybė“ nustatyta, kad *kiekviena šalis priima reikiamus teisės aktus ir imasi kitų būtinų priemonių, kad užtikrintų galimybę patraukti atsakomybėn juridinius asmenis už pagal šią konvenciją nustatytus aktyviojo kyšininkavimo, prekybos poveikio ir pinigų plovimo baudžiamuosius nusikaltimus,* (...), kur 2 dalyje papildomai nurodyta, *išskyrus šio straipsnio 1 dalyje numatytus atvejus, kiekviena šalis imasi reikiamų priemonių, kad užtikrintų galimybę patraukti atsakomybėn juridinį asmenį tada, kai dėl šio straipsnio 1 dalyje nurodyto fizinio asmens priežiūros ar kontrolės trūkumo juridiniam asmeniui pavaldus fizinis asmuo galėjo įvykdyti to juridinio asmens naudai šio straipsnio 1 dalyje minimus baudžiamuosius nusikaltimus* (...).

— 1995 m. liepos 26 d. Konvencijos dėl Europos Bendrijų finansinių interesų apsaugos (Konvencija dėl Europos Bendrijų finansinių interesų apsaugos, parengta vadovaujantis Europos Sąjungos sutarties K.3 straipsniu, Valstybės žinios, 2004-07-20, Nr. 112-4178), Antrojo protokolo 3 straipsnyje 1 dalyje nustatyta*, kad kiekviena valstybė narė imasi būtinų priemonių užtikrinti, kad juridiniai asmenys galėtų būti traukiami baudžiamojon atsakomybėn už sukčiavimą, aktyviąją korupciją ir pinigų plovimą* (...), kur 2 dalyje papildomai nurodyta, kad *be šio straipsnio 1 dalyje jau nustatytų veikų, kiekviena valstybė narė imasi būtinų priemonių užtikrinti, kad juridinis asmuo galėtų būti traukiamas baudžiamojon atsakomybėn tais atvejais, kai dėl šio straipsnio 1 dalyje nurodyto asmens nepakankamos priežiūros ar kontrolės sukčiavimo arba aktyviosios korupcijos, arba pinigų plovimo veikas to juridinio asmens naudai galėjo padaryti jam pavaldus asmuo* (...).

— tiek nacionalinėse, įskaitant ir Lietuvos, rekomendacijose, pvz. Antikorupcijos vadovas verslui, 2016 metais parengtas Specialiųjų tyrimų tarnybos: *labai svarbu, kad kiekvienos organizacijos teisės aktuose būtų nustatytos aiškios antikorupcinės nuostatos bei etiško elgesio reikalavimai, su kuriais visi darbuotojai būtų supažindinami pasirašytinai, bei periodiškai būtų organizuojami darbuotojų antikorupciniai mokymai. Lietuvoje tiek viešasis, tiek privatus sektorius turėtų siekti „nulinės tolerancijos korupcijai“ (...) privačiame sektoriuje yra diegiamos įvairios priemonės dėl netolerancijos korupcijai, pavyzdžiui, Antikorupcinės politikos, Dovanų politikos, Interesų konflikto vengimo politikos, Etikos kodeksai, kurie yra sudėtinė verslo organizacijų vidaus tvarkos taisyklių dalis (*Specialiųjų tyrimų tarnyba, 2016).

Užsienio praktika rodo, kad yra šalių, kur tiesiogiai per įstatymus ar teismų praktiką yra reikalaujama įsteigti teisės atitikties valdymo sistemas organizacijoje, siekiant minimizuoti su korupcija susijusią riziką ir tuo užtikrinti priežiūros ir kontrolės funkcijas, bei yra numatyta vadovo ir įmonės atsakomybės už tokių sistemų neimplementavimą ar nepakankamą įmonės priežiūrą. Viena iš tokios kovos su korupcija priemonės taikančių šalių pavyzdžių yra JAV, 2002 m. priėmusios Sarbanes-Oxley aktą (Sarbanes–Oxley Act of 2002, Pub.L. 107–204, 116 Stat. 745, enacted July 30, 2002) (angl. US Sarbanes–Oxley Act of 2002), Didžioji Britanija, priėmusi kyšininkavimo įstatymą 2010 m. (Bribery Act 2010, CHAPTER 23) (angl. Bribery Act 2010), kur reglamentuota komercinių organizacijų atsakomybė už netinkamą organizacijos veiklos organizavimą, neužkertančio kelio kyšininkavimui, bei Vokietija, kuri su Siemens byla maždaug nuo 2013 metų (žr. apačioje) pradėjo taikyti vadovų atsakomybę už netinkamą organizacijos veiklos organizavimą, t. y. teisės atitikties valdymo sistemų neimplementavimą įmonėje, neužkertančio kelio teisiniams bei kitiems pažeidimams, teismų praktikoje.

Pastaraisias metais keli teismai Vokietijoje (Neubürger-Entscheidung“ des LG München I (Urt. v. 10.12.2013 – 5 HK O 1387/10) = BB 2014, 850, obiter dicta des BGH zur Frage der Garantenstellung des Compliance-Officers (BGHSt 54, 44 [49]), obiter dicta des BGH zur Bedeutung eines effizienten Compliance-Managements für die Bemessung von Geldbußen (Urteil vom 17.7. 2009 – 5 StR 394/08, Rn. 117 ff.)) nusprendė, kad veikianti teisės atitikties valdymo sistema gali sušvelninti vadovo ar įmonės atsakomybę. Be to, Vokietijos rinkoje vyrauja bendras supratimas, kad įmonės turi turėti teisės atitikties valdymo sistemas, norint atitikti tam tikras konkurencingumui reikalingas sąlygas ir kriterijus, reikalaujamus iš partnerių (Volk, 2019).

Kadangi Vokietijos ir Lietuvos teisės sistemos priskiriamos romėnų-germanų teisės šeimai, joms abiem taikoma ES ir tarptautinė teisė, dėl to Lietuva ir Vokietija daugeliu aspektų turi panašų ar net analogišką teisinį reguliavimą. Vokietijos ekonomika yra patyrusi praeityje keletą rimtų korupcijos skandalų, ir dėl to yra susiformavę stipresnis korupcijos privačiame sektoriuje teisinis reguliavimas bei teismų praktika. Lietuvai būtų naudinga, remiantis Vokietijos praktika, išanalizuoti teisės atitikties valdymo sistemų teisinio reglamentavimo galimybes ir praktinio pritaikymo naudą. Todėl toliau straipsnyje bus detaliau paaiškinama, kaip toks mechanizmas – teisės atitikties valdymo sistemos - įtvirtintas Vokietijos teisinėje sistemoje ir naudojamas teismų praktikoje.

Teisės atitikties valdymo sistemų taikymas Vokietijoje

Pareiga implementuoti teisės atitikties valdymo sistemas nėra tiesiogiai įtvirtinta Vokietijos teisės aktuose, tačiau yra bendrai sutariama, kad tokia pareiga netiesiogiai kyla iš šių įstatymų nuostatų:

— 91 str. 2 d. AktG (Vokietijos akcinių bendrovių įstatymas): Vadovo rizikos valdymo įsipareigojimas įmonei, o kartu ir pareiga įsteigti stebėjimo sistemas: *Vadovas turi imtis tinkamų priemonių, visų pirmiausia, sukurti stebėsenos sistemą, kad pokyčiai, keliantys pavojų nuolatiniam bendrovės egzistavimui, būtų atpažinti ankstyvame etape.*

— 93 str. 1 d., 76 str. 1 d. AktG: Bendroji vadovo pareiga rūpintis įmone: *Vykdant vidaus ir išorės pareigas, valdyba turi teisėtumo pareigą laikytis įstatymų, vykdydama savo pareigas.*

Vadovas privalo atlyginti įmonei padarytą žalą (pilnai asmeniškai atsakingas įmonei visu savo turtu), jei netinkamai vykdo savo pareigas.

— Vokietijos įmonių valdymo kodeksas (Deutsches Corporate Governance Kodex), galiojantis Vokietijos biržoje kotiruojamoms bendrovėms: *Vadovas, vykdydamas bendrovės reikalus, turi elgtis rūpestingai ir vadovautis patikimo vadovo principais.*

— Be to, vadovui, kaip teisėtai įmonei atstovaujančiam organui, gali kilti ir asmeninė baudžiamoji atsakomybė iš 9 str. 1 d. Nr. 1 Owig ir 130 str. OWiG (Administracinių teisės pažeidimų įstatymas): *Tas kuris, kaip verslo ar įmonės savininkas, tyčia ar dėl neatsargumo nesiima priežiūros priemonių, būtinų tam, kad įmonėje užkirstų kelią įsipareigojimų pažeidimams, kurie taikomi savininkui ir už kurių pažeidimą gresia laisvės atėmimas arba finansinė bauda, elgiasi nerūpestingai, jei padarytas toks pažeidimas, kurį tinkamai prižiūrint galima būtų buvę užkirsti arba apsunkinti kelią.*

130 straipsnis OWiG iš esmės yra vienintelė esminė (plačiąja prasme) baudžiamosios teisės organizacinė norma ir baudžiamosios teisės pagrindas. Norma pateikia verslo priemonių apžvalgą, kad būtų išpildyti įmonės valdymo teisiniai reikalavimai.

Šie straipsniai taikomi tiek privačiam sektoriui, tiek ir atitinkamai valstybės valdomoms įmonėms bei turi teisinę analogiją ar panašų reguliavimą kitose negu AG (AB) formos įmonėse, pvz. GmbH (UAB) ir kitose verslo organizavimo formose

Kaip rodo Vokietijos civilinių ir baudžiamųjų bylų praktika, vis daugėja bylų, kai įmonių valdymo organams buvo svarstoma priteisti kompensuoti padarytą žalą įmonei, nes jie neužtikrino efektyvaus teisės atitikties valdymo sistemos įgyvendinimo, tai sudarė sąlygas korupcijai, pvz. Deutsche Bank/Kirch/Breuer (BGH, Urteil vom 24.01.2006 - XI ZR 384/03), Siemens /Neubürger (OLG München, Az: 7 U 113/14; LG München I, Urteil vom 10. Dezember 2013 – 5HK O 1387/10, 5 HKO 1387/10), VW /Winterkorn (VW /Winterkorn, 2021).

Viena iš pirmųjų ir precedentinių yra Siemens AG byla. Tyrimo metu buvo nustatyta, kad keliose Siemens verslo srityse nuo devintojo dešimtmečio buvo kuriama „juodųjų kasų“ sistema. Paslėptos "juodosios kasos" buvo pildomos dideliais kiekiais grynųjų pinigų ir prireikus naudojamos kyšiams sumokėti. Šių kasų pildymas grynaisiais buvo atliekamas kelerius metus, paskui jas papildė plati fiktyvių konsultantų sutarčių ir fiktyvių Siemens apmokestinamų sąskaitų sistema. „Pajamos“ iš fiktyvių sutarčių ir sąskaitų patekdavo į "juodąsias kasas" ir leisdavo mokėti kyšį, kad vėliau galima būtų paveikti viešųjų pirkimų procesus.

Siemens AG valdyba nesiėmė jokių reikšmingų pokyčių šiame kontekste. Todėl J. H. Neubürger, už finansus atsakingas valdybos narys, buvo apkaltintas pažeidęs valdybos pareigas neužkirtęs kelio neteisėtai įmonės veiklai ir jos darbuotojų elgesiui. Jis neužtikrino, kad įmonėje būtų įdiegta veiksminga teisės atitikties valdymo sistema, kuri būtų faktiškai taikoma ir kontroliuojama. Be to, nepaisant to, kad jam buvo atkreiptas dėmesys į pakartotinius rimtus atitikties taisyklių pažeidimus, jis nesiėmė jokių priemonių arba jų buvo nepakankamai, kad išaiškintų ir ištirtų, taip pat ištaisytų pažeidimus bei nubaustų darbuotojus, padariusius pažeidimus. Nors buvo pradėti kai kurie vidaus tyrimai, jų rezultatai liko be pasekmių.

Siemens akcininkų įsitikinimu išankstinis nuoseklus padėties išaiškinimas ir ištaisymas būtų nutraukę „juodųjų kasų" sistemos veiklą daug anksčiau. Dėl tos priežasties iš viso Siemens koncernas sumokėjo apie 2,5 milijardo eurų už baudas, mokestines nepriemokas, vidaus tyrimus ir advokatus.

Miuncheno apygardos teismas nuteisė J. H. Neubürger sumokėti Siemens bendrovei 15 milijonų eurų, pasisakydamas: *Kaip teisėtumo principo įpareigojimo dalis vadovas turi rūpintis tuo, kad įmonės procesai būtų taip organizuoti ir prižiūrimi, kad nebūtų pažeisti įstatymai, pvz., nebūtų siūlomi kyšiai užsienio valstybės pareigūnams arba atitinkamai užsienio valstybės privatiems asmenims. Vadovas atlieka savo pareigas tinkamai tik tada, jei jis įsteigia teisės atitikties valdymo sistemą, orientuotą į žalos prevenciją ir rizikos kontrolę. (...) Teisėtumo principo laikymasis ir atitinkamai veikiančios teisės atitikties valdymo sistemos sukūrimas priklauso bendrai vadovo atsakomybei.* Tai - aiškūs teismo teiginiai apie pareigą implementuoti teisės atitikties valdymo sistemas.

Kitoje Vokietijos byloje (Urteil v. 09.05.2017 – BGH 1 StR 265/16) Aukščiausiasis Teismas (BGH) dar kartą patvirtino teisės atitikties valdymo sistemų svarbą korupcijos bylose ir su jų nuobaudomis susijusiais klausimais. BGH mano, kad skiriant baudą įmonei/ vadovui, svarbu įvertinti, ar įmonė yra įdiegusi efektyvią vidaus teisės atitikties valdymo sistemą siekiant išvengti teisinių pažeidimų arba bent jau stengiasi tai padaryti iškart po nusikaltimo nustatymo (tokiu atveju bauda būtų sumažinta nežymiai). Po šio BGH sprendimo teisės atitikties valdymo sistemų svarba Vokietijos įmonėse vėl padidėjo. Svarbus aspektas yra, kad teisės atitikties valdymo sistemų vaidmuo čia susijęs ne su konkrečiomis įmonėmis, bet taikomos be

apribojimų ir mažoms ir vidutinėms įmonėms, nepaisant pramonės šakos, teisinės formos, įmonės dydžio - tokių mažų ir vidutinių įmonių Vokietijoje yra didžioji dalis.

Apibendrinant, galima padaryti išvadas, kad (1) teisės atitikties valdymo sistemų svarbą Vokietijoje pripažįsta pačios įmonės, verslo partneriai, reguliavimo įstaigos, teismai (2) teisės atitikties valdymo sistemos Vokietijoje labiau orientuotos į bendrą rizikos ir kontrolės valdymą įmonėje, o teisės pažeidimai, tokie kaip korupcija, yra viena iš sudedamųjų dalių, (3) teismai pripažino teisės atitikties valdymo sistemų svarbą bei naudoja jas vadovo ir juridinių asmenų civilinės ar baudžiamosios atsakomybės vertinimui, (4) tyrimai rodo, kad teisės atitikties valdymo sistemos įmonėje mažina išlaidas susijusias su reagavimu, ištaisymu ir baudomis, esant pažeidimams įmonėje bei padeda užkirsti kelią pažeidimams.

Teisės atitikties valdymo sistemų taikymo galimybės Lietuvoje

Lietuvoje pastebima tendencija, kad teisės atitikties valdymo sistemų implementavimas Lietuvos įmonėse vis populiarėja, bet išlieka labiau savanoriškas žingsnis iš įmonių pusės, negu teisinis reikalavimas. Tokias išvadas galima daryti remiantis Privataus sektoriaus skaidrumo tyrimu, vertinančiu tris pagrindinius kriterijus – įmonės antikorupcines priemones, organizacijos skaidrumą ir finansinių rodiklių atskleidimą, kurį atlieka Transparancy International (Transparency International Lietuvos skyrius, 2019). Be to, Lietuvoje vis dar pasitaiko įmonių, kurios nežino, kaip suvaldyti korupciją įmonėje, nežino apie teisės atitikties valdymo sistemas, o jeigu ir turi tokias, tai jos yra labiau formalaus, fragmentiško pobūdžio ar neveikiančios praktikoje. Todėl atsiranda vis daugiau iniciatyvų, tokių kaip Asociacijos „Investors' Forum" iniciatyva „Baltoji Banga" (Iniciatyva - Baltoji Banga) (įkurta privačiam sektoriui 2007 m.), „Skaidrumo Akademija" („Skaidrumo Akademija") (įkurta viešajam sektoriui 2020m.), prie kurių jungiasi vis daugiau įmonių ir kitų organizacijų, norinčių artimiau susipažinti su pirmiausia korupcinių rizikų valdymu.

Vis dėlto reikia pabrėžti, kad nors Lietuva per porą dešimtmečių pasiekė stulbinančių rezultatų, perimdama pavienes tendencijas šioje srityje iš užsienio šalių - bet tendencijos gali ir keistis, ir toliau vystytis, o nesant tinkamam teisiniam reguliavimui, jų veiksmingumas gali būti labai ribotas. Savanoriškas teisės atitikties valdymo sistemų įdiegimas pavieniuose sektoriuose ar įmonėse neatstoja teisinio saugumo žalos materializavimosi atveju. Tad valstybės pareiga išlieka įvertinti rizikas, kylančias iš teisinio reguliavimo vakuumo. Valstybė savo ruožtu turi ne tik stebėti teigiamas tendencijas, bet ir aktyviai kurti strategijas, jungiančias įvairaus lygio ir formų poveikio priemones, paskatinimus, bet ir - bausmes.

Nors Lietuvos įstatymai, panašiai kaip Vokietijos, tiesiogiai nereikalauja įsteigti teisės atitikties valdymo sistemas įmonėje, tačiau tokia pareiga galėtų kilti iš BK 20 straipsnio 3 dalies, kuris iš esmės įtvirtina analogišką reguliavimą paminėtiems reguliavimams tarptautinėse sutartyse ir tam pačiam Vokietijos 130 str OWiG - baudžiamosios atsakomybės taikymo juridiniams asmenims sąlygų reguliavimas: *Juridinis asmuo gali atsakyti už nusikalstamas veikas ir tuo atveju, jeigu jas juridinio asmens naudai padarė juridinio asmens darbuotojas ar įgaliotas atstovas šio straipsnio 2 dalyje nurodyto asmens nurodymu ar leidimu arba dėl nepakankamos priežiūros arba kontrolės*.

Taigi baudžiamoji atsakomybė pagal BK 20 straipsnio 2, 3 dalis juridiniam asmeniui gali kilti tuomet, kai juridinio asmens naudai nusikalstamą veiką padaro ne vadovaujančias pareigas einantis asmuo, o darbuotojas ar įgaliotas atstovas, tačiau su sąlyga, kad ta veika padaryta dėl vadovaujančias pareigas einančio asmens nepakankamos priežiūros arba kontrolės. Teismas, šiuo atveju spręsdamas juridinio asmens baudžiamosios atsakomybės klausimą, turi įvertinti vadovaujančias pareigas einančio asmens nepriežiūros ar kontrolės stokos pobūdį ir įtaką

nusikalstamai veikai padaryti: ar vadovaujančias pareigas einantis asmuo sąmoningai arba netgi piktybiškai nevykdė ar aplaidžiai vykdė jam pavestas priežiūros ir kontrolės funkcijas, ar tos funkcijos buvo vykdytos nepakankamai rūpestingai ir ar tai galėjo sudaryti sąlygas nusikalstamai veikai padaryti ir pan.(Teismų praktikos dėl juridinių asmenų baudžiamosios atsakomybės taikymo apžvalga, AB-49-1, Lietuvos Aukščiausias Teismas, 2018 m. lapkričio 8 d.) Taigi, manytina, kad veiksmingos teisės atitikties valdymo sistemos galėtų būti efektyvi įmonės gynybinė priemonė ir apriboti juridiniam asmeniui baudžiamąją atsakomybę, kai jis imasi preventyvių priemonių, bei padidinti atsakomybę, kai jis nesiima preventyvių priemonių. Įmonė, kuri efektyviai (pvz., JAV teisingumo departamento kriminalinis skyrius turi metodiką įmonių teisės atitikties valdymo sistemų vertinimui - U.S. Department of Justice Antitrust Division Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations, July 2019) implementavo teisės atitikties valdymo sistemas ir jų stebėseną, bet darbuotojas ją apėjo – neturėtų būti traukiama baudžiamojon atsakomybėn. Šiuo atveju nusikalstama veika turėtų būti inkriminuota tik ją padariusiam darbuotojui - fiziniam asmeniui. Tačiau reikia pabrėžti, kad teisės atitikties procedūros negali egzistuoti tik ant popieriaus. Tam, kad teisės atitikties valdymo sistemos atliktų savo funkciją ir būtų pasiekti atitikties tikslai, teisės atitikties valdymo sistemos turi būti veiksmingos, t. y. įtrauktos į organizacijų procesus. Nes teisės atitikties valdymo sistemų veiksmingumas tampa vienu iš esminių išsamaus patikrinimo vertinimo elementų, vykdant subjekto nustatytus teisinius įsipareigojimus, įskaitant organizacijos veiklos pažeidimų prevenciją. Todėl tinkamai įgyvendinama ir veikianti teisės atitikties valdymo sistema yra teisinės atsakomybės kriterijus (Stępniewska, 2019).

Pareiga valdyti riziką įmonėje bei turėti atitinkamas sistemas galėtų kilti taip pat iš įmonės valdymo organams galiojančios rūpestingumo pareigos. Kasacinis teismas, pasisakydamas dėl įmonės vadovo rūpestingumo pareigos turinio, yra išaiškinęs, kad vadovo rūpestingumo pareiga visų pirma nustato teisėto elgesio reikalavimą, kad paties vadovo elgesys nepažeistų imperatyviųjų teisės normų, be to, vadovas privalo prižiūrėti, kad ir įmonės veikla būtų teisėta – *vadovas privalo dirbti rūpestingai ir kvalifikuotai bei daryti viską, kas nuo jo priklauso, kad jo vadovaujama įmonė veiktų pagal įstatymus ir kitus teisės aktus. Įmonės vadovas taip pat privalo rūpintis, kad įmonė laikytųsi įstatymų, nustatytų savo veiklos apribojimų. Vadovą ir jo vadovaujamą įmonę sieja fiduciariniai santykiai, nuo pat tapimo bendrovės vadovu momento vadovas turi elgtis rūpestingai, atidžiai ir apdairiai (*Lietuvos Aukščiausiojo Teismo 2006 m. gegužės 25 d. nutartis, priimta civilinėje byloje Nr. 3K-7-266/2006; Lietuvos Aukščiausiojo Teismo 2014 m. gegužės 5 d. nutartis, priimta civilinėje byloje Nr. 3K-3-244/2014; Lietuvos Aukščiausiojo Teismo 2016 m. birželio 3 d. nutartis, priimta civilinėje byloje Nr. 3K-3-298-701/2016). Taigi, bendroji valdymo organų rūpestingumo pareiga apima ne tik teisėto (Lietuvos Aukščiausiojo Teismo 2006 m. birželio 12 d. nutartis, priimta civilinėje byloje Nr. 3K-3-298/2006), bet ir sąžiningo bei protingo elgesio reikalavimą (Lietuvos Aukščiausiasis Teismas, Bendrovės valdymo organų civilinę atsakomybę reglamentuojančių teisės normų taikymo Lietuvos Aukščiausiojo Teismo praktikoje apžvalga, Teismų praktika 45, 2016 m. lapkričio 23 d.).

Be to, tokia pareiga galėtų kilti iš įmonės valdymo organams CK 2.87 straipsnyje įtvirtintų fiduciarinių pareigų, *, t. y. veiklos principai, kurių valdymo organai turi laikytis organizuodami kasdienę bendrovės veiklą, priimdami ir įgyvendindami įmonės veiklos sprendimus. Akcinių bendrovių įstatymo 19 straipsnio 8 dalyje nustatyta, kad bendrovės valdymo organai privalo veikti bendrovės ir jos akcininkų naudai, laikytis įstatymų bei kitų teisės aktų ir vadovautis bendrovės įstatais. CK 2.87 straipsnyje įtvirtinta, kad juridinio asmens valdymo organo narys juridinio asmens ir kitų juridinio asmens organų narių atžvilgiu turi veikti sąžiningai ir protingai, būti lojalus, laikytis konfidencialumo, vengti situacijos, kai jo*

asmeniniai interesai prieštarauja ar gali prieštarauti juridinio asmens interesams (1–6 dalys) ir kt. Šie veiklos principai įpareigoja bendrovės valdymo organus veikti išimtinai bendrovės interesais, t. y. užtikrinti stabilią, efektyvią, konkurencingą jos, kaip rinkos dalyvio, veiklą (Lietuvos Aukščiausiojo Teismo 2013 m. balandžio 19 d. nutartis, priimta civilinėje byloje Nr. 3K-3-234/2013).

Taigi, apibendrinant galima teigti, kad vadovą ir įmonę, kuriai jis vadovauja, sieja rūpestingumo ir fiduciariniai santykiai. Todėl vadovas turi elgtis rūpestingai, atidžiai, apdairiai ir veikti išimtinai juridinio asmens interesams. Šių pareigų nevykdymas, pvz. jei vadovas žino apie esamas problemas ar rizikas įmonėje, bet nesiima jokių veiksmų išspręsti jas, ar jų netinkamas vykdymas lemia Civiliniame kodekse įtvirtintą vadovo atsakomybę. Įmonės akcininkai tokioje situacijoje galėtų pareikšti vadovui ieškinį dėl žalos atlyginimo. Tai reiškia, kad įmonei patyrus nuostolių dėl žalos atlyginimo ar baudos sumokėjimo, ši turėtų turėti teisę mokėtiną sumą prisiteisti iš vadovo, jei būtų konstatuota, kad jis veikė netinkamai (Rapolas, 2020).

Tačiau, nepaisant Vokietijos pavyzdžiui analogiško reguliavimo, Lietuvoje analizuojant įmonių valdymo organų civilinę atsakomybę reglamentuojančių teisės normų taikymo Lietuvos Aukščiausiojo Teismo praktikoje apžvalgą (Lietuvos Aukščiausiasis Teismas, Bendrovės valdymo organų civilinę atsakomybę reglamentuojančių teisės normų taikymo Lietuvos Aukščiausiojo Teismo praktikoje apžvalga, Teismų praktika 45, 2016 m. lapkričio 23 d.), galima rasti bylų, kuriose teismai diskutuoja dėl vadovo atsakomybės ir jo rūpestingumo, lojalumo ir teisėtumo principų pažeidimo, tačiau niekur nėra minima, kad įmonių valdymo organai turi pareigą implementuoti teisės atitikties valdymo sistemas, kad sumažintų verslo, įskaitant korupcijos, riziką. Be to, nepavyko surasti ir korupcijos bylų, kur juridiniam asmeniui būtų taikomas BK 20 str. 3 d. dėl vadovo netinkamos priežiūros ar kontrolės.

Autorės nuomone, pavyzdžiais, kur teismai galėtų įtraukti teisės atitikties valdymo sistemų ir jų efektyvumo vertinimą, sprendžiant vadovo atsakomybę dėl nepakankamos priežiūros ir kontrolės, dėl kurių atsirado galimybė pažeidimams ir todėl padaryta didelė žala įmonėms, visuomenei, valstybei ir gamtai, galėtų būti 2020m. pradėti tyrimai įmonėms „Ekologistika“ ir „Grigeo Klaipėda“ dėl aplinkos taršos. Šie atvejai indikuoja, kad organizacijų vidinės ar tarporganizacinės procesų grandinės – jeigu jos yra netinkamai sudėliotos ir prižiūrimos – sudaro sąlygas nukrypimams nuo procesų ar teisinių normų, galimai sukeldami žalą ir pačiai įmonei. Reikia palaukti, ką nuspręs teismai šiose bylose, nes kol kas „Grigeo Klaipėda“ atveju įtariamiesiems yra pareikšti įtarimai pagal du Baudžiamojo kodekso (BK) straipsnius – dėl aplinkos apsaugos taisyklių pažeidimo, dėl ko yra padaryta žala gamtai ir dėl didelio kiekio dokumentų klastojimo (Rumšienė , LRT, 2021), o „Ekologistikos“ atveju galutiniai įtarimai pareikšti septyniems fiziniams ir juridiniams asmenims, tarp jų – „Ekologistikos“ vadovui ir dviem darbuotojams – bei pačiai bendrovei. Visi jie įtariami sistemingu aplinkos apsaugos priežiūros ir naudojimo taisyklių pažeidimu bei apgaulingu apskaitos tvarkymu. Vadovas bei įmonė taip pat įtariami turto sunaikinimu dėl neatsargumo, o vadovas – ir dokumento suklastojimu (Šukšta, LRT, 2020), tačiau, autorės nuomone, ši byla, analogiškai anksčiau minėtiems Vokietijos pavyzdžiams, galėtų tapti teisės atitikties valdymo sistemų teisinio reikalavimo Lietuvos tesimų praktikoje pradžia.

Autorės nuomone, tokia, ne tik Vokietijos, bet ir kitų užsienio šalių praktika, galėtų patapti efektyvia korupcijos privačiame sektoriuje (įskaitant ir valstybės valdomas įmones) prevencijos priemone Lietuvoje ir gali būti aktyviai naudojama teismų praktikoje. Skiriamos sankcijos vadovams ir juridiniams asmenims priverstų juos susimąstyti apie asmeninę reputaciją ir galėtų atgrasinti ūkio subjektus nuo ketinimų užsiimti korupcija ar korupcinio pobūdžio nusikaltimais. Taip pat teisės atitikties valdymo sistemos galėtų būti efektyvi vadovo

ir juridinių asmenų gynybos priemonė, leidžianti vadovui ir įmonei įrodyti, kad jie padarė viską, kas įmanoma, kad užkirstų kelią nusikaltimams.

Apibendrinant galima padaryti išvadas, kad (1) teisės atitikties valdymo sistemos Lietuvoje tampa vis aktualesnės, tačiau yra labiau savanoriškas dalykas iš įmonių pusės, (2) Lietuvos teisinė bazė, kuri galėtų būti pritaikyta teisės atitikties valdymo sistemoms įtvirtinti Lietuvoje, yra labiau orientuota į pavienes nusikalstamas veikas, negu į bendrą rizikos valdymą ir kontrolę, (3) teismai kol kas neformuoja praktikos, kur teisės atitikties valdymo sistemos būtų panaudotos vadovo ir juridinio asmens civilinės ar baudžiamosios atsakomybės vertinimui, (4) kol kas nėra ištirta Lietuvoje, ar teisės atitikties valdymo sistemos padeda Lietuvos įmonėms mažinti išlaidas, susijusias su pažeidimais.

Išvados

Teisės atitikties valdymo sistemos gali būti veiksminga priemonė, užtikrinanti efektyvų viešojo ir privataus sektoriaus dalyvių darbą, galinti minimizuoti bendras su įmonės veikla, taip pat ir su korupcija, susijusias rizikas bei žalą, galinti padėti atskirti, kam panaikinti ar sušvelninti juridinių asmenų ir jų vadovų civilinę ar baudžiamąją atsakomybę dėl netinkamos įmonės priežiūros ir kontrolės, ir kam ne.

Kai kuriose valstybėse tiesiogiai taikant įstatymus ar teismų praktiką reikalaujama įsteigti teisės atitikties valdymo sistemas organizacijoje, siekiant sumažinti riziką, įskaitant ir su korupcija susijusią riziką, ir tuo užtikrinti priežiūros ir kontrolės funkcijas, bei yra numatyta vadovo atsakomybė už tokių sistemų neimplementavimą ar nepakankamą įmonės priežiūrą. Iš tokios kovos su korupcija priemonės taikančių šalių yra JAV (įstatymas), Didžioji Britanija (įstatymas), Vokietija (teismų praktika).

Vokietijoje yra bendrai sutariama, kad pareiga implementuoti teisės atitikties valdymo sistemas netiesiogiai kyla iš šių įstatymų nuostatų: 130 str. OWiG (Administracinių teisės pažeidimų įstatymas), 91 str. AktG (Vokietijos akcinių bendrovių įstatymas), 76 str. 1 d., 93 str. 1 d. AktG, 43 str. GmbhG, Vokietijos įmonių valdymo kodekso. Vokietijos teismai jau formuoja praktiką, kai įmonių valdymo organai yra kaltinami dėl netinkamos įmonės priežiūros ir kontrolės, dėl ko įmonė patyrė žalą. Teismai yra pasisakę, kad vadovas atlieka savo pareigas tinkamai tik tada, jei jis įsteigia teisės atitikties valdymo sistemą, orientuotą į žalos prevenciją ir rizikos valdymą.

Lietuvoje pareiga implementuoti įmonėje teisės atitikties valdymo sistemas, bent hipotetiškai, galėtų kilti iš BK 20 straipsnio 3 dalies ir įmonėms valdymo organams galiojančių rūpestingumo, lojalumo ir teisėtumo principų laikymosi. Tačiau Lietuvos tesimų praktikoje kol kas niekur nėra naudojamas toks mechanizmas. Teismai kol kas nėra pasisakę apie įmonių valdymo organų pareigas implementuoti teisės atitikties valdymo sistemas, kad sumažintų verslo, įskaitant korupcijos, rizikas.

Vokietijos praktika gali būti pavyzdys Lietuvos teisės aktų leidėjui dėl įstatymų projektų, susijusių su skaidrumo viešajame ir privačiame sektoriuje nuostatomis, įpareigojančiomis įmones įvesti ir taikyti veiksmingas antikorupcines procedūras, svarstymo.

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THE LEGAL REGULATION OF COMPLIANCE MANAGEMENT SYSTEMS TO PREVENT CORRUPTION AND THEIR ROLE IN DETERMINING THE CIVIL AND CRIMINAL LIABILITY OF LEGAL PERSONS AND THEIR MANAGERS

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Summary

The damage corruption causes to a country's economic development is indisputable and at the same time difficult to define, because it spreads in secret, and only its consequences rise to the surface. Corruption hides within the internal and inter-organisational process chains of public and private sector organisations, which are essential to the functioning of modern societies - if they are not properly structured and supervised. From the perspective of the general interests of the state, it can be argued that corruption threatens its normal functioning. The fight against corruption must be one of the main ambitions of the state in order to ensure public security. To this end, Lithuania has adopted certain laws and programmes, such as The National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025, however, their realisation requires them "to launch a comprehensive and sustained anti-corruption campaign", as stated by the compilers of the 2020 Index of Economic Freedom. Consequently, the author of the article puts forward a hypothesis that one of the effective measures in the fight against corruption lies in the legalisation of the responsibility of managers of public and private organisations, as part (singular; part) of a chain of societal processes, for managing the organisation's risks, including corruption risks.

Legal compliance management systems can be an effective tool to ensure that public and private sector actors work effectively.

The aim of this article is to show that, firstly, legal compliance management systems are becoming binding rules of conduct for an increasing number of people, creating a new regulatory sphere, a set of standards complementary to traditional normative frameworks such as statutory law, and, secondly, from a criminal law point of view, legal compliance management systems are becoming important tools for the prevention of corporate crime, including corruption, and can help to distinguish between those who should be exempted from and who should not be exempted from, the civil or criminal responsibility of the corporate entity and its management for the failure to properly supervise and monitor it.

In order to achieve this objective, an analysis of legal documents and scientific literature has been carried out, as well as the use of the methods of alternatives and logical analysis, and a comparison of the individual legal norms regulating this issue.

The article presents the German practice of applying preventive measures to ensure the efficient work of public and private sector actors: the legal requirement to implement legal compliance management systems in the company in order to minimise corruption risks and the resulting liability of legal entities and their managers for inadequate oversight, and discusses the issue of the existence of a similar legal possibility to develop such practice in Lithuania. In addition, in (no " the") light of the German and international experience, it is suggested that the Lithuanian legislator should consider the possibility of draft laws relating to transparency in the public and private sector requiring, directly through legislation or case law, the establishment of legal compliance management systems within an organisation to mitigate risks, including corruption-related risks, and thus to provide for

oversight and control functions, and to provide for the liability of the manager for the failure to implement or to provide adequate supervision of the company.

In the author's view, modern law should respond to and move with various other scientific developments and innovations. In this context, it should be stressed that the article addresses the issue in an interdisciplinary manner, bringing together the disciplines of civil and criminal law, economics and criminology. The law and economics movement is associated with the pursuit of utility efficiency, which underlines the importance of their cooperation in the study of various problems and developments of relevance to society.

Keywords: *corruption, prevention of corruption, legal compliance management systems, legal regulation, liability of managers and legal persons.*

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SELF-DEFENCE AGAINST TERRORIST ATTACKS

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Abstract *The article analyses the concept of self-defence against non-state actors – terrorist groups. The events of last decades where non-state actors (terrorist groups) had carried out attacks amounting to armed attack in sense of Article 51 of UN Charter left a dilemma for states whether the right to self-defence encompasses as well actions against non-state entities. The state practice illustrated in present article supports the idea that self-defence is possible against whoever committed armed attack, be it a state or non-state entity. The article also discusses the standard of action against states harbouring terrorists.*

Keywords: *: armed attack, terrorist groups, self-defence, unwilling or unable test*

Introduction

"Those youths that destroyed Americans with their planes, they did a good deed. There are thousands more young followers who look forward to death like Americans look forward to living." (Hofman, 2003). These words were spoken by Al Qaeda spokesman Suliman Abu Geith after 2001 September 11 attacks on New York and Washington DC. They reflect the ambitions of terrorists in the modern international community: terrorists have declared war on the United States and its allies, that is, almost on all of Western culture. The above words also reflect the determination of terrorists to act using all means possible, not safeguarding even their own lives, as this war is, in their view, a holy war. The United States has also declared war - but not on civilization or culture, but on terrorism.

Although there have been positive developments in the fight against terrorism in the last decade of the 20th century, terrorism has not disappeared and remains a relevant problem in the 21st century. The states themselves are no longer engaging in open warfare, but outraged national groups are seeking justice through brutal coercion. In last decades terrorism gained another impetus - it is now based not only on ideological but also on fundamental incentives.

The means of terrorist combat are changing, and terrorists even gain access to the weapons of mass destruction, destroying important civilian targets. However, even without weapons of mass destruction, terrorists are able to pose a major threat and cause a great deal of damage: during 9/11, the means of the tragedy were the aircrafts, which were hijacked with knives and martial arts. After hijacking four planes, the terrorists directed two of them to the World Trade Center, one to the Pentagon, and the fourth was likely intended to fly to the White House, but was probably crashed near Shanksville, Stony Creek Township, Pennsylvania. During these events the death toll events exceeded the number of victims in the Pearl Harbor attack, killing approximately 3,000 people of 85 nationalities. Recent events in Iraq and Syria, where the Islamic State, by announcing its caliphate, simultaneously controlled an area nearly the size of the United Kingdom, also leave no doubt about the changing, growing potential of terrorist groups. Thus, it can be argued that some terrorist attacks are not inferior in scale to military action by states. The latter, in turn, also take retaliatory (sometimes military) action to defend themselves against this growing threat.

The purpose of this article is to analyse the use of self-defence measures against armed attacks by terrorist groups, and the corresponding state practice regarding this question. The

main question is whether presently international law allows self-defence against terrorist groups (non-state actors) and under what conditions. The methods used to achieve this purpose are analytical, comparative, teleological.

Self-defence as an exception to the prohibition of the use of force

The principle of the use of force, according to the United Nations (UN) Charter (1945), Article 2(4) means that no military force is allowed between states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The two exceptions to this principle are the authorisation of the use of force by the Security Council in situations where there is threat to peace, breach of peace or act of aggression, and self-defence of states against armed attack.

Article 51 of the UN Charter (1945) states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." Most of the scholars argue that this Article, together with Article 2 (4) of the UN Charter, now defines and restricts the right to self-defence (it previously included preventive action) and is now allowed in cases of armed attack and only in cases of armed attack (Shaw, 1997, p. 777). However, there are also those who believe that the beginning of an article stating that "no provision of this Charter restricts the inherent right to self-defence" means that there is still a customary right of self-defence which applies in other cases and that Article 51 then applies. when an armed attack occurs. However, in the Nicaraguan case, the International Court of Justice (ICJ) linked the customary right of self-defence to the existence of an armed attack (*Nicaragua v. United States of America,* 1986).

Self-defence must meet certain requirements established in customary law. First and foremost, self-defence must meet the requirement of necessity - that is, peaceful means of resolving the conflict must be used first and the use of force must be the last resort. Once the attack is already underway, then the need to respond by force is clear (Schmitt, 2003). However, if only force is threatened, the use of non-military means may be effective and the use of force may not be necessary.

Proportionality is the second condition for self-defence. This principle does not require the state to respond in self-defence, using only as much force as was used against it. In this way, the state would either remain unable to defend itself or excessive use of force would be justified (Schmitt, 2003). A proportionate response is a response that uses as much force as is necessary to repel an attack. On the one hand, it allows the state to defend itself effectively, on the other hand, it requires that excessive force is not used.

The third requirement - imminency - is relevant when we talk about a situation where the attack has not yet taken place. Self-defence actions in this case may take place during the last window of opportunity in order to use all possibilities to resolve the conflict by peaceful means. An attack in this case must be imminent (Schmitt, 2003, p. 93).

Self-defence against terrorist actions

Neither Article 51 of the UN Charter nor, for example, Article 5 of the North Atlantic Treaty mention that an armed attack must be carried out by the state. However, G. Gaja claimed that the concept of armed attack in Article 51 can be linked to the definition of aggression in French (fr. *agression armee*), and the definition of aggression explicitly refers to acts of the

state (Gaja). Byers is also of the opinion that terrorist acts do not in themselves confer a right to self-defence. According to him, most states would not support actions that would open the territory of these states to attack whenever terrorists are suspected of operating from their territory (Byers, 2002).

However, there are arguments to the contrary. As already mentioned, in the Nicaragua case (1986) the ICJ linked the concept of an armed attack to the act of the State, but it cannot be said that the concept of an armed attack is identical to that of an aggression, as the ICJ itself argued in that case (*Nicaragua v. United States of America*, p. 101) that aggression should be distinguished from other, lighter forms of the use of force, and further in the case argued that the use of force may fall outside the notion of armed attack (*Nicaragua v. United States of America*, p. 127). Consequently, a distinction should be made between aggression, armed attack (which gives rise to the right to self-defence) and lighter forms of the use of force prohibited by Article 2 (4) of the UN Charter. It follows that the reference in the definition of aggression to acts of the State does not automatically mean that an armed attack can only be carried out by the State.

Consequently, if a terrorist attack has not been carried out directly by any state, there is no reason to believe that it should not be considered an armed attack. Although the concept of armed attack has traditionally been used to describe the actions of a state, Article 51 of the UN Charter does not stipulate that the attack must be carried out directly by another state. Indeed, Article 2 (4) of the Charter uses the words "the use of force by a Member State against any State" and this phrase is not repeated in Article 51, so that Article does not specify who may carry out an armed attack giving the right to self-defence. The right to self-defence, before the adoption of the UN Charter, included the right to react to attacks, whoever their author was (Murphy, 2002), and consequently, the right of self-defence now includes the right to defend oneself against attacks by non-state actors.

It can also be said that if an armed attack is committed not by the State, there is no reason to prove that the armed attack justifying the right of self-defence took place, because if the attacker is not a State, he cannot benefit from the prohibition of the use of force established in Article 2 (4) of the UN Charter (Guruli, 2004). Although theoretically possible, it is very likely that in reality this entity will still be located in one or more of the States protected by Article 2 (4). This underlines the importance of identifying the state against which self-defence actions should be directed after an armed attack by a non-state actor. However, this issue is separate and distinct from seeking to determine whether an armed attack has taken place that would justify the use of force.

State practice in relation to the use of force against terrorists

Even though the ideas of scholars of international law abound and are of explanatory importance in international law, it is only the state practice that is decisive in determining what is the content of the rules of international law, as the states are the sole creators of the rules of international law. The *opinio juris* of states is decisive in stating what the customary law is, and as well the opinion of the state and its position is crucial in formulating the treaties as only by the direct action of the state - signing the treaty - a state may be bound by contractual obligations. Therefore, to answer the question of use of force against terrorist groups it is important to look at what states individually or in international forums have stated regarding such a question.

In previous state practice, allegations that terrorist acts amounted to an armed attack were often not generally accepted. For example, the Security Council of UN (SC) did not justify

Israel's actions in 1982 against Lebanon, although Israel claimed to have invaded it to counter the abilities of the Palestine Liberation Organization (PLO) to carry out terrorist activities in northern Israel (Security Council, 1982a, 1982b, 1982c). Similarly, in 1985, the Security Council condemned Israeli action against Tunisia in response to PLO attacks (Security Council, 1985). However, there have been cases where states have taken the view that terrorist bombings could be considered an armed attack giving the right to self-defence. In 1998, when Al Qaeda organised the bombing of US embassies in Kenya and Tanzania, killing 300 people, 12 of them Americans, the US exercised its right to self-defence and attacked terrorist training camps in Afghanistan and a pharmaceutical factory in Sudan that allegedly produced chemical weapons. While some states have condemned these attacks, others have supported them. Neither the General Assembly of the UN, nor the Security Council condemned these actions. Even the League of Arab States only condemned the attack on a Sudanese chemical plant but stated nothing about action against Afghanistan (Murphy, 2002).

C. Stahn argues that the previous critical attitude of states towards the use of force in response to terrorist acts was largely due to factual evidence and the context of the events, rather than a categorical denial of the right to self-defence in the event of terrorist acts (Stahn, 2003). For example, when the United States bombed Libya in 1986, the criticism of US action in response to the La Belle disco attack was largely focused on two aspects: first, whether a single assassination of a US soldier abroad could justify the use of armed force, and second, whether US action met the requirements of necessity and proportionality (Stahn, 2003). On the contrary, in 1993, a rocket attack on Iraq in response to a failed assassination attempt on former U.S. President Bush has sparked only minor controversy. Many states either supported or did not oppose US action, only China explicitly condemned it (Gray, 2004).

Admittedly, it must be acknowledged that there is a possibility that the authors of the UN Charter did not foresee that an entity other than the State may carry out an armed attack. This possibility may be based on the fact that the provisions of the UN Charter on the use of force were a response to the Second World War and were primarily intended to regulate inter-state conflicts.

However, under the Vienna Convention on the Law of Treaties, the intentions of the parties to the contract may not be given more weight than the wording of Article 51 itself. Furthermore, the fact that one important provision on the use of force (Article 2 (4)) does not refer to the State and the other (Article 51) does not imply that the latter provision should not have been so limited (Vasiliauskienė, 2008).

International reaction to 9/11 terrorist attacks and self-defence actions of USA in Afghanistan

State and international organisations' reaction to 11 September 2001 proves that the wider explanation of Article 51 is supported by the states.

For military action against Al Qaeda and the Taliban to be legitimate, the question to be answered is whether Al Qaeda attacked only the World Trade Center and the Pentagon, or did it attack the United States itself? (Brown, 2003). The answer can be based on Al Qaeda's willingness and ability to go to war against the United States. Usama Bin Laden had repeatedly called for war with the United States: in 1996, he issued a speech calling on all Muslims to a holy war against U.S. forces in Saudi Arabia, with particular emphasis on terrorist measures. In 1998, Bin Laden and three other terrorist commanders issued a statement, which was considered to be a religious order (fatwa) for all Muslims, stating that killing Americans and their allies - soldiers and civilians - was the personal responsibility of every Muslim (Brown, 2003).

Therefore, there was a clear desire by Al Qaeda to carry out aggression against the United States, not only against its citizens, but also against the state itself. In fact, not every crazy group that implies grandiose declarations needs to be bombarded right away. However, Al Qaeda is a special case because it had repeatedly demonstrated its ability to carry out what it said in real action - that is, in a series of large-scale attacks on US targets. These targets included U.S. forces in Yemen, U.S. embassies in Kenya and Tanzania, and the World Trade Center and the Pentagon. The group was also believed to have contributed to the attack on U.S. forces in Somalia, as well as the bombing of the U.S. military training center in Riyadh, and planned to attack U.S. citizens celebrating the new millennium (Brown, 2003). Therefore, Al Qaeda not only wanted to, but had a real chance to carry out an armed attack against the United States, not only against its citizens.

The resolutions of Security Council, adopted after September 11 events, emphasizing the inherent right of individual and collective self-defence, implicitly acknowledged that these events amounted to an armed attack, regardless of who committed them (Security Council, 2001a, 2001b). They were adopted before anti-terrorist actions were launched and when the suspicion fell on an international terrorist group. Resolution 1368 (2001) was passed the day after the attacks, when no one had yet considered the possibility that any state might be "behind these attacks." This position of the Security Council is confirmed by the fact that it never expressed its disagreement when the US informed it of its intention to realize its inherent right to individual and collective self-defence (United States of America, 2001).

State practice after 9/11 events also confirms the view that self-defence action is also possible against a non-state actor. No allegation has been made from States that customary self-defence law or Article 51 can be applied only in cases where the acts in question are carried out by the State. On the contrary, there was very clear evidence, such as NATO's decision to invoke Article 5 of the Washington Treaty for the first time in its history, that events must be considered an armed attack giving the right to self-defence: "The Council agreed that if it is determined that this attack was directed from abroad against the United States, it shall be regarded as an action covered by Article 5 of the Washington Treaty, which states that an armed attack against one or more of the Allies in Europe or North America shall be considered an attack against them all." (North Atlantic Council, 2001)

Self-defence against ISIS and *opinio juris* of states

The Islamic State (former name Islamic State in Iraq and the Levant, hereinafter referred to as ISIS) at its highest moments stood with al-Qaeda as one of the most dangerous jihadist groups, after its gains in Syria and Iraq. In June 2014, the group formally declared the establishment of a "caliphate" – a state governed in accordance with Islamic law, or Sharia, by God's deputy on Earth, or caliph. By 2014, Islamic State in Iraq had occupied large parts of territory in Iraq and Syria (Vasiliauskienė, 2016). It was estimated by US National Counterterrorism Center that ISIS In 2014 controlled a territory in Tigris-Euphrates river basin similar to the size of United Kingdom (Vasiliauskienė, 2016). At its peak, it is estimated that ISIS had about 30,000 militants (Reyes Para, 2021).

The international coalition aimed at fighting ISIS was formed, and it received broad support from many states. As the webpage of the coalition states, "The Coalition's 83 members are committed to tackling Daesh on all fronts, to dismantling its networks and countering its global ambitions. Beyond the military campaign in Iraq and Syria, the Coalition is committed to: tackling Daesh's financing and economic infrastructure; preventing the flow of foreign terrorist fighters across borders; supporting stabilisation and the restoration of essential public

services to areas liberated from Daesh; and countering the group's propaganda." (Global Coalition).

These actions were based on the principle of collective self-defence: Iraq had requested that the United States help it defend itself against ISIS and its armed action. "While the Iraqi government has consented to foreign military action against ISIS within Iraq, the Syrian government did not. Rather, Syria protested that the airstrikes in Syrian territory were an unjustifiable violation of international law" (Reyes Para, 2021). Iraq informed Security Council about its actions of individual self-defence (Iraq, 2014), and the US - about collective self-defence on behalf of Iraq (United States of America, 2014). Same notification was provided by United Kingdom (United Kingdom, 2014). France, which was one of the coalition partners, firstly limited its action to the territory of Iraq, but later, after the attacks, also declared its individual right to self-defence and stated to the Security Council that "In accordance with Article 51 of the Charter of the United Nations, France has taken actions involving the participation of military aircraft in response to attacks carried out by ISIL from the territory of the Syrian Arab Republic." (France, 2015)[1]

The United States have stressed that ISIS is a serious threat to Iraq, as it continued attacks from safe havens in Syria. According to US government, "These safe havens are used by ISIL for training, planning, financing, and carrying out attacks across Iraqi borders and against Iraq's people." (United States of America, 2014). Further, it stressed that "ISIL and other terrorist groups in Syria are a threat not only to Iraq, but also to many other countries, including the United States and our partners in the region and beyond. States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defence, as reflected in Article 51 of the Charter of the United Nations, when, as is the case here, the government of the State where the threat is located is unwilling or unable (to prevent the use of its territory for such attacks." (United States of America, 2014).

This test of "unwilling or unable", used by the United States, is nowadays used also by many of the states participating in anti-terrorist military action to determine whether a state where the terrorists are located may be attacked in self-defence. This test is not yet universally accepted by the states. In 2016 a researcher exploring state opinions on this question distinguished 10 states, explicitly mentioning this test in their documents and declarations (Chachko, Deeks, 2016)[2], three states (Belgium, Iran, South Africa) were implicitly using this test, the position of some other states was ambiguous[3]. Six states had clearly stated their objections to such rule (Syria, Venezuela, Ecuador, Cuba, Brazil, Mexico). Thus, this rule still is in formulation and does not yet enjoy universal acceptance.

Conclusions

Self-defence is one of the exceptions to the principle of the use of force established in the UN Charter and in customary international law which allows the use of force in the case of

[1] „In a letter dated 20 September 2014 addressed to the President of the Security Council (S/2014/691), the Iraqi authorities requested the assistance of the international community in order to counter the attacks perpetrated by ISIL. In accordance with Article 51 of the Charter of the United Nations, France has taken actions involving the participation of military aircraft in response to attacks carried out by ISIL from the territory of the Syrian Arab Republic."

[2] United States, United Kingdom, Germany, The Netherlands, Czech Republic, Canada, Australia, Russia, Turkey, Israel.

[3] France, Denmark, Norway, Portugal, Members of the GCC, Egypt, Iraq, Jordan and Lebanon, Colombia, Uganda, Rwanda, Ethiopia, India

armed attack against a state. Self-defence action needs to conform to the requirements of necessity and proportionality. Self-defence may be exercised also when the armed attack is imminent.

Classical understanding of an armed attack was that it was usually perpetrated by state forces, but in the last decades terrorist organisations have developed military capabilities equalling or exceeding those of states and were able to carry out actions amounting to armed attacks. The challenge of defending a state against terrorist attacks amounting to armed attack is that in many cases the terrorist actions may not be attributed to a state, and thus states started using self-defence against non-state actors. Thus, the interpretation of the right of self-defence was extended to include self-defence against non-state actors, as it is illustrated by the resolutions of UN Security Council, NATO and practice of states.

The cases of self-defence after 9/11 attacks and against ISIS organisation on request by Iraq and as well as a self-defence measure by France were not met by many objections in international arena. However, the underlying test used by the states participating in these operations (a state "unwilling" or "unable" to fight against a terrorist group) is still developing and for the moment is not considered yet a rule of customary international law.

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