MYKOLO ROMERIO UNIVERSITETO

VIEŠOJO SAUGUMO AKADEMIJA

VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (30)

Mokslinis žurnalas

PUBLIC SECURITY AND PUBLIC ORDER (30)

Research Journal

Kaunas 2022

VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (30)
Mokslinis žurnalas

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

Mokslinio žurnalo VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA
Redaktorių kolegijos 2022 m. birželio 17 d. posėdžio nutarimu leidinys rekomenduotas spausdinti.
Žurnalas referuojamas EBSCO Publishing, Index Copernicus tarptautinėse duomenų bazėse

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PUBLIC SECURITY AND PUBLIC ORDER (30)
Research Journal

Each article is reviewed by 2 scientists, following the principle of blind reviewing.
Research Journal has been published since 2008. The research journal is listed in the EBSCO Publishing [International Security & Counter-Terrorism Reference Center], Index Copernicus International Database.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

T U R I N Y S

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

NETWORK OF WATER PROBLEMS IN THE PRESS OF MEXICO CITY DURING THE COVID-19 ERA

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DOI: 10.13165/PSPO-22-29-34

Abstract. *The pandemic led to containment and mitigation policies, as well as distancing and confinement strategies that limited the supply of water resources to social sectors. Residential areas-maintained supply, but with an increase in rates. Marginalized areas were subsidized and exempted from paying for an increasingly intermittent supply. Anti-COVID-19 policies guided water policies in two ways: The first consisted of disseminating anti-COVID-19 policies in water management agencies. Another second consisted of the autonomy of the institutions and their decoupling or concordance with anti-COVID-19 policies. In this way, the literature from 2019 to 2022 around anti-COVID-19 policies in their water dimensions, register problems of scarcity, famine and unhealthiness. The scarcity had already been observed in the marginalized sectors, the famine in the residential areas, but the unhealthiness was appreciated in the migrant communities. In fact, the type of exposure to occupational hazards determined the health status of migrants. The water problems were recorded in the circulation press to highlight the asymmetries of anti-COVID-19 policies on the public and private sectors, as well as political and social actors. The objective of the study was to reveal the network structure of relationships between nodes and edges related to press releases on water issues. A documentary, cross-sectional and retrospective study was carried out with newspapers of national circulation: El País, El Reforma, La Jornada and El Universal, considering the water problems of scarcity, unhealthiness and famine. The results show a structure of nodes where the water problems were initiated by La Jornada and ended by El Reforma. Both findings are relevant considering the ideology of the newspaper. La Jornada, a newspaper identified with the political ideology of the left, initiated the dissemination of water problems in a city administered by a government of the same ideology. El Reforma, a newspaper designated by the executive as a spokesperson for the opposition ideology, culminates the network of notes on water problems. That is to say, regardless of the type of political ideology attributed to the newspapers, the problems of scarcity, unhealthiness and famine are spread. In relation to the state of the art where it is shown that ideology does not influence the establishment of the agenda, the present work corroborates and recommends expanding the study to other entities administered by the opposition such as the cities of Guadalajara and Monterrey.*

Keywords – *Famine, COVID-19, Scarcity, Insalubrity, Agenda*

Introduction

Anti-COVID-19 policies, consisting of mitigation and containment, focused their effectiveness on strategies of distancing and confinement of people (WHO, 2022). As the pandemic continued and intensified, water policies were geared towards optimizing resources (PAHO, 2022).

The impact of anti-COVID-19 policies, strategies and programs on the institutions in charge of managing water resources and services was in three areas (OECD, 2022). The shortage was announced as an austerity policy for marginalized areas (Inegi, 2021). Batch policies contrasted with regular supply policies in residential areas, although they were encouraged by the increase in rates (Conagua, 2022). In a discretionary way, the subsidies and forgiveness were oriented towards scarcity and unhealthiness in peripheral areas of the cities, or in the receiving areas of migrants (Uribe et al., 2017).

The coverage of the printed media around the relationship between anti-COVID-19 and water policies during the period from November 2019 to May 2022, registered the establishment of an agenda where the problems of scarcity, unhealthiness and famine were preponderantly disseminated (Garcia, 2020). Scarcity was a mediated problem such as tandem in peripheral areas of cities (García et al., 2021). Unhealthiness as a scenario of contagion, disease and death from COVID-19 or any other associated disease (Sandoval et al., 2021). The famine associated with water availability in residential areas (Sandoval, 216). In this way, the press established the problems as central axes of the local agenda (Sandoval et al., 2021). The frequency of the problems suggests a convergence in the printed media consulted, but the ideological differences associated with the sources of information suggest an analysis of the interactions between the press releases (Tinto, 2009). That is, the flow of information can converge on a water agenda, but the ideological differences suggest an asymmetry between the interactions with a short-term scenario projected as divergent (Agenda of each newspaper) rather than convergent (Media Agenda) (Tonello & Valladares, 2015).

The **objective** of the study was to establish the network of interactions between the press releases in order to be able to appreciate the structure of the resulting media agenda, considering the review of printed media with national circulation and their notes related to the water problems associated with the pandemic in the period from November 2019 to May 2022.

Are there significant differences between the structure of press releases related to water problems during the pandemic with respect to the network analyzes of this study?

The premises that guide this work indicate that the pandemic generated an expectation of water availability, sanitation and cost of public service (Juárez et al., 2021). As the pandemic intensified, expectations turned to despair in the face of the health, economic, social, and water crisis (Nieto, 2020). Consequently, the print media had to intensify their notes related to water problems in order to correspond to social expectation (Guevara, 2012). Once the vulnerable society was immunized, expectations decreased and media coverage was oriented towards the dissemination of risk scenarios such as migrant communities. In this way, the establishment of the local water agenda was due to citizen expectations that diminished as their need for information on the pandemic decreased after the vaccination campaigns. Once readers demanded content prior to the pandemic, press releases on water problems were combined with information from vulnerable sectors such as migrants. Consequently, water problems went from being an axis of the media agenda to an axis of the migratory agenda.

Method. A retrospective, correlational and exploratory study was carried out with a selection of articles published in newspapers with national circulation and with an opposite ideological attribution, during the period from November 2019 to May 2022 (see Table 1).

Table 1. **Sample Descriptive**
Source: Prepared with study data

	2019	2020	2021	2022
The country	9	4	7	3
The reform	8	9	5	9
the day	6	5	3	6
The universal	7	8	8	7

The Delphi Inventory was used for the coding of the information. Experienced judges who are experts in water problems were contacted. The objectives and those responsible for the project were reported, as well as the warning of non-remuneration for their answers (Carreón et al 2014). Confidentiality and anonymity were guaranteed in writing following the Helsinki protocol and the APA format for studies with experts (Coulomb, 2008). The judges qualified the press releases related to water resources and services. In a second round, the averages were compared with the initial scores (Berroeta et al., 2015). In the end, the rating of each note was reconsidered or ratified (Henríquez et al., 2016). The judges assigned a zero to the note if it was not related to any of the problems, or assigned a value of five for the notes that were significantly related.

The information was captured in Excel and processed in JASP version 14. The centrality, grouping and structuring coefficients were estimated in order to be able to test the hypothesis regarding the significant differences between the network of press releases with respect to the analyzes observed in the present work. Values close to zero were considered evidence of neural networks due to the proximity of relationships and configuration of nodes and edges (Cortés and Peña, 2015).

Results

Figure 1 shows the centrality values of water problems in the press from 2019 to 2022.

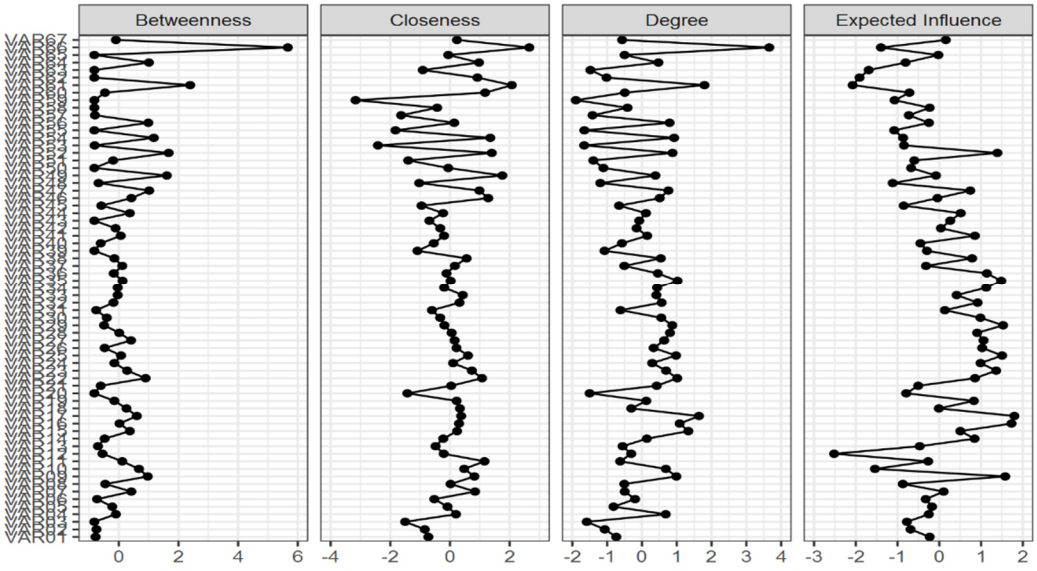

Figure 1. Centrality of water issues in the press from 2019 to 2022
Source: Prepared with data study

ISSN 2029-1701
ISSN 2335-2035 (Online)

It can be seen that the El País press releases reflect more proximity of the nodes and edges with respect to the El Universal press releases. In other words, the water problems disseminated in the country are less distant from the media agenda than the articles in El Universal.

Figure 2 shows the grouping values of the water problems reported in the press from 2019 to 2022. The press releases of La Jornada and El Reforma show greater proximity with respect to the notes of El País and El Universal. In other words, if the country's stories are closer to the media agenda, they are not reconfigured towards that agenda by interrelating with each other and with other stories. On the other hand, the press releases of La Jornada and El Reforma are more related to the emerging agenda.

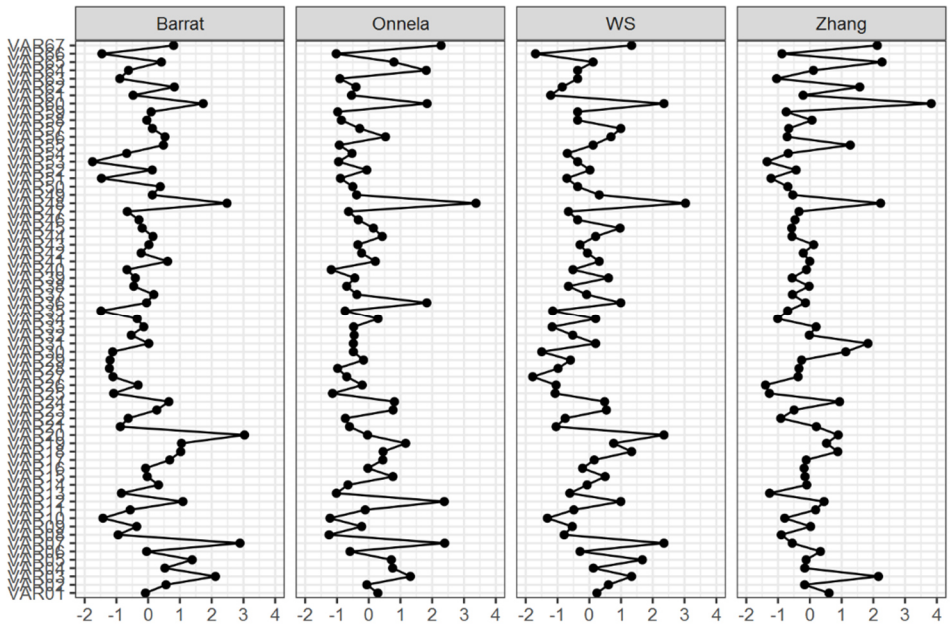

Figure 2. Clustering of water issues in the press from 2019 to 2022
Source: Prepared with data study

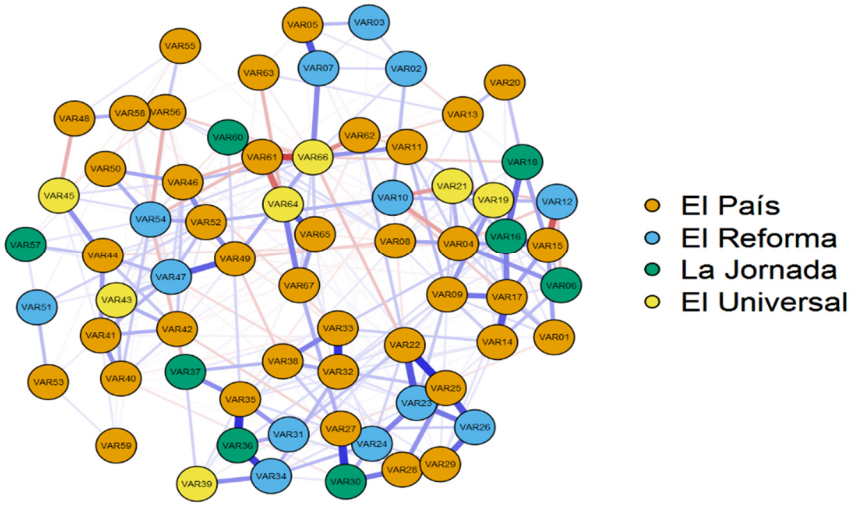

Figure 3. Structuring of water issues in the press from 2019 to 2022
Source: Prepared with data study

Figure 3 shows the structuring values of the water issues disseminated in the press from 2019 to 2022. The neural network suggests learning from the print media when disseminating water issues. In other words, the press moved from a verifiability frame to a verisimilitude frame.The data prevails in the first phase because reduced interactions can be seen, but as the pandemic progresses, readers' expectations drop and they force the press to generate a plausible frame. The difference is substantial, the verifiability framework supposes information concentrated in data and readers who compare sources. The verisimilitude suggests notes in accordance with the ideologies attributed to the left for La Jornada and the right for El Reforma.

The results show that the structure of the press releases in the period from 2019 to 2022 is grouped around a verisimilitude agenda. In other words, the high expectations of the readers led the newspapers to offer data to be compared with other sources, but once the immunization had passed and the consequent lack of confidence, the demand for information was reduced. In this situation, the press opted for a new verisimilitude framework that consisted of the dissemination of images rather than data. Readers were able to find out from the same vaccine-oriented content, the reduction of infected, sick and dead by COVID-19. Therefore, the hypothesis of significant differences between the theoretical structure of the agenda and the framework of water resources and services with respect to the analyzes presented is not rejected.

Discussion

The contribution of this work to the state of the art lies in the establishment of a verisimilitude agenda of water problems disseminated by the press from 2019 to 2022. The notes on water problems had an asymmetric centrality and grouping in the newspapers observed. The structuring of the notes related to scarcity, unhealthiness and famine are initially set in a verifiability framework due to the high data content, but in the end, interactions explained by the plausibility framework adopted by the sources are appreciated. In relation to the studies of the establishment of the agenda and the framework where asymmetries between the sources of information are demonstrated, the present work observed the same behavior. In a prolonged phenomenon such as the COVID-19 health crisis, the media move from the verifiability frame because they try to reduce false news with data towards a verifiability frame because they try to maintain the level of audience and expectation (Galicia et al., 2017). In the present study the same structure is appreciated, although the ideology of the source does not explain this tendency or communicative strategy. Framing studies warn that verifiability is generated in sources that seek to sustain a narrative in the face of an uncertain and prolonged event (García, 2018). In the present work it is appreciated that verifiability was the first strategy of the printed media to spread the pandemic. Verisimilitude studies have shown that this framework emerges once the audiences have given up seeking information from different sources because they consider that the problem or risk event has been controlled (García & Márquez, 2013). In the present work, it is noted that the plausibility framework underlies once the pandemic has been declared controlled and the immunization carried out.

However, verifiability and plausibility coexist in risk media diffusion scenarios (Medrano & Muñoz, 2017). The pandemic, assumed as a risk event, was spread by the media from both frames, but in the case of the water problems of scarcity, unhealthiness and famine derived from the health and economic crisis, the frames were structured in a linear way. Research lines related to the

differences between the coverage of the pandemic and water problems will allow corroborating the studies of the framework and the establishment of the agenda from the path that goes from verifiability to plausibility.

Conclusion

The objective of this work was to establish a network of notes related to the water problems associated with the pandemic. The results show that the structure of notes is oriented from verifiability at the beginning of the economic crisis to plausibility at the end of the confinement and distancing of people. The application of the observed results to risk communication suggests a plausibility frame at the beginning of every crisis and a verifiability frame without the risk being imminent, immeasurable, unpredictable and uncontrollable.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

MODEL OF MEDIATING FACTORS OF TRANSFER HABITUS IN THE COVID-19 ERA

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DOI: 10.13165/PSPO-22-29-35

Abstract. *Public transport was a scenario for anti-COVID-19 policies once it was established as a source of contagion. The strategies of distancing and use of anti-COVID-19 devices were implemented in public transport as a preventive measure. Users developed a habitus of transfer or negotiation around preventive strategies. Ethos, aesthesis, hexis, eidos were modes of negotiation of mobility spaces in public transport. Ethos refers to the ability to generate mobility principles adjusted to distancing, but to the benefit of one of the parties involved who is less favored with the strategy, as is the case of the vendors. Aesthesis means the appreciation of public transport as a means of concerted satisfaction with users who appropriate the mobility space. Hexis suggests limited expressiveness, but on the border of distancing, as is the case with the way of sneezing. Eidos or reasons for transfer established by the guidelines of the transport system, such as prioritizing those who use transport to go to work. The transfer habitus explains the appropriate use of transport, although in the case of eidos or motives, the discussion focuses on whether it is the social, environmental or personal dimensions that affect the appropriate use of transport. Therefore, the aim of the study was to model the relationships between commuting habitus in order to anticipate the appropriate use of transportation. A cross-sectional, mediational and psychometric study was carried out with a sample of 100 student users of public transport during the pandemic. It was found that personal motives, a component of the habitus eidos, is a determining factor in the proper use of transportation. In turn, the vision of the future, a component of the habitus ethos, is a determinant of social motivations and the proper use of transportation. Therefore, it is recommended to guide public policy towards the ethical and motivational habitus of transfer.*

Keywords*: Aesthesis, COVID-19, Eidos, Ethos, Hexis, Habitus*

Introduction

As of this writing, the SARS-CoV-2 coronavirus and COVID-19 worldwide have infected 17 million, sickened 9 million, and killed 700,000. In Mexico, 700,000 have been infected, 400,000 become ill and 45,000 have died.

Governments have implemented health policies for the mitigation of the pandemic through the confinement of people, social distancing, the use of masks and hand washing, but the restriction on mobility has not prevented the occurrence of closed spaces in closed spaces. most of them infections.

In the Metropolitan Zone of the Valle México (ZMVM) about 45% of the vehicle fleet transfer belongs to the public transport concession followed by private cars to 29% and use taxi 11%. Inflation (4% accumulated) of magna gasoline has grown by 40%, premium with 30%, diesel with 48%, while the salary only increased by 28% (INEGI, 2020). Mexico City occupies the last places in terms of pedestrian movement with a figure close to 2%, followed by New York City with 10% and the City of London with 20% while in the city of Bombay 55% of journeys are on foot. Regarding the family economy, transportation spending is divided into 50% for buses or minibuses, 30% for urban buses, 16% for taxi radio and 2% for metro. In this context, it is possible to note that the sustainability of public transport implies the establishment of a charging system according to peri-urban mobility capabilities.

Precisely, the objective of this work is to specify a model for the study of mobility in public transport, considering the health policies to mitigate the pandemic which consist of social distancing, confinement of people and the use of face masks in spaces closed or semi-open.

What are the dimensions of mobility habitus reported in the literature regarding risk events or contingencies?

The hypothesis that answers the question is that since the habitus of mobility is a construct of expressiveness, reasoning, morality and aesthetics, the representation of its image is focused on safety and efficiency, as well as the cost of transportation and the potential benefits. Thus, in the first section the theories of the habitus of mobility are exposed, and its dimensions related to expressiveness (eidos), aesthetics (aesthesis), logic (hexis) and ethics (ethos) as foundations of rupture with the immediate environment, the journey, stay and real or symbolic return of the residents of the periphery with respect to the inhabitants of the centrality. A second section includes updated and specialized results on the subject. In the third section, the axes, trajectories and relationships between categories and explanatory and predictive variables of the phenomenon are established.

Theory of mobility habitus

In this section, the theory that explains the habitus of mobility is understood, understood as a self-managed liberation against the symbols of power that the State implements to legitimize the confinement of people, the restriction on their mobility and the suspension of their individual guarantees.

In the framework of the confinement of people, social distancing and the restriction to the habitus of mobility, the corresponding theory is distinguished by explaining the symbolic liberation of people to confinement through a complex process of capitals and fields of power and influence between the parties involved. in public transport (Adams, 2020). Political and social actors, public and private sectors participate in restoring a balance between demands from the environment and internal resources. It is about the prevalence of archetypes versus media representations derived from the pandemic.

The habitus theory, unlike the explanatory theoretical and conceptual frameworks of mobility in public transport, is distinguished by its specialization in the symbolic sphere of power construction and the influence of archetypes, representations and expectations (Hernandez, 2020). It is a process of interpretation of meanings guided by the asymmetric relationships between rulers

and ruled. While traditional theoretical approaches see public transport as an instrument of power or influence, the habitus theory warns of this duality as an intermediate phase towards the symbolic liberation of people from the political or strategic dispositions of their rulers.

Consequently, the structure of the habitus theory is complex; it includes esthetic provisions that explain the tendency of people to move towards distant archetypes in terms of their effects or close in terms of their causes (Molina, 2020). This is the case of the epidemic attributed to China, which was initially perceived as distant with minimal consequences. It also includes logical provisions (eidos) that explain compliance with restrictive mobility policies and social distance. Or, resistance to the use of closed spaces or face-to-face contact services. It also alludes to expressive provisions (hexis) from which the appropriation and use of the closed or semi-open public space is interpreted to the differences between migrant flows or floating natives. Finally, the principles (ethos) that guide the transfer of people from periphery to centrality or from semi-periphery to semi-centrality suggest provisions against or in favor of identity and attachment to the place of origin.

In short, the habitus theory explains the restrictive policy of individual liberties and guarantees from a symbolic order from which individuals, groups or communities build archetypes of power and influence (Garcia, 2020). These are four dimensions related to expressiveness, morality, logic and aesthetics that represent symbols associated with the pandemic, such as social distancing. In this framework of meanings, the theory anticipates a scenario of freedom of choice that would be associated with the emancipation of the governed. Citizen participation would be the embodiment of this habit of mobility provided that the parties involved generate differences, negotiations, agreements and joint responsibilities.

Studies of mobility habitus

The capabilities of public service users are related to mobility opportunities and the responsibilities that they imply. In this sense, Human Development is the result of a system of freedom of choice in which as planning margins expand. In this sense, the public transport situation can be discussed from its fare system as a factor of mobility opportunities and connection capabilities (Bustos, 2020). From this relationship emerge proposals for intervention in areas that allow citizens to clarify the limit values anthropocentric development sustainable, as well as the values egocentric enhancing sustainability and urban energy.

In the future natural resources will be reduced not by their availability or consumption, but by their relationship with anthropocentric, egocentric, biosphere, altruistic or selfish values (Juarez, 2020). It is a scenario in which humanity develops technology while observing how its consumption possibilities are also minimized at the cost of preserving the resources that are considered indispensable for subsequent generations. In this sense, the administration of public transport will no longer be managed from consensus, but from dissent since once a high social status has been reached, the discussion about the emergence of alternative resources will guide decision-making regarding its consumption and administration.

The dimensions from which this author has constructed the discourse of the sustainability of public transport and of which he has been criticized, although from such objections it is possible to reconstruct the proposal of knowledge dialogue to find a way of distributing resources between

social groups (Quiroz, 2020). The qualifications of the expert judges in the subjects of interurban public transport are oriented towards a consensus regarding satisfactory experience and choice of destination. Both categories permeate the criteria of the participating judges, orienting the excuse towards risks along the way.

However, the disruption in the positions of the judges lies in the acceptance of video surveillance technology, as some consider that they violate the privacy rights of Internet users, but others warn an extension of public security devices (Limon, 2020). In this sense, crime prevention, the delivery of justification and social rehabilitation are peripheral categories to interurban public transport, although a new category regarding semi-public or semi-private security emerges, consisting of the social representation of violence and emotions such as anger, anxiety, worry or outrage. In this way, the asymmetry between the cost of the interurban public transport service and the quality of the experience, as well as the safety of the route and the satisfaction of the use of the system, stand out as central axes of discussion and evaluation.

Consequently, the sustainability of inter-urban public transport lies in the balance of costs and benefits no longer in terms of satisfactory experience, comfort in transportation, but in security such as crime prevention, video surveillance, monitoring, seizures or inspections (Sandoval, 2020). Regarding the perceptions of the genders regarding the tariffs and environmental impact of transport in general, differences were also found. However, regarding the high, medium and low income, the differences were confined to the use of bicycles, rickshaw, motorcycle taxi and trolleybus.

The public transport was established as multidimensional due to its socio-political context and the daily use of in the present study, it has been shown that the hypotheses regarding the econometric knowledge and its impact on the perceptual differences between men and women complement the findings (Carreon, 2020). However, the hypothesis regarding social postmaterialist in which high incomes correspond to the use of sustainable transport rather than conventional seems to show that habitus around the use of public transport are oriented by materialistic and therefore anthropocentric visions rather than by egocentric habitus and postmaterialists.

However, it supports the hypothesis of complexity of transport public because it is organized systems negentropic in which habitus anthropocentric and materialistic coexist with habitus egocentric and post materialistic (Perez, 2020). Perceptions related to knowledge and gender perspectives that establish significant differences between users. Therefore, the conventional public service in comparison to the system called sustainable as being considered asymmetric, explain the transition from environmental knowledge to environmental rationality.

However, a preponderant factor in the transition to sustainability is postmaterialist. In this paper, the hypothesis of differences between economic incomes does not support the difference between perceptions related to the use of sustainable transport in relation to the disuse of conventional and polluting transport (Carreon, 2019). In this way, the sustainability of public transport should be explained based on the effect that transport policies have on user groups. Such a study will allow to anticipate scenarios of conflicts between authorities regarding public services in the matter of route reordering and establishment of tariffs, as well as replacement of units.

Modelling of mobility habitus

From the theoretical, conceptual and empirical frameworks related to the habitus of mobility, it is possible to model, trajectories and relationships between categories and explanatory variables of the differences between rulers and ruled with respect to their symbolic representation of mobility, social distancing and the confinement of people as preventive measures for contagion, illness and death by COVID-19 (see Figure 1).

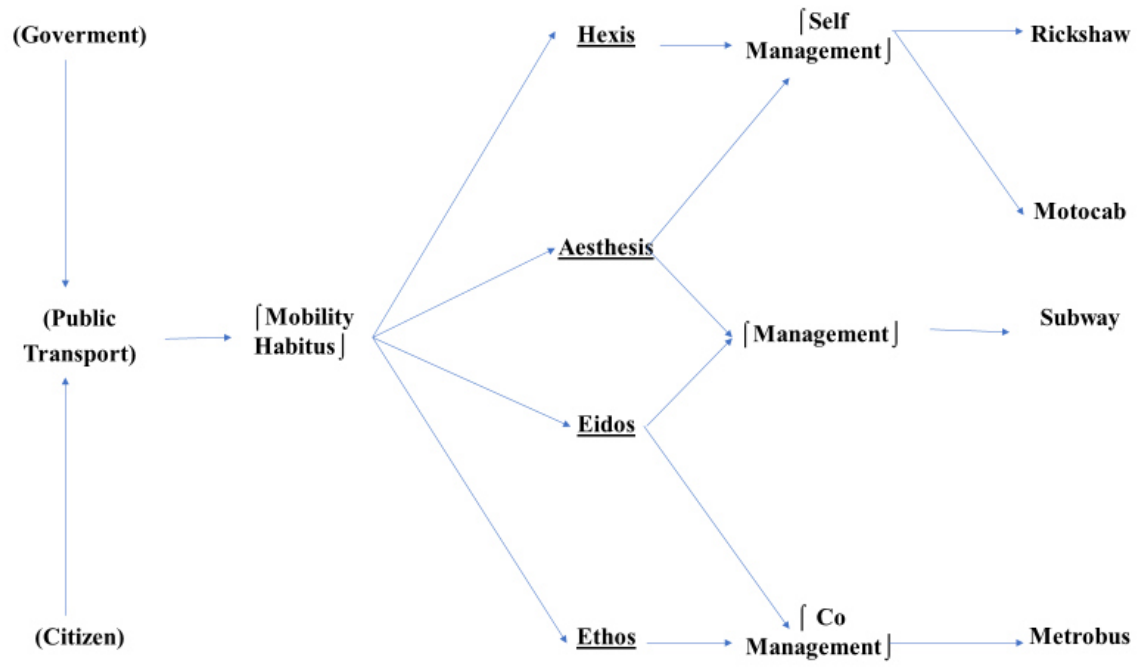

Figure 1. Modelling of mobility habitus
Note: Elaborated with literature review; ( ) = Analytical category, ⌈⌋ = Construct, ____ = Factor

The model includes a single analytical axis of the habitus in reference to mobility in public transport. It includes four explanatory factors that address the aesthetics, logic, ethics and expressiveness of users around restrictive use. It is an explanatory trajectory of contingent situations or risky scenarios, but also predictive of self-management or co-management relationships.

In the first case, when restrictive mobility policies are expressed, reasoned, valued or viewed unfavorably, civil self-management emerges. This is the case of public transport by motorcycle taxi or rickshaw which include few users with informal transportation routes. In the second case, the discussion between the public and private sectors, political and private actors entail a system of co-responsibility in which the State and individuals negotiate the transfer of people for work or school reasons. This would be the case of the system known as MetroBus.

In summary, the symbolic liberation structure of the users with respect to the policy of distancing and restricting mobility involves two systems; one self-managing and the other co-managing. Both cases can be observed, measured and compared with other systems managed by

the State, but whose control is adjusted to the disposition of confinement of people. On the other hand, the emergence of a co-management and even more self-management system allows the mobility of users. The risks involved are high, but being perceived as potentially necessary, they are widely used by the parties involved.

Methodology

A cross-sectional, correlational and psychometric study was carried out with a selection of 100 students (M = 23.2 SD = 3.2 age and M = 7'982.301 SD = 345.43 monthly income). The inclusion criteria were the use of transportation for work purposes, as well as the transfer from the periphery to the urban center and the use of anti-COVID-19 devices such as face masks, masks, gloves or alcohol gel.

The Carreón Transfer Habitus Inventory (2022) was used, which includes the four exposed dimensions: Aesthesis, Eidos, Ethos and Hexis. It includes 20 items with five response options from 0 = "I do not agree at all" to 5 = "I quite agree". The reported reliability of the instrument ranges between 0.780 and 0.792, but in the present study it was 0.775. The reported validity of the instrument includes the four dimensions that explain between 67% and 72% of the total variance, although in this study the four factors explained 56% of the total variance.

Respondents were contacted through their institutional mail. The objective and those responsible for the project were reported. The Helsinki and APA protocol was followed for the written guarantee of confidentiality and anonymity of the responses. It was reported that responses to the instrument would not be paid for.

Data were captured in Excel and processed in JASP version 14. Reliability and construct validity coefficients were estimated. Regression estimates were made between the determining factors of the adequate use of transport. The mediation model was estimated in order to test the hypothesis of significant differences between the theoretical structure and the estimated model. Values close to unity were assumed as evidence of reliability, validity, regression, and mediation.

Results

Figure 1 shows the values of the coefficients that explain the measurement relationships between the transfer habitus, the ethics and motivation factors. It is appreciated that the mediating factor of personal motives determines the appropriate use of transportation, as well as the vision of the future as the main determinant of personal motives and the appropriate use of transportation.

It means then the transfer habitus is explained by a structure of mediating factors: ethical habitus and motivational habitus. The components of both factors such as the vision of the future and social motives are central determinants of the adequate use of transport. In other words, transport policies and distancing strategies are limited to both components. Consequently, risk communication can be reoriented towards vision of the future and social motives. Both components would anticipate a risk prevention scenario with the reduction of infections due to the proper use of transportation.

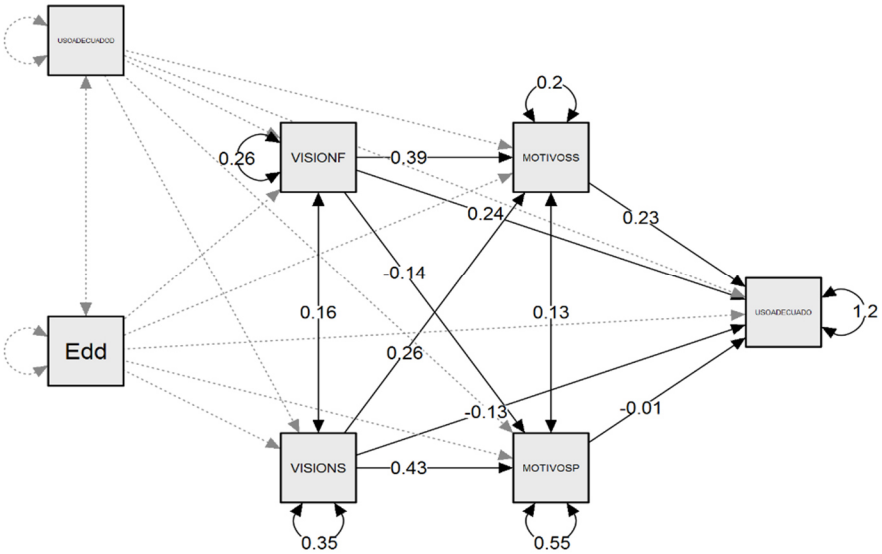

Figure 1. Model of mediating factors of transfer habitus
Source: Elaborated with data study

Discussion

The contribution of this study to the state of the question lies in the establishment of two mediating components of the ethical and motivational habitus as predictors of the use of transport. Habitus studies suggest that the parties involved reach a level of negotiation that allows one of them to achieve a unilateral and hegemonic benefit. In the present work it is noted that those who develop the ethical and motivational habitus have an advantage over the aesthetic or expressive habitus. Studies on motivational habitus focus on personal motivation rather than social or environmental motivation, but in this study, it is the social pressure exerted on those who use transportation that determines their good behavior. Lines of research concerning the factors associated with social motives and the ethical vision of the future will allow us to anticipate risk and prevention scenarios.

Conclusion

The contribution of this work to the state of the question lies in the modeling of categories and explanatory variables of the impact of mitigation policies on the mobility of users of public services. It is a proposal in which the management, self-management and co-management of mobility through public transport would be systematically observed.

In relation to the habitus theory which observes the symbolic liberation of users with respect to restrictive policies, the present work proposes a sequence of dispositions against and in favor of isolation, distancing and segregation. The differences and similarities between the parties involved can be seen from the management, self-management and co-management of mobility.

Regarding studies of mobility habitus where relationships with postmaterialism stand out, this study shows a symbolic axis of analysis. In other words, cost and benefit research limits the

observation of asymmetries between rulers and ruled, as well as the emancipation of the user from his authority through self-management. Lines of discussion around postmaterialist mobility and the dimensions of the habitus will allow us to notice a structure of meanings. Such a sequence of archetypes would reflect power and influence between the interlocking parts.

In relation to the modeling of the categories and the variables where an axis of analysis that spreads in various routes of symbolic interpretation lies, this work highlights the aspect of self-management. It is a ramification of senses unrelated to the differences between rulers and ruled. Regarding public transport, similarities prevail such as the connection to the centrality (subway), but the imponderables such as the informality of fares stand out.

In short, the habitus of mobility as an emancipatory symbolism of the safeguard by the COVID-19 allows us to inquire about its differential structure. Authorities and users seem to distinguish themselves by their dispositions towards mobility when materializing the meaning of a type of transport. While citizens build a self-management of meanings in their informal transfer, the State seems to move towards a logic of aesthetics. Said in media terms, the government opts for the image of destiny and the user for its representation of confinement.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

POLICIJOS PAREIGŪNŲ VEIKLOS TEISINIO REGLAMENTAVIMO ETINIS ASPEKTAS

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DOI: 10.13165/PSPO-22-29-21

Anotacija. *Straipsnyje teoriniu aspektu analizuojama profesinės etikos svarba policijos pareigūno veiklos teisiniame reglamentavime. Temomis apie požiūrį į pareigūno veiklos teisinį reglamentavimą iš etinės pusės kalbama nepakankamai, todėl temos naujumas grindžiamas poreikiu išsamiau aptarti etikos ir moralės reikšmę policijos pareigūno veiklos teisiniame reglamentavime. Tyrimo problema konkretizuojama šiais klausimai: Kiek reikšmingas yra etinis elgesys bei moralė policijos pareigūnų veiklos teisiniame reglamentavime? Ar profesinės etikos principai ir nuostatos yra apibrėžti policijos pareigūnų teisiniame reglamentavime? Tyrimo objektas: policijos pareigūnų veiklos teisinio reglamentavimo etinis aspektas. Tyrimo tikslas: atskleisti policijos pareigūnų veiklos teisinio reglamentavimo etinį aspektą. Tyrimo uždaviniai: 1) atskleisti profesinės etikos svarbą policijos pareigūno veiklos teisiniame reglamentavime; 2) įvertinti profesinės etikos principų raišką policijos pareigūnų veiklos teisiniame reglamentavime. Tyrimo metodai: mokslinės literatūros analizės metodas, teisės aktų analizės metodas, apibendrinimas, kokybinis dokumentų turinio analizės metodas.*

Policijos pareigūnų veiklą reglamentuojančių teisės aktų samprata apima teisinius aspektus, kurie nustato pareigūno kompetenciją, veiksmų teisėtumą, teises, pareigas, tačiau viso to neužtenka, siekiant puikaus valstybės tarnautojo įvaizdžio. Policijos pareigūnas privalo puoselėti moralę bei dorovę, remdamasis profesinės etikos kodekse nustatytais principais bei nuostatomis. Policijos pareigūnai turi tarnybai ir ne tik jai skirtą ,,Lietuvos Respublikos policijos darbuotojų etikos kodeksą“, kuriame yra numatyti principai bei nuostatos, kuriais, papildomai šalia teisės aktų, turi vadovautis policijos pareigūnai savo profesinėje veikloje. Visus kodekse nurodytus principus ir visas nuostatas policijos pareigūnas sutinka savo kasdienėje tarnyboje. Empirinio tyrimo metu nagrinėtuose teisės aktuose - ,,Lietuvos Respublikos policijos įstatyme“ ir ,,Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ - nustatyta, jog visi principai bei nuostatos, vienaip ar kitaip atsispindi teisės normose ir yra reikalingi policijos pareigūnų veiklos teisiniame reglamentavime. Vertinant principų atsispindėjimo analizuotuose įstatymuose kiekybę, ,,Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme‘‘, labiausiai, ir didesniame kontekste atsispindi tie principai, kurie labiau nukreipti į visuomenę, valstybės interesus, tai pvz. atsakomybės, lojalumo, nešališkumo, politinio neutralumo, viešumo ir skaidrumo principai. ,,Lietuvos Respublikos policijos įstatyme‘‘ labiau išskirtini yra tie principai, kurie yra susiję su pačiu policijos pareigūnu, bei jo vidumi, tai pvz. pagarbos žmogui ir valstybei, teisingumo, nesavanaudiškumo, sąžiningumo principai.

Pagrindinės sąvokos:*, policijos pareigūnas, etika, policijos veiklos teisinis reglamentavimas.*

Įvadas

Lietuvoje policijos pareigūnas, pirmiausia, turi būti LR pilietis (Lietuvos Respublikos vidaus tarnybos statuto pakeitimo įstatymas, LRS). Remiantis Lietuvos policijos pateikta 2020 m. apžvalga (,,2020 m. policijos veikla pažyma 2021-03-02‘‘, Vilnius, 2021), šiandien, Lietuvoje yra apie 8 000 tūkstančius dirbančių policijos pareigūnų. Visi jie yra statutiniai valstybės tarnautojai, kurių tikslas yra vienas – ginti asmenis pagal LR įstatymus, ištiesti pagalbos ranką, gerbti bei apsaugoti žmogų ir jo interesus, užtikrinti visuomenės saugumą,

kovoti su nusikalstamumu. LR Policijos įstatymo 4 straipsnio 2 dalyje rašoma, kad „*Policijos veikla grindžiama profesinės etikos, pagarbos žmogaus teisėms, humanizmo, visuomenės moralės, teisėtumo, politinio neutralumo, veiklos viešumo ir konfidencialumo derinimo, tarnybinio pavaldumo, subsidiarumo, taip pat prievartos naudojimo tik būtinais atvejais ir jos panaudojimo proporcingumo principais*.“ (Lietuvos Respublikos policijos įstatymas, LRS) Todėl galima suprasti, jog pareigūną, bei jo darbą sieja – įstatymai, pareigūnas, besivadovaudamas LR įstatymais, vyriausybės nutarimais, atlieka jam pavestas užduotis, bet to neužtenka, kad darbas ir jo rezultatai būtų pakankami, todėl pareigūno veikloje turi atsispindėti ir profesinė etika. Policijos pareigūno darbas (Paurienė, 2019) - sudėtingas procesas, kuris reikalauja ne tik teorinių žinių, įstatymų žinojimo, bei jų išmanymo, tačiau ir tinkamo elgesio, bei įvaizdžio, kruopštumo, moralės.

Valstybės tarnyboje pasitaiko melo ir apgaulės, korupcijos, interesų konflikto, priešiškumo, smurto ir t. t., kas neretai visuomenę supriešina su policijos pareigūnais. Netinkamas vieno pareigūno veiksmas gali paveikti visą bendruomenę. Todėl gerinant pareigūno vardą ir visuomenės pasitikėjimą, kiekvienam pareigūnui svarbu yra pradėti nuo savęs, savo paties elgesio (Schröder-Bäck, 2021). „*Policininkas ne tik <...> dorovinių santykių aktyvus dalyvis, bet jų organizatorius ir kūrėjas*“(Tidikis, 1994, p. 23). Mokslininkai analizuoja policijos pareigūnų etinės kompetencijos ugdymo procesą (Paurienė, 2019), policijos pareigūnų etiškumą dirbant areštinėse (Miko-Schefzig ir Reiter, 2018), moralumą ir etiką rengiant kriminalinių tyrimų dokumentus (Scharlibbe, 2021), etinius iššūkiais, su kuriais susiduria pareigūnai pandemijos laikotarpiu (Schröder-Bäck, 2021).

Lietuvos policija kiekvienais metais atlieka gyventojų apklausas apie pareigūnų darbą, elgesį, išmonę. Paskutinėje 2018 m. E. Vileikienės atliktoje gyventojų apklausoje, vos 3% apklaustųjų paminėjo, jog pareigūnai yra sąžiningi („Gyventojų nuomonė apie policiją ir viešojo saugumo situacijos vertinimas“, Vilnius, 2019). Pareigūno darbas yra nuolatos stebimas ir aptarinėjimas, kadangi pareigūnui yra palikta diskrecija, t. y. savo nuožiūra spręsti susiklosčiusią situaciją nepažeidžiant įstatymų. Tame galima įžvelgti problemą, kuomet pareigūno darbas yra reglamentuotas įstatymais, jis vis tiek turi teisę elgtis taip, kaip jam atrodo tinkamiausia tuo metu, ir taip, kad nebūtų pažeista teisė bei moralė. *„<...> diskrecija nusako tam tikrą pareigūno ar valstybės institucijos laisvę, sprendžiant vieną ar kitą klausimą (dalyką) dėl individualaus asmens ar asmenų grupės.*“ (Bakševičienė, 2017, p. 71) . Tačiau Thomann, van Engen ir Tummers (2018) teigia, jog diskrecijos reikėtų privengti, kadangi naudojimasis šia teise reiškia politikos įgyvendinimą ne taip kaip numatyta. Todėl sudėtinga yra laviruoti tarp įstatymo ir etikos, tam, kad tarnyba būtų atlikta tinkamai, taip pat įgyvendinti patį įstatymą ir suprasti, kokios turėtų būti pareigūno veikimo ribos. Vertinant Juodaitytės ir Paurienės (2018) apklausos metu surinktus duomenis, kaip pareigūnai įgyvendina etikos principus savo veikloje, pastebima, kad ne visi principai yra įgyvendinami tinkamai ir yra kur tobulėti. „*Policijos pareigūnų veikloje vertinant etikos principų realizavimą didžiausi trūkumai pastebėti padorumo ir teisingumo principų įgyvendinime.<...> Šios būsimų policijos pareigūnų nuostatos į etinių principų realizavimą policijos pareigūnų praktinėje veikloje sąlygojo menkesnį padorumo ir teisingumo principo vertinimą. Aukščiausiai vertinamas policijos pareigūnų darbe realizuojamas atsakingumo principas.*” (Juodaitytė ir Paurienė, 2018, p.114-115). Pagal 2020 m. VRM organizuotą gyventojų apklausą dėl pasitikėjimo viešąjį saugumą užtikrinančiomis tarnybomis („Ministrė Agnė Bilotaitė: gyventojų pasitikėjimas pareigūnais ir saugumo jausmas didėja“, Lietuvos policija), galima pastebėti, jog pasitikėjimas policijos pareigūno atliekama tarnyba bei elgesiu, pamažu auga. VRM statistiniai rodikliai rodo didėjančius pasitikėjimo rodiklius, kas leidžia daryti prielaidą, jog policijos pareigūnas savo tarnybą atlieka ne tik vadovaudamasis teisės normomis, bet ir vis daugiau remiasi etiniu

aspektu. Policijos pareigūnai turi savo profesinės etikos kodeksą, bet ne visuomet juo yra naudojamasi. Žiniasklaidoje (pvz., BNS, *„Policija pradėjo tarnybinį patikrinimą dėl netinkamo pareigūno elgesio“,* LRT), galima rasti nemažai sensacingų straipsnių apie neetišką pareigūno elgesį ar peržengtas moralės ribas. Nors etikos kodeksą galima vadinti priemone prieš nepagarbą, korupciją, netolerianciją, piktnaudžiavimą ir kt., tačiau ne visi policijos pareigūnai linkę šia priemone kaip tinkamo elgesio gairėmis naudotis, todėl krenta pareigūno reputacija (Miko-Schefzig ir Reiter, 2018). Šią mintį patvirtina ir Palidauskaitė (2010), teigdama, jog netinkamą tarnautojo įvaizdį kuria etikos principų nepaisymas ir nebūtinai tik tarnybos metu. Taip pat netinkamas įvaizdis gali atsispindėti kalboje, ar priimamuose sprendimuose (Scharlibbe, 2021). Policijos pareigūnų veiklos teisinio reglamentavimo etinio aspekto atskleidimas yra aktuali problema, kurios kontekste iškyla konkretūs klausimai: Kiek reikšmingas yra etinis elgesys bei moralė policijos pareigūnų veiklos teisiniame reglamentavime? Ar profesinės etikos principai ir nuostatos yra apibrėžti policijos pareigūnų teisiniame reglamentavime?

Temomis apie požiūrį į pareigūno veiklos teisinį reglamentavimą iš etinės pusės kalbama nepakankamai, todėl temos naujumas grindžiamas poreikiu išsamiau aptarti etikos ir moralės reikšmę policijos pareigūno veiklos teisiniame reglamentavime.

Tyrimo objektas: policijos pareigūnų veiklos teisinio reglamentavimo etinis aspektas.

Tyrimo tikslas: atskleisti policijos pareigūnų veiklos teisinio reglamentavimo etinį aspektą.

Tyrimo uždaviniai:

1. Atskleisti profesinės etikos svarbą policijos pareigūno veiklos teisiniame reglamentavime.
2. Įvertinti profesinės etikos principų raišką policijos pareigūnų veiklos teisiniame reglamentavime.

Tyrimo metodai: mokslinės literatūros analizės metodas, teisės aktų analizės metodas, apibendrinimas, kokybinis dokumentų turinio analizės metodas.

Mokslinės literatūros analizės ir apibendrinimo metodas pritaikyti analizuojant mokslininkų nuomones apie profesinės etikos svarbą policijos pareigūno veiklos teisiniame reglamentavime. Teisės aktų analizės metodas naudotas analizuojant LR teisės aktus, reglamentuojančius policijos pareigūno veiklą. Empiriniame tyrime naudota kokybinė dokumentų turinio analizė, siekiant nustatyti etikos poziciją policijos pareigūnų teisiniame reglamentavime.

Profesinės etikos svarba policijos pareigūno veiklos teisiniame reglamentavime

Etika ir teisė yra glaudžiai susijusios. Pruskus ir Briedis (2010, p.11) teigia jog „*šis ryšys gana sudėtingas ir kartu neabejotinai turi stimuliuojantį poveikį tiek teisei, tiek etikai. Moralinio ir teisinio reguliavimo centre glūdi esminiai socialinio gyvenimo klausimai: moralė ir teisė operuoja kai kuriais bendrais principais kriterijais ir sąvokomis, taip pat įsipareigojimais ir įrodymais. Tačiau teisės normos (įstatymai) yra privalomos <...>, o moralinės normos įsigalioja, kai joms pritaria socialinių struktūrų visuma.*“ Taip pat autoriai mini, jog etika įmanoma tiek, kiek tai leidžia pats individas ir kiek jam pavyksta visuomenės interesą susieti su savais įsitikinimais (Pruskus ir Briedis, 2010). Užsiimant bet kokia profesine veikla yra ne tik svarbu profesionalumas ar atlikto darbo tikslumas, taip pat svarbu yra ir geri santykiai su kolegomis bei visuomene. Įvairūs šaltiniai teigia, jog profesinė etika stiprina darbuotojų santykius, taip pat tobulina asmenybę, ji nesiekia sudaryti tam tikrų nurodymų profesinėms grupėms, tačiau normina elgesį ir veiklą (Scharlibbe, 2021; Schröder-Bäck, 2021).

Profesinės etikos normos kiekvienai profesinei grupei gali skirtis. Profesijų yra daug ir įvairių, kai kurios jų, kaip pvz. muitinės pareigūnai, policijos pareigūnai, valstybės sienos apsaugos tarnybos pareigūnai turi atskirus profesinės etikos kodeksus, kurie yra vieši ir visiems prieinami, taip pat orientuoti ne tik į pačius darbuotojus ir jų dorovę, tačiau ir į visuomenės požiūrį, komunikaciją su visuomene bei reputaciją. „*Tarnaujant visuomenei, svarbi ir asmeninė, ir profesinė darbuotojo moralė. Profesinė etika remiasi moraliniais principais, kurių privalo laikytis visuomenės tarnautojai, atlikdami savo darbą.*“, teigia Palidauskaitė (2007, p. 50). LR policijos įstatymo 1 str. 1 d. rašoma - „*Lietuvos Respublikos policija yra teisėtvarką užtikrinantis vykdomasis valstybinės valdžios organas, veikiantis Respublikos vidaus reikalų sistemoje.*“ Kadangi policijos pareigūnų veikla yra tiesiogiai susijusi su visuomene ir policijos pareigūnai atspindi valstybės interesus, labai svarbu valstybės tarnautojams veikti pagal etikos normas bei principus. Palidauskaitė ir Didžiulienė (2002, p. 62-63) išskyrė dvi esmines priežastis etikos svarbos priežastis. Visų pirma, teigė, kad gyvenant demokratinėje valstybėje, etika yra itin svarbi, kadangi demokratija grindžiama valdžios ir pasitikėjimo sąsaja, kas būdinga yra ir kalbant apie etiką. Taip pat piliečių lūkesčiai yra sutelkti į bendruomenės interesų gerinimą, jie tikisi, kad valstybės tarnautojai pirmiau atsižvelgs ne į asmeninius interesus, bet į bendruomenės. Tai lemia valdžios ir visuomenės bendravimo sėkmę, tam yra tiek Konstitucijoje, tiek kituose teisės aktuose apibrėžiamos atitinkamos taisyklės ir normos. Svarbu, jog valstybės tarnautojai puoselėtų tai, ką laiko vertybėmis visuomenė, taip pat svarbu, kad tai atsispindėtų ir teisės aktuose, kuriais vadovaujasi pareigūnai. Būtina tobulinti ir kreipti valstybės tarnautojų sprendimus bei elgesį į etinę pusę. Visų antra, pasak Palidauskaitės ir Didžiulienės (2002, p. 62-63), etika svarbi dėl aukštesnių reikalavimų valstybės tarnautojams - policijos pareigūnams nei kitiems piliečiams. Ir taip yra todėl, kad policijos pareigūnai naudojasi atitinkama galia prieš eilinius piliečius, įgyvendindami įstatymus (pvz., nepaklusus policijos pareigūnui galima atsakomybė piliečiui pgl. Administracinių nusižengimų kodekso 506 str.), ko pasekoje yra stebimas pareigūnų darbas tiek pasitelkiant įvairią įrangą, tiek atitinkamose situacijose įsiterpiant žiniasklaidai. Policijos pareigūnai turi kontroliuoti savo elgesį ir ypatingą dėmesį skirti etikai ir jos normoms, pastebi Miko-Schefzig & Reiter, 2018. Vieno ar kelių pareigūnų etikos laikymasis ar nesilaikymas neretai yra visos organizacijos atspindys.

Prie visų teisės aktų, kurie reglamentuoja policijos pareigūno veiklą yra svarbu ir norminti elgesį, nustatyti atitinkamas elgesio taisykles, apibrėžti pagrindinius elgesio principus, todėl policijos pareigūnai vadovaujasi ne tik teisės aktais, tačiau ir „Lietuvos Policijos darbuotojų etikos kodeksu“. Policijos pareigūnų veiklos teisinis reglamentavimas nėra griežtas vien įstatymu ar statutu. Tam, kad tinkamai reglamentuoti pareigūnų veiklą, svarbu ne tik sustyguoti jų veiksmus, tačiau ir aptarti kiekvieno tiek teigiamo, tiek neigiamo veiksmo padarinius bei etinę pusę. Kaip pavyzdys, 2020 m. birželio 25 d., vienas iš Šiauliuose dirbusių policijos pareigūnų buvo uždarytas į areštinę savo kolegų esant sunkiam girtumui. Jis vairavo automobilį girtas, buvo sukeltas eismo įvykis, ir negana to, pareigūnas pasišalino iš įvykio vietos. Po tokio neetiško elgesio bei neteisėto - įstatymų nepaisymo, policijos pareigūnas vienareikšmiškai buvo atleistas iš tarnybos. Už tokį policijos pareigūno poelgį gėdos jausmą teko patirti tiek kolegoms, tiek Šiaulių apskrities policijos viršininkui, ir šio nederamo įvykio pasekmes jaučia ne tik pats pareigūnas, bet ir jo kolegos. Viršininko Sarapo komentaras apie įvykį buvo trumpas ir aiškus „*Tai - gėda, kurios kartėlį teks nuryti visiems kolektyvo nariams.*“ (Online: „Šiaulių pareigūnai apgailestauja dėl savo kolegos elgesio“, Lietuvos policija). Tokie ir panašūs, policijos pareigūnų veiksmai nėra toleruojami, už kiekvieną nusižengimą yra numatyta tiek atsakomybė kaip įprastam LR piliečiui, tiek atsakomybė kaip policijos pareigūnui, kuris nesilaiko statuto, etikos normų ir įstatymų. Svarbu, jog policijos pareigūnų teisiniame reglamentavime

atsispindėtų tiek etika, tiek atsakomybė. Kaip teigia Palidauskaitė ir Didžiulienė (2002, p. 63), „*šiuolaikiniame pasaulyje griežtinant reikalavimus valstybės tarnautojams, jų elgesys tiriamas ir vertinamas vis kruopščiau ir kritiškiau. Dėl to visi viešojo sektoriaus organizacijų vadovai ir darbuotojai nuolatos turi kontroliuoti savo elgesį etikos aspektu bei domėtis bendromis etikos problemomis. Atskirų organizacijos darbuotojų etiškas arba neetiškas elgesys yra tos organizacijos bendrosios kultūros išraiška. Todėl atskirų organizacijos darbuotojų ir visos organizacijos etinio ugdymo klausimai neturėtų būti palikti savieigai. Atsakomybę už tai turėtų jausti ir organizacijos vadovai, ir kiti darbuotojai*."

Tokie ir panašūs skandalai, žiniasklaidos iškelti į viešumą, sukelia nemažai diskusijų tiek tarp pačių policijos pareigūnų, jų vadovų, tiek tarp visuomenės, kuri labai priešiškai visą tai vertina. Neretai kyla klausimai, kaip išvengti tokio elgesio, kuris sukelia neigiamą požiūrį tiek į policijos pareigūnus, tiek į pačią policijos įstaigą, kadangi būtent per policijos pareigūnų darbą ir atliekamus veiksmus išryškėja etikos principai ir standartai, kuriais grindžiama valstybės tarnyba.

Etika neturi konkrečių ir apibrėžtų standartų, kaip ją turėtų vertinti ar suprasti kiekvienas asmuo. Policijos pareigūnai turi savo profesinės etikos kodeksą, kuris nustato vienokius ar kitokius elgesio rėmus valstybės tarnautojui. Schröder-Bäck (2021) kalba apie tai, jog jau nuo seno buvo kreipiamas dėmesys į valstybės tarnautojų etiką ir jos įtaką. Senovės Atėnuose buvo bandoma iš anksto užkirsti kelią neatsakingam ir egoistiniam tarnautojų elgesiui. Drausminančios ir kartu prevencinės priemonės buvo nuolatinė piliečių vykdoma tarnautojų asmeninės ir visuomeninės veiklos kontrolė ir reikalavimas atsiskaityti prieš visuomenę už atliktą darbą baigus tarnybą. Panaši praktika buvo nusistovėjusi ir Prūsijoje. JAV jau XIX a. bandė kovoti su korupcija bei interesų konfliktu. „Lietuvos policijos darbuotojų etikos kodekse" yra iškeltas ir apibrėžtas tikslas „*suteikti policijos darbuotojams dorovinius orientyrus, ugdyti jų dorovinės atsakomybės jausmą ir skatinti prisidėti prie dorovinių santykių kūrimo, įtvirtinimo ir puoselėjimo policijos sistemoje ir visuomenėje, stiprinant teigiamą policijos įvaizdį*." M. F. Farahani ir F. F. Farahani (2014, p. 285) teigia, kad etika yra būtinybė kiekvienoje profesijoje ir į tai yra būtina atsižvelgti įdarbinant žmones ir darbo aplinkoje.

Palidauskaitė (2008, p. 24), plačiai rašiusi apie valstybės tarnautojus, mini, jog „*valstybės tarnautojai, būdami tarpine grandis tarp piliečio ir politinės valdžios, turi administracinio veikimo laisvę įgyvendinti viešąją politiką, todėl jų vertybinės nuostatos ir elgesys nusipelno dėmesio.*" Pareigūnų darbas yra stebimas ir vertinamas ne vien valdžios institucijų, bet ir visuomenės, žiniasklaidos, todėl būtina net ir pačioje paprasčiausioje, ekstremaliausioje, pavojingiausioje situacijoje išlaikyti etines normas ir priimti etiškus sprendimus. Policijos pareigūno priimami sprendimai daro įtaką tiek materialine prasme, tiek nematerialine. Etiškas sprendimas daro įtaką visuomenės gyvenimui, todėl svarbu nepažeisti asmenų teisių; pačiam pareigūnui, kuris priima sprendimus, jo jausmų, emocijų supratimui; organizacijos klimatui, veiklai.

Visi pareigūnų priimami sprendimai vienaip ar kitaip siejasi su įstatymais, taisyklėmis, kurios tą akimirką yra reikalingos, naudos ir nenaudos pasvėrimui situacijos metu. Žvelgiant Europos mastu, Brown (2003, p.186) rašė, jog politiniuose režimuose ir teisinėje sistemoje kiekviename sprendime, svarbu yra demonstruoti savo etines dorybes. Sėkmė ar nesėkmė taikant etiką ,tiesiogiai veikia politiką, teisėtumą, pasitikėjimą valdžia ir demokratinės valstybės stiprybę.

Griežta pareigūno veiksmų kontrolė dar nėra viskas, siekiant idealaus pareigūno darbo atlikimo. Prie viso to reikalingas moralus konkrečios situacijos sprendimas, kadangi teisės aktai jo nenumato nubrėždami tik kontūrus. Nuo moralės priklauso ne tik situacijos sprendimo rezultatas, bet ir tarnybinių pareigų atlikimas, kadangi be moralinių ir dorovinių vertybių gali

nukentėti tarnybos kokybė. Šiuos ir kitus teiginius, susijusius su etika policijos pareigūno darbe pateikia Bilius (2018, p. 52).

Policijos pareigūnai „*turi teisę teisėtai riboti asmens teises ir laisves, atlikti asmenų, daiktų, dokumentų apžiūrą, prieš asmenį naudoti psichinės, fizinės prievartos priemones ir šaunamąjį ginklą.*“ (Misiūnas, 2010, p. 20). Tai reikalauja tiek fizinio, tiek psichologinio pasirengimo, atitinkamo nusiteikimo prieš asmenį, prieš kurį pareigūnas naudojasi minėtomis teisėmis. Atrodo, jog šios teisės niekaip nėra susijusios su etika, tačiau kiekvienam pareigūnui yra suteikta diskrecijos teisė, kuria vadovaudamasis pats pareigūnas gali pasirinkti kada ir kokius veiksmus naudoti.

Tyrimo metodologija

Šis straipsnis remiasi atlikto empirinio tyrimo duomenimis, kuriame buvo pritaikytas kokybinis dokumentų turinio analizės metodas. Nagrinėjimui pasirinkti teisės aktai - „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatymas“ ir „Lietuvos Respublikos policijos įstatymas“. Minėti teisės aktai išanalizuoti remiantis „Lietuvos policijos darbuotojų etikos kodekso“ (toliau – Etikos kodeksas) principais bei nuostatomis, siekiant nustatyti Etikos kodekse išskirtų principų ir nuostatų reikšmingumą policijos pareigūnų veiklos teisiniame reglamentavime bei etikos svarbą policijos pareigūnų veikloje; įvertinti sąsajas tarp pagrindinių teisės aktų, reglamentuojančių policijos pareigūnų veiklą, bei profesinės etikos kodekso, kuriuo savo tarnyboje remiasi policijos pareigūnai.

Kokybiniu dokumentų turinio analizės tyrimo metodu, siekiama reziumuoti reikšmingus nagrinėjamai temai dokumentuose esančius duomenis, naudojantis pirminiais šaltiniais. Informacija renkama apie policijos pareigūnų veiklą ir policijos pareigūnų profesinės etikos principus. Minėtieji dokumentai pasirinkti todėl, kad yra laisvai viešai prieinami neribotam žmonių kiekiui ar grupei, taip pat todėl, kad, remiantis metodologu Tidikiu (2003), nedaro išankstinės įtakos tyrimo eigai, nuostatoms dėl savo oficialumo ir viešumo. Kokybinis dokumentų turinio analizės tyrimo metodas pasirinktas, kadangi tokių tyrimų šia tema atlikta labai mažai. Kokybinio dokumentų turinio analizės metodu darbe analizuojami tekstiniai duomenys. Tyrimui parinkti dokumentai priimti 2000-2018 m. laikotarpiu, tačiau nagrinėjamos aktualios redakcijos. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatymo“ aktuali redakcija nuo 2019 m. gruodžio 31 d., „Lietuvos Respublikos policijos įstatymo“ aktuali redakcija nuo 2020 m. liepos 1 d., „Lietuvos policijos darbuotojų etikos kodekso“ aktuali redakcija nuo 2018 m. rugpjūčio 3 d. Atliekant teorinę teisės aktų bei Etikos kodekso analizę, išskirti vienuolika veiklos ir elgesio etikos principų ir pagal juos išnagrinėti teisės aktų straipsniai. Išanalizuoti dokumentai susisteminti ir pateikti lentelėje (žr. 1 lentelę).

Profesinės etikos atsispindėjimas policijos pareigūnų veiklos teisiniame reglamentavime

Etikos kodekso 2 skyriaus, 5 dalyje yra numatyti šie veiklos ir elgesio principai: „*pagarbos žmogui ir valstybei, teisingumo, atsakomybės, lojalumo, nesavanaudiškumo, sąžiningumo, nešališkumo, padorumo, politinio neutralumo, pavyzdingumo, viešumo ir skaidrumo.*“

Pagarbos žmogui ir valstybei principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ pirmą kartą pagarbos atsispindėjimas matomas 17 straipsnyje, policijos pareigūno priesaikos tekste, kuriuo pareigūnas prisiekia negailėti jėgų ir ginti žmogaus, valstybės teises ir laisves, interesus. Taip pat 21 straipsnio 1 dalies 1 punkte tarp pareigūno pareigų išskirta yra ir pareiga, nukreipiama į žmogų „*gerbti ir ginti žmogaus orumą, užtikrinti ir saugoti žmogaus teises ir laisves*“.

„Lietuvos Respublikos policijos įstatymo“ 4 straipsnio 1 dalyje pagarba žmogui pasireiškia ginant asmenis, nepaisant jų rasės, lyties, kalbos, kilmės, socialinės ar turtinės padėties, religijos ar tikėjimo, įsitikinimų, politinių ar kitokių pažiūrų, priklausymo tautinei mažumai, negalios, amžiaus, lytinės orientacijos. Taip pat 5 straipsnio 1 dalies 1 ir 2 punktai nurodo policijos uždavinius, nukreiptus į pagarbą žmogaus teisėms ir laisvėms, į visuomenės saugumą „*1) žmogaus teisių ir laisvių apsauga; 2) asmens, visuomenės saugumo ir viešosios tvarkos užtikrinimas*“. Prie pareigūno pareigų, kurios išskirtos minėto įstatymo 25 straipsnio 1 dalyje, pabrėžta tai, jog pareigūnas privalo „*1) gerbti ir ginti žmogaus orumą, užtikrinti ir saugoti jo teises ir laisves*“ yra ypatingai svarbus pagarbos žmogui ženklas, o pareigą, paminėtą to paties straipsnio 1 dalies 5 punkte galima sieti su pagarba valstybei, nes jos paslapčių saugojimas yra labai reikšmingas ir turi aukštą vertę pareigūno tarnyboje.

Teisingumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ teisingumo principą galima įžvelgti 21 straipsnio 1 dalies 2 punkte. Viena iš pareigūno pareigų yra „*2) sužinoję apie rengiamą ar daromą teisės pažeidimą, taip pat patys būdami teisės pažeidimo liudytojais imtis neatidėliotinų priemonių užkirsti kelią rengiamam arba daromam teisės pažeidimui*“. Policijos pareigūnas turi siekti teisingumo, kaip numatyta teisės aktuose, netoleruodamas teisės pažeidimų. Lygiai taip pat teisingumą taiko ne tik pareigūnai visuomenėje, bet ir teisingumo principas vyrauja nukreiptas į pareigūnus ir jų darbą. Tai galima pastebėti minėto įstatymo 6 skirsnyje, kuris vadinasi „Pareigūnų skatinimas ir atsakomybė“. Teisingumas atsispindi tuo, kad puikiai atliekantis tarnybą pareigūnas bus skatinamas, o pareigūnui pažeidžiančiam normas, savo pareigas, uždavinius, atitinkamai bus taikoma atsakomybė, nuobaudos.

„Lietuvos Respublikos policijos įstatyme“ teisingumo principas atsispindi 5 straipsnio 1 dalyje, kuomet kalbama apie policijos uždavinius „*4) nusikalstamų veikų ir administracinių teisės pažeidimų (nusižengimų) prevencija; 5) nusikalstamų veikų ir administracinių teisės pažeidimų (nusižengimų) atskleidimas ir tyrimas*“. Taip pat teisingumo principą galima įžvelgti minėto įstatymo 6 straipsnyje, kuriame išskirtos policijos pareigūnų funkcijos, atliepiančios teisingumui. Šis straipsnis pabrėžia - tiek nusikalstamų veikų ar administracinių nusižengimų prevenciją bei kontrolę, tiek jų išaiškinimą, registravimą, bei išskiria būdus, kurių pareigūnai gali imtis vykdydami teisingumą, pvz., kriminalinės žvalgybos vykdymas. Taip pat šis straipsnis išskiria ir teismų nuosprendžių, nutarimų ir nutarčių vykdymą, kas taip pat priskirtina prie teisingumo. Teisingumas tai vienas žodis, į kurį telpa daugybė pareigūnų funkcijų. Teisingumą galima apibrėžti kaip visą pareigūno veiklą, visą darbo procesą, nes pareigūnas turi imtis tik teisingų veiksmų, nepažeisti teisės normų, ir neleisti pažeisti jų aplinkiniams, o pažeidusiems numatyti atsakomybę, ar imtis atitinkamų veiksmų tiek einamųjų, tiek procesinių. Todėl prie teisingumo galima priskirti ir policijos pareigūnų įgaliojimus, kurie nurodyti 21 straipsnyje, bendrąsias pareigūnų teises, nurodytas 22 straipsnyje, taip pat teises įgyvendinant nusikalstamų veikų ar administracinių teisės pažeidimų (nusižengimų) prevenciją – 23 straipsnis, teises atskleidžiant ir tiriant nusikalstamas veikas ar administracinius teisės pažeidimus, numatytus 24 straipsnyje. Teisingumas taip pat atsispindi ir pareigūno pareigose, kurios išvardintos kaip privalomos 25 straipsnyje ir aprėpia visus jau minėtus su teisingumo principu susijusius straipsnius. Teisingumo sąvoka yra plati, todėl galima teigti, jog tam tikras teisingumas išryškėja ir minėto įstatymo 15 straipsnyje, kuris kalba apie policijos pareigūnų veiklos kontrolę. Yra vykdomi patikrinimai, siekiant nustatyti ir patikrinti pareigūno kompetentingumą, teisės aktų bei teisinio proceso išmanymą, tokiu būdu įvertinant atliekamų pareigūno veiksmų teisėtumą ir, ar pareigūno atliekami veiksmai tarnybos metu yra teisingi. Be viso to, pagrindiniai principai, kuriuos dar šis straipsnis išskiria yra ir teisėtumas, viešojo intereso apsauga, žmogaus ir piliečių teisių bei laisvių užtikrinimas.

Atsakomybės principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ 9 straipsnyje išryškėja atsakomybės principo ryšys su reputacija. Būsimasis pareigūnas, prieš patekdamas į sistemą, turi prisiimti atsakomybę už visus praeityje padarytus veiksmus, jei tokių yra, ir jei jie sutampa su šiame straipsnyje nurodytais veiksmais, prisiimti atsakomybę už jam priklijuotą „prastos reputacijos“ etiketę. Bendra atsakomybė ir aptariamasis principas yra numatytas atskirame šio įstatymo skirsnyje – 6-tajame kartu su skatinimu. Pareigūnų atsakomybė atliekant pareigas, pažeidus įstatymų reikalavimus, numatyta minėto įstatymo 38 straipsnyje, tai yra teisinė atsakomybė kaip ir kiekvienam piliečiui, o pareigūnų atsakomybė už tarnybinius nusižengimus – 39 straipsnyje. Šios nuobaudos skyrimo ir panaikinimo tvarką nustato Vidaus reikalų ministras, suderinęs su Finansų ir Teisingumo ministrais, skirtingai nei pažeidus įstatymų reikalavimus. Taip pat atsakomybės principas yra siejamas ne tik su pareigūnais, bet ir su statutinėmis įstaigomis, jų vadovais, kurie priiminėja sprendimus pareigūnų atžvilgiu ir tai numatyta 42 straipsnyje.

„Lietuvos Respublikos policijos įstatyme“ atsakomybės principą galima susieti su policijos pareigūnų viešumu, kuris yra išanalizuotas 7 straipsnyje, kadangi policijos pareigūnų darbą stebi visuomenė, apie įvairią pareigūnų veiklą yra teikiama vieša informacija. Siekiant, kad ta informacija nepakenktų policijos įvaizdžiui, kad nesumažintų visuomenės pasitikėjimo, pareigūnas privalo būti atsakingas.

Lojalumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ lojalumo principas atsispindi reikalavimuose pretenduojant į vidaus tarnybą ir yra išskirtas 8 straipsnio 1 dalies 4 punkte. Lojalumo sąvoka yra apibrėžta minėto įstatymo 10 straipsnyje. Lojalumo principo įgyvendinamas neturint Lietuvos Respublikai priešiškų interesų, nebendradarbiaujant ir nebendradarbiavus su užsienio valstybės žvalgybos ar saugumo tarnyba arba su asmeniu, bendradarbiaujančiu ar palaikančiu ryšius su užsienio valstybės žvalgybos ar saugumo tarnyba, taip pat nedalyvaujant arba dalyvavus teroristinės organizacijos ar teroristinės grupės veikloje arba palaiko ar palaikė ryšius su asmeniu, priklausančiu teroristinei organizacijai ar grupei, taip pat negaunat pajamų iš minėtų organizacijų ar grupių. Taip pat lojalumas atsispindi, kuomet nėra rengiamasi pažeisti Lietuvos valstybės nepriklausomybės, teritorijos vientisumo ar santvarkos, bei nesuteikiant pagrindo manyti, kad asmens tarnyba vidaus tarnybos sistemoje būtų nesuderinama su nacionalinio saugumo interesais.

„Lietuvos Respublikos policijos įstatyme‘‘ lojalumo principo atitikmenys apibrėžti nėra, tai nurodyta „Lietuvos Respublikos policijos veiklos įstatymo pakeitimo įstatymo projekto ir su juo susijusių įstatymų projektų aiškinamajame rašte‘‘, kurio 4 dalyje rašoma, jog „*Įstatyme nėra nustatytos policijos pareigūnų lojalumo (veiklos teisėtumo) tikrinimo galimybės. Įstatymas nereglamentuoja policijos pareigūnų rengimo ir kvalifikacijos tobulinimo, jų tarnybos eigos (santykių).*“

Nesavanaudiškumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ nesavanaudiškumo principas yra taip pat labai svarbus ir minėtame įstatyme savanaudiškos paskatos vertinamos kaip tarnybinę atsakomybę sunkinančios aplinkybės pagal 40 straipsnio 2 dalies 2 punktą.

„Lietuvos Respublikos policijos įstatyme“ šio principo įgyvendinimui galima priskirti minėtame įstatyme 20 straipsnio 4 dalyje išskirtą nuostatą, jog „*4. Asmenys už neteisėtą pareigūno tarnybinio pažymėjimo, tarnybinės uniformos ir jos skiriamųjų ženklų ar pareigūno tarnybinio ženklo, kursanto pažymėjimo naudojimą atsako įstatymų nustatyta tvarka.*“ Bet koks naudojimasis tarnybine padėtimi nėra toleruojamas, pareigūnas privalo naudoti tarnybinį pažymėjimą, dėvėti uniformą pagal paskirtį ir nesiekti iš to naudos.

Sąžiningumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ sąžiningumas išryškėja pareigūno priesaikos tekste 17 straipsnyje, kuriame vienas iš

įpareigojimų - „*sąžiningai atlikti man patikėtas pareigas ir visada saugoti gerą vidaus tarnybos sistemos pareigūno vardą.*“ Į sąžiningumo sąvoką bei principą įeina kone visi įstatymo 3 skirsnio straipsniai, pradedant 21 straipsniu ir jame išdėstytomis pareigūnų pareigomis , kurios išskirtos kaip privalomos, ir kuriomis turi pareigūnas sąžiningai vadovautis. 22 straipsnis ir 23 straipsnis pabrėžia pareigūnų teises, bei teisę dirbti kitą darbą, įpareigoja pareigūną sąžiningai naudotis savo teisėmis, jas išmanyti, bei jomis nepiktnaudžiauti ir nesielgti priešingai. Taip pat sąžiningumo principas atsispindi ir minėto įstatymo 25 straipsnyje, kuris orientuotas į interesų konfliktą, siekiant sąžiningos ir nešališkos pareigūno tarnybos ir visiems vienodų sąlygų. Be to, sąžiningumo principas yra svarbus ir išskiriamas ne tik policijos pareigūno atžvilgiu, bet ir tų asmenų, kurie yra atsakingi už pareigūnų pareigybes, už atranką į laisvas pareigybes, už pareigūno pareigų paaukštinimą ar pažeminimą. Taip pat už pareigūnų rotaciją, tarnybą užsienyje, kad visi minėti procesai vyktų sklandžiai, vertinant pareigūnų kvalifikaciją, viešojo ir privataus interesų konflikto nebuvimą, ir taikant visiems pareigūnams vienodas sąlygas rengiant viešus konkursus ir skiriant vertinimo komisiją, kaip numatyta 35 straipsnyje. Apie tai kalbama minėto įstatymo 5 skirsnio 29-36 straipsniuose.

„Lietuvos Respublikos policijos įstatyme“ sąžiningumo principas išryškėja policijos pareigūno principų – 4 straipsnis, atliekamų uždavinių, kurie išskirti 5 straipsnyje, funkcijų - 6 straipsnis kontekste. Taip pat 21 straipsnis, apibrėžiantis pareigūnų įgaliojimus, yra svarbus kalbant apie sąžiningumo principą, nes pareigūnas turi įgaliojimus „*duoti sau nepavaldiems asmenims teisėtus nurodymus ar pateikti reikalavimus, o jeigu asmenys jų nevykdo ar priešinasi, panaudoti prievartą*“ ir pareigūno reikalavimai yra išskirti kaip privalomi, todėl savo statusu visuomenėje, pareigūnas privalo naudotis sąžiningai. Minėto įstatymo 22 straipsnis nurodo bendrąsias pareigūnų teises, kurių yra trylika, ir sąrašas nėra baigtinis. 25 įstatymo straipsnis nurodo pareigūnų pareigas, kurios yra pabrėžtos kaip privalomos, todėl pareigūnas privalo sąžiningai atlikti savo pareigas. O už kiekvieną įstatyme numatyto straipsnio nesilaikymą pareigūnams yra taikoma anksčiau minėta tarnybinė atsakomybė, remiantis „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatymo‘‘ 39 straipsniu.

Nešališkumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ nešališkumo principas apima privalomumą viešai nereikšti asmeninių simpatijų ar antipatijų ir tai atsispindi 24 straipsnio 7 punkte, kuriame išskiriamas draudimas streikuoti. Tai minima ir 62 straipsnyje, kuris draudžia statutinėse įstaigose veikiančioms profesinėms sąjungoms „*1) organizuoti streikus ir juose dalyvauti; 2) organizuoti piketus ar mitingus, kurie tiesiogiai trukdytų statutinės įstaigos veiklai ar atlikti pareigūno tarnybines pareigas, taip pat juose dalyvauti.“*

„Lietuvos Respublikos policijos įstatyme“ konkrečiai nešališkumo principas išskirtas nėra. Tačiau pareigūnas turėtų būti laisvas nuo išankstinių nuostatų apie kolegas, valdžią ir nereikšti jų viešai. Jei savo tarnyboje pareigūnas elgsis taip, kaip numato šis įstatymas, tuomet problemų nekils.

Padorumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ padorumo principas kaip ir keli aukščiau minėtieji principai, atsispindi pareigūno priesaikos tekste, 17 straipsnyje, išskiriant pagarbą „Lietuvos Respublikos Konstitucijai“ ir įstatymams, ir gero pareigūno vardo saugojimą. Taip pat padorumo principą, galima įžvelgti ir 21 straipsnio 1 dalies 1 punkte, kuris yra apie pagarbą žmogui, jo teisėms ir laisvėms, taipogi 5 punktas pabrėžia paslapčių saugojimą, kuris taip pat yra padorumo ženklas. Taip pat padorumo principas atsispindi 24 straipsnio 8 punkte, kuris draudžia „*8) būti tarnybos metu neblaiviam ar apsvaigusiam nuo narkotinių, psichotropinių ar kitų psichiką veikiančių medžiagų*“.

„Lietuvos Respublikos policijos įstatyme“ padorumo principas pasižymi gerbiant žmogų, jo laisves ir teises pagal 25 straipsnio 1 dalies 1 punktą, kuriame išskirta pareiga, kuri pabrėžta

kaip privaloma, taip pat ir pagal 5 punktą, kuris numato laikyti paslaptyje jam patikėtą įslaptintą informaciją Atsižvelgiant į prievartos panaudojimo sąlygas, išskirtas 27 straipsnyje, padorumo principas atsispindi pareigūnui gebant įvertinti, kada yra reikalinga naudoti prievartą, atkreipiant dėmesį į perteklinį prievartos panaudojimą, kas parodo pareigūno kultūrą bei taktiškumą asmens, prieš kurį naudojama prievarta, ar kuris elgiasi priešingai teisės normoms, atžvilgiu.

Politinio neutralumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ šis principas išskirtas ir paminėtas prie pagrindinių vidaus tarnybos principų, kurie apibrėžti 3 straipsnyje. Politinio neutralumo principas 1 dalies 3 punkte apibrėžtas - „ *Pareigūnas privalo, nepaisydamas asmeninių politinių pažiūrų, nešališkai tarnauti žmonėms ir teisėtai valstybės valdžiai, nedalyvauti politinių partijų ar politinių organizacijų veikloje*“ 24 straipsnyje 6 punkte prie pareigūnams taikomų apribojimų taip pat yra paminėta, jog policijos pareigūnas negali „*6) būti politinių partijų ar politinių organizacijų nariu, dalyvauti jų veikloje*“. Galima šį principą sieti kartu su nešališkumo principu, kuris neleidžia jokių viešų asmeniškumų prieš kolegas, visuomenės veikėjus, vadovus.

„Lietuvos Respublikos policijos įstatyme“ politinio neutralumo principas išskiriamas tik 4 straipsnio 2 dalyje, kuomet yra pabrėžiama tai, kuo yra grindžiama policijos pareigūnų veikla „*2. Policijos veikla grindžiama profesinės etikos, pagarbos žmogaus teisėms, humanizmo, visuomenės moralės, teisėtumo, politinio neutralumo, veiklos viešumo ir konfidencialumo derinimo, tarnybinio pavaldumo, subsidiarumo, taip pat prievartos naudojimo tik būtinais atvejais ir jos panaudojimo proporcingumo principais.*“

Pavyzdingumo principas. „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ pavyzdingumo principas atsispindi reikalaujant iš pareigūno nepriekaištingos reputacijos, kuri yra numatyta 9 straipsnyje. Taip pat prie pavyzdingumo principo galima priskirti ir lojalumą Lietuvos valstybei. Pavyzdingumo principą galima įžvelgti ir 20 straipsnyje, kuris yra apie pareigūnų kvalifikacijos tobulinimą, kadangi pavyzdingumas atsispindi pareigūno kompetencijoje, tobulėjime. Be to, pavyzdingumą galima įžvelgti ir tvarkingos uniformos dėvėjime pagal 63 straipsnį.

„Lietuvos Respublikos policijos įstatyme“ pavyzdingumo principas atsispindi 20 straipsnio 4 dalyje, draudime policijos pareigūnui naudoti tarnybinį pažymėjimą, uniformą ne pagal paskirtį ir už tai yra taikoma atsakomybė. Pareigūnas turi elgtis kultūringai, uniformą dėvėti tvarkingą ir pagal paskirtį.

Viešumo principas ir skaidrumo principas. Iš „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ esančių normų viešumo principo įgyvendinimui galima išskirti draudimą pareigūnams streikuoti, dalyvauti politikoje, kurie numatyti 24 straipsnio 1 ir 6 punktuose. Šis principas yra akcentuotas į pareigūno siekimą nepriešinti savo asmeninių interesų prieš valstybės interesus, pabrėžiamas kaip įmanoma didesnis pareigūno neutralumas tokiose situacijose. Tačiau šį principą galima tapatinti su skaidrumo principu, kadangi jie papildo vienas kito reikalavimus. Skaidrumo principas yra išskirtas prie pagrindinių vidaus tarnybos principų 3 straipsnio 1 dalies 4 punkte ir yra aiškinamas, taip, jog „*bet kokia pareigūno veikla atliekant pareigas turi būti vieša, išskyrus įstatymuose nustatytus atvejus*“.

„Lietuvos Respublikos policijos įstatyme“ viešumas paminėtas kartu su konfidencialumu ir išskirtas prie policijos veiklos principų 4 straipsnio 2 dalyje, pabrėžiant kuo yra grindžiama policijos veikla. Minėtame įstatyme viešumo principui aptarti yra skirtas atskiras 7 straipsnis. 1 dalyje teigiama, kad policija apie savo veiklą informuoja tiek valstybės ir savivaldybių institucijas, tiek pačią visuomenę, nepažeidžiant asmens bei visuomenės interesų ir tiek kiek leidžia minėtame straipsnyje 2 dalyje nurodytos aplinkybės, apie nekaltumo prezumpciją, valstybės paslaptis, žmogaus garbę bei orumą, nusikalstamų veikų ar administracinių teisės

pažeidimų prevenciją, išaiškinimą arba jų padarymą. Be to, kartą per pusmetį policijos generalinis komisaras teikia informaciją apie pareigūnų veiklą internete. Taip pat 11 straipsnyje viešumo principas atsispindi 3 dalyje, kuri nurodo, kad „ *3. Policija įstatymų ir (ar) kitų teisės aktų nustatyta tvarka bendradarbiauja su viešosios informacijos rengėjais ir skleidėjais. Policija gali pati rengti ir leisti visuomenės informavimo priemones, kuriose teikiama informacija apie nusikalstamų veikų ir administracinių teisės pažeidimų (nusižengimų) prevencijos priemonių, policijos uždavinių įgyvendinimą ir skelbiama kita su policijos veikla susijusi informacija.*“ Visi šie minėto įstatymo straipsniai kalba apie viešumą, tačiau atsižvelgiant į prieš tai minėto „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatymą“, be skaidrumo principo viešumo principas nebūtų iki galo aiškus, ir skaidrumo principe atsispindi viešumas. Tiek viešumas, tiek skaidrumas reiškia atskaitingumą visuomenei. Viešumo principo laikymasis leidžia visuomenei iš dalies kontroliuoti pareigūnų veiklą, o skaidrumo principas padaro pareigūnų darbą matomą, gerina visuomenės pasitikėjimą. Tam, kad užtikrinti skaidrumą, pareigūnas turi veikti viešai. Į skaidrumo principą daugiau ar mažiau galima įtraukti visus prieš tai minėtus principus.

Atsakomybė už etikos principų nesilaikymą yra numatyta „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatymo“ 39 straipsnio 3 dalies 10 punkte, kuriame teigiama, jog tarnybinė nuobauda – atleidimas iš vidaus tarnybos, gali būti skiriama už nusižengimus, kuriais šiurkščiai nusižengiama tarnybinės etikos principams.

1 lentelė. Etikos principų atsispindėjimas teisės aktuose

Nr.	**Principas**	**Tyrimo metu išskirti straipsniai „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“**	**Tyrimo metu išskirti straipsniai „Lietuvos Respublikos policijos įstatyme“**
1.	Pagarbos žmogui ir valstybei principas.	17 straipsnis; 21 straipsnio, 1 dalies, 1 punktas.	4 straipsnio 1 dalis; 5 straipsnio 1 dalies 1 punktas ir 2 punktas; 25 straipsnio, 1 dalis; 25 straipsnio 1 dalies, 5 punktas.
2.	Teisingumo principas.	21 straipsnio 1 dalies 2 punktas.	5 straipsnio 1 dalis; 6 straipsnis; 21 straipsnis; 22 straipsnis; 23 straipsnis; 24 straipsnis; 25 straipsnis; 15 straipsnis.
3.	Atsakomybės principas.	9 straipsnis; 38 straipsnis; 39 straipsnis; 42 straipsnis.	7 straipsnis.
4.	Lojalumo principas.	8 straipsnio 1 dalies 4 punktas; 10 straipsnis.	-
5.	Nesavanaudiškumo principas.	40 straipsnio 2 dalies, 2 punktas.	20 straipsnio 4 dalis.
6.	Sąžiningumo principas.	17 straipsnis; 21 straipsnis; 22 straipsnis; 23 straipsnis; 25 straipsnis; 35 straipsnis.	4 straipsnis; 5 straipsnis; 6 straipsnis; 21 straipsnis; 22 straipsnis; 25 straipsnis.
7.	Nešališkumo principas.	24 straipsnio 7 punktas; 62 straipsnis.	-
8.	Padorumo principas.	17 straipsnis; 21 straipsnio 1 dalies 1 punktas; 24 straipsnio 8 punktas.	25 straipsnio 1 dalies 1 punktas ir 5 punktas; 27 straipsnis.
9.	Politinio neutralumo principas.	3 straipsnis; 24 straipsnio 6 punktas.	4 straipsnio 2 dalis.
10.	Pavyzdingumo principas.	9 straipsnis; 20 straipsnis; 63 straipsnis.	20 straipsnio 4 dalis.
11.	Viešumo ir skaidrumo principas.	24 straipsnio 1 punktas ir 6 punktas; 3 straipsnio 1 dalies 4 punktas.	4 straipsnio 2 dalis; 7 straipsnis.

Taigi, visi nagrinėti etikos principai bei nuostatos vienaip ar kitaip atsispindi policijos pareigūnų teisiniame reglamentavime, kuris nagrinėtas tyrimo metu. Etinis aspektas atsispindi netolygiai, tačiau nagrinėtieji teisės aktai yra etiški, tiek policijos pareigūnų atžvilgiu, tiek siekiant, jog policijos pareigūnai laikytųsi moralės. Iš kokybinio dokumentų analizės tyrimo metu surinktų duomenų buvo svarbu išskirti esminius teisės aktų straipsnius, kuriuose atsispindi etinis aspektas. Susisteminus, bei išanalizavus duomenis buvo išskirti vienuolika etikos principų, kurių atsispindėjimas policijos pareigūnų veiklos teisiniame reglamentavime, buvo nagrinėtas pagal du teisės aktus.

Principo grafoje išvardinti vienuolika policijos pareigūnų elgesio ir veiklos principų, kurie numatyti „Lietuvos policijos darbuotojų etikos kodekso“ 2 skyriaus, 5 dalyje .

Tyrimo metu buvo analizuojami „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatymas“, išskirtas trečioje lentelės grafoje, bei „Lietuvos Respublikos policijos įstatymas“, išskirtas ketvirtoje lentelės grafoje. Visi vienuolika nagrinėtų principų, vienaip ar kitaip sutinkami „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“, taip pat didžioji dalis principų paminėti ir „Lietuvos Respublikos policijos įstatyme“, tačiau lojalumo ir nešališkumo principai nebuvo pastebėti. Apie lojalumo principą užsiminta pačiame įstatyme buvo tik tiek, kad minėtasis įstatymas nenustato pareigūnų lojalumo galimybių.

„Nuo policininko dorovingumo lygio, santykių su piliečiais, su policijos darbuotojų kolektyvu, priklauso kiekvieno jo nario psichologinė būsena, bendro darbo kokybė ir efektyvumas, veiklos darnumas, visuomenės požiūris į policiją.“ - teigia Bilius (2018, p. 51). Todėl policijos pareigūnų veiklą reglamentuojantys įstatymai nėra nukreipti vien į pačią jų veiklą, funkcijas, įvairias taisykles. Teisės normos labai plačiai apima ir etiką, kuri nustato pareigūnų vertybes, o įstatymų pagalba jos yra įgyvendinamos.

Vertinant principų atsispindėjimo analizuotuose įstatymuose kiekybę, „Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ labiausiai atsispindi tie principai, kurie nukreipti į visuomenę, valstybės interesus, tai, pvz., atsakomybės, lojalumo, nešališkumo, politinio neutralumo, viešumo ir skaidrumo principai. „Lietuvos Respublikos policijos įstatyme“ labiau išskirtini yra tie principai, kurie yra susiję su pačiu policijos pareigūnu bei jo vidumi, tai, pvz., pagarbos žmogui ir valstybei, teisingumo, nesavanaudiškumo, sąžiningumo principai.

Rekomendacijos padėčiai keisti. Siekiant užtikrinti etinių vertybių puoselėjimą, siūlytina tiek naujai į tarnybą atėjusiems policijos pareigūnams, tiek ilgesnį laiko tarpą dirbantiems, tiek jų vadovams, reguliariai vesti seminarus, mokymus apie etines pareigūno puoselėtinas vertybes, bei priminti „Lietuvos Respublikos policijos darbuotojų etikos kodeksą“. Siekiant užkirsti kelią galimiems etikos pažeidimams, rekomenduotina aptarti policijos pareigūnų dažnesnius etinius pažeidimus, galimas pažeidimų pasekmes.

Išvados

Policijos pareigūnų veiklą reglamentuojančių teisės aktų samprata apima teisinius aspektus, kurie nustato pareigūno kompetenciją, veiksmų teisėtumą, teises, pareigas, tačiau viso to neužtenka, siekiant puikaus valstybės tarnautojo įvaizdžio. Policijos pareigūnas privalo puoselėti moralę bei dorovę, remdamasis profesinės etikos kodekse nustatytais principais bei nuostatomis. Kiekvienam pareigūnui yra suteikta diskrecijos teisė, kuria vadovaudamasis pats pareigūnas gali pasirinkti kada ir kokius veiksmus naudoti, o diskreciją galima vadinti teisinio reguliavimo etine išraiška pareigūno atžvilgiu. Profesinė etika padeda pareigūnui tinkamai laviruoti situacijoje, ugdyti savitvardą, kultūringumą, išlaikyti tinkamą visos policijos įvaizdį visuomenėje.

Policijos pareigūnai turi tarnybai ir ne tik jai skirtą ,,Lietuvos Respublikos policijos darbuotojų etikos kodeksą“, kuriame yra numatyti principai bei nuostatos, kuriais, papildomai šalia teisės aktų, turi vadovautis policijos pareigūnai savo profesinėje veikloje. Visus kodekse nurodytus principus ir visas nuostatas policijos pareigūnas sutinka savo kasdienėje tarnyboje. Empirinio tyrimo metu nagrinėtuose teisės aktuose - ,,Lietuvos Respublikos policijos įstatyme“ ir ,,Lietuvos Respublikos vidaus tarnybos statuto patvirtinimo įstatyme“ - nustatyta, jog visi principai bei nuostatos, vienaip ar kitaip atsispindi teisės normose ir yra reikalingi policijos pareigūnų veiklos teisiniame reglamentavime.

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ETHICAL ASPECT OF THE LEGAL REGULATION OF POLICE OFFICERS' ACTIVITIES

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Summary

The article theoretically analyses the importance of professional ethics in the legal regulation of the activities of a police officer. The topic of the approach to the legal regulation of the activities of an officer is insufficiently discussed, therefore the novelty of the topic is based on the need to discuss in more detail the significance of ethics and morality in the legal regulation of the activities of a police officer. The problem of the research is specified in the following questions: How significant is the ethical behaviour and morality in the legal regulation of the activities of police officers? Are the principles and provisions of professional ethics defined in the legal framework for police officers? The object of the research: the ethical aspect of the legal regulation of the activities of police officers. The aim of the research: to reveal the ethical aspect of the legal regulation of the activities of police officers. Objectives of the investigation: 1) to reveal the importance of professional ethics in the legal regulation of the activities of a police officer; 2) to evaluate the expression of the principles of professional ethics in the legal regulation of the activities of police officers. Research methods: method of analysis of scientific literature, method of analysis of legal acts, generalization, qualitative method of content analysis of documents.

Assessing the amount of principles reflection in the analysed laws, in the "Law on the Approval of the Statute of the Internal Service of the Republic of Lithuania" there are mostly reflected principles that are more focused on the society and the interests of the state, e.g., principles of responsibility, loyalty, impartiality, political neutrality, openness and transparency. In the "Law of the Police of the Republic of Lithuania", the principles that are related to the police officer himself are more distinctive e.g., principles of respect for person and the state, justice, selflessness, and honesty. As already mentioned, the quality of the overall work of police officers, the coherence of their activities, and the public's attitude towards the police depend on the level of morality of the police officer, which is revealed through their relations with citizens and with other officers. Therefore, the laws regulating the activities of police officers are not limited to their own activities, functions, and various rules. Legal norms to high extent include ethics, which determine the values of officers, and with the help of the law they are implemented.

The concept of legal acts regulating the activities of police officers includes legal aspects that determine the competence, legality, rights and duties of an officer, but all this is not enough to achieve a great image of a civil servant. A police officer must uphold morals and ethics in accordance with the principles and provisions set out in the Code of Professional Ethics. Police officers have a "Code of Ethics for Police Officers of the Republic of Lithuania" dedicated not only for the service, which provides principles and provisions that police officers must follow in their professional activities together with legal acts. The police officer encounters all the principles and all the provisions set out in the code in his or her day-to-day service. The legislation examined in the empirical study – "Law on the

Police of the Republic of Lithuania" and "Law on the Approval of the Statute of the Internal Service of the Republic of Lithuania" – it has been established that all the principles and provisions, in one way or another, are reflected in legal norms and are necessary for the legal regulation of the activities of police officers.

***Keywords**: police officer, ethics, legal regulation of police officers' activities.*

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

THE IMPORTANCE OF PHILOSOPHY IN RESOLVING NIGERIA'S SECURITY ISSUES

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DOI: 10.13165/PSPO-22-29-04

Abstract. *The significance of security cannot be overstated, as it is required for human stability or peaceful coexistence. Security entails the protection of nations, communities, as well as individuals against dangerous attacks. The study looked at disturbing security issues in Nigeria, such as the terror activities of Boko Haram, banditry, and militancy. The study exposes that it is the failure of the government to attend to fundamental issues that has led to the aforementioned issues. The study looked at the current state of security in Nigeria and thus examined the importance of philosophy to achieving a peaceful and secure society. The method of content analysis was adopted and, consequently, reveals that philosophy has an essential role to play in resolving the insecurity issues in Nigeria. Furthermore, the study extracted data from secondary sources such as journals, text, and internet sources. The study also comprehensively looked at the concept of security and further exposes that philosophy enables us to understand the obligations and duties of citizens to the government and other members of society, as well as the obligations and duties of the government to the people. Accordingly, we suggest the application of philosophy as a tool to resolve security issues in Nigeria. Consequently, we conclude that philosophy can play an essential role in resolving security issues in Nigeria.*

Keywords: *Security, philosophy, Boko Haram, banditry, militancy and ethics.*

Introduction

The basic function of security as a political notion is to ensure national and international peace. Security, as a philosophical term, is an old human ideal to which people and society have aspired for millennia. As a result, the concept of security takes on philosophical and ethical significance. Security is a major worry for everyone since when there is insecurity, it quickly becomes a social issue with no bounds (Ugwu and Abah, 2020).

Security terminology is ambiguous. The ambiguity of the term "security" stems from its etymological origins, as well as the profusion of contemporary conceptions of what it means to be secure. Philosophical involvement with security has the ability to clarify the concept's structure, substance, hidden value commitments, and (possible) incoherence with other disciplines. Explanatory definitions of security provide scholars with a benchmark against which to evaluate

descriptive assertions about the presence or absence of security and construct explanatory links between security and other notions (such as power, domination, and justice). Yet, for the most part, this promise has remained unfulfilled. Despite the fact that security appears to be at the heart of many moral and political issues, current philosophers have rarely given it serious consideration.

The comprehension of philosophy's four main branches is important in the current exercise of defining its relationship with the idea of security in terms that are understandable to scholars outside the discipline of philosophy. Epistemology, ethics (or moral philosophy), logic, and metaphysics are the four disciplines. According to Singer (2002), epistemology is a field of philosophy concerned with determining the nature, basis, and extent of knowledge. It delves into the different types of knowledge, the nature of truth, and the connections between knowledge and belief. According to Lillie (1948), ethics is the normative science of human behavior in societies—a science that evaluates this behavior as right or wrong, good or evil, or in some other sense. According to Badru (2009), logic can be characterized as a normative science of reasoning as a discipline of philosophy. It is normative in the sense that it establishes standards of accuracy for correct thinking. It is scientific because it is carefully studied and highlights flaws that may limit man's ability to reason correctly. According to Singer (2002), metaphysics is the study of reality's and existence's underlying natures, as well as the essences of things.

Furthermore, according to Blackburn (2005), the term "metaphysics" is now used to refer to any inquiry that raises concerns about reality that are beyond or beyond the scope of scientific inquiry. Ontology and cosmology make up metaphysics. The former is a philosophical investigation into the nature of being, or what is or exists, while the latter is an investigation into the whole of the cosmos. The former is extremely important to the current research.

Nigeria is not the only country affected by insecurity. It is a problem for a number of countries around the world. It obstructs society's socioeconomic development. Terrorism, banditry, and militancy are to be investigated critically in this work. It also tries to find a solution to the issues. The study aims at looking at the importance of philosophy in resolving Nigeria’s security issues. The study employed the method of content analysis to get a better understanding of the issue of security from a philosophical underpinning. Consequently, the work is extracted from secondary sources. The secondary sources include journals, text, and internet sources.

The Concept of Security

The practice of assuaging any form of threat to individuals and their valuables is referred to as security. This is why, according to Buzan, security is about a nation's ability to sustain independent identity and functional integrity in the face of change that they see as hostile, while their bottom line is survival (Bodunde et al., 2014). According to the preceding, security is defined as the feeling of being safe from harm, fear, worry, oppression, danger, and poverty, as well as the defense, protection, and preservation of key values and threats to those values.

According to William (2008), security is most usually connected with the reduction of threats to treasured values, particularly those dangers that endanger the life of a specific reference object. In line with the foregoing, Imobighe claims that security refers to a nation's ability to safeguard and develop itself, promote its treasured values and legitimate interests, and improve the well-being

of its people from danger or threats. Internal security can thus be defined as the freedom from or absence of tendencies that threaten a country's internal cohesion and corporate existence, as well as its ability to maintain vital institutions for the promotion of its core values, socio-political and economic goals, and to meet the legitimate aspirations of its citizens (Ogaba, 2010). As a result, security, whether classical, state-centric, traditionalist or non-traditionalist, is all about preventing the loss or damage of assets, including living and non-living resources.

On the subject of security, there are two basic schools of thought: traditional and non-traditional. The traditional school of thought favors maintaining the Cold War security concept. Security in this sense is defined by this school of thought as safety against danger and external attack or infiltration. The traditional security paradigm is a realist security model with the state as the referent object (Abolurin, 2010). It correlates security with peace and conflict prevention by military methods, such as deterrence policies, non-offensive defense, and so on.

This is why Walt (1991), defines security as the study of military forces' threats, uses, and control. It looks at the circumstances that make the use of force more likely, how the use of force impacts individuals, nations, and societies, and the policies that states adopt to avoid or engage in conflict. Because this school of thought is so closely linked to the military, Barry Buzan sees security as undeveloped and in need of rehabilitation. According to Nwolise, the Cold War period gave conventional security theories a high level of dominance, to the point where security is based on the belief that only a military system can effectively deter attack and the threat of force (Nwolise, 2008). This aligns with Ken Boo's assertion that "one of the hallmarks of the new thinking" is that "political accommodation should be a primary and consistent goal of security strategy." Throughout the Cold War, the harmful impact of virtually solely associating security with the military was clear. This approach is known as strategic reductionism, which entails viewing security through a technical and mechanistic military lens, as seen by a fixation on military balance and the application of cutting-edge technology (Nwolise, 2008).

The non-traditional school of thought on security is the second school of thought. The goal of this school is to broaden and extend the definition of security. Other challenges, such as the environment and political, economic, and social threats, it is argued, risk the lives and property of individuals rather than the state's survival. It does imply that a primarily military definition overlooks the fact that the biggest threat to state survival may be environmental, health, political, social, and economic rather than military. As Sola Ogunsanwo properly points out, today's security notions and beliefs are all-encompassing. Security entails more than just military protection or protection from external threats. Many people in poor countries regard security as the most basic level of the struggle for survival. As a result, the non-military dimension of security should be included in an integrated African Security Assessment. From now on, the term "security" should be used in a broader sense to include economic, social, environmental, and food security, as well as equality of life security and technical security (Ochoche, 1997).

However, security in this context refers to human emancipation. It means that people/citizens must be free of the problems, difficulties, and restraints that may hinder them from doing what they want freely, such as epidemics, poverty, oppression, inadequate education, and crises. Politics, environmental difficulties, economic and demographic issues, and other non-military issues are all posing severe dangers to people's security today. Barry Buzan provides a theoretical perspective

on how to comprehend the concept of security and identifies three levels of analysis: individual, national, and international. He believes that individual security, also known as personal security by other researchers, refers to the values that people desire to protect, such as life, health, status, independence, and prosperity (Buzan, 1991). Individuals strive to protect themselves from a variety of risks, including what is known as "social security." This encompasses bodily harm, economic harm, and violations of human rights. Pain, damage, death, seizure, and destruction of property are examples of these, as are inaccessibility to labor or resources for human subsistence, injustice, unjust imprisonment, denial of normal civil liberties, and threats to human dignity. National and international levels of security, the other two layers of Buzan's analysis, are discussed as national security and international security, respectively.

Boko Haram

Boko Haram, which means "Western education is forbidden in Hausa" etymologically, was founded in 2002. The creation of Boko Haram was the consequence of a dispute between the conventional Islamic teachings of Sheikeh Adam at the Mahammadu Ndimi Mosque in Maiduguri, Bornu State in Nigeria's north-east, and the militant exposition of the holy Quran by Mohammed Yusuf, his follower and pupil. For his rebellious tendencies, Yusuf was dismissed from the mosque. For example, he had a vision in his mind of building a new system in which people who are considered to be impoverished would inherit the earth. Yusuf did not lose up on his dream after being expelled from the mosque, and he went on to build his own mosque shortly afterward. When Yusuf finished erecting his mosque in Nigeria's north-eastern region, he began recruiting young boys at the primary and secondary levels. His objective was to first indoctrinate them with his own Islamic worldview, causing them to reject earlier ideas about western education, which he saw as a sin, earning them the moniker "Boko Haram." Several experts have pointed out that the formation of groups like Boko Haram is a result of elite corruption, which has had a negative impact on citizens in that region (North East), and hence poverty is the norm (Big-Alabo and Big-Alabo, 2020).

As a result of the life paradox created by western education and society, looking at the aforementioned factors, one could argue that the formation of the Boko Haram group was a key reason for the majority of people living in poverty and abject poverty, while the few who are essentially the ruling class are waxing rich with the nation's resources. Yusuf's major goal was to Islamize Nigeria, therefore the first attack on the Nigerian government occurred in 2009, and a bounty was placed on Yusuf, which resulted in his death the following year. The leadership was thus passed on to Abubakar Shekau, who quickly declared himself in a widely circulated videotape. The group's goal is to Islamize the country and impose Sharia law across the board, and it has sought to do so by kidnappings, suicide attacks, and bombings of religious and government facilities that harm a significant number of people at the same time. The assassination of the gang's head enraged the group, resulting to violent attacks against the Nigerian Police Force as well as innocent bystanders. Boko Haram has evolved into a highly dangerous and destructive organization. However, over 20,000 people have died and millions have been displaced, mostly in Nigeria's north-eastern region (Idahosa, 2015). Boko Haram fighters bombed, demolished, and

killed numerous civilians, burned villages, and kidnapped many people, including children, women, and adults, according to Amnesty International. Nigeria had the greatest substantial increase in terrorist killings ever recorded by any country, according to the Global Terrorism Index 2015 report, from 1595 in 2013 to 6118 in 2014. The group was declared the most dangerous terrorist group in the world that year as a result of this data, as well as the attack on the police force headquarters in Abuja and the United Nations offices in Abuja. The kidnapping of almost 300 schoolgirls from Chibok in Bornu State was one of Boko Haram's bloodiest atrocities, and it drew international attention of the world and also international response. The Nigerian military claimed at one point that they had cited the girls' position, but they were hesitant to go for their rescue because doing so might result in the deaths of some or all of the girls. When they controlled so many local administrations in the north-eastern section of the country and declared those territories an Islamic caliphate, their operations took off. Boko Haram's activities also reveal that they have been able to infiltrate the government, military, and the general public, allowing them to carry out successful terror attacks. This terrorist gang has killed so many people and caused so much harm to the civilian population in 2019 and 2020. In fact, between the end of 2019 and the beginning of 2020, there were a series of attacks on the military that resulted in the deaths of over 100 military people. Despite all of the sabotage, the struggle against Boko Haram has so far yielded some victories (Big-Alabo & Big-Alabo, 2020).

Banditry

Banditry has reached alarming proportions in Nigeria, posing a severe security threat not only to the Northwest but to the entire country. The extent to which bandits operate in Nigeria's northwest has resulted in a wave of kidnappings, maimings, deaths, population displacements, cattle losses, and general disruption of socio-economic activities, as well as an atmosphere of uncertainty, which has become concerning to both the government and the citizenry.

It is important to realize that banditry is not new in Nigeria. According to anecdotal and scholarly reports, the phenomena existed before Nigeria became a governmental state. According to Jaafar (2018), there were documented incidents of banditry in colonial Nigeria as early as the 1930s. In order to put this assertion into historical context, Jaafar explains that wayfarers and merchants traveling over our local commercial corridors in those days were frequently threatened and endangered by nondescript bandits. Armed robbers and criminals were known to prey on items transported by donkeys, camels, and ox carts. Those robbers on our trade routes would take the merchandise by force and flee into the bush. So that's only one facet of the problem. In other cases, bandits would raid farming communities and villages with the goal of committing heinous murders and wilful destruction of property. The bandits would destroy nearly everything in their path during such raids, including jewelry, farm products, and so on. This subculture existed long before the arrival of colonialists in northern Nigeria (Jaafar, 2018).

According to The Humanitarian (2018), banditry has a long history in northern Nigeria. The first reported incident occurred in 1901, when a 12,000-strong camel caravan transporting various grains was ambushed, killing 210 merchants somewhere between western Hausaland and the Niger border. Although banditry is as old as Nigeria, it has grown in scope and complexity over time,

progressing from a simple kind of criminality to a more intricate and complicated pattern of criminality.

In the framework of Nigeria's present security dialectics, the modern metamorphosis of banditry can be witnessed. As a result, criminal gangs, generally composed of young people from farming and herding communities and/or local bandits, exploit the escalating instability, fear, and cyclical attacks to plunder villages, perform highway robberies, and rustle cattle for personal gain. Both farming and pastoral communities are affected by this lawlessness (Bagu and Smith, 2017; Okoli & Ugwu, 2019).

Militancy

Militancy also refers to the actions or attitudes of persons who are actively involved in attempting to bring about political change, frequently in methods that others find objectionable (BBC English Dictionary,1972). Since the Niger Delta Militants began operations almost a decade ago, they have shown a willingness to use force or violence to achieve their goals. Oil was discovered for the first time in 1958 near Oloibiri, in what is now the state of Bayelsa. In the years afterwards, oil and gas production in the Niger Delta has provided the Nigerian government with a significant portion of its revenue. During this time, successive dictatorships, influenced by corporate politics, enacted laws that effectively placed multinational oil companies like Chevron, Royal Dutch Shells, and ExxonMobil in control of Nigeria's oil resources.

Surprisingly, the Niger Delta region, where oil is used to develop other regions of the country, has remained the least developed. The goose who laid the golden egg was apparently thrown to the wild wolves. The residents of the Niger Delta have endured environmental degradation as a result of the oil industry's unrestrained pollution. As a result of environmental contamination and lax rules, entire generations have been denied the means of subsistence. The people of the Niger Delta, who are largely fisherman, saw their catches diminish on a daily basis owing to the effects of oil on aquatic life. Oil revenues were rarely seen or felt by those who were affected by its impacts (Essoh, 2018).

Ken Saro Wiwa spearheaded a nonviolent struggle against environmental deterioration in Ogoni territory and other parts of the Niger Delta as president of the Movement for the Survival of Ogoni People (MOSOP). In 1995, he and eight others were wrongly convicted of masterminding violence and murdered by General Sani Abacha's military regime, an act that sparked international outrage and earned Nigeria a three-year ban from the Commonwealth of Nations. Following in the footsteps of Saro-Wiwa, Niger Delta militants opted to use violence as a form of opposition to what they saw as unfair and unjust treatment of their people, after witnessing the governments' reaction to nonviolent campaigning (Essoh, 2018).

The Niger Delta People's Volunteer Force and the Movement for the Emancipation of the Niger Delta (MEND) were among the organizations that prosecuted the Niger Delta Militancy (NDPVF). These gangs kidnapped and occasionally killed oil workers, destroyed oil pipelines and installations, and engaged in guerilla warfare against the Nigerian government at the height of the insurgency. Militancy in the Niger Delta Region has thus become a vicious cycle, wreaking havoc on the region's mineral riches and earnings (Essoh, 2018).

Philosophy and Security

In general, it's worth noting that the four areas of philosophy all focus on various elements that help people organize their lives and thrive in society. Epistemology is concerned with human knowledge, ethics with human behavior, logic with the skill of proper reasoning, often known as deep or critical thinking, and metaphysics with the systematic attempt to assist human beings in recognizing and distinguishing reality (what is) from mere appearance (what appears to be, but is not).

In this study, the four branches of philosophy contribute in different ways to our specific understandings of different dimensions and levels of analysis of the concept of security, on the one hand, and our general understanding of what security and securitization are about in general, as well as the best practices for pursuing it in society, on the other. The nature of security and securitization in any given context is revealed by metaphysics; epistemology focuses on the knowledge and information systems that underpin security; logic deals with critical analysis and deep thinking relevant to proper security analysis, policy decisions, and implementation; and ethics is concerned with the right behavioural disposition to duty that is expected of people. However, it should be understood that any society's survival and growth depend on its ability to maintain security. Security entails defending individuals, communities, and nations from threats and attacks. Security is so crucial that every government devotes a significant portion of its budget to ensuring it.

Philosophy's Importance in Resolving Nigeria's Security Issues

Individuals with a good understanding of philosophy can fit well into interpersonal, inter-ethnic, and international relationships (Abakare and Okeke, 2016). According to Salawu (2010), charges and allegations of neglect, oppression, dominance, exploitation, victimization, discrimination, marginalization, nepotism, and bigotry are a key source of ethnic disputes. For example, in the case of militancy in the Niger Delta, which began as a result of the government's failure to respond to the needs of the region's people, peaceful protests failed and resulted in the execution of the vanguards of such movements against neglect, marginalization, and nepotism. The emergence of militancy was because the peaceful protests failed, and hence the need to use force and violence to obtain their demands. Abakare and Okeke (2016) demonstrate that knowledge of philosophy leads to new approaches to problems. Philosophy sharpens the mind and frees it from preconceptions. As a result of this, individuals are able to question cultures and customs that contradict reason. Such practices that are contrary to reason are therefore rejected or modified (Abakare and Okeke, 2016).

Ethics is a field of philosophy that establishes guidelines for human conduct. It assists us in distinguishing between acceptable and unacceptable behavior. It aids in the development of good character and the avoidance of undesirable habits. For instance, as we have stated, many experts have seen the emanation of groups like Boko Haram as a result of elite corruption. This corruption, which is a result of moral bankruptcy, has further led to poverty and hunger. We are of the view

that ethical knowledge will aid politicians in avoiding rancour and hatred in politics. It instills in political leaders a sense of civic duty and accountability. This enables them to look out for the interests of the people and make judgments that will benefit society's growth and development. It will also assist us in having law-abiding individuals who respect legitimate authority (Adekiitan & Christiana, 2021). Philosophy teaches us about citizens' responsibilities to the government and other members of society, such as paying taxes, obeying the law, community involvement, voting, etc., as well as the government's responsibilities and duties to the people, such as provision of security, welfare of citizens, provision of social amenities, etc., which are necessities for civil order and peace. The Nigerian government, which ought to be responsible for making provisions for all of these, has failed to do so. Hence, this has led to the emergence of security issues such as militancy in the Niger Delta, Boko Haram in the northern part of the country, and pieces of banditry everywhere in the country. Philosophical theories also promote fairness, justice, equality, freedom, and the preservation of human rights, and if the government charged with providing all of these fails to do so, citizens have every reason to revolt, resulting in insecurity. Undoubtedly, these values contribute to societal peace and security.

Conclusion

Security, as it is, is a fundamental necessity to achieving civil peace. The government is expected to provide this fundamental necessity or face operating in an unsafe environment where insecurity will be the order of the day. We comprehensively looked at security issues such as the terror activities of Boko Haram, banditry, and militancy. We are of the view that education as a tool is used to reshape man's total being. This work shows the essence of philosophy and its role in resolving matters pertaining to insecurity in Nigeria. Finally, the study showed the traditional branches of philosophy and the importance of each branch to achieving or resolving security issues. Accordingly, we suggest the application of philosophy as a tool to resolve security issues in Nigeria. Consequently, we conclude that philosophy can play an essential role in resolving security issues in Nigeria.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

SOME REMARKS ON AN ELECTRONIC CASE MANAGEMENT SYSTEM IN THE CRIMINAL JUSTICE AREA

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DOI: 10.13165/PSPO-22-29-15

Progress is impossible without change, and those who cannot change their minds cannot change anything

George Bernard Shaw[1]

Abstract. *Storage capacity, transmission of huge amounts of data from one part of the World to another within seconds has created solid technological ground for usage it in the conservative area our social life such as the criminal proceedings.*

The author of this research aim is to present his vision and vectors based on his practical experience on usage the achievements of the Fourth Industrial Revolution for an electronic criminal case management system in the criminal justice area, namely at the criminal proceedings. The above mentioned issue trend points out the main objective of this paper:

To describe main elements of e-case management system's architecture.

Research type: fixed research.

Keywords: *digital technologies, criminal proceedings, an electronic case management system in the criminal justice area.*

Introduction

There is nothing permanent except change.
Heraclitus[2]

Emerging technologies, particularly in the area of communication, may significantly expand the availability and quality of data upon which we can make informed decisions for the benefit of society. 5G will have an average download speed of about 1 Gbps (1 gigabyte per second), meaning

[1] 35 Inspirational Quotes On Progress. https://www.awakenthegreatnesswithin.com/35-inspirational-quotes-on-progress/

[2] Brainyquotes. https://www.brainyquote.com/topics/change-quotes

that users can download an entire movie in a matter of seconds. In short, 5G technology can quickly transfer huge amounts of information/metadata from one point to another, despite locations and the distances between them. This makes this technology extremely attractive to law enforcement agencies.

The author of this paper is going to present his vision and vectors on usage the achievements of the Fourth Industrial Revolution at the criminal proceedings. It is the most conservative part of procedure laws, regulated in detailed each procedural actions. It is understandable such strict regulations due to huge responsibility which bear on the shoulders of the applicants of criminal law provisions as *ultima ratio* tool to protect the highest values in the society. The judges, prosecutors and other officials who are dealing with criminal offences have accepted novelties in the area of criminal justice with some elements of precaution or even with a fear. Reasons for it could be different by its essence, origin varying from a lack of confidence dealing with new technologies till lack of legal acts. Despite above mentioned factors more and more countries are exploring ways on employment the achievements of the newest technologies on storage and transmission data in the criminal proceedings.

The author of this paper would like to draw attention to the usage of a specific phrase by national lawmakers in article 1 of Criminal Procedure Code of the Republic of Lithuania: "*in defense of human and citizen rights and freedoms at a speedy and detailed detection of criminal acts."*[3] How to speed up detection and pre trial investigation and the same time to keep protection of a human right at the highest level? The answer and the same time the solution is next to us. Employment of achievements of the Fourth Industrial Revolution at the criminal proceedings. Namely, creation of electronic case management system at the criminal proceedings.

The author of this paper personally witnessed and was the part at the implementation electronic case management system, experienced obstacles with whom the architecture of the e-case management system faced in the Republic of Lithuania and in Ukraine. It was valuable experience and the author would like to share this vision, ideas on the construction of an electronic case management system in the criminal justice area, main obstacles on the way of implementation it into real life. It allows to have a clear picture on an electronic case (hereinafter referred to as "**e-case**") management system at the criminal justice area.

Architecture of an electronic case management system

Four freedoms of the European Union: free movement of goods, free movement of capital, freedom to establish and provide services, free movement of persons are the main drivers who has make impact on the conservative criminal justice area. It also pushes for deeper digitalization different spheres of social life, for example, e-government, e-commerce. Many public services became accessible through the Internet. If someone were to tell about it 20-30 years ago, we would have just labelled him/her as a human being affected by science-fiction ideas.

At the same time, a drastic and rapid change in the social life within last 20 years require to have clear vision on the directions of the technology development. Pandemic as a catalyst adds addition speed for development electronic case management system in many countries around the world. 2020 starts with introduction strict limitations for natural persons' movements. It also makes

[3] Criminal Procedure Code of the Republic of Lithuania. Official Gazette. 2002, No. 37-1341.

immense effect on traditional, conservative criminal justice sphere as a criminal proceeding. A strict ban on movements also effects court trails, many criminal cases which were handover to a court for further actions stalk like a car jams during rush hours in the Megapolis. For example, like Beijing, Paris, or even capital city of the Republic of Lithuania - Vilnius. Only achievements of the new digital technology allow to go ahead for criminal proceedings. For example, electronic criminal case, online court trials etc. Despite many awful things which pandemic brought into our daily life we can find one positive thing. Pandemic has fostered introduction to the new products of digital revolution in the criminal proceedings. The author's point of view it may take 7-10 years or more to achieve it what we already have now.

The technological solutions, tools are not almighty from themselves and cannot provide any guarantees for its successful performance at the criminal justice area. The most important figure in the e-criminal justice area is a human being. Introduction the products of the new digital technology requested from developers of it to shape clear vision on e-case management system at the criminal proceedings, e-file, also requested from law makers side, practitioners, researchers to build solid legal ground for usage the products of newest technologies in criminal proceedings and to present clear structure of the future e-justice philosophy.

The author of this paper would like to draw attention to the elements of e-criminal justice:

1) environment;
2) architecture of e-case management system,
3) legal grounds for functioning such system including comparative study on it.

Many of practitioners (judges, prosecutors, defense lawyers, officials from pre-trial investigation bodies) who works in a criminal justice area, namely, at different stages of criminal procedure even in the dreams couldn't imagine the fact that it can happened at X day when a criminal case with volumes of hard copies will be replaced by almost invisible, easy transformable from one place to another part of the world within seconds small e- criminal case.

Before introduction, a state of art in the criminal procedure we should get answer on several questions. Who will be a user? Is a user ready to accept the new technology at the service? At first, if we want to get an answer to the first question, we should have clear picture on the main actors in criminal justice area and their characteristics such as age, literacy on information technology etc. Before start to introduce the e-case management system, the developers must have full picture on future users of their products. The introduction of e-case management system for future users should follow classic rules of marketing of new products. Adaptive education programs should be developed for each segment of actors/parties involved into criminal proceedings based on each person's literacy level on information technology.

There are also other many factors related with environment related to the e-criminal case management system which can be object of separate study. The author's opinion – the main axis of e-case management system at the criminal proceedings is **a human being**. If a human being doesn't accept or simply ignore the products of new technologies, it will create huge obstacles on implementation new progressive ideas into real life.

E-case management system (for criminal, civil, administrative proceedings) main pillars are:

1) software and hardware,
2) data transmission,
3) users,
4) interoperability,

5) protection from different types of incidents (cyber-attacks, interruption of energy supply, protection the personal data of criminal procedure parties etc.).

The important part in the architecture of e-criminal case system is software. The creator of e-case software must obey main principles (the author as practitioner presented just some of them) during development an electronic case management system:

1) friendly to a user,
2) easy for navigation,
3) clear presentation of e-case,
4) "need to know",
5) involvement of all parties of criminal proceedings.

Users. All main players in a criminal justice area must be involved into building e-case management. Firstly, we need identify main players in given area. It helps to avoid mistakes on development above mentioned system in some countries, namely each player started to develop own e-case management system and later due to different software, applications in use prevents to operate e-case management system as one indivisible part free from interoperability issues. There are we can compare it with phenomena which in music world we called out of tune orchestra. A state allocated amount of budget money for creation above mentioned system and each ministry, state agency announces public tender for creation own part of e-case management system. Lack of strategy, vision on development e-case management system at the criminal proceedings, lack of cooperation and coordination amongst selected service providers or/and suppliers of goods for separate parts of the same system leads to miscommunication between separate parts of the system. These learned lessons from other countries must be taken into account before planning to create e-case management system. Also, access right to e-case management system should be granted for defense lawyers. For example, access to all materials of a criminal case after pre-trial investigation was finished by the pre-trial investigation body.

To sum up, Ministry of Internal Affairs, General Prosecutor's office, Ministry of Justice (namely National Court administration), other pre-trial investigation bodies, Bar Association are the main players in the criminal justice area and one strategy, one vision should be in place amongst above mentioned players on creation e-case management system.

The author of this paper think that e-case management system has consist of united, interconnected and at the same time independent parts/blocks running by different players of the criminal proceedings. For example, pre-trial investigation bodies and prosecution office, court.

E-case management system has to cover all the stages of criminal procedure and in addition:

1) preliminary phase of information inquiry regarding presence or absence elements of criminal act in the presented event;

2) criminal execution part where penitentiary institutions, other state institutions, probation service involved into execution process could provide some data, namely through downloading procedural documents related with execution of different types of criminal punishments, confiscation of crime proceeds, etc.

It allows to save a lot of financial, human resources on monitoring: how confiscation of seized crime proceeds is going, how mechanism of compensation to the crime victims works in real life or choosing the most suitable behavior correction programs for convicted person based on accessible and already collected data. The same time it allows to prepare different by its aim

assessments on different topics. For example, on execution of confiscation property of convicted abroad.

Protection from different types of incidents. What digital hub that brings conversations, content, assignments, and apps together in one place is going to use for communication? For example, for conduction witness interview online, court hearings online? It is strategic question and answer should be given after comprehensive analysis pros and cons for each proposed and functioning now system. For example, Google Meet, Skype, Zoom, Microsoft Teams. There are many factors which decision maker should pay attention. For example, price for a product, possibility of a product provider remotely to stop functioning of apps, global situation in the world, threat of cyber-attacks from internal and external hackers.

The most vulnerable and weakest part in the protection system of e-case management system is a human being and first step should be introduced staff with basics of cyber hygiene.

Databases of e case management system must be duplicated, in other words, a backup must be in place to prevent in case of emergency situation to restore the lost data. Also permanent, non-interrupted electricity supply must be in place in case of incidents at power grids. Finally, e-case management system (for the criminal, administrative, civil proceedings) must be granted critical national infrastructure status.

Conclusions

Architecture of an electronic case management system must keep proper balance between comprehensive and solid protection of the personal data of parts involved in the criminal proceedings and the public's right to know.

The main pillars of an electronic case management system are: 1) a human being, 2) an environment, 3) the technological and legal procedures.

Ministry of Internal Affairs, General Prosecutor's office, Ministry of Justice (namely National Court administration), other pre-trial investigation bodies, Bar Association are the main players in the criminal justice area and one strategy, one vision should be in place amongst above mentioned players on creation e-case management system.

A cyber hygiene is an important tool to protect the the weakest pillar of an electronic case management system – a human being.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

PECULIARITIES AND CHALLENGES OF MEDIA AND POLICE COOPERATION

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DOI: 10.13165/PSPO-22-29-31

Abstract. *The cooperation between media and police leads the public to receive the information about criminal events in the country, learns about police reforms and other important events related to police work. The relationship between the media and the police in today's Lithuania is very little examined and analyzed. Taking all of that into account, it was decided to examine the statements of police representatives to the media and journalists to discuss, from personal experience, the cooperation between the two institutions represented by the subjects.*

Therefore the object of article is the relationship of media and police cooperation. The purpose of the article is to analyze the aspects of media and police cooperation. Objectives of the research are: to reveal the basic information publishing principles of the media; to discuss the main legal acts regulating police cooperation with the media; assessing the attitudes of police spokespersons and journalists towards the aspects of mutual cooperation, to reveal the peculiarities and the challenges of it.

The cooperation between the media and the police is assessed as good enough, but there is a clear mutual criticism, which indicates that there are difficulties in their cooperation. Problems arise when police spokespersons avoid providing information to journalists and journalists obsessively demand this information. It is proposed to solve the problems by fostering mutual respect and goodwill, realizing each other's needs. The fact that the information provided by police officers to journalists is distorted is not obvious, but noticeable. This discrepancy in real information stems from gaps in police-media cooperation, with police officers refraining from providing detailed information on a specific crime and journalists lacking the information provided and relying on unconfirmed data. However, according to spokespersons of the police, cooperation with the media brings more benefits to the police than harm. According to them, the improvement of the image of the police is related to the information published in the media, which forms a positive image of the police.

Keywords: *media, relationship, police, cooperation, police spokespersons, journalists.*

Introduction

The public learns about the police activities, get the knowledge and reviews of the criminal world from the media. So the media's relationship with the police is crucial in order to obtain the most accurate information possible and to inform the public in a timely and accurate manner. The police must have an interest in providing journalists with as much complete, accurate and objective information as possible, in accordance with the law and thus contributing to public education. And the media must comply with all the principles and functions of informing the public, as well as the legal framework, in cooperation with the police and in disseminating relevant information. The question therefore arises as to the challenges of police and media co-operation in educating the public on criminal issues.

The item of police-media cooperation aspect is not widely analysed in the scientific literature. There is a lack of in-depth analysis on the current tendencies of journalists' communication with law enforcement institutions in Lithuania.

In this context, the **subject** of the article is the relationship between media and police cooperation.

The **purpose** of the article is to analyze the aspects of media and police cooperation.

The **tasks** of the article are:

1. To reveal the basic information publishing principles of the media.
2. To discuss the main legal acts regulating police cooperation with the media.
3. Assessing the attitudes of police spokespersons and journalists towards the aspects of mutual cooperation, to reveal the peculiarities and the challenges of it.

Methods used in the article: analysis of scientific literature, method of document analysis, method of data collection of qualitative research - interview, descriptive-interpretive analysis.

Basic theoretical and legal principles of information disclosure

Journalists, by providing prompt information, help the public to publish information about the current situation, as well as to create a more comprehensive picture of the whole world, ensuring a careful issue. When collecting and presenting information to people, journalists must follow certain rules and norms that oblige them to do their job honestly and to portray national and world news fairly and realistically.

According to L. Bielinis (2005), it can be stated the media not only informs the society about current news, but also establishes the audience's perception that such an opinion about reality is correct and necessary, may be a misconception. In this way, the media creates reality and becomes the main guarantor of the reality of phenomena and images provided to the public. L. Bielinis (2005) distinguishes three levels of media impact on society:

1. Cognitive - which directly provides attitudes, names values and captures an understanding of a phenomenon (situation).
2. Affective - which forms a feeling of anxiety or joy, fear or appeasement, affects moral judgments and wants to identify or distance oneself from the object being described.
3. Behaviors - activation or suspension of activities, provocation of specific actions.

This article highlights the second level in order to assess media and police cooperation and the importance of this cooperation to society. Discussing the affective level of the media's influence on society, it's distinguished the power of the media, its ability to influence the society by publishing all kinds of current affairs, which one of them is criminal news. The publishing a large amount of information about various crimes in the country interests the public by criminals, but at the same time forms a sense of anxiety through negative and bad news. Makes you interested in one or another problem, delves into it more specifically too. L. Bielinis (2005) also highlights one of many functions of the media – "to direct public opinion towards the necessary problems." This feature proves that the media can easily manipulate people and stimulate interest in specific issues and prevailing topics, seemingly forgetting other issues and pushing them aside. Another, also important, function of the media, which the author emphasizes, is "changing and neutralizing the parameters of the facts". This function states that the media has a significant influence on a person's perception of the environment, current phenomena and specific events.

The public reads, listens to and watches the news because they want to know what is happening in the world and in the country. The news depicts the reality of today in relation to

a particular issue, event, or process. The audience has to be interested in what they read. In his opinion, journalists have to know the needs of society, to present the current, new and "hot" event at the moment when the public has the most questions about a particular event or phenomenon. Therefore, the news published at the right time will always be interesting and will attract the most people who read, listen to and watch it. The journalist also claims that many medias publish new and relevant news, but in order to interest the audience, the relevant news needs to be expanded, described in more detail and presented informatively. When the news is relevant, interesting and informative, it receives a lot of public interest. This idea is also shared by David Randall (2005), who categorizes news value factors as specific – the factors that make up the relevant facts under discussion, and the general ones – that can be called subjective factors in the value of news. Making every decision, no matter how journalists try professionally to select topics, is inseparable from society's personal attitude. Some may find relevant news about sports, others criminal. Such a factor is natural, acceptable, and does not cause any controversy until journalists begin to distort objective truth by inserting their opinions and embellishments of real truth in order to engage the audience.

In these times of technology it is important that information provided by the media to the general public, which can only see it as soon as it is disseminated on online portals, is published in accordance with all the rules and principles laid down in the media. These principles are described not only in the scientific literature but also in legislation. According to Liudvika Meškauskaitė (2018), the principles of public information are "the general principles of law (basic provisions) enshrined in the legal acts regulating the legal relations of public information, which determine the development of the branch of media law." The rule of law is, in other words, in ways that clearly define the boundaries of the entity 's activities. When it is discussing the legal environment for journalism, the main sources of public information law should be identified. These sources are laws, in particular, which protect the rights of media users, regulate the interests of media workers, and ensure the transparency and accessibility of information provided to the public (Mažylė, 2012).

The item 25 of the Constitution of the Republic of Lithuania (Lietuvos Respublikos Konstitucija) provides that a person has the right to have his or her convictions and to express them freely. People must not be prevented from seeking, receiving and disseminating information and ideas. However, the freedom to express one's beliefs and disseminate information is incompatible with criminal acts such as incitement and defamation of national, racial, religious or social hatred, coercion and discrimination. Freedom of expression, together with the prohibition of mass censorship of information enshrined in item 44 of the Constitution, is a fundamental condition for the existence of free journalism. But at the same time, it is argued that freedom of the media is not absolute, as any negative content is restricted and misinformation is prohibited.

In addition to the Constitution, a law of great importance to the media is the Law on Public Information of the Republic of Lithuania (Lietuvos Respublikos visuomenės informavimo įstatymas). This law is the main source of law governing the provision of information to the public, defining the right to receive and impart information, to express one's beliefs freely, and to protect the honor and dignity of natural and legal persons when inaccurate information is disseminated. The Law on Public Information states that "the duty of the mass media to deny published untrue information that degrades the honor and dignity of a natural person or violates the business reputation of a legal person, the conditions for denying such information, and the procedure is established by the norms of the Civil Code".

The Civil Code is the main codified legislation, the provisions of which are relevant not only to the media but also to media consumers. The Second Book of the Civil Code stipulates

that if inaccurate data has been disseminated through the media, the person about whom the data has been disseminated has the right to draw up a denial and request that the media publish the denial. The Civil Code also obliges the person who published the incorrect information to compensate for the damage caused to the person about whom the misinformation was disseminated. „A media outlet that disseminates degrading and untrue information must compensate for the material and non-material damage caused to the persona.“ (Civilinis kodeksas). This means that the law protects the rights of media users and provides for liability for violation of those rights.

It is also important to look at the legal provisions that guide the police and the media in their cooperation with each other. The Law on the Police of the Republic of Lithuania states that the police shall co-operate with producers and disseminators of public information in accordance with the procedure established by laws and other legal acts. Thus, police cooperation is clearly enshrined in legal acts. The order and methods of police institutions providing information to the media are determined and its form, content and competence of the representatives providing information to the press are regulated by the Order of the Commissioner General of the Lithuanian Police “Approving the Regulation on Provision of Information to Producers and Distributors of Public Information” („Dėl informacijos teikimo viešosios informacijos rengėjams ir platintojams reglamento patvirtinimo“). According to this order, the main objectives of police cooperation with the media can be identified: *to implement the public's right to information; to ensure the publicity of the activities of police institutions; to encourage society to contribute to crime prevention; to create and maintain a positive image of the police.*

These objectives should be pursued in order to ensure high-quality, good and smooth communication with the media. It is also in line with these objectives that the police are encouraged to use the media not only to ensure the publicity of police activities, but also to encourage the public to contribute to speeding up the detection or prevention of crime. Police officers, in cooperation with the media, must not only report on criminal incidents, but also regularly talk about crime prevention, and encourage the public to report on crimes being planned or committed, as well as suspects. This idea is supported by the provision in item 11 of the Police Law that the police shall pay special attention to cooperation with the public in order to provide mutual assistance and the participation of members of the public in ensuring public order, personal and public safety. Police cooperation with the public is facilitated by the media, which can publish not only news on the criminal world on online portals, in newspapers or on radio and television, but also educate the public about policing, good work and encourage people to contribute to policing to create a safe environment.

The Law of the Police, as well as other laws already mentioned above, mentions cases where the police must inform and provide the media with detailed information on: the circumstances of criminal incidents, various events organized by the police that promote public confidence in the police, and publicity, plans and prospects. It should be noted that the police, when informing the public and state and municipal institutions about their activities, may not violate the interests of the individual and society protected by law. Therefore, the Law of the Police stipulates that the police may not disclose information that is a state, service, commercial, industrial or banking secret, except as required by law. It is also stated that information obtained in the course of official activities that would violate the presumption of innocence, harm human dignity or security, legitimate interests of natural and legal persons, prevent, ensure the detection, detection or commission of criminal offenses or administrative offenses may not be published.

Therefore, both when providing information to the media and when trying to obtain information about criminal incidents, the police must comply with the objectives of cooperation under the law and be aware of the legal requirements for the disclosure or non-disclosure of certain information. And both police officers and journalists would be held liable for ignorance of regulation and non-compliance with legal norms.

Analysis of the relationship between police and media cooperation

The main goal of the empirical study is to evaluate the communication aspects of the media and the police, based on the opinion of journalists and police representatives. In order to assess the peculiarities of police and media cooperation, a qualitative research method was chosen - a survey of open questions of target groups was conducted. The interviewees are experts in their field - police representatives for the media and journalists on law enforcement and criminal issues. This method is useful in that "the collected qualitative data (information) does not reveal facts and statistics, but experience, meanings, processes". It is important for the study to clarify the main aspects of police and media cooperation, which are revealed on the basis of the respondents' answers to open-ended questions. The content analysis method was chosen to analyze the results of the study. This method was used to analyze the responses to the research surveys and to identify the main ideas of the respondents' responses. The main ideas were grouped and summarized to describe the results obtained.

Two target groups of study participants have been identified:

1. Journalists. The study involved 4 respondents from different Lithuanian news portals with 3 to 30 years of experience. The work of all journalists involved in the investigation is related to the coverage of criminal news and law enforcement issues in the media.

2. Representatives of territorial police authorities providing information to the media. 7 subjects from the Chief Police Commissariats of different Lithuanian cities with 1 to 20 years of experience participated in the study.

The survey conducted an electronic survey of open-ended questions. This type of survey method was chosen because "it is performed at a convenient time and place for the respondent, which allows for better consideration of the answers." from respondents 'work practices. A separate questionnaire was developed for both target groups. Journalists and police officers were assured of the confidentiality of their personal data in order to obtain the most open answers possible. The revealing of the peculiarities of the co-operation is primarily aimed at finding out how the communication between journalists and police representatives takes place.

Police officers were asked about their cooperation with the media as police officers. Representatives of the police pointed out that communication takes place by various means, most often noting that information is transmitted by e-mail, telephone, there are also physical meetings, interviews, and comments are requested at the scene. The majority of respondents to the survey say that police and media communication takes place on a daily basis, and police officers can be reached 24 hours a day: "I have to communicate with the media every day. Every day's work begins with the provision of summaries of the police's daily events to the media. "I work with the media directly and indirectly, through various means and methods of communication (oral, written, physical meetings)."

However, this statement that police and media cooperation is ongoing is contradicted by journalists, whose experience shows that contact with police is sometimes difficult. Police communications departments are said to be open until 5 pm, after this time there are difficulties in obtaining information: "Minor events often make it difficult to get information after work hours and on weekends, who are often reluctant to cooperate and offer to wait until the next day

or Monday for the information to be provided by the representatives." All journalists involved in the investigation point to the fact that police officers are very reluctant to communicate and are closed, refusing to disclose information even after the pre-trial investigation. However, this is not the case for all police officers. It is therefore not possible to state unequivocally that the entire police communication department is indifferent to informing the public, as this depends on the police themselves personally.

And by analogy, the police also highlight the problems of cooperation with the media: too much and extremely intrusive media interest in the details of the incident; "Of course, there are members of the media who use aggressive attack tactics to invade their premises when they arrive." In doing so, journalists violate the principle of humanism discussed in the theoretical part, which provides for respect not only for the reader, the listener and the viewer, but also for the colleagues with whom they have to cooperate, in this case the police. Journalists demand that information be provided to them as quickly and as fully as possible, trying to extract all the facts and details of the incident, which police officers cannot publish while the pre-trial investigation is underway. Police say the disclosure of pre-trial investigation data could jeopardize the outcome of the case, and is strictly refusing to provide such information to the media. However, the excessive interest of the media and the desire to engage the public in disclosing the circumstances of an incident is a common occurrence: But media ratings are forcing them to search for "Sensation," according to a police spokesman.

However, most people think that today's media is much more cultured than it was 10 years ago: "there used to be attempts - 'Give something you can't tell others', but now it's no longer the case." years of experience in this field, says that cooperation with the media has really improved and changed for the better. Cooperation with the media is based on the principle of equality, which requires that no exceptions be made to the provision of information. Consequently, all journalists should receive information at the same time and in the same way, no one is given any privileges. However, there are differences of opinion between police officers and journalists. According to journalists, the situation is somewhat different. Highlighting the main sources of information, they mention that one of the sources in their work is dating in law enforcement. Journalists say acquaintances working in law enforcement agencies are of great importance. In order to get detailed information even after working hours - you need to have acquaintances. And according to the police, communication with the media is smooth and information is provided in the same way, without exception.

Continuing the idea that cooperation between police officers and journalists has greatly improved over the last decade, the main reasons for this have been largely identified by respondents: the establishment of personal contact. Warm, personal contact is very important in the cooperation between police officers and journalists. The disadvantages, wishes and advantages of communication are expressed in the cooperation. A similar experience is shared by other police officers, who claim that cooperation with journalists is shrouded in warm and quality communication, which is implemented with a sense of respect and understanding for each other. Another reason - the pursuit of a common goal - both journalists and police representatives, as if by agreement, say that the aim of cooperation between the two institutions is to inform the public, so a good level of cooperation can be achieved by both parties to keep the public informed accurately and in a timely manner. "The interest in informing the public is common, it becomes a precondition for smooth cooperation", notes journalist.

Explaining the ways and means of achieving smoother and closer cooperation between the media and the police, what would improve the cooperation between law enforcement authorities and journalists? Most respondents differed in their views on improving police and media communication. One wants to single out the unanimous opinion of journalists, which

shows the outrage of the media about the closedness of the police. It is emphasized that "cooperation will improve when the Soviet legacy in law enforcement disappears, in particular the extreme isolation." Another respondent comments similarly, stating that "the approach to law enforcement communication needs to change first. Journalists need to become friends, not enemies. Failure to provide information must make sense and it should have very clear criteria and should not be abused. What is being sought now is not how to provide information, but the reasons why not. According to journalists, in order to achieve better and better cooperation between the media and the police, it is necessary to work together to implement the public's right to receive all relevant information in the field of law enforcement news. To achieve this, more detailed information and analysis by police on crimes of active public interest is desirable. Some police officers envisage the following measures to improve co-operation: the absence of a common value and search for ratings, constant contact, answering questions and adhering to communication ethics. Most police officers value communication with journalists as good, and in order for this communication to remain good or continue in a positive direction, it envisages ways to establish and follow the rules, to maintain direct contact.

In order to assess the respondents' opinion about the distortion of criminal information in the media and the reasons for the distortion, both police officers and journalists were asked how they assessed the significant discrepancy between the criminal media coverage and the actual crime in our country. Analyzing the answers of the survey respondents to this question, no unanimous opinion can be distinguished. However, the majority of respondents answered that the criminal news in the media is a bit inaccurate and "embellished". A police spokesman says the criminal information provided in the media does not correspond to reality. According to the respondent, this discrepancy is due to several reasons: "Very often the information provided is inaccurate and sometimes completely untrue. This is due to two reasons: the media's desire to be the first to disclose the facts and the fact that the information itself is obtained from non-official sources is sometimes shared." and is based on initial event information. And the initial information is that given by the speaker who called General Assistance Center or by the first officials who arrived at the scene. This is often inaccurate and is later corrected and refined as more details become available. The inconsistency of the information is caused by the closed nature of law enforcement institutions: "law enforcement is very closed, the media relies on the stories of one witness, participant in the event, interested person or grandmother who listened to some rumors at all. Such information, intentionally or unintentionally, is often incomplete, distorted, and shows only part of the image. As the law enforcement, for its part, does not comment on or clarify them, the public is exposed to reality. "There is also a perception that criminal information in the media is distorted because journalists do not rely on official data but on unknown sources. The police representative emphasizes that journalists "beautify" the information based on several sources and in order to interest the audience. "As you know, the media relies on a number of sources, so often some high-profile events are embellished, perhaps somewhat 'inflated', surrounded by stories to make it more interesting to the reader." "The media has to rely on untested sources and considerations to fill the vacuum. "Journalists often fill in the missing elements themselves, so it is often based on misinterpretations. The journalist cites this reason for the inconsistency of information as a way out when, without receiving official information from the police, inaccurate information has to be made public, based on unofficial sources.

The other question was addressed to find out the influence of the media on the image of the police, to analyze the importance of the media for public opinion, publishing not only criminal information, but also news related to police activities, reforms, and successfully

completed investigations. The image of the police is inseparable from the information published by the media for the public about police activities. The more positive information about the police in the media, the more public trust of the police activities and better the image of the institution.

In order to find out the opinion of police representatives about the change in the image of the police, respondents were asked to assess how the image of law enforcement agencies has changed over the past decade. All police officers interviewed noted that the image of the police is only improving every year. Respondents emphasize that the police is becoming more and more open, actively communicating institutions, intensively announcing the daily life of officials and reforms. Some police representatives emphasize that the media does contribute to the improving image of the police, but at the same time the rapidly changing and improving police itself is trying to improve the image. A police spokesman said: "I agree that the media is really a powerful tool to go beyond a positive image. But that is certainly not enough. Words must match deeds. Over the decade, the police authority has changed dramatically within itself, in its vision, mission, thinking and culture. Became innovative and modern. Media culture has also changed. The police are cooperating smoothly with the media and a dialogue based on respect has developed. However, the police is the institution where the events that most often affect citizens have a negative impact, so we will not avoid negative attitudes and experiences." Another police officer shares the idea that the police are modernizing, changing for the better, and the image is also improving: "The police have changed a lot in the last decade. Renewed, integrated many innovations: mobile workplaces; the latest, smart equipment; electronic document management systems; new cars, clothing. This has helped the police react faster and more effectively to events and be closer to the person. All of this received media attention, it was publicized and written. What is known to have raised public confidence in the police. "

In order to make sure that public confidence in the police is really growing, it is expedient to examine the information of the 2020 Police Activity Review of the Police Department under the Ministry of the Interior of the Republic of Lithuania, which present the results of the public confidence survey.

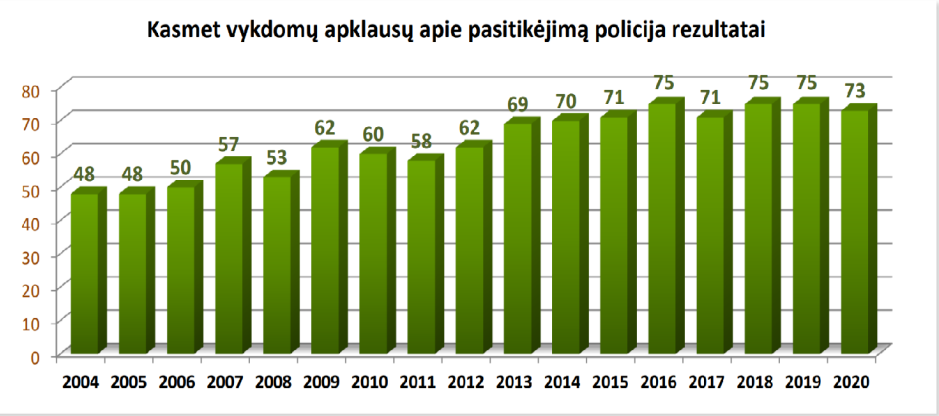

Figure 1. Results of annual police confidence surveys

Police were also asked whether they thought the media was obstructing police proceedings or whether there were more cases of aiding and abetting. The majority of police representatives agree that the media contributes to the preventive work of the police and facilitates the investigation. "The media is very helpful when it comes to getting our message out to as many people as possible and as quickly as possible, e.g. search for a minor, a request

to identify the persons captured in the photo, etc. ”- says a police representative. A similar opinion is expressed by another police representative, who states that “addressing the public with the help of the media, such as identifying a person, or responding to seeing or knowing the circumstances of an incident, really helps to unravel the crime faster and more effectively. ”By publishing such information and asking for public help, the media helps investigators unravel the crime faster, find a missing person or disseminate important information. At the same time, in this way, it brings people closer to the work of the police, the public feels involved in the course of the investigation, becomes involved in the activities of the law enforcement institution and thus forms a better opinion about the police.

The investigation revealed that co-operation between the media and the police is ongoing, on a daily basis. Police representatives send last day's summaries to journalists, communicate through various means of communication, and schedule meetings live. The co-operation between the two institutions is defined as working-level, good enough, but there are also problems with co-operation. There is dissatisfaction on the part of the media with regard to the closed nature of police officers, the withholding of information and the constant reluctance to share the circumstances of crimes. Police are more likely to view working relationships with the media more positively, but also point to difficulties that sometimes arise in working with journalists. Those difficulties arise when journalists demand more detailed information about criminal events. In summary, however, police and media co-operation are still improving and a number of measures are proposed to address the issues: mutual goodwill, non-abuse of rights, respect for and fulfillment of each other's needs.

Assessing the fact of distortion of criminal information in the media, it can be stated that the discrepancy of information is not obvious, but noticeable. Based on the criteria for selecting news, which are described as the relevance and novelty of the news, it can be stated that journalists try to provide information as soon as possible while it is still new and relevant, but in most cases such information is unspecified and unconfirmed. This leads to inconsistent information. Also, in order not to jeopardize the pre-trial investigation and sometimes to abuse this right, police officers do not provide any information about the incident to journalists during the investigation, which means that journalists do not always have to search for information through unknown sources. is accurate.

Of course, the benefits of the media in shaping the image of the police are noticeable and at the same time support the ongoing investigation. According to research, the image of the police is improving every year, as evidenced by growing trust in the police. The media contributes to this by announcing and publicizing positive things about the police, such as police reforms and the successful completion of investigations. Therefore, it can be said that both the media and the improving and modernizing police themselves contribute to the improvement of the image.

Conclusions

The media, in performing its main functions, informing people about what really happened, as well as cultivating moral and spiritual values in a person, must be guided by the principles of justice, honesty and humanism. Additional media functions are often noticeable, in which the audience is not always attracted to the published information by the exact facts. The rights, duties and responsibilities of journalists are governed by the law, which requires the smooth and fair conduct of journalists.

In co-operation with each other, police and media authorities must comply with the objectives of co-operation provided for by law and be aware of the legal requirements for the

disclosure or non-disclosure of certain information. Smooth cooperation between the media and the police, in accordance with legal requirements, is an integral part of this.

An empirical study has shown that co-operation between the media and the police is valued quite well, but there is clear mutual criticism that there are difficulties in co-operation between the two institutions. Problems arise when police officers avoid providing information to journalists and journalists are too obsessively demanding this information. It is proposed to solve the problems that arise by fostering mutual respect and goodwill, realizing each other's needs, not abusing rights, setting clear rules and complying with them. The fact that the information provided to the journalists by the police was distorted is not obvious, but it is noticeable. However, police cooperation with the media benefits the police more than harm. According to them, the improvement of the image of the police is related to the information published in the media, which forms a positive image of the police.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

THE PALESTINIAN QUESTION AND THE ROLE OF ICC

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DOI: 10.13165/PSPO-22-29-10

Abstract. *This work deals with the latest ruling of the ICC of February 2021 and the situation in Palestine. It also seeks to analyze and give an answer to a series of questions: What is the relative application for the initiation of a search for crimes committed in the territory; When in the neighboring territories have opened for the first time the discussion of statehood according to general international law; What is the role of the Prosecutor of the ICC to open an investigation without the manipulation of countries that wanted to hinder such actions and certainly not to question the commission and the violation of gross violations of human rights; What is the juridical role of the prosecutor? And final what is the position of the pre-trial Chamber with the relative sentences, the fundamental notions of the international general law and of the international criminal justice?*

Keywords: *ICC; Palestine; statehood; international recognition; resolutions of the UN General Assembly; art. 53StICC, art. 19 StICC, art. 12 StICC, art. 119StICC, art. 17StICC, art. 21StICC, art. 15 StICC.*

Introduction

The Palestinian situation as well as the Cypriot one have been the subject of discussion for years after various tensions that are occasionally noticed and without reaching a definitive conclusion of a peaceful solution according to the rules of international law. A step forward in the Israeli-Palestinian situation is certainly the decision of 5 February 2021 by the International Criminal Court (ICC)[1] where for the first time an international court recognized Palestine as a "state party" to the Statute of Rome and that ICC as a competent body to exercise its jurisdiction in the Palestinian Territory Occupied by Israel since 1967[2] and to ascertain the situation of the commission of serious international crimes under the same Statute (StICC) and to decide the related punishment of those responsible. Palestinian territory that does not enjoy the international personality, (following a victorious insurrection) effectively controls part of the territory and does not dispute the subjectivity of an embryonic state, such as that recognized to the Palestine Liberation Organization (PLO) endowed with effectiveness.

Internationalist theories on international or non-international armed conflicts, the role of international law, the use of arms as well as the legal rules on the protection of human rights question the relative use of the ICC position and especially the final result of investigations in the area given that Israel has not been a party of the StICC and that certainly will not be actively cooperating on their side making the situation even more difficult for the foreseeable future.

[1]See from the past the relative Referral by the State of Palestine Pursuant to articles l3(a) and 14 of the Rome Statute, 15 May 2018. Ref: PAL-180515-Ref (for further analysis see also: D. Liakopoulos, *"The referral "power" of ICC Prosecutor according to art. 13 StICC"*, in Global Jurist, 20 (3), 2020) and the sentence of the ICC, Pre-trial Chamber I, Situation in the State of Palestine, ICC-01/18, 5 February 2021.

[2]E. Kontorovich, *"Israel/Palestine. The ICC's uncharted territory",* in Journal of International Criminal Justice, 11, 2013, pp. 994ss.

The decision of the ICC of February 5, 2021

Indeed, the ICC took up the matter after a palestinian request to the office of Prosecutor which also included other countries such as the West Bank, East Jerusalem and the Gaza Strip. The application was based on art. 53, par.1 of the Statute of the ICC (StICC)[3] and considered the situation as "the unique history and circumstances of the Occupied Palestinian Territory"[4]. According to art. 53StICC[5] relating to the Prosecutor's action to open investigations proposed by a Member State or by the United Nations Security Council itself. We can mention this situation (rectius, the jurisprudence) as an extremely elastic situation, which allows the prosecution body to balance the exercise of the punitive pretension with other requirements expressly provided for by the Statute, such as the protection of victims and the seriousness of crimes, or implicitly inferred from the system, such as the compatibility of the procedure with the experiment of national reconciliation processes. In this case, the Pre-Trial Chamber, if it considers that the prejudice to the interests of the prosecutor's alleged justice does not justify the renunciation of the action, can review, even ex officio, the decision of the prosecuting body and obliging him to start an investigation or to prosecute (article 53 paragraph 3 letter b) Statute and Rule 110 RPP)[6].

Palestine does not exercise full control and its statehood according to general international law[7] does not seem to have been definitively resolved and the Prosecutor had deemed it

[3]As we can just see in the past cases (Katanga, Appeals Judgment on Admissibility (n 41) para 78): "(…) Therefore, in considering whether a case is inadmissible under article 17 (1) (a) and (b) of the Statute, the initial questions to ask are (1) whether there are ongoing investigations or prosecutions, or (2) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned. It is only when the answers to these questions are in the affirmative that one has to look to the second halves of sub-paragraphs (a) and (b) and to examine the question of unwillingness and inability. To do otherwise would be to put the cart before the horse. It follows that in case of inaction, the question of unwillingness or inability does not arise; inaction on the part of a State having jurisdiction (that is, the fact that a State is not investigating or prosecuting, or has not done so) renders a case admissible before the Court, subject to article 17 (1) (d) of the Statute. For further details see also: M. Pertile, *"The borders of the occupied Palestinian territory are determined by customary law: A comment on the Prosecutor's position on the territorial jurisdiction of the ICC in the situation concerning Palestine",* in Journal of International Criminal Justice, 2020, 19 (4), pp. 967ss.

[4]M. Pertile, *"The borders of the occupied Palestinian territory are determined by customary law: A comment on the Prosecutor's position on the territorial jurisdiction of the ICC in the situation concerning Palestine", op. cit.*

[5]T. De Souza Dias, *"Interests of justice: Defining the scope of prosecutorial discretion in art. 53 (1) (c) and (2) (c) of the Rome Statute of the International Criminal Court"*, in Leiden Journal of International Law, 30 (3), 2017. In particular was stated that: "(...) The Chamber sets forth three guidelines for determining if the jurisdictional standard is met: Thus, the Chamber considers that for a crime to fall within the jurisdiction of the Court, as stated in Article 53, it has to satisfy the following conditions: (i) it must fall within the category of crimes referred to in article 5 and defined in articles 6, 7, and 8 of the Statute (jurisdiction ratione materiae); (ii) it must fulfill the temporal requirements specified under article 11 of the Statute (jurisdiction ratione temporis); and (iii) it must meet one of the two alternative requirements embodied in article 12 of the Statute (jurisdiction ratione loci or ratione personae). The latter entails either that the crime occurs on the territory of a State Party to the Statute or a State which has lodged a declaration (...), or be committed by a national of any such State (...) then articulates the guidelines for assessing a "potential case" (...) admissibility at the situation phase should be assessed against certain criteria defining a "potential case" such as: (i) the groups of persons involved that are likely to be the focus of an investigation for the purpose of shaping the future case(s); and (ii) the crimes within the jurisdiction of the Court allegedly committed during the incidents that are likely to be the focus of an investigation for the purpose of shaping the future case(s). The Prosecutor's selection of the incidents or groups of persons that are likely to shape his future case(s) is preliminary in nature and is not binding for future admissibility assessments. This means that the Prosecutor's selection on the basis of these elements for the purposes of defining a potential "case" for this particular phase may change at a later stage, depending on the development of the investigation (...)".

[6]G. Sluiter, H. Friman, S. Linton, S. Vasiliev, S. Zappalà (eds), *"International criminal procedure. Principles and rules",* Oxford University Press, Oxford, 2013, pp. 1299-1374.

[7]See in particular: L.A. Aledo, *"Le droit international public"*, Dalloz, Paris, 2021. D. Alland, *"Manuel de droit international public",* PUF, Paris, 2021. C. Tomuschat, C. Walter, *"Völkerrecht",* Nomos, Baden-Baden, 2021.

appropriate to exercise his power based on art. 19, par. 3 StICC asking The Chamber for a preliminary examination for a ruling on the scope of the relevant territorial jurisdiction of the ICC on the situation in Palestine[8] to avoid in the future waste of time on research and a final useless decision. In particular, the Chamber confirmed the dissenting opinion of Judge Kovács[9] the relative conclusions of the Prosecutor, ascertaining and verifying that Palestine is a "state party" to the Rome Statute and that the jurisdiction of the ICC extends to occupied Palestinian territory which also includes the West Bank, East Jerusalem and the Gaza Strip[10] and as a consequence the validity of the application submitted. The reasoning followed by the judges, although it was not clear enough in some points, essentially represents an important contribution relating to the general recognition of the statehood of Palestine under general international law. Moreover, regardless of the origin of the notitia criminis, art. 19 StICC recognizes the power to raise a question of procedural suitability pursuant to art. 17 StICC (challenge to the admissibility)[11] for only once each and before the beginning of the trial, unless there are exceptional circumstances that justify its promotion after the first hearing. The hearing can be held even when the defendant has renounced the right to appear, or has escaped or is untraceable and all the necessary measures have been taken to ensure its presence and to inform it of the accusations. Thirty days before the confirmation of hearing charges, the indictment, together with the minutes of the evidence on which it is based, is notified to the suspect. For its part, the defense has a duty of disclosure of the evidence that it intends to bring to support its thesis, to which it must comply no later than fifteen days before the date set for the hearing (Rule 121 para 3 and 6 of Statute of Rules of Procedure and Evidence)[12].

The Chamber addressed three preliminary issues raised by some state parties, such as curiae friends and representatives of their victims. The Chamber ruled out the discussion that the Prosecutor's request was political in nature as we have seen in the situation in Afghanistan and beyond and that the ICC is in a position to decide on the matter. On the one hand, the Prosecutor had submitted a specific question of a legal nature, relating to the "territory" over which the ICC could have exercised its jurisdiction pursuant to art. 12, par. 2, lett. a) of the Statute, and on the other hand, any problems of a political nature of the final decision would not in any case cause problems for a ruling on the merits and final[13]. In particular, by letter of articles 12, par. 3 and 14 distinguish between two different cases and it is admitted that through the ad hoc acceptance of jurisdiction, a non-state party can restrict the jurisdiction of the Court-ratione temporis e loci, but not ratione materiae (given the generic reference to the crimes referred to 53StICC) -, with the general limit of the prohibition of "intervention" in international justice according to rule 44 of the related Rules of Procedure and Evidence[14]. Within this spirit,

[8]ICC, Pre-Trial Chamber I, Situation in the State of Palestine, ICC-01/18, requested from the Prosecutor in 22 January 2020, par. 5.

[9]See: ICC01/18-143-Anx1).

10ICC, Pre-Trial Chamber I, Situation in the State of Palestine, ICC-01/18, decision of 5 February 2021.

[11]W.A Schabas, *"The International Criminal Court: A commentary on the Rome Statute",* (2nd ed.), Oxford University Press, Oxford 2016, "(…) prosecutorial decision making does not derive from apathy or a desire to protect perpetrators, which may properly be criticized as inconsistent with the fight against impunity. According to this approach, a State would be judged on its compliance with the duty to prosecute by an analysis of its motives rather than its actions.

[12]D. Liakopoulos, *"The right of disclosure in hybrid Tribunals",* in Juris Gradibus, 2016. G. Sluiter, H. Friman, S. Linton, S. Vasiliev, S. Zappalà (eds), *"International criminal procedure. Principles and rules",* op. cit.

[13] ICC, Pre-trial Chamber I, Situation in the State of Palestin, op. cit., par. 56-57

[14]D. Liakopoulos, *"The function of accusation in International Criminal Court. Structure of crimes and the role of Prosecutor according to the international criminal jurisprudence"*, ed. Maklu, Antwerp, Portland, 2019 (second edition).

the Chamber ruled that, on the basis of another decision of an international nature dating back to 1954 and especially pronounced by the International Court of Justice (ICJ) on the case of the monetary gold principle relating to the Italy v. France[15], United Kingdom and United States- the adoption of a final decision involving other legal interests of a third country in the proceeding[16], in our case Israel[17] would not be able to reach a final decision.

Furthermore, the ICC stressed that Israel had not intended to submit comments, as it was invited to do so. The judges also specified that their decision will not be based on a specific solution that refers to the relative dispute between two historical countries (Palestine and Israel) that do not have the relevant jurisdiction to resolve an international dispute[18]. The Chamber also ascertained that it is the competent body to rule on the issue of jurisdiction even before the initiation of a specific case against people who are suspected of having committed crimes of an international nature, despite that art. 19, par. 3StICC, refers expressly to the "preliminary questions on the competence of the ICC and on the admissibility of a case"[19].

Within this spirit the Chamber established that Palestine is a "State in whose territory the conduct in question occurred", according to art. 12, par. 2, lett. a), and has ascertained its jurisdiction with respect to possible crimes committed and to be verified in the Occupied Palestinian Territory[20]. The majority of the judges interpreted the art. 12, par. 2, lett. a) StICC according to the principle in good faith and based on the context and object and purpose of the Rome Statute[21]- and stated that the term "State" refers to a "State party" to the Statute and without establishing whether it is a State that obtains all the requisites of a State according to the rules of general international law[22]. The Chamber considered the procedure of accession of Palestine to the Statute as plausible and definitive as well as the role of the Secretary General of the United Nations as depositary of the Statute of Rome and also taking into account the positions obtained for years by the United Nations General Assembly relating to the Israeli-Palestinian situation and from which "unequivocal indications must emerge that it considers a certain entity as a State"[23].

[15]ICJ in 15 June 1954 sentence of the Monetary Gold case (Italy v. France, United Kingdom, United States). In ICJ Reports, 1954, par. 19. previously the absence of the consent of Russia, a non-member state to the society of nations, had led the court to refrain from exercising consultative jurisdiction in the case of the status of Eastern Karelia, concerning a dispute between Russia and Finland. See the advisory opinion of 23 July 1923, in CPJI, Sèrie B, n. 5, par. 7ss. In the same sentence of Monetary Gold, ICJ it would seem to have wished to subordinate the application of the present principle in question to two conditions not simply implicated, but constitute the very object of the requested decision and secondly to the circumstance that the preliminary question involving the interests of the third state has a merely bilateral character. It was therefore considered that in the East Timor case ICJ would not have attributed the necessary importance to the fact that the burning of the legality of Indonesia presence in Timor concerned not only Portugal but the entire international community. See also in argument: J.A. Vos, *"The function of public international law",* ed. Springer, Berlin, 2018, pp. 298ss. A. Orakhelashvili, *"The competence of the International Court of Justice and the doctrine of the indispensable party. From Monetary Gold to East Timor and beyond"*, in Journal of International Dispute Settlement, 2 (2), 2011, pp. 374ss.

[16]For further details and analysis see: D. Liakopoulos, *"The role of not party in the trial before the International Court of Justice",* ed. Maklu, Antwerp, Portland, 2020.

17A.R. Rodriguez-Vila, *"The ICC, the Monetary Gold Principle and the determination of the territory of Palestine"*, in Opinio Juris, 2 November 2020.

[18I] CC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 60

[19]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 68

[20]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 69

[21]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 91

[22]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 93

[23]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 96. The Chamber recalled in this sense the document relating to the practice of the Secretary General as depositary of international treaties, see: UN Doc. ST/LEG/7/Rev.1, par. 83.

According to art. 125, par. 3StICC, the Rome Statute is open "to all States"[24] and allows the membership of entities whose statehood results from precise decisions of the General Assembly and as a consequence also obtains the requirements of public international law for the recognition of a State. In particular, the ICC was based on Resolution n. 67/19 of 29 November 2012 of the General Assembly of the UN which confirmed the: "Right of the Palestinian people to self-determination and independence in their own State (...) had recognized Palestine as a non-member observer State of the United Nations[25]. The accession of Palestine as a "State party" to the Rome Statute had occurred in accordance with the provisions of art. 125, par. 3, and regardless of its status under general international law. Furthermore, the judges of the pre-trial Chamber have pre-established that they are not competent to establish the related issues of statehood that may bind the international community from a legal point of view but on the other hand, such recognition did not resolve the historical situation of these two countries. therefore questioning that the Chamber limited itself to establishing that Palestine was a "State party" of StICC[26].

According to this establishment of Palestine as a "State party", the Chamber decided that the jurisdiction of the ICC would extend as a consequence to the Occupied Palestinian Territory to include the West Bank, East Jerusalem and the Gaza Strip, building upon and repeating once again the Resolution no. 67/19 of the General Assembly, given that the right of the Palestinian people to self-determination[27] and sovereignty has been confirmed both in the State of Palestine and in the Occupied Territory since 1967[28]. The Chamber, as well as other international bodies, among which the ICJ and the Security Council of the UN, not only confirmed the right of the Palestinian people to the right to self-determination, but considered that Israeli settlements in the Palestinian territories occupied since 1967 constitute a grave violation of international law, as well as the main obstacle to the two-state solution[29]. The Chamber stressed that the decision of extending the jurisdiction of the ICC for future checks and searches for the Commission of international crimes also in the Occupied Territory was compatible with respect for internationally recognized human rights, in accordance with the provisions of art. 21, par. 3StICC[30] and in this case the right to self-determination[31].

The Chamber has not decided anything regarding the "possible" limits to the jurisdiction of the ICC based on the provisions of the Oslo Accords of 1995[32]. Given that some provisions

[24]D. Liakopoulos, "The function of accusation in International Criminal Court. Structure of crimes and the role of Prosecutor according to the international criminal jurisprudence", op. cit.

[25] Par. 98. see also: S. Sakran, *"The creation of the non-member observer state of Palestine. A legal analysis of UN General Assembly Resolution 67/19",* in Amsterdam Law Forum, 9 (2), 2017, pp. 132ss.

[26l] CC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 108.

[27] Self-determination as developed by the practice of the UN (Articles 1, para. 2, 55 and 56), by a series of resolutions from the General Assembly of the UN as a rule of general international law or a fundamental principle of international law or a rule of ius cogens; and also by the ILC itself which since 1966 has included it in the exemplary list of mandatory regulations. For further analysis see also: L.A. Aledo, *"Le droit international public",* op. cit., D. Alland, *"Manuel de droit international public"*, op. cit., W. Kälin, A. Epifany, M. Caroni, J. Künzli, B. Pirker, *"Völkerrecht"*, Stämpfli Verlag, Bern, 2022.

[28l] CC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 117

[29]See Resolution of the Security Council n. 2334 (2016) of 13 December 2016

[30]D. Liakopoulos, *"Justicia dura: anatomia e interpretaciòn en la exclusiòn de la responsabilidad penal individual en la justicia penal internacional",* in Revista Eletrònica de Estudios Penales y de la Seguridad, 2019, n. 4. R.J.A. Morales, *"Definiciòn de los crimenes internacionales y responsabilidad penal internacional"*, ed. Juridicos Olejnik, Santiago de Chile, 2020.

[31]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 122-123

[32]We speak about "Oslo I" and "Oslo II" accords signed by Israel and the Palestine Liberation Organization (PLO) (as representative of the Palestinian people) on 13 September 1993 and 28 September 1995. In the text of the

of these Agreements limit the jurisdiction of the Palestinian Authority to palestinians and/or not israelis in the West Bank and Gaza Strip and that Palestine could not delegate its jurisdiction to the ICC. The Chamber has included and interpreted that the Oslo Accords do not affect the jurisdiction of the ICC and that any issues created could have been raised by the interested and participating States in accordance with art. 19StICC-relating to preliminary questions concerning the competence of the ICC and the admissibility of a legal and non-political case-rather than in relation to a debate on the jurisdiction of the ICC which is connected to the initiation of an investigation by the Prosecutor of the ICC[33].

The decision of the pre-trial Chamber opens the discussion between the notion of statehood in Palestine and the use of judges in the relative decision between "State" under general international law and "State party" of the StICC[34]. In particular, long before the decision of the pre-trial Chamber the judges doubted, that Palestine could be considered a "State party" to the Statute of Rome without being a "State" under general international law. If on the one hand Palestine is a fully-fledged "State party" in the ICC system-in reality what the pre-trial Chamber has clearly confirmed-on the other hand the notion of its statehood is part of the broader process aimed at achieving it. A decision that is placed alongside (and against) other factors aimed at operating in the opposite direction. Factors such as recognition by other States of the International Community, various sentences and decisions of different judicial bodies at the international level, resolutions by international organizations, etc. Factors which, although they are not constitutive of statehood, that is in themselves sufficient to qualify an entity as a State recognized in all respects by the international community, influence and contribute to determining the process of formation of the entity as such.

In addition to this spirit, art. 15 (1) StICC that clearly authorises the prosecutor to exercise prosecutorial discretion. However, paragraph (3) of the same article contains an obligatory language enforcing the prosecutor to proceed with the investigation. The ICC has not made any clear judgment on this question, and the matter is still debated;With respect to the selection of admissible cases, the StICC are silent. However, there is an explicit and common consensus among commentators and authors that the prosecutor has an implicit power to reject any case on the basis of "the interests of justice", in particular "relative gravity", whatever the trigger mechanism is. The OTP has just published a new policy document on the selection of cases and confirmed that it has broad prosecutorial discretion when selecting among legally worthy admissible cases. The paper particularly sets three criteria for this selection, namely: the gravity of the crimes, the degree of the responsibility of the alleged perpetrators[35], and the potential charges;The prosecutor sits at the critical juncture of the efficiency and sufficiency of the ICC

treaties, in whose Preamble, it was reported: "The Government of the State of Israel and the PLO Team" (see, Declaration of principles on interim self-government arrangements and The Government of the State of Israel and the Palestine Liberation Organization; The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. In particular par. 2 of art. 1 "Oslo II", it was provided that: "(...) once Israel had ceased the occupation, the administration of Gaza and the West Bank it would have been transferred to the Palestinian National Authority "). For further details see also: J. Quigley, *"The Oslo accords. More than Israel deserves"*, in American University International Law Review, 12 (2), 1997, pp. 289ss. I. Malik, *"Analysis of the Oslo accords",* in Strategic Studies, 21 (2), 2001, pp. 136ss. Y.AL. Khudayri, *"Are the Oslo accords still valid? For the ICC and Palestine it should not matter"*, in Opinion Juris, 12 June 2002.

[33] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 129

[34] S. Talmon, *"Germany publicly objects to the International Criminal Court's ruling on jurisdiction in Palestine"*, in GPIL-German Practice in International Law, 11 February 2021.

[35]D. Liakopoulos, "International standards and responsibility competition according to the International Criminal Court: Anatomy, interpretation, proposals", in Revista Eletrônica de direito Penal e Polìtica Criminal-UFRGS, 6, 2018.

at furthering its institutional goals. Whilst the prosecutor is required to maintain the sufficiency of the ICC as a legal body, which works independently without concrete prescriptions, she is required as well to make the work of the ICC efficient and capable of achieving its institutional aims. Whilst the first stands for the value of independence, the latter refers to the value of discretion. The strict commitment to the legal rules does not necessarily render the work of the ICC efficient. The ICC is not yet an ideal resort to address all sorts of atrocities, and that its ability to deliver justice is considerably limited. There are often legitimate political questions that are necessary for making the work of the ICC efficient at furthering its institutional goals[36].

In this sense, the same decision of the pre-trial Chamber recognized that Palestine is a State party to the Statute of the ICC and can be considered one of the other related factors that contribute to the acquisition of statehood of an entity under general international law. Some contradictions come from the reasoning that the pre-trial Chamber has found in our opinion a "solution" that has taken into account the dynamic perspective of statehood. The incompetence of the pre-trial Chamber has shown a certain weakness in ruling on the validity of the procedure for joining Palestine to the StICC and in establishing the requirements of statehood under general international law. The ICC has tried to give a "recognition" of not only political but also legal value, as a de facto process in favor of statehood. Politically significant and still "insufficient" from a legal point of view since the problem is not exhausted in it is an area of essentially customary law such as international law in which there is no precise and instantaneous moment in which the state in the sense of international law comes into existence. The ICC according to our opinion has not committed a general recognition (uti universi) which tends to correspond to the existence of the requisites of effectiveness and independence but a specific one as a sort of "certification" of statehood of a decisive nature because it "incorporates" and expresses the ”attitude” of a plurality of States belonging to the StICC to give a partial element of the effectiveness and independence of an aspiring State that has suffered continuous injustices for many years and both victims of gross violations must be protected and this role has been definitively attributed at the ICC.

“State party” and STICC. Validity and competence of the ICC

The pre-trial Chamber included in its decision the relative competence to rule on Palestine's accession procedure to the StICC. In particular, if Palestine could be considered a "State in whose territory the relevant conduct occurred according to art. 12, par. 2, lett. A) StICC, the pre-trial Chamber has decided that the meaning of the term allows to interpret the term "State" in the sense of "State party" to the Rome Statute and that it is not necessary to establish compliance with the relevant requirements of statehood under general international law (...)"[37]. The position was based on the relevant rules and provisions of the Statute, in particular those concerning the procedure of accession of a State. The pre-trial Chamber has established, through the notification of filing by the Secretary General which is limited, "(...) to give effect to the practice of the General Assembly, from which unequivocal indications must emerge in the sense that it considers a certain entity as a State (...)"[38]. The General Assembly may allow an entity to access the Statute[39] and, in the case of Palestine, Resolution no. 67/19 in which the

[36]D. Liakopoulos, *“Schutz des angeklagten im Strafverfahren”*, in International and European Union Legal Matters, working paper series, 2013.
[37]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 93.
[38] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 96
[39] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 97

right of the Palestinian people to self-determination and independence in their own State was reaffirmed and the relative status of a non-member observer State of the United Nations was recognized. Within this spirit, the pre-trial Chamber observed that it is not the relevant body, indeed it has no competence either to review the outcome of the accession procedure, or to contest the validity of the Resolution of the General Assembly[40] and as a consequence that the procedure of accession of Palestine was concluded in a "correct and regular" way[41]. The pre-trial Chamber also decided that when a State joins the StICC it meets the requirements and automatically comes into effect for the new State. The only way to contest the validity of membership is through the Resolution of a dispute within the Assembly of States parties, in accordance with the provisions of art. 119, par. 2, of the Statute[42], namely: "(...) Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court (...)". Declarations submitted pursuant to article 12 of the StICC considered to be part of the judicial functions of the ICC[43].

The pre-trial Chamber specified that it is not the competent body to rule on the validity of the accession procedure and this adhesion has been completed correctly and regularly in accordance with the provisions of the StICC. The reference to art. 119, par. 2, as the only instrument of contesting the validity of a State's membership, it is emphasized that the pre-trial Chamber would not be competent to decide on an interstate dispute and on the validity of the membership of a State party to such a dispute. The possibility is not excluded that the issue also arises before the ICC in the context of a dispute relating to its judicial functions, on which the ICC is certainly competent in accordance with the provisions of art. 119, par. 1. According to art. 119, par. 1 StICC[44] any dispute relating to the judicial functions of the ICC will be resolved by the latter, where, "pursuant to par. 2, a dispute between the States parties relating to the interpretation or application of the Statute, will be referred to the Assembly of the States parties (...)"[45]. An interstate dispute must be addressed within the Assembly of States parties, it does not mean that it is necessary or not for the validity of an accession procedure to go before the ICC and with the obligation or not of the ICC to pronounce it. Within this spirit, the pre-trial Chamber and the provisions of art. 119, par. 1 StICC confirmed that Palestine had acceded to the Statute in a correct and regular way.

The positions of the Chamber can be interpreted and find a broader basis of justification in their reasoning in a dynamic perspective of statehood. The competence of the Assembly of States parties to resolve any dispute between the States on the validity of the accession procedure has not prevented the pre-trial Chamber from ascertaining the regularity of Palestine's accession and establishing the exercise of its jurisdiction in the Occupied Palestinian Territory. The pre-trial Chamber considered the recognition of Palestine's right to statehood given that 138 States had expressed their opinion in Resolution no. 67/19 of the General

[40]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 99
[41]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 102
[42]ICC, Pre-trial Chamber I, Situation in the State of Palestine, op.cit., par. 102
[43]W.A Schabas, The International Criminal Court: A commentary on the Rome Statute, op. cit.
[44] M. Vagias, *"The territorial jurisdiction of the International Criminal Court"*, Cambridge University Press, Cambridge, 2014, pp. 90ss. D. Liakopoulos, *"Autonomy and cooperation within the International Criminal Court and United Nations Security Council"*, W.B. Sheridan Law Books, ed. Academica Press, Washington, London, 2020. M. Cormier, *"The jurisdiction of the International Criminal Court over nationals of non-States parties"*, Cambridge University Press, Cambridge, 2020, pp. 95ss. D. Liakopoulos, *"Types of international cooperation and legal assistance in the ICC"*, in Revista de Derecho Ciencias Sociales y Politicas. Universidad San Sebastiàn, n. 25, 2019, pp. 104ss.
[45] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 103.

Assembly. The pre-trial Chamber stressed that the States parties to the Statute themselves had not raised negative comments or imposed clauses when Palestine joined the StICC and that no controversy had arisen within the Assembly of States parties to the pursuant to art. 119, par. 2. The clarifications of the pre-trial Chamber to underline the absence of disputes by the States, despite the relative power to lodge disputes, no one in any case had not referred to the Assembly of States parties the relative historical controversy regarding the accession of the Palestine.

Indeed the pre-trial Chamber was based on Resolution n. 67/19 which considered it as decisive in order to recognize the relative status of Palestine as a State party to the Statute. The pre-trial Chamber underlined the effects in general, noting that it has radically ("drastically") changed the practice of the Secretary General regarding the acceptance of the terms of accession of Palestine to various international treaties[46]. The effect of the Resolution of the General Assembly was not limited within the spirit of the recognition of Palestine as a State party to the Statute of Rome, but intense and extended to any other treaty that contains the formula "all States" or "any State" of which the Secretary General is depositary[47].

The recognition of the right to statehood provided for in Resolution n. 67/19 is a different recognition given that it effectively and unilaterally respects the existing States of the international community towards an entity that satisfies the requirements of statehood and/or that aspires to become a new State and differs from that form of "collective recognition and informal" from admission to the United Nations. The pre-trial Chamber, on the basis of a consolidated practice of the Secretary General, attributed the precise effect of allowing an entity that aspires to become a State to accede to an international treaty. The recognition-whether of a unilateral or of collective nature-does not have constitutive value of statehood, nor a resolution of the United Nations General Assembly, of a non-binding nature, could establish that a certain body satisfies the requirements of statehood under the general international law, nor can it maintain that a Resolution adopted with 138 votes in favor and reaffirming the right of a people to self-determination and independence in a State, is devoid of any legal effect for the purposes of its statehood. Not only can such a Resolution be interpreted as expressing the will of a certain number of States to follow the path of a particular entity towards statehood. It is precisely this will that is manifested in the context of the General Assembly and allows to qualify the effect of the "State party" to an international treaty, albeit limited to the application of that treaty. The pre-trial Chamber made its status conditional on the recognition of its right to statehood by the General Assembly and/or by a substantial part of the states of the international community represented in it.

The pre-trial Chamber regarding the implicit recognition of Palestine manifested by the same States parties to the StICC recalled that the Secretary General in the role of the depositary also informs the States parties to notify the deposit of the instrument of accession of a new State and that none of them they (with the exception of Canada) had contested the accession of Palestine[48]. The pre-trial Chamber noted that the seven States parties that had submitted observations in the proceedings on jurisdiction in the Occupied Palestinian Territory argued that Palestine could not be considered as a state for the purposes of art. 12, par. 2, lett. a) StICC

[46] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 98
[47] L. Badaågård, M. Klamverg, *"The gatekeeper of the ICC: Prosecutorial strategies for selecting situations and cases at the International Criminal Court",* in Georgetown Journal of International Law, 48, 2017, pp. 640 (noting that "Office of the Prosecutor (OTP) policy and strategy straddles law and politics at multiple levels and describing the evolving relationship with domestic processes"). In argument see also: M.A. Newton, *"A synthesis of community-based justice and complementarity"*, in C.D. Vos, S. Kendall, C. Stahn (eds), Contested justice: The politics and practice of International Criminal Court interventions, Cambridge University Press, 2015, pp. 122ss.
[48] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 100

and there were in fact no objections at the time of Palestine's accession, nor that other states had contested the validity within the Assembly of States parties[49].

The will of the pre-trial Chamber has confirmed the meaning that recognition can assume for the purposes of explicitly manifested statehood-as in the case of the Resolution of the General Assembly-and when it is inferred from a determined behavior of the States, as we have seen in case of the absence of objections by the States parties to the Statute to the accession of Palestine.

"Statehood" of an entity under general international law

The pre-trial Chamber examined the related arguments regarding its incompetence to establish precisely whether an entity can be considered a State under general international law. The pre-trial Chamber stated that it cannot pronounce on the validity of the accession procedure and would confirm the notion/term "State" referred to in art. 12, par. 2, lett. a) StICC, and which does not refer to a state under general international law. The pre-trial Chamber is competent and has also admitted its competence to review the membership procedure and to determine whether an entity meets the requirements of statehood under general international law. The pre-trial Chamber is incompatible with the provisions of the Statute[50]. In the same sentence that we are referring to, the pre-trial Chamber noted that the provisions of the Statute allowed to establish whether Palestine was a State party and that it was not necessary to resort to other sources of international law as provided for in art. 21, par. 1, lett. b) StICC and to establish whether an entity adhering to the Statute complies with the requirements of statehood under general international law[51]. A statement that seems to implicitly admit that in the event that it cannot be possible to resolve the question of the status of Palestine on the basis of the Statute, the ICC could take into account "other sources of international law"[52], we refer to the rules of customary law, to determine if Palestine could be considered a State.

Within this contradiction we can say that it seems to us that an explanation can be found in the more general circle of the reasoning of the pre-trial Chamber and in a dynamic and not static perspective of statehood. It is appropriate to reiterate in the sense that the ICC has not excluded even implicitly to ascertain the regularity of an accession procedure when this is necessary to resolve a matter for the purpose of exercising its functions. The affirmation of the pre-trial Chamber regarding the complexity and political nature of statehood assumes importance, the Statute precludes the power to decide on the latter and in particular that the ICC "is not constitutionally competent to establish issues of statehood that are binding on the international community (...)"[53]. The pre-trial Chamber did not exclude the possibility of taking into consideration other sources of international law, to establish and interpret whether an entity can be considered a State party, and within its own competence to decide on the statehood of an entity with binding effects for the international community. The possibility of resorting to "other sources of international law" pursuant to art. 21, par. 1, lett. b) StICC can be understood in the light of the more general reasoning of the pre-trial Chamber, in the sense that the ICC has not precluded the power to take into account the factors of general international law, even if they are not constitutive of statehood, influence the formation process of a state. The ICC

[49] ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 101
50ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 103
51ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 111
52 C. Tomuschat, C. Walter, *"Völkerrecht",* op. cit.
53ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 108

cannot establish that an entity is a State in the sense of general international law with a decision that binds all States of the international community. On this basis, it can be assumed that the pre-trial Chamber considered that "it was not necessary to refer to other sources of international law as those data of the practice that affect the statehood of Palestine, and in particular the recognition of its right to statehood in a Resolution of the General Assembly, they formed the basis of the accession procedure, in the sense of determining the validity of the accession of Palestine to the Statute (...)"[54]. The pre-trial Chamber noted that the question submitted by the Prosecutor could be resolved with reference to the StICC and that there was no need to refer to other sources of international law. The fact remains that the pre-trial Chamber could refer to general international law-and the related factors of the ends of statehood-with effects limited to the Statute.

Statehood or not, the problem remains that the pre-trial Chamber had as its purpose the punishment of the commission of crimes punishable by international justice and in particular by international courts and moreover the protection of victims and the persecution of persons who have committed serious violations according to the international criminal law. The divide between the aim of bringing criminal justice to perpetrators at any cost and the aim of reaching peace by abandonment may just end with neither justice nor peace delivered to both victims and perpetrators. The tension between these two values is still yet to be sorted out. The impotent enforcement mechanisms that the ICC holds make the ability of the ICC as a main international protector of victims highly questionable, in particular that the ICC has achieved little since its operation in 2002. That means, that the ICC should abandon its proceedings whenever its ability to deliver its own justice is not possible. In fact, based on the practice of the Prosecutors of the ad hoc Tribunals, the ICC prosecutor is required to analytically and carefully examine potential effects and ability of the Court, before intervening in a certain situation. Although this is not an easy task, as the ICC prosecutor cannot predict every single circumstance of the future, however, there are still different strategies that the prosecutor can follow in case it appears that the Court's approach is not workable.

Explicitly, Article 53 StICC requires the prosecutor to consider the voices of victims before proceeding with her investigation or prosecution. This particular factor is highly crucial to changing the type of the decision the prosecutor may make. If the local voices of a certain conflict favor a certain form of alternative other than the ICC, then the prosecutor is highly required to respect this particular demand. The Uganda situation has shown a typical example, where the majority of voices favored the peace demands ahead of justice. Even more to the point, the majority of Ugandans sought the local justice mechanism to replace the ICC. In such a scenario, the Prosecutor should have stepped back and allowed for the local alternatives to take place. Any potential failure of the prosecutor, therefore, to respond to every side of the argument does not mean that the prosecutor is in a crisis. The persistent criticism is a healthy phenomenon and does not nullify the good mission that the Court, and, in particular, and in particular all the actions that the prosecutor has conducted so far. On the contrary, the dyadic criticisms helped us to find why the prosecutor faces criticisms, and also pushed us to look for solutions for some dyadic arguments. It is true that some dyadicisms cannot be resolved due to the strong legal arguments that each side uses, however, there has often been means to reduce others[55].

54 ICC, Pre-trial Chamber I, Situation in the State of Palestine, op. cit., par. 109

55D. Liakopoulos, *"International Criminal Court: Impunity status and the situation in Kenya"*, in International and European Union Legal Matters, 2014.

Concluding remarks

The pre-trial Chamber considered Palestine a State party to the StICC and inserted itself into the dynamic and not static perspective of statehood. This configured as a data, that contributes to the statehood of Palestine, despite the fact that the ruling is clearly limited to the application of the StICC and for the specific purpose of allowing the exercise of its jurisdiction over crimes committed in the Occupied Palestinian Territory. The reasoning that has been followed demonstrates the importance attributed to the will of the existing States of the international community to support the statehood of an entity that aspires to become a State, both when this is expressed expressly and in concrete case, also through a Resolution of the General Assembly of the United Nations, and when it can be implicitly deduced, for the lack of contestation of statehood through the instruments provided by the StICC itself. The decision of the pre-trial Chamber allows us to observe how recognition, although not a constitutive element of statehood, can produce the relative effect of recognizing an entity as subject of international law in relative areas and for specific purposes, and this even when compliance with the requirements of its statehood provided for by general international law is still doubtful and/or opposed by part of the international community.

The decision of the pre-trial Chamber can be considered as a further datum of the practice which, together with others, actually affects the statehood of Palestine. In the Resolution of the General Assembly no. 67/19 it should be emphasized that the non-admission to the United Nations as a member state did not prevent Palestine from being admitted to UNESCO as a full-fledged State on 31 October 2011, about a month after the request submitted to the United Nations. In recent years, Palestine has begun to "behave" internationally just like a State, such as when it complained about its alleged violations in interstate disputes. The reference is to the appeal filed in 2018 to the United Nations Committee on the Elimination of Racial Discrimination against Israel for alleged violations of the 1965 Convention and to the one against the United States before the ICJ, invoking the violation of the Vienna Convention on Diplomatic Relations of 1961[56], regarding the transfer of the US embassy from Tel-Aviv to Jerusalem. In fact, the United Nations Committee has recognized the statehood of Palestine for the purpose of exercising its jurisdiction in the dispute it has submitted to the ICJ and has not yet ruled on merit[57].

That certain types of recognition in limited contexts and for specific purposes are in no way constitutive of the statehood of Palestine, there is no doubt that they play a significant role in the process of forming a State. Statehood is not recognized even in these limited areas, and it would be indications in the sense of not wanting to consider Palestine as a State of the international community. It can be assumed that such recognitions take on even more importance in a case, like that of Palestine, in which the element of statehood is the subject of the controversy concerning control over the Occupied Palestinian Territory. And in relation to the assumption of a clear and widespread position, which was also expressed by the Security Council, in the sense that the Israeli settlements constitute a violation of international law. Failure to control these territories and failure to comply with the requirement of effective

[56] D.B. Hollis, *"The oxford guide to treaties",* Oxford University Press, Oxford, 2020. M. FITZMAURICE, P. MERKOURIS, *"Treaties in motion. The evolution of treaties from formation to termination",* Cambridge University Press, Cambridge, 2020, pp. 282ss.
[57] A. Imseis, *"On membership of the United Nations and the State of Palestine: A critical account",* in Leiden Journal of International Law, 34(4), 2021, pp. 862ss.

government over a territorial community is the consequence of an objective situation of military occupation exercised by Israel since 1967 and deemed illegitimate under international law. Illegitimacy that has been clearly expressed in important international contexts given that in fact Israel continues to occupy the Palestinian territories and how the use of armed violence of all kinds, with its dramatic consequences, continues to occur periodically. And it is precisely by taking into account the foregoing that the relevance of international legal instruments can be considered which, despite failing to prevent illegitimate situations from continuing to occur, in fact "press" for this objective to be achieved and in some cases manage to allow achieve significant results. The decision of the ICC, in recognizing the statehood of Palestine, albeit for the sole purpose of applying the Statute of Rome, has in fact "opened" the will of various States of the international community to consider it as a State despite the absence of a generalized consensus of States of the international community. Thanks to this decision which made it possible through a legal instrument such as that of the StICC - that the ICC was able to start investigations, on March 3, 2021, into possible crimes of an international nature committed in the Occupied Palestinian Territory. The actions of ICC in itself cannot stop the use of gun violence, but they may act as a deterrent and, if nothing else, lead to the punishment of those responsible for international crimes committed in the course of that violence.

We can say that the Palestinian choice was to "jurisdictionalize" the relative question of self-determination through effective exceptions of international law and in particular through the jurisdiction of the ICC, it seems taking into account the relative risks, this strategy may be successful in the near future and with the ultimate aim of frightening the Israeli authorities. The ICC has not denied the effectiveness of the State of Palestine is solely due to the occupation (of parts) of its territory and therefore to the Commission of international crimes by the Israeli authorities, it would explain the continuous reaction that all these months from last February until today Israel and its allies continue with various ways of being counterproductive and disregarding an international peace process. Within that spirit are vital to the success of the ICC furthering its institutional aims, including justice, peace and security, and recommending the OTP to follow them, given the current circumstances in which the ICC works. The decision to initiate investigations or proceed with prosecutions are not only contingent on the legal criteria of the Statute. There are always extra-legal factors and political circumstances necessary for the exercise of meaningful prosecutorial missions. The engagement of the prosecutor in the particularities of situations and cases is very important for enforcing meaningful justice that the ICC itself may not be able to do. The consideration of extra-legal factors is essential for the viability, efficacy, efficiency, and independence of the ICC. The consideration of these political circumstances within the decision making-process is important because these kinds of political considerations are intrinsic to international justice.

The development of the international criminal law, rectius justice and the jurisprudence of international prosecutors all contributed to developing the role of an international prosecutor, as a new international player within the international legal arena and international politics. For instance, when the prosecutor stops the criminal proceedings, using her discretionary power, based on "the interests of justice", the prosecutor, in fact, may be addressing other values, such as stability or peace-related considerations. The prosecutor's new roles emerge during this process besides her main mandate in delivering justice. Accordingly, the current international Prosecutor can/should exercise a multitude of roles in order to promote those values. With the establishment of the ICC, we have begun to see a dramatic development in the idea of the prosecution in terms of both the legal level and practical level. It is a multi-functional prosecution. The creation of the ICC witnessed a formal emergence of a new sense of prosecution, where the role of the prosecutor has been formally widened, accordingly. Article

53 StICC was a product of the historical development of the exercise of the discretionary power by the previous prosecutors. Although this form of power was not clear enough either theoretically or practically in the work of the Military Tribunals, it was clear enough in the practice of the Special Criminal Tribunals. With the arrival of the ICC, we have begun to see that these developments have been embedded in the law[58].

According to our opinion, the consideration of peace processes (a political influence) on the basis of "the interests of justice" can be accounted for only when such processes are associated with some sort of justice mechanisms. This is often the case when international justice of the ICC is not attainable due to some obstacles, then other justice mechanisms might be more meaningful and needed. The use of the apologist considerations as a tool to achieve the utopian end, which is justice, in its broad sense, is the approach that may legitimately help justify the consideration of political factors. As the prosecutor is expected to be independent, respecting the rule of law when exercising her discretion, she is also expected to be flexible, as discretion is in nature a power that stands outside the law. The prosecutor may need to give weight to considerations that are not warranted in law. The ignorance of one of these premises posed the prosecutor in the dyadic criticisms.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

DIGITAL CONNECTIVITY FOR WORK AFTER HOURS AMID COVID-19: THE CASE OF PUBLIC SECTOR IN LITHUANIA

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DOI: 10.13165/PSPO-22-29-36

Abstract *In Lithuania the implementation of telework in public sector is not very prominent. However, amid COVID-19 and national lockdown situation new measures had to be taken and in some public sector entities telework was introduced for the first time. With implementation of this new work mode, digital connectivity for work after hours became a prominent practice. To evaluate how this work model shift influenced employees (why they work and what outcomes such work generates), a qualitative research method, interviews, was applied in case of 2 public sector enti-ties in Lithuania where telework was not considered to be a normal practice. Even though being a pilot study, the results of this research revealed that after the introduction of telework and given the access to digital technologies for work related matters, employees tend to experience increased work engagement, have more flexibility to manage their work time and undesirable outcomes of such work model are not as negative and severe as can be predicted. This case study introduces the topic not explored in depth heretofore and suggests ingenious conclusions on the matter. Re-sults of this study support and contradict previous literature and propose additional insights. One of the most important practical implications refers to the findings that introduction of telework for the first time in public sector has more benefits than undesired outcomes with only insignificant undesirable outcomes.*

Keywords: *digital connectivity; telework; public sector; constant connectivity; work engagement.*

Introduction

The use of digital technologies for work related tasks remotely has been applied in many businesses, however, not to the extent and intensity that was reached amid COVID-19 pandemic. After the introduction of various restrict governmental policies and measures, lockdowns and shut-downs of businesses, digital connectivity (DC) for remote work unquestionably spiked (Chadee, Ren and Tang, 2021). COVID-19 pandemic disrupted various labor markets and imposed organizations to transform existing patterns of operation around the globe. This surge of connectivity via digital means brought new challenges, especially for those to embrace it for the first time. Rapidly understood as a new norm of work, this work method was equally understood as a threat to general well-being of employees (Derks, Van Mierlo and Schmitz, 2014; Sonnentag and Bayer, 2005; Boswell and Olson-Buchanan, 2007; Sonnentag, 2012).

Nonetheless the implementation of remote work/telework over the past decades was monitored to gradually increase even before the crisis (Eurofound and the International Labour Office, 2017), the public sector appears to be behind on implementing telework opportunities (Ruth and Chaudhry, 2008). However, COVID-19 situation forced many economic sectors to

see telework/work from home (WFH) as the new normal and bureaucratic organizations became no exception. This case study address-es public sector in Lithuania.

The **aim** of this research is to reveal the reasons and understand the outcomes of DC for work after hours in public sector in Lithuania amid COVID-19 pandemic and telework. This case study intends to fill some gaps in previous studies and aims at contributing to academic literature several ways. First of all, to overview and advocate a topic of growing importance in contemporary human resources management by analyzing issues not elaborated and covered adequately in academic literature, as public sector lacks academical insights and is neglected in comparison to private sector, when public bodies (such as government departments) should be leaders and set an example in DC encouragement, provide necessary and favorable policies (Yin, Zhang and Dong, 2020). Secondly, this research aims to explore beforehand unanalyzed experiences. Thirdly, it is intended to encourage future in-depth studies to be developed to analyze overall situation of DC for work after hours in public sector worldwide.

The remaining sections of the paper are structured as follows: the theoretical part gives an overview of the literature on DC and telework. Further, the applied research **method** is described. The empirical results come further. Finally, the discussion and conclusions are provided.

Theoretical background

Digital connectivity for work after hours and telework during COVID-19

DC for work or digital work connectivity is mainly understood as the use of digital technologies for work related matters while away from employers' premises (Rivera, 2020). In addition to emails and various DMS (Document Management System) in this study DC for work is also understood as communication through instant messaging and social media channels (Bordi, Okkonen, Mäkiniemi and Heikkilä-Tammi, 2018). Amid COVID-19 pandemic and national lockdowns many businesses had to shift their operation behavior and were forced to transfer to digital environment. During this novel situation, DC became the new norm of work behavior and even though it was firstly considered as a "magic bullet" to save businesses from col-lapse, it also introduced new challenges to cope and work behaviors to be addressed (Chadee, Ren and Tang, 2021). In line with new demands, employees had to embrace multiple digital technologies and were forced to find new methods to integrate this change and increased communication (Okkonen, Heimonen, Savolainen and Turunen, 2018) into their lives and combine work and home domains efficiently (Mark, Iqbal, Czerwinski and Johns, 2014) whilst teleworking.

The term of telework was first defined back in 1975 (Niles, 1975), however there is no universally acknowledged definition of it up to current days. Telework is mainly understood as work done or services provided remotely by using information and communication technologies (IT means) (Eurofound, 2020). It is an alternative to traditional work arrangement that covers a variety of practices and forms, and decouples the activity of work from material work place, specific work schedule, grounded 'office' rules, conducts and routines (Tietze, 2002). Telework is seen as a challenge to traditional management models organization theories (Taskin and Edwards, 2007). That is to say, telework mainly implies work done outside employer's site via help of IT means and DC.

Notwithstanding the broad definition and perception of telework, it has to be out-lined, that even though the term of telework might be related with work from home (WFH), it does not necessarily imply such environment (Belzunegui-Eraso and Erro-Garcés, 2020). In this

paper the term telework is chosen as a substitute to WFH and as a subcategory of remote work concept due to the fact that amid COVID-19 pandemic people were forced to work remotely not necessarily only from home. The term of telework is chosen also because it specifically describes that while teleworking, people use personal digital devices (e. g. mobile phones, PC, laptops) and is this term is restricted to employees, excluding depending contractors, etc. (Sostero, Milasi, Hurley, Fernández-Macias and Bisello, 2020; Eurofound, 2015). Thus, telework is here considered as major factor to enable and encourage DC for work after hours.

As of official statistics, only 5.2% of European Union workers, together with only 2.5% of Lithuanians, in 2018 were usually working from home (Eurostats, 2020), when in 2020 this percentage rose to nearly 40% (Eurofound, 2020) with public administration sector the third most popular one to be convenient for telework practice. Due to this considerable increase, for those to start telework for the first time, it became rather difficult to separate work and personal life domains. As telework is considered to be directly linked to increased work behavior (ten Brummelhuis and Bakker, 2012, Demerouti, Derks, ten Brummelhuis and Bakker, 2014), the lines get blurred and workers are more likely to start ad-mixing work-nonwork boundaries, i. e. stay DC. As reported, 24% of teleworkers were more likely to work on their free time (Eurofound, 2020). This abrupt of normal working modality (when working in employer's premises) came with its potential benefits and undesirable outcomes.

Whilst embracing telework and constantly surrounded by a range of digital technologies one of most worrying problems is, of course, constant connectivity (Dery, Kolb and Maccormick, 2014; Mazmanian, 2012). Despite various managerial practices and governmental attempts to limit such connectivity (Sayah, 2013), when provided with technological gadgets and forced to merge life and work environments into one, employees encounter various problems. In order to understand and evaluate reasons for increasing DC for work and after hours, all constituents have to be considered simultaneously, i. e. technology as a facilitator, management strategies and characteristics of work itself (Aljabr, Chamakiotis, Petrakaki and Newell, 2021). In mind with existent research-es, four major categories of reasons for DC after work can be outlined.

Reasons for Digital Connectivity for Work after Hours

An individual's reasons for work after hours are by no means likely to vary. However, there are some most prominent ones that are in help to determine whether a person is in the habit of staying DC to work or not (Ashforth, Kreiner and Fugate, 2000). The identification of these main reasons can help to better understand the workforce within a company and efficiently manage the personnel.

Based on boundary theory (Ashforth, Kreiner and Fugate, 2000), notably important key variable is individual's type and ability to integrate. As of this theory, the relationship of work and home do-mains is influenced by how a person perceives these different roles, i. e. one that con-siders work domain to be an important part of self-concept, is more likely to stay connected to work and blur the boundaries between the family and work domains (Ashforth, Kreiner and Fugate, 2000). Within this theory, employees who are more attached with work-related matters tend to be DC for work after hours. Coupled with boundary theory, Boswell and Olson-Buchanan revealed a positive correlation between communication technology use after hours and ambition followed by job involvement, concluding affective commitment not as significantly related (Boswell and Olson-Buchanan, 2007).

Another group of reasons to stay DC after business hours is tightly connected with organization's policy and norms (Belkin, Becker and Conroy, 2020). The availability for

employees to access work related communication channels and technologies after hours can manifest into different outcomes, e. g. one that is ambitious and eager to reach career progression is more likely to be engaged into after-hours connectivity and can experience severe burnout, while those who are aware of this constant connectivity policy but do not spend actual time working after hours, do fell stressed about diminished boundaries between work and life domains (Belkin, Becker and Conroy, 2020). Fenner and Renn found that perceived usefulness of technology and positive psychological climate for work after hours using technological devices are positively connected to employees' willingness to perform job related tasks after hours (Fenner and Renn, 2009). Organizational expectations and policies are thus positively related to DC after hours and it is crucial for companies to set specific rules governing the use of technologies after business hours.

The third group of reasons to stay DC and perform work related tasks after hours is based on direct managerial practices (Sinha and Laghate, 2021; Duxbury, Higgins, Smart, and Stevenson, 2014). When employees are equipped with technological devices and can be reachable 24/7, employers or immediate superiors demand employees to be approachable when needed, following their, as role-model, example, i. e. are pressured to conform to constant availability and response time, bound to engage to meet expectations (Sinha and Laghate, 2021; Duxbury, Higgins, Smart, and Stevenson, 2014).

The outcomes of digital connectivity

As more contemporary workplaces are characterized by their level of digitization, especially amid COVID-19 pandemic, and employees are forced or encouraged to per-form work outside employer's site via help of IT means, increased connectedness seems rather inevitable. This, first and foremost, is understood as negatively related to one's ability to psychologically detach from work. Numerous studies have been conducted and demonstrated direct correlation between the ability to disengage psychologically from work related matters and overall employees' well-being (Derks, Van Mierlo and Schmitz, 2014; Sonnentag and Bayer, 2005, Boswell and Olson-Buchanan, 2007; Sonnentag, 2012). The impact of connectedness on employees' well-being most generally include intensified employees' attention, availability, obligation to immediate response, psychological disengagement (Büchler, ter Hoeven, and van Zoonen, 2020). All these constituents result in psychosomatic health problems, emotional exhaustion, stress and general performance (Büchler, ter Hoeven, and van Zoonen, 2020). Employees who are able to temporarily disengage from work are to recover and come back with improved engagement, higher-level of psychological well-being and are ready to meet new demands (Büchler, ter Hoeven, and van Zoonen, 2020). This is understood as productivity vehicle, while given the feel of constant connectivity and inability to detach from work matters may cause counterproductive effects such as burnout, emotional exhaustion, collapsed boundaries between work and home domains, etc.

Methodology

Context of the study

Due to increased percentage of telework implementation, and public sector being rather a convenient sector (Eurofound, 2020), the context of this study is public sector in Lithuania. While telework and constant DC for work is more present in private sector, management practices and principles in public sector in Lithuania are seen as more traditional and standard.

On the other hand, new strategies are being adopted. The modernization and remodeling of human resources system and public sector management in Lithuania seems to be rather slow and limited as new principles in practice are adapted only in a limited manner and, from the perspective of human resources, seem to be understood as declaratory (Chliviskas and Luckutė, 2016). However, amid COVID-19 crisis, when almost all organizations were forced to reorganize their nature of operation in order to meet and manage new challenges, the approach towards human resources in public sector in Lithuania was seen to transform. Despite the complexity of processes of decision-making and delivery of public services and limited technical facilities, this crisis left the sector without any other choice. As a result, human resources in public sector are now said to be understood from the mechanical point of view (Vaismoradi, Turunen, and Bondas, 2013). Considering public sector in Lithuania to be operating in rather traditional work model, it becomes an interesting context for this study because in analyzed public bodies telework to such extent was introduced for the first time.

Data collection and sample

Together with theoretical approach, this research is based on qualitative insights from semi-structured face-to-face interviews with 8 employees from 2 public sector entities. These entities are municipal actors that are in charge of public administration. For this case study public sector entities were chosen provided that employees of those entities worked at employer's premises and not at home theretofore COVID-19 pan-demic and were forced to change their working behavior amid the pandemic. Inter-viewed employees had 8 to 5 work schedules 5/7 and had limited or no access to digital technologies for connectedness after hours. The majority of employees in researched companies had to telework, however, only 8 people out of 40 questioned in both public entities admitted to stay digitally connected for work after hours. It can be concluded that the majority of employees in public sector in Lithuania tend not to be engaged to work after hours.

This research invokes thematic analysis approach (Vaismoradi, Turunen, and Bondas, 2013). Dossiers of participants are listed in Table 1 below. This case study should be understood as a first step for more in-depth study compiling of bigger number of interviewees. The majority of interviewees are long-term employees and of elder age, only 1 male and 7 females.

Table 1. Dossiers of participants

ID	Age	Education	Position	Seniority
1	65	Diploma of Higher Education	Specialist	7 years
2	37	Diploma of Higher Education	Specialist	11 years
3	56	Diploma of Higher Education	Specialist	16 years
4	54	Diploma of Higher Education	Head of Unit	11 years
5	36	Diploma of Higher Education	Head of Unit	2 years
6	54	Diploma of Higher Education	Specialist	12 years
7	28	Diploma of Higher Education	Specialist	4 years
8	42	Diploma of Higher Education	Specialist	6 years

Interviews were carried out in a one-week period in March, 2022, audio records were made with the consent of the interviewees. Interviews were conducted in Lithuanian, questions for interviewees were given in five blocks of questions regarding: main details about work after hours' schedules, reasons, evaluation and consequences, measures to stop or limit digital connectivity for work after hours. Average duration of an interview was 23 minutes. The main

interview questions are listed in Table 2 below. Most relevant answers to interview questions are outlined in Appendix A.

Table 2. The main interview questions

Topic	Main questions
The change of work routine	How often do you work/stay digitally connected for work after hours and when? How this routine changed amid COVID-19? Please explain why.
Reasons to stay DC for work after hours	Why do you stay DC for work after hours? Please indicate main reasons. To what extent your DC for work after hours dependent on organization's policy and norms, your direct superior, colleagues, career ambitions, personal traits, family?
Undesirable outcomes	Do you consider DC for work after hours a positive or negative work behavior? Do you suffer any negative effects of such connectivity: physical, psychological? Have you experienced any unpleasant episodes within a family because of DC for work?
Potential benefits	Can you name any positive effects of DC for work after hours?
Measures to stop or limit DC for work after hours	What measures do you take to stay disconnected from work? Is it possible to completely digitally disconnected from work while constantly surrounded by technologies?

Results

In this study the experiences of DC for work after hours from the interviewees are organized into the following main dimensions. Firstly, the change of DC (moments of connectivity) is evaluated. Secondly, reasons for DC after work are outlined. Then, accordingly to the experiences of interviewees the undesirable outcomes and potential benefits are considered. Lastly, overall situation and measures to stop or limit DC for work after hours are discussed.

The change of digital connectivity for work after hours (moment of connectivity)

To measure the extent to which interviewees were digitally connected and/or worked after hours using technologies, respondents were asked to estimate how often (indicating cases per week) and for how long they were working after hours before the pandemic, amid the outbreak and national lockdown. 2/3 of interviewees answered that they were never DC for work after hours and this behavior changed as their employers were forced to provide technological gadgets for them to be able to telework during COVID-19 outbreak in the country. On average, interviewees tended to work after hours 0 to 1 time per week before being able to telework and 3-4 times midst the lockdown. Almost all interviewees accentuated that constant access to technological gadgets is strongly related to the extent of time people spend DC to work after hours, e. g.:

The cases of staying digitally connected for work after hours definitely increased as be-fore the pandemic, I have always left my phone at work, however during lockdown and even now I bring my phone home and feel responsibility to answer it even if a client calls after work hours. (ID1)

With regard to breaches of normal working routines while being digitally connected to work during the lockdown, interviewees answered that they were mainly interrupted during

lunch or having dinner (ID1, ID2, ID4, ID7). Many respondents noted that there were cases when they were working during the late or even night time (ID2, ID3, ID4, ID5, ID6, ID7, ID8).

Reasons for digital connectivity after work

To analyze reasons for DC for work after hours and in line with theoretical researches, the following two sections are outlined: the blur between home and work domains, as most relevant and other irrelevant factors such as organization's policy and norms and direct managerial practices.

The blur between home and work domains

Personal traits and self-concept. In compliance with boundary theory, the results of carried out interviews confirm direct relation between individual's self-concept and likeliness to stay DC for work after hours, i. e. those interviewees who tended to practice work after hours (if provided with technological gadgets) even before the lockdown, simultaneously with those, who only started this behavior amid COVID-19 and lockdown, recognized that this tendency is particularly relevant to their disposition to consider work domain important and interesting in their personal life (all IDs):

It is absolutely relevant to my personality as I love my job and to spend some extra time after work hours to make some calls or write some short report is no problem for me. I just can't "close the doors at 5 o'clock" and leave everything if I am needed. (ID2)
It's just my personality. If by any chance, not even on purpose, I check my e-mail and see a work-related message, I tend to answer and by doing to I feel as if I am needed and being useful. (ID3)

In addition, phrases used by the interviewees admitting individual's self-concept included: "I feel obliged to", "you just have to do it", "this is your responsibility", etc. An interesting observation is that the majority of interviewees concluded that they feel affectively committed to their jobs, i. e. their engagement to the company and the level of loyalty is one of the reasons to stay DC after hours (ID1-ID6):

The majority of my colleagues try to do their best and cooperate by not wasting others' time, thus, if one does not have the ability to complete the task during working hours, it has to be done after, so the next day all team could deliver good results and feel happy about it. (ID6)

The merge of home and office space. The results of this research revealed that the boundaries between the family and work domains became comprehensively blurred when people started to work from home during the lockdown/telework. Asked to evaluate their time spent working/staying digitally connected for work after hours interviewees admitted that they were constantly crossing these boundaries due to the fact that they had to perform two (or more) roles simultaneously and the inexperience and inability to segment work and home boundaries resulted in necessity to perform work tasks after hours (ID2, ID5, ID7). This blur of boundaries was more observed from those who are of younger age and have children. By the same token, but from different perspective an important observation is that not only the blur between roles, but the merge of home and office spaces rather results in tendency to stay digitally connected to work after hours:

While in lockdown, teleworking, I considered my work to be the most important and interesting. As I had nothing else to do, not being able to go out I used to stay digitally connected even up until 10-11 pm. (ID3)
Before telework, I never used to check my work email or perform any work-related tasks after work hours, but during the lockdown I tended to do this often as my room became my office and you were able to work any time you felt like it. (ID7)

Irrelevant factors

Organization's policy and norms. Public sector entities analyzed in this research were not promoting or implementing telework previously and this performance model was a new practice. Thus, employees of these companies were not familiar with expectations and policies towards specific rules governing the use of technologies after business hours. As the majority of interviewees indicated (ID1-ID5, ID7-ID8), constant access to work related communication channels and technologies was severely connected to their tendency to stay DC after work hours:

Being given a laptop for telework and a permission to use it for personal matters was a complete game-change for me. As I spend a lot of time by the computer, having one for all affairs was really problematic; these two digital worlds often collided into one. (ID7)

Respondents concluded that no (or loose) rules regulating the access to technological devices from work for personal use after work hours is more negative than a positive norm. Interviewees were happy about having the ability to use technologies for their personal uses, however it often resulted in staying DC for work after business hours and even leading to experience burnout episodes (ID3, ID4, ID5, ID6, ID7, ID8). All confirmed that there is no encouragement or positive attitude towards work after hours using technological devices from their organizations and willingness to behave in such manner is more related to their personal traits.

Direct managerial practice. To understand whether managers took the opportunity to reach to their technologically/digitally equipped and almost 24/7 reachable employees, all interviewees expressed that there was no direct demand to be approachable when needed. However, some respondents indicated that even before the pandemic and telework they sometimes had to perform work-related tasks because of their bond with immediate superiors or colleagues, e. g. answer some questions or ad-dress specific issue via mobile phone (calls, Facebook, WhatsApp, etc.) during the weekend, while on holiday (ID2, ID3, ID4, ID5, ID7, ID8). Apart from these exceptional cases, interviewees explained that this shall not be understood as managerial demand or standard practices.

I am constantly digitally connected to my superior because we connect on Facecebook messenger and many times we communicate though this channel. One time I was on vacation and she needed me and called via messenger and I had to address this immediate issue. (ID7)

Undesirable outcomes

Rather surprisingly, there is a difference in opinions about constant connectivity to work and overall well-being. While none of the interviewees experienced any strongly negative

psychological effects and said that DC for work after hours did not negatively impact their productivity, thoughts on this work model justified. 50% of respondents (ID1, ID2, ID5, ID7) do think that the ability to be DC to work after business hours is more positive than negative and another 50% conclude the contrary (ID3, ID4, ID6, ID8).

In view of any negative physical outcomes, some interviewees (ID1, ID2, ID3, ID7, ID8) mentioned occasional fatigue, back pain (in case of telework and not being able to have ergonomic seating conditions), minor vision problems. However, these undesirable outcomes were not considered as severe:

I have no ergonomic environment in my house, thus I had to work while at the pool, at the kitchen counter, on the sofa, whatever, I had some back-pains, etc. But it was not that bad (ID2)

Potential benefits

The majority of respondents expressed that they consider DC for work having more potential benefits than negative outcomes and those, who justify work after hours argue that the flexibility of telework outweighs the undesirable, i. e. in comparison to not having the ability to telework before the lockdown interviewees say that if one is able to somehow find the overall balance, the ability to manage your time more flexible is of great benefit. Respondents who expressed negative attitude towards digital connectivity for work after hours believe that there should be clear boundaries between personal and working hours, an employee should be granted the workload proportional to normal business hours and even not to be accessible 24/7. However, even with such stance, interviewees admitted that they still stay digitally connected for work after hours contrary to their beliefs.

In terms of any problems related to personal-work life balance during telework, the majority of respondents felt no severe discomfort explaining that they were able to perform both, home and work roles simultaneously or being able to segregate them when needed (ID3, ID4, ID5, ID6, ID7, ID8):

I felt and feel no discomfort while teleworking or staying digitally connected after hours, because I am able to segregate family and work time, in fact, I felt much more relaxed being able to have this flexibility of telework and managing my time according to current needs. (ID8)

At the same time, some interviewees admitted that their achieved personal-work life balance and connectivity for work after hours was directly dependent on norms in their families: those whose relatives and/or significant others were also working after hours, experienced less or none issues or unpleasant episodes (ID1, ID4, ID6, ID7, ID8) in comparison to those, who were the only ones to stay digitally connected/accessible (ID2, ID5).

Measures to stop or limit digital connectivity for work after hours

In the light of increased number of cases to stay DC to work after hours, interviewees admit, that it is the matter of one's personal routine. However, whilst tele-work, work-personal life behavioral patterns changed and it is now more complicated, while being able to digitally connect, to change such behavior, especially if one fells passionate about his work (ID2, ID4, ID5, ID7, ID8). Basic measures to limit digital connectivity are suggested: simply disconnect

from any work-related technologies (ID1, ID3, ID8), try to perform as much work as possible during normal business hours (ID5, ID7, ID8) or to simply utilize lunch and other breaks if one feels comfortable to do so (ID5).

On the overall, respondents expressed their concerns about the blur of boundaries between home and work domains amid the processes of digitalization. To reveal general opinions, the majority of interviewees (ID1, ID3, ID4, ID6, ID8) reasoned that it is not difficult to limit or stop DC for work after hours with the supposition that the person must be able to draw firm lines between home and work life. They suggested that this strongly depends on the ability to segregate and straighten out top priorities in life and perform correspondingly. Per contra, ID2, ID5 and ID7 declared that it is almost impossible to stay disconnected from work while having constant digital access when one is passionate and care about his work:

If your employee does not set out rules on accessing digital gadgets provided for work, it is very difficult to stay offline. For example, I have the ability to use employer's provided laptop for personal issues and for me it is impossible to not pay any attention and efforts when I receive an email after work hours whilst using it, I am just interested about what is going on. (ID7)

Discussion and conclusions

The aim of this research was integrated. Adding to previous works and findings, results of this research suggest additional insights about how the access to digital technologies modify work behavior of public sector employees who previously had not experienced any telework. This research, although being a pilot study, reveals gripping points to be studied in depth.

First of all, it can be concluded that the introduction of telework is tight-knit with increased work behavior (Demerouti, Derks, ten Brummelhuis, and Bakker, 2014; ten Brummelhuis and Bakker, 2012). As admitted by interviewees of this research, telework has modified their approach to work. All respondents were experiencing telework for the first time during the lockdown and as a result, their normal working modality was abrupted. Not only they were struggling with unfamiliar work conditions, their work routine has changed and they tend to be more engaged to work matters even after the return to offices whilst now having constant access to digital technologies. Thus, in an overview of Lithuanian public sector, this research supports previous academic literature and verifies that telework increases DC after work hours and endorse official Eurofound (Eurofound, 2020) statistics. In addition, it has to be pointed that this engagement increase has long-term consequences over employees and profoundly changes normal work practices on public sector.

The results of this study add up to academical insights and support theories, that DC for work after hours directly depends on employee's self-conception. As affirmed by all interviewees, the availability for employees to access work related technologies and DC for work after hours is dependent on one's self-conception. To support Ash-forth et al., (Ashforth, Kreiner, and Fugate, 2000) those, who tend to consider work domain to be an important part or their life, are more likely to stay DC for work after hours. All interviewed employees stated that their willingness to be accessible 24/7 and to perform work tasks is only reluctant to their personal character. A point to be kept in mind is that all respondents, declared that it is their personal matter to stay DC for work after hours. Partially contrary to Boswell and Olson-Buchanan (Boswell and Olson-Buchanan, 2007), interviewees in this research do not represent any direct correlation between communication technology use after hours and career ambitions. None of the respondents claimed that working after hours is connected with their career goals

or the need to portray themselves as exemplary employees, etc. However, it can be concluded that employees, who are able to manage their work and life balance but tend to feel passion about their work and find it interesting, are more likely to stay digitally connected after work hours.

As of organizations level, positive phycological climate for DC for work after hours is not very dependent on the amount of time employee spends being digitally connected for work matters after hours. Research results contradicts existing academic works (Fenner and Renn, 2009) as interviewees state that one is likely to stay DC for work after hours due to personal character rather than because of organization's norms and attitude to-wards it. On the other hand, some respondents do agree that when employer is positive about work after hours and does not have any restricted policy on the matter, this can correlate with increased work engagement.

Unanticipatedly to previous works and traditional beliefs, exploitation by direct superiors was rejected. All interviewees claimed that they do not experience any exploitation by their immediate superiors whilst having constant access to digital technologies for work. However, it has to be outlined that during interviews, distrust on honesty about the matter was experienced. Given the nature of Lithuanian public sec-tor, employees, especially the elder ones, are not willing to express their honest opinion about their superiors. Thus, this conclusion should be considered questionable. Nevertheless, being accessible 24/7 via digital technologies do sometimes result in work engagement after hours or off hours. Due to this convenience employees, as shown by this research, do actually feel discomfort about being approachable when needed and to uphold theoretical approaches (Demerouti, Derks, ten Brummelhuis and Bakker, 2014; Sonnentag and Bayer, 2005; Boswell and Olson-Buchanan, 2007; Sonnentag, 2012), have difficulties to disengage from work psychologically.

To generalize an overview of undesirable outcomes and potential benefits of DC for work after hours it has to be concluded that in case of this research employees in public sector did witness more positive than negative sides of telework. Benefits to be mentioned and observed the most were the flexibility of telework and ability for employees to manage their own work time, i. e. interviewees stated that when one is able to find the balance between home and work domains, telework can be in great advantage on the grounds that when one is able to manage his time, it can lead to increased producibility in comparison to when employee is forced to be at employer's premises 8 to 5.

Undesirable outcomes in this case study were not as present as presupposed, the majority of interviewees did not overcome any serious problems related to personal-work life balance during telework, however, it has to be pointed out that during lockdown those, who had bigger families and young children, no ergonomic work environment, did struggle more compared to employees of elder age/no young children/enough home space to find comfortable working environment. In terms of family norms, the majority of interviewees stated that it became a normal practice in their families to DC for work after hours. On the overall, the results of this study partially contradict previous academical works (De Vries, Tummers, and Bekkers) and employees in public sector, at least in Lithuania, does not experience any severe negative effects from telework, and whilst being DC for work, their organizational commitment actually increases and not vice versa. In correspondence with the results of this study, it can be concluded that the introduction of DC and telework in public sector is considered to be a productivity paradox (Ruth and Chaudhry, 2008) and can be associated with increased work engagement due to the flexibility of such work model.

Practical implications. This research has some managerial implications for practitioners. Seeing the value of DC, public sector entities are encouraged to develop a "culture of telework" having in mind that more and more employees are willing to combine working from home and work in the office. Entities are supposed to help employees to keep the lines between work and home domains by not expecting employee to be available 24/7. Finally, public sector entities need to develop employees while encouraging them to change their attitude and not to feel obliged to work after working hours.

Limitations

This research has some shortcomings that might be addressed in future research. The first concern is related to pilot study. For further studies, more interviews in public sector entities need to be conducted. The second concern deals with Lithuanian context. Taking different nature of public sector in EU into consideration, further research should focus also on other EU countries. The third concern refers to the situation, more specifically to the COVID-19 pandemic. Future research might ana-lyse the relationship DC in stable situation.

Conflicts of Interest

The authors declare no conflict of interest.

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Appendix A

Topic	Question	Most relevant illustrative quotes
The change of work routine	How often do you work/stay digitally connected for work after hours and when?	(ID1) My work phone is always on and I always answer it. My laptop is usually off. (ID2) Before COVID-19, very rarely. Now I always stay digitally connected via phone or laptop, even on weekends. (ID4) At least 2 or 3 evenings per week via phone and laptop. (ID7) Always. My phone is always on and I answer it anytime. I use work laptop for my personal matters, thus I tend to check work e-mail (and answer queries) from time to time on my free time during evenings, weekends, even while on holiday.
	How this routine changed amid COVID-19? Please explain why	(ID1) The cases of staying digitally connected for work after hours definitely increased as before the pandemic, I have aways left my phone at work, however during lockdown and even now I bring my phone home and feel responsibility to answer it even if a client calls after work hours. (ID2) Telework for me resulted in increased digital connectivity for work after hours, because when I work from employer's premises I work more efficiently and complete most tasks within working hours. Whilst telework, I had to simultaneously take care of my kids, was distracted and had to complete work queries after business hours. (ID3) After I was given a laptop for telework, I used to stay connected and work after hours very often: during lunch break, evening, weekends, etc. Before telework this was not the case because I was busy doing something else, and during lockdown we had to stay inside, so I had nothing else to do but work.
Reasons to stay DC for work after hours	Why do you stay digitally connected for work after hours? Please indicate main reasons. To what extent your digitally connected for work after hours dependent on organization's policy and norms,	(ID1) I just feel obliged to answer the phone, definitely not out of curiosity. (ID2) It is absolutely relevant to my personality as I love my job and to spend some extra time after work hours to make some calls or write some short report is no problem for me. I just can't "close the doors at 5 o'clock" and leave everything if I am needed. (ID3) It's just my personality. If by any chance, not even on purpose, I check my e-mail and see a work-related message, I tend to answer and by doing to I feel as if I am needed and being useful. (ID3) While in lockdown, teleworking, I considered my work to be the most important and interesting. As I had nothing else to do, not

	your direct superior, colleagues, career ambitions, personal traits, family?	being able to go out I used to stay digitally connected even up until 10-11 pm. (ID4) First of all, my workload is just too big. However, as a head of department I am responsible for the overall performance, thus I, myself, finish any unfinished tasks of my employees, even though I am not required to do so. (ID5) During lockdown and telework I had to not only perform work but also take care of my kids. (ID6) I stay digitally connected and work after hours only sometimes and this is an operation which interrupts my colleagues' performance, thus I do it after hours in order not to disturb them. (ID7) Before telework, I never used to check my work email or perform any work-related tasks after work hours, but during the lockdown I tended to do this often as my room became my office and you were able to work any time you felt like it. (ID7) Being given a laptop for telework and a permission to use it for personal matters was a complete game-change for me. As I spend a lot of time by the computer, having one for all affairs was really problematic; these two digital worlds often collided into one. (ID8) I was provided with laptop for telework and was able to manage working hours myself, so I was very happy with this ability to perform work whenever most convenient, even after normal business hours.
Undesirable outcomes	Do you consider digital connectivity for work after hours a positive or negative work behavior? Do you suffer any negative effects of such connectivity: physical, psychological? Have you experienced any unpleasant episodes within a family because of digital connectivity for work?	(ID1) I do not think that it is some kind of malady whilst teleworking. When you work after hours after you come back home from the office, then yes, but whilst telework, no. (ID2) I guess it depends on your personality. I love my job and see no problem to stay digitally connected for work after hours. (ID3) I think that it is bad behavior. One has to be able to separate work and home. (ID4) It depends on circumstances. If your office environment and atmosphere allow you to complete your task within business hours, then no. If not, you have no other choice but to complete your work at home. (ID5) I think that digital connectivity for work after hours is good whilst telework. I very much value the flexibility of managing my own work schedule because of my family and it is ideal for me to have the ability to connect to work related matter from home to finish my tasks. It is especially convenient when you have a sick child and are not forced to take sick-leave but can just work from home on your convenient time. (ID6) I think that it is a bad behavior. Digital connectivity (and work done at that time) for work after work hours should be considered as paid overtime. (ID7) I think it is more positive than negative. I prefer the benefits of staying digitally connected for work after hours because I can compensate the time that I spend on my personal matters during business hours and finish my tasks on time. This give me the ability to not show the loss of performance and I can manage my schedules to my convenience.

		(ID8) I think that it is not very good. An employee is supposed to have the ability to finish work within business hours. However, if I have to run some personal errands during business hours, it is very convenient for me to have the ability to digitally connect after work hours and complete my work. The most important this is just to find balance.
Potential benefits	Can you name any positive effects of digital connectivity for work after hours?	(ID1) Well, for example, some very interesting clients call you after hours and that conversation can cheer you up, you remember their stories, even laugh sometimes with them. (ID2) The biggest advantages is being able to use work-related digital technologies for personal matters. (ID3) COVID-19 and telework forced me to learn a lot of new techniques and this helped me to improve my skills. Of course, the ability to use the equipment for personal matters is the biggest advantage. (ID4) I can do my work peacefully, while surrounded by most comfortable environment. (ID5) Definitely the flexibility to manage your time and finish everything on time. (ID8) I felt and feel no discomfort while teleworking or staying digitally connected after hours, because I am able to segregate family and work time, in fact, I felt much more relaxed being able to have this flexibility of telework and managing my time according to current needs.
Measures to stop or limit DC for work after hours	What measures do you take to stay disconnected from work? Is it possible to completely digitally disconnected from work while constantly surrounded by technologies?	(ID1) I do not take any measures because I do not mind it. But if you want to stay disconnected from work after hours it depends on your personal attitude. (ID3) I just shut down mu laptop, but then turn it on again, that not very good. However, I believe that it is possible to stay disconnected when you have other activities to engage in, like hobbies, learning something new, etc. (ID5) I just try to do all the work during business hours. However, when you feel happy and interest in your job you tend to stay engaged and I think this is not a bad thing. (ID8) I just not let myself to overwork while staying digitally connected for work after hours. Just do not turn on your phone or laptop and that is it.

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

SENOVĖS ROMĖNŲ BAUDŽIAMOSIOS TEISĖS BRUOŽAI

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DOI: 10.13165/PSPO-22-29-07

Anotacija. *Studijuojant teisės bei teisėsaugos mokslus labai svarbu, o kartu ir įdomu atsigręžti į praeitį. Tai svarbu ne tik smalsumo patenkinimui, bet ir savivokos, teisinės savimonės formavimui, profesionalumo įtvirtinimui, taip pat pasiektos pažangos įvertinimui, europinio tapatumo pažinimui. Nežinodami teisinių mechanizmų kilmės, neįvertiname vertingos patirties, prarandame nematerialųjį turtą. Studijuojant baudžiamojo teisingumo mokslus, šiuolaikinę baudžiamąją teisę kartais kyla kitas klausimas: kokia buvo, jei iš viso buvo romėnų baudžiamoji teisė? Šis klausimas įdomus, kadangi senovės Romos civilinė teisė studijuojama gan plačiai. Lietuvos teisės studijose senosios Romos baudžiamojo teisingumo klausimams beveik neskiriamas joks dėmesys. Jei romėnų civilinei teisei ir teisės istorijai skiriama nemažai dėmesio, baudžiamojo teisingumo genezės klausimai retai ką sudomina, studijos koncentruojamos į nūdienos teisinio vertinimo analizę. Straipsnio tikslas – aktualizuoti istorinę įžangą į senąsias baudžiamosios teisės užuomazgas romėnų teisėje Lietuvos baudžiamosios teisės ir teisės istorijos studijų kontekste, iškelti pradmenis, nurodyti esminių normų formavimąsi, pagrindines nusikalstamas veikas, jų bruožus, aiškinimą, skatinti gilesnį domėjimąsi ir mokslinę diskusiją. Dėl temos platumo straipsnyje neaptariami bausmės klausimai senovės romėnų baudžiamojoje teisėje.*

Pagrindinės sąvokos: *senovės Romos baudžiamoji teisė, senovės romėnų baudžiamoji teisė, furtum, vis, rapina, raptum.*

Įvadas

Studijuodami šiuolaikinę teisę atsigręžiame atgal ir mokomės iš praeities. Istorijos pažinimas leidžia suvokti teisės normų kilmę, sąlygotumą, suteikia vertingos patirties, atkleidžia nematerialaus turto klodus.

Studijuojantiems teisės mokslus tenka susidurti su senovės Romos civilinė teise. Taip pat ir su teisės istorija, kuri trumpai apibūdina nusikalstamų veikų teisinio vertinimo problemas jų ištakose Antikoje. Studijuojant baudžiamojo teisingumo mokslus ir šiuolaikinę baudžiamąją teisę iškyla klausimas: kokia buvo, ar iš viso egzistavo romėnų baudžiamoji teisė? Šis klausimas įdomus, kadangi senovės Romos civilinė studijuojama plačiai ir gana giliai; senosios civilinės teisės nuostatos neprarado prasmės net praėjus keliems tūkstantmečiams.

Kokia buvo senoji baudžiamoji teisė ir kokios jos ištakos – šis klausimas įdomus, bet nėra vienareikšmio atsakymo į jį. Nėra išlikę daugybės pirminių šaltinių, o nemaža dalis žinių grindžiamos išlikusiomis nuotrupomis, kurios surašytos gerokai vėliau, nei veikė pati sistema ir tyrėjų hipotezėmis užpildant tai, kas neišliko. Kartu sunku įsivaizduoti efektyviai veikiančią valstybę, kurioje nebūtų įstatymu įteisintos valstybinės ar viešosios teisingumo palaikymo sistemos, nusikaltimų įvertinimo sistemos, baudžiamosios teisės bei baudžiamojo proceso. Šiuolaikinio žmogaus požiūriu - nebent jis būtų anarchistas ar kraštutinis liberalas, - valstybė be teismų, nuosprendžių ir kalėjimų egzistuoti negali. Valstybė apgina silpnesnįjį, nuskriaustąjį, viešą interesą, vertės kūrimą, pati save nuo perversmų ar išorės grėsmių. Pamatuota valstybės

prievarta palaikomas teisės gyvybingumas, santykių tarp asmenų pastovumas, užtikrinamas nešališkas teisingumas. Todėl kyla klausimas, ar senovės Roma, kaip valstybė, pasižymėjusi intensyvia plėtra, užkariavimais, pasaulėžiūros sklaida, universalumu, savo įtakos plėtimu galėjo išsiversti be baudžiamojo teisingumo sistemos. Klaidinga manyti kad baudžiamojo teisingumo sistemos nebuvo, kaip ir klaidinga šią svarbią senovės Romos teisės istorijos sritį ignoruoti. Gilesnio tyrimo nusipelno klausimas, kokia baudžiamojo teisingumo sistema buvo, kokios jos prielaidos, ar galima ją sieti su rašytiniais teisės aktais, kokie iš jų išlikę, kokią įtaką turėjo jie turėjo teisinės minties raidai, kokios veikos buvo laikomos nusikaltimais ir kokia atsakomybė už jas numatyta.

Tyrimo naujumas. Šiuolaikinės Lietuvos teisės studijose senosios Romos baudžiamojo teisingumo klausimams beveik neskiriamas joks dėmesys. Jei romėnų civilinei teisei ir teisės istorijai skiriama nemažai dėmesio, baudžiamojo teisingumo genezės klausimai retai ką sudomina. Senovės Romos teisė beveik išimtinai vertinama tik kaip civilinė teisė ir veikos, turinčios ne vien civilinį pobūdį kartais vertinamos tik kaip civilinės. Baudžiamojo teisingumo nuotrupų paminėjimo galima rasti tik teisės istorijos vadovėliuose. Iš šiuolaikinių baudžiamosios teisės mokslininkų vienintelis D. Pranka savo disertacijoje paminėjo senosios romėniškos baudžiamosios teisės bruožus. Tarpukariu senosios baudžiamosios teisės, baudžiamumo pradus ir senosios Romos baudžiamojo teisingumo sistemą nagrinėjo prof. Vladimiras Stankevičius. Užsienio teisės mokslininkai šiai temai skiria nemažai dėmesio. Nagrinėjama ir baudžiamoji sistema bendrai, ir atskiros jos normos, institutai, idėjos, bausmių sistema, procesas, laisvųjų piliečių bei vergų teisinės atsakomybės aspektai ir kiti klausimai.

Tyrimo objektas. Pradų kilmės, idėjų, pradinių kriminalizavimo nuostatų klausimai skatina ieškoti atsakymų, todėl tyrimo objektas – senovės Romos baudžiamosios teisės pradai, veikų baudžiamumą sąlygojusios idėjos, įstatymai, numatę nusikalstamas veikas bei pagrindinės veikos.

Tyrimo tikslas – aktualizuoti jau sukauptą teisės istorijos mintį, pateikti trumpą istorinę įžangą į senąsias baudžiamosios teisės užuomazgas romėnų teisėje, nurodyti esminių normų formavimąsi, pradus, pagrindines nusikalstamas veikas, jų bruožus, aiškinimą, skatinti gilesnį domėjimąsi ir mokslinę diskusiją. Dėl apimties ribotumo straipsnyje nenagrinėjami specifiniai klausimai susiję su atpildu, kalte, jos formomis, bausmių klausimai.

Tyrimo problemos. Tyrimas dėl lietuviškos tradicijos romėnų teisę vertinti tik kaip civilinę, analizės stokos nemaža dalimi yra aprašomojo pobūdžio, o akademinė diskusija dėl šaltinių ypatybių ribota. Būtina paminėti ir temos teiginių bei išvadų sąlygiškumą. Temos ypatumas tas, kad ji pasižymi išvestinių šaltinių gausa, tačiau pirminių šaltinių mažai. Dėl šaltinių įvairovės, autorių nuomonių apie istorinius faktus, interpretacijų apie tai, kaip galėjo būti, vertimo iš lotynų kalbos ypatybių, tyrimo teiginiai ir idėjos kai kuriais atvejais yra sąlygiški. Kai kuriais atvejais negalima daryti kategoriškų išvadų, kadangi ne visos baudžiamosios normos išliko rašytiniuose šaltiniuose. Kai kurias normas atspindi amžininkų raštai ir nuomonės, tačiau ne jų tekstas; kai kuriais atvejais autoriai remiasi gerokai vėlesnėmis kodifikacijomis bei kompiliacijomis, kai normos prarado pirminį pavidalą ir buvo papildytos komentatorių. Kas ypatingai svarbu, neretai daromos išvados senąsias normas lyginant su šiuolaikinėmis, su dabar egzistuojančia tradicija, kuri gerokai nutolusi. Visos šios aplinkybės svarbios darant išvadas bei formuojantis asmeninę skaitytojo nuomonę. Todėl dėmesingumas, kritinis požiūris, laisvesnis teisinis interpretavimas atsižvelgiant į istorinį kontekstą būtini skaitant šį straipsnį.

Rašant straipsnį buvo stengiamasi remtis keliais įvairių laikotarpių šaltiniais, kurie atspindi teiginį ar idėją bei ją patvirtina. Dėl kai kurių klausimų atspindžio literatūroje ribotumo, autoriaus mokslinė diskusija taip pat ribota. Senovės romėnų teisė nuo valstybės susikūrimo iki

žlugimo apėmė apie tūkstančio metų laikotarpį, kuris nebuvo ir negalėjo būti vienalytis. Dažniausiai tiriamų, analizuojamų teisės normų šaltinių laikotarpis dar kitas – daug sužinome iš Digestų ir Justiniano kodifikacijų, kurios surašytos jau Vakarų Romos imperijai žlugus. Jos surašytos rytų Romos imperijos teisininkų, dirbusių kitoje kultūrinėje terpėje ir kitame erdvėlaikyje, geografiškai ir kultūriškai nutolusiame nuo ištakų, kur viskas prasidėjo.[1] Straipsnio tikslas – paskatinti ieškoti ir atsigręžiant į praeitį ieškoti naujų sprendimų. Tekste (dažniausiai skliaustuose, *kursyvu*) pateikiama kiek įmanoma daugiau lotyniškų sąvokų, atkeliavusių iš tiriamo laikotarpio.

> *„Žmonijos istorija patvirtina, jog baudžiamoji teisė būtina vien dėl to, kad padėtų žmonėms sėkmingai gyventi kartu“* (Wessels, 2003, p. 28)

Senojo baudžiamojo teisingumo sistemos paieškos. Laiko ir erdvės ribos: senovės Roma

Romėnų teisė – tobuliausia senovės pasaulio teisės sistema, vientisa ir visa apimanti, šios teisės pagrindu susiklostė turtingiausia teisinė kultūra, ilgiems laikams tapusi visos žmonijos turtu (Maksimaitis, 2002, p. 54). Šios teisės sistema siejama ir su Vakarų teisės istorijos pradžia. „Mūsų modernioji teisė ir teisinė mąstysena suformuota Romėnų teisės“ (Ziemermann, 2007, p. 11). Todėl teisės studijos nemažai dėmesio skiria senajai romėnų civilinei teisei – ir neatsitiktinai, jos nuostatos universalios, lanksčios ir praėjus tūkstantmečiams sudaro privatinės teisės branduolį. Viešosios teisės ir baudžiamojo teisingumo sistemos klausimas sudėtingesnis ir ne toks aiškus. Baudžiamojo teisingumo sistema, kaip ją suprantame šiandien, kaip savarankiškas mechanizmas susiformavo daug vėliau, naujaisiais laikais. Romos laikotarpiu tokios sistemos bruožai jau pradėjo ryškėti ir sudarė pagrindą vėlesnei baudžiamajai teisinei minčiai. Nusikalstamų veikų įvertinimas aktualus visais laikais. Kaip suvokiame šiuolaikiškai, jis svarbus keliais aspektais – visuomenės interesų apgynimo, nukentėjusiojo interesų apgynimo, padarytos veikos įvertinimo; svarbi ir valstybės, kaip koncentruotos galios įtaka tokių veikų įvertinimui ir bendro apsaugos mechanizmo formavimui.

Šiame straipsnyje vartojama sąvoka „Senovės romėnų baudžiamoji teisė“ – sąlyginė, nes apibendrina labai ilgą Romos, kaip valstybės gyvavimo laikotarpį, pasižymėjusį savitais valstybės bruožais, priklausomai nuo istorinio laikmečio ir socialinių sąlygų. Ji sąlyginė ir dvejopo – civilinio ir baudžiamojo – kai kurių veikų pobūdžio.

„Romėnų teisė buvo teisės sistema (*ordo iuris*), gyvavusi senovės Romoje nuo jos įkūrimo 753 m. pr. Kr. iki imperatoriaus Justiniano Didžiojo (483–565 m.) mirties, beveik šimtą metų po Vakarų Romos imperijos žluginimo 476 metais. Per tūkstantį metų nuo Dvylikos lentelių įstatymų (451–450 m. pr. Kr.) iki Justiniano didžiojo kodifikavimo apie 530 m., romėnai sukūrė labiausiai ištobulintą ir išsamią pasaulietinę teisės sistemą antikos laikais (Domingo, 2017, p. 1).

Periodizacijos požiūriu laikotarpis, į kurį patenka senosios Romos teisės sąvoka – labai ilgas. Jį priimta skirstyti istoriniais Romos gyvavimo laikotarpiais, susijusiais su valstybės valdymu, valdovais, jos raida. Lietuvos teisės istorijoje siūloma periodizacija, kuri apima tris arba keturis romėnų teisės laikotarpius: pirma, seniausią VI-III pr. Kr., archainės teisės; antra, ikiklasikinį, (III a. pr. Kr. iki I a. pr. Kr.); trečia, klasikinės ir labiausiai išplėtos teisės (I a. pr.

[1] Autorius linkęs laikytis tradicijos Romą suprasti jos pirmine geografine prasme su idėjų lopšiu Romos mieste ir aplink jį.

Kr. iki III a. po Kr.).; ketvirta, poklasikinį (IV-VI a. po Kr.) (Maksimaitis, 2002, p. 52). „Romėnų teisės plėtra buvo laipsniška ir susijusi su valstybės istorija: Monarchija (753–509 pr. Kr.), Respublika (509–27 pr. Kr.), Principatas (27 pr. Kr. – 284 m.), Dominatas (284 – 565 m.) (Levy, 1938, p. 294).

Baudžiamosios teisės studijų požiūriu šie laikotarpiai, nors ir svarbūs, yra sąlyginiai. Autoriaus nuomone, svarbiausia yra pagrindinių baudžiamosios atsakomybės nuostatų bei pradų idėja ir jos atskleidimas, išryškinimas, baudžiamųjų veikų atskleidimas. Todėl kartais tyrėjai romėnų baudžiamosios teisės raidą apibrėžia supaprastintai ir išskiria tris laikotarpius: primityvioji baudžiamoji teisė, kai baudžia šeimos tėvas (*pater familias*, *paterfamilias*); labiau išvystyta teisė, kai baudimą sprendžia privati baudžiamoji teisė; ir trečiasis periodas – kai baudžia vieša baudžiamoji teisė; „o žiūrint visiškai supaprastintai – laikotarpis, kai nebuvo teismų ir laikotarpis, kai atsirado specialūs teismai“ (Bajram, 2013, p. 4).

Kaip kadaise savo fundamentaliame veikale „Romos baudžiamoji teisė“ rašė Teodoras von Mommsenas, vienas pirmųjų ėmęsis sistemingai išstudijuoti ir aprašyti visą senovės romėnų baudžiamąją teisę, „teisininkai ir istorikai vienodai sutarė, kad neturime tokio dalyko, kaip Romos baudžiamosios teisės mokslas“ (Strachan-Davidson, 1901, p. 219). Kartu jis pripažino, kad „Kaltės ir bausmės idėjos yra senos kaip žmonija ir negimė kartu su baudžiamąja teise... Baudžiamoji teisė prasideda ten, kur despotiška galia bausti ir teisti to, kas ją turi, ribojama valstybės įstatymo arba papročio, galingo kaip įstatymas.“ (Mommsen, 1899, p. 82, cituota pagal Strachan-Davidson, 1901, p. 236). Taigi, susiduriame su veika ir bausme - atlygiu už nusikaltimą, ir valstybės valia riboti atlygį, kerštą, numatyti taisykles, tvarką, kada, kas ir kaip smerktina ir baustina. Šių idėjų užuomazgos gimė ten, kur ir visa Vakarų teisės tradicija.

Patys pirmieji senovės Romos baudimo sistemos bruožai išlieka migloti ir aiškumas kyla tik randantis rašytinių šaltinių. „Baudžiamoji senųjų bendruomenių teisė nėra nusikaltimų teisė; tai neteisybių ir skriaudų teisė... Matyt teisingiau sakyti apie ankstyvąją Romos teisę kad tai teisė, kuri su retomis išimtimis atpažįsta tik skriaudos idėjos esmę; ji neskiria nusikaltimo ir civilinių teisių pažeidimo“ (Aston, 1914, p. 216). Kartu keliama idėja, kad bausmė, kaip pasmerkimas istoriškai galėjo kilti iš aukojimo ir šventinimo (Aston, 1914, p. 215), nes ir pati sąvoka „sankcija“ (*sanctio*) pagal žodžio kilmę susijusi su sąvokomis „*sacratio*“, „*sacer*“ reiškiančiomis pašventinimą (Aston, 1914, p. 215). Romos valstybės kūrimosi laikotarpiu baudimo ir teisingumo procedūros buvo siejamos su pagonių šventikais ir žyniais, o procesas turėjo sakralinių bruožų (Aston, 1914, p. 215; Bajram, 2013, p. 4).

„Ankstyvoji romėnų baudžiamoji teisė yra miglota ir neaiški..., monarchijos laikotarpiu romėnų teisė buvo grindžiama papročiais... dauguma kurių buvo siejama su šeima, todėl nėra nepagrįsta daryti išvadą, kad valstybės vaidmuo laikantis tvarkos ir tradicijų buvo periferinis..., ir jei buvo tam tikri kėsinimaisi, baudžiami valstybės, tai buvo labiau išimtis iš taisyklės; taigi baudžiamoji teisė iš esmės buvo mažiau išplėtota negu civilinė“ (Brazao, 2004, p. 17-18).

Pradinė mintis, išsakyta daugybės tyrėjų tokia: romėnų teisėje, ypač ankstyvuoju jos periodu, baudžiamoji ir civilinė teisė buvo susiliejusi (Tamm, 1997, p. 157). Iš tiesų, tokia pozicija pagrįsta; tik teisingiau ji skamba taip – civilinė ir baudžiamoji teisė dar nebuvo vienareikšmiškai atskirtos. „Romėnų teisė skyrė dvi sąvokas – *crimina* (nusikaltimai) ir *delicta* (privatūs deliktai)“ (Hausmaninger, 1981. p. 331, cituota pagal Nekrošius et al., 2007, p. 255). Kai kurie nusikaltimai, dėl kurių baudžiamosios teisės prigimties dabar nekeliama klausimų, pagal romėnų teisės sistemą buvo civilinių teisių pažeidimai (deliktai): tai vagystė (Nekrošius et al., 1999, p. 11).

„Romėnų teisė lyg ir išskyrė nusikaltimus, apibrėžė baudžiamosios teisės sampratos ribas. Tačiau, kita vertus, kalbant apie tikrąją baudžiamąją teisę, tokią teisės šaką, kokia ji suprantama šiandien, galima pasakyti, kad romėnų teisėje jos nebuvo. „Romėnų teisėje nebuvo tikslaus

nusikaltimo apibrėžimo, baigtinio bausmių sąrašo“ (Pranka, 2012, p. 13-14). Tačiau turime būti atsargūs ir nenueiti supaprastinimo bei neigimo keliu, neieškodami pirminių šaltinių, daryti nepagrįstas, paviršutiniškas išvadas, esą „nebuvo baudžiamojo kodekso, todėl neveikė ir baudžiamosios teisės principas – *nullum crimen, nula poena sine lege*. Visa baudžiamoji teisė tuo metu rėmėsi viena valdžios institucija – valdovu“ (Pranka, 2012, p. 14). Tokia pozicija neteisinga, nepagrįsta, paviršutiniška, ji neatspindi istorinės tikrovės ir teisės idėjų. Būtent šiuo laikotarpiu ir kilo įstatymo, kuriuo baudžiamas tam tikras elgesys, sąmoningas kaltininko poelgis, veika, idėjos, baudžiamumo tik už aiškiai uždraustą veiką, bausmės proporcingumo veikai, kaltės, kaltumo idėjos.

Vienas pirmųjų fundamentalių teisės aktų, įtvirtinęs baudžiamosios atsakomybės nuostatas yra XII lentelių įstatymai (450 m. pr. Kr.). Šie „įstatymai“ (taisyklių rinkinys) dėl savo civilinio pobūdžio retai kada analizuojami iš baudžiamųjų normų pozicijų.[2] Visi kiti senovės Romos baudžiamojo teisingumo laikotarpiai pažymėti atskirų valdovų priimtais (patvirtintais) baudžiamaisiais įstatymais, reguliuojančias konkrečias sritis arba institucijų teisės aktais. „Dėl to, kad teisinis reguliavimas buvo kuriamas skirtinguose amžiuose besikeičiančiomis istorinėmis aplinkybėmis, negalima kalbėti nei apie bausmių sistemos vientisumą, nei apie faktų, veikų įvardinimą“ (Jusztinger, 2016, p. 74).

Svarbu ir tai, kad baudžiamosios normos buvo betarpiškai susijusios ir su procedūrinėmis taisyklėmis.[3] Supaprastintu, schematišku požiūriu, išskiriamu kai kurių tyrėjų, procesas tobulėjo taip: „sakralinis baudžiamasis procesas Romos valstybės kūrimosi laikotarpiu; pažintinis procesas ir provokacija (*provocatio*[4]) ankstyvosios Respublikos laikotarpiu; *quaestiones extraordinariae* (ypatingieji teismai) ir *quaestiones perpetuae* (nuolatiniai teismai); konsulo ir senato baudžiamieji teismai, principato teisėkūra ir imperatoriaus baudžiamieji teismai“ (Imperijos laikotarpiu) (Baijram, 2013, p. 4-5).

Valstybei ir teisei tapus labiau pasaulietine, sutariama egzistavus visuotinę (tautos) teisingumo sistemą (*iudicia populi*), nuolatinius baudžiamuosius teismus (*questiones perpetuae*) ir baudžiamuosius teismus karalystės metu (*cognitio extra ordinem*) (Bajram, 2013, p. 5). Atskirų rūšių baudžiamosioms veikoms vertinti buvo steigiami specialūs nuolatiniai teismai (*quaestiones perpetuae)* kurie buvo kolegialūs ir pritaikyti tirti ir vertinti vienam ar keliems tos rūšies nusikaltimams (*publica judicia)*, pvz., nužudymams, valstybės išvadavimui, valstybinio turto grobstymui (Green, 1999-2000, p. 1096). Teismai buvo kolegialūs, panašūs į prisiekusiųjų teismus, kuriuos sudarė 30 – 60 metų amžiaus Romos piliečiai (Robinson, 1998, p. 324, 326). Kadangi nebuvo policijos ir tyrimo įstaigų sistemos, tvarkos apsaugą atliko piliečiai ir jų bendradarbiavimas, vėliau reguliari kariuomenė (trys miesto kohortos) (Robinson, 1998, p. 324). Nusikalstamų veikų tyrimas ir įvertinimas buvo piliečių reikalas, taip pat ir dalis miesto prefekto veiklos, kaltintojui vėliau suteikta teisė atlikti tyrimą - *inquisitio* (Robinson, 1998, p. 324, 327). Kai kurie veikas numatę įstatymai taip pat numatė jų tyrimo procedūrą.

[2] Trumpą analizę pateikė Vėlyvis su Jonaičiu, pvz., žr. Vėlyvis, S., Jonaitis, M., (2007) „XII lentelių įstatymai: bendrųjų šiuolaikinės teisės principų pradmenys“, *Jurisprudencija,* 11(101), p.39; Vėlyvis, S. Jonaitis, M. (2008) „XII lentelių įstatymai ir kai kurios atskirų šiuolaikinės teisės šakų bei institutų nuostatos“, *Jurisprudencija,* 1(103), p.12.

[3] Dėl straipsnio apimties baudžiamieji procesiniai klausimai aptariami tik bendrais bruožais, kaip įžanga į problemą.

[4] *Provocatio (provoactio ad populum)* – teisė apeliuoti asmeniui, kuris nuteistas aukščiausia bausme. Kai kurių šaltinių teigimu, ši teisė numatyta *Lex Valeria*, 509 m. pr. Kr. (pvz., Mousourakis, 2003, p. 145). Senovės Romoje, skirtingai nuo šių dienų sąvokos „provokacija“ (kurstymas, lenkimas nusikalsti), terminas *provocatio* turėjo tik pozityvią, teigiamą reikšmę.

Romėniškosios baudžiamųjų normų sistemos bruožai ir kilmė

Romoje nebuvo baudžiamosios teisės šiuolaikiniu supratimu - kaip atskiros teisės šakos, teisės srities, reguliavimo sistemos, arba baudžiamumo ir kriminalizavimo sistemos. Nusikaltimais padarytos žalos klausimai didele dalimi buvo sprendžiami privataus kaltinimo tvarka: *ius privatum* apėmė asmeninę, turto civilinę ir dalinai baudžiamąją teisę, o procedūra, užtikrinant šias teises buvo privatus procesas (*iudicium privatum*). Baudžiamoji teisė ir civilinė teisė nebuvo aiškiai atskirtos, todėl daugybė veikų, kurios šiuolaikiniu supratimu būtų baudžiamosios, romėnų supratimu buvo laikomos deliktais – civilinių teisių pažeidimais, už kuriuos buvo taikomos pusiau baudžiamosios sankcijos. Šiuolaikiniu supratimu romėnų baudžiamoji teisė buvo laisvas įvairių įstatymų, numatančių baudžiamąsias veikas rinkinys, nesusietas į vieną kodifikaciją (Green, 2000, p. 1096).

„Norint suprasti romėnų baudžiamąją teisę svarbu suprasti dualizmą visose jos dalyse... Baudžiamajai teisei, kuri yra padalinta į privačią ir viešą teisę, labai svarbos dvi esminės sąvokos *crimen* ir *delictum*... šios sąvokos reiškia neteisėtą aktą, kuris pažeidžia įsipareigojimus, numatytus privačioje teisėje *(delictum)* arba viešojoje teisėje *(crimen)*. Dėl Romos teisei būdingo dualizmo šalia egzistuoja baudžiamoji viešoji teisė ir baudžiamoji privati teisė. Skirtumas glūdi tame, kieno interesai pažeisti konkrečiu atveju“ (Frydek, 2010, p. 69). *Crimen* bendrąją prasme – bet koks aktas, kuris neteisėtas ir baudžiamas, o *Crimine alqm accusare* reiškia kaltinti ką nors nusikaltimo padarymu (tą patį reiškia ir *accusare*) (Frydek, 2010, p. 69). Šios sąvokos sudaro romėnų baudžiamosios teisės pagrindą.[5]

Atkreiptinas dėmesys, kad nėra labai aiškios ribos ir tarp pavojingų veikų, jų sąvokų, o jas numatant įstatymuose neegzistavo pavojingumo kriterijus šiuolaikiniu supratimu. Todėl reikia vengti kategoriškų išvadų ir apibendrinimų. Tyrėjai taip pat pabrėžia - apie romėnų baudžiamąją teisę negalima spręsti remiantis vien šiuolaikinės teisės samprata ir mums įprastomis sąvokomis (Alexander, 1984, p. 522). Dėl šių priežasčių pačių romėnų nurodytas skirtumas tarp *ius publicum* ir *ius privatum* nebūtinai reiškia baudžiamosios ir civilinės teisės atskyrimą (baudžiamoji teisė nebūtinai ir ne visada priklauso *ius publicum,* o terminas *civis* (pilietis) dažnai reiškia sąsają su piliečiais, o ne kokį nors „viešą“ dalyką); būtų klaida manyti, kad kiekvienas Romos įstatymas ar procedūra yra grynai civilinė arba grynai baudžiamoji (Alexander, 1984, p. 522).

Romėnų baudžiamajai teisei nebuvo būdinga vienalytė kriminalizacija – skirtingais laikotarpiais, skirtingi subjektai leido aktus, nustatančius veikas, tų aktų apimtį, tačiau įstatymų leidėjas nebuvo vienareikšmis ir nebuvo suprantamas taip, kaip dabar (pvz., tautos susirinkimai, Romos senatas, pretorių ediktai, imperatorių konstitucijos) (Maksimaitis, 2002, p. 41-44). „Romėniškosios sistemos grožis buvo tas, kad pretoriai nustatė aiškias pagrindines taisykles, kurios laikas nuo laiko galėjo būti išplėtojamos, kurios buvo sukurtos mokslingų ir meistriškų teisininkų ir galiausiai kodifikuotos tokių pat vyrų ir palaikomos veiksminga imperine sankcija“ (De Villiers, 1918, p. 419). Teigiama, kad romėnų „baudžiamasis įstatymas niekada nebuvo tikslus taisyklių ir sankcijų rinkinys, numatantis aiškias bausmes už jų padarymą. Tai buvo nurodymų sistema tiems, kurie vykdė įstatymą, kuriems buvo leista tam tikra veiksmų ir sprendimų platuma ir kurie buvo laisvi nuspręsti dėl bausmių, sunkinančių aplinkybių ir sušvelninti sprendimą esant lengvinančių aplinkybių“ (Mommsen, 1899, p. 44, cituota pagal Green, 2000, p. 1097).

[5] Civiliniai pažeidimai buvo vadinami *delicta, delicta minor, maleficia.* Tačiau nusikaltimas išimtinais atvejais galėjo būtų įvardytas ne tik *crimen*, bet ir *maioribus delictis*, kaip nurodyta Digestuose (Dig. 48, 19, 5, 2) – toks pažeidimas, kuris pavojingas visai romėnų tautai.(Frydek, 2010, p. 70).

Nors nebuvo baudžiamosios teisės ir baudžiamojo teisingumo kodifikuotos sistemos, negalima sakyti, kad baudžiamojo teisingumo sistemos nebuvo. Ji buvo tokia, kokia užtikrino to raidos laikotarpio valstybės poreikius ir kurią nulėmė romėnų visuomenės socialinė sankloda: laisvieji Romos piliečiai, svetimšaliai asmenys ne-piliečiai (*peregrini*), vergai, tradicinis individualizmas, piliečio turtinių teisių ir interesų apsaugos prioritetas prieš kitas vertybes, stipri patriarchalinės šeimos struktūra su šeimos tėvo (*pater familias*) absoliučia valdžia ir autoritetu bei kitos priežastys. Nusikaltimo, kaip viešo blogio samprata senovės Romoje plito labai lėtai, baudžiamasis įstatymas reguliavo tik nežymią santykių dalį, o didelę dalį sudarė kitos socialinės kontrolės sistemos.

Kaip apie romėnų baudžiamąją teisę rašė V. Stankevičius, pirmas svarbus bruožas – asmenų kategorija, kuri sudarydavo šeimą, klausė šeimos galvos neribotos jurisdikcijos; jai priklausė ir baudimas už įvairius nusižengimus. Šiai jurisdikcijai priklausė visi vaikai, moterys, vergai ir iš dalies išlaisvintieji (*libertini*), o tai sudarė didžiąją visuomenės dalį (Stankevičius, 1932, p. 566). Šeimos galvos valdžia turėjo absoliutų pobūdį ir išskirtinę vietą visuomenėje, jos įtaka buvo svarbi formuojantis pačiai valstybei ir visuomenei, ji buvo „plati iki pat gyvybės ir mirties teisės visiems namiškiams ir tebeėjo vienu iš pagrindinių Romos visuomenės ramsčių“ (Stankevičius, 1932, p. 566). Namiškių santykiai su pašaliniais šeimai asmenimis galėdavo likti šeimos jurisdikcijos viduje, „vergų ir vaikų atžvilgiu šeimos galva galėjo išsirinkti – arba pačiam sumokėti už jų padarytą žalą, palikus bausmę kaltajam paskirti arba išduoti kaltąjį nukentėjusiajam“ (Stankevičius, 1932, p. 566). Kita absoliučios valdžios atmaina, – taip pat ir bausti už neteisėtus veiksmus, – buvo kariuomenės vado valdžia. Ši valdžia buvo absoliuti pavaldžių asmenų atžvilgiu, ir plati kitais atžvilgiais, nes provincijos ir taikos metu buvo valdomos karine tvarka. O taikos metu „miesto sienose laisviems ir visateisiams romėnų piliečiams magistratūra taikydavo plačiai suprantamą priverčiamąją teisę *coercitio*, pagal kurią buvo taikomos ir baudžiamosios priemonės (Stankevičius, 1932, p. 566).

Baudžiamaisiais įstatymais buvo reguliuojama labai siaura sritis, visateisio romėnų piliečio nusikaltimai padaryti miesto sienose taikos metu kitam visateisiam piliečiui arba pažeidžiančių itin svarbius visuomeninius interesus, todėl „romėnų baudžiamosios teisės plačiąją to žodžio prasme, tiktai nežymi atsitiktinė ir subsidiarinė dalis teatsispindėdavo įstatymuose ir jeigu kitų tautų įstatymuose senuosius teisės paminklus sudaro išimtinai baudžiamieji kodeksai, kur privatinės ir viešosios teisės normų arba nėra, arba jos skęsta baudžiamosios teisinės medžiagos masėje, tai Romoje baudžiamajai teisei nuskirtas daug nežymesnis, trečialaipsnis, galima pasakyti, net atsitiktinis vaidmuo: iš XII lentelių tiktai dvi tėra paskirtos baudžiamajai teisei, Institucijose nieko nėra apie ją, Digestuose iš penkiasdešimt knygų dvi tėra jai paskirtos“ (Stankevičius, 1932, p. 567). Romėnų teisininkus ir teisės kūrėjus pirmiausia skatino esminė mintis – nustatyti piliečių tarpusavio teises ir pareigas, suskirstyti jų įtakos sferas (Stankevičius, 1932, p. 561). Esminė teisės paskirtis buvo piliečio teisių užtikrinimas, individualistinio teisinio subjektiškumo įtvirtinimas, o ne kolektyvinė visuomenės idėja, kas ir nulėmė baudžiamosios teisės antraeilį vaidmenį. Todėl „savo pagrindu romėnų baudžiamoji teisė buvo lyg ir privatinės teisės tęsinys ir papildymas: reguliuodama privačius ginčus dėl turto, valstybė čia pat reguliuoja ir privačius ginčus dėl padarytų skriaudų...; šia prasme *delicta privata* statomi prieš *delicta publica*, viešojo pobūdžio nusikaltimams, baudžiamiems kriminalinio proceso tvarka“ (Stankevičius, 1932, p. 568).

Teisės aktai, numatantys baudžiamumą. Nusikaltimo sąvoka ir ribos

Senojoje romėnų teisėje nebuvo griežto principo *nullum crimen sine lege* įtvirtinimo (šis principas išsikristalizavo ne anksčiau kaip aštuonioliktajame-devynioliktame šimtmečiuose

(Levy, 1938, p. 292). Tačiau pastebima, vėlyvoji Romos respublika buvo būtent tas laikas kai šio principo užuomazgos formavosi (Levy, 1938, p. 297).

Romėnų baudžiamoji teisė buvo išskaidyta atskirose normose, atskiruose specialiuose įstatymuose: „materialiai Romos baudžiamoji teisė ligi paskutinių dienų liko ne tiktai kaip eilė atskirų sudėčių, griežtai apibrėžtų, specialių, nesiduodančių generalizuoti, bet ir kaip eilė atskirų įstatymų, iš kurių kiekvienas turėjo savo tendencijų ir savo tam tikro pobūdžio“, ir „Baudžiamajai teisei buvo būdingas partikuliarizmas“ (Stankevičius, 1932, p. 572-573).

Pagrįsta teigti, kad pirmosios rašytinės nuostatos dėl baudimo ir baudžiamosios atsakomybės atspindi XII lentelėse (451-449 m. pr. Kr.). Nors ir kuklios, baudimo normos ir ribos egzistuoja už kelias pagrindines veikas, taip pat nustatytos atsakomybės nekilimo, šalinimo sąlygos. Vėliau, respublikos laikotarpiu, po to – ir imperijos laikotarpiu atsirado nemažai įstatymų, nukreiptų baudžiamosiomis priemonėmis spręsti konkrečių, laikmečiui bei problemai aktualių kėsinimųsi.

Nusikaltimas yra *crimen* (daugiskaita – *crimina*) – veika, kuri kenkia visuomenei ir valstybei, kuri persekiojama viešuoju kaltinimu - *accusatio*; tuo tarpu *delictum* – privačių teisių pažeidimas.[6] Ilgainiui plečiantis viešajai baudžiamajai teisei nusikaltimai įvardijami kaip *crimen publicum*, o anksčiau žinomi privačios teisės pažeidimai *delictum* tampa *crimen privatum* (Bartošek, 1989, p. 67). Nėra vienos ir aiškios klasifikacijos, egzistuoja įvairių nuomonių, nes priminių šaltinių stokojama, žinojimo spragos papildomos hipotetinėmis galimybėmis, kurios įpinamos į bendrą sistemą. Nemažai žinių semiamasi iš vėlesnėse epochose parašytų šaltinių, kurie tik atspindi istorinę patirtį, parašyti vėliau, nei buvo taikomi tikrieji įstatymai.[7]

Apibrėžiant nusikaltimų *(crimen)* rūšis buvo priimami specialūs įstatymai – *leges* (vienaskaita - *lex*). Šie įstatymai buvo skirti konkrečiai veikai kriminalizuoti, numatyti baudimą už ją (pvz., *lex Calpurnia de repetundis* – Kalpurnijaus įstatymas dėl kyšininkavimo, 149 m. pr. Kr.; *Lex Cornelia de sicariis et veneficiis* – Kornelijaus įstatymas dėl žudikų ir nuodytojų, apie 80 m. pr. Kr., *Lex Cornelia de falsi* – Kornelijaus įstatymas dėl klastojimų, Imperatoriaus Augusto *Lex Iuli de adulteriis* – įstatymas dėl svetimavimo (Stankevičius, 1932, p. 571). Su šiais įstatymais ne tik buvo sprendžiami materialinės baudžiamosios teisės – kriminalizavimo, bausmės nustatymo – klausimai, bet įtvirtinami ir procesiniai aspektai: speciali procedūra, steigiami specialūs teismai (Stankevičius, 1932, p. 572). Dauguma nusikaltimų turėjo savo rūšinius pavadinimus, paprastai pagal veikos esmę, ir tai atsispindėjo įstatymo pavadinime – *adulterium, ambitus, falsum, homicidium, incestum, lenocinium, paricidium, peculatus, perduelllio, plagium, stellionatus, vis* (Bartošek, 1989, p. 67). Kaip dėl normų apimties, taip ir dėl terminų pažymėtina, kad jie nėra visada tikslūs ir vienareikšmiai, jie priklauso nuo

[6] *Crimen* reiškė ir nusikaltimą, ir kaltinimą (-us). Kitos svarbios sąvokos – *reus:* kaltininkas, kaltinamasis *(rea* jei moteriškos giminės*); delator:* senovės Romoje prokuroras, kaltintojas arba „įskundėjas“ (asmuo, kreipęsis dėl nusikaltimo), teisme šis asmuo buvo pristatomas; *causa:* kaltinamojo motyvas ir jo atskleidimas teisme; *defensio:* gynyba ir jos pasirodymas teismo metu; *relatio:* priešiniai kaltinamojo kaltinimai kaltintojui; *iudex, iudicium:* teisėjas, jo vaidmuo teisme ir nuosprendis, pripažinimas kaltu, pasmerkimas *(condemnatur);* (romėniškų procesų aprašymas, pagal romėnų istoriko Tacito analus, žr. pvz., Thomas, J. W. (1993), “Roman Criminal Law and Legal Narrative in the Neronian Books of the Annals of Tacitus”, Dissertations. 3288. p6. https://ecommons.luc.edu/luc_diss/3288

[7] Pavyzdžiui, remiamasi Digestais, kurie parašyti ypač vėlai – tada, kai pačios Romos (Vakarų Romos) jau nebuvo kaip savarankiško valstybinio darinio, buvo likusi tik Rytų Romos imperija (Urbanavičiūtė, 2009, p. 101). Pavyzdžiui *lex Cornelia de Falsis* 81 m. pr. Kr. Originalus tekstas dingęs, o tai, kas likę – rekonstruota iš Justiniano *Digestų* (Green, 2000, p. 1096). Digestų veikų išdėstymas pateikiamas 48 knygoje (Digest of Justinian: Liber XLVIII, thelatinlibrary.com/justinian/digest48.shtml)

laikmečio, lotynų kalbos ypatybių, taip pat ir nuo vertimo, konteksto, tyrėjo pasirinktos pozicijos pagal šiuolaikinę baudžiamąją teisę, kaip atskaitos tašką.

Laikoma, kad nėra labai aiškios ribos tarp respublikos laikotarpio įstatymų leidybos numatytų nusikaltimų (*crimina ordinaria*) ir imperatorių sprendimais numatytų nusikaltimų (*crimina extraordinaria*). Romėnų jurisprudencijoje nebuvo paplitusi aiški ir konkreti nusikalstamų veikų ir jų sudėčių klasifikacija, ypatingas dėmesys baudimo teisės klausimams nebuvo teikiamas (Bartošek, 1989, p. 67). Magistratai turėjo valdžios teisę (*imperium*) kvalifikuoti veikas savo nuožiūra ir skirti už jas bausmes taip pat savo nuožiūra. Kai kurių autorių teigiama, kad be imperatoriaus išleistų įstatymų kaip baudžiamosios teisės šaltiniai buvo pripažįstami papročiai ir praktika (Bartošek, 1989, p. 67).

Pagrindinės, dažniausios veikos

Aptariant konkrečias veikas reikia turėti galvoje kai kurių iš jų dvejopą - civilinį ir baudžiamąjį teisinį - pobūdį. Straipsnyje pateikiamos dažniausios, atskirais įstatymais numatytos veikos, egzistavę plačiu senovės Romos gyvavimo laikotarpiu.[8]

Furtum. Bene geriausiai žinoma ir galimai seniausia nusikalstama veika iš senosios romėnų baudžiamosios teisės yra *furtum* (pažodžiui lotyniškai – „vagystė“). Tai turtinis nusikaltimas, kuris didele dalimi atitinka šiuolaikinę vagystę (Girard, 1932, p. 24). Kaip pastebėta tyrėjų, *furtum* ilgainiui išsiplėtė ir apėmė beveik visus pasikėsinimus į turtą (Stankevičius, 1932, p. 569). *Furtum* veika tapo platesnė nei vagystė ir apėmė ne tik daikto paėmimą (*furtum rei*), bet ir neteisėtą naudojimąsi daiktu, kaip juo naudotis nepriklauso ar nesutarta - *furtum usus* ir *furtum posesionis* (Girard, 1932, p. 25; Bajram, 2013, p. 7). Tam pritaria kiti šiuolaikiniai tyrėjai (Garoupa & Gómez, 2005, p. 9).

Furtum, kaip turtinei veikai nustatyti buvo svarbūs elementai – noras pasipelyti (*contrectacio fraudulosa*) ir neteisėtumo sąmonė (*animus furandi*), kad daiktas priklausytų kuriam nors asmeniui (*invite domino*) ir kad daiktas būtų paimtas prieš savininko valią; be to, jis turėjo būti kilnojamasis *(res mobiles)*. *Furtum usus* – ėmimas iš svetimo daikto naudos, kuriai asmuo neturi teisės (depozito laikytojas, kuris pasisavina daiktą), ar pasiskolinęs daiktą asmuo naudoja jį taip, kaip pagal sutartį naudoti negali (Girard, 1932, p. 26-27). Dar išskiriamas motyvas užvaldyti daiktą, padaryti savu – *lucrandi causa* (lot. „vardan naudos gavimo“). *Furtum* sukeldavo skundo teisę – *actio furti*, kuria galėjo pasinaudoti nukentėjęs asmuo prieš nusikaltėlį (Girard, 1932, p. 26-27). Prieš tai, savininkas turėjo teisę iškelti ginčą dėl daikto sugrąžinimo (c*ondictio furtiva*), o daiktą turintis asmuo turėjo teisę ginčyti tokį reikalavimą (Bajram, 2013, p. 7).

Furtum, pasireiškęs kaip vagystė (daikto pagrobimas) dar skirstytas į *furtum manifestum*, kai kaltininkas pagautas ir *furtum nec manifestum*, kai kaltininkas nežinomas (Girard, 1932, p. 26-27). Šios aplinkybės laikytos svarbiomis, nes akivaizdžios vagystės atveju daikto savininkas patiria daugiau skriaudos ir kančios, taigi nusipelno ir didesnio atlygio.[9]

[8] Kadangi veikos atsiradę skirtingais laikotarpiais, skirtingų įstatymų pagrindu, autorius jų negrupuoja pagal kėsinimosi objektą, dalyką, kitus šiuolaikinius požymius, taip pat nesilaiko jų eiliškumo pagal abėcėlę, nes baudžiamajai teisei tai nei būtina, nei būdinga; veikos išdėstytos autoriaus nuomone pagal jų senumą, dažnumą, aktualumą teisės istorijos studijoms. Autorius taip pat laikosi nuomonės, kad šios veikos nagrinėtinos ne vien kaip civiliniai deliktai (žr., pvz., Nekrošius et. al, 2007, p. 256-260).

[9] Išskiriamos ir kitos vagystės rūšys – *furtum conceptum* (kai daiktas rastas pas vagį prie liudytojo), *furtum oblatum* (kai vogtas daiktas rastas paslėptas ne pas vagį), *furtum lance et licio* (vogtas daiktas rastas oficialios kratos metu vagies namuose), *furtum prohibitum* (kai vagis neleido daryti kratą namuose), *furtum non exibitum* (kai vagis nerodė vogto daikto, kuris vėliau buvo rastas), *furtum balnearium* (vagystė viešosiose pirtyse), *furtum domesticum* (namų vagystė, padaryta šeimos nario). Nuo šių rūšių priklausė baudos dydis – keletą kartų viršijantis vogto daikto

Rapina – plėšimas, arba vagystė su užpuolimu ir smurtu (Garupa & Gomez, 2005, p. 3), kartais apibūdinamas ir kaip banditizmas, arba banditiškas užpuolimas, padarytas gaujos (Bajram, 2013, p. 8).

Stellionatus – klastojimo ir apgaulės nusikaltimas (*stellio* - lot. driežas, padaras, romėnų supratimu simbolizavęs klastą) (Biscotti, 2011, p. 3), susijęs su piktavališkumu, slaptumu, sumanumu, gudrumu ir apgaule. Papildomai, šis nusikaltimas ir kitos klastojimo - *crimina falsi* - formos buvo numatytos *Lex Cornelia de falsi* – Kornelijaus (Sulos) įstatymas dėl klastojimų. Šis nusikaltimas susijęs ir su *fraus* – apgaulės motyvu (*fraus* buvo specifiškai suprantamas kaip priežastis, motyvas, tačiau ne nusikaltimas pats savaime), bei tyčia apgauti kitus - *fraudationis causa*; ši konstrukcija nevisiškai atitinka šiandienio sukčiavimo aktus (Biscotti, 2011, p. 3). Savarankiška veika buvo ir apgaulės nusikaltimas - *dolus malus*, arba apgaulingų priemonių naudojimas kito žmogaus elgesiui paveikti (Girard, 1932, p. 46-47). Egzistavo ir atmaina - *crimen fraudati vectigalis* – tyčinis žalos padarymas valstybei nuslepiant mokesčius, mokėjimus ar duokles. Šiuolaikiniu požiūriu sukčiavimas ir apgaulė buvo išskaidyti į įvairaus masto ir įvairiose srityse padaromas veikas.

Iniuria (injuria) - „neteisėtumas“, nuoskauda, arba įžeidimas, - dažnai pasitaikiusi ir itin plačiai traktuota veika (Giltaj, 2018, p. 23). Šią sąvoką apėmė įžeidimas, kuris turėjo būti dažniausia „neteisėtumo“ atmaina pagal *lex Cornelia de iniuriis*. Pasak tyrinėtojų, prie *iniuria,* kaip įžeidimo atmainos galėjo būti priskirti ir fiziniai sužalojimai arba kitam asmeniui priklausančio vergo išplakimas (kaip savininko įžeidimas), arba bet koks veiksmas, užtraukiantis pažeminimą, o įžeidimo būdas taip pat turėjo teisinės reikšmės. Teigiama, kad kaip *iniuria* (nuoskauda) buvo ir sąnario sulaužymas (*membrum ruptum*), kaulo sulaužymas (*os fractum*) ir „paprastos nuoskaudos, kurias mūsų nuomone sudarė lengvi smurtai, smūgiai į veidą ir šiaip smūgiai“ (Girard, 1932, p. 22). Dėl šių veikų galėjo būti paduodamas skundas. Teigiama, kad vėliau *Lex Cornelia de injuris* diktatorius Kornelijus Sula nuo kitų nuoskaudų atskyrė smūgius ir įsiveržimus į būstą *(puksare, verberarre, vi domum introire*), tikslu iš jų padaryti viešuosius nusikaltimus (Girard, 1932, p. 24). *Iniuria* buvo laikomas ir gyvo ar negyvo žmogaus įžeidimas, reputacijos menkinimas, ir dėl tokios veikos buvo galimas skundas privatinės teisės tvarka (*actio injuriarum)* (de Villiers, 1900, p. 251). Ulpianas apibrėžė *iniuria* kaip „bet ką, kas daroma ne pagal teisę“ (Dig. 47.10.1: „*[O]mne enim, quod non iure fit, iniuria fieri dicitur*“). *Iuniuria* buvo reikalaujamas noras padaryti įžeidimą – šmeižimo ir kitais *iniuria* veikos atvejais reikėjo nustatyti norą šmeižti elgtis neteisėtai – *animus iniuriandi* (de Villiers, 1918, p. 412-413).

„*Iniuria* buvo ilgo tobulinimo produktas ir iki to laiko, kai buvo įtrauktas į *Corpus iuris civilis,* jis galėjo apimti užpuolimus su lazda ar akmeniu, įsibrovimą į namus, šmeižtą, įsibrovimą į svetimą teritoriją, neteisėtą įkalinimą, žalas, padarytas kito asmens gyvūno ir žalas, kurios atsirado asmenims, apsistojusiems viešose užeigose. Ji apėmė į visumą daugybę veikų, kurios mūsų akimis yra visiškai skirtingos ir savarankiškos“ (Helmholz, 2001, p. 37-38). Teigiama, kad su *iniuria* atsirado ir priežastingumo samprata – *damnum iniuria datum* – žala padaryta neteisėtumu, dėl neteisėtų veiksmų; teisininkai sąvokai *iniuria* suteikė ir kitą savarankišką prasmę, kad „žala padaryta neteisėtu būdu“ *(damnum iniuria datum).*[10] Ši papildoma sąvokos prasmė ribojo atvejus, kada asmuo galėjo būti kaltinamas, t. y. atvejus, kai kaltininkas sukėlė žalą ir ją sukėlė neteisėtai (Frier, 1988, p. 488).

vertę. Jei buvo pagrobiami naminiai gyvuliai, priklausomai nuo jų kiekio nusikaltimas buvo įvardijamas kaip *abigeatus*, o ne *furtum* (Bajram, 2013, p. 9).

[10] *Damnum iniuria datum* dažnai nurodoma ir kaip savarankiška veika, jos turinį siejant su žalos turtui padarymu, pvz., Bajram, 2013, p. 10; Girard, 1932, p. 35, Nekrošius et al. 2007, p. 259, kt.

Maiestatis, arba *maiestas (majestas),* taip pat *maiestatis imminutae* (*lasae, violatae*) – veikos, nukreiptos prieš pareigūnus ir įstaigas (tribūnus, magistratus), imperatorių (Dyjakowska, 2013, p. 25, 35), taip pat ir pačią valstybę - valstybės išdavimas, ginkluotas sukilimas, maištas, kaip nusikaltimas numatytas *Lex Apuleia* 103 pr. Kr., po to papildytas Sulos *lex Cornelia de maiestate* 81 pr. Kr., ir jam įsteigtas specialus teismas (*quaestio). Majestas* buvo susijęs ir su *perduellio,* nes jos abi buvo valstybės išdavimo veikos, kurios pasak tyrėjų geriausiai atsekamos dėl kaltinimų gausos (Greenidge, 1895, p. 240). *Maiestas* veikos buvo numatytos ir *lex Julia de majestate,* kaip nurodyta Digestuose (48, 4) (Dyjakowska, 2013, p. 25, 35). Šios veikos - viešosios baudžiamosios teisės pavyzdys (Dyjakowska, 2013, p. 31). Valstybės išdavimas (kurį Ulpianas vadina *Perduellio*) apima ginkluotų ginklais arba akmenimis vyrų susirinkimą mieste arba kiti veiksmai, priešingi bendram būviui (*adversus rem publicam)* (Greenidge, 1895, p. 237).

Repentundarum – neteisėto atlygio vykdant pareigas reikalavimas, taip pat ir kyšio priėmimas, numatytas *lex Calpurnia de repetundis* – Kalpurnijaus įstatymas dėl kyšininkavimo, 149 m. pr. Kr. (Stankevičius, 1932, p. 571).

Plagium – arba *crimen legis Fabia de plagiariis,* reiškė laisvo žmogaus pagrobimą turint tikslą jį paversti vergu arba vergo iš savininko pagrobimą, laisvės varžymą laisvam žmogui arba įkalbėjimą vergą palikti savo savininką (*plagiarius* arba *plagiator* reiškė „asmenybės pagrobėją“; iš čia daug vėliau kilo kūrinio autoriaus tapatybės vagystės pavadinimas); (Bajram, 2013, p. 11; Brown, 2016, p. 17; Digestų 48.15.0.).

Peculatus – numatytas *lex Iulia de peculatus* priimtas imperatoriaus Augusto apėmė viešųjų lėšų užvaldymą, valstybės turto pagrobimą, įskaitant turtą, skirtą aukojimui (*res sacrae*) (Amielańczyk, 2012, p. 12, 18). Ši veika apėmė ir viešųjų įrašų klastojimą, neteisėtą pasinaudojimą viešuoju pinigų gaminimo aparatu, valstybės tauriųjų metalų vertės mažinimą (Amielańczyk, 2012, p. 16).

Homicidii, homicidium – nužudymas, gyvybės atėmimas, veika padaryta tyčia; *paricidium* – tėvų nužudymas. Nors šiais laikas atrodo akivaizdus tokios veikos baudžiamumas, senovės Romoje buvo kiek kitaip. Manoma, kad gyvybės atėmimai iš pradžių „buvo labiau šeimos reikalas ir iki Principato laikotarpio jie buvo šeimos galvos (*paterfamilias*) arba savininko (ar globėjo) jurisdikcija“ (Brazao, 2004, p. 28). Vėliau nužudymus apėmė specialus įstatymas dėl žudikų ir nuodytojų - *Lex Cornelia de sicariis et veneficiis*, nuo 81 B.C. ir kuris apėmė ne vien nužudymus, bet ir juos sukėlusius nuodijimus, padegimus (Mara, p. 44, 48). Pavyzdžiui, įvairių nuodų pardavimas buvo griežtai baudžiamas pagal *lex Cornelia de sicariis et veneficis* (Kornelijaus įstatymą dėl žudikų ir nuodytojų), t.y. šie veiksmai buvo vertinami kaip nužudymas (Notari, 2016, p. 66). „Pagal *Corpus Juris civilis homicidium* nusikaltimas nurodytas Digestuose 48. 8, ir 9. 16, o *D* 48. 9 ir *C 9.* 17, nurodytas ir *parricidium* (tėvų nužudymas, *pater familia* nužudymas) nusikaltimas, kuris vertintas kaip savarankiška veika (*sui generis)*“ (Marshal, 1896, p. 232). Neatsargus gyvybės atėmimas nebuvo laikomas nusikalstamu pagal *Lex Cornelia* (Marshal, 1896, p. 235). Tokia veika nebuvo laikomas išvarytojo, pasmerktojo gyvybės atėmimas, arba gyvybės atėmimas naktiniam vagiui (*fur nocturnus*), padarytas ginties būsenoje. Netyčinis gyvybės atėmimas galėjo sukelti tik civilines teisines pasekmes (Bartošek, 1989, p. 144).

Vis – prievartos nusikaltimas (Bartošek, 1989, p. 328); tai veika, pasireiškusi kaip fizinis užpuolimas ir pirmą kartą savarankiška veika tapęs pagal *lex Lutatia*, paskelbtą 70 pr. Kr. Šis įstatymas numatė ir ginkluotą užpuolimą, kaip *vis* rūšį. Su *vis* susijęs *metus* – grasinimas, nors buvo numatytas kaip atskira nusikalstama veika (Girard, 1932, p. 40-41).

Stuprum – seksualinės privartos veika. Iššaginimo ir seksualinės prievartos nusikaltimų vertinimas buvo nevienareikšmis: prievartinis lytinis santykiavimas taip pat buvo ir *vis* atmaina

(Nguyem, 2006, p. 83). Kitais atvejais iššaginimas, seksualinis prievartavimas galėjo būti laikomas *stuprum* - kurį apėmė bet koks gašlus ar netradicinis seksualinio pobūdžio aktas, taip pat pažįstamo asmens iššaginimas, viliojimas, homoseksualūs santykiai ir smurtinis iššaginimas (Nguyem, 2006, p. 83). Su seksualine sfera susiję kitos veikos – *adulterium,* arba svetimavimas (neištikimybė); pagal *lex Julia de adulteriis* buvo laikomi seksualiniai santykiai su ištekėjusia moterimi, kuriai būdingas socialinis statusas. Veika *lenocinium* reiškė naudos gavimą – sąvadavimą - iš *adulterium* arba *stuprum,* ir atsirado vėlyvojoje imperijoje, kad būtų uždraustas sąvadavimas (Robinson, 1998, p. 329). Vėlesniuoju Romos gyvavimo laikotarpiu seksualinius nusikaltimus apėmė ir *raptus* – iššaginimas, pagrobimas ir viliojimas nekaltų merginų ar moterų. Iššaginimas galėjo būti ir *iniuria* atmaina – kaip pasikėsinimas į skaistybę (Nguyem, 2006, p. 83). Iššaginimo bylose reikalavimas nustatyti žinojimą ir norą - *sciens dolo malo* buvo būtinas atsakomybei kilti. Iššaginimas buvo baudžiamas sunkiausia bausme – kas reiškė mirties bausmę, ištrėmimą arba asmens teisinio statuso (laisvo Romos piliečio teisių) praradimą (Nguyem, 2006, p. 83).

Ambitus – rinkiminis kyšininkavimas ir įtakojimas rinkimų, arba rinkiminės korupcijos atmaina. Tokia veikia įtvirtinta apie 181 pr. Kr. ir įkurtas specialus teismas ją vertinti. Vėlesniais pakeitimais išplėsta nusikaltimo sudėtis, kad būtų apimta ne tik balsų pirkimas už pinigus, bet ir pramogų teikimas, rėmėjų samdymas ir kitos organizuotos paramos formos (Lintott, 1990, p. 1). Artima veika - *crimen sodaliciorum* – prekiavimas rinkėjų balsais.

Annonae (*lex Julia de annona*) – dirbtinis maisto kainų didinimas (Bartošek, 1989, p. 59) ir kiti veiksmai, kuriais siekiama padidinti Romai tiekiamo maisto produktų kainas, neteisėti spekuliaciniai veiksmai. Imperatorius Augustas sukūrė nusikalstamą veiką, pagal kurią buvo baudžiamas trukdymas Romos grūdų tiekimui nepagrįstai juos kaupiant ar kitais būdais trukdant jų pristatymui, prieinamumui bei kainos išpūtimas (spekuliacija). *Annona* apėmė platesnę veikų sampratą, galėjo apimti ir kitų maisto produktų tiekimą Romai ar kitam miestui (Erdkamp, 2016).

Be jau įvardytų veikų atskirais įstatymais ir atskirais valstybės gyvavimo laikotarpiais buvo kriminalizuotos ir kitos, pvz., *calmuniae* – nekalto žmogaus apkaltinimas nusikaltimu, dar žinomas kaip *falsa accusatio* pagal *lex Remmnia* (Bartošek, 1989 p. 59).

Išvados

Senovės Roma, gyvavusi nuo jos įkūrimo 753 m. pr. Kr. iki Vakarų Romos imperijos žlugimo 476 metais, o po to Rytų Romos imperatoriaus Justiniano Didžiojo kodifikavimo apie 530 m., sukūrė ir vėlesnėms kartoms paliko labiausiai ištobulintą ir išsamią pasaulietinę teisės sistemą antikos laikais. Ši teisės sistema siejama ir su Vakarų teisės istorijos pradžia, o mūsų modernioji teisė ir teisinė mąstysena didele dalimi suformuota Romėnų teisės. Didžiąją romėniškosios tradicijos dalį sudaro civilinė teisė. Dėl šių priežasčių Lietuvoje studijuojama Romos teisė išimtinai civilinės teisės požiūriu. Romėnų teisėje, ypač ankstyvuoju jos periodu, civilinė teisė apėmė didžiąją dalį baudžiamųjų nuostatų. Ilgainiui atsiranda skirstymas į privačius ir viešus deliktus, o vėliau – ir atskirais įstatymais numatytos nusikalstamos veikos.

Todėl senovės Roma įdomi ir baudžiamosios teisės studijų požiūriu, šios srities negalima ignoruoti. Būtent Romos respublikos laikotarpiu atsirado pirmieji įstatymai, numatę rašytines baudžiamąsias nuostatas. Šiuo laikotarpiu noras apsaugoti visuomenę nuo pavojingų kėsinimųsi, o iš kitos pusės - apsaugoti laisvą pilietį ir jo interesus nuo teisių varžymo, vėliau ir nuo valstybės galios, pradeda formuoti ir šiuolaikinius baudžiamojo teisingumo sistemos principus. Šiuo laikotarpiu galima rasti ir pirmuosius *nulllum crimen sine lege* pradus, kurie aktualūs ir šiuolaikinėje Lietuvos baudžiamojoje teisėje.

Vienas pirmųjų fundamentalių teisės aktų, įtvirtinęs baudžiamosios atsakomybės nuostatas yra XII lentelių įstatymai (450 m. pr. Kr.). Kiti senovės Romos baudžiamojo teisingumo laikotarpiai pažymėti atskirų valdovų priimtais (patvirtintais) baudžiamaisiais įstatymais, reguliuojančias konkrečias sritis, arba institucijų teisės aktais. Šiuose įstatymuose įvardijamos pačios veikos, bet dažnai nėra aiškios ribos tarp gimininių pavojingų veikų, neegzistavo pavojingumo kriterijus šiuolaikiniu supratimu, nebuvo vienalytės kriminalizavimo praktikos. Vertinant šias veikas reikia vengti kategoriškų išvadų ir apibendrinimų, apie romėnų baudžiamąją teisę spręsti remiantis šiuolaikinės baudžiamosios teisės samprata.

Nusikaltimas pagal romėnų tradiciją - *crimen* (daugiskaita – *crimina*), tai veika, kuri kenkia visuomenei ir valstybei, kuri persekiojama viešuoju kaltinimu – *accusatio.* Plečiantis viešajai baudžiamajai teisei nusikaltimai įvardijami kaip *crimen publicum*, o anksčiau žinomi privačios teisės pažeidimai *delictum* tampa *crimen privatum.* Šios nuostatos ilgainiui evoliucionavo iki mums suvokiamų teisės šakų.

Dauguma nusikaltimų turėjo savo rūšinius pavadinimus, paprastai pagal veikos esmę – *adulterium, ambitus, falsum, homicidium, incestum, lenocinium, paricidium, puculatus, perduelllio, plagium, stellionatus, vis.* Kai kurios veikos, tokios kaip kėsinimaisi į turtą (*furtum*), šiuolaikiniu supratimu laikomi ir civilinės, ir baudžiamosios teisės dalyku.

Pagrindinės, dažniausios veikos – *furtum, iniuria, vis, maiestas, repentundarum, plagium, peculatus, homicidium (paricidium), stuprum, ambitus, annonae, stellionatus, calmuniae* numatytos atskiruose įstatymuose ir aiškintos plačiai, baudžiamajai teisei nebuvo būdingas itin griežtas įstatymo traktavimas. Veikas aprašę įstatymai numatė pagrindinius jų požymius, todėl taip pradėjo formuotis nusikaltimo sudėties požymių nustatymo reikalavimas, rašytinio įstatymo aiškinimo tradicija, būdingi šiuolaikinei baudžiamajai teisei.

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FEATURES OF ANCIENT ROMAN CRIMINAL LAW

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Summary

The article deals with the questions about ancient Roman criminal law and its origins. As these questions are relevant to modern law studies there is lack of discussion in Lithuanian law. If much attention is paid to Roman civil law and the history of law, the questions of the genesis of criminal justice are seldom of interest. Thus in Lithuania the law of ancient Rome is almost exclusively regarded as a civil law. The knowledge of history allows to understand the origins and conditionality of legal norms and provides valuable insights, as well as reveals the layers of this intangible property. As it is described in the history of law, ancient Roman law is the most perfect legal system in the ancient world, unified and all-encompassing. The richest legal culture has developed on the basis of this law which has long become property of all mankind. The question of the criminal law of ancient Rome is interesting because the civil law of ancient Rome is studied extensively. The provisions of old Roman civil law have not lost their meaning even after several millennia. As research shows there was no such thing as Roman criminal law in a modern understanding. There was no separate branch of law, area of legal regulatory system or centralized system of criminalization or penalization. However, during the early Roman period, then republic of Rome the system of criminal justice as we understand it today as an independent mechanism began to take shape. The author presents the separation of the concepts of the crimina (crimes) and delicta (private torts), the dual concept of Roman criminal law. The author mentions one of the first fundamental legal acts that established the provisions of criminal liability, i.e. The Laws of Twelve Tables as well as features and peculiarities of criminal proceedings, the process of iudicia populi, permanent courts or questiones perpetuae and courts during the times of kingdom, cognitio extra ordinem. The author presents the provisions of the criminal law of ancient Rome from different periods, examples of individuals laws as well as different criminal acts such as furtum, iniuria, vis, maiestas, repentundarum, plagium, peculatus, homicidium (paricidium), stuprum, ambitus, annonae, stellionatus, calmuniae.

Keywords*: ancient roman criminal law, criminal law of ancient Rome, furtum, vis, rapina, raptum.*

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

SOCIAL CONTROL IN THE ROAD AND URBAN ENVIRONMENT: COMPARATIVE ANALYSIS

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DOI: 10.13165/PSPO-22-29-01

Abstract. *Under the aegis of social control theory, this work aims to identify the main differences between police pursuits of vehicles on highways and urban roads. The perceptions of military road police officers in Minas Gerais about the characteristics of vehicle chase occurrences are used, identifying the main differences between vehicle pursuits on highways and in urban areas. The data collection instrument was a semi-structured questionnaire. Data were analyzed using statistical tools and content analysis. Among the differences between the pursuit of vehicles in the urban area and on the highways, 6 (six) of them make up a total of 68% of the total differences that emerged. These 6 (six) main differences are as follows: a) vehicle speed; b) characteristics of the roads; c) onlookers – presence of people on the roads; d) risk of accidents; e) characteristics of the siege and blockade operations; f) difficulties in communications.*

Keywords: *Social control. Police chase. Public security. Public order. Public Management.*

Introduction

Violent crime and public insecurity are two of the main points of distress for Brazilians (Nóbrega Júnior, 2018). In any case, the State reform boosted the development of the modern conception of public security, which is substantiated in managerial ideas supported in conflict resolution through the mediation between coercion and consensus (Veiga and Souza, 2018). Nevertheless, Molina (2002) points out that these deviant behaviors are repressed through the so-called social control, which aims to align behaviors, actions and acts with established norms, forming, in society, majority currents. This same author adds that social control is made up of a complex of institutions, strategies and social sanctions with the aim of submitting individuals to current standards and norms.

Hamelin and Spenlehauer (2006) conclude that the police force is the one who can regularly perform social control for law enforcement. In any case, despite being present in our social daily life, the Police have been the object of scientific research only in the last fifty years, as highlighted by Carvalho (2011). In this perspective, studying this Institution and its activities, characteristics and articulations is always presented as a great challenge in contemporary societies.

Thus, the idea of social control is multifaceted and seen in different ways depending on who approaches the subject. Regardless of the type of society, there will always be a demand for a certain type of social control that allows life in society based on norms and, consequently, punishments, in order to guarantee mutual respect, social interaction, obedience to a minimum ethical standard of sociability, and the coexistence between the different ones (Wacquant, 2002).

Despite this idea, there are some points that are general in almost all the definitions presented by different scholars. The main one is precisely the exercise and monopoly of force by the police, as a peculiar element in relation to any other professional activity or institutional branch of the State (Mello, 2018). In this scenario, the fundamental element of police activity emerges, namely, the maintenance of peace and public order, so that dealing with conflict is at the heart of police work (Goldstein, 2003).

From the above, it is abstracted that the police is one of the instruments of social control available to the State, which is responsible for maintaining public order, the safety of individuals and public and private property. In this light, police pursuits on urban roads and highways emerge, an act in which the agent in charge of law enforcement goes after a citizen who has disobeyed a legal order, fleeing the scene. However, based on the theory of social control, the police will use the techniques and tactics they have to stop the flight, approach the transgressor, identify him and, if necessary, arrest him.

Thus, based on the social control theory, this work aims to identify the main differences between police pursuits of vehicles in road and urban environments. In order to do so, it uses the analysis of the perceptions of military road police officers in Minas Gerais about the characteristics of vehicle chase occurrences, identifying the main differences between vehicle pursuits on highways and in urban areas.

Materials and methods

Applied to the 1.206 (one thousand two hundred and six) individuals (military road police officers of Minas Gerais - Brazil), the data collection instrument was a semi-structured questionnaire, with 19 (nineteen) sequential questions, among which 17 (seventeen) were objective and the other two were subjective (disserative), capable of gathering the perceptions of the individuals surveyed in relation to the objectives of the study. Among the questionnaires answered, 857 (eight hundred and fifty-seven) were considered valid (71.06%). Based on the population fraction of each military police officer surveyed, a proportional stratified random sample was selected.

Immediately afterwards, the aforementioned sample was dimensioned with an α error of 0.05 and a power of 85% (β error of 0.15), assuming as an important factor (which should be preserved in the sample) the approximate percentage of soldiers who responded to the original questionnaire and who felt able to act in vehicle pursuit incidents. The MINITAB-18 program was used and the value for the sample size (n) was equal to 208 questionnaires, among which the stocking fractions had the same percentage values as all the questionnaires validly answered.

Quantitative approach

The answers to the questionnaires were analyzed using descriptive statistics (means, medians and standard deviation) and the Wilson's Method statistical tool. The fact that the interviewee had participated, at some point in his career, in a police vehicle chase (technical aptitude variable) was chosen as a preponderant factor for the statistical analyses. This variable presented, in the research population (857 individuals), the dimension of 28%. In this treadmill, applying the Wilson's Method tool (0.25 to 0.31), establishing the confidence level at 95%, the value of 29.81% emerges in the sample. In this scenario, a perfect representativeness of the chosen proportional stratified random sample is confirmed, so that, statistically, the observed value is within the estimated confidence interval.

In a descriptive analysis about the specification of the characteristics considered different between the police pursuit of vehicles in the urban area and on the highways, each answer was replaced by one or more "key words" that meant the written text. These were then collected, coded and the frequency of repetitions of each one of them was observed. Table 1, inserted below, summarizes the set of keywords, code and their respective frequencies.

Table 1. Characteristics judged to be different between police pursuit of vehicles in urban areas and on highways.
Source: Made by the authors from the research carried out.

N	KEYWORD	FREQUENCY
1	Access to side roads	2
2	Motorcycle support	1
3	Support from other sectors	11
4	Attention from users	1
5	Characteristics of the approach	8
6	Characteristics of the roads	32
7	Vehicle characteristics	5
8	Siege and blockade	15
9	Traffic control	1
10	Accreditation for emergency vehicles	1
11	Curious - people on the road	30
12	Support delay	11
13	Communication difficulty	13
14	Firearm shooting	2
15	Distance from the city	1
16	Duration of pursuit	1
17	Effective of the fraction	3
18	Roads and shortcuts	11
19	Driver experience	3
20	Ease of follow-up	1
21	Vehicle flow	8
22	Vehicle braking	1

23	Legislation	1
24	Place to approach	4
25	Ways to neutralize the fugitive	3
26	Radio network	4
27	Accident risk	20
28	Accident risk - security of military police	1
29	Response time	1
30	Specific training	1
31	Vehicle speed	77

Qualitative approach

The collected data were analyzed using the content analysis technique, divided into stages, namely: 1) pre-analysis, 2) material exploration and 3) treatment of results, inference and interpretation. With the support of the NVivo 11 Plus software, the collected data were tabulated (systematized) in order to facilitate the interpretation / understanding of the information, giving more validity and reliability to the analyses, interpretations and inferences of this study (Felisberto and Pardini, 2022). Continuous act, as pointed out by Zermiani *et al*. (2021), the collective subject discourse was elaborated.

In order to obtain the "Collective Subject Discourse", as Lefèvre and Lefèvre (2014) call it, the raw discourses were initially submitted to an analytical work through the selection of the main central ideas and/or anchors present in each of the individual speeches as well as in all of them together. In this scenario, it was possible to obtain everyone's speech as if it were one. The data of the discursive questions were tabulated from the reading of the researched individuals' speeches and the identification of a word, a concept or expression that revealed the essence of the meaning of each answer. Therefore, what was called "unit of analysis" was obtained.

Having found the appropriate expressions or words that denote the statements collected (units of analysis), the categories were established. In the categorization, the grouping of discourses was classificatory, an essential condition for the production of knowledge or understanding through the elimination of individual variability not relevant to the researched phenomenon. Then, what came into being was the name or title of the class, with no empirical discourses from then on. The category came to exist in its place (Lefèvre and Lefèvre, 2014). In this approach, the discourse of the collective subject provided the work with the following category: differences between police pursuit of vehicles in urban areas and on highways. The units of analysis that translated the category in question were: (a) speed of the fleeing vehicle; (b) characteristics of the roads; (c) onlookers – people on the roads; (d) risk of accidents; (e) siege and blockade; and (f) communication.

It is important to highlight that 65% of the respondents had over 5 (five) years in the road policing activity, so it appears that the population surveyed has sufficient knowledge to provide credibility and practical reliability for the conclusions resulting from the research. Additionally,

96% have already participated in vehicle pursuit incidents, so it is inferred that the discussions about the results of this work are of trust and legitimacy, since the knowledge extracted from the present study has its genesis in a population that already experienced, in practice, social control through the activity of police pursuit of vehicles, central object of this study.

Discussion

Police pursuit is the moment when, on their own initiative or by request, police officers undertake to accompany a suspected individual or perpetrator of a crime. In any case, it is certain that the flight of a citizen occurs for various reasons, and can only be verified, in most cases, after the suspect is approached. On the other hand, the duty to pursue is inherent to the police function, as it is a presumably legitimate, self-executable and imperative administrative act (Carlos, 2018).

Quantitative aspects

The Table 2 presents the frequency (individual and relative) of the main characteristics that emerged between police pursuits on highways and urban roads. It appears that the main difference is the speed of the vehicles – 28%. Furthermore, the 6 (six) main differences between the pursuit of vehicles in the urban area and the pursuit of vehicles on the highways, as an instrument of social control, make up 68% of all the differences mentioned.

Table 2. Main characteristics judged to be different between chasing vehicles in urban areas and on highways - keywords and frequency.
Source: Made by the authors from the research carried out.

N	KEYWORD	FREQUENCY	
		Absolute	Relative
1	Vehicle speed	77	28%
2	Characteristics of the roads	32	12%
3	Curious - people on the road	30	11%
4	Accident risk	20	7%
5	Siege and blockade	15	5%
6	Communication	13	5%

Qualitative aspects

The interpretation developed was based on the category “differences between police pursuit of vehicles in urban areas and on highways”, which emerged from the data analysis technique used. From this category, the units of analysis were: (a) speed of the fleeing vehicle; (b) characteristics of the roads; (c) onlookers – people on the roads; (d) risk of accidents; (e) siege and blockade; and (f) communication. Thus, the main differences between police pursuits

of vehicles that occur on highways and those that occur on urban roads, a tool of social control by the police, were revealed.

a) Runaway vehicle speed

The police pursuit begins in situations in which the driver of a certain vehicle does not respect the stop order issued by the police officer. In any case, it is essential that the police assess the cost-effectiveness of their conduct/decisions, as it is notorious that the lawbreaker on the run does not care about road safety and prints excessive speed in order to avoid legal responsibility. of his deviant act eventually performed. It was evidenced that on highways, when on the run, the speed that the lawbreaker prints is higher than when the escape occurs on urban roads, which is a factor that differentiates police pursuits in the aforementioned scenarios. The extracts below corroborate the assertion presented.

> [...] the average speeds developed on highways are higher compared to the urban perimeter [...] (Interview 113).

> [...] due to the high speed that runaway vehicles print on the highway is much higher than on the streets, most of the time our vehicles are forced to use speeds higher than those provided for in the corporation's manuals [...] (Interview 230).

> [...] vehicle speed on the highway is higher than in urban areas, the distance and duration of a pursuit may be greater because on the highway there are fewer obstacles for the vehicle to move forward [...] (Interview 319).

b) Characteristics of the roads

The characteristics of roadways in relation to urban roads was a converging point in the content of the speeches. Paving and layout emerged as differentiators between urban areas and the road environment, so that social control on highways is difficult compared to when it is exercised on urban roads. The following fragments, taken from the interviewees' speeches, represent the perception of the researched population in such a way that they consolidate the unit of analysis in question.

> [...] the issue of paving the highways, access to side roads, on the streets there is no way to leave the road quickly, making police action difficult, the characteristics of the road on the streets do not favor the marginal as much as on the highways. Knowing the terrain is essential (Interview 460).

> [...] geometry and layout of highways in relation to urban roads, on highways it is easier to escape without being seen, the road network is extensive, there are several escape routes; (Interview 4).

c) Curious – people on the road

When analyzing the discourses about people on the streets as a variable of police pursuits, it became evident that the presence of onlookers / people on the roads is a preponderant factor that differentiates police pursuits on urban roads from those that occur on highways, so that the

risk of accidents increases as the greater the presence of bystanders / people on the roads, the greater the risk of an accident occurring. It appears, therefore, that in vehicle chases that occur in urban areas, the number of bystanders / people on the road is greater when compared to vehicle chases on highways. The extracts below corroborate this assertion.

> [...] on the highways, the number of onlookers and popular people is quite low, on the streets, on the other hand, there are more onlookers, this increases the chance of an accident and makes pursuit more difficult [...] (Interview 413).

> [...] in urban areas, unlike highways, there is a greater number of pedestrians and vehicles circulating, as well as a greater number of streets and alleys, which makes it difficult to pursue safely (Interview 620).

> [...] in urban areas there is the issue of vehicle and people traffic, on the highway there would be a smaller flow of vehicles, usually without pedestrians, then the risk of accidents decreases a little (Interview 634).

d) Risk of accidents

The collective subject discourse indicates, as a differentiating variable for vehicle pursuits on highways and in urban areas, the greater probability of the occurrence of traffic accidents in the urban area. Social control in urban centers, through police pursuit of vehicles, suggests a higher risk of accidents than on highways. The statements below confirm this.

> In the city, the risks of collateral damage and casualties are higher than on the highways, due to terrain geography and other factors (Interview 414).

> In urban areas, there is greater difficulty due to the streets, alleys, alleys and corridors, bringing greater risks of accidents and pedestrians being run over (Interview 444).

> [...] on urban roads, the risk of accidents is more evident, unlike pursuits on highways (Interview 672).

e) Siege and blockade

Siege is the tactical action that consists of positioning a group of police officers and police vehicles in strategic locations in a given sector, aiming to surround escape routes for people and/or evading vehicles and, with that, make their interception or approach feasible. Blockade, on the other hand, is a tactical action, which is based on the positioning of police and vehicles at a specific strategic point, located in a certain sector, aiming to interrupt, obstruct, temporarily reduce or stop the flow of vehicles or people, allowing the interception or approach of the due diligence target (PMMG, 2011). It appears that the siege and blockade activity is evidenced as a differentiating variable in police pursuits of vehicles that occur on highways in relation to those that are triggered on urban roads. The collective subject discourse points out that on highways, siege and blockade are more difficult in relation to urban roads. The following excerpts corroborate this point.

> [...]greater difficulty in setting up a siege and blockade on highways, considering the rapid transit of vehicles (Interview 4).
>
> On highways, there is often no way to trigger a siege since there are no vehicle(s) ahead [...] (Interview 113).
>
> Roadblock siege is undoubtedly much more difficult to achieve [...] (Interview 311).

f) Communication

The collective subject discourse denotes that the communication process in vehicle chases is a differentiating variable when they occur on highways from those that occur on urban roads. The following fragments point out that there is greater difficulty in communication on highways, either due to the distance between police buildings or due to the scarcity of coverage of the telephone network or even the fragility of coverage of the police radio network.

> Difficulties in radio and telephone communication on highways are greater than in cities [...] (Interview 514).
>
> They are different, because each place has its peculiarity. Urban: ease of communication, support, heavy traffic, difficulty approaching in places where there are people who could be reached, etc. On the highway, the communication difficulty increases, because due to places without radio or cell signal [...] (Interview 715).
>
> On the highway there is no efficient means of communication, on the urban road it is different, there are more means of communication (Interview 720).

From the analyzes carried out, it is possible to infer, in particular, that there are significant differences between vehicle pursuits in urban areas and those that occur on highways. Thus, for the efficient exercise of social control, it is important for police organizations to build rules that regulate police pursuit of vehicles in such a way that they differentiate strategic and operational procedures when on highways and when in urban areas, punctuating the issues that cover the speed of the fleeing vehicle, the characteristics of the roads, the questions about people on the roads, the risks of accidents, the siege and blockade, and the inferences of communication.

Conclusions

The entire process of reform and improvement of the State's capabilities is based on the ideology of managerialism so that, in the exercise of social control, the police officer emerges as a manager and mediator of conflicts, based on legal provisions and guarantee of rights (Veiga and Souza, 2017). In any case, academic studies are essential to see the state of the art of the most diverse themes of the social sciences, specifically when it comes to studies on the subject of public security. From this perspective, the richness of the approach is extremely valuable, as it provides several reflexive subsidies for the manager of public security policy (Nóbrega Jr, 2018).

This study contributes, in particular, as a perspective for police organizations to improve

their respective doctrines that cover police pursuits of vehicles so that they are able to promote more efficient social control. Furthermore, it increases the literature on the object under study, contributing to discussions about social control in road and urban environments.

The results achieved in this work are not absolute or definitive, as they address dynamic issues that change in time and space, according to the dynamics and specificities of nature and human resources, so that the generalization of the results is not possible for all populations (Felisberto and Pardini, 2018). As a limitation, it is pointed out the fact that the field research was carried out only with military road police officers in Minas Gerais. In this context, future studies are suggested in which the researched population is composed of urban traffic police officers and/or police officers from other federal states and/or from other police organizations.

In any case, it is important to conclude, finally, that when new ideas and ways of acting start from well-defined rules, opportunism decreases, trust increases, and transaction costs are minimized, converging on an efficient institutional structure (Fuentelsaz *et al*., 2019). In this context, one last reflection is essential: if police organizations want to anticipate new problems and challenges, and respond to them efficiently, in such a way as to chart their own path to prosper in the future, they will need to think and act strategically (Bryson *et al*., 2014; Tomazevic *et al*., 2017; West and Blackman, 2015).

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

GYVŪNŲ KONFISKAVIMAS DĖL ŽIAURAUS ELGESIO SU JAIS

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DOI: 10.13165/PSPO-22-29-33

Anotacija. *Straipsnyje analizuojami gyvūnų konfiskavimo teisiniai pagrindai ir įgyvendinimo problematika žiauraus elgesio su gyvūnais bylose. Lietuvoje, lyginant 2021 m. – 2022 m. statistinius duomenis su 2019 m. - 2021 m., gyvūnų konfiskavimo atvejų išaugo beveik dvigubai. Tiek statistiniai duomenys, tiek žiniasklaidos ir gyvūnų gerovės organizacijų viešinami žiauraus elgesio su gyvūnais atvejai leidžia daryti prielaidą, kad žiaurus elgesys su gyvūnais ir poveikio priemonės – gyvūno konfiskavimo taikymas tokiose bylose yra itin aktuali problema. Problematiška šioje srityje yra tai, kad gyvūno konfiskavimo teisinis reglamentavimas yra netinkamai taikomas, atitinkamų institucijų pareigūnai neturi reikiamų kompetencijų, nėra suformuotos vieningos gyvūnų konfiskavimo praktikos, taip pat valstybėje nėra gyvūno konfiskavimo efektyvumą užtikrinančių priemonių. Straipsnyje taip pat diskutuojama dėl situacijų, kurioms esant taikomas ir galėtų būti taikomas gyvūnų konfiskavimas, pristatomas esamas gyvūno konfiskavimo teisinis reglamentavimas.*

Pagrindinės sąvokos: *Gyvūnų teisės, žiaurus elgesys su gyvūnais, teisinė atsakomybė, gyvūnų konfiskavimas.*

ĮVADAS

„Nuo tilto numestas šuo, kuris buvo sulipintas lipnia juosta [...]“, „Nužudytas katinas Pickus: nusikaltėliai nori išsisukti“, „Žiaurią egzekuciją žalčiui surengęs vyras sulaukė ne tik internautų pykčio, bet ir institucijų dėmesio“, „Moteris Lazdijų rajone rado nušautą savo šunį“, „[...] nuskandino škotų terjero veislės kalytę“, „Savo akimis matė, kaip Rokiškio rajono gyventojas sukapojo šunį [...]“ – visos šios antraštės pasirodė Lietuvos žiniasklaidoje dar 2021-2022 metais. Tai tik maža dalis išviešintų žiauraus elgesio su gyvūnais atvejų.

Gyvūnai, kaip ir žmonės, jaučia skausmą, yra sąmoningi, turi emocijas, individualius poreikius. Suprasdami tai, žmonės vis dažniau kalba apie gyvūnų teises, jų apsaugą bei tai užtikrinančius mechanizmus. Nors Lietuvos Respublikoje gyvūnų gerovės ir apsaugos klausimai yra reglamentuojami atskiru teisės aktu, tačiau apskritai nacionalinės teisės sistemoje gyvūnai yra laikomi nuosavybės objektu, todėl, iš esmės gyvūnas kaip nuosavybės objektas, mažai kuo skiriasi nuo bet kokio kito daikto, pavyzdžiui, stalo ar automobilio, kurį galima bet kada nusipirkti ar parduoti, naudotis siekiant gauti naudos.

Laikotarpiu nuo 2019 m. sausio 1 d. iki 2021 m. balandžio 4 d., administracinių nusižengimų bylose dėl žiauraus elgesio su gyvūnais, užfiksuota 11 gyvūnų konfiskavimo atvejų, o laikotarpiu – nuo 2021 m. birželio 10 d. iki 2022 m. kovo 1 d. – 18 atvejų, t. y. per metus konfiskavimo atvejų skaičius išaugo beveik dvigubai (Administracinių nusižengimų registro duomenys). Konfiskavimas suprantamas kaip bausmė, nuobauda ar kitokia poveikio priemonė, kuri skiriama už nusikalstamų veikų ar nusižengimų padarymą. Konfiskavimu siekiama nubausti už padarytą nusikalstamą veiką ar nusižengimą, atlyginti padarytą žalą,

atkurti buvusią būseną, užkirsti kelią pažeidimų darymui ateityje ir pan. Kiekvienu atveju, konfiskuojant atitinkamą objektą, įgyvendinami keli tikslai, o dažniausiai siekiama pasiekti baudžiamumo ir prevencinių tikslų. Pats turto konfiskavimas galėtų būti apibūdinamas, kaip neatlygintinas nuosavybės teisės objekto paėmimas valstybės nuosavybėn. Gyvūno konfiskavimas suprantamas taip pat, tačiau gyvūno konfiskavimo procedūros itin sudėtingos, kurių taikymui reikalingos specifinės žinios.

Gyvūnų konfiskavimo dėl žiauraus elgesio su jais temos aktualumą liudija ne tik žiniasklaidoje pasirodžiusios sukrečiančios antraštės ar didėjantis konfiskuojamų gyvūnų skaičius, bet ir dažna teisinio reguliavimo kaita, visuomenės įsitraukimas į nuolatines diskusijas gyvūnų gerovės klausimais, besikeičianti visuomenės nuostata neteisėtų veiksmų su gyvūnais atžvilgiu, todėl neatsitiktinai 2022-ieji metai paskirti Gyvūnų gerovės metais („Dėl 2022 metų paskelbimo Gyvūnų gerovės metais“ (LRS, Nr. 10895)). Visi nagrinėjamos temos aktualumą liudijantys elementai veda prie to paties diskusinio klausimo, ar tikrai yra tinkamas ir pakankamas gyvūnų gerovės ir apsaugos teisinis reglamentavimas? Ar taikant gyvūnų konfiskavimą pasiekiami numatyti poveikio priemonių tikslai ir, ar tai efektyvi taikoma priemonė?

Gyvūnų gerovės ir apsaugos užtikrinimo problemos dažnai nagrinėjamos užsienio valstybių mokslininkų darbuose, tačiau šis klausimas nėra sulaukęs Lietuvos teisės mokslininkų dėmesio. Gyvūnų gerovės klausimais dažniausiai viešai pasisako įvairių nevyriausybinių organizacijų atstovai (VšĮ „Gyvūnų gerovės iniciatyvos“, VšĮ „Gyvūnų apsaugos teisių organizacija“ ir pan.), tuo tarpu iš mokslinės perspektyvos gyvūnų gerovės klausimai dažniausiai tirti veterinarijos ir biomedicinos mokslininkų (J. Kučinskienės, V. Ribikausko, B. Bakučio, S. Biziulevičiaus ir kt). Dalis mokslininkų nagrinėjo gyvūnų gerovės klausimą filosofijos ir etikos mokslų bendrame kontekste (pavyzdžiui, K. Akošas „Ar gyvūnai mąsto?“, K. V. Trainys „Ar gyvūnai protauja?“ (2000 m.). Tačiau teisiniu požiūriu gyvūnų gerovės užtikrinimo klausimai, teisinės atsakomybės už žiaurų elgesį su gyvūnais klausimai Lietuvoje iki šiol nuosekliai nebuvo tyrinėti, nors teisinis reguliavimas šioje srityje per pastaruosius 30 metų keitėsi ženkliai.

Šio straipsnio tikslas – išanalizuoti gyvūnų konfiskavimo teisinius pagrindus ir įgyvendinimo problemas.

Rengiant straipsnį buvo analizuojami nacionaliniai ir užsienio šalių teisės aktai, susiję su gyvūnų gerovės užtikrinimu, atsakomybės už žiaurų elgesį su gyvūnais nustatymu bei poveikio priemonių taikymu. Siekiant atskleisti gyvūnų konfiskavimo pagrindus bei turinį taip pat buvo analizuota mokslinė literatūra. Siekiant išsiaiškinti praktikoje kylančias problemas gyvūnų gerovės užtikrinimo srityje, buvo atliktas empirinis tyrimas – ekspertų interviu. Teismų praktikos ir gautų duomenų iš institucijų analizė leido atskleisti dažniausiai praktikoje pasitaikančias problemas, susijusias su poveikio priemonės – gyvūno konfiskavimo taikymu žiauraus elgesio su gyvūnais atvejais.

Situacijos, kurioms esant, taikomas gyvūnų konfiskavimas

Poveikio priemonė – gyvūnų konfiskavimas gali būti skiriama ir administracinių nusižengimų ir baudžiamosiose bylose. Pagrindai, kada gali būti skiriamas gyvūnų konfiskavimas, įtvirtinti Lietuvos Respublikos administracinių nusižengimų kodekse (toliau – LR ANK) ir Lietuvos Respublikos baudžiamajame kodekse (toliau – LR BK).

LR BK 310 straipsnio 1 dalyje įtvirtinta, kad *„tas, kas žiauriai elgėsi su gyvūnu, jį kankino, jeigu dėl to gyvūnas žuvo arba buvo suluošintas, baudžiamas viešaisiais darbais arba bauda, arba areštu, arba laisvės atėmimu iki vienerių metų“*. Kaip ir dėl visų nusikalstamų

veikų, taip ir dėl šios, teismas gali paskirti baudžiamojo poveikio priemonę – turto konfiskavimą, o šiuo atveju, gyvūno konfiskavimą. Taigi, pirmasis pagrindas, dėl kurio gyvūnas gali būti konfiskuojamas, yra nusikalstama veika, t. y. žiaurus elgesys su gyvūnu, jo kankinimas, jeigu dėl to gyvūnas žuvo arba buvo suluošintas.

LR ANK 346 straipsnio 20 dalyje numatyta, kad *„už šio straipsnio 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 dalyse numatytus administracinius nusižengimus gali būti skiriamas gyvūnų konfiskavimas. Už šio straipsnio 11, 12, 13, 14, 15, 16, 17, 18, 19 dalyse numatytus administracinius nusižengimus privaloma skirti gyvūnų konfiskavimą“*. Visų pirma, aktualu tai, kad vienais atvejais gyvūno konfiskavimas yra privalomas, o kitais atvejais, ši priemonė gali būti ir neskiriama. Už įvairius Lietuvos Respublikos gyvūnų gerovės ir apsaugos įstatymo (toliau – GGAĮ) nuostatų pažeidimus poveikio priemonė – gyvūno konfiskavimas nėra privaloma (tik galima), išskyrus kovinių šunų, kovinių šunų mišrūnų, pavojingų šunų mišrūnų įvežimą į Lietuvos Respubliką, įsigijimą, veisimą, naudojimą, prekybą jais ar kitokį jų perdavimą (LR ANK 346 straipsnio 11-15 dalys) ir esant žiauraus elgesio su gyvūnu, gyvūno kankinimo atveju (LR ANK 346 straipsnio16-19 dalys). Žiauraus elgesio su gyvūnu ar gyvūno kankinimo atveju, imperatyvas konfiskuoti gyvūną įsigaliojo 2021 m. birželio 10 d., o iki to laiko šios priemonės skyrimas priklausė nuo atitinkamų institucijų pareigūnų valios.

„Gyvūnų veisimas nesilaikant teisės aktuose nustatytų reikalavimų ir (ar) sukeliantis žalingas pasekmes gyvūnų sveikatai ir gerovei“, „gyvūnų mokymas ir dresavimas, sukeliant jiems skausmą ir baimę, naudojant dirbtinai žalojančias ar skausmą, kančią sukeliančias priemones“, „veterinarinės procedūros, siekiant pakeisti gyvūnų išvaizdą ar gyvūnų fiziologines funkcijas (ausų, barzdelių, skiauterių, snapų, uodegų trumpinimas, balso stygų, ragų, nagų, sparnų, kanopų ir ilčių pažeidimas ar pašalinimas, plunksnų išpešimas ar pašalinimas kitu būdu ir kt.), pažeidžiant gyvūnų kūno dalių, minkštųjų audinių ar kaulų struktūrą, išskyrus gyvūnų kastravimą ir kitus teisės aktuose numatytus atvejus arba veterinarines procedūras, atliekamas veterinarijos gydytojo sprendimu dėl gyvūno sveikatos“ – tai tik keletas veiksmų, laikytinų žiauriu elgesiu su gyvūnu ir jų kankinimu pagal GGAĮ 4 straipsnio 2 dalį. Tokių veiksmų sąrašas – nebaigtinis, įstatymo leidėjas neatsitiktinai paskutiniame punkte įtvirtinto nuostatą, kad ir kiti veiksmai, sukeliantys gyvūnų žūtį, skausmą, kančią, pavojų gyvūnų sveikatai ar gyvybei, išskyrus teisės aktuose nustatytus atvejus, gali būti laikomi žiauriu elgesiu su gyvūnu ir jo kankinimu. Kadangi, žiauraus elgesio su gyvūnais sąvoka yra kultūriškai determinuota, skirtinguose laikotarpiuose bei žmonių grupėse suprantama skirtingai, taip pat ir gyvūno konfiskavimas, kaip poveikio priemonė, gali būti taikoma labai įvairiais atvejais, todėl aktualu apžvelgti situacijas, kuomet ši priemonė turėtų arba galėtų būti taikytina, nors teisės aktuose tai nėra reglamentuojama.

Kai gyvūno laikytojas neturi pakankamai lėšų būtinų veterinarinių paslaugų suteikimui, kai jis dėl sveikatos būklės negali tinkamai rūpintis gyvūnais ir (ar) būti atsakingu už jų gerovę, ar gyvūno laikytojo ilgos darbo valandos, per kurias gyvūnas yra nevedžiojamas, laikomas uždarytas namuose, nors atrodo, kad gyvūnas yra mylimas ir prižiūrimas, ar tokiose situacijose nėra pažeidžiamos gyvūno teisės? Net nepastebima, kaip iš „didelės meilės“ gyvūnams yra peržengiama riba ir tai tampa prievarta gyvūnui ar netgi žiauriu elgesiu su juo, jo kankinimu, o asmuo, laikydamas gyvūną, nesupranta savo netinkamų veiksmų ir susiklosčiusią padėtį grindžia tik subjektyviu situacijos suvokimu ir įsitikinimu, kad gyvūnu jis rūpinosi ir jį prižiūrėjo tinkamai (Kauno apygardos teismo nutartis Nr. AN2-71-966/2019). GGAĮ 20 straipsnio 6 dalyje numatyta, kad „kai gyvūno augintinio savininkas nebegali daugiau suteikti gyvūnui augintiniui reikiamos priežiūros, jis privalo perduoti gyvūną augintinį naujam savininkui (įskaitant perdavimą gyvūnų globėjui), kuris privalės prižiūrėti gyvūną augintinį pagal šio įstatymo ir kitų teisės aktų reikalavimus. Gyvūno augintinio savininkas, nebegalintis

suteikti gyvūnui auginiui reikiamos priežiūros ir išnaudojęs visas galimybes perduoti gyvūną auginį kitam savininkui ir išsaugoti jo gyvybę, gali kreiptis į veterinarijos gydytoją dėl nugaišinimo“. Nors įtvirtinta norma, įpareigojanti gyvūno savininką perduoti naujam savininkui, kai jis nebegali jo prižiūrėti, realiose situacijose šis įpareigojimas ne visuomet vykdomas: gyvūnų savininkai išvyksta palikdami gyvūnus, paleidžia gyvūnus miške ir pan. Be to, to paties įstatymo 20 straipsnio 7 dalyje įtvirtinta, kad „draudžiama laikyti gyvūnus asmenims, įstatymų nustatyta tvarka pripažintiems neveiksniais šioje srityje. Asmenys, kurių veiksnumas šioje srityje apribotas, gali įsigyti, laikyti gyvūnus tik turėdami rūpintojo sutikimą“, tačiau, ar tai iš tikrųjų pritaikoma praktikoje?

Teisinis reguliavimas, numatantis gyvūno konfiskavimą

GGAĮ 4 straipsnio 4 dalis numato, kad „iš gyvūnų savininkų ar laikytojų, kurie kankina gyvūnus, žiauriai elgiasi su jais, Lietuvos Respublikos administracinių nusižengimų kodekso ar Lietuvos Respublikos baudžiamojo kodekso nustatyta tvarka gyvūnai gali būti konfiskuojami“ (LR Gyvūnų gerovės ir apsaugos įstatymas 1997 (Valstybės žinios Nr. 108-2728)). Kaip minėta, nuo 2021 m. birželio 10 d. pagal LR ANK 346 str. 20, už žiaurų elgesį su gyvūnais, gyvūno kankinimą, gyvūno konfiskavimas yra privalomas.

Turto konfiskavimo bendrosios taisyklės reglamentuojamos tiek LR ANK 29 straipsnyje, tiek LR BK 72 straipsnyje. Kadangi, gyvūnas remiantis teisės aktais laikomas turtu ar daiktu, jam taikomos minėtų straipsnių nuostatos. Priešingai nei LR BK 72 straipsnyje, LR ANK 29 straipsnyje įtvirtinta, kad ši poveikio priemonė gali būti skiriama tik tuo atveju, kai tai numatyta specialiosios dalies straipsnyje, nustatančiame atsakomybę už asmens padarytą veiką. Tai puikiai matyti ir LR ANK 346 straipsnio 20 dalyje, kurioje atskirai įtvirtintas poveikio priemonės skyrimas už tam tikrus nusižengimus.

Turto, kuris buvo administracinio nusižengimo padarymo įrankis, priemonė, dalykas ar įstatymų uždraustos veikos rezultatas, o šiuo atveju, gyvūno, konfiskavimą vykdo „institucija, kurios pareigūnas atliko administracinio nusižengimo tyrimą, o kai nutarimas priimtas ne teismo tvarka, – institucija, kurios pareigūnas priėmė nutarimą“. Dėl LR ANK 346 straipsnio 16-19 dalyse numatytų administracinių nusižengimų teiseną pradeda, tyrimą atlieka ir protokolus surašo šių institucijų pareigūnai:

1. Valstybinės maisto ir veterinarijos tarnybos (toliau – VMVT)(LR ANK 589 str. 1 d. 30 p.),
2. Aplinkos apsaugos valstybinės kontrolės (toliau – AAVK) (LR ANK 589 str. 1 d. 31 p.),
3. Policijos (LR ANK 589 str. 1 d. 49 p.),
4. Savivaldybių administracijų (LR ANK 589 str. 1 d. 82 p.).

Gyvūno konfiskavimas baudžiamosiose bylose yra skiriamas teismo, kuris skirdamas šią baudžiamojo poveikio priemonę privalo laikytis LR BK 9 skyriuje numatytų reikalavimų.

Kaip įtvirtinta LR ANK 688 straipsnyje, nutarimas konfiskuoti daiktą vykdomas paimant jį ir priverstinai neatlygintinai perduodant tą daiktą valstybės nuosavybėn. Kadangi, konfiskuotas daiktas atitenka valstybės nuosavybėn, šį daiktą reikia apskaityti. Nusikalstamų veikų ar administracinių nusižengimų, dėl kurių skiriamas gyvūno konfiskavimas, aukomis gali būti tiek gyvūnai auginiai, tiek ūkiniai gyvūnai bei laukiniai gyvūnai. Laukinių gyvūnų konfiskavimo procedūros vykdymas (apskaitymas, realizavimas) yra skirtingas nei ūkinių gyvūnų ir gyvūnų auginių.

2004 m. Lietuvos Respublikos Vyriausybės nutarimu Nr. 634 patvirtintų Bešeimininkio, konfiskuoto, valstybės paveldėto, valstybei perduoto turto, daiktinių įrodymų, lobių ir radinių

perdavimo, apskaitymo, saugojimo, realizavimo, grąžinimo ir pripažinimo atliekomis taisyklėse atskiru straipsniu įtvirtinti turto apskaitymo reikalavimai, kai yra konfiskuojami laukiniai gyvūnai. „Konfiskuoti ar kitaip valstybei perduotini gyvi ar negyvi pagal Lietuvos Respublikos arba Europos Sąjungos teisės aktus ar tarptautinius susitarimus saugomų rūšių laukiniai augalai ar gyvūnai, jų dalys ar gaminiai iš jų (toliau – gyvi ar negyvi laukiniai augalai ar gyvūnai, jų dalys ar gaminiai iš jų), taip pat konfiskuoti ar kitaip valstybei perduotini ūkiniai gyvūnai ir gyvūnai auginiai, naminiai gyvūnai į mokesčių inspekcijos apskaitą neįtraukiami“. Konfiskuotus gyvus ar negyvus laukinius gyvūnus, jų dalis ar gaminius iš jų (toliau – laukiniai gyvūnai) privaloma įtraukti į valstybės ar savivaldybės, kurios žinioje jie yra, apskaitą. Valstybės ar savivaldybės institucija, kurios žinioje yra konfiskuoti negyvi laukiniai gyvūnai, jų dalys ar gaminiai iš jų, „per 30 dienų nuo šių daiktų patekimo jų žinion privalo kreiptis į Lietuvos Respublikos aplinkos ministeriją (ar jos įgaliotą instituciją) dėl šių daiktų laikymo, tolesnio perdavimo sąlygų“, o dėl gyvų – nedelsdama, t. y. ne vėliau kaip kitą darbo dieną. Aplinkos ministerija (ar jos įgaliota institucija), atsakydama į tokį paklausimą, per 30 dienų, arba kitu atveju – nedelsdama, praneša, kur ir kokiomis sąlygomis privaloma konfiskuotą turtą laikyti, kada, kur ir kokiomis sąlygomis perduoti arba sunaikinti teisės aktų nustatyta tvarka. Gyvų laukinių gyvūnų saugų perkėlimą į tinkamą ir ministerijos nurodytą jiems laikyti vietą, arba sunaikinimą savo lėšomis organizuoja valstybės ar savivaldybės institucija, kurios žinioje konfiskuoti gyvūnai yra („Dėl Bešeimininkio, konfiskuoto, valstybės paveldėto, valstybei perduoto turto, daiktinių įrodymų, lobių ir radinių perdavimo, apskaitymo, saugojimo, realizavimo, grąžinimo ir pripažinimo atliekomis taisyklių patvirtinimo“ (*Žin*. 2004, Nr. 86-3119 su vėlesniais pakeitimais).

Konfiskuotų ūkinių gyvūnų ar gyvūnų augintinių perėmimo, įtraukimo į apskaitą, įkainojimo, saugojimo (laikymo), realizavimo, perdavimo ir nugaišinimo tvarką nustato 2021 m. Lietuvos Respublikos žemės ūkio ministro įsakymu Nr. 3D-284 patvirtintas Konfiskuotų ar kitaip valstybei perduotų ūkinių gyvūnų ir gyvūnų augintinių perėmimo, įtraukimo į apskaitą, įkainojimo, saugojimo, realizavimo ir nugaišinimo tvarkos aprašas („Dėl Konfiskuotų ar kitaip valstybei perduotų ūkinių gyvūnų ir gyvūnų augintinių perėmimo, įtraukimo į apskaitą, įkainojimo ,saugojimo, realizavimo ir nugaišinimo tvarkos aprašo patvirtinimo“(TAR, 2021-04-28, Nr. 8809). Dėl konfiskuotų gyvūnų augintinių ir ūkinių gyvūnų įtraukimo į apskaitą, įkainojimo, saugojimo, realizavimo, perdavimo kitiems, nugaišinimo atsakinga VMVT. Institucija, konfiskavusi gyvūną, turi apie tai pranešti VMVT, o ši organizuoti gyvūno perėmimą. Konfiskuoto gyvūno perėmimas užfiksuojamas „Gyvūno perėmimo aktu“, kuriuo apibūdinamas perimtas gyvūnas. Visa informacija apie konfiskuotą gyvūną įtraukiama į Perimtų gyvūnų apskaitos žurnalą, kuriame ir renkami visi duomenys apie gyvūną: nuo įtraukimo į apskaitą iki realizavimo ar nugaišinimo. Taigi, VMVT perėmus gyvūną ir surašius Gyvūno perėmimo aktą, laikoma, kad gyvūnas yra jos žinioje iki realizavimo ar nugaišinimo.

Kita proceso dalis – konfiskuoto gyvūno realizavimas. Apskritai, turto realizavimas suprantamas, kaip „turto pardavimas konkurse, įskaitant elektroninį konkursą, elektroninėje parduotuvėje, elektroniniame aukcione, pardavimas per įmones, su kuriomis Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (toliau – mokesčių inspekcija) konkurso būdu yra sudariusi turto realizavimo sutartis, perdavimas patikėjimo teise ar realizavimas kita įstatymų nustatyta tvarka ir būdais“ („Dėl Konfiskuotų ar kitaip valstybei perduotų ūkinių gyvūnų ir gyvūnų augintinių perėmimo, įtraukimo į apskaitą, įkainojimo ,saugojimo, realizavimo ir nugaišinimo tvarkos aprašo patvirtinimo“(TAR, 2021-04-28, Nr. 8809).

Dėl konfiskuotų laukinių gyvūnų realizavimo klausimo: kaip ar kokiomis sąlygomis tą gyvūną perduoti, laikyti ar išvis sunaikinti, sprendžia Lietuvos Respublikos aplinkos

ministerija. Konfiskuoti laukiniai gyvūnai gali būti perduodami mokslo ir mokymo institucijoms ar privalomai sunaikinami (dėl užkrečiamų ligų, ar jeigu jie yra sugedę, mažaverčiai ir pan.).

Toliau kalbant apie konfiskuotų ūkinių gyvūnų ir gyvūnų augintinių realizavimo tvarką, svarbu atkreipti dėmesį, kad prieš realizavimą, perdavimą, saugojimą ar nugaišinimą yra atliekamas konfiskuoto gyvūno tinkamumo realizuoti įvertinimas ir įkainojimas. Ne vėliau kaip per 5 darbo dienas nuo gyvūno perėmimo dienos, VMVT įvertina gyvūno tinkamumą realizuoti ir priima sprendimą dėl konfiskuoto gyvūno tinkamumo realizuoti. Institucija, priimdama sprendimą, vadovaujasi registrų, informacinių sistemų duomenimis, teisės aktų reikalavimais. Vertindama konfiskuoto gyvūno tinkamumą realizuoti parduodant, taip pat, turi atsižvelgti į gyvūno vertę eurais, sveikatos būklę, amžių, prekinę išvaizdą, paklausą, realias pardavimo galimybes ir kitas aplinkybes, dėl kurių gyvūnas galėtų būti netinkamas realizuoti parduodant. Sprendžiant klausimą dėl kelių gyvūnų tinkamumo realizuoti, vertinamas kiekvienas gyvūnas atskirai, išskyrus atvejus, kai konfiskuojama gyvūnų vada, t. y. motina ir nuo jos priklausantys jaunikliai, kurie vertinami ir realizuojami kartu. Poįstatyminiame akte yra išvardinti atvejai, kuomet konfiskuotas gyvūnas pripažįstamas netinkamu realizuoti, pavyzdžiui, šuo ar katė, neturintys kilmę patvirtinančių dokumentų, gyvūnas paimamas iš teritorijos, kurioje nustatyta tos rūšies gyvūnams ypač pavojinga gyvūnų užkrečiamoji liga. Pripažįstant, kad konfiskuotas gyvūnas netinkamas realizuoti parduodant, nurodoma, ar gyvūną galima neatlygintinai perduoti kito asmens nuosavybėn ar gyvūnas turi būti nugaišinamas. Jeigu konfiskuotas gyvūnas pripažįstamas tinkamu realizuoti parduodant, VMVT atlieka kainų apklausą arba pasirenka kitą pardavimo būdą. Konfiskuoto gyvūno nepardavimo atveju, kaip ir netinkamo realizuoti parduodant, gyvūnas gali būti perduodamas kito asmens nuosavybėn (šiuo atveju pasirašomas Gyvūno perdavimo-priėmimo aktas). Konfiskuotas gyvūnas gali būti perduodamas gyvūnų globėjams, turintiems tinkamas sąlygas tiems gyvūnams laikyti, arba kitiems gyvūnų laikytojams, galintiems užtikrinti tinkamas sąlygas ir sutinka perimti tokius gyvūnus. Perduodant konfiskuotą gyvūną, VMVT gali nurodyti tą gyvūną tam tikrą laiką karantinuoti, gydyti, atlikti užkrečiamųjų ligų tyrimus ir veterinarines paslaugas, pavyzdžiui, kastruoti. Akcentuotina tai, kad jeigu perimtus gyvūnus būtina laikyti nuo perėmimo iki jų realizavimo, VMVT užtikrina, kad su gyvūnų globėjais ar laikytojais būtų sudaromos ekonomiškai pagrįstos laikino gyvūno laikymo sutartys, o t. y., kad teikiamų gyvūnų laikino laikymo paslaugų kaina būtų nustatyta vadovaujantis protingumo kriterijais ir atitiktų rinkoje teikiamų analogiškų laikino gyvūnų laikymo paslaugų kainą. Pabrėžtina ir tai, kad VMVT, atsižvelgdama į perimamų gyvūnų sveikatos būklę ar siekdama išvengti bereikalingo perimamų gyvūnų streso dėl perkėlimo į kitą laikymo vietą, ar galimai papildomų išlaidų dėl perimamų gyvūnų perkėlimo į kitas laikino laikymo vietas, gali palikti perimamą gyvūną toliau laikyti asmeniui, laikinai laikančiam gyvūną, neatsižvelgdama į tai, kad kitas asmuo gali suteikti laikino laikymo paslaugą žemesne kaina“ („Dėl Konfiskuotų ar kitaip valstybei perduotų ūkinių gyvūnų ir gyvūnų augintinių perėmimo, įtraukimo į apskaitą, įkainojimo ,saugojimo, realizavimo ir nugaišinimo tvarkos aprašo patvirtinimo“(TAR, 2021-04-28, Nr. 8809). O ne ką mažiau svarbi nuostata ta, kad VMVT, vadovaudamasi GGAĮ 20 str. 7 d. ir realizuodama konfiskuotus gyvūnus, turi įvertinti, ar įsigyjantiems asmenims leidžiama juos laikyti. „Rekomenduojama konfiskuotų ar valstybei perduotų gyvūnų neleisti įsigyti asmenims, kurie per paskutinius metus traukti administracinėn ar baudžiamojon atsakomybėn už žiaurų elgesį su gyvūnais ir gyvūnų kankinimą, asmenims, kurie atitinka bent vieną Lietuvos Respublikos gyvūnų gerovės ir apsaugos įstatymo 8 straipsnio 4 dalies 1–4 papunktyje nurodytą kriterijų, taip pat asmenims ar jų šeimos nariams, iš kurių šie gyvūnai buvo konfiskuoti“ („Dėl Konfiskuotų ar kitaip valstybei perduotų ūkinių gyvūnų ir gyvūnų augintinių perėmimo, įtraukimo į apskaitą, įkainojimo

‚saugojimo, realizavimo ir nugaišinimo tvarkos aprašo patvirtinimo“(TAR, 2021-04-28, Nr. 8809).

Visa gyvūnų konfiskavimo tvarka numatyta tuo atveju, kai jau yra priimtas sprendimas konfiskuoti gyvūną, tačiau, kaip žinoma, ne visada užfiksavus žiauraus elgesio su gyvūnu ar kankinimo atvejį, toks sprendimas iškart priimamas, tad kyla klausimas, kokie reikalavimai taikomi iki sprendimo gyvūną konfiskuoti priėmimo?

Remiantis GGAĮ 4 straipsnio 5 dalimi „kol bus priimtas ir įsiteisės teismo sprendimas arba bylą ne teismo tvarka nagrinėjančios institucijos (pareigūno) sprendimas dėl gyvūno konfiskavimo, savivaldybės administracijos direktoriaus įgaliotas asmuo, dalyvaujant Valstybinės maisto ir veterinarijos tarnybos veterinarijos gydytojui ir policijos pareigūnui, jeigu būtina užtikrinti viešąją tvarką, turi paimti tokį gyvūną ir perduoti jį gyvūnų globėjui ar kitam paimtą gyvūną galinčiam laikinai laikyti gyvūnų laikytojui arba kitokiu būdu užtikrinti tinkamą gyvūno laikymą“. Jeigu paimamas gyvūnas yra suluošintas ar sunkiai sergantis, siekiant nutraukti jo kančias, gali būti priimamas sprendimas jį nugaišinti. Asmuo, kuris žiauriai elgėsi su gyvūnu, jį kankino, privalo atlyginti visas gyvūno gydymo, laikino laikymo, nugaišinimo ar gaišenos tvarkymo išlaidas. Tai vienintelė teisės norma, reglamentuojanti institucijų pareigas, finansus ir kt. esant situacijai, kuomet dar nepriimtas atitinkamos institucijos sprendimas konfiskuoti gyvūną. Atlikus teisės aktų analizę, paaiškėjo, kad teisinis reguliavimas šioje srityje yra neišsamus, nenuoseklus, todėl egzistuojantis teisinis reguliavimas suponuoja naujų problemų atsiradimą, kadangi dažnu atveju institucijos nežino kaip elgtis, kas turėtų finansuoti su tokiu atveju susijusias išlaidas ir pan.

Paminėtina ir tai, kad 2020 m. rugsėjo 14 d. buvo patvirtintas Lietuvos Generalinio policijos komisaro ir Valstybinės maisto ir veterinarijos tarnybos direktoriaus įsakymas „Dėl reagavimo į pranešimus apie žiaurų elgesį su gyvūnais ir jų kankinimą algoritmo patvirtinimo“ , kuriuo numatyti aiškūs bendri veiksmų algoritmai, gavus pranešimą apie įtariamą žiaurų elgesį su gyvūnais (https://vmvt.lt/naujienos/grieztesnei-gyvunu-veisimo-ir-prekybos-kontrolei-koordinuoti-vmvt-ir-policijos-veiksmai).

Esamas teisinis reglamentavimas yra neišsamus ir neaiškus. Tvarka, kurios laikytis reikia po sprendimo konfiskuoti gyvūną priėmimo, yra gan aiški, reglamentuota poįstatyminiais ir kitais teisės aktais, tačiau procesas iki sprendimo konfiskuoti priėmimo reglamentuojamas tik viena norma. Iš egzistuojančio teisinio reglamentavimo analizės matyti, kad toks gyvūno konfiskavimo teisinis reguliavimas nėra pakankamas, kad jį būtų galima laikyti efektyvia priemone kovojant su žiauraus elgesio su gyvūnais nusižengimais ar nusikalstamomis veikomis bei, kad šios priemonės taikymu pasiekiami prevenciniai tikslai. Žinoma, pabrėžtina ir tai, kad daugėjant gyvūnų konfiskavimo atvejų, įstatyminė bazė yra nuolat kuriama ir tobulinama, įteisinami kompetentingų institucijų bendradarbiavimo ir reagavimo į žiauraus elgesio su gyvūnais ar jų kankinimo atvejus.

Gyvūno konfiskavimo taikymo praktikoje problematika

Išanalizavus teisinio reglamentavimo ypatumus svarbu išgryninti gyvūnų konfiskavimo taikymo praktikoje kylančias problemas.

Pasitaiko taip, kad, asmuo, padaręs administracinį nusižengimą, numatytą LR ANK 346 str. 16-19 d., ar nusikalstamą veiką, numatytą LR BK 310 str., lieka nenubaustas. Viena iš pagrindinių priežasčių, kodėl taip nutinka, yra tai, kad nusižengimai ar nusikalstamos veikos dėl žiauraus elgesio su gyvūnais, tampa dideliu iššūkiu institucijoms dėl įrodinėjimo proceso sudėtingumo. Įrodymų trūkumas, pareigūnų kompetencijų stoka, įrodymų dingimas, gyvūno savininko nustatymo problematika, gyvūno sveikatingumo apžiūra, kaltinamasis susitaiko su

nukentėjusiuoju – keletas įvardijamų veiksnių, turinčių didelę įtaką bylos baigčiai. Pavyzdžiui, viena iš žiniasklaidoje pasirodžiusių situacijų – Kaune buvo išmesti iš mašinos kačiukai, automobilio valstybinis numeris užfiksuotas, tačiau pritrūko įrodymų, kuriuose užfiksuotas pats kačiukų išmetimo faktas (Klaipėda.diena, „Internete liejasi apmaudas: judrioje Kauno gatvėje kačiukus sutraiškė mašinos“, https://klaipeda.diena.lt/naujienos/kaunas/nusikaltimai-ir-nelaimes/internaute-liejasi-apmaudas-ant-judraus-kelio-ismesti-kaciukai-915506).

Viena iš labiausiai akcentuojamų problemų, su kuria susiduriama šiame procese, tai – nepakankamų žinių ir tinkamų įgūdžių stoka tarp pirmųjų pagalbos teikėjų, t. y. policijos pareigūnų, savivaldybės administracijos, VMVT pareigūnų ar valstybinės aplinkos apsaugos kontrolės pareigūnų. Būtent įrodymų nesurinkimas arba įrodymų neužfiksavimas, institucijų pareigūnų nežinojimas kaip jie turi atlikti atitinkamus veiksmus, gali labai apsunkinti procesą. Praktikoje pasitaiko tokių situacijų, pavyzdžiui – pildant gyvūnų patikrinimo aktą, VMVT pareigūnas nurodo skaičių – 50 šunų, tačiau neidentifikuoja gyvūno lyties, o vėliau, jeigu šie gyvūnai nebuvo laikinai paimti, jiems dingus nebelieka įrodymų, kad buvo atlikta apžiūra (Interviu su VšĮ „Lietuvos gyvūnų apsaugos ir teisių organizacija“ vadove). Panašios situacijos matomos ir iš teismų praktikos. *„Vilniaus rajono savivaldybės Viešosios tvarkos skyriaus vyr. specialisto 2020 m. lapkričio 24 d. nutarimu Nr. A33(13)-89 atsisakyta pradėti D. T. administracinio nusižengimo teiseną pagal ANK 346 straipsnį.“* (Vilniaus apygardos teismo nutartis Nr. AN2-104-932/2021). Šioje situacijoje teismas pasisakė, *„jog šiuo atveju nutarimas atsisakyti pradėti administracinio nusižengimo teiseną buvo priimtas neatlikus išsamaus pareiškėjos pranešime nurodytų aplinkybių tyrimo“*, todėl nutarė panaikinti pirmos instancijos sprendimą. Kitas atvejis – *„Nepaisant moters liudijimo ir į šuns kaklą įaugusios grandinės nuotraukų, atsakingosios institucijos žiauraus elgesio su gyvūnais fakto nenustatė, o tarp tyrimo nutraukimą lėmusių argumentų – veterinaro išvada, kurioje konstatuojama, jog jo (veterinaro) praktikoje į kaklą įaugusios grandinės yra dažnas atvejis ir tai yra ne nepriežiūra ar žiaurus elgesys su gyvūnais, o pačių šunų polinkis tai plonėti, tai storėti, dėl ko grandinės ir įauga...“*(Delfi, Gyvūnų globėjus sukrėtusi istorija: kiemsargio kakle – įaugusi dviguba grandinė, https://www.delfi.lt/letena/gyvunu-teises/gyvunu-globejus-sukretusi-istorija-kiemsargio-kakle-iaugusi-dviguba-grandine.d?id=86597689).

Nevieningą teisės aktų normų taikymo praktiką iliustruoja ši byla – „Pažymėtina, jog Valstybinės maisto ir veterinarijos tarnybos pozicija dėl šio pažeidimo yra nenuosekli – nutarime institucija ANK 346 straipsnio 16 dalyje padarytą nusižengimą grindžia Lietuvos Respublikos gyvūnų gerovės ir apsaugos įstatymo 4 straipsnio 2 dalies 2, 9, 15 ir 17 punktų pažeidimais bei detaliai apie juos pasisako. Tuo tarpu skunde, institucija pasisako tik dėl šio įstatymo 4 straipsnio 2 dalies 2, 15 ir 17 punktų pažeidimų, o 9 punkte padaryto pažeidimo nedetalizuoja.“ (Kauno apygardos teismo nutartis Nr. AN2-57-919/2022). Kitas puikiai esamą situaciją iliustruojantis atvejis, kuomet 2020 m. liepos pradžioje socialiniame tinklapyje „Facebook“ viešai nuaidėjo piliečio nusiskundimas autobuso vairuotojo veiksmais, kai gandras atsitrenkė ir įstrigo autobuso korpuse, o vėliau buvo paliktas leisgyvis. Dėl šio įvykio policija atsisakė pradėti ikiteisminį tyrimą, kadangi, nors ir autobuso vairuotojo elgesys nebuvo tinkamas, tačiau žiaurus elgesys su gyvūnais yra tyčinis ir sąmoningas nusižengimas, kai gyvūno savininkas ar kitas asmuo suvokia, jog jo veiksmai gyvūnui suteiks skausmą ir kančią ir sąmoningai to siekia, ko nagrinėjamu atveju nenustatyta. Vis dėlto VšĮ „Gyvūnų gerovės iniciatyvos“ apskundus tokį nutarimą, tyrimas buvo pradėtas. (GGI, GGI apskundus nutarimą tyrimas dėl autobusus partrenkto vis tik buvo pradėtas, https://ggi.lt/ggi-apskundus-nutarima-tyrimas-del-autobusu-partrenkto-gandro-vis-tik-buvo-pradetas/).

Didelė problema ir tai, kad nei vienos iš minėtų institucijų - pirmųjų pagalbos teikėjų, pareigūnas nėra praktikuojantis veterinarijos gydytojas, kuris galėtų patikrinti gyvūno

sveikatingumą. Nevyriausybinių organizacijų atstovų teigimu, žiauraus elgesio su gyvūnu pagrindas yra tai, kad gyvūno laikymo sąlygos sutrikdė gyvūno sveikatingumą, t. y. kad jam kilo kažkokios sveikatos pasekmės, kad jis buvo suliesėjęs, kad jis susirgo, kad jam buvo nepatogu, jam skaudėjo ir visi panašūs veiksmai, kurie ir nurodo, kad su gyvūnu buvo žiauriai elgiamasi. Faktinių aplinkybių nustatymas, gyvūno sveikatos patikrinimas patikrinimo vietoje būtų netgi ydinga antikorupciniu požiūriu procedūra, kadangi *„šiuo metu gyvūnų sveikatos įvertinimo procedūra ir kriterijai nenustatyti, todėl egzistuoja rizika, kad ši procedūra gali būti atliekama skirtingai ar tendencingai, priklausomai nuo situacijos*“ (Lietuvos Respublikos specialiųjų tyrimų tarnybos atlikta korupcijos rizikos analizė, https://www.stt.lt /doclib/qcsxdj9h9vubb3pksp9fm6mr11g91fnh). Svarbiausias įrodymas byloje – gyvūno sveikatai kilusių pasekmių įrodymas, nes kitu atveju ta pati situacija gali likti įvertinta prieštaringai. Tai matyti ir iš Specialiųjų tyrimų tarnybos atliktos korupcijos analizės pateiktų pavyzdžių apibendrinimo: „nustačius netinkamo dydžio narvus ūkiuose, vienais atvejais gyvūnų savininkai ar laikytojai buvo traukiami atsakomybėn pagal ANK 346 straipsnio 1 dalį – tai yra už gyvūnų gerovės reikalavimų pažeidimus, kitais atvejais pagal ANK 346 straipsnio 16 dalį – už žiaurų elgesį su gyvūnais“ (Lietuvos Respublikos specialiųjų tyrimų tarnybos atlikta korupcijos rizikos analizė). *„Iš bylos medžiagos matyti, kad [...] 2019-11-20 nutarimu nutraukė ikiteisminį tyrimą E. P. atžvilgiu dėl to, kad jis galimai žiauriai elgėsi su gyvūnu, jį kankino ir dėl to gyvūnas žuvo ar buvo suluošintas, nenustačius pakankamai duomenų, pagrindžiančių jo kaltę dėl nusikalstamos veikos padarymo.“(*Vilniaus apygardos teismo nutartis Nr. AN2-221-468/2021). Kaip matyti Vilniaus apygardos teismo nutartyje, ikiteisminis tyrimas dėl žiauraus elgesio su gyvūnais buvo nutrauktas, o asmuo patrauktas administracinėn atsakomybėn visai ne dėl žiauraus elgesio, o už kitų gyvūnų gerovę reglamentuojančių teisės aktų pažeidimus. Kitas pavyzdys – baudžiamojoje byloje neginčijamai nustatyta, kad asmuo netinkamai rūpinosi auginamais galvijais, neparuošė, nepirko ir nešėrė jų pilnaverčiais pašarais, neįrengė galvijų šėrimo ir girdymo vietų, laikė galvijus lauke ir jų laikymui tinkamai neįrengtose pastogėse, laiku nesirūpino dėl veterinarinės pagalbos suteikimo – šias aplinkybes patvirtino byloje apklausti liudytojai, tačiau byloje neįrodyta, kad asmens laikomi galvijai žuvo ar buvo suluošinti būtent dėl tų nustatytų aplinkybių, taigi nenustatytas būtinasis priežastinis ryšys tarp veikos ir kilusių padarinių (Kauno apygardos teismo nutartis baudžiamojoje byloje Nr. 1A-327-238/2018).

Priešingą nuomonę šiuo klausimu pateikia VMVT pareigūnai, nurodydami, kad „[...]teisinės atsakomybės taikymas nėra susijęs tik su gyvūnu sveikata, kurią tarsi galėtų detaliai įvertinti tik praktikuojantis veterinarijos gydytojas. Svarbu suprasti, kad teisinė atsakomybė taikoma už teisės aktuose nustatytų reikalavimų pažeidimus, o tokie reikalavimų pažeidimai gali atsiskleisti ir netinkamomis laikymo sąlygomis (nors gyvūnai patikrinimo momentu būtų ir visiškai sveiki) ir taip pat gali būti kompleksiškai susiję ir su netinkamomis laikymo sąlygomis, dėl kurių gyvūnams spėjo pasireikšti vieni ar kiti sveikatos sutrikimai“ (Interviu su VMVT).

Atkreiptinas dėmesys į netinkamą teisės aktų taikymą, kuris itin problematiškas situacijose, susijusiose su laukinių gyvūnų gerovės pažeidimais. Atlikus teismų praktikos analizę matyti, kad teisės taikymo praktika yra nenuosekli – analogiškose situacijose kartais asmuo atsakomybėn traukiamas už žiaurų elgesį su gyvūnais (LR ANK 346 str. 16-19 d. ar LR BK 310 str.), o kitu atveju – už laukinės gyvūnijos išteklių netinkamą naudojimą (LR ANK 303 str. ar LR BK 272 str. 274 str.). Pastebėta, kad valstybinės aplinkos apsaugos kontrolės pareigūnas pagal savo darbo atlikimo specifiką dažniausiai taiko atitinkamas teisės normas, susijusias su laukinės gyvūnijos išteklių netinkamu naudojimu, nurodydamas atliktus Laukinės gyvūnijos naudojimo taisyklių ar Laukinės gyvūnijos įstatymo nuostatų pažeidimus, tačiau apie

pažeidimus, nurodytus GGAĮ – nenurodo. Kyla klausimas, tai kaip gi turėtų iš tiesų būti, ir kaip turėtų būti įvertinama, ar tai nėra žiaurus elgesys su gyvūnu? „Tai yra tiesiog dar nevykstanti praktika instituciniame lygmenyje“ (Interviu su nevyriausybinių organizacijų atstovais). Atkreiptinas dėmesys, kad Lietuvos Respublikos laukinės gyvūnijos naudojimo taisyklės patvirtintos dviejų institucijų: Lietuvos Respublikos aplinkos ministro ir Valstybinės maisto ir veterinarijos tarnybos direktoriaus. Toks teisinį reguliavimą įtvirtinančių subjektų ypatumas suponuoja nuomonę, kad taisyklių laikymosi nuostatų patikrinimas turėtų būti vykdomas kelių institucijų. Ir nevyriausybinių organizacijų nuomone, turėtų būti dvi institucijos, kurios atlieka patikrinimus: viena tikrina ar laikymo sąlygos atitinka reikalavimus, o kita – tikrina gyvūno sveikatingumą t. y. ar jis buvo gydomas, ar jis sirgo, ar yra įrašai kokie, kokios procedūros buvo atliktos, o jeigu gyvūnas yra jau nugaišęs, tai dėl kokių priežasčių jis nugaišo.

Kaip viena iš pagrindinių įrodinėjimo proceso problemų baudžiamajame procese nurodoma tai, kad nenustatomas asmuo, padaręs nusikalstamą veiką tokiais atvejais kai randami negyvi gyvūnai atliekų konteineriuose ar panašiose vietose. Iš tokių, itin žiaurių situacijų, pastebėtina, kad gyvūno identifikavimo klausimas yra labai aktualus, nors dažniausiai jis siejamas su individualiomis retesnėmis situacijomis, kurios nėra dažniausia problema, su kuria susiduriama. 2022 m, gegužės 1 d. įsigaliojo GGAĮ 7 straipsnio pakeitimai, pagal kuriuos numatyta pareiga augintinių savininkams nuo 2022 m, gegužės 1 d. ženklinti kates, šunis, šeškus. Tikėtina, kad atsiradus imperatyvui ženklinti kates, šunis, šeškus, gyvūno identifikavimo problema turėtų išsispręsti. Tačiau neatmestina, kad dėl visuomenės teisinės sąmonės lygio ir tam tikros kategorijos gyvūnų augintojų sąmoningumo stokos bei dėl tinkamo kontrolės užtikrinimo mechanizmo nebuvimo, daugybė gyvūnų gali likti nepaženklinti mikroschemomis ir problema gali likti neišspręsta (LR Gyvūnų gerovės ir apsaugos įstatymo Nr. VIII-500 2, 4, 7 ir 10 straipsnių pakeitimo įstatymo projektas 2020 (LRS, Nr. XIIIP-5174(2))). Identifikavimo problema atliepiama ir gyvūno laikino laikymo išlaidų kompensavimo atvejais, kadangi gyvūnas iki jo konfiskavimo netampa valstybės nuosavybe, ir jo išlaikymo pareiga atsiranda šio gyvūno laikytojui specialios viešosios teisės normos (GGAĮ 4 str. 5 d.) pagrindu, o nesant ar neidentifikuojant tokio laikytojo/savininko gyvūno išlaikymo išlaidų našta tenka gyvūnų globos namams (Kauno apygardos teismo nutartis Nr. E2A-1506-555/2020).

Visose bylose, gyvūnų gerovės organizacijos ar kiti suinteresuoti asmenys, pranešę apie žiaurų elgesį su gyvūnu, įgyja pranešėjo statusą, o tie, kurie patiria finansinius nuostolius, pavyzdžiui, gyvūnų globos namai, turi galimybę juos išieškoti. Problemų dėl skolų išieškojimo nekyla ten, kur gyvūnų globos namai yra sudarę sutartis su atitinkamomis savivaldybėmis ir situacijose, kuriose žinomas asmuo, padaręs nusikalstamą veiką ar nusižengimą. Atkreiptinas dėmesys į tai, kad iš 60 savivaldybių, 44 yra sudariusios sutartis su gyvūnų globos namais ir tik 33 iš jų, sutartyse yra numatę sąlygas dėl laikino gyvūnų laikymo iki kol bus priimtas sprendimas konfiskuoti. Tai reiškia, kad kitais atvejais gyvūnų laikino laikymo išlaidų kompensacinis mechanizmas nėra užtikrinamas. Vienais atvejais, dėl pernelyg ilgo bylinėjimosi proceso, gyvūnas laikomas net ne mėnesiais, o metais, kol priimamas sprendimas, todėl patiriamos veterinarinių paslaugų suteikimo išlaidos, išlaidos pašarui ir kt. Kitais atvejais, jei priimamas sprendimas nekonfiskuoti gyvūno, ar pripažinus asmenį nekaltu, nebelieka iš ko galima išieškoti lėšas. Todėl gyvūno laikino laikymo išlaidų našta tenka neabejingai visuomenei, įvairioms organizacijoms, savanoriškai surinktomis lėšomis padedančioms išlaikyti gyvūnus arba savivaldybėms. Pagal galiojančius teisės aktus, nukentėjusiuoju gali būti pripažintas gyvūno savininkas, t. y. gali būti gyvūnų gerovės organizacija, kuriai priklauso gyvūnas, arba fizinis asmuo, tuo atveju, jeigu kažkas kitas su tuo gyvūnu žiauriai elgėsi. Tačiau, jeigu gyvūnas nėra tos organizacijos turtas, bylose dėl žiauraus elgesio su gyvūnais,

organizacija neturi jokio statuso, nebent pareiškėjo tais atvejais, kai praneša apie žiauraus elgesio su gyvūnais faktą. Atkreiptinas dėmesys ir į savivaldybių administracijas, kurios pasisako, kad „neaišku, kodėl savivaldybė turi spręsti su konfiskuojamų gyvūnų laikinu laikymu susijusių išlaidų apmokėjimo klausimą, kai teisės aktuose nurodoma, kad šias išlaidas turėtų apmokėti gyvūnų savininkas, dėl kurio veiksmų su gyvūnais pradėti ikiteisminiai ar teisminiai procesai“.

Gyvūnų gynėjų klausimas aktualus administracinių nusižengimų bylose, nes baudžiamosiose bylose tokį vaidmenį atlieka prokurorai. Administracinių nusižengimų bylose susiduriama su situacijomis, kuomet institucija, tyrusi žiauraus elgesio su gyvūnu atvejį, atsisako pradėti tyrimą, o tokio sprendimo apskųsti niekas negali. Susidaro situacija, kad nei viena organizacija, suinteresuota gyvūnų gerovės klausimais, ar tie patys pranešėjai neturi nei teisės susipažinti su tokio sprendimo turiniu, nei galimybės jį apskųsti. Tuomet institucija, tirianti tokį atvejį, yra „paskutinė“ priėmusi sprendimą. Ar tai teisinga? Nevyriausybinių organizacijų teigimu, taip neturėtų būti. Nevyriausybinių organizacijų atstovai dirba šiais klausimais, skundžia sprendimus, kreipiasi į teismus (jau netgi yra priimtų sprendimų), taip prisideda prie tokių situacijų sprendimo, vieningos praktikos kūrimo, kadangi suprantama, kad gyvūnas pats savęs bylose atstovauti negali. Atsižvelgiant į tai, galbūt svarstytinas klausimas dėl specialiojo statuso nevyriausybinėms organizacijoms, susijusioms su gyvūnų gerove, suteikimo? Šių organizacijų įtraukimo į bylas, galimybės susipažinti su priimtų sprendimų turiniu, priimtų sprendimų apskundimo teise ir pan. Pavyzdžiui, Lenkijoje, Gyvūnų gerovės apsaugos įstatyme įtvirtinta, kad „visuomeninės gyvūnų globos organizacijos teisme gali atstovauti nukentėjusiajam, t. y. asmeniui, kurio gyvūnas nukentėjo nuo žiauraus elgesio ir kuris pats nenori ar negali dalyvauti teismo procese“ **(**„Bausmės už žiaurų elgesį su gyvūnais“, LRS, žiūrėta 2022 m. kovo 22 d., https://www.lrs.lt/sip/getFile3?p_fid=31992).

Kita problema – praktika rodo, kad įprasta tapo tai, kad nelegalūs veisėjai yra įpareigojami įteisinti savo veiklą, nepaisant to, ar asmenys geba tinkamai užsiimti tokia ūkine veikla ar ne. Jau ne kartą žiniasklaidoje, socialiniuose tinkluose matyti antraštės „Po skandalo konfiskavus šunis tapo legalia veisėja“ (Kurjeris, Po skandalo konfiskavus šunis tapo legalia veisėja). Metai iš metų besiverčiantys neteisėta komercine veikla asmenys po pirmojo institucijų įspėjimo įteisina savo veiklą, nors nei požiūris, nei supratimas apie gyvūno auginimą išlieka nepakitęs. „*Sprendžiant dėl paskirtos administracinio poveikio priemonės individualizavimo, atsižvelgtina į tai, kad [...] po [...] departamento pareigūnų atlikto patikrinimo netrukus ėmėsi priemonių įteisinti savo ūkinę veiklą [...].Apygardos teismo vertinimu, šios aplinkybės lengvina A. Ž. administracinę atsakomybę“* – tokie vertinimai matomi ir bylose dėl žiauraus elgesio su gyvūnais (Šiaulių apygardos teismo nutartis Nr. AN2-25-744/2021). Valstybinės maisto ir veterinarijos tarnybos teigimu, „bet kokiu atveju, jei asmuo buvo patrauktas teisinėn atsakomybėn, tai ateityje norėdamas užsiimti kažkokia teisės aktuose reguliuojama veikla jis privalo laikytis taisyklių pvz., atitinkamai registruoti savo veiklą, teikti ataskaitas ir t. t. Todėl net ir tais atvejais, kai asmuo buvo patrauktas teisinėn atsakomybėn, tačiau suprato savo neigiamą elgesį ir ateityje ėmėsi veiksmų veiklą vykdyti tinkamai pagal teisės aktų reikalavimus, tai vertintina, kaip teigiamas asmens elgesio pokytis, kad valstybės nustatytų taisyklių visumoje būtų laikomasi“. Tačiau pabrėžtina tai, į ką atkreipia dėmesį nevyriausybinių organizacijų atstovai, kurie teigia, kad po skandalo prašymą įteisinti ūkinę veiklą pateikė 1000 asmenų ir visi tie prašymai buvo patenkinti. Tai demonstruoja institucijų požiūrį į tokią veiklą: susidaro įspūdis, kad VMVT prioritetą teikia ne gyvūnų gerovei, bet gyvūnų veisimo verslo organizavimui.

Gyvūno laikinas laikymas iki sprendimo konfiskuoti gyvūną priėmimo ir po sprendimo įsigaliojimo – taip pat vienos iš pagrindinių problemų šiame procese. Su šia problema susiduria

visos anksčiau minėtos institucijos, priimančios sprendimus dėl gyvūnų konfiskavimo. Laikino laikymo vietos paieškos problematika itin aktuali konfiskuojant laukinius gyvūnus. Šiems gyvūnams laikyti reikalingas leidimas, tad nėra paprasta surasti tokias vietas. Plėšrūnai, egzotiniai gyvūnai, įvairūs mišrūnai ar saugomi gyvūnai – gyvūnai, kuriems ypatingai sunku surasti tiek laikino, tiek nuolatinio laikymo vietas. Tokiose situacijose bendradarbiaujama su kitomis valstybėmis bei nevyriausybinėmis organizacijomis, pavyzdžiui, VšĮ „Gyvūnų teisių apsaugos organizacija“, kuri padeda surasti gyvūnams namus. Vienas iš didelio atgarsio sulaukusių pavyzdžių matomas Šiaulių apygardos teismo nagrinėjamoje byloje. Apygardos teismas priėmė galutinį sprendimą konfiskuoti 7 lūšis, kurios iki sprendimo priėmimo jau buvo išvežtos į Belgiją, nes Lietuvoje nėra sąlygų, kur laikyti tokius gyvūnus, nors gali atrodyti ir ironiška, kad į įsakymą „Dėl Lietuvos Respublikos saugomų gyvūnų, augalų ir grybų rūšių sąrašo patvirtinimo“, t. y. Lietuvos raudonąją knygą, įrašytam gyvūnui nėra suteikiamų sąlygų laikyti Lietuvoje (Šiaulių apygardos teismo nutartis Nr. AN2-188-744/2021). Kiti laukiniai gyvūnai, laikomi gyvūnų globos namuose, su kuriais yra pasirašytos sutartys, tačiau čia taip pat matoma problema, kadangi dažniausiai tokiose vietose nėra sudaromos tinkamos sąlygos laukiniams gyvūnams laikyti. Džiugu tai, kad Lietuvoje steigiamas gyvūnų globos centras, kuris bent dalinai galės prisidėti prie šios problemos sprendimo. Toliau kalbant apie kitus gyvūnus (gyvūnus augintinius ar ūkinius gyvūnus) pastebima tai, kad, nors Lietuvoje gyvūnų globos namų yra tikrai daug, tačiau juose susiduriama su vietos trūkumu. Taip pat, tai susiję ir tai, kad ne visos savivaldybės yra sudariusios sutartis su gyvūnų globos namais, tad nesant teisinio pagrindo, ne visi noriai priima laikyti gyvūnus. Taip pat tai yra susiję su gyvūnų identifikavimu. Iš tiesų, gyvūnų globos namų yra daugybė, tačiau nepaženklinti, palikti be priežiūros gyvūnai, bešeimininkiai tampa valstybės našta.

Siekiant sumažinti esančių problemų kiekį, užtikrinti poveikio priemone siekiamų tikslų įgyvendinimą, reikalinga imtis tam tikrų veiksmų. Viena pusė asmenų sutinka, kad teisės aktų yra pakankamai, yra aiškios, detalios nuostatos ir pan., o kita grupė asmenų, atvirkščiai – teigia, kad norint užtikrinti tinkamą gyvūno konfiskavimo priemonės veikimą reikalingos aiškesnės teisės normos. Vienas iš paprasčiausių problemų sprendimo būdų – tinkamas jau esamų teisės aktų normų taikymas, atitinkamų institucijų kompetencijos tobulinimas, tinkamas darbo funkcijų atlikimas. Be kita ko, kalbant apie gyvūno konfiskavimą, neįmanoma nepaminėti kitos poveikio priemonės, apie kurią jau seniai kalbama ir Lietuvoje, tai – draudimas laikyti gyvūną asmenims. Tokia priemonė taikoma daugelyje valstybių, tokių kaip, J. Karalystė, Šveicarija, Austrija, Prancūzija, Airija, Vengrija, Suomija, Norvegija ir t. t. Tuo atveju, jeigu neegzistuoja joks kontrolės mechanizmas**,** asmuo, iš kurio gyvūnai konfiskuojami, be jokių apribojimų, jau kitą dieną gali įsigyti naują gyvūną. Atsiranda tikimybė, kad asmuo vėl taip elgsis, kadangi be jokių suvaržymų jam leidžiama įsigyti gyvūnus. Tai puikiai matyti iš tokių pavyzdžių, kaip kad 2008 m. teismo sprendimu asmuo buvo pripažintas kaltu, padarius nusikaltimą, numatytą LR BK 310 straipsnio 1 dalyje, nes 2018 m. savo šunį užkapojo mačete (nustatytos daugybinės gilios kirstinės žaizdos galvos ir kaklo bei nugaros srityse) bei paliko prie netoli namų esančios upės, tačiau, šiuo metu, tas pats asmuo jau turi naują šunį (Lrytas, Mačete užkapoto šuns šeimininko rankose – naujas augintinis). Pabrėžtina, kad taip sukeliama ir finansinė našta valstybei: didelės laikino gyvūno išlaikymo ir gydymo išlaidos, ilgi teisminiai procesai. Vienas iš pavyzdžių, šuo Ričis, kuris iš nelegalios veisyklos buvo 9 mėnesius laikomas VšĮ „Dogspotas“: veterinarinės išlaidos 2100 eurų, o išlaikymo išlaidos – 450 eurų arba šuo vardu Melin, taip pat paimta iš daugintojų, laikyta 7 mėnesius ir bendra išlaidų suma siekė 1235 eurų (GGI, Draudimas laikyti gyvūną Lietuvoje). Taigi, draudimo laikyti gyvūnus priemonės įtvirtinimas asmenims, jau baustiems už žiaurų elgesį su gyvūnais, galėtų prisidėti prie gyvūno konfiskavimu siekiamų prevencinių tikslų įgyvendinimo.

Išvados

Poveikio priemonė – gyvūnų konfiskavimas gali būti skiriama ir administracinių nusižengimų, ir baudžiamosiose bylose. Pagrindas, dėl kurio gali būti taikomas gyvūno konfiskavimas – teisinis, numatytas Lietuvos Respublikos administracinių nusižengimų kodekse ir Lietuvos Respublikos baudžiamajame kodekse. Remiantis Administracinių nusižengimų kodekso nuostatomis, vienais atvejais gyvūno konfiskavimas turi būti taikomas imperatyviai, o kitais atvejais – pasirinktinai. Priežastis, dėl kurios privalomas gyvūno konfiskavimas, visų pirma – žiaurus elgesys su gyvūnu ar jo kankinimas, taip pat – neteisėtas kovinių šunų, kovinių šunų mišrūnų, pavojingų šunų mišrūnų įvežimas į Lietuvos Respubliką, įsigijimas, veisimas, naudojimas, prekyba jais ar kitoks jų perdavimas. Kaip ir dėl visų nusikalstamų veikų, taip ir dėl Baudžiamojo kodekso 310 straipsnyje, teismas gali paskirti baudžiamojo poveikio priemonę – turto konfiskavimą, o šiuo atveju, gyvūno konfiskavimą.

Poveikio priemonės – gyvūno konfiskavimo taikymą galima išskirti į dvi dalis: procedūros vykdymas ir organizavimas iki kompetentingos institucijos sprendimo konfiskuoti gyvūną priėmimo ir po sprendimo įsigaliojimo. Po priimto sprendimo konfiskuoti gyvūną, tiek laukinių gyvūnų, tiek gyvūnų augintinių ir ūkinių gyvūnų konfiskavimo atveju, procedūra reglamentuojama taisyklėmis, specialiais teisės aktais. Dėl laukinių gyvūnų konfiskavimo atsakinga Lietuvos Respublikos aplinkos ministerija, kuri kiekvienu atveju ir sprendžia, kaip elgtis konkrečioje situacijoje. Dėl taisyklių, susijusių su konfiskuojamais gyvūnais augintiniais ir ūkiniais gyvūnais, taisyklių įgyvendinimą atsakinga Valstybinė maisto ir veterinarijos tarnyba.

Tvarka, kurios laikytis reikia po sprendimo konfiskuoti gyvūną priėmimo, yra gan aiški, reglamentuota poįstatyminiais ir kitais teisės aktais, tačiau procesas iki sprendimo konfiskuoti priėmimo reglamentuojamas daug siauriau, aiškiai nereglamentuojant teisinių santykių. Iš esamo tokio teisinio reglamentavimo matyti, kad toks gyvūno konfiskavimo teisinis reguliavimas nėra pakankamas, kad jį būtų galima laikyti efektyvia priemone kovojant su žiauraus elgesio su gyvūnais nusižengimais ar nusikalstamomis veikomis bei, kad šios priemonės taikymu pasiekiami prevenciniai tikslai. Nesant išsamaus teisinio reguliavimo iki sprendimo konfiskuoti priėmimo, atsiranda teisės spragų.

Gyvūnų konfiskavimas yra sudėtinga ir itin problematiška procedūra. Apžvelgus žiniasklaidoje minimas situacijas, išanalizavus teismų praktiką, statistinius duomenis bei ekspertų iš atitinkamų institucijų nuomonę, matyti, kad gyvūno konfiskavimo teisinis reguliavimas taikomas netinkamai, o gyvūno konfiskavimo modelis įtvirtintas Lietuvos Respublikos teisės aktuose yra ydingas.

Atlikus tyrimą pastebėta, kad daugėjant gyvūnų konfiskavimo atvejų, teisinis reguliavimas yra nuolat keičiamas ir papildomas, sprendžiamos atsirandančios teisinės spragos, reglamentuojami kompetentingų institucijų bendradarbiavimo ir reagavimo į žiauraus elgesio su gyvūnais ar jų kankinimo atvejus, algoritmai.

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32. Interviu su Vilniaus miesto savivaldybės atstovu.
33. Savivaldybių administracijų pateikti duomenys.

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

ANIMAL CONFISCATION DUE TO CRUELTY

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Summary

The article analyzes the legislation of animal confiscation and its implementation issues. Official statistics of criminal and administrative cases and facts of cruelty to animals published by the media and animal welfare organizations shows that cruelty to animals and their confiscation is a relevant issue in Lithuania.

The article also presents the analysis of the situations in which the confiscation of an animal is applied and the existing legal regulation of animal confiscation. Furthermore, by analyzing the judicial practice, opinions of animal welfare organizations and other institutions' representatives and prominent events that received a lot of media attention, the problems that are encountered in animal confiscation practice are explored.

As a sanction, the confiscation of animals can be used in both administrative and criminal cases. The grounds on which the confiscation of an animal may be applied are the legal ones provided for in the Code of Administrative Offenses of the Republic of Lithuania and the Criminal Code of the Republic of Lithuania. According to the provisions of the Code of Administrative Offenses, the confiscation of an animal must be mandatory in some cases and optional in other cases. The reason for the mandatory confiscation of the animal, in particular the cruel treatment or torture of the animal, as well as the illegal import, breeding, use, trade or other transfer of fighting dogs, crossbreeds, dangerous crossbreeds to the Republic of Lithuania. If an offense provided for in Article 310 of the Criminal Code of the Republic of Lithuania is committed, the court may order the confiscation of property and, in this case, the confiscation of the animal.

Keywords*: animal rights, cruelty to animals, legal liability, confiscation of animals.*

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

CIRCULAR PUBLIC PROCUREMENT AS A COMPONENT OF GLOBAL SECURITY

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DOI: 10.13165/PSPO-22-29-05

Abstract. *One of the types of "green" public procurement has been studied - circular procurement based on the principles of circular economy. Their purpose is to ensure that the goods or materials from which they are made are used in the new cycle at the end of their service life. The basic legal models of organization of such purchases are considered and the conditions under which procurements become circular and contribute to the achievement of sustainable development goals, namely the availability of special technical specifications, are identified. Special technical specifications allow the use of goods or materials in the new cycle. Emphasis is placed on the need to apply a "circular criterion", which requires the continued use of goods or materials. Possible ways of introducing circular public procurement into the national public procurement system are suggested. The impact of public circular procurement on global security is argued.*

Key words: *public procurement, "green" public procurement, circular public procurement, circular economy, sustainable development.*

Introduction

Recent studies have shown that global consumption of natural resources since 1980 has far exceeded the level of productivity of the biosphere. Every year, environmental scientists determine the date of the so-called environmental debt - the day when humanity has already used all the resources that the planet is able to renew in a year, ie the Earth's population begins to "borrow" resources from future generations. The Day of Environmental Debt is coming earlier: in 1970 this day came on December 29, and in 2018 - on August 1. Thus, as of 2018, in order to provide current consumption, humanity already needs a planet 1.7 times larger than the Earth (Overshootday, 2022). If such trends continue until 2050, the projected population of 9.6 billion people will need the equivalent of almost three planets Earth to be able to ensure the current standard of living (Unesco, 2018). By 2030, the world's population will need 40% more water than our planet can provide. The consequences of such consumption rates are obvious, they are the result of irrational water use, overfishing, deforestation and carbon dioxide emissions. Over the past 10 years, economic losses due to extreme weather conditions have increased by 86% to $ 129 billion. USA (World economic forum, 2018). We borrow all the resources we consume today from future generations. For example, in 2011 it was estimated that about 2.5 billion coffee cups alone are simply thrown away each year, and these figures are increasing every year (BBC News, 2018).

Paper coffee cups often contain polyethylene, which prevents soaking, but takes about 200 years to decompose naturally. This situation necessitates the development of new legal models of organization of society and the economy, which would involve the efficient use of resources. In this context, the circular economy (closed-loop economy or circular economy) is attracting more and more attention in different countries (McDowall et al, 2017) as a form of organization of social relations in the context of achieving environmental goals of sustainable

development. As an alternative to the traditional linear economy, which involves the extraction of resources, their processing, use and conversion into waste, such an economy promotes the use of resources as long as possible, obtaining maximum value when using goods, and then recovering goods and the materials from which they are made, at the end of each service life (WRAP, 2022). One of the potential means of achieving the goals of the circular economy is public procurement. For example, the EU Circular Economy Plan (2015) gives public procurement a significant role in its development. Every year the state purchases goods, works and services to perform its functions. According to the World Bank, approximately 50-70% of national budgets are expenditures on public procurement. On average, the total volume of public procurement reaches about 20% of GDP in the countries of the Organization for Economic Cooperation and Development and 15% in countries that are not members of this organizations (Sustainable development, 2008), (IUNIDO, 2017) estimated to account for one-fifth of world GDP. Procurement volumes in Ukraine are also significant - almost 13% of GDP (Public procurement reform, 2022). The potential powerful influence of public procurement on the realization of the goals of the circular economy can be explained by the following facts. In Ukraine, as of 2016, the activities of almost 3,500 businesses depended on public procurement, as their income was 80% or more generated by participation in public procurement. These businesses are engaged in more than 300 different activities (YouControl, 2022). Given such significant volumes, procurement can contribute to transformational changes in the market. Circular procurement should play an important role in achieving the 2030 Sustainable Development Goals (the draft of this document is currently being discussed in expert circles), including Objective 12 - responsible consumption and production.

Analysis of recent research and publications. It should be noted that the development of "green" procurement is gaining momentum in Ukraine, in particular the creation of a regulatory framework for their implementation, which is partly due to the fulfillment of obligations under the Association Agreement with the European Union (EU). Despite the fact that the issue of "green" procurement is the subject of research in foreign and domestic scientific literature, the possibility of organizing circular procurement has not received proper scientific attention. Today in the world there are studies on the implementation of such purchases, conducted by public organizations, associations, institutions and authorities of different countries (Circular procurement; European Comission; Nordic Counsil of Ministers, 2017). For example, in the Kingdom of the Netherlands, 32 municipalities and two provinces have set a goal to achieve that by 2025, 50% of all procurement is circular (Amsterdam smart city, 2018). However, today circular purchases are implemented mainly in the form of various projects, rather than on a systematic basis, which requires scientific development of their organization and implementation.

Thus, **the purpose of this article** is to identify specific circular procurement, defining the conditions under which public procurement becomes circular and promoting sustainable development, and outlining potential ways to introduce such procurement in country.

Research results. The impact of the procurement process on the supplier's activities is linear, in which detailed specifications and price are the main issues to be resolved between the customer and the supplier. As soon as the customer is determined with the technical specifications (size, color of the product, etc.), the supplier selects the resources for the production of the product, which is then delivered to the customer in accordance with the agreed requirements. After use, the customer must decide how to dispose of waste. Optimization of the use of raw materials for production or waste in technical specifications, as a rule, is not solved (Witjes, 2016). This situation can be remedied by circular procurement - a type of "green" procurement, which in the EU is defined as a process in which customers purchase goods, works

and services with limited environmental impact throughout the life cycle compared to - not with goods, works and services of the same functional purpose (European Comission, 2011). In turn, “green” procurement is a component of sustainable public procurement and determines the environmental component of such procurement. According to the European Commission's approach, circular procurement can be defined as the process by which customers purchase goods, works and services that help close energy and material circuits in supply chains to minimize and, at best, avoid negative impact on the environment and minimization of waste generation throughout the life cycle (European Comission, 2017). The peculiarity of circular procurement is that they must comply with the principles of the circular economy and ensure the further "life" of the product after its use. Prolongation of "life" is usually ensured by reusing and increasing the service life of goods through, for example, modernization, repair and reconstruction, conversion of old goods and waste into new resources, recycling of materials into secondary resources. Circular purchases help customers ensure that goods or materials are reused at the end of their service life in the new cycle.

There are different legal models for organizing circular public procurement.

1. After using the object of purchase, the supplier buys it from the customer (buy-sell back) for a specific price. For example, a customer sells used furniture to a manufacturer, which encourages him to restore, modernize or renovate furniture. This option is more rational in relation to goods that have a short shelf life. After all, if we take furniture as an example, the average term of their use is about 9-12 years (Comission Staff, 2018). During this time, the guarantees that the participant who delivered the goods has not yet ceased its activities are reduced.

2. Sale by the customer of the goods after it use by third parties (buy-resell). An example is the sale of plastic to businesses that process it. This model of procurement stimulates recycling processes and is more acceptable when goods are no longer of interest to the supplier for reuse. Such a model may involve not only the sale of used goods, but also the purchase of services for its processing. Back in 2015 in Ukraine, the customer announced a tender for the purchase of services for the disposal of sorted material resources with an expected declared value of UAH 100,000. This service involved the disposal of decommissioned computer and peripheral equipment. 13 bidders took part in the tender, of which the bid of the bidder with the price of UAH 1. According to the procurement contract, the cost of precious metals after disposal of the equipment is transferred to the customer's account in accordance with the Passport of final processing at purchase prices for precious metals set by the NBU State Treasury (Prozorro, 2022). That is, today, procurement can create new ways to use and generate additional revenue from waste disposal. In this case, the waste of some became resources for others. Difficulties in this model are the correct calculation of the cost of disposal of goods at the stage of purchasing a new product using the criterion of evaluating the tender proposal based on the value of the life cycle of the product, ie calculating the approximate cost of disposal, recycling or renewal using. The development of methodologies for calculating such costs for certain types of goods can alleviate the situation with the calculation of costs associated with the collection and disposal of the subject of procurement. For example, according to paragraph 96 of the EU Directive 2014/24 on public procurement at the EU level, common methodologies for calculating life-cycle costs for certain categories of goods or services should be developed. When such methodologies are developed, they should be mandatory.

3. The customer focuses on receipt services instead of purchasing goods. In this case, the ownership of the goods remains with the supplier. A leasing service or services is purchased, but not the product itself. Examples include Philips and Engie, which provide lighting services at Schiphol Airport (Amsterdam), and the airport only pays for light consumption. And Philips

collects them at the end of their service life for further processing (Roadmap, 2020). In 2013, in Bremen, the Senate Department of Environment, Construction and Transport replaced its existing fleet with membership in the local car sharing service. Prior to that, the Department owned 11 cars, but their use was low - less than three hours a day. Due to the transition to car-sharing services with online booking, Bremen now has access to more flexible and efficient modes of transport, including electric vehicles, which saves money on maintenance, parking, etc. (European Comission, 2017). In this model of circular procurement, an important role will be played by the procurement planning stage, when the customer must ask whether the purchase of goods is necessary at all, whether the service can be purchased. Quite often the product itself is not needed, but only the function it performs. There is a reorientation to the needs of the customer, not to the product itself. This approach can help meet the need for fewer things, thus reducing the environmental impact of production processes. As consumer funds become more dependent on the time of use of the product, consumers can be encouraged to reduce it, thus reducing the environmental impact during use. Such processes often include the concept of "leasing society" (Turlee, 2013), which is a new model of organization of society and involves structural changes in the use of resources, including the transition from a linear to a circular model of efficient and consistent use of resources. According to the definition of the European Parliament, the leasing society is characterized by new relationships between producers and consumers, based on new and service-oriented business models (Europeen Parliament, 2012). Changes in the ownership structure in the leasing company shift the responsibility for the maintenance, maintenance and disposal of goods to producers / sellers. This creates incentives for the production of more durable and resource-efficient goods, optimizing its disposal, ensuring easier processing. This will help reduce the number waste. For example, the customer returns the goods to the owner after use, not just gets rid of it. That is, such a society can be the basis for changing approaches to procurement to achieve the goals of the circular economy.

It is important to note that all these models do not guarantee the implementation of circular purchases. An additional condition is needed, in particular, reaching an agreement on what will happen after the stage of use - the functional purpose of the subject of procurement. If there is no relevant agreement and further control, then such purchases provide only the possibility of closing the energy or material circuit in the supply chain. For example, utensils made of a material that, according to technical characteristics, can be recycled after use, including plastic, but this does not automatically contribute to the goals of sustainable development, because it can simply be disposed of after use. Thus, circular purchases do not automatically contribute to sustainable development. In fact, such a purchase becomes circular provided that the value of the purchase is maintained and the degree of damage, destruction or destruction is minimized, as well as from the end of the product's life and further actions to maximize the life cycle of the product and resources. That is, in a circular purchase there should be not only a requirement to use the material, for example, by processing, but also a requirement for further action on the subject of procurement after its service life or a requirement to maintain its value during use (maintenance, - grinding of spare parts, etc.). During the application of the first model of the use of the so-called circular criterion should be provided for the organization of circular purchases for the sale of goods after their use to the supplier. The essence of this criterion is that in the case of returning the goods to the supplier, the latter will give him a "second life". That is, the sale must be carried out with the condition of further use of the goods. The same applies to another model, when the customer sells the product to a third party or purchases a recycling and recycling service. The participant must provide information on reuse or revisions, including the parties involved in the process. Then the evaluation criterion will be

not only the price - additional points will be given to participants who will offer a higher level of reuse than specified in the technical specifications (Comission Staff, 2018).

Thus, the first important condition for determining circular purchases is the need to apply the "circular criterion", which provides requirements for the further use of goods or materials.

In order for the specified "circular" criterion for further actions with the product to be met, it is necessary to correctly determine the technical specifications at the stage of its first purchase. It is important for the customer to immediately anticipate the product design requirements that will determine the reusability of components, their repair and improvement. For example, there should be mandatory requirements in the technical specifications that the bidder must provide documents proving that their product can be disassembled with standard tools that allow reuse, upgrade, repair or recycling of components. For example, furniture should be designed in such a way that it can be disassembled without permanent fastening elements (eg glue). These mandatory requirements are designed for office furniture for reuse and renewal in the UK and are called “Government Procurement Standards for Office Furniture”, which have been prepared for sustainable public procurement and are mandatory for customers, who have committed themselves to adhering to these standards (Procure’s note, 2022). According to the standard specifications developed by the European Commission, if the furniture has parts that cannot be reused, it is proposed to send them for recycling, before performing sorting, for example, plastic, metal, textiles, wood, etc.

Service-oriented model of procurement to be characterized by the experience of the city of Zurich in refusing to purchase office equipment (including printers) and focusing on services from an external supplier (for printing, copying, scanning, etc.). The city currently pays only for the number of pages and no longer spends money to purchase equipment. It is important to note that the technical specifications for such purchases included: 1) paper consumption: service providers should use only recycled paper and the default two-sided and black-and-white printing mode; 2) it was assumed that documents that needed to be printed are stored in a certain repository. Printing cannot begin until the user logs into this repository. This system avoids sloppy printing, which is often not even removed from the printer, and solves certain information security issues; 3) the printers had to meet the requirements of energy saving to have the function of switching to energy saving mode when not in use. This concept envisages a reorientation from the purchase of small and medium-sized printers to offices to the purchase of several but large printers, which would be installed, for example, in the corridors. This approach to procurement has helped the city significantly reduce costs. Prior to that, the city owned 100 different models of printers, copiers, scanners and fax machines. By changing the approach to procurement, they reduced the number of such devices from 5,500 to 3,600 with only two brands and seven models, resulting in 34% energy savings. The new approach has significantly improved the printing skills of employees, which has led to a reduction in the amount of paper and printing (Gpp in practice, 2015).

Thus, the second important condition for circular procurement features are features of technical specifications. The basis for the potential implementation of circular procurement in Ukraine may be the introduction of the above tool for customers, namely: calculating the value of the subject of procurement taking into account its life cycle, which includes costs associated with the collection and disposal of goods. This is already provided in the draft Law on Amendments to the Law of Ukraine "On Public Procurement" and some other legislative acts of Ukraine to improve public procurement, the text of the bill is at the stage of public discussion (Draft Law, 2022). The criterion of product life cycle assessment will provide more opportunities for customers for the strategic use of public procurement and the organization of circular procurement. After all, currently the application of non-price criteria is low even if they

can be used in accordance with Art. 28 of the Law of Ukraine "On Public Procurement". Thus, the practice of the appellate body in the field of public procurement is ambiguous and often not in favor of customers who try to apply other criteria along with the price. According to Art. 28 of the Law of Ukraine “On Public Procurement”, other criteria together with the price are applied in the case when the procurement is complex or specialized. In its letter, the Ministry of Economic Development and Trade of Ukraine noted that the Law of Ukraine "On Public Procurement" does not define the concept of "procurement that is complex or specialized" and recommends that customers justify the use of non-price criteria (Ministry of Economic Development, 2022). The appellate body in the field of public procurement does not always support the use by customers of other evaluation criteria than the price, which they then can not prove when challenging such requirements, and explain the complexity of procurement (Dubrova, 2018). An example of this is the situation when a foreign company appealed against the requirements established by the Social Insurance Fund for Accidents at Work and Occupational Diseases of Ukraine in the tender documentation for the purchase of cars for the disabled. In particular, the customer, in addition to the price, set the following evaluation criteria: transmission, fuel consumption in the combined mode per 100 km, airbags, air conditioning / climate control, warranty period. The foreign complainant stated that the cars being purchased were not complex or specialized, were not manufactured to a separate specification, there was a permanent market for them, so the establishment of other criteria other than price are illegal. The Permanent Administrative Board of the Antimonopoly Committee of Ukraine for Complaints of Violations of Public Procurement Legislation concluded that the customer did not provide explanations and confirmation of the specialized nature of the subject of procurement, and obliged the Social Insurance Fund to comply with the documentation with the requirements of the Law (Decision № 1040-r, 2012).

Thus, the current practice complicates the implementation of not only circular but also sustainable procurement in general, considering only price as a priority criterion. In this case, it will not be possible to assign additional points, for example in the case of furniture reuse services, to a participant who offers a higher and longer level of furniture reuse than those specified in the specifications. However, the above-mentioned draft law on amendments to the Law of Ukraine “On Public Procurement” can solve this problem, as in the text of Art. 29 on the consideration and evaluation of tender proposals, such wording as "procurement that is complex and specialized" is proposed to be removed.

At the same time, the issue of the introduction of circular procurement is of a strategic nature, as its solution requires not only clarification of formal procedural rules of procurement, but also changes in thinking and approaches to public procurement with emphasis on priority measures for recycling or reuse. whose. The introduction of circular procurement in Ukraine will require a rethinking of the goals and means of legal regulation of relations in the field of public procurement, which are mainly aimed at saving public funds.

Based on the above, it is possible to draw the following conclusions:

1. Circular public procurement is a type of "green" public procurement and aims to ensure that goods or materials at the end of their service life are reused in a new cycle. Such purchases play an important role in planning and defining product requirements in order to ensure a long life cycle and high potential for further use, modernization or processing. The most common models of circular procurement are as follows: 1) the supplier after using the subject of procurement buys it from the customer;

2) the customer sells the goods after its use to third parties; 3) the customer focuses on receiving services instead of purchasing goods.

2. Public procurement becomes circular under two conditions at the same time: 1) special technical specifications that allow the use of goods or materials from which it is made in the new cycle, such as the ability to disassemble or recycle them; 2) application of the "circular criterion", ie requirements for further use of goods or materials.

3. In order to introduce circular procurement, it is necessary to move from a functional to a strategic approach to public procurement. It seems expedient to introduce planning principles in the field of green procurement development in Ukraine, in particular by setting a recommended percentage of procurement that customers should seek, which is in line with the practice of developing national implementation plans of "green" procurement by EU member states.

In addition, circular procurement should play an important role. One of the means of gradual introduction of circular procurement in Ukraine is the development of standard specifications for certain categories of goods that have a high potential for reuse, extension of their existence or processing for the convenience of customers during procurement.

Through circular public procurement, public organizations can contribute to the goals of state environmental policy, such as reducing greenhouse gas emissions, improving energy and water efficiency, reducing production and consumption waste, and improving the safety of finished products. In the social sphere, circular public procurement can have an impact, for example, on creating a more comfortable environment and improving the health of users. In economic terms, the circular public procurement approach involves estimating the full value of the product life cycle, which provides an objective assessment of the economic benefits or losses of the subject of procurement and the effectiveness of public procurement. In general, circular public procurement contributes to significant resource savings, the development of a more independent and powerful economies of countries, which is one of the factors of global security.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

ENTREPRENEURSHIP NETWORKS AGAINST COVID-19

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DOI: 10.13165/PSPO-22-29-02

Abstract. *As of May 2022, the pandemic has limited opportunities for entrepreneurs. The objective of the study was to establish the networks of opportunities, motives, dispositions, ethics, pressures, challenges, reputation, images, identities and behaviors related to entrepreneurship in the face of the health and economic crisis. A documentary, cross-sectional and exploratory study was carried out with a selection of sources indexed to international repositories: Scopus, JCR, WoS, Latindex, Redalyc, Scielo and Frontiers. A search was made for the keywords of opportunism, optimization, innovation and entrepreneurship. The summaries corresponding to the pandemic period from November 2019 to May 2022 were considered. A structure of relationships between nodes and edges was found that suggests a neuronal learning that went from the dimension of pressure in the face of the pandemic to entrepreneurial identity. The centrality parameters that measure the distance between edges and nodes suggest that the dispositions are structured according to this principle of proximity. The grouping coefficients that indicate the structuring of the edges and nodes according to their dimensions suggest that the network is reconfigured from process innovation and resourcs optimization. The structure measure reflects the pressure concentration as the network input and the identity dimension as the network output. The centrality parameters that measure the distance between edges and nodes suggest that the dispositions are structured according to this principle of proximity. The grouping coefficients that indicate the structuring of the edges and nodes according to their dimensions suggest that the network is reconfigured from process innovation and recurss optimization. The structure measure reflects the pressure concentration as the network input and the identity dimension as the network output. In this way, the present study found a central and grouped structure in two dimensions of pressure and identity of entrepreneurship in the face of COVID-19 Delimitation to three dimensions of analysis corresponding to opportunities, optimizations and innovations is recommended.*

Keywords –*Internet, Trolling, Stalking, Stashing, Texting, Bullying*

Introduction

The period of the pandemic that runs from November 2019 to May 2022 has caused a health, economic and social crisis with effects on entrepreneurship (Barroso et al., 2020). The anti-COVID-19 policies, the mitigation and containment strategies, as well as the distancing and confinement programs were aimed at the financial rescue of working families rather than the financing of micro, small and medium-sized enterprises (Morched et al., 2021). Thus, the impact of the pandemic on entrepreneurship opportunities has been a central issue on the local agenda (Khan et al., 2022). The literature from 2019 to 2022 on entrepreneurship suggests a network structure between nodes and edges on the opportunities that the pandemic opened up for the discussion of entrepreneurship as a response to the health, economic and social crisis (Najeh & Morched, 2022).

The theoretical, conceptual and empirical frameworks that explain entrepreneurship suggest that in a crisis scenario it emerges as a common response in the affected localities (Aqmala & Putra, 2021). In the case of the theory of demands and resources, the pandemic meant a challenge that had to be counteracted with the optimization of resources (Miah, 2021). However, the theory of complex institutions ensures that entrepreneurship is the product of strategic alliances between political and social actors, as well as the public and private sectors (Setyanti, 2021). In this way, the demands and resources are combined with the autonomous institutions in the face of crises (Saha & Jannat, 2021).

As for the studies on entrepreneurship focused on emerging organizations, the opportunities determine the optimization of resources and process innovation (Tasnim & Wuryani, 2021). The literature from 2019 to 2022 suggests that stigma is the mediating factor of the variables related to entrepreneurship (Iman et al., 2021). Stigma regulates entrepreneurial decision-making (Maldonado et al., 2021). In high-risk scenarios, stigma inhibits resource management, but in scenarios of trust, it activates investment in companies that adjust their protocols to biosafety or accident and disease prevention (Perdana, 2021).

However, the models that have shown the relationships between the variables do not include the possible interactions that allow us to see a general panorama of entrepreneurship in a scenario and period of crisis (Reavis et al., 2021). The theoretical, conceptual and empirical models assume that the demands and resources, as well as the complexity of the organizations are instances where asymmetries are appreciated, but possible scenarios of improvement are not observed (Da Rosa et al., 2021).

The objective of the present study was to reveal the structure of entrepreneurship networks published in the international literature during 2019 to 2022.

Are there significant differences between the structure of opportunity networks with respect to the structure observed, analyzed and discussed in the present work related to entrepreneurship?

The premises that guide this work suggest that the pandemic limited entrepreneurial opportunities and opened up process innovations, as well as resource optimization (Sidrat & Boujelbene, 2022). Mitigation and containment strategies, as well as distancing and confinement programs, were intensified as financing for companies was reduced (Tandoh et al., 2022). Therefore, the differences between the theoretical structure and the observed

network will open the discussion about the pandemic and its effects on the reactivation of the economy (Wasim & Rehman, 2022)

Method

This work is documentary cut since studies from 2019 to 2022 search criteria keywords are reviewed; "Entrepreneurship", "innovation", "utility", "support", "ease" or "accessibility" in three search engines: Scopus, JCR, WoS, Latindex, Redalyc, Scielo and Frontiers (see Table 1).

Table 1. Descriptive of sample
Source: Elaborated with data study

Repository	COVID-19	Entrepreneurship
Sopus	7	8
JCR	8	7
WoS	5	9
Latindex	6	6
Redalyc	7	7
Scielo	9	8
Frontiers	6	5

The Systematic Review Inventory was used, which includes questions related to the concepts of entrepreneurship and COVID-9, considering the criteria and evaluations of expert judges on both topics (see Table 2).

Table 2. Descriptive of the judges
Source: Elaborated with data study

Sex	Age	Income	Experience
Male	56	49’083.00	12
Female	64	36’904.00	11
Female	48	29’087.00	10
Male	50	30’789.00	13
Male	39	41’324.00	14
Male	52	46’906.00	15
Female	61	53’213.00	9

Delphi technique was used to establish relationships paths dependence between factors advanced in the theoretical, empirical and conceptual frameworks are the hypotheses for contrasting scenarios according to literature. Based on the criteria and qualifications of the judges, the selected articles were coded considering a Likert-type scale that goes from 0 = "not at all likely" to 5 = "quite likely". The data was captured in excel and processed in JASP version 15.0

Non-parametric statistical values were obtained in order to establish the centrality and grouping of the selected findings. Next, the relationships between the extracts were estimated in order to establish the revised knowledge network in the literature. The neural network

equation was followed because they explain the learning of a network of knowledge such as entrepreneurship before COVID-19 (see Figure 1).

$$+ \frac{1}{N_T}\sum_{i}^{N_T}(T(\boldsymbol{x}_i) - \hat{T}_i)^2$$

$$+$$

$$; \frac{1}{N_R}\sum_{i}^{N_R}(V(\boldsymbol{x}_i)\|\nabla T(\boldsymbol{x}_i)\| - 1)^2$$

Figure 1. Neuronal network
Source: Sahli et al., (2020)

Results

Figure 2 shows the parameters measured by centrality, a property of neural networks that allude to a risk threshold. Values outside the threshold are assumed to be part of another node. Values internal to the threshold demonstrate the convergence of the elements in a central node.

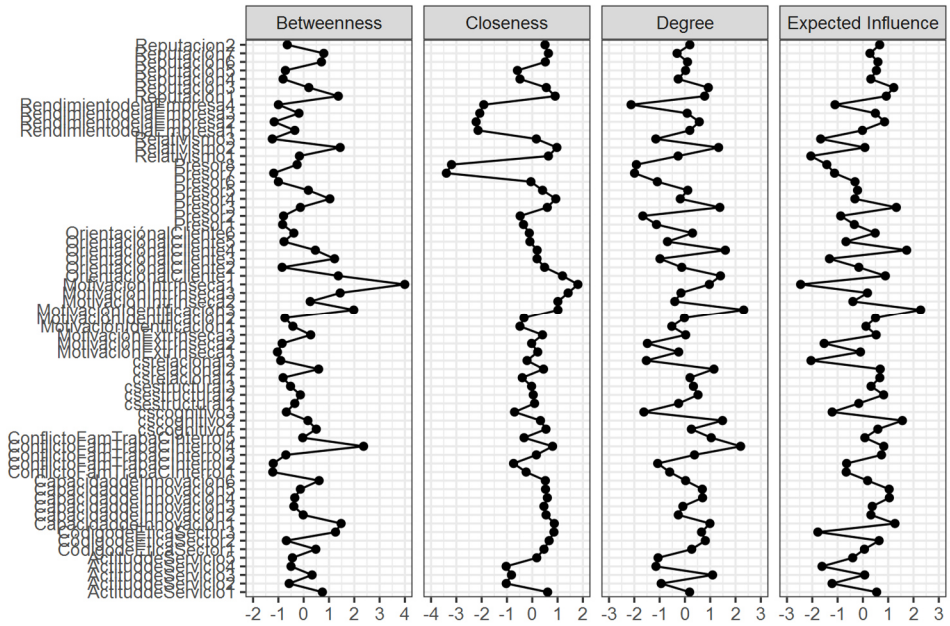

Figure 2. Centrality
Source: Elaborated with data study

Figure 3 shows the convergence of peripheral nodes into a central one. Clustering is a property of neural networks that allows it to be distinguished from other nodes. The parameters that measure the grouping suggest that the elements converge in a node that the literature identifies as entrepreneurship.

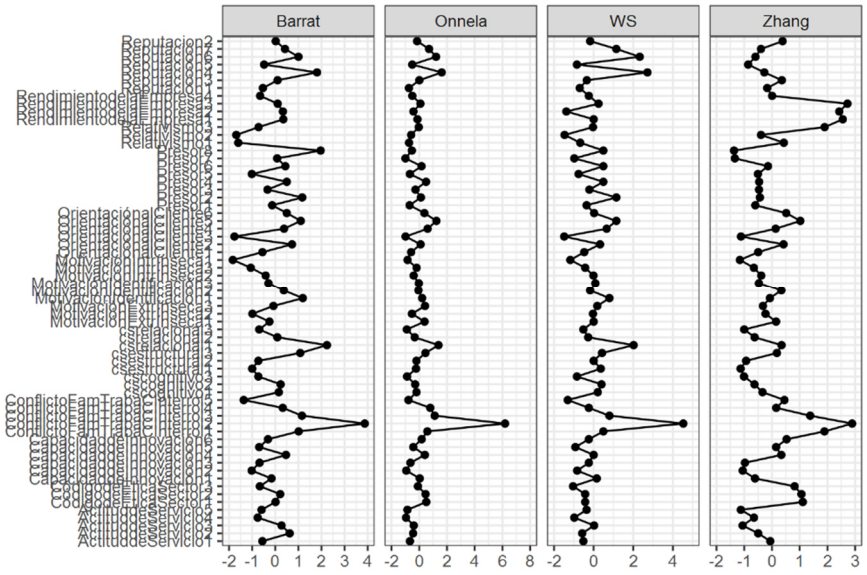

Figure 3. Clustering
Source: Elaborated with data study

Figure 4 shows the relationships between the elements. It is possible to appreciate that positive relationships prevail, although asymmetric relationships prevail in the associations between intrinsic motivation and ethics. In other words, entrepreneurship is configured for intrinsic reasons such as inheritance and the legacy of the project to future generations, but it is opposed to ethics with care for the environment.

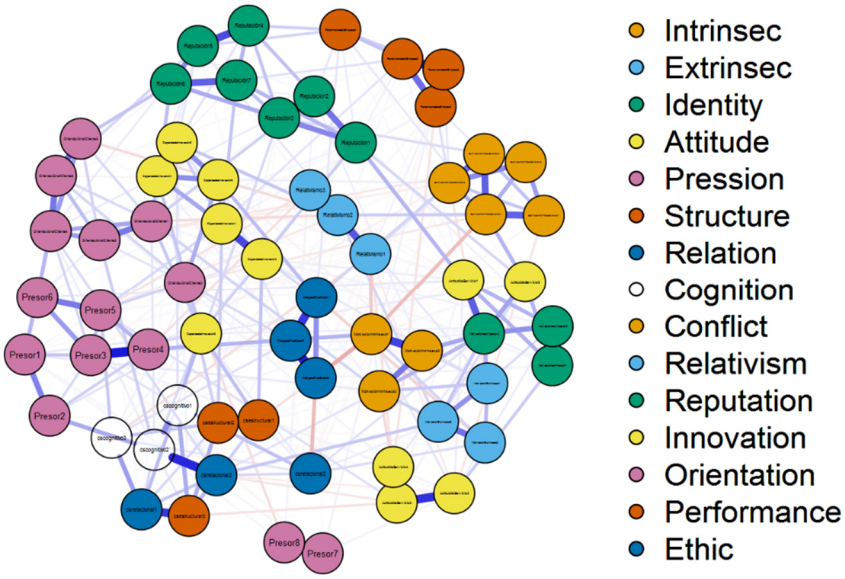

Figure 4. Neural network
Source: Elaborated with data study

The results show that entrepreneurship in the COVID-19 era is distinguished by being multidimensional, although the asymmetry between ethics and intrinsic motivation opens the discussion about the relevance of carrying out a project for moral reasons versus local or regional conventions in around that project.

Discussion

The contribution of this work to the state of the art consists in the establishment of a model of entrepreneurship networks based on the findings of the literature from 2019 to 2022. A network was found that indicates the inclusion of multiple dimensions which, when interacting, are structured. in an entry of dispositions to the demands and an exit of entrepreneurial identities such as optimism (Silva et al., 2021). In relation to entrepreneurship studies where resource optimization and process innovation stand out as central axes of local entrepreneurship, this study warns that these two dimensions are diversified. The optimization of resources is related to the image, identity and reputation of the organization. Innovation is more closely linked to entrepreneurial dispositions motivated by the crisis. In this way, the structure of the analyzed findings seems to indicate that the relations between the rulers and the ruled are guided by the demands of the environment and the identity of the alliances.

Conclusion

Entrepreneurship in the COVID-19 era is distinguished by reorienting the optimization of resources and process and product innovations based on the distancing and confinement of people. Entrepreneurship as a response to the health and economic crisis is distinguished more by coexisting with risk scenarios than by avoiding them. Entrepreneurship in the COVID-19 era distinguishes innovative proposals from non-innovative responses. The pandemic forced innovative entrepreneurship to emerge. The pandemic reduced non-innovative responses to simple reactions. The distancing and confinement of people increased innovative responses. Anti-COVID-19 policies reduced resource optimization initiatives. Innovative entrepreneurship, unlike optimization entrepreneurship, is a sequence of coexisting responses to crises and risks. Optimizing entrepreneurship are only reactions to crises and risks. Rising risks drive significant optimization and systematic innovation.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

KALININGRAD TRANSIT: IMPLEMENTATION PRINCIPLES AND ISSUES

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Abstract. *Lithuania is a small country with limited natural and other resources and market, so it is why Lithuania is interested in being as open to the world as possible. The geographical location of Lithuania between the West and the East and its membership in the Schengen area help to be open as much as possible. Lithuania's status as a transit country is valued and recognized in the world. For this reason, one of the priority areas of our country is an efficient transit system, with an efficient transit procedure. Kaliningrad transit also plays an important role in the general transit system of Lithuania.*
Kaliningrad transit is an integral part of EU law. This is a special EU agreement with the Russian Federation. The Kaliningrad region is a typical enclave surrounded by the European Union, an integral part of the Russian Federation that has no direct land connection with its continent.
The study aims to assess Lithuania's role and powers in the implementation of Kaliningrad transit and its control. The article, using the analysis of scientific literature and legal acts, aims to assess the aspects of legal regulation and the general situation regarding Kaliningrad transit scheme, to identify problematic aspects, and to suggest possible solutions.

Keywords: *Kaliningrad transit, transit procedure.*

Introduction

Freedom of movement and residence for persons in the European Union is the cornerstone of EU citizenship, established by the Treaty of Maastricht in 1992. The gradual phasing-out of internal borders under the Schengen agreements was followed by the adoption of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU.

The free movement of persons was the conclusion of the two Schengen agreements, i.e. the Agreement proper of 14 June 1985, and the Convention implementing the Schengen Agreement, which was signed on 19 June 1990 and entered into force on 26 March 1995. Initially, the Schengen implementing Convention (signed only by Belgium, France, Germany, Luxembourg and the Netherlands) was based on intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the "Schengen acquis" into the Treaties. Today, under the "Lisbon Treaty", it is subject to parliamentary and judicial scrutiny. As most Schengen rules are now part of the EU acquis, it has no longer been possible, since the EU enlargement of 1 May 2004, for accession countries to 'opt out' (Article 7 of the Schengen Protocol).

The free movement of persons is guaranteed in the Schengen area territory. Single external border checks and common rules were created in line of control between each of member state. Apart from external borders, rules and procedures with regard short stay visas and asylum request were established too. Moreover, simultaneously in order to achieve appropriate level of security compensatory measures were provided. The Schengen acquis was incorporated into the EU legal framework by the Amsterdam Treaty in 1997.

The purpose of establishing a transit procedure in accordance with the acquis of the European Union (hereinafter EU) is to ensure the security of the EU. Security, in the traditional sense, has always been associated with the desire of a particular state to ensure the security of its territory. The researchers from the last century are still analyzing the existing link between migration (including transit) and security, researchers are still analyzing from the last century (especially after the events of September 11, 2001) (Lahav, 2003). According to researchers, the mere possibility, that the actions of a small and relatively weak non-governmental organization could have such catastrophic consequences, fundamentally changes the perception of international security. Until then, the subjects of international security were considered to be almost exclusively sovereign states, and the practice of international security has largely collapsed (Ticu, 2021). In certain cases, migration, including transit, may have an impact on international security: international migration may pose a threat to international security when it is massive and out of control (Adacher and Flamini, 2020).

Therefore, the migration process and the transit procedure must be controlled not only at national level, but also internationally. The EU has enshrined this in its legislation, establishing transit procedures for individuals and designating authorities responsible for transit control. In the case of Lithuania, Lithuania has never been a center of attraction for immigration - but Lithuania has long been a transit country. The transit procedure seeks to control and, in certain cases, restrict the passage of persons through the territory of the country.

The article, analyzing legal acts, aims to assess the role and powers of Lithuania in the implementation of Kaliningrad transit and its control.

Development and main provisions of the legislation on Kaliningrad transit

After regaining independence in 1990, Lithuania signed a number of intergovernmental agreements with neighboring countries on border management, security and control issues. Although the relations between Lithuania and Russia have always been quite tense, despite the development of relations, on July 29, 1991 an agreement was signed between the two countries on cross-border relations. This treaty laid new foundations between two sovereign equivalent states, Lithuania and Russia. The parties agreed to maintain friendly cross-border relations and to cooperate on an equal footing for mutual benefit in accordance with the norms of international law. According to prof. dr. Dainius Žalimas, "On the basis of cross-border relations, the agreement could be compared even with the acts of restoration of Lithuania's independence, the 1920 peace treaty between Lithuania and Russia, or at least the 1994 treaty with Poland on friendly relations and good neighborly co-operation" (Žalimas, 2018). The above-mentioned Agreement on Cross-Border Relations is accompanied by another Agreement of the Parties on Cooperation in the Economic and Socio-Cultural Development of the Kaliningrad Region. Article 7 of this document stays, that the parties undertake to regulate the conditions of transit through the Republic of Lithuania.

The procedure for transit of citizens of the Russian Federation through the Republic of Lithuania was established in February 24, 1995 in the protocol of the Interim Agreement between the Government of the Republic of Lithuania and the Government of the Russian Federation " On the travel of citizens of the Russian Federation and other persons without Visas to the Kaliningrad region of the Russian Federation and back" The agreement stipulates that when trains stop in the territory of the Republic of Lithuania, personal documents and customs control will be carried for those citizens of the Russian Federation and other persons who disembark at designated stations, and persons who do not disembark in the territory of the Republic of Lithuania are not subject to border checks.

In preparation for Lithuania's membership in the European Union, the above-mentioned provisions had to be reviewed and amended. External border crossing procedures had to be applied to citizens of the Russian Federation, as third-country nationals transiting through the territory of the Republic of Lithuania.

This procedure for transit through the territory of the Republic of Lithuania has been implemented for the citizens of the Russian Federation since 1 February 2003 in accordance with the order No. 589/172 of 20 December 2002 approved by the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania; "Control on citizens of the Russian Federation in transit by transit trains through the territory of the Republic of Lithuania" (Order No. 589/172, 2002)

Following this order, the travel documents of citizens of the Russian Federation in transit through Lithuania were checked and only those persons who had valid travel documents and had applied for transit through the territory of the Republic of Lithuania could cross the border.

Kaliningrad's transit in the European Union is unique, with third-country nationals traveling through the European Union between two parts of the Russian Federation, which are not geographically bordered (Kiseleva, 2011). The degree of risk and threat is quite high. In view of this situation, the European Union and the Russian Federation issued a joint statement on 11 November 2002, “On transit between the Kaliningrad region and the rest of the Russian Federation”. The document acknowledges that in order to develop a strategic partnership, special steps have been agreed to ensure the transit of persons and goods between the Kaliningrad region and other parts of Russia. The document also emphasizes that from 1 January 2003 Lithuania will comply with special provisions regarding the transit of third-country nationals through the country.

After the signing of the Treaty of Accession of the Republic of Lithuania to the European Union on 16 April 2003 the Facilitated Transit Scheme would apply to Kaliningrad transit from 1 July 2003.

According to the agreement signed between the European Union and the Russian Federation on 11 November 2002 on transit between the Kaliningrad region and the rest of the Russian Federation, citizens of the Russian Federation are issued a Facilitated Transit Document (hereinafter - STD) or for travel from the territory of the Russian Federation to the Kaliningrad Region of the Russian Federation in transit through the territory of the Republic of Lithuania they are issued the Facilitated Rail Transit Document (hereinafter - FRTD) (COM/2006/0840 final, 2006).

The purpose of FTDs and FRTDs was defined by the Council Regulation (EC) No 693/2003 of 14 April 2003. This Regulation establishes and validates FTDs and FRTDs as documents equivalent to transit visas and allows their holders to enter the territory of a Member State in order to transit through the territory of a Member State in accordance with the Schengen provisions on the crossing of external borders. Passengers traveling with FRTD are not allowed to disembark from the train and their travel time is limited. The European Union has committed itself to providing financial assistance to the Republic of Lithuania in implementing the arrangements provided for in the agreement. Lithuania agreed to recognize the internal passports of the Russian Federation and to issue FTDs and FRTDs on the basis of them until 31 December 2004. Since 1 January 2005 transit documents are issued only to holders of Russian foreign passports, this procedure was valid for one year until 1 January 2006, after this date all passports on the basis of which FTDs and FRTDs were issued had to be foreign passports of the Russian Federation. The Republic of Lithuania and the Russian Federation also

undertook to sign a readmission agreement, which was to enter into force no later than 30 June 2003. Such agreement on the readmission of illegal immigrants was signed on 12May 12, 2003.

The Council of the European Union has approved Regulation No. 694/2003 on 14 April 2003 on a standard for Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD), which definitively established those documents. The Regulation also lays down standard STD and FRTD "stickers" (Figure 1 and Figure 2), their security features and requirements, and a standard procedure for filling.

Figure 1. Example of FTD
Source: Order of 26 June 2003 of the Minister of the Interior of the Republic of Lithuania No. 1V-238 "On the Approval of Forms"

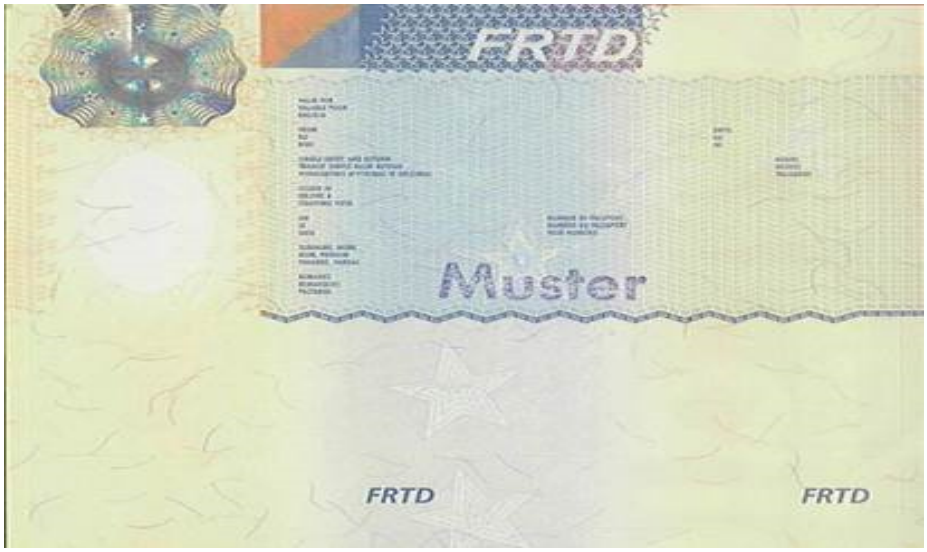

Figure 2. Example of FRTD
Source: Order of 26 June 2003 of the Minister of the Interior of the Republic of Lithuania No. 1V-238 "On the Approval of Forms"

The Commission also obliges Member States to choose one authority which would be entitled to print the stickers and to notify the Commission and the Member States of the choice of such authority. The security measures for FTD and FRTD documents shall not be published, they shall be provided only to the authorities responsible for printing the stickers. It is interesting that the regulation could be applied by any member state of the European Union, the regulation did not mention either the Russian Federation or the transit of its citizens through Lithuania. Article 12 of the Regulation states that "Member States which decide to issue an FTD / FRTD shall communicate that decision to the Council and to the Commission. The Commission shall publish that decision in the Official Journal of the European Union. The decision shall enter into force on the day of its publication." (Council Regulation No 694/2003).

Procedures on Kaliningrad transit

EU membership gives a relatively large degree of freedom to transit persons within the territory of the Member States, and the regulation of the transit procedure for third-country nationals includes restrictions and more stringent requirements. EU legislation has sought to codify Community legal instruments in the field of transit in order to make them as easy as possible, which not only facilitates the implementation of the free transit procedure but also helps to ensure the rights of persons in transit. After Lithuania became a member of the EU and joined the Schengen area, the legal regulation of the transit procedure for persons changed significantly. Transit, its procedural issues have become a Community-wide policy, as EU legislation has become hierarchically superior to national legislation.

A facilitated transit document (STD) is issued to citizens of the Russian Federation traveling through the Republic of Lithuania. A facilitated transit document is a special transit facilitation permit issued for multiple transit operations by all land vehicles. A consular fee of EUR 5 shall be charged for the issue of a document. The period of validity of an STD shall not exceed 3 years. The duration of transit with an STD through the territory of the Republic of Lithuania may not exceed 24 hours each time. A response to the issuance of an STD shall be provided within 7 working days.

Citizens of the Russian Federation who have expressed a wish to transit by rail through the Republic of Lithuania must apply to the Consular Section of the Ministry of Foreign Affairs of the Republic of Lithuania no later than 24 hours before departure. Twenty-four hours before the train arrives at the border checkpoint, the SBGS already has information on the number of arriving passengers and can anticipate the forces required to inspect the train.

The FRTD is a special document facilitating transit through the territory of the Republic of Lithuania, which the Republic of Lithuania may issue to citizens of the Russian Federation to enter the Kaliningrad region once from the Russian Federation and return from the Kaliningrad region to the Russian Federation by rail. The duration of stay with an FRTD in the territory of the Republic of Lithuania each time (round trip) may not exceed 6 hours. The FRTD is valid for up to 3 months. Transit trains run on the 227 kilometer-long Kena-Vilnius-Kaunas-Kybartai railway line. The average time of crossing the territory of the Republic of Lithuania by train is 4 hours and 37 minutes. An additional 1 hour 23 minutes between the average crossing of the territory of the Republic of Lithuania and the validity of the FRTD (6 hours) is intended for unforeseen train stops.

Kaliningrad transit is an integral part of EU law. The existing measures for the proper implementation of the Kaliningrad Transit Scheme are reviewed annually and new preventive solutions, both technical and procedural, are added. Given the current situation between Russia

and the European Union over the war in Ukraine, Lithuania cannot take any independent decisions, as this is a special EU agreement with the Russian Federation.

Conclusions

Independence of Lithuania in 1991 led to creating a new foundation for statehood. Bilateral agreements between Lithuania and Russia prescribed for the liberal mode of transit even when in 1995 Lithuania introduced visas for visits and road transit transportation.

Kaliningrad's transit in the European Union is unique, with third-country nationals traveling through the European Union between two parts of the Russian Federation that are not geographically bordered. The degree of risk and threat is quite high and can occur at any time.

Kaliningrad transit is an integral part of EU law. Lithuania cannot take any independent legal decisions to change the transit status of Kaliningrad, as this is a special agreement between the EU and the Russian Federation. The transit procedure, in geographical terms, has been extended from one state to the whole of the Schengen area, and the legislation has become applicable not only to the national aspect but also to the Schengen area.

A transit procedure is an established and controlled procedure for traveling through a country that is not a country of destination. This procedure is aimed at ensuring the security of the EU and Lithuania, therefore the transit procedure can be treated as a preventive measure. The situation of the Kaliningrad transit scheme must be constantly assessed with additional technical and procedural preventive measures.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

INTERACTIONS BETWEEN VARIETIES OF SPONTANEOUS AND ORGANIZED SOCIAL ORDER IN CYBERSPACE: IN TERMS OF SUSTAINABLE SECURITY

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DOI: 10.13165/PSPO-22-29-19

Abstract. *The interaction between the variety of spontaneous and organized social order constantly occurs in reality. Organized order can be successfully created only by observing the general social rules that have been formed in the practice of spontaneous order development. The creation of social networks in cyberspace enables many subjects to engage in this interaction in various forms of self-expression. Research on sociocultural expression, which is expanding in social networks, opens up a new deep problem – the tensions of interaction between organized and spontaneous varieties of social order, e.g.. personal data protection and crime issues. The experience of escalating these tensions in cyberspace is also transferred by the subjects to real life. It influences changes in the development of the social order towards a decline in the sustainability of security at all levels of human relations – at the level of individuals and their groups.*

Sustainable security is the long-term balance between subjective freedom and social security, embodied in the general or social rules of conduct that have grown up in the culture of society, and the implementation of which we call justice. Historically, for a long time, social order was formed spontaneously in order, first of all, to guarantee the safety of a group of people. Joint subjective efforts to guarantee security led to groups of people becoming communities, and the freedom of individuals was linked to the creation of a social order. In the process of transition to more modern social forms of life, individual persons and their groups have accumulated greater power than other entities. Their pursuit of freedom of expression and personal gain led to conflicts between the varieties of spontaneous and organized social order. In such a context, the opposite concept of freedom was formed: freedom is only outside the social order.

On the basis of the pursuit of benefits and self-expression, both concepts of freedom now compete in social networks. When subjects adhere to common norms of behavior and base their interaction on the pursuit of common security, their concept of freedom is formed within the social order. However, it is also the opposite: when the rules of social order serve only to achieve the great benefit of a part of the subjects, the concept of freedom without restrictions is inevitably formed. Its compliance and unlimited expansion erode sustainable security.

The aim of this study is to reveal the sustainable security approach and its methodological possibilities to examine the peculiarities of the interaction of organized and spontaneous social order varieties in cyberspace.

Keywords. *Spontaneous social order, organized social order, sustainable security, freedom, safety.*

Introduction

In modern development of mankind, more and more opportunities for self-expression are being acquired by subjects of an open society. The growing dynamism of their activities is implied by intertwined global processes: 1) formation of a global information civilization; 2) above the formation of national political communities and their associated identities; and 3) the effects of the development of globalization and the braids of their interaction. In their impact, we observe a world-wide interconnection of social ties and relationships that is ever-expanding and complex. Under its influence, there is an "epochal scroll in the cultural worldview" (Tomlinson, 2002, p.48). One of the signs of this scroll is the growing intensification of interaction between varieties of spontaneous and organized social order in cyberspace.

„Spontaneous order is a general social order, which, without being the result of any effort, develops as a result of the interaction of many individuals. <...> The constructed order, on the contrary, always provides for an exogenous goal in relation to individuals, to which the former must be more or less subordinated. In the first case, individuals are connected by a relationship of horizontal, in the second – by a relationship of vertical dependence; the first are relations of mutual benefit, the second are relations of one – sided benefit. Precisely because the latter are relations of one-sided benefit, one or another coercion is necessary to maintain them“ (Degutis, 1998, p.218).

The creation of social networks in cyberspace enables a large and age-wide circle of subjects to engage in this interaction. Research on the growing diversity of sociocultural expressions in social networks opens up a new deep problem – the growing tensions of interaction between varieties of organized and spontaneous social order. Typical examples of its expression are the theft of personal data and identities and other crimes in cyberspace. Subjects in the escalation of these tensions can transfer the experience gained into real life, where smart technologies take root. This would lead to the development of social order towards the aggravation of the problem of security sustainability at all levels of human relations – at the level of individuals and their groups. Therefore, the study of this phenomenon requires the development of methodological access based on a sustainable security approach.

Two concepts of freedom compete in social networks for benefits and self-expression. When subjects adhere to common norms of behavior and base their interaction on the pursuit of common security, their concept of freedom is formed within the social order. But the opposite is also true: when the demands of an organized social order move away from sociocultural justice, the concept of freedom without restrictions inevitably forms. Its compliance and unlimited expansion erode sustainable security.

The subject of this study is the rules of procedure for social networks. **Purpose of the study** - to reveal the sustainable security approach and its methodological possibilities to examine the peculiarities of the interaction of organized and spontaneous varieties of social order in cyberspace. The study is based on methods of analysis, comparison, interpretation and generalization of documents.

Definition of a sustainable security approach

In modern Western civilization, a liberal understanding of social relations is deeply rooted, which is based on the constant emphasis on the primacy of individual freedom over other social phenomena and the desire to expand it indefinitely. On the one hand, the tendency towards absolutisation of individual freedom inevitably leads to a softening of the rules of social order and a diminution of the social role of the public (common) good, but on the other hand, it increasingly individualizes the perception of security in such a way that it also distorts the understanding of responsibility. Individuals seek to emphasize the legal responsibility of other entities and demand it from the state institutions when personal security is violated. Therefore, it is no coincidence that in the context of the absoluteness of the expression of subjective freedom, conflicts of subject relations are noticeably aggravated (Naujas demokratijos ir religijos konflikto etapas, 2022) part of which are related to mismatches and different interpretations of one's own sense of security and that of others. It is therefore necessary to examine the dilemma of the relationship between subjective freedom and individual and public security. Although the question "What is more important, subjective freedom or security?" is banal, but it becomes especially important when general or social security is clearly weakening. This dilemma can and should be addressed by trying to define a sustainable security approach.

We will define the sustainable security approach after examining its elements – "sustainable" and "security". What is sustainable? Lithuanian Dictionary provides the following meanings of "sustainable": strong, durable; constant, immutable; immune, enduring, resistant; long-lasting, non-persistent (Tvarus reikšmė - Lietuvių kalbos žodynas). A deep analysis of the individual meanings of the adjective "sustainable" reveals that with this word we can describe the longevity of a permanent, steady state of any object, phenomenon, relationship, or process. For example, any spiritual, political, economic or legal relationship can be described as being in a sustainable balance, i.e., 1) at rest, equalizing forces, or 2) in a state of harmony (Kas yra pusiausvyra? Terminų žodynas). The word "rest" expresses a state of calm, seriousness and balance (Kas yra Ramybė? Terminų žodynas). The word "harmony" expresses the alignment of someone (definition and meaning of harmony), i.e., describes the dynamic process of interaction of forces or elements and / or its result. Therefore, in summary, we can state that sustainable balance expresses the long-term process of harmonization of any interaction forces (elements) and the result achieved, e.g., the methods of legal regulation have achieved a balance of subject rights (freedom) and legal obligations (responsibility).

Security is a state of protection and insurance against dangers and confidence in one's own knowledge. This threefold interpretation of the meaning of security is conditioned by the fact that security itself expresses a relationship with someone in which there is no threat relationship to the subjects. That is, the ratio of subjects must be in sustainable balance, i.e., the "subjective forces" expressing it must be in a state of harmony. There can be various subject relationships at the individual level and that of the group of individuals. For example, the physical, mental, social, spiritual relationship of an individual with himself, other people, their groups, objects of nature, values, activities, its tools and products, with God. Internal and intergroup relations of a group of individuals, their relationship with individuals, objects of nature, activity and its products, with God.

The question is raised: what concepts express "subjective forces", so that with them it would be possible to describe different subject relations, their forms and content? The emergence of entity relationships requires the freedom of entities to make decisions, which are based not only on the subject's knowledge of the benefits, but also on the possible threats that may arise to him and other subjects of the relationship being created as a result of improper implementation of subjective freedom. The emergence and functioning of threats will inevitably affect the state of both personal and general security, which can lead to a loss of sustainable balance. So all subject relationship is linked by two concepts: freedom and security. Freedom is based on the knowledge and will (power) of individuals and their groups to build relationships that do not violate personal and social (general) security. In case of security threat, the subjects of the relationship must voluntarily assume social (legal) responsibility for the consequences of their act or action (inaction) in order to restore a sustainable balance between freedom and security again.

The (not)emergence of threats to the subjects of the relationship or security is conditioned by the level of culture of their interaction and interaction with the environment, expressed by the object - oriented relationship of the elements of the content of culture – knowledge, competence and skills; value orientations and stereotypes; experience of creative activity - and the subjective ability to base the interaction itself on them. Interaction between individuals and their groups manifests itself in four forms – communication, cooperation, competition and conflict. That is, on the one hand, communication, cooperation, rivalry and even conflict are always regulated by the culture of behavior of society and its groups – by the corresponding requirements for the implementation of values and norms, but on the other hand, their subjective implementation may not correspond to the objective reality of security. Therefore, it is no

coincidence that the reasons for the emergence of threats are various: 1) subjective, e.g., subjective interpretation of the behavior of the subject(s) of the relationship as posing a threat to the state of security; 2) objective, e.g., the emergence and functioning of threats independent of the will of the subjects of the relationship; 3) mixed, e.g., the relationships that arise from the subjective pursuit to control threats generate new threats to the development of security. Therefore, a sustainable security approach must include objective security, sense of security (subjective security) and confidence in security (absence of doubt).

Is sustainable security a purely theoretical construct or does it actually exist in the practice of relationships? Historically, the earliest processes of cultural selection in humanity form a sustainable security as a balance between social security and subjective freedom, because otherwise the continuity of human existence would be very problematic. This balance was embodied in the common norms of behavior of groups of people, the constant observance of which is the common basis for the formation and establishment of human communities and spontaneous social order. Social order is formed spontaneously only when the practical mind of group of individuals links the benefits of following common rules of conduct with the security of individuals and the ability to survive basic needs (according to A. Maslow) in the process of satisfaction.

Compliance with common rules of conduct that embodied sustainable security (as a balance between social security and subjective freedom) ensured: 1) the formation and establishment of human communities, 2) the formation of sense of common good – justice and normative justice. The process of awareness of the common good - justice through cultural selection of the rules of social life has reversibly influenced the strengthening of social control of the community and the development of its self-regulation ability. Therefore, Linas Baublys, having examined the ancient concept of justice, quite rightly argues that "justice is a fundamental principle of social life, indicating certain - moral, legal, economic, political limits and possibilities of human behavior" (Baublys, 2005, p. 33).

Thus, a sustainable security approach can be defined on the basis of the analysis presented. Sustainable security is the long-term balance between subjective freedom and social security, embodied in the general or social rules of conduct that have grown up in the culture of society, and the implementation of which we call justice. When subjects adhere to common norms of behavior and base their interaction on the pursuit of common security, the concept of freedom functioning within the limits of the correct social order is formed. However, the opposite may be the case: when the demands of social order move away from sociocultural justice, the concept of freedom as the absence of constraints is inevitably formed, the observance of which, and especially its unlimited expansion, destroys sustainable security.

Social order and the relationship of its varieties

In the most general sense, a social order is a set of characteristics of community relations and relationships that have worked out and developed 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 a society or social group as possible. It is necessary to realize that human groups have formed and survived on Earth in very different natural conditions. Therefore, in the process of adapting human groups to the natural environment and its purification practices, different characteristics of interrelationships and relationships that determine the survival of individuals are formed, which: 1) groups of people gradually institutionalized as common rules of group behavior; 2) compliance with common rules of behavior led to the formation of groups of people as communities and the subsequent development of their interaction with each other

– societies and nations. The formation of general or social rules of behavior and their observance at the same time condition a two–way process - the spontaneous formation of both the community and its social order. Therefore, it can be said that there is as much community (society) as its members adhere to common rules of conduct.

The spontaneous formation and development of the social order is a process whose "driving force" comes from the need to satisfy basic human needs. In the theory of human needs A. Maslow stressed that "these needs, or values, relate hierarchically and evolutionarily – in terms of strength and primacy. For example, security is more powerful and stronger, a more urgent, earlier emerging, vital need than love, and the need for food is usually stronger than every other need. In addition, all these needs can be considered the steps along the time trail to a general self-actualization that includes all basic needs"(Maslow, 1989, p. 343).

Meeting basic human needs inevitably led to the development of such rules of social behavior, which not only helped to survive as many groups of people practicing them as possible, but also to achieve higher goals in life. In other words, in order to avoid dangers and increase mutual trust or to meet basic needs, systems of social assessments and norms have developed and are now developing: what is happening, what is good, what is evil, what must be sought and what must be avoided, how to behave in one situation or another, etc. On their basis, it is decided what is meant by one or another event, phenomenon (system of meanings), what is the relationship of events, phenomena, things (system of relations). All this is now the most important elements of the culture of society.

It is very important to realize that the social order is an inevitable and continuous creation of human, existing as a creation of human activity. Human creates it by constantly reflecting on his experiences and thoughts, projecting them into the external world and embodying them, giving them a concrete form. This is how he can express himself as a subject of inner coexistence. Human's thoughts are most often associated with increasing his own security and other egoistic interests, for example, the needs of freedom. Social order is not a part of the "nature of things" and cannot be derived from the "laws of nature".

But we rarely, or not at all, realize that the social order is expressed by a large number of institutions "which are really the result of human activity, but are not the result of human design" (Ferguson, 1767, p.187). The difference between the two categories of phenomena - "the result of human activity that is not the result of human thought" and "the result of human thought" gave F. A. Hayek a basis to think on self-creating systems and to distinguish two varieties of social order: a) a self-grown (spontaneously) social order as if it had arisen from within without a prior purpose, and (b) a social order created by specific people as if it had been created consciously from outside (Hayek, 1998, p. 65-67).

Hayek emphasizes that "the difference of this kind of order from the one that someone creates <...> is fundamental to understanding social processes and social policy. We have few terms to describe these two orders. Order made <...> can also be described as a construction, as an artificial order or, especially if it concerns a managed social order, as *organisation*. On the other hand, the developed order, which we have described as self-occurring,<...> in English it is most convenient to call *spontaneous order*. Classical Greek <...> has two different words to denote these two varieties of order, namely the word *taxis* - a man-made order, for example, combat order, and a developed order was escribed by the word *kosmos*, which originally meant right order in the state or society" (Hayek, 1998, p.65-66).

All deliberately created orders inevitably serve or served the purposes of their creators, are usually relatively simple and specific, their existence can be determined by observation and intellectually covered. None of these traits are necessary for a spontaneous order. Its level of complexity is not limited by the possibilities of the individual human mind, its existence is not

necessarily revealed to our senses, since it can be based on purely abstract relationships that we can only reconstruct in thought. Since it is not made, we cannot reasonably say that it has a definite purpose, although the perception of its existence allows us to successfully pursue many different goals. That is, the spontaneous order performs a function, i.e., serves to realize the goals of various entities. On the basis of this function, public confidence in spontaneous order is formed, since it expands our capabilities. Therefore, in order to use this function of spontaneous order, subjects adapt to its rules that directly affect only some of them, and as a whole do not necessarily know. Spontaneous order develops through the incorporation of new circumstances and rules and inevitably becomes complicated in such a way that all circumstances and rules cannot be covered by any individual mind. After all, an order that has developed spontaneously can expand into such a complex social order that will not be subordinated to the intellectual processes of conscious coordination and regulation, because for its development the knowledge of all its individual members will be used, which will never be concentrated in a single mind. Inevitably, therefore, such a spontaneous order will limit our possibilities of control (Hayek, 1998, p. 67-71).

Since spontaneous order develops without a prior purpose as a result of the interaction of many individuals, it is impossible to predict it. A classic example of this order is the market, in which all individuals seek benefits and, as a result, relationships spontaneously develop between them. Thus, the market provides the function of obtaining benefits. Its examination reveals that the receipt of benefits is associated with the quality of goods and services. The essential feature of the quality of goods and services is their sustainability. Thus, a deep analysis of the market order reveals that the market is viable and functional only when its order is consistent with a sustainable security approach. Such functionality is also inherent in the spontaneous order of society, which developed on the basis of the maintenance of customs and traditions.

All artificial arrangements are constructed under conditions of spontaneous order that exist and function in reality. "Although spontaneous order and organization always coexist, it is impossible to combine these two principles of order as one likes. <...> To some extent, every organization must rely on rules, not just specific orders. <...> Only by following rules and not specific orders, individuals have access to knowledge that no one as a whole has. Each organization, whose members are not merely tools of the organization, defines by its orders only the function to be performed by each member, the objectives to be achieved, and certain general features of the methods to be used, and leaves everything else to be decided by individuals according to their knowledge and abilities," says Hayek (p. 79).

It is very important to realize that the rules of organization and spontaneous order are different in their origin and role. The rules of the organization are created to fulfill specific goals and regulate relations between the management and its subordinates and the details of activities. Therefore, they will be different for different members of the organization. The rules of spontaneous order are formed in the process of interaction between individuals as a consequence of their relationship of freedom and security. They do not depend on specific goals and apply equally to all members of a society or group. The rules of spontaneous order are used by individuals as available knowledge to achieve their goals. Therefore, organisations must take care that the cooperating individuals rely on common rules. This is especially important when we move to a common order of society as a whole. "We cannot maintain this complex order under the direct leadership of its members, it can only be maintained indirectly – by maintaining and improving the rules that allow the formation of a spontaneous order," states Hayek (p. 82). Therefore, it can be unequivocally stated that artificial orders can be functional if they comply with the general rules of the spontaneous order and do not contradict its further development.

Inversion of interaction between freedom and security in cyberspace consumption policy

Security is becoming increasingly important in cyberspace. This is due to the increasing number of crimes in cyberspace, the growth of their diversity and complexity. It is no coincidence that the Prosecutor Office of the Republic of Lithuania stresses that "with the development of information technologies, economic, financial and other activities rapidly moving to cyberspace, the number of criminal acts committed in cyberspace in the Republic of Lithuania, as in the whole world, is constantly growing, and it is predicted that it will continue to grow. These acts are extremely latent, more complex, and their investigation and disclosure is extremely complicated due to the exceptional professionalism and ability of criminals to disguise themselves on the internet“ (Nusikaltimai elektroninėje erdvėje, 2019).

In cyberspace, there is a layered interaction of organized and spontaneous order. Directly organized procedures in cyberspace are created by website and network managers and compliance with its rules is supervised by handlers. In the creation of the organizational order in cyberspace, national and above-national entities are increasingly involved not directly, which regulate the activities of all entities and users and control their responsibilities by means of legislation of the relevant legal force. As a result, site and network managers are increasing their responsibilities to improve internal arrangements in a way that is consistent with international and national legislation. Also, the responsibilities of website and network managers to control the behaviour of users of cyberspace in order to comply with the rules of common procedure and to manage emerging risks and infringements are increasing.

Creation and consumption of electronic space has its own history. Early users associated cyberspace more with the free provision of information (e.g., advertising), receiving and interpersonal communication. Therefore, managers and handlers of electronic communications and websites took a liberal approach to interaction between users in order to achieve their economic benefits. Even the idea that absolute freedom of individuals is possible in the virtual world and no one can regulate it has been disseminated. On the basis of human freedom of expression and the pursuit of benefits, the priority of unlimited subjective freedom was promoted, which enabled sites managers to attract users, accumulate their databases and derive enormous benefits from the management of these bases.

On the other hand, it can also be argued that on the basis of human freedom of expression and benefits, the interactions between users of cyberspace developed a spontaneous order that destroyed the classical concept of sustainable security. This means that although the organizational order of the sites formally existed, it was not developed, and its violations were liberally controlled. Consequently, there has been a gradual development of subjective freedoms - with as few constraints as possible -resulting in a spontaneous order, which is the opposite of the spontaneous order of security. It is necessary to remember that from the point of view of sustainable security, subjective freedom must not be opposed to the security of a group of people or society. However, at the beginning of the creation and use of cyberspace, the expression of subjective freedom and the disregard for security prevailed. Security was interpreted solely at the level of preventing physical threats. Since in the virtual world, subjects are disconnected from physical contacts, the provision was made that their security was not threatened.

It now must be stated that the consumption of cyberspace is already equivalent to the consumption of reality. For example, in 2015, there were 2.07 billion users of social networks, and in July 2021, it was 4.48 billion. Since 2015, social media growth rate was an average of 12.5% per annum. Growth is now declining, as the data of 2019-2020 shows 9.2% growth rate (Dean, 2021). Thus, there has been a transformation and we have to turn to the concept of

sustainable security, because the freedom of users of cyberspace has become a challenge to the security of themselves, groups of people and states. The new reality of digital space (first of all, elimination of time and space restrictions, anonymity, large-scale possibilities of operation) allows new forms and ways of illegal activity and distinguishes computer crimes as special and different from the usual crimes of the "earthly world" (Ugnė Grigaitytė, Miglė Mackevičiūtė, 2022, p. 278).

Users of the cyberspace are very different in terms of their interests, knowledge and experience, but actively, especially the younger generation, participate in various activities that involve: 1) the production, dissemination and reception and interpretation of a wide variety of information, 2) the provision and receipt of goods and services; 3) the creation of virtual groups and communities and the maintenance of their functioning, 4) the creation and maintenance of images of objects and entities. Digital opportunities involve them in activities because they rely on their knowledge, freedom of virtual interactions and anonymity. However, a significant proportion of users do not have the necessary competences to reasonably assess the risks of their activities in cyberspace. There will always be a risk that the wide-ranging capabilities of digital technologies enable the security of users of cyberspace to be compromised. Therefore, it is necessary to develop their protection and threat recognition competences. On the other hand, the behavior of cyber users is changing, as they increasingly inform the virtual police patrol about the observed violations (Policijos virtualus patrulis pasidalijo rezultatais: kaip sekėsi ir kas labiausiai patraukė dėmesį?, 2021).

It is very important to stress that international and national legislation increasingly defines and regulates the risks arising in cyberspace. In the context of their implementation, managers and managers of social networks change their position in relation to the subjective interaction of freedom and security. They develop new rules for the management of social networks, compliance with which would allow achieving a balance between freedom of expression and social security of subjects, i.e., there is an inversion of the interaction between freedom and security, which is consistent with a sustainable security approach. "Facebook" community standards, for example, describe what is allowed and not allowed to do in the "Facebook"system.

"Facebook" "society's standards goal is is to create a place for expression and give people a voice. "Meta" wants people to be able to talk openly about the issues that matter to them, even if some may disagree or find them objectionable. In some cases, we allow content, which would otherwise go against our standards, if it's newsworthy and in the public interest. We do this only after weighing the public interest value against the risk of harm, and we look to international human rights standards to make these judgments" (Facebook Community Standards, 2022).

This community emphasizes that "our commitment to expression is paramount, but we recognize the internet creates new and increased opportunities for abuse. For these reasons, when we limit expression, we do it in service of one or more of the following values:

1. Authenticity. "We want to ensure that the content people see on "Facebook" is authentic. We believe that authenticity creates a better environment for sharing, and that's why we don't want people using „Facebook" to misrepresent who they are or what they're doing.

2. Security. We're committed to making „Facebook" a safe place. We remove content that could contribute to a risk of harm to the physical security of persons. Content that threatens people has the potential to intimidate, exclude or silence others and isn't allowed on „Facebook".

3. Privacy. We're committed to protecting personal privacy and information. Privacy gives people the freedom to be themselves, choose how and when to share on „Facebook" and connect more easily.

4. Dignity. We believe that all people are equal in dignity and rights. We expect that people will respect the dignity of others and not harass or degrade others" (Facebook Community Standards, 2022).

"Facebook" community standards detail various forms of prohibited and controversial behavior and policies to prevent them. For example, how violence and criminal behaviour can occur in a social network? For users to better understand and recognize prohibited behaviour, "Facebook" managers decompose it into separate elements: violence and incitement, dangerous individuals and organizations, coordination of intentional harm and promotion of criminal activity, restricted goods and services, fraud and deception. Security is decomposed into the following elements: suicide and self-harm, sexual exploitation of children, violence against children and child nudity, sexual exploitation of adults, bullying and harassment, exploitation of people, violations of privacy. Controversial content includes hate speech, violent and shocking content, adult nudity and sexual activity, sexual harassment (Facebook Community Standards, 2022).

"Facebook" community is the social network with the most users. Its managers and handlers seek to establish in cyberspace standards of community behavior, compliance with which will lead to the development of a culture of freedom of expression, but also attract even more users. Therefore, their policies, on the one hand, seek to define as fully as possible the forms of intolerable behavior and the appropriate practices for their prevention, but, on the other hand, reserve the opportunity for themselves to publish content that does not meet the declared standards but is in the public interest. Thus, the possibility of double standards remains, although, insuring against possible errors, notes that decisions will be based on an assessment of the public interest benefit / harm risk ratio and in accordance with international human rights standards. Competition between all social networks is likely to be based on a policy of balancing freedom and security. Therefore, there is hope that the promotion of a sustainable security policy in cyberspace will lead to the development of a spontaneous order of security in the real world.

Conclusions

Linguistic and etymological examination of the meanings of "sustainability" and "security" allows a reasonable definition of a sustainable security approach. Sustainable security is the long-term balance between subjective freedom and social security, embodied in the general or social rules of conduct that have grown up in the culture of society, and the implementation of which we call justice. The main meaning of the term" sustainable security " is the qualitative description of the state of security.

In the processes of cultural selection of humanity, sustainable security is formed as a balance between social security and subjective freedom, because otherwise the continuity of human existence would be very problematic. This balance was embodied in the common norms of behavior of groups of people, the constant observance of which is the basis for the formation and establishment of human communities and their social order. Social order is formed spontaneously only when the practical mind of a group of individuals relates the benefits of following common rules of conduct with the security of individuals and the ability to survive in the process of satisfying basic needs.

From the point of view of sustainable security, cyberspace consumption policy is undergoing an inversion of the interaction between freedom and security. Its formation is determined by the pursuit by international and national authorities of the relevant legal power to control the increase in the number, diversity and complexity of cybercrime through legal regulation. Managers and handlers of social networks establish standards of community behavior in cyberspace, the observance of which will lead to the development of a culture of freedom of expression. They emphasize that decisions on network user behaviour will be based on an assessment of the public interest benefit / risk of harm and in accordance with international human rights standards. Competition between all social networks is likely to be based on a policy of balancing freedom and security. Therefore, there is hope that the promotion of a sustainable security policy in cyberspace will lead to the development of a spontaneous order of security in the real world.

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ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2022 (30)

FEATURES OF THE LEGAL REGULATION ENSURING THE RIGHT OF MINORS TO PRIVATE LIFE AND THE PROTECTION OF PERSONAL DATA

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Abstract. *The quality protection of minor's right to privacy cannot be achieved without sufficient protection of personal data. The General Data Protection Regulation provides specific protection rules for the processing of minor's personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Minors merit specific protection, any information and communication when it comes to their privacy and data protection.*

This scientific article aim is to investigate the legal regulation for the protection of minors's personal data and to show the connection of this legal regulation with the individual's fundamental right to privacy and identify the problems of this legal regulation.

In order to achieve these goals, there will be discussed the main legal aspects of children's data protection, such as consent, age requirements and other aspects. This scientific article analyzes not only the legal regulation of the protection of children's personal data but also the connection with the right to privacy.

Keywords: *right to privacy, minor's protection of personal data, GDPR.*

Introduction

Development of the information society, evolution of new technologies, processes of globalization, growth of the use of digital technologies due to the influence of the COVID-19 pandemic raise the debate about the impact of present and future technologies on human rights, i.e., how these processes can ensure and protect the human right to privacy and the protection of personal data. The mentioned processes have particularly highlighted the importance of the right of minors to data protection and privacy, and at the same time have led to a new look at the problems arising from the improper processing of personal data.

The personal data protection system has been developed to protect not only personal data, but also person's right to private life. Importantly, the violation of the right to the protection of personal data also violates the privacy of the person (*Štareikė, Kausteklytė-Tunkevičienė, 2021*).

On May 25, 2018, a new legal regulation, the General Data Protection Regulation (GDPR) (*GDPR, 2018*), came into force, which took a fresh look at the problems arising from the improper processing of personal data (*Štareikė, Kausteklytė-Tunkevičienė, 2018*). It was the GDPR and its legal regulation that was the first in the European Union to regulate the processing of personal data of minors under the age of 16, classifying personal data of minors as particularly sensitive data requiring greater protection. The GDPR actually returned control of personal data from organizations to the natural person, transferring responsibility to them. Organizations must be able to explain to every natural person who asks them: What information about the person does the organization has? For what purpose it processes personal data? Where and how is the processed personal data used? (*SolPriPa Project Guidelines, 2019*).

The quality protection of the minors right to privacy cannot be achieved without sufficient protection of personal data. The General Data Protection Regulation provides specific

protection rules for the processing of minor's personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Minors merit specific protection, any information and communication when it comes to their privacy and data protection (*GDPR, 2018*). Minors want to maintain control over their personal data, as this is related to the sharing of the value of personal data. Personal data can be used to better serve individuals on the internet, for example, to target ads that are relevant to them and meet their needs (*SolPriPa Project Guidelines, 2019*).

In this context, this article analyses the relationship between the minor's right to privacy and protection of personal data, legal regulation, scope of these rights and values protected. The second part of the article analyses the requirements for the processing of personal data of minors and the main measures to ensure the right of minors to data protection and privacy in the digital space.

The relevance of this scientific article is related to ensuring the processing of personal data of minors and privacy requirements and identification of appropriate measures to prevent violations of these rights. The **purpose of this scientific article** is to analyse legal regulation of the processing of personal data of minors and identify the problems of this legal regulation. In order to achieve these goals, there will be discussed the main legal aspects of minor's data protection, such as consent, age requirements and other aspects. This scientific publication will analyse not only the legal regulation of the protection of minor's personal data but also the connection with the right to privacy.

The object of scientific article is processing of personal data of minors as a guarantee of the right to a private life.

The scientific article uses the following theoretical and empirical methods: the method of comparative analysis, logical – analytical and systematic analysis. The comparative analysis method was used to compare the content and legal regulation of the right to protection of personal data of minors and right to privacy, a logical – analytical method was used to analyse the requirements for the processing of personal data of minors and to identify the most common problems in this area. Logical-analytical and systematic analysis methods are used to reveal the relationship between legal acts and legal doctrine, different legal norms, summarize the scientific article, reveal the main problem, and formulate conclusions.

Legal regulation of the right of minors to protection of personal data and protection of private life

The right to privacy and protection of personal data is governed by both the European Union (further – EU) and the Council of Europe (further - CoE) legal regulation ensuring protection of fundamental human rights. The right to privacy and protection of personal data are closely related, sometimes even overlapping, but they are not identical rights (although they protect similar values - human dignity, the right to autonomy, secrecy of personal life, etc.) (*Štareikė, Kausteklytė-Tunkevičienė, 2021*). Privacy and data protection, although interrelated, are recognized worldwide as two separate rights. In Europe, they are seen as vital parts of sustainable democracy and privacy is recognised as a universal human right, but data protection – at least for the time being - is not. The right to privacy or private life is consolidated in *The Universal Declaration of human rights* (Article 12), *The European Convention on Human Rights* (Article 8) and *The European Charter of Fundamental Rights* (Article 7).

The concept of data protection arises from the right to privacy, and both are important for preserving and promoting fundamental values and rights. Data protection has precise objectives

to ensure fair processing (collection, use, storage) of personal data in both public and private sectors. (*European Data Protection Supervisor*).

The Council of Europe's legal framework for the right to privacy and data protection is consolidated in various documents. One of the most important legislations guaranteeing the rights to privacy and data protection is the Convention for the protection of human rights and fundamental freedoms (*ECHR*) of the year 1950. Article 8 of the ECHR establishes a person's right to private and family life esteem: (i) everyone has the right to respect for his private and family life, his home and his correspondence; (ii) there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The 108th Convention of the Council of Europe, which was submitted for signature back in 1981, long before the era of internet and electronic communications, is also worth noting. The 108th Convention of the Council of Europe is the first binding international instrument that protects individuals against abuse that may involve the collection and processing of personal data, establishes basic principles and safeguards, and grants rights to data subjects. The development of digital technologies has raised new challenges and highlighted problems in the field of personal data protection. Considering the imperfection of data protection regulation the Convention was updated in 2018 (*Council of Europe, 2018*). Given different responsibilities of supervisory authorities, the Convention now clearly requires institutions to pay great attention to the rights of children and other vulnerable persons in data protection when it comes to raising public awareness (*Milkaite, Lievens, 2018*). The updated Convention sets out the objective of protecting the right to private life through automated processing of personal data, respecting the rights and fundamental freedoms of each person in the territories of all parties, regulating international data transfers and, in particular, ensuring the right to private life of individuals.

The international agreements are also worth mentioning. *The United Nations' Convention on the Rights of the Child* of the year 1989 is an important agreement between countries that have promised to protect and safeguard the rights of the child. The Convention regulates that any person under the age of 18 is considered a child. It also regulates what are the rights of children and what are the duties of the governments of the countries. All rights governed by the Convention are related, all are equally important and cannot be taken away from children. Clause 16 of the Convention provides for the protection of privacy, i.e., that every child has the right to privacy. It is also established that the laws of the States Parties to the Convention shall protect the personal and family life of children, the inviolability of the apartment, the secrecy of correspondence or any unlawful encroachment on their honour and reputation. The child has the right to be protected from such interference or encroachment by the law. Clause 17 of the Convention regulates children's access to information, States Parties recognise the important role of mass media and ensure that the child has access to information and materials from various national and international sources, in particular such information and materials that contribute to the child's social, spiritual, and moral well-being and promote his or her physical and mental development. It is recognized that children have the right to receive information from the internet, radio, television, newspapers, books, and other sources. In the meantime, adults should make sure that the information they receive is not harmful. Governments should encourage the media to share information from various sources in languages that are understandable to all children (*The United Nations Convention on the Rights of the Child, 1989*).

The protection of personal data of minors is subject to the general legislation of the European Union: the Charter of fundamental rights of the European Union, the General Data Protection Regulation (*GDPR, 2018*).

Article 7 of the Charter of Fundamental Rights of the European Union distinguishes between a person's right to private and family life, that every person has the right to respect for his or her private and family life, the inviolability of housing and the secrecy of communication. Article 8 establishes the protection of personal data, where each person has the right to the protection of his or her personal data, and personal data must be properly processed and used only for specific purposes and only with the consent of the person concerned or on other legal grounds established by law. An independent body must monitor compliance with the rules on the protection of personal data (*Charter of Fundamental Rights of the European Union, 2000*).

Table1. Legal regulation of the child's right to privacy and data protection
Source: compiled by the author

CoE legal regulation	EU legal regulation	National regulation
The European Convention for the protection of human rights and fundamental freedoms (Article 8)	Charter of Fundamental Rights of the European Union (Articles 7 and 8)	The law on legal protection of personal data of the Republic of Lithuania (Article 6)
The Convention of the Council of Europe No. 108+	General Data Protection Regulation (Article 8)	The law on information society services of the Republic of Lithuania (Article 10)
	The resolution of the European Parliament, dated July 6, 2011, on a comprehensive approach to the protection of personal data in the European Union (2011/2025 (INI))*	The law on the protection of the rights of the child of the Republic of Lithuania (Article 10, part 1)
	Article 29 Working Party, Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679*	
	Article 29 Working Party opinion 2/2009 on the protection of personal data of minors *(Opinion 2/2009 on the protection of children's personal data)* *	
	Article 29 Working Party working document 1/2008 on the protection of personal data of minors *(1/2008 on the protection of children's personal data (general guidelines and the special case of schools))* *	
	**Documents are of a recommendatory nature, i.e., not legally binding*	

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On May 25, 2018, in the Member States of the European Union there was introduced the GDPR, repealing the October 24, 1995 Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the freedom of such data, on which the processing of personal data in the EU member states

was based. The aim of the GDPR to ensure real protection of personal data, to protect the rights of individuals in the digital space and to strengthen the fight against crime is identified as an incentive to have a uniform and updated legislation on the protection of personal data in all member states of the European Union. The main objectives of the personal data protection reform were to strengthen the rights of data subjects, to establish the responsibilities of data processors and data sub-processors, and to ensure transparent and reliable regulation and processing of personal data (*Štareikė, Kausteklytė-Tunkevičienė, 2018*). According to R. N. Zaeem and K. S. Barber (2020): *„The EU GDPR is one of the most recent and powerful regulations passed to protect consumers' data. Not only does it give EU citizens more agency to control their own personal information with organizations inside and outside the EU, the GDPR has inspired sweeping new legislation in the US and continues to be the most widely referenced privacy regulation as new regulations are considered in the US and around the globe".*

Frequent breaches of personal data are related to minor's personal data due to insufficient protection through the use of smart technologies. So, the question naturally arises is the privacy of minors sufficiently guaranteed by the regulations on the protection of personal data? The rapid growth of technologies and the provision of services, where the business model is based on the collection and analysis of personal data (from social networks, marketing, analytical purposes) pose many problems. The protection of personal data is a fundamental right of the EU and privacy is understood more than a luxury but a necessity (Livingstone, 2018).

Thus, the main aspects of how the GDPR is committed to improving the protection of minor's privacy are discussed. The GDPR has established that information related to personal data and held by data controllers and processors (Livingstone, 2018):

- first, process them lawfully, securely and fairly, in a transparent manner and in a way that is comprehensible to data subjects;
- second, collect and process personal data and, if data controllers engage in profiling, only for specific, explicit, and legitimate purposes, subject to specific provisions on "sensitive" data (e.g., health data; data on racial or ethnic origin; religious beliefs; information on sexual orientation, etc.).
- third, facilitate the rights of individuals to access, rectify, erase and restore their personal data in certain circumstances
- fourth, meet a wide range of management requirements based on risk-based impact assessments.

Personal data of minors are classified as particularly sensitive data requiring greater protection by excluding minors from the general spectrum of the concept of entities (see Table 2)

The GDPR Recital 38 establishes that the specific protection of minors is applied in cases where information society services are provided, because minors need special protection of their personal data, because they may not be sufficiently aware of the risks, consequences or safeguards associated with the processing of personal data and their rights. Such special protection should in particular apply to the use of minor's personal data for marketing purposes, the creation of a virtual personality or user profile and the collection of personal data relating to minors through the services offered directly to the child. The consent of the holder of parental responsibility should not be required to provide prevention or counselling services directly to the child.

Table2. Types of personal data
Source: compiled by the author.

Personal data	Special categories of personal data	Personal data of minors
Any information about identified or identifiable natural person (name, surname, tel. no, bank card no., fingerprint, iris, face image, vehicle registration no., e-mail address and so on.)	- Racial or ethnic origin, political views, religious or philosophical beliefs, trade union membership; - Genetic data, biometric data (to specifically identify a natural person); - Health data, - Data on the sex life/sexual orientation of a natural person.	**Personal data of minors classified as particularly sensitive data requiring greater protection by excluding minors from the general spectrum of the concept of entities** (name, surname, personal code, address of residence, telephone number, e-mail address, nationality, date of birth, bank card number, education data (completed primary school, data on diplomas and certificates), data on health (health status, blood group, etc.), image data, biometric data, family member data (if associated with the data subject), interests, purchase and shopping history, internet pages visited by a person, randomly generated telephone number, location data (e.g., location data on mobile), Internet Protocol (IP) address, etc.

Thus, according to the EU law (*Art. 8 of GDPR*), if information society service providers handle data of children over 16 years of age, on the basis of consent, such data processing will be legal only if that consent has been given or the processing of the data has been authorised by the holder of parental responsibility and to the extent that such consent or permission has been given. The State Consumer Rights Protection Service defines information society services as various economic activities carried out when connected to an electronic communications network, in particular the sale of goods via the internet. Information society services are not only services for which contracts are concluded on the internet, but also include those services for which their recipients do not pay, such as services for the provision of information on the internet, means for retrieving, accessing information, services consisting in the transmission of information via communication networks, the provision of access to the communication network or the provision of information provided by the recipient of the service on the internet (*State Consumer Rights Protection Authority*). Member states may set a lower age in their national law, but not less than 13 years. In accordance with GDPR 58, minors must be given special protection, and information and notifications where data processing is child-oriented should be worded in clear and simple language that is easy for the child to understand.

The law on the protection of the rights of the child of the Republic of Lithuania (*Art. 10, part 1*) affirms that the child has the right to private personal and family life, privacy of communication, protection of personal data, secrecy of correspondence, honour and dignity, inviolability, and freedom of the person.

The European Parliament resolution, dated July 6, 2011, on a comprehensive approach to the protection of personal data in the European Union (2011/2025(INI)) notes that children must be particularly protected, as they may not fully understand the risks, consequences, safeguards, and rights associated with the processing of personal data, given the increasing

number of social networks on the internet and the disclosure of their personal data by young people. Attention is drawn to the need for particular protection of vulnerable persons, especially children, in particular by establishing a mandatory requirement for a high level of data protection and implementing appropriate specific data protection measures for such persons; stresses the importance of data protection legislation; recognises the need for particular protection of children and minors, given the increased use of the internet and digital content by children, and stresses that the ability to use media should be an important part of official education in order to teach children and minors to behave responsibly in the online environment. In order to achieve the intended objectives, special attention should be paid to the provisions on the collection and further processing of children's data, the implementation of the principle of limitation of goals in the field of children's data.

With regard to profiling, the Article 29 Working Party, a former advisory body that provided guidance on the implementation of the EU data protection law, which was replaced by the European Data Protection Board established after the entry into force of the GDPR, pointed out that despite the fact that the GDPR does not prohibit profiling of children at all, data controllers should generally refrain from profiling (behaviour) of minors for marketing purposes (Article 29 Data Protection Working Party, 2018). Automated decision-making, including profiling, with legal or similar significant effects should not apply to minors. Profiling children from an early age can lead to ads, services, products, and information being tailored and targeted to them, based on their online presence and past behaviour, offering the same services and goods, thus reducing new opportunities (Milkaitė, Lievens, 2018).

Following an overview of the main legislation and the legal regulation of the processing of personal data, the main measures to ensure the right of minors to data protection and privacy in the digital space are discussed below.

Key aspects to ensure the right of minors to data protection and privacy in the digital space

In 2019, „Spinter tyrimai“ research on the issues of personal data protection was conducted in Lithuania on behalf of the State Data Protection Inspectorate in order to find out the opinion and awareness of the population regarding the protection of personal data (*State Data Protection Inspectorate, 2019*). The study revealed that 73 percent of 18-25 years old Lithuanian residents know or believe that they know about the rights or duties established for them by law in the field of personal data protection. Young people identify online media (58%) and television (52%) as the most popular source of information on personal data protection, while other people (28%) and social networks have similar popularity for disseminating information on personal data protection (27%) (SolPriPa, 2019).

In the light of the above study, the online space presents a number of challenges related to the processing of personal data, especially when online services and social networks are used by minors. In practice, many questions arise regarding the processing of personal data of minors: what information should be provided to minors about the processing of their personal data? Is the consent of a minor required to process his or her personal data? What is the age limit from which the data controller and/or the processor can process personal data of minors?

As already mentioned, the protection of personal data is closely related to a person's right to privacy. Violation of personal data processing requirements also violates the right to privacy. Ensuring the right to privacy is vital for the development of the child. Key privacy-related media literacy skills are closely linked to various areas of child development. Children are still developing their own awareness of privacy, but even older minors have difficulty understanding the full complexity of internet data flows and some aspects of data commercialization. There is

a clear need for an adapted approach that takes into account the social maturity and development of minors and individual differences. Not all minors are equally able to browse the digital environment safely, taking advantage of the opportunities available, avoiding or reducing privacy risks. These problems raise pressing issues in media literacy research and education. It is undeniable that privacy concerns have intensified with the introduction of digital technologies and the emergence of internet access, as these technologies create large data sets with detailed documentation of personal information about internet users. Meanwhile, minors are more vulnerable than adults to online threats to privacy because they lack digital skills and do not realize the risk of privacy violation (*Livingstone, Stoilova Nandagiri, 2019*).

The first aspect, it is important to note that any information that can help identify a person is personal data. Information should be understood as audio, visual, genetic data, fingerprints and other data, which can be represented by letters, numbers, graphic, photographic image, sound (phone) and other forms. Thus, personal data is considered all information related to:

1) Information relating to a living person;
2) A person's identity can be established by directly personally identifiable data (e.g., by name and surname, personal code, etc.);
3) Determined indirectly, i.e., when the available data is insufficient to identify a specific person, however, the identity of the person can be established using other data, regardless of whether the organization has it (e.g., car license plate number, video data, telephone number, etc.) (*SolPriPa Project Guidelines, 2019; GDPR, 2018*).

The controller must actively provide certain essential mandatory information to the data subjects. Information about the name and address of the data controller, the legal basis and objectives of processing, the categories and recipients of data processed, as well as the means for the implementation of rights can be granted in any appropriate format (electronic website, through technological means for personal devices, etc.), provided to the data subject in a fair and efficient manner. The information provided should be easily accessible, readable, understandable, and adapted to the relevant data subjects, for example in a language understood by children. Any additional information that is necessary to ensure fair processing or that is useful for such a purpose, such as retention period, knowledge of the reasons for the processing or information about the data transfer to another contracting or non-contracting party (including information whether that particular non-contracting party provides an adequate level of protection or whether the data controller has taken measures to guarantee that level of data protection) cases must also be reported (*Handbook on European data protection law, 2018*).

As already mentioned, Article 8 of the GDPR provides that, where personal data are processed on the basis of the consent of the person and this relates to the direct offer of information society services to the minor, the processing of the minor's personal data is lawful only if the minor is at least 16 years old, but not less than 13 years old. The Law on legal protection of personal data of the Republic of Lithuania establishes that the processing of personal data of a minor is legal if the consent is given by a minor not younger than 14 years of age. It should be noted that if a minor is under 14 years old and uses electronic services (social networks, receives newsletters, sends computer games) to data controllers - various business representatives need to obtain the consent of one of the minor's parents or other legal representatives, since the provision of these services will use the minor's personal data.

Personal data, as with other data subjects, must also be processed in accordance with the principle of transparency (*Štareikė, 2021*). Consent must be given freely, based on information, specific and unambiguous. Consent must be a statement or a clear confirmatory act expressing consent to the processing of data, and the person has the right to withdraw his consent at any

time. It is the responsibility of controllers to keep a verifiable record of consent that can be verified (*Handbook on European data protection law, 2018*).

Although the GDPR does not impose requirements on the form or ways in which a person's consent is to be given, it does establish these terms of consent (*SolPriPa Project Guidelines, 2019*):

1) The controller must be able to prove that the minor or his legal representative has agreed to the processing of personal data;

2) It must be ensured that the minor understands to whom and for what he has given his consent, and therefore he must be properly informed of:

- the identity of the company collecting personal data (i.e., name, legal entity code, etc.),
- the purposes of the intended processing of personal data,
- type of data to be processed,
- possibility to withdraw consent,
- the fact that the data will only be used for automated decision-making, including profiling (if applicable),
- transfer of data to third parties, etc.

3) The consent request must be made in an understandable and easily accessible form, in clear and simple language, and should not contain unfair terms;

4) Silence, pre-ticked boxes, inaction should not be considered consent;

5) Consent is obtained by a written statement (including by electronic means) relating to other matters, must be clearly distinguished from other matters;

6) Consent must not be ambiguous;

7) Revoking consent must be as easy as giving it. The person must be informed of the right to withdraw his or her consent before giving his or her consent.

Obviously, the fact that more and more human activities are being converted into data means that privacy, and no longer publicity, now requires a thoughtful effort, so that it is much easier to preserve than to remove a record of what has been said or done. It is becoming the norm, not the exception, that the digital footprint of personal data becomes a means by which a person's choices are determined by others based on their views and also on the interests of the controller (*Livingstone, Stoilova, Nandagiri, 2019*). Thus, the increasing use of digital technologies also leads to increased requirements and responsibilities for data controllers in order to properly process personal data of minors and in order to avoid penalties for improper processing of personal data of minors. Business representatives (data controllers/processors) should first be able to correctly identify and verify the age of a minor seeking electronic services. Business representatives should take proportionate measures to the nature and risks of data processing activities, to verify that the minor is of the age to give consent in the digital space, as an example, to ask questions that the minor would not be able to answer by his maturity, or not to provide services until the minor provides the e-mail address of one of his parents or legal representative.

Children under the age of digital consent must have the consent of the holder of parental responsibility on their behalf. Member states have the right to reduce this age to 13 years in one of the rare cases of derogation allowed by the GDPR. This means that in practice, when a child gives consent, he should confirm which country he is in, since different states may have different age restrictions (*Data Global Hub*). Thus, if the user is younger than required, the data controller will have to require not only parental permission for the minor to access the services in the digital space, but also to make sure that the person giving that consent is the holder of parental responsibility. In all cases, in order to verify the age of the minor, the principle of data minimisation should be respected, where personal data should only be processed using

appropriate means if the purpose of the processing of personal data cannot reasonably be achieved by other means (*Štareikė, 2021*). Where the risk is not high, data collection may be limited to the minor filling out an appropriate form on the internet – indicating his date of birth. Data protection impact assessment (DPIA) can help decide what steps need to be taken to verify a child's age, his/her state of residence, or the right of legal representatives to express their consent on behalf of the child. Under the current legislation, it is necessary to carry out DPIA when children are directly offered information society services (*State Data Protection Inspectorate, 2019; GDPR, 2018*).

However, according to S. Livingstone, M. Stoilova and R. Nandagiri (2019) ensuring minor's privacy in a digital environment is particularly challenging for three main reasons.

First, minors are often pioneers in exploring and experimenting with new digital devices, services, and content. Minors face risks that many adults do not even realize or are unable to predict risks, while developing risk reduction strategies. Although minors have always been experimental, today these actions are especially significant, since minors now operate on digital platforms that both record everything and are often owned by data controllers. The increasing monitoring and accumulation of data, the occasional and inappropriate use or leakage of personal data of minors, and therefore privacy, are a major concern in public and political circles.

Secondly, minors are less aware than many adults of the current and future risks posed to their well-being by the use of the digital environment. Most studies have focused on underage adolescents, but it is increasingly common for the youngest children to constantly use the internet (*Chaudron et. al., 2018; S. Livingstone et. al., 2019*).

Thirdly, the specific needs and rights of minors and children are too little recognized or foreseen in the development of the digital environment and the regulatory, state and commercial organizations that underpin it (Livingstone et al., 2015).

Another important aspect in the light of what has been discussed is that the GDPR imperatively imposes an obligation on business representatives who process personal data of minors to take appropriate measures to provide children with information about the future processing of their personal data: for what purposes is the personal data of a minor processed? To whom was or will (may be) disclosed the personal data of a minor?

All information must be provided in a concise, transparent, understandable and easily accessible form, in clear and simple language. For the presentation of information, minors are offered to use visualization, for example, videos, tables, symbols, etc. It is recommended to use various visualization tools in order for the minor to better understand how his or her personal data will be processed. In all cases, technologies for determining the location of minors must be avoided, since such data pose a particular risk to the safety of children. UNICEF noted in its report (2018) that physical privacy in the collection of personal data is violated in cases where the use of tracking, tracking or live streaming technologies may reveal the image, activity or location of the child. Also, various threats to the privacy of communication are associated with random access to records, conversations and messages. If there is no consent of minors in relation to the lawful processing of their data, the privacy, collection, storage and processing of personal data information of minors may be violated. The UNICEF report (2018) pays particular attention to the right of minors to privacy and the protection of personal data, the right to freedom of expression and access to diversity of information, the right to freedom from encroachment on reputation, the right to protection, the right to redress for violations and abuses of their rights – as specified in the UN Convention on the rights of the child (1989).

The third aspect is that business entities must avoid the formation of child profiles, and when this is inevitable, due to the specifics of the business, then profiling should be chosen by

the data subject or his legal representative through his active actions, for example, by placing a check mark on the section on the activation of profiling on the service provider's website. According to M. Macenaite (2017): *"The prohibition of profiling has the potential to diminish the commercial exploitation of children's data <...> happening through complex marketing, tracking and targeting systems used by many online service providers that monitor and monetize children's online behaviour and interactions"*. Profiling is understood as any form of automated processing of personal data consisting of the use of personal data to assess certain personal aspects relating to a natural person, in particular to analyse or predict aspects relating to that natural person's activities at work, economic situation, health status, personal interests, interests, reliability, behaviour, location or movement (*GDPR, 2018*) and should not be used for minors. In a general sense, decision-making only in an automated way means that decisions will be made by technological means, without any human intervention. Profiling is done when personal aspects of a person are evaluated to make predictions, even if no decision is made. If a company assesses a person's characteristics (such as age, gender or height) or divides them into certain categories, this means that the person is subject to profiling. Profiling and automated decision-making are common practices in various sectors, e.g., banking, finance, tax and healthcare. Using this method can be more effective, but less transparent. Therefore, both minors and their legal representatives must be informed in each case about all possible risks and negative consequences of profiling.

The fourth aspect, it is undeniable that the right of minors to privacy and the protection of personal data has been greatly influenced by the closure of schools due to the COVID-19 pandemic. In order to adapt to the pandemic situation, schools and teachers had to switch quickly to online and distance education. While it is clear that digital access and support measures are important not only for access to education, the privacy of minors must be maintained. Due to the pandemic, the increased use of educational technologies and the transition to online learning have also significantly increased data collection by companies that provide educational institutions with software that collect, process much more information and personal data about students and their private lives. Thus, businesses representatives, schools and education departments must implement various privacy and data protection regimes in the software, and take responsibility and accountability for personal data breaches. Schools should make appropriate decisions about educational programs and websites used in the school and inform the parents of students about such decisions. At the same time, lessons should be prepared for students on online privacy, digital citizenship, guidelines on how to behave and stay safe on the internet, and safe programs and websites for minors should be recommended (SolPriPa, 2019; Zimmerle, Wall, 2019).

Conclusions

The pandemic caused by the Covid-19 virus, development of information technologies, development of new data processing methods, prevalence of distance learning as a form of learning organization pose new challenges to the right of minors to private life and the implementation of ensuring the protection of personal data. The above processes have particularly highlighted the importance of the right of minors to data protection and privacy, and at the same time have led to a new look at the problems arising from the improper processing of personal data.

The right of minors to the protection and privacy of personal data is governed by the general legislation of the European Union and the Council of Europe. The right to privacy and protection of personal data are closely related, sometimes overlapping, but they are not identical

rights. Violation of personal data processing requirements also violates the right to privacy. The protection of the right to privacy is vital for the development of the minor child, therefore it is necessary to comply with the requirements of personal data protection processing and to assume responsibility and accountability for the data controllers when processing the data of minors.

Key measures to ensure the right of minors to data protection and privacy in the digital space: personal data of minors must be processed in accordance with the principle of transparency, free will, consent to the processing of data must be based on information, the information provided must be specific and unambiguous and must correspond to the maturity of the minor and be understandable to him or her. Depending on the state of the minor's residence and the age requirements, consent must be given by the minor himself or his legal representative. When processing data of minors, data controllers must follow the principle of data reduction, avoid technologies for determining the location of children and the formation of child profiles.

Also, to ensure the right of minors to data protection and privacy in the digital space, it is important to invest and take preventive measures: introducing new educational programs; preparing lessons for students on online privacy, digital citizenship; developing guidelines and measures on how to behave and stay safe on the internet, recommending the use of secure programs and websites for minors.

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Autorių kolektyvas
Visuomenės saugumas ir viešoji tvarka (30): mokslinis žurnalas. – Kaunas: Mykolo Romerio universiteto Viešojo saugumo akademija, 2022. – 185 p.
ISSN 2029–1701 (print) ISSN 2335–2035 (online)

VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (30)
Mokslinis žurnalas

PUBLIC SECURITY AND PUBLIC ORDER (30)
Research Journal

Atsakingasis redaktorius – prof. dr. Rūta Adamonienė
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Vykdantysis redaktorius – Dr. Rasa Dobržinskienė
Maketavo – Nėlė Visminienė ir Pavel Lesko
2022-06-23
13 autorinių lankų

Išleido Mykolo Romerio universiteto Viešojo saugumo akademija
Maironio g. 27, LT- 44211, El.paštas vsa@mruni.eu
Kaunas 2022 m.
Tinklapis internete www.mruni.eu
https://www3.mruni.eu/ojs/vsvt/index