MYKOLO ROMERIO UNIVERSITETO

VIEŠOJO SAUGUMO AKADEMIJA

Mykolas Romeris
University

VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (33)

Mokslinis žurnalas

PUBLIC SECURITY AND PUBLIC ORDER (33)

Research Journal

Kaunas 2023

VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (33)

Mokslinis žurnalas

Atsakingasis redaktorius
Prof. dr. Rūta Adamonienė, Mykolo Romerio universitetas, Lietuva
Atsakingojo redaktoriaus pavaduotoja
Prof. Dr. Aurelija Pūraitė, Mykolo Romerio universitetas, Lietuva
Vykdantysis redaktorius
Dr. Rasa Dobržinskienė, Mykolo Romerio universitetas, Lietuva
Nariai:
Prof. Dr. Snieguolė Matulienė, Mykolo Romerio universitetas, Lietuva
Prof. Dr. Birutė Pranevičienė, Mykolo Romerio universitetas, Lietuva
Prof. hab. dr. Žaneta Simanavičienė, Mykolo Romerio universitetas, Lietuva
Prof. Dr. Vaiva Zuzevičiūtė, Mykolo Romerio universitetas, Lietuva
Prof. Dr. Orekhova Tatjana Viktorovna, DIA Ekonomikos Akademija, Bulgarija
Prof. Dr. Mihaela Gavrila, Sapienza universitetas, Italija
Prof. Dr. Ligita Šimanskienė, Klaipėdos universitetas, Lietuva
Prof. Dr. Piotr Bogdalski, Ščytno Policijos Akademija, Lenkija
Prof. Dr. Saulė Petronienė, Kauno Technologijos universitetas, Lietuva
Prof. Dr. Martina Blaškova, Čekijos Policijos Akademija, Čekija
Prof. Dr. Tatjana Polajeva, EuroAcademija, Estija
Prof. Dr. Andrea Fischbach, Munsterio universitetas, Vokietija
Prof. Dr. Nino Abesadze, Ivane Javakhishvili Tbilisio Valstybinis universitetas, Gruzija
Prof. Dr. Violeta Vasiliauskienė, Mykolo Romerio universitetas, Lietuva
Prof. Dr. Larisa Kapranova, Pryazovskyi valstybinis Technikos universitetas, Ukraina
Prof. Dr. Živilė Stankevičiūtė, Kauno Technologijos universitetas, Lietuva
Doc. Dr. Pablo De Diego Angeles, UNED (Nacionalinis nuotolinio mokymo universitetas), Ispanija
Doc. Dr. Andrej Sotlar, Mariboro universitetas, Slovenija
Doc. Dr. Jekaterina Kartašova, Middlesex universitetas, Didžioji Britanija
Doc. Dr. Tiina Koivuniemi, Policijos universiteto kolegija, Suomija
Doc. Dr. Cristian-Eduard Stefan, Policijos "Alexandru Ioan Cuza" Akademija, Rumunija
Doc.Dr. Lienite Litavniece, Rezeknes Technologijų Academija, Latvija
Dr. Laetitia Langlois, Angers universitetas, Prancūzija
Dr. Andrzej Wawrzusiszyn, Pasieniečių mokymo centras, Lenkija
Lekt. Chiok Phaik Fern, Jalan universitas, Malaizija
Lekt. Uno Traat, Estijos Saugumo mokslų akademija. Estija

Redaktorių kolegija patvirtinta Mykolo Romerio universiteto Viešojo saugumo akademijos Tarybos posėdyje 2022 gruodžio 22 d. 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 2023 m. birželio 19 d. posėdžio nutarimu leidinys rekomenduotas spausdinti.
Visos leidinio leidybos teisės saugomos. Šis leidinys arba kuri nors jo dalis negali būti dauginami, taisomi ar kitu būdu platinami be leidėjo sutikimo. Žurnalas referuojamas EBSCO Publishing, Index Copernicus tarptautinėse duomenų bazėse

Adresas: Mykolo Romerio universiteto Viešojo saugumo akademija Maironio g. 27, LT- 44211 Kaunas
El. paštas: vsa@mruni.eu

PUBLIC SECURITY AND PUBLIC ORDER (33)
Research Journal

Editorial Board Editor-in-Chief
Prof. Ph. D. Rūta Adamonienė, Mykolas Romeris University, Lithuania
Deputy Editor-in-Chief
Prof. Ph. D. Aurelija Pūraitė, Mykolas Romeris University, Lithuania
Executive Editor
Ph. D. Rasa Dobržinskienė, Mykolo Romerio universitetas, Lietuva
Members:
Prof. Ph. D. Snieguolė Matulienė, Mykolas Romeris University, Lithuania
Prof. Ph. D. Birutė Pranevičienė, Mykolas Romeris University, Lithuania
Prof. hab. Ph. D. Žaneta Simanavičienė, Mykolas Romeris University, Lithuania
Prof. Ph. D. Vaiva Zuzevičiūtė, Mykolas Romeris University, Lithuania
Prof. Ph. D. Orekhova Tatjana Viktorovna, DIA Academy of Economics, Bulgaria
Prof. Ph. D. Mihaela Gavrila, Sapienza University, Italy
Prof. Ph. D. Ligita Šimanskienė, Klaipėda University, Lithuania
Prof. Ph. D. Piotr Bogdalski, Police Academy in Szczytno, Poland
Prof. Ph. D. Saulė Petronienė, Kaunas University of Technology, Lithuania
Prof. Ph. D. Martina Blaškova, Police Academy of the Czech Republic, Czech Republic
Prof. Ph. D. Tatjana Polajeva, EuroAcademy, Estonia
Prof. Ph. D. Andrea Fischbach, Munster university, Germany
Prof. Ph. D. Nino Abesadze, Ivane Javakhishvili Tbilisi State University, Georgia
Prof. Ph. D. Violeta Vasiliauskienė, Mykolas Romeris University, Lithuania
Prof. Ph. D. Larisa Kapranova, Pryazovskyi State Technical University, Ukraine
Prof. Ph. D. Živilė Stankevičiūtė, Kaunas University of Technology, Lithuania
Assoc. Prof. Ph. D. Pablo De Diego Angeles, UNED (National Distance Learning University), Spain
Assoc. Prof. Ph. D. Andrej Sotlar, University of Maribor, Slovenia
Assoc. Prof. Ph. D. Jekaterina Kartašova, Middlesex University, London, Great Britain
Assoc. Prof. Ph. D. Tiina Koivuniemi, Police University College, Finland
Assoc. Prof. Ph. D. Cristian-Eduard Stefan, Police Academy "Alexandru Ioan Cuza", Romania Assoc.
Assoc. Prof. Ph. D. Lienite Litavniece, Rezekne Academy of Technologies, Latvia
Ph. D. Laetitia Langlois, Angers University, France
Ph. D. Andrzej Wawrzusiszyn, Border Guard Training Center, Poland
Lect. Chiok Phaik Fern, Jalan University, Malaysia
Lect. Uno Traat, Estonian Academy of Security Sciences, Estonia

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

© Mykolas Romeris University Academy of Public Security, 2023
Address: Mykolas Romeris University Academy of Public Security Maironio st. 27, LT-44211 Kaunas
E-mail: vsa@mruni.eu

TURINYS

Anželika BANEVIČIENĖ, Jonas TAMULEVIČIUS
CRIMINAL LIABILITY FOR RIOTING 3

Gediminas BUČIŪNAS, Dalia JASEVIČIENĖ
PAGALBOS NUKENTĖJUSIEMS NUO NUSIKALSTAMOS VEIKOS TEIKIMO PAGRINDINĖS PROBLEMOS IŠKYLANČIOS DAR IKI BAUDŽIAMOJO PROCESO PRADĖJIMO... 23

Gediminas BUČIŪNAS
TEISMO (NE)VERTAS PASITIKĖJIMO ASMUO 33

Oleksandr Hryhorovych CHEREP, Denis KRYLOV, Eimantas KISIELIUS, Lyudmila Hryhorovna OLEYNIKOVA
ELABORATION OF METHODOLOGY FOR THE DEVELOPMENT OF THE BUSINESS MECHANISM FOR INVESTMENT PROJECTS AT PRODUCTION ENTERPRISES...... 48

Povilas KĖŽA, Jurgita BALTRŪNIENĖ
KRIMINALISTIKOS MOKSLO INDĖLIS KOVOJANT SU ŠIUOLAIKINIU ORGANIZUOTU NUSIKALSTAMUMU 59

Santa KLIMAVIČIŪTĖ, Erika MATULIONYTĖ-JARAŠŪNĖ
KOMUNALINIŲ TEKSTILĖS ATLIEKŲ TVARKYMO SISTEMOS YPATUMAI ZERO WASTE IDEALOGIJOS KONTEKSTE 73

Justyna MAJCHRZAK-LEPCZYK
DIGITIZATION OF TRADE AND CHANGES IN CONSUMER BEHAVIOR - SELECTED AREAS 85

Viktoriia ROLEDERS
BUSINESS CIRCULAR STRATEGIES: CRITERIA AND PROSPECTS 94

Borys SAMORODOV, Diana SKOROKHOD, Roman GALYCH
ENSURING ECONOMIC SECURITY IN UKRAINE THROUGH THE IMPLEMENTATION OF EU EXPERIENCE IN PUBLIC PROCUREMENT 103

Ieva SAUDARGAITĖ
PUBLIC SECURITY IN CONSTITUTIONAL DIMENSION IN LITHUANIA 115

Vytautas ŠLAPKAUSKAS
CHALLENGES OF PREDICTING SOCIAL CONFLICTS IN THE CONTEXT OF CRISES AND HYBRID THREATS 130

Violeta VASILIAUSKIENĖ, Vykintas STUMBRYS
PROBLEMATIC ASPECTS OF THE LEGAL DEFINITION OF HYBRID WARFARE.. 142

Audronė ŽEMECKĖ – MILAŠAUSKĖ
CRIMINAL LIABILITY FOR UNLAWFUL COLLECTION OF INFORMATION ON PRIVATE LIFE OF A PERSON: PROBLEMATIC ASPECTS, LINKS WITH DIVORCE PROCEEDINGS 154

Rasa ŽIBAITĖ – NELIUBŠIENĖ
DISCUSSION ISSUES OF ASSESSMENT OF DATA OBTAINED BY USING SPECIAL KNOWLEDGE IN CRIMINAL PROCEEDINGS 168

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

CRIMINAL LIABILITY FOR RIOTING

Anželika BANEVIČIENĖ
Mykolas Romeris University
Maironio St. 27, LT-44211 Kaunas, Lithuania
E-mail: a.baneviciene@mruni.eu
ORCID ID: 0000-0002-2855-6890

Jonas TAMULEVIČIUS
Mykolas Romeris University
Maironio St. 27, LT-44211 Kaunas, Lithuania
E-mail: tamuleviciusj@inbox.lt
ORCID ID: 0009-0001-8399-3292

DOI: 10.13165/PSPO-23-33-11

Abstract *Disturbances that turn into riots are very diverse. This can happen when farmers block highways during a protest or when residents protest at the Seimas against the Government's austerity policy and tax reform, or when they protest against the Government's restrictions for people who do not have immunity to the coronavirus and who do not get tested, as well as when football fans express their dissatisfaction with the result of the match. Why are these events considered riots and not public order violations? How do riot crimes differ from other public disorder crimes? What are the characteristics of riot crime investigation? What are the challenges faced by the officers investigating these crimes? The answers to these questions are discussed in the article. Scientific literature, legal acts, and court practice were analysed to achieve the aim. To identify the problems arising in handling riot cases, police officers were interviewed. The analysis shows that the definitions of the riot and the grave violation of public order, established in Article 283 of the Criminal Code of Lithuania, is not clear and leaves the court with wide discretion on how to interpret the content. The Criminal Code should provide definitions of "public order," "gathering of people", and "grave violation of public order." The law should establish that for determining a riot, it does not matter where the riot takes place - in a public or private place. In the "gathering of people" the focus should be on the number of active violators of public order instead of the total number of people present at the riot scene. Police officers lack knowledge about the effects of riots and need riot recognition and qualification training. In practice, police officers face some challenges in identifying riot organisers, instigators and active participants.*

Keywords: *riot, public order, public violence*

Introduction

Since ancient times, the order in society has been maintained by customs and traditions passed down from generation to generation. With the development and formation of social relations and communities, public order began to be regulated by legal norms to ensure public safety and the state's existence. Only by providing public order the safety of individuals in public places is guaranteed.[1]

One of the prerequisites for the state's existence is establishing order and its maintenance by legal norms. Of course, in modern democratic states, every person has the right to their beliefs and to express them publicly. However, this right is not absolute. The exercise of this right cannot violate the public order established by the state and the rights of other persons in society. Convention for the Protection of Human Rights and Fundamental Freedoms states that *the exercise of these freedoms <...> may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary for a democratic society, in the interests*

[1] Edita Gruodytė, „Takoskyra tarp administracinio teisės pažeidimo ir nusikalstamos veikos viešosios tvarkos sektoriuje" *Jurisprudencija Mokslo darbai* 2007 8(98): 90.

of national security, territorial integrity or public safety, for the prevention of disorder or crime.[2]

Articles 25 and 26 of the Constitution of the Republic of Lithuania also state that the freedom to express beliefs, receive and disseminate information may be limited by law if it is necessary to protect human health, honour and dignity, private life, morality, or defend the constitutional order.[3]

Chapter XL (40) of the Criminal Code of the Republic of Lithuania (hereinafter - Criminal Code) specifies crimes and misdemeanours against public order, among which riots are considered the most severe crimes.[4] This crime is punishable by up to 6 years in prison, and if a weapon is used or the criminal resists police officers, a 10-year prison sentence can be imposed. Persons from the age of sixteen are punished for this crime.[5] In the Public Security Service Law, riots are classified as special situations, during which public security service officers can use not only physical force but also special riot control machines or even firearms to control the situation.[6]

Disturbances that turn into riots are very diverse. This can happen when farmers block highways and stop traffic, demanding that the government take measures to eliminate difficulties in the agricultural sector, increase wholesale purchase prices of various farm products and increase subsidies (2003),[7] or when residents try to break into the Seimas in protest against the Government austerity policy and tax reform, the economic crisis and the closure of the Ignalina nuclear power plant (2009),[8] or when residents express violent protest against the Government's restrictions for people who have not been vaccinated and do not have immunity to the coronavirus (2021),[9] as well as when football fans express their dissatisfaction with the result of the match (2011).[10]

Considering the diversity of events, it becomes essential to answer the following questions: Why are these events considered riots and not public order violations? How do riot crimes differ from other public disorder crimes? What are the characteristics of the riot crime investigation? Aren't the officers investigating the riots having trouble dealing with these crimes?

To answer these questions, the research aims to determine the characteristics of riots as a criminal offence and identify qualification problems. Accordingly, the objectives are: to reveal

---

[2] "Convention for the Protection of Human Rights and Fundamental Freedoms," opened for signature November 4, 1950, *European Treaty Series* no. 5, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005, Article 10 (2).

[3] *Lietuvos Respublikos Konstitucija*, adopted by the citizens of the Republic of Lithuania in a referendum on October 25, 1992, last amendment No XIV-1030, April 21, 2022, TAR, https://www.e-tar .lt/portal/ lt/legalAct/ TAR.47BB952431DA/asr.

[4] Seimas of the Republic of Lithuania, *Lietuvos Respublikos baudžiamasis kodeksas*, approved by Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas, No VIII-1968, September 26, 2000, last amendment No XIV-1925, April 27,2023, TAR, https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr, Article 283.

[5] *Lietuvos Respublikos baudžiamasis kodeksas*, Articles 283 and 13 (1).

[6] Seimas of the Republic of Lithuania, *Lietuvos Respublikos Viešojo saugumo tarnybos įstatymas*, No X-813, September 19, 2006, last amendment No XIV-1207, June 28, 2022, TAR, https://www.e-tar.lt/portal/lt/legalAct/ TAR.2E8452AA51C0, Articles 2(2), 13, and 14.

[7] Supreme Court of Lithuania, *Criminal case No 2K-7-393/2005,* Ruling, October 4, 2005, Infolex.lt, https://www-infolex-lt.skaitykla.mruni.eu/tp/58917

[8] Vilnius Regional Court, *Criminal case No 1A-152-303-2012*, Judgment, April 5, 2012, eteismai, https://eteismai.lt/byla/259422086628826/1A-152-303-2012.

[9] „Riaušės Prie Seimo," lrytas.tv, accessed April 15, 2023, https://tv.lrytas.lt/zyme/riauses-prie-seimo.

[10] „Kaune dešimtys futbolo sirgalių sulaikyti, aštuoni – sužeisti," Alfa.lt, accessed April 15, 2023, https://www.alfa.lt/straipsnis/10875172/kaune-desimtys-futbolo-sirgaliu-sulaikyti-astuoni-suzeisti/

the concepts of the riot and public order in the context of the riot, to analyse qualification elements of the riot crimes and identify problems officers face in investigating riot cases.

Scientific literature, legal acts, and court practice were analysed to achieve the aim. To identify the problems arising in handling riot cases, police officers were interviewed. The officers were asked to answer the questionnaire questions online. The interview was conducted in March-April 2023.

The answers were provided by eight officers of the specialised police department who investigated riot cases, seven police training officers, and 48 police officers who can be called upon to take quelling or evidence-gathering actions in the event of a riot.

59.7 per cent of the survey participants were men, and 40.3 per cent were women. Fifty per cent of the officers who participated in the survey have master's or bachelor's degrees in law, whereas 21 per cent have higher non-university education in law. 77.4 per cent of officers have work experience of 6 or more years, while 22.6 per cent have work experience of up to 6 years.

The paper presents the results of the analysis of scientific literature, legal acts and court practice, as well as the results of the survey.

The Concept of the Riot

In the Lithuanian dictionary, a riot is a mass dissatisfaction or protest about something.[11] The Oxford Dictionary explains the riot as a situation in which a group of people behaves violently in a public place, often as a protest.[12] Analysing Article 283 of the Criminal Code of the Republic of Lithuania allows us to identify a straightforward definition of a riot.[13] The Riot is *a grave violation of public order by a gathering of people*. Article 283 also contains several examples considered a grave violation of public order. These actions are *public violence* and the *destruction of property*.

Such a definition leaves the court with broad discretion to interpret the content of the terms used in Article 283. The court specifies the scope of this article in its practice. The Vilnius District Court defined Riot as public disobedience, manifested by spontaneous physical violence, vandalism – the destruction of public and private property, and other grave violations of public order, accompanied by resistance to police officers and other persons performing public administration functions. Riots are characterised by crowd-induced chaos, manifesting in violence, destruction of property, and other grave violations of public order[14]. Kaunas District Court provided a more straightforward definition. According to the court, Riots are situations where a group of people deliberately violate public order, commit public violence, and destroy property.[15]

Both the definition of the riot in the Criminal Code and the interpretations of the courts indicate that a riot occurs when public order is gravely violated.

---

[11] „Riaušės," Lietuvių kalbos žodynas, accessed April 15, 2023, http://www.lkz.lt/?zodis=riau %C5%A1%C4%97s&id=23047560000.

[12] A S Hornby, *Oxford Advanced Learner's Dictionary of Current English*, Sixth edition 2000, (Oxford University Press 2000), 1103.

[13] *Lietuvos Respublikos baudžiamasis kodeksas*, Article 283 states that, *whoever organized or provoked a gathering of people to commit public violence, destroy property or otherwise gravely violate public order, as well as whoever during riots committed violence, destroyed property or otherwise gravely violated public order*, is punishable <…>.

[14] *Criminal case No 1A-152-303-2012.*

[15] Kaunas Regional Court, *Criminal case No 1A-137-317/2011*, Judgment, April 5, 2011, https://eteismai.lt/byla/178471027456575/1A-137-317-2011.

The concept of violation of public order is not presented in Article 283 of the Criminal Code. However, to determine the concept of *violation of public order*, we could refer to Article 284 of the Criminal Code, in which the law provides for criminal liability for violation of public order. Article 284 of the Criminal Code states that a violation of public order occurs *when disrespect to the surrounding people or the environment is demonstrated in a public place by insolent behaviour, threats, taunting, or acts of vandalism, thereby disrupting public peace or order*. The definition of the violation of public order shows that such a violation has to occur in a public place.

Public Place

Which place is considered a public place is not explained in the Criminal Code. The concept of a public place is presented in various laws regulating different fields. In the Assembly Law, a public place is considered streets, squares, parks, and other public places and buildings of common use in cities and settlements.[16] In addition to the places specified in the Assembly Law, the Law on Noise Management additionally states that public places are also bars, discotheques, cafes, and places of entertainment events.[17] Article 288 of the Code of Administrative Offences further includes beaches and public transport as public places. Meanwhile, Article 484, in addition to those already listed, additionally includes stadiums, private cars, exhibitions, markets and mass events, and sports halls during competitions.[18] It should be noted that the given list of public places is incomplete. In all legal acts, it is noted that other places can also be considered public places.

According to legal experts, the concept of *a public place* is not unambiguous. Depending on the regulated legal relationship and the purpose of the Law, a public place can be considered a place owned by the state or a municipality - a public space, a place accessible to the public regardless of who owns it, or even a place owned and used by a private person where it is necessary to protect public interests.[19] It is clarified in court practice. According to the court, a public place should be considered a place where other persons are present or have the right to visit this place at the moment of the crime.[20]

In its practice, the Supreme Court of Lithuania noted that the act is considered to have been committed in a public place regardless of whether or not someone was present at that place during the time of the crime. The important thing is that due to the free access to such a place, other persons may appear here at any moment, and they will experience inconvenience due to

[16] Seimas of the Republic of Lithuania, *Lietuvos Respublikos susirinkimų įstatymas,* No I-317, December 2, 1993, last amendment No XIV-1775, December 23, 2022, TAR, https://www.e-tar.lt/portal/lt/legalAct/TAR.E59A4E24506E/asr, Article 4 (1).

[17] Seimas of the Republic of Lithuania, *Lietuvos Respublikos triukšmo valdymo įstatymas*, No IX-2499, October 26, 2004, last amendment No XIV-694, November 23, 2021, TAR, https://www.e-tar.lt/portal/lt/legalAct/TAR.7E6F5E3523EA/asr, Article 6 (1) (1).

[18] Seimas of the Republic of Lithuania, *Lietuvos Respublikos administracinių nusižengimų kodeksas* approved by Lietuvos Respublikos administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas, No XII-1869, June 25, 2015, last amendment No XIV-1382, July 19, 2022, TAR, https://www.e-Tar .lt / portal /lt/legalActEditions/4ebe66c0262311e5bf92d6af3f6a2e8b, Article 484.

[19] Rūta Šimkaitytė – Kudarauskė „Viešosios vietos sąvokos samprata ir problematika“, *Visuomenės saugumas ir viešoji tvarka,* No 5 (2011): 210, Mykolo Romerio universitetas, https://ojs.mruni.eu/ojs/vsvt/article/view/6179/5239.

[20] Šiauliai District court, *Case of administrative offenses No A17-1416-874/2019*, Ruling, August 7, 2019, eteismai.lt, https://e-teismai.lt/byla/220668037529670/A17_-1416-874/2019.

the perpetrator's actions.[21] In the opinion of the court, public order can also be violated in the yard of a residential homestead, the stairwell or yard of an apartment building, or in another private place, to which, for one reason or another, other people can freely enter with the consent of the owner.[22]

The practice of other countries in defining the concept of public places is not uniform. Some countries, like Lithuania, do not define what is considered a public place in the criminal code, present the definitions of public place in other legal acts, and allow courts to determine the meaning of a public place in a particular situation. For example, the Law Enforcement Act provides a *public place* definition in Estonia. The Law states that *a public place is a territory, building, room or a part thereof given to an unspecified number of persons for use or used by an unspecified number of persons, and also a public transport vehicle*.[23] In Latvia, the public place definition can be found in the Law on Safety of Public Entertainment and Festivity Events. The Law states that a public place is *any site that, irrespective of its actual use or type of ownership, functions to ensure the common needs and interests of the public and, for payment or free of charge, is available to any natural person.*[24]

Other states define *a public place* directly in the criminal law. For example, in Colorado Revised Statutes 2021, a public place is defined as *a place to which the public or a substantial number of the public has access and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.*[25]

Meanwhile, the definition of a public place does not apply to riot regulation in third countries. The criminal law establishes that rioting can be committed both in a public and private place. For example, the British Public Order Act 1986 states that riots may be committed in private and public places.[26] The Criminal Justice (Public Order) Act, 1994 of Ireland, also states similarly. The Law establishes that riots can occur *at any place (whether that place is a public place, private, or both)*.[27]

Riots can occur both in a public place and in a private area and spread to a public place; therefore, concerning riots, it is not appropriate to assess whether the violation takes place in a public or private place when determining a *grave violation of public order.* Considering the variety of riots and practices of other states, we recommend establishing in Article 283 of the Criminal Code of Lithuania the condition that a riot may occur in private and public places.

[21] Supreme Court of Lithuania, Criminal case No 2K-159/2009, Ruling, May 12, 2009, https://eteismai.lt/ byla/ 272217236359181/2K-159/2009.
[22] Supreme Court of Lithuania, *Criminal case No 2K–160-697/2019*, Ruling, June 6, 2019, https://eteismai.lt /byla/163174713687052/2K-160-697/2019?word=turto%20sugadinimas%20privataus% 20kaltinimo
[23] Riigikogu, *Law Enforcment Act*. RT I, 22.03.2011, 4, Riigi Teataja, accessed May 3, 2023, https://www.riigiteataja.ee/en/compare_original/506112013015, Article 54.
[24] Saeima, *Latvian Republic Law on Safety of Public Entertainment and Festivity Events,* LIKUMI, accessed May 3, 2023, https://likumi.lv/ta/en/en/id/111963, Section 1 (1^1)
[25] Colorado General Assembly, *Colorado Revised Statutes 2021, title 18 Criminal Code*, accessed May 3, 2023, https://leg.colorado.gov/sites/default/files/images/olls/crs2021-title-18.pdf , § 18-1-901 (n).
[26] *Public Order Act 1986*, CHAPTER 64, Legislation.gov.uk, accessed May 4, 2023, https://www.legislation.gov .uk/ukpga/1986/64, Article 1 (5).
[27] Oireachtas, *Criminal Justice (Public Order) Act, 1994*, Number 2, 1994, eISB, accessed May 3, 2023, https://www.irishstatutebook.ie/eli/1994/act/2/section/14/enacted/en/html, Article 14 (1)(a).

Public Order

As already mentioned above, riots infringe a public order. The importance of maintaining public order is emphasised in the Constitution of Lithuania, Lithuanian laws, Courts decisions, and legal doctrine. Article 94 of the Constitution of the Republic of Lithuania states that *The Government of the Republic of Lithuania guarantees state security and public order*. Article 5 of the Police Law establishes the duty of the Lithuanian Police to ensure public order.[28] The Supreme Court of Lithuania, noting the importance of maintaining public order, stated that the legal regulation established by the State says that the order of coexistence of members of society and the communication of people in public spaces must be based on the principles of cultural traditions, respect, and tolerance. Personal safety, protection of moral and cultural traditions and spiritual comfort in public life is a social value that is not only encouraged and nurtured by the state but also protected by relevant legal acts and, in cases provided for by law, using criminal law.[29]

However, it is essential to emphasise that the definition of public order is neither formulated in Articles 283 and 284 of the Criminal Code nor in other legal acts. Accordingly, the question arises about what the concept of *public order* means.

The Lithuanian Encyclopaedia explains that public order is a system of public relations established by law and social norms and protected by the state based on ethics, morality, and mutual respect.[30] Lithuanian courts presented various definitions of public order in their decisions. In the opinion of the Supreme Court of Lithuania, the public order includes the basic principles on which the state's legal system is based. The principles are established in the Constitution of the Republic of Lithuania and other legal acts. [31] In another case, the court has also said that public order is a situation or a way of acting that meets the requirements of society. Public order is formed based on various social norms and aims to ensure harmonious and beneficial mutual relations between people.[32] In the opinion of the Klaipėda City District Court, public order is the general rules of public behaviour based on the principles of morality and mutual respect that exist in society.[33]

Some definitions of public order can also be found in legal doctrine. According to Lithuanian legal doctrine, public order is the general rules of external behaviour adopted in society, grounded on mutual respect. Compliance with these rules ensures the ordinary course of public life, tolerant communication, civilised ways of resolving conflicts between people and refraining from aggressiveness in realising one's interests.[34] According to M. Hejduk, a Polish legal expert, the public order is a system of actual social relations regulated by the law and other

---

[28] Seimas of the Republic of Lithuania, *Lietuvos Respublikos policijos įstatymas*, No VIII-2048, October 17, 2000, last amendment No XIV-1208, June 28, 2022, TAR, https://www.e-tar.lt/portal/lt/legalAct/TAR.CA8937 2D00AA/asr

[29] Supreme Court of Lithuania, *Criminal case No 2K-7-404/2014*, Ruling, December 2, 2014, eteismai.lt, https://eteismai.lt/byla/201223916673628/2K-7-404/2014.

[30] „Viešoji tvarka“, Visuotinė Lietuvių enciklopedija, accessed May 3, 2023, https://www.vle.lt/straipsnis/viesoji-tvarka/

[31] Supreme Court of Lithuania, Civil case No 3K–3–546–915/2015, Ruling, November 11, 2015, eteismai.lt, https://eteismai.lt/byla/275484003091431/3K-3-546-915/2015.

[32] Supreme Court of Lithuania, Criminal case No 2K-264/2003, Ruling, April 8, 2003, Teisės gidas, https://www.teisesgidas.lt/modules/paieska/lat.php?id=19238.

[33] Klaipėda City District Court, Case of administrative law violations No A2.9.–594–889/2014, Resolution, March 14, 2014, eteismai.lt, https://eteismai.lt/byla/177352662858874/A2_9_-594-889/2014.

[34] Gintaras Švedas, ed., Lietuvos Respublikos baudžiamojo kodekso komentaras. Specialioji dalis (Vilnius: VĮ Registrų centas, 2009), 483.

norms accepted in society, guaranteeing individuals' undisturbed and conflict-free functioning.[35]

Unlike the legal norms of Lithuania, the definitions of public order can be found in the legal acts of other states. For example, in the Estonian Law Enforcement Act, public order is defined as a state of society where adherence to legal provisions and protection of persons' personal *and legal rights are guaranteed*.[36]

To ensure the clarity of legal regulation and to consider the practice of other states, we recommend that the meaning of the *public order* clearly define in Lithuanian legal acts.

Grave Violation of Public Order

As mentioned, according to the Lithuanian Criminal Code, Riot is considered to occur when there is a grave violation of public order. Article 283 of the Criminal Code does not explain the concept of *grave violation of public order*. It only provides several examples of what is considered a grave violation of public order. Such a violation of public order can be committed by performing public violence and/or destroying property. The logical construction of the article makes it evident that *public violence* or *destruction of property* in itself gravely violates public order - in other words, these are formalised cases of grave violation of public order.[37] The content of the legal norm of Article 283 shows that the list of provided actions is not exhaustive. In addition to these actions, other grave violations of public order may occur. What are the other cases of grave violation of public order? It is left for the court to decide.

In the event of a *violation of public order*, criminal liability may arise under Article 283 or Article 284 of the Criminal Code. Accordingly, when determining violations of public order, the guidance can provide Article 284 of the Criminal Code, where we can find the concept of violation of public order. According to Article 284, *a violation of public order* is a display of disrespect for others and the environment. The forms of disrespect are *insolent behaviour*, *threats*, *taunting*, or *vandalism*.[38]

Considering Article 284, it can be said that Riots have to have the outcome of *disrupting public peace or order*. The motive for riots is protest, disrespect for public order and general rules of conduct, and publicity (riots go beyond private conflict). Their purpose is to draw attention and resonate.[39]

When deciding whether the perpetrator's actions caused these consequences, the reaction of those around them, the number of victims, and how long the illegal activities lasted must also be considered.[40] The Supreme Court, in his practice, states that these consequences are determined taking into account whether physical violence was used in a public place, whether the people around them felt grossly humiliated or shocked, whether the rest or work of companies was interrupted, significant material damage was caused, the normal activities of

[35] Monika Hejduk, „Zakres znaczeniowy porządku publicznego“ *Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy*. 2020:1(34).
[36] Riigikogu, *Law Enforcment Act*, Article 4.
[37] Paulius Veršekys, „Vertinamieji nusikalstamos veikos sudėties požymiai“. (PhD diss., University of Vilnius, 2013*)*, 267, eLABa talpykla. http://talpykla.elaba.lt/elaba-fedora/objects/elaba:2027563/datastreams/MAIN/content.
[38] Supreme Court of Lithuania, *Criminal case No 2K-141/2015*, Ruling, January 13, 2015, https://eteismai.lt/byla/276938245650370/2K-141/2015.
[39] „Riaušės,“ Visuotinė lietuvių enciklopedija, accessed April 15, 2023, https://www.vle.lt/straipsnis/riauses/.
[40] Supreme Court of Lithuania, *Criminal case No 2K-19-511/2020*, Ruling, February 2, 2020, eteismai.lt, https://eteismai.lt/byla/72941671512005/2K-19-511/2020?word=priverstinis%20darbas.

companies or institutions were disrupted, people were caused great fear, or whether there was confusion, cancellation of their event, traffic stop, etc.[41]

The question arises regarding the meaning of the forms of grave violation of public order - *public violence*, *destruction of property* and *others* - specified in Article 283 of the Criminal Code of Lithuania. The following examines the meaning of these concepts.

Public violence

Article 283 of the Criminal Code does not define what is considered violence. Cambridge Dictionary defines violence as actions or words intended to hurt people.[42] In practice, violence can take many forms. There may be physical violence, psychological violence, verbal violence (including hate speech), and others. So, the question is, what kind of violence is considered a riot? To answer this question, we can refer to legal doctrine and court practice, which examines not only the crimes of riots according to Article 283 of the Criminal Code but also violations of public order, which are punishable according to Article 284 of the Criminal Code.

When applying the criminal liability provided for in Article 284 of the Criminal Code for violations of public order, the Courts classify public violence as *insolent behaviour*. In the legal doctrine, the concept of *insolent behaviour* is defined as *aggressive, morally unacceptable, shocking actions or inactions that disturb public peace and public order*.[43] In court practice, violence against a person in a public place is usually considered insolent behaviour, [44] even in cases where the person's health is unaffected by the violence.[45]

As already mentioned above, to incur liability for violations of public order, including riots, actions have to have the outcome of disrupting public peace or order. It is necessary to determine whether the violent act crosses the boundaries of a private conflict and is dangerous not only for a specific participant in the conflict but also for the environment or society.[46] Insolent behaviour manifests itself in violence against a person in a public place and, as a result, disrupts public peace.[47] Meanwhile, punching someone in public without an apparent reason shows the offender's disrespect for those around him.[48]

The violence attributed to such behaviour can be directed not only at people but also at animals. The Supreme Court of Lithuania has noted that shooting storks in front of people during the day is impudent behaviour. According to the court, by shooting white storks in public, the convict realised that he was disrespecting the traditions of the Lithuanian nation to protect and respect this bird, caused the indignation of those who saw the event and people living nearby, showed disrespect to those around him and the environment, and disturbed public peace.[49]

---

[41] *Criminal case No 2K-19-511/2020*.
[42] „Violence," Cambridge Dictionary, accessed April 15, 2023, https://dictionary.cambridge.org/dictionary/english/violence
[43] Gintaras Švedas, ed., Lietuvos Respublikos baudžiamojo kodekso komentaras. Specialioji dalis (Vilnius: VĮ Registrų centas, 2009), 252.
[44] *Criminal case No 2K-19-511/2020*.
[45] Supreme Court of Lithuania, *Criminal case No 2K-134/2014*, Ruling, January 14, 2014, https://eteismai.lt/byla/40842212711138/2K-134/2014.
[46] *Criminal case No 2K-141/2015*,
[47] *Criminal case No 2K-19-511/2020*,
[48] *Criminal case No 2K-19-511/2020*; Supreme Court of Lithuania, *Criminal case No 2K-652/2007*, Ruling, October 30, 2007, https://eteismai.lt/byla/68969738312096/2K-652/2007; Supreme Court of Lithuania, *Criminal case 2K-452/2011*, Ruling, October 18, 2011, https://eteismai.lt/byla/212675717164810/2K-452/2011.
[49] Supreme Court of Lithuania, *Criminal case No 2K-334/2004*, Ruling, May 4, 2004, Teisės gidas, https://www.teisesgidas.lt/lat.php?id=25308.

ISSN 2029-1701
ISSN 2335-2035 (Online)

Psychological and verbal violence (including hate speech) are also classified as public violence, punishable under Articles 283 and 284 of the Criminal Code when committed in a *public place*.[50] Such psychological abuse manifests itself in threats and taunting.

Threats are intimidation, manifesting as threats to kill or harm health or destroy or damage property. Various acts such as insults, threats, some hooligan acts such as making noise to cause fear or anxiety, and the like can be recognised as intimidation.[51] Such actions cause another person fear, stress, tension, and insecurity.[52] Even various unauthorised marches or demonstrations can also be considered riots; when various posters promoting violence are displayed, the march's participants threaten others by their appearance and behaviour.[53]

Taunting can be defined as the demonstrative humiliation of people's dignity through various words and actions. [54] This can include profanity or dousing a person with a liquid that smells like faeces.[55] If the taunting actions are aimed at humiliating a specific person, this has to be qualified as bullying. When such actions express general dissatisfaction, i. e. the person humiliated by the actions is not necessarily the cause of dissatisfaction - he may be an accidental victim who happened to be near the person performing the actions at the time. Such actions are qualified as a violation of public order. If a group of persons grossly violates public order, such actions should qualify as riots.

According to judicial practice, to establish the reality of a threat, it is not necessary to prove that the person making the threat intended to carry out the threat. It is sufficient to determine that the victim, according to the expression of the *threat* and other circumstances, had reason to fear the threatening actions, and the perpetrator wanted precisely this state of the victim.[56]

The conducted survey made it possible to determine whether police officers can recognise outcomes of public violence, which indicates that riots are taking place or have occurred. In response to the question asking to choose from the given list the answers meaning outcomes typical of riots, 74.2 per cent of respondents indicated *public physical violence*, 72.6 per cent indicated *disruption of the normal activities of an institution, or organisation*, 64.5 per cent indicated *shocking the society*, 58.1 per cent chose a *disruption of the normal life*, 50 per cent indicated *frightening the community*, 29 per cent indicated *public psychological violence* and one respondent indicated that he did not find a single correct answer. Respondents had to select all of the listed outcomes for the correct answer. The responses show that police officers lack knowledge about the effects of riots.

Public destruction of property

The concept of the *destruction of property* can be compared to the concept of *vandalism*, which is also punishable under Article 284 of the Criminal Code. Article 284 stipulates that a

---

[50] Supreme Court of Lithuania, *Criminal case Nr. 2K-327-696/2016*, Ruling, October 18, 2016, https://eteismai. lt / byla / 50528084947341/2K-327-696/2016
[51] *Criminal case Nr. 2K-327-696/2016.*
[52] *Criminal case Nr. 2K-327-696/2016.*
[53] E. Gruodytė et al., *Lietuvos Baudžiamoj teisė. Specialioji dalis. Antroji knyga* (Kaunas: Vytauto Didžiojo universiteto leidykla, 2022), 656-657.
[54] *Criminal case No 2K-141/2015*; Klaipėda Regional Court, *Criminal case No 1A-18-557/2020*, Ruling, January 23, 2020, https://eteismai.lt/byla/255810361434008/1A-18-557/2020
[55] Supreme Court of Lithuania, *Criminal case No 2K-557/2014*, Ruling, December 30, 2014, https://eteismai.lt /byla/185692598673854/2K-557/2014.
[56] Supreme Court of Lithuania, *Criminal case No 2K-410-693/2015*, Ruling, October 13, 2015, https://eteismai. lt/ byla/ 265610887084591/2K-410-693/2015.

violation of public order occurs when disrespect to the surrounding people or the environment is demonstrated in a public place by acts of vandalism, thereby disrupting public peace or order. Vandalism is defined as *the intentional and malicious destruction of or damage to the property of another*.[57] Vandalism is generally understood as smashing, destroying, or setting fire on someone else's property, sprinkling paint, etc.[58] During a violation of *public order*, vandalism includes violent behaviour that involves the destruction of public or private property, such as - *breaking, burning or smearing benches in streets and parks; spreading buildings with graffiti; knocking down telephone booths or bus stops, breaking windows and other similar actions*.[59] The practice of the Supreme Court of Lithuania states that *vandalism is aimless, senseless, unmotivated destruction of cultural and artistic heritage and other property in parks, squares and cemeteries, as well as burning, devastation and destruction of cultural and religious buildings, house facades, showcases, and other objects*.[60] The court also recognised as vandalism the burning of an apartment building corridor intending to take revenge on private individuals since the corridor is considered a public place.[61]

Other violations of public order

There are no references in the Lithuanian legal acts as to what *other violations of public order* are punishable under Article 283 of the Criminal Code. It is left to the discretion of the courts to decide.

There needs to be more case law on this issue. The actions of farmers during the 2003 riot can be attributed to such activities. The Supreme Court of Lithuania concluded in its decision that *blocking the highways, which stops the traffic and thus disrupts the work of the institutions, is a sufficient basis to recognise that public order has been grossly violated*.[62]

The gravity of the actions

Although individuals are punished for violating public order under Article 283 (riots) and Article 284 (violation of public order) of the Criminal Code of Lithuania, it should be noted that the degree of aggressiveness of actions under Article 283 differs from Article 284. For a person to be prosecuted under Article 283, he must commit a *grave violation* of public order by his actions. At the same time, under Article 284, criminal liability arises for *violating* public order. In its practice, the Supreme Court of Lithuania noted that *the gravity of the actions* is essential in deciding whether the perpetrators' actions should be attributed to the crimes punishable under Article 283 or Article 284.[63]

The term *grave violation* of public order is exclusively used in Article 283 of the Criminal Code of Lithuania. In other articles of the Criminal Code, such a sign of violation is not distinguished. The Lithuanian dictionary interprets the word grave as *impermissible, huge*

[57] „Vandalism," Farlex, The Free Dictionary, accessed April 15, 2023, https://legal-dictionary.thefreedictionary.com/Vandalizm

[58] Gintaras Švedas, ed., Lietuvos Respublikos baudžiamojo kodekso komentaras. Specialioji dalis (Vilnius: VĮ Registrų centas, 2009), 483.

[59] Gruodytė, „Takoskyra," 91.

[60] *Criminal case No 2K–160-697/2019.*

[61] Supreme Court of Lithuania, *Criminal case No 2K-89-139/2016*, Ruling, March 8, 2016, https://eteismai.lt/byla/77668317389247/2K-89-139/2016.

[62] *Criminal case No 2K-7-393/2005*

[63] Supreme Court of Lithuania, *Criminal case No 2K-552/2012*, Ruling, December 4, 2012, https://eteismai.lt/byla/142907711661131/2K-552/2012.

(deviation), impolite, and rude.[64] In their practice, Lithuanian courts have repeatedly noted that grave violation of public order is an evaluative feature[65] that is determined by taking into account the specific factual circumstances of the case, the degree of aggressiveness, cynicism, and immorality of the actions.[66]

In court practice, the event of 2009, during which offenders threw various objects at the windows of the Seimas, rushed into the Seimas, threw gas canisters, blocked traffic in the surrounding streets near the Seimas and across the Žvērynas bridge, and disrupted the work of institutions, was recognised as a riot (grave violation of public order).[67] Another example of a grave violation of public order can be the actions of another person during the 2009 riots. A person, being *near the Seimas of the Republic of Lithuania <...>, in Vilnius, during the riots, being drunk, used obscene words, threw stones, snowballs, eggs, and other objects at the police officers and Public Security Service (PSS) officers, and the Seimas, disobeyed to the legal order of the police officer to stop and kicked him once in the chest and hit him in the face with his hand, insulted the police officers and PSS officers with obscene words, kicked a garbage container.* [68]

Regarding the gravity of the actions, it should also be noted that not all police officers who participated in the survey know what criteria must be considered when assessing the gravity of the actions and what events are considered a *grave violation of public order*.

When choosing answers to the question of what criteria should be considered in assessing the gravity of the action, 88.7 per cent of the officers indicated the *degree of aggressiveness*, 66.1 per cent indicated *immorality*, 59.7 per cent indicated *shocking others*, 59.7 per cent indicated *disruption of everyday life*, 53.2 per cent indicated *cynicism* and 30.6 per cent indicated the *duration of actions*. It should be noted that the correct answer is a choice of all listed criteria.

Marking which of the specified events should be considered as events that grossly violate public order, 93.5 per cent of respondents chose *throwing explosive devices in a public place during an event*, 83.9 per cent chose *to throw objects at the windows of the Seimas*, 66.1 per cent chose *blocking highways*, 56.5 per cent chose *resistance to a civil servant*, 46.8 per cent picked *intentional damage to official vehicles*, 24.2 per cent chose *violence in prison when the victims suffered minor health disorders*. For the correct answer, the respondents had to select all the answers, except *violence in prison, when the victims suffered minor health disorders*.

Respondents' answers to questions show that police officers lack knowledge about what criteria must be considered when assessing the gravity of the actions and what events are considered a *grave violation of public order. Not* all of them can notice all possible *outcomes of riots.* In addition, it should be noted that 80.7 per cent of respondents also indicated that they had no specialised training related to riots, and 56.5 per cent of the respondents indicated that they did not even have specialised training in the field of assessment of violations of public order.

Considering the complexity of the riot cases and survey results, we recommend establishing special riot recognition and qualification training for police officers.

---

[64] „Šiurkštus," Žodynas.lt, accessed April 15, 2023, https://www.zodynas.lt/terminu-zodynas/SS/siurkstus.
[65] *Criminal case No 2K-7-393/2005*; 2nd District Court of Vilnius City, *Criminal case No 1-15-503/2011*, Judgment, February 25, 2011 https://eteismai.lt/byla/77529163092769/1-15-503/2011.
[66] Gruodytė et al., *Lietuvos Baudžiamoj teisė*, 658.
[67] *Criminal case No 1-15-503/2011.*
[68] *Criminal case No 1-15-503/2011.*

Gathering of People

For the grave violation of public order to be considered a riot, the act must be committed *by a gathering of people*.[69] In the Oxford Dictionary, a *gathering* is *a meeting of people for a particular purpose*.[70] In the doctrine, the *gathering of people* is defined as a *meeting of people not connected by organisational structural ties in one place*[71] *or* as *a voluntary gathering of a crowd of people in one place.* [72]

A gathering of people can arise for various reasons, for example, due to an event (concert, basketball competition, football competition, etc.) or participation in a rally, peaceful assembly, demonstration, or just to have a good time.[73]

It should be noted that the legal acts do not define the number of people who must gather to be considered a *gathering of people*. This is left to the discretion of the court. In its practice, the Supreme Court of Lithuania noted that *a gathering of people in the sense of Article 283 of the Civil Code should be understood as a sufficiently large group of people gathered in a particular place (area)*.[74] According to the opinion of Vilnius 2nd district court, a gathering of people must consist of *a sufficiently large number of people*.[75] In its practice, the court did not recognise five persons who actively participated in fights as a *gathering of people* because, in its opinion, such a number is not large. The court noted that *no matter how gravely the public order was violated, the number of persons who violated it in this case clearly does not reach such a level that it would be a basis to state that there was a gathering*.[76] The Supreme Court of Lithuania recognised as a *gathering of people* a group of 500 people and a group of 1500 people who gathered on the main road in 2003[77] and a group of 3500 people who gathered near the Seimas in 2009.[78] And finally, the police estimated that 6000 people gathered during the 2021 riot.[79]

It should be noted that the court, assessing the seriousness of the riot situation, considers the entire "gathering of people" a participant in the riot, although not all members of the "gathering of people" actively participate. According to the court, *participants of such a group use united forces to commit violence, destroy property or otherwise gravely violate public order; at the same time, each of them supports the actions of the other by their actions. This kind of joint action should be considered to pose a greater risk than the actions of individuals or a small group of (several) individuals*.[80]

It should be noted that the legal regulation of riots in some other states differs from the legal regulation of Lithuania. In those states, the focus is not on the *gathering of people* but on the number of active participants. However, the number of participants that cause a riot also varies among states. For example, In Ireland and Great Britain, twelve or more persons who are

---

[69] *Lietuvos Respublikos baudžiamasis kodeksas*, Article 283.
[70] Hornby, *Oxford Advanced Learner's Dictionary*, 531.
[71] Olegas Fedosiukas, „Nusikaltimai ir baudžiamieji nusižengimai viešai tvarkai," infolex.lt., accessed May 1, 2023, https://www.infolex.lt/portal/diskusijos/docs/13_11_40_nBK%20apzvalga%20specialioji%20dalis.doc, 1.
[72] Gruodytė et al., *Lietuvos Baudžiamoj teisė*, 657.
[73] Gruodytė et al., *Lietuvos Baudžiamoj teisė*, 657.
[74] *Criminal case No 2K-552/2012*
[75] *Criminal case No 1-15-503/2011.*
[76] *Criminal case No 1A-137-317/2011.*
[77] *Criminal case No 2K-7-393/2005*
[78] *Criminal case No 1A-152-303-2012.*
[79] Lietuvos Policija, „Teismui perduota 2021 m. rugpjūtį prie Seimo vykusių riaušių byla," policija.lrv.lt, accessed 28 April 2023, https://policija.lrv.lt/lt/naujienos/teismui-perduota-2021-m-rugpjuti-prie-seimo-vykusiu-riausiu-byla.
[80] *Criminal case No 2K-552/2012*

present together use or threaten unlawful violence commit a riot,[81] whereas, in the Colorado Revised Statutes 2021 and U.S. Code, a riot means a public disturbance involving an assemblage of three or more persons.[82]

In addition, it should be noted that the officers who took part in the survey also found it difficult to answer the question of what group of people they think constitutes a *gathering of people*. The answers given by the officers varied widely. Only 32.3 per cent of the officers' answers correspond to court practice. They stated that a *gathering of people* is when more than 100 people gather. Meanwhile, other respondents indicated a much smaller number of people. 45.2 per cent indicated that a *gathering of people* is when 11 to 30 people gather, 16.1 per cent indicated 31 to 50 people, 3.2 per cent chose the answer up to 10 people, 1.6 per cent indicated 51 to 75 people and 1.6 per cent of the participants indicated that the *gathering of people* consists of 76 to 100 people.

Considering the difficulties of police officers in determining the *gathering of people* and taking into account the practice of other states, and the fact that not the full *gatherings of people* are prosecuted, but only active participants in riots (the analysis is provided below), we suggest abandoning the concept of the *gathering of people* in the definition of the riot. Instead of this requirement, it would be better to determine the number of persons who are actively violent in the group, which would indicate that a riot is taking place. We suggest providing that there is a riot when 12 persons commit a grave violation of public order. It should be established that how many people are around the active rioters is not essential.

Complicity

Article 282 of the Criminal Code of Lithuania states that criminal liability arises for those who organised or provoked a gathering of people to commit violence and who *committed* violence. The Supreme Court of Lithuania has noted in his practice that *the composition of participation in riots determines the complicity as a necessary feature because riots, which are generally called grave violations of public order, only can be publicly committed by a group of people, i.e. a sufficiently large number of people.* [83] This means participation in riots without sharing with other participants in the gathering is impossible.[84]

A Riot can happen spontaneously. For example, the riot of 2009 arose after the end of the meeting "Stop the impoverishment of people, the destruction of business, the destruction of sports, press and culture" organised by the Lithuanian Labor Federation, the Confederation of Lithuanian Trade Unions and the Lithuanian trade union "Solidarumas".[85] Accordingly, there is no formal partnership agreement. According to court practice, a pre-planned, detailed plan to commit a crime, a division of roles, or a pre-arrangement is not necessary for a group of accomplices in a riot crime. Collusion can be predicted from conclusory actions, which show the person’s will to participate together in a gathering (group of people, company, crowd) with others in criminal acts. A person can express his attitude by showing active support for the violence of other persons, destruction of property, or other gross violations of public order by his actions and by actively contributing to these actions.[86] In the court’s opinion, riot

[81] *Public Order Act 1986*, Part 1. Section 1.
[82] *Colorado Revised Statutes 2021* , § 18-9-101 (2); 18 U.S. Code 102 (2006), § 2102, Legal informatikon institute, accessed May 4, 2023, https://www.law.cornell.edu/uscode/text/18/2102.
[83] *Criminal case No 1-15-503/2011.*
[84] *Criminal case No 1-15-503/2011.*
[85] *Criminal case No 1A-152-303-2012.*
[86] *Criminal case No 1A-152-303-2012.*

participants must answer as accomplices because they express their consent to participate in the criminal act through their active actions. It is not important at what time during the riot each offender carried out their actions, grossly violating public order.[87]

Systematic interpretation of Articles 24 (Complicity and types of accomplices) and 283 of the Criminal Code of Lithuania allows us to conclude that in the case of riots, the participants of a group of accomplices can act as riot organisers, instigators, or executors. According to Article 283 of the Criminal Code of Lithuania, *organising* or *provoking* riots, as well as *participating* in riots, is punishable. It must be said that the participants perform their actions in the riots only with direct intention, i.e. the perpetrator realises that he organises or provokes gross violations of public order by a group of people or actively performs these actions himself and wants to act this way.[88]

The *organisation* of a riot manifests itself in actions aimed at providing organisation and directionality to the individuals present in the gathering. The organisation itself can be spontaneous or pre-planned. It does not matter what steps the organiser takes to make the group's actions more effective. It can be calling people to gather, directing the gathered people to a single goal, giving instructions to individual people and groups, providing items intended to injure the body or destroy property, predicting provocations, and other actions.[89]

The court practice shows a similar approach. In the riot of 2003, the court recognised A.K. and B.M. as organisers. They called Lithuanian farmers to protest, organised rallies near the main highways, coordinated the actions of the rally participants, ordered to carry out the planned agreement, thus coordinated the activities of the farmers, and urged them to disobey the police officers.[90]

According to Articles 24 and 283 of the Criminal Code of Lithuania, the *instigator* is responsible for the actions by which he provokes a riot. Provocation of the riot manifests itself in the involvement, incitement, and encouragement of persons to commit a criminal act. Such actions may include instructions, various shouts to start anti-social activities or to resist police officers, inciting aggression, and spreading false information that does not correspond to reality, but causes individuals to have contradictory thoughts and encourage them to commit violence, act aggressively or otherwise violate public order.[91] For example, the court found out that in the riot of 2009, Č. B. carried out active acts of provocation. Covering his face with a respirator, standing in front of a crowd of people, he campaigned with hand gestures and words to attack the officers and the Seimas building, shouted and whistled, aggressively approached the officers, provoked them, and rushed to the doors of the Seimas.[92]

According to court practice, in the event of a riot, not the entire *gathering of people* is prosecuted, but only the *active participants*.[93] Criminal liability arises only for those *participants* in the riot who disturbed public order by *active actions*. For example, out of 3500 persons who formed the *gathering of people*, 35 were recognised as active participants in the riot of 2009 and were prosecuted.[94]

[87] *Criminal case No 2K-552/2012*
[88] *Criminal case No 1-15-503/2011.*
[89] Fedosiukas, „Nusikaltimai,“ 1.
[90] *Criminal case No 2K-7-393/2005.*
[91] Fedosiukas, „Nusikaltimai,“ 1; *Criminal case No 1-15-503/2011.*
[92] *Criminal case No 1A-152-303-2012.*
[93] *Criminal case No 1A-152-303-2012.*
[94] *Criminal case No 1A-152-303-2012.*

The mere presence of a person in a place where riots are taking place cannot bring him either criminal or administrative liability.[95] Accordingly, to be recognised as an *executor,* he must participate in a riot by active actions, performing the acts provided for in Article 283, i.e., he must commit violence, destroy the property of others, or otherwise grossly violate public order. For example, in the riot of 2003, individuals were recognised as active riot participants (executors) because they blocked the main road with tractors, which disrupted traffic and disrupted the work of border checkpoints.[96] In the riot of 2009, A.D. was recognised as one of the most active participants, characterised by the intensity of illegal actions. Covering the lower part of his face with a scarf, A.D. acted among other persons, constantly changing his location: he went to groups of people, shouted, cursed, whistled, and threw various objects - stones, debris, sticks in the direction of the Seimas; he campaigned for people to throw things at the Seimas and occupy it; he threw snow, pieces of ice, broken tiles, bottles, stones at the officers; he beat the officers' protective shields with his hands; he grabbed the gas charges before they could trigger and threw them back at the officers; he broke the sidewalk, broke the fence of the adjacent construction site and the fountain bars; he broke one window of the Seimas; he threw stones at the windows of cafes on the street.[97]

Eight survey participants, who completed a pre-trial investigation in a riot case, answered an open question about what difficulties they faced during the pre-trial investigation when identifying the riot organiser, instigator, and participant.

Most pre-trial investigation officers who participated in the survey indicated they had no difficulties identifying the riots' organiser. One respondent stated that there are difficulties in gathering evidence in cases where the organiser organises remotely (with the help of social media). If the riots were organised only in the social space of the Internet, it would be challenging to detect such information since it may be posted in a closed group or on a web page visible only to a particular group of individuals. As a result, sometimes, no trace of an organisation remains. It is easier to identify the organiser if the organisation takes place during a live event.

Pretrial investigation officers indicated the following difficulties they face when identifying a riot instigator: when the person's actions were not recorded on video and audio, it is challenging to prove instigation; the sound quality of the video material is not always good, it is difficult to hear what people are saying, urging and the like; it is difficult to prove that a person is an instigator if he does not express thoughts in a public place that are aimed at encouraging others to commit a criminal act and such actions are not recorded on video or audio; it is difficult to determine how the instigator involves or encourages other people to join the riot because it sometimes happens before the crowd gathers.

The respondents' answers also show that, in practice, the instigator is not always identified in the riot investigation. One pretrial investigation officer noted that instigation was not emphasised during the riot investigation in 2021. Such an approach is confirmed by court practice. The analysis of court decisions in the 2009 riot case shows that acts of provocation were classified as active participation in a riot and have not been analysed separately.[98]

---

[95] European Court of Human Rights, *Case of Laniauskas v. Lithuania*, Application no. 6544/20, May 17, 2022, HUDOC database, https://hudoc.echr.coe.int/eng?i=001-217248; 2nd District Court of Vilnius City, *Case of administrative law violation, No A2.11.-706-497/2009*, Ruling, March 17, 2009, https://e-teismai.lt/byla/48014 23064448/A2_11_-706-497/2009.

[96] *Criminal case No 2K-7-393/2005.*

[97] *Criminal case No 1A-152-303-2012.*

[98] *Criminal case No 2K-552/2012*

In practice, when identifying a participant in a riot, it takes much time for the pre-trial investigation officers to review a large amount of footage and record in writing the facts relevant to the pre-trial investigation because there are many active and passive participants in the riot. Therefore, it takes time to identify the rioters and their actions. Some rioters wear masks, so it is difficult to find them if they are not arrested at the scene. Suppose a participant in the riot is wearing a mask. In that case, it is necessary to select the route of his movement with the help of video cameras and find where he takes off the mask so his facial features can be identified. Also, once a participant in the riot is identified, it isn't easy to find him because the participants gather from different parts of Lithuania, and their place of residence does not match the declared place of residence.

In some countries, such as Canada, wearing masks during riots provides greater punishment for rioters than for a participant who did not hide his identity. Article 65 of the Criminal Code of Canada[99] states that *[e]very person who takes part in a riot <…> is liable to imprisonment for a term of not more than two years*. In contrast, a *person who commits an offence [a riot] while wearing a mask or other disguise to conceal their identity without lawful excuse is <…> liable to imprisonment for a term of not more than 10 years*.

Considering other countries' experience, it is recommended to provide stricter liability in Lithuania for persons who participate in riots without justifiable reason wearing masks and hiding their identity.

The survey participants also noted that the existing legal regulation of riots has certain shortcomings. It is difficult to distinguish the qualifying features of riot crimes from those of public order violations. There is also a lack of clarification of the concepts presented in Article 283 of the Criminal Code of Lithuania.

Conclusions

The performed analysis allows us to draw the following conclusions and make recommendations:

The definition of the riot - a grave violation of public order by a gathering of people, and lack of explanation of the concepts of a "gathering of people" and a "grave violation of public order", leaves the court with wide discretion on how to interpret the content of the Article 283 of the Criminal Code of Lithuania.

Riots can occur both in a public place and in a private place, spreading to a public place; therefore, concerning riots, it is not appropriate to assess whether the violation occurs in a public or private place when determining a grave violation of public order. It is recommended to establish in Article 283 of the Criminal Code of Lithuania the condition that a riot may occur in private and public places.

The definition of public order is formulated neither in Articles 283 and 284 of the Criminal Code nor in other legal acts. To ensure the clarity of legal regulation and consider the practice of other states, it is recommended that the meaning of the concept of *public order* is clearly defined in Lithuanian legal acts.

Article 283 of the Criminal Code does not explain the concept of *grave violation of public order*. It can be public violence, destruction of property and others. Public violence can take many forms. This can be physical violence - insolent behaviour, and psychological or verbal violence, which manifests itself in threats and taunting. There are no references in the

---

[99] Parliament of Canada, *Criminal Code (R.S.C., 1985, c. C-46),* Justice Laws Website, last modified May 25, 2023, https://laws-lois.justice.gc.ca/eng/acts/C-46/page-7.html#h-116101

Lithuanian legal acts as to what other violations of public order can be. The low number of riot cases does not create conditions for the courts to fill the gaps in legal regulation.

Riots have to have the outcome of disrupting public peace or order. The analysis of survey results shows that Police officers lack knowledge about the effects of riots.

The aggressiveness of actions under Article 283 (riots) is higher than Article 284 (infringement of public order). *Grave violation* of public order is exclusively used in Article 283. Not all police officers know what criteria must be considered when assessing the gravity of the actions and what events are considered a gross violation of public order.

Considering the complexity of the riot cases, it is recommended to establish special riot recognition and qualification training for police officers; it is also recommended to provide definitions of a *gathering of people* and a *grave violation of public order* in the Criminal Code of Lithuania.

Criminal Code does not define the number of people who must gather to be considered a *gathering of people*. This is left to the discretion of the court. Considering the variety of court decisions and difficulties of police officers in determining the "*gathering of people"* and considering the practice of other states, it is recommended to abandon the existing concept of the *gathering of people* in the definition of the riot. Instead, it is recommended to focus on the number of active violators of public order. The Criminal Code should establish that a group of twelve people committing a *grave violation of public order* is enough for them to incur criminal liability for the rioting.

Complicity is a necessary feature in riot crimes. However, a detailed plan to commit a crime, a division of roles, or pre-arrangements are not required. Collusion can be predicted from conclusory actions, which show the person's will to participate in a gathering with others in criminal acts. The members' roles are riot organiser, riot instigator, and active riot participant.

It may be challenging to identify the riot organiser if he organises riots online on social media since the information may be posted in a closed group or on a web page visible only to a particular group of individuals.

It can be challenging to identify the actions of a riot instigator when he provokes people before the crowd gathers or when he does not express his thoughts in a public place. Such activities are only sometimes recorded on video or audio. In the video material, where the crowd's actions are recorded, it isn't easy to hear what a specific person is saying, urging, and the like.

It takes time to identify the active participants in a riot due to the significant number of footage and record review and a large amount of the facts to be recorded in the case documents; there are many active and passive participants in the riot, some of the rioters wear masks, a place of residence of participants does not match the declared place. The Criminal Code is recommended to provide stricter liability for persons who participate in riots by wearing masks without justifiable reason and concealing their identity.

References

1. "Convention for the Protection of Human Rights and Fundamental Freedoms," opened for signature November 4, 1950, *European Treaty Series* no. 5. https://www.coe.int/en/web/con-ventions/full-list/-/conventions/treaty/005.
2. 2nd District Court of Vilnius City, *Case of administrative law violation, No A2.11.-706-497/2009*, Ruling, March 17, 2009, https://e-teismai.lt/byla/4801423064448/A2_11_-706-497/2009.

3. 2nd District Court of Vilnius City. *Criminal case No 1-15-503/2011*, Judgment, February 25, 2011, https://eteismai.lt/byla/77529163092769/1-15-503/2011.
4. Alfa.lt. „Kaune dešimtys futbolo sirgalių sulaikyti, aštuoni – sužeisti,“, accessed April 15, 2023. https://www.alfa.lt/straipsnis/10875172/kaune-desimtys-futbolo-sirgaliu-sulaikyti-astuoni-suzeisti/.
5. Cambridge Dictionary. „Violence,“ accessed April 15, 2023. https://dictionary.cambridge.org/dictionary/english/violence
6. Colorado General Assembly. *Colorado Revised Statutes 2021*, accessed May 3, 2023. https://leg.colorado.gov/sites/default/files/images/olls/crs2021-title-18.pdf.
7. European Court of Human Rights, *Case of Laniauskas v. Lithuania*, Application no. 6544 /20, May 17, 2022, HUDOC database. https://hudoc.echr.coe.int/eng?i=001-217248;
8. Farlex, The Free Dictionary. „Vandalism,“ accessed April 15, 2023. https://legal-dictionary. thefreedictionary.com/Vandalizm
9. Fedosiukas Olegas. „Nusikaltimai ir baudžiamieji nusižengimai viešai tvarkai,“ infolex.lt., accessed May 1, 2023. https://www.infolex.lt/portal/diskusijos /docs/13_11_40_nBK%20 apzvalga%20specialioji%20dalis.doc.
10. Gruodytė Edita, et al. *Lietuvos Baudžiamoj teisė. Specialioji dalis. Antroji knyga* (Kaunas: Vytauto Didžiojo universiteto leidykla, 2022).
11. Gruodytė Edita. „Takoskyra tarp administracinio teisės pažeidimo ir nusikalstamos veikos viešosios tvarkos sektoriuje“ *Jurisprudencija Mokslo darbai* 2007 8(98); 89–94.
12. Hejduk Monika. „Zakres znaczeniowy porządku publicznego“ *Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy*. 2020:1(34).
13. Hornby A S. *Oxford Advanced Learner's Dictionary of Current English*, Sixth edition 2000, (Oxford University Press 2000). https://ojs.mruni.eu/ojs/vsvt/article/view/6179 / 5239.
14. Kaunas Regional Court. *Criminal case No 1A-137-317/2011*, Judgment, April 5, 2011, eteismai.lt. https://eteismai.lt/byla/178471027456575/1A-137-317-2011.
15. Klaipėda City District Court. Case of administrative law violations No A2.9.–594–889/2014, Resolution, March 14, 2014, https://eteismai.lt/byla/177352662858874/A2_9_-594-889/2014.
16. Klaipėda Regional Court. Criminal case No 1A-18-557/2020, Ruling, January 23, 2020, eteismai.lt. https://eteismai.lt/byla/255810361434008/1A-18-557/2020.
17. Lietuvių kalbos žodynas. „Riaušės,“, accessed April 15, 2023. http://www.lkz.lt /?zodis=riau% C5%A1%C4%97s&id=23047560000.
18. Lietuvos Policija, „Teismui perduota 2021 m. rugpjūtį prie Seimo vykusių riaušių byla“, policija.lrv.lt., accessed 28 April 2023. https://policija.lrv.lt/lt/naujienos/teismui-perduota-2021 -m-rugpjuti-prie-seimo-vykusiu-riausiu-byla.
19. *Lietuvos Respublikos Konstitucija*. Adopted by the citizens of the Republic of Lithuania in a referendum on October 25, 1992, last amendment No XIV-1030, April 21, 2022, https://www.e-tar.lt/portal/lt/legalAct/TAR.47BB952431DA/asr.
20. lrytas.tv. „Riaušės Prie Seimo. “, accessed April 15, 2023. https://tv.lrytas.lt/zyme/riauses-prie-seimo.
21. Oireachtas. *Criminal Justice (Public Order) Act, 1994*, eISB, accessed May 3, 2023. https://www.irishstatutebook.ie/eli/1994/act/2/section/14/enacted/en/html.

22. Parliament of Canada. *Criminal Code (R.S.C., 1985, c. C-46)*, Justice Laws Website, last modified May 25, 2023. https://laws-lois.justice.gc.ca/eng/acts/C-46/page-7.html#h-116101.
23. *Public Order Act 1986.* Legislation.gov.uk. accessed May 4, 2023. https://www.legi-slation. gov.uk/ukpga/1986/64.
24. Riigikogu. *Law Enforcment Act*. RT I, 22.03.2011, 4, Riigi Teataja, accessed May 3, 2023. https://www.riigiteataja.ee/en/compare_original/506112013015.
25. Saeima. *Latvian Republic Law on Safety of Public Entertainment and Festivity Events,* LIKUMI, accessed May 3, 2023. https://likumi.lv/ta/en/en/id/111963.
26. Seimas of the Republic of Lithuania. *Lietuvos Respublikos administracinių nusižengimų kodeksas,* approved by Lietuvos Respublikos administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas, No XII-1869, June 25, 2015, last amendment No XIV-1382, July 19, 2022, https://www.e-tar.lt/portal/lt/legalActEditions/ 4ebe66c0262311e5bf92d6af3f6a2e8b.
27. Seimas of the Republic of Lithuania. *Lietuvos Respublikos baudžiamasis kodeksas*, approved by Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas, No VIII-1968, September 26, 2000, last amendment No XIV-1925, April 27,2023, https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr.
28. Seimas of the Republic of Lithuania. *Lietuvos Respublikos policijos įstatymas*, No VIII-2048, October 17, 2000, last amendment No XIV-1208, June 28, 2022, https://www.e-tar.lt/portal/lt/ legalAct/TAR.CA89372D00AA/asr.
29. Seimas of the Republic of Lithuania. *Lietuvos Respublikos susirinkimų įstatymas,* No I-317, December 2, 1993, last amendment No XIV-1775, December 23, 2022, https://www.e-tar.lt/ portal/lt/legalAct/TAR.E59A4E24506E/asr.
30. Seimas of the Republic of Lithuania. *Lietuvos Respublikos triukšmo valdymo įstatymas*, No IX-2499, October 26, 2004, last amendment No XIV-694, November 23, 2021, https://www.e-tar.lt/portal/lt/legalAct/TAR.7E6F5E3523EA/asr.
31. Seimas of the Republic of Lithuania. *Lietuvos Respublikos Viešojo saugumo tarnybos įstatymas*, No X-813, September 19, 2006, last amendment No XIV-1207, June 28, 2022, https://www.e-tar.lt/portal/lt/legalAct/TAR.2E8452AA51C0.
32. Supreme Court of Lithuania. *Criminal case Nr. 2K-327-696/2016*, Ruling, October 18, 2016, https://eteismai.lt/byla/50528084947341/2K-327-696/2016.
33. Supreme Court of Lithuania. Civil case No 3K–3–546–915/2015, Ruling, November 11, 2015, https://eteismai.lt/byla/275484003091431/3K-3-546-915/2015.
34. Supreme Court of Lithuania. Criminal case 2K-452/2011, Ruling, October 18, 2011, https://eteismai.lt/byla/212675717164810/2K-452/2011.
35. Supreme Court of Lithuania. *Criminal case No 2K-410-693/2015*, Ruling, October 13, 2015, https://eteismai.lt/byla/265610887084591/2K-410-693/2015.
36. Supreme Court of Lithuania. *Criminal case No 2K-557/2014*, Ruling, December 30, 2014, https://eteismai.lt/byla/185692598673854/2K-557/2014.
37. Supreme Court of Lithuania. *Criminal case No 2K-89-139/2016*, Ruling, March 8, 2016, https://eteismai.lt/byla/77668317389247/2K-89-139/2016.
38. Supreme Court of Lithuania. *Criminal case No 2K-141/2015*, Ruling, January 13, 2015, https://eteismai.lt/byla/276938245650370/2K-141/2015.

39. Supreme Court of Lithuania. *Criminal case No 2K-19-511/2020*, Ruling, February 2, 2020, eteismai.lt. https://eteismai.lt/byla/72941671512005/2K-19-511/2020?word=priverstinis 20darbas.
40. Supreme Court of Lithuania. Criminal case No 2K-134/2014, Ruling, January 14, 2014, eteismai.lt. https://eteismai.lt/byla/40842212711138/2K-134/2014.
41. Supreme Court of Lithuania. Criminal case No 2K-159/2009, Ruling, May 12, 2009, eteismai.lt. https://eteismai.lt/byla/272217236359181/2K-159/2009.
42. Supreme Court of Lithuania. *Criminal case No 2K–160-697/2019*, Ruling, June 6, 2019, https://eteismai.lt/byla/163174713687052/2K-160-697/2019?word=turto%20sugadinimas%20privataus%20kaltinimo.
43. Supreme Court of Lithuania. Criminal case No 2K-264/2003, Ruling, April 8, 2003, https://www.teisesgidas.lt/modules/paieska/lat.php?id=19238.
44. Supreme Court of Lithuania. Criminal case No 2K-334/2004, Ruling, May 4, 2004, https://www.teisesgidas.lt/lat.php?id=25308.
45. Supreme Court of Lithuania. *Criminal case No 2K-552/2012*, Ruling, December 4, 2012, https://eteismai.lt/byla/142907711661131/2K-552/2012.
46. Supreme Court of Lithuania. Criminal case No 2K-652/2007, Ruling, October 30, 2007, https://eteismai.lt/byla/68969738312096/2K-652/2007.
47. Supreme Court of Lithuania. *Criminal case No 2K-7-393/2005,* Ruling, October 4, 2005, https://www-infolex-lt.skaitykla.mruni.eu/tp/58917.
48. Supreme Court of Lithuania. *Criminal case No 2K-7-404/2014*, Ruling, December 2, 2014, https://eteismai.lt/byla/201223916673628/2K-7-404/2014.
49. Šiauliai District court. *Case of administrative offenses No A17-1416-874/2019*, Ruling, August 7, 2019, https://e-teismai.lt/byla/220668037529670/A17_-1416-874/2019.
50. Šimkaitytė – Kudarauskė Rūta. „Viešosios vietos sąvokos samprata ir problematika“, *Visuomenės saugumas ir viešoji tvarka, No 5 (*2011): 199-219, Mykolo Romerio universitetas.
51. Švedas Gintaras, ed. Lietuvos Respublikos baudžiamojo kodekso komentaras. Specialioji dalis (Vilnius: VĮ Registrų centas, 2009).
52. U.S. Code (2006), Legal informatikon institute, accessed May 4, 2023. https://www.law.cornell.edu/uscode/text/18/2102.
53. Veršekys Paulius. „Vertinamieji nusikalstamos veikos sudėties požymiai“. (PhD diss., University of Vilnius, 2013), eLABa talpykla. http://talpykla.elaba.lt/elaba-fedora/objects/elaba:2027563/datastreams/MAIN/content.
54. Vilnius Regional Court. *Criminal case No 1A-152-303-2012*, Judgment, April 5, 2012, https://eteismai.lt/byla/259422086628826/1A-152-303-2012.
55. Visuotinė lietuvių enciklopedija. „Riaušės,“, accessed April 15, 2023. https://www.vle.lt/straipsnis/riauses/.
56. Visuotinė Lietuvių enciklopedija. „Viešoji tvarka“, accessed May 3, 2023. https://www.vle.lt/straipsnis/viesoji-tvarka/
57. Žodynas.lt. „Šiurkštus,“ accessed April 15, 2023. https://www.zodynas.lt/terminu-zodynas/SS/siurkstus.

MRU Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

PAGALBOS NUKENTĖJUSIEMS NUO NUSIKALSTAMOS VEIKOS TEIKIMO PAGRINDINĖS PROBLEMOS IŠKYLANČIOS DAR IKI BAUDŽIAMOJO PROCESO PRADĖJIMO

Gediminas BUČIŪNAS
Vytauto Didžiojo Universitetas, Teisės fakultetas
Jonavos g. 66, LT-44318 Kaunas,
Mykolo Romerio universitetas, Viešojo saugumo akademija
Maironio g. 27, LT-44211 Kaunas,
El. paštas: gediminas1967@mruni.eu
ORCID ID: 0000-0002-1826-0527

Dalia JASEVIČIENĖ
Nusikaltimo aukų rėmimo asociacija
Valakupių g. 5, LT-10101 Vilnius
El. paštai: dalytes@gmail.com, nara@mruni.eu
ORCID ID: 0000-0002-9566-7574

DOI: 10.13165/PSPO-23-33-07

Anotacija. *Nukentėjusiojo nuo nusikalstamos veikos teisių apsauga iki baudžiamojo proceso pradėjimo šiuo metu yra grindžiama Lietuvos Respublikos įstatymu "****Dėl pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims"****. Minėtame įstatyme įtvirtinta nuostata, kad nukentėjusiems asmenims nuo nusikalstamos veikos pagalbą suteikia akredituotos pagalbos tarnybos (Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas, 2021). Pastebėtina, kad 2023 metais Lietuvoje tokiomis akredituotomis tarnybomis tapo 25 organizacijos.*

2022 - 2023 m. buvo atliktas empirinis tyrimas kurio ***tikslas*** *buvo nustatyti ar asmenims, kurie kreipiasi į policiją pranešdami apie galimą nusikalstamą veiką jų atžvilgiu yra sudaromos sąlygos naudotis Lietuvos Respublikos Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatyme įtvirtintomis garantijomis. Šio empirinio tyrimo metu, taikant apklausos metodą, garantuojant respondentams anonimiškumą, buvo surinkta informacija iš 16 asmenų nukentėjusiųjų nuo nusikalstamų veikų, kurie kreipėsi į nusikalstamos veikos nukentėjusiems asmenims tarnybas ieškodami pagalbos. Atlikta asmenų nukentėjusiųjų nuo nusikalstamų veikų anoniminė apklausa leido įvertinti Lietuvos Respublikos įstatymo „Dėl pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims" efektyvumą ir akredituotų tarnybų teikiamų paslaugų prieinamumą. Buvo nustatyta, kad Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymo 3 str. įtvirtinti pagalbos teikimo principų ir nukentėjusiųjų asmenų teisių, numatytų minėto įstatymo 4 str. realizavimas praktinėje pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims tarnybų veikloje (toliau – akredituota tarnyba) yra gana sudėtingas, o kartais net ir neįmanomas.*

Vienas svarbiausių probleminių klausimų yra teisinės konsultacijos dėl policijos (ikiteisminio tyrimo įstaigos) atsisakymo pradėti ikiteisminį tyrimą suteikimo terminai. Ši konsultacija turi būti suteikta per 7 dienas, nes toks apskundimo terminas įtvirtintas Lietuvos Respublikos baudžiamojo proceso kodekso 168 str. (Lietuvos Respublikos baudžiamojo proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Baudžiamojo proceso kodeksas, 2002). Remiantis atlikto tyrimo duomenimis, operatyviai sureaguoti į tokį trumpą įstatymo nustatytą terminą (pateikti teisininko kvalifikuotą konsultaciją) pagal anoniminius apklausos duomenis, galėjo tik dvi iš dvidešimt penkių akredituotų tarnybų.

Gauti tyrimo metu duomenys leidžia teigti, kad 2021 m. priimtas įstatymas sudarė galimybę asmenims nukentėjusiems nuo nusikalstamos veikos pasinaudoti tam tikro pobūdžio paslaugomis. Tuo pačiu tai parodė, kad tiek psichologinės pagalbos, tiek teisinės nemokamos paslaugos prieinamumas vis dar yra nepakankamas.

Pagrindinės sąvokos: *Baudžiamasis procesas, nukentėjusysis, nusikalstama veika, teisinė pagalba, akredituota tarnyba.*

Įvadas

2021 m. sausio 14 d. Lietuvos Respublikos Seime priimtas Lietuvos Respublikos

pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas Nr. XIV-169, kuriuo reglamentuojamas pagalbos teikimas nuo nusikalstamų veikų nukentėjusiems asmenims (*Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*, 2021). Šio įstatymo 2 straipsnio 4 punktas numato, kad „*pagalba nuo nusikalstamos veikos nukentėjusiems asmenims – informacija, konsultacijos ir (ar) paslaugos, teikiamos nuo nusikalstamos veikos nukentėjusiems asmenims atsižvelgiant į individualius jų poreikius, dėl padarytos nusikalstamos veikos atsiradusius poreikius ir nusikalstamos veikos pobūdį*.“

Visame įstatyme pagalba nuo nusikalstamos veikos nukentėjusiems asmenims suprantama kaip informacija, konsultacijos ir (ar) paslaugos, teikiamos nuo nusikalstamos veikos nukentėjusiems asmenims atsižvelgiant į individualius jų poreikius, dėl padarytos nusikalstamos veikos atsiradusius poreikius ir nusikalstamos veikos pobūdį. Deja, įstaigos, teikiančios pagalbą, dažnai ją supranta kaip socialines ar psichologo paslaugas (*Pagalbą teikiančios tarnybos*, 2023 m.). Suprantama pagalba turi būti kompleksinė, tačiau interesantų grupė – „nusikalstamos veikos aukos“, kuriems, visų pirma, reikalingos teisinės konsultacijos. Nukentėjusiųjų teisės įtvirtintos Lietuvos Respublikos baudžiamojo proceso kodekse ir kituose įstatymuose (Ancelis, P., 2003, pp. 97-104), kuriuos 2022-11-27 Lietuvos Respublikos generalinė prokuratūra apibendrinusi pateikė prokuratūros internetinėje svetainėje, išskirdama net 18 punktų (*Apie nukentėjusiojo teises*, 2023).

Vis dėlto asmuo, kuris yra nusikalstamos veikos auka ir dar neturi nukentėjusiojo statuso, pagal išvardintą sąrašą turi tik dvi teises – kreiptis į ikiteisminio tyrimo įstaigą ar prokuratūrą žodžiu arba raštu ir kitą teisę – apskųsti priimtus procesinius sprendimus. Pastaruoju metu nagrinėjant statistinius duomenis apie pradedamus ikiteisminius tyrimus, pastebėtina tendencija, kad iš esmės jų skaičius mažėja (*Lietuvos policijos veiklos ataskaita* 2022 m.). Tai kelia pagrįstų abejonių ar užtikrinama kvalifikuota teisinė pagalba nusikalstamų veikų aukoms, o ne tik asmenims, baudžiamojo proceso įstatymo nustatyta tvarka pripažintiems nukentėjusiaisiais nuo nusikalstamos veikos.

Nusikalstamos veikos auka šiame darbe suprantama kaip asmuo, kuris nukentėjo nuo nusikalstamos veikos, t. y. dėl nusikalstamos veikos patyrė turtinės, fizinės ir/ar moralinės žalos, tačiau dar nėra pradėtas ikiteisminis tyrimas.

Taigi, šio mokslinio darbo autorių **tikslas** buvo nustatyti ar asmenims, kurie kreipiasi į policiją, pranešdami apie galimą nusikalstamą veiką jų atžvilgiu, yra sudaromos sąlygos naudotis Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatyme numatytomis garantijomis. Darbe buvo siekiama nustatyti, ar nukentėjusiems asmenims, kurie kreipiasi į pirmojo kontakto įstaigą (policiją, prokuratūrą), buvo suteikta informacija apie galimybę gauti kompleksinę psichologo, socialinio darbuotojo ir teisininko pagalbą. Įvertinus, galimas akredituotos tarnybos pagalbos teikimo/gavimo problemas, buvo siekiama nustatyti ir nepakankamos pagalbos suteikimą sąlygojusias priežastis. Tuo pačiu tai leis pagerinti Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymo efektyvumą. Atkreiptinas dėmesys, kad Europos Žmogaus Teisių Teismas konstatavo, kad Konvencijos 3 straipsnis įtvirtina reikalavimą valstybės valdžios institucijoms, greitai reaguojant į skundus, atlikti veiksmingą ikiteisminį tyrimą, siekiant nustatyti bylos faktus ir kaltininką (*Mažukna prieš Lietuvą, peticijos Nr. 72092/12*), sprendimas priimtas 2017-04-11).

Užsibrėžtam tyrimui tikslui pasiekti buvo išsikelti tokie tyrimo uždaviniai:

• Apklausti asmenims nukentėjusius nuo nusikalstamų veikų ir siekusius gauti teisinę pagalbą;

• Išanalizuoti nemokamos teisinės pagalbos prieinamumą, kokybę, iškylančias problemas dar iki pradedant pirmąją baudžiamojo proceso stadiją – ikiteisminį tyrimą,

Nukentėjusiojo teisių užtikrinimo problemas nagrinėjo mokslininkai: P. Ancelis 2003 m., vėliau - R. Burda, S. Kuklianskis, G. Sakalauskas, R. Merkevičius, bei kiti. Kitą vertus, Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymo taikymas akredituotų tarnybų praktinėje veikloje iki šiol moksline prasme nebuvo giliau analizuotas Lietuvos mokslininkų ir praktikų tarpe.

Šio mokslinio tyrimo naujumas yra naudoti informacijos gavimo šaltiniai. Tyrimo metu buvo atlikta 16 asmenų, patyrusių fizinę, turtinę ir moralinę žalą nusikalstama veika, anoniminė apklausa. Šio tyrimo metu gauti duomenys yra labai vertingi ta prasme, kad iki šiol rasti galimybę apklausti tokį kiekį asmenų, kurie į ikiteisminio tyrimo įstaigą kreipėsi per pastaruosius vienerius metus, yra sudėtinga. Pirma, ikiteisminio tyrimo pareigūnų priimti procesiniai sprendimai, o tiksliau, tyrimo bylose esantys nukentėjusiųjų asmenų kontaktiniai duomenys nėra laisvai prieinama informacija dėl asmens duomenų teisinės apsaugos įstatymo reikalavimų. Antra, norint tokius asmenis (nukentėjusiuosius) apklausti net anonimiškai, reikia pirmiausiai įgyti jų pasitikėjimą.

Tiriamoji dalis

Vienas iš ypatingiausių metodų rinkti duomenis, siekiant nustatyti įstatymo efektyvumą yra asmenų anoniminė apklausa. Kokybinio tyrimo imtis – apklausa buvo atliekama ir buvo pasiektas „*prisotinimo*“ efektas (Gaižauskaitė ir kt., 2016, p. 18), t. y. respondentų atsakymai pradėjo kartotis. Šis efektas, atliekant tyrimą, su respondentais pasireiškė apklausus 5 žmones. Visi dalyvavę anoniminiame anketavime asmenys buvo užkoduoti atsakymais A1 (pirmoji auka), A2, A3 ir t.t. Vis dėl to siekiant padaryti pagrįstas išvadas būtina visų pirma nustatyti ar imtis atitinkamų reprezentatyvumo kriterijų. Pagrindinė imties reprezentatyvumo užtikrinimo sąlyga yra jos atsitiktinis parinkimas iš populiacijos. (T. Bilevičienė, S. Jonušauskas 2011). 2022 m. užregistruotos 5 878 nusikalstamos veikos, susijusios su smurtu artimoje aplinkoje (Lietuvos Policijos ataskaita, 2022). Kai kurių autorių nuomone, latentinių nusikaltimų skaičius yra nuo 3 iki 10 kartų didesnis nei registruojamų. (G. Sakalauskas, 2011). Vadinasi galima įvertinti, kad nagrinėjamu atveju (imtis 16 asmenų) veikos susijusios su smurtu artimoje aplinkoje sudarė 87% respondentų, vadinasi galimai užregistruotų, respondentų pradėtų ikiteisminio tyrimų turėtų būti 6756. Vidutiniškai įvertinus latentiškumą, 2022 metais galimai yra 43916 aukų, nukentėjusių nuo įvairių nusikalstamų veikų.

Taigi, įvertinus visus galimus nusikaltimus, t.y. ir užregistruotus ir latentinius, populiacijos dydis būtų N=43916. Turint imtį 16 asmenų, ir vadovaujantis *Paniott* formule (Kardelis, 2002) matome, kad:

$$\Delta = \sqrt{\frac{1-\frac{1}{N}}{n}}$$

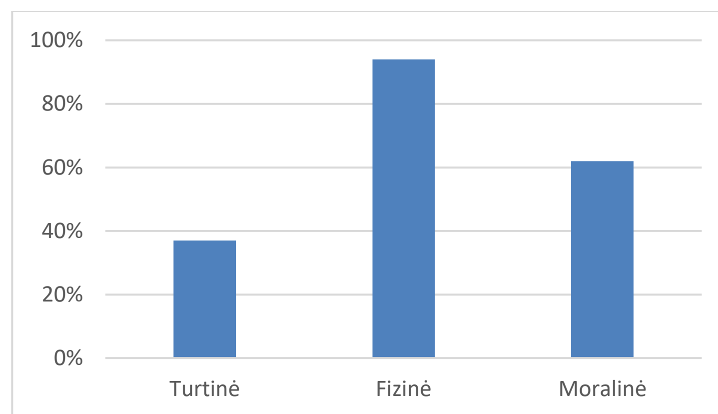
Gauname, kad tokiu būdu mūsų atlikta apklausa yra reprezentatyvi su 25% paklaida.

Turint tikslą išnagrinėti nukentėjusių nuo nusikalstamų veikų patyrimą ieškant kvalifikuotos pagalbos tapus nusikalstamos veikos auka, buvo sudaryta anoniminė anketa su pateiktu tyrimo tikslu ir suformuluotais klausimais, ir anketa buvo pateikta 16 asmenų, kurie kreipėsi į akredituotą tarnybą. Anketoje buvo bendrojo pobūdžio klausimai, siekiant nustatyti imties patikimumą bei su šiuo tyrimu susiję klausimai:

- Kokio pobūdžio žala buvo Jums padaryta nusikalstama veika?
- Kiek laiko praėjus nuo nusikalstamos veikos padarymo (pastebėjimo) kreipėtės į ikiteisminio tyrimo įstaigą (policiją)?
- Ar pirmojo kontakto įstaiga (policija, prokuratūra) Jus informavo apie galimybę gauti

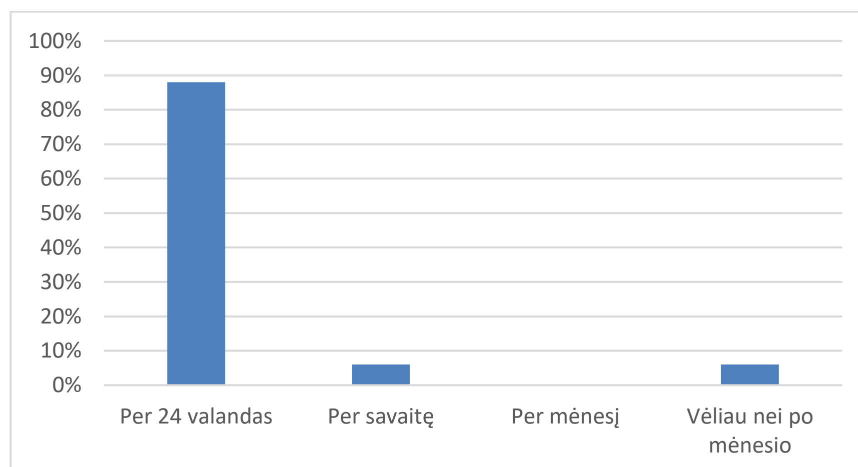
pagalbą akredituotose tarnybose.

- Kokios pagalbos tikėjotės iš pirmo kontakto įstaigos?
- Ar manote, kad pirmojo kontakto metu patyrėte institucinį smurtą, jei taip – įrašykite kaip tai pasireiškė.
- Per kiek laiko po Jūsų kreipimosi buvo pradėtas ikiteisminis tyrimas?
- Kokios kitokios pagalbos Jums prireikė vėliau, po pranešimo apie nusikalstamą veiką pateikimo?
- Ar kreipėtės dėl pagalbos suteikimo į vieną ar kelias akredituotas pagalbos asmenimis nukentėjusiems nuo nusikalstamos veikos tarnybas?
- Ar buvo Jums suteikta reikalinga pagalba akredituotoje tarnyboje?



1 pav. Diagrama, respondentų atsakymų į klausimą – kokio pobūdžio žala Jums buvo padaryta nusikalstama veika?

Iš pateikiamų duomenų matyti, kad atsitiktinėje imtyje, nagrinėjant asmenis, kurie ieško pagalbos dėl ikiteisminio tyrimo pradėjimo, didesnė dalis asmenų buvo patyrę fizinę žalą.



2 pav. Diagrama, respondentų atsakymų į klausimą – kiek laiko praėjus nuo nusikalstamos veikos padarymo (pastebėjimo) kreipėtės į ikiteisminio tyrimo įstaigą?

Pastebėtinas ypatingai sąmoningas nukentėjusiųjų elgesys, pranešant apie padarytą nusikalstamą veiką nedelsiant, taip sudarant galimybes ne tik rasti nusikalstamos veikos

pėdsakus, bet ir užfiksuoti juos, be to, neatidėliotinai atliktas teismo medicinos tyrimas leidžia tiksliau nustatyti nusikalstamos veikos padarymo būdą ir panaudotas priemones.

Į klausimą „Ar pirmojo kontakto įstaiga (policija, prokuratūra) informavo Jus apie galimybę gauti pagalbą akredituotose tarnybose“ nei vienas respondentas neatsakė teigiamai. Tik du respondentai papildomai nurodė, kad apie akredituotas tarnybas jie buvo informuoti įvykio vietoje dirbusių greitosios medicinos pagalbos darbuotojų ir vaiko teisių apsaugos specialistų atvykusių išklausyti vaiko nuomonę po įvykio.

Vis dar pasitaiko atvejų, kai nukentėję nuo nusikalstamos veikos asmenys kreipiasi į policiją tik norėdami informuoti atsakingas įstaigas. Paprastai tai susiję su draudimo išmokos gavimo galimybe tik esant pateiktam pranešimui į policiją. Kita vertus, pasitaiko ir tokių elgesio modelių, kai nukentėję nuo nusikalstamos veikos asmenys mano, kad apie nusikalstamas veikas jie turi būtinai pranešti policijai, tačiau jie visiškai nepageidauja jokio policijos, kitos valstybės įstaigos įsikišimo į iškilusį konfliktą, o juo labiau ikiteisminio tyrimo pradėjimo.

Todėl respondentų buvo klausiama ar jie pageidavo būtent ikiteisminio tyrimo ir baudžiamojo persekiojimo asmenų, įvykdžiusių priešingus teisei veiksmus. Įšį klausimą visi respondentai atsakė, kad kreipėsi į pirmojo kontakto įstaigą tikėdamiesi ikiteisminio tyrimo pradėjimo.

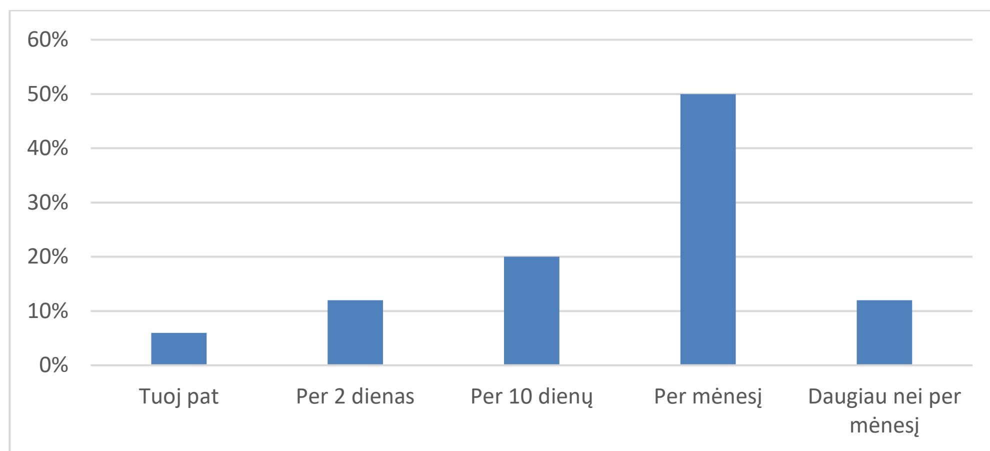
Pastebėtina, kad net 87% respondentų nurodė, kad patyrė institucinį smurtą ikiteisminio tyrimo įstaigoje. Paprašius nurodyti, kodėl jie taip mano, respondentai pateikė informaciją apie tam tikrus policijos pareigūnų veiksmus ar žodinius išsireiškimus, kurie akivaizdžiai žemina asmenų nukentėjusiųjų nuo nusikalstamų veikų orumą, o kai kuriais atvejais net pažeidžia jų teises. Gana dažnai pasitaikė atvejai, kad asmenys, nukentėję nuo nusikalstamos veikos, buvo atkalbinėjami nesikreipti į policiją raštu. Taip pat dažnai būdavo užduodami klausimai, nesusiję su nusikalstama veika, o ir jų formulavimas buvo neadekvatus. Pavyzdžiui, pirminės apklausos metu, moteriai nurodžius, kad patyrė seksualinę prievartą bei kūno sužalojimus (išangės ir tiesiosios žarnos plyšimas), ikiteisminio tyrimo įstaigos pareigūnas klausimą suformulavo taip: „*ar Jūs jautėte malonumą tuo metu?*“. Nepaisant to, kad atsakymas į tokį klausimą niekaip nedaro įtakos ikiteisminio tyrimo eigos, tačiau ikiteisminio tyrimo įstaigos pareigūnas paaiškino, kad nukentėjusioji turi tai paaiškinti. Palyginus dažni yra grasinančio pobūdžio pareigūnų pasisakymai: „*jei rašysit pareiškimą pradėti ikiteisminį tyrimą pagal nusikalstamos veikos požymius, numatytos Lietuvos Respublikos BK 149 str.3d., mes bet kada galėsime paimti Jūsų vaiką ir jį laikyti*“; “*tai, kad Jums prakirsta galva, nereiškia, to, kad Jūs nesudavėt smūgių savo vyrui, geriau nieko nerašykit, nes kitaip ir jis parašys, kad Jūs jį mušėt ir mes Jus į areštinę vešim, o ne į ligoninę*”; “*čia dėl tokių dalykų, kam Jūs rašysit, nieko čia baisaus nėra, čia tik raudona (išsireiškimas apie suplyšusį ausies būgnelį), o kiek čia paskui Jus tampys ir tyrėjos ir paskui dar teismai)*”.

Išanalizavus respondentų apklausas pastebėtini keli ypatingi atvejai. Daugelio nukentėjusiųjų prašymai, kreipiantis į policiją yra analogiški – pradėti ikiteisminį tyrimą ir surasti kaltus asmenis. Deja, analizuojant iš ikiteisminio tyrimo įstaigų pateiktus atsakymus pareiškėjams pastebėtina, kad dalis procesinių sprendimų atsisakyti pradėti ikiteisminius tyrimus yra orientuoti į statistinių rodiklių pagerinimus. Latentiškumo prasme tam tikra dalis nusikalstamų veikų lieka neatskleistos ir pavojingas asmuo lieka nenubaustas.

Pavyzdžiui, 2023 m. balandžio mėnesį nepilnametės V. K. tėvas kreipėsi į policiją su pareiškimu, nurodydamas, kad rado savo dukrą išrengtą nuogai ir be sąmonės prie jos draugės namų. Atvykusiems policijos pareigūnams jis nurodė, kad dukra, jo žiniomis, išėjo pas savo draugę į svečius ir, kai ilgai negrįžo, jis išėjo jos ieškoti. Jis rado savo nepilnametę dukrą be sąmonės, išrengtą visiškai nuogai, paguldytą ant žemės pagalbiniuose ūkio statiniuose. Mergaitė buvo perduota atvykusiems medikams, atgavusi sąmonę ji artimiesiems nurodė, kad

buvo išprievartauta. Vėliau ją apie tai klausiant medikams ji nurodė, kad neatsimena jokių aplinkybių ir nieko nekomentuos. Vaiko tėvas į įvykio vietą atvykusiam policijos pareigūnui nurodė visas jam žinomas aplinkybes, tačiau pareigūnas priėmė sprendimą priimti pareiškimą iš tėvo tik surašant tam tikras aplinkybes, bet nurodė išžaginimo neminėti. Pareigūnas paaiškino, kad tėvai turės galimybę kreiptis į policiją dėl išžaginimo tik po to, kai ginekologas patvirtins, kad dukra turėjo lytinius santykius.

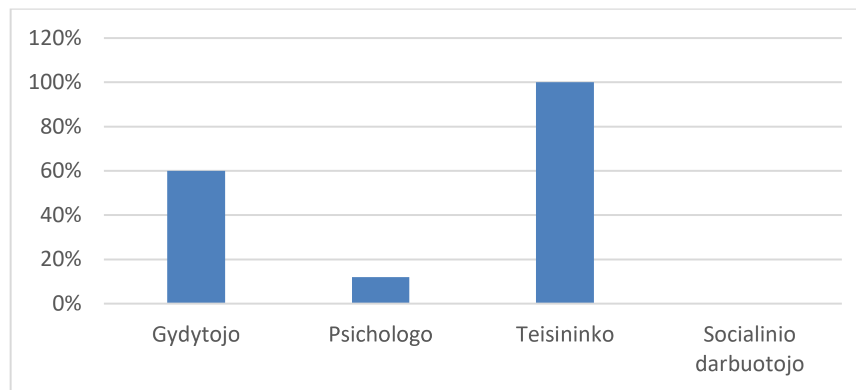
Toks nepagrįstas ikiteisminio tyrimo nepradėjimas ir pirminių veiksmų savalaikis neatlikimas sąlygoja sudėtingesnį įrodinėjimo procesą (G. Bučiūnas, 2017). Tiriant tam tikras veikas ypatingą reikšmę turi pirminių veiksmų savalaikis atlikimas. Vienu svarbiausiu klausimu yra keliamas įvykio vietos neatidėliotinis tyrimas, kuriam tikslinga pasitelkti kriminalistinę laboratoriją.



3 pav. Diagrama, respondentų atsakymų į klausimą – per kiek laiko po Jūsų kreipimosi buvo pradėtas ikiteisminis tyrimas?

Iš šios diagramos matyti, kad daugelis ikiteisminių tyrimų yra pradedami vėliau nei per 2 dienas. Kaip jau buvo minėta, greitas ikiteisminio tyrimo pradėjimą sąlygotų savalaikę teismo medicinos ekspertų atliekamą asmens kūno apžiūrą (Ancelis, 2016). Lietuvos teismų praktikoje yra pasitaikę atvejų, kai nukentėjusiojo asmens kūno medicininis tyrimas buvo atliekamas po mėnesio ir nenustačius jokių fiziologinių pakitimų, sudarė galimybę įtariamajam, o vėliau kaltinamajam neigti savo kaltę (Lietuvos apeliacinis teismas, 2011). Būtent rugsėjo mėnesį paaiškėjus mažamečio lytinei prievartai, vaiko kūnas buvo apžiūrėtas tik lapkritį. Suprantama, kad po tiek laiko jokių pėdsakų ant asmens kūno apie patirtą prievartą (nusikalstama veika kvalifikuota pagal nusikalstamos veikos numatytos Lietuvos Respublikos BK 150 str. 4 d. požymius) (*Lietuvos Respublikos baudžiamojo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Baudžiamasis kodeksas*, 2002) nebuvo. Tuo pasinaudodamas kaltinamasis pateikė apeliacinį skundą, teigdamas, kad jokios seksualinės prievartos prieš vaiką jis nenaudojo. Vis dėlto, teismas konstatavo, kad mažiausiai prieš mėnesį iki tyrimo buvo atlikti veiksmai.

Taigi, esant tokiam laikotarpiui, bet kokie pėdsakai ant nukentėjusiosios kūno galėjo išnykti dėl objektyvių aplinkybių. Taigi tai, kad medicinos ekspertai neaptiko jokių nusikalstamos veikos pėdsakų ant nukentėjusiojo asmens kūno, nėra įrodymas, kad nusikalstama veika nebuvo padaryta.



4 pav. Diagrama, respondentų atsakymų į klausimą – kokios kitokios pagalbos Jums prireikė vėliau, po pranešimo apie nusikalstamą veiką?

Visi respondentai teigia, kad jie kreipėsi daugiau nei į vieną akredituotą tarnybą. Bendraujant su respondentais daugelis jų paaiškino savo pasirinkimą vieninteliu argumentu, teigdami, kad akreditacija visoms tarnyboms yra vienoda. Dalis akredituotų tarnybų neturi jokios galimybės suteikti teisinę konsultaciją, kita dalis akredituotų tarnybų teigia, kad būtų skirta teisininko konsultacija, pirmiausia būtina registracija pas socialinį darbuotoją, kuris sudarys individualų kompleksinės pagalbos planą. Vėliau, pagal plano terminus, būtų galima registracija ir teisininko konsultacijai.

Taigi, apibendrintai galima teigti, kad per Lietuvos Respublikos BPK numatytą 7 dienų atsisakymo pradėti ikiteisminį tyrimą apskundimo terminą gauti kvalifikuotą ir nemokamą teisinę pagalbą yra labai sudėtinga. Vis dėlto, reikia pastebėti, kad mažesniuose regionuose akredituotų įstaigų paslaugos yra prieinamesnės nei didžiuosiuose šalies miestuose. Vilniaus ir Kauno regionuose sulaukti kvalifikuotos teisinės pagalbos, siekiant apginti savo, kaip asmens, nukentėjusiojo nuo nusikalstamos veikos teises ir teisėtus interesus yra sudėtingiau.

Suprantama, kad fizinis asmuo, galimai nukentėjęs nuo nusikalstamos veikos, neturi specifinių žinių, kad gali įstatymo nustatyta tvarka kreiptis nemokamos pagalbos į akredituotas tarnybas. Taigi pirmojo kontakto įstaigoje, nepateikus asmeniui jokios informacijos apie galimybę gauti pagalbą, tikėtina, kad dažnu atveju asmuo pats savarankiškai neieškos tokios informacijos. *„Ieškoti juodos katės tamsiame kambaryje galima tik tada, kai tiksliai žinai kur ji miega – visa kita metafizika arba beprotystė*“ (A. P. Piskarskas, 2006).

Iš anoniminės apklausos duomenų matyti, kad pirmojo kontakto įstaigoje neretai buvo patiriamas institucinis smurtas. Tai gali būti laikoma vieną iš pagrindinių priežasčių, kodėl nukentėjusieji ne visada žino apie galimybę gauti tinkamą ir savalaikę kvalifikuotą pagalbą akredituotose tarnybose dar iki pradedant ikiteisminį tyrimą. Siekiant pagerinti esamą situaciją, tikslinga nustatyti pareigą ikiteisminio tyrimo įstaigos (policijos) pareigūnams informuoti nukentėjusįjį apie pagalbos teikimą akredituotose tarnybose, įteikiant tokių institucijų sąrašą su kontaktiniais duomenimis, kiekvienam besikreipiančiam į ikiteisminio tyrimo įstaigą (policiją) dėl padarytos nusikalstamos veikos.

Išvados

1. Policija, kaip pirmojo kontakto įstaiga neteikia jokios informacijos apie akredituotų tarnybų, galinčių suteikti nemokamą pagalbą asmenims, nukentėjusiems nuo nusikalstamos veikos, veiklą.

2. Atlikus respondentų anoniminę apklausą buvo nustatyta, kad iki šiol nėra vykdoma Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymo 9 str. 1 d. įtvirtintos nuostatos, o būtent, kad pirmojo kontakto institucija nukentėjusiems asmenims suteiktų informaciją apie:

- pagalbą, kuri nukentėjusiam asmeniui gali būti suteikta ir pagalbos tarnybų kontaktinius duomenis (pateikiamas pagalbos tarnybų sąrašas, kuriame nurodyti jų pavadinimai, veiklos vykdymo teritorijų adresai, telefono ryšio numeriai, elektroninio pašto adresai), įskaitant informaciją apie galimybę gauti sveikatos priežiūros paslaugas, reikiamo specialisto pagalbą ir galimą laikiną apgyvendinimą;
- tai, kokiais būdais ir sąlygomis nukentėjęs asmuo gali gauti specialias apsaugos priemones;
- kokiais būdais ir sąlygomis nukentėjęs asmuo gali kreiptis dėl teisinės pagalbos, konsultacijų;
- kokiais būdais ir sąlygomis nukentėjusiam asmeniui gali būti atlyginta nusikalstama veika padaryta žala.

3. Siekiant pagerinti esamą situaciją, tikslinga nustatyti pareigą ikiteisminio tyrimo įstaigų pareigūnams informuoti apie pagalbos teikimą akredituotose tarnybose, įteikiant jų sąrašą su kontaktiniais duomenimis, kiekvienam besikreipiančiam asmeniui nukentėjusiajam nuo nusikalstamos veikos. Ši pareiga galėtų būti įtvirtinta Lietuvos Respublikos Generalinio prokuroro įsakymu patvirtintose rekomendacijose dėl ikiteisminio tyrimo pradžios ir jos registravimo tvarkos.

Literatūra

1. Ancelis, P., Bučiūnas, G. ir kt. (2016). Atskirų nusikalstamų veikų tyrimas. Vilnius.
2. Ancelis, P., (2003). Nukentėjusiojo teisinė padėtis pasikeitus baudžiamiesiems įstatymams. Jurisprudencija, t. 49 (41); 97–104 psl.
3. Apie nukentėjusiojo teises, Lietuvos Respublikos generalinė prokuratūra. (2023) https://www.prokuraturos.lt/lt/visuomenei/apie-nukentejusiojo-teises/7210
4. Babachinaitė, G., Kiškis, A. ir kt. (2009). *Latentinio nusikalstamumo kriminologinio tyrimo metodikos*. Vilnius.
5. Bučiūnas, G., Gruodytė, E., Šalčius, M. (2017). *Ikiteisminis tyrimas: procesiniai, kriminalistiniai ir praktiniai aspektai*. Vilnius.
6. EŽTT sprendimas byloje Mažukna prieš Lietuvą, peticijos Nr. 72092/12, sprendimas priimtas 2017-04-11.
7. Gaižauskaitė, I., Valavičienė, N. (2016). Socialinių tyrimų metodai: kokybinis interviu. Vadovėlis. Vilnius.
8. Kardelis, K. (2002). Mokslinių tyrimų metodologija ir metodai. Kaunas.
9. Lietuvos Respublikos baudžiamojo proceso kodeksas. *Valstybės žinios*, 2002-04-09, Nr. 37-1341. https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777/asr
10. Lietuvos Respublikos baudžiamasis kodeksas. *Valstybės žinios*, 2000-10-25, Nr. 89-2741. https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr
11. Lietuvos Respublikos Policijos veiklos įstatymas. *Valstybės žinios*. (2000), Nr. 90-2777. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111665

12. Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas. TAR, 2021-01-20, Nr. 908. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ce7d8910571711eba1f8b445a2cb2bc7
13. Lietuvos apeliacinio teismo nutartis baudžiamojoje byloje Nr. 1A-109/2011. https://e-teismai.lt/byla/245879937641809/1A-109/2011
14. Lietuvos policijos veiklos ataskaita 2022 m. https://policija.lrv.lt/lt/administracine-informacija/ataskaitos
15. Oficialios statistikos portalas. https://osp.stat.gov.lt/lietuvos-gyventojai-2021/salies-gyventojai/gyventoju-skaicius-ir-sudetis
16. Piskarskas A. P. (2006). *Fizikos paskaitų konspektas*.
17. Pranešimo apie nusikalstamą veiką medžiaga reg. Nr. M-2-02-00168-22.
18. Pranešimo apie nusikalstamą veiką medžiaga reg. Nr. M-1-01-22386-23.
19. Pranešimo apie nusikalstamą veiką medžiaga reg. Nr. M-1-01-05590-23.
20. Sakalauskas G. (2011), *Registruotas ir latentinis nusikalstamumas Lietuvoje: tendencijos, lyginamieji aspektai ir aplinkos veiksniai*, Vilnius.

THE MAIN PROBLEMS OF PROVIDING SUPPORT TO VICTIMS OF A CRIMINAL ACT ARISING BEFORE THE INITIATION OF CRIMINAL PROCEEDINGS

Gediminas BUCIUNAS
Vytautas Magnus University, Mykolas Romeris university

Dalia JASEVICIENE
National victims support association

Summary

The protection of the rights of the victims who had suffered from a criminal act until the initiation of criminal proceedings currently based on the Law of the Republic of Lithuania "**On Assistance to Victims of a Criminal Act**". The aforementioned law enshrines the provision that assistance is provided to the victims by the specially accredited services. 25 organizations had been granted this status as the accredited institutions that has the right to provide services to the victims.

2022-2023 an empirical study and anonymous survey has been carried out, the purpose of which was to determine under which conditions and how had been provided an assitance to the potential victims who applied to the police and reported on a criminal act committed against them 16 victims of criminal acts applied to the specially accredited institutions for assistance. The empirical study found that certain issues, although very important, are not being addressed in proper way in the accredited services.

One of the most important issues in protection of the victims rights is operative and high quality legal advice regarding the refusal of the pre-trial institution mainly police to open a pre-trial investigation. According to the provisions of law on **"Assistance to Victims of a Criminal Act**" legal consultation must be provided within 7 days. Article 168 of the Criminal Procedure Code of the Republic of Lithuania provides such a period for submission complaint regarding refusal to open criminal proceeding.

Based on the collected data during above mentioned survey only two out of twenty-five accredited institutions were able to promptly respond to such a short deadline set by the criminal procedure code. Also, conducted an anonymous survey of victims of criminal acts allowed to assess the effectiveness of

the Law "**On Assistance to Victims of Criminal Acts**" and the availability of different types of services which was supossed to provide accredited institutions.

The data obtained during the investigation allows us to sum up that in 2019 the adopted law made it possible for victims of criminal acts to use certain types of services. At the same time, it showed that the availability of both psychological support and legal free services is still insufficient.

Keywords: *a criminal procedure, a victim, pre trial investigation, an accredited institution., legal assistance*.

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

TEISMO (NE)VERTAS PASITIKĖJIMO ASMUO

Gediminas BUČIŪNAS
Vytauto Didžiojo Universitetas Teisės fakultetas
Jonavos g. 66, 44318 Kaunas
Mykolo Romerio universitetas Viešojo Saugumo Akademija
Maironio g. 27, 44211 Kaunas
El. paštas: gediminas1967@mruni.eu
ORCID ID: 0000-0002-1826-0527

DOI: 10.13165/PSPO-23-33-08

Anotacija. *Šio mokslinio straipsnio tikslas yra išanalizuoti kriterijus, kuriais teismas (teisėjas) oficialiai pristato naują baudžiamojo proceso dalyvį – laiduotoją. Ši procesinė figūra atsiranda atskirame baudžiamojo proceso etape, o būtent, kai sprendžiamas klausimas dėl asmens atleidimo nuo baudžiamosios atsakomybės pagal laidavimą. Šiuo atveju į procesą įtraukiamas dalyvis, kuris ateityje gali suvaidinti itin svarbų vaidmenį teisės pažeidėjui gresiančios kriminalinės bausmės fone. Įstatymų leidėjas tokį fragmentinį proceso dalyvį, įvardija laiduotoju, kuris turi atitikti teismo verto pasitikėjimo asmens standartą. Kas gi iš tikrųjų slypi už šio termino, kokie reikalavimai keliami norint atitikti nustatyta įstatymo leidėjo suformuluotą standartą keliamą laiduotojui, o būtent būti teismo vertu pasitikėjimo asmeniu? Nacionalinis įstatymų leidėjas, tik apibrėždamas asmenų ratą, kurie gali būti laiduotojais, nepateikia išsamesnių kriterijų, kuriais remiantis būtų galima vadovautis priimant valinį sprendimą tiek prokurorui, kai yra sprendžiamas klausimas dėl asmens atleidimo nuo baudžiamosios atsakomybės pagal laidavimą tiek teismui (teisėjui) priimant galutinį sprendimą valstybės vardu dėl teisės pažeidėjo atleidimo nuo baudžiamosios atsakomybės pagal laidavimą.*

Tyrimo autorius analizuos teismų praktiką, kuriose asmenys buvo atleisti nuo baudžiamosios atsakomybės pagal laidavimą ir kokiais kriterijais vadovavosi teismas (teisėjas) suteikdamas naujam proceso dalyviui procesinį statusą – laiduotojas ir pateiks pasiūlymų dėl kriterijų, naudojamų nustatyti ar asmuo atitinka standartą, įvardijamą kaip „teismo vertas pasitikėjimo asmuo“ tobulinimo.

***Pagrindinės sąvokos**: Baudžiamasis procesas, kriminalinė bausmė, atleidimas nuo baudžiamosios atsakomybės pagal laidavimą, laiduotojas, teismo vertas pasitikėjimo asmuo, kriterijus.*

Įvadas

Baudžiamosios teisės doktrinoje visuotinai pripažįstama, kad baudžiamoji teisė atlieka šias funkcijas: apsauginę, represinę, prevencinę ir informacinę. Baudžiamoji teisė pirmiausia atlieka apsauginę funkciją, siekiant apsaugoti visuomenę nuo pavojingų, įstatymu draudžiamų veikų, už kurių padarymą numatytos teisinės pasekmės. Nacionalinis įstatymų leidėjas įtvirtino šią nuostatą Lietuvos Respublikos baudžiamojo proceso kodekso 1 str., kuris nurodo, kad *„baudžiamojo proceso paskirtis yra ginant žmogaus ir piliečio teises bei laisves, visuomenės ir valstybės interesus greitai, išsamiai atskleisti nusikalstamas veikas ir tinkamai pritaikyti įstatymą, kad nusikalstamą veiką padaręs asmuo būtų teisingai nubaustas_ir niekas nekaltas nebūtų nuteistas.“* Apsauginei baudžiamosios teisės funkcijai vykdyti yra sukurta visa represinio pobūdžio priemonių visuma, pradedant procesinėmis prievartos priemonėmis ir baigiant baudžiamojo įstatymo sankcijose už nusikalstamų veikų padarymą numatytos kriminalinės bausmės, kitos baudžiamojo poveikio priemonės skiriamos teismo (teisėjo) valstybės vardu. Lietuvos Respublikos baudžiamojo kodekso 41 str. nurodo, kad *„1. Bausmė yra valstybės prievartos priemonė, skiriama teismo nuosprendžiu nusikaltimą ar baudžiamąjį nusižengimą padariusiam asmeniui. 2. Bausmės paskirtis:1) sulaikyti asmenis nuo nusikalstamų veikų darymo;2) nubausti nusikalstamą veiką padariusį asmenį; 3) atimti ar apriboti nuteistam asmeniui galimybę daryti naujas nusikalstamas veikas; 4) paveikti bausmę atlikusius asmenis, kad laikytųsi įstatymų ir vėl nenusikalstų; 5) užtikrinti teisingumo principo*

įgyvendinimą.“ Šiame pacituotame straipsnyje atskleidžiama represinės baudžiamosios teisės funkcijos esmė. Kita vertus, vien tik represinės funkcijos dominavimas negarantuoja kitų baudžiamosios teisės funkcijų sklandaus funkcionavimo, jų efektyvumo ir tikslų, kuriems pasiekti jos sukurtos, pasiekimą. Kriminalinės bausmės skyrimas asmenims padariusiems nusikalstamas veikas dar negarantuoja, kad teismo sprendimu pripažintas kaltu asmuo ateityje po paskirtos bausmės atlikimo vėl nenusikals, nėra jokių garantijų, kad gresianti kriminalinė bausmė turės prevencinį poveikį.

Kartais praktinėje veikloje yra pamirštama, kad baudžiamoji teisė turi ir humaniškąjį pradą, kuris vis dažniau ir dažniau dabartinėje praktikoje yra taikomas, o būtent atleidimo nuo baudžiamosios atsakomybės institutas, kurio nuostatos įtvirtintos Lietuvos Respublikos baudžiamojo kodekso bendrosios dalies 36-40 straipsniuose ir kituose baudžiamojo kodekso specialiosios dalies straipsniuose. Vienas iš atleidimo nuo baudžiamosios atsakomybės institutų šio tyrimo kontekste yra atleidimas nuo baudžiamosios atsakomybės pagal laidavimą, kuris yra įtvirtintas Lietuvos Respublikos baudžiamojo kodekso 40 str. Nacionalinis įstatymų leidėjas taip pat pristato naują, fragmentinį, turintį specialų, aiškiai apibrėžtą tikslą proceso dalyvį plačiąją prasme – laiduotoją, kuriuo gali būti pripažintas asmuo, kuris atitinka įstatyme įtvirtintam standartui įvardijamu terminu **„teismo pasitikėjimo vertas asmuo.“**

Nacionalinis įstatymų leidėjas apibrėžia asmenų galinčių būti laiduotojais ratą, tačiau nepateikia jokių išsamesnių kriterijų, kuriais remiantis būtų galima vadovautis priimant valinį sprendimą dėl procesinio statuso suteikimo laiduotojui, kuris privalo atitikti nustatytą standartą **„teismo vertas pasitikėjimo asmuo**“. Tai sukelia tam tikrų sunkumų tiek ikiteisminio tyrimo pareigūnui, prokurorui, pateikiant savo nuomonę dėl asmens pripažinimo vertu pasitikėjimo, kai yra sprendžiamas klausimas dėl asmens atleidimo nuo baudžiamosios atsakomybės pagal laidavimą esant prašymui iš potencialaus laiduotojo, tiek teismui (teisėjui), priimant galutinį sprendimą valstybės vardu suteikti ar nesuteikti procesinį dalyvio statusą laiduotojui.

Ši problematika ir apsprendė autoriaus pasirinkimą tirti šį objektą – atskirus atleidimo nuo baudžiamosios atsakomybės pagal laidavimą instituto kriterijus, kuriais vadovaujantis yra nustatoma, ar asmuo pretenduojantis gauti procesinį statusą baudžiamajame procese atitinka įstatymu nustatyta standartą – teismo vertas pasitikėjimo asmuo. Šio tyrimo autorius analizuos teismų praktiką, kuriose asmenys buvo atleisti nuo baudžiamosios atsakomybės pagal laidavimą ir kokiais kriterijais vadovavosi teismas, suteikdamas naujam proceso dalyviui procesinį statusą – laiduotojas, kuris atitinka įstatymiškai įtvirtinta standartą „teismo vertas pasitikėjimo asmuo”.

Užsibrėžtam tyrimo tikslui pasiekti buvo išsikelti tokie tyrimo uždaviniai:

1) Išanalizuoti bendruosius reikalavimus asmeniu pretenduojančiam būti laiduotoju;

2) Identifikuoti kriterijus, kuriais teismas vadovavosi pripažindamas laiduotoją teismo vertu pasitikėjimo asmeniu;

3) Kokiomis asmeninėmis ir charakterio savybėmis turi disponuoti laiduotojas, pretenduojantis į nacionalinio įstatymo leidėjo įtvirtinta standartą „teismo vertas pasitikėjimo asmuo“, kuris galėtų daryti apčiuopamą įtaką kito asmens, pažeidusio teisės normas elgesiui, ją pakoreguoti, nukreipti teisės pažeidėjo sąmonę, elgseną link visuotinai priimtų vertybių gerbimo ir priimtų elgesio taisyklių laikymosi;

4) Kaip laiduotojo asmeninės ir charakterio savybės buvo įvertintos Lietuvos teismų praktikoje;

5) Pateikti naujus kriterijus, leidžiančius patobulinti patikros procedūras, leidžiančias teismui (teisėjui) priimti valinį sprendimą, kuriuo konstatuojama, kad laiduotojas, kuriam suteikiamas procesinis statusas baudžiamojoje byloje atitinka teismo verto pasitikėjimo asmens standartą.

Tyrimo metodai: mokslinės literatūros analizės metodas, teisės aktų analizės metodas, sisteminės analizės metodas, apibendrinimas, laisvasis interviu, lyginamasis, abstrakcijos metodai.

Atleidimo nuo baudžiamosios atsakomybės pagal laidavimą institutą nagrinėjo J. Bagdžius (Daktaro disertacija, Atleidimas nuo baudžiamosios atsakomybės pagal laidavimą, (2022)). Taip pat atleidimo nuo baudžiamosios atsakomybės pagal laidavimą instituto atskiri elementai buvo analizuoti mokomuosiuose šaltiniuose: prof. dr. J. Prapiesčio (Prapiestis, et la BK komentaras, 2004, p. 253-261), prof. dr. V. Piesliako (Pesliakas, Lietuvos baudžiamoji teisė Antroji knyga, 2008, p. 374-376) moksliniuose darbuose. Tam tikrais lyginamaisiais aspektais atleidimas nuo baudžiamosios atsakomybės pagal laidavimą analizuotas dr. A. Baranskaitės, atlikusios tyrimą atleidimo nuo baudžiamosios atsakomybės kaltininkui susitaikius su nukentėjusiuoju (A. Baranskaitė, 2005, A. Baranskaitė, 2008) moksliniuose tyrimuose. Kita vertus, kriterijai, leidžiantys nustatyti ar asmuo yra vertas teismo pasitikėjimo ar nevertas, minėtų autorių darbuose buvo paliesti tik fragmentiškai.

Tiriamoji dalis

... juk tikrai atleisti reiškia priimti kitą žmogų tokį, koks jis yra, o ne reikalauti atgailos, paklusnumo ir nuolankumo ...

Erichas Marija Remarkas

Lietuvos Respublikos Konstitucijos, priimtos 1992 m. spalio 25 d. referendume, Preambulėje įtvirtintas siekis atviros, teisingos, darnios pilietinės visuomenės ir teisinės valstybės. Šis siekis glaudžiai susipina su humanizmo principu, kuris tampa kertiniu taikant baudžiamosios teisės represinę funkciją asmens padariusio nusikalstamą veiką atžvilgiu. Autorius pritaria dr. D. Prapiesčio ir prof. dr. Prapiesčio išsakytai nuomonei, kad baudžiamosios teisės doktrinoje, humanizmo principui nėra skiriama didesnio dėmesio (Prapiestis, D, Prapiestis, J. (2022), p. 269). Išimtis yra prof. dr. Pavilonio, V. parašytas „**Baudžiamosios teisės Bendrosios dalies**“ vadovėlio I skyrius Bendrieji baudžiamosios teisės pagrindai, kuriame pateikiama ir humanizmo principo samprata baudžiamojoje politikoje (Pavilonis, 2002, p. 48-50).

Lietuvos Respublikos baudžiamojo kodekso parengimas ir jo priėmimas 2002 m. buvo naujas puslapis humanizmo principo baudžiamosios teisės kelyje. Atleidimo nuo baudžiamosios atsakomybės institute atsirado atleidimo nuo baudžiamosios atsakomybės pagal laidavimą teisės norma, kuri savyje įkūnijo humanizmo principo pradus. Humanizmo principas kaip bendrasis teisės principas, kartu gali būti laikomas ir baudžiamosios atsakomybės principu kartu su teisėtumo, teisingumo ir lygybės įstatymams principais. Visi paminėti principai įtvirtinti Lietuvos Respublikos baudžiamojo proceso kodekso 1 str., skelbiančiame, kad „*baudžiamojo proceso paskirtis yra ginant žmogaus ir piliečio teises bei laisves, visuomenės ir valstybės interesus greitai, išsamiai atskleisti nusikalstamas veikas ir tinkamai pritaikyti įstatymą, kad nusikalstamą veiką padaręs asmuo būtų teisingai nubaustas ir niekas nekaltas nebūtų nuteistas.*“ Humanizmo principas kaip baudžiamosios atsakomybės principas aiškiai atskleidžiamas Lietuvos Respublikos baudžiamojo proceso kodekso 40 str. reglamentuojančio atleidimą nuo baudžiamosios atsakomybės pagal laidavimą. Šis straipsnis išliko nepakitęs nuo pat naujojo Lietuvos Respublikos baudžiamojo kodekso priėmimo 2002 m.

Peržvelgus Integruotą baudžiamojo proceso informacine sistemą (toliau - IBPS) ir Lietuvos teismų informacinės sistemos LITEKO, pateikiama statistiką apie atleidimą nuo baudžiamosios aatsakomybės pagal laidavimą taikymą Lietuvos Respublikoje pastebėsime vis

didėjant laidavimo instituto taikymą teismų praktikoje, ir tuo pačiu humanizmo principo plitimą tokioje konservatyvioje aplinkoje kaip baudžiamoji politika. 2014 m. buvo atleista nuo baudžiamosios atsakomybės ir perduota pagal laidavimą – 517 asmenys, 2015 m. – 632, 2017 m. – 1353, 2018 m. – 1844, 2019 m. – 1912, 2020 m. – 1885, 2021 m. - 2025. Šio instituto taikymo augimą nulėmė nuo 2017 m. kriminalizuotas transporto priemonės vairavimas neblaiviam, kuriam tenka daugiau kai trečdalis visų atleidimo nuo baudžiamosios atsakomybės pagal laidavimą atvejų. Tai labai svarbus žingsnis plėtojant humanizmo principą baudžiamojoje politikoje, suteikiant asmeniui, kuris peržengė įstatymu įtvirtintus reikalavimus, pasikėsino į įstatymu saugomus ir ginamus teisinius gėrius, viltį, galimybę pakoreguoti savo elgseną, permąstyti savo poelgį ir nenusikalsti ateityje, bei tuo pačiu išvengti neigiamų baudžiamosios atsakomybės taikymo padarinių vėliau. Pvz., pretenduojant užimti tam tikras pareigas konkurso būdu ar gauti leidimą įsigyti šaunamąjį ginklą savigynai.

Preziumuojama, kad homo sapiens gali pasirinkti kaip jam elgtis vienoje ar kitoje situacijoje, kokį elgesio modelį pasirinkti ir kokius valinius sprendimus priimti. Kita vertus, kiekviena situacija yra tokia nepakartojama, unikali, kad vienas žmogus gali pasielgti vienaip, o kitas žmogus – visai kitaip. Autorius pritaria kriminologų pateikiamai nuomonei, kad žmonės konkrečią padėtį suvokia ir vertina skirtingai. „*Tai susiję su asmenybės vertybių sistemą, nuostatomis. Todėl individualaus nusikalstamo elgesio mechanizme asmenybė ir jai būdingos savybės vaidina išorinių veiksnių atžvilgiu lemiamą vaidmenį. Padaryta nusikalstamą veiką yra asmenybės ir konkrečios gyvenimo situacijos tarpusavio sąveikos rezultatas, kurioje jos yra lygiaverčiai partneriai. Nusikalstama veika yra asmenybės, kuri sąveikauja su situaciniais veiksniais, kriminogeninių savybių įgyvendinimo pasekmė*“ (Galinaitytė, J. et la. (2010). Kriminologija. p. 246, 248).

Asmens kriminogeninės savybės gali atsiskleisti, o gali ir neatsiskleisti, tai labai priklauso nuo pačio asmens ir išorinių veiksnių, dar kitaip vadinamu socialinės mikro ir makroaplinkos terminais. Nusikalstamas veikas padarę asmenys irgi skiriasi, netgi tas pačias veikas. Kriminologai bando skirstyti asmenis padariusius nusikalstamas veikas į tipus pagal tam tikrus kriterijus. „*Pagal asmens elgesio socialinį kryptingumą išskiriamos penki nusikaltėlių tipai: profesionalus, įprastinis, nepastovus, nerūpestingas, atsitiktinis. Pagal kitą kriterijų – kaltės forma, nusikalstamas veikas padarę asmenys gali būti skirstomi į du tipus, tyčines nusikalstamas veikas padarę asmenys ir neatsargias nusikalstamas veikas, padarę asmenys*. (Galinaitytė, J. et la. (2010). Kriminologija. p. 257-259).

Bendros žinios apie nusikaltėlių arba tiksliau, šio tyrimo kontekste asmenų įtariamų/kaltinamų nusikalstamų veikų padarymu tipus, leidžia turėti išeities tašką, priimant sprendimą, ar asmeniui gali būti taikomas atleidimas nuo baudžiamosios atsakomybės pagal laidavimą ar kitu teisiniu pagrindu. Kita vertus, tai gali būti atskiro mokslinio tyrimo objektas. Sugrįžtant prie šio tyrimo tikslo, svarbiausias elementas jau minėtame institutte yra laiduotojas, kuris įgys šį procesinį statusą baudžiamojoje byloje, jeigu jis atitiks tam tikrus įstatymuose įtvirtintus reikalavimus.

Pirmiausia, pradėtina nuo atsakymo į klausimą, o kas gi apskritai gali būti laiduotoju bendrąja prasme. Šis fragmentinis proceso dalyvis suvaidins svarbų vaidmenį, kaip privatus kalėjimo prižiūrėtojas asmens kaltinamo nusikalstamo veikos padarymu tolimesniame gyvenime, ženkliai sumažins neigiamas teisines pasekmes įstatymo ribas peržengusiam asmeniui. Tokio vadinamo privataus kalėjimo prižiūrėtojo terminu aktyvus įsitraukimas į baudžiamąjį procesą, ypač kai tai yra susiję su teisės pažeidėjo elgsenos korekcija, suteikia viltį paslydusiam asmeniui reabilituotis visuomenėje, keistis, turint sektiną pavyzdį, kuris įstatymo leidėjo įvardijamas laiduotoju.

Visuomeninio santykio susiformavimui ir tolimesnei jo genezei į aukštesnį lygį, kuriame bus prisiimama atsakomybė už kito asmens elgsenos pokyčius, požiūrio į vertybes koregavime, pirmiausiai privalu atitikti bendruosius įstatymo reikalavimus, norint būti tokių santykių dalyviu, o kalbant civilinės teisės kategorijomis būti sandorio šalimi. Sutinkamai su Lietuvos Respublikos Civilinio Kodekso Pirma knyga, kurio 1.64 str. 1. d. yra nurodoma, kad „*Sandoriais laikomi asmenų veiksmai, kuriais siekiama sukurti, pakeisti arba panaikinti civilines teises ir pareigas. .....6. Dvišaliu laikomas sandoris, kuriam sudaryti būtina dviejų šalių suderinta valia.7. Daugiašaliu laikomas sandoris, kuriam sudaryti reikalinga suderinta trijų ir daugiau šalių valia*.“ Asmuo, pretenduojantis įgyti laiduotojo statusą baudžiamojoje byloje, kaip potenciali sandorio šalis įgis teises, pareigas. Kita vertus, ne kiekvienas fizinis asmuo gali būti sandorio šalimi, o tik tas, kas asmuo turi civilinį veiksnumą ir teisnumą. Kyla klausimas, o kas gi gali atitikti šiuos bendruosius reikalavimus? Sutinkamai su Lietuvos Respublikos Civilinio Kodekso Antra knyga 2.1. str. **„***Galėjimas turėti civilines teises ir pareigas (civilinis teisnumas) pripažįstamas visiems fiziniams asmenims. 2. 2 str. 1. Fizinio asmens civilinis teisnumas atsiranda asmens gimimo momentu ir išnyksta, jam mirus.* ***...****2.5 straipsnis. Fizinių asmenų civilinis veiksnumas. 1. Fizinio asmens galėjimas savo veiksmais įgyti civilines teises ir susikurti civilines pareigas (civilinis veiksnumas) atsiranda visiškai, kai asmuo sulaukia pilnametystės, t. y. kai jam sueina aštuoniolika metų. 2. Tais atvejais, kai įstatymai leidžia fiziniam asmeniui sudaryti santuoką anksčiau, nei sueis aštuoniolika metų, asmuo, kuriam nėra suėjęs šis amžius, įgyja visišką civilinį veiksnumą nuo santuokos sudarymo momento. Jeigu vėliau ši santuoka nutraukiama ar pripažįstama negaliojančia dėl priežasčių, nesusijusių su santuokiniu amžiumi, nepilnametis įgyto visiško veiksnumo nenustoja*.“

Taigi, kaip matome, asmuo, pageidaujantis būti laiduotoju, privalo turėti civilinį teisnumą ir veiksnumą.

Kitas svarbus klausimas šiame tyrime yra fizinio asmens, norinčio būti laiduotoju, pakaltinamumas. Ar gali nepakaltinamas ar ribotai pakaltinamas asmuo būti laiduotoju? Pakaltinamumas siejamas su gebėjimu suvokti savo veiksmus ir juos valdyti. Preziumuojama, kad asmuo yra pakaltinamas, kol neatsiranda duomenų rodančių, kad fizinis asmuo negali suvokti ir valdyti savo veiksmų. Visa tai turi būti nustatoma laikantis įstatymo nustatytų procedūrų, atliekant tyrimus. Sutinkamai su Lietuvos Respublikos baudžiamojo kodekso (toliau BK) 18 str. 1 d. nurodoma, kad „*teismas asmenį pripažįsta ribotai pakaltinamu, jeigu darydamas šio kodekso uždraustą veiką tas asmuo dėl psichikos sutrikimo, kuris nėra pakankamas pagrindas pripažinti jį nepakaltinamu, negalėjo visiškai suvokti pavojingo nusikalstamos veikos pobūdžio ar valdyti savo veiksmų.“* BK 18 straipsnyje išskirti du riboto pakaltinamumo kriterijai – medicininis ir juridinis. „*Asmuo pripažįstamas ribotai pakaltinamu tik tada, kai nustatomi abu būtini minėti kriterijai. Medicininio kriterijaus išraiška baudžiamajame įstatyme yra psichikos sutrikimas, kuris nėra pakankamas pagrindas pripažinti asmenį nepakaltinamu. Juridinis kriterijus apibūdinamas dviem požymiais – intelektiniu ir valiniu. Pirmas iš jų reiškia asmens gebėjimą suprasti savo veiksmų esmę, antras – asmens gebėjimą valdyti savo veiksmus. Taigi pažymėtina, kad medicininį riboto pakaltinamumo (kaip ir nepakaltinamumo) kriterijų sudaro psichikos sutrikimai, tačiau vien toks sutrikimas nelemia riboto pakaltinamumo, nes ne kiekvienu atveju psichikos sutrikimas lemia tokią būseną, dėl kurios asmuo negali visiškai suvokti savo veiksmų ar jų valdyti. Ribotas pakaltinamumas nustatomas dėl konkrečios baudžiamuoju įstatymu uždraustos veikos ir gali būti tik tos veikos darymo metu. Jeigu kyla abejonių dėl asmens pakaltinamumo, šioms abejonėms pašalinti skiriama teismo psichiatrinė ekspertizė, nes asmens psichinės būklės tyrimas reikalauja specialių žinių“* (Lietuvos Aukščiausiojo Teismo kasacinė nutartis byloje Nr. 2K-417/2012). Ar gali toks asmuo paveikti, daryti įtaką kitam asmeniui, jei ne visiškai suvokia savo veiksmus,

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

negali jų valdyti arba tik iš dalies gali tai daryti. Atsakymas vienareikšmiškas – toks asmuo negali būti laiduotoju.

Peržvelgus teisės portalą „INFOLEX“ ir atsitiktine tvarka pasirinkus baudžiamąsias bylas, kuriose buvo minimas atleidimas nuo baudžiamosios atsakomybės pagal laidavimą taikymo institutas, neaptikta duomenų, kad būtų keliamas klausimas dėl asmens išreiškusio norą būti laiduotoju pakaltinamumo.

Kitas klausimas – laiduotojo amžius. Kokio amžiaus sulaukęs asmuo gali būti laiduotoju. Sutinkamai su Jungtinių Tautų Vaiko Teisių Konvencija, kuri priimta Generalinės Asamblėjos 44/25 rezoliucija pagal Trečiojo komiteto pranešimą (A/44/736 ir Corr. 1) 1 str. „*šioje Konvencijoje vaiku laikomas kiekvienas žmogus, neturintis 18-os metų, jei pagal taikomą įstatymą jo pilnametystė nepripažinta anksčiau.* Lietuvos Respublika pasirašė ir ratifikavo šią Konvenciją. Sutinkamai su Lietuvos Respublikos Konstitucijos 138 str. 6 p. nuostatomis, kurios aiškiai nurodo, kad „*Tarptautinės sutartys, kurias ratifikavo Lietuvos Respublikos Seimas, yra sudedamoji Lietuvos Respublikos teisinės sistemos dalis.*“

Taigi, apibendrinant galima teigti, kad fiziniam asmeniui norinčiam tapti teisinio santykio, šiuo atveju įgyti laiduotojo procesinį statusą baudžiamajame procese, būtina turėti civilinį teisnumą ir veiksnumą, būti pasiekus 18 m. amžiaus, išskyrus atvejį numatytą įstatyme, taip pat suvokti ir valdyti savo veiksmus, t. y. būti pakaltinamu.

Įstatymų leidėjas nustatė kas gali būti laiduotoju ir pateikė reikalavimus fiziniam asmeniui, norinčiam būti laiduotoju ir tuo pačiu įgyti procesinį statusą baudžiamojoje byloje. Sutinkamai su BPK 40 str. 1 d.. „*Asmuo, padaręs baudžiamąjį nusižengimą, neatsargų arba nesunkų ar apysunkį tyčinį nusikaltimą, teismo gali būti atleistas nuo baudžiamosios atsakomybės, jeigu yra asmens, kuris vertas teismo pasitikėjimo, prašymas perduoti kaltininką jo atsakomybei pagal laidavimą. Laidavimas gali būti paskirtas su užstatu arba be jo. ...3. Laiduotojas gali būti kaltininko tėvai, artimieji giminaičiai ar kiti teismo pasitikėjimo verti asmenys. Teismas, priimdamas sprendimą, atsižvelgia į laiduotojo asmenines savybes ar veiklos pobūdį ir galimybę daryti teigiamą įtaką kaltininkui. 4. Laidavimo terminas nustatomas nuo vienerių iki trejų metų.*“ Kaip matome BPK 40 str. 3 d. įstatymo leidėjas įtvirtina reikalavimus fiziniam asmeniui, norinčiam būti laiduotoju. Minėtus reikalavimus galime pavadinti specialiais, o būtent: laiduotojo asmeninės savybės ar veiklos pobūdis, galimybė daryti teigiamą įtaką kaltininkui.

Taigi, fizinis asmuo, išreiškęs norą tapti laiduotoju baudžiamajame procese, turi atitikti bendruosius ir specialiuosius reikalvimus, kurie įstatyme yra įvardijami terminu „**teismo vertas pasitikėjimo asmuo“.** Tik tuomet teismas (teisėjas) gali suteikti fiziniam asmeniui, išreiškusiam norą tapti teisės pažeidėjo mokytoju, savotišku privačiu kalėjimo prižiūrėtoju, kuris padės įstatymo saugomus ir ginamus teisinius gėrius pažeidusiam fiziniam asmeniui koreguoti savo elgseną, vertybinę sistemą, požiūrį į visuomenėje nustatytas elgesio taisykles. Įstatymų leidėjas. suformuluodamas aptakius specialiuosius reikalvimus fiziniam asmeniui pretenduojančiam tapti fragmentiniu baudžiamojo proceso dalyviu - laiduotoju, palieka ikiteisminio tyrimo pareigūnui, prokurorui, gynėjui, teismui itin plačią erdvę intepretuoti įstatymo įtvirtintą standartą „**teismo vertas pasitikėjimo asmuo**“, turėti pateiktų argumentų vertinimo laisvę, ir tuo pačiu neįspraudžia į siaurus įstatymo rėmus įtrauktų proceso dalyvių pateikiamas nuomones.

Pradedant šį tyrimą, pirmiausiai turime turėti aiškią poziciją šiuo klausimu. Ar esant visoms BK 40 str. nuostatomis teismui (teisėjui) privalu priimti sprendimą dėl asmens atleidimo nuo baudžiamosios atsakomybės pagal laidavimą? Aiškų, vienareikšmišką ir argumentuotą atsakymą į tai pateikia jau susiformavusį teismų praktika. „*Kasacinės instancijos teismo praktikoje pripažįstama, kad, net ir nustačius visas BK 40 straipsnyje nurodytas formalias*

sąlygas, teismui paliekama diskrecija motyvuotai apsispręsti tiek dėl asmens atleidimo, tiek ir dėl atsisakymo atleisti asmenį nuo baudžiamosios atsakomybės pagal laidavimą“ (Lietuvos Aukščiausiojo Teismo kasacinės nutartys baudžiamosiose bylose Nr. 2K-140/2015, 2K-86-895/2015). „*Kasacinės instancijos teismo išplėstinė septynių teisėjų kolegija pažymi, kad, net ir esant visoms BK 40 straipsnio 2 dalyje nurodytoms sąlygoms, teismas gali, bet neprivalo taikyti BK 40 straipsnį ir asmenį, padariusį nusikalstamą veiką, atleisti nuo baudžiamosios atsakomybės pagal laidavimą. Vien tai, kad A. K. nesutinka su teismų priimtu sprendimu, savaime nelaikytina netinkamu baudžiamojo įstatymo taikymu“* (Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-7-266-942/2015).

Lietuvos Aukščiausiasis Teismas kasacinėje nutartyje baudžiamojoje byloje 2K-120-489/2016 akcentavo, kad, „*net ir nustačius visas BK 40 straipsnyje nurodytas formalias sąlygas, teismui paliekama diskrecija motyvuotai apsispręsti tiek dėl asmens atleidimo, tiek ir dėl atsisakymo atleisti asmenį nuo baudžiamosios atsakomybės pagal laidavimą. Teismas turi pagal savo vidinį įsitikinimą, įvertinęs byloje esančius įrodymus, padaryti išvadą, kad yra pakankamas pagrindas manyti, jog asmuo laikysis įstatymų ir nedarys naujų nusikalstamų veikų, taip pat pasirinktas laiduotojas turės teigiamos įtakos kaltininkui. Be kita ko, byla po bylos formuojamoje teismų praktikoje nusikaltimų valstybės tarnybai ir kitose bylose taikydami BK 40 straipsnio nuostatas teismai įpareigoti apsvarstyti, ar išties kaltininkas yra tokia nesavarankiška, nebrandi asmenybė, kurios gyvenimiškų vertybių sistema, sugebėjimas kontroliuoti savo veiksmus, susilaikyti nuo nusikalstamų veikų darymo dar nesusiformavę. Būtent tokiam nusikalstamą veiką padariusiam ir aktyviai atgailaujančiam asmeniui BK 40 straipsnio nuostatos nustato papildomai reikalingą jo tolesnio elgesio korekciją, autoritetą turinčio asmens (teismo pasitikėjimo verto asmens, artimo giminaičio, tėvų) priežiūrą, teigiamos įtakos darymą, kad nusikaltęs asmuo laikytųsi įstatymų, nedarytų naujų nusikalstamų veikų. Be to, asmeniui, vykdančiam profesinę veiklą padarius korupcinio pobūdžio nusikalstamas veikas, atleidimas nuo baudžiamosios atsakomybės pagal laidavimą, neskyrus baudžiamojo poveikio priemonės, uždraudžiančios užsiimti profesine veikla, neatitinka padarytos nusikalstamos veikos pobūdžio, jos pavojingumo ir šiuo aspektu yra neteisingas“* (pvz., kasacinės nutartys baudžiamosiose bylose Nr. 2K-319/2008; 2K-239/2008; 2K-P-82/2010; 2K-71/2011; 2K-312/2011; 2K-140/2015; 2K-137/2015; 2K-86/2015).

Šio tyrimo autorius, spręsdamas išsikeltą vieną iš tyrimo uždavinių, identifikuos kriterijus, kuriais teismas vadovavosi laiduotoją pripažindamas teismo vertu pasitikėjimo asmeniu. Įstatymų leidėjas įtvirtino specialiuosius reikalavimus fiziniam asmeniui, norinčiam tapti laiduotoju vartodamas šią juridinę konstrukciją „**laiduotojo asmenines savybes ar veiklos pobūdį ir galimybę daryti teigiamą įtaką kaltininkui**“. Minėtoje konstrukcijoje vartojamas skiriamasis jungtukas „**ar**“. „*Tradiciniuose lietuvių kalbos gramatikos darbuose, kuriuose remiamasi logika, jungtukai **ir, ar, arba** yra skirstomi panašiu kaip logikoje principu: „**ir**“ laikomas sujungiamuoju jungtuku, kurio paskirtis – jungti kalbos elementus, kuriais įvardijamiems dalykams vienodai tinka tai, kas predikuojama. „**Ar, arba**“ – skiriamieji jungtukai, kurie sieja sintaksinius elementus, kuriuose įvardijami tokie dalykai, iš kurių tik vienam gali tikti tai, kas predikuojama“* (Akelaitis. G. (2012). Tai leidžia mums išskaidyti įstatymo leidėjo vartojamą juridinę konstrukciją dėl specialaus reikalavimo fiziniam asmeniui išreiškusiam norą tapti laiduotoju, fragmentiniu baudžiamojo proceso dalyviu, santykinai į dvi autonomiškas dalis, o būtent: 1) **asmeninės savybės ir galimybė daryti teigiamą poveikį kaltininkui**; 2) **veiklos pobūdis ir galimybė daryti teigiamą poveikį kaltininkui.**

Visuotinė lietuvių enciklopedija žodį „**veikla**“ aiškina taip: „*sąmoningas elgesys, turinti tam tikrą tikslą. Pagrindinės rūšys: žaidimas, mokymasis, darbas ir kūryba. Veiklai būdinga perspektyva (išankstinis planas, apimantis veikimo terminus, metodus ir priemones), ją skatina*

tam tikri iš poreikio kylantys motyvai. Veikla nėra įgimta, jos žmogus išmoksta gyvendamas. Veiklos išmokimas susideda iš kelių tarpusavyje susijusių, bet skirtingų pakopų. Elementariausia veiklos išmokimo pakopa yra žinojimas (kai stebėjimai ar žodinės instrukcijos žmogui suteikia žinių apie tam tikrą veiklą, bet jos jis atlikti nemoka). Kai žmogus ne tik žino, kaip atlikti veiksmus, bet ir moka tai padaryti, veiklos išmokimas pereina į mokėjimo pakopą. Dar aukštesnė veiklos išmokimo pakopa yra motorinės (pavyzdžiui, rašymo, dainavimo, žaidimo, profesinio darbo) ir vidinės, arba protinės (pavyzdžiui, veiklos planavimas, tikrovės stebėjimo, problemų sprendimo, meninės ir mokslinės kūrybos), veiklos įgūdžiai. Pati aukščiausia veiklos išmokimo pakopa vadinama meistriškumu (tobulas veiklos atlikimas tinkamai panaudojant žinias, mokėjimus ir įgūdžius). Meistriškai gali būti atliekama bet kokia sudėtinga veikla (pavyzdžiui, skambinimas fortepijonu, žmonių grupės organizavimas kokiai nors veiklai). Kiekvienos veiklos sėkmę lemia įgimtų (gabumai, talentas, genialumo prielaidos) ir išmoktų savybių deriniai. ...Veikla nebūtų sąmoninga ir tikslinga be įvertinimo, kuris garantuoja grįžtamąją informaciją ir koreguoja tikslo siekimą. Išorinė (fizinė) ir vidinė (psichinė) žmonių veiklos pusės neatskiriamai susijusios.“

Žodis **„pobūdis“** lietuvių kalbos žodyne aiškinamas kaip *„daikto ar reiškinio skiriamųjų ypatybių visuma, būdinga ypatybė, charakteris; ... prigimtis, būdas*. Aiškinant minėtus du žodžius **„veikla“, „pobūdis“** gramatiniu, loginiu aiškinimo būdais matome, kad veiklos pobūdis, tai aktyvus, sąmoningas elgesys siekiant tam tikrą užsibrėžto tikslo su grįžtamuoju ryšiu.

Tai leidžia daryti išvadą, kad tiek laiduotojo, tiek asmens padariusio teisės pažeidimą vertybinė sistema, požiūris į padarytą nusikalstamą veiką, sutaptų. Juk nebūtinai, kad laiduotojas ir kaltininkas turėtų tuos pačius pomėgius, dirbtų panašu darbą, kartu gyventų. Tai patvirtina šiuo klausimu besiformuojant teismų praktika, kuri nurodo, kad „*Lietuvos Respublikos BK 40 straipsnio 1 ir 3 dalyse nustatytos sąlygos* ***nereikalauja****, kad laiduotojas turėtų gyventi kartu su kaltininku, jo darbinė veikla turėtų būti panaši į kaltininko. Vien tai, kad tokios aplinkybės nenustatytos, nedraudžia asmenį pripažinti tinkamu laiduotoju*“ (Lietuvos Respublikos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-164-895/2018).

Sprendžiant dėl laiduotojo tinkamumo tapti nauju baudžiamojo proceso dalyviu, „*turi būti išsiaiškintas jo požiūris į kaltininko padarytą nusikalstamą veiką, taip pat laiduotojas turi nurodyti savo būsimos teigiamos įtakos pobūdį atleidžiamam nuo baudžiamosios atsakomybės asmeniui“* (Lietuvos Aukščiausiojo Teismo kasacinės nutartys baudžiamosiose bylose Nr. 2K-P-82/2010, 2K-71/2011, 2K-305/2011, 2K-186-942/2018, 2K-96-628/2019). *„Aplinkybės, kad laiduotojas nekritiškai vertina kaltininko elgesį, yra svarbios sprendžiant dėl laiduotojo tinkamumo, jo galimybės atlikti jam, kaip laiduotojui, pavestas pareigas“* (Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-136/2012).

Atkreiptinas dėmesys, kad Lietuvos Respublikos baudžiamojo proceso kodekse neįtvirtinta laiduotojo teisė susipažinti su visa baudžiamosios bylos medžiaga, po to kai jis pateikia prašymą tapti nauju proceso dalyviu, atitinka įstatymo keliamus reikalavimus.

Kokiomis asmeninėmis ir charakterio savybėmis turi disponuoti laiduotojas, pretenduojantis į nacionalinio įstatymo leidėjo įtvirtinta standartą **„teismo vertas pasitikėjimo asmuo“,** kuris galėtų daryti apčiuopamą įtaką kito asmens, pažeidusio teisės normas elgesenai, ją pakoreguoti, nukreipti teisės pažeidėjo sąmonę, elgseną link visuotinai priimtų vertybių gerbimo ir priimtų elgesio taisyklių laikymosi. Kaip laiduotojo asmeninės ir charakterio savybės buvo įvertintos Lietuvos teismų praktikoje?

Spręsdamas aukščiau iškeltus uždavinius, tyrimo autorius, pasirinkęs raktinius žodžius paieškai „**teismo vertas pasitikėjimo asmuo**“, išanalizavo teisės portale „INFOLEX“ esančius

ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

Lietuvos Aukščiausiojo Teismo kaip nacionalinių teismų praktikos formuotojo priimtus procesinius sprendimus bei žemesnės pakopos teismų sprendimus. Išanalizavęs nutartis autorius susistemino gautą informaciją ir nustatė, kad pripažįstant asmenį, vertu teismo pasitikėjimo ir galinčiu būti laiduotoju, atsižvelgiama į galimo laiduotojo:

- asmenines savybes;
- veiklos pobūdį ir realią galimybę daryti teigiamą įtaką kaltininkui;
- laiduotojo pateikiama charakteristiką iš darbovietės;
- teistumo duomenis apie laiduotoją;
- duomenis iš administracinių nusižengimų registro apie laiduotoją;

Lietuvos Aukščiausiojo Teismo kasacinėje nutartyje baudžiamojoje byloje Nr. 2K-96-628/2019 konstatuota, kad *„laiduotojo administracinis baustumas nėra absoliuti aplinkybė, paneigianti LR BK 40 straipsnio taikymo galimybes – kiekvienu atveju vertintina padarytų administracinių nusižengimų esmė. Kita vertus, kaltininko padarytos veikos ir laiduotojo ankstesnių administracinių nusižengimų pobūdis gali parodyti, kad pasirinktas asmuo yra netinkamas būti laiduotoju."*

„Sprendžiant dėl laiduotojo atitikties LR BK 40 straipsnio 1 ir 3 dalyse nurodytiems reikalavimams, turi būti apibrėžta, kokį realų auklėjamąjį poveikį gali padaryti laiduotojas, be kita ko, atsižvelgiant į kaltininko veiklą, jo padarytos nusikalstamos veikos ypatumus, kaltininko ir laiduotojo tarpusavio santykius ir pan". (Lietuvos Aukščiausiojo Teismo kasacinės nutartys baudžiamosiose bylose Nr. 2K-255/2014, 2K-132-699/2017, 2K-186-942/2018). „Sprendžiant, ar laiduotojas galės daryti teigiamą įtaką nusikalstamą veiką padariusiam asmeniui, *vertintinas ir laiduotojo materialaus priklausomumo nuo kaltininko faktas. Šiuo aspektu kasacinėje nutartyje baudžiamojoje byloje Nr. 2K-67-942/2019 atkreiptas dėmesys į tai, kad materialinis sugyventinės priklausomumas nuo kaltininko gali neleisti prieštarauti jo priimtiems sprendimams. Galimybę daryti teigiamą įtaką paprastai paneigia tai, kad laiduotojas ir kaltininkas nėra saistomi tvirtais asmeniniais ryšiais, susitinka retai, bendrauja nereguliariai, jų nesieja glaudūs santykiai"* (Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-134-1073/2018).

Autorius taip pat pateikia žemiau tuos teismų praktikos pavyzdžius, kuomet byloje nenustatytos realios laiduotojo galimybės daryti teigiamą įtaką atleistam nuo baudžiamosios atsakomybės asmeniui. Pvz., *„nustatyta, kad dėl amžiaus, einamų pareigų ir kitų byloje nustatytų aplinkybių kaltininko sūnus objektyviai nėra pajėgus imtis priemonių įtakai savo tėvui daryti ir būti jam autoritetas"* (Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-186-942/2018). *„Nustatyta,* kad *laiduotojas nekritiškai vertina kaltininko elgesį – tai yra svarbios aplinkybės, sprendžiant dėl laiduotojo tinkamumo, jo galimybės atlikti jam, kaip laiduotojui, pavestas pareigas"* (Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-136/2012).

Vienas iš instrumentų, vertinant ar asmuo, pateikęs prašymą būti laiduotoju, atitinka suformuluotą įstatymo leidėjo standartą „**būti teismo pasitikėjimo vertu asmeniu**" yra tyrimo veiksmas – apklausa. Šis duomenų rinkimo įrankis į teismo verto pasitikėjimo asmens statusą predentuojantį fizinį asmenį yra atliekamas ikiteisminio tyrimo stadijoje – ikiteisminio tyrimo įstaigos pareigūno, o bylą perdavus teisminiam nagrinėjimui – teismo (teisėjo). Apklausos turinys susijęs su laiduotoją charakterizuojančiais duomenimis, jų analizę bei ryšių su kaltininku kokybės, intensyvumo, nepertraukiamumo nustatymu. Pvz., teismas konstatavo, kad *„K. V. tik formaliai atitinka BK 40 straipsnio 3 dalyje nustatytus reikalavimus, keliamus laidotojo asmenybei. Nes byloje nustatytos kitos svarbios aplinkybės patvirtina, kad ji nėra kasatoriui autoritetą turintis asmuo (anksčiau jau buvo nukentėjusi nuo sutuoktinio smurtinio elgesio ir dėl to net buvo pradėtas baudžiamasis procesas; nagrinėjamo įvykio metu buvo*

susipykusi su savo sutuoktiniu, dėl jo elgesio nenorėjo jo matyti ir bijojo būti savo namuose, kuriuose nebuvo 3–4 paras), ir neleidžia spręsti apie jos tinkamumą būti laiduotoja, t. y. gebėjimą kontroliuoti savo sutuoktinio elgesį, daryti jam teigiamą įtaką, pasiryžimą prisiimti atsakomybę sau dėl laidavimo, garantuoti, kad jis daugiau įstatymų nepažeis. Šiuo aspektu pažymėtinos ir kitos svarbios aplinkybės, turinčios įtaką teismo vidinio įsitikinimo ir pasitikėjimo asmeniu, kaip laiduotoju, susiformavimui, yra tai, kad pirmosios instancijos teisme K. V., siekdama palengvinti kasatoriaus teisinę padėtį, teismą klaidino, davė neteisingus parodymus ir nenurodė, kaip ji ruošiasi daryti teigiamą įtaką savo sutuoktinio elgesiui ir jį kontroliuoti" (Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-132-699/2017).

Kauno apygardos teismo nutartyje baudžiamojoje byloje Nr. 1A-248-813/2023 nurodoma, kad „*teismų praktikoje sprendžiant, ar yra pagrindas manyti, kad asmuo laikysis įstatymų ir nedarys naujų nusikalstamų veikų, atsižvelgiama į duomenis, leidžiančius daryti išvadą apie atsitiktinį padarytos veikos pobūdį ar, priešingai, polinkį nusikalsti ar kitaip pažeisti įstatymus. Taip pat vertintinos aplinkybės, apibūdinančios kaltininko asmenybę, jo požiūrį į padarytą veiką, elgesį praeityje ir pan."* (Lietuvos Aukščiausiojo Teismo nutartys baudžiamosiose bylose Nr. 2K-221-693/2017, 2K-176-303/2018, 2K-145-895/2018, 2K-274-693/2018). „*Vienai ar kitai išvadai, be kita ko, gali turėti įtakos ankstesni (išnykę) kaltininko teistumai ir veikų, už kurias jis anksčiau buvo nuteistas, pobūdis, taip pat informacija apie anksčiau padarytus administracinius nusižengimus* (Lietuvos Aukščiausiojo Teismo nutartys baudžiamosiose bylose Nr. 2K-108/2011, 2K-67-511/2017, 2K-221-693/2017, 2K-100-648/2019, 2K-114-628/2019, 2K-250-976/2020). *... Byloje esantis Administracinių nusižengimų registro išrašas apie asmeniui registruotus administracinius nusižengimus (pažeidimus) ir priimtus sprendimus už paskutinius 5 metus patvirtina, kad V. K. nekartą baustas administracine tvarka už Kelių eismo taisyklių pažeidimus. 2021 m. jis baustas už nustatyto greičio viršijimą; naudojimąsi mobilaus ryšio priemone vairuojant automobilį; transporto priemonės neapdraudimą privalomuoju draudimu ir vairavimą transporto priemonės, kuri neapdrausta transporto priemonių valdytojų civilinės atsakomybės privalomuoju drausimu; 2020 m. baustas už nustatyto greičio viršijimą; transporto priemonės vairavimą neužsisegus saugos diržo. 2019 m. ir 2018 m. jis buvo baustas už nustatyto greičio viršijimą. Be to, Varėnos rajono apylinkės teismo 2016 m. gegužės 10 d. baudžiamuoju įsakymu jis buvo nuteistas už BK 227 straipsnio 2 dalyje numatyto nusikaltimo padarymą, t. y., už tai, kad siekdamas išvengti administracinės atsakomybės už važiavimą transporto priemone neužsisegus saugos diržo, davė kyšį policijos pareigūnams. Iš baudžiamojo įsakymo turinio matyti, kad iki minėto nusikaltimo padarymo jis taip pat ne kartą buvo baustas už įvairių Kelių eismo taisyklių pažeidimų padarymą. Nors šis teistumas, kaip, beje ir dar vienas teistumas (2005 m. spalio 24 d. nuosprendis), yra išnykęs, tačiau pirmosios instancijos teismas, spręsdamas dėl laidavimo instituto taikymo galimybės, pagrįstai tai vertino kaip V. K. charakterizuojančias aplinkybes, rodančias, kad jis yra linkęs nepasisyti teisės aktų reikalavimų asmuo, taip pat nėra pavyzdingas vairuotojas. Atsižvelgus į šias aplinkybes, taip pat aplinkybes, susijusias su aptariamo nusikaltimo padarymo aplinkybėmis, t. y., kad nuteistajam buvo nustatytas 2,11 promilės neblaivumas, automobilis vairuotas darbo dieną, po darbo valandų, kuomet būna intensyvesnis eismas, tuo keliant dar didesnį pavojų tiek savo, tiek kitų eismo dalyvių sveikatai ar net gyvybei, daroma išvada, kad nuteistasis atsainiai vertina įstatymų reikalavimus, jam taikytas atsakomybės formas, nesvarsto ir nevertina galimų tokio savo neteisėto elgesio pasekmių ateityje. Teismo pareiga paskirti tokią bausmę, kuri realiai, o ne formaliai paveiktų asmenį, kad pastarasis ateityje laikytųsi įstatytų ir nedarytų naujų nusikalstamų veikų. Todėl darytina išvada, kad nagrinėjamu atveju yra reali tikimybė, jog*

asmuo ateityje tinkamai nesilaikys įstatymų ir darys naujas nusikalstamas veikas, todėl pirmosios instancijos teismas padarė pagrįstą išvadą, kad šiuo atveju nėra galimas atleidimo nuo baudžiamosios atsakomybės pagal laidavimą taikymas."

Tyrimo autorius neaptiko teismų praktikoje, taikant teisės pažeidėjo atleidimą nuo baudžiamosios atsakomybės pagal laidavimą (BK 40 straipsnis), apie galimo laiduotojo asmenines savybes, jų išsamesnę analizę psichologiniu aspektu. Viena iš svarbiausių žmogaus asmeninių savybių yra sąžiningumas. Ar gali nesąžiningas asmuo daryti teigiamą įtaką kitam asmeniui, koreguoti jo elgseną link visuotinai priimtinų vertybių. Pvz., ar gali asmuo, kuris vengia mokėti priteistų teismo sprendimu alimentų vaikų išlaikymui, ar asmuo, kuriam priteistos mokėti skolos kreditoriams civilinėje byloje dėl priimtų prievolių nevykdymo atitikti įstatymo leidėjo nustatytam standartui „**teismo vertas pasitikėjimo asmuo?**" Atsakymas į keliamus klausimus būtų neigiamas – negali. Tai pat sprendžiant apie fizinio asmens asmenines savybes labai svarbus elementas yra charakterio bruožai, kurie sutinkamai su „Psichologijos įvado" autoriais J. Lape ir G. Naviku „*išreiškia žmogaus nuostatas į: 1) kitus žmones, kolektyvus (nuoširdumas, pasitikėjimas, jautrumas, pakantumas arba priešingos savybės); 2) darbą (darbštumas arba tingumas, punktualumas, stropumas, atsakomybė, kūrybiškumas arba jų stoka); 3) daiktus (tvarkingumas, taupumas, nevalyvumas, išlaidumas); 4) patį save (kuklumas, išdidumas, savimeilė, savikritiškumas, godumas,drovumas ir t. t.).Charakterio bruožai sudaro struktūrą. Atskiri bruožai nėra atsitiktiniai – jie tarpusavyje susiję. Pavyzdžiui, drovus žmogus bus kuklus, ramus, nuolankus, paslaugus ir pan. Žinodami vieno žmogaus charakterio bruožus galime numanyti jį turint ir kai kuriuos kitus, kurių jo elgesyje dar nepastebėjome.*" (J. Lapė, G. Navikas, (2003), p. 211). Tai suponuoja išvadą, kad atliekant galimo laiduotojo vertinimą turi būti įtraukiama daugiau instrumentų, o tiksliau informacijos šaltinių, leidžiančių turėti daug išsamesnį vaizdą apie fizinį asmenį pasirengusiu būti laiduotoju. Tokiais šaltiniais galėtų būtų duomenys iš skolininkų duomenų bazės, atvirų informacijos šaltinių, medicinos įstaigų apie turimas priklausomybes. Kitas klausimas, ar gali būti laiduotoju asmuo, turintis dar nepasibaigusi teistumą. Vienareikšmiško atsakymo šioje situacijoje negali būti, reikia atsižvelgti į nusikalstamos veikos padarymo aplinkybes, nusikalstamos veikos sunkumą, kaltės formą ir kt. aplinkybes, prieš priimant procesinį sprendimą pripažinti fizinį asmenį atitinkantį įstatymo įtvirtintą standartą „vertas teismo pasitikėjimo asmuo" arba „nevertas teismo pasitikėjimo asmuo." Apklausiamas galimas laiduotojas teisme turėtų būti visada įspėjamas dėl melagingų duomenų pateikimo apie save.

Šio tyrimo autorius trumpai apžvelgęs kriterijus, kurie taikytini pripažįstant asmenį laiduotoju, suteikiant jam teismo verto pasitikėjimo asmens statusą, siūlo praplėsti vertinimo instrumentų, o tiksliau, įtraukiant informaciją iš skolininkų duomenų bazės, atvirųjų informacijos šaltinių, rekomendacinis laiškas skirtas apibūdinti laiduotoją. Tai leistų patobulinti patikros procedūras, leidžiančias teismui (teisėjui) priimti valinį sprendimą, kuriuo konstatuojama, kad laiduotojas, kuriam suteikiamas procesinis statusas baudžiamojoje byloje, atitinka teismo verto pasitikėjimo asmens standartą.

Atlikus anonimiškai nestruktūruotą interviu apie asmens atleisto nuo baudžiamosios atsakomybės pagal laidavimą elgsenos pokyčių vertinimą elektroninių ryšio priemonių pagalba šešius respondentus, dirbančius advokatais, prokurorais, ikiteisminio tyrimo pareigūnais, probacijos tarnybos pareigūnais buvo gauti atsakymai, kad jokia institucija, įskaitant probacijos tarnybą, neatlieka atleistų nuo baudžiamosios atsakomybės pagal laidavimą asmenų elgesio korekcijos tarpinių vertinimų. Taigi, tai leidžia teigti, kad grįžtamojo ryšio tarp valstybės institucijų ir teisiškai reikšmingo visuomeninio santykio, atsiradusio taikant atleidimą nuo baudžiamosios atsakomybės pagal laidavimą dalyvių nėra. Tyrimo autoriaus nuomone, toks grįžtamasis ryšis padėtų pasidalinti gerąją praktiką kaip ir kokiais būdais daryti teigiamą įtaką

teisės pažeidėjams, leistų laiduotojo procesinį statusą įgijusiam fiziniam asmeniui geriau atlikti nelengvą misiją.

Išvados

1. Bendrieji reikalavimai fiziniam asmeniui norinčiam tapti teisinio santykio, šiuo atveju įgyti laiduotojo procesinį statusą baudžiamajame procese: turėti civilinį teisnumą ir veiksnumą, suvokti ir valdyti savo veiksmus, t. y. būti pakaltinamu bei būti pasiekus 18 m. amžiaus, išskyrus atvejį, numatytą įstatyme.
2. Įstatymo leidėjo suformuluotus specialius reikalavimus galimam laiduotojui galima santykinai suskirstyti į dvi grupes: 1) **asmeninės savybės ir galimybė daryti teigiamą poveikį kaltininkui**; 2) **veiklos pobūdis ir galimybė daryti teigiamą poveikį kaltininkui.**
3. Pripažįstant asmenį, vertu teismo pasitikėjimo ir galinčiu būti laiduotoju, teismų praktikoje atsižvelgiama į galimo laiduotojo:
   - asmenines savybes;
   - veiklos pobūdį ir realią galimybę daryti teigiamą įtaką kaltininkui;
   - laiduotojo pateikiama charakteristiką iš darbovietės;
   - teistumo duomenis apie laiduotoją ;
   - duomenis iš administracinių nusižengimų registro apie laiduotoją.
4. Lietuvos Respublikos baudžiamojo proceso kodekse neįtvirtinta laiduotojo teisė susipažinti su visa bylos medžiaga, po to kai jis pateikia prašymą tapti nauju proceso dalyviu ir atitinka įstatymo jam keliamus reikalavimus kaip teismo vertas pasitikėjimo asmuo.
5. Sąžiningumas kaip viena esminių fizinio asmens asmeninių savybių yra būtinas elementas įstatymo leidėjo suformuluotame standarte „**teismo vertas pasitikėjimo asmuo**“ sprendžiant klausimą dėl fizinio asmens pripažinimo laiduotoju.
6. Atliekant galimo laiduotojo vertinimą siūlytina dar papildomai gauti informacijos iš skolininkų duomenų bazės, atvirųjų informacijos šaltinių, rekomendacinių laiškų prie jau tardiciškai susiformavusių informacijos šaltinių.
7. Grįžtamojo ryšio tarp valstybės institucijų ir teisiškai reikšmingo visuomeninio santykio, atsiradusio taikant atleidimą nuo baudžiamosios atsakomybės pagal laidavimą dalyvių nėra konstatuota. Toks ryšis padėtų pasidalinti gerąja praktika darant teigiamą įtaką teisės pažeidėjams, leistų laiduotojo procesinį statusą įgijusiam fiziniam asmeniui geriau atlikti pareigas.

Literatūra

1. Akelaitis, G., et la. (2012). Specialybės kalba: gramatika ir logika. Mokslinių straipsnių rinkinys. Vilnius: Mykolo Romerio universitetas, 6-16 psl.
2. Ancelis, P., Bučiūnas, G. ir kt. (2016). Atskirų nusikalstamų veikų tyrimas. Vilnius: Registrų centras.
3. Bagdžius, J. (2022). Atleidimas nuo baudžiamosios atsakomybės pagal laidavimą. Daktaro disertacija, Vilnius: Vilniaus universitetas.
4. Baranskaitė, A. (2008). Atleidimo nuo baudžiamosios atsakomybės kaltininkui ir nukentėjusiajam susitaikius procesinės problemos. Jurisprudencija, Tomas 113, Nr. 11.
5. Bučiūnas, G., Gruodytė, E., M. Šalčius (2017). Ikiteisminis tyrimas: procesiniai, kriminalistiniai ir praktiniai aspektai. Vilnius: Registrų centras.
6. Galinaitytė, J. et la (2010). Kriminologija. Vilnius: Mykolo Romerio universitetas.

7. Jungtinių Tautų Vaiko Teisių Konvencija. Prieiga: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.19848 (Žiūrėta 2023-04-28).
8. Lapė, J., Navikas, G. (2003). Psichologijos įvadas. Vilnius: Lietuvos Teisės Universitetas.
9. Lietuvos Respublikos Konstitucija. Valstybės žinios, 1992, Nr. 33-1014.
10. Lietuvos Respublikos civilinis kodeksas. Prieiga: https://www.infolex.lt/ta/81200#Xb28654c764c34c48a83648cb840bf5ec (Žiūrėta 2023-04-19).
11. Lietuvos Respublikos baudžiamojo proceso kodeksas. Prieiga: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr (Žiūrėta 2023-05-03).
12. Lietuvos Respublikos baudžiamasis kodeksas. Prieiga: https://www.infolex.lt/portal/start_ta.asp?act=doc&fr=pop&doc=66150 (Žiūrėta 2023-04-03)
13. Lietuvių kalbos žodynas. Pobūdis. Prieiga: https://www.lietuviuzodynas.lt/zodynas/Pobudis (Žiūrėta 2023-05-01).
14. Lietuvių kalbos žinynas. Jungtukas. Prieiga: http://www.šaltiniai.info/files/kalba/KJ00/Lietuvių_kalbos_žinynas._Jungtukas.KJ1807.pdf (Žiūrėta 2023-05-02).
15. Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-417/2012.
16. Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-140/2015.
17. Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-86-895/2015.
18. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-319/2008.
19. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-239/2008.
20. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-P-82/2010.
21. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-71/2011.
22. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-312/2011.
23. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-140/2015.
24. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-137/2015.
25. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-86/2015.
26. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-164-895/2018.
27. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-P-82/2010.
28. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-67-942/2019.
29. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-71/2011.
30. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-305/2011.
31. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-186-942/2018.

32. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-96-628/2019.
33. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-136/2012.
34. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-132-699/2017.
35. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-221-693/2017.
36. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-176-303/2018.
37. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-250-976/2020.
38. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-274-693/2018.
39. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-114-628/2019.
40. Lietuvos Aukščiausiojo Teismo kasacinė nutartys baudžiamojoje byloje Nr. 2K-417/2012.
41. Kauno apygardos teismo nutartis baudžiamojoje byloje Nr. 1A-248-813/2023.
42. Kardelis, K. (2002). Mokslinių tyrimų metodologija ir metodai. Kaunas.
43. Remarkas, E. M. Prieiga: https://www.c1.lt/tema/atgaila/ (Žiūrėta 2023-04-09).
44. Prapiestis, D., Prapiestis, J. (2022). J. Humanizmo principas Lietuvos baudžiamojoje politikoje. Kelyje su Konstitucija. Recenzuotų mokslinių straipsnių rinkinys. 268-290 psl. Prieiga: https://www.zurnalai.vu.lt/open-series/article/view/29807 (Žiūrėta 2023-04-20); https://doi: 10.15388/KSK.2022.13
45. Pesliakas, V. (2008). Lietuvos baudžiamoji teisė Antroji knyga. p. 374-376.
46. Pobūdis reikšmė. Prieiga: https://www.lietuviuzodynas.lt/zodynas/Pobudis__(Žiūrėta 2023-04-25).
47. Visuotinė lietuvių enciklopedija. Prieiga: https://www.vle.lt/straipsnis/veikla/_(Žiūrėta 2023-05-03)
48. Teismų praktikos taikant atleidimą nuo baudžiamosios atsakomybės pagal laidavimą (BK 40 straipsnis) apžvalga. Prieiga: https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/68 (Žiūrėta 2023-05-02).

A PERSON (NOT) WORTHY OF THE COURT'S TRUST

Gediminas BUCIUNAS
Vytautas Magnus University, Mykolas Romeris University

Summary

The purpose of this scientific article is to analyze the criteria by which the court (judge) officially introduces a new participant in the criminal process – a surety. This procedural figure appears at a separate stage of the criminal proceeding, namely, when the issue of releasing a person from criminal liability on bail is decided. In this case, a participant is included in the process, who can play a very

important role in the background of the criminal punishment in the nearest future. The legislator designates such a fragmentary participant in the criminal proceeding as a surety, who must meet the standard of a person worthy of the court's trust. What really lies behind this term, what are the requirements to meet the standard formulated by the legislator for a surety, namely to be a person of trust worthy of the court (judge)? The national legislator only defines the circle of persons who can be a surety, although it does not provide any more detailed criteria on the basis of which it would be possible to be guided in making a voluntary decision both for the prosecutor when the issue of a person's release from criminal liability is doing to debate on bail and for the court (judge) on making the final decision on behalf of the state to release an offender from criminal liability on bail.

The author of this research paper is going to conduct a study on the criteria on the basis of which a new, fragmentary participant appears in a separate stage of the criminal proceeding and who meets the standard formulated by the national lawmaker as "**a person worthy of the trust of the court**". First of all, the author of this paper analyzes the case law on releasing from criminal liability on bail and what kind of criteria was accepted by the court (judge) when decision on granting procedural status to a natural person – a surety was done. The author of this research paper presents proposals for the further development of the criteria on determining whether a person is worthy of the court's trust or not.

Keywords: *Criminal proceedings, criminal punishment, release from criminal liability on bail, a surety, a person worthy of the trust of the court, the criteria.*

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

ELABORATION OF METHODOLOGY FOR THE DEVELOPMENT OF THE BUSINESS MECHANISM FOR INVESTMENT PROJECTS AT PRODUCTION ENTERPRISES

Oleksandr Hryhorovych CHEREP
Zaporizkyi National University (Zaporizhzhia)
м, Zhukovs'koho St, 66, Zaporizhzhia, Zaporizhia Oblast, Ukraine, 69600
E-mail cherep.av.znu@gmail.com
ORCID ID: 0000-0001-5253-7481

Denis KRYLOV
Zaporizkyi National University (Zaporizhzhia)
м, Zhukovs'koho St, 66, Zaporizhzhia, Zaporizhia Oblast, Ukraine, 69600
ORCID ID: 0000-0001-8522-5433

Eimantas KISIELIUS
Vilnius University
Muitinės st. 8, 44280 Kaunas, Lithuania
ORCID ID: 0000-0001-7702-0702

Lyudmila Hryhorovna OLEYNIKOVA
Academy of Financial Management,
6, Stepana Bandery Ave, Kyiv, Ukraine, 04073
ORCID ID: 0000--0001-8204-4434

DOI: 10.13165/PSPO-23-33-15

Abstract *A research and methodological approach to the development of the business mechanism of investment projects (IP) at production enterprises is proposed; it is based on the development of the management system of investment projects with regard to the leverages, tools, management methods, financial activity of the enterprise, the efficiency of the investment project; it envisages the assessment of the investment capacities of the enterprise, provided that the project is implemented; this will allow to select the most efficient investment project, enhance the efficiency of the project management with the goal of the rational utilization of the project resources, achievement of the goals determined, the successful implementation of the project, which would contribute to improving the results of the enterprise-related investment activities (IA).*

Keywords: *Methodology; business; investment projects.*

Introduction

IA intensification by production enterprises is the basis for their development, renewal of their functioning, improvement of financial indicators, enhancement of their competitiveness, as well as prerequisite for improving the economic development of Ukraine. However, lowering the share of investment resources is negatively impacting the development of production enterprises. The economy development is characterized by the unstable political system, emergence of crisis phenomena, aggravation of socio-economic problems, which causes complications in the regional development and reduction of financial stability of food industry enterprises. Under these conditions, the investment capital decreases within the country, as well as the level of trust and investors' involvement decrease, causing stagnation of enterprises. Accordingly, crisis developments negatively impact implementation of IP and their efficiency. It is worth mentioning that the safe development, the success of enterprises' financial activities depends also on the performance of an implemented IP or several projects. To assure

implementation of investment projects, protection against the investment market's risks is required, as well as the stable operation of enterprises, stabilization of country's development, provisioning with financial resources, investment capital, involvement of investors etc. Provided introduction of an investment project, the company does not only involve the capital of international investors, but practices also the well-considered investment policy. The company's investment activity provides possibilities for its development, involvement of internal and external investment resources with the goal of profiting. However, the success of IA depends on the level of riskiness and profitability of an IP.

In accordance with the mentioned circumstances, the role and need to apply the company's IP management system increases. The IP management system provides for the successful implementation of the project with the purpose of achieving the determined goals. To improve the management system efficiency, application of the business mechanism for the IP's implementation is important. Application and development of the business mechanism would allow assessing hazards, factors of the investment market, to determine IP's advantages, the scope of available and required investment resources, to organize the successful implementation of the project during each phase of activities.

Analysis of recent investigations and published papers

Issues of the investment management, IP, utilization of the business economics mechanism, specific features of the investment portfolio development and management, introduction of the MBO method (management by objectives) in managing investments have been studied as by foreign, as well as national scientists. The mentioned issues have been studied by the following scientists: K.O. Biliaieva, N.A. Sokolova (2010), I.O. Biianska (2010), I.A. Blank (2001), I.M. Boiarko L.L. Hrytsenko (2011), M.P. Voynarenko , A.V. Cherep, O.I. Gonchar, O.G. Cherep, D.V. Krylov, L.G. Oleynikova (2019), O.V. Hryvkivska, O.V Prokopets (2010), Ye.S. Kuzmin (2012), P.V. Kukhta (2011), P.V. Kukhta (2012), Kh.Z. Makhmudov, I.I. Petrenko (2011), H.A. Makhovykova (2010), O.H. Nastasenko (2010), I.O. Paslavska (2008).

Researchers have quite carefully analyzed specific features of managing investment projects, however issues of developing the IP business economics mechanism on enterprises remains unsolved, as well as the issue of its place in managing the investment projects, the development of the project management system with regard to the business economics mechanism.

Presentation of key topics

The IP management system of production enterprises based on the business economics mechanism consists of a set of successive phases, because their successive implementation provides for implementing the project by taking balanced managerial decisions, by being committed to the established principles, correcting the project implementation process, eliminating deviations, which would help to achieve the expected effect, to reliably implement the project, to meet interests of project participants. The required prerequisite of the IP management system with regard to the business economics mechanism is the implementation of phases in a certain consequence, correspondence to determined rules and requirements to allow for the reliable utilization of the investment, financial, labour project-related resources etc.

The following shall be included into the IP management system tasks based on the business economics mechanism: substantiation of the structure and type of the project; determining the scope of the required resources; substantiation of the project goals; determining the project participants; establishing supervision over the project implementation; assessment of possible risks and hazards of the investment market; setting up the project budget; determining the project implementation deadlines; composing the activities' schedule for each project implementation phase; provisioning the governmental assistance and supervision; monitoring of the project-related personnel implementing their obligations. The investment project management system based on business economics mechanism envisages the project scheduling, setup, organisation, implementation, motivating, and the project supervision and consists of fourteen phases. Each phase of the investment project management system based on the business economics mechanism is considered below.

During the first phase, the project management system is developed. During this phase, special groups are set up, which will introduce the IP implementation process, coordinate the project participants' actions and the group includes representatives of all project participants, the project manager, the project personnel. This phase is characterized by the management of the scheduling process, organization, supervision of works related to the investment project. Coordination of actions during this phase is a prerequisite to the timely completion of assigned tasks and to the sequence of implementing further phases.

During the second phase, characteristics of the IP implementation business economics mechanism are taken into account. Major components of this mechanism are: the managed and managing subsystems; organisational, motivating and economic tools; governmental levers, tax levers, legislative levers, financial levers, innovative-investment levers; management methods; management subsystems. Accounting for components of the business economics mechanism opens up opportunities to determine and coordinate the project implementation process, to account for the cooperation extent between the national, local authorities, investors, company's owners, to decrease the impact of hazards and risks provided coherent implementation of all phases of the mechanism.

During the fourth phase, the investment market factors are assessed, as well as internal and external environment factors, thereby allowing to identify hazards, risks, to develop actions for avoiding those or decreasing the negative impact on the IP implementation (Fig. 1- 3).

The following internal environment factors are worth considering: interconnections and mutual assistance between the members of the project team; level of qualification of project team employees; the management style of the investment project manager; involvement of project team members; the authenticity of the information exchanged by the project participants; measure of responsibility of project participants; timely execution of duties by project team members; the enterprise competitiveness level; organization of the production process; lack of equity funds provided by foreign investors; increase in the volume of raised and borrowed funds; rising prices for manufactured goods; missing the IP activities' deadlines; insufficient implementation of the up-to date equipment; foreign investors leaving the project; reduction of production capacity of the enterprise. It should be mentioned that internal factors could include the possibility of managing and introduce changes in accordance with the IP implementation needs.

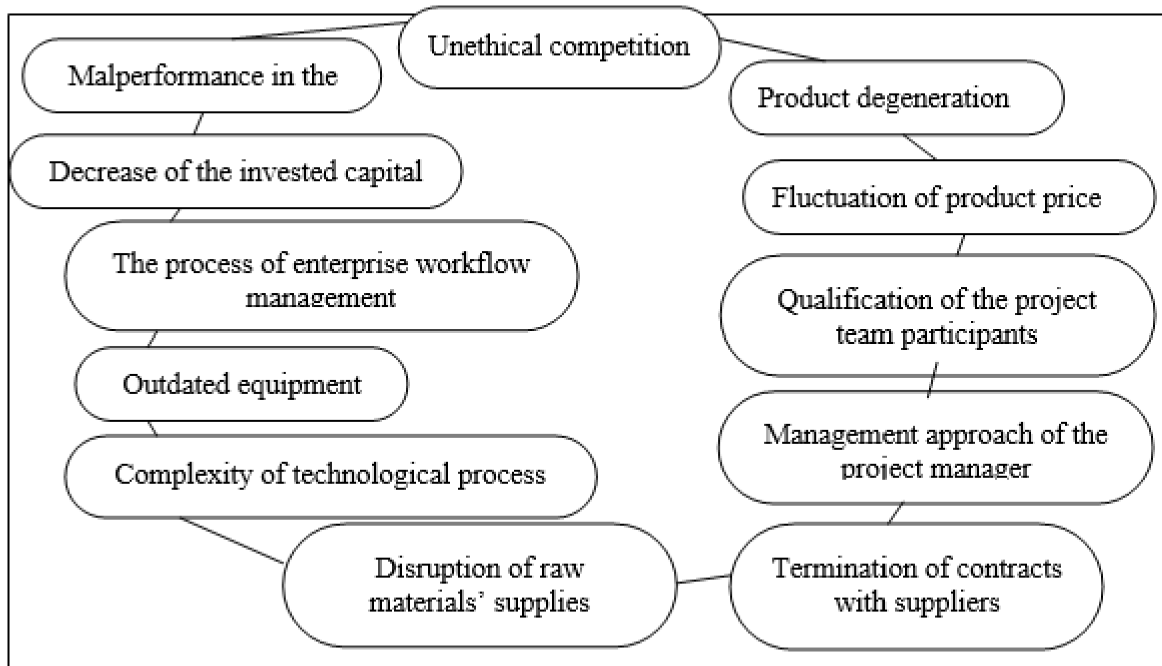


Figure 1. Internal factors impacting implementation of an investment project at food industry enterprises
Source: introduced by authors

The following internal environment factors are worth considering: interconnections and mutual assistance between the members of the project team; level of qualification of project team employees; the management style of the investment project manager; involvement of project team members; the authenticity of the information exchanged by the project participants; measure of responsibility of project participants; timely execution of duties by project team members; the enterprise competitiveness level; organization of the production process; lack of equity funds provided by foreign investors; increase in the volume of raised and borrowed funds; rising prices for manufactured goods; missing the IP activities' deadlines; insufficient implementation of the up-to date equipment; foreign investors leaving the project; reduction of production capacity of the enterprise.

Amongst external environment factors, the following should be emphasized: investment ambitions of enterprises; development of the tax system; investment climate in the country; the tax load; development of the banking system; conditions of enterprise operation; effectiveness of the current legislation; instability of the political system; level of economic development; implementation of information technologies; environmental standards for products; welfare of population; population living conditions and life standards; state regulation and support of IA enterprises, provision of guarantees to foreign investors and protection of their rights; use of risk insurance system for foreign investors; stock market regulation; examination of investment projects. External factors continuously impact the IP implementation, they impact its development and can not be controlled, however they are to be adopted to in accordance with the determined project's goals.

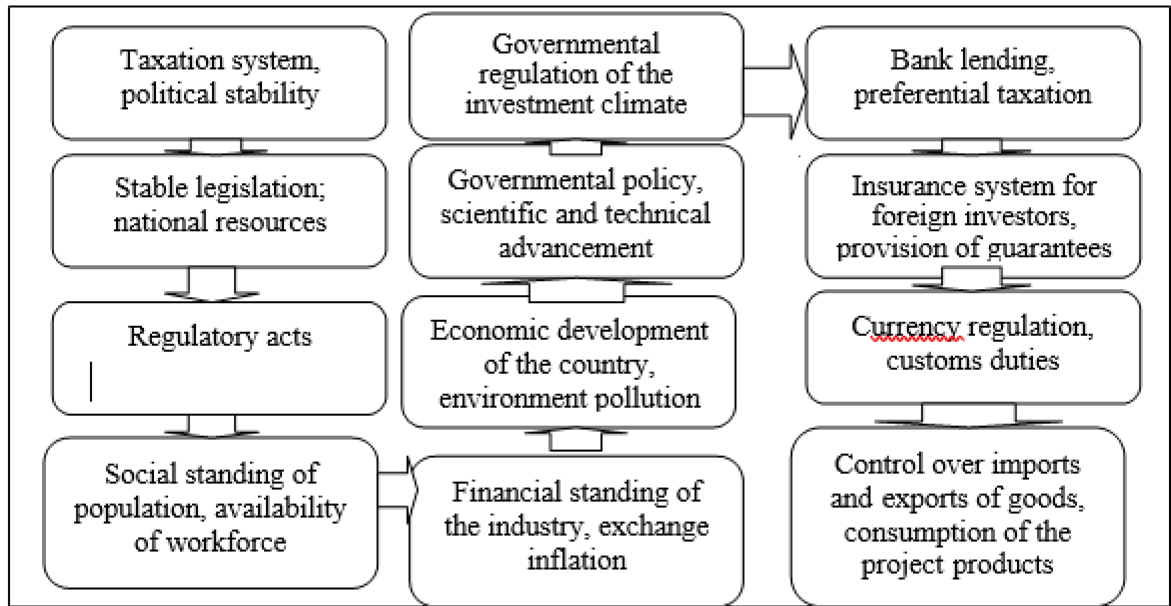


Figure 2. External factors impacting implementation of an investment project at the food industry enterprises

Source: introduced by authors

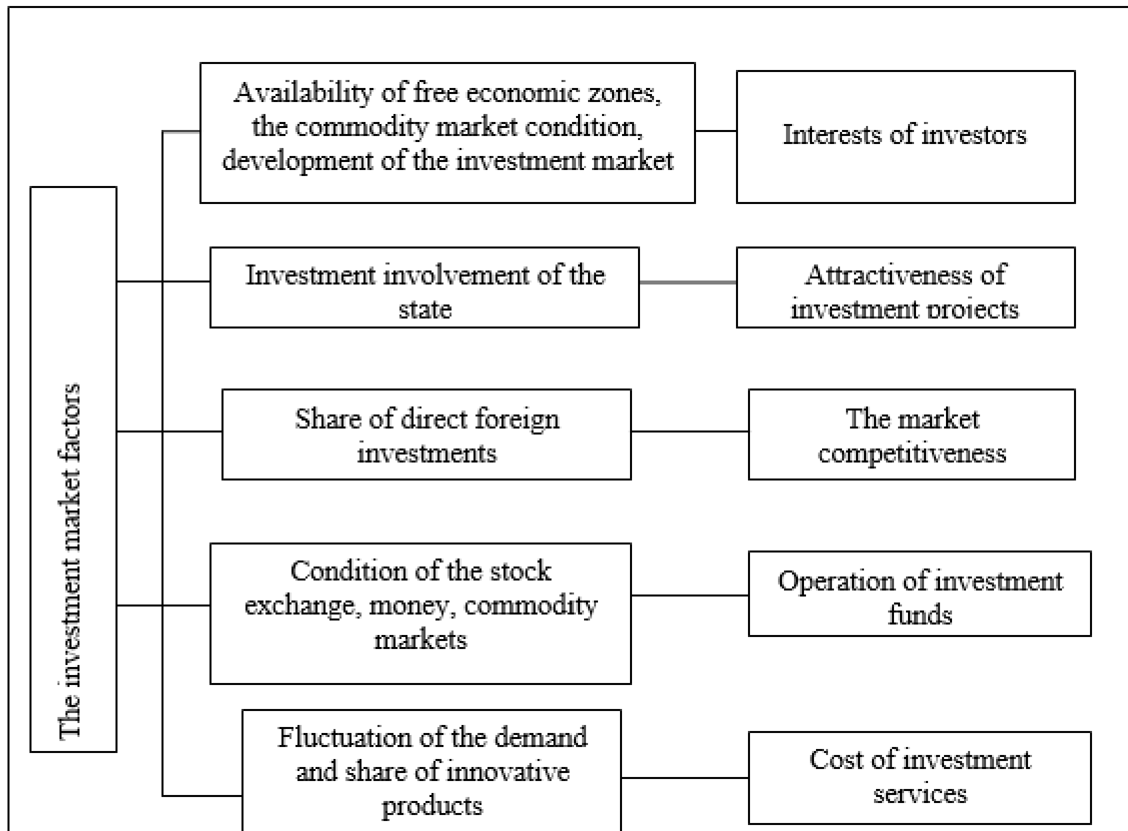


Figure 3. Investment market factors impacting implementation by the food industry enterprise of an investment project

Source: introduced by authors

The following are the investment market factors: market infrastructure; the investment market participants; development of the investment sphere; change of investors' interests; development of the investment market; appearance of new products on the market; the demand change, interests of international missions; the attractiveness of the country on the world market; establishment of international trade; operation of international investment funds; condition of the stock market; credit and deposit rates proposed by commercial banks; prices for investment services; demand for capital goods; volume of direct investments; share of domestic and foreign investment market; international assistance; money market; real estate market; commodity market conditions; investment activity of enterprises; availability of free economic zones; investment activity of population; IA of banks. To conclude, the investment market factors listed below play an important role; they have to be taken into account during then development, configuration and implementation of an investment project, as they impact the IP effectiveness and its expected results.

Planning is performed during the fourth phase the project, in other words goals and purposes of the investment project are determined, as well as goals of the business economics mechanism, and plans concerning achievement of those goals are developed and drafted.

In accordance with goals determined within the project management system, they can be corrected provided there are deviations, with the purpose of achieving expected results. During this phase the project team is set up, including investors, owners of the enterprise, representatives of the governmental and local authorities, the project manager, the project accountant, the project engineer, head of logistics department, the auditor of the project, the construction head, manager responsible for endorsing contracts, personnel, suppliers, agents, support organizations, consultants, i.e. representatives of each participant of the project (Fig. 4).

The investment project's participants can include (Fig. 5): the customer, i.e. the project owner investing money and determining the cost and duration of the project; investor, i.e. organization, which directs funds to the project and has a share in the project's capital (investor can be also the project's customer); the project team managed by the project manager and which is active along the entire project implementation term; the project manager, i.e. a legal entity with an authority delegated by the project's customer concerning the supervision, scheduling, organization of work of the project's staff. IP participants can also be the following parties: consultants offering consulting services to employees in accordance with the approved contract; suppliers providing raw materials and products required for the project; an architect, i.e. the person who develops the design and estimate documents and is responsible for the project management; engineer, i.e. the person who is scheduling and supervising the product's manufacturing process, implements tests and is responsible for product sales.

The project involves also the subcontractor, i.e. person responsible for timely implementation of works according to the terms determined by the project; governmental authorities, which receive tax payment and govern environmental and social norms of the project implementation; consumers, i.e. persons consuming the investment project's final product and provide for revenues; competitors; licensing organisations issuing licenses permitting the use of certain territories; owners of the land plot – persons who give the customer the right to use the land plot they own on a contractual basis; legal entities; project sponsors. Choice of the project team plays an important role as obligations are distributed and the extent of responsibilities is determined; achievement of the desired goals depends on their coordinated work.

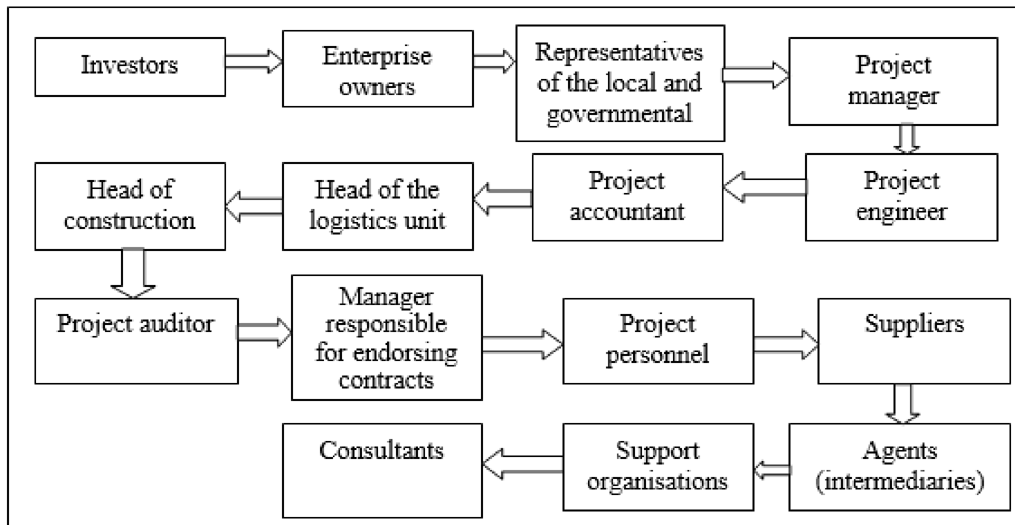


Figure 4. Composition of the investment project team on the food industry enterprises
Source: introduced by authors

The fifth phase is featured by the determination of the required scope of investment resources and the choice of financing sources.

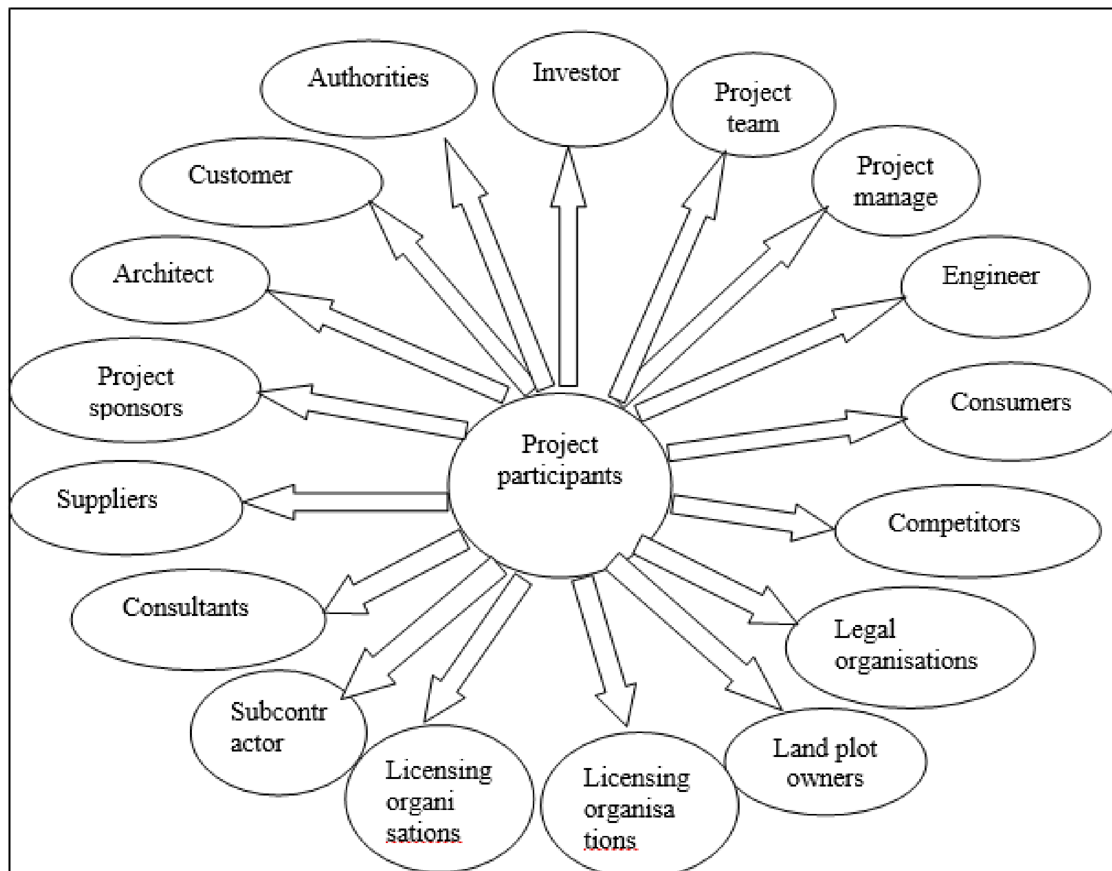


Figure 5. Participants of the investment project implemented on food industry enterprises
Source: introduced by authors

This phase plays an important role as the efficiency of the development and implementation of the investment project depends on the scope of provisioning with resources. Respectively, the financing sources are: bank loans, the governmental financing, investment capital, internal funds, awarded tenders. The rational distribution and use of investment resources will allow setting up the investment project organisational process.

During the sixth phase, competitors are assessed, namely the competitiveness level and financial independence of the enterprise are analysed, the level of company's competitive activity is determined, availability of similar investment projects is assessed, their strengths and competitiveness are determined, effects from implementation of projects are compared, the projects' scales are assessed, commercial, budget, social results of those projects are identified.

Thereafter, the competitive environment of the investment project is assessed, envisaging the following: analysis of competitor's expenditures; assessment of the share of each investment project on the market; characteristics of types of competitor's projects; comparison of economic, production, scientific components of investment projects; assessment of the efficiency of competitors' investment projects; characteristic of products produced by competitors; assessment of advertising activities' efficiency; comparison of the support and financing provided by foreign investors; determining possibilities of competitors and their strategies; assessment of projects' customers; determining the investment market challenges.

During the eight phase, several investment projects are compared with the goal of assessing their efficiency, profitability, to determine challenges, possibilities, advantages and disadvantages allowing to enhance profitability of the own project, to take into account experience of other existing projects, to avoid possible external hazards and to enhance the project management efficiency. Comparison of projects is performed based on the consideration of projects implementation terms, the scope of resources allocated, determination of challenges and uncertainties, the size of the expected income and expenses, on determining the project's payback periods.

Thereafter, the investment project budget is established and the project implementation schedule development process is managed. During this phase, possible expenditures related to the implementation of the project are determined, as well as the scope of available resources and their financing sources, possible proceeds from the project implementation are considered and the budget is set up. The following is included into the project expenditures: fuel, energy; labour remunerations; raw and consumable materials; components; technological upgrading of obsolete equipment; overheads; procurement of equipment and mechanisms; procurement of buildings and structures; payment of taxes to the budget, etc. The investment project budget is set up based on the balance between the project expenditures and earnings with regard to the funds attracted (attracted, borrowed and own investor's assets) and shall be precisely timed (month, week, decade). In compliance with the business economics mechanism structure, the identified risks are determined, as well as the investment market challenges, the extent of provisioning with financial resources, provisioning with labour resources, the duration of the investment project.

Forecasting possible results of implementing the investment project is performed during the tenth phase. Presence of the efficient project management system, application of the business economics mechanism will allow forecasting the size of the expected profit, the investment's payback period, investments' profitability, the invested capital recovery rate and the size of capital return, the project implementation costs, economic effectiveness of the project implementation, the amount profited by the investor, the enterprise, governmental authorities in accordance with their invested share and to assess the feasibility of the investment project. Provided forecasting of the investment project, the following factors are considered:

professional attitude of employees and project managers; availability of documented contracts; correct drafting and execution of project documentation; use of project management plan; availability of resources and availability of time reserves for the project implementation; financial stability of the enterprise; interaction between all project participants and subdivisions; minimization of borrowed funds and prevalence of own funds; implementation of the project at successive stages.

The management structure is organised during the eleventh phase and envisages distribution of responsibilities amongst the personnel, determining the terms of works execution, appointment of responsible persons for each department, drawing up a work execution schedule, defining terms of project financing, accepting managerial and organizational and technological decisions, endorsing contracts, drafting and approval of reporting documentation. Also, during this phase, the managers' responsibilities are determined, their duties are assigned, managerial decisions are made, and project resources are divided between units. If the process of implementing the investment project is implemented on the basis of existing plans, available resources are used and works are coordinated, changes are introduced in the project implementation process, goals are achieved.

During the twelfth phase, the system of motivating persons responsible for implementing the project management system is introduced, as well as motivation of personnel namely implementing the investment project. It is envisaged to develop the moral and material incentives for employees responsible for the development and implementation of managerial decisions, for performing actions related to configuring the investment project. The system of incentives should include: financial rewards; letters of recognition; offering additional paid leave days; reduction in working hours; sponsoring recreational tours; salary increase, etc.

Investment project is monitored during the thirteenth phase, which envisages the development of the monitoring system over works being done in compliance with the determined deadlines during each phase and generally over the project term, as well as monitoring of the enterprise's investment project in general. This phase allows controlling the correct and timely implementation of tasks by the project team with the purpose of applying methods for eliminating the deviations revealed, introducing corrections, correcting the identified errors, making decisions on introducing changes to the project and modifying tasks. During the monitoring phase, the following decisions are made: decision-making on adjusting the work of managers in order to eliminate the revealed deviations; control over the process of work execution at each stage of the project and within each subdivision; evaluation of the overall status of the project and its implementation; evaluation of project effectiveness; checking the effectiveness of work at specified intervals, etc.

During the final phase, managerial decisions are taken concerning expediency of implementing the investment project provided disclosure of deviations; the obtained results are assessed and compared against the planned results. During this phase, measures to reduce investment risks are elaborated, efficiency of the investment project management system is estimated, and methods to eliminate the identified system's weaknesses are composed. Determining the efficiency of the investment project management system with regard to the business economics mechanism allows for finding flaws and weaknesses of this system, to develop methods for enhancing its efficiency with the purpose of adjusting the rational utilization of the investment project's resources, accounting for the investment market's challenges, macro- and microenvironment factors, creating conditions for managing the project implementation process.

It should be emphasized that in some cases, in the process of applying the investment project management system, foreign investors make a decision to terminate the project, in

particular: the emergence of more efficient and profitable projects; delays in the project implementation; increase of expenses for the project implementation compared to the planned amounts; increased competition in the sales of similar products; slowdown of the country's economic development; reducing the level of economic activity of the enterprise. The reason for foreign investors to exit the project is the increase of the investment market threats and aggravation of internal problems of the investment project.

Conclusions

Application of the proposed investment project management system within an enterprise would allow implementing an investment project through rational utilization of the project resources and by adopting well-reasoned managerial decisions, promoting to create a project team, special groups to manage the investment project implementation. An advantage of the described management system is the incorporation during its creation and further application of the project implementation business economics mechanism’s components, which allow for assessing the investment market hazards, as well as involving foreign investors, increasing the invested capital, organizing the process of implementing investment projects. Therefore, the investment projects management system based on the business economics mechanism provides an opportunity of managing the following processes: scheduling; implementation; control; organisation; monitoring; motivation.

References

1. H.A. Makhovykova. (2010) *Assessment of economic efficiency of investment projects with regard to the ecological factor*: [monographs] / H.A. Makhovykova. – SPb.: Published by SPbGUEF,. – 180 P.
2. I. Biianska. (2010) *Assessing the economic efficiency of investment projects*. / I. Biianska // Newsletter of the National University “Lvivska politekhnika”. – No. 683. – P. 149–154.
3. I. Paslavska. (2008) *Model for optimizing financial and investment decisions*. / I. Paslavska // Creation of market economy in Ukraine: publication of research papers.– Issue 18: Problems of economic cybernetics. – P. 151–156.
4. I.A. Blank. (2001) *Investment management: training course* / I.A. Blank – K.: Edition “El-ga-N”, “Nika-center”. – 448 p.
5. I.M. Boiarko, L.L. Hrytsenko. (2011) *Investment analysis: training book*. – K.: Centre for Educational Literature. – 400 p.
6. K.O. Biliaieva, N.A. Sokolova. (2010) *Analysis of methods of forecasting the efficiency of investments to innovative projects*. / K.O. Biliaieva, N.A. Sokolova // East European Magazine of Advanced Technologies. – No. 6/2(48). – P. 10–12.
7. Kh.Z. Makhmudov, I.I. Petrenko. (2011) *Investment project as a form of fulfilling the investment potential of an enterprise* / Kh.Z. Makhmudov, I.I. Petrenko // Economics and the region. – No. 2 (29) – P. 132–136.
8. M.P. Voynarenko, A.V. Cherep, O.I. Gonchar, O.G. Cherep, D.V. Krylov, L.G. Oleynikovaю (2019) *Information provision for forecasting strategies innovative activities of enterprises*. 9th International Conference on Advanced Computer Information Technologies, ACIT - Proceedings, art. no. 8780030, pp. 362-365
9. O.H. Nastasenko. (2010) *Methodological approach to assessing the efficiency of investment activities at dairy processing enterprises*. / O.H. Nastasenko // Topical issues of the economy. –. – No. 4 (106). – P. 120–126.

10. O.V. Hryvkivska, O.V. Prokopets. (2010) *Methodological approaches to the analysis of investment projects* / O.V. Hryvkivska, O.V. Prokopets // Economics and management. — No. 4. – P. 13–18.
11. P. Kukhta. (2012) *The basic principles and the sequence of managerial decisions in substantiating the feasibility of real investments made by enterprises.*/ P. Kukhta // Newsletter of Kyiv national university n.a. Taras Shevchenko. Economics. Issue 136 – P. 41–45.
12. P.V. Kukhta. (2010) *Development of assessment methods applied to the efficiency of real investments* [Electronic source] / P.V. Kukhta // Scientific newsletter of Poltava university for economics and trade. Series: Economic sciences. – No. 6 (51). – Part 1 – P. 267–275.
13. Ye.S. Kuzmin. (2012) *Methods of determining the investment efficiency of dairy enterprises.* / Ye.S. Kuzmin // Research papers of Kirovohrad national technical university. Economic sciences. – Issue 22(2). – part 2. – P. 264–271.

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

KRIMINALISTIKOS MOKSLO INDĖLIS KOVOJANT SU ŠIUOLAIKINIU ORGANIZUOTU NUSIKALSTAMUMU

Povilas KĖŽA
Mykolo Romerio Universitetas, Viešojo Saugumo Akademija
Maironio g. 27, LT-44298 Kaunas, Lithuania
El. paštas pov.keza@gmail.com
ORCID ID: 0009-0009-8833-8332

Jurgita BALTRŪNIENĖ
Mykolo Romerio Universitetas, Viešojo Saugumo Akademija
Maironio g. 27, LT-44298 Kaunas, Lithuania
El. paštas: baltruniene.jurgita@gmail.com
ORCID ID: 0000-0001-8323-0570

DOI: 10.13165/PSPO-23-33-16

Anotacija. *Vienas pagrindinių kriminalistikos mokslo uždavinių yra nusikaltimų tyrimo, atskleidimo bei prevencijos metodų įdiegimas praktinėje veikloje. Socialiniai pokyčiai, mokslo ir technikos pažanga suteikia galimybę efektyviai panaudoti gautus rezultatus kriminalistikos metodų, priemonių bei rekomendacijų išpildymui kovojant su nusikalstamumu. Kriminalistikos mokslo raida rodo, kad naujų poreikių būvimas skatino konkrečių poreikių tenkinimą. Tokiu būdu buvo mažinama takoskyra tarp didėjančios būtinybės ir jos neišpildymo. Kriminalistika, kaip integralus mokslas yra priklausomas nuo kitų mokslų laimėjimų ir jų pritaikymo nusikaltimų tyrimo reikmėms. Ryšys tarp kriminalistikos mokslo ir esamų tendencijų turi būti glaudus ir nenutrūkstamas. Šis procesas, turi leisti ne tik efektyviai kovoti su esamomis grėsmėmis, bet taip pat užbėgti įvykiams už akių ir tokiu būdu didinti piliečių saugumą visuomenėje.*

Organizuotas nusikalstamumas yra viena pagrindinių grėsmių ES saugumui. Informacinėms Technologijoms žengiant į priekį, išvien keičiasi nusikaltimų modus operandi. Technologijos mums atveria lyg šiol nematytas galimybes, bet tuo pačiu suteikia ir beprecedentį lankstumą organizuotoms nusikalstamoms grupuotėms. Šiame straipsnyje apžvelgiamos galima dirbtinio intelekto ir kriminalistikos mokslo sąveika tarpusavyje kovojant su šiuolaikiniu[1] organizuotu nusikalstamumu ir esami iššūkiai tiriant, bei atskleidžiant nusikalstamas veikas. Analizuojamos organizuoto nusikalstamumo tendencijos ir dirbtinio taikymo galimybės tiriant, išaiškinant ir užkardant nusikalstamas veikas. Kovojant su šiuolaikiniu organizuotu nusikalstamumu, reikia naujų ir efektyvių metodų, būtina tobulinti teisėsaugos institucijų pajėgumus ir naudoti naujas technologijas, kurios padėtų atkleisti ir nustatyti nusikalstamų organizacijų veiklą ne tik fizinėje, bet ir virtualioje erdvėje. Reikia suprasti, kad šiame sparčiai besikeičiančiame pasaulyje, efektyvi kova su organizuotu nusikalstamumu yra įmanoma tik sujungiant profesionalaus personalo, pažangių technologijų ir tarptautinio bendradarbiavimo galimybes.

Pagrindinės sąvokos: *Dirbtinis intelektas, Konvoliuciniai neuronų tinklai, kontrabanda, šifruoti komunikacijos tinklai, organizuotas nusikalstamumas.*

Įvadas

Hansas Grosas, norėdamas parodyti kriminalistikos mokslo reikšmę, rašė: „Kokiu būdu mes galim rasti tą ar kitą įrodymą, kaip prie jų prieiti, kaip juos apsaugoti ir panaudoti, visa tai taip pat svarbu, tai tas rezultatas, kurio mes siekiame vykdydami teisingumą. Rasti ir panaudoti nusikaltėlio pėdsakai, kruopščiai nubraižytas nors ir nesudėtingas brėžinys, mikroskopinis preparatas, iššifruotas susirašinėjimas, fotografinės nuotraukos, tatuiruotės, atkurtas apanglėjęs laiškas, koks nors tikslus matmuo ir tūkstančiai panašių realijų – tai ne kas kita, kaip nepaperkami liudytojai, neleidžiantys paneigti ir kartu leidžiantys nuolat tikrinti, liudytojai,

[1] Autorių paaiškinimas: Šiuolaikinis organizuotas nusikalstamumas yra reiškinys, kurio veikimo ir sąveikos su aplinka mechanizmas yra paremtas globalizacijos ir modernių technologijų plėtros naudojimosi galimybėm.

kurių atžvilgiu negalima klaida, vienpusiškas supratimas, pikta valia, šmeižtas ir panašiai. Su kiekvienu kriminalistikos laimėjimu krenta liudytoju parodymų reikšmė ir drauge kyla realių įrodymų reikšmė".[2]

Kriminalistika yra integralus mokslas, kurio raidai daug įtakos turėjo socialiniai pokyčiai, gamtos ir technikos mokslų laimėjimai. Tai yra mokslas kuris suteikia teisingumo ir saugumo garantą šiame sparčiai besikeičiančiame pasaulyje. Nusikaltėlių paliekami pėdsakai įgauna vis naujas formas, kurių išaiškinimui ir tyrimui nebeužtenka tradicinių kriminalistikos metodų. Naujų būdų ir metodų, kuriuos gali suteikti moderniausios technologijos, integracija į kriminalistinę praktiką yra labai svarbi norint sėkmingai kovoti su šiuolaikiniais nusikaltėliais. Kaip pažymi Doc. Dr. Egidijus Kurapka, „<...> kriminalistikos mokslas nuolat plėtojamas, tobulėja kriminalistinių tyrimų metodikos, didėja kriminalistikos galimybės, į nusikaltimų tyrimo sferą skverbiasi tobuliausios ir veiksmingiausios mokslinės technologijos. Kriminalistų kuriamas rekomendacijas lemia teisėsaugos institucijų poreikiai. Kriminalistikos mokslininkai, ieškodami naujų mokslo laimėjimų taikymo galimybių nusikaltimams tirti, daro tai vykdydami teisėsaugos institucijų užsakymus. Mat gyvenimas nestovi vietoje: nuolat tobulėja nusikaltimų darymo būdai, atsiranda naujos jų rūšys, todėl prireikia naujų tyrimo metodikų <...>".[3]

Informacinio amžiaus kontekste, pasaulis tampa vis labiau skaitmenizuotas. Progresyvus technologijų tobulėjimas mums suteikia tokias galimybes, kurios sunkiai buvo įsivaizduojamos prieš kelis dešimtmečius. Šis reiškinys yra susijęs su moderniomis technologijomis, tokiomis kaip internetas, mobilieji įrenginiai ar socialiniai tinklai, kurie leidžia keliais mygtukų paspaudimais pasiekti kitą pasaulio kraštą, komunikuoti ir dalintis informacija tarpusavyje. Didelis duomenų kiekis ir šiuolaikinių technologijų pažanga mums leidžia sukurti technologinius instrumentus, kurti naujas technologines architektūras, kurios atveria nematytas galimybes siekiant atlikti tam tikras užduotis.

Kartu su inovatyviu pasauliu, neatsiejamai, tobulėja ir organizuotų nusikalstamų grupuočių daromi nusikaltimai. Nusikaltėliai greitai adaptuojasi prie sparčiai besikeičiančios aplinkos ir išradingai pritaiko naujausius technologijų laimėjimus savo veikoms realizuoti.

2011 m. spalio 25 d. Europos Parlamentas rezoliucijoje dėl organizuoto nusikalstamumo Europos Sąjungoje[4], pabrėžė, kad organizuotas nusikalstamumas yra viena pagrindinių grėsmių ES saugumui. Organizuotų nusikalstamų grupuočių daromi nusikaltimai visuomenei kainuoja daug, nes yra pažeidžiamos pamatinės žmogaus teisės ir demokratinės vertybės, nukreipiami ir netikslingai iššvaistomi finansiniai ir darbo ištekliai, iškreipiama laisva bendroji rinka, skatinama korupcija ir tokiu būdu skverbiamasi į politiką, viešąjį administravimą ir teisėtą ekonomiką.

2021 m. balandžio mėn. Europos Komisija priėmė 2021 – 2025 m. ES kovos su organizuotu nusikalstamumu strategiją. Strategijoje pažymėta, kad „ <...> dėl neskaidraus veiklos pobūdžio visuomenei nematomas organizuotas nusikalstamumas kelia didelę grėsmę Europos piliečiams, verslui ir valstybės institucijoms. Reaguojant į realiame gyvenime ir internete veikiančių organizuotų nusikalstamų grupių keliamą tarpvalstybinę grėsmę ir kintantį

[2] Kriminalistika. Teorija ir technika. Mykolo Romerio Universitetas. 2012 m. Šaltinis: https://repository.mruni.eu/handle/007/16854

[3] Doc. Dr. Egidijus Kurapka. Kriminalistikos raidos Lietuvoje tendencijos: mokslas ir praktika. Šaltinis: https://etalpykla.lituanistika.lt/fedora/objects/LT-LDB-0001:J.04~2000~1367178506602/datastreams/DS.002.0.01.ARTIC/content.

[4] Organizuotas nusikalstamumas Europos Sąjungoje 2011 m. spalio 25 d. Europos Parlamento rezoliucija dėl organizuoto nusikalstamumo Europos Sąjungoje (2010/2309(INI)) Šaltinis: (https://www.infolex.lt/teise/default.aspx?id=1929&crd=295363&qi=7006681)

jų veikimo būdą, reikia imtis suderintų, tikslingesnių ir pritaikytų atsakomųjų priemonių.<...>".[5]

Europos Sąjungoje veikiantis organizuotų nusikalstamų grupių veikimas ir bendradarbiavimas yra nuolat kintantis ir daug sričių apimantis procesas. Nusikalstamų grupuočių tinklai dalyvauja įvairioje nusikalstamoje veikloje, kuri dažnu atveju apima prekybą narkotikais, kontrabandą, sukčiavimą, neteisėtą migrantų gabenimą ar prekybą žmonėmis. Tokių veikų atskleidimas reikalauja daug resursų ir profesionalaus personalo bendradarbiavimo tarptautiniame lygmenyje. Šiuolaikinės organizuotos nusikalstamos grupuotės yra skaitmeninio amžiaus atstovai, todėl technologinių instrumentų, tokių kaip šifruotų ryšių kanalų naudojimas ar kriptovaliutos, kuriomis yra maskuojami finansiniai srautai, sukelia papildomų sunkumų teisėsaugos institucijoms efektyviai su to kovoti. Taip pat svarbu atsižvelgti ir į internetinę dimensiją, nes šiuolaikinis organizuotas nusikalstamumas veikia ne tik realioje, bet ir kibernetinėje erdvėje. Vis intensyvesnis naudojimasis internetu ir internetinėmis paslaugomis, skatina kibernetinių nusikaltimų augimą ir didina riziką vartotojams tapti tokių nusikaltimų aukomis.

Lietuvos Respublikos Seimas 2015 m. gegužės 7 d. nutarime „dėl viešojo saugumo plėtros 2015 – 2025 metų programos patvirtinimo" pažymėjo, kad organizuotų nusikalstamų grupuočių *modus operandi* būtent dėl modernių technologijų naudojimo tampa vis sudėtingesnė ir įvairesnė. Ryškėja tendencija užsiimti vis labiau pelninga nusikalstama veikla ir mažėja specializacija konkrečių nusikalstamų veikų srityse. Pabrėžiama, kad „<...> augant interneto įtakai mūsų gyvenime, nusikalstamų veikų elektroninėje erdvėje mastas ir galima žala tik didės, o spartūs informacinių ir ryšių technologijų pokyčiai (pvz., debesų kompiuterija) gali lemti ir naujus iššūkius. Todėl nusikalstamos veikos elektroninėje erdvėje vertintos kaip auganti grėsmė viešajam saugumui <...>".[6]

2021 m. Europolo atliktame ES sunkių ir organizuotų nusikaltimų tyrime (angl. The European Union Serious And Organised Crime Threat Assessment, SOCTA) pažymėta, kad organizuotų nusikalstamų grupių esama visose valstybėse narėse.[7] Organizuotas nusikalstamumas yra iš esmės paveiktas globalizacijos procesų. Daugėja nusikalstamų tinklų, kurie nėra susieti su konkrečia pilietybe ar tautybe ir veikia tarpvalstybiniu mastu. Nusikaltėliai greitai įsisavina ir integruoja naujas technologijas į nusikaltimų schemas, jas tobulina ir kuria naujus intersubjektyvius nusikaltimų tinklus, paremtus modernių technologijų teikiamu beprecedenčiu lankstumu, kuriam įtakos neturi geografiniai ar laiko zonų apribojimai.

Šiuolaikinio organizuoto nusikalstamumo mastas ir sudėtingumas kelia naujus iššūkius kriminalistikos mokslui. Kriminalistikos mokslo atsiradimas ir istorija kilo iš valstybės ir visuomenės socialinio užsakymo: reikėjo kurti naujus įrankius ir metodus nusikaltimų atskleidimui ir tyrimui.[8] Kiekviena idėja ir gautas rezultatas skatina naujų kriminalistinių poreikių augimą ir tų poreikių tenkinimą. Kriminalistika, norėdama tapti šiuolaikine, privalo pasiduoti naujausioms informacinių technologijų ir ryšių tendencijoms, jas priimti ir naudoti tai kaip efektyvų įrankį kovojant su šiuolaikiniu organizuotu nusikalstamumu. Daugeliui, modernių technologijų integraciją kelia nerimą, tačiau manau, kad tai turėtų kelti parengtumo

[5] Komisijos komunikatas Europos Parlamentui, Tarybai, Europos ekonomikos ir socialinių reikalų komitetui regionų komitetui „2021 – 2025 m. ES kovos su organizuotu nusikalstamumu strategija". Šaltinis: (https://www-infolex-lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1245030&qi=7007649)

[6] Lietuvos Respublikos Seimo 2015 m. gegužės 7 d. nutarimas Nr. XII-1682 „Dėl viešojo saugumo plėtros 2015-2025 metų programos patvirtinimo". Šaltinis: (https://www-infolex-lt.skaitykla.mruni.eu/ta/332447)

[7] Serious and Organised Crime Threat Assessment (SOCTA) 2021 m. Šaltinis: (https://www.europol.europa.eu/publications-events/main-reports/socta-report)

[8] Developments of theory of criminalistics and future of forensic expertology. Innovative essence of criminalistics and prospective directions of its development. Viktor Shevchuk. P. 165

lygį. Reikia kovoti ne tik su dabartinėmis grėsmėmis, bet ir atsižvelgti į tai, kad sparčiai tobulėjantis informacinių technologijų sektorius pasauliui siūlo vis naujas galimybes ir tuo pačiu kelia naujus iššūkius kriminalistikos mokslui. Šiuolaikinis organizuotas nusikalstamumas yra globalus ir skaitmenizuotas reiškinys, todėl šiai kovai yra reikalingas tarptautinis bendradarbiavimas, informacijos ir išteklių dalijimasis, naujausių technologijų teikiamų galimybių naudojimas ir bendrų strategijų kūrimas.

Kriminalistikos mokslo ir dirbtinio intelekto sinergija

Šiandienos realybė reikalauja mokslininkų bendruomenės sukurti ir įdiegti tinkamus įrankius, galinčius patenkinti šiuolaikinių tyrimų ir teisminės praktikos poreikius. Moderniausios technologijos ir naujausios informacijos rinkimo, analizavimo metodologijos yra esminės kriminalistikos mokslo tobulėjimo gairės norint efektyviai kovoti su šiuolaikiniu organizuotu nusikalstamumu. Kriminalistikos mokslininkai ir specialistai, atsižvelgdami į aplinkos pokyčius, nuolat tobulina kriminalistinės teorijos ir praktikos metodikas. Inovatyvūs ir efektyvūs įrankiai yra gyvybiškai svarbūs norint ne tik prisitaikyti prie šiuolaikinių nusikalstamumo tendencijų ir su tuo veiksmingai kovoti, bet taip pat, perspektyviniu požiūriu kriminalistikos mokslas turi tapti dar labiau glaudus su informacinių technologijų sritimi. Technologijos, tokios kaip Web3 aplikacijos, blokų grandinės (angl. Blockchain), NFT, kriptovaliutos, kompiuterių debesija, pažangūs kriptografijos ir informacijos šifravimo metodai, plačiai pasiekiami VPN tinklai ir galiausiai proveržis dirbtinio intelekto (angl. artificial intelligence) srityje galiausiai tapo ne tik plačiai naudojamais kiekvieno žmogaus gyvenime, bet tai taip pat tai yra įrankiai, kuriais naudojasi organizuoto nusikalstamumo tinklai savo veikoms vykdyti ir realizuoti.

Sparčiai vystantis technologijoms didelis dėmesys turi būti skiriamas dirbtinio intelekto technologijai, kuri iki 2023 m. buvo mistifikuojama. Daug dėmesio sulaukusi dirbtinio intelekto technologija yra lyginama su „ugnies atradimu“ [9], kitų ekspertų nuomone tai kelia egzistencinę krizę žmonijai, kadangi šios technologijos vystymo galimybės neturi ribų ir tapo nekontroliuojamu procesu.[10] Tačiau aišku tik viena: dirbtinio intelekto amžius prasidėjo.

Dirbtinis intelektas (DI) yra kompiuterių mokymosi, supratimo ir sprendimo sistema, kuri naudoja daugybę mokslinių disciplinų tokių kaip matematiką, statistiką, informatiką. DI leidžia techninėms sistemoms apdoroti didelius kiekius duomenų ir atlikti analizę, kad priimtu tiksliausiai apskaičiuotus sprendimus. Ši technologija taip pat geba mokytis iš savo patirties, kad gerintų teisingų sprendimų priėmimo gebėjimus ateityje.

Dirbtinis intelektas nėra naujovė, nes kaip idėja ir mokslinio tyrimo objektas egzistuoja jau daugiau kaip pusę amžiaus, tačiau tik paskutiniu metu stipriai pažengus skaitmenizacijos ir informacinių technologijų srityse, dirbtinis intelektas tapo labiau matomu ir plačiai naudojamu įrankiu.[11] Didžiulės duomenų saugyklos, kompiuterių ir didelių skaičiavimo galimybių buvimas suteikia reikiamus resursus duomenų analizei ir modelių kūrimui, kad būtų galima apdoroti milžiniškus informacijos srautus, kurių apdorojimas žmogui būtų nepaprastai sudėtingas ar net neįmanomas. Tai yra galinga ir plačiai naudojama technologija daugelyje sričių, pvz.: medicinoje pasitelkiant dirbtinio intelekto technologija, vėžio prognozavimas

[9] Google CEO: A.I. is more important than fire or electricity. Šaltinis: https://www.cnbc.com/2018/02/01/ google-ceo-sundar-pichai-ai-is-more-important-than-fire-electricity.html

[10] Elon Musk among experts urging a halt to A.I. training. Šaltinis: https://www.bbc.com/news/technology-6511 0030)

[11] The History of Artificial Intelligence. Šaltinis: (https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/)

pacientui pasiekė naujas aukštumas.[12] Švietimo srityje tinkamai pritaikyto dirbtinio intelekto technologija mokytojams suteikė galimybę efektyviau peržiūrėti ir įvertinti mokinių užduotis. Mokymo programos buvo individualizuotos atsižvelgiant į mokinių poreikius. [13] Finansų srityje pritaikytas dirbtinis intelektas padidino sukčiavimo rizikos aptikimą, prekyba paremta kompiuteriniais algoritmais tapo pelningesnė. [14]

Platus galimybių diapazonas, kurį suteikia dirbtinio intelekto technologija, yra potencialus ir kryptingas kelias norint sukurti kriminalistinį „produktą“, kuris efektyviai ir veiksmingai padėtų kovoti su šiuolaikiniu organizuotu nusikalstamumu. Tai gali suteikti daugiau galimybių tiriant ir atskleidžiant nusikalstamas veikas ar identifikuojant nusikaltėlius. Šiuolaikinio organizuoto nusikalstamumo kontekste, nusikaltėliai naudodami modernias technologijas, kuriomis neretu atveju paslepia savo tapatybę, apsunkina tyrėjų darbą, todėl koreliacijų radimas tarp daugybės užmaskuotų ir skirtingų kintamųjų yra labai reikalingas, norint išpildyti kriminalistikos mokslo praktinius uždavinius.

Lietuva, kaip tranzitinė šalis, dažnu atveju tampa didelio mąsto kontrabandos liudininke. Skandalingoje kontrabandos karaliaus byloje atliekant ikiteisminį tyrimą nustatyta, kad per dvejus metus į Lietuvą ir kitas Europos Sąjungos šalis, vilkikais neteisėtai buvo įvežta ir išvežta cigarečių, kurių muitinė vertė viršijo 10 mln. eurų. Nelegaliai per sieną gabenta ar bandyta pergabenti daugiau nei 84,6 mln. vienetų kontrabandinių rūkalų iš Rusijos Federacijos. Šioje byloje, kurioje iš nustatytų aplinkybių matyti, kad nusikalstama veika buvo padaryta pagal kruopščiai parengtą planą – užmaskuotas didelės vertės cigarečių gabenimas į užsienį. *„<...> susitikimo metu sutarė, kad pagamins tuščiavidurį priedangos krovinį iš medienos pakuočių cigarečių kroviniui paslėpti, <...>, paruoš ir perduos nusikaltimo vykdytojui krovinio dokumentus, patvirtinančius, jog iš Rusijos Federacijos į Lietuvos Respublika gabenamas pjautinės medienos krovinys“.*[15]

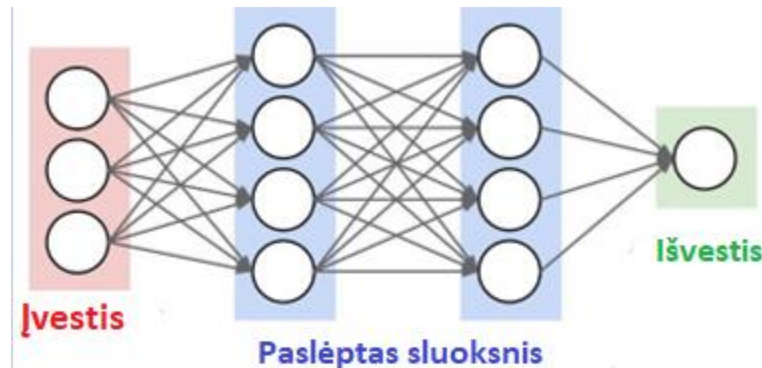
Muitinėje yra naudojamas rentgeno aparatas, kurio bangos gali praeiti pro objektą ir detektoriaus pagalba užfiksuoti praeinančio ir sugerto spindulio intensyvumą. Tai leidžia sukurti vaizdą, kurio pagrindu tokie duomenys yra reikalingi norint pamatyti objekto vidų neardant atskirų jo komponentų.[16] Tačiau bėda ta, kad rentgeno aparatas konkrečioje situacijoje parodys tai kas yra viduje – medienos krovinys.

Pasitelkus rentgeno ir gilaus mokymosi (angl. Deep-Learning)[17] dirbtinio intelekto šakos technologija galima pastebėti daugiau. Įgyvendinant gilaus mokymosi algoritmus, yra naudojami neuroniniai tinklai, kurie yra analogiški žmogaus smegenų veiklai. Gilusis mokymasis yra naudojamas apdorojant duomenis siekiant atpažinti objektus, juos klasifikuoti, prognozuoti arba sugeneruoti naujus turinius. Šis procesas apima įvairius sluoksnius, kurie transformuoja pradinę informaciją. Pradinis sluoksnis (įvestis) gauna duomenis ir transformuoja juos į tinkamą formatą, kuris yra pateikiamas tolimesniems sluoksniams, kiekvienas tolimesnis sluoksnis taip pat atlieka transformacijas ir pateikia juos kitam

---

[12] Shgiao Huang, Jie Yang, Simong Fong and Qi Zhao. Artificial intelligence in cancer diagnosis and prognosis: Opportunities and challenges. Šaltinis: (https://pubmed.ncbi.nlm.nih.gov/33907522/)
[13] Lijia Chen, Pingping Chen and Zhijan Lin. Artficial Intelligence in Education: A review. Šaltinis: https://iee explore.ieee.org/abstract/document/9069875
[14] The Alan Turing Institute. Artificial intelligence in finance. Bonnie G. Buchanan, PhD, FRSA. Šaltinis: (https://www.turing.ac.uk/sites/default/files/2019-04/artificial_intelligence_in_finance_-_turing_report_1.pdf)
[15] 2023 m. sausio 17 d. LAT Nutartis. Baudžiamoji byla Nr. 2K-69-788/2023 (Šaltinis: https://www-infolex-lt.skaitykla.mruni.eu/tp/2137004)
[16] Review Article. Recent Development in X-Ray Imaging Technology: Future and Challenges. Xiamgyu Ou, Xue Chen, Xianning Xu, Lilli Xie, Xiaofeng Chen, Zhongzhu Hong, Hua Bai, Xiaowang Liu, Qiushui Chen, Lin Li and Huanghao Yang. Šaltinis: (https://downloads.spj.sciencemag.org/research/2021/9892152.pdf)
[17] Deep Learning for A. I. Šaltinis: (https://dl.acm.org/doi/pdf/10.1145/3448250)

sluoksniui. Proceso pabaigoje yra gauta išvestis, kuri gali būti naudojama sprendžiant konkrečius uždavinius.[18]



1 pav. Konvoliucinių neuronų tinklų iliustracija
Šaltinis: Machine Learning & Big Data Blog. What's Deep Neural Network? Deep Nets Explained. Jonathan Johnson. 2020[19]

Atliktas tyrimas parodė[20], kad pasitelkus Konvoliucinius Neuroninius Tinklus (angl. Convolutional Neuron Network, CNN) kaip gilaus mokymosi modelio tipą ir integruojant į rentgeno aparatą buvo galima aptikti kroviniuose konteineriuose gabenamas „mažas metalines grėsmes" (angl. Small Metallic Threats, SMT's), kurios yra skirtos sprogstamiems užtaisams gaminti. Ši technologija geba aptikti ir atpažinti objektus užimančius mažiau nei 50 pikselių, esančius vaizduose, kuriuose yra daugiau kaip 2 mln. pikselių. Buvo aptikta 90% paslėptų mažų metalinių grėsmių, iš kurių klaidingų indikacijų signalų buvo mažiau nei 6%. Ši technologija turi žmogui nebūdingą darbo našumą, nes krovininio konteinerio apdorojimo t. y. , kelias nuo įvesties iki išvesties ir gauto sistemos atsakymo, laikas buvo 3,5 sekundės. Tai dar kartą parodo, kad dirbtinio intelekto technologija leidžia atlikti sudėtingus analitinius procesus, kurie per daug sudėtingi arba pernelyg dideli, kad juos galėtų atlikti žmogus.

Dirbtinio intelekto gilaus mokymosi neuroninių tinklų veikimas apima daugybę procesų. **Pagrindinis tikslas yra „išmokyti"** sistemą atpažinti ir atskirti tam tikras formas ar objektus vaizdo, garso įraše ar kitame duomenų rinkinyje. Norint išmokinti technologiją atpažinti, pastebėti ar prognozuoti tam tikrus reiškinius, reikia turėti duomenų rinkinį, kuris apimtų ieškomų reikalingų objektų ar formų pavyzdžius. Sistemai suprantama kalba reikia paaiškinti ko mes ieškome ir kas mums reikalinga. Tokio mokymo procesas gali būti pasikartojantis ir reikalaujantis nemažai laiko, tačiau tai leidžia pasiekti labai aukštą tikslumo lygį atpažįstant ir klasifikuojant duomenis ar tam tikrus reiškinius. Kruopščiai parengta duomenų sistema ir tos sistemos pagrindu paruošta dirbtinio intelekto technologija kriminalistikoje gali prisidėti ir išplėsti galimybių ribas kovojant su nusikalstamumu, įskaitant elektroninėje erdvėje, ypač tamsaus interneto platformose. Konvoliucinius neuroninius tinklus galima panaudoti siekiant nustatyti galimus nusikaltimų planus tiek fizinėje, tiek internetinėje erdvėje. Ši technologija gali

[18] What is Deep Learning? How It Works, Techniques and Applications – MATLAB and Simulink. Šaltinis: https://www.mathworks.com/discovery/deep-learning.html
[19] Machine Learning & Big Data Blog. What's Deep Neural Network? Deep Nets Explained. Jonathan Johnson. Šaltinis: https://www.bmc.com/blogs/deep-neural-network/
[20] Automated detection of smuggled high-risk security threats using Deep Learning. N. Jaccard, T.W. Rogers, E.J. Morton, L.D.Griffin. Šaltinis: https://ieeexplore.ieee.org/abstract/document/8267319

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

analizuoti tekstinius duomenis, kaip pavyzdžiui, pranešimus forumuose ir taip nustatyti galimus bendruomenių ryšius tarp nusikalstamų grupuočių.[21]

Svarbu paminėti, kad dirbtinio intelekto, kaip ir kitų technologijų, rezultatas priklauso nuo to, kaip ir kokio tikslo siekiant yra naudojama konkreti technologija. 2019 m. vasario 12 d. Europos Parlamentas rezoliucijoje dėl visapusiškos Europos pramonės politikos dirbtinio intelekto ir robotikos srityje, atkreipė dėmesį į tai, kad piktavališkas dirbtinio intelekto naudojimas gali kelti grėsmę skaitmeniniam, fiziniam ir viešajam saugumui.[22] Tai gali tapti įrankiu vykdant iki šiol nematytas dezinformacijos kampanijas, pvz., *DeepFakes*. Taip pat šia technologija gali būti pasinaudota didelio masto atakoms prieš informacines valstybinių institucijų, organizacijų, verslų sistemas ir taip pažeisti kritines kibernetinio saugumo infrastruktūras. Europos Sąjungos policijos biuras (Europol) 2022 m. kovo 10 d. pranešė, jog yra vykdoma nauja iniciatyva skirta užtikrinti, kad dirbtinio intelekto technologija būtų naudojama skaidriu ir atsakingu būdu.[23] Kuriama sistema, kurios tikslas yra užtikrinti, kad dirbtinis intelektas būtų naudojamas pagal nustatytus principus, kurie užtikrintų skaidrumą, atsakomybę ir pagarbą žmogaus teisių apsaugai. Tai yra svarbus žingsnis siekiant teisingo ir atsakingo dirbtinio intelekto naudojimo Europos Sąjungoje.

Svarbios informacijos, tam tikrų tendencijų ir koreliacinių ryšių pastebėjimas yra kriminalistinių tyrimų aspektas, kuris gali būti stipriai patobulintas naudojant dirbtinio intelekto technologijos įrankius. Šios technologijos gali padėti surasti ryšius, kurie yra reikalingi sėkmingai ikiteisminio tyrimo eigai. Tai yra ypač svarbu norint veiksmingai kovoti su vis sudėtingesniu ir įvairesniu organizuotu nusikalstamumu, kuriame dažnai yra pastebimas tam tikras tendencingumas. Visų šių galimybių pagrindu galima teigti, kad dirbtinio intelekto technologija yra nepakeičiamas ir efektyvus įrankis, kuris gali stipriai prisidėti prie kriminalistikos mokslo plėtojimo ir visuomenės saugumo didinimo.

Iššūkiai ir problematika kovojant su šiuolaikiniu organizuotu nusikalstamumu

Kriptografiniai raktai ir šifravimas tapo pagrindinių teisių, skaitmeninio suverenumo ir inovacijų apsaugos elementu. Elektroninių laiškų sistemos, elektroninės bankininkystės, parduotuvės ir daugelio kitų internetinių paslaugų apsaugos sistemos yra paremtos kriptografiniais algoritmais. Tai yra privatumo ir konfidencialumo apsaugos dalis, padedanti užtikrinti, kad tik tam tikri asmenys turėtų prieigą prie tam tikros informacijos, be trečiųjų šalių įsikišimo. Tokios technologijos naudojimas yra būtinas norint išvengti neteisėto priėjimo prie informacijos.[24] Taip pat, dabartinės tendencijos vis labiau skatina interneto vartotojus naudotis programomis arba paslaugomis, kurios didina saugumą naršant internete. Žinoma, iš pažiūros tai nėra blogai, nes pvz., VPN paslaugos apsaugo nuo tapimo aukomis kibernetiniams nusikaltėliams ir mažina asmeninių duomenų nutekinimo riziką. Tačiau, toks tapimas „nematomu“ elektroninėje erdvėje yra kontraversiškas, nes tokių galimybių prieinamumas

[21] Dark Web Data Classification Using Neural Network. Šaltinis: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8979735/

[22] 2019 m. vasario 12 d. Europos Parlamento rezoliucija dėl visapusiškos Europos pramonės politikos dirbtinio intelekto ir robotikos srityje (2018/2088(INI)) Šaltinis: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0081_LT.html

[23] New Accountability Framework to use artificial intelligence in a transparent and accountable manner. Šaltinis: (https://www.europol.europa.eu/media-press/newsroom/news/new-accountability-framework-to-use-artificial-intelligence-in-transparent-and-accountable-manner)

[24] An Overview of Cryptography. Šaltinis: https://d1wqtxts1xzle7.cloudfront.net/38411944/An_Overview_of_Cryptography.pdf?1438962673=&response-content-disposition=inline%3B+filename%3DAn_Ove_

sukelia riziką ir papildomus iššūkius kriminalistikos mokslui, kai reikia identifikuoti tam tikro žmogaus tapatybę.

Ilgą laiką organizuoto nusikalstamumo pėdsakai internete buvo pastebimi tamsaus interneto (angl. DarkNet) forumuose.[25] Tai yra reiškinys, kuris iš esmės keičia tradicinį nusikalstamų veikų pobūdį ir sudaro naujus iššūkius teisėsaugos institucijoms. Tamsusis internetas yra pasiekiamas per specialias programas, tokias kaip „Tor", „I2P", „Freenet". Tai yra privati tinklų sistema, kuri suteikia vartotojams anonimišką prieigą prie tinklo. Kartu su minėtomis programomis dažnai yra naudojamos papildomos technologijos, kurios yra susijusios su IP ir finansinių srautų maskavimu. Suprantama, kad šios rinkos „dalyviai" yra technologiškai raštingi, nes priėjimas prie tamsaus interneto nėra indeksuojamas per tradicinius paieškos variklius, tokius kaip „Google", „Bing" ar „Yahoo". Finansiniai srautai dažniausiai maskuojami kriptovaliutomis, kurių transakcijų vykdymas yra greitas ir nereikalauja jokių tarpininku. Ši anonimiškumo savybė, kartu su kriptovaliutų decentralizuotu pobūdžiu, padaro patrauklia alternatyva organizuotų nusikalstamų grupuočių veiklai. Taip pat reikėtų paminėti blokų grandinės (angl. Blockchain) technologiją, kuri yra pagrindinė kriptovaliutų technologinė priemonė. Blokų grandinės yra saugumo ir patikimumo garantas, nes visos kriptovaliutų transakcijos yra saugomos ir sunkiai identifikuojamos, o kriptovaliutų savininko tapatybė yra apsaugota dėl šifruotų kriptografinių kodų naudojimo.

2021-2025 m. ES kovos su organizuotu nusikalstamumu strategijoje yra pažymima, kad didžiausia kliūtis veiksmingai nustatyti šios rūšies nusikaltimus neabejotinai yra nuasmeninimo priemonių naudojimas nusikalstamai veiklai. Šifruotas ryšys naudojant įvairias taikomąsias programas ar internetines pranešimų perdavimo priemones, kuriomis naudojasi nusikaltimų vykdytojai, yra rimta aptikimo proceso problema. Tai, kad teisėsaugos institucijos neturi prieigos prie užšifruotų pranešimų, kuriuos naudoja organizuotos nusikalstamos grupuotės, turėtų būti laikoma vienu didžiausių trūkumų, nes nepakankama prieiga prie informacijos labai trukdo laiku imtis veiksmų.[26]

Didelė teikiamų paslaugų pasiūla ir pažanga skaitmeninio saugumo srityje, nusikalstamas veikas internete leido perkelti ir į viešai ir lengvai prieinamus forumus ar susirašinėjimo platformas. Jeigu prieigai prie tamsiojo interneto platformos reikia suprasti kaip veikia tam tikri netradiciniai paieškos varikliai, kaip apsaugoti savo internetinio ryšio adresą ar jo buvimo vietą, tai dabartinės tendencijos šį faktorių eliminuoja ir visus šiuos procesus padaro žymiai paprastesnius. Pavyzdžiui, „Telegram" yra populiari komunikacijos programa, kuri leidžia vartotojams siųsti tekstinius, garso ir vaizdo pranešimus, dalintis duomenimis. Apart to, „Telegram" siūlo paslaptingus pokalbius, kurie išsitrina juos perskaičius arba po nustatyto laiko tarpo. Viena iš svarbiausių savybių, kuri padaro šią aplikaciją labai patrauklia yra „end – to end" šifravimas. Tai reiškia, kad bet koks susiekimas tarp siuntėjo ir adresato yra matomas tik jiems ir yra nepasiekiamas trečiosioms šalims[27]. Ši galimybė komunikuoti ir tapti sunkiai identifikuojamiems plačiai atveria duris organizuoto nusikalstamumo įvairiems tikslams realizuoti ir vykdyti.

2022 m. duomenimis, „Telegram" aplikacijos mėnesinių aktyvių naudotojų skaičius buvo 700 mln.[28] Organizuotam nusikalstamumui yra suteikiama galimybė pasiekti plačia auditorija ir anonimiškai dalyvauti įvairiose nelegaliose veiklose, tokiose kaip prekyba narkotikais,

[25] A Mysterious and Darkside of The Darknet: A Qualitative Study. Šaltinis: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4167244
[26] 2021-2025 m. ES kovos su organizuotu nusikalstamumu strategija. Šaltinis https://www-infolex-lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1245030&qi=7007785
[27] https://core.telegram.org/api/end-to-end
[28] Telegram statistika. Šaltinis: https://www.statista.com/statistics/234038/telegram-messenger-mau-users/

ginklais ar žmonėmis. Tai yra didelė problema, su kuria susiduria ne tik teisėsaugos institucijos, bet taip pat tai liečia kiekvieno mūsų gyvenimą, nes lengvai pasiekiamas žmogus gali tapti tam tikros formos nusikaltimo liudininku ar net auka.

Tarptautinio bendradarbiavimo svarba kovojant su šiuolaikiniu organizuotu nusikalstamumu

Šiuolaikinio organizuoto nusikalstamumo globalizacija sudaro poreikį stiprinti tarptautinio bendradarbiavimo galimybes. Nusikaltimų tyrimai, prokuratūrų ir teismų veikla negali būti apribota nacionalinėmis sienomis ir atsiliekančiais teisiniais aspektais. Norint veiksmingai ir optimaliai kovoti prieš organizuotus nusikalstamumo tinklus reikia tobulinti ir supaprastinti teisinius mechanizmus, kurie apima ekstradicijos, tarpvalstybinės teisinės pagalbos, baudžiamųjų proceso perdavimo ir kitus teisiniu aspektu reikalingus klausimus. Vienodų kokybės standartų integracija baudžiamajame procese yra būtina, jog tarptautinio bendradarbiavimo kontekste, kriminalistiniai instrumentai būtų tokie pat efektyvūs kaip ir kitoje ES valstybėje narėje.

2021 m. Europolo sunkaus ir organizuoto nusikalstamumo grėsmės įvertinime yra pažymima, kad beveik 70% nusikalstamų tinklų veikia daugiau nei trejose valstybėse. Šiuolaikinės organizuotos nusikalstamos grupuotės veikia pagal legalaus verslo modelį ir yra labiau nei bet kada suinteresuotas vis didesnių pajamų gavimu, nepriklausomai kokia nusikalstama veikla užsiima. 80% organizuotų nusikalstamų grupuočių veikiančių ES viduje yra dalyvauja tokios nusikalstamose veiklose kaip prekyba narkotikais, ginklais, internetiniai ir kitos formos sukčiavimai, prekyba žmonėmis ir nelegalių migrantų gabenimu. 60% nusikalstamų tinklų pasižymi korupciniais ryšiais.[29] 2021 m. balandžio mėn. 2021–2025 m. ES kovos su organizuotu nusikalstamumu strategijoje pabrėžta, kaip svarbu ardyti organizuotas nusikalstamas struktūras, taikantis į grupes, keliančias didesnį pavojų Europos saugumui, ir į asmenis, esančius aukštesnėje nusikalstamų organizacijų hierarchijos pakopoje.[30]

Kovojant su šiuolaikiniu organizuotu nusikalstamumu yra gyvybiškai svarbu bendradarbiauti ES ir tarptautiniu lygmeniu. Šiai kovai yra reikalingas tarptautinis koordinavimas, informacijos ir išteklių dalijimasis, bendrų strategijų kūrimas. Tarptautinis koordinavimas yra svarbus informacijos dalijimosi ir bendrų strategijų kūrimo atžvilgiu. Informacijos dalijimasis yra kritiškai svarbus, nes organizuotų nusikalstamų grupuočių tinklai veikia skirtingose šalyse ir reikalinga informacija turi būti prieinama kiekvienai Europos Sąjungos narei. Šengeno erdvėje valstybės narės policijos pareigūnai turėtų turėti prieigą prie tokios pat informacijos, kokią gali gauti jų kolegos kitoje valstybėje narėje. Visapusiškas ir veiksmingas bendradarbiavimas turi tapti kasdienybe[31]. Bendros strategijos pagrindu reikia imtis efektyvių veiksmų, kurie apimtų modernių technologijų ir profesionalaus personalo teikiamas galimybes.

„Encrochat“ byloje padedant Europolui ir Eurojustui, Belgijos, Prancūzijos ir Nyderlandų teisminės ir teisėsaugos institucijos bendradarbiaudamos užblokavo šifruoto ryšio kanalą,

[29] 2021. Serious and organised crime threat assessment. Šaltinis: (https://www.europol.europa.eu/cms/sites/default/files/documents/socta2021_1.pdf

[30] Komisijos komunikatas Europos Parlamentui, Tarybai, Europos ekonomikos ir socialinių reikalų komitetui regionų komitetui „2021 – 2025 m. ES kovos su organizuotu nusikalstamumu strategija“. Šaltinis: https://www-infolex-lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1245030&qi=7007649

[31] Komisijos Komunikatas Europos Parlamentui ir Tarybai dėl penktosios ES saugumo sąjungos strategijos įgyvendinimo pažangos ataskaitos. Šaltinis: https://www-infolex-lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1273895&qi=7006916

ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

kuriuo naudojosi stambios organizuotos nusikalstamos grupuotės.[32] Uždarymo metu paslauga naudojosi 60 000 abonentų, iš kurių 90 proc. buvo nusikaltėliai. Užšifruota pranešimų sistema, kurią naudojosi organizuotos grupuotės, vadinosi EncroChat ir buvo labai populiari tarp nusikaltėlių visoje Europoje. Belgijos ir Olandijos teisėsaugos institucijos susipažino su EncroChat sistema 2019 m. vasario mėn., kai buvo pradėtas tyrimas susijęs su tarptautiniu narkotikų kontrabandos tinklu. Per operaciją buvo sulaikyti tūkstančiai nusikaltėlių ir konfiskuoti dešimtys milijonų eurų vertės turto, įskaitant narkotikus, ginklus. Ši operacija leido teisėsaugos institucijoms susipažinti su organizuoto nusikalstamumo struktūra ir veikla, kurios buvo nežinomos anksčiau. EncroChat byla parodė , kad teisėsaugos institucijos gali naudoti naująsias informacines technologijas, kad išaiškintų organizuotų grupuočių tinklus ir veikimo mechanizmus.

Operacija „Pollino“, kuri prasidėjo 2016 m., kai Nyderlandų policija pradėjo tyrimą dėl didelio kokaino kontrabandos tinklo, kurioje buvo įtraukti „Ndragheta“ nariai. „Ndrangheta“ yra galingiausia ir pavojingiausia Italijos mafija, kuri yra laikoma viena iš didžiausių ir įtakingiausių organizuotų nusikalstamų grupuočių pasaulyje.[33] Tyrimo metu buvo aptiktos 4 tonos kokaino ir šimtai kilogramų kitų narkotinės kilmės medžiagų.[34] Operacijos metu buvo sulaikyta daugiau nei 80 įtariamųjų, įskaitant aukšto rango „Ndrangheta“ mafijos narius. Tai yra didžiausia operacija prieš „Ndrangheta“ mafiją, kuri buvo vykdoma per pastaruosius kelis dešimtmečius. Vykdant ES teisminį ir policijos bendradarbiavimą išardyta didžiulė organizuota nusikalstama grupė. Jungtinė tyrimo grupė sudaryta iš Italijos, Vokietijos ir Nyderlandų teisėsaugos surengė Eurojusto koordinuojamą ir Europolo remiamą reidų dieną, po kurios 34 asmenys buvo nuteisti kalėti iš viso daugiau kaip 400 metų. Vėliau dar 12 asmenų buvo nuteisti kalėti daugiau kaip 173 metus, o keliose valstybėse narėse teismo procesai tebevyksta.[35]

Naujausias Eurojusto operatyvinės veiklos šioje srityje pavyzdys – parama, suteikta SKY ECC bylos tyrėjams ir prokurorams. Tyrėjai stebėjo, kaip nusikaltėliai naudojasi šifruotų ryšių priemone SKY ECC , ir gavo neįkainojamos informacijos apie šimtus milijonų žinučių, kuriomis keitėsi nusikaltėliai.[36] Taip buvo surinkta itin svarbi informacija apie daugiau nei šimtą suplanuotų didelio masto nusikalstamų operacijų, užkertant kelią potencialioms gyvybei pavojingoms situacijoms ir išvengiant galimų aukų. Demaskavus „EncroChat“, daugelis naudotojų perėjo prie populiarios SKY ECC platformos.[37]

Išvados

Šiuolaikinis organizuotas nusikalstamumas yra sudėtingas ir pastoviai kintantis reiškinys, su kuriuo susiduriama daugumoje pasaulio valstybių. Šių nusikalstamų grupuočių veikla apima daug sričių, tokias kaip prekyba žmonėmis, narkotikais, pinigų teisinės padėties keitimas, sukčiavimai. Šis reiškinys dominuoja ne tik realybėje, bet taip pat ir internetinėje erdvėje. Nusikaltėliai vis dažniau kūrybiškai pritaiko modernias technologijas savo nusikalstamoms

---

[33] Italian organized crime threat assessment. Europol. Šaltinis: https://www.europol.europa.eu/sites/default/files/documents/italian_organised_crime_threat_assessment_0.pdf
[34] Coordinated crackdown on Ndrangheta mafia in Europe. šaltinis: https://www.europol.europa.eu/media-press/newsroom/news/coordinated-crackdown-ndrangheta-mafia-in-europe
[35] KOMISIJOS KOMUNIKATAS EUROPOS PARLAMENTUI IR TARYBAI dėl penktosios ES saugumo sąjungos strategijos įgyvendinimo pažangos ataskaitos. Šaltinis: https://www-infolex-lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1273895&qi=7006916
[36] New major interventions to block encrypted communications of criminal networks. Šaltinis: https://www.eurojust.europa.eu/news/new-major-interventions-block-encrypted-communications-criminal-networks
[37] 2021 m. Eurojusto metinė ataskaita. Šaltinis: https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-annual-report-2021-lt.pdf

veikoms realizuoti ir taip apsunkina teisėsaugos darbą. Siekiant neatsilikti nuo kitų mokslų plačiai taikančių IT technologijas ir dirbančių su DI galimybių diegimu į savo sritis, kriminalistika privalo ne tik greitai ir sumaniai adaptuoti kitų mokslų pasiekimus ir per savo rekomendacijas pritaikyti juos nusikalstamų veikų aiškinimui, tyrimui ir prevencijai, bet ir parengti ilgalaikes strategijas šių technologijų panaudojimui moksliniams ir taikomiesiems tikslams. Didelės apimties duomenų analizė ir jų naudojimas DI priemonėmis gali padėti nustatyti ryšius tarp nusikaltimų ir juos darančių asmenų, įvertinti nusikaltimų riziką ir prognozuoti galimus ateities scenarijus.

Kriminalistikos mokslo plėtros poreikis į kibernetinę erdvę yra vis aktualesnis, nes vis daugiau nusikaltimo formų pasireiškia internetinėje erdvėje. Tai yra svarbu siekiant apsaugoti Europos Sąjungos piliečius nuo kibernetinių atakų ir kitų elektroninio nusikalstamumo formų variacijų. Reikia kurti naujus metodus, kurie padėtų teisėsaugos institucijoms efektyviai kovoti su kibernetinėje erdvėje esančia nusikalstama veikla. Tai reikalauja aukštos kvalifikacijos specialistų darbo, kurie technologinėmis priemonėmis gebėtų identifikuoti, analizuoti ir atkurti kibernetinius įvykius, susijusius su nusikalstamomis veikomis. Tai reikalauja nuolatinio šios srities specialistų ruošimo ir mokymo, naujų metodų ir technologijų kūrimo bei efektyvaus bendradarbiavimo tarp skirtingų teisėsaugos institucijų, tiek nacionaliniu, tiek tarptautiniu lygmeniu.

Norint veiksmingai kovoti su šiuolaikiniu organizuotu nusikalstamumu, labai svarbu teisminėms ir teisėsaugos institucijoms bendradarbiauti tarptautiniu lygmeniu ir bendromis pastangomis kurti strategijas, bei laikytis vieningos baudžiamojo proceso politikos. Organizuotas nusikalstamumas peržengia valstybių sienas, neturi geografinių apribojimu, todėl tarpvalstybinis bendradarbiavimas visomis įmanomomis galimybėmis yra gyvybiškai svarbus. Tai gali apimti daugybę veiksmų, tokių kaip informacijos mainai, išsamių kriminalinių tyrimų koordinavimas, bendrų standartų ir procedūrų diegimas. Tai reikalauja nuolatinio dialogo ir bendradarbiavimo tarp valstybių, teisminių ir teisėsaugos institucijų.

Literatūra

1. A Mysterious and Darkside of The Darknet: A Qualitative Study. Prieiga per internetą: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4167244
2. Automated detection of smuggled high-risk security threats using Deep Learning. N. Jaccard, T.W. Rogers, E.J. Morton, L.D.Griffin. Prieiga per internetą: https://ieeexplore.ieee.org/abstract/document/8267319
3. An Overview of Cryptography. Prieiga per internetą: https://d1wqtxts1xzle7.cloudfront.net/38411944/An_Overview_of_Cryptography.pdf?1438962673=&response-content-disposition=inline%3B+filename%3DAn_Ove_)
4. Coordinated crackdown on Ndrangheta mafia in Europe. Prieiga per internetą: https://www.europol.europa.eu/media-press/newsroom/news/coordinated-crackdown-ndrangheta-mafia-in-europe
5. Doc. Dr. Egidijus Kurapka. Kriminalistikos raidos Lietuvoje tendencijos: mokslas ir praktika. Prieiga per internetą: https://etalpykla.lituanistika.lt/fedora/objects/LT-LDB-0001:J.04~2000~1367178506602/datastreams/DS.002.0.01.ARTIC/content
6. Developments of theory of criminalistics and future of forensic expertology. Innovative essence of criminalistics and prospective directions of its development. Viktor Shevchuk. P. 165-170.
7. Deep Learning for A. I. Prieiga per internetą: https://dl.acm.org/doi/pdf/10.1145/3448250

8. Dark Web Data Classification Using Neural Network. Prieiga per internetą: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8979735/
9. Elon Musk among experts urging a halt to A.I. training. Prieiga per internetą: https://www.bbc.com/news/technology-65110030
10. Google CEO: A.I. is more important than fire or electricity. Prieiga per internetą: https://www.cnbc.com/2018/02/01/google-ceo-sundar-pichai-ai-is-more-important-than-fire-electricity.html
11. Italian organized crime threat assessment. Europol. Prieiga per internetą: https://www.europol.europa.eu/sites/default/files/documents/italian_organised_crime_threat_assessment_0.pdf
12. Komisijos komunikatas Europos Parlamentui, Tarybai, Europos ekonomikos ir socialinių reikalų komitetui regionų komitetui „2021 – 2025 m. ES kovos su organizuotu nusikalstamumu strategija“. Prieiga per internetą: https://wwwinfolex.lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1245030&qi=7007649
13. Komisijos Komunikatas Europos Parlamentui ir Tarybai dėl penktosios ES saugumo sąjungos strategijos įgyvendinimo pažangos ataskaitos. Prieiga per internetą: https://www-infolex-lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1273895&qi=7006916)
14. Lietuvos Respublikos Seimo 2015 m. gegužės 7 d. nutarimas Nr. XII-1682 „Dėl viešojo saugumo plėtros 2015-2025 metų patvirtinimo“. Prieiga per internetą: https://www-infolex-lt.skaitykla.mruni.eu/ta/332447
15. Lijia Chen, Pingping Chen and Zhijan Lin. Artficial Intelligence in Education: A review. Prieiga per internetą: https://ieeexplore.ieee.org/abstract/document/9069875
16. New Accountability Framework to use artificial intelligence in a transparent and accountable manner. Prieiga per internetą: https://www.europol.europa.eu/media-press/newsroom/news/new-accountability-framework-to-use-artificial-intelligence-in-transparent-and-accountable-manner
17. New major interventions to block encrypted communications of criminal networks. Prieiga per internetą: https://www.eurojust.europa.eu/news/new-major-interventions-block-encrypted-communications-criminal-networks
18. Organizuotas nusikalstamumas Europos Sąjungoje 2011 m. spalio 25 d. Europos Parlamento rezoliucija dėl organizuoto nusikalstamumo Europos Sąjungoje (2010/2309(INI)). Prieiga per internetą: https://www.infolex.lt/teise/default.aspx?id=1929&crd=295363&qi=7006681
19. Review Article. Recent Development in X-Ray Imaging Technology: Future and Challenges. Xiamgyu Ou, Xue Chen, Xianning Xu, Lilli Xie, Xiaofeng Chen, Zhongzhu Hong, Hua Bai, Xiaowang Liu, Qiushui Chen, Lin Li and Huanghao Yang. Prieiga per internetą: https://downloads.spj.sciencemag.org/research/2021/9892152.pdf
20. Shgiao Huang, Jie Yang, Simong Fong and Qi Zhao. Artificial intelligence in cancer diagnosis and prognosis: Opportunities and challenges. Prieiga per internetą: https://pubmed.ncbi.nlm.nih.gov/33907522/
21. The History of Artificial Intelligence. Prieiga per internetą: https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/
22. The Alan Turing Institute. Artificial intelligence in finance. Bonnie G. Buchanan, PhD, FRSA. Prieiga per internetą: https://www.turing.ac.uk/sites/default/files/2019-04/artificial_intelligence_in_finance_-_turing_report_1.pdf

23. Telegram šifravimas. Prieiga per internetą: https://core.telegram.org/api/end-to-end
24. Telegram statistika. Prieiga per internetą: https://www.statista.com/statistics/234038/telegram-messenger-mau-users/
25. Vidmantas Egidijus Kurapka, Snieguolė Matulienė, Eglė Bilevičiūtė, Janina Juškevičiūtė, Lina Novikovienė, Raimundas Jurka, Renata Valūnė. Kriminalistika. Teorija ir Technika. Mykolo Romerio Universitetas. 2012 m. Vilnius. Prieiga per internetą: https://repository.mruni.eu/handle/007/16854
26. What is Deep Learning? How It Works, Techniques and Applications – MATLAB and Simulink. Prieiga per internetą: https://www.mathworks.com/discovery/deep-learning.html
27. 2019 m. vasario 12 d. Europos Parlamento rezoliucija dėl visapusiškos Europos pramonės politikos dirbtinio intelekto ir robotikos srityje (2018/2088(INI)) Prieiga per internetą: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0081_LT.html
28. 2021 m. Europolo atliktame ES sunkių ir organizuotų nusikaltimų tyrime (angl. The European Union Serious And Organised Crime Threat Assessment, SOCTA) Prieiga per internetą: https://www.europol.europa.eu/publications-events/main-reports/socta-report
29. 2021 m. Eurojusto metinė ataskaita. Prieiga per internetą: https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-annual-report-2021-lt.pdf
30. 2021-2025 m. ES kovos su organizuotu nusikalstamumu strategija. Prieiga per internetą https://www.infolex.lt.skaitykla.mruni.eu/tp/default.aspx?id=1929&crd=1245030&qi=7007785)
31. 2023 m. sausio 17 d. LAT Nutartis. Baudžiamoji byla Nr. 2K-69-788/2023. Prieiga per internetą: https://www-infolex-lt.skaitykla.mruni.eu/tp/2137004

THE CONTRIBUTION OF FORENSIC SCIENCE TO THE FIGHT AGAINST ORGANIZED CRIME

Jurgita BALTRŪNIENĖ, Povilas KĖŽA
Mykolas Romeris University

Summary

One of the main tasks of forensic science is the implementation of crime investigation, detection and prevention methods in practical activities. Social changes, scientific and technical progress provide an opportunity to effectively use the obtained results for the implementation of forensic methods, tools, and recommendations in the fight against crime. The development of forensic science shows that the existence of new needs encouraged the satisfaction of specific needs. In this way, the divide between the increasing necessity and its non-fulfillment was reduced. Criminology, as an integral science, is dependent on the achievements of other sciences and their application to the needs of crime investigation. The connection between forensic science and current trends must be close and continuous. This process must allow not only to effectively fight against existing threats, but also to prevent events from happening and thus increase the safety of citizens in society.

Organized crime is one of the main threats to EU security. As Information Technology advances, the modus operandi of crimes is constantly changing. Technology opens unprecedented possibilities for us, but at the same time it also gives unprecedented flexibility to organized criminal groups. This article reviews the possible interactions between artificial intelligence and forensic science in the fight against modern organized crime and the current challenges in investigating and uncovering criminal acts. The

trends of organized crime and the possibilities of artificial application in investigating, solving, and preventing criminal acts are analyzed. In the fight against modern organized crime, new and effective methods are needed, it is necessary to improve the capabilities of law enforcement institutions and use new technologies that would help uncover and identify the activities of criminal organizations not only in the physical, but also in the virtual space. It must be understood that in this rapidly changing world, an effective fight against organized crime is possible only by combining the capabilities of professional personnel, advanced technologies, and international cooperation.

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

KOMUNALINIŲ TEKSTILĖS ATLIEKŲ TVARKYMO SISTEMOS YPATUMAI ZERO WASTE IDEALOGIJOS KONTEKSTE

Santa KLIMAVIČIŪTĖ
Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
E-mail nertine.dama@gmail.com
ORCID ID: 0009-0002-0709-9771

Erika MATULIONYTĖ-JARAŠŪNĖ
Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
E-mail erikam@mruni.eu
ORCID ID: 0000-0003-2087-2028

DOI: 10.13165/PSPO-23-33-14

Anotacija. *Atliekų apimčių augimas yra glaudžiai susiję su žmonių populiacijos augimu ir didėjančiu išsivystymo lygiu, kurio šalutinis produktas yra didėjančios atliekos. Nebūtų teisinga teigti, kad nėra galimybių efektyviai tvarkyti atliekas, tačiau tai susiję su papildomomis išlaidomis, kurios pakelia prekių ar paslaugų kainą. Pasaulyje sparčiai plinta ir visuomenės pripažinimo sulaukia zero waste ideologija ir iniciatyvos, susijusius su atsakinga gamyba ir vartojimu, rūšiavimu bei perdirbimu. Zero waste tai nulinė atliekų kultūra, kurios esminis tikslas - „nulis atliekų" buityje principas, apimantis ne tik tinkamą atliekų rūšiavimą, mažinimą, bet tuo pat ir skatinantis kitaip pažvelgti į vartojimą. Svarbiausia priemonė atliekų paruošimo pakartotinio naudojimo procese yra susidariusių atliekų rūšiavimas. Norint sėkmingai įgyvendinti zero waste tikslus, sprendimai turi būti priimami visais lygiais, pradedant nuo tarptautinės bendruomenės susitarimų, valstybių politikos formavimo ir baigiant kiekvienu vartotoju, kuris būdamas sąmoningas, savo kasdieniniame gyvenime priiminės atsakingus sprendimus, užtikrinančius aplinkai draugiškiausius pasirinkimus. Atliekų tvarkymas atliekamas atsižvelgiant į atliekų tvarkymo prioritetus bei esamus aplinkosauginius reikalavimus. Valstybių atliekų tvarkymo politikos kryptys pasirenkamos pagal valstybės siekiamus tikslus, tai gali būti sąlygota labiausiai pageidautinu sprendimu - prevencija arba mažiausiai pageidaujamu - šalinimas sąvartynuose. Atliekų tvarkymo srities teisės aktai įpareigoja atliekas tvarkyti taip, kad nebūtų daromas neigiamas poveikis aplinkai ar žmonių sveikatai. Tvarkant atliekas skatinama laikytis atliekų tvarkymo hierarchijos prioritetų, kurie skirstomi į atliekų tvarkymo hierarchijas 3R, 5R, 7R, 8,0R. Dažniausiai sutinkami 5R pagrindiniai principai: atsakingas vartojimas, atliekų kiekio mažinimas (prevencija), pakartotinis atliekų panaudojimas, atliekų perdirbimas, panaudojimas energijai gauti, atliekų šalinimas sąvartynuose. Vartotojas, kuris supranta darnaus vystymosi, žiedinės ekonomikos tikslus yra pakankamai sąmoningas rinktis prekes ar paslaugas, kurios yra labiau tausojančios aplinką, be to, jis supranta kiek yra svarbus atliekų tvarkymas ir valdymas. Lietuvoje tekstilės atliekos tvarkomos bendrai komunalinių atliekų srauto tendencijomis ir daugiausiai yra šalinamos sąvartyne arba deginamos, kas neatitinka 5R pagrindinių atliekų tvarkymo hierarchijos prioritetų principų. Reikia pripažinti, kad dėvėtos tekstilės surinkimo lygis yra tik 13 proc. viso Lietuvoje parduoto kiekio kas parodo, kad nepakankamai dėmesio yra skiriama tekstilės atliekų tvarkymo reguliavimui. Vertinant komunalinių atliekų tvarkymo sistemą Lietuvoje nustatyta, kad vis dar nepakankamas dėmesys skiriamas tekstilės atliekų tvarkymui. Tačiau reikia pasidžiaugti, kad Lietuva tekstilės atliekų tvarkyme imasi ryžtingų sprendimų ir bus siekiama iškeltų tikslų, kurie bus plačiau analizuojami straipsnyje.*

Pagrindinės sąvokos. *Zero waste, atliekų tvarkymo 3R, 5R, 7R, 8.0R hierarchijos, komunalinių tekstilės atliekų tvarkymas.*

Įvadas

Tendencingai didėjanti gyventojų populiacija sukuria didesnius veiklos mastus, atsiranda didesni vartotojiškumo poreikiai. Vykstant šiems procesams susidaro atliekos, kuriomis reikia rūpintis. Tinkamai nepasirūpinus atliekomis iškyla neigiami padariniai - tarša aplinkai, kuri

neretai įtakoja neigiamus padarinius žmonijai, klimato kaitai. Žmonių populiacijos didėjimas, vykdomos ūkinės veiklos plėtojimas tendencingai sukelia padarinius, žmonija priversta imtis įvairių priemonių siekiu keisti savo požiūrį, gyvenimo būdą ar elgseną aplinkosaugos atžvilgiu.

Gamtos išteklių naudojama daugiau nei pati gamta gali jų duoti, tačiau negeneruojami nauji pakankami kompensaciniai mechanizmai atstatyti atsiradusį skirtumą. Vienas iš būdų kontroliuoti atsirandančius aplinkosauginius padarinius tai prevencija, atsakingas vartojimas, samprata to kas daroma ir ko siekiama. Teigiama, kad daugėjant atliekų kiekiui, principingai didėja ir sąvartynai, dėl ko gana svarbus vaidmuo tenka gyventojams ir valstybėms. Vieni gyvena atsakingu požiūriu į atliekų susidarymą ir jų tvarkymo būdą, kiti teršia savo ir kitų aplinką, nekreipiant dėmesio į atsakomybės ribas ar aplinkosauginius principus. Atliekų tvarkymo sistema tūri būti vykdoma atsakingai, nuosekliai, savalaikiai atsižvelgiant į keliamus aplinkosauginius reikalavimus ar kitus veiksnius įtakojančius atliekų susidarymą.

Zero waste samprata reiškia atsakingą gamybą ir vartojimą, rūšiavimą bei perdirbimą. Atliekų tvarkymo ypatumai ES ir nacionalinės teisės lygmeniu įgyvendinami atliekų tvarkymo hierarchijos piramidės principų eiliškumu, kurie atitinka *zero waste* 5R metodus.

Pastaruoju metu požiūris į minėtas koncepcijas iš esmės keičiasi, todėl šiuo darbu siekiama papildyti ir patikslinti iki šiol aptartas *zero waste* esmines principines nuostatas, komunalinių tekstilės atliekų tvarkymo teisinio reguliavimo praktines problemines įžvalgas, bei įvertinti ar nacionalinėje teisėje yra pakankamas tokių atliekų tvarkymo teisinis reguliavimas ir ar įgyvendintos teisinės nuostatos atitinka *zero waste* ideologijos sampratos požiūrį. Taip pat aktualu nustatyti ar nacionalinėje teisėje atliekų tvarkymo hierarchijos eiliškumas pilnai realizuoja komunalinių tekstilės atliekų tvarkymo ypatumus.

Zero waste pradininkė Bea Johnson, palčiai išplėtojo *zero waste* ideologijos koncepciją, sukūrė atliekų nereikalaujančius 5R metodus ir įkvėpė milijonus žmonių rinktis *zero waste* gyvenimo būdą. Moksliniuose straipsniuose D. Bereikienė, E. Štareikė atskleidė bei papildė Direktyvos 2008/98/EB dėl atliekų preambulėje suformuluotos pamatinės atliekų tvarkymo nuostatos aiškinimą. Tran, Binh Yen atliko išsamų tyrimą nagrinėjant *zero waste* ideologijos sampratą, metodų taikymo galimybes Suomijoje, įvardijo priežastis nesėkmingo metodų įgyvendinimo atskiruose etapuose, pateikė alternatyvas.

Šio darbo objektas – komunalinių tekstilės atliekų tvarkymo sistemos ypatumai *zero waste* ideologijos kontekste.

Tyrimo problema: *Zero Waste* principinių metodų bei komunalinių (tekstilės) atliekų tvarkymo sistemos problematika Lietuvoje.

Tyrimo tikslas: *Zero Waste* nulinės atliekų prevencijos taikymo ypatumai komunalinių (tekstilės) atliekų tvarkyme.

Tyrimo uždaviniai:

1. Aptarti *zero waste* sampratą, atliekų tvarkymo hierarchijų principines nuostatas.
2. Įvertinti komunalinių tekstilės atliekų teisinio reguliavimo bei praktinius probleminius aspektus *zero waste* kontekste.

Tyrimo metodai: Siekiant atskleisti šio darbo temos problematiką bei išnagrinėti tyrimo dalyką taikyti teoriniai lyginamasis, sisteminis, loginis (analitinis) tyrimo metodai. Taikant teorinį lyginamąjį metodą lyginami Lietuvos bei užsienio valstybių autorių mokslinių šaltinių įžvalgos, koncepcijos. Nagrinėti teisiniai dokumentai analizuojami naudojant loginį, sisteminį ir dokumentų analizės metodus. Dokumentų analizės metodas taikytas nagrinėjant nacionalinės bei ES teisės aktus, mokslinės literatūros koncepcijas. Taikant šį metodą nustatyti komunalinių tekstilės atliekų teisinio reglamentavimo ypatumai, įgyvendinimo trūkumai, problematika. Taip pat gautos susistemintos žinios apie komunalinių atliekų tvarkymo teisinio reglamentavimo sistemos ypatumus, pagrindinius atliekų tvarkymo hierarchijos metodus *zero waste* ideologijos

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

koncepcijos sampratas. Loginis (analitinis) metodas formuluotos ir pateiktos išvados, pasiūlymai.

Zero waste samprata, atliekų tvarkymo hierarchijų nuostatų ypatumai

Zero waste nulinė atliekų kultūra aiškinama kaip „gyvenimas be atliekų prasideda nuo pokyčių kasdienybėje ir pačių gyventojų pastangų: saikingo vartojimo, sąmoningų pasirinkimų, suvokimo“[1]. *Zero waste* koncepciją prieš beveik dešimtmetį išpopuliarino JAV gyvenanti prancūzė Bea Johnson, kurios vertinimu, „Namai be atliekų yra gyvenimo būdas, ir, jei norime taip gyventi ilgesnį laiką, privalome užsitikrinti, kad jis būtų įmanomas ir pritaikomas prie mūsų dabartinės realybės“[2]. B. Johnson sukūrė nereikalaujančių atliekų 5R metodą, publikuotą jos knygoje „Namai be atliekų“, kur teigiama, kad „nepriklausomai nuo vietovės kiekvienas gali taikyti 5R metodą, kiekvienas gali išmokti pasakyti ne (atsisakyti); gali atsisakyti daiktų, kurių nereikia, kad galėtų naudotis kiti (sumažinti); gali pakeisti vienkartinius daiktus daugkartiniais, taisyti, pirkti naudotus (pakartotinai naudoti) bei kiekvienas turi galimybę naudotis tam tikro tipo perdirbimo priemonėmis (perdirbti) ir kiekvienas gali įdiegti savo poreikius atitinkančią komposto sistemą (supūti)“[3].

Vienas didžiausių bendruomenių tinklų Tarptautinis Zero waste aljansas (toliau - TZWA), kuriame aktyviai skelbiami *zero waste* ideologijos standartai, politika, geriausia praktika tikslinėms auditorijoms, kai visuomenės švietimo ir praktinio *zero waste* principų taikymo pagalba siekiama sukurti pasaulį be atliekų. Jis įsteigtas skatinti teigiamas alternatyvas sąvartynams ir deginimui, didinti bendruomenės informuotumą apie socialinę ir ekonominę naudą, kurią galima gauti, kai atliekos laikomos ištekliais, kurių pagrindu galima kurti darbo vietas ir verslo galimybes. Aljanso vertinimu, pateikiamos technologijos, metodai, reikalingos norint pasiekti nulinį atliekų kiekį. Taip pat šia veikla inicijuojami moksliniai tyrimai, visuomenės informavimas, kad būtų skatinamas „nulinių atliekų" principas, stiprinami gebėjimai veiksmingai įgyvendinti „nulinių atliekų" principą, nustatomi standartai, pagal kuriuos vertinami „Nulinių atliekų" pasiekimai. Vykdoma veikla vyksta tarptautinių, nacionaliniu ir vietos lygmeniu, kuri įtraukia visus visuomenės sektorius. TZWA vertinimu, "nulinės atliekos" samprata tai „etiška, ekonomiška, veiksminga ir perspektyvi koncepcija, pagal kurią žmonės gali pakeisti savo gyvenimo būdą ir įpročius taip, kad jie imituotų natūralius ciklus, o visos išmestos medžiagos taptų ištekliais, kurie gali būti naudingi kitiems. Siūloma „nulinė atliekų“ tvarkymo piramidė pasiekiama veiklos principais, o tvarus išteklių valdymas apima tikslus t. y. gamintojo atsakomybė - pramoninė gamyba ir dizainas; bendruomenės atsakomybė - vartojimas, naudojimas, šalinimas; politinė atsakomybė - suburti bendruomenės ir pramonės atsakomybę į darnią visumą[4]. TZWA siūloma *zero waste* atliekų tvarkymo hierarchija 8.0R, kuri apibūdina politikos krypčių ir strategijų, kuriomis remiama „nulinių atliekų" sistema, taip pat eiga nuo didžiausio ir geriausio ir iki mažiausio medžiagų naudojimo, kuri parengta taip, kad ją būtų galima taikyti visoms auditorijoms, taip pat išsamiai aiškinama tarptautiniu mastu pripažinta 3R skatinama politika, veikla ir investicijos hierarchijos viršuje. Pateikiamos gairės tiems, kurie nori kurti sistemas ar gaminius, kurios priartina prie nulinio

[1] „Nulis komunalinių atliekų į sąvartyną? Šio tikslo siekia ir Klaipėda“, Delfi, https://www.delfi.lt/projektai/atlieku-kultura/nulis-komunaliniu-atlieku-i-savartyna-sio-tikslo-siekia-ir-klaipeda-87162655.
[2] Beat Johnson, *Namai be atliekų*, (Dvi tylos, 2018), 20.
[3] „Zero waste home“, https://www.facebook.com/ZeroWasteHome.
[4] „Who is the Zero Waste International Alliance (ZWIA)?”, Zero Waste International Alliance, https://zwia.org/.

atliekų kiekio. Naudotojai skatinami kurti politiką ir veiksmus pradedant nuo hierarchijos viršūnės[5]. 8.0R atliekų tvarkymo hierarchijos piramidė pateikiama 1 pav.

1 pav. 8.0R atliekų tvarkymo hierarchijos piramidė[6]

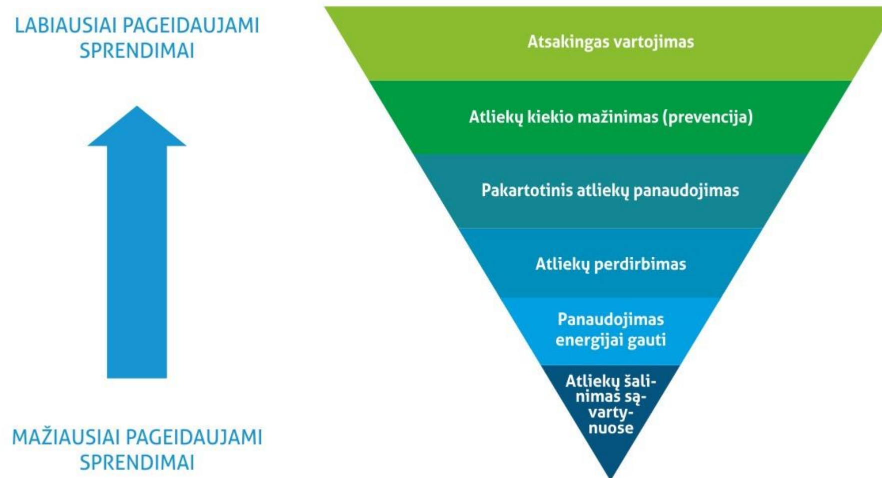
Nagrinėjant analizuojamos *zero waste* hierarchijos 8.0R atliekų tvarkymo hierarchijos piramides pakopinius žingsnius nurodyti paaiškinimai: Rtehink/Redesign - uždaro ciklo modelis, Reduce - minimalizmas, Reuse - pakartotinumas, Recycle/Compost - perdirbimas, kompostavimas, Material recovery - pakartotinis naudojimas, Residuals Management - atliekų rūšiamas, Unacceptable - nepriklausomybė[7]. *Zero waste* hierarchijos 8.0R atliekų tvarkymo hierarchijos piramidė pateikiama kaip vienas aukščiausių atliekų tvarkymo lygmuo. Tai būtų siekiamybė valstybės, kuri siekia būti vertinama kaip pilnai valdanti atliekų tvarkymo procesą ir įgyvendinanti *zero waste* principus.

Europos Sąjungoje vienas esminių atliekų tvarkymo teisinis pagrindas įtvirtintas Europos Parlamento ir Tarybos direktyvoje 2008/98/EB dėl atliekų (toliau - direktyvoje 2008/98EB), kurioje pateikiamas atliekų prevencijos ir tvarkymo srityje taikomas prioritetų eiliškumas. Toks atliekų tvarkymo modelis, kaip buvo šiame straipsnyje analizuotas B. Johnson modelis atitiktų 5R metodą. ES atliekų tvarkymo piramidė taip pat pateikiama penkių pakopų žingsniuose t. y. „atliekų hierarchija nustatyta atliekų tvarkymo ir šalinimo prioritetų tvarka“[8]. Direktyvoje 2008/98/EB atliekų valdymui nustatytas tikslas: „saugoti aplinkos ir žmonių sveikatą, pabrėžiant tinkamo atliekų tvarkymo, naudojimo ir perdirbimo būdų svarbą mažinant išteklių poreikį ir gerinant jų naudojimą, nustatant atliekų hierarchiją[9]. ES atliekų tvarkymo hierarchijoje vaizduojama viršutinėje dalyje labiausiai pageidaujamos priemonės, o apačioje pateikiamas atliekų šalinimas, kuris vertinamas kaip kraštutinė atliekų tvarkymo priemonė. Šios piramidės žingsniais nustatyta atliekų tvarkymo ir šalinimo tvarka: prevention (prevencija), preparing for re-use- (pakartotinis naudojimas); recycling (perdirbimas); recovery (kitas naudojimas); disposal- (šalinimas)[10]. Taikant tokius žingsnius mažėja atliekų kiekiai

[5] „Who is the Zero Waste International Alliance (ZWIA)?”, Zero Waste International Alliance, https://zwia.org/.
[6] Who is the Zero Waste International Alliance (ZWIA)?”, Zero Waste International Alliance, https://zwia.org/.
[7] „Who is the Zero Waste International Alliance (ZWIA)?”, Zero Waste International Alliance, , https://zwia.org/zwh/.
[8] „Atliekų pagrindų direktyva”, Europos Komisija, https://environment.ec.europa.eu/topics/waste-and-recycling/waste-framework-directive_lt#ref-2023-wfd-revision.
[9] „ES atliekų valdymo teisė“, EUR-Lex, https://eur-lex.europa.eu/LT/legal-content/summary/eu-waste-management-law.html.
[10] „Atliekų hierarchija“, EUR-Lex, https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=LEGISSUM:waste_hierarchy.

ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

sąvartynuose, pinga atliekų surinkimo ir tvarkymo kaštai, tausojami gamtiniai ištekliai. ES atliekų tvarkymo hierarchijos piramidė pateikiama 2 pav.



2 pav. ES atliekų tvarkymo hierarchijos piramidė[11].

Lietuvoje atliekų tvarkymo reguliavimas įgyvendintas LR atliekų įstatymo nuostatose 3 straipsnyje, kuriame nurodoma, kad jis vykdomas teisės aktų nustatyta tvarka pagal atliekų tvarkymo prioritetus (principus), taip pat atkreipiant dėmesį ir į esamus aplinkosauginius reikalavimus. Atliekų tvarkymo politikos kryptys taip pat sąlygojančios grįstai labiausiai pageidaujamais bei mažiausiai pageidaujamais sprendimais. Pažymėtina, kad „atliekų tvarkymo sektoriaus teisės aktai įpareigoja atliekas tvarkyti taip, kad nebūtų daromas neigiamas poveikis aplinkai ar žmonių sveikatai. Tvarkant atliekas skatinama laikytis atliekų tvarkymo hierarchijos prioritetų, kuriuos sudaro pagrindiniai principai: atsakingas vartojimas, atliekų kiekio mažinimas (prevencija), pakartotinis atliekų panaudojimas, atliekų perdirbimas, panaudojimas energijai gauti, atliekų šalinimas sąvartynuose.[12]

Analizuojant atliekų tvarkymo hierarchijos principus vertinama, kad „esmė išryškėja per esminius atliekų tvarkymo krypties principus, nukreipiančius į atliekų tvarkymo žingsnių etapus orientuotus į 3R į aplinkosaugos aspektus, 5R į išsaugojimo aspektus, 7R į tvarumo aspektus atliekų tvarkymo hierarchijos piramidėje“[13]. 3R aplinkosaugos principai veikia kartu, kad sumažintų susidarančių atliekų kiekį ir pagerintų atliekų tvarkymo procesą. Iš esmės 3R koncepcija apima veiksmų seką, kaip tinkamai tvarkyti atliekas, kurių prioritetas *Reduce* (mažinti atliekų susidarymą), po to – *Reuse* (pakartotinai naudoti), o tada – *Recycle* (perdirbti), kad prieš išmetant atliekas į sąvartyną joms būtų suteikta antra galimybė[14]. 5R aplinkosaugos principų koncepcija apima (1)„*Refuse*- (atsisakyti), skatina atsisakyti pirkti produktus, kurie gali paveikti aplinką, (2)*Reduce* (mažinti) skatina išmokti mažinti vartotojiškumą produktų bei kitų gamtinių išteklių resursus, kad būtų taupomi ateinančioms kartoms, (3) *Reuse* (pakartotinis

[11] Atliekų hierarchija“, EUR-Lex, https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=LEGISSUM:waste_ hierarchy.
[12] „Atsakingas atliekų tvarkymas”, Orlen Lietuva, žiūrėta 2023 m. kovo 30 d., https://www.orlenlietuva.lt/LT/SR / Environmental/visuomen%C4%97s%20%C5%A1vietimas/Puslapiai/ Atsa-kingas-atliek%C5%B3-tvarkymas.aspx.
[13] „Waste4Change Supports 3R (Reduce-Reuse-Recycle) Green Concept!”, Waste 4change, https://waste4chan ge.com/blog/waste4change-supports-3r-reduce-reuse-recycle-green-concept/.
[14] „Waste4Change Supports 3R (Reduce-Reuse-Recycle) Green Concept!”, Waste 4change, https://waste4chan ge.com/blog/waste4change-supports-3r-reduce-reuse-recycle-green-concept/.

naudojimas), numatyta pakankamai daug įvairių būdų kaip galima panaudoti nenaudojamus ar senus daiktus, (4) *Repurpose* (atnaujinti, keisti, pakeisti), kūrybiškumo aspektas atnaujinant ar keičiant daiktų paskirtį, (5) *Recycle* (perdirbti). Jei nėra galimybės laikytis ankščiau pateiktų, tai galima pasirinkti ir 4R išsaugojimo modelį, galima rinktis perdirbimo procesą“[15]. 7R koncepcija apima: (1) *Rethink* (permąstyti); (2) *Refuse* (atsisakyti); (3) *Reduce* (sumažinti) geriausia šiukšlė yra ta, kuri nesusidaro. Pakartotinai naudoti galima viską; (4) *Reuse* (naudoti pakartotinai); (5)*Repair* (pataisyti, atkurti) sugedus taisyti ir naudoti iš naujo, tokiu būdu taupoma planetos išteklius. (6) *Recycle* (perdirbti) padeda sulėtinti sąvartynų augimą ir pakartotinai panaudoti išteklius. (7) *Rot* (kompostuoti) – nes jei negalima perdirbti, gal galima kompostuoti.[16]

Vienas vertinimų atsižvelgiant į aptartus autorės B. Johnson 5R metodus 2019 m. atliktas Suomijoje. Vertinime pristatyta *zero waste* idėja, pagrindiniai šios idėjos principai. Vertinimo metu siekta išsiaiškinti kokios atliekos susidaro visuomenės gyvenime, bei kaip suprantama ar kaip laikomasi *zero waste* idėjos gyvenimo būdo principinių nuostatų, siekiama nustatyti priežastis, kodėl nepasirenkama šios idėjos principinių idėjų. Tyrime nagrinėjamos galimos *zero waste* alternatyvos.[17]

Nagrinėjant pateiktus atliekų tvarkymo krypties principus 3R, 5R, 7R, 8.0R, pateikiama atliekų tvarkymo sistemos svarba, aktualumas, identifikuojami veiksniai įtakojantys neigiamus aplinkosauginius pokyčius. Nustatomi kriterijai gebantys panaikinti padarytą žalą arba kriterijai ko vengti, kad tokia žala neatsirastų. Pažymėtina, kad „žingsnių kryptis orientuotos į atkuriamąjį, kompensacinį mechanizmą mūsų aplinkai, dėl žmonijos vartotojiškumo, neatsakingos veiklos ar kitų žalą aplinkai darančių veiksnių“[18].

Komunalinių tekstilės atliekų tvarkymo teisinio reguliavimo ypatumai, problematika

„Vystantis pramonei, augant vartojimui ES valstybėms, Lietuvai, aktualesni tampa tvaraus atliekų tvarkymo klausimai. Valstybės įvairiais reguliavimo instrumentais įsipareigoja sumažinti atliekų srautų susidarymą, siekia taupiai naudoti gamtinius išteklius. Pastebima, kad atliekų paruošimas pakartotiniam naudojimui realizuotinas tinkamai rūšiuojant atliekas. Susidariusios atliekos turi būti vertinamos kaip gamybos ir energijos ištekliai. Valstybė turi sudaryti palankias ir motyvuojančias teisines prielaidas dalyvauti atliekų rūšiavime tiek atliekas tvarkančias įmones, tiek visuomenę“[19]. Be kita ko „siekiant, kad komunalinės atliekos būtų tvarkomos efektyviai ir rezultatyviai, turi būti mažinami susidarančių atliekų kiekiai, jos tinkamai rūšiuojamos, o po rūšiavimo likusios – sutvarkomos efektyviausiu ir mažiausiai aplinkai žalingu būdu“[20]. J. Bivainio ir V. Podgaiskytės vertinimu „Atliekų tvarkymo ciklas

[15] „3 R’s of Environment – Reduce, Reuse, Recycle | Waste Management”, Earth Reminder for everyone, https://www.earthreminder.com/3rs-of-environment-reduce-reuse-recycle/.
[16] „7 Steps on the journey to net-zero“, Boxfish, https://www.weareboxfish.com/7-steps-on-the-journey-to-net-zero/.
[17] „Yen Tran, “Zero waste lifestyle”, Tampere University of Applied Sciences September (2019):1-2. https://www.theseus.fi/handle/10024/261946.
[18] „Waste4Change Supports 3R (Reduce-Reuse-Recycle) Green Concept!”, Waste 4change, https://waste4change.com/blog/waste4change-supports-3r-reduce-reuse-recycle-green-concept/.
[19] Daiva Bereikienė, Eglė Štareikė, „Atliekų rūšiavimo teisinio reguliavimo aspektai“, Public Security and Public Order Research journal, 03/30 (2013): 45, file:///C:/Users/VAITIPS/Downloads/%23%23common.file.naming Pattern%23%23%20(14).pdf.
[20] „Komunalinių atliekų tvarkymas“, Valstybės kontrolė, file:///C:/Users/VAITIPS/Downloads/komunaliniu-atlieku-tvarkymas%20(3).pdf. https://www.valstybeskontrole.lt/LT/Product/24155/komunaliniu-atlieku-tvarkymas.

pagal darnaus vystymosi principus yra išskiriamas į 5 fazes: atliekų susidarymas, atliekų rūšiavimas susidarymo vietoje, surinkimas ir vežimas, atliekų naudojimas ir atliekų šalinimas.<...> Lietuvos gyventojams vis dar trūksta žinių ir motyvacijos rūšiuoti buitines atliekas, reikėtų skatinti gyventojų suinteresuotumą rūšiuoti buitines atliekas ir naudotis visuomenės informavimo priemonėmis informuojant apie atliekų tvarkymo sistemos organizavimą“[21].

Valstybinio atliekų prevencijos ir tvarkymo 2021–2027 metų plano bei 2023 m Valstybės kontrolės audito ataskaitoje pateiktais duomenimis nustatyta, kad nacionalinėje teisėje nėra užtikrinta efektyvi atliekų tvarkymo infrastruktūra, nėra pakankamai įgyvendinanti *zero waste* principinių nuostatų atitiktį tvarkant susidariusius atliekų srautus (jų atskiras rūšis), taip pat išlieka ir probleminis antrinis atliekų rūšiavimas, perdirbimas. Lietuvoje esminių minėtų problemų židinys ir toliau išlieka komunalinių atliekų, ypatingai tekstilės atliekų teisinio reguliavimo bei praktinio įgyvendinimo probleminiai sprendiniai.

Nagrinėjant Valstybinio atliekų prevencijos ir tvarkymo 2021–2027 metų planą nustatyta, kad Lietuvoje nepakankamas komunalinių atliekų rūšiavimas bei perdirbimas, nes arba nėra pakankamų pajėgumų arba turima įranga nėra pajėgi (reikalaujanti modernizavimo) siekiu perdirbti tam tikras antrines žaliavas ar jų frakcijas. Pažymėtina, kad dėl šių esminių trūkumų nėra tinkamos, efektyvios sistemos pasiekti efektyvesnių rezultatų. Analogiškai teigiama 2022 m. Valstybės kontrolės veiklos audito ataskaitoje, kurioje nustatyti esminiai trūkumai, sąlygojantys nepakankamą atliekų tvarkymo įgyvendinimą, kaip pavyzdžiui, nepakankamas informuotumas visuomenei (siekia 33 proc.), skirtingas organizuojamų komunalinių atliekų tvarkymo procesas įtakoja skirtingus rinkliavos dydžius, atliekų turėtojai nemotyvuoti rūšiuoti; dėl netinkamo atliekų rūšiavimo (33 proc.) mišriose komunalinėse atliekose esančių pakuočių, už kurias turi mokėti GI bet moka gyventojas; nesudarytos sąlygos visiems pasinaudoti komunalinių atliekų surinkimo paslauga; trūksta didelių gabaritų atliekų surinkimo aikštelių[22].

Nagrinėjant Valstybinio atliekų prevencijos ir tvarkymo 2021-2027 metų planą nustatyta, kad „dėvėtos tekstilės surinkimo lygis Lietuvoje žemas, nes atskirai surenkama vos 13 proc. viso Lietuvoje parduoto kiekio, o taip pat pagrindinės su tekstilės atliekų surinkimo sistema susijusios problemos, neužtikrinta pakankama atskiro tekstilės surinkimo infrastruktūra, nepatogi tekstilės surinkimo infrastruktūra regionuose, be to gyventojai nemoka teisingai rūšiuoti tekstilės atliekų, ir nemotyvuojami rūšiuoti tekstilės atliekų, be to, nepakankamas ekologinis švietimas, trūksta susistemintos koncentruotos informacijos apie tokių tekstilės atliekų rūšiavimą, surinkimą, infrastruktūrą ir teikiamas paslaugas. Nustatyta, kad įmonės dažniausiai gamybines tekstilės atliekas sumaišo su MKA. Taip pat pastebėta, kad ne visos atliekos, kurios galėtų būti surenkamos atskirai, surenkamos atskirai“[23]. Taip pat papildant pateikiamos tokios netinkamo tekstilės atliekų rūšiavimo priežastis: „nemaža dalis nebetinkamų naudoti tekstilės gaminių išmetami į komunalinių atliekų konteinerius arba paliekami greta jų, nes gyventojai nežino, kur juos dėti arba nenori tam gaišti laiko“[24].

---

[21] Paulė Tamašauskaitė, Jonas Volungevičius, „Antrinių žaliavų surinkimo sistemos apkrova Lietuvoje“, Geografijos metraštis 52, (2019):, 13, https://www.researchgate.net/profile/Jonas-Volungevicius-.2/publication/338361119_Load_of_Secondary_Raw_Material_Collection_System_in_Lithuania/links/5e85af714585150839b6151f/Load-of-Secondary-Raw-Material-Collection-System-in-Lithuania.pdf.

[22] „Komunalinių atliekų tvarkymas“, Valstybės kontrolė, https://www.valstybeskontrole.lt/LT/Product/24155/komunaliniu-atlieku-tvarkymas.

[23] „Valstybinio atliekų prevencijos ir tvarkymo 2021-2027 metų planas“, TAR, https://am.lrv.lt/lt/veiklos-sritys-1/atliekos/valstybinio-atlieku-prevencijos-ir-tvarkymo-2021-2027-metu-planas.

[24] „Tekstilės atliekos: ką turi žinoti gyventojai?“, Lietuvos Respublikos aplinkos ministerija, https://am.lrv.lt/lt/naujienos/tekstiles-atliekos-ka-turi-zinoti-gyventojai.

Lietuvoje vykdomas tekstilės atliekų surinkimas neužtikrina ir pakartotinio tekstilės atliekų naudojimo bei perdirbimo“[25]. Vertinant perdirbimo tekstilės statistiką matyti, kad „didžiausia dalis – 34,7 proc. – tekstilės atliekų pašalinta sąvartynuose, 30,8 proc. – sudeginta, panaudota energijai gauti, 8,8 proc. jų perdirbta – sukompostuota, 1 proc. – panaudota pakartotinai, 4,6 proc. – išvežta“[26], o 2021 m. dinamikos duomenimis „nepavojingųjų atliekų sąvartynuose buvo pašalinta 14 418,446 t surinktų atliekų iš jų <...> 2519,844 t – tekstilės gaminiai <...> bei 2021 m. pašalinta po apdorojimo likusių 2674,507 t atliekų <...> 2195,217 t – kiti tekstilės gaminiai.“[27]

Pažymėtina, kad „pakartotinis drabužių naudojimas padeda ne tik išvengti taršos (dauguma drabužių sunkiai suyra), bet ir sutaupyti daug energijos ir kitų išteklių naujų drabužių gamyboje. Drabužiai, kurių negalima pakartotinai naudoti, gali būti perdirbami į kitus gaminius. Atliekų deginimas arba šalinimas sąvartynuose yra paskiausias pasirinkimas, kai išnaudotos aukščiau minėtos galimybės“[28].

2020-03-11 Europos Komisijos Naujas žiedinės ekonomikos veiksmų planas nustatė įpareigojimą tekstilės atliekų tvarkymui: „parengtos gairės, kaip pasiekti aukštą tekstilės atliekų rūšiuojamojo surinkimo rodiklį, kurį valstybės narės turi pasiekti iki 2025 m.“[29] Bus vertinama kaip įpareigojimai nuo 2025 m. sausio 1 d. ir stebima, kad tekstilės atliekos būtų surenkamos atskirai.

Nagrinėjant Lietuvos tekstilės atliekų tvarkymo politikos kryptingumą nustatyta, kad Valstybinio atliekų tvarkymo 2014–2020 m. plane (toliau - VAT 2014-2020 planas) įtvirtinta nuostata „parengti aplinkos ministro 2010 m. gruodžio 16 d. įsakymo Nr. D1-1004 „Dėl Reikalavimų regioniniams ir savivaldybių atliekų tvarkymo planams patvirtinimo“ pakeitimo projektą – įpareigoti įtraukti tekstilės ir pavojingųjų atliekų surinkimo priemones į regioninius ir (ar) savivaldybių atliekų tvarkymo planus“[30]. Analizuojant VAT 2014-2020 planą nustatyta, kad toks projekto pakeitimas iniciuojamas nuo 2014 metų, pažymėtina, toks projekto pakeitimas Regioninių ir savivaldybių atliekų prevencijos ir tvarkymo planų sudėties ir turinio, rengimo ir skelbimo reikalavimuose įgyvendinamas nuo 2022-08-20.

Nustatyta, kad Regioninių ir savivaldybių atliekų prevencijos ir tvarkymo planų sudėties ir turinio, rengimo ir skelbimo reikalavimuose buvo įtraukta nuostata, kad „informacija apie komunalinių atliekų tvarkymo paslaugos prieinamumą registruotiems komunalinių atliekų turėtojams pagal <...> aprūpinimą <..> tekstilės atliekų rūšiavimo jų susidarymo vietose priemonėmis.“[31] Priimtas ir teisiškai reglamentuotas sprendimas atskirai pradėti vykdyti tekstilės atliekų tvarkymo politiką, aprūpinant tokį rūšiavimo sistemą būtinomis priemonėmis

---

[25] „Šiuo metu Lietuvoje nesukurta gyventojų lūkesčius tenkinanti naudotos tekstilės surinkimo ir tvarkymo sistema. Vykdomas tekstilės atliekų surinkimas neužtikrina ir pakartotinio tekstilės atliekų naudojimo bei perdirbimo“, Tekstilės tvarkymas, https://tekstilestvarkymas.lt/tekstiles-atlieku-tvarkymas-lietuvoje/.

[26] „Valstybinio atliekų prevencijos ir tvarkymo 2021-2027 metų planas“, TAR, https://am.lrv.lt/lt/veiklos-sritys-1/atliekos/valstybinio-atlieku-prevencijos-ir-tvarkymo-2021-2027-metu-planas.

[27] „Komunalinių atliekų tvarkymas“, Valstybės kontrolė, https://www.valstybeskontrole.lt/LT/Product/24155/komunaliniu-atlieku-tvarkymas.

[28] „Šiuo metu Lietuvoje nesukurta gyventojų lūkesčius tenkinanti naudotos tekstilės surinkimo ir tvarkymo sistema. Vykdomas tekstilės atliekų surinkimas neužtikrina ir pakartotinio tekstilės atliekų naudojimo bei perdirbimo“, Tekstilės tvarkymas, https://tekstilestvarkymas.lt/tekstiles-atlieku-tvarkymas-lietuvoje/.

[29] „Naujas žiedinės ekonomikos veiksmų planas, kuriuo siekiama švaresnės ir konkurencingesnės Europos“, EUR-Lex, žiūrėta 2023 m. balandžio 23 d., https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A52020DC0098 .

[30] „Dėl Valstybinio atliekų tvarkymo 2014–2020 m. plano įgyvendinimo“, TAR, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d013b670796811e4a8a7b07c53dc637c?jfwid=gvy9zieid.

[31] „Dėl Valstybinio atliekų tvarkymo 2014–2020 m. plano įgyvendinimo“, TAR, žiūrėta 2023 m. balandžio 12 d., https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d013b670796811e4a8a7b07c53dc637c?jfwid=gvy9zieid.

ISSN 2029-1701
ISSN 2335-2035 (Online)

t. y. konteineriais, bei atsirado nuostata, kad „atliekų prevencijos ir tvarkymo strategijos dalyje turi būti <...> nustatytos užduotys plano vykdymo laikotarpiu <...> atliekų prevencijos ir tvarkymo priemonės, aprašymas ir pasirinkimo pagrindimas, įskaitant šias priemones: užtikrinančias, kad sąvartynuose nebūtų šalinamos perdirbti ar kitaip panaudoti tinkamos atliekos, <...> tekstilės ir kitų buityje susidarančių atliekų prevenciją“ [32]. Įgyvendinamas norminis pagrindas tekstilės atliekų tvarkymo politikos kryptyse t. y. tekstilės atliekų politikos užduočių formulavimas bei atitinkamos prevencijos kryptys, nustatomas įpareigojimas tvarkyti susidarančias tekstilės atliekas kaip tai rekomenduojama kaip Direktyvoje 2008/98/EB bei Žiedinės ekonomikos veiksmų plane.

Pažymėtina, kad iki šių metų Regioninių ir savivaldybių atliekų prevencijos ir tvarkymo planų sudėties ir turinio, rengimo ir skelbimo reikalavimuose galiojančios redakcijos tekstilės atliekos tvarkomos bendrai komunalinių atliekų srauto tendencijomis, o išimtis kuomet atliekų tvarkytojai atsižvelgdami į įstatymo nuostatas, įgalinančias atliekas tinkančias antriniam naudojimui, arba priskyrę antrinių žaliavų kategorijai įvykdo *zero waste* prioritetinių žingsnių principą - antrinį naudojimą, taisymą, o esant tekstilės atliekoms netinkančios antriniam naudojimui bendruoju komunalinių atliekų srautu minėtos atliekos naudojamos deginimui - energijai gauti arba šalinamos sąvartynuose. Nėra aiškios apibrėžties kokiais kriterijais remiantis atliekų tvarkytojai tekstilės atliekas netinkamas naudoti pakartotinam naudojimui naudoja energijai gauti degindami ir kokias šalinama sąvartyne.

Išvados

1. *Zero waste* - nulinė atliekų kultūra, kurios esminis tikslas yra „nulis atliekų“ buityje ir apimantis ne tik tinkamą atliekų rūšiavimą, mažinimą, bet ir skatinantis kitaip pažvelgti į vartojimą, susimąstyti apie tai, ką paliekame ateities kartoms. *Zero waste* atliekų tvarkymo hierarchija 8.0R apibūdina politikos krypčių, strategijų, kuriomis remiama „nulinių atliekų" sistema, eiga nuo didžiausio ir geriausio ir iki mažiausio medžiagų naudojimo. Direktyvoje 2008/98/EB dėl atliekų preambulėje nustatomas tikslas saugoti aplinkos ir žmonių sveikatą, pabrėžiant tinkamo atliekų tvarkymo, naudojimo ir perdirbimo būdų svarbą mažinant išteklių poreikį ir gerinant jų naudojimą, nustatant atliekų hierarchiją. ES atliekų tvarkymo hierarchijoje atliekos tvankomos vadovaujantis tinkamiausio prioritetinio atliekų tvarkymo hierarchijos 5R principų nuostatų metodu.
2. Lietuvoje *zero waste* ideologija įgyvendinama per metodus, o susidariusias atliekas žymiai efektyviau tvarkyti, rūšiuoti per sistemingai nustatytus prioritetus. Atliekų prevencijos ir tvarkymo srityje taikomas prioritetų eiliškumas kaip analogiškai *zero waste* 5R modelyje. Atliekų tvarkymo įstatymo nuostatose nustatoma, kad atliekų prevencijos ir tvarkymo prioritetų eiliškumas taikomas atsižvelgiant į bendruosius aplinkos apsaugos principus. 2023 m Valstybės kontrolės audito ataskaitoje duomenimis, nacionalinėje teisėje nėra užtikrinta efektyvi atliekų tvarkymo infrastuktūra, nėra pakankamai įgyvendinanti *zero waste* principinių nuostatų atitiktį tvarkant susidariusias atliekų srautus (jų atskiras rūšis), taip pat išlieka probleminis antrinis atliekų rūšiavimas, perdirbimas.
3. Tekstilės atliekų tvarkymo ypatumams įgyvendinti nacionalinėje teisėje priimtas įsipareigojimas, nuo 2025 m. sausio 1 d. tekstilės atliekos būtų surenkamos atskirai. Lietuvoje Valstybinio atliekų tvarkymo 2014–2020 m. plane įtvirtinanti nuostata parengti Reikalavimų regioniniams ir savivaldybių atliekų tvarkymo planų pakeitimo projektą įpareigoti įtraukti

[32] „Regioninių ir savivaldybių atliekų prevencijos ir tvarkymo planų sudėties ir turinio, rengimo ir skelbimo reikalavimų patvirtinimo“, TAR, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.389385/asr .

tekstilės surinkimo priemones į Regioninius (savivaldybių) atliekų tvarkymo planus. Toks projekto pakeitimas iniciuojamas nuo 2014 metų, tačiau minėtuose reikalavimuose įpareigojimas tvarkyti įsigaliojo nuo 2022-08-20. Atsiranda teisinė valia atskirai pradėti vykdyti tekstilės atliekų tvarkymo politiką, aprūpinant tokį rūšiavimo sistemą būtinomis priemonėmis, bei įgyvendinamas norminis pagrindas tekstilės atliekų tvarkymo politikos kryptyse tekstilės atliekų politikos užduočių formulavimas bei atitinkamos prevencijos kryptys, nustatomas įpareigojimas tvarkyti susidarančias tekstilės atliekas.

4. Lietuvoje tekstilės atliekos tvarkomos bendrai komunalinių atliekų srauto tendencijomis ir daugiausiai yra šalinamos sąvartyne arba deginamos. Atliekų tvarkymo įstatyme nurodoma, kad atskirai surinktos atliekos tikslu paruošti pakartotinai naudoti bei perdirbti, negali būti šalinamos sąvartyne arba toks šalinimo būdas kaip deginimas energijai gauti, išimtis kuomet toks šalinimo būdas kaip saugiausias, aplinkosauginiu požiūriu geriausias, ir efektyviausias tvarkymo būdas, o kaip kuras energijai gaminti gali būti naudojamos tik išrūšiavus likusios pakartotinai naudoti ir perdirbti netinkamos energinę vertę turinčios atliekos. Lietuvoje pagal Valstybės kontrolės veikos audito išvadą, nustatyta, kad neužtikrinti tinkami komunalinių atliekų rūšiavimo ir pakankamo antrinių žaliavų apdorojimo pajėgumai dėl trūkstamo įrangos modernizavimo. Nepakankamai išplėtotas rūšiuojamojo komunalinių atliekų surinkimo sistema. Nėra galimybės įvertinti ar numatytos užduotys įvykdomos siekiu imtis priemonių nustatytoms problemoms spręsti dėl atliekas tvarkančių atsakingų dalyvių ataskaitų nepateikimo arba tokių ataskaitų ne išsamumo.

Literatūra

1. „3 R's of Environment – Reduce, Reuse, Recycle | Waste Management", Earth Reminder for everyone, https://www.earthreminder.com/3rs-of-environment-reduce-reuse-recycle/
2. „7 Steps on the journey to net-zero", Boxfish, https://www.weareboxfish.com/7-steps-on-the-journey-to-net-zero/ .
3. „Atliekų hierarchija", EUR-Lex, https://eur-lex.europa.eu/legal-contentLT/TXT /?uri=LEGISSUM:waste_hierarchy .
4. „Atliekų pagrindų direktyva", Europos Komisija, https://environment.ec.europa.eu/ topics/waste-and-recycling/waste-framework-directive_lt#ref-2023-wfd-revision .
5. „Atsakingas atliekų tvarkymas", Orlen Lietuva, https://www.orlenlietuva.lt/ LT/SR/Environmental/visuomen%C4%97s%20%C5%A1vietimas/Puslapiai/Atsakingas -atliek%C5%B3-tvarkymas.aspx .
6. „Dėl Valstybinio atliekų tvarkymo 2014−2020 m. plano įgyvendinimo", TAR, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d013b670796811e4a8a7b07c53dc637c?jfwid=gvy9 zieid.
7. „ES atliekų valdymo teisė", EUR-Lex, https://eur-lex.europa.eu/LT/legal-content/ summary/eu-waste-management-law.html .
8. „Komunalinių atliekų tvarkymas", Valstybės kontrolė, https://www.valstybeskontrole.lt/ LT/Product/24155/komunaliniu-atlieku-tvarkymas .
9. „Naujas žiedinės ekonomikos veiksmų planas, kuriuo siekiama švaresnės ir konkurencingesnės Europos", EUR-Lex, https://eur-lex.europa.eu/legal-content /LT/TXT/?uri=CELEX%3A52020DC0098 .
10. „Nulis komunalinių atliekų į sąvartyną? Šio tikslo siekia ir Klaipėda", Delfi, https://www.delfi.lt/projektai/atlieku-kultura/nulis-komunaliniu-atlieku-i-savartyna-sio-tikslo-siekia-ir-klaipeda-87162655 .

11. „Regioninių ir savivaldybių atliekų prevencijos ir tvarkymo planų sudėties ir turinio, rengimo ir skelbimo reikalavimų patvirtinimo“, TAR, https://e-seimas.lrs.lt /portal/legalAct/lt/TAD/TAIS.389385/asr .
12. „Šiuo metu Lietuvoje nesukurta gyventojų lūkesčius tenkinanti naudotos tekstilės surinkimo ir tvarkymo sistema. Vykdomas tekstilės atliekų surinkimas neužtikrina ir pakartotinio tekstilės atliekų naudojimo bei perdirbimo“, Tekstilės tvarkymas, https://tekstilestvarkymas.lt/tekstiles-atlieku-tvarkymas-lietuvoje .
13. „Tekstilės atliekos: ką turi žinoti gyventojai?“, Lietuvos Respublikos aplinkos ministerija, https://am.lrv.lt/lt/naujienos/tekstiles-atliekos-ka-turi-zinoti-gyventojai .
14. „Valstybinio atliekų prevencijos ir tvarkymo 2021-2027 metų planas“, TAR, https://am.lrv.lt/lt/veiklos-sritys-1/atliekos/valstybinio-atlieku-prevencijos-ir-tvarkymo-2021-2027-metu-planas.
15. „Waste4Change Supports 3R (Reduce-Reuse-Recycle) Green Concept!”, Waste 4change, https://waste4change.com/blog/waste4change-supports-3r-reduce-reuse-recycle-green-concept/.
16. „Who is the Zero Waste International Alliance (ZWIA)?”, Zero Waste International Alliance, https://zwia.org/.
17. „Zero waste home“, https://www.facebook.com/ZeroWasteHome.
18. Bereikienė, D., Štareikė, E., „Atliekų rūšiavimo teisinio reguliavimo aspektai“, Public Security and Public Order Research journal 03/30 (2013): 45, file:///C:/Users /VAITIPS/Downloads/%23%23common.file.namingPattern%23%23%20(14).pdf .
19. Johnson, B., Namai be atliekų, (Dvi tylos, 2018).
20. Tamašauskaitė, P.,Volungevičius, J., „Antrinių žaliavų surinkimo sistemos apkrova Lietuvoje“, Geografijos metraštis 52, (2019): 3, https://www.researchgate.net/ profile/Jonas-Volungevicius2/publication/338361119_Load_of_Secondary_Raw_Material_Collection_System_in_Lithuania/links/5e85af714585150839b6151f/Load-of-Secondary-Raw-Material-Collection-System-in-Lithuania.pdf
21. Tran, Y., “Zero waste lifestyle”, Tampere University of Applied Sciences September (2019):1-2. https://www.theseus.fi/handle/10024/261946.

CHARACTERISTICS OF MUNICIPAL TEXTILE WASTE MANAGEMENT SYSTEM IN THE CONTEXT OF ZERO WASTE IDEOLOGY

Santa KLIMAVIČIŪTĖ, Erika MATULIONYTĖ-JARAŠŪNĖ
Mykolas Romeris University

Summary

This article reveals the concept of zero waste ideology, as well as the provisions of waste management hierarchies 3R, 5R, 7R, and 8.0R. The growth of waste volume is closely related to the growth of human population and the increasing level of development, the by-product of which is increasing waste. Zero waste ideology and initiatives related to responsible production and consumption, sorting and recycling are rapidly spreading and gaining public recognition worldwide. Zero waste is a zero waste culture, the main goal of which is the principle of "zero waste" in the household, which includes not only proper sorting and reduction of waste, but also encourages a different look at consumption. The most important tool in the waste preparation and reuse process is the sorting of the

generated waste. In order to successfully implement the Zero waste goals, decisions must be made at all levels, starting from the agreements of the international community, the formulation of state policies, and ending with each consumer who, being conscious, will make responsible decisions in their daily life, ensuring the most environmentally friendly choices. Waste management is carried out taking into account waste management priorities and existing environmental requirements. State waste management policies are chosen according to the goals pursued by the state, this can be conditioned by the most desirable solution - prevention or the least desirable - disposal in landfills.

Legislation in the field of waste management obliges waste to be managed in such a way that it does not have a negative impact on the environment or human health. When managing waste, it is encouraged to follow the priorities of the waste management hierarchy, which are divided into the waste management hierarchies 3R, 5R, 7R, 8.0R. The most common 5R main principles are: responsible consumption, waste reduction (prevention), waste reuse, waste recycling, utilization to obtain energy, disposal of waste in landfills. A consumer who understands the goals of sustainable development and the circular economy is conscious enough to choose goods or services that are more environmentally friendly, and he also understands the importance of waste management and management. In Lithuania, textile waste is managed in general according to the trends of the municipal waste flow and is mostly disposed of in a landfill or incinerated, which does not meet at least the 5R principles of the main priorities of the waste management hierarchy. It must be recognized that the level of collection of used textiles is only 13 percent. of the total amount sold in Lithuania, which shows that insufficient attention is paid to the regulation of textile waste management. When evaluating the municipal waste management system in Lithuania, it was found that insufficient attention was paid to textile waste management. However, we should be happy that Lithuania is taking decisive decisions in the management of textile waste and will achieve the set goals, which will be analyzed in more detail in the article.

In Lithuania, textile waste is managed according to the trends of the general municipal waste flow and is mostly disposed of in a landfill or incinerated. The Waste Management Act states that separately collected waste for the purpose of preparation for reuse and recycling cannot be disposed of in a landfill or such a disposal method as incineration to obtain energy, with the exception of when such a disposal method is considered the safest, environmentally best, and most efficient method of handling, but as fuel for energy can be used for production only after sorting out the remaining waste with energy value unsuitable for reuse and recycling. In Lithuania, according to the conclusion of the audit of the State Audit Office, it was found that adequate capacities for municipal waste sorting and sufficient processing of secondary raw materials are not ensured due to the lack of equipment modernization. The system of sorting municipal waste collection is insufficiently developed. There is no possibility to assess whether the planned tasks are fulfilled in order to take measures to solve the identified problems due to the non-submission of reports by the responsible participants handling waste or the incompleteness of such reports.

Keywords: *Zero waste, waste management 3R, 5R, 7R, 8.0R hierarchies, municipal textile waste management.*

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

DIGITIZATION OF TRADE AND CHANGES IN CONSUMER BEHAVIOR - SELECTED AREAS

Justyna MAJCHRZAK-LEPCZYK
Hipolit Cegielski State
University of Applied Sciences in Gniezno, Poland
E-mail: j.majchrzak-lepczyk@ans.gniezno-edu.pl
ORCID ID: 0000-0002-6729-8409

DOI: 10.13165/PSPO-23-33-10

Abstract *Contemporary retail is increasingly conducted in a hybrid form, with a clearly growing share of mobile technologies. Social media accompany consumers on a daily basis - they shape the potential of interpersonal relationships, but also aim to promote and sell products.*
With the growing number of smartphone activities, the application market is developing dynamically and the availability of modern technologies is increasing. Online shopping is supported by a voice assistant, the customer can use virtual fitting rooms, talk to artificial intelligence (chatbot) and receive answers to asked questions. Both consumers and companies use this technology on a daily basis.

The aim of the study is to draw attention to the broadly understood digitization, which is changing the face of trade and consumer behavior. Changes in the purchasing behavior of generations living with the convenience of technology will be indicated. Understanding and adapting to these changes has become a necessity for companies.
The study focused on the shopping behavior of today's consumers, who are almost constantly connected to the Internet and to each other via mobile devices. The main focus will be on Poland, and the source base will be literature sources and industry reports. Selected areas of purchasing changes will be analyzed, and the obtained data will allow to diagnose differences in consumer preferences and the level of their digitization.

Keywords: *digitization, e-commerce, consumer behavior, artificial intelligence (AI), technologies, metaverse*

Introduction

The past years marked by the pandemic, war and high inflation have become one of the main factors of change in the retail trade. Companies began to introduce an integrated sales model, implement new consumer-oriented technologies and thus the role of innovation and automation in customer relations has clearly increased. There has also been a change in consumer mentality, which is extremely important for retailers.

In the modern economy, it is crucial for enterprises to gain a competitive advantage. To achieve this, various activities are undertaken, with a strong emphasis on digitization. Thanks to this approach, an increasing number of enterprises are subject to digital transformation, leading, among other things, to better quality of sales processes and raising customer service standards. Electronic sales, apart from the mere possibility of offering individual product categories online, also enables a certain increase in customer activity in business operations. What makes this possible, among other factors, is influencing the attitudes and purchasing decisions of other consumers, thanks to the system of comments and opinions. For many buyers, recommendations play an important role, as they can significantly reduce the time and effort needed to make purchases.

The purpose of the following considerations is to critically look at the changing trends in consumer behavior and the reaction of enterprises to these changes.

The intensive and rapid development of modern technologies creates a new group of consumers who expect companies to adapt to their shopping preferences. The companies which are aware of the challenges spend more on the development of e-commerce.

The study uses a deductive method supported by a descriptive analysis. The descriptive analysis was based in particular on books, articles and reports carried out by selected institutions.

The reality of the digital consumer

A digital consumer is a buyer who, during the purchasing process, but also before and after the purchase, uses the achievements of new technologies. They quickly adapted to the market reality in which technological solutions significantly influence their behavior. It is a consumer who has access to the Internet and uses it on a daily basis as a permanent and indispensable element of life. In some sense, it is also a way of life. These are primarily young people, but this trend is also followed by older generations of consumers. The digital customer is a reality in both the B2B and B2C segments.

Currently, five generation groups live side by side in the world - baby boomers, generation X, Y, Z and Alpha. Each of the generations is shaped by different experiences, socio-cultural surroundings and historical events, which means that the values they profess differ from each other and require a separate marketing approach. Division into generational groups is the simplest and most popular method of mass market segmentation (Kotler, 2021, p. 29-40).

The first generation are baby boomers, defined as people born between 1946 and 1964. The name "baby boomers" was coined due to the demographic boom that was recorded in the first years after World War II.

Generation X is called in Poland the generation of the Polish People's Republic. It is a group of people born in the years 1965-1980. It was a time of groundbreaking historical events - the rise of Solidarity, the fall of communism and the Cold War in Europe and the United States. Generation X has also experienced important technological changes.

Millennials, also known as Generation Y, are a group of people born in the 1980s and 1990s. According to W. Września, Generation Y in Poland is the generation of people born between 1984 and 1997 (Wrzesień, 2007).

Generation Z, also known as Zoomers or the Internet Generation, are people born in the late 1990s to 2009. As the first generation, they did not experience the times before the advent of the Internet and computers.

The Alpha Generation, i.e. those born in the years 2010-2025, are called digital natives because they are perfectly at home in the world of the Internet. Already in early childhood, they saw their parents and siblings spending time in front of the screens of their phones or computers, which were often more interesting to them than other elements of everyday life.

H. Mruk argues that it can be expected that the current change of generations, reaching 25 years, will be shortened to 7-10 years (Mruk, 2022, p. 16). The main reason is the ongoing social and technological changes. The next generations will be increasingly focused on the practical use of technology. This undoubtedly determines the need among companies to create many distribution channels - from traditional through hybrid to virtual ones.

It is the virtually unlimited access to information brought about by digitization that enables today customers obtain data on the offer of a specific company, compare prices or read the opinions of other users and perform this conveniently in relatively short time (KPMG, 2018).

However, as emphasized by Ph. Kotler, digitization of a company should not stop only at customer involvement, but should cover all touchpoints - from marketing, through sales, distribution, delivery, to service. All these digital touchpoints should create a synchronized consumer experience (Kotler, 2021, p.103).

The near future is shaped by many trends, which are shown in Figure 1.

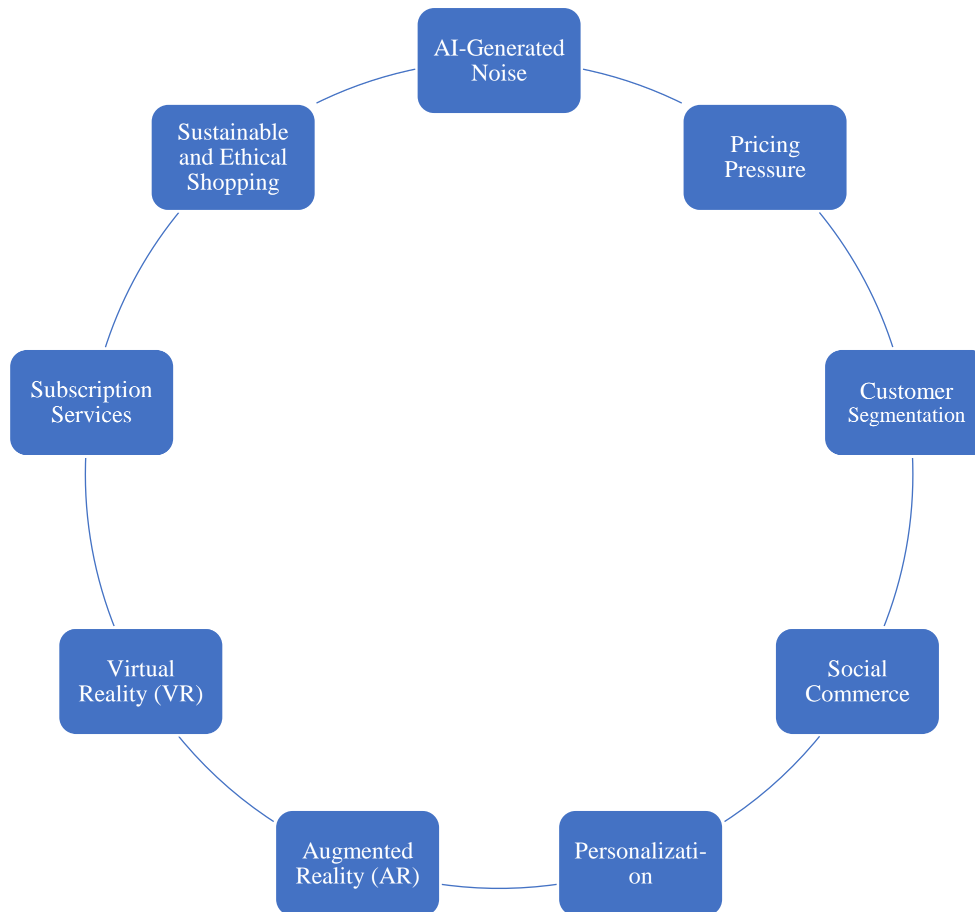


Figure 1. Trends in retail

Source: Own study based on: K. W. McLaren, 2023, The Future Of E-Commerce: Trends To Watch In 2023, https://www.forbes.com/sites/forbesmarketplace/2023/03/21/the-future-of-e-commerce-trends-to-watch-in-2023/ ? sh=1c3631b7631e May 2, 2023

The present world is bots instead of people working in call centers or refrigerators that inform about the expiration date of the products contained there. What until recently seemed impossible and unreal, today is a reality.

The pandemic lasting in 2020-2022 caused an increase in interest in electronic shopping, which, in turn, generated the need to process more and more data in order to learn about consumers' shopping preferences. It was also the time when a number of studies on consumer activity on the web and changes caused by the pandemic were carried out[1]. The Internet of Things or augmented reality (VR) offer newer and newer market conditions in which customers can, among other things, use a virtual fitting room and see themselves in different variants of

[1] Wawrzuta, D.; Klejdysz, J.; Jaworski, M.; Gotlib, J.; Panczyk, M. Attitudes toward COVID-19 Vaccination on Social Media: A Cross-Platform Analysis. Vaccines 2022, 10, 1190. https://doi.org/10.3390/vaccines10081190; De Brabandere L, Hendrickx G, Poels K, et all, Influence of the COVID-19 pandemic and social media on the behaviour of pregnant and lactating women towards vaccination: a scoping reviewBMJ Open 2023;13:e066367. doi: 10.1136/bmjopen-2022-066367; Uzair Shah, Md. Rafiul Biswas, Raian Ali, Hazrat Ali & Zubair Shah (2022) Public attitudes on social media toward vaccination before and during the COVID-19 pandemic, Human Vaccines & Immunotherapeutics, 18:6, DOI: 10.1080/21645515.2022.2101835.

clothing or glasses frames. The metaverse[2] is also developing, seen as an imaginary borderless area where people can be met in virtual reality. The term itself is still evolving, however, the metauniverse can be defined as the convergence of the physical and virtual worlds. The essence of Metaverse from the customer's point of view is therefore immersion in the 3D world and a sense of its realism from the point of view of the avatar. PWC experts refer to the future of the Metaverse as a realistic world where people and organizations sell goods and services, sign and execute contracts, interacting with each other (PWC, 2023).

The chain of grocery stores Żabka Nano, which is developing in Europe, has the innovative AiFi platform used in all its stores. It is a camera-based solution that uses computer vision and so-called machine learning to recognize products that the customer reaches for from the shelves and automatically finalizes the payment after leaving the store (Żabka, 2022).

Changes in consumer behavior

Customers, regardless of whether they make purchases in an online or stationary store, use convenient communication channels and obtain information on the offers they are interested in (IBM, 2022). Therefore, in purchasing processes, companies should recognize the key moments during which the buyer needs support. It is in such moments that building a positive shopping experience becomes the most effective. Thus, digital technologies enable the delivery of selected information in real time during key purchasing stages, which, with the growing interest in electronic shopping, may be an opportunity to consolidate new habits among various customer groups.

The growing concern for the climate and the environment generate a demand for the purchase of used products, which is supported by sales platforms such as OLX, Vinted or Allegro, enabling direct exchange of products between consumers. The term re-commerce has already become part of everyday life on the web. It is both the sale of products in outlet stores or second-hand shops, as well as the sale of second-hand items, closely related to ecology and sustainable development (IBM, 2022). This is in line with the current situation, when a significant part of consumers do not have a good financial situation and allocate less funds for consumption - which is also noted by experts from the Capgemini Research Institute or PWC (Capgemini Research Institute 2023). According to Google statistics, searches for product names with the term "used" are increasing (IdoSell, 2023). An example worth citing is also socially responsible shopping, which is carried out on the Polish market by, for example, CCC or Modivo together with InPost, offering reusable packaging.

Consumers are also eager to use subscription services, which guarantee them convenience, speed and personalized product recommendations. Subscriptions now offer almost everything - from personalized products to meal kit deliveries and subscriptions to beauty and clothing products.

Another significant change is mobile shopping. An Insider Intelligence analysis shows that the share of m-commerce in total retail may reach 8.7% by 2026 (Mokka, 2022). An important factor in this growth is undoubtedly the development of mobile applications and their increasing popularity. Companies that already have a popularized application and a group of users certainly have greater opportunities to increase their range of sales and marketing activities.

[2] The metauniverse came into the public consciousness in October 2021 when Facebook changed its name to Meta.

ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

One-click ordering is currently one of the most important trends in m-commerce, and its popularity is increasing year by year. This solution allows customers to complete their purchases without having to repeatedly enter payment and delivery information, which is important when using mobile devices. The function translates into an increase in sales, which was confirmed, among other providers, by Amazon, the pioneer of this solution on the market (IdoSell, 2023).

Another important area of change is the popularity of voice assistants, such as Amazon Alexa or Google Assistant, which enable users to make purchases in a simple and convenient way, which will translate into an increase in the popularity of voice shopping in m-commerce. The development of this type of purchase is favored, apart from the development of technology, by the increasing purchasing power of the younger generations, for whom this type of technology is more natural.

Instant payment is starting to play an increasingly important role when making purchases. In order to increase the chance of a successful transaction, an online store should provide customers with the fastest way to pay for transactions, without having to change the platform or register. Customers are increasingly willing to use one-click shopping options.

Deferred payments (buy now pay later) are also developing dynamically, giving the opportunity to purchase products without having to pay for them right away (IdoSell, 2023).

It is therefore clear that the significant acceleration of customer digitization, breaking the existing consumer habits and fears have resulted in significant changes in the way companies communicate with customers, sales channels and pre- and post-sales service.

The role of modern media

The impact of digitization drives marketing activities that have changed and will continue to evolve, thus improving the methods of product promotion. The evolution of marketing is due to changes in the technological and economic landscape, which allows marketing to move to a higher stage of evolution to marketing 5.0. Marketing 5.0 is a period of transition to technology for people, in which artificial intelligence, NLP[3] technologies, sensory technologies and the Internet of Things play an important role (Kobec, 2022). In the concept of marketing 5.0, the consumer is in an intelligent, flexible digital environment and interacts with artificial intelligence as a full-fledged agent of the digital environment.

The development of information technologies leads to the growing pace of attracting people to the Internet. Data processing and analysis technologies are becoming essential for the existence of modern business. E. Brousseau and T. Penard (2007, pp. 81-114) pointed out that digital business models do not imply changes only in the digital sphere, and should be perceived as "intermodal" ones which are visible in various areas of the organization's functioning. In addition, digital business models are largely intertwined with traditional models, which results in the implementation of innovations as well as the use of marketing strategies also in industries that are not directly related to the digital market. This undoubtedly proves the complexity of the changes that are induced in modern business models. An example worth referring to is the model used within the Uber platform, which offers taxi services to customers. The sharing model uses a digital platform, thanks to which customers look for drivers offering transport services. The innovativeness of this model boils down to the fact that it is not embraced within any corporation or taxi companies present on the market, and therefore it is fully independent of them (Bartczak, 2023).

---

[3] NLP is a technology that focuses on natural language processing to facilitate human-machine communication.

Technological progress causes, but also forces, constant changes that affect the market and consumers. One of the factors contributing to the development of technology that allows one to connect, enabling the interactivity of individuals, groups and organizations is undoubtedly social media. The progressing virtualization of socio-economic life raises the need to monitor the intensity of the ongoing changes. The functioning of companies is increasingly dependent on the attitudes and behavior of consumers. It is therefore worth knowing what values are important to them and how they will achieve their goals (Figure 2).

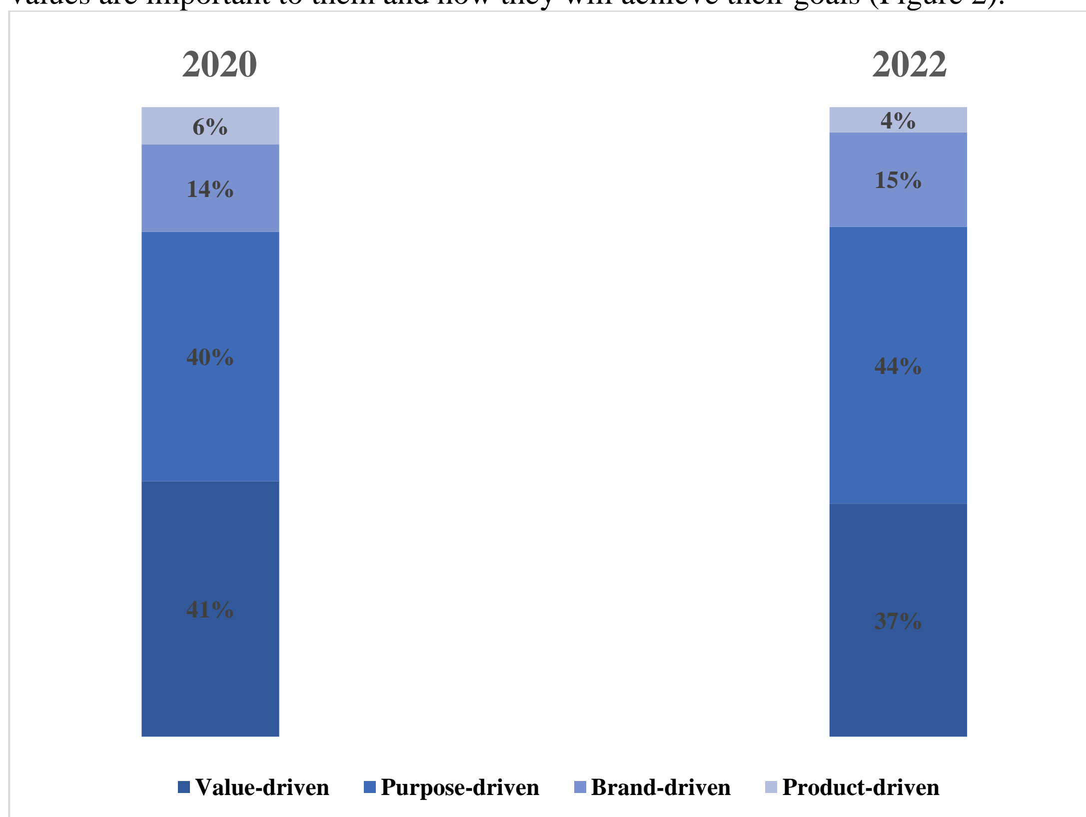


Figure 2. Goal-oriented consumer

Source: Own elaboration based on (IBM, Research Insights, (2022), p.13)

According to an IBM report (2022, p. 13) purpose-driven consumers (44%) are looking for products that align with their values. Environmental impact and taking care of sustainable development is very important to them. Value-driven consumers (37%) expect value, convenience, but are also willing to change habits limiting the negative impact on the environment. Brand-driven consumers (15%) trust and prioritize brands. Product-oriented consumers (4%) focus primarily on the functionality and value of the product and its price.

Among the modern digital technologies used in marketing, a set of measures for the use of social media as channels of marketing activities should be indicated, referred to as Social Media Marketing (SMM) - marketing in social networks. These are ways to reach a specific target group of users through interaction and direct impact on potential customers. Companies operating on the network should constantly be in the common communication space with their environment, both current and potential consumers, but also with partners or competitors, and regularly generate content about themselves and their offers (Bartczak, 2023).

Thus, the importance of social media is growing both as a source of information about products and as a place to make purchases. More and more intense marketing activity of companies in social media is being observed, as well as a change in the way that market players

communicate. There is equality of communication between the sender of information and its recipients (Matwiejczyk, 2020, p.174). Social media made it possible to post opinions, reviews, evaluate purchased products, and communicate with other product users in order to exchange opinions on them. This certainly translates into recommendations for other members of the community focused around the product or company. Therefore, social media can significantly contribute to building a company's competitive advantage.

It was through social media that influencer marketing was born, which, thanks to building its own community by influencers, has an impact on a specific group of recipients. Unlike traditional celebrities, influencers build their position on the Internet by sharing various content with the audience, also often of private nature. Thanks to this openness and ease of conveying messages, influencers seem closer to their recipients, which builds trust and credibility.

Shopping on social media allows one to increase the reach and interest of customers, and also allows to reach target groups more easily. Cooperation with influencers and the use of tools such as, for example, posts with the possibility of buying directly from the platform, clearly change the sales processes in m-commerce.

The business potential of social media requires new marketing tools that enable precise targeting and allow for a two-way flow of information, not only between the recipients and the brand, but also include the influencer who advertises the product. K. Stopczyńska (2021) indicates that for 70% of Internet recipients, the content created by influencers is the first source of information about products.

It is the possibility of freely creating, editing and duplicating various types of content that makes social media successfully used as the Internet marketing tool for many individuals. The role of the consumer has ceased to consist only in getting acquainted with the content of the advertising message, as was the case in traditional media, but it gives them the opportunity to interact, modify and express their personal feelings about the product (PWC, 2023).

D. Kaznowski (2016) divided social media based their functions into:

- used to present opinions and views, for example through blogs - Instagram, Twitter,
- for file sharing - YouTube, TikTok,
- focused on building and maintaining relationships - Facebook,
- for exchanging discussions, solving problems – these include Internet forums.

One of the main reasons for the popularity of social media among young people is the need to communicate with the brand and other people. Young people are more interested in social problems and willingly join discussions about them. Social media offers platforms where people can express their views and engage in debates on issues of concern to the society. In this context, television that is more one-sided and does not allow this interaction is becoming less attractive.

For the young generation, the opportunity to react to the content displayed on the Internet in real time is an opportunity to manifest their own views. Thanks to this, they feel that their opinion will be noticed not only by the brand or the creator of the content, but also by another group of Internet users. A popular tool for measuring the engagement of online audiences is the engagement rate, which is the ratio of interactions, i.e. likes, comments and shares, to the number of users' followers.

The report commissioned by the Chamber of Electronic Economy by the Mobile Institute shows that mobile consumers buy online more often and more than the average Internet user (Marszycki, 2023). The E-commerce in Poland report shows that mobile buyers also have higher expectations regarding the convenience of shopping, speed of delivery, availability of mobile payment methods and promotions (Gemius Polska, 2022).

E-commerce is characterized by high dynamics of change. This is due, on the one hand, to the development of new information technologies, increased competition, the emergence of new business models, and, on the other hand, to the development of the information society and increasing access to the Internet. With the development of technological tools and means, e-consumers of all ages are becoming customers of online stores.
The examples cited illustrate the potential of the digital economy, which has changed almost everything related to buying - from infrastructure to commerce and payment systems, to the psychology of consumer preferences and expectations.

Conclusions

Digitization is certainly an opportunity for companies to build knowledge about customer behavior and preferences. Progressing digitization has educated a new consumer who, on the one hand, has adapted to the technological offer offered by enterprises, and on the other hand, sometimes forced them to redefine the way they operate.

Undoubtedly, the multitude of information left by customers in the digital world allows entrepreneurs to better understand their shopping choices, as well as enables an individualized approach to the buyer. Thus, understanding what customers really expect may turn out to be a key factor determining market success.

Using modern technological solutions, it is possible to shape business activities and adapt marketing communication to changes taking place among consumers. The combination of the traditional and digital environment opens the door to the use of new tools of influence, as well as shaping models of behavior. This leads to the assimilation of the digital environment to the real one and the transfer of communication and decision-making process to the real environment.

The mentioned areas of research do not exhaust the subject, but they illustrate the multiplicity of areas of change and challenges faced by a number of companies.

References

1. Bartczak K. (2023), Modele biznesu oparte na cyfrowych platformach technologicznych, Warszawa: Wydawnictwo Difin
2. Brousseau E. & Penard T. (2007), The economics of digital business models: a framework for analyzing the economics of platforms, „Review of Network Economics", vol. 6(2), pp. 81-114
3. Capgemini Research Institute, (2023), What matters to today's consumer. 2023 Consumer behavior tracker for the consumer products and retail industries
4. De Brabandere L, Hendrickx G, Poels K, et all, (2023), Influence of the COVID-19 pandemic and social media on the behaviour of pregnant and lactating women towards vaccination: a scoping review BMJ Open 2023;13:e066367, doi: 10.1136/bmjopen-2022-066367;
5. Gemius Polska, (2022), E-commerce w Polsce
6. IBM, Research Insights, (2022), Consumers want it all: Hybrid shopping, sustainability, and purpose-driven brands
7. IdoSell, (2023), Co czeka e-commerce w 2023 roku?, https://www.egospodarka.pl/179226,Co-czeka-e-commerce-w-2023-roku,1,39,1.html (30.04.2023)

8. Kaznowski D., (2016), Social media – społeczny wymiar Internetu [in:] J. Królewski, P. Sala (eds.), E-marketing. Współczesne trendy. Pakiet startowy, Warszawa: Wydawnictwo PWN
9. Kobec D. (2022), Ewolucja działań marketingowych w koncepcji „Marketing 1.0 – 5.0" przez pryzmat digitalizacji. International Science Journal of Management, Economics & Finance. Vol. 2(2), pp. 63-75. doi: 10.46299/j.isjmef.20230202.08. (1.05.2023)
10. Kotler Ph., (2021), Marketing 5.0, Warszawa: Wydawnictwo MT Biznes\
11. KPMG, (2018), Digital Custome, https://kpmg.com/pl/pl/home/insights/2018/07/digital-customer-cyfrowy-klient.html (27.04.2023)
12. Marszycki M., (2023), Rozwój polskiego rynku e-commerce. Raport e-Izby: Liderzy e-commerce podsumowują dekadę rozwoju branży, https://itwiz.pl/raport-e-izby-liderzy-e-commerce-podsumowuja-dekade-rozwoju-branzy/ (30.04.2023)
13. Matwiejczyk A., (2020), Media społecznościowe jako narzędzie marketingu internetowego na przykładzie Netflixa, „Academy of Management", nr 4(2)
14. McLaren K.W., (2023), The Future Of E-Commerce: Trends To Watch In 2023, https://www.forbes.com/sites/forbesmarketplace/2023/03/21/the-future-of-e-commerce-trends-to-watch-in-2023/?sh=1c3631b7631e (2.05.2023)
15. Mokka, (2023), Jakie zmiany w m-commerce w najbliższym czasie?, https://www.egospodarka.pl/181332,Jakie-zmiany-w-m-commerce-w-najblizszym-czasie,1,39,1.html (30.04.2023)
16. Mruk H., (2022), Technologie i generacje a zachowania konsumentów (in:): Marketing. Koncepcje i doświadczenia, (eds.) H. Mruk & A. Sawicki, Pelplin: Wydawnictwo „Bernardinum"
17. PWC, (2023), Perspectives from the Global Entertainment & Media Outlook 2022–2026. Fault lines and fractures: Innovation and growth in a new competitive landscape, https://www.pwc.com/gx/en/industries/tmt/media/outlook/outlook-perspectives.html (1.5.2023)
18. Shah U., Biswas Md. R., Ali R., Ali H. & Shah Z. (2022), Public attitudes on social media toward vaccination before and during the COVID-19 pandemic, Human Vaccines & Immunotherapeutics, 18:6, DOI: 10.1080/21645515.2022.2101835 (1.05.2023)
19. Stopczyńska K. (2021), Influencer marketing, czyli marketing rekomendacji w życiu marki, https://www.wydawnictwo-siz.pl/2021/12/03/influencer-marketing-czyli-marke ting -rekomendacji-w-zyciu-marki/ (1.5.2023)
20. Wawrzuta, D.; Klejdysz, J.; Jaworski, M.; Gotlib, J.& Panczyk, M. (2022), Attitudes toward COVID-19 Vaccination on Social Media: A Cross-Platform Analysis. Vaccines, 10, 1190. https://doi.org/10.3390/vaccines10081190 (30.04.2023)
21. Wrzesień W. (2007), Czy pokoleniowość nam się nie przydarzy? Kilka uwag o współczesnej polskiej młodzieży, NAUKA 3, pp. 131-151
22. Żabka (2022), Bezobsługowa Żabka Nano podbija Europę, https://www.zabka.pl/biuro-prasowe/bezobslugowa-zabka-nano-podbija-europe (2.5.2023)

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

BUSINESS CIRCULAR STRATEGIES: CRITERIA AND PROSPECTS

Viktoriia ROLEDERS
Vasyl' Stus Donetsk National University
21, 600th Anniversary Street, Vinnytsia, 21021, Ukraine
PhD in Economics, Associate Professor, Doctoral student, Faculty of Economics
E-mail: v.roleders@donnu.edu.ua
ORCID: 0000-0002-6653-6583

DOI: 10.13165/PSPO-23-33-02

Abstract. *The international practices of realization of business circularity strategies are researched and systematized. The trends in change of value priorities of corporate policy of companies depending on phases of transformation of business models are revealed. The focus on the operational efficiency of production processes is strengthened by the transition to the principles of sustainable development and environmental responsibility, and then the creation of circular value chains. Creating circular value chains requires a change in corporate policy and management tools. The transformation of companies' business models affects its corporate culture. The mission and philosophy of business are changing, fundamentally new integrated indicators for assessing financial, economic and social performance are being formed. Environmental management can bring many benefits to producers of goods: saving money and resources, increasing customer satisfaction and loyalty, improving the morale of employees. The analysis of the structure of investments and investment agreements in digitization projects is performed. It is established that most of the financial resources are directed to waste collection and recycling. This has increased the demand for waste processing equipment and caused structural changes in the engineering market. Positive ttrendss of growth of investment attractiveness of circularity projects are revealed. In Ukraine, as in the world society, there are demands for a healthy lifestyleand environmental protection, so the country must create an institutional framework for the implementation of these needs. It is necessary to encourage a new generation of entrepreneurs to learn and innovate, to initiate "green" business strategies for the development of territories and to promote cross-sectoral cooperation. Further research is needed on the divergence of circular business models by industry and practices of adaptive management tools in the context of conceptualization of change and structural redistribution of resources in the environment.*

Keywords: *circular economy, business models, phases of transformation, resource efficiency indicators, investments.*

Introduction

The civilizational development of society today is at a crucial stage of planning how to overcome the global health crisis and economic upheaval caused by the COVID-19 pandemic. Strategies for the use of natural resources have exhausted themselves, and therefore it will be difficult to return to the usual business models, under these conditions, the demand for environmental protection models of economic development, which includes the concept of circular economy, is increasing.

To move towards a circular economy, products must be designed from the outset to optimize the ability to recover raw materials when the product has completed its first phase of use, and to enable phases of second, third or even endless use. This requires the formation of new criteria for evaluating strategies and investments in business development based on the principles of the circular economy.

The purpose of the article is a theoretical analysis of the practical experience of international companies regarding the criteria for assessing resource efficiency in the process of business transformation on the basis of the circular economy and the determination of promising investment directions for their development.

The advantages of the circular economy are increasingly recognized, but there are still many barriers preventing the transition to a "cyclical" or "green" business model. Some authors indicate that an inadequate financing scheme, insufficient financial resources (Ormazabal M. et al, 2018), as well as a lack of support from state institutions (Rizos V. et al, 2016; Ormazabal M. et al, 2016; Rizos V. et al, 2015) cause the slowdown of "green" transformations in production. This is especially acutely felt by small and medium-sized businesses (EIO, 2016). The risk for companies when transitioning to the principles of a circular economy is mainly related to the fact that changes in the principles of organizing production on a cyclical basis require the involvement of significant investments, in particular in disposal, recovery infrastructure and eco-technologies to close the so-called "loops" production (Stewart R., 2018). A study conducted by Chinese scientists (Su B. et al, 2013) showed that external barriers, such as the lack of a consistent state policy and financing restrictions, are more relevant for Chinese small and medium-sized businesses in the promotion of "clean" technologies than internal, so-called technical and managerial barriers. Thus, the availability of investment in technology is critical for firms to implement the principles of a circular economy.

Shahbazi and others (Shahbazi S. et al, 2018) claim that limited financial opportunities for environmental investments are a primary issue for company management. Also, Chinese researchers Su and others (Su B. et al, 2013) insist on the need to make large financial investments in pilot projects of the circular economy. In particular, the new perspective of selling services rather than products means that companies will not receive payment at the beginning of the product's life cycle, but only after providing the service as a whole, so timing becomes a key issue in such investments (EEA Circular Economy in Europe). It is obvious that the implementation of circular business models requires specific adapted financial mechanisms.

An example of progressive cooperation within the circular business model is industrial symbiosis (Chertow M., 2000; Daddi T. et al, 2017). Ghisellini and others (2018) demonstrate that the reasons for which companies are interested in participating in these advanced circular economy solutions are the possibility of recovering the costs associated with investments in the environment.

Also, tax reduction, the policy of refunding funds for the use of resources and financial subsidies positively stimulate the development of industrial symbiosis. Aid et al. (2017) point out that financing problems for synergistic partnerships are a limitation to the development of eco-industrial parks, and they discuss how taxes and government subsidies enable economies of scale. Discussing a similar topic, Wellenturf (2017) believes that joint processes developed through a circular model encourage interested parties to joint production, technological solutions, and project financing.

Masi et al. (2017) emphasize the importance of financial support through subsidies and other incentives in the manufacturing industry, in which investment support for technology development is considered vital (Pan S., 2014; Pereiras S.). Various studies have also highlighted state subsidies as an element that facilitates research, innovation and investment activities.

Regarding the environmental sphere, Tirguero et al. (2017) and Gizzetti (2014) indicate the positive effect of state subsidies on the introduction of environmental innovations in the company. Moktadir et al. (2018) demonstrate that small businesses need more support from the government to adopt sustainable production practices because they lack sufficient capital.

Based on the results of the scientific works of the above-mentioned authors, economic tools and resources for the development of the circular economy should include fiscal and financial incentives, direct financing and public procurement (EOI). However, the adoption of the CE strategy by enterprises is only at the initial stage, which does not allow for an in-depth

analysis of the literature on specific financial resources applied to circular processes. It should be taken into account that the circular economy is a complex model that includes various environmental issues and applies to different areas of investment, such as those dedicated to the environmental improvement of the company, eco-innovations or energy saving, as well as renewable energy sources.

Foreign scientists - R. Dangelico, K. Geiser, C. Kumar, S. Morch, S. Neck, D. Pujari, M. Rogers, S. Rusinko, K. Summers, S. Schwartz, and others.They analyze the impact of material flows on the competitiveness of production and the state of the environment, define "green" innovations and "green" products, investigate the issue of training employees on the problems of reducing energy consumption, emissions and volumes of solid waste; prove that technological advances contribute to the growth of productivity of resources and, thereby, help manufacturers of industrial products not only to cope with the growing shortage of material resources, but also to implement an industrial revolution (Musina L., 2014).

Fundamental science is paying more and more attention to the issue of green innovations (Schiederig T., 2012), in particular in the context of the influence of various strategies on the production of green innovative products (Albino V. et al, 2009; Kes M. et al, 2014). A growing stream of research examines the organizational aspects of such innovations, including the impact of product design, disposal and secondary use of waste on production efficiency (Mangun, D., 2002), forecasting costs for disposal at the end of the product life cycle, determining the share of products that can be restored, repaired or processed (Cheung Wai M., 2014), etc.

From the analysis of the literature related to the circular economy, it can be assumed that a higher level of related activities carried out by enterprises will predict greater environmental efficiency. However, it should be noted that most of the research in this area concerns the resources and internal capabilities of companies that have not yet implemented the principles of organizing production on the basis of the digital economy (Kieffer C., 2018). At the same time, no systematic analysis of resource efficiency criteria of companies was found. The relevance of new value approaches to the management of strategic business development in modern conditions determines the need to identify promising projects for investment in order to expand production on the basis of circularity.

Research results. As the analysis of international practices shows, the criteria for evaluating the effectiveness of the implementation of corporate management strategies change in accordance with the challenges of the external environment. Analytical review of publications makes it possible to state that the assessment of resource efficiency within the production chain is currently the most common approach to the classification of circularity strategies (table 1).

Research on the practices of implementing circularity strategies shows that new business solutions are constantly appearing and changes are made to the given classification and, accordingly, to the expansion of the theoretical foundations of the formation of a circular economy. So, for example, I. Zvarych (2017) suggests considering the fourth principle - global social corporate responsibility (Responsibility) as mandatory during the formation of global circular chains of adding value.

Trends in the change of value priorities of corporate policy of companies depending on the phases of transformation of business models on the basis of the circular economy have been revealed.

Table 1. Circularity strategies within the production chain in order of priority

Strategy	English name	Short name	Value
Smarter product use and production	R(0) – Refuse	Refuse	Making a product redundant by giving up its function or offering the same function with a radically different product
	R(1) – Rethink	Rethinking	Make the use of the product more intensive (for example, through product sharing or by marketing multi-functional products)
	R(2) – Reduce	Abbreviation	Increase efficiency in the production or use of products by consuming less natural resources and materials
Розширити термін служби виробу та його частин	R(3) – Reuse	Reuse	Reuse by another consumer of a product that is not needed by the previous user, but is still in good condition and fulfills its original function
	R(4) – Repair	Repair	Repair and maintenance of a defective product so that it can be used according to its original function
	R(5) – Refurbish	Renewal	Restore the old product and update the possibility of consumption
	R(6) – Remanufacture	Reconstruction	Use parts of a discarded product in a new product with the same function
	R(7) – Repurpose	Repurposing	Use the discarded product or its parts in a new product with a different function
Useful use of materials	R(8) – Recycle	Processing	Process materials to obtain the same (high grade) or lower (low grade) quality
	R(9) – Recover	Restoration	Combustion of materials using energy

Source: based on (José Potting, 2017)

The focus on the operational efficiency of production processes is strengthened by the transition to the principles of sustainable development and environmental responsibility, and then by the creation of circular value chains (table 2).

Table 2. The genesis of company indicators by phases of business transformation

Indicators/ Phase	Operational efficiency	Sustainability	Creating a circular value chain
Ecological	Energy efficiency	Recycled content	Valorization of remaining resources
	Water efficiency	Circularity projects	Stored value
	Material efficiency	Dividends for waste from landfills	Intensity of impact on the environment (EP&L Intensity)
Social	Labor hours per unit	Local stakeholders are involved	Jobs created (direct and indirect)
	Performance level	Covered customers	Open social enterprises
	Transparency of supply chains	Number of accidents or incidents	Total economic contribution
Financial	Energy cost per unit	Carbon credits	Income from circularity
	Price per resource unit	Circular purchases	Share of the circularity portfolio
	Landfill fee for garbage	Saving resources	Volume of recycled goods sold

Source: based on (WBCSD, 2018)

The system of indicators for evaluating the effectiveness of corporate management of international companies is divided into areas: impact on economic results, social consequences, and finances. Companies must take into account the ethical aspects of their activities, but this

does not exclude the achievement of economic goals. Environmental assessment is a basic tool in corporate governance and a necessary component on the way to sustainable management.

Management of the development of companies is based on the implementation of the project approach (WBCSD, 2018). Investments shape the unknown because the future is not just undefined, it has to be made possible, it has to be created, and virtual reality is the key to that. We analyzed circularity investment projects presented by international companies and determined that these are mostly startups and social and environmental projects that are more of a demonstration and image nature and are not a manifestation of the systemic demand of traditional industries. It should be noted that waste management, which includes its collection, sorting and processing, is the most developed area of circular economy development.

The destruction of the environment caused by plastic packaging has changed the corporate policy of fast food companies in the context of using paper cups. Thanks to the organic nature of this packaging for drinks, a positive perception of consumers and their requests for this form of packaging was formed. As a result, this has had a positive impact on the paper cup market. So, according to Data Bridge Market Research, by 2027 the paper cup market will be valued at $11.61 billion.USA, while registering growth at the level of 4.1% for the forecasted period of 2020–2027 (WBCSD, 2018). Moreover, many current directions of economic development, such as e-commerce, have become an impetus for the active consumption of corrugated cardboard and the demand for paper recycling.

For example, Huhtamaki Hong Kong announced the acquisition of catering assets of International Paper Co. in China, including the production of paper cups and food containers. In addition, Georgia Pacific announced plans to invest $70 million. USA in logging operations to obtain raw materials needed for paper towels, cups and toilet paper. Similarly, Lollicup USA has established a new manufacturing facility in Rockwall, Texas, for paper and plastic cups (The AP news, 2020).

According to international research companies (Global Market Insights), the global market for equipment for the processing of secondary raw materials was estimated at 750 million dollars. USA in 2017, and until 2025 it will grow annually by an average of 6%. Structurally, the market can be segmented by type of equipment (sorting presses, shredders, cutters, granulators, etc.), by type of material (plastics, metals, paper and wood, rubber, etc.), as well as regionally (North America, Europe, Asia Pacific, Latin America, Middle East and Africa). According to 2017 data, the segment "pickup presses" dominate in terms of volume with a 30% share in the overall structure of the waste processing equipment market (Global Market Insights, 2018). It is also expected that in 2025 it will reach the figure of 390 million dollars. USA, showing an average annual growth of 5.7%.

Lefort, Danieli Centro Recycling, Morita Holdings Corporation, Forrec Srl Recycling, BHS Sonthofen, Panchal Plastic Machinery Private Ltd, Mid Atlantic Waste Systems, Idromec Spa and others are among the world's largest companies operating in the waste recycling equipment market. Market requests for digital economy projects became a prerequisite for structural changes in the engineering market. Thus, the identified trends confirm the investment attractiveness of circularity projects and the prospects for the development of business models based on the principles of the circular economy.

Conclusions

The relevance and global economic importance of the issue of the development of the circular economy make it necessary to solve this issue at different management levels. The objective reality is the involvement of all participants in economic relations in this process:

manufacturers, service providers, end consumers, government, international organizations. Modern entrepreneurs who carry out production activities need to take into account many factors that affect the development of their business in order to function effectively on the market. In addition to the task of bringing profit to your company and developing your activity according to all economic canons, you need to bring social utility and take care of the surrounding environment. In order to solve the risks associated with the management of companies based on circular business models, there is a growing need for the formation of a new environmentally responsible corporate culture.

In Ukraine, as well as in the world society, there are requests for a healthy way of life and preservation of the environment, therefore, the country must create institutional foundations for the realization of these needs, it is necessary to encourage training and innovation of a new generation of entrepreneurs, to initiate "green" business strategies for the development of territories and to promote intersectoral cooperation.

In the near future, pressure from such factors as resource scarcity and climate change is expected to increase. Global solutions are focused on a new economy that will ensure the livelihood of future generations. Government agencies can help establish the right conditions for businesses to operate – ones that enable effective use of data and real-life testing, while building trust in business and government. These are new responsibilities that product manufacturers must undertake in accordance with the demands of society in order to invent new business models in the era of massive personal data, automated transport and virtual reality.

Today, the nature of innovation processes has profoundly changed, and startups are not the only business model that is based on the invention of new products and services, as well as new knowledge and technologies. All mature companies, especially those operating in global markets, are indeed faced with a dilemma: to grow the business through operational scalability or to expand the product line at risk to become "obsolete" or to regularly renew their activities through the development of radically new concepts.

One of the main challenges facing management in connection with the implementation of the principles of the circular economy is the unpredictable results and consequences of business transformation in a competitive environment. Therefore, the replacement of business models is the basis of new approaches to company management. From this perspective, companies must create or enhance value by configuring or reconfiguring new or existing resources. Further research is needed on the issue of divergence of circular business models according to industry characteristics and practices of applying adaptive management tools in the context of conceptualizing changes and structural redistribution of resources in the environment.

References

1. Ormazabal M., Prieto-Sandoval V., Puga-Leal R., Jaca C. (2018). Circular Economy in Spanish SMEs: Challenges and opportunities. *J. Clean. Prod,* no. 185, pp. 157–167.
2. Rizos V., Behrens A., Van Der Gaast W., Hofman E., Ioannou A., Kafyeke T., Flamos A., Rinaldi R., Papadelis S., Hirschnitz-Garbers M. et al. (2016). Implementation of circular economy business models by small and medium-sized enterprises (SMEs): Barriers and enablers. *Sustainability,* no. 8, pp. 1212.
3. Ormazabal M., Prieto-Sandoval V., Jaca C., Santos J. (2016). An overview of the circular economy among SMEs in the BasqueCountry: A multiple case study. *J. Ind. Eng. Manag.,* no. 9, pp. 1047–1058.
4. Rizos V., Behrens A., Kafyeke T., Hirschnitz-Garbers M., Ioannou A. (2015). The Circular

Economy: Barriers and Opportunities for SMEs; Centre for European Policy Studies (CEPS): Brussels, Belgium.
5. EIO (2016). Bi-Annual Report 2016: Policies and Practices for Eco-Innovation Up-Take and Circular Economy Transition. Available at: https://ec.europa.eu/environment/ecoap/sites/ecoap_stayconnected/files/ eio_2016_report.pdf (access date 05.05.2023).
6. Stewart R., Niero M. (2018). Circular economy in corporate sustainability strategies: A review of corporate sustainability reports in the fast-moving consumer goods sector. *Bus. Strateg. Environ.,* no. 27, pp. 1005–1022.
7. Su B., Heshmati A., Geng Y., Yu X. (2013). A review of the circular economy in China: Moving from rhetoric to implementation. *J. Clean. Prod.,* no. 42, pp. 215–227.
8. Shahbazi S., Wiktorsson M., Kurdve M., Jönsson C., Bjelkemyr M. (2016). Material efficiency in manufacturing: Swedish evi- dence on potential, barriers and strategies. *J. Clean. Prod.,* no. 127, pp. 438–450.
9. EEA Circular Economy in Europe. Developing the Knowledge Base. Available at: https://ec.europa.eu/environment/ecoap/policies-and-practices-eco-innovation-uptake-and-circular economy-transition_en (access date 03.05.2023).
10. Chertow M. R. (2000). Industrial symbiosis: Literature and taxonomy. *Annu. Rev. Energy Environ.,* no. 25, pp. 313–337.
11. Daddi T., Nucci B., Iraldo F. (2017). Using Life Cycle Assessment (LCA) to measure the environmental benefits of industrial symbiosis in an industrial cluster of SMEs. *J. Clean. Prod*., no. 147, pp. 157–164.
12. Ghisellini P., Ji X., Liu G., Ulgiati S. (2018). Evaluating the transition towards cleaner production in the construction and dem-olition sector of China: A review. *J. Clean. Prod*., no. 195, pp. 418–434.
13. Aid G., Eklund M., Anderberg S., Baas L. (2017). Expanding roles for the Swedish waste management sector in inter-organiza- tional resource management. *Resour. Conserv. Recycl*., no. 124, pp. 85–97.
14. Velenturf A. P. M. (2017). Resource Recovery from Waste: Restoring the Balance between Resource Scarcity and Waste Over-load. *Sustainability,* no. 9, pp. 1603.
15. Masi D., Day S., Godsell J. (2017). Supply Chain Configurations in the Circular Economy: A Systematic Literature Review. *Sustainability,* no. 9, pp. 1602.
16. Pan S. Y., Du M. A., Huang I. T., Liu I. H., Chang E. E., Chiang P. C. (2014). Strategies on implementation of waste-to-energy(WTE) supply chain for circular economy system: A review. *J. Clean. Prod*., no. 08, pp. 409–421.
17. Pereiras S., Cdti E. H., Pereiras M. S., Huergo E. La Financiación de Actividades de Investigación, Desarrollo e Innovación: Una revisión de la evidencia sobre el impacto de las ayudas públicas. Available at: https://www.cdti.es/recursos/publicaciones/archivos/7396_211121112006133850.pdf (access date 01.04.2023).
18. Triguero Á., Cuerva M. C., Álvarez-Aledo C. (2017). Environmental innovation and employment: Drivers and synergies. *Sustainability,* no. 9, pp. 2057.
19. Ghisetti C., Rennings K. (2014). Environmental innovations and profitability: How does it pay to be green?An empirical analy- sis on the German innovation survey. *J. Clean. Prod.,* no. 75, pp. 106–117.
20. Moktadir M. A., Rahman T., Rahman M. H., Ali S. M., Paul S. K. (2018). Drivers to sustainable manufacturing practices and circular economy: A perspective of leather industries in Bangladesh. *J. Clean. Prod*., no. 174, pp. 1366–1380.

21. EOI Eco-Innovation Observatory-Policies and Practices for Eco-Innovation Up-Take and Circular Economy Transition. Available at: https://ec.europa.eu/environment/ecoap/policies-and-practices-eco-innovation-uptake-and-circular-economy-transition_en (access date 28.04.2023).
22. Musina L. A., Kvasha T. K. (2014). Resource-efficient economy: European tendencies and lessons for Ukraine. *Economic analysis*, vol. 18, no. 1, pp. 51–62.
23. Schiederig T., Tietze F., Herstatt C. (2012). Green innovation in technology and innovation management – an exploratory literature review. *R&D Management*, vol. 42, no. 2, pp. 180–192. Available at: http://onlinelibrary.wiley.com/doi/10.1111/ j.1467-9310.2011.00672.x/pdf (accessed October 2018).
24. Albino V., Balice A., Dangelico R. M. (2009). Environmental strategies and green product development: an overview on sustainability-driven companies. *Bus. Strategy Environment*, vol. 18, no. 2, pp. 83–96.
25. Kes M., Mont O., Rodhe H., Orsato R., Ryan C. Neij L. (2014). Strategies for sustainable solutions: an interdisciplinary and collaborative research. *Cleaner Production*, vol. 83, pp. 5–6.
26. Mangun, D., Thurston D. (2002). Incorporating component reuse, remanufacture, and recycle into product portfolio design. *IEEE Trans. Eng. Manag*., vol. 49, no. 4, pp. 479–490.
27. Cheung Wai M., Marsh R., Griffin P. W., Newnes L. B., Mileham A. R., Lanham J. D. (2014). Towards cleaner production: a roadmap for predicting product end-of-life costs at early design concept. *Cleaner Production*, vol. 82, pp. 431–441.
28. Kieffer C., Carrillo-Hermosilla J., del Río P. (2018). Drivers and barriers of eco-innovation types for sustainable transitions. A quantitative perspective. *Bus. Strateg. Environ*., pp. 1–38.
29. José Potting, Marko Hekkert, Ernst Worrell and Aldert Hanemaaijer (2017). «Circular economy: measuring innovation in the product chain». Policy Report. Netherlands Environmental Assessment Agency. The Hague.
30. Zvarych I. (2017). Circular economy and globalized waste management. *Journal of European Economy,* vol. 16, no. 1(60), pp. 41–57.
31. WBCSD (2018). Circular Metrics Landscape Analysis. Available at: https://docs.wbcsd.org/2018/06/Circular_Metrics-Landscape_analysis.pdf (access date 25.04.2023).
32. Jessica Lyons Hardcastle (2016). Why Environmental Managers, Investors Love Circular Economy Technologies. Available at: https://www.environmentalleader.com /2016/08/why-environmental-managers-investors-love-circular-economy-technologies/ (access date 23.04.2023).
33. DBMR (2020). Global Paper Cup Market – Industry Trends and Forecast to 2027. Available at: https://www.databridgemarket- research.com/reports/global-paper-cup-market (access date 27.04.2023).
34. The AP news (2020). Paper Cups Market to Grow 1.5x by 2028; Disposable Paper Cup Options Gain Demand Driven by Fears of Covid-19 Transmission, Says Future Market Insights. Available at: https://apnews.com/press-release/accesswire/4bb9f10f8c2073 abc9acdab0838e9a45 (access date 25.04.2023).
35. Global Market Insights. Recycling equipment and machinery market size by machine. Available at: https://www.gminsights.com/ industry-analysis/recycling-equipment-and-

machinery-market (access date 23.04.2023).

36. Global Market Insights (2018). Inc. Recycling Equipment and Machinery Market to hit $1.2bn by 2025. Available at: https://www.globenewswire.com/news-release/2018/08/06/1547343/0/en/Recycling-Equipment-and-Machinery-Market-to-hit-1-2bn- by-2025-Global-Market-Insights-Inc.html (access date 05.05.2023).

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

ENSURING ECONOMIC SECURITY IN UKRAINE THROUGH THE IMPLEMENTATION OF EU EXPERIENCE IN PUBLIC PROCUREMENT

Borys SAMORODOV
V. N. Karazin Kharkiv National University
Svobody sqr, 4 UA 61000 Kharkiv, Ukraine
E.mail: samorodov@karazin.ua
ORCID ID:0000-0002-5267-1178

Diana SKOROKHOD
V. N. Karazin Kharkiv National University
Svobody sqr, 4 UA 61000 Kharkiv, Ukraine
E.mail: skorohod2021uo11@student.karazin.ua
ORCID ID: 0009-0002-5938-8372

Roman GALYCH
V. N. Karazin Kharkiv National University
Svobody sqr, 4 UA 61000 Kharkiv, Ukraine
E.mail: r.v.galych@karazin.ua
ORCID ID:0000-0001-7958-8174

DOI: 10.13165/PSPO-23-33-09

Abstract: *This scholarly article delves into the significance of ensuring economic security in Ukraine amidst globalization and the integration of countries into the global economy. The article analyzes the difficulties faced by Ukraine in the domain of public procurement, including consumer rights violations and corruption risks. To tackle these issues, one potential solution is to implement the European Union's best practices regarding public procurement.*

The article compares the legal frameworks of Ukraine and the EU on public procurement matters and identifies the most effective ways to incorporate European practices into Ukrainian procurement processes. In the EU, public procurement procedures must be equitable and transparent, giving all interested parties an equal opportunity to compete for and obtain contracts. Additionally, public authorities are required to post all necessary procurement information on their websites and open electronic platforms to ensure accessibility of information for all interested parties. The authors argue that by following European standards, Ukraine can improve the transparency and efficiency of its procurement processes, reduce corruption risks, and ensure better goods and services for its citizens and government. The adoption of these standards is crucial for Ukraine's economic security and overall development.

The study also reveals that the implementation of EU procurement standards can increase supplier competition, lower government procurement costs, and result in better quality goods and services for state entities. This can be achieved by employing European procurement procedures. Furthermore, the adoption of European standards guarantees compliance with procurement participation rules for all participants and reduces corruption risks in this area. Notably, the standards require audits and reporting on purchases, which ensures control over the process and the avoidance of possible violations.

The incorporation of European standards in public procurement can serve as a critical means of enhancing the effectiveness and transparency of procurement management. This research is based on the analysis of legislation and expert assessments.

Keywords: *economic security, Ukraine, globalization, integration, public procurement, European Union, legal framework, transparency, efficiency, supplier competition, procurement procedures.*

Introduction

In the current context of globalization and economic integration, ensuring economic security is a foremost priority for a nation's development. Effective deployment of resources

and infrastructure through public procurement constitutes a crucial tool for achieving this objective.

However, Ukraine, like many transitional economies, grapples with challenges in the organization of public procurement, leading to losses in state revenue, violations of consumer rights, and increased corruption risks. An approach to address these issues is to adopt the European Union's public procurement practices.

This scientific article delves into the subject of guaranteeing economic security in Ukraine via the implementation of European Union (EU) practices in public procurement. It scrutinizes key aspects of the appropriate organization of public procurement and the implementation of EU standards in this domain. To achieve this, a comparison of the legal framework pertaining to public procurement between Ukraine and the EU is executed, and the optimal techniques to integrate European experience into the practical application of public procurement in Ukraine are established.

The research findings demonstrate that the adoption of EU practices in public procurement can significantly enhance the effectiveness and transparency of procurement procedures in Ukraine, diminish corruption risks, and ensure superior quality and availability of goods and services for the state and its populace. In particular, integrating European standards into public procurement can foster competition among suppliers, reduce state procurement costs, and guarantee superior quality goods and services. Thus, the implementation of EU practices constitutes a crucial step towards ensuring economic security in Ukraine and can positively impact the nation's overall development.

Analysis of recent research and publications. The issue of public procurement legislative framework and its alignment with EU standards has been explored by various legal scholars, such as M. Sirant, N. Bolkvadze, I. Bondar, D. Martynovych, N. Tkachenko, M. Kovaliv, G. Pisarenko, O. Ivanova, V. Averyanov, N. Yu.Tsybulnyk, M. Amann , H. Kaletnik, N. Zdyrko, A. Olefirand others. Meanwhile, scholars such as I. Pikh, N. Karas, O. Siriy, O. Barvinchuk have studied the economic aspects of the issue. Nevertheless, to implement relevant EU norms into national legislation and ensure socio-economic security in public procurement, there is a need to synthesize and consolidate the research findings of these scholars.

The purpose and objectives of the research are to analyze the challenges and risks associated with public procurement in Ukraine, such as corruption and violations of consumer rights, and to identify the potential solutions that can be implemented to enhance the transparency and efficiency of procurement processes.

To achieve this goal, the following objectives are defined:

- to examine the best practices of the European Union in the field of public procurement;
- to compare the legal frameworks of Ukraine and the EU on public procurement matters and identify the most effective ways to incorporate European practices into Ukrainian procurement processes;
- to assess the potential impact of EU procurement standards on supplier competition, government procurement costs, and quality of goods and services for state entities in Ukraine;
- to develop practical recommendations for the adoption of EU procurement standards in Ukraine.

The object of research is the process of ensuring economic security in Ukraine through the implementation of EU experience in public procurement.

The subject matter of research is the theoretical, methodological, and applied aspects of incorporating EU procurement standards into the Ukrainian legal framework and their potential impact on procurement management.

The methods of scientific research. The article discusses the methods of scientific research used to ensure economic security in Ukraine through the implementation of EU experience in public procurement. The research is based on reliable methodological foundations drawn from modern financial and economic science. The study employs various scientific methods such as abstract and logical methods, systematic and logical generalization, scientific abstraction, synthesis, analytical method, and the method of factorial and comparative analysis.

The information base for the research includes a wide range of sources such as regulatory legal acts, analytical and statistical information, informational and analytical reviews, scientific articles, monographs, and internet resources related to the theory and practices of public procurement and economic security in the EU and other countries.

The obtained results of the research contribute to the scientific field of economic security in Ukraine. The research proposes the implementation of EU best practices in public procurement as a novel solution to improve economic security in Ukraine. The adoption of these standards is crucial for Ukraine's economic security and overall development.

The practical significance of the research lies in its ability to implement the EU's best practices in public procurement, as Ukraine can improve transparency, efficiency, and reduce corruption risks in its procurement processes, which is crucial for its economic security and overall development. Furthermore, the adoption of European standards can increase supplier competition, lower government procurement costs, and result in better quality goods and services for state entities.

The main research material

Presently, the public procurement market in Ukraine is deemed to be in its nascent stage. The existing mechanism for public procurement is not optimal and necessitates modernization in accordance with the experience of the European Union. The public procurement market necessitates compliance with several critical requirements, such as the elimination of corrupt practices, ensuring the utmost transparency in the tender process, identification of unscrupulous suppliers, and promotion of free-market competition. It is equally imperative to frequently scrutinize, simplify and update public procurement procedures as some of them are excessively prolonged, which could serve as an impediment to the effective functioning of the market infrastructure.

Significant endeavors have been undertaken to reform the procurement process in the framework of Ukraine's endeavor towards European integration. These measures encompass the adoption of a series of legislative acts and the establishment of corresponding instruments. The Association Agreement between Ukraine and the European Union, which was ratified in 2014 (Association Agreement between Ukraine and the European Union), stands as a pivotal pre-reform document. The Agreement incorporates various provisions pertaining to public procurement, especially the obligation to ensure transparency, openness, and competitiveness throughout the procurement process. Furthermore, in 2015, the "On Public Procurement" law was passed, which mandates the implementation of the principles of transparency, openness, and competitiveness in the procurement process, and the creation of an electronic procurement system.

The strategy for reforming the public procurement system in Ukraine (Постанова Кабінету Міністрів України. Про Стратегію реформування системи публічних закупівель, 2016) is an important component of the country's European integration process. Its goal is to ensure effective and transparent use of state funds when purchasing goods, works, and services. Article 5 of the "On Public Procurement" law (*Law of Ukraine.* 2016) was

included in the strategy for reforming the public procurement system, which established the main principles of public procurement, including fair competition among bidding participants, product quality and compliance with price, proper delivery of goods, works, and services within the established timeframe, as well as transparency and openness at all stages of procurement. In addition, there is a non-discriminatory approach towards potential order executors, which ensures the selection of the optimal proposal.

The ProZorro portal, which was launched in 2015, became the fundamental tool for reforming the public procurement process (*Electronic source*). The electronic platform for conducting public procurement using open data ensures the publication of up-to-date information about customers, goods and services, which has attracted significant interest from market participants. ProZorro allows you to prevent the implementation of corruption schemes and ensures the effectiveness of choosing the best offer among those proposed. According to the author of the study, ProZorro was a revolutionary step in reforming the process of public procurement in Ukraine. The creation of this portal has facilitated the enhancement of transparency and effectiveness in public procurement, consequently diminishing the risks of corruption and guaranteeing a higher level of competition in the market. ProZorro became an example of successful implementation of open data and electronic democracy in Ukraine.

The implementation of the ProZorro.sale electronic trading program marked the next step in the reformation of the public procurement system (*Electronic source*). This program enables the electronic auctioning of state-owned property, thereby ensuring openness, transparency, and efficiency in the sale of such assets. This is a crucial undertaking, given that state property is the shared ownership of all Ukrainian citizens and should thus be sold at the highest possible value. Moreover, the program facilitates the widespread availability of information on state asset sales, thereby aiding the fight against corruption and promoting confidence in government. Successful auctions have already taken place under the auspices of the ProZorro.sale initiative, including the sale of real estate, land plots, and other movable assets. Participation in these auctions requires registration on the electronic platform as a bidder and the provision of a required deposit. Bidders can then submit proposals for the purchase of state property, with the winning bidder being granted the right to acquire the asset.

Implementation of public procurement procedure in Ukraine

The regulatory framework governing public procurement in Ukraine comprises the Law "On Public Procurement" (*Law of Ukraine,* 2015) and its antecedent, the Law "On Implementation of State Procurements" (*Law of Ukraine,* 2014). To carry out the public procurement procedure, the customer must announce the bidding, publish the technical assignment and participation terms, receive proposals from participants, evaluate proposals, and conclude a contract with the winning bidder. In order to ensure the effective functioning of the public procurement system in Ukraine, it is necessary to constantly improve legislation and implement new technologies that allow for quality and efficiency of procurement procedures, reduce corruption risk, and increase competition.

As Ukraine endeavors to integrate into the European Union, it strives to align with European norms in various fields, including the regulation of public procurement. The legislation of the EU concerning public procurement holds significant importance for Ukraine in this regard. The Association Agreement between Ukraine and the EU (*The Council of the European Union. The Association Agreement between the European Union and its Member States,* 2014) envisions comprehensive integration with the European market, encompassing participation in the EU public procurement program. Ukraine has committed to conforming its

public procurement legislation to EU stipulations, which will secure equitable and transparent access to the EU public procurement market for Ukrainian businesses. The author of the scholarly article accentuates the necessity of adapting Ukraine's public procurement legislation to the EU's requirements. This step is essential for ensuring unbiased and lucid admission to the EU public procurement market for Ukrainian enterprises, potentially empowering Ukraine's economic progress and augmenting investments. The implementation of the Association Agreement with the EU is a significant advancement towards ensuring Ukraine's legal framework's harmonization with European standards and elevating the caliber of public procurement procedures. Nevertheless, to ensure the efficacy of public procurement reform, it is crucial to not only amend the legislation but also guarantee its proficient implementation and regulatory compliance.

Public procurement in the EU

Public procurement is a significant contributor to the European Union's economy, accounting for approximately 14% of the GDP. To ensure equity in the bidding process, the regulations are stringent and complex. The initial stage involves the public sector unit outlining its requirements and detailing technical specifications, performance requirements, and evaluation criteria for the intended goods, services, or works. The requirements must be unbiased, transparent, and non-discriminatory to promote fair competition. Following this, a notification is published in the Official Journal of the European Union (OJEU), requesting interested parties to submit their bids (*Official Journal of the European Union, 2022*).

The Official Journal of the European Union (OJEU) functions as a web-based platform for the dissemination of all public procurement notices originating from EU member states. The notice is designed to communicate crucial information concerning the procurement process, including bid submission deadlines, evaluation criteria, and contract value. Bidders who are interested in the contract respond to the notice by submitting their bids. The notice's evaluation criteria are employed to assess the submitted bids and establish the most economically advantageous one. The criteria cover various factors, including price, quality, environmental and social impact, and innovation. After the assessment, the public sector organization then awards the contract to the successful bidder. In circumstances where the contract value surpasses the EU threshold, the public sector entity is under an obligation to publish a contract award notice on the OJEU. The notification must encompass relevant information about the contract's worth, the victorious bidder's identification, and the justification for the selection.

The European Union (EU) mandates the employment of electronic tools and procedures in the procurement process to ensure transparency and efficiency are enhanced. The use of electronic procurement tools, such as electronic tendering and e-procurement portals, is increasingly prevalent in extensive procurement procedures. EU public procurement law aims to guarantee fair competition, prevent corruption, and promote sustainability. In the procurement process, it is imperative for public sector entities to ensure impartial treatment of all bidders, while guaranteeing transparency, unbiasedness, and equity. The EU endorses sustainable procurement practices that prioritize environmental and social considerations throughout the procurement process.

In conclusion, the process of public procurement in the EU is intricate and intended to guarantee impartial competition and just treatment of all bidders, while simultaneously achieving cost-effectiveness for the public sector. The EU has developed a comprehensive regulatory framework to uphold transparency, fairness, and sustainability in public procurement

procedures. In addition, the integration of electronic procurement tools has led to an increase in effectiveness and openness in the procurement procedure.

The European Union has developed a comprehensive package of legislative acts that regulate public procurement procedures in its member countries. The primary document that regulates procurement in the EU is Directive 2014/24/EU (*Directive (EU) 2014/24 of the European Parliament and of the Council*, 2014) on public procurement procedures. It establishes general rules for procurement procedures in all areas, including goods, services, and construction works.

The key task for Ukraine is to align its legislation on public procurement with the relevant EU directives, which are listed below:

Directive on public procurement (2014/24/EU)

• Directive on procurement in the utilities sectors (2014/25/EU)

• Directives on the application of procedures for the award of public supply and works contracts (89/665/EEC and 92/13/EEC)

• Directive on defence and security procurement (2009/81/EC)

• Directive on the award of concession contracts (2014/23/EU)

• Directive on electronic invoicing in public procurement (2014/55/EU)

It is necessary to identify the "General Provisions on Economic Freedoms and Legal Principles of the Treaty on the Functioning of the European Union" (*"Treaty on the Functioning of the European Union,* 1957) and the "Precedent Law of the European Union Court" (*European Court Reports*, 2022) among the listed directives. These directives regulate public procurement in cases where the specified amount exceeds the established threshold values. In situations where the threshold values are not exceeded, priority is given to national legislation in combination with EU directive rules. In other cases, preference is given to national legislation in combination with EU directives rules.

Control over the implementation of public procurement belongs to the Antimonopoly Committee, the Accounting Chamber, the Ministry of Economic Development and Trade, the State Audit Service of Ukraine, and the State Treasury of Ukraine. International economic security in the sphere of public procurement of Ukraine as a candidate country for EU membership.

During the Brussels summit on June 23, 2022, a significant official decision was reached, granting Ukraine the esteemed status of a candidate country for European Union membership. This landmark event signifies a gradual transformation of Ukraine's trade policy to conform with the new status. Hence, it is imperative to conduct an assessment of the prospective advantages and disadvantages that may arise from the assimilation of Ukraine's public procurement sphere with that of the European Union nations. This evaluation will facilitate an appraisal of the potential implications on the economic security of the country.

The economic aspect of research

The presented data in Table 1 outlines the total count of tenders and tenders with genuine values for various European Union countries. With this information as a basis, the researcher identified the level of economic activity, as well as the dedication towards transparent and competitive public procurement in each country.

The significant quantity of tenders observed in Germany, France, and Spain is indicative of robust economic activity and government procurement. Conversely, countries such as Cyprus, Iceland, and Luxembourg exhibit comparatively lower quantities of tenders, which suggests a lower level of economic activity.

Furthermore, the quantity of tenders with legitimate values reflects the level of transparency within the public procurement procedures of each respective country. Notable disparities between the total number of tenders and tenders with actual prices in nations like Poland and Romania may signify the presence of transparency challenges in their procurement processes.

Table 1. The dissemination of the tender database across certain EU member states

Source: Unique traits of sports-related public procurements in the European Union, AK Journals, 2022

	Total tenders	Tenders with valid value		Total tenders	Tenders with valid value
Austria	3 934	3 850	Ireland	1 475	1 329
Belgium	3 615	3 428	Italy	12 094	11 730
Bulgaria	8 584	6 541	Lithuania	4 839	4 076
Republic of Cyprus	314	298	Luxembourg	963	944
Czech Republic	10 250	9 441	Latvia	2 375	2 007
Germany	55 604	43 983	Malta	628	601
Denmark	2 554	2 410	Netherlands	5 350	3 374
Estonia	1 392	1 262	Poland	44 805	36 464
Spain	17 698	16 992	Portugal	3 335	3 125
Finland	4 358	4 223	Romania	3 425	3 065
France	31 603	29 117	Sweden	12 624	11 135
Greece	2 644	2 412	Slovenia	2 369	2 177
Croatia	2 487	2 270	Slovakia	1 052	1 029
Hungary	4 299	4 041	**Total**	**244 670**	**211 324**

In conclusion, the data presented above emphasize the significance of effective regulation, transparency, and competition in public procurement processes for achieving sustainable economic growth and stability across Europe. Countries can derive advantages from adopting and implementing the most effective methodologies of other nations to upgrade their procurement mechanisms, stimulate competition, and enhance efficiency.

Given Ukraine's proximity to attaining candidate status for EU accession, its public procurement sector presents a considerable economic potential. By adhering to EU legislation and policies, Ukraine can leverage the well-established public procurement market of the European Union to exploit the opportunities it offers.

An eminent benefit of acquiring EU membership is the bestowed access to the single market, renowned as the largest global market encompassing a populace exceeding 500 million individuals. This access will unlock novel avenues for Ukrainian enterprises to partake in government procurement tenders, competing with firms across Europe, ultimately leading to a substantial uplift in the Ukrainian economy.

By implementing EU legislation concerning public procurement, Ukraine will be able to enhance the transparency, efficiency, and integrity of its public procurement system, thereby creating a more appealing investment climate for both businesses and investors. A transparent

ISSN 2029-1701
ISSN 2335-2035 (Online)

and efficient procurement system can boost investor confidence in the country's investment stability, promoting the influx of foreign investment.

Ukraine possesses a significant quantity of small and medium-sized enterprises (SMEs) that could considerably profit from increased availability to public procurement contracts. Through fostering the involvement of SMEs and new entrants in public procurement and building a more varied supplier base, Ukraine could substantially elevate its SME sector, engendering job creation and spurring economic growth in the nation.

In summary, Ukraine's membership in the EU would provide it with the opportunity to access EU funding for public procurement projects. This access to EU funding would be instrumental in supporting and advancing Ukraine's public procurement initiatives. The EU offers considerable financing opportunities for public procurement undertakings, with a notable focus on infrastructure and environmental protection. The availability of this financing would provide a noteworthy stimulus to Ukraine's public procurement industry, as well as contributing to economic growth in other domains.

Taking everything previously noted, Ukraine, as a candidate for EU accession, holds considerable potential for economic expansion in public procurement. By aligning more closely with the EU market and implementing EU law, Ukraine can reap the benefits of wider access to public procurement contracts, improved transparency and efficiency in its public procurement system, increased participation by small and medium-sized enterprises and new entrants, and access to EU project funding for public procurement.

Challenges and risks in public procurement of Ukraine

1. Corruption has emerged as a pressing issue in Ukraine's public procurement domain, substantiated by several occurrences of embezzlement, kickbacks, and collusive practices involving government officials, bidders, and intermediaries. The absence of transparency in procurement procedures, attributable to the use of sealed tenders and inadequate disclosure of procurement data, has contributed to the proliferation of corruption, resulting in a loss of public confidence in the procurement system. The author contends that enhancing transparency and openness in procurement procedures, embracing competitive bidding, and broadening the pool of participants can help mitigate the risk of corruption in this domain. Moreover, effective oversight and inspections by relevant authorities, along with public engagement in monitoring procurement procedures, are crucial. Insufficient regulatory frameworks and underdeveloped electronic public procurement systems may also contribute to corruption. To effectively combat corruption in Ukraine's public procurement sphere, systemic reforms and continual efforts to improve legislation and procurement processes are imperative.

2. Inadequate competition presents a significant impediment to economic progress. In the context of Ukraine, a noteworthy concern arises from the concentration of certain pivotal sectors, such as energy and infrastructure, within the control of a few major corporations. This scenario hampers the entry of new market players and diminishes opportunities for competition. When a limited number of companies hold substantial market shares, they wield their influence to manipulate prices, stifle innovation, and impose unfavorable conditions on other participants. Consequently, consumers endure heightened costs, limited choices, and decreased investments in the development of emerging enterprises and technologies.

According to the author, one potential remedy to address the issue of inadequate competition is to enhance regulatory oversight over competition in Ukraine, encompassing the regulation of company mergers and acquisitions. This entails fostering an environment conducive to the advancement and reinforcement of competition, facilitating the entry of new

market participants, broadening consumer choice, enhancing efficiency, and reducing the cost of goods and services. Furthermore, it is crucial to foster the development of Ukraine's technological and innovative infrastructure, while providing support to small and medium-sized enterprises to enable their active participation in competition. Promoting the advancement of novel technologies and innovative solutions is also imperative to bolster companies' competitiveness.

In order to foster effective competition, it is imperative to promote the advancement of new technologies and innovative solutions within key sectors of the economy. This will unlock opportunities for new market entrants and enhance the overall competitiveness of all companies operating within the market. To illustrate, facilitating the growth of green energy and the implementation of energy-efficient technologies can create fresh opportunities for companies and enhance their competitive advantage in the energy industry. Similarly, the proliferation of information technology and the digital economy can introduce novel channels for companies operating in sectors such as transportation, logistics, and trade, among others. Effective progress in these domains can further engender cost reductions in goods and services, making them more accessible to consumers and elevating demand. Consequently, this will contribute to heightened market competition and the creation of new employment opportunities. Ergo, the advancement of new technologies and innovative solutions assumes a crucial role in fostering market competition and facilitating sustainable economic growth.

3. Furthermore, in addition to the aforementioned challenges, Ukraine confronts risks stemming from its legal and institutional framework. These include a deficiency in clarity and coherence in procurement regulations, insufficient institutional capacity and expertise, and inadequate resources for oversight and enforcement. These risks can seriously undermine the effectiveness of public procurement in Ukraine and cause corruption and inefficient use of budget funds. For example, if procurement rules are not clear and agreed, this may lead to contracts being awarded to substandard suppliers, or procurement procedures not being transparent enough, making them vulnerable to corruption schemes.

The inadequacy of institutional capacity and expertise can also impede the procurement process, particularly in instances where government entities lack the necessary proficiency to identify optimal bids and execute efficient procurement procedures. This may result in inefficient and superfluous use of public funds, with adverse effects on the country's budget and economy. Insufficient resources for oversight and enforcement can also create challenges for public procurement in Ukraine. Without sufficient means to monitor procurement processes and protect against corruption, this may encourage unscrupulous suppliers and procurement authorities to engage in negligent and corrupt behavior.

Ukraine needs serious reforms and efforts to make its public procurement efficient and transparent. This requires not only legal and institutional support, but also investment in the professional development of public procurement workers.

To tackle the challenges mentioned above, the author recommends the provision of professional training to specialists engaged in public procurement and the establishment of mechanisms for their continuous professional development. Additionally, it is crucial to ensure a robust monitoring mechanism for procurement processes to prevent corruption. This can be accomplished by setting up independent bodies responsible for overseeing public procurement and enforcing compliance with the rules.

Ukraine can benefit from adopting the best global procurement practices to improve the efficiency and transparency of its procurement processes. For instance, the country can learn from the procurement practices of EU and OECD member states and adopt international standards and norms governing procurement activities.

All these important measures ultimately aim to make public procurement in Ukraine significantly more efficient, transparent, and widely accessible to all interested parties, while also preventing corruption and completely eliminating careless or inappropriate use of public funds. This will undoubtedly ensure much more efficient and stable functioning of the national economy and guarantee the long-term stability and prosperity of the country as a whole.

Recommendations on strengthening the security of public procurement according to the conducted research

In order to bolster the economic security of public procurement in Ukraine, various recommendations have been put forth. Andrii Olefir presents a study on the problems of public procurement in Ukraine called "Problems of public procurement in comparison with European experience" (A. Olefir, 2017), suggesting several proposals to improve the national legislation in this regard. These proposals concern the electronic auction procedure, supplier qualification, the selection of the most economically advantageous tender, and corruption prevention. The author of the study also analyzes the EU's experience in the legal resolution of public procurement problems, and trends to stimulate the development of the national economy through public procurement. While corruption prevention is a widespread goal in Ukraine, the primary objective of legal policy in public procurement should be the development of competition, which provides the most cost-effective acceptance of proposals. The article further highlights the shortcomings of the new legislation on public procurement, which introduced electronic auctions but did not resolve most of the problems arising during the tendering process. These problems include distorted competition, divided subjects of procurement for tendering concealment, and unjustifiably broad application evaluation criteria of price proposals. Besides corruption, it also identifies hazards such as lobbying and the reduced usefulness of public goods due to product purchases based only on prices. To address these issues, the article suggests that Ukraine adopt the provisions of Directive 2014/24/EU (*Directive (EU)* 2014/24 *of the European Parliament and of the Council*, 2014), which establish more effective approaches to the legal regulation of public procurement than Ukrainian laws. These approaches include evaluating bids after their qualifying examination, not announcing public tenders if state (municipal) enterprises can satisfy procurement needs, and the tendency to unite demand from customers to achieve economies of scale. The article also recommends that legislation include special measures that stimulate enterprises to implement environmental and other standards and encourage the participation of small and medium enterprises in tenders and businesses of disabled and other socially disadvantaged groups. To expand the range of "connected persons" who cannot participate in tenders, the article suggests adopting a list of products (with division into categories) for which a permanent market exists, where customers are entitled or required to use a mixed system of evaluation.

In the article "Public procurement in Ukraine as a state governance instrument: evaluation, control, improvement", H. Kaletnik and N. Zdyrko (H. Kaletnik and N. Zdyrko, 2019) conducted an analysis of the crucial role of public procurement in implementing sustainable development policies in economic, social, and environmental fields. The article details the tactical and strategic goals of public procurement and highlights the problematic aspects of the process, including changing legislation, inconsistent terminology, and inadequate supervision. Additionally, the authors examine the established components of public procurement and the classification of procedures for their implementation, outlining the peculiarities of the procedures for different types of public procurement concerning their value and fulfillment order. The article also analyzes the positive tendencies in quantitative and

qualitative indicators of public procurement in Ukraine, and provides examples of disqualifications and rejections of participants. The study also highlights the importance of controlling bodies in public procurement, including their composition and subordination, and typical violations of control results. According to the suggested measures, it is essential to reform the control system, eliminating duplication of functions and powers, and creating a single controlling specialized body, the Public Procurement Inspectorate, to increase the efficiency and effectiveness of control. It also emphasizes the need to boost institutional capacity and transparency in public procurement to ensure compliance with procurement rules and reinforce monitoring.

Conclusions

In summary, the domain of public procurement assumes critical importance in ensuring the economic security of Ukraine, particularly as the nation aspires to integrate into the European Union. However, Ukraine encounters various challenges and risks in this sphere, including corruption, limited transparency, and inadequate competition. To fortify the economic security of public procurement, Ukraine should undertake measures to bolster the legal and institutional framework, enhance transparency and oversight, foster competition, and address issues pertaining to corruption and integrity. The implementation of the aforementioned measures has the capacity to foster heightened confidence among the public with regard to the procurement process, thus supporting Ukraine's economic expansion and progress towards EU accession.

References

1. Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part dated 30 November 2015, No. 984_011. [Online]. Available at: http://zakon.rada.gov.ua/laws/show/984_011 (Accessed: 07 April 2023).
2. Legislation (WTO Government Procurement Agreement): [Online]. Available at: https://e-gpa.wto.org (Accessed: 19 April 2023).
3. Zakon Ukrainy "Pro pryyednannia Ukrainy do Uhody pro derzhavni zakupivli" vid 16.03.2016 № 1029-VIII. [Online]. Available at: https://zakon.rada.gov.ua/laws/show/1029-19#Text (Accessed: 13 April 2023).
4. Ukraine. Cabinet of Ministers. (2016). Pro Stratehiyu reformuvannya systemy publichnykh zakupivel ("dorozhnyu kartu"): Postanova Kabinetu Ministriv Ukrayiny vid 24.02.2016 r. № 175. Uriadovyi Kurier. 2016, № 175. [Online]. Available at: http://zakon3.rada.gov.ua/laws/show/175-2016-%D1%80 (Accessed: 09 April 2023).
5. Ukraine. (2015). Pro publichni zakupivli: Zakon Ukrayiny vid 25.12.2015 № 922-VIII (zi zminamy). Vedomosti Verkhovnoi Rady Ukrayiny. 2016, № 9. [Online]. Available at: https://zakon.rada.gov.ua/laws/show/922-19#Text (Accessed: 18 April 2023).
6. ProZorro. [Online]. Available at: https://prozorro.gov.ua/uk/ (Accessed: 11 April 2023).
7. ProZorro.sale. [Online]. Available at: https://prozorro.sale/en/ (Accessed: 23 March 2023).
8. Ukraine. (2014). Zakon Ukrayiny "Pro zdiisnennia derzhavnykh zakupivel" vid 10.04.2014 № 1197-VII. Available at: http://zakon.rada.gov.ua/laws/show/1197-18. [Online]. (Accessed: 05 March 2023).

9. Ofitsiinyi visnyk Ievropeiskoho Soiuzu. URL: https://eur-lex.europa.eu/oj/direct-access.html. [Online]. (Accessed: 07 April 2023).
10. Current legal framework, rules, thresholds and guidelines. [Online]. Available at: https://eur-lex.europa.eu/oj/direct-access.html [Online]. (Accessed: 04 May 2023).
11. Treaty establishing the European Economic Community. [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11957E%2FTXT [Online]. (Accessed: 3 April 2023)
12. **TED (Tenders Electronic Daily).** [Online]. Available at: https://ted.europa.eu (Accessed: 8 April 2023).
13. **TED eTendering**. [Online]. Available at: https://etendering.ted.europa.eu (Accessed: 8 April 2023).
14. Olefir, A. (2014). Problems of public procurement in comparison with european experience [Monograph]. Kyiv: Justinian. 9-248 p. [Online]. Available at: https://www.ceeol.com/search/article-detail?id=539365 (Accessed: 04 May 2023).
15. Kaletnik, H., & Zdyrko, N. (2019). Public procurement in Ukraine as a state governance instrument: evaluation, control, improvement. [Online]. Available at:http://socrates.vsau.org/repository/getfile.php/24765.pdf (Accessed: 16 April 2023).
16. European Commision. [Online]. Available at: https://commission.europa.eu/index_en (Accessed: 11 March 2023).
17. Amann, M. – Essig, M. (2015): Public Procurement of Innovation: Empirical Evidence from Eu Public Authorities on Barriers for the Promotion of Innovation. *Innovation: The European Journal of Social Science Research* 28(3): 282–292. [Online]. Available at: https://www.tandfonline.com/doi/abs/10.1080/13511610.2014.998641?journalCode (Accessed: 13 March 2023).
18. Tsybulnyk N. Yu. (2017). Dosvid krayin YeS shchodo zdiysnennya publichnykh zakupivel. [Experience of EU countries on public procurement]. Naukovyi Visnyk Mizhnarodnoho Humanitarnoho Universytetu. Seriya "Yuryspudentsiya", Odesa, 28, 94-97. [Online]. Available at: http://vestnik-pravo.mgu.od.ua/archive/juspradenc28/ juspradenc28.pdf#page=94 (Accessed: 01 May 2023).

MRU Mykolas Romeris University

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

PUBLIC SECURITY IN CONSTITUTIONAL DIMENSION IN LITHUANIA

Ieva SAUDARGAITĖ
Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
E-mail ievasaudargaite@mruni.eu
ORCID: 0009-0000-1409-2442

DOI: 10.13165/PSPO-23-33-12

Abstract *This article analyses how the public security is reflected in the constitutional dimension in Lithuania. The analysis is performed by focusing on two main aspects: the entrenchment of public security in the text of the Constitution and the interpretation of the relevant constitutional provisions by the Constitutional Court, i.e., on the official constitutional doctrine related ensuring public security. This article consists of two main parts: the first part deals with the relevant analysis of the text of the Constitution, and the second part analyses the interpretation of the Constitution by the Constitutional Court from two angles – first, what is the role that the Constitution attributes to the public security and then – what impact this role has on the status of the subjects ensuring public security. Following the analysis of the text of the Constitution, the conclusion that the constitutional provisions cover the variety of aspects, that are related to the different fields of ensuring public security, is made. Whereas the analysis of the interpretation of these provisions by the Constitutional Court leads to the conclusion that ensuring public security falls within the mission of the State and public security is one of the most important public interests in our legal system. This special role of public security also implies a special role and status of subjects ensuring public security in our country. It is also concluded that an overview of future constitutional challenges suggests that the questions related to ensuring public security in Lithuania, including not only the general aspects of ensuring this public interest, but, possibly, also the issues relevant to the special status of institutions ensuring the public security and their officials exercising these functions, will continue to remain in the scope of constitutional jurisprudence.*

Keywords: *ensuring public security, public interest, "paramilitary services", statutory state service.*

Introduction

The need for security is, unquestionably, at the very heart of the needs of every society. However, at some point such need may become even more important, more significant than any other aspect. This is particularly relevant in the context of national emergencies and arising geopolitical threats. Therefore, the challenges of the last few years – the COVID-19 pandemic and the resulting health crisis, the war in Ukraine and the inherent geopolitical crisis – have further reinforced the need for ensuring public security, in Lithuania as well.

Ensuring public security may, of course, require means of different nature. However, the law, as an idea that has become a rule of conduct and has turned into a reality of human behavior[1], inevitably comes to the limelight as well. Thus, while ensuring public security, we inevitably relay, among others, on legal means. This, consequently, also includes resort to the supreme law – the Constitution, which, being the core of the legal system[2], embodies the main principles governing, basically, every aspect of our lives. Therefore, the analysis of legal regulation in specific area, essentially, is impossible without the analysis of the context of the Constitution[3], and ordinary law (i.e., laws and sub statutory regulation) must be assessed based

[1] Vaišvila, A. (2009) *Teisės teorija*. 3rd edn. Vilnius: Justitia, 2009, p. 60.
[2] Birmontienė, T. et al. (2019) *Konstituciniai ginčai*. Vilnius: Mykolo Romeriis university. P. 19.
[3] Ažubalytė, R. 'Influence of the jurisprudence of the Constitutional Court on the criminal procedure', *Jurisprudence*, 19(3), 2012, 1059–1078, p. 1062.

on their constitutionality, disclosing all relevant elements of legal regulation[4]. Therefore, being the highest legal power, the Constitution becomes the navigational guidepost of the legality of the entire legal system[5]. Hence, the core principles for ensuring public security are also embodied, primarily at the constitutional level: the Constitution, being the supreme law, sets the requirements for all other legal acts, i.e., including laws and legal acts adopted in the executive level which are of utmost importance when ensuring public security.

In addition, the Constitution plays a special role in guaranteeing the sustainability of legal system due to its adaptability to the changing environment through the interpretation. Being the most stable and at the same time viable law, due to its interpretation (i.e., referred to as jurisprudential constitution[6]), the Constitution acts, essentially, as a guarantor of the sustainability of law in general. It facilitates the adaptation of legal system to the changes of dynamic environment, accordingly – to the developments within the sphere of public security. However, apart from the analysis of certain aspects of ensuring public security[7] and aspects related to the restriction of human rights due to ensuring public security[8], little attention in academic field is paid to the role of public security in constitutional dimension. Therefore, in the context of current challenges it is important to analyse how public security is reflected in the supreme law, what is its role in the constitutional dimension.

It should be noted in this context that the concept of public security is vast and, depending on different approaches to it, may encompass different aspects. To this end, while referring to the public security in the constitutional dimension, the understanding of this concept as it is embodied in the national legal system is taken into account. Thus, the public security within the means of this article encompasses such fields as the fight against crime, ensuring public order and safety of individuals in the state, guaranteeing reliable control and protection of state border, and ensuring road safety[9]. Accordingly, the public security in this article is understood as part of national security, which includes the protection of the legitimate interests of individual, society and the state against criminal offences and other violations of the law, as well as natural or man-made disasters[10].

The objective of this article is to analyse how the public security is reflected in the Constitution of the Republic of Lithuania (explicitly and in its interpretation, i.e., in official constitutional doctrine). The article focuses on the analysis of the public security in the

---

[4] Jarašiūnas, E. 'Aukščiausioji ir ordinarinė teisė: požiūrio į Konstituciją pokyčiai', *Jurisprudencija*, 33(25), 2002, 30–41, p. 39.

[5] Mesonis, G. 'The hermeneutic of Constitution: Unity of law and philosophy', *LOGOS*, 58, 2009, 36–43, p.42 [online]. Available at: http://www.litlogos.eu/L58/logos58_036_043mesonis.pdf (Accessed: 8 May 2023)

[6] For more see, Jarašiūnas, E. 'Jurisprudencinė Konstitucija', *Jurisprudencija. Mokslo darbai*, 12(90), 2006, pp. 24–33.

[7] For example, Novikovas, A. 'Konstitucijos nuostatų detalizavimas pagrindžiant savivaldybių galimybę savarankiškai vykdyti viešosios tvarkos apsaugą', *Jurisprudencija. Mokslo darbai*, 3(105), 2008, pp. 54–59; Melnikas, B. 'Public security institutions in countries of central and Eastern Europe: improvement of the systems of development of public security management specialists', *Jurisprudencija*, 73(65), 2005, pp. 30–38; Tumalavičius, V. (2017) *Viešojo saugumo užtikrinimo teisiniai aspektai lietuvoje: dabarties tendencijos ir procesai, mokslo studija*. Vilnius: Generolo Jono Žemaičio Lietuvos karo akademija.

[8] For example, Junevičius, A.'Laisvas asmenų judėjimas: apribojimai susiję su viešąja tvarka, visuomenės saugumu ir sveikata', *Public policy and administration*,12(1), 2013, pp. 133–147.

[9] 'Appendix 'Basics of national security of Lithuania' to the Law on the Basics of National Security of the Republic of Lithuania' [online]. Available at: https://www.e-tar.lt/portal/lt/legalAct/TAR.A0BAB27D768C/asr (Accessed: 8 May 2023)

[10] ' Public security development programme 2015-2025, adopted by the Resolution of the Seimas of the republic of Lithuania of 7 May 2015 No XII-1682' [online]. Available at: https://www.e-tar.lt/portal /lt/ legal Act / ea944da0f95d11e4927fda1d051299fb (Accessed: 8 May 2023)

Constitution by covering two main aspects: the analysis of constitutional provisions related to ensuring the public security and some relevant aspects revealed in constitutional jurisprudence. However, some insights into the certain tendencies within constitutional dimension and possible development of the constitutional doctrine are provided as well.

For the purposes of preparation of this article Constitution, jurisprudence of the Constitutional Court of the Republic of Lithuania and scientific literature were analysed. The constitutional provisions and the jurisprudence of the Constitutional Court were analysed mainly by applying linguistic, systematic and comparative methods.

I. Public security in constitutional provisions

If we looked into the text of the Constitution, the analysis of it could lead us to the general conclusion that the notion "public security" is somewhat "alien" to the Constitution. Of course, this is true only in the first glimpse and in the sense, that there are no provisions that would at the same time explicitly include the notion "public security" and would be aimed namely at ensuring it.

However, if we investigate the text of the Constitution more thoroughly, we will find such notions as "security of society", "security of the State", "public order", etc. Thus, all these (and many other) notions are to a greater or lesser extent related to various aspects of ensuring public security. This, among others, gives us a basis for talking about the importance of public security at the constitutional level.

All the constitutional provisions related to the different aspects of ensuring public security could be grouped in some way. The following is the most general grouping of constitutional provisions, reflecting divergent aspects related to ensuring public security. Thus, constitutional provisions to a certain extent related to ensuring public security could be grouped as follows:

(i) Provisions embodying aspects of public security as legitimate aim for restricting certain human rights and fundamental freedoms.

For example, Article 32 of the Constitution, which embodies right of free movement and right to choose the place of living of the citizens, states: "Citizens may move and choose their place of residence in Lithuania freely and may leave Lithuania freely. These rights may not be restricted otherwise than by law when this is necessary for the protection of the security of the State or the health of people, or for the administration of justice. Citizens may not be prohibited from returning to Lithuania." Thus, inter alia the security of the state, as well as health of the people are seen as a legitimate aim for restricting right of free movement.

Another example would be Article 36, which embodies the right to assemble. It states: "Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings. This right may not be limited otherwise than by law and only when this is necessary to protect the security of the State or society, public order, the health or morals of people, or the rights or freedoms of other persons." Thus, among others, public order, as well as the security of the State and society constitute legitimate aim for restricting right to assemble.

To sum up, the security of the State or society, as well as public order under the Constitution (certain constitutional provisions) constitute legitimate aim for restricting certain human rights and freedoms. In other words, these aspects related to public security constitute a public interest in the context of restricting them.

(ii) Provisions related to the constitutional requirement to try to ensure the security of each person and all society against criminal attempts.

Such constitutional provisions include aspects related to criminal procedure, as well as criminal justice. These provisions are inextricably linked to ensuring the security of the individual, as well as the society as whole. For example, the Paragraph 1 of the Article 31 of the Constitution establishes the presumption of innocence ("A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment") which is a core principle, that is applied during the whole procedure while investigating the crime, prosecuting a person, etc.

Another example could be the Paragraph 6 of the Article 31 of the Constitution which embodies the right of every person suspected of committing a crime or accused of committing it to defence as well as to an advocate from the moment of his apprehension or first interrogation. It may seem that these provisions are not directly linked to ensuring public security. However, the right to defence, as well as right to an advocate are intrinsically linked, among other things, to the process of investigating crimes, accordingly, they are directly related to ensuring public security.

Thus, as it may be seen from the provided example, these constitutional provisions also cover aspects related to ensuring public security; they also aim at guaranteeing the security of every individual, as well as of the society.

(iii) Provisions that entrench the powers of the state institutions implementing the state authority in the field of regulating questions related to ensuring public security.

For example, Item 1 of Article 94 embodies the powers of the Government of the Republic of Lithuania: it establishes the powers to manage national affairs, protect the territorial inviolability of the Republic of Lithuania, and guarantee state security and public order.

These constitutional provisions showcase the example of functions related to ensuring public security that fall within the competence of institutions implementing state powers in Lithuania. Such functions, as it may be seen from the provided example, are typically described in generic terms and are related to implementation of general commitment of the state to ensure public security.

(iv) Provisions referring to persons performing functions related to ensuring public security.

For the sake of accuracy, it should be noted that one article of the Constitution – Article 141 of the Constitution could be attributed to this group. Thus, one article which mentions the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary, i.e., it mentions those persons who, taking into account the concept of public security, participate in ensuring public security in our country.

Under the Article 141 of the Constitution the mentioned persons (together with other groups that are mentioned in these provisions) are prohibited from becoming Members of the Seimas, members of municipal councils, or municipal mayors, as well as to hold any elective or appointive office in the civil State Service or participate in political activities.

Hence, these constitutional provisions establish certain aspects of specific status of the mentioned persons, that perform functions related to ensuring public security. It should be noted in this regard, that the Constitution essentially does not impose an analogous or similar prohibition on other persons performing other functions. In other words, no other official or other persons performing specific functions in the state are imposed a prohibition to perform certain functions. These special constitutional provisions, therefore, give rise to the specificity of legal status of the mentioned persons implementing functions related to ensuring public security.

The given possible grouping of constitutional provisions, which are inherently linked to ensuring public security, is not a definite one. Nonetheless, this (conditional) classification allows us to see in the Constitution the variety of aspects, that are related to the different fields of ensuring public security. It could be, nonetheless, stated, that these constitutional provisions are related to the means of guaranteeing public security in the complex area comprising national, societal, and individual levels.

However, the Constitution, like all legislation, must be interpreted[11]. It is only through interpretation, that the stability and at the same time – the viability of the Constitution can be guaranteed[12]. Thus, although the explicit constitutional regulation related to ensuring public security may seem somewhat scarce, any conclusions could be made only following the interpretation of the constitutional provisions.

II. Public security in official constitutional doctrine

In this context it should be stressed that under the Constitution, only the Constitutional Court is empowered to construe the Constitution officially[13]. It is done in constitutional justice cases, i.e., by deciding whether laws (certain other legal acts) are not in conflict with the Constitution (certain other higher ranking legal acts). Interestingly, the interpretation of the constitution is a process, the end and qualitative completeness of continuous which can only be associated with the permanence of the validity of the constitution itself[14]. Thus, the official constitutional doctrine (the interpretation of constitutional provisions) is developed by the Constitutional Court "case by case"[15].

As the Constitutional Court has stated, such development involves, not only the disclosure of relevant new aspects of the constitutional legal regulation and supplement of the conception of the constitutional provisions provided in previously adopted acts of the Constitutional Court with new elements (fragments), but also reinterpretation of the official constitutional doctrinal provisions formulated previously when the official constitutional doctrine is corrected[16]. In other words, together with the development of official constitutional doctrine the content of the constitutional provisions changes as well, the extent of the changes depends on the interpretation of the constitutional provisions provided by the Constitutional Court. Therefore, the content of constitutional provisions is never static, it always develops and is adapted to the ever-changing circumstances. In academic level this phenomenon is even called the "jurisprudential constitution", i.e., as the category that reflects the idea of a living, evolving, functioning constitution[17].

It should be noted in this context that the content of the mentioned constitutional provisions related to ensuring public security, revealed in the official constitutional doctrine, is, accordingly, also ever changing. In addition, the mentioned specificity of the constitutional interpretation, i.e., the fact that is ever-changing and evolving, also determines that the official constitutional doctrine, *inter alia* related to ensuring public security, is particularly broad.

---

[11] Sinkevičius, V. 'Konstitucijos interpretavimo principai ir ribos', *Jurisprudencija*, 67(59), 2005, 7–19, p. 7.
[12] Birmontienė, T. et al. (2019, pp. 41-45).
[13] The ruling of the Constitutional Court of the Republic of Lithuania of 30 May 2003. Official Gazette, 2003, No. 53-2361.
[14] Mesonis (2009, p. 42).
[15] The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006. Official Gazette, 2006, No. 36-1292.
[16] The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006.
[17] Jarašiūnas, (2006, pp. 24–33).

Consequently, the analysis of public security in constitutional dimension could not be thoroughly performed in one article and should be limited only to the most general aspects. In other words, we are inevitably required to limit our analysis of official constitutional doctrine only some aspects related to ensuring public security.

Hence, this part of the article presents two main aspects related to ensuring public security: provisions of official constitutional doctrine related to the role of public security as a public interest, as well as those provisions of the official constitutional doctrine that reveal the impact of such special role of public security onto the status of state institutions and officials, implementing functions in ensuring public security.

II.1. The role of public security as of a public interest in the Constitution

Generally, in academic literature the public security is associated with the state, its functions, and, inseparably, with its relationship with the individual, i.e., it is determined as the relevant factors to protect citizens and the state and to ensure the safety of persons and property security[18]. Whereas the state, whose power covers all its territory, is seen as a political organisation of all society, whose mission, its obligation under the Constitution is to ensure human rights and freedoms and to guarantee the public interest[19][20]. Thus, the functioning of the state is inextricably linked with the implementation of the public interest. In addition, the implementation of the public interest as the interest of society is one of the most important conditions of the existence and development of society itself[21].

Under the Constitution each public interest, as emphasised Constitutional Court, reflects and expresses the fundamental values which are entrenched in, as well as protected and defended by the Constitution, such as openness and harmony of society, the rights and freedoms of the person, the supremacy of law, etc.[22] Thus, the public interest is understood in a broader sense than just as than the interest of the majority, and that society is understood as a complex of different groups with different interests[23]. Therefore, not any legitimate interest of a person or a group of persons is regarded as a public interest; it has to reflect and express the fundamental values consolidated, protected, and defended by the Constitution[24]. Consequently, while determining what role is attributed to the public security (elements thereof) in the Constitution, we should analyse if it (elements thereof) is related to public interest.

The following aspects related to guaranteeing the public interest and related to ensuring public security could be distinguished as an example in this respect:

(i) Aspects related to ensuring the security of society and guaranteeing public order.

---

[18] Kalašnykas, R., Deviatnikovaitė, I. ‘Kai kurių bendrųjų Europos Bendrijos teisės principų taikymo ypatumai administruojant viešąjį saugumą’, *Jurisprudencija. Mokslo darbai*, 4(94), 2007, 44–53, p.45.

[19] The ruling of the Constitutional Court of the Republic of Lithuania of 30 December 2003. Official Gazette, 2003, No. 124-5643.

[20] The ruling of the Constitutional Court of the Republic of Lithuania of 15 May 2007. Official Gazette, 2007, No. 54-2097.

[21] The ruling of the Constitutional Court of the Republic of Lithuania of 6 May 1997. Official Gazette, 1997, No. 40-977. The ruling of the Constitutional Court of the Republic of Lithuania of 13 May 2005. Official Gazette, 2005, No. 63-2235. The ruling of the Constitutional Court of the Republic of Lithuania 21 September 2006. Official Gazette, 2006, No. 102-3957.

[22] The ruling of the Constitutional Court of the Republic of Lithuania of 21 September 2006.

[23] Beliūnienė, L. et al. (2015) *Viešojo intereso atpažinimo problema Lietuvos teisėje: kriterijai ir prioritetai*. Vilnius: Teisės institutas. P. 253.

[24] The ruling of the Constitutional Court of the Republic of Lithuania of 21 September 2006.

It is generally stated in the official constitutional doctrine that under the Constitution, institutions of state authority and administration have a duty to ensure safety of the society and public order, to protect individuals from attempts against their lives or health, to protect human rights and freedoms[25]. This is the most general provision which reveals the importance, among others, of the aspects of ensuring public security. The content of the mentioned general duty of the state authorities is revealed in constitutional jurisprudence.

For example, in one of the constitutional justice cases the Constitutional Court elaborated its doctrine related to Article 36 of the Constitution which embodies the right to assemble in peaceful meetings. It was stated that this freedom may be implemented only without violating other constitutional values. Therefore, although organisers of meetings may freely choose the place, time, purpose, and manner of meetings, they must also take measures so that the meeting would not intimidate the security of the State or society, public order, people's health or morals, or the rights and freedoms of other persons. It is for the institution or official adopting decisions concerning the coordinated place, time, and form of the meeting to ascertain if the meeting will not violate the mentioned constitutional values.[26]

This example also proves that guaranteeing *inter alia* public order, which is one of the fields of public security, is an important public interest.

(ii) Aspects related to ensuring the security of each person and all society from criminal attempts.

The respective official constitutional doctrine is based, among others, on the stipulation that a just and harmonious civil society and state under the rule of law is decided by security of every individual and society overall from criminal attempts. In this context the Constitutional Court has emphasised more than once, that it is for the state to ensure such security – it is one of the priorities of the state. Whereas one of the types of measures in this respect are measures that help to create preconditions for restraining crime as a social phenomenon[27]. In addition, the mentioned obligation of the state requires defining criminal acts and establishing criminal liability for them by the law, as well as the duty of legislature to regulate criminal procedure relations (i.e., relations connected with the disclosure and investigation of criminal acts and with the consideration of criminal cases)[28]. Thus, the relevant official constitutional doctrine involves in this respect various aspects related to the restraint, investigation, and solution of crimes, as well as other measures for guaranteeing public order, etc.

For example, the Constitutional Court has held that under the Constitution, the restraint, investigation, and solution of crimes is a public interest, therefore, to ensure the normal activities of the institutions of law and order that are performing these functions, the necessary information must be supplied gratis[29]. Whereas the clarity of decisions adopted during a pretrial

[25] The ruling of the Constitutional Court of the Republic of Lithuania of 25 January 2013. Official Gazette, 2013, No. 11-520. The ruling of the Constitutional Court of the Republic of Lithuania of 5 June 2020. Register of Legal Acts, 2020-12-31, No. 29221.
[26] The ruling of the Constitutional Court of the Republic of Lithuania of 7 January 2000. Official Gazette, 2000, No. 3-78.
[27] The ruling of the Constitutional Court of the Republic of Lithuania of 9 December 1998. Official Gazette, 1998, No. 109-3004.
[28] The ruling of the Constitutional Court of the Republic of Lithuania of 26 June 2017. Register of Legal Acts, 2017-06-26, No. 10749.
[29] The ruling of the Constitutional Court of the Republic of Lithuania of 19 September 2002. Official Gazette, 2002, No. 93-4000.

investigation and the substantiation of such decisions with legal arguments is an important guarantee, *inter alia*, of the right to fair legal proceedings and the right to judicial protection[30].

Thus, the necessity to ensure security of each person and all society from criminal attempts is seen in the official constitutional doctrine as one of the aspects of the mission of the state. Therefore, restraint, investigation and solution of crimes are the fields that are inseparable from the implementation of the public interest.

(iii) Aspects related to ensuring road safety.

The Constitutional Court has emphasised that it is a public interest to ensure traffic safety, *inter alia*, road traffic safety. It was then explained that this leads to certain requirements for legislation: the established traffic safety requirements have to be necessary to ensure public order and the security of society, human life and health, including appropriate requirements for road users, etc. For example, under the Constitution in order to ensure road safety, the legislature may establish such a legal regulation on the granting of the right to drive vehicles under which this right would not be granted for a certain period of time to persons who have committed the most serious violations of traffic rules[31].

The provided example proves that, under the Constitution, ensuring road safety – one of the fields of public security, which also implies the implementation of public interest.

Thus, the given examples from the official constitutional doctrine prove that ensuring security of the society, individuals from criminal attempts, as well as guaranteeing public order constitute the very essence of the role of the state. This means, of course, that both – ensuring security of the society, individuals from criminal attempts and guaranteeing public order, as well as ensuring road safety, constitute a very important public interest. It may be consequently concluded that ensuring public security is required by the whole society.

It should be added in this respect that other links between the protection of the public interest and ensuring public security could also by implied from the official constitutional doctrine. However, the provided examples, obviously, affirm that in general ensuring public security is at the very essence of the state – is inextricably linked to its main mission (as of political organisation of all society) and it constitutes an important public interest.

In this context we could wonder, why the conclusion that public security (its aspects) constitutes public interest is so important? Primarily, this fact means that the need to ensure public security must be taken into account when legally regulating various spheres of social life. For example, the Constitutional Court in one of constitutional justice cases has concluded (while interpreting the provision of Paragraph 3 of the Article 46 of the Constitution "the State shall regulate economic activity in such a way that it serves the general welfare of the nation") that the general welfare of the nation is not possible without the security of the State and of the society, the maintenance of which is a prerequisite for the achievement of the welfare of the nation; the security of the State and of society is a constitutionally important objective, a public interest which must be respected by the State when regulating economic activity in a way that serves the well-being of the nation. Therefore, as it was emphasised, the legislator must establish a specific legal framework for economic sectors (economic entities or objects) important for state and public security, *inter alia*, specific requirements (conditions) for

[30] The ruling of the Constitutional Court of the Republic of Lithuania of 17 February 2016. Register of Legal Acts, 2016-02-17, No. 2985.

[31] The ruling of the Constitutional Court of the Republic of Lithuania of 24 July 2020. Register of Legal Acts, 2020-07-24, No. 16411.

economic activities to prevent threats to state or public security[32]. In this particular case, for example, the Constitutional Court held that the legal regulation under which the investor, once declared to be non-compliant with the interest of national security, would be considered permanently not to be in the national security interest (irrespective of any factual circumstances) is in conformity with the Constitution.

Thus, as it may be seen from the official constitutional doctrine, the aspects of public security, that constitute the public interest, may require setting certain limits on the exercise of various human rights and freedoms. Therefore, the public security in this respect may have impact on legal regulation in various fields. Only by respecting such special role of public security, the security of society and individuals could be guaranteed.

Additionally, the fact that ensuring public security constitutes public interest also has an impact on the status and functions of the authorities implementing this public interest, as well as on the status, functions and guarantees of persons that help to implement it. Given the large volume of aspects in this respect, as well as their specificity, the relevant official constitutional doctrine is presented and analysed separately in another section of this article.

However, before moving towards the analysis of the mentioned aspects, it should be additionally noted, that the questions related to ensuring public security are at the core of constitutional jurisprudence. In the past year the Constitutional Court has dealt various cases directly or indirectly related to ensuring public security. For example, constitutional justice cases related to the right of the National Centre for Public Health to assign binding measures to employees for the control of communicable diseases in humans[33], to the irremovable reasons threatening national security interests[34], to entrusting the Government with the task of identifying areas where workers who have been checked for the presence of a communicable disease are permitted to work and those who have not undergone a health check are suspended from work[35].

In addition, the questions (more or less) related to ensuring public security remain on the table of the Constitutional Court, prompting for further constitutional developments in this sphere. This conclusion is affirmed by the fact that Constitutional Court is preparing to hear more cases concerning certain aspects related to ensuring public security. For example,[36] cases related to the constitutionality of temporary accommodation of an asylum seeker in the Foreigners Registration Centre[37], to the constitutionality of the National Certificate[38], to the constitutionality of restrictions on the freedom of movement of persons during the period of quarantine[39]. Therefore, we may conclude that, in general, aspects related to ensuring public security will remain a focal point in the constitutional jurisprudence, prompting for further developments of the respective official constitutional doctrine.

---

[32] The ruling of the Constitutional Court of the Republic of Lithuania of 22 September 2022. Register of Legal Acts, 2022-09-22, No. 19372.
[33] The ruling of the Constitutional Court of the Republic of Lithuania of 21 June 2022. Register of Legal Acts, 2022-06-21, No. 13291
[34] See the ruling of the Constitutional Court of the Republic of Lithuania of 22 September 2022.
[35] See the ruling of the Constitutional Court of the Republic of Lithuania of 12 October 2022. Register of Legal Acts, 2022-10-12, No. 20749.
[36] *List of petitions*. The official website of the Constitutional Court [Online]. Available at: https://lrkt.lt/en/petitions/list-of-petitions/371 (Accessed: 8 May 2023)
[37] Petition No. 1A-56/2022, case No. 10-A/2022.
[38] Petition No. 1B-10/2022, case No. 9/2022; petition No. 1B-18/2022, case No. 18/2022.
[39] Petition No. 1A-81/2022, case No. 11-A/2022; petition No. 1A-82/2022, case No. 12-A/2022; petition No. 1A-83/2022, case No. 13-A/2022.

II.2. The impact of a special role of public security on the status of the subjects ensuring it

This specific role of public security, as of a public interest, also has an impact on the status of subjects (institutions and persons) implementing it. As it was already shown in the first section of this article, the constitutional provisions establish certain aspects of specific status of certain persons, that perform functions related to ensuring public security. Thus, this section of this article is designated to the analysis of the relevant official constitutional doctrine related to the specificity of the status of certain persons, performing functions in ensuring public security.

The Constitutional Court has emphasised, that in order to guarantee the public interest of entire national community, the state must ensure the existence and implementation of the functions of public administration, as well as carrying out of public services[40]. In other words, under the Constitution, in order to guarantee public interest special system of institutions must be established. These institutions exercise specific functions related to implementation of public interest, *inter alia* to ensuring public security.

In this context it should be noted, that all state institutions could be divided into several groups[41]: (i) state institutions expressly specified in the Constitution (for example, the State Defence Council, the Commander of the Armed Forces, the Office of the Prosecutor General, security service); (ii) state institutions, which according to the Constitution, must be established by the law (for example, specialised courts); (iii) state institutions that need to be established for implementing state governance, administering national affairs, and ensuring the performance of various state functions – state institutions must be organised in order to perform such functions, although their establishment is not explicitly provided for in the Constitution.

The Constitutional Court has noted that due to the content of each state function and the circumstances of performing such functions state institutions performing these functions differ in terms of their status and the character of their activity[42]. The Article 141 of the Constitution, which refers to, among others, the officers of the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services, is considered also to determine state service[43]. It is, accordingly, emphasised, that some functions of the state are fulfilled, primarily or mainly, through civil state (and municipal) institutions, whereas others are performed through military and/or paramilitary state institutions[44].

In this regard the constitutional notion "paramilitary services" is interpreted in the official constitutional doctrine as including the statutory state institutions that do not belong to the national defence system; these institutions include police authorities, the bodies of interior service and security service as well as the other state institutions the activity of which, taking into account their mission and functions, have to be organised on the basis of statutory relations[45]. Actually, if we compare this constitutional notion with the understanding of public security which is referred to in this article (i.e., as mentioned, the public security in this article is understood as part of national security, which includes the protection of the legitimate

---

[40] The ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004. Official Gazette, 2004, No. 181-6708.
[41] The ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004.
[42] The ruling of the Constitutional Court of the Republic of Lithuania of 27 February 2012. Official Gazette, 2012, No. 26-1200.
[43] The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015. Register of Legal Acts, 2015-11-04, No. 17587.
[44] The ruling of the Constitutional Court of the Republic of Lithuania of 24 September 2009. Official Gazette, 2009, No. 115-4888.
[45] The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.

ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

interests of individual, society and the state against criminal offences and other violations of the law, as well as natural or man-made disasters[46]), we will see that the understanding applied in this article matches the one implemented by the ordinary law, and reveals essential aspects of the constitutional notion of "paramilitary services". Thus, when we talk about ensuring public security, we primarily refer to the paramilitary service and persons implementing functions within this sphere.

It should be noted in this respect, that according to the official constitutional doctrine, military, paramilitary, or security service is regarded as separate from civil service. Accordingly, there is, under the Constitution, a differentiated concept of civil state institutions and military state institutions, which lead to a differentiated regulation of relations connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for different legal status of persons working in civil, military, and paramilitary state institutions that is distinguished by certain particularities[47].

Thus, based on this official constitutional doctrine, various institutions could be established in order to guarantee public interest. The system of state institutions comprises very diverse state institutions, whereas their status and powers are dependent on the functions performed by the state and, accordingly, on the powers granted to particular institutions. The differentiation of state institutions leads, accordingly, to the differentiation of the status of persons helping to carry out the functions, attributed to particular state institution. Therefore, it implies different types of the state service, which is generally understood as a professional activity of state servants. For the purpose of this article paramilitary service is to be considered the most related to the implementation of public interest within the sphere of ensuring public security.

Under the Constitution, the constitutional purpose of paramilitary service is related with areas that are important to the security of the state and society (guarding and control of the state border, ensuring the public order, investigation of crimes, protection of state secrets, etc.)[48]. According to the Constitutional Court, the paramilitary service including the statutory state institutions are the police authorities, the bodies of interior service and security service as well as the other state institutions. Under the Constitution, the activity of these institutions has to be organised on the basis of statutory relations.[49] Thus, according to the official constitutional doctrine the specific role of the paramilitary service, presupposes special functions of persons implementing public interest within this sphere. Whereas the specificity of these functions requires specific status to be attributed to persons implementing them.

This specific status in the official constitutional doctrine involves various aspects. Primarily, as mentioned, it presupposes, the statutory relations, as well as strict hierarchical subordination. The Constitution also establishes special requirement *inter alia* for officials of state institutions to comply with the high standards required by the law, requirements of loyalty to the State, as well as of an impeccable reputation[50]. In addition, the statutory concept of the state service determines such special features of statutory service as its special legal regulation by statutes, such special requirements for officials of state statutory institutions that are related

[46] 'Public security development programme 2015-2025, adopted by the Resolution of the Seimas of the republic of Lithuania of 7 May 2015 No XII-1682'.
[47] The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.
[48] The ruling of the Constitutional Court of the Republic of Lithuania of 27 February 2012.
[49] The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.
[50] The ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2019. Register of Legal Acts, 2019-04-18, No. 6411.

to their education, age, state of health, etc[51]. The specificity of statutory state service is also represented by the fact that officials of statutory service are attributed specific powers (for example, to give certain mandatory instructions to persons outside their authority), special social and other guarantees[52].

Thus, due to the different functions that are performed by paramilitary institutions, the status of persons helping to exercise such functions is also different from the status of other officials of state institutions. In addition, the functions attributed to various paramilitary institutions differ as well. Therefore, the status of officials working in diverse paramilitary institutions differs as well (especially, as to their powers and requirements for the officials), i.e., even within the system of paramilitary institutions the status of officials of these institutions is not homogeneous. The status of officials of particular paramilitary institution (institutions) should therefore, if needed, be exhaustively examined separately. Nonetheless, all paramilitary institutions are mandated to implement public interest in the field of ensuring public security. The status of all officials of paramilitary institutions, accordingly, is similar in that they all contribute to ensuring public security, i.e., to implementing one of the most important public interests in our country.

In this context it should be additionally noted that although the special status (though diverse) of officials of paramilitary institutions has been established since the restoration of the independence of Lithuania, various aspects of this status still tend to be the subject of constitutional jurisprudence. The Constitutional Court has already dealt more than once with the questions, concerning specific status of the officials of statutory state institutions, as well as other officials exercising functions in the public security field. For example, in the year 2022 the Constitutional Court has examined the constitutional justice cases related to the compensation for losses of the State pensions of officials and servicemen[53], to the prohibition of being a statutory civil servant for a person exempted from criminal liability[54], and to the additional annual leave for officials bringing up a child(ren) up to the age of 14 alone[55].

In conclusion, obviously, not only the questions (more or less) directly related to ensuring public security, but also the ones related to special status of the officials whose function is to help ensure public security, remain on the table of the Constitutional Court, prompting for further constitutional developments in this sphere. It is, therefore, safe to assume, that that issues related to the status of officials of statutory state institutions might continue to remain in the agenda of the Constitutional Court.

Conclusions

The analysis of the constitutional provisions related to ensuring public security and their interpretation in the official constitutional doctrine, allows certain generalisations to be made regarding the role of public security in the constitutional dimension.

---

[51] The ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2012. Official Gazette, 2012, No. 47-2309.
[52] The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.
[53] See the ruling of the Constitutional Court of the Republic of Lithuania of 17 June 2022. Register of Legal Acts, 2022-06-17, No. 13127.
[54] See the ruling of the Constitutional Court of the Republic of Lithuania of 20 October 2022. Register of Legal Acts, 2022-10-20, No. 21298.
[55] See the ruling of the Constitutional Court of the Republic of Lithuania of 30 November 2022. Register of Legal Acts, 2022-11-30, No. 24335.

1. The public security is an integral and indispensable part of constitutional regulation. Although not all aspects of public security are explicitly referred to in the Constitution, various aspects related to ensuring it are explicitly referred to in the supreme law. Whereas the analysis of the official constitutional doctrine affirms that both – ensuring security of the society, individuals from criminal attempts and guaranteeing public order, as well as ensuring road safety, constitute a very important public interest. Thus, under the Constitution, ensuring public security (in the various fields) falls within the State mission. Accordingly, the public security (aspects thereof) constitutes one of the main public interests in our legal system.

2. The special place of public security in the constitutional dimension is also reflected by the specificity of the role of those implementing it. Due to the particular importance of public security, as of public interest, the institutions exercising functions related to ensuring public security, as well as their officials, have special status, as compared, respectively, to other state institutions and officials. Under the Constitution implementation of public interest in the field of ensuring public security is, primarily, linked to "paramilitary services" and persons implementing functions within this sphere. Although the status of officials in the system of paramilitary institutions is not homogeneous, at the same time their status similar in that they all contribute to ensuring public security, i.e., to implementing one of the most important public interests in our country. In addition, their status is generally related (though may be to a different extent) to strict hierarchical subordination, it is regulated by the special statutes, it implies compliance with various additional requirements (such as of loyalty to the State, an impeccable reputation, special education, state of health), attribution of specific powers, special social and other guarantees.

3. An overview of future constitutional challenges suggests that the questions related to ensuring public security in Lithuania, including not only the general aspects of ensuring this public interest, but, possibly, also the issues relevant to the special status of institutions ensuring the public security and their officials exercising these functions, will continue to remain in the scope of constitutional jurisprudence. However, the direction of the relevant development of official constitutional doctrine can only be identified after the analysis of the new aspects of jurisprudential development.

References

1. 'Public security development programme 2015-2025, adopted by the Resolution of the Seimas of the republic of Lithuania of 7 May 2015 No XII-1682' [online]. Available at: https://www.e-tar.lt/portal/lt/legalAct/ea944da0f95d11e4927fda1d051299fb (Accessed: 8 May 2023)
2. 'Appendix 'Basics of national security of Lithuania' to the Law on the Basics of National Security of the Republic of Lithuania' [online]. Available at: https://www.e-tar.lt/portal/lt/legalAct/TAR.A0BAB27D768C/asr (Accessed: 8 May 2023)
3. Ažubalytė, R. 'Influence of the jurisprudence of the Constitutional Court on the criminal procedure', *Jurisprudence*, 19(3), 2012, 1059–1078,
4. Beliūnienė, L. et al. (2015) *Viešojo intereso atpažinimo problema Lietuvos teisėje: kriterijai ir prioritetai*. Vilnius: Teisės institutas.
5. Birmontienė, T. et al. (2019) *Konstituciniai ginčai*. Vilnius: Mykolo Romeriis university.
6. Jarašiūnas, E. 'Jurisprudencinė Konstitucija', *Jurisprudencija. Mokslo darbai*, 12(90), 2006, 24–33.

7. Jarašiūnas, E. 'Aukščiausioji ir ordinarinė teisė: požiūrio į Konstituciją pokyčiai', *Jurisprudencija*, 33(25), 2002, 30–41.
8. Junevičius, A.'Laisvas asmenų judėjimas: apribojimai susiję su viešąja tvarka, visuomenės saugumu ir sveikata', *Public policy and administration*,12(1), 2013, 133–147.
9. Kalašnykas, R., Deviatnikovaitė, I. 'Kai kurių bendrųjų Europos Bendrijos teisės principų taikymo ypatumai administruojant viešąjį saugumą', *Jurisprudencija. Mokslo darbai*, 4(94), 2007, 44–53.
10. *List of petitions*. The official website of the Constitutional Court [Online]. Available at: https://lrkt.lt/en/petitions/list-of-petitions/371 (Accessed: 8 May 2023)
11. Melnikas, B. 'Public security institutions in countries of central and Eastern Europe: improvement of the systems of development of public security management specialists', *Jurisprudencija*, 73(65), 2005, 30–38.
12. Mesonis, G. 'The hermeneutic of Constitution: Unity of law and philosophy', *LOGOS*, 58, 2009, 36–43 [online]. Available at: http://www.litlogos.eu/L58/logos58_036_043mesonis.pdf (Accessed: 8 May 2023)
13. Novikovas, A. 'Konstitucijos nuostatų detalizavimas pagrindžiant savivaldybių galimybę savarankiškai vykdyti viešosios tvarkos apsaugą', *Jurisprudencija. Mokslo darbai*, 3(105), 2008, 54–59.
14. Sinkevičius, V. 'Konstitucijos interpretavimo principai ir ribos', *Jurisprudencija*, 67(59), 2005, 7–19.
15. The ruling of the Constitutional Court of the Republic of Lithuania of 30 May 2003. Official Gazette, 2003, No. 53-2361.
16. The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006. Official Gazette, 2006, No. 36-1292.
17. The ruling of the Constitutional Court of the Republic of Lithuania of 30 December 2003. Official Gazette, 2003, No. 124-5643.
18. The ruling of the Constitutional Court of the Republic of Lithuania of 15 May 2007. Official Gazette, 2007, No. 54-2097.
19. The ruling of the Constitutional Court of the Republic of Lithuania of 6 May 1997. Official Gazette, 1997, No. 40-977.
20. The ruling of the Constitutional Court of the Republic of Lithuania of 13 May 2005. Official Gazette, 2005, No. 63-2235.
21. The ruling of the Constitutional Court of the Republic of Lithuania 21 September 2006. Official Gazette, 2006, No. 102-3957.
22. The ruling of the Constitutional Court of the Republic of Lithuania of 25 January 2013. Official Gazette, 2013, No. 11-520.
23. The ruling of the Constitutional Court of the Republic of Lithuania of 5 June 2020. Register of Legal Acts, 2020-12-31, No. 29221.
24. The ruling of the Constitutional Court of the Republic of Lithuania of 7 January 2000. Official Gazette, 2000, No. 3-78.
25. The ruling of the Constitutional Court of the Republic of Lithuania of 9 December 1998. Official Gazette, 1998, No. 109-3004.
26. The ruling of the Constitutional Court of the Republic of Lithuania of 26 June 2017. Register of Legal Acts, 2017-06-26, No. 10749.

27. The ruling of the Constitutional Court of the Republic of Lithuania of 19 September 2002. Official Gazette, 2002, No. 93-4000.
28. The ruling of the Constitutional Court of the Republic of Lithuania of 17 February 2016. Register of Legal Acts, 2016-02-17, No. 2985.
29. The ruling of the Constitutional Court of the Republic of Lithuania of 24 July 2020. Register of Legal Acts, 2020-07-24, No. 16411.
30. The ruling of the Constitutional Court of the Republic of Lithuania of 22 September 2022. Register of Legal Acts, 2022-09-22, No. 19372.
31. The ruling of the Constitutional Court of the Republic of Lithuania of 21 June 2022. Register of Legal Acts, 2022-06-21, No. 13291
32. The ruling of the Constitutional Court of the Republic of Lithuania of 12 October 2022. Register of Legal Acts, 2022-10-12, No. 20749.
33. The ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004. Official Gazette, 2004, No. 181-6708.
34. The ruling of the Constitutional Court of the Republic of Lithuania of 27 February 2012. Official Gazette, 2012, No. 26-1200.
35. The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015. Register of Legal Acts, 2015-11-04, No. 17587.
36. The ruling of the Constitutional Court of the Republic of Lithuania of 24 September 2009. Official Gazette, 2009, No. 115-4888.
37. The ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2019. Register of Legal Acts, 2019-04-18, No. 6411.
38. The ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2012. Official Gazette, 2012, No. 47-2309.
39. The ruling of the Constitutional Court of the Republic of Lithuania of 17 June 2022. Register of Legal Acts, 2022-06-17, No. 13127.
40. The ruling of the Constitutional Court of the Republic of Lithuania of 20 October 2022. Register of Legal Acts, 2022-10-20, No. 21298.
41. The ruling of the Constitutional Court of the Republic of Lithuania of 30 November 2022. Register of Legal Acts, 2022-11-30, No. 24335.
42. Tumalavičius, V. (2017) *Viešojo saugumo užtikrinimo teisiniai aspektai lietuvoje: dabarties tendencijos ir procesai, mokslo studija*. Vilnius: Generolo Jono Žemaičio Lietuvos karo akademija.
43. Vaišvila, A. (2009) *Teisės teorija*. 3rd edn. Vilnius: Justitia, 2009.

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

CHALLENGES OF PREDICTING SOCIAL CONFLICTS IN THE CONTEXT OF CRISES AND HYBRID THREATS

Vytautas ŠLAPKAUSKAS
Mykolas Romeris University
Maironio St. 27, LT-44211 Kaunas, Lithuania
E-mail: slapkauskas@mruni.eu
ORCID ID: 0000-0002-9637-6672

DOI: 10.13165/PSPO-23-33-05

Abstract. *Climate change and environmental degradation have affected the entire world to varying degrees and are the main source of new crises and hybrid threats. All states and societies have a difficult and, at the same time, new responsibility to change their social ways of life, which until now have led to environmental degradation. In this process, a part of the world's humanity will experience great difficulties and overcoming them may become the cause of a global wave of social conflicts. It is necessary to avoid the rise of such a wave because its consequences can be very dangerous. This is evidenced by the consequences of Russian aggression in Ukraine.*

The article examines the challenges of predicting social conflicts, which are determined by the environment of crises and hybrid threats and the tendency of its expansion. The study revealed that the prediction of social conflicts is limited by groups of challenges of a hierarchical nature:

1. Objectively existing threats and the challenges of predicting their development, e.g. the effects of climate change, the effects of ongoing war.

2. The challenges of predicting the subjective perception of threats, which arise from the way groups of people perceive hybrid threats and evaluate the preventive behavior of authorities.

3. Methodological challenges caused by the need to create a paradigm of the connection between hybrid threats and their subjective perception (security theory).

4. Challenges in the choice of research methods caused by the limited possibilities to rely on the extrapolation of the previously established relationship between threats and their subjective perception.

Some of the research results are presented in the conclusions. One of the most important of them emphasizes the need to rethink the concepts of freedom and security and their relationship to successfully guarantee the peace of public life in the context of crises and hybrid threats.

Keywords: *climate change and environmental degradation, state, human social development, social life, social conflict.*

Introduction

At the end of the 20th century, the famous US sociologist Immanuel Maurice Wallerstein was the first to make a reasonable prediction about the end of the evolution of the global capitalist system as we know it. He said that the modern world-system as a historical system has entered the stage of an ending crisis and is unlikely to exist in fifty years. However, since the results of the crisis cannot be determined in advance, we do not know whether the new system (or systems) that has come to replace it will be better or worse than the one in which we now live (Wallerstein, 1999).

In the states of the current world, there is a predominance of concern about crises and hybrid threats (Cook, May 4, 2023), which are the ominous result of unbridled economic expansion and the long-term impact of other anthropogenic factors on the environment. The global expansion of the process of climate and environmental degradation has already reached such a scale that individual countries are developing such environmental conditions that are less and less favorable for human social development. Therefore, it is not by chance that the migration and anxiety that the headlines of the online media remind us about are spreading. For example, "By 2100 almost half the planet could enter new climate zones: Europe will suffer the

most" (Iki 2100 m. beveik pusė planetos gali patekti į naujas klimato zonas: labiausiai nukentės Europa).

It can be assumed that climate change and environmental degradation are a hybrid cause of the global crisis of democracy. In 2022 the state of global democracy report points out that, "global democracy, already under increasing threat over the last few years, approaches the end of 2022 with multiple tipping points on the horizon—a cost of living crisis, an impending global recession, and recent wars in places as diverse as Ukraine and Ethiopia. Democracies are struggling to effectively bring balance to environments marked by instability and anxiety, and populists continue to gain ground around the world as democratic innovation and growth stagnate or decline" (Global State of Democracy Report 2022).

The feeling of impending changes is reinforced by three books published in 2022 and 2023:

1. Martin Wolf. The Crisis of Democratic Capitalism (Penguin Press, 2023).
2. Francis Fukuyama. Liberalism and Its Discontents (Farrar, Straus and Giroux, 2022).
3. Pranab Bardhan. A World of Insecurity: Democratic Disenchantment in Rich and Poor Countries (Harvard University Press, 2022).

James Livingston, who analyzed their content, states that "three recent books combine theoretical sophistication and historical method in ways that enable us to rethink majority rule and thus re-imagine the future of democracy. And the most searching of the three calls into question whether that future is compatible with capitalism as we have come to know it" (Livingston, March 10, 2023).

Thus, it can be said that all the countries of the world and their societies must prepare for future global changes. Most of the world's societies are not ready for them. Some of the members of societies most affected by climate change and environmental degradation are preparing for migration or are already involved in migration processes. Another part of them fights, usually, among themselves for the meager resources of survival. The analysis of various data allows us to say that there is a global wave of social conflicts due to the limited resources of social life. This rising tide of social conflict will inevitably lead to many challenges that need to be anticipated and researched in advance.

The purpose of this study is to reveal the systemic and structural challenges of predicting social conflicts. The main claims of the research are as follows:

- The development of natural and artificial factors and their interaction causes side effects - crises and hybrid threats.
- Emergence and development of crises and hybrid threats change the normal life environment.
- The context of crises and hybrid threats can be the causes of social conflicts and a catalyst for their development.
- The functioning of crises and hybrid threats limits the possibilities of predicting social conflicts.

The research is based on document analysis and a systematic approach.

The context of crises and hybrid threats and the challenge of its global spread

Sources of power of a natural, social and technological nature generate threats to the existence of all entities. The biggest source of power is climate change and environmental degradation. Its effect activates the behavior of all sources of power of a social nature - geopolitical and transnational entities, state coalitions and individual states, their self-governing entities and local communities (Šlapkauskas, 2022, p. 22). Social entities create and manage

threats of a technological nature. Crises and hybrid threats are the result of the interaction of power sources of natural, social and technological nature. The most important existential needs of man and their groups are to take care of food and safety. Crises and hybrid threats can radically limit the fulfillment of existential needs, such as the availability of potable water. The long-term functioning of crises and hybrid threats is especially harmful, because they transform the environment and the conditions of social life that depend on its condition.

The context of crises and hybrid threats is the deterioration of social life conditions due to the action of threats that limit the possibilities of human social development and may lead to the formation of social disorganization - the weakening and interruption of the connection between cultural values and behavioral norms. Such conditions are formed as a complex result of the negative impact of threats on the normal life of groups of people. Threats can be of different nature, strength, interconnectedness and duration. The natural and evolutionary threats of climate development and the escalation of man-made threats provoke different subjective reactions of human groups, which may cause additional threats.

The impact of crises and hybrid threats of particularly high power and duration significantly limits the possibilities of human social development. Human social development is understood optimistically: it is a process that should increase the opportunities of a person of any level of development to choose the three most important things - live a long and healthy life, acquire knowledge, and make sure the resources necessary to achieve a normal standard of living. Without these basics, many other options remain unavailable.

In the context of long-term crises and hybrid threats, irreversible social changes inevitably occur, which are determined by the need of human groups to survive in new conditions. L. Friedman and J. Ladinsky emphasize that social change is any non-repetitive change in established ways of behavior in society. Social changes occur because the social structure changes - patterns of social relations, established social norms and social roles (Cotterrell, 1997, p. 67-68).

Human existence always takes place in the context of various threats. According to security research classic Barry Buzan, “security is not absolute for any individual. <...> Most of the threats to the individual arise from the fact that people live in a social environment that generates inevitable social, economic, and political pressure. Social threats take many forms, but four main types can be distinguished: physical threats (pain, injury, death), economic threats (possession or destruction of property, deprivation of opportunities for employment or access to resources), threats to rights (imprisonment, denial of normal civil rights), and threat to status or position (public humiliation). These types of threats are not mutually exclusive, as one (injury) may very well lead to another (job loss)" (Buzan, 1997, p.70-71). Thus, B. Buzan aptly emphasizes the hybrid effect of threats. Therefore, it can be said that the existence of hybrid threats began to be realized in the second half of the 20th century.

At the beginning of the 21st century, hybrid threats began to be deliberately and intensively used as a weapon in the fight against other entities. The growth of the number of cyberspace users and the development of their connections is especially favorable for the creation and use of hybrid threats. The growing social role of smart technologies and artificial intelligence presents both positive and negative opportunities. There are already serious doubts about the further social role of artificial intelligence (Thomas, 8 Risks and Dangers of Artificial Intelligence to Know). The dangerous possibilities of using artificial intelligence to limit civil rights are visible (Skidelsky, May 25, 2023). Therefore, it is proposed to declare a moratorium on the development of artificial intelligence (Pause Giant AI Experiments: An Open Letter. March 22, 2023).

Why is it necessary to specifically examine the context of crises and hybrid threats, if human existence has always taken place in the context of threats so far? The fundamental reason for the need to examine the dynamic context of crises and threats is that the pace and ways of social life have changed in less than a generation's lifetime: relatively slow social life has been replaced by a radically high pace. The difference in this speed of social life is expressed by the decrease in the role of internal - social control in society and the inevitable increase in external - control by state authorities. This is a very dangerous process, because the expansion of external control of society raises the question of the limits of the power of state power.

Any liberal democratic state strives for the functionality of its existence. Therefore, it must manage the processes of social integrity of the society. Some of them can be managed by increasing the external control of society. But it has limits: liberal democracy may unwittingly turn into illiberal, and then undemocratic, by gradually crossing one or other limits of external control of society. The scientific team of Central and Eastern European countries examined the real possibilities of such a transformation. Summarizing the research conducted by the countries, it can be stated that all post-communist societies have preserved the features of neo-militant democracy to varying degrees, the strength of which in the public sphere is determined by the wavering influence of Russia (Neo-militant Democracies in Post-communist Member States of the European Union, 2022). Excessive expansion of state control can be avoided only by strengthening the internal - social control of the society itself.

Social control is a mechanism of social regulation of the behavior of people and their groups, which ensures compliance with certain common restrictions, the violation of which disrupts the realization of basic human needs and the functioning of the social system itself. General restrictions on behavior can be customary, moral, legal. Social control is based on the material and symbolic resources that the society has at its disposal to encourage positive behavior of its members and condemn its deviations.

Historically, human development has been characterized by a relatively slow pace of social life. The fundamental reason for this pace was the need for human groups to survive. To survive and reproduce, it took a long time to adapt to threats of natural and social origin. During this complex process of adaptation in the natural and social environment, the main institutions of social behavior - morality, religion and law - spontaneously formed. They are forms of functioning of the social order. "A social order is a set of characteristics of community relations and relationships that occur and develop in individual societies or social groups, the practice of which helps to survive (determines the development of community internal security) and achieve a higher standard of living for as many members of a society or social group as possible. This means that people together create their living environment (cultural and psychological structures) in order to institutionalize the security and freedom of the community and its members, their connection. It can be assumed that compliance with the rules of social order guarantees the safety of individuals and social groups" (Šlapkauskas, 2022, p. 27).

It is important to emphasize that a relatively fast-paced social life, unlike a slow-paced one, provides a significantly greater variety of life options that can be implemented without following general rules of moral behavior. For example, at the beginning of the era of cyberspace consumption, the Internet was said to offer opportunities for absolute freedom. This false thesis is now being neutralized by the implementation of sustainable security policy. "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

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

cyberspace, the observance of which will lead to the development of a culture of freedom of expression. They emphasize that decisions on network user behavior 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" (Šlapkauskas, 2022, p. 169).

However, it is not enough to implement a sustainable security policy only in cyberspace, because new threats are generated by climate change and environmental degradation. Although many studies on climate change and environmental degradation have been carried out, many relevant reports have been prepared and the highest international agreements on the global prevention of climate change and environmental degradation have been signed, it is still not possible to implement a sustainable security policy for the environment (AR6 Synthesis Report: Climate Change 2023).

Climate change and environmental degradation are now the largest source of hybrid threats to human development. Its operation means that for the first time after the Second World War, not a national or regional, but a global context of crises and hybrid threats is being formed. Climate change and environmental degradation are causing geopolitical, social and military conflicts on a global scale. For example, "a conflict over water triggered clashes in France, where several villages can no longer provide their residents with tap water. And Italy's largest river is already running as low as last June" (Europe's next crisis: Water, April 28, 2023).

Paradoxically, this state of the highest level of threats occurred after the collapse of the Soviet empire and the formation of a global market on the planet. It was naively believed that economic cooperation between authoritarian and democratic countries under market conditions promotes the development of their political and economic liberalism. According to Jean Pisani-Ferry, "when the post-World War II order was conceived, the focus was not on managing the global commons, but rather on fostering economic ties through trade and investment, in the hope that this would strengthen political alliances. Preventing climate change, preserving biodiversity, and avoiding the depletion of high-sea fisheries were not on anyone's radar" (Jean Pisani-Ferry, Mar 28, 2023).

“Climate change will increasingly increase the risk <...> as physical impacts increase and geopolitical tensions mount about the global response to the challenge. The increasing physical effects of climate change also are likely to intensify or cause domestic and cross-border geopolitical flashpoints. As temperatures rise and more extremes climate effects manifest, there is growing risk of conflicts over resources associated with water, arable land, and the Arctic. Additional factors, such as migration, some of which will be exacerbated by climate and weather events, will heighten these risks. Contested economic and military activity in the Arctic have the potential to increase the risk of a miscalculation, particularly while there are military tensions between Russia and other seven Arctic countries following Russia's invasion of Ukraine in early 2022. <...> Climate-related disasters in low-income countries will deepen economic challenges, raise the risk of inter-communal conflict over scarce resources, and increase the need for humanitarian and financial assistance. The growing gap between the provision of basic needs and what governments and the international community can provide raises the likelihood of domestic protests, broader instability, extremist recruitment, and migration” (Annual threat assessment of the U.S. intelligence community, 2023, p. 22).

No single country alone can limit the global expansion of the context of crises and hybrid threats. It is likely that it is still possible to do this with the joint efforts of the countries of the world. Organizing the prevention of climate change and environmental degradation requires a

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

leading country with the necessary resources and able to mobilize most of the world's countries for a common goal. Therefore "The United Nations has warned that "cascading and interlinked crises" are jeopardizing not just the 2030 Agenda for Sustainable Development, but "humanity's very survival." Mitigating the threat requires a radical reform of international finance, based on a market-shaping paradigm that advances the common good" (Mazzucato, May 1, 2023). The latest IPCC report makes this clear. Averting the worst effects of climate change demands a profound economic transformation in the next decade. Achieving it will require a new social contract, based on a fairer distribution of wealth and income (Gaffney, March 31, 2023).

Signs of the structure and development of social conflicts

The expanding context of crises and hybrid threats is not favorable for the development of social life. Modern states and societies do not have the necessary experience to quickly adapt to climate change and a degrading environment. Adequate response of people and their groups to the evolving context of crises and hybrid threats is the most important factor. However, often individuals and their groups choose the method of migration to new areas of life. In the near future, the expanding environmental degradation will inevitably increase migration processes towards developed countries, hoping to find suitable opportunities for social life there. Strengthened border protection of developed countries can temporarily slow down the pace of inward migration but cannot solve the migration problem itself. Therefore, the population in the European Union and North America will inevitably increase significantly. Therefore, in areas suitable for living, sooner or later, real conflicts over living space may prevail.

Conflict is a struggle between people and their groups, in which they have conflicting attitudes, goals of action, or resist aggression against their values. The struggle can take various forms - political, economic, cultural, military - and with different intensity. The strongest conflict between parties involving more than a few individuals is called social conflict.

"Social conflict is a clash of opposing social interests, views, aspirations. It usually arises from the unequal opportunities of various social forces to use the necessary resources to satisfy needs" (Socialinis konfliktas - Visuotinė lietuvių enciklopedija). Thus, a social conflict is a struggle between the parties to the conflict, in which the parties seek to seize the resources or territory of the rival, threaten to individuals or groups, their property or culture in such a way that the struggle takes the form of attack or defense. Social conflicts can arise at different levels - interpersonal, intergroup, and international.

All social conflicts have a characteristic structure and go through their respective stages of development. Researchers of social conflicts usually distinguish the following structural elements:

- Participants. There can be two or more parties (groups) that have their own point of view and interests.

- Topic. It defines what caused the dispute or war.

- Object. Every social conflict has its object, which can be the property, power, resources, spiritual achievements of the parties (groups).

- Context. The context of social conflict consists of the macro and microenvironment in which the opposition of countries (groups) is formed and takes place. The environment can be changed by corresponding changes in the behavior of social institutions and groups, which arise because of the subjective reaction to threats to security and the limitation of opportunities for the realization of interests. The appearance of threats to public safety can become a stimulus and catalyst for social conflict. For example, political conflicts related to the management of the COVID-19 pandemic.

Conflicts are easier to recognize and understand when they are viewed as evolving processes. Therefore, five stages are distinguished in their structure:

1. Latent, or hidden, conflict. This is the initial stage of the conflict. It is usually caused by competition for the same goals or with different operational goals.
2. Understood conflict. It is the awareness of latent conflict.
3. Felted conflict. It differs from the understood in that it manifests itself in emotional tensions and crises. Individuals need to vent their tensions and worries in some way to maintain inner balance.
4. Expressed conflict. This is a variant of conflict behavior. It is most pronounced when open aggression occurs. For example, the brutal aggression of the Russian Federation in Ukraine.
5. Conflict resolution and consequences. The connections between understood and expressed, felted and expressed conflicts are the points at which various conflict resolution programs are applied. Their goal is to prevent conflicts that have reached the level of understanding and feeling from developing into non-cooperative behavior. For that purpose, discussions, negotiations, group agreements are organized, material values are redistributed, interdependence of conflicting parties is reduced, etc. If the conflict is resolved, especially according to the wishes of its participants, and leads to satisfaction, then it can be expected that it will not recur later. Unresolved, but only suppressed, conflict returns sooner or later and takes on more dangerous forms.

Observations and analysis of the development of conflicts in the countries of authoritarian regimes and liberal democracies allow us to distinguish the main signs of social conflicts. Characteristic signs of the presence of social conflicts and their development are the following:

1. Within the state:

- Dissemination of militant political rhetoric.
- Development of ideologizing of legal and information relations.
- Increase in the number of human rights violations and weakening of legal protection.
- Growth of exclusion and emigration flows.
- Growth of disinformation in public communication networks.
- Activation of radicalism and separatism.
- Application of political, economic, judicial and police repression against non-governmental organizations and members of civil society.

2. Between states:

- Growth of public political, economic and energy pressure.
- Turning political pressure into an aggressive position.
- An increase in the number of violations of the border protection regime of the neighboring state.
- Development of information warfare.
- Increase in cases of violation of international public law norms.
- Formation of immigration as a latent struggle against the neighboring state.
- Attempt(s) to cause a crisis in another country or its various areas of life.
- Latent and expressed application of hybrid threats.
- Demonstration of readiness for military aggression against a neighboring country.
- The beginning and continuation of military aggression against a neighbor or another country.

Most of the sign's characteristic of social conflicts can be observed in all states of authoritarian regimes, for example, Russia, Belarus, Iraq, China. There are fewer such signs in illiberal or only partially liberal democracies such as Hungary. However, signs of social

conflicts can increasingly be observed in liberal democratic countries, such as the USA and EU countries. The study of the manifestation of signs characteristic of social conflicts reveals that they have recently become more frequent in all countries of the world.

Increasing expression of signs characteristic of social conflicts represents the crisis of globalization and even its possible end. For example, late last year, Morris Chang, the legendary founder of Taiwan's (and the world's) leading semiconductor producer, proclaimed that "globalization is almost dead" (Nye, JR., Mar 31, 2023). Therefore, the question arises: What's Next for Globalization? (Rodrik, Mar 9, 2023).

Basic issues of predicting social conflicts in the context of crises and hybrid threats

The possibilities of forecasting social conflicts are limited by two groups of unknowns: 1) the nature of crises and hybrid threats, the nature of the context resulting because of their interaction, and the peculiarities of development; 2) subjective perception of new threats by state institutions, groups of people and individuals and their inappropriate behavior in the changing environment of crises and hybrid threats. After study the relationship between the context of crises and hybrid threats and its subjective perception, it became clear that: 1) at the geopolitical level, there is still no unified political, economic and sociocultural approach to the development of crises and hybrid threats and its context; 2) a scientific methodology for identifying crises and hybrid threats and assessing the likely consequences of their development has been formed. Since, from a theoretical point of view, crises and hybrid threats of various nature and power may arise, the possibilities of their manifestation are explained and evaluated in the preparation of relevant future scenarios. For example, the possible consequences of Russia's war against Ukraine for Lithuania (Rusijos karo prieš Ukrainą galimi poveikiai Lietuvai, 2023).

Prevention of the global expansion of the context of crises and hybrid threats requires unified, quick and strong geopolitical solutions and their implementation. So far, current efforts do not match the level of threats. The prevention of climate change and environmental degradation is particularly severely limited by Russia's aggressive war in Ukraine. Therefore, the social consequences of climate change and environmental degradation - the possibility of the emergence and development of conflicts increasingly cover the whole world.

Based on the analysis of the relationship between the global emergence of crises and hybrid threats and their subjective perception, we distinguished four groups of challenges in predicting social conflicts:

1. Objectively existing threats and the challenges of predicting their development, such as the effects of climate change, the effects of an ongoing war.

2. The challenges of predicting the subjective perception of threats, which arise from the way groups of people perceive hybrid threats and evaluate the preventive behavior of authorities.

3. Methodological challenges caused by the need to create a paradigm of the relationship between hybrid threats and their subjective perception (holistic security theory).

4. Challenges in the choice of research methods caused by limited opportunities to rely on the extrapolation of previously established threats and their subjective perception.

Climate change and environmental degradation are the source of the most powerful global threats. The impact of its expression is and will be the strongest source of social conflicts in the future. For example, the number of social conflicts will increase due to access to water in areas of intensive environmental degradation. The constant lack of water and food, high heat conditions increase the volume of migration. These are the corresponding conditions for the

belligerent behavior of other sources of power - geopolitical and transnational entities, coalitions of states and individual states, their self-governing entities, and local communities. Therefore, social conflicts of various motivations may arise at the level of national societies. In order to predict the scope of their expression, it is necessary to distinguish the possible levels of social effects of climate change and environmental degradation:

- social consequences on a global or planetary scale, for example, due to the rise in the level of the oceans, there is a real threat to the functionality of island-states. The United Nations is not yet ready to organize the rescue of the people of these countries.
- regional social effects, for example, a long-term drought led to the emigration of Syrian peasants within their own country. As a result, social conflicts arose and expanded, which led to a civil war and the establishment of the terrorist group ISIS on the territory of Syria. This led to large-scale emigration to European Union countries. This emigration caused political, economic and socio-cultural turmoil in individual EU countries.
- social effects on a local scale, for example, floods in 2022 caused extensive damage to German towns.

Thus, it is necessary to accumulate a lot of data on climate change and environmental degradation at each level, the analysis of which allows predicting the emergence and development of possible social conflicts. But objective data on the presence of threats alone is not enough for a reliable forecast of social conflicts. It is influenced by the subjective perception of the context of crises and hybrid threats by people and their groups. For example, the global financial crisis of 2008/2009 caused the largest economic emigration of Lithuanian residents to be developed EU countries. It can be said that Lithuania's accession to the EU "facilitated" the emigration of its residents during the financial crisis.

The analysis of the attitude of groups of people towards the COVID-19 disease pandemic and the organization of its prevention, their behavior during the pandemic allows us to say that the differences in the subjective perception and behavior of threats were determined by the individual abilities of individuals to find reliable information about the nature of the pandemic, its prevention and (dis)trust in government institutions. Trust in government institutions was mixed before the pandemic, with institutions directly helping people, such as health and the police, being viewed positively, and institutions of political power and the judiciary being viewed negatively. The attitude of public groups towards the work of health institutions has changed during the pandemic. A lot of negative reactions from groups of people were caused by the unusually strict behavior of the authorities during the COVID-19 global quarantine period. This can be explained by the fact that the protection of human rights and freedoms has already grown in the consciousness of Lithuanian society, and the concept of negative freedom has formed.

The Lithuanian society that restored the independent state has followed a long path of social evolution - from a Soviet-style closed society to an open liberal democracy (Šlapkauskas, 2022, pp. 5-17). This does not mean that the manifestations of authoritarianism and Sovietism have completely disappeared. But the young generation of society has already realized the possibilities offered by negative freedom. Thus, there are groups of people in Lithuanian society who have different perceptions of the relationship between freedom and security. In other words, the manifestations of past and present political ideologies interact in the social space of Lithuanian society, which interpret the freedom and security of individuals, society (nation) and the state differently, and their connection. Due to the differently understood connection between freedom and security, there are constant political disputes within and between the highest authorities, which limit the prediction of social conflicts.

The competition of different concepts of freedom and security leads to such political and legal decisions that generate latent social conflicts, for example, the epic of drafting the civil union law of the Republic of Lithuania. According to the great 20th century philosopher Isaiah Berlin, freedom for wolves often meant death for sheep. Or, in other words, freedom for some is non-freedom for others. (Stiglitz, Feb 24, 2023).

The competition of different concepts of freedom and security leads to such political and legal decisions that generate latent social conflicts, for example, the epic of drafting the civil union law of the Republic of Lithuania. This means that at the political level there is a constant struggle for the subjective power to define "what is law?" and to impose its concept on other subjects of the political field. This struggle is taking place sharply at the geopolitical level as well: a new wave of long-term conflict between two political worldviews - the primacy of human rights or the primacy of state law - is emerging again. In the modern stage of geopolitical development, this escalating conflict has turned into an open political, legal and military struggle. Having grown its political, economic, and military muscles, authoritarian China wants to impose its understanding of the international order on the world, which is radically different from the Western understanding (Leonard, Mar 30, 2023).

The methodological challenges of social conflict forecasting are conditioned by the need to create a new holistic paradigm of the connection between individual, public and national security in this period of crisis and hybrid threats expansion. Such a paradigm of holistic security must perform several essential functions: 1) help groups of people to know and actively take such actions that can limit the expansion of the context of hybrid threats; 2) it must serve as a methodological tool for predicting social conflicts and their prevention. To create such a methodological tool for predicting social conflicts, it is necessary to examine possible answers to the following questions:

1. How does the interaction between the concepts of freedom and security influence (encourage or limit) solutions to the emergence and development of social conflicts, the possibilities of knowing and interpreting their social consequences?
2. What concept of the connection between freedom and security of social entities would lead to the creation of non-violent and sustainable peace?
3. Is it possible to create such a concept of the holistic security of society, based on which it would be possible to achieve a systematic knowledge of the sources of threats to security and their interaction?
4. Is it possible to create a cognitive theory of social conflict, based on which it would be possible to develop prediction and prevention of social conflicts in the future.

The reliability of predicting social conflicts is limited by the challenges of choosing adequate research methods. Those research methods that have already provided reliable forecasting data are most often used. However, the complex nature of crises and hybrid threats limits their usual perception and knowledge. Therefore, relying on the previously established relationship between threats and their subjective perception may lead to the selection of not entirely appropriate research methods.

Conclusions

Sources of power of a natural, social and technological nature generate threats to the existence of all entities. The biggest source of power is climate change and environmental degradation. Its effect activates the behavior of all sources of power of a social nature - geopolitical and transnational entities, state coalitions and individual states, their self-governing entities and local communities. Social entities create and manage threats of a technological

nature. Crises and hybrid threats are the result of the interaction of power sources of natural, social and technological nature.

The context of crises and hybrid threats is the deterioration of social life conditions due to the intensification of climate change and environmental degradation, which limit the possibilities of human social development and lead to the formation of social disorganization - the weakening and interruption of the connection between cultural values and behavioral norms. In the process of forming such a context, the number of emigrants looking for new conditions suitable for social life is increasing. Due to the intensity of immigration, the number of people in habitable areas is growing. Therefore, the possibilities of social conflicts increase in this process.

Forecasting social conflicts in the context of crises and hybrid threats is limited by hierarchical challenges:. 1) Objectively existing threats and the challenges of forecasting their development. 2) Challenges of predicting the subjective perception of threats. 3) Challenges of the cognitive methodology of the relationship between hybrid threats and their subjective perception. 4) Challenges in choosing methods for researching the relationship between hybrid threats and their subjective perception.

Prevention of the emergence of the context of crises and hybrid threats leads to the need to rethink the concepts of freedom and security and their connection, so that their implementation guarantees the peace of public life.

References

1. Annual Threat Assessment of the U.S. Intelligence Community, February 6, 2023, <C:/Users/User/Desktop/Project%20Syndicate/Annual_Threat_Assessment.pdf>, žiūrėta 2023 05 15.
2. AR6 Synthesis Report: Climate Change 2023,<AR6 Synthesis Report: Climate Change 2023 — IPCC >, žiūrėta 2023 05 08.
3. Buzan, B., 1997. Žmonės, valstybės ir baimė. Tarptautinio saugumo studijos po šaltojo karo. Vilnius: Eugrimas/ALK.
4. Cook, L. F. Deciphering the Latest IPCC Report, May 4 2023, <Deciphering the Latest IPCC Report by Lindsey Fielder Cook - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 18.
5. Cotterrell, R., 1997. Teisės sociologija. Įvadas. Kaunas: Dangerta.
6. Europe's next crisis: Water. April 28, 2023,<Europe's next crisis: Water – POLITICO >, žiūrėta 2023 05 04.
7. Gaffney, O. Tax the Rich to Save the Planet. Mar 31, 2023, <Tax the Rich to Save the Planet by Owen Gaffney - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 10.
8. Global State of Democracy Report 2022: Forging Social Contracts in a Time of Discontent, <Global State of Democracy Report 2022: Forging Social Contracts in a Time of Discontent |The Global State of Democracy (idea.int)>, žiūrėta 2023 05 18.
9. Iki 2100 m. beveik pusė planetos gali patekti į naujas klimato zonas: labiausiai nukentės Europa, <Iki 2100 m. beveik pusė planetos gali patekti į naujas klimato zonas: labiausiai nukentės Europa | Verslas | 15min.lt>, žiūrėta 2023 05 15.
10. Leonard, M. Xi Jinping's Idea of World Order, Mar 30, 2023,< Xi Jinping's Idea of World Order by Mark Leonard - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 07.

11. Livingston, J. The Sense of an Ending. Mar 10, 2023, <The Sense of an Ending by James Livingston - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 10.
12. Mazzucato, M. Financing the Common Good. May 01, 2023,<Financing the Common Good by Mariana Mazzucato - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 10.
13. Mike, T. 8 Risks and Dangers of Artificial Intelligence to Know | Built In, žiūrėta: 2023 05 17.
14. Neo-militant Democracies in Post-communist Member States of the European Union /
15. Edited By Joanna Rak, Roman Bäcker, 2022. London and New York, Routledge Taylor & Francis Group.
16. Nye, J. S., JR. Is Globalization Over? Mar 31, 2023,< Is Globalization Over? by Joseph S. Nye, Jr. - Project Syndicate (project-syndicate.org), žiūrėta 2023 05 11.
17. Pause Giant AI Experiments: An Open Letter. March 22, 2023)<Pause Giant AI Experiments: An Open Letter - Future of Life Institute>, žiūrėta: 2023 05 17.
18. Rodrik, D. What's Next for Globalization? Mar 9, 2023,<What's Next for Globalization? by Dani Rodrik - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 12.
19. Rusijos karo prieš Ukrainą galimi poveikiai Lietuvai, 2023. Lietuvos Respublikos Seimo kanceliarija.
20. Skidelsky, R. Creeping Toward Dystopia, May 25, 2023,< Creeping Toward Dystopia by Robert Skidelsky - Project Syndicate (project-syndicate.org)>, žiūrėta 20023 05 26.
21. Socialinis konfliktas,<socialinis konfliktas -Visuotinė lietuvių enciklopedija (vle.lt)>, žiūrėta 2023 05 20.
22. Stiglitz, J., Who Stands for Freedom?, Feb 24, 2023,<Who Stands for Freedom? by Joseph E. Stiglitz - Project Syndicate (project-syndicate.org)>, žiūrėta 2023 05 28.
23. Šlapkauskas, V., 2022. Theoretical and Methodological Aspects of the Definition of, and Research into, Security of a Small State // *Europe Alone: Small State Security without the United States* / edited by David Schultz, Aurelija Pūraitė, Vidmantė Giedraitytė. Lanham: Rowman & Littlefield International.
24. Šlapkauskas, V., 2022. Interactions between varieties of spontaneous and organized social order in cyberspace: in terms of sustainable security // *Research Journal Public Security and Public Order*, 2022 (30), p. 160-170.
25. Wallerstein, I. M., 1999. The End of the World as We Know it: Social Science for the Twenty-first Century. University of Minnesota Press.

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

PROBLEMATIC ASPECTS OF THE LEGAL DEFINITION OF HYBRID WARFARE

Violeta VASILIAUSKIENĖ
Mykolas Romeris University, Public Security Academy
Maironio g. 27, Kaunas, Lithuania
E-mail v.vasiliauskiene@mruni.eu
ORCID ID: 0000-0003-0743-4015

Vykintas STUMBRYS
Marijampolė University of Applied Sciences
P. Armino str. 92-4, Marijampole 68125, Lithuania
E-mail vstumbrys@gmail.com
ORCID ID: 0009-0008-9184-9216

DOI: 10.13165/PSPO-23-33-13

Abstract *The increased military threat brings anxiety and heightened sensitivity to the use of the term. Therefore, „hybridity" has become a much-debated concept these days. War is a state when one goes beyond the limits of coexistence with one's neighbours, where the human mind and the greatest cruelty are manifested to win. Therefore, regulating such relations has always been a big challenge. Modern hybrid warfare is new in that it challenges the established order since World War II, the US leadership in establishing global order. It is a challenge to the dominance of military power and scientific thought of Western civilization. New military powers are emerging that, unable to challenge the United States directly, seek to compete for dominance in their region or the world through other means.*

Keywords: *hybrid war, international law, hybrid actions, hybrid peace, the definition of hybrid warfare, hybrid threats, hybrid interference.*

Introduction

Russia's military and non-military campaigns in Ukraine opened another, new page of hybrid actions for the international community. We are faced with a situation where neither national nor international legal regulation is adequate to respond to these actions. There is a problem with their legality and attribution to a hostile state. In Lithuania, the continuing migrant crisis orchestrated by the Lukashenko regime also poses a number of problems to the Lithuanian state in tackling the crisis and at the same time in the assurance of human rights. The new amendments to the Law on the Legal Status of Foreigners (2004) and the Law on State Border and its Protection (2000) legalising the push-back policy in times of extraordinary situations immediately faced controversy due to the alleged violation of human rights and opposition to international law (Vasiliauskas, 2023).

Ever since the Trojan War, all means are used to gain an advantage in war. As far as the ingenuity of the human mind allows, any methods are used in war. War is a state (Žilinskas, 2012, p. 1206) when one goes beyond the limits of coexistence with one's neighbours, where the human mind and the greatest cruelty manifest in the pursuit of victory. Therefore, regulating such relations has always been a big challenge. More or less, past wars have had elements of "hybridity" and most of them have been characterised by episodes of lawlessness and "unconventional" methods. The use of the term shows that we have an assumption that war can be regulated by international institutions (Johnson, 2018, p 141). Modern hybrid warfare is new in that it challenges the established order since World War II, the US leadership in the established global order. It is a challenge to the dominance of military power and scientific

thought of Western civilization. New military powers are emerging that, unable to challenge the United States directly, seek to compete for dominance in their region or the world through other means. All these factors influence the need for the analysis of the hybrid warfare phenomenon in the context of legal regulation. The article aims to reveal the concept of hybrid warfare and emerging problems in the context of international law regulating the conduct of states in the international arena.

The definition of hybrid warfare

During the last twenty years, the global balance of power has been called into question by the emerging ambitions of China, India, Pakistan, and Iran. And they have someone to learn from - since the collapse of the Soviet Union, Russia has been a leader on the front of hybrid threats. The main feature of hybrid war is the constant combination of military and non-military methods of influence, which poses unusual political tasks for both the army and the security services (Dykyi, Kharchenko, 2016, p. 8). The term "hybrid warfare" or "hybrid threat" has been used synonymously with terms "ambiguous warfare," "fourth or fifth-generation warfare," "non-linear warfare," "low-intensive asymmetric war," "unconventional warfare" or "full-spectrum warfare" indicating perhaps something new and different than the normal understanding of conventional "warfare." (Fogt, 2021, p. 30).

In 1948 the USA Central Intelligence Agency was charged by the USA National Security Council with conducting espionage and counter-espionage operations abroad. It therefore was, for operational reasons, not to create a new agency for covert operations, but in times of peace to place the responsibility for them within the structure of the Central Intelligence Agency and correlate them with espionage and counter-espionage operations under the over-all control of the Director of Central Intelligence (National Security Council Directive on Office of Special Projects, 1948).

Covert operations were understood to be all activities which are conducted or sponsored by government against hostile foreign states or groups or in support of friendly foreign states or groups but which are so planned and executed that any US Government responsibility for them is not evident to unauthorised persons and that if uncovered the US Government can plausibly disclaim any responsibility for them. Specifically, such operations would include any covert activities related to: propaganda, economic warfare; preventive direct action, including sabotage, anti-sabotage, demolition and evacuation measures; subversion against hostile states, including assistance to underground resistance movements, guerrillas and refugee liberation groups, and support of indigenous anti-communist elements in threatened countries of the free world. Such operations shall not include armed conflict by recognized military forces, espionage, counter-espionage, and cover and deception for military operations (National Security Council Directive on Office of Special Projects, 1948).

We see that the definition includes hybrid actions, but does not call them "hybrid" actions them according to the current understanding.

Speaking about the history of the use of the term, Solmaz (2022) notes that "the use of the term 'hybrid warfare' dates to the 1990s. To our best knowledge, the term 'hybrid warfare' first appeared in Thomas Mockaitis' book entitled *British Counterinsurgency in the Post-imperial Era* in 1995." (Solmaz, 2022) In later years several authors used the term, but their definitions were not that similar to each other, but in essence they indicated that "hybrid warfare" was a mode of warfare neither purely conventional nor irregular. (Solmaz, 2022).

Further mentions of hybrid warfare are related to the description of the strategy used by the Hezbollah in the 2006 Lebanon War (Van Puyvelde, 2015).

One of the most famous researchers on hybrid warfare, Hoffman (2007, p. 28) has maintained that states can shift their regular forces to irregular units and employ non-traditional warfare tactics. In the final analysis, his notion of 'hybrid warfare', in substance, refers to non-state actors with high-tech weapons and states who adopt irregular tactics. Hoffman's idea of 'hybrid warfare' well describes what 21st-century insurgents such as Hezbollah, Hamas, the Taliban, ISIS, and PKK have done over the last two decades. Also, it captures state-based irregular fighters such as Russia's masked troops known as 'little green men', China's maritime militias, and Iran's Quds Force. So, although non-state actors with sophisticated weapons and states who employ irregular tactics are not completely new, today they seem dominant in today's armed conflicts, as Hoffman forecasted correctly in 2007 (Solmaz, 2022).

F. G. Hoffman (2009) has defined hybrid threats as "any adversary that simultaneously and adaptively employs a fused mix of conventional weapons, irregular tactics, terrorism and criminal behaviour in the battle space to obtain their political objectives." He identifies five characteristics of hybrid warfare that distinguish such warfare from conventional warfare:

1) modality of actions - four action modules are distinguished in the area of military operations: conventional warfare, tactics characteristic to irregular groups, terrorist and criminal actions;

2) synchrony - all 4 types of actions are coordinated, take place at the same time and in the same space;

3) fusion - all actions of the warring groups aim for a common goal;

4) multimodality – different groups participate in military operations, characterised by a variety of tactics and weapons;

5) criminality - an atmosphere of fear and mistrust is created in the space of military actions by means of criminal actions (Kilinskas, 2023).

The terms "hybrid war" and "hybrid threats" further entered modern vocabulary after Russia's illegal annexation of Crimea in 2014 and the war in eastern Ukraine. Here, for the first time, we clearly saw that a completely different kind of conflict was taking place. Instead of a clear enemy, his structures, in Crimea we saw "green men" without distinguishing marks. Russian President Vladimir Putin initially insisted that "these are not our soldiers", although he later rewarded them and publicly acknowledged their involvement. At the time, Ukraine was under diplomatic and economic pressure and a veritable information war, cyber-attacks and subsequent actions by special operations forces. (Bajarūnas, Keršanskas, 2016).

Turning to the field of international organisations, NATO has developed its definition of hybrid threats with the aim of developing a NATO strategy on the countering of hybrid threats. In 2010, NATO defined hybrid threats as "those posed by adversaries, with the ability to simultaneously employ conventional and non-conventional means adaptively in pursuit of their objectives" (NATO, 2010).

NATO's interpretation of hybrid warfare depicts it as a mixture of military means and non-military means, including propaganda and cyber activities. For NATO officials, hybrid warfare is "the highly integrated use of a wide range of overt and covert military, paramilitary and civilian means" (NATO, 2014). This depiction describes a combination of political and non-traditional means of coercion and influence. These activities include the coercive use of military force and more subtle forms of harmful influence in the political and informational spheres.

One of the well-known international organisations analysing the hybrid threat, Hybrid Centre of Excellence, defines "hybrid threat" as an action carried out by state or non-state actors whose purpose is to harm or weaken the target by influencing its decision-making at the local, regional, state or at the institutional level. (Hybrid CoE, 2023a)

Accordingly, the main features of hybrid threats according to the Hybrid CoE are:

1. Coordinated and synchronised actions, deliberately targeting the systemic vulnerabilities of democratic states and institutions by various means.
2. Activities that exploit the limits of detection and attribution as well as different interfaces (war and peace, internal and external security, local state and national and international).
3. Activities aimed at influencing various forms of decision-making at the local (regional), state or institutional level and are intended to further and/or implement the agent's strategic goals while undermining and/or undermining the goal (Hybrid CoE, 2023).

The first principle of hybrid warfare is that the composition, capabilities, and actions of a hybrid force are unique to the force's specific context. That context includes the temporal, geographic, sociocultural and historical environment in which a particular conflict takes place (McCulloh, Johnson, 2013). Hybrid warfare occurs whenever it is not possible to wage war directly on the battlefield. That is, whenever the warring parties are different and one of the parties has a smaller advantage on the battlefield, it tries to avoid confrontation by all means and to fight in other ways. This is especially characteristic of guerrilla warfare - distribution of leaflets, recall, ambushes, mining of roads and bridges, acts of terrorism and the like. However, a hybrid war can be waged by both a weak side and a strong one that is fighting in territories outside of its control. On one side, the French partisans under the Vichy government or the partisan movements of Lithuania, Latvia, and Estonia, on the other side Al Qaeda, or coups organised or supported by the Soviet regime in Cuba, South American countries, or Finland in order to create the illusion of a legitimate war.

Part of hybrid warfare involves exploiting the economic openness of Western democracies to seize strategic economic sectors, such as critical infrastructure, finance, and media, through which these authoritarian actors can attempt to destabilise Western democracies and purposefully damage them (Heather, et. al., 2016). Democracies urgently need to find ways to defend themselves against such hybrid interference without jeopardising the values they are supposed to defend. Expanding state control of civil society is not a viable liberal democratic strategy. Western democracies should also not resort to countermeasures such as corruption, disinformation, election interference, and other hybrid measures of interference, as this would only further erode liberal democratic values around the world. More dangerous to the West are the more subtle, non-military activities that authoritarian regimes use to infiltrate democratic societies. “Hybrid interference” is a concept coined to capture non-military practices aimed at mostly covert manipulation of other states' strategic interests (Wigell, 2019). As such it is similar to what was called “active measures” etc. during the Cold War, and recently in Russian strategic discussions as “Gibridnaya voyna” (translated from Russian “hybrid warfare”). The idea behind the “Gibridnaya voyna” is to avoid the traditional battlefield in order to destroy the political cohesion of the enemy from within, using a carefully crafted hybrid of non-military means and techniques that intensify political, ideological, economic and other social polarisation in western society, leading to its internal collapse (Fridman, 2018, p. 96). Keeping diplomatic relations intact and thus not crossing any formal threshold of war, the aggressor mobilises opposition and radicals in the target state through a variety of means, from disinformation campaigns to the corruption of political figures and the financing of subversive movements, carefully synchronised to intensify the conflict (Wigell, 2021).

Researchers Breitenbauch and Byrjalsen (2019) suggest that central feature to hybrid interference is subversion. Subversion refers to an aggressor state’s purposeful attempt to destabilize and undermine the authority of a target state by using local proxy actors. Mikael Wigell (2021) thinks it specifically involves the use of disinformation and economic inducements to recruit and assist these actors inside the target country, detach their loyalties

from the target government, and use them as interlocutors to transform the established social order and its structures of authority and norms. The aim is to weaken democratic governance and norms as a means of enhancing their own authoritarian standing. Not only are weakened democracies less able to directly confront these authoritarian aggressors, but they will also look less appealing as models of success and partners for others. By portraying Western democracies as corrupt and ungovernable, authoritarian regimes such as China, Iran, Russia, and Turkey are less at risk of being overthrown by their own populations (Wigell, 2021).

Problems in the legal field regarding hybrid warfare - *ius ad bellum*

The hybrid actions are often conducted in the way that would allow the perpetrating state to "fly below" the radar of the prohibitions established in the international law, especially the prohibition of the use of force established in Article 1(4) of the UN Charter. "In practice, hybrid measures are designed to avoid being identified as clear violations of the Charter even when they do constitute an unlawful use of force. One way this is achieved is through an emphasis on covert action" (Cantwell, 2017). One of the aims of using covert action is to avoid being implicated in clear breaches of international law. Covert means means are important for the perpetrator of hybrid warfare because such action exploits the weakness of an international enforcement regime and encourages inaction, especially where aggressor states have sown doubt as to attribution or the the legality of their behaviour. (Cantwell, 2017).

Hybrid measures falling short of the use of force and measures in other fields usually do not violate Article 2(4). Disinformation, criminal activity, economic measures - all these fall below the threshold of the use of force. However, such actions may be considered a form of interference, a prohibition implicit in Article 2(1) of the Charter. (Cantwell, 2017). The General Assembly has stated in 1965 that interference is the "subordination of the exercise of [a state's] sovereign rights. In 1970 the General Assembly has stressed that there is a ban on intervention in the internal or external affairs of any other state along with "all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements." (Cantwell, 2017, UN General Assembly, 1970).

The prohibition of the use of force is a cornerstone provision, *ius cogens* of international law. The inherent right to self defence from an armed attack is established in Article 51 in UN Charter (1945). It states that every state has the right to defend itself in case if an armed attack occurs. However, the exact extent of the actions constituting armed attack is not as clear-cut. Armed actions of state's armed forces will surely constitute armed attack in the sense of Article 51 and customary international law, but a question arises when the actions in question are low-intensity or are perpetrated by irregular armed bands. The International Court of Justice (hereinafter - ICJ) has stated that "[t]he Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces." (ICJ, 1986). In the Nicaragua case, the ICJ held the view that "a mere frontier incident" – however, this should be defined – does not qualify as an "armed attack." (Fogt, 2021, p. 63), thus requiring the gravity of the offensive in order to invoke self defence of the state. However, Fogt (2021) argues that this restrictive and cautious interpretation has been rejected by some states and various scholars. "It seems, indeed, most convincing to depart from the view of a gravity requirement expressed by the ICJ in the Nicaragua case and regard any attack which results in or is likely to cause destruction of property and injury or loss of life as an "armed attack," which justifies state self-defence subject to the jus ad bellum principles

of necessity and proportionality. A proportionate response to a small-scale attack, which could be conducted as part of a hybrid warfare, would in itself be limited in scale and effect in order to be lawful." (Fogt, 2021, p. 63).

The question whether one may take into account several incidents which in accumulation then would together constitute an armed attack is raised by the accumulation of events theory. Fard, et. al. (2023) state that the ICJ has confirmed the existence of a severity threshold to distinguish between "the most severe forms" and "less severe forms" of the use of force. The doctrine of accumulation events refers to a series of minor incidents that have accumulated until they reach the threshold of an armed attack, and is also known as the "spiking" theory, which some governments use to justify their right to self-defence. have resorted to this theory, there are indications that transnational terrorist attacks have presented serious problems to governments, making them willing to accept this theory, which previously had little support, to some extent. (Fard, Hatami, Azadbakht, 2023)

"When applied to malicious cyber activities in the context of international law, normative aggregation may be appropriate where a series of acts can be attributed to a single State. As with normative aggregation in domestic criminal law, individual malicious cyber activities do not have to constitute a standalone wrongful act if, in the aggregate, the consequences of state action constitute a breach of an international obligation. Under international law, this theory of aggregation is called the Accumulation of Events Theory, or Nadelstichtaktik" (McLaughlin, 2023) In other sources theory is called needle prick or pin-prick or spiking.

McLaughlin (2023) states that the foundational test for when a cyber or other hybrid activities constitutes an armed attack triggering a right to self-defence is whether the consequences are comparable with those resulting from a kinetic weapon. To aggregate the cumulative effects of malicious activities that do not individually reach this threshold, the consequences and actions must be causally and temporally related and attributed to a single source. The accumulation of events begins with the first identifiable wrongful act in the series and continues until the activity ceases. Any action taken in self-defence must be both proportionate and necessary to the effective exercise of self-defence. In responding to hybrid activities, proportionality and necessity are predicated on that which is required to affect either the ability or the will of the nation in violation to continue its wrongful actions.

We can assume that the theory of accumulation is suitable for the legal definition of hybrid threats. It helps to properly assess that a legal threshold has been crossed, from which retaliatory action can be taken. Regulating the use of force is a primary function of international law because if states could freely resort to force the ideal of the rule of law in international society would be impossible. In this situation, accumulation theory comes to help. Fogt (2021) states that "The accumulation of events theory is of particular importance when discussing hybrid threats and warfare designed to stay under the triggering threshold. The asymmetric hybrid character of the low-level use of force, the flexibility regarding intensity and rapid adaptability coupled with disinformation and fake news targeted at the entire society as such may collectively constitute an "armed attack" and, thus, justify a necessary and proportionate act in self-defense."

The question of attribution remains: one still has to establish whether this string of actions may be attributed to one or more specific states or a non-state group. "Both the standard evidence of attribution to such hybrid attacks to a specific state or non-state actor group, and the determination of the necessary scale and frequency of small attacks required remains unclear. On the one hand, this makes the accumulation of theory a most difficult jus ad bellum justification to apply for the state claiming self-defence or collective self-defence, but it does open the legal door of self-defence of the victim state by a series of hybrid acts." (Fogt, 2021).

Many other jus ad bellum issues of state self-defence also have the character of complex legal grey zones covered by uncertainties such as: the quality and quantity of the target of an armed attack (a person, unit, military facilities, infrastructure or territory), the standard of burden of proof, the need of a possible intention (mens rea element), a duration or gravity requirement, or whether accumulation of "small" events suffices (Fogt, 2021). These additional legal grey zones add to the possibility for states to conduct a legally reasonable justified hybrid warfare campaign under the commonly accepted or at least plausible defendable threshold for state or alliance self-defence.

Hybrid warfare and *ius in bello*

When analysing hybrid warfare, there are questions and issues surrounding the *ius in bello* of international law, or international humanitarian law (hereinafter - IHL). The measures of hybrid warfare, as mentioned, often are so executed as to fly "below the radar" of international law. This applies also to the international humanitarian law, which is the set of rules activated when the activities of the parties reach the threshold of armed conflict. "The beginning of an armed conflict is the moment from which the application of the full regime of one or another international humanitarian law begins. Therefore, it can be said that the classification of the situation as an armed conflict is a legal fact of extraordinary importance" (Žilinskas, 2008, p. 92).

The precise determination of the existence of an armed conflict has significant and far-reaching implications in international law. During an armed conflict, contractual obligations may change, refugee rights are assessed differently, arms control standards are applied during it, and the law of neutrality is also changed (Use of Force Committee, 2010, p. 33). The most important implication would be that only during an armed conflict can parties exercise the rights of belligerents. Exercising these rights outside of armed conflict risks violating fundamental human rights that apply in peacetime (Vasiliauskienė, 2012, p. 182).

During an armed conflict, for example, the protection of the right to life changes. In peacetime, the state may use force to maintain order, including the taking of life, but according to human rights norms this must be absolutely unavoidable and strictly proportionate to the objectives pursued. The taking of life during an armed conflict is analysed according to IHL norms, which set completely different standards and proportionality requirements (Vasiliauskienė, 2012, p. 182). Furthermore, a state responding in a proportionate and necessary manner in self-defence can only use force against persons and objects if it fulfills the requirements of the IHL (Fogt, 2021, p. 73). An object is a legitimate target if it constitutes a military objective and if the use of force against this target is proportionate and conducted with lawful methods, means and all feasible precautions have been taken. (Fogt, 2021, p. 73).

The International Criminal Tribunal for the former Yugoslavia (hereinafter - ICTY) in Tadic case has elaborated the definition of an armed conflict which since has been cited in numerous occasions and became accepted as textbook definition of armed conflict, not provided for in the Geneva Conventions on the laws of war, Common article 2. ICTY states that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State" (ICTY, 1995, para. 70).

The UN High Commissioner for Human Rights' Special Rapporteur on Human Rights and Terrorism has defined an armed conflict as a situation where two or more parties to the conflict, armed with military weapons, engage in military operations (hostilities) sufficient to meet the customary definitions of armed conflict. What constitutes sufficient military action

depends on whether the conflict is international or not. When analysing whether there is an armed conflict, it is taken into account that the armed forces (rather than the police), military weapons (rather than the police) and military (rather than law enforcement) operations are being used (UN Special Rapporteur, Kalliopi K. Koufa, 2004, p. 9).

The Committee on the Use of Force of the International Law Association analysed the concept of armed conflict in international law. Based on its analysis in 2010, the Committee found that the definition of armed conflict presented in the Tadič case is supported by the analysis of other sources. The committee distinguished two essential features of every armed conflict: the existence of organised armed groups and involvement in combat actions of a certain intensity (Use of Force Committee, 2010, p. 2).

The problems arise with both aspects of the definition of the armed conflict.

Speaking about the organisational aspect, in case of the activity of states, the organisational criterion does not raise questions, as state is *ipso facto* considered an organised entity fully capable to participate in an armed conflict. But a different question arises, of attribution of particular hybrid action to the state. In case of hybrid actions, the states aim to "hide" behind proxies, armed groups, green men etc., therefore it is difficult to ascertain the organisator of hybrid actions and thus the existence of armed conflict.

Furthermore, the intensity criterion is even more problematic. Manifestations of hybrid warfare in many cases do not amount to armed actions, but in totality may incur consequences similar to armed actions. Therefore a question arises whether the accumulation of actions could be considered together in order to determine whether the threshold for armed conflict has been crossed.

As mentioned, the implications of this determination are that "a crisis situation just below the uncertain threshold for a [non-international armed conflict] will be dealt with by the national crisis and emergency (martial) law and law enforcement [rules of engagement] under a human rights law paradigm, which may be done with or without military support from the state itself or its alliance partners." (Fogt, 2021, p. 74). A conflict situation matching the requirements above would trigger armed response according to the rules of IHL. Fogt (2021, p. 74) continues stating that "in case the hybrid campaign and the non-state armed resistance group(s) are down-scaled and hostilities decrease, the threshold for a NIAC may no longer be met with the result that the peacetime jus ante bellum re-applies." Thus many questions yet remain unanswered

Conclusions

The use of the term "hybrid warfare" dates to the 1990s, it appears for the first time in Thomas Mockaitis' book entitled British Counterinsurgency in the Post-imperial Era in 1995. Further mentions of the phenomenon include Hezbollah strategies in 2006 Lebanon War and 2014 Russian strategy in Ukraine. Hybrid threats are defined as fused mix of conventional weapons, irregular tactics, terrorism and criminal behaviour in the battle space to obtain their political objectives. NATO defines hybrid warfare as a mixture of military means and non-military means. Hybrid CoE defines hybrid threats as actions carried out by state or non-state actors whose purpose is to harm or weaken the target by influencing its decision-making at the local, regional, state or at the institutional level. Thus all the definitions stress the use of various methods in pursuit of specific political and military objectives.

The first area where the questions about hybrid threats arise is the ius ad bellum, or the prohibition of the use of force. Self-defence by armed force is permitted only in case of an armed attack, and many actions of the spectrum of hybrid threats or hybrid warfare fall below this threshold. Disinformation, criminal activity, economic measures – such actions are clearly

below the threshold of self-defence. However, some actions of this spectrum may be more like armed actions according to their consequences. Therefore there is the question whether the accumulation of such events may lead one to conclude that an armed attack has occurred.

The ius in bello application is triggered by an armed conflict and causes numerous changes in the rights of the belligerent parties, regime of possible actions in armed actions, and implications on the protection of human rights. According to the famous ICTY definition in Tadic case, “an armed conflict exists when there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. Speaking about the first element – organisation of the parties of the conflict, it is more a question of attribution of the conduct to the state or to a particular group that is problematic in case of hybrid threats. Furthermore, the question of intensity is in a way similar as in case of armed attack – the question is whether a number of relatively low-intensity actions may be considered together as amounting to armed conflict.

Acknowledgements This article was fully funded by Erasmus + project HYBRIDC, implemented by Mykolas Romeris University (partner) in cooperation with Police Academy of the Ministry of the Interior of Croatia, coordinator Estonian Academy of Security Sciences (EASS).

References

1. Bachmann, S., (2012) ‘Hybrid Threats, Cyber Warfare and NATO’s Comprehensive Approach for Countering 21st Century Threats – Mapping the New Frontier of Global Risk and Security Management’ (January 22, 2012). *Amicus Curiae,* Vol. 88 [online] Available at: https://ssrn.com/abstract=1989808 (Accessed: 14 May 2023).
2. Bajarūnas, E., Keršanskas, V. (2016) ‘Hybrid Threats: Analysis of Content, Challenges Posed and Measures to Overcome’, *Lithuanian Annual Strategic Review* 16(1):123-170 [online] Available at: https://www.researchgate.net/publication/330316025_Hybrid_Threats_Analysis_of_Content_Challenges_Posed_and_Measures_to_Overcome (Accessed: 23 May 2023).
3. Breitenbauch, H., Byrjalsen, N. (2019) ‘Subversion, Statecraft and Liberal Democracy,’ *Survival* 61, no. 4: 31–41, [online] Available at: https://doi.org/10.1080/00396338.2019.1637118. (Accessed: 23 May 2023).
4. Cantwell D. (2017) ‘Hybrid Warfare: Aggression and Coercion in the Gray Zone’, *ASIL Insights* Issue: 14 Volume: 21 [online] Available at: https://www.asil.org/insights/volume/21/issue/14/hybrid-warfare-aggression-and-coercion-gray-zone (Accessed: 05 April 2023).
5. Dykyi E., Kharchenko S., (2016) *Hibridinis Rusijos karas: Ukrainos patirtis Baltijos šalims,* Generolo Jono Žemaičio Lietuvos karo akademija, ISBN 978-609-8074-47.
6. Fard, M. A., Hatami, M., Azadbakht, F. ‘The doctrine of the accumulation of events in resorting to legitimate defense’, *International Law Review* [online] Available at https://www.cilamag.ir/article_704061.html?lang=en (Accessed 23 May 2023).
7. Fogt, M., (2021) ‘Legal Challenges or “Gaps” by countering hybrid warfare – building resilience in jus ante bellum’, *Southwestern Journal of International Law,* Vol. XXVII:1 [online] Available at: https://www.swlaw.edu/sites/default/files/2021-03/2.%20Fogt%20%5B28-100%5D%20V2.pdf (Accessed: 23 May 2023).
8. Fridman, O. (2018) *Russian "Hybrid Warfare": Resurgence and Politicization* [online] Available at: http://www.studiapolitologiczne.pl/pdf-136135-64183?filename=OFER%20FRIEDMAN_%20Russian.pdf (Accessed: 23 May 2023).

9. Heather A. Conley, Mina J., Stefanov R., Vladimirov, M., (2016) *The Kremlin Playbook: Understanding Russian Influence in Central and Eastern Europe,* Lanham: Rowman and Littlefield, 2016
10. Hoffman, F. G. (2007) *Conflict In 21th Century: The Rise Of Hybrid Wars.* Potomac Institute for Policy Studies: Arlington VA.
11. Hoffman, F. G. (2009) 'Hybrid vs. Compound War: The Janus Choice: Defining Today's Multifaceted Conflict', *Armed Forces Journal* [online] Available at: http://armedforcesjournal.com/hybrid-vs-compound-war/ (Accessed: 23 May 2023).
12. Hybrid CoE (2023) *Hybrid Threats As a Concept* [online] Available at: https://www.hybridcoe.fi/hybrid-threats-as-a-phenomenon/ (Accessed: 23 May 2023).
13. Hybrid CoE (2023a) *Hybrid Threats* [online] Available at: https://www.hybridcoe.fi /hybrid-threats/ (Accessed: 04 May 2023).
14. ICJ (1986) 'Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U. S.)', Judgment, 1986 I.C.J. Rep. 14, 103,195 (June 27) [online] Available at: https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf (Accessed: 23 May 2023).
15. ICTY (1995) 'The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction,' IT-94-1-A, 2 October 1995, para. 70. [online] Available at: https://www.icty.org/x/cases/tadic/acdec/en/51002.htm (Accessed: 23 May 2023).
16. Johnson R. (2018) 'Hybrid War and Its Countermeasures: A Critique of the Literature', *Small Wars & Insurgencies*, Vol. 29, No. 1 [online] Available at: https://doi.org/10.1080 /09592318.2018.1404770 (Accessed: 01 May 2023).
17. Kilinskas, K. (2023) 'Hibridinis karas' *Visuotinė lietuvių enciklopedija.* [online] Available at: https://www.vle.lt/Straipsnis/hibridinis-karas-124426 (Accessed: 23 May 2023).
18. McCulloh, T., Johnson, R. (2013) 'Hybrid warfare', *Joint Special Operations University Report* 13-4 [online] Available at: https://apps.dtic.mil/dtic/tr/fulltext/u2/a591803.pdf (Accessed: 23 May 2023).
19. MCDC Countering Hybrid Warfare Project (2019) *Hybrid Warfare: Understanding Deterrence,* Vienna: MCDC, March 2019 [online] Available at: https://assets.publishing. service.gov.uk/government/uploads/system/uploads/attachment_data/file/795220/20190 304-MCDC_CHW_Info_note_6.pdf (Accessed: 23 May 2023)
20. McLaughlin, M. (2023) Deterring the Next Invasion: Applying the Accumulation of Events Theory to Cyberspace, *Opiniojuris* [online] Available at: http://opiniojuris.org /2023/03/02/deterring-the-next-invasion-applying-the-accumulation-of-events-theory-to-cyberspace/ (Accessed: 23 May 2023)
21. *National Security Council Directive on Office of Special Projects.* (1948) [online] Available at: https://history.state.gov/historicaldocuments/frus1945-50Intel/d292?fbclid=IwAR3wSAcQ8n7IgCExlaTd-0QoHvqhW5vntjQ2CDlX9BB0p4EXxoBOlmGxous (Accessed: 23 May 2023).
22. NATO (2010) *Bi-SC Input to a New NATO Capstone Concept for the Military Contribution to Countering Hybrid Threats,* 25 August 2010 [online] Available at: https://www.act.nato.int/images/stories/events/2010/20100826_bi-sc_cht.pdf (Accessed 23 May 2023).
23. NATO (2014) *Wales NATO Summit Communique,* 4 September 2014 [online] Available at: http://www.nato.int/cps/en/natohq/official_texts_112964.htm?selectedLocale=en (Accessed: 23 May 2023)

24. Solmaz, T., (2022) 'Hybrid Warfare': One Term, Many Meanings', *Small Wars Journal* [online] Available at: https://smallwarsjournal.com/jrnl/art/hybrid-warfare-one-term-many-meanings (Accessed: 23 May 2023).
25. UN General Assembly (1965) *Declaration on the Inadmissibility of Intervention and Interference in the Domestic Affairs of States*, G.A. Res. 20/2131, Dec. 21, 1965, [online] Available at: http://www.un-documents.net/a20r2131.htm (Accessed: 23 May 2023).
26. UN General Assembly (1970) *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations,* G.A. Res. 25/2625, Oct. 24, 1970 [online] Available at: http://www.un-documents.net/a25r2625.htm (Accessed: 23 May 2023)
27. *United Nations Charter* [online] Available at: https://www.un.org/en/about-us/un-charter (Accessed: 05 April 2023).
28. UN Special Rapporteur, Kalliopi K. Koufa (2004) *Terrorism and Human Rights*. Final report, 25 June 2004. United Nations Economic and Social Council. Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. No. E/CN.4/Sub.2/2004/40 [online] Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/146/77/PDF/G0414677.pdf?OpenElement (Accessed: 23 May 2023).
29. Use of Force Committee. International Law Association (2010) *Final Report on the Meaning of Armed Conflict in International Law, delivered at the Hague Conference* [online] Available at: http://www.ila-hq.org/en/committees/index.cfm/cid/1022 (Accessed: 05 April 2023).
30. Van Puyvelde D. (2015) 'Hybrid war – does it even exist?' *NATO review*, [online] Available at: https://www.nato.int/docu/review/articles/2015/05/07/hybrid-war-does-it-even-exist/index.html (Accessed: 23 May 2023).
31. Vasiliauskas, M. (2023) *Įstatymas dėl migrantų išstūmimo ne juokais supykdė: „Siena ne nuo migrantų, bet nuo tarptautinės teisės"?* TV3.lt [online] Available at: https://www.tv3.lt/naujiena/video/istatymas-del-migrantu-isstumimo-ne-juokais-supykde-siena-ne-nuo-migrantu-bet-nuo-tarptautines-teises-n1232410 (Accessed: 03 May 2023).
32. Vasiliauskienė, V. (2012) 'Ginkluoto konflikto samprata ir "karas su terorizmu"'. *Teisė: Mokslo darbai.* Vol.. 82, p. 180-197. [online] Available at: https://vb.mruni.eu/object/elaba:3149682 (Accessed: 23 May 2023)
33. Wigell, M. (2019) 'Hybrid Interference as a Wedge Strategy', *International Affairs* 95, no. 2: 255–275, [online] Available at: https://doi.org/10.1093/ia/iiz018 (Accessed: 28 March 2023).
34. Wigell, M. (2021) 'Democratic Deterrence: How to Dissuade Hybrid Interference', *The Washington Quarterly* [online] Available at: https://www.tandfonline.com/doi/full/10.1080/0163660X.2021.1893027 (Accessed: 23 May 2023).
35. Žilinskas, J. (2008) 'Ginkluoto konflikto samprata tarptautinėje humanitarinėje teisėje ir jos taikymo problemos moderniuose ginkluotuose konfliktuose', *Jurisprudencija,* Vol. 104 Nr. 2 [online] Available at: https://ojs.mruni.eu/ojs/jurisprudence/article/view/2625 (Accessed: 05 April 2023)
36. Žilinskas, J. (2012). '„Teisingo karo" doktrina ir jos atspindžiai mūsų dienomis'. *Jurisprudencija*, 19(3), p. 1201–1214, [online] Available at: https://ojs.mruni.eu/ojs/jurisprudence/article/view/80 (Accessed: 23 May 2023).
37. „The Law on State Border and its Protection of the Republic of Lithuania," Valstybės žinios, 2000, Nr. 42-1192.

38. „The Law on the Legal Status of Foreigners of the Republic of Lithuania," Valstybės žinios, 2004, Nr. 73-2539.

MRU Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)

CRIMINAL LIABILITY FOR UNLAWFUL COLLECTION OF INFORMATION ON PRIVATE LIFE OF A PERSON: PROBLEMATIC ASPECTS, LINKS WITH DIVORCE PROCEEDINGS

Audronė ŽEMECKĖ - MILAŠAUSKĖ
Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
Emails audronekaunas@gmail.com; advokate@zemecke.eu
ORCID ID 0009-0000-2072-2834

DOI: 10.13165/PSPO-23-33-04

Abstract. *Depending on the nature of the violation, infringements of a person's right to privacy can lead to both ethical and legal liability. In terms of legal liability, they can be analysed in the context of civil, criminal and administrative law. Liability for the unlawful collection of information about a person's private life is briefly provided for in Article 167 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the "CCL"), but the legislator does not clarify the criteria on the basis of which the collection of information about a person's private life is unlawful, thus leaving it open to interpretation by the courts. In practice, parallel to civil divorce proceedings, criminal proceedings are initiated, where the collection of information by the spouses as participants in the proceedings is assessed. There is a need to assess the constitutional principle of the inviolability of a spouse's private life in the context of the collection of information (about each other) and to declare this process lawful or not. The focus is on the purposes of the data collection. When assessing the case law and linking the collection of information about a person's private life to the purpose of data collection for the purpose of exercising the right of private persons to provide evidence in proceedings for legitimate purposes within the meaning of Article 167 of the CCL, the acts do not always constitute a crime. This situation focuses the need for a deeper analysis of the liability for the unlawful collection of information, with an emphasis on the regulation of the private life of the spouse and its application.*

Keywords: *private life, protection of private life, unlawful collection of information about a spouse's private life.*

Introduction

Depending on the nature of the violation, infringements of a person's right to privacy can lead to both ethical and legal liability. In terms of legal liability, they can be analysed in terms of civil, criminal and administrative law. In the present case, only one aspect of the inviolability of private life will be focused on in the context of criminal liability, namely the unlawful collection of information about a person's private life.

First of all, we would like to mention international legislation: the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), which is the basic instrument for the development of the legal regulation of privacy in national law. Article 8 of the Convention states that "Everyone has the right to respect for his private and family life, the inviolability of the home and the secrecy of correspondence"(European Convention for the Protection of Human Rights[...], 2011); Article 12 of the Universal Declaration of Human Rights states that "No one shall be subjected to arbitrary interference with his private and family life, the inviolability of his home, the secrecy of his correspondence, or attacks upon his honour and dignity. Everyone has the right to the protection of the law against such interference or attempted interference" (Universal Declaration [...], 2006) and Article 17 of the International Covenant on Civil and Political Rights, which provides for prohibitions of interference with private life and for the right to defend oneself against such interference (International Covenant [...], 2002).

The principle provisions in national law on the inviolability of private life are enshrined in Article 22 of the Constitution of the Republic of Lithuania (Constitution[...],1992). According to the official constitutional doctrine, the norms enshrined in this article of the Constitution protect the individual's right to privacy. This right includes private, family and home life, physical and mental integrity, honour and reputation, confidentiality of personal facts, the prohibition to publish confidential information received or collected, etc. Arbitrary and unlawful interference in a person's private life is also an attack on his or her honour and dignity (Resolution of the Constitutional Court, 8 May 2000). A person’s private life is his or her personal life: lifestyle, marital status, living environment, relations with other persons, views, beliefs, habits, physical and mental condition, health, honour, dignity, etc. The Constitution enshrines the inviolability of a person's private life, from which the individual's right to privacy derives. Article 22(3) of the Constitution, “information about a person's private life may be collected only by reasoned court decision and only in accordance with the law”, and Article 22(4) of the Constitution, “the law and the courts shall ensure that no one is subjected to any arbitrary or unlawful interference with his or her private and family life, or to any attack on his or her honour and dignity” are some of the key guarantees of a person's privacy. They protect a person's private life against unlawful interference by the State, other institutions, their officials and other persons (Resolution of the Constitutional Court, 19 September 2002).

Restrictions on constitutional human rights and freedoms may be made if the following conditions are met: they are made in accordance with the law; they are necessary in a democratic society in order to protect the rights and freedoms of others and the values enshrined in the Constitution, as well as constitutionally important objectives; they do not undermine the nature of the rights and freedoms and their essence; and they comply with the constitutional principle of proportionality.

The legal liability for violation of the provisions enshrined in the Constitution and international legal acts is provided for in Chapter XXVI of the Special Part of the Criminal Code of the Republic of Lithuania. Despite the fact that the legislator has provided the highest hierarchical protection for unlawful interference in private life, there are problematic situations. The qualification of the unlawful collection of information on a person's private life provided for in Article 167 of the CC of the Republic of Lithuania is of particular importance(Criminal Code[...], 2000).The concept of private life is quite broad, Article 167 of the CC of the Republic of Lithuania does not specify it, therefore, the court decides on what is part of the private life of a particular person, what information falls within the sphere of the private life of a particular person by assessing the totality of the facts and circumstances established in the case. The concept of collection of information includes all possible means of unlawful conduct intended for that purpose, such as surveillance of a person, monitoring of the person himself or his home, eavesdropping on conversations, taking photographs and so on. Unlawful collection of information about a person's private life means that the information is collected without the consent of the person concerned or in the absence of a reasoned judicial decision or outside the law. Thus, the legislator, when drafting the disposition of this norm, has made it concise, concentrating the thought on a clear description that does not require additional guidance. This conciseness, however, allows legal practitioners to interpret the elements of the offence in an ambiguous manner, in other words, the interpretation of the law is left exclusively to the legal practitioner. Therefore, in practice, and in particular in the context of divorce proceedings, the courts are often confronted with situations in which they have to deal with criminal proceedings for unlawful collection of information in parallel to divorce proceedings, where the parties to the proceedings are family members - spouses. In the present case, a number of questions arise

as to the circle of relatives who may be held liable under Article 167 CC? Are the spouses private persons? If so, can the gathering of private information about the other spouse give rise to criminal liability under Article 167 of the CC? According to Article 2.23of the Civil Code of the Republic of Lithuania, the inviolability of private life means that information about a person's private life may only be published with his consent. Article 2.23 of the Civil Code of the Republic of Lithuania, which regulates the right to private life and its secrecy, does not stipulate the form in which a person's consent must be expressed (Civil Code[...], 2000). The courts, interpreting the provisions of Article 2.23(1) of the Civil Code of the Republic of Lithuania, have held that a person's consent to the publication of private information may be given orally, in writing, and may also be inferred from his or her conclusory acts (e.g., a person publicly discloses details of his or her private life to other persons, gives an interview to a journalist, etc.). The content of these norms raises a number of problematic aspects which have been little addressed in the scholarly literature.

The object of the study is the problem of interpretation of the objective elements of the criminal offence of unlawful collection of information about the private life of a spouse.

The aim of the study is to analyse whether spouses living in marriage have a protected private life in the context of Article 167 of the CC of the Republic of Lithuania.

Study objectives:

1. To provide an overview of the concept of private spousal life.
2. To investigate whether the spouses' private life is protected by law.
3. Identify the essential elements that would make the collection of information on the private life of his or her spouse a criminal offence.

Methods: qualitative analysis and document analysis methods, as well as synthesis and deduction and generalisation methods were used.

Concept of private spousal life

To start with the analysis of the concept of private life, it is necessary to underline that the content of private life can be analysed from several angles, i.e. doctrinal/theoretical interpretation, statutory law and case law. If we analyse the academic literature, we will not find a precise definition of the right to privacy or the content of private life. However, a number of authors have analysed the right to privacy and its content, such as Lankauskas, M., Mulevičius, M., Zaksaitė, S 2013(Lankauskas, 2013) , Petraitytė, I. 2011 (Petraityte, 2011) and others. It should be emphasised that the jurisprudence of the Constitutional Court of the Republic of Lithuania has also paid attention to this issue.

1. The right to respect for private life is guaranteed by Article 8(1) of the Convention, which provides that everyone has the right to respect for his private and family life, to respect for the integrity of his home and the confidentiality of his correspondence. As pointed out by Ehlers D., Becker U., the right to respect for private life is the most extensive of the four rights mentioned above, while the other three are considered to be specific areas of private life. The right to respect for private life is most often invoked in cases where the more specific rights already mentioned above cannot be applied (Edlers , 2007).

Article 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms sets out the cases in which interference with private life is permissible, i.e. when such interference with a person's privacy is provided for by law and is necessary in a democratic society in the interests of national security, public protection or the economic well-being of the country, for the purpose of preventing breaches of public order or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of other persons.

Mykolas Romeris University
ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

It should be noted that the list of grounds for restriction is exhaustive - the right to privacy cannot be restricted on any other grounds. Meanwhile, the European Court of Human Rights applies a kind of "three-step test" when dealing with a violation of Article 8 of the Convention, i.e. it examines whether the violation of privacy can be justified on the basis of both formal (i.e. strict compliance with the requirements laid down in national law and Article 8(2) of the Convention) and evaluative (whether the violation is necessary in a democratic society and justified by a legitimate aim) criteria. Moreover, even if these criteria are met, the restriction of privacy must be proportionate, i.e. the means used must be adequate to the legitimate aim pursued (Meškauskaitė, 2016).

2. Meanwhile, the principle provisions in national law on the inviolability of private life are enshrined in Article 22 of the Constitution of the Republic of Lithuania. According to the official constitutional doctrine, the norms set out in this article of the Constitution protect the right to privacy, but the content of private life is not disclosed. This right includes private, family and home life, physical and mental integrity, honour and reputation, confidentiality of personal facts, the prohibition to publish confidential information received or collected, etc. Arbitrary and unlawful interference in a person's private life is also an attack on his or her honour and dignity (Resolution of the Constitutional Court, 23 October 2002). To summarise, the right to privacy covers a wide range of areas, including the informational privacy of a person's data, the inviolability of his or her body, of the transmission of information, of his or her possession of information, of his or her possession of communications, of his or her home or his or her home or his or her home territory, as well as the right of personality, the right to an image, the right to honour, the right to dignity, and the right to the protection of personal data, among others.

Article 2.23(1) of the Civil Code of the Republic of Lithuania reflects the provision of Article 22 of the Constitution, which states that a natural person has the right to the inviolability of his or her private life, and, inter alia, that the law and the court shall protect against arbitrary or unlawful interference with his or her private and family life, or attacks on his or her honour and dignity. As already mentioned, the right to respect for private life is protected by the Convention for the Protection of Human Rights and Fundamental Freedoms, as enshrined in Article 8 thereof. The protection of this right and the means of its defence are laid down in Article 2.23 of the Civil Code. According to Article 2.23(1) of the Civil Code of the Republic of Lithuania, the inviolability of private life means that information about a person's private life may be published only with his/her consent. Article 2.23 of the Civil Code of the Republic of Lithuania, which regulates the right to privacy and confidentiality of private life, does not stipulate the form in which a person's consent must be expressed. The courts, interpreting the provisions of Article 2.23(1) of the Civil Code, have held that a person's consent to the publication of private information may be given orally, in writing, and may also be inferred from his or her conclusory acts (e.g., a person publicly discloses details of his or her private life to other persons, gives an interview to a journalist, etc.).

Married life between two people also falls within the sphere of privacy. All of the elements listed in the content of a person's private life are not analysed in this article, but the focus is on clarifying the term "private", raising the question of whether spouses can have a private life, independent of the other spouse, which would be protected by the criminal law. This question arises from the divorce process and the parallel case law in criminal matters, where the courts have to decide where a spouse's private life begins and where it ends.

It should be emphasised that Article 3.27 of the Civil Code of the Republic of Lithuania lays down the obligation of spouses to be loyal to each other and to respect each other, to provide moral support, to the extent of the capabilities of each of them, to contribute to the

satisfaction of the common needs of the family or of the other spouse, and that the legal regulation of family relations is therefore based on the principles of equality of the spouses and the voluntary nature of marriage. "In exercising family rights and performing family duties, persons shall observe the law, respect the rules of common life, observe the principles of good morals and act in good faith. It shall be prohibited to abuse family rights, i.e. it shall be prohibited to exercise them in such a manner and by such means as to infringe or restrict the rights or legally protected interests of other persons or to cause damage to other persons"(Civil Code[...], 2000).

The Constitutional Court has also noted that the legal concept of privacy also relates to a person's state of expectation of privacy and his or her legitimate expectation of privacy. The Constitutional Court of the Republic of Lithuania, using the concepts of both the right to privacy and the right to private life as equivalent, has stated that the right to privacy includes the individual's private, family and home life, the individual's physical and mental integrity, honour and reputation, the confidentiality of personal facts, the prohibition of publication of confidential information received or collected, and the following(Resolution of the Constitutional Court, 8 May 2000).

3. At the same time, however, it must be stressed that if a person violates the interests protected by the law, whether by criminal acts or otherwise, the limits of a person's private life end. "Interpreting these provisions in conjunction with the above constitutional principle of the inviolability of private life, it follows that the celebration of marriage and the status of individuals as spouses do not negate their privacy in relation to each other, and that they are therefore obliged to respect it and not to violate it, and that, in the event of a breach of this principle, it is incumbent upon the State to protect the right violated. On the other hand, in determining whether a spouse's right to respect for his or her private life has been infringed and violated by the conduct of the other spouse, it is necessary to take into account the particularities of the privacy between the spouses. In family proceedings in which the fault of the spouses in the dissolution of the marriage is at issue, the subject-matter of the evidence relates to the facts and evidence concerning the parties' family life, their conduct within the family (marriage) and the breach of their spousal obligations, and includes the human right to privacy. In such cases, in order to protect the right to privacy, the law even establishes an exception to the principle of publicity of court hearings (Article 9(1) of the Civil Procedure Code of the Republic of Lithuania and Article 379 of the Code of Civil Procedure of the Republic of Lithuania), thus declaring,“ in essence, that the right to privacy is not absolute, and that in such cases, the participants in the proceedings, when arguing their claims and defenses, may refer to the relevant data on the private life of the person concerned“(Criminal case 1A-145-256-2014).It follows from the case-law that the spouses' status as spouses does not negate their privacy vis-à-vis each other, and that they have a duty to respect it and not to violate it, and that, in the event of a violation, the State is obliged to uphold the right violated. „Article 22 of the Constitution of the Republic of Lithuania. The provision that no one shall be subjected to unlawful and arbitrary interference with a person's private life should not be interpreted as an absolute prohibition to restrict the inviolability of a person's private life in certain cases; whether the inviolability of private life will be restricted in a particular case is determined by the nature of this personal non-pecuniary value and its compatibility with the rights and legitimate interests of other persons; a person's expectation to be 'left alone' in this case depends on his or her own desire to prevent access to his or her personal data by other persons in the course of his or her contacts with others"(Civil case 2A-129-883/2016).Thus, to summarise what has been stated in the cases, it should be noted that the State protects and defends a person's inviolable private life and privacy.

ISSN 2029-1701
ISSN 2335-2035 (Online)
Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

Criminalisation of the collection of information on the private life of a spouse: key aspects.

In order to highlight the essential aspects of the criminal liability for collecting information on the private life of a spouse, it is necessary to emphasise which types of collection of information could be distinguished. It should be noted that the law does not specify the means of collecting information, but case law does. As an example, we can single out the administrative case II-279-1049/2019 of the Kaunas District Court, where the court lists "[...] all possible ways of unlawful action, such as surveillance of a person, surveillance of his/her person or his/her home, wiretapping, photography, etc. "Unlawful collection of information about a person's private life means that the information is collected without the consent of the person to whom the information relates, or in the absence of a reasoned judicial decision or outside the law. [...] In judicial practice and legal theory, it is considered that this includes all possible methods of action: surveillance of a person, surveillance of the person himself or herself or of his or her home and private property, eavesdropping on conversations, copying of correspondence, other private documents, collecting, studying, systematising, studying and systematising the sources of information about the person, interviewing the person's acquaintances, his or her co-workers, and recording of the information obtained“(Administrative case II-279-1049/2019).

It must be stressed that private individuals are not generally entitled to collect information, and furthermore, the collection of evidence by individuals cannot in fact be considered as operational (criminal intelligence) activity, the means of which can only be used by persons authorised by the State. Officials authorised to do so must duly authorise such activities and must not exceed their powers. In summary, it can be said that criminal liability arises only from the unlawful collection of information.

In case law, the frequent and potentially unlawful collection of information on a person's private life is often linked to parallel civil proceedings for divorce or to the relationship of persons who have been living together as partners for a long time. A review of the case law on whether a spouse's right to respect for private life has been restricted and infringed reveals the following key points.

In divorce proceedings, if private information about a spouse is gathered for a short period of time, with the aim of gathering evidence of disloyal behaviour or infidelity, and the evidence is intended to be presented in a civil proceeding, this is not considered criminal conduct. I would single out a criminal case (Criminal case 1A-145-256/2014) in which the Vilnius City District Court acquitted V.K. by a verdict of 21 November 2013 under Article 167(1) and 168(1) of the CC of the Republic of Lithuania, without having committed an act having the elements of a criminal offence. V.K. was accused of illegally collecting information about a person's life: in September 2009, at an unspecified time, in an apartment at S. Nėries g. 99-96, Vilnius, he illegally read and photographed text messages contained in the SIM card of L. K.'s mobile phone, subscriber number (-);Continuing his criminal act, on 16 September 2009, he illegally obtained from UAB Tele 2 the telephone number of L. K. (-) detailed call and text message records; In continuation of the criminal offence, in autumn 2009, at an unspecified time, in the city of Vilnius, illegally followed L. K. by car at least several times; in continuation of the criminal offence, in 2009, in the city of Vilnius, in the city of Vilnius, illegally followed L. In autumn 2009, at an unspecified time, unlawfully secretly recorded L. K.'s private conversations; In continuation of the offence, in January 2011, at an unspecified time, unlawfully took photographs of L. K. in the vicinity of the building at 86 E Ateities St., Vilnius, unlawfully. V.K. was also accused of unlawfully using information about the private life of a person, i.e. on 23-12-2009, at Laisvės pr. 79a, Vilnius, he submitted to the 1st District Court of Vilnius

City, in the civil case No. (-) on the divorce of marriage, without the consent of L. K., and thereby unlawfully used information collected during the commission of the offence provided for in Article 167(1) of the Criminal Code of the Republic of Lithuania, about the private life of L. K.

On appeal, the Prosecutor's Office requested to annul the verdict, to sentence V.K. under Article 167(1) of the Criminal Code of the Republic of Lithuania to a fine of 10 MGL (LTL 1300), under Article 168(1) of the Criminal Code of the Republic of Lithuania to a fine of 15 MGL (LTL 1950), to combine the sentences according to the procedure set out in Article 63 of the Criminal Code of the Republic of Lithuania, and to impose the final fine of 20 MGL (LTL 2600). The applicant submits that the court did not properly assess the evidence, although it found that V.K. recorded conversations and checked L.K.'s personal belongings at home, retrieved a detailed list of the latter's telephone calls and messages, carried out these actions in the context of suspicions of infidelity, in order to record his spouse's improper behaviour in the family, and used the information gathered in order to prove his spouse's fault in the divorce proceedings. There can be no abuse of procedural coercive measures or their use for purposes other than those laid down in the CPC. In the present case, no coercive measures provided for and possible under the laws of the Republic of Lithuania were applied to L. K., and V. K. collected evidence in the civil case on his own initiative, unlawfully, i.e. in violation of the law. He not only illegally read and photographed the text messages on the SIM card of L. K.'s mobile phone, but also illegally obtained detailed call and text message records from UAB 'Tele 2' and illegally recorded L. K.'s private conversations. V.K.'s testimony that he did not secretly record personal conversations, but found the compact disc containing the recorded conversations in the mailbox, should be regarded as a defence and an attempt to evade criminal liability. Although the court stated that V.K.'s version of the discovery of the audio recordings in the mailbox was not refuted, it did not discuss the unlawful use of this information, i.e. the submission of the information to the court in the civil divorce proceedings. The examination of the case shows that V.K. took photographs of L.K. not on Ateities Street but on Didlaukio Street, in front of the building of the State Forensic Service. V. K. admitted the fact of taking the photographs, and this circumstance should therefore be corrected rather than removed from the indictment. This leads to the conclusion that the guilt of Mr V.K. is fully proven and that he should be convicted. Taking into account the personality of Mr V. K., the degree and nature of the seriousness of the offences, the form and nature of the guilt, the absence of aggravating and mitigating circumstances, and the other circumstances provided for in Article 54 of the Criminal Code of the Republic of Lithuania, he should be fined. The appeal was dismissed.

On appeal, the Vilnius Regional Court, after verifying the legality of the verdict, found that when V.K. suspected that L.K. was being unfaithful to him, he checked her phone, found a picture of her lover and love messages, and found a love note in her handbag. When L.K. decided to divorce, he took the phone to a bailiff to record the fact of his wife's infidelity. For the same purpose, he called UAB TELE 2 and asked them to send him detailed messages and call records from his wife's phone. From the records obtained, he found that L. K. was in regular contact with A. B.. L.K.'s conversations with her lover were recorded accidentally because she threatened him and left the earpiece on at home for her own protection. He did not record any of L.K.'s other conversations. On one occasion, he took a picture of L.K.'s car because he saw that she was using a police car for her own purposes. During the divorce proceedings, he submitted all the data he had gathered to the court in order to prove his spouse's infidelity. The Court of Appeal did not consider such actions of V.K. to be criminal, concluding that V.K. was acquitted lawfully and justifiably. The Court reasoned that in September 2009, V.K. and L.K. were voluntarily living together in the same apartment, sharing a common household, and were

equal spouses.It also noted that, according to the circumstances established, Mrs K. had not expressed to her spouse her views on possible problems in her marital life, her desire to live separately, etc., in order to establish the limits of her privacy and to declare her intention to be 'left alone' within the meaning of the principle of privacy. On the contrary, in order to create the illusion of a good relationship between the spouses, she concealed her intimate relationship with A.B. The defendant only took action when he suspected his spouse's infidelity. He did so in a short period of time in order to record his spouse's inappropriate behaviour in the family and used the information gathered to prove his spouse's guilt in the divorce proceedings. This was done for a legitimate purpose which justifies the restriction of the individual's right to respect for private life guaranteed by law. The information on Ms L.K. was not gathered in a context of harassment, manipulation or any other unlawful context, but in accordance with a legally and morally acceptable understanding of the rights and obligations of spouses. V.K.'s actions were based solely on gathering evidence of his spouse's infidelity in the divorce proceedings, thereby seeking to exercise his procedural rights in the divorce proceedings. In the present situation, L.K. could not objectively have consented to the collection of such information, and therefore the recording of conversations, the reading and photographing of SMS messages, and the retrieval of the detailed records of telephone calls and messages are, in the present case, legitimate collection of information about a person's private life and the use of that information in civil proceedings for divorce.

Another case could be the example of the Court's conviction (Criminal case 2K-198/2013). In this case, the collection of information about a spouse and his/her private life was criminalised. In this case, the court convicted the defendant, declaring it a criminal offence to collect information about a spouse's private life. The cassation appeal of K.Č., the defence counsel of the convicted N.Z., was rejected by the ruling of the Supreme Court of Lithuania on 23 April 2023. The essence of the case is that N.Z. was convicted under Article 167(1) of the Criminal Code of the Republic of Lithuania for the fact that since the summer of 2010, in Kaunas, at his home, at (-), at his work, at (-), and in other places of the city, N. N. Z.., threatening to commit an act dangerous to life, health or property, and systematically intimidating her by means of mental violence: suspecting her of infidelity, disseminating this information to her friends and acquaintances, restricting her freedom of communication with other persons, calling her obscene names in a clear display of his disapproval and disrespect towards other persons, constantly following her where she was going in her car in order to ensure her unconditional obedience, and causing her constant fear and tension; since 2010 On 20 September 2010, after A. N. Z. had notified her of her wish to divorce, he sought to restrain her from doing so by making her aware that the divorce might not be good for her, at around 7.30 a.m., on 30 September 2010, at around 7.35 a.m., he called A. N. Z., who was at home, and threatened her that in the event of a divorce he would deprive her of the opportunity to work at the public enterprise (-), and said that 'if I bury, I'll bury everything, there won't be any such name'; on the same day at around 7.35 a.m., he called her and told her to think about the meaning of what he had just said, saying 'I'm going to turn 60, I'm not going to have anything to lose, I'm out of date...'; on 2 November 2010 On November 2, 2010, at an unspecified time, he called J. P. and threatened to destroy his wife and everything else; On November 2, 2010, on an unspecified date, he met V. M. in Kaunas, near the house (-). M. M., on M. M.'s day of arrival in M.V.'s home in M.V., said that he would like to find a person who could "break" his wife's alleged lover K.A. and "kill" his wife in order to give her a good party for beating up K.A., and to pay LTL 10 000 to kill A. N.Z.; and also, between 1 September and 1 October 2010 In Kaunas, at an unspecified location, in the car of A. N. Z., a Renault Megane (registration No. (-), secretly installed a device to determine the location of the mobile object in real time

and continuously tracked the route and location of A. N. Z.'s movements until 23 December 2010 at 8.45 a.m., when he dismantled the device himself during a spot-check at the house in Kaunas, at the instruction of police officers; between 14 December 2010 at 7.47 p.m. and 22 December 2010 at 9.05 a.m. On 22 December 2010 and 22 December 2010, he secretly installed a listening device in the common dressing room of the employees of (-) in Kaunas, (-), and listened to the conversations of A. N. Z. and other persons.

In her cassation appeal, the defence counsel of the convicted person requested to set aside the verdict of the Kaunas City District Court of 31 May 2012 and the ruling of the panel of judges of the Criminal Division of the Kaunas Regional Court of 30 October 2012, and to terminate the case.

The appellant argued that the courts had incorrectly assessed the evidence collected and the circumstances established, and therefore misapplied the criminal law. The Court of First Instance, while acknowledging that this case involves a sensitive situation, as the accused and the victim are married, drew incorrect and unlawful conclusions that N.Z. had acted unlawfully towards his spouse. This conclusion of the court contradicts not only the principles of logic and reasonableness, but also the provisions of the Civil Code of the Republic of Lithuania, the Code of Civil Procedure of the Republic of Lithuania, and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The court's verdict does not comply with the requirements of Article 305 of the CPC, as the court's conclusions are not based on a legal assessment of the specific circumstances, nor does it set out the legal arguments confirming the constituent elements of the offences charged in the actions of N. Z.

According to the defence counsel, the verdict is unfounded and unlawful. The circumstances established in the case, that a microphone was installed in the sinking room at (-) and GPS equipment was installed in the car, do not prove that any criminal acts were committed (terrorising and collecting data on a person's private life), and it has not been established which data on the victim's private life were collected. The make-up room (-) was used by all employees. The car is community property until the divorce is finalised and the property is divided (Article 3.117 of the Civil Code). The fact that Ms Z's whereabouts at the quarry with Mr K. were established confirms Ms Z's unauthorised and unlawful conduct as a spouse within the meaning of the provisions of the Civil Code of the Republic of Lithuania on marriage and family. According to the appellant, the courts, in qualifying the former disagreements between the spouses, confused the law governing marriage and family relations (Article 3.60 of the Civil Code of the Republic of Lithuania, which provides that the other spouse is guilty of dissolution of the marriage if he or she has been unfaithful or has breached his or her duties as a spouse; Articles 177 and 178 of the Civil Procedure Code of the Republic of Lithuania, which require the parties in a civil case to provide written evidence, photographs, and so on) with the criminal law rules. In the appellant's view, in this case, the public authorities have infringed the right to respect for family life, and the reasons for the breakdown of the family are to be determined by the law in divorce proceedings. The Zs are now reconciled, have been living together since the last hearing at first instance, and are raising and educating their two minor children, and the conviction is not in the best interests of the children.

The panel of judges of the Supreme Court of Lithuania dismissed the cassation appeal, noting that the allegations referred to in the cassation appeal by the convicted person's defence counsel that the courts did not properly investigate the evidence contained in the case, because they ignored some of it, and that the court's conclusions were not based on the legal assessment of specific circumstances, must be rejected.

The Chamber of Judges pointed out that the scope of protection of a person's private life against interference by another private person depends, inter alia, on the nature of the

relationship between those persons, which determines the limits of privacy in relation to each other. The legal regulation of family relations in the Republic of Lithuania is based, inter alia, on the principles of the voluntary nature of marriage and the equality of spouses (Article 3.3(1) of the Civil Code of the Republic of Lithuania). In exercising family rights and performing family duties, persons are obliged to observe the law, respect the rules of common life, the principles of good morals and act in good faith (Article 3.5(2) of the Civil Code). It is prohibited to abuse family rights, i.e. to exercise them in such a way and by such means as to violate or impair the rights or legally protected interests of other persons or cause damage to other persons (Article 3.5(3) of the Civil Code). The spouses must be loyal to each other and respect each other, as well as support each other morally and materially (Article 3.27(1) of the Civil Code).

On the other hand, in this context, it is necessary to take into account the particularities of the privacy between the spouses when determining whether their right to respect for private life has been infringed and violated as a result of the other spouse's conduct. In the present case, it is relevant in this respect that, according to the facts established by the courts, the victim expressed to her spouse as early as the summer of 2010 her views on the problems she was experiencing in her family life, her desire to live separately, her disagreement with his constant control, etc., in order to define the limits of her privacy and to declare her desire to be relatively 'left alone' in the sense of the principle of the inviolability of private life. The cassation appeal submits that the installation of the GPS equipment in the Renault Megane is lawful, since the car is owned jointly by the perpetrator and the victim. However, the Chamber of Judges points out that in this case, the decisive factor for the classification of the act under Article 167 of the CCL is not the ownership of the car, but the fact that the equipment installed in the car was used to collect information about the victim, who used it. It was N.Z. who followed the route of A.N.Z., who was unaware of the equipment, in the car for a considerable period of time (at least about three months). GPS tracking is different in nature from other means of video and audio surveillance, which reveal more information about a person's behaviour, thoughts or feelings and may therefore be more restrictive of a person's right to respect for private life. However, the systematic collection of information about a person by means of GPS equipment may restrict a person's right to privacy, especially when such information is used to exert a certain influence on the person, in the present case by terrorising him (mutatis mutandis Uzun v. Germany, no. 35623/05, judgment of 2 September 2010).

Although the complaint alleges that the installation of a listening device in the dressing room of the employees does not confirm the collection of information on the private life of a person, since that room was used by everyone, the Chamber of Judges noted that private life may include professional activities and relations with other persons outside the person's home or private quarters. Certain expectations of privacy also exist in the workplace and when several people are in contact. For more than a week, Mr Z kept a listening device in his dressing room and eavesdropped on the conversations of his wife and others. The latter could not have foreseen that their conversations were being listened to by a person who was not present at the time, as they were not informed of this in any way. The Chamber of Judges found that the actions of the convicted person went beyond the limits of normal acceptable communication and care between spouses. The celebration of a marriage does not in itself imply the unconditional abolition of privacy between the spouses and, consequently, of the right of one spouse to control the other's relations with the outside world. Mr Z. collected information about his spouse of a kind which is generally considered to be part of a person's privacy, although not intimate in itself. According to the circumstances established by the Courts, this was done without any legitimate aim which could justify a restriction of the right to respect for private life guaranteed by the Constitution and the Convention.

The Chamber of Judges drew attention to the argument of the cassation appeal concerning the proof of the infidelity of the spouse in the civil procedure and stressed that according to the circumstances established by the courts, N. Z. did not essentially relate her actions, qualified under Article 167 of the CC of the Republic of Lithuania, to the gathering of evidence for the divorce proceedings. On the contrary, throughout the criminal proceedings, the convicted person, in his testimony, justified his actions on the grounds of taking care of his wife, his desire to preserve the family independently of his spouse's wishes, and similar motives.

To summarise the situation, it should be stressed that in this case, the collection of information on the spouse did not involve the exercise of procedural rights, but rather was detrimental to the spouse. Taking into account the clearly expressed expectations of A.N.Z. of greater privacy in her relationship with her spouse, the use of technical means adapted to the collection of secret information, the relatively long duration and systematic nature of the collection of secret information, the fact that the information was collected without any justifiable purpose and was used for the purpose of A.N.Z. N.Z., the Chamber of Judges finds that N.Z.'s actions were quite dangerous, violated the inviolability of A.N.Z.'s private life, and were reasonably assessed as unlawful collection of information about her private life within the meaning of Article 167 of the Criminal Code of the Republic of Lithuania.

To summarise, the right to private life is one of the fundamental human rights enshrined in both Lithuanian and international law (Article 22(1) of the Constitution, Article 8(1) of the Convention, Article 7 of the Charter of Fundamental Freedoms of the European Union, Article 2.23(1) of the Civil Code). The inviolability of private life presupposes the individual's right to privacy. This right includes the inviolability of personal, family and home life, honour and reputation, physical and mental integrity of a person, confidentiality of personal facts, prohibition to publish confidential information received or collected, etc. (Resolutions of the Constitutional Court of the Republic of Lithuania of 21 October 1999, 8 May 2000, 19 September 2002, 23 October 2002, 24 March 2003).

The constitutional regulation of the principle of the inviolability of private life implies that, in order to ensure the effective protection of privacy, the process of collecting information about a person's private life is essentially formalised, linked to the procedure established by law and the adoption of a court decision. Thus, private individuals acting freely are generally not entitled to collect such information [...]. On the other hand, taking into account the specific nature of the relations between private individuals in certain areas and the different expectations of privacy that this entails, as well as the importance of the information in question for the exercise of the rights of others, the constitutional principle of the inviolability of private life has in some cases been subject to a more flexible and broader interpretation at the legislative level and in the case law, but without undermining the essence of the principle. One of such cases is the exercise of the right of private parties to the proceedings to adduce evidence[...]. In cases where information is gathered for the purpose of providing evidence in divorce proceedings, the Court assesses the relationship between the parties, their conduct, the purposes for which the information was gathered, the means by which it was gathered, and the duration and intensity of the action.

Conclusions

The content of private life can be addressed in several ways, i.e. doctrinal/theoretical interpretation, statutory law and case law. The right to respect for private life is guaranteed by Article 8 of the Convention, paragraph 1 of which states that everyone has the right to respect for his private and family life, the inviolability of his home and the secrecy of his

correspondence. The concept of private life is defined in Article 2(40) of the Law on Public Information of the Republic of Lithuania. According to Article 40 of the Law on Information Society, private life shall mean the private life of a person, his family, the living environment consisting of the person's dwelling, the private territory belonging to the dwelling and other private premises used by the person for his/her economic, commercial or professional activities, leisure, recreation, as well as other areas of the private life of the person, in which he or she has a reasonable expectation of privacy, a person's mental and physical integrity, honour and reputation, sensitive personal facts, photographs or other images of a person, information about a person's health, private correspondence or other communications, a person's views, beliefs, habits and other data which may be used only with his or her consent.

According to Article 167(1) of the Criminal Code of the Republic of Lithuania, whoever unlawfully collects information about a person's private life is liable. Thus, the object of this offence is the inherent, conventional and constitutional value of the inviolability of a person's private life, and the subject matter is information, the content of which consists of knowledge about a person's private life. The objective aspect of this offence consists in the unlawful collection of information about a person's private life. The collection of such information is prohibited, except where authorised by law or by a court.

The principle of the inviolability of a person's private life is enshrined in Article 22 of the Constitution of the Republic of Lithuania. According to paragraph 3 of this Article, information about a person's private life may be collected only by a reasoned court decision and only in accordance with the law, and paragraph 4 stipulates that the law and the court shall protect a person against arbitrary or unlawful interference in his/her private and family life, and against attacks on his/her honour and dignity. Article 28 of the Constitution stipulates that in exercising his/her rights and freedoms, a person must respect the Constitution of the Republic of Lithuania and the law, and must not infringe the rights and freedoms of others. The Constitution thus guarantees everyone's right to private life and its inviolability. It must be stressed that this right is not restricted by marriage. It should therefore be noted that Article 167 of the Criminal Code of the Republic of Lithuania provides for the protection of both the rights of the spouses to respect for their private and family life and the actions of one spouse towards the other. In the case-law, when assessing the gathering of information on a person's private life, the relationship between the parties, the conduct of the spouse, the purposes of the gathering of the information, the means by which it was gathered, and the duration and intensity of the acts.

References

1. Civil Code of the Republic of Lithuania. TAR, 2000, No. 74-2262 (as subsequently amended and supplemented).
2. Constitution of the Republic of Lithuania. Adopted by the citizens of the Republic of Lithuania in a referendum on 25 October 1992 (Valstybės žinios, 1992, No. 33-1014). Entered into force on 2 November 1992 (with subsequent amendments and additions).
3. Criminal Code of the Republic of Lithuania. TAR, 2000, No. 89- 2741 (as subsequently amended and supplemented).
4. Ehlers D., Becker U. European Fundamental Rights and Freedoms. Berlin, 2007, p. 68.
5. European Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 1950, Valstybės žinios, 2011, No. 156-7390.
6. International Covenant on Civil and Political Rights. Valstybės žinios, 2002, No. 77-3288.

7. Kaunas District Court. Judgment on behalf of the Republic of Lithuania. 12 August 2019, Kaunas. Administrative case II-279-1049/2019. Accessed online: https://eteismai.lt /byla/161080016540852/II-279-1049/2019?word=vie%C5%A1a%20tvarkara%C5%A1%C4%8Di%C5%B3%20paie%C5%A1ka.
8. Lankauskas, M., Mulevičius, M., Zaksaitė, S. (2013). Issues relating to the right to privacy, freedom of thought, conscience, religion and expression, Vilnius: Lietuvos teisės institutas.
9. Law on Public Information of the Republic of Lithuania. TAR, 2006, No. X-752.
10. Meškauskaitė L., Lankauskas M., Criminal liability for violations of the inviolability of a person's private life in the context of the European Court of Human Rights and Lithuanian case law. Teisės problemos. 2016. No.1 (91) Accessed online: https://teise.org/wp-content/uploads/2016/06/Meskauskaite-Lankauskas-2016_1.pdf.
11. Panomariovas, A. (2001) The secrecy of private life and related issues in criminal proceedings. Jurisprudencija, 23(15), 98 – 105.
12. Petraitytė, I.(2011). Protection of personal data and right to privacy. Teisė, 88, 163-174.
13. Resolution of the Constitutional Court of the Republic of Lithuania of 21 October 1999 "On the Compliance of the Resolution of the Supreme Council of the Republic of Lithuania of 31 January 1991 "On the Writing of Names and Surnames in the Passport of a Citizen of the Republic of Lithuania" with the Constitution of the Republic of Lithuania"
14. Resolution of the Constitutional Court of the Republic of Lithuania of 8 May 2000 "On the Compliance of Article 2(12), Article 7(2)(3), Article 11(1) of the Law on Operative Activities of the Republic of Lithuania and Article 1981(1) and (2) of the Criminal Procedure Code of the Republic of Lithuania with the Constitution of the Republic of Lithuania".
15. Resolution of the Constitutional Court of the Republic of Lithuania of 19 September 2002 "On Article 27(2) of the Law on Telecommunications of the Republic of Lithuania (11 July 2000, wording), Article 2(1) of the Law on Amendments to Article 2 of the Law on Telecommunications of the Republic of Lithuania, Article 57(4) of the Law on Telecommunications of the Republic of Lithuania (5 July 2002, wording), Article 57(4) of the Law on Operative Activity of the Republic of Lithuania (1997, version) The Court of Justice of the Republic of Lithuania shall declare that the provisions of Article 7(3)(4), Article 7(3)(6) of the Law on Operative Activities of the Republic of Lithuania (wording of 22 May 2002), Article 48(1) of the Code of Criminal Procedure of the Republic of Lithuania (wording of 26 June 1961) and Article 75(1) of the Law on Operative Activities of the Republic of Lithuania (wording of 29 January 1975) comply with the Constitution of the Republic of Lithuania.
16. Resolution of the Constitutional Court of the Republic of Lithuania of 23 October 2002 "On Compliance of Article 8 and Article 14(3) of the Law on Public Information of the Republic of Lithuania with the Constitution of the Republic of Lithuania".
17. Resolution of the Constitutional Court of the Republic of Lithuania of 19 September 2002 "On Article 27(2) of the Law on Telecommunications of the Republic of Lithuania (version of 11 July 2000), on Article 27(1) of the Law on Amendments to Article 27 of the Law on Telecommunications of the Republic of Lithuania, on Article 57(4) of the Law on Telecommunications of the Republic of Lithuania (version of 5 July 2002), on Article 57(4) of the Law on Operative Activity of the Republic of Lithuania (version of 5 July 2002). Article 7(3)(4) of the Law on Operative Activities of the Republic of Lithuania (version of 22 May 2002), Article 7(3)(6) of the Law on Operative Activities of the

Republic of Lithuania (version of 20 June 2002), Article 48(1) of the Code of Criminal Procedure of the Republic of Lithuania (version of 26 June 1961) and Article 75(1) of the Code of Criminal Procedure of the Republic of Lithuania (edition of 29 January 1975), and Article 75(1) of the Law on Operative Activities of the Republic of Lithuania (edition of 20 June 2002), are contrary to the Constitution of the Republic of Lithuania.

18. Review of the practice of the Supreme Court of Lithuania. January 2020. Accessed online: https://www.lat.lt/data/public/uploads/2020/02/lat_aktuali_praktika_sausis_2020.pdf
19. Supreme Court of Lithuania. Order on behalf of the Republic of Lithuania. 23 April 2013, Vilnius. Criminal case 2K-198/2013. Accessed online: https://eteismai.lt/byla/120423708912325/2K-198/2013
20. Šiauliai District Court. Order on behalf of the Republic of Lithuania. 11 January 2016, Šiauliai. Civil case 2A-129-883/2016. Accessed online: https://eteismai.lt/byla/67349357117760/2A-129-883/2016.
21. Universal Declaration of Human Rights. Valstybės žinios, 2006, Nr. 68-2497.
22. Vilnius Regional Court. Verdict on behalf of the Republic of Lithuania. 13 March 2014, Vilnius. Criminal case 1A-145-256-2014. Accessed online: https://eteismai.lt/byla/190799927730249/1A-145-256-2014.
23. Vilnius Regional Court. Order on behalf of the Republic of Lithuania. 13 March 2014, Vilnius. Criminal case 1A-145-256/2014. Accessed online: https://eteismai.lt/byla/190799927730249/1A-145-256-2014#.
24. Žiobienė, E. (2005). Current issues in the protection of the constitutional right to private life. Jurisprudencija, 64(56), 124-131.

Mykolas Romeris University

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

DISCUSSION ISSUES OF ASSESSMENT OF DATA OBTAINED BY USING SPECIAL KNOWLEDGE IN CRIMINAL PROCEEDINGS

Rasa ŽIBAITĖ – NELIUBŠIENĖ
Mykolas Romeris University
Maironio St. 27, LT-44211 Kaunas, Lithuania
E-mail: rasa.zibaite@mruni.eu
ORCID ID 0009-0006-1680-0223

DOI: 10.13165/PSPO-23-32-06

Abstract*. As the social environment develops, as science and technology improve, more and more attention in the evidentiary process is paid to the data obtained by using special knowledge. Without such data, the investigation of certain criminal acts or even making a final decision is unimaginable. It is important to realize that the evaluation of data obtained by using special knowledge, precisely because of its specificity, requires greater care, because data obtained by using special knowledge (forensic science) should be considered as personal evidence obtained by a person who had no (in)direct personal contact with the criminal act under investigation and the judge has the duty to assess the result based on certain special knowledge that he does not personally have. The analysis performed has shown that (first of all) the provisions of the case-law regarding the assessment of the conclusions obtained using special knowledge on the basis of private initiative provide reasonable grounds to consider the fact that, unfortunately, there is a derogation from the provisions of the principle of free assessment of evidence. It can also be assumed (secondly) that in the absence of factors determining the insufficient quality and reliability of the conclusion, the conclusion obtained and submitted by a private participant in criminal proceedings by way of the neutralizing mechanism should continue to be assessed as an advisory conclusion.*

Keywords*: special knowledge, reliability of evidence, conclusion of the private expert.*

Introduction

As the social environment develops, as science and technology improve, more and more attention in the evidentiary process is paid to the data obtained by using special knowledge. Without such data, the investigation of certain criminal acts or even making a final decision is unimaginable. As P. Kirk has pointed out: "Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as a silent witness against him. [...] Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent. Only its interpretation can be wrong. Only human failure to find it, study and understand it, can diminish its value"[1].

It is important to realize that the assessment of data obtained by using special knowledge requires greater care precisely because of its specificity because (first of all) data obtained by using special knowledge (*forensic science*) should be considered as *personal evidence* obtained by a person who had no (in)direct personal contact with the criminal act under investigation and (second) the judge has the duty to assess the result based on certain special knowledge that he does not personally have. Therefore, in addition to the general evidence assessment scheme, such data also contain additional elements (essentially formulated in the case-law) that strengthen the reliability of such data. This paper will discuss several of them.

Object of research: assessment of data obtained by using special knowledge in criminal proceedings.

Purpose of research: to disclose the relevant (essentially formulated in the case-law) aspects of the assessment of data obtained by using special knowledge by paying more attention to the results of the special investigation obtained on the basis of a private initiative.

[1] Erikas Kaukas (2012), The Issues of the Interpretation of Physical Evidence in the International Context. *Public Security and Public Order*, (7), 112-125.

Research tasks:

1. To discuss the aspect of the impartiality of the subject with special knowledge, namely a private expert, with regard to the dependence on other parties to the proceedings.
2. To discuss the relevant aspects (essentially formulated in the case-law) aspects of assessment of the reliability of the results obtained by using special knowledge, namely the results of the special investigation obtained on the basis of a private initiative.

Research methods: the document analysis is used to analyze the issues of legal regulation and case-law; the systematic analysis is used to compare legal provisions and case-law, the deduction analysis allowed defining specific problems arising in legal practice due to general requirements, whereas the generalization method helped to structure the whole and to present structured conclusions

Aspects of impartiality of "the competent witness" as a source of personal evidence

In procedural laws, the use of special knowledge is regulated in different chapters, for example, Section XIII Chapter Seven "Expert Opinion" of the Code of Civil Procedure, which is dedicated to this issue (Articles 212 – 219 of the Code of Civil Procedure lay down the performance of expert examinations and the appointment of experts, the presentation of questions to the expert, the duties and rights of the expert, the liability of the expert, the contents of the conclusion drawn up by the expert, the procedure of questioning of the expert, the assessment of the conclusion drawn up by the expert, and regulate the issue of ordering the supplementary or repeated expert examination), however, specific issues are also regulated in other Articles, for example, in Article 682 of the Code of Civil Procedure, which lays down the procedure of ordering the expert examination in enforcement proceedings.

Meanwhile, different sections of the Code of Criminal Procedure contain the following Articles: Articles 84–88 of the Code of Criminal Procedure (which lay down the concept of the expert, the rights, duties and liability of the expert, and the contents of the expert examination report), Articles 89–90 of the Code of Criminal Procedure (which lay down the concept of the specialist and the contents of the conclusion drawn up by the specialist), Articles 205–206 of the Code of Criminal Procedure (which lay down the procedure of examination of objects and the peculiarities of examination), Articles 208–211 of the Code of Criminal Procedure (which lay down the grounds and procedure of ordering the expert examination), Articles 284–285 of the Code of Criminal Procedure (which lay down the procedure of participation and questioning of the subject with special knowledge during the hearing of the case in court), whereas Article 286 of the Code of Criminal Procedure regulates the procedure of ordering and performance of the expert examination during the hearing of the case in court.

In criminal proceedings, special knowledge may be applying by the following two subjects: the expert (who complies with the requirements laid down in the Code of Criminal Procedure)[2] and the specialist (although the Code of Criminal Procedure does not lay down a requirement for the specialist to be included on the list of experts, however, the specialist is subject to certain competence and qualification requirements)[3]. Accordingly, the Code of Criminal Procedure lays down the following two forms of use of special knowledge: <...> *the expert examination report and the conclusion of the specialist drawn up on the basis of the*

[2] The expert is a person whose name is on the list of experts and who is ordered by the court to conduct a forensic expert examination, or any other person whose name is not on the list of experts, but who has the required special knowledge and who is ordered by the court to conduct a forensic expert examination in particular proceedings (Article 210 of the Code of Criminal Procedure).

[3] Criminal proceedings of the Supreme Court of Lithuania No. 2K-201-1073/2018 No. 2K-431/2010.

examination of objects. The procedure of ordering and performance of these procedural actions differ accordingly[4].

The subject who has special knowledge can be considered the expert witness in the broad sense. However, if opposed to the "authentic witness" (the witness "born together with the circumstances of the event" rather that directly affected by the criminal act or otherwise related to the commission of the criminal act[5]), the rules of irreplaceability[6] and authenticity[7] of the witness do not apply to the expert witness. Such witness could be described as "the competent witness", therefore, it is important to understand both the importance of competence (professional, occupational aspects) of the person who has special knowledge and the factors that help to ensure the quality and reliability of the examination that requires special knowledge.

It is believed that the successful of the expert's work depends on several factors, including not only the selection of the appropriate expert, but also the expert's skills in analyzing, evaluating, synthesizing and expressing the results obtained.[8] There is no doubt in the doctrine that the effectiveness of the expert examination also depends on the selection of the appropriate expert (specialist), i.e. on the special knowledge and skills held by him.[9] There is no doubt that the most significant factors influencing the process of formulating conclusions by the subject with special knowledge are the subject's qualification and competence. In international legal acts, on the basis of professional sovereignty, the duties of the forensic expert are divided into the following two groups: one of them includes the duties related exclusively to the personality of the forensic expert, i.e. the duty of the personal responsibility of the expert; the duty of confidentiality; the duty to take an oath; the duty to regularly improve (update) competence and *the duty to remain independent and impartial.*

In the context of the independence and impartiality of the subject with special knowledge as the factor contributing to the strengthening of the reliability of such data, attention should first be paid to the expert's independence from the parties to the process. Article 67 paragraph 2 of the Code of Civil Procedure stipulates that the expert may not participate in the hearing of the case if he is dependent on at least one of the parties or other persons participating in the proceedings due to his service or otherwise, or if he had performed a revision, audit or any other inspection the material of which was the basis for the institution of the civil case. Meanwhile, the Code of Criminal Procedure does not provide for any direct regulation on this issue. The

[4] Criminal proceedings of the Supreme Court of Lithuania No. 2K-201-1073/2018.
[5] Ažubalytė, R. (2016) et al. Criminal Procedure Law. *General Part: Textbook. Book 1 Vilnius: Centre of Registers*, 214-218; Cf. see Jurka R. (2009) The Witness and the Procedural Interests of the Witness in Criminal Proceedings. Monograph. *Vilnius: State Enterprise Centre of Registers*.
[6] Ažubalytė, R. (2016) et al. Criminal Procedure Law. *General Part: Textbook. Book 1 Vilnius: Centre of Registers*, 216 -217 („Irreplaceability characterizes the witness as a unique subject of the process. This feature cannot be denied by the fact that several (or a dozen) persons are often interrogated as witnesses and they give the same kind of testimonies about the circumstances that need to be determined. The fact that several witnesses repeat the same circumstances should not be considered as the basis for replacing one witness with another, but simply for deciding the sufficiency and/or reliability of their testimonies (data)").
[7] Ažubalytė, R. (2016) et al. *Criminal Procedure Law. General Part: Textbook. Book 1 Vilnius: Centre of Registers* ("The feature of authenticity indicates that the subject matter of the testimony given by the witness should usually be the data and the information based on the first source from which the witness became aware of the factual circumstances that have certain significance for the correct examination of the case. This feature also means that when a person who is neutral towards the circumstances of the case that are being determined and investigated, is questioned as a witness, such person is not bound by any motives or interests that are inseparable from, for example, the victim, the person suspected or accused of the commission of the crime.")
[8] Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. Vilnius: Centre of Registers, 459-472, 462.
[9] Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. *Vilnius: Registrų centras*. 459-472.

doctrine notes that the real impartiality of the subjects with special knowledge can be ensured only when they are independent participants in the criminal proceedings and their status does not overlap or coincide with the status of other participants in the proceedings, and when they are not related to other participants in the proceedings either personally or on the basis of any service-related, institutional relations.[10]

Thus, in order to ensure the impartiality of the specialist (expert), the examination that requires special knowledge should not be ordered to the person who is maintains employment-based relations with the state authority that has an independent material or procedural interest in the criminal case, which is realized after the acquisition of the procedural status (e.g., that of the civil claimant). Therefore, from the formal point of view, only the persons working in such institutions as the Forensic Science Centre of Lithuania would meet the requirement of independence.

In this context of the independence and impartiality of the subject who has special knowledge, it is worth paying attention to the discussions arising in relation to the examinations involving special knowledge and performed at the initiative of the private participant in the proceedings. It has been clarified in the case-law that following the adversarial principle, among other things, individuals must be given the opportunity to defend their interests in the criminal case by also using the results of the examinations performed on the basis of the private initiative.[11] In its turn, the European Court of Human Rights has drawn attention to the importance of the data obtained on the basis of the private initiative for the principle of equality[12].

The Supreme Court of Lithuania notes that "at the request of the accused (his defense counsel) or another participant in the proceedings, the examination of objects or documents significant for the investigation and hearing of the criminal act, which has been performed by a private expert or any other person with special knowledge, is not the examination of objects within the meaning of Article 205 of the Code of Criminal Procedure, and the document drawn up by such persons is not recognized either as a report of the expert examination (Article 88 of the Code of Criminal Procedure) or as a conclusion of the specialist (Article 90 of the Code of Criminal Procedure), but is examined and assessed as a document – an advisory conclusion drawn up by a person who has special knowledge (Articles 95–96 of the Code of Criminal Procedure) (cassation rulings in criminal proceedings No. 2K-521/2008, 2K-465/2010, 2K-165/2013, 2K-337/2014). An advisory conclusion may be recognized as evidence in criminal proceedings if it meets the general and special requirements for such type of evidence.

Therefore, two positions are formed in the doctrine based on this practice. On the one hand, it is understandable that the conclusions obtained on the basis of the private initiative have limited binding nature for the court and according to the prevailing case-law, these conclusions cannot be assessed as conclusions of the specialist or reports of the expert examination because they are drawn up after receiving the data of one of the parties, representing one of the parties, and their impartiality and objectivity may thus be called into

[10] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University*, 363-379.

[11] Gintaras, G. (2014). Value Priorities in Criminal Proceedings, *Vilnius: Centre of Registers,* 160.

[12] Case of Khodorkovskiy and Lebedev v. Russia (No. 2), Applications nos. 51111/07 and 42757/07; 14/05/2020. The European Court of Human Rights has pointed to the problems of assessment of such special knowledge obtained on the basis of a different initiative by noting the following: "the court of first instance also stated that the report of the expert is not within the competence of "the specialist". Such a statement amounts to a general refusal to admit any evidence given by "the specialist" intended to deny the conclusion of the expert, which, in the Court's view, is incompatible with the principle of equal treatment of the parties.

ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (33)

question as impartiality is nevertheless affected by the interest in helping the person who is seeking help[13]. Other researchers are concerned that under such case-law of the Supreme Court of Lithuania, courts are obliged to assess not only the completeness, reliability and validity of the information obtained through the use of special knowledge, but also the subjects who performed the examinations and presented the conclusions, based on the "appropriateness" of such subjects. Namely: the procedural value of the conclusion is determined on the basis of the fact whether the conclusion was submitted by a public or a private subject with special knowledge.[14] Therefore, the conclusion submitted by a private specialist or expert, regardless of its completeness, reasonableness and scientific nature, does not acquire the same procedural status as the document drawn up by a specialist or expert ordered by the prosecutor or the court.[15] Procedural documents prepared by an expert or specialist *a priori* are given the status of "more valuable/important" (evidence of greater probative value) than the data obtained on the basis of the private initiative (advisory conclusion).[16]

According to the case-law, in cases where the advisory conclusion contradicts the conclusion of the specialist or the report of the expert examination available in the criminal case, the persons who submitted the conclusion of the specialist or the report of the expert examination and the advisory conclusion are usually summoned to the court session to remove the contradictions"[17]. The Supreme Court of Lithuania also develops the case-law that in the event of existence of any contradictions between the advisory conclusion and the conclusion of the specialist/expert, the court must take measures to remove them by questioning the persons who submitted the conclusions, and if the contradictions cannot be removed, the court must order a supplementary or repeated expert examination. Thus, as the doctrine points out, there exists a predetermined maximum evidentiary power that can be "achieved" by a so-called advisory conclusion drawn up by a private specialist or expert, which is the ordering of a repeated expert examination, usually to be performed by the same state expert body whose specialist's or expert's conclusions were disputed[18].

In its case-law, the Supreme Court of Lithuania emphasizes that "<...> As a general rule, the evidentiary value of the report of expert examination (conclusion of the specialist) obtained in accordance with the procedure established by the Code of criminal Procedure cannot be denied solely on the basis of the advisory conclusion: "*<...> it has been clarified in the case-law that documents obtained at the initiative of the participants in the proceedings, which were drawn up using special knowledge, are considered advisory conclusions (cassation rulings in criminal proceedings No. 2K-465/2010, 2K-525/2010). Such conclusions are a different type of evidence than the conclusions of the specialist or the reports of expert examinations obtained*

[13] Paužaitė-Kulvinskienė, J., Juodkaitė-Granskienė, G., Pajaujis, V. "The Duties and Liability of the Forensic Expert and the Resulting Sanctions. Lithuanian Context and European Prospects", 312.
[14] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University,* 363-379.
[15] Gušauskienė, M. (2019) Issues of Independence and Competitive Right of Expert Activities, Criminalistics and Forensic Expertology: Science, Studies, Practice. 15. D. 2 / compiled by Juodkaitė-Granskienė, G. *Kaunas: Forensic Science Centre of Lithuania,* 90-106
[16] Gušauskienė, M. (2019) Issues of Independence and Competitive Right of Expert Activities, Criminalistics and Forensic Expertology: Science, Studies, Practice. 15. D. 2 / compiled by Juodkaitė-Granskienė, G. *Kaunas: Forensic Science Centre of Lithuania,* 90-106
[17] Criminal proceedings of the Supreme Court of Lithuania No. 2K-122-303/2020, No. 2K-165/2013, No. 2K-337/2014, No. 2K-211-895/2018
[18] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University,* 363-379

in accordance with the procedure laid down in the Code of Criminal Procedure. Advisory conclusions must be examined at a court hearing, but such conclusions alone cannot deny the probative value of the conclusions of the specialist or the reports of expert examination obtained in accordance with the procedure laid down in the Code of Criminal Procedure (cassation ruling in criminal proceedings No. 2K-251-507/2016). In the case under consideration, the conclusions of P.P. obtained at the initiative of the defense were properly verified at the court hearings. <...> P. P. was questioned as a specialist and gave explanations in the same manner as expert D. V. The court of appellate instance noted that in the advisory conclusion, forensic medicine specialist P. P. insufficiently described the health data of V. M. and A. Š. as he did not have the case material and did not examine it, therefore, there existed no grounds to rely on the conclusions of that specialist (cassation ruling in criminal proceedings No. 2K-208-976/2017) <...>".[19]

Thus, such provisions of the case-law regarding the assessment of the conclusions drawn up using special knowledge on the basis of the private initiative, when it is indicated that such advisory conclusions alone cannot deny the probative value of the report of expert examination (conclusion of the specialist) obtained in accordance with the procedure laid down in the Code of Criminal Procedure, also that if it is not possible to remove the contradictions between the advisory conclusion and the conclusion of the specialist/ expert, it is necessary to order a supplementary or repeated expert examination (which is often ordered to the same state institution), etc., provide reasonable grounds to believe that, unfortunately, there is a derogation from the provisions of the principle of free assessment of evidence.

Several relevant aspects of assessment of the reliability of the results obtained by using special knowledge

As noted in the case-law, when assessing a report of expert examination or a conclusion of the specialist, it is necessary to review and assess them not only in terms of their connectivity and admissibility, but also in terms of some other circumstances that have an effect on their reliability, namely: the scientific validity and appropriateness of the methods applied; the completeness, sufficiency and quality of the material provided to the expert or specialist; the correctness of the initial data provided to the expert or specialist; [...] and etc.[20]

The analysis of the case-law as one of the problematic areas when considering the issue of assessment of the reliability of special examinations, has made it possible to distinguish the scientific validity and appropriateness of the research methodologies used. This aspect is especially relevant when assessing the result of a special examination obtained on the basis of the private initiative. The doctrine states that subjects who provide a conclusion should use only scientifically based research methodologies and instruments, i.e. it is allowed to use only such tools and methods that are based on the scientifically sound regularities, processes and phenomena, and ensure reliable and objective results.[21] We can also find the opinion that the tools and scientific methodologies used in the investigation of criminal acts should be approved

[19] Criminal proceedings of the Supreme Court of Lithuania No. 2K-208-976/2017, also in 2019 March 28 Review of the application of the norms of the Criminal Procedure Code regulating the use of special knowledge in court practice. Court practice, (50), https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/68

[20] Criminal proceedings of the Supreme Court of Lithuania No. 2K-2/2005, No. 2K-316-699/2015, No. 2K-206-693/2017, No. 2K-208-976/2017, No. 2K-97-976/2020

[21] For more information, see Foster, K. R.; Huber, P. W. (1999). Judging science. Scientific knowledge and the federal courts. *Cambridge: MIT Press.*

in accordance with the appropriate procedure and a register of validated and recommended methodologies should be compiled[22].

As noted in the doctrine, the Law of the Republic of Lithuania on Criminal Procedure does not directly lay down the requirements that the methodologies and research techniques must be scientifically validated, that they must ensure the completeness, correctness, authenticity and adequacy of the results obtained, however, such requirements can be implied from the contents of Article 1 of the Code of Criminal Procedure, which lays down the purpose of criminal proceedings.[23]

However, there are authors who claim that the verification of the reliability of the conclusion of the subject with special knowledge does not mean that the court must check the validity and quality of the methodologies themselves based on their examination and the modern correspondence of the development of special knowledge in that area, therefore, the court must check whether there is a basis for the choice of research methodologies indicated in the conclusion, and in the event that there is no such basis, the court may recognize the expert examination as groundless.[24] It is also important to emphasize that the court which is hearing the case and to which the expert report is submitted, cannot indicate what specific methods of scientific research should be applied in order for it to be carried out with quality. The subject who has special knowledge is personally responsible for the appropriate quality of the conclusion.

In this context of research methodologies, it is worth mentioning the ruling of the Supreme Court of Lithuania, which dealt with the issue of non-disclosure of the research methodology used in the conclusion: "[..] assessment of the research methodology in the conclusion of the specialist (the scientific validity and appropriateness of the methods used) is only one of the aspects which must be taken into account by the court when assessing the reliability of the conclusion of the specialist available in the criminal case as the appropriate source of evidence, which meets the requirements of Article 20 of the Code of Criminal Procedure, therefore, *the mere non-disclosure of the research methodology*, contrary to what is claimed by the convicted R. P. and his defense counsel, *does not* in itself *constitute the sufficient* grounds in the present criminal case *to assess the conclusion* submitted by specialist L. L. *as being groundless or unreliable* within the meaning of Article 20 of the Code of Criminal Procedure. At this point, it should also be noted that the court of appellate instance has recognized that non-disclosure of the methodology of examination of R. P.'s comments should be considered one of the shortcomings of the conclusion presented to the court, however, taking into account the contents of the explanations given by the specialist in court, the fact that in the this particular case, R.P's guilt is based not only on the conclusion presented by L.L., but also on other evidence collected and verified in the case, this deficiency is not considered to be essential."[25]

The general rule provides that the reliability of the conclusion given by the subject with special knowledge is assessed not only by analyzing its contents and structure, but also by comparing it with other evidence. For example, the case-law considers the issue of whether the

[22] Juškevičiūtė, J. (1998). The Use of Special Knowledge in the Investigation of Crimes: Status and Prospects. *Doctoral Dissertation. Social Sciences. Law. (6F). Vilnius*, 55.

[23] Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. *Vilnius: Vilnius University,* 363-379.

[24] Россинская, Е. Р. (1998). Судебная экспертиза в уголовном гражданском арбитражном процессе (с. 50). Москва: Норма.

[25] Criminal proceedings of the Supreme Court of Lithuania No. 2K-206-693-2017.

conclusions of subjects with special knowledge can be compared with each other (not only with other data in the case). When considering such situation, the Supreme Court of Lithuania has noted the following: "It should be noted that for a detailed comparison of the conclusions presented on the basis of special knowledge, it is necessary that they meet several essential requirements, i.e. all experts (specialists) must examine the same initial material (objects of examination), *apply the same research methods* and procedures, and answer the same questions."[26]

Thus, such case-law developed by the Supreme Court of Lithuania raises the issue that the comparison of conclusions presented by subjects with special knowledge (for example, in case of defense, when seeking to deny the conclusion ordered by the prosecution or the court and obtained on the basis of the private initiative) is hardly possible in certain cases because in order for the conclusions to be compared, the expert must apply identical research methods and procedures, whereas the List of Professional Secrets of the Forensic Science Centre of Lithuania contains "expert examination methodologies, except the ones that are announced in public" as one of the professional secrets[27]. The courts, in turn, tolerate this practice of non-disclosure of the methodology by pointing out that it is a deficiency of only one of the elements of the quality of the conclusion.

Another problematic aspect of assessment of the result of the examination involving special knowledge and obtained on the basis of the private initiative (and not only this alone) is related to the contents and the scope of the material presented to the subject.

The importance of the initial material submitted to the expert for the reliability of the result of special examination is also emphasized in the case-law of the Supreme Court of Lithuania: "the initial data (objects subject to examination) examined by the expert or specialist and used to formulate answers to the questions put to him, are of great importance for the quality of the results of special examination and for the completeness of the conclusions"[28]

In certain cases, their quantity is insufficient to obtain a conclusion, and the specialist may refuse to provide a conclusion on certain issues: "The conclusion of the specialist shows that the specialist relied on the information recorded in the Record of Inspection of the Road Traffic Accident of 17 February 2015, which stated that double 11m brake marks had been recorded; the diagram of the scene of the road traffic accident of 17 February 2015; Photo Table No. 1 enclosed to the Record of Inspection of the Road Traffic Accident. When describing the material presented to him, the specialist indicates which data are recorded in which document presented to him and which are not. It should be noted that having examined and assessed the available data, the specialist may conclude that certain circumstances cannot be determined."[29]

Another problem encountered in practice is the quality of the data on which the conclusion of based. There are cases when conclusions that require special knowledge are formed on the basis of the data of questionable quality (not only in terms of the contents, but also in terms of the form): "In the Statement of Defense, the Prosecutor indicates that during the hearing of the case on merits, the Ignalina region District Court examined all evidence collected, also the conclusion of specialist V. M., also questioned him during the session of the court where the latter stated that while drawing up the conclusion he relied on the photographs presented by the defendant's defense counsel, those photographs were undated, they recorded

[26] Criminal proceedings of the Supreme Court of Lithuania No. 2K-233-1073/2020.
[27] List of Professional Secrets of the Forensic Science Centre of Lithuania: https://ltec.lrv.lt/lt/teisine-informacija/teises-aktai (Accessed: 17 April 2023)
[28] Criminal proceedings of the Supreme Court of Lithuania No. 2K-233-1073/2020.
[29] Criminal proceedings of the Supreme Court of Lithuania No. 2K-97-976-2020.

vehicle damage, brake marks and diagram of the event. The specialist explained that he did not have the pre-trial investigation material. Therefore, the prosecutor believes that the court was correct when it refused to rely on the said conclusion because the photographs were provided to the specialist without compliance with the procedure applied in criminal proceedings, the time of taking of the photographs was not established and the conclusions made by the specialist contradict the conclusions made in other expert examinations."[30]

Thus, "the quality of expert examination also depends on the initial data presented to the expert"[31]. And "the poor quality" of initial data (in different aspect: limitation of the methodology, insufficiency of information, etc.) determines not only the unreliability of the results obtained by suing special knowledge, but also the possible incorrectness of the final decision of the court.

Conclusions

The provisions of the case-law regarding the assessment of the conclusions obtained using special knowledge on the basis of the private initiative, when it is stated that the advisory conclusion alone cannot deny the probative value of the conclusions of the specialist or the reports of expert examination obtained in accordance with the procedure laid down in the Code of Criminal Procedure, also that when the contradictions between the advisory conclusion and the conclusion of the specialist/expert cannot be removed, it is necessary to order a supplementary or repeated expert examination (which is often performed by the same state institution), etc., provide reasonable grounds to consider the fact that, unfortunately, there is a derogation from the provisions of the principle of free assessment of evidence.

It can be assumed that in the absence of factors determining the insufficient quality and reliability of the conclusion, the conclusion obtained and submitted by a private participant in criminal proceedings by way of the neutralizing mechanism should continue to be assessed as an advisory conclusion.

References

1. Ažubalytė, R. (2016) et al. Criminal Procedure Law. General Part: Textbook. Book 1 Vilnius: Centre of Registers.
2. Case of Khodorkovskiy and Lebedev v. Russia (No. 2), Applications nos. 51111/07 and 42757/07; 14/05/2020.
3. Criminal proceedings of the Supreme Court of Lithuania No. 2K- 477/201019.
4. Criminal proceedings of the Supreme Court of Lithuania No. 2K-201-1073/2018
5. Criminal proceedings of the Supreme Court of Lithuania No. 2K-431/2010.
6. Criminal proceedings of the Supreme Court of Lithuania No. 2K-122-303/2020,
7. Criminal proceedings of the Supreme Court of Lithuania No. 2K-165/2013,
8. Criminal proceedings of the Supreme Court of Lithuania No. 2K-337/2014,
9. Criminal proceedings of the Supreme Court of Lithuania No. 2K-211-895/2018.
10. Criminal proceedings of the Supreme Court of Lithuania No. 2K-2/2005,
11. Criminal proceedings of the Supreme Court of Lithuania No. 2K-316-699/2015,

[30] Criminal proceedings of the Supreme Court of Lithuania No. 2K- 477/201019.
[31] Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. Vilnius: Registrų centras, 459-472, 462.

12. Criminal proceedings of the Supreme Court of Lithuania No. 2K-206-693/2017,
13. Criminal proceedings of the Supreme Court of Lithuania No. 2K-208-976/2017,
14. Criminal proceedings of the Supreme Court of Lithuania No. 2K-97-976/2020.
15. Criminal proceedings of the Supreme Court of Lithuania No. 2K-201-1073/2018.
16. Criminal proceedings of the Supreme Court of Lithuania No. 2K-206-693-2017.
17. Criminal proceedings of the Supreme Court of Lithuania No. 2K-208-976/2017.
18. Criminal proceedings of the Supreme Court of Lithuania No. 2K-233-1073/2020.
19. Criminal proceedings of the Supreme Court of Lithuania No. 2K-97-976-2020.
20. Code of Criminal Procedure. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr
21. Erikas Kaukas (2012), The Issues of the Interpretation of Physical Evidence in the International Context. Public Security and Public Order, (7).
22. For more information, see Foster, K. R.; Huber, P. W. (1999). Judging science. Scientific knowledge and the federal courts. Cambridge: MIT Press.
23. Gintaras, G. (2014). Value Priorities in Criminal Proceedings, Vilnius: Centre of Registers.
24. Gušauskienė, M. (2019) Issues of Independence and Competitive Right of Expert Activities, Criminalistics and Forensic Expertology: Science, Studies, Practice.
25. Gušauskienė, M., Belevičius, L. (2016). Are the Results of the Use of Special Knowledge in Criminal Proceedings Always Considered a Reliable Source of Evidence? Criminal Justice and Business. Vilnius: Vilnius University.
26. Juodkaitė-Granskienė, G. (2011). Criminal Code of the Republic of Lithuania Is 10 Years Old / Chief Scientific Editor Gintaras Švedas. Vilnius: Centre of Registers.
27. Juškevičiūtė, J. (1998). The Use of Special Knowledge in the Investigation of Crimes: Status and Prospects. Doctoral Dissertation. Social Sciences. Law. (6F). Vilnius.
28. List of Professional Secrets of the Forensic Science Centre of Lithuania: https://ltec.lrv.lt/lt/teisine-informacija/teises-aktai (Accessed: 17 April 2023)
29. Paužaitė-Kulvinskienė, J., Juodkaitė-Granskienė, G., Pajaujis, V. “The Duties and Liability of the Forensic Expert and the Resulting Sanctions. Lithuanian Context and European Prospects”, 312.
30. Россинская, Е. Р. (1998). Судебная экспертиза в уголовном гражданском арбитражном процессе (с. 50). Москва: Норма.
31. 2019 March 28 Review of the application of the norms of the Criminal Procedure Code regulating the use of special knowledge in court practice. Court practice, (50), https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/68 (Accessed: 17 April 2023)

Autorių kolektyvas
Visuomenės saugumas ir viešoji tvarka (33): mokslinis žurnalas. – Kaunas: Mykolo Romerio universiteto Viešojo saugumo akademija, 2023. – 177 p.
ISSN 2029–1701 (print) ISSN 2335–2035 (online)

VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (33)
Mokslinis žurnalas

PUBLIC SECURITY AND PUBLIC ORDER (33)
Research Journal

Atsakingasis redaktorius – prof. dr. Rūta Adamonienė
Atsakingojo redaktoriaus pavaduotoja – prof. dr. Aurelija Pūraitė
Vykdantysis redaktorius – dr. Rasa Dobržinskienė
Maketavo – Nėlė Visminienė ir Pavel Lesko
2023-06-20
13 autorinių lankų

Išleido Mykolo Romerio universiteto Viešojo saugumo akademija
Maironio g. 27, LT- 44211, El.paštas vsa@mruni.eu
Kaunas 2023 m.
Tinklapis internete www.mruni.eu
https://www3.mruni.eu/ojs/vsvt/index