DAUGAVPILS UNIVERSITĀTE
DAUGAVPILS UNIVERSITY

DAUGAVPILS UNIVERSITĀTES ZINĀTŅU DAĻA
SCIENCE DEPARTMENT OF DAUGAVPILS UNIVERSITY

DAUGAVPILS UNIVERSITĀTES 61. STARPTAUTISKĀS ZINĀTNISKĀS KONFERENCES RAKSTU KRĀJUMS

PROCEEDINGS OF THE 61st INTERNATIONAL SCIENTIFIC CONFERENCE OF DAUGAVPILS UNIVERSITY

B. DAĻA. SOCIĀLĀS ZINĀTNES

PART B. SOCIAL SCIENCES

DAUGAVPILS UNIVERSITĀTE
AKADĒMISKAIS APGĀDS „SAULE”
2019

Apstiprināts Daugavpils Universitātes Zinātnes padomes sēdē 2019. gada 30. decembrī, protokols Nr. 16. /
Approved in the meeting of Daugavpils University Science Council on December 30, 2019; minutes No 16.

Kokina I., red. *Daugavpils Universitātes 61. starptautiskās zinātniskās konferences rakstu krājums. B. daļa "Sociālās zinātnes" = Proceedings of the 61st International Scientific Conference of Daugavpils University. Part B "Social Sciences".* Daugavpils: Daugavpils Universitāte, 2019.

Daugavpils Universitātes 61. starptautiskās zinātniskās konferences Programmas komiteja / Programme Committee of the 61st International Scientific Conference of Daugavpils University

Daugavpils Universitātes 61. starptautiskās zinātniskās konferences Rīcības komiteja / Organizing Committee of the 61st International Scientific Conference of Daugavpils University

Atbildīgās par izdevumu / Responsible for the Edition

Olita Miglāne (olita.miglane@du.lv)
Anna Vanaga (anna.vanaga@du.lv)

ISSN 2500-9842
ISSN 2500-9869
ISBN 978-9984-14-900-4

Daugavpils Universitātē docētāju un studējošo zinātniskās konferences notiek kopš 1958. gada. Konferencēm ir starpdisciplinārs raksturs un tajās piedalās gan studējošie, gan docētāji, gan arī ievērojami zinātnieki no dažādām pasaules valstīm. Daugavpils Universitātes 61. starptautiskās zinātniskās konferences pētījumu tematika bija ļoti plaša – eksaktās, humanitārās, izglītības, mākslas un sociālo zinātņu jomās.

Zinātnisko rakstu krājumā ***Daugavpils Universitātes 61. starptautiskās zinātniskās konferences rakstu krājums = Proceedings of the 61st International Scientific Conference of Daugavpils University*** apkopoti 2019. gada 11.–12. aprīlī konferencē prezentētie materiāli.

Daugavpils Universitātes 61. starptautiskās zinātniskās konferences rakstu krājums tiek publicēts 3 daļās: A. daļa. *Dabaszinātnes*; B. daļa. *Sociālās zinātnes*; C. daļa. *Humanitārās zinātnes*.

The annual scientific conferences at Daugavpils University have been organized since 1958. The themes of research presented at the conferences cover all spheres of life. Due to the facts that the conference was of interdisciplinary character and that its participants were students and outstanding scientists from different countries, the subjects of scientific investigations were very varied – in the domains of exact sciences, the humanities, education, art and social sciences.

The results of scientific investigations presented during the conference are collected in the collection of scientific articles ***Proceedings of the 61st International Scientific Conference of Daugavpils University.***

Proceedings of the 61st International Scientific Conference of Daugavpils University are published in three parts: part A. *Natural sciences*; part B. *Social Sciences*; part C. *Humanities.*

SATURS / CONTENTS

PSIHOLOĢIJA / PSYCHOLOGY

MENEDŽMENTS / MANAGEMENT

PEDAGOĢIJA / PEDAGOGY

TIESĪBU ZINĀTNE / LAW

EKONOMIKA UN SOCIOLOĢIJA / ECONOMICS AND SOCIOLOGY

PSIHOLOĢIJA / PSYCHOLOGY

TESTING FIVE – DIMENSIONAL IDENTITY MODEL AND DERIVING PERSONAL IDENTITY STATUSES AMONG LATVIAN EMERGING ADULTS

Sergejs Andrejevs, Vitālijs Raščevskis
Daugavpils University, Parādes street 1, Daugavpils, sergejs193@gmail.com, wiras@inbox.lv

Abstract

Testing Five-dimensional identity model and deriving personal identity statuses among Latvian emerging adults

Key words: *emerging adulthood, personal identity, identity dimensions, identity statuses*

Emerging adulthood is a period of identity exploration, and identity formation is one of the main developmental tasks of emerging adulthood. Marcia's identity status paradigm theory was based on two identity dimensions exploration and commitment. Unpacking commitment and exploration identity dimensions new model has been proposed – Five dimensional identity model. This model describes identity formation in five dimensions – exploration in breadth, commitment making, ruminative exploration, exploration in depth and identification with commitments. Exploration in depth has two sub-dimensions – reflective exploration in depth and reconsideration of commitment. The purpose of this study was to improve adapted Latvian version of Dimensions of Identity Development Scale (DIDS) and using cluster analyses empirically derive identity statuses. The study included emerging adults (total N = 101, 65% women) age between 18–25 (*M = 22,19, SD = 2,31*). Through confirmatory factor analysis results showed that the best model fit for DIDS was six factor model df = 257, χ^2 = 443,73, CFI = 0,85 un RMSEA = 0,09. Two step cluster analysis results indicated seven identity statuses – diffused and carefree diffusion, searching and ruminative moratorium, two subtypes of foreclosure – early closures and closures, and achievement. Suggestions for future research are discussed.

Kopsavilkums

Piecu-dimensiju identitātes modeļa pārbaude un personīgās identitātes statusu izdalīšana Latvijas jauniešiem

Atslēgvārdi: *jaunieši, personīga identitāte, identitātes dimensijas, identitātes statusi*

Jauniešu vecums ir identitātes izpētes periods, un identitātes veidošanās ir viens no galvenajiem attīstības uzdevumiem šajā vecumposmā. Marsijas identitātes statusu paradigmas teorija tika izveidota balstoties uz divām identitātes dimensijām – izpēti un apņemšanos. Diferencējot apņemšanās un izpētes identitātes dimensijas tika piedāvāts jauns modelis – Piecu dimensiju identitātes modelis. Šis modelis apraksta identitātes veidošanos piecu dimensiju ietvaros – izpēte plašumā, saistību izvēlēšanās, domīgā izpēte, padziļinātā izpēte un identifikācija ar saistībām. Padziļinātā izpēte tiek iedalīta divās apakšdimensijās – analizējošā un regresējošā padziļinātā izpēte. Šī pētījuma mērķis bija uzlabot adaptēto Piecu dimensiju identitātes modeļa aptauju un pielietojot klāsteru analīzi empīriski izdalīt identitātes statusus. Pētījumā piedalijās jaunieši (n = 101, no kuriem 65% bija sievietes), respondentu vecums bija no 18 līdz 25 gadiem (*M = 22,19, SD = 2,31*). Pielietojot apstiprinošo faktoru analīzi iegūtie rezultāti norādīja uz to, ka personīgās identitātes aptauju vislabāk raksturo sešu identitātes dimensiju modelis df = 257, χ^2 = 443,73, CFI = 0,85 un RMSEA = 0,09. Divu soļu klāsteru analīzes rezultātā tika izdalīti septiņi identitātes statusi – difūzi difūzais un difūzi bezrūpīgais, meklējošais un domīgais moratorijs, divi iepriekšizlemtā statusa apakšstatusi – agri izlemtais un izlemtais, un identitāti sasniegušais stauss. Tika izteikti priekšlikumi nākotnes pētījumiem.

Introduction

Term of identity can be seen from different angles, in the middle of 20th century Erikson (Erikson, 1968) tried to describe the term and invented new terminology such as – identity confusion, identity diffusion and psychosocial moratorium. Identity development starts from childhood days and this process continues throughout a persons' life with normative crisis in adolescence when individual look for own identity buy exploration process (Erikson, 1968). Arnett (Arnett, 2000) suggests that industrialized societies gave option for young people to postpone transition to adulthood until at least the late twenties with a focus on ages between 18 – 25, and presented new life course stage – emerging adulthood. Emerging adulthood has become a distinct

period of the life course between adolescence and young adulthood, characterized by five distinctive features, where one of them is identity exploration (Arnett, 2000).

Based on Erikson's (Erikson, 1968) work Marcia (Marcia, 1966) comes up with Identity status theory. Theory was constructed based on two criteria; identity exploration (originally called "crisis") and identity commitment in the areas of occupation and ideology (Marcia, 1966), latter being composed of religious and political positions (Kroger & Marcia, 2011). Exploration is period of engagement in choosing among meaningful alternatives and commitment refers to the degree of personal investment of individual exhibits. The existence or absence of these two criteria, Marcia (Marcia, 1966) derived four identity statuses – achievement, diffusion, moratorium and foreclosure. In a foreclosure status emerging adult have not experienced a crisis, but having commitment, for example, based on parent's choices. In the identity-diffusion emerging adults may or may not have exploration and has a lack of commitment. In the moratorium status, emerging adult is in the exploration period, and have an active struggle to make commitments. On identity achievement status emerging adult has experienced exploration period and has made identity commitments (Marcia, 1966).

Identity status theory was based on person centered approach, to capture identity development, two variable centered theories were presented. One of them is a three dimension model that describes three structural dimensions: commitment, in-depth exploration and reconsideration of commitment (Crocetti, Rubini & Meeus, 2008) and another in a beginning called four dimensional model – these identity dimensions can be grouped into two identity cycles: commitment formation and commitment evaluation (Luyckx, Goossens, Soenens & Beyers, 2006) later, a fifth dimension was added (Luyckx, Schwartz, Berzonsky, Soensen, Vansteenkiste, Smits & Goossens, 2008).

Five dimension identity model consists of two commitment dimensions – commitment making and identification with commitment, three exploration dimensions – exploration in breadth, exploration in depth and ruminative exploration. Exploration in breadth means gathering of information about different alternatives to guide the choices one makes. Commitment making refers to the making of choices. Exploration in depth means the gathering of information about current choices to guide the maintenance and evaluation of these choices. Identification with commitment refers to the degree of identification with these choices (Luyckx, Goossens, Soenens, Beyers & Vansteenkiste, 2005). Ruminative exploration means asking themselves the same identity questions and not allowing to have necessary space to make commitments. To capture all five identity dimensions authors create Dimensions of Identity Development Scale (DIDS) (Luyckx et al., 2008). In later researches, identity dimension exploration in depth (ED) was subdivided in two aspects; reflective exploration in depth (EDa) refers to the careful evaluation of existing commitments and

reconsideration of commitment (EDb) refers to a certain form of reconsideration of commitment (Crocetti et al. 2008) corresponding to individuals' efforts to change or discard current commitments (Zimmermann, Lannegrand-Willems, Safont-Mottay & Cannard, 2015). Two sub-dimensions of exploration in depth also was found in other researches (Skhirtladze, Javakhishvili, Schwartz, Beyers & Luyckx, 2016, Mannerstrom, Hautamaki & Leikas, 2016). Distinction between two aspects of exploration in depth allowed authors to present a new hypothesized identity model based on three dimensional and five dimensional identity model combination (Zimmermann et al., 2015).

Since five dimensional identity model has been presented, researches were made in many countries and used cluster – analytic procedures derived identity statuses – achievement, foreclosure, carefree diffusion and diffused diffusion, ruminative moratorium and searching moratorium and undifferentiated.

Individuals in achievement status have focuses in their life, they are not easily influenced by external factors, and they know where they are going, if there are obstacles they will persevere in their chosen directions, unless proceeding becomes clearly unrealistic. They have room for understanding the experiences of others. Foreclosures status individuals appear as strong and self-directed as achievements, their commitments is made by others mostly family. Longer a foreclosed position individual stay, more powerful becomes shame and guilt associated with questioning those positions (Kroger & Marcia, 2011).

Also in the literature Meeus and colleagues (Meeus, van de Schoot, Keijser, Schwartz & Branje, 2010) distinguished two subtypes of foreclosed statuses – early closures and closures, depending on the developmental pathways through which adolescents arrive at this status. When person begin in the foreclosed status and stay there over time, they have strong commitments that were established early on, have not tried to consider alternative commitments, have not engaged in-depth exploration, and stay in early closures status. Respondents who move from moratorium to foreclosed status they have considered alternative commitments, low in-depth exploration and should be in closures status (Meeus et al., 2010).

Individuals in moratorium status are struggling to define themselves. They are looking for different alternatives in their lives, they are lively, engaging and conflicted. They tend to draw others into their identity formation project. There are two types of moratorium – searching moratorium and ruminative moratorium. Searching moratorium can also be called traditional type of moratorium where the best outcome is made self-relevant choices and move on to the firm commitments of identity achievement (Kroger & Marcia, 2011). Ruminative moratorium characterized by a lack of strong or definite commitments and same time never ended exploration

process (Luyckx et al., 2008), they can become paralyzed in their vacillations (Kroger & Marcia, 2011).

Identity diffusions have week or non-existent exploratory period and an inability to make definite commitments. In this status individuals are extremely flexible, charming, infinitely adaptable and depending on current situation. They have not internal sense of self definition and looking externally to define who they are and will be (Kroger & Marcia, 2011). There are two subtypes of diffusion status – diffused diffusion and carefree diffusion. Diffused diffusion status is characterized with traditional diffusion status. Individuals in carefree diffusion status do not want to start exploring identity-related issues or to make commitments themselves to a certain option; they seem to enjoy their uncommitted status (Luyckx et al., 2005, Luyckx et al., 2008).

The last status what was appearing in research was undifferentiated cluster to which belongs an individual that cannot be safely classified into one of the other categories (Luyckx et al., 2008).

Achievement and foreclosure statuses characterized by high scores on commitment dimensions and low scores on ruminative exploration. The differences on those two statuses, achievement has moderate to high scores in exploration in breadth and exploration in depth, foreclosure has low scores on both exploration dimensions. Diffusion status was presented with two types of diffusion – carefree diffusion and diffused diffusion. Both diffusion statuses have low score on commitment dimensions. Diffused diffusion was characterized by high scores on ruminative exploration and carefree diffusion by low scores on exploration in breadth and in depth. In researches there were described two types of moratorium – ruminative and searching moratorium. Differences on those two statuses appear regarding commitment. Ruminative moratorium has low score and searching moratorium moderate score on both commitment dimensions (Luyckx et al., 2008, Schwartz, 2011, Crocetti et al., 2011, Zimmermann et al., Mannerstrom et al., 2016, Skhirtladze et al., 2016).

The purpose of our study was to validate five-dimensional model questionnaire (DIDS) among Latvian emerging adults. The first objective: translate and assess reliability and factorial validity of the Latvian version of the DIDS. Second objective was: to look if we could derive identity statuses through cluster analysis in Latvian emerging adult sample.

Material and methods

Participants

Number of the respondents for this study N = 101 (65% woman), the age was between 18–25 (M = 22,19, SD = 2,31). Regarding demographical indicators, 36% of the respondents have university education, 44% secondary education and 12% professional secondary education, 8% of the respondents has education lower than secondary education. 35% of the respondents were students, 38% were students and employed, 22% employed, and 5% unemployed. 8% reported

being married, 2% already divorced and 5% had children. 60% of respondents live in Riga and other 40% come from other regions in Latvia.

Instrumentation

First Latvian adapted version of The Dimensions of Identity Development Scale (DIDS, Luyckx et al., 2008) was presented in bachelor work by Andrejevs (Andrejevs, 2016) and improved version was presented on master's thesis (Andrejevs, in press). DIDS consists of 25 items, each identity dimensions have five items which was rated on a 5-point Likert scale ranging from 1 (completely disagree) to 5 (completely agree). Commitment making (1.–5. items), sample, "Decided on the direction I want to follow in life", identification with commitment (6.–10. items), sample "Because of the path of life I have mapped out, I feel certain about myself", exploration in breadth (11.–15.), sample "Think about the direction I want to take in my life", exploration in depth (16.–20.), sample "Think about the future plans I have made", ruminative exploration (21.–25.), sample "Keep looking for the direction I want to take in my life". Cronbach's alphas in original DIDS respectively were 0,86, 0,86, 0,81, 0,79, and 0,86 (Luyckx et al., 2008).

The DIDS was translated from English to Latvian by the bilingual translator and then independently back-translated by another bilingual translator blind to the original version. This translation was then discussed between the authors and translator until a consensus was reached and developed a final Latvian version of the DIDS.

Procedure

Participation in the study was voluntary, anonymity was guaranteed, participants feel electronic version of Latvian version of the DIDS, on a time scale from 12.02.2018 – 05.06.2018. Statistical analysis was conducted in IBM SPSS 22.00 and AMOS 22.00.

Results

Reliability and factorial validity

Capture reliability of the DIDS, Cronbach's alphas coefficient was conducted. Cronbach's alphas were for commitment making (α = 0,84), identification with commitment (α = 0,88), exploration in breadth (α = 0,87), exploration in depth (α = 0,59), and ruminative exploration (α = 0,74). For sub-dimensions of exploration in depth: reflective exploration in depth (α = 0,49, EDa, items 21–22) and reconsideration of commitment (α = 0,66, EDb, items 22–25). All reliability coefficients was good except exploration in depth identity dimensions, which was divided in two sub-dimensions based on previous findings (Zimmermann et al., Mannerstrom et al., 2016, Skhirtladze et al., 2016).

To evaluate the factor structure of the Latvian adaptation of the DIDS was performed Confirmatory Factor analyses (CFA) using different standard fit indices – Chi square index (χ^2), comparative fit index (CFI) and root mean square error of approximation (RMSEA). Chi square

index (χ^2) should be as small as possible, CFI should be equal or greater than 0,90 and RMSEA should be lower than 0,08 (Hu & Bentler, 1999). We tested four, five and six – factor models. Four-factor model, in which a pair of dimensions was collapsed into a single one, for example four-factor model, CM and IC, means that commitment making and identification with commitment was combined. In a six-factor model identity dimension exploration in depth was divided on two sub dimensions. Table 1 gives an overview of the fit indices of all models tested.

Table 1. **Fit indices for the four to six factor model of the DIDS**

Model	df	χ^2	CFI	RMSEA
Four-factor model, CM and IC	266	531,64	0,79	0,10
Four-factor model, ED un EB	266	538,13	0,78	0,10
Four-factor model, EB un RE	266	661,03	0,68	0,12
Four-factor model, ED un RE	266	529,15	0,8	0,10
Five-factor model	262	502,75	0,81	0,10
Six-factor model	257	443,73	0,85	0,09

Note: CM = Commitment making, IC = Identification with commitment, EB = Exploration in breadth, ED = Exploration in depth, RE = Ruminative exploration

Our analysis found that six-factor model provided a better fit than any alternative models. This model show the better fit, but has a questionable fit because CFI below and RMSEA above the recommended cut-off. Nevertheless in future analyses we used six-factor model.

Correlational Analyses

Results of the correlations among the five identity dimensions, including the two aspects of exploration in depth EDa and EDb, is provided in Table 2.

Table 2. **Spearman's Correlations among the five identity dimensions, including two aspects of exploration in depth**

Dimensions	Means (*SD*)	1	2	3	4	5	6	7
1. CM	3,58 (0,71)	–						
2. IC	3,59 (0,71)	0,70**	–					
3. EB	3,99 (0,61)	0,18	0,31**	–				
4. ED	3,57 (0,59)	0,15	0,17	0,29**	–			
5. EDa	3,87 (0,68)	0,42**	0,47**	0,24*	0,60**	–		
6. EDb	3,38 (0,78)	-0,04	-0,02	0,31**	0,89**	0,21*	–	
7. RE	3,03 (0,74)	-0,58**	-0,42**	0,23*	0,16	-0,17	0,33**	–

* p=0,05, ** p= 0,01

Note: CM – Commitment making, IC – Identification with commitment, EB – Exploration in breadth, ED – Exploration in depth, EDa – Reflective exploration in depth, EDb – Reconsideration of commitment, RE – Ruminative exploration

There is significant correlation between both commitment dimensions (r_s = 0,70), and both commitment dimensions positively correlates with reflective exploration in depth (r_s = 0,42/0,47) and negatively correlates with ruminative exploration (r_s = -0,58/-0,42). Only identification with commitment dimension has correlation with exploration in breadth (r_s = 0,31). Exploration identity

dimension exploration in breadth positively correlates with all other exploration dimensions, and reconsideration of commitment positively correlates with ruminative exploration.

Empirically Identity derived statuses

Before doing cluster analysis data was screening for univariate (i.e., values more than 3 SD below or above the mean) and multivariate outliers (i.e., individuals with high Mahalanobis distance values). In our data we found only four univariate outliers. When these respondents were taken out we conducted, using Z-scores, a two-step procedure. In the first step, a hierarchical cluster analysis was carried out using Ward's method and based on squared Euclidian distances. The second step consisted in an iterative k-means clustering procedure using the initial cluster centers what was calculated in first step of cluster analysis.

In the beginning cluster analysis was run with 4 (based on identity status theory) and later 6 clusters (based on researches – Luyckx et al., 2008, Schwartz et al., 2011, Crocetti et al., 2011, Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016). Four cluster solution helps to easily identify respondents into four basic clusters, six cluster solutions helps to recognize new cluster and name it based on four cluster solution. In four cluster solution we identify four basic statuses – Achievement, Foreclosure, Moratorium and Diffusion (Figure 1.).

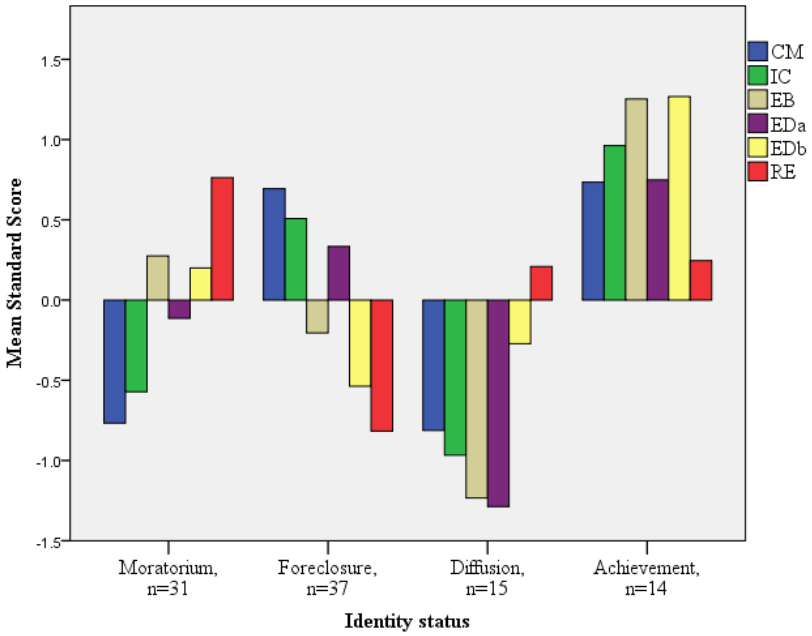


Fig. 1. **Four cluster solution in Latvian emerging adult sample**

Note: Z scores for Commitment making (CM), Identification with commitment (IC), Exploration in breadth (EB), Reflective exploration in depth (EDa), Reconsideration of commitment (EDb) and Ruminative exploration (RE)

For six cluster solution there was two new clusters, first cluster was cluster where move respondents (n = 6) from foreclosure status and we suppose that this status is one of the foreclosure sub-statuses. Second status consist with respondents from moratorium (n=2) and achievement (n=7)

statuses, we suppose that this status is one of the moratorium statuses. Based on literature research and comparing our results there was just one status instead of two diffusion statuses us it was in another researches (Luyckx et al., 2008, Schwartz et al., 2011, Crocetti et al., 2011, Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016). In the course of the research we rise hipothesis that for our data optimal cluster number is seven and the seventh cluster will be one of the diffusion sttatuses.

Results confirm our hypothesis in seven cluster solution new cluster was created from diffusion (n=3) and moratorium (n=1) respondents and we call this cluster us difused diffusion status. Results for seven cluster solution are shown in Figure 2.

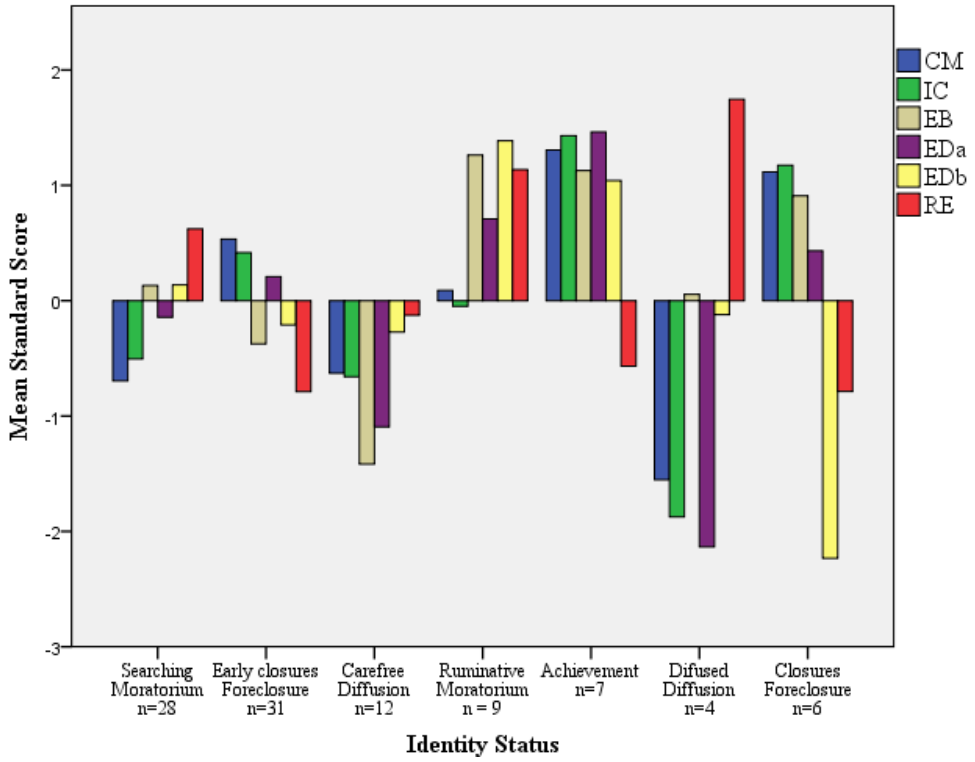


Fig. 2. **Seven cluster solution in Latvian emerging adult sample**

Note: Z scores for Commitment making (CM), Identification with commitment (IC), Exploration in breadth (EB), Reflective exploration in depth (EDa), Reconsideration of commitment (EDb) and Ruminative exploration (RE)

Discussion

Reliability of the DIDS Latvian version for four identity dimensions was similar with publication where the first time was presented DIDS English version (Luyckx et al., 2008). Only Exploration in depth identity dimension has low Cronbach's alpha, this results goes in one line with other publications (Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016) suggesting to separate exploration in depth dimension in two sub dimensions. Also confirmatory factor analyses confirm it, better model fit shows six factor model.

All correlation between identity dimensions was similar us it was found in another researches (Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016). Only there was missing corelation between bouth comitment dimensions and exploration in deapth sub-dimension – reconsideration of comitment (Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016) this corelation can be explained based on translation of questions or small sample of respondents. Other missing corelation between comitment making and exploration in breadth can be explained becouse of small sample of respondents. In reserch where N = 295 also was not found corelation (Skhirtladze et al., 2016) where N = 751 corelation was very week r = 0,08 (Mannerstrom et al., 2016) and N = 1775 corelation was also small r = 0,18 (Zimmermann et al., 2015).

In our research to name clusters in one or in another status we use two types of analysis. One of the way was based on identity dimensions and previous literature research and second way was based on, where in four cluster solution participants move to the new clusters. Based on literature research optimal cluster number was found six clusters in all researches (Luyckx et al., 2008, Schwartz, 2011, Crocetti et al., 2011, Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016). In our six cluster solution there was missing two clusters which was recognised in previous mensioned us difused difusion and unifferentiated. Based on this results we have question if six cluster solution are the best and if the best cluster solution is seven than new cluster need to be carefree difusion cluster. When we made seven cluster solution new clutser emerged us difused difusion cluster. Regarding unifferentiated status, what was find in enother reserches (Luyckx et al., 2008, Schwartz, 2011, Zimmermann et al., 2015, Skhirtladze et al., 2016). It can be explained us combined two sttuses what was't separated in a six cluster solution in the reserches mentioned above.

To name clusters to one or another status us it was mention previously we use two types of analyses. Based on literature research there was high scores on commitment dimensions for achievement and foreclosure statuses and differences appears for these statuses in exploration dimensions. Based on this information recognize achievement and foreclosure statuses in four cluster solution was possible and there is not any discussions. In a seven cluster solution appears new cluster, which consist of individuals who in four cluster solution were in foreclosure cluster. Based on results we suggest that there is two types of foreclosure statuses us it was describe by Meeus and colleagues (Meeus et al., 2010). Early closure looks more us tradition foreclosure status what was described in previous researches (Luyckx et al., 2008, Schwartz, 2011, Crocetti et al., 2011, Zimmermann et al., 2015, Mannerstrom et al., 2016, Skhirtladze et al., 2016). Closure status has higher scores in comitment dimension and very low score in exploration in deapt sub

dimensions – reconsideration of comitment. Hight score in exploration in breadth confirm that this respondnets move from moratorium to foreclousure status (Meeus et al., 2010).

In another side of identity development is diffusion status. Also this status was easily recognize in four cluster solution – low scores in commitment and exploration dimensions except reconsideration of commitment and ruminative exploration. In a seven cluster solution there was found two types of diffusion statuses. Our results confirm findings from other researches, which help separate two diffusion statuses, diffused diffusion status has high score on ruminative exploration and carefree diffusion has high scores in exploration in breadth (Luyckx et al., 2008, Schwartz, 2011, Zimmermann et al., 2015, Mannerstrom et al., 2016).

Last two statuses are moratorium statuses. In the four cluster solution there was moratorium status and respondent mainly stays in this status also in seven cluster solution and we can name this cluster us traditional moratorium status – searching moratorium. Another one cluster we called ruminative moratorium, in this cluster individuals already did exploration, but continue work on commitment dimensions. It is going in the same line with another research where individuals in ruminative moratorium blocking to form fully accepted identity commitments (Luyckx et al., 2008). Individuals who create ruminative moratorium status mainly were separating from achievement status in seven cluster solution, thereby suggesting that this status in identity development can be between moratorium and achievement statuses.

Conclusion

In a future need continue improve DIDS Latvian adaptation, to improve factorial validity and also supplement DIDS English version for both exploration in depth sub-dimensions.

In Latvian emerging adults sample what was used for this research, optimal number of clusters was found seven clusters, respectively seven identity statuses was derived. Want to pay attention than in all previous researches us optimal cluster number was suggested six clusters. These seven identity statuses where: diffused and carefree diffusion, searching and ruminative moratorium, two subtypes of foreclosure early closures and closures, and achievement.

Acknowledgments

The authors would like to thank the emerging adults who volunteered to participate in the study. Information in this publication was presented at the 61st International Scientific Conference of Daugavpils University, 11–12 April 2019, Daugavpils, Latvia.

References

Andrejevs, S. (2016). Identitātes dimensiju un orientācijas uz nākotni saistība 18–25 gadus veciem jauniešiem. *Bakalaura darbs.* Rīga: Latvijas Universitātes Pedagoģijas, psiholoģijas un mākslas fakultātes Psiholoģijas nodaļa. 1–39.

Andrejevs, S. (in press). Personīgās identitātes, etniskās identitātes un pašcieņas sasitība 18–25 gadus veciem jauniešiem. *Maģistra darbs*. Rīga: Daugavpils Universitāte Sociālo zinātņu fakultāte, Socialās psiholoģijas katedra. 1–68.

Arnett, J. J. (2000). Emerging adulthood: A theory of development from the late teens through the twenties. *American Psychologist, 55*, 469–480.

Erikson, E. H. (1968). *Identity: Youth and crisis*. New York: Norton

Crocetti, E., Rubini, M. & Meeus, W. (2008). Capturing the dynamics of identity formation in various ethnic groups: Development and validation of three dimensional model. *Journal of Adolescence*, 31, 207–222.

Hu, L.-T., & Bentler, P. M. (1999). Cutoff criteria for fit indexes in covariance structure analysis: Conventional criteria versus new alternatives. *Structural Equation Modeling*, 6, 1–55.

Kroger, J. & Marcia, E. J. (2011). The identity statuses: origins, meanings, and interpretations, In Schwartz, S.J., Luyckx, K. & Vignoles, V. L. (Eds.). *Handbook of Identity Theory and Research*. (pp. 31–53). Philadelphia: Springer Science + Business Media LLC.

Luyckx, K., Goossens, L., Soenens, B., Beyers, W., & Vansteenkiste, M. (2005). Identity statuses based upon four rather than two identity dimensions: Extending and refining Marcia's paradigm. *Journal of Youth and Adolescence*, 34, 605–618.

Luyckx, K., Goossens, L., Soenens, B., & Beyers, W. (2006). Unpacking commitment and exploration: Validation of an integrative model of adolescent identity formation. *Journal of Adolescence*, 29, 361–378.

Luyckx, K., Schwartz, S.J., Berzonsky, M. D., Soensen, B., Vansteenkiste, M., Smits, I. & Goossens, L. (2008). Capturing ruminative exploration: Extending the four-dimensional model of identity formation in late adolescence. *Journal of Research in Personality*, 42, 58–82.

Mannerstrom, R., Hautamaki, A., & Leikas, S. (2016). Identity status among young adults: Validation of the Dimensions of Identity Development Scale (DIDS) in a Finnish sample. *Nordic Psychology, 69*, 195–213.

Marcia, E. J. (1966). Development and validation of ego identity status. *Journal of Personality and Social Psychology, 3*, 551–558.

Meeus, W., van de Schoot, R., Keijser, L., Schwartz, S.J. & Branje, S. (2010). On the progression and stability of adolescent identity formation: A five-wave longitudinal study in early-to-middle and middle-to-late adolescence. *Child development*, 81(5), 1565–1581.

Skhirtladze, N., Javakhishvili, N., Schwartz, S. J., Beyers, W., & Luyckx, K. (2016). Identity processes and statuses in post-Soviet Georgia: Exploration processes operate differently. *Journal of Adolescence, 47*, 197–209.

Zimmermann, G., Lannegrand-Willems, L., Safont-Mottay, C., & Cannard, C. (2015). Testing new identity models and processes in French-speaking adolescents and emerging adults students. *Journal of Youth and Adolescence, 44*, 127–141.

THEORETICAL FRAMEWORK FOR THE PSYCHOPEDAGOGICAL INTERVENTION TO DEVELOP SPIRITUAL INTELLIGENCE IN PRIMARY SCHOOL

Ina Grasmane
Daugavpils University, Vienības 13, Daugavpils, LV5401, inagrasmane@gmail.com

Abstract
Theoretical framework for the psychopedagogical intervention to develop spiritual intelligence in primary school
Key words: *spiritual intelligence, psychopedagogical intervention, primary school pupils, objectives, strategies*
Spiritual intelligence is an essential condition of psychological health, emotional maturity and social functioning. Since the formation and development of healthy and mature personality is one of the main educational purposes, contribution of psychology in this context should be the studies exploring the theoretical underpinnings and practical implementation of interventions in the field of spiritual intelligence. The gived theoretical paper presents the conceptual elaborations in terms of three aims: 1) to analyse the theoretical background of spiritual intelligence, 2) to justify the development of spiritual intelligence by means of psychopedagogical intervention programs, and 3) to articulate the objectives and strategies of psychopedagogical intervention for the development of spiritual intelligence for primary school students. At the beginning of the article the diversity of definitions of spiritual intelligence has been revised to discern five main features of spiritual intelligence that could constitute main objectives of psychopedagogical intervention program for the development of spiritual intelligence. The next section provides an insight into the concept and types of psychopedagogical intervention programms, thus introducing the context for the intervention programm regarding the spiritual intelligence. The last part of the paper focuses on the specific features of psychopedagogical intervention for the development of spiritual intelligence and presents the objectives and strategies for the development of spiritual intelligence in primary school pupils.

Kopsavilkums
Psihopedagoģiskās intervences garīgā intelekta attīstībai sākumskolā teorētiskais ietvars
Atslēgvārdi: *garīgais intelekts, psihopedagoģiskā intervence, sākumskolas skolēni, mērķi, stratēģijas*
Garīgais intelekts ir būtisks psiholoģiskās veselības, emocionālā brieduma un sociālās funkcionēšanas priekšnoteikums. Tā kā veselīgas un nobriedušas personības veidošana un attīstība ir viens no galvenajiem izglītības mērķiem, psiholoģijas ieguldījums šajā kontekstā varētu būt pētījumi, kas orientējas uz garīgā intelekta teorētiskā pamatojuma bagātināšanu un šī intelekta attīstības intervenču izstrādes un izmantošanas analīzi. Šī teorētiskā raksta mērķis ir piedāvāt konceptuālas izstrādnes trijās jomās: 1) garīgā intelekta teorētiskā pamatojuma analīze, 2) garīgā intelekta attīstības, izmantojot psihopedagoģiskās intervences programmas, pamatojums un 3) mērķu un stratēģiju izstrāde psihopedagoģiskai intervencei garīgā intelekta attīstībai sākumskolas skolēniem. Raksta sākumā tiek aplūkota garīgā intelekta teorētisko definīciju daudzveidība, ļaujot atklāt piecas garīgā intelekta pazīmes, kuras varētu tikt izmantotas psihopedagoģiskās intervences garīgā intelekta attīstībai galveno mērķu formulēšanai. Nākamā raksta nodaļa sniedz ieskatu psihopedagoģiskās intervences programmu jēdzienā un aplūko to veidus, tādējādi veidojot teorētisko kontekstu intervences programmai saistībā ar garīgo intelektu. Raksta noslēguma daļa pievēršas psihopedagoģiskās intervences garīgā intelekta attīstībai specifiskām pazīmēm un piedāvā kopsavilkuma pārskatu par mērķiem un stratēģijām garīgā intelekta attīstībai sākumskolā.

Introduction

Modern era puts new demands on the field of education. The role of education nowadays is not only in providing knowledge, but also in helping to develop the versatile human personality, which later will ground the self-actualized human life. Young people today is standing not only in front of the information hustle and the challenges of a very rapid technological development, but also searches for the answers on the questions – how in this age, where a human has to deal with many complex problems, maintain humanity, respect for oneself and others, how to maintain a genuine connection with oneself and person's deepest, true and unique potential?

One of the contemporary research fields in pedagogical psychology is related to the spiritual development of young people. Today it is a common assumption that school must educate not only a person with a developed intelligence, but also with developed spiritual abilities as well, that form him/her as a personality and ensure more stable society (Baxen, Nsubuga, & Johanson, 2014). Thus, one of the promising notions in this field of research, closely tied both to the idea of intelligence and idea of spirituality, is spiritual intelligence (hereinafter referred to as "SI").

Examples of studies on SI show that development of SI is essential to succeed in life and to achieve the goals of life. Contribution of psychology in this context is the research of development opportunities, conditions and mechanisms of SI. The construct of SI currently appears to be at the early stages of research in psychology science. There are several studies and books that describe SI, just a few instruments to measure SI have been created. All studies in relation to SI point out the significance of SI development, but a timely issue is – how and by what tools to promote the development of SI? The literature analysis indicates the scarcity of programs and methods that would facilitate development of SI in different age groups. It is an equally topical matter, how to integrate approaches of SI development into learning process of school, if it is known that "developed SI promotes the development of rational intelligence" (Safara & Bhatia, 2013).

Considering these preconditions, given paper strives to reach three aims: 1) to analyse the theoretical background of spiritual intelligence, 2) to justify the development of spiritual intelligence by means of psychopedagogical intervention programs, and 3) to articulate the objectives and strategies of psychopedagogical intervention for the development of spiritual intelligence for primary school students.

Concept of spiritual intelligence: theoretical underpinnings

The nature of human intelligence has become the subject of scientific debate already from the end of previous century. By challenging the hypothesis, that concept of intelligence is only related to human IQ, H. Gardner (Gardner, 2011) put forward the idea, that intelligence is a set of different abilities, therefore opening the doors to new discussions about the nature of intelligence and ways to explore it. He put forward a new hypothesis that intelligence is a set of congenital monolith factors, consisting of seven components – linguistic, logical-mathematical, bodily, musical, spatial, emotional and spiritual intelligence (Gardner, 2011).

Concept "spiritual intelligence" is, undoubtedly, based on the concept of spirituality, but in the context of present paper it will be separated from the direct religious approach within the meaning of spirituality. In the further analysis several most important theoretical approaches to SI will be presented as to provide the brief conceptual overview for grounding the techniques beneficial for the development of SI.

F. Vaughan defines SI as going beyond the conventional psychological development. In addition to self-awareness, SI implies awareness of our relationship to the transcendent, to each other, to the Earth and all beings. SI can be seen as transcendental and mystical attitude towards life, things, relationships and world. Working as a psychotherapist, researcher has observed that high SI opens the heart, illuminates the mind, and inspires the soul, connecting the individual, unique human psyche to the underlying ground of being and allowing to express this uniqueness. SI can be developed with spiritual exercises and its development can help person to distinguish reality from illusion. SI expressions in culture are love, wisdom and service (Vaughan, 2003). Drawing on the SI definition by F. Vaughan, we can identify an essential indicator of SI development – spiritual self-awareness, experience of various states of consciousness and ability to switch from one to other, intuition, meditation, and visualisation that allows to perceive the wisdom of inner world (Vaughan, 2003).

In his turn R. Emmons defines SI as the adaptive skills and distinguishes five expressions of SI: capacity to transcend the physical and material entities, ability to switch from one state of consciousness to other, ability to sanctify everyday experience, ability to utilize spiritual resources to solve problems, and capacity to be (Emmons, 1999, 2000). Relying on this definition, we can distinguish another essential aspect of SI – adaptive skills, that allow to utilize spiritual resources and information for more efficient solving of everyday problems and goal attainment (Emmons, 1999).

Meanwhile one of the leading SI researchers D. B. King also defines SI as a set of adaptive mental capacities based on spiritual, transcendent and non-material aspects of reality, specifically those that contribute to natural and unique human nature, form the purpose of the human life, transcendence, widening limits of self-awareness. These processes play adaptive role in awareness of person's purpose in life, that facilitates problem solving and thereby creates the ability to argue abstractly. The author distinguishes the following characteristics of SI: understanding and awareness of purpose in life, transcendental consciousness, critical existential thinking, and a generally high level of awareness (King & DeCicco, 2009). Thus, theory developed by D.B. King points out new distinct feature of SI – awareness of human uniqueness.

In their turn D. Zohar and I. Marshall define SI as an opportunity of person to ask himself/herself – how can I change my situation if I want to do it? SI helps to make decisions that are harmonised with the inner world, inner values. The authors distinguish such features of SI as self-awareness, spontaneity, creativity, holism, life visions and the existence of values, ability to accept diversity, sense of independence, ability to create, reframe, awareness of resources and awareness of oneself as a respectful and humble personality. Besides, the universal awareness, that human is a responsible part of a larger whole and his/her decisions affects the world around

him/her – can be articulated as specific definition of SI developed by D. Zohar and I. Marshall (Zohar & Marshall, 2001).

SI researcher S. Wigglesworth defines SI as the innate human need and ability to connect with something greater than oneself. Researcher distinguishes the following characteristics of person with SI – calmful, focused, aware of one's own mission, loving, merciful, able to take care of others, faith-filled and courageous, trustworthy, forgiving, generous, great teacher, leader and mentor, humble, inspiring, wise, non-violent, with open mind and open heart, persistent, value-focused, able to share and be of service to others. The definition by S. Wigglesworth allows to formulate another specific trait of SI – ability to accept and connect with something greater than oneself, that encompasses the sense of mission, unity of heart and mind, understanding of personal purpose in life and personal maturity according to age (Wigglesworth, 2012).

Researcher N. Gheorgita, in her turn, describes SI as a healthy and strong self-awareness, which gives the opportunity to rise higher than cognitive and emotional capacity that in turn helps to find solutions and to solve life tasks in an efficient way being in a state of the stability and emotional balance. SI makes the connection between cognitive and emotional intelligence and stimulates them (Gheorgita, 2014). Based on the theoretical studies of this author, development of self-confident personality can be distinguished as a feature of SI. Self-confident personality, according to the author, includes self-esteem, ability to live and be aware of present moment, here and now, as well as a sense of independence, ability to stand against public opinion and defend one's own views (Gheorghiță, 2014; Zohar & Marshall, 2001).

Summarizing the definitions of SI, main features of SI that could constitute five main objectives of psychopedagogical intervention program for the development of SI, were discerned:

- universal awareness of one-self as a responsible part of a larger whole and under-standing that our decisions affect the surrounding world (Zohar & Marshall, 2001), the ability to accept and be in contact with something greater (Wigglesworth, 2011).
- spiritual self-awareness: experience of different states of consciousness and ability to switch from one to the other, intuition, medita-tion and visualisation, that allows to perceive the wis-dom of inner world (Vaughan, 2003).
- adaptive skills that allow to utilize spiritual resources and information to solve everyday problems more effectively and achieve the set goals (Emmons, 1999).
- awareness of human uniqueness, purpose of the human life, transcendence, widening the limits of self-awareness and facilitating problem solving and ab-stract thinking (King & DeCicco, 2009).
- self-conscious personality (Gheorgita, 2014).

Concept and types of psychopedagogical intervention programs

In the last decades different forms of learning, including psychopedagogical intervention, have been conceptualized in theory and practice. Current reforms of education system are searching for new methods and creating programs for solving different developmental tasks of children. In the 20th century researchers have developed various development programs and studied their effectiveness. Cornerstone of any development program is a development of some competence based on the flexible ability to use personal and environmental resources to achieve adaptive results (Waters & Sroufe, 1983). Each psychopedagogical intervention has its certain development tasks and objectives that are intended for a certain target group and achievement of certain results.

The history of psychopedagogical intervention for the development of children's thinking starts with cognitive-behavioural school (Costa, 1985). There are programs that have been developed and have become international instruments used in a number of countries around the world, for example, Instrumental Enrichment Program, Structure of Intellect Program (SOI), Strategic Reasoning Program, Cognitive Research Trust Program, Program "IMPACT project", Children's Philosophical Thinking Program, California Writing Project, Psychopedagogical intervention "The Future Problem Solving Program", etc.

Another approach alongside the development of cognitive thinking, in which psychopedagogical intervention is created, is the integration of academic and social-emotional learning. Social-emotional learning programs as the psychopedagogical interventions for the development of children's emotional sphere are extensively described in scientific literature. These are psychological training programs that promote the development of pupils' emotional abilities (Durlak, Weissberg, Dymnicki, Taylor, & Schellinger, 2011). These initiatives are commonly referred to as Social-Emotional Learning (SEL) programs that offer different benefits, including the reduction of aggressive behaviour, development of socio-emotional skills and mental health. Such programs are integrated into the school's pedagogical process and the studies show that pupils, who mastered such a program within the learning process, had a more positive microclimate in the classroom (Rivers, Brackett, Reyes, Elbertson, & Salovey, 2013), as well as less clinical symptoms, including anxiety, social stress (Mayer & Salovey, 1997) and depression symptoms (Castillo, Salguero, Fernández-Berrocal, & Balluerk, 2013).

When implementing the program in the classroom, the teacher not only provides academic knowledge, but also educates pupils on emotional and relationship issues. This setting deepens contact of teacher with children, gives another character to the role of the teacher, and also helps children to develop self-regulation of emotions and relationship building skills that in turn promote a positive emotional climate in the classroom and in school in general (Olweus, 2011).

So far, only a few psychological intervention programs have been created in Latvia for children that are mainly focused on the development of emotional intelligence. For instance, B. Martinsone, who has developed emotional learning program and proved its usefulness, by integrating this program into Latvian education system, states that only combining academic education and increase of pupils' emotional intelligence, it is possible to achieve the educational goals of the 21st century (Martinsone, 2016).

Psychopedagogical intervention for the development of SI

The literature analysis shows some implications that needs to be considered in construction of any psychopedagogical intervention at shool level. Research on the effectiveness of support programs in recent years shows that programs focusing on just one area, for instance, emotional expression, are not as effective as those including integrated social, emotional and cognitive processes (Humphrey & Zimpfer, 1996; Summers, Behr, & Turnbull, 1988). Thus, it has to be considered that an effective psychopedagogival intervention for the development of SI should also envisage the integration of different developmental aspects, namely, to focus not only on spiritual, but also emotional, moral, social and cognitive development of program participants.

Also, the implementation of the philosophical programs showed that the effective performance of program and its results depended on the teachers' preparedness to conduct the program and the teachers' giftedness in storytelling and moral intelligence development. Under the guidance of gifted teachers, this program achieved good results. The results of the program suggest that, in similar way, SI can be developed by the teachers who has developed SI for themselves. Therefore, it is important to develop a teacher training program in parallel with the development of the intervention program (Lipman, 1999).

Psychopedagogical intervention of social-emotional learning was implemented in different schools in Spain and a large study on the impact of the program was carried out. In this program, in addition to the schools involved in the program, two schools in each city operated as an experimental or control group. The control group gave the opportunity to study the effectiveness of the program at the time of implementation and in the long term. This program was also run by specially trained teachers (Castillo et al., 2013). A similar idea was also implemented in the SI development program for adults. The study revealed several statistically significant differences between experimental group, where the SI development program was implemented, and control group, where such a program was not implemented (Gheorghiță, 2014).

In the study by Stanszus and his colleagues (Stanszus et al., 2017), seven criteria were developed to be met in order for psychopedagogical intervention to be effective:

1. Psychopedagogical intervention and the research methods used within it are empirically tested and valid.

2. Psychopedagogical intervention is being implemented for at least several weeks (the longer, the better), by organizing also day-to-day practice of individual exercise for participants to strengthen and promote psychological changes.
3. Throughout the program, the focus will be on the main task of the program – to develop a specific psychological quality.
4. The program includes mainly exercises based on theoretical knowledge, experience and practice, but exercises are also suitable and can be integrated into the daily life of the program participants.
5. The program provides a possibility to combine different topics, different methods that complement each other and provide a comprehensive development in a specific field.
6. It is necessary to include cognitive and emotional training units that train for the core competencies that are being developed in a specific program and are considered to be significant in existing research.
7. Program is intended for a specific target group – children of pre-school age, pupils of primary school, adults, adolescents, etc. (Stanszus et al., 2017).

To develop a psychopedagogical intervention program for the development of SI, as it was already mentioned, it is important to explore the common types of psychopedagogical intervention programs, taking into account their positive experience and suitability for achieving goals of specific psychopedagogical intervention. In the light of the experience of existing research, the philosophical story method, which has already proved its effectiveness, would be used in such program. It will be an attempt to create a program with a diverse methodology and a combined impact on the child's thinking, behaviour, emotions and spirituality.

On the basis of five main objectives of the psychopedagogical intervention discerned at the beginning of this paper (in tune with the ideas of D. Zohar, I. Marshall, S. Wigglesworth, F. Vaughan, R. Emmons and D.B. King), and grounding on the more extensive analysis of relevant literature (Emmons, 1999; King & DeCicco, 2009; Zohar & Marshall, 2001; Wigglesworth, 2012; Vaughan, 2003) Table 1 presents the strategies of psychopedagogical intervention for the development of SI in primary school pupils.

Table 2. **Objectives and strategies of psychopedagogical intervention for the development of SI in primary school pupils**

Objectives	Strategies
1. Universal awareness of oneself as a responsible part of a larger whole and understanding that our decisions affect the surrounding world (Zohar & Marshall, 2001), the ability to accept and be in	1. To develop holism: ability of seeing larger patterns, relationships, and connections; having a sense of belonging. 2. To enhance the "celebration" of diversity, ability to accept different opinions, traditions. 3. To develop a tendency to live, asking inner question "Why" to develop the necessity to understand what stands "behind"

Objectives	Strategies
contact with something greater (Wigglesworth, 2012).	4. To develop awareness of mission in life 5. To develop openness of heart and mind 6. To develop understanding of purpose of life, according to age.
2. Spiritual self-awareness: experience of different states of consciousness and ability to switch from one to the other, intuition, meditation and visualisation, that allows to perceive the wisdom of inner world (Vaughan, 2003).	1. To develop awareness of spiritual, emotional and physical dimensions of the personality. 2. To develop ability to combine all the personality resources to achieve one's specific goal. 3. To develop awareness of one's free will and its role in the decision-making process, sense of independence.
3. Adaptive skills that allow to utilize spiritual resources and information to solve everyday problems more effectively and achieve the set goals (Emmons, 1999).	1. To develop ability to sanctify everyday experience and improve one's social mastery. 2. To develop awareness of values, a hierarchy of personal values, persistence in action, focusing on the implementation of values in one's life. 3. To develop inner calm and focus. 4. To develop compassion, ability to be of service to others, to solve relationship problem situations in a non-violent way. 5. To develop courage and self-confidence. 6. To develop the skills of forgiveness, humility, compassion and empathy.
4. Awareness of human uniqueness, purpose of the human life, transcendence, widening the limits of self-awareness and facilitating problem solving and abstract thinking (King & DeCicco, 2009).	1. To open up for creativity, spontaneity and the ability to create and transform. 2. To discover the resources in complicated situations, to learn from failures, mistakes and misfortunes. 3. To develop teaching skills, that enable one to be a great teacher, leader and mentor.
5. Self-conscious personality (Gheorghiță, 2014).	1. To develop self-esteem, the ability to live and be aware of this moment, here and now. 2. To develop the feeling of independence, ability to stand against the public opinion and defend one's own views. 3. To develop authenticity, skills to feel, hear oneself and express it verbally. 4. To develop the ability to ask a question, what to live for, and search for one's personal answer to it. 5. To develop the ability to assess one's personality resources and to develop a sense of self-sufficiency.

Conclusions

Mature and developed SI is not only the desirable goal of personality development, education and therapy, but also an essential condition of human psychological health and social functioning. People with high SI are both physically and emotionally, as well as mentally healthier, more capable of fulfilling their goals and talents in life. Developed SI helps to understand and identify one's world, meaningfully formulate it, identify one's personal purpose, set goals. SI acts as a whole together with rational and emotional intelligence, influencing them (Madhumathi & Suparna, 2017). Abilities and features of high SI are inherent to all children and can be purposefully developed in a process of upbringing and learning. Children's natural sense of humour, sense of play, openness to play, creative processes, ability of children to ask philosophical questions about life – these are just some of the elements that characterize children's SI. These are the spiritual resources of the personality that are little researched and help the children to explore more deeply who they are.

Theoretical and empirical research of SI reveals the fundamental importance of SI and its development in the areas of health, education and psychological stability. This paper has described the three dimensions of SI development, namely, analysed the theoretical background of spiritual intelligence, justified the development of SI by means of psychopedagogical intervention programs, and articulated the objectives and strategies of psychopedagogical intervention for the development of SI for primary school students.

After studying the scientific literature on SI features and its' development, considering the need to develop programs that includes multiply combined effects on child development with a possibility to integrate it into learning process, the work will be continued with the creation of the SI development program, where, alongside with philosophical stories, other SI development methods will be created and empirically tested. The program will be an attempt to create a diverse methodology with a combined impact on the child's thinking, emotions and behaviour, with the aim of raising SI and trying to find out whether introducing such a psychopedagogical intervention program can not only enhance the SI, but also raise the child's spiritual well-being and sense of happiness.

References

Baxen, J., Nsubuga, Y., & Botha, L. J. (2014). A capabilities perspective on education quality: Implications for foundation phase teacher education programme design. *Perspectives in Education, 32*(4), 93–105.

Castillo, R., Salguero, J. M., Fernández-Berrocal, P., & Balluerka, N. (2013). Effects of an emotional intelligence intervention on aggression and empathy among adolescents. *Journal of Adolescence, 36,* 883–892.

Costa, A. L. (1985). Developing mind. A resource book for teaching thinking. In A. Costa, R. Hanson, H. Silver, & R. Strong (Eds.), *Programs for teaching thinking* (pp. 163–185). US Departament of Education.

Durlak, J. A., Weissberg, R. P., Dymnicki, A. B., Taylor, R. D., & Schellinger, K. (2011). The impact of enhancing students' social and emotional learning: A meta-analysis of school-based universal interventions. *Child Development, 82,* 405–432.

Emmons, R. A. (1999). *The psychology of ultimate concerns: Motivation and spirituality in personality.* New York: Guilford Press.

Emmons, R. A. (2000). Is spirituality an intelligence? Motivation, cognition, and the psychology of ultimate concern. *The International Journal for the Psychology of Religion, 10*(1), 3–26.

Gardner, H. (2011). *Frames of mind. The theory of multiple intelligence*. New York: Basic Books.

Gheorghiță, N. (2014). Ways of developing spiritual intelligence. *Journal of Experiential Psychotherapy, 17,* 3(67), 31–36.

Humphrey, D. G., & Zimpfer, D. G. (1996). *Counseling for grief and bereavement*. London: Sage.

King, D. B., & DeCicco, T. L. (2009). A viable model and self-report measure of spiritual intelligence. *International Journal of Transpersonal Studies, 28*(1), 68–85.

Lipman, M. (1999). *Improving your storytelling. Beoynd the basic for all who tell stories in work or play.* Little Rock, AR: August House.

Madhumathi, C., & Suparna, D. (2017). Spiritual intelligence among secondary school students with respect to gender and management. *International Journal of Indian Psychology, 4*(4), DOI: 10.25215/0404.028

Mayer, J. D., & Salovey, P. (1997). What is emotional intelligence? In P. Salovey & D. Sluyter (Eds.), *Emotional development and emotional intelligence: Educational implications* (pp. 3–31). New York: Basic Books.

Martinsone, B. (2016). Social emotional learning: Implementation of sustainability-oriented programm in Latvia. *Journal of Teacher Education for Sustainability, 18*(1), 57–68.

Olweus, D. (2011). Large-scale implementation of school based anti bullying programs. *Symposium in European Conference on Development Psychology*. Bergen, Norway.

Rivers, S. E., Brackett, M. A., Reyes, M. R., Elbertson, N. A., & Salovey, P. (2013). Improving the social and emotional climate of classrooms: A clustered randomized controlled trial testing The RULER Approach. *Prevention Science, 14*(1), 77–87.

Safara, M., & Bhatia, M. S. (2013). Spiritual intelligence. *Delhi Psychiatry Journal, 16*(2), 412–423.

Stanszus, L., Fischer, D., Böhme, T., Frank, P., Fritzsche, J., Harfensteller, J., … Schrader, U. (2017). Education for Sustainable Consumption through Mindfulness training – Development of a consumption-specific intervention. *Journal of Teacher Education for Sustainability, 19*(1), 5–21.

Summers, J. A., Behr, S. K., & Turnbull, A. P. (1988). Positive adaptation and coping strengths of families who have children with disabilities. In G. H. S. Singer & L. K. Irvin (Eds.), *Support for caregiving families: Enabling positive adaptation to disability* (pp. 27–40). Baltimore: Paul H. Brookes.

Vaughan, F. (2003). What is spiritual intelligence.? *Journal of Humanistic Psychology, 42*(2), 16–33.

Waters, E., & Sroufe, L. A. (1983). Social competence as a developmental construct. *Developmental Review, 3*(1), 79–97.

Wigglesworth S. (2012). *SQ21 – The twenty-one skills of spiritual intelligence*. New York: Select Books.

Zohar, D., & Marshall, I. (2001). *Spiritual intelligence the ultimate intelligence*. London: Bloomsbury Publishing.

DIFFERENCE BETWEEN EPISTEMOLOGICAL ATTITUDE IN STUDENTS FROM NETHERLANDS AND IN STUDENTS FROM LATVIA TOWARDS THE SOURCES OF KNOWLEDGE

Jevgenija Sivoronova, Aleksejs Vorobjovs
Daugavpils University, Parādes Street 1, Daugavpils, Latvia, jevsi21@gmail.com, spk@du.lv

Abstract

Difference between epistemological attitude in students from Netherlands and in students from Latvia towards the sources of knowledge

Key words: *epistemology, attitude, sources of knowledge, knowledge, student*

Aim of the present research is to verify that there exist differences among epistemological attitudes in students from Netherlands and students from Latvia towards different sources of knowledge, scientific literature and articles, a tutor in an educational institution as a source of knowledge, popular science journals and newspapers, popular science broadcasts, internet resources.

Epistemological attitude is a construct of a student's orientation reflecting formal and substantial evaluation aspects of the source of knowledge. The present theoretical construct allows studying psychological and epistemological mechanisms which determine imprinting the source image as a significant one.

Students from different faculties of Erasmus University Rotterdam (Netherlands) (N=100; M=21.52 years, SD=3.75 years) participated in the present study held in 2017 in addition to students from different higher education institutions of Daugavpils city (Latvia) (N=102; M=23.08 years, SD=5.87 years). The results of the study showed that there is a statistically significant difference between the epistemological attitude of the students of Rotterdam Erasmus University and various higher education institutions of Daugavpils city concerning the assessment of all sources, formally and in content, in features ($0.05 > p < 0.001$) and in the content categories ($0.05 > p < 0.001$). It has been found that each source of knowledge is evaluated as a significant one, but the mechanisms that make up the importance differ among students in the Netherlands and Latvia.

Kopsavilkums

Atšķirība starp Nīderlandē un Latvijā studējošo epistemoloģisko attieksmi pret zināšanu avotiem

Atslēgvārdi: *epistemoloģija, attieksme, zināšanu avoti, zināšanas, studenti*

Pētījuma mērķis ir pārbaudīt vai pastāv atšķirība starp Nīderlandē un Latvijā studējošo epistemoloģisko attieksmi pret dažādiem zināšanu avotiem – zinātnisko literatūru un rakstiem, pasniedzēju mācību iestādē, populārzinātniskiem žurnāliem un avīzēm, populārzinātniskās televīzijas raidījumiem, interneta resursiem.

Epistemoloģiskā attieksme ir studentu izziņas orientācijas konstrukts, kas atspoguļo zināšanu avota formālos un saturiskos vērtēšanas aspektus. Teorētiskais konstrukts ļauj pētīt epistemoloģiskos un psiholoģiskos mehānismus, kas atbild par zināšanu avota nozīmības tēla veidošanās.

Pētījumā piedalījās studenti no Roterdamas Erasmus universitātes (Nīderlande) (N=100; M=21,52 gadi, SD=3,75 gadi), kas tika veikts 2017 gadā, un studenti no Daugavpils dažādām augstskolām (Latvija) (N=102; M=23,08 gadi, SD=5,87 gadi), kas tika veikts 2014. gadā.

Pētījuma rezultāti parādīja, ka pastāv statistiski būtiska atšķirība starp Roterdamas Erasmus universitātes un Daugavpils dažādās augstskolās studējošo epistemoloģisko attieksmi visu avotu novērtējumā, formāli un saturiski, pazīmēs ($0,05 > p < 0,001$) un pazīmju satura kategorijās ($0,05 > p < 0,001$). Konstatēts, ka katrs zināšanu avots novērtēts kā nozīmīgs, bet nozīmību veidojošie mehānismi Nīderlandē un Latvijā studējošiem atšķiras.

Introduction

The problem of cognition and knowledge is fundamental and interdisciplinary. With the rapid development of information technology and cognitive opportunities in society, there is a need to maintain continuous flow of information. There exists an issue about what forms of cognition as the sources of knowledge are relevant today. Epistemological attitude is a tool allowing to determine the attitude to the sources of knowledge and knowledge itself. Students face different forms of cognition in their daily practice. Therefore, they can give an answer to several questions related to the quality of knowledge, cognitive tendencies, and peculiarities of student cognition from different

culturally academic backgrounds. The aim of the research is to examine the difference between the epistemological attitude of the students in Netherlands and Latvia and content of the attitude towards the sources of knowledge.

Epistemological issues in psychological researches

Epistemology is a branch of philosophy whose fundamental issues are related to cognitive possibilities, knowledge, its nature, quality and reliability criteria (Lektorsky 2018). Modern epistemological issues are also topical in psychology. Last decades they are developing in the direction of *personal epistemology* (Hammer & Elby 2002; Hofer & Pintrich 2002; Hofer 2006; Hofer & Bendixen 2012), its research case is related to the system of *"subject"* (individual, personality) – *"knowledge",* studying cognitive features, abilities, processes and knowledge of different aspects of the individual and personality. The main phenomenon is *epistemological belief* (Brownlee & Berthelsen 2006; Hofer 2006; Hofer & Pintrich 1997; King & Kitchener 2002; Perry 1981; Schommer 1990; Schommer – Aikins 2004, 2017). It helps to reveal individual's existing theories of knowledge and reality, their quality and stability, structure, cognitive potential, cognitive sources, linking it all with the individual's cognitive and personal development levels. Other phenomena such as *epistemological world views* (Olafson et. al. 2010; Schraw & Olafson 2002), *epistemic beliefs* (Muis 2007), which essentially are beliefs about the nature of knowledge and its acquisition, are also part of the research; or a phenomenon that accentuates the connection of knowledge with the cognitive process, such as *epistemological reflection* (Baxter-Magolda 2004), *epistemological thinking* (Kuhn & Weinstock 2002), *epistemological understanding* (Kuhn et. al 2000; Kuhn & Park 2005), *epistemic cognition* (Chinn et. al. 2011) and many others.

In the context of social epistemology numerous researches are made about *epistemic authority* (Blumberga 2012; Dugas & Kruglanski 2018; Kruglanski et. al. 2005; Raviv et al. 1993), which allows to determine the degree of trust to the source of knowledge. In the context of social constructionism, there is a notion of *ontological world view* (Ponterotto 2005), which reflects an individual's theory of reality, and other philosophical and ontological constructs revealing aspects of individual knowledge construction.

There are a number of phenomena such as *scientific attitude* or *attitude toward science models* (Gohit & Sredevi 2008; Kennedy et. al. 2016; Lacap 2015; Lichtenstein et. al., 2008; Moore & Foy 1997; Rao 1996; Yasar & Anagun 2009) in the field of pedagogical research on *teaching* and *learning* process (Erdamar 2010; Lin et. al. 2013; Ozturk, Koc & Cetin 2002; Qian & Alvermann 2000). They reflect attitude towards science and learning in relation to various elements of learning, study process, personality aspects of students and tutors, motivation and skills.

In these studies, the study of epistemological psychological phenomena focuses on the discovery of various aspects of cognition and knowledge in relation to various aspects of the

individual's mental, psychological and personality aspects, development and teaching, social factors, etc. Psychosocial phenomena which are based on the basis of epistemology and focus on cognitive objects and knowledge research rather than on the psychological and psychological peculiarities of an individual were not found. In the study, novelty is related to the proposed concept of epistemological attitude and the model of content.

Concept and model of epistemological attitude

Concept and model of epistemological attitude was proposed with the aim of studying the attitude of the student being the subject of an academic cognition, attitude to the sources of knowledge and knowledge (Sivoronova 2015). The model is based on a three-level methodology – philosophical, generally scientific, and scientific in particular (Judin 1997). Philosophically it is based on *epistemological approaches* (Lektorsky 2010, 2018) and *epistemological strategies* (Spirkin 2002), philosophical approaches – *functionalism* (Dewey 1916; Mead 1938; Schiller 1930) and *pragmatism* (James 1907; Peirce 1923). The principle of the structure of a general scientific methodology serves as a basis for the structure of the attitude model. The psychological methodology of attitude is based on the attitude structure approach – *tripartite model of attitude* (Ajzen 2005; Breckler 1984; Rosenberg & Hovland 1960; Fazio & Petty 2007; Hogg 2006; Van der Berg et. al. 2006; Schiffman & Kanuk 2004) and *functional* approach (Herek 1987; Katz 1960; Prentice 1987; Smith 1947; Shavitt 1989). The structure of epistemological attitudes consists of four reactions, based on a three component structure (Rosenberg & Hovland, 1960) – cognitive, emotional, behavioral, and the fourth one being – pragmatic. The pragmatic reaction reflects the personality reactions of an individual in his/her attitude to an object. It was distinguished on the basis of the theory of attitude (Gregory, Much & Peterson 2002; Greenwald 1989; Katz 1960; Lapinski & Boster 2001; Prentice 1987; Schade et. at. 2016; Wang 2009) that the main function of attitudes is related to the needs of personality. The emotional response was complemented by the prognostic aspect, underpinning the epistemological strategy (Spirkin 2002) and the concept of strategy in psychology (Bors et al. 2006; Chang 2001; Pereira-Santos 2019; Vermunt & Donche 2017; Vermunt & Vermetten 2004). Cognitive response content is based on epistemological approaches (Lektorsky 2010, 2018). On this basis, the concept of epistemological attitudes, which reflects a student's cognitive orientation model, is based on evaluation responses – cognitive, emotionally prognostic, behavioral, or action, and pragmatism that allows the assessment aspects and significance of the source of knowledge and its mechanisms to be identified.

Method

Participants

Altogether 202 respondents took part in the present research: students from different faculties from Rotterdam Erasmus University (N=100) 18–44 years old (M = 21.52 years, SD =3.75 years);

men (n = 49, M = 22.08 years, SD = 4.18 years) and women (n = 51, M = 20.98 years, SD = 3.24 years); students from different higher education institutions of Daugavpils city (N=102) 19–53 years old (M = 23.08 years, SD = 5.87 years); men (n = 48, M = 21.5 years, SD = 4.36 years) and women (n = 54, M = 24.48 years, SD = 6.68 years).

Instrumentation

The Epistemological Attitude Questionnaire (EAQ) (Sivoronova 2015) was used in a study to assess the source of knowledge and knowledge therein. There are five different sources of knowledge for evaluation: 1) scientific literature and articles (including those in electronic format); 2) a tutor in an educational institution; 3) popular scientific journals and newspapers; 4) popular television broadcasts; 5) Internet resources (all sources on the Internet, except the above mentioned). The instrument determines formal and substantive aspects of evaluation and importance of the source of knowledge. The overall reliability of the survey ranges from α = 0.86 to α = 0.89.

The EAQ consists of 4 scales and 11 features (k = 44). The formal aspect consists of four scales measuring attitudinal responses, substantive aspect – 11 characteristics and categories of attribute content. *The cognitive scale* determines respondent's cognitive response and its features in the assessment of the source of knowledge and its content; is determined by four characteristics – *criticism, fundamentalism and normativism, subject centrism, science centrism*. *The emotionally prognostic* scale determines nature and intensity (emotional prognostic value) of the emotionally prognostic response of the respondent, which is determined by three features – *optimism, skepticism, agnosticism*. *Action/Behavioral scale* determines the nature of behavioral responses and behavior with the source of knowledge depending on characteristics (conditions) of the interaction situation expressed in the *academic* and *personal situation*. *The pragmatism scale* determines the practical significance of the choice of the source of knowledge, or pragmatism for the respondent's personality, expressiveness and orientation, it is expressed in two characteristics – *functionalism* and *adaptivism*. The significance of the source of knowledge and its mechanisms should be defined in the interpretation of statistical, formal and content characteristics.

Procedure

First of all, a pilot study was conducted with a sample of students (N = 102) from various higher educational institutions in Daugavpils, which took place in December 2014 (Sivoronova 2015). In the second phase of the study, a survey was conducted in March 2017, and data from the Erasmus University students in Rotterdam (N = 100) were collected using the EAQ. The participation of the students was voluntary, and the selection was random. Filling in the survey took on a face-to-face basis and after lectures, in groups and individually.

Results

It has been found that there is a difference between the content of epistemological attitudes of students in The Netherlands and Latvia – in formal and content aspects, importance and mechanisms of knowledge sources, evaluations of all sources; finding significant differences between several responses reactions (0.05> p <0.001), characteristics (0.05> p <0.001) and categories characteristics' content (0.05> p <0.001).

Scientific literature and articles

Evaluation of students at Rotterdam Erasmus University is formally more cognitive (U = 3656***) than in students in higher education institutions of Daugavpils City. The result indicated significant differences in content aspect of epistemological attitude, which is clearly shown in comparison of EA profiles (see Figure 1) in criticism ($\chi 2$ = 34.96***), in optimism ($\chi 2$ = 7.76**) and skepticism ($\chi 2$ = 13.13***), functionalism ($\chi 2$ = 5.31**) and four characteristics' content.

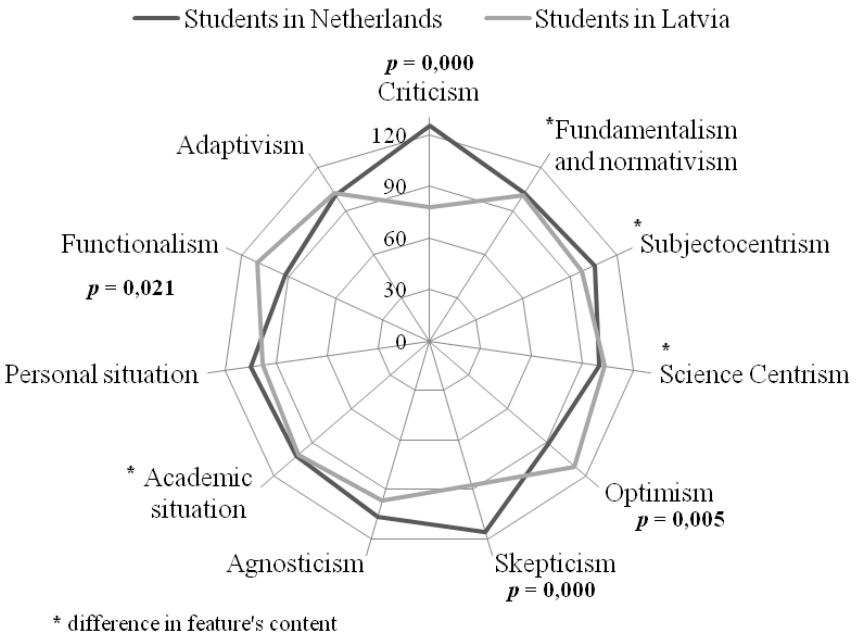


Figure 1. **Comparison between epistemological attitude profile toward scientific literature and articles in students from Netherlands and students from Latvia**

Students in The Netherlands have more criticism in the content of epistemological attitudes, deficiencies in meaning of the source of knowledge, being more skeptical about the critical point of view on scientific base; they contest the content of the source in any aspect. Despite the critical position of students, the source of knowledge is significantly epistemological. Highly appreciated is source-based and evidence-based methodology, in-depth theoretical basis that promotes the psychological significance of the source – use in the studio process to acquire knowledge in depth, academic communication, as a source of creative thinking (ideas and thought experiment).

The assessment of students in Latvia has higher emotionally prognostic optimism mainly in relation to the quality of potential knowledge in general, and it is thought that content knowledge will not raise any doubt. Students are more expressive in functionalism in the choice of source, but its use is more related to higher self-esteem and satisfaction and self-esteem is targeted with acquisition of knowledge. For students, the source is generally significant, its knowledge evaluated as a highly substantiated scientific substantiation, less critical in its assessment and less skeptical about the quality of knowledge. High epistemological assessment is consistent with its psychological significance, reflecting high functionality, especially in study-related conditions and purposes, and most notably noted for the preparation of independent study papers (independent essays and homework).

The tutor in an educational institution

In the formal aspect, no statistically significant differences were found between students in Netherlands and Latvia. Statistically significant differences in the result shows the content aspect of epistemological attitude – criticism ($\chi 2$ = 12.9***) and subjectcentrism ($\chi 2$ = 3.71*), the tendency to the difference in optimism characteristic (p=0.06), and content of four characteristics (see Figure 2).

In The Netherlands, students in their assessment are more critical concerning the overall credibility of the knowledge given by the tutors, considering that they need additional testing. In the student's consciousness, the importance of the tutor as a source is formed by both epistemological and psychological mechanisms. One of the most important cognitive tools for students in the Netherlands is critical reflection on the scientific nature of the material presented, emphasizing the truth relativity, which generally does not hinder the assessment of knowledge as of high quality. The psychological significance of a particularly pronounced study process, as the source provides knowledge in depth, above the curriculum. Students also tend to perceive the tutors a source of leisure time, outside of study discussions.

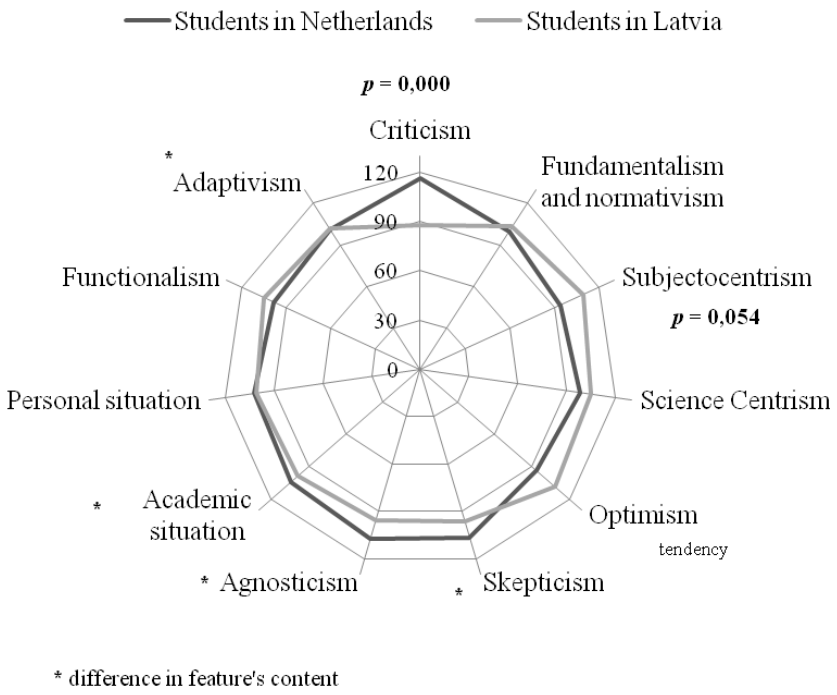


Figure 2. **Comparison between epistemological attitude profile toward the tutor in an educational institution as a source of knowledge in students from Netherlands and students from Latvia**

In Latvia, students are more subject-centered as a source of teaching as a source of specialization, especially when evaluating the teacher's creative approach to teaching. Students are more prognostic in the sense of optimism that knowledge is, however, more of a true reflection of the truth and of no doubt. For students, the teacher is important both epistemologically and psychologically. Knowledge is rated as highly scientific, with high prognostic potential, which is reflected in high usage and pragmatism, respectively. The students also noted that listening to the teacher is an opportunity to acquire knowledge with little effort and to acquire it in depth.

Popular science journals and newspapers

Formally, students from various higher education institutions of Daugavpils tend to use more than students from Erasmus University in Rotterdam, finding a significant difference ($U = 4786$*) in the response. Statistically significant differences were found in fundamentalism and normality ($\chi 2 = 4.42$*) and in characteristics of an academic situation ($\chi 2 = 12.69$***), and in the content of the four features (see Figure 3).

The content of attitudes of students at the Erasmus University in Rotterdam is a characteristic of a higher degree of fundamentalism and normality. Students believe that the source and its contents are generally accepted and accepted in society, tend to appreciate knowledge according to the quality of the reflected methodology – theoretical or empirical basis is included in the source. For students, the significance of the source is epistemologically moderate, such sources are evaluated in society, but students tend evaluate critically the scientificness of sources and quality of

prognostic content. Sources were not considered to be highly psychologically significant, no high use among students was observed, and personally was more pragmatically neutral. Those students who tend to use them, choose as a source of leisure time, reading material in comfort.

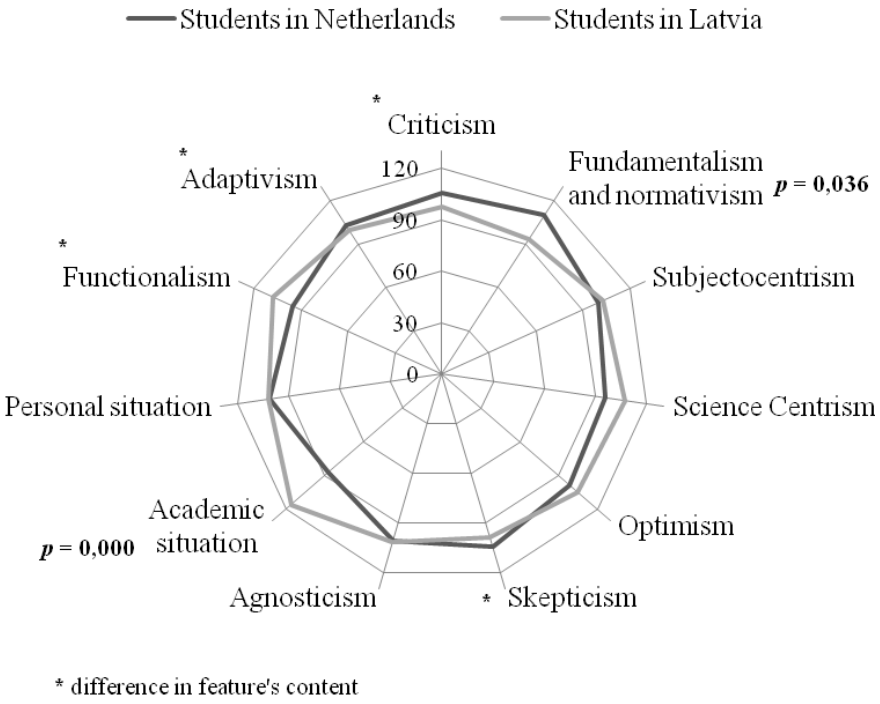


Figure 3. **Comparison between epistemological attitude profile toward popular science journals and newspapers in students from Netherlands and students from Latvia**

Students from Daugavpils Higher Education Institutions use more popular scientific journals and newspapers in academic situations – in seminars, discussions and other academic communication (seminars, discussions, lecturers), acquire knowledge over the curriculum, and prepare the use of information to write essays and other independent course works or home works. The significance of the students for the sources is mainly formed by psychological mechanisms. Epistemological quality was judged to be high on average, but sources were used for several purposes, in particular for studies. Consequently, sources have been assessed as highly functional, noting the positive impact of the use of sources on self-esteem. Optional adaptability is characterized by the ability to use the source in comfortable conditions.

Popular science television broadcasts

Formally there are no statistically significant differences between the attitudes of students in the Netherlands and Latvia. In the content aspect, statistically significant differences are seen in optimism ($\chi 2$ = 4.92*) and in the three-character content were found (see Figure 4).

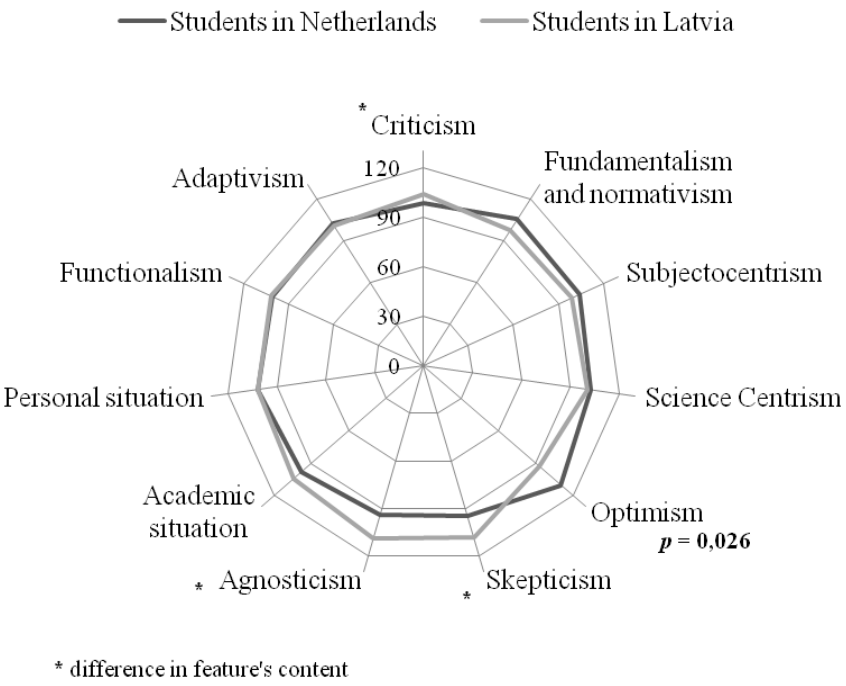


Figure 4. **Comparison between epistemological attitude profile toward science popular science broadcasts in students from Netherlands and students from Latvia**

In The Netherlands, students are generally critical concerning television programs. The critical feature is similarly expressed in both samples, each emphasizing the aspects of the source to be criticized. Students in The Netherlands are critical concerning knowledge because it usually provides a one-sided view of the issues of interest. In spite of criticism, it is generally more optimistic that the need for knowledge needs to be met and the true knowledge can be obtained. The source is moderately important, provided by both epistemological and psychological mechanisms. On average, the quality of knowledge has been evaluated; the source is pragmatic in the personal situation in general, and the adaptability in the choice. Less source knowledge is useful for academic purposes, more than a source of free time.

Students in Latvia are also characterized by criticism, criticizing the credibility of source knowledge, and consider that additional knowledge is needed for content knowledge. In general, the source does not have a high epistemological value, low prognostic value of knowledge, and even agnostically determined source. Despite this assessment, the source has a psychological significance. Overall, the content of the source was evaluated as invalid for studies, but more than half use the source to gain knowledge over the study program. The source is mainly used in personal situations and is associated with high source pragmatism.

Internet resources

Students in Daugavpils higher education institutions formally use more and pragmatically evaluate them higher in statistically significant differences (U = 3663***) and pragmatism (U=3718***) reactions. There are differences in the content aspect, which are statistically

significant differences in the academic situation ($\chi 2$ = 34.96***), functionalism ($\chi 2$ = 7.76**), adaptivism ($\chi 2$ = 13.13***), and content of four characteristics (see Figure 5).

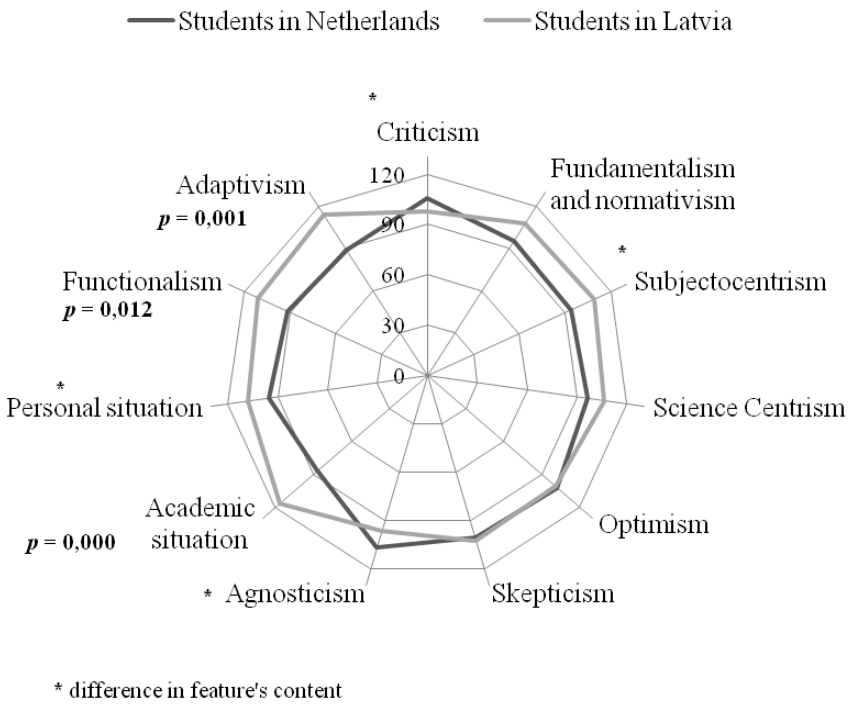


Figure 5. **Comparison between epistemological attitude profile toward internet resources in students from Netherlands and students from Latvia**

In the perception of students in The Netherlands, Internet resources have more psychological significance, and it is shown not in studies but in personal circumstances and purposes. Students evaluated Internet resources as lacking epistemological quality for one-sided responses to problems, expressed criticism towards knowledge, a low level of critical point of view of the present information, and an inadequate fundamental basis, and overall that content of Internet resources is a set of more subjective opinions and not authentic knowledge. However, most students actively use the source, but only half of them value it as suitable for studies. The Internet has a pronounced pragmatic meaning, is convenient for achievement of my goals and objectives, is convenient in usage, and generally is personally valuable and popular in society. Students are less adaptive in Internet choice, and more functional.

Students in Latvia give higher importance to the Internet both epistemologically and psychologically, in particular emphasis is put on the successful acquiring of source's content (style of presentation of the information is good for its perceiving and learning), its personal value (knowledge is valuable and important in my system of personal meanings (values, interests, desires, aspirations), author's creative approach. In the academic situation students use the source more. It should be mentioned that the Internet resources are those that do not include these four groups of sources; however, students have an interest in preparing the independent work related to studies,

acquiring the study subject in depth. Use is also more pronounced in personal situations, especially in leisure time. The choice of internet by students' is more pragmatic in general. The choice is more adaptive, because the source allows you to gain knowledge effortlessly, the cognition is possible under comfort conditions, and they select the source for its popular knowledge acquisition method.

Conclusions

The results of the study showed that there is a difference between epistemological attitude of the students in the Netherlands and Latvia, the formal and content aspects, the importance of knowledge sources and its mechanisms in the assessment of all five sources; finding statically significant differences between several attitude responses ($0.05 > p < 0.001$), characteristics ($0.05 > p < 0.001$) and categories of characteristics ($0.05 > p < 0.001$). In the evaluation of scientific literature and articles, statistically significant differences were found in the formal aspect of epistemological attitude, cognitive reaction ($U = 3656$***), in the content aspect – in criticism ($\chi 2 = 34.96$***), in optimism ($\chi 2 = 7.76$**) and skepticism ($\chi 2 = 13.13$***), functionalism ($\chi 2 = 5.31$**) and content of four characteristics. The assessment of the teaching institution's through tutor revealed statistically significant differences in the content aspect of epistemological attitudes – criticism ($\chi 2 = 12.9$***) and subjectcentrism ($\chi 2 = 3.71$*), the tendency to differ in optimism ($p = 0.06$), and content of four characteristics. The evaluation of popular scientific journals and newspapers revealed statistically significant formal differences – in the action ($U = 4786$*), and in terms of content – in fundamentalism and normativism ($\chi 2 = 4.42$*) and academic situation ($\chi 2 = 12.69$***), and content of four characteristics. Statistically significant differences in content – optimism ($\chi 2 = 4.92$*), and content of three characteristics found in the evaluation of popular science television broadcast. In the evaluation of Internet resources, statistically significant differences are in the formal aspect, in the activities ($U = 3663$***) and pragmatism ($U = 3718$***), and in the content aspect – in the academic situation ($\chi 2 = 34.96$***), functionalism ($\chi 2 = 7.76$**), adaptivism ($\chi 2 = 13.13$***), and content of four characteristics.

References

Ajzen, I. 2005. Attitude, Personality and Behaviour. In T. Manstead (Ed.) *Mapping Social Psychology.* Berkshire: Open University Press.

Baxter Magolda, M.B. 2004. Evolution of a Constructivist Conceptualization of Epistemological Reflection. *Educational Psychologist*, Vol. 39 (1), pp. 31–42.

Blumberga, S. 2012. Dimensions of Epistemic authority of University Professors. *Natural and Social Sciences Journal*, Vol. 5, pp. 16–20.

Bors, D.A. Vigneau, F., Lalande, F. 2006. Measuring the need for cognition: Item polarity, dimensionality, and the relation with ability. *Personality and Individual Differences*, 40, pp. 819–828.

Breckler, S.J. 1985. Empirical validation of affect, behavior, and cognition as distinct components of attitude. *Journal of Personality and Social Psychology,* 47 (6), pp. 1191–1205.

Brownlee, J. Berthelsen, D. 2006. Personal epistemology and relational pedagogy in early childhood teacher education programs. *Early Years: An International Journal of Research*, 26 (1), pp. 17–29.
Chang, E. C. 2001. *Optimism and pessimism: Implications for theory, research, and practice*. Washington, DC: American Psychological Association.
Chinn, C.A., Buckland, L.A. Samarapungavan, A. 2011. Expanding the dimensions of epistemic cognition: Arguments from philosophy and psychology. *Educational Psychologist, 46*, pp. 141–167.
Dewey, J. 1916. *Essays in Experimental Logic*. Ch. XIII. Chicago: University of Chicago Press
Dugas, M., Kruglanski, A.W. 2018. Shared reality as collective closure. *Current Opinion in Psychology*, Vol. 23, pp. 72–76.
Erdamar, G. 2010. Some variables affecting student teachers' studying strategies. *Hacettepe Universty Journal of Education*, 38, pp. 82–93.
Fazio, R. H., Petty, R. E. 2007. *Attitudes. Vol. 1: Structure, function, and consequences*. Hove: Psychology Press.
Gohit, R. K., Sreedevi, K.V. 2008. Scientific Attitude Scale. *Constructivism in Science Education*. Discovery Publishing House.
Gregory, G. D., Much, J. M., & Peterson, M. 2002. Attitude functions in consumer research: comparing value-attitude relations in individualistic and collectivistic cultures. *Journal of Business Research*, 55, pp. 933–942.
Hammer, D., Elby, A. 2002. On the form of a personal epistemology. In B.K. Hofer, P.R. Pintrich (Eds.), *Personal epistemology: the psychology of beliefs about knowledge and knowing.* Erlbaum, Mahwah, pp. 169–190.
Herek, G.M. 1987. Can functions be measured? A new perspective on the functional approach to attitudes. *Social Psychology Quarterly*, 50(4), pp. 285–303.
Hofer, B. K. 2006. Domain Specificity of Personal Epistemology: Resolved Questions, Persistent Issues, New Models. *International Journal of Educational Research*, Vol. 45(2), pp. 85–95.
Hofer, B. K., Pintrich, P. R. 1997. The development of epistemological theories: Beliefs about knowledge and knowing and their relation to learning. *Review of Educational Research*, 67, pp. 88–140.
Hofer, B.K., Bendixen L.D. 2012. Personal epistemology: Theory, research, and future directions. In K.R. Harris, S. Graham, T. Urdan (Eds.), *APA educational psychology handbook, Vol. 1: Theories, constructs, and critical issues*, American Psychological Association, Washington, pp. 227–256.
Hofer, B.K., Pintrich, P.R. 2002. *Personal epistemology: The psychology of beliefs about knowledge and knowing.* Erlbaum Associates, Mahwah, NJ.
Hogg, M. A. 2006. Social identity theory. In: P. Burke (Ed.), *Contemporary social psychological theories.* Stansford University Press, pp. 7–30.
Hovland, C. I., Rosenberg, M. J. 1960. Cognitive, Affective and Behavioral Components of Attitudes. In Rosenberg, M. J., Hovland C. I. (Eds.), *Attitude Organization and Change: An Analysis of Consistency among Attitude Components*. New Haven: Yale University Press, pp. 112–163.
James, W. 1907. *Pragmatism*. Cambridge: Harvard University Press.
Jan D. Vermunt.
Judin, Je.G. 1997. *Metodologija nauki: Sistemnost'. Dejatel'nost'* [Methodology of Science: Systematic. Action.]. Moskva: Jeditorial URSS, 444 s.
Katz, D. 1960. The Functional Approach to the Study of Attitudes. *Public Opinion Quarterly*, No 24, pp. 163–204.
Kennedy, J. P., Quinn, F., Taylor, N. 2016. The school science attitude survey: a new instrument for measuring attitudes towards school science. *International Journal of Research & Method in Education*, Vol. 39, pp. 422–445.

King, P.M., Kitchener, K.S. 2002. The Reflective Judgment Model: Twenty Years of Research on Epistemic Cognition. In B. Hofer & P. Pintrich (Eds.), *Personal epistemology: The psychology of beliefs about knowledge and knowing*. Mahwah, NJ, US: Lawrence Erlbaum Associates Publishers, pp. 37–61.

Kruglanski, A.W., Raviv, A., Bar-Tal, D., Raviv, A., Sharvit, K., Ellis, S., Bar, R., Pierro, A., Mannetti, L. 2005. Says Who? Epistemic Authority Effects in Social Judgment. *Advances in Experimental Social Psychology*, Vol. 37, pp. 345–392.

Kuhn, D., Weinstock, M. 2002. What is epistemological thinking and why does it matter? In B. K. Hofer & P. R. Pintrich (Eds.), *Personal epistemology: The psychology of beliefs about knowledge and knowing*. Mahwah, NJ, US: Lawrence Erlbaum Associates Publishers. pp. 121–144.

Kuhn, D., Cheney, R., Weinstock, M. 2000. *The development of epistemological understanding. Cognitive Development*, 15, pp. 309–328.

Kuhn, D., Park, S.-H. 2005. Epistemological understanding and the development of intellectual values. *International Journal of Educational Research*, 43(3), pp. 111–124.

Lacap, M. P. 2015. The scientific attitudes of students major in science in the new teacher education curriculum. *Asia Pacific Journal of Multidisciplinary Research*, 3(5), pp. 7–15.

Lektorskii, V.A. 2010. Realism, Antirealism, Constructivism, and Constructive Realism in Contemporary Epistemology and Science. *Journal of Russian and East European Psychology*, Vol. 48. M.E. Sharpe, pp. 5–44.

Lektorsky, V.A. 2018. Constructive realism as the contemporary form of epistemological realism. *Philosophy of Science and Technology*, Vol. 23(2), pp. 18–22.

Lichtenstein, M.J., Owen, S.V., Blalock, C. L., Liu, Y., Ramirez, K. A., Pruski, L. A., Marshall, C. E., Toepperwein, M. A. 2008. Psychometric Reevaluation of the Scientific Attitude Inventory-Revised (SAI-II). *Journal of Research in Science Teaching*, 45(5), pp. 600–616.

Lin, H., Hong, Z.-R., Chen, Y.-C. 2013. Exploring the development of college students' situational interest in learning science. *International Journal of Science Education*, 35(13), pp. 2152–2173.

Mead, G. H. 1938. *The Philosophy of the Act*. Chicago: University of Chicago Press.

Moore, R. W., Foy, R. L. H. 1997. The scientific attitude inventory: A revision (SAI II). *Journal of Research in Science Teaching*, 34(4), pp. 327–336.

Muis, K.R. 2007. The role of epistemic beliefs in self-regulated learning. *Educational Psychologist*, 42, pp. 173–190.

Olafson, L., Schraw, G.,Vander Veldt, M. 2010. Consistency and Development of Teachers' Epistemological and Ontological World Views. *Learning Environments Research*, Vol. 13(3), pp. 243–266.

Öztürk, B., Koç, G., Çetin. 2004. Attitudes of students at gazi university vocational education faculty towards studying. *Vocational Education Journal*, 6, 12, pp. 1–18.

Peirce, C. S. 1923. *Chance, Love and Logic; philosophical essays by the late Charles S. Peirce.* London: K. Paul, Trench, Trubner.

Pereira-Santos, D., Prudêncio, R. B. C., de Carvalho, A. 2019. Empirical investigation of active learning strategies. *Neurocomputing*, Vol. 326–327, pp. 15–27.

Perry, W.G. 1981. Cognitive and ethical growth: The making of meaning. In: Chickering. A. W. (Ed), *The Modern American College.* San Francisco, CA, pp. 76–116.

Ponterotto, J.G. 2005. Qualitative Research in Counseling Psychology: A Primer on Research Paradigms and Philosophy of Science. *Journal of Counseling Psychology*, 52(2), pp. 126–136.

Prentice, D.A. 1987. Psychological Correspondence of Possessions, Attitudes, and Values. *Journal of Personality and Social Psychology*, Vol. 53, pp. 993–1003.

Qian, G., Alvermann, D. E. 2000. Relationship between epistemological beliefs and conceptual change learning. *Reading & Writing Quarterly*, 16(1), pp. 59–74.

Rao, D.B. 1996. *Scientific Attitude vis-à-vis Scientific Aptitude*. Discovery Publishing House: N. Delhi.

Raviv, A., Bar-Tal, D., Raviv, A., Abin, R. 1993. Measuring epistemic authority: studies of politicians and professors. *European Journal of Personality*, 7, pp. 119–138.

Schade, M., Hegner, S., Horstmann, F., Brinkmann, N. 2016. The impact of attitude functions on luxury brand consumption: An age-based group comparison. *Journal of Business Research*, 69(1), pp. 314–322.
Schiffman, L.G., Kanuk, L.L. 2004. *Consumer Behaviour*, 8th ed. Upper Saddle River, NY: Pearson Education.
Schiller, F.C.S. 1930. *Studies in Humanism*. 2. Ed., L.
Schommer Aikins, M. 2017. Web of Concepts Critical to Today's World Epistemological Beliefs Cognitive Flexibility and Balance. *Psychology and Behavioral Science, International Journal*, Vol. 7(5), DOI: 10.19080/PBSIJ.2017.07.555724
Schommer, M. A. 1990. Effects of beliefs about the nature of knowledge on comprehension. *Journal of Educational Psychology*, Vol. 82, No. 3, pp. 498–504.
Schommer-Aikins, M. 2004. Explaining the epistemological belief system: Introducing embedded systemic model and coordinated research approach. *Educational Psychologist, 39*, pp. 19–29.
Schraw, G., Olafson, L. J. 2002. Teachers' epistemological world views and educational practices. *Issues in Education*, Vol. 8, pp. 99–148.
Shavitt, S. 1989. Products, personalities and situations in attitude functions: Implications for consumer behavior. *Advances in Consumer Research*, 16, pp. 300–305.
Sivoronova, J. 2015. *Studentu epistemoloģiskās attieksmes pret zināšanu avotiem. Bakalaura darbs.* Daugavpils: Daugavpils Universitāte, 155 lpp.
Spirkin, A.G. 2002. *Filosofija* [Philosophy]. Moskva: Gardariki, 472 s.
Van den Berg, H., Manstead, A., Pligt, J., Wigboldus, D. 2006. The impact of affective and cognitive focus on attitude formation. *Journal of Experimental Social Psychology*, 42, pp. 373–379.
Vermunt J.D., Vermetten Y. 2004. Patterns in student learning: Relationships between learning strategies, conceptions of learning, and learning orientations. *Educational Psychology Review*, 16(4), pp. 359–384.
Vermunt, J. D., Donche, V. 2017. A Learning Patterns Perspective on Student Learning in Higher Education: State of the Art and Moving Forward. *Educational Psychology Review*. DOI: 10.1007/s10648-017-9414-6
Wang, X. 2009. Integrating the theory of planned behavior and attitude functions: Implications for health campaign design. *Health Communication*, 24, pp. 426–434.
Yasar, S., Anagun, S.S. 2009. Reliability and Validity studies of the science teaching course – Scientific Attitude Scale. *Journal of Turkish science education*, 4(2), Ekip. Ltd.

MENEDŽMENTS / MANAGEMENT

THE EFFECTIVE INDICATORS OF CRIMINAL PUNISHMENT ENFORCEMENT INSTITUTIONS

Anatolijs Čapkevičs
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401,
anatolijs.capkevics@inbox.lv

Abstract

The effective indicators of criminal punishment enforcement institutions

Key words: *criminal punishment enforcement institutions, Administration of Penal Institutions, State Probation Service, effective indicators, activity results*

The effective indicators, accessible in the public surveys conducted by the Administration of Penal Institutions (further – API) and State Probation Service (further – SPS) in the period of 2015–2017, reflect the results of API and SPS activity (general information about what has been done in the previous period), but not the degree of achieving the aim of re-socialization policy. To evaluate the results of their activity, institutions enforcing criminal punishment have to introduce effective indicators which would provide information about the achievement of the results expected from the re-socialization policy. In future, at drawing up documents on planning punishment enforcement policy, criminal punishment enforcement institutions should be imposed the obligation to reflect in their annual surveys the degree of achieving the planned re-socialization policy results.

Kopsavilkums

Krimināls odu izpildes institūciju rezultatīvie rādītāji

Atslēgvārdi: *kriminālsodu izpildes institūcijas, Ieslodzījuma vietu pārvalde, Valsts probācijas dienests, rezultatīvie rādītāji, darbības rezultāti*

Rezultatīvie rādītāji, kuri ir pieejami Ieslodzījuma vietu pārvaldes (turpmāk – IeVP) un Valsts probācijas dienesta (turpmāk –VPD) 2015.–2017. gada publiskajos pārskatos, atspoguļo IeVP un VPD darbības rezultātus (vispārīgu informāciju par to, kas paveikts iepriekšējā periodā), nevis resocializācijas politikas mērķa sasniegšanas pakāpi. Kriminālsodu izpildes institūcijām, savas darbības rezultātu novērtēšanā, ir nepieciešams ieviest rezultatīvos rādītājus, kuri vārētu sniegt informāciju par resocializācijas politikas sagaidāmo rezultātu izpildi. Turpmāk, veicot soda izpildes politikas plānošanas dokumentu izstrādi, būtu nepieciešams kriminālsodu izpildes institūcijām uzdot pienākumu atspoguļot plānoto resocializācijas politikas rezultātu sasniegšanas pakāpi gada publiskajos pārskatos.

The paper is aimed at studying the issue whether the effective indicators of criminal punishment enforcement institutions in Latvia determine achieving the results of re-socialization policy.

The challenge posed for the state administration is to provide better service (effectiveness) with less means (economy) (6).

In conformity with the new approach to administration, the effectiveness of state administration is determined by setting aims, planning respective activities and assessing what has been achieved, i. e. by determining the degree of achieving the aim. Such an approach implies that at planning and implementing policy the attention is focused on the control of results, and for this purpose a system of results and effective indicators is being created (1).

In order the process of evaluating the accomplished work would have an added value and would achieve the aim, it is vital for the heads of institutions to understand the nature, use and consequences of evaluating their work (3).

To assess the effectiveness of state administration institutions, systems of results and effective indicators adequate for a specific political sphere are designed and introduced. And the sphere of criminal punishment enforcement policy is no exception in this respect. For planning, implementation and supervision of this sphere, too, the systems of results and effective indicators are created and introduced (1).

The first part of article 5 in Latvia's Punishment Enforcement Code (further –LPEC) defines those state institutions which are entitled to enforce criminal punishments imposed as basic punishments: the imprisonment places of the Administration of Penal Institutions at the Ministry of Justice (imprisonment) and the State Probation Service (forced labor). While the third part of article 5 states that "if Court has put a person on probation or on parole before the appointed time, the implementation of such judgment of court is controlled and the convicts are watched by the State Probation Service". Consequently, The Administration of Penal Institutions (API) and the State Probation Service (SPS) are those institutions of enforcing criminal punishment which basically enforces criminal punishment in the Republic of Latvia (2).

When developing systems of API and SPS effective indicators, it is essential to evaluate effective indicators of other countries – how sentence executing institutions in countries with a rich experience of evaluating policy and practice of a judicial system sector have formulated aims and desired policy results, have linked policy results with activity results and resources used for achieving the results (1).

The judicial sector in general, including institutions enforcing criminal punishment, is expected:

1. To influence criminal recidivism and to achieve a reduction in the number of committing recidivistic crimes (aim of reducing recidivism).
2. To ensure the adoption of effective decisions in relation to sanctions and punishment to be imposed on law breakers (aim of penalty imposing quality).
3. To implement a qualitative execution of sentences and rulings (aim of the penalty enforcement quality).
4. To provide that the protection of society is organized in a safe and humane way (aim of the safety and humane approach)
5. To provide that victims and potential victims of transgression of law are protected, that the victims are involved in the process of restoring justice (aim of the protection of victims) (1).

The introduction of internationally comparable indicators allows evaluating the policy of criminal judicial system within the context of other countries. These indicators may indicate the strategic directions for the development of policy and practice of criminality control (1).

The indicator of criminal recidivism has been identified as one of the most significant indicators in other countries, characterizing the quality of work of both API and SPS (5).

The institutions of Latvian criminal judicial system have not been directly given the task to collect, summarize and analyze information about recidivistic criminality. Statistic data relating to criminal recidivism and recidivistic criminality are at the disposal of institutions of some countries. However, this information is fragmentary and insufficiently detailed, which does not allow to comprehensively analyze the work quality of institutions of criminal judicial system, especially that of institutions executing criminal punishment (4).

At present, no official normative act or political document in Latvia provides the methodology for evaluating recidivism, and consequently the information on recidivistic criminality is not available in general. The institutions of enforcing criminal punishment should undertake the initiative of suggesting a discussion on the evaluation of the indicators of recidivism and approach to their analysis, involving in this discussion also courts, prosecutors and the police (4).

The Regulations of the Cabinet of Ministers Nr 580 on "Guidelines on the re-socialization of prisoners for 2015–2020" (further – guidelines on prisoners' re-socialization) state the aim of re-socialization policy as follows: to reduce all the risks of criminal behavior during the imprisonment and after serving one's sentence so that to promote person's reliability and his successful adaption to the society and alignment with the market. The result expected from the re-socialization policy is the improvement of effective indicators of criminal punishment enforcement institutions (7).

Both API and SPS prepare annual public surveys on work they had done previous year, including in them effective indicators.

At analyzing the API public surveys for 2015–2017, we can draw a conclusion that they include structured information about such indicators as: repair work and provision of infra-structure, structure of the institution, implementation of projects, developing normative acts (including also amendments of API internal rules and regulations), financing from the national budget and its spending, the number and placing of prisoners, security of penal institutions, activities carried out for the re-socialization of prisoners, prisoners' health care, administrative work, dealing with petitions, staff, communication with the society, activities planned for the next year.

The SPS public surveys for 2015–2017 include basically structured information about such indicators as: the number and characterization of clients (classification of offence and clients' age), structure of the institution, spending of the state budget means, organizing the enforcement of a criminal sentence (forced labor and forced measures having an educational character for children – public activities), preparing evaluation reports, monitoring (SPS monitoring and electronic monitoring), organization and management of the settlement, SPS consultative councils, research

done and commissioned by SPS, implemented projects, improvement of SPS management and activity, staff, communication with the society, activities planned for the next year.

The structural analysis of indicators has shown that at present all the indicators of the work of criminal punishment enforcement institutions are being analyzed together, without separating informative indicators from effective indicators. During the process of summarizing the indicators, the effective indicators which indicate to work quality of different institutions are not separated from the informative indicators which serve to meet the needs of statistics (5).

We can conclude that API and SPS effective indicators are summarized to obtain general information about what has been done in the previous period. An integrated approach to scheduling and evaluating the results of the activities of institutions has not been defined. The present data analysis process is not oriented towards helping the management to assess work of institutions and decide whether the activity of the institution is to be assessed as good and, consequently, in which spheres improvements would be necessary so that the results of the activity of the institution could be better. (5) Besides, the effective indicators have to indicate to the achievement of re-socialization policy results too. As defined by the prisoners' re-socialization guidelines, the improvement was planned in thirteen effective indicators.

In API and SPS public surveys for 2015–2017, out of the thirteen effective indicators the information can be found only about two indicators: the number of prisoners who are involved in the programs for lessening addiction provided by Addicts Center of Olaine prison and the number of places where the prisoners are kept under safe and appropriate (meeting international requirements) conditions. Information about the rest of eleven effective indicators is not available at all in the API and SPS public surveys for 2012–2017.

In both 2015 and 2017, the guidelines for prisoners' re-socialization scheduled involving 200 prisoners into the programs for lessening addiction provided by the Addicts Center in Olaine prison. In 2016, the program for lessening addiction involved 8 prisoners (4% from the planned amount), in 2017 – 120 prisoners (60% from the planned amount).

The prisoners' re-socialization guidelines scheduled that in 2015 penalty institutions would provide 160 places (2.73% from the number of places in penalty institutions), in 2016 and 2017 360 places (6.15% from the number of places in penalty institutions) would be provided in the penalty institutions where the prisoners would be kept under safe and appropriate (meeting international requirements) conditions. Due to the fact that in 2015 the youth detention center was opened in Cēsis and in 2016 Addicts center started functioning in Olaine prison, the planned indicators were achieved for 100%.

Conclusions

Assessing the results achieved during the period of 2015 2017, we can draw a conclusion that the institutions of criminal punishment enforcement in Latvia do not register many of those effective indicators which have been planned to achieve in guidelines for the re-socialization of prisoners.

At present, the effective indicators available in the API and APS public surveys for 2015 – 2017 sooner reflect the results of API and SPS activity than the degree of achievement the highest aim (the aim of re-socialization policy). From this we can infer that it is impossible to evaluate the performance of every criminal punishment enforcement institution, if API and SPS in general do not carry out registration of effective results planned by the guidelines for prisoners' re-socialization.

To achieve the aim of re-socialization policy, criminal punishment enforcement institutions have to introduce a system of effective indicators for assessing their activity, which could provide the information about the fulfillment of the expected results of re-socialization policy.

In future, when drawing up documents of planning punishment enforcement policy, it would be necessary to impose the obligation on criminal punishment enforcement institutions to reflect the degree of achieving the scheduled re-socialization policy results in public surveys, so that the degree to which the aim of re-socialization policy has been achieved could be established in future.

References

Krimināls odu izpildes rezultatīvie radītāji: citu valstu pieredze. Pieejams (Accessed): https://www.vpd.gov.lv/ptjumskriminlsoduizpildesrezultatvierdtjicituvalstupieredze [skatīts 02.02.2019].
Latvijas Sodu izpildes kodekss. Pieejams (Accessed): https://likumi.lv/doc.php?id=90218 [skatīts 22.01.2019].
Par Ieslodzījuma vietu pārvaldes un Valsts probācijas dienesta nodarbināto amatu kompetencēm, individuālajām īpašībām un spējām. Pieejams (Accessed): http://www.ievp.gov.lv/images/stories/petijums/1d.pdf [skatīts 16.02.2019].
Recidīva rādītāji, to noteikšanas kārtība un piemērošana Valsts probācijas dienesta un Ieslodzījumu vietu pārvaldes darbā. Pieejams (Accessed): http://at.gov.lv/files/uploads/files/docs/2011/rec_pedejais.pdf [skatīts 25.02.2019].
Rezultatīvo rādītāju sistēmas un datu analīzes prakses izpēte Ieslodzījuma vietu pārvaldē un Valsts probācijas dienestā. Pieejams (Accessed): https://www.vpd.gov.lv/ptjumsrezultatvordtjusistmasun datuanalzespraksesizpteieslodzjumavietuprvaldunvalstsprobcijasdienest [skatīts 10.02.2019].
Valsts pārvaldes reformu plāns 2020. Pieejams (Accessed): https://www.mk.gov.lv/sites/default/files/editor/Valsts_kanceleja/reformu_plans_2020_final_26072017.pdf [skatīts 13.02.2019].
24.09.2015. Ministru kabineta rīkojums Nr. 580 "Par Ieslodzīto resocializācijas pamatnostādnēm 2015.–2020. gadam". Pieejams (Accessed): https://likumi.lv/ta/id/276740-par-ieslodzito-resocializacijas-pamatnostadnem-2015-2020-gadam [skatīts 28.01.2019].

THE ANALYSIS OF IMPROVEMENT OF EFQM BUSINESS EXCELLENCE MODEL

Andzela Veselova
University of Latvia, Aspazijas blvd 5, Latvia LV 1050, andzela.veselova@lu.lv

Abstract

The analaysis of improvement of EFQM business excellence model

Key words: *Business excellence, criterion, guidelines, improvement, model*

European Foundation for Quality Management defined the benchmarking guidelines of EFQM business excellence model in early 90-ies of the 20th century, and keep them updating periodically. The excellence model is a structure envisaged for the interpretation of excellence guidelines in performance. In order to facilitate the benefits from the EFQM adoption in the company, the management shall initially ensure the compliance of the business activities to the aforementioned excellence benchmarking guidelines. If the company fails to understand and accept the guidelines entirely, the mastering of the model can be complicated and even pointless for any type of the business. EFQM guidelines serve to analyse the performance of the company and justify the adoption of the model in the level of top management.

The aim of the research is to study the improvement possibilities of the performance quality assessment in Latvian companies, basing on EFQM business excellence model. The hypothesis of the research is following: improving the EFQM business excellence model used in the performance quality assessment in Latvian companies by including important new criteria and integrating them into conventional criteria of the model could increase the competitiveness of the business and drive it towards higher level of excellence. The tasks of the research consist of studying the benchmarking guidelines of European business excellence model; in the result of assessment by Latvian and foreign business excellence and quality experts verify the assumptions included in the EFQM business excellence model with author's improvements, thus approbating and proving he hypothesis; to draw the conclusions and come up with the proposals.

Kopsavilkums

EFQM Biznesa izcilības modeļa pilnveidošanas analīze

Atslēgvārdi: *biznesa izcilība, kritēriji, pilnveidošana, modelis, vadlīnijas*

EFQM Biznesa izcilības modeļa pamatnostādnes izveidoja Eiropas Kvalitātes vadības fonds 20 gadsimta 90. gadu sākumā, un no tā laika tās periodiski atjauno. Izcilības modelis ir struktūra, kas paredzēta Izcilības nostādņu interpretēšanai reālā darbībā. Lai veicinātu ieguvumus no *EFQM* apgūšanas uzņēmumā, vadība sākotnēji nodrošina to, ka uzņēmuma darbība atbilst izcilības pamatnostādnēm. Ja tās uzņēmumā nav pilnībā izprastas un pieņemtas, modeļa apgūšanas process var būt sarežģīts un pat bezmērķīgs neatkarīgi no uzņēmējdarbības veida. *EFQM* nostādnes var tikt izmantotas par pamatu, analizējot uzņēmuma darbību. Tāpat tās nodrošina pamatu saskaņošanai augstākās vadības līmenī.

Pētījuma mērķis ir, pamatojoties uz EFQM Biznesa izcilības modeli, izpētīt Latvijas uzņēmumu darbības kvalitātes novērtēšanas pilnveidošanas iespējas. Pētījuma hipotēze – pilnveidojot Latvijas uzņēmumu darbības kvalitātes vērtēšanas procesā izmantojamo *EFQM* Biznesa izcilības modeli, iekļaujot tajā būtiskus, jaunus kritērijus un integrējot tos ar vispārpieņemtajiem modeļa kritērijiem, var paaugstināt uzņēmējdarbības konkurētspēju un virzīt to uz augstāku izcilības līmeni. Uzdevumi: veikt Eiropas Biznesa Izcilības modeļa pamatnostādņu izpēti; Latvijas un ārvalstu ***Biznesa izcilības un kvalitātes jomas ekspertu*** vērtējuma rezultātā pārbaudīt autora pilnveidotajā EFQM Biznesa izcilības modelī iekļautos pieņēmumus, tādejādi aprobējot, un pierādot izvirzīto hipotēzi; apkopot secinājumus un sniegt priekšlikumus.

Introduction

According to the statements by L. Porter and S. Tanner, The European Foundation for Quality Management (EFQM) business excellence model is a substantial tool of diagnostics providing to the stakeholders learning opportunities aimed to realize the strengths of the company and to discover the possibilities of improvement (Porter, Tanner, 2001). Besides, the aforementioned model can give a company the chance to calculate the difference between the best practice and actual performance (Sampaio, Saraiva, Monteiro, 2012: 183). Due to the model's popularity,

practicableness and wide applicability the author chose it as a basic tool for further research and elaboration of the practical part of her study.

The author pointed out that a company can avoid the waste of resources thorough assessment of initial activities, enabling the possibility to channel these resources to the business operations that would facilitate the implementation of business excellence guidelines.

The aim of the research is to study the improvement possibilities of the performance quality assessment in Latvian companies, basing on EFQM business excellence model (BEM). The hypothesis of the research is following: improving the EFQM BEM used in the performance quality assessment in Latvian companies by including important new criteria and integrating them into conventional criteria of the model could increase the competitiveness of the business and drive it towards higher level of excellence. The tasks of the research consist of studying the benchmarking guidelines of European BEM; in the result of assessment by Latvian and foreign business excellence and quality experts verify the assumptions included in the EFQM BEM with author's improvements, thus approbating and proving the hypothesis; to draw the conclusions and come up with the proposals. The methods applied in research are analysis of literature and a survey of inhabitants (questionnaire).

Discussion

The EFQM BEM is based on a set of European values, first expressed in the European Convention on Human Rights (1953) and the European Social Charter (revised in 1996). This treaty is ratified by the 47 member states of the Council of Europe, and the principles are incorporated into national legislation. The Fundamental Concepts of Excellence build on the foundation of these basic Human Rights, assuming they are universally applied. Recognising the role business can play in supporting the broader goals of the United Nations (UN), the UN Global Compact (2000) was established. This initiative encourages organisations to actively apply these values, set out as principles for sustainable and socially responsible business, across their global operations. Whilst a number of these principles are explicitly covered in the EFQM BEM, a number are implicit, including those relating to human rights, corruption, bribery and forced labour, as these are already a legal requirement within Europe. EFQM BEM can see in Fig. 1.

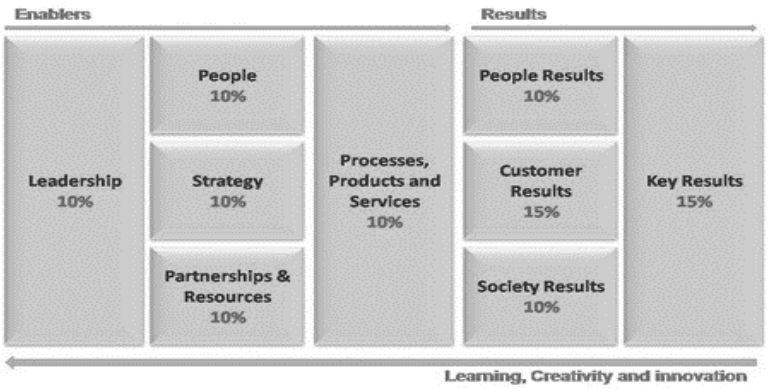


Figure 1. ***EFQM* Business excellence model**
(created by the author according to Heras-Saizarbitoria, Marimon, Casadesús 2012)

The Model has nine criteria (*Leadership, People, Strategy, Partnership and Resources, Processes, Products and Services, People results, Customer results, Society results, Key results*) and 32 sub-criteria. Model has two parts – Enablers and Results. Total core 1000 points – 500 as Enablers and 500 as Results part.

Model based on Fundamental Concepts of Excellence: (Sampaio, Saraiva, Monteiro 2012)

Fundamental Concepts of Excellence are:

1. Adding Value for Customers. Excellent organisations consistently add value for customers by understanding, anticipating and fulfilling needs, expectations and opportunities.
2. Creating a Sustainable Future. Excellent organisations have a positive impact on the world around them by enhancing their performance whilst simultaneously advancing the economic, environmental and social conditions within the communities they touch.
3. Developing Organisational Capability. Excellent organisations enhance their capabilities by effectively managing change within and beyond the organisational boundaries.
4. Harnessing Creativity & Innovation. Excellent organisations generate increased value and levels of performance through continual improvement and systematic innovation by harnessing the creativity of their stakeholders.
5. Leading with Vision, Inspiration & Integrity. Excellent organisations have leaders who shape the future and make it happen, acting as role models for its values and ethics.
6. Managing with Agility. Excellent organisations are widely recognised for their ability to identify and respond effectively and efficiently to opportunities and threats.
7. Succeeding throughthe Talent of People. Excellent organisations value their people and create a culture of empowerment for the achievement of both organisational and personal goals.
8. Sustaining Outstanding Results. Excellent organisations achieve sustained outstanding results that meet both the short and long term needs of all their stakeholders, within the context of their operating environment.

2015 brought significant changes to the ISO 9000 standards. (2015) Subsequently, the author considers important to take into account these changes upon identification of the assumptions to be included into the improved EFQM BEM, therefore a general overview of standard sections and comments on necessity of inclusion of other particular issues and their usefulness in context of the improved EFQM BEM are provided.

Risk assessment-based thinking allows the organization to diagnose factors that could create derogations from its processes and the forecasted results of the quality management system, apply preventively the management tools and methods to reduce negative impacts and take the new opportunities, which is essential for a company striving for business excellence.

Risk-assessment based analysis is important in order to achieve an efficient quality management system. The concept of risk-based thinking has been indirectly included in the previous issues of the international standard ISO 9001 (2015), i.e. in application of preventive measures aimed to dissolve possible incompliances, analysing of any emerged incompliances, carrying out the activities proportional to the impact of incompliance in order to prevent the repetition of inadequacy (Hunt, Dominguez, Williams 2016). In order to comply with the requirements of the aforementioned international standard, the organization must plan and implement the activities that include risks and opportunities (Abuhav 2017). Risk consists of the impact of incertitude, which can be positive or negative. Risk-based positive deviation can give the opportunity, but not all positive impacts of risk will. Therefore, thinking of companies striving for excellence from the point of view of a successful business, risk assessment must be included in EFQM BEM (Peckford 2016).

The new version of ISO 9001 (2015) includes the explanation of company's context and the respective requirement to comply with it. Such a requirement lacked in the previous version of ISO 9001(ISO 2008) – an important aspect from the business standpoint, since each company operates in a determinate environment and is subject to different environmental factors (such as political, economic, demographic and so on), therefore the disregarding their impact will affect negatively the competitiveness of the company. Section 4 of ISO 9001 (2015) prescribes the following: the Organization shall state the external and internal circumstances related to the intentions and strategic development of the company and provide an impact to its ability to achieve the expected results of quality management system; the Organization shall monitor and review the information on its external and internal circumstances, which would definitely help in moving forward to business excellence. (Peckford 2016) Besides, ISO 9001 (2015) keeps several sections of the previous version of the standard, such as resource planning, ensuring production and services and similar, indicating that not all sections must be automatically replaced by new ones. Successful issues that have been included in the standard previously keep modifying over the time, mainly in

relation to terminology. The new version pays more attention to information analysis. The examination of the standard leads the author to conclude that sections 9 and 10 are dedicated particularly to a variety of data studies and analysis, which can serve for fact-based decision-making. In comparison to the previous version of the standard, the analysis of information and data in the new version is more detailed. The author believes that a comprehensive information analysis one of the most important aspects to be included in the EFQM Model and put among the main criteria, since it is the base of successful business. Information analysis can include the data on the external environment and the results can be applied in order to increase the competitiveness of the company.

Basing on guidelines of EFQM BEM and standards sections of ISO 9001 (2015), the author suggest to add to the criteria of leadership and strategy *"The principles of Sustainable Development and Risk Assessment"*. It means that nowadays the business should definitely take into account the sustainable development, taking care of the environment, work environment and society in general, which is possible only under guidance of a strong leader and well-elaborated business strategy (Hoyle 2017). Upon elaboration of the strategy risk assessment shall be considered, i.e. the risks related to stakeholders, since it is the only way for the company to protect the business from unpleasant situations emerged due to the breach of the contract or in case of fundamental changes in customers' behaviour. The criterion *"Human Resources"* should include and emphasize equal rights of all employees, ethical conducts and sustainability-oriented thinking. All of aforementioned conditions comply with the basic principles of the contemporary business and taken into account by the largest part of the companies caring about their public image. In addition, an efficient communication system is what matters, since it would ensure precise and correct decision-making. The author suggests to add to the criterion *"Partnerships and Resources"* the compliance with long-term requirement and risk assessment, which would considerably increase the competitiveness of the company regardless its type of business activities and help to demonstrate the excellence in performance. The use of cutting-edge technologies could help to implement the general business strategy. Knowledge and information management within a company can help the management team and executives in taking the right strategic and tactic decisions aimed to increase the competitiveness of the company in short and long term.

As for the criterion *"Products, Services and Processes"*, it should include sustainable development. It means, that organizing its business the company must use not only environmentally friendly technologies, but also consider the broadening the range of environment-friendly products (Robitaille, 2015:27). The sub-criterion *"Social Perception"* must be supplemented by the improvement of company's image, adding the sustainability component (Cianfrani, West 2015). The efficiency indexes of this criterion should include the solutions of the environmental problems,

thus pointing at the fact, that environment effects are important to the company striving for excellence in business performance (Cochran 2015). And last, but not least criterion suggested by the author is *"Business Sustainability"* related to the impact of the projects related to natural, working and social environment, which is an integral and significant part of business excellence (Peckford 2016: 68).

The assessment of the existing criteria of different business excellence models and changes introduced in standard ISO 9001 (2015), considering the guidelines of BEM, during the research the author suggests several assumptions for approbation that could essentially improve the EFQM BEM to ensure more effective implementation. These assumptions include *Internal and External Suppliers; Labour Safety and Healthcare; Risk Assessment; Suppliers; Business Excellence; Improvement; External Environment of the Company and Its Impact; Comprehensive Information Analysis and Risk Assessment; Business Sustainability*.

In order to prove the hypothesis, in June-July 2018 the author carried out the survey of 20 experts – 8 experts from Latvia and 12 experts from abroad with proper experience in assessment of EFQM BEM. All persons included in experts' list are appreciated Latvian and foreign EFQM and quality management specialists; therefore, their participation is of high value. Thus, for instance, among Latvian experts in the survey took part *Adela Vitkovska*, whose personal qualification is EFQM internal assessor, which means a certification with right to participate in assessment of EFQM BEM implementation process as full-scale evaluator. Another expert was Vanda Novokšonova, member of the Board of Eurofortis, a licensed EFQM IAT coach and the assessor of EQFM Excellence award. One more opinion was provided by Inese Didže, director of Dobele State Gymnasium, representative of GOA-Solutions (Expert of EFQM BEM). Latvian experts shared their experience and exchanged opinion with Andriano Ruchini, a qualified assessor of EQFM BEM from Italy, Dimitra Bartozoulianou from Greece, who represented EFQM organization and works at Certification department. The author used rating scale 0–10, where 0 – criterion is not important for the inclusion in EFQM Model, 10 – criterion must be included in EFQM Model.

Experts' evaluations regarding the importance of EFQM Model criteria, sub-criteria and particular aspects in the common EFQM Model are:

- **Criterion 1:** ***Leadership*** (proportion of the criterion in model 10): Arithmetic mean – 9,6; Mode – 10, Median – 10; Standard deviation – 0,3; Significance of the criterion in the model – 9,7.
    - Sub-criterion 1.a: *Leaders develop the mission, vision, values and ethics and act as role models* (proportion of the sub-criterion in criterion 15.2). Arithmetic mean – 9,3; Mode – 9, Median – 10; Standard deviation – 0,5; Significance of the criterion in the model – 9,4.

- Sub-criterion 1.b: *Leaders define, monitor, review and drive the improvement of the organisation's management system and performance* (proportion of the sub-criterion in criterion 13.5): Arithmetic mean – 8; Mode – 8, Median – 8; Standard deviation – 0,4; Significance of the criterion in the model – 8,3.
- Sub-criterion 1.c: *Management encourages the creation, implementation and continuous improvement of efficient management system basing on principles of sustainable development and risk assessment and taking into consideration both short and long term goals* (proportion of the sub-criterion in criterion 14.6): Arithmetic mean – 9,6; Mode – 10, Median – 10; Standard deviation – 0,3; Significance of the criterion in the model – 9,7.
- Sub-criterion 1.d: *Leaders engage with external stakeholders* (proportion of the sub-criterion in criterion 13.8): Arithmetic mean – 8,8; Mode – 9, Median – 9; Standard deviation – 1,0; Significance of the criterion in the model – 8,5.
- Sub-criterion 1.e: *Management sustains the culture of excellence among employees basing on sustainable development* (proportion of the sub-criterion in criterion 15.3): Arithmetic mean – 9,5; Mode – 9, Median – 9; Standard deviation – 1,6; Significance of the criterion in the model – 9,5.
- Sub-criterion 1.f: *Leaders ensure that the organization is flexible and manage change effectively* (proportion of the sub-criterion in criterion 12.9): Arithmetic mean – 8,3; Mode – 8, Median – 8; Standard deviation – 1,7; Significance of the criterion in the model – 8,0.
- Sub-criterion 1.g: *Management identifies the necessary changes to the company and leads their implementation basing on principles of sustainable development and risk assessment in long term* (proportion of the sub-criterion in criterion 14.6): Arithmetic mean – 8,3; Mode – 8, Median – 8; Standard deviation – 1,9; Significance of the criterion in the model – 9,0.

- **Criterion 2: *Strategy*** (proportion of the criterion in model 9.5): Arithmetic mean – 9; Mode – 9, Median – 10; Standard deviation – 0,1; Significance of the criterion in the model – 9,2.
  - Sub-criterion 2.a: *Strategy is based on understanding the needs & expectations of both stakeholders and the external environment* (proportion of the sub-criterion in criterion 16.8): Arithmetic mean – 9,3; Mode – 9, Median – 10; Standard deviation – 1,3; Significance of the criterion in the model – 9,1.
  - Sub-criterion 2.b: *Strategy bases on understanding of needs and wishes of the interested stakeholders and external environmental requirements in terms of sustainable development as well as on risk assessment* (proportion of the sub-criterion in criterion

17.3): Arithmetic mean – 9,0; Mode – 8, Median – 9; Standard deviation – 1,2; Significance of the criterion in the model – 9,4.

- Sub-criterion 2.c: *Strategy bases on assessment of current situation and potential opportunities* (proportion of the sub-criterion in criterion 16.2): Arithmetic mean – 8,5; Mode – 8,5 Median – 9; Standard deviation – 1,4; Significance of the criterion in the model – 8,8.
- Sub-criterion 2.d: *Strategy bases on assessment of current situation and sustainable development* (proportion of the sub-criterion in criterion 15.5): Arithmetic mean – 8; Mode – 8; Median – 9; Standard deviation – 1,2; Significance of the criterion in the model – 8,4.
- Sub-criterion 2.e: *Strategy and the respective supporting activities are elaborated, reviewed and updated according to the principles of sustainable development and risk assessment* (proportion of the sub-criterion in criterion 17.7): Arithmetic mean – 9,5; Mode – 9; Median – 9; Standard deviation – 1,5; Significance of the criterion in the model – 9,6.
- Sub-criterion 2.f: *Strategy and supporting policies are communicated, implemented and monitored* (proportion of the sub-criterion in criterion 16.6): Arithmetic mean – 8,8; Mode – 9; Median – 8; Standard deviation – 1,1; Significance of the criterion in the model – 9,0.

- **Criterion 3: *People*** (proportion of the criterion in model 10): Arithmetic mean – 9,5; Mode – 10; Median – 9; Standard deviation – 1,1; Significance of the criterion in the model – 9,7.
  - Sub-criterion 3.a: *People plans support the organization's strategy* (proportion of the sub-criterion in criterion 14.2): Arithmetic mean – 8,3; Mode – 8; Median – 8; Standard deviation – 1,0; Significance of the criterion in the model – 8,7.
  - Sub-criterion 3.b: *Staff employment bases on equal opportunities of the employees, ethic conducts and sustainable thinking* (proportion of the sub-criterion in criterion 14.1): Arithmetic mean – 8,0; Mode – 8; Median – 8; Standard deviation – 1,8; Significance of the criterion in the model – 8,6.
  - Sub-criterion 3.c: *Inclusion of employees with special needs in work environment* (proportion of the sub-criterion in criterion 12.9): Arithmetic mean – 7,5; Mode – 7; Median – 7,5; Standard deviation – 0,9; Significance of the criterion in the model – 7,9.
  - Sub-criterion 3.d: *People's knowledge and capabilities are developed* (proportion of the sub-criterion in criterion 14.3): Arithmetic mean – 9,8; Mode – 9; Median – 9; Standard deviation – 0,7; Significance of the criterion in the model – 8,7.

- Sub-criterion 3.e: *People are aligned, involved and empowered* (proportion of the sub-criterion in criterion 13.8): Arithmetic mean – 8,0; Mode – 7; Median – 7,5; Standard deviation – 1,3; Significance of the criterion in the model – 8,4.
- Sub-criterion. 3.f: *Efficient employees' communication system and reduction of the related risks* (proportion of the sub-criterion in criterion 15.7): Arithmetic mean – 9,8; Mode – 10; Median – 9; Standard deviation – 0,3; Significance of the criterion in the model – 9,6.
- Sub-criterion 3.g: *People are rewarded, recognised and cared for* (proportion of the sub-criterion in criterion 14.9): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 1,0; Significance of the criterion in the model – 9,1.

- **Criterion 4: *Partnerships & Resources*** (proportion of the criterion in model 9.5): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 0,6; Significance of the criterion in the model – 9,2.
  - Sub-criterion 4.a: *Partners and suppliers are managed for sustainable benefit* (proportion of the sub-criterion in criterion 22.1): Arithmetic mean – 9,8; Mode – 9; Median – 10; Standard deviation – 0,5; Significance of the criterion in the model – 9,7.
  - Sub-criterion 4.b: *Finances are managed to secure sustained success* (proportion of the sub-criterion in criterion 18.5): Arithmetic mean – 8,3; Mode – 8; Median – 8; Standard deviation – 1,1; Significance of the criterion in the model – 8,1.
  - Sub-criterion 4.c: *Buildings, equipment, materials and natural resources are managed in a sustainable way* (proportion of the sub-criterion in criterion 19.9): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 1,3; Significance of the criterion in the model – 8,7.
  - Sub-criterion 4.d: *Management applies technologies to support the strategy implementation in long term* (proportion of the sub-criterion in criterion 20.1): Arithmetic mean – 9,0; Mode – 8; Median – 9; Standard deviation – 1,3; Significance of the criterion in the model – 8,8.
  - Sub-criterion 4.e: *Managed information and knowledge, assessment of the related risks in order to support the adoption of efficient decisions and increase the competitiveness of the company both in short and long term* (proportion of the sub-criterion in criterion 21.2): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 1,3; Significance of the criterion in the model – 9,3.

- **Criterion 5:** ***Processes, Products & Services*** (proportion of the criterion in model 10): Arithmetic mean – 9,5; Mode – 9; Median – 9,5; Standard deviation – 0,3; Significance of the criterion in the model – 9,7.
  - Sub-criterion 5.a: *Elaboration and management of processes in order to increase their value according to the needs of interested stakeholders, assessment of possible risks* (proportion of the sub-criterion in criterion 19.5): Arithmetic mean – 8,5; Mode – 9; Median – 8,5; Standard deviation – 0,6; Significance of the criterion in the model – 8,9.
  - Sub-criterion 5.b: *Development of products and services in order to increase their value according to the customers' needs in long term* (proportion of the sub-criterion 20.6): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 1,0; Significance of the criterion in the model – 9,4.
  - Sub-criterion 5.c: *Products and services are effectively promoted and marketed* (proportion of the sub-criterion in criterion 18.2): Arithmetic mean – 8,5; Mode – 8; Median – 8,5; Standard deviation – 1,4; Significance of the criterion in the model – 8,3.
  - Sub-criterion 5.d: *Products and services are elaborated, supplied and lead according to the principles of sustainable development* (proportion of the sub-criterion in criterion 20.6): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 1,0; Significance of the criterion in the model – 9,4.
  - Sub-criterion 5.e: *Company improves relationship with customers basing on principles of sustainable development* (proportion of the sub-criterion in criterion 21.2): Arithmetic mean – 9,3; Mode – 9; Median – 9; Standard deviation – 0,7; Significance of the criterion in the model – 9,6.
- **Criterion 6:** ***Customer Results*** (proportion of the sub-criterion in criterion – 10): Arithmetic mean – 10,0; Mode – 10; Median – 10; Standard deviation – 0,1; Significance of the criterion in the model – 10.
  - Sub-criterion 6.a: *Perceptions (reputation and image, product and service value, product and service delivery, customer service, relationship and support, customer loyalty and engagement)* (proportion of the sub-criterion in criterion 53.3): Arithmetic mean – 9,8; Mode – 9;10; Median – 10; Standard deviation – 0,4; Significance of the criterion in the model – 9,8.
  - Sub-criterion 6.b: *Performance Indicators (product and service delivery, customer service, relationships and support, complaints handling, involvement of customers and partners in the design of products, processes, etc.)* (proportion of the sub-criterion in criterion 46.7): Arithmetic mean – 8,8; Mode – 9; Median – 9; Standard deviation – 0,9; Significance of the criterion in the model – 8,6.

- **Criterion 7: *People Results*** (proportion of the sub-criterion in criterion 10): Arithmetic mean – 10,0; Mode – 10; Median – 10; Standard deviation – 0,1; Significance of the criterion in the model – 10.
  - Sub-criterion 7.a: *Perceptions (satisfaction, involvement and engagement, motivation and empowerment, leadership and management, competency and performance management, training and career development, effective communications, working conditions* (proportion of the sub-criterion in criterion 53.5): Arithmetic mean – 9,8; Mode – 9; Median – 10; Standard deviation – 0,3; Significance of the criterion in the model – 9,9.
  - Sub-criterion 7.b: *Performance Indicators (involvement and engagement activities, competency and performance management activities, leadership performance, training and career development activities, internal communications* (proportion of the sub-criterion in criterion 46.5): Arithmetic mean – 8,8; Mode – 8;9; Median – 9; Standard deviation – 0,3; Significance of the criterion in the model – 8,6.
- **Criterion 8: *Society Results*** (proportion of the criterion in model 10): Arithmetic mean – 9,5; Mode – 9; Median – 9,5; Standard deviation – 0,2; Significance of the criterion in the model – 9,7.
  - Sub-criterion 8.a: *Perceptions (image of the organization – as employer, responsiveness in contacts; performance of organization as a responsible member of the society – ethical conducts; role of the organization in the life of the local community – involvement in education and training – support in sports and recreation activities, accidents and health risks, noises and smells, image regarding the sustainability assurance* (proportion of the sub-criterion in criterion 53.6): Arithmetic mean – 8,8; Mode – 9; Median – 9; Standard deviation – 0,8; Significance of the criterion in the model – 9,0.
  - Sub-criterion 8.b: *Efficiency indexes (cooperation with authorities in such issues as certification, import/export, new products, solutions of environmental problems* (proportion of the sub-criterion in criterion 46.4): Arithmetic mean – 7,5; Mode – 8; Median – 8; Standard deviation – 1,1; Significance of the criterion in the model – 7,8.
- **Criterion 9: *Business Results*** (proportion of the criterion in model 10): Arithmetic mean – 9,8; Mode – 10; Median – 9,5; Standard deviation – 0,6; Significance of the criterion in the model – 9,7.
  - Sub-criterion 9.a: *Business Outcomes (financial outcomes, business stakeholder perceptions, performance against budget, volume of key products or services delivered, key process outcomes)* (proportion of the sub-criterion in criterion 51.6): Arithmetic

mean – 9,5; Mode – 9; Median – 9; Standard deviation – 0,5; Significance of the criterion in the model – 9,8.

- Sub-criterion 9.b: *Business Performance Indicators (financial indicators, project costs, key process performance indicators, partner and supplier performance, technology, information and knowledge)* (proportion of the sub-criterion in criterion 48.4): Arithmetic mean – 9,3; Mode – 9; Median – 9; Standard deviation – 0,2; Significance of the criterion in the model – 9,2.

- **Criterion 10:** ***External Environment of the Company and Its Impact*** (proportion of the aspect in criterion 90): Arithmetic mean – 9,0; Mode – 9; Median – 9; Standard deviation – 0,9; Significance of the criterion in the model – 9,3.
- **Criterion 11:** ***Comprehensive Information Analysis and Risk Assessment*** (proportion of the aspect in model 90): Arithmetic mean – 8,5; Mode – 9; Median – 9; Standard deviation – 0,3; Significance of the criterion in the model – 8,8.
- **Criterion 12:** ***Business Excellence*** (proportion of the aspect in model 100): Arithmetic mean – 9,7; Mode – 10; Median – 9,5; Standard deviation – 0,2; Significance of the criterion in the model – 9,9.
- **Criterion 13:** ***Business Sustainability*** (proportion of the criterion in model 100): Arithmetic mean – 9,6; Mode – 10; Median – 10; Standard deviation – 0,2; Significance of the criterion in the model – 9,7.
    - Sub-criterion 13.a. ***Indexes of impact of the projects related to natural, working and social environment*** **(proportion of the sub-criterion in criterion 100):** Arithmetic mean – 9,5; Mode – 9; Median – 9; Standard deviation – 1,0; Significance of the criterion in the model – 9,6.

To summarize the opinion of the experts, the author used Google Forms questionnaire aimed to find out the importance of different criteria, sub-criteria and particular aspects of EFQM BEM offered by the author in the context of common EFQM model. Basing on evaluations provided the author elaborated an improved EFQM BEM. The author applied the rating scale from 1 to 10, where 1 meant that the criterion, sub-criterion or aspect was not qualifying for inclusion in EFQM Model, but 10 meant that the criterion, sub-criterion or aspect must be included in the Model. In addition to the importance of criteria and sub-criteria in the common model, the experts had to assess the "weight" of each of the indicated criteria, sub-criteria and aspects. The author concludes that in total the importance and "weight" have been assessed similarly due to the experience and perception of the experts regarding the significance of the criterion, its impact to the competitiveness or role in excellence of the company. Different personal experience could generate some particular differences in ratings. At the end of the questionnaire, the experts had the

opportunity to express their opinion regarding the criteria, sub-criteria and aspects that should be included in EFQM BEM providing the "weight" of the elements in the Model, respectively. Due to the fact, that some aspects, such as *"Internal and external suppliers", "Risk assessment"* and *"Improvement"* scored less than 5 points, the author excluded them from the approbated Model.

The author pointed out that the new EFQM BEM should include such important aspects as the external environment and its impact on the company, comprehensive information analysis and risk assessment, and business excellence. Experts participating in the approbation of the model named all aforementioned criteria important. Thus, the high importance of the improvements suggested by the author and approved by the experts in the context of common EFQM BEM are proved, concluding, that these criteria should be included in the Model.

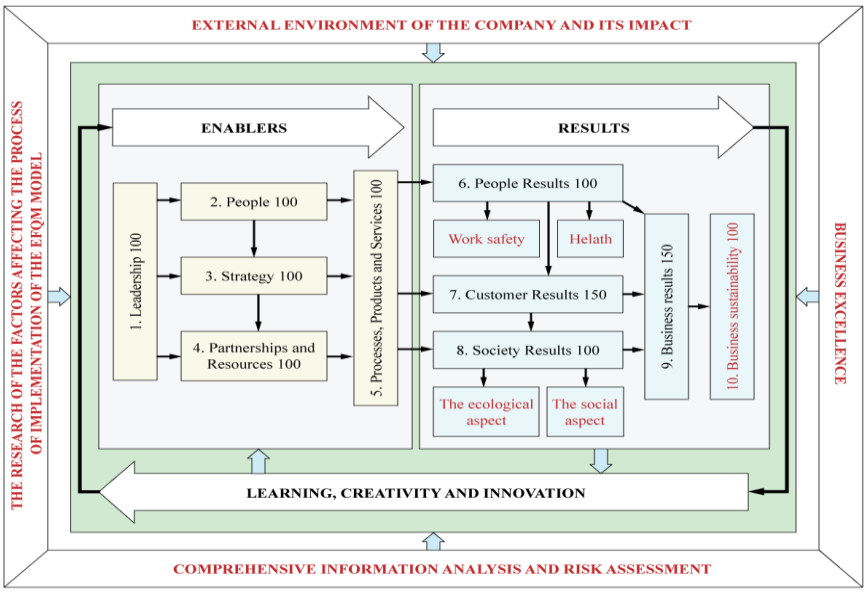


Figure. 2. **Improved EFQM BEM**
(created by the author according to the experts' survey data collected in 2018 (n=20) and standard ISO 9001:2015)

Rating scale 1–10, where one – the criterion is not important for the inclusion in EFWM Model, 10 – criterion must be included in EFQM Model

The author believes that the Model shall keep the conceptually adopted principle of the existing Model regarding the sequence: approach – results, then training and improvements, but the implementation mechanism needs changes, including in the model some particular aspects and a new criterion – *"Business sustainability"*, which is directly related to business excellence.

Before introduction of the EFQM BEM, the management of the company must assess the stimulating and impeding factors in order to reduce the possible obstacles to the implementation of the Model and encourage the competitiveness by maximizing the influence of the stimulating factors.

The aspect of comprehensive information analysis and risk assessment interacts with the implementation of every criterion since the quality of the decision-making depends on analysis (interpretation) and scope of available and necessary information in order to define strengths and weaknesses of the company, change strategy, introduce improvements, reduce possible business risks etc. Dealing with risks and opportunities is the first step to efficient quality management system in order to improve the results and prevent negative impacts. The opportunities can emerge in the situation that is favourable to achieve the expected results, for instance, in circumstances allowing the organization to attract customers, elaborate new products and services, reduce losses and improve the productivity. The activities for taking opportunities may include the consideration of the related risks.

In the result of the interaction of the criteria, the company can achieve a certain level of excellence, which can be raised periodically after assessment of previous achievements, namely, the level of compliance with the current criteria, while setting higher goals in order to increase the competitiveness. The adding of "social" and "ecologic" aspect to the 8th criterion *"Social Results"* and *"Labour safety"* and *"Healthcare"* to the 6th criterion *"Results of Employees"* could better visualize the conditions to be complied with in the framework of sub-criterion.

Conclusions

1. Author's hypothesis – the improvement of the EFQM BEM to be applied in the quality assessment process in Latvian companies, including new criteria and integrating them with the conventional criteria of the model, can give the opportunity to increase the business competitiveness and drive it towards higher level of excellence – is proved by the data approbation of the qualitative research carried out by the author.

To responsible persons of European Foundation for Quality Management:

2. In order to reflect in EFQM BEM the topical issues of the contemporary business practice related to companies' striving for excellence and according to the improvements of the approbated Model approved by Latvian and foreign experts, the author suggests to include in the EFQM BEM such aspects as *"External environment and its impact to the company", "Comprehensive information analysis and risk assessment", "Labour safety and healthcare"* as well as a particular criterion *"Business Sustainability"* (with corresponding sub-criterion *"Assessment of the indexes of the impact from projects related to natural, working and social environment"*). All new criteria have been appreciated by Latvian and foreign experts.
3. In order to comply in due quality with the guidelines of EFQM BEM aimed to achieve short- and long-term goals, which is important for the implementation of company's strategy and risk identification, the sub-criteria of the criterion *"Leadership"* should be supplemented by the indication about sustainable development in following wording: The management encourages

the creation, implementation and continuous improvement of efficient management system basing on principles of sustainable development and risk assessment and taking into consideration both short and long term goals. The management strengthen the culture of excellence among the employees of the company basing on sustainable development. The management identifies the necessary changes in the company and leads their implementation basing on principles of sustainable development and risk assessment in long term.

4. In order to guarantee the successful the company's activities in long term in the constantly changing business environment, the author suggest to amend the sub-criteria of the criteria *"Strategy"* adding the indication about necessity of sustainable development and risk assessment in following wordings: Strategy bases on understanding of needs and wishes of the interested stakeholders and external environmental requirements in terms of *sustainable development* as well as on *risk assessment.* The strategy is based on an assessment of the current situation and potential opportunities. The strategy is based on an assessment of the current situation and potential risks of sustainable development. Strategy and supporting activities are elaborated, reviewed and updated according to the principles of sustainable development and risk assessment.
5. In order to improve the human resource issues in long term, reduce the amount of incorrect or not precise information, the criterion *"Human Resources"* should include the following ground sub-criteria with indication on guaranteed equality, sustainable thinking as well as risk reduction in communication with staff in following wordings: Staff employment bases on equal opportunities of the employees, ethic conducts and sustainable thinking. Social inclusion of the employees with special needs in working environment. Ensures efficient employees' communication system. Reduction of the related risks.
6. To make the company implement its strategy in long term and reduce possible risks related to the insufficient knowledge and information for the decision-making, the sub-criteria of the criterion *"Partnerships and Resources"* are supplemented with the indication about risk reduction possibilities in following wordings: Use of technologies aimed to support the implementation of the strategy in long term. Management of information and knowledge, assessment of the related risks in order to support an efficient decision-making and increase the competitiveness of the company in short- and long term.
7. In order to comply precisely with the needs and wishes of all interests stakeholders as well as in order to ensure the company's operations basing on principles of sustainable development, the sub-criteria of the criterion *"Products, Services, Processes"* are supplemented with the indication about risk assessment: Elaborates and leads the processes in order to ensure the continuously increasing value according to the needs of the stakeholders, assesses the possible

risks. Develops products and services in order to ensure constantly increasing value according to the customers' needs in long term. The products and services are elaborated, supplied and managed according to the principles of sustainable development. Manages and improves customer relations basing on principles of sustainable development. The aforementioned will help to strive to excellence, while taking into consideration the ecology and interests of the society.

8. In order to strengthen the positive image of the company in the society the sub-criterion of the criterion *"Social Results"* is supplemented with the indication on image in the context of sustainability, making long-term contributions.
9. To ensure stronger visual impression regarding the dual meaning in the criteria *"Employees' Results"* and *"Social Results"* in the graphic image of EFQM Model, the emphasis is put on labour safety and healthcare in *"Employees' Results"* and ecological and social importance in *"Social Results"*. These specifications will provide clearer vision to the users regarding the issues included in the sub-criteria.

References

Abuhav, I. (2017). *ISO 9001:2015 – A Complete Guide to Quality Management Systems*. CRC Press.

Cianfrani, C. A., West J., E. (2015). *ISO 9001:2015 Explained*, 4th Ed. ASQ Quality Press.

Cochran, C. (2015). *ISO 9001:2015 in Plain English*. Paton Professional.

Ghicajanu, M., Irimie, S., Rares, L. M. (2015). Criteria for Excellence in Business. In *Procedia Economics and Finance* 23, pp. 445–452.

Heras-Saizarbitoria, I., Marimon, F., Casadesús, M. (2012). An empirical study of the relationships within the categories of the EFQM model. *Total Quality Management & Business Excellence*. *Total Quality Management*. 23(5), p. 526, pp. 523–540.

Hoyle, D. (2017). *ISO 9000 Quality Systems Handbook-updated for the ISO 9001:2015 standard*. Routledge.

Hunt, L., Dominguez, J., Williams, C. (2016). *The ISO 9001:2015 Handbook*. Paton Professional.

Increasing the Quality of an Organization's Outputs 7th Ed.

ISO 9000:2015. *Quality Management Systems: Fundamentals and vocabulary.* (Accessed) http://www.seatone.cn/news/upfile/7-ISO%209000-2015%E5%9F%BA%E7%A1%80%E4%B8%8E%E6%9C%AF%E8%AF%AD(%E8%8B%B1%E6%96%87%E7%89%88).pdf [03.03.2019].

ISO 9001:2015. *International Organization for Standardization.* Quality management systems – Requirements 5th Ed. (Accessed) https://sertifiointi.com/wp-content/uploads/2014/06/ISO-9001-2015-Draft.pdf [03.03.2019].

Peckford, G.S. (2016). *Mastering ISO 9001:2015*: *A Step-By-Step Guide to the World's Most Popular Management Standard.*

Porter, L., Tanner, S. (2001). Assessing Business Excellence. A Guide to Business Excellence and Self-Assessment, Elsevier Butterworth-Heinemann, Oxford.

Quality Management Systems. *Requirements (ISO 9001:2015).* CEN-CENELEC Management centre: Brussels.

Robitaille, D. (2015). *The (almost) Painless ISO 9001:2015 transition*. Paton Professional.

Sampaio, P., Saraiva, P., Monteiro, A. (2012). A comparison and usage overview of business excellence models. *The TQM Journal*, 24 (2), pp. 36–93.

SERVICE QUALITY IN THE PUBLIC SECTOR OF LATVIA

Iveta Katelo, Irēna Kokina, Vitālijs Raščevskis
Daugavpils University, Parādes street 1, Daugavpils, Latvia, iveta.katelo@du.lv

Abstract

Service quality in the public sector of Latvia

Key words: *service quality, SERVQUAL, customers expectations, public sector*

Introduction:. The service industry plays an increasingly important role in the economy of many countries. On average, each eleventh Latvian resident (8.8%) works in the public sector – for state institutions or institutions of local government, for capital societies owned by above mentioned institutions, or in other institutions related to the State, or to local governments. **Aim:** The aims of the study was to characterize the concept of service quality and assessment methods; collecting foreign experience in evaluating of service quality; practically check the method in Latvian state institutions; analyze the results of the examination and draw conclusions about the possibilities of using the method. **Matherial and methods:** The SERVQUAL instrument was adopted to measure the quality of customer service as it demonstrated the "gap" between the customers' expectations and the perceptions. The Statistical Package for the Social Sciences version 22.0 was employed to analyze the data. **Results:** The research was based on a selection of customers of public services, 300 people in total in Latvian regions, in 2017–2018. The research was carried out at the state institutions of Latvia regions which provide services of social assistance, services of employment promotion; implement the state policy of environment protection; provide services of legal assistance. **Conclusion:** The study tried to present the findings of assessing the expectations and perceptions of service quality for customers in a public service context in Latvia. The service quality gaps indicated that the public service department was failing to meet the expectations of their customers. The results of this analysis provide evidence that service provider gaps must be reduced. An important step in minimizing service provider gaps is regularly measure customer expectations and communicate these expectations.

Kopsavilkums

Pakalpojumu kvalitāte Latvijas valsts sektora iestādēs

Atslēgvārdi: *pakalpojumu kvalitāte, SERVQUAL, klientu vēlmes, publiskais sektors*

Pakalpojumu nozarei ir arvien lielāka nozīme daudzu valstu ekonomikā. Vidēji katrs vienpadsmitais Latvijas iedzīvotājs (8,8%) strādā publiskajā sektorā – valsts iestādēs vai pašvaldību institūcijās, kapitāla sabiedrībās, vai citās iestādēs, kas saistītas ar valsti, vai pašvaldībām. Pētījuma mērķis bija raksturot pakalpojumu kvalitātes un novērtēšanas metodes; ārvalstu pieredzes apkopošana pakalpojumu kvalitātes novērtēšanā; metodes pilnveidošana un praktiskā pārbaude Latvijas valsts iestādēs; pārbaudes rezultātu analīze un secinājumu izdarīšana par metodes izmantošanas iespējām. SERVQUAL instruments tika izmantots, lai novērtētu klientu apkalpošanas kvalitāti, jo tas parāda starpību starp klientu vēlmēm un uztveri. Datu analīzei tika izmantota Sociālo zinātņu statistiskā pakete 22.0. Pētījums balstījās uz sabiedrisko pakalpojumu klientu izvēli, kopumā 300 respondentiem Latvijas reģionos, laika periodā no 2017. līdz 2018. gadam. Pētījums tika veikts Latvijas reģionu valsts institūcijās, kas sniedz sociālās palīdzības pakalpojumus, nodarbinātības veicināšanas pakalpojumus; īsteno valsts vides aizsardzības politiku; sniedz juridiskās palīdzības pakalpojumus. Pētījumā mēģināts analizēt rezultātus, kas iegūti, novērtējot klientu gaidas un uztverto pakalpojumu kvalitāti un pakalpojumu kvalitātes prognozes sabiedrisko pakalpojumu kontekstā Latvijā. Pakalpojumu kvalitātes nepilnības liecina, ka valsts iestāžu sniegto pakalpojumu kvalitāte nespēj apmierināt klientu cerības. Šīs analīzes rezultāti liecina, ka jāsamazina sniegto pakalpojumu nepilnības. Svarīgs solis, lai samazinātu pakalpojumu sniedzēju nepilnības, ir regulāri mērīt klientu vēlmes un informēt par tām pakalpojumu sniedzēju.

Introduction

The operational efficiency of a company or an institution, as well as the possibility to increase it is an actual management problem. Currently, these problems become even more significant due to intensified competition between producers, as well as consumers and customers propose increased requirements to quality and price of the product or service.

The efficiency of an organization is determined by the degree to which organization achieves desired objective and carry out its functions, compared with the consumption of resources. The objectives of activity are particularly important for development of a company. They are determined taking into account the chosen strategy, and are a key motivating factor.

Any company establishes qualitative objectives of activity – standards, due to which the organization's growth can be measured, as well as targets with achieved results compared.

The standards include specific quality criteria or indicators according to which is possible to judge on the compliance of the activities with the set objectives.

The indicator systems are quantitative and qualitative indicators or groups of indicators which are obtained and interpreted by certain methodologies, and allow to evaluate the current situation, to make comparisons, to create forecasts and to set up strategic management decisions.

For evaluation of organization's activities, the indicator systems are used not only because of the fact that they allow you to set up short-term financial indicators, but also for the reason that they determine the value of intangible components. There is impossible to evaluate financially the quality of service or customer loyalty.

What is the system after all? It is totality of elements that performs certain functions in mutual interaction and / or reaches certain goals. By objective considerations, there are no systems in nature. The human, trying to study the regularities of the Universe, creates models that combine some reality elements in a system. So, the system is defined by the researcher itself. The researcher looks at it, makes investigations, analyses, summarizes the observations, as well as tries to control the system.

In the same way, the main principle in the management when establishing a system is as follow – a leader itself has to be a part of the system. The management functions are distributed over its entire architectonics pattern in any system. The management cannot be separated from the system, furthermore, the management improves jointly with the system growth and development, and this process is mutual.

The organization is a complex, opened socially-technical system, which works according to the laws of systemic approach. However, there is necessary to take into account that the people are main elements of any organization. Therefore, the organization should become an intelligent teaching system that is able to determine criteria or indicators of its sustainable, efficient activity, as well as goals and directions of development.

Which are actually the main systems developed in the modern management theory able to evaluate the quality and efficiency of the organization's activity? We will try to examine those.

C.F. McNair, Richard L. Lunch, Kelvin F. Cross. Efficiency Pyramid. (C.F. McNair, Richard L. Lunch, Kelvin F. Cross, 1990) The authors presented in 1990 a method called the Efficiency Pyramid. The main concept of this method is the connection of customer-oriented corporate strategy with the financial indicators that are supplemented with the main quality (non-financial) indicators. The management information shall come only from the top level of senior management. The

efficiency pyramid is built using the evaluation of principles of quality management, book-keeping, industrial technologies and customer service.

Robert and David S. Kaplan P. Norton Balanced System of Indicators – the Balanced Scorecard. (Robert S. Kaplan, David P. Norton, 1992). This system came into existence implementing the research projects in 12 companies. It consists of financial and non-financial indicators.

In the classical model, the balanced system of indicators examines the company's operation according to 4 criteria: finances, relationships with customers, internal business processes, staff training and development. The company can choose for itself the priority indicators or to increase the number of indicators, by including, for example, innovations and service. Short-term indicators are balanced with long-term indicators. The external indicators – finances, as well as the relationships with customers are balanced by the internal ones – internal business processes and staff training. The system includes both objective evaluation – finances, and subjective assessment – satisfaction of customers and staff. In connection with the company's strategy, and in order to evaluate the performance in accordance with above four criteria, 5–6 indicators are chosen for each of those criteria. However, this system has gained popularity because of the fact that the strategic objectives and indicators that determine their fulfilment are mutually linked in a chain of causal relationships and form so-called strategic maps. Scientists recommended to name as "strategic maps" relationships of cause and consequences between individual elements of the organization's strategy.

L.S. Maisel Balanced System of Indicators – the Balanced Scorecard (S. Maisel Lawrence, 1992). It has the same title as R.S. Kaplan – D.P. Norton model. L.S. Maisel defines also four criteria according to which the company should be assessed. Instead of the staff training and development, the scientist proposes to evaluate the growth and development of human resources. Within this system, innovations as well as education and training, product development, competence and corporate culture are evaluated. Differences between this model and R.S. Kaplan – D.P. Norton model are insignificant. More attention is paid to the assessment of competencies and contribution of the staff.

Christopher Adams and Peter Roberts model (Christopher Adams, Peter Roberts, 1993). The authors proposed a model which was named EP2M-Effective Progress and Performance Measurement.

In this model, the most important during assessment is considered that what the company performs:

– In customer service and implementation of market demands;
– in improvement of internal business processes (efficiency, profitability);

– in change management and strategic management;
– in property management and behaviour freedom;

The objective of the system is not only to make changes in the company, but also to develop that sort of corporate culture when changes would become a regular phenomenon.

Hubert K. Rampersad. Total Performance Scorecard (Hubert K. Rampersad, 2005).

Based on R.S. Kaplan – D.P. Norton model, H.K. Rampersad (Hubert K. Rampersad, 2005) has developed its universal system of indicators.

The universal indicator system consists of five main elements:

1. Balanced system of personal indicators;
2. Balanced system of organization's indicators;
3. Total Quality Management;
4. Change Management and Competence-Based Management;
5. D. Kolb's learning cycle;

The system of R.S. Kaplan – D.P. Norton (Robert S. Kaplan, David P. Norton, 1992) is used only as one of the elements. The personal balanced system of indicators includes such indicators as personal mission, vision, roles, goals, factors of success, effective indicators, and opportunities for improvement of the performance.

The Organization's balanced system of indicators includes following indicators: the organizational mission, vision, basic values, fortune factors, goals, performance indicators and actions aimed to improve the organization's activities.

The Total Quality Management is the management of an organization through quality. In order to improve the organization's activities, quality of outgoing product, as well as quality of internal processes and quality of personnel are continuously monitored and improved.

The Change Management is a process consisting of a number of stages: awareness of need for changes, creation of change vision, preparation of the ways of change implementation, implementation of changes, integration of changes. All these processes are also being evaluated.

The Competence-Based Management is also a special process in the organization which includes:

– competence identification for successful strategic development of organization;
– formation of competence profiles for various levels of staff;
– competence model of organization level, according to the organization's goals and objectives,
– planning of staff training and development in accordance with the competence model of organization. The evaluation of these processes has also been included in the H. Rampersad's system.

D. Kolb's learning cycle model, according to Rampersad, has to be used in organizations to carry out personnel training. This model includes the learning cycle where "immediate and particular experience" is the basis for "observations and reflections" (Kolb's cycle can be sometimes started with other cycles, such as mental observation or theory). These concepts of "observation and reflection" are assimilated and transformed into "abstract terms" providing a new meaning to the activities that can be as the "active test", which in turn creates new experience. Commenting this process, it should be noted that such learning system may be used only if it causes no risk to the business, namely to the customer service.

In general, we can say about H. Rampersad system that it can be used as an alternative to R.S. Kaplan – D.P. Norton system. But, it is much more complicated, broader, more expensive and therefore more difficult to implement. However, if the company requires a very fine analysis of the entire processes, H. Rampersad system is excellent.

There are systems developed in the modern management theory that combine different quality assessment models. These systems have resulted from the economic analysis methods due to their improvement and development, as well as by changing the social-economic situation. The changes have taken place in the direction of customer-oriented strategy, quality management, as well as human resource management.

Discussion

Nowadays, when rendering services in the private sector, it is self-evident the compliance with main principles of rendering of certain services and servicing of customers, ensuring the subordination of internal processes of institution in accordance with rendered services and customer needs. It includes both notification of clients about services to be rendered and the way of their receiving, and servicing of customers in manner and form convenient for them (personally, by telephone, using the Internet).

Service is a consumer order fulfilled for remuneration or for nothing within an economical or professional activity of a person, or fulfilment of a such contract concluded with a consumer, according to which a certain thing/ article is rented out, a new thing/article is manufactured, existing thing/ article or its characteristics are improved or modified, or a work is performed, or an immaterialized work result is gained.

Quality is totality of properties and characteristics of goods and services which determines their ability to meet certain or foreseeable needs. The simplest definition of quality states that the quality is a compliance with requirements (Crosby 1995). The understanding of the concept of "quality" is not unequivocal; each person perceives and characterizes it differently, by evaluating it subjectively. After analysing the definitions of various authors, one can be concluded that the

definitions of J.M. Juran (Juran 1988), F. Crosby, which include references to certain requirements, their execution and evaluation of execution, are most relevant to the essence of this study.

The International Standards Organization (ISO) defines the quality as follows: attributive characteristic of an object or item that determines its ability to conform with the defined and expected needs-standards.

Operation of any service is focused on the satisfaction of customer's needs. To understand the mechanism of the service area, the study of needs is necessary. The need is considered as "lack, necessity to get something that an individual does not possess".

The usage in the public administration of operating principles approbated in the private sector and being customer and service-oriented, is at the moment one of the actual issues of modernization of the public administration both in the world and in Latvia. It is related both to the improvement of the services quality and its accessibility to customers, and with significant changes of the model of operation of the public institutions making the public administration more transparent and more efficient.

Implementation of service and customer-oriented operating principles in the public administration is a part of the so-called new philosophy of public management, which envisages the usage in public administration of management methods approbated in the private sector – focusing on results, efficiency, delegation of responsibility and operation in conditions of competition. Initially, the term was introduced in Great Britain in the 1990s with the purpose to describe the usage of private management models in the public sector. Great Britain was the first country that had already started in the 1990s progress to the reforms of the public service introducing standards of customer service in the public sector (CAN, 2013).

On average, each eleventh Latvian resident (8.8%) works in the public sector – for state institutions or institutions of local government, for capital societies owned by above mentioned institutions, or in other institutions related to the State, or to local governments. Taking into account the total amount of employed population, the general governmental sector is employed by one-fifth of working-age and able to work persons. Although in absolute figures, the number of persons, employed in general governmental sector of Latvia, has been significantly decreased, proportion of the decline is not so remarkable due to emigration affects – from 9.6% in 2008 to 8.8% in the 2nd quarter of 2016. In comparison with other countries of the European Union, the number of persons employed in general governmental sector in Latvia does not exceed the average ratio of the European Union. In Finland, for example, it comes to 8.2% (The State Chancellery, 2016). In Latvia, single improvement policy of the public service has not been approved up to now; the same is also related to the non-definition of the concept of public service, as well as to the duties of institutions in connection with rendering of services. However, a number of positive examples are

also to be mentioned in connection with the organization of rendering of services according to the best practice. For assessment of operation of the state institutions in Latvia, a model is necessary, which would allow to determine in due time whether the operation of the institution is sufficient qualitative when servicing customers.

In the 1990s, a number of attempts has been implemented in the world to develop a model using which the dissatisfaction of customers with the service would be measured. Let's look at them.

The method SERVQUAL has been developed by Parasuraman, Zeithaml and Berry (Parasuraman et al, 1988;. 1991; 1993; 1994). The quality of service is assessed by calculating the difference between the quality what a customer expects and what it really perceives when facing service. SERVQUAL (Parasuraman et all, 1988) is structured in two parts. The first and the second part contains 22 questions each, and questions are designed to evaluate customers' expectations and the quality really perceived during servicing. The assessment of service quality is obtained by comparing the values of customer expectations and perceived quality. Cronin and Taylor (1992) have proposed the method SERVPERF (Cronin andTaylor, 1994). Its main characteristic mark is that SERFPERF is focused on the evaluation of the service quality perceived by a customer. According to Cronin and Taylor, this version gives better results than SERVQUAL and reduces the number of inquiries to service users. Schvaneveldt (1991) evaluated the service quality from two points of view in his questionnaire. The first direction was to show the dimension of perceived quality and the other one – to show the customer's feelings – satisfaction or dissatisfaction. In order to display importance of customer's expectations better, Teas (1993) proposed the usage of the NQ model (Normed Quality). Expectations of a customer have been interpreted in two different ways: at the ideal level, providing the highest score of each attribute, or at the implementing level by examining actual circumstances under which the service may be provided.

In addition to these methods, various other methods of calculation of Customer Satisfaction Index (CSI) are practised on a large scale. The basic method which interpretations are used in Europe, was developed at Stockholm School of Economics. This parameter is calculated, based on the method of personal interviews, and is used as one of the parameters of the long-term profitability of a company and allows recognizing backgrounds and factors of satisfaction and loyalty of a customer. The European Customer Satisfaction Index (ECSI). ECSI is another variation of the polling model. Customers' expectations, company's image, perceived quality, perceived value, customers' satisfaction and customers' loyalty are modelled similar to the SERVQUAL and the Swedish Customer Satisfaction Index (SCSI).

Public services are a "tangible" result of the activities of institutions of state administration or self-governments, which becomes apparent as ensuring certain benefits to its customers – to the

public/ society. Traditional guidelines for administrative reforms in various countries are following: 1) improvement of services quality (including public services); 2) economical profitableness of public sector (reduction of state functions and of costs per one unit of rendered services); 3) strengthening the discipline of execution (by ensuring implementation of decisions, plans). According to the opinion of the American expert in the field of public administration D. Kettl (Kettl, 2000), it is possible to distinguished five strategies in the process of today's administrative reforms:

1. Effectiveness. The state institutions have to look for the possibility how to increase the number of renderied services with the existing or lower costs.
2. Marketing. All activities are based on one strategy – replacement of traditional bureaucratic/ departmentalism management and control mechanisms by market mechanisms.
3. Orientation to rendering of services. Development of customer-oriented systems of rendering of services. This strategy has been widely used in Singapore.
4. Decentralization. In many countries, the administrative reform comprises implementation of national programmes on the lower – local self-government levels. On the local government levels, customer service centres are being established which will ensure the opportunity for the inhabitants to receive services of different institutions in one place. This strategy was started to implement in Canada, Georgia.
5. Responsibility for the results. Contracts of public services are being designed, which include the key mission, directions of activities, listing of achievable goals and resultative parametres for each public institution, as well as the responsible persons are being defined. Predominantly, this strategy was used in Great Britain.

Above mentioned approaches to the state administrative reform and to the change of its mechanisms of activities are related to the new conception of public management (New Public Management). This conception prescribes the use of management methods in the public administration, which are approbated in the private sector: implementation of customer-oriented services; orientation on results, efficiency; delegation of responsibilities; activities in the competitive circumstances.

There by, we can speak about the change of paradigm of public administration itself. There is a transition from the idea of "citizens for the country" to the idea of "the country for citizens" in progress. The transition to the customer-oriented activity in the public administration also means the appearance of new goals and functions. The new functions are following:

1. Marketing function – segmentation of the market of public services; finding out the consumers' needs; assessment of the necessity of certain kinds of services;
2. Planning function – includes both strategic and financial planning;

3. Quality control function – monitoring of service quality by assessing the quality of rendered services, satisfaction of customers and availability of services. (Шаститко А.Е., 2004)

The conception on the perfection of the public service system, approved by the Cabinet of Ministers of Latvia on 19 February 2013, was the basis for the draft law on public services, which was discussed at the sitting of the Cabinet of Ministers of Latvia in January 2014.

As the negative demographic and migration trends continue, and there is a risk that the population of Latvia could be reduced by another 20% in the next 15 years (until 2030), the issues regarding the maintenance of public individual services in less populated areas will remain topical. Until 2030, a small decrease in the number of school-age children (by 4%) is forecasted, while the proportion of the elderly people will increase from present-days 19% to 25% in 2030, which will enlarge the demographic load. A certain part of the public individual services will preserve its necessity or will become even more significant (non-formal education, social and health care).

The final report for 2015 of the study "Assessment of variety of the public individual services according to the distribution of population" (VARAM, 2015) includes the following key conclusions:

In order to optimize the costs of the public individual services – educational, cultural, social and health services, they must be concentrated in nine cities of republican subordination and in 21 towns, which are defined as development centres of regional significance. No more than 30 development centres are actually functioning in Latvia, so, it would be also important to reorganise the administrative division according to this reality in the very near future.

In accordance with the Action Plan for 2014–2020 of the basic guidelines for the development of the state administration policy, the VARAM (Ministry for Environment Protection and Regional Development) had received the task, by consulting with local self-governments, to determine the groups of administrative territories in the state around the development centres of regional and national significance until 31 December 2016, within the framework of which the self-governments may voluntarily join together or cooperate (LR MK, 2014). At the same time, Clause 38 of the Declaration of the Action Plan of the Government on the implementation of the planned activities of the Cabinet of Ministers led by Māris Kučinskis had envisaged to define territories for self-governmental cooperation. In order to implement the statements of these plans, as well as in accordance with the above-mentioned informative reports, basic guidelines examined at the Cabinet of Ministers, and based on the results of related studies, the VARAM has developed a project for the creation of 29 cooperation territories, by forming cooperation areas around the centres of regional and national significance, and started consultations with the involved institutions and local self-governments in the second half of 2016.

The legislation of the Republic of Latvia does not clearly define the quality of public services. On the other hand, there are several approaches in the management science, how the authors define and evaluate the quality of service.

The service is a useful form of human activities that does not create material value or independent material products. The concept of public services is characterized by the following elements: 1) the rendered services are of social significance; 2) they have an unlimited number of customers; 3) they are provided either by the state or by local self-government institutions or by other state structures; 4) they are based on the state property.

Results

The practical part of the research summarizes the data collected for practical inspection of the above mentioned model of the quality assessment – SERVQUAL (Parasuraman et al. 1985).

The purpose of this research was to test the suitability of the SERVQUAL method for assessment of service quality, to understand its compliance with Latvian conditions. For data collection and verification, an anonymous questionnaire was used.

The research was based on a selection of customers of public services, 300 people in total in Latvian regions, in 2017–2018. The research was carried out at the state institutions of Latvia regions which provide services of social assistance, services of employment promotion; implement the state policy of environment protection; provide services of legal assistance. The satisfaction of the customers of institutions and the quality of the rendered services were assessed.

Data for research was collected at the time and place convenient to the respondents. The content and purpose of the survey was introduced to the respondents. Confidentiality and anonymity of respondents was ensured regarding provided information. Essential ethical, legal principals were taken into account during research to ensure that the personal rights of research participants were not violated. A questionnaire according to the pattern of sources of scientific literature was prepared for testing the method.

The questionnaire of the SERVQUAL method consisted of two parts. Eeach part of the questionnaire contained 22 statements about the service quality, which formed according to the distribution a set of criteria with 5 dimensions. A customer had to evaluate each statement in accordance with the 5-point scale.

Part A – displayed the expectations of the customer regarding to the service quality as well as the importance of various quality criteria for the customer.

Part B – displayed the assessment of servicing received by the customer;

The object to be assessed in both parts of the questionnaire was the services quality as the set of five quality dimensions, consisting of 22 criteria, where:

Dimension 1 – Set of material benefits (appearance and physical components);

Dimension 2 – Safety (trustfulness/ confidence, accurate execution);

Dimension 3 – Responsiveness (diligence and helpfulness);

Dimension 4 – Competence (attention, reliability);

Dimension 5 – Empathy (convenient receipt of service, good communication and customers' understanding).

Statistical software package "SPSS 22.0.0 for Windows" was used for data analysis.

The results of the research made in 2017–2018 are analyzed below. Their statistical analysis has disclosed the following results.

The average customer expectations assessment value has got 4.47. The average service performance assessment value has got 3.98.

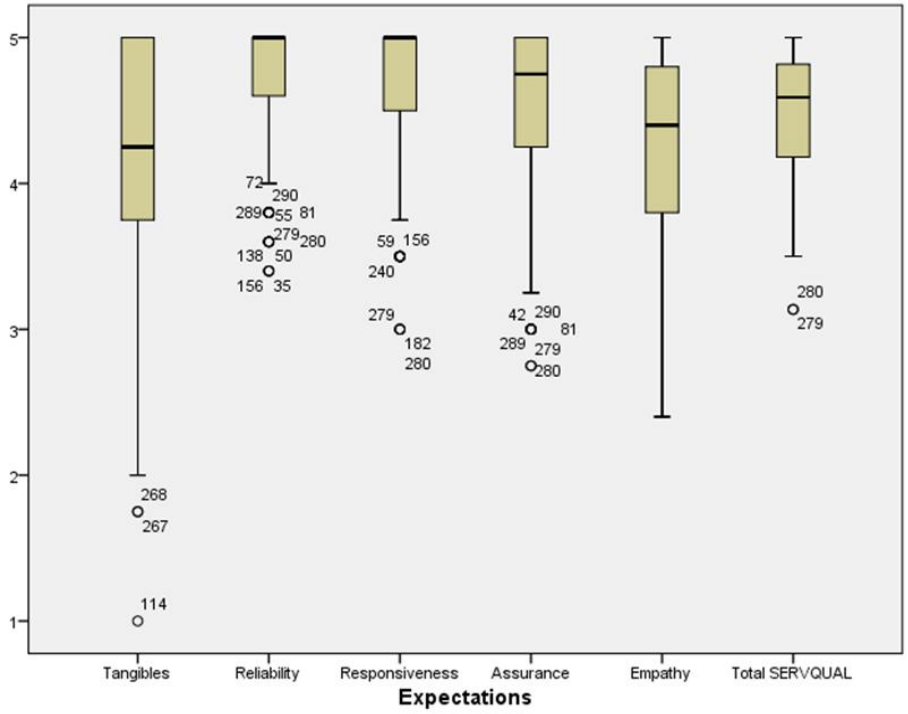


Figure 1. **The average customer expectations value** (in points)

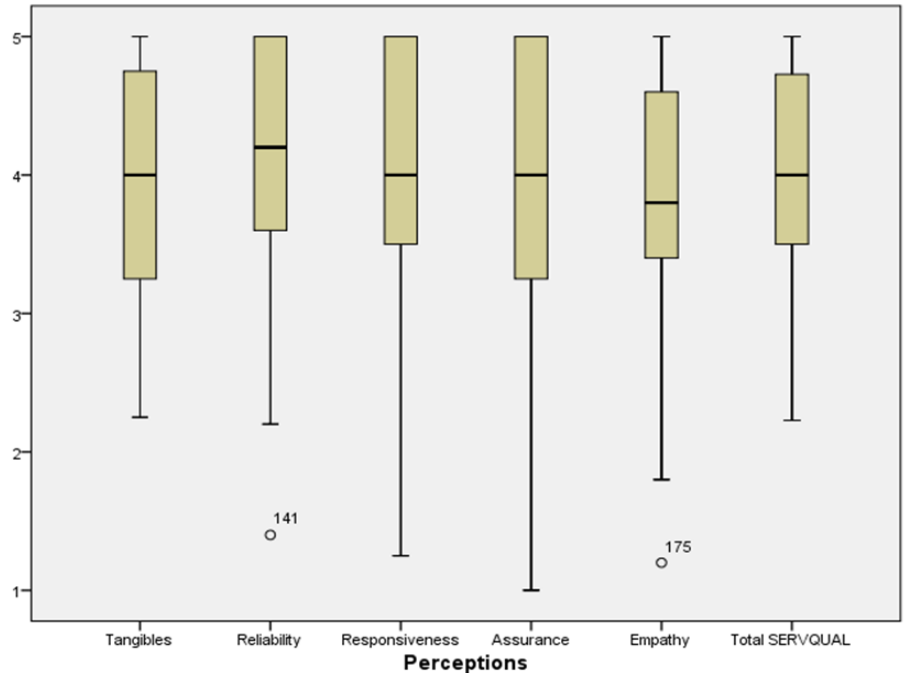


Figure 2. **The average customer perceptions value** (in points)

Calculating the difference between the performance of the service received by the customer and the average values of the customer's expected quality, we obtain an average quality that is negative in all quality dimensions. Less negative evaluation of quality is only in the dimension of material benefits and the dimension of empathy.

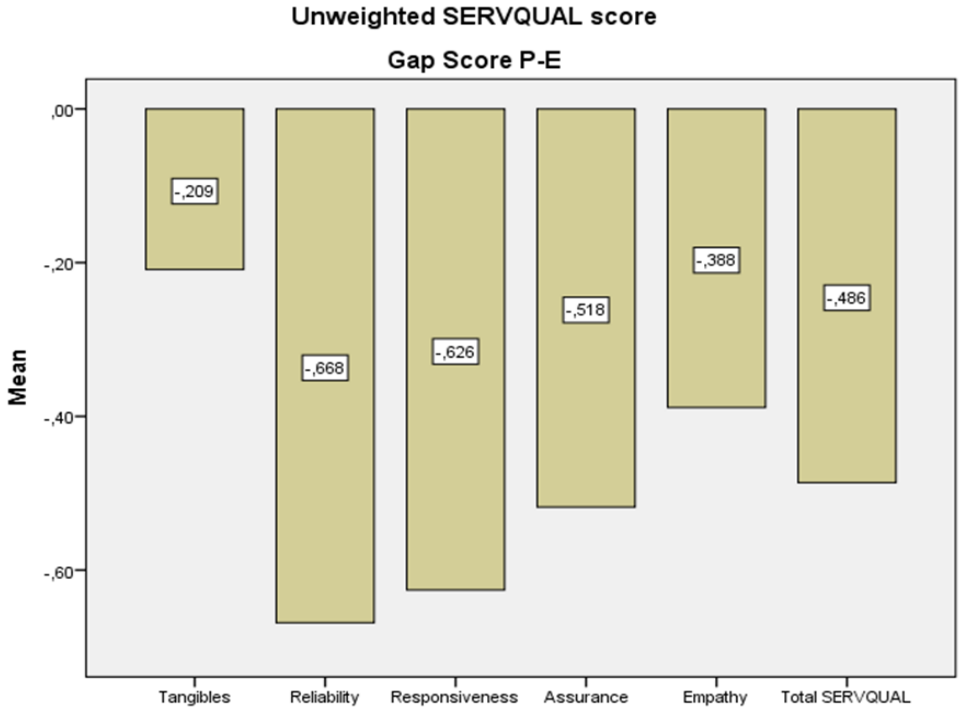


Figure 3. **The average quality of public services in Latvia in 2017–2018** (in points)

Analyzing the results by the state institutions surveyed, the most positive assessment of the quality of services provided is the DRVP. The most negative evaluation was the quality of services provided by SEA, SSIA, SRS.

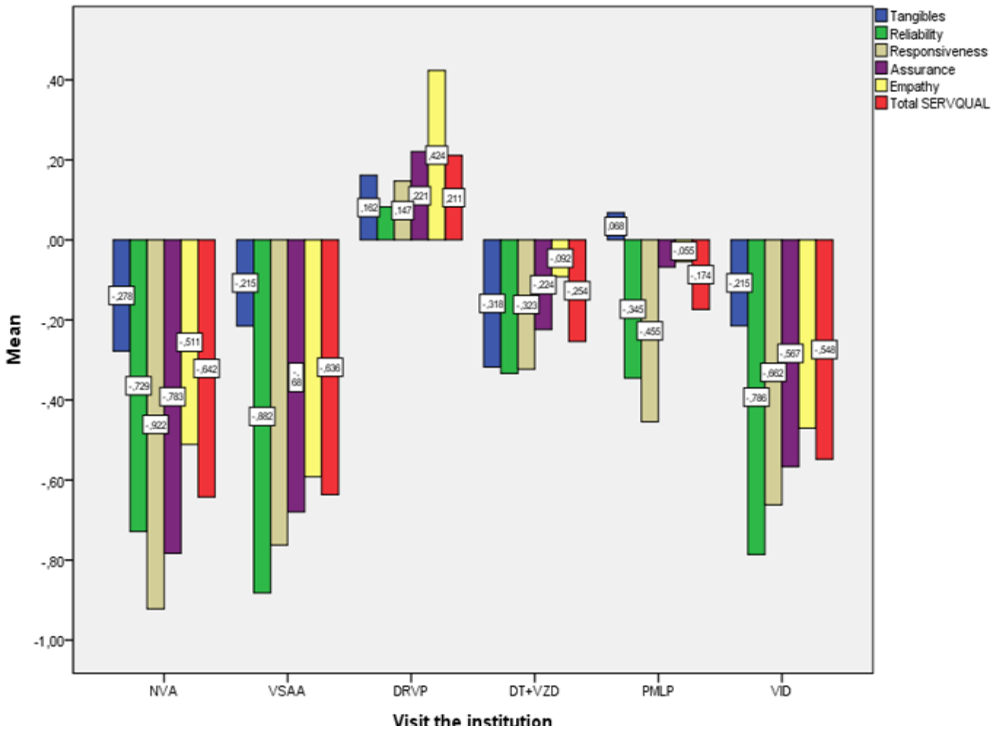


Figure 4. **Evaluation of Quality of Public Services depending on investigated state institutions**

Analyzing the results of the service quality assessment according to the surveyed clients' place of residence, it can be concluded that the quality of services was evaluated less favorably by Latgale residents. In the other analyzed regions and Riga, the quality of services was assessed equally negatively.

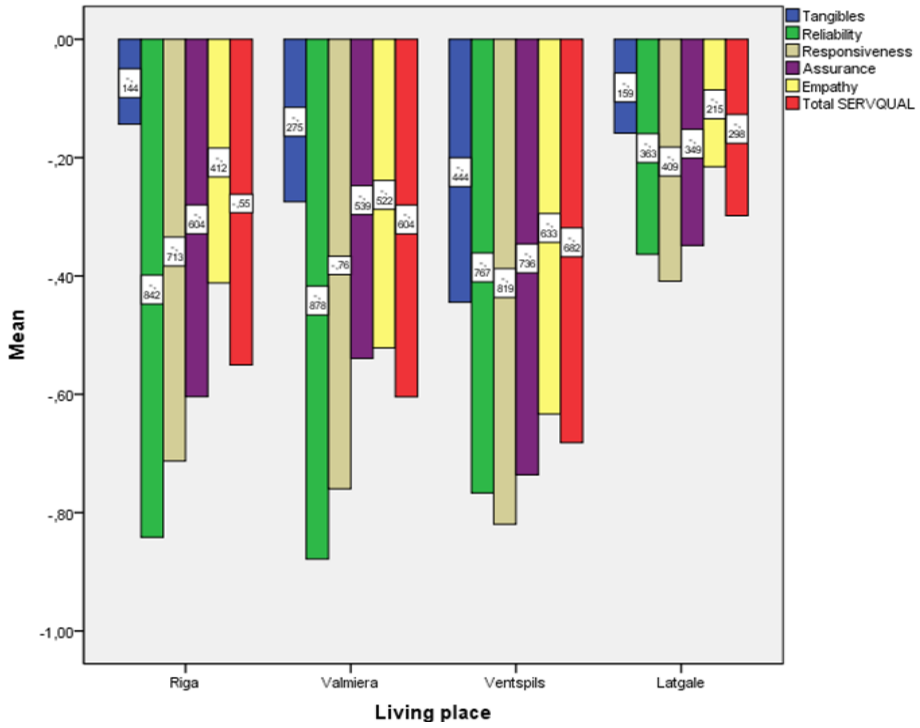


Figure 5. **Evaluation of Quality of Public Services depending on their living location**

In different age groups, the quality of services was most negatively assessed by retirement age clients.

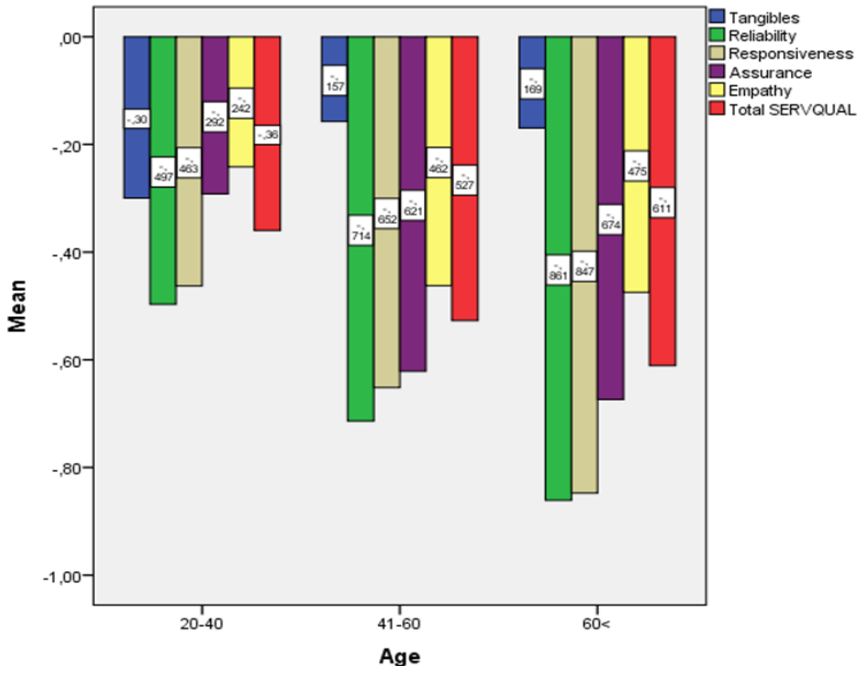


Figure 6. **Evaluation of Quality of Public Services depending on their age**

Less negatively rated the quality of service by men. Women had less negative evaluation of the quality of material benefits.

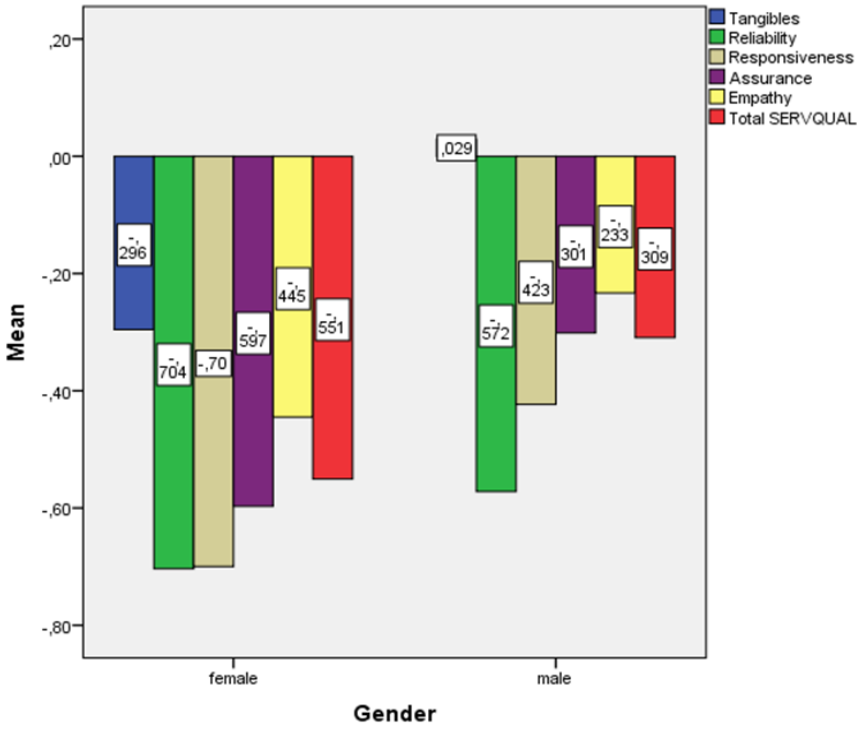


Figure 7. **Evaluation of Quality of Public Services depending on their gender**

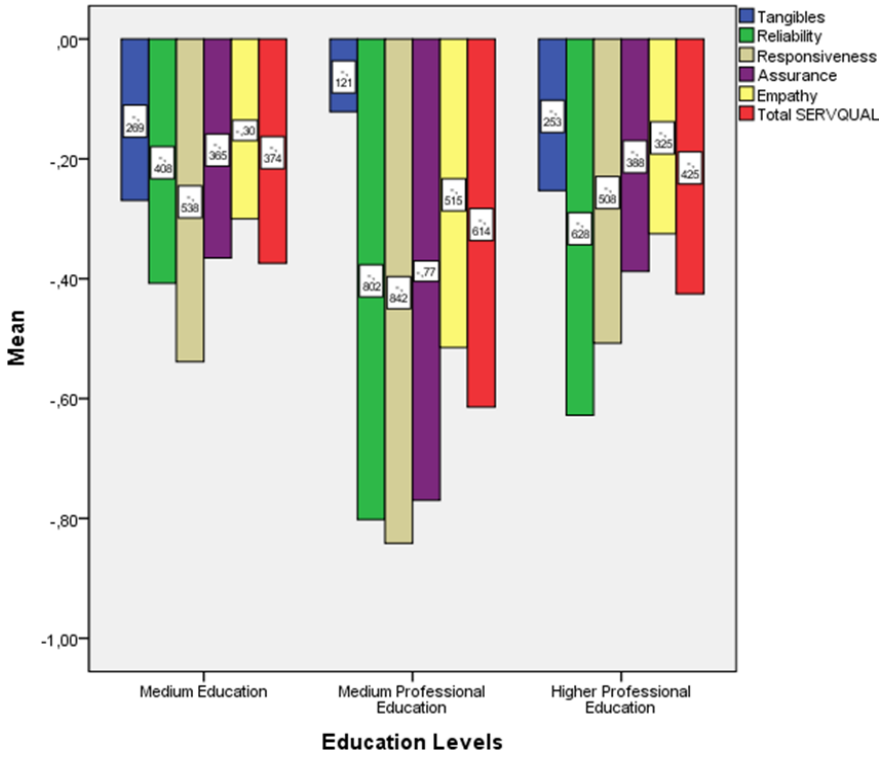


Figure 8. **Evaluation of Quality of Public Services depending on their education levels**

Analyzing survey results according to respondents' education level, shows that the most negatively rated service quality by customers with medium professional education.

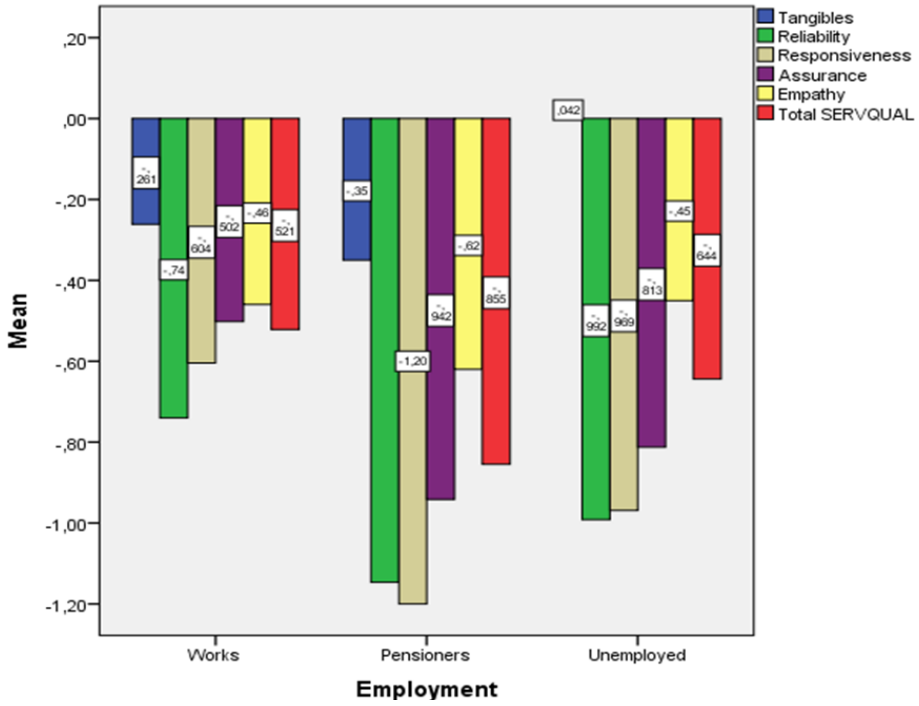


Figure 9. **Evaluation of Quality of Public Services depending on their employment**

When evaluating the results of the survey according to the employment of the respondents, it has to be concluded that the most negative evaluation of the service quality was provided by clients-pensioners.

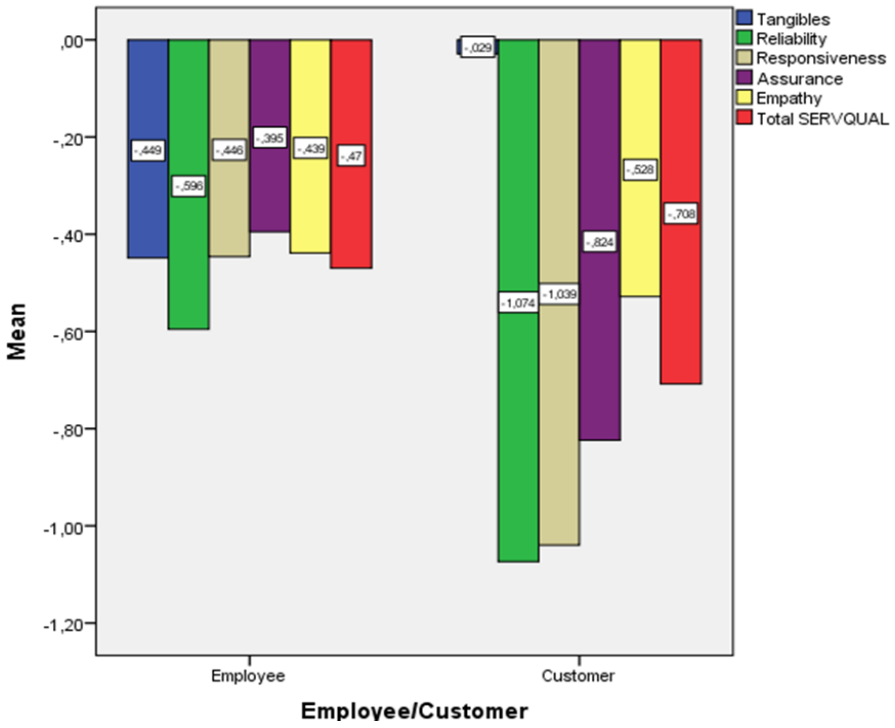


Figure 10. **Comparison of public service quality assessment for employees and customers**

Comparing the views of customers and employees on the quality of service, we have to conclude that the customers have evaluated it more negatively.

But it should be mentioned that the employees of the institutions themselves evaluated the quality of service in other public institutions negatively.

Table 1. **Gaps between Perceptions and Expectations (P-E) for Customers**

Dimension	Expectations (E)		Perceptions (P)		P-E	Wilkinson criterion	
	Average	SN	Average	SN	Average	Z	NL
q_1	4,2021	,97226	4,0925	,90151	-,1096	-1,634[b]	,102
q_2	4,2637	1,06280	3,9692	,94291	-,2945	-3,638[b]	,000
q_3	3,8253	1,33173	3,9144	1,03688	,0890	-1,011[c]	,312
q_4	4,3390	,99386	3,8185	1,06067	-,5205	-6,657[b]	,000
q_5	4,5890	,78798	4,0377	,93534	-,5514	-7,689[b]	,000
q_6	4,8527	,40046	3,9760	1,01675	-,8767	-10,881[b]	,000
q_7	4,7808	,56219	4,0959	1,02430	-,6849	-8,844[b]	,000
q_8	4,6644	,72061	4,0787	0,9253	-0,5856	-8,610[b]	,000
q_9	4,7637	,54582	4,1199	,93941	-,6438	-9,379[b]	,000
q_10	4,5959	,69439	4,1747	,91961	-,4212	-6,449[b]	,000
q_11	4,5548	,79975	3,9692	1,07250	-,5856	-7,243[b]	,000
q_12	4,7603	,52830	4,0445	1,02615	-,7158	-9,180[b]	,000
q_13	4,8836	,34202	4,1027	,99296	-,7808	-10,408[b]	,000
q_14	4,5856	0,7006	4,0034	1,01365	-0,5821	-7,890[b]	,000
q_15	4,5308	0,7338	3,9486	1,03915	-0,5821	-7,929[b]	,000
q_16	4,7055	,59399	4,3082	,87000	-,3973	-6,620[b]	,000
q_17	4,3082	,83370	3,7979	1,12314	-,5103	-6,426[b]	,000
q_18	4,1610	,94421	3,8014	1,00254	-,3596	-4,907[b]	,000
q_19	3,9897	1,08879	3,5205	1,26935	-,4692	-5,017[b]	,000
q_20	4,0719	1,00084	3,6438	1,11682	-,4281	-5,035[b]	,000
q_21	4,5479	,68446	4,0925	,90532	-,4555	-7,282[b]	,000
q_22	4,4110	,81372	4,1815	,85631	-,2295	-3,257[b]	,001
Material benefits	4,1575	,78676	3,9486	,81197	-,2089	-4,265[b]	,000
Safety	4,7301	,38070	4,0616	0,8187	-,6685	-11,234[b]	,000
Responsiveness	4,6986	,43909	4,0728	,87788	-,6259	-10,265[b]	,000
Competence	4,5325	0,5563	4,0146	,90294	-0,5179	-8,685[b]	,000
Empathy	4,2363	,66357	3,8479	,82614	-,3884	-7,063[b]	,000
InTotal 22 q.	4,4721	0,4200	3,9859	0,7722	-0,4861	-10,267[b]	,000

Conclusions

During the study, it was found that it is not possible to use the SERVQUAL method without applying it to the circumstances of each state and institution under investigation. The study tried to present the findings of assessing the expectations and perceptions of service quality for customers in a public service context in Latvia. The service quality gaps indicated that the public service department was failing to meet the expectations of their customers. The results of this analysis provide evidence that service provider gaps must be reduced. An important step in minimizing service provider gaps is regularly measure customer expectations and communicate these expectations. Quality assessment of services provided by public authorities and regular evaluation of their – monitoring should become an integral part of public administration.

References

Administratīvi teritoriālās reformas likums. Latvijas Republikas likums. Pieņemts 21.10.1998. [stājās spēkā 13.11.1998.], zaudējis spēku 31.12.2008. Pieejams tiešsaistē: http://m.likumi.lv/doc.php?id=51528

Babakus E., Mangold W.G. 1992. Adapting the SERVQUAL Scale to Hospital Services: Anempirical investigation. *Health Services Research,* 26(6), 1992.

Bakar C., Akgůn S.H., Al Assaf A.F. 2008. The role of expectations in patient assessments of hospital care: An example from a university hospital network, Turkey. *International Journal of Health Care Quality Assurance,* 21(4), 2008.

Cronin, J.J. and Taylor S.A. (1992). "Measuring service quality: a reexamination and extension", Journal of Marketing, Vol. 56.

Cronin, J.J. and Taylor, S.A. (1994). "SERVPERF versus SERVQUAL: reconciling performance based and perceptions-minus-expectations measurement of service quality", Journal of Marketing, Vol. 58, January.

Crosby P. 1995. *Quality without Tears.* New York: MCGraw-Hill.

Donnelly M., Kerr N.J., Rimmer R., Shiu E.M. 2006. Assessing the Quality of Police Services Using SERVQUAL. *Policing: An International Journal of Police Strategies & Management,* 29(1), 2006.

Galloway L. 1998. Quality Perceptions of Internal and External Customers: A case study ineducational administration. *The TQM Magazine,* 10(1), 1998.

Eiropas Sociālā fonda projekts Nr. 1DP/1.5.1.2.0/08/IPIA/SIF/002 "Publisko pakalpojumu sistēmas pilnveidošana". Metodiskā rokasgrāmata par pakalpojumu sniegšanas un kvalitātes jautājumiem. Rīga, VARAM, 2013.

Juran J. 1988. *Juran on Planning for Quality.* New York: Free Press.

Kangis P., Passa V. 1997. Awareness of Service Charges and Its Influence on Customer Expectations and Perceptions of Quality in Banking. *Journal of Services Marketing,* 11 (2), 1997.

Katelo I. 2016. Perfomance Evaluation Indicators Systems. // Proceedings of the 58th International Scientific Conference of Daugavpils University. Part B "Social Sciences". Daugavpils: 2016., ISBN 978-9984-14-779-6, ISSN 2500-9869.

Katelo I. 2017. Methods of Service Quality Evaluation. // Proceedings of the 59th International Scientific Conference of Daugavpils University. Part B "Social Sciences". Daugavpils: 2017., ISBN 978-9984-14-833-5, ISSN 2500-9842, ISSN 2500-9869.

Katelo I. 2018, The evaluation of the quality of public services. Proceedings of the 60th international scientific conference of Daugavpils University. Part B "Social Sciences". Daugavpils, Daugavpils Universitāte, 2018., ISBN 978-9984-14-864-9, ISSN 2500-9842, ISSN 2500-9869.

Kettl D. F. 2000. *The Global Public Management Revolution. A report on the transformation of governance*. Washington: Brookings Institution Press.

Luk, Sherriff Ting-Kwong. 1997. An examination of the role of marketing culture in service quality. International Journal of Contemporary Hospitality Management, vol. 9(1), May, 1997.

LVS EN ISO 9000:2007. Kvalitātes pārvaldības sistēmas. Pamatprincipi un terminu vārdnīca (Quality management systems. Terminology and vocabulary (ISO 9000: 2005).

Parasuraman A., Zeithaml V.A., Berry, L.L. 1985. A Conceptual Model of Service Quality and Its Implications for Future Research. The Journal of Marketing, Vol. 49, No. 4, 1985.

Parasuraman A., Zeithaml V.A., Berry, L.L. 1988. SERVQUAL: A multiple-item scale for measuring consumer perception of service quality. Journal of Retailing, 64(1), 1988.

Parasuraman A., Zeithaml V.A., Berry L.L. 1994. Reassessment of Expectations as a Comparison Standard in Measuring Service Quality: Implications for future research. Journal of Marketing, 58(1), 1994.

Par Valsts pārvaldes politikas attīstības pamatnostādnēm 2014.–2020. gadam. Ministru kabineta 30.12.2014. rīkojums Nr. 827 (prot. Nr. 69 47.§). Pieejams tiešsaistē: http://likumi.lv/doc.php?id=271384

Priekšlikumi diskusijai par valsts pārvaldes reformām, Valsts kanceleja, Rīga, 2016.
Reģionālās attīstības likums. Latvijas Republikas likums. LR Saeima, 21.03.2002. [stājas spēkā 23.04.2002.]. Pieejams tiešsaistē: https://likumi.lv/doc.php?id=61002
Schvaneveldt, S.J., Enkawa, T. and Miyakawa, M. (1991), "Consumer evaluation perspectives of service quality: evaluation factors and two-way model of quality", Total Quality Management, Vol. 2 No. 2.
Teas, R.K. 1993, "Expectations, performance, evaluation, and consumers' perceptions of quality", Journal of Marketing, Vol. 57, July.
Teas, R.K. 1994, "Expectations as a comparison standard in measurement of service quality: an assessment of a reassessment", Journal of Marketing, Vol. 58, January.
VARAM. 2013. *Metodiskā rokasgrāmata par pakalpojumu sniegšanas un kvalitātes jautājumiem.* Rīga.
VARAM. 2015. Izvērtējums "Publisko individuālo pakalpojumu klāsta izvērtējums atbilstoši apdzīvojumam". Pētījuma izvērtējums, izstrādāts Norvēģijas finanšu instrumenta līdzfinansētā projekta Nr. 4.3.-24/NFI/INP-002 "Latvijas plānošanas reģionu un vietējo pašvaldību teritoriālās attīstības plānošanas kapacitātes palielināšana un attīstības plānošanas dokumentu izstrādāšana" ietvaros. Rīga.
Шаститко А.Е. 2004. Организационные рамки предоставления публичных услуг. Вопросы экономики, № 7, 2004.

THE POLITICS OF A CORPORATE SOCIAL RESPONSIBILITY IN THE ENTERPRISE X FOR A SUSTAINABLE REGIONAL DEVELOPMENT

Viktorija Jarmuševiča, Dzintra Iliško
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401, dzintra.ilisko@du.lv

Abstract

The politics of a corporative social responsibility in the Enterprise X for a sustainable Regional development

Key words: *corporate social responsibility, entrepreneurship, sustainability, sustainable development, stakeholders*

Corporate social responsibility is no longer just a modern and new concept added to the company's profile. Over the last decade, companies around the world have recognized the importance of socially responsible business and its impact on the company's reputation, performance and results. Undoubtedly, many corporate scandals that are destroying the business world have contributed to Corporate Social Responsibility (CSR), which is becoming more and more active in business.

More and more companies around the world include CSR in their daily activities, support community economic, cultural, artistic and sporting events, to "give back" to the society. Still, others are building their own business in accordance with the concept of corporate social responsibility. In any case, CSR has become more than just a section of a company website or public-relations activity; it is now an integral part of companies' efforts to ensure sustainable development.

The interest about a corporate social responsibility has increased in the last years. Enterprises become aware that a corporate social responsibility can be used as a strategy to foster sustainable development of enterprises. In today's economic conditions, this type of responsibility also affects the Latvian economy. Despite concerns in the economic environment, companies are constantly increasing their social responsibility efforts.

The objective of the work is to explore the process of implementation of the strategy of a social responsibility in the enterprise X.

The author conducted research and carried out interviews on the enterprise's corporate social responsibility and sustainability aspects in order to explore how to CSR strategy is implemented in the enterprise X and to understand how enterprise integrates the company's sustainability in its structure. Thus, the author has developed a model of corporate social responsibility in order to improve the effectiveness of CSR policies and to ensure the company's sustainability.

Kopsavilkums

Koncerna „X" korporatīvās sociālās atbildības politikas īstenošana ilgtspējīgai reģiona attīstībai

Atslēgvārdi: *korporatīvā sociālā atbildība, uzņēmējdarbība, ilgtspējība, ilgtspējīgā attīstība, ieinteresētās puses*

Korporatīvā sociālā atbildība vairs nav tikai moderna un jauna koncepcija, kas ir pievienota uzņēmuma profilam. Pēdējo desmit gadu laikā uzņēmumi visā pasaulē ir atzinuši sociāli atbildīgas uzņēmējdarbības nozīmi un ietekmi uz uzņēmuma reputāciju, veiktspēju un rezultātiem. Neapšaubāmi, daudzus korporatīvos skandālus, kas iznīcina uzņēmējdarbības pasauli, ir veicinājusi korporatīvā sociālā atbildībā (KSA), kas kļūst arvien aktīvāka uzņēmējdarbībā.

Arvien vairāk uzņēmumu visā pasaulē iekļauj KSA savā ikdienas darbībā, atbalsta sabiedrības ekonomiskos, kultūras, mākslas un sporta pasākumus, lai „atdotu" sabiedrībai. Tomēr citi veido savu biznesu, ievērojot uzņēmuma sociālās atbildības koncepciju. Jebkurā gadījumā KSA ir kļuvusi vairāk nekā tikai sadaļa uzņēmuma tīmekļa vietnē vai sabiedrisko attiecību darbībā; tagad tā ir neatņemama sastāvdaļa uzņēmumu centienos nodrošināt ilgtspējīgu attīstību.

Interese par korporatīvo sociālo atbildību pēdējos gados ir palielinājusies. Uzņēmumi apzinās, ka uzņēmumu sociālo atbildību var izmantot kā stratēģiju uzņēmumu ilgtspējīgas attīstības veicināšanai. Mūsdienu ekonomiskajos apstākļos šāda tipa atbildība attiecas arī uz Latvijas tautsaimniecību. Neskatoties uz satraukumu ekonomiskajā vidē, uzņēmumi pastāvīgi palielina centienus sociālās atbildības jomā.

Darba mērķis: izpētīt koncerna „X" korporatīvā sociālās atbildības politikas īstenošanas procesu.

Pētījumā tika izmantotas sekojošās metodes: normatīvo dokumentu analīze, kontentanalīze, intervijas ar koncerna „X" augstāko līmeņu vadītājiem un viņu vietniekiem, kā arī nodaļu vadītājiem ar mērķi noskaidrot korporatīvās sociālās atbildības politikas īstenošanu ilgtspējīgas attīstības nodrošināšanai koncernā „X".

Autore veica pētījumu un intervijas par koncerna korporatīvo sociālo atbildību un to ilgtspējas aspektiem, lai iegūt priekšstatu par to, kā koncernā X tiek īstenota KSA stratēģijas īstenošana, un saprast kā koncerns integrē uzņēmuma ilgtspēju savās procedūrās, noskaidrojot, ka eksperti nav pietiekami zinoši par KSA politiku koncernā. Tādējādi autore izstrādāja korporatīvās sociālās atbildības modeli, lai efektivizēt korporatīvās sociālās atbildības politikas īstenošanu un nodrošinātu uzņēmuma ilgtspējību.

Introduction

The corporate social responsibility (CSR) became a particularly topical issue in the field of entrepreneurship since Latvia joined the European Union in 2004. All business companies are asked to undertake the strategy of social responsibility and to adopt the principles of social responsibility. In the context of this study, a sustainability strategy is adjusted to the specific economic, social, environmental and cultural factors of the business environment in Latvia and Europe, with the respect to the international criteria of integration of corporate social responsibility in the enterprise (Tilt 2016).

The first attempts in Latvia were to promote, adopt and implement the principles of sustainable development. The sustainability index of Latvian companies has been established for several years in a row, and various policy documents have been developed that include the principles of sustainable development. Solutions to environmental problems are also included in other policies, strategies and regulations. These documents have been taken into account in developing sustainable development guidelines in Latvia.

There are enough general studies on sustainable development in the world and in Latvia as an economic category. In Latvia: anti-fraud policy and implementation plan, strategy for 2030, strategy for enterprise X business lines, management processes and affiliated companies development until 2030, however, there are still questions about, how to improve and develop corporate social responsibility through sustainable development.

Corporate social responsibility as a concept of sustainable development has been studied by: K. Davis (1960), Carroll (1979), Cochran & Wood (1984); Carroll (1991), Burke & Logsdon (1996), Lantos (2001), Marrevvijk (2003), Heslin & Ochoa (2008), Porter & Kamer (2011), Trapp (2012), Chandler & Werther (2013), Carroll (2015), Chandler (2016) et al.

The objective of the work is to explore the process of implementation of the strategy of a social responsibility in the enterprise X.

To achieve the aim, the following tasks are defined:

1) to evaluate the implementation of corporate social responsibility policy for sustainable development in the enterprise X;
2) to develop a corporate social responsibility model for the enterprise X.

Discussion

The current belief that corporations have a responsibility towards society is not new. There is an international demand for all enterprises to undertake a responsibility for their actions. The demands about the responsibilities that enterprises are expected to undertake have changed with the changing socio political conditions (Agudelo 2019).

Today companies see the need to adapt a socially responsible behavior in responding to the challenged caused by the globalization in order to accept a sustainable path of development. As Carroll (2015) comments, initialization of CSR becomes stronger, and since 1992, and fifty-one companies have already adopted a vision based on such priorities as preservation of natural resources, by ensuring human dignity and transparent policy (Carroll 2015).

Van Marrewijk (2003) offers a holistic understanding of CSR, influenced by his search for sustainability as over embracing vision, where each enterprise has a new role within the society in making strategic and sustainable decisions for the whole community (Marrewijk 2003). Matten and Moon (2008) point out to internal and external complexity of this notion ranging from philanthropic initiatives to a political dialogue leading to a responsible business behavior (Matten & Moon 2008). The most popular is stakeholder theory in relation to the responsibilities that the company has towards its stakeholders.

Belal (2008) suggests three main perspectives how to view CSR. These are: political economy theory, legitimacy theory, and stakeholder theory. The most of conceptualizations relate to stakeholder theory, because any institutions' policy and practice is related the habits and behavior of their customers as well on their level of literacy in regards to environmental impacts of their actions that involves their ethical values. As Van der Laan Smith et al. (2005) states, stakeholder theory has a huge impact on CSR disclosure. Castello & Lozano (2011) assert that the reality of postindustrial society and appearance of complex problems that require a search of new forms of conceptualization of CSR (Castello & Lozano 2011).

The promotion of CSR was also a part of Millennium Development Goals (MDG's) agenda and later, Sustainable Development Goals (SDGs). The definitions of CSR of the 2000's reflected the belief that corporations had a new role in society in which they need to be responsive to social expectations and should be motivated by the search for sustainability, which meant they would have to make strategic decisions to do so (Husted and Allen 2007; Porter and Kramer 2006; Werther and Chandler 2005). This opened the discussion around the benefits of strategic CSR and by the early 2010's it was believed that companies can generate shared value while improving the firm's competitiveness through a holistic implementation of SCSR.

The modern CSR concept, which is widespread in the West, shows the willingness of companies to voluntarily and independently solve current societal challenges. The European Commission gives the following definition of CSR: "CSR is the voluntary willingness of companies to integrate social and environmental issues into their activities in cooperation with stakeholders. Social responsibility is not just about meeting legal requirements, but also about investing in human capital, the environment and with stakeholders" (European Commission 2015).

The Social Responsibility Business Platform states: "Entrepreneurial decision-making is based on ethical considerations and compliance with legal requirements, as well as respect for people, society and the environment." The International Organization of Employers CSR formulates as follows: "Voluntary business initiatives that promote social, economic and environmental conditions in society." (CSR Platform 2014).

The development of ISO 26000 is important for CSR movement not only because it serves as a guideline on how companies can operate in a socially responsible way, but more so because it was developed by 450 experts from 99 countries and 40 international organizations, and so far more than 80 countries are have adopted guidelines for national standards (ISO nd-b, nd-c).

It follows from the above definitions that CSR takes into account two areas of socio-economic and environmental safety, where the inclusion of environmental issues was the result of many public organizations and a number of environmental disasters.

Research method

The author has carried out twenty one-hour long semi structured interviews with the upper and middle level managers of one of the leading enterprises in Latvia and explored the factors of success for implementing the CSR and the obstacles of implementation a CSR politics for a sustainable regional development in practice.

Interviews were conducted with 20 experts from the main business divisions (strategic management, quality management, human resource management, health management, marketing and brand management, internal and external communication, security and environmental protection) to provide an informative picture of the whole company.

Research Findings

The author has developed a corporate social responsibility model to ensure the sustainability in the enterprise X through the use of strategic principles of social responsibility that require consistency and coordination of stakeholder interests.

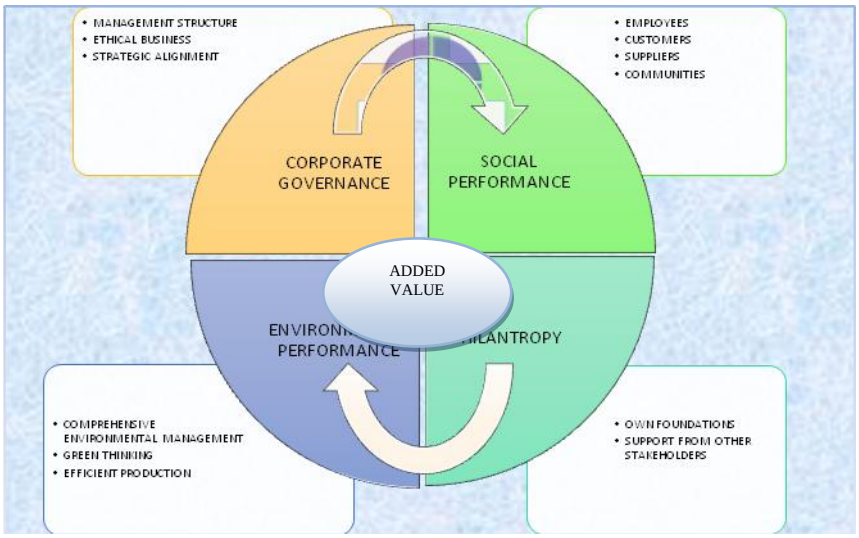


Fig. 1. **The Model of Corporate Social Responsibility designed by the author**

For the purpose of the research the author has carried out twenty semi structured interviews with the representatives from the higher management level in the enterprise, when senior and middle management assessed the corporate social responsibility model and its role in corporate social responsibility policy for sustainable regional development (see Fig. 1).

One of the questions posed was on a perception of a significance of corporate social responsibility for the company related to sustainability (see Fig. 2) and what mechanisms is needed to ensure business effectiveness (see Fig. 3).

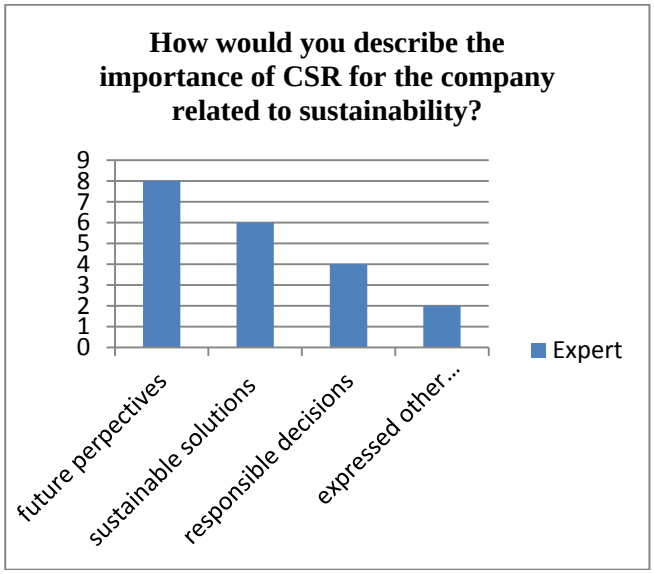


Fig. 2. **How would you describe the importance of CSR for the company related to sustainability? (n-20)**

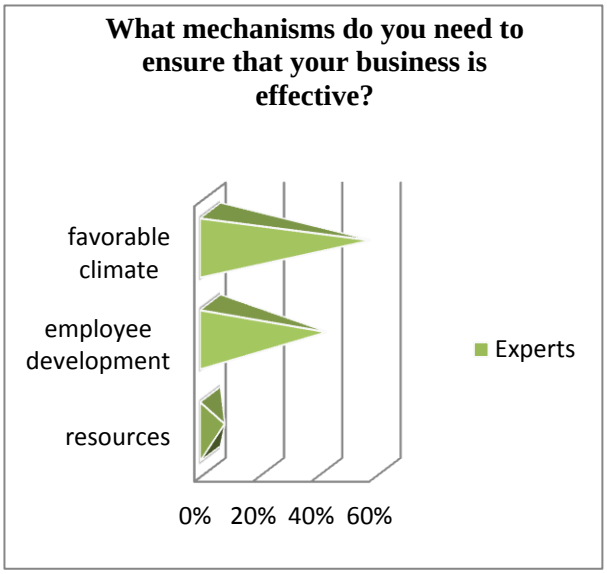


Fig. 3. **What mechanisms do you need to ensure that your business is effective? (n-20)**

The question on **how one describes the importance of CSR** in his/her company, eight experts have responded that they view sustainability as a future perspective, six of them are aware

of sustainable solutions being implemented in the enterprise, four of them relate sustainability to a responsible decision making in the enterprise. One of the experts commented that: "At present, the value of each business is not only the value of today's business, but also the sustainability of the company's future development, which includes not only the past performance and the current situation, but also future perspectives."

On a question ***what mechanisms you need to ensure that your business is effective***, 55% of the experts surveyed said that it was a good climate for the enterprise, 40% of the respondents said it was a constant development of employees, and 5% of respondents said that resource scarcity always exists. So employees are one of the enterprise's greatest assets. Highly qualified employees are the guarantor of the enterprise's sustainability. Of course, it is necessary to develop employee knowledge management, perhaps to attract new specialists, as well as to rotate employees among the Group companies, and to introduce a long-term motivation system.

The other questions have its focus on evaluation does your corporate strategic plan has integrated social responsibility values and how sustainability strategies that are already beginning implemented in the company?

Fig. 4. **Whether your corporate strategic plan has integrated social responsibility values? (n-20)**

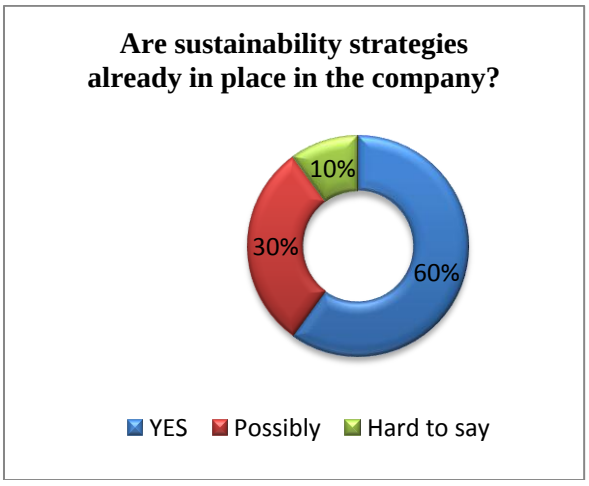


Fig. 5. **Are sustainability strategies already in place in the company? (n-20)**

The question of ***whether your corporate strategic plan has integrated social responsibility values***, 70% of respondents said that corporate responsibility included social responsibility values in the corporate strategic plan, and 30% of respondents said they had not integrated the values of social responsibility in the strategic plan, because there is a lack of information on how to do it methodically (see Fig. 4).

On a question ***are sustainability strategies already in place in the company***, twelve of the interviewed experts indicated that only few efforts have already been made on the legislative level

at the enterprise. Sustainability is embedded both, as a long-term strategy and as a mid-term strategy, where the main strategic goals and tasks define the sustainable development of the enterprise. Six experts have replied that this is possible to reorient the enterprise towards a sustainable development and two expert's view many difficulties in reorienting the enterprise towards a sustainability development (see Fig. 5).

On a question **who is responsible for the strategic decision-making process**, fifteen experts have replied that it is a committee that oversees implementing process of the company's CSR and monitoring a sustainability performance. One expert replied that all stakeholders are involved in the strategic decision-making process, but four experts expressed difficulty to answer the author's question. The answers indicate that the management team has not developed a mechanism of involving multiple stakeholders in implementing the sustainability perspective and the strategy of corporate social responsibility in practice by restricting this task purely for the CSR Committee at the enterprise (see Fig. 6).

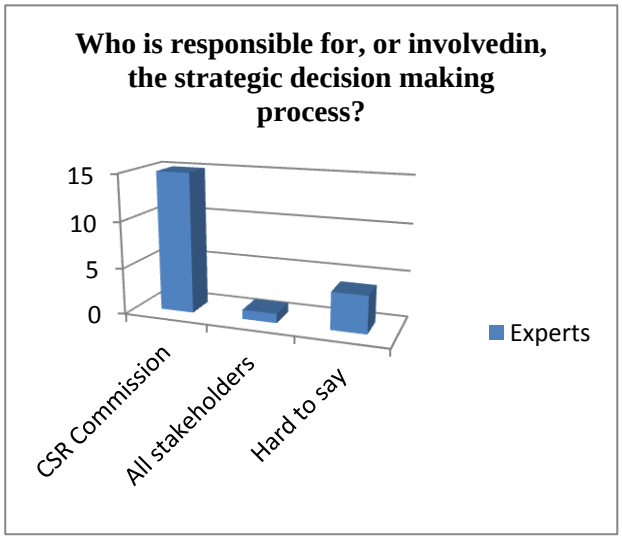


Fig. 6. **Who is responsible for the strategic decision making processing the enterprise? (n-16)**

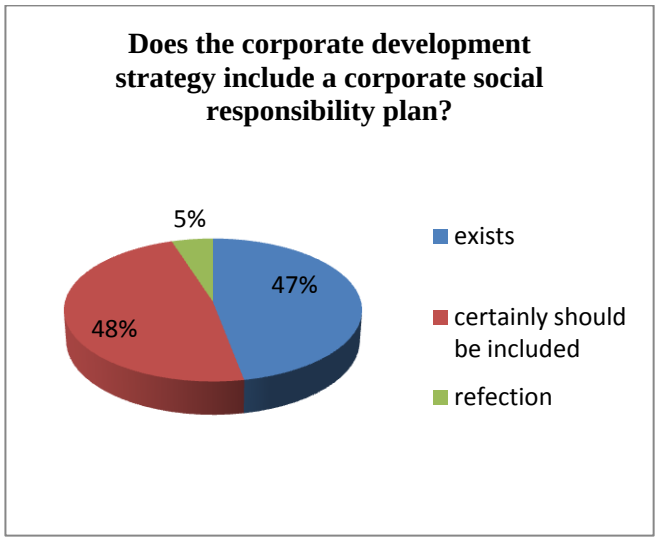


Fig. 7. **Does the corporate development strategy include a corporate social responsibility plan? (n-20)**

On a question ***does the corporate development strategy include a corporate social responsibility plan***, 48% of the experts expressed the likelihood that such a plan is embedded in the current long-term development strategy, while 47% expressed their conviction that a corporate social responsibility should definitely be included in a strategic planning of the developing a sustainability strategy in the enterprise (see Fig. 7).

The author has designed the model of corporate social responsibility for enterprise X and asked the leading experts in the field for the evaluation.

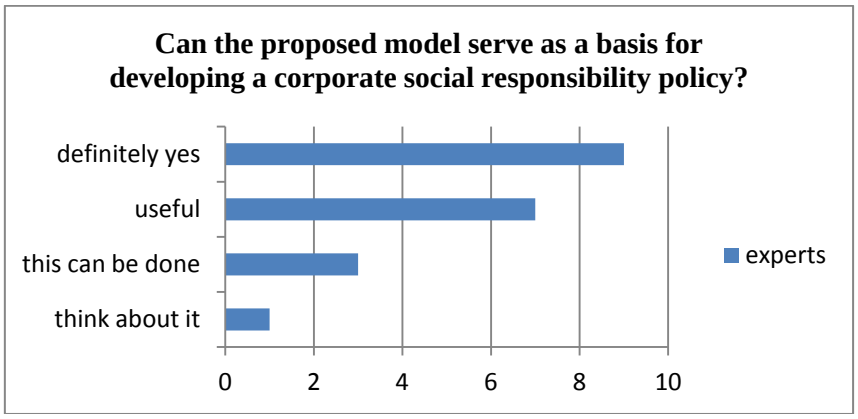


Fig. 8. **Can the proposed sustainability model serve as a basis for developing a corporate social responsibility policy? (n-20)**

On a question ***can the proposed model serve as a basis for developing a corporate social responsibility policy***, nine experts recognized the applicability of the model for this particular enterprise for implementing the policy of corporate social responsibility, seven experts replied that this is useful to consider and one expert answered that he needs deeper and a more detailed consideration.

Experts admit that applying this model will definitely strengthen the enterprise's CSR policy, make it more comprehensible and accessible to the enterprise's employees, and sustainable development in particular. For now, the value of each business is not only the value of today's business, but also the sustainability of the company, which includes not only the past performance and the current situation, but also the future prospects. Unfortunately, the most difficult thing to do is to evaluate it objectively, and one way to do this is to assess the quality of corporate governance.

Conclusion

In the 21st century, any modern company must rely on sustainable solutions that define its responsible behavior. Responsible decisions are being made in the company to justify any business activity because sustainability is the responsibility for what we leave to our children and how well we build our world. This corporate social responsibility of the enterprise is oriented towards other people and future generations.

CSR is voluntary, it is embedded in the philosophy of the enterprise. These are not only donations, charity and paid taxes, but also is a labor law, human rights, environmental problems, corruption prevention, which is perceived more widely. Corporate social responsibility is the most effective way to ensure the companies' competitiveness as well as social welfare and a long-term development.

Thus, in 2013, the enterprise X has defined and approved a CSR policy with the main purpose of its implementation: by defining the principles of corporate social responsibility with the focus on responsible and ethical business, by promoting strategic goals and improving their implementation

in practice. CSR policy is a tool for enterprise management and is mandatory for the whole enterprise.

Among the principles of the enterprise is just payment of taxes, responsible business initiatives that are written clearly in the strategic aims of the enterprise and are based on such values as responsibility, cooperation, justice and sustainable development.

Today the strategy of CSR need to be seen via adaptive and dynamic conceptual framework since new requirements and imperative of the national legislation that places new expectations of business companies, thus altering social, environmental and economic impacts in transparent decision making process.

The main difficulties in implementing the strategy of a corporate social responsibility as the following: low internal ability to communicate with stakeholders and listen to their concerns and expectations as well as low efficiency of networking with multiple stakeholders and the local community. Experts admitted that it was necessary to look for a new perspective to open up the adaptive system and to involve stakeholders. As a few success factors, the experts mentioned: corporate reputation and corporate sustainability, internal and external communication.

Author's suggestion:

1) First of all, it is important to emphasize the development of society, in particular consumer awareness of social responsibility, in order to promote long-term corporate social responsibility in line with relevant business initiatives.
2) Secondly, expanding the desire of employees and customers for a broader perspective of sustainability and corporate social responsibility, strive to build a network of stakeholders.

References

Agudelo, M.A.L., Jóhannsdóttir, L., & Davídsdóttir, B. 2019. A literature review of the history and evolution of corporate social responsibility. In: International Journal of Corporate Social Responsibility. Vol. 4 (1), doi.org/10.1186/s40991-018-0039-y

Belal, A. R. 2008. Corporate social responsibility reporting in developing countries: The case of Bangladesh (1st Ed.). Hampshire: Ashgate.

Carroll, A. B. 1979. Three-dimensional conceptual model of corporate Performance. Academy of Management Review, Vol. 4 (4), 497–505. http://dx.doi.org/10.2307/41165066

Carrol, A. B. 1999. Corporate social responsibility. Business & Society. Vol. 38 (3), pp. 268–295.

Carroll, A. B. 2015. Corporate social responsibility: The centerpiece of competing and complementary frameworks. Organizational Dynamics. Vol. 44(2), pp. 87–96.

Castello, I., & Lozano, J. 2011. Searching for new forms of legitimacy through corporate responsibility rhetoric. Journal of Business Ethics, Vol. 100 (1), pp. 11–29.

Chandler, D. 2016. Strategic corporate social responsibility: sustainable value creation. United States of America: SAGE Publications.

Chandler, D., & Werther, W. B. 2013. Strategic corporate social responsibility: stakeholders, globalization, and sustainable value creation (3rd Ed.). United States of America: SAGE Publications.

Cochran, F., Wood, R. 1984. Corporate social responsibility and financial performance. Academy of Management Journal. Vol. 27(1), pp. 42–56. http://dx.doi.org/10.2307/259398

Eiropas Parlaments. 2017. Ziņojums par sociālo atbildību. [European Commission.] (Accessed): 20.12.2017. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+REPORT+A7-2010-0317+0+DOC+XML+V0//LV

Heslin, P. A., & Ochoa, J. D. 2008. Understanding and developing strategic corporate social responsibility. *Organizational Dynamics, Vol. 37*(2), pp. 125–144.

Husted, B. W., & Allen, D. B. (2007). Strategic corporate social responsibility and value creation among large firms: Lessons from the Spanish experience. *Long Range Planning, 40*(6), 594–610.

ISO. (n.d.b). ISO 26000 – social responsibility. (Accessed): 17.05.2018. https://www.iso.org/iso-26000-social-responsibility.html

Korporatīvās sociālās atbildības platforma. 2014. *Latvijas Darba devēju konfederācija.* [Corporate Social Responsibility Platform] (Accessed): 10.12.2017. http://www.lddk.lv/pakalpojums/korporativas-socialas-atbildibas-platforma/

Lantos, G. P. 2001. The boundaries of strategic corporate social responsibility. Journal of Consumer Marketing. Vol. 18(7), pp. 595–632.

Matten, D. and Moon, J. 2008. 'Implicit and explicit CSR: A conceptual framework for a comparative understanding of corporate social responsibility. Academy of Management Review. Vol. *33*(2), pp. 404–424.

Porter, M. E., & Kramer, M. R. 2011. Creating shared value. Harvard Business Review (January-February).

Tilt, C. A. 2016. Corporate social responsibility research: the importance of context. International Journal of Corporate Social Responsibility. Vol. 1(2). doi.org/10.1186/s40991-016-0003-7

Trapp, N. L. 2012. Corporation as climate ambassador: Transcending business sector boundaries in a Swedish CSR campaign. Public Relations Review, Vol. 38(3), pp. 458–465.

Van der Laan Smith, J., Adhikari, A., & Tondkar, R. H. 2005. Exploring differences in social disclosures internationally: A stakeholder perspective. *Journal of Accounting and Public Policy*, Vol. 24(2), pp. 123–151. https://doi.org/10.1016/j.jaccpubpol.2004.12.007

van Marrewijk, M. 2003. Concepts and definitions of CSR and corporate sustainability: Between agency and communion. Journal of Business Ethics, Vol. 44(2/3), pp. 95–105.

Wade, D., & Recardo, R. 2001. Corporate performance management: How to build a better organization through measurement driven strategic alignment. *Butterworth-Heineman*. (Accessed): 19.02.2019. https://www.sciencedirect.com/science/book/9780877193869#book-info

PEDAGOĢIJA / PEDAGOGY

EDUCATION FOR SUSTAINABLE DEVELOPMENT: VALUES AND VIRTUES OF GENERATION Z IN THE CONTEXT OF A COMPETENCY-BASED APPROACH IN THE ANTHROPOCENE AGE

Jeļena Fedosejeva, Aleksandrs Boče, Marija Romanova-Klapina
Daugavpils University, Parādes street 1, Daugavpils, jelena.fedosejeva@daugvt.lv, makslas.studija12@gmail.com, marija-romanova@inbox.lv

Abstract

Education for sustainable development: values and virtues of generation Z in the context of a competency-based approach in the anthropocene age

Key words: *sustainable education, competency-based approach, pupil values, Z generation*

Global changes in society have fundamentally changed the social habits of children and young people, they are radically different in their day-to-day activities, in the sense of values, in life goals. Starting from the 2018–2019 school year, Latvia will begin a gradual transition to the improved curriculum within the framework of the project "Competency-Based Approach in the Curriculum" of the NCE (National Centre for Education) of the Republic of Latvia. As a result, pupils are envisaged to acquire value-based skills, knowledge, attitudes and habits that are necessary in the 21st century. Thus, values are one of the basic components of a new curriculum. However, it is very important to understand whether the values and virtues defined in the documents correspond to the real situation at schools and to the progress towards sustainable development. The theory of generations, which is being increasingly discussed at present, especially in the context of the labour market, has become a very topical issue. Schools also include individuals of different generations, teachers of different ages and pupils. Hence, there is a great difference between generations. Based on the theory of generations, each generation has its own values and beliefs that are changing over the years. Each new generation has a different lifestyle, which have largely changed as a result of globalization and the evolution of society. In Latvia, the issue of youth values has become increasingly topical nowadays. The study uses a different value model and the defined values that are not based on the theory of generations as a whole, but help determine whether the values and virtues defined in the new curriculum correspond to the value system of pupils and educators. Consequently, a number of topical issues are considered within the framework of the study.

Kopsavilkums

Izglītība ilgstpējīgai attīstībai – Z paaudzes vērtības un tikumi kompetenču pieejas kontekstā Antropocēnes laikmetā

Atslēgvārdi: *ilgstpējīga izglītība, kompetenču pieeja, skolēnu vērtības, Z paaudze*

Globālās pārmaiņas sabiedrībā ir būtiski mainījušas bērnu un jauniešu sociālos paradumus, tie radikāli atšķiras ikdienas darbībā, vērtību izpratnē, dzīves mērķiem. Latvijā sākot ar 2018./2019. mācību gadu skolās sākās pakāpeniska pāreja uz pilnveidoto mācību saturu VISC (Valsts izglītības satura centrs) projekta Kompetenču pieeja mācību saturā ietvaros. Tā rezultātā skolēniem ir paredzēts apgūt 21. gadsimtā nepieciešamās prasmes, zināšanas, attieksmes un ieradumus, kas balstītas uz vērtībām. Tātad viens no jaunā mācību satura pamatiem ir vērtības, kas ir aktualitālās mūsdienās. Tomēr ir ļoti būtiski saprast, vai dokumentos definētās vērtības un tikumi atbilst reālajai situācijai skolās un mūsu sabiedrībā. Ir pilnīgi saprotams, ka bez mūsdienas izglītojamo galveno īpatnību izpētes nevar piedāvāt jauno mācību programmu, tāpēc arī ļoti aktuāla ir kļuvusi paaudžu teorija par ko tiek runāts aizvien vairāk, īpaši darba tirgus kontekstā (Biruma 2015). Arī skolās ir sastopami dažādu paaudžu indivīdi, dažāda vecuma skolotāji un skolēni. Līdz ar to eksistē liela paaudžu atšķirība. Balstoties uz paaudžu teoriju (Mannheim 1972), katrai no paaudzēm ir savas vērtības un uzskati, kas ar gadiem aizvien mainās. Katrai jaunajai paaudzei ir savādāka vide un dzīvesstils, kas galvenokārt ir mainījies globalizācijas un sabiedrības attīstības rezultātā (Biruma 2015). Latvijā aizvien vairāk ir kļuvis aktuāls jautājums tieši par jauniešu vērtību pētīšanu (Mārtinsone & Mihailova 2015). Tomēr šajā pētījumā izmantots cits vērtību modelis un definētās vērtības, kā arī tie nebalstās uz paaudžu teoriju kopumā, bet gan atšķirīgu laika posmu. Pētījums palīdzētu noskaidrot, vai jaunajā mācību saturā definētās klasificētas vērtības un tikumi atbilst skolēnu un pedagogu vērtību sistēmai. Līdz ar to viena pētījuma ietvaros iespējams aplūkot vairākus aktuālus jautājumus.

The theoretical background and the methodology of research

In Latvia, starting from school year 2018/2019, the gradual transition to advanced learning content begins in schools VISC (National Centre for Education Content) under the project *Competency-Based Approach to Learning Content*. As a result, pupils are expected to acquire the skills, knowledge, attitudes and habits based on the values that are needed in the 21st century (*Education for Modern Competency* ..., 2017). Therefore, one of the basics of the new curriculum is values. Values serve as standards or criteria, relate to the desired goals and their interaction forms the action of an individual (Schwartz 1992; Schwartz 2012). By definition, it can be concluded that values determine an individual's attitude and behaviour in different life situations. Likewise, they form virtues or already acquired and accepted values (*Education for Modern Competency* ..., 2017). From the point of view of the teaching staff, virtues are the moral qualities that have been developed and implemented in the learning process and comply with professional norms (Sockett 1993). The new curriculum includes 10 main values and 12 virtues that will build upon them. The defined value system is based on the values set by the Constitution of the Republic of Latvia, the Universal Declaration of Human Rights and the European Convention on Human Rights (*Education for Modern Competency*..., 2017). However, it is very important to understand whether the values and virtues defined in the documents correspond to the real situation in schools and society. Nowadays, several authors have defined the values of the 21st century, such as humour or voluntary work (Lakota, Širca & Delmor 2016). The theory of generations, which is increasingly being discussed, has become very topical, especially in the context of the labour market (Biruma 2015). Individuals of different generations, teachers of different ages and pupils are also common in schools. Therefore, there is a big difference between generations. Based on generational theory (Mannheim 1972), each generation has its own values and beliefs that have been changing over years. Every young generation has a different environment and lifestyle, which has largely changed as a result of globalization and societal development (Biruma 2015). In Latvia, the issue of studying the values of young people has become increasingly important. No research has been conducted specifically in the context of schools, which is clearly an innovation and could help to understand whether there is a problem of generational differences in the context of the value system both in general education and in vocational education institutions. The study would also help to clarify whether the values and virtues defined in the new curriculum correspond to the issues of the pupils and the value system of teachers. Thus, in the framework of one study, it is possible to consider several topical issues.

The purpose of the research is to compare whether the values and virtues defined in the content of the competency-based approach coincide with the values and virtues of pupils and teachers in the Latvian and Lithuanian vocational education institutions?

Research questions:

- Do the values and virtues defined in the content of the competency-based approach coincide with the values and virtues of pupils and teachers in vocational education institutions?
- Are there any differences between the values and virtues of pupils and teachers?

Values for the Z generation, the relation between these values and sustainable development

It would be correct to consider the development of the young people's values in the context of the Anthropocene age. The Anthropocene age significantly influences the meaning of conventional values. There is a different understanding or an interpretation of these values. Accordingly, this different interpretation of common values makes communication between the younger and the older generations more complicated, because under the same word – designation, quite different things are understood. As a result of the Anthropocene age, young people also have very different, new values, some of which, by the way, till now could count as vices and shortcomings. It is therefore not enough simply to study the attitudes of young people to any of these named values. Initially, it would be important to find out how today's young people understand these values, what these values mean to them. Another issue that arises – how, by what methods it should be advisable to facilitate for the young people's undistorted understanding of the values defined in the content of education? The development of the Anthropocene age (or human degradation in it) gives all that is named the meaning of customer need gaining (satisfaction). The issue is that the mentioned values and the understanding of these values would not serve to develop the attitude of the consumer in the consciousness of the Z-generation representatives, but rather to direct the thinking of this generation to the sustainable development of the society.

The meaning of the value education defined in the content of education is as follows:

- *Value education is a set of educational features, and the learning standard provides for its inclusion in the primary school education.*
- *Value education is carried out during the lessons of ethics, social science, Christian learning, literature, philosophy, history, culture and education.*
- *Currently, the national standard does not define a single curriculum for value education or upbringing lessons* (School 2030 2017).

The issue of values is also addressed within UNESCO:

UNESCO's value education is related with the lifelong learning and heritage education (LV portal 2014).

In 2011, the issues of value education were discussed within the framework of the VISC, which resulted in the development of *"Methodological Recommendations for Improvement of Educational Work in General Education and Vocational Education Institutions"*. They defined the

values that pupils had in the process of learning to gain an understanding and a positive attitude. These values are:

- *human and its personality,*
- *life, health and safety,*
- *spirituality and virtue,*
- *respectful, responsible and tolerant interpersonal relationships,*
- *knowledge and work,*
- *promoting one's own and society's well-being,*
- *patriotism and civic participation,*
- *family,*
- *traditions and culture,*
- *nature and environment in the sustainable development* (School 2030 2017).

Before speaking about the influence of the anthropocene on the understanding of the values of the modern youth and the formation of this understanding, let's consider the meaning of the anthropocene concept. Anthropocene is a term used in science to describe the Earth's current period of history, in which human activities occupy a leading position in the influence of the Earth's ecosystem. From 1995 onwards, the term 'Anthropocene' started to be used in this sense by the Nobel Prize laureate in chemistry, Paul Kurtzens. In January 2016, the academic magazine "Science" published an article claiming that the Pleistocene era was over, as since the middle of the 20th century, the human influence on nature and its systems has become so serious that it is possible to speak of joining a new ecological age. Anthropocene in the context of education can mean the following. Despite intense cooperation in achieving sustainable development goals, the overall situation in the global development trajectory has marked a non-sustainable direction in which education promotes the reproduction of unsustainable behaviour patterns (UN 2011). This situation has already gained its name in the recent years – Anthropocene age (Figueroa 2017). The Anthropocene phenomenon is emerging gradually and is now a phenomenon that demonstrates the non-sustainable quality of human ecological, cultural and societal relationships. Anthropocene circumstances have become the current conditions for addressing issues of education for sustainable development, for education and science development, educational, science development issues and other issues. Anthropocene can also be characterised as a relationship established between the human and nature, where the human is the main and the only one, and the nature is strongly subordinate to the wishes of the human (Fedosejeva et al 2018). Distancing from the nature contributes to the creation of unnatural life, unnatural human relationships. First of all, the Anthropocene age influences the development of the modern youth, the formation of young personality and thus the attitude towards values. For example, the perception of the world by the Z

generation is extremely different from the perception of the world that once existed for all previous generations. Z generation – they are the today's young people up to 19 years. They, starting from their birth, were growing and developing under the influence of the digital environment, and their conscious (and even unconscious) life passes in the constant virtual connection. For example, sometimes, children at the age of three know better how to deal with the Internet and "Skype" than their parents and grandparents. Now, it is too early to say what the Z generation will be when they grow up, however more specifically, we can now judge about the formation of their consciousness, perception and relevant values, taking into account what they are in their current stage of development (ParMuziku.lv 2017). Observing the Z-generation representatives, one can say that they are self-confident, self-reliant and purposeful, as well as more pragmatic than the previous generations (ParMuziku.lv 2017). It is important that, unlike previous generations, the Z generation does not remember the time before social media, as a result of which much more time is spent on different social networks and the like, and the smartphone remains almost a part of the modern young people. It affects the whole perception of the young person and its formation in general – starting with the constant presence in the virtual reality and its relating and sometimes even mixing with the existing reality, and ending with the young people's mutual relationships and relationships with parents, teachers and others. Of course, this also greatly affects the learning process. It turns out that representatives of the Z generation often consider the representatives of the previous millennials generation to be old people. It also shows that they consider themselves to be more advanced (ParMuziku.lv 2017). Typically, there is a certain lack of relation between the inter-generations. In essence, the Z generation does not inherit the norms of life and perception of life from previous generations, but because of the changed living conditions, to a large extent, due to comprehensive technolization and endless informative exchanges, it creates its own perception of life, the world around it, and its life standards and values.

Research design and participants

In Latvia, the issue of research regarding the values of young people has become increasingly important. However, this study uses a different value model and defined values, and they do not rely on generational theory in general, but on a different period of time. No research has been conducted specifically in the context of schools, which is clearly an innovation and could help to understand whether there is a problem of generational differences in the context of the value system both in general education and in vocational education institutions. The research would also help to clarify whether the values and virtues defined in the new curriculum correspond to the issues of the pupils and the value system of teachers. Therefore, within the scope of one research it is possible to look at several topical issues.

The aim of the research is to compare whether the values and virtues defined in the content of the competency-based approach coincide with the values and virtues of pupils and teachers in Latvian and Lithuanian vocational education institutions? Research questions: *Whether the values and virtues defined in the content of the competency-based approach coincide with the values and virtues of pupils and teachers in vocational education institutions? Are there differences between the values and virtues of pupils and teachers?*

During the research, an empirical study has been carried out, with the research sample of 305 students studying in Daugavpils Technical School in I, II and III course. The research combined quantitative and qualitative methods. The first stage of the empirical research consisted of the focus group discussions; the focus group sampling was carried out based on random selection. It formed a group of students: the youngest, the I course – 16 years old, the eldest – the III course – 18 years, with the variable composition – 80 participants. The second stage consisted of questionnaires and document analysis. Initially, scientific literature in English and the new curriculum of competency-based approach educational content School 2030 were analyzed, as well as regulatory enactments.

Research findings

The empirical research data were analyzed according to the developed criteria. Criterion 1 – Family, Criterion 2 – Health, Criterion 3 – Education, Criterion 4 – Love, Criterion 5 – Career, Criterion 6 – Freedom, Criterion 7 – Money, Criterion 8 – School, Criteria 9 – motherland, Criteria 10 – Art, Criteria 11 – pets, Criteria 12 – fresh air, Criteria 13 – I myself. It can be seen in Figure 1: *"Student's personal allocation of values by priority"*.

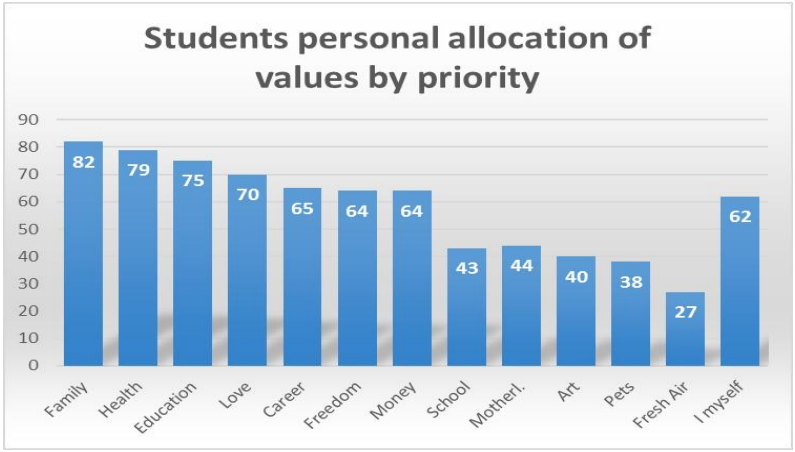


Figure 1. **Student's personal allocation of values by priority**

Most of the young people 82% of the total respondents chose the value *family* that correlates with health, meaning that many young people are engaged in sports and it corresponds to almost 79% of the total number of respondents. *Love* refers to the human values of humanity and represents 70% of the total number of respondents. Seriously against the attitude of young people's

love can only be spoken if the statements of the students are not only found, observed and described, but if their argumentative content and context were taken into account and considered.

The young people in the focus group didn't discuss the wider sense during the interview, as this value is very important. The value *motherland* has got only 44% which is related with orientation, solidarity and awareness that identity is not inherited, and that it is a very low indicator. Very important criteria for young people are *career* and *freedom* 65% and 64% from all the respondents. They relate *freedom* to both personal freedom, and a chance to free choice and to speak freely, and only one respondent in the focus group answered that he wishes to be "spiritually free". Denn Schawbell (2014) has carried out a research during which it has been stated that 61% of high school students want to do business – to work for themselves. This trend can be attributed to the new technology influence on the modern generation (Schawbel 2014). The study carried out by the CGK Center (The Center for Generational Kinetics) says that the wish to do business has 77% representative of the Z generation which is rooted in the desire to determine their own working hours and salaries (The Center for Generational Kinetics 2017). *I myself* make up 62% and focus on developing his/her own Ego and balancing socially important values. The value of *money* makes up 64%, the focus group during the discussions confirmed great importance and need for money in the context of the economic crisis. For example, there were the following answers in the questionnaire: "One can get for money both education and health", "All my value is money". The smallest result is the fresh air criterion making up 27%, and it is clearly seen how we work with the Z generation, who have great interest in information technology, innovations and who are always on the Internet. When contacting with the early age range of youth, the authors have noticed that students differ significantly from other generations in the same age group. The age range studied are pupils born after 2000 and is the so-called Z generation, which is often referred to as the internet generation, because it is no longer just an instrument, but an integral part of everyday life and learning work. Young people use the Internet as a source of information, communication and entertainment (Dorsey 2015). Analyzing the respondents' questionnaire responses regarding 10 questions that influenced the choice of values in general, it can be seen as a general that young people chose *family, health and education* as their values. There was also a survey for teachers and parents who most appreciated the same values as *health, life, family, safety, joy in living, human dignity*, and students, in their turn, have chosen *life, family, health, safety*.

Conclusions

The pedagogical and psychological factors of value creation are not unequivocal, which have been concluded during the course of the theory evaluation. The motives for young people to choose the values are related to the context of socio-economic situations, to the norms of the consumer society and to their values and needs. The curriculum standards, education regulatory documents

emphasize values such as economic competitiveness. When changing subjects and subject programs, pupils (students) should be focused on the humanitarian value of the future society as a whole. During the empirical study, it turned out that the value *family*, which is both moral and material support, is more important for young people than their *motherland*. Analyzing the significance of values, the spirituality and moral consciousness does not correlate with the value of searching for the meaning of life. During the research, it has been found out which values a young person transforms from education and subjects that are regulated by the state, the goals of school upbringing, the experiences of parents, and which young people consider to be useful. For example, *career* as a value is mentioned in all strategic educational documents, and was also important in the ranking of youth values. The research has revealed how cultural traditions and differences in generational thinking affect the younger generation with a different vision and a different world of values. The developed value model PIKC Daugavpils Technical School reflects the social environment, fixes its experience and advances the interest in a common cultural environment. The priority values of modern young people are *family, health, love and career*. It affects the identity of young people and is related with their goals. The most important values for teachers, parents and pupils are largely the same: health, safety, family and life. Life and family are included in the new curriculum. Thus, the values defined in the competency-based curriculum partly coincide with the most important values of teachers, parents and pupils. After the survey, the most important virtues for parents and teachers are responsibility, honesty, justice, freedom of action, and for pupils, in their turn, – *self-control, freedom of action, justice, wisdom and impartiality*. The virtues that coincide and are the most important of all groups are *freedom of action* and *justice*. Competency-based content includes *justice, wisdom, and self-control*. Therefore, the virtues, defined in the new curriculum, partly coincide with the real situation in schools. In the future, the Z generation will become the fastest growing generation in work places and the labour market (*The Center for Generational Kinetics* 2017); the first indicators show that this generation is more self-confident, relies on their abilities, is innovative and goal-oriented. They tend to educate themselves, for example, with Pinterest and YouTube, wanting to make positive changes in the world. Representatives of the Z generation are also more different from each other than the Millenium generation (Segran 2016). Entrepreneurial skills rather than competition should be developed already in the school environment, taking into account the peculiarities of modern-generation learning – the desire to acquire practice-based education, while forms of learning that can make content for the Z generation easier to acquire, are discussions, debates, experiments, project work and group work, real situation analysis. The best what we can give to the technology generation is the opportunity to identify themselves, their potential and their values, not to get confused among many opportunities.

References

Biruma A. 2015. Paaudzes darba tirgū. Kā ar tām strādāt? Kādas pārmaiņas gaida nākotnē? Pieejams (Accessed): http://www.cesis.lv/uploads/files/uznemeji/ArtaBiruma.pdf [skatīts 05.04.2018].

Dorsey J. 2015. What do we know about the generation after millennials? Pieejams (Accessed): https://www.youtube.com/watch?v=4f16o9Q0XGE [skatīts 02.02.2018].

Fedosejeva J., Boče A., Romanova, M., Iliško Dz., Ivanova O. Education for sustainable development: The choice of pedagogical approaches and methods for the implementation of pedagogical tasks in the Anthropocene age. Journal of Teacher Education for Sustainability, Vol. 12(1), 157–179.

Figueroa A. 2017. Economics of the Anthropocene age. Pieejams (Accessed): https://books.google.lv/books?isbn=3319625845 [skatīts 14.06.2018].

Izglītība mūsdienīgai lietpratībai: mācību satura un pieejas apraksts. 2017. Pieejams (Accessed): https://www.skola2030.lv/ [skatīts 04.04.2018].

Lakota B.A., Širca T.N., & Dermol V. 2016. Virtues – the centre of quality education system – for Successful Integration in the International Society. Procedia – Social and Behavioral Sciences, Vol. 221, pp. 302–307.

Mannheim K. 1972. Paul Kecskemeti, Karl Mannheim: Essays. Routledge, pp. 276–322.

Mārtinsone K., & Mihailova S. 2015. Charasterisics of personal value-meaning systems of Latvian youths in 1998, 2005, 2010 and 2015: A Comparative Study. Society. Integration. Education, Vol. 3 (pp. 576–587). Rezekne: Rēzeknes Augstskola.

Kas ir Z paaudze un cik svarīga tai ir mūzika? Pieejams (Accessed): https://www.parmuziku.lv/.../kas-ir-z-paaudze-un-cik-svariga... [skatīts 11.02.2018].

Schawbel D. 2014. Why 'Gen Z' May Be More Entrepreneurial Than 'Gen Y'. Pieejams (Accessed): www.entrepreneur.com: https://www.entrepreneur.com/article/231048 [skatīts 20.02.2018].

Schwartz S.H. 1992. Universls in the content and structure of values. Theoretical dvances and empirical tests in 20 countries. Advances in Experimantal Social Psyschology, Vol. 25, pp. 2–65.

Schwartz S.H. 2012. An Overview of the Schwartz Theory of Basic Values. International Association for Coss-Cultural Psychology, Vol. 2, pp. 3–20.

Sockett H. 1993 The moral base of teachers professionalism. New York: Teachers College Press.

Segran E. 2016 Your Guide To Generation Z: The Frugal, Brand-Wary, Determined Anti-Millennials. [skatīts]. Pieejams Accessed: https://www.fastcompany.com/3062475/your-guide-to-generation-z-the-frugal-brand- wary-determined-anti-millen

The Center for Generational Kinetics. 2017, Oktobris 25. Pieejams (Accessed): http://genhq.com/expect-gen-z-workforce/ [skatīts 25.10.2018].

The Center for Generational Kinetics. 2017. Pieejams (Accessed): http://genhq.com/igen-gen-z-generation-z- centennials-info/ [skatīts 25.10.2018].

UN. 2011. Learning for the future: Competences in Education for Sustainable Development. Pieejams (Accessed): file:///C:/Users/Dzintra/Desktop/ECE_CEP_AC13_2011_6%20COMPETENCES%20EN.pdf [skatīts 13.06.2018].

Vērtībizglītība – kā to īsteno skolās? – LV portāls. 2014. Pieejams (Accessed): https://lvportals.lv/.../261732-vertibizglitiba-ka-to-isteno-sko... [skatīts 20.03.2019].

Weller C. 2017. Teenagers Are Avoiding Sex, Alcohol, And Driving Like Never Before, Says New Study. Pieejams (Accessed): http://www.sciencealert.com/gen-z-study- psychology-sex-alcohol-driving-teenagers [skatīts 07.03.2018].

PERSONALISED LEARNING APPROACH IN MATHEMATICS FOR THE SECONDARY SCHOOL STUDENTS

Austra Reihenova
Daugavpils University, Latvia, reihenova_a@inbox.lv

Abstract

Personalised learning approach in mathematics for the secondary school students

Key words: *personality, individuality, development, self-regulation, personalised learning*

The topicality of the article is related to the essence of personalisation, which highlights the development of each student's talents and abilities.

The aim of the article is to offer a personalised learning approach that would ensure the development of each student's personality, taking into account his or her individual characteristics, opportunities, attitude and *self-regulation*.

The theoretical basis of the article is based on the personalisation approaches of the pedagogical process, which are based on the theory of learning cognition and constructivism.

In the author's proposed learning approach each student can develop his or her individuality based on the diversity of the core subjects and the organisation forms of learning.

The components of personalised learning approach are learning environment, learning organisation, curriculum, learning process, and thought process. The students' goals are different in self-regulated learning time. The higher the student's level of self-regulation is during the learning time, the higher are the results shown in the exam work. The most effective learning work forms according to the assessment by the 11th grade students are interactive lectures. For the 12th graders it is independent work.

Kopsavilkums

Personalizēta mācīšanās pieeja vidusskolā matemātikā

Atslēgvārdi: *personība, individualitāte, attīstība, pašregulācija, personalizēta mācīšanās*

Raksta aktualitāte saistās ar individualizācijas būtību, kas aktualizē katra studenta dotību un spēju attīstību.

Raksta mērķis ir piedāvāt personalizētas mācīšanās modeli, kas nodrošinātu katra studenta personības attīstību, ievērojot viņa individuālās īpatnības, iespējas, attieksmi un pašregulāciju.

Raksta teorētisko pamatu veido pedagoģiskā procesa individualizācijas pieejas, kas balstās uz mācīšanās kognitīvisma un konstruktīvisma teoriju. Tiek piedāvāta mācīšanās pieeja, kurā katrs skolēns var attīstīt savu individualitāti uz interesējošo mācību priekšmetu satura apguves pamata un mācīšanās organizācijas formu daudzveidības.

Pētījumā datu ieguvei izmantoti studentu pārbaudes darbi un anketas ar atvērtiem jautājumiem. Pētījumā datu apstrādei izmantota daudzveidīgu datu avotu triangulācijas metode.

Personalizētas mācīšanās pieejas komponenti ir mācīšanās vide, mācīšanās organizācija, mācību programma un saturs, mācīšanās process, domāšanas process. Pašregulētā mācību stundā skolēnu mērķi atšķiras. Jo skolēnam ir augstāks pašregulācijas līmenis mācību stundā, jo augstāku sniegumu viņš/viņa uzrāda pārbaudes darbā. Efektīvākās mācīšanās darba formas 11. klases skolēnu vērtējumā ir interaktīvās lekcijas, bet 12. klasei – patstāvīgais darbs.

Introduction

Education should be oriented towards the development of a student's abilities and the skills that are necessary for living in this complicated and ever-changing world. It should be based on the ability to learn, listen, collaborate, solve problems, understand individuals from other cultures, be active and creative, and be prepared for life in society. Education is the process of developing one's talents, emotional and social intelligence, and personality (Likumi, 2014).

The learning process in schools should be directed towards the learning of the material and should integrate new alternative learning methods and forms and new knowledge development principles for creating ideas (OECD 2018; Sahlberg, 2010). It is not the amount of retained information that determines a student's education level; it is the student's ability to use the obtained information in real situations and to self-educate.

Learning is a purposeful cognitive process, an enrichment of experience and a student's active work towards the goal of self-transformation (Žogla, 2001). Nowadays, the largest emphasis in education is put on the learning process, on research and problem solving, on reading comprehension, on the use of reasoning, on the ability to learn and on the development of independent learning skills (Fišers, 2005).

The pedagogical process in school is planned in order to ensure the capability of students to individually construct their understanding of the world. This construction is a creative process that intends for the multiplicity of knowledge comprehension and the diverse opportunities of human development.

Self-directed learning is related to the free choice of learning content, goals and resources, with independent steering of the learning process. The theory of self-directed learning recognises that each person's learning is simultaneously directed by themselves and externally (Vorobjovs, 2002).

From the viewpoint of the constructivist theory, learning is the process of knowledge construction, with an emphasis on the learning process and the individuality of students' achievements. The learning process is based on a student's individual experience (Helds, 2006), on how a student is able to use their individual knowledge in the initial system, which is the reflection of an understanding of the world. Each encounter with a new problem-situation creates an opportunity to either change or maintain the existing structures and systems of experience.

Cognitive learning requires a student's awareness and reflection abilities. Cognitivism is based on the development of a student's thinking processes; the faster a student can think, the more diverse and creative will be ability to solve tasks. Both learning theories emphasise the self-regulation of learning (Helds, 2006; Vorobjovs, 2002).

The **purpose of this article** is to draw attention to students' individual characteristics, needs, interests and abilities because there can be large differences between the achievements and depths of cognitive thinking among students in the same class.

The **relevance of this article** is tied to the creation of a new approach to learning that would allow to uncover each student's unique abilities, learning style, development environment, speed of thought and mental capacity because students vary and comprehend learning material at various cognitive levels (Grant, 2014).

Theoretical findings regarding students' learning abilities

Personalised education is based on the approach that the whole education process, its methods and learning style should be directed towards the student and that learning should be tailored to each student's individual characteristics, needs and interests so that the student would be able to develop their own mastery at the highest level. Necessity is the main motive for learning in the pedagogical process.

A person develops as a personality while living in society (Vorobjovs, 2002). Self-creation of personality is the personality's desire to create the conditions of its own individual development. Thereby, the essence of individuality can be traced by researching the personality in development, in action and in interaction with the environment, where it reveals itself as self-existent and unique, as a united internal subject and as a singularity among other subjects.

Students have various interests and desires, various skills and levels of their development, and various intentions for the future. Each student's development happens differently, since each student is unique and unrepeatable (Albrehta, 2001; Šteinberga, 2013; Vorobjovs, 2002). In the personalised learning process, students learn the learning content at the pace and style appropriate for them. Such learning is ensured by various deep cognitive assignments.

The components of personality structure are progress (attitude towards reality), opportunity, character and self-regulation. Individuality characterises a personality more specifically and in more detail (Bogoslovska, 1982; Vorobjovs, 2002; Zelmenis, 2000). Individualised learning is teaching that is oriented towards observance of the specific individual's skills and interests; the teacher looks for the approach for each student, in order to involve them in active and productive work and to develop each student's skills and abilities.

Learning is a purposeful cognitive process, an enrichment of experience and a student's active work towards the goal of self-transformation (Žogla, 2001). Personalised learning is related to promoting individual learning and observing students' individual characteristics. The main goal of personalised education is to determine the individual education goals of each student and to coordinate processes for realising them (Grant, 2014). The main goals of individual learning are to develop the ability to learn and think because self-development is a lifelong process.

In turn, one of the most powerful learning motives in a purposefully organised learning process is interest (Vorobjovs, 2002; Žogla, 2001), which (similar to curiosity) likens the student's learning to freely chosen action. It is important to engage the student as to promote quicker development of skills in learning subjects, to obtain experience and to deeper develop abilities in interest subjects in school. Essentially, this is for a student to develop the abilities of reasoning, taking on responsibility, goal setting and decision-making in school.

Thus, when starting high school, students must be given a free choice to choose the learning subjects that they will need in studies and later in life. Once students find a field that interests them and in which they are successful, their overall success will improve. A student's natural abilities and interests increase their achievements and success (Robinson, 2013).

Creating learning skills can be considered as granting opportunities to students. When a student has obtained a new skill, new opportunities are opened. Expanding a student's opportunities is the goal of education. Developing the skills to learn is one of the most important goals of the

learning process. It ensures the student with learning autonomy and expands independence. The main task of obtaining learning goals is structuring new information and experience.

Personalized learning includes elements: differentiation – changing the instructional approach; individualization – changing the pace; student agency – choice, relevancy, and involvement (Culatta, 2016).

Methods of the study

The study utilised the action research, where the researcher and the subjects collaborate with the goal to collectively identify problems and search for their solutions (Pipere, 2016). The object of the research is the student (Helds, 2006), with his/her needs, motives, interests and abilities. High schoolers (n=73) responded to an open type form questions and gave written analysis of their learning activity experience, in accordance with their needs and 21st century requirements.

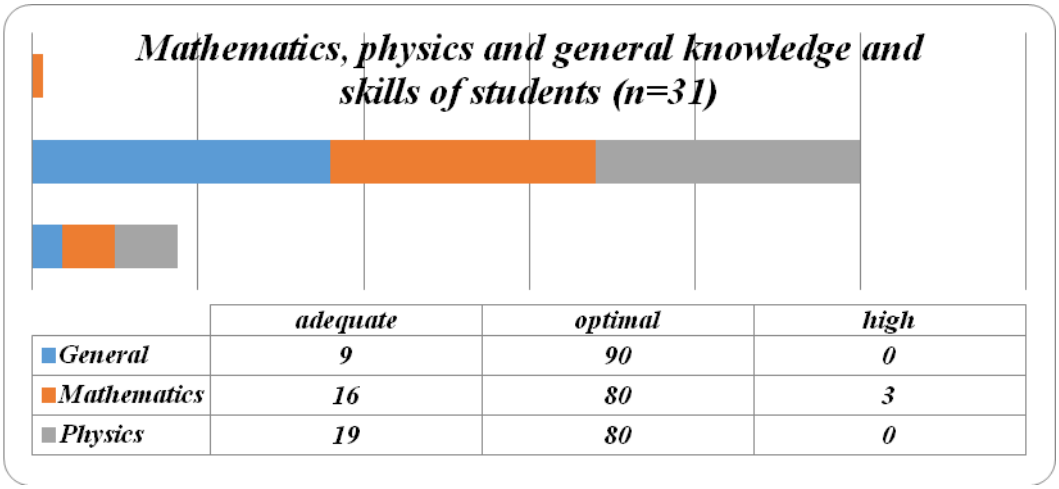
The quantitative method ensures the opportunity for the subjects to express their opinion more freely and reveal the main issues, while the qualitative method provides the opportunity to deeper understanding, learning motives, needs, goals and to better understand the opinion of those being researched (Pipere, 2016).

Research findings

Answers to the form question about the student's main needs can be grouped by levels of needs: existence needs – 56%, affiliation needs – 23%, growth needs – 83%. Existence needs combine physiological and security needs; affiliation needs are related to contact with other people; and growth needs relate to the desire for recognition, respect and self-affirmation (Vorobjovs, 2002).

Learning goals split into levels: obtain education 50% and obtain education in a specific field of interest 50%. Answers reflect that half of the students have still not decided where they will study after finishing high school, while the other half are already purposefully implementing their desires. Students emphasise that they are learning in order to obtain a quality education in learning subjects of interest, to develop skills for further life and to develop creativity. Students note that in school they gain the ability to understand life because school will not teach life's rules and norms, but it helps to come closer to understanding.

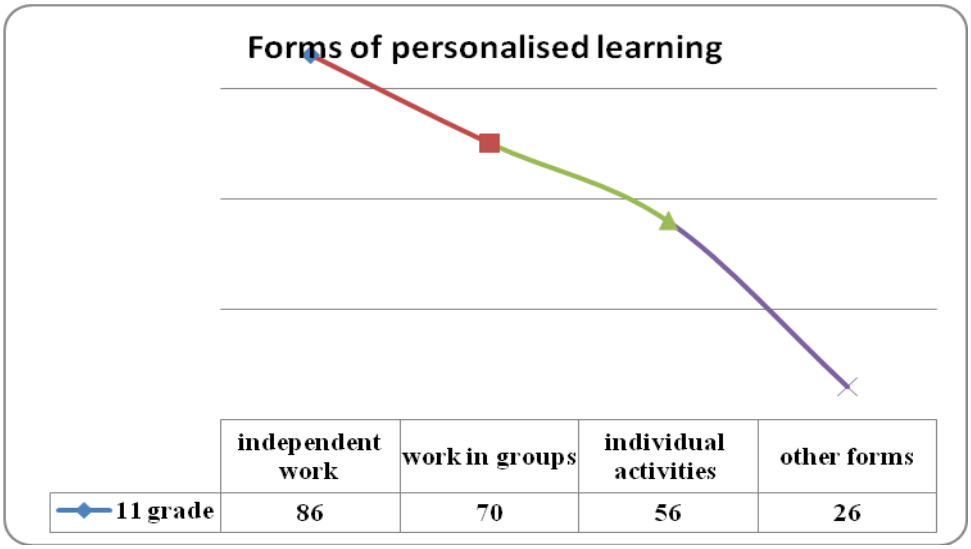
Students who study in the physics and programming learning programme view their priority subjects to be mathematics – 36%, physics – 30% and programming – 23%. Meanwhile, 3% have other priorities or still haven't decided. They emphasise that they are good at and are interested in priority subjects and that physics and mathematics help to explain the principles of the structure of the world. 83% of students indicate that the choice of a learning programme is also related to mastering the knowledge and skills of interest subjects, while 16% of students made their decision because of their friends (Figure 1).



	adequate	optimal	high
General	9	90	0
Mathematics	16	80	3
Physics	19	80	0

Figure 1. **Mathematics, physics and general knowledge and skills of students**

In order to realise their needs, to achieve their set goal and to develop themselves as a personality, students support these learning work forms: (1) independent work (in class, at home, in extracurricular activities, in the computer and technology environment) – 86%; (2) work in groups (develops communication and collaboration skills) – 70%; (3) individual activities (teacher guided work) – 56%; (4) other forms – 26% (Figure 2). Some students express the opinion that all forms of learning work are necessary and that they provide a variety of information but need to be used in specific proportions. Students emphasise independent work for developing themselves because each student is free to have their own interests, values, goals and decisions. Also, when learning the content of a specific subject, various types of thought processes (Reihenova, 2018a) and different approaches to problem solving are used (Reihenova, 2018c).

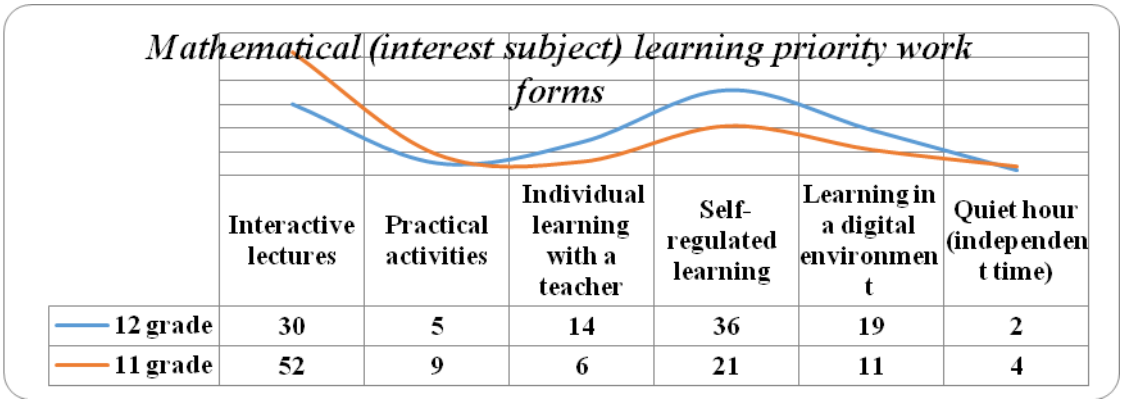


	independent work	work in groups	individual activities	other forms
11 grade	86	70	56	26

Figure 2. **Forms of personalised learning (n=31)**

The content of the school's mathematics course is easier for students to understand through the following methods: independent work – 33%, delving into the teacher's explanation – 63%, classmate explanations – 13%, individual learning with teacher support – 3%. The answers of 11th grade students (n = 49) are dominated by work in passive learning, but 12th grade students (n = 24) note that independent learning is the only way to truly learn, in order to generate one's own ideas and thoughts. 12th grade student answers split into three viewpoints that could be separated into levels: the teacher explains the content at the beginning of the topic and leads the learning process; the teacher only leads the student into the content of the topic and the student further works independently; the teacher explains only after the student has had a go at it, helps to develop an overview of the topic and provides a deeper look into the topic.

Regarding the utilisation of the priority work form of inquiries (in mathematics and physics), student opinions were similar: 52% interactive lectures, 21% independent student work, 9% practical activities. However, less important were individual learning with a teacher, learning in a digital environment and quiet hour (independent time). The advantages of individual learning are still not understood by the students, they are not yet able to formulate their needs and learning goals, or they do not see how use of the knowledge can be used in life. Individual learning guided by a teacher provides positive reinforcement and improves or enhances a student's interest in the learning subject (Figure 3).



	Interactive lectures	Practical activities	Individual learning with a teacher	Self-regulated learning	Learning in a digital environment	Quiet hour (independent time)
12 grade	30	5	14	36	19	2
11 grade	52	9	6	21	11	4

Figure 3. **Mathematical (interest subject) learning priority work forms (n=17)**

Students note that learning activities should be planned to offer more complicated intellectual work in the beginning of the day; lunchtime should be restful and include interest activities, independent time, sports and meditation; and later work should happen in an integrated computer and technology environment. The students themselves best know what, when and how long they need to learn and what conditions and learning work forms are necessary for their development. The student has the last word in the matter because it is the student who is responsible for his performance.

Students differ not only in their academic abilities and interests but also in the level at which they understand explanations and are ready to move on from solving one problem to another. Robinson emphasises that academic ability is important, but it is not the whole of human intelligence (Robinson, 2013). A teacher helps students progress from the initial level to the next until they reach a high level of individual work (Grant, 2014).

The goals of self-regulated learning are 39% searching and compiling information and 36% setting goals and time planning. A student's level of self-regulation is determined by indicators: work guided by a teacher, teamwork planning and individual work. Multifaceted self-realisation of personality is not possible without one's own conscious internal self-regulation and self-direction.

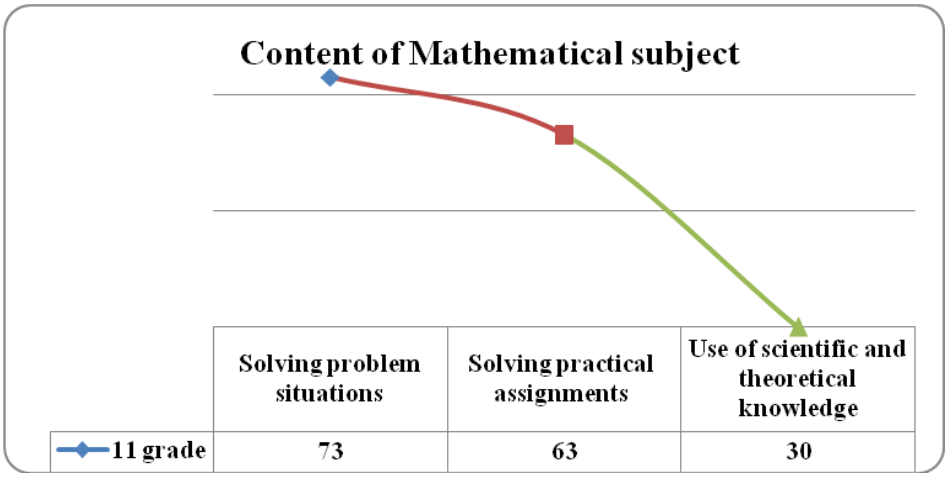


Figure 4. **Content of Mathematical subject (n=31)**

A student more productively learns mathematical subject content on the following basis: solving problem situations – 73%, solving practical assignments – 63%, scientific and theoretical knowledge – 30% (Figure 4). The most essential learning activities of students are related to creatively and logically using knowledge; they are project and research work in which the student applies the school-taught theory to real life. Some students note that multiplicities of approaches are necessary because a problem can be explained with theory, but the practical application of a theoretical model can be understood by solving a problem of the model. In mathematics, students use in-depth content to develop thinking skills – 76%, to solve creative assignments – 53%, to make generalisations of problem situations – 43%, to solve abstract tasks at a deeper level – 33% and to do research – 16% (Figure 5).

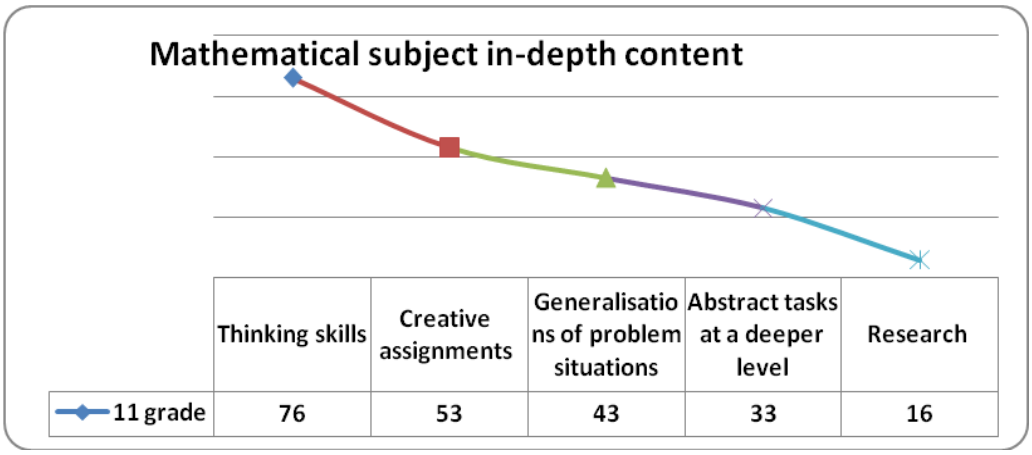


Figure 5. **Mathematical subject in-depth content (n=31)**

To customise teaching for a student's individual characteristics, various teaching forms and approaches that are tested by experience are used: grouping by abilities, self-regulated learning, learning mastery and learning in a digital environment (Geidžs, 1999; Sawyer, 2008; Ziegler, 2012).

Nowadays, there are four directions for the organisational structure of personalised learning: abandoning the class and hour system (switching to flow learning), abandoning dominating frontal work forms, refraining from using the common average learning speed of students, and freeing the teacher from the organisational role of the learning process (Albano, 2015; Culatta, 2016; Geidžs, 1999; Grant, 2014; Mincu, 2012; Niss, 2002; Rudolph, 2016; Ziegler, 2012).

New tendencies can be seen in the personalised learning process: individual and flexible division of learning work and time according to student views in relation to the gradual learning of a separate subject or an independent part of a specific subject's content, studying learning material at an individual pace, choosing alternative techniques (of work form, learning material, information resources) for learning the content of material, variable compositions of learning groups, changing the position of the student (by choosing initiative curriculum, independent work planning and responsibility for executing intentions), and communication and interaction with the teacher during individual learning time (Albano, 2015; Culatta, 2016; Geidžs, 1999; Grant, 2014; Mincu, 2012; Niss, 2002; Rudolph, 2016; Ziegler, 2012).

Self-respect and positive self-evaluation are important conditions for a student to achieve the heights of his/her needs and the fulfilment of his abilities. Self-assessment as the purpose for reflection is to be aware of the goals that the student has set, to enhance the learning process, to identify performance, to make corrections to the choice of content, and to promote the development of self-assessment skills (Grant, 2014; Hahele, 2006). Self-evaluation and a teacher's assessment in mathematics coincide for 70% of students. 50% of students believe that they can motivate themselves to learn, 20% of students sometimes need external support, but 10% of students want to receive constant external support. The main motivator is assessment. External support is necessary

to begin work. A supportive learning environment and a student's interest in the field of study are determined by the student's knowledge and level of skill learning. The student has the desire to be happy, educated and search for the truth of life. To simply be, not exist, such is the view of students about their life's goal.

The task of school is to organise the learning process so that it would support the development of each student's personality. World experience shows that the individual development of students is promoted by the choice and variety of learning forms: lectures, project methods, extracurricular activities, review lessons, differentiated content courses and mandatory lessons, interest activity groups and free time in class (individual time) (Robinsons, 2013).

The goal of personalised learning is to base the learning process on each student's personality. Every student in a specific age group is gifted with specific talents, the ability to learn and various levels of motivation to learn; therefore, they should be taught differently (Albano, 2015; Grant, 2014).

The goal of free time (individual time) was for each student to set their own goal for the time (Geidžs, 1999; Takacs, 1986), to develop a work plan and to choose resources for realising the goal, in order to prepare for the examination. While implementing the goal of the free time, 75% of students strengthened their basic skills in methods for solving inequalities, 29% of students solved more complicated assignments and applied the use of the knowledge to solving an assignment in another topic, but 8% of students developed skills to solve assignments of a higher abstraction level (Anderson, 2001).

Student self-evaluation about free time learning and the exam evaluation coincided for 25% of students, didn't coincide for 41% and partly coincided for 33% (Figure 6). In turn, 33% of students support independent learning because they can learn at their own pace and style, can learn about a topic that interests them and can independently learn in school.

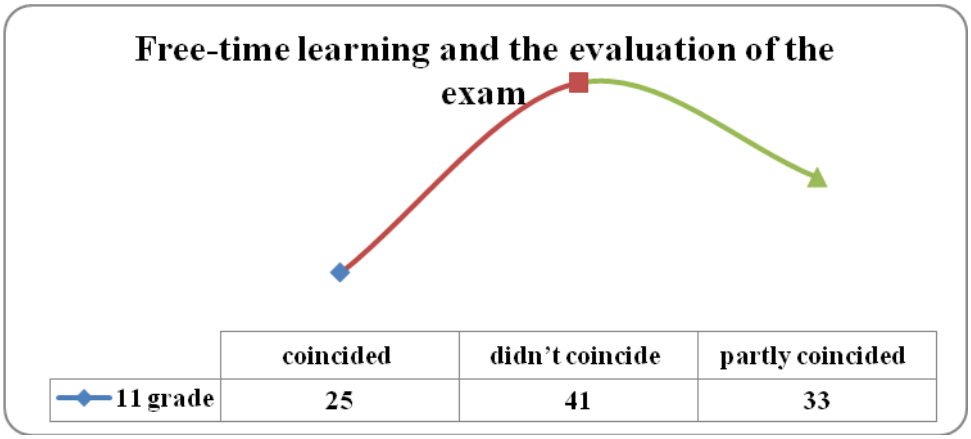


Figure 6. **Free-time learning and the evaluation of the exam (n=31)**

The students' goals are different in self-regulated learning time. Analysis of the results of exam work reflects a correlation: the higher the student's level of self-regulation is during the learning time, the higher are the results shown in exam work. Evaluation of exam work also coincided with the level of knowledge and skills in mathematics. Students with a low evaluation in exam work indicate that one must learn to plan the work for learning time and to select tasks that are diverse and of varying cognitive levels. The SOLO cognitive levels of knowing exam work were the following (Anderson, 2001): 25% of students rated adequate, 33% rated optimal and 20% rated high. When the SOLO cognitive level increased, the students' performance decreased in the criteria for every skill.

The goal of personalised learning work is to gain mastery and develop one's own system for learning. The mastery approach is learned throughout the whole time of the learning process and is based on three basic conditions: the previous level of preparation, a learning process that is oriented towards gaining mastery and the availability of assistance when it is needed (Grant, 2014; Sawyer, 2008; Ziegler, 2012).

Discussion

When a student has determined his/her learning interests and follows them, then he/she learns for himself/herself (Helds, 2006). The personalised learning approach is individualised, creative and focused on collaboration. Class (flow) work makes use of interactive lecture methods, discussions and individualised learning. Thereby, teaching classes are more than the sum of separate class parts. It is rather the coordination of teaching methods, where relationships between methods are just as important as the methods themselves.

The usefulness of class work is based on the development of the structural outline of the topic during the learning time. Students need both approaches because they are different. A synthesis of both approaches is helpful; in parallel to teacher led activities (involving listening, reading and discussion), the students compose projects and perform research with the teacher's support about the topics that they choose or recommend and with personally selected methods and resources.

Using various organisational forms of learning helps to evolve the thought processes of students from collective thinking to individual thinking, which is related to a higher level of thought operations because the student develops the skill to transfer and generalise processes (specification, classification and abstraction) (Reihenova, 2019a).

There are many and various work forms that develop student thinking. One of them is an interactive lecture (Reihenova, 2018b) that is a dynamic and capable of uniting within itself verbal, graphic, symbolic and written language. Student abilities can be maximally developed in the interactive lecture because the way in which the lecture happens could possibly develop more creative and critical thinking. The more enhancing elements (where students can reason and work)

are included in the lecture, the more branching will occur in their thinking structure and their thought work will manifest itself.

This learning process enriches goals, actualises motives, provides a student with an individually saturated use of resources, offers self-assessment criteria of results at the highest level possible and develops theoretically based learning approaches (for the sake of cognitive relief) for achieving the highest possible level of individual mastery (Žogla, 2001). The role of the teacher becomes that of a facilitator of learning, where the aim is to coach learners to analyze problems and think critically to solve them (Facer, 2016).

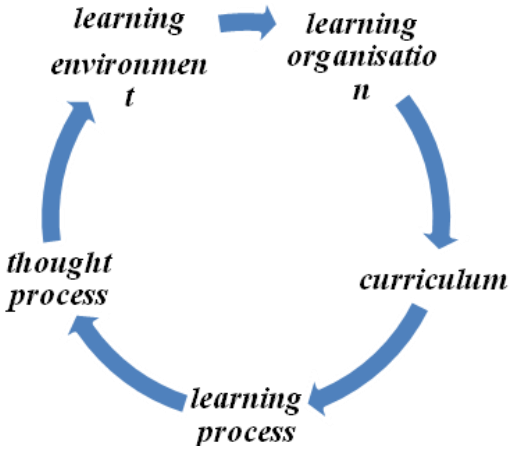


Figure 7. **Personalised learning approach**

The personalised learning approach is based on the student as a personality (and on his work, learning skills and experience) and on social needs and interests (Figure 7).

For learning to comply with a student's needs, there must be changes to the learning environment, the curriculum and learning forms and approaches. Thereby, the main benefits of the transformation of learning are collaboration and the realisation of achievements and goals both in and out of school.

Each student learns mathematical learning content at their own level, which is appropriate for their abilities, corresponds with their interests and needs, and where there is a balance between learning basic skills and concepts, in order to develop creativity.

Education is a complicated personal development process in which each student arrives at a complete understanding of themselves and learns to explain their relationships with the surrounding world. Education must be reviewed as an individual process of expanding consciousness, where each person understands and realises himself as one part of a larger whole. The indivisible unit must be spoken about in education – the student and the environment of his development and work, so that the future environment of development and life would be improved by achievements in school and education.

Conclusions

Personalised learning is a cognitive process that is organised around the student in observation of his needs and interests. An individual approach is realised, and individualised learning forms are used. The student consciously makes decisions and carries responsibility for the execution of these decisions. The learning environment and technologies are subordinate to the learning goals and experience of the student. This all is done to achieve the highest level of mastery.

The benefits of personalised learning are associated with the participation of the student in setting goals, learning in flows, more time for individualised learning (with a teacher or several teachers simultaneously), lectures by specialists about integrated topics of interest, more learning time, and learning at one's own pace and style.

The goal of personalised learning work is to gain mastery and develop one's own system for learning. The most effective learning work forms according to the assessment by 11th grade students are interactive lectures. For 12th graders it is independent work.

Each student learns mathematical learning content at their own level, which is appropriate for their abilities, corresponds with their interests and needs, and where there is a balance between learning basic skills and concepts, in order to develop creativity.

The mastery approach is learned throughout the whole time of the learning process and is based on three basic conditions: the previous level of preparation, a learning process that is oriented towards gaining mastery and the availability of assistance when it is needed.

References

Albano G., Miranda S., Pierri A. 2015. *Personalized learning in mathematics.* In Journal of e-Learning and Knowledge Society, Vol. 11(1), pp. 25–42. ISSN: 1826-6223, e-ISSN:1971-8829.

Albrehta D. 2001. *Didaktika* [Didactic]. Rīga: RaKa.

Anderson L.W., Krathwohl D.R. 2001. *A taxonomy for learning, teaching, and assessing: a revision of Bloom's taxonomy of educational objectives*. New York: Longman.

Bogoslovska V., Kovaļova A., Stepanova A., Šabaļina S. 1978. *Vispārīgā psiholoģija* [General psychology]. Rīga: Zvaigzne.

Culatta R. 2016. What are you talking about?! The Need for Common Language around Personalized Learning. (Accessed): http://er.educause.edu/articles/2016/3/what-are-you-talking-about-the-need-for-common-language-around-personalized-learning

Facer K. 2016. Keri Facer: Schools must become future-building rather than future-proof. https://hundred.org/en/articles/keri-facer-schools-must-become-future-building-rather-than-future-proof

Fišers R. 2005. *Mācīsim bērniem domāt* [Teaching Children to Think]. Rīga: RaKa.

Geidžs N. L., Berliners D.C. 1999. *Pedagoģiskā psiholoģija* [Educational psychology]. Rīga: Zvaigzne ABC.

Grant P., Basye D. 2014. Personalized learning: A guide for engaging students with technology. (Assessed): https://www.intel.com/content/dam/www/public/us/en/documents/education/k12-personalized-learning-guidebook.pdf

Hahele R. 2006. *Pašnovērtējums mācību procesā* [Self-assessment in the learning process]. Rīga: RaKa.

Helds J. 2006. Mācīšanās kā konstruktīvs un sistēmisks jēdziens [Learning as a constructive and systemic concept]. Rīga: LU Akadēmiskais apgāds. [skatīts 10.04.2019]. Pieejams (Accessed): https://www.researchgate.net/publication/297386708_Plaisa_kompetences_izpratne_teorija_un_prakse/download
Karpova A. 1994. *Personība un individuālais stils* [Personality and individual style]. Rīga: LU.
Likumi.lv. 2014. *Izglītības attīstības pamatnostādnes 2014.–2020. gadam* [Guidelines for the Development of Education for 2014–2020].
Mincu M.E. 2012. Personalised Learning in Japan: Personalisation of Education in Contexts: Policy Critique and Theories of Personal Improvement, 161–174.
Niss M. 2002. Mathematical competencies and the learning of mathematics: the Danish komproject. http://www.math.chalmers.se/Math/Grundutb/CTH/mve375/1112/docs/KOMkompetenser.pdf
OECD 2018. *The future of education and skills Education 2030*. https://www.oecd.org/education/2030/E2030%20Position%20Paper%20(05.04.2018).pdf
Pipere et al., 2016. *Pētniecība: teorija un prakse* [Research: Theory and Practice]. Rīga: RaKa.
Reihenova A. 2018a. *Vidusskolēnu domāšanas veidi matemātikas mācīšanās procesā.* Pieejams: Society. Integration. Education. Proceedings of the International Scientific Conference. 2018, Volume II, 405–418.
Reihenova A. 2018b. Self-motivated Secondary School Student in Learning Mathematics. *The 60st International Scientific Conference of Daugavpils University*. Retrieved from: https://dukonference.lv/files/978-9984-14-864-9_60_konf_kraj_B_Soc%20zin.pdf
Reihenova A. 2018c. *Mācību pētnieciskās prasmes matemātikas stundās vidusskolā* [Secondary school students' types of thinking in learning maths]. Pieejams: http://journals.rta.lv/index.php/PSPI/issue/view/102
Reihenova A. 2019a. Integrētās mācības matemātikas un dabaszinātņu mācīšanās procesā vidusskolā [Integrated Learning in the Mathematics and Natural Sciences Learning Process in High School]. Pieejams: Society. Integration. Education. Proceedings of the International Scientific Conference. 2019, Volume II, 445–459.
Rubene Z. 2008. *Kritiskā domāšana studiju procesā* [Critical Thinking in the Study Process]. R.: LU Akadēmiskais apgāds.
Rudolph D., Sparwald M. 2016. Personalisiertes Lernen: Ein pädagogischer Fachbeitrag. https://www.wissensschule.de/personalisiertes-lernen-ein-paedagogischer-fachbeitrag/
Robinsons K. 2013. *NE tikai AR PRĀTU* [Out of our Minds]. Rīga: Zvaigzne ABC.
Sahlberg P. 2010. Rethinking accountability in a knowledge society. Accessed: https://pasisahlberg.com/wp-content/uploads/2013/01/Rethinking-accountability-JEC-20101.pdf
Sawyer R.K., 2008. Optimising learning implications of learning sciences research. (Accessed): http://www.oecd.org/site/educeri21st/40554221.pdf
Šteinberga A. 2013. *Pedagoģiskā psiholoģija* [Pedagogical Psychology]. Rīga: RaKa.
Takacs C. A. 1986. *Enjoy Your Gifted Child. New York.*
Vorobjovs A. 2002. Sociālā p*siholoģija* [Social psychology]. Rīga: Izglītības soļi.
Zelmenis V. 2000. *Pedagoģijas pamati* [Basics of Pedagogy]. Rīga: RaKa.
Ziegler A., Phillipson S.N. 2012. Towards a systemic theory of gifted education. (Assessed): https://www.researchgate.net/publication/263686628_Towards_a_systemic_theory_of_gifted_education
Žogla I. 2001. *Didaktikas teorētiskie pamati* [Theoretical Background of Didactic]. Rīga: Zvaigzne.

TIESĪBU ZINĀTNE / LAW

THE LEGAL DEFINITION OF CRYPTO ASSETS

Irina Cvetkova
Baltic Internationa Academy, Lomonosova iela 1/4, Riga, Latvia, LV-1019, cvetkova@inbox.lv

Abstract

The legal definition of Crypto Assets

Key words: *bitcoin, crypto assets, cryptocurrency, token, virtual currency*

Cryptocurrencies or Crypto Assets appeared due to technological progress and the evolution of money as a completely liquid medium of exchange. Originally money fulfilled a function of exchange of goods. It was then assigned to gold as the universal equivalent. The next stage – transition to paper money, until the emergence of electronic money. The past ten years have seen the creation of a new class of digital instruments that are not issued by a sovereign institution or commercial bank. Since these instruments may be used as a currency, they are variously labeled "electronic cash", "digital currency", "virtual currency", "cryptocurrency" or "Crypto Asset". The Crypto Assets is a cryptographically protected decentralized digital currency used as means of exchange. Due to development of new technologies and innovations, the rate of using of cryptocurrency is rapidly increasing throughout the globe, replacing not only cash payment and payments by bank transfer, but also electronic or virtual payments. There are more than 2524 kinds of Crypto Assets in the world, and this data is changing every second. The law scholars have not yet reached a consensus regarding nature and legal status of the Crypto Assets. The Crypto Asset possesses both the nature of obligations rights and property rights, since it may be both a commodity and means of payment. In some countries the approach to definition of Crypto Assets is different. The purpose of the article is to evaluate the legal status of Crypto Assets. Comparative and analytical research methods are used for this research.

Kopsavilkums

Kriptoaktīvu juridiskais statuss

Atslēgvārdi: *bitkoins, kriptoaktīvs, kriptovalūta, tokens, virtuāla valūta*

Pateicoties tehnoloģiskajām progresam un naudas evolūcijai ir radušies kriptovalūtas vai kriptoaktīvi ka absolūti likvīds apmaiņas līdzeklis. Naudas sistēmas attīstības pirmsākumos vispirms par naudu kļuva prece, vēlāk tai tika piešķirts universāls zelta ekvivalents. Nākamais posms – parēja uz papīra naudu līdz pat elektroniskās naudas rašanas brīdim. Pēdējos desmit gadus tika izveidoti jaunie digitālie instrumenti, kurus neemitē valsts vai komercbankas. Tā kā šos instrumentus var izmantot ka valūtu, tie tiek dažādi apzīmēti ka "elektroniskā nauda", "digitālā valūta", "virtuālā valūta", "kriptovalūta" vai "kriptoaktīvs". Kriptoaktīvs ir kriptogrāfiski aizsargāts decentralizēts digitālais apmaiņas un norēķinu līdzeklis. Pateicoties jaunu tehnoloģiju un inovāciju attīstībai visā pasaulē kriptoaktīvu izmantošanas ātrums strauji pieaug, aizstājot ne tikai skaidras naudas maksājumus un maksājumus ar bankas pārskaitījumiem, bet arī virtuālus maksājumus. Patlaban pasaulē ir vairāk nekā 2524 kriptoaktīvu un šie dati mainās ik pēc sekundes. Tiesību zinātnieku vidū pagaidām nav vienotas nostājas par kriptoaktīvu juridisku dabu un tiesisku statusu, tai nav sniegta legāldefinīcija. Kriptoaktīvam piemīt gan saistību tiesības, gan īpašuma tiesības, jo tas var būt gan prece, gan maksāšanas līdzeklis. Dažādās valstīs ir atšķirīga pieeja kriptoaktīvu tiesiskā statusa noteikšanai un tās apgrozījuma tiesiskajām regulējumam. Raksta mērķis ir izvērtēt kriptoaktīvu juridisko statusu, tajā tiek izmantotas salīdzinošās un analītiskās pētniecības metodes.

Introduction

Virtual currencies or cryptocurrencies appeared due to technological progress and the evolution of money as a completely liquid medium of exchange. Indeed, originally money fulfilled a function of exchange of goods. It was then assigned to gold as the universal equivalent. The next stage – transition to paper money, until the emergence of electronic money.

The past ten years have seen the creation of a new class of digital instruments that are not issued by a sovereign institution or commercial bank, are not denominated in a sovereign unit, and do not have physical counterparts. Since these instruments may be used as a currency, they are

variously labeled “electronic cash,” “digital currency,” “virtual currency,” “cryptocurrencies” or “cryptoassets”.

The new currency instrument is abstract currencies. They are currencies in the sense that they can be exchanged peer-to-peer. They are representations of numbers, i.e., abstract objects. An abstract currency system is a self-enforcing system of property rights over an abstract instrument, which gives its owners the freedom to use and the right to exclude others from using the instrument.

Virtual currency is usually not a legal tender because it is not fiat currency, that is, the money that is issued by a particular country. Virtual money that transacts within the virtual world and not convertible to fiat currency is not, in strict legal sense, defined as virtual currency. It should also not be confused with e-money, which is a digital transfer mechanism for fiat currency (Chuen 2015: 310). Crypto asset performs one of the most important functions inherent in money – it is the exchange of information of the community, which recognizes it as an appeal.

Data on transactions are stored on software platform *Blockchain*, or distributed ledger technology, underpins many virtual currencies, but can also be used within private, permissioned ledger systems – versions of public and private systems may be used by financial institutions, governments and cross-industry (Iansiti et al. 2017).

Abstract currency payments are not intermediated – although they take place over the internet, they are peer-to-peer like cash – they are settled as soon as enough system participants agree they are valid. At the same time, a number of countries demonstrate a complete inability to respond adequately and competently to innovations and technological progress.

A major impediment to the analysis and the formulation of clear policies for the emerging cryptoasset and blockchain industry is the lack of clear and common terminology. A variety of terms are used, often interchangeably and without a clear definition. Even the term cryptoasset lacks a specific definition; it is widely employed as an umbrella term to refer to digital tokens that are issued and transferred on DLT systems (Rauchs et al. 2018).

At the same time, a number of countries demonstrate a complete inability to respond adequately and competently to innovations and technological progress. To resolve the legal aspects of the crypto assets, the European Union has also faced the need to create the appropriate legal regulation, but does not hurry with its adoption. Currently, there is no single legal definition of the crypto assets and general legal regulation in the EU, but some countries of Europe have defined the status of the crypto assets for taxation.

The first attempt to provide the basis for a discussion on virtual currency schemes is a European Central Bank’s report “Virtual currency schemes”. It is important to take into account that these currencies both resemble money and necessarily come with their own dedicated retail payment systems; these two aspects are covered by the term “virtual currency scheme” (ECB 2012).

The aim of the paper is to evaluate the legal status of Crypto Assets. The author analyses legal status of Crypto Assets in different countries and Latvia, because in some countries the approach to definition of Crypto Assets is different, the law scholars have not yet reached a consensus regarding the nature and legal status of the Crypto Assets. Comparative and analytical research methods are used for this paper.

Crypto assets is a type of money

In order to find out, whether a crypto asset can be considered as money, let's find out what money is. Money can be anything that the participants of the national economy, having previously agreed, use as money or a universal medium of exchange. That is, money is always primarily a social agreement. According to this view, the persons who may not be familiar with each other, and did not even trust each other, decide to arrange their transactions in cash and non-cash money, for example, to exchange labor, goods or services, because they consider such a trade agreement to be the best possible option. (Camera et al. 2013: 14889).

The characteristic features of money are the following criteria:

1) Self-sufficient form of exchange value;
2) Purchasing power (exchange possibilities in the process of barter);
3) External measure of labor in monetary value.

A crypto asset cannot be money or currency in its essential sense, since money is a product of the state. A crypto asset has no significant signs of currency. It is the state that issues money, ensuring for them a certain value and determining the mandatory status of legal tender for payment.

A crypto asset is not a monetary means in the classical sense, since the state does not emit it, does not determine and does not guarantee its value, as well as does not establish the obligation to accept it as a payment.

However, some experts believe that the crypto nature is not different from the standard currency. At the moment, cash constitutes only a small part of the economy, most of the circulation of money occurs in electronic format, which in essence is only the data stored on a computer. The state no longer guarantees the redemption of currency in gold. In fact, the existing monetary system operates based on mutual trust between individuals who believe that the value of the currency will continue in the future (including the one between financial institutions and the government). Cryptocurrency is also based on the confidence of its users that in the future it will retain its value. (Guttmann 2013: 123).

In the USA, crypto assets serve as a means of payment for goods and the laws provide for a special clause that it can serve as a unit of value in which wages are paid. In turn, the Commission for Investigation of Financial Crimes (FinCEN) reported that any fiat money exchange operations

need to be regulated in the same way as the fiat money exchange process is a state recognized means of payment that does not have intrinsic value and redemption (FinCEN 2013).

The Cabinet of Ministers of Japan equated crypto assets *Bitcoin* to the fiat money and decided to create an appropriate regulatory framework for the full integration of cryptocurrencies in the banking system of Japan (Nikkei 2017). Japan Financial Services Agency (JFSA) has become the national regulator of cryptocurrency activities, which regulates the national currency emission.

The Australian Taxation Office (ATO) does not consider that cryptocurrency can have the status of money or foreign currency, equating operations with it to barter arrangements (Australian Government 2018).

In the early 2018, the South American country of Venezuela became the first country in the world to declare a cryptocurrency *El Petro* as their primary currency (Aitken 2018). For Venezuela, this is an opportunity to get out of the financial crisis and improve its economic situation.

Sweden also made a statement about the possibility of creating a national virtual currency *E-krona*. Just last year, the government issued a report describing what this new token would look like. At the moment, the reports state that the e-Krona will start its pilot scheme in 2019 and that it will be implemented in 2021, but the tests may take more time and are pending public approval (Bitcoin Exchange Guide News Team 2018).

Estonia also assessed the possibility of introducing its own cryptocurrency – *Estcoin* (Teffer 2017). But, unlike Sweden, which is not in the eurozone and does not conflict with the European Central Bank, Estonia is a member of the EU and has no right to issue a national currency that could become a competitor to the euro, as the ECB has already warned Estonia.

Thus, in some countries, crypto assets have become legal means of payment, which various market participants recognize and accept as a means of payment along with money.

Crypto assets are a monetary surrogate

Monetary surrogates are not a means of storing values, neither do they perform the function of the unit of account. Economists consider monetary surrogates to be legitimate financial instruments that can be exchanged for traditional money. These include credit funds (bonds, notes, cheques, etc.) and electronic money. Although crypto assets do not have all the characteristic features of money, they do not have an issuer and cannot be counted as the so-called "substitute" for money.

The US Internal Revenue Service (IRS) has issued a manual on the taxation of operations with crypto assets, including *Bitcoin*, taxes, according to which crypto assets are classified as:

1) currency;
2) property;
3) investment instrument (IRA Financial Group 2014).

Since most jurisdictions do not recognize a crypto asset as an official or legal means of payment, which is equivalent to money, it cannot be considered a money-substitute. So, for instance, the taxation office of the Netherlands does not consider crypto assets legal tender (International Bureau for Fiscal Documentation 2015).

Crypto assets are a type of electronic money

According to the EU e-money Directive EMD), electronic money is a monetary value, which follows from the submitted requirements for issuers: this value must be stored in electronic form; e-money itself must be issued to receive funds (Directive 2009/110/EC 2009). In crypto asset systems, the unit of account has been changed. This important problem is defined by the ECB as follows:

1) These systems rely on a certain exchange rate, which can fluctuate, since the value of a cryptocurrency is usually based on its own supply and demand.
2) The connection with the traditional currency is lost to some extent, which could be problematic when funds are restored, even if it can be allowed.
3) The fact that a currency is called differently (that is, not the euro, the US dollar, and so on) and the fact that cash funds should not be repurchased at face value means that full control over the cryptocurrency is left to its issuer, which is usually a non-profit organization.
4) Electronic money systems are governed by regulations, and the founders of electronic money systems that issue means of payment in the form of electronic money are subject to the relevant administrative requirements and controls. For cryptocurrency systems, the risks faced by each type of currency are different.

Electronic money is primarily subject to operational risk associated with potential failures of the system on which electronic money is stored. Crypto assets are not only influenced by credit and operational risks, liquidity risks without any legal protection, but these schemes are subject to the legal risk of uncertainty and fraud as a result of lack of regulation and public supervision.

Opponents of this point of view indicate that the main difference between a crypto asset and electronic money is the absence of an intermediary in the calculations that verifies the payment. Since when a crypto payment is made, the calculation is carried out from one subject to another directly.

At the same time, a crypto asset differs significantly from electronic money: the calculations of crypto assets occur without an intermediary that has to verify the payment, all calculations are performed from one subject to another directly.

Crypto assets are a financial instrument

The financial instrument is any sold asset, money, securities or contractual rights to receive or give money or any financial instrument. The Federal Financial Supervisory Authority of Germany

(BaFin) Recognizes crypto assets as a financial instrument within the meaning of the first sentence of part 11 of article 1 of the Banking Law. Cryptocurrency activity is not licensed, but in certain cases (for example, for the exchange of cryptocurrencies on the stock exchange) a license must be obtained (ZAG 2017). Also, in Bulgaria, a crypto asset is recognized as a financial instrument that is subject to the appropriate taxes.

However, a crypto asset includes an obligation right and cannot be considered a monetary obligation, since the relations that are included in the transaction of a crypto asset are in their essence similar to a barter agreement. The issue of a crypto asset remains decentralized on the computer; therefore, it does not correspond to the emission of a security. Due to the fact that each transaction of a crypto asset creates a new unit in the chain of transactions, each member of the payment system becomes a unique issuer. Therefore, a crypto asset is not a security, as it has no significant attributes of securities.

While the EU is slowly trying to streamline cryptocurrency activities, a new innovative product has appeared – *ICO* (Initial Coin Offerings). *ICO* is a software token that performs a pre-sale to potential investors, that is, a mechanism to raise funds, according to the conditions of which the cryptocurrency in the future is sold for the existing liquid virtual funds. *ICO* is a new innovative blockchain that provides investments in production, commodity and financial projects. The report prepared by the USA Securities and Exchange Commission (SEC) on investigation of the situation regarding the blockchain *The DAO* points out that *ICO* tokens are equated to securities regardless of the name and the principle of work (Diemers 2017)**.** Thus, *ICO* tokens are a financial instrument that presents new cryptocurrencies.

Crypto assets are a commodity

A product is any tangible and intangible object that is used in economic terms and that its owner exchanges for a fee. Many countries consider cryptocurrency as property or commodity, and imposes tax on it. The Israel Tax Authority in 2017 published a circular in which the cryptocurrency is classified as a digital unit with a nominal value that can be used for barter and investment (The Bureau of National Affairs 2017). The US Commodity Futures Trading Commission (CFTC) in September 2015 recognized crypto asset *Bitcoin* as a commodity (CFTC 2015). The state classifies crypto assets as an intangible product with a specific value for a specific period of time.

Crypto assets are a property

In legal science, money is defined as property — an abstract, calculated value requirement that is not property, since it is not an individual or individualizable thing. Money is recognized as property of a certain person, which is set in circulation as a replaced item by quantity, measure, value and other features. The crypto asset has a binding legal character with property rights that

appear among the participants of the *block-chain* cryptographic system, each transaction of which creates a new block of transactions in the chain, as a result of which the participant of the payment system becomes an issuer.

According to the content of property rights, a crypto asset represents the subjective rights of the subjects of legal relations and is associated with the possession, use and disposal of any property, as well as with the material requirements that arise between the parties of the turnover in the distribution of property or the exchange of goods, for example. Property status means that crypto assets are subject to purchase, sale and exchange, along with any other objects of property rights.

In the United States, a crypto asset can be qualified as property to pay federal taxes if they are sold or if profit from capital gains is earned. In Russia, in the second reading, the draft law "On digital financial assets" was approved, according to which a crypto asset is recognized as property (The State Duma of the RF 2018).

In Latvia, the official opinion on the issue of crypto assets was expressed by Finanšu un kapitāla tirgus komisija (The Financial and Capital Market Commission) and Valsts ieņēmumu dienests – VID (State Revenue Service). VID pointed out that cryptocurrency (crypto asset) is a financial instrument for the value-added tax application, but for accounting and bookkeeping it is a commodity that is accounted for like any product, setting its value in euros. For the calculation of the income tax, it is equated to a commodity, not a financial instrument. (VID 2017).

Conclusion

1. Crypto asset as an absolutely liquid means of exchange replaces not only cash and non-cash money, but also electronic means of payment.
2. No intermediary needed for the turnover of crypto assets *(bank, e-purse and others).*
3. Today, neither in the EU countries, nor in other countries of the world there is a single position among legal lawyers on whether crypto assets can be considered money or it is a money surrogate.
4. Resolution of this issue directly affects the future of crypto assets – whether they will receive a state-recognized status, and how the tax authorities, the prosecutor's office and the courts will behave.
5. According to the content of property rights, crypto assets represent the subjective rights of the subjects of legal relations and are associated with the possession, use and disposal of any property, as well as with the material requirements that arise between the parties of the turnover in the distribution of property or exchange, for example, goods.
6. It is necessary to determine the essence and nature of crypto assets, their legal status and functions, along with cash and electronic money.

7. The emergence of decentralized systems and crypto assets has led to evolutionary changes in the international legal system.
8. Legal science is on the threshold of creating a theory of crypto assets.

References

Aitken R. 2018. *Does Venezuela's Oil-Backed 'Petro' Have The Power to Showcase National Cryptocurrencies?* Available: https://www.forbes.com/sites/rogeraitken/2018/05/31/does-venezuelas-oil-backed-petro-have-the-power-to-showcase-national-cryptocurrencies/#5624968 a7b43 [01.04.2019.].

Australian Government. 2018. *Tax treatment of cryptocurrencies,* Available: https://www.ato.gov.au/General/Gen/Tax-treatment-of-crypto-currencies-in-Australia---specifically-bitcoin/ [01.04.2019.].

Bitcoin Exchange Guide News Team. 2018. *Sweden's e-Krona Cryptocurrency Project Prepares for Launch of Its Digital Fiat*. Available: https://bitcoinexchangeguide.com/swedens-e-krona-cryptocurrency-project-prepares-for-launch-of-its-digital-fiat/ [01.04.2019.].

Camera G., Casari M. and Bigoni M. 2013. *Money and trust among Strangers. National Academy of Sciences,* Vol. 110, No. 37, p. 14889–14893.

Chuen D.L.K. 2015. *Handbook of Digital Currency. Bitcoin, Innovation, Financial Instruments and Big Data* // London: Elsevier, p. 310.

CFTC. 2015. *Order instituting proceedings pursuant to sections 6(C) and 6(D) of the CFTC. Commodity exchange act, making findings and imposing remedial sanctions,* Available: https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf [01.04.2019.].

Diemers D. 2017. *Initial Coin Offerings. A strategic perspective: Global and Switzerland.* Available: https://cryptovalley.swiss/wp-content/uploads/20171221_PwC-S-CVA-ICO-Report_December_final.pdf

DIRECTIVE 2009/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

ECB. 2012. *Virtual currency schemes of ECB.* Available: http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf [01.04.2019.]

Guttmann B. 2013. *The Bitcoin Bible: All you need to know about bitcoins.* Germany: BoD. p. 123–124.

Iansiti M. and Lakhani K.R. Jan-Feb 2017. *The Truth About Blockchain, Harvard Business Review,* Available: https://hbr.org/2017/01/the-truth-about-blockchain [01.04.2019.].

International Bureau for Fiscal Documentation. 2015. *How to Tax Bitcoin?,* Amsterdam, The Netherlands, Available: http://scitechconnect.elsevier.com/wp-content/uploads/2016/01/Chapter-14-–-How-to-Tax-Bitcoin.pdf [01.04.2019.].

IRA Financial Group. 2014. *New IRS Notice Confirms Tax Treatment of Bitcoins as Property and not Currency – Expected To Increase Popularity for Self-Directed IRAs, According to IRA Financial Group,* Available: http://www.prweb.com/releases/bitcoins-self-directed-/ira-tax-property-currency/prweb11704323.htm [01.04.2019.].

Nikkei. 2017. *Virtual money poses accounting dilemma for Japan's early adopters.* Available: https://asia.nikkei.com/Business/Trends/Virtual-money-poses-accounting-dilemma-for-Japan-s-early-adopters [01.04.2019.].

Rauchs M. et al. 2018. *Distributed Ledger Technology Systems: A Conceptual Framework. Cambridge Centre for Alternative Finance.* Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3230013 [01.04. 2019].

Teffer P. 2017. *Estonia tests water for own virtual currency.* Available: https://euobserver.com/eu-presidency/138796 [01.04.2019.].

The Bureau of National Affairs. 2017. *Israel Seeks Tax on Bitcoin, Virtual Currency Transactions,* Available: https://www.bna.com/israel-seeks-tax-n73014450141/ [01.04.2019.].
The Financial Crimes Enforcement Network. 2013. *Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (FIN-2013-G001),* Available: https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf [01.04.2019].
The State Duma of the Russian Federation. 2018. *Bill of the Russian Federation "About Digital Financial Assets",* Available: https://www.minfin.ru/ru/document/?id_4=121810 [01.04.2019.].
Valsts ieņēmumu dienests. 2017. *Par darījumiem ar kriptovalūtu un nodokļiem.* Available: http://m.lvportals.lv/visi/e-konsultacijas/11918-par-darijumiem-ar-kriptovalutu-un-nodokliem/ [01.04.2019.].
ZAG. 2017. *Merkblatt-Hinweise zum Zahlungsdiensteaufsichtsgesetz (ZAG),* Available: https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Merkblatt/mb_111222_zag.html [01.04.2019.].

ISSUES OF COMMENSURATE COMPENSATION

Dana Segale
Riga Stradiņš University, Latvia, Dzirciema Street 16, Riga, LV-1007, danasegale@inbox.lv

Abstract

Issues of commensurate compensation

Key words: *compensation, loss, commensurate compensation, infringement of rights, effective right protection*

Compensation for losses in the Latvian law is primarily regulated by the third sentence of Section 92 of the Constitution of the Republic of Latvia, namely, everyone, where his or her rights are violated without basis, has a right to commensurate compensation. It is reasonable to distinguish between compensation claims against private persons within the framework of the civil and criminal procedure and compensation claims against the state which, in turn, are regulated within the framework of the administrative procedure.

It should be admitted that the issues of commensurate compensation are often analyzed in the case-law and it should be partly agreed with the position of the Supreme Court of the Republic of Latvia, namely, that a number of principles should be distinguished in determining the compensation. In order for the compensation to be commensurate in accordance with Section 92 of the Constitution of the Republic of Latvia, it must be an effective remedy (see Paragraph 8 of the Judgment of 1 March 2007 in case No. SKA-54/2007). The concept "commensurate compensation" means that the compensation must be fair. The compensation must give satisfaction to the person whose rights have been infringed (see Paragraph 16 of the Judgment of 18 February 2011 in case No. SKA-161/2011).

However, according to the author, the effectiveness of the remedy and commensurate compensation are the concepts that do not overlap often. Rights can be effectively protected, but whether the protection is fair, proportionate and, finally, commensurate, and how to prove it, or how to determine the amount of compensation, these issues are left open to the case-law. Although legal literature states that the remedy that provides effective legal protection for a particular infringement of rights makes difference, compensation is usually understood in monetary terms, but the understanding of each person on the amount of money that brings satisfaction is unequivocal and even incomparable.

Kopsavilkums

Atbilstīga atlīdzinājuma problemātika

Atslēgvārdi: *atlīdzība, zaudējumi, atbilstīgs atlīdzinājums, tiesību aizskārums, efektīva tiesību aizsardzība*

Zaudējumu atlīdzība Latvijas tiesībās ir primāri regulēta ar Latvijas Republikas Satversmes 92. panta trešo teikumu, proti, nepamatota tiesību aizskāruma gadījumā ikvienam ir tiesības uz atbilstīgu atlīdzinājumu. Ir pamats nošķirt atlīdzības prasības pret privātpersonām civilprocesa un kriminālprocesa ietvaros, un atlīdzības prasības pret valsti, kuras, savukārt tiek regulētas administratīvā procesa ietvaros.

Jāatzīst, ka atbilstīga atlīdzinājuma problemātika tiek bieži analizēta judikatūrā un ir daļēji jāpiekrīt Latvijas Republikas Augstākās tiesas nostājai, proti, ka ir nošķirama virkne principu, kas ir jāievēro atlīdzinājuma noteikšanā. Lai atlīdzinājums būtu atbilstīgs Latvijas Republikas Satversmes 92. panta izpratnē, tam ir jābūt efektīvam tiesiskās aizsardzības līdzeklim (sk. 2007. gada 1. marta sprieduma lietā Nr. SKA-54/2007 8. punktu). Jēdziens atbilstīgs atlīdzinājums nozīmē, ka atlīdzinājumam ir jābūt taisnīgam. Atlīdzinājumam ir jāsniedz gandarījums personai, kuras tiesības ir tikušas aizskartas (sk. 2011. gada 18. februāra sprieduma lietā Nr. SKA-161/2011 16. punktu).

Taču autores prāt tiesiskās aizsardzības efektivitāte un atbilstīgs atlīdzinājums, bieži vien nav jēdzieni, kuri pārklājās. Tiesības var būt efektīvi aizsargātas, bet vai dotā aizsardzība ir taisnīga, samērīga un visbeidzot atbilstīga un kā to pierādīt, vai kā noteikt atlīdzinājuma apmēru, jautājumi judikatūrā tiek atstāti atklāti. Kaut arī juridiskajā literatūrā ir minēts, ka izšķirošs ir tieši atlīdzinājuma līdzeklis, kurš nodrošina efektīvu tiesisko aizsardzību konkrētajam tiesību aizskārumam, visbiežāk atlīdzinājums tiek saprasts naudas izteiksmē, bet katras personas izpratne par naudas apmēru, kurš rada gandarījumu, viennozīmīgi ir atšķirīgs un pat nesalīdzināms.

Introduction

Compensation for losses in the Latvian law is primarily regulated by the third sentence of Section 92 of the Constitution of the Republic of Latvia, namely, everyone, where his or her rights are violated without basis, has a right to commensurate compensation. It is reasonable to distinguish between compensation claims against private persons within the framework of the civil and criminal procedure and compensation claims against the state which, in turn, are regulated within the framework of the administrative procedure. The goal of this article is to analyze the fulfilment of the concept "commensurate compensation" and the issues related to the understanding, translation and application of this concept, thus also identifying problems.

Materials and methods

This article includes the analysis of the concept "commensurate compensation", which is found in literature, case law and publications of authors of various fields of law, the analysis will be carried out using a theoretical justification method, by the help of which the doctrine of rights will be analyzed, and an analytical method; besides, legal provisions and the opinions of different authors, as well as legal regulation in terms of regulatory acts and legal literature will be compared, an analysis and a summary will be carried out using a descriptive method.

Main part of the article

It should be admitted that the issues of commensurate compensation are often analyzed in the case-law and it should be partly agreed with the position of the Supreme Court of the Republic of Latvia, namely, that a number of principles should be distinguished in determining the compensation. In order for the compensation to be commensurate in accordance with Section 92 of the Constitution of the Republic of Latvia, it must be an effective remedy (see Paragraph 8 of the Judgment of 1 March 2007 in case No. SKA-54/2007). A concept "commensurate compensation" means that the compensation must be fair. The compensation must give satisfaction to the person whose rights have been infringed (see Paragraph 16 of the Judgment of 18 February 2011 in case No. SKA-161/2011). Therefore, compensation may not be disproportionately low in a democratic and legal state (see Paragraph 18 of Case No. SKA-104/2010 2010 of 16 February 2010).

However, when studying the concept of commensurate compensation and, in general, the third sentence of Section 92 of the Constitution of the Republic of Latvia, it is reasonable to conclude that the understanding of commensurate compensation is usually considered from a financial point of view, however, it is worth to pay attention to the fact that the concept "commensurate compensation" is not only about finances, because justice can be achieved and satisfaction can be given to a person whose rights have been infringed also by intangible means. Thus, the author wishes to draw attention to the fact that infringement of rights and compensation cannot be considered as a source of profit.

A similar point of view can be found in several rulings of the European Court of Human Rights, for example, there is a ruling that expressly states that the court for the purposes of determining a fair compensation has distinguished between cases where the applicant has suffered physical or psychological trauma, agony, anxiety, dissatisfaction, pain and suffering, sense of injustice or humiliation, prolonged uncertainty, destruction of life, or a real loss of opportunities and the cases where the applicant suffered damage on a smaller scale; a public recognition expressed as a judgment binding to the Member State is in itself a strong form of compensation. (see the judgment of the European Court of Human Rights of 18 September 2009 in joined cases "Varnava" and Others v. Turkey, application No. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90)

Thus, the court has concluded that often recognition of the circumstance itself – due to which the rights were infringed – as inappropriate or invalid already provides satisfaction to the person, besides, in such a case also other members of society are also protected to greater extent from repeated infringement of rights; contrary to cases where a compensation is simply determined to a person in monetary terms and the situation is not considered on a larger scale assessing the appropriateness of the process infringing the rights and the possibility to remedy it. In the above ruling, the strict boundary between the desire to obtain financial satisfaction and profit and the desire to receive recognition of the fact that the rights were infringed is established very well.

The author largely agrees with E. Danovskis analysis and understanding of the concept in the area of administrative law, namely, expressions of commensurate compensation are extremely diverse, as this wording refers to any unjustified infringement of rights. There is no complete list of commensurate forms of compensation, however, the examples of practice summarized in the commentary of the UN International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms can help gain insight into the content of this concept. Thus, the commentary on Section 2 of the UN International Covenant on Civil and Political Rights indicates that remedies may be conditionally divided as follow: restitution, compensation, rehabilitation, satisfaction, guarantees of no repetition (Danovskis E. 2014, p. 231.–232.).

Taking into account the foregoing, it can be clearly concluded that it is misleading to attribute merely monetary aspect to the concept "commensurate compensation". Besides, if, however, the aspect of the concept "commensurate compensation" that includes monetary expression should be considered, one of the most striking problems is quantification, assessing and, of course, proving. According to the author, the above problems could be less if we had common understanding of the concept itself. However, there have also been suggestions to abandon the various versions of the concept, to change or replace them, as it was done with the concept "compensation for non-material damage", offering instead of it a concept "consolation money" (Torgāns K. 2014, p. 121–136), but according to the author, the concept itself can be changed or kept, it would not change essentially anything unless the concept is fulfilled with a common content and meaning, as it is with the concept "commensurate compensation". There is a need for clarification and common position not only in the case-law or in the works of some authors, but in the regulatory framework. Similarly, in previous articles, the author has acknowledged the need for appropriate harmonization of the terminology included in the legislation of the Republic of Latvia, thus ensuring legal clarity. At the same time, it would facilitate the work of those persons who apply the relevant laws and regulations and would not raise doubts about the proper interpretation of the terms used in regulatory enactments. Thus, it should be noted that a consistent terminology is essential and without

significant justification the change of the terms can cause countless problems in the application of the regulatory enactment, as well as create unforeseen legal restrictions.

The most striking issue in the understanding of the concept "commensurate compensation" is the inconsistent fulfilment of the concept itself. Case law is changeable and, as there are diverse cases, it changes its position, but the concepts and their fulfilment cannot be so flowing and changeable. The concept needs to have a core, which, of course, can get covered over time with some additions as the time passes and society, science and law develop in general.

Results and conclusions

The author is of the opinion that the effectiveness of legal remedies and commensurate compensation, as well as many other concepts that are mentioned chaotically as to their meaning, are often not concepts that overlap. Rights can be effectively protected, but whether the protection given is fair, proportionate and, finally, commensurate and how to prove it, or how to determine the amount of compensation, how to choose the remedy and its form, these issues are left open in the case-law. Although legal literature states that the remedy that provides effective legal protection for a particular infringement of rights makes difference, compensation is usually understood in monetary terms, but the understanding of each person on the amount of money that brings satisfaction is unequivocal and even incomparable. Besides, the understanding of commensurate compensation as a concept having merely financial meaning is incorrect.

References

Constitution of the Republic of Latvia. Law of the Republic of Latvia. Latvijas Vēstnesis No. 43, 07/11/1922.

Civil Law. Law of the Republic of Latvia. Valdības Vēstnesis No. 41, 20.02.1937.

Group of authors under scientific supervision of Prof. K. Torgāns. Commentary on the Civil Procedure Law. Part I (Chapters 1–28). Riga, Courthouse Agency, 2011.

Commentary of the Constitution of the Republic of Latvia. Chapter VIII. Fundamental human rights. Group of authors under scientific supervision of Prof. R. Balodis. Riga: Latvijas Vēstnesis, 2011.

Torgāns K. 2014. Current News Regarding Responsibility for Non-Material Damage. Collection of articles from the 72nd Scientific Conference of the University of Latvia. Riga: LU Akadēmiskais apgāds, p. 121–136.

Danovskis E. 2014. Understanding of Commensurate Compensation in Administrative Law. University of Latvia, 5th International Scientific Conference of the University of Latvia, Riga, p. 231–232.

Judgment of the Department of Administrative Cases of the Supreme Court Senate of the Republic of Latvia in case No. SKA-54/2007, Riga, 2007.

Judgment of the Department of Administrative Cases of the Supreme Court Senate of the Republic of Latvia in case No. SKA-161/2011, Riga, 2011.

Judgment of the Department of Administrative Cases of the Supreme Court Senate of the Republic of Latvia in case No. SKA-104/2010, Riga, 2010.

THE ROLE OF MUNICIPALITIES IN PROMOTING COOPERATION IN THE FIELD OF THE PROTECTION OF CHILDREN'S RIGHTS

Ginta Krikščūne
Riga Stradiņš University, Dzirciema Street 16, Riga, LV-1007, Latvia, ginta.krikscune@gmail.com

Abstract

The role of municipalities in promoting cooperation in the field of the protection of children's rights

Key words: *law, priority of children's rights, parental responsibility, interinstitutional cooperation*

In Latvia, the competence of the state in the field of the protection of children's rights includes the formulation of the policy on the protection of children's rights and the monitoring and control of related compliance.

The principles of the protection of children's rights are laid down in the Law on the Protection of Children's Rights, and they are as follows: the rights and best interests of the child take priority in lawful relations that affect the child. The rights and best interests of the child must be a primary consideration in any actions affecting the child, regardless of whether these actions are performed by state or municipal authorities, public organisations or other private individuals and legal entities, courts and other law enforcement authorities. **The rights of the child should be protected by means of cooperation with families, state and municipal authorities, public organisations and other private individuals and legal entities.**

It has been increasingly observed that certain duties are delegated to local municipalities, which often have only limited funds to finance social services for families with children and out-of-family care services. The competence of municipalities includes the consideration of matters related to violations of the rights of the child, the administration of social services and the functioning of child care institutions etc. Given that, these are just some of the areas in which municipalities must take part in and carry out the responsibilities delegated to them by the state, **the aim of this study** is – to ascertain how efficiently, qualitatively and in accordance with the best interests of the child, the municipalities are dealing with these responsibilities.

Research methods used: data collection method (case analysis) and statistical data processing method (analyzed, evaluated and interpreted numerical data sets).

Kopsavilkums

Pašvaldību loma sadarbības veicināšanā bērnu tiesību aizsardzības jomā

Atslēgvārdi: *likums, bērna tiesību prioritāte, vecāku atbildība, starpinstitūciju sadarbība*

Bērnu tiesību aizsardzības jomā Latvijā valsts kompetencē ietilpst bērnu tiesību aizsardzības politikas izstrāde, kā arī normatīvo aktu tiesiskā reglamenta ievērošanas uzraudzība un kontrole.

Bērnu tiesību aizsardzības principi ir noteikti Bērnu tiesību aizsardzības likumā un, proti, tie ir – tiesiskajās attiecībās, kas skar bērnu, bērna tiesības un intereses ir prioritāras. Visām darbībām attiecībā uz bērnu neatkarīgi no tā, vai tās veic valsts vai pašvaldību institūcijas, sabiedriskās organizācijas vai citas fiziskās un juridiskās personas, kā arī tiesas un citas tiesībaizsardzības iestādes, prioritāri ir jānodrošina bērna tiesības un intereses. **Bērna tiesību aizsardzība īstenojama, sadarbojoties ar ģimeni, valsts un pašvaldību institūcijām, sabiedriskajām organizācijām un citām fiziskajām un juridiskajām personām**.

Aizvien vairāk ir vērojama izteikta pienākumu deleģēšana vietējām pašvaldībām, kurām bieži ir ļoti ierobežoti finanšu līdzekļi sociāliem pakalpojumiem ģimenēm ar bērniem un ārpusģimenes aprūpes pakalpojumu sniegšanai. Pašvaldību kompetencē ietilpst ar bērnu tiesību pārkāpumiem saistītu jautājumu izskatīšana, sociālo pakalpojumu administrēšana, bērnu aprūpes iestāžu funkcionēšanas nodrošināšana utt. Ņemot vērā to, ka tās ir tikai dažas no jomām, kurās pašvaldībām ir jāņem dalība un jāveic pienākumus, ko tai ir deleģējusi valsts, šī **pētījuma mērķis** ir – noskaidrot cik efektīvi, kvalitatīvi un atbilstoši bērna vislabākajām interesēm, pašvaldības tiek galā ar šiem pienākumiem.

Izmantotās pētījuma metodes: datu vākšanas metode (situācijas analīze) un statistiskā datu apstrādes metode (analizēti, vērtēti un interpretēti skaitlisku datu kopumi).

Introduction

In Latvia, according to laws, the protection of children's rights falls within the competence of many state or municipal authorities or public organisations and other private individuals or legal entities that provide support and assistance to children and families.

The Law on the Protection of Children's Rights lays down one of the fundamental principles defined in the UN Convention on the Rights of the Child, whereby the best interests of the child must be a primary consideration in any actions.

The Law on the Protection of Children's Rights [1], hereinafter – the LPCR, enshrines the principles of protection of the rights of the child and defines that the rights and best interests of the child take priority in lawful relations that affect the child.

This article specifically focuses on matters related to interinstitutional cooperation, when it is necessary to introduce social corrections or implement a social assistance programme for children who have committed crime or carried out actions that are likely to lead to unlawful acts.

To achieve the purpose of the research, the following tasks were set: to analyze normative acts defining the responsibilities of local governments for promoting cooperation in the field of protection of children's rights; to conduct a situation analysis in interinstitutional cooperation; to perform statistical data processing (to analyze, to rate and interpret a set of numerical data).

Main part of the article

The rights of the child should be protected by means of cooperation with families, state and municipal authorities, public organisations and other private individuals and legal entities. The organisation of interinstitutional cooperation and the procedure for protecting the rights of the child are laid down in Cabinet Regulation No 545 of 12 September 2017 on Interinstitutional Cooperation in the Protection of Children's Rights [2]. The goal of this Regulation is to ensure that institutions protect children's rights within their respective competence and following their purposes by means of cooperation groups established for the protection of children's rights[1] and the Cooperation Council for Children[2].

The role of municipalities and their institutions in the safeguarding and exercise (protection) of children's rights is extremely important and essential. The significance of this role is enshrined in both international and national laws; for example, Article 15(1) of the Law on Municipalities [3] lists autonomous functions of municipalities, and some of them concern the protection of children's rights directly, namely municipalities must:

– provide education of the public, i.e. ensure certain rights of citizens to acquire primary and general secondary education; ensure children of pre-school and school age with places at

[1] ***A cooperation group*** is a consultative collegiate body set up by a municipality, which is operating in the administrative territory of a respective municipality or city. A municipality or city may have several cooperation groups, or several municipalities may set up one common cooperation group. In such cases, the territory covered by every cooperation group must be determined.

[2] ***The Cooperation Council for Children*** is a consultative collegiate body, whose objective is to facilitate uniform understanding that the principle of priority of the best interests of the child must be respected in municipal and state policies and to promote concerted efforts of institutions, including cooperation groups, in the field of the protection of children's rights. The Cooperation Council for Children is set up, their objectives and composition are determined and their rules are approved by the minister for welfare.

training and educational institutions; provide organisational and financial assistance to extracurricular training and educational institutions and education support institutions, etc. (*Article 15(1)(4)*);

- ensure social assistance (social care) of citizens (social assistance for low-income families and socially disadvantaged persons, ensure places for old people at old-age homes, ensure places for orphans and children without parental care at training and educational institutions, provide overnight shelters for the homeless, etc. (*Article 15(1)(7)*);
- ensure guardianship, trusteeship, adoption and the protection of the moral and economic rights and interests of children (*Article 15(1)(8)*);
- implement the protection of the rights of the child in a relevant administrative territory (*Article 15(1)(23)*).

The LPCR also refers to and stresses the significance and importance of municipalities; namely, according to the law, municipalities must: provide assistance and support to families with children, guaranteeing shelter, warmth and clothing and nutrition appropriate to child's age and state of health, for each child residing in the municipality's territory; provide out-of-family care for children who temporarily or permanently do not have a family or who, in their own interests, should not be left in the relevant family; ensure the right of the child to general secondary education and provide them with assistance in vocational training; organise primary health care for mothers and children; organise parental education; provide pre-school and extracurricular child institutions and public libraries, organise children's recreation; draw up and implement programmes for street children; carry out other measures safeguarding the rights of the child.

Equally important is the role of municipalities in the organisation of crime prevention or interinstitutional cooperation, when institutions must introduce social corrections[3] and implement a social assistance programme for children who have committed crime or carried out actions that are likely to lead to unlawful acts.

Article 58(1) of the LPCR lays down that work with children for crime prevention is carried out by municipalities in collaboration with the parents of children, educational institutions, the State Police, the State Probation Service, if the child is a probation client, public organisations and other institutions.

[3] A municipality keeps a prevention file and draws up a programme for social correction of behaviour for each child who: has committed a criminal offence and is not in detention during the pre-trial investigation period; is found guilty of a criminal offence, but whose penalty does not involve deprivation of liberty; is released from criminal liability; is released from a prison or penal institution; has committed unlawful acts referred to in the Criminal Law prior to attaining the age of 14 years; has committed unlawful acts referred to in the Administrative Violations Code more than twice; is a beggar or vagrant or carries out other actions that are likely to lead to unlawful acts.

With a view to fulfilling the aforementioned duties, municipalities must set up in their relevant territories cooperation groups[4], which would comprise representatives of the following authorities: municipal police or the State Police[5]; municipality's social service; municipality's education board or an education specialist; family court. The competence (objective) of cooperation groups is as follows:

- to consider individual cases related to a potential infringement of the rights of the child if quick response or cooperation among several institutions is necessary or if a relevant situation cannot be resolved by a single institution or has not been resolved over a long period;
- to analyse the existing situation in the field of the protection of children's rights and submit suggestions to municipalities regarding the formulation of a municipality's or city's programme on the protection of children's rights, including measures required for the improvement of the interinstitutional cooperation system and for concerted and coordinated cooperation among institutions;
- to present suggestions to the Ministry of Welfare for the improvement of laws and the enhancement of cooperation in the field of the protection of children's rights. The Ministry of Welfare hands these suggestions over to the Cooperation Council for Children for consideration;
- to inform the public (local residents) about topical issues concerning the protection of children's rights.

The rules of a cooperation group determine the procedure for implementing interinstitutional cooperation by the group. It should be noted that the current version of Article 58 of the LPCR has been in force since 2000; however, a regulation requiring that cooperation groups or commissions set up by municipalities (one or the other or both) have their own rules, which must be published on the relevant municipality's website (by 1 December 2017) was adopted and entered into force only at the end of 2017, which was, in fact, only after Ilona Kronberga [4], former Head of the State Inspectorate for Protection of Children's Rights, had indicated that such a regulation would be necessary, and namely: *"**The facts are that** interinstitutional cooperation for the protection of children is not sufficient or is so weak that it is only aimed at the exchanging of piles of paperwork among institutions rather than any real joint work in the interests of specific children and families. The time has come for amending the Law on the Protection of Children's Rights to formulate a Cabinet regulation that could be named "Procedure whereby entities involved in the protection of*

[4] On the initiative of members of a cooperation group, representatives of the following authorities and institutions may be invited: educational institutions; child care institutions; prisons; municipality's pedagogical and medical commission; municipality's administrative commission; the State Probation Service; the State Police; non-governmental organisations.
[5] If a municipality has no municipal police or has not delegated the duties of municipal police to another municipality.

children's rights cooperate in the interinstitutional environment in the best interests of the child". This procedure would define duties of every party concerned and their responsibility for any failure to fulfil their duties".

Such a document should be of great importance because it should define guidelines (general rules) for the successful, effective and constructive interinstitutional cooperation, taking account of the best interests of the child; however, as the analysis of practical experience of municipalities has revealed, **only 47 municipalities of total 110 municipalities** (based on websites all of 110 municipalities by 9 May 2018) have such rules of a cooperation group or commission published, while no such rules are available (published) on the websites of **63**[6] municipalities. The derogation here is that, the author has performed the processing and interpretation of the data obtained as a percentage, which means that by expressing these data obtained in percentage terms – **43% of municipalities have performed these duties mentioned in the regulatory enactments, while 57% of municipalities have not done so**. This leads to a conclusion that municipalities have not attached great importance to this matter (field), neither have they used their resources (specialists of institutions and other specialists, financing, etc.) to achieve, as effectively as possible, the required level of interinstitutional cooperation safeguarding the rights and priorities of the child.

In addition, in the light of the foregoing and available statistical data, it should be concluded that the main problems related to the protection of children's rights are associated with unsatisfactory prevention efforts, i.e. children are taken into care too late. Overall, the country needs child social workers. Some social workers dealing with children lack adequate qualifications and knowledge. In small municipalities, the social worker's functions are often delegated to employees who are not trained for this purpose and are merely combining their official roles.

Accordingly, the problem existing at municipality level is the training of municipal staff [5]**, namely staff training programmes**[7]. Specialists must complete a training programme of 40 academic hours in order to acquire special knowledge in the field of the protection of children's rights. Specialists who have completed the programme are issued certificates, and they are considered to be qualified and to have improved their professional knowledge about the protection of children's rights. **These hours are not and cannot be regarded as sufficient to recognise that**

[6] These municipalities are: Ādaži; Aglona; Aizpute; Aloja; Alūksne; Amata; Ape; Auce; Babīte; Baldone; Baltinava; Bauska; Beverīna; Brocēni; Cibla; Dagda; Dundaga; Durbe; Engure; Grobiņa; Iecava; Ikšķile; Jaunjelgava; Jaunpiebalga; Jaunpils; Ķegums; Kocēni; Koknese; Krimulda; Krāslava; Kuldīga; Līgatne; Lubāna; Madona; Mālpils; Nereta; Skrīveri; Skrunda, Smiltene, Vaiņode; Valka; Varakļāni; Vecumnieki; Ventspils, etc.

[7] Training programmes were approved by the State Inspectorate for Protection of Children's Rights on 2 November 2015, No 1-8/2538. The programmes have been drawn up in accordance with Article 5^1(2) of the Law on the Protection of Children's Rights and requirements set out in Cabinet Regulation No 173 of 1 April 2014 on the Procedure for Acquiring Special Knowledge in the Field of the Protection of Children's Rights and the Content and Scope of this Knowledge. This regulation sets forth the procedure whereby specialists of state and municipal institutions who are considering cases related to the protection of children's rights (hereinafter – specialists) acquire special knowledge in the field of the protection of children's rights and the content of this knowledge.

a person is specialised in the field of the protection of children's rights and able to work with minors**. It is also noteworthy that employees who have completed the training admit that these hours are neither** sufficient **nor of proper quality so that they might be able to assume such a major responsibility in the interests of minors effectively and to the highest standards.**

The author has already identified several key questions that will have to be answered at both municipal and state level over time, such as: *What was the real situation regarding interinstitutional cooperation from 2000 to the end of 2017? How are the duties (tasks) divided between the members of this team (municipal institutions)? Are interinstitutional meetings being held with sufficient frequency? Is any information being aggregated about the team's activities to achieve the goal and in their work with families? How is interinstitutional cooperation being implemented at present? How successful/unsuccessful is it? What factors prevent successful and effective cooperation? Finally, are a minor's rights, duties and interests respected in all cases (when a social correction and social assistance programme for minors is in place)?*

It is essential to conduct an analysis and research (of practical experience or reality) in this field and answer the above questions because it is the only way to understand where work should be focused, priorities should be set and the state, including municipalities, should go **in order to ensure the protection of children's rights and, above all, implement the national family policy *"Natural family as a value and state priority"* in Latvia**. It should also be noted that municipalities represent the first stage, they are the ones assuming hard work to achieve that children grow up in their families and are not separated from them. Therefore, the more successful efforts municipalities will make (which also refers to tasks delegated by the government), the more likely it will be that the interests and priorities of the child are respected at the highest level and in line with the best interests of the child.

Conclusions

The main problem at national level is that several non-interrelated institutions of different levels deal with matters related to children's rights, social security, education, employment, etc. **Institutions are focused on children in crisis situations and dysfunctional low-income families rather than healthy families, thereby dealing with consequences and their elimination.**

It is clearly evident that certain duties are delegated to local municipalities, which often have only limited funds to finance social services for families with children and out-of-family care services. **Effective out-of-family care cannot be achieved as the national financing system in this area is divided between state and municipal services, and it is ineffective.** *For instance, specialised child care centres for children with special needs are financed by the state, while orphanages (shelters) for children whose parents are not able to provide care are financed by municipalities.* **As a result of institutional problems, the integration of institutionalised**

children into society after they attain majority is difficult because they are not prepared sufficiently for independent life, and municipalities are not always able to provide these children with comfortable homes.

The state has no unified coordination mechanism in place to streamline policies formulated and implemented and measures carried out in different sectors with the protection of the interests of the family and the provision of required support. As a result, institutions' functions are overlapping or are not executed because they are regarded as those of another institution. [6]

Although major reforms in the field of the protection of children's rights have been introduced, several laws have been adopted and amended, case-law has been developed, etc., the existing system established for the protection of children's rights is still functioning ineffectively. This ineffectiveness can be observed at both state and municipal level, which is also evidenced by various data, such as information aggregated for the year 2017 about child birth, mortality, age structure, health, education, social protection, use of information technologies, violence against children and children in trouble with the law in the data collection *"Children in Latvia" ("Bērni Latvijā")* [7] published by the Central Statistical Bureau of the Republic of Latvia, a research "Analysis of the situation existing in Latvia in the field of the protection of children's rights with respect to children taken into out-of-family care and children who are at risk of losing their family care" [8] ordered by *SOS Children's Villages Latvia (Latvijas SOS Bērnu ciematu asociācija*) in 2009, a report *"Summary of the work of family courts 2017" ("Par bāriņtiesu darbu 2017. gadā kopsavilkumu")* [9] drawn up by the State Inspectorate for Protection of Children's Rights.

References

The Law on the Protection of Children's Rights. Date of adoption: 19.06.1998, date of entry into force: 22.07.1998. *Latvijas Vēstnesis*, 199/200 (1260/1261), 08.07.1998, *Ziņotājs*, 15, 04.08.1998.
Cabinet Regulation No 545 of 12 September 2017 on Interinstitutional Cooperation in the Protection of Children's Rights. Date of adoption: 12.09.2017, date of entry into force: 15.09.2017. Latvijas Vēstnesis, 183 (6010), 14.09.2017.
Law on Municipalities. Date of adoption: 19.05.1994, date of entry into force: 09.06.1994. Latvijas Vēstnesis, 61 (192), 24.05.1994, Ziņotājs, 11, 16.06.1994.
Kronberga: Starpinstitūciju sadarbība bērnu aizsardzībai, iespējams, orientēta uz "apmētāšanos" ar dokumentiem. Source: http://bnn.lv/kronberga-starpinstituciju-sadarbiba-bernu-aizsardzibai-iespejams-orienteta-uz-apmetasanos-ar-dokumentiem-207058 [visited on 19.04.2018].
Training and seminars. Source: http://lpmc.lv/macibas.html [visited on 21.03.2018].
Research "Analysis of the situation existing in Latvia in the field of the protection of children's rights with respect to children taken into out-of-family care and children who are at risk of losing their family care" ordered by SOS Children's Villages Latvia (Latvijas SOS Bērnu ciematu asociācija). Riga, 2009. Source: https://www.sosbernuciemati.lv/lv/mes-palidzam/informativie-materiali/?file=367 [visited on 13.04.2018].
Data collection "Children in Latvia" ("Bērni Latvijā") of the Central Statistical Bureau of the Republic of Latvia. Riga, 2017. Source: www.csb.gov.lv/sites/default/files/nr_12_berni_latvija_2017_17_00_lv_en.pdf [visited on 11.04.2018].

Research "Analysis of the situation existing in Latvia in the field of the protection of children's rights with respect to children taken into out-of-family care and children who are at risk of losing their family care" ordered by SOS Children's Villages Latvia (Latvijas SOS Bērnu ciematu asociācija). Riga, 2009. Source: https://www.sosbernuciemati.lv/lv/mes-palidzam/informativie-materiali/?file=367 [visited on 13.04.2018].
Report "Summary of the work of family courts 2017" ("Par bāriņtiesu darbu 2017. gadā kopsavilkumu") drawn up by the State Inspectorate for Protection of Children's Rights of the Ministry of Welfare of the Republic of Latvia. Source: http://www.bti.gov.lv/lat/barintiesas/statistika/?doc=5164&page= [visited on 13.04.2018].

THE DUAL NATURE OF PATIENT LEGAL PROTECTION IN THE MEDICAL TREATMENT RISK FUND

Līga Mazure
Rezekne Academy of Tehnologies, Atbrīvošanas al. 115, Rezekne, LV-4601, liga.mazure@inbox.lv

Abstract

The dual nature of patient legal protection in the medical treatment risk fund

Key words: *compensation, dual nature, fund, harm, patient*

A patient claim for harm related to medical treatment and compensation for this harm has a civil nature. Still the patient may employ their legal protection for harm related to medical treatment in two ways – in a civil procedure in court and in an administrative procedure in the Medical Treatment Risk Fund (hereinafter – the Fund). When creating the Fund in Latvia, the understanding of it that exists in the world practice has been transformed.

No consensus exists in the legal practice and the legal science on the use of the patient protection measures – the court or the Fund. Since the laws and regulations do not provide a clear answer, different interpretations of the use of these measures are possible – turning to court and the Fund in a different order, as well as their alternative application. The opinion expressed in the legal science on the Fund as an obligatory pre-trial stage is not supported unequivocally.

The principles for patient compensation from the Fund provided for in the laws and regulations violate the patient's right to legal protection in case of harm related to medical treatment. These drawbacks of the laws and regulations are also confirmed by the legal practice that has formed in relation to this issue**.**

Kopsavilkums

Pacienta civiltiesiskās aizsardzības duālais raksturs Ārstniecības riska fondā

Atslēgvārdi: *atlīdzība, duālais raksturs, fonds, kaitējums, pacients*

Pacienta prasībai par kaitējumu ārstniecībā un atlīdzībai par šo kaitējumu ir civiltiesisks raksturs. Tomēr pacients savu civiltiesisko aizsardzību par kaitējumu ārstniecībā var īstenot divos veidos – gan civilprocesuālā kārtībā tiesā, gan administratīvi tiesiskā kārtībā Ārstniecības riska fondā (turpmāk tekstā – Fonds). Veidojot Fondu Latvijā, tika transformēta tā pasaules praksē pastāvošā izpratne.

Juridiskajā praksē un tiesību zinātnē nav vienprātības par pacienta īstenojamo aizsardzības līdzekļu – tiesas vai Fonda, pielietojumu. Normatīvajam regulējumam nesniedzot skaidru atbildi, iespējami dažādi pielietojuma interpretācijas varianti – gan tiesas un Fonda dažāds secīgums, gan to alternatīvs pielietojums. Nav viennozīmīgi atbalstāms tiesību zinātnē paustais viedoklis par Fondu kā obligātu pirmstiesas posmu.

Normatīvajā regulējumā noteiktie principi pacienta atlīdzībai no Fonda aizskar pacienta tiesības uz civiltiesisko aizsardzību ārstniecības kaitējuma gadījumā. Šos normatīvā regulējuma trūkumus apliecina arī izveidojusies minētā jautājuma juridiskā prakse.

Introduction

Patient compensation for harm related to medical treatment has a civil nature which can also be implemented in an administrative legal procedure in the Medical Treatment Risk Fund (hereinafter – the Fund). When creating the Fund in Latvia, the understanding of it that exists in the world practice has been transformed. Since the laws and regulations do not provide a clear answer, different interpretations of their application are possible – different order of the court and the Fund, as well as their alternative application. The principles for patient compensation from the Fund provided for in the laws and regulations violate the patient's right to legal protection in case of harm related to medical treatment. These drawbacks of the laws and regulations are also confirmed by the legal practice that has formed in relation to this issue.

The purpose of the article is to analyse the dual nature of patient legal protection in the Fund, find out the problems related to this issue and offer specific solutions. The semantic, grammatical, historical, comparative, analytical, systemic, and theleological research methods were used for the preparation of the article. Having explored the dual nature of patient legal protection in the Fund,

improvements are offered for this issue by considering a change in the interpretation of particular issues and designing specific implementable proposals.

Meaning of the medical treatment risk fund in patient civil protection

The legal relations in medical treatment are contractual, i.e. they involve a multilateral transaction and a bilateral contract where the parties have equal rights (Civillikums 1993: 1403., 1427., 1511., 1512.p.). If a patient incurs harm during treatment, this is considered a delict (Civillikums 1993: 1635.p. 1.d.), regardless of the competition between delictual and contractual liability (Civillikums 1993: 1635.p. 1.d., 1587.p., 1812.p.; Bitāns 1997: 96; Čakste 2011: 190, 191) that exists in this situation. The patient is entitled to a civil claim for reimbursement, which is secured in the international and national rules of law (*Konvencija par cilvēktiesību un cieņas aizsardzību bioloģijā un medicīnā* 1997: 24.p.; *European charter of patients' rights* 2002: a.14; Par pacientu tiesību piemērošanu pārrobežu veselības aprūpē 2011: 1.p., 3.p.d), 4.p. 2.d.c); Pacientu tiesību likums 2009: 16.p. 1.d.).

The laws and regulations provide for two ways of implementing patient claims to be satisfied. On the one hand, a patient has the right to apply to court via a civil procedure (Civillikums 1993: 1732.p.); on the other hand, they can apply via an administrative procedure to the Fund (Pacientu tiesību likums 2009: 16.p. 2.d., 17.p. 2.d.; *Medicīnas tiesības* 2015: 331). Violated civil rights can be defended not only by the court but also by a state and municipal institution if the law explicitly provides the subject with such right to choose an institution of defence (*Civilprocesa likuma komentāri* 2011: 76, 78), which is thus in line with the legal system.

Compensation from the Fund is paid to the patient for culpable harm which results from a culpable action of a medical practitioner or circumstances during treatment (Pacientu tiesību likums 2009: 16.p. 1.d.; Ārstniecības riska fonda darbības noteikumi 2013: 12. 2.pk.) for which the medical practitioner or the medical institution is responsible. Author cannot agree with the opinion that the fault or culpability of medical practitioners is not established in this process (Liepiņš, Vētra, Joksts 2018: 31; ARTS I 2017: 7.pk.; ARTS 2016: 7.pk.). The fault of medical practitioners is not established in order to punish these persons but fault is established in order to pay compensation to the patient from the Fund. Thus, the operation of the Latvian Fund is based on the principle of fault.

Sweden is the first country where, in 1975, an administrative compensation system was created in medical treatment relations upon an agreement with the consortium of private insurers (Johansson 2010; Essinger 2009: 2; Felice, Lambkros; Bogdan 2011: 3). When other countries borrowed the idea, funds were created for the payment of compensations to patients for harm related to medical treatment, which is based on direct (strict) liability and where preventable rather than culpable harm is compensated, i.e. harm that would not have occurred if the action of the medical practitioner corresponded to the standard expected in a particular society (Johansson 2010:

88–90; Essinger 2009: 2, 6, 9; Danzon 1994: 453, 454, 463; Felice, Lambkros; Bogdan 2011: 1; Farrell, Devaney, Dar 2010: 43, 44, 49; Watson, Kottenhagen 2018: 7, 8, 10, 14; Rencher). In Latvia the Fund was also created to replace civil liability insurance for medical practitioners and medical institutions (STS 2018: 15.1.pk.) with medical institutions paying contributions to the Fund instead (Pacientu tiesību likums 2009: 17.p. 3.d.). Non-fault based system is based on the offence theory where the fact of offence itself is sufficient for liability (Čakste 2011: 191) rather than fault and where evidence of a causal relationship between medical treatment that does not meet the standard and the harm creates the basis for compensation (Watson, Kottenhagen 2018: 5).

Supranational law has secured the principle where the patient must be guaranteed a compensation regardless of the reason for the harm (*European charter of patients' rights* 2002: a.14 p. 2). This principle is considered the absolute idea of compensation, which the countries have narrowed down to compensation for preventable harm. Whereas in the operation of the Latvian Fund, this idea has been narrowed down even more, down to compensation for culpable harm, which can be corrected in accordance with the understanding of the fund by the countries of the world.

Opinions have been expressed on expanding the legal basis of compensation from the Fund, which contain ambiguous explanations of the proposals. For example, it has been offered to include iatrogenic errors in compensation (Liepiņš 2016: 305). On the one hand, an iatrogenic error is interpreted as an irreversible error made by a medical practitioner during the course of treatment (in addition to a possible deontological, diagnostic, treatment error) (*Medicīnas tiesības* 2015: 679; Liepiņš, Vētra, Joksts 2018: 32), emphasizing incorrect action of a medical practitioner as its cause (Greek: *iatros* – physician, *gignesthai* – to occur, to originate) (Baldunčiks, Pokrotniece 1999: 324). On the other hand, the iatrogenic complication is singled out in contrast to doctors' errors, which are negative consequences of a medical practitioner's actions performed carefully and diligently in accordance with medical guidelines caused by an accident or force majeure (Lācis 2018: 22, 24). Whereas a unifying opinion is also expressed that iatrogenic events include errors as well as events (Watson, Kottenhagen 2018: 8). Expanding the meaning of the legal basis of compensation from the Fund requires its unambiguous and clear definition, also deriving from it more nuanced elements for proper functioning of the legal system.

If a patient receives a compensation from the Fund, the civil liability measures provided for in the laws and regulations are not taken against the medical practitioner involved in the harm, although their culpability is established for the payment of compensation (Pacientu tiesību likums 2009: 16.p. 1.d.; Ārstniecības riska fonda darbības noteikumi 2013: 12.2.pk.). Negative consequences are determined indirectly only if the medical institution has not made contribution payments to the Fund, in which case the National Health Service (hereinafter – the NHS) has the

right to recover from this medical institution all the compensation paid to the patient (Pacientu tiesību likums 2009: 17.p. 5.d.). However, in this case liability is established not so much for patient harm as for violation of ensuring the operation of the Fund, i.e. not making payments to it. On the one hand, it is in line with civil rights for the reaction to a delict to be material, with the element of punishment being only secondary (Sinaiskis 1996: 229) and the Fund taking material responsibility for patient harm. On the other hand, lack of punishment threatens patient safety (Bogdan 2011: 5), which we have to admit. Even though the primary load of civil liability lies on the Fund, still certain legal reaction against the medical practitioner responsible for patient harm is necessary.

A set of measures is found among the world countries, which has three directions after payment from the compensation system. Firstly, for example in Sweden and Denmark, a separate governmental institution has been created which decides on taking disciplinary action against the medical practitioner; this institution is not merged with the fund, no information exchange takes place between these bodies, and an application from the patient is required for initiating a case (Felice, Lambkros; *Health care in Denmark* 2017). Secondly, for example in Sweden and Finland, each case of compensation for patient harm from the compensation system is evaluated in order to find out the cause of such harm, i.e. malpractice by a medical practitioner, an error in the healthcare system, etc. (Essinger 2009: 10; Farrell, Devaney, Dar 2010: 46). And thirdly, for example in Sweden, preventive measures are taken to reduce the likelihood of the same type of harm to a patient happening again, i.e. conferences on patient safety, using data on specific types of harm in education, visits to medical institutions by representatives of the fund, etc. (Essinger 2009: 10). Thus legal consequences of patient harm are more nuanced and further going, and investigating the cause of such harm and its prevention reduces the likelihood of its reoccurrence in the future.

Ways of employing the medical treatment risk fund and the court in patient legal protection

The legal system includes the principle that the claims procedure and the mechanism for the protection of patient rights in case of harm should be clear to the patient (Par pacientu tiesību piemērošanu pārrobežu veselības aprūpē 2011: 4.p. 2.d.c) pk.). Even though in the laws and regulations this principle is only applicable to cross-border treatment (Par pacientu tiesību piemērošanu pārrobežu veselības aprūpē 2011: 1.p. 1.d., 4.d.), it is assumed that it applies to treatment of any patient, without narrowing down the application of the principle depending on a specific type of treatment. In patient claim for harm related to medical treatment, two protection measures can be employed – the Fund or the court in a civil procedure. Still, no consensus exists in the legal practice and the legal science on the use of these measures, since laws and regulations do not provide a clear answer on the ways of using these measures. Thus, different ways to make use of these measures are possible.

Firstly, the laws and regulations provide that no compensation is paid from the Fund if the patient has already received it through a civil procedure or a criminal procedure (Pacientu tiesību likums 2009: 16.p. 5.d.). Thus it is not allowed to apply to the Fund and to court at the same time to seek compensation for harm, thus receiving compensation from different sources more than once.

Secondly, there have been cases in the legal science and legal practice where the Fund is considered an obligatory pre-trial measure (Liepiņš, Vētra, Joksts 2018: 28; RPVPT 2017: 9.pk.). Even though, for example in Denmark, this principle exists (*Health care in Denmark* 2017; Felice, Lambkros), it is not currently supported in Latvia. The judge does not accept a claim if the out-of-court procedure has not been followed (Civilprocesa likums 1998: 6.p., 132.p. 1.d. 7.pk.). For several categories of civil cases, the law provides that before applying to court these cases need to be reviewed in previous out-of-court legal protection institutions or the actions for peaceful settlement provided for in the legislation have to be taken (*Civilprocesa likuma komentāri* 2011: 78). Furthermore, the number of cases provided for in the legislation where a claim is not accepted is exhaustive, and it cannot be interpreted in a broader sense (*Civilprocesa likuma komentāri* 2011: 330). Considering that this is an imperative legal regulation, which narrows the scope of patient rights, this principle of obligatory pre-trial is not to be interpreted or presumed but is clearly determined in the legal regulations. And the legal regulations on medical treatment do not provide that the Fund is an obligatory pre-trial measure.

Thirdly, a question arises whether a patient can submit a claim to the court through a civil procedure if compensation has already been paid from the Fund. Such a possibility is not excluded in the legal science (*Medicīnas tiesības* 2015: 342), and other countries, i.e. Sweden, Norway, New Zealand, even provide for such patient right (Essinger 2009: 9; Danzon 1994: 460; Bogdan 2011: 3, 4; Farrell, Devaney, Dar 2010: 50; *Informācija par kompensācijas izmaksāšanas noteikumiem skandināvu valstīs*: 11.pk.). Still, having evaluated the laws and regulations of Latvia, the author has to conclude that two ways currently exist. If a patient is not satisfied with the amount of compensation paid from the Fund or the payment of such compensation is denied, the decision of the NHS can be appealed in an administrative procedure (Pacientu tiesību likums 2009: 17.p. 2.d.). Whereas a patient can raise a claim in court after the Fund if the patient is requesting compensation for other items, which are not provided for by the Fund, such as possible decrease in the patient's anticipated profits, maintenance payments for the patient's dependents, or funeral costs (Civillikums 1993: 2347.p. 1.d., 2348.p., 2350.p., 2351.p.).

Fourthly, for example in Sweden, Finland, Norway, Canada, a patient has the right to choose between the fund or the court (Danzon 1994: 453; Bogdan 2011: 3; Felice, Lambkros; Watson, Kottenhagen 2018: 15; Farrell, Devaney, Dar 2010: 45, 50; *Informācija par kompensācijas izmaksāšanas noteikumiem skandināvu valstīs*: 9.pk.). In special cases the legislation provides the

subject with the right to choose which protection institution to apply to for protection (alternative jurisdiction), clearly specifying these alternative institutions (*Civilprocesa likuma komentāri* 2011: 78). The principle of alternative choice corresponds to the understanding of the civil rights where in accordance with the principle of disposition a patient has the right to choose whether to request compensation for harm related to medical treatment and at which institution to do so without legal obstacles for such interpretation.

Thus, we can conclude that the Fund is not to be considered an obligatory pre-trial measure where a patient has the right of alternative choice between the Fund and the court in a civil procedure for compensation for harm related to medical treatment.

Reviewing a decision on compensation from medical treatment risk fund

The principles provided for in the laws and regulations on reviewing the decision on compensation from the Fund violate the patient's right to legal protection in case of harm related to medical treatment. When evaluating the issue of compensation from the Fund for patient harm, the Health Inspectorate (hereinafter – the Inspectorate) in fact reviews the case in its essence, makes a conclusion on legal categories, and on the basis of this conclusion the NHS makes a decision regarding compensation from the Fund (Ārstniecības riska fonda darbības noteikumi 2013: 6., 7., 10., 11.pk.). Thus, an administrative institution has been granted an extraordinary power to determine material liability and harm in medical treatment relations (Rencher: 2). This decision of the NHS can be appealed in the Ministry of Healthcare; whereas the decision of the Ministry of Healthcare can be appealed in an administrative court (Pacientu tiesību likums 2009: 17.p. 2.d.).

The administrative court, when reviewing the appealed decision of the Ministry of Health, generally does not evaluate the case in its essence but transfers it to the NHS for a second reviewing (Liepiņš, Vētra, Joksts 2018: 33). Such action is justified as follows – the administrative court makes sure that no obvious errors or significant procedural violations have occurred, that the administrative institution has followed the general evaluation principles, that no considerations have taken place that do not correspond to the essence of the case, that the evaluation is not based on false facts, that no procedural errors have been made, stating that the administrative court does not check the decision of the administrative institution in its entirety (Vildbergs, Krasts 2002: 186; ARTS 2016: 11.pk.; ARTS II 2017: 11.pk.; ARTS 2017: 11.pk.). It must be noted that some cases have been found where the administrative court sees the essence of the case, changing the amount of compensation payable, ordering the NHS to issue a more favourable administrative act, for example, increasing the compensation from 10% to 85% (ARTS IV 2017: Rezolutīvā daļa). The administrative court states that the analysis of the factual and legal circumstances of the case based on evidence is the responsibility of the NHS, for which they issue an administrative act (ARTS

2016: 14.pk.; ARTS 2017: 23.pk.), which in fact means that this is the responsibility of the Inspectorate, on the basis of which the NHS makes their decision.

In Latvia, it is problematic for the Inspectorate to perform tasks of legal nature because this is beyond their competence. The Inspectorate carries out investigations and provides a report on treatment quality (Veselības inspekcijas nolikums 2008: 4.1.pk.). The Inspectorate staff perform their professional duties using their knowledge, abilities, skills, and work experience to achieve the highest professional result (Veselības inspekcijas ētikas kodekss 2016: 3.2.1.pk.). And since the employees of the Inspectorate are certified expert doctors (ARTS I 2017: 10.pk.; ARTS III 2017: 10.pk.), the tasks of the institution include the evaluation of medical rather than legal matters. For example, the funds in Sweden and Denmark employ both medical and legal specialists (*Ietekmes ziņojums;* Johansson 2010; Felice, Lambkros). Even though the legal science states that in reviewing the issue of compensation from the Fund, the decision of the Inspectorate cannot be appealed (Liepiņš, Vētra, Joksts 2018: 37), still legal practice has corrected this approach – if the conclusion of the Inspectorate is an obstacle to issuing a favourable administrative act, then it is an intermediate decision with significant impact which can be appealed in court separately if after such conclusion of the Inspectorate a favourable administrative act can no longer follow (ATADS 2018: 8.pk.). It is doubtful whether the opportunity of appeal alone would solve the overall situation.

Thus current procedure for reviewing the decision on compensation from the Fund violates patient rights to legal protection (Cilvēka tiesību un pamatbrīvību aizsardzības konvencija 1997: 6.p. 1.d.; LR Satversme 1993: 92.p.; Civilprocesa likums 1998: 1.p. 1.d.), which is also confirmed by the legal practice that has formed. The procedure for reviewing the decision on compensation from the Fund needs to be changed. Considering the civil nature of the compensation from the Fund itself, two ways of reviewing the decision in question can be established. Firstly, if procedural violations in making the decision are found, the decision of the NHS can be appealed in an administrative procedure. Secondly, if the content of the decision of the NHS needs to be reviewed, i.e. the case needs to be reviewed in its essence, it can be appealed in court in a civil procedure.

Conclusions

1. A patient's claim regarding harm related to medical treatment and the compensation for this harm has a civil nature. Still the patient may employ their legal protection from harm related to medical treatment in two ways – in a civil procedure in court, and in an administrative procedure in the Fund. When creating the Fund in Latvia, the understanding of it as it exists in the world practice has been transformed. The involvement of the Fund in the mechanism of patient legal protection needs to be improved. Firstly, the meaning of compensation from the Fund needs to be expanded to include compensation for preventable harm to the patient. Secondly, if a patient has received compensation from the Fund, then, at the same time, a set of

measures is to be designed and introduced for objective evaluation of the cause of the harm and for reducing the likelihood of patient harm happening again.

2. No consensus exists in the legal practice and the legal science on the application of the patient protection measures – the court or the Fund. Since the laws and regulations do not provide a clear answer, different interpretations of their application are possible – different order of the court and the Fund, as well as their alternative application. The opinion expressed in the legal science on the Fund as an obligatory pre-trial stage is not supported unequivocally, and the patient has the right to an alternative choice between the Fund and the court in a civil procedure seeking compensation for harm related to medical treatment.
3. The procedure for reviewing the decision on compensation from the Fund needs to be changed. Considering the civil nature of the compensation from the Fund itself, two ways of reviewing the decision in question can be established. Firstly, if procedural violations in making the decision are found, the decision of the NHS can be appealed in an administrative procedure. Secondly, if the content of the decision of the NHS needs to be reviewed, i.e. the case needs to be reviewed in its essence, it can be appealed in court in a civil procedure.

References

ARTS 2017. Administratīvās rajona tiesas (Rēzeknes tiesu nams) 2017. gada 15. decembra spriedums lietā Nr. A42-02722-17/42.
ARTS I 2017. Administratīvās rajona tiesas (Rēzeknes tiesu nams) 2017. gada 21. jūlija spriedums lietā Nr. A420193917.
ARTS II 2017. Administratīvās rajona tiesas (Rēzeknes tiesu nams) 2017. gada 28. jūnija spriedums lietā Nr. A420176417.
ARTS III 2017. Administratīvās rajona tiesas (Rēzeknes tiesu nams) 2017. gada 19. maija spriedums lietā Nr. A420144517.
ARTS IV 2017. Administratīvās rajona tiesas 2017. gada 5. aprīļa spriedums lietā Nr. A420243916.
ARTS 2016. Administratīvās rajona tiesas (Rēzeknes tiesu nams) 2016. gada 8. decembra spriedums lietā Nr. A420289116.
ATADS 2018. LR Augstākās tiesas Administratīvo lietu departamenta 2018. gada 21. septembra spriedums lietā Nr. A420333014, SKA-151/2018.
Ārstniecības riska fonda darbības noteikumi. 2013. MK 2013. gada 5. novembra noteikumi Nr. 1268. No: *Latvijas Vēstnesis*, 22. novembris, Nr. 228.
Baldunčiks J., Pokrotniece K. 1999. *Svešvārdu vārdnīca: vairāk nekā 15 000 citvalodu cilmes vārdu un terminoloģisku vārdkopu.* Zin. red. Baldunčiks J. Rīga: Jumava.
Bitāns A. 1997. *Civiltiesiskā atbildība un tās veidi*. Rīga: AGB.
Bogdan J. 2011. Medical malpractice in Sweden and New Zealand. In: *Center of Justice & Democracy*, July, Nr. 21, 9 p.
Cilvēka tiesību un pamatbrīvību aizsardzības konvencija. 1997. Starptautiskais līgums. No: *Latvijas Vēstnesis*, 13. jūnijs, Nr. 143/144.
Civillikums. 1993. Ceturtā daļa. Saistību tiesības: LR likums. No: *LR Saeimas un Ministru Kabineta Ziņotājs*, 14. janvāris, Nr. 1.
Civilprocesa likuma komentāri. 2011. I daļa (1.–28. nodaļa). Autoru kolektīvs. Rīga: TNA.
Civilprocesa likums. 1998. LR likums. No: *Latvijas Vēstnesis*, 3. novembris, Nr. 326/330.
Čakste K. 2011. *Civiltiesības*. Rīga: Zvaigzne ABC.

Danzon P.M. 1994. The Swedish Patient Compensation System: Myths and Realities. In: *International Review of Law and Economics*, Nr. 14, pp. 453–466. [skatīts 21.04.2019]. Pieejams (Accessed): https://faculty.wharton.upenn.edu/wp-content/uploads/2014/10/the-swedish-patient_1.pdf

Essinger K. 2009. *The Swedish Medical Injury Insurance*. Report. [skatīts 21.04.2019]. Pieejams (Accessed): www.vm.gov.lv

European charter of patients' rights. 2002. [skatīts 21.04.2019]. Pieejams (Accessed): http://health-rights.org/index.php/cop/item/european-charter-of-patients-rights.

Farrell A.M., Devaney S., Dar A. 2010. *No-fault compensation schemes for medical injury: a review*. UK: Scottish Government Social Research.

Felice C., Lambkros L. *Medical liability in three single-payer countries*. [skatīts 01.04.2019]. Pieejams (Accessed): http://www.pnhp.org/facts/medical_liability_in_three_singlepayer_countries.php

Health care in Denmark. 2017. An overview. Ministry of health, 73 p. [skatīts 21.04.2019]. Pieejams (Accessed): https://www.sum.dk/English/~/media/Filer%20-%20Publikationer_i_pdf/2016/Healthcare-in-dk-16-dec/Healthcare-english-V16-dec.ashx

Ietekmes ziņojums. Ministru kabineta noteikumu "Noteikumi par Ārstniecības riska fonda darbību" projekta sākotnējās ietekmes novērtējuma ziņojums. [skatīts 1.04.2019]. Pieejams (Accessed): www.vm.gov.lv

Informācija par kompensācijas izmaksāšanas noteikumiem skandināvu valstīs. Veselības ministrija. [skatīts 21.04.2019]. Pieejams (Accessed): www.vm.gov.lv

Johansson H. 2010. The Swedish system for compensation of patient injuries. In: *Ups J Med Sci*, May, Nr. 115, pp. 88–90.

Konvencija par cilvēktiesību un cieņas aizsardzību bioloģijā un medicīnā. 1997. [skatīts 03.04.2019]. Pieejams (Accessed): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006C0500:LV:HTML

Lācis A. 2018. Jatrogēnijas koncepcija. No: *Jurista Vārds*, 21. augusts, Nr. 34, 18.–26. lpp.

Liepiņš A., Vētra J., Joksts O. 2018. Ārstniecības riska fonds: pieredze, problēmas, risinājumi. No: *Jurista Vārds*, 21. augusts, Nr. 34, 27.–39. lpp.

Liepiņš A. 2016. Trūkumi Ārstniecības riska fonda regulējumā. No: *RSU 2016. gada 17.–18. marta konferences "Politiskās, ekonomiskās, sociālās un tiesiskās sistēmas transformācijas Latvijā un pasaulē" rakstu krājums.* Rīga: RSU.

LR Satversme. 1993. LR likums. No: *Latvijas Vēstnesis*, 1. jūlijs, Nr. 43.

Medicīnas tiesības. 2015. Autoru kolektīvs. Rīga: TNA.

Pacientu tiesību likums. 2009. LR likums. No: *Latvijas Vēstnesis*, Nr. 205.

Par pacientu tiesību piemērošanu pārrobežu veselības aprūpē. 2011. Eiropas Parlamenta un Padomes 2011. gada 9. marta direktīva 2011/24/ES. No: *Eiropas Savienības Oficiālais Vēstnesis*, L 88, 45.–65. lpp.

Rencher B. *SB 141, the "Patient Injury Act", could harm Georgia healthcare consumers*. 3 p. Pieejams (Accessed): https://www.georgiawatch.org/wp-content/uploads/2013/02/SB-141-Analysis.pdf [skatīts 21.04.2019].

RPVPT 2017. LR Rīgas pilsētas Vidzemes priekšpilsētas tiesas 2017. gada 2. oktobra spriedums lietā Nr. C-1876-17/28.

Sinaiskis V. 1996. *Latvijas civiltiesību apskats. Lietu tiesības. Saistību tiesības*. Rīga: Latvijas Republikas Tieslietu ministrijas Tiesiskās informācijas centrs.

STS 2018. LR Satversmes tiesas 2018. gada 18. oktobra spriedums lietā Nr. 2017-33-03.

Veselības inspekcijas ētikas kodekss. 2016. Pieejams (Accessed): www.vi.gov.lv/lv/sakums/_110/etikas-kodekss [skatīts 21.04.2019].

Veselības inspekcijas nolikums. 2008. MK 2008. gada 5. februāra noteikumi Nr. 76. No: *Latvijas Vēstnesis*, 8. februāris, Nr. 22.

Vildbergs H.J., Krasts V. 2002. *Salīdzinošās administratīvās tiesības*. Rīga: Eurofaculty.

Watson K., Kottenhagen R. 2018. Patients' rights, medical error and harmonization of compensation mechanisms in Europe. In: European Journal of Health Law, Nr. 25, pp. 1–23. Pieejams (Accessed): https://brill.com/view/journals/ejhl/25/1/article-p1_1.xml [skatīts 21.04.2019].

THE SETTLEMENT OF SOME ISSUES OF OPERATION MECHANISM OF THE FIRST DEMAND GUARANTEE IN LITHUANIAN LAW

Giedrius Nemeikšis
Panevėžys University of Applied Sciences, Lithuania, Turiba University, Latvia

Abstract

The settlement of some issues of operation mechanism of the first demand guarantee in Lithuanian law

Key words: *first demand guarantee, personal security, enforcement of obligations, abstract obligation, Lithuanian civil law*

Effective enforcement of obligations is actual issue in order to protect confidentially business interests, considering harmful effects of constantly recurrent World's Economic Crisis experienced until now. So, first demand guarantee is a top-priority solution on this question provided by international commerce practice. Also, national legal systems of neighbouring countries of Latvia, i.e. Lithuania, Russia have stepped further in regulation of this, but national legal systems face with numerous issues regarding a proper regulation of this and one of the biggest one is guarantor's refusal to pay to the creditor under the first demand guarantee, as well as Latvian law that does not provide special regulation on this question. The aim of the research is to reveal the content of validity as base for guarantor's refusal to pay under the first demand guarantee according to international commerce practice and legal doctrine, while evaluating legal regulation of this in Lithuanian and Russian laws. The research was carried out by employing the logical, the comparative legal methods, the system analysis, the linguistic, the synthesising methods and the analysis of legal documents. The results of the analysis showed the complicated variety of approaches of international commerce practice towards the validity as basic for guarantor's refusal to pay and the necessity to set clearly this basics in analysed national laws.

Kopsavilkums

Dažu pirmā pieprasījuma garantijas mehānisma darbības Lietuvas likumdošanā problēmu risinājums

Atslēgvārdi: *pirmā pieprasījuma garantija, personiskā drošība, pienākumu izpilde, abstrakts pienākums, Lietuvas civillikums*

Efektīva pienākumu īstenošana ir nozīmīgs jautājums uzņēmējdarbības interešu konfidencialitātes aizsardzībā, ņemot vērā pasaules ekonomiskās krīzes līdzšinējo pastāvīgo ietekmi. Tādējādi pirmā pieprasījuma garantija ir prioritārs risinājums, ko piedāvā starptautiskā komercprakse. Tāpat Latvijas kaimiņvalstu, piemēram, Lietuvas un Krievijas nacionālās tiesību sistēmas ir spērušas soli uz priekšu šī jautājuma noregulēšanā, taču valstu tiesību sistēmas saskaras ar dažādiem sarežģījumiem attiecībā uz šo regulējumu un viena no lielākajām problēmām ir galvotāja atteikums maksāt kreditoram saskaņā ar pirmā pieprasījuma garantiju, tāpat Latvijas likumdošana neparedz specifisku šī jautājuma regulējumu. Pētījuma mērķis ir atklāt galvotāja atteikuma veikt maksājumus saskaņā ar pirmā pieprasījuma garantiju saturisko pamatu saskaņā ar starptautisko komercpraksi un tiesību doktrīnu, vienlaikus izvērtējot šī jautājuma tiesisko regulējumu Lietuvas un Krievijas tiesību aktos. Pētījums tika veikt, izmantojot loģiskās, salīdzinošās juridiskās metodes, sistēmas analīzi, lingvistiskās, sintēzes metodes un juridisko dokumentu analīzi. Analīzes rezultāti liecināja par dažādām kompleksām pieejām galvotāja atteikuma veikt maksājumu saskaņā ar pirmā pieprasījuma garantiju pamatojumu starptautiskajā komercpraksē, kā arī nepieciešamību to skaidri noteikt analizētajos valsts tiesību aktos.

Introduction

Effective enforcement of obligations should be more discussed in order to protect confidentially business interests, considering harmful effects of constantly recurrent World's Economic Crisis experienced until now. So, first demand guarantee as important international financial instrument, that can help effectively in this case and it is provided by three non-binding international documents of various international organisations (the Convention On Independent Guarantees and Stand-by Letters of Credit, the Uniform Rules for Demand Guarantees and European Private Law on Independent personal security). Apart from these efforts, this innovative financial instrument for the enforcement of obligations reflects in civil laws of some neighbouring countries of Latvia, i.e. Lithuania, Russia, Hungry and Czech Republic. Meanwhile in Lithuanian

Law, a situation is much more complicated in comparison with the situation in international practice, because scientists and legislator have not drawn attention to legal relations of first demand guarantee since the new Lithuanian Civil Code with laconic regulation entered into force and there is lack of case law on this question. Moreover, in assessing the national regulations on this question of other countries – the Western European countries, there is a different situation in regulatory of the first demand guarantee in national legal system in comparison with Lithuanian regulation practice (Drobnig, 2007: 125). Since in Latvian positive law there is no such first demand guarantee as measure for the enforcement of obligations regulated by law as it is in Lithuanian and Russian laws as well as in international commerce practice, so researches results is actual to Latvian law too. Moreover, it is necessary to note that this analysis is based on legal regulation of the bases for guarantor's refusal to pay under the first demand guarantee, because every such situation threatens the s*olvet et repete* principle and other key working principles of the first demand guarantee. So, such complicated situation requires a deeper analysis.

The object of the research is legal regulation of validity as base for guarantor's refusal to pay under the first demand guarantee.

The aim of the research is to reveal the content of validity as base for guarantor's refusal to pay under the first demand guarantee according to international commerce practice and legal doctrine, while evaluating legal regulation of this in Lithuanian and Russian laws.

The tasks of the researches:

1) to identify the main bases for guarantor's refusal to pay under the first demand guarantee according to international commerce practice and legal doctrine;
2) to reveal the content of the validity as basic for guarantor's refusal to pay under the first demand guarantee according to international commerce practice and legal doctrine;
3) to evaluate national legal regulation of main bases for guarantor's refusal to pay under the first demand guarantee in Lithuanian law and to draw solutions to identified problems.

The methods of the research: The research was carried out by employing the logical, the comparative legal methods, the system analysis, the linguistic, the synthesising methods and the analysis of legal documents.

Abbreviations: the Lithuanian CC – the Civil Code of the Republic of Lithuania; Russian CC – the Civil Code of the Russian Federation; URDG rules – ICC Uniform Rules for Demand Guarantees; UNCITRAL Convention – United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

Discussion

The analysis of the regulations provided by the international documents, examined for this thesis, namely the UNCITRAL convention, the PECL project and the URDG rules and the bases for

guarantor's refusal to pay under guarantee, which are analysed in the legal doctrine, they can be divided into fount main groups:

a) on validity;
b) on discrepancies in the submitted documents;
c) personal replications (Bertrams, 2004; Affaki, 2001; Goode, 2003 et al).

It should be noted, that the basis for discrepancies in guarantor's refusal to pay under first demand guarantee is related to the compliance with the requirements of form and content raised to creditor's request and the documents supporting it. Since this is related with the strict compliance with the conditions principle and the standard-based criteria of compliance based on the letter of credit regulation practice (Ellinger, 2000: 160–169), this base for guarantor's refusal to pay is less complicated and important than the other two bases for guarantor's refusal to pay under guarantee, namely personal replications and validity, because they threaten the key working principles of the first demand guarantee, so they will be examined in greater detail.

The validity

The guarantor's refusal to pay under the first demand guarantee is based on invalidity and related to two different cases of creditor's dishonesty. One of such cases is creditor's intention to trick the guarantor by submitting a false letter of surety or other documents, related to the requirement to pay under guarantee (Horowitz, 2010: 172). Another important case is related to the abuse of creditor's rights, i.e. the creditor disposes his right under first demand guarantee against without any legal basis for this action. For example, a creditor's request to pay under guarantee states, that an obligation, secured by such guarantee was violated and that with this request a creditor complies with all the other requirements for receiving a payment under guarantee (Stephen, 2006: 35). These seemingly different situations fall under one category, namely the doctrine of fraud, which is well developed in the legal doctrine. It is generally defined as the only exception of validity which allows the guarantor to refuse to pay to the creditor, having received his requirement to pay under guarantee. Various authors constantly discuss the problematics of the fraud doctrine, emphasizing that such an exceptional measure basically maintains the balance between the interests of different individuals, acting in these legal relations, and helps to avoid the conflicts between them. On the one hand, there is a debtor, who constantly assumes the risk for dishonest actions of the creditor, requesting to pay to the guarantor the amount of money, set in the first demand guarantee, so he has legitimate needs to have certain legal safeguards at his disposal, on the other hand, there is a guarantor, who does not want to assume the risk for additional losses, in the event of a debtor refusing to pay under guarantee, so it is important for him to limit himself to formal evaluation of the creditor's request only (Stoufflet, 2003: 79).

The legal doctrine raises a requirement of manifestation to the exception of fraud, so in practice, it makes the guarantors' attempt to determine creditor's dishonesty, difficult. It is quite difficult for the guarantor to implement such actions in practice and to determine the creditor's dishonesty, when certain requirements of clarity and obviousness are raised to the determined circumstances, like the ones in the UNCITRAL convention, i.e. such circumstances have to be well-known, clear and need no additional proof (Explanatory note by the UNCITRAL secretariat, 1996). Without full certainty and within the existence of certain doubts on creditor's dishonesty, with regards to the specifics of the first demand guarantee legal relations and disproportionally high risk under the obligation to pay under such guarantee, the guarantor may not suspend the payment under guarantee, none the less require to submit additional proof, in order to make sure about the creditor's dishonesty (Hsu, 2002: 25; Stoufflet, 2003: 139).

The further research for this thesis should be directed towards the international standards, defined by international documents. The UNCITRAL convention attempts to facilitate the guarantor's position in the process of document assessment and the article 19, section 1 of UNCITRAL convention, provides a list of circumstances, under which a high probability of fraud or abuse can be construed. The authors of the UNCITRAL convention commentary note, that the three situations described by this act constitute sufficient basis for determining the general definition of fraud, the content of which is agreed upon on international level, and defined by the following situations: 1) the documents submitted are inauthentic or even forged (non-original); 2) the creditor's request and the documents confirming it are unrelated to the guarantors' obligation to pay; 3) after assessing the nature and purpose of creditor's request, it is concluded that it has no possible basis, for such actions, which could be brought to the guarantor (Explanatory note by the UNCITRAL secretariat, 1996).

The authors in the legal doctrine note, that the second basis, which is the least defined (the first and the third cases are quite clear and the later one is detailed in the current regulations) should be understood not only as a requirement to pay under first demand guarantee, which is not associated with the agreement, secured by it, but as a requirement, which is not based on proper creditor's motives (Diedrich, Švarca, 2004: 145). Based on this fact, the creditor's request to the guarantor should only be related to a clearly defined obligation, secured by a guarantee, not to the reimbursement of all the possible creditor's losses, arising from the breach of obligation, secured by a guarantee. What regards the validity of improper motives in the legal doctrine, it is specified that a guarantor is not obliged to pay under first demand guarantee if the creditor abuses his rights, as, for example, the creditor submits such request to the guarantor, in order to cause unjustified loses to the debtor or pressurize the debtor, so that he would act or make decisions under the creditor's wishes (Hare, 2004: 278). So, it is clear, that laconic provisions of the UNCITRAL convention, are

sometimes not enough to express their true content and the will of the authors of the convention, in determining such provisions in the regulation. Also, article 19, section 2 of the UNCITRAL convention provides a list of situations, which specify the third case, in order to guarantee the complete precision of these rules and reduce the uncertainty of the said regulations, i.e. 1) circumstances, which influenced issuing of the first demand guarantee 2) the agreement secured by a guarantee was declared invalid by court or arbitration, unless such circumstance as the object of the guarantee was provided in it; 3) a debtor undoubtedly fulfilled his obligations to the creditor; 4) the failure to fulfil the obligations was influenced by intentional actions taken by the creditor, etc. Also, the authors of the UNCITRAL convention point out that the said provisions only allow the guarantor to refuse satisfying the creditor's request under guarantee, but they do not require to act in this manner, because the convention takes into account the guarantor's concern to guarantee the reliability of such means of fulfilment of obligations, as separate and individual means of taking the responsibility for another individual's obligations. So, in accordance with the UNCITRAL convention, if a guarantor does not refuse to pay, obviously because of a fraud, no regulation is breached.

Another international document examined for this thesis is the PECL project. Despite its laconic regulations of guarantee legal relations, this question, as well as the UNCITRAL convention receives a lot of attention and article 3:105 of this project establishes a special provision on obviously false claims, i.e. this article provides, that an issuer of independent means of enforcement of the fulfilment of obligations is not obliged to act under the creditor's requirement, if the evidence confirms that such a requirement is obviously false and was expressed abusively. So, according to the authors of the commentary, this provision of the PECL project is based on article 19 of the UNCITRAL convention. However, it is noted, that such regulations of the PECL project, are not as wide and detailed as UNCITRAL convention, as the content of the fraud exception is not well established and explained. Also, the authors of the PECL project state that these provisions should be applied carefully and thoughtfully, and the conditions only explained in the narrow sense (Explanatory note by the UNCITRAL secretariat, 1996).

It is interesting, that in the context of the circumstances, corresponding to the fraud doctrine, not only the guarantor is granted certain rights, but the debtor as well. The same article of the PECL project indicates, that the debtor has the right to prohibit the guarantor from acting under guarantee and satisfying the creditor's request or to prohibit the creditor from submitting such an unreasonable request. Such regulatory practice is a modern step forward, which regulates all the important factual actions, carried out by the subjects of the legal relations, as in practice, only a debtor can submit the evidence, that the circumstances substantiating the creditor's request are unfair and creditor's actions are based on fraud. However, the authors of this commentary note, that under the

circumstances of a fraud, the means, granted to a debtor, should be treated similarly to the legal means, indicated in article 20 of the UNCITRAL convention, and should be left unspecified, so that the procedural law could anticipate their content (Anderson et al, 2010: 254).

The URDG rules barely discuss this issue, there are only some general provisions determining the guarantor's protection against such circumstances, i.e. article 27, section A of the URDG rules, only indicates, that a guarantor is not liable for the form, reliability, authenticity, forgery or the legal significance of the submitted documents. Also, section D of this article notes, that a guarantor does not assume the responsibility for other people's actions related to the documents submitted to a guarantor. So, the position of the creator's of the URDG rules on this case is quite clear and they are unwilling to develop the base for fraud doctrine in the regulations, having evaluated the level of complexity and difficult application of this means, so that the main principles of the functioning of first demand guarantee were not breached. If trying to assess such position of the creator's of URDG rules, it is difficult to unambiguously, objectively assess its validity, as on the one hand, the risk to violate the important principles of the functioning of first demand guarantee decreases and it facilitates the role of the guarantor's functioning under such conditions, while on the other hand, such position unreasonably restricts the operational limits of a guarantor, preventing the guarantor from long, groundless legal actions on return of unjustified payments.

However, article 19 of the UNCITRAL convention provides exceptional circumstances, allowing to ignore the obligations undertaken by a guarantor, so these circumstances are seen as fairly controversial, like the first one, when there were no circumstances under which first demand guarantee could be issued, so it is unclear how the existence of such basis could be verified, if no supplementary documents are required (Goode, 2003: 124). The legal doctrine describes the third case as well, by indicating that a debtor has undoubtedly fulfilled his obligations to the creditor, but there are doubts on what "undoubtedly" means, and it is unclear what standard of evidence would suffice to state the circumstances, because the national legal systems can have different opinions on this particular question (Stephen, 2006: 35). Other researchers have drawn the attention to the fact, that UNCITRAL convention focuses on the forms of the manifestation of improper creditor's behaviour, but not on the subjective side of such behaviour, and it is not required to submit the documents proving the creditor's guilt (Mara, Trager, 1999: 54). Some researchers suggest to use an American point of view on this the question and expresses the need to enable the creditor to account for possible fraud, because if he is able to give a reasonable explanation, there is no obvious fraud (Chin, Wong, 2004: 94). Objective assessment of this practice shows that it really leads to violation of the procedural definitions and unreasonably obliges the guarantor to be a judge in order to assess the validity of the positions expressed by both parties and make a decision about paying to the creditor under first demand guarantee. The position taken by the creators of URDG rules, on this

aspect, namely a refusal to continue the development of fraud doctrine in current regulations, because it would aggravate the role of a guarantor, and preservation of the independent means of enforcing the fulfilment of obligations, is not a grounded and criticisable solution to a problem.

To draw the conclusion, the basis for guarantor's refusal to pay under guarantee, related to the creditor's dishonesty, is difficult to apply in practice, none the less, there are various positions on this issue, which are all reasonable, so the role of a guarantor on this aspect is the least defined and clear, and his actions solely depend on his will.

It should be noted, that neither of the examined national legal systems defines fraud as substantial basis for refusal to satisfy the creditor's request under first demand guarantee, and this question is not expressis verbis, regulated by separate legislations. However, it is worth noticing that the solvet et repete feature of the guarantee established in paragraph 5 of article 6.92 of Lithuanian CC and section 2 of article 376 of the Russian CC, enabling the guarantor to delve into the creditor's and debtor's internal relations to a certain extent, i.e. the paragraph 5 of article 6.92 of Lithuanian CC provides *expressis verbis* that "where it becomes known to the guarantor that the principal obligation secured by the guarantee has been performed fully, or has been terminated on other grounds, or has been acknowledged null and void, he must immediately notify of this the creditor and the debtor. In the event where after such notification the guarantor receives a repeated demand of the creditor to perform the obligation, he shall be obliged to satisfy thereof only upon the presentation by the creditor proof that the obligation has not been terminated and continues to be valid". Such very similar legal provision is set in section 2 of article 376 of the Russian CC. So, it is correct to relate the application of these legal norms in Lithuanian and Russian legal systems with the dishonesty of a creditor, as in this way, there are no major breaches of the first demand guarantee and especially the solvet et repete principle based on priority of the obligation undertaken by a guarantor to pay a certain amount to a creditor, under his demand, and a prohibition to dispute such payment, by isolating the guarantor from any possible disputes between the debtor and the creditor, so, it is characteristic specifically to first demand guarantees (Goode, 2003: 147). So, it can be said, that the Lithuanian CC as well as the Russian CC provide the indirect basis to pay under guarantee, which is related to the invalidity (based on the classification of bases for invalidity). However, it does not exempt Lithuanian and Russian legislators from the obligation to properly regulate the legal relations of guarantee and first demand guarantee on the legislative level, or articulate which of the previously mentioned positions is supported by the national legislations, because the dispositive method of regulating civil legal relations, on the presence of undefined issues, allows for various solutions in the legal practice, which has no base for the current case.

Conclusions

1. Although the reasons of guarantor's refusal to pay under a guarantee, they can be divided into three categories: discrepancies in the content of the submitted documents, personal replications and validity, but a detailed analysis has shown that the positions of international document on personal replications and validity separate by providing less defined regulation.
2. The application of validity, which consists primarily of the deception doctrine and its content is elaborated in detail by the UNCITRAL convention and accepted by the PECL project, is not accepted or developed by the URDG rules as this measure is complicated and it is difficult to exercise it in practise. Personal replications receive similar treatment, as one of such means, namely countertrade obligations, is only accepted by the UNCITRAL convention.
3. Since the Lithuanian CC as well as the Russian CC provide the indirect basis to pay under guarantee, which is related to the invalidity, it does not exempt Lithuanian and Russian legislators from the obligation to properly regulate the legal relations of guarantee and first demand guarantee on the legislative level, or articulate which positions (acceptance of refusal) is supported by the national legislations.

References

Legal documents:

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit. *http://www.uncitral.org/pdf/english/texts/payments/guarantees/guarantees.pdf* [retrieved 01.11.2017].

ICC Uniform Rules for Demand Guarantees Including Model Forms. International Chamber of Commerce Publication No. 758, 2010.

Independent personal security. Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference *(DCFR)*. http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf [retrieved 01.11.2017].

The Civil Code of the Republic of Lithuania of 18th July 2000, Law No. VIII-1864 (Last amended on April 12, 2011, No XI-1312). *Valstybės žinios*, No. 74-2262, 2000.

The Law on financial institutions of the Republic of Lithuania of 10th September 2002, Law No. IX-1068 (Last amended on 22 December 2011 – No XI-1872), *Valstybės žinios*, No. 91-3891, 2002.

Civil Code of Russian Federation (Гражданский кодекс Российской Федерации). Российская газета, 24.02.1996, No. 38.

Legal doctrine:

Affaki G. 2001. *ICC Uniform Rules on Demand Guarantees. A User's Handbook to the URDG*. ICC Publication No. 631, p. 108.

Anderson, R. G., von Bar C., Clive C., Oliphant, K., Evans-Jones, R., & Steven, A. (2010). *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)*. Oxford University Press; Ed by, Vol. 3, p. 364.

Bertrams R. 2004. *Bank guarantees in International Trade: the law and practice of independent (first demand) guarantees and standby letters of credit in civil law and common law jurisdictions*. 3rd revised edition. Paris, New York: ICC Publishing, p. 242.

Chin L.Y., Wong Y.K. 2004. Autonomy – A nullity exception at last?. *Lloyd's Maritime and Commercial Law Quarterly*, Vol. 1–128, p. 94.

Drobnig U. 2007. *Principles of European law. Personal security*. Selier: European law publishers, p. 567.
Diedrich F., Švarca I. 2004. Unfair calling under international bank guarantees: fraud and the principle of independence. *Internationales Handelsrecht*, No. 4:4, p. 139–147.
Ellinger P. 2000. The Doctrine of Strict Compliance: its Development and Current Construction' in Rose, F. (ed.) *Lex Mercatoria: Essays on International Commercial Law in Honour o f Francis Reynolds*, No 187.
Explanatory note by the UNCITRAL secretariat on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit. Introduction, Part E. Secretariat of the United Nations Commission on International Trade Law, 1996: *http://www.uncitral.org/pdf/english/texts/payments/guarantees/guarantees.pdf* [retrieved 01.11.2017].
Goode R. 2003. *Legal Problems of Credit and Security*. 3rd edition. London: Sweet Maxwell, p. 145.
Hare C. 2004. Not so black and white: the limits of the autonomy principle. Cambridge Law Journal, No. 63(2), p. 261–316.
Horowitz D. 2010. *Letters of Credit and Demand Guarantees: Defences to Payment*. Oxford: OUP Oxford, p. 272.
Hsu Ch. 2002. The Fraud Exception to the Principle of Independence. *Fu-Jen Law* Review No. 22-151, p. 25.
Mara E., Trager M.E. 1999. Towards a Predictable Law on International Receivables Financing: The UNCITRAL Convention. *New York university school of law journal of international law and politics*, Vo. 611-43, p. 53–54.
Stephen K. 2006. The Fraud Exception. *National Law Journal*, No. 1634, p. 36–37.
Stoufflet J. 2003. Fraud in Documentary Credit, Letter of Credit and Demand Guarantee' in Byme, J. & Byrnes, C. (eds.) *Annual Survey o f Letter o f Credit Law and practice*. Institute of International Banking Law & Practice, No. 120, p. 147.

Case Law

The Supreme Court of Lithuania, Civil division, 1st February 2010 ruling in civil case *BUAB "Valdiklis" v. UAB "Naujoji šiluma"*, No. 3K-3-18/2010.

SHAREHOLDERS' OF LIMITED LIABILITY COMPANY RIGHTS TO INFORMATION

Sergejs Aleksejevs
Riga Stradins University, Dzirciema street 16, Riga, europa1@inbox.lv

Abstract

Shareholders' of limited liability company rights to information

Key words: *participant, right to information, limitations, commercial secret*

Article 194 of the Commercial Law has defined certain shareholders' right of limited liability company (further – Ltd) to receive the information from the board of directors as to the company activities and to have an access to all company documents. Such a member's rights, however, are not absolute, but the legislator has indicated that it can be limited in each particular case by decision of shareholders' meeting, if there is a suspicion that one of its members might use the acquired information contrary to the company aim, causing essential harm or losses to the company, or to one of the members within the company, or the third parts.

Besides, the right to receive the information, as written in Article 194 of Commercial Law, in its broader sense, envisages the right of the company member, included in Article 194 of Commercial Law, to receive the information on convening a meeting, agenda for the meeting (issues of discussion), and the right to draft decisions.

An important problematic issue to be analysed is the legal basis as to the right of information limitations and what might be the consequences of a breach of rights, which could affect either the subject who by realizing his/her personal rights has requested information, or by the effect of information on the further commercial activity of the company due to an unauthorized disclosure of information to the competing companies, or to the rights of the rest of the participants.

Implementation of such rights into life, conflict situations, refusal of company Board to show the documentation and other important agreements to minority members, solution of conflict situations in legal proceedings, the results and the experience of other countries in this context, or the decision of company members meeting is a qualitative and fast legal instrument to limit the rights to information, taking into account the order of convening the meeting – 14 days being mandatory. Thus, it calls for a separate legal research.

Kopsavilkums

Komerclikuma 194. pantā ir noteiktās sabiedrības ar ierobežotu atbildību (turpmāk tekstā – SIA) dalībnieka tiesības saņemt no valdes informāciju par sabiedrības darbību un iepazīties ar visiem sabiedrības dokumentiem. Tomēr šādas dalībnieka tiesības nav absolūtas, bet likumdevējs norādīja, ka tos var ierobežot katrā konkrētajā gadījumā ar dalībnieku sapulces lēmumu, ja ir pamatotas aizdomas, ka dalībnieks iegūtās ziņas varētu izmantot pretēji sabiedrības mērķim, nodarot sabiedrībai vai ar to vienā koncernā ietilpstošajam subjektam, vai trešajām personām būtisku kaitējumu vai zaudējumu.

Turklāt Komerclikuma 194. pantā paredzētās tiesības uz informāciju plašāka nozīmē paredz Komerclikuma 214. pantā noteiktās dalībnieka tiesības saņemt informāciju par dalībnieku sapulces sasaukšanu, sapulces paredzēto darba kārtību (izskatāmos jautājumus) ka arī tiesības saņemt lēmumu projektus.

Svarīgs problēmjautājums, kuru ir nepieciešams izvērtēt, kāds ir tiesisks pamats tiesību uz informācijas ierobežošanai un kādas varētu būt šo tiesību pārkāpuma sekas, kas varētu ietekmēt gan dalībnieku, kurš realizējot savas tiesības ir pieprasījis informāciju, gan saņemtās informācijas ietekmi uz sabiedrības turpmāko komercdarbību pie neatļautās informācijas atklāšanas konkurējošam sabiedrībām, gan parejos dalībnieku tiesības.

Šādu tiesību īstenošanā dzīvē, strīdu situācijas, sabiedrības valdes atteikums uzrādīt dokumentāciju un svarīgos līgumus mazākuma dalībniekam, strīdu situāciju risināšana tiesvedības procesā, rezultāti, citu valsts tiesības un pieredze šajā jomā, vai sabiedrības dalībnieku sapulces lēmums ir kvalitatīvs un ātrs tiesiskais instruments tiesību uz informāciju ierobežošanai, ņemot vērā sapulces pasludināšanas un sasaukšanas kārtību – obligātas 14 dienas. Šī problēma neapšaubāmi prasās pēc padziļināta papildus pētījuma.

Introduction

There are two forms of commercial companies in Latvia – Joint Stock Company and Limited Liability Company (hereinafter – SIA or the Company). The number of SIA is incomparably higher, it is the most popular type of merchant, however, in scientific literature more attention is paid to *the rights of information* of the members of joint stock company. Therefore, in this article, the author draws attention to *the rights of information* of SIA members. The aim of the article is to describe *the rights of a participant in the company to information*, which is strengthened in the Commercial

Law, to analyze the case law, when the judgments find that the participant's *rights to information* had been violated.

The task of the article is to look at the normative regulation included in the Commercial Law, which is applicable to *the participant's right to information*, finding theoretical answers, evaluating the depth of its content and evaluating the findings described in science. The article analyzes the shortcomings, limitations and differences in content of *the participant's rights to information* in individual court judgments and makes proposals for their elimination. Analytical and comparative methods were used in the research. The informative basis of the research work is national legislation, literature and case law.

A member of the Company has the right to receive information on the Company's activities from the Board and to get acquainted with all documents of the Company. However, such participant's rights are not absolute, this may limit the decision of the meeting of the participants in each particular case if there is a reasonable suspicion that the participant may use the information obtained contrary to the purpose of the company, cause some damage or loss to the company or the entity belonging to it in one group, or to third parties (Article 194 of the Commercial Law).

The foreseeable right to information in a wider sense provides for the right of a participant to receive information on convening a meeting of members, the agenda envisaged by the meeting (issues to be considered) and the right to receive draft resolutions (Article 214 of the Commercial Law).

However, such right to information is to be assessed in conjunction with restrictions on commercial confidentiality (Article 19 of the Commercial Law) and the new Commercial Secrets Protection Act (the Law on Protection of Commercial Secrets) which has come into force.

Discussion

The participant's right to information is subordinated to the entries in the Participant Register. Pursuant to Section 136, Paragraph one of the Commercial Law, a participant is a person entered in the register of participants unless otherwise provided by law. Section 187 (1) of the Commercial Law stipulates that the responsible institution for the registration of the members of the company is the Board of the company, which reviews the received notices of acquisition of shares and accordingly makes changes in the register of participants by submitting the new members register also to the Enterprise Register. *Participants have a direct link with the company's activities because the company is established and exists only for the realization of the economic interests of the participants and for the achievement of the goals. Only the entry in the register of members allows the owner or holder of shares to exercise the rights of the participant in relation to the company arising from these parts, i.e. the right to the share may not coincide with the status of the*

participant (Judgment of the Department of Civil Cases of the Supreme Court Senate of 28 November 2018 in case C30291015, SKC-266/2018).

The legislator has separated the cases when the members of the company have the right to acquaint themselves with the company's documents or receive information about the company, and the cases when a member of the company has the right to request and receive derivatives (extracts, copies, copies, etc.) from the company or other written information.

The Participant shall have the right to become acquainted with the Register of Participants and to receive from the Chairman of the Board or a Board member authorized by the Board an extract from the Register of Members of the Company regarding the shares in the Company or a copy of the last register part (Article 187 of the Commercial Law).

The analysis of scientific literature leads to the conclusion that there are different approaches to the right to information for typology.

Article 194 of the Commercial Law includes two rights of participants:

1) to receive information from the Board on the activities of the company or the right to information;
2) to get acquainted with all documents of the company or the right to inspect the company.

The participant's right to information or the right to receive information about the company's activities from the Board includes all information related to the company and its affairs. The Company has the right to receive information and information about facts related to the Company's economic activity, its transactions and relations with third parties, as well as the Company's accounting.

In turn, the participant's right to inspect the company or to get acquainted with all documents of the company provides the participants with the right to get acquainted with the company's correspondence, accounting, record keeping and other documents. Thus, it can be concluded that the Board is obliged to provide the participant with the opportunity to get acquainted with the documents of the company (J. Bogdasarov. Rights of the Shareholders and the Participants of the Company. Jurista Vārds, No. 25 (530), 8 July 2008).

Another approach is more comprehensive and detailed, and, namely, that the participant's right to information means:

First of all, these rights provide the participants with opportunities to get acquainted and check the annual accounts of the company, accounting data, reports of the Board and auditors, other documents of the company, as well as get acquainted with the state of the company's property.

Secondly, in a narrower sense, these rights provide the participants with the opportunity to receive information on the issues covered by the company meeting.

Thirdly, in a broader sense, in relation to the participants' meetings, this right also provides for the possibility for each participant to receive complete information on the venue, agenda and other relevant issues of the announced meeting of participants in due time before the meeting (L. Rasnačs. Right to participate in the management of the company and contest the decisions of the members' meetings). Jurista Vārds, No. 28 (830), July 22, 2014).

When translating the legal norm included in Article 194 of the Commercial Law systematically, i.e., by clarifying the meaning of a legal norm in relation to other legal norms included in Section 187, Paragraphs 11 and 12 of the Commercial Law, it can be concluded that the participant is entitled to obtain information regarding the shares held by the participant upon receipt of the participant, the derivative of the register – an extract of the shares belonging to him, while in respect of the shares owned by other members he may obtain information by exercising the rights provided for in Section 187, Paragraph 11 of the Commercial Law, i.e. to become acquainted with the register of participants (Judgment of 26 November 2013 by the Zemgale District Court in case no. C13045712).

The minority's right to information is respected and unchangeable. There can be no situation where a minority participant has not even been sent any information – a notice about convening a meeting of participants. Furthermore, failure to send such statements is openly acknowledged by the Board of directors, explaining that the minority member has no significant influence on the decision making at the shareholders' meeting and in any event (announcing / not announcing the meeting of members) the decision of the members would be the same. In other words, the notification would be purely formal. However, such findings are unfounded and must be regarded as a material violation of Article 214 of the Commercial Law. The participant's right to information is an individual right for each participant. This right is shared by each and every participant (no matter how much capital he/she owns) and provides the opportunity to receive information about the company's activities and familiarize himself/herself with all documents of the company (Judgment of the Department of Civil Cases of the Supreme Court Senate of 15 November 2018, Case C15226415, SKC-293/2018).

Restriction of participant's right to information

The case-law shows a different approach to the subject's right to information. One of the problems encountered is the refusal of the board of directors to provide information to the participant. One of the three members of the company, which owns 50% of the capital, received a refusal by the Board of the company to provide information on the company's activities and to familiarize itself with the company's documents, as the Board recognized any information as commercial secret that is not publicly available on the company's economic activity (Judgment of the Chamber of Civil Cases of the Vidzeme District Court of 8 March in Case C29508316).

According to the author, the Board acted unlawfully, because only the decision of the meeting of the members may limit the right of the particular participant to information (Article 194 of the Commercial Law). It is not permissible for the Board of a company to assume the functions of a meeting of members.

The Board's decision to grant the status of a commercial (trade) secret cannot in itself serve as a basis for limiting the access to information to a member of a capital company, since the principle of subordination of the Board and the members follows from Article 210 of the Commercial Law, according to which a meeting of the Board may decide any matter within the competence of the Board, but in no case is the Board entitled to decide on issues within the competence of the meeting of participants. In addition, the purpose of the Commercial Secrets Regulation contained in Article 19 of the Commercial Law is to limit unfair competition arising from the disclosure of an unlawful trade secret, rather than to limit the participant's right to the information it needs for the exercise of its rights (Judgment of 13 April 2017 by the Riga Regional Court Civil Court in Case No. C30442415).

It is the duty of the Board, in accordance with Section 169 of the Commercial Law, to perform its duties as a thorough and diligent owner; its duty is also to verify the purposes for which the information will be used, as the information could be used contrary to the aims of the company and cause damage to it. If the Board has reasonable doubts as to the purpose of the use of the information, then the members of the company must be notified in order to decide at the meeting of the participants whether to limit or not restrict the participant's right to information. (Judgment of the Civil Chamber of the Vidzeme District Court of 8 March 2018, Case C29508316).

The argument that the Board's decision to grant the status of a trade secret is not contested and therefore valid and binding is unfounded, as such an opinion is in clear contradiction with the principle of subordination of the Board and the members, according to which the Board is bound by the decisions of the meeting of shareholders and accordingly the right to challenge them (Article 217 of the Commercial Law), while the decisions of the Board are not binding for the Meeting of the Participants as the highest decision-making body of the Company and therefore the Law does not provide for the procedure for contesting the decisions of the Board (Judgment of the Civic Court of Riga District Court, April 13, 2017 in case C30442415).

Another issue, quite different, is the inclusion of a different and irrelevant formulation of the Article 194 of the Commercial Law in the agenda of the meeting of members, when the issue of *providing news and documents to a participant* voted, with a proposal 50% of votes "for" and 50% "against" is rejected. Thus, it is possible that even a participant who owns half (not less than 50%) of the capital will never be able to receive information about the company's activities and get acquainted with the company's documents. In the author's view, in this particular case, at the very

beginning it was possible to deliberately formulate the issue to allow or disallow the participant to get acquainted with the company's documents. In this case, the provisions of Article 194 of the Commercial Law were unacceptably interpreted as they indicate that the meeting of the participants may restrict the participant's right to information by decision. So, only to restrict, not to allow the provision of information or not to permit (Judgment of the Civil Chamber of the Vidzeme District Court of 8 March 2018, Case C29508316).

To limit the participant's right to information, a set of cumulative features have to be implemented: 1) a decision of the meeting of the participants; 2) such a decision can only be taken in case of a reasonable suspicion of using this information contrary to the public interest, based on several criteria to be evaluated (e.g. purpose of requesting and using information, justification of necessity, proportionality, etc.) (J. Bogdasarov, for information: Jurista Vārds, No. 25 (530), July 8, 2008).

Participants' decision to limit access to information can only be made on a case-by-case basis, which means that the restriction can only apply to specific information. However, a specific decision of the Meeting of the Participants restricts the right of the participant to receive the information in full not "in any particular case", as allowed by Article 194 of the Commercial Law (Judgment of 13 April 2017 by the Riga Regional Court Civil Cases Judgment in case C30442415).

It is recognized in the case-law that for the recognition of information as a commercial secret, the following criteria must be established:

1) the merchant has granted the status of commercial secret to the object;
2) the object of the commercial secret status corresponds to the commercial secret features specified in the norm. The person may receive commercially confidential information if the disclosure of the information is provided for by law or, if the requested information concerns a significant public interest and the disclosure is proportionate to the possible harm to the interests of the capital company (Judgment of the Supreme Court Senate, April 11, 2014, case No SKC-10 / 2014).

Protection of a commercial secret is very important for the merchant, because the value of the merchant's enterprise and its development possibilities depend on it. Passing a commercial secret on a competitor gives it an economic advantage and is contrary to fair business practices. At the same time, the commercial secret holder must make reasonable efforts to protect the value at his/her disposal. First of all, the merchant must determine for himself which economic, technical or scientific matters or information related to the company will be kept secret. Secondly, the merchant must ensure the measures to preserve the commercial secret (judgment of the Department of Administrative Cases of the Supreme Court Senate, case No SKA-168/2010, May 17, 2010).

According to the author, it is a respectable judgment of the court to consider the view as false, if by limiting a participant's right to information only a suspicion is required, as the legislator's will, when defining the term "reasonable suspicions", clearly indicates that there is a need for an objective legal or factual basis for this suspicion; on the other hand, if there are reasonable suspicions, they must be supported by evidence. Such an approach is also provided by the Grammatical Understanding of Article 194 of the Commercial Law, because in the explanatory dictionary of the Latvian language (available at www.tezaurs.lv) it is said that "justified is one whose truth, necessity is proved". Thus, the participant's right to information cannot be restricted if there is no evidence of the validity of the suspicion, because in such a case the suspicion is not and cannot even be justified (Judgment of 13 April 2017 by the Riga Regional Court Civil Cases Judgment in case C30442415).

Another point worth discussing is the situation where a participant wishes to exercise the right to information, receive information about the company's activities and become familiar with the company's documents, and he/she is still a Board member or a member of other competing 2–3 companies operating in a similar field. Where to find proportionality between a participant's right to information and the merits of a particular merchant to protect a commercial (trade) secret. In the opinion of the author, if the meeting of the participants has not decided to limit the rights of such a participant, the Board shall inform the participant about the activities of the company and allow to get acquainted with the company documents.

Here, the new Commercial Secrets Protection Act, which aims to ensure effective protection of commercial secrets, in particular against unlawful acquisition, use or disclosure, may serve as an aid. In addition, this law defines the misuse and disclosure of a commercial secret as a violation of the right without the consent of the holder of the commercial secret, and the holder of the commercial secret in providing the information indicates that the information is a commercial secret, as well as the need to protect the commercial secret. According to the author, it would be advisable for the commercial secret holder to ask for a written commitment to protect the commercial secret or to sign a confidentiality or non-disclosure agreement, at the same time alerting him / her to take legal action in case of unlawful disclosure and use. It is therefore important that the law provides for both the means of legal protection and the right to claim compensation by means of monetary compensation which the author believes would be one of the defenses against the unlawful use and disclosure of the commercial secret. An important aspect is that a commercial secret is recognized as a restricted access information within the meaning of the Information Transparency Act until the business secret holder informs in writing about the termination of the commercial secret status or when the relevant information has become known or accessible to other

persons on a legal basis. (Law on Protection of Commercial Secrets, Law on Information Transparency).

Only the members' meeting may limit the participant's right to information. According to the author, a scientifically questionable is the issue whether such decisions should be taken by the participants only at the meeting of the participants, that is, in accordance with its proclamation and convocation procedure, deadlines (14 days), expenses, time, that it will probably be the only item on the agenda or, however, such rights may be exercised by participants without convening a meeting, that is, in accordance with Article 215 of the Commercial Law. However, this article also provides for a deadline for sending all participants a draft decision no less than two weeks in advance.

It is necessary to distinguish between two issues, the first, which generally refers to the purpose and content of Article 215 of the Commercial Law in relation to Article 210 of the Commercial Law (Competence of the Meeting of Participants), Article 213 (Convening of the Meeting of the Participants). Article 210 of the Commercial Law directly and precisely defined the scope of issues when the convocation of the meeting of the participants is mandatory (Commercial Law). On the other hand, the purpose of Article 215 of the Commercial Law was to create another mechanism for decision making of participants, when convening a meeting of participants is not obligatory and not even necessary, mechanism for decision-making of participants, when there is a need for a quick, qualitative decision and cannot wait for the scheduled meeting time of participants. – 14 days, this question will require a separate research direction. According to the author, the legislator wishing to provide the participant with a different decision-making mechanism has not finalized its rules, as a result, releasing the Board from the obligation to convene a meeting of members, and participants during the meeting to examine the items on the agenda, and assigning this approach some weight to its realization, that is, by including mandatory conditions to send a draft decision to all participants at least two weeks in advance. Amendments are required that reduce or abolish such a period.

The second issue to be dealt with separately, though closely related to the above-said, is the request of a particular participant to provide information when the costs of convening a meeting of the participants to consider such a single issue are not in the public interests and purpose. For example, when a company has 4–5 members, each owns 3–5% of the total number of shares in the company, and each one every 3–4 months requires extensive information related to multiple transactions, cash movement accounts, accounting registers. In addition, the real purpose of the participant as to the amount of information requested is not understandable (transfer of data to a competing company is possible; deliberate / unconscious destabilization of the company's daily activities due to the size of the requested information). The author considers that such a decision as

to limiting the participant's rights may be taken by a majority of the participants immediately by different means of communication (post, joint immediate consultation, electronic communication, telephone, etc.) and by appropriate registration / fixing of the decision.

Conclusions

The rights of receiving information of a member of the Company shall be divided into the following categories as the right **to know** about certain events, for example, the convening of the Meeting of the Participants; the right **to get acquainted with** specific documents provided for in the Commercial Law, such as the register of participants, the draft meetings of the participants; the right **to receive** a certified extract from the company membership register of the shares in the company or a copy of the last register compartment, an annual report, proposal for profit utilization. In addition, the participant has the right to receive information from the Board on the company's activities and to get acquainted with all documents of the company.

The participant's right to information is independent of the number of shares it holds. The Board has no right to limit the participant's right to information. Only a meeting of members can decide to limit the participant's right to information. Such rights may be restricted if there is a reasonable suspicion that the participant may use the information obtained contrary to the purpose of the company.

The decision of the Meeting of the Participants may limit the participant's right to information in each particular case, rather than completely limit the receipt of information forever.

The Company's Management Board may recognize specific information about a commercial (trade) secret. However, the recognition of information as a trade secret does not mean that a participant cannot exercise its rights and does not receive any information. The Management Board, when providing information to a participant, indicates that the information is a commercial secret, as well as the need to ensure the protection of the commercial secret by warning the court in case of violation of the law.

References

Eiropas Parlamenta un Padomes Direktīva (ES) 2016/943 (2016. gada 8. jūnijs) par zinātības un darījumdarbības neizpaužamas informācijas (komercnoslēpumu) aizsardzību pret nelikumīgu iegūšanu, izmantošanu un izpaušanu (Dokuments attiecas uz EEZ). (In Latvian) Accessed: https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex:32016L0943 viewed (06.04.2019.).

Komerclikums. (2000). LR likums, Latvijas Vēstnesis, 158/160 (2069/2071), 04.05.2000.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 11, 01.06.2000. (In Latvian) Accessed: https://likumi.lv/doc.php?id=5490 viewed (30.03.2019.).

Komercnoslēpuma aizsardzības likums (2019). LR likums, Latvijas Vēstnesis, 52 (6391), 14.03.2019. (In Latvian) Accessed: https://likumi.lv/ta/id/305532-komercnoslepuma-aizsardzibas-likums viewed (07.04.2019.).

Informācijas atklātības likums (1998) Latvijas Vēstnesis, 334/335 (1395/1396), 06.11.1998.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 24, 24.12.1998. (In Latvian) Accessed: https://likumi.lv/doc.php?id=50601 viewed (09.04.2019.).

L. Rasnačs. Tiesības piedalīties kapitālsabiedrības pārvaldē un apstrīdēt dalībnieku sapulču lēmumus. *Jurista Vārds*, Nr. 28 (830), 2014. gada 22. jūlijs. (In Latvian) Accessed: https://juristavards.lv/doc/264865-tiesibas-piedalities-kapitalsabiedribas-parvalde-un-apstridet-dalibnieku-sapulcu-lemumus/viewed (30.03.2019.).
J. Bogdasarovs. Akcionāru un SIA dalībnieku tiesības uz informāciju. *Jurista Vārds*, Nr. 25 (530), 2008. gada 8. Jūlijs. (In Latvian) Accessed: https://juristavards.lv/doc/177741-akcionaru-un-sia-dalibnieku-tiesibas-uz-informaciju/viewed (30.03.2019.).
2018. gada 15. novembra Augstākās tiesas Senāta Civillietu departamenta spriedums Lietā Nr. C15226415, SKC-293/2018. (In Latvian) Accessed: www.at.gov.lv/downloadlawfile/5636 viewed (03.04.2019.).
2018. gada 28. novembra Augstākās tiesas Senāta Civillietu departamenta spriedums Lietā Nr. C30291015, SKC-266/2018. (In Latvian) Accessed: http://www.at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/civillietu-departaments/klasifikators-pec-lietu-kategorijam/komerctiesibas/komersanta-ipasuma-tiesibas viewed (04.04.2019.).
2014. gada 11. aprīļa Augstākās tiesas Senāta Administratīvo lietu departamenta spriedums Nr. SKC-10/2014. (In Latvian) Accessed: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/administrativo-lietu-departaments/hronologiska-seciba?year=2014 viewed (02.04.2019.).
2010. gada 17. maija Augstākās tiesas Senāta Administratīvo lietu departamenta spriedums Lietā Nr. SKA-168/2010. (In Latvian) Accessed: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/administrativo-lietu-departaments/hronologiska-seciba?year=2010 viewed (02.04.2019.).
2013. gada 26. novembra Zemgales Apgabaltiesas spriedums Lietā Nr. C13045712. (In Latvian) Accessed: https://www.tiesas.lv/nolemumi/pdf/144294.pdf viewed (31.03.2019.).
2018. gada 8. marta Vidzemes Apgabaltiesas Civillietu tiesas kolēģijas spriedums Lietā Nr. C29508316. (In Latvian) Accessed: https://manas.tiesas.lv/ Anonimizets nolēmums_352082.pdf viewed (02.04.2019.).
2017. gada 13. aprīla Rīgas Apgabaltiesas Civillietu tiesas kolēģijas spriedums Lietā Nr. C30442415. (In Latvian) Accessed: https://manas.tiesas.lv/ Anonimizets nolēmums_338846.pdf viewed (03.04.2019.).
Latviešu valodas skaidrojošā vārdnīcā. (In Latvian) Accessed: www.tezaurs.lv

PROBLEMS OF PROVING EMOTIONAL DOMESTIC VIOLENCE

Jeļena Kaļiņina, Jānis Radionovs
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401, tenderness20@inbox.lv, janrad@inbox.lv

Abstract

Problems of proving emotional domestic violence

Key words: *family, domestic violence, emotional violence, evidence*

The Latvian legal framework does not foresee any liability for emotional domestic violence against an adult. Moreover, emotional violence remains unpunished, and the only thing that can be done in practice by the victim is to go to the police to bring preventive negotiations with the perpetrator or to go to the court with an application for temporary protection against violence. It has to be admitted that the way in which this violence is expressed is one of the most dangerous, because prolonged life in imbalance, emotional tension, harms the human psyche and undermines personality. Therefore, the consequences of emotional violence in society should not be underestimated. In practice, when filing a lawsuit, the victim faced a problem of proof. Evidence fixed in any way can be used as evidence in proceedings, but if the victim was not able to gather evidence in the violence, the only way to seek professional help from a specialist who would be able to provide not only psychological help but also opinion.

Kopsavilkums

Emocionālās vardarbības ģimenē pierādīšanas problemātika

Atslēgvārdi: *ģimene, vardarbība ģimenē, emocionālā vardarbība, pierādījumi*

Latvijas tiesiskajā regulējumā nav paredzēta atbildība par emocionālo vardarbību ģimenē, ja tā vērsta pret pilngadīgo personu. Emocionālā vardarbība paliek nesodīta un vienīgais, ko praksē var izdarīt cietušais, ir vērsties policijā, lai policijas darbinieki izvestu profilaktiskās pārrunas ar varmāku. Tapāt cietušajam ir iespēja vērsties tiesā ar prasības pieteikumu par pagaidu aizsardzību pret vardarbību. Taču iesniedzot pieteikumu tiesā, cietušais saskārās ar pierādīšanas problemātiku. Tiesvedībā kā pierādījumu var izmantot jebkurā veidā fiksētus pierādījumus, bet, ja cietušais savlaicīgi pierādījumus savākt nepaspēja, vienīgais risinājums ir vērsties pēc palīdzības pie speciālista, kurš varētu sniegt ne tikai psiholoģisko palīdzību, bet arī atzinumu lietā. Jāatzīst, ka šīs vardarbības izpausmes veids ir viens no bīstamākiem, jo ilgstoša dzīve disbalansā un emocionālajā spriedzē, nodara kaitējumu cilvēka psihei un personībai. Tādēļ sabiedrībā nevajadzētu nenovērtēt emocionālās vardarbības sekas.

Introduction

The Aim of the Article: to analyse forms of expression of emotional violence, with a special attention to the means of proof that can be used in court proceedings in cases of temporary protection against violence and in family law disputes affecting the interests of children.

Methods: **analysis, induction, deduction, systematic logical, sociological**.

When physical force is used like body injury, murder, rape, there is a reaction in the society. However, domestic violence includes not only physical or sexual violence. It has several forms of expression, and one of them is emotional or psychological violence. Emotional violence does not cause resonance in society, but its consequences for the victim are sometimes more dangerous than physical harm. It harms the personality. Emotional violence is a way of influencing the human psyche without physical harm. Responsibility for the application of emotional violence in the legal framework of the Republic of Latvia is not foreseen, but there is a possibility to apply for temporary protection against violence and to protect itself from further influence. However, temporary protection against violence is a civil process and, as in any civil case, the claimant must prove the claim. As a result of physical injury, the main evidence is the recording of bodily injury in a medical facility. In the case of emotional violence, on the other hand, the collection of evidence is

more difficult. The authors of the article analyse the ways in which emotional violence is revealed and the problems of proof based on theory and practice.

Expression of emotional violence

Emotional (psychological) violence is a way of not applying physical pressure, influencing a human psyche. Usually it is in behavioural control (abuser controls the life of the victim, in contact, where to spend time, account for delays, constant interrogation, etc.), in the control of thinking (installs his own thoughts), in the control of emotions (provocation of emotions and manipulation to cause a certain emotion), in information control (controls information sources, such as what you watch, read, listen, etc.). It is always an imbalance when one dominates, while the other obeys. One of the dangerous manifestations of emotional violence is gaslighting – denial of reality. For example, denying the facts ("What with you, I have never said so"), denying emotions ("Ask, you feel you have a bad mood, but not at all"), "A real man (woman) does not behave." That is – if you were different (better) – there would be no problem at all. Working with yourself, growing up! Clinical Psychologist Kočetkov J. Draws attention to the fact that most of the victims of gas-lighted patients develop anxiety and depressive disorders (Kočetkovs J., Latipovs I., 2018).

A lot of people confuse love with the total control. If a partner asks a woman to leave work and work better with the household and children, because her income is able to provide the family with everything they need – this can be considered a concern. But if a partner is critical of a woman's work, work, friends, family, and insists that she leave work and get in touch with close people, there is obviously a tyrant in front. Tiran strives to control everything, ridicule, break goals, reduce self-esteem. For Tiran the main is – victim to feel that if not he/she would no longer need anyone. Violence can be rude, threatened, insulted, but can also happen without it. Society is often not distinguished from genuine tyranny. It is also quite difficult to distinguish violence from the perspective. Such injuries are not always obvious to the surrounding and sometimes to the victim. One's cannot see a damaged self-esteem but the damage done to a person can only be seen when the consequences are as severe as not being seen. Speaking of emotional aspects, everything seems exaggerated to others, but they do not see what happens in the family behind closed doors. A victim, such as a woman, should be aware that, in such relationships, the psyche will be destroyed. Unfortunately, in practice, this identification takes place late, when the personality is already changed, when the person no longer has the power to fight when the person does not believe in himself and believes that he is guilty. In addition, they do not believe that the situation can be changed by receiving support. The reasons why a person chooses to stay in such unhealthy relationships can be varied, such as fear of taking away children, shame, lack of work and income, and inability to support themselves, childhood problems, etc. Only qualified specialists – a psychologist or a psychiatrist – can identify problems and help solve them. If you ignore the

problems and continue to tolerate emotional violence, you may end up in a physical shift to emotional violence. Only the external force can stop the person who has permission to treat the other person.

In 2018 the Ministry of Welfare of the Republic of Latvia published an informative report on violence against women and domestic violence and their prevalence and dynamics in 2016. It has published data for 2016. In 2016 in Latvia 109 women who suffered from emotional violence (including 96 of them in the family) received social rehabilitation service. Moreover, for those who attended individual counselling and group therapy, the prevalent type of violence was emotional violence and physical violence. However, this service starts with the recommendations of the authorities (for example, the Orphan's Court) and a very small number of cases when the person starts rehabilitation itself. In 2016 there were 977 children who received social rehabilitation service due to emotional violence. The study shows that children most often suffer directly from emotional violence, either from combined violence, or physical abandonment (Ministry of Welfare, 2018). Studies by the European Union show that 60% of women equivalent to about 505,000 Latvian women (Ministry of Welfare, 2014), have suffered from existing or former partner psychological violence in their lives.

Temporary protection against violence

Liability for emotional violence against adults is not provided for in the Latvian legal framework. The Latvian Administrative Violations Code 172.[2] provides with administrative liability for physical or emotional abuse against the child. An adult has the right to go to the police. The police make a decision on segregation if there is an immediate threat, namely the risk of violence. If no immediate threat has been identified, the police explain that they should go to court with an application for temporary protection against violence. The procedure is stipulated in the Cabinet of Ministers Regulation No. 161 "Procedure for Prevention of Violence and Provisional Protection against Violence". In practice, the authors decide to use this option when the victim has already made a decision to divorce (if it has been concluded), terminate the relationship with the abuser (if the marriage is not concluded), if the process of custody of the child is expected (if there are children with the offender). If there is emotional violence in the family, the best way is to separate the abuser from the victim so that the process of divorce or custody of children takes less stress. Judging always causes discomfort known to man but if the other party is a person who has been controlling, terrorizing for years, then the process causes fear and pain to the victim. In addition, in order to achieve the desired result, the abuser will continue to manipulate and influence. Conversely, if a court decision on temporary protection against violence is in force, the perpetrator is forbidden to approach the victim and to communicate and contact him in any way. However, as authors practice, in such cases, manipulation and control can continue if there are children together.

Unfortunately, the child is often used in parental manipulation. Even if a decision on temporary protection against violence is in force and does not affect the child, the child has the right to use the second parent. There is a risk that the abuser will try to influence the child, settle down, bribe, etc.

Means of proof in civil proceedings

All family law disputes, including the process of temporary protection against violence, should be considered in civil proceedings and any claim should be based not only on legal norms but also on evidence. Section 92 of the Civil Procedure Law determines that evidence is the information upon which the court determines the existence or non-existence of facts that are relevant to the adjudication of the case. However, Section 93 of the Civil Procedure Law determines that the plaintiff must prove the validity of his claims, but the defendant must prove the validity of his objections. The claimant – in this case, the victim of violence – must justify the claim with specific, verifiable facts and evidence. The application for temporary protection against violence should not only indicate some form of violence or violent control, but also how it manifests itself (paragraph 4 of the application) and describe the evidence available to the claimant (paragraph 7 of the application). These are mandatory points to be filled in (Cabinet Regulation No. 161).

Talking about emotional violence is more difficult to collect. One of the means of proof is the explanations of the parties (Section 104 of the Civil Procedure Law). The plaintiff and the defendant provide their explanations and, if they are to be confirmed by other evidence, they must be regarded as evidence. On the one hand, when lodging an application with the court, the plaintiff signs the truthfulness of the information provided and has been warned of criminal liability for the provision of false information. On the other hand, if there is no other evidence the court will not be able to objectively and comprehensively assess the circumstances of the case, based solely on the contradictory explanations of the parties.

Witness testimony as a means of proof (Section 105 of the Civil Procedure Law) if someone has knowledge of the facts relating to the case. In practice, these things are used in categories, but they are often not witnessing. Domestic violence is a latent crime because everything is happening in the family, behind closed doors and hidden from the surrounding eyes. For example, in one of the civil cases, the defendant summoned his mother to a hearing to give evidence of the untruthfulness of the information provided by the applicant. However, the witness could not answer any question of the court, because in fact he/she did not live with the parties, did not know what was happening in their everyday life, etc., but he/she only knew what her son told her.

Written evidence (Section 110 of the Civil Procedure Law) plays an important role in the hearing of a case. In the case of emotional violence, they could be the victim’s diaries (for example, if a woman leads a diary and writes down all the events, her thoughts and feelings), letters, text messages, other types of correspondence, and other records (such as an audio recording) suggesting

violence existence, threats, etc. In practice, until the victim (most often a woman) decides to bring such a claim to the court, the victim had already applied to the police or had a call to the scene. Usually, the police warn the person (the abuser) of the inadmissibility of the unlawful acts, take preventive talks. A police statement on the number and outcome of calls can serve as one of the written evidences. If the victim first contacted other institutions, such as the crisis centre, then all inquiries should be required. In foreign practice, the best way to prove emotional violence and protect yourself is to keep a diary with facts and record telephone calls.

The material evidence (Section 115 of the Civil Procedure Law), proving emotional violence in authors' practice, was not found but still possible. For example, gifts from the abuser with threats and other inscriptions showing violence; important things for the victim who deliberately broke the abuser, etc.

Expertise (Section 121 of the Civil Procedure Law) at the request of a party may serve as one of the most important evidence, as it will be based on the expert's knowledge – an expert assessment of the consequences of emotional violence on the victim. The expert answers the psychological state of the injured person, changes after the end of the violence, the consequences in the emotional sphere, behaviour, cognitive functioning, social sphere, feelings, etc., or trauma or emotional experience. In the authors' practice such was not assigned as categories of cases, but the victims testify to the opinion of a psychologist.

The opinion of the institution (Section 126 of the Civil Procedure Law) is usually given in cases involving children. If the violence is directed against a child, either if there is a civil procedure for custody and access rights, the opinion is given by the Orphan's court. In this case, the best interests of the child are essential.

Conclusions

Emotional violence is one of the most dangerous forms of domestic violence, because prolonged life in emotional tension causes damage to the human psyche and personality. Physical harm is a danger to life and health, but the consequences of emotional violence should not be underestimated. Emotional violence is very widespread, but it does not pay much attention to society or distinguish it because of stereotypes and prejudices.

The body of evidence mentioned in the article is perfect but in the real life the person who has suffered from emotional violence is not the proof.

In this case, the only way out is to get help from specialists – a family doctor, a psychologist, a psychiatrist, a crisis centre, etc. to get not only psychological help, but also to get a specialist opinion. However, it must be acknowledged that domestic violence is a latent crime and not all victims seek help at once or later.

The Istanbul Convention provides that parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised. In Latvia, responsibility for psychological violence is not provided for. But several European Union countries fulfilled the requirements of the Istanbul Convention and determined responsibility for psychological violence within the family (for example, France, Ireland).

In view of the negative effects of psychological violence, attention should be paid to this in Latvia. As one of the solutions is to recognise as a criminal offence the activities of a person who knowingly and relentlessly takes action that is controlling or coercive; or has a serious effect on a relevant person, and; or a reasonable person would consider likely to have a serious effect on a relevant person (psychological violence, offence of coercive control). As the main evidence in the case, would be an expert's opinion on the harm caused to a person (moral, psychological). Moreover, after the guilty person is brought to justice, the victim could recover his injury compensa tion.

References

Council of Europe Convention on preventing and combating violence againstwomen and domestic violence. Istanbul, 11.05.2011.
Kočetkovs J., Latipovs I. 2018. *Otrs tevi gandrīz padara traku. Gazlaitings: vardarbība, par kuru nerunā.* http://veselam.la.lv/otrs-tevi-gandriz-padara-traku-gazlaitings-vardarbiba-par-kuru-neruna
Ministry of Welfare. 2018. Informatīvais ziņojums par vardarbības pret sievietēm un vardarbības ģimenē gadījumiem, to izplatību un dinamiku 2016. gadā. Rīga.
Ministry of Welfare. 2014. Informatīvais ziņojums par vardarbības ģimenē gadījumiem, to izplatību un dinamiku 2013. gadā. Rīga.
14.10.1998. Latvijas Republikas likums. Civilprocesa likums https://likumi.lv/doc.php?id=50500.
07.12.1984. Latvijas Republikas likums. Latvijas Administratīvo pārkāpumu kodekss https://likumi.lv/doc.php?id=89648
25.03.2014. MK noteikumi Nr. 161 "Kārtība, kādā novērš vardarbības draudus un nodrošina pagaidu aizsardzību pret vardarbību" https://likumi.lv/doc.php?id=265314

CONTROL OF THE LEGALITY OF THE PROCESSING OF DATA RESULTING FROM OPERATIONAL ACTION

Jānis Kāršenieks
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401, janis.karsenieks@inbox.lv

Abstract

Control of the legality of the processing of data resulting from operational action

Key words: *data protection, justice, control, data subject rights, operational activity*

The effectiveness of legal rules in general and the rights of data subjects, in particular depend to a large extent on appropriate mechanisms for their implementation. In the digital age, data processing has become comprehensive and increasingly difficult to understand. In order to reduce the imbalance between data subjects and controllers, individuals have been given a certain right to exercise greater control over their personal information.

Irrespective of the importance of taking operational action measures, the data subject is also entitled to the protection of his or her data, even to a limited extent, in this processing.

Kopsavilkums

Operatīvās darbības rezultātā iegūto datu apstrādes tiesiskuma kontrole

Atslēgvārdi: *datu aizsardzība, tiesiskums, kontrole, datu subjekta tiesības, operatīvā darbība.*

Tiesību normu efektivitāte kopumā un jo īpaši datu subjektu tiesības lielā mērā ir atkarīgas no atbilstošiem mehānismiem to īstenošanai. Digitālajā laikmetā datu apstrāde ir kļuvusi visaptveroša un arvien grūtāk saprotama. Lai mazinātu nelīdzsvarotību starp datu subjektiem un pārziņiem, indivīdiem ir piešķirtas noteiktas tiesības veikt lielāku kontroli pār savu personisko informāciju.

Neatkarīgi no tā, cik svarīga operatīvās darbības pasākumu veikšana, datu subjektam ir tiesības uz savu personas datu aizsardzību pat ierobežotā apjomā.

Introduction

The right to access data and the right to rectify it is laid down in Article 8 (2) of the Charter of Fundamental Rights of the European Union (hereinafter – Charter), which is the primary legal act of the European Union (hereinafter – EU) and has a fundamental value in the EU legal system. EU secondary legislation, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, hereinafter – GDPR) and European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (hereinafter – Police directive), have established a coherent legal framework that mandates data subjects to give them rights to controllers. Access to personal data is a fundamental right of data subjects, as it enables them to be aware of the data processing related to them. In addition, it may also be a prerequisite for other rights, such as the right to rectification and the right of redemption.

In addition to providing individuals with rights, it is equally important to create mechanisms that allow data subjects to challenge violations of their rights, control those responsible, and claim compensation. The right to an effective remedy guaranteed by the European Convention for the

Protection of Human Rights and Fundamental Freedoms (hereinafter – Convention) and the Charter provides that remedies are available to everyone.

The purpose of this article is to analyse the scope and limits of the data subject's right of access in the context of operational activities.

An equivalent study, to the knowledge of the author, has never been carried out to date. The tasks of the article are: to understand and analyse the preconditions for the exercise of the data subject's access rights in cases when data processing takes place in the context of operational activities; to study legislation defining (defining) the scope and limits of the right. The analytical, inductive, systematical, logical and comparative scientific research methods are used during the research progress.

Discussion

The scope and content of access rights are defined in Article 15 (1) of the GDPR and Article 14 of the Police directive, which is identical in nature.

Where the processing of data by the competent authorities (police, prosecutors, etc.) is done to prevent, investigate, detect criminal offenses and administrative offenses and to protect against threats to public policy, access rights have certain limitations. The right of access to your personal data may be limited only if that restriction is considered to be a necessary measure in a democratic society in order to:

(a) protect national security, public security, national monetary interests or combat crime;

(b) protect the rights and freedoms of data subjects or other persons.

Exercising the right of access with the above limitations is an obligation imposed on the controllers, including the right to obtain information on the purpose of the processing, the legal basis, the information on the recipients or categories of recipients of the data, and the content of the information disclosed, not only in relation to the present, but also the past.

The right of access, as well as the right to rectify or erase personal data and to limit processing, must be in writing by submitting a signed or secure electronic signature application, or by using the authentication service available on the website www.latvija.lv using certain authentications ways to verify your identity and free of charge. The request may be subject to a reasonable administrative fee if the law so permits and the request is manifestly unfounded or excessive. The law enforcement authority may also refuse to respond to such manifestly unreasonable or excessive requests, especially if their repetition justifies such refusal.

The Police directive, in its guidelines and basic principles for the processing of personal data, is identical in substance to certain exceptions and limitations of Directive 95/46 / EC, which has lapsed with the date of application of the GDPR (25 May 2018).

The Court of Justice of the European Union has already recognized that the provisions of Directive 95/46 which, in so far as they govern the processing of personal data which may undermine fundamental freedoms, and in particular the right to privacy, must be interpreted in the light of the fundamental rights guaranteed by the Charter [1]. Article 7 of the Charter guarantees the right to privacy, while Article 8 of the Charter provides for the right to the protection of personal data. Paragraphs 2 and 3 of the latter article specify that these data must be processed in good faith, for specified purposes and with the consent of the person concerned or by another legitimate statute that everyone has the right of access to the data collected about him and his rights. To make corrections to these data and that compliance with these rules is controlled by an independent authority.

In particular, with regard to the general conditions of legality laid down in Directive 95/46, it should be noted that, with the exception of the derogations provided for in Article 13 thereof, any processing of personal data must, first, comply with the principles set out in Article 6 of this Directive and, secondly, must comply with one of the principles listed in Article 7 of that Directive for the recognition of data processing as lawful. An identical position and general conditions for the processing of personal data are also enshrined in Articles 4 and 8 of the Police Directive. It follows from the foregoing that, in order to recognize the lawful and legitimate processing of personal data by the law enforcement authority in the context of an operational activity, it must meet a number of criteria, namely, comply with the basic principles of data processing, for precise, explicit and legitimate purposes and the legal basis for processing. The processing of personal data shall be considered lawful only in so far as such processing is necessary for the performance of the task performed by the competent authority for those purposes and the task is determined by the regulatory act of the competent authority. In the absence of any mandatory data processing, it cannot be recognized as legitimate and justified.

In order to assess and establish whether a law enforcement authority has lawfully performed the processing of personal data of the natural persons involved in the operational activity, the data subject has the right to request a legal assessment of the processing of personal data during the operational activity in accordance with the procedures specified in regulatory enactments.

Operational measures must be taken both before and during criminal proceedings, and may continue after the criminal proceedings have been completed. These measures must be carried out solely for the purpose of fulfilling statutory tasks, such as protecting individuals against criminal threats, preventing, preventing and detecting criminal offenses, clarifying the perpetrators and sources of evidence, political, social, military, economic, scientific, technical, obtaining, accumulating, analysing and using criminal and other information related to the sphere of crime and its infrastructure related to threats to national security, defense and economic sovereignty in

accordance with the procedures prescribed by law. Irrespective of the importance of taking operational action measures, the data subject is also entitled to the protection of his or her data, even to a limited extent, in this processing.

The European Court of Human Rights has repeatedly touched on the issue of respect for human rights in its operational activities and has recognized that the existence of provisions allowing, for example, covert surveillance, operational hearings per se limits the rights under Article 8 of the Convention. Article 13 of the Convention provides that anyone whose rights and freedoms as set forth in this Convention have been violated shall have the right to effective protection by public authorities, notwithstanding that the violation has been committed by persons in the exercise of their official functions.

As the European Court of Human Rights has repeatedly recognized, Article 13 of the Convention provides for access to remedies at national level, in any form ensuring the essence of the rights and freedoms of the Convention in the national legal system. As a result of the action of Article 13, legal remedies must be provided at national level, which makes it possible to examine in substance the "substantiated complaint" filed under the Convention, while satisfying the discretion of the Contracting States as to the manner in which they comply with these provision obligations under the Convention.

In the case of the Association for European Integration and Human Rights and Ekimdzhiev [2], the European Court of Human Rights reiterated that, in the case of effective surveillance, an effective remedy within the meaning of Article 13 of the Convention is a remedy that is effective, given the limited scope of protection inherent in such system. In this case, the European Court of Human Rights assessed whether, under Bulgarian law, there were remedies that were effective in such a limited situation. The European Court of Human Rights has recognized that an observation test can be carried out in three stages: when it is initially requested while it is being carried out or after it has stopped. It follows that operational control in general and the review of the lawfulness of the individual conduct of the measure in question may be carried out at three levels: when the initial order for execution is issued; at the time of action; after completion of the action. With regard to the first two levels, the essence and meaning of the operational activity implies that not only the action itself, but also the control of its legality, must be implemented without the knowledge of the person. On the other hand, in the context of the follow-up of the rule of law, in particular with the participation of a person, the question is whether the person should be informed of the operational activity after the completion of the operational activity.

According to the case law of the European Court of Human Rights, in order to guarantee the protection of the right of individuals, in cases of operational intelligence leading to a significant interference in the privacy of a person, the law must provide sufficient protection against possible

arbitrary action [3]. One of the elements of protection against possible arbitrary actions is the provision of information to persons who have been subjected to specific operational emergency measures, if such information on the operational emergency measures taken does not pose a threat to other interests. On the basis of the above-mentioned findings of the European Court of Human Rights, the Latvian legislator made amendments to the Law on Operational Activities, providing for informing the person about the operational activities and time performed, as well as listing the cases when this information is not provided. This obligation to provide information shall apply only to operational measures taken in a special manner. Consequently, the subjects of the operational activity are not obliged to inform the data subjects in the framework of the Law on Operational Operations regarding the operational measures taken against them in a general manner. However, this does not mean that the data subject is thus denied access to information on the processing of their data in the context of an operational activity, if measures are to be taken in a general manner.

Article 5 of the Operational Activities Law provides that if a person considers that an actor has acted in violation of his or her lawful rights and freedoms, he or she has the right to submit a complaint to the prosecutor, who, upon inspection, gives an opinion on the officer of the operator. Compliance with the law as well as it can go to court. If any of the restrictive conditions for access rights occur and operational measures have been taken against the data subject in a general manner, the individual is entitled to refer the lawfulness of his or her data processing to the prosecutor's office or to the court (administrative court) immediately.

Conclusions

Operational subjects are not obliged to inform data subjects in the framework of the Investigatory Operations Law regarding operational measures taken against them in a general manner. However, this does not mean that the data subject is thus denied access to information on the processing of their data in the context of an operational activity if the measures are to be taken in a general manner.

If any of the restrictive conditions for access rights occur and operational measures have been taken against the data subject in a general manner, the individual is entitled to refer the lawfulness of his or her data processing to the prosecutor's office or immediately to the court (administrative court).

References

Skat. Eiropas Savienības Tiesas virspalātas 2015. gada 6. oktobra spriedumu lietā Nr. C-362/14, EU:C:2015:650, 38. punkts un tajā minētā judikatūra. Pieejams: https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A62014CJ0362

Skat., piemēram, lietu Neimanis pret Latviju, Nr. 70597/11, 76. punkts, 2015. gada 21. jūlijs.

Skat., piemēram, Eiropas Cilvēktiesību tiesas 1984. gada 2. augusta sprieduma lietā *Malone v. The United Kingdom*, Nr. 8691/79 67. punktu.

Eiropas Cilvēktiesību un pamatbrīvību aizsardzības konvencija. Pieejams: https://www.vestnesis.lv/ta/id/43859

Eiropas Savienības Pamattiesību harta. Pieejams: https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=FR

Eiropas Parlamenta un Padomes Regula (ES) 2016/679 (2016. gada 27. aprīlis) par fizisku personu aizsardzību attiecībā uz personas datu apstrādi un šādu datu brīvu apriti un ar ko atceļ Direktīvu 95/46/EK (Vispārīgā datu aizsardzības regula). Pieejams: https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A32016R0679

Eiropas Parlamenta un Padomes Direktīva (ES) 2016/680 (2016. gada 27. aprīlis) par fizisku personu aizsardzību attiecībā uz personas datu apstrādi, ko veic kompetentās iestādes, lai novērstu, izmeklētu, atklātu noziedzīgus nodarījumus vai sauktu pie atbildības par tiem vai izpildītu krimināLsodus, un par šādu datu brīvu apriti, ar ko atceļ Padomes Pamatlēmumu 2008/977/TI. Pieejams: https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex%3A32016L0680

Eiropas Parlamenta un Padomes Direktīva 95/46/EK (1995. gada 24. oktobris) par personu aizsardzību attiecībā uz personas datu apstrādi un šādu datu brīvu apriti. Zaudēja spēku no 25.05.2018. Pieejams: https://eur-lex.europa.eu/eli/dir/1995/46/oj/?locale=LV

Operatīvās darbības likums / Latvijas Republikas likums / Pieņemts 16.12.1993; stājies spēkā 13.01.1994. // "Latvijas Vēstnesis" 30.12.1993. Nr. 131. Pieejams: https://www.vestnesis.lv/ta/id/57573-operativas-darbibas-likums

CRIMINAL RESPONSIBILITY FOR CRIMES AGAINST INTELLECTUAL PROPERTY UNDER THE LEGISLATION OF EUROPEAN COUNTRIES

Juna Kjakšta
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401, junakjaksta@inbox.lv

Abstract

Criminal responsibility for crimes against intellectual property under the legislation of European countries

Key words: *intellectual property, criminality, the criminal legislation, copyrights, invention rights, European legislation*

The article is devoted to the issues of criminal law ensuring the protection of intellectual property in some European countries. The author explores the European legislation on responsibility for violation of intellectual rights. Special attention is paid to the structure of legal regulation of criminal liability for these offenses. The analysis of the criminal legislation of Latvia on the protection of intellectual property and the law enforcement practice shows that at the moment it requires serious legislative changes. This situation is explained by the relatively recent history of intellectual property protection in Latvia. In this context, it seems appropriate to refer to the legislation of other European countries that have a wealth of experience in dealing with encroachments on intellectual property.

Kopsavilkums

Intelektuālā īpašuma krimināltiesiskās aizsardzības regulējums Eiropas valstīs

Atslēgvārdi: *intelektuālais īpašums, noziedzība, krimināltiesību akti, autortiesības, izgudrojumu tiesības, Eiropas tiesību akti.*

Raksta mērķis ir izzināt intelektuālā īpašuma krimināltiesiskās aizsardzības mehānismus dažādās Eiropas valstīs. Autore analizē Eiropas valstu normatīvos aktus, kas skar atbildību par pārkāpumiem intelektuālā īpašuma tiesību jomā. Īpašu uzmanību veltot krimināltiesību pārkāpumiem tiesiskā regulējuma struktūrai. Analizējot Latvijas normatīvos aktus, kar regulē intelektuālā īpašuma aizsardzību, kā arī šo normatīvo aktu tiesību piemērošanas praksi, konstatējams, ka līdz šim Latvijas krimināltiesībās intelektuālā īpašuma krimināltiesību jautājumi nav bijuši par plašas un padziļinātas izpētes objektu. Šajā kontekstā ir lietderīgi apskatīt dažādu Eiropas valstu normatīvo regulējumu, kurām ir bagāta pieredze intelektuālā īpašuma pārkāpumu novēršanā.

Introduction

Active integration of Latvia into the world community, joining the World Trade Organization, joining the relevant international agreements in this regard, forces the intellectual property protection issues to be oriented towards developed European countries (Ministru kabineta rīkojums Nr. 169 Konvencija par Pasaules intelektuālā īpašuma organizācijas dibināšanu, 2015). The purpose of the work – to study the content of criminal law protection of intellectual property in the normative legal acts of European countries – Criminal Codes and other laws. The main objective of identifying theoretical foundations and aspects of criminal protection of intellectual property is to identify those intellectual property protection findings that are guidelines for the development of intellectual property rights in the Republic of Latvia. The development of criminal protection of intellectual property has taken place imperceptibly due to the lack of adequate theoretical research. Proposals for the improvement of intellectual property rights can not be formed without historical research and study of theoretical knowledge. The theoretical basis must be developed, taking as a basis the knowledge of law scientists of other countries in this area. The tasks of scientific work are as follows: to clarify the regulation of intellectual property protection in the Criminal Codes of European countries, analyzing it in conjunction with civil and administrative law protection means;

identification of the most characteristic features of the object of Criminal Law of intellectual property in the normative acts of European countries.

The struggle with intellectual property has become one of the most pressing tasks in Latvia and abroad today. In order for this task to be feasible, effective remedies must be available: the power of intellectual property rights is reflected in the exercise of these rights, or in the enforcement options best reflected in the remedies available to the rights-holder against the rights-holder. In civil law, the widest range of means is available to enable the victim to obtain material and moral satisfaction with the infringed rights in respect of criminal sanctions (Latvijas Civillikuma komentāri, 2002), the position being that they would apply primarily to particularly gross and systematic commercial infringements of intellectual property rights.

Discussion

The topicality of the issue of criminal law protection of intellectual property could be in the theoretical plaque, especially considering that up to now Latvian criminal law issues of criminal law of intellectual property have not been the subject of extensive and in-depth investigation.

Economic crime against intellectual property is a set of crimes directed against authors and legal entities that directly own these intellectual properties, as well as the ways and means of using these products that are part or closely related to intellectual property products (Мацкевич, 2017, p173.). As recognized by the Riga Regional Court Criminal Cases Chamber in its judgment of 19 September 2013, the impact of computer program piracy on the rights and interests of society is much wider than the loss suffered by computer software producers. Therefore, this system of protection of rights should be such that those who invest their finances and knowledge in intellectual property products can rely on their investment being properly, not just declarative, protected and able to recover their investment (Rīgas apgabaltiesas 2013. gada 19. septembra spriedums lietā Nr. 11816006611).

The Berne Convention for the Protection of Literary and Artistic Works, adopted in 1886, deals with the protection of works and the rights of their authors. This is the first codified legal act aimed at protecting the rights and interests of intellectual property owners. Obviously, the adoption of this convention was justified by the increased number of copyright infringements.

The criminal codes of the Federal Republic of Germany, the Republic of Poland, Switzerland, Austria, Italy, Holland and other countries are not the only sources of intellectual property protection rights in these countries. The relevant norms in these countries are enshrined in special laws. These laws often provide for sanctions for violation of intellectual property rights. Unlike the Republic of Latvia Criminal law, the national regulations allow for criminal liability regulation and not only by code but also by another application of the law, or at all does not contain codified normative acts in the field of criminal law.

For example, Article 1 of the Danish Criminal Code (Danish Criminal Code, 2008, p. 296) states that only acts punishable under a statute or entirely comparable acts shall be punished. According to Article 1 of the Swiss Criminal Code (December 21, 1937), which provides for the principle of no penalty without law, no one may be punished for an act unless it has been expressly declared to be an offence by the law. The law category is not specified in this case. A similar regulation is contained in Article 111-2 of the Criminal Code of the French Republic (2005), as well as in several other countries. The Criminal Codes of the aforementioned countries hardly contain norms regulating criminal offenses against intellectual property. For example, the Danish Criminal Code refers to the intention to provide or introduce information about a company's business secrets as one of the particularly aggravating circumstances of violation of the confidentiality of correspondence, housing or other location (Dānijas krimināl kodekss. Salīdzināmās krimināltiesības, 2008). This Criminal Code contains no other references to intellectual property rights.

European countries where the rules for the application of criminal law on intellectual property protection are included in cross-sectoral legislation can be mentioned: Greece (Law No. 2239 on Trademarks 1994), Ireland (Copyright and Related Rights Act, 2000), Cyprus (Copyright Laws, 1976), Norway (Trademarks Act, 2010), Portugal (Industrial Property Code, 2008) and others. This approach looks irrational. Firstly, the development of public relations, in the field of the use of intellectual creativity products, requires the establishment of a unified system of intellectual property legislation. Secondly, the incorporation of the legal norms regulating the protection of intellectual property into various regulatory enactments makes it difficult to understand the content of the intellectual property as a criminal protection object, as well as the practice of applying these norms. (Izmaiņas intelektuālā īpašuma aizsardzībā, 2011). Emphasizing that the implementation of positive law enforcement practices, the emphasis is on general rules of criminal law. It is self-evident that for the most effective law enforcement, it is advisable to put these rules in one act – the Criminal Code.

Law scientists note the trend of codification of criminal law, which is characteristic of both the Continental (Roman – Germanic) family of the legal system and the general law ("Common law") (Жалинский, 2004. p. 560). According to this trend, norms that provide for criminal liability for violations of intellectual rights are grouped into a single legal act (code). At the same time, they are usually structurally separated and act as a single object complex of legal norms of criminal law enforcement. The special part of the Criminal Code of the Republic of Bulgaria (Наказателен Кодекс, 1968) contains a special section "crimes against intellectual property". Other Bulgarian laws do not contain criminal law provisions in the area of intellectual property. The Spanish Criminal Code of 1995 (Penal Code, 1995) contains a section entitled "on felonies against

intellectual and industrial property, the market and consumers", which is almost entirely devoted to responsibility for infringements of intellectual property rights.

The French intellectual property code (Code de la Propriété Intellectuelly, 1992) contains a wide range of creative and other protected intellectual property objects, including those that are not included in Latvian laws and regulations (lectures, speeches, sermons, court speeches or other works of the same nature, as well as other types of clothing and footwear produced by seasonal industry, t.sk. fashion items) (Intelektuālais īpašums, 2008). The Code provides for criminal liability for illegal actions in relation to all these objects without exception. Indications of certain elements of intellectual property in the relevant provisions of the law have the status of an example or perform some concretizing function.

The content of intellectual property in European legislation is mostly homogeneous from the point of view of the object of the crime. The unifying effect of international agreements seems obvious: The Universal Copyright Convention, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, The World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty or WCT), The WIPO Performances and Phonograms Treaty (WPPT), The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), etc.c.

A high level of danger to the public in the event of an infringement of intellectual property rights and the recognition of that danger by national legislators can be judged by the sanctions of the criminal law norms of the countries concerned (Personu īpašums un tā aizsardzība, 2002). The penalties for these crimes are comparable, and in some cases even exceed the penalties for crimes against property. The Spanish Penal Code provides that for infringement of intellectual property rights, the court may impose a prison sentence of at least half a year or a fine of at least six minimum months' salary, comparable to a penalty for theft in aggravating circumstances, misappropriation or fraud. According to the norms of French Code of Intellectual Property (Code de la Propriété Intellectuelly, 1992), most offenses related to counterfeit are punishable by a two-year imprisonment and a high fine. Based on Article L335-9 of the code, in case of repeated accomplishment of the given criminal act, the type of punishment imposed on the guilty person is doubled.

Article 172A of the Bulgarian Criminal Code (Наказателен Кодекс, 1968) stipulates that violations of property rights in respect of intellectual property results may be punishable by up to three years' imprisonment and a fine. Plagiarism is punishable by a term of imprisonment of up to two years.

Conclusion

The analysis carried out makes it possible to draw some general conclusions about the peculiarities of criminal protection of intellectual property in developed European countries.

- There are two main approaches to regulating the legal structure of liability for infringements of intellectual property rights. Relevant norms may be included in cross-sectoral legislation dedicated to a specific group of intellectual property objects, and may be grouped into one specific structural element in the Criminal Law (usually in a section of a specific section).
- Intellectual property is understood primarily as a single object of protection of criminal law. Such an approach is mainly reflected in the structure of the Criminal Law: by placing legal provisions on liability for infringements of intellectual property rights in a single criminal law, the legislator combines these norms in a single structural element of the law.
- The provision of a wide range of intellectual property objects, including those not mentioned in the Criminal Law of the Republic of Latvia, is ensured by means of criminal justice.
- Criminal liability for infringements of intellectual property rights does not depend on the extent or severity of the offenses.
- The degree of criminal liability in the analyzed countries for crimes against intellectual property is strict.

References

Bulgārijas Krimināl kodekss (02.04.1968.), ar groz. līdz 28.05.2010. Pieejams (Accessed): https://www.wipo.int/edocs/lexdocs/laws/en/bg/bg024en.pdf

Francijas intelektuālā īpašuma kodekss (01.07.1992.), ar groz. līdz 25.03.2019. Pieejams (Accessed): https://wipolex.wipo.int/en/legislation/details/18788 (sk. 13.04.2019.).

Francijas Krimināl kodekss (01.03.1994.), ar groz. līdz 25.03.2019. Pieejams (Accessed): https://www.legifrance.gouv.fr/content/location/1740

Grūtups, A., Kalniņš, E. 2002. *Latvijas Civillikuma komentāri.* Rīga.

Joksts, O., Jankovskis, A. 2002. *Personu īpašums un tā aizsardzība.* Rīga.

Konvencija par fonogrammu producentu aizsardzību pret neatļautu viņu fonogrammu pavairošanu (Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms). Pieņemta Ženēvā 29.10.1971., Latvijā stājās spēkā 23.08.1997. (Latvija ratificējusi ar 24.03.1997. likumu "Par Konvenciju par fonogrammu producentu aizsardzību pret neatļautu viņu fonogrammu pavairošanu", stājies spēkā 08.04.1997., publicēts: Latvijas Vēstnesis, 08.04.1997., Nr. 89.).

Krastiņš U., Liholaja V. (2016) *Krimināllikuma komentāri. Otrā daļa (IX–XVII).* Rīga: Tiesu namu aģentūra, 364., 369. lpp.

Krastņš U., Liholaja V. (2008) Dānijas krimināl kodekss. Salīdzināmās krimināltiesības. Latvija, Beļģija, Dānija, Nīderlande. Rīga: LU Akadēmiskais apgāds, 296. lpp.

Krimināllikums. Latvijas Republikas likums. Latvijas Vēstnesis, 08.07.1998., Nr. 199/200.

Latvijas Administratīvo pārkāpumu kodekss. Latvijas Republikas kodekss. Ziņotājs, 20.12.1984., Nr. 51.

Latvijas Republikas Augstākās tiesas Krimināllietu departamenta 2017. gada 15. februāra lēmums lietā Nr. SKK-17/2017. Pieejams (Accessed): http://at.gov.lv/files/uploads/files/archive/department2/2017/SKK-17-2017.doc

Ministru kabineta rīkojums Nr. 169 Konvencija par Pasaules intelektuālā īpašuma organizācijas dibināšanu. Pieejams (Accessed): https://likumi.lv/ta/lv/starptautiskie-ligumi/id/717, Rīgā 2015. gada 1. aprīlī.
Papēde M. Izmaiņas intelektuālā īpašuma aizsardzībā. Jurista Vārds Nr. 9, Rīga, 01.03.2011.
Par Intelektuālā īpašuma tiesību aizsardzības un nodrošināšanas pamatnostādnēm 2015.–2020. gadam. (01.04.2015.). Pieejams (Accessed): https://likumi.lv/ta/id/273234-par-intelektuala-ipasuma-tiesibu-aizsardzibas-un-nodrosinasanas-pamatnostadnem-2015-2020-gadam
Par Marakešas līgumu par Pasaules tirdzniecības organizācijas izveidošanu. (29.12.1998.). Pieejams (Accessed): https://likumi.lv/doc.php?id=51135
Rīgas apgabaltiesas 2013. gada 19. septembra spriedums lietā Nr. 11816006611.
Romas konvencija par izpildītāju, fonogrammu producentu un raidorganizāciju tiesību aizsardzību. (26.10.1961.). Pieejams (Accessed): https://likumi.lv/ta/lv/starptautiskie-ligumi/id/473 (sk. 01.04.2019.).
Rozenfelds, J., 2008. *Intelektuālais īpašums.* Zvaigzne ABC.
Spānijas Karalistes krimināl kodekss (24.11.1995.), ar groz. līdz 01.01.2013. Pieejams (Accessed): https://www.legislationline.org/documents/section/criminal-codes/country/2/Spain/show
Šveices Krimināl kodekss (21.12.1937.), ar groz. līdz 01.03.2019. Pieejams (Accessed): https://www.admin.ch/opc/en/classified-compilation/19370083/201903010000/311.0.pdf
Universālā Autortiesību konvencija (06.09.1952.). Pieejams (Accessed): http://portal.unesco.org/en/ev.php-URL_ID=15381&URL_DO=DO_TOPIC&URL_SECTION=201.html
Vispasaules intelektuālā īpašuma organizācijas (WIPO) līgums par autortiesībām. (06.03.2002.). Pieejams (Accessed): https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1268-vispasaules-intelektuala-ipasuma-organizacijas-wipo-ligums-par-autortiesibam
Vispasaules intelektuālā īpašuma organizācijas (WIPO) līgums par izpildījumu un fonogrammām. (20.05.2002.). Pieejams (Accessed): https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1273-vispasaules-intelektuala-ipasuma-organizacijas-wipo-ligums-par-izpildijumu-un-fonogrammam
Мацкевич, И. (2017). *Причины экономической преступности. Учебное пособие.* Министерство образования и науки Российской Федерацииб Московский государственный юридический университет. Pieejams (Accessed): https://на.мвд.рф/upload/site128/document_file/Prichiny_ekonomicheskoy_prestupnosti.pdf
Жалинский А. Э. Современное немецкое уголовное право. М.: ТК “Велби”; Проспект, 2004. 560 с.

MONETARY COMPENSATION FOR PECUNIARY LOSS AFTER A CONSTITUTIONAL COURT JUDGMENT

Jānis Priekulis
University of Latvia, Raiņa bulvāris 19, Riga, LV-1586

Abstract

Monetary compensation for pecuniary loss after a Constitutional Court judgment

Key words: *monetary remedies, monetary damages, pecuniary loss, the Constitutional Court, an unlawful law*

In Latvia according to Article 92, Clause three of the Constitution every individual is entitled to request monetary compensation for pecuniary loss caused by an unlawful law. However, monetary compensation is a remedy of last resort when it is not possible to ensure an effective remedy with only non-monetary remedies.

If a law that was declared unlawful by the Constitutional Court of the Republic of Latvia has not been applied to the individual who contested particular legal norm, a procedure on how pecuniary loss is reimbursed is more ambiguous. In order to satisfy a claim on monetary compensation for pecuniary loss, four prerequisites must be met. First, there must be a judgment of the Constitutional Court of the Republic of Latvia wherein a law is revoked and violation of a right belonging to a specific individual is recognized. Second, a law must be revoked with retroactive effect in respect to an individual that requests monetary compensation for pecuniary loss. Third, a law must be revoked with retroactive effect as of the moment when pecuniary loss occurred or continued to occur. Fourth, clear causal link between an alleged pecuniary loss and a violation must be established. A court of general jurisdiction shall establish whether these prerequisites are met, not the Constitutional Court of the Republic of Latvia because it is not capable to provide monetary compensation for pecuniary loss.

Kopsavilkums

Atlīdzinājums naudā par zaudējumiem pēc Satversmes tiesas sprieduma

Atslēgvārdi: *mantiskie tiesību aizsardzības līdzekļi, atlīdzinājums naudā, zaudējumi, Satversmes tiesa, prettiesisks likums*

Latvijā, pamatojoties uz Satversmes 92. panta trešo teikumu, personai ir tiesības pieprasīt atlīdzināt naudā zaudējumus, kuri radušies prettiesiska likuma (likuma normas) dēļ. Tomēr atlīdzinājums naudā par zaudējumiem ir galējais atlīdzinājuma līdzeklis, kad efektīvu tiesību aizsardzības līdzekli nav iespējams nodrošināt ar nemantiskajiem tiesību aizsardzības līdzekļiem.

Lai atlīdzinātu zaudējumus naudā, kad uz likuma (likuma normas) pamata nav pieņemts tiesību piemērošanas akts, pirmkārt, jābūt Satversmes tiesas spriedumam, kurā likums (likuma norma) atzīts par prettiesisku un konstatēts konkrētās personas nepamatots tiesību aizskārums. Otrkārt, Satversmes tiesas spriedumā ir jābūt piemērotam atpakaļvērstam spēkam attiecībā uz personu, kura prasa atlīdzināt zaudējumus naudā. Treškārt, atpakaļvērstam spēkam jāaptveras ar to laikposmu, par kādu pieprasa radušos zaudējumu atlīdzinājumu naudā. Ceturtkārt, jākonstatē, ka zaudējumi radās tā nepamatota tiesību aizskāruma rezultātā, kas bijis par pamatu likuma (likuma normas) atcelšanai, proti, cēloņsakarību starp radītajiem zaudējumiem un Satversmes tiesas konstatēto nepamatoto tiesību aizskārumu. Zaudējumu atlīdzināšanas vispārīgos noteikumus ir nepieciešams konstatēt vispārējās jurisdikcijas tiesai. Tie netiek konstatēti Satversmes tiesas procesā.

Introduction

Nowadays it is not questioned anymore that an individual has a right to monetary compensation for damage caused by the executive. However, it is still unclear whether there is a right to monetary compensation for damage caused by an unlawful law or a legal norm (hereinafter both referred to also as “law”).

In the world, there are states where it is prohibited to revoke a law, even for courts. For example, in the Netherlands and in the United Kingdom only legislator itself may revoke a law it has adopted. As a result, in the Netherlands and in the United Kingdom individuals do not enjoy a right to monetary compensation for damage caused by an unlawful law.

However, these kinds of states are in minority, and usually, courts may revoke an unlawful law – either a specific court (centralized constitutional review) or more than one court

(decentralized constitutional review). Procedure on how an individual may exercise its right to monetary compensation regarding unlawful laws foremost depends on existing model of constitutional review.

In Latvia as in Germany, there is centralized model of constitutional review and in this type of constitutional review it is characteristic that a specific authority that in most cases is constitutional court assess a lawfulness of a law. In most cases, such authority is not endowed with a right to provide monetary redress for pecuniary loss. An exception is constitutional courts in Balkans – Serbian constitutional court[8] and constitutional courts of Montenegro[9] and Bosnia and Herzegovina.[10]

As to Europe, most of constitutionals courts in Europe are not entitled to provide monetary redress for pecuniary loss caused by an unlawful law. It is also a case of the Constitutional Court of Latvia and the Federal Constitutional Court of Germany. In Germany, it is even considered that a right to monetary compensation for such loss should not be guaranteed, as the legislator acts as a guardian of society's interests as a whole.[11] However, as the legislator may violate human rights (a right to property and etc.), states should guarantee that a right to monetary compensation may be exercised also in cases when an unlawful law is the cause of damage.

The aim of this article is to discover whether an individual is entitled to monetary compensation for pecuniary loss after the judgment of the Constitutional Court. In order to achieve this aim, the author will analyse general conditions for compensating pecuniary loss, as well and applicable law in these types of cases. The author uses case studies, as well as foreign and national law and literature studies.

General conditions to compensate pecuniary loss

Monetary compensation for pecuniary loss is a remedy of last resort. In order to reimburse a pecuniary loss, state at the first place must use non-monetary remedies such as restitution. Only when it is clear that non-monetary remedies are not capable to restore an earlier financial condition of a victim, monetary compensation may be provided. Accordingly, primarily state must take all possible measures to ensure proper redress without awarding monetary compensation.

If a law unjustifiably infringes a right of an individual, as a result, an individual incurs pecuniary loss, this loss must be properly reimbursed. That may be pecuniary loss already incurred to an individual (e.g. loss of earnings), as well as pecuniary loss that will occur in the future. In addition, also both direct and indirect pecuniary loss shall be reimbursed.

[8] Law on the Constitutional Court of Serbia, Article 85 and 89. Pieejams: www:codices.coe.int [opened: 13.03.2019.].
[9] Law on Constitutional Court of Montenegro, Article 67, Paragraph 3. Pieejams: www:codices.coe.int [opened: 13.03.2019.].
[10] Rules of the Constitutional Court of Bosnia and Herzegovina, Article 74. Pieejams: www:codices.coe.int [opened: 13.03.2019.].
[11] Please see Baginska W. Damages for Violations of Human Rights. London: Springer, 2016, p. 108.

If a law that was declared unlawful by the Constitutional Court of the Republic of Latvia has not been applied to the individual who contested particular legal norm, a procedure on how pecuniary loss is reimbursed is more ambiguous. The first prerequisite for awarding monetary compensation for pecuniary loss is a judgment of the Constitutional Court of the Republic of Latvia wherein it is found that a contested law does not comply with higher law and infringement of a right is recognized. However, it is only a first necessary condition. In addition to that, it must also be established that a particular law is revoked with retroactive force (lat. – ex tunc) in respect to the individual who claims damages and at least from the moment when the pecuniary loss occurred. However, in the end, whether pecuniary loss needs to be compensated depends on the fact whether all necessary prerequisites are met, especially, whether there is clear causal link between an alleged pecuniary loss and a particular violation.

In case law, there is a judgment wherein a court assessed a possibility to compensate pecuniary loss notwithstanding that a law was not revoked with retroactive force (lat. – ex tunc). After judgments of the Constitutional Court of the Republic of Latvia in cases no. 2008-36-01 and 2010-22-01 wherein a law governing forced lease were revoked without retroactive effect (lat. – ex nunc), an individual claimed damages. This particular individual was the owner of several land plots on which buildings were constructed that belonged to other individuals (i.e. divided property). In these cases, he alleged that pecuniary loss occurred because of unjustified restrictions of lease fee. Although the court established that "in addition to the fact that the law is declared invalid, also violation itself should be considered" and that "the Constitutional Court [..] did not consider necessary to revoke a particular law with retroactive effect, the court continued with a profound assessment whether his claim shall be satisfied."[12] It is wrong because at the time when an alleged pecuniary loss occurred , particular laws were presumed to be lawful according to the principle of legal certainty. The principle of legal certainty provides that as long as a law is in force, it shall be obeyed. There is a presumption that law is lawful and individuals must obey it if is not otherwise declared by a competent authority.[13] In Latvia, the Constitutional Court of the Republic of Latvia is the authority that may revoke a law and decide whether a law should be revoked with retroactive effect (lat. – ex tunc).

Hence in order to satisfy a claim on monetary compensation for pecuniary loss, four prerequisites must be met. First, there must be a judgment of the Constitutional Court of the Republic of Latvia wherein a law is revoked and violation of a right belonging to a specific individual is recognized. Second, a law must be revoked with retroactive effect (lat. – ex tunc) in respect to the individual that requests monetary compensation for pecuniary loss. Third, a law must

[12] For more please see Kurzeme Regional Court's judgment of 14 January 2016, case no. C27167614.
[13] For more about the principle of legal certainty please see the Supreme Court's judgment of 30 March 2004, case no. SKA-5, paragraph 15–17.

be revoked with retroactive effect (lat. – ex tunc) as of the moment when pecuniary loss occurred. Fourth, a clear causal link between an alleged pecuniary loss and a violation must be established. A court of general jurisdiction shall establish whether these prerequisites are met, not the Constitutional Court of the Republic of Latvia because it is not capable to provide monetary compensation for pecuniary loss.

If the Constitutional Court of the Republic of Latvia revokes a law that dismisses a municipal council because there were no legal grounds to adopt such law, deputies to whom the law is revoked as of the time when their rights were infringed, may claim damages in the amount of their unpaid salary. However, a case-by-case evaluation shall be made. For example, a member of a municipal council decides to lay down the mandate and thereafter such law is adopted and revoked. He will not be provided with any compensation, because the reason why he did not receive a salary is that he laid down his mandate, not because a municipal council was dismissed.

Applicable procedural law

After a judgment of the Constitutional Court of the Republic of Latvia, a claim for damages may be made before a court of general jurisdiction.[14] Courts of general jurisdiction are obliged to hear these cases in order to guarantee a right to a fair trial and a right to an effective remedy enshrined in the Article 92 of the Constitution of the Republic of Latvia. Courts. Priority shall be given to an obligation to guarantee constitutional rights, and not to strict interpretation to Article 1 of Civil Procedure Law, according to which courts of general jurisdiction hear only civil cases.

As courts of general jurisdiction usually hear cases under the Law on Criminal Procedure and Law on Civil Procedure, courts foremost have to decide on applicable procedural law. There is not even a single law that governs a procedure on how these types of cases shall be heard. Therefore, courts of general jurisdiction shall use a legal analogy. They have three options – apply a law that governs how civil cases, criminal cases or administrative cases shall be dealt. As by using a legal analogy, a law that regulates possibly similar legal situations should be applied, a choice shall be made between the Law on Civil Procedure and the Law on Administrative Procedure. The Law on Criminal procedure does not govern similar legal situations, as in criminal proceedings the main question is whether an individual has committed a crime.

Behind the Law on Civil Procedure a paradigm lies that both parties are equivalent and they execute their rights themselves without the intervention of courts. Accordingly, courts act as passive observers. Behind the Law on Administrative procedure, on the other hand, lies a wholly different idea – the idea of objective investigation, as it is presumed that parties are not equivalent and courts

[14] That was decided in Supreme Court judgment of 8 May 2012, case no. SKA-16/2012.

must take active role to achieve a just outcome of a case i.e. courts obtain evidence, give instructions and suggestions to parties, as well as establish a subject of a claim.[15]

If the legislator has not adopted a specific law that governs how these types of cases shall be heard, courts of general jurisdiction shall use a method of a legal analogy and apply a law that governs possibly similar situations. This is the Law on Administrative Procedure that is applied in all state liability matters regarding which the legislator has adopted specific legislation. However, it would be an anomaly if courts of general jurisdiction apply the Law on Administrative Procedure as a primary law, as administrative courts were established to hear cases under this law. Therefore if the legislator does not amend the Law on Administrative Procedure and recognizes the competence of administrative courts to hear these types of cases, courts of general jurisdiction will continue to apply the Law on Civil Procedure in these cases.

If a court of general jurisdiction concludes that pecuniary loss shall be compensated, a question arises from which authority damages shall be adjudged. The answer is quite simple – from a defendant. In these cases, a legal gap exists. By using a method of legal analogy courts of general jurisdiction shall apply respective legal norms of the Law on Administrative Procedure, accordingly those legal norms that govern the execution of courts' judgments wherein damages are adjudged.[16] Public law legal person itself decides from which financial means it will compensate a sum adjudged by courts, and courts shall not impose the executive any obligations in this regard, for example, providing that state fee shall be compensated from budget of a specific authority.[17] Hence in these types of cases, courts of general jurisdiction shall not automatically apply the Law on Civil Procedure. They should assess by the substance in what amount the Law on Civil Procedure may be applied. There may be cases when a proper usage of a method of legal analogy leads to application of the Law on Administrative Procedure such as in execution of court's judgments.

Applicable material law

The same question appears as with procedural law – which material law may be applied by a method of legal analogy?

Courts of general jurisdiction basically have a choice between the Civil Law and the Law on Compensation For Damage Caused By State Authorities and the Law on Compensation For Damage Caused In Criminal Proceedings and Administrative proceedings. Courts of general jurisdiction do not have absolute freedom to choose which material law to apply. Law that regulates possibly similar situations shall be applied. Application of a law that does not regulate possibly

[15] For more about the principle of objective investigation see Objektīvās izmeklēšanas princips – interpretācija un piemērošana. Augstākā tiesa, 2005. gads. Pieejams: http://www.at.gov.lv [opened: 14.12.2018.].
[16] These legal norms are included in Section IV of Law on compensation for damage caused by state authorities..
[17] For more please see Danovskis E. Briede J. Publisko tiesību subjekta civiltiesiskais statuss. Jurista Vārds, 14.02.2012., Nr. 7 (706).

similar situations violates the principle of equality, as this principle serves the basis of a legal analogy.

From these laws, possibly similar situations regulate two of them – the Law on Compensation For Damage Caused By State Authorities and the Law on Compensation For Damage Caused In Criminal Proceedings and Administrative proceedings, as they both govern how state shall reimburse damage that was caused because of improper execution of state power. If only one of them needs to be chosen, then it shall be the Law on Compensation For Damage Caused By State Authorities. However, both of them provide almost identical regulation in regard to compensation for pecuniary loss.

The Civil Law does not govern similar situations, as it governs private law relationships, that is, relationships between private individuals. The Civil Law is primarily applicable in civil liability cases. However, the Civil Law may be applied in state liability cases to fill legal gaps i.e. if there is no specific public-legal norm that governs a particular situation insofar it is possible to apply civil-legal norm by the substance. As for now, it is possible to apply the Civil Law in administrative proceedings when a claim for compensation for pecuniary loss is decided.

Hence, courts of general jurisdiction shall not apply the Civil Law mechanically. They shall assess whether it is possible to apply the Civil Law by the substance in state liability matters. For example, Article 1782 of Civil Law is not applicable in state liability matters, as this article provides that a person shall be liable for losses that his servants or other employees cause to third persons only if he fails to exercise due care in choosing servants or other employees. As to the state liability, all actions of individuals who exercise state power are attributable to state insofar they exercise state power. There are quite different situations – members of the parliament are elected in free elections, and it would be impossible to verify whether electors exercised due care while electing them. It must also be taken into account that a fault of an individual that exercised state power is not a condition that shall be met to provide redress for pecuniary loss. The Civil Law shall be interpreted in consonant with Article 92 of the Constitution of the Republic of Latvia.[18]

Regarding this court's judgment, it must be taken into account that the legislator – parliament, and citizens (in Latvia) – state organ, whose actions are attributable to state itself. Therefore, in state liability cases a fault of the legislator does not matter. If a law is declared unlawful, it means that state improperly used its state power, more specifically, its legislative power, and if all prerequisites are met, pecuniary loss shall be compensated. Again, a fault of the legislator is not a prerequisite that must be met to compensate pecuniary loss. If a law is declared unlawful and a causal link between violation and pecuniary loss is established, state must provide proper redress to a victim.

[18] For bad example, see. Kurzemes Regional Court judgment of 14 January 2016, case no. C27167614.

Conclusions

1. In Latvia according to Article 92, Clause three of the Constitution every individual is entitled to request monetary compensation for pecuniary loss caused by an unlawful law.
2. Monetary compensation is a remedy of last resort when it is not possible to ensure effective remedy with only non-monetary remedies.
3. If a law that is declared unlawful by the Constitutional Court has not been applied to the individual who contested particular law four prerequisites must be met to satisfy a claim on monetary compensation for pecuniary loss. First, there must be a judgment of the Constitutional Court wherein a law is revoked and violation of a right belonging to a specific individual is recognized. Second, a law must be revoked with retroactive effect in respect to an individual that requests monetary compensation for pecuniary loss. Third, a law must be revoked with retroactive effect as of the moment when pecuniary loss occurred or continued to occur. Fourth, clear causal link between an alleged pecuniary loss and a violation must be established.
4. A court of general jurisdiction shall establish whether the prerequisites for compensating pecuniary loss are met, and not the Constitutional Court.

References

Augstākā tiesa. Objektīvās izmeklēšanas princips – interpretācija un piemērošana. 2005. gads. Pieejams: http://www.at.gov.lv [opened: 14.12.2018.].
Baginska W. Damages for Violations of Human Rights. London: Springer, 2016.
Danovskis E. Briede J. Publisko tiesību subjekta civiltiesiskais statuss. Jurista Vārds, 14.02.2012., Nr. 7 (706).
Kurzeme Regional Court's judgment of 14 January 2016, case no. C27167614.
Law on the Constitutional Court of Serbia, Article 85 and 89. Pieejams: www:codices.coe.int [opened: 13.03.2019.].
Law on Constitutional Court of Montenegro, Article 67, Paragraph 3. Pieejams: www:codices.coe.int [opened: 13.03.2019.].
Rules of the Constitutional Court of Bosnia and Herzegovina, Article 74. Pieejams: www:codices.coe.int [opened: 13.03.2019.].
Supreme Court's judgment of 30 March 2004, case no. SKA-5.
Supreme Court judgment of 8 May 2012, case no. SKA-16/2012.

CYBERCRIME AGAINST GOVERNMENT: COMPARATIVE ANALYSIS OF LATVIA AND THE WORLD COUNTRIES

Elina Radionova-Girsa
Daugavpils University, Veldres 5-36, Riga, elinaradionova@gmail.com

Abstract

Cybercrime against government: comparative analysis of Latvia and the world countries

Key words: *cybercrime, cybersecurity, government, computer crimes*

The age of technologies has brought to our lives a lot of interesting things and opportunities. Technologies help us to communicate easily all over the world, to send and receive useful information, to look through and pay bills quickly using online banking systems, even to use state institution's opportunities. As a result of worldwide digitalisation process, crimes on the Internet became topical.

Government as well as individuals are in danger. There are a big range of cybercrimes connected with the government. One of the priorities of legislative and law enforcement activities is the protection of citizens' rights and legitimate interests against computer crimes, as well as ensuring the security of information of state and legal persons.

The paper has mostly theoretical knowledge that can be used also in practice when dealing with cybercrime problems against government.

Kopsavilkums

Kibernoziegumi pret valsti: Latvijas un pasaules valstu salīdzinošā analīze

Atslēgvārdi: *kibernoziegumi, kiberdrošība, valdība, datornoziegumi*

Tehnoloģiju gadsimts ir devis mūsu dzīvei daudz interesantu lietu un iespēju. Tehnoloģijas palīdz mums sazināties viegli visā pasaulē, nosūtīt un saņemt noderīgu informāciju, ātri apskatīt un apmaksāt rēķinus, izmantojot tiešsaistes banku sistēmas, pat izmantot valsts institūcijas iespējas. Vispasaules digitalizācijas procesa rezultātā noziegumi internetā kļuva aktuāli.

Valdība un indivīdi ir apdraudēti. Pastāv liels skaits kibernoziegumu, kas saistīti ar valdību. Viena no likumdošanas un tiesībaizsardzības pasākumu prioritātēm ir pilsoņu tiesību un likumīgo interešu aizsardzība pret datoru noziegumiem, kā arī valsts un juridisko personu informācijas drošības nodrošināšana.

Darba pamatā ir teorētiskās zināšanas, kuras var izmantot arī praksē, risinot problēmas, kas saistītas ar kibernoziedzības problēmām pret valsti.

Introduction

One of the priorities of legislative and law enforcement activities is the protection of citizens' rights and legitimate interests against computer crimes, as well as ensuring the security of information of state and legal persons.

The aim of the paper is to analyse cybercrimes against government and to compare Latvia and other countries approaches to fight with it.

Main tasks of the paper are to study and analyse legislative documents and scientific literature on the topic, to make a comparative analysis of Latvia and the world countries actions against cybercrime, to draw conclusions.

Main methods are scientific literature analysis, legal literature and policy analysis, analysis of findings.

The paper has mostly theoretical knowledge that can be used also in practice when dealing with cybercrime problems against government.

Discussion

In Chapter IX (Crimes against Humanity, Peace, War Crimes, Genocide), Chapter IX (Terrorist Crimes), Chapter X (Crimes against the State) of Criminal Law of the Republic of Latvia

expressly defines the interests protected by law and may be defined as objects of a criminal offense. The author of the paper notes how each chapter has articles that provide for an offense against the Internet and an automated data processing system, thus indicating that the criminal environment is no longer just a record (traditional) but also a cyber space.

The interests of different countries are constantly under threat in cyberspace. For example, as outlined in the UK Cyber Security Strategy, as well as cybercrime, recruitment and radicalization of state-supported national infrastructure attacks or terrorist use is possible. Cyber security is multifaceted and there are many governments, as well as other countries that are working to ensure that the UK is protected online.

In turn, US hackers commanded 200,000 computer servers worldwide to attack the White House website (Government Battles Cyber Crime).

According to data from the Centre for Strategic and International Studies (CSIS), in January and February 2019 there were 13 cyber security incidents marked as significant and threatening national interests:

- February 2019. State-sponsored hackers were caught in the early stages of gaining access to computer systems at the Australian Federal Parliament
- February 2019. European aerospace company Airbus reveals it was targeted by Chinese hackers who stole the personal and IT identification information of some of its European employees
- February 2019. Norwegian software firm Visma revealed that it had been targeted by hackers from the Chinese Ministry of State Security who were attempting to steal trade secrets from the firm's clients
- January 2019. Hackers associated with the Russian intelligence services were found to have targeted the Center for Strategic and International Studies
- January 2019. The U.S. Department of Justice announced an operation to disrupt a North Korean botnet that had been used to target companies in the media, aerospace, financial, and critical infrastructure sectors.
- January 2019. Former U.S. intelligence personnel were revealed to be working for the UAE to help the country hack into the phones of activists, diplomats, and foreign government officials
- January 2019. U.S. prosecutors unsealed two indictments against Huawei and its CFO Meng Wanzhou alleging crimes ranging from wire and bank fraud to obstruction of justice and conspiracy to steal trade secrets
- January 2019. Security researchers reveal that Iranian hackers have been targeting the telecom and travel industries since at least 2014 in an attempt to surveil and collect the personal information of individuals in the Middle East, U.S., Europe, and Australia

- January 2019. The U.S. Democratic National Committee revealed that it had been targeted by Russian hackers in the weeks after the 2018 midterm elections
- January 2019. South Korea's Ministry of National Defense announced that unknown hackers had compromised computer systems at the ministry's procurement office
- January 2019. The U.S. Securities and Exchange Commission charged a group of hackers from the U.S., Russia, and Ukraine with the 2016 breach of the SEC's online corporate filing portal exploited to execute trades based on non-public information
- January 2019. Iran was revealed to have engaged in a multi-year, global DNS hijacking campaign targeting telecommunications and internet infrastructure providers as well as government entities in the Middle East, Europe, and North America.
- January 2019. Hackers release the personal details, private communications, and financial information of hundreds of German politicians, with targets representing every political party except the far-right AfD.

One category of cybercrime refers to cybercrime against government. Cyber terrorism is one of the special crimes in this category. The growth of the Internet has shown that cyber space is used by individuals and groups to threaten international governments and threaten the citizens of a country. This crime manifests itself in terrorism, when certain "cracks" go to the government or military service website.

This category includes Parliament's attack on Delhi and Mumbai (2001). India has introduced its first Cyber Law using IT law. It has been amended and the 2008 version is still being implemented (Dalla, Geeta, 2013).

By contrast, when the European Convention proposed the Cybercrime Convention, no precise definition of cybercrime was given. Each country has its own way of defining cybercrime specific to its socio-cultural situations. Especially if cybercrime is highlighted against the state and its government.

The author notes how cyber-terrorism is a convergence of terrorism and cyberspace. It is generally understood that this means illegal attacks and threats of attacks on computers, networks and information stored therein when it is done to intimidate or coerce the government or its people to achieve political or social goals.

Furthermore, in order for an attack to be regarded as cyber-terrorism, it should cause violence against persons or property or at least cause sufficient harm to create fear. Examples include attacks that lead to death or bodily injury, explosions, airplane crashes, water pollution or serious economic losses. Serious attacks on critical infrastructures could be acts of cyber terrorism, depending on their impact (Gordon, Ford, 2002).

In Russia, due to this problem, an expanded Security Council meeting took place on October 26, 2017, at which President Putin mentioned the main directions for developing information security in the Russian Federation. The Russian President pointed to the increase in the intensity of cyber-attacks. According to him, the problem of IT systems invasion in the field of national defence and management, as well as funding becomes more and more topical. Attention was drawn to the need for security of information systems and communication networks of public authorities (Коновалов, Наумов, Колесникова, 2018).

As another example, where the criminal object was national interest, the loss of the territory of the Islamic State (IS) from 2016 to 2017. Group IS used the Internet to encourage and inspire people to commit terrorist acts. In many ways, the military defeat has made the Internet even more important IS; since then, IS has been trying to push terrorist attacks in the West through the Internet (Europol Report).

Another category of cybercrime is cyber warfare. Cybercrime can be defined as an interference with national infrastructure and communications systems, including financial markets, through hacking and a range of tools for malicious code creation (Cavelty, 2007) (Conway, 2002).

Cyber warfare differs from conventional war in several important aspects. Understanding the boundaries between war and peace, the civilian and military spheres, state and non-state actors, foreign and local cybercrime are decisively changing the battlefield. Cyber warfare can occur on servers in any country or at the company's headquarters where important data is stored.

Cyber war greatly extends the number of parties involved, creating new geography of conflicts, which does not satisfy traditional interpretations of the state and borders. A significant difference between cyber war and conventional war is when such attacks occur, for example, from thousands of miles of hackers accessing computer networks to cause physical, financial, or psychological damage, rather than a military unit in the immediate vicinity of armed equipment or weapons (Warf, 2015).

Conclusions

In terms of cybercrime, it is concluded that the government and country is as vulnerable as any individual. However, if the government has been chosen as the criminality, the whole society is also at risk.

There is no limit to cybercrime, so cyber-war and cyber-terrorism are essential and important things that every country that thinks about the peace and prosperity of its citizens must think about.

Cybercrime and cyber-terrorism are crimes of the 21st century, which need to be deeply explored and promoted, including special measures in any country's defence strategy.

References

Cavelty, M. (2007). Cyber-terror – looming threat or phantom menace? The framing of the US cyber-threat debate. In Journal of Information Technology & Politics, 4 (1), pp. 19–36.

Conway, M. (2002). Reality bytes: cyberterrorism and terrorist 'use' of the internet. In First Monday, 7 (11).

Criminal Law of the Republic of Latvia. Access: https://likumi.lv/doc.php?id=88966 (Retrieved: 10.05.2019.).

Cyber Crime Strategy (UK). Access: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228826/7842.pdf

Dalla H.S., Geeta (2013). Cyber Crime – A Threat to Persons, Property, Government and Societies. In International Journal of Advanced Research in Computer Science and Software Engineering. Volume 3, Issue 5, May 2013. Pp 1000.

Europol Report. INTERNET ORGANISED CRIME THREAT ASSESSMENT 2018. Access: https://www.europol.europa.eu/Internet-organised-crime-threat-assessment-2018

Gordon, S., Ford, R. (2002). Cyberterrorism? In Computers & Security. Volume 21, Issue 7, November 2002, pp. 636–647.

Government Battles Cyber Crime. ABC News. Access: https://abcnews.go.com/WNT/story?id=130807&page=1&page=1

Significant Cyber Incidents Since 2006. (2019). Center for Strategic and International Studies (CSIS), Washington, D.C. Access: https://www.csis.org/programs/cybersecurity-and-governance/technology-policy-program/other-projects-cybersecurity Retrieved: 04.04.2019.

Warf, B. (2015). Cyberwar: A new frontier for political geography. In Political Geography, Volume 46, May 2015, pp. 89–90.

Коновалов А.А., Наумов С.А., Колесникова Д.Д. (2018). Киберпреступность как глобальная угроза экономичсекой безопасности: виды, особенности, проблемы противодействия. Access: http://rostjournal.ru/?p=2740

INTERCOUNTRY ADOPTION TRENDS IN LATVIA AND IN GLOBAL LEGAL SYSTEM

Ārija Vitte
University Turība, Graudu street 68, Riga, Latvia, LV-1058, turiba@turiba.lv

Abstract

Intercountry adoption trends in Latvia and in global legal system

Key words: *civil law, family law, intercountry adoption*

The aim of the report is to state whether the intercountry adoption trends and legal regulation of adoption, mainly in the aspect of international law, are sufficient to ensure implementation of the main task – consideration of the interests of children and protection in the process of adoption.

The author concludes that the regulation of international adoption today is formed successfully, pointing out additionally separate risk factors, which can directly influence formation of uniform understanding in interpretation of international conventions and with this, also their application.

Kopsavilkums

Starpvalstu adopcijas attīstības tendences Latvijā un globālā tiesību sistēmā

Atslēgvārdi: *civiltiesības, ģimenes tiesības, starpvalstu adopcija*

Darba mērķis ir noskaidrot, vai starpvalstu adopcijas attīstības tendences un adopcijas tiesiskais regulējums starptautisko tiesību tvērumā ir pietiekams, lai nodrošinātu adopcijas galveno mērķi – bērna vislabāko interešu ievērošanu un aizsardzību adopcijas procesā.

Autore secina, ka starptautiskās adopcijas tiesiskais regulējums šobrīd ir veiksmīgi izveidots, taču papildus pastāv atsevišķi riska faktori, kuri var ietekmēt vienotas izpratnes veidošanos starptautisko konvenciju interpretācijā un arī to piemērošanā.

Introduction

In the countries with well established law, the adopted children have an opportunity to get into a family, where the child can feel like a full-value family member and also successfully integrate into the society. It concerns not only children from families, but also orphans and children without parents' care, if we are thinking about protection of children's rights and well-being. The trends of adoption, within Latvia as well as abroad, maintain without changes, nevertheless, adoption to foreign countries mainly dominates (Adoption Trends in Latvia, statistics).

Every country should take prior measures that should ensure a possibility for a child to stay in a family from his/her country of origin, however, it has been recognised on the international level that also by intercountry adoption it is possible to ensure pre-emptive rights for a child, for whom it is not possible to find an appropriate family in the country of his/her origin (Hague Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Issues, parts 2 and 3). In separate countries the institute of adoption has been formed in different systems of legal acts. In society today the problems of adoption are investigated and the legal acts are improved in order to solve the issues related to adoption also on the international level. For this purpose the question becomes topical – can the regulations of collision norms regulating the process of intercountry adoption ensure the children's rights and interests, as the sources of international law underline the aim of intercountry adoption that it should be in compliance with the best interests of children considering the basic rights that are recognised in the international law.

The author has used the analytical and descriptive methods of the research and revealed the problematic issues in the process of adoption, applying the sources of international law. Also the grammatical research method was used, which was applied in evaluation of the regulations of collision norms regulating the process of adoption. In the result the investigated problem issues were systematically summarised and the conclusions made.

Characterisation of legal aspects of intercountry adoption

The notion of the institute of adoption is known all over the world, nevertheless, understanding about it can differ depending on the legal system of the country. So, for instance, in the countries of the English – American legal system (Great Britain, USA) adoption was not understood for a long time in the same way as it was in the countries of the continental legal system (e.g., countries with the Roman – German legal system, like Germany, France, or countries with the legal system of the Northern countries, like Finland, Sweden, Norway).

In the continental legal systems the institute of adoption has developed already from the Roman law, but in the countries with the English – American legal systems the institute of adoption was originally understood as legitimisation of a child, as well as acknowledgement of paternity and adoption as such. Today the understanding of adoption in the countries of the English – American legal system has approached that of the countries of the continental legal system. For instance, in the USA adoption is understood as an official process, in the result of which relations among children and parents are created for persons, who are not in such relations naturally. It is interesting to note that in the Islamic legal system adoption is not recognised as complete putting of a child in a new family, but as ensuring caring in another family, or "kafala" (Cretney, Masson, Bailey-Harris, 2003792). The mentioned kind of child care, which is determined in the Islamic law, has been emphasized also in the Convention of November 20, 1989 on the Rights of the Child (Convention on the Rights of the Child, 1989, third part of the Article 20).

On the international level the basic issues of adoption are solved in the European Convention of April 24, 1967 on Adoption of Children. In turn, the system of adoption has been established in the Convention of November 20, 1989 on the Rights of the Child securing the guarantees of ensuring the interests of children in case of intercountry adoption. Still, the legal regulation of these issues can be found in the Hague Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Issues. The Hague Convention includes only unified collision forms. For all that, not all of the countries have ratified the mentioned Conventions; therefore, also the bilateral or multilateral agreements among the countries, which stipulate the collision norms for solving issues in the sphere of family law, play an important role. Similarly in such intercountry agreements on legal assistance the issues on recognition and implementation of

the ruling taken by foreign courts are stipulated, including recognition of adoption in foreign countries (Канашевский, 2006, 524).

Usually in cases of intercountry adoption the personal law of the adopter or of the adoptee is applied, or both can be used cumulatively. But by complex solving the issues of adoption, it is necessary to consider the civil law of the adoptee (Lexpatriae). Subsidiary the law of the court country is applied (Lexfori). The process of adoption is regulated by the law of the country, where it takes place. Due to this the intercountry adoption is regulated by series of collision norms.

Adaption and its annulment regulations have to be determined in compliance with the personal law of every adopter. In turn, the legal sequences are determined in compliance with the law in the country, which is the permanent residence of the adopter (Lexdomicilii). The legal sequences of adoption by married persons are determined in compliance with the law of the country, where the marriage had been registered. In cases, when one spouse (one of the adopters) dies, application of the adoption legal sequences is done in compliance with the law in the country, which is the permanent residence of the other adopter (Гельман-Павлов, 2011, 382).

International sources for regulation of the process of adoption

Adoption is one of the institutes of family law, the legal regulation for implementation of which is essential in the context of the international law. The above mentioned is based on different understanding of the notion adoption and its preconditions in separate countries, as well as on applying the legal consequences of adoption, which are defined with certain differences in the material and legal procedure norms in separate countries. They can be definite criteria for the potential adopters, for instance, to be of the same nationality, an adopter not married cannot adopt a child of the opposite gender, a person already having children cannot adopt, or different other regulations relating to the age of the adopter, the difference in the age of the adopter and the child to be adopted (Scolesetal, 1984, 546).

The most expressed differences are in the legal consequences of adoption, for instance, in the hereditary rights. In the Russian federation and Lithuania the adopted children are equal to the blood relations, and they are not infringed upon the hereditary rights (Civil Code of the Russian Federation, 2001, first part of the Article 1147 and Civil Code of the Republic of Lithuania, 2000, first, third and fourth part of the Article 5.11). In turn, in Latvia until the amendments in the Civil Code in 2014 the regulation was in force, which did not provide the hereditary rights for the adopted from the adopter direct and collateral line relatives (Civil Code, 1937, reduction of the Article 401 before amendments in 2014). In order to eliminate the situations that adoption is not recognised abroad, based on the lack of fulfilment of formal preconditions, which are required by the legal norms of the definite country, international documents are developed and ratified with the aim to reach certain consequence in solution of adoption issues. As one of such sources of laws the

Hague Convention of November 15, 1965 on Jurisdiction, Applicable Law and Recognition of Degrees Relating to Adoptions can be mentioned. This Convention is not applied, if the adopters and the adoptee live in the same place of residence and in the same country, or they have the same citizenship, and if the adopters have neither the same citizenship, nor residence. The country, which obtains jurisdiction in accordance with the Article 3 of the Convention, in the given case cannot guarantee adoption. In compliance with this Convention the country, in which the adopter or the adopters permanently live, or one or both adopters have the citizenship of this country, obtains jurisdiction. The Convention does not stipulate the personal law of the child (Bojārs, 1998, 218–219). Nevertheless, the above mentioned Convention has not gained great responsiveness, as only a small number of countries have joined it (Conventionof 15 November 1965 onJurisdiction, ApplicableLawandRecognitionofDecreesRelating to Adoptions).

The European Convention of April 24, 1967 on Children Adoption can be used most successfully for approximation of the laws. Still, in relation to the intercountry adoption cooperation system the Hague Convention of May 29, 1993 on protection of children and cooperation in foreign adoption issues is of essential importance. The crucial element of intercountry cooperation can be seen in the aims of this Convention – to form the system of cooperation among the contracting countries and ensure that the adoption in compliance with this Convention is recognized in the contracting countries (Hague Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Issues, part b and c of the Article 1). The mentioned Convention determines definite requirements for intercountry adoption. The Article 4 of the Convention stipulates that adoption can take place, if the competent authorities in the country of the child's origin have acknowledged that the child can be adopted, and if the possibilities for adoption in the country of origin are sufficiently evaluated, as well as if the competent authority has ensured the procedure for receiving the necessary consent for adoption that it is not in relation to any kind of payment or compensation. It is additionally stressed that intercountry adoption should be in compliance with the child's interests. The Convention also determines the procedure of intercountry adoption. The potential foreign adopters can participate in the process of intercountry adoption through mediation of the central authority of country, which is their permanent place of residence (Hague Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Issues, Chapter IV). The Convention stipulates that adoption can be performed also after moving the child to the host country, but it is not considered to be as a regulation complying with the interests of the child. Therefore, for instance, in Latvia this issue is based on the Article 28 of the Convention, which stipulates freedom of countries in solution of separate issues. The Convention also solves situations that can occur, if in a member country there

are different legal systems, or it consists of separate territorial units with an independent normative base, as, for instance, in the USA.

Conclusions

1. In the context of intercountry adoption, its main requirement is reflected in the Hague Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Issues, determining that intercountry adoption should be performed in the best interests of the child.
2. The Convention specifies essential requirements for intercountry adoption, as well as the procedure of intercountry adoption.
3. The norms of the Convention in the sphere of the functions of the institutions of the central authorities are also essential in order to form the cooperation system by the help of the central institutions of the member countries for preventive elimination of kidnapping, trade or illegal transmigration of children that can be a risk factor in definite cases.
4. Recognition of adoption in one of the member states by other member states in compliance with definite requirements, criteria and preconditions has been mostly highlighted in the Convention.
5. The Convention creates a legal base for intercountry adoption and recognition of adoption in foreign countries, nevertheless, some aspects still are not revealed in it, for instance, the principles of supervision after adoption.
6. There are still risk factors existing in relation to participation of individual mediators in the process of adoption with the permissible fees for professional services and their rationality.

References

Adopcijas tendences Latvijā uz 2017. gada 1. august. Pieejams: http://www.lm.gov.lv/text/1052 [skatīts 27.02.2018].

Bojārs J. 1998. *Starptautiskās privāttiesības*. Rīga: Zvaigzne ABC, 713. lpp.

Civillikums. Pirmā daļa. Ģimenes tiesības, stājās spēkā 01.09.1993., publicēts *Ziņotājs*, Nr. 22/23, 10.06.1993. Pēdējie grozījumi 17.01.2013.

Civillikums. Otrā daļa. Mantojuma tiesības, stājās spēkā 01.09.1992., publicēts *Ziņotājs*, 30.07.1992, Nr. 29. Pēdējie grozījumi 29.11.2012.

Civil Code ofthe Republic of Lithuania. The Code ofthe Republic of Lithuania 17.08.2000., Nr. VIII-1864. Book Five. Law of Sucession. Valstybes zinios, 29.09.2000., Nr. 82. Pieejams: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=245495 [skatīts 20.02.2018.].

Conventionof 15 November 1965 on Jurisdiction, Applicable Lawand Recognitionof Decrees Relating to Adoptions Members ofthe Organisation. http://www.hcch.net/index_en.php?act= conventions.status&cid=75 [skatīts 20.02.2018].

Cretney S.M., Masson J.M., Bailey-Harris R. 2003. *Principlesof Family Law*. London: Sweet & Maxwell, 901 p.

Eiropas Padomes Konvencija par bērnu adopciju. Sastādīta Strasbūrā 1967. gada 24. aprīlī. Pieņemta Latvijas Republikā ar likumu "Par Eiropas Konvenciju par bērna adopciju" 16.03.2000. Publicēta: Latvijas Vēstnesis,Nr. 115/116, 30.03.2000. Pēdējie grozījumi 12.06.2009.

Hāgas konvencija par bērnu aizsardzību un sadarbību starpvalstu adopcijas jautājumos. Sastādīta 1993. gada 29. maijā Hāgas Starptautisko privāttiesību konferencē. Pieņemta Latvijas Republikā ar likumu "Par Hāgas konvenciju par bērnu aizsardzību un sadarbību starpvalstu adopcijas jautājumos" 25.10.2001. Publicēta: Latvijas Vēstnesis Nr. 162, 09.11.2001. Pēdējie grozījumi 12.06.2009.

Konvencija par bērna tiesībām. Pieņemta Apvienoto Nāciju Organizācijas Ģenerālajā asamblejā 1989. gada 20. novembrī. Ratificēta Latvijā ar AP lēmumu "Par pievienošanos starptautiskajam cilvēktiesību aktam – "Konvencijai par bērna tiesībām"" 04.09.1991. Stājās spēkā 14.05.1992.

Scoles, Eugene F., Hay, P. 1984. *Conflicts of Laws*. St. Paul, Minn: West Publishing Co, 1233 p.

Willis L. M. Reese, Rosenberg M., Hay P. 1990. *Cases and materialsonconflictoflaws* (9th ed.). NewYork: Westbury, Foundation Press, 1022 p.

Гельман-Павлова И.В. 2011. *Международное частноеправо: учебник для бакалавров и специалистов*. Москва: "Издательство Юрайт", 511 с.

Гражданский кодекс Российской Федерации Часть третья от 26 ноября 2001 г. N 146-ФЗ. Принят Государственной Думой 1 ноября 2001 г. Одобрен Советом Федерации 14 ноября 2001 г. Опубликован в "Парламентской газете" от 28 ноября 2001 г. N 224. http://base.garant.ru/10164072/63/

Канашевский В.А. 2006. *Международное частное право*. Москва: Издательство "Международные отношения", 698 с.

3-PARTY REPO. LATVIAN EXPERIENCE

Tatjana Jukna
Riga Stradins University, Dzirciema street 16, Riga, LV-1007, Tatjana.jukna@gmail.com

Abstract

3-party repo. Latvian experience

***Key words: r**epo, 3-party repo, repurchase agreements, financial instruments, securities*

Technology development, high-level computerization in all areas are changing the pattern of the modern life. These changes are affecting all areas of business including the transaction persons entering. Evolution of the classical repo into new more complicated structures such as 3-party repo or repo with central counterparty could be explained by beforementioned. Despite the fact that the official "name" of the transaction is 3-party Repo, it is still 2 party: transaction between two counterparties – obliged to deliver securities and money under repo transaction, but third party is an agent chosen by counterparties and ensuring settlement under repo transaction. Thus, the transaction became safer and risk to lose property in case of the default of the counterparty is less. The role of the 3-rd party in 3-party Repo may be compared with the role of the bank ensuring payments under sale purchase transaction of the real estate, when purchaser provided to the bank money necessary for the transaction and seller may receive this money only in exchange of the title transfer documentation. Similarly, is in repo: purchaser receives securities only if he transferred money into possession of the 3-rd party, seller receives money if he transferred securities into possession of the 3-rd party. It means that settlement occurs if both parties performed their obligations. Latvian market practice are not familiar with 3-party Repo, and as shows our research only one-third of questioned market experts have heard and may explain the nature of 3-party Repo.

Kopsavilkums

Trīspusējs repo. Latvijas pieredze

***Atslēgvārdi: r**epo, trīspusējs repo, atpirkšanas darījumi, finanšu instrumenti, vērtspapīri*

Tehnoloģiju attīstība un augsts kompjuterizācijas līmenis visās dzīves jomās ir stipri mainījis mūsdienu dzīvi. Šīs izmaiņas ietekmē arī biznesu, tajā skaitā, darījumus, ko savā starpā noslēdz cilvēki. Ar iepriekšminēto var izskaidrot klasiskā repo darījuma evolūciju uz sarežģītākām struktūrām, tādām kā repo ar centrālo kontrahentu vai trīspusējs repo. Neskatoties uz to, ka oficiālais darījuma nosaukums ir "trīspusējs repo", darījumā joprojām ir tikai 2 puses: darījums ir starp divām pusēm, kurām pastāv pienākums piegādāt vērtspapīrus un naudu sakarā ar repo darījumu, savukārt trešā puse ir aģents, kuru izvēlas darījuma dalībnieki. Šī puse nodrošina norēķinus darījumā. Kā rezultātā, darījums kļūst drošāks un risks pazaudēt savu īpašumu otras puses saistību neizpildes gadījumā kļūst zemāks. Trešās puses loma Trīspusējā repo var būt salīdzināma ar bankas lomu, kas nodrošina norēķinus nekustamā īpašuma pirkšanas – pārdošanas darījumā, t.i. kad pircējs piegādājis bankai naudu apjomā, kāds ir nepieciešams darījuma īstenošanai, savukārt pārdevējs var saņemt šo naudu tikai apmaiņā pret īpašumtiesību nodošanas fakta apstiprinošiem dokumentiem. Ļoti līdzīgi ir arī repo darījumā: pircējs saņem vērtspapīrus tikai, ja viņš pārskaita naudu trešai pusei, savukārt pārdevējs saņem naudu, tikai tad, ja viņš pārskaitījis vērtspapīrus trešai pusei. Tas nozīme, ka norēķini notiks, ja abas puses izpildīs savas saistības. Latvijas tirgus praksē Trīspusējs repo nav pazīstams, un kā liecina mūsu pētījums, tikai viena trešdaļa no tirgus ekspertiem ir dzirdējuši un var paskaidrot trīspusēja repo darījuma būtību.

Introduction

Repo transaction was never researched from the standpoint of the Latvian law. There are almost no publications in respect of the specific capital market's transactions such as Repo, options, futures, swaps in Latvia. The legal understanding of the margin forex transactions is weak. Repo transaction have been chosen as the first topic for the cycle of the studies in respect of specific capital market transaction.

Repo transaction is "a sale of securities coupled with an agreement to repurchase the securities at a specified price on a later date in future" (World Bank: 2010, 5) In other words, Repo transaction is the transaction between to counterparties, who sale/buy and repurchase/sale back simultaneously the same type of financial instruments. The sale/buy occurs on a certain date in the near future, the repurchase/sale back in the certain date in the far future. So, the ownership rights on

securities are limited to the terms agreed between counterparties – term of the transaction. There is a major distinction between repo and sale-purchase: counterparties have contingent mutual liabilities within repo's term only. Among them could be mentioned obligation of the owner to pass the income generated by financial instrument to the seller, obligation of the seller to repurchase financial instrument immediately, when market conditions is unfavourable to the financial instruments, the right to sell financial instrument on occurrence of stop loss event in respect of the financial instrument, the rights to use financial instruments, or limitation to do so and etc.

Repo transaction has variety of the legal structures as well as variety of interpretations. The main question is: What from standpoint of the law is Repo: sale-purchase or collateralised loan? This article is not about interpretation of the Repo, but about Repo structures. It is not possible to discuss about legal structures of Repo without saying at least few words about collateral.

When the financial instruments (securities) have been issued in the paper form (bearer securities), it was difficult to recognize whether securities have been sold or whether they have been pledged to the repo counterparty, whereas in both cases physical passing of securities must occur. (Нерсесов: 1889, 137–144) Due that, scientists raised the problem of ownership on securities received by the second party under repo transaction (for example Fedorov, Nefedev, Citovich, Shershnevich, Nersesov, Golmsten) more than one century ago. Now, when financial instrument (in the narrow meaning) is only electronic record and ownership may be evidenced by means of account statement from relevant account, the owner of the account is recognized as the owner of the financial instrument. Thus, the passing of financial instrument could be performed only by means of transfer of electronic record from account of the seller to the account of the buyer, and in result of such transfer the changes of the ownership occurs, and title is transferred. In case of pledge, financial instruments are "blocked" in account of the pledger or transferred to the special collateral (pledge) account, opened in the name of pledger. The would be no legal problem, if collateral may not be passed to the counterparty on the title transfer basis, and Repo would be legally recognized as true sale-purchase transactions. But collateral may be passed on title transfer basis in some countries, for example in the United Kingdom (McKendrick: 2016, 674–676). In common and historically, the Latvia is not characterised by approach of title transfer on collateral consisting of financial instruments (securities).

Our research discovered only case of the title transfer of the financial instruments in the framework of brokerage trading. Interview with relevant expert allowed to conclude that title transfer emulation into Latvian legal practise used in the capital markets are influenced by English approach as well as by adopting EU law into Latvian national system, by implementing EU Financial Collateral Directive (Directive 2002/47/EC:2002). Professional experience of the author evidencing that long time before implementation of Financial Collateral directive, Repo on the

basket of securities being under asset management was used for the speculative purposes. It should be noted that asset manager performed asset management of the basket in favour of seller after financial instruments have been transferred to the counterparty – a bank (buyer). In the legal interpretation, the owner of the basket (buyer in Repo) recognized the rights of asset manager appointed by seller (previous owner) to manage financial instruments (to dispose and to purchase). Thus, previous owner with mediation of asset manager was be able to affect the composition of property of new owner within term of the repo transaction. It also was the legal structure of the Repo used in Latvian market. This case is briefly described by prof. Torgans in the Volume II of Obligation law too. (Torgāns: 2006, 37–38)

3-party Repo also is one of the Repo possible legal structures. This legal structure is developing rapidly during last 20 years. (World Bank: 2010, 23–43), (Горда: 2017, 25–33) Such development could be explained by huge changes in the forms of financial instruments (exists in the form of the electronic records) and manner of their transfer. Such changes are caused by the computerization, and development of Internet speed.

Aim and tasks: The aim of this article is to research peculiarities of 3-party Repo from the standpoint of Latvian experience. To achieve the aim the answers on the following questions shall be done: are 3-party Repo used in Latvia and whether 3-party Repo are known to the Latvia?

For the avoidance of any misunderstanding in respect of the topic of research, the analysis of the Latvian practise on the level: investment service provider – client, as counterparties of the Repo, will be done only. Relations on the level investment: investment service provider – investment service provider, are out of the scope of the research.

Methods: Mainly, the descriptive and analytical methods will be used to achieve the aims of the research related to the discovering of peculiarities of 3-party Repo. In turn to achieve the second aim the telephone interviews with capital market experts and legal professionals will be used.

Discussion

The nature of the Repo as the transaction between two counterparties have been reviewed in the article's introduction. So, in respect of classic Repo, we can come to conclusion at least on following: (i) two parties participate in transaction, (ii) parties contracting directly (iii) transaction consists of two stages (initial sale/buy and closing repurchase/sale back) (iv) contingent liabilities exist within transaction term (v) at the initial stage seller must transfer financial instruments to the buyer and the buyer must transfer money to the seller (v) at the closing stage seller must transfer financial instruments to the buyer and the buyer must transfer money to the seller. Parties are under counterparty's default risk during the whole period of the repo: seller transfers financial instruments and doesn't receive money or buyer transfers financial instruments and not receives money. It is essential and basic to avoid the risk of the Repo: to keep ownership over financial instruments till

the moment when payment is received or not to pay till the moment when financial instruments are received. Thus, only one possible solution to enter into Repo exists: one party shall bear the counterparty's default risk and execute obligation on delivery (payment) first.

To avoid the default risk third person is used. Both counterparties are choosing a trustful person who will service Repo. It means that a trustful person ensures the execution of settlements on the delivery versus payment basis: delivers financial instruments to the buyer when money received from him and transfers the money to the seller when financial instruments received from him. Euroclear: 2009, 30) Respectively, buyer and seller shall pass assets (financial instruments and money) to the third person, and it is a precondition of the settlement. If repo counterparty defaulted (not provided assets), third party returns to the non-defaulting counterparty received assets. So non-defaulting counterparty will not loss ownership on assets, if other party are in the default. (Copeland: 2012, 3) The role of third party is comparable with the role of the bank servicing (intermediating) real estate sale-purchase transaction by means of Transaction's account (*Darījumu konts*).

Third party in 3-party Repo is not a counterparty under Repo transactions. The nature of obligation of third party differs from the nature of obligations of Repo counterparties, the same as differs obligation of seller and buyer under real estate sale-purchase transaction and bank, servicing Transaction account. Bank never is counterparty under sale-purchase transaction. Sale-purchase transaction is separate transaction between seller and buyer, in turn, the method and conditions of payments are settled in the special new three-party agreement, between seller, buyer and bank.

The same legal construction is used in 3-party Repo: Repo agreement and three-party agreement on methods of payments/settlements and other services related to the technical execution of repo. It means, that 3-party Repo is not any new modern form of the Repo. It is the scope of separate legal arrangements, but in any case, only two counterparties are contracting in Repo, third party is intermediating in settlements under separate 3-party legal arrangement. Thus, the title of the legal structure "3-party repo" or "Tri-party repo" could be misleading. It should be noted that author faced the 3-party Repo approximately in 2010, when clients asked financial institution ensure settlements and keep collateral. But no one, nor author, nor clients does not know that the legal structure necessary to the clients internationally is known as "3-party Repo".

In result of the scrutiny of the Latvian capital markets participants and their services, it was no find no-one mentioning of the 3-party Repo and or offering of any similar legal construction. Nasdaq Central Security Depository (Riga), also not offering 3-party repo (Nasdaq CSD).

Author presumed that like 3-party repo constructions used *ad -hoc* in financial institution. For that purpose, 10 capital market experts were interviewed (7 of the represented banks, 1 – investment brokerage company, 2 – specialized supervision authority). Only 30% of experts were familiar with

term "3-party repo" (1 bank, 1 investment brokerage company, 1 – specialized supervision authority). Only 2 participants quite exactly explained the legal construction of Repo (1-investment brokerage company, 1 specialized supervision authority). After explanation of the legal construction to all participants, all of them answered negatively on the question in respect of entering into 3-party Repo with the clients. Participants from specialized supervision authority also do not remember cases when 3-party Repo have been identified in frame of regulatory market participants' examinations. Interviews' results allow to conclude that Latvian market, in common, is not familiar with 3-party Repo and 3-party Repo not used on Latvian market. If the cases are, they are very rare, and are more exemptions than market practise. The title "3-party Repo" is misleading, because most of the experts are able to provide answers in respect of the 3-party Repo transaction only after explanation of 3-party Repo's nature.

Conclusions

As a result of the research following conclusions can be made:

1. Only two counterparties are entering into Repo transaction in 3-party Repo.
2. 3-party repo is scope of two legal arrangements: contract on Repo transaction between two Repo counterparties and contract on servicing Repo between two Repo counterparties and chosen by them trusted 3-rd person.
3. 3-party Repo is not the form of the Repo transaction, it is legal structure used for minimizing risk of default of Repo counterparties.
4. When 3-party Repo is not used at least one Repo counterparty accepting the risk of default of other counterparty in settlements.
5. Like 3-party Repo legal constructions are known to Latvian market and widely used in sale purchase transactions with real estate.
6. 3-party Repo legal construction is not new or modern, it is only modernized and computerized in its practical realisation.
7. Latvian market, in common, is not familiar with 3-party Repo and 3-party not used on Latvian market. If the cases are, they are very rare, and are more exemptions from market practice than market practise.

References

Copeland A., Duffies D., Martin. A., McLaughlin S. 2012. *Key mechanics of the U.S. Tri-party Repo Market*. p. 12.

Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements OJ L 168, 27.6.2002, p. 43–50. Online available from: http://data.europa.eu/eli/dir/2002/47/oj (accessed April 2019).

Euroclear. 2009. *Understanding repos and repo markets*. Triparty Collateral management team. Brussel, Euroclear, p. 70.

McKendrick. 2016. *Goode on Commercial Law*. London, LexisNexis UK and Penguin Books Ed. 5, p. 1388.
Nasdaq CSD Online available from: https://nasdaqcsd.com/lv/par-mums/noteikumi-un-likumi/(accessed April 2019).
Torgāns K. 2006. *Saistību Tiesības II. daļa. Macību grāmata*. Rīga, Tiesu Namu Aģentūra, 359. lpp.
World Bank. 2010. *Repo Markets: Draft Background Note*. s. l., Gemloc Advisory Services, p. 70.
Горда, А.С. *Зарубежная практика осуществления операций Репо*. 2017. Крымский федеральный университет имени В.И. Вернадского, Т. 3, С. 25–35.
Нерсесов Н.О. 1889. *О БумагахЪ на предЪявителя сЪ точки зрЪнIя гражданскаго права: Историко-догматическое изслъдованiе.* Москва, Университетская типография Императорскаго Московскаго Университета, С. 188.

A VICTIM OF TRAFFICKING IN HUMAN BEINGS: VICTIMOLOGICAL PROBLEMS

Aldona Kipāne
Rīga Stradiņš University, Dzirciema street 16, Riga, LV-1007, Latvia, aldonakipane@inbox.lv

Abstract

A victim of trafficking in human beings: victimological problems

Key words: *a victim of trafficking in human beings, victimological problems, identification of a victim*

Criminal actions have led to a significant impact on the sense of security of the individual and the society. This is particularly affected by cases of trafficking in human beings. The concept of trafficking in human beings has changed significantly over time, and the use of people sold has also changed. Today, in the open world, human trafficking is taking a new turn and is endangering the freedom, security and life of individuals. Traffickers, unlike slaveholders of ancient times, use new and modern methods and techniques to entice and subdue victims. In the article the author analyses the victimological aspects of human trafficking. This issue is particularly topical in Latvia. One of the important tasks of law enforcement authorities is the identification and detection of potential victims of trafficking, the provision of legal protection for victims and systematic and targeted preventive work with them. The fewer people will be able to become victims of human trafficking, the fewer such cases will be.

The author concludes that although in recent years there has been a progress in combating trafficking in human being in Latvia, the implementation of preventive measures and identification of a victim is not sufficient at the same time.

Kopsavilkums

Cilvēku tirdzniecības upuris: viktimoloģiskās problēmas

Atslēgvārdi: *cilvēku tirdzniecība, upuris, viktimoloģiskās problēmas, upura identificēšana*

Noziedzīgas rīcības rezultātā būtiski tiek ietekmēta indivīda un sabiedrības drošības izjūta. Īpaši to ietekmē cilvēku tirdzniecības gadījumi. Cilvēku tirdzniecība jēdzieniskais ietvars laika gaitā ir ievērojami mainījies, kļuvusi citāda arī pārdoto cilvēku izmantošanas veids. Šodien, atvērtās pasaules laikā cilvēku tirdzniecība uzņem jaunus apgriezienus, apdraudot personu brīvību, drošību un dzīvību. Cilvēku tirgotāji, atšķirībā no seno laiku vergturiem, izmanto jaunas un mūsdienīgas metodes, lai pievilinātu un pakļautu upurus. Rakstā autore analizē cilvēka tirdzniecības viktimoloģiskos aspektus. Šis jautājums Latvijā ir īpaši aktuāls. Viens no tiesībsargājošo iestāžu svarīgajiem uzdevumiem ir potenciālo cilvēku tirdzniecības upuru konstatēšana, upura tiesiskās aizsardzības nodrošināšana, kā arī sistēmisks un mērķtiecīgs preventīvs darbs ar šīm personām. Jo mazākam personu skaitam piemitīs spēja kļūt par cilvēku tirdzniecības upuriem, jo mazāk šādu gadījumu būs.

Autore secina, ka lai arī pēdējos gados Latvijā vērojams progress cilvēku tirdzniecības apkarošanas jomā, tomēr vienlaikus nepietiekama ir gan novēršanas pasākumu realizēšana, gan upura identificēšanas process.

Introduction

Trafficking in human beings involves the unfair use of vulnerable persons that are traded by criminals as goods for economic gain. It is noted that around 40 million people worldwide are victims of human trafficking – a type of modern slavery where violence, force, deceit or coercion are used by traders in order to control both adults and children (International Labour Organization. Global estimates of modern slavery: Forced labour and forced marriage 2017). Exploitation of a person is carried out in various ways: prostitution or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, bonded labour or organ removal. Human trafficking consists of three elements: **Action** (what action is taken); **Method** (how it is done); **Exploitation purpose** (what the purpose is). It is a serious crime, abuse of the victim, violation of fundamental rights and human dignity.

The aim of the study is to discover the victimological problems of victims of human trafficking in order to identify the directions of victimological prevention. Latvia is a country of origins for the trafficking of men, women and minors for sexual exploitation and forced labour.

Admittedly, the victimological research of victims of trafficking in human beings is as important as the research of tendencies and dynamics of this offence, the criminological research of enhancing factors and conditions, as well as of the personality of a criminal. Our fellow humans suffer from this offence, and that is why it is a traumatic, painful experience that has devastating consequences, for example, it deprives a person of the ability to cope with other stressful situations and daily activities. The author shares the view that "it is important to realize that everything starts with the awareness of trafficking in human beings about a crime with highly variable application methods. Public awareness, the ability to draw conclusions and active position are prerequisites for not continuing such crimes, for identifying them and providing for adequate penalties by law, and for perpetrators to get punished, but for victims – assistance" (Ivančiks 2008).

General and special legal cognitive techniques are used for study on phenomena and regularities of criminological reality: referential analysis of special and legal literature and sources, descriptive method studying in detail the subject-matter of the study, statistical data processing method. Conclusions drawn in various researches, opinions and knowledge of scientists and specialists are the basis for the study.

Victimological characteristic of trafficking in human beings

Victims of trafficking in human beings as highly protected persons have increased victimity, such as acquired physical, psychological or social qualities and features that can contribute to people becoming the victim of that offence. As a result, self-worth and self-esteem may decrease. Victims of the crime are experiencing the same crisis reactions as veterans of war, victims of natural disasters, people suffering from illness, or people who lost a family member in a tragic incident. The psychological impact of crime includes both short-term and long-term responses to victimisation. Among the consequences of an immediate crime are disbelief, confusion, numbness, shame, anger and denial, and shock. Victims may experience "combat or flight" syndrome during the commitment of the offence. Some victims experience temporary paralysis and then critically assess their reactions and feel guilty. Overall, these short-term reactions occur within twenty-four to forty-eight hours after the incident (Myrstol & Chermak 2005).

Victims of trafficking in human beings rarely seek help and report on the fact of trafficking in human beings. Its latency is created by language barriers, shame about the situation, the victim's fear of traffickers and/or law enforcement, as well as social stigma (qualities that indicate a man is different, worse or unacceptable) due to the exclusion. The victim has a special psychological attitude towards the person, while the perpetrator is aware of his/her authority in the eyes of the victim. Victims of trafficking in human beings do not have a single profile. Victims can be women, men, children, teenagers and adults, national, alien or immigrant. Their level of education is different. Georgian professor Georgij Glonty divides victims of trafficking in human beings,

including sexual enslaving, into three groups: 1) persons forced to work in the relevant field as a result of deceit or coercion; 2) persons who were deceived by the recruits without speaking the truth about the scope of occupation, but pointed out another; 3) persons who have been informed on the occupation but have entrusted control of the situation to another person (trafficker) who used the economic and legal dependency of the victim for his or her own benefit (Глонти 2004). The criminological characteristic of victims of trafficking in human beings includes the following elements:

- **Social-demographic features** (gender, age, social status, family status, position in service).
- **Level of education, professional skills**– especially vulnerable persons ate those who are fallen out of the labour market, who do not have vocational education or professional skills. They are often workers, shop assistants, agricultural workers and etc.
- **Criminal characteristic.** Persons who were not criminally held earlier or convicted, they may have illegally entered the country, those who committed illegal actions in the country. This also prevents the victims from turning to law enforcement authorities.
- **Criminal procedural characteristic.** A person who has suffered from trafficking in human beings is a specially protected victim (Kriminālprocesa likuma 96^1 pants). Additional procedural guarantees are provided for a group of specially protected victims.
- **Methods and techniques of victimisation**. Traffickers use a variety of socio-economic methods of influence and control, and means against victims. Cases of trafficking in human beings are becoming increasingly common when recruiters are people's acquaintances, friends or even family members who use the trust of people close to them (Cilvēku tirdzniecības tendences Latvijā). To control and keep the victim in captivity the traffickers isolate him/her from family, friends and community. They limit contacts with strangers and ensure that any contact is, by its nature, general, so that the victim does not develop any social links and does not receive support. The same, frequent movement of victims ensures that there will be no communication, friendly or otherwise closer relations. This contributes to the fact that a person is not identified as a victim of trafficking in human beings (Trafficking in persons report 2008). Probably, the most disobedient and cunning victims are almost always exposed to crueller psychological and physical violence, including repeated rapes, stricter control to subdue the victim (Raymond & Hughes 2001). According to the results of the study, victims of human trafficking see three possibilities of release: 1) Becoming a non-profit due to injury, a psychological disorder or a pregnancy; 2) helping a customer; 3) death (Denisova 2001). For example, in order to escape isolation, the victim used an epileptic fit (stopped taking medicine, and as the result it contributed to a fit).

Although trafficking in human beings covers all demographic indicators, there are certain cases or conditions of vulnerability that increase the risk of becoming a victim of trafficking in human beings. The experience of the centre MARTA indicates that the most common reasons for the risk of becoming a victim of human trafficking are experience of violence, lack of social skills, low level of education, material difficulties and unemployment, addictions and health problems, disorder and lack of personal documents, legal issues and obligations, restrictions on benefits and maintenance. Summarizing the data, it can be concluded that potential risk groups most frequently exposed to the risk of victimisation of trafficking in human beings are people with low level of education, unemployed, jobseekers, people with loan obligations, people with low and irregular income, women (mostly 18–40 years old), single mothers, prostitutes, people who have experienced violence before are more vulnerable to future abuse because the effects of traumatic events are usually long-term and difficult, young women under the age of 25, children and adolescents from social-risk families. There are also families who perceive a child as a thing or something disruptive. In these cases, parents deny the child mutual relations and parenting, do not allow him/her to integrate into the family. In such families the child may not even receive the necessary nutrition. Parents are also sending children to begging or getting the food in a criminal way (Viano 1976). There are also people from families with many children and low-income families, orphans, children of the streets, ethnical minorities.

Social factors such as poverty, dysfunctional family, problems of physical health or mental problems, addiction from alcohol, drugs or psychotropic substances may form the basis for the vulnerability of the victim (Krastiņš, Liholaja 2016). Arguments of recruits are based on basic human needs – the need for daily subsistence, security, affiliation, dignity. Therefore, the offer, which includes meeting the unfulfilled needs, becomes so important that risk assessment is no longer possible. The job or profit offer is important in the case of poverty. The opportunity to help your family is also important (Patvērums Drošā māja).

Traditionally, the purpose of human trafficking is to obtain the material benefits from an individual's exploitation. Purposes of exploitation are involvement of a person in prostitution or other forms of sexual exploitation, forcing to work or to provide a service, forcing to commit criminal offences, slavery or other similar forms (debt slavery, serfdom or other forms of forced transfer of a person to another person depending on, keeping in service, illegal removal of organs and human tissues (Data collection on trafficking in human beings in the EU. Final report – 2018). Fake marriages are also one of the types of exploitation.

The detecting of cases of trafficking in human beings and identification of its victims is one of the topical problems. This aspect is also marked in the report of US State Department "On combating human trafficking" from 2018. It is pointed out in the report that employees from

different services lack knowledge of the characteristics of trafficking in human beings, which makes it difficult to identify such cases, particularly between women and minors in the prostitution industry. In addition, experts expressed concern about sexual exploitation cases among those legally engaged in prostitution, and pointed out that representatives of law enforcement authorities are aimed at identifying violations of prostitution rules or other laws and regulations rather than identifying potential cases of trafficking in human beings (2018. gada ASV Valsts Departamenta ziņojums "Par cilvēku tirdzniecības novēršanu"). Thus, these are victimological directions to be promoted and developed by law enforcement authorities creating a new qualitative practice.

Action of law enforcement authorities gaining the information on human trafficking during investigation of other criminal offence is one of the ways of identification of the victims of trafficking in human beings. Human trafficking victims are also sometimes identified through neighbours, customers, co-workers, or other community members. Victims have also been identified because they sought social, medical, or employment dispute services and were subsequently identified as human trafficking victims (Logan 2007). For example, *an employee of municipal social service reported that D. May be a human trafficking victim to the specialists of the centre MARTA* (Gada pārskats. Centrs MARTA 2018).

The general indicators of identifying a victim of trafficking are different: The victim has no personality identifying or travel document; the victim has been taught to speak to officials of law enforcement authorities and immigration; the victim is in a situation of forced labour or sexual trafficking; the victim's remuneration guarantees the payment of the service; the victim is denied free movement; the victim or family are threatened to cause damage in the case of escape; the victim is threatened with deportation or arrest; the victim is restricted or even denied access to food, water, sleep or medical care; the victim is prohibited from contacting family and friends; the victim is not allowed to meet or visit religious organisations (Logan 2007).

At the same time, it should be taken into consideration that there several factors and circumstances that hinder the detection of cases of human trafficking and the identification of the victim. They are related to:

- the actions of the subject of the offence – the active counteraction of the criminal environment. It is mainly organised and controlled by a group (organised group) with the aim of obtaining funds. There are several persons involved in these activities, each of whom has his/her own responsibilities and tasks; a number of victims involved is large, and these offences are of a cross-border nature.
- the personality of the victim: language or cultural barriers, lack of awareness or education of the victim, isolation of the victim, greater fears and security violations, limited reporting of the offence;

- public attitudes and awareness: prejudices of society towards victims; relatively higher needs of the victims; insufficient resources and support services.

The second aspect of the problem is that the victims of human trafficking rarely position themselves as victims of a criminal offence. There are indicators or *"red flags"* that may indicate a potential victim of trafficking in human beings. Victims can be identified by the situation, by life story, by demeanour (Logan, Walker & Hunt 2009). Victims of these categories need multidisciplinary assistance to deal with the effects of trauma and to ensure the needs of the victim. The global nature of trafficking in human beings shows that providing assistance to victims of trafficking is specific and problematic due to a number of circumstances. The consequences of human trafficking cover a wide range – most victims of human trafficking are suffering physical pain, many remain disabled, almost all victims suffer psychological consequences. Working with victims of trafficking in human beings requires a dignified and sensitive attitude. Therefore, in order to prevent repeated victimisation or revictimisation – additional damage and harm caused by society, state employees, law enforcement officers faced by the victim due to their harmful behaviour (utterances or attitudes) – acknowledgements of the professor of Tilburg University Jan J.M. van Dijk can be quoted: a law enforcement officer (especially a policeman) should be taught that their treatment of victims is as important as the attitude of the doctors to the patient (Van Dijk 1999).

There are two directions of victimological preventive aspects of human trafficking:

- general or common social: it includes a broad range of economic, social, cultural, parenting and legal measures that actively target not only victimisation of particular persons, but also the formation of criminal tendencies in society.
- special (criminological) – a set of measures taken by the State, law enforcement authorities and public organisations with persons who have the capacity of becoming a victim under certain circumstances. This work should focus on neutralising or changing the victimological characteristics of these persons with a view to reducing individual victimisation (Zīle 2002). It should be taken into account that in the process of personal socialisation the effects are created by micro environment and macro environment, where both positive and negative factors are present. Therefore, the creation of an appropriate social environment is becoming a determinant in the formation process of a fellow citizen (Palčejs, Zīle 2011).

The prevention of human trafficking refers to a series of strategies implemented by enterprises, the community, the government, individuals and non-governmental agencies/organisations to have an impact on a variety of environmental, cultural, economic and social factors affecting the risks of crime and victimisation (Winterdyk 2017). People who have become victims of trafficking often lack the knowledge and skills to identify and assess risk levels,

to critically assess the information given by the traffickers, and to anticipate and prevent harmful effects from occurring.

Conclusion

1. The author indicates that a positive personality guideline is the ability to critically and appropriately assess the situation and to choose the right pattern of behaviour. Therefore, the prevention of trafficking in human beings must be understood as a system of multi-level legal tools of influence.
2. Prevention measures should address the broad areas of public life: social security, employment, education, leisure activities, etc.
3. Preventing trafficking in human beings can only be effective in a comprehensive and complex set of measures, transforming the social environment, transforming the personality of a criminal, neutralising criminal manifestation, and acting on the personality of the victim.
4. An important task of prevention is to inform different layers of society about not getting into the traps of recruiters which are so cunning and sometimes very difficult to recognize.

References

Cilvēku tirdzniecības tendences Latvijā. Accessible: www.cilvektirdznieciba.lv [visited 12.05.2019.].

Data collection on trafficking in human beings in the EU. Final report – 2018. Lancaster University.

Denisova T. 2001. *The transnational political criminal nexus of trafficking in women from Ukraine*. Trends Organized Crime.

International Labour Organization. Global estimates of modern slavery: Forced labour and forced marriage. 2017. Accessible; http://www.ilo.org/wcmsp5/groups/public/--dgreports/---dcomm/documents/publication/wcms_575479.pdf [visited 13.05.2019.]

Gada pārskats. Centrs MARTA. Rīga, 2018. Accessible: http://www.marta.lv/par-martu/gada-parskati [visited 13.05.2019.].

Ivančiks, J. Cilvēku tirdzniecības apkarošanas aktualitātes Latvijā // Administratīvā un Krimināla Justīcija 3/2008 (44), 36–46. lpp.

Krimināprocesa likums. LR likums. Latvijas Vēstnesis Nr. 74 (3232), 11.05.2005.

Krastiņš U., Liholaja V. 2016. Krimināllikuma komentāri. Otrā daļa (IX–XVII nodaļa). Rīga: Tiesu namu aģentūra.

Logan T. K., Walker R. and Hunt G. 2009. Understanding Human Trafficking in the United States. *Trauma, Violence & Abuse*, 10 (1), 3–20.

Logan, T. K. 2007. *Human trafficking in Kentucky*. Accessible: http://www.cdar.uky.edu/CoerciveControl/docs/Human%20Trafficking%20in%20Kentucky.pdf

Myrstol B. A. and Chermak S. M. Victimology. 2005. / in Criminology Leonard Glick, Boston: Pearson/Allyn and Bacon.

Palčejs P., Zīle J. 2011. Cilvēku tirdzniecība kā viens no transnacionālās noziedzības veidiem. *Sabiedrība un kultūra. XII rakstu krājums.* Liepāja,

Patvērums Drošā māja. Speciālistu padomi. Accessible: http://www.patverums-dm.lv/lv/specialistu-padomi [visited 11.05.2019.].

Raymond J.G., Hughes D.M. 2001. *Sex trafficking of women in the United States: International and domestic trends*. Washington, DC: Coalition Against Trafficking in Women.

Trafficking in Persons Reports 2009. U.S. Department of State 2009. Accessible: https://2009-2017.state.gov/j/tip/rls/tiprpt/2009/index.htm

van Dijk, J. J. M. *Introducting victimology*. 1999. Accessible: https://www.researchgate.net/profile/Jan_Dijk5/publication/241763870_Introducing_victimology/links/5575c5d108aeb6d8c01ae471/Introducing-victimology.pdf [visited 10.05.2019.].
Viano E. 1976. *Victims and Society*. Washington, DC: Visage.
Winterdyk, J. A. 2017. *Crime Prevention: International Perspectives, Issues, and Trends*. Taylor & Francis Group, LLC.
2018. gada ASV Valsts Departamenta ziņojums "Par cilvēku tirdzniecības novēršanu".
Zīle J. 2012. Viktimoloģiskā prevencija – viens no palīdzības veidiem cilvēku tirdzniecībā cietušajām personām Latvijā. *Administratīvā un krimināla Justīcija*, Nr. 2 (59), 57–64. lpp.
Глонти Г. 2004. *Торговля людьми с целью сексуальной эксплуатации: реалии и перспективы (криминологический анализ проституции, порнобизнеса и трефикинга).* Тбилиси.

MINORS CRIMINAL TENDENCIES IN LATVIA

Ilga Trubiņa
Daugavpils University, Parādes Street 1, Daugavpils, Latvia, LV-5401, ilga.trubina@inbox.lv

Abstract

Minors criminal tendencies in Latvia

Key words: *crime, juvenile delinquency, number of juvenile delinquencies*

There are crimes of minors in every single country, Latvia is not an exception, but there are different trends in juvenile delinquency in each country. This article analyses and reflects trends in juvenile delinquency in Latvia between 2016 and 2018, since the crime rate of minors in the country is mainly an indicator of the well-being of society. One of the criminal craftsmen of a minor is the number of criminal offences recorded during that period. Although there is a tendency to decrease in the total number of criminal offences recorded, there is an increase in the number of offences registered by minors. As well as the increasing number of juvenile delinquency, the number of minors who committed criminal offences is decreasing, despite the increasing number of offences registered by minors. In Latvia, the largest proportion of minors' criminal offences against property are unchanged, and there is a constant tendency that most of them commit crimes directly by boys.

Kopsavilkums

Nepilngadīgo personu noziedzības tendences Latvijā

Atslēgvārdi: *noziedzība, nepilngadīgo personu noziedzība, nepilngadīgo personu noziedzīgu nodarījumu skaits*

Ik vienā valstī pastāv nepilngadīgo personu noziedzība, arī Latvija nav izņēmums, taču katrā valstī nepilngadīgo noziedzības tendences ir atšķirīgas. Šajā rakstā tiek analizēts un atspoguļots nepilngadīgo personu noziedzības tendences Latvijā laika posmā no 2016. gada līdz 2018. gadam, tā kā nepilngadīgo personu noziedzības līmenis valstī galvenokārt ir sabiedrības labklājības rādītājs. Viens no nepilngadīgo personas noziedzības rātītājiem ir reģistrēto noziedzīgo nodarījumu skaits attiecīgajā laika posmā. Neskatoties uz to, ka pastāv tendence samazināties kopējo reģistrēto noziedzīgo nodarījumu skaitam, taču vērojams nepilngadīgo personu reģistrēto noziedzīgo nodarījumu skaita pieaugums. Kā arī valstī pieaug nepilngadīgo personu noziedzīgu nodarījumu recidīvs, tā kā neskatoties uz to, ka pieaug nepilngadīgo personu reģistrēto noziedzūgu nodarījumu skaits, samazinās pašu nepilngadīgo personu skaits, kuras izdarījušas noziedzīgus nodarījumus. Latvijā lielāko īpatsvaru nemainīgi veido nepilngadīgo personu noziedzīgi nodarījumi pret īpašumu, kā arī pastāv nemainīga tendence, ka vairākums noziedzīgus nodarījumus izdara tieši zēni.

Introduction

The aim of this work is to analyse the trends of juvenile delinquency, its dynamics and nature in Latvia between 2016 and 2018, as the crime rate of minors in the country is not only one of the welfare indicators of society, but also points to undesirable trends in the economy, culture and other spheres, so that it is important to analyse minors trends in crime of minors in Latvia.

The following tasks are required to achieve the job objective:

- to investigate and describe the state of crime and trends of minors in Latvia between 2016 and 2018;
- to investigate and describe the dynamics and trend of crimes in the breakdown by membership of the objects of the groups defined by the Criminal Law in Latvia between 2016 and 2018;
- to investigate and describe the composition of minors committed criminal offences in Latvia between 2016 and 2018.

The work uses general scientific research techniques (analysis, synthesis, induction, decomposition) and special study methods (comparative, formally dogmatic, descriptive).

Discussion

Crime: a historically changing, socially criminal phenomenon consisting of a set of crimes committed over a certain period of time. Crime is caused by the reluctance or inability of a part of human society to live in accordance with generally accepted public rules (laws). (crystallson 2003: 9). In this case, minors should be treated as part of human society.

Persons who have not reached the age of 18 shall be considered in a company with the concept of "minor". On the other hand, Article 11 of the Criminal Law (CRL) stipulates that a natural person who has reached the age of 14 by the date of committing the criminal offence shall be held criminally liable. A minor, that is, a person who has not reached the age of 14 shall not be held criminally liable. Consequently, the minor is a person aged between 14 and 18.

The state of crime in the country is characterised by statistics, i.e. the number of crimes recorded. However, when assessing the crime situation, special attention should be paid to the crimes committed by minors, since juvenile delinquency accurately reflects existing social challenges, adverse and negative trends in the economy, culture, prevention, the operation of mass media and other spheres. Juvenile delinquency means the number of detected crimes committed by minors (Kristapsone 2003: 78). Therefore, in her article, the author will study the trends of juvenile delinquency in Latvia over the past three years.

According to statistics from the Centre of Information Ministry of Interior, 45 639 criminal offences were recorded in the country in 2016 (of which 907) committed minors. In 2017, 44 250 offences were recorded in the country (of which 767) committed by minors. However, according to IEM IC, 43 260 offences (of which 870) were registered in the country in 2018 were committed by minors. The analysis of statistics shows that there is a tendency to reduce the number of criminal offences registered in the country, but there is an increase in the number of juvenile delinquency registered. On the other hand, an analysis of the Centre of Information Ministry of Interior data on the number of minors who have committed criminal offences shows that in 2016 they were 678 minors, 758 minors in 2017 and 740 minors in 2018. Statistics show that in 2018 the number of minors themselves committing criminal offences has decreased, while the number of offences committed by registered minors has increased. In other words, this means that minors commit criminal offences more frequently, resulting in a relapse of juvenile offences.

However, it is important to understand that minors' personalities are still forming and that both socially positive and socially negative behaviour are being learned quickly in this process. Criminal punishment "stamping" a teenager on a criminal. That stamp, according to research by foreign specialists, leaves traces of the sanctioned psyche for longer. The environmental treatment of the punished is also changing. The condemnation of adults and, at the same time, the weaning of

their peers for the "exploits" of the punished often reinforces undesirable diversions. When he sees himself as a criminal, the teenager often acts according to this notion (Wolf, 2004: 360).

In addition to the total number of juvenile offences recorded in the country, the automotive accident is important, but a lot of attention should be paid to crimes according to the nature of the threat to the interests of the person or the public and the degree of public danger. (see Table 1)

Table 1. **Number of criminal offences of registered minors by definition**[19]

Year	Criminal offences	Less serious crimes	Serious crimes	Particularly serious crimes
2016	22	562	289	34
2017	18	477	236	43
2018	20	538	281	47

The Centre of Information Ministry of Interior statistics show that the number of criminal offences, fewer serious crimes and serious crimes committed by minors increased in 2018 compared to 2017, as in 2018 the number of criminal offences was 20, 2 more than in 2017, less serious crimes 538 (+61), serious crimes of 281 (281) (281) (+45). For the three years, however, there is a constant trend towards an increase in the number of particularly serious crimes committed by minors, i.e. 34 in 2016, with 47 particularly serious crimes in 2017 and 47 in 2018 respectively.

By analysing the breakdown of Centre of Information Ministry of Interior criminal offences by belonging to the sites of the groups designated by the KL during the period 2016–2018, the largest proportion of minors' criminal offences against property is unchanged. The number of offences of this type in 2016 was 664, representing 77% of the total number of offences, 556 (-108) in 2017, 78% of the total number of offences and 631 (+75) in 2018, 77% of the total number of offences. Juvenile delinquencies against general security and public order rank second, with 60 offences in 2016, 76 in 2017 (+16) and 52 in 2018 (-24). There are 55 offences committed by minors in third place, 36 in 2017 (-19) and 45 in 2018 (+9). It should be noted that the fact that property offences and personal health crimes have increased in 2018 compared to 2017 is a negative one. The fact that juvenile delinquencies against general security and public order have decreased in 2018 is a positive one. As well as in 2018, the number of types of criminal offences has declined compared to 2017. For example, the number of offences related to the use, purchase, storage, manufacture, transport and transfer of intoxicating substances has decreased by 6% (-1%), the number of offences against morality and sexual integrity decreased by 1.2% (-0.8%) and the number of offences following Article 231 (Hooliganism) by 0.7%. (-1.3%).

In the general confusion surrounding the process of raising a child with the search for a place and role, it is problematic to focus on the situation and to choose the only right and legitimate

[19] Centre of Information Ministry of Interior data. Accessed https://data1.csb.gov.lv/pxweb/lv/sociala/sociala__likump/SKG030.px/

course of action. It's hard to do for adults, but harder for a teenager. (Vilks, China 2004: 351). But the juvenile delinquency structure is determined by the motives for the actions of minors, which describe a scale of values and reactions of teens in a particular situation. They can be primary and secondary themes, and these primary themes define the style of adolescence. Often, the crime involves demonstrating courage, bashing, obtaining alcoholic beverages and sweets, purchasing fashion cases, technical parts and materials, and so on, minors think little about responsibility. Most delinquent teens are not even aware of the antislavery of their actions because there is no adequate knowledge. The influence of friends and the need for self-expression are very important (Kristapsone 2003: 80).

In an analysis of the statistics from the Centre of Information Ministry of Interior, the author found that the structure of juvenile delinquencies is strongly dominated by property crimes and suggests that minors are capable of criminal offences because of their property, as thefts are most widespread among juvenile delinquencies (see Table 2).

Table 2. **Number of offences committed by minors qualifying under Articles KL**[20]

Year	Article 180	Article 175
2016	309	227
2017	247	186
2018	296	200

For example, in 2016 minors committed 309 offences qualifying under Article 180 of the KL (theft, fraud, small embezzlement), respectively in 2017 247 (-62) and 2018 296 (+49). Subsequently followed by criminal offences qualifying under Article 175 KL (theft), 227 offences in 2016, 186 in 2017 (-41) and 200 in 2018 (+14). It follows that trends in the development of minors are generally negative.

As another indicator of the trend of crime, automatically, is the composition of minors committing criminal offences, for example, according to the data of the Central Statistical Bureau database (CSPD), the number of persons committing criminal offences in 2016 is 10 478, of which 5.1% of the total number of persons committing crimes is minors, in 2017, 9785 (5.3%) and 2018, respectively, 9375 (5.2%). Invariably, most criminals are committed by boys. For example, in 2016 boys make up 88%, girls 12%, boys make up 87% in 2017, girls 13% and boys make up 84% in 2018, girls 16%. It follows that there is an increase in the proportion of criminal offences committed by girls. An analysis of the proportion of offences committed by boys by severity (see Table 3) showed a tendency to commit serious and particularly serious crimes to boys throughout the three-year cross-section.

[20] Centre of Information Ministry of Interior data. Accessed https://data1.csb.gov.lv/pxweb/lv/sociala/sociala__likump/SKG030.px/

Table 3. **Proportion of criminal offences committed by boys (as a percentage) by weight of total criminal offences**[21]

Year	Criminal offences	Less serious crimes	Serious crimes	Particularly serious crimes
2016	95	88	95	97
2017	61	83	95	88
2018	85	83	93	91

For example, in 2016, a percentage of the total number of offences committed by boys committed 95% serious crimes and 97% particularly serious crimes, respectively 95% of serious crimes, 88% particularly serious crimes and 93% serious crimes in 2018, 91% particularly serious crimes.

The prevention of violations of child and youth law (including criminal offences) should be seen as a tool for the overall reduction of crime in the future. The antisocial behaviour of children and young people is often associated with the development of their grandfathers – for example, testing their personal freedom mayor. Therefore, the causes of violations of the law committed by children and young people can often differ significantly from the causes of violations of the law of adults. These differences create a phenomenon: preventing child and youth delinquencies, if properly performed, can have a greater effect than working proactively with adults who have already developed a stable tendency to break the law. In international law, child prevention is defined as a set of targeted measures involving a child in socially meaningful, legislative-oriented activities that are relevant to his development phase and maturity (Kronbergs 2015).

The study "Child-friendly legal environment in Latvia: in focus – prevention of delinquencies" identifies factors that may lead to child antisocial behaviour. The most common risk factors that may affect the behaviour of the child:

- A child in the family does not have a favourable environment for his or her development:
  - parental problems with the use of addictive substances;
  - parental conflicts (including divorce);
  - the child's parents have moved abroad, resulting in the child being raised by other relatives;
  - the child's needs are not given adequate time, and parents do not create an appropriate environment for the child to develop communication capabilities with co-human beings;
  - frequent changes in residence, resulting in a child not developing socially sustainable links with fellow human beings;

[21] Centre of Information Ministry of Interior data. Accessed https://data1.csb.gov.lv/pxweb/lv/sociala/sociala__likump/SKG030.px/

  - the state of health of the relatives of the child (severe diseases);
- the child has been subjected to violence;
- school conflicts;
- condition of the child's health (psychological, neurological)

Despite the fact that there is still a stereotype that only minors who come from disadvantaged families commit criminal offences, it appears from the study "Child-friendly legal environment in Latvia: in focus – prevention of delinquencies" that teens who commit criminal offences also come from well-established families – parents lack time to focus on raising a child, contacts are limited. Only to satisfy the child's material desires and physiological needs.

Prevention and prevention of violations of child and youth law, which is confirmed by, for example, the draft Law on the Prevention of Antisocial Behavior Prevention of Children, submitted to the Cabinet of Ministers of the Ministry of Justice, which aims to promote the child's refrain from illegal activities, prevent child risks, create and strengthen the orientation of the child's values, change the child's behavior, promoting the inclusion of a child in society, strengthening the role of the legal representatives of the child in prevention, promoting an effective model for the cooperation of child protection specialists in support of the child and his or her legal representatives. As well as guidelines for the prevention of child crime and the protection of children against criminal offences adopted on 21 August 2013 (hereinafter – guidelines). The guidelines aim to reduce child crime, eliminate factors contributing to criminal behaviour, and to improve the safety of children by protecting them from health and life risks. However, despite the measures mentioned above, trends in the development of minors in Latvia are still negative and potentially very dangerous.

Conclusions

The overall situation in Latvia has changed between 2016 and 2018. Overall, the number of criminal offences registered has decreased, but the number of juvenile delinquency has increased. There is also a tendency to reduce the number of minors themselves who committed criminal offences, but to increase the number of offences committed by registered minors, resulting in a relapse of juvenile delinquencies. For the three years, however, there is a constant trend towards an increase in the number of particularly serious crimes committed by minors. From 2016 to 2018, the highest proportion is invariably composed of property offences by minors, and thefts are the most widespread. Indeed, the majority of the offences are committed by boys, but there is an increase in the proportion of criminal offences committed by girls.

References

Kriminoloģija: Mācību grāmata / Zinātniskie redaktori: mag. iur. K. Ķipēna, dr. iur. A. Vilks. – Rīga: Nordik, 2004.

Kristapsone S. (2003) Noziedziba Latvija. Rīga. Raka.

Krimināllikums./ Latvijas Republikas likums. Pieņemts Latvijas Republikas Saeimā 17.06.1998.; stājies spēkā 01.04.1999.; ar grozījumiem, kas pieņemti līdz ar 07.11.2018.// Latvijas Vēstnesis, 08.07.1998., Nr. 199/200 (1260/1261). Pieejams: (Accessed): https://likumi.lv/doc.php?id=88966 (skatīts 30.04.2019.).

Bērniem draudzīga tiesiskā vide Latvijā: fokusā – likumpārkāpumu prevencija. Pieejams (Accessed): http://providus.lv/upload_file/Projekti/Kriminalitesibas/Berniem_draudziga_tiesiska_vide_LV_1.pdf (skatīts 30.04.2019)

Centrālās statisikas pārvaldes datubāzes dati. Pieejams (Accessed): https://data1.csb.gov.lv/pxweb/lv/sociala/sociala__likump/SKG030.px/ (skatīts 01.05.2019)

Kronberga I. Noziedzīgu nodarījumu prevencija, kā krimināLsoda mērķis. Pieejams (Accessed): http://www.slideshare.net/providus/ilona-kronberga-lu73konference (skatīts 29.04.2019.).

Likumprojekts "Bērnu antisociālās uzvedības prevencijas likums". Pieejams (Accessed): https://www.google.lv/search?ei=e9zSXNLHLsqSmwWQkJ_YDg&q=%22B%C4%93rnu+antisoci%C4%81l%C4%81s+prevencijas+likums&oq=%22B%C4%93rnu+antisoci%C4%81l%C4%81s+prevencijas+likums&gs_l=psyab.3..0i19j0i22i30i19.13511669.13512843..13513120...0.0..0.209.332.0j1j1.....0....2j1..gws-wiz.....0i22i30.TF0Jxz90Ji0 (skatīts 04.05.2019.).

Nepilngadīgo personu noziedzība Latvijā. Pieejams (Accessed): https://lvportals.lv/skaidrojumi/287883-nepilngadigo-personu-noziedziba-latvija-2017 (skatīts 02.05.2019.)

Par Bērnu noziedzības novēršanas un bērnu aizsardzības pret noziedzīgu nodarījumu pamatnostādnēm 2013.–2019. gadam./ Ministru kabineta rīkojums Nr. 392. Pieņemts Latvijas Republikas Ministru kabinetā 21.08.2013.; stājās spēkā 21.08.2013.// Latvijas Vēstnesis, 23.08.2013., Nr. 164 (4970). Pieejams (Accessed): https://likumi.lv/doc.php?id=259219 (skatīts 03.05.2019.)

Pārskats par nepilngadīgo noziedzības stāvokli, noziedzīgos nodarījumos cietušajiem bērniem un noziedzības novēršanas problēmām 2016. gada 12 mēnešos. Pieejams (Accessed): http://www.vp.gov.lv/?id=305 (skatīts 26.04.2019.).

Pārskats par nepilngadīgo noziedzības stāvokli, noziedzīgos nodarījumos cietušajiem bērniem un noziedzības novēršanas problēmām 2017. gada 12 mēnešos. Pieejams (Accessed): http://www.vp.gov.lv/?id=305 (skatīts 26.04.2019.).

Pārskats par nepilngadīgo noziedzības stāvokli, noziedzīgos nodarījumos cietušajiem bērniem un noziedzības novēršanas problēmām 2018. gada 12 mēnešos. Pieejams (Accessed): http://www.vp.gov.lv/?id=305 (skatīts 26.04.2019.).

ADMINISTRATIVE RESPONSIBILITY FOR UNAUTHORISED CONSTRUCTION IN REPUBLICS OF LITHUANIA AND LATVIA

Ināra Ziemele
Turiba University, Riga, Latvia, ziemele.inara@inbox.lv

Abstract

Administrative responsibility for unauthorised construction in Republics of Lithuania and Latvia

Key words: *administrative fine, construction control institutions, elimination of unauthorised construction, responsibility for unauthorised construction, unauthorised construction*

The new Construction Law of the Republic of Latvia (further – CLLv) come into force from 01.10.2014, and The new Construction Law of the Republic of Lithuania (further – CLLt) come into force from 01.01.2017.

The aim of paper is to compare responsibility for unauthorised construction (further – UC) in both states. There is discussed the bill of amendments about defining administrative responsibility in CLLv from 01.01.2020, when Administrative Responsibility Law will come into force.

Conclusions shows that definement of UC are similar in both states.

Construction control in Lt perform State Territorial Planning and Construction Inspectorate under the Ministry of Environment, but in Lv building authorities of local governments, The State Construction Control Office or other institutions.

There are bigger fines for UC in Lt than in Lv, till 60000 euro (further – €).

To eliminate UC in Lt, after preparing construction project and paying payment of the specified contribution for UC, can receive construction permit. In Lv the building authority take decision to renew the previous condition, if construction of the particular object in the relevant territory is precluded by laws and regulations or permission to perform construction after fulfilment of the requirements of the laws and regulations. Lv local governments shall implement a fee for contribution for UC.

There is plan to decrease fine for UC in Lv, what can increase amount of UC in future.

Kopsavilkums

Administratīvā atbildība par patvaļīgu būvniecību Lietuvas un Latvijas Republikās

Atslēgvārdi: *atbildība par patvaļīgu būvniecību, administratīvais naudas sods, būvniecības kontrole, patvaļīga būvniecība, patvaļīgas būvniecības novēršana*

Latvijas Republikā (turpmāk – Lv) no 01.10.2014. spēkā ir jauns Būvniecības likums. Arī Lietuvas Republikā (turpmāk – Lt) 01.01.2017. stājies spēkā jauns Būvniecības likums.

Darba mērķis ir salīdzināt abās valstīs noteikto atbildību par patvaļīgu būvniecību. Apskatīts arī likumprojekts par grozījumiem Lv Būvniecības likumā par administratīvās atbildības noteikšanu Būvniecības likumā no 01.01.2020., kad stāsies spēkā Administratīvās atbildības likums un Latvijas Administratīvo pārkāpumu kodekss zaudēs spēku.

Secināts, ka patvaļīgas būvniecības definējums un ēku iedalījums 3 grupās Lt un Lv ir līdzīgs.

Būvniecības kontroli Lt veic viena iestāde Lt Vides ministrijas Teritoriālās plānošanas departaments un Valsts Būvinspekcija, bet Lv pašvaldību būvvaldes, Būvniecības valsts kontroles birojs vai citas institūcijas.

Lt pārkāpumu sankcijas noteiktas atkarībā no ēkas grupas un darbu veida un naudas sodi Lt ir lielāki nekā Lv, līdz 60000 €.

Lai novērstu patvaļīgu būvniecību Lt, sagatavojot projekta dokumentāciju un samaksājot patvaļīgās būvniecības apstiprināšanas iemaksu, var saņemt būvniecības atļauju. Lv iestāde pieņem lēmumu par iepriekšējā stāvokļa atjaunošanu vai atļauju veikt būvniecību pēc normatīvo aktu prasību izpildes. Lv pašvaldībām jāievieš papildus patvaļīgās būvniecības apstiprināšanas nodeva.

Lv ar likumprojektu par grozījumiem Lv Būvniecības likumā, naudas sodus paredzēts samazināt, kas var negatīvi ietekmēt patvaļīgās būvniecības apjomus būvniecībā nākotnē.

Introduction

The new Construction Law of the Republic of Latvia (further – CLLv) come into force 01.10.2014. and The new Construction Law of the Republic of Lithuania (further – CLLt) come into force 01.01.2017.

The aim of the paper is to compare responsibility for UC in both states. This topic is actual, because there is bill of amendments about defining administrative responsibility in CLLv from

01.01.2020. when Administrative Responsibility Law (further – ARL) will come into force and Latvian Administrative Violations Code (further – LAVC) will lose force.

Research methods: historical, researching for bills of amendments; legal-dogmatic research to compare the statutory provisions of Lt and Lv; teleological interpretation to find out the meaning of the legal provision; analytical to research, analyse and summarise information.

In this paper contents discusson of regulatory enactments regulating the issue and bills of amendments, information available in internet resources, published before 13.04.2019. This paper considers and analyses the information and summarizes the issues and problems of responsibility for UC in Lt and Lv.

Construction Control

Lt. Construction documents are issued by the municipal administration. Building permits in the territorial waters of Lt, the exclusive economic zone and the continental shelf, projects of special national importance, permits to continue suspended construction are issued by the State Territorial Planning and Construction Inspectorate under the Ministry of Environment (further – Lt Inspectorate) (CLLt, 27. (2), (3)). Lt Inspectorate reviews complaints about possible violations in construction in accordance with the Law on Territorial Planning and Construction of the Republic of Lithuania (further – LtTPC) (LtTPC).

Lv. State Construction Control Office controls construction (further – office) of structures and buildings that are mentioned in section 6.[1] of CLLv (public buildings with more than 100 people at a time; had procedure of environmental impact assessment; if construction is submitted by a local government and the public works contract price is 1.5 million € or more; is building authority for structures necessary for needs of the Ministry of Defence or its subordinate institution). The local government for ensuring rules of law of the construction process establish a building authority in its territory and take decisions on the contested administrative acts, actual action and decisions of the building authority (CLLv, 7. (1)). Construction control is performed by the building inspectors employed in the building authority, office or other institutions (CLLv 18. (1)) (Ministry of Economics, The State Environmental Service, The State Railway Technical Inspectorate, The Latvian State Roads, look at The Draft Law).

In Lt construction control performs one institution Lt Inspectorate, but in Lv the building authority, office or other institutions.

Unauthorised construction

Lt. UC is construction of a building or its part without a valid building permit or having it, but in violation of the essential design solutions of the building (CLLt 1. 46.). The building permit documents are necessary for permission to construct a new building, to reconstruct or to renew a building, to carry out major or to perform simple repairs of a building, demolition of a structure, for

permission to continue suspended construction and changing the purpose of a building or part of it (CLLt 27.).

Lv. UC is construction work which has been commenced or is carried out without a construction permit or before a note has been made in the construction permit, certification card or explanatory memorandum on the fulfilment of the relevant conditions, construction work which does not confirm to the building design and the requirements of laws and regulations, using of the structure or its part not according to the designed type of use (CLLv, 18. (2)).

Definement of UC are similar in both states.

Responsibility for unauthorised construction

Structures in **Lt** groups:

- **special building** (ypatingasis) in which dangerous substances are used or stored, a public building with more than 100 people at a time, more than 5 floors apartment houses, cultural heritage building;
- **not-special building** (neypatingasis) is a building that is not classified as special and non-complex;
- **non-complex** (nesudėtingasis) is simple structure with a maximum height of 8,5 meters, the sum of areas of all floors and associated use areas not exceeding 80 m^2 and with a basement not more than one storey or engineering structure of simple constructions (CLLt 2. 20., 28., 30.).

Structures in **Lv** groups:

- **group 1** – one-storey building with area not more than 25 m^2, a separate industrially manufactured one-storey building with building area up to 60 m^2 (container-type building) and outside the city and village territories one-storey non-residential building with construction area up to 60 m^2;
- **group 3** – a public building with more than 100 people at a time, building which has more than five surface or more than one underground storeys;
- **group 2** – buildings which are not contained in group 1 or 3 (General Construction Regulations, Annex 1).

Grouping of buildings in 3 groups are similar in Lt and Lv, only cultural heritage buildings are special buildings in Lt (in Lv that could be group 3).

Lt. Article 56 of CLLt sets out thirty sanctions for UC, taking into account the building group and the construction work carried out there. The builder or client (further – B) or the legal entity (further – LE) is called for administrative responsibility. The smallest fine is for simple repairs of non-complex building – B fine is from 50 to 100 €, but LE from 100 to 150 €. For UC of a new special building – for B fine is 10000 to 30000 €, but for LE 16000 to 50000 €. For UC of a new, non-complex building – B fine is from 2000 to 9000 €, and LE from 4500 to 17000 €. The biggest

fine is for UC of a new special building in the protected area – B from 16000 to 40000 €, and LE from 20000 to 60000 € (CLLt). Lt Inspectorate detected 482 cases of UC in 2016 and 375 cases in 2017 (Lt Inspectorate Report).

Although fines for UC are high, the number of UC cases are not low.

Lv. In article 152 (1) of LAVC for UC in an existing building and (2) for new construction the fine is not determined independently of the group of the building: from 70 to 700 € for natural persons (further – NP) and LE from 280 to 4300 €; (2) NP from 140 to 1400 € and LE from 700 to 7100 €. LAVC will lose force from 01.01.2020. and ARL will come into force. ARL provides for a longer limitation period for commencement of administrative violation proceedings three years from the day of committing the violation (ARL, 118 (3)) than now defined in Article 37 (1) of the LAVC – six months. From 01.01.2020. Sanctions for administrative violations in construction will be determined in CLLv according to the Cabinet of Ministers 04.02.2013. order No. 38 "Concept of Development of the Administrative Penalty System" (further – CMO) (CMO). And the draft law "Amendments to the Construction Law" (No. 197/Lp13; further – The Draft Law) is on the agenda of the Saeima (13th Saeima). Chapter II of CMO states that a person who has committed an administrative offense for the first time must be able to be warned first in cases where no significant harm has been caused by an administrative offense or if the violation committed is minor and the warning should be retained in the administrative penalty system as a principal sentence. A fine is the most appropriate and effective penalty for an administrative offense and should be given the primary penalty (CMO). Minimum fine for NP and LE will be two fine units (i.e. 10 €) (ARL, 16. (2) and (3)). The Draft Law for UC provides for the imposition of a warning or a fine of 10 € as a minimum administrative penalty. The smallest fine is set for up to 15 fine units (75 €) for construction work started or carried out in a building or part of it, if an explanatory memorandum is required, but no note has been made on the fulfillment of the conditions for the commencement of construction work (The Draft Law, 25. (1)). The maximum fine imposed by the ARL to NP is 400 fine units (2000 €), and to LE – 4000 units of fine (20000 €) (ARL 16. (4)), which in The Draft Law provides to NP for construction work, if a building permit is required, it has been issued, but no note has been made on the fulfillment of the design conditions, a building permit is required and it has not been issued and on the execution of construction works with deviations from the building design. For LE maximum fine is provided for construction works started or performed in a building or part of it, if building permit is required and it is not issued (The Draft Law, 25). Article 7 of CMO states that within two years from the date of entry into force of the ARL, the Ministry of Justice shall prepare an informative report on the execution of administrative fines and submit proposals for improvement of the legal framework in accordance with the experience of other countries in the enforcement of fines (CMO). The Latvian Association of Local and Regional

Governments (further – LALRG) notes that The Draft Law does not provide any justification for the reduction of fines for the UC from 140 € for issuing of a warning or a fine of 10 € or NP from 700 € for warning or a fine of 10 € and suggests increase the minimum fines for UC according to the LAVC currently (LALRG letter). The author states that the reduction of administrative responsibility in construction is not permissible, as practical experience also indicates that the current amount of fines does not motivate the public representatives not to violate the established construction procedure. If the minimum penalty for construction violations is a warning or 10 €, the volume of UC will only increase, so there is no justification for reducing administrative responsibility in construction to the minimum of administrative penalties. According to the experience of other countries – Lt administrative fines for UC are higher, but the number of UC cases is still high. The limitation in construction will be three years from the date of the offense, and the Lv should also consider to raise the minimum amount of administrative fines.

Elimination of unauthorised construction

Lt. The consequences of UC are eliminated in accordance with the procedure established by LtTPC (CLLt 32.). Article 14 of the LtTPC stipulates that an inspector of Lt Inspectorate shall, within 10 working days from the date of signing the UC act, provide the owner, manager or user of the building or part of it, the landowner, manager or user a mandatory indication of elimination of the consequences of UC. The mandatory order stipulates that the person has the right to prepare the project documentation and, upon payment of the UC approval fee specified in Annex 1 of the CLLt, to receive a construction permit, if the performed works are possible according to the existing detailed plans of the land plots and the construction does not contradict the mandatory environmental protection requirements and protection of protected areas. Prevent the effect of UC can by demolishing or rebuilding building if the public interest is compromised by demolition or dismantling of it. Mandatory indications must be complied in six months or shorter if it is found that UC has seriously infringed the rights of third parties and severely constrained their ability to use affected property. Lt Inspectorate may extend the term once for 3 months if there are important reasons. Receiving or correcting project documentation is considered an important reason for which the person cannot influence the duration (LtTPC).

The UC approval fee (I) is determined by the value of UC works and construction products used, but not less than 86 € and not more than 300000 € and 70% of the value of the arbitrary works (V). The fee is calculated using the formula $I = V^2/144810$ €. Cost value is determined by construction expert valuation of construction and construction product prices during evaluation of UC works (CLLt, Annex 1).

Lv. If a building inspector detects UC he or she stops the construction work and writes a relevant opinion, and the building authority shall take one of the following decisions: to renew the

previous condition, if construction of the particular object in the relevant territory is precluded by laws and regulations or permission to perform construction after fulfilment of the requirements of the laws and regulations governing construction. If a decision on permission to perform construction is not carried out within the time period laid down by the building authority, the building authority may decide on renewing the previous condition (CLLv, 18. (5)). CLLv has no deadlines for the adoption of the building inspector's relevant opinion and the decision of the building authority. The deadlines for making decisions are defined in other normative acts, as in LAVC article 238.[1], that within 3 working days it is necessary to make a decision on commencement of administrative violation record keeping or refusal to initiate it (LAVC; ARL 117.) and within nine months to make a decision on the application of the penalty (LAVC 37. (4), ARL 119. (1) 12). The deadlines for decision-making and the time period for dispute are determined by the Administrative Procedure Law (further – APL). According to APL administrative act can be performed for five years (APL 360.[1]).

Only in Riga city territory in 2017 issued 1078 and in 2016 1038 administrative acts on the elimination of the consequences of UC (The building authority of Riga). Several Lv municipalities have adopted binding regulations providing for an increase in the fee: 5 times in Riga (Riga Regulations No. 147), 3 times in Liepaja (Liepāja Regulations No. 28) and Jēkabpils (Jēkabpils Regulations No. 37), if prior to the acceptance of the construction UC has been detected. In order to reduce UC volumes in the Lv, sanctions for UC should be more severe and additional UC approval fees should also be introduced in other municipalities.

Conclusions

1. In Lt construction control performs one institution, but in Lv the building authority, office and other institutions.
2. Definement of UC in Lt and Lv are similar.
3. In Lt and Lv group buildings in 3 groups, only cultural heritage buildings are special buildings in Lt (Lv could be in group 3).
4. Although fines for UC in Lt are high, the number of UC cases are not low.
5. Lv should increase the minimum amount of administrative fines for UC. Reducing administrative liability in construction to a minimum will increase UC volumes.
6. In Lt prevention of UC must be executed in six or nine months and a UC approval fee is set.
7. In order to reduce UC volumes in Lv, sanctions for UC should be more severe and additional UC approval fees should be introduced in municipalities by adopting binding regulations.

References

13. Saeima. Likumprojekti. Uz 2. lasījumu. Nr. 197 / Lp13 "Grozījumi Būvniecības likumā". https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/webPhase6?OpenView&Count=30 [13.04.2019.].

Administratīvās atbildības likums. Pieņemts 25.10.2018., spēkā no 01.01.2020. https://likumi.lv/ta/id/303007 [13.04.2019.].

Būvniecības likums. Pieņemts 09.07.2013., spēkā no 01.10.2014. Pēdējie grozījumi 14.02.2019., spēkā no 13.03.2019. [13.04.2019.].

Jēkabpils pilsētas domes 29.08.2013. (prot. Nr. 22, 7.§) saistošie noteikumi Nr. 37 "Saistošie noteikumi par nodevām Jēkabpils pilsētā". Pieņemti 29.08.2013., spēkā no 01.01.2014. Pēdējie grozījumi 29.10.2018., spēkā no 01.01.2019. https://likumi.lv/doc.php?id=262003. [13.04.2019.].

Latvijas Administratīvo pārkāpumu kodekss. Pieņemts 07.12.1984., spēkā no 01.07.1985. Pēdējie grozījumi 03.04.2019., spēkā no 13.04.2019. https://likumi.lv/doc.php?id=89648 [13.04.2019.].

Liepājas pilsētas domes 08.12.2016. (prot. Nr. 15, 11.§) saistošie noteikumi Nr. 28 "Par Liepājas pilsētas pašvaldības nodevu par būvatļaujas izdošanu vai būvniecības ieceres akceptu, izdarot atzīmi Paskaidrojuma rakstā vai Apliecinājuma kartē". Pieņemti 08.12.2016., spēkā no 25.01.2017. https://likumi.lv/doc.php?id=288242 [13.04.2019.].

Lietuvas Republikas Būvniecības likums. Pieņemts 30.06.2016., spēkā no 01.01.2017. https://www.e-tar.lt/portal/legalAct.html?documentId=b2d704e048e711e6b5d09300a16a686c [13.04.2019.].

Lietuvas Republikas Teritoriālās plānošanas un būvniecības valsts uzraudzības likums. Pieņemts 02.07.2013., spēkā no 01.01.2014. Pēdējie grozījumi 30.06.2016., spēkā no 01.01.2017. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.453232/asr [13.04.2019.].

Likumprojekts "Grozījumi Būvniecības likumā". VSS-1011. TA-2399. http://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/5DC678A5CFA03DAEC2258382002FAFE6?OpenDocument#b [13.04.2019.].

Ministru kabineta 19.08.2014. noteikumi Nr. 500 "Vispārīgie būvnoteikumi". Pieņemti 19.08.2014., spēkā no 01.10.2014. Pēdējie grozījumi 25.09.2018., spēkā no 28.09.2018. https://likumi.lv/doc.php?id=269069 [13.04.2019.].

Ministru kabineta 04.02.2013. rīkojums Nr. 38 (prot. Nr. 5 30.§) "Par Administratīvo sodu sistēmas attīstības koncepciju". Pieņemts 04.02.2013., spēkā no 04.02.2013. https://likumi.lv/doc.php?id=254559 [13.04.2019.].

Rīgas domes 12.05.2015. (prot. Nr. 54, 7.§) saistošie noteikumi Nr. 147 "Par pašvaldības nodevu par būvatļaujas izdošanu Rīgā". Pieņemti 12.05.2015., spēkā no 01.07.2015. https://likumi.lv/ta/id/274618-par-pasvaldibas-nodevu-par-buvatlaujas-izdosanu-riga [13.04.2019.].

Rīgas pilsētas būvvaldes 2017. gada pārskats. Rīgas pilsētas būvvalde. Par mums. Gada pārskati. http://www.rpbv.lv/wp-content/uploads/2018/07/gada_parskats_2017.pdf. [13.04.2019.].

Valstybinė teritorijų planavimo ir statybos inspekcija prie Aplinkos ministerijos. Veiklos ataskaitos. 2017 m. veiklos ataskaita. http://vtpsi.lrv.lt/lt/administracine-informacija/veiklos-ataskaitos. [13.04.2019.].

Vēstule: Latvijas Pašvaldību savienībā izsaka priekšlikumus likumprojektam "Grozījumi Būvniecības likumā" un aicina noteikt, ja būvdarbi tiek veikti bez būvniecības ieceres dokumentiem, tad fiziskām personām tiek piemērots naudas sodu no 28 līdz 40 naudas vienībām, bet juridiskajām personām no 100 līdz 4000. 13. Saeima. Likumprojekti uz 2. lasījumu. Nr. 197 / Lp13 Grozījumi Būvniecības likumā. https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/B6BC82526A7155C3C22583D30043F695?OpenDocument [13.04.2019.].

SOCIAL RESPONSIBILITY AS A COMPONENT OF TENDER ASSESSMENT WITHIN THE PUBLIC PROCUREMENT PROCESS

Līga Avena
Riga Stradiņš university, Latvia, liga.avena.lv@gmail.com

Social responsibility as a component of tender assessment within the public procurement process
Key words: *public procurement, social responsibility, sustainability, effectivity*
Rationality and effectiveness of the use of public resources is one of the most significant societal issues discussed all over the world. Especially during periods of unstable economy, the society pays special attention to the use of public resources often identifying more new issues. At the time when effective meeting of the needs of society is a guiding principle for the use of public funds, it is important to evaluate the issue in the light of benefits obtained or purchased for public needs, as well as to analyse whether the supplier who has fulfilled the contractual obligations is socially responsible in its daily operations and the funds received for the execution of the contract are used in the interest of the whole society and not only focused on maximizing profits. The public expenditure through the public procurement process has a huge potential to influence the supply chain positively in its every stage changing market tendencies accordingly in the area of socially responsible implementation of the contract, thus affecting positively the quality of life of the society in general. Consequently, evaluation of the social responsibility as an assessment component within the public procurement is particularly important.
The aim of this article is to reveal the content framework of the social responsibility as a component of tender assessment considering the existing practice and case law in the area of public procurement, as well as the aim of the concept and ways of achieving it on its merits.

Public spending through public procurement has a tremendous potential to positively affect the functioning of the supply chain and to change market trends in the implementation of a socially responsible contract, thus also having a positive impact on the quality of life of society as a whole. An important emphasis on social responsibility elements in public procurement is also provided by the EU Public Procurement Directive, which includes a horizontal "social clause" on the principle of respect for environmental and social obligations and labour law applicable and derived from EU law, national law, collective agreements and international law.

The purpose of this article is to reveal the content framework of social responsibility as a component of tender evaluation, taking into account not only the established practice and case law in the field of public procurement, but also the purpose of the concept and the possibility to achieve its purpose by nature.

In accordance with Directive 2014/24 / EU of the European Parliament and the Council of the European Union (February 26, 2014) on public procurement and repealing Directive 2004/18 / EC (hereinafter referred to as "the Directive") *with a view to the better integration of social and environmental considerations in the procurement procedures, contracting authorities should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or trading and its conditions of*

those works, supplies or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. (...) However, the condition of a link with the subject-matter of the contract excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services. Contracting authorities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place. Article 98 of the Directive also states that *it is essential that award criteria or contract performance conditions concerning social aspects of the production process relate to the works, supplies or services to be provided under the contract.*

It can be concluded from the assessment of the Directive that it explicitly refers to the need to pay particular attention to social aspects in the award procedure, while respecting the link with the subject-matter of the contract, preventing the use of criteria and conditions relating to general corporate policy, or requirement for a specific corporate policy on social responsibility. However, the Directive does not clarify the meaning of these concepts, i.e. what should be understood by the term "corporate policy" or "social responsibility". It is therefore necessary to clarify the meaning of these concepts in order to be able to incorporate the social aspects of the contract award procedure, in line with the requirements of the Directive, while respecting the prohibition of requiring specific corporate social responsibility policies.

Since the 1950s, scientific literature and business-related sources, especially in the USA, contain concepts related to corporate social responsibility. The most frequently mentioned are "corporate social responsibility", "Corporate Social Performance" and "corporate social integrity". In the course of time, these concepts have replaced one another, gaining the meaning of the previously used concept, and hence a new added meaning. During the 1980s, the following terms were used: "business ethics", "corporate philanthropy", "corporate social policy", and "stakeholder management". At the beginning of the 21st century, the following terms became relevant: "sustainable development", "corporate citizenship", "corporate sustainability", "corporate reputation", "socially responsible investment", "Corporate Social Report", etc. (Epstein 2002;27)

Marreviyk, Kotler and Nancy emphasized the need to harmonize the concept of corporate social responsibility with "corporate sustainability" (Marreviyk 2003; 95-105)

Steuer et al. offer the theoretical "core" – a model that combines the concept of "sustainable development" with "corporate sustainability" and "Relationship management with stakeholders" (Steuer 2005; 263-281). According to the researchers, study on the origin of the key concept is possible in a broader context and includes alternative approaches, and can therefore in some ways be seen as a general concept.

When assessing the manifestation of social responsibility in public procurement, it is most directly reflected in the Green Public Procurement (GPP). GPP is a process whereby public authorities seek to procure goods, services and construction works with less environmental impact throughout their life cycle than goods and services with the same primary function but purchased using different procurement principles. (Communication from the European Commission 2008;4) It should be noted that aspects of social responsibility in procurement can be integrated not only as "environmental impacts", but other elements of social responsibility are also taken into account in the procurement procedure, such as the absence of tax debts, average hour rates of employment, employment in a social risk group, etc.

Although there is no consensus on the precise definition of social responsibility in sources, it is perceived as a broad set of concepts including actions aimed at managing stakeholders and managing social issues (e.g., Clarkson, 1995, Swanson, 1995, Hillman and Keim, 2001 and Wood, 1991).

Carrol (1979) has looked at the hierarchy of the social responsibility model (see Figure 1).

Figure 1. **Corporate social responsibility hierarchy** (Carrol 1979)

According to the author of this paper, public procurement can be an excellent tool for promoting social responsibility because public administration acts as both a market regulator and a market participant.

It should be noted that many public authorities in Europe implement in practice not only GPP, but also sustainable public procurement, incorporating environmental and social criteria into their purchasing decisions. (Buying green, 2016)

As stated in the Jeong-Wook Choi study, "Can Public Procurement Make Society Better?" public procurement can contribute to social responsibility in various ways. Initially, socially responsible activities appear to be more expensive to perform in a procurement, but it is necessary to weigh all life-cycle costs of a procurement subject, which will be lower in the long run. Thus, it can be concluded that social responsibility is characterized by the ability to plan in the long term,

including planning and evaluating the impact of the activity on the long-term living standards of society, not only on the current state budget.

When evaluating the tendencies of public procurement nowadays, in the opinion of the author of this paper, public procurement in Latvia is part of the first and second stage of the social responsibility hierarchy, i.e., the tenderers prioritize the maximum profit (stage 1) while preparing the tender, and the contracting authority checks whether the tender meets all requirements specified in regulatory enactments (stage 2), including the standards, etc. Aspects such as ethics and the goal of making the society better are not priorities, in principle, they are not set as a goal at all. According to the author, this approach is basically ineffective and characteristic of short-term thinking, which in the long term does not effectively implement the socio-economic and legal interests of the target group – the society.

When defining quality requirements in the public procurement process, it is also important to identify exactly the interests of the target group (society) that the contracting authority can implement through public procurement.

According to Article 10 of the "State Administration Structure Law", *state administration shall act in the public interest. Public interest shall include also proportionate observance of the rights and lawful interests of private individuals.*

In its turn, the purpose of the law "On Prevention of Conflict of Interest in Activities of Public Officials", in accordance with Article 2 thereof, is *to ensure that the actions of public officials are in the public interests*.

In order to ensure good governance in the public sector, institutions and individuals must act in the public interest continuously, in accordance with the law, avoiding prioritizing their own interests. (International Federation of Accountants, 2013)

It can be concluded that the members of the procurement commission who make the decision to award the contract in the public procurement, as officials, are responsible and act in the public interest, ensuring the implementation of the legal interests of the society. Given that the state administration activity is mainly financed by the state budget, which is made up of taxes paid by society, it is in the interest of any member of society, as a taxpayer, to use these funds effectively. Receiving public services provided within the framework of public administration affect every member of society. Economic theory explains how people use limited resources to meet their needs to the maximum. Accordingly, it is in the public interest to use the collected taxes as efficiently as possible. It follows from the above mentioned that social responsibility, in which socio-economic and legal interests or needs of society are ensured, should be an essential component of the evaluation process in the awarding of public contracts, subject to the prohibition of the Directive to require specific corporate policies in the field of social responsibility.

In the legal system, the concept "social needs" or "public needs" is not widely explained. As the Court of Justice of the European Communities acknowledges in case C-373/00, the term "public needs" should be interpreted uniformly in accordance with Community law and its interpretation in the Member States should not be different.

As stated in the judgment of the Court of Justice (Third Chamber) of 10 May 2012 in case C 368/10, in order to guarantee equal opportunities, the award criteria must be such that the comparison and evaluation of tenders can be carried out objectively. If these conditions are met, the economic and quality criteria for the award of the contract, such as the fulfilment of environmental requirements, may allow the contracting authority to meet the needs of the relevant public as set out in the contract specifications. Under the same conditions, the contracting authority may use criteria aimed at satisfying social needs, in particular by referring to the needs of beneficiaries or users of disadvantaged groups in the contract specifications – works, supplies or services.

In the author's opinion, it is debatable how closely the criterion of social responsibility should be related to the particular subject of the procurement. According to the principle established in practice and case-law, only those aspects that are directly related to the fulfilment of the particular procurement subject should be assessed as the selection criterion of the most economically advantageous tender. However, in the author's view, such an approach too narrowly interprets "the needs of society". For example, in a public procurement where the supplier merely provides for the assembly and delivery of the goods produced by the manufacturer, there is often a lack of resources in the supply chain that could be attributed to the elements of social responsibility. However, the revenue and profit from the performance of the contract are used to secure the economic activity of the supplier, including economic activity unrelated to the performance of the contract in question. Thus, the public financial resources actually co-finance the supplier's economic activity and it is in the public interest to maximize the use of these funds not only for the part of the funds that make up the procurement prime cost (i.e. referring to those resources and supply chain elements directly involved in the contract), but the whole contract price. Thus, the elements of social responsibility should be assessed not only in relation to the fulfilment of the specific subject of the procurement, but to the economic activity of the applicant as a whole.

References

Buying green! A handbook on green public procurement. 3rd edition. // Luxemburg: Publications Office of the European Union, 2016. http://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf, p. 4.

Carrol, B.A. "Three-Dimensional Conceptual Model of Corporate Social performance," *Academy of Management Review*, vol. 4, 1979, pp. 497–505.

Clarkson M.B.E., A stakeholder framework for analyzing and evaluating corporate social performance. //The Academy of Management Review, 20(1): 1995, p. 92–117.

Communication from the European Commission "Public procurement for a better environment" COM (2008) 400, p. 4.
Directive 2014/24 / EU of the European Parliament and the Council of the European Union (February 26, 2014) on public procurement and repealing Directive 2004/18 / EC // Official Journal of the European Union, L 94/65, 28.3.2014.
Epstein E., Business ethics as an academic discipline: the past, present and future (analysis of the American experience). Herald of St.Petersburg Unt. Ser. Management: 2002, p. 27.
Hillman A. J. & Keim G.D., Shareholder value, stakeholder management, and social issues: what's the bottom line?// Strategic Management Journal, 22(2): 2001, p. 125–139.
International Federation of Accountants "Good Governance in the Public Sector – Consultation Draft for an International Framework", 2013. http://www.ifac.org/system/files/publications/files/Good-Governance-in-the-Public-Sector.pdf
Jeong-Wook Choi, A study of the role of public procurement – can public procurement make society better? http://www.ippa.org/IPPC4/Proceedings/13ProcurementPreferences/Paper13-4.pdf
Judgment of the Court (Fifth Chamber) of 27 February 2003. Adolf Truley GmbH v Bestattung Wien GmbH, case C-373/00. http://curia.europa.eu/juris/liste.jsf?language=en&num=C-373/00
Judgment of the Court of Justice of the European Union (Third Chamber) 10 May 2012 in Case C-368/10. http://curia.europa.eu/juris/document/document.jsf?docid=122644&doclang=EN
Legal act of the Republic of Latvia "Par interešu konflikta novēršanu valsts amatpersonu darbībā" // "Latvijas Vēstnesis", 69 (2644), 09.05.2002.
Legal act of the Republic of Latvia "State Administration Structure Law" https://likumi.lv/ta/en/en/id/63545-state-administration-structure-law
Marrewijk M.Van. Concepts and Definitions of CSR and Corporate Sustainability: between Agency and Communion. // "Journal of Business Ethics", Vol. 44, № 2–3, 2003, p. 95–105.
Steurer R., Langer M., Konrad A., Martinnuzzi A., Corporations, Stakeholders and Sustainable Development: A Theoretical Exploration of Business-Society Relations.// "Journal of Business Ethics", Vol. 61, № 3, 2005, p. 263–281.
Swanson D.L., Addressing a theoretical problem by reorienting the corporate social performance model. // The Academy of Management Review, 20(1): 1995, p. 43–64.
Wood D. J., Corporate social performance revisited. Academy of Management Review, 16: 1991, p. 691–718.

EKONOMIKA UN SOCIOLOĢIJA / ECONOMICS AND SOCIOLOGY

LEGAL ACTS CONDUCIVE TO REGIONAL INSTITUTIONAL COOPERATION IN LATVIA

Jānis Ezers, Kaspars Naglis-Liepa
Latvia University of Life Sciences and Technologies, Faculty of Economics and Social Development, ezers.j@gmail.com, ef08389@llu.lv

Abstract

Legal acts conductive to regional institutional cooperation Latvia

Key words: *regulatory framework, regional development, cooperation, collaboration*

The regulatory framework and policy documents regulating institutional cooperation in the regions have been a focus of scientific discussion for a long time, as they represent a formal legal framework for cooperation (or a lack of it) among institutions aimed at contributing to regional growth. The regulatory framework contributing to or hindering development, institutional cooperation and regional growth is a factor of sustainable development. The regulatory framework contributing to regional growth in Latvia is comprised of not only the national and regional frameworks but also the international framework. It is important to assess the regulatory framework by analysing the regional economies of Latvia as a component of the global economy. The regulatory framework stipulating that and how institutional cooperation has to be made and contributing to social equality and public participation in state and environmental governance would also promote cooperation among regional institutions for sustainable development. An important research task is an examination of the regulatory framework for institutional cooperation, as it allows understanding whether the framework is conducive or hindering. Research investigations by Latvian scientists have found that many local governments in the regions still make isolationistic policies both horizontally and vertically, which was due their competition. Accordingly, it is important to assess the role of the current regulatory framework in institutional cooperation.

The research aim of the paper is to assess the regulatory framework and policy documents contributing to or hindering institutional cooperation needed for development in the regions of Latvia, focusing on the international, national and regional levels. A special focus is placed on the research investigations by Latvian economists and law scientists into the regulatory framework for regional development. After analysing the relevant regulatory framework and scientific literature, the authors concluded that the international, national and regional frameworks are conducive to institutional cooperation. A problem that requires a further and more detailed research investigation is the reason why institutional cooperation does not occur sufficiently, which does not allow the territorial development pace to be fast enough owing to local and national institutional cooperation.

Kopsavilkums

Reģionālās institucionālās vides sadarbību veicinošie tiesību akti Latvijā

Atslēgvārdi: *normatīvais regulējums, reģionālā attīstība, kooperēšanās, sadarbība*

Normatīvais regulējums un attīstības plānošanas dokumenti, kas regulē institucionālo sadarbību reģionos, pamatoti ir zinātnisko diskusiju centrā jau ilgstoši, jo tas ir formālais juridiskais ietvars institūciju sadarbībai (vai tās trūkumam) reģionālās ekonomikas attīstībai. Regulējums, kurš nodrošina attīstību, vai bremzē, institūciju sadarbību un reģionu izaugsmi, ir nozīmīgs ilgtspējīgas attīstības faktors. Latvijas reģionālās ekonomikas izaugsmes normatīvo bāzi veido ne tikai nacionālais un reģionālais normatīvais regulējums, bet arī starptautiskais. Būtiski ir veikt visa šī regulējuma izvērtēšanu, vērtējot Latvijas reģionālo ekonomiku kā globālās ekonomikas sastāvdaļu. Normatīvais regulējums, kurš nodrošina, ka un kā tiek veidota institucionāla sadarbība, sociālā vienlīdzība un sabiedrības līdzdalība valsts un vides pārvaldē, nodrošinātu arī reģionālo institūciju sadarbību ilgtspējīgai attīstībai. Normatīvā regulējuma izpēte institūciju sadarbības jomā ir būtisks uzdevums, jo dod iespēju saprast, vai regulējums ir stimulējošs vai bremzējošs. Latvijas zinātnieku pētījumi norāda uz to, ka joprojām daudzas pašvaldības reģionos īsteno norobežošanās politiku gan horizontālajā, gan vertikālajā līmenī, ko ir veicinājusi konkurences politika. Nozīmīgi ir novērtēt normatīvā regulējuma lomu līdzšinējā institucionālajā sadarbībā.

Raksta mērķis ir novērtēt normatīvo regulējumu un attīstības plānošanas dokumentus, kas veicina vai bremzē institūciju sadarbību Latvijas reģionu attīstībā, akcentējot gan starptautisko, gan nacionālo, gan reģionālo līmeni. Īpaša uzmanība tiek pievērsta Latvijas ekonomistu un juristu pētījumiem par normatīvo regulējumu reģionu attīstībai. Veicot normatīvā regulējuma un zinātniskās literatūras analīzi, autori secina, ka gan starptautiskais, gan nacionālais un reģionālais normatīvais regulējums nodrošina un veicina institucionālo sadarbību. Problēma, kas prasa tālāku un detalizētāku pētījumu, – kamdēļ institucionālā sadarbība nenotiek pietiekamā līmenī, lai varētu runāt par būtisku teritorijas attīstības tempu atkarībā no lokālo un nacionālo institūciju sadarbības līmeņa

Introduction

The regulatory framework and policy documents are a very significant factor contributing to the sustainable development of a regional economy. This is a legal framework for dealing with particular regional economic problems, which ensures that institutions make (or hinder) successful cooperation at the international, national and regional levels. At the regional and national levels, the regulatory framework sets the "rules of the game" for various governmental and nongovernmental institutions, prescribing the terms and conditions to be met by the institutions; it has to be a stable legal mechanism that allows the institutions involved not only to perform their functions but also to contribute to development and growth. The incorporation of the cooperation aspect in the legal framework enhances the competitiveness of the regions as well. A well-structured legal framework forms an institutional environment, thereby ensuring not only stability but also opportunities for development and sustainable growth. The role of the legal framework in regional development has been little researched in Latvia, yet the institutional cooperation aspect as an instrument of economic growth has to be researched. An essential part of the researches focused on enhancing the local government system of Latvia (A. Stucka, 2012).

Latvian scientists have internationally researched the effectiveness of the United Nations Organisation in maintaining international peace and security with the aim of identifying whether the earlier UN activities could be considered effective (G. Reire, 2010). In relation to Latvia, it was researched whether cooperation, establishing business clusters in an industry, considerably contributes to the development of the industry (K. Šteinbergs, 2017). It was also researched whether changes in policies on the public sector should be made to enhance the institutional environment in Latvia, including the regulatory framework and policy documents (A. Vītola, 2016). The aspects of the regulatory framework have been researched by Kristīne Jaunzeme through analysing the institutional system of local governments, focusing on the matters related to municipal institutional system models, administration and the status of municipality executive director (K. Jaunzeme, 2009).

The Ministry of Environmental Protection and Regional Development has designed a territorial reform, the purpose of which is to reduce the number of municipalities, amalgamating them into more sustainable and economically viable divisions that could autonomously perform their functions (in accordance with Section 15 of the Law on Local Governments). It is important to understand whether the amalgamation of municipalities, establishing 35 municipalities around the centres of development, is associated with their current inability to cooperate with one another. Second, since it is essential to examine the effects of both the current administrative and territorial division and the planned one on the economic development of a region, which could be a separate

research investigation, the present paper focuses on cooperation and the relevant legal framework and an analysis and assessment of institutional cooperation.

The paper gives insight into cooperation among institutions, which is stipulated by the relevant legal framework, in accordance with the classification of legal documents: 1) international legal documents (international treaties binding upon Latvia, customary international law, general principles of international law); 2) external legal documents (the Constitution, laws, Cabinet regulations, regulations binding upon local governments, international treaties, principal treaties of the European Union etc.); 3) internal legal documents (issued to prescribe the functions of an institution or a subordinate institution, e.g. municipal instructions, recommendations, statutes, etc.).

Discussion

After examining the United Nations Organisation, international law professor I. Ziemele has pointed out that it is one of the international organisations whose strength lies in making and introducing international norms and standards, e.g. incorporating them in the UN Charter or designing and concluding hundreds of international agreements as well as drawing up various recommendatory documents (I. Ziemele, 2005). The objectives of the United Nations Organisation that are defined in the UN Charter, which is also the Constitution of the organisation and a multilateral treaty of nations, are as follows:

1) maintaining international peace and security and taking effective collective measures to prevent and avoid threats to peace, aggression acts and other peace violations and deal with and solve international disputes and situations, which could lead to the disruption of peace, by peaceful means in accordance with the principles of justice and international law;
2) establishing friendly relations among nations based on respect for the principle of equality and self-determination of nations, as well as other appropriate measures to strengthen universal peace;
3) implementing cooperation to solve international problems of an economic, social, cultural or humanitarian character and contributing to the respect of human rights and basic freedoms regardless of race, gender, language or religion;
4) being a centre for harmonizing the actions of nations in achieving the objectives.

Accordingly, one could conclude that all the four objectives of the UN refer to cooperation: joint action to achieve common objectives (maintenance of peace and security, friendly relations among nations, cooperation to solve economic, social, cultural or humanitarian problems), establishment and development of friendly relations based on particular principles (equality and self-determination of nations) as well as the UN has to be a centre for harmonizing the actions of nations. In her doctoral dissertation Role of the United Nations Organisation in Maintaining International Peace and Security, researcher Gunda Reire has pointed out that cooperation among

institutions is effective within not only the UN but also NATO and the EU if it occurs within a common political framework and involves common personnel and a common planning mechanism (G. Reire, 2010). The UN employ sanctions, peace keeping missions as well as international military operations as the key instruments for peace and security (to resolve conflicts).

The institutions that provide cooperation for growth and development within the UN are the UN General Assembly and the Economic and Social Council. The General Assembly as the key UN decision-making institution is represented by 192 member countries. Each member country, regardless of the size of it, has one vote. The number of member countries (192) is sufficient to represent the common opinion of the world countries and work on achieving the above-mentioned common objectives. There is one more organisation whose membership nears the number of UN member countries – the International Organisation for Standardisation with 164 members.

The UN Department of Economic and Social Affairs, in accordance with the UN Charter, is one of the basic institutions of the UN, the purpose of which is to coordinate international economic and social cooperation and development, find solutions to international economic, social and health-related problems, promote cooperation in the field of culture and education as well as contribute to the universal observance of human rights and basic freedoms.

The European Charter of Local Self-Government, adopted by the Council of Europe on 15 October 1985, could be referred to as one of the international documents being important for research on cooperation for regional development in the regions of Latvia. As pointed out by Latvian Academy of Sciences academician Edvīns Vanags, the European Charter of Local Self-Government could be considered the most important document of international law for local governments (E. Vanags, 2000). The charter is important in relation to the paper, as it regulates the formal structure of regional institutions as well as entitles local authorities to unite in order to cooperate and form consortia with other local governments within the framework of the law with the aim of carrying out tasks of common interest, as well as the local authorities have the right to associate with their counterparts in other countries under the conditions as may be provided for by the law (The European Charter of Local Self-Government, signed in 1985). For example, Jurmala – a city under state jurisdiction – has concluded cooperation agreements with Pietarsaari in Finland, in France, Terracina in Italy, Gävle and Eskilstuna in Sweden and other cooperation cities or towns in Estonia, Lithuania and other countries (Jurmala City International Cooperation).

Since Latvia is one of the 28 Member States of the EU (at the moment of writing the paper the UK was an EU Member State), there are binding primary legal documents of the EU – the Founding Treaties and basic general principles – and secondary legal documents – regulations, directives, decisions, etc.

Establishing the European Economic Community in 1958, foundations were laid for closer economic cooperation among six countries: Belgium, France, Italy, Luxembourg, the Netherlands and Germany. In 1993, the European Economic Community was transformed into the European Union; for this reason, two founding treaties are binding: the Treaty of the European Economic Community (signed in 1957) and the Treaty of the European Union (signed in 1992).

The preamble of the Treaty of the European Economic Community declared that the principle of cooperation has to be introduced to contribute to economic and social development in the Member States, eliminating barriers dividing Europe, making joint efforts aimed at enhancing the living and working conditions of people, coordinating actions in order to ensure balanced growth and trade and fair competition, deepening economic integration and ensuring harmonised development and reducing disparities among various regions. At the moment of establishment, the European Economic Community declared solidarity with the United Nations Organisation (Treaty of the European Economic Community).

In accordance with the Treaty of the European Union, the Member States made commitments to establish more enhanced cooperation than it was prescribed by the Treaty of the European Economic Community, implementing consolidation policies among the nations and introducing the free movement of individuals (free flow of labour).

The European Union, just like the United Nations Organisation, has a single organisational structure, which is stipulated by the Treaty of the European Union; it ensures the successive and persistent functioning of the EU, which allows the EU to achieve its goals. Article 3 of the Treaty stipulates that the Council of Europe and the European Commission have to cooperate to ensure succession in economic and other policies.

An analysis of the legal acts conducive to the institutional environment reveals that the Treaty of the European Union has special Chapter VII – Provisions on Enhanced Cooperation intended for the Member States that have decided to establish enhanced cooperation.

Accordingly, one can conclude that in the legal frameworks of both the European Union and the United Nations Organisation – in primary law – the principle of cooperation among countries and among institutions represents an important cornerstone, a basic principle of the functioning of the European Union, which was one of the key purposes of foundation of the European Economic Community.

The authors analysed interinstitutional cooperation in the national legal framework pertaining to economic development in the regions of Latvia (the Constitution, laws, Cabinet regulations, binding local government regulations) and policy documents (long-term conceptual document Growth Model for Latvia: People First; the Sustainable Development Strategy of Latvia and the National Development Plan of Latvia).

In relation to the legal acts conducive to regional institutional cooperation, the State Administration Structure Law is important; its purpose is to ensure democratic, lawful, effective, open and publicly accessible state administration, which is achieved through prescribing the institutional system and operational framework for state administration. Section 6 of the State Administration Structure Law stipulates that state administration is organised in a single hierarchical system, and no institution or administrative official may remain outside this system. The law prescribes the principle of subordination, supervision and control – a higher-level institution or official may perform the mentioned actions over lower-level institutions or officials. In accordance with Section 1 of the law, an institution is an authority which acts on behalf of a public person and whose competence in state administration is specified by a regulatory enactment. Since the research problem of the paper is cooperation, the analysis of the State Administration Structure Law has revealed that, first, the law prescribes that a state administration official has to cooperate with another state administration official; second, Chapter VII of the law (Sections 54–61) stipulates interinstitutional cooperation: institutions have to cooperate in order to perform their functions and tasks, and the institutions may refuse cooperation (in accordance with Section 56) only in case it is not possible for some real, lawful reasons or another institution could be involved in the cooperation, thereby allowing consuming fewer resources. If institutions belong to different departments, they may conclude interdepartmental agreements.

A further analysis of the legal framework regulating cooperation among governmental institutions reveals that the Law on Local Governments covers a very essential scope of matters – local governments are located throughout the country, they are closer to their citizens and deal with a series of essential problems that directly affect the daily life quality of the citizens (public utilities: water supply and sewage disposal, heating and waste management; placemaking; education and cultural activities as well as, of course, local economic growth, which is important for municipalities). In accordance with the State Administration Structure Law, local administration represents indirect administration. The Law on Local Governments stipulates the general provisions and economic basis for the activities of the local governments of Latvia, the competence of local governments, the rights and responsibilities of city or municipality councils and their institutions, as well as of the chairpersons of city or municipality councils, the relations of local governments with the Cabinet and ministries, as well as the general provisions for relations among local governments (Law on Local Governments, 1994).

As pointed out by researcher K. Jaunzeme, the central administration of a municipality (e.g. in Jurmala it is the Jurmala City Council, and often there is a confusion over whether it is a decision-making body or an executive body) is one of the local government institutions that acts on behalf of the municipality (K. Jaunzeme, 2009). This institution has its own statute, i.e. Jurmala, a city under

state jurisdiction, has adopted the Jurmala City Government Statute that stipulates that, in accordance with the law, Jurmala performs autonomous functions (mentioned above) on behalf of Jurmala residents. The residents of Jurmala City are represented by the elected Jurmala City Council that makes decisions as a legal entity, and which is important for the present research on institutional cooperation, determines the institutional structure of the local government, decides on its autonomous functions, the implementation of voluntary initiatives (e.g. in the case of the government of Jurmala City, it pertains to advisory councils, including the Business Advisory Council whose purpose is to foster economic activities in Jurmala City and maintain effective dialogues between the government of Jurmala City and local businesspersons and entrepreneurs) and the procedure of how to perform the public administrative functions and tasks delegated to the local government, draws up, approves and implements the municipality budget as well as is directly responsible for the legal activities of local government institutions and proper use of funding (Jurmala City Government Statute, 2010). The authors have made an exception and sought to find the role of "cooperation" referred to in the Jurmala City Government Statute, as it directly pertains to the research problem – legal acts conducive to regional institutional cooperation – and Jurmala is one of the largest cities in Latvia. Unfortunately, the only reference to cooperation made in the statute could be found in relation to a commission established by the local government – the Jurmala City Civil Protection Commission. In respect to the institutions of the local government, the statute mainly referred to the following ideas: to manage, perform, call a meeting and supervise; competence.

To make a comparison, the authors used the Ventspils City Government Statute. The statute establishes a special job position – first vice-chairperson for cooperation –, which is an important fact showing cooperation is of great importance for the local government. The Ventspils City Government Statute prescribes cooperation not only for the first vice-chairperson but also for the executive director.

It is necessary to do an in-depth examination of statutes of local governments of Latvia to understand whether the Jurmala City Government Statute represents an exception or regularity in relation to cooperation in the particular municipality and the regions of Latvia.

A legal act that is very important and directly affects regional, including economic, development and institutional cooperation is the Regional Development Law. The purpose of this Law is to promote and ensure balanced and sustainable development of the State, taking into account special features and opportunities of the entire State territory and of separate parts thereof, to reduce the unfavourable differences among them, as well as to preserve and develop the features characteristic of the natural and cultural environment of each territory and the development potential thereof (Regional Development Law, 2002). The law stipulates that regional development

involves productive changes in the social and economic situation in the entire territory of the State or separate parts thereof, while regional policy – guidelines and purposeful activity of the government in promoting regional development by co-ordinating sectoral development in conformity with the development priorities of separate parts of the State territory and by providing direct support for development of separate parts of the State territory. The Regional Development Law, in particular , defines/specifies the partnership principle, which involves cooperation among national administrative institutions, international institutions, planning regions, local governments, associations, foundations and businesspersons.

The following planning regions have been established as an instrument for implementing regional policies: Kurzeme planning region, Riga planning region, Vidzeme planning region, Zemgale planning region, Zemgale planning region and Latgale planning region. Unlike the statistical regions, which are six in number, the planning regions are five.

Let us examine one of them – the formal administrative structure of Latgale planning region – because in accordance with the law, the administrative structure and operational principles of all the planning regions are the same. Possibly, the difference lies in the way how each planning region manages to perform the tasks assigned, yet this is not the aim of the present paper.

Latgale planning region is a derived public person, established in accordance with the Regional Development Law and is supervised by the Ministry of Environmental Protection and Regional Development (Latgale Planning Region Statute, 2007). The region was established in 2006 with the aim of contributing to regional development planning, coordination, cooperation with other institutions; it is regulated also by the Territorial Planning Law and other legal acts being in force. Latgale planning region is comprised of 19 rural municipalities (Aglona, Baltinava, Balvi, Cibla, Dagda, Daugavpils, Ilukste, Karsava, Kraslava, Livani, Ludza, Preili, Rezekne, Riebini, Rugaji, Varkava, Vilaka, Vilani and Zilupe) and two cities under state jurisdiction (Daugavpils and Rezekne). The total area of the region is 14 547 km^2 (or 22.52% of the total area of Latvia). The administrative structure of Latgale planning region, in accordance with the Statute, is as follows:

Administrative structure of Latgale planning region

General meeting
(consists of the chairpersons of local governments)

Council
(re-elected by the general meeting, consists of 21 members nominated by the local governments)

Chairperson and vice-chairperson of the Council

Administration
(executive body of the planning region)

Source: authors' construction based on the Statute of Latgale planning region

In accordance with the Statute, the administration of Latgale planning region performs the following functions: 1) drawing up policy documents (territorial plans, development programmes, etc.); 2) harmonisation of the policy documents at the regional and national levels; 3) cooperation among the municipalities of Latgale as well as national institutions with regard to regional development matters; 4) defence of interests of Latgale planning region at the national level; 5) planning of regional and local public transport routes.

Accordingly, one can conclude that in accordance with the national legislation, particularly the administrations of the planning regions (as derived public persons) are the institutions that draw up policy documents for the regions of Latvia, implement the policies and are responsible for cooperation among municipalities as well as achieving positive changes in the socioeconomic situation in the regions and the country as a whole.

The Spatial Development Planning Law, adopted in 2011 by the Saeima, is not less important for contributing to cooperation. The purpose of the law is to ensure such spatial development planning that would raise the quality of the living environment, ensure sustainable, effective and rational use of territories and other resources, as well as targeted and balanced development of the economy. The law prescribes that in spatial development planning, the following principles have to be complied with: 1) sustainability, 2) succession, 3) equal opportunities, 4) continuity, 5) transparency, 6) integrated approach, 7) diversity and 8) coherence. The principles of spatial development planning allow concluding that the principles mainly focus on cooperation, e.g. the integrated approach principle, which ensures that economic, cultural, social and environmental aspects are harmonised and industry interests are coordinated as well as development priorities are harmonised at all the levels of spatial planning, and cooperation is implemented purposefully, determining the environmental impacts.

Conclusion

1) The analysis of the legal framework, policy documents and scientific literature revealed that the principle of cooperation has been incorporated in the international, national and regional legal frameworks.
2) Institutions for cooperation have been established at all levels in line with the legal frameworks.
3) The scientific literature analysis revealed that institutions are not sufficiently open for cooperation; instead, the institutions mainly make isolationistic policies that hinder the development of the regions in a long-term.
4) Regional institutional cooperation could be promoted through enhancing the legal framework – the legislation has to be complemented by mechanisms stimulating institutional cooperation.

References

Charter of the United Nations Organisation. Retrieved: https://www.mfa.gov.lv/arpolitika/starptautiskas-organizacijas/latvija-apvienoto-naciju-organizacija/apvienoto-naciju-organizacijas-statuti

European Charter of Local Self-Government. Retrieved: https://www.vestnesis.lv/ta/id/39149-eiropas-vietejo-pasvaldibu-harta

Growth Model for Latvia: People First. (2005). Retrieved: https://likumi.lv/doc.php?id=217923

Jaunzeme, K. (2009). Local Government Institutional System. Lawyer's Word (Jurista Vārds). 2009/No/36 (576).

Jurmala City Government Statute. (2010). Retrieved: https://likumi.lv/doc.php?id=266508

Jurmala City International Cooperation. Retrieved: https://www.jurmala.lv/lv/pasvaldiba/starptautiska_sadarbiba/

Latgale Planning Region Statute. (2007). Retrieved: https://www.lpr.gov.lv/wp-content/uploads/2007/info/Latgales-pl%C4%81no%C5%A1anas-re%C4%A3iona-nolikumu.pdf

National Development Plan of Latvia 2014–2020. (2012). Retrieved: https://likumi.lv/doc.php?id=253919

Regional Development Law. (2002). Retrieved: https://likumi.lv/doc.php?id=61002

Reire, G. (2010). The role of the United Nations in maintenance of international peace and security. University of Latvia.

Saeima. (1994). Law on Local Governments. Retrieved: https://likumi.lv/doc.php?id=57255

Spatial Development Planning Law (2011). Retrieved: https://likumi.lv/doc.php?id=238807

State Administration Structure Law. (2002). Retrieved: https://likumi.lv/doc.php?id=63545

Šteinbergs, K. (2017) Cluster Strategic Direction and Initiative Model to Facilitate the Development of the Audiovisual Sector in Latvia. Riga Technical University.

Stucka, A. (2012). Current Public Law Issues in the Improvement of Latvian Local Government System. University of Latvia.

Sustainable Development Strategy of Latvia. (2010). Retrieved: http://polsis.mk.gov.lv/documents/3323

Treaty of the European Economic Community. Retrieved: https://www.ecb.europa.eu/ecb/legal/pdf/ce32120061229lv00010331.pdf

Treaty of the European Union. Retrieved: https://www.ecb.europa.eu/ecb/legal/pdf/ce32120061229lv00010331.pdf

Vanags, E. (2000). Ratification and Implementation of the European Charter of Local Self-Government (in Latvian). Retrieved: https://www.vestnesis.lv/ta/id/13546

Ventspils City Government Statute. (2007) Retrieved: https://likumi.lv/doc.php?id=245698

Vītola, A. (2016). An Evaluation of the Socioeconomic Impact of Institutions. Riga Technical University.

Ziemele, I. (2005) Latvia in the United Nations Organisation and the European Council. How international legal opportunities are used? See: Latvia in international organisations. Proceedings of the Strategic Analysis Commission No. 1(2)/2005. Riga. Science. 2005.

THE DEGREE OF ECONOMIC DIFFERENTIATION OF THE COUNTRIES AROUND THE WORLD AND IN THE EU

Nataļja Seļivanova-Fjodorova
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401, nsel15@inbox.lv

Abstract

The degree of economic differentiation of the countries around the world and in the EU

Key words: *economic differentiation, state of economic differentiation, countries around the world and the EU countries, coefficient of variation, comparative analysis*

On the basis of the structural operationalization of the research subject – countries' economic differentiation, the author explained that each type of countries' differentiation (economic, social, cultural, political, linguistic, ethnic, etc.) is characterized by following structural elements: degree, nature, direction, pace, and territorial level. Within the framework of the article, the author outlines the degree of economic differentiation (methodologically accurate – the state of differentiation) of the countries around the world and in the EU, as one of the structural elements of the process of economic differentiation, and carries out a comparative analysis using coefficients of variation. In the result of empirical analysis, it was determined how big the degree of the state of economic differentiation is between the countries around the world and in the EU as compared with the degrees of the state of differentiation of other types. Having analyzed sub-indexes of the Historical Index of Human Development (HIHD), the author received an unexpected result – the state of economic differentiation of the countries around the world is not (and from 1870 until 2015 never was) the type of differentiation according to which countries differ the most. Quite the opposite, the state of economic differentiation of the countries around the world is most vividly expressed in comparison with their state of differentiation in terms of population's health and education. In order to confirm the outcomes of the analysis carried out applying HIHD indicators, the author conducted a comparative analysis of various types of differentiation of the countries around the world and in the EU using the data of the United Nations Development Programme (UNDP) and The World Bank. The outcomes of the research showed that the state of economic differentiation both in the EU and in the world manifestly exceeds other types of differentiation, for example differentiation in population's health and education, and this trend has been stable during the last 18 years.

Kopsavilkums

Pasaules un ES valstu ekonomiskās diferencētības pakāpe

Atslēgvārdi: *ekonomiskā diferenciācija, ekonomiskā diferencētība, pasaules un ES valstis, variācijas koeficients, salīdzinoša analīze*

Pamatojoties uz pētījuma priekšmeta – valstu ekonomiskās diferenciācijas – strukturālo operacionalizāciju, autores noskaidroja, ka katram valstu diferenciācijas (ekonomiskās, sociālās, kultūras, politiskās, lingvistiskās, etniskās utt.) veidam ir raksturīgi šādi strukturālie elementi: pakāpe, raksturs, virziens, temps un teritoriālais līmenis. Šī raksta ietvaros autore veic pasaules un ES valstu ekonomiskās diferenciācijas (metodoloģiski korekti–diferencētības) pakāpes kā viena no ekonomiskās diferenciācijas procesa strukturālajiem elementiem, salīdzinošo analīzi, izmantojot variācijas koeficientu (angļu valodā: ***coefficients of variation***). Empīriskās izpētes rezultātā tika noskaidrots, cik liela ir pasaules un ES valstuekonomiskās diferencētības pakāpe salīdzinājumā ar citu diferencētības veidu pakāpēm. Analizējot vēsturiskā Tautas attīstības indeksa (VTAI) apakšindeksu, autores ieguva negaidītu rezultātu – pasaules valstu ekonomiskā diferencētība nav (un kopš 1870. gada līdz pat 2015. gadam nekad nav bijis) tas diferencētības veids, pēc kura pasaules valstis atšķiras visvairāk. Gluži otrādi – pasaules valstu ekonomiskā diferencētība ir visvājāk izteikta salīdzinājumā ar to diferencētību pēciedzīvotāju izglītības un veselības. Lai pārliecinātos par analīzes rezultātiem, kas tika veikts ar VTAI rādītājiem, autore veica arī pasaules valstu un ES dažādu diferencētības veidu salīdzinošo analīzi, izmantojot Apvienoto nāciju organizācijas Attīstības programmas (ANOAP) un Pasaules bankas datus. Šīs analīzes rezultāti parādīja, ka gan pasaules valstu, gan ES valstu ekonomiskā diferencētība vairākkārt pārsniedz citus diferencētības veidus, piemēram diferencētību pēc iedzīvotāju izglītības un veselības, un šī tendence ir noturīga vismaz pēdējo 18 gadu garumā.

Introduction

Almost all modern researchers who work in the sphere of spatial economics address the issue of economic differentiation between certain countries and regions according to the pace and scale of their economic development, the standard of living, and many other indicators. Consolidation of the experience and summarizing outcomes of the research intocountries' and regions' differentiation is

quite a challenging task, as there is a large number of publications on this topic, and the research delves into various aspects of differentiation of regions, such as its reasons and factors (Кохова 2004; Rice, Venables 2004a, 2004b; Cochrane, Perrella 2012), its indicators (Granberg et al. 1998; Granberg 1999; European Trade Union Institute 2011; Kvíčalová et al. 2014), its structure (Kovacs 2004; Beramendi 2007), its patterns (Frias et al. 1998; Kim 2008; Kuttor 2009; OECD 2011; Lavrinoviča u.c. 2012; Komarova et al. 2018; Комарова и др. 2018), its consequences (Kim 2008; Glinskiy et al. 2017), as well as it refers to various levels of territorial division – from municipalities (Schmidt, Denisenko 2009; Voroshilov 2013) to whole countries (Turnock 2001; Komarova et al. 2018; Комарова и др. 2018).

The author's methodological scope within this research is that countries' economic differentiation is an absolutely normal process that is based on natural differences in the conditions of capital application and living conditions. But the task of researchers and practitioners who work in the sphere of territorial development is to assess the degree of differentiation and control over it so that too strong differentiation of countries does not hinder socio-economic development of both countries and a world as a whole. Researchers all over the world note the ambiguity of consequences of countries' differentiation stating that from the standpoint of economic effectiveness, spatial inequality may be beneficial or harmful (Kim 2008), disruptive (Schwab 2017). On the one hand, socio-economic differentiation within a world gives impetus to the development of poorer countries, promotes sustainability of more successful countries, but on the other hand, the stimulating effect of territorial differentiation of socio-economic development takes place only up to a certain level (Glinskiy et al. 2017).

In order to more completely and comprehensively understand the research subject – the economic differentiation of countries – the author has carried out its structural operationalization, i.e. has identified structural elements of the differentiation process. The methodological approach to distinguishing between the differentiation process and its result – the state of differentiation used by the author is similar to the one of distinguishing between the development process and its result – the state of development that was proved and applied in J. Lonska's Doctoral Thesis "Assessment of Territorial State of Development in Latvian Regions" (Lonska 2014).

Carrying out structural operationalization of the research subject, it is necessary to keep in mind that economic differentiation is just one type of countries' differentiation alongside with other types (social, cultural, political, linguistic, ethnic, etc.). Each of these types of countries' differentiation is characterized by the following structural elements that allow us to comprehensively study and describe a particular type of countries' differentiation:

- ***degree*** of the state of differentiation is a static element in the structure of the process of countries' differentiation that indicates how strongly countries around the world or a part of the world (for example, the European Union) are differentiated according to the studied indicator;
- ***nature*** of the state of differentiation is also a static element in the structure of the process of countries' differentiation that shows if the dispersion of the state of countries' differentiation corresponds to normal distribution according to the studied indicator, i.e. the Gauss curve;
- ***direction*** of the process of differentiation is a dynamic element in the structure of the process of countries' differentiation that indicates which direction – an increase or a decrease in the degree of the state of differentiation – the process of countries' differentiation takes place;
- ***pace*** of the process of differentiation is also a dynamic element in the structure of the process of countries' differentiation that shows the rate at which the degree of countries' state of differentiation increases or decreases;
- ***territorial level*** of the state of differentiation shows at what territorial level – between different countries or within one country – the process of differentiation mainly takes place.

Taking into consideration that economic differentiation is just one type of countries' differentiation alongside with other types, the following research problem is defined: there is no clear evidence about the degree of the state of economic differentiation of the countries around the world and in the EU in comparison with the degrees of the state of differentiation of other types, and this bothers policy which is dealing with management of spatial inequalities.

On the basis of the carried out structural operationalization of the research subject – countries' economic differentiation, the author conducted a comparative analysis of the degrees of economic differentiation (methodologically accurate and hereafter – state of differentiation) in the countries around the world and in the EU applying the coefficient of variation. In the result of empirical analysis, it was determined how big the degree of the state of economic differentiation of the countries around the world and in the EU is, as compared with the degrees of the state of differentiation of other types.

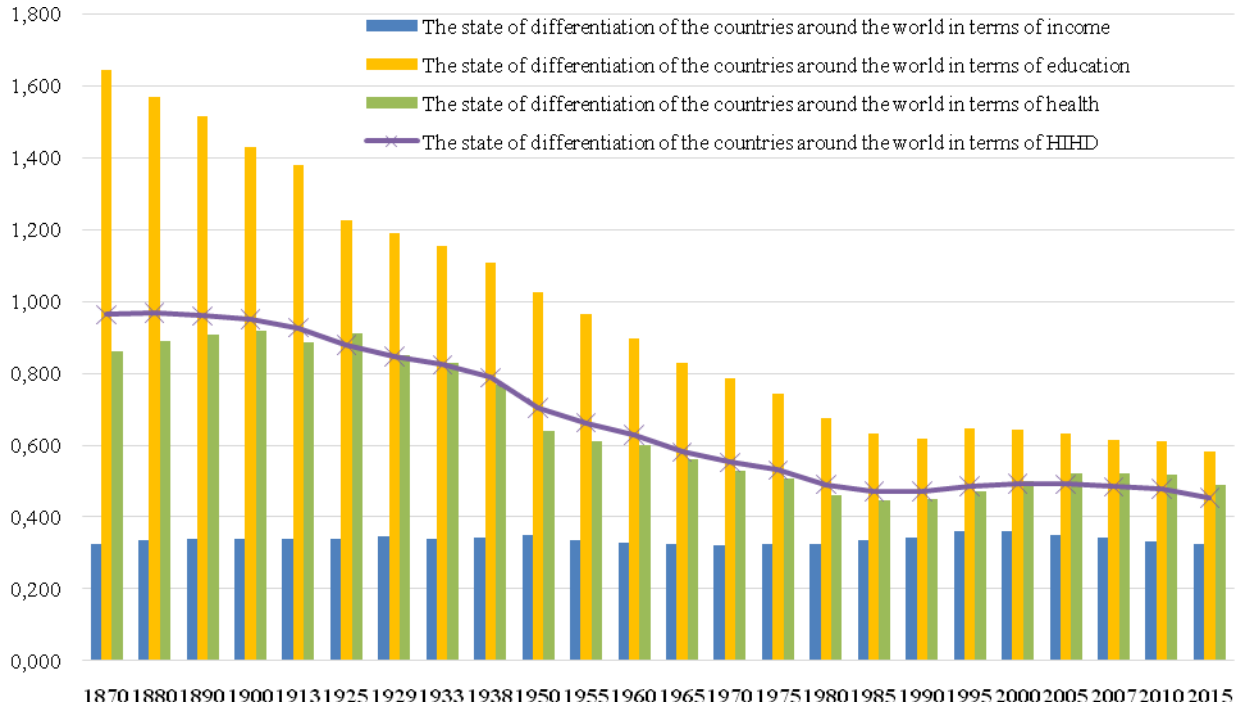
Discussion

The author applied (Mahbub ul Haq 1990) the components of Human Development Index (HDI) i.e. sub-indexes that measure a country's achievements in terms of health (health dimension), education (education dimension), and actual income (income dimension) of its citizens (UNDP 2019a)as empirical indicators that allow measuring and comparing various types of the state of differentiation of the countries around the world and in the EU. The three sub-indexes are standardised in the form of numeric values from 0 to 1 whose geometric mean represents the total TAI indicator in the range from 0 to 1.

The author uses the database of the Historical Index of Human Development (HIHD) indicators which was developed by the Spanish Professor of Economic History L. Prados de la Escosura (Prados de la Escosura 2015), as a source for empirical data for measuring and comparing different types of the state of countries' differentiation. This database is valuable because it provides a historically comparable data on sub-indexes of the HDI from 1870 to 2015 for the countries around the world.

In turn, the author uses the coefficients of variation as a methodical tool for the analysis and comparison of different types of the state of differentiation between the countries around the world and the European Union. The coefficient of variation characterizes σ-convergence, i.e. "spatial convergence" (Sala-i-Martin 1996) between countries around the world in terms of the HIHD and its sub-indexes – income, education, and health. The coefficients of variation have been obtained by the ratio of the standard deviation to the mean of the sample (Marques, Soukiazis 1998).

The following Figure shows the results that allow us to compare the degree of various types – income, education, and health – of the state of differentiation of the countries around the world which is measured using the coefficients of variation of the HIHD sub-index during the period of 150 years (see Fig. 1).



Source: calculated and developed by the author based onPrados de la Escosura 2015.

Note: the number of countries in the sample increased from 104 in 1870 to 164 in 2015, but only 96 countries have been selected for the analysis, as there are data for all time points of the period under study.

Fig. 1. **Degree of the state of differentiation of the countries around the world based on the Historical Index of Human Development (HIHD) and its sub-indexes – income, education, and health, coefficient of variation, n = 96 countries, 1870–2015**

It was quite unexpected for the author to determine that economic differentiation is not (it never was during the 150-year study period) the type of differentiation according to which countries around the world differ the most. Quite the opposite, the state of economic differentiation of the countries around the world is the weakest one in comparison with their state of differentiation in terms of population's education and life expectancy. Countries around the world are most differentiated (and were always differentiated throughout the 150-year study period) in terms of their population's education, but not by their population's income (see Fig. 1).

In order to verify the outcomes of the analysis carried out on the basis of the HIHD indicators database (Prados de la Escosura 2015), the author also carried out a comparative analysis of different types of the state of differentiation of the countries around the world and in the EU on the basis of modern data that characterize population's income, education and health for the period of the last 18 years, i.e. since 2000[22] (see Tables 1 and 2).

Table 1. **Degree of the state of differentiation of the countries around the world in terms of income, education, and life expectancy, coefficient of variation, *n* = 132 countries, 2000–2017**

Year	Degree of countries' state of differentiation in terms of:			
	Gross national income (GNI) per capita (2011 PPP $)	Mean years of schooling	Expected years of schooling	Life expectancy at birth
2000	1.075	0.451	0.306	0.158
2001	1.064	0.445	0.300	0.158
2002	1.053	0.440	0.292	0.156
2003	1.047	0.437	0.289	0.154
2004	1.037	0.434	0.274	0.151
2005	1.023	0.429	0.267	0.148
2006	1.013	0.424	0.256	0.144
2007	0.993	0.419	0.250	0.139
2008	0.980	0.414	0.242	0.135
2009	0.967	0.408	0.236	0.130
2010	0.966	0.401	0.232	0.126
2011	0.958	0.394	0.228	0.123
2012	0.950	0.386	0.224	0.119
2013	0.945	0.379	0.225	0.116
2014	0.935	0.374	0.224	0.114
2015	0.934	0.370	0.228	0.111
2016	0.927	0.366	0.225	0.109
2017	0.923	0.363	0.223	0.108

Source: calculated and developed by the author based on theWorld Bank 2019a, 2019b; GlobalDataLab 2013–2019.

[22] The author managed to find the complete data on population's income, years in education, and life expectancy in 132 countries around the world, from 2000 to 2017 (World Bank 2019a, 2019b; GlobalDataLab 2013-2019).

Table 2. **Degree of the state of differentiation of the EU countries in terms of income, education, and life expectancy, coefficient of variation, n = 26 countries, 2000–2017**

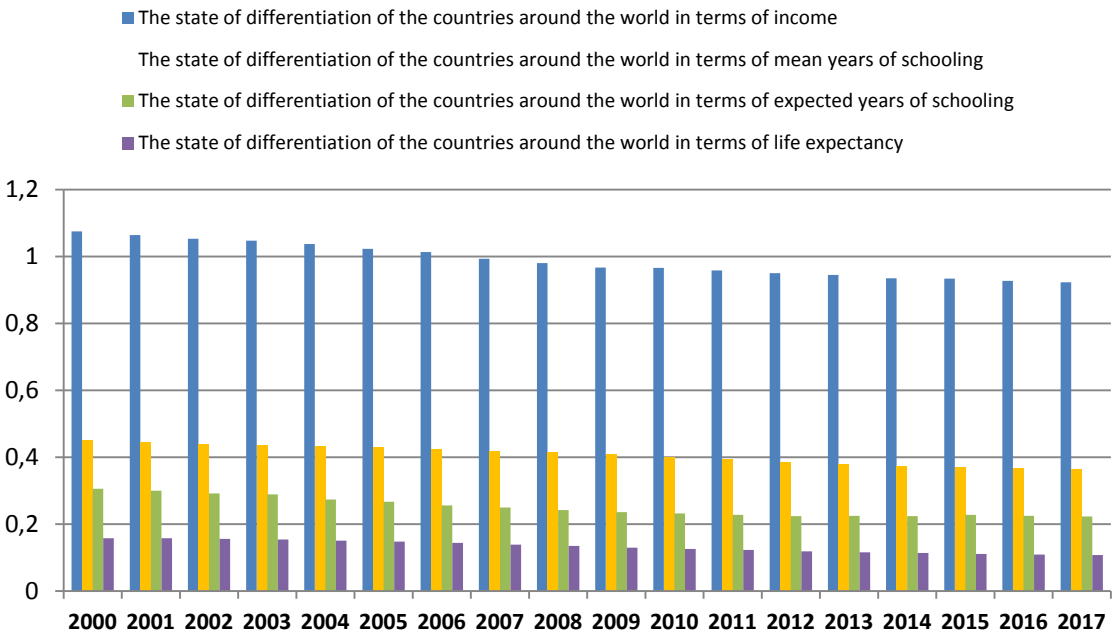
Year	Degree of countries' state of differentiation in terms of:			
	Gross national income (GNI) per capita (2011 PPP $)	Mean years of schooling	Expected years of schooling	Life expectancy at birth
2000	0.447	0.124	0.112	0.043
2001	0.428	0.124	0.109	0.042
2002	0.412	0.127	0.101	0.042
2003	0.397	0.129	0.096	0.041
2004	0.390	0.131	0.078	0.041
2005	0.371	0.124	0.077	0.041
2006	0.365	0.122	0.075	0.041
2007	0.348	0.117	0.071	0.040
2008	0.323	0.116	0.069	0.040
2009	0.319	0.113	0.068	0.039
2010	0.325	0.110	0.066	0.038
2011	0.319	0.107	0.075	0.037
2012	0.312	0.102	0.078	0.036
2013	0.305	0.099	0.078	0.036
2014	0.295	0.097	0.081	0.036
2015	0.303	0.092	0.084	0.035
2016	0.298	0.090	0.085	0.036
2017	0.285	0.090	0.085	0.035

Source: calculated and developed by the author based on theWorld Bank 2019a, 2019b; GlobalDataLab 2013–2019.

Note: the sample of the EU countries included the countries that were the EU members in 2017 (except Luxembourg and Cyprus, for which there were not complete data in the sources).

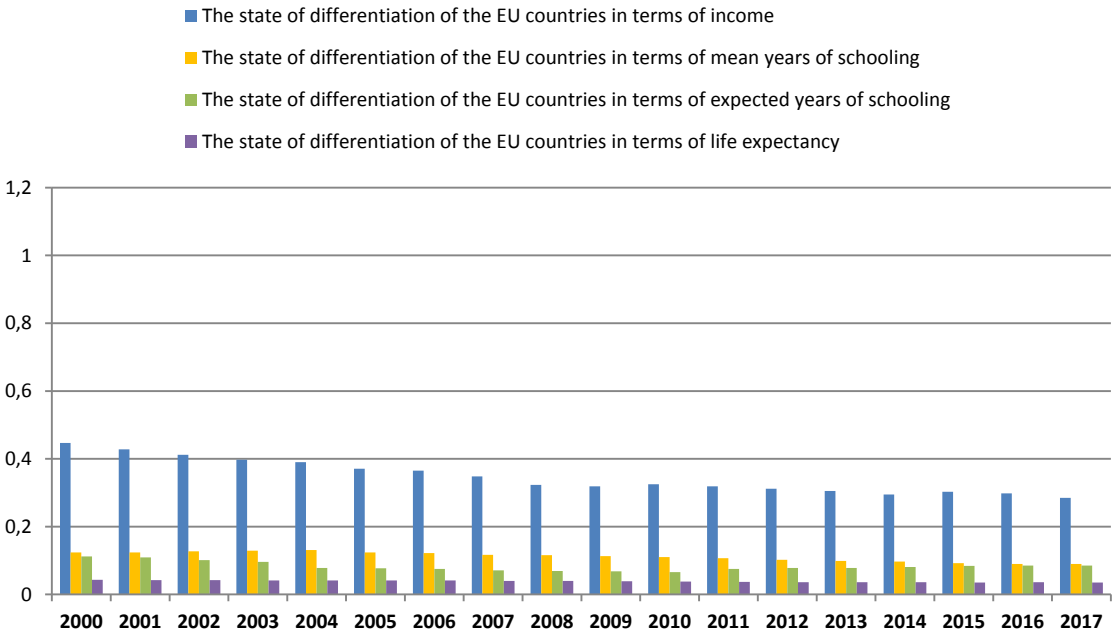
From the data presented in Tables 1 and 2 it can be seen that the state of economic differentiation of both countries around the world and in the EU still several times exceeds other types of countries' state of differentiation, in particular, countries' state of differentiation in terms of education and health. This trend has been stable for at least last 18 years (see also Fig. 2 and 3).[23]

[23] The author believes that this is a very serious contradiction (for the topic of this research it is a fundamental one) that does not allow her to use the Historical Index of Human Development (HIHD) database for the period 1870-2015 (Prados de la Escosura 2015) for the comparative analysis of the degree of countries' state of differentiation.



Source: developed by the author based on data from Table 1.

Fig. 2. **Degree of the state of differentiation of the countries around the world in terms of income, education, and life expectancy, coefficient of variation, n = 132countries, 2000–2017**

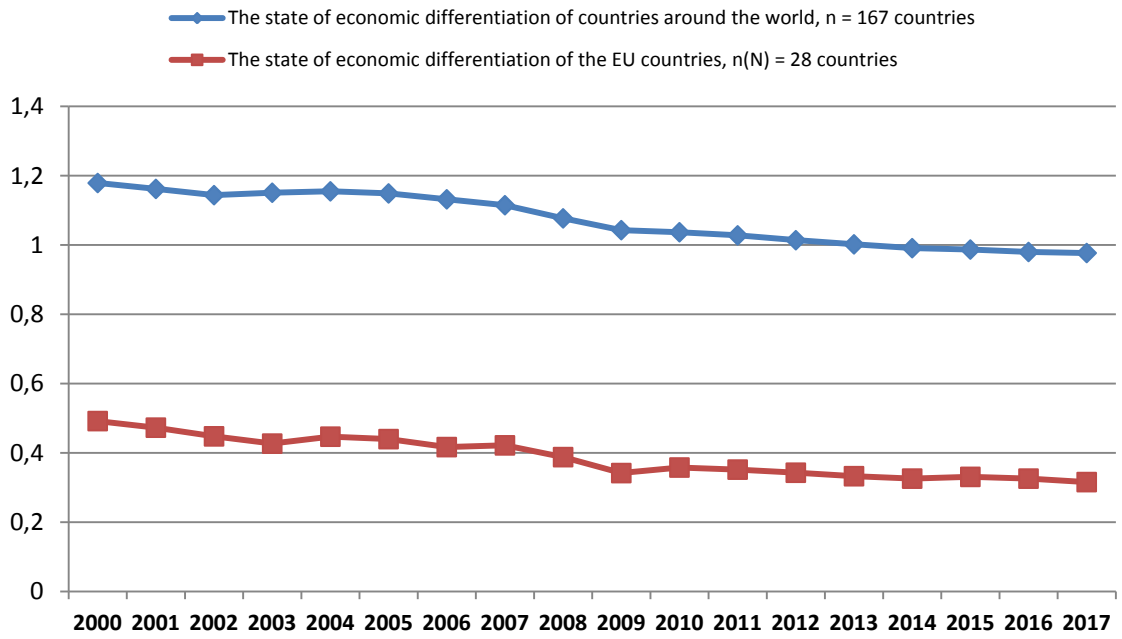


Source: developed by the author based on the date from Table 2.

Fig. 3. **Degree of the state of differentiation of the EU countries in terms of income, education, and life expectancy, coefficient of variation, n = 26 countries, 2000–2017**

Figure 4 is a visual representation of the comparison of the degree of the state of economic differentiation of the countries around the world and in the EU for the period 2000– 2017. It clearly shows that the state of economic differentiation of European countries is much weaker than the state of economic differentiation of the countries around the world, despite the fact that when compared

within the EU, the state of economic differentiation as well as of the countries around the world dominates in comparison with other types of the state of differentiation (see Fig. 2 and 3).



Source: calculated and developed by the author based on theWorldBank 2019a, 2019b.
Notes: 1) the sample of the EU countries includes the countries that were the EU members in 2017; 2) the name of the analyzed indicator in the data source:Gross national income (GNI) per capita, PPP (current international $).

Fig 4. **Comparison of the degree of the state of economic differentiation of the countries around the world and in the EU, coefficient of variation, 2000–2017**

Conclusions

The analysis of the degree of the state of economic differentiation of the countries around the world and in the EU in comparison with other types of differentiation using the coefficient of variation allowed the author to determine that the state of economic differentiation of the countries both around the world and in the EU manifestly exceeds other types of differentiation, in particular, in terms of people's education and health; and this trend has been stable for at least the last 18 years, starting from 2000. Moreover, the state of economic differentiation of European countries is much weaker than the state of economic differentiation of the countries around the world, despite the fact that, when compared within the EU, the state of countries' economic differentiation in the EU as well as in the world, dominates over other types of differentiation.

Unfortunately, the author did not manage to show it in the historical perspective of 150 years, as the Historical Index of Human Development (HIHD) database for the period 1870–2015 which the author based her analysis on within the framework of this article, proved its inconsistency for the purposes of comparative analysis of the degree of the state of differentiation of the countries around the world. Therefore, the author had to omit using it for the further empirical analysis.

References

Beramendi P. 2007. Inequality and the territorial fragmentation of solidarity. In: *International Organization,* Vol. 61(4), pp. 783–820.

Cochrane Ch., Perrella A. 2012. Regions, regionalism and regional differences in Canada. In:*Canadian Journal of Political Science,* Vol. 45(4), pp. 829–853.

European Trade Union Institute. 2011. *Regional Inequalities in Europe*. Accessed: https://www.etui.org/content/download/5425/53612/file/Chap+7.pdf [11.05.2019].

Frias I., Vazquez M., Iglesias A. 1998. Economic growth and employment: regional disparities in the EU. In: *38th Congress of the European Regional Science Association: "Europe Quo Vadis? – Regional Questions at the Turn of the Century",* Vienna. Accessed: https://www.econstor.eu/bitstream/10419/113563/1/ERSA1998_313.pdf [11.05.2019].

Glinskiy V., Serga L., Novikov A., Litvintseva G., Bulkina A. 2017. Investigation of correlation between the regions sustainability and territorial differentiation. In: *Procedia Manufacturing,* Vol. 8, pp. 323–329.

Global Data Lab. 2013–2019. *Sub-national Human Development Index database.* Accessed: https://globaldatalab.org/shdi/ [11.05.2019].

Granberg A. 1999. Differentiation of regions of Russia on gross regional product by expenditures. *39th Congress of the European Regional Science Association: "Regional Cohesion and Competitiveness in 21st Century Europe",* Dublin. Accessed: https://www.econstor.eu/dspace/bitstream/10419/114305/1/ERSA1999_a217.pdf [11.05.2019].

Granberg A., Masakova I., Zaitseva I. 1998. Gross regional product as the indicator of differentiation of social-economic development of the regions (Russia in transition). *38th Congress of the European Regional Science Association: "Europe Quo Vadis? – Regional Questions at the Turn of the Century",* Vienna). Accessed: https://www.econstor.eu/bitstream/10419/113445/1/ERSA1998_124.pdf [11.05.2019]

Kim S. 2008. Spatial inequality and economic development: theories, facts and policies. *Working Paper No. 16.* Washington: The World Bank.

Komarova V., Vasserman Y., Selivanova-Fyodorova N. 2018. Is the UNDP declared human development for everyone possible in real life? In: *European Scientific Journal,* Vol. 14(31). Accessed: http://www.eujournal.org/index.php/esj/article/view/11454 [11.05.2019].

Kovacs Z. 2004. Socio-economic transition and regional differentiation in Hungary. In: *Geographical Bulletin,* Vol. LIII, No. 1–2. Accessed: https://www.researchgate.net/publication/228962218_Socio-economic_transition_and_regional_differentiation_in_Hungary [11.05.2019].

Kuttor D. 2009. Territorial inequalities in Central Europe: spatial analysis of the Visegrad countries. In: *Romanian Review of Regional Studies,* Vol. V(1). Accessed: https://core.ac.uk/download/pdf/27060466.pdf [11.05.2019].

Kvíčalová J., Mazalová V., Široký J. 2014. Identification of the differences between the regions of the Czech Republic based on the economic characteristics. In:*Procedia Economics and Finance,* Vol. 12, pp. 343–352.

Lavrinoviča I., Lavriņenko O., Teivāns-Treinovskis J. 2012. Iedzīvotāju ienākumu diferenciācija un tās ietekme uz noziedzības līmeni: reģionālais aspekts. No: *XIII starptautiskās zinātniskās konferences "Ilgtspējīga uzņēmējdarbība mainīgos ekonomiskos apstākļos" rakstu krājums.* Rīga: Biznesa Augstskola Turība, 242.–251. lpp.

Lonska J. 2014. *Teritoriju attīstītības novērtēšana Latvijas reģionos*. Promocijas darbs. Daugavpils: Daugavpils Universitāte.

Mahbub ul Haq. 1990. *Human Development Report 1990.* United Nation Development Programme. New York: Oxford University Press.

Marques A., Soukiazis E. 1998. Per capita income convergence across countries and across regions in the European Union: some new evidence. In: *Proceedings of the 2nd International Meeting of European Economy Organized by CEDIN(ISEG),* Lisbon.

Rice P., Venables A. 2004a. *Productivity: Understanding Regional Differences.* Accessed: http://cep.lse.ac.uk/pubs/download/CP162.pdf [11.05.2019].
Rice P., Venables A. 2004b. Spatial Determinants of Productivity: Analysis for the Regions of Great Britain. *CEP Discussion Paper No. 642*. Accessed: http://cep.lse.ac.uk/pubs/download/dp0642.pdf [11.05.2019].
OECD (Organisation for Economic Co-operation and Development). 2011. Regional economic disparities. In: *OECD Regions at a Glance 2011*. Paris: OECD, pp. 40–45.
Prados de la Escosura L. 2015. World Human Development, 1870–2007. In: *Review of Income and Wealth*, Vol. 61(2), pp. 220–247.
Sala-i-Martin X. 1996. Regional cohesion: Evidence and theories of regional growth and convergence. In:*European Economic Review*, Vol. 40, pp. 1325–1352.
Schmidt U.D., Denisenko V.A. 2009. Differentiation and regulation of social and economic development of the region's municipalities. In: *Voprosy ekonomiki*, Vol. 21, pp. 5–14.
Schwab K. (Ed.). 2017. *The Global Competitiveness Report 2017–2018.* Geneva: World Economic Forum.
Turnock D. (ed.) 2001. *East Central Europe and the Former Soviet Union: Environment and Society*. London: Arnold.
UNDP (United Nations Development Programme). 2019a. *Human Development Index (HDI).* Accessed: http://hdr.undp.org/en/content/human-development-index-hdi [11.05.2019].
UNDP (United Nations Development Programme). 2019b. Table 1. Human Development Index and its components. *Human Development Reports.* Accessed: http://hdr.undp.org/en/composite/HDI [11.05.2019].
Voroshilov N.V. 2013. The differentiation of the socio-economic development of municipalities of the Vologda region in 1991–2011. In: *Problems of Territory's Development,* Vol. 3, pp. 31–41.
World Bank. 2019a. GNI per capita, PPP (current international $). *International Comparison Program Database.* Accessed: https://data.worldbank.org/indicator/ny.gnp.pcap.pp.cd [11.05.2019].
World Bank. 2019b. Life expectancy at birth, total (years). *Data.* Accessed: https://data.worldbank.org/indicator/sp.dyn.le00.in [11.05.2019].
Комарова В., Вассерман Ю.М., Селиванова-Фёдорова Н. 2018.Каким образом страны мира дифференцируются по уровню развития человеческого потенциала. *Материалы V Международной научно-практической конференции "Актуальные проблемы развития человеческого потенциала в современном обществе",* Пермский Государственный Национальный Исследовательский Университет, с. 138–144.
Кохова И.В. 2004. *Региональная дифференциация уровня жизни населения России.* Автореферат диссертации. Научная библиотека диссертаций и авторефератов disserCat. Доступно: http://www.dissercat.com/content/regionalnaya-differentsiatsiya-urovnya-zhizni-naseleniya-rossii [11.05.2019].

CIRCULAR ECONOMY: DIRECTIONS OF DEVELOPMENT IN EUROPEAN UNION COUNTRIES

Halina Shmarlouskaya
Belarusian State Economic University, 26, Partizanski Av., Minsk, Republic of Belarus,
galina.shmarlovskaya@gmail.com

Abstract

Circular economy: directions of development in European Union countries

Key words: *circular economy, business models, digitalisation, economy "3R", resources recovery, sharing platforms, product life extension*

The essence, preconditions, main directions and manifestations of the circular economy is analysed, the experience of countries and leading international corporations in mastering new business models in a circular economy (resources recovery, sharing platforms, product life extension, etc.) is studied in the article.

The main precondition for the circular economy formation is the digitalisation, which has a multidirectional impact on the economy. First, it opens up new opportunities for the global problems solving, but at the same time it is accompanied by an escalation of global problems caused by an increase in consumption of resources and energy, in electronic waste generation and a reduction in employment. Second, it contributes to the transition to a non-linear economic model, which allows creating a closed-type economic model.

It is justified that the development of the circular economy has various forms of manifestation, its development involves a comprehensive restructuring of legislation, the introduction of new technologies and new business models, causes external and internal, positive and negative effects. Each country has national peculiarities of the transition to a circular economy concept, various priority directions of its implementation. It is shown that the leaders in mastering the model of circular economy and closed supply chain are the European Union countries, they identify the main directions of the circular economy development.

Introduction

The globalisation of the world economy, along with positive consequences, has led to an escalation of global problems (lack of resources, environmental pollution, etc.). Some possibilities for the solution of these problems arise in the conditions of digitalisation, which has a multidirectional impact on the economy. First, it opens up new opportunities for the global problems solving. But at the same time it is accompanied by an escalation of global problems caused by an increase in consumption of resources and energy, in electronic waste generation and a reduction in employment. Second, it contributes to the transition to a non-linear economic model, which allows optimising the production process, creating a closed-type economic model.

The circular economy is an economic model that through the use of ICT is aimed at restoring, conserving and renewing of resources, at controlling of the process of waste generation, their reduction and reuse, at increasing in employment. It is an economy that has a restorative and closed nature. The circular model leads to the development of the economy "3R" (reduce, reuse and recycle), involving the optimisation of the production process, repeated or joint use of the product and waste recycling. The basis of the circular economy is formed by closed supply chains, its formation should lead to the realisation of the zero waste principle. Its implementation in practice has led to the emergence of new business models.

Circular economy is a multidimensional phenomenon. In this regard the article focuses on the following aspects: essence of the circular economy, forms of manifestation, directions of

development, EU countries experience, effectiveness. So, the purpose of the article is to reveal the essence, preconditions, main directions and manifestations of the circular economy, to study the experience of countries and leading international corporations in mastering new business models in a circular economy.

The information basis of the study was the statistical data, analytical reviews and reports of international economic organisations (UNCTAD, WTO), Eurostat, studies of individual scientists. General scientific methods (analysis and synthesis, induction and deduction, logical-historical method, scientific abstraction), systematic approach, economic-statistical methods were used in the research.

Discussion

According to the United Nations data ("The Global E-Waste Monitor 2017: Quantities, Flows and Resources") in 2016 about 44.7 million tons of mobile phones, computers, TVs and other consumer electronics were thrown out in the world. This weight is equal to 4.5 thousand Eiffel towers. At the same time, only 20% of all electronic waste was recycled. And there are precious metals in this waste (gold, silver, copper, platinum and others). It is estimated that in 2016 the cost of the discarded precious materials that could be reused was 55 billion USA dollars. In the European Union (EU) 12.3 million tons of electronics are thrown away every year. It's 16.6 kg of e-waste per capita (in Norway – 28.5 kg) (UN 2017). In general, according to Eurostat data, the situation in the EU is as follows: 1) in 2016 the average amount of municipal solid waste per capita was equal to 482; the leaders are Denmark, Norway, Germany; 2) the level of recycling municipal solid waste – 45.8%, the leader is Germany – 66.1% (Hervey 2018).

One of the innovative approaches that allow determining effective ways to solve global problems using digital technologies is the circular economy. At the 46th International Economic Forum in Davos (2016) it was determined that circular economy is the basis of the "Fourth Industrial Revolution". By 2025 the circular economy will annually provide an increase in global economic income of over 1 trillion USA dollars, an annual productivity increase of 3%, a global domestic product increase of 7% (MacArthur et al. 2014).

The concept of circular economy combines approaches from various scientific schools (performance economy, industrial ecology, regenerative design, etc.). In scientific literature a number of definitions are used. At the beginning of 2018 there were more than 114 definitions of circular economy, made by various scientific schools, specified in legislative acts of various countries, introduced into practice by international organisations (Kirchherr et al. 2017). Among them: the circular economy, the economy of a closed cycle (cyclic economy; closed-loop economy; closed supply chains). The most commonly the following definitions are used.

The circular economy is an economic model that through the use of ICT is aimed at restoring, conserving and renewing of resources, at controlling of the waste generation process, their reduction and reuse, at increasing in employment. The circular economy is an economy that has a restorative and closed nature (MacArthur et al. 2013).

The circular economy implementation requires the change of the economic model. During the 20 century there was a linear model based on the principle "take, make, waste". This involves providing raw materials, organisation of production, waste disposal. The digitalisation contributes to the transition to a non-linear economic model, that allows optimising the production process, creating a closed-type economic model. The non-linear model is a circular economic model based on the principle "take, make, reuse". It involves providing raw materials, organisation of production, reuse of waste in the form of raw materials (Dedicoat 2016).

In this way the circular model leads to the development of the economy "3R" (reduce, reuse and recycle), involving the optimisation of the production process, repeated or joint use of the product and waste recycling (Dedicoat 2016). The basis of the circular economy is formed by closed supply chains, its formation should lead to the realisation of the zero waste principle.

The development of a circular economy has various forms of manifestation: 1) integration of enterprises, sometimes from various industries, into a closed production chain; 2) waste recycling; 3) reuse of goods; 4) export/import of secondary raw materials to be processed by companies in different countries.

Its implementation in practice has led to the emergence of new business models. The classification of innovative business models of the circular economy was developed by experts from Accenture (Accenture 2014). Of interest is the experience of countries and international corporations in mastering new business models in a circular economy. Among them:

1) circular suppliers – a business model in which limited resources are replaced with fully renewable sources (fully recyclable or biodegradable resources) (Renault, Ford Motor Company, IKEA, etc.);
2) resources recovery – a business model consisting in recovery and reuse of resources, ensuring the reduction of waste and use of return flows in the production;
3) sharing platforms – a business model that is built on the exchange or sharing of goods and assets, providing interaction between product users. It led to changes in consumer relations between themselves (C2C) (BlaBlaCar, RelayRides, Airbnb, Rent-a-Park, NeighborGoods) and also changes in business and consumer relations (B2C) (3DHubs platform, Tool Library);
4) product life extension – a business model that allows companies extending the products life cycle by repairing, upgrading, renovating or restoring, including product refurbishment and/or

component remanufacturing, waste/products recycling (SR-Harvesting, Swappie, BMA Ergonomics);

5) product as a service – a model in which customers use products by "leasing".

The use of the circular economy business models allows reducing material, energy and environmental costs, integrating enterprises into a closed production chain. In this regard in the developed countries new requirements are imposed on imported goods: products must meet the criteria of circularity, including reusability, extended service life, minimal waste, etc.

The most suitable for the circular economy creation are mechanical engineering, automobile, pharmaceutical, aviation and aerospace industries, production of chemical and medical equipment, home appliances and electronics, etc. At the same time, according to experts of UPS and GreenBiz, it is assumed that the high-tech sector is the most promising in adopting a circular economic model. First of all, in electronics, computers and mobile phones production, since in these industries it is the most easy to integrate the systems of recycling and of products reuse.

The leaders in mastering the model of circular economy and closed supply chain are the EU countries, they identify the main directions of the circular economy development. In the EU countries, the circular economy is considered as a priority in economic development, a mechanism to maintain independence from the primary resources suppliers and to ensure economic security. In addition, each country has national characteristics of this concept implementation.

Among the directions of a circular economy formation it is possible to single out the following: creation of legislation; providing state financial support, identifying incentives; investment in research and development and innovative projects; transition from a linear to a circular business model; introduction of digital innovative technologies; integration of enterprises, including from various industries, into a closed supply chain.

Finland was the first country in the world to develop a national roadmap for the transition to a circular economy. Scotland was the first country to join the Circular Economy 100 (CE100) club, initiated by the Ellen MacArthur Foundation. Germany, Great Britain and France occupy leading positions in the circular economy development (for example, taking into account such indicators as amount of investment, patents and jobs in the circular sectors of the economy). In the Circular economy ranking–2018, Germany ranks first in the number of patents related to circular economy (1260). The United Kingdom and Germany are the leaders in "circular" investment.

Conclusions

Thus, one of the innovative approaches that allow determining effective ways to solve global problems using digital technologies is the circular economy that has a restorative and closed nature. The circular economy has various forms of manifestation: integration of enterprises into a closed production chain; waste recycling; reuse of goods; export/import of secondary raw materials to be

processed by companies in different countries. The development of the circular economy causes different external and internal, positive and negative effects. Of particular importance is the formation of environmental effects, due to the reduction in the waste amount, reduction of environmental pollution.

In the EU countries the circular economy is considered as a priority in economic development, a tool to increase the industry competitiveness, a mechanism to maintain independence from the primary resources suppliers and to ensure economic security. Each country has national peculiarities of the transition to a circular economy concept, various priority directions of its implementation. Its development involves a comprehensive restructuring of legislation, the introduction of new technologies and new business models.

References

Accenture. 2014. *Circular Advantage: Innovative Business Models and Technologies to Create Value in a World without Limits to Growth*. https://www.accenture.com/t20150523T053139__w__/us-en/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Strategy_6/Accenture-Circular-Advantage-Innovative-BusinessModels-Technologies-Value-Growth.pdf

Dedicoat C. 2016. *Circular economy: what it means, how to get there*. https://www.weforum.org/agenda/2016/01/the-importance-of-a-circular-economy

Hervey G. 2018. *Ranking how EU countries do with the circular economy. Getting Wasted.* https://www.politico.eu/article/ranking-how-eu-countries-do-with-the-circular-economy/

Kirchherr Julian et al. 2017. Conceptualizing the circular economy: An analysis of 114 definitions. *Resources, Conservation and Recycling.* № 127. pp. 221–232.

MacArthur E. et al. 2013. *Towards the circular economy.* London: Ellen MacArthur Foundation, McKinsey Center for Business and Environment. https://www.ellenmacarthurfoundation.org/assets/downloads/publications/Ellen-MacArthur-Foundation-Towards-theCircular-Economy-vol.1.pdf

MacArthur E. et al. 2014. *Towards the Circular Economy: Accelerating the scale-up across global supply chains*. Geneva: World Economic Forum.

UN. 2017. ООН: страны должны принять решительные меры по вопросу утилизации электронных отходов. *Мосты.* № 12. https://www.ictsd.org/bridges-news/мосты/news/оон-страны-должны-принять-решительные-меры-по-вопросу-утилизации-электронных

THE CONCEPT AND MODEL OF DIGITAL ECONOMY: THE EXAMPLE OF EUROPEAN UNION COUNTRIES

Viktorija Aleksejeva
Daugavpils University, Parādes street 1, Daugavpils, Latvia, LV-5401, aleksejeva30@inbox.lv

Abstract

The concept and model of digital economy: the example of European Union countries

Key words: *digital economy, digital economy indicators, European Union countries, factor analysis, digital economy model*

The aim of the article is to define the concept of the digital economy and to develop a digital economy model on the example of European Union countries.

The spread of the digital economy is based on the Internet. The rapid development of the Internet transformed both environment of the business and society itself. Digitalization has transformed several industries – trade, marketing, etc. Due to this transformation, the digital economy is defined in different ways, from different points of view.

The concept of a digital economy is ambiguously interpreted, with several superficial definitions appearing in several literature sources. The digital economy is also called the internet economy, the new economy, the information economy, the online economy, etc. The literature does not reflect the measurement of the digital economy, that is, the common digital economy index is not mentioned, so certain indicators are not defined that reflect the digital economy.

The article defines the concept of the digital economy and provides the basis for identifying and summarizing indicators that characterize the digital economy in EU countries. Based on the set indicators, the model of the digital economy is being constructed. The design of the digital economy model will be based on the 2018 digital economy indicators in the EU.

Kopsavilkums

Digitālās ekonomikas jēdziens un tās modelis: Eiropas Savienības valstu piemērs

Atslēgvārdi: *digitālā ekonomika, digitālās ekonomikas indikatori, Eiropas Savienības valstis, faktoranalīze, digitālās ekonomikas modelis*

Raksta mērķis ir definēt digitālās ekonomikas jēdzienu un izstrādāt digitālās ekonomikas modeli uz Eiropas Savienības valstu piemēra.

Digitālās ekonomikas izplatīšanās notiek, balstoties uz internetu. Interneta straujā attīstība pārveidoja gan uzņēmējdarbības vidi, gan sabiedrību. Digitalizācija ir transformējusi vairākus nozares – tirdzniecība, mārketings u.c. Sakarā ar šo transformāciju digitālā ekonomika tiek definēta dažādos veidos, no dažādiem skatu punktiem.

Digitālās ekonomikas jēdziens tiek traktēts neviennozīmīgi, proti, vairākos literatūras avotos parādās vairākas virspusējas definīcijas. Digitālā ekonomika tiek saukts arī par interneta ekonomiku, jauno ekonomiku, informācijas ekonomiku, tiešsaistes ekonomiku u.c. Tāpat literatūrā maz tiek minēts un analizēta digitālās ekonomikas mērīšana, respektīvi, vienots digitālās ekonomikas indekss netiek minēts, tādējādi arī noteikti rādītāji netiek definēti, kas atspoguļo digitālo ekonomiku.

Raksta ietvaros tiek definēts digitālās ekonomikas jēdziens un uz tā pamata tiek noteikti un apkopoti rādītāji, kas raksturo digitālo ekonomiku ES valstīs. Balstoties uz noteiktajiem rādītājiem, tiek konstruēts digitālās ekonomikas modelis. Digitālās ekonomikas modeļa konstruēšanas pamatā tiks izmantoti 2018. gada digitālās ekonomikas radītāji ES valstīs.

Резюме

Концепция и модель дигитальной экономики: пример стран Европейского Саюза

Ключевые слова: *дигитальная экономика, показатели дигитальной экономики, страны Европейского Союза, факторный анализ, модель дигитальной экономики*

Целью статьи является определение концепции дигитальной экономики и разработка модели дигитальной экономики на примере стран Европейского Союза.

Распространение дигитальной экономики основано на интернете. Быстрое развитие интернета изменило как предпринимательскую среду, так и общество. Дигитальная экономика преобразовала несколько отраслей – торговлю, маркетинг и т. д. Из-за этого преобразования дигитальная экономика определяется по-разному, с разных точек зрения.

Понятие дигитальной экономики трактуется неоднозначно, и в нескольких литературных источниках появилось несколько поверхностных определений. Дигитальная экономика также называется интернет-экономикой, новой экономикой, информационной экономикой, онлайн-экономикой и т. д. Аналогичным образом, в литературе не упоминается и не анализируется измерение дигитальной экономики, то есть единый индекс дигитальной экономики не упоминается, поэтому не определены показатели, отражающие дигитальную экономику.

В статье дается определение концепции дигитальной экономики и предоставляется основа для выявления и обобщения показателей, характеризующих дигитальную экономику в странах ЕС. На основе установленных показателей строится модель дигитальной экономики. Дизайн модели дигитальой экономики основан на показателях дигитальной экономики 2018 года в ЕС.

The theoretical – methodological aspects of research

In general, the functioning of the digital economy is based on the Internet, while the internet infrastructure consists of equipment that maintains the internet. The key players in the digital economy are individuals and organizations that use the Internet to do the economic actions or performance of digital economy. The software includes software platforms, applications, social networks, cloud computing, etc. (Peitz, Waldfogel 2012: 3) In the context of the digital economy, staff are described as people or employees who maintain and use the Internet and, ultimately, organizations that are engaged in the development and operation of the digital economy.

Since the boom of the digital economy, literature has brought to light a number of concepts related to the digital economy, as well as several definitions of the digital economy. The borders of the digital economy are so vague that its definition is also ambiguous. This paper discusses concepts related to the digital economy, defines the definition of the digital economy, and constructs the digital economy model based on the available digital economy data.

Several scientific articles reflect attempts to define the digital economy, but definitions are usually based on the reference to Don Tapscott's 1995 definition, namely that the digital economy is an economic transaction that is carried out via the Internet and carried out by economic agents such as natural persons and organizations. Based on Don Tapscott's definition, the digital economy is also called the web economy and the internet economy. Considering that the digital economy defined by the author Tapscott was formulated in the last century, it should be noted that the essence, structure and concept of the digital economy has changed and evolved since then, so it is necessary to review and supplement this definition. A number of scientists have made the definition and reformulation of the digital economy. (Tapscott 1995)

In the scientific paper "Digital Economy, Entrepreneurship and the Concept of Open Innovation", author Petkovsky, Mirchevsky and Angelova define the digital economy as an Internet economy, a web-based economy based on digital network technology: The Internet, a computer and software. Digital Networking and Communication Infrastructure provides a global platform where individuals and businesses interact, collaborate and provide information flow. (Petkovska et al. 2017) This definition includes attributes such as the Internet, a computer, and software that support the functioning and development of the digital economy. Likewise, actors in the digital economy, individuals and businesses, appear in this definition.

In the scientific paper "The New Digital Economy Productivity Paradox", author Bart van Ark defines the digital economy as a mobile technology and unrestricted access to the Internet and its connection to storing, analyzing and developing new applications in cloud computing. Analyzing the above definition of the digital economy, it should be concluded that new terms appear in this definition, namely mobile technologies, internet connection, information, cloud storage.

In the report of the International Monetary Fund, the digital economy is defined by three dimensions, namely the environment (how?), The product (which?) And the actors (who?). (IMF 2018) Under these dimensions, the elements that are summarized in Table 1 are precisely defined.

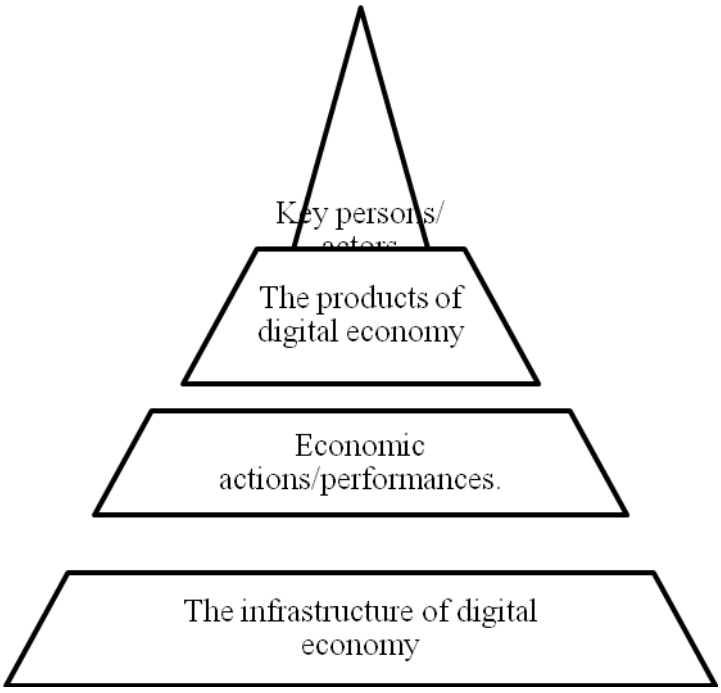
Table 1. **The Structure of Digital Economy**

The author/-s of scientific article, issue year	The elements of digital economy infrastructure	The key persons/actors of digital economy	Economic actions/performance	The product of digital economy
Dom Tapscott, 1995	Internet network, Internet	Individuals and organizations	The implementation and transportation of digital economy transactions	–
Petkovska, Mirchevska un Angelova, 2017	Software, internet, computer	Enterprises, individuals	Communication, cooperation and provision of information flow	Information
Bart van Ark, 2018	Mobile technology internet connection, the storage of cloud computing	–	Storage and analysis of information, development of new applications	Information
IMF report, 2018	Digital ordering via digital platform, digital platform, digital delivery	Organizations, households, governments, non-profit organizations	–	Information, services and goods

Source: made by author based on the analyzed literature

Summarizing the definitions of the digital economy in scientific articles, the structure of the digital economy is defined. The digital economy consists:

- The elements of infrastructure,
- Key persons/actors,
- Products,
- Economic actions/performances.



Picture 1. **The pyramid of digital economy structure/concept** (made by the author)

Consequently, the definition of the digital economy is formulated. **The digital economy is an economic sector in which economic activities are implemented – exchange of information, services and goods, transportation, storage, analysis based on digital technologies: internet, computer (hardware), software (software) and (brainware) companies, individuals, households and government (public authorities).** With the development of the digital economy, a number of terms, concepts and digital forms have emerged in the digital economy.

Big data is an information technology that encompasses a set of methods, tools and approaches for processing large-scale structured and unstructured, fast-growing, diverse data sets. (Su 2012)

Cloud computing is a service model in which data is maintained, managed and backed up remotely and accessible to users on a network (usually the Internet). Cloud computing involves the transfer of services, calculations or data at low cost for business purposes. By providing data in the cloud, it can be accessed more easily and everywhere, often at a much lower cost, increasing its value, making it possible to improve a common platform, integration and analysis. (Kulkarni et al. 2012)

In order to construct the digital economy model, it is necessary to have indicators of the digital economy that reflect the structure of the digital economy and are in line with the definition of the digital economy. The latest 2018 indicators of the digital economy from the Eurostat database were taken as the basis for the selection of the following indicators of the digital economy. (see the table No. 2)

Table 2. **Indicators of digital economy in 2018 (%)**

No.	The indicator of digital economy	Unit of measure	Key persons/ actors	Infrastructure	Economic performance action	Product
1.	The use of internet by individuals corresponding to the public authorities	%, out of all individuals from 16 to 74 years old	Government, individuals,	Internet	Cooperation, communication, information processing, transactions etc.	Information, service
2.	The use of computer, notebook, smartphones, tablets and other portable devices by individuals at work	%, out of all individuals from 16 to 74 years old	Individuals	Software, internet, computer, mobile technology	Information processing	Information, services, goods
3.	Online purchases of individuals in the last 12 months	%, out of all individuals from 16 to 74 years old	Individuals	Internet, digital devices, computer	Online purchasing	Goods, service
4.	Ordering goods or services of individuals via the Internet	%, out of all individuals from 16 to 74 years old	Individuals	Internet, digital devices, computer	Goods and services ordering	Goods, services
5.	Use the cloud storage by individuals to store different files	%, out of all individuals from 16 to 74 years old	Individuals	Cloud computing storage	Information storage	Information
6.	Use of laptop, notebook, tablet by individuals to access to the Internet outside of work or home	%, out of all individuals from 16 to 74 years old	Individuals	Mobile technology, internet	Information processing	Information
7.	Share of companies employing ICT specialists	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Infrastructure of digital economy, depending on performance of enterprise	Economic activities according to the to the performance specifics of enterprise	The products of digital economy according to the performance specifics of enterprise
8.	Share of companies sending e-invoices suitable for automated processing	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Hardware, internet, computer	Information transactions, information processing	Information
9.	The share of enterprises that buy cloud computing services that operate through the Internet	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Cloud computing, internet	Information processing	Information
10.	Share of enterprises that buy e-mail services	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Internet, digital devices, computer	Information processing	Information
11.	The share of enterprises that buy office software	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Hardware, computer	Information processing	Information
12.	The share of enterprises that buy financial and accounting software and applications	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Hardware, computer	Information processing	Information
13.	The share of enterprises that analyze big data from any data source	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Internet	Information processing	Information

Continuation of Table 2

No.	The indicator of digital economy	Unit of measure	Key persons/ actors	Infrastructure	Economic performance action	Product
14.	The share of enterprises that analyze big data from social media	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Internet, applications	Information processing	Information
15.	Share of enterprises using 3D printing and robotics	%, out of all enterprises except finance sector (10 employees or more)	Enterprises	Digital devices, internet, software	Development of the applications, information processing	Goods, services, information
16.	Share of households with access to the Internet	%, out of all households	Households	Digital devices, computer, internet	Information processing	Goods, services, information
17.	Share of households using broadband internet	%, out of all households	Households	Digital devices, computer, internet	Information processing	Goods, services, information

Source: made by author, based on Eurostat data in 2018.

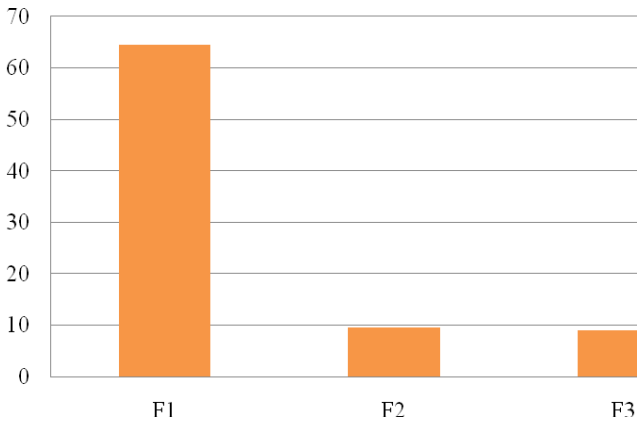
Digital economy indicators were selected on the basis of the definition of the digital economy, and indicators of digital economy in 2018.

Research results

In order to develop the model of digital economy, the indicators were chosen, which characterizes the environment of digital economy. Based on availability of indicators in 2018 in the Eurostat data basis, overall were chosen 17 indicators of digital economy.

Based on 17 indicators of digital economy mentioned above, the factor analysis was conducted in the SPSS Statistics software environment. The main factors were identified, which determines the development level of digital economy in the European Union countries in 2018.

Developed factor analysis showed that indicators mentioned above made three factors: **use of digital devices by individuals for implementing economic activities (F1), use of internet and digital devices by enterprises for implementing economic activities (F2), economic performance of enterprises in the digital environment (F3).**



Picture 2. **Share of the dispersion of the development level of the digital economy of EU countries, explained by 3 main factors, *%, 2018**

* Name of the factor: F1 – use of digital devices and internet by individuals for implementing economic activities, F2 – use of internet and digital devices by enterprises for implementing economic activities, F3 – economic performance of enterprises in the digital environment.

According to the diagram, development level of digital economy in the EU countries more than half determines use of digital devices and internet by individuals for implementing economic activities (F1 factor). Below is reflected analyzed indicators, which determine the development level of the digital economy, by factors.

Table 3. **Distribution of indicators determining the level of development of the digital economy of EU countries by factors, * Factor load values, 2018**

No	Indicators	F1	F2	F3
1.	Online purchases of individuals in the last 12 months	0,913		
2.	The use of computer, notebook, smartphones, tablets and other portable devices by individuals at work	0,864		
3.	Share of households with access to the Internet	0,857		
4.	Ordering goods or services of individuals via the Internet	0,846		
5.	The use of internet by individuals corresponding to the public authorities	0,790		
6.	Share of households using broadband internet	0,788		
7.	Use of laptop, notebook, tablet by individuals to access to the Internet outside of work or home	0,681		
8.	Use the cloud storage by individuals to store different files	0,579		
9.	Share of enterprises that buy e-mail services		0,838	
10.	The share of enterprises that buy financial and accounting software and applications		0,806	
11.	Share of companies sending e-invoices suitable for automated processing		0,785	
12.	The share of enterprises that buy cloud computing services that operate through the Internet		0,782	
13.	The share of enterprises that buy office software		0,774	
14.	The share of enterprises that analyze big data from social media			0,921
15.	The share of enterprises that analyze big data from any data source			0,889
16.	Share of companies employing ICT specialists			0,674
17.	Share of enterprises using 3D printing and robotics			0,517

* Name of the factor: F1 – use of digital devices by individuals for implementing economic activities, F2 – use of internet and digital devices by enterprises for implementing economic activities, F3 – economic performance of enterprises in the digital environment.

Source: made by the author, based on the results of factor analysis.

Conclusions

The digital economy is an economic sector in which economic activities are implemented – exchange of information, services and goods, transportation, storage, analysis based on digital technologies: internet, computer (hardware), software (software) and (brainware) companies, individuals, households and government (public authorities). The digital economy can be structured according to four elements, namely digital economy actors or key persons or users (individuals, households, enterprises, public authorities/governments), digital economy products (goods, services and information), economic activities (information processing, storage, etc.). Digital Economy infrastructure (Internet, hardware, software, application, etc.) given that the concept and definition of the digital economy have emerged recently, the concept of the digital economy is formulated differently by adding or changing the terms to the terms associated with the digital economy, namely: internet economy, web economy, information economy, online economy, etc.

The Digital Economy Model of the EU Countries Based on Factor Analysis and it consists ofthree key factors: F1 – use of digital devices by individuals for implementing economic activities, F2 – use of internet and digital devices by enterprises for implementing economic activities, F3 – economic performance of enterprises in the digital environment. **The first factor** "the use of digital devices by individuals for implementing economic activities" **– describes the use of digital devices of individuals both at work and at home, as well as the use of the Internet for ordering goods and services and making purchases. The second factor** "use of internet and digital devices by enterprises for implementing economic activities", **is based on the use of enterprise digital devices for economic activities such as the use of financial software. This factor also reflects the use of the Internet for business purposes through economic activities. The third factor** "economic performance of enterprises in the digital environment" **characterizes the operation and performance of businesses through information and communication technologies.**

It can be concluded that the model of the digital economy in the countries of the European Union is based, first of all, on the use of physical and internet devices by individuals for the implementation of economic activities (64% on the level of development of the digital economy); 9% sets the level of development of the digital economy) and, thirdly, the economic performance of businesses in the digital environment (down 8% on the level of development of the digital economy).

Bibliography

Eurostat data basis. Available: https://ec.europa.eu/eurostat/data/database [seen on 15.05.2019].
Internaional Monetary Fund (IMF). Measuring The Digital Economy. 2018.
Kulkarni, G., Sutar, R., Gambhir, J. 2012. Cloud Computing-Storage as Service. In: *International Journal of Engineering Research and Applications (IJERA).* Vol. 2, Issue 1, Jan-Feb 2012, pp. 945–950.
Peitz, M., & Waldfogel, J. (Eds.). 2012. The Oxford handbook of the digital economy. In: *Oxford University Press.*
Petkovska, T., Mirchevka, T. P., Angelova, B. 2018. Digital Economy, Entrepreneurship and the Concept of the Open Innovation. *Journal of Sustainable Development*, *8*(19), 82.
Su, X. 2012. *Introduction to Big Data.* Institutt for informatikk og e-læring ved NTNU Learning material is developed for course IINI3012 Big Data.
Tapscott D. 1994. *The Digital Economy: Promise and Peril in The Age of Networked Intelligence.* McGraw-Hill.