Latvian Academy of Sciences
Mykolas Romeris University
Riga Stradiņš University
College of Law

THE SEVENTH YEAR AS EUROPEAN UNION MEMBER STATES: ECONOMICS, POLITICS, LAW

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FOREWORD

The first seven years as Member States of the European Union have presented the Baltic States with opportunities better to develop their economies; membership has assisted them in responding to, and mitigating the impact of the present global financial and economic crisis. During this time, the Baltic States have been able to strengthen their security, to put their administrative structures and legal system into better order much more successfully than were they not to have been supported by the European Union.

Presently, Latvia, Lithuania and Estonia, together with the other EU Member States, are striving to restore their economic growth and are developing a set of measures so as to be better prepared for future analogous crises and to overcome these without incurring the present severe consequences. It is self-evident that the European Union itself needs to change, to be able to take more effective decisions and to ensure their effective implementation. The Lisbon Treaty has been a step in the right direction, but it has not addressed all of urgent issues still outstanding. Member States must, sooner or later, decide to invest more authority in Union Institutions. Society needs to be better engaged at all levels of governance; presently, this engagement is insufficient and democratic processes need to be strengthened.

This is the fifth conference jointly organised by the Latvian Academy of Sciences, the Mykolos Romeris University, the Riga Stradiņš University, and the College of Law, dedicated to problems faced by new EU Member States. Specialists and scholars from Latvia, Lithuania, Estonia and Sweden have been conference participants. The previous conferences took place in 2003, 2004, 2005, 2007 and 2009. All conference materials have been published. This present volume comprises articles submitted by the participants at the conference that took place on 6–7 May 2011.

I wish, in the name of the organising committee, to thank all conference participants. I hope that readers shall also value this publication. It is planned that the next, and final conference in this series, shall take place in 2014, on the occasion of 10 years of Baltic State membership of the European Union. I believe that any future conference series ought to address a narrower range of topical issues.

Prof. *Tālavs Jundzis*
Chair of the Organising Committee

Chapter 1

EUROPEAN UNION AFTER LISBON TREATY

THE EUROPEAN UNION POST THE LISBON TREATY REFORMS

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Abstract
The article examines the function of the European Union after entry into force of the Lisbon Treaty with respect to increased citizen understanding and dealing with the economic downturn as well as external visibility in respect to security and trade issues.

Keywords: Lisbon Treaty, Euroscepticism, economic downturn, Treaty on European Union, Treaty on Functioning of the European Union, European External Action Service, High Representative for Foreign Affairs and Security Policy, simplified treaty revision procedure, European Parliament elections.

Introduction

The European Union (EU) was formally established by the entry into force on 1 November 1993 of the Treaty on European Union (the Maastricht Treaty, TEU). The TEU was both a reform treaty, in that it modified the Treaties establishing the then three European Communities, and an innovative treaty in that two new policy domains, subject to intergovernmental cooperation[1], were substantively delineated, as was the role of established European Institutions in implementation of these decisions. The TEU was further innovative in the fact that it was the first treaty concluded during the European integration process that contained a so-called *rendez-vous*

[1] The EU was graphically illustrated by a Grecian-like temple comprising three pillars, only one of which, the European Communities, encompassed the European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community.

clause, notably, explicit treaty provision for the need, in the case of the TEU concluded in 1992, by 1996 further to revise the legal basis of the European Union[2]. As seen in Table 1 below, the first Treaty to revise the legal basis of the European Union entered into force on 1 May 1999, the second revision Treaty, on 1 February 2003, and the most recent revision, the Lisbon Treaty, on 1 December 2009. Of these the Lisbon Treaty alone contained no *rendez-vous* clause. This fact notwithstanding a relatively minor revision to the legal basis for the existence and function of the European Union has been identified as needed to deal with issues affecting the Euro-zone, and was first discussed in December 2010. This revision is presently being finalised.

This paper deals with a number of issues related to the extent to which the European Union both as regards its Institutions and their remit for work have been strengthened in the light of contemporary internal and external challenges faced by the EU.

Table 1. Revisions to the Treaty on European Union

Treaty	Date of signature	Entry into force
Treaty on European Union (Treaty of Maastricht)	7 February 1992	1 November 1993
Treaty of Amsterdam	2 October 1997	1 May 1999
Treaty of Nice	26 February 2001	1 February 2003
Treaty of Lisbon	13 December 2006	1 December 2009

The principal internal challenges faced by the EU was institutional efficiency in a Union of 27 Member States and democratic credibility of the European integration process, both in terms of its achievements and eventual goals as perceived by the majority of EU citizens. Externally credibility of the EU as the true representative of its Member States in domains where the EU has been given a remit to function has been uneven: the EU has been seen as a relatively easy to manipulate and the Institutions to circumvent. The extended EU reform crisis, i.e. non-ratification of the Treaty Establishing a Constitution for Europe and delays in ratifying the Lisbon Treaty, has not reflected well on Member State solidarity, coherence, even the political commitment of certain EU Member States to a strong European Union.

[2] Treaty on the European Union, Article N, para. 2, *Official Journal*, Series C, vol. 191, 29 July 1992.

Establishment of the EU and the need for its reform

The Treaty on European Union resulted from the work of two parallel Inter-governmental Conferences that both opened in Rome on 14 December 1990; the TEU was signed at Maastricht February 1992 at the conclusion of these conferences. The stated aims of these conferences were to address the following topics[3]:

(a) Establish a Union based on the solidarity of the Member States with proper balance between the responsibilities of the individual States and the Community and between the roles of the Institutions, coherence of the overall external action of the Community in the framework of its foreign, security, economic and development policies and of its efforts to eliminate racial discrimination and xenophobia in order to ensure respect for human dignity;

(b) Strengthen the role of the European Parliament to raise democratic legitimacy;

(c) Institute arrangements allowing national Parliaments to play their full role in the Community's development;

(d) Establish the remit for a common foreign and security policy aimed at maintaining peace and international stability, developing friendly relations with all countries, promoting democracy, the rule of law and respect for human rights, encouraging the economic development of all nations, and should also bear in mind the special relations of individual Member States;

(e) Introduce the legal basis for European Citizenship, including provision for a European ombudsman;

(f) To enhance the effectiveness and efficiency of the Union;

(g) Lay down the conditions for Economic and Monetary Union, including introduction of a single currency;

(h) Deal with internal affairs issues and immigration policy in the light of creation of a single market.

The decision to open these negotiations had been taken, in principle, at the Strasbourg European Council of December 1989. Developments in Eastern Europe, both political and economic, took place so rapidly, and to such a fundamental extent, that the TEU was partially obsolete by the time that it entered into force in on November 1993. By this time four

[3] Cf. the Presidency Conclusions (14 & 15 December 1990), SN 424/1/90. Brussels: Council of the European Communities, December 1990.

strong applicants for membership (Austria, Norway, Finland and Norway) had emerged to join the two long-standing applicants for membership (Cyprus and Malta). A further ten Central and Eastern European states (including the Baltic States) evidently keen to join, although the first two explicit Eastern European candidacies were deposited only in late 1994. Thus, the EU had to start adapting its working methods for a Union of at least 20 states[4], bearing in mind tremendous disparities in development among the potential member states, as well as their largely disjoint political interests.

Although revision of the modus operandi of the EU was a necessity, the actual reform process turned out to be long and tedious. Whereas the European Communities had functioned for nearly 30 years before the first major revision in their legal basis, the legal basis for the EU was revised three times within 15 years of its existence. The Institutions of the EU did not suffer a fatal blockage in their work, although decision-making became slower.

Not all of the goals set out in 1990 for the EU have been attained by even the most recent revision, i.e. the entry into force of the Lisbon Treaty, a number of these have been reached.

The Treaty of Lisbon

This treaty, formally, *The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community,* was signed at Lisbon, 13 December 2007, and entered into force on 1 December 2009. It took the form of a major revision of both treaties, including renaming of the Treaty establishing the European Community as the Treaty on Functioning of the European Union (TFEU). The three-pillar model of the EU was thus abandoned, and, almost imperceptibly, the European Atomic Energy Community (Euratom) no longer is an intimate part of the EU[5]. All EU Member States are Euratom Member States, and no EU Member State is able selectively to withdraw from Euratom membership. Dealing with Euratom is a difficult topic inasmuch as there is no consensus at present among EU Member States about how Euratom ought to be revised (includ-

[4] Such an institutional architecture was sketched out by the Treaty of Amsterdam; the EU of 27 Member States worked, until the end of November 2009, on the basis of the Nice Treaty, as modified by two treaties of Accession.

[5] Cf. Protocol 12 of the Lisbon Treaty.

ing abandoning its link to the development and construction of new civilian atomic energy power plants). Objections are strongly voiced by popular anti-nuclear movements, as well as by a number of Green parties of varying degrees of political support in a number of EU Member States.

The achievements of the Lisbon Treaty most evident to the general public comprise creation of a new post, President of the European Council[6], popularly known as the EU President, and a heightened role for the High Representative for Foreign Affairs and Security Policy[7]. In terms of democratic legitimacy increased legislative powers have been accorded to the European Parliament and EU citizens may come forward with a petition that requires the European Commission to consider drafting a new legislative act[8]. Although the European Commission is not obliged to draft the requisite act, it would be foolhardy of the Commission to ignore any initiative properly drafted, including dealing with a topic upon which the Commission has been given a remit to act.

The Lisbon Treaty has slightly simplified function of the EU with a larger number of Member States than is presently the case. Notably, previous Accession Treaties continued detailed arrangements for ensuring the proper weight of a new Member State in decision-making as well as tending with each enlargement to increase the total number of Members of the European Parliament. Recall that the first Parliamentary Assemblies in the 1950s had 142 members (none of whom were directly elected) whereas the Lisbon Treaty fixes the future number of MEPs at 751, independent of the number of Member States[9]. Similarly, total membership is fixed for several consultative committees.

One of the most significant aspects of the reformed legal basis for the EU is the consolidation of the legal remit for EU institutions to act, notably to adopt legislative acts. This important result has largely failed to seize popular and even academic attention but is an important step forward in

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[6] Article 15, para. 5, TEU.

[7] Article 18, TEU; a High Representative for Common Foreign and Security Policy was introduced by the Amsterdam Treaty, and this position was filled by Javier Solana from 1 May 1999 onwards until the present High Representative took office on 1 December 2009.

[8] The treaty provides the outline of this procedure at article 24, TFEU. After public consultation carried out in 2010, launched, the European Commission drafted detailed procedures (foreseeing a minimum participation from each Member State, 6000 in the case of Latvia, 74 250 in the case of Germany, that were adopted by the European Parliament at a first reading on 15 December 2010, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0480&language=EN&ring=A7-2010-0350 (accessed 1 February 2011).

[9] Article 14, para. 2, TEU.

achieving item (f) above as expressed more than 20 years ago. EU bodies are legally obliged to act solely upon the basis of competences that have been attributed to them[10] and then, carefully respecting boundaries between areas where their competences are exclusive[11], or shared with Member States[12], or merely supportive of Member State actions[13].

The road to achieving this reformed legal basis for the EU was long and arduous, encountering a number of obstacles that have raised questions as to how the public and Member State governments and administrations view further deepening of European integration.

Firstly, in terms of democratic legitimation and its impact upon public perception of the EU, neither the reform process itself (the final stage leading to entry into force lasted the best part of a decade) nor its results appear greatly to have improved the public perception of how democratic the EU is. Table 2 below shows some selected results from Eurobarometer surveys of public opinion.[14]

Table 2. Surveyed responses to the question "My country has benefitted from membership in the EU"

Year	EU 15	EU 25/27	Latvia	Lithuania	Estonia
2003	54%	n/a	n/a	n/a	n/a
2006	n/a	53%	43%	62%	56%
2010	n/a	53%	41%	66%	73%

The results for Latvia, notoriously, have been influenced by the local political class hiding its economic and other misdeeds behind the skirts of the EU. In addition, the steady bombardment of Latvian public opinion by the Russia-oriented mass media, mostly significantly in the Latvian language, has proved to be mildly successful in terms of influencing public opinion. It is furthermore the case that a very substantial segment of the active population now lives abroad, further influencing public opinion.

Euroscepticism has been a constant feature of the European integration process even well before the EU became the focus of public attention. Noteworthy examples are popular opinion in the UK and in Denmark.

[10] Article 4, para. 1, and Article 5, para. 2, TEU.
[11] Article 3, TFEU.
[12] Article 4, TFEU.
[13] Articles 5 & 6, TFEU.
[14] Information source, Standard Eurobarometer surveys 59, 66 and 73, to be found at http://ec.europa.eu/public_opinion/archives/eb_arch_en.htm (accessed 1 February 2011).

Over time little has changed in these countries with a slight increase in voter apathy in the UK coupled with the advent of extraordinarily frank eurosceptical political parties scoring some remarkable successes in the EP: in 2009, the second largest popular vote in the UK went to an outspoken eurosceptic political party[15].

In general, there has been a gradual long-term roll off in popular support for European integration. One important contributing cause was the gradual transition from European issues being peripheral to daily news that took place in the late 1980s when European integration was popularly seen to be a (painless) remedy for painful national problems. Once it became evident that European integration was not a substitute for concerted national effort the added value of retaining integrated EU structures increasingly has come into question.

Public participation in elections for the European Parliament is an important indicator for ascertaining the extent to which EU institutions enjoy democratic legitimacy, with exception of Belgium, where voting is compulsory by law (typically more than 90% vote), voter turnout at EP elections has fallen steadily (see Table 3). Voter turnout in the two countries most closely associated with European integration (politically and economically, respectively) France and Germany has shown a dramatic decrease from after the first EP elections were held in June 1979. For comparison, voter participation in EP elections by the electorate in the UK has been consistently low.

The Latvian result for 2009 is better than might have been the case were the EP elections not to have coincided with elections for local authorities. It is noteworthy that only a relatively small number of voters who voted for the latter did not bother to vote for the former, i.e. 801 348, versus 797 219 voters took up voting slips at voting stations[16].

[15] See the UK Independence Party web-site for a listing of elected MEPs as well as for recent developments, http://www.ukipmeps.org/mypage_5_UKIP-MEPs.html (accessed 1 February 2011); UKIP MEPs are part of the small Europe of Freedom and Democracy grouping of similarly minded MEPs (30) from several EU Member States, including a former President of Lithuania, Rolandas Paksas, cf. http://www.efdgroup.eu/the-group.html (accessed 1 February 2011).

[16] For detailed results of the 2009 elections in Latvia both for local authorities and for deputies to the European Parliament see http://web.cvk.lv/pub/public/29429.html (accessed 1 February 2011).

Table 3. Voter participation in elections to the European Parliament[17]

Year	EU 9	EU-25/27	France	Germany	UK	Latvia	Lithuania	Estonia
1979	62%	n/a	61%	66%	32%	n/a	n/a	n/a
2004	n/a	45%	47%	43%	39%	41%	48%	27%
2009	n/a	43%	41%	43	35%	54%	21%	44%

External challenges for the reformed EU

The ambition of European integration to allow Europe to regain its voice on the world stage is long-standing, as is the observation that Europe does not speak with one voice.[18] Reform of the EU was launched in 2002 partially in order that the EU Member States act more coherently and consistently on the world stage. There are two related aspects to this ambition.

First, the Member States of the EU comprise the largest developed actual market for goods of all kinds, from basic to the most advanced. It is an unappealing aspect of recent developments in the capacity of EU Member States to satisfy their internal demand in many market sectors has diminished partly due to intrusion by foreign competition, partly as a result of implementing a range of economic development policies. The mantra of free trade notwithstanding (and honest pricing, i.e. anti-dumping agreements) EU Member States have suffered by being selectively targeted for intrusive and damaging penetration of the EU's Internal Market.[19] Thus, defence of EU trading interests has been a significant aspect of the competences shared by EU institutions with the Member States. The reforms instituted by the Lisbon Treaty do not substantially change this remit, with the exception of the European Union acquiring legal personality.

The most visible testimonial to European economic integration has been introduction of a single currency, the euro, that is now the national

[17] Cf. http://www.europarl.europa.eu/parliament/archive/staticDisplay.do?language=EN&id=213 (accessed 1 February 2011).

[18] Henry Kissinger allegedly posed the rhetorical question during his time as senior security adviser to several Presidents of the United States as to what telephone needs to be rung to discuss the European position at least as far as foreign affairs (security issues) are concerned.

[19] The Treaty of Lisbon renamed the Single Market (established in 1993 for most goods and services on offer by the Members States of the EU); the Institutions were empowered to attain this goal which was laid out in detail in a report authored by the then President of the European Commission, Jacques Delors.

currency of 17 EU Member States: these comprise the Euro area. The legal basis for this currency was established by the entry into force in 1993 of the TEU. The recent world-wide economic downturn together with structural shortcomings in budgetary discipline among a number of members of the Euro area have resulted in a daunting challenge to the European Central Bank, and also to the other members of the Euro area. Undoubtedly, the reputation (stability) of the single currency as perceived in third countries has been diminished.

A draft text revising the TFEU[20] was adopted at the European Council meeting of December 2011. This revision foresees establishing a permanent Stability Mechanism for the Euro. To do this the European Council is using the simplified revision procedure provided for in Article 48(6) TEU. Consultation of the institutions concerned should be concluded on time to allow the formal adoption of the decision in March 2011, with completion of national approval procedures by the end of 2012, and entry into force on 1 January 2013. Until that time the present European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM) will remain in force until June 2013.[21] The Member States declared at this time that such revision of the basic treaties does not increase the competences conferred on the Union.

Second, it has proven to be difficult to defend EU interests abroad without a strong common voice in regard to security and political cooperation. The Lisbon Treaty has brought about a significant change in the remit of the High Representative. Firstly, the High Representative (whose formal position was Secretary General of the Council) is both a permanent member of the European Council and of the European Commission. There is thus coupling between representing Member State interests and the various foreign relations (trade, enlargement, development cooperation and humanitarian assistance) aspects of the work of the services of the European Commission. Legal basis for a new body, the European External Action Service has been established and this service, an admixture of diplomats seconded from Member States and Commission officials is to make up this service. Although the foreign representations of them would enjoy diplomatic status, their presence complements rather than replaces

[20] Article 136, TFEU; Article 122, para. 2, TFEU to be deleted.

[21] See Conclusions of the European Council meeting of 16&17 December, 2011 at Brussels, cf. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/118578.pdf (accessed 1 February 2011).

diplomatic missions of EU Member States. For the smaller EU Member States this is an opportunity to have its diplomats acquire experience in many foreign countries where there is no national diplomatic representation. For example, Latvia has only one (1) residential diplomatic representation in Africa (in Egypt), and none in Central and Latin America.[22]

The United States has been both a friend, present at the creation of the first European Community, that for the coal and steel industries and generally supportive of the progress of European integration. Certainly, the EU – USA (Transatlantic) Dialogue is the oldest one of these bilateral dialogues and had proved to be productive in terms of addressing challenges to the economic and political relationship. The USA has taken a keen interest (and a generally pro-active position) as regards widening the European Union. A serious review of the legal basis for the EU as revised by the Lisbon Treaty concludes, inter alia, that

> ... the Lisbon Treaty would have positive implications for U.S.-EU relations. While the treaty is unlikely to have major effects on U.S.-EU trade and economic relations, some believe that it could allow the EU to move past its recent preoccupation with distracting internal questions and take on a more active and effective role as a U.S. partner in tackling global challenges. There are indications that adoption of the Lisbon Treaty would make the EU more amenable to future enlargement, including to the Balkans and perhaps Turkey, which the United States strongly supports. On the other hand, skeptics maintain that a stronger EU poses a potentially detrimental rival to NATO and the United States.[23]

Although this report was finalized after onset of the world economic downturn it refrains from assessing how the reformed EU might go about tackling the problem of economic recovery. In this regard there are a number of differences in approach being advocated by the EU when compared to that advocated by the United States.

Undoubtedly, the citizens of most EU Member States regard formation of a common defence force as a valid competence of the European Union. Member States, however, have long been reticent to accede to such policies. Relatively recently, a Rapid Reaction Force, the Eurocorps, has been

[22] The Latvian ambassadors to Brazil and Mexico reside in Portugal and the USA, respectively, cf. http://www.mfa.gov.lv/en/ministry/mission/ (accessed 1 February 2011).

[23] Cf. The European Union's Reform Process: The Lisbon Treaty, by Kristin Archick and Derek E. Mix, Congressional Research Service report RS 21618, 9 November 2009.

created; this act has received wide-spread public support[24]. The Eurocorps, however, is rather small in terms of what might be needed in case of a serious conflict. It is also not a standing or permanent force.

The TEU in its original form (optimistically) referred to the Western European Union (WEU) as an expression of common action in defence matters.[25] The WEU derives from treaties that were concluded well before the onset of the European integration process that led to establishing the EU.[26] However, membership in the WEU has not been seen by EU Member States as an alternative to membership of the NATO alliance. The reforms instituted by the Lisbon Treaty continue to allocate a certain role for the WEU, but, more importantly, provide a legal basis for establishing links between NATO and EU Institutions.[27] However, the resolutely neutral stance adopted by a number of EU Member States (Ireland, Austria, Finland, Sweden) render adoption of EU decisions in this regard a difficult, although not an intractable issue.[28]

Conclusions

When compared with the first twenty years of European integration, i.e. from the 1950s onwards, the first 20 years of existence of the EU have been no less (and arguably no more) challenging. Whereas there were no major revisions to the legal underpinning of European integration during its initial period of operation, the legal basis of the EU has three times been revised during the comparable period of time. The most recent of these revisions has proven to be embarrassing in that apparent weakness in their commitment to European integration have been demonstrated by a number of Member States. Ultimately, the extent to which solidarity (of

[24] Cf. the results of a dedicated Eurobarometer survey, Public opinion and European defense, reporting date July 2001, at http://ec.europa.eu/public_opinion/archives/ebs/ebs_146_en.pdf (accessed 1 February 2011).

[25] Cf. the *Declaration on the Western European Union* adopted on the occasion (Final Act) of closure of the IGC preparatory to signature of the Treaty on European Union 7 February 1992.

[26] The Western European Union has currently no direct link to military units of its member states; the WEU derives ultimately from the Treaty on Economic, Social and Cultural Collaboration and Collective Self-Defence signed at Brussels on 17 March 1948; as of July 2001, the WEU retains some few residual functions but has not undertaken an operational missions since that time.

[27] Protocols number 12 and 11, respectively; the conditions for links with NATO are described in greater details for the self-evident reason that the relationship with NATO is more varied and intensive than any present or foreseeable future relationship with the WEU.

[28] Cf. Article 42, TEU.

a minimal or maximal kind) shall continue to be a key feature of the EU will be tested by how long it takes for the economic and social conditions in the recent intake of 12 new Member States to reach a closer approximation to average conditions throughout the entire EU. Institutional and other changes brought about by the Lisbon Treaty (this treaty contains no *rendez-vous* clause) are robust enough that future flexibility in working relationships within the EU shall not be associated with public bickering that only reduces the strength of the EU as an actor on the world stage. The external environment in which the EU finds itself is a strong counter-argument to assertions of national capabilities to be more effective than joint co-ordinated action.

L'UNION EUROPÉENNE APRÈS L'ENTRÉ EN VIGUEUR DU TRAITÉ DE LISBONNE

Eduards Bruno Deksnis

Résumé

Le traité de Lisbonne est entré en vigueur le 1er décembre 2009 et vise à moderniser le fonctionnement de l'Union européenne élargie à 27 membres. Si le traité de Lisbonne ne contient pas de mesure phare qui fait avancer la construction européenne, il adapte néanmoins en profondeur les règles des traités afin que l'Union puisse réagir aux nouveaux défis du 21e siècle.

L'Union Européenne a subi un processus de révision et adaptation presque continuel pendant ses 20 années de fonction. Cette circonstance était une réponse aux défis actuels, tel que l'évolution majeure de la politique (gouvernance) et économique (instauration d'une économie basé sur le marché) dans plusieurs pays Européens qui se trouvait pendent les premiers 40 ans de l'intégration européenne écarté de prendre son propre rôle là-dedans.

Aujourd'hui les défis dont les Etats-membres de l'UE doivent se faire face vient de loin (de l'Asie sur le plan économique, de l'Afrique des pays du Moyen Orient sur le plan démographique). Pour en assure ses propres intérêts souverains les états membres doivent quand même agir plus d'une manière plus unie et communautaire qu'auparavant.

Certains défis économiques mondiales et des tensions internes (budgétaires) dans la zone d'Euro ont eu pour conséquence le première tentative de révision du traité sur le fonctionnement de l'Union Européenne en ne pas suivant la méthode classique (qui est longue et bourrée avec des risques d'échec) mais sur les procédures de révision simplifiées (art. 48, Traité sur L'Union Européenne). La réussite d'application de cette procédure sonnerait une signale assez important auprès des pays tiers qui étaient un peu confus en regardent les délais (entre 2004 et 2009) dans la reforme de l'UE.

Mots-clés: Traité de Lisbonne, Euroscepticisme, ralentissement de l'économie, Traité sur l'Union Européenne, Traité sur le fonctionnement de l'Union Européenne, Service européenne pour l'action extérieure, Haut Représentant pour les affaires étrangères et la politique de sécurité, procédure de révision simplifiée, élections du Parlement Européen

EU POLICY COORDINATION EFFICIENCY IN LATVIA, LITHUANIA AND ESTONIA — COMPARATIVE PERSPECTIVE

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Abstract
This article deals with coordination of EU policies in the three Baltic countries: Lithuania, Latvia and Estonia. Coordination refers in this context to a political process of both reaching agreements and consensus on the content of positions representing interests of those countries in EU institutions, as well as determining how to implement the European law and EU policies on national level. The main objective of the article is to shortly analyze the criteria and main indicators of the efficiency of EU policies coordination in the Baltic States in comparative perspective as well as to point out strengths and weaknesses of the coordination systems in the Baltic States in the light of coordination efficiency requirements. The article points out some aspects of construction and functioning of the coordination systems in the Baltic States and evaluates their meaning in the context of the EU seven-years-lasting membership.

Keywords: coordination of EU policies, efficiency, nation states in the EU, multilevel governance, Metcalfe's scale, benchmarks, Baltic States, centralized coordination system.

> The issue of efficiency — of what it means in the European context, and whether there is a recipe for success in a certain national strategy — seems to be undoubtedly important. It remains, however, extremely problematic.[1]

[1] Kassim, H., Peters, G., Wright, V. *The National Co-ordination of EU Policy*. Vol. 1. The European Level, Oxford, 2000, p. 254.

What is efficiency of coordination?

Efficiency is one of the key concepts related to coordination of EU policies in the Baltic States, because it justifies the entire system of coordination. In the Baltic States coordination is efficient and it produces proper results as regards both representation of national interests of Lithuania, Latvia and Estonia in the European Union and implementation of the EU law on a national level. However, in each of these countries the level of effectiveness is different and it can be perceived as differently grounded.

The purpose of this short article is to give evidence that effectiveness of coordination in the Baltic countries is measurable — although only to a certain extent. In the analysis there are some practical conclusions about what is problematic and what could be improved in coordination systems of the Baltic States in order to raise the efficiency of coordination in these countries.

In order to determine whether certain measures are effective or not, it is necessary to specify a proper understanding of the term "effectiveness" and the way it is used in the context of coordination. It is also crucial to decide upon which tools are appropriate to measure effectiveness of coordination. There are at least a few such measures of effectiveness, among them benchmarks of the European institutions and World Bank, indicators used in the so-called "Metcalfe scale", finally opinions of the employees of EU policies coordination system in the Baltic States. These three tools were used in research underlying this article.

Efficiency is a concept derived largely from the sphere of economics, meaning rationality of certain activities from the perspective of the ratio of costs to the results achieved. This economic understanding of the effectiveness can be applied to coordination with the assumption that the "result" means both the level of realization of national positions in the EU institutions (the so-called coordination "up") as well as implementation of the European law in a given time and in the proper way. The EU Member States should seek for efficiency due to limited human, financial, and often technical resources staying at their disposal. This pursuit for efficiency should not be absolute, however. Sometimes it is necessary to devote more resources if the purpose to be achieved is worth it (e.g. coordination of building long-term strategies in implementing EU structural funds) — then efficiency is replaced by the concept of effectiveness.

Just to give a broader context of the efficiency concept, it is worth mentioning that certain similar indicators may also point out some of the aspects of validity of creating coordination mechanisms in the Baltic States. These are, for example: adequacy (sometimes equated with seemliness), flexibility, durability, utility, sustainability.[2] Adequacy and utility issues concern not only input–output relations but also the question whether a certain activity is grounded and whether there is actual demand for it. A good example is the question of setting up European policy priorities in the Baltic States — in Lithuania and Latvia these priorities are clearly formulated in the context of national interests but taking into account the objectives of the European institutions in a given period of time, in the case of Estonia they are formulated on the basis of the Presidency priorities. The Lithuanian and Latvian approach meets the expectations of citizens on specific objectives of coordination more than the approach represented by Estonia. The expectations are met because the priorities are set up by a democratically elected national authority and they represent certain aspects of national strategies. In the context of wildly criticized democratic deficit in the EU, this aspect is meaningful. Thus, the approach of Lithuanian and Latvian EU policy coordinators, to a greater extent than the Estonian one, meets the criteria of appropriateness and usefulness. On the other hand, Estonia increases its chances of effective coordination already in the phase of setting out priorities, because the priorities are formulated taking into consideration their suitability in the context of possible coalition-building and finding supporters for them on the European stage. This makes the probability of realization of those priorities in the European decision-making processes more likely. In order to fully conceptualize the effectiveness of coordination of EU policies in the Baltic States it is indispensable, inter alia, to answer the following questions:

1. What level of implementation of specific coordination objectives will indicate the effectiveness of implementation?
2. Which scales and measuring tools show the most relevant indicators of effectiveness of coordination of EU policies?
3. Which problems of coordination of EU policies in the Member States have a relevant impact on the level of its efficiency?

Since it is impossible to determine the actual effectiveness of coordinating EU policies in the Baltic countries using statistics (e.g. ratio of the overall number of Lithuanian, Latvian and Estonian national positions to

[2] Stake, R. *The Art of Case Study Research*. Thousand Oaks, CA: SAGE Publications 1995.

the number of legal acts adopted at the level of European institutions satisfying those interests), it is necessary to analyze such more available data as those covered by reports of the Baltic States on implementation of EU policies, reports of external institutions surveying this type of activities in various countries (e.g. World Bank, Freedom House or international funds and research institutions). Although they do not fully refer to effectiveness of coordination of EU policies in the Baltic States, they cover certain aspects of this efficiency and may give some basis for a deeper analysis of this issue. As regards the main purpose of coordination in Lithuania, Latvia and Estonia, it can be described as a situation in which the Baltic States pursue their national interests within the EU while contributing to the EU overall goals. The effectiveness of coordination in this context is focused on two dimensions — national and European. For example, one of the main EU objectives is "promoting economic, social and territorial cohesion and solidarity among Member States".[3] One of the main ways to achieve such cohesion is EU's regional policy. The purpose of coordination in all Baltic States is to set out national positions in the field of regional policy, enabling quick implementation of this policy and effective use of structural aid. Thus, the higher the efficiency of achieving national objective (use of structural funds), the higher the efficiency of implementation of the EU goal related to improving the living standard of citizens in the European Union.

Regarding the indicators depending on certain scales and measuring tools, they place different Member States in one of the following groups: 1) a group of countries effectively coordinating EU policies, 2) a group of countries having big problems with effective coordination, and 3) a group of inefficient countries.[4] Efficiency should be determined by indicators such as, among others: 1) the level of administrative capacities of a certain Member State to fully participate in fulfilling their tasks at all levels of the multi-level political system of the EU, 2) the number of national positions, postulates of which have been included into acts of European law (assuming that in each Member State national positions covered all important matters to be represented at the EU level), 3) the time period in which decisions are made at different levels of coordination, 4) no significant

[3] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Charter of Fundamental Rights of the European Union (OJ C 83, 30 March 2010).

[4] Lippert, B., Umbach, G. *The Pressure of Europeanization.* Institut für Europäische Politik, Europäische Schriften, 82. Baden-Baden: Nomos, 2005, pp. 22–35.

obstacles in creating coalitions with other Member States to implement national interests.

A lack of efficiency in coordinating EU policies can have significant negative consequences for a Member State[5]— in particular, for a small state having a relatively small number of both votes in the Council of the EU and representatives in the European Parliament. No doubt, the Baltic countries belong to small EU Member States. If such a state inappropriately or inadequately coordinates preparation of a national position to the Council of the European Union or any other European institution, as a result the decision taken by the EU institution may be very unfavourable for the country and this state may be unable to avoid negative effects of the decision. Similarly, inadequate coordination of implementation of European law may lead to discrimination of a certain Member State against nationals of Member States having implemented the EU law properly and, as a consequence, to numerous lawsuits against this country before the European Court of Justice. This may lead to the imposition of certain fines on such States and to worsening its position among the Member States.[6]

Some aspects of measuring effectiveness of EU policies coordination in the Baltic States

One of the most well-known tools of measuring effectiveness of coordination of European affairs in the EU Member States (and to some extent also in the candidate countries) is a so-called "Metcalfe's scale". Les Metcalfe, a former professor at the European Institute of Public Administration in Maastricht, has developed a special tool for measuring effectiveness of coordination of EU policies in the Member States, whereby it is possible to determine the extent of the efficiency on a scale 1–9 and draw conclusions on which elements of the coordination process a greater emphasis should be placed, or which should be replaced by more efficient ones.

The tool developed by Metcalfe implies the existence of different levels of effectiveness of coordination process — from the level of an overall strategy to the level of independent decision-making by institutions or organizations involved.

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[5] Case of the European Court of Justice: C-374/89 European Commission vs. Italy, 1990, p. I-2425.

[6] Infringements of EU Law: http://ec.europa.eu/community_law/infringements/infringements_en.htm (accessed 21 April 2009).

Before presenting a detailed analysis of effectiveness of coordination of the EU policies in Lithuania, Latvia and Estonia on the basis of the Metcalfe scale, it is worth paying attention to two general issues related to interpretation of the analysis results, namely, (1) to the issue of decline of the overall coordination capacity in the Baltic States since their accession to the EU, and (2) to the issue of inadequate human resources management in Lithuanian, Latvian and Estonian public administration and services, affecting to a high extent the overall efficiency of coordination of the EU policies in these states.[7]

The following diagram shows the levels of coordination efficiency from both descriptive and axiological point of view (it evaluates coordination in certain countries according to the level it achieves on the scale and points out the standards to be followed in order to improve the efficiency). It is worth noting that there is no country in the EU having achieved the highest level on the scale.

Scale of policy coordination by Les Metcalfe:

Level 9. Overall strategy
Level 8. Defining priorities
Level 7. Setting the operational parameters
Level 6. Arbitration in matters of political differences
Level 5. Seeking for agreement on policies
Level 4. Avoiding significant differences between organizations
Level 3. Consultation with other organizations (feedback)
Level 2. Communication with other organizations
Level 1. Independent decision making within the organization

The precondition for analysis of coordination efficiency in the Baltic States with the use of Metcalfe's scale is that coordination is essential to properly manage the EU and its Member States in the process of achieving EU Member States' purposes in the EU and the EU goals at the same time. The main reason of setting out this precondition is multiplicity of actors on EU multi-level institutional system stage. On the scale it is necessary to achieve all lower levels first in order to reach one of the higher levels. Therefore, it is impossible that a certain Member State has a unified strategy for operation of various institutions involved in coordination process without having efficiently implemented standards of their mutual communication.

[7] EU-8 Administrative Capacity in the New Member States: The Limits of Innovation? Study, Document of the World Bank, Number: 36930-GLB, September 2006, p. 8.

On the basis of the Metcalfe's concept, Latvia and Lithuania are close to the fifth level — seeking for agreement on policies (the basic level for coordination system to be considered efficient). Actually, after seven years of membership in the EU, the level could be expected to be closer to the sixth or seventh. The higher efficiency of coordination in the EU — its eighth level — has been reached only by France and the UK (the latter is, however, on a slightly lower level than France). Definitely low on the scale are Poland and Slovakia – close to the second level. The most important obstacle in improving efficiency of the EU coordination for the latter countries appears to be difficulty in overcoming differences between structures, political priorities and working styles of organizations involved in coordination. As for Estonia, it is ranked slightly below the fourth level, mainly because of the decentralized design of the system of institutional coordination and the large degree of autonomy of ministries and government agencies in the coordination system. The decentralization sometimes leads to a lack of willingness to cooperate on interministerial level. This means that in the case of Estonia one cannot speak about efficiency of the whole coordination system but only about efficiency of some of its aspects (e.g. implementing EU directives, where Estonia is consistently among the most efficient EU Member States). Estonian example shows that a high level of decentralization and a lack of stimuli from one central coordinating institution in the coordination system may bury the efficiency of professionalization of staff in the system of coordination of EU policies, despite an increase in their overall responsibility for the operational aspects of the system of public administration. In connection with this, a drop in coordination efficiency in Estonia in comparison to the pre-accession period is similar to the cases of Hungary and the Czech Republic.

The main conclusion to be drawn from the analysis above is that the more centralized the coordination system, the more efficient it is. The Metcalfe's scale is, to a large extent, a scale of centralization of the coordination system. The case of the Baltic States serves as the best example of this statement.

Metcalfe scale as a tool for measuring effectiveness of coordination set out certain benchmarks. There are, however, other benchmarks set out in the so-called "Common Assessment Framework" of the European Institute of Public Administration, which are useful in indicating the standards and, on their basis, levels of coordination efficiency in the EU Member

States. These standards include, among others, situations in which: (1) expectations of each institution are clearly articulated and related to different levels of coordination: governmental level, level of ministries, agencies, departments and individuals; (2) objectives of governmental and ministerial level are clear and are reflected in objectives and plans at lower levels; (3) there is a clear division of responsibility for different tasks within the system of coordination, and all actors are aware of who is responsible for what; (4) expected results of specific activities are defined before performing these activities; (5) there must be provided adequate resources to implement coordination activities; (6) institutions have some flexibility in coordination activities; (7) there is a system of internal audit, control and improvement of functioning of the administration; and finally (8) there is a possibility to mobilize adequate human resources.

According to authors of Common Assessment Framework, each of the criteria determining the level of coordination efficiency may be analyzed as "planned", "planned and executed", "planned, executed and checked" and finally "planned, performed, inspected, improved and adapted".

As regards the first three benchmarks, Latvia and Lithuania meet them, mainly because of the centralized systems of coordination, however, due to certain problems, Latvia has not exceeded the third level yet while Lithuania is still on the fourth level. These problems are mostly related to a lack of transparency in the appointment of officials of the highest levels of public administration (and they participate in defining the strategy and assessing its performance in the coordination system). In both countries, but to a greater extent in Latvia, there is no evaluation system for public administration employees of different levels, which in many cases make it difficult to assess the real quality of their performance in the coordination system. In Lithuania, the public administration reform, particularly in the fields of strategic planning and management of human resources, led to reaching of most of the desired results (of course, within limited resources available). This places this country on the highest level of fulfilling requirements of the three first benchmarks and the highest rank among all the so-called New EU Member States (EU-12). Estonia's situation in this context is the most difficult among the Baltic countries. Its level of coordination of EU, particularly in the field of strategic planning, is rather low mainly because of decentralization of system and the lack of

consistency in the implementation of various elements of public administration reform.[8]

Full implementation of the first three benchmarks would provide the Baltic States with certainty that their administrations "speak with one voice" (literature on this topic often refers to this expression as mirroring the main purpose of coordination). Achievement of the fifth level of benchmarks in this area, however, may be reached only when the objectives of public administration reform in each of the Baltic States are achieved.

As for the next three benchmarks, they can be reduced to the effectiveness of the division of responsibilities between departments and officials of the public administration. In this regard, again, Lithuania has achieved the highest level, the situation is slightly worse is Latvia, and Estonia fulfills the requirements of this benchmark the least. It must be underlined though, that the overall level of this index is rather low in all three countries and remains between the second and third level.

Another group of benchmarks relates to the flexibility in the operation of the whole coordination system. In this regard, all the Baltic States are doing no more than average, because the system of delegating responsibilities and enforcing specific tasks does not work effectively. Unfortunately, in the Baltic countries public administration is regarded as the place from which it is very difficult to be removed, regardless of performance. This shows a low level of delegation and accountability for specific tasks within the system of coordination.

It was impossible to point out in such a short article all aspects related to measuring efficiency of EU policies coordination in the Baltic States, therefore, the presented aspects are more a voice in the discussion and a piece of the area of coordination efficiency. To sum up this short analysis, however, it can be stated that the effectiveness of coordination of EU policies in Lithuania, Latvia and Estonia is relatively high, taking into consideration the fact that these countries had to totally rebuild systems of their public administrations only a few years ago and bearing in mind that they are rather "new" democracies in comparison to the so-called "old" Member States.

[8] European Integration and Public Administration Reform in Estonia. Dr. Kaarel Haav. Paper presented to the 8th NISPAcee Annual Conference "Ten Years of Transition: Prospects and Challenges for the Future", Budapest, Hungary, 13–15 April 2000.

KOORDYNACJA POLITYK UNII EUROPEJSKIEJ NA LITWIE, ŁOTWIE I W ESTONII — PERSPEKTYWA PORÓWNAWCZA

Renata Mieńkowska-Norkienė

Streszczenie

Artykuł ma na celu analizę efektywności koordynacji polityk unijnych na Litwie, Łotwie i w Estonii z wykorzystaniem kilku różnych, nieuwzględnianych jak dotychczas w litewskiej łotewskiej czy estońskiej literaturze przedmiotu, narzędzi, w szczególności tzw. "skali Metcalfe'a" czy benchmarków Administrative Capacities Common Assessment Framework Banku Światowego.

Przedmiotem analizy jest efektywność rozumiana, jako sensowność i celowość koordynacji z punktu widzenia stosunku poniesionych nakładów (zasobów) do osiągniętych rezultatów (realizacji celów narodowych państw bałtyckich i celów Unii Europejskiej jako całości). Koordynacja polityk UE to w artykule proces polityczny uzgadniania sposobu reprezentowania oraz treści stanowisk określających interesy tych krajów w instytucjach Unii Europejskiej, a także ustalania sposobu wdrażania prawa europejskiego i realizacji polityk unijnych na poziomie krajowym.

Koordynacja polityki europejskiej w krajach bałtyckich jest efektywna według większości kryteriów, jest także efektywna na tle innych państw UE. Efektywność zdecentralizowanego systemu koordynacji polityk wspólnotowych w Estonii jest jednak mniejsza niż efektywność scentralizowanych systemów koordynacji na Litwie i Łotwie, przy czym Litwa, z racji na wyższy stopień centralizacji koordynacji, jest bardziej efektywna niż Łotwa.

Efektywność koordynacji we wszystkich państwach może być wyższa dzięki gruntownym reformom administracji publicznej, które w każdym z nich zostały już rozpoczęte albo częściowo wdrożone.

Słowa kluczowe: Koordynacja polityk UE, wydajności, państwa narodowe w UE, wielopoziomowe zarządzanie, skala Metcalfe'a, punkty odniesienia, kraje bałtyckie, scentralizowany system koordynacji.

THE INFLUENCE OF GLOBAL RISKS ON THE EUROPEAN UNION

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Abstract
This article presents an assessment of experience gained from the present crisis and the global risks that the European Union is likely to face, and to be influenced by during the next decade. Seven different types of risk are examined by looking at how these might develop in the immediate future with the attendant consequences. A number of possible solutions and suggestions are offered on how to mitigate, or even to avoid these risks. The principal conclusion is that effective ways to counteract global risks and ensure economic recovery of the European Union are only possible if the Union itself changes substantially by allowing effective decisions to be taken rapidly.

Keywords: European Union, economic and financial crisis, globalization, risk analysis, future prediction.

The seven years of Baltic membership of the European Union have seen not only success stories. One of the deepest and most agonizing of economic and financial crisis has beset the European Union and its Member States. The new EU Member States, in particular Latvia, have been particularly severely touched by these crises.

It is highly debatable whether the institutions of the EU need to assume responsibility for insufficient foresight in predicting the onset of the crises and a lack of readiness to deal with them. It is well established that the crises were initiated in the USA where conditions had been allowed to develop that allowed formation of a financial bubble whose bursting shook economies and financial systems throughout the world. It is a feature of the market economy that it faces regular occurrence of crises, but this is

the first such crisis, which is one of the deepest on record, to have global impact.[1] The EU Institutions as well as those in the Member States, both old and new, were unprepared to meet this challenge.

Overcoming the current global economic and financial crisis may require considerably greater effort and last longer than was the case for past crises. For example, it is forecast in various scenarios for economic growth in Latvia that it is likely to approach the median economic level in developed countries only after 2040.[2]

The overall unfavourable climate for economic growth both in the European Union and globally shall pose in of itself a serious challenge to national governments and international organizations. Such weakness of economic and financial systems enhances the development of existing risks to stability, national and international security, as well as encouraging the appearance of such new risks. This means that governments, as well as the society in general, are subjected to stress, turbulence and psychological discomfort.

The methodology for assessing risks and threats has developed substantially and rapidly during the past 20 years. The theoretical basis developed by Barry Buzan for understanding how threats to personal security, and national and international security influence the ability to safeguard essential values and vital interests,[3] is now a generally accepted part of political science. This theory has become, in practice, the basis for concluding, on the basis of analysis, that risks are factors leading to insecurity and are threats to fundamental values. As regards individuals, these values are the right to life, freedom, honour and respect, etc.; as regards states, these values are independence, territorial integrity, democratic governance and respect for human rights.

Scientists and other specialists are continuing to analyse the root causes, contributing circumstances and security risks associated with the present global crisis. Governments and international organisations have developed, and are beginning to implement, wide ranging measures intended to bring a rapid resolution of the crisis, mitigation of its effects and

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1 Dent, S.H. *The Great Depression Ahead*. New York, London, Toronto, Sydney: Free Press, 2009, p. 6. "There is a logic to our economy that includes inflation and deflation, bubbles and depressions, growth and recessions, and innovation and decline – just as in our broader world with the tides, the sun rising and setting, the 7 days in a week, the 12 months in a year..."

2 Apinis, M. Novecosim pirms kļūsim bagāti. *Dienas Bizness*, 28 January 2011, 8, 9.

3 Buzan, B. *People, States and Fear*. Second edition. New York, London, Toronto, Sydney, Tokyo, Singapore, Harvester: Wheatsheaf, 1991.

of the negative consequences. Thought has been given to early prediction of future similar crises, and how to overcome them with the least possible negative effects. The European Union has in this respect foreseen a range of broad and radical measures whose implementation might be hampered by too scrupulous attention to a democratic approach to adopting the relevant laws and disagreements between states.

Scenarios for future development trends arising from our present circumstances, and new security strategies, need to be based upon risk assessments that take into account lessons learned from the present economic and financial crisis. Both as a process and in terms of results, the unique aspects of globalisation must be at the heart of such analyses and forecasts. As the present crisis amply demonstrates, globalisation has introduced changes in many processes and shaped trends, and, therefore, demands changes in our understanding of and attitude towards many fundamental issues.

Diverging and even pessimistic forecasts of world development trends for this century, and assessment of associated potential risks have been presented by a number of scholars. George Friedman, for example, foresees a new cold war with Russia, an internal crisis in the Chinese economy and Mexico becoming a leading world power, as well as in the mid-21st century a new world war between the USA and an indeterminate Eastern European coalition.[4] Harry Dent, on the other hand, forecasts an increase in terrorism that will reach a maximum in 2014, but also that a third World War would break out at the beginning of the 2120s, at a time when the US economy no longer would be the world leader.[5] For their part, Latvian scholars during the time prior to Latvian accession to the European Union predicted a very rosy picture of development for the following 10–15 years; real developments have proceeded otherwise.[6]

A global risk assessment, supported by detailed studies, for the coming decade was prepared by a group of academics and specialists for presentation at the 2011 Davos forum.[7] These studies examined a hierarchy of

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[4] Friedman, G. *The Next 100 Years. A Forecast for the 21st Century.* New York, London, Toronto, Sydney, Auckland: Doubleday, 2009.

[5] Dent, S.H. *The Great Depression Ahead. How to prosper in the Crash Following the Greatest Boom in History.* New York, London, Toronto, Sydney: Free Press, 2009, pp. 346–348.

[6] *Latvia in Europe: Visions of the Future.* Collection of Articles. Jundzis, T. (ed.). Riga, BCSS LAS, 2004.

[7] *Global Risks 2011.* Sixth edition. An initiative of the Risk Response Network. Geneva, World Economic Forum in collaboration with March & McLennon Companies, Swiss Reinsurance Company Wharton Center for Risk Management, University of Pennsylvania, Zurich Financial Services, 2011.

risks, emphasising two essential sources of risk, as well as identifying a number of other lesser risks. The principal sources of risk are: 1) the persistence of essential differences and inequalities in national economies around the world that lead to the paradoxical result of globalisation in the 21st century, notably various national economies develop in parallel, but some economies considerably lag behind; 2) failure to introduce a global system of financial governance. In addition to these risks, the study emphasises three groups of risk: microeconomic disequilibrium; the continued existence of the shadow (illegal) economy; risks to the supply of water, food and energy, demand for which is likely to increase by 30–50% during the next 20 years. A number of other processes must be continuously monitored for risk, such as threats to cyber security, demographic challenges, uncertainty in the supply of raw materials, the proliferation of weapons of mass destruction.[8] Research has shown that highlighting the negative consequences of globalisation for populist ends also poses a threat to security.[9] This last source of risk has not up to now been identified in security studies; however, including it in security assessments is warranted. Results from this most recent study of risk presented to the world economic forum is based on our current appreciation of trends in the development of society and the economy; these results refrain from formulating abstract predictions of future developments.

The process of globalisation and associated global risks has very directly impacted the European Union and its Member States. As an international organisation the European Union is better placed to mitigate risks due to globalisation than any of its individual Member States. In this study we have examined seven important categories (types) of risk that shall, over the next decade, directly impact the further development of the European Union and its Member States. These are: 1) struggle for influence in the world and associated threats; 2) increased economic differentiation and poverty; 3) exhaustion of natural resources and a struggle for control of these; 4) disregard for cultural differences and insults to identity; 5) risks associated with the information society; 6) terrorism and cross-border crime; 7) military competition and an arms race.

The struggle for influence in the world is an intrinsic part of how the international state system works and also contributes to development. The European Union does not intend to be a bystander in this process. The

[8] *Ibid*., pp. 6, 7.
[9] *Ibid*.

Lisbon Strategy adopted by the EU in 2000 set for the European Union the goal to become by 2010 the most competitive and dynamic knowledge-based region in the world. Despite these goals not being attained, the European Union has not abandoned its ambitious goals and on 17 June 2010 the new Europe 2020 strategy that incorporates these same goals was adopted.[10]

The strength of each member of the international system determines its rank and role in this system. It also determines how the economy develops, trade relations and access to limited resources under conditions of intense competition, and, most significantly, contributes to the well-being of society. The role of state authority and its significance is ever increasing in a globalised world, one where interdependence is constantly increasing.

The need to establish a global system of governance is apparent as the sole effective means of regulating global processes.[11] It is, however, not credible that such a system shall come about in the near future; although the route to such a system might be democratic in form, the deciding actors might be economic, financial and trading organisations. Given that the European Union is a political and economic organisation and thus ought to be well placed to increase its presence in the world. On the other hand, such an increase in its influence is possible only if the European Union becomes internally united and possessing an effective system of governance. This goal as yet is far from having been attained by the European Union.

At present the struggle for playing the leading role on the international stage is already quite fierce. In successfully developing its economy China hopes in the very near future to become an equal partner with the USA. India also has a good chance to become a leading actor. In this context the European Union does not at present have a very bright perspective. In like manner struggle for influence and a dominant position is fierce and is becoming more acute in various geopolitical regions. These processes taken together will tend to destabilise the world, lead to new conflicts and provide many shocks and political confrontations. Competition and the rearrangement of authority that are on-going today means that for a small state to survive, and the Baltic States undeniably are small states, entails

[10] *A Communication from the Commission, Europe 2020: a European strategy for smart, sustainable and inclusive growth*. COM (2010) 2020. Brussels, 3 March 2010.

[11] *The Federalist Debate.* Papers on Federalism in Europe and the World. Year XXII, Number 1, March 2009, New Series.

joining a strong international alliance or aligning themselves with one of the leading powers. In joining NATO and acceding to the European Union the Baltic States have chosen correctly and their choice is politically sound.

An increase in economic differentiation and increased poverty shall be in the coming decade one of the most severe international problems, one that will directly impact the European Union and its Member States as part of the international system. That the rich become richer and the poor, poorer is a characteristic of the market economy; this adage pertains not only to individuals, but also to states. The global economic and financial crisis that has bankrupted many rich individuals has in general not changed this process, and the process has tended to exacerbate matters.

Differences in the economic well-being of states and individuals have increased in previous decades. More than one quarter (25%) of states around the world are under-developed; most of these states are in Africa. Out of the total world population of 6.3 billion approximately one-sixth live in poverty,[12] and tens of thousands of individuals die each day from hunger. The gap between the rich and poor states is rapidly widening, as is the case for rich and poor individuals. The 20% of the world population who live in the most developed states consume 86% of the world's resources.[13]

Economic differences and poverty lead to increased political tension in the international system and lead to sharp social confrontations. These factors encourage the flight of individuals from poor states and are the principal cause of illegal immigration. Macroeconomic differences between states allow corruption to flourish, lead to cross-border criminality, including human trafficking, terrorism, illegal arms sales, including the proliferation of weapons of mass destruction.

Poverty means not only living at a critically low subsistence level and in constant hunger, but also a low level of education, often, illiteracy. These factors hinder the spread of democracy, lead not only to conflicts, but also to a general resource to violent methods. Poverty is accompanied by the spread of disease and infections, often reaching areas far outside of their sources. States in Africa are the greatest source of infections, including AIDS.

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[12] Following the UN Standard definition of poverty as individual daily income of less than 2 $US. The poverty line in the European Union is defined as individuals whose income is less than 40% of the national median income per equivalent adult.

[13] *New International Magazine.* First Stop for global justice. 3 February 2011, www.newint.org/feature/1999/03/01/poor-rich-the-facts/

The European Union must not only make an effort and invest resources in reducing poverty around the world reducing risks posed to the EU and its Member States, but also must take steps to reduce economic inequality and poverty in its own Member States. The Europe 2020 adopted by the EU assigns high priority in this "European platform against poverty" to reduce by 25% the number of those living in its Member States who are presently below the poverty threshold, thereby reducing the risk of poverty for some 20 million persons.[14]

Exhaustion of natural resources and struggle for access to them is currently an international problem, one that is steadily becoming more acute. Reserves of oil, natural gas, drinking water, tungsten ore, the rare earth elements (samarium, neodymium, caesium, etc.) are rapidly dwindling. Manufacturing and introduction of new technologies is scarcely conceivable without these resources. Thus, issues of the availability of resources currently are fermenting arguments, conflicts and even wars. After analysing a number of military conflicts that occurred near the end of the past century, Michael Klare has concluded that these were ultimately caused by issues of access to resources.[15] Widely-held opinion insists that the US wars with Iraq, both in 1991, and in 2003, were waged in response to the oil interests in this region of major world powers.

The consequences for the European Union and the world of exhaustion of the reserves of oil and natural gas have been studied in great detail and the results are well known by most members of society. Until recently little attention has been paid to the fall in the rate at which ores containing the rare earth elements are being mined in China and in other states that supply the needs of the European Union. These elements are used, and there are no alternatives to their use at present, in the production of electric automobiles and wind turbines, as well as, lap-top computers, wide-screen television receivers and mobile telephones, magnets, lasers and medical equipment, as well as by defence industries. Furthermore, present forecasts indicate that the demand for a number of these elements could triple by 2030, as a result of increased productions.[16]

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[14] *A Communication from the Commission, Europe 2020: a European strategy for smart, sustainable and inclusive growth*. *Op. cit.*

[15] See Klare, M.T. *Resource Wars. The New Landscape of Global Conflict.* New York: A Metropolitan/OWL Book, 2002.

[16] See the statement of position by Commissioner (Industry and Entrepreneurship) Antonio Tajoni (Vice-President European Commission). *Raw materials – European industry needs access to critical raw materials.* http://ec.europa.eu/commission_2010-2014/tajani/hot-topics/raw-materials/index_en.htm, site visited 14 February 2011.

An expert group reported to the European Commission the results of a first analysis on the state of access by the European Union to mineral raw materials, including rare earth elements. Their conclusion was that as a result of price increases of these raw materials EU enterprises could lose their international competitiveness and might be forced to cease production.[17] The EU has promised to develop a strategy to meet this challenge, however, no simple solution is evident.

Exhaustion of critical raw materials can heighten confrontation in the international system. One evident area comprises border disputes, for example, the Latvian–Lithuanian sea border delimitation agreement which has not been ratified due to disputes over potential oil deposits, is likely to become more difficult to finalise in the future.

Disregard of cultural differences and disrespect of identity are current processes today, and hold the potential for future risks that may seriously perturb the world. Cultural differences that Samuel Huntingdon has labelled as different civilisations, are more extensive and deep-rooted than differences in ideology, or between states.[18] These differences comprise an outlook, ideas on the nature of democracy and democratic values, the free market and liberal economics, the relationship between church and state, the nature of international action, etc.

Ethnic and religious identity, both of which depend on belonging to a nation or religion, are particularly persistent aspects of identity, at the same time extremely sensitive towards any threats, largely because this aspect of identity has been formed over the centuries and have a strong hold on individual consciousness. These identities have at times been deftly manipulated by persons seeking to establish their authority and to gain power, only later to misuse these sentiments for their own personal ends. For a variety of reasons, disrespect of ethnic and religious identity has led to many conflicts and the number of these confrontations is steadily increasing. These situations have become more profound and threatening; they concern large regions and engage large numbers of individuals.

The European Union in formulating its foreign policy must pay maximum attention to cultural differences, making certain that national or religious sentiments are not offended. In this regard, the EU must also put in order, make more coherent, its internal policies. There are occasions wherein individuals, under the guise of exercising their human rights, are

[17] *Ibid.*
[18] Huntingdon, S.P. The Clash of Civilizations. *Foreign Affairs*, 1993, 73(3), 30.

able deeply to offend the religious sentiments of other EU citizens; such occasions ought more strictly to be censured, even resorting to legal measures.

The risks inherent in the information society are not always appreciated and taken account of by society in general. In their daily routine, few people note that their life has become almost completely dependent on information technologies, beginning with telephone conversations and making purchases at a shop. State power is no longer measured solely by the extent of the armed forces and quality of their equipment, or even by the extent to which it controls natural resources; to a large extent a state's authority depends on its ability to gather, collate and use information that every year doubles in quantity. Information technologies have consequently gained strategic importance. The development of an individual, a society, a state and all of mankind has come to depend on information technology.

In cyberspace the principal risks are due to theft of information, unauthorized access to information, espionage, cyber attacks on various servers and terrorism. If a hacker, using a computer, robs a bank, then there are known financial consequences; however, if a terrorist or other person with ill-intent hacks into the control system of anatomic power plant, or illegally breaks into a military control network, the sever consequences might follow for all of society. It is the opinion of experts that absolute security is impossible in cyberspace.[19]

Information is also not absolutely secure within the European Union. The European Parliament expressed its concerns, in 2000–2001, about the reach of a system of automatic interception of information (code name ECHELON), led by the US National Security Agency. The system comprises elements that are located in Europe. According to expert assessments the system is capable of intercepting 3 billion messages yearly, including telephone conversations, telefaxed messages, e-mails, use of the Internet and information transmitted by microwave.[20] There is legitimate concern that this system, which is not under the control of the European Union, uses information about its citizens and institutions without legal sanction.

Estonia has had to endure, in 2007, the most serious cyber attack on its computer networks of any EU Member State. These attacks were linked

[19] Schneier, B. *Beyond Fear: Thinking Sensibly about Security in an Uncertain World*. New York: Copernicus books, 2003.

[20] Campbell, D. *Development of Surveillance Technology and Risk of Abuse of Economic Information. A Report to the European Parliament,* 2000. http://www.europarl.europa.eu/stoa/publications/studies/19981401_1_en.pdf

to removal of a statue, the Bronze soldier, from one location to another in Tallinn, and their massive nature and targeting of the Estonian government computer network was the equivalent of military aggression.

These actions and others have induced the European Union seriously to address the issue of cyber security. The European Network and Information Security Agency (ENISA) was established in 2004. The European Commission, on 30 September 2010, decided to strengthen and modernize the remit of ENISA, in order that it might be able to assist EU Member States in developing their capacity to detect and avert cyber security risks. A training exercise "Cyber Europe 2010" was held in all of the Member States of the European Union in November 2010 to verify and upgrade readiness to repel a massive cyber attack. An EU directive is being prepared to deal with cyber crimes. The EU ought to pay greater attention to informing and educating the general public about cyber security. In addition, specialised law enforcement units ought to be formed to deal with data crimes including their cooperation throughout the European Union.

Terrorism and cross-border crime are not new features; however, the fight against these will require during the next decade considerably more effort and resources. Terrorism and crime shall take on new forms and expressions, ones that we can only faintly predict today. In like manner as has been the case up until now, results of scientific and technological advances shall be used by terrorists and organised crime for their own purposes. Cyber terrorism and cyber crime are likely to become more wide-spread. Instead of organizing bomb outrages, terrorists might resort to the use of chemical and biological weapons, both of which weapon types are readily available; use of such weapons would lead to horrific consequences. Specialists are concerned lest terrorists, in addition to employing radiological weapons, might be able to acquire a tactical nuclear device, one that is relatively small and easy to use.[21] Organised crime will take on a more pronounced cross-border nature, adapting to the process of globalisation. Trafficking in narcotics, prostitution, trade in human organs, illegal weapons sales, and other forms of organised criminal activity in an ever increasing manner will affect not only one or another state, but may destabilise the situation in entire regions, undermining the economy, corrupting the political system at its weakest points.

[21] Ferguson, C.D., Potter, W.C. *The Four Faces of Nuclear Terrorism.* New York, London: Routledge, 2005.

The European Union, in seeking to raise its influence on the world stage, is likely to encounter increased resistance to such actions by terrorists. Organised crime in Europe is likely to become more wide-spread and have a greater impact, unless an effective system of governance is put in place, firstly by EU Institutions, but also by the Member States. The current provisions for cooperation among EU Member States in home affairs and in the fight against crime have been improved with the entry into force of the Lisbon Treaty; however, these mechanisms are far from what shall be needed during the coming decade to meet challenges in the fight against terrorism and cross-border crime.

Military rivalry and arms races are an intrinsic aspect of the struggle for power that continues in the world today, and which demonstrates a tendency to become more acute. The world is saturated with conventional weaponry and thus, with a sharpening in political confrontations, states shall be forced to seek any and all means of acquiring their own nuclear weapons. Undoubtedly, these processes shall proceed slowly, but they will build on trends established during the past decade. Stationing a system of protection against ballistic rockets, possibly including creation of such a system in Europe, shall compel states to improve their ballistic rocket technology leading to a new level of weapons sophistication. The military use of space, in which the USA has up to now played an exclusive role, shall increase. From a military point of view, space satellites and systems installed in orbit would have a vital role to play in any major international military action. The struggle to use space for military purposes is likely to become a high priority for states over the coming decades.

The European Union is unprepared to face future military challenges. National armies in the Member States are expensive to maintain, ineffective and old-fashioned. Reliance upon NATO for their security has meant that the European Union and most of its Member States has acquiesced to the leading security role played by the USA in the world. The Member States of the EU are unlikely to renounce reliance upon their national armed forces in favour of a single modern EU army except in the distant future. Nevertheless, developments elsewhere in the world might constrain the European Union to resolve this issue much earlier than is desired by many politicians.

Conclusions and recommendations

The global economic and financial crisis has taken on a number of aspects that have up to now not been encountered given the pace of globalisation and essential changes in the international state system that have taken place after the end of the cold war. Overcoming the crisis has involved a recourse to non-traditional measures, one whose effectiveness we shall be able to judge only in the future. Nevertheless, it is necessary to develop methods today that will allow early prediction of the onset of future crises and ensure the effectiveness of remedial measures.

The European Union needs to engage in planning future developments, taking into account lessons learned from the present crisis, as well as global risk factors. This should be done by specialists basing their work on existing understanding of underlying mechanisms, suitably improved based on recent lessons. The European Union and its Member States have to bear in mind that in future they shall reap the benefits of globalisation, as well as being challenged by endemic risks and threats that shall persist in the working of the international state system, as well as by new forms and types of risk and threat.

Risk analysis allows identification of a number of global risk groups that shall challenge the European Union in the coming decade. These are: 1) the struggle for dominant position on the world stage and associated threats; 2) exacerbation of differences in the level of economic development and the risk of impoverishment; 3) exhaustion of raw materials and the struggle to control dwindling resources; 4) failure to appreciate the significance of cultural differences and insufficient regard for such differences; 5) risks associated with the information society; 6) terrorism and cross-border criminality; 7) military rivalry and increased rates of arms procurement.

In order that it overcome crises and deal effectively with future challenges and global risks, the European Union itself needs to change fundamentally. The Member States must be prepared to delegate more substantially more power to the Institutions of the Union, in order to allow taking decisions more quickly and effectively. It is only with a substantial increase in its remit and powers to act that the European Union could aspire to an increased role in the international state system.

GLOBĀLIE RISKI UN TO IETEKME UZ EIROPAS SAVIENĪBU

Tālavs Jundzis

Kopsavilkums

Ekonomikas un finanšu krīze pasaulē ieguvusi jaunas, nepieredzētas īpašības, ko diktējusi globalizācija un būtiskas izmaiņas starptautiskajā sistēmā pēc aukstā kara beigām. Krīzes pārvarēšanai nācies lietot netradicionālas metodes, kuru efektivitāti varēsim novērtēt tikai nākotnē. Taču jau tagad jāizstrādā metodika krīžu savlaicīgai prognozēšanai un jānodrošina mehānismu efektivitātes izvērtēšana.

Nākotnes attīstība Eiropas Savienībā jāplāno, ņemot vērā ne tikai tagadējās krīzes mācības, bet arī citus globālos riskus, kuru analīze regulāri jāveic speciālistiem, balstoties uz jau esošajām un pilnveidotām metodikām. Jāņem vērā, ka Eiropas Savienība un tās dalībvalstis arī nākotnē ne tikai baudīs globalizācijas augļus, bet arī sastapsies ar izaicinājumiem – riskiem un draudiem, kas starptautiskajā sistēmā ne tikai saglabāsies, bet arī iegūs jaunus veidus un formas.

Risku analīze ļauj pievērst uzmanību vairākām globālo risku grupām, kuras Eiropas Savienībai nāksies pārvarēt nākamajā desmitgadē. Tās ir: 1) cīņa par varu pasaulē un tās radītie draudi; 2) ekonomisko atšķirību pastiprināšanās un nabadzības riski; 3) resursu izsīkšana un to pārdales riski; 4) kultūras atšķirību ignorēšana un identitātes aizskārumi; 5) informācijas sabiedrības riski; 6) terorisms un transnacionālā noziedzība; 7) militārā sacensība un bruņošanās.

Krīžu pārvarēšana un efektīva cīņa ar nākotnes izaicinājumiem un globālajiem riskiem Eiropas Savienībā iespējama vien tad, ja tā pati būtiski pārmainīsies. Eiropas Savienības dalībvalstīm jāizšķiras par ievērojami lielākas varas nodošanu kopīgajām institūcijām, nodrošinot ātru un efektīvu pārvaldes lēmumu pieņemšanu. Tikai tad Eiropas Savienība var pretendēt uz savas lomas palielināšanu un konkurētspēju starptautiskajā sistēmā.

Atslēgvārdi: Eiropas Savienība, ekonomikas un finansu krīze, globalizācija, risku analīze, nākotnes prognozēšana

LATVIA AND THE EUROPEAN UNION: A HISTORICAL RETROSPECTIVE

Kristīne Beķere

Abstract

The article describes the relationship between Latvia and the European Union (then the European Communities) during the Soviet occupation period of Baltic States, describing also the activities of Latvians living abroad, and of Baltic organisations in lobbying the Council of Europe and the European Parliament.

Keywords: Latvia, European Union, the Baltic question, human rights, European Parliament, Baltic émigré organizations

Official relations between Latvia and both of the other Baltic States with the European Union (then the European Communities) only began after the independent statehood was regained in 1991. These relations culminated with all three Baltic States acceding to the EU as Member States in 2004. Nevertheless, a tenuous relationship with the EU formed during the period of Soviet occupation, most significantly, during the time period 1989–1991, when the process of regaining independence was under way in the Baltic States.

Whilst Latvia, Lithuania and Estonia were part of the USSR the rights of the Baltic peoples to determine their form of government and live in independent states were defended by Balts living in exile abroad. The latter sought support for their cause by appealing to various governments and international bodies, including the European Parliament and the Council of Europe. From 1990 onwards, these appeals were undertaken by Baltic governments themselves.

The Baltic Question was rarely raised at the level of European institutions throughout the entire period of Soviet occupation; exceptionally,

the issue was discussed during the late 1980s and early 1990s, i.e. once relations between the USSR and the Baltic States began to change. Nevertheless, there were a number of earlier discussions. The Parliamentary Assembly of the Council of Europe adopted on 29 September 1960, on the occasion of 20 years that had elapsed since the Baltic States had been forcibly incorporated by the USSR, a resolution on the situation in the Baltic States. This resolution expressed sympathy for the plight of the Baltic nations, declared support for these nations by the people of Europe and reaffirmed that Western countries were continuing a policy of non-recognition of a *de jure* incorporation of the Baltic States by the USSR. The resolution also invited Western governments to support efforts of Baltic nationals living abroad striving to restore a free Estonia, Latvia and Lithuania, as members of international, democratic European institutions.[1] A further resolution addressing the Baltic States was adopted 28 January 1987 by the Parliamentary Assembly of the Council of Europe, reiterating that European countries continued to refuse to recognise that incorporation of the Baltic States had been carried out in a legitimate way.[2]

Furthermore, 11 members of the Parliamentary Assembly signed, on 10 November 1986, a declaration on human rights issues, including those arising in the Baltic States, to contradict human rights provisions of the Helsinki Final Act. The signatories of this declaration indicated that the already poor state of human rights in the illegally annexed Baltic States was continuing to degrade. They called for a need to continue dialogue on these matters, and to give maximum importance in negotiations to human rights problems, thereby preventing these issues to be overshadowed by other topics, for example, arms control issues.[3]

During the 1980s, the European Parliament also discussed the Baltic Question on several occasions. A number of parliamentary bodies and individual deputies co-operated with Baltic exile organisations.

In 1982, Otto von Habsburg, a distinguished member of the European Parliament, addressed the Baltic Question, by authoring a Parliamentary Report that called for the Baltic Question to be raised at the United Nations

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1 See the collection of documents related to international recognition of Latvia during the time period 1918–1998, published in Latvian only: *Latvijas valsts okupācijas gados. – Dokumenti par Latvijas valsts starptautisko atzīšanu, neatkarības atjaunošanu un diplomātiskajiem sakariem 1918–1998*. Rīga: Nordik, 1999, p. 160.

2 *Ibid.*

3 Cf. the written declaration Nr. 145, issued by the Council of Europe Parliamentary Assembly of the Council of Europe, 10 November 1986.

Special Committee of 24 on Decolonisation.[4] He was successful insofar as the European Parliament adopted, on 13 January 1983, a Resolution on the situation in Estonia, Latvia and Lithuania. In the preamble to this declaration a number of significant historical facts were listed justifying the urgent need for this resolution, including a description of the situation on the Baltic States. The text refers to the appeal of April 1979 to the UN by 45 Estonians, Latvians and Lithuanians inviting it to recognise the right of the Baltic States to self-determination and independence; also to the treaties of 1920 between the USSR and the three Baltic States, wherein the USSR guaranteed the territorial integrity of the latter; Article 8 of the Final Act at Helsinki of the Conference on Security and Cooperation in Europe, and other legal documents. This act by the European Parliament censured occupation of the Baltic States in 1940 that occurred following the Molotov–Ribbentrop Pact, and noted that most European countries, as well as the United States, Canada, the United Kingdom, Australia and others had a policy of not recognising the legitimacy of this occupation. The Resolution by the European Parliament invited the Foreign Ministers of the European Communities to raise the Baltic Question at the UN for consideration by its Special Committee of 24 on Decolonisation. Furthermore, the resolution called for the Baltic Question to be examined in the follow-up conferences that were dedicated to assessing implementation of the Helsinki Final Act. Finally, the resolution instructed the President of the European Parliament to transit it to the Conference of Foreign Ministers of the Communities.[5] However, the Conference of Foreign Ministers of the Communities failed to act upon the request to submit the Baltic Question to the UN Special Committee of 24 on Decolonisation. Hans Dietrich Genscher, Foreign Minister of the Federal Republic of Germany, expressed the view of the Conference of Foreign Ministers of the Communities in an appreciation of and sympathy for the difficult position of the Baltic peoples, but also that realistic political considerations meant that raising such a question would only receive a cursory examination by the UN. Furthermore, were the result to be negative, the interests of the Baltic peoples might suffer in consequence.[6]

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[4] Hough, W.J.H. The Annexation of the Baltic states and its effect on the development of law prohibiting forcible seizure of territory. *New York Law School Journal of International and Comparative Law,* Vol. 6 (2), 1985, 438.

[5] Resolution on the situation in Estonia, Latvia and Lithuania. Adopted by the European Parliament in Strasbourg on 13 January 1983.

[6] Hough, W.J.H. The Annexation of the Baltic states and its effect on the development of law prohibiting forcible seizure of territory. *Op. cit*., 440.

An additional, similar resolution on the Baltic Question was adopted by the European Parliament in 1989.[7]

The work of Otto von Habsburg in submitting a draft resolution to the European Parliament and staunchly defending the Baltic States in the light of decolonisation was closely supported by and in cooperation with various Baltic émigré organisations. Bernd Posselt, secretary to Otto von Habsburg, appraised Baltic organisations of progress in building support in the European Parliament for this resolution. Thus, Baltic organisations were informed in a timely manner of the confrontation that took place between Otto von Habsburg and German Foreign Minister Genscher during the session at which the resolution was adopted. Minister Genscher rejected the demand to raise the Baltic Question at the UN. In like manner the Secretariat of Otto von Habsburg informed Baltic organisations of future planned steps in regard to the Baltic Question.[8]

For their part various Baltic organisations informed Otto von Habsburg about their activities and successes that they achieved. Judging by surviving documents, Latvian émigré organisations largely devoted themselves to disseminating information to the mass media and publicity campaigns associated with debate in the European Parliament about the Baltic Question. By sending out letters they also canvassed the position of various Members of the European Parliament concerning the draft resolution.[9] Exchange of letters and transmission of information on Baltic issues between various Members of the European Parliament and various émigré Baltic organisations continued on in later years.

The Baltic Intergroup of Members of the European Parliament was created on 21 May 1988; the activities of this group focussed on the right to self-determination and support for implementation of human rights provisions in the occupied Baltic States. The aim of the Baltic Intergroup was to ensure that the human rights principles contained in the Helsinki Final Act would be implemented in the Baltic States. In the same way that Members of the European Parliament represented many countries and diverse political parties, the Baltic Intergroup was similarly broadly-based. It was led by Dr. Hans-Joachim Seeler, elected as a social democrat from Germany. Algis Klimaitis, director of the Baltic World Council, was the

[7] Deksnis, E. European Union relations with the Baltic States. 1988–1991. In: *The Baltic Way to Freedom.* Riga: Zelta Grauds, 2005, p. 401.

[8] See an undated letter from Berndt Posselt to unspecified Baltic organisations, at the Latvian State Archives (LVA), f. 2197, 1.v. apr., l.131., p. 302.

[9] See a letter to Berndt Posselt. *Op. cit*., p. 388.

general secretary of the Baltic Intergroup.[10] This attested to links between the European Parliament and émigré Baltic organisations.

Baltic issues were more forcefully raised in European institutions in 1990/91, during the process of the Baltic peoples regaining independent statehood.

The heads of Baltic governments appealed to both the European Parliament and the Council of Europe for their support. On 30 June 1990, the Chairmen of the three Baltic Supreme Councils sent letters asking for their support to Anders Björck, President of the parliamentary Assembly of the Council of Europe, and to Enrique Baron Crespo, President of the European Parliament. The latter was asked to form an official inter-parliamentary delegation of the three Baltic countries at the European Parliament. Such a delegation would allow the Baltic States constructively to participate in the work of the European Parliament, as well as to help with transformation of the economic and social system in the Baltic States, thereby accelerating the process of renewing independent statehood in Lithuania, Latvia and Estonia, as well as strengthening democracy in the Baltic States.[11] The letter to the President of the Parliamentary Assembly of the Council of Europe asked to grant special guest delegation status to Lithuania, Latvia and Estonia. This would permit the Baltic States to integrate step-by-step into the community of European states, allow participation in resolving problems important to all of Europe, to gain experience with modern democratic procedures. The result would be better success in dealing with social and economic development as well as treating humanitarian issues.[12]

European Institutions of their own accord reacted to events in the Baltic. The European Community invited the USSR, on several occasions during 1990, to refrain from intimidation and to act in accord with provisions of the Helsinki Final Act and the Paris Charter. The European Community reacted particularly vigorously to the violent events in the Baltic during January 1991. Furthermore, in January 1991, the European Parliament, inspired by the initiatives of the Icelandic Government, formed a special Committee to investigate the legal aspects of the behaviour of the USSR in Vilnius on 13 January 1991. Members of this Committee visited

[10] See the World Federation of Free Latvians press release, 26 May 1988, at the Latvian State Archives, (LVA), f. 2197, 1.v. apr., l.102., p. 215.

[11] A letter to Mr. Enrique Baron Crespo, President of the European Parliament (30 June 1991). In: *Together. Council of the Baltic States, 1990–1992: Documents.* Vilnius, 1996, p. 25.

[12] A letter to Mr. Anders Björck, president of the Parliamentary Assembly of the Council of Europe. In: *Together.... Op. cit.,* p. 26.

both the Baltic region and Moscow.[13] The Council of Europe also addressed Baltic issues and adopted a resolution that condemned recourse to use of military force against civilians and warned of the negative consequences of future overt violent acts.[14] The European Commission also associated itself with international protests against violence by Soviet authorities in the Baltic by deciding in January 1991 to postpone planned negotiations with Soviet authorities concerning closer economic cooperation and delaying implementation of a technical assistance programme worth 500 million dollars.[15]

Finally, on 27 August 1991, only six days after *de facto* independence of the Republic of Latvia was renewed, the Member States of the European Community recognised the independence of all three Baltic States. In its communication the Member States congratulated the Baltic States on regaining their independence and sovereignty, and stated the Baltic States thereby to have returned to the family of European states: "... It is now time, after more than fifty years, that these States resume their rightful place among the nations of Europe. Therefore, the Community and its Member States confirm their decision to establish diplomatic relations with the Baltic States without delay. Implementing measures will be taken by Member States individually."[16]

Notwithstanding the fifty years of the Baltic States being separated from Europe, whilst being incorporated in the USSR, Member States of the European Communities already had supported the ambition of the Baltic States for regaining independence and had expressed their opinion that these were undeniably European states and worthy of being part of European community of nations. Sustaining this view of the Baltic States as well as attracting attention to the Baltic Question was at the core of activities by Latvians living abroad, and of Baltic organisations in lobbying the Council of Europe and the European Parliament. In regard to the Baltic Question, these European Institutions principally examined cases of

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[13] Genzelis, B. The Twists and Turns of the Recognition of Lithuania Statehood. Published in *The Baltic Way to Freedom*. *Op. cit*., p. 393.

[14] Jundzis, T. The Role of non-violent resistance in the struggle to achieve full independence. In: *Regaining independence: non-violent resistance in Latvia 1945–1991.* Rīga: Latvian Academy of Sciences, 2008, p. 591.

[15] *Ibid.*

[16] The Declaration by the Foreign Ministers of the 12 Member States of the European Communities has been published as "Eiropas Kopienas dalībvalstu 27.08.1991. deklarācija par Baltijas valstu neatkarību", in a collection of documents, *Dokumenti par Latvijas valsts starptautisko atzīšanu.... Op. cit.,* p. 243.

human rights abuses in the Baltic States and the right of the Baltic peoples to self-determination and a form of governance of their choosing.

The Baltic Question was examined most often during 1990/91 once the process of agitating for restoration of their statehood became apparent in Latvia, Lithuania and Estonia. Once *de facto* independent statehood was attained, the Member States of the European Communities did not hesitate to recognise this fact, warmly welcoming their return to the family of European nations. The practicalities of "returning to Europe" were in 1991 only a future task, one that was successful in that all three Baltic States acceded to the European Union in 2004.

LATVIJA UN EIROPAS SAVIENĪBA: VĒSTURISKS ATSKATS

Kristīne Beķere

Kopsavilkums

Latvijas un abu pārējo Baltijas valstu oficiālas attiecības ar Eiropas Savienību sākās pēc to neatkarības atjaunošanas 1991. gadā un sasniedza savu maksimumu 2004. gadā, visām trim Baltijas valstīm kļūstot par Eiropas Savienības dalībvalstīm. Tomēr zināmas attiecības, lai arī netiešas, pastāvēja starp Baltijas valstīm un ES arī pirms tam, padomju okupācijas laikā.

Neraugoties uz piecdesmit gadus ilgušo Baltijas valstu atšķirtību no Eiropas, atrodoties PSRS sastāvā, Eiropas Kopienas dalībvalstis arī vēl pirms Baltijas valstu neatkarības atgūšanas apliecināja savu atbalstu Baltijas valstu brīvības centieniem un izteica savu uzskatu, ka Baltijas valstis ir piederīgas Eiropai un pienācīga tās daļa. Uzturēt šo uzskatu un pievērst uzmanību Baltijas jautājumam Baltijas valstu okupācijas laikā centās emigrācijā dzīvojošo latviešu un baltiešu organizācijas, cita starpā vēršoties arī pie Eiropas Padomes un Eiropas Parlamenta. Sākot ar 1990. gadu, šos sakarus uzņēmās jau pašas Baltijas valstu valdības. Galvenās problēmas, kuru sakarā Eiropas institūcijas savā darbā skāra Baltijas valstu jautājumu, bija cilvēktiesību pārkāpumi Baltijas valstīs un tautu tiesības uz pašnoteikšanos un brīvu pārvaldes formas izvēli.

Īpaši bieži Baltijas jautājums Eiropas institūcijās tika aplūkots 1990.–1991. gadā, norisinoties neatkarības atgūšanas procesam Latvijā, Lietuvā un Igaunijā. Baltijas valstīm faktiski atgūstot neatkarību, Eiropas kopienas valstis nekavējoties atzina šo faktu, izsakot prieku par Baltijas valstu atgriešanos Eiropas valstu saimē. Praktiskais "atgriešanās Eiropā" darbs gan 1991. gadā vēl lielākoties bija priekšā, un, veiksmīgi noritot, tas vainagojās ar visu triju Baltijas valstu iestāšanos Eiropas Savienībā 2004. gadā.

Atslēgvārdi: Latvija, Eiropas Savienība, starptautiskās attiecības, Baltijas jautājums, cilvēktiesības, Eiropas Parlaments, baltiešu trimdas organizācija.

Chapter 2

SURMOUNTING THE ECONOMIC CRISIS

USE OF THE ECONOMIC THEORY FOR SHAPING THE NATIONAL POLICY OF A LOW COMPETITIVE ECONOMY IN THE ECONOMIC SPACE DOMINATED BY STRONG ECONOMIES

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Abstract
This presentation focuses on the unique situation met by such underdeveloped countries, like Lithuania and other Baltic countries, after regaining their independence and their entering quite a new economic space — one dominated by incomparably stronger economies. The review of economical theories dealing with international labour division shows that currently there exists no single theoretical basis able to provide a consistent approach to problems met by Lithuania and other Baltic countries. Instead, in each situation one has to search empirically for a suitable theory among many competing ones.

At least a partial solution of this "meta-theoretical" problem is seen in gathering and systemizing of a "bank" of theory selecting criteria — considerations that have to be reviewed when selecting a proper theoretical approach to a single case of underdeveloped and rather uncompetitive economy acting in economical space dominated by economic super powers.

Reviewing the case of Lithuania we discussed several such considerations and ideas that should be included in such a "bank" of theory selecting criteria.

Keywords: low competitive economy, economic integration and safety, integrated economic space, economical theory and their use in the shaping of economic police.

Introduction

This presentation focuses on the unique situation met by such underdeveloped countries like Lithuania and other Baltic countries after regaining their independence and their entering quite a new economic space — one dominated by incomparably stronger economies.

The review of economical theories dealing with international labour division shows that currently there exists no single theoretical basis able to provide a consistent approach to problems met by Lithuania and other Baltic countries. Instead, in each situation we meet the necessity of a rather empiric selection of a suitable theory among many competing ones. The solution of this "meta-theoretical" problem is seen in gathering and systemizing criteria for real-situation-related (and not subjective theoretical) preferences based on selecting of the most suitable approach.

This brings the need to discuss considerations and criteria that should be regarded in shaping the economic policy of Lithuania and other Baltic countries.

In the following section, "Theories of economic integration and the problem of low competitive economy", we will focus upon the general preconditions for low competitive state to form efficient economic policy in an economic space dominated by powerful and high competitive economies.

The next section, "Formation of the integration economic policy in a low competitive state", considers policy recommendations arising from the theoretical analysis.

Theories of economic integration and the problem of low competitive economy

Lithuania, like some other new members of the EU, is a weak economy which has to act in the market dominated by strong ones. A country in such a position meets very difficult problems when shaping its economic policy: whether to try to integrate as close as possible or to resist such integration, to open its inner market for strong economies, or to protect it, to prefer long-time investments and develop science intensive branches or to choose short-time ones, etc.

The answers to all these questions are supposed to be found in the modern economical theories of international labour division.

Let us consider from the historical and modern aspect the economic theories which describe such components determining the increase of the well-being of a nation like foreign economic relations and trade, which are the derivatives of competitiveness of the national industry, agriculture, and sector of traditional and information services.

In order to understand the logic of functioning of modern international foreign economic relations, trade and their subsequent integration displays it is necessary to refer to the theory. Today the core issue both for trading and integration processes is the question of the role and degree of intervention of the state in this process, whereas at the beginning of creation of the theory of international trade (mercantile system) in the 15th–17th centuries such question did not exist for its main representatives like T. Mun [1], A. de Montchrestien[2] and W. Stafford[3]. It was very obvious to them that international trade could be based only on active intervention of the state into economic activities of national subjects of trade, or using modern terminology — lobbying protectionism. The main objectives and criteria of trade in those days did not differ much from the modern ones — maintenance of positive trading balance, accumulation of gold-currency reserves or simply jewelry and precious metals which were associated with the increase of commodity weight. Later in the first place came parameters like the distribution of economic (land, labour, capital) and natural resources at the expense of which, using modern language, static gains take place. The theoretical basis of all these preferences is given in the theory of absolute advantages of A. Smith[4] and in the theory of comparative advantages of D. Ricardo[5].

Later these basic theories and their derivatives, additions, transformations, modifications, updatings and detailed elaborations basically by efforts of the 20th century scientists, like E. Heckscher and B. Ohlin[6],

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1 Mun, Th. *Englands Treasure by Foreign Trade.* Elibron Classics Series. Adamant Media Corporation, 2005.

2 Montchrestien, A. *Traicté de l'oeconomie politique.* Genève Librairie Droz, 1999.

3 Backhouse, R. (comp.) *Early Histories of Economic Thought 1824–1914*. London: Routledge, 2000.

4 Smith, A. *The Wealth of Nations*. New York: Dover Publications, 2002.

5 Ricardo, D. *The Principles of Political Economy and Taxation*. New York: Dover Publications, 2004.

6 Heckscher, E., Ohlin, B., 1933. http://www.econ.rochester.edu/Faculty/jones/Palgrave_Jones_on_Heckscher_Ohlin.pdf (accessed 16 May 2010).

W. Leontief[7], M. Porter[8], T. Rybczinski[9], P. Samuelson[10], W. Malenbaum and W. Stolper[11] and others have been shifted to a modern perception but the criteria specified above remained as the basis alongside with the added integration parameters such as desirable adjacency of territories, accumulation of all kinds of resources, first of all financial ones, creation of highly technological manufactures, i.e. achievement of dynamic gains oriented towards the influence on manufacturing capacities and subsequent growth of income.

For example, the theorem of Heckscher-Ohlin suggests that patterns of trade between the countries are based on the characteristics of the countries. It maintains that capital-rich countries will export capital-intensive goods while labour-rich countries will export labour-intensive products.

The theorem of Stolper-Samuelson as the basic model of the theory of foreign trade tries to give the answer to the central question of economics: how changes of commodity prices through the application of various constraints, like duty and excise taxes, etc., will affect the prices of production? Stolper-Samuelson declares that if the price of capital-intensive products is growing, for whatever reason, then the price of capital is increasing as well and this factor is used extensively in industry, at the same time the price of other factors, like the rate of wages paid for labour will is falling.

The theorem of Rybczynski illustrates the relationship between the changes. To keep the prices of goods constant, the same prices should be kept for production factors. The latter will remain constant only when the ratio of the factors used in the two sectors remains constant. In the case of the growth of one factor the constant balance will remain only with the increase of production in the industry, which makes extensive the use of this factor and vice versa, the reduction of production in other industries, which will lead to the release of a fixed factor that will be available for use alongside with the growing factor in the expanding industry.

In the second half of the 20th century, basically in connection with integration processes taking place in Europe and the creation of two eco-

[7] Leontief, W. *Input-Output Economic*. New York: Oxford University Press, 1986.
[8] Porter, M.E. *On Competition*. Boston: Harvard Business School Publishing Corporation, 2008.
[9] Rybczinski, T. 1955. http://www.fordschool.umich.edu/rsie/workingpapers/Papers426-450/r448.pdf (accessed 17 June 2010).
[10] Samuelson, P. *Economics. An Introductory Analysis*. New York: McGraw-Hill Book Company, 1948. Inc.
[11] Malenbaum, W., Stolper, W.F. Political Ideology and Economic Progress. The Basic Question. *World Politics*, 12 (3), Apr., 1960, 413–421.

nomic formations — the European Economic Community (EEC) in the Western Europe and the Council for Mutual Economic Assistance (CMEA) for socialist countries in the Eastern Europe — to the already existing theories, two new groups of theories were added, which relatively could be divided into supporters of consecutive "step by step" rapprochement of economies and supporters of formation *a priori* of supranational institutions. Though in the socialist countries of that time due to political-ideological motives such theories in their modern approach were not given enough attention, nevertheless, the real functioning of the CMEA perfectly fits in all theories of the fathers of functionalism, like A. Spinelli[12], D. Mitrany[13], E.B. Haas[14] and others as well as into the liberal intergovernmental theory of A. Moravcsik[15], which appeared already after the disintegration of the the CMEA.

The theoretical base of integration in the Western Europe is slightly wider. From the purely theoretical classical definition of B. Balassa[16] who approached the economic integration pointing out its five levels — from free trade through customs union, common market and economic union until full economic integration to the theories of functionalism, federalism, institutionalism. At the same time, P. Streeten[17] looked upon the European integration from the point of view of neofederalism defining its purposes as presence of economic growth and the principle of economic equality, more even distribution of income and the bigger freedom of choice.

Basically both directions, namely, the theory of consecutive rapprochement and the theory of the creation "a priori" of supranational formations had one purpose — through economic cooperation to increase the degree of political trust and competitiveness of national economies. Entering the new stage of integration orientated first of all to the nearby markets these two theories underwent actual revision, were updated, converged and in new wording acquired the term of neofederalism and neofunctionalism. Thus, starting with the mid-1970s, the main theory of the European integration became the theory of a neofunctionalism by E.B. Haas and

[12] Spinelli, A. 1984. http://www.altierospinelli.org (accessed 25 June 2010).
[13] Mitrany, D. *The Functional Theory of Politics*. London: Martin Robertson, 1975.
[14] Haas, E.B. *The Uniting of Europe: Political, Social and Economic Forces 1950-57*. Ann Arbor, MI: UMI Books on Demand, 1996.
[15] Moravcsik, A. *The Choice for Europe: Social purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press, European edition with London: Routledge/UCL Press, 1998.
[16] Balassa, B. *The Theory of Economic Integration*. London, 1961.
[17] Streeten, P. *Economic Intregration. Aspects and Problems*. Leyden: AW Sythoff, 1961.

Ph. Schmitter[18]. Its basis was three stages of preconditions for cooperation — presence of common values, i.e. coincidence of purposes and interests of the political and economic elite; the pilot project focused on success (most relevant and advanced and least problematic); immediate injection of positive dynamics to the cooperation by duplicating the first successful project on other areas of cooperation.

The integration theory found further profound development in the works of A. Moravcsik[19]. The keynote of this theory is that despite the general global values of the countries-partners, the interests of national political-business elite of different countries could considerably differ due to both national interests and a different degree of responsibility that they exercise in the integrated economic space. A. Moravcsik talks about the definition of preferences of the integrated states which are defined by their power, asymmetric independence and possibility to reach the strategic goals of negotiations at the expense of acceptable tactical concessions.

Thus, the general situation in the economic theory is rather frustrating.

1. Our review shows that there does not exist any leading theory able to provide a solid basis for an efficient economical strategy of Lithuania in its new situation. Instead, we see a great deal of different approaches, each of them is based upon some economical idea and facts and provides its own recommendations that differ from those of other approaches.

2. When taking decisions, the economic police meets the necessity to choose the "most suitable" theory which means to answer the question which of many existent international labour division theories should be chosen in a given situation.

3. The economical policy needs a meta-theory indicating the basis of such choice and defining special situations in which every single theory should be preferred.

In the next paragraph, we review some points that should be considered in the selection of a theoretical basis for shaping of economical strategy of an underdeveloped country like Lithuania.

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[18] Haas, E.B., Schmitter, Ph. Economics and Differential Patterns of Political Integration: Project About Unity in Latin America. *International Organization*, XVIII (4), 1964; Haas, E.B. The Study of Regional Integration: Reflections on the Joy and Anguish of Pretheorizing. *International Organization*, XXIV (4), 1970.

[19] Moravcsik, A. *Centralization or Fragmentation? Europe Facing the Challenges of Deepening, Diversity and Democracy*. New York: Council on Foreign Relations, 1998; Moravcsik, A. *Europe without Illusions*. Lanham, MD: University Press of America, 2005.

Formation of the integration economic policy in a low competitive state

The basis for the well-being of nations is the presence of enterprises generating surplus value. If the capital of these enterprises is national then such enterprises take a more active role in the formation of well-being of the nation. With the reduction of the national capital and the increase of foreign capital, this well-being decreases. The key factor here is the question to what degree the national capital is capable of guaranteeing competitiveness of enterprises and their production on internal and foreign markets, and in which foreign markets, closed or open. Ideally, the presence of competitive production or services allows enterprises to find the demand on the global market, to make economies from manufacturing scales, and thus, campaign both for the free market and for various kinds of integration processes the final objectives of which are the expansion of commodity market of production and services of the given enterprise. We shall name such enterprises "the first group", they are always on the crest of the wave.

But what should the enterprises do, which have never been "on the wave" but which are making efforts to this end? How should they proceed, in what markets should they trade and at whose expense should they maintain competition with the enterprises of "the first group"? These enterprises (we shall name them "the second group"), by all parameters, and first of all, from the aspect of scale of capitalisation and volumes of output concede to the enterprises of the first group with all the following consequences. Free trade and various integration processes in economy do not necessarily improve their condition in economy and, as a rule, lead to closing of such enterprises or their absorption by the enterprises of the first group, which in its turn affects the national market of employment in the given branch and outflow of profits to the enterprises that have absorbed them. Thus, the enterprises of the first group become richer with ever increasing possibilities of growth and competitiveness and the enterprises of the second group that operate basically in the local markets fall into decline. How should these enterprises avoid such a destiny?

First, they should become, partially or completely, the divisions of the enterprises of the first group which could offer a share of their local and foreign market. The shortcoming is that profits will also go to

the enterprises of the first group. The advantage is that such enterprises economically could remain afloat and technologically meet all requirements of the enterprises of the first group, i.e. to become competitive internationally.

Second, they could try to enter into cooperation with enterprises of a technologically similar level with the purpose of gaining advantage from manufacturing volumes. The partners could be from the enterprises of both the first and the second group. The advantage would be a retained control over manufacture, expansions of the local market, at least up to the size of two countries, employment of local manpower, use of profit for modernization and expanding of manufacture.

Third, to try to be kept on the local market and to emerge on export markets.

In other words, the issues of well-being of the nation depend on the degree of involvement of the population in labour activity. The presence of work implies the growth of well-being of the nation, its absence — the decline, and as it has already been said above, we mean the work generating an additional surplus value of enterprises, i.e. work in the budgetary enterprises is not taken into consideration.

Now from the enterprise generating a surplus value we can move to a more complex aggregated condition — to national economy of the particular country and its generated surplus value, or in other words, to competitiveness and employment of the population generating primary surplus value in the national economy, assuming that exporting economies improve their position while the importing ones worsen it.

In authoritative economies full employment of the population is guaranteed and this factor, despite efficiency losses, increases the well-being of the nations. Though here we talk more about the survival of companies or economies of separately taken countries than about their possibilities to compete outside their national borders, however, this factor is extremely important for the formation of competitive economies. Historically, most of the highly industrially developed countries passed this phase. For example, the USA and Germany, during the establishment and strengthening of their economies in the first quarter of the 20th century, were protected with high tariff barriers. The same policy allowed the Soviet Union to create a powerful industry and regularly increase the well-being of the nation. Thus, while in 1913 the indicator of the average GNP per capita in Russia

was only 15% compared to the USA level, in 1955, this indicator rose to 40%, in 1975 to 60 % and in mid-1980s — to about 65%.[20]

This means that realization of the policy of protectionism and free trade should be seen in reliance to the development level of national economy and also to the fact for whom and at whose expense the well-being is achieved — for national or foreign work and capital, which categories of the population (consumers or manufacturers) and institutions in the form of the state will receive the benefits. It is obvious that consumers and partially manufacturers win from the free market to the extent to which export can cover their losses from the appearance of substitutes on the local commodity market. Under free trade the country with low developed economy focusing on import finds itself in unambiguous loss and tries to win back on the consumers what it could have received in the case of presence of preferential trade from counterparts from a foreign market. The question of well-being implies the following: which categories of consumers compensate the losses of government from the zone of free trade and whether this compensation exists at all. If such compensation exists then the well-being of the nation grows, but if not, it falls. If the market is not free then the government receives the highest dividends.

The most important parameter here is the question of how strong the national economy is and how much it is oriented on export. If the economy is strong then the creation of free trade zones is always attractive, since the market expansion stimulates the national economy which in its turn leads to the increase of well-being of the nation. If the economy is weak the issues of protectionism and development of regional inter-state trade leading to the increase of the well-being of the nation are also important.

For investment-wise weak economy with limited accumulative financial possibilities of the state to support perspective branches of economy, the presence of the free market means permanent backwardness of local manufacturers against world leaders, and consequently, a gradual decline of nation's well-being. The only solution is the support of local manufacturers and regional cooperation which, on the one hand, fits well the theory of gravitation of Tinbergen for the countries with similar weight in economy:

[20] Fischer, S., Dornbusch, R., Schmalensee, R. *Economic*. New York: McGraw-Hill, Inc., 1988, p. 761.

$$F_{ij} = G\frac{M_i M_j}{D_{ij}}$$

where:

F is trade stream, G — constant, M_i — GNP, M_j — GDP of each country in econometric estimations, and D — distance, and the theory of "the second best" and also the theory of neofunctionalism of E. Haas with its basis of striving to controlled integration on regional level.

The next item for discussion is how much the involvement of the countries into one or another regional economic and other union leaves freedom to its participants in choosing partners or contacts outside these unions and to what level the cooperation within the framework of one union is obligatory and efficient for each of its constituent countries.

The basic economic problem facing the countries with similar economic development and of similar size to Lithuania is that their economies cannot compete qualitatively and quantitatively either in the EU market or the markets of other developed economies. The leadership of such countries, on the one hand, face the problem either to choose one of directions that would allow to make investments and look for partners and companies of the developed economy, or, on the other hand, in the long run to be only consumers of the goods, products and services, and thus, the issues of convergence and standards of living will be put aside. The comprehension of the fact that without manufacturing, the generated added value of the enterprises, there cannot be any rise in well-being of the nation, should urge the governments to act adequately creating such conditions. In the absence of such conditions, the participation in the EU can be considered simply as a formality which under free trade conditions apart from direct payments provide no advantages to the national economy as the substitutes of goods on regional market, especially in the sphere of food products, imply the outflow of finances to the regions of their origin. Thus, the importing country gets into constantly increasing financial dependence regarding the accumulation of financial resources for the support of local manufacturers.

Concerning the "Eastern initiative" the same tendency to increase the zone of free trade in the post-Soviet space countries could be observed. The common problem of the countries to the East from the "Iron Curtain" is that the production of their economies, except the cases when their production has stable demand in Western Europe due to the investments

of the Western countries and transfer of production to the East, has low demand in the markets of the Western Europe and basically is directed to the home market. However, if for such a big country like Poland the home market, especially for agricultural and other food articles, is vitally important and is supplied by local manufacturers, for countries like Lithuania the share of local manufacturing for home consumption is much less.

It is partially related to the environmental conditions, but basically with poor diversification of manufacture, which in its turn is limited by losses from manufacture scales. Thus, the initiative of "Eastern partnership" provides a possibility of expansion of the market to the East which allows to secure financial assets from sale and the return of investments expected by the partners. In other words, the "Eastern partnership" is the same expansion of the EU to the East only in its shortened and more formal variant, and since the risks in the private sector here are still high enough, these territories are assigned to the sphere of non strategic investments to the new EU countries having closer contacts than with old EU members. The basic point of such economic cooperation for enterprises with limited resources, of the former socialist space, is an attempt to get access to cheaper labour and energy resources, amalgamation of producing units with the purpose of subsequent access to richer markets, i.e. profit maximisation in relation to investments.

Such a policy could help to create new workplaces in the new EU countries and improve their position in the global economic competition, and eventually, define, which branches could be potentially fit for the competition in the world markets. Only having reached a certain threshold limit in concentration, production technologies and finances allowing to overcome temporary financial and time rupture from the moment of manufacture and sale, the enterprises are able to sustain the competition both on national and global markets.

Conclusions

The current economical situation of Lithuania and other Baltic countries seems to be rather new for the economic theory. There exists no single theoretical position able to provide any consistent recommendations on the further economic policy of these countries.

Therefore, the use of the present-day theories is based upon a rather eclectic selection between them. It is a selection based rather on personal and political preferences of police shapers and not on any consistent and scientifically proved grounds.

The main way of development of some general theory describing the situation for countries like Lithuania and providing related recommendations is to gather and systematize considerations for the selection of a specific theory according to a specific economic situation.

Summarising the above, it is possible to draw conclusions for two spheres or levels of interaction – the global and the regional one.

In the global aspect, the "Eastern partnership" will promote rapprochement concerning national safety on all European continent, restoration of trust and contacts between societies and the people, promotion of diverse integration processes including the economic ones, and what is most important, will allow to avoid creation of new political, military and economic dividing lines and borders.

In a regional economic aspect working on the crossroad of two systems or blocks could give tangible results for well-being of the nearby nations. The new EU countries are capable of providing the volumes of financing, investments and consultations, which are anticipated in the countries-participants of "Eastern partnership". The countries-participants of "Eastern partnership" are capable to supply the resources for the purpose of increasing their global competitiveness.

The increase of well-being of the nation could emerge from contacts with partners having an identical and even a lower level of development, and not only on higher level.

Only the production and services of enterprises, even on the basis of "the second best" but generating primary surplus value, promote the growth of well-being of the nation.

For "rather economically backward nations", like Lithuania, the creation of long-term real economic strategy and policy directed on support of local manufacturers instead of a chaotic running around between the simplified reductionism and the Silicon Valley is extremely important.

ПРИМЕНЕНИЕ ЭКОНОМИЧЕСКОЙ ТЕОРИИ ПРИ ФОРМИРОВАНИИ ГОСУДАРСТВЕННОЙ ПОЛИТИКИ СТРАН С СЛАБОКОНКУРЕНТНОЙ ЭКОНОМИКОЙ, НАХОДЯЩИХСЯ В ЭКОНОМИЧЕСКОМ ПРОСТРАНСТВЕ, В КОТОРОМ ДОМИНИРУЮТ СТРАНЫ С СИЛЬНОЙ ЭКОНОМИКОЙ

Резюме

В центре внимания статьи уникальная экономическая ситуация, с которой Литва и другие страны Балтии столкнулись после возрождения их независимости. Эту ситуацию можно охарактеризовать так – экономически слабая страна, оказавшаяся на экономическом пространстве, на котором доминируют экономические супердержавы (Германия, Франция, Великобритания, Скандинавские страны и др.).

Позиция такой экономически слабой страны в этой ситуации характеризуется прежде всего ее пониженной (по сравнению с указанными экономическими супер-державами) конкурентоспособностью. В этих условиях само выживание такой страны в значительной мере зависит от точно выбранной экономической стратегии.

Однако обзор экономических теорий международного разделения труда показывает, что попытка опереться на них в поиске такой стратегии довольно проблемна. Это связано с многочисленностью этих теорий и отсутствием критериев для выбора лучше всего подходящей для данной конкретной страны в определенной экономической ситуации.

Первым шагом к разработке «мета-теории», то есть «теории для выбора теории» может стать создание «банка критериев» — формирование набора моментов, которые необходимо учитывать при выборе подходящей теории.

На примере Литвы рассмотрен целый ряд таких соображений.

Ключевые слова: слабоконкурентная экономика, экономическая интеграция и безопасность, интегрированное экономическое пространство, экономическая теория и ее применение для формирования экономической политики.

ECONOMIC INTEGRATION OF THE BALTIC AND THE CIRCUMJACENT STATES

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Abstract
During their long and difficult fight for independence on their adjacent countries (Russia, Poland, Germany, etc.), the Baltic countries had to cope with only one — the *disintegration* task. They had to use every opportunity to become as much independent as possible from these large, mighty and politically and economically aggressive states. They had to protect their own economy from both political and economical occupation. This long tradition of persistent struggle for economical and political independence, for separation and disintegration from the circumjacent world still today permeates both the economic and political decision-taking in Baltic countries and is both a leading and an essential economic strategy.

Today, in quite a new political and economic situation (EU, NATO, strong political and economical systems in Baltic countries, economical globalisation, development of regional and world common economical spaces), the Baltic countries faced a quite opposite and rather unusual task — how to integrate with the world and especially with next-door neighbours — circumjacent states. The Baltic have to decide how to be involved into regional and world economic cooperation, which first of all means integration with the surrounding countries. The Baltic have to decide how much "dependent" they have to become on the adjacent countries with the aim to make also them dependent on itself. This problem is especially complicated because the old intensive fight that was caused by the previous economic situation produced a political tradition of suspicion and resistance against any integration. This tradition does not always agree with new economic realities. Notwithstanding it, this political tradition often outweighs economic considerations.

Our paper focuses on the economical side of the matter. Instead of discussing whether we should or should not integrate we try to review criteria to be considered when searching the proper (which means economically the most useful for the Baltic) level of integration. For example, we review the most difficult case — problems of economical integration with the country that arouses the most political

(and consequently, economical) aversions — Belarus. Analysis of this example is especially interesting because of the conviction that is widely spread in the Baltic, that the Baltic countries should do everything to be protected from this evil — a totalitarian country, which means, from all connections, also, economic ones. We suppose that the considerations we reviewed for Belarus can be of importance when dealing with other circumjacent states.

As it often happens, our discussion showed that the answer to this integration — disintegration question is not any definite decision (to avoid any integration or to aim at it) but rather finding of a proper degree of integration. Our analysis has shown that there even exist very promising prospects of quite far-reaching economical integration between the Baltic (represented by Lithuania) and Belarus. Our analysis also doubts the current practice when adequate political considerations based upon a previous economical situation, are decisive today, in a quite new world.

Key words: Lithuania, Belarus, bilateral economic relations, economic integration, preconditions, Eastern Partnership.

Introduction

This long tradition of persistent struggle for economical and political independence, for separation and disintegration from the circumjacent world still today permeates both economic and political decision-taking in Baltic countries and is both a leading and an essential economic strategy in the Baltic. During its long and difficult fight for independence from its adjacent countries (Russia, Poland, Germany, etc.), Baltic countries had to cope with only one — disintegration task: how to become as much independent as possible from these large, mighty and politically and economically aggressive states, how to protect the economy from both political and economical occupation.

Contrary to this, today, in quite a new political and economic situation (EU, NATO, strong political and economical systems in the Baltic), the Baltic countries faced quite an opposite and unusual for these states task of economic integration with circumjacent states. The Baltic have to decide how much integrated with these countries they should be. In terms of the above mentioned persistent fight for independence policy, the Baltic has to decide how much "dependent" it has to become from its adjacent countries with the aim to make them also dependent on the Baltic. This problem is especially complicated because the old intensive fight, which was caused

by the previous economic situation, now becomes a rather political tradition that not always agrees with new economic realities. In this way that political tradition often outweighs the economic considerations.

Our paper focuses on the economic side of matter. Instead of discussing whether we should integrate or not we try to review criteria to be considered when searching the proper (which means, economically the most useful for Baltic) level of integration. As an example, we review the most difficult case – problems of economic integration with the country that arouses the most political (and hence economical) aversions – Belarus. Analysis of this example is especially interesting because of the widely spread conviction in the Baltic that the Baltic countries should do everything to be protected from this evil, totalitarian, etc. country, which implies, from all connections, also the economic ones.

The questions that are top important in our analysis.

The first question – what are the criteria, and of what level, for optimal integration of the countries of the "first and second" economic "worlds", i.e. for countries of the old and newly economically incorporated Europe, since the latter, at least in the foreseeable future, is doomed to be in a pursuit position.

The second question – in what way low competitive economies can become strong in the integrated European economic space? It may sound paradoxical, but this could be achieved at the expense of the same criteria of B. Balassa[1] only in this case directed not inside an economically incorporated Europe but outside. Political *carte blanche* for such economic scenario is given in the "Eastern Partnership" programme perfectly fitting into the gravitation theory of Tinbergen for countries with similar economic weight.

Circumjacent states

The small Baltic countries always were surrounded by political and economical over-powers — Russia, Poland, Germany. The Baltic States always were "a sheep in the pack of wolves" seen by these over-powers as a titbit that had to be subjected by these countries and in this way "integrated" with them. Therefore, such integration always was a bad thing. This is especially true for Russia which was the latest to occupy Lithuania. After the downfall of the Soviet Union, Belarus is seen in Lithuania (and

[1] Balassa, B. *The Theory of Economic Integration*. London, 1961.

in other Baltic countries) as the most traditional piece of the former Soviet state, successor of its traditions. Thus, much of the former anti-Russian aversions is directed to this country. This made Belarus a concentration of the old anti-integration political tradition. Every proposed political, economical, educational, environmental etc. action is seen, first of all, in terms of its possible effects in making mutual separation from Belarus less distinct and clear-cut.

This makes Belarus the most proper country for our analysis. It is the most typical, concentrated manifestation both of the old anti-integration tradition and, as we will see, of new integration challenges.

Last but not least, Belarus is the most "convenient" for our purpose. It is not so huge as Russia, which makes the problems of integration with this countries much more graspable, considering the scope of this paper.

Forces pushing to convergence

As to considerations to increase the integration, we review two kinds of factors for convergence and integration: those making increase of economical (and interrelated political) integration useful for Lithuania, and those making this process easier.

Firstly, considering the processes of European safety and economic integration with three integral elements of Western Europe, Eastern Europe and Russia, theoretically, this process should cover not only integration within the limits of the EU, but also countries of the post-Soviet space and Russia.

Secondly, as the basic question of European safety, except for direct military threats, is the fact that countries with a lower level of income represent greater danger to the unity of the EU than any outer threats, there is a question of how to level them. Here we could refer to a number of integration theories and researches[2] which unfortunately give little attention to the conditions of low competitive economies. Therefore, the theory

[2] Mitrany, D. *The Functional Theory of Politics*. London: Martin Robertson, 1975; Haas, E.B. *The Uniting of Europe: Political, Social and Economic Forces 1950–57*, Ann Arbor, MI: UMI, 1996; Moravcsik, A. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press, European edition with London: Routledge/UCL Press, 1998; Radelet, S. *Regional Integration and Cooperation in Sub-Saharan Africa: Are Formal Trade Agreements the Right Strategy*. Development Discussion Paper No. 592 July 1997, Copyright 1997 Steven Radelet and President and Fellows of Harvard College; Smilga, E. *Strateginės minties integravimo galimybės Lietuvoje*. *Politology (Politologija)*, 4 (40), 2005, 034–052.

of the "second best" gives rise to the dilemma of creation or reduction of workplaces and inflow or outflow of monetary weight in the countries with high competitive economy and energy resources.

It is obvious that for small and relatively backward EU countries from the technological aspect, like Lithuania, it is improbable both in nearest and long-term future to catch up with leading economic countries. Another solution for levelling the difference in the Gross National Product (GDP) could be regional cooperation with neighbours.

Ask a question, whether the programme "Eastern Partnership" is capable of levelling this difference or at least capable of showing "a road map" for convergence of a "low competitive" economy in open economic space?

As the basis for convergence, we take adjacent territories on either side of an economic dividing line where economies are low competitive. In this context the programme "Eastern Partnership"[3] as one of components of the programme "The European Neighbourhood Policy", developed in 2004, created to avoid new dividing lines between the European Economic Community and its neighbours[4] and its economic block "The Agreement on Association", which assumes gradual integration of the partner countries into the EU economy. However, creation of a profound and universal zone of free trade with each partner country, on condition of their joining the WTO, does not reflect the problems of low competitive economies and ways to increase national GNP and does not give guidelines towards a balanced and optimal economy keeping the continuity of competition and interaction of national and non-national economy. Basically, such a discrepancy arises from different purposes and expectations which participants put forward on either side of the "Eastern Partnership". While the basic economic target of the countries-participants of the "Eastern Partnership" is to receive investments relating them to technologies and access of EU markets, the goals of the EU countries lies in the optimisation of manufacturing expenses and in an easy access to the markets of the above mentioned countries.

Thus, on the continuum of economic rapprochement between the two states, one or another point satisfying the conditions for optimum could always be chosen or aspired to depending on the closeness or coincidence of interests of the parties. If we consider this point on a continuum from the

[3] Commission of the European Communities, Brussels, 2008, COM (2008) 823 final, Communication from the Commission to the European Parlament and the Council, Eastern Parnership {SEC(2008) 2974}.

[4] EC 2010 [online]. http://ec.europa.eu/world/enp/index_en.htm [accessed 21 May 2010].

point of view of economy *laisser-faire* and try to apply it to the relations of Lithuania and Belarus it is possible to assume that in the initial situation it will be approximately in the centre of the continuum and its moving to one or another direction will depend on the purposes and expectations of the two parties and will also be equitable in a reasonable measure to the interests of the two economies.

Thus, the first step of integration could be simply directed on the expected increase of growth of volumes and diversification of trade and services, as the bottleneck here is the size of home market, for example, of Lithuania, which does not allow to optimise internal manufacture. Basically, these are the results of insufficient volumes and low capital investments of manufactures, in other words, small and technologically weak manufactures making basis of the Lithuanian economy are little adapted for stable competition in the EU market. Notably, the level of efficiency of many manufactures both in Lithuania and Belarus is below compared to the developed economies, and thus, integration and capitalisation of manufactures would allow a considerable increase of the technological level and cutting of average expenses to make these enterprises more competitive.

Creation of an acceptable trading union for mutual penetration into each other's home markets could become the second step of integration that will lead to the revival of labour market and following investments in the tideway of the theory of economy: increased amounts of manufacturing, transport flows, services, equipment, goods and labour. Mutual interest will be inspired not only by access to mutual common market but also on the adjacent markets. Eventually, any comprehension and speculations about an equal common market result in pure efficiency and cost of manufacture and its influence both on regional and wider streams of trade. In a wider sense, this reasoning could be considered as a possibility of a long-term steady economic growth of the Lithuanian and Belarus economies and increase of their GNPs. Market integration can create also other dynamic effects, which could cause structural changes of the market, for example, its shift towards the field of high technologies and consequent attraction of additional investments.

Summarising both integration steps one could ask a question: do Lithuania and Belarus need a strong regional economic policy directed at all neighbours and of what form could it be?

Considerations behind the anti-integration resistance. Is the fear of economic integration real?

There are many examples of successful cooperation of the countries in the world which do not enter into the economic unions but have close relations with them, for example, Switzerland, Norway and some other non-EU countries in Europe, or such units within the uniform state but belonging to different limits of coordinated and/or uniform competitive economy (EU and the USA), and where there are elements of economic systems, as for example the Peoples Republic of China and Hong Kong.

Taking as the basis the gravitation theory of Tinbergen, for countries with a similar economic weight, we shall compare quantitative and quality indicators of the Lithuanian and Belarus economies and define their competitiveness on the world and regional scales. The statistical data below show that Lithuania and Belarus have comparable economies both in absolute sizes and per capita income.

Table 1. Compared geographical, demographic and economic parameters for Lithuania and Belarus for 2008[5]

	Lithuania	Belarus	Difference (times)
Territory (thousand of sq. km)	65.3	207.6	3.2
Population (million)	3.3	9.7	2.9
GNP in 2008 (billion USD)	45.0	59.9	1.3
GNP per capita (thousand USD)	13.4	6.2	2.2
Foreign trade turnover (billion USD)	54.9	72.4	1.3

However, all these positive tendencies should not ignore problematic questions, for example, the place of Belarus in the international division of labour. The complicated external economic situation of Belarus could be explained by the severity of world crisis and, first of all, by demand and price reduction for its basic articles of export such as deliveries of manufacturing industry to Russia and oil products to the EU. Other GDP-growth-limiting factors in the future will certainly be higher Russian oil and gas prices as

[5] Statistikos departamentas prie LR vyriausybės, Belstat, and calculations of the authors, 2009.

the import and export of natural resources make a considerable share of income from Belarus export. It is necessary to note the presence of state protectionism favouring Belarus enterprises against Lithuanian companies working in Belarus.

Table 2. Foreign trade of Belarus, in billion dollars / % to GNP6

	2007	2008
Export	24.3 / 53.7	33.0 / 54.8
Including energy carriers	8.3 / 18.3	12.1 / 20.1
Import	28.4 / 62.7	39.2 / 64.9
Including energy carriers	10.0 / 22.0	13.9 / 23.0

Comprehension of the fact that the breakthrough of growth of national economies in the face of the world globalisation basically it possible only at the expense of united innovations and accumulation of human and investment capital, would allow an economic link Lithuania – Belarus, employing advantages of state regulation and free market to raise self-sufficiency of the home market with goods produced in both countries and, what is more essential, to reduce the income gap per capita between Lithuania, Belarus and the developed economic countries.

Undertaking of such steps at an institutional level would promote formation of uniform programmes of economic development of both countries on an innovative basis, attraction of capital, technologies, administrative and marketing skills.

The next step in the initial phase of efficient and successful interaction of both states would imply such factors as the sizes of the commodity markets of the two countries and their efficiency including the common regional market of technologies, finances, investments, labour, minimisation of prices for primary raw materials and consequent growth of joint export possibilities.

The ultimate goal of such an association should provide the creation of such conditions which, on the basis of innovations, high technologies, geographic advantages and incorporation of economy of both states in the East – West system, would lead to the creation of contemporary "intelligently sophisticated" business.

[6] IMF 2009, 22 September 2009, Source: IMF (DoTS) DG TRADE European Union: 27 members.

A long-term objective should be the increase of both GDP and GNP per capita to the average level of industrially developed countries which, in our opinion, in the initial stage could be within the boundaries of 20 000–25 000 USD.

The implementation of this ambitious programme would allow our countries to stand on the same level with the developed countries of Eastern and Central Europe. For many years, Lithuania and Belarus have been traditionally important trading partners and take the 7th to 9th place in foreign trade volume with each other.

Table 3. Comparative turnover of goods between Lithuania and Belarus, in mln. Litas[7]

	Export from Lithuania to BY	Import to Lithuania from BY
2007	1733.4 (4,0%)	1220.4 (2,0%)
2008	2495.8 (4,5%)	1247.0 (1,7%)

The union of two countries with the total population of approximately 13 million allows to talk about a substantial and solid home market, considerably increasing export possibilities and the fact that the differences of our economies are not so great, which means that nobody will encroach on the autonomy of the national elite.

To consider the economic model of the union state, first of all, it is necessary to draw attention to the structure of both economies and define the areas for cooperation where the highest efficiency could be reached. First of all, such areas could be logistics, coordinated foreign trade policy and trade, frontier cooperation.

Prospects of a "joint integration"

What if both countries will be included into a common integrated economical space? Thus, we return again to the issue of the efficiency of the creation of the economic union between Lithuania and Belarus as the countries of the "second world". The question could be posed under a different angle: how to become a country of the "first world" and if not together with Belarus, with whom then? It is obvious that at the level of enterprises

[7] Lietuvos statistikos metraštis 2009.

of any size the problems of efficiency and competitiveness could be solved only partially. To deal with the question of efficiency and competitiveness of the two countries or convergence of their economic subjects in one home market with an exit through it to the Western and Eastern markets is an ambitious task that is successfully solved now in China by connecting versatile economic models operating in continental China, its free economic zones and Hong Kong. To make something similar in the centre of Europe between two countries close to each other in many parametres with the attraction of already operating nine free economic zones in Lithuania and six in Belarus, and the creation of high technology parks, would allow them to get on the list of the industrially-developed states of the world and would also promote strengthening of the European economic stability.

Conclusions

The results of the analysis raise doubts concerning the widespread stereotype of "restrictions" according to which it is necessary to "protect" our economy from contacts with Belarus in every possible way.

This analysis proves a high perspective and an economic advantage of close integration of our economy with that of Belarus. The analysed data allows to draw attention to the issue of close economic integration transforming into a political one.

Efficiency growth of low competitive economy could take place as a result of contacts with a high competitive economy as well as contacts with a regulated economy. Regulated economies have an advantage in comparison with low competitive economies in the sense of accumulation and concentration of financial resources. It makes them attractive to the EU Member States.

The programme "Eastern Partnership" gives a political *carte blanche* and the theory of Gravitation of Tinbergen, the economic basis for cooperation of the countries bordering with the EU, which is the key issue of the European safety and consolidation of the EU. This should become the main tool for increase of economic stability along the EU borders by increasing of income both in partner countries and the new EU Member States.

Successful implementation of this special case of political-economical cooperation between Lithuania and Belarus could become a successful pilot project for its propagation and application for the partner countries of the EU.

ЭКОНОМИЧЕСКАЯ ИНТЕГРАЦИЯ БАЛТИКИ С ОКРУЖАЮЩИМИ ЕЕ СТРАНАМИ

Резюме

В ходе своей длительной и трудной борьбы за независимость от окружающих стран (России, Польши, Германии и т.д.) страны Прибалтики имели дело в основном с одной задачей – дезинтеграции, сепарации, защиты своей экономики от окружающих мощных, политически и экономически агрессивных, с существенными имперскими стремлениями стран.

В этих условиях Литва и другие страны Балтии должны были использовать каждую возможность отделить свою экономику от экономик этих стран. Жизненной необходимостью для маленькой Литвы (а также Латвии и Эстонии) было отделить и противопоставить свои экономические интересы интересам окружающих супердержав.

Поэтому сопротивление интеграции с окружающими державами является естественной многовековой политической традицией Литвы и других балтийских стран.

Эта традиция непрерывной борьбы за политическую и экономическую независимость и в наши дни пронизывает каждое политическое и экономическое решение, является основой экономической политики.

В то же время эта политическая традиция, во многом порожденная прошлой политической и экономической ситуацией балтийских стран, не всегда полностью соответствует новым политическим и экономическим реалиям. Эта традиция, рожденная в ситуации политической и экономической беззащитности продолжает существовать в условиях общепризнанной и никем не оспариваемой независимости балтийский стран, и столь же несомненной политической, экономической и военной защищенности в рамках Европейского Союза, НАТО, наличия сильных, сложившихся политических и экономических государственных систем.

Указанная устойчивая политическая традиция, возникшая в совершенно иных, нередко прямо противоположных нынешнем условиях, все еще побуждает страну сопротивляться процессам, многие из которых вытекают из всемирного процесса глобализации, развития мирового и региональных общих экономических пространств. В силу действия данной традиции страна постоянно оказывается перед выбором — руководствоваться своими экономическими интересами или следовать сложившейся в прошлой экономической ситуации политической традицией.

Наша статья посвящена именно этой проблеме. Однако вместо того, чтобы обсуждать популярную проблему сопротивляться экономической интеграции с окружающими странами или стремиться к ней, мы обсуждаем критерии и соображения, которые нужно учитывать решая вопрос об оптимальной степени интеграции, то есть такой, которая в наибольшей степени соответствует экономическим интересам страны.

Этот вопрос рассмотрен на примере Белоруссии. Выбор этой страны связан с тем, что именно по отношению к ней традиция экономической сепарации проявляется особенно сильно. Анализ показывает, что экономическую перспективность далеко идущей экономической интеграции с данной страной. Показывается, что в силу целого ряда причин эта интеграция, выгодная для Белоруссии, еще более выгодна для Литвы, способствуя ее экономическому росту и, следовательно, политического влияния.

Наш анализ ставит под сомнение существующую практику, когда политическая традиция, сформировавшаяся в уже не существующий политической и экономической ситуации, оказывается определяющей при принятии экономических решений, в том числе о степени экономической интеграции с соседними странами.

Ключевые слова: Литва, Белоруссия, экономические взаимоотношения, экономическая интеграция, предпосылки восточноевропейского партнерства.

STRUCTURAL PROBLEMS OF THE LITHUANIAN ECONOMY IN THE INTERNATIONAL DIVISION OF LABOUR

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Abstract
The paper addresses the pivotal economic problem, which Lithuania faced after regaining its independence and entering the European economic space. This problem is concerned with the transition to quite a new and in many respects contrasting economic position that Lithuania obtains in this new space.

In the economically and technologically underdeveloped Soviet Union Lithuania was in a rather favourable situation. It held the position of "a strong one among weak ones". Being economically much stronger than the majority of less developed regions of the former USSR, Lithuania used to attract "high-tech" investments. It was a preferable place for science-intensive investments. This shaped the structure of Lithuanian economy — it was a "leader economy", the structure dominated by science-intensive branches.

In the new European market the old Soviet "high-tech" proved to be totally uncompetitive and obscene. This challenged the very basis of Lithuanian economy. The country met a difficult task to obtain a new, in many respects contrasting to the previous one, position of "the weakest among the strong ones", to survive in the space dominated by others. The country had to find its new place — instead of being a leader it has to become an appendage of new leaders, to become indispensable and this way — competitive.

We show that this position of an appendage of highly developed modern economy which psychologically could be seen as degradation, in fact, is a great challenge for the country. In fact, it is the only way to be included into international cooperation. It is also an inevitable interim station and a springboard for Lithuania to regain its leading position in the future.

The presentation reviews current Lithuanian trade data and tries to specify the present position of the country on its way toward integration into European economic space. This review shows: (1) the analysis of Lithuanian export demonstrates a doubtless progression of Lithuanian economy towards its new "appendage" position; (2) this progression is followed by increasing integration of the country to European market; (3) Lithuania is rather on the beginning of this way; (4) the remnants of the previous strong position on the Eastern market and stable economic relations with Baltic countries play an important mitigating role, making Lithuanian transition to its new position less painful.

Key words: Lithuania, restructurization of economy, competitiveness of national economy, economic position of a country, European Union.

Introduction

Independence was the dream of many generations of Lithuanian people. The national independence was seen as a way for national development, especially for economic proliferation. It had to give Lithuanian people freedom to act, to release their economic initiative, to build a rich country and introduce high modern living standards. Independent political situation and independent free economy were supposed to provide a mighty impetus for quick economic development of the country. No doubt that this quick development of free Lithuania will place the country on its proper place — among the world's economic leaders.

As is usually the case with dreams, the reality proved to be much more complicated. Indeed, the independence solved many important problems and brought a great deal of progress in many areas of life. However, it also brought new, challenging and to many people unexpected problems.

Such problems were and still are the necessity of a fundamental change of Lithuania's economic position and consequently, the necessity in a crucial and, in fact, very painful restructurization of Lithuanian economy.

These problems will be discussed briefly in the following chapter.

The following one deals with the same problems in a more specific way. Using the official statistical data on the trends of Lithuanian export data, the current place of the country in its movement towards a new economic position is discussed.

Independence of Lithuania and the change in its economic position

On the one hand, being occupied by USSR Lithuania was one of the most developed economic regions of this huge country. First of all, this was due to some natural and traditional reasons. Thanks to its location (close to Western Europe) and its position (on the main road of exchange between East and West) Lithuania always had good opportunities to develop its industry. One of the most important resources of Lithuania was its population, among the leading ones in the USSR as to the level of education, and possessing relatively high labour moral.

This was the most important reason for developing science-intensive branches of economy in Lithuania. It involved the construction of new enterprises, which contributed to the industrialization of the Lithuanian economy and the increase of the share of mechanical and electrical products in the overall share of output. On the other hand, isolation from world markets and the overall technology level of the Soviet industry, except for the enterprises of military-industrial complex, were inferior to that of their Western rivals. In the Soviet Union, including Lithuania, the lion's share of export component was due to oil and gas, and engineering products were more focused on the domestic market or the markets of the third world countries, although its percentage was all-time highest in the Lithuanian modern history[1].

However, the outcome of all this was a rather paradoxical situation of Lithuania in the former Soviet Union. On the one hand, Lithuania was an occupied country, suffering all negative moral, cultural, economic consequences of its dependant political situation. On the other hand, economically it was in a rather favourable situation. It was the situation of "a strong one among weak ones". Being a preferable place for science-intensive investments Lithuania was highly competitive in attraction of the most perspective branches of industry. This left the majority of less developed regions of the former USSR in a position of sustained and underdeveloped, just the source of raw materials for economically leading regions of the USSR (like Lithuania and other Baltic countries).

One of the most important consequences of this position was the very structure of Lithuanian economy — it was a "leader economy", the structure

[1] Markevich, N., Panzyrev, A. Participation of Lithuania in international cooperation of the USSR. *USSR Foreign Trade*, 9, 1987, 37; Cesevičius, D. *Lietuvos ekonominė politika 1918–1940*. Vilnius: Academia, 1995.

of which is typical for most developed countries. In fact, it reflected the real economic situation of these countries in the closed economic space of the former Soviet Union.

Regaining its independence and joining world market and later the EU have been events of crucial importance for Lithuania. The dreams of many generations of Lithuanian people for independence, free development and democracy came true.

However, economically the former position of Lithuania ("a strong one among weak ones") proved to be the most vulnerable, even comparing to the less developed regions of the former Soviet Union. The main source of this vulnerability was the striking contrast between the technological levels of the Western and Soviet Union's industries.

By the time when Lithuania regained its independence, weakly developed socialist industry of the Soviet industry was far behind the Western one. Lithuanian (and that of all Baltic countries) economy that used to be the leading one in the closed economic space of the Soviet Union proved to be totally noncompetitive compared to such economic powers as the USA, Germany or Scandinavian countries.[2]

Independence extinguished the leading role of Lithuania. The first years of independence have been the years of unprecedented destruction of country's economy, especially of its leading branches — electronics, engineering industry, chemistry. As a result of this economic "shock of independence", the great majority of large enterprises went bankrupt.

The country faced a very difficult task to adapt to its new role of "the weakest among the strong ones". Its production that had been seen as "high-tech" in the underdeveloped Soviet Union was seen as "yesterday's" technology and met no demand in this new world. The country had to find its new place — to become an appendage of new leaders, to find resources, services, products that could be demanded in this new, mighty, intensive, universal, highly adaptable economic world. This becoming an appendage, which psychologically could be seen as a degrading fact, actually proved to be a very important challenge for the country. For Lithuania it turned out to be the way to be included into international cooperation. Paradoxically, to regain its former economically leading position the country first has to become an appendage, which means to become demanded, to be included.

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[2] *Die baltischen Staaten. 54. Jahrgang,* Heft 2/3. Herausgegeben von der Landeszentrale für politische Bildung Baden-Württemberg, 2004, pp. 134–154.

Only after successfully joining the world market, the "jump" to a leading position becomes possible. Let us have a look at the current situation and see how successful Lithuania is in this process of "becoming demanded".

Progression of Lithuania to its new economic position

A total re-polarization of export flows in a competitive global economy was a major challenge to Lithuania in the international division of labour. Table 1 and Table 2 below contain the official data on the development of Lithuanian international trade showing both general trends in export and changes in it.

Table 1. Geographic distribution of exports and imports in 1938, 2004 and 2009 with some countries (BSRC* – Baltic Sea Region Countries, CIS – Commonwealth of Independent States).

Country	1938		2004		2009	
	EXP%	IMP%	EXP%	IMP%	EXP%	IMP%
BSRC + RU, BY, UA			57.5	69.2	66.4	71.4
BSRC	29.3	27.9	42.9	42.6	45.5	37.6
RU, BY, UA			14.6	26.6	20.9	33.8
EU – BSRC			23.5	20.4	18.8	21.5
EU			66.4	63.0	64.3	59.1
USSR	5.7	6.7				
Germany*	26.8	24.4	10.2	16.9	9.7	11.3
Latvia*	1.1	1.1	10.1	3.8	10.1	6.4
Estonia*			5.0	3.2	7.0	2.6
Sweden*	1.4	2.4	5.1	3.3	3.6	2.7
Denmark*			4.7	3.5	3.8	2.2
Poland*			4.8	7.6	7.2	10.0
Finland*			0.9	3.4	1.6	1.9
England	39.4	30.9	5.3	2.3	4.4	1.6
Norway			2.1	0.9	2.5	0.5
CIS			16.2	26.9	23.4	32.9
Russia			9.1	22.3	13.2	29.9
Belarus			3.2	2.8	4.7	3.0
Ukraine			2.3	1.5	3.0	0.9
RU, BY, UA in % to CIS			90.4	99.1	89.4	98.8

The table summarises official statistical data provided by the Lithuanian Department of Statistics[3], Lithuanian Ministry of Economy[4], Lithuanian Ministry of Finance[5] and the Lithuanian Ministry of Foreign Afairs[6].

Reviewing these data we can see several trends, the most important within the frame of this paper.

1. There is an obvious progression of Lithuania in its inclusion to the Western economic space. Data analysis show increasing amounts of Lithuanian export to the West European countries.

2. We can see many remnants of the previous economic position in the East. Lithuanian export still is traditionally directed to the previous Soviet market. Lithuanian goods are still competitive in this market. We can suggest that it is not because our goods are better than those coming from West European countries. Most probable, the point is that Lithuania is much more familiar with this market. Knowledge of Russia and other post-Soviet countries, of Russian language, good personal relationships having survived despite all political conflicts are the factors that improve the competitiveness of Lithuania on this market. Very important are long-standing traditions of cooperation with these countries. The first axiom: the traditions of production are created over the years, and economic entities, for the sake of political expediency, cannot radically and quickly change the nomenclature of production that entails both the imbalance of access to raw materials and supply of finished products to the markets. In this aspect, the primary factors are access to markets of raw materials, which in Lithuania's case traditionally are located to the east of its borders. From this fact follows the second axiom: the key role of eastern partners as the main suppliers of raw materials and energy sources and markets for traditional Lithuanian products, mainly dairy products, and a big customer in the market of logistics and transit services.

Unfortunately, all this it is a transient, temporary advantage. Western economies are rapidly mastering the eastern market. Thus, the Lithuanian remnant position can mitigate its economic problems, but not solve them.

3. A steady part of Lithuanian export always has been and remains the Baltic. Thus, for nearly 75 years about 60–70% (in 1928 about 60%, in

[3] Lietuvos Respublikos statistikos departamento svetainė. www.stat.gov.lt.
[4] Lietuvos Respublikos ūkio ministerijos svetainė. www.ukmin.lt.
[5] Lietuvos Respublikos finansų ministerijos svetainė. www.finmin.lt.
[6] Lietuvos Respublikos ūžsienio reikalų ministerijos svetainė. www.urm.lt.

1938 approx. 30%) of the volume of the Lithuanian foreign trade has been traditionally concentrated around the countries of the Baltic Sea basin in the West and with neighbouring partners in the East. Here we can make a conclusion that in the foreseeable future, a presupposition for the change of the situation seems unlikely. One can presuppose that next-door neighbours usually are a "natural market", since neighbours have a natural prevalence of closeness, good mutual knowledge, good connections, common traditions. All these privileges are stable, they do not vanish with time. Therefore, the Baltic countries are a kind of support for each other in the new, challenging situation.

4. The structure of Lithuanian export to the West shows its refuse of the previous "economic leader" position and its transition to the role of an economic appendage. Lithuania totally refused from science-intensive branches that previously were the core of its economic position. Light industry, raw produce, and half-finished products are the leading ones in Lithuanian export (see Table 2 below).

A typical example of such activity could be Lithuania's furniture industry where a significant proportion of products are made by orders of IKEA and Conforama companies. A similar situation exists in the textile industry. It is obvious that access to the markets of these countries would be significantly lower in the absence of gravitational effects both in foreign trade and the international division of labour. The share of other EU countries, in the absence of the above stimulating effects, despite the fact that the number of these countries is bigger — 18 instead of 7 — was about 20% in the Lithuanian foreign trade.

All these factors determine structural changes in Lithuanian export and economy. As far as the structure of Lithuanian exports is concerned the following should be noted. If in the pre-war years it was farming, during the Soviet times its structure shifted towards increasing exports of machinery and equipment, and with the opening of Mazeikiai refinery — to export of petrol products and gasoline. The latter two items accounted for 65% of all Lithuanian exports in the mid 1980s. Over the last seven years, these products account for about 40% of Lithuanian export. Export of agricultural sector during the last ten years, like in the Soviet times, is within the range of 15%, while exports of chemical products, wood processing and light industry compared to Soviet period have increased twice from 13% to 26%. Imports of semi-finished products compared to pre-war period has doubled from 35% to 60%. Exports of semi-finished products today accounts for 50% of exports.

Table 2. The structure of Lithuania's exports in 1938, 1986, 2004 and 2009 in %.

	1938	1986	2004	2009
Machinery and equipment	-	33	23	19
Petrol products and gazoline	-	32	19	19
Foods, fish and fish products	55	12	7	14
Furniture and paper products	-	6	8	8
Agricultural production	15	4	4	6
Chemical products and fertilizers	-	4	7	9
Textiles and their products, linen	15	3	12	6
Wood, timber	15	-	5	3
Other products	-	6	15	16

The table summarizes official statistical data provided by the Lithuanian Department of Statistics[7], Lithuanian Ministry of Economy[8], Lithuanian Ministry of Finance[9] and the Lithuanian Ministry of Foreign Affairs[10].

The above brings to two conclusions.

First, the country has made its first steps in its "becoming necessary". Quite logically, it proved to be necessary first of all to the nearest area of Baltic and other countries which belonged to the former Soviet Union. Two factors seem to be most important: tradition (these countries are "old markets" of Lithuanian economy, this market is well-known, based upon old business relations and connections and, the last but not least, common business language — Russian and "regional" effect — opportunity to develop branches in which the delivery is crucial.

[7] Lietuvos Respublikos statistikos departamento svetainė. www.stat.gov.lt.
[8] Lietuvos Respublikos ūkio ministerijos svetainė. www.ukmin.lt.
[9] Lietuvos Respublikos finansų ministerijos svetainė. www.finmin.lt.
[10] Lietuvos Respublikos ūžsienio reikalų ministerijos svetainė. www.urm.lt.

Secondly, Lithuania is continuing to maintain its "high-tech" position in its former leading branches — electronics, engineering industry, chemistry and successfully proceeds to its new role as an appendage of the Western economy. Our rather paradoxical conclusion is that this seems to be a positive trend, inevitable for the further economic development of Lithuania.

From the above analysis we can conclude that in the foreseeable future both Lithuania's participation in the international division of labour and its qualitative and geographical components will not change and, if they do, the process will be slow and predictable.[11] This means that the countries of the Baltic Sea and Eastern partners will remain for Lithuania the most important trading partners and the structure of the national economy should be developed primarily in the direction of satisfaction of the needs of domestic consumption markets in these countries. Similar conclusions could be made about the structure of foreign economic relations, and consequently, on the structural changes, or maintaining the status quo in the national economy of Lithuania. At least for the next 10–15 years, it is very unlikely that changes in the structure of the production in Lithuania will take place. Slow and sluggish investments of foreign contractors and the lack of tradition and, accordingly, specialists in the manufacture of non-traditional goods is also a problem for Lithuanian industry, which is even more aggravated by the outflow of skilled workers abroad and inflexible policy of the ruling majority towards Western and Eastern partners. And if in the case of the former ones all is left for its natural course in the hope of "redeeming" market mechanisms, then in respect of the latter the politics can never be separated from the economy and therefore poses great challenges for makroeconomic stability and the very existence of the Lithuanian state. Hopes for compensation for occupation, as it was the case with the peace treaty of 21 July 1920 with Soviet Russia when Lithuania got 3 million gold rubles, does not allow to gain non-political benefits from the international division of labour on the Eastern market.

Another solution of the problem of structural changes may be the increase of income per capita and the gradual replacement of imported goods from the Lithuanian market, as well as strengthening of the joint Lithuanian–Latvian market, which shows good tendencies of growth. This

[11] Vijeikis, J., Mačys, G. Trade policy in Lithuania: Past experience and benchmarks for the future. *Intellectual economics,* 2010, 1 (7), 76–86.

could resolve the problem of high trade deficit, the substitution of imported components in the final export product and the creation of enterprises with high added value. Lithuanian import nomenclature with the EU meets the parameters of the countries with a relatively low level of economic development and who are trying to fill this gap with imports of capital goods primarily in the field of mechanical engineering, electrical engineering, vehicles, products of chemical industry.

Gravitation models of cooperation are well supported by both quantitative and qualitative, and export-import structure of foreign trade of individual countries, such as derivatives of the international division of labour, and acquire their growing attraction due to high per capita income in separate markets, and due to the size of these markets. In view of this cooperation the question could be put in following aspect: how much closeness or distance between the two countries affect their external trade taking into account not only the distance factor, but also other parameters such as market access (tariff and other restrictions) or cultural, linguistic and institutional differences.

Based on the above data one could pose a question to institutional organizations responsible for economic policy whether they deal with a targeted stimulation of export development in the already relatively well-functioning or in a relatively random directions or in completely new directions, which could lead to some benefits from the international division of labour in the future.

Conclusions

1. Regaining the independence and joining the world market and later the EU has been of crucial importance for Lithuania. However, economically the former position of Lithuania ("a strong one among week ones") proved to be vulnerable because of the striking contrast between the difference in the technological level of the Western and Soviet Union industries.

2. Lithuania faced a difficult task to adapt itself to its new role of "the weakest among the strong ones". The country had to find its new place — become an appendage of the new leaders, to find resources, services, products that could be demanded in this new, mighty, intensive, universal, highly adaptive economic world. Therefore, becoming an appendage which psychologically could be seen as degradation, in fact proved to

be a very difficult challenge for the country and the only way to be included into international cooperation.

3. Only after successful joining the world market in the role of its "appendage" the "jump" to a leading position could become possible for Lithuania.

4. Analysis of trends in Lithuanian export show that despite all progress Lithuania is still on the beginning of adaptation its economy to new economic space. This causes current competitiveness problems, which, in line, brings many problems for country's economy and its population.

Nevertheless, there are several points mitigating this painful transition and re-adaptation: remnants of the former strong position of Lithuania on the East market and the "local stability effect" — traditional, "next-door" economic relations with other Baltic countries, especially Latvia.

5. Lithuania still preserves some remnants of its further strong position in the Eastern market. This is a very important point helping Lithuania to stand in a new challenging economic situation and making its restructurization less painful. However, this seems to be a temporary, transitional privilege, gradually decreasing with the increasing ability of Western economies to work with Eastern market.

6. Next-door Baltic countries, especially Latvia, imply an important and long-standing factor providing additional "local stability" effect and mitigating difficulties of structural change.

ПРОБЛЕМЫ ЛИТОВСКОЙ ЭКОНОМИКИ В СИСТЕМЕ МЕЖДУНАРОДНОГО РАЗДЕЛЕНИЯ ТРУДА

Резюме

В статье обсуждается новая экономическая ситуация, в которой Литва столкнулась после провозглашения ее независимости и присоединения к Европейскому союзу. Страна оказалась в новом экономическом пространстве, которое в корне отличалось от советского. Предыдущая экономическая позиция Литвы была «сильный среди слабых» — Литва была одной из наиболее развитых и экономически лидирующих республик бывшего экономически отсталого Советского Союза. Это обусловило и структуру ее экономики, в которой значительную часть занимали наукоемкие произ-

водства. В новом экономическом пространстве Литва занимает (по крайней мере временно) прямо противоположную позицию — одной из наименее развитых стран Европейского Союза.

В силу этого страна столкнулась с трудной задачей — полностью перестроить свою экономику — из экономического лидера превратиться в «придаток» уже существующих, несравненно более мощных экономических лидеров. Без решения этой задачи страна не сможет включиться в международное разделение труда. Без этого она не решит своих экономических проблем и лишиться всякой надежды в будущем восстановить свою позицию одной из развитых современных стран.

На основе анализа экспорта уточняется нынешняя ситуация Литвы. Показывается, что 1) налицо явный прогресс во включении экономики Литвы в новое экономическое пространство; 2) страна постепенно осваивает свою новую экономическую роль — переключаясь на продукцию хоть и не столь наукоемкую и престижную, но требуемую в новых условиях; 3) однако адаптация экономики к этой новой позиции происходит медленно, что лежит в основе многих трудностей, которые переживает страна; 4) остатки старой позиции на восточном рынке и «стабилизирующий локальный эффект» — устойчивые связи в Балтийском регионе выступают в роли важного фактора, смягчающего болезненность адаптации экономической структуры Литвы к новой экономической позиции.

Ключевые слова: Литва, переструктурирование экономики, конкурентность национальной экономики, экономическая ситуация страны, Европейский Союз.

PROBLEMS OF ADOPTION OF THE EURO IN THE BALTIC COUNTRIES

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Abstract
The article analyzes the possibilities of Latvia and Lithuania to adopt the euro, which is one of most important tasks of the economic policy in these countries. The international importance of the euro, the advantages and disadvantages of a single currency are discussed. The strategy of the adoption of the euro in Lithuania is presented. The analysis based on the data of Eurostat database shows that both Lithuania and Latvia may become the eurozone member states if they first will cope with financial problems at their governments.

Keywords: currency, euro, European Monetary Union.

Introduction

The foundation of the European Union (EU), as a result of the European integration process, is one of the most politically and economically significant processes in the entire history of Europe. The establishment of the European Monetary Union (EMU) and the introduction of the euro ended the currency integration process which had lasted for 50 years. The euro became the key axis of integration. In the contest of the international monetary system, formation of the EMU is perhaps the most important event since the failure of the world monetary system that functioned on the basis of the Bretton Woods Agreement. The first year of the functioning of the euro showed that the single currency stabilized the fluctuation of interest, price, and exchange rates in the complicated environment of economic globalization. On the other hand, adoption of the euro is significant not only in economic and political, but also in psychological terms. National

currency is an important symbol of national sovereignty. Voluntary transfer from national currency to the euro shows the strengthening of the general European identity.

Adoption of the euro and joining the EMU remains one of most important tasks of the economic policy in Lithuania. It has been anticipated that Lithuania and Slovenia should become eurozone countries since 1 January 2007. However, by that moment, the inflation rate in Lithuania slightly exceeded the set limit (0.1 %), and Slovenia alone joined the EMU. Thus, the adoption of the euro in Lithuania was postponed. When on 1 January 2007 Lithuania was expected to join the EMU, the eurozone already comprised 12 EU Member States. In the same year, Slovenia and later on Cyprus, Malta, Slovakia and Estonia joined the EMU; today it unites 17 EU Member States.

In order to select the proper strategy for integration into the EMU, it is important to analyze the experience of the countries that successfully joined the EMU. Since the experience of functioning of the EMU is not so rich, more discussions on this point are expected in the future. The ways the adoption of a single currency can affect country's economy was investigated by Benjamin (2007)[1], Duisenberg (2002)[2], Galati (2004)[3], Gaspar (2004)[4], Greenspan (2001)[5], Rose (2001)[6], Shalder (2005)[7] and other authors.

The purpose of the article is to discuss the possibilities of the adoption of euro in Lithuania and Latvia with reference to other countries that successfully joined the EMU.

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1 Benjamin, C. Enlargement and the international role of Euro. *Review of International Political Economy*, 14, 2007.

2 Duisenberg, W. *The Euro as a Catalyst for Integration and Competition in EMU.* Vienna, 2002.

3 Galati, G., Tsatsaronis, K. The impact of the Euro on Europe's Financial Markets. *Financial Markets, Institutions and Instruments*, 12, 2003.

4 Gaspar, V. *The transformation of the European Financial System.* Millenium BCP Bankers Seminar. Lisboa, February, 2004.

5 Greenspan, A. The Euro as an International Currency. Remarks by Chairman of the Board of Governors of the Federal Reserve System, before the Euro 50 Group Roundtable. Washington, 30 November 2001.

6 Rose, A., Engel, C. Currency Unions and International Integration. *CEPR Discussion Paper* No. 2659, 2001.

7 Shalder, S. Drummond, P., Kuijs L. *Adopting the Euro in Central Europe. Challenges of the Next Step in European Integration. Occasional Paper*, No. 234. Washington, IMF, 2005.

Increase of euro's international weight during the pre-crisis period

From the very adoption until the rise of the world financial and economic crisis, the euro has held a firm position among other currencies.

Having replaced the national money of most EU states, the euro was continuously gaining strength and became one of the most important international currencies in the world. At present the euro can be regarded as the world's second currency, successfully competing with the USA dollar. The role of the euro as a basic and reserve currency is also increasing. The euro being the basic currency, a wide spectrum of currency regimes is possible. One way or another, about 30 non eurozone states have associated their currency with the euro[8]. Thus, an outcome of the establishment of the EMU is euro's internationalization. An obstacle for a more rapid spread of the euro is the so-called "snitching cots", i.e. consumption of time and money in the transition to another currency.

Introduction of the euro was a powerful stimulus for the development of finance markets. The single currency made it possible to optimally distribute the capital in the eurozone. Due to this, more participants could make use of a larger number of financial means, because in smaller states with different money there is no possibility to form the sufficient critical mass of using definite financial means.

One of the major advantages for countries joining the EMU is a positive effect of trade expansion, i.e. the so-called Rose effect[9]. Andrew Rose has defined that trade flows between country pairs that belong to the monetary union are on the average 100% greater than among the EU countries not belonging to the monetary union. Noteworthy is the fact that trade growth stimulates the economic growth as well. It has been established that trade increase in the country by 1% determines an increase of the gross domestic product by 0.33%[10].

By eliminating the exchange rate indetermination, the single currency diminishes the risk and determines thereby a lower rate of real interest. The decreasing rate of interest, in its turn, stimulates economic growth. Notably, integration into the eurozone will provides superiority to a country, i.e. an

[8] Benjamin, C. Enlargement and the international role of Euro. *Op. cit.*
[9] Rose, A., Engel, C. Currency Unions and International Integration. *Op. cit.*
[10] Shalder, S., Drummond, P., Kuijs, L. Adopting the Euro in Central Europe. *Op. cit.*

opportunity to actively represent its own economic interests by participating in the EU economic decision making. The remaining EU countries have little possibilities to influence these decisions.

One of the arguments against the adoption of the euro is based on the Balassa-Samuelson effect, which means the growth of inflation within the country. In estimation of the International Monetary Fund, the Balassa-Samuelson effect can increase inflation by 1–2% in the EU states (Shalder, 2005)[11].

The countries that pursue the classical monetary policy will lose this independent economic policy means after joining the EMU. The Central European Bank pursues the monetary policy with regard to the situation of the entire eurozone without stressing particularities of separate countries. Therefore, the common monetary policy can be regarded optimal in respect of separate countries.

If the majority of Eastern European countries were accepted to EMU today, they would not avoid of the price "shock ", i.e. a fair jump of prices. Even the most developed West Eastern countries, e.g. Germany have not avoided a certain increase in prices, though it was not considerable. Psychological factors are also of utmost importance for the adoption of the euro. Just like the national anthem or flag, the national currency is perhaps the most vivid indication of sovereignty. Loss of a right to issue the national currency can form a negative attitude of population to the adoption of the euro.

In summary we can affirm that, in terms of economics, the adoption of the euro undoubtedly causes more positive than negative effects.

Strategy on the adoption of the euro in Lithuania

Strategy on the adoption of the euro in Lithuania was prepared on the basis of the experience gained by the countries that underwent successful adoption of the euro. The society of various countries, which adopted or pursue the adoption of euro, were or are fearfully concerned with the leap in prices that may possibly be determined by the adoption of the euro. The case of Germany proved that such fear is too far overdone.

Despite that Germany is one of the most powerful European states, having a developed economy, fears regarding the adoption of the euro were

[11] *Ibid.*

not avoided. Most people expected an abrupt rise in prices, though economically such fears were not grounded. In fact, statistical data indicated a certain rise in prices after the adoption of euro in Germany, but it was not so large as perceived by the mass media and residents themselves. Besides, the rise in prices was conditioned also by other factors not related with the adoption of the euro[12]. The adoption of the euro had some influence on prices of several services and commodities; however, no notable influence on the common price index of users was observed. Other factors, not related to the adoption of the euro, were much more significant. These are: reform of ecological tax in 2002–2004, health care reform in 2004, the growth of fuel prices in 2002–2006, rise in the price for energy products and food.

Psychological issues also must be considered in estimating the adoption of the euro as a factor of price rising. People subjectively estimate information on a certain economic phenomenon, which not necessarily corresponds to facts. Users tend to notice and stress price growth rather than price fall or its stability. With regard to that, the Federal Statistical Office of Germany decided to follow the honesty principle, i.e. to present objective information to the society about changes in the price index, inflation level, etc. This strategy of communication proved to be good and has been accepted in the international arena.

Under Resolution No. 592 of the Government, dated 30 May 2005, the Coordination Commission on the Adoption of the Euro in the Republic of Lithuania was formed with the aim to ensure proper preparation for the adoption of the euro in Lithuania. To this end, seven working groups were formed that prepared the National Euro Adoption Plan and the Public Information and Communication Strategy on the Adoption of the Euro of Lithuania.

In 25 April 2007, the new Resolution of the Government of the Republic of Lithuania, "On the Approval of the National Euro Adoption Plan and the Public Information and Communication Strategy on the Adoption of the Euro of Lithuania", came into force. As laid down in the National Euro Adoption Plan, the primary aim is to identify the main elements and means of euro adoption in the Republic of Lithuania that would ensure protection of consumer interests, smooth litas replacement by euro and public information. The National Euro Adoption Plan establishes the principal euro

[12] Davulis, G. Problems of the adoption of the euro in Lithuania. *Intellectual Economics. Scientific Research Journal*, 2(6), 2009.

adoption elements, schedule and procedure thereof. It sets out the legal framework for euro introduction in Lithuania, as well as the institutional framework, currency exchange means and provides the instruments to be implemented in various sectors.

The National Euro Adoption Strategy is based on the following principles. The principle of continuity shall mean that all the documentation with reference to litas will remain valid for the period of validity after the replacement by the euro. The value in litas will mean the value in euro established in accordance with the irrevocable litas conversion rate against euro. Protection of consumer interests: taking up all and any means to prevent any abuse in reviewing prices, salaries, pensions, social protection benefits, etc.

Another important document in pursuit of euro adoption is the Public Information and Communication Strategy on the Adoption of the Euro of Lithuania. To avoid the shock after euro adoption, regular public information on decisions, stimulation of its citizenship and activeness in public life are of high importance. The primary aim of this Strategy is to help the society to prepare for euro adoption. This Strategy foresees informing of the public on euro introduction and factors related thereto. With reference to their competence, institutions concerned must provide to the society all the information on any aspects concerning euro adoption.

Thus, the formation of the Strategy on the Adoption of the Euro of Lithuania has taken into consideration also the experience of foreign countries that have already adopted euro.

Assessment of possibilities to introduce the euro in Lithuania and Latvia

Since 1 January 2011, Estonia has become the 17th eurozone member. Lithuania and Latvia are also determined to introduce the euro starting from 2014 onwards. Such a scenario would seem absolutely real and feasible considering the fact that the Estonian economics cannot be objectively regarded as being much more superior to the economics of the abovementioned countries. However, one must admit here that Estonia did manage to maintain its financial discipline at the level likely to be envied by other countries with much greater economic power. In 2009, the Estonian budget deficit stayed as low as 1.7% of the gross domestic product

(GDP), as compared to Germany (3.3% of GDP), France (8% of GDP), Great Britain (12% of GDP), Greece (13% of GDP). The EU average of budget deficit constituted 6.8% of GDP and the respective rate in eurozone was 6.3 per cent. Even though the Estonian budget deficit amounted to 2.2% of GDP in 2010, it still did not exceed the limit of 3% of GDP, in this way satisfying the Maastricht criterion. Moreover, Estonian foreign debt constitutes only 7% of GDP, which is substantially less than is required for a country to be accepted to the eurozone. Therefore, Estonia is one of the few EU countries satisfying the monetary union criteria. The most important factors which subsequently led to such remarkable achievements were a well thought-out economic policy, concentration of all national political powers upon a common aim and, as already mentioned, strict financial discipline. The support, which Estonia receives from the Nordic countries, cannot be underestimated either.

On the other hand, Estonian economics is only able to secure Estonian citizens with the standard of living that does not considerably exceed the quality of living in the other two Baltic States and takes a significantly lower place in comparison with, for example, standard of living in Ireland, currently a very problematic EU country. A statistic Irish person earns as much as 33 000 euro per year on average, whereas his Estonian counterpart's income per year constitutes approximately 9 200 euro. In Ireland, an unemployed person is entitled to receive a 800-euros-allowance plus the same amount of money is allocated for the keeping of his/her accommodation, whereas in Estonia only 67 euro per month are guaranteed for unemployed people. One of the most acute problems in Estonia (as in Lithuania) is emigration. If we take only the construction sector in Finland, as many as 30 000–40 000 Estonian workers have integrated there. According to data announced in 2010[13], approximately 130 000 people have left the country over the recent years. This means a huge number of inhabitants for such a small country, while Ireland, currently undergoing hard times, does not regard emigration as a serious problem anymore.

One might presume here that the adoption of euro will enable Estonia to cope more effectively with its problems. Alongside with the advantages brought by the euro, as discussed above, euro will give to Estonia a higher status in the face of other European countries and will probably attract much more attention from foreign investors. The latter factor might be

[13] http://www.stat.ee/

beneficial for the other Baltic countries as well since Lithuania, Latvia and Estonia are often regarded by investors as one single region.

The state of play in the global economics that has been ameliorating over the recent years will facilitate the improvement of macroeconomic factors of Lithuania and Latvia, thus bringing them closer to the euro. The EU market continues to be of high interest for the Baltic countries, even though its growth rates are not very impressive. According to the estimations of the European Commission, the annual percentage change in real EU GDP will not reach 2% in 2011, repeating the same scenario of 2010. Such a situation facilitates the growth of export from the Baltic countries. For a number of years, the Baltic States were marked by a considerably faster economic growth than other EU countries, however, as the global trade shrank as a result of world economic crisis, the export-oriented economics of the Baltic States plummeted to an all-time low: in 2009, the real GDP of these countries decreased by 14–18% (14% in Estonia, 17% in Lithuania and 18% in Latvia) as compared to 2008 data.

All the three countries — Lithuania, Latvia and Estonia — are coping with the problem of emigration. If emigration processes are not suppressed in these countries, they will face serious economic problems in the future as the demographic situation there is quite poor. Moreover, in spite of intensive emigration, unemployment has become a serious and large-scale problem in the Baltic countries. According to the date of Eurostat[14], the unemployment rate in these countries has reached unprecedented heights and now amounts to 14–18 %. It is not likely that any considerable changes would take place in labour markets of all countries concerned in this year either.

In 2010, the Baltic countries underwent inflationary pressures from abroad determined by the growth of prices of raw materials, energy supplies and grain in world exchanges. However, these pressures did not provoke any substantial price growth. The rate of inflation was 0.8 % in Lithuania, whereas Latvia even had deflation. Still, bearing in mind the fact that, in comparison with the EU average, common price level in the Baltic States is quite low (75 % in Latvia, 68 % in Lithuania), it might be presumed that inflation in the Baltic States will be faster than in the eurozone. Therefore, in order to introduce the euro, these countries will have to cope with another serious problem and take steps to reduce inflation rate.

[14] http://www.ec.europa.eu/eurostat

In 2010, the Baltic countries had already shown some signs of recovery in their economies. It is only in Latvia that the recession of economy remained considerably high, reaching approximately 4% in the first half-year of 2010. Meanwhile, Lithuanian economy developed marginally and the recovery of economy is largely influenced by the growth of export.

Among the Baltic countries, Estonia is likely to be the most attractive one to foreign investment. Direct foreign investment in Estonia was increasing even during the years of recession, and in 2009 it reached almost 9% of GDP. Despite the slight decrease in direct foreign investment in Estonia in 2010, it still exceeded 8% of GDP. Meanwhile, direct foreign investment into the Latvian and Lithuanian economy was likely to decline (from 3.8% of GDP in 2008 to 0.3% of GDP in 2009 in Latvia and from 3.9% of GDP in 2008 to 0.9% of GDP in 2009 in Lithuania) and in 2010 it reached negative values.

Like many other EU countries, the Baltic countries are facing the budget deficit problem: proportion of fiscal deficits to GDP largely exceeds the limit of 3% prescribed by the Treaty of Maastricht. In 2009, this figure amounted to 9.2% in Lithuania and 10.2% in Latvia, while estimations of their fiscal deficits for the year 2010 relate to 7–8% of GDP. Information regarding government debt is not satisfying either. On 1 July 2010, the proportion of government debt to GDP was equal to 43% in Latvia and 34% in Lithuania and these figures satisfy the Maastricht criterion (60 per cent), but they were increasing very fast in the last two years. So the Baltic countries striving for the adoption of the euro will have to face a difficult task, i.e. reduce their fiscal deficits to the permissible limit.

Thus, the situation in Lithuania and Latvia is not easy. The internal market in Lithuania is underdeveloped with no visible signs of its recovery, loan granting for business purposes is absolutely dependent on foreign banks, and foreign investments seem to be insufficient. Though Lithuania's government debt falls within the permissible limits and is much less than prescribed by the Treaty of Maastricht, its repayment might cause a number of problems, bearing in mind the insufficiently developed internal market and lack of investment that could contribute to a strengthened efficiency of production processes. The reduction of fiscal deficit is another and equally serious problem. The country's situation is also burdened by emigration leading to the depletion of qualified staff resources. The most

important economy recovery factor in this country is export and Lithuania's competitiveness in foreign markets.

The situation in Latvia is similar to the situation in Lithuania — recession of economics is very severe, internal market is poorly developed, like in Lithuania, budget deficit is high and emigration is reaching a large scale. However, the gap between Latvia and Lithuania can be surmounted and filled in and it is very likely that both countries will adopt the euro at the same time. Latvia's advantage is that it pays much less interest for the loans granted by the International Monetary Fund as compared to Lithuania.

With reference to the above, Estonia deserved its accession to the EMU for it seems to be in a markedly better position than Lithuania and Latvia according to the key indicators. Among the Baltic States, Estonia is most attractive to investment, it has the most effective public sector, the situation of public finances does not face any problems and its economic policy is coherent. From other points of view, Estonia only slightly differs from the other Baltic countries.

Conclusions

The following conclusions can be drawn from this analysis. During a comparatively not long period of its existence, the euro has become a powerful steady and reliable international currency. Therefore, entry into the EMU and adoption of the euro will bring more possibilities and economic benefits than losses to the countries.

Both Lithuania and Latvia may also become the eurozone member states. However, they should firstly cope with financial problems at the government, which is far from being an easy task to deal with. On the other hand, these countries ought to reanimate and develop their internal markets, as well as modernize the production process with a view to all state of the art technologies.

EURO ĮVEDIMO PROBLEMOS LIETUVOJE

Gediminas Davulis, Linas Šadžius

Santrauka

Straipsnyje nagrinėjamos galimybės įsivesti eurą Lietuvoje ir Latvijoje, kas yra vienas svarbiausių ekonominės politikos uždavinių šiose šalyse. Aptariama euro tarptautinė reikšmė, bendros valiutos privalumai ir trūkumai. Pateikiama euro įvedimo strategija Lietuvoje. Atlikta analizė parodė, jog tiek Lietuva, tiek ir Latvija turi galimybių įsivesti eurą ir tapti euro zonos narėmis, tačiau tik tuo atveju, jeigu joms pavyks susidoroti su tikrai nelengvomis problemomis. Be pirmaeilio uždavinio — sumažinti biudžeto deficitą iki Mastrichto kriterijaus reikalaujamų ribų, šioms šalims būtina atgaivinti vidaus rinką ir padidinti šalies konkurencingumą, atnaujinant ir modernizuojant šalies ūkį.

Reikšminiai žodžiai: valiuta, euras, Europos pinigų sąjunga.

Chapter 3

BUSINESS AND LABOUR MARKET

REGULATION OF INSURANCE MARKET IN LITHUANIA: EFFORTS TOWARDS THE OPEN MARKET

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Abstract
This article seeks to analyse the experience of Lithuania after the new regulation in insurance sector was implemented according to which insurance undertakings of other European Union (hereinafter, the EU) Member States acquired the right to engage in insurance activity in Lithuania. The article shows the possibilities for insurance undertakings of other EU Member States to act in Lithuanian insurance sector, analyses the problems that were caused by efforts to create the open insurance market in Lithuania, and advantages and disadvantages of such process that may be seen until now.

Three possibilities having insurance undertakings of other EU Member States are discussed in the article: the right to establish a subsidiary undertaking, the possibility to provide services on the cross-border basis and the right to establish a branch in Lithuania.

The author comes to the conclusion that despite the fact that some problems were caused by trying to create a really open insurance market in Lithuania, the overall impact of the possibility of insurance undertakings of other EU Member States to act in Lithuania is more positive than negative.

Keywords: the open insurance market, the right to provide insurance services, the right of establishment in the insurance sector.

Introduction

Before Lithuania joined the EU, there were just a few possibilities to insurance undertaking of other EU[1] Member States (other than Lithuania)

[1] References to other EU Member States in this article include references to the European Economic Area Member States.

to engage in insurance activity in Lithuania. These possibilities in principal were related only to the insurance of large risks. However, the situation dramatically changed when Lithuania joined the EU and implemented EU legislation (EU directives) in insurance sector. Since then insurance undertakings of other EU Member States have a wide access to the Lithuanian insurance market. Paragraph 1 of Article 3 of the Law on Insurance of the Republic of Lithuania[2] provides that the following subjects should have the right to engage in insurance activity in Lithuania:

1) insurance undertakings — public companies, private companies, and European companies (*Societas Europaea*) established in the manner prescribed by laws of Lithuania and which have obtained a licence to engage in insurance activity according to the procedures set out in the Law on Insurance;

2) insurance undertakings of other EU Member States, exercising the right of establishment and (or) the right to provide services;

3) branches of insurance undertakings of foreign countries established in Lithuania having a licence to carry on insurance activity as branches according to the procedure prescribed by the Law on Insurance.

Moreover, Article 56 of the Law on Insurance provides that insurance undertakings of other EU Member States should have the right to establish subsidiaries, provide services or establish a branch in Lithuania.

Establishment of subsidiaries

The right to establish subsidiaries means that the insurance undertaking of other EU Member State has the right to establish the subsidiary insurance undertaking in Lithuania. It is important that such establishment should obey the same rules as those applicable to all other insurance undertakings established in Lithuania. This means that subsidiary insurance undertakings should be established in line with the requirements of Lithuanian company law, should obtain the licence from the Lithuanian Insurance Supervisory Commission (hereinafter – the LISC)[3], should follow all organisational and operating requirements, are supervised by the LISC, etc.

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[2] Law on Insurance of the Republic of Lithuania (*Lietuvos Respublikos Draudimo įstatymas*) No. IX-1737 dated 18 September 2003, as amended.

[3] The Lithuanian Insurance Supervisory Commission is the state institution which supervises insurance activities in Lithuania.

It should be noted that such a possibility to engage in insurance activity in Lithuania was also before Lithuania joined the EU. The right to establish the subsidiary insurance undertaking actually does not give any advantages in comparison with the situation as it was before Lithuania joined the EU.

The right to provide services

Another option for insurance undertakings of other EU Member States may be the possibility to exercise the right to provide insurance services in Lithuania without any establishment therein (cross-border provision of insurance services). Article 57 of the Law on Insurance stipulates that insurance undertakings of other EU Member States should have the right to start providing services in Lithuania upon the receipt by the LISC from the competent authority of the Member State, in which the insurance undertaking is established, of documents which must be submitted by this authority to the LISC in accordance with the legal acts of that EU Member State and upon meeting other conditions stipulated by this Law.[4]

This option to engage in insurance activities in Lithuania means that insurance undertakings of other EU Member States can in the simplest way start providing insurance services in Lithuania, i.e. there is no need to undergo a very complicated and lengthy licensing procedure in Lithuania. There is only one thing that an insurance undertaking of other EU Member State should do: to notify its "home" supervisory authority[5] about the intention to provide insurance services in Lithuania. After that the "home" supervisory authority provides certain information and documents to the LISC, and upon the receipt of such information and documents by the LISC the insurance undertaking has the right to start providing insurance services in Lithuania.

Talking about the right to provide insurance services, it should be taken into account that the possibility for insurance undertakings of other EU Member States to provide insurance services in Lithuania should not give the right to insurance undertakings of other EU Member States to assign a person subordinate to instructions and control of the represented undertaking who will be in Lithuania permanently or for a long period

[4] Such a procedure also in known as a "notification procedure".
[5] The home supervisory authority means the competent authority of that Member State where the insurance undertaking is established and authorised.

of time and who has been empowered to establish the rights and obligations for insurance undertakings of other EU Member States with regard to third parties (Paragraph 5 of Article 57 of the Law on Insurance). This means that the right to provide insurance services on the cross-border basis is a suitable option only for those insurance undertakings of other EU Member States which intend to engage in insurance activity in Lithuania temporally (on non-permanent basis), from time to time, by making just few insurance contracts with few clients, etc. If, however, the insurance undertaking intends to provide insurance services in Lithuania on a permanent basis, another option should be used (establishment of the branch).

The right to establish the branch

Similarly as in the case of cross-border provision of insurance services, before the establishment of the branch insurance undertakings of other EU Member States should undergo the notification procedure. Paragraph 1 of Article 58 of the Law on Insurance provides that an insurance undertaking from other EU Member State should have the right to establish the branch and commence its activities in Lithuania in two months after the "home" supervisory authority of the insurance undertaking informs the LISC about the intention of the insurance undertaking to establish the branch in Lithuania and provides the information and documents which the "home" supervisory authority must provide to the LISC in accordance with the legal acts of that Member State. The LISC must inform the "home" supervisory authority about the conditions applicable to the activities of branches of insurance undertakings of other EU Member States in Lithuania precluding breaches of public order.[6]

Similarly as in the case of cross-border provision of insurance services in the case of establishment of the branch there is no need of undergoing a very complicated and lengthy licensing procedure in Lithuania. This is one of most significant differences (and an advantage) in comparison with the situation when insurance undertakings established outside the EU intend to open the branch in Lithuania. In the latter case such insurance undertakings should obtain the licence for provision of insurance services

[6] The list of the provisions stipulated to protect the public order is published on the internet site of the LISC: http://www.dpk.lt/en/teises.legal.php.

in Lithuania, as well as follow quite strict requirements applicable to such branches.[7]

It should also be noted that the procedures set out in the Law on Insurance regarding establishment of branches of insurance undertakings of other EU Member States should be applicable to the agencies or any other offices managed by the employees and persons of the founding undertaking, who have a permanent or a long-term authorisation to operate on behalf of the insurance undertaking. This means that even though an insurance undertaking of other EU Member State has, in Lithuania, a small office or agency, which are not established as branches from the company law perspective, such an office or agency would be treated as a branch from the perspective of the insurance law.

A specific case when an insurance undertaking of other EU Member State would be treated as having a branch in Lithuania, from the insurance law perspective (but not from the company law perspective), can be the case of acting in Lithuania through tied insurance intermediaries.[8] Such interesting and sophisticated acting should be followed by two groups of requirements:

1) requirements applied to insurers;

2) requirements applied to tied insurance intermediaries.

Insurance undertakings of other EU Member States intending to engage in insurance activity in Lithuania through tied insurance intermediaries should follow specific main requirements:

– Firstly, the insurance undertaking should undergo the abovementioned notification procedure applicable for the establishment of the branch.

– Secondly, before launching insurance activity in Lithuania, insurance undertakings of other EU Member States must list tied insurance intermediaries and include all its tied insurance intermediaries in this list, manage that list and publicly disclose certain data of the list in accordance with the legal acts approved by the LISC. An insurance agent might be included into the list of tied insurance intermediaries only if he/she is of good repute and qualified whereas an entity of insurance agents might be included in such a list only if its employees who would provide insurance mediation services are of good repute and qualified.

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[7] Those requirements are very similar to the case of insurance undertakings licensed in Lithuania.

[8] A tied insurance intermediary under Lithuanian law means an insurance agent (as natural person) or entities of insurance agents (as legal persons).

– Thirdly, when the insurance undertaking engages in insurance activity in Lithuania through tied insurance intermediaries, it must organise professional training for the employees of the tied insurance intermediary whose activities include provision of insurance mediation services.

– Fourthly, the insurance undertaking must ensure that the terms and conditions of insurance contracts are in line with requirements of the Lithuanian law, especially with the requirements set forth for the conclusion and execution of insurance contracts, consumer rights protection, etc.

Another group of requirements applies to tied insurance intermediaries.

– Firstly, under Lithuanian law, tied insurance intermediaries must have the professional indemnity insurance cover. The sum insured should be no less than € 1 120 200 per insured event and € 1 680 300 for all insured events per year. The insurance cover must be valid across the entire territory of the EU. A tied insurance intermediary must have insurance cover throughout the period of mediation activities. However, there are two exceptions when tied insurance intermediaries may not have the professional indemnity insurance cover:

1) the insurance undertaking itself concludes the professional indemnity insurance contract insuring the tied insurance intermediary;
2) if the insurance undertaking, by concluding the contract with the tied insurance intermediary, assumed the obligation to indemnify the loss incurred due to the tied insurance intermediary's default or on inadequate discharge of the professional obligations.

– Secondly, a tied insurance intermediary must not be able to engage in an insurance mediation activity on behalf and in the interests of other insurance undertakings in relation to insurance contracts providing identical or similar insurance coverage.

– Thirdly, the tied insurance intermediary also must provide to the clients the information specified by the LISC (information which should be provided by insurance intermediaries according to EU Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation) and, prior to entering into an insurance contract, also the information specified in the Law on Insurance, e.g. the legal form, name, address of the insurance undertaking, the law which governs the insurance contract, etc.

Summarising the possibility to exercise the right of establishment, it should be noted that such a possibility is a very good alternative for insur-

ance undertakings of other EU Member States which intend to engage in insurance activity in Lithuania on the permanent basis, because this way of activity enables to avoid the need to establish in Lithuania the subsidiary insurance undertaking (with the consequences of licensing, complying with the local regulation of insurance activity, etc.).

Advantages and disadvantages of the open insurance market in Lithuania

Efforts towards the open insurance market in Lithuania gave certain advantages and disadvantages in insurance sector.

The increased competition between insurance undertakings in Lithuania might be stressed as a clear advantage. According to the data of the LISC, at the moment there are about 400 insurance undertakings from other EU Member States which exercise the right to provide insurance services on the cross-border basis[9] and 15 branches[10] of insurance undertakings of other EU Member States[11]. The increased number of insurance undertakings which may offer insurance services in Lithuania creates the possibility to policyholders to obtain a wide range of insurance services suitable for them on the best conditions. Moreover, the insurance undertakings from other EU Member States started to offer insurance services which previously were not offered in Lithuania, e.g. the Directors and Officers (D&O) liability insurance services.

On the other hand, it may be seen that the open market brought also certain disadvantages. After Lithuania joined the EU in 2004, a clear tendency has developed showing that more and more insurance undertakings established in Lithuania and owned by foreign insurance or finance groups are transformed into branches. The LISC, in respect of such branches, has very limited supervisory powers. Since the role of the branches of foreign insurance undertakings is consistently increasing, the Lithuanian Government (the Ministry of Finance) has raised serious concerns that the LISC would have less supervisory powers, and consequently, Lithuania would lose the control over the Lithuanian insurance market. This was one of

[9] The list of such insurance undertakings is published in the internet site of the LISC: http://www.dpk.lt/en/es_draudikai_beta.php.

[10] One branch announced a termination of its activities as of 1 January 2011.

[11] The list of branches is published on the internet site of the LISC: http://www.dpk.lt/en/drinkos.draudikai2.php.

the reasons why Lithuania, by adopting the Solvency II Framework Directive, has strongly supported the idea that the local supervisors should have more rights and obligations in respect of supervision of insurance or finance groups.

Further, increased competition in the insurance sector led to the situation when small Lithuanian insurance undertakings went to bankrupt.[12] To this end it might be mentioned that even in 2010 a bankruptcy case was opened against a previously well-known insurance undertaking in Lithuania. There are some concerns that other relatively small Lithuanian insurance undertakings owned by local individuals or legal entities might also face similar problems.

Moreover, there are some concerns that insurance undertakings of other EU Member States will dominate over the Lithuanian insurance market, e.g. already at the moment there are 15 branches of insurance undertakings of other EU Member States and only 12 insurance undertakings[13] licensed in Lithuania. As the rule, the branches of insurance undertakings of other EU Member States have not so strong and close relations with Lithuania as insurance undertakings established in Lithuania. This may lead to the situation when insurance undertakings of other EU Member States will not take into account the economical situation of Lithuania and will act contrarily to the needs of economy.

Summarising the advantages and disadvantages of the new regulation in insurance sector[14], it should be mentioned that despite the fact that some problems were caused by trying to create a really open insurance market in Lithuania, the overall impact of the possibility of insurance undertakings of other EU Member States to act in Lithuania is more positive than negative.

[12] According to public available data there are three Lithuanian insurance undertakings that went bankrupt since 1 May 2004.

[13] The list of such insurance undertakings is published in the internet site of the LISC: http://www.dpk.lt/en/drinkos.draudikai.php

[14] New regulation means the regulation under which the insurance undertakings of other EU Member State acquired the right to engage in insurance activity in Lithuania.

DRAUDIMO PASLAUGŲ RINKOS REGULIAVIMAS LIETUVOJE: PASTANGOS SUKURTI ATVIRĄ RINKĄ

Tomas Talutis

Santrauka

Šis straipsnis siekia atskleisti Lietuvoje susiklosčiusią praktiką po to, kai Lietuva įstojo į Europos Sąjungą ir įtvirtino naują teisinių santykių draudimo sektoriuje reguliavimą, pagal kurį draudimo įmonės iš kitų Europos Sąjungos valstybių narių įgijo teisę vykdyti draudimo veiklą Lietuvoje. Straipsnyje yra aptariami klausimai, susiję su kitų Europos Sąjungos valstybių narių draudimo įmonių galimybėmis vykdyti draudimo veiklą Lietuvoje, taip pat parodoma, kokias problemas sukėlė Lietuvos pastangos sukurti atvirą draudimo paslaugų rinką Lietuvoje, išskiriami šio proceso privalumai ir trūkumai.

Straipsnyje detaliau nagrinėjamos trys galimybės, kurias turi kitų Europos Sąjungos valstybių narių draudimo įmonės vykdyti draudimo veiklą Lietuvoje: dukterinės draudimo įmonės steigimas, teisė teikti paslaugas neįsisteigus ir teisė steigti filialą Lietuvoje. Be to, kaip viena specifinių galimybių yra analizuojama situacija, kai kitų Europos Sąjungos valstybių narių draudimo įmonės gali vykdyti draudimo veiklą Lietuvoje naudojantis priklausomų draudimo tarpininkų paslaugomis.

Straipsnyje autorius padaro išvadą, jog nepaisant tam tikrų problemų, kurias sukūrė pastangos Lietuvoje sukurti atvirą draudimo paslaugų rinką, bendras poveikis, kurį galima pastebėti kitų Europos Sąjungos valstybių narių draudimo įmonėms suteikus galimybes vykdyti draudimo veiklą Lietuvoje, yra labiau teigiamas negu neigiamas.

Reikšminiai žodžiai: atvira dtraudimo paslaugų rinka, teisė teikti draudimo paslaugas, įsisteigimo teisė draudimo sektoriuje.

THE POTENTIAL OF APARTMENT HOUSE MANAGEMENT

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Abstract
The necessity of housing maintenance is stated because the country has a large number of housing stock, which has to be successfully maintained to ensure its sustainability. The aim of the article is to explore factors that hinder successful organization of management of apartment houses, and factors that contribute to the housing management, which dominate as novelties; also, to offer the introduction of the "Kaizen principle" of housing management in the organization.

The main problems that hinder successful management of residential buildings are:

- Non-customer — persons who owns the property, not the service providers, are often not knowledgeable about the service and "game rules" in the property market sector;
- Apartment owners' incompetence in the sphere of housing management;
- Household credit and a rapid increase in unemployment directly influence the house managers;
- One of the factors undermining the payment discipline is the lack of discipline of control and monitoring of payments.

As the housing management develops, a number of facts are released in the regulation of new legislation, which contributes to the high quality of housing management services. The promoting innovation factors in the country are: educating the manager, statutory mandatory minimum management activities which in the Latvian legislation are provided for the first time, "Home Files" for carrying out the requirement for a written management or agency agreement.

But there is also another aspect for successful implementation in the legislative framework: how well the building administrators are able to manage their businesses through the introduction of all administration and management activities in their attractive homes. Consequently, the authors suggests building your own business based on the Kaizen principle. This means — focus on continuous

change, not to allow any excuse that prevents things from going forward, and doing everything to make them happen, also every employee's awareness and empowerment of every employee.

For the management company to provide affordable and professional services to residential apartment owners and users, regulatory compliance, management of standard development and approval of the company, and Kaizen principles are implemented as a first step, which would allow the company staff to give a complete picture of the actions to be expected, of the results, and to determine levels of responsibility of the staff.

Keywords: real estate, residential building management, owners, legal conditions, Kaizen principle.

Housing management is needed because the country has a large housing stock that has to be supported by constructing its sustainable development. Whatever the framework of the housing fond tactics, one of the key challenges is to create suitable conditions for owners at their homes so that they themselves could improve the situation, by showing their initiative. To reach this goal it is necessary that the improvements will be sustained and that the improved housing situation will be secured for a longer period. The national housing policy should provide adequate conditions which includes reasonable legal conditions, available loans to improve the housing stock as well as the existence of appropriate institutions that can and are willing to support housing improvement.

Housing operation is the longest life cycle and management is the only variable factor, which can affect it after the building has been put into service. Solution of the project and the execution of works shall remain as a static, constant value. House until its demolition or reconstruction is operated as it is built. Whereas management of work is affected by the extent to which consumers (owners, tenants) benefit from the management within the limits of building construction. The more complex and diverse buildings are built, the more important role is attributed to the technical maintenance during the operation. Home longevity and comfort level is largely determined by the technical work quality. Contemporary environment for design and construction as well as new forms of housing management require an appropriate level of technical facility maintenance services that would be able to effectively execute the built environment of economic and technical challenges.

On 1 January 2010, in Latvia the Residential Building Management Act came into force. Work on the drafting of this law lasted for several years, starting from 2005. The law was designed with the objective to develop a comprehensive framework for housing management, to cover any type of housing stock (single-apartment, apartment, house denationalized, new project).

The goals of the Residential Building Management Act are the following:

- to provide housing operation and maintenance (physical preservation over their lifetime), according to legal requirements;
- promote housing improvement over their lifetime;
- ensure each dwelling house management continuity;
- maintain and develop the residential environment as objects of aesthetic value and, consequently, the environmental amenities;
- prevent the public and environmental safety risks during the operation of housing;
- improve housing management labour skills in order to improve the management of the organization and efficiency.

The above Act provides housing management principles involved in this process of mutual relations, rights, duties and responsibilities, as well as national and local expertise in this area.

Successful work with the real estate requires complex knowledge. It requires taking into account the dynamics of market development and market analysis. You have to know what the real estate buyer and seller wants, their interests, needs and beliefs. This allows increasing the sales and efficacy of the real estate. Consequently, it is necessary to have a professional staff, both managers and lawyers, who have an experience in property management, as well as accountants, who focus on a particular sector.

There are a number of factors that hinder successful operation of the law.

The first factor — for private operators who wish to provide real estate maintenance (administration and management) services on the market to different owners the first problem is related to clarification of all aspects of the service — what is the service?

Essentially, **the second factor** is the apartment owners' incompetence and vulnerability of the area of legislation. In Latvia, to a large extent, the form of cooperation lacks confidence, due to the mentality of the people

and their previous unfortunate experiences. There are very few positively-minded people. One-dwelling residents have not only different financial opportunities, social status, education level, but also different understandings of life, they differ in mentality, ethnicity and age. Maintenance faces apartment owners' indifference, immunity and ignorance. We have not developed housing joint maintenance culture.

The third factor — the current economic situation and solvency impact maintenance. Already beginning from the late 2007, an everyday notion of "economic crisis", a "real estate bubble" has appeared. The causes and consequences have already occurred and the reasons are broadly reflected in the conclusions of economists, media and other information products. Households in the credit and the rapid increase in unemployment directly influence the house managers in house management service, and also, maintenance is charged to basic necessities.

New project managers are in a most vulnerable situation. New-home owners in 97% of cases have purchased homes through bank loans which are pledged to the bank with the mortgage, which in case of money recovery will leave the operator without the new-home. According to statistics, only 50% of apartments have been purchased to live there — others are owned by brokers who did not manage to realize the project during the speculative property market.

The fourth factor — debt recovery dynamics. One of the factors that undermine the payment discipline is a lack of control and monitoring of payments. Many maintenance companies have few actions concerning the recovery of debts.

Real estate manager would not reflect the everyday lives of hard-core apartment owners / tenants and their tasks, the available financial resources, human resources, concrete and reasonable deadlines. Industry is characterised by increasing uncertainty, a high level of stress and of changes. In the management process it appears more and more often that what the customer (apartment owner) had requested is not necessarily what the customer wanted the most.

There are a lot of contributory factors that brought the Latvian housing management novelty.

The first factor — a request for Governor's education: the law provides for an action when a self-possessed house is managed, it requires the third professional housing management qualification level. By contrast, managers who carry out other houses owned by management are subject

to the fourth level of professional qualification certificate. Professional standards require the profession of building administrator (with the theme of education — Commerce and Administration, which is the fourth level of professional qualification). The fifth level of professional qualification results in a profession of a real estate economist (with the theme of education — Commerce and Administration). Those who wish to acquire a third professional qualification level for the management of their own home will get a House Manager's profession. Such development and implementation of professional standards are rated positively, because it gives an opportunity to bring the real estate owner the manager qualification.

The second factor — the law sets minimum management activities in the Latvian legislation which are regulated for the first time. Those are:

- maintenance of residential buildings (physical maintenance) in accordance with statutory requirements: health care; heating, cold water and sanitation provision, as well as household waste; residential buildings at the existing facilities and communication survey, maintenance and running repairs; residential home environment as an object the request made to it; residential buildings for energy efficiency, minimum requirements for enforcement;
- management of work planning, organizing and monitoring — managing the work plan, including the maintenance of the plan, preparation of the draft budget for the preparation of financial accounting organization;
- keeping of Home Files;
- agreement on the use of land attached to the closure of the landowner;
- provision of information to state and municipal institutions.

The overall record of the operations is a positive development because it answers the question, what actions must be included in building management, and about the responsibility of any residential home owners, co-owners and managers. In addition, owner of the apartment is responsible for enforcement. And only in case these activities are transferred with an authority to the manager, the responsibility of the failure passes to the residential home manager.

The third factor — Home File. It is an establishment of a clear set of maintenance of each dwelling house, which will provide an opportunity to obtain information on the homes of owners and third parties, as well as state and local government institutions, where their functions will

require a home files section containing information. “Home File” assist in arranging carriage house documentation of all quality documentation and records of management activities, but a change of manager, or where the owners themselves will decide to manage the house, will be relieved from home file transfer process.

The fourth factor — maintenance or an agency contract. Residential building management process improving the effectiveness of the law has been introduced in the contract management framework, which is managing the transfer of the task manager, in agreement with the apartment owners. As such, this is not a novelty, but with the entry into force of the law, it is determined that the contract must be necessarily in writing, as well as the fact that it must have the authorization agreement. So far, these conditions were not as mandatory requirements. When awarding the management contract, it is important to respect and balance the interests of the parties to engage in maintenance process. Management contracts shall be coordinated on both sides, with the house owner and manager interests. In Residential Building Management Law there are specialized rules on governing the direct management of the contract. With regard to the transfer of the management task to the manager, the decision is made by apartment owners who determine how much the management of all or part of the transfer shall be granted to the manager, which is done by writing a residential home management contract. Current manager of the law may receive compensation for completing the task. Apartment owners are obliged to provide the manager with funds.

The fifth factor — posted manager. A manager seconded by the municipality is appointed for a period of residential house manager, who performs certain management activities in the house while the owner provides home administration of the laws and regulations. The act requires the municipality to appoint a seconded manager if the owner does not provide residential home manager services or the administration has not been asked to make a manager change as a result of threat to human life, health, safety or property or the environment. Governor may propose the appointment of a person whose rights have been violated in connection with legal or other residential management-related laws and regulations or by an authority which has competence in residential management of the regulatory laws. The designated manager is responsible for avoiding potential risks in time and at the same time to make these compulsory statutory management activities to be accomplished.

There are a number of obstacles for implementation of this provision of law:

- It is not clear from which funds the manager will receive his salary. If the relationship with the owner-manager to hire an appropriate regulatory framework can provide an authorization agreement, an agreement for administration and management fees in respect of a designated manager is not possible. This means that the local authority may use the the budget money to hire emergency managers, and then through the apartment owners' invoices recover these funds back.
- There could be a situation when a lot of residents do not pay for maintenance because they do not find it necessary, thus causing a large debt burden. Consequently, it is not clear who will deal with the debt collection, especially if the posted manager will work for a longer period.
- There is no mechanism that operates between the municipal and residential home owners according to expenses.
- The law does not provide for the management of domestic waste and the threat of municipal asset recovery procedures.

Consequently, it is concluded that the Act is governed by the posted Manager, while the under-regulation provides management support and operation monitoring and, most important, provides control.

The provision of quality housing is one of the living standards indicators. It is also a condition for preservation of human health and active living activities. Real estate can be fully deployed and the arrangement can be achieved with good management, market-based real estate management and administration.

For all of the activities to be successfully implemented, first, it requires a legal framework, which should be dealt with persons involved in duties, responsibilities, rights, and a series of measures that determine what actions would be necessary to ensure successful maintenance of the housing stock. But there is also another aspect — how well the building administrator is able to manage their businesses through introduction of all the administration and management activities in their attractive homes.

Consequently, the authors suggest building your own business based on the **Kaizen principles**. 'Kaizen' (from Japanese 'improvement') is a Japanese word, which was adapted in English and refers to the philosophy

or practice that focuses on continuous improvement in manufacturing, business and even life in general activities. Kaizen generally means activities that constantly improve business functions — from production to management, from top management to the line personnel.

By improving standardized activities and processes, Kaizen aims at eliminating all invalid (non-manufacturing) branches. The principles of Kaizen concern the following: the focus for a period, continuous changes, an excuse to prevent or to do everything to make things go forward, every employee's awareness and empowerment of every employee.

In applying the Kaizen principles, specific objectives are put forward:

- injury prevention (time, money, materials, effort);
- quality (goods, services, relations, personal behaviour, staff development);
- services and reduction of production costs;
- reserve maintenance and distribution;
- increased degree of customer satisfaction.

The first principle — focus on customers or the apartment owner. Not to make concessions, offering only high quality services. This ensures the customer or the apartment owner's satisfaction. Each manager's personal responsibility is keeping track of services to meet consumers' needs.

The 21st century came with slogans like "the world shrinks", "live in a global village", "geography has come to an end". Business fiction writers talk about chaos that has come again, about the fact that the "abundance of their clients are more like a king's", "the customer is the mother of all dictators". Organizations are forced to reassess management approaches in order to be able to hold their positions in the new times.

The second principle — continuous change. Real estate manager's daily activity does not describe clearly defined tasks of apartment owners, available financial resources, personnel resources, and reasonably specific deadlines. Industry is increasingly emerging in high uncertainty stress and changes in level. It appears that what the customer / apartment owner has claimed is not always what it most wanted in the management process. That is why the traditional approach is — stay fit on the budget, technical requirements, the technical condition and time is useless because they are unable to respond to the persistent changes. Therefore, a search for improvement is always going on, which does not break after the introduction of yet another improvement. Each service or management process improvement

is realized as a new formal standard. Managers must establish their own processes or standards which clearly would be addressed in all activities that should be taken to implement quality service and achieve apartment owner satisfaction. But notice that this standard will exist only as long as the employee will not disclose any method of how to improve it!

The third principle — recognition of the problem. Information is a critical variable in the success of building management. Therefore, centralized management, which decides on the availability of information and its contents may be harmful to building management business because it cannot be delivered to the topical and more operational information for both company employees and the ultimate consumer — the apartment owner. Therefore, it is desirable to involve company employees, service providers and apartment owners to maintenance work. Thus, the essential thing here is decentralization of power. Each work team, department or any employee may submit their proposals for solutions affecting housing maintenance, the potential conflict. It also means the driver's courage to share his power.

The fourth principle — disclosure propaganda. House management company employees should be readily available for apartment owners. First, it is best if each house has a specific manager and apartment owners can apply directly such person with all the current issues. Second, there must necessarily be adoption time for the apartment owners who may apply to the management of the company and discuss their issues of concern or to express their proposals. Third, applied Kaizen employees are generally less separated from each other. Analogically, the working space is more open.

There are three basic positions including the items with each other to work together and which must be open with each other — Housing Management Company, service providers and apartment owners. Referring to the need for decentralization of power, the concept of openness is mainly felt with the suppliers of information, which is the house manager. This can take manager's direct interest and confidence of the exhibition of the customer information accuracy and usefulness. The company's management is clearly defined and set out his concept, which should be developed according to national legislation and customer expectations, avoiding unnecessary confusion and conceptual errors.

The fifth principle — creation of the work team. Each management employee of the company is a working member of the crew, headed by

its leader. Employees participate in the daily or weekly planning, which operates continuously, or are designed for a particular purpose. Employees are involved in business life, thus it strengthens the collective responsibility of the company and the central role of sensation. The following factors continue the process:

- The management company employees are involved in active acquisition of information and setting an example by operating report of the managed sites on the problems that are recorded;
- Making a special group of industries — building administrator associations involving industrial workers and delivering timely information about events in the environment, seeking common solutions to existing problems, making proposals for legislative change;
- Making a free information delivery, where any apartment owner can express their views on the events, or to make proposals or complaints about the quality of services.

The sixth principle — management with the functional command's help. No one working for a functionally specific activity will have all the skills; no one will be able to offer the best ideas to achieve the most efficient service. Right from the start, creating a team responsible for building management should include people representing the functional areas so that the service provided during the course of implementation will be affected. This means that the company must have a staff with knowledge of the engineering things, business and accounting, psychology, marketing, planning and management.

The seventh principle — development of self-discipline. Self-discipline as a requirement:

– belonging to a team and standing one's own control;
– self-respect indicates inner strength and integrity;
– ability to work harmoniously with colleagues and clients.

Given that the building management work is closely related to the ongoing requirements of the apartment owners, the more people will be characterized by self-discipline and enthusiasm, the better for the company and customers.

The eighth principle — informing each employee. All staff is fully aware of the company's planned work or problems. There must be information feedback. Proper attitude and behaviour will depend on the company's strategy, its culture, values, plans and work experience,

understanding and acceptance. Management of the company's development strategy must focus on the basic principles of employee information. Thus, the management staff are aware of the ongoing processes in the company and the customers and service providers have access to information on environment and development plans, thus allowing counting on the possible change.

The ninth principle — empowerment of each employee. Each employee must ensure the opportunity to operate according to his information. Consequently, the employees can actually affect the performance, thanks to the training of a wide field of stimulation, the powers to make decisions, access to information and budget, feedback and incentive schemes. It is important to recognize their contribution and non-discrimination between the order of seniority, but rather to gain from each of the parties involved in high-quality and meaningful information, useful for businesses and apartment owners as clients.

The **tenth factor** — remember that there are no limits to improvement. Do not stop! Any management company following a successful implementation of management concepts could increase their customer satisfaction levels; achieve their business objectives, as well as become one of the companies in the sector, where the number of customers will only increase. Thought, emotion and interaction quality defines the quality of the final result, since it has a significant impact on human creativity. Thus, the emphasis is on efforts to create an environment that promotes good, positive thinking, energy, good communication and strong cooperation.

To the management company to provide affordable and professional services to residential apartment owners and users, regulatory compliance, management of standard development and approval of the company, and Kaizen principles are implemented as a first step, which would allow the company's staff to give a complete picture of the actions to be expected, results, and to determine the staff levels of responsibility.

DZĪVOJAMO MĀJU PĀRVALDĪŠANAS POTENCIĀLS

Iveta Puķīte

Kopsavilkums

Daudzdzīvokļu dzīvojamo māju ekspluatācija saistīta ar virkni juridiska, ekonomiska un saimnieciska rakstura pasākumu. Mājokļu pārvaldīšanas un apsaimniekošanas nepieciešamību nosaka tas, ka valstī ir liels apjoms dzīvojamā fonda, kurš būtu veiksmīgi jāuztur, lai nodrošinātu tā ilgtspējību. Raksta mērķis ir izpētīt faktorus, kas kavē daudzdzīvokļu dzīvojamo māju apsaimniekošanas veiksmīgu organizāciju, izpētīt veicinošos faktorus, kas dzīvojamo māju pārvaldīšanas jomā dominē kā novitātes, kā arī piedāvāt "*Kaizen* principu" ieviešanu dzīvojamo māju pārvaldīšanā.

Raksts sastāv no trijām daļām. Pirmā un otrā daļā ir balstītas uz likumu "Dzīvojamo māju pārvaldīšanas likums", kas Latvijā stājās spēkā 2010. gada 1. janvārī. Likums tika izstrādāts ar mērķi – izveidot visaptverošu normatīvo regulējumu dzīvojamo māju pārvaldīšanai, attiecinot to uz jebkuru dzīvojamo fonda veidu.

Pirmajā daļā tiek klasificētas problēmas, kas kavē dzīvojamo māju veiksmīgu pārvaldīšanu. Tās ir:

- ne klients – persona, kurai pieder īpašums, ne pakalpojuma sniedzēji, bieži vien nav kompetenta par pakalpojumu un "spēles noteikumiem" šajā īpašuma tirgus sektorā;
- dzīvokļu īpašnieku nekompetence dzīvojamo māju pārvaldīšanas jomā;
- mājsaimniecību kredītsaistības un bezdarba līmeņa straujā palielināšanas vistiešākajā mērā ietekmē arī namu apsaimniekotājus;
- viens no faktoriem, kas mazina maksājumu disciplīnu, ir kontroles un uzraudzības trūkums par maksājumu apjomu.

Raksta otrajā daļā autore izdala faktorus, kuri savukārt veicina kvalitatīvu dzīvojamo māju pārvaldīšanas pakalpojumu ieviešanu. Kā veicinošie inovatīvie faktori valstī tiek minēti: prasība pārvaldnieka izglītībai (likums paredz pārvaldnieka profesionālo izglītību gadījumos, kad tiek pārvaldīta dzīvojamā māja), likumā noteiktas obligātās minimālās pārvaldīšanas darbības, kuras Latvijas likumdošanā tiek reglamentētas pirmo reizi, "Mājas lietas" vešana un prasība pēc rakstiska pārvaldīšanas jeb pilnvarojuma līguma.

Lai normatīvo aktu regulējumu veiksmīgi ieviestu dzīvē, vēl ir arī otrs aspekts — cik veiksmīgi namu pārvaldnieki spēj vadīt savus uzņēmumus, ieviešot

visas pārvaldīšanas un apsaimniekošanas darbības savos apsaimniekojamos namos. Līdz ar to raksta trešajā daļā autore iesaka namu pārvaldniekiem savu biznesu balstīt uz *Kaizen* principiem balstītu biznesa pieeju. Tas nozīmē — koncentrēties uz laiku, veikt nepārtrauktas izmaiņas, nepieļaut aizbildinājumus un darīt visu, lai lietas virzītos uz priekšu, informēt ikvienu darbinieku un piešķirt pilnvaras ikvienam darbiniekam.

Lai apsaimniekošanas uzņēmums varētu sniegt kvalitatīvus un profesionālus pakalpojumus dzīvojamo namu dzīvokļu īpašniekiem un to lietotājiem, normatīvo aktu ievērošana, pārvaldīšanas standarta izstrādāšana un apstiprināšana uzņēmumā, un *Kaizen* principu ieviešana būtu pirmais solis, kas dotu iespēju uzņēmuma darbiniekiem sniegt pilnīgu priekšstatu par veicamajām darbībām, sagaidāmajiem rezultātiem, kā arī noteiktu darbinieku atbildības līmeņus.

Atslēgvārdi: nekustamais īpašums, dzīvojamo māju pārvaldīšana, īpašnieki, juridiskie nosacījumi, *Kaizen* principi.

THE BENCHMARKING PROCESS — IMPROVING QUALITY PERFORMANCE IN INSURANCE INDUSTRY

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Abstract
The purpose of this paper is to summarize and analyse the criteria of qualitative benchmarking, and to investigate the use of quality benchmarking in insurance industry in Latvia in order to determine the key driving factors of quality. The paper investigates the common understanding of quality criteria in insurance industry, and how those criteria correspond with EFQM Excellence Model, developed by the European Foundation for Quality Management. A case study and other tools are used to define the readiness of the industry for benchmarking. The results are based on the research conducted in the professional associations in the defined field. This is the first study that adopts the benchmarking models for measuring quality criteria in the insurance industry in Latvia. The authors consider this research as the initial step the industry must undertake before planning and implementing any models or methods to achieve a higher quality performance.

Keywords: quality, benchmarking, criteria of quality, EFQM.

Defining quality benchmarking criteria

Benchmarking assists businesses in identifying potential targets for improvement. As a systematic process for improving performance, benchmarking has gained great popularity worldwide since the 1980s. As a classic of benchmarking R. Camp observed, "establishing operating targets

based on the best possible (industry) practices is a critical component in the success of every business."[1] Benchmarking moves management thinking from an internal focus to one that is external and competitive and can lead to revolutionary rather than evolutionary change.[2] This sets high quality standards for the service industries. Therefore, it is important to conduct the comparison of quality criteria to ascertain which practices are achieving superior performance levels. Insurance companies in Latvia do not carry out mutual benchmarking, and as a result of that they do not know how they rank against their peers in terms of quality. Being concerned about intense competition as well as being self-oriented they do not see benefits in sharing of information and in benchmarking. At the time of globalisation, competition and rapid change one must make sure that people-related issues are at the top of business agenda so that the changes can be managed effectively. J. Bramha declined, "you should look to benchmark key-people policies and people processes against what other organizations are doing".[3]

Companies whose shareholder value is clearly driven by people — whose employee's costs can be three or more times their capital costs — share more important qualities, including the need to use employee-oriented operating performance measures.[4] This may have implications for the use of benchmarking in human capital organizations in general.[5]

Insurance industry represents service sector and even more human capital organizations. The authors' intention is to investigate if they have common understanding about the quality criteria, and what they can learn from each other.

Benchmarking in another context is as a replacement for market testing to demonstrate that in-house provision of services has been contested, representing a little more than a way of complying with government value for money criteria. Benchmarking in this guise involves the comparison of key activities and processes to demonstrate their effectiveness (in compari-

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1 Camp, R. C. *Benchmarking: The Search for Industry Best Practices that Lead to Superior Performance.* Milwaukee, WI: Quality Press: American Society for Quality Control, 1989.

2 Boxwell, R.J. *Benchmarking for Competitive Advantage.* New York, NY: McGraw-Hill, 1994.

3 Bramha, J. *Benchmarking for people managers.* London: IPD House, 1997.

4 Barber, F., Strack, R. The suprissing economics of a "People business". *Harward Business Review*, No. 6, 2005.

5 Tyler, M. C. Benchmarking in the non-profit sector in Australia. *Benchmarking: An International Journal,* 12 (3), 2005.

son to other providers) and to convince the government that they remain the best mode of delivery of the service in question.[6]

The goal of the study is to determine the existing criteria of qualitative benchmark in insurance industry.

Case study of insurance industry in Latvia

There exist several tools and models which are used as benchmarking tools in order to improve the performance of companies by developing the strategies.[7] Three different methods are applied in this research in order to have a wider understanding of the concept of benchmarking in insurance industry in Latvia:

1) Desk research/Literature research: largely designed to review existing literature, the investigations and papers that are accessible in internet resources, books of benchmarking and available latest studies in data bases;

2) Survey: conducted by Latvian insurance brokers association (LIBA).

Since 2007, LIBA has been conducting a survey of insurance companies, "Insurers' performance evaluation by insurance brokers". All members of LIBA participate in this survey evaluating each insurer's performance, according to nine criteria, by giving marks from 1 to 5, where 1 is the lowest possible performance evaluation, and 5 is the highest evaluation. According to this evaluation benchmarking is performed and the ranking of the insurers is made, insurance brokers are licensed, they are experienced insurance professionals, so they can be considered as insurance field experts. Some insurers include the results of the survey in their annual reports, which also show validity of the survey;

3) Case Study: the methodology adopted for the research comprised a number of research strategies, which included in-depth interviews with heads of industry associations, conducted with two heads of associations representing insurance industry.

Insurance industry in Latvia is represented by two associations. Insurance companies are represented by Latvian Insurers Association (LIA),

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[6] Bowerman, M., Francis, G., Ball, A., Fry, J. The evolution of benchmarking in UK local authorities. *Benchmarking: An International Journal,* 9 (5), 2002, 429–449.

[7] Mehregan, M.R., Nayeri, M.D, Ghezavati, V.R. An optimisational model of benchmarking. *Benchmarking: An International Journal*, 17 (6), 2010.

founded on 12 August 1993. LIA unites 18 insurance companies and branches of foreign insurers (10 non-life and 8 life), which control approximately 99.8% of the total Latvian insurance market. LIA represents the common interests of the insurance industry of Latvia. The association discusses issues that are relevant to the insurers, as well as informs the society about topics significant for the clients. LIA members offer to their clients all kinds of insurance including motor, property, health, life, as well as pension and savings insurance.

Other organization, Latvian Insurance Brokers Association (LIBA) was founded on 20 March 2000 by insurance broker companies registered in the Republic of Latvia. Currently there are 104 insurance broker companies in Latvia. The aim of the LIBA is to develop insurance brokers' market, raise the quality of insurances services and representation of common interest of the members.

The summary of the opinion expressed in the in-depth interviews by the two heads of associations representing insurance industry enabled formulating the quality benchmarking criteria.

Insurance companies are represented by Latvian Insurers Association (LIA).

LIA currently does not conduct any quality benchmarking activities, but they do admit the necessity for such benchmarking. The head of LIA determined such quality criteria:

1) Client satisfaction (client references, loyalty);
2) Client complaints (the number of complaints submitted to LIA ombudsman, Finance and Capital Supervision Commission — a state governed regulatory institution in Latvia, as well as the number of complaints in media);
3) Claim handling agility and attitude (quickness, simplicity and accessibility of the process of handling claims);
4) Reputation (evaluation of the insurer by customers, partners, media and other institutions);
5) Accessibility (number of affiliates, 24-hour call centres, accessibility through internet);
6) Service level (kindness of employees, IT service level);
7) Concessionality (interpretation of insurance conditions in clients' favour).

All those criteria have focus on client perspective. They all are aimed towards client satisfaction. In addition to those criteria there exists another

perspective. As described by the head of LIA, there are two groups of insurers in Latvia. The first group is insurers with Western Europe owners, and the second one includes domestically owned companies. There is an assumption that Western Europe companies have better quality practices than domestically owned ones. Therefore, it can be concluded that ownership of the company can be indirectly determined as a quality criteria.

As previously said, there is an organization in Latvia, apart from LIA, which has been completing insurer's quality benchmarking already for three years, for its own purpose: Latvian Insurance Brokers Association (LIBA).

As stressed by Aigars Krūms, the head of LIBA,

> Insurance brokers are the only insurance industry representatives, who are obliged by law to work only on behalf of client and his/her interests. Working on behalf of clients, insurance brokers, as professionals of insurance industry are developing their own, subjective opinion about each and every insurer's attitude towards their clients and client's representatives — brokers.

In order to summarize their members' opinion on the quality of Latvia's insurance companies, LIBA has conducted a survey of benchmark insurance companies according to the following criteria:

1) Performance agility (how quickly insurer serves clients, brokers, claims);
2) The quality of insurers' product and services (coverage, deductibles, exceptions, obligatory conditions, conditions of compensation, other conditions);
3) Price level (comparison of prices to the similar products from competitors);
4) Insurers' public reputation (how clients evaluate insurer, reviews from clients);
5) Whether the insurer is well known (whether clients recognize particular insurer, evaluation of insurers' marketing activity);
6) Insurers' attitude towards insurance brokers (insurers' employees attitude — friendly, arrogant, other and public expressions about brokers);
7) Do insurers treat direct clients, and broker clients equally (do broker clients receive equal offer in the sense of price and service);
8) How quickly insurance claims are handled;

9) Does insurer compete fair (Does insurer try to cheat broker by addressing client directly).

Essentially, LIBA considers more important to benchmark their partners — insurers than benchmark themselves. It can be explained by the fact that insurers are "owners" of the product — services provided to the customers, and in the sense of quality they are more influential than insurance brokers, who are "distributors".

As admitted by both heads of the examined associations, there is no methodological and comprehensive quality evaluation approach implemented, and they do see a need and potential benefits for such a model to be established. Therefore, the authors propose the EFQM model as a method how to organize and systematize quality benchmarking efforts in industry.

The EFQM model has been used to assess the association's progress towards excellence. The research question was: how the heads of the associations understand the criteria of the EFQM model and the key driving factors of the quality. The EFQM model is a non-prescriptive model based on nine criteria, which can be used to assess an organisation's progress towards excellence. Five of these criteria are called "enabler" criteria, which means that they cover different aspects that enable an organisation to be successful: leadership, people, policy and strategy, partnerships and resources, and processes. The remaining four criteria are results criteria, which means that they cover different results that an organisation achieves: people's results, customer's results, society's results and key performance results. The criteria are also divided into sub-criteria, which contain a number of questions that should be used in an assessment of an organisation.[8]

The EFQM model served mainly as a checklist of different assessment criteria in this benchmarking exercise. Although benchmarking was focused on the enabler criteria, these criteria seemed to cover most of the important aspects of quality management. There were some difficulties, however, related to the definitions of the different sub-criteria. For example, there is not a clear distinction between policy and strategy in the model. There is also some overlapping between the process criteria and the rest of the enabler criteria. These problems may hopefully be solved in further developments of the EFQM model. In their presentation of the model, the

[8] *The EFQM Excellence Model: Public and Voluntary Sectors.* European Foundation for Quality Management, Brussels, 1999.

EFQM have ensured that "the model remains dynamic and in line with current management thinking".[9]

The EFQM model has been used to assess the insurance association's progress towards excellence. The research question was how they understand the criteria of the EFQM model and the key driving factors of the quality.

Result oriented

Insurers focus on the financial performance and quantitative result analyses. They used to benchmark criteria like profit, turnover and market share. Insurers consider this quantitative data as a reflection of performance quality.

Focus on the client

Focus on the client is essential in insurance industry. They understand that customers are their primary reason for being and strive to innovate and create value for them by understanding and anticipating their needs and expectations. Insurers conduct individual and mutual surveys on client satisfaction and opinion on a regular basis.

Insurers are using more tools for client opinion assessment and doing that on a regular basis.

Leadership

The head of an insurance association considers that in insurance industry leadership matters a lot. Several insurance companies are managed by charismatic leaders who shape the future and make it happen, acting as role models for its values. The ability of leaders to adapt, react and gain the commitment of all stakeholders in the turbulent economic environment is crucial to ensure the on-going success of the organisation. Leadership is acknowledged as a very important factor in achieving outstanding results.

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[9] Axelsson, R., Bihari-Axelsson, S., Steen, L. Quality management in health insurance: A case of third-party benchmarking. *International Journal of Public Sector Management.* 17 (3), 2004.

Management of processes

Insurers take management of the processes very seriously. Descriptions of processes are often formal and managed accordingly. Information and communication technologies are often used to manage and supervise processes. Insurers consider process management as a crucial activity for achieving high and unitary quality standards. Such an approach is safeguarding important opportunity for data gathering, and consequential quantitative measurement and performance evaluation.

Development of human resources

Insurers consider human resources as most valuable assets in their companies. It is important to value employees and create a culture of empowerment in organisations for the balanced achievement of organisational and personal goals. The challenge is to create a balance between the strategic needs of the organisation and the personal expectations of the people to gain their commitment and engagement.

Learning opportunity

P. Senge[10] represents approaches (theories and methods) for developing three core learning capabilities:

– fostering aspiration (personal mastery, shared vision);
– developing reflective conversation (mental models, dialogue);
– understanding complexity (system of thinking).

As acknowledged by the head of insurance association, constant learning is an integral part in insurance industry. Markets and products are changing quickly, and competition is tough. Learning, adopting and innovating are especially crucial in significantly shrinking insurance market (market decreased more than 30% in year 2009), affected heavily by economic crisis.

Partnership

The core assets are forms of social capital — relationships, networks, trust and co-operation. These values give them an access to physical and financial capital.

[10] Senge, M.P. *The Fifth Discipline. The art and the practice of the learning organization*. NY: Currency Doubleday, 2006.

Insurers directly, and through their association, seek, develop and maintain trusting relationships with various partners to ensure mutual success. These partnerships are formed with customers, distributors, supervising state institutions, reinsurers, other associations of the finance industry. It is a constant and long-lasting process devoted to mutual benefit and development.

Corporate and social responsibility

As acknowledged by the head of insurers' association, there are different approaches among association members, sometimes even controversial. Nevertheless, it is widely recognised that excellent organisations embed within their culture an ethical mind-set, clear values and the highest standards for organisational behaviour, all of which enable them to strive for economic, social and ecological sustainability.

Conclusion

The benchmarking process is commonly defined to include four parts, often undertaken continuously or through numerous iterations[11]:

1) analyze the position you are currently in;
2) find someone who is performing measurably better;
3) learn from them what they are doing to achieve that performance; and
4) adapt your practices and processes as a result of that learning and thus implement relevant changes that will effect superior performance in your organization.

There is no quality benchmarking conducted between members of associations. However, insurance association members are benchmarked by members of another insurance market association — insurance brokers association. Since brokers are participants of the same insurance market, and work in close cooperation with insurers, they claim to be experts in the field.

According to the research, it can be concluded that companies in Latvia's insurance industry have an understanding about quality benchmarking, but they do not conduct benchmarking according to any model

[11] Codling, S. *Benchmarking*. Brookfield, VT: Gower, 1998.

or methodology. The authors propose the EFQM model as a method how to organize and systematize quality benchmarking efforts in researched industry. Systematic design of the model helps evaluate companies in particular industry by quality criteria and reveal opportunities for mutual learning. The authors suggest to the associations in the industry to conduct educational explanatory work to convince companies to participate in benchmarking, to conduct comparison of quality criteria in order to ascertain which practices are achieving superior performance levels.

SALĪDZINOŠAIS NOVĒRTĒJUMS APDROŠINĀŠANAS NOZARES KVALITĀTES UZLABOŠANAI

Valdis Janovs, Ieva Zemīte

Kopsavilkums

Raksta mērķis ir noteikt apdrošināšanas nozares kvalitātes kritērijus, kurus nepieciešams izmantot Latvijas apdrošināšanas kompāniju salīdzinošajā novērtēšanā. Veicot pētījumu, autori izvērtē Latvijas Apdrošināšanas brokeru asociācijas izstrādātos vērtēšanas kritērijus, veic dziļās intervijas ar asociāciju vadītājiem, pielieto gadījumu izpētes metodi un analizē zinātnisko literatūru, lai noteiktu nozares novērtējumam piemērotākos kvalitātes kritērijus. Lai veiktu apdrošināšanas kompāniju kvalitātes salīdzinošo novērtēšanu atbilstoši Eiropas Kvalitātes Vadības Fonda izstrādātajiem kvalitātes kritērijiem, autori iesaka pielietot Eiropas Izcilības modeli. Analizējot pētījumā iegūto informāciju, secināts, ka apdrošināšanas kompānijas Latvijā apzinās nepieciešamību veikt salīdzinošo novērtēšanu, bet pašlaik nekādus modeļus vai metodes praksē nepielieto.

Autori iesaka apdrošināšanas asociāciju vadītājiem uzņemties iniciatīvu un rosināt veikt kvalitatīvu salīdzinošo novērtēšanu apdrošināšanas kompānijās, kas veicinās gan šo kompāniju, gan kopējo nozares attīstību Latvijā.

Atslēgvārdi: kvalitāte, salīdzinošais novērtējums, kvalitātes kritēriji, Eiropas Izcilības modelis.

IMPLEMENTATION OF QUALITY MANAGEMENT SYSTEMS ACCORDING TO ISO 9000 STANDARDS

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Abstract
Implementation of a quality management system, and its subsequent certification, is a voluntary process, supported by the organization's own strategy, motivations, policies and goals. To have more benefits from ISO 9000 certification, organizations may take into consideration that the design and implementation of an organization's quality management system is influenced by organization strategy, its size and organizational structure, its organizational environment, changes in that environment, and the risks associated with that environment. Literature indicates that organizations often lack flexibility in the design and implementation of quality management systems and show low utilization of employees' skills and knowledge. This article analyzes different patterns of implementation of quality management systems in different kinds of organizations and examines the associated performance outcomes. The article also discusses success factors for ISO 9000 certification benefits which can help to plan and implement quality management systems according to 9000 standard more successfully. The research shows that organizations with different quality management system implementation patterns have significantly different performance outcomes. A mature quality management system should consider success factors for quality management system implementation benefits from the early phases of their planning and designing processes. By requiring that all processes and procedures be documented, the ISO 9000 standard is undoubtedly commonly associated with control orientation organizations. There is an interesting relationship between reasons of ISO 9001 quality management system implementations and the corresponding performance outcomes. Very important is correct maintenance of a quality management system during the post-certification period. Quality auditors are in a powerful position to increase the value of certifications.

Keywords: management systems, ISO standards, quality management.

Introduction

In the present economic environment, more and more organizations implement quality management systems in an attempt of bringing supplementary advantages to their businesses. Many of quality management systems are based on ISO 9000 standards. Lithuanian businesses and organizations of all kinds are rapidly changing over the recent years. Organizations and companies are becoming increasingly dependent on each other and foreign partners in regard of business, prosperity and socioeconomic changes and environmental responsibility. There is an essential necessity for using International Standards in these changing conditions. Using international standards benefits manufacturers, service providers, users, consumers and regulators and supports sustainable development. Certification based on international standards provides confidence and facilitates access to world markets, so its popularity is relevant today. By looking at the number of ISO 9001 certificates per 1000 inhabitants, one can see that Italy is the leader (1.70), followed by Spain (1.11) and Australia (0.84), UK (0.76), Germany (0.48), Japan (0.42), France (0.40)[1].

Quality management systems according to ISO 9001 Standards have gained recognition in Lithuania, too. The numbers of certifications of ISO 9001 had substantially increased during the last few years. By the end of July 2010, ISO 9001 had approached 1.022 certifications across a wide range of organizations in the manufacturing, service and government areas. The number of ISO 9001 certificates per 1000 inhabitants in Lithuania reached 0.28.

Despite the numerical success of ISO 9000, a considerable deal of criticism of the certification exists, as it is not a risk-free undertaking. ISO 9000 certification does not guarantee improved performance due to high explicit and implicit costs associated with its implementation.[2] Lately, various studies have confirmed that ISO 9000 certification is too expensive, time consuming, resource-consuming, formalized and im-

[1] Sampaio, P., Saraiva, P., Guimaraes Rodrigues, A. ISO 9001 certification research: questions, answers and approaches. *International Journal of Quality and Reliability Management,* 26 (1), 2009, 35–58.

[2] Van der Wiele, T., Van Iwaarden, J. Perceptions about the ISO 9000:2000 Quality System Standard revision and its value: Dutch experience. *International Journal of Quality and Reliability Management,* 2005, 22 (2), 101–119.

personal and that the implementation costs are greater than the benefits derived.[3]

To obtain more benefits from ISO 9000 quality management system, organizations may take into consideration that the design and implementation of an organization's quality management system is influenced by the organization's strategy, its size and organizational structure, the organizational environment, changes in that environment, and the risks associated with that environment.

The purpose of this article is to analyze different patterns of implementation and maintenance of quality management systems in different kinds of organizations and discuss success factors that can help planning and implementation quality management systems according to 9000 standards more successfully.

The current research is based on qualitative methods of analysis and literature review of quality management practice.

The fit between strategic organization dimensions and the values of ISO 9000 standards

Some authors have analyzed the relationship between the values and requirements that underpin the ISO 9000 standard and important strategic and organizational dimensions. The control or creativity orientation is an important dimension that underpins many strategic management choices of organizations.[4] The 'control orientation organizations' is synonymous with the bureaucracy and centralization, has extensive departmentalization, high formalization, mainly downward communication, use the process oriented strategy, operational excellence is mainly marked by a highly disciplined and structured way of doing business. The ways of solving and sensing problems can be reduced to a set of explicit systems and instructions. The ISO 9000 standard, by requiring that all processes and procedures be documented, undoubtedly, is commonly associated with

[3] Bhuiyan, N., Alam, N. An investigation into issues related to the latest version of ISO 9000. *Total Quality Management,* 2005, 16 (2), 199–213; Casadesus, M., Karapetrovic, S. An empirical study of the benefits and costs of ISO 9000 compared to ISO 90001/2/3:1994. *Total Quality Management,* 2005, 16 (1), 105–120.

[4] Ghani, K.A., Jayabalan,V., Sugumar, M. Impact of advanced manufacturing technology on organizational structure. *Journal of High Technology Management Research*, 2002, 13 (2), 159–175.

control orientation organizations.[5] The Standard would enhance the control of the management system by documentation and formalization (manuals, procedures, instructions, protocols etc.) and systematization (hierarchical, orderliness, sequentially interacting processes).[6] This type of organizations gets benefits from ISO 9000 certification very easily.

On the opposite side of strategic spectrum there are creativity orientation organizations. This model of organization uses cross-hierarchical, flexible and functional teams, has law formalization, lateral, upward and downward communication system, almost continually search for market opportunities and accordingly institute or need to institute highly flexible structures and practices.[7] The normative values of institutionalization, documentation and systematization embodied in the ISO 9000 standard will militate against the need for structural fluidity to stimulate creativity and innovation. This type of organizations introduces some difficulties to implement quality management systems according to ISO 9001 standard.

Lee *et al*.[8] analyzed the implementation and performance outcomes of ISO 9000 in service organizations and showed that managers in organizations must realize that ISO 9000 is capable of generating a competitive advantage only if top management is fully committed to the programme implementation from a strategic perspective.

Abdullah and Ahmad[9] analyzed the fit between organizational structures, management orientation, knowledge orientation, and the values of ISO 9000 standard. They postulated that the more mechanistic and explicit knowledge based organizations will implement ISO standards easily while the more organic and tacit knowledge organizations will experience tensions arising from lack of fit. Hence, conceptually, the standard will work best in more mechanistic and routine knowledge based settings. Creativity-oriented strategies will find the standard quite dysfunctional

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5 Molina, L.M., Montes, F.J.L., Fuentes, D.M.F. TQM and ISO 9000 effects on knowledge transferability and knowledge transfer. *Total Quality Management*, 2004, 15 (7), 1001–1115.

6 Anwar, S.A., Jabnoun, N. The development of a contingency model relating national culture to total quality management. International Journal of Management, 2006, 23 (2), 272–280.

7 Donaldson, L. *The Contingency Theory of Organizations.* Thousand Oaks, CA: Sage Publications, 2001.

8 Lee, P.K.C., To, V.M., Yu, B.T.W. The implementation and performance outcomes of ISO 9000 in service organizations: an empirical taxonomy. *International Journal of Quality and Reliability Management,* 2009, 26 (7), 646–662.

9 Abdullah, H.S., Ahmad, J. The fit between organizational structure, management orientation, knowledge orientation, and the values of ISO 9000 standard. *International Journal of Quality and Reliability Management,* 2009, 26 (8), 744–760.

while control and operation-based strategies are likely to benefit most from the certification.

Some authors classified firms into three categories of strategic orientation, namely, cost leadership, market differentiation and focus strategy and concluded that the strategic orientation is a moderating factor influencing the relationship between registration to a quality scheme such as the ISO 9000 scheme and the firm's financial performance.[10]

The latest version of ISO 9000 indicates that the standard is constituted by eight principles.[11] Thus, it is very possible that certified organizations may not implement these principles in a similar extent and may exhibit varying patterns of implementation by paying extra attention to some principles that are in line with their corporate strategies. In this connection it can be stated that managers of organizations should study issues on developing ISO 9000 implementation strategy. With well developed ISO 9000 strategy, the implementation of standard can be better aligned with the environment of firms so as to accomplish competitive advantages and optimal performance.

The relationship between organizations' certification motivations and the corresponding results

A strong relationship between companies' certification motivations and the corresponding results was revealed. When firms simply react to external pressures for getting certified, they may consider ISO 9000 certification as a prime goal in itself, adopt a minimalist approach to achieving it and thus achieve limited internal performance improvements.[12] Rodriguez-Escobar *et al.*[13] analyzed the dissatisfaction that ISO 9000 created in small companies. For small companies, certification is only a guarantee that a company is using a quality management system according to a list requisites and procedures. However, the benefits that have been attributed to ISO 9000 have

[10] Dimara, E., Sakuras, D., Tsecouras, K., Goutsos, S. Strategic orientation and financial performance of firms implementing ISO 9000. *International Journal of Quality and Reliability Management,* 2004, 21 (1), 72–89.

[11] EN ISO 9000:2005 E. *Quality Management System — Fundamentals and Vocabulary.* Brussels: CEN Management Centre, 2005.

[12] Quazi, H., Jakobs, R. Impact of ISO 9000 certification on training and development activities. *International Journal of Quality and Reliability Management,* 2004, 21 (5), 497–517.

[13] Rodriguez-Escobar, J.A., Gonzalez-Benito, J., Martinez-Lorente, A.R. An analysis of degree of small companies' dissatisfaction with ISO 9000 certification. *Total Quality Management & Business Excellence,* 2006, 17 (4), 507–521.

often been overstated, so that companies tend to generate high expectations that are difficult to realize completely. As an external motivation factor, ISO 9001 certification is frequently used mostly as a marketing tool.[14] Some companies admit that without ISO 9000 certification they would not have achieved a significant number of contracts.[15]

Organizations that view certification as an opportunity to improve internal processes and systems, rather than simply to hang a certificate on the wall, will get broader positive results from ISO 9000 certification.[16] Swedish investigators Lundmark and Westelius[17] revealed that the strongest, most obvious and most valued effects of the ISO 9000 standards are clearer and more apparent working procedures and responsibilities. The most apparent problem is bureaucracy, which can lead to reduced flexibility.

Fotopulos and Psomas[18] investigated ISO 9001:2000 implementations in the Greek food industry and showed that the major reasons for certification, unlike benefits, concern firstly the internal business environment and then the external one, and no particular difficulties were observed during the standard implementation. From the overall findings of the study the authors concluded that strong internal motivation or willingness to improve a company's quality helps to establish a quality managements system that leads to external benefits, such as improvement of the company's position in the market, as well as to internal benefits. Ruževičius *et al*.[19] obtained similar results. Their research revealed that the implementation of a quality management system mostly results in benefits of an intangible nature that are internal to a given company. The key finding is that although the main reasons to start implementing the quality system are expectations of external advantages, the implementation results mostly in the increase of internal benefits such as improvements in the definition of responsibilities

[14] Poksinska, B., Dahlgaard, J.J., Eklund, J.A.E. From compliance to value-added auditing-experiences from Swedish ISO 9001:2000 certified organizations. *Total Quality Management & Business Excellence,* 2006, 17 (7), 879–892.

[15] Douglas, A., Coleman, S., Oddy, R. The case for ISO 9000. *The Total Quality Management Magazine,* 2003, 15 (5), 316–324.

[16] Lopis, J., Tari, J. The importance of internal aspects in quality improvement. *International Journal of Quality and Reliability Management,* 2003, 20 (3), 304–324.

[17] Lundmark, E., Westelius, A. Effects of quality management according to ISO 9000: A Swedish study of the transit to ISO 9000:2000. *Total Quality Management & Business Excellence,* 2006, 17 (8), 1021–1042.

[18] Fotopulos, Ch.V., Psomas, E.L. ISO 9001:2000 implementation in the Greek food sector. *TQM Journal,* 2010, 22 (2), 129–142.

[19] Ruževičius, J., Adomaitienė, R., Sirvidaitė, J. Motivation and efficiency of quality management systems implementation: a study of Lithuanian organizations. *Total Quality Management & Business Excellence,* 2004, 15 (2), 173–189.

and obligations of the employees, a decrease in non-conformism, better communication among the employees, and increased efficiency.

White *et al*.[20] examined the rationale for establishing a quality management system by obtaining ISO 9001:2000 certifications in not-for-profit small to medium enterprises in the UK and showed that through a correct development of the quality management system companies were able to generate bottom-line savings and business performance enhancement. The study identifies the process by which the organization prepares for certification and shows that when the quality management system is developed as part of a coherent initiative, lasting performance improvements are achieved.

The value of quality management systems according to the 9001 standard depends on the way they are implemented. The performance of quality management systems can improve if companies diligently adopt the new standard, rather than attempting to incorporate it into existing quality management systems.[21] Leadership style also influences performance. Leadership styles that support the implementation of ISO 9000:2000 are empowerment and contingent reward.[22] Lin and Wu[23] suggest a knowledge creating model for ISO 9001:2000 that an organization can use to gain the knowledge needed to enhance quality and performance. It also provides a ready framework for ordering and structuring an organization's knowledge.

The importance of continuous improvement of the quality management system during the post-certification period

The continuous improvement stage is crucial during the post-certification period, it is actually the phase where the maintenance of the quality system is carried out. This phase is important if the organization wants to continuously improve and reap long-term benefits from having a quality management system in place.[24] There is evidence in the literature

[20] White, G.R.T., Samson, P., Rowland-Jones, R., Thomas, A.J. The implementation of a quality management system in the not-for-profit sector. *TQM Journal,* 2009, 21 (3), 273–283.
[21] Michaela, M.C., Lorente, M., Rafael, A. ISO 9000:2000: Key to quality? An exploratory study. *Quality Management Journal,* 2007, 14 (1), 7–18.
[22] Naceur, J., Abdullah, A.H. Leadership styles supporting ISO 9000:2000. *Quality Management Journal,* 2005, 12 (1), 21–29.
[23] Lin, C., Wu, C. A knowledge creation model for ISO 9001:2000. *Total Quality Management & Business Excellence,* 2005, 16 (5), 657–670.
[24] Nanda, V. *Quality Management System Handbook for Product Development Companies.* Boca Raton, FL: CRC Press, 2005.

that ISO 9001 quality management systems perceived benefits do decries over time.[25] They stated that there was no evidence to state that certified organizations progressively experience more beneficial outcomes from ISO 9001 certification. In fact, results have indicated that, on the other hand, organizations appear to experience declining benefits over time. These investigations show how important is correct maintenance of quality management system during the post-certification period. During this period, emphasis is placed on activities such as the management reviews, corrective and preventive actions, internal and external audits, collection and analysis of data, measurement of performance, and continuous improvement. Ab Wahid and Corner[26] investigated critical success factors and problems in ISO 9000 quality management systems maintenance in service organization. The results showed that people who comprise top management, other employees, the reward system, team work, continuous improvement, understanding of the ISO 9000 itself, and measurement of performance and communication are all critical success factors for ISO 9000 maintenance and for successful results of quality management system. Continuous improvement of processes, people and systems are also very important factors for a sustainable quality management system. It is useful to apply other methods and tools in achieving the demanded quality. Miguel and Dias[27] propose a framework for combining ISO 9001 requirements with quality function deployment. White *et al*.[28] suggest using process mapping for analysis and development of processes in not-for-profit organizations.

Terziovski and Power[29] analyzed the impact of continuous improvement approach to ISO 9000 quality management systems benefits, and several important conclusions have been drawn from the study. The key finding is that organizations that seek ISO 9000 certification with a proactive approach driven by a continuous improvement strategy are more likely to derive significant benefits as a result. They also found that organizations can effectively use ISO 9000 quality management system as a means of

[25] Casadesus, M., Karapetrovic, S. An empirical study of the benefits and costs of ISO 9000 compared to ISO 90001/2/3:1994. *Total Quality Management,* 2005, 16 (1), 105–120.
[26] Ab Wahid, R., Corner, J. Critical success factors and problems in ISO 9000 maintenance. *International Journal of Quality and Reliability Management,* 2009, 26 (9), 881–893.
[27] Miguel, P.A., Dias, J.C.S. A proposed framework for combining ISO 9001 quality system and quality function deployment. *TQM Journal,* 2009, 21 (6), 589–606.
[28] White, G.R.T., Samson, P., Rowland-Jones, R., Thomas, A.J. The implementation of a quality management system in the not-for-profit sector. *TQM Journal,* 2009, 21 (3), 273–283.
[29] Terziovski, M., Power, D. Increasing ISO 9000 certification benefits: a continuous improvement approach. *International Journal of Quality and Reliability Management,* 2007, 24 (2), 141–163.

promoting and facilitating quality culture, where the quality auditor is an important player in the process. The strongest positive association was found between a continuous improvement strategy and improved business performance.

Internal and external quality audits help to improve quality management systems and increase the motivation for quality work. Quality system maintenance stage internal quality audits must be utilized not merely to verify adherence to the defined quality management system but also to explore opportunities to continuous improvement. The audit and inspection processes that the certification entails help further the homogenization and standardization of organizational processes.[30] Certified organizations want auditors not only to issue a certificate, but also to share their own experiences and give suggestion for improvements. The OEMs require auditors of QS-9000 to identify opportunities for improvement in their audit report. This adds value and benefits the auditee's customers.[31] There exist great differences regarding the required conditions for certification. The differences primarily depend on the auditors, but also on the certification bodies.

Quality auditors are in a powerful position to increase the ability to unveil conformity and thus increase the value of certifications. The main reason for conducting audits is to obtain factual input for management decisions but the vast majority of audits only produce data for use in granting a certificate, for improving documentation or for enforcing conformity. Most auditors have been exposed to conformity auditing where the sole objective is to establish if a specific requirement has been met. They invariably do not provide data for making managerial decisions concerned with staff development, technology, growth, product and processes because these decisions are based on current performance and often all the audit reveals is current conformity, not current performance. There are a number of approaches generally used in conducting internal and external quality system audits and not all of them are successful. A more effective is processes based auditing. The auditor seeks to establish the results the organization desires to achieve, determines that these results take into account the needs of the customers and the interested parties and then examines the way that processes are managed to achieve these results and improve performance. By doing so the auditor touches every requirement

[30] Power, M. Evaluating the audit explosion. *Law and Policy,* 2003, 25 (3), 185–202.
[31] Reid, R.D. Tips for automotive auditors. *Quality Progress,* 2004, 37 (5), 72–75.

in ISO 9001 standard. If evidence is revealed the organization is satisfying the customers and other interested parties and is applying the eight quality management principles in the way it runs activities there will be no sound basis for report nonconformities.[32]

Dereli and Baykasoglu[33] considered that quality audits bring value-added in the attempt of increasing process efficiency and effectiveness. Their studies showed that the ISO 9000 certification process is a cybernetic system where the feedback part is quality auditing and an effective auditing can therefore improve and accelerate the certification process. They regard quality auditing as a point of departure for creating innovation within organization.

Conclusions

The quality management systems according to ISO 9001 Standards have gained recognition in Lithuania. The numbers of certifications of ISO 9001 had substantially increased in the last few years. By the end of July 2010, ISO 9001 had approached 1.022 certifications across a wide range of organizations in the manufacturing, service and government areas. The number of ISO 9001 certificates per 1000 inhabitants in Lithuania reached 0.28. Despite the numerical success of ISO 9000, a great deal of criticism of the certification exists, as it is not a risk-free undertaking. Literature indicates that organizations often lack flexibility in the design and implementation of quality management systems and show low utilization of employees' skills and knowledge.

A strong interdependence between the companies' certification motivation factors and the results obtained exists. ISO 9001 certification is frequently used as a marketing tool, while customer pressure is also one of the main motivation factors. The major reasons for certification, unlike benefits, concern firstly the internal and then the external business environment. Organizations that see certification as an opportunity to improve internal processes and systems will get broader positive results from ISO 9000 certification.

[32] Kaziliūnas, A. Problems of auditing using quality management systems for sustainable development of organizations. *Technological and Economic Development of Economy: Baltic Journal on Sustainability,* 2008, 14 (1), 64–75.

[33] Dereli, T., Baykasoglu, A. A team-oriented cybernetic approach for value added quality auditing. *Cybernetics and Systems,* 2006, 37 (4), 311–327.

ISO 9000 certification can deliver business benefits, but managers of organizations should study issues on developing an ISO 9000 implementation strategy. A mature quality management system should consider critical success factors for ISO 9000 certification benefits from the early phases of their planning and designing processes. It should be realized that the more mechanistic and explicit knowledge-based organizations will enjoy ISO certification, the more organic and tacit knowledge organizations will experience tensions arising from a lack of fit. A critical point in this effort is the commitment of top management to set priorities in appropriate resource allocation during the design and implementations of an ISO 9000 quality system.

Continuous improvement factors are critical during the post-certification period. Those factors are important if an organization wants to continuously improve and reap long term benefits from having a quality management system in place. Continuous improvement of processes, people and systems, the reward system, team work, measurement of performance and communication are all critical success factors for a sustainable quality management system and for successful results of ISO 9000 certification.

Quality auditors are in a powerful position to increase the value of certifications. Certification audits help to improve quality management systems and increase the motivation for quality work. Certified organizations want auditors not only to issue a certificate, but also to share their own experiences and give suggestion for improvements. A successful audit may not only produce data to use in obtaining a certificate, for improving documentation or for enforcing conformity, but also provide data for making managerial decisions concerned with staff development, technology, growth, product and processes because these decisions are based on current performance.

TARPTAUTINIUS ISO 9000 STANDARTUS ATITINKANČIŲ KOKYBĖS VADYBOS SISTEMŲ DIEGIMAS ORGANIZACIJOSE

Adolfas Kaziliūnas

Santrauka

Lietuvai įstojus į Europos Sąjungą pagyvėjo bendradarbiavimas tarp Lietuvos įmonių ir organizacijų ir kitų Europos šalių įmonių bei organizacijų. Šiam bendradarbiavimui labai padeda tarptautinių standartų panaudojimas, nes jie padeda vienodai suprasti ir suderinti daugelį kriterijų. Tarptautiniai kokybės vadybos sistemų standartai ISO 9000 randa vis platesni pritaikymą Lietuvoje. Iki 2010 metų liepos pabaigos pagal ISO 9001 standartą privačiame ir viešajame sektoriuose buvo sertifikuota 1022 organizacijos. Nežiūrint ISO 9000 standartų populiarumo pasitaiko nemažai atvejų, kai kokybės vadybos sistemos (KVS) diegimas ir sertifikavimas neatneša organizacijai laukiamos naudos. Remiantis literatūros šaltiniais straipsnyje analizuojamas KVS, atitinkančių ISO 9000 serijos standartus, diegimas įvairaus tipo organizacijose ir šių sistemų tiekiama nauda. Tyrimas rodo, kad (KVS) veiksmingumas ir teikiama nauda labai priklauso nuo sistemos diegimo planavimo, diegimo būdo bei tinkamos priežiūros po sistemos įdiegimo. Pirmiausia būtina įvertinti strateginius faktorius, susijusius su organizacijos veiklos pobūdžiu. Ypač atidžiai šiuos faktorius turi įvertinti organizacijos, pasižyminčios savo veiklos lankstumu ir kūrybiškumu. Pastebimas aiškus sąryšis tarp kokybės sistemos diegimo motyvuojančių faktorių ir gaunamų rezultatų. Geresni rezultatai gaunami, kai kokybės sistema diegiama remiantis vidiniais motyvuojančiais faktoriais, o ne dėl išorės spaudimo, ar siekio panaudoti kokybės sistemą kaip rinkodaros priemonę. Svarbu yra toliau tobulinti kokybės sistemą ir gavus ISO 9000 sertifikatą. Straipsnyje pateikiami nuolatinio procesų ir sistemos gerinimo sėkmės faktoriai, padedantys pastoviai gauti gerus rezultatus po ISO 9000 kokybės vadybos sistemos sertifikavimo. Nemažą įtaką kokybės sistemų teikiamai naudai turi ir tinkamai pravedami auditai.

Raktiniai žodžiai: vadybos sistemą, ISO sertifikatą, kokybės vadybos.

THE RECENT TRENDS OF LABOUR FLEXIBILITY IN THE BALTIC STATES

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Abstract
The main goal of this paper is to examine the recent tendencies of labour flexibility in the Baltic States. There were introduced labour flexibility forms, distinguished the main factors influencing the implementation of flexible working arrangements, discussed the results of the survey on attitudes towards the flexibility of work time organization and the European Community strategic goals towards the increase of the labour flexibility. The data used in the comparative analysis of the labour flexibility forms existing in the Baltic States is taken mostly from the newest available European statistics and from national statistics agencies of the Baltic States. Where available, comparisons with the EU-27 means are made. The findings provide insight into the extent to which the labour flexibility practices are implemented in the Baltic States and allow concluding that the gap between the EU-27 averages on the flexibility of the working time is closing in the latest years as the result of the companies' response to the economic downturn and often it is not the voluntary choice of the employee. The flexibility of the organization of the working time shows also a positive trend in the Baltic States during the last few years.

Keywords: labour flexibility, Baltic States, part-time work, employment strategy, overtime, atypical hours.

Introduction

Demand for labour flexibility — the ability of employers to readily adjust the number of employees and their work hours — has increased over the past two decades as just-in-time business strategies have permeated the economy. The traditional employment model is replaced by flexible labour

arrangements. The non-traditional forms of work organization make the companies more flexible, better adjusting to the changing situation in the market and as response to the economical crisis.

In the EC Communication KOM (2011) 11 final[1] it is emphasised that in many Member States there are still insufficient or weak labour market transitions, the labour market is characterised by rigidity and relatively low turnover to meet changing demand patterns. Partly this is caused by the rigidity of working (time) arrangements, i.e. insufficient internal flexibility. Therefore, it is topical to evaluate the situation in the Baltic States, concerning the labour flexibility practices, and to find out, which labour flexibility forms are still not sufficiently introduced.

Labour flexibility forms

Flexible work arrangements can be classified differently, there is no uniform classification. Summarizing various sources (Stavrou, 2005; Žičkienė, Koverienė, 2008; George, 2004; Hohl, 1996, Bush,1994, etc.)[2], we can distinguish: 1) *flexibility in the working time*: part-time work; annualized hours; staggered work hours; flexible time (flexitime); compressed hours; 2) *flexibility in the working time organization*: temporary employment; fixed term contracts; work in atypical hours: weekend work; shift work; overtime; 3) *flexibility of the working place*: home working; work workplace share; home-office working; teleworking; 4) *other flexible forms of working*: on-call work; gradual retirement; leaves and sabbaticals; work rent, etc.

C. Atkinson, L. Hall (2009), L. Golden (2009) distinguish *formal* and *informal* flexibility. Formal flexibility is determined in the job contract, organizations' statute. Informal flexibility is voluntary innitiative of the

[1] Communication KOM. 11 final. Annual Growth Survey: advancing the EU's comprehensive response to the crisis. 2011. Annex 3 "Draft joint employment report" (Brussels, 12.1.2011) http://www.eu-oplysningen.dk/upload/application/pdf/824986d5/20110011.pdf.

[2] Stavrou, E.T. Flexible work bundles and organizational competitiveness: a cross-national study of the European work context. Cyprus, 2005. http://www3.interscience.wiley.com/cgibin/fulltext/112141271/PDFSTART.
George, R. Flexible Working in the IT Industry: Long-hours cultures and work life balance at the margins? London, 2004. http://www.bis.gov.uk/files/file11416.pdf.
Bush, K. Flexible Work Options. 1994. http://www.context.org/ICLIB/IC37/Bush1.htm.
Hohl, K.L. The Effects of Flexible Work Arrangements. Chicago, 1996. http://web.ebscohost.com.

employers to increase the job satisfaction of the employees. Informal flexibility is widely spread in Lithuania, it is confirmed by Reingardė and Tereškinas research (2006, 82)[3]. Informal flexibility is convenient for the employees as it helps to reconcillate the family and work interests, by the same getting the same amount of the salary.

The factors influencing the implementation of flexible working arrangements

The following structural factors are distinguished: *work sector* (private or public, in private sector flexibility is higher); *the sector of the industry* (work arrangements are more flexible in services' sector), *the nature of work* and *profession*, as well as *organizational culture*. Also, individual factors can be distinguished, such as *personal skills*, *education* and *experience*[4]. The surveys are showing that more often the flexible working arrangements are applied to the specialists and managers, or only temporarily, during some seasons or as experimental model (Golden, 2001). J. Plantenga, Ch. Remery (2010) also indicate that flexible work time organization schedules are more often applied to relatively more qualified employees (managers, professionals, specialists), employees working in public administration and business sectors; in larger companies (above 500 employees) (however, this difference is not significant). Other findings of surveys made confirm that more women than men would like to choose flexible work forms[5].

The attitudes of the inhabitants towards the flexibility of work time organization

The work organization flexibility can be a positive means helping to reconcile work-family issues for the employees, however, it is important to know the preferences of the employees concerning it. The Lithuanian

[3] Reingardė J., Tereškinas A. Darbo ir šeimos gyvenimo suderinimas Lietuvoje bei lyčių lygybė: iššūkiai ir galimybės. In: Reingardė J. (sud.) *(Ne)apmokamas darbas: šeimai palanki darbo aplinka ir lyčių lygybė Europoje*. Vilnius: Eugrimas, 2006, pp. 47–102

[4] Torpey E.M. Adjusting the when and where of your job. *Occupational Outlook Quarterly*, 2007, 14–27. http://www.bls.gov/opub/ooq/2007/summer/art02.pdf.

[5] Galinsky, E., Bond, J., Hill, E.J. *A Status Report on Workplace Flexibility*. NY: Families and Work Institute, 2004.

scientists S. Žičkienė and A. Koverienė made a survey in 2008[6], in which they were asking 561 inhabitants of Šiauliai region, if they wanted a more flexible schedule of work. Their findings show that 68 per cent of the unemployed and 41 per cent of the employed persons would like to work part-time. The same research revealed the dependence of choice of flexible work model by age: young people would like both to participate in the organization's activity and work at home, motivating it by the possibility to reconciliate work and studies, work and family life. Older people are less mobile and work in the home environment would be more convenient for them, however, it would isolate them from the collective, would decrease the number of social relations, which has large impact on the psychological state and work quality in older age. Respondents also thought that working part-time, would allow them to dedicate more time to their families, hobbies, education, daily chores. 36 per cent of the respondents were willing to work shorter weeks, 42 per cent would wish to work part time or all time at home hoping that this would make it possible to plan their activities more efficiently. The main reason which would have an impact on refusing from flexible work schedule is lower salary. Also, respondents found the compressed hours' work schedule as not convenient. These results shows preferences but not the real situation existing in the labor market. According to the survey made in Finland[7] in 2002, 42 percent of 24–49 years employed respondents were choosing part-time work, because they could not find full-time job, but the young people aged 15–24 chose this form of work organization due to the possibility to reconcile work with studies. The newest data shows that after 2008, involuntary part-time work as a response to crisis remarkably increased in whole Europe.[8]

The EU goals concerning work flexibility

Increasing the flexibility in working time arrangements is an important element in EU employment strategies. Already in 1998, the EU invited their social partners, by means of the EU Guidelines for Member States

[6] Žičkienė, S., Koverienė, A. Lankstūs darbo organizavimo modeliai: teoriniai ir praktiniai aspektai. *Ekonomika ir vadyba: aktualijos ir perspektyvos*, 2008, Nr. 3 (12), 405–419.

[7] Kauhanen, M. Part-time and involuntary part-time work in the private service sector in Finland. *Economical and Industrial Democracy,* Sage publications, 2008, 29, 217. .

[8] *European Economic Statistics*. 2010 edition. Eurostat statistical books. Luxembourg: Office for Official Publications of the European Communities, 2011.

Employment Policies, to negotiate and make agreements "to modernize organization of work, including flexible working arrangements". European Employment Strategy (Employment guideline 21) accentuates the needs to balance the flexibility and social security. In the part of the Europe 2020 Strategy "An Agenda for new skills and jobs' in order to make Europe's labour markets function better, the Commission proposes some concrete actions that will help to improve flexicurity in the labour markets[9]. In the Communication KOM (2011) 11 final[10], evaluating the present situation in the EU it is asserted that in many labour markets the large differences in relative levels of employment protection legislation result in a division between well-protected workers with permanent contracts and less-protected workers with atypical, mostly temporary, contracts. The impact of the crisis has highlighted this issue: job losses for workers in temporary work were almost four times higher than for those in permanent employment ((KOM 2011) 11 final). In the recommendations, it is emphasised that it is necessary to increase internal flexibility by adjusting of work organization, setting up the working time; also, it is necessary to support flexible working arrangements (flexitime, teleworking) for those returning from parental leave. It also could ease the reconciliation of work and private life and contribute to women's employment. By the same it is advised to extend full-time day-care facilities, especially for children under 3-years-old and to shorten parental leave schemes for the countries in which it exceeds 12 months.

Summarizing, we can state that at present flexible work schemes are considered as important political means, which should help the employers to adjust to changing economic circumstances, and the employees — to balance work-family life by working part-time or by flexible work schedules. The European Commission also is adjusting to the modern forms of labour organization. For example, on 18 December 2009, it has issued the Decision C(2009) 10224, "concerning the implementation of teleworking in Commission departments from 2010 to 2015", where it decides to implement a teleworking scheme into its departments.[11]

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[9] Agenda for new skils and jobs. http://ec.europa.eu/social/main.jsp?catId=958&langId=en.

[10] Communication KOM (2011) 11 final. Annual Growth Survey: advancing the EU's comprehensive response to the crisis. *Op. cit.*

[11] Commission Decision of 18 Dec. 2009 C(2009) 10224, "concerning the implementation of teleworking in Commission departments from 2010 to 2015" http://ec.europa.eu/civil_service/docs/equal_opp/teleworking_decision_en.pdf.

Flexible working time arrangements in the Baltic countries

The best accessible source for comparative analysis of the Baltic countries is the Eurostat statistical data, therefore, the further analysis will focus on the work flexibility, basing on following available criteria: flexibility in the length of the working time, and flexibility in the organization of the working time.

Flexibility in the length of the working time

We will analyse data on the following flexible or atypical working time arrangements: *part-time work, overtime work*, and *atypical working hours.*

Part-time work

The research made by Plantega and Remery[12] shows that concerning the flexibility of work time the least flexible countries in 2004–2007 were Portugal, *Lithuania*, Cyprus and Hungary.

However, it should be noticed, that not always the flexible working time is the best option: as concerns part-time work, it is noticed that it is mostly chosen by women. Such types of job require lower qualification and responsibility, and are also less paid, which may lead to higher gender inequality. From the other side, the findings of Burchell *et al.*[13], based on data from the European working conditions survey, shows that the volume of working hours is the main dimension of working time, which determines work-life balance. As Burchell *et al*. conclude, "the higher the number of hours worked, the more likely men and women are to report that their working hours are incompatible with family and other commitments".

In the period of 2002–2007, the amount of part-time workers in all Baltic States was either decreasing or stable (see Table 1)[14] while in the EU-27 it was slighty increasing. In the following years, as the numbers for 2009 show, the gap between the Baltic States and the EU-27 was closing.

[12] Plantenga, J., Remery, Ch. *Flexible working time arrangements and gender equality. A comparative review of 30 European countries.* European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G1. Luxembourg: Publications Office of the European Union, 2010.

[13] Burchell, B., Fagan, C., O'Brien, C., Smith, M. *Working conditions in the European Union: The gender perspective*. Luxembourg: Office for Official Publications of the European Communities, 2007.

[14] Eurostat. Employment (main characteristics and rates). Annual averages [lfsi_emp_a] http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsi_emp_a&lang=en.

According to the data of Eurostat, in Latvia part-time work was more common for the young people who are just entering labour force, both for men and for women. In Lithuania part-time employees are most common between the youngest and oldest age groups. However, in Estonia part-time employment is most common among older female employees.[15] This leads to the conclusion that in Estonia part-time work is chosen not like alternative, which allows to combine work and family life.

Table 1. Part-time employment in 2009 and change in part-time employment before and after the crisis

	Part-time in 2009 (% employees)	Part-time growth 2009* (pp)	Average PT growth 2002–2007
EU–27	18.8	0.6	0.3
Estonia	10.5	3.3	0.0
Latvia	8.9	2.6	–0.7
Lithuania	8.3	1.6	–0.2

Source: Eurostat. Employment (main characteristics and rates) – Annual averages [lfsi_emp_a]

* Based on comparison of PT employment in 2007 and 2009

In 2009, 18.8 % of all employees in EU-27 worked part-time (Table 1). The share of such employees has increased in 0.6 pp since 2007. But if to compare this data with the previous period of 2002–2007, the share of part-time employees was increasing about 0.3 p.p. every year. In 2009, a sharp increase in part- time work is noticeable in Estonia and Latvia (3.3 and 2.6 pp correspondingly, comparing with 2008), in Lithuania the increase is not so large (1.6 pp). This may indicate that some jobs were transformed from full-time work to part-time work, striving to maintain more work places and avoid of loosing of specialists during the period of crisis. Statistical data on 2008–2009 also shows that in Latvia part-time works considerably increased among both men and women; in Lithuania the amount of male part-timers, and in Estonia — part of female part-timers increases (see Table 2).

[15] *European Economic Statistics*. 2010 edition. Luxembourg: Office for Official Publications of the European Communities, 2011.

Table 2. Men and women in part-time employment 2005–2009 (% of all employees)

	2009		2008		2007		2006		2005	
	Men	Women	M	W	M	W	M	W	M	W
EU–27	8.3	31.5	7.8	31.1	7.7	31.2	7.7	31.2	7.4	30.9
Estonia	7.0	13.8	7.1	10.4	4.3	12.1	4.3	11.3	4.9	10.6
Latvia	7.5	10.2	4.5	8.1	4.9	8	4.7	8.3	6.3	10.4
Lithuania	7.0	9.5	4.9	8.6	7.0	10.2	7.9	12	5.1	9.1

Source: Eurostat. Employment (main characteristics and rates) Annual averages [lfsi_emp_a]

Comparison with the other European countries shows that PT rises faster for the male population, on short as well as on a longer term: compared with 2005, the share for men rose 0.9%, for women this only is 0.6%. If we compare 2008 with 2009, the share for men rises 0.5%, for woman only 0.4%. An explanation could be found in the economical crisis: if a company decides to deal with this crisis by reducing the number of full-time contracts and replacing them with part-time contracts, e.g. by introducing a four-day week for the whole company, the male population will be more affected than the female because more women as men are already working part-time.

It is important to notice that part-time is not always ***voluntary***. Eurostat data of 2008 year shows that the tendencies are changing: after few years of generalized reduction of involuntary part-time, the trend ends in 2007 — it turns upwards (European Economic Statistics 2010). One of the most affected countries is Latvia: 20.9 per cent of part-time workers aspired to a full-time job in 2007; in 2008, 27.2 per cent worked part-time involuntary; in 2009 — already 43 per cent. In 2009, only 10.6 percent were choosing voluntary part-time work.[16] Statistics Estonia[17] data shows, that in 2009, 10.3 per cent of men and 26.5 per cent of women wanted part-time work, however, in part-time work there were even less employees of both genders. This tendency is also to be explained by the economical crisis. Companies have to reduce their workforce as production

[16] Statistics Latvia. NB11. Employed Population By Full-Time And Part-Time Work And Sex. http://data.csb.gov.lv/DATABASEEN/Iedzsoc/Annual%20statistical%20data/05.%20Employment%20and%20unemployment/05.%20Employment%20and%20unemployment.asp.

[17] Statistics Estonia. http://pub.stat.ee/px-web.2001/I_Databas/Social_life/19Worklife_quality/12Working_time/12Working_time.asp. WQU 05.

diminishes. Jobs are reduced from FT to PT, not always by choice of the employee or jobseeker.

Average working hours and overtime

In Directive 2003/88/EC, the EU provides a basic legal framework concerning the length of working time.[18] According to this directive, the average working time for each seven-day period, including overtime, should not exceed 48 hours. In 2009, most countries have set the upper limit for weekly working time at 40 hours. Agreed normal working hours per week in the Baltic countries is 40 (EU-27 average is 38.7 hours).[19]

Basing on European economic statistics, in the EU-27 countries in 2009, the full-time employees were working 40.6 weekly hours on average, there is a slight decrease from 41 hours in 2008; self-employed full-timers were working 46.2 hours on average in 2009 and 46.7 hours in 2008; other full-timers were working 39.5 weekly hours in 2009 and 39.8 hours in 2008. The decrease in the length of working time is smaller among the part-timers: it was shortened from 20 weekly hours in 2008 to 19.9 hours in 2009. All those estimates are actual hours worked in the main job (European Economic Statistics 2010).

In the EU, in 2009, the longest actual weekly hours worked by full-time employees in their main jobs are found in Romania (41.2 hours). When comparing the data for the fourth quarter of 2009 with those for the fourth quarter of 2008, a general fall in the actual weekly hours worked by full-time employees is noticable. Average actual hours fell in 21 of the 28 countries. Averages across each of the EU27, EU15 and NMS groups of countries all fell by 0.3 hours. In Lithuania it fell from 40.2 to 39.7 actual hours (0.5 hours), in other Baltic countries — more radically: in Latvia from 41.7 to 39.9 (1.8 hours), in Estonia from 41.1 to 39.1 (1 hour).[20] This downward tendency meant that the average gap between agreed and actual hours narrowed between 2008 and 2009. A possible explanation may be the widespread use of short-time working in many countries in 2009 in response to the economic downturn.

[18] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32003L0088&model=guichett.

[19] European industrial relations observatory on-line (EIRO). Working time developments-2009. http://www.eurofound.europa.eu/eiro/studies/tn0903039s/tn0903039s.htm.

[20] Based on data comparison: EIRO Working time-2008 and Working time developments-2009. http://www.eurofound.europa.eu/.

Comparing by gender, in 2009, actual weekly hours worked by male full-time employees in their main jobs exceeded those of their female counterparts in all countries considered, by an average of 2.1 hours across the EU27. Comparing Baltic countries, men's actual weekly hours exceeded women's by less than an hour in Latvia and Lithuania.[21]

Table 3. Actual hours worked, annual

	2009	2008	2007	2006	2005
European Union (27 countries)	368 993 323	380 997 997	377 827 167	371 054 054	365 791 805
Estonia	1 060 155	1 265 069	1 282 286	1 274 203	1 214 698
Latvia	1 899 158	2 264 128	2 343 300	2 291 050	2 203 727
Lithuania	2 636 244	2 895 638	2 868 390	2 760 373	2 732 844

Source: Eurostat. Employment (main characteristics and rates) [nama_nace06_e]

In Table 3 we see how the number of annual hours worked was changing over time. In per cent, in EU-27 countries in 2009, compared with 2008, the number of actual annual hours worked has shortened by 3.15 per cent, whereas in the Baltic States these numbers are even more explicit, especially in Estonia and Latvia, where the number of actual annual hours worked has decreased by 16.2 and 16.1 per cents, correspondingly; in Lithuania — almost 9 per cent. This clearly shows the impact of the economical crisis.

Flexibility in the organization of the working time

The important indicator of labour flexibility is flexible organization of the working time, i.e. the number of employees, working according other agreements than having fixed beginning and ending hours of the working day. In EU Labour Force Surveys there are used three indicators: 1) staggered working hours, 2) flexitime arrangements and 3) working time banking.

With **staggered hours** employees have the opportunity to start and finish work at slightly different times, fixed by the employee or the employer; this implies that the employee has some opportunity to fix the hours, but

[21] EIRO. Working time developments – 2009 http://www.eurofound.europa.eu/eiro/studies/tn1004039s/tn1004039s.htm#hd4.

the total number remains unchanged. **Flexitime arrangements** include the option of a flexible start and end of a working day and the possibility to fully determine personal working schedules. **Working time banking** refers to a system of accumulation and settlement of debit and credit hours around the standard number of weekly or monthly hours, i.e. an employee can work more hours in exchange for taking the equivalent time off at some time in the future. Over a longer period the average number of working hours is equal to the number contractually agreed for working time. Two options are distinguished: working time banking with the opportunity to only take hours off, and working time banking with the possibility to take full days off. In addition, there is a category "other".[22]

Table 4. Share of employees (15+) having access to flexible working time schedules, by gender, 2004

	Staggered working hours	Working time banking	Flexitime arrangements	Other
Estonia				
Male	**7.0**	5.2	**8.9**	0.1
Female	**5.0**	3.1	**4.3**	0.1
Latvia				
Male	4.8	0.7	**12.7**	1.8
Female	4.4	0.6	**10.0**	2.1
Lithuania				
Male	**14.4**	1.0	1.3	0.1
Female	**9.6**	0.8	1.5	0.1

Source: Flexible working time arrangements and gender equality

Basing on data from Flexible working time arrangements and gender equality survey of Plantenga, Remery[23], in the Table 4 we presented the situation in the Baltic countries in 2004. According to this data, in Lithuania the most popular form of flexible working time schedule was *staggered working hours* (flexible beginning and ending of working day, however, the same fixed number of hours worked), the other forms where not popular. In Latvia much more popular were *flexitime arrangements* (flexible start and

[22] Plantenga, J., Remery, Ch. Flexible working time arrangements and gender equality. *Op. cit.*

[23] *Ibid.* The source, which is used by authors: EU Labour Force Survey, ad hoc module 2004. Newer data is not available yet.

end of the working day as well as flexible duration of the working day). In Estonia flexitime arrangements also were popular, however, almost the same popular form was staggered working hours. In this country there were comparably more employees (5.2 per cent of men and 3.1 per cent of women), which were working according to the *working time banking* system. Thus, we may conclude that Estonia was mostly advanced, which concerns the use of flexible working time schedules.

European Company Survey 2009 data[24] shows that in Lithuania around 52%, in Latvia around 54%, in Estonia around 48% of the establishments were practicing flexitime schemes at establishment level, and in Lithuania 60%, in Latvia 59%, in Estonia 54% of employees were entitled to use flexitime scheme. EU-27 average is higher, though the establishment level is similar, about 57% of establishments with flexitime schemes; however, more — about 68% of employees — are entitled to use flexitime scheme. The flexibility schemes are an instrument open to the majority of workers, however, flexible time arrangements are sometimes restricted to specific groups of employees, such as clerical staff, employees in management positions or employees not working any shift scheme (European Company Statistics 2009).

Fixed-term employment

The share of working according to fixed-term contracts was increasing in many EU countries, however, the EU-27 mean was decreasing. Very remarkable increase of share of employees, working according to the fixed-term agreements is noticeable in Latvia, where it has increased by 1 pp, comparing 2008 and 2009 (see Table 5).

Table 5. Fixed-term employment. Share of people working with fixed-term contracts, % of total employees

	2009	2008	2007	2006	2005
EU-27	13.6	14.2	14.6	14.5	14.0
Estonia	2.5	2.4	2.1	2.7	2.7
Latvia	4.3	3.3	4.2	7.1	8.4
Lithuania	2.2	2.4	3.5	4.5	5.5

Source: Eurostat. Employment (main characteristics and rates)

[24] European Company Statistics 2009 Overview. European Foundation for the Improvement of Living and Working Conditions, 2010. http://www.eurofound.europa.eu/pubdocs/2010/05/en/1/EF1005EN.pdf.

It is likely that the countries chose different ways of the adjusting to the crisis: in some countries fixed-term contracts were terminated or not renewed (like probably it happened in Estonia and Lithuania), therefore, their share was decreasing; in other countries, like in Latvia, temporary contracts were increasing as they replaced permanent contracts. Fixed-term contracts are a good indicator for the economy as people which such contract are the most vulnerable group of employees in a company. In times of crisis they usually are the first to be affected, in times of prosperity they are used to fill the first job openings.

Table 6. Fixed-term employment. Share of men and women working with fixed-term contracts, % of total employees

	2009		2008		2007		2006		2005	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
EU – 27	14.5	12.8	15.0	13.4	15.3	13.9	15.1	14	14.5	13.6
Estonia	2.0	3.0	1.4	3.4	1.6	2.7	2.2	3.3	2.0	3.4
Latvia	2.9	5.8	2.0	4.7	2.9	5.5	5.4	8.8	6.2	10.7
Lithuania	1.6	2.9	1.9	2.9	2.3	4.9	2.7	6.4	3.6	7.6

Source: Eurostat. Employment (main characteristics and rates)

Comparing by the gender (Table 6), in 2008–2009, in Estonia the share of women, working according to fixed-term contracts has increased; in Latvia both men's and women's share has increased, in Lithuania the share of women, working according to fixed-term contracts has decreased (at 0.3 pp), the number of men, working with temporary contracts, remained unchanged.

Atypical working hours

Atypical work refers to work in the evening, at night, on Saturdays, on Sundays and shift.

Table 7. Work at atypical hours, by country[25] (%)

Country	Night work	Work on Saturdays	Work on Sundays	Shift system
Estonia	19	37	31	36
Lithuania	22	37	29	36
Latvia	31	54	42	41
EU-27	18	40	24	31

Source: ECS 2009

As European Company Statistics shows (Table 7), in Latvia, in 2009, 54 per cent of the employees were working on Saturdays, 42 per cent on Sundays, and a similar proportion on a shift system. These numbers quite remarkably exceed the mean in EU-27. In Latvia and Lithuania the numbers of employees, working at atypical hours are very similar and a bit higher, compared with EU-27 mean, which concerns the shift work and on work on Sundays. However, in these countries it is less popular to work on Saturdays. In general, no particularly clear country patterns emerge regarding work at unusual hours, although the following observations can be made, comparing EU countries. Economic sectors where atypical working hours are common are mostly characterised by the need to provide 24-hour services to the public (European Company Statistics 2009).

Conclusions

1. The need for labour flexibility is constantly increasing. Flexible work schemes are considered as an important political means, which should help the employers to adjust to changing economic circumstances, and the employees — to balance work-family life by working part-time or by flexible work schedules. It can be found in contemporary society in many forms such as flexibility in the length of the working time, in organization of the working time, flexibility of work place, and is constantly increasing in most European countries.

[25] European Company Statistics 2009 Overview. European Foundation for the Improvement of Living and Working Conditions, 2010. http://www.eurofound.europa.eu/pubdocs/2010/05/en/1/EF1005EN.pdf.

2. EU is striving to eliminate still large differences in relative levels of employment protection legislation which result in a division between well-protected workers with permanent contracts and less-protected workers with atypical, mostly temporary, contracts. As a mean it recommends for Member States to make adjustments in work organization, setting up the working time; supporting flexible working arrangements (flexitime, teleworking) for those returning from parental leave.
3. From the comparison of statistical data on the *flexibility of the working time* we can conclude that the part-time work is less developed in Lithuania as in the other Baltic States; the Baltic States as a whole have less part-time workers as the mean of the EU-27. However, this gap is closing in the latest years as the result of the companies' response to the economic downturn and often it is not the voluntary choice of the employee. The impact of the economical crisis is also well seen in the radical decrease of the actual annual hours worked, especially in Estonia and Latvia.
4. Concerning *flexibility of the organization of the working time*, the statistical data of 2004 shows that in Lithuania staggered working hours were popular, in Latvia flexitime arrangements were found the most, and Estonia was most advanced as all three forms of flexibility in working time were popular. However, European Company Statistics shows that at the company level, in 2009, flexitime schemes were widely introduced in more than a half of companies in all Baltic States, which is close to EU-27 average; the difference was more noticeable (about 10 per cent less, compared to EU-27 average) in the entitlement of the employees to use flexitime schemes. This may lead to the conclusion that the flexibility in work time organization shows also a positive trend in the Baltic States during the last few years.

PASTAROSIOS DARBO ORGANIZAVIMO MODELIO LANKSTUMO TENDENCIJOS BALTIJOS ŠALYSE

Svajonė Mikėnė

Santrauka

Šio straipsnio tikslas — išanalizuoti naujausias darbo organizavimo lankstumo tendencijas Baltijos valstybėse. Straipsnyje aptariamos lanksčios darbo organizavimo formos, išskiriami lanksčių darbo organizavimo formų paplitimą lemiantys veiksniai, pateikiami Šiaulių apskrityje vykdyto gyventojų preferencijų lanksčioms darbo organizavimo formoms tyrimo apibendrinti rezultatai. Apžvelgti ES prioritetai dėl darbo organizavimo lankstumo didinimo bei siūlomos priemonės. Pateikiami naujausių prieinamų statistinių duomenų, susijusių su lanksčios darbo trukmės bei lanksčių darbo organizavimo formų taikymu analizės rezultatai, lyginant juos su Europos Sąjungos 27 šalių vidurkiais. Atlikta analizė leidžia daryti tokias išvadas: 1) poreikis lanksčiam darbo organizavimui vis didėja visose šalyse; lankstūs darbo grafikai naudojami kaip priemonė, padedanti darbdaviams prisitaikyti prie besikeičiančios ekonominės situacijos; darbuotojams tai yra priemonė, padedanti subalansuoti darbą ir asmeninį gyvenimą bei išlikti darbo rinkoje sunkmečio sąlygomis. 2) ES Komisija siekia eliminuoti didelius užimtumo apsaugos teisės aktų skirtumus, kurie sąlygoja darbuotojų padalijimą į gerai apsaugotus darbuotojus, dirbančius pagal neterminuotas sutartis, ir mažiau apsaugotus darbuotojus, dirbančius pagal netipines, daugiausia laikinas, sutartis. Kaip priemonę ji rekomenduoja korekcijas darbo organizavime, darbo laiko nustatyme; skatina sudaryti lanksčius darbo sutarimus su iš tėvystės atostogų grįžtančiais darbuotojais. 3) Statistinių duomenų analizė rodo, kad darbo trukmės lankstumo atžvilgiu Baltijos šalių atotrūkis nuo kitų Europos šalių (lyginant su ES-27 vidurkiu) pastaraisiais metais mažėja. Tai aiškinama kompanijų atsaku į ekonomikos krizę. Lanksčios darbo organizavimo formos dar 2004-aisiais buvo ne ypač paplitę Baltijos šalyse, mažiausiai — Lietuvoje. Tačiau 2009 m. atliktas Europos organizacijų tyrimas rodo pozityvias kaitos tendencijas visose Baltijos šalyse.

Rakta žodžiai: lankstus darbo organizavimo modelis, Baltijos šalys, dalinis užimtumas, užimtumo strategija, viršvalandžiai, netipinės darbo valandos.

PECULIARITIES OF RESOLUTION OF INDIVIDUAL LABOUR DISPUTES IN LITHUANIA

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Abstract
Most fundamental changes in labour law occurred in the Republic of Lithuania after the reestablishment of its independence. After that the possibility emerged to start developing its own legal regulation. As a result, a new Labour Code of the Republic of Lithuania came into force in 2003. It codified most previously valid legal acts, which no longer corresponded to the modern situation and labour relations regulation. Even the proceedings of resolution of labour disputes have changed a lot. This regulation was affected not only by the domestic changes in our country, but also by preparation for joining, and membership of the European Union with implementation of its legal provisions as acquired communitarian made a big impact, too. In EU law legal acts there is no primary setting out of the proceeding of individual labour dispute resolution, but indirect provisions making impact on individual labour dispute resolution can be found.

The institute of individual labour disputes has changed and even is changing nowadays, and that is why detection of reasons of these changes and the problems arising are topical. Some aspects of it are investigated in the article.

Seeking to better explain peculiarities of this labour law institute, the main objective of the article is the resolution of individual labour dispute order in Lithuania.

The main aim of the work is to investigate the proceeding of the resolution of individual labour disputes, disclose most common problems and give possible ways of their resolution.

Keywords: individual labour dispute, labour dispute commission, court, proceeding of labour dispute resolution.

Definition of labour disputes

The term 'labour dispute' in Lithuania appeared only in 1971. It was legally used in previously valid code of labour laws. 'Labour conflict' is a term, which has been used for legislation in Russian (at the same time in Lithuania). It is really important to emphasize that the term 'labour dispute' is better than the term 'labour conflict', because in philosophy, by definition, 'conflict' means something that cannot be resolved, but legal principles and regulations seek that each dispute must be resolved in one or another way. It should be noted that a disagreement arising from labour relations not necessarily becomes an individual labour dispute (for example, the employer pays the employee timely unpaid wage and statutory interest). When a labour dispute arises, the case is submitted for resolution to the legally authorized and competent body.[1]

The law establishes that an individual labour dispute is a disagreement between the employee and the employer for in labour laws and other normative legal acts, employment or collective agreements established implementation of rights and obligations, which is resolved by the order settled in Labour Code, Chapter XIX.[2]

Previously, valid legislation in Lithuania (before the adoption of the Labour Code) determined that a labour dispute is a disagreement between the employee and employer for labour contract, labour laws and legislation, the employer's rules, enforcement of the provisions of collective agreements, which parties of dispute have not resolved through direct negotiations.[3]

According to Lithuanian laws, the given definition shows that the moment that labour disputes begin is the end of failed negotiations between disagreeing parties. It is worth attention that this concept implies the possible origin of individual labour disputes from collective agreements. But it should be noted that from collective agreements not only individual but also collective disputes may occur. Individual labour disputes can arise only in cases which are determined in the Labour Code, Chapter XIX. For example, an individual labour dispute cannot arise in the case when the head of the company, during the negotiations with employee representatives for collective agreement changes, will not agree to include in the draft of agreement provisions about additional paid breaks during work time.

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[1] Анасимов, А.Н., Анасимов, А.А. *Трудовые договоры, трудовые споры*. М.: Berator-Mpress, 2002, 170 p.

[2] LR Darbo kodeksas. *Valstybės žinios*, 2002, 06 04, Nr. IX-926.

[3] LR Darbo ginčų nagrinėjimo įstatymas. *Valstybės žinios*, 2000, Nr. VIII-1742 neteko galios 2003 01 01d.

Different authors give various definitions for individual labour disputes, but in spite of this opinion diversity, labour dispute can be identified and described through such common criteria's as:

– parties of dispute;

– its object;

– procedures of its resolution.[4]

Parties of individual labour dispute are subjects who primarily act in the resolution of labour dispute. An individual labour dispute can arise only between an employee and employer (parties who are in labour relations with each other).

Labour dispute parties due to their status differences have different rights and obligations. The Constitutional Court has explained that legal acts regulating labour relations and areas related with them must not only provide protection for workers during the work process, but also assure a full range of human rights guaranties preventing from one labour relations parties dominance over other party.[5] Thus, the Constitutional Court, and nowadays the legal regulation, shows that the employee is the weakest subject in labour relations, and that is why his rights must be protected actively. The other party of the labour dispute is an employer that can act as an enterprise, institution, organization or other organizational structure, regardless of it ownership, legal form but having a legal capacity.[6]

The employee is a physical person who has legal capacity and works by labour agreement for a salary. Full legal capacity and ability to gain employment rights and obligations appear for a person when he is at least sixteen years old.

Regardless the fact that labour relations are specific, in some cases there arise difficulties separating one branch of law from another. In particular, this separation is very important in the civil law. Sometimes there arises a question whether the dispute is a labour dispute by its origin or not. The subject of legal regulations is one of the features helping to decide this. The subject of labour law are public relations, which occur in the work process, their presence is shown by written employment contract.[7]

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[4] Tiažkijus, V., Petravičius, R., Bužinskas, G. *Darbo teise*. Vilnius: Justitia, 1999, 171 p.

[5] LR Konstitucinio Teismo nutarimas dėl LR Civilinio proceso kodekso 476 straipsnio trečiosios dalies atitikimo Lietuvos Respublikos Konstitucijai. *Valstybės žinios*, 1998, 09 24.

[6] Lietuvos Respublikos darbo kodeksas. *Valstybės žinios*, 2002, Nr. IX-926.

[7] *Ibid.*

The civil law regulates different work relations. For example, in outsourcing relations no labour contract between parties is made, because outsourcing contracts are regulated according to the civil law. By outsourcing contract, the contractor is obligated to carry out some work at his own risk according to customer's task and give the result of work to the customer, and the customer is obligated to pay for it. The contractor and the client are not in subordination and dependence relations.[8] In the event of a labour dispute, it is important to consider whether the work was performed under the employment contract; if not, then whether a specific person works under a patent or has other backgrounds. Sometimes the employee seeks to avoid formal validation of labour relations treating them as civil relations. However, mere absence of a contract of employment should not be considered as the basis for absence of labour relations, and recognition of a labour dispute should be possible.

Another important element of an individual labour dispute is its object (background). Causes for labour disputes usually are inappropriate execution of labour duties or legal acts. Individual labour disputes can arise concerning the following issues:

– laws and other legal acts containing improper application of the labour law;
– application or non application of collective agreement provisions;
– employment contract, its amendment and termination.

In these matters subjects of labour relations can protect their legitimate rights and interests addressing competent organs.

As it has already been mentioned above, the existence of labour relationships is not always proved in finding all the formal criterions, such as the existence of a written employment contract. In that case the only problem is that the relations between parties are labour relations, and the raised dispute is a labour dispute. It must be noted that the labour law regulates not only the labour relationships, but even some closely related relationships (for example, relations for the material responsibility in the employment relationship[9]).

Thus, the object of individual labour disputes is the subject which rises disputes. These disputes are unique, since they rise from labour relations. The objectives of individual labour disputes have no final list, because it is impossible to do, assuming the fact that labour relations are not static

[8] Civilinis kodeksas. *Valstybės žinios*, 2000, Nr. VIII-1864, 6.644 str.
[9] Tiažkijus, V., Petravičius, R., Bužinskas, G. *Darbo teise*. *Op. cit.*

and they are constantly improving. Previously, courts investigated disputes within the limits laid down by arguing parties[10], now courts can extend claim limits and fulfil the requirements, which the employee has not raised in his claim, for example, to pay interest.

Another important element in the resolution of individual labour disputes is the order of resolution.

General order of resolution of individual labour disputes

Disputes usually rise when one arguing party thinks that his right has been violated, while the other side usually does not want to agree about having broken the law. Therefore, it is important to determine, whether the dispute is legally legitimate, and how it can be resolved. Disputes usually are resolved applying a claim to authorized institutions or trying peacefully to resolve it between each other without any aid. In essence, the mentioned aspects can be applied to individual labour disputes.

In the case of individual labour dispute settlement procedures, Chapter XIX of the Labour Code is important. This section can be regarded as a leading basis for resolving individual labour disputes, the resolution of any type of individual labour dispute must follow the order set in the mentioned chapter.

The Labour Code sets two stages of individual labour dispute resolution:

- Pre-litigation stage: labour disputes commission;
- Judicial stage: labour dispute resolution in the court.

Before the enactment of the Labour Code, the resolution of individual labour dispute procedures were regulated by law from which some provisions can still be found in the Labour Code.[11] Labour dispute resolution law instituted one more individual labour dispute resolution stage — negotiations, but their legal regulation failed. This stage was previously mandatory and problematic showing how the employee, in an appropriate order, should apply to the employer if the latter avoided registering his application. Presently, this stage is non-regulated and negotiations can start only in case both arguing parties honestly want to negotiate. If the negotiations

[10] LAT civilinė byla V. Šinkūnaitė v. UAB "Žalgirio loto" Nr. 3K-3-1238/2002 Bylų kategorija 7.3.1.

[11] Lietuvos Respublikos darbo ginčų nagrinėjimo įstatymas. *Valstybės žinios*, 2000, Nr. VIII-1742 neteko galios 2003 01 01d.

succeed it can help avoid the labour dispute and other unwanted legal consequences. As it has already been mentioned, the first mandatory prejudicial body for individual labour dispute resolution, which can be omitted only in exceptional cases, is labour dispute commission.

Resolution of individual labour disputes in labour dispute commission

Prior to the adoption of the Labour Code, in case of a labour dispute, the legislature had not instituted the possibility for an employee to apply directly to the court in cases when the employer clearly avoided negotiations with the employee. Such a regulation enabled employer's ability to prolong the litigation period. In addition, the labour dispute commission was composed only for a particular labour dispute. Such temporary labour dispute commissions in many cases did not function in practice, and the pre-trial stage of litigation was inaccessible.[12] At this moment, the Labour Code states that a labour dispute commission is established in a company for a period not exceeding two years as a permanent authority and resolves individual labour disputes arising there.

Sometimes the provisions of the Labour Code are criticized as not meeting the requirements of the EU and the ILO, because they allow employers discriminate employees and violate their rights. For example, Article 293, paragraph 1, of the code states that "labour dispute commission shall be composed of an equal number of employees and employers representatives" and paragraph 2 states that "the employer must immediately initiate the formation of a labour dispute commission according to the order set in the first paragraph if the labour dispute commission is not established". These aspects show that the employer does not have an obligation to have permanent labour dispute commission functioning, under the above conditions, and paragraph 1 does not define the procedures how labour dispute commission should be composed.[13] However, this criticism is not acceptable, because the legislature has established a protective mechanism — the possibility of litigation in the court if the labour dispute commission is absent or not formed in stated time.

[12] LR Darbo kodekso projekto aiškinamasis raštas. 2001, Nr. IXP, 1268.
[13] LDF *Valdybos Žinios*, Biuletenis Nr. 18 2001 m. sausis // http://www.ldf.lt/inc/biuletenis18.doc.

Sometimes the employer does not perform his duty to establish a labour dispute commission and the Labour Code does not determine any sanctions for that. Of course, there is a possibility for administrative sanctions, however, they are quite mild.[14]

Labour dispute commission has to pass a decision within a 14-day term. A copy of the decision is given to the persons who acted in the case. The employee has a ten-day term for appeal of the decision to the court. It is quite a short term, so no wonder what sometimes employees miss it, but it can be renewed for valid reasons.[15]

If the decision comes into force it must be enforced during a 10-day-term as long as no other term is stated in the decision. If the employer does not execute the decision it can be enforced by rules applied for courts decision enforcement. Previously, an employee could apply directly to the bailiff for enforcement of labour dispute commission's decision.[16] Currently, a legal requirement to apply to the court for approval of labour commission's decision enforcement before applying to the bailiff, in a legal aspect, means not acceptance of labour commission's decision. But on the other hand, such an order helps enforce decision more efficiently. In such cases provisions from the Code of Civil Procedure, bailiffs' law and others are applied.

The Labour Code legally provides for the background for an objective work of the labour dispute commission ensuring some rights for its members. Labour commission members who represent employees' interests cannot be fired, with some exceptions or unless the employer is liquidated. In addition, the committee members receive average remuneration for the time spent resolving labour disputes. But these guarantees cannot ensure absolute impartiality of committee members, one can easily imagine the pressure an employer sets on the commission members, for example, by saying that "Christmas is coming, but only 'the best' employees will receive a Christmas bonus." If an employer somehow influences the decision of the labour dispute commission this is not the end of dispute, because the employee can seek justice by submitting a claim to the court.

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[14] LR Administracinių teisės pažeidimų kodeksas. *Valstybės žinios*, 1989, Nr. 2-14 aktuali iki 2011-01-01 41 str., 233 str.

[15] LAT civilinė byla A.Urbonavičiūtė v. Gabrielės Petkevičaitės-Bitės vidurinė mokykla 3k-3-651/2002.

[16] LR Darbo ginčų nagrinėjimo įstatymas. *Valstybės žinios*, 2000, Nr. VIII-1742 neteko galios 2003 01 01d. 9 str.

Resolution of labour disputes in the court

Some employees avoid labour dispute resolution and litigation in the courts deeming this process to be very expensive.[17] But this point of view is not correct for a number of reasons. Firstly, all litigations costs are covered by the losing party, secondly, employees are exempt from stamp-duty.

Individual labour disputes can reach the court in two ways. Firstly, if the labour dispute commission has not been established within the set time limit, or it has passed a decision that does not satisfy the employee's interests, or the employer does not fulfil a valid decision. This is the way for an employee to resolve the dispute in the pre-trial stage. Another way is when labour disputes can be directly resolved in the court, in the following cases:

- The dispute arises from a change in the employment contract conditions, transfer to another job, suspending of labour contract by employers will, termination of labour contract without any just cause, or breaching legal procedures;
- A change of labour contract termination background;
- When the employment relationship between the employer and the employee is terminated;
- Other cases stated in the legal acts.

Courts resolve labour disputes bearing the procedures set in the Code of Civil Procedures that has a special chapter shared for regulation of labour disputes. Is it necessary and essential to separate labour disputes from civil disputes? The answer concerns the fact that an individual labour dispute rises between an employee and an employer. These parties are not equal by their status, usually the employee is a weaker part in labour relations compared to employer. That is why the employee gets more rights for defence of his interests (for example, the employee can appeal the labour commission's decision to the court, but the employer has no such right[18]).

The Code of Civil Procedures that came into force in 2003 has changed a lot of aspects of civil, including labour litigation procedures. It provides more procedural guaranties for its parties.[19]

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[17] Teismai turės labiau ginti pažeistas darbuotojų teises. http://www.min.tm.lt/nck/n5/darbosantykiai.doc.

[18] LR Darbo kodeksas. *Valstybės žinios*, 2002, Nr. IX-926, 293 str.

[19] LR Civilinio proceso kodekso projekto aiškinamasis raštas. Teisingumo ministerija, 2001, IXP 1127.

Labour disputes are resolved by the Code of Civil Procedure with exceptions made by other laws. One of the main aspects set in this code is that trade unions, if they represent the union members in labour relations, can be representatives in court.[20]

Applicants – employees are exempt from stamp duty and other costs of payment in all matters if claims arise from an employment relationship.[21]

No appeal can be submitted to the appealate court if the amount of claim is less than 250 litas, but the exception is set that it does not apply to disputes arising from matters concerning salaries and other benefits related to labour relations.

Most specific is Chapter XX of the Code of Civil Procedure, which sets special rules for labour litigation. It provides that court proceedings must begin not later than within thirty days from the date the claim was accepted and the case must be resolved not later than within thirty days from the date when the case was prepared for the court. Court jurisdiction in labour cases compared to civil cases is broader:

First, the court is granted the right to collect the evidence, which parties do not present to the court, but the court considers that they are necessary for proper resolution of the dispute.

Second, if the court during the hearings finds that the defendant is false it has the right by its initiative to invite other defendant.

Third, the court of first instance has the right to exceed the claim limits. However, the court activity must be balanced with impartiality, since it cannot violate the competition principle or give priority for any litigating party.

The Labour Code and the Code of Civil Procedure, which were enacted in 2003, have helped to resolve a number of important issues. A lot of problems arise due to the fact that labour relations were regulated by different laws, and usually they opposed to each other, which made it difficult to understand them not only for ordinary people but also for lawyers.[22]

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[20] LR civilinio proceso kodeksas 56 str. 5p.
[21] *Ibid.* 83 str.1d., 3d.
[22] Teismai turės labiau ginti pažeistas darbuotojų teises. http://www.min.tm.lt/nck/n5/darbosantykiai.doc.

Conclusions

1. The stages of common labour dispute settlement procedure are divided as follows: the pre-trial stage — labour dispute settlement in the labour dispute commission; the judicial stage — labour dispute resolution in the court. However, the stage of negotiations should not be forgotten. While the negotiations are not considered as an integral part of the labour dispute resolution stage, dispute prevention is more important than the litigation decision. Negotiations help the arguing parties to maintain good relations and do not require involvement of a third party in that stage.
2. The labour code establishes an obligation for an employer to form a labour dispute commission according to the order set by law. The law clearly states how and under what terms the commission must be formed, but do not define the employer's liability for failure to comply with this obligation and for delays in resolving labour disputes. It is assumed that the only legal measure available in that case is the employee's right directly appeal to the court. Despite this, the stricter administrative responsibility for the employer should be set seeking to prevent abuse of law in such situations.
3. Court's abilities of resolving individual labour disputes are quite broad. Changes made in the legislation allowed the courts to become more active resolving labour disputes and even exceed claims limits if they decide what that is needed.
4. The presence of labour relations shows a formal document labour contract, but this proof should not be overestimated. Because sometimes due to employer's fault this contract is not made in a written form. But this fact cannot negate the existence of labour relations and the raised dispute should be recognized as individual labour dispute in that case, too.

PECULIARITIES OF SOLUTION OF INDIVIDUAL LABOUR DISPUTES IN LITHUANIA

Dalius Vaičiulis

Santrauka

Individualūs darbo ginčai opi ir socialiai reikšminga visuomeninio gyvenimo sritis. Individualių ginčų nagrinėjimo tvarka yra teisiniu požiūriu nuo Lietuvos Respublikos nepriklausomybės atkūrimo iki šių dienų yra pakitusi ir turi jai būdingų ypatumų.

Šiuo požiūriu autorius atskleidžia ne tik šiai dienai galiojančią bendrą individualių darbo ginčų nagrinėjimo tvarką, nurodo jos ypatumus, probleminius aspektus, bet kartu nurodomi svarbesni pokyčiai, įvertinus iki darbo kodekso, kuris parengtas atsižvelgiant ir į Europos Sąjungos teisės reikalavimus, galiojusias teisines nuostatas. Minėta pozicija padeda geriau suvokti įvykusias permainas šioje srityje bei pagrįsti jų poreikį ir aktualumą.

Aptariami tokie svarbūs aspektai kaip darbo ginčų samprata, pateikiamas atribojimas nuo sąlyginai giminingos teisės šakos kaip civilinė teisė.

Nagrinėjama tiek ikiteisminė darbo ginčų nagrinėjimo stadija, kurioje svarbų vaidmenį atlieka darbo ginčų nagrinėjimo komisija, tiek ir teisminė stadija, kurioje aktualus teismų vaidmuo. Nagrinėjant bendrą individualių darbo ginčų nagrinėjimo tvarką nurodomos ne tik teisinės nuostatos reglamentuojančios minėtų institucijų kompetencijas, bet kartu identifikuojamos svarbesnės probleminės teisinės nuostatos tiek teoriniu, tiek praktiniu aspektais.

Raktiniai žodžiai: individualus darbo ginčas, darbo ginčų komisija, teismas, darbo ginčo sprendimo tvarka.

SECURITY OF LIABILITY EXECUTION BY OFFERING THE PROPERTY AS A PLEDGE

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Abstract
Recently, with the development of the financial market in Lithuania, the bank sector finds a greater relevance in claims under monetary liabilities that performance is mortgage secured. It is obvious that if covenanters intend to delegate the right of claim under the principle of liability secured by the mortgage of an immovable thing, necessarily, the issue of the delegation of mortgage as the material right secure the performance of the principal liability. A proper regulation of this legal issue shall not only reduce the administrative costs related with the delegation of mortgage claim but also provide a new creditor with legal guarantees that in case of non-performance of the delegated credit claim his claim will be fully satisfied from the mortgaged immovable thing.

With reference to the legislation in force, practices of the Supreme Court of the Republic of Lithuania, the issues of security of liability execution by offering the property as a pledge by analyzing these issues from the point of view of the offering as a pledge, as one of the ways to secure the execution of liabilities, a comparative analysis of the reform of the law on the right of pledge was made. The thesis has been targeted to reveal the problems faced in implementing the pawning and possible ways for solving the problems.

The key findings and proposals are also presented.

Key words: liability, liability security, pawning, nature, reform, creditor, request, immovable, registry, general appurtenance.

Introduction

The relevance and problem of the topic. In Lithuania, under the conditions of development of the financial market, bank sector, gradually

building up of the hypothecary crediting system common in Europe and hypothec banks, the assignment of claims under monetary obligations, which performance has been secured by pledge, hypothec (mortgage), gains more and more relevance. It is obvious that in order to assign the right of claim under the main obligation, secured by the pledge of property, the problems of the performance of the pledge of property, such as registration of the pledge, co-owners, also arise. Appropriate legal regulation of this issue not only reduces administrative expenses incurred by the participants of the civil relationships in relation with the assignment of a hypothecary claim, but also provides legal guarantees that in case of failure to perform the claim of a creditor acquired by assignment, the claim thereof would be fully satisfied from the pledged real thing. In practice, problems regarding the registering of pledges, the sale of co-owned property or some part thereof, consent of co-owners, and forced pledges are especially often.

The objective of the research is to analyse the theoretical and practical legal aspects of the security of the performance of obligations by the pledge of property, to present the legal ways of improvement of the regulation of the pledge of property.

The research object is the pledge of property.

The research methods are the following:

- The legal regulation of the pledge of property is assessed using the method of analysis of legal acts;
- The method of systemic analysis allowed reviewing and analysing of the pledge of property and the related problems;
- Conclusions are formulated with the help of the method of generalisation.

Security of liability execution by offering the property as a pledge: theoretical aspect

Concept and relevance of the security of performance of obligations by pledge of property

A pledge, as a legal measure of minimising the credit risk, is closely related with a hypothec (mortgage), whereas the purpose thereof as well as the purpose of the hypothec (mortgage) is to distinguish a certain object of ownership from the total mass of property of a debtor or a third party

and to encumber it by a property right in favour of a creditor pursuing to ensure appropriate performance of the monetary obligation subject to securing.

The concept 'pledge' has been used in two meanings: in the broad and in the narrow sense.

The pledge in the broad sense is understood as a creditor's right to direct enforcement towards the pledged property and to satisfy his claim from the value of the pledged property or the income received administrating it in priority to other creditors. Such a concept of the pledge includes also mortgage.

The pledge in the narrow sense is the institute of civil law.[1] The concept of the pledge in the narrow sense is presented in Article 1.198 of the Civil Code: "A pledge shall mean pledging of a movable thing or real rights securing the discharge of an existing or future debt obligation, when the object of the pledge is transferred to the creditor, a third person or remains with the pledgor." The object of the pledge remaining with the pledgor may be locked, sealed or marked by marks indicating that it has been pledged. Pursuant to the pledge, the creditor (the pledgee) has the right to satisfy his claim from the value of the collateral prior to other creditors, if the debtor fails to discharge the obligation secured by the pledge (in the event of default).

We may establish the features that distinguish essentially the pledge from mortgage:

1) the object of the pledge may be: a) movable things or b) real rights (rights to land, wood, other things, i.e. the right of use, the right of lease and other real rights, for example the right of claim, except for the rights in relation with the personality of the owner of the thing subject to pledging, as well as the rights, which assignment is forbidden by laws or a contract, in respect of which under the existing laws enforcement may be levied. However, the object of mortgage may be only individual immovable things, registered in the public register and not withdrawn from the civil turnover that may be submitted for a public forced auction;

2) the object of the pledge may be: a) transferred to the creditor or b) a third person, or c) remain with the pledgor.

The object of mortgage always remains with the debtor (or any other owner of the thing) and is not subject to transferring to the creditor or any third persons;

[1] Lietuvos Respublikos civilinis kodeksas 4.198-4.228 str. *Valstybės žinios*, 2000, Nr. 74.

3) the procedures of enforcement of collaterals and mortgaged property are different.[2]

Striving to ascertain, whether the mortgage and pledge are real rights or the rights arising from obligations, we should not forget the opinion expressed by K. Pobedonoscev in the 19th century, that the exceptional features of the property law and the law of obligations lie in the concept about a thing and a personal act, therefore, this difference must exist in every law system. The issue, what is the subject of attributing real rights and what — the rights arising from obligations, is solved differently in various law systems, whereas the majority of the most important obligations have a purpose to establish a right to a thing[3].

Analysis of security of performance of obligations by pledge of property: practical aspect

The pledge is a very reliable measure of the security of the performance of obligations giving the creditor exceptional priority rights to the certain property of the debtor or a third person, from the value of which the claim of the creditor may be promptly and efficiently satisfied under non-adversarial procedures. The pledge reduces efficiently the risk of the debtor's insolvency and ensures a long-term protection of the creditor's interests. However, notwithstanding that, the institute of pledge gives to the parties more freedom to choose, how the object of the pledge should be realised, than mortgage, it is also possible to meet problems striving to realise it promptly. In practice, problems regarding the register of pledges, sale of the co-owned property or some part thereof, consent of the co-owners, compulsory pledge are rather usual.

Legal analysis of co-owners in pledge of property

Problems concerning the sale of the co-owned property are rather usual. It is necessary to know that the Civil Code of the Republic of Lithuania provides for a special procedure regarding the co-owned property. The purpose of the procedure is to defend the interests of co-owners, minimise the number of co-owners in order to ensure the economical possession,

[2] Lietuvos Respublikos civilinis kodeksas. *Valstybės žinios*, 2000, Nr. 74, 191.

[3] Baranauskas, E. Įkeitimo teisinis reguliavimas: daktaro disertacija: socialiniai mokslai: teisė. Vilnius: LTU, 2002, p. 43.

disposal of a certain property. Therefore, failure to comply with the procedure may result in some negative legal effects both to the buyer and the seller.

Article 4.78. of the Civil Code established the undisputable right of each co-owner to handle his property at his own discretion, i.e. transfer in possession of, lease or otherwise alienate, mortgage or encumbrance in some other way all or a part of his share held in common partial ownership. However, it is important to notice that the legal regulation construed in such a way that some obligations are also provided for the persons in addition to the given rights. Article 28 of the Constitution of the Republic of Lithuania states that exercising his rights and freedoms, everyone must observe the Constitution and the laws of the Republic of Lithuania, and must not restrict the rights and freedoms of other people. Thus, it is obvious that the right of a co-owner is not absolute, especially talking about selling of the share of the co-owned property.

In practice, problems regarding the consent of co-owners or other problems are rather usual, for instance, in the civil case No. 3K-3-535/2009, a plaintiff AB "Kazlų Rūdos metalas" applied to the court with the claim on 5 June 2008 and indicated in his pleading that the judge of Vilnius City 1st District Court Hypothec Department, having considered the application of the applicant (creditor) AB Kredyt Bank S. A. Vilnius Branch regarding forced exaction of a debt, decided to seizure and transfer to the creditor the pledged movable things by her judgement dated 18 April 2008. According to the plaintiff, he got to know from the mentioned court judgement that the UAB "Delsima" pledged to a bank the plaintiff's equipment, which he brought to the venue of performance of the contracts, while performing the contracts concluded with the defendant UAB "Delsima" on 29 November 2006 and 15 December 2006 and the Agreement on Joint Activities concluded on 14 February 2007, as his contribution to the joint activities. The plaintiff also indicated that pursuant to the Agreement on Joint Activities dated 14 February 2007, the mentioned equipment became the common partial divided property of the participants of joint activities and the UAB "Delsima" could not pledge this equipment without having received a written consent from the plaintiff[4]. Pursuant to articles 1.80, 1.96, 4.49, 4.171, 4.206 of the Civil Code, the plaintiff asked the court to acknowledge as invalid the part of the pledge bond of a movable thing No. 01220070006160,

[4] Lietuvos Respublikos civilinis kodeksas, 4.206 str. *Valstybės žinios*, 2000, Nr. 74

where 16 pieces of equipment located in the AB "Pagirių šiltnamiai" were pledged, the value of the equipment was 1 700 000 Lt.

Pursuant to the imperative requirement of paragraph 6 of Article 4.201 of the Civil Code, jointly owned things may be pledged only upon a written consent of all co-owners and the parties themselves may not agree on modification, restriction or abrogation of an effect or application of the mandatory rules of law[5].

Furthermore, it was alleged that the ownership of the disputed equipment passed to the UAB "Delsima" under the VAT invoice, thus, Article 4.49 of the Civil Code was interpreted and applied incorrectly as well as the issue of contract interpretation by the Supreme Court of Lithuania was ignored. Pursuant to Article 4.49 of the Civil Code, the acquirer of a thing (property) acquires the ownership right to the thing (property) as of the moment these are transferred to him, provided the laws or the contract do not stipulate otherwise. Pursuant to the Agreement on Joint Activities dated 14 February 2007, the disputed equipment became not the ownership of the UAB "Delsima" but the common partial divided property of the Parties; and the Parties agreed in paragraph 4 of article 3 of the Agreement that the particular amount and form of the contribution of each of the Parties (money, property and etc.) would be established in accordance with the invoices or other documents holding legal power subject to later submission. Hence, the parties established the procedures of passing of the right of ownership in the Agreement on Joint Activities and the shares of the right of ownership could not be revised during the performance of the Agreement on Joint Activities — the particular shares of the Parties had to be established in accordance with the documents submitted later and until that, any property transferred to the joint activities had to be considered as co-owned. Furthermore, the plaintiff did not know about the conditions of the credit agreement concluded between the UAB "Delsima" and the Bank on 28 March 2007. Meanwhile, it is obvious from the mentioned agreement that the Bank knew about the contracts concluded between the AB "Kazlų Rūdos metalas" and UAB "Delsima" and the conditions thereof as well as the fact that the things subject to pledging did not belong to the pledgor, thus the Bank did not exercise the necessary concern and did not act fairly to the extent that can reasonably be required of him, taking in regard the concrete circumstances, in which he acted. During the court proceedings,

[5] *Ibid*.

the plaintiff explained that on 2 April 2008, document No. 01/318 was required in the financial activities of the company justifying that the means used by the company were not bad debts, thus the court decided unsoundly that the mentioned document proved that the purpose of the VAT invoice was to execute the purchase–sale of the disputed equipment.

Having reviewed the case, it shall be noticed that the defendants UAB "Delsima" and AB Kredyt Bank S.A. stated different arguments, which, in their opinion, justified the legality of the agreement. Due to this reason, the board of judges discussed separately the stated arguments. Therefore, the Supreme Court of Lithuania stated that the appellate court interpreted and applied inappropriately the norms of material law, departed from the practice of the Supreme Court of Lithuania, therefore, this judgement was subject to annulment[6] and the judgement of the court of the first instance was subject to remaining in force. This judgement stated that the AB "Kazlų Rūdos metalas" and UAB "Delsima" agreed to implement the project of modernisation and renewal of the heat economy of the AB "Pagirių šiltnamiai" concluding the Agreement on Joint Activities dated 14 February 2007. In Article 3 of the mentioned agreement, the Parties established that the property contributed by them to the joint activities was their common partial divided property, and agreed to establish the particular amount and form of the contribution of each of the Parties by written mutual agreement in accordance with the invoices or other documents holding legal power subject to later submission. The court emphasised that pursuant to the imperative requirement of paragraph 6 of Article 4.201 of the Civil Code, jointly owned things could be pledged only upon a written consent of all co-owners, and the parties themselves could not agree on modification, restriction or abrogation of an effect or application of the mandatory rules of law[7]. The court stated that the UAB "Delsima" did not prove that he had authorities to pledge the co-owned property, whereas the written consent of the AB "Kazlų Rūdos metalas" to pledge the equipment of 1 700 000 Lt value was not given. The court also indicated that the parties to the dispute did not present any proofs proving their agreement regarding the purchase-sale of the disputed equipment, whereas the VAT invoice GBD No. 7038806 dated 19 June 2007 did not confirm that the equipment specified in it was transferred to the UAB "Delsima" on 19 June 2007. The court decided that

[6] Lietuvos Respublikos civilinio proceso kodeks 346 str. 2 d. 1, 2 punktai. *Valstybės žinios*, 2002, Nr. 36-1340.

[7] Lietuvos Respublikos civilinis kodeksas 6.157 str. *Valstybės žinios*, 2000, Nr. 74.

the disputed movable things did not pass to the ownership of the UAB "Delsima" under the VAT invoice GBD No. 7038806 dated 19 June 2007, and the UAB "Delsima" did not have a right to pledge this equipment. In the opinion of the court, the credit agreement concluded between the UAB "Delsima" and the Bank evidenced that the bank knew about the Agreement on Joint Activities dated 14 February 2007, thus concluding the pledge agreement with the UAB "Delsima", the Bank failed to behave with the care and caution necessary in the corresponding conditions and did not ascertain, whether the UAB "Dalsima" had the consent of the other co-owners to pledge the disputed equipment. On the grounds of the abovementioned motives, the court satisfied the claim of the plaintiff.

Thereby, we may generalise and make a conclusion that a thing belonging by the right of common ownership may be pledged only on the consent of all co-owners. When a part of common divided ownership is subject to pledging, the consent of other co-owners is not necessary, however, the pledged part must be accurately defined in the contract on the manner of the use of the thing concluded among the co-owners and certified by a notary.

Legal analysis of the legal (forced) pledge of property

The legal pledge may be described as a hypothec (mortgage) arising independently of the will of a debtor, i.e. the grounds of arising of such mortgage are not the contracts of the creditors and debtors (as, for instance, the grounds of the contractual mortgage), but a law or a court judgement.

The main difference between the legal and contractual mortgage is that the legal mortgage may arise only on the basis of the law or a court judgement and only in cases established by laws. Furthermore, the legal mortgage may secure only particular claims, which are listed in the new Civil Code. Pursuant to the provisions thereof, legal mortgage (forced hypothec) shall arise on the basis of the law or a court judgement in the following cases: 1) to secure the state claims arising from taxing and state social insurance legal relations[8]; 2) to secure claims related to the construction of buildings or reconstruction[9]; 3) to secure claims in

[8] Lietuvos Respublikos civilinis kodeksas 4.176 str. *Valstybės žinios,* 2000, Nr. 74.
[9] Lietuvos Respublikos civilinis kodeksas 4.177 str. *Valstybės žinios,* 2000, Nr. 74.

relation with payment of a rent[10] and 4) in other cases provided for by the Civil Code.[11]

The legal mortgage (forced hypothec) may arise:

1) to secure property claims to be satisfied in accordance with a court judgement[12], 2) to secure the payment of maintenance to the former spouse adjudicated by a court order after their divorce[13], 3) to secure the payment of maintenance to minor children adjudicated by a court order[14], 4) to secure the payment of a compensation to other successors of a farmer for the shares of the property belonging to them; and 5) in other cases provided for by the Civil Code[15]. An application to register the compulsory (forced) mortgage as well as executing contractual mortgage shall be executed as the mortgage bond[16], for issuing of which the expression of the creditor's will certified by his signature is sufficient. It shall be noticed that the Civil Code provides for that, when the mortgage is contractual, the mortgage bond shall be certified by a notary.[17]

One of the major claims, which may be secured by compulsory mortgage, is the state claims arising from taxing and the state social insurance legal relations. To secure the state claims arising from taxing and the state social insurance legal relations, the mortgage is established on the request of the state tax inspectorate, customs or the state social insurance authorities.[18] Undoubtedly, having established the compulsory (forced) mortgage in order to secure such claims, the civil relations are much more public and stable. Creditors are provided with a possibility to get all information about the debtor's taxing liabilities to the state before giving loan, leasing, factoring, overdraft and other financial and commodity credits and thus have a much more comprehensive picture about the financial situation of the potential debtor, his reliability and credit rating.

Article 4.178 of the Civil Code also establishes the type of compulsory (forced) mortgage facilitating performance of court judgements — after the satisfaction of the claim on the recovery of the money in accordance

[10] Lietuvos Respublikos civilinis kodeksas 6.445 str. *Valstybės žinios,* 2000, Nr. 74.
[11] Lietuvos Respublikos civilinis kodeksas 4.175 str. *Valstybės žinios,* 2000, Nr. 74.
[12] Lietuvos Respublikos civilinis kodeksas 4.178 str. *Valstybės žinios,* 2000, Nr. 74.
[13] Lietuvos Respublikos civilinis kodeksas 3.72 str. *Valstybės žinios,* 2000, Nr. 74.
[14] Lietuvos Respublikos civilinis kodeksas 3.197 str. *Valstybės žinios,* 2000, Nr. 74.
[15] Lietuvos Respublikos civilinis kodeksas 4.175 str. *Valstybės žinios,* 2000, Nr. 74
[16] Lietuvos Respublikos teisingumo ministro 2002 m. vasario 20 d. įsakymas Nr. 46 "Dėl hipotekos, įkeitimo, priverstinės hipotekos, priverstinio įkeitimo lakštų formų ir hipotekos, priverstinės hipotekos, įkeitimo ir priverstinio įkeitimo lakštų pildymo instrukcijos patvirtinimo". *Valstybės žinios*, 2002, Nr. 22-839.
[17] Lietuvos Respublikos civilinis kodeksas 4.185 str. *Valstybės žinios,* 2000, Nr. 74.
[18] Lietuvos Respublikos civilinis kodeksas 4.176 str. *Valstybės žinios,* 2000, Nr. 74.

with a court judgement, the mortgage in respect of the debtor's thing may be registered upon the creditor's application. The court judgement shall indicate the amount of the claim secured by the mortgage, the term of the mortgage, the thing that is registered in the Register of Mortgages and the owner of the thing thereof. This forced mortgage secures the more efficient performance of court judgements to exact money due to the origin of such mortgage from the real law as well as the quality thereof to follow the thing, where the ownership of the thing passes to another person.

The Civil Code also embeds the general principle, that such a thing should be selected as the object of the forced mortgage, that having sold it, all creditor's claims are satisfied and the debtor should be affected the least.[19] Notwithstanding that the Civil Code does not clearly foresee, who may be the owner of the thing subject to forced pledge, however having performed a more detailed analysis of articles 4.176 – 4.178 of the Civil Code and in consideration of the fundamental principles of justice and reasonableness, it should be accepted unambiguously that the object of forced mortgage may be only a thing owned by a debtor, whereas the mortgage of the thing of another person would conflict not only with the principle of justice but also the constitutional principle of inviolability of property. The duty to check whether the thing selected as the object of the forced mortgage is appropriate shall be assigned to the mortgage judge, who, in addition, has to check during the legal investigation, whether the grounds to establish the forced mortgage exist, and ascertain himself about the legitimacy of such grounds.

In summary, it is necessary to notice that the county court confirmed indirectly that it was even not necessary for the mortgage to be valid, that the securing main obligation would be expressed in the form of a written transaction, whereas the execution and registration of the mortgage bond was a sufficient proof of the existence and validity of the main obligation subject to security.

Conclusions

Lithuanian law on pledges is based on the major principles of modern pledges. However, some problems also exist. The essential weaknesses of the reformed law on pledges are the following: the possibility of pledging

[19] Lietuvos Respublikos civilinis kodeksas 4.171 str. 11 d. *Valstybės žinios*, 2000, Nr. 74.

of a future property is limited; the doctrine of specificity is subject to application; establishing of the right to pledge is over-formalised; the registration of a pledge bond does not have the meaning of publicizing of rights; the regulation of exaction from the pledged property during the processes of bankruptcy or restructuring of the debtor; pursuant to Article 564 of the Civil Procedure Code, a debtor has an opportunity to protract the exaction from the pledged property; the legal regulation of pledges is not sufficiently dispositive; an honest acquirer of the property pledged abroad is not defended. However, the involvement of a legislative authority is necessary to solve only some of the listed problems. Other insufficiencies of the law on pledges might be eliminated successfully by the creative practice of courts.

In practice, problems concerning the consent of co-owners are often. Usually, problems concerning selling of the co-owned property and some part thereof arise. The Civil Code of the Republic of Lithuania provides for a special procedure to solve that. The purpose of the procedure is to defend the interests of co-owners, minimise the number of co-owners in order to ensure the economical possession, disposal of a certain property. Therefore, failure to comply with the procedure may result in negative legal effects both to the buyer and the seller. A co-owned thing may be pledged only upon the consent of all co-owners thereof. Pledging some part of the common divided ownership, the consent of other co-owners is not required, however, the part of property subject to pledging must be accurately defined in the contract on the manner of the use of the thing concluded among the co-owners and certified by a notary.

PRIEVOLIŲ ĮVYKDYMO UŽTIKRINIMAS TURTO ĮKEITIMU

Eglė Šimkevičienė

Santrauka

Pastaruoju metu Lietuvoje plėtojantis finansų rinkai, bankų sektoriui vis didesnį aktualumą įgyja reikalavimų pagal pinigines prievoles, kurių įvykdymas yra užtikrintas įkeitimu. Akivaizdu, kad norint perleisti reikalavimo teisę pagal pagrindinę prievolę, užtikrintą įkeitimu, neišvengiamai kyla ir turto įkeitimo

įvykdymo problemų, kaip įkeitimo registravimas, bendraturčiai. Tinkamas šio klausimo teisinis reguliavimas ne tik sumažina civilinių santykių dalyvių patiriamas su hipotekinio reikalavimo perleidimu susijusias administracines išlaidas, bet ir suteikia naujajam kreditoriui teisines garantijas, kad nevykdant perleidimu įgyto kreditorinio reikalavimo, jo reikalavimas bus visiškai patenkintas iš įkeisto nekilnojamojo daikto.

Straipsnyje, remiantis galiojančiais teisės aktais, Lietuvos Aukščiausiojo Teismo praktika, gvildenami prievolių įvykdymo užtikrinimo turto įkeitimu klausimai, nagrinėjant juos įkeitimo, vieno iš prievolių įvykdymo užtikrinimo būdų. Straipsnyje taip pat siekiama parodyti, su kokiomis praktinėmis problemomis susiduriama įgyvendinant įkeitimą ir kaip šios problemos sprendžiamos. Pateikiamos pagrindinės išvados.

Reikšmingi žodžiai: prievolė, prievolės užtikrinimas, įkeitimas, prigimtis, reforma, kreditorius, reikalavimas, nekilnojamas turtas, registras, bendraturčiai.

Chapter 4

STATE ADMINISTRATION AND SOCIETY

IMPROVEMENT OF THE CIVIL SERVICE MANAGEMENT

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Introduction

The model of the Lithuanian civil service formally corresponds to the standards of the EU countries, that are greatly diverse and not unified (standards). However, the Lithuanian model, because of its personnel management status jurisdiction, structural subsystems (at different levels, such as central, ministerial, municipality, etc.) and also for some subjective reasons (level of employee competence), cannot perform the objectives programmed in its legislation and legal acts. Especially the objectives related to the strategic planning of institutions and legislation; determining employee demand, prognostication, work efficiency, effectiveness and financial reasonability, and, most importantly, considering issues concerning positions and optimization of a number of positions, as well as creating surplus value in personnel management.

Thus, from the systematic perspective, analyzing each problem of management improvement, we should have:

- to revise the present civil service management scheme;
- to develop a list of positions enabling control of dynamic alteration processes of civil service objectives;
- to accomplish stocktaking of new and long-term civil servant functions (at different levels and in different structures);
- to make corrections in description of jobs and activity procedures;

– to initiate changes of management functions and structures in institutions and establishments;
– to project teamwork methods;
– to apply flexible format for job placements.

Having implemented the enumerated objectives, we can expect essential quantitative and qualitative changes in modelling the civil servants corps, and at the same time, to increase the effectiveness of its work, providing the opportunity to evaluate the civil servants corps according to the main criterion – efficiency or effectiveness.

Survey of civil service management models' peculiarities

Considering the modernization possibilities of civil service management, it is obvious that this modernization requires efforts specialists of different fields, such as lawyers, managers, economists and others. Actually, in Lithuania no special research related to this issue has been conducted, or it has been episodic and fragmentary. Mechanical application of research findings of scientists from other contries has often been unreasonable and ineffective.

The solution of these related to the civil service management problems is possible only if systemic approach is established to human resource management and understanding, that human resources management in civil service is an activity based on objective scientific principles or theoretical constants.

Retrospectively looking at the evolution of theoretical concepts of civil service management, we can notice that some of them are of a persistent nature, others as if revive in a different situation, opposite to the one when they were not perceived and did not have problems, still others were successfully adapted in some other period of the state development.

Lithuanian civil service personnel management model formally is similar to the model preached by followers of classical theory, which is characterized by administrative hierarchy and strict regulation of functions.

Such a model is effective in the presence of stable state and society when permanent administrative functions are formed and alternation of the situation evolves slightly. This form is not typical of Lithuania. Lithuanian

civil service management model in operation at the moment is not only prospectless, but it does not correspond to the present day needs either. In the selection system of civil service corps, in the evaluation of its activity performance, in areas of allocating remuneration, social guarantees and personal responsibilities we may observe much subjectivity, and indeterminacy of personal responsibility prevails, so formal similarity to the Lithuanian civil service personnel management model is simply a mimicry. This model is prospectless in Lithuania in the nearest future, that is why it is necessary to intercept the principal attitudes of other theoretical schools, especially, in our opinion, those, that are described in the concepts of systemic and situational theories, such as new public administration theory, new civil service, personnel strategic management, overall quality management, etc.

Development of the European human resource management model in the public sector was occurring in the integrated context of global theory and practice.

Concept of civil service improvement

In February 2010, the Project of the Concept of Civil Service Improvement[1] was promulgated, which pursues to establish guidelines for civil service improvement as it is envisaged in the programme of the fifteenth government of the Republic of Lithuania. The content of this concept is discussed at different levels.

In 2002, after the Seimas of the Republic of Lithuania passed the Law Amending the Law on Civil Service[2], a mixed civil service management model came into effect with dominating career model paradigms, the most important of which are the following: recruitment into the position is termless, promotion or lateral transfer procedures are not competitive, qualification grade system requirements are widely applied, the continuity of administrative relations is guaranteed in case of civil servant lateral transfer into another position, when the former position is cancelled, strict hierarchy of positions, higher remuneration is linked with higher position.

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[1] *The Concept of Civil Service Improvement.* Project 25th February, 2010

[2] *The Law of the Republic of Lithuania on Amending the Law on Civil Service.* 23 April 2002. No. IX-855, *Vilnius. Žin.*, 2002, No. 45-1708.

The Project of the Concept of Civil Service Improvement also discloses certain disadvantages existing in Lithuanian civil service model. It is emphasized that civil servants' performance is not fully result-oriented, staff selection, work performance, assessment, qualification training career, rotation and dismissal peculiarities are not distinguished, remuneration system is not transparent and does not foster superior performance, managers' possibilities to monitor human resource in a flexible way are rather limited, individual accountability for the activity performance of the institution is not sufficient, possibility to escape responsibility for administrative crimes, regulation and application of ethics and corruption prevention measures is not effective, the idea of "excellent reputation" is not established.

The civil service vision, as stated in the Concept project is "oriented to performance results and public needs, of limited size, responsible and accountable, implementing innovations, flexible, transparent and competitive civil service."

The formulated vision lacks two extremely important constituents — effectively performing and optimally using public resources management system, capable of defeating corruption phenomena. Moreover, some civil service elements, such as "of restricted size", "implementing innovations" and "competitive" civil service might be criticized. The huge number of civil servants is nevertheless a limited number, so we must pursue an optimal number of civil servants, which results from the required demands of function fulfillment in public sector institutions.

Implementation of innovations is a permanent, obligatory for any effective performance process, perceived as an inevitable progress factor, so it cannot be an exclusive element of civil service.

The requirement that civil service must be competitive, seems strange. What does the statement mean? If we understand competitiveness as existing between public and private sector institutions, we should consider the optimal distribution of their fields of activities between public institutions/establishments and private enterprises. If we understand competitive civil service as how effectively it functions in comparison to civil service models of other countries, it is necessary to realize the peculiarities of civil service models in different countries, and such model comparison is rather controversial.

The Concept Project identifies the following civil service management and its legal regulation development principles: "... orientation to activity

results and public needs, implementation of activity results agreements; special regulation of manager selection, performance evaluation, career and responsibility; civil service based on professionalism, results, personal competence and qualification; higher personnel management flexibility; the civil service human resource management effectiveness, modernization, flexibility, application of rotation; inevitability of the administrative responsibilities for administrative crimes."

It is difficult to agree that the abovementioned are comprehensive civil service management and moreover, legal regulation principles. Civil service management principles should result from the civil service mission in order to successfully accomplish it. The principles are formulated as follows:

- Orientation to activity results and public needs;
- Objective integral evaluation of activity effectiveness of public sector institutions;
- Optimization of the number of civil servants;
- Improvement of public administration institutions' composition and structure
- Optimization of functions and responsibilities assigned to all state administration and particular public sector institutions;
- Transparency and validity in personnel selection, certification, career, qualification training, motivation and settling remuneration;
- Permanent efforts to restrict unreasonable expansion of civil service.

The Concept Project also formulates the civil service development guidelines that identify the measures intended to proceed to a new civil service management model. The focus is on the following measures: strengthening corps of managers; unbiased, effective and partly centralized implementation of selection to the position of civil servant (except positions that recruit on the basis of political or personal confidence); reorganization of remuneration system and relating financial motivation with activity results; development of social guarantees system, modernizing human resources management and implementing the competences management model; modernization of the civil service evaluation system, which would be related to individual activity results and strategic goals of the institution, and would help to ensure a more objective evaluation of activity results; abolishing civil servants' possibilities to escape the administrative responsibility; simplification (liberalization) of administrative relations.

The Concept lacks systematic approach to the management of the civil service, though some indicated guidelines certainly have to be implemented.

The suggested reorganization of the civil service management structural scheme

Having looked through the United Nations Organization (UNO) International Public Administration Expert Forum Papers[3] since 1967 and the efforts of France, Germany, the USA, Canada and other countries to modernize the civil service management, we may notice that among concrete objectives, such as improvement of the civil servants' selection system or developing professionalism, great attention is paid to rationalization of the civil service management system structural scheme.

Considering search and findings of various countries and appropriately adapting them to Lithuanian conditions, personnel management in the civil service could be constructed according to the following scheme:

- To establish Central (general) civil management service under the Office of the Government of the Republic of Lithuania as its separate department or as a special Government departament (e.g. Department of Statistics, etc.)
- To establish three departments at the General civil service management institution or office (independently of its subordination):
  - personnel management subdivision of central offices (comprising offices of regional subordination among them);
  - personnel management subdivision of statutory organizations;
  - personnel management subdivision of self-governing institutions.
- To organize human resource lower grade applying the headquarters principle;
- To create integrated personnel management services, related by public administration functions, e.g. economy management, administration of social issues, etc. The economy management general personnel management service could be established un-

[3] *Unlocking the Human Potential for Public Sector Performance:* World Public Sector Report 2005 (United Nations, Department of Economic and Social Affairs). New York, 2005.

der the Ministry of Finance, as it is done in different EU countries, the integrated personnel service performing social block functions — under the Ministry of Social Security and Labour, statutory organizations — under the Ministry of the Interior, self-governing institutions — under the administration of municipalities.

This civil service management structure would possibly have the following consequences:

- Would help to coordinate strategic planning (pursuing one of the most important functional aspects of modern personnel management), and overall, coordinate and systematize the activity of public administration institutions;
- In the described personnel management integrated grades to staff professional teams (there should be a group of auditors, lawyers, economists, managers);
- Such staffing of the personnel management structure would help to accept the current public administration challenges, to pursue its effectiveness applying new public administration, new civil service attitudes of theoretical concepts — to pursue flexibility, project teamwork methods, etc.
- The suggested civil service reorganization would make the civil service less expensive, more operational and more effective.

In order to ahcieve the so far hypothetical results, several steps are necessary to be taken:

- To perform management (subordination) analysis of plentiful currently working public administration institutions and establishments, and develop a project meeting the requirements of the systematic management principle;
- To revise the formulated objectives and functions of the public institutions and establishments (in general and seperately for each department).

The last-mentioned step is of an exclussive value. Qualitatively performed functional analysis of assignments concerns all constituent parts of the personnel management system — planning and prognostication of employee demand, selection and staffing (quantitative and qualitative), evaluation, motivation, implementation of advanced management

technologies, including optimal application of informational technologies potential in the management.[4]

Determining the number of employees at an institution

Currently in Lithuania there exists the only "activation" paradigm in civil service management — to reduce the number of civil service institutions and of those employed there. But what is this activation based on? The activity audition research in a number of institutions and establishments has not been performed, the methodology of that activation has not been developed. Thus, the decisions taken are subjective, often made by people who do not have the necessary competence in this field.[5]

What is currently taken into consideration while determining the number of civil servant positions in Lithuania?

The main legal acts regulating determination of a number of positions in Lithuanian public administration institutions and establishments are the Government of the Republic of Lithuania Resolution No. 1641, 19 December 2003, on the Approval of maximum allowable number of civil servants and employees working under labour contracts, and the Update, detailing some follow procedures of resolution regulations — the Government of the Republic of Lithuania Resolution No. 215, 21 February 2007, on the Approval of the Republic of Lithuania 2008 Budget Financial Indicators' Project Development Plan. Following these legal acts, in public administration institutions and establishments one distinctive tendency has emerged — during the establishment of new job positions, a high number of unoccupied positions remain.

Having analyzed from different perspectives the human resource formation procedures in public administration institutions and establishments, the current state manifests that the processes occur spontaneously, not following management science theoretical models and its practical value.

Having looked through the data compiled in the Civil Servants Register, we can discover the main reasons that have lead to the current

[4] Jančauskas, E.E. *Human resource management. System. Policy. Selection. Training Professionalism.* Volume II. – Vilnius: VVAM, 2009.

[5] Determining the Scope of Personnel Administration in Public Administration Institution or Establishment. UAB "Personalo valdymo grupė". Vilnius, 2004.

situation. A fact is that civil service corps formation methodology has not been developed yet, — there are no criteria, nor regulations, enabling to objectively determine, how many and what civil servants are necessary to perform general and special activity functions in a particular public administration institution or establishment.

One of the criteria determining the required numbers of personnel and human resources of other departments to perform the assigned functions is an optimal aggregate number of servants, necessary to perform those functions qualitatively and timely.

Determining an optimal number of employees in the ministry, department or any other structural division, it is very important to identify its particular functions for execution, to precisely define the essence of each function, to avoid duplication of some functions at different command levels in the frame of the analyzed department and all the structure.[6] Only after accomplishment of this work we may offer the solution to this problem, namely, determining an optimal number of civil servants. The main factors determining an optimal number of civil servants are the functions assigned to a structural division, which determine a number of assignments, their periodicity and the accomplishment time-span of each assignment. Consequently, an optimal number of civil servants can be determined by appropriately estimating one factor — the sum of time-span to accomplish all the functions and assignments. The enumerated tasks are suggested to be solved with the help of queueing system theory[7], choosing the queueing system model, where all assignments have to be performed, the assignment accomplishment delay is acceptable and the sequence of assignment accomplishment can be chosen after evaluating the priorities. All these conditions can be fulfilled, if the number of civil servants is not smaller than multiplication of the two factors: the assignment flow intensity multiplied by the average duration/time-span of all assignments performance. Applying the queueing theory the activity of any structural

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[6] Šileika, A., Blažienė, I., Grikienė, Grigoras, V. *Methodology for evaluation of activities and job positions.* Ministry of Social Security and Labour. Trilateral council of the Republic of Lithuania. Institute of Labour and Social Research. Vilnius, 2004.

[7] Gordon, G., Pressman, J., Chn, S. *Quantitative Decision Making for Business*. Third edition. Prentice Hall: N.Y.: Englewood Cliffs, 1990; Refael, H. *To Queue or not to Queue:Equilibrium Behaviour in Queueing Systems*. Part 1-4. London, 2006; Cooper, R.B. *Introduction to Queueing Theory.* Second Edition. Florida. Atlantic University. Boca Raton, Florida. North Holland. New York. Oxford, 1981; Bose, S.K. *Introduction to Queues and Queueing Theory.* Kluwer/Plenum Publisher, 2002; Puškorius, S. *Sprendimų priėmimo teorija. Operacijų tyrimo metodai.* Vilnius: MRU, 2009.

division or system is formalized according to the particular aspects of the division.

Theoretical basis for the model

The essence of this methodology is based on the queue theory, supposing that any task has to be accomplished. It is stated that the number of tasks (jobs, clients, requisitions) to be served flow into some system (organization). These tasks reach the system in random order. This flow of tasks may be interpreted as an average number of different tasks reaching the system during one unit (day, week, month, quarter, year, etc.) of time.

The intensity of the flow of these tasks may be marked by λ indicating the measure unit of the intensity (per day, per week, per month, per year).

Every task is accomplished within a particular time frame. Any time frame for accomplishing the task is random and may be estimated by an average of this time m_{ti}. As every task has its own average time frame for accomplishment, it is essential to find the average time frame of accomplishment for any tasks, using the formula:

$$m_t = \sum_{i=1}^{m} \frac{m_{ti}}{m},$$

where m_{ti} is average time frame for accomplishing the particular task;
m is the amount of all tasks.

The tasks are performed by civil servants of some unit. The number of servants of this unit n is the criterion that should be optimized. This variance is quite clearly described in *queue* models of any kind. Thus, this theory might be useful to solve the problem.

Any task might/should wait for some time before it is performed. Thus, we need to choose such a kind of queuing system model, which allows estimating the waiting time in queue.

All tasks must be fulfilled, so this requirement should be met, too. This means the condition when any task waits in queue as long as necessary until fulfilled. The system fulfills these conditions, if the inequality

$$\gamma = \frac{\lambda * m_t}{n} < 1$$

is true.

Consequently, the amount of servants in any organization may be found using the inequality:

$$n > \lambda * m_t,$$

where λ is the intensity of tasks during some unit of time;
m_t is the average of all tasks to be done.

Characteristics of a model

Applying this methodology, which is in detail described in the article by Pushkorius[8], we can calculate not only the required number of civil servants, but also determine other important indicators of an institution, such as average number of busy civil servants per day, week, month, year, average of time for any task waiting in line, which part of the civil servants is busy and which is not, what the probability is, that all servants will not be occupied with work for some period, duration of which assignments has to be first reduced implementing advanced management measures in increasing qualification of civil servants, better organizing teamwork and other indicators.

The required baseline data

In order to apply this model, we need to know:

- types of tasks;
- the amount of tasks to be done within a time period (day, week, month, quarter, year);
- the average time of all tasks to be done;
- the average amount of civil servants, needed to finish any task.

Provided this model is used, it is possible to make much more complex estimations if the duration of tasks is random. In this case we need to know the standard deviations of each task done.

The calculated indicators

Applying this methodology we can calculate the following indicators

- The required number of civil servants at the institution;

[8] Puškorius, S. *Methods for Setting the Number of Civil Servants in any Organization. The Fifth Year as European Union Member States: Topical Problems in Management of Economics and Law.* Proceedings of the International Conference 8-9 May 2009. pp. 162–169.

- The average amount of performed tasks during some unit of time;
- The average amount of busy civil servants;
- The percentage of busy civil servants;
- The average amount of tasks waiting in queue;
- The average of time any task should wait in queue.

In order to realize advantages and disadvantages of this model, it would be necessary to conduct a research at some institution, discuss the received recommendations, improve the suggested procedures on development and calculation of indicators and baseline data; also take this method as a basis for determining the required employee demand at any institution. The authors of the article could participate in approbation, approval and implementation of this methodology.

Only in this way — applying management general principles in accordance with mathematical solution reasoning methods — it is possible to discover optimal decisions regarding optimization and modernization of the civil service management.

Conclusions

1. From the perspective of civil services management theoretical basis, Lithuanian civil service management is formally similar to the model preached by the followers of classical theory, which is characterized by administrative hierarchy and strict regulation of functions. It should be emphasized that such model is effective in the presence of a stable state and society when consistent administrative functions are formed and the situation slightly evolves. This form is not typical of Lithuania. Thus, formal similarity to such a state management model is simply a mimicry. This model is prospectless in Lithuania in the nearest future, so it is necessary to intercept the principal attitudes of other theoretical schools, especially, in our opinion, those that are stated in the concepts of systematic and situational theories. The latter theoretical attitudes were reflected in presently existing public administration theoretical and practical concepts, such as new public administration, new civil service, personnel strategic management, overall quality management, etc.
2. Although the Concept of the civil service improvement in Lithuania developed in 2010 is characterized as having certain advantages, it does not meet up-to-date requirements, as it lacks systemic approach to

the civil service management, has many disadvantages, related to the efforts to secure those main disadvantages, beneficial only to the civil servants.

3. In authors' opinion, in order to advance in the improvement of the civil service management, it is important not only to improve its management scheme, but also to identify the appropriate indicators and criteria of evaluation of civil servants' performance effectiveness; to decide on the optimization of career models and, undoubtedly, on the unification of job positions, preparation of work and job description methodology and their appropriate validation.
4. One of the criteria determining the required number of personnel and human resource to perform the assigned functions is an optimal aggregate number of civil servants, necessary to qualitatively and timely perform those functions.
5. Determining an optimal number of civil servants in the ministry, department or any other structural division, it is very important to identify its particular functions for execution, to precisely define the essence of each function, to avoid duplication of some functions at different command levels within the frame of the analyzed department and all the structure. Only after accomplishment of this work we may solve this problem — determine an optimal number of civil servants.
6. The main factors determining an optimal amount of civil servants are the functions attributed to the structural division, the number of tasks to be done, their periodicity and the accomplishment time-span for each task. Consequently, an optimal number of civil servants can be determined by appropriately estimating one factor — the sum of time-span to accomplish all the functions and tasks.
7. The raised problem is suggested to be solved with the help of queueing systems theory, selecting the appropriate queueing system model, where all tasks have to be performed, the assignment accomplishment delay is acceptable and the sequence of assignment accomplishment may be chosen having assessed their priorities. All these conditions can be fulfilled, if the number of civil servants is not smaller than multiplication of the two factors: the intensity of task flow multiplied by the average time-span of performance of all tasks.
8. In order to apply this model it is necessary to know the content of the tasks, the number of any kind of task during the analyzed period

of time (per day, week, month, quarter, year), the average time-span of each task to be done and the average amount of civil servants, performing the same task.

9. Applying this methodology we can calculate such indicators as the required number of civil servants at the institution, the average number of performed tasks per week (month, year), the average number of busy civil servants, percentage of busy civil servants, the average number of tasks waiting in line, and the average of queueing time-span of each task.
10. In order to use the advantages of this methodology, it is necessary: to perform management (subordination) analysis of plentiful currently working public administration institutions and establishments and develop a project, meeting the requirements of the systemic management principle, to revise the formulated objectives and functions of the public institutions and establishments (in general and separately for each department).

VALSTYBĖS TARNYBOS VALDYMO TOBULINIMAS

Eduardas-Enrikas Jančauskas, Stasys Puškorius

Santrauka

Straipsnyje nagrinėjamos kai kurios itin aktualios valstybės tarnybos valdymo problemos, tarp jų išskirti veiksniai, nuo kurių priklauso valstybės valdymo efektyvumas, atlikta valstybės tarnybos valdymo modelių ypatumų apžvalga, pasiūlyta valstybės tarnybos valdymo struktūrinė schema,

pateikta metodika, skirta nustatyti optimalų darbuotojų skaičių.

Parodoma. kad galiojančiose žmonių išteklių komplektavimo procedūrose valdymo procesai vyksta stichiškai, nesivadovaujant vadybos mokslo teorinėmis nuostatomis ir praktine patirtimi. Siūloma sukurti Centrinę (generalinę) valstybės valdymo tarnybą prie LR Vyriausybės kanceliarijos, sudarant joje tris padalinius: centrinių įstaigų personalo valdymo poskyrį, statutinių organizacijų personalo valdymo poskyrį, savivaldos institucijų personalo valdymo poskyrį.

Nustatant optimalų darbuotojų skaičių, autoriai siūlo suskirstyti organizacijos funkcijas ir atliekamus darbus į grupes, kuriose bet kuris jos darbuotojas gali pakankamai kokybiškai tuos darbus atlikti. Siūlomos metodikos esmę sudaro toks masinio aptarnavimo sistemos modelis, kuriame numatoma, kad visi darbai turi būti atlikti. Identifikuoti rodikliai, kurie apibūdina darbų atlikimo procesą, nustatyti reikalingi išeities duomenys ir jų gavimo būdai ir padarytos atitinkamos išvados.

Rakta žodžiai: valstybės tarnyba, valstybės tarnautojas, valstybės valdymo modelis, optimalus darbuotojų skaičius, darbų trukmė, darbų periodiškumas, darbų atlikimo laiko vidurkis, vidutinis užimtų darbuotojų skaičius.

CONSUMER RIGHTS PROTECTION IN LITHUANIA: CHANGES BY LITHUANIAN MEMBERSHIP IN THE EU

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Abstract
All countries are driven by one basic goal — to develop economy by ensuring prosperity nationwide and for each person individually. Open and competitive market is the most effective way to promote business performance and ensure that consumers are provided with high-grade services and goods.

However, in developed countries such a system is confronted with difficulties. Monopolies are growing, trade practice is unfair and misleading while goods and services tend to be unsafe and faulty. Consumers are often provided with inadequate information about quality, expiry date and other factors related to the goods and services. These and such like market shortages are disbalancing information and power between consumers and businessmen. Consumers are not only less informed than the sellers, but also appear in a weaker position when it comes to defending their own interests. Therefore, consumer rights protection cannot be imagined without State's intervention.

Consumer rights protection is one of the key priority areas of the European Union. When Lithuania joined the EU, there was a necessity to harmonize the level of business conditions, consumer rights protection as well as defense.

The aim of this research is to reveal changes in relation to consumer rights protection in Lithuania, which have taken place thanks to EU membership. Since there are many significant changes going on in consumer rights protection areas, this publication includes an analysis of several aspects: development of legal regulation, conceptions of consumer agreement formed in the case-law and contexts of institutional systems for consumer rights protection.

Keywords: consumer, consumer law, consumer rights protection, consumer agreement.

Legal regulation for consumer rights protection in Lithuania: main development aspects

Consumer rights protection has become quite an important legal regulation field in the Republic of Lithuania as well as in the European Union. Till the restoration of independence, consumer rights were not separated as an individual field and till the year 1994 these issues were generally regulated by the then Civil Code of the Republic of Lithuania, by the administrative legal regulations and Law on Competition of the Republic of Lithuania.

On 10 November 1994, a Law on Consumer Protection of the Republic of Lithuania was adopted.[1] A number of rules were approved while implementing the provisions of the law: Retail trade, Replacement of good acquired in the distribution businesses of the Republic of Lithuania (not valid anymore), Public catering (not valid anymore) and Service provision (not valid anymore). By making this step, Lithuania was seeking to prove its intentions to harmonize the national law with that of the European Union's. However, the Law on Consumer Protection was quite laconic; provisions were declarative and there was no mention of responsibility in the case of nonconformity with the provisions.

Article 70 of the "European Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part"[2], ratified by the Law of the Republic of Lithuania on 20 June 1996, intended that there was a need of a fast-acting progress in harmonization of law in the field of consumer protection.

In the year 2000, a Draft Law on Consumer Rights Protection was prepared. While working on this draft plan one of the most important tasks was to harmonize national regulations on consumer protection and European Union regulations within this field. Therefore, a number of EU directives were implemented in the law[3]: 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, 93/13/EEC

[1] Law on Consumer Protection of the Republic of Lithuania. *Valstybės žinios*, 1994, Nr. 94-1833.

[2] Law on ratification of European Agreement establishing an association between the European Communities and the Republic of Lithuania of the Republic of Lithuania. *Valstybės žinios*, 1996, Nr. 64-1502. Came into force from 01.02.1998, *Valstybės žinios*, 1998, Nr. 11-266.

[3] Law on Consumer Protection of the Republic of Lithuania. *Valstybės žinios*, 1994, Nr. 94-1833; 2000, No. 85-2581.

on unfair consumer contracts, 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises be interpreted restrictively so as not to cover a contract, 97/7/EC concerning the distance marketing of consumer financial services, 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, 87/102/EEC concerning consumer credit, 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

Other general provisions of EU regulation in the field of consumer rights protection were implemented in the Law on Advertising of the Republic of Lithuania[4], adopted on 18 July 2000, Law on Food of the Republic of Lithuania[5], Law on Product Safety of the Republic of Lithuania[6], laws on telecommunications[7], post[8], and tourism[9] and other laws of the Republic of Lithuania.

A large part of consumer protection related regulations is also implemented in the Civil Code of the Republic of Lithuania, adopted on 18 July 2000 (came into force on 1 July 2001)[10], which regulated individual types of consumption agreements: consumption bargain and sale, consumption lease, consumption contracting and consumption credit agreement. The Code also defines requirements and provisions applicable in general relations with consumers, such as standard (Article 6.185, CC RL), unexpected (surprising) (Article 6.126, CC RL), unfair contract conditions (Article 6.188, CC RL), liability for damage resulted from insufficient product or service quality (paragraph four, Book 6, CC RL), cover of the damage resulted from misleading advertising (paragraph five, Book 6, CC RL) and other provisions.

When Lithuania joined European Union, consumer rights protection became one the most harmonized fields. In cooperation with European Union institutions, national institutions of the Republic of Lithuania have prepared a new draft law regulating consumer rights protection, which was in full harmonization with regulations and directives adopted by the EU in this field. On 12 January 2007, Seimas of the Republic of Lithuania adopted

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4 Law on Advertising of the Republic of Lithuania. *Valstybės žinios*, 2000, Nr. 64-1937.
5 Law on Food of the Republic of Lithuania. *Valstybės žinios*, 2000, Nr. 32-893.
6 Law on Product Safety of the Republic of Lithuania. *Valstybės žinios*, 2001, Nr. 64-2324.
7 Law on Telecommunications of the Republic of Lithuania. *Valstybės žinios*, 1998, Nr. 56-1548.
8 Law on Post of the Republic of Lithuania, *Valstybės žinios*, 1999, Nr. 36-1070, 2010, Nr. 94-3306.
9 Law on Tourism of the Republic of Lithuania. *Valstybės žinios*, 1998, Nr. 32-852l 2001, Nr. 34-1128.
10 Civil Code of the Republic of Lithuania. *Valstybės žinios*, 2000, Nr. 74-2262.

the new Law on Consumer Protection of the Republic of Lithuania (came into force on 1 March 2007)[11], where consumer's rights to address state institutions and protect his/her violated rights in out-of-court procedure, rights and liabilities of institutions, hearing the claims of the consumers, hearing order and conclusion drawing order for such claims and liability for violations of legal acts regulating consumer rights protection were clearly regulated.

Recently in Lithuania another meaningful step was taken towards protection of consumer interests by adopting a Law on Consumer Credit of the Republic of Lithuania (23 December 2010, No. XI-1253). Adoption of this law generated a number of discussions between consumer rights protector and credit companies. Implementation of the principle of responsible lending is especially critical for the consumers, as prior to conclusion of consumer credit the creditor will have to evaluate the financial solvency of the consumer credit borrower. Till now consumer was the one who was burdened with a task to evaluate his/her own ability to repay the borrowed money and was encouraged to "lend responsibly". Unfortunately, in many cases consumers were not able to cope with it. Another provision of the law is limiting the rate of interest and thus became very unfavourable among fast credit companies. It is indicated in the law that the total price of the consumer credit cannot be considered as reasonable, legitimate, does not meet the requirements of honest commercial practices and violates the balance of interests between creditor and borrower if annual percentage rate of the total consumer credit price on the day the contract is concluded is higher than two hundred fifty percent.

The beginning of the year 2011 in Lithuania is associated with a new consumer rights protection stage, which is related to a new strategy of the State Consumer Rights Authority for the period of 2011–2014 and its implementation measures plan, which is currently at the draft stage. Hopefully, good will in protecting consumer interests will not be encumbered with still complicated financial condition of the state.

I would like to draw your attention to one more issue that will affect consumer rights protection development both in Lithuania and the whole of the European Union. It is the new Consumer Rights Directive[12].

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[11] Law on Consumer Protection of the Republic of Lithuania. *Valstybės žinios*, 1994, No. 94-1833; 2000, Nr. 85-2581; 2007, Nr. 12-488.

[12] Proposal of 8 October 2008 for a Directive of the European Parliament and the Council on Consumer Rights – COM(2008) 614. [interactive] (accessed 29-01-2011) http://ec.europa.eu/consumers/rights/docs/COMM_PDF_COM_2008_0614_F_LT_PROPOSITION_DE_DIRECTIVE.pdf.

According to the fact that this Directive will be of detailed and ultimate harmonization, this will stipulate consumer right protection all across the European Union. "If it will be decided that it will be of an exhaustive harmonization, that is uniform level of protection of consumer rights will be determined all across European Union, Member States will not be able to regulate this area in any other way. This means that Member States will not be able to provide for improved level of consumer's protection."[13]

In Lithuania the provisions of this Directive will be advantageous, yet in some aspects consumer's position can worsen, since currently the case law is quite flexible in judging recognition of an agreement as consumer agreement.

Conception of consumer agreement formed by the Supreme Court of Lithuania

By establishing and developing the principles of protection of consumer rights within Lithuania, the case law of the Supreme Court of Lithuania performs a significant role.

The Supreme Court of Lithuania, as an institution, which is competent to interpret legal acts of the Republic of Lithuania, in the judgment of the 12 May 2003 in Civil Case No. 3K-3-579/2003[14] on the resolution of a dispute due to the contract between two legal persons — "Vilniaus vandenys" and Owners' Association of Multi-Apartment Buildings — by seeking to recognize the contract as a consumer contract, expressed its position which has greatly contributed to defining the conception of consumer agreement in Lithuania.

By acknowledging this contract as a consumer contract the Court was referring to Part 1 of the Article 1.39 of the Civil Code and emphasized that a consumer contract is defined by two attributes: *firstly*, goods and services must be acquired by a natural person; *secondly*, the natural person has to acquire goods or services outside his economic activity, but in order to meet his personal, family and household needs.

[13] Novikovienė, L. Theoretical and Practical Issues of Consumer's Conception. *Jurisprudencija*, 2010, 4 (122), 285–286.

[14] Judgment of the Supreme Court of Lithuania of 12 May 2003 in Civil Case No. 3K-3-579/2003. 257th Owners' association or multi-apartment buildings v. UAB "Vilniaus vandenys", cat. 37.1.

By legally evaluating the contract, these two attributes require to determine, which person, i.e., natural or legal, *is the end consumer of goods and services as well as the purpose of acquisition of goods and services.*

In addition, the specific nature of Owners' Association or Multi-Apartment Buildings was taken into consideration, since following the provisions of Law on Home Owners' Associations of Multi-Apartment Buildings, this association is considered as a non-commercial legal person with a special capacity and through which citizens can implement their objective and obligatory rights. Therefore, following the disputed contracts consumers of the supplied water are not considered as an association, but as owners of the apartments, i.e., natural persons, who utilize water for their household needs. Owners of the apartments are the ones who pay for the supplied water — not the association.

While hearing this case the Supreme Court of Lithuania evaluated the disputed contracts in a non-formal way and referred to the actual situation.

In other case, which contains an absolutely different subject of disputes compared to the previous one, by resolving the question of recognizing a contract on carriage by air as a consumer contract[15], the Supreme Court of Justice also abandoned formal evaluation of the parties of the contract, although the employer was the one who bought flight tickets for the claimant and the purpose of the trip was duty assignment. By considering this contract as a consumer contract, the Supreme Court of Lithuania has stated that the subject of the contract on carriage of passengers is a very specific service — passengers are carried to the destination point, therefore, one party of the contract on carriage of passengers or the third party is always a natural person and the contract is concluded in his favour (passenger), and that is one of the attributes of consumer contract defined in the Article 1.39 of the CC RL. As it was mentioned before, the other attribute, which has to conform to the consumer contract, is the purpose of the conclusion of the contract. Referring to this attribute of this consumer contract, the Supreme Court of Lithuania underlined that it is necessary to discern the purpose of carriage as such (in this case flight) and the purpose of person's trip. Thus, the subject of the Contract on carriage by air is a flight as such; upon this contract personal needs of a passenger have to be met to be carried to the destination point, which cannot not be

[15] Judgment of the Division of Civil Cases of the Supreme Court of Lithuania of 1 December 2009 m. in Civil Case No. 3K-3-541/2009. M. L. v. Air Baltic Corporation AS.

considered as related to his business or profession, since the destination of the person's trip (i.e., his activity after arrival to the destination point) is beyond the limits of the contract on carriage of passengers. Following these arguments, the Supreme Court of Lithuania stated that the contract on carriage of passengers should be considered as a consumer contract, where passenger is the weaker party, being in obviously unequal position in respect of other party of the contract — the carrier.

Thus, according to these cases we can claim that the Supreme Court of Lithuania has recognized a contract, which is concluded by a legal person on behalf of a natural person, as a consumer contract.

In its case law the Supreme Court of Lithuania has also paid attention to the fact that it often comes into collision when seeking to determine the purposes upon which the contract was concluded, since a person can buy a respective good for personal needs as well as for his/her family needs and business needs. In one of the cases the Supreme Court of Lithuania was resolving a dispute if a natural person, who has registered his farm on his own name and after concluding a contract on purchase of peat substrate and the enterprise can be recognized as a consumer. The Court specified upon the resolution that the consumer is a natural person, who acquires goods and services for his own and household needs, his family's needs and outside business and professional activity. The farmer bought peat substrate outside his personal needs, but for the purposes of business, in order to grow vegetables and flowers, therefore, he is deemed as a businessman and the purchase contract he has concluded is not considered as a consumer contract.[16]

There are no rules of law in Lithuanian legal area that would regulate the double purposes of the contract, although such contracts might be concluded as it was demonstrated by the case law. Therefore, in such cases courts are forming a precedent practice.

Institutional system for consumer rights protection within Lithuania

The new Law on Consumer Rights, which came into force on 1 March 2007, embedded an alternative procedure for the judicial investigation, i.e. consumer rights protection out-of-court (alternative dispute settlement) and

[16] Judgment of the Supreme Court of Lithuania of 19 October 2005 in Civil Case No. 3K-3-458/2005. V. Pečiulis v. AB "Durpeta".

determined the order of the procedure. According to the Law on Consumer Rights, which was valid till 1 March 2007, out-of-court dispute settlement can be carried out just in several fields of consumer rights protection, such as telecommunication services, financial services, postal services, etc. Out-of-court dispute settlement did not embrace all of the needed consumer rights protection fields. Meanwhile, the new law on consumer rights protection has finally formed in Lithuania an institutional system intended to investigate disputes between consumers and trader, service providers in an out-of-court order.

The activity of these state institutions within Lithuania is coordinated by the State Consumer Rights Protection Authority, which is seeking to develop high European Union's standards in Lithuania in compliance with consumer rights protection system as one of its key priorities.

It is noteworthy that the State Consumer Rights Protection Authority is the only consumer rights protection institution within Lithuania, which is notified to the European Commission.

Apart from the State Consumer Rights Protection Authority, there are other institutions described in the Part 1 of Article 22 of the Law on Consumer Protection[17], which investigates disputes between consumers and traders, service providers in an out-of-court-order in certain fields:

- The Communications Regulatory Authority (investigates disputes in the fields of electronic communications, postal and courier services);
- Insurance Supervisory Commission (investigates disputes in cases and order under the law on insurance);
- State Energy Inspectorate Under the Ministry of Energy (investigates disputes in the cases of consumer rights protection under Article 18 of the Law on Energy);
- National Control Commission for Prices and Energy (investigates disputes in the cases of consumer rights protection under the Article 17 of Law on Energy).

Although alternative dispute settlement has many advantages — in this way we save resources, time and endeavor, which are wasted while fighting in the court, parties can control dispute settlement course and results, there is less hostility, stress and more satisfaction after meeting

[17] Law on Consumer Protection of the Republic of Lithuania. *Valstybės žinios*, 1994, Nr. 94-1833; 2000, Nr. 85-2581; 2007, Nr. 12-488.

real interest and needs with the settlement of the dispute"[18] — in Lithuania out-of-court dispute investigation traditions are still not well-established. It is conditionally a new field, which emerged couple of years ago. Therefore, it is vital to provide consumer with information as much as possible for them to know that they have a possibility to defend their violated rights not only in court, but also in more usual, cheaper and faster way.

Conclusions

1. While EU market integration becomes faster and goods and services are flooding in, Lithuanian consumers can more often choose, but they are also facing bigger hazards of products, unfair trade. Therefore, it is vital in the future to actively develop the policy of consumer rights protection and to include it in all the rest of the fields of activity. Thanks to the European Union membership, Lithuania has made a progress both in terms of quality and quantity of consumer rights protection.
2. Lithuanian case-law has set a precedent : when investigating a case of recognition of an agreement, which was concluded between two legal entities, as a consumer agreement, the main evaluation criterion is not the formal party of the agreement, but the nature of the legal entity, and who was concerned to conclude the agreement as well as determining who is the final receiver of good/services. When the new Directive will be adopted the way it is proposed now, there will be no possibility to interpret consumer agreement in that way since it will include no institute of agreement conclusion via representative.

[18] Petrauskas, F. Ginčų nagrinėjimas ne teisme: Lietuvos patirtis ir problemos [Out-of-Court Proceeding in Lithuania: Experience and Problems]. In: *Vartotojų teisių apsaugos teisiniai aspektai Europos Sąjungoje* [Legal Aspects of Consumer Protection in the European Union]. 2010, p.170.

VARTOTOJŲ TEISIŲ APSAUGA LIETUVOJE: POKYČIAI LIETUVAI TAPUS ES NARE

Lina Novikovienė

Santrauka

Ekonomikos vystymas, užtikrinant didesnę nacionalinę ir individualią kiekvieno asmens gerovę — visų valstybių pagrindinis tikslas. Atvira ir konkurencinga rinka yra efektyviausias būdas skatinti verslo našumą ir užtikrinti, kad vartotojai įsigytų kokybiškas prekes ir paslaugas.

Tačiau net išsivysčiusiose šalyse ši sistema susiduria su kliūtimis. Tai monopolijų vyravimas, nesąžininga ir klaidinanti prekybos praktika, nesaugios, su defektais prekės ir paslaugos. Vartotojams dažnai pateikiama neadekvati informacija apie prekių ir paslaugų kokybę, galiojimo laiką ir pan. Šie ir kiti rinkos trūkumai sudaro informacijos ir galios disbalansą tarp vartotojo ir verslininko. Vartotojai ne tik yra mažiau informuoti nei pardavėjai, paslaugų teikėjai, bet ir silpnesnėje pozicijoje gindami savo interesus. Todėl vartotojų teisių apsauga neįsivaizduojama be valstybės įsikišimo.

Europos Sąjungoje vartotojų teisių apsauga laikoma viena iš prioritetinių sričių. Lietuvai tapus jos nare atsirado būtinumas suvienodinti tiek verslo sąlygas, tiek vartotojų teisių apsaugos ir gynimo lygį.

Lietuvos narystės Europos Sąjungoje dėka įvyko ženklūs pasikeitimai stebimi daugelyje vartotojų teisių apsaugos sričių, todėl šioje publikacijoje analizė atliekama keliais aspektais: teisinio reglamentavimo raidos, teismų praktikoje formuojamos vartojimo sutarties koncepcijos ir vartotojų teisių gynimo institucinės sistemos kontekstuose.

Reikšmingi žodžiai: vartotojas, vartotojų teisė, vartotojų teisių apsauga, vartojimo sutartis.

FEATURES OF INVESTMENT IN HUMAN CAPITAL IN LATVIA

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Abstract
This article analyzes the educational strategies of students and their parents. Furthermore, it provides the results of the calculation of the cumulative net present value of investment in education.

Keywords: human capital, innovation, student loan.

According to the United Nations Development Programme (UNDP), Latvia ranks 48th out of 169 countries of the world in terms of human development index (HDI). The top five countries with the highest level of human development are Norway, Australia, New Zealand, USA and Ireland. Among other countries with a high HDI is Germany, which ranks 10th, and Czech Republic, which ranks 28th. Latvia's neighbouring countries, Lithuania and Estonia, rank 44th and 34th, respectively.[1]

The HDI includes indices characterizing the level of education, Life Expectancy (LE) and Gross Domestic Product (GDP) per capita. In terms of Life Expectancy Index and GDP index, Latvia lags far behind developed countries and ranks 106th in the world for LE and 70th for GDP per capita.

At the same time, according to the UNDP, Latvia ranks 27th in the world for Education Development Index (EDI), ahead of such developed countries as Japan (34th), Israel (35th) and Czech Republic (39th) in the list of 169 countries.

Positive trends in higher education in Latvia can be seen from the increase in the number of students. Since 1995, when the population's

1 http://hdr.undp.org/en/reports/global/hdr2010/

psychological shock caused by the economic reforms began to decline gradually, the number of students in Latvia started to grow. Over the past fifteen years, the number of students has increased threefold: from 39 676 people in 1994/1995 to 125 350 people in 2009.[2]

Problem definition and research objectives

Speaking of high education index and a significant number of students, the author has in mind the human potential. The author uses the term 'human potential' to refer to the "stock" of knowledge and professional experience which has been accumulated by a person as a result of learning, self-education and socialization and which the person can use if involved in the process of capital turnover.[3]

Unlike human potential, 'human capital' acts as a "stream" and represents an employee's "stock" of knowledge and skills incorporated in the labour relationship and used by an employee in the professional activities.

In other words, human capital is *a set of professional expertise, knowledge and skills, which make it possible for a person to receive rental income*.[4]

Based on the differences between human potential and human capital, the purpose of the research is to analyze the possibility of transformation of human potential in Latvia into human capital, i.e. the possibility to derive rent from the obtained higher education degree and gained professional experience.

The opportunity enabled by higher education to enhance one's material well-being and improve one's social position has a direct influence on the formation of the parents' educational strategy regarding their children. In the course of the research, the author was also interested in the economic effect of the current investment of financial, human and social capital of parents in the education of their children.

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[2] http://izm.izm.gov.lv/upload_file/Registri_statistika/03uznemsana-2009.pdf.

[3] Human Development Index (HDI) — A composite measure of achievements in three basic dimensions of human development — a long and healthy life, access to education and a decent standard of living.

[4] Asplund, R., Pereira, P. T. (eds.) *Returns to Human Capital in Europe: A Literature Review.* Helsinki: ETLA, 1999.

Research tasks

A number of tasks had to be completed to implement the set objectives:

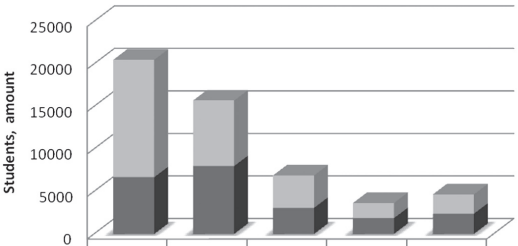
- to analyze the dynamics of public expenditure on higher education;
- to explore the relation of free places (state-funded places) and non-state-funded places at universities in Latvia;
- to determine the tuition fees in popular disciplines, as well as in socially significant disciplines;
- to review the effectiveness of financial capital investment in education based on a comparison of alternative educational strategies and discounting of future income;
- to identify the impact of the parents' human and social capital on the formation of the educational strategy regarding their children.

Situation in the sphere of education

Over the last years, the share of state-funded places in Latvia's universities has decreased. While state-funded places accounted for 71% of the total number of places in 1995, their number dropped to 20% in 2009. In 1995, there were 28 199 students funded by the state budget, while in 2009 the number of such students was 25 138.[5]

Figure 1 shows the relation of state-funded and non-state-funded places in the academic year 2009/2010 at state universities, such as University of Latvia (LU), Riga Technical University (RTU), Latvia University of Agriculture (LLU), Daugavpils University (DU) and Riga Stradiņš University (RSU).

[5] Central Statistical Bureau of Latvia, 2009.



	LU	RTU	LLU	DU	RSU
Fee	13810	7716	3818	1780	2272
Budget	6690	7999	3082	1871	2390

Figure 1. Relation of state-funded and non-state-funded places at Latvia's universities in the academic year 2009/2010 (thousand people).

The diagram shows that the share of students studying on a fee basis in the academic year 2009/2010 amounted to 67% at LU, 49% at RTU, 48% at RSU, 48% at DU and 55% at LLU of the total number of students.[6]

Simultaneously with the increase in the number of non-state-funded places, the cost of education has risen. For example, the tuition fees at LU have increased 1.5 times in just one year. While the minimum tuition fee at the mentioned university in 2007 was around 970 euros and the maximum fee was around 1650 euros, the minimum fee rose to 1280 euros and the maximum fee rose to 2560 euros in 2010[7].

At the same time, the upward trend of tuition fees is characteristic not only of the leading educational institutions in the country, but also of regional universities. For example, the tuition fees at Daugavpils University ranged from 570 to 1000 euros in 2007. In 2010, the cost of education at this university rose to 1250 euros.

Students and their parents have to pay significant tuition fees not only at the Faculty of Economics and Faculty of Law or for highly sought after degrees in Telecommunications, but also when studying for a degree in socially important disciplines, such as Education and Medicine. For example, the annual tuition fee at RSU amounted to 2000 euros in 2010.[8]

Reduction of state-funded places at Latvia's universities and growth of tuition fees take place against a background of overall state funding

6 http://izm.izm.gov.lv/upload_file/Registri_statistika/03uznemsana-2009.pdf.
7 http://izm.izm.gov.lv/upload_file/Registri_statistika/07Finansejums-2009.pdf.
8 *Ibid.*

cuts regarding the social sphere. Beginning in 2004, the share of the state support for higher education in the total state budget expenditures declined from 2.13% to 0.7%, while the share of the state support for all levels of education decreased from 6.7 to 3.2%. Meanwhile, expenditure on higher education for the period from 2004 to 2010 did not exceed 0.8% of GDP and expenditure on all levels of education was up to 1.5% of GDP[9]. The dynamics of public expenditure on the social sphere is shown in Figure 2.

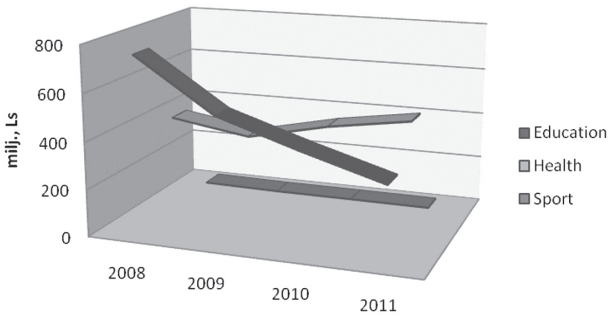


Figure 2. Dynamics of public expenditure on the social needs.

The data presented in the chart indicate that along with budget cuts on education the state also decreased expenditure on health care and sports. For example, during the reporting period, the share of health expenditure in the total amount of state budget expenditures declined from 7% in 2008 to 2.5% in 2011. The share of budget expenditures on sports over the same period decreased from 0.8 to 0.4%. No wonder why Latvia ranks below 100th in the world for life expectancy.[10]

"Abandonment" of the sphere of education by the state leads not only to a reduction in the number of state-funded places and increased tuition costs, but also downgrades the quality of the educational process. It is therefore quite understandable that the increase in the number of non-state-funded places at the universities and growth of education costs have not contributed to the influx of young teachers into the sphere of higher education.

[9] http://data.csb.gov.lv/DATABASE/ekfin/databasetree.asp?lang=16.
[10] www.likumi.lv. Par valsts budžetu 2010.–2011. gadam (The Law on State Budget 2010–2011).

Analysis of education strategies of students and their parents

Despite the reduction of state-funded places and the rising tuition fees, the number of students continues to grow. Therefore, to gain a better insight into the processes going on in the higher education system in Latvia, it is necessary to analyze the investment strategies of students and their parents.

The major stimuli that compel a person to spend time, effort and funds on higher education include the pleasure of mastering the chosen professional occupation, the opportunity for creative and professional fulfilment, comfortable working conditions, etc. An important factor influencing a person's decision to pursue higher education is also the expected stream of income in the form of salary after the education process is completed.

Without belittling the importance of other factors, we shall dwell on the analysis of investment expenditures on education and projected future stream of income of a Latvia's university graduate. In other words, we shall define the extent to which the human potential accumulated by a person during university studies can be transformed into human capital, i.e. a set of professional expertise, knowledge and skills, which make it possible for a person to receive income, and the extent by which the projected future stream of income will exceed the expenditures on education.

Methodology for evaluating the effectiveness of investments in higher education

The following methodology has been used to evaluate the effectiveness of investing in higher education:

1. It is assumed that the undergraduate applicant may receive a higher education degree in one of four professions: engineer, economist, physician and teacher.
2. Depending on the place of residence, the undergraduate applicant may select a university in his/her hometown or move to another city where the preferred university is located, including the capital.
3. Depending on his/her abilities, the undergraduate applicant can study for a higher education degree at the expense of the state budget or on a fee basis.

4. Tuition for studies on a fee basis is funded at the expense of the parents or through a bank loan. It is assumed that the student does not have an opportunity to have a side job due to a heavy academic load.
5. The student loan is provided on preferential terms by one of Latvia's banks (the state student loan).
6. If the studies are funded through the state budget, the student will receive a scholarship.
7. Depending on his/her financial situation, the student can either rent a room or live in a dorm. In this case, the cost of meals and lodging should not be lower than the minimum consumer budget.
8. It is assumed that after graduation, the graduate may start his/her professional career in any city in Latvia, including the capital. If the graduate moves from his/her hometown, he/she will have to rent an apartment.

The factors influencing the parents' educational strategy and the effectiveness of financial investments in education are presented in Table 1. Different combinations of factors have enabled us to analyze various educational strategies for each professional occupation.

Table 1. Factors influencing the educational strategy

Name of the factor	Indicator values			
Professional occupation	Engineer	Economist	Physician	Teacher
Tuition funding conditions	Non-state-funded studies, student loan	Non-state-funded studies, own funds	State-funded studies	x
Place of residence	Riga	Provinces	x	x
Place of studies	Riga	Provinces	x	x
Place of work after graduation	Riga	Provinces	x	x
Living conditions	Lives with parents/in a dorm	Rents a room	x	x

The net present value of the future stream of income (the sum of the discounted net cash flows) has been used as a criterion for the effectiveness of investment in higher education. The general formula of the calculation is shown below.

$$NPV = \sum_{t=0}^{n} \frac{B_t - C_t}{(1+i)^t} \quad (1)$$

NPV = net present value of the future stream of income;
B_t = benefits from education in period t;
C_t = costs of education in period t;
n = number of time periods, which is equal to the number of years of work activities;
i = discount rate.

Benefits from education *Bt*, which are calculated for the certain time period *t,* represent the difference between incomes received by a person with higher education and a person without higher education. *Bt* can be calculated using the following formula:

$$B_t = I_{et}e - I_{wet} \quad (2)$$

Ie = the remaining available income received by a person with higher education in period *t*. It is the difference between total income and expenditure on food and essential items included in the minimum consumer budget.
Iwe = the remaining available income received by a person without higher education in period *t.* It also equals the difference between total income and expenditure on food and essential items included in the minimum consumer budget.

Costs of education *Ct* include the costs of studies on a fee basis funded through own resources or credit resources.

Since investments in education and income received after graduation are stretched in time, there is a need to equate the value of future income to its present value, i.e. to perform discounting. To calculate the discount factor, we have used the refinance rate of the Bank of Latvia, which is equal to 3.5%.

The RSU tuition fee to become a physician was 4000 euros. The fees for pursuing a degree in Economics amounted to 1300 euros at LLU and 2560 euros at LU, while the fees for studying Engineering were 3000 euros at RTU and 1700 euros at LLU. The tuition fees to become a teacher amounted to 1100 euros at DU and 1600 euros at LU.[11]

[11] http://izm.izm.gov.lv/upload_file/Registri_statistika/07Finansejums-2009.pdf.

Table 2 shows the cost of accommodation and meals of a student and subsequently an employed graduate. The cost of accommodation and meals is based on a minimum consumer budget (MCB) on the day of calculation. For those living in the capital city, a multiplying factor of living expenses, which is equal to 1.5, is implemented.

Table 2. Cost of accommodation and meals, EUR[12]

Expenditure item	Period	
	per month	per year
The cost of accommodation and meals of a student pursuing higher education in the provinces (1 MCB)	250	2500
The cost of accommodation and meals of a student pursuing higher education in Riga (1.5 MCB)	375	3750
The cost of accommodation, meals and tuition of a student in Riga if the student is from outside of Riga	435	4350

Salary of a person with higher education, depending on his/her duration of employment and chosen professional occupation is presented in Table 3. Data of the Ministry of Welfare of Latvia and the Central Statistical Bureau have been used for the calculation of salaries.

Table 3. Monthly salary depending on the duration of employment, EUR[13],[14]

Professional occupation	Place of work	Period of employment				
		Years 1–5	Year 5–10	Year 10–15	Years 15–20	Over 20 years
Engineer	Riga	820	870	950	1100	1400
	Region	650	680	750	860	1100
Physician	Riga	750	780	850	980	1200
	Region	600	650	700	800	1000
Teacher	Riga	520	545	600	690	860
	Region	400	420	460	540	670
Economist	Riga	550	580	640	740	920
	Region	500	525	580	670	830

[12] Central Statistical Bureau of Latvia, 2009.
[13] Central Statistical Bureau of Latvia, 2009.
[14] www.likumi.lv. Valsts un pašvaldību institūciju amatpersonu un darbinieku atlīdzības likums.

Table 4 provides additional data on the size of the scholarship and the salary level of an employee without higher education.

Table 4. Size of scholarship and salary level of an employee without higher education[15]

Name of the index	Value
Scholarship per month, EUR	170
Employee's salary per month, EUR	
Riga	400
The provinces	280

To compare the level of salaries, we have chosen the salary of a locksmith, as locksmithing is the most sought-after trade. The average locksmith's salary was 600 euros per month in November 2009. The average salary in other trades that do not require higher education was as follows: a welder's salary was 700 euros, a construction worker's salary was 620 euros and a driver's salary was 550 euros. Thus, the salary of a worker without higher education is comparable to the salary of a doctor and a teacher in the first and second year of employment.[16]

The second important conclusion is that the salaries of workers without higher education remain high not only in the capital city, but also in the provinces, while the salaries for the professions of an economist, a physician and a teacher are differentiated depending on the geographical location of the place of work.

Calculation of the cumulative net present value

Figure 3 shows the results of the calculation of the cumulative net present value of investments in education for people who were born in the capital city, where they have received higher education and where they are working.

[15] http://data.csb.gov.lv/Dialog//DATABASE/Iedzsoc/Ikgad%E7jie%20statistikas%20dati/Darba%20samaksa/&lang=16.
[16] *Ibid*.

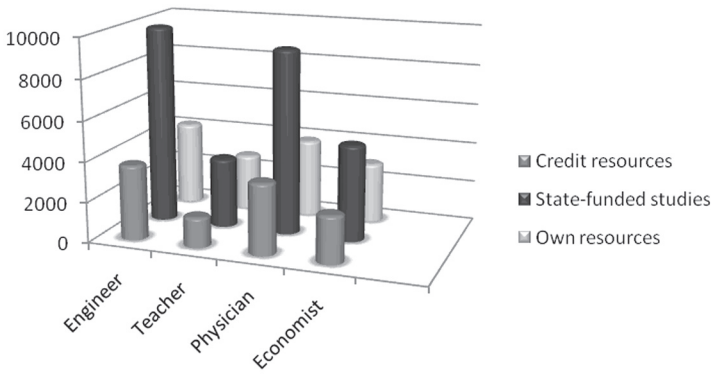


Figure 3. The cumulative net present value for students who were born in the capital city, where they have received higher education and where they are working.

The comparison of incomes of a person with higher education and of a person without higher education demonstrates that the return on financial investment in education in Latvia is low. In other words, benefits from education, i.e. the difference between the income received by a person with higher education, taking into account investments in higher education, and the income received by a person without higher education is negligible.

Calculations show that even in the capital city the only professional occupation which guarantees a positive cumulative net present value of higher education at the end of working career is the profession of an engineer. The cumulative net present value of education is 9900 euros for state-funded studies, 4200 euros for studies funded through own resources and 3750 for studies funded through credit resources.

The prestigious profession of an economist ensures a positive cumulative net present value of higher education only provided that the studies have been funded through the state budget. The economist's cumulative net present value of education is 4800 euros (state-funded studies), 2360 euros (studies funded through credit resources) and 3000 euros (funded through credit resources).

The professions of a physician and a teacher in terms of the stream of the cumulative net present value of higher education do not justify the investment of financial resources and time. Whatever the educational strategy, a metropolitan resident with the profession of a physician or a teacher,

will have a negative cumulative net present value of higher education at the end of his/her working career. In other words, the total income of a person without higher education, after taking into account the discounting, is higher than the income of physicians and teachers. The cumulative net present value of these professions ranges from 700 euros to 1900 euros.

The present analysis of data allows us to draw the following conclusions. Firstly, the socially significant professions such as a physician and a teacher cannot provide respective specialists with a higher income compared with trades that do not require any education, for example, a road worker or a salesperson. Consequently, the labour market witnesses an imbalance regarding the salaries of individual categories of workers.

The income of the highly skilled workers is equal to the income of employees performing work that does not require high skills and education.

Secondly, the calculations show that the investments of human and financial capital of the parents in the children's human capital have become ineffective due to the "abandonment" of the social sphere by the state. Investments in education to pursue a degree in the socially important disciplines, such as Medicine and Education, as compared to alternative investments of financial resources, do not pay off either in the short or long term as a result of rising tuition fees and low salaries. In other words, due to lower public expenditure on education, parents and their children, after mobilizing all available resources of the family with the help of the social capital, cannot get a positive net present value of investments in the future.

Moreover, the existing bank loan conditions do not contribute to improvement of the situation. Because of the short duration of the loan and the high cost of using the credit resources, a young professional with a higher education degree is unable to make the current loan payments on his/her own in view of the level of salaries.

Thirdly, considering the inefficiency of investments in higher education in Latvia, a part of the most active undergraduate applicants, depending on their financial capacity, prefer to pursue higher education either in the Commonwealth of Independent States or Western Europe. In the future, these students studying abroad are unlikely to return to their home country.

Fourthly, the low salary of the general population challenges not only the reproduction of qualified specialists, but also the mere reproduction of population in Latvia. This situation is well correlated with the long-term UNDP forecasts regarding the total population in Latvia, which is expected to decline significantly.

All of the above suggests that the state and business merely declare a transition to innovative development. If the need for innovation really existed, the work of scientists and specialists would be remunerated much better, while the demand for places in PhD programmes and research institutions would be very high.

Comparing the obtained data with the distribution of population by income, we can say that if the situation with the cost of the non-state-funded education and loan conditions does not change, no more than 10–15% of the population will be able to afford studies on a fee basis in the future, even if funded through credit resources.

ХАРАКТЕРИСТИКА ЧЕЛОВЕЧЕСКОГО КАПИТАЛА В ЛАТВИИ

Дайна Василевска

Резюме

Целью данного исследования является анализ возможности превращения человеческого потенциала в Латвии в человеческий капитал, т.е. возможность извлечения ренты из полученного высшего образования и накопленного профессионального опыта.

Возможность улучшения своего материального благополучия и повышения социального положения в обществе, которое дает высшее образование, оказывает непосредственное влияние на формирование образовательной стратегии родителей в отношении своих детей. В ходе исследования автора интересовал также вопрос, какой экономический эффект дают в настоящее время инвестиции финансового, человеческого и социального капитала родителей в образование своих детей.

Для реализации поставленных целей потребовалось решить ряд задач:

- проанализировать динамику государственных расходов на высшее образование;
- изучить соотношение бесплатных мест (мест, оплачиваемых из средств государственного бюджета) и платных мест в вузах Латвии;

- определить стоимость обучения, как по популярным специальностям, так и по социально значимым;
- проанализировать эффективность вложений финансового капитала в образование на основе сравнения альтернативных образовательных стратегий и дисконтирования будущих доходов;
- выявить влияние человеческого и социального капитала родителей на формирование образовательной стратегии в отношении их детей.

Не умаляя важность других факторов, во-первых, были проанализированы инвестиционные затраты на образование и сделан прогноз будущего потока дохода выпускника латвийского вуза. Другими словами, определено, в какой степени человеческий потенциал, накопленный человеком при обучении в высшем учебном заведении, может быть трансформирован в человеческий капитал, т.е. в совокупность профессиональных знаний, умений и навыков, благодаря которым человек имеет возможность получать доход, и насколько прогнозируемый поток будущих доходов превзойдет затраты на образование.

Представленный анализ данных позволил сделать следующие выводы. Во-первых, такие социально значимые профессии, как врач и педагог, не могут обеспечить их обладателя более высоким доходом по сравнению с профессиями, не требующими никакого образования, например, дорожного рабочего или работника торговли, а на рынке труда складывается диспропорция по оплате труда отдельных категорий работников.

Во-вторых, расчеты показали, что инвестиции человеческого и финансового капитала родителей в человеческий капитал детей из-за «ухода» государства из социальной сферы становятся неэффективными. Из-за роста стоимости обучения и низкой оплаты труда инвестиции в получение образования по таким социально значимым профессиям, как врач и педагог, по сравнению с альтернативными вложениями финансовых ресурсов, не окупаются ни в краткосрочном, ни долгосрочном периоде. Другими словами, из-за снижения расходов государства на образование родители и их дети, мобилизовав с помощью социального капитала все доступные ресурсы семьи, не могут получить положительный дисконтированный доход от инвестиций в будущем.

В-третьих, оценив неэффективность вложений средств в получение высшего образования в Латвии, часть наиболее активных абитуриентов в зависимости от финансовых возможностей предпочтет получить высшее образование либо в СНГ, либо в странах Западной Европы. В будущем эти студенты, обучающиеся за рубежом, вряд ли захотят вернуться обратно в страну.

В-четвертых, низкая заработная плата основной части населения ставит под вопрос не только воспроизводство квалифицированных специалистов, но и простое воспроизводство численности населения в Латвии. Такая ситуация хорошо коррелирует с долгосрочными прогнозами UNDP относительно численности населения Латвии, которые предполагают значительное сокращение численности населения страны.

Сопоставляя полученные данные с распределением населения по уровню дохода, можно говорить о том, что если ситуация с величиной стоимости платного образования и условиями кредитования не изменится, платное образование даже за счет кредитных ресурсов сможет позволить себе в будущем не более 10–15% населения.

Ключевые слова: человеческий капитал, инновации, студенческий заем.

DEMOGRAPHIC AGEING OF BALTIC STATES: THE CHALLENGES FOR POLICY RESPONSES

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Abstract
The issues of demographic ageing in the Baltic States are explored in the article, focusing on the comparative analysis of development of this process within the context of general EU trends and on the evaluation of the impact of global changes of population age structure on policy making. Basing on a secondary analysis of the official documents of the Commission of the European Communities, the EU social policy measures targeted to overcome (or to slow/minimize) the negative consequences of this process are presented and the conceptual framework of "active ageing" approach is discussed.

Keywords: demographic ageing, life expectancy, fertility, social policy.

Introduction

The Baltic States, as well as the other EU Member States, are facing the process of demographic ageing — the continuous growth in the number of the older generations (those over 65 years[1]) will change radically the age structure of Lithuania, Latvia and Estonia. According to the Eurostat population projections (baseline scenario), the proportion of the youngest (0–14) will decrease in the Baltic region from 14.4 per cent in 2010 to 12.7 per cent in 2060, and respectively, the share of the oldest (65 and

[1] The age 60 (or 65) is considered as a bottom mark of the old age.

over) will increase from 16.7 to 33.8 per cent.[2] The rapid increase of the older generations (and especially of the number of the oldest age cohorts) substantially changes the systems of production and consumption and poses challenges to social policy makers.

The article aims to evaluate the recent trends and prospects of population ageing in Estonia, Latvia and Lithuania, revealing demographic challenges for the future development of Baltic States and highlighting expected policy responses in the context of EU political debate.

Changes in the age structure of population of the Baltic States: recent trends and future prospects

According to the Eurostat data[3], between 1990 and 2008, the number of people aged 60 and over in the European Union (EU) rose from 84 to 111,6 million. Expressed in percentages, the proportion of elderly people has risen from 19.2 to 22.5. The actual size of the elderly population in several EU countries already exceeds the projected estimations. Because older people represent the fastest-growing segment of the Europe's (world's) population, it is of considerable importance to understand both the *causes* and *consequences* of the growth in their number and the increase in percentage of the total population.[4]

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[2] Ageing characterises the demographic perspectives of the European societies. Eurostat. *Statistics in focus.* 72/2008. Population figure and composition. Statistics Estonia. http://pub.stat.ee/px-web.2001/I_Databas/Population/01Population_indicators_and_composition/04Population_figure_and_composition/04Population_figure_and_composition.asp. Accessed 17 December 2010.
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[3] *Population statistics 2006 edition.* Luxembourg: Office for Official Publications of the European Communities, 2006.
Ageing characterises the demographic perspectives of the European societies. *Op. cit.*
Data Navigation Tree. Population. Population on 1 January by age and sex. Eurostat website: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database. Accessed 17 December 2010.

[4] Mikulionienė, S. Veco įaužu stāvoklis Latvijā un Lietuvā: sociodemogrāfiskais salīdzinājums. *2nd World Congress of Latvian Scientists: Congress Proceedings.* Latvian Academy of Sciences, Riga, 2001; Mikulionienė, S. Stankūnienė, V. *Socio-Economic Status*

In demography, it is well known that the age structure of population is the product of past trends in fertility, mortality and migration and influences, in turn, the current levels of birth, death and migration rates. Different combinations of these indicators can produce stable population (young or old), either rejuvenating or ageing population:

- As death rates drop and life expectancy increases, the older population increases partly because life expectancy goes up somewhat at older ages, so people live longer when old.
- Changes in fertility generally produce the biggest changes in a society's age structure, regardless of the level of mortality. Fertility adds people only at age zero to begin with, but that effect stays with the population age after age. High fertility produces a young age structure, whereas low fertility produces an older age structure.[5]
- Migration can have a sizable impact, because migrants tend to be concentrated in particular age groups.

Fertility in most European countries started to decline at the beginning of the 1960s, in the mid of 1970s reaching the level which is too low for replacement of generations (total fertility rate below 2.1). The total fertility rate (TFR) in the former EU-15 has changed from 2.59 in 1960 to 1.42 in 1995. In the years thereafter some recovery has occurred to a level of 1.54 in 2004. The lowest fertility indicators were characteristic to the countries of South Europe — Greece (TFR is 1.29), Spain (TFR is 1.32, Italy (TFR is 1.33).[6] The time trend of the total fertility rate in the newly acceded Member States (EU-10) differs from that in the former EU-15: only a small decline in the 1980s and a substantial decline in the 1990s were observed. This trend has been continued in the first half of the 21st century: TFR in 2004 was at the level of 1.25[7]. The Baltic States, as is seen in Figure 1, followed this Central – Eastern European pattern of fertility decline: in 2004, TFR indicators in Latvia (1.24), Lithuania (1.26) and Estonia (1.40) were among the lowest in the EU.

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and Living Arrangements of Older Persons in Lithuania. Economic Commision for Europe, United Nations, New York and Geneva, 2003; Kanopienė, V., Mikulionienė, S. Gyventojų senėjimas ir jo iššūkiai sveikatos apsaugos sistemai. *Gerontologija*, LGGD, Vilnius, 2006, VII(3); Kanopienė, V., Mikulionienė, S. Demografinio senėjimo problemos socialinėje Europos Sąjungos darbotvarkėje. *Socialinis darbas.* Vilnius: MRU, 2006, Nr. 5 (2), 5–14.

5 The ageing of a population due to contraction of the proportion of young persons is called "ageing at the base" (of the pyramid), while the ageing of a population due to expansion of the proportion of elderly persons is called "ageing at the apex" (of the pyramid).

6 *Population statistics 2006 edition. Op. cit*., p. 76.

7 *Ibid.*

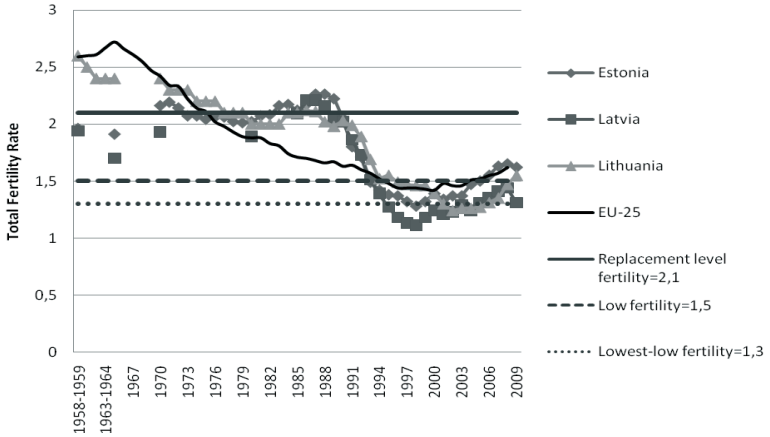

Figure 1. Dynamics of total fertility rate in the Baltic States, 1958–2009.[8]

During the last five years, these different regional fertility trends have converged: according to the latest available (2009) data, among the countries with the lowest fertility indicators there are representatives from different regions: Latvia (TFR is 1.31), Hungary (TFR is 1.32), Portugal (TFR is 1.32) and Germany (TFR is 1.36).[9]

With a noticeable decrease of fertility, the older generations are replaced by less numerous young age cohorts: in 1960, the proportion of the age group (0–19) in the total population of former EU-15 was close to one third (31.8 per cent) while in 2004 — less than one fourth (22.4 per cent), i.e. a part of the youngest nearly equals the share of the oldest. These changes are mostly pronounced in the Mediterranean region (Greece, Spain and Italy), where the oldest age cohort (60 and over) outnumbered the youngest. (0–19). Similar trends were observed in the new Member States (EU-10): during a period 1970–2004, a proportion of age group 0–19 in a total population has decreased in Poland, Slovenia and Slovakia by 13.1–12.7 percentage points, in Lithuania — by 9.6, In Latvia and Estonia — by 6.0 percentage points. The ageing "at the base" is still observed in a majority of EU Member States. Moreover, this process is projected to gain speed in the future.

Meanwhile the "ageing at the apex" is characteristic of the old EU Member States where the life expectancy has been improving steadily,

[8] *Population statistics 2006 edition. Op. cit.,* p. 72.
Data Navigation Tree. Population. Total fertility rate. Eurostat website: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database. Accessed 16 Dec 2010.

[9] *Population statistics 2006 edition*. *Op. cit*., p. 76.

e.g., since 1960 the average male life expectancy at birth has lengthened in EU-15 by 9.2 years and female — by 9.3 years (Table 1). Malta and Cyprus have, in contrast to other newly acceded EU Member States, life expectancy figures that are very similar to the former EU-15 countries.

This process went unevenly and was much slower in the countries of Central and Eastern Europe (except of Slovenia) and in the Baltic States. As is seen in Table 1, at the beginning of the 1960s, the differences in the life expectancy at birth between the EU-15 states and Baltic countries were not much pronounced: women lived on average by 1–2 years and men — by 2–3 years longer in the old member states, compared with Estonia, Latvia and Lithuania. However, because of stagnation of male life expectancy and slower rise of female life expectancy in the Baltic States, this gap has expanded.

If we rank the EU-27 countries by average life expectancy for females in 2009, France would be on the top of the list (85.03 years), followed by Spain (84.94 years), respectively, average life expectancy for males is longest in Sweden (79.43 years) and Italy (78.71[10]).

Table 1. Average life expectancy in EU Member States and Baltic States, 1960–2007[11]

	Country	1960	1980	2007	Change	
		average life expectancy in years			years	per cent
Female	EU-15	72.9	77.2	83.52	+10.62	14.6
Male		67.4	70.5	77.65	+10.25	15.2
Gender difference		5.5	6.7	5.87		
Female	Estonia	71.6	74.1	78.84	+7.24	10.1
	Latvia	72.4	74.2	76.46	+4.06	5.6
	Lithuania	71.4	75.4	77.23	+5.83	8.2
Male	Estonia	64.3	64.1	67.23	+2.93	4.6
	Latvia	65.2	63.6	65.76	+0.56	0.9
	Lithuania	64.9	65.5	64.85	-0.05	-0.1
Gender difference	Estonia	7.3	10.0	11.61		
	Latvia	7.2	10.6	10.88		
	Lithuania	6.5	9.9	12.38		

[10] 2007 data.

[11] Data Navigation Tree. Population. Life expectancy at birth, by gender – [tps00025] Eurostat website: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database. Accessed 20 December 2010.

It appears that the three Baltic countries are nowadays least "favourable" for new-born boys (in 2009, male life expectancy indicators were respectively 67.51 year in Lithuania, 68.4 years in Latvia and 69.8 years in Estonia). Respectively, Romania, Bulgaria and Latvia have the lowest average life expectancy at birth for females (77.39, 77.4 and 78.05 years).

Similar to the life expectancy at birth, the significant improvement of the life expectancy at 60 is observed in the old EU Member States: since the beginning of the 1960s, the indicator for men has increased by 35.6 per cent (a change from 15.9 in 1960 to 21.56 years in 2007) and for women — by 35.8 per cent (a change from 19 to 25.8 years)[12]. Diverse trends during this period were observed in the Baltic countries, especially in respect of men: male life expectancy at 60 has slightly increased in Estonia (by 4.1 per cent, a change from 15.3 to 15.94 years), but decreased in Latvia (from 15.6 years[13] to 15.34 years) and Lithuania (from 17.1 years to 15.37 years). For women the situation is more favourable, but still the rise was slow: female life expectancy at 60 has increased in Estonia by 18.6 per cent (a change from 19 to 22.53 years), in Lithuania — by 9.9 per cent (a change from 19.8 to 21.77 years) and in Latvia — by 5.9 per cent (a change from 19.9[14] to 21.09 years).

Summing up, it can be concluded that increased life expectancy is a very important driver of population ageing in EU-15 Member States whereas in the Baltic States (as well as in the other new Member States) the situation differs (Figure 2).

[12] Data Navigation Tree. Population. Life expectancy at 60. Eurostat website: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database. Accessed 20 December 2010.
[13] 1970 data, Eurostat gives no information for 1960 and 1965.
[14] 1970 data.

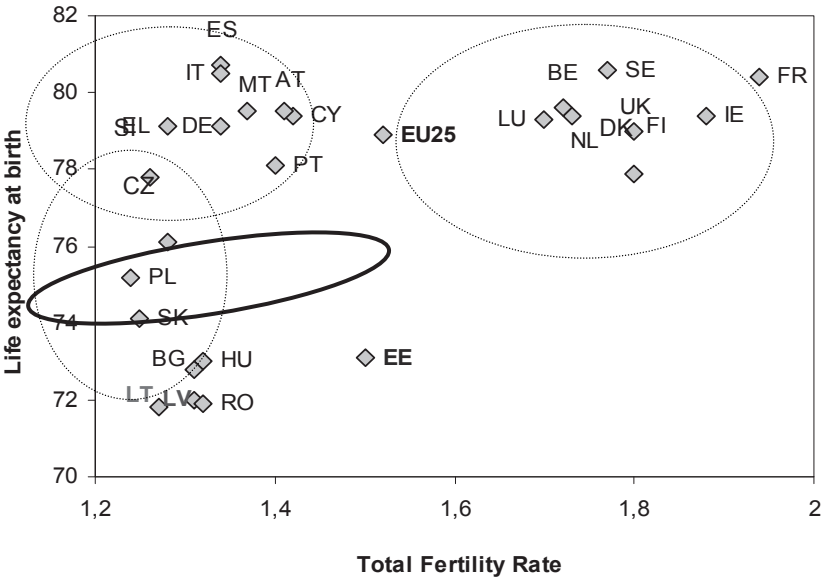

Figure 2. The "drivers" of population ageing in Baltic States and EU-25, 2006.[15]

More intense ageing — "ageing at the apex" has conditioned a faster course of population ageing in the old Member States (Figure 3). The age structure of the new Member States is comparably younger, and the Baltic States according to the level of population ageing are in the medium position.[16]

In the coming years, it is expected that the ageing of the population will accelerate in EU as the large post-war baby boom generations reach the (early) retirement age group.

[15] *Statistics in focus.* Population and social conditions. 16/2006, Eurostat, European Communities, 2006.

[16] Mikulionienė, S., Stanaitis, S. Amžiaus struktūra. In: *Lietuvos gyventojai: struktūra ir demografinė raida.* Stankūnienė, V. (ats. red.). Vilnius: Statistikos departamentas, Socialinių tyrimų institutas, 2006, pp. 8–27.

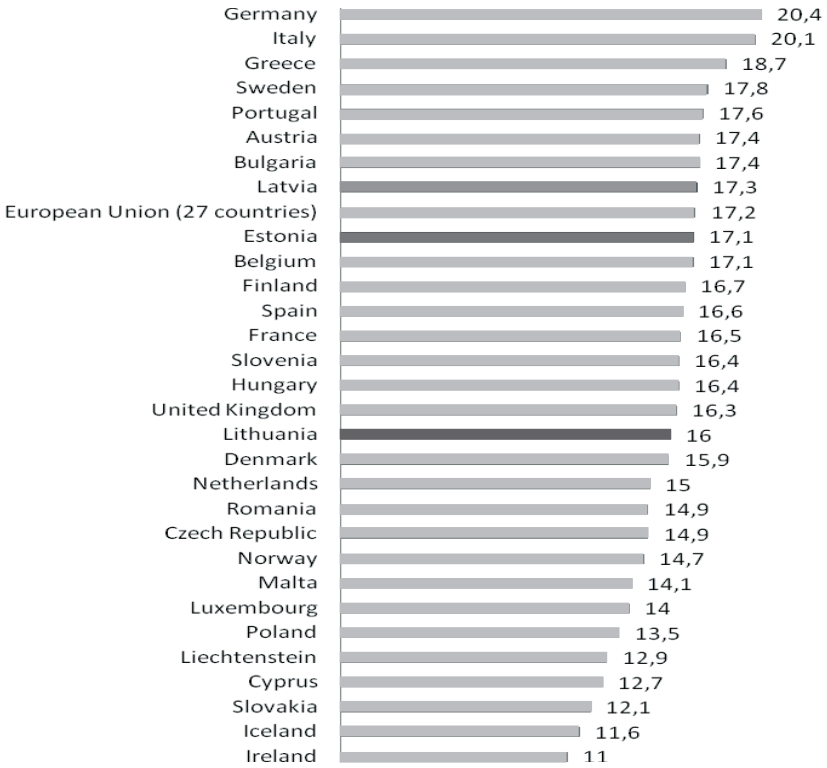

Figure 3. Proportion of population aged 65 and over in EU-27 Member States, 2009.[17]

[17] Proportion of population aged 65 and over. Eurostat website: http://epp.eurostat.ec.europa.eu/ Accessed 31 January 2011.

Table 2. Change of population age structure in Baltic States, 2010–2060, per cent[18]

	Proportion of age group in total population					
	0–14		15–64		65+	
	2010	2060	2010	2060	2010	2060
Estonia	15.1	13.99	67.9	55.29	17.0	30.72
Latvia	13.65	12.27	68.99	53.35	17.36	34.38
Lithuania	14.73	12.41	69.22	52.87	16.05	34.72
	Changes of the age group in 2060, in per cent compared with 2010					
Estonia	78.8		69.1		153.5	
Latvia	67.3		57.9		148.3	
Lithuania	64.3		58.3		165.2	

According to Eurostat Population projections (the 2008-based convergence scenario), the age structure of EU-27 population will change dramatically till the mid of 21st century[19]:

- The total number of children (0–14) will decrease by 6.67 million — it will change from 77 624 million in 2010 to 70 952 million in 2060.
- The total number of working age population (15–64) will decrease by 51.69 million — it will change from 334 987.4 million in 2010 to 283 292.6 million in 2060.
- The total number of the older persons (age 65 and over) will increase by 64.7 million — it will change from 86 775 million in 2010 to 151 474 million in 2060.

Respectively, the proportion of the youngest population (0–14) in EU-27 will decrease from 15.6 per cent in 2008 to 14.0 per cent in 2060, the proportion of working age population (15–64) will change from 67.3 per cent to 56.0 per cent and the share of the oldest (65 and over will increase from 17.1 per cent to 30.0 per cent. Big changes in the age structure of population of Baltic States are also expected: the proportion of the youngest (0–14) will decrease in this region from 14.7 per cent in 2008 to 12.7 per cent in 2060, NS respectively, the proportion of working age population (15–64) will change from 68.7 to 53.5 per cent and share of the oldest (65 and over) will increase from 16.6 to 33.8 per cent. In the future, the young

[18] Ageing characterises the demographic perspectives of the European societies. *Statistics in focus.* Population and social conditions. EUROSTAT, 72/2008.
[19] Long-term population projections at national level. *Statistics in focus.* Population and social conditions. EUROSTAT, 3/2006.

age cohorts in Estonia, Latvia and Lithuania will be less numerous and the size of old generations will increase remarkably. As is seen from Table 2, the process of demographic ageing will be most rapid in Lithuania — the country will "move" from the group of the "youngest" EU Member States to the medium position in the classification of the countries according to the level of population ageing.

Challenges of population ageing for social policy

Elderly policy remained one of the weakest areas of EU social policy for a long time. The emphasis placed on workers' rights in the Community's and Union's treaties and charters signalled that European social policy was only indirectly concerned with categories of the population who did not gain entitlements to social protection as active members of labour force. The Treaty establishing the European Economic Community, later the Single European Act and the Treaty on European Union made no reference to older people. A statement on European policy for this potentially disadvantaged category of former or would-be workers was, however, introduced into the Community Charter of the Fundamental Social Rights of Workers and a new article on non-discrimination in the Treaty of Amsterdam identified age among the areas where discrimination was to be eliminated.[20]

Thus, policy deliberations took place only on the national level and the European institutions have worked on ageing issues only since the late 1980s. Real collaboration at EU level has developed in the second half of the 1990s, responding the UN initiatives and to the UN International Year of Older persons.[21] Although EU Member States maintain long-standing differences not only in demographic evolution, but also in political, economic and social protection systems, as well as in values and attitudes, the Commission believes that EU demographic and other social characteristics are already converging and will need, in many ways, similar policy responses.

[20] Dromantienė, L., Kanopienė, V. Demografinis senėjimas ir ES socialinė politika pagyvenusiems [Demographic ageing and social policy for elder in EU]. *Socialinis darbas.* Vilnius: LTU, 2004, Nr. 3 (2), pp. 12–23.

[21] Communication from the Commission. Towards a Europe for All Ages. Promoting Prosperity and Intergenerational solidarity. Commission of the European Communities, Brussels, COM (1999), 221 final.

Therefore, recent years have seen major developments in EU co-operation on ageing issues and a number of important international documents were passed.[22] Several dimensions that are posed by demographic ageing have been identified in these documents:

- The relative decline of the workforce and the ageing work force;
- The growing need for old age care and health care;
- The growing diversity among older people in terms of resources and needs;
- The rise of importance of gender issues.

The decrease of the number of working age population calls for a strong age aspect in human resources management and implies a rethinking of policies which encourage early exit from the labour market, instead of lifelong learning and new opportunities.[23]

Major transformations of population age structure in EU-25 (and in the Baltic States as well) have altered the ratio between the retired and the working population and will continue to do so. This process is reflected in variations of what are commonly called the dependency ratios, one of which is the ratio of people aged 65 and over to those aged 20–64. Since 1990, the old age dependency ratio[24] has changed in EU-27 from 20.6 per cent to 25.4 per cent (2008 data). In 2008, the biggest proportion of the older persons to the working age population in the EU-27 was in Germany, Italy (30.4 per cent) and Greece (27.8 per cent). The indicators of Baltic States were close to the EU average: 25.3 per cent in Estonia, 24.9 per cent

[22] Communication from the Commission to the Council and the European Parliament. Europe's response to the World Ageing. Promoting economic and social progress in an ageing world. A contribution of the European Commission to the 2nd World Assembly of Ageing. Commission of the European Communities, Brussels, COM (2002), 143 final; Joint report by the Commission and the Council on supporting national strategies for the future of health care and care for the elderly. Council of the European Union, Brussels, 10 March 2003, 7166/03; Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "Modernizing social protection for the development of high-quality, accessible and sustainable health care and long-term care: support for the national strategies using the "open method of coordination", COM (2004) 304 final; Communication from the Commission. Green Paper "Confronting demographic change: a new solidarity between generations", Brussels, 16.3.205 COM (2005) 94 final.

[23] Medaiskis, T., Gruževskis, B., Mikulionienė, S. Visuomenės senėjimas: padariniai darbo rinkai ir įmonėms. *Lietuvos ekonomika Europoje ir globalioje erdvėje.* Vilnius, 2007, pp. 241–264.

[24] The ratio between the total number of elderly persons of an age when they are generally economically inactive (aged 65 and over) and the number of persons of working age (from 15 to 64).

in Latvia and 23.0 per cent in Lithuania.[25] The EU is projected to move from 2010 to 2060 from having four to only two persons of working age (15–64) for every person 65 and above. Meanwhile, the increasing old age dependency ratio makes pressure on pension systems and public finances — a broader base for social protection systems must be secured through higher employment rate.

The older people are not a homogenous group not only in respect of demographic structure, but also in respect of health status, incomes, etc. Many of them face the risk of a social exclusion late in life, especially women. Thus, accelerating ageing of population has a tremendous and ambiguous impact on policy making and poses challenges to the economic system (labour force, consumption, investments and savings), education (development of adult education system), social care (new forms and strategies, development of long-term care) and health care systems (in respect of maintaining the financial sustainability of the system, the balanced development of high quality and affordable services and promotion of healthy lifestyles).

The European Union's response to ageing is developed as a part of the overall strategy of mutually reinforcing policies launched at the European Council meeting in Lisbon and confirmed at subsequent EC meetings. It can be stated that EU's integrated approach to ageing encompasses the economic, employment and social implications of ageing and it aims at mobilizing the full potential of people of all ages. In other words, this approach is based on the orientation towards active ageing policies (life-long learning, working longer, retiring later and more gradually, being active after retirement and health sustaining activities).

Active employment strategies lay at the core of these policies. At the Stockholm meeting of the European Council the goal to reach the 50 per cent employment level of the elderly (55–64 year age group) in 2010 was raised. One year later, at the Lisbon meeting the other ambitious target, to prolong the average retirement age by five years, was set up. How realistic these targets are in respect of the situation in Baltic States?

The Eurostat data show that the indicators of labour market participation of the elderly in Estonia, Latvia and Lithuania during 2000–2009 were higher, compared to the average EU-27 indicators and they were in 2009 above (Estonia) or close (Latvia and Lithuania) to the Lisbon targets

[25] Old-age-dependency ratio [tsdde510] Eurostat website: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database. Accessed 23 December 2010.

(Figure 4).[26] Accordingly, three Baltic States did achieve especially high results while implementing Lisbon targets (especially in 2008), also recently experienced economic recession bated dramatically the results reached.

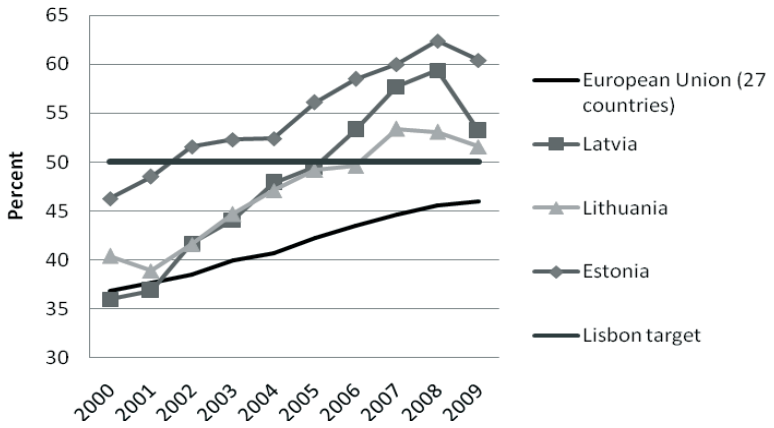

Figure 4. Employment rate of older workers (aged 55 to 64) in Baltic States, 2000–2009, per cent.[27]

Particularly big differences between EU-27 and the Baltic States are observed in respect of women's participation. In 2009, the employment rate of women aged 55 to 64 varied between 66.7 per cent in Sweden and 11.2 in Malta, the average indicator for EU-27 being at the level of 37.8 per cent.[28] Among the Baltic States, Estonia is a clear leader — in 2009, the employment rate of women aged 55 to 64 in Estonia comprised 61.2 per cent while in Latvia and Lithuania, respectively, 53.3 and 48.3 per cent.[29] Summarising up, the employment rates of the Baltic States older age women are meeting the Lisbon targets very well.

[26] The employment rate of older workers is calculated by dividing the number of persons aged 55 to 64 in employment by the total population of the same age group. The indicator is based on the EU Labour Force Survey.

[27] Employment rate of older workers by gender (tsiem020). Eurostat website http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/Annexes/lfsi_act_a_esms_an1.htm. Accessed 31 January 2011.

[28] Data Navigation Tree. [tsiem020] Employment rate of older workers by gender; Females. Eurostat website: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsiem020. Accessed 31 January 2011.

[29] *Ibid.*

If the actual retirement age is considered, it appears that a big number of women and men in the Latvia and Estonia still stay in the labour market after reaching the legal retirement age: in 2009, the average exit age of the workforce in Estonia was 62.6 years, in Latvia — 62.7 years (in 2008), compared to the EU-25 average of 61.4 years (in 2009)[30]. In Lithuania the average exit age from the labour force in 2006 was 59.9 years. Unfortunately, Labour Force Surveys data were not reliable for Lithuania for several years, but it could be guessed that according to this indicator — average exit age of the workforce — Lithuania probably lays behind her neighbouring countries and probably behind the EU average.

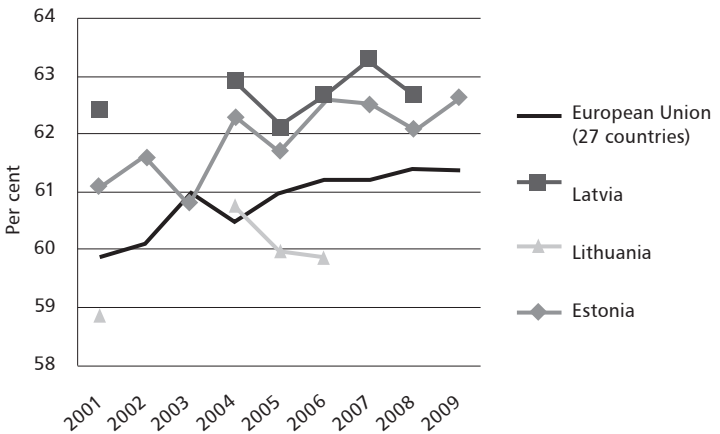

Figure 5. Average exit age from the labour force in the Baltic States, 2001–2009, per cent.[31]

However, up to now, there are many obstacles to longer working lives: labour market is not "friendly" for the older workers and social protection systems support early retirement in various ways.

For example, in Lithuania, active ageing policies still are rather ambivalent. Recession of economy at the end of the 1990s necessitated to introduce the passive measures in support of older people:

[30] Average exit age from the labour force — weighted by the probability of withdrawal from the labour market. http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/Annexes/lfsi_exi_a_esms_an1.htm. Accessed 31 January 2011.
[31] *Ibid.*

- In accordance with the amendments of the Law on Support of the Unemployed, the payment of the unemployment benefits was prolonged until the retirement age for the unemployed persons who have at least 15 years state social insurance period and are within two years of becoming eligible to receive full old-age pension.
- Since June 2004, the unemployed older people who have pension insurance period of 30 years and maximum five years remaining until retirement age, benefit from allocation and payment in advance social insurance old age pensions.

These measures conditioned both hidden discrimination by age[32] and unwillingness of older unemployed, especially in rural areas and small towns to search for jobs. The data of the Lithuanian Labour exchange on registered unemployment show, that a share of persons older than 50 among total unemployed started to increase: at the beginning of 2002, it was 23.5 per cent, respectively, at the beginning of 2003 — 25.2 per cent, at the beginning of 2004 — 27 per cent. The employers were now willing to offer jobs to the elderly persons — nearly a half of them (close to 40 per cent) remained unemployed longer than one year after registration at the territorial labour exchanges.

As it was indicated in the National Strategy on Overcoming the Effects of Ageing[33], early retirement schemes could be considered only as a temporary measure. The Strategy emphasized the need to integrate the ageing factors into employment policies with the aim to retain older people active in the labour market as long as possible and to reduce their unemployment rate.

In order to promote a further growth of employment and to meet the Lisbon targets, a new law On Support of Employment of Republic of Lithuania was introduced in 2006.[34] Until the adoption of this law, additional guarantees in the labour market were applied to persons who have not more that five years until their entitlement to old age pension. The new law has lowered the age "bar" — persons aged 50 and older are additionally supported in the labour market in respect of placement, participation in the programmes of professional training, etc.

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[32] Mikulionienė, S., Mačernytė-Panomariovienė, I. *Amžiaus diskriminacija viešajame sektoriuje.* Tyrimo ataskaita. Vilnius, 2007 (rankraštis).

[33] Adopted on 14 June 2004 by the Order of the Government No. 737.

[34] Adopted by Seimas (Lithuanian Parliament) on the 15th of June, No. X-694, applicable from 1 August 2006. *Official Gazette*, Nr. 73-2762, 2006.

Yet, many people in pre-retirement age are not willing / lack motivation to use new opportunities, offered by law: as the research data show the majority of older unemployed persons (55 and over) registered at the territorial labour exchanges are not willing to participate in active labour market policy programmes: about 90 per cent do not want to get new profession, more than 84 per cent do not want to upraise their skills and qualifications in special retraining programmes, more than 33 per cent — to work temporarily, etc.[35]

By opinion of labour market experts,[36] there are different groups of the elderly unemployed persons according to the level of work motivation:

- 1st group — active job searchers who come to the labour exchange in order to find job (they make about 39 per cent of the older unemployed persons);
- 2nd group — those who want to register at the labour exchange in order to get unemployment benefit and/or social assistance benefits; however, during the last six months, they have at least once made attempt of job search);
- 3rd group — those who have not made any attempt of job search during the last six months, they have extremely low labour motivation;
- 4th group — persons who are not able to work (e.g., disabled) and/or do not have any work motivation, they get registered only in order to get various social benefits.

In summary, it can be said that the main determinants of economic activity of the elderly people are related with the increasing labour force demand and the growth of supply of jobs as well as low incomes (pensions) of the elderly. The opposite factors, which impede the participation of pensioners in the labour market, are connected with their personal situation (bad health, the lack of necessary skills and qualifications, low education, etc.).

[35] Moskvina, J. Vyresnio amžiaus asmenų dalyvavimo darbo rinkoje galimybių vertinimas [Evaluation of the opportunities of participation of the elderly people in the labour market]. Report at the national conference "Gyventojų senėjimo iššūkiai socialinei politikai" [Challenges of demographic ageing to social policies]. Mykolas Romeris university, Vilnius, 18 October 2007.

[36] *Ibid.*

Conclusions

The following major conclusions can be drawn from the conducted analysis:

- According to average life expectancy at birth for males in 2007, the three Baltic States are on the very bottom of EU-27 scale (Lithuanian males — 64.85 years, Latvian — 65.76 years and Estonian — 67.23 years) in contrast to Italy and Sweden, which are on the top of the scale with 78.71 and 79.02 years, respectively. The same indicators for females are as well low. Latvian females with 76.46 years occupy the very last position, Lithuanian females with 77.23 years are on the fourth position from the bottom and Estonia with 78.84 years is the seventh from the bottom in contrast to Spain and France, which are on the top of the scale with 84.33 and 84.81 years, respectively.
- In the future, the young age cohorts in Estonia, Latvia and Lithuania will be less numerous and the size of old generations will increase remarkably. The process of demographic ageing will be most rapid in Lithuania — the country will "move" from the cluster of the "youngest" EU Member States to the medium position in the classification of the countries according to the level of population ageing.
- Accelerating ageing of populations has a tremendous and ambiguous impact on policy making and poses challenges to the economic system (labour force, consumption, investments and savings), education (development of adult education system), social care (new forms and strategies, development of long-term care) and health care systems.
- The European Union's response to ageing is developed as a part of the overall strategy of mutually reinforcing policies launched at the European Council meeting in Lisbon and confirmed at subsequent EC meetings. It can be stated that EU's integrated approach to ageing encompasses the economic, employment and social implications of ageing and it aims at mobilizing the full potential of people of all ages.
- The 2009 Eurostat data show that the indicators of labour market participation of the elderly in Estonia, Latvia and Lithuania are higher, compared with the average EU-27 indicators and they were

in 2009 above (Estonia and Latvia) or close (Lithuania) to the Lisbon targets.

- Particularly big differences between EU-27 and the Baltic States are observed in respect of women's participation. Among the Baltic States, Estonia is a clear leader: in 2009, the employment rate of women aged 55 to 64 in Estonia reached 61.2 per cent while in Latvia and Lithuania, respectively, 53.3 and 48.3 per cent. The employment rates of the Baltic States older age women are meeting the Lisbon targets very well.

DEMOGRAPHIC AGEING OF BALTIC STATES: THE CHALLENGES FOR POLICY RESPONSES

Vida Kanopiene, Sarmite Mikulioniene

Santrauka

Pagyvenusio amžiaus žmonės yra sparčiausiai augantis Europos ir pasaulio gyventojų segmentas. Sparčiai mažėjant gimstamumui, vyresnes kartas keičia vis mažiau skaitlingos jaunosios kartos, šie procesai ryškiausiai pasireiškia Vidužemio jūros regiono šalyse (Graikijoje, Ispanijoje ir Italijoje) ir naujosiose ES valstybėse narėse, jų tarpe ir Baltijos valstybėse. Demografinis senėjimas "iš viršaus", vykstantis dėka ilgėjančios gyvenimo trukmės, yra pastebimas daugumoje senųjų ES valstybių narių: nuo 1960 m. vidutinė tikėtina vyrų gyvenimo trkmė ES-15 valstybėse pailgėjo 9.2 metais, moterų – 9.3 metais. Centrinės ir Rytų Europos šalyse (išskyrus Slovėniją), taip pat Baltijos valstybėse šis procesas buvo nenuoseklus ir vyko/iki šiol vyksta žymiai lėčiau. Numatoma, kad jau netolimoje ateityje demografinis Europos sąjungos visuomenių senėjimas paspartės, kadangi pensinio amžiaus sulauks gausios pokario "kūdikių bumo" kahortos.

Eurostat Gyventojų prognozių skaičiavimai rodo, kad ES-27 gyventojų amžiaus struktūra ženkliai pasikeis: juniausios amžiaus grupės (0-14 metų) gyventojų dalis per laikotarpį nuo 2008 iki 2060 metų sumažės nuo 15.6 iki 14.0 procentų, darbingo amžiaus (15-64 metų) dalis pasikeis nuo 67.3 iki 56.0 procentų ir vyriausiųjų (65 metų ir vyresnių) proporcija išaugs nuo 17.1 iki 30.0 procentų. Atitinkamai dideli pokyčiai įvyks ir Baltijos valstybių

gyventojų amžiaus struktūroje: jauniausiųjų (0-14 metų) dalis sumažės 14.7 iki 12.7 procento, darbingo amžiaus (15-64 metų) dalis pasikeis nuo 68.7 iki 53.5 procento ir vyriausiųjų (65 metų ir vyresnių) proporcija išaugs nuo 16.6 to 33.8 procento. Ypač spartus demografinis senėjimas bus Lietuvoje — šalis iš "jauniausių" ES valstybių narių grupės "persikels" į viduriniąją poziciją.

Europos Sąjungos politikų atsakas į gyventojų senėjimą yra plėtojamas kaip sudėtinė dalis bendrosios Bendrijos socialinės-ekonominės raidos strategijos, kuri buvo įtvirtinta Europos tarybos Lisabonos susitikime ir vėlesniuose susitikimuose. Galima būtų kalbėti apie integruotą požiūrį į demografinį senėjimą, kuris savyje apima ekonominius, socialinius ir užimtumo aspektus, siekiant mobilizuoti visų vyresniojo amžiaus gyventojų žmoniškųjų išteklių potencialą, visų pirma, ilginant darbinio gyvenimo trukmę. .

Nors, lyginant su vidutiniais ES-27 rodikliais, vyresniojo amžiaus Baltijos valstybių gyventojų užimtumo lygis yra aukštesnis (Estijoje ir Latvijoje jis netgi viršija tikslinius Lisabonos rodiklius, o Lietuvoje yra artimas jiems), iki šiol egzistuoja daugybė veiksnių, kurios neskatina darbinio gyvenimo ilginimo — galima teigti, kad darbo rinka nėra "draugiška" pagyvenusiems darbuotojams, o socialinės apsaugos sistemos taip pat įvairiais būdais palaiko ankstyvesnį išėjimą į pensiją.

Rakta žodžiai: demografinis senėjimas; tikėtina gyvenimo trukmė; gimstamumas; socialinė politika

DEMOGRAPHIC CHANGES IN THE BALTIC STATES FROM THE VIEW OF FAMILY POLICY

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Abstract
The aim of this article is to analyse the main instruments and indicators of family policy (birth, fertility, marriage and divorce rates, family patterns and benefits in the Baltic States), which had affected the demographic situation and, probably, still are active to contribute to the demography indices in a positive manner across the Baltic States. The author of this article will compare the existing data of demographic situation (childbirth rate, fertility rate etc.), which simultaneously can serve as indicators for an assessment of the family policy in three neighbouring countries.

Keywords: family policy, birth rate, fertility, cash benefits, child care/parental leave, paternity leave, parental benefit, child care, marriage, divorce, marital child birth.

In the Baltic States, like in many European countries, family policies have gained huge importance in recent years. Part of the explanation for this is certainly an increased awareness of challenges, whose impacts are already perceivable today and will intensify in the future: population ageing, decreasing birth rates, diversification of family forms, or reconciliation needs.

Usually family policy is not understood as a separate sector of state policies, but it is integrated within the welfare system, e.g. social security and benefits, pensions etc.

Because state family policies developed later and more hesitantly than most other social policies, they are characterised by a belated and small degree of institutionalisation. For example, many countries have never

institutionalised an explicit "family ministry". Among the Baltic States only in Latvia there had been established the Ministry for Children and Family Affairs, which had existed starting from May of 2004, was reorganised as the Ministry for Children, Family and Integration Affairs and, finally, was liquidated on 1 July 2009.

At the same time, there is no standard definition in the literature as to what constitutes the term "family policy". Most common understanding is that family policy includes the following[1]:

- Children and family cash benefits (allowances) and tax relief for families with children;
- Maternity and parental leave policies (including pregnancy benefits, maternity and paternity leave policies, and parental and childcare leave policies);
- Childcare policies (including the provision of childcare and related subsidies for day-care, kindergarten, pre- and after-school care, and early childhood education);
- Housing benefits for families with children;
- Support for families with caring responsibilities toward the elderly or other dependants;
- Other policies or services for families with children.

The aim of this article is to analyse the main instruments of family policy, which had affected the demographic situation and, probably, still are active to contribute to the demography indices in a positive manner across the Baltic States. The author of this article will compare the existing data of demographic situation (childbirth rate, fertility rate etc.), which simultaneously can serve as indicators for an assessment of the family policy in three neighbour countries.

The **birth rate** is an item of concern and policy for a number of national governments, among them also in Latvia and other Baltic States. During the last seven years, the birth rate in the Baltic States significantly did not improve in spite of measures, which had been implemented and targeted to increase a birth rate and to slow down a reduction of population.

Table 1 demonstrates that the highest point of a birth rate (total fertility rate) — 1.45 — during the last five years, Latvia experienced in 2008;, Lithuania in 2009 — 1.55, and Estonia in 2008 — 1.66, while the minimum of total birth rate to reach an alternation of generation is 2.1–2.3.

[1] Gauthier, A.H. *The Impact of the Economic Crisis on Family Policies in the European Union.* European Commission. 2010, p. 3.

Table 1. Birth rate in Lithuania, Latvia and Estonia in 2005–2009

	Lithuania*	Latvia**	Estonia***
2005	1.27	1.31	1.50
2006	1.31	1.35	1.55
2007	1.35	1.41	1.64
2008	1.47	1.45	1.66
2009	1.55	1.32	1.63

* http://db1.stat.gov.lt/statbank/SelectVarV–al/Define.asp?Maintable=M3010508&PLanguage=1. Accessed 26 January 2011.
** http://www.csb.gov.lv/. Accessed 26 January 2011.
*** http://pub.stat.ee/px-web.2001/Dialog/Saveshow.asp. Accessed 26 January 2011.

There were some endeavours to improve birth rate by improving family policy issues, mostly those related to **cash benefits**, such as **child care/parental leave**, which were attracted to earnings of the person who takes care of a child.

In the Baltic countries (as well as in some other European countries) in the light of gender equality measures for involving fathers in the care of children are used. Fathers are entitled to **paternity leave** during the mother's maternity leave. In Lithuania, paternity leave is of one month duration and with 100% of compensation of earnings. Paternity leave has become very popular among Lithuanian fathers, and is used increasingly.[2] In Latvia, a socially insured father who has been granted a 10-days long leave due to birth of his child is entitled to the paternity benefit. Paternity benefit is granted and paid in the amount of 80%[3] from the average insurance contribution wage calculated from the six-month income.[4] In Estonia, the father is entitled to a paternity leave of 10 days during the pregnancy and maternity leave of the mother or within two months after birth of the child. Holiday pay are paid according to the father's average salary, but not more than three times the average monthly gross wages of Estonia in the quarter preceding the month of use of paternity leave. Monthly gross wages are determined on the basis of data published by the Statistical Office.[5]

[2] Giedre Purvaneckiene. University of Vilnius, Lithuania http://www.un.org/womenwatch/daw/csw/csw53/panels/capacity-buidling/purvaneckiene-final.pdf. 20 January 2011.
[3] Until 3 November 2010, the paternity leave benefit was paid in the amount of 100% from the average insurance contribution wage, but due to budgetary consolidation reasons the amount was reduced.
[4] State Social Insurance Agency. http://www.vsaa.lv/vsaa/content/?lng=en&cat=681. Accessed 23 January 2011.
[5] http://www.eesti.ee/eng/teemad/family/pregnancy_and_birth_of_a_child/paternity_leave. Accesed 23 January 2011.

Due to the financial crisis, the Estonian government, in 2008, approved suspension of paternity leave benefit until the end of 2012.[6]

The statistics show that the range of persons who received paternity leave reduced gradually. To illustrate the situation, the author presents statistics of Latvia during last three years. In Figure 1, data of persons having received paternity leave[7] are shown.

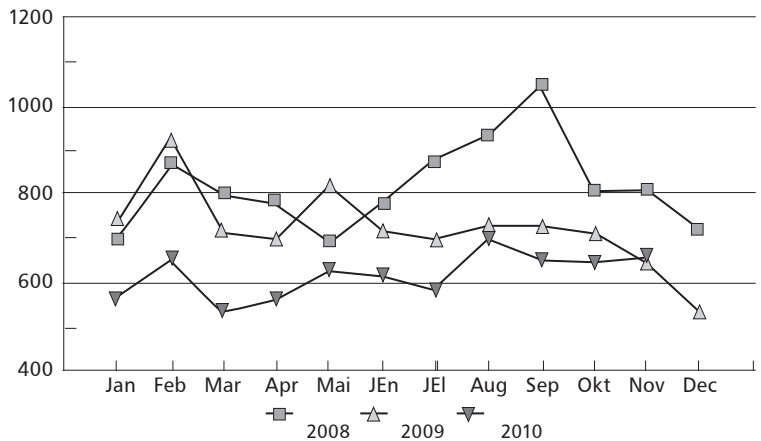

Figure 1. Data of persons having received paternity leave in Latvia, 2008–2010.

Parental leave is available for both parents and can be structured in two ways: as a non-transferable individual right with an equal amount of leave, or as a family right which parents can divide between themselves based on their choice. According to the EU Parental leave directive (96/34/EC), all Member States must provide at least three months per parent, while payments etc. are not specified. While lengths vary considerably across Europe, one can differ between countries providing about nine to 15 months, and those providing up to three years.[8]

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[6] Gauthier A.H. *The Impact of the Economic Crisis on Family Policies in the European Union. Op. cit*., p. 10.

[7] http://www.vsaa.gov.lv/. Accessed 23 January 2011.

[8] Major Trends of State Family Policies in Europe. Working Report ¤Summary (April 2010) http://www.familyplatform.eu/en/2-critical-review/conference/ef3-state-family-policies. Accessed 24 January 2011.

In the Baltic States, **parental benefit** is fixed in the national legal acts and varies until the child reaches 18 months (Latvia and Estonia) or three years (Lithuania). In Estonia[9] similarly to Latvia and Lithuania, the parental benefit is calculated on the basis of the income subject to social tax earned in the calendar year prior to the day on which the right to the benefit arose. The parental benefit differs according to whether the parent who takes care of the child continues to be actively employed or not. Different approach was established in Lithuania. At present, the longest parental leave with the highest level of compensation of earnings is in Lithuania. Parental leave can be extended until the child is three years of age, the compensation for the first year's earnings is 100% (a "ceiling" does exist, but it is very high), for the second year it is 85%, and during the third year parents are entitled to a low flat-rate benefit. Recently, a new social guarantee was introduced for a parent using parental leave: parental leave can be combined with part-time work. In this case, the parental benefit covers the difference between the current salary and the full benefit. This option allows the mother (or sometimes) the father not to lose their qualifications.[10] Temporarily, during the crisis, a parent on parental leave of a child under one year will be compensated 90% and a parent of a child under two years will receive 75% of her/his salary[11], but still the system created in Lithuania is very friendly organized for families.

Child care has been one of the crucial family policy issues in the EU during the last few years and the Baltic States were not an exception. Following the 2002 "Barcelona targets"[12] of providing childcare by 2010 to at least 33% of children under three years of age and to at least 90% of children between three years old and the mandatory school age. Regarding the lower age group (0 to 3 years), Latvia and Estonia have reached an intermediate level of coverage (between 16 and 26%), but Lithuania shows a coverage rate of 10% or less.[13] However, the situation of Lithuania should be interpreted in connection with good conditions of well-paid and long-lasting parental leaves and parental benefits.

[9] http://www.sm.ee/eng/for-you/families/parental-benefit.html. Accessed 25 January 2011.
[10] http://www.un.org/womenwatch/daw/csw/csw53/panels/capacity-buidling/purvaneckiene-final.pdf. Accessed 25 January 2011.
[11] Gauthier A.H. *The Impact of the Economic Crisis on Family Policies in the European Union. Op. cit*., p. 10
[12] In 2002, at the Barcelona Summit, the European Council (heads of state or government of the EU Member States) set the targets of providing childcare.
[13] http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/592&format=HTML&aged=0&language=EN&guiLanguage=en. Accessed 26 January 2011.

It should be admitted that multiple support, certainly, is very important for families to make them feel protected and recognised as a value from the point of view of the state. Additionally to the material support for families and such factors as economical stability and predictability, the significance also should be given to the strengthening of values in the society.

In Latvia researches[14] have been made for several times to find out and to analyse the meaning of family within the scale of values. As well as factors that encourage to conclude a marriage or which have a positive impact on one's stability, birth-rate, and positive relationships among family members. As recognised by researchers, the main factor affecting the persons, when they are choosing whether to conclude a marriage or not, or choosing a different type of relationship, for example, cohabitation, is the meaning of values.

Also, some surveys in social science demonstrate that marriage is the safest place for children as well as for mothers. Marriage dramatically reduces the risk that mothers will suffer from domestic abuse, family members will far less likely to suffer from alcohol, drugs abuse and poverty than mothers who have never been married. The institution that most strongly protects mothers and children from domestic abuse and violent crime is marriage.[15] Families based on marriage are, on average, healthier, wealthier, and more stable than other family forms.[16] It follows that the best place for rearing children is family constituted by marriage. In Table 2, the data of **marital live births** (in percentage) in the Baltic States are provided. Official data from Latvian, Estonian and Lithuanian Statistics' Bureaus testifies that the situation in Baltic States is very different, because one of very important factors, which must be taken into account when interpreting these data, is religious belief, which is more widespread in Lithuania.

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[14] Sebre, S. u.c. Laulību, dzimstības un pozitīvu bērnu un vecāku attiecību veicinošo faktoru izpēte. 2004. http://www.lm.gov.lv/text/1107; Berga, G. u.c. Laulību, šķiršanas, laulību noturības un dzimstības veicinošo faktoru izpēte. 2005. http://www.lm.gov.lv/text/1107; Demogrāfija un ģimenes stāvoklis Latvijā. SKDS, 2008. http://www.lm.gov.lv/text/1107. Accessed 30 January 2011.

[15] Fagan, P.F., Johnson, K.A. Marriage: The Safest Place for Women and Children. *The Heritage Foundation Backgrounder*, No. 1535, 10 April 2002. http://www.heritage.org/Research/Reports/2002/04/Marriage-The-Safest-Place-for-Women-and-Children. Accessed 30 January 2011.

[16] O'Nail, R. Does marriage matter? http://www.civitas.org.uk/pdf/cs31.pdf. Accessed 30 January 2011.

Table 2. Marital live births (%) in the Baltic States, 2004–2009

	2004	2005	2006	2007	2008	2009
Lithuania	71.28	71.58	70.36	70.79	71.45	72.05
Latvia	54.7	55.4	56.6	57.0	56.9	56.5
Estonia	42.03	41.49	41.76	41.94	40.93	40.82

Over the last decades, patterns of partnerships and living arrangements have changed significantly all around Europe. **Marriage rates** have declined and divorce rates increased, and increasingly cohabitation is used as a stepping stone for marriage or as a stable alternative to it.

In Table 3, marriages per 1000 population[17] in the Baltic States are shown, the situation fully corresponding to the before mentioned one.

Table 3. Marriages per 1000 population in the Baltic States, 2004–2009

	2004	2005	2006	2007	2008	2009
Lithuania	5.6	5.8	6.3	6.8	7.2	6.2
Latvia	4.5	5.5	6.4	6.8	5.7	4.4
Estonia	4.45	4.55	5.18	5.23	4.57	4

It should be admitted that the analyses of birth-rates and family structures in several countries acknowledges the tendency that in most Northern and Western European countries, except Western Germany and the Benelux countries, more than 40% of cohabiting couples already have children. Still, the percentage of first-born children of cohabiting parents is much higher than for second or later born children.[18] The second and third children in families, which are not married, have born more rarely than in married families.

While marriage rates have decreased in Europe, **divorce rates** have been constantly on the rise. In Table 4, the situation concerning divorce

[17] http://data.csb.gov.lv/Dialog/Saveshow.asp; http://db1.stat.gov.lt/statbank/SelectVarVal/Define.asp?Maintable=M3010301&PLanguage=1; http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=PO047&ti=MARRIAGES+AND+DIVORCES&path=../I_Databas/Population/01Population_indicators_and_composition/02Main_demographic_indicators/&lang=1. Accessed 30 January 2011.

[18] OECD Database. Cohabitation rate and prevalence of other forms of partnership. www.oecd.org/els/social/family/database; Research on Families and Family Policies in Europe, p. 25. Accessed 30 January 2011. http://www.familyplatform.eu/en/1-major-trends/final-report-1/research-on-families-and-family-policies-ineurope. Accessed 30 January 2011.

rates per 1000 population[19] in the Baltic States is shown. Baltic States are good exception in the overall situation in Europe, because in the Baltic States the proportion of divorces per 1000 inhabitants is stable.

Table 4. Divorce rates per 1000 population in the Baltic States, 2004–2009

	2004	2005	2006	2007	2008	2009
Lithuania	3.2	3.3	3.3	3.4	3.1	2.8
Latvia	2.3	2.8	3.2	3.3	2.7	2.3
Estonia	3.08	3.01	2.84	2.84	2.61	2.38

With the start of the economic transformations in the Baltic States, the demographic processes have been experiencing essential changes. Fertility has dropped well below the level ensuring the replacement of generations. The family institute has been basically changing. Among the young people, a modern family pattern, with family establishment not related to marriage as one of its essential features, has been gaining strength.

When developing state support policy for families and taking the political decisions, which affect family situations, it should be borne in mind that one of the most important values and preconditions of society existence is a strong and socially and economically independent family.

DEMOGRĀFISKĀS PĀRMAIŅAS BALTIJAS VALSTĪS ĢIMENES POLITIKAS ASPEKTĀ

Līga Āboliņa

Kopsavilkums

Raksts sagatavots ar mērķi analizēt atsevišķus nozīmīgus ģimenes politikas indikatorus (piemēram, dzimstība, laulības, laulības šķiršana, ārpus laulības dzimušo bērnu skaits) kopsakarībās ar ģimenes atbalsta pasākumiem, kas ir kļuvuši aktuāli un piedzīvojuši pārmaiņas pēdējos gados Baltijas val-

[19] http://data.csb.gov.lv/Dialog/Saveshow.asp; http://db1.stat.gov.lt/statbank/SelectVarVal/Define.asp?Maintable=M3010301&PLanguage=1; http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=PO047&ti=MARRIAGES+AND+DIVORCES&path=../I_Databas/Population/01Population_indicators_and_composition/02Main_demographic_indicators/&lang=1. Accessed 30 January 2011.

stīs — Lietuvā, Latvijā un Igaunijā. Rakstā izmantotā statistika attiecas uz laika periodu, kopš Baltijas valstis iestājušās Eiropas Savienībā.

Baltijas valstīs, tāpat kā citās Eiropas Savienības valstīs, ģimenes politika, kura kā sociālās politikas atzars ir attīstījusies vēlāk un neviendabīgi, pēdējo gadu gaitā ir guvusi arvien lielāku nozīmi. Tam par iemeslu kalpo gan apstākļi, ka sabiedrība noveco, gan arī tas, ka samazinās dzimstība un dažādojas ģimenes modeļi un vērtības.

Raksta ietvaros ir analizēti dzimstības rādītāji Baltijas valstīs, konstatējot, ka Latvija, tāpat kā Igaunija, 2008. gadā uzrādījusi visaugstāko summāro dzimstības koeficientu, kas Latvijā bija 1.45, bet Igaunijā — 1.66. Savukārt Lietuvā nepārtraukti palielinās summārais dzimstības koeficients, 2009. gadā sasniedzot 1.55. Rakstā tiek parādīts laulību un laulības šķiršanu skaits Baltijas valstīs, konstatējot, ka Lietuvā caurmērā laulības tiek slēgtas biežāk, un arī šķirtas tiek nedaudz biežāk, tomēr laulības šķiršanas rādītājs Baltijas valstu starpā būtiski neatšķiras. Tomēr ievērojama atšķirība ir attiecībā uz laulībā dzimušo bērnu skaitu, proti, Lietuvā būtiski vairāk, bet Igaunijā — vismazāk bērnu dzimst laulātiem vecākiem, ko ietekmē arī reliģiskās piederības atšķirības.

Tāpat autore analizē valsts nodrošinātos ģimenes atbalsta pasākumus — bērna kopšanas atvaļinājuma ilgumu, bērna kopšanas/vecāku pabalstu, paternitātes atvaļinājumu un pabalstu un to atšķirības Baltijas valstu kontekstā.

Atslēgvārdi: ģimenes politika, dzimstība, pabalsti, bērna kopšanas atvaļinājums, paternitātes atvaļinājums, vecāku pabalsts, bērna aprūpes pakalpojums, laulība, laulības šķiršana, laulībā dzimis bērns.

LEGAL ASPECTS AND PROBLEMS OF CONCLUDING PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

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Abstract
Innovation of public-private partnership theme is based on post-crisis period, with priorities of improving the state economy, solving the proportional problem of social interest and economic growth, risk regulation and use the legal ways to solve such problems.

The goal of the article is to investigate the legal aspects and legal problems of implementations of regulation for concluding public-private partnership (PPPs) contracts in European Union Member States.

The article focuses on four key topics:

1. Protecting the public interest and maximizing value added to citizens;
2. Contract design and management, in particular, the payment mechanism and the risk allocation built-in the contractual terms;
3. Importance of standardized contracts and advisory units to reduce the risk of contract misspecification;
4. Efficient risk allocation and description of the incentive structure and risk transfer between the contracting parties for the main forms of PPPs.

The author makes some juridical conclusions about the existing problems in theory and legal regulation, compares the experience of different EU states of public-private partnership contracts, provides some suggestions for solving problems and improving the PPPs process.

Keywords: partnership, contract, risk regulation, public partner, private partner, state regulator, concession contracts.

Introduction

Public-private partnerships (PPPs) are long-term contractual arrangements between the public and private sectors in which the private sector has a responsibility for significant aspects of the building and operation of an infrastructure for the delivery of public services.[1] PPPs are generally not "privatizations" in the sense that the latter term is most commonly used. A privatized business is one that was formerly owned by the public sector and is now owned by the private sector. It may operate in highly competitive markets — as, for example, an airline does — or it may hold a monopoly position and so require *active regulation* once it is transferred to the private sector — as a utility company does. In either case, the public sector is disengaged from the business.[2]

Economical features and aspects which have effect on the contract:

1) the characteristics of the targeted sector and the market structure;
2) the degree of macroeconomic instability;
3) the country's regulatory and institutional framework;
4) the contract design and management, in particular the payment mechanism and;
5) the risk allocation built-in the contractual terms.

There are problems of identification of the legal nature of such difficult and comprehensive kind of contracts. Is it private law regulation or public law, or maybe it is a two-step theory. In the first part of PPPs process it is a Public Law regulation, especially administrative law, with problem of choice, but in concluding the contract it will be Private Law.

As to problems of the transparency in PPPs — in comparison with the public procurement of standardized products or services, PPPs are likely to be even more problematic from a governance point of view, as PPP procurements tend to be infrequent for the particular public buyer, much larger, more complex, and often specific to particular assets. These features make benchmarking and other standard forms of outside control more complex. At the same time, stakes are higher than in standard procurement, so bad governance can be much more costly.

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[1] Contract Design in Public-Private Partnerships. Report prepared for the World Bank by Elisabetta Iossa Giancarlo Spagnolo Mercedes Vellez. http://www.gianca.org/PapersHomepage/Contract%20Design.pdf.

[2] Public-Private Partnerships. Michael B. Gerrard. http://www.imf.org/external/pubs/ft/fandd/2001/09/gerrard.htm

Concerning risk allocation problems in the PPPs programmes — PPP contracts are characterized by a relevant level of *risk transfer* to the private-sector party, although the specific risk allocation varies with the form of PPP used for the project, as different is the scope of activities delegated to the private sector. For each type of PPP contract, risk is allocated to the private-sector party through contractual incentives and penalties incorporated within the payment mechanism, and through the activities for which the private-sector party is responsible

PPPs types and regulation of the contracts

In Europe, a challenge for the public sector has been to rapidly build up the capacity and knowledge to devise and implement PPPs, and to manage the PPP contractual relationships over the long-run. The public sector's progress on this front has not kept pace with that of private sector partners. In the UK, recognition of this problem by the National Audit Office has led to a series of programmes aimed at training public officials and to an extensive use of external consultants.

Many forms of PPP exist and are continuously being developed to suit project characteristics:

1. The main defining feature is the degree of private control over and involvement in financing;
2. There is no unique model, nor does the theory suggest the development of one. Each project will define what is suitable and what is required.[3]

Member State experience in PPPs:

France has an extensive experience with public private partnerships by using concession contracts and delegating public services in various sectors, including the health sector. Private sector concessions for the development and operation of water supply and treatment plants have been common in France for at least 40 years, leading to the growth of large, diversified French private sector utility companies. Recently, the Government granted new concession contracts for the A86 motorway around Paris and for urban transportation. Over 100 public private partnership projects have been completed or contemplated in France.

[3] *Guidelines for Successful Public-Private Partnerships.* Brussels, February 2003. European Commission Directorate-General Regional Policy.

In Ireland, public private partnership arrangements have delivered significant infrastructure projects, such as the east and west link toll bridges in Dublin, the programme for decentralised government offices and a new power station. The Government of Ireland has subsequently made a more formal commitment to such partnerships, with the release of the *Framework for Public Private Partnerships* and the passing of the State Authorities (Public Private Partnership Arrangements) Act 2001. Projects under consideration cover the education, local services, public transport, roads, solid waste and water/waste water sectors. The preferred bidder for the first project under the new public private partnerships policy was announced in March 2001. The project involves a private company designing, building, financing and operating five new post-primary schools. The Government has also announced eleven National Roads Authority projects and the procurement process for the Dublin Metro.

In Belgium, public private projects have been negotiated across a number of sectors, including roads, water, waste and health care. The Belgian Government intends to promote public private partnership projects in transport (including rail) and management of public real estate. The Flemish Regional Government established an agency within its administration to identify public private partnership projects, design model partnership structures and mediate between the public and private sectors. That government is focusing on investments in road and waterway infrastructure, the clean up of "brownfields" and city regeneration. The Committee also met with officials from the European Commission in Brussels. The European Commission released a green paper on public procurement in the European Union in 1996 and, more recently, revised its rules on public contracts and public works concessions to promote the involvement of private capital in infrastructure funding.

The *bundling* of project phases into a single contract is the main characteristics of PPP contracts. If we consider the different stages of a project as comprising the design (D), the building (B), the finance (F) and the operation and management (O), we have that PPPs differ in terms of which of these four stages are delegated to the private sector (DBFO).

However, the term PPP is generally used to indicate substantial involvement of the private sector in at least building (or renovation) and operation of the infrastructure for the public-service provision. The bundling of project phases encourages the private-sector party (typically a consortium of firms) to think about the implications of its actions on different stages of the

project (from the building to the operation) and thus favours a whole-life costing approach (see Bennett and Iossa (2006), and Martimort and Pouyet (2007) for an in depth discussion).

PPP contracts are based on *output specifications* in the sense that the public-sector party defines only basic standards of service, leaving the private-sector party with the choice as to how to meet and possibly improve upon these basic standards. The idea of the output specification is to provide incentives for innovative approaches, allowing for private sector's skills and knowledge to feed into public service provision. Leaving the private partner's PPP contracts is characterized by a relevant level of *risk transfer* to the private-sector party, although it is to be noted that the specific risk allocation varies with the form of PPP used for the project, as different is the scope of activities delegated to the private sector. For each type of PPP contract, risk is allocated to the private-sector party through contractual incentives and penalties incorporated within the payment mechanism, and through the activities of which the private-sector party is responsible.

PPP contracts are generally *long-term contracts* with duration increasing with the level of financial involvement of the private sector in the provision of investments. Upon contract expiry, the public-sector party regains possession of the assets and can re-tender aspects of the service provision to other providers or take provision in-house.[4]

Latvian experience: Drafting of a bill has been analyzed from other countries' (British, Ireland's, Lithuanian, Czech, Greek, etc.) experience in PPP framework issues, and the major European Union legislation has been identified, which must correspond to the draft law, and deliberate judgments of the Court of PPP issues. While in European Union countries, for example, in Poland, Greece and the Czech Republic, the bills are not as large (on average, 35–45 articles) as Latvian PPP bill (119 articles).

Latvia is one of the first countries in Europe, whose domestic regulations will be included in the institutional framework for PPP and sponsor interference law. The working group considered it more user-friendly and understandable to the fact that the PPP bill is included in the framework of the joint-venture company and the target company in the creation, operation, participants shift capital and winding up, instead of this framework

[4] Grimsey and Lewis (2002) for a discussion of how risk allocation in PPPs differs from that in traditional procurement.

being covered in the Commercial and other normative acts, so the user must use a specific statute.[5]

EU and Latvian national regulation and legal problems of PPPs

Despite the troubling developments during the financial-economic crisis, PPP projects demonstrated much resilience. Lately, however, there seem to be new challenges facing all projects and stakeholders in the region, which often lead to a breakdown of cooperation between the various participants.

This article will provide a platform for discussing the way forward for PPP by showing models and practices for that work. As usual, the event will also provide an excellent opportunity for networking with industry peers as well as establishing cross-industry contacts.

Movement acting problems on a regional level:[6]

- **Hear** about current and planned **projects** in the region;
- **Discover** new **opportunities** even in challenging times;
- **Learn** about **innovative approaches** in PPP;
- **Explore financing** options;
- **Discuss** lessons and **strategies** with public and private sector decision makers;
- **Gain insight** into partnerships that actually work;
- **Acquire** practical **know-how** at the workshop day.

For example: Czech PPP Association is a non-profit civic association of natural and juristic persons, active in the area of investments and services supplied for the public sector, in its effective version. The main aims of PPP Association are support and development of investments and services by means of PPP in the Czech Republic. PPP Association actively participates in forming the conditions and rules, helping to achieve transparent principles of these kinds of investments and services. It also advances protection of good morals and strengthening of general confidence in effective forms of the public and private sector co-operation. PPP Association helps its

[5] PPPs law in Latvia, draft of bill. http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/FD73DDFE3637A14DC225756A004B1831?OpenDocument#a. Accessed 31 January 2011.

[6] PricewaterhouseCoopers, 2005. *Delivering the PPP promise: A review of PPP issues and Activity.* Rajan, R.G., Conference materials, 1992.

members and the public sector to create a file of rules, principles and steps directed at successful implementation of the PPP projects.[7]

Basic problems of developing PPPs:

- To gain an understanding of the limitations of the Balanced Scorecard in this post credit crunch age;
- To gain an understanding of the risk-based performance methodology;
- To develop an understanding of risk appetite and a clear, actionable framework for defining your risk appetite;
- To understand the relationship between strategic objectives, risk appetite and risk exposure, and tools for managing this relationship;
- To understand the role of strategic objectives and key risks, how to define, integrate and align these;
- To understand the role of initiatives and actions, and how they are aligned to drive your complete change agenda;
- To understand the role of risk and control assessment, and key indicators and how assessment and indicator data can be used together to drive better decision-making.

European Union Directives regulation of PPPs:

1. European Parliament and Council Directive 2004/17/EC of 31 March 2004 (hereinafter — the Directive 2004/17/EC), which coordinates the procurement procedures of entities operating in water, energy, transport and postal services. That Directive has introduced national legislation by 31 January 2006. The Directive was transposed adoption of the PPP Act, which came into force on 1 October 2009. In the past, 18 June 2009, the PPP Act (effective from 1 October 2009) under construction — the draft annotations PPP V. under "What Latvian international commitments of a normative act" in paragraph 1 stated that the PPP bill complies with the Directive 2004/17/EC, but informative reference to the Directive PPP Law was not included. This lack of precision is necessary to be repaired.

[7] Lobina, E., Hall, D. Problems with Private Water Concessions: A Review of the Experiences in Latin America and Other Regions. In: *Water Pricing and Public-Private Partnership in the Americas.* Inter-American Development Bank, 2003; Loosemore, A. Risk allocation in the private provision of public infrastructure. *International Journal of Project Management*, 2007, 25, 66–76; Martimort, D., Pouyet, J. Build it not: normative and positive Conference materials studies. 2007.

2. 2nd European Parliament and Council Directive 2007/66/EC of 11 December 2007, amending Council Directives 89/665/EEC and 92/13/EEC with regard to the review procedure for improving the efficiency of public procurement field. That Directive has introduced national legislation by 20 December 2009. The European Commission has opened an infringement procedure (case no. 2010/0140) against the Latvian Republic due to the fact that Latvia has not notified the Commission of measures taken in relation to the transposition of Directive 2007/66/EC, or in other words, for not implementing the directive in good time. The Republic of Latvia has received, on 24 June 2010, the European Commission's reasoned opinion that is communicated to the arrangements under which national legislation is transposing the Directive 2007/66/EC. With the reasoned opinion the European Commission asks the Latvian Republic to take the necessary measures to ensure compliance with the reasoned opinion within two months from the date of receipt of this opinion, that is, until 27 August 2010.
3. If the directive is not fully implemented by 27 August 2010, Latvia by a court decision can be subject to financial penalties (fines and penalties). 3rd European Parliament and Council Directive 2009/52/EC of 18 June 2009 laying down minimum standards for the sanctions and measures against employers who employ third-country nationals staying illegally. The directive is to be introduced in the national legislation by 2011 on July 20.[8]

Risks included in the Public Private partnership contracts

As long as everything is in order and the project is developing a contract and includes the right not needed, but still joined to any of the problems, there are conflicts and lawyers begin to look for reasons who is guilty, what about punishment.

French professor Arni Smiley deems the rights to have features like the electrical energy — as long as everything is in order, in the meantime we do not notice them, but then there are problems, electricity is lost, and the search begins for perpetrators.[9]

[8] www.saeima.lv/likumprojekti 31.01.2011.

[9] Renda, A., Schrefler, L. *Public-Private Partnerships. National Experiences in the European Union*. Centre for European Policy Studies, Briefing Note IP/A/IMCO/SC/2005-160, Brussels, 2006. A. Smiluis.

In developing this idea, the right to serve as a tool to human plated right-lamp illuminates the room, electrical wires are insulated and therefore "will not get through the fingers", but as soon as someone tries, "it comes to your mind" to change something, then he gets an electric shock. Contract penalties are also applied, as a result of a breach.[10]

The right is the sleeping dragon (Leviathan) that the law frames slow quietly, but as to which of these frames breach of the consequences are inevitable. After the classic scientist Thomas Hobbes, there is an objective need for social contracts.

Types of risks concerning:

– politics,
– economics,
– building,
– financial.

Risk transfer lies at the heart of effective PPP design. If a good balance is not achieved it will result in increased costs and the inability of one or both parties to fully realize their potential.[11]

Objective: Improve the quality and effectiveness of public sector investment policies.

Actions that we support:

1. Establishing level playing field conditions for PPPs;
2. Pan-European dissemination of knowledge & experiences;
3. Supporting PPPs by mitigating bottle-necks such as transaction costs.[12]

The positive impact of this is clearly visible: first generation PPP projects have been wound up and second generation projects are now in full implementation with a considerable number of projects in the pipe line.

Green book requirement:

Results of the public consultation:

1. Consensus on the need for a harmonious combination of market mechanisms and public service missions;
2. Essential importance of sgis;

[10] Revina, E. Decision of the Authority and civil agreement interaction. *Jurista vārds*, 28 July 2009.

[11] Resource book on PPP case studies http://ec.europa.eu/regional_policy/sources/docgener/guides/pppresourcebook.pdf. 31.08.2010.

[12] A Tale of Two Dutch PPPs 2nd Intl. EC Workshop on PPPs. André Betting, Dir. Dutch PPP Knowledge Centre 5 July 2004. http://ec.europa.eu/regional_policy/sources/docgener/guides/pppguide.htm.

3. Need for coherent Union policies;
4. Subsidiarity;
5. Legal certainty (financing, definition, organisation);
6. Importance of evaluation;
7. Trade policy and co-operation policy.[13]

Building a valuable approach to PPPs:

Guiding principles in the area of services of general interest:

1. Enabling public authorities close to the citizens;
2. Maintaining high levels of quality, security and safety;
3. Ensuring consumer and user rights;
4. Monitoring and evaluating the performance;
5. Respecting diversity of services and situations;
6. Increasing transparency;
7. Providing legal certainty.

From the business community in Member States — there is a shared interest to upgrade major infrastructure through these projects. The opportunity to participate in this is the reason for PPP and for the theory to become the basis for facilitation.

Conclusions and suggestions

1. Tasks of national legal acts include
   - ensuring open market access and equal fair and transparent competition under the public procurement directive;
   - protecting and safeguarding the public interest;
   - ensuring compatibility between PPP and State Aid rules;
   - defining the right level of grant contribution and the right PPP formula tailored to the specific circumstances.
2. A task for the government is to develop the following Cabinet of Ministers draft: "The provisions of the concession procedures for the notification content, submission procedures and communication model forms". The rules will determine the bill for the content and preparation order. The Ministry of Finance is responsible for drafting these regulations after the adoption of the bill, to go into effect simultaneously with the law coming into force.

[13] The Follow-up to the Green Paper on services of general interest. http://ec.europa.eu/regional_policy/sources/docgener/guides/pppguide.htm.

3. A task for the court system is providing a bill known as after contract Review Institute for interested parties in certain cases, which involve significant public-private partnerships; the legislation on violations could apply for a court of public partner or the representative of the concession procedures for the commission of unlawful conduct and after unlawful concession agreement was concluded.

This will reduce illegal activities in such cases as this action will have serious consequences that so far have not been foreseen. Consequently, individuals will get wider law enforcement opportunities. The Application Review Commission decisions may be appealed to the Administrative District Court and providing that the decision can be appealed in cassation to the Supreme Court Administrative Cases Department, this will be undermined judicial workload and will speed up the judicial review process, so that individuals will make it faster to get a definitive ruling in the case.

For problem solving, which provides individuals the right to apply for unlawful concession contract as null and void by the Administrative Procedure Law, Administrative Court has been selected taking into account that:

1) the court is to determine whether there is a public-private partnerships — the concession procedure for violating legal acts;
2) all appropriate issues are addressed in a single judicial proceedings, without distinguishing between the public partner, agent or partner in public concession procedures for commission action in a public field review of the decision on the conduct of contract continued validity or enforcement of various legal proceedings (civil and administrative procedure);
3) the solution is based on the likelihood of legal literature given the need to examine the issue in the dispute quickly, as well as to the likely significant financial implications, provided that the decision can be appealed in cassation of the Supreme Court Administrative Cases Department for changes in administrative procedure.

PPPs can deliver excellent infrastructure on time and within budget. There is consistent evidence from the UK that PPPs are much more likely to deliver the infrastructure on time and within budget than the public sector.

ЮРИДИЧЕСКИЕ АСПЕКТЫ И ПРОБЛЕМЫ ЗАКЛЮЧЕНИЯ КОНТРАКТОВ ГОСУДАРСТВЕННО-ЧАСТНОГО ПАРТНЕРСТВА

Николай Озолиньш

Резюме

Инновация темы государственно-частного партнерства основана на посткризисный период, с приоритетами улучшение состояния экономики, решение пропорционально проблемы социального интереса и экономического роста, риск регулирования и применения правовых путей решения таких проблем. Целью статьи является исследование правовых аспектов и правовых проблем реализации регулирования заключения Государственно-частного партнерства (ГЧП) контрактов в государствах Европейского союза. Статья сосредоточена на четырех основных темах:

1. Защита общественных интересов и обеспечение максимальной на добавленной стоимости для граждан;
2. Форма и содержание контракта и управления, в частности, механизм оплаты ираспределение рисков встроенный в договорных условиях;
3. Важность использования стандартных контрактов и консультативных единиц по сокращению риска неверной спецификации контракта;
4. Эффективное распределение риска и описание стимулов и структуры передачи риска между договаривающимися сторонами для основных форм ГЧП. Автор сделал некоторые юридические выводы о существующих проблемах в теории и правовом регулировании, сравнил опыт различных стран ЕС государственно-частного партнерства контрактов, обеспечил некоторые предложения для решения проблем и улучшения процесса ГЧП.

Ключевые слова: партнерство, договор, риск регулирования, государственный партнер, частный партнер, государственный регулятор, концессионные договоры.

UNMARRIED COHABITATION: THEORETICAL AND PRACTICAL ASPECTS

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Abstract
Law rules regulating marriage and family relations are influenced by the culture and religious norms of every country. Fast globalization processes, social, economic and political changes influenced the appearance of man's and woman's co-habitation derivatives, which by many theorists are considered as family alternatives leading to deinstitutionalization of marriage and family relations. Nowadays there are various approaches to cohabitation — the spectrum ranges from overtly hostile attitudes to full assimilation to formal marriage. The main aim of this article is to analyze the legal side of the cohabitation institution which is the form of family creation particularly between man and women who are living together without marriage registration.

The institution of cohabitation is one of the novelties of the Civil Code of the Republic of Lithuania, Book Third "Family Law". The sixth part titled as "Rights and duties of other members of the family" and the norms of the fifteenth chapter regulate mutual property relations between a man and a woman living together without having their marriage registered. Though, in spite that the Civil Code is already valid for ten years, norms regulating the relations between cohabitants are still invalid, which causes discussions and disputes among the society. Such indefiniteness and legal obscurity obviously influence legal disputes and the legal practice model. The author of the article analyses problems which cohabitants encounter (property division, maintenance and succession aspects, etc.). It is considered, that rough regulation of such relations suppose ambiguous treatment of the cohabitant status, which influences violation of cohabitants' and their children's rights and interests. Considering the raised problems, the author suggests possible solutions and draws attention to several foreign countries, such as France, Sweden (because the initial draft of Cohabitation chapter of CC followed closely the Swedish Cohabitees Act (Joint Homes).

Striving for realization of the aim and tasks the research used theoretical and empiric scientific methods: comparison, historical, systematic analysis, theological, linguistic, logical, statistics and questionnaires (empirical material includes questionnaires composed by the author in 2006).

Keywords: cohabitation, family member, property regime, partnership.

Introduction

Throughout the latter several decades, traditional family started to mediate in the Republic of Lithuania. Although traditional family model based on marriage registration dominates in Lithuanian, rapid social and economic changes, intensive emigration[1] influenced the fact that younger men and women started living together under actual matrimonial relations (cohabitants), i.e. forming families without marriage registration. With reference to the statistic records concerning population and accommodation general census[2] in 2001 there were 55.2 thousand such couples in Lithuania. Cohabitants comprise 3.2 per cent of all residents of the country. A number of cohabitants — 48 per cent of men and 43 per cent of women are divorced. Almost one-third of cohabitants have never lived in legal marriage. In 2006, the author of this article has accomplished a survey (questionnaire the main object of which was to discover what kind of model of family relations dominates in Lithuania, and why individuals choose a particular form of family relations' establishment) which discovered that a sheer majority of respondents (60 per cent) prefer marriage as the form of family creation, 27 per cent choose unregistered cohabitation, and only 13 percent would register their partnership.[3]

In comparison to the residents of other countries of the Baltic States, most of cohabitants were recorded in Estonia – 90 (from 1000 residents), in Lithuania and Latvia this rate is less – respectively 32 and 28.[4] It was noticed that cohabitant relations break more often that families with marriage registration. Demographers indicate that such a strategy of family

[1] According to Eurostat records, since 2005, five members of EU (Estonia, Latvia, Poland, Netherlands, Lithuania) have had negative migration saldo. http://www.stat.gov.lt/uploads/42_Lietuvos_gyventojai.pdf?PHPSESSID.

[2] *Demography Chronicle.* Statistical department, 2004.

[3] Kudinavičiūtė-Michailovienė, I. *Marriage Conditions and their Realization*. Monograph. Vilnius: Justitia, 2007, pp. 38–39.

[4] http://www.stat.gov.lt/lt/news/view/?id=824&PHPSESSID=.

formation increases family instability.[5] In more developed countries family formation without marriage registration is already considered as overdue and failed experiment and more often it is turned back to the fundamentals of traditional family.[6] Therefore, having in mind that norms of the Civil Code (2001) regulating property relations of the cohabitants are still invalid, the analysis of cohabitation institution in the context of marriage and family relations becomes actual and important.

Legal regulation of cohabitation until the Civil Code of the Republic of Lithuania in 2001

Analyzing legal regulation of actual marital relations or otherwise called actual marriage (cohabitation) in the context of family law development, it has to be mentioned that legal acts valid in 1918–1940 did not reglament cohabitation. It was noticed that most widely actual marriage was regulated in 1926 by the Code of the Matrimony, Family and Wardship, which was obtained in Lithuania since 1 December 1940. Its provisions accepted actual marriage alongside with the marriage registration. Actual marriage had to be established in court stating that 1) a man and a woman keep house together, 2) they do not hide their relations from other people, 3) such relations are granted in correspondence or other documents, 4) support each other materially, 5) have children, foster and support them. According to the norms of the latter Code, actual marriage can be instituted in the reference of similar factors. However, court could equate actual cohabitation to actual marriage only in two cases: 1) establishing cohabitant's right to maintenance as a result of incapacity and 2) dividing property which was acquired living together. Not all relations were identified as actual marriage, but only serious and enduring relations with the intention to compose a family.[7] Sustaining such provisions, in several years actual marriage was equated to marriage registration, i.e. legal acts analogically estimated both actual (not registered at the state institutions by the act of civil status) and registered marriages. In both cases juridical outcomes were the same. Legal regime of the property acquired in actual marriage

[5] Maslauskaitė, A. *Lithuanian family: between market and policy*. Vilnius: Institute of Democratic Policy, 2005, pp. 24–36.

[6] Wilkins, R.G. *International Law, Social Change and the Family*. http://www.ngowatch.org/wilkins.pdf.

[7] Matvejev, G. *Soviet Family Law*. Moscow: Juridical literature, 1978, pp. 53–54.

obtained the same legal property status as in marriage registration. On 8 July 1944, the situation had been changed by the decree[8], which abolished the legal force of the actual marriage. Persons, who until the decree came to force had been living as actual cohabitants, were allowed to register their marriage. In the process of marriage registration they could indicate the beginning of their actual marriage. Thenceforth, it was considered as the origin of marital rights and duties. This legal act acknowledged again the importance of marriage registration on the motives that the security of actual marriage endanger the principle of monogamy and can encourage polygamy. Actual cohabitation avoids state control which determines legal obstacles for marriage registration, since actual cohabitants do not apply to the department of the record of the civil status act. Therefore, difficulties occur while trying to realize a set of demographic tasks considering accountancy of population records. Actual marriage influences the origin of frivolous relations and etc.[9] Actual cohabitation was not recognized by the valid norms of the Family and Marriage Code of the Republic of Lithuania (hereafter Family and Marriage Code).[10]

The Civil Code of the Republic of Lithuania[11] introduces a new institute — living together without marriage registration (cohabitants). After the analysis of the latter institute and the comparison with marriage institute, it might be judged as new marriage form. On the other side, there exist opinions that "partnership is not the alternative of the marriage, since it does not provide the privileges which are ensured by marriage. This institute regulates exceptionally just issues on property relations. (...) heterosexual relations of the couples cannot be ignored in the society. Moreover, you cannot deny the demand at least minimally protect the interests of the weak side of such relations[12]".

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[8] USSR decree of the Presidium of the Supreme Soviet "Re increase of State aid to pregnant women, mothers with many children and single mothers, on strengthening measures for the protection of motherhood and childhood; on the establishment of the honorary title "Mother Heroine" and foundation of the institution of the order "Motherhood Glory" and "Motherhood Medal". USSR Supreme Soviet News, 1944, No. 37.

[9] Riasencev, V. *Family Law*. Moscow: Juridical literature, 1971, p. 32.

[10] *Marriage and Family Code of Lithuanian Republic.* Vilnius: Ministry of Justice Press, 1990.

[11] Civil Code of the Republic of Lithuania, adopted by Seimas of the Republic of Lithuania on 18 July 2000, No. VIII-1864. www.lrs.lt.

[12] Nemaikštytė E., Poškutė, M. Law on Partnership — which way Lithuania choose? *Law News*, 2006, No. 4 (17), 2–5.

Legal regulation of cohabitants' relations according to the Civil Code of the Republic of Lithuania (2001)

In the sixth part "Rights and Duties of Other Family Members" of the third book "Family Law" of the Civil Code of the Republic of Lithuania cohabitants are referred to as family members. The concept 'family member' is a derivative from the concept 'family'. Civil Code does not provide a 'family' concept. Different definitions can be found in separate legal acts as well. For example, "family is spouses or persons living together, or a married person with whom are living children after court decision at the case of divorce, or one of the parents, their children and adoptees under 18"[13]. In the other act,[14] family is interpreted as "the community of individuals involved in close relations and created on the basis of the marriage between a man and a woman, and considered as a subject by the state". Meanwhile, the Concept does not include cohabitants, i.e. individuals who are connected by common life, economy or family. State protects motherhood, parenthood, childhood, therefore, it fosters groups of the individuals created not on the basis of marriage, but related in close kinship, education, inter assistance and common economy. Thus, without a sole consensus what to consider as family or family member, the extent of rights and duties is interpreted diversely. Moreover, it becomes unclear what kind of a family the State protects and what is the quality of the provided protection.

Chapter XV of the CC of the Republic of Lithuania (Arts. 3.229–3.235) adopted in 2000 regulates the legal aspects of property of man and woman who are living together without marriage registration, if their relations are regulated by the Law on Cohabitation. Unfortunately, till now (2011) there is no special law which regulates such relations. It has to be mentioned that on 24 February 2004, the Law on Partnership (cohabitation without marriage registration) was prepared; however, most of its provisions were not sufficiently grounded or finished.[15] Considering that the legal act on Partnership (cohabitation) project was not implemented, on 4 September 2006, the government of the Republic of Lithuania entrusted to the Ministry

[13] Law on children disbursements of the Republic of Lithuania. *State News*, 1994, No. 89–1706.

[14] Resolution No. X-1569 of the Seimas of the Republic of Lithuania of 3 June 2008 On the Approval of the State Family Policy Concept. *State News,* 2008, No. 69–2624.

[15] Draft of Law on Partnership. http://www.lrs.lt. 2004.07.14; Report of Law on Partnership (Committee on Legal Affairs of Seimas of Lithuanian Republic (IXP-3272). http://www.lrs.lt.

of Justice to prepare amendments of the Civil Code concerning the Partnership registration. The latter attempts of Civil Code Amendment were not implemented as well.

Thus far, both in judicial and notarial practice there could be found different interpretations concerning cohabitants' rights and duties and their realization possibilities. For example, on 26 April 2005, the Board of the Supreme Administrative Court of Lithuania heard the case[16] and applied the provisions of the Civil Code concerning cohabitants, though they are declaratory. In this case, Court acknowledged claimant's right to long-term date with his cohabitant, although such right is not incorporated in the internal rules of the correctional institutions (their living together (partnership) fact was not registered). Other possible criteria for a long-term date were also absent (for example, mutual child).

Next example, on 15 September 2005, the Supreme Court of Lithuania enacted the decree in the civil case No. 3K-3-389/2005 where dispute appeared concerning recognition of the cohabitant of the dead tenant of the apartment and a close relative (grandmother) as family members and their rights to the apartment which belonged to the municipality. This case did not apply the norms of "Family law", but appealed to the sixth book of the Civil Code (Art. 6.588), i.e. Supreme Court held that not the fact of partnership registration is important, but the exact time of claimants settlement in the living accommodation and living there not less than one year.[17] Thus, sustaining the above mentioned examples it is supposed that in spite Civil Code being a solid legal act and its norms interpreted and applied systematically, actual cohabitants (without partnership registration fact) still might have analogical rights to those that are due to persons with marriage registration.

On the other side, if we analyse the extent and content of the rights and duties of cohabitants and married couples, the differentiation of status, which sometimes is interpreted as discrimination, comes to stage. It is obvious in the civil cases of the property division of the cohabitants.[18] Sustaining the court practice now all property of the unmarried persons is reasonably considered as mutual partial property and in case of dispute

[16] Decision of Supreme Administrative Court of Lithuania enacted on 26 April, 2005 in the case *H.J. v. Pravieniškių 1 Correction House No. A [10]- 483-05*.

[17] Decision of the Supreme Court of Lithuania enacted on the 15th of September, in the civil case *V.Ž. v. Klaipėdos Municipal City Council No. 3K-3-389/2005*

[18] Decision of the Supreme Court of Lithuania enacted on 13 June 2006 in the civil case *D.Z. v. R.A.I., No. 3K-7-332/2006;* Decision of Supreme Court of Lithuania enacted on 8 April, 2008 in the civil case *V.J. v. L., No. 3K-3-235/2008*.

it is divided according to the norms of the fourth book of the Civil Code, i.e. legal norms regulating marital (joint) property status are not applied to the property of cohabitants. Legal relations regulated in the third book "Family Law" of the Civil Code originate from marriage, kinship or other principles embedded in law. Such legal relations emerge only as a result of juridical fact, for example, marriage or birth registration. However, presumption of jointly owned property is not applied to the property of the people who are living together, but are not married. Therefore, cohabitants might prove their part of the property on the ground of each input to the acquired or created property. They should also appeal the legal norms regulating jointly owned property. Although, only one person is registered as the owner, such property of the cohabitants might be declared as common joint property, if there is evidence that such property was acquired spending mutual finances and used by both of cohabitants. Part 2 of Article 4.80 of the Civil Code specifies that one way to divide joint property is monetary compensation. The attention should be drawn that joint property mode is not applied to the property of the individuals who have registered marriage in church, but did not enter it to the records of civil registry office. In this case the legal regime of partial property is employed.[19]

One more important dimension is that cohabitants have no right to inherit the property after the death of the other cohabitant unless it is mentioned in the will. The norms of the Civil Code of the Republic of Lithuania regulating the heredity under the law do not foresee cohabitants as possible inheritors (CC Art. 5.11). On the other hand, cohabitants unlike spouses have no possibility to settle *joint will* as it is predicted for the individuals under marriage registration (CC Arts. 5.43–5.49). Here one more difference between cohabitants and spouses should be mentioned — the duty of support. The regulation of the Civil Code (Art. 3.72) embeds the duty of the spouses on inter support. Meanwhile, the same duty is not intended for the cohabitants. Moreover, cohabitant is not treated as a subject with the right to the widow's pension after the death of one of the cohabitants.[20] It is supposed that such a regulation is a partnership derivative, in the context of the union between free individuals with separate property. Thus, such a

[19] Decision of the Supreme Court of Lithuania enacted on 26 April, 2006 in the civil case *E.V. v. E.Š., No. 3K-3- 305/2006.*; Decision of the Supreme Court of Lithuania enacted on 28 February 2005 in the civil case *A.S. v. R.J Nr. 3K-3-107/2005*

[20] The Law on the State Social Insurance Pension of the Republic of Lithuania. *State News*, 2005, No. 71-2555, Article 35.

nature of the regulation of property relations between cohabitants emerges striving to at least minimally secure the property interests of the cohabitants. Meanwhile, personal relations (for example, to choose cohabitant's surname, and etc.) are not regulated at all.

Legal regulation of cohabitation in foreign countries

Nowadays in many countries the definitions of 'marriage', 'cohabitation', 'partnership' and 'family' almost merge and there is transformation of the family form. But the family based on marriage still might be called the most pragmatic, internationally recognized and protected model of the development of family relations. Actually the norms of the Civil Code regulating the relations between the individuals without marriage registration (cohabitants) were "constructed" in reference with the legal acts of various foreign countries (especially Sweden).

In the neighbour states such as Latvia, Russia and Poland, the law on cohabitation does not exist. Cohabitation is not legalized in Estonia as well. Cohabiting partners may conclude the contract of partnership in accordance to the Law of Obligations Act. Partners are personally and solidary liable for their property and transactions. The contract of partnership is concluded in accordance with the commercial law principles.

In France the institution of unmarried cohabitation is provided in Article 515-8 of the French Civil Code.[21] There is no regulated status, though the relations between the cohabitants are subject to the rules of ordinary law, particularly in the event of separation (possible complaints of unjustified enrichment). Institution by the law of 15 November 1999 (see Art 515-1 et seq. of the Civil Code) of the Civil Solidarity Contract (*PACS*) defined as a contract concluded by two adult natural persons of the opposite or same sex to govern their life together. This contract creates obligations (pecuniary support and mutual assistance, and joint liability in respect of the third parties for debts incurred by one partner for the needs of day-to-day life (manifestly excessive expenditure is excluded). Unless the partners choose otherwise, the principle is the rule of separate ownership of property (Article 515-5 of the Civil Code). There is no specific provision for any emergency or protective measure as encountered in marriage or, where

[21] *Code Civil.* Paris: Editions Dalloz, 1992.

the contract is terminated, for compensatory payment or performance.[22] By default, the partners do not inherit from each other, and the *PACS* confer no entitlement to reversion or bereavement allowance. Finally, the *PACS* have no effect on parental authority and the rules of paternity/maternity. It should be mentioned, that 266 500 marriages were celebrated in 2007 and 77 362 *PACS* were concluded in 2006 (70 000 in the first three quarters of 2007).[23]

In Sweden, where approximately 70 per cent of people at the age of 16–29 live together without marriage registration, cohabitation has a special term '*sammanboende*' and the cohabitant '*sambo*'.[24] In Sweden cohabitation is defined in the Cohabitees (Joint Homes) Act. The Act is not applicable to a married person. Moreover, cohabitation needs to be permanent and consequences on the property of the common residence and inventory. The Cohabitees Act of Sweden determines specific legal treatment of the property of the cohabitants and does not require expressed will; it is enough that cohabitants live together under the circumstances appropriate to marriage (this condition presumes that cohabitants have common children or the same registration address).[25]

Summarizing everything up, it should be stated that attitude to cohabitation differs in foreign countries. Some countries tolerate such lifestyle (especially Scandinavian model); others liberalize gradually — unregistered marriage becomes a ready alternative to the registered one (e.g., French *PACS* (together with cohabitation)); Russia, Latvia and Estonia do not provide cohabitation with legal status; Lithuania determines only partial regulation, i.e. referring property relations. Thus, family transformation is obvious: cohabited couples (the same sex as well), whose relations gradually obtain legal status, exist alongside the marriage. If the Commission of European Family Law (CEFL)[26] strives to realize such settled tasks as unification and balance of family law of separate countries, creation of common general standards (principles), the requirements of the regulation of the latter institution should be unequivocal. It is supposed, that

[22] Jessurun D'Oliveira, H.U. *Registered Partnerships, PACSes and Private International Law*. Cohabitation non maritale. Evolution recent en droit Suisse et etranger. Actes du Colloque de Lausanne du 23 fevrier 2000. Geneva, 2000.

[23] http://www.coe.int/t/dg3/familypolicy/Source/4_1_ii%20Legislation%20on%20cohabitation.pdf.

[24] Bradley, D. *Family Law and Political Culture. Scandinavian Laws in Comparative* Perspective. Modern Legal Studies. London: Sweet and Maxwell, 1996, p. 95

[25] Cohabitees Act. http://www.sweden.gov.se/sb/d/2768/a/16220.

[26] Boele-Woelki, K. The principles of European family law: its aims and prospects. http://www.utrechtlawreview.org/publish/articles/000012/article.pdf.

the contradiction between the need to protect the weaker country and the private autonomy of the other country is obvious. Therefore, the level of the legal treatment of such relations cannot be high. However, the definition is very important, i.e. if the criteria are the contract or legal registration, the moment when legal norms might be adopted is easily recognized,[27] in contrast to the regulation of "long-term living as a couple" or "not less than one year" and etc.

Conclusions and suggestions

After the analysis of theoretical and practical aspects of living together without marriage, it might be stated that the Scandinavian model of legal regulation of man's and woman's living together without marriage registration which was chosen and adopted by the Civil Code of the Republic of Lithuania, is rough. Therefore, it is suggested to improve the actual legal norms essentially and equalize the terminology used.

The analysis of fragmentary regulation of cohabitants' rights revealed that the latter institute is regulated rather narrower than marriage. It is considered that in some cases such narrowness is far too strict, i.e. if we interpret that family relations are constructed on partnership, we should discuss the possibility for at least long-term living cohabitants or the cohabitants who have common children to obtain some important rights of family members (for example, inheritance, support, the right to widow's pension).

The provisions of the Civil Code, regulating exceptionally just man's and woman's living together without marriage registration property relations, are ambiguous and lack consistency and legal clarity. Therefore, they should be revised while determining the moment of the beginning and the end of the cohabitation. It is important in the process of common property (acquired and used while living together) division. At the same time the provisions used at the process of property division should be named.

The analysis of the legal regulation of similar relations in many European countries reveals that models of alternative family relations (in comparison to the status acquired after marriage registration) usually do not ensure thorough security of the cohabitants' rights and interests and

[27] Scherpe, J. The legal status of cohabitants — requirements for legal recognition. http://www2.law.uu.nl/priv/cefl/Con2004/CONHome2004.html.

include the establishment only of particular rights and duties. Besides, many countries interpret that the institute of cohabitation or partnership is intended for the regulations of the relations between the individuals of the same sex, but not for family "redundancy".

ИНСТИТУТ СОЖИТЕЛЕЙ: В ТЕОРЕТИЧЕСКИХ И ПРАКТИЧЕСКИХ АСПЕКТАХ

Инга Кудинавичюте-Михайловене

Резюме

Конституция Литовской Республики определяет взгляд общества на семью, которую охраняет и опекает государство (38 статья). Эта конституционная установка является основой, не только принимая законы, но и решая многие проблемы теоретического и практического характера, появляющиеся при взаимодействии семьи и государства, личности и общества. Гражданский кодекс Литовской Республики вступивший в действие 1 июля 2001 года, утвердил институт сожительства, который устанавливает только имущественные отношения между мужчиной и женщиной, которые зарегистрировали свое партнерство в установленном законом порядке, живут вместе, не менее одного года не регистрируя брака, намереваясь создать семью. Эти правовые нормы до сих пор недействительны и поэтому возникают споры по поводу статуса сожителей, т.и. является ли они семьей, имеют ли право унаследовать после смерти одного из них, право на поособие и обязоность материально содержать после прекращение их взаимоотношении, споры по поводу раздела имущества и т.п. Можно утверждать, что взгляд на совместное проживание, не регистрируя брака в разных зарубежных странах различен: в одних — такой образ жизни одобряется (особенно скандинавская модель), в других — понемногу либерализуется — нерегистрируемый брак становится удобной альтернативой регистрируемому (например, во Франции), а еще в других (Россия, Латвия, Эстония) — не имеет правового статуса или устанавливается лишь их частичное регулирование (например, в Литве установлены лишь имущественные отношения сожителей).

Ключевые слова: сожительство, член семьи, режим имущества, партнерство.

FORENSIC SCIENCE IN LITHUANIA: NOWADAYS AND REFORMS

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Abstract
One of the main tasks of governmental institutions is its citizens' security and rights protection. Addressing these challenges the expert analysis has a special significance for court. Today, forensic science implies not activities of a craftsman, but of a scientist. This is clearly seen in Western Europe, and especially the U.S., where the judge receives and evaluates the evidence, and must behave in such a way that the evidence on which the sentence would not only be permitted during the event associated with, but be reliable, especially when in contact with scientific evidence (forensics). In court the scientific credibility of the evidence must be based on scientific laws. This requires assessment of whether the techniques and methodology basing on which the conclusion is true are from academic positions and whether they were properly utilized. Science is the heart of Forensic Science. Court decisions, Daubert v. Merrell Dow (1993), have confirmed this fact.[1]

Pronounced adverse dynamics of crime, new methods and instruments of crime trends in the occurrence, unprecedented growth and new developments in research urge the need to investigate the use of crime. Most foreign countries have observed broad criminal investigation of modern technology development and deployment of an outbreak, helping to stabilize the crime: crime phenomenon is analyzed and predicted in integrated, reformed, forensic and criminological research and practical authority, optimized for their business.

This article aims to examine trends of expert institutions in Lithuania analysing interviews with officers, assessment of good practice in the world to submit their proposals, which might be of interest and expertise by colleagues in the international community.

Keywords: criminalistics, forensic institution, reform, forensic examination.

[1] *Fundamentals of forensic science.* Max Houc Jay Siegel. 2006, p. 18.

Crime and its control is one of the most complex scientific and practical problems. In addition to basic research, applied crime would control studies that have a legitimate impact on a practice basis in more than one country. And most importantly, the studies carried out in another country (an empirical matter) can only be targeted (by comparison, a similar situation, similar phenomenon in nature, and so on), rather than replace or compensate for the field of national crime surveys. These studies must be based on the local material, taking into account the economic and social situation, historical developments, trends, characteristics of the mentality and identity.

Today's social changes in Lithuania have transformed many relationships in society. Economic, social lifestyle changes not only ensure the rapid development of market economy, public sector and consolidation of democratic processes with certain dysfunctions, but also concerns the sphere of human security. A fairly complicated criminogenic situation, law enforcement reform, radical reform of the legal system (in recent years, in major codes: Criminal Code, Criminal Procedure Code, Civil Code and other relevant legislation, such as forensic law, which has been discussed for several years) are the realities of today's Lithuania.

As to adversarial criminal process stages, pre-trial judge or performing functions for the court to be assigned to carry out forensic examinations and forensic science institutions to statutory procedure set up by the Government of the Republic of Lithuania, ministries, funded by the Lithuanian state budget, in recent years have established separate private expert bodies.

In 2005–2008, researchers of Mykolas Romeris University conducted a study of criminology and forensic science knowledge and their level in Lithuania. Respondents were represented by pre-trial (including police) agencies, prosecutor, expert bodies, the judiciary, the Bar and others. In the initial stage about 1000 questionnaires were distributed, but for various reasons, 693 respondents were treated to the survey questionnaires, among them: the judicial staff — 1% of all respondents, officials of the Prosecutor's Office — 4%, pre-trial investigation officers — 14%, MIA Ministry of Justice expert organ — 7%, police officers — 58%, employees of state administration bodies — 1%, the bar staff — 1%, and others — 14% of all respondents. Subsequently, another 500 questionnaires were distributed. The total study

period was concerned with 693 questionnaires. The survey[2] results showed that practitioners in a relatively high availability in their assessment of practical skills in the field of criminology, also recognized the need to strengthen the criminal — disciplinary, criminology and forensic science disciplines of teaching process in higher education and improving skills, because it is the inefficient Lithuanian police, prosecutors, courts and expert bodies and other law enforcement officers who are working in interpreting criminal reasons. For example, the way an inefficient Lithuanian police officer is explaining the reason for crime: 29% — imperfect legislation, 17% — poor legal knowledge, 8% — problems with the rule of law, 9% — weak forensic and forensic knowledge; 2% — problems with forensic expert recommendations and without access to institutions, 11% — poor organization of work and services; 26% — poor logistics support, 4% — lack of ethics and of motivation (see Figure 1).

The researchers suggested that the situation arising in forensic science needs a development concept and its implementation mechanism. This was endorsed by Government in the 16 November 2009 Meeting — the need for expertise to optimize the Lithuanian authorities, and in 28 January 2010 Order No. 33 by the Lithuanian Prime Minister, a task force charged with analyzing the Republic of Lithuania forensic agencies together in one body, the forensic potential of these institutions' operational problems and prospects of development.

Lithuanian state forensic institutions are set up specifically for expert work or there are other bodies of special units for expert work, but they are of a different departmental dependency.

Currently, we have more in state forensic facilities. Forensic law is made by private experts, the Coordinating Council, but expert coordination and optimization needs attention.

Today in Lithuania the main bodies of forensic science are[3]:

[2] Kurapka, E.V., Malevski, H., Kažemikaitienė, E. Kriminalistikos ir teismo ekspertizės žinių poreikio ir jų taikymo praktikos Lietuvoje vertinimas. *Jurisprudencija. MRU mokslo darbai* (Vilnius), 12 (102), 2007.

[3] Since 2001, forensic science in Lithuania is formed by the representatives of the Lithuanian Society of Criminalists. The Society currently comprises about one-third of members with scientific degrees (professors, associate professors). The aim of the Society is to bring together science and practice of forensic specialists and others, to develop their interests in scientific, technical, educational, information and other fields closely related to forensic science, improve its members' expertise and professional activities, represent the interests of the public administration and other institutions informing them about the activities of the Society. The main activities of the Society are: organising scientific conferences, seminars, training courses, competitions, initiating research, training programmes in collaboration with education, training and practical institutions, implement the programmes of

1. Lithuanian Forensic Science Centre (hereinafter LFSC) under the Ministry of Justice.
2. Lithuanian Police Forensic Science Centre (hereafter LPFSC) under the Ministry of Internal Affairs.
3. State Forensic Service of the Lithuanian Ministry of Justice (hereinafter SFS), in 2010 it was Mykolas Romeris University Research Institute, Ministry of Justice is now subject to a forensic service.
4. National Forensic Psychiatry Service (the NFPS), is subject to the Ministry of Health Ministry.

LFSC is a national public administration body, which is designed, according to the case and investigating authorities, to carry out tasks assigned to the studies as well as scholarly work in criminology and forensic science fields, currently performing in 38 examination fields. The main customers of expertise are courts, prosecutors, police, customs service, security and the Special Investigation Service, State Tax Inspectorate, State Control, private individuals and legal entities, foreign law enforcement authorities. In 2009, 4327 forensic investigations were carried out: 10 per cent of all tests were carried out on behalf of the judiciary, 2 per cent for Public Prosecutor's Office, and 86 per cent for pre-trial investigation officers. In 2009, 152 3781 objects were analysed and responses were made to 747 343 questions.

LPFSC is a specialized police force that provides police and other investigating authorities of the country's scientific and technical assistance in preventing, detecting and investigating criminal acts. The centre operates with three boards of identification, forensic investigations and studies and cynologist board, whose main function is to research facilities

study, with the active participation of experts, preparing for certification and accreditation programmes to engage in study of the development of standards and norms. To provide suggestions in other fields of science, for experts in software development, particularly with regard to the legal aspect of criminalistics, and if need be, under the existing Ministry of Justice, to inform the expert members about the Society's activities, participation in the development of expertise methodologies commissions, in providing expert training, review of scientific work, to develop forensic theory and practice of representatives of co-deployment of scientific knowledge into practice and to initiate an applied research profiled implementation, train and enable the scientific and methodological publications on criminology and forensic issues, to carry out other work to ensure the realization of goals of the Lithuanian Criminalists Society.

Research in forensic investigation is carried out mostly by Mykolas Romeris University where there are postgraduate studies in the expert studies programme. This programme is sufficiently universal providing the knowledge and skills to pursue research activities, analytical work and expert work. The programme is sufficiently flexible to allow taking into account the needs of practice and student choice, more in a separate forensic and expert direction. Once awarded a Master of Law degree (specialization, Forensic tests).

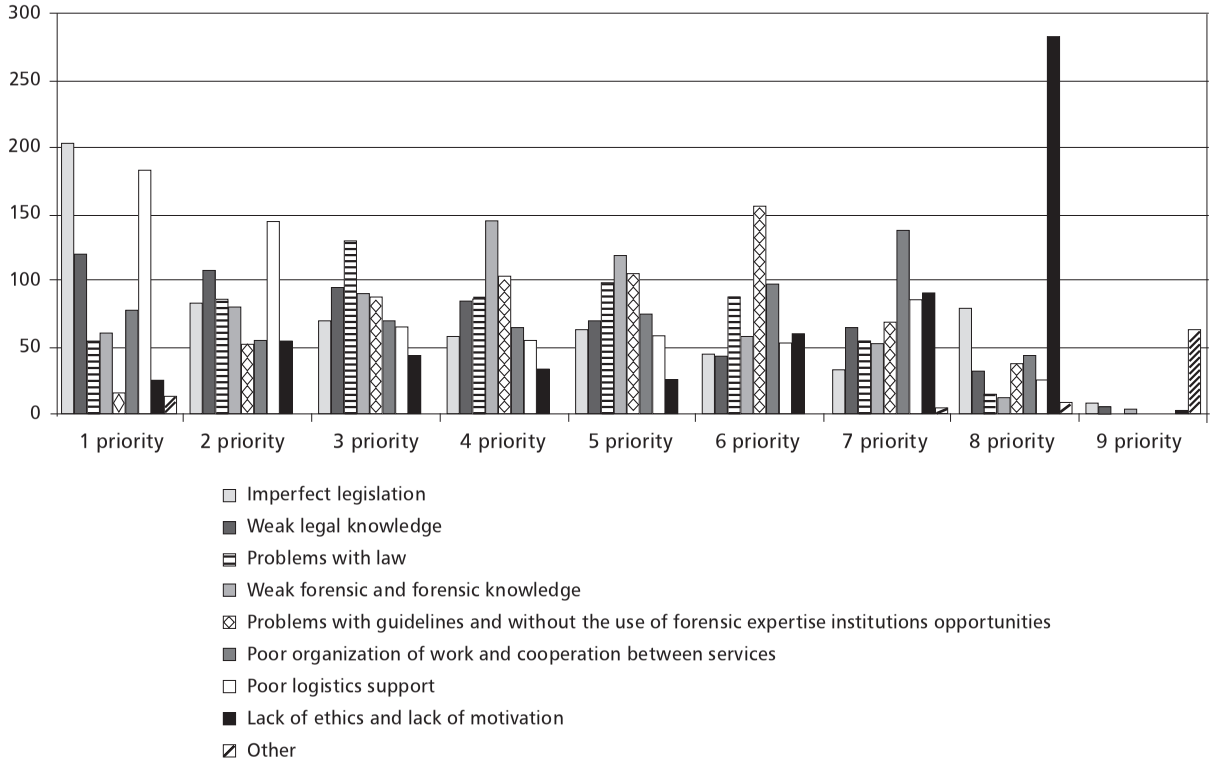

Figure 1. Reasons for crime: survey results.

and expertise in accordance with the pre-trial judges' and court orders, and conduct training of police officers to work with service dogs.

During the reporting period of 2009, 11 030 questions for identification were registered to receive tasks to carry out a study (10 350 tests were performed). During 2009, 607 631 items were analysed, it is 93 807 (or 15 per cent). There were more facilities than in 2008.

SFS is a body of the Lithuanian Ministry of Justice, established by the Government of the Republic of Lithuania. Its purpose is to conduct forensic examinations in accordance with court orders and inquiries in accordance with public prosecutors and investigative agencies, the task of officials and individuals and legal entities to the introduction of new testing methods, expert practice to carry out scientific research and development and methodological work in the field of forensic science.

During the reporting period of the 2009, 7693 death examinations were carried out. Compared with 2008, it is a more than 19.9 per cent decline of these studies. In 2009, 13.8 per cent were decreased and for 19 970 people life tests were conducted. An important and significant departure in the event of such decline: in 2009, 506 departure times, which is by 17.8 per cent less than in 2008, but by 18 per cent more than in 2008, an increased number of visits to the courts — 969 times. In 2009, 371 examinations were conducted concerning case materials (in 2008 — 292 tests).

NFPS is the Lithuanian National Health System of the health care facility whose primary purpose is concerned with forensic psychiatry, forensic psychology expertise.

At the end of 2010, Lithuania initially carried out a comprehensive study of the expert bodies and their working efficiency. The problem concerned isolated groups, which are currently a highly relevant expertise in order to optimize the activities of institutions and improve their performance indicators.

The first group of questions that included the service problems were dealing with excessive, repeated surveys of appointments. One of the reasons why excessive studies are appointed — there is a lack of investigating officers and inadequate reasoning skills of these tasks by the officials. Examination of expert bodies is in accordance with the criteria set out in the workload that the workload exceeds the capacity of judicial expertise and capabilities to carry out examinations and investigations in a timely and good quality, but it is not possible to attract new experts (disinclination to acquire expert skills due to small, uncompetitive salaries, mandatory

preparation of long-term learning). Currently, there are inadequate social guarantees for experts. Concerned with these problems is also the retirement age of experts.

The problem-related services and specialists / experts are leaving the scene. The financial and human resources are designed to ensure not moving to the scene around the clock. The Working Group also drew attention to the fact that there is no uniform system for determining the service charges. Private expert fees are not regulated by legislation.

The working group focused on research and duplicate activities among agencies for distribution. It was found that the DNA tests, in LPFSC and SFS, are similar to the studies carried out by LPFSC and LFSC. Currently, there is duplication between the LPFSC and SFS addressing the problem through the Ministry of the General Prosecutor's Office (in order to reduce the lengthy DNA analysis, LPFSC has agreed to the surveys carried out by each expert body). Examination of LPFSC and LFSC activities are found to duplicate the volume of research expertise.

Other subjects dealt with in the group concern the state of infrastructure problems. Assessment by expert bodies of the state of premises of the most expert bodies, except for KTC and VTMT main building of Vilnius, is that the premises lack statutory working and hygienic conditions. Most facilities require reconstruction. It was also found that there are many areas of worn material base in basic as well as in peripheral units. Poor self-sufficiency of the necessary equipment for forensic institutions is due to insufficient funding.

A third group of questions that were explored by the working group — Human Resources, organization of different trainings and qualifications to the system. Qualification training is unregulated. All institutions (both central and peripheral units) have a lack of expertise in performing professionals. The human resource problem was caused by inadequate wages, workload, an unattractive profession and its specificity concerning time and expense, and qualification. Tests highlighted the problem to make the profession more attractive. It is relevant to the forensic experts.

Paying for the studies examining the problems were not coordinated with the courts like the ones concerning travel expenses (the court refuses to pay the travel costs of the forensic experts from the institutions). According to the civil proceedings, the courts are not accountable for timely execution of the examination. There is total lack of funds for research by

the external control, since the participation of external analytical quality control programmes require financial injections. Often it is not possible to carry out verification on metrological equipment. It was also found that the expert bodies of appropriations each year are under accreditation and support.

The study showed a Lithuanian court expert professional code of ethics for the validity of limitations. In Forensic Experts Coordinating Board, on 9 February 2007 at the hearing, the court addressed the Lithuanian experts as to the professional code of ethics, but it was not accepted thus being only recommendatory by nature.

The working group of expert evaluation of the activities of establishments found that the Court of Experts for the Coordination Council was inactive. According to Article 16.1 of the Forensic Law, forensic institutions and private sector experts in the court case of experts were coordinated by the Coordination Council, but that body was not active. A third group of questions that were explored by the working group concerned human resources. Therefore, attention is drawn to the fact that it is necessary to review the activities of the Council, its features and functions, to strengthen them, have more effective operation of the imperative need for power, for example approve the pre-trial investigation officers' use of specialized training programmes, issues and so on to extend its jurisdiction and powers.

The last team to examine issues was related to the case of private experts. By law, the court of private experts is coordinated by the Court of Coordination Council of experts, but it actually does not work. A Private Forensic expert of the monitoring mechanism is unidentified. It is also the right not to accept the regulations that govern the framework for private provision of expert qualifications (qualifications for private forensic experts from the court granting institutions regulated in accordance with the Act and guidance on forensic institutions internal legislation).

The aim of optimizing the expert bodies in the country, linking them to a number of institutes is not a new phenomenon. For example, the U.S. Congress, the National Academy of Sciences, the Council has commissioned a forensic programme for the development of countries.[4] Submission to the Council indicates that it must be established by the National Institute of

[4] IAI Positions and Recommendations to the National Academies of Sciences Committee to Review the Forensic Sciences. International Association for Identifications. *Identification News*, 38 (1), 2008.

Forensic Science. The Institute's key strategic objectives: a court expert, scientific and educational programmes for the development of national databases and records management, a single expert operational standards and legislative development, competent reviewed science (research), and logistics support, provide for forensic science education programmes and strategies, oversee training and standards of forensic accreditation colleges and universities to assess new technologies in forensic investigation, and so on (for coordination and guidance system of the group).

The guidelines also emphasize that the National Institute of Forensic Science develops terminology and reviews recommendations of standardization regulations, recommendations on the science of quantitative and qualitative indicators, the autonomy of the recommendations (of forensic services and their providers should be independent of external commercial pressures, law enforcement and prosecution services), the analytical quality control scheme (error removal recommendation), to develop ethical guidelines, universally binding, both public and private institutions and individuals providing expert services for accreditation and certification recommendations, and even a number of recommendations relating to the expert coaching, biometric systems are automated, and so on.

Research in Lithuania showed that the expert bodies of the system are already ripe for change, supported by Government, to meeting the provisions of the development and operational expertise of the Ministry of Justice working group's efforts, in our opinion, in Lithuania a scientific body should be established that would ensure a strategic, integrated multi-level forensic case study, with rational use of the existing material and potential use of material, not only dealing with a variety of forensic science and forensic issues, and investigation of crime, and for preventing the interpretation of scientific, methodological, didactic and organizational issues.

Immediate steps should be taken opening the way for more efficient application of scientific achievements in criminal investigations, while taking into account the practical needs of law enforcement, practical expertise to create an efficient network of institutions.

We suggest a first group of measures — part of the reorganization of the institutional expertise to the National Institute of Criminalistics, attracting researchers from other institutions. This reorganization will:

– stabilize and improve the scientific level, ensuring the need for judicial modern expert research to extension and development, taking into account the evolving situation and need;

- have a coordination centre, which has concentrated the scientific potential;
- make optimal use of scientific potential for increasing the quality of expert labour;
- avoid departmental approach with expertise in criminal investigations;
- ensure a high level of expertise, highly repetitive, performance;
- implement the necessary research work of expert modern building techniques, including the use of other Lithuanian institutions of science, and of the material base and intellectual potential;
- gain faster integration into the European Research Area and taking advantage of international opportunities for funds to modernize the base material;
- run methodological work aimed at expert training techniques, applications, search, verification, adaptation, accreditation, and certification;
- ensure the transmission of relevant international organizations, foreign and Lithuanian law enforcement authorities;
- ensure rational use of existing in Lithuania expensive forensic techniques and other academic institutions with modern equipment that can be used for expert research and development methodologies;
- address the issue of expert training.

Such a research-practical centre — the National Institute of Criminalistics is a rise of a new level — general and specialized studies of various levels of professionals and officials, qualification, marks the contribution to preparation and expertise. These could be non-consecutive postgraduate studies, the way of training experts towards the aptitude, and the like. In all, the institute of methodological support ensures the formation of effective law enforcement officers, and regularly, in accordance with the needs of the scientific permit — methodological literature of law enforcement personnel.

The second group of measures is setting up a National Centre for forensic investigations, focusing on high-level professional development activities to ensure efficient and expeditious pre-trial investigation. This is a logical step, since the entry into force of the new Ministry of the CPC pre-trial investigation and a considerable increase in the role of the specialist, and specialist findings became the dominant form of expertise

and current LPFSC and LFSC expert in the regional offices. Above the main functions of the institutions based on a practitioner research, there is accident investigation, forensic data bank credits, or handling of this pre-operative research institutions needs.

Reorganization of the expert bodies in Lithuania, in our view, leads to optimizing the positive effects:

- their activities are coordinated by one ministry instead of three — Ministry of Health, Ministry of Justice, Ministry of Intenal Affairs;
- avoid duplication, improved management;
- more efficient allocation of expert workflow;
- more rational allocation of the budget planning and efficient allocation of funds, will provide the infrastructure and medical equipment and technological upgrading in line with EU standards;
- centralized professional development experts will ensure a high level of professional qualifications, investigations and examinations, quality, standardization and certification;
- Forensic Case Studies, accredited laboratory activities;
- more efficient and rational solutions to existing problems — reducing the unnecessarily high court expert workload, dealing with human resources issues and ensuring adequate payment for the workload and the specificities and the elimination of unregulated functions;
- coordinated case of expert services, tariff-setting mechanism.

Such a system would be more optimal, to avoid duplication, and efficient, bringing closer a specialist and researcher on the scene, and it would save time and resources.

Conclusions

Research is carried out in Lithuania on the basis and in accordance with the global practice, and it is proposed to optimize the expert bodies in the country by combining them into a number of institutes.

We suggest that expert institutions and their departments were reorganized into two bodies. In Lithuania there should be established a scientific body (the National Institute of Criminalistics), which would study strategic, comprehensive multi-level problems in the forensic examination

of the rational potential and current use of a material not only dealing with a variety of forensic science and forensic issues, and investigation of crime and for preventing the interpretation of the scientific, methodological, didactic and organizational issues. This would rise to a new level of general and specialized studies of various levels of professionals and officials, qualification, marking the institution's contribution to the preparation and expertise.

The second institution (National Centre for Criminal Investigation), we believe, should be looking at a high level of professional development activities to ensure efficient and expeditious pre-trial investigation. These institutions would become the main activities of professional studies (the findings), accident investigation, forensic data bank credits, or management, in other words, a pre-operative research institutions needs.

LIETUVOS KRIMINALISTIKOS MOKSLO DABARTIS IR REFORMA

Vidmantas Egidijus Kurapka, Eglė Bilevičiūtė, Snieguolė Matulienė

Santrauka

Viena iš pagrindinių valstybių institucijų yra jos piliečių saugumo ir jų teisių apsaugos užtikrinimas. Sprendžiant šiuos uždavinius ypatinga reikšmė tenka teismo ekspertiniams tyrimams. Šiandien teismo ekspertizė yra ne amatininko, o mokslininko veikla. Tą ryškiai matome Vakarų Europoje, o ypač JAV, kur teismuose įsitvirtino Dauberto standartas[5]. Pagal šią nutartį teisėjas ne tik priima ir vertina pateiktus įrodymus, bet ir privalo elgtis taip, kad įrodymais, kuriais bus grindžiamas nuosprendis, būtų ne tik leistini, susieti su tiriamuoju įvykiu, bet ir patikimi, ypač kai liečia mokslinius įrodymus (teismo ekspertizes). Teismo įrodymų mokslinis patikimumas turi būti grindžiamas moksliniais dėsningumais. Tai reikalauja įvertinimo, ar metodika ir metodologija, kuriomis grindžiama išvada, yra teisinga iš mokslo pozicijų ir ar jos buvo teisingai panaudotos.

Pasireiškiant nepalankioms nusikalstamumo dinamikos, naujų nusikal-

[5] Žr. 1993 m. JAV Aukščiausiojo Teismo nutartis Daubtert V. Merrell Dow Pharmaceuticals.

timų būdų ir priemonių atsiradimo tendencijoms, kaip niekada išauga ir naujausių mokslinio tyrimo pasiekimų panaudojimo nusikaltimams tirti poreikis. Daugumoje užsienio šalių pastebimas plataus šiuolaikinių nusikaltimo tyrimo technologijų kūrimo ir diegimo protrūkis, padedantis stabilizuoti nusikalstamumą: nusikalstamumo fenomenas analizuojamas ir prognozuojamas kompleksiškai; kuriamos ir vystomos kriminalistikos, teismo ekspertizės ir kriminologinės mokslinės institucijos.

Šiame straipsnyje siekiama išnagrinėti ekspertinių įstaigų Lietuvoje reorganizavimo tendencijas analizuojant pareigūnų interviu duomenis, geros praktikos įvertinimą pasaulyje, pateikiami pasiūlymus, kurie galėtų būti naudingi kolegoms ir tarptautinei bendruomenei.

Raktiniai žodžiai: kriminalistika, ekspertinės įstaigos, reforma, teismo ekspertizė.

Chapter 5

JUSTICE AND INTERNAL AFFAIRS

CRISIS OF CRIMINOLOGY
A SCHOLARLY LOOK AT THE POSSIBILITY OF THE SCHOLARLY STUDY OF CRIME

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Abstract
Law has been taught for centuries at European universities, but even today we do not know what kind of "thing" *law* actually is. It somehow seems very strange but unfortunately this is how it is. Normally, we say, "law is law". As long as we do not know what law is, we cannot, in the scholarly sense of the word, speak about crime as a phenomenon. Hence, we can today speak about crime as the form of some other phenomenon (or phenomena), or, in other words, about crime as seemingness. But let it be said right away that crime shouldn't be investigated through crime itself (this is a very important postulate!), although it is done very often today.

We also have to underline that law is not any "supernatural" phenomenon, for example given to us by God. *Law* derives from society and society alone and it is an intrinsic phenomenon peculiar to it, or matter. Naturally, *law* is a social phenomenon, but we do not very well know why it is a social phenomenon. As crime "springs from law" then crime, too, must be a social phenomenon. But once again we do not very well know why it is a social phenomenon.

Actually, *non-law* is being taught in faculties of law as juridical or legal acts mainly speak about what one shouldn't do, how one shouldn't act and what one should avoid at the threat of punishment. It is also difficult to understand the term *positive law*, which means the current legislation in force in literature about law. In fact, two very different terms, *law* and *legislative acts* have been mixed up here. One of the most essential things here is this – how and why law "becomes" positive law or legal acts. Until today, law and legal acts are believed to be one and the same phenomenon. This conviction is erroneous.

Keywords: everything that is regarded as science in jurisprudence or law actually isn't it.

What is law?

In order to study crime it is necessary previously to understand, what is laws, a phenomenon or a value. For Georg Wilhelm Friedrich Hegel (1770–1831), everything, often probably including people, were things. Law has been taught for centuries at European universities, but even today we do not know what kind of "thing" *law* actually is. It somehow seems very strange but unfortunately this is how it is. Normally, we say that "law is law". As long as we do not know what law is, we cannot, in the scholarly sense of the word, speak about crime as a phenomenon. Hence, we can today speak about crime as the form of some other phenomenon (or phenomena), or, in other words, about crime as seemingness. But let it be said right away that crime should not be investigated through crime itself (this is a very important postulate!), although it is done very often today. In October 2008, after the World Congress on Criminology in Barcelona[1], the author of this article sent to some leading scholars of the subject a very short opinion of those problems, of which there is a brief discussion below. Earlier, today's speechmaker has spoken on the subject at high-level international seminars in Vilnius (2007), St. Petersburg (2008), Riga and Vilnius (2010).[2]

Law is not a phenomenon hovering above the society

We also have to underline that law is not any "supernatural" phenomenon, for example given to us by God. The subject under discussion also includes the so-called *natural law* (abstract or ideal law), which,

[1] See: XV Congreso Mundial da la Sociedad Internacional de Criminologia. Barcelona, del 20 al 25 de Julio de 2008.

[2] See: Лепс, А. Кризис юридической науки, в том числе и криминологии. *Балтийский Юридический Журнал*, 2010, № 1 (19), Рига, с. 64–72; Leps, A. Kuritegevuse teadusliku uurimise võimalikkusest. *Haridus*, 2010, 2, Tallinn, lk. 13–15; Лепс, А. Кризис юридической науки, в том числе и криминологии (Научный взгляд на возможность научного исследования преступности). International Scientific Conference "The Strengthening of Security in Crisis Conditions: New Challenges and Unconventional Approaches." Programme and Abstracts. Riga, April 8, 2010, pp. 22–23; Leps, A. Crisis of Law, Including Criminology. XXIII Annual Conference of the Baltic Criminologists in Vilnius "Crime and Punishment in the Baltic Region". 22–23 October 2010. http:www.nplc.lt/centrov/reng/ren014/ren014.aspx; Лепс, А. Кризис юридической науки, в том числе и криминологии. Криминология: вчера, сегодня, завтра. *Труды Санкт-Петербурского криминологического клуба*, № 1 (20), 2011, Санкт-Петербург, 2011; Leps, A. Crisis of Law, Including Criminology. The Club of Rime — European Support Centre. Publications December 2010, Vienna, Austria. http://www.clubjfrome.at/news/newsflash91.html.

figuratively speaking, means that *law* is some kind of phenomenon hovering above the society and is not in any way connected with it. But this is not the case. *Law* derives from society and society alone. Naturally, *law* is a social phenomenon, but we do not very well know why it is a social phenomenon. As crime "springs from law" then also crime must be a social phenomenon. But once again, we do not very well know why it is a social phenomenon.

Distinction between law and legislative acts, rule of law, and correlation between law and economy

Actually, *non-law* is being taught in faculties of law as juridical or legislative acts mainly speak about what one shouldn't do, how one shouldn't act and what one should avoid at the threat of punishment. It is also difficult to understand the term *positive law*, which means the current legislation in force in literature about law.

In fact, two very different terms, *law* and *legislative acts* have been mixed up here. One of the most essential things here is this – how and why law "becomes" positive law or legislative acts. Until today, law and legislative acts are believed to be one and the same phenomenon. This conviction is erroneous. Incidentally, *non-law* could also be the general definition of breaches of law (breaches of laws, crime, offensive conduct). As we know, civil-law infringements are "their own business" for members of the society, but in the case of a crime one of the parties is always the *state*. From here we could hurriedly proceed also to the topic of the rule of law, as politicians, and Estonian politicians in particular, like to emphasise in every possible case that we live according to rule of law. By doing so they want to leave the impression that everything is absolutely OK, that the people live in an environment that does not jeopardise them in any way (that the 105 to 150 thousand unemployed in Estonia today mean nothing?),[3] but at the same time do not explain what rule of law actually is. Let us here bring a hint in the form of a statement by Karl Marx (1818–1883): "The bourgeois economists have merely in view that production proceeds more smoothly with modern police than, e.g., under club-law. They forget, however, that

3 Estonia, officially the Republic of Estonia, is a state in the Baltic Region of Northern Europe. With a population of only 1.34 million, Estonia is one of the least-populous members of the EU. On 1 January 2011, Estonia changed over to the euro, the single European currency.

club-law too is law, and that the law of the stronger, only in a different form, still survives even in their "constitutional State".[4] As a result, the basis of law has to be always and above all found in relations of property, particularly of private property and organisation of the economy, which is why law does not have its own history, and consequently, law is probably not an eternal phenomenon.[5] Neither do we know how big the share of economy should be in the regulation of relations of law and organisation of the economy. True, economics was taught at the Faculty of Law of Tartu University in imperial times and up to the Second World War. Only in 1 January 1938, did the Department of Trade of the Faculty of Law of Tartu University become an independent Economic Faculty.[6]

Consequently, law was then preferred to economics at the Tartu University, Faculty of Law, which is eventually not right. But such a concept of things was characteristic of the period. On the one hand, many Western specialists in law hold such a point of view today, contrary to scholars subscribing to post-Modernist points of view who often deny the modern use of legal acts. The riskiness of their views often refers to anarchy or, on the other hand, to, infallibility (so judges of the US Supreme Court need not be guided so much by legislative acts in force than their own convictions?!). See, for example, works by the US Professor Ronald Dworkin (b. 1931).

Justice

The term 'justice' has whipped up a lot of passions in Estonia. Ilmar Tammelo (1917–1982), reportedly the best-known Estonian legist, has made an in-depth study of justice. He wrote that "justice is a positive ethical social value according to which each is given his or her share in standard bilateral situations".[7] But he also pointed out that the idea of justice in the way as it has been presented in the above definition was not immediately applicable in theoretical law. The author of the article asks, why? Everything is OK, but what Professor I. Tammelo did not know is the most important "thing", phenomenon or value that defines or "gives" the parties their shares in standard bilateral situations. But the value of Prof.

[4] Marx, K. Plan of the Critique of Political Economy as Projected by Marx 1858-62. http://www.marxists.org/archive/marx/works/1859/critique-pol-economy/appx.htm.
[5] Гегель, Г.В.Ф. *Наука Логики.* Санкт-Петербург: Наука, 2002, с. 408.
[6] Leps, A. *Kui Eestit valitsesid juristid*. Tallinn, 2009, lk. 32.
[7] Tammelo, I. *Õiglus ja hool.* Tartu, 2001, 2006, lk. 279.

I. Tammelo's knowledge lies in that he very correctly pointed out that justice must also have "another side". Another Estonian legist, Eduard Raska (1944–2008), unfortunately, did not understand what Prof. I. Tammelo wrote. Prof. E. Raska asks what the "standard bilateral situation" means, and that also the phrase "his or her share" needs interpretation.[8] Prof. E. Raska naturally did not understand Prof. I. Tammelo because he thought that justice, exactly like law was some kind of "unilateral" phenomena, values or "things". The conclusion from this is the following. If one is not familiar with something, or is poorly informed about it, he does not know what "things" law and justice actually are. But it is clear that one person's or a group of persons' right to some thing or object, briefly to some kind of a value, need not be just with respect to another person or group of persons. Even Plato distinguished two types of justice: justice with regard to individuals and justice in the social sense.

If there wouldn't be law there wouldn't be any legislative acts, and consequently, any crimes or crime

But before viewing crime, we should briefly discuss non-law (infringement of the law), that is, offence. For example, Article 3, section 1, of the Penal Code defines an offence as "a punishable act provided for in this Code or another Act" (this is not the best ruling). Section 2 of the same article says that offences are criminal offences and misdemeanours. Article 3, section 3, defines a criminal offence as follows: "A criminal offence is an offence, which is provided for in this Code and the principal punishment prescribed for which in the case of natural persons is a pecuniary punishment or imprisonment and in the case of legal persons, a pecuniary punishment or compulsory dissolution." Article 3, section 4 defines misdemeanour as follows: "A misdemeanour is an offence, which is provided for in this Code or another Act and the principal punishment prescribed for which is a fine or detention." This is the formal treatment or concept of an offence, a notion that does not bring us a single step ahead in the scholarly sense. But the Penal Code doesn't really have to open the material contents of an offence, although it could do so, because otherwise we could get the impression that there is no need for the Penal Code at all. True, the criminal law dogma

[8] Raska, E. *Õiguse apoloogia. Sissejuhatus regulatsiooni sotsioloogiasse.* Tartu, 2004, lk. 47–48.

does not deal with it and so the whole problem remains hanging in the air. Law was needed because of growth in the number of crimes, writes Apostle Paul. It is quite clear that if there were no legislative acts, there wouldn't be any offences, either criminal offences or misdemeanours. But this doesn't mean that these acts or inactions would therefore remain uncommitted.

At the same time, legists should be interested in the material definition of an offence (a criminal offence or a misdemeanour), that is, the contents of an offence (a criminal offence or a misdemeanour). Until we have not made clear for us the material contents of an offence (a crime or a misdemeanour), we cannot unfortunately study offences in the scholarly sense — by what phenomena a crime been caused, which is particularly necessary from the point of view of the prevention of offences (including crimes and misdemeanours).

In Estonia, we do not speak about offences but about crime. As crime is a phenomenon that comes under the sphere of administration of the Justice Ministry and as they mainly investigate crime for some reason there, then also the author proceeds from it, although this is not quite proper and accurate. Actually the Ministry of Justice should study offences as it was done in Estonia before the Second World War.

Today the crimes committed in a certain territory during a certain period are added up and as a result a totally new phenomenon is born — crime, which is then viewed concerning its dynamics, its structure is studied and compared with the number of population, etc. Of course, such information has a certain importance in the daily work of law enforcement bodies. But attempts are made to attribute a scientific value to such information, although it is far removed from science. An endless number of professional reports and books are being written on such a "scientific" basis throughout the world.

The method of dialectic logic

Where is the error that things are what they are? The author is convinced that the error must be looked for from the methods used to study crime. Every scholar or researcher "invents" his own methods by which he then attempts to solve one or another problem, but actually generates new problems, as it tends to happen in the case of empirical treatments. Unfortunately, they do not want to admit that there have been only a few

great scholars (men of genius if you wish) who have managed to produce a scientific method, which should surely be used also in the study of crime. These people are first of all Plato (427–347 BC), Aristotle (384–332 BC) and Hegel (1770–1831).

The title of that method is dialectic logic, which reflects, by means of philosophical categories or basic notions, the most common and significant properties of phenomena of reality and cognition. Plato was the man who, treating the method of cognisance of ideas, first named the method dialectics. Aristotle provided great contribution in working out philosophical categories. Hegel, who viewed categories in their dialectic development, has said with a modesty characteristic of a great scholar that his development of the categories was relatively modest, as Aristotle had already done that work. Aristotle studied ten categories including being, essence, the basis of all the other categories, quality, quantity and other categories. Hegel asserts that "logic is the most difficult science."[9] And unfortunately, this is true. K. Marx who, apparently, best of our contemporaries understood Hegel's dialectic logic and developed it, has said regarding "safeguarding of what has been acquired" — a notion pertaining to law — "that each mode of production produces its specific legal relations, political forms, etc. It is a sign of crudity and lack of comprehension that organically coherent factors are brought into haphazard relations with one another that each new form of production creates property relations, forms of government etc."[10] Marx has actually borrowed the meaning of the second sentence from Hegel.[11] Hegel's so-called Greater Logic (being, substance and reality, which treats objective logic, and his Doctrine of the Notion that deals with subjective logic)[12] is an extremely difficult nut to crack for every scholar. If, however, Hegel's dialectic logic is not well understood, there is no sense in dealing with the social sciences, including law, either! According to Hegel everything on the level of being is concrete and on the level of essence relative and probable. This is an important fact.

In the author's opinion the best expert of these spheres of scholarship was the St. Petersburg legist Lev I. Spiridonov (1929–1999).[13] Generally,

[9] Гегель. *Энциклопедия философских наук. Часть первая. Логика.* Москва-Ленинград, 1930, с. 39.

[10] Marx, K. *Poliitilise ökonoomia kriitikast.* Tallinn, 1965, lk. 149.

[11] Гегель. *Наука Логики. Том. 2*. Москва, 1971, с. 173.

[12] Гегель Г.В.Ф. *Наука Логики*. *Op. cit.*

[13] See: Спиридонов, Л.И. *Социальное развитие и право*. Издательство Ленинградского Университета, 1973; Спиридонов, Л.И. *Социология уголовного права.* Москва, 1986; Спиридонов, Л.И. *Теория государства и права*. Санкт-Петербург, 1995; Спиридонов, Л И. *Избранные произведения.* Санкт-Петербург, 2002.

people often love to speak about the systematic treatment of one or another social science, but in practice no one has achieved the gist of the matter, that is, systematic treatment. On the other hand, we cannot accuse scholars that came before us of stupidity. Hegel wrote in the first part of his *Encyclopaedia of the Philosophical Sciences* or so-called *Shorter Logic:* Development of the logical idea becomes progressive movement, that is, thinking, rising from the abstract to the concrete, the earlier systems that have occurred in the history of philosophy are more abstract[14] and consequently less correspond to the reality. Thus, contrary to a widespread opinion, crime, one of the principle terms of law, particularly criminal law, is actually an entirely abstract phenomenon.

Punishment

A few words also about punishment. After the German Penal Code, the Penal Code in force in Estonia gives punishment a more important role than to crime, as the title of the Penal Code is Penal Code. As a result, the consequence —punishment — becomes more important than the cause — crime. I wonder whether it is the best title but this is how it was decided. Actually the Penal Code is a translation of the German Strafgesetzbuch (Penal Code) of 1975 and the French Penal Code (Criminal Code) of 1994 (in the opinion of some legists a poor translation). After all, Estonians themselves cannot accomplish anything at all?! But as far punishment is concerned then retaliation to the culprit, reformation of the person of the culprit, improvement of the culprit so he would not commit and further offences, and in case of imprisonment, also the fact that until the culprit is isolated from the society he cannot as a rule commit any new crimes, is usually understood as the punishment. None of the above definitions of punishment are wrong, but summed up they will not constitute the phenomenon that Hegel calls "something", which is also the contents of punishment.[15] The death penalty is naturally a retaliation. Only several countries' representative bodies, parliaments, have done away with the capital punishment. The population has been against the abolition of the death penalty everywhere… But Hegel says: the people know nothing…

[14] Гегель, Г.В.Ф. *Энциклопедия философских наук. Часть первая. Логика*. *Op. cit*., с. 147.
[15] Гегель, Г.В.Ф. *Наука Логики. Op. cit*., с. 420–425.

Relationship of the society and the State

Understanding of the relationship of the society and the State also creates a lot of confusion. Faculties of Law teach subjects such as theory of the State and of law; which today is called public law. The names (titles) of both the courses are perhaps not very accurate. Law and relations of law proceeding from law are, after all, phenomena rising from the society, that is, phenomena rising from social relations. Law descends into positive law, that is, legislative acts (legislation), which is the patrimony of the State, because legal acts must be ensured by the force (compulsion) of the State. After all, the State is only necessary in order to keep in check members of the society with egoistic views and behaviour, which is inevitable in the conditions of private property. So needs of members of the society "create the State". How these transitions take place and what the concrete needs of members of the society are is something science doesn't very well know today. And it is difficult for it to acquire this knowledge as the general, although erroneous, opinion is that law and legal acts are one and the same phenomenon.

What should serious scientific study of law begin with?

Every beginning is hard, for the problem is really difficult. What is the uppermost in scholarship is also the uppermost in history. It is not possible to begin philosophy from "myself" or from "population" as there is no objective movement, although it seems right to begin with something real and concrete. In his *Philosophy of Law*, Hegel begins with the most abstract phenomenon— possession[16], about which K. Marx says that Hegel correctly begins the study of law (philosophy of law) with possession as the simplest law relationship of the subject.[17] Consequently, possession as an immediate concrete fact is the immediate acquisition by an individual or a collective of individuals of natural objects.[18] Hegel says that the truth of being as well as of non-being lies in the unity of both one and the other, and this unity is becoming, i.e. creation of some kind of another phenomenon. In other words, it means that the philosophical category of being logically, and not temporally, presumes in it a contradiction. As a result of

[16] Гегель. *Философия права.* Москва, 1990, с. 99.
[17] Marx, K. *Poliitilise ökonoomia kriitikast. Op cit.,* p. 160.
[18] Спиридонов, Л.И. *Социальное развитие и право. Op. cit*., с. 46.

the category of being, or something, in this case possession, presumes an inherent contradiction.

But contradiction generates movement, having an impulse and activity, which passes into some other phenomenon.[19] What form of property possession takes is again a very difficult problem. It should be said as a marginal note that in the conditions of capitalist production relations between members of the society are as a rule expressed through private property. Hegel's researcher Kuno Fisher (1824–1907) wrote that by its nature Hegel's philosophy (logic) was like knowledge, like a will to acquire new knowledge and solution of problems rising from that new knowledge.[20] In connection with the category of philosophical initiation, or "being", which in the study of law is *possession*, Prof. L. I. Spiridonov notes that it becomes extremely difficult in the course of further theoretical analysis for a scholar not to lose the entirety being studied. Careless analysis that has lost the image of the entirety as its original precondition and aim always risks to break up a the subject into parts, which are totally unspecific for the entirety, and it is no longer possible to put them together into a new entirety, like it is impossible to cut a body into pieces and then gluing them together into a living body.[21]

Unfortunately, it has to be noted here that philosophers, specialists in economics and representatives of other branches of science have developed law in a considerable greater degree than legists themselves. The lawyers' main presumable shortcoming is that they usually do not know philosophy or have a poor knowledge of it.

What we should think about today's jurisprudence or as science?

A few years before his death Prof. L. I. Spiridonov, whom the author of this article knew for 25 years, said that he still wanted to write his last book, which would have titled "Philosophy of Right". Prof. L. I. Spiridonov said on several occasions that he had already written the first sentence of the book: "Everything that is regarded as science in jurisprudence or law actually isn't it."

[19] Гегель. Наука Логики. *Op. cit*., с. 31.
[20] Фишер, К. *Гегель, его жизнь, сочинения и учение.* Москва-Ленинград, 1933, с. 340.
[21] Спиридонов, Л.И. *Избранные произведения. Op. cit*., с. 31.

Unsystematic treatment

Here, the author very briefly analyses certain notions and terms connected with law and linked with the research of crime. The author did it unsystematically, not characteristically of the scientific approach of the subject. The author did not present the terms dealing with the reality in transition from one to another, although it should flow like water in a river, but did it as it is peculiar to our today's science.

Probably the time has arrived when it is necessary to start on a strictly scientific basis about the contents of phenomena of the reality — law and non-law, positive law and legal acts (legislation) crime and punishment and offences (crime). The time of complicated and often nondescript definitions sucked out of the pen seems to be over. I feel sorry for law students who have to learn by heart all kind of definitions, which even the lecturer often does not understand. Here is a funny example from the late 1950s when a lecturer at the Faculty of Law of Tartu State University said that a warrant of payment was a document titled Warrant of Payment. But if the student's mechanical memory is not so good, he will develop difficulties in the acquisition of subjects taught at the Faculty of Law.

КРИЗИС ЮРИДИЧЕСКОЙ НАУКИ НАУЧНЫЙ ВЗГЛЯД НА ВОЗМОЖНОСТЬ НАУЧНОГО ИССЛЕДОВАНИЯ ПРЕСТУПНОСТИ

Андо Лепс

Резюме

Для того, чтобы исследовать преступность, следует прежде уяснить, какой «вещью», явлением или ценностью является *право* вообще. У Г. В. Ф. Гегеля всё является «вещами», часто, вероятно, и человек. Веками в университетах Европы изучалось правоведение, но до сих пор неизвестно, что за «вещь», всё-таки, это *право*. Кажется каким-то очень странным, но, увы, это так. Обычно говорят, что «право есть право». До тех пор, пока мы не знаем, что представляет из себя *право*, мы не можем в научном смысле говорить о преступлении и о преступности, как о явлении. Следовательно,

мы сегодня можем говорить о преступлениях и о преступности, как о форме какого-то другого явления (может быть, других явлений), или, другими словами, о преступлениях и о преступности как о видимости. Но пусть сразу будет сказано, что преступления и преступность нельзя исследовать через саму преступления и преступность (это очень важный постулат!), пускай, что сегодня это делается очень часто.

Следует подчеркнуть, что *право* не является каким-то «сверхъестественным» или употребляя термина Гегеля «сверхчувственным», например, происходящим от бога явлением. К этой области относится также т.н. *естественное право* (абстрактное или идеальное право), которое, образно говоря, обозначает то, что, как будто, *право* было бы каким-то «парящим явлением» над обществом, которое с обществом никак не связано. Но это не так. *Право* вытекает из общества и только из общества. Естественно, *право* — это социальное явление, но почему оно является социальным явлением, это хорошо не известно. Поскольку преступность «вытекает из права», тогда и преступность должна быть социальным явлением. Но почему она является социальным явлением, это, опять же, хорошо не известно.

На факультетах правоведения, в действительности, изучается *неправо*, поскольку юридические законы или законодательные акты преобладающе говорят о том, что нельзя делать, как нельзя вести, от чего следует воздерживаться под угрозой наказания. Тяжело понять также термин *позитивное право*, который в юридической литературе обозначает действующее законодательство. В действительности, здесь перепутаны два очень различных термина «право» и «законодательные акты». Здесь одним из наиболее существенных вещей является именно эта – как и почему право «становится» позитивным правом или юридическими законами. До сих пор считается, что *право* и *юридические законы* — одно и то же явление. Это ошибочное убеждение.

Где ошибка, что дела таковы, каковы они есть? Подписавшийся убежден в том, что ошибку следует искать в методах, которые используются при изучении преступности. Каждый ученый или исследователь «изобретает» свой метод, с помощью которого он старается решить одну или другую проблему, в действительности же возникают совершенно новые проблемы, как это неизменно случается при эмпирических рассмотрениях.

Сегодня складывают вместе преступления, совершенные на какой-то территории за определенный промежуток времени, в результате чего и получали совершенно новое явление – преступность, которая рассматривается динамически, изучается её структура, сравнивается с количес-

твом населения и т.д. Конечно, у таких «справок» есть определенное оперативное значение в повседневной работе учреждений, относящихся к правоохранительным службам. Но таким «справкам» часто пытаются дать на-учную ценность, хотя дело далеко от науки. На такой «научной» основе во всём мире пишется бесконечное число «специальных» докладов и книг.

К сожалению, не хочется признавать то, что в истории человечества были только некоторые единичные личности – учёные (если желаете – гении), которые сумели выработать научный метод, который непременно следует использовать и при исследовании преступности. Эти люди, прежде всего, Платон, Аристотель и Гегель. Название этого метода – *диалектическая логика*, которая при помощи философских категорий или принципов отражает наиболее общие и значительные свойства явлений.

По мнению подписавшийся, крупнейшим современным специалистом в этих научных областях был Санкт-Петербургский ученый – правовед Лев Иванович Спиридонов. У нас достаточно часто любят говорить в одной либо другой общественной науке о т.н. «системной разработке», но до сути дела, т.е. «до системной разработки» никто, практически, не добрался. Но, с другой стороны, нельзя обвинять в глупости предшествующих нам учёных. В первой части своей «Энциклопедии философских наук» или т.н. «Малой Логике» Гегель писал следующее: Развитие логической идеи оказывается прогрессивным движением, т.е. мышление, поднимаясь от абстрактного к конкретному, в истории философии встречавшиеся ранее системы более абстрактные и, следовательно, вместе с тем и наиболее бедные системы, и менее соответствуют действительности. Итак, преступление, как одно из основополагающих понятий правовой науки, особенно уголовного права, вопреки распространённому мнению, в действительности совершенно абстрактное явление.

LATVIA'S SEVEN YEARS IN THE EUROPEAN UNION — CRIMINOLOGICAL VIEW

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Abstract
The aim of the article is to make an overview of Latvia's seven years' experience in the European Union from the criminological point of view. The author not only describes some criminogenous signs of the last years, but also highlights the guidelines of the perspectives in crime combating. The basic problem of the study is to emphasize the state security, based on the innovative approaches, which have successfully been applied in some European countries. The criminological aspect is connected with the analysis of political planning documents (National Development Plan, Latvia's Strategic Development Plan) which comprise issues of criminal law, the establishment of Criminal Intelligence model, basic concepts of control of drugs and psychotropic substances, the increase of effectivity of penalty execution. The innovative moment of the article is mainly addressing the perspectives of stabilization of the criminogenous situation. One of the most essential conclusions to be made is the fact that Latvia, joining the common legal environment, had potentially higher advantages in security and justice.

Key words: security, criminological view, Criminal Intelligence model, National development plan and strategy, control of drugs and psychotropic substances.

Introduction

Latvia's participation in the European Union has a short history, though sufficient enough for us to specify certain trends and regularities of this participation. There is no doubt, that the fields to be learned and analyzed, as well as criteria for the analysis might be quite many and versatile. For Latvia, as the EU Member State, there may be various aspects for comparaison and analysis. An adequate analysis, perhaps, would not

be complete, if we could not turn attention to the criminological aspects as well.

The author would like to mention that the context of criminological analysis could deal not only with identification of the status, dynamics and structures of crimes. Criminological view, analyzing Latvia's seven years period in the EU, should be investigated much wider.

Firstly, it would be worth mentioning that the criminological aspect is connected with the establishment of a common legal policy and realization of crime prevention and combating. The abovementioned fact is attributable to government administration systems in providing public safety.

Secondly, the criminological view is attributable also to the perfection of legislative system. Thirdly, criminological view, acknowledging Latvia's integration into the EU, should also deal with institutional reforms and transformation of law enforcement institutions. Fourthly, Latvia's participation in the EU would not be complete, if in the criminological context there would not be raised the legally cultural problem of legal community as well.

Thus, the author would like to conclude, that Latvia's seven years presence in the EU, from the criminological aspect, might be viewed from different points of views, which, taken together, would not be estimated unequivocally.

Crime situation and tendencies before and after Latvia's joining the European Union

One of the most commonly used measuring instruments of crime diagnostics is the criminal statistics being at the disposal of the State Police (SP). Just these statistical indices are mainly the basis for the estimation of crime situation and tendencies, as well as knowledge on criminogenous processes in the country. We have to recognize that criminal statistics depict rather contradictory aspects of crime situation and tendencies.

Comparing the recorded criminal cases (criminal proceedings initiated) in the last decade (2000–2010), it is important to mention that the tendency is unstable.[1] Thus, if starting with 2000 up to 2004 the recorded criminal cases were increasing, then in the first years after Latvia's joining the EU,

[1] Public Order and Justice. http://www.csb.gov.lv/en/statistikas-temas/public-order-and-justice-key-indicators-30683.html.

the tendency of criminal cases was contradictory (in 2005, the number of crimes decreased, but in the next year it grew drastically). The tendencies mentioned, perhaps, were connected with certain changes in legislative regulation, as well as changes in the institional system of law enforcement institutions.

Starting with 2006, an evident tendency for fixed crime decrease was observed, which was not characteristic in the years of economic upswing, as one can see in the period of present crisis (see Figure 1).

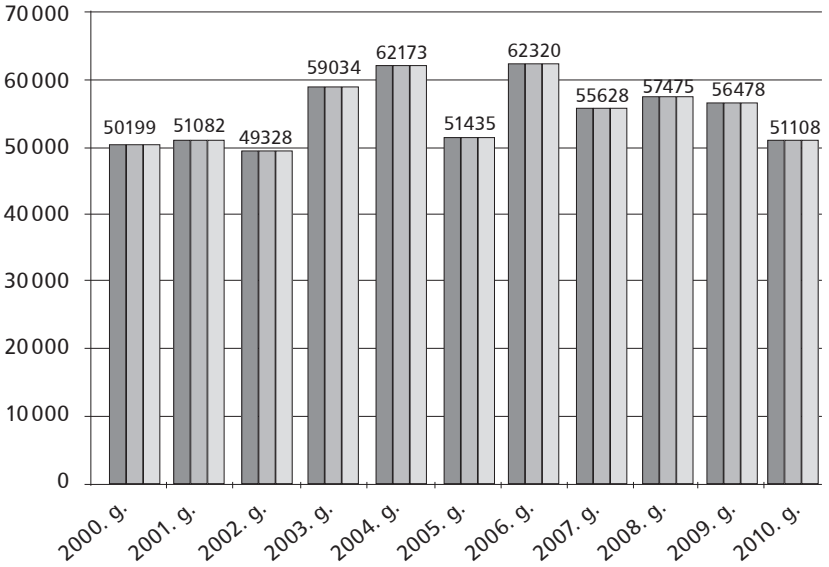

Figure 1. Recorded criminal cases in Latvia in 2000–2010.

It is to be noted that in the last years, also after Latvia's joining the EU, the level of detection of registered crimes has been falling dramatically.[2] According to SP annual report, publishing the data of 2006: in 2004, 48.4% of fixed crimes were detected; in 2005, 46.1%; and in 2006, only one fifth (21.6%). In 2010, in the country, on average, only every third crime was detected. It means that two of three criminals could undisturbedly

[2] Valsts policijas gada pārskati. http://www.vp.gov.lv/?sadala=189.

continue applying their criminal skills. At the same time, not all the crimes were registered. What is the real crime situation?

In any case — not the one that is depicted in the statistics of registered crime. Optional study results have shown that in Latvia, on average, 19.8% population, aged from 15 to 80 years, suffer from crime. The number is impressive. In Riga, on average, one fourth (26.4%) population of the respective age, become the victims of crime. This number is even more dramatic, although only a person herself/himself can judge and say how safe or unsafe it is to live now.[3] But it is a separate story to tell the real situation of crime. What determines the tendencies of crime?

To a greater or lesser extent we can agree that these are just the social, economic, political, legal and other factors which affect the criminogenous processes and at the same time determine the criminal tendencies.[4] We are painfully affected by the current social and economic situation in the state and its characterizing factors. Prices for goods are increasing much faster than the available incomes. Salaries, at the same time, are the lowest in Europe, which is the reason for Latvian population leaving the country for those countries which are much more stable economically. Guest workers would hardly promote stability of social processes and further fasten the economic growth of the country. People from other countries, including less developed countries, the countries with other cultural traditions clash with the unhomogenous Latvia's socially ethnic environment. The latent or evident cultural conflicts are not only the grounds for various social unrest events and excesses (e.g., Paris in 2005–2006), but also catalyzes the crime escalation, promotes the possibility of the increase of terroristic acts, human trafficking, and other especially severe crimes. Drug market, offer of psychoactive substances thanks to annual opium harvest in Afghanistan, has greatly increased. No wonder that young people admit — there is almost no problem to get the drugs at any place and at any time. There are a lot of crime-determining factors. And they cannot be characterized as such that are favourable to influence the crime tendencies in a positive way. At the same time, it would be worth to mention some Latvian political, and especially criminal policy activities in controlling the criminogenous situation and increasing the public security.

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[3] Vilks, A. Noziedzīgos nodarījumos cietušo kriminoloģiskās problēmas. *Jurista vārds*, Nr. 42 (547), 2008. gada 4 novembris.

[4] Jundzis, T. Drošības politiskie un tiesiskie risinājumi ekonomiskās krīzes apstākļos. *Globālā krīze: kriminālo realitāšu aprises.* Starptautiskais zinātnisko darbu krājums. Baltijas kriminoloģiskā konference "Sabiedrība. Cilvēks. Drošība. 2009.", 2009. gada 2.–3. aprīlī. Rīga: Baltijas Starptautiskā akadēmija, 2009, 21. lpp.

Security development planning in Latvia and policy of criminal law

Analyzing the documents of state development planning which could be referrable to public security after Latvia's joining the EU, we can acknowledge that in neither of them sufficient and considerable attention is devoted to internal security and policy of criminal law. Internal security is not defined as priority, and moreover, its implementation in life is paid even lesser attention. In order the above-mentioned would not be only an assumption, I would like to deal with some Latvian documents.

No doubt, that one of the most significant conceptual legal acts is **Latvijas Nacionālās attīstības plāns (2007–2013) — Latvia's National Development Plan (2007–2013)** which was accepted by Regulations No. 564 of the Cabinet of Ministers on 6 July 2006.[5] In the National Development Plan (NDP), Chapter II, "State growth model."People first"" it has been admitted that "*Each individual's more significant wishes deal with welfare, one's safety and that of one's closest people* (highlighted by A.V.), with one's health and provision for old age, with clean air and fresh water, with a possibility to learn and expose ones creativeness, with a wish to travel, etc." Thus, the internal security is still determined as one of the most significant man's wishes. In NDP Part 6, "Human welfare rise", Chapter 6.1.3. "Sustained social safety system" the problem of internal security, its topicality and significance is specified, as well as the tasks are revealed for problem solution. What most essential problems are identified in the context of NAP internal safety ensurance? "In order that Latvia is safe and stable, one has to continue improving capacity of internal security system activity and cooperation with foreign colleagues, paying special attention to the evaluation of international criminal connections and investigation of the situation of criminality in other countries."[6]

At the basis of sustained security there is prediction of tendencies which may affect Latvia in the further period of time (highlighted by A.V.).

Greater attention has to be turned also to the activities of international criminal structures in Latvia. For a more complete ensurance of security in Latvia, it is necessary to implement a targeted activity in fight against crime, which is getting more and more complicated, since Latvian law enforcement institutions need more modern and more adequate logistics,

[5] Ministru kabineta 2006. gada 6. jūlija Noteikumi Nr. 564. Latvijas Nacionālās attīstības plāns (2007–2013). http://www.likumi.lv/doc.php?id=139505&from=off.

[6] *Ibid*., Chapter 4.2.2.

in order one could successfully react to the procedures of global processes. One has to achieve the public support to the system of security and promote the measures of crime prevention. In order to protect Latvian population from consequences as a result of disaster, it is necessary to improve the work of civil defence system, thus guaranteeing that the state can timely and effectively respond to environmental and man-made disasters.

In NDP the tasks are determined, which are directed at the solution of the above-mentioned problems: to facilitate a more successful cooperation of structural units, including the cooperation with international crime combating institutions; to perfect the civil defence system and promote cooperation between the institutions in this field; to improve cooperation of institutions involved in anti-terroristic activities; to perfect and modernize the system in fight against the illegal transfer of drugs and psychotropic substances, human trafficking and crimes of economic character; to improve interinstitutional cooperation in the field of shelter; to improve the logistics of law enforcement institutions, as well as to perfect informatics and communication technologies; to develop the training of the staff involved in threat combating; to promote cooperation of institutions in protection of author's rights, related rights and protection of intellectual property, improving the existing system in fight against violations in this field; to improve the capacity of law enforcement institutions and to develop contacts with the public.

Analyzing NDP in the context of provision of criminal law and internal security, one can say that many practically significant problems, are not included in NDP (development of new possible criminal cases, including the use of modern technology, human trafficking, possible development of excise goods smuggling, undoubtful development of financially economic crimes and their effect on the national economy and social environment, etc.). Among the problems raised, the prediction (and investigation) of developmental tendencies is grounded, yet among the tasks to be solved, it is not included. NDP as a document of political planning is content rich, however, its implementation and putting into life was practically not realized in life. Despite Part 6 in the plan, Implementation and supervision of the National Development Plan, it is admitted that "NDP concentrates the attention of politicians, clerks and the whole public to a common objective, main directions of activity and tasks to be solved. For the plan implementation it is essential to have a link with other documents of planning and other measures promoting the state's growth, development of programmes

and activities, mutual balance and introduction", further political planning was not dealing with other documents, measures to be realized, provision of financing, supervision of ralization of the plan, etc. The National Development Plan has remained only as a document for planning and not as a document for strictly realized political planning, including the field of criminal law policy and internal safety.

In the context of the policy of criminal law one can find not a less interesting political document like "**Latvia's Strategic Development Plan for 2010–2013**", which has been approved by the Order Nr. 203 of the Cabinet of Ministers on 9 April 2010.[7] In Part 2 of the mentioned Strategic Plan, "Social security", Chapter 2.5. ("Physical security"), one can find only three points in the plan, which are dealing with the policy of criminal law and the internal (homeland) security. In the context of provision of security and in the fight with crimes an essential role could be played by the establishing a unified national criminal intelligence model and its implementation (NDP p. 2.5.1.1.). The grounds for the realization of the activity mentioned is connected with the fact that one of the EU priorities states the introduction of European Criminal Intelligence model, ensuring a high standard of the quality of criminal intelligence.[8]

This model determines a unified methodology which has to be met by all EU Member States and agencies (especially Europol), with an aim to provide an effective information flow between the law enforcement institutions in the fight of organized and cross-border crimes. Criminal Intelligence model is an effectively realized strategy in the fight against crimes, especially the organized crime, which is based on the results acquired in the process of criminal intelligence.[9] It is planned that as a result of the activities (by establishing and introducing a unified Criminal Intelligence model), the percentage (%) of criminal processes started by State Police in 2013 will be 33.8%. In 2010, it was 31.8%. Criminal Intelligence model is an effectively realized strategy in fight with crimes, especially the organized crime, which is based on the results acquired in the process of criminal

[7] MK rīkojums 09.04.2010. Nr. 203 "Par Latvijas Stratēģiskās attīstības plānu 2010.–2013. gadam". http://www.likumi.lv/doc.php?id=208079.

[8] Komisijas paziņojums Padomei un Eiropas Parlamanetam — Par piekļuves uzlabošanu informācija: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0429:LV:HTML tiesībsargājosām iestādēm /* COM/2004/0429.

[9] Beikmanis, J. Operatīvās informācijas analīze noziegumu atklāšanā. Disertācija juridiskās zinātnes kriminālistikas un operatīvās darbības apakšnozarē. Rīga, Latvijas Policijas akadēmija, 2009.

intelligence.[10] The model of criminal intelligence might allow to determine work priorities and more effectively make use of resources of law encforcement institutions. Work effectivity and resource economy is essential in achieving a coordinated action in the fight against crime. A mechanism is going to be designed how the collected and processed criminal intelligence information, in a form of a definite product, will be further used at a certain level structure, by planning the further activities, or making decision on crime combating. The law enforcement institution will be informed about the problems, thus easing to make decisions, to identify priorities and to envisage resources (financial, human, etc.).

Belgium which is presiding now in the EU has set the task for the introduction of the European Criminal Intelligence model and its implementation as the priority for its precidency in the EU in the year 2011. The above-mentioned fact is connected with the establishment of the National Criminal Intelligence model and its effective functioning in all EU Member States.

The aim of the work of Latvian national law enforcement institutions is to prevent and combat the crime in correspondence to their competence and task set forward. In single cases a various interpretation has been found of this competence, as well as ineffective information exchange. As a result, several law enforcement institutions have simultaneously undertaken and realized analogous criminal intelligence measures for one and the same person (have received and realized the information about one and the same figures), in such a way doubling the competence and uselessly spending material and personal resources.

Control of spread of drug addiction and psychotropic substances, working out the measures of control and provision for their implementation are considered the basic national guidelines of work (NDP p.2.5.1.2.). The realization of the activities mentioned is connected with the inclusion of main principles of further policy, such as the necessary measures in prevention of drug addiction, rendering therapy and rehabilitation, combating with the spread of drugs.[11] As a result of these measures it is expected that the crimes, dealing with the illegal production, storage or realization of drugs in 2013 (from the total number of crimes %) will be 4%. It is interesting that in 2010 it was already 4.2%.

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[10] Atbalstīti pēdējie precizējumi pamatnostādņu projektā narkomānijas ierobežošanai un kontrolei turpmākajiem septiņiem gadiem. http://www.iem.gov.lv/lat/aktualitates/informacija_medijiem/?doc=22511.

[11] *Ibid.*

The basic concepts are realized in accordance to the law of development planning system in a hyierarchically higher midterm development planning document, "Latvia's National Development Plan for 2007–2013" where the development' strategic aims and the tasks are included, which have to be perfected and modernized in the system fight aagainst drugs' illegal movement and to involve the society in the fight against addiction diseases, including drug addiction.

It is necessary to add that by taking into account the wide spectre of interdisciplinary illegal drug and drug addiction prevalence, the basic concepts are connected also with many other development planning documents, which, as to their content, are closely connected with the decrease of drug addiction and drug distribution, e.g., Public Health Strategy, Programme for Action in Public Health Strategy Implementation for 2004–2010, Infection Control of HIV programme for 2009–2013, Youth Policy state programme for 2009–2013, prevention, combating and reduction of organized crime state programme for 2006–2010, imprisonment of minors for penalties and enforcement of custody implementation policy for 2007–2013 and their realization in 2010–2013 programme provided, as well as addressed at Professional Social work development programme for 2005–2011, defining the programme work to implement the sub-objective "to perfect interinstitutional cooperation in work with families at risk and indigent families".

Not a less significant direction in the provision of work effectivity of law enforcement institutions is the idea to simplify and make effective the deadline of criminal penalty enforcement (NDP p. 2.5.2.1.). The mentioned strategic activity envisages that by 2013 it is important to introduce the resocialization model components for imprisoned persons, which do not require extra financing.[12] It is planned to introduce a two-stage system in partially closed prisons, as well as in 2010, to specify the order of fines and forced labour. As a result of realisation of these measures, the number of prisoners who are employed in the prisons by the businessmen will increase by 15% in 2013 opposite to the number in 2010.

It must be mentioned that to realize the abovementioned measures, by providing the persons' physical security, who undoubtfully have criminal-political background, is envisaged that in the country in 2010 and 2011

[12] Ministru kabineta rīkojums Nr. 6.9.01.2009. Krimināsodu politikas koncepcija. http://polsis.mk.gov.lv/view.do?id=2891.

per 100 000 population, 2700 crimeswill be registered. In 2012 the number will be 2650, and in 2013 — 2600.

In the above context one can mention only the fact that in 2008, as stated in "Latvia's Strategic Development Plan 2010–2013", Appendix Nr. 1, "Priorities and Macro Level Results in Latvia's Strategic Development Plan 2010–2013", per 100 000 population there were registered 2540 crimes. However, if at the same time we get acquainted with the statistical information of the Ministry of the Interior on the crime level in Latvia in January–December 2010, then we can conclude that in the country per 100 000 population 2260.1 crimes are registered.

Conclusions

On joining the EU, Latvia got involved into the common legal environment with potentially higher advantages to provide security and justice. At the same time, Latvia is not protected from the activities of organized transnational criminal groups in its territory. Joining the EU there increased the possibilities to make a more effective fight against them, ensuring cooperation with Member States' law enforcement institutions, widening the possibilities to obtain information, which helps in detecting crimes and to detain the criminals. By participating in the work of European police organization Europol, Latvia receives support in investigation of severe crimes. Europol is authorized to help investigate the crimes, which deal with drug smuggling, human trafficking, automobile thefts, organization of illegal immigration, women and children sexual abuse, smuggling of radioactive and nuclear materials, money laundering, terrorism, etc. In the field of criminal law at the moment of Latvia's joining the EU, the first and foremost achievement has been the introduction of a unified European order on imprisonment. With it there is significantly facilitated the transfer of sentenced persons, thanks to decreased deadlines and the number of reasons for refusals of transfer. At the same time, concepts or criminal policy have been worked out and realized in Latvia, which are characteristic to European countries.

LATVIJAS SEPTIŅI GADI EIROPAS SAVIENĪBĀ: KRIMINOLOĢISKAIS SKATS

Andrejs Vilks

Kopsavilkums

Iestājoties ES, Latvija iekļāvās kopējā tiesiskā telpā ar potenciāli augstākām priekšrocībām nodrošināt drošību un tiesiskumu. Tajā pašā laikā Latvija nav aizsargāta no organizēto transnacionālo noziedzīgo grupējumu darbības savā teritorijā. Iestājoties ES, pieauga iespējas ar tiem efektīvāk cīnīties, nodrošinot sadarbību ar dalībvalstu tiesībaizsardzības institūcijām, paplašinot iespējas iegūt informāciju, kas palīdz atklāt noziegumus un aizturēt noziedzniekus. Piedaloties Eiropas policijas organizācijas *Europol* darbā, Latvija saņem palīdzību smagu noziegumu izmeklēšanā. *Europol* ir pilnvarots palīdzēt izmeklēt noziegumus, kas saistīti ar narkotiku kontrabandu, cilvēku tirdzniecību, automašīnu zādzībām, nelegālās imigrācijas organizēšanu, sieviešu un bērnu seksuālo izmantošanu, radioaktīvo un kodolmateriālu kontrabandu, naudas atmazgāšanu, terorismu u.c. Krimināltiesību jomā līdz ar pievienošanos ES pirmais un galvenais ieguvums ir vienotā Eiropas apcietinājuma lēmuma ieviešana. Ar to ir ievērojami veicināta aizdomās turēto un notiesāto personu nodošana, pateicoties samazinātajiem termiņiem un nodošanas atteikuma iemeslu skaitam. Vienlaicīgi Latvijā tiek izstrādātas un realizētas krimināpolitiskās nostādnes, kuras ir raksturīgas Eiropas valstīm.

Atslēgvārdi: drošība, kriminoloģiskais skats, kriminālizlūkošanas modelis, nacionālais attīstības plāns un stratēģija, narkotiku kontrole, psihotropās vielas.

COUNTERING TRANSNATIONAL ORGANIZED CRIME

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Abstract
This report outlines the origins of transnational organized crime, describes how it manifests itself and identifies possible threats against societies. Money laundering is dealt with in some detail since it facilitates transnational crime activities and their expansion into the legal economy. The challenges posed by financial crime are identified and guidelines for its prevention are outlined.

The EU strategy against transnational organized crime is an example of how the common European model of crime prevention can be implemented elsewhere.

It is fair to say that criminals are ahead of governments in exploiting the most advanced tools of globalization, such as international travel, banking and trade.

Keywords: transnational, organized, crime, assets, sharing, intelligence, investigation, team, threat.

Organized crime — an increasing threat to humanity

Criminals have posed a threat to people and societies since time immemorial. Today, the nature of crime has changed. Former Director General of the UNODC, Antonio Maria Costa, has expressed grave concern over the systemic and destabilizing effects of organized crime globally on civil society.[1] In Costa's view, the "real climate change" facing humanity is the current social disintegration of civil society in many countries, and the fact that many countries are not aware of the massive problems that organized crime will cause in the future.

[1] Kegö, W. Organized Crime: A Major Threat to State Security. Institute for Security and Development Policy. *ISDP Policy Brief,* No. 19, 19 February 2010.

Many small countries do not have the capacity to deal with the activities of transnational organized crime and in some cases nations may depend upon capital investment from organized crime. This development can be seen in small island nations in the Atlantic, which allow the daily transits of aircrafts often carrying illicit drugs. In Europe virtually all national law enforcement agencies admit that they have serious problems with organized crime.

How and when did organized crime evolve to constitute such a threat to societies worldwide?

Evolution of organized crime

The process of globalization has promoted economic growth by facilitating the movement of people, goods, capital and services. On the negative side, globalization has also helped to spread insecurity and violence through internationalized organized crime and terrorism. Since 9/11, organized crime has, by large, escaped attention from policy makers focused on the fight against terrorism.[2]

The structures of contemporary criminal networks have evolved from pyramid-shaped hierarchies to networks of cells where almost every unit is operating independently. They are continuously changing constellations, partners and even geographical locations which makes it nearly impossible to map out an entire network. Even if elements of a network were to be eliminated the decentralized network would be quick to refill those voids. The numerous geographically widespread criminal organizations engage with each other for the sake of cooperation but also to compete with one another. Additionally, they are also closely knitted to governmental and other societal actors. The decentralized structure of these organizations, their broad involvement in the legal economy and their leverage upon regimes, especially in countries marred with corruption, makes them hard to eradicate. Even if the higher echelons of a network were to be wiped out, the organization itself would fill in their vacancies with new recruits.

The present trend is that organized crime groups specialize in providing particular services, such as drug importation, drug concealment,

[2] Speech delivered by Antonia Maria Costa, Executive Director, UNODC at the G8 Presidents of Chambers Meeting. "How can Parliaments fight organized crime?" 13 September 2009 http://www.unodc.org/unodc/en/about-unodc/speeches/2009-13-09.html. Accessed 27 March 2010.

fraudulent documentation, money laundering, street enforcement, and racketeering.

A criminal enterprise today is highly efficient in terms of expertise and manpower.[3] Supporting these criminal networks is a range of professionals operating along the margins of criminality, without which transnational crime would not succeed. They include lawyers, accountants, financial advisers, bankers, stockbrokers, IT specialists, businessmen, chemists, corrupt politicians, judges and magistrates, government officials, police, customs officers and military personnel; and even compliant media people and clerics.

The profits that criminals make are not used for the lavish lifestyles but for investments in the legitimate business, property and shares. Subsequently, a significant part of the criminal profits generated by criminal enterprises may be generated from legitimate business activities, using funds derived from illegitimate or criminal activities. It is not the commodity trafficked or the service provided that counts. What motivates Organized Crime is the capacity to undertake activities at the lowest risk of detection whilst generating the highest possible profits.

The economics of transnational organized crime

Transnational criminality has recently diversified into aspects of financial crime such as identity-theft, cyber-crime, human trafficking and illegal exploitation of natural resources. We cannot assess the true dimensions of this global business, though we can guess that, in size and impact, it dwarfs any legitimate trade.[4] Estimates of the total value of organized crime vary widely. Havocscope, an online database of black market activities estimates world illicit trade to be almost US$ 730 bn per year, with counterfeiting and piracy US$ 300 bn – US$1 trn, trade in environmental goods US$ 69 bn and weapons trade US$ 10 bn.[5] The illicit drug trade is valued at between US$ 500 and US$ 900 bn worldwide. Trafficking in persons for sexual exploitation or forced labor is one of organized crime's largest revenue sources, generating US$ 9.5 bn annually,

[3] McFarlane. J. Regional and International Cooperation in Tackling Transnational Crime, Terrorism and the Problems of Disrupted States. *Journal of Financial Crime,* 2005, 12 (4).
[4] G8 Presidents of Chambers Meeting, "How can Parliaments fight organized crime?"
[5] Havocscope Black Market Indexes. www.havocscope.com. Accessed 12 April 2010.

according to the FBI. McAfee (an IT security company) estimates that theft and breaches from cybercrime may have cost businesses as much as US$ 1 trn in 2008.[6] These figures does not include organized crime's part of the US$1 trn in bribes that the World Bank estimates is paid annually or its part of the estimated US$ 1.5–6.5 trn in laundered money.[7] The laundering of billions of dollars from organized crime money will worsen national debt problems because large sums of money will be lost as potential tax revenue.

The lowest common denominator of all transnational criminal activities is money laundering by which the proceeds of illegal activities are converted to means for legal investments in the economy. According to the World Bank and the International Monetary Fund (IMF), shadow transactions were estimated to be as high as between US$ 6.5 trn and US$ 9 trn in 2001.[8] If these figures are put in contrast to the total global GDP it would amount to 20–25 per cent of its total sum.

On the other hand, the United Nations International Drug Control Programme (UNDCP) assessed the annual turn-over from the entire criminal market to be around US$ 1500 bn.[9]

Transnational organized crime in an increasingly global economy poses a serious threat to national security. Countries worldwide, whether they are developed or underdeveloped, did not previously share a collective problem of this nature. The transnational criminal networks do not just affect a selected group of financial institutions or regional areas. They affect international financial networks and economies at national and regional levels. These new threats will also present new conflicts that will require innovative strategies in the future, since we today have global cooperation among transnational criminal groups.[10]

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6 Mills, E. Study: Cybercrime costs firms $1 trillion globally. CNET, 28 January 2009. http://news.cnet.com/8301-1009_3-10152246-83.html. Accessed 19 April 2010.

7 Organized Crime (Challenge 12). The 4D Network. http://4dnetwork.org/goals/view/?goal_id=350. Accessed 19 April 2010.

8 Kegö, W. Organized Crime: A Major Threat to State Security. *Op. cit.*

9 Organized Crime – Drug and Human Trafficking in Europe. Rapporteur: Christine Boutin (France). NATO Parliamentary Assembly, 5 November 2004. http://www.nato-pa.int/Default.asp?SHORTCUT=368. Accessed 19 April 2010.

10 Stephens, M. Global Organized Crime. Paper presented at the Woodrow Wilson School Policy Conference 401A Intelligence Reform in the Post-Cold War Era, 6 January 1996. http://www.fas.org/irp/eprint/snyder/globalcrime.htm. Accessed 20 March 2010.

Problems facing law enforcement

The major challenge lays in understanding the high complexity guised under the label "transnational organized crime" and by coming to terms with its threat to state security. Encumbered in many ways, law enforcement agencies have not been as quick to adapt to this new situation and criminals are well aware of this fact. Transnational criminal organizations exploit the inherent weaknesses of law enforcement agencies, in order to conduct their illegal activities and to hide their illicit proceeds in ways that minimize the risk that they will be arrested or prosecuted, or have their assets forfeited.

The dilemma with rivalry and competition among national law enforcement agencies serves the interests of organized crime groups. This is a serious problem since regional cooperation will inevitably fail if communication and trust among agencies at a national level is critically low. The mere existence of rivalry among agencies is usually explained by arguments that underscore the lack of trust and cooperation due to narrow-minded competitiveness. Additionally, lack of acknowledgement that other agencies have the capacity to contribute to ongoing operative and investigative missions can be added to the list of factors that benefits criminal networks.[11]

Organized crime groups are also benefitting greatly from their innovative approach to technology. In this respect, law enforcement agencies are perhaps lagging behind the most. Needless to say, figuring out how criminals innovate new ways of exploiting telecommunications, visa free regimes and electronic banking is a time and resource consuming activity.

The difficulties in keeping pace with criminals are twofold. Firstly, insufficient resources are often a restraining factor for law enforcement agencies in terms of procurement, hiring staff and training existing staff. Secondly, law enforcement agencies have restrictions in executing actions due to bureaucratic structures which results in slow responses to actions of more flexible criminal networks.

Also, receiving warrants and other types of permission for conducting surveillance and tracking activities under suspicion of being criminal

[11] McFarlane, J. Regional and International Cooperation in Tackling Transnational Crime, Terrorism, and the Problems of Disrupted States. *Op. cit.*

can be challenging. The problems faced by law enforcement agencies are further exacerbated by the ability of organized crime groups to smoothly carry out ad-hoc actions by means of, for example, hiring temporary "staff".

European lessons

The European Union as a regional body has experienced severe problems but simultaneously been relatively quick to respond to the urgent needs of preventing organized crime. In Europe, the fight and prevention of transnational crime has over the last two decades increasingly gained priority on the agendas of EU Member States. The main reason for this development is attached to three interrelated events. First, the security void that appeared after the fall of Communist regimes in Eastern Europe created incentives for criminal elements to capitalize on weak state control and subsequently grow in size. Second, the provision for the freedom of movement in the Maastricht Treaty (1993) eased the operations of criminal networks in "old" Europe. Lastly, the enlargement of the EU in 2004 has, created a flexible milieu for the operations of criminal networks in the European continent in an unprecedented manner. Subsequently, the EU's actions to counter this development have paved the way for a process aimed at harmonizing and unifying national structures on legal matters in order to combat transnational criminality. The recently ratified Lisbon Treaty has promoted issues of policing and judicial relevance to a policy area in its own right.

The EU's engagement in crime-related issues, or lack thereof, has gone from being merely passive in the 1980s, to highly active, due to the ratification of the Lisbon Treaty and the adoption of the Stockholm Programme.[12]

Previously, there was a desire among Member States to prevent organized crime. However, different sets of regulations, organizational structures that were yet to be harmonized, and diverse Member State priorities prevented the realization of effective cooperation. With the ratification of the Lisbon Treaty, new opportunities for fighting organized crime have been created.

[12] Sjölinder H. Fighting Organized Crime in the EU. From a presentation at ISDP.

Overall, the EU decision-making process has eased since most areas of the third pillar (Police and Judicial Co-operation in Criminal Matters) are now based on qualified majority voting. This is the main rule across the Freedom, Security and Justice areas of the EU. However, one of the remaining problems is that unanimity still applies to operative cooperation within the Union and there are preconditions for the activities of one Member State in another Member State.

The Lisbon Treaty also provides for the establishment of a Standing Committee on Internal Security (COSI) with a mandate to facilitate and strengthen coordination of operative cooperation between Member States. This committee aims to evaluate the general state of operative co-operations in the EU zone, identify flaws, and forward recommendations for further improvements. However, the committee has not yet materialized and it remains to be seen how it will fulfill these tasks. Furthermore, the Lisbon Treaty's major challenges lie in its structure and geographical location.

The Stockholm Programme is the third five-year plan with guidelines for the EU's justice and home affairs. This comes after the Tampere and Hague Programmes which resulted from the Amsterdam Treaty that committed the EU to establish common areas of freedom, justice and security. Simply, the evolutionary process of the guideline programmes has gone from being abstract and non-binding instruments to concrete and mandatory measures.

Can the EU model be exported?[13]

Firstly, the EU's solutions to problems dealt with above cannot entirely be exported elsewhere because it takes an organization with supranational elements (such as the EU) that gives precedence to its own legislation over the national law of Member States. Today, there are no such organizations other than the EU. However, the lesson learned from the European case is that of an organization that has engaged and implemented actions against the growing threat posed by organized crime groups. Here, the Lisbon Treaty and the Stockholm Programme are two documents that, despite their

[13] The following is based on Sjölinder, H. Fighting Organized Crime in the EU.

flaws, will prove indispensable to European law enforcement officers and possibly inspire decision makers elsewhere to follow suit.

But, the big challenge still remains. There is a lack of awareness on the issue of transnational crime amongst decision makers worldwide. This is deduced from the fact that criminal networks only recently internationalized which makes awareness as well as competency amongst politicians, law enforcement agencies and the general public on the issue critically low. Previously, when organized crime operated within the border of one country, counter measurements came through traditional national channels. Now, the question is whether governments and law enforcement agencies are fully aware of the fact that organized crime has internationalized and that transnational problems require transnational solutions. Therefore, there might be a risk that the political will among states to prevent transnational organized crime is not sufficient enough to follow the European lead.

What then, should be done in order to improve efforts against transnational organized crime?

New strategies to counter organized crime

Contemporary organized crime has internationalized, nestled itself into the higher echelons of societies and consequently started to pose a great threat to state security. Prevention of organized crime needs to take the same path, namely, to become more internationalized, as transnational problems needs transnational solutions.

Needless to say, there are no universal remedies against transnational organized crime. However, that does not imply that there are no strategies for deterring organized crime groups away from corrupting societies, criminalizing states and investing criminal proceeds into the legitimate economy. When dealing with organized crime of transnational nature, it is quintessential to understand the complexity of the issue at stake, keeping pace with the innovations of criminals and working actively to prevent the activities of organized crime networks in a multilateral fashion. Since transnational crime creates synergies between terrorism, drug trafficking, money laundering and cybercrime, the response must include deepened intra-state and intra-agency cooperation.

Improving multilateral communication and cooperation

A law enforcement authority in a member state, which has the authority to investigate a certain crime or criminal activity in that state, shall have the right to request and get access to information registered in another member state that is needed for the investigation.[14]

The EU's work in preventing organized crime can serve as a good guideline for the global efforts in combating the ills of transnational organized crime. Since it is not plausible to expect countries outside of the EU to follow in its footsteps in handling organized crime in the near future, one could highlight some of its guidelines. For instance, the idea of having law enforcement agencies across a wider region that can respond swiftly and promptly against transnational criminal activities is central to obstructing criminal networks. Unfortunately, almost all countries are experiencing troubles in this area due to a two-fold problem. Firstly, many states are experiencing difficulties in acquiring information deemed necessary in ongoing investigations from other states. The difficulties manifest as either protracted processes or through straight denials on requests for information. Secondly, uncoordinated national legislation on collecting and exchanging information contributes to the problematic issue of cross-border co-operation.

Therefore, there is a need for governments to come to terms with the need to adopt horizontal rather than vertical approaches in countering organized crime.

Attack the assets

The main incentive for individuals pursuing a criminal career is economic gain. Over the last two decades, the turnover of transnational illegal activities has generated ever increasing profits. Consequently, organized crime networks are expanding and attracting new recruits that favour "working" in a profitable business sector. Increasing the focus on attacking the assets of criminals ought to be prioritized higher. Economic crime needs more priority and more obstacles ought to be erected against

[14] Lars-Gunnar Jonsson, Swedish Police Attaché in Brussels, 1998, quoted in Fredrik Nygren, "The Swedish Initiative: Management of Information Exchange," available at http://www.daten.european-police.eu/2008/nygren.pdf.

criminals funneling illegal money to the legal sector. The solution is for individual countries to tighten placement regulations in national banks and sophisticate their swift systems for transactions. These measures are especially urgent since the profits of organized crime are surpassing GDP of some underdeveloped countries, enabling criminal groups to hijack state structures and to create narco economies or, even worse, narc-states.

Sharing and intercepting intelligence

The axiom of criminals being one step ahead of the long arm of the law is more than true when it comes to technology. Criminals are often sophisticated in the usage of communication, the main technological facilitator of transnational crime. Today, transnational networks operate smoothly through borders and expedited by international communications. Therefore, governments ought to be more willing to share intelligence with foreign services. Also, legislation that enables government agencies to intercept, analyze and share information with foreign entities is equally as important.

Regional joint investigation teams

A good response to the persisting problems would be regional joint investigation teams. A proposal for such an idea was actually presented by a workgroup consisting of seven independent experts in the Baltic Sea Region in 2006.[15] The proposal would have brought together criminal, intelligence and customs officers and prosecutors into one center. Unfortunately, the proposal never took off due to lack of political interest. The benefits of regional joint investigation teams lay in the advantage that comes with co-location. In essence, this would bring the concept of cooperation to another level. Today, communication between law enforcement agencies in different countries is facilitated through telephone and e-mail. However, in order to work more efficiently and to gain trust among regional actors, one has to bring law enforcement officers and prosecutors from different countries into one location. In the end, in order for trust to prevail it is para-

[15] *Baltic Joint Investigation Team: A new way of cooperation: Common action proposal*. Stockholm: Mobilisering mot Narkotika and European Cities Against Drugs, 2006.

mount for people to meet face to face on a daily basis. The regional joint investigation teams would not constitute a body but rather a new working method. Information exchange is a crucial component in transnational law enforcement as has been previously mentioned. However, information exchange alone cannot be effective due to a twofold problem. First, each country is sovereign in the application of its national laws. Therefore, each state border becomes a major hindrance to compulsory measures. Second, international legal aid procedures, which, for example, includes requests for extradition, handing over penal procedures to foreign countries or issuing a warrant of arrest does not come without problems.

They are often bureaucratic, time-consuming and ineffective.

The effectiveness of Regional Joint Investigation Teams lay in their ability to initiate actions in multiple countries simultaneously. Surveillance staff in respective countries enables simultaneously launched investigations, judicial processes, arrests and interrogations. In the end, success will be dependent on the number of criminals prosecuted and not on the volume of information that is exchanged among the investigation teams.

GRÄNSÖVERSKRIDANDE ORGANISERAD BROTTSLIGHET

Walter Kegö

Abstrakt

Vi är alla integrerade i den globaliserade kriminaliteten. Stater och gränser spelar en allt mindre roll för de kriminella nätverken. Produktionsländer, transitländer och konsumtionsländer är alla integrerade i komplexa nätverk som kännetecknas av ekonomisk vinning, våld och korruption.

Produktion och smuggling av både heroin och syntetiska droger i vårt närområde ökar konstant. Handeln med människor, i synnerhet kvinnor, visar inga tecken på att avta. Den organiserade brottsligheten försvårar i allt högre grad lösningen av konflikter och försvagar stater genom korruption och ökad kriminell kontroll. Kopplingen mellan terrorism och organiserad brottslighet blir allt tydligare, men konsekvenserna är svåra att förutse.

Utvidgningen av Schengen — området innebär att EU:s östra gräns har kommit närmare regioner och områden som är dåligt kontrollerade och politiskt instabila och sålunda borde vara intressanta att studera när det gäller - brottstrender och kriminella aktiviteter. Utmaningarna som vi har framför oss ligger i att arbeta mot en harmoniserad lagstiftning och ett utökat samarbete mellan åklagarna i regionen och framför allt mellan andra brottsbekämpande myndigheter.

Att använda gemensamma arbetsgrupper är en annan väg att gå för att förbättra samarbetet. Men då måste det bli en betydligt högre aktivitet inom de nationella brottsbekämpande myndigheterna.

En gemensam regional strategi är också nödvändig och skulle förbättra möjligheterna att utöka det brottsbekämpande samarbetet i bl a Östersjöregionen.

Problemen är mångfacetterade och det behövs nya grepp för att få problemen under kontroll. Det finns emellertid mycket lite som ett enskilt land kan göra för att möta de stora problem som följer med smuggling och penningtvätt. Man måste ha ett mycket nära samarbete med andra stater, som också är påverkade av samma hantering.

Gemensamma utredningar är av avgörande betydelse för att vi skall bli effektivare i arbetet. Dessutom måste vi modernisera vårt tänkande och vårt sätt att arbeta. Vi kan inte längre fokusera på att tänka lokalt och nationellt utan vi måste tänka internationellt. Men då behöver vi också inse att vi alla är beroende av varandra.

Sökord: globaliserade, kriminella, nätverk, organiserad, brottslighet, korruption, samarbete.

THE CHALLENGES OF ANTI-CORRUPTION POLICY OF LATVIA AFTER JOINING THE EU

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Abstract
The Corruption Perceptions Index 2010 which is 4.3 points[1] for Latvia shows that strengthening of anti-corruption policy is still one of the most important issues on the legal and political agenda of Latvia.

The objective of the article is to ascertain the challenges of anti-corruption policy of Latvia after joining EU, to evaluate the influence of joining EU on anti-corruption policy of Latvia, and point out the tasks which the Corruption Prevention and Combating Bureau and other participants of development of anti-corruption policy have to carry out both in short- and middle-term periods.

The author concludes that there are still a wide range of anti-corruption issues, especially in the sphere of improving control of individuals' incomes and responsibility for high level corruptive activities, which are not solved because of the lack of political will, and that there are challenges for developing capacity and professionalism to investigate cases in the situation when crimes become more complicated both due to the development of technologies and free movement of people and capital.

Keywords: anti-corruption/corruption, Corruption Prevention and Combating Bureau (*KNAB*), criminal prosecution, EU fund, financing of parties, fraud, investigation, lobbyism, state policy, pre-election campaign, public procurement.

The necessity for anti-corruption policy in the Republic of Latvia was recognized already before joining European Union (EU) in 2004 but accession to NATO and EU, as well as the consultations of World Bank experts,

[1] The corruption perceptions index 2010 results. http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results. Max. value is 10 points which means that the state is free from corruption, min. 0 — the state is absolutely corrupted.

played an even more important role in the development of anti-corruption policy of Latvia.

R. Kārkliņa stated that EU had considered anti-corruption issues to be very important in accession to EU and had impelled the candidate states to ratify conventions.[2]

While already in the first years after resumption of the Republic of Latvia as an independent state (1990), laws with important role in fighting corruption were prepared and adopted, the strategic anti-corruption issues were defined and a systematic programme was adopted only on 27 February 1998. On this date, the Cabinet of Ministers of Latvia took a decision on the strategy of prevention of corruption and its priorities in public administration.[3] By this decision the national corruption prevention programme became basically accepted.

The Anti-Corruption Council, established by the Cabinet of Ministers on 23 September 1997 as a coordinating body, being aware that corruption threatens the economic, social and legal developments, and every resident's rights and freedoms of sales, thereby reducing public loyalty to the state and affect the country's political stability, has developed an anti-corruption programme.

The programme was developed with the aim to create sustainable and effective public policy targeted at corruption prevention by means of identification of the enabling conditions for corruption, and providing for the conditions of the law and other appropriate means, including drawing up and enforcing new legislation. A necessity for such a policy and its successful implementation were also argued as a precondition of integration of the Republic of Latvia in the EU, ensuring compliance with the democratic and legal state requirements.[4]

The programme was developed on the basis of the Twenty Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers of the Council of Europe on 6 November 1997, recommendations to the Latvian government within the "Octopus" project (a joint project of European Commission and European Council in the fight against corruption and organized crime in countries in transition).[5]

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[2] Kārkliņa, R. *Korupcija postkomunisma valstīs.* Rīga: Apgāds "Valters un Rapa", 2006, 176. lpp.

[3] See document: Latvijas Republikas Ministru kabinets, protokols Nr. 9, pieņemts 27.02.1998., Nr. 9., 1.§ http://polsis.mk.gov.lv/LoadAtt/file37016.doc.

[4] See: Korupcijas novēršanas programma. http://polsis.mk.gov.lv/view.do?id=474.

[5] *Ibid.*

The next significant year in the development of anti-corruption policy of Latvia is 2002 when another anti-corruption law was adopted in Latvia. It was the law "On Prevention of Conflict of Interest in Activities of Public Officials". This Law was adopted by the Parliament (*Saeima*) on 25 April 2002 and came into force on 10 May 2002. With this law coming into force the Prevention of Corruption Law, which was in force since 1995, was repealed.

2002 was also the year of the establishment of the Corruption Prevention and Combating Bureau (*KNAB*) [6] — the institution which is responsible for preventing and fighting corruption in Latvia. *KNAB* was officially established on 1 May 2002 when the Law on *KNAB* came into force. On 10 October 2002, the first Director of *KNAB* was appointed.

The World Bank appears to have been the first international institution to suggest the establishment of *KNAB* as a multifunctional institution in early 2000. The impetus for this idea was given by studies commissioned by the World Bank on the so-called state capture, in which Latvia ranked highly. The Latvian non-governmental sector and leading anti-corruption experts had been actively advocating for the establishment of such an institution in Latvia and this, as well as certain external factors (membership in NATO and the EU), altogether contributed to the establishment of *KNAB*.[7]

As Inese Voika, a Latvian anti-corruption expert and the head of Council of Transparency International-Latvia, has indicated, the establishment of KNAB was closely linked to the expectations for the control of applications of EU funds in Latvia. Inese Voika consider us unexpected, that EU was requesting KNAB to be a partner in controlling EU funds.[8]

Joining EU was a significant step not only for the establishment of new borderlines in politics and national economy, and for the scope of legal acts compulsory for Latvia, but also became a new challenge for the anti-corruption policy.

Currently, as a EU Member State, Latvia is obligated to comply with EU legislation as well as has an opportunity to follow the best practices of other EU states.

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[6] Abbreviation in Latvian language — Korupcijas novēršanas un apkarošanas birojs (*KNAB*).

[7] Monitoring the work of the Corruption Prevention and Combating Bureau. A research study of the performance of the Corruption Prevention and Combating Bureau, 2008 and 1st half of 2009. Rīga: TI-Latvia (Delna), 2010, p. 7.

[8] Voika, I. Report in International conference "Specialized Anti-Corruption Agencies: independent to be effective, effective to lose independence". 25–26 March 2010. The conference programme and presentations. http://www.delna.lv/eng/project/45/

The European Union has produced several documents on fighting corruption, *inter alia*:

- Action plan to combat organized crime (adopted by the Council on 28 April 1997).[9]

Responding to this political guideline, the Commission put forward in the same year a Communication to the European Parliament and to the Council suggesting a range of measures (banning of tax deductibility of bribes, rules on public procurement procedures, introduction of accounting and auditing standards, blacklisting of corrupt companies and measures in the Community's external aid and assistance scheme) with a view to formulating an EU strategy on corruption both within and outside its borders.[10]

- Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee — on a Comprehensive EU Policy Against Corruption.
- Action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, adopted by the Council on 3 December 1998.
- The Millennium Strategy on the Prevention and Control of Organized Crime — reiterated the need for instruments aimed at the approximation of national legislation and developing a more general EU policy towards corruption, and urged Member States to ratify the EU and Council of Europe anti-corruption instruments.

The EU has established its own instruments to tackle corruption:

- Two Conventions on the protection of the European Communities' financial interests and the fight against corruption involving officials of the European Communities or officials of the EU Member States:
  1) 26 July 1995 Convention on the protection of the European Communities Financial Interests. This Convention came into force in Latvia on 26 July 1995. Convention has two protocols (1996 and 1997).

[9] See: *Official Journal C 251, 15/08/1997, pp. 0001–0016.*

[10] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, on a Comprehensive EU Policy Against Corruption. http://trade.ec.europa.eu/doclib/docs/2004/june/tradoc_117715.pdf.

2) 26 May 1997 Convention drawn up on the basis of Article k.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of European Union. It came in force in Latvia on 28 September 2005.

- Document with the focus on corruption in the private sector — Joint Action of 22 December 1998, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector.
- The European Anti-Fraud Office (OLAF), set up in 1999, which has inter-institutional investigative powers.

The Commission is also in favour of accession to a number of instruments originating with other international bodies. The aim is to take into account the already existing activities in order to avoid duplication, and to ensure that measures already existing in the EU have the same mandatory character in other international organisations. The Organisation for Economic Cooperation and Development (OECD), the Council of Europe and the United Nations have already produced their own conventions on corruption[11], for example:

1) The Criminal Law Convention on Corruption of the Council of Europe (accepted by 7 December 2000 Law in Latvia, which came into force on 20 December 2010);
2) The Civil Law Convention on Corruption of the Council of Europe (accepted by 17 February 2005 Law in Latvia, which came into force in 9 March 2005);
3) The United Nations Convention against Corruption (came into force in Latvia on 3 February 2006);
4) OECD Convention on combating bribery of foreign public officials in international business transactions.

The establishment of Corruption Prevention and Combating Bureau was an important driving force for the next steps of prevention and fighting corruption in Latvia, like the amendments to the Latvian Administrative Violations Code, the Criminal Code, the Law on Financing of Political Organisations, the Law on Pre-election Campaign before the *Saeima* Elections

[11] A comprehensive EU anti-corruption policy. http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33301en.htm.

and the Elections to the European Parliament. *KNAB* has elaborated the National Strategy for Corruption Prevention and Combating 2004–2008, National Programme for Corruption Prevention and Combating 2004–2008, Corruption Prevention and Combating Strategy for 2009–2013 and many other programmatic and conceptual policy documents.

KNAB is the designated national contact point of network against corruption in the Member States of the European Union, according to decision adopted by the Cabinet of Ministers on 30 June 2009.

Decision of the Council of the European Union on setting up a contact-point network against corruption was taken in October 2008, thus recognizing the importance of enhancing international cooperation in the fight against corruption at EU level.[12]

KNAB had initiatives in the wide range of anti-corruption spheres but few of them are still "lost in nitty-gritty of politics" strengthening of independence of *KNAB*, improving control of individuals persons' incomes, criminal responsibility for illegal activities in the financing of parties, improving Latvian Administrative Violations Code with amendments on institution, who has the right to punish for violation of public procurement procedures, legal regulation on lobbyism etc.

Necessity to strengthen the independence of *KNAB* is related to the risk of political manipulation with this institution. As emphasized in the monitoring of *KNAB*, made by TI-Latvia (*Delna*), the status of *KNAB* under the supervision of the Cabinet of Ministers makes it vulnerable to the attempts to influence its work, especially by the Prime Minister, who as the head of the Cabinet of Ministers holds the supervisory power over *KNAB*. The Prime Minister's rights in this regard, as shown by concrete previous practices, can be widely interpreted. This can have an intimidating effect on the management of *KNAB* and create unwanted precedents, especially if the holder of the Prime Minister's office is disposed to interfere in the work of *KNAB*. Other vulnerabilities include the necessity to receive approval of the annual budget, as well as the procedure for the appointment and dismissal of the *KNAB*'s Director.[13]

Why are the mentioned activities so important, in the opinion of the author and *KNAB*, and what has initiated them?

Anti-corruption policy cannot function effectively when serious faults in the system of the declaration of incomes and property are existent.

[12] International Co-operation. http://www.knab.gov.lv/en/knab/cooperation/
[13] Monitoring the work of the Corruption Prevention and Combating Bureau. *Op. cit.*

Possibilities to control incomes of public officials and ex-officials remain limited before the KNAB initiatives to develop legislation which provides for the mandatory declaration of general property and the control of it become adopted, as the possibility of legalization of incomes received in a corruptive way still remains in existence before that.

In public opinion, *KNAB* is more effective in fighting administrative corruption[14] (positive assessment is given by 46.5% of respondents) but less successful in combating high-level corruption/preventing state capture (44.1%). Effectiveness of both functions is assessed as negative by more than half of the respondents of the public surveys.

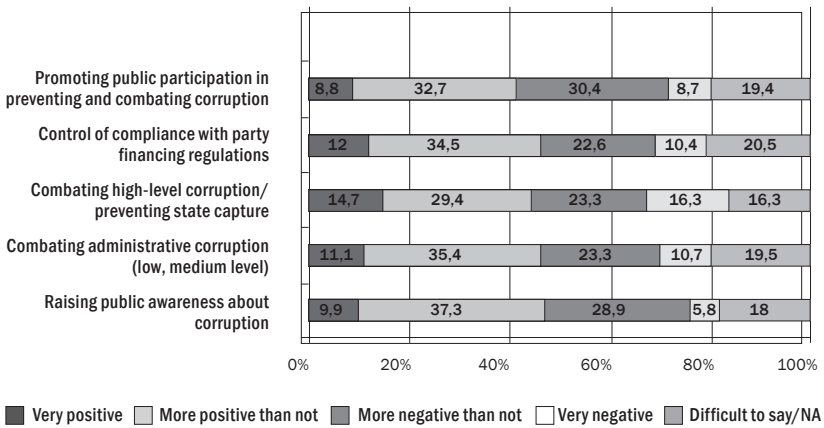

Figure 1. The public assessment of *KNAB*'s performance.

Society and anti-corruption experts expect that corruption is combated more effectively, especially the high level (political) corruption. This is not possible without strict regulations in the sphere of financing of political parties and lobbyism. In spite of improvements in the regulations on the pre-election financing of parties (parties will be financed by state according to the procedure regulated by law), the legal acts still do not criminalize the violation of the financing rules. This is not commensurate with the negative consequences of large-scale violations which can have a serious influence on the legislative, political and administrative environment.

[14] Results of a public opinion poll conducted by SKDS, 2009.

The risk of corruption is, for the most of time, related to the right to take a decision on finances and administrative resources. Even if the Latvian Administrative Violations Code stipulates that an institution which is responsible for the preparation of an administrative offence's protocol on violation of public procurement procedures is police, this mechanism has proved ineffective. But till now, all activities of *KNAB* aimed to solve the problem by submitting recommendations to assign this duty to the Bureau of Procurement Supervision have not been successful because of the lack of political will.

Joining the EU has brought into agenda also some new risk areas of corruption. One of the most important risk areas, because of concentration of large amount of money, is the management of the EU funds and grants in Latvia.

According to the decision of the Council of the EU on long-term financial framework for 2007–2013, Latvia has received EUR 4.53 billion (EUR 4 530 447 634) for achievement of Cohesion Policy goals through acquisition of the EU funds (ERDF, ESF and CF).[15]

Practice of *KNAB* shows that qualms in this aspect are reasoned. For example, in 2010, *KNAB* sent to the State Prosecutors Office materials of criminal proceedings requesting to start criminal prosecution against five officials from the State Labour Inspection. *KNAB* has obtained sufficient evidence to encourage the prosecution based the fact that during the period from October 2008 to September 2009 five officials, in the frame of the European Social Fund (ESF) project and European Regional Development Fund (ERDF) project, concluded bogus employment contracts with five persons.[16]

Free movement of people and capital in EU causes *KNAB*'s necessity for strong trans-national co-operation and understanding of financial processes and regulations abroad to prevent and combat corruptive activities.

During monitoring of *KNAB* where the author of this article took part, it was ascertained that due to the lack of resources, *KNAB* is not able to provide for the development of the professional skills of its employees. *KNAB* investigates offences involving complex financial operations and types of crimes for which they do not have previous long-term investigation experience. Therefore, measures to develop and improve the qualification

[15] EU Funds. General Information. http://www.esfondi.lv/page.php?id=658.
[16] Preses relīzes. http://www.knab.gov.lv/lv/knab/press/article.php?id=309928.

of those employees who need specialized knowledge must be taken in order to build their competence by involving domestic and foreign experts, if necessary. Funding from the EU and other financial sources should be sought for this. This would also enable *KNAB* to become more innovative in its work, as this is of crucial importance for its ability to perform its functions well.[17]

These activities are necessary investments in the capacity of KNAB also since the above mentioned special attention to the prevention and combating corruption in the management of the EU funds and grants is a sphere which must become a serious part of the anti-corruption policy of Latvia.

HERAUSFORDERUNGEN DER ANTI-KORRUPTIONS-POLITIK LETTLANDS NACH DEM BEITRITT ZUR EU

Inga Liepa-Meiere

Zussammenfasung

Ziel des Artikels ist es, die Herausforderungen der Anti-Korruptions-Politik Lettlands nach dem Beitritt zur EU und den Einfluss der EU auf die Anti-Korruptions-Politik Lettlands zu ermitteln, und die Tätigkeiten aufzuzeigen, welche das Büro für Prävention und Bekämpfung der Korruption (KNAB) und andere Teilnehmer zur Entwicklung der Anti-Korruptions-Politik durchführen müssen, sowohl im kurz- als auch mittelfristig.

Die Autorin stellt fest, dass die Notwendigkeit für eine Anti-Korruptions-Politik in der Republik Lettland schon vor dem Beitritt zur EU und zur NATO, sowie die Beratungen der Weltbank-Experten spielten eine treibende Kraft bei der Entwicklung der Anti-Korruptions-Politik Lettlands.

Die Autorin betont, dass der neue Schritt in der Entwicklung der Anti-Korruptions-Politik Lettlands die Gründung des Büros für Prävention und Bekämpfung der Korruption war, welches wichtige Aktivitäten in der politischen Planung und Abfassung von Rechtsvorschriften umgesetzt. Aber nach der Analyse kommt die Autorin zum Schluss, dass es durch das Fehlen von

[17] Monitoring the work of the Corruption Prevention and Combating Bureau. *Op. cit.*

gesetzlichen Bestimmungen in Lettland immer noch eine breite Palette von Fragen zur Korruptionsbekämpfung gibt, welche wegen des Fehlens des politischen Willens nicht gelöst werden: Stärkung der Unabhängigkeit des Büros für Prävention und Bekämpfung der Korruption, Verbesserung der Kontrolle des Einkommens einzelner Personen, strafrechtliche Verantwortlichkeit für illegale Finanzierung von Parteien, Verbesserung des lettischen Ordnungswidrigkeiten-Codex mit der Institution, welche das Recht hat das Protokoll zu erstellen über Verletzungen des öffentlichen Beschaffungswesens, gesetzliche Bestimmungen über Lobbyismus, usw.

Grössere Vorsicht ist nötig zum Vorbeugen der Korruption beim Management von Geldern aus von EU-Fonds. Auch gibt es Herausforderungen für die Entwicklung von Kapazität und Professionalität beim Untersuchen von Fällen, weil die Verbrechen komplizierter geworden sind, sowohl durch die Entwicklung von Technologien und die Freizügigkeit von Personen und Kapital.

Stichwort: Anti-Korruptions-/Korruption, Büro für Prävention und Bekämpfung der Korruption (KNAB), Strafverfolgung, EU-Fonds, die Finanzierung der Parteien, fraud- Betrug, Ermittlungen, Lobbyismus, die staatlichen Politik, Vor-Wahlkampf, die öffentliche Beschaffung.

ENFORCEMENT OF COURT JUDGMENTS IN FAMILY MATTERS INVOLVING CROSS BORDER ELEMENT — LITHUANIAN APPROACH

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Abstract
In the present times of overall globalisation and integration, emigration and re-immigration, marriages between citizens of different states and persons of different nationalities are no longer surprising. Lithuanian citizens resident in other Member States of the European Union (EU) have children and register their birth abroad; subsequently, the fact of their birth is included in the records in Lithuania. This international societal integration also leads to an increase of legal relationships and legal disputes with the so-called cross-border element, i.e. when legal relationships or legal disputes become linked in one or another way with the legal systems of two or more rather than one state. Legal relationships of this kind pose many different questions, e.g., to the court of which state to apply in each specific case; whether it will be possible to enforce a judgment of the court of one state abroad; the law of which state should be applied to the relationships of the parties in a specific case, etc. Some of these issues are analysed further in this article.

Keywords: cross-border family matters, recognition and enforcement of foreign judgments, Brussels Regulations.

Introduction

With the current-day increase of international economic, legal, political and social co-operation, the issues of recognition and enforcement of foreign judgment are becoming particularly important. The number of legal disputes resolved in one EU Member State and often enforceable in

another one inevitably is increasing; therefore, it is in extremely important to create an effective mechanism for the recognition and enforcement of foreign judgments, which *inter alia* is also a prerequisite for the protection of human rights.

The doctrine of law recognises two legal mechanisms or two forms of the enforcement of foreign judgments in contemporary worldwide practice.[1]

Firstly, it is a review of a foreign judgment carried out by the courts of the enforcing state. This control is understood as recognition of a foreign judgment and, in this way, granting it legal power in the territory of another Member State (*exequatur** issuance).

The second method is enforcement of a foreign judgment according to the same procedure that would be followed to enforce national judgments of the enforcing state without any recognition procedure of the judgment in the territory of the enforcing state, i.e. without the *exequatur* procedure. It is intended to withdraw the *exequatur* procedure in the EU. It is noted in the Stockholm Programme[2] that the process of abolishing all intermediate measures (the *exequatur*), should be continued during the period covered by the Programme.

In terms of recognition of judgments in cross-border family matters, the following principal categories can be distinguished and followed in the analysis of characteristics and specifics of their enforcement. First of all, it is court judgments of (1) property and (2) non property nature. Judgments of property nature may be related to (a) maintenance to minor children, (b) maintenance of the spouses or compensation of damages, and (c) sharing of property. Judgments of non property nature in family matters may be further classified into (a) judgments on divorce and separation of spouses, (b) judgments on the place of residence of minor children and procedure of communication with minor children, as well as (c) return of children. Court judgments on divorce, recovery of maintenance to minor children and implementation of the procedure of communication with children are most often in practice, therefore, this article will further discuss some problematic issues related to the enforcement of these judgments.

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[1] Нешатаева, Т.Н. *Международное частное право и международный гражданский процесс.* Москва: Городец, 2004, p. 527.

* Latin: "Let it be executed".

[2] Multi-annual programme 2010–2014 regarding the area of freedom, security and justice. The Stockholm Programme — An open and secure Europe serving and protecting citizens. *OJ,* 2010, C 115.

Legal grounds

An opportunity to recognise and enforce judgments given by Lithuanian courts in family matters abroad and, accordingly, judgments of the courts of other states in Lithuania is ensured by several sources of law:

Firstly, bilateral and one trilateral agreement on legal assistance and legal relationships of Lithuania (with 13 states in total), e.g., 1992 Agreement on Legal Assistance and Legal Relationships of the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia[3]. The second group of sources includes multilateral conventions. The third source, above all others, is the *acquis communitaire* that came into force in Lithuania and in other new EU Member States (including Latvia) since 1 May 2004.

Brussels Regulations

In legal literature, one often comes across the concepts "Brussels Regulations" or "Brussels Rules". It is a reference to the Council Regulations on jurisdiction and the recognition and enforcement of judgments. First of all, it is the cornerstone Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[4] (Regulation Brussels I). Alongside with Regulation Brussels I, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000[5] (Regulation Brussels II*bis*) is of high relevance, in particular in family matters. In the opinion of some authors, the new Regulations Brussels II*bis* means the first step towards the abolition of the *exequatur* procedure between EU Member States[6] in order to achieve the goals set forth in The Hague Programme[7].

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[3] 1992 Agreement on Legal Assistance and Legal Relationships of the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia. *Valstybės žinios,* 1994, No 28.

[4] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. *OJ,* L 307.

[5] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000. *OJ,* 2003, L 338.

[6] Nekrošius, V. Der Europäische Vollstreckungstitel (EVT) – Ziele und Umsetzungsschwierigkeiten. *Material of International Scientific-Practical Conference "Purpose of Modern Civil Proceedings".* Vilnius: Legal Information Department, State Enterprise Centre of Registers, 2008, p. 238.

[7] Presidency Conclusions of the Brussels European Council from 4–5 November 2004. The Hague Programme.

The case-law seeks avoiding such legal situations when the persons divorced in one state would be recognised married in another Member State. Since international law recognises the human right to marry, the Member States should not be allowed discretion whether to recognise a foreign judgment on divorce or not. The states must accept a judgment of divorce and allow divorced persons to marry again, if the judgment on divorce complies with the standards of international civil procedure, i.e. there is sufficiently close link of family legal relations with the state where the judgment is given, fair proceedings, the foreign judgment does not conflict with *ordre public* of the enforcing state.

Regulation II*bis* reinforces the recognition of foreign judgments in matrimonial matters *ipso jure*, that is, without any special procedure being required (Article 21 of the Regulation). Persons who divorce in one EU Member State will have the same status in all other EU Member States. However, it should be noted that only resultative judgments related to divorce, separation of spouses or invalidation of marriage are recognised under this Regulation, i.e. when the relevant issue is finally resolved. It can be explained by the operation of forum shopping, because, e.g., if marriage is not terminated in one state, the person will be able to choose another state where the marriage would be terminated. The doctrine of law of France and legal literature recognise that Regulation Brussels II*bis* ensures the right to "effective divorce".[8]

Although persons who divorce in Lithuania are considered divorced in England, for example, and, accordingly, those who chose England to divorce are considered divorced also in Lithuania, however, citizens of the Republic of Lithuania who divorce abroad must apply to a civil registry institution regarding the inclusion of their divorce into the register. In this case, an apostillised foreign judgment or divorce certificate, as well as a certificate referred to in Annex I to Regulation Brussels II*bis*, has to be submitted. The day when marriage has been terminated is the date indicated on the divorce certificate issued by the relevant foreign state or in the judgment issued by the foreign court.

In case of divorce in the state other than EU Member State (e.g., in Norway or Switzerland), such judgment should first of all be recognised

[8] For more see: Литвинский, Д.В. *Признание иностранных судебных решений по гражданским делам.* Санкт-Петербург: Издательский дом СПГУ, 2005, p. 250, 325.

by the Court of Appeals of Lithuania under the Code of Civil Procedure of the Republic of Lithuania in order to include such divorce in the register in Lithuania or to enforce it (e.g. in the part on the sharing of the property.[9]

Recognition of judgments related to maintenance

Bearing in mind differences in the regulation of the recognition of foreign judgments, in each case, before applying for the recognition of a Lithuanian judgment to a competent court of the relevant foreign state, it is important to identify which legal act has to be invoked depending on the moment the judgment of the Lithuanian court has been pronounced and the regulation of legal relations of the Republic of Lithuania with a specific state.

The provisions of Lithuanian agreements on legal assistance and legal relations with Latvia, Estonia and Poland, regulating mutual recognition of judgments, similarly to those of Germany with other EU Member States, are relevant only for those judgments, which fall outside the scope of the Brussels Regulations.[10]

By the scope of application, Regulation Brussels I as well as the trilateral Agreement of the Republic of Lithuania with Estonia and Latvia and the 1973 Hague Convention are applicable to the recognition and enforcement of judgments related to maintenance obligations in civil matters. Although, in fact, it is indicated neither in the text nor in the Recitals of Council Regulation (EC) No. 44/2001; it follows from the systematic interpretation of this Regulation and Regulation Brussels II*bis*. The fact that Regulation Brussels I also applies to matters related to maintenance obligations is mentioned in Article 5(2) where the rules of jurisdiction are defined. A reference to this can also be found in Regulation Brussels II*bis*. Although the name of the latter Regulation can be misleading from the first sight and make believe that it is applicable to the recognition and enforcement of judgments related to maintenance obligations, it is expressly stated in Article 1(3) thereof that "this Regulation shall not apply to [...] maintenance obligations". Moreover, paragraph 11 of the Recitals of

[9] The only court examining applications for the recognition and enforcement of foreign judgments and international arbitration awards in the Republic of Lithuania.

[10] For more about the relationship of German international agreements and EU legislation, see: Schütze, R.A. *Deutsches Internationales Zivillprozessrecht unter Einschluss des Europäischen Zivilprozessrechts.* Berlin: De Gruyter Recht, 2005, p. 170.

Regulation Brussels II*bis* states that "Maintenance obligations are excluded from the scope of this Regulation as these are already covered by Council Regulation No 44/2001."

Let us presume that it is sought to recognise a judgment pronounced by the Lithuanian court on 15 December 2003 regarding the recovery of maintenance from a debtor resident in Estonia. The recognition of Lithuanian judgments on the recovery of maintenance and their enforcement in Estonia, in the meantime, is regulated by Regulation Brussels I, 1973 Hague Convention and the Agreement on Legal Assistance and Legal Relationships of the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia. Thus, taking into account the fact that the recognition of maintenance obligations falls within the scope of all three above-mentioned legal acts, specific grounds in a given situation should be determined based on the date of the judgment of the Lithuanian court and the validity of all aforementioned sources of law in terms of time, as well as the relationship defined therein with other legal acts of the applying states and international obligations.

It is, in principle, unanimously agreed in legal literature that the EU law should have supremacy. Nevertheless, in certain cases it is possible to choose sources of law even when one of them is a legal act of the EU. The possibility of choice also exists between Council Regulation (EC) No, 44/2001 and international agreements regulating specific international relations when there is no requirement of exclusive application. Article 71(2) of Regulation Brussels I allows choosing in the examination of applications for the recognition of foreign judgments the provisions of both a Convention regarding a specific case (e.g., 1973 Hague Convention in maintenance matters) and this Regulation. Meanwhile, bilateral agreements on recognition and enforcement between individual EU Member States are, in principle, relevant only in those areas of law where Council Regulation (EC) No. 44/2001 is not applicable with reference to its Article 1 (Article 70(1) of Regulation Brussels I). "The national law on the recognition and enforcement of judgments of individual member states is by the provisions of the Regulation abolished according to the functional scope of Council Regulation (EC) No 44/2001 and its application in terms of time [...]."[11] German Prof. H. Schack, however, is of the opinion that the principle of

[11] Kropholler, J. *Europäisches Zivilprozessrecht*. Frankfurt am Main: Verlag Recht und Wissenschaft GmbH, 2005, S. 385–386.

supremacy of international agreements over the national law is not applicable to the recognition of judgments.[12]

Another important aspect is the transitional provisions established in Article 66 of Regulation Brussels I and Article 64 of Regulation Brussels II*bis*, i.e. the applications of the Brussels Regulations in respect of time. To conclude, it could be summed up that, following Regulation Brussels I and Regulation Brussels II*bis*, other Member States of the EU should recognise judgments of Lithuanian courts (as well as Latvian, Estonian, etc.) adopted after the day these stated became members of the EU, i.e. after 1 May 2004, presuming that the case has been heard in accordance with appropriate rules of jurisdiction in force at the time the action was instituted.

Consequently, in the case in question Regulation Brussels I cannot be applied because the judgment the recognition of which is sought was adopted before the coming into force of this Regulation both in the state of the judgment, i.e. Lithuania, and in the enforcing state, i.e. Estonia. If the situation being modelled is analysed further and it is assumed that it is sought to have the judgment regarding maintenance given by the Lithuanian court before 1 May 2004 recognised and enforced in Estonia, it should be asked which of the international agreements regulating this issue, i.e. the trilateral Lithuanian, Estonia and Latvian agreement regarding legal assistance and legal relations or the 1973 Hague Convention on the recognition and enforcement of decisions relating to maintenance obligations, should be used as a basis in this case. [13]

The bilateral and the trilateral agreements of Lithuanian regarding legal assistance and legal relationships do not provide for similar transitional provisions, which are laid down in Regulation Brussels I and Regulation Brussels II*bis*; based on such agreement, other contracting states may recognise judgments of Lithuanian courts in civil matters irrespective of the date when they were pronounced. Article 24 of the 1973 Hague Convention also stipulates that "this Convention shall apply irrespective of the data of the judgment". However, Article 24(2) of this Convention lays down some specifics for the enforcement procedure of the judgments adopted earlier than the Convention came into force in the state of origin and the recognising state.

[12] See: Schack, H. *Internationales Zivilverfahrensrecht.* München: Verlag C.H.Beck, 2002, p. 350.

[13] Such a conflict of legislative provisions should be also solved in a similar situation with the Republic of Poland.

While acknowledging that the state acceding to a multilateral international agreement assumes international commitments to apply it according to the conditions specified in the agreement without reservations, first of all, the provisions of the 1973 Hague Convention should be analysed as defining its relation with other international agreements of the states parties to the Convention. Article 23 of the 1973 Hague Convention specifies that this Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement. Thus, the 1973 Hague Convention does not provide for any superiority in case of a double regulation of the issue of recognition of foreign judgments in those states.

H. Nagel and P. Gottwald note that Article 23 of the 1973 Hague Convention establishes the most favourable principle in relation to other rules. However, the provisions of different conventions as a whole, in their opinion, cannot be combined together.[14] Thus, in case of a conflict of the 1973 Hague Convention and another international agreement of the states, which regulates mutual recognition of judgments, the right to choose which source of law to invoke depends on the person concerned who submits an application to recognise the judgment abroad, taking into consideration the provisions of which of the international agreements are more favourable. On the other hand, once it is recognised that the most favourable principle is established in the 1973 Hague Convention, in case of a conflict between the provisions of this Convention and other international agreement of the states, the court examining the application to recognise a foreign judgment should apply the most favourable legislative grounds *ex officio* itself.

Thus, if there is an application made in any of the EU Member States to recognise a Lithuanian judgment made before 1 May 2004, the procedure in force before that date should be followed, i.e. the bilateral agreement of Lithuania and that Member State or the 1973 Hague Convention. And on the contrary, when an application is made to recognise Lithuanian judgments pronounced after 1 May 2004 in other EU Member States, reference should be made to the provisions of Regulation Brussels I and Regulation Brussels II*bis*, despite that Lithuania has agreements on mutual assistance and legal relations with such states or if those EU Member States have acceded to the 1973 Hague Convention.

[14] Nagel, H., Gottwald, P. *Internationales Zivilprozessrecht.* Köln: Verlag Dr. Otto Schmidt, 2002, p. 691; also see Siehrt, K. *Das Internacionale Privatrecht der Schweiz*. Zurich: Schulthess, 2002, S. 673.

Recognition and enforcement of judgments related to residence of children, procedure of communication with children and return of children

One of the most sensitive is the enforcement of judgments of non property nature in matrimonial cross-border cases related to the determination of the child's residence and the procedure of communication with the child. The child is not a thing that could be physically delivered by the bailiff to the parent with whom the child should reside or whom the child should visit on weekends, as decided by the court. In this case two fundamental interests clash — compliance with the court's judgment as an act of a sovereign state and the child's interests.

The most obvious example of the problems of effective legal regulation and its implementation and far from the best Lithuanian experience in applying Regulation Brussels II*bis* is the case of 2008 *Rinau vs. Rinau* which is well known throughout the entire EU. After the divorce of a Lithuanian citizen and a German citizen, the German court determined the residence of their minor daughter to be with the father. When coming to Lithuania to visit her parents, the girl's mother also took together her daughter temporarily, however, she was not returned to her father in Germany and stayed to live in Lithuania. After the girl's father applied to the Lithuanian institutions regarding the enforcement of the German judgment under Regulation Brussels II*bis* requiring to return immediately the child who was abducted in civil terms (since the mother did not return the under-aged daughter to the father with whom her residence was established), the inexperience of Lithuanian courts, bailiffs and other institutions, unfortunately, came to light.

In this case, the Supreme Court of Lithuania even requested a preliminary ruling from the ECJ regarding the interpretation of Articles 21, 23, 24, 31(1), 40(2) and 42 of Regulation Brussels II*bis*. By the judgment of 11 June 2008 in the case No C-195/08 PPU[15] the ECJ has ruled under an urgent procedure that:

1. Once a non-return decision has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 of Regulation Brussels II*bis*, that that decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering

[15] ECJ Case C-195/08 PPU: Judgment of the Court (Third Chamber) of 11 July 2008. *OJ,* C 223.

return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the Regulation, opposition to the recognition of the decision ordering return is not permitted and it is for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.

2. Except where the procedure concerns a decision certified pursuant to Articles 11(8) and 40 to 42 of Regulation Brussels II*bis*, any interested party can apply for non-recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.

3. Article 31(1) of Regulation Brussels II*bis*, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non-recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that decision In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.

However, even after the preliminary ruling of the ECJ and after the decisions of the Court of Appeal of Lithuania and the Supreme Court, the Lithuanian authorities did not have sufficient resolve to enforce the judgments. The judgments of the German and Lithuanian courts that determined the residence of the girl with her father, citizen of Lithuania, were enforced by the girl's father himself who secretly took her back to Germany.

Regretfully, such a situation, in which most of all the interests of the young girl suffered, was the result of the lack of understanding of EU legal acts by courts and other institutions. The Stockholm Programme emphasises that in cases of parental child abduction, apart from effectively implementing existing legal instruments in this area, the possibility to use family mediation at international level should be explored, while taking account of good practices in the Member States.

It was possible to solve this situation by using the right legal instruments. There was and still is a legal way to seek that the girl lives with her mother in Lithuania — by applying to a competent Lithuanian or German court regarding the determination (changing) of the child's residence and a lawful enforcement of such judgment both in Germany and Lithuania.

Conclusions

In order to implement the objectives set out in The Hague Programme, the new Regulation Brussels II*bis* has made the first step towards abolishing of the *exequatur* procedure between EU Member States.

Regulation II*bis* reinforces the recognition of foreign judgments in matrimonial matters *ipso jure*, that is, without any special procedure being required This Regulation recognises only resultative judgments in matrimonial matters (related to divorce, separation of spouses or invalidation of marriage), i.e. when the relevant issue is finally resolved.

If it is sought to have a Lithuanian judgment pronounced before 1 May 2004 recognised in any of the EU Member States, the procedure in force before that date should be followed, i.e. the bilateral agreement of Lithuania and that Member State on the recognition and enforcement of judgments or the 1973 Hague Convention.

When an application is made to recognise Lithuanian judgments pronounced after 1 May 2004 in other EU Member States, if Lithuania and such state has agreements on legal assistance and legal relationships or if the relevant EU Member State has acceded to the 1973 Hague Convention, reference should be made, in particular, to the provisions of Regulation Brussels I and Regulation Brussels II*bis*.

TEISMO SPRENDIMŲ ŠEIMOS BYLOSE SU UŽSIENIO ELEMENTU VYKDYMAS – LIETUVOS PATIRTIS

Egidija Stauskienė, Laura Gumuliauskienė

Santrauka

Vis intensyviau plėtojantis tarptautiniam ekonominiam, teisiniam, politiniam bei socialiniam bendradarbiavimui ir integracijai, tuo pačiu daugėjant ir teisinių santykių, kuriems būdingas vadinamasis užsienio elementas, ypatingai svarbūs tampa užsienio teismų sprendimų pripažinimo bei vykdymo klausimai. Neišvengiamai didėja teisinių ginčų, kuriuos išsprendus vienoje valstybėje priimtą teismo sprendimą tenka vykdyti kitoje valstybėje, todėl ypač svarbu sukurti efektyvų užsienio teismų sprendimų pripažinimo ir vykdymo

mechanizmą, kuris, be kita ko, yra būtina žmogaus teisių apsaugos sąlyga. Tai ypač aktualu, kalbant apie teismų sprendimus, priimtus socialiai jautriausiose — šeimos bylose su vadinamuoju užsienio elementu.

Kalbant apie teismų sprendimų šeimos bylose su užsienio elementu vykdymą, galima išskirti tokias svarbiausias jų kategorijas: 1) turtinio ir 2) neturtinio pobūdžio teismų sprendimai. Turtinio pobūdžio teismų sprendimai gali būti susiję su: a) išlaikymu nepilnamečiams vaikams, b) sutuoktinių vienas kito išlaikymu ar žalos atlyginimu, bei c) dėl turto pasidalijimo. Neturtinio pobūdžio teismų sprendimus šeimos bylose dar galima išskirti į: a) dėl santuokos nutraukimo ir sutuoktinių gyvenimo skyrium (separacijos), b) dėl nepilnamečių vaikų gyvenamosios vietos ir bendravimo tvarkos su jais nustatymo, taip pat c) vaikų grąžinimo. Atsižvelgiant į tai, kad dažniausiai praktikoje susiduriama su teismų sprendimų dėl santuokos nutraukimo, išlaikymo nepilnamečiams vaikams išieškojimo ir bendravimo su vaikais tvarkos realizavimu, straipsnyje analizuojami kai kurie su šių sprendimų pripažinimu ir vykdymu užsienyje susiję probleminiai aspektai, apžvelgiami teisiniai pagrindai šių sprendimų pripažinimui ir vykdymui, daugiausia dėmesio skiriant vadinamiesiems Briuselio Reglamentams, įvertinama Lietuvos patirtis šioje srityje.

Rakta žodžiai: šeimos bylos su užsienio elementu, užsienio teismų sprendimų pripažinimas ir vykdymas, Briuselio Reglamentai.

ANALYSIS OF SERIOUS TRAFFIC ACCIDENTS IN BALTIC STATES

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Abstract
After the Baltic States integrated into the Western European Economic Area country's transport system has started changing rapidly. Dynamic change in vehicle number along with transportation demand has lead to traffic density development. Therefore, road safety has become the key priority in policy as it is also a part of commitment to the European Union as of the Member State.

Road traffic safety and security, accident reduction are among today's major life goals. Presently, these issues are a major focus of attention in all European Union countries. This is huge public, national and European Community interest in these issues, therefore, the European Commission, Council, and each state's effort is welcomed to ensure safety and improve it.

The research object of this article is traffic accidents causing serious consequences.

The aim of the article is to analyse the traffic accidents causing serious consequences for the traffic participant and to disclose what measures the European Union is going to apply towards reducing the number of accidents in the future

Objectives of the article:

- to reveal the conception of traffic accidents and the losses they comprise;
- to analyze the statistics of traffic accidents including the number of injured and death-toll within the Baltic States;
- to reveal the European Union's policy in increasing of traffic safety.

The methods used in the article are:

- document analyse method was used to study the legal acts of road traffic;

– comparative method was used to compare different situations and circumstances of traffic accidents in Baltic States;
– summarization method was used to make any conclusions of the analysis of legal acts, statistics and priorities about safety of road traffic in Europe Union;
– statistic method was used to compare the statistics dates of serious traffic accidents in Lithuania, Estonia and Latvia.

Keywords: Baltic States, traffic accidents, safety of road traffic.

Prior to analysis of traffic accident state in the Baltic States, an 'accident' as such should be defined. According to the road-traffic regulations, traffic accident is a road accident, which takes place in a private or public area, when due to a moving vehicle a person or persons are killed or injured or at least one vehicle, load, road or buildings or any other asset in the place of accident are damaged.[1] Definitions of an accident are provided both in academic and methodical literature. However, it should be noted that these conceptions are very similar. They mainly include the same indications. It is claimed that traffic accident is "an accident when due to a moving vehicle a person or persons are killed or injured, vehicles, loads, road signs, buildings or any other asset is damaged"[2]. While analyzing the conception of a traffic accident we shall notice that a vehicle is its main element. However, one should bear in mind that a cyclist, rider or even pedestrian may be considered as a traffic accident participants. Thus, in this case we talk about persons, whose actions may directly or indirectly condition the traffic accident.

It should be noted that during traffic accidents usually young people are the ones who are affected and the society suffers both moral and material losses. According to the traffic accident losses counting procedure[3], these losses within Lithuania yearly constitute around 1.5 billion Litas,

[1] Resolution No. 1950 of the Government of the Republic of Lithuania: Lietuvos Respublikos "Due to the confirmation of the road-traffic regulations". 11 December 2002, No. 1950, Vilnius. *Žin*., 2003, No. 7–263.

[2] Burda, R., Krikščiūnas, R., Latauskienė, E., Malevski, H., Matulienė, S. *Kriminalistikos taktika ir metodika* [Tactic and methods of criminalistics]. Mokomasis leidinys nuotolinėms studijoms. Vilnius, 2004, p. 133; Stungys, K. *Autoįvykio vietos tyrimas.* Vilnius, 2000, p. 5.

[3] Evaluation of losses suffered due to negative transport effects in urban areas. Research report. Vilnius Gediminas Technical University [interactive]. http://www.transp.lt/files/uploads/client/SVEKOTRANS_2009.pdf. Accessed 25 January 2011.

that is around 3 per cent of gross domestic product while in other European countries traffic accident losses comprise 1-2 per cent of gross domestic product. The losses are calculated in accordance to the traffic accident price module applied by the World Bank in big variety of countries around the world.

Traffic jams, material losses, loss of many active years of life for people and moral losses of the country can be summed up as daily after-effects caused by traffic accidents.

Lithuanian context

After carrying out an analysis on the data on traffic accidents and the number of affected people during the last decade as provided by the Traffic Department of the Lithuania's Police Department, we can see that the peak number of injured and killed was reached in the year 2005 (see Table 1). The number of traffic accidents during that year was 6772 cases where 773 people were killed and 8467 injured.

Table 1. Registered accidents, persons killed and injured in Lithuania in 2001–2010[4]

Year	Traffic accidents	Persons killed	Persons injured
2001	5972	706	7103
2002	6091	697	7428
2003	5965	709	7266
2004	6357	752	7862
2005	6772	773	8467
2006	6589	759	8254
2007	6448	740	8043
2008	4795	499	5818
2009	3827	370	4459
2010	3 625	300	4328

[4] Traffic accidents statistics in Lithuania [interactive]. http://www.lpept.lt/lt/statistika/2010/201008.pdf. Accessed 25 January 2011.

In 2010, 3625 traffic accidents were registered in Lithuania when people were affected. 300 people were killed (47 of them died as a result of injuries away from the place of the accident) and 4328 were injured. From the killed ones, 290 were males and 10 females. 243 traffic accidents have taken place due to the fault of drunk drivers. That's the lowest death-toll in Lithuania since 1961 (353 people killed) as reported by the Police Department.

92 deaths for road accidents fall to one million inhabitants (111 in the year 2009; 149 in 2008; 221 in 2007; 184 in 2000, and 316 in 1991).

In 2010, the number of traffic accidents in comparison with 2009 decreased by 4.7 per cent (or there were registered by 180 accidents less); there were by 18.9 per cent less people killed (or by 70 less) and by 2.2 per cent less injured ones (or by 98 less). There have been by 69 accidents or by 22.1 per cent less accidents caused by drunked drivers.

Statistics on the traffic accidents for the year 2009: 3805 traffic accidents, 370 people killed and 4426 injured. 312 traffic accidents have taken place due to the fault of drunk drivers.

There were 106 pedestrians killed (by 12.4 per cent, or by 15, less than in 2009), which comprises 35.3 per cent of all of the people killed in road accidents. More than a half of the pedestrians, i.e. 61.3 per cent were killed during the dark time of the day. Most of the pedestrians (17) were killed on November (14 of them during the dark time of the day).

There were also killed:

- 95 drivers (by 21.5 per cent or by 26 less than in the year 2009), and it comprises 31.7 per cent of all of the killed ones;
- 67 passengers (by 23 per cent or by 20 less), and it comprises 22.3 per cent of all of the killed ones;
- 24 cyclists (by 20 per cent or by 6 less), and it comprises 8 per cent of all of the killed ones.

The following are among the injured ones in traffic accidents — 1334 (by 2.3 per cent less than in the year 2009), drivers — 1269 (by 3.6 per cent less), pedestrians — 1246 (by 6 per cent or by 80 less).

According to the Chief of Lithuanian Road Police, "The statistics is undeniable and there are much less killed and injured ones on the road this year for real. In addition, there are fewer drunk drivers detained. In 11 months of the year 2010, only 23 were killed due to their fault. We should admit that the drastic sanction intended for the drinkers has

served the purpose. Limitation of alcoholic beverages selling time limitation and frequent police busts have also contributed in reducing the risk of drivers."[5]

Estonian context

According to the review prepared by the Road Administration, in the year 2010 there were 1340 personal injury traffic accidents in Estonia, which is less by 167 than in the previous year (see Table 2). The number of fatal accidents decreased in the last year by 22 and the number of injured persons, by 222.

According to the initial data, last year 78 (a year before it was 100) persons perished and 1709 (1931) were injured in traffic.

Table 2. Registered accidents, persons killed and injured level in Estonia in 2006–2010[6]

Year	Traffic accidents	Persons killed	Persons injured
2006	2585	204	3508
2007	2450	196	3271
2008	1869	132	2398
2009	1505	100	1930
2010	1340	78	1712

In 2010, the police registered 424 crashes of vehicles (436 in the year 2009), in these crashes 32 (32) persons perished and 660 (690) were injured. According to the analysis carried out by the Road Administration, the main reasons for such accidents were cut up to another vehicle at an intersection, crush with approaching vehicle during overtake and insufficient separation distance.

[5] Keliuose šiemet žuvo 20 proc. mažiau žmonių, sumažėjo neblaivių vairuotojų [20 percent fewer people killed on roads this year, drunk drivers decreased [interactive]. http://www.delfi.lt/news/daily/crime/keliuose-siemet-zuvo-20-proc-maziau-zmoniu-sumazejo-neblaiviu-vairuotoju.d?id=40183883. Accessed 26 January 2011.

[6] Traffic accidents statistics in Estonia [interactive]. http://www.stat.ee/34674?highlight=traffic. Accessed 25 January 2011.

The number of registered traffic accidents with participation of motor vehicle drivers in the state of intoxication was 146 (248 in the year 2009), in these 11 (28) persons were perished and 222 (352) were injured.

There was a significant decrease in the number of single vehicle accidents, i.e. run-off-roads, which decreased in a year from 405 to 286. In these accidents 16 (a year before 30) persons perished and 403 (557) were injured. The main reason for such accidents was the choice of improper speed.

Last year, 336 (341 in the year 2009) collisions of vehicles to pedestrians were registered, in these 13 (23) persons perished and 339 (331) were injured. The main reasons for such accidents were crossing of road by a pedestrian in front of an approaching vehicle and collision to a pedestrian who was crossing a road on a pedestrian crossing.

In 2010, there were 125 (a year before 157) accidents with bicycles and in these accidents 9 (7) persons perished and 120 (153) were injured. The number of registered accidents with moped was 82 (84 in the year 2009), in which 1 (2) person perished and 89 (97) were injured

Tarmo Miilits, the Head of the Law Enforcement Police Department of the Police and Border Guard Board stated that "The past year brought a smaller or larger decline almost in all accident types. The behavioural habits of road users have changed — rules are being observed and other road users are being considered more. We hope that such a trend of considerate behaviour will continue. Naturally, the most important aspect is the continuous decrease of the number of fatal traffic accidents, but I would also like to point out a 40% decrease of traffic accidents with participation of drivers in the state of intoxication." [7]

He also notes that "It is indicated that the attitude of road users has changed. Taking the driver's seat of a vehicle after drinking of alcohol has faced clear condemnation in the society. It has been definitely assisted by constant explanation work of the Road Administration and systematic cooperation of government facilities in training of road users, in prevention as well as in the supervision sphere."[8]

The counsellor of the Road Administration Villu Vane meets with the Head ideas. He added "Although several statistical figures have improved

[7] The number of serious traffic accidents decreased by one tenth in the last year [interactive]. http://www.politsei.ee/en/uudised/uudis.dot?id=163327&order=date2+desc&currentPage=1&searchquery=statistic. Accessed 24 January 2011.

[8] *Ibid.*

in the last few years, we are still among the average in the European Union in the sense of traffic safety and we have a long way to go."[9]

Latvian context

In comparison with the year 2009, in Latvia as well as in Lithuanian and Estonia the number of traffic accidents in 2010 has decreased (see Table 3)

Table 3. The registered accidents, persons killed and injured in Latvia in 2006–2010[10]

Year	Traffic accidents	Persons killed	Persons injured
2006	4302	407	5404
2007	4781	419	6088
2008	4196	316	5408
2009	3158	254	3928
2010	2304	158	2890

In 2009, 3158 traffic accidents were registered, and in 2010 ,— 2304, i.e. by 72.96 per cent less. Accordingly, the number of injured ones in traffic accidents in 2009 is 3298 and 2890 in 2010. This comprises 73.57 per cent comparing with the year 2009. Death-toll in the traffic accidents was reduced by significant amounts, as in 2009 the number of persons killed in the road accidents decreased by 62.20 per cent. In 2009, 316 people were killed and 254 in 2010.

One of the main causes for traffic accidents with serious consequences is still incorrect speed, i.e. the regulated speed limit or exceeding the speed mismatch weather and road conditions, vehicle speed control continues to be a substantial traffic monitoring office job.[11]

In summary, from this statistical analysis it is clear that the number of killed and injured people in traffic accidents over the past few years has

[9] *Ibid.*

[10] Road accidents in Latvia 2010 [interactive]. http://www.sam.gov.lv/satmin/content/?cat=148. Accessed 25 January 2011.

[11] 2009 Public Report [interactive]. http://www.vp.gov.lv/doc_upl/publ_parsk_2009.doc#_Toc257208488. Accessed 26 January 2011.

decreased in all the Baltic countries. The behavioural habits of road users have changed. The measures undertaken by the Baltic States such as drastic sanction intended for the drinkers, limitation of alcoholic beverages selling time, frequent police busts have led to positive results.

A following article would be appropriate to discuss the priorities of the European Union to reduce serious traffic accidents. We would like to draw your attention that in the European Union reduction of the number of people killed in accidents has been in question since 2001, when European Commission adopted a White Paper[12], by setting a goal for the European Union community to reduce the number of the ones killed on the road by half till the year 2010. High accidental rate did not prevent Lithuania from becoming a member of European Union, but this does not mean that our country was standing aside while everybody else was striving to reach this crucial goal.

Although during the recent years we have noticed improvement in reducing the death-toll in road accidents, Lithuania is still lagging behind most of the European countries. The European Union's average for the year 2008 is 89 killed falling to one million inhabitants while in Lithuania there were 109 of them. Of course, it is way much better than the average of the 2007 when this number was equal to 224 or 2001–2005 when 200 were killed falling to one million inhabitants. By analyzing death cases on the road falling to one millions inhabitants we can see that both Lithuania and Latvia had similar situations while in other European countries, such as Malta, Netherlands, Sweden and United Kingdom, 50–60 road death accidents have fallen to one million inhabitants in a one year period and the average of 25 European countries is 95 deaths[13].

European Commission emphasizes that the goal set in 2001, i.e. decreasing road accident death cases by half till 2010, was fully implemented, and the progress made is evident. General decrease average for traffic accident death cases in European Union is 36 per cent. Meanwhile in Lithuania the number of people killed in traffic accidents was decreased by 48 per cent since the year 2001. According to the data of European Commission this kind of achievement is a little bit better in neighbouring Latvia and Estonia as well as Spain and Portugal. It also is to be noted

[12] White Paper "European transport policy for 2010: time to decide" [interactive]. http://ec.europa.eu/transport/white_paper/index_en.htm. Accessed 26 January 2011.

[13] Communication from the Commission — the European Road Safety Action Programme Mid-Term Report [interactive]. http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0074:LT:NOT. Accessed 27 January 2011.

that in accordance to road accident deaths falling to one million inhabitants Lithuania is one of the leading countries in EU. Today European Commission has already outlined guidelines regarding traffic safety issue and adopted a "2011–2020 Action Programme on Road Safety"[14], by by setting seven strategic goals, intended to increase vehicle safety, improve infrastructure and maintain discipline among drivers. In ten years, it is intended to improve safety measures for tractors and vehicles, build safer roads, develop advanced vehicles, improve driver preparation and training quality, apply more strict penalties for those who do not follow the road-traffic regulations, grant special attention to bikers and thus decrease not only the death-toll, but also the number of injured ones.

Conclusions

1. Definitions of an accident are provided both in academic and methodical literature. However, it should be noted that these conceptions are very similar. They mainly include the same indications.
2. During traffic accidents, usually young people are the ones who are affected and the society suffers both moral and material losses. According to the traffic accident losses counting procedure, these losses within Lithuania yearly constitute around 1.5 billion litas, that is around 3 per cent of gross domestic product while in other European countries traffic accident losses comprise 1–2 per cent of gross domestic product.
3. Statistics show that the number of killed and injured people in traffic accidents over the past few years has decreased in all the Baltic countries. The measures undertaken by the Baltic States such as drastic sanctions intended for the drinkers, limitation of alcoholic beverages selling time, frequent police busts have led to positive results. However, according to the number of casualties on road, Lithuania still lags behind many European countries. Estonia is in the best position among the three Baltic countries.
4. In ten years in Europe Union it is intended to improve safety measures for tractors and vehicles, build safer roads, develop advanced vehicles, improve driver preparation and training quality, apply stricter penalties

[14] Road Safety Programme 2011–2020: detailed measures [interactive]. http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/343&format=HTML&aged=0&language=LT&guiLanguage=en. Accessed 27 January 2011.

for those who do not follow the road-traffic regulations, grant special attention to bikers and thus decrease not only the death-toll, but also the number of injured ones.

EISMO ĮVYKIŲ, SUKELIANČIŲ SUNKIAS PASEKMES, ANALIZĖ BALTIJOS VALSTYBĖSE

Andrejus Novikovas

Santrauka

Baltijos šalių integracija į Vakarų Europos ekonominę erdvę sparčiai pakeitė šalies transporto sistemą. Dinamiškas automobilių skaičiaus ir pervežimo poreikio kitimas sąlygojo eismo intensyvumo augimą. Todėl saugus eismas keliais yra prioritetinė sritis, kuri, pažymėtina, yra sudedamoji narystės Europos Sąjungoje dalis.

Eismo saugumas keliuose ir jo užtikrinimas, avaringumo mažinimas — yra vienas pagrindinių šiandienos gyvenimo tikslų. Pastaruoju metu visose Europos Sąjungos šalyse šiems klausimams skiriamas didžiulis dėmesys. Tai didžiulis visuomenės, valstybių ir Europos Bendrijos interesas, todėl sveikintinos Europos Komisijos, Tarybos, ir kiekvienos valstybės pastangos užtikrinti eismo saugą ir ją gerinti.

Šio straipsnio tyrimo objektas yra eismo įvykiai sukeliantys sunkias pasekmes eismo dalyviams.

Darbe keliamas tikslas — išanalizuoti eismo įvykių sukeliančių sunkias pasekmes eismo dalyviams bei atskleisti kokias priemones ruošiasi taikyti Europos Sąjunga mažinat eismo įvykių skaičių ateityje.

Straipsnyje formuluojami uždaviniai:

– Atskleisti eismo įvykių sampratą bei jų sudaromus nuostolius
– Analizuoti eismo įvykių, juose žuvusių ar sužalotų asmenų statistiką Baltijos valstybėse.
– Atskleisti Europos Sąjungos politiką eismo saugumo didinimo srityje.

Rašant darbą, buvo naudojami šie tyrimo metodai:

– dokumentų analizės metodas buvo naudojamas analizuojant įvairius teisė aktus, reglamentuojančius eismą keliuose.

– lyginamasis metodas lyginant skirtingas eismo saugumo situacijas Baltijos valstybėse.
– apibendrinimo metodas buvo naudojamas siekiant apibendrinti mintis apie eismo saugumo statistiką skirtingose Baltijos valstybėse bei Europos Sąjungos prioritetus eismo saugumo užtikrinimo srityje.
– statistinis metodas buvo naudojamas analizuojant įvairius statistinius duomenis apie avaringumą, nekentėjusiųjų, autoįvykių skaičių keliuose.

Raktiniai žodžiai: Baltijos valstybės, eismo įvykiai, eismo saugumas keliuose.

HATE SPEECH IN LITHUANIA CRIMINAL LAW

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Abstract
According to statistics, hate speech takes the main part of hate crimes and is the most problematic one. This paper is designated to study hate speech institute in Lithuania criminal law — namely, criminalization of hate speech, general corpus delicti, main regulation and qualification problems.

Key words: hate crimes, hate speech, equality, discrimination, inciting to discriminate.

The first document in the European Union[1] (EU) for the common Member States position on hate crimes was Joint Action[2], adopted in 1996. Later it was repealed with Framework Decision[3], adopted in 2008. Both Joint Action and Framework Decision are directed to combat hate crimes, oblige Member States to combat racism, xenophobia and ensure that further listed criminal acts would be punished, such as public incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin; public dissemination or distribution of tracts, pictures or other material, that incite violence or hatred; public condonation, denial or gross trivialisation of crimes of genocide, crimes against

[1] Lithuania joined the EU on 1 May 2004.
[2] Joint action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia (96/443/JHA). *OJ* L 185, 1996.
[3] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. *OJ* L 328, 2008.

humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group; public condonation, denial or gross trivialisation the crimes defined in Article 6 of the Charter of the International Military Tribunal[4] appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group,. As you see, almost all criminal acts under the Framework Decision are forms of *hate speech*.

The Council of Europe[5] defines hate speech as all forms of expressions that disseminate, incite, promote or excuse racial hatred, xenophobia, Anti-Semitism or other forms of hatred based on intolerance. Hate speech is a specific crime, the victim is chosen just for reference to one's inherent, inseparable features. Hate speech also includes intolerance, discrimination of minorities and migrants and hostility against them expressed by aggressive nationalism and ethnocentrism. Likewise hate speech is defined by the European Court of Human Rights[6] (ECHR). Hate speech is a very dangerous form of hate crimes because it is a discriminatory form of aggression that destroys the dignity of those in the group under attack. It creates a lesser status not only in the eyes of the group members themselves but also in the eyes of others who perceive and treat them as less than human. The denigration of persons on the basis of their ethnic identity or other group membership in and of itself, as well as in its other consequences, can be an irreversible harm.[7]

Hate speech is manifested as incitement to hatred or incitement to discriminate, holocaust denial[8], also can be evidenced as hate messages,

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[4] Tarptautinio Baudžiamojo Teismo Romos Statutas. *Valstybės žinios*, 2006, Nr. 49–2165.

[5] Council of Europe Committee of Ministers recommendation on Member states Nr. R 97(20) on hate speech [interactive]. 1997. http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec(1997)020&ExpMem_en.asp#TopOfPage. Accessed 15 October 2010.

[6] Cases: *Gündüz v. Turkey,* No. 35071/97, §40, 14 November 2000; *Erbakan v. Turkey,* No. 59405/00, §56, 6 July 2006.

[7] Rwuanda tribinal, *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, para 1072.

[8] *Hate crimes in the* OSCE *region — incidents and responses. Annual report for 2007*, p. 30.

flyers, graffiti[9] and etc. According to this, hate speech is a very broad term and includes all acts related to freedom of expression.[10]

After joining the European Union[11], Lithuania had to assume all obligations under the Joint Act and Framework decision and criminalize hate speech. According to hate speech definition given above and considering legal elements of a crime objective and subjective elements[12], we can state, that Lithuania criminalized hate speech in Article 170[13] of Criminal Code of Republic of Lithuania[14] (CC) and Article 170(2)[15] of CC. As both of the acts criminalized under Articles 170 and 170[2] of CC are forms of hate speech we can exclude general legal elements of a crime: object, victim, objective elements, subject and subjective elements.

[9] Cortese, A. *Opposing hate speech.* USA: Praeger Publishers, 2006, p. 16

[10] *Hate crimes in the* OSCE *region… Op. cit.,* p. 123.

[11] Lithuania joined the EU on 1 May 2004.

[12] In Lithuania criminal law, legal elements of a crime can be disseminated into two groups of elements — objective and subjective. Objective elements include: the object of the criminal act, victim, *actus reus*, prescribed results, causation, manner, time, place, etc. The subjective elements are: subject (perpetrator), *mens rea* (fault), intent and motives, etc.

[13] Article 170. Incitement against any nation, race, ethnic, religion, etc. group of humans.
1. One who having the intent to disseminate produced, obtained, sent, transported, kept material which contained information taunting, contemning, promoting hatred or inciting to discriminate, violence or physically dispose of a group of people or person of a group because of sex, sexual orientation, race, nationality, language, origin, social background, religion or beliefs, or disseminated such material is punished with fine or restrain or arrest or detention till one year.
2. One who publicly taunted, contemned, promoted hatred or incited to discriminate a group of people or person of a group because of sex, sexual orientation, race, nationality, language, origin, social background, religion or beliefs is punished with fine or restrain or arrest or detention till two years.
3. One, who publicly incited violence or physically dispose of a group of people or person of a group because of sex, sexual orientation, race, nationality, language, origin, social background, religion or beliefs or funded or otherwise supported materially such acts is punished with fine or restrain or arrest or detention till three years.
4. Legal persons are also responsible for acts under this Article.

[14] Lietuvos Respublikos baudžiamasis kodeksas. *Valstybės žinios*, 2000, Nr. 89–2741.

[15] Article 170[2]. Public endorsement to international crimes, USSR or Nazi Germany crimes, crimes against Republic of Lithuania or people of Lithuania, their denial or rough condemnation.
1. One, who publicly endorsed genocide or other crimes to humanity, war crimes, established under Lithuania or EU laws, stand up decisions under Lithuania or international courts, denied them or rough condemned if it is made in a threatening, abusive or offensive manner, also who publicly endorsed USSR or Nazi Germany aggression against Republic of Lithuania, USSR or Nazi Germany crimes of genocide or other crimes against humanity or war crimes in Lithuania or against residents of Lithuania or other serious or very serious crimes against Republic of Lithuania or residents of Lithuania in year 1990–1991, denied them or rough condemned, if it is made in a in a threatening, abusive or offensive manner or is violated public order punished with fine or restrain or arrest or detention till two years.
2. Legal persons are also responsible for acts under this Article.

Object of hate speech

E. Bieliūnas[16] and R. Valentukavičius[17] define that hate crime object is such fundamental value as equality (the same object we can define under the title of Section XXV of the CC, there hate speech crimes are established — crimes and misdemeanours for equality of people and freedom of belief). OSCE[18] defines the object of hate speech likewise — the ideal of equality of all members of society.[19] We should specify that the object is not equality comprehensively, but equality of a particular social vulnerable group of persons or a member of such a group defined by reference to sex, sexual orientation, race, nationality, language, origin, beliefs, religion or social background. There can be discussions why just a particular group of persons or a member of such a group is protected under CC, but we should clarify that the above mentioned social groups are excluded and protected not incidentally — groups have a historical background. Attempts to violate the natural equality of such a group of persons or a member of such a group were made constantly through ages.[20]

Equality is a fundamental value that is directed to ensure dignity and give opportunity for all to realize their potential.[21] According to this, we can set additional objects of the hate speech as: principles of freedom, democracy, respect to human rights and fundamental freedoms and rule of law — principles that are the EU base, common for Member States[22], also security[23], dignity and autonomy[24] and also other fundamental,

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[16] Švedas, G., Abramavičius, A., Bieliūnas, E. *Lietuvos Respublikos baudžiamojo kodekso komentaras. II tomas I dalis. Specialioji dalis.* Vilnius: Registrų centras, 2009, p. 248.

[17] General Prosecution Office of the Republic of Lithuania 23 December, 2009 order *Metodinės rekomendacijos dėl nusikalstamų veikų, padarytų rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumų*. http://www.prokuraturos.lt/nbspnbspNusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx [interactive]. 2009. Accessed 15 September 2010, p. 2.

[18] Organization of security and cooperation in Europe. Lithuania joined OSCE in 1991.

[19] OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Jernow, A. *Hate Crime Laws: A Practical Guide.* Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2009, p. 19.

[20] Such as women, Jews, Roma, black people and etc.

[21] OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Jernow, A. *Hate Crime Laws… Op. cit.*

[22] General Prosecution Office of the Republic of Lithuania 23 of December, 2009 order *Metodinės rekomendacijos … Op. cit.*

[23] Švedas, G., *et al. Lietuvos Respublikos baudžiamojo kodekso komentaras. Op. cit.*

[24] Bamforth, N., *et al. Discrimination Law: Theory and Context, Text and Materials (Sociolegal*). London: Sweet and Maxwell, 2008, p. 481.

inherited human rights, because hate speech is directed at the nature of a person, features that defines person. The target of hate speech include not only individuals of a particular group but also their living, identity, culture and fundamental value of democratic society.

We deem hate speech to be a very detrimental criminal act; the social damage manifests through severe moral damage of a victim. Especially, if it is consistent, hate speech is as damaging and detrimental as a physical act and, on some occasions, are even more detrimental in case victim has to deal with emotional pain.[25]

Hate speech can also determine physical acts against victims, because hate speech serves to derogation of secured groups, they are treated as "not-human" and that constitutes circumstances to maul these individuals.[26] These crimes are more detrimental than crimes without discriminatory intent. On the basis of additional damage to an individual and all social group[27], these acts are distinguished by harshness and use of stereotypes.[28]

Victim

There is special victim of the crime. Article 170 of the CC establishes covert listing of victims — a victim has to be chosen with reference to one's sex, sexual orientation, race, nationality, language, origin, social background, religion or belief, Article 170(2) of the CC leaves listing overt. D. Žalimas[29] says that crimes established in Article 170(2) of the CC are directed to any group of people or person and victim is not related to a particular category. All crimes of genocide, crimes to humanity and war crimes have to be approached and contaminated *pari passu* and all victims of these crimes (their dignity) have to be defended *pari passu*. In the opinion of the author of this paper, a victim of hate crime has to be a person or a group of persons chosen just because of one's inherent, integral group

[25] Flett, J., Macormac, H., Siklossy, G. (eds.). *Combating Racist Crime and Violence: Testimonies and Advocacy Strategies.* Brussels: European Network Against Racism (ENAR), 2009, p. 8.
[26] *Ibid*. P 8.
[27] Bamforth, N., *et al*. *Discrimination Law… Op. cit.,* p. 493.
[28] Stereotype — interim attitude to particular group of persons just because of particular ground. For example, all gipsies are thieves; the place of woman is in the kitchen, etc.
[29] Žalimas, D. Kodėl bus baudžiama už nacių ir sovietų nusikaltimų šlovinimą? [interactive]. Delfi, 2010. http://www.delfi.lt/news/ringas/lit/article.php?id=33678329. Accessed 16 September 2010.

characteristics, it is the main element of the hate crime that distinguishes hate crime from other crimes.

Victim is very important element of the crime because it is one of the criterions that can help qualify crime as hate crime: if victim does not belong to a protected social group, crime cannot be qualified as hate speech crime. If victim belongs to a protected social group, pretrial investigation officers or prosecutors have to examine the crime especially thoroughly and establish if crime was made with discrimination and hate intent.

A victim of hate crime can be both a single individual and a group of individuals defined by reference to protected characteristics, because this crime violates the rights and fundamental freedoms of both an individual and a group of individuals, and the crime can be and usually is directed against an indefinite group of individuals.[30] We should emphasize that although crime often is directed against a particular individual, in this case the criminal actually has the intent to violate rights of all individuals of that category, consequently violation of the rights of one individual conditions violation of the rights of all individuals of that group.

Non-discrimination grounds

There are no precise definitions of the non-discrimination grounds in Lithuanian legal acts; also, there is no international document that would define all non-discrimination grounds. Some definitions can be found in international documents (for example, race[31]), other result from common understanding (for example, age). Others are being discussed and there is no common agreement (for example, sex[32]).

As we mentioned, Article 170 of the CC establish such kinds of non-discrimination grounds — sex, sexual orientation, race, nationality, language, origin, social background, religion or belief. Article 29 of the Constitution of the Republic of Lithuania[33] and Article 2(1) of the Law of Equal

[30] For example, internet comment: "*juden raus*", etc.

[31] Council Directive 2000/43/EB Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin. *OJ* , L 180, 2000; Jungtinių tautų Tarptautinė konvencija dėl visų formų rasinės diskriminacijos panaikinimo. *Valstybės žinios,* 1998, Nr. 108–2957.

[32] It is considered that discrimination on the ground of transsexuality is the grounds of sex.

[33] Lietuvos Respublikos Konstitucija. *Valstybės žinios*, 1992, Nr. 33–1014.

Possibilities of the Republic of Lithuania[34] establish broader non-discrimination grounds that also include disability and age. We think that ejection of disability and age grounds in the CC has to be considered as a legal omission that cannot be removed by invoking the legal analogy, because criminal responsibility is *ultima ratio.* Convention on the rights of people with disabilities[35] prohibits discrimination on the ground of disability, the EU Framework directive[36] concern age, consequently we think that these grounds have to be included in the list of non-discrimination grounds established in Article 170 of the CC and this omission has to be removed by amending criminal laws.

Objective elements

Hate speech crimes are active acts manifesting as producing materials with discriminating content, public insulting and mocking, inciting to violence against individuals of particular social group, etc. Hate speech crimes cannot be committed by inaction. Manifestations that can be qualified as hate speech can be very complicated because hate speech is not necessarily shown through hate expressions and emotions. Hate speech can be covered in manifestations that from first glance look like rational or normal.[37] There are some rules in ECHR and other institutions' case law that can help distinguish manifestations that are insulting from those that are fully protected by freedom of expression.[38]

Hate speech crime can be made in different places, such as Internet, street, media, etc. The importance of the internet as a space of forum where intolerance and organized hate acts can be expressed was acknowledged by OSCE Member States and determined to obligations that were directed against the promotion of the hate and intolerance on the internet.[39] OSCE Permanent Council impels Member States to investigate and prosecute violence and criminal acts that have a motive of racism, xenophobia or

[34] Lietuvos Respublikos lygių galimybių įstatymas. *Valstybės žinios,* 2003, Nr. 114–5115.
[35] Jungtinių tautų Neįgaliųjų teisių konvencija ir jos Fakultatyvusis protokolas *Valstybės žinios*, 2010, Nr. 71–3561. Lithuania ratified on 27 May 2010.
[36] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. *OJ* L 303, 2000.
[37] Stereotypes and stigma.
[38] Webber, A. *Manual on hate speech*. Strasbourg: Council of Europe Publishing, 2009, p. 5.
[39] Organization for Security and Co-operation in Europe 11 November 2004 Permanent Council decision No. 633 Promoting tolerance and media freedom in the internet [interactive]. 2004. http://www.osce.org/documents/pc/2004/11/3805_en.pdf. Accessed 24 November 2010.

Anti-Semitism. Internet can considerably strengthen the manner how individuals implement human rights and fundamental freedoms (for example, freedom of expression). Internet provides great possibilities to serve for common good, positively influence many spheres of life, including communication, information, knowledge, commerce and development. It can serve as an important source of pluralism and independent information (moreover, in some states internet is the only alternative to controlled media information source), relieve involving in enactment of democratic decisions and can promote realization of human rights and fundamental freedoms.[40]

Subject

Hate speech can be committed by any person, both natural and legal. Natural persons can be subject of the crime beginning with the age of 16 then having full responsibility. A person can be a civil servant, officer, politician, religious sachem or an ordinary. Despite the fact that a legal person can be a subject of the crime, in no pretrial investigations or cases transferred to court investigation legal persons have been accused of hate speech in Lithuania yet.[41]

The subject of hate crime can be very important qualifying crime as hate speech crime. Dependence on the marginal group can help pretrial investigation officers clear out and unfold crimes and prove the discrimination nature of the crime. For example, Vilnius district court, proving the discriminating nature of the crime, appealed to facts that rummage at defendant's home showed a computer, which contented Nazi information, also appealed to facts, that the defendant attended 11 March 2008 non-sanctioned procession where Anti-Semitist and other national discord inciting slogans were chanted. The court stated that all these facts show what influenced outlook of the defendant and her attitude to individuals that belong to other group of race or nationality. All this had influence on

[40] *Hate crimes in the* OSCE *region — incidents and responces. Annual report for 2007.* Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2008.

[41] Lietuvos Respublikos generalinės prokuratūros specialiųjų tyrimų skyriaus veiklos 2009 m. ataskaita [interactive]. 2010. http://www.prokuraturos.lt/nbspnbspNusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx. Accessed 30 September 2010; Lietuvos Respublikos generalinės prokuratūros specialiųjų tyrimų skyriaus veiklos 2008 m. ataskaita [interactive]. 2009. http://www.prokuraturos.lt/nbspnbspNusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx. Accessed 30 September 2010.

the personality of the defendant and her actions during the incident.[42] The Lithuanian Supreme Court maintained such a position stating that first and second instance courts reasonably referred to facts on defendant's chauvinistic and nationalistic attitude.[43]

Subjective elements

Hate speech crimes are committed just with direct concretised *mens rea* (fault)[44] — the subject realizes that he violates equality of the individuals and wants to act in that way.

As we mentioned above, hate speech crimes can be committed in different places and mannera, but all of the acts has one common essential feature of subjective elements — purposeful, directed and specific xenophobic, homophobic, discriminating (in common, broad approach) motivation.[45]

Motives and purpose of the hate crime are essential and most important features of legal elements of a crime that determine if the crime is qualified as a hate crime. If there are not enough evidences on motives and intentions, the crime cannot be qualified as a hate speech crime. The Lithuanian Supreme Court supported such a position stating that naming a black person as "nigger" with no intent to incite discrimination because of his race cannot be assumed as a violation of equality.[46]

The main purpose of hate speech is to humiliate, insult an individual or a group of individuals of particular sex, sexual orientation, nationality, race, etc., and show real or assumed vulnerability, inadequacy, narrowness of the individual or the group of individuals.[47] The motive usually is internal attitude and hate of the criminal to a particular social group based on stereotypes and prejudices.

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[42] Vilniaus district court Criminal division ruling of 11 of September, 2009 *V. I. under Articles 284(1) and 170 of the CC* (No. 1A-747/2009).
[43] Lithuania Supreme Court Criminal division ruling of 2 of March, 2010 *V. I. under Articles 284(1) and 170 of the CC* (No. 2K-91/2010).
[44] *Ibid.*
[45] General Prosecution Office of the Republic of Lithuania 23 of December, 2009 order *Metodinės rekomendacijos … Op. cit.*
[46] Lithuania Supreme Court Criminal division ruling of 2 of March, 2010 *V. I. under Articles 284(1) and 170 of the CC* (No. 2K-91/2010).
[47] General Prosecution Office of the Republic of Lithuania 23 of December, 2009 order *Metodinės rekomendacijos … Op. cit.*

One of the practical problems is to assess the discriminatory or inciting nature of written texts, affirmations, publicly usable lexis, posters, symbols, signs or even acts. Relevant and significant or even determinative success of pretrial investigation is the part of specialists and experts — linguists, historians, anthropologists, experts in semiotics. Usually they are asked to give conclusions about the facts of case.[48]

Conclusions

1. Hate speech is a form of hate crime, and the obligation for the state to criminalize hate speech raises from international documents.
2. Hate speech is a very broad term and includes all acts bound with freedom of expression that disseminate, incite, promote or advocate racial hatred, xenophobia, Anti-Semitism or other forms of hatred based on intolerance. Hate speech includes also aggressive nationalism and ethnocentrism intolerance, discrimination of minorities, migrants.
3. The object of hate crime is equality of humans that belong to a particular social group. Additional object of hate speech can be principles of freedom, democracy, respect to human rights and fundamental freedom, security, dignity and autonomy of humans.
4. Hate speech can be committed only in direct concretised *mens rea* (fault). The motives and purpose of the hate crime are essential and most important features of legal elements of a crime that determine if the crime is qualified as a hate crime.
5. The main purpose of hate speech is to humiliate, insult an individual or a group of individuals of aparticular social group. The motive usually is internal attitude and hate of the criminal to a particular social group based on stereotypes and prejudice.

[48] For example, including Ombudsman of equal possibilities as a specialist for conclusions. Vilnius city 1 region court sentence of 9 of December, 2009 *E.G. under Articles 169 and 170 of the CC* (No. 1-1327-88/2009).

NEAPYKANTOS KALBA: LIETUVOS BAUDŽIAMOJI TEISĖ

Julija Šlekonytė

Santrauka

Neapykantos kalba yra viena iš neapykantos nusikaltimų formų ir pareiga kriminalizuoti neapykantos kalbos nusikalstamas veikas išplaukia iš tarptautinių dokumentų. Neapykantos kalbą galime apibrėžti kaip visų formų išraiškas, kuriomis yra platinama, kurstoma, skatinama ar pateisinama rasinė neapykanta, ksenofobija, antisemitizmas ar kitos neapykantos formas, pagrįstos netolerancija. Neapykantos kalbos apima ir agresyvaus nacionalizmo ir etnocentrizmo išreikštą netoleranciją, mažumų, migrantų ir migrantų kilmės asmenų diskriminaciją ir priešiškumą prieš juos. Neapykantos kalbos objektas yra asmenų, priklausančių tam tikrai socialinei grupei, lygiateisiškumas. Papildomais nusikalstamos veikos objektais gal būti — laisvės, demokratijos, pagarbos žmogaus teisėms ir pagrindinėms laisvėms bei teisinės valstybės principai, asmenų saugumas, orumas ir autonomiškumas. Lietuvos Respublikos Baudžiamajame kodekse yra nepilnai apibrėžiamos saugomos socialinės kategorijos, taip pažeidžiant Lietuvos tarptautinius įsipareigojimus — nėra įtraukti negalios ir amžiaus požymiai. Neapykantos kalba atliekama tik tiesiogine tyčia. Būtini nusikalstamos veikos sudėties elementais yra motyvai (neapykanta, pagrįsta prejudicija ir stereotipais) ir tikslai (diskriminuoti, atimti ar apriboti asmenų teises ir laisves).

Rakta žodžiai: neapykantos nusikaltimai, neapykantos kalba, lygiateisiškumas, diskriminacija, kurstymas diskriminuoti.