Social Transformations in Contemporary Society

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PREDICTING THE CHANGE OF CHILD’S BEHAVIOR PROBLEMS: SOCIODEMOGRAPHIC AND MATERNAL PARENTING STRESS FACTORS ...........267

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Abstract

Purpose – The identification of the values portrait of the students from Estonia and Romania and the analysis of the educational factors that influence the forming of the pupils’ values, their parents and teachers personal values hierarchy and what they consider as being important for their children’ values education.

Methodology – Participants of this study are represented by pupils from Romanian and Estonian gymnasiums and high schools (12 – 19 years old), their teachers and parents. The main method used is the Portrait Values Questionnaire (PVQ; Schwartz et al, 2001, 2003), that was designed to measure ten theory-based value orientations: power, achievement, hedonism, stimulation, self-direction, universalism, benevolence, tradition, conformity, security.

Findings – Individual values outcomes were analyzed using statistical methods. The main results are the means values profiles separately for students, parents and teachers samples from Estonia and Romania. The significant statistical differences of this study’s findings were identified using the paired samples t test.

Research limitations/implications – The participants’ samples are not national representative. It would be desirable to use specific statistical methods for the identification of more correlations and implications of other variable registered in the collected data such as age, gender, adult marital status and education.

Practical implications – It is suggested that the results of this research would be useful for the development of new formal and informal educational strategies, addressed to all educational actors. Applicative results of the study will be disseminated to the school psychologists and teachers from Romania, Estonia and other countries.

Originality/Value – The comparison study have a substantial number of participants from two different countries aged between 12 and 67 years and with different social statuses: students, parents and teachers. Values research can provide predictive and power of knowledge when we analyze actions, attitudes, opinions and human behavior that can reflect major social changes in societies and across nations.

Keywords: students, parents, teachers own values, socialization values, Schwartz Portrait Values Questionnaire.

Research type: research paper.
Introduction

We are the witnesses of large changes in today’s European society with consequences in profound layers of political, social and cultural life. It can be said that now we are more capable of reflecting on our own changes, towards a social cultural metamorphosis which subdues us. Europe has become an important compound of collective mental, a factor of social motivation. Following enlargement of European Union, Estonia and Romania are increasingly being characterized by a variety of economic, social and cultural differences.

Values are relatively stable, internal standards used to evaluate behaviors and events (Rokeach, 1973). Modern sociology, psychology and anthropology (Voicu and Voicu, 2008) have not developed a consensus concerning the manner of manifesting values. The first common point is particularly in refuse of considering values as indissoluble ways to establish what is beautiful or what the absolute truth is. The second common point consists of placing values of individual level, but with an important determinant factor of society. Last but not least, all three sciences define the values as a determinant factor of choices from day to day life, as a useful tool for individuals in coordinating their priorities and their own lives. Values determine the manner of structuring society, the way of building and organizing social relationships and in the same time, values represent anchors that allow individuals to become oriented in the surrounding world.

Values are “deeply rooted, abstract motivation” (Schwartz, 2012), can provide predictive and knowledge power when we analyze actions, attitudes, opinions and can reflect major social changes in societies and across nations. Values are really anchors which allow to individuals to orient in surrounding world. They are inside of individual but are an important social determinant expressed through and in the same time derived from customs, norms, believes and ideologies. Comparisons of the value can reveal the impacts of major social changes.

Values determine the manner of structuring society, the way of building and organizing families, social relationships, relationships inside of organizations and their functioning. The rules are nothing less than a practical transposition of dominant values at the respective society or community level. When external entities try to impose new rules, effective functioning and respect for them is dependent on the manner in which these match and overlap with existing ones. The change of values is a long and continuous process. The social-economics situation of Romania and Estonia is placed in a broader European context not so far away by the other former communist countries. The values analysis of two formal communist countries may reveal many similarities because of the same political background but also differences due to the different cultural, historical and geographical engraving.
1. The Schwartz Value Survey

There are three sets of theories generated by Hofstede, Schwartz and Inglehart about values that are extremely influential in contemporary bibliography, and which generated the most popular scales of measuring values. All these three types of scales make an option for researching values on general level, not in particularly one. All three suppose cross cultural analysis of values and are looking for new common dimension of values which can allow the comparison of different cultures being less important the historical moment of comparison.

Comparative study of values is stimulated in present by the possibility of realizing very fast quantitative comparisons among societies. IT soft development permit today to be realized large scale databases, encompassed answers offered by huge patterns, representative for large groups came from different countries, to a huge number of questions which permit direct measuring of opinions and attitudes. The polls of values allow in the last 25 years the accumulations of an important set of date, which permit assessment of changes from contemporary society. Schwartz Value Survey (SVS) is currently the most widely used by social and cross-cultural psychologists for studying individual differences in values. This scale asks respondents to rate the importance of 56 specific values as “guiding principles in your life”. These specific values measure ten theory-based value orientations: power, achievement, hedonism, stimulation, self-direction, universalism, benevolence, tradition, conformity, security (table 1). Studies in over 65 countries support the distinctiveness of these value orientations.

Table 1. Schwartz’s 10 value types and the 45 associated individual level values items.

<table>
<thead>
<tr>
<th>Value Type Definition</th>
<th>Value Item for Each Value Type</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Power</strong>: Social status and prestige, control or dominance over people and resources.</td>
<td>Social power, authority, wealth, Successful, capable, ambitious, influential</td>
</tr>
<tr>
<td><strong>Achievement</strong>: Personal success through demonstrating competence according to social standards.</td>
<td>Pleasure, enjoying life, self-indulgent</td>
</tr>
<tr>
<td><strong>Hedonism</strong>: Pleasure and sensuous gratification for oneself.</td>
<td>Daring, a varied life, an exciting life</td>
</tr>
<tr>
<td><strong>Stimulation</strong>: Excitement, novelty, and challenge in life.</td>
<td>Creativity, curious, freedom, independent, choosing own goals</td>
</tr>
<tr>
<td><strong>Self-direction</strong>: Independent thought and action, choosing, creating, exploring.</td>
<td>Protecting the environment, a world of beauty, unity with nature</td>
</tr>
<tr>
<td><strong>Universalism</strong>: Understanding, appreciation, tolerance, and protection for the welfare of all people and for nature. (Subtypes: Nature and Social concern)</td>
<td>Equality, a world at peace, social justice, broadminded, wisdom</td>
</tr>
</tbody>
</table>

Table continuation on the next page
2. The Current Study Methodology

The aim of this study is to settle down the results of analysis of the values of Estonian and Romanian students from Estonia and Romania and the identification of the educational factors which influence the construct of the pupils’ values: their parents’ and teachers’ values.

2.1. Participants

The target group of this study is represented by pupils from Romanian and Estonian gymnasiums and high schools (12 – 19 years old) their teachers and parents, from four different schools in two large cities. The samples of the study consists altogether of 709 participants from Estonia and 818 participants from Romania. Estonian sample consists of 507 students (mean age = 15,31), 112 parents (mean age = 40,64), and 90 teachers (mean age = 41,76), and Romanian sample consists of 593 students (mean age = 15,46), 118 parents (mean age = 41,39), and 107 teachers (mean age = 39,85). The questionnaires were completed by the students at school during the class hour. Part of the teachers and parents completed the questionnaires on paper at school and part of them answered the questionnaire online. Participation in the study was anonymous, strictly on voluntary basis.

2.2. Instruments

Portrait Values Questionnaire (PVQ; Schwartz et al., 2001, 2003) was designed to measure the same ten basic value orientations measured by Schwartz Value Survey: power, achievement, hedonism, stimulation, self-direction, universalism, benevolence, tradition, conformity and security. It presents respondents with a more concrete and less cognitively complex task than the earlier value survey. This makes it suitable for use with all segments of the population including those with little or no formal education.
PVQ includes 21 short verbal portraits of different people. Each portrait describes a person’s goals, aspirations, or wishes that point implicitly to the importance of a single value type. Respondents’ personal values are inferred from their self-reported similarity to people who are described in terms of particular values. For example: “Thinking up new ideas and being creative is important to him. He likes to do things in his own original way.” describes a person for whom self-direction values are important. To measure personal values, participants indicated “How much like you is this person?” for each portrait. There are six possible answers: very much like me, like me, somewhat like me, a little like me, not like me, and not like me at all, transformed into a 6 points numerical scale. Thus, respondents’ personal values are inferred from their self-reported similarity to people who are described in terms of particular values.

The second questionnaire is a modification of the Portrait Values Questionnaire (Knafo & Schwartz, 2003), tailored differently for students, parents and teachers. To measure perceived parental values for them, adolescents indicated “How would your parents want you to respond to each item?”. To measure socialization values, parents indicated “How would you want your son/daughter to respond to each item?” and teachers indicated “How would you want your pupils to respond to each item?”. The original version in English language of the questionnaire was translated into Estonian and Romanian using back-translation procedures.

3. Results and Discussions

Schwartz questionnaires outcomes showed that Estonian and Romanian students, parents and teachers have almost the same own values portrait (fig. 2). Romanian and Estonian adult generation (parents and teachers) are describing themselves as being orientated towards self-direction and self-transcendence through universalism and benevolence, seeking tolerance and social justice. They do not report that it is important for them to have power and social status, to be hedonist, to enjoy themselves and to have stimulation through new things.

Romanian and Estonian teenagers are describing themselves as being independent, preferring freedom and seeking pleasure above all different things. Respecting tradition, conformity and having power is not important for students. Achievement is not so much significant for Estonian then for Romanian students. At the same time they consider that their parents’ expectations related to them are centered on the same area: self direction and independence in association with benevolence, feeling of seeking to help others.

Both, Estonian and Romanian students perceived parental values as less oriented through power, stimulation and tradition (fig. 3). In parallel, Romanian and Estonian socialization values are focused on self-direction and independence associated with self-transcendence (benevolence, universalism) for Estonian parents, and with self-enhancement (power and achievement) for Romanian parents. A comparative analysis of values of Estonian, Swedish, and Russian–Estonian mothers (Tulviste, Mizera, De Geer, 2012) revealed that the most valued characteristics in children in the present were those...
Fig 2. Estonian and Romanian parents, students and teachers own values menas

Fig 3. Estonian and Romanian parents, students and teachers socialization values means
related to benevolence. Benevolence seems to be valued universally valorizing the preservation and enhancement of the welfare of people with whom one is in frequent personal contact through honesty, loyalty, responsibility. The same research findings concluded that both samples of mothers from Estonia (Estonians and Russian Estonians) put significantly more emphasis on conformity than the Swedish mothers. In the currently study Estonian parents socialization values are not focussed on conformity.

Teacher’s socialization main values are the same in Estonia and Romania, with focus on self-transcendence and benevolence (providing general welfare), universalism and self-direction. Tradition, hedonism and power are not important values for school educational environment in both countries.

The significant statistical differences of this study findings were identified using the paired samples t test. A confidence interval for the average difference is 95%. Paired samples t tests consist of three different groups of units, students, parents and teachers that have been tested twice with the same questions orientated towards two different perspectives. The same questionnaire (Portrait Values Questionnaire) was used during the first measurement for description of the personal values (see table 2, self values) of students, parents and teachers. The second measurement outcomes describe the socialization values for children (see table 2, child values) or what parents and teachers would like for the students values portrait.

The paired sample t test (table 2) was a good technique for investigation face to face of the self, the personal portrait representation (self values) with the idealistic portrait of the children drawn by educators (child values). Furthermore, it can be used as analytical comparison between parental socialization values desire for their own child and children perceived parental values for them. Throughout, the perception of children from both countries about their own parents’ values for them had higher level than their self portrait. They believe that their parents wish for them a more secure life, in respect with tradition and conformity, with more power, achievement and universalism and with less hedonism and stimulation. Particularly, Romanian and Estonian children consider that their parents greatest desire is their child will learn how to respect rules, to be obedient.

Surprisingly, all the educators’ values scores are higher for what they would like to draw for children than how they are describing themselves. More than half of possible differences are statistically significant with sig. (2tailed) < .05 at the Paired Sample T Test results (table 2). Moreover, the values hierarchy for the desired values for children described by parents from both countries is almost the same. They wish for their own children much more achievement, power, stimulation, self direction and hedonism. Romanian parents added at this list two more values: universalism and security. There were no significant differences between self values of parents and desired own child values portrait in the register of benevolence, tradition and conformity.

Teachers from both countries want for their students a higher level of development than they have succeeded to accomplish for themselves through more achievement, stimulation, universalism and conformity. In addition, Estonian teachers wish for their students more benevolence and power, while Romanian teachers would like more security and tradition.
Tabel 2. The Paired Sample T Test results. Significant differences between Schwartz values for the self of parents, teachers and students and socialization values for children.

<table>
<thead>
<tr>
<th>1. Paired of values of Estonian parents</th>
<th>Paired differences mean</th>
<th>t</th>
<th>Sig. (2tailed) *</th>
<th>Relation between paired values means</th>
</tr>
</thead>
<tbody>
<tr>
<td>self-power and child-power</td>
<td>- .4107</td>
<td>- 4.708</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-achievement and child-achievement</td>
<td>-.9643</td>
<td>- 9.310</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-hedonism and child-hedonism</td>
<td>-.3571</td>
<td>- 3.882</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-stimulation and child-stimulation</td>
<td>-.8973</td>
<td>- 8.928</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-direction and child-self-direction</td>
<td>-.4955</td>
<td>- 5.849</td>
<td>.000</td>
<td>&lt;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Paired of values of Romanian parents</th>
<th>Paired differences mean</th>
<th>t</th>
<th>Sig. (2tailed) *</th>
<th>Relation between paired values means</th>
</tr>
</thead>
<tbody>
<tr>
<td>self-power and child-power</td>
<td>-.6336</td>
<td>- 6.941</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-achievement and child-achievement</td>
<td>-.5991</td>
<td>- 6.686</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-hedonism and child-hedonism</td>
<td>-.6897</td>
<td>- 6.422</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-stimulation and child-stimulation</td>
<td>-.5043</td>
<td>- 5.705</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-direction and child-self-direction</td>
<td>-.3966</td>
<td>- 5.297</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-universalism and child-universalism</td>
<td>-.1275</td>
<td>- 2.086</td>
<td>.039</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-security and child-security</td>
<td>-.3147</td>
<td>- 2.995</td>
<td>.003</td>
<td>&lt;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Paired of values of Estonian teachers</th>
<th>Paired differences mean</th>
<th>t</th>
<th>Sig. (2tailed) *</th>
<th>Relation between paired values means</th>
</tr>
</thead>
<tbody>
<tr>
<td>self-power</td>
<td>.3167</td>
<td>3.714</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-achievement</td>
<td>.6167</td>
<td>- 6.248</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-stimulation</td>
<td>.7056</td>
<td>- 6.872</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-universalism</td>
<td>.3185</td>
<td>- 3.864</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-benevolence</td>
<td>.1667</td>
<td>- 2.079</td>
<td>.041</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-conformity</td>
<td>-.3000</td>
<td>- 3.189</td>
<td>.002</td>
<td>&lt;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Paired of values of Romanian teachers</th>
<th>Paired differences mean</th>
<th>t</th>
<th>Sig. (2tailed) *</th>
<th>Relation between paired values means</th>
</tr>
</thead>
<tbody>
<tr>
<td>self-achievement</td>
<td>.4810</td>
<td>- 5.329</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-stimulation</td>
<td>.3925</td>
<td>- 4.827</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-universalism</td>
<td>.1478</td>
<td>- 2.614</td>
<td>.010</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-tradition</td>
<td>-.1589</td>
<td>- 2.110</td>
<td>.037</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-conformity</td>
<td>-.3143</td>
<td>- 3.740</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-security</td>
<td>-.3810</td>
<td>- 5.107</td>
<td>.000</td>
<td>&lt;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Paired of values of Estonian Students</th>
<th>Paired differences mean</th>
<th>t</th>
<th>Sig. (2tailed) *</th>
<th>Relation between paired values means</th>
</tr>
</thead>
<tbody>
<tr>
<td>self-power</td>
<td>-.1179</td>
<td>- 2.153</td>
<td>.032</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-achievement</td>
<td>-.2405</td>
<td>- 4.355</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-hedonism</td>
<td>.6649</td>
<td>12.179</td>
<td>.000</td>
<td>&gt;</td>
</tr>
<tr>
<td>self-stimulation</td>
<td>.4720</td>
<td>8.606</td>
<td>.000</td>
<td>&gt;</td>
</tr>
<tr>
<td>self-universalism</td>
<td>.2888</td>
<td>- 6.267</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-benevolence</td>
<td>-.2638</td>
<td>- 5.834</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-tradition</td>
<td>-.7238</td>
<td>- 13.914</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-conformity</td>
<td>-.11486</td>
<td>- 19.355</td>
<td>.000</td>
<td>&lt;</td>
</tr>
<tr>
<td>self-security</td>
<td>-.7008</td>
<td>- 13.054</td>
<td>.000</td>
<td>&lt;</td>
</tr>
</tbody>
</table>

Table continuation on the next page
Similarities between the social actors from both countries are evident when we examine the list of the most important values for them. In Romania or Estonia, for adults or for teens, there are three outstanding values: benevolence, universalism and self-direction. In accordance with the specificity of their age, teenagers add much color to these values as given by their particular needs for hedonism and stimulation.

In 2001, Schwartz and Bardi conducted an empirical research that examines the values’ hierarchy of the representative and near representative samples from 13 nations, school teachers from 56 nations and college students from 54 nations. It was found a surprisingly “pan cultural norms” consensus regarding the hierarchical order of values: benevolence, self-direction, and universalism values are consistently most important, power, tradition, and stimulation values least important, and security, conformity, achievement and hedonism in between. In this respect, the present study’s value hierarchy did not differ from their finding, are almost the same. Findings of the current study concluded that parents and teachers from Estonia and Romania share the same higher interest for benevolence, self-direction and universalism, considering power and stimulation less important in their life. In the values’ hierarchy list benevolence is consistently the first value and power is the last. The main difference is the higher respect of Romanians and Estonians adults participants for tradition (mean rank 5 and 6) in comparison with pan cultural norms (mean rank 8 and 9). We can not say about the students from Romania and Estonia, their option is different by the world college students, they are placing firstly the hedonism nearly self-direction and benevolence. The presence of benevolence on top hierarchy could be explain by the fact that this study students age is between 10 and 19 and the world research sample includes college students that are above this age period, they are more adults. Seeking more hedonism is a predominant need and feature of the adolescents. The consideration for tradition and power are not so much substantial for the teens from Romania and Estonia.

In a recent research performed on senior high school Estonian students (17 to 20 years, $M = 18.2$), Tulviste and Mizera (2012) observed a relative stability of the youth values hierarchy. This study was focused on a selected list of five Schwartz’s value types and the order of the importance emphasized by the students was: self-direction,
achievement, conformity, power, and tradition. The hierarchy of these five value types was the same as in the present study. Estonian adolescents’ value scale identified in 2000 is similar with the findings of the second similar research in 2009, self-direction was consistently more important, tradition and power were least important. On the whole, tradition and power values are located at the bottom of the pan-cultural hierarchy, with very high consensus regarding their relatively low importance.

Conclusions

To conclude, this study has revealed that the framework of the values profile of Estonian and Romanian students, parents and teachers have almost the same upward and downward trend given by nearly like or parallel lines of scores. There is a striking level of agreement regarding the relative importance of different types of values. Almost the same values are connected between people from different parts of the world. There are more similarities than differences and essential criteria are related to former communist affiliation and specific culture roots. Estonia and Romania are placed in the group of traditional countries of Europe, together with most of the ex-communist states. Traditionalism and modernity are not normative labels, as there are no clear guidelines according to which one can say a country is traditionalist or modern. To gain a full understanding of human value complexity, we have to take in consideration both differences and similarities.

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CIVIL LIABILITY FOR NUCLEAR DAMAGE: COMPARATIVE ANALYSIS OF INTERNATIONAL TREATIES

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Abstract

It was widely accepted that nuclear damage might be extensive and spread to other countries. International civil liability for nuclear damage is embodied by two major instruments: International Atomic Energy Agency (IAEA) 1963 Vienna Convention on Civil liability for Nuclear Damage and Paris Convention of 1960 on third party liability (OECD) with its amending protocols. Major problem arises because of lack of coherence and for this reason supplementary conventions and protocols has been adopted but sufficient results has not been achieved. International treaties on civil liability for nuclear damage are mostly based upon principles of operator’s exclusive, channeling, strict liability for nuclear damage, mandatory financial coverage, compensation without discrimination. These principles set ground for the appropriate compensation standard thus minimizing the difficulty level of complicated legal cross-actions and identifies certain subjects in individual cases who are liable also allows a concentration of the insurance capacity. Although Conventions sets similar principles, Europe remains in two different liability regimes which cover differences of liability amounts, scope of application, rules of jurisdiction conflicts. Problem of legal coherence at European Union level also arises because Member States are either parties to the Paris Convention or Vienna Convention at different speeds. This research paper provides an in-depth analysis of international legal framework development and impetus to create trans-boundary compensation mechanisms thus to foster development of European Union nuclear energy market and to provide higher protection for victims inside and outside the country where the incident has occurred.

Purpose – provide comparative analysis of international treaties which regulate civil liability for nuclear damage in the context of European Union nuclear energy market development.

Design/methodology - paper is based on document analysis, systemic, comparative analysis method by comparing different conventions and its implications.

Findings – two liability regimes set different liability amount for the operator and some additional implications to the State and with its amendments provides additional compensation options from all contracting parties collected funds. However the problem rises for the operator to provide insurance whereas Vienna convention only sets minimum liability amount and it is up to state to decide on liability limits or even to provide unlimited liability for the operator. In this case operator faces difficulties to find appropriate insurance as it has to be guaranteed for certain amount. Another situation when a State provides very high maximum amount of the operator’s
liability therefore state aid problem arises because there is a need for state guarantee or when there are several operators and not all of them need this amount of insurance because they are being decommissioned.

Research limitations – to analyze liability regimes in the light of cohesion and harmonization of regimes also the obligation of the nuclear installation operator to provide insurance when maximum amounts or blank indemnity are set by national law.

Practical implication – This comparative analysis provides a background on further discussions concerning the nuclear operator’s liability and insurance limits issues and cohesion between two regimes by providing a harmonized model throughout European Union.

Originality – Only a few authors have analyzed some aspects of nuclear liability there is still a lack of academic insights into nuclear liability regimes and insurance issues in the light of competition law. This work provides insights into nuclear liability issues and will certainly be valuable in practice when developing nuclear projects.

Keywords: civil liability for nuclear damage, Vienna Convention, Paris Convention, operator of nuclear installation, strict liability, comparative analysis.

Introduction

The need for special nuclear liability regime originated from Brookhaven Report dated back 1957. This report for the first time addressed the risks and consequences of nuclear accidents also set background to create certain insurance instruments and preventive measures. Nuclear liability regime provides two approaches: Paris Convention on Third Party Liability in the Field of Nuclear Energy (hereinafter – Paris Convention) and Vienna Convention on Civil Liability for Nuclear Damage (hereinafter – Vienna Convention). Chernobyl accident put up the intention to create more effective and viable international nuclear liability and compensation regime. Several amendments to the Conventions were made however not all Member States acceded the adopted protocols and some of them are still not in force. Nuclear liability regime provides coherent compensation system for nuclear damage and facilitates international trade in nuclear material. Conventions leaves discretion for the Contracting Parties to decide what will be national regulation whereas there is no strict implication to impose appropriate measures. The aim of this article is to compare different international regimes regarding the civil liability for nuclear damage and the need to create trans-boundary compensation system. Research is based on document analysis, comparative and systematic analysis methods to provide comparative aspects of different liability systems.

1. Basic principles of civil liability for nuclear damage

The fundamental principles were established by Paris Convention and later on were found on subsequent international agreements are: the operator of nuclear installation is exclusively liable for accident, compensation limited to a precise amount, liability duration is limited to certain period, financial guarantee of the operator corresponding to its liability non-concurrent jurisdiction.\(^1\) Civil liability on nuclear damage is based on several principles which will be shortly explained above. Strict liability means that after accident occurs the operator of nuclear

installation is exclusively liable despite his fault or negligence\(^1\) therefore litigation process is fostered and possible obstacles are carried away. Operator of nuclear installation is exclusively liable therefore claims are lodged exclusively against the nuclear operator. Such principle presupposes legal channeling to the nuclear operator\(^2\) and main purpose is to prevent legal duplicated actions likewise to identify a liable subject in nuclear accident and to draw attention to the insurance capacity.\(^3\) Operator might be vindicated from liability if he proves that a civil war, an armed conflict or in even gross negligence of the victim caused nuclear incident.\(^4\) The Conventions provide an opportunity for Contracting Parties to limit the nuclear operator liability in the certain amount. However the liability issues raise major discussions in the international debates. There are also some countries which chose to impose blank indemnity for the operator\(^5\). The amount of civil liability for nuclear damage has increased gradually to provide certain benefits to nuclear operator in certain level assures avoidance of recourse claims (the case when operator has very high imposed liability level) and reflect the requisite for higher operator responsibility thus foster development of nuclear energy market. Liability is also limited in time which means that claims for compensation have to be lodged in 30 years related to loss of life and personal injury and in relation to other damage in 10 years when incident occurred.\(^6\)

Operator of nuclear installation is required to provide financial coverage for the certain amount of money specified by the Installation State. Unlimited financial coverage is not possible as the capacity of insurance market is limited. In this case insurance amounts are relatively high and therefore legislators encourage insurers to bring together the nuclear insurance pools thus providing an international insurance mechanism.\(^7\) There is also a possibility for a number of nuclear operators to set an insurance pool which provides a wide coverage of damage in case an accident occurs.\(^8\) Such models are used in Germany and USA. Operator’s pool makes rationale when country has several nuclear installations.

Principle of exclusive jurisdiction is granted to the courts of the State where accident has occurred and prevents a situation when claimants seek to find more convenient adjudicators, also sets an appropriate background for nuclear operators to a certain level of compensation.\(^9\) Principle of exclusive jurisdiction identifies the competent court close to the source of damage thus allowing person who suffered damage to lodge claims without any further travelling.

Basic principles of nuclear liability provides harmonization of national laws thus creates legal certainty, fosters Contracting Parties to achieve objectives at an international level thus eliminating the possibility of discrimination between victims also ensures that claimants in states

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\(^1\) Vienna Convention on civil liability for nuclear damage and the 1997 Convention on Supplementary compensation for nuclear damage. Explanatory texts. 2007. IAEA

\(^2\) Ibid.

\(^3\) Legal channeling is accepted in all States that enacts nuclear liability except Austria, USA. The latter has a regulation for nuclear damage which provides prompt and orderly compensation from two tier system and contains pool of insurance funds.

\(^4\) Vienna Convention on Civil Liability for Nuclear Damage (Consolidated text amended by the Protocol of 1997). Art IV.

\(^5\) Counties which implements unlimited liability for the operator are: Austria, Germany, Japan, Switzerland, Russia.

\(^6\) Op cit. 4, Art. VI


\(^8\) Ibid.

\(^9\) Ibid. p. 115.
with unified legislation would have their disputes settled according to similar rules despite the location of the accident.

2. The Paris Convention on Third Party Liability in the Field of Nuclear Energy

Third party liability for nuclear activities covered by international conventions reflects an early identification and prevention of nuclear damage system also put forward the impetus in a timely manner to create a decent system of efficient protection of victims in case of accident thus enhances the progress of nuclear market. The Paris Convention provides a nuclear third party regime and covers damage caused in the territory of its Contracting Parties or high seas\(^1\). After the adoption of this convention contracting parties recognized that liability amount set up by the Convention was not sufficient to cover nuclear incident damage therefore several amendments to the convention were made and later on the Brussels Supplementary Convention was adopted which provided three tier systems and established additional State compensation tier and public funds compensation tier\(^2\). The Paris Convention is regional European agreement with several non-European members of the OECD\(^3\). The Convention does not apply to nuclear incidents occurring outside territory of the contracting states or to damage, unless operator’s national law provides otherwise\(^4\). The Steering Committee for Nuclear Energy adopted interpretation whereas Paris Convention should apply to incidents occurred in the high seas and in a non – contracting state\(^5\). Paris Convention imposes minimum liability amount of 5 million SDR\(^6\) to nuclear operator and maximum of 15 million SDR. However most of the contracting parties have higher operator’s liability amount, for example Germany has unlimited liability for nuclear operator. Therefore Steering Committee for Nuclear Energy adopted non-binding recommendations to raise the liability amounts up to 150 million SDR.

Compensation system under Paris Convention and Brussels Supplementary Convention is comprised of three tiers. Under first tier nuclear operator is liable under amount of at least 5 million SDR and is obliged to provide financial insurance or security. Under second tier amount between sum covered by the nuclear operator and 175 million SDR will be provided by Installation State through its public funds. Under third tier the liability between 175 and 300 million SDRs will be provided by the Member contribution.\(^7\) As the damage exceeds second tier level third tier provides an amount of 125 million SDRs out of funds which are contributed by all the parties according to Brussels Supplementary Convention. The Chernobyl accident brought the need to increase the amounts and coverage of liability. In this regard 2004 Protocol to amend

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\(^3\) Australia, Canada, Japan, Korea, Mexico, United States of America are not Contracting parties of nuclear liability conventions.

\(^4\) Op cit 11.


\(^6\) The SDR is International Monetary Fund reserve asset. 1 SDR = 1.29500 USD (Approx. rates as of 2013 March)

\(^7\) Op cit 11.
the Paris Convention and Brussels Supplementary Convention was adopted\(^1\) whereas the amount of operator’s liability has increased to an amount not less than 700 million Euros. Protocol also recognizes the right of the State with an unlimited liability to participate in the scheme of Convention. Convention sets an obligation for the operators to secure financial liability however if State declares unlimited liability, operator has to ensure financial security up to 700 million Euros or in certain cases\(^2\) Convention sets reduced liability amount. Amended protocol provides a broader range of damage for which compensation is applicable also broadens the geographical scope.\(^3\) Despite the amending protocols were adopted not all of them are in force because lack of ratified countries thus existing regulation supposes different regulation in Contracting Parties also imposed liability amounts widely vary thus creating divergence between States.

### 3. Vienna Convention on Civil liability for Nuclear Damage

In 1963 Vienna Convention on Civil liability for Nuclear Damage was adopted at the diplomatic conference at IAEA Headquarters in Vienna. This Convention is a document to which all States may adhere of weather they are parties to existing nuclear liability conventions. Vienna Convention has been amended once by 1997 Protocol\(^4\) and sets operator’s maximum liability up to 300 million SDRs (about 360 million Euros). According to Vienna Convention the upper ceiling for the operator is not fixed but it may be limited by legislation by each State however implemented ground is not less than US $ 5 million\(^5\). Convention does not provide maximum amount of liability. There is an obligation for the operator to provide insurance to imposed liability and in case there is no possibility to grant adequate insurance, the State covers difference between specified liability amounts.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage (hereinafter -1997 Protocol) and the Convention on Supplementary Compensation for Nuclear Damage (hereinafter - CSC) were major instruments that provided increased liability amounts in the case nuclear accident occurs they also provided amendments to the scope of damage covered and the jurisdiction rules. Furthermore, CSC establishes an opportunity for Vienna Convention countries or Paris Convention countries or even a country which is not a Party to either of these conventions to accede. 1997 Protocol provides new liability amounts for the nuclear operator not less than 300 million SDRs or may be limited to not less than 150 million SDRs and up to amount of 300 million SDR State compensates nuclear damage. Despite this regulation there is also a possibility to provide operators liability for not less than 5 million SDR and the rest amount will be provided by the Installation State.\(^6\) 1997 Protocol introduces amendments related to the scope

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\(^1\)Protocol to Amend the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960. Only Norway and Switzerland has ratified this protocol.

\(^2\) Convention sets minimum amounts of 70 million EUR for low-risk installations and 80 million EUR for transport activities.

\(^3\) Convention covers certain types of economic loss, the cost of measures to reinstate a significantly deteriorated environment, the income loss which incurs as a result of debilitation of environment also the necessary preventive measures which has to be taken and additional loss linked to these measures.


\(^5\) Value in gold 29 April 1963. Equal to 235 million Dollars (based on US$ gold value on 10/08/2012 of $1650/oz)

\(^6\) 1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear damage 29 September 1997.IAEA.
of the application and covers damage despite of its location also considers the possibility to modify regulation on the risks involved and clarifies that convention is only applicable to nuclear installations used for peaceful purposes however it does not provide a solution in cases when incident occurs during the transportation and damage is suffered in a non-Contracting party.

4. Cohesion between Vienna and Paris nuclear liability regimes

Chernobyl accident catalyzed the improvements of liability regime consequently the Joint Protocol provided a framework by combining certain aspects of different liability regime. This regulation introduces an option to both Vienna and Paris Convention States to implement certain unifying provisions when nuclear accident occurs. It is important to mention the Joint Protocol links Paris and Vienna conventions thus broadening the application of civil liability regime. Despite the similarities between two Conventions, there still remains a lack of regulation coherence and a need for harmonization.

Other instrument that draws relation to both systems is CSC which is open to States that are parties to Vienna Convention or Paris Convention also to Non-convention States. CSC has a so called “grandfather clause” which provides opportunity for USA to participate at this regime without changing its national legislation. Convention is still not yet in force.

According to the CSC Installation State will ensure the availability of 300 million SDRs; however the State may establish the limit of operator’s liability up to 300 million SDRs or may set lower or higher amount. Another tier provides compensation from public funds which is up to 300 million SDR and 150 million of this amount is especially granted to cover the trans-boundary impact.

Lithuania is party to 1963 Vienna Convention and 1988 Joint Protocol (has signed and ratified) also has signed but not yet ratified the 1997 Protocol and CSC. State provides financial security limit up to 160 million dollars according to 1963 Vienna Convention the same limit is set to nuclear operator.

Interesting to take insight into the USA regulation of nuclear liability. As it was mentioned above USA has ratified CSC but is not a contracting party either to Vienna or Paris Conventions. According to Price – Anderson Act which the purpose is to ensure the availability of large nuclear pools to provide orderly compensation for victims who incur damages from radiological incident despite the fact who is liable is certain case. Price Anderson Act sets an obligation for operators to ensure the highest available insurance which is up to 375 million dollars also after the incident occurs operators are obliged to pay additional amount (about $ 95.8 million per entity) to a

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3 Art. 2: “Convention will enter into force on the ninetieth day following the date on which at least five States with a minimum of 400.000 units of installed nuclear capacity have deposited an instrument”. According to latest status there are 15 signatories, 4 of which have ratified this Convention, namely Argentina, Morocco, Romania, United States of America.
4 Convention on Supplementary Compensation for Nuclear Damage was adopted on 12 September 1997, Vienna.
nuclear insurance pool. The combined two tier system now covers about $10 billion\(^1\). This regulation provides whole coverage to those who are affected by nuclear to damage to guarantee the availability of compensation.

Liability regimes implies nuclear operator to provide financial security insurance, however Vienna Convention sets only minimum liability amount compare to Paris which imposed maximum liability amount for the nuclear operator or installation state. Therefore problem arises when national legislation provides operator to ensure financial liability to the amount not specified in the international conventions and there are also decommissioning nuclear objects which are not likely to be in the same situation as installation which is operational. In this case possible State Aid issues arise when legislation is imposed to selectively to one operator avoiding other also there might be need of state guarantee in case of high cap liability limits are imposed. These issues should be analyzed in the competition law situation.

After the closer analysis of Paris Vienna regimes for nuclear damage we can see that there is no unified regime throughout Europe also amending protocols are not into force and there still remain two approaches of liability regime. Lessons from Fukushima accident showed the need to provide appropriate compensation regimes for victims. USA example of two tier system might serve as an example for European Union looking for harmonized and efficient compensation mechanism thus fostering development of nuclear energy market. This system provides adequate and orderly compensation also lets nuclear operator after compensation paid to the victims of accident to recover and continue business without bankruptcy. In this regard there might be adopted European Directive which put efforts to provide efficient compensation mechanism and provide comfort zone for nuclear operators thus enhancing to develop nuclear industry.

Conclusions

1. Nuclear liability is based on principles of exclusive and channelling liability of the operator, compensation limited to a precise amount and in time, exclusive jurisdiction granted to the courts of Installation State, obligation of financial coverage for the operator.

2. Paris Convention was the first instrument upon which third party liability was based later on. With later amendments provides three tier systems which provides wider range of compensation to the victims.

3. Vienna Convention does not provide maximum amount of liability this is up to contracting party to decide on what amount operator will be liable. However revised Vienna Convention increases the minimum amount of damaged to be compensated up to 300 million SDRs.

4. Although there are two regimes of nuclear compensation not all amendments are in force because not enough contracting parties acceded these protocols and later on ratified. There is still a lack of harmonised nuclear liability regime throughout European Union. Joint protocol and Convention on Supplementary convention are certain connections between two different systems but again CSC is not yet in force and several countries which adhere to Paris convention has signed but not ratified Joint protocol also problem arises in when operator is obliged to provide the insurance which is implied by national legislation and is higher than Conventions provide. Then State Aid issues might rise when operators therefore have to provide financial coverage and state guarantee is inevitable.

\(^1\) Ibid.
5. Possible solution to provide European Union harmonised nuclear liability regime might be the example of USA and its two-tier system under which operator is liable under certain amount of money and additional several times bigger coverage is provided to insurance pool by all operators in case accident occurs.

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TRANSFORMATIONS IN THE NOTION OF CONTRACTUAL EQUILIBRIUM BETWEEN PARTIES WITH EQUAL BARGAINING POSITION

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Abstract

Purpose – the purpose of this article was to analyse the conception of contractual equilibrium which had dominated in the classical period of contract law and define the problems of the application of such concept in the contractual relationship of parties with equal bargaining position.

Methodology – theoretical methods (analytic, systematic and historical) had been applied in the research.

Findings – the author concludes that the limits of intervention into the contractual relationship of parties with equal bargaining position (especially, business to business contracts) has to be reasoned taking into consideration the concept of contractual equilibrium applied in the period of the classical contract law. What is more, it has been concluded that the court judging on the basis of unequal bargaining power must take into consideration not only the experience and position of the party, but also it must determine, whether a party has used its advantageous position, therefore, the weaker party could not conclude the contract on better terms. In these cases it is important to determine which party has the burden of proof – the party invoking it’s weaker bargaining position must not only prove the real advantageous bargaining position of counterparty, but also unsuccessful attempts to conclude the contract with more beneficial provisions.

Research limitations – in this paper the research has been limited to the analysis of the concept of contractual equilibrium which had been dominating in classical period of contract law and the analysis of problems in applying such concept in the contemporary legal relationship between parties with equal bargaining power.

Practical implications – the findings of the research can be applied by judges in determining the criteria which could be the basis for the intervention into contractual relationship between parties with equal bargaining power.

Originality – although Zapolskis, P., Klimas, E., Jurgaitis, V., Jakaitė, A. and some other scholars have analysed particular aspects of contract law which are important for the ensuring the contractual balance in the relationship between the parties with equal bargaining position, the problems of intervention into such contractual relationship has been mention only indirectly and the attention has been paid to other aspects. Taking into consideration the absence of legal
doctrine in Lithuanian Republic regarding intervention into legal relationship between parties with equal bargaining power, the research is original.

**Keywords:** contractual equilibrium, contract freedom, bargaining power, weaker party.

**Research type:** general review.

### Introduction

The notion of contractual equilibrium is considered to be one of the main purposes of contract law – it is a relationship which formally should be reflected in every contract concluded between parties having equal bargaining power. This idea is inseparably related to the principal of contract freedom. Accordingly, changes in this fundamental contract law principal undoubtedly should be considered as changes in the process of ensuring the contractual equilibrium.

The ones who should be mostly concerned with the balance between rights and obligations are the parties of precise precontractual relationship - every person bargains for the most advantageous terms of contract and does not conclude unbeneficial contracts on his own free will. In case the parties are unable to reach the assurance of such contractual balance on their own the state has to interfere by passing the laws (legislative) or by implementing the justice (judiciary). If the contract concluded with the weaker party is taken into consideration the intervention is justified by the solidarity policy of the state and those social purposes which are being achieved using the contract law rules do not raise doubts for most of us. However, such intervention is carried out not only in cases of the relationship with the weaker party. For this reason the question has to be raised, to what extent such interference of the state (especially – the judiciary) into the contractual relationship of the parties with equal bargaining power should be considered as justified.

What is more, it is obvious that the notion of contractual freedom which dominated in the classical period of contract law could not be applied to its full extent because of the dramatic changes in the society and the solidarity policy of modern state. Despite that, sometimes the interference into the contractual relationship between the parties of equal bargaining power can be considered as unjustified and unreasonable, even if the party demands it. The contractual balance of relationship between parties with equivalent bargaining power should be reflected by their concluded contract. Even more - the unreasonable solidarity in respect of one of the parties should be considered as the obstacle of market certainty. For this reason, the intervention into contractual relationship between the parties with equal bargaining power should be executed only in exceptional cases.

### I. The content of contractual freedom in the period of classical contract law

The principle of contractual freedom prospered in the classical period of contract law, the golden age of which was the XIX century. During this period the rules of economics were considered to be the background ant the essence of law. The assimilation
of general principles of contract law and the market economy grounds determined that the contractual relationships were based on some main rules: the parties dealt with each other “at arm’s length” and this legal concept meant that every party relies on his own skills and judgments, no one had any fiduciary obligations towards the other. Parties negotiated over the price and terms of the transaction. Offers were submitted, accepted, rejected and counter-offers were presented. The offer could be withdrawn even if it could be relied on it. Neither party had the obligation to disclose all information, also, with rear exceptions, neither party was entitled to rely on the other party. Everyone had to analyse the terms, evaluate the subject-matter of the contract and the general market situation, the future possibilities and had to rely on his sources of information. A party was entitled to advise experts and acquire information from third parties for money. If he did not, it was considered that the party acted at his own risk. The only exception – there had to be no fraud and misrepresentation, however, those rules were interpreted very narrowly. The transaction was considered to be concluded when the parties reached and expressed their agreement. Mistakes and subjective intentions were not important, unless they could influence the free will (consent) of the party, which was essential for the conclusion of the contract. The contract had to be concluded freely and without pressure, despite that, those notions were also interpreted very narrowly, because they could not contradict the rules of market place where certain „not exaggerated” pressure was held to be a normal phenomenon. The content of the contract, the price and the subject-matter were exclusively the concern of the parties. It was presumed that the parties realize the level of their experience and knowledge and that they are the best judges who are able to evaluate their needs and the possibility that they had estimated the risks and essential terms of the contract. This was considered to be the normal process of bargaining. The prevalence of those essential ideas determined that from the moment of conclusion the parties of the contract could not rely on the unfairness, the gross inadequacy or excess price.

The presumption of equal benefit gained from the contract was applied during the classical period of contract law, which meant that deal was considered fair despite the real value of exchange. This presumption was grounded on reasoning that "it is impossible for courts to assess the fairness of exchanges because of the subjectivity of values: since individuals value things differently, a contract freely entered into is fair by definition; courts should not second – guess the parties\' preferences and refuse to enforce their contracts. Second, consistent with social Darwinism, exchanges which are grossly unbalanced are regarded as instances of foolishness and carelessness from which parties should not be protected, lest it removes their incentive to be more careful in future“.

„The classical model of contract, which relied upon a utopian of equality of bargaining power and symmetric information between the parties, has declined as a result of dramatic shifts in the technological, political and social organisation of society

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heralded by unprecedented growth in the production of goods and services and the dominance of standardised business contracts throughout the twentieth century. New European welfarists justify not only judicial interventionism in agreements and policing standard terms, but in addition, the notion that the parties should similarly consider the needs and legitimate interests of their co-contracting partners. Contractual solidarity is now entrenched as a principle of Dutch, French and Spanish contract law. It could not be doubted, that economical, technological and social changes have influenced the systems of contract law and obviously – the development of process of ensuring the contractual equilibrium. In spite of that, contract freedom (also – the *pacta sunt servanda* rule) remained to be an important principle of contract law and has not been eliminated.

It is widely acknowledged nowadays, that contract law is best understood as grounded by two fundamental and conflicting – ideas: autonomy and solidarity. The notion of autonomy is politically related to liberalism and its typical dogmas – contract freedom and *pacta sunt servanda* rules. The idea of solidarity is politically related to socialism and its main rules – good faith and the protection of weaker party’s interests. Obviously, the balance between those fundamental notions is a hard task of legislation and judiciary.

### II. Peculiarity of relationship between parties of equal bargaining position

The need to limit the contractual freedom is obvious in the relationship of parties with unequal bargaining power – those are cases when the contract is concluded with a weaker party, the most often example of which is a consumer contracts. The priority protection of such parties is undoubtedly recognized by the European Union institutions.

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The solidarity policy of the state and European Union is reflected in the consumer law and the reasons of such policy are mostly not the subject-matter of contract law.

However, when such state „help“ is implemented regarding contractual relationship between parties of equal bargaining position, it can be not only unreasonable, but even harmful, especially, in the business to business contracts. The certainty of the market is one of the most important criteria for business environment. Experienced businessmen appreciate not only the possibility of profit and the tax system of the country, when deciding if it is worth entering into business relationship there. Legal system and its certainty are very important parameters motivating to start and/or continue business practice in a particular country. The possibility to prognosticate the likelihood of future disputes and the perspective of them with respect to concluded contracts is essential criteria for evaluating the risks of your business.

The question has to be raised: whether the rules which had dominated in the classical period of contract law (defined in section I of this Article) should not be applied in the relationship between the parties of equal bargaining power, especially – the businessmen? How should the notion of contractual equilibrium be interpreted and applied in the commercial relationship?

There is an opinion expressed in legal doctrine that the contract should be considered equivalent if it is substantially fair. According this idea, the commodity or service should be sold for a fair price – market price – and only such transaction does not infringe the balance of contractual rights and obligations. This means that the contractual price of subject-matter which does not correspond to the market value could be reasonable ground for the contract to be declared voidable or amended by the court. This could sound logical at first glance. However, this idea could be criticized. One of the reasons – the conception of „fair price“ is meaningless in market economy. Value is subjective. What is more, the principle of substantive fairness hardly corresponds with the notion of contract freedom, according to which every person is entitled to decide whether to conclude contract or not, and what should be the terms of the contract. Classical contract law theory was grounded on the idea that no person could agree with terms which are disadvantageous, so the conclusion of contract itself had to justify the fact that the party evaluated the terms of the contract and agreed to them.

On the basis of the idea that interests of neither party of the commercial contract should be protected more, the equilibrium of such relationship should be reflected namely by the concluded contract. Presuming that both parties negotiated actively for the most beneficial terms and that they would not agree to disadvantageous one, the mere conclusion of the contract is a proof that parties have reached a compromise. It could be objected that not always parties are active in the negotiations for dozens of reasons. Sometimes a party considers itself as the weaker party and is sure, that the other party

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shall not agree to the proposed terms. In other cases the particular situation, for example, the lack of time, makes them conclude the contract without proper analysis or without proper negotiations. However, it is doubted that when the relationships of parties with equal bargaining power are concerned such reasoning could be applied. If the counterparty is passive during the negotiations not because he had no possibility to negotiate (i.e., his proposals were rejected by using advantageous bargaining position), but for reasons which do not depend on the active party, this inactivity should be considered as his own risk. If a party who proposed the term does not receive any counterargument or even an opinion, naturally that this party reasonably believes that the passive party agrees to the term. If later it turns out that the term is unbeficial for the passive party, the interests of the active party should not suffer, because the inactivity of the counterparty has not been influenced by the active party.

Illustrative examples that the intervention into contractual relationship can be very problematic are the cases of contractual penalty reduction. Although parties agree to it in the contract, according the Article 6.73 (2) of Lithuanian Republic Civil Code, the amount of penalty stipulated may be reduced by the court when it is manifestly excessive. This rule is often used by court emphasising the compensatory function of penalty clauses. Although the analysis of court practice of the Supreme Court of Lithuania shows that it is admitted that the relationship between parties with equal bargaining power should be treated differently and it is even more obvious in commercial relationship. In one of the judgements the Supreme Court of Lithuania noted that the penalty should not be reduced to the extent which would deny the principle of contractual freedom. What is more, it has been mentioned more than once that the position of the parties is important criteria. The court motivated it’s decision on the fact that the parties of the contract were private businessmen, who had the experience in commercial relationship, freely expressed their will regarding taken responsibility for breaches of contract and ruled that without any exceptional ground the penalty reduction in such case would mean the breach of freedom of contract and the will of parties. What is more, the Supreme Court of Lithuania stated that entrepreneurs can freely agree regarding the nature and amount of contractual liability, what is more, such agreement must be respected, so the court should not deny their will on formal grounds. The agreements of businessmen are not the subject-matter of public law, so the courts should not interfere without the existence of exceptional circumstances which would be the reason to declare the breach of essential rules of law. And in that case such circumstances had not been determined.

In several of its rulings considering the interference into commercial relationship the Supreme Court of Lithuania emphasised that it is essential to take into consideration the fact that the parties are private entrepreneurs, having experience in business practice and negotiations, able to forecast the consequences of the contractual breaches

1 The Supreme Court of Lithuania, Civil Division 2 November 2010 ruling of the board of judges in the civil case UAB „Miaras“ v. A. Daujoto individuali įmonė „Aldaujana“ (case No. 3K-7-409/2010).
2 The Supreme Court of Lithuania, Civil Division 14 March 2011 ruling of the board of judges in the civil case AB „Kauno energija“ v. UAB Kauno termofikacijos elektrinė (case No. 3K-3-104/2011).
and who can choose the terms of contracts\(^1\). For this reason, judicial intervention into such relationship is an exceptional measure and that the opposite interpretation of legal rules would force not to rely on concluded contracts and this would definitely damage the stability of civil relationships\(^2\).

Although those examples prove the recognition of a concept stating that the intervention into commercial relationship is considered to be an exception, it could not be stated that solving the disputes between businessmen Lithuanian courts always take into consideration the fact that the contract is commercial and that the interference should be allowed only in exceptional cases or at least clearly discuss all reasons why this rule should not be applied in the case\(^3\). Due to the limited scope of this article such cases shall be discussed in other publications.

Such regulation of Lithuanian Republic can be compared with the regulation of Germany where the Article 348 of Commercial Code\(^4\) expressly states that “a penalty agreed to be paid by a mercantile trader in the course of his mercantile business cannot be reduced on the ground of sect. 343 of the Civil Code (i)\(^5\).

The arguments presented in this section of the article show that in the relationship between the parties with equal bargaining power, especially, the businessmen, the principal of contract freedom and the notion of contractual equilibrium should be interpreted in the light of classical contract law.

### III. Other problems

As mentioned earlier, the assurance of contractual equilibrium is problematic enough even in the relationship of parties with equal bargaining power. In some cases the most difficult issue is the qualification of parties – whether they should be considered as having equal bargaining power. Does the fact that both parties are entrepreneurs shall

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\(^1\) The Supreme Court of Lithuania, Civil Division 25 August 2008 ruling of the board of judges in the civil case *UAB „Kaduva“ v. UAB „Okadeta“* (case No. 3K-3-401/2008).

\(^2\) The Supreme Court of Lithuania, Civil Division 18 June 2009 ruling of the board of judges in the civil case *UAB „Progresyvus verslas“ v. UAB „Baltisches Haus“* (case No. 3K-3-274/2009).

\(^3\) In some cases courts reduce the sums of penalties defined in the commercial contracts without explaining why it has been decided not to take into consideration the commercial type of relationship or even without mentioning the fact that the parties are entrepreneurs. For example, the Supreme Court of Lithuania, Civil Division 19 June 2006 ruling of the board of judges in the civil case *UAB „Šilo takas“ v. A. S. I.I.* (case No. 3K-3-409/2006), the Court of Appeal of Lithuania, 28 June 2012 ruling of board of judges in the civil case UAB “Vaineta” v. UAB “Airinė” (case No. 2A-1314).


\(^5\) Section 343 of BGB “Reduction of the penalty”: “(1) If a payable penalty is disproportionately high, it may on the application of the obligee be reduced to a reasonable amount by judicial decision. In judging the appropriateness, every legitimate interest of the obligee, not merely his financial interest, must be taken into account. Once the penalty is paid, reduction is excluded. (2) The same also applies, except in the cases of sections 339 and 342, if someone promises a penalty in the event that he undertakes or omits an action”. German Civil Code [interactive]. 1900, [accessed 2013-05-10] <http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p1192>.
mean that they definitely enjoy equal bargaining power? Business entities are classified into large, medium and small, and it is often noted that contractual relationship between a large corporation and a small or medium size business can be considered as the relationship with a weaker counterparty. However, does the protection of the interests of such businessmen - formally the weaker party - always is rational and fair?

It is obvious that the same legal entity, which is considered as the stronger contract party in one legal relationship, could be the weaker in another and such argument is quite common in legal doctrine. This only proves that the size of the legal entity may not be undoubted criteria. In spite of that, the problems of ensuring the contractual equilibrium may evidence in different situations.

How should a judge solve the case, when the weaker party did not negotiate and concluded the contract on less advantageous terms, although the stronger party had been willing to compromise? Here it should be asked, what could be the reasons of such willingness? Why shouldn’t the stronger party use its bargaining position and why should it agree on giving up even the smallest part of the benefits? However, there could be even some causes. First of all, a party with a stronger bargaining position may rationally evaluate that in case of future legal dispute in court the counterparty would be considered as a weaker party and its interests would be probably protected on priority basis. For this reason, by agreeing on compromise terms it ensures that there won’t be any future legal disputes on the ground of contractual inequality or at least reduces the risk of them. Second, the purpose may be strictly commercial – if the stronger party has one or more competitors in the same market and the competition is tense, almost every transaction is important, even if the counterparty is a small or medium enterprise. Every contract is a “small” victory, especially if the market itself is not large. What is more, it should not be forgotten, that legal entity is just a fiction (creation of law) and the decision is made by natural person. For this reason, such decision sometimes is based not only on the professional reasons.

Previously mentioned reasons prove that the bargaining position of the party should not be the ground to decide undoubtedly that the interests of the weaker party have to be defended in a particular case. First of all, it must be identified whether the stronger party actually used its bargaining position and whether the weaker party even tried to propose better terms and conclude more advantageous contract. It is rational, that in such cases, when the weaker party did not put any efforts and concluded the contract without even trying to negotiate, the interests of such party should not be defended more that the interests of the counterparty. What is more, the rules on allocation of burden of proof become very important. According to the principle that the fact must be proven by the party of the dispute which relies on such fact (the Article 178 of Lithuanian Code of Civil procedure¹), it must be recognized that the party which invokes the unequal bargaining position must not only prove such weaker position of it, but also – the unsuccessful efforts to conclude the contract on better terms.

It is obvious that the qualification of contract parties and the evaluation of contractual equilibrium shall mostly be the task of the court in case the dispute between the parties arises and the parties are not able to solve it peacefully. It is important that judges who decide in favour of a weaker contract party on grounds of contractual unbalance would determine whether the parties in fact had unequal bargaining position and the weaker party had no possibility to conclude the contract on better terms.

Conclusions

Contractual equilibrium is inseparable from the concept of contractual freedom. Therefore the changes in this concept have influenced the processes of ensuring the contractual balance. It is no doubt that the interpretation of contractual freedom principle which prevailed in the classical period of contract law cannot be applied in its full extent nowadays as it does not always correspond with the social values and aims of modern state. Despite that, the reasoning of contractual freedom of classical period should not be rejected one hundred present. This notion should still be applied in the contractual relationships between the parties with equal bargaining power, especially the businessmen, and such application would ensure the certainty of legal system of the state which is a significant criteria.

A very important issue for the ensuring the balance of contractual rights and obligations is the qualification of the parties. Acknowledging the difference of application of contractual freedom notion in the relationships of parties with equal bargaining power, there is a need to define how should such equality be understood and determined. And this question shall probably be answered by the judge solving particular legal dispute and evaluating the bargaining position of the parties. It is essential, that the judge would rule in favour of one party on the basis of its weaker bargaining position only if he has actually evaluated not only the experience and the status of the party (whether it is large corporation or small single person business), but also the fact that the party actually used its stronger bargaining position, therefore, the weaker party could not conclude the contract on more beneficial terms. In such cases the question of burden of proof is relevant – the party, relying on its weaker bargaining position must not only prove the advantageous position of the counterparty, but also – the unsuccessful efforts to conclude the contract on better terms.

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THE POLISH HEALTH CARE SYSTEM’S ENDLESS JOURNEY TO PERFECTION – A NEVER ENDING STORY

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Abstract

Purpose: The main aim of this paper is to show the Polish health care system’s transformation process in recent years and to answer the question whether is there a simple path from centralization to decentralization or another form of centralization. The transformation process has changed the health care system’s financing from budget planning to compulsory health insurance deducted from workers’ and employers’ premiums. In addition, the transformation has strengthened the autonomy of the health care at a local level and made it less dependent from the public sector. Different health care system corresponds to each period respectively. It is believed that the main change in Polish heath care took place in 1999 when the function of the payer which formerly belonged to the government administration was overtaken by an independent institution (Health Care Fund).

The article not only describes and explains functioning of each health care model existing in Poland in the past but also puts them in the international context. In addition, the article shows difficulties each model had to face and cope with and indicates the underlying reasons for changes in the Polish health care and theirs consequences.

Design/methodology/approach: A range of recently published (1990-2012) works, which aim to provide both theoretical and practical view on the health care system in Poland, has been analyzed.

Findings: The final thesis stated in this article presents a way of interpretation changes that the Polish health care system has been undergoing in recent years. This paper challenges a thesis according to which the polish health care system is decentralized.

Research limitations/implications: The scope of this article is limited and does not allow to perform further research. Additionally, the research was based on the very scare literature on the issue of health care system in transition.

Practical implications: This paper reveals several practical applications worthy of future study in health care system’ changes (mainly decentralization). First, it would be valuable not only to further investigate and determine a range of financial and legal instruments which are used by local governments to affect the health care system, but also to evaluate these instruments in terms of their suitability for performing statutory duties imposed on the local governments in this respect.

Originality/Value: This paper is part of a growing body of research on local government’s role in the health care system. It will contribute to future research on similar topics.
Keywords: health care, health care system, Semashko model, health care decentralization
Research type: general review

Introduction

For many years the Polish health care system has been subjected to numerous analyses and researches conducted by representatives of different fields of science – not only law, but also economics, sociology and psychology. As a complex issue the Polish health care system has undergone large – scale and highly dynamic changes in the recent years. Those changes have been strongly connected with social and economic processes resulting from political transformation, changes in financing of medical services from public sources, new tendencies in illness` epidemiology, and appearance of new medical technologies together with general technological progress in science which could be applied to medicine (Szełemej, 2009).

The process of transformation of the communist countries which took place in Central and Eastern Europe affected the whole structures of those states, including health care systems. Before the collapse of communism, the health care systems in those countries were highly centralized and based on Soviet – designed Semashko model. It is said that health care in communist countries was ineffective and chronically underfunded. (Marree and Groenwegen, 1997).

It is worth emphasizing that while many system components were common, the health care reform experiences in Central and Eastern Europe differs considerably from that of the successor states since the dissolution of the USSR. This is probably due to being relatively more prosperous and having had experience with private practice and social health insurance before the Second World War (like it was in Poland in 20’s XX c.) (http://www.euro.who.int/en/what-we-do/health-topics/Health-systems/primary-health-care/facts-and-figures).

An analysis of the subject literature shows that whereas before the Second World War the East European Countries had a Bismarck health care system after the Second World War a Semashko system was introduced. Later, after the breakdown of the communist regime those countries have reintroduced a Bismarckian social insurance system (Marree and Groenwegen, 1997).

Historical Background

a) Before the Second World War

In order to understand changes of the Polish health care system and its present shape it is crucial to present the historical background. The current Polish health care system has been a result of the transformations in the last 100 years. At the beginning of XX c. authorities has accepted the role of the state in providing health care services to
citizens. Later, because of wars and other conflicts the state became very poor and could not follow its mission regarding medical services.

In February 1917, as a part of a program of reconstructing Polish government institutions, the Temporary Council of State established a sanitary unit in the Ministry of Home Affairs. When First World War came to an end the necessity of rapid changes in the Polish health care system was accentuated. Poor health conditions, extremely high death rate and ruined medical infrastructure were signs that health care reform are highly demanded. Just a while before Poland regained its independence, In May 1917, a draft public Health Law had been presented – the main idea concerning multisectoral health care system with the public sector dominating over the private sector (Godycki – Ćwirko, Oleszczyk and Windak, 2010). It should be emphasized that the role of public sector was significant and medical services were provided by county physicians (state health service), hospitals (local government health service) and health centers and self governed Sick Funds for employees. A system of treatment service for working group of people was established by “Mandatory Insurance in Case of Illness Law” on 19\textsuperscript{th} May 1920. There was introduced an insurance obligation which meant that insurance was compulsory and universal. Medical services were provided by licensed physicians contracted by The Sick Funds. The Ministry of Public Health was liquidated in January 1924, and its responsibilities were taken over by the General Directorate for Health Service in the Ministry of Home Affairs, transformed in 1928 into the Department of Health of the Ministry of Social Welfare (Godycki – Ćwirko, Oleszczyk and Windak, 2010).

There were also many small sick funds which, due to high unemployment, united less and less workers. The economic crisis from the 20\textsuperscript{s} hastened the reform – in 1933 Sejm adopted the new Social Insurance Law (called “consolidating law”) and established The Social Insurance Enterprise – a new institution that took over the responsibilities of Sick Funds. It is worth noticing that in 1937 only 1,5 million people from 36 million of Poland population used medical services provided by local government health centers, and only 2 million people made use of outpatients clinic managed by the Social Insurance. In addition, in 1938 only 14,7 % of the Polish population was covered by sickness insurance; this is because insurance did not covered rural population which constituted 70 % of the nation. Nevertheless, in comparison to the rest of Eastern European countries such as: this system was considered as modern and innovative.

b) After the Second World War

The new communist government founded a National Health Service based on the Shemashko model (called also a “soviet model”) of the Soviet Union and in 1952 constitution (article 3), proclaimed the principle of great importance: health care freely accessible and delivered free-at-the-point-of-need to the whole population (although, many authors point out that country at that time was devastated and lacked the capacity to guarantee free health care). But a catchy slogan “free health care for all” remained as an essential element of the Shemashko model and returned in the early 90’s when Poles still
demanded free medical services. (Marree and Groenwegen, 1997). In 1991 over 70 % Poles declared, that the health care system should be financed only from the state budget (Krynicka, 1992).

In Semashko model health care is considered to be an integral part of planned economy which runs similarly to other sectors. In other words, there is no difference between health care and, for instance, industry. All sectors are centrally planned. The Ministry of Health is the key policy maker and regulator of the health system. All institutions responsible for health care are state-owned. This means that all decisions regarding investment projects are made by the central administration. The quality/condition of the health care system is a result of the politics/political game. The political party decides which sector of economy should be provided with money. Therefore, the armaments industry, considered as the most important, has been always well funded whereas health care was usually financially neglected. As well as in other sectors of the economy, health care chronically experiences shortages. Due to the fact that all citizens have the right to use free health care services, their quality and availability is rather poor. A deep conviction of equal access to medical treatment and feeling of security are discredited by symptoms of corruption (Kornnai and Eggleston, 2002).

Above factors caused that at the turn of the 80’s and 90’s the system was extremely inefficient.

**Transformation**

In 1989, after over sixty years of being dominant system in Polish economy, communist regime has ended. Since its fall in 1989 Poland has been reforming the public sector, particularly public finances. We should remember, that the transformation of the health care system in all countries of Central and Eastern Europe started under very difficult conditions (Marree and Groenwegen, 1997). Health care, which was inherited from the communist system, was pathological in many aspects.

There was gross negligence regarding management, employment policy and the system’s financing. First of all, the health care system was over employed – it is estimated that in the 80’s only 52% of medical staff were professional medical staff (doctors and nurses). The rest of the people employed in this sector were working in administration. Due to constant price rises, staff demanded higher salaries. Personnel costs constituted the biggest part of every entity’s budget. It was typical to Semashko model which focused on increasing number of medical personnel and hospital beds in order to compensate the scarcity of supplies and the poor quality of facilities (Marree and Groenwegen, 1997). The key factor was that medical staff constantly made demands for increases in remuneration. In addition, significant impact on the bad condition of the health care system was done by poor management i.e. during over 50 years medical establishments were managed without any reference to economic accounts. The relation between medical services and their costs was not noted.

The Ministry of Health and Social Welfare was responsible for the major part of health care – it also financed most of the health care expenditures at the national level,
including drugs, regional hospitals, rescue and ambulance services, prevention programs... . Poland was divided into 49 small regions which received their budgets for health care directly from the Ministry of Finance. A special feature of the Polish health care sector was formed by almost 400 integrated health services (health care institutions - ZOZs). The ZOZs were established by the Instruction of Ministry of Health in 1973. They were funded by voivodships and their budgets were global “and ZOZs were therefore largely free to set their own priorities” (Marree and Groenwegen, 1997).

The term transformation refers not only to system changes but also economic mechanism. In the public eye transformation is mainly considered as economic and political changes. Reform of the health care system has been rather ignored in both political and social discourse. By many authors it has been emphasized that during the time of transformation the system faced overlapping crises – the financial crisis was accompanied by systemic and political crises. Galloping inflation (in January 1991 amounted 75 %) caused rapid growth in prices which made medical services financing in view longer than 1 month almost impossible (Kulak, 1999). The repeated growth in prices of importing medical devices and drugs caused the situation in which hospitals were no longer able to buy ordered products. Planning the health care system expenses was no longer possible.

Consequently, the problem of growing debt of the health care centers occurred. In 1991 the debt rate amounted 250 million PLN, in 1998 – the rate achieved 750 billion PLN. As many authors underline, this situation was caused by defective exercised ownership and mistakes in investor’s supervision over the operations and finance.

It should be emphasized that Poland was the first socialist country in Eastern Europe to have free elections – new government announced to continue publicly financed health care and to decentralize the health care organization It has determined the direction of reforms (Marree and Groenwegen, 1997).

**Apparent Decentralization**

Simultaneously to the reform of the health care system the administrative reform was carried out. Since 1999 there have been three levels of territorial administration and self-government in Poland. The principal unit of administrative division with territorial self-government status, established in 1990, is the gmina (often translated as commune or municipality). It is followed by the powiat (often translated as a county or a district) and the województwo (a voivodeship, or an area governed by a voivode; also translated as a region), which form the second and third level of administration and territorial self-government, respectively (Poland. Health system review, 2011).

The law on territorial self-government compelled districts and provinces to assume the responsibility over health promotion and health care made districts and provinces take responsibility for this tasks. Nowadays, the local self – governments are able to operate their own health care units. However, they do not have direct control over the resources required to finance the units. The money mainly comes from health insurances in a form of payment for services. What is more, the responsibility of the government
administration in health care is significantly curtailed and the scope of the regulatory role of the Health Minister is unclear. The duties of local government are not clearly defined either.

Apart from legal and organizational changes, the reform of the health care system brought a significant change in financing the system. Before the beginning of gradual public sector devolution in 1989, the Polish health system was strongly hierarchical and predominantly funded from the central budget. In the course of the political and economic reorganization that followed the collapse of communism, the strongly centralized system based on the Soviet model of health care was replaced with a decentralized system of mandatory health insurance, complemented with financing from central and local budgets. During the 1990s, the administration of most health care services and the ownership of most public health care facilities were transferred from the Ministry of Health initially to the voivodeships and gminas and later also to powiats, which were re-established as an intermediate level of public administration in 1999.

The transformation of the system has brought, among others, the change in the method of financing from budget planning to compulsory health insurance deducted from workers’ and employers’ premiums. Before the reform in 1998, the system was strongly hierarchical and predominantly funded from the central budget (the function of the payer in the health system belonged to the government administration), Since 1 January 1999, by virtue of The Act of 6 February 1997 on public health insurance this function was overtaken by the Health Care Fund and since 1 April 2003 also by the National Health Fund (NFZ). Therefore, the management of funds allocated for this purpose has been excluded from the structure of public administration and the funds allocated for this purpose which came from the tax revenues were excluded from the state and local government budget (in the wake of the administrative reform, 17 sickness funds were created within the system of mandatory universal statutory health insurance (SHI). The SHI contributions subsequently became the major public source of the health care funding, relegating the state and territorial budgets to a complementary role. After only four years of activity, sickness funds were replaced by a single institution – the NFZ – in 2003).

Since the beginning of the 90’s both public and private health care centers have been established. Therefore the Act on Health Care Institutions constituted a theoretical possibility of differentiating ownership relations by establishing and overtaking health care centers by a wide range of entities, particularly by communes. In a current state of the law, regulated by the Act of Medical Activities a medical entity can be established and maintained in a form of a limited liability company or budget unit by the Treasury (represented by the minister, central government authority or governor), or by the local government units. These entities may join a limited liability company performing medical activities (Article 6, section 8), and they may also run the Independent Public Health Care Institution (IPHCI).

Because of the reactivation of the local government, its role in the health care system has significantly increased. The local government has been obliged to take over the responsibilities for the health care. Initially, this liability applied only to communes. In
1995, on the basis of the pilot program and Article 3 - so-called the City Act of 1995, municipal communes were given the responsibilities and powers under the Act on Health Care Institutions. Previously, health care institutions were run by the government administration. Since then, however, running health care institutions has become the responsibility of municipal communes. Financing these tasks was defined in the Article 11 of the aforesaid Act, which stated that the income of municipal communes, which overtake responsibilities and powers, increases by an amount equal to the product of the share ratio of personal income tax and the total amount of country's income from the personal income tax planned in the budget act. In addition, it has been predicted that the amount would increase by additional 2% in order to finance capital expenditures. Therefore, health care entities, previously supervised by governors, now, on the basis of governors’ decision have become communal organizational units and the powers of the founding body have been passed from governors to local government units. District and provincial governments have become responsible for exercising founding and supervisory functions over the health care institutions.

Despite the fact, that the payer in this system is the National Health Fund, the local government, as an establishing entity, still bears financial responsibility for protecting citizens’ health. In accordance with the regulations of the Act on Medical Activity, significant financial consequences result from ownership entitlements of local government units in relation to medical entities. According to Article 59 Section 2 of the aforesaid Act, a local government unit, as an entity that establishes the IPHCl can (within 3 months following the deadline of approval of the IPHCl's financial statements) cover the net loss of this institution for the financial year, on if after adding depreciation the result is negative - up to the amount of this value (Article 59 Section 2). In case of dismissing this option, the establishing entity, shall either issue a regulation or disposition, or pass a resolution on changing the form of business (i.e. transforming it into a limited liability company or a budget entity) or liquidating the IPHCl (Article 59 Section 4) within 12 months of expiring date specified above.

This legal status constitutes a serious threat to the financial stability of the local government (Babczuk, 2010). It is widely known that many health care institutions report that the level of their debt exceeds the budgets of the establishing entities. It is said that liabilities of medical entities in 2012, compared to the previous year, increased twice. The doctrine emphasizes that responsibilities concerning state health policy, which are generally the domain of the government, are being transferred onto the local government without providing it with adequate financial resources. It is the establishing entity that has to cover the expenses of maintaining IPHClIs because they are not financially supported by the National Health Fund and the Ministry of Health. This solution is inconsistent with general principles regarding methods and forms of financing health care services by public entities, which assume that the latter (local government units in particular) can finance the IPHClIs only within the scope needed to meet the general guidelines indicated in Article 48 of the Act on Health Care Services Financed from Public Funds. The basic right of local government is the possibility of transferring funds to the IPHClIs. The right was included in the Act on Health Care Institutions (Article 55), as well
as in the Act on Medical Activity that would replace the former one. However, in practice, there are serious limitations, i.e. it does not take into consideration the possibility of advancing funds by the local government in order to cover liabilities arising from the National Insurance Contributions, the Health Insurance Contributions and the Labour Fund (liabilities to the Social Insurance Institution).

According to Gorzelak, the urgent need for the decentralization of the state administration in Poland was frequently expressed in various reports. It was emphasized that centralized management of hospitals, secondary schools, state industries – those which belonged to the state rather than to local government – was becoming more and more difficult. Local government would be much better allocated to manage these facilities than the central administration could ever hope to be. Furthermore, the budgetary independence of the new administration units would have allowed for the scope of the central budget to be significantly limited (Gorzelak and Jałowiecki, 2000). Decentralization envisages that not only functions, powers, duties should be redistributed from the state to the local authorities, but also, or probably above all, funds and resources. Nevertheless, many authors pointed out that still an unresolved matter remained - a lack of the budgetary decentralization in provincial government and the funds which they have at their disposal fall far short of their needs (Gorzelak and Jałowiecki, 2000). In brief, the fundamental aim of the reform – the decentralization of the state – has only been partially achieved. Although new local government units have been introduced, these governments have not been given adequate legislative powers or independent budgetary means.

Centralized system has many weaknesses – in Poland there is a model based on administration of existing resources and structures: there is a little analytical work in departments of the Health Ministry, which “could serve as a basis for new policies and programs”. Unfortunately, the problem concerns not only the lack of many fundamental analytic tools but also the information system which is very much inadequate when it comes to “the proper monitoring and more insightful analysis of the state of health of the population”. As a result, there is a lack of knowledge on local government potential relating to the formulation of health policies (Wojtyniak and Goryński, 2008).

Sadly to say, there is no need-based allocation formula to support national, regional or local decision-making process with regard to distribution of funds among regions and different types of health institutions. The state and the territorial self-governments directly finance health services, but their shares are not as sizeable. Since 2007, the largest item in the state budget related to the financing of health care services has been emergency services, for which PLN 1.2 billion was allocated in 2007, PLN 1.6 billion in 2008, and slightly over PLN 1.9 billion in 2009. Financing from the state budget also covers certain highly specialized services (e.g. organ transplants, certain cardiological expensive and radiological interventions). Limited financing seems to be the greatest barrier in achieving accessibility and good quality of health care services and in improving patients’ satisfaction.
Conclusion

The Polish health care system has undergone several huge changes during the previous years. The direction of changes was influenced by many factors – economic position of the Polish state, its financial situation, and, mainly, the political system. In a historical perspective, the long-time process when changes occurred, can be divided into 3 periods: before The Second World War, after The Second World War, and after the systemic Transformation. Contemporary Polish society’s problems are forcing the health care system to undergo permanent changes. Population ageing, technological development and illnesses caused by modern civilization start to challenge the Polish health care. The system must adjust to new problems which the future brings. Unfortunately, old management structures are poorly prepared to meet the challenges, and the system seems to struggle to survive. Governments must be facing difficult task to establish an affordable health care system. Nowadays, when the system constantly struggles with a crisis, the government assigns the responsibility for health care to local government (named it “decentralization”).

“In recent years a major experiment took place in the health care system in Poland, consisting of a smooth transition from a centrally controlled, public, fossilized system of budgetary units (hospitals) to the phase of self-managing pseudo-companies, still operating in a single payer system, but often subjected to the influence of aggressive elements of the market”. Author points out that Polish legal system when it comes to creating new subjects on the market of medical services and applying for public (budgetary) resources is the most liberal in the world (Szełemej, 2009).

The actions and measures which were taken and adopted in recent years targeted at improving the competition in the health care sector. According to reformers, money wasting should be limited by introducing a competition policy. On the other hand, the authors emphasize that free market in health care system in a myth – health can’t be compared to profit, and health care units can’t focus only on overall yield. The fundamental aim in health care should focus on prevention measures and action protecting life and health. These values, health and profit, can’t be contrasted.

The privatization of health care has many supporters (Goodman, Musgrave and Herrick, 2008). However, the “free market” introduced by new legal solution seems to be free only in theory. In other words, the Polish market of medical services is fully controlled by National Health Fund, and works like a regulated market, which means that the health care system in Poland doesn’t belong to the free market. (Zalicki, Konkurencja ograniczy..., 2012).

Privatization of the public hospitals as a result of inefficient management and accumulated debt has been strongly politicized. At the same time, however, privatization of health care institutions by self-governments, encouraged by the 2011 Law on Therapeutic Activity has been taking place. Time will show how commercialization of hospitals impacts on the accessibility, affordability and quality of medical care in Poland.

To briefly summarize: The Polish health care system has undergone deep changes during the last century. Whereas before the Second World War the system was
decentralized with clearly outlined role of the state, after the Second World War it was strongly centralized and financed from budgetary funds. After transformation in 1989 the direction of reforms was not explicitly stated. Poland has not yet declared clearly whether it would adopt government financed or market based method regarding financing health care. Hence, the current system is called “mixed”.

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Legal acts of the Republic of Poland


ORGANIZATIONAL ASSESSMENT: EFFECTIVENESS VS. EFFICIENCY

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Abstract

Purpose – Organizational assessment has always been the key element of the discussion among scientists as well as business people. While managers are striving for better performance results, scientists are reaching for best ways to evaluate the organization. One of the most common ways to assess the performance of the entity is to measure the effectiveness or the efficiency of the organization. Those two concepts might look synonymous, yet as the findings revealed they have a distinct meaning. The purpose of this article is to reveal those differences and explore organizational assessment within effectiveness and efficiency plane.

Design/methodology/approach – Scientific literature analysis, comparative and summarization methods will be used during the research to better understand the challenges of the issue.

Findings – Effectiveness and efficiency are exclusive performance measures, which entities can use to assess their performance. Efficiency is oriented towards successful input transformation into outputs, whereas effectiveness measures how outputs interact with the economic and social environment.

Research limitations/implications – In some cases effectiveness concept is being used to reflect overall performance of the organization, since it is a broader concept compared to the efficiency. It gets challenging to explore the efficiency factor if it is included under effectiveness assessment.

Practical implications – The assessment of the organizational performance helps companies to improve their reports, assures smoother competition in the global market and creates a sustainable competitive advantage.

Originality/Value – The paper revealed that organization can be assessed either within effectiveness or efficiency perspective. Organization striving for excellent performance should be effective and efficient, yet as the findings revealed, inefficient, yet effective organization can still survive yet at a high cost.

Keywords: organizational assessment, effectiveness, efficiency.
Research type: conceptual paper, scientific literature review.

Introduction

Organizational performance stimulation has always been a priority in private as well as in public sectors, since it is directly associated with the value creation of the entity. Organizations are constantly striving for better results, influence and competitive advantage. However, most organizations are struggling to get it right. Management is not always aware of the adequate assessment of their organizational performance. Plethora of models, frameworks or methods for conducting entities valuation creates unnecessary stress for management to select the path that is congruent with organizations believes and cultural philosophy (Richard, 2009).

Common measures of the organizational performance are effectiveness and efficiency (Bounds at all, 2005; Robbins, 2000). For managers, suppliers and investors these two terms might look synonymous, yet, according to Mouzas (2006), each of these terms have their own distinct meaning. Most organizations assess their performance in terms of effectiveness. Their main focus is to achieve their mission, goals and vision. At the same time, there is plethora of organizations, which value their performance in terms of their efficiency, which relates to the optimal use of resources to achieve the desired output (Chavan, 2009). The question is, whether there is a difference if the organization is effective yet inefficient and visa versa. Also, is it important for the entities to understand the disparity?

The aim of the research is to discuss organizational performance within entities effectiveness and efficiency perspective. The objectives: 1) to identify the features of the efficiency and the effectiveness concepts; 2) to explore the differences and proximities between effectiveness and efficiency. Research methods – conceptual paper, scientific literature review.

The assessment of the organization

Today’s organizations face unprecedented challenges assessing their performance. Globalization, requirement for social responsibility, innovative technology and new strategic thinking are just a few of the aspects required in nowadays competitive economy.

and services, they strive for a long term relation between customer and organization, which means that social responsibility, quality of the production and post-purchase service must have high standards. Usually high performance organizations have strong upper management and human recourse standards are set in place. Because of high organizational expectations, right people are being hired to fulfill the positions. Employees are well aware of the performance measures and the importance to achieve the excellence in their duties. Due to a high level of employee involvement in the organizational processes, the entity is awarded with staff commitment which reduces rotation level and the cost associated with the hiring and training processes (Demartini, 2011). Employees that are devoted to the organization are well aware of necessary knowledge, skills and experience to create unique solution for customers (Harris, 2000).

Organizational assessment is a usual practice in high performance organizations. Because of their high standards they must continuously strive for better results, which can be achieved by constant benchmarking and self-evaluation. Today’s organizational assessment has been taken to a higher level. In order to sustain a high performance organization, managers are no longer implementing traditional valuation indicators, even if they successfully have been used for years. Khademfar and Amiri (2013) suggest a model of high performance organization, which maintains five major approaches: Strategic, Customer, Leadership, Processes and Structure and, Values and Beliefs. Strategic approach takes the organization to a higher plane of maturity with a clear vision where the entity is going. Customer approach strives for clientele loyalty, whether Leadership approach is associated with management knowledge to transfer the strategy to employee level, which will have a direct impact on their behavior and believes. The fourth block is associated with organization’s processes and structure. High performance organization should strive for implementing innovative policies to support the strategy. The last component of the model is Value and Believes which translates into organizations ability to implement the strategy. All pieces are linked to each other, since change to one provides changes in the others.

According to 2013 -2014 Baltridget Performance Excellence Program, it is crucial for organizations to self-assess their performance, since it can help the organization to achieve the excellence in their operations.

Achieving high levels of organizational performance is a multidimensional process. Knowledge, associated with self-assessment is not enough to assure high performance of the organization. The challenge that most managers are facing in today’s rapidly changing economy is to address right tools to evaluate their own performance against rival results (Villegas and Valldares, 2005).

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12013 -2014 Baltridget Performance Excellence Program
http://www.nist.gov/baldrige/publications/criteria.cfm
Why self—assess?

- Customers and/or competitors are driving a need to change.
- The industry or environment is changing.
- The organization is among the best; therefore it is important to make sure it stays that way.
- Performance is efficient, and it is crucial to keep it that way.
- The drive to enhance organizational learning.

How will organization benefit?

- Is able to identify successes and opportunities for improvement.
- Knows how to initiate changes or energize current initiatives.
- Learns how to energize the workforce focus on common goals.
- Efficiently utilizes benchmarking strategy.
- Aligns the resources with the strategic objectives
- Delivers world-class results

Effectiveness vs. efficiency

There are various opinions regarding valuation of the organization. Mouzas (2006) emphasized two indicators to assess the performance: the efficiency and the effectiveness. For managers, suppliers and investors these two terms might be synonymous, yet, each of these terms have their own distinct meaning. The findings revealed that efficiency information provides different data compared to effectiveness one (See Figure 1).

<table>
<thead>
<tr>
<th>Efficiency information</th>
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<tr>
<td>Input</td>
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<td>Process</td>
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Figure 1. Chain of effects

**Effectiveness** oriented companies are concerned with output, sales, quality, creation of value added, innovation, cost reduction. It measures the degree to which a business achieves its goals or the way outputs interact with the economic and social environment. Usually effectiveness determines the policy objectives of the organization or the degree to which an organization realizes its own goals (Zheng, 2010). Meyer and Herscovitch (2001) analyzed organizational effectiveness through organizational commitment. Commitment
in the workplace may take various forms, such as relationship between leader and staff, employee’s identification with the organization, involvement in the decision making process, psychological attachment felt by an individual. Shiva and Suar (2010) agree that superior performance is possible by transforming staff attitudes towards organization from lower to a higher plane of maturity, therefore human capital management should be closely bound with the concepts of the effectiveness.

According to Heilman and Kennedy – Philips (2011) organizational effectiveness helps to assess the progress towards mission fulfillment and goal achievement. To improve organizational effectiveness management should strive for better communication, interaction, leadership, direction, adaptability and positive environment. Back in 1988, Seiichi Nakajima has introduced the concept of Total Productive Maintenance, which has been widely applied in the plants and covered the entire life of the equipment in every department including planning, manufacturing, and maintenance (Fu-Kwun Wang, 2006; Muthiah and Huang, 2006). The system allowed assessing overall performance of the plant, since it covered:

1. Total effectiveness (productivity, quality delivery, safety, social responsibility and morals);
2. Total maintenance system (maintenance prevention system, maintainability improvement);
3. Total participation of the employees (the increase of the effectiveness of the plant depends on the involvement of the staff, regardless of the department they belong to).

According to Porter (1996), Total Productive Maintenance system could be applied as a tool not the strategy for managers to ensure operational effectiveness. The author stressed out the fact that effectiveness management tools and techniques such as benchmarking, time based competition, outsourcing, partnering are slowly taking the place of the strategy. It is a result of organizations’ frustration of their inability to translate goals into sustainable profitability.

**Efficiency** measures relationship between inputs and outputs or how successfully the inputs have been transformed into outputs (Low, 2000). To maximize the output Porter’s Total Productive Maintenance system suggests the elimination of six losses, which are: (1) reduced yield – from start up to stable production; (2) process defects; (3) reduced speed; (4) idling and minor stoppages; (5) set-up and adjustment; and (6) equipment failure. The fewer the inputs used to generate outputs, the greater the efficiency.

According to Pinprayong and Siengthai (2012) there is a difference between *business efficiency* and *organizational efficiency*. Business efficiency reveals the performance of input and output ratio, while organizational efficiency reflects the improvement of internal processes of the organization, such as organizational structure, culture and community. Excellent organizational efficiency could improve entities performance in terms of management, productivity, quality and profitability. The Pinprayong and Siengthai (2012) introduced seven dimensions, for the measurement of organizational efficiency:

- Organizational strategy;
Corporate structure design;
Management and business system building;
Development of corporate and employee styles;
Motivation of staff commitment;
Development of employee’s skills;
Subordinate goals.

Effectiveness and efficiency are exclusive, yet, at the same time, they influence each other; therefore it is important for management to assure the success in both areas. Pinprayong and Siengthai (2012) suggest that ROA is a suitable measure of overall company performance, since it reveals how profitable organizations assets are in generating revenues.

Organizational performance = effectiveness x efficiency;

Total asset turnover ratio measures the ability of a company to use its assets to efficiently generate sales; therefore it can be treated as efficiency. Profit margin ratio is an indicator of a company’s pricing strategies and how well it controls the costs, also it is a good measure for benchmarking purposes; therefore it could be treated as effectiveness. As a result, overall performance can be measured by quantifying the efficiency and the effectiveness.

Efficiency is all about resource allocation across alternative uses (Kumar and Gulati, 2010) (See figure 1). It is important to understand that efficiency doesn’t mean that the organization is achieving excellent performance in the market, although it reveals its operational excellence in the source of utilization process.

Effective yet inefficient organization?

Organizations can be managed effectively, yet, due to the poor operational management, the entity will be performing inefficiently (Karlaftis, 2004). Inefficient and ineffective organization is set for an expensive failure. In such case there is no proper resources allocation policy and there is no organizational perspective of their future. Organization has leadership issues, high employee turnover rate and no clear vision where the organization will be standing tomorrow.

If the organization is able to manage its resources effectively, yet it does not realize its long term goals, it will bankrupt slowly. This strategy is cost efficient but it is not innovative and creates no value. Management has no clear customer oriented policy set in place, which leads to constant focus on efficiency. Such organization uses all its efforts to implement strict resource allocation policy, which translates into strict staff cost control, training cost reduction or even elimination. These actions lead to low morale of the organization high turnover rate of the employees and low customer satisfaction. Efficient but ineffective organization cannot be competitive and it will bankrupt eventually.
In both cases, inefficient – ineffective and efficient – ineffective, organization is set for failure. Therefore a conclusion reveals that an organization cannot survive without effectiveness policy (See Figure 2).

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<thead>
<tr>
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<th>Effective</th>
<th>Ineffective</th>
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<tbody>
<tr>
<td><strong>Efficient</strong></td>
<td>Succeeds at minimum cost. The company thrives.</td>
<td>Cost under control but fails to succeed. The company is bankrupting slowly.</td>
</tr>
<tr>
<td><strong>Inefficient</strong></td>
<td>Succeeds at a high cost. The company exists.</td>
<td>An expensive failure. The company is bankrupting fast.</td>
</tr>
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**Figure 2. The characteristics of effectiveness and efficiency.**

If the company is inefficient but effective it might survive, but the cost of operational management, processes and inputs will be too high. Cost inefficient organizations do not have proper resource allocation management. From the accounting perspective they might break even or have very little profit. Although, such organizations have excellent long term perceptions of the degree of the overall success, market share, profitability, growth rate, and innovativeness of the organization in comparison with key competitors (Zokaei, 2006). Inefficient – effective organizations should consider the assessment of their recourse allocation. Usually, the morale in such entities is high. Delicate changes brought in the operations and introduced in a subtle manner should result the increase in the efficiency, which would lead organization to desired competitive advantage.

High effectiveness and high efficiency organizations are well known as high performance entities. They demonstrate excellence in their operational performance as well as strategic planning. Their outcome is productive, cost management is under control, tasks distributed and completed in a timely matter. Usually such organizations have high morale and staff commitment, which also results the highest quality of the outcome. Employees are well aware of the tasks they have been delegated to perform, they are also well informed of the indicators, which are used to assess their outcomes. Their performance and their attitudes lie along company’s long term goals and vision.

**Conclusion**

The fundamental difference between organizational assessment using either effectiveness or efficiency measuring methods lies in the fact, that effectiveness is much broader perspective, which takes into account quality, creation of value added, employee satisfaction, output interaction with the social and economic environment. While efficiency measures the relationship between inputs and outputs or how successfully the inputs are being transformed into outputs.
Effectiveness and efficiency are exclusive performance measures, yet, at the same time, they influence each other. As the findings revealed, effective yet inefficient organization might survive, while efficient yet ineffective one will bankrupt slowly. In order to achieve the excellence in competitive performance, organizations should strive to increase the efficiency and effectiveness indicators evenly.

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PROACTIVE REGULATORY INTERVENTION IN EU COMMUNICATIONS SECTOR AND ITS FORESEEABLE FUTURE

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Abstract

Purpose – to review and provide insights on the issues concerning ex ante regulatory approach in EU telecommunications (hereinafter – electronic communications) industry, identify and emphasise benefits, main challenges and further regulatory prospective.

Design/methodology/approach – based on current regulatory framework and analysis of academic literature, author discusses problematic issues related to the needs and further perspectives of proactive regulatory regime in EU electronic communications sector.

Findings – the author reviews special qualities for different regulatory regimes (ex ante, ex post) and examines them in the context of sharp developments of the industry and EU regulatory policy.

Research limitations/implications – the analysis aims to convey the main understanding on the regulatory specifics of the communications industry, the main features, distinguishing communications industry from the others and foreseeable regulatory perspectives.

Practical implications – the core aspect of the paper is to evaluate current regulatory approach of the EU electronic communications sector and assess potential regulatory approaches in the context of making self-sustaining pro-competitive market structure, technological development.

Originality/Value – the paper highlights some significant changes between two regulatory approaches in the light of specific features in EU electronic communications. Author provides his insights on the status and perspectives on application for both regulatory methods. Apparently, these issues have so far been subjected too little academic analysis. As shown in this paper, regulatory policy can have the essential impact on the activities taken by other players. The decision to give an even bigger role to competition rules, do not mean to eliminate sector specifics itself. With this in mind, EU legislators are not able to eliminate proactive regulatory control, thus reducing ex ante rules progressively as competition in the market develops and more investments are promoted. However, sectors still requires for at least a minimum level of legislation, retaining the need of both regulatory regimes at least until sector specific qualities will completely abolish need for ex ante regulatory intervention.

Keywords: SMP, ex ante, ex post, proactive control, sector specific features, telecommunications.

Research type: general review, viewpoint.
1. Introduction

Over the last two decades European regulation for electronic communications suffered from various legal forms of legislative regulation. There are different arguments if such regulation goes in the right direction and should go further or not. On the one hand, electronic communications networks are the backbone of information society. The EU’s policy framework improves competition, drives innovation, and boosts consumer rights within the European single market (Official EU website, 2013). On the other hand, EU is criticized for heavy bureaucracy and slow decision-making processes. However, after the Single Market was established European telecommunications sector has moved from a tradition of monopolies to privatization and competition.

The main legal forms to promote changes in the market, different legislative instruments were necessary (Regulations, Directives, Decisions, Recommendations, Guidelines, etc.). Moreover, the main legislative packages were designated to liberalise, harmonise national legislations thus increasing competition in the national markets at first and at EU level later on.

Over the last twenty years, EU actions for electronic communications have led to a falling call costs, higher consumer choice and higher standards of the service. That was mainly done by a regulatory framework for electronic communications and as a consequence - promoted competition and consumer rights. Most of these improvements were made by the help of EU legislation and the main approach was ex ante regulation.

Critics of the latter view argue that legal obligations led EU legislation to over-regulation and increased cost of regulatory procedures, thus warrant ex ante regulation making ordinary competition law insufficient to completely customise neither Significant Market Power (hereinafter SMP), nor other unique features. The main reason for the current application of these both regulatory methods is sectors specific features which are not common in the other sectors.

This paper provides overview of proactive (ex ante) and ex post regulatory approaches, highlights the interaction between proactive regulatory provisions and EU competition law, discusses current stage and foreseeable direction of the market regulation. The constant shift in approach remains controversial not only because of the change EU regulatory policy, but also because of the communications dynamical nature which leaves no space for application of pure competition law.

This brief analysis emphasizes the linkage between corresponding balance of proactive legal-regulatory impact and self regulation based measures. Indeed, times when the behaviour was shaped exclusively by the proactive regulatory measures can hardly be reflected in the current events. On the other hand, having no governmental power to shape the behaviour and enforce it leaves place for abusive activities of market players. To add, dynamics of technology affects the character of regulatory policy as well, making ex post approach insufficient to be the sole method. Nonetheless, the future of electronic communications regulation depends on the ability for lawmakers to embrace a
new model of regulation that uses different tools from the self-regulation led by \textit{ex post} measures and traditional model (statutory regulation).

This paper does not tend to criticise none of the regulatory approaches; rather it aims to illustrate the current tension between \textit{ex ante} and \textit{ex post} regulatory approaches in the sector, the need for balanced solutions to reach behavioural effects on current events and to look further by indicating the potential regulatory regime in the years to come. The emphasis is given to specific features as a dominant source for proactive control.

The objective of this paper is to provide insights on why telecommunications sectors still needs to be regulated and what reasons raised regulatory demands for \textit{ex post} based measures. With this point of departure, competition rules related measures as a source on behavioural controller is given relatively modest attention in the paper.

2. Specific qualities and possible regulatory regimes

2.1 A description of the specific qualities

The electronic communications industry perhaps is the one of the most dynamic segments among those in the EU. One of the main objectives of sector-specific regulation is to ensure an evolution to a self-sustaining pro-competitive market structure in which the firms behave in a competitive manner so that benefits from competition, in terms of lower subject to sector specific regulation (Bourreau and Doğan, 2001).

The current rules which govern the telecoms sector in the EU were agreed in 2002. The European Parliament and the Council of the EU, after two years of discussions, adopted a revised regulatory framework which entered in force on 18 December 2009 (Official EU website). This framework was named in jargon “Telecommunications Package”.\textsuperscript{1} The need for such legislation was caused by sector-specific qualities which are not common in other sectors or industries. To disclose specifics of the communications industry, it is truly important to understand what are the main features distinguishing communications industry from the others.

Indeed, unlike the other sectors, some undertakings in electronic communications, in particular, telecommunications sector still enjoys a position of economic strength, thus affording the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers (Bavasso, 2003). Such economic strength is called Significant Market Power (hereinafter – SMP). According to the concept of previous legislation, it was considered that undertakings (companies) having more than 25% market share are likely have a SMP (dominant position). Pursuant to the current Framework Directive (Recital 25), concept of SMP is redefined and based on the concept of ‘\textit{dominant position}’ developed in general competition law. To add, undertakings with

\footnotesize{\textsuperscript{1} New regulatory framework is consisted of Framework Directive, Authorisation, Access, Universal Service, Privacy and Electronic Communications, Better lawmaking and Citizens rights Directives, also BEREC Regulation and Radio spectrum Decision.}
the dominant position will always have SMP, but not necessarily vice versa. Undertakings having SMP are not in a position to abuse their market power to restrict or to distort competition in itself, as this is a matter of Competition authorities to investigate. In other words, existence of SMP does not mean that there is no competition, though it may indicate that competition may not be effective.

As it was indicated above, the current concept of SMP is based on competition law methodology. This means that undertakings (companies) with more than 40% market share are in most cases to be considered to have a Significant Market Power (dominant position). However, sole market shares do not presume SMP. It must be also analysed the other economic characteristics of the markets to determine SMP, but market shapers is the most important one. Several Moreover, Commission Recommendation of 2007 aims to ensure that the legal framework keeps up with the changing conditions in the market in order to identify market susceptible to ex ante regulation, while Commission Guidelines (2002) identify a range of factors to consider in determining whether the entity has SMP.

Indeed, the difference between 2003 and 2007 Recommendations confirms EU policy trends: almost all retail markets and many wholesale markets were deregulated during that time, thus leaving ex ante regulation only in the markets where no effective competition was and where competition law remedies were not sufficient to tackle the sector-specific problem. Noticeable that national regulatory authorities (hereinafter NRA) might be in position to decide that ex ante regulation is still needed in deregulated market. However, ex-ante regulation can only be imposed by NRAs in certain circumstances. Recommendation provides three criteria assessment to apply to identify markets that are susceptible to ex ante regulation (Commission Recommendation, 2007).

The first criterion, as a sector’s specific quality, is high and non-transitory barriers to entry. The second criterion helps to assess undertaking’s increase of market shares in recent years, costs and time consumption and investments needed to enter the market, or increase of the service price, etc.). While the third criterion helps to evaluate SMP using the same principles as under the competition law. And according to the European Court of Justice (Case 27/76, United Brands v Commission, 1976), an undertaking is unlikely to be determined as a dominant if it does not have SMP. Having no proved and justified all of these three criterions NAR’s cannot determine undertaking as having SMP in the particular market.

2.2 Regulatory regimes: definitions and features

Indeed, Framework Directive directly determine objective to remove sector specific regulation, reducing ex ante rules adequately to competition development in the market (Commission Recommendation, 2007).

While being criticised, proactive measures, as an effective regulator, was never rejected. Although technology based nature requires extremely efficient control mechanisms because of their dynamic nature. Ex ante is so called proactive regulatory approach based on sector specific regulation. Basically it is imposition of regulation to prevent anticompetitive behaviour before it takes place. This approach can successfully
serve as a transformer of legal obligations with capability to shape the behaviour of market players having SMP, although is capable to interrupt competitions between the market players in the markets, which are fully competitive. This leads to the fact that *ex ante* regulation is only imposed within the EU if the market is found effectively to be uncompetitive following a market analysis (Barendse, 2007). To add, *ex ante* regulation is limited to the entities that have SMP and have potential barriers to fair competition in the market to begin. The need to assess whether the overall benefits of regulation outweigh the costs of regulation is also necessary.

Nevertheless, public interests, harmonisation measures in Single Market and competition based approach reshaped the scope of electronic communications control during the last decade. Co-regulative power was the integral part of this sector, but nowadays command and control legal-regulatory controls cannot be expected to be effective if the environment reacts in ways not consistent with expected results. Thus it raised the need to reach the interaction to balance the weight of power. Some stakeholders and scholars argue that markets in the Recommendation should not be warrant by proactive regulation and regulation shall be withdrawn at all. While the others argue that the Commission should gear all its interventions towards the long-term welfare of the citizens (Streel, 2008).

It is to say that less proactive constrains for undertakings does not necessarily mean less regulation as such. In this respect European Commission recently announced a tender for the study to assess the *ex ante* regulation in electronic communications markets, reflecting the scale and importance of this issue.\(^1\)

*Ex post* is the regulatory regime mainly based on principles governed by competition rules, based on traditional regulation of historical events. It is to say, *ex post* regulation refers to the opposite situation than *ex ante*, where no explicit market intervention is performed. Furthermore, it follows EU regulatory framework main objective - to phase out sector-specific regulation. Nevertheless, the Regulatory Framework for Telecommunications, in force since 2003, introduced a new regulatory approach, basing the sector-specific *ex ante* regulation on the principles of competition law (Szarka, 2003).

Furthermore, in the context of EU objectives *ex post* regulatory approach is the dominant and is expected to take the sole position in electronic communications sector. By implementing *ex post* rules it is aimed to foster innovations, further technological development, and welfare of consumers and freedom of conducting business.

Anyway, *ex ante* regulatory measures don’t eliminate the scope for *ex post* competition policy and contrary. Basically, both measures currently operate together in the electronic communications sector. Apparently, the current need of both regulatory regimes requires for a minimum level of legislation and effective promotion of competitions at the same time.

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\(^1\) The undergoing study *Future electronic communications markets subject to ex-ante regulation (Recommendation on relevant markets)*. SMART 2012/0007.
3. Challenges ahead

Beginning in 1980s and continuing into the 1990s, the telecommunications industry in almost all countries experienced privatization. The privatization of these of these previously large state-owned carriers involved, however, serious problems of remaining monopoly power or market failure (Walden, 2009). However, in the past 10 years new players have challenged incumbent operators, and markets for mobile services have grown tremendously. The development of internet and IP (internet protocol) – based services has the potential to unsettle many established positions in the telecommunications industry and the ICT sector at large (Huigen and Cave, 2008).

Current progress, steep increasing of use of the internet, current stage of innovations, evolving development of technology and technological impact in economic, cultural or even daily life, makes us hopefully believe that great challenges are not climbed over. However, it makes elimination of sector specific regulation in the foreseeable future more challenging.

On the other hand, increase of regulation does not match the de-regulatory rhetoric of the public authorities and sometimes disturb changes. As the electronic communications develop so fast, regulatory policy must satisfy expectations policy predictability for the electronic communications industry. That evidently will promote even greater investments and stimulate competition the market. Doubtless, the major services in foreseeable future will move towards the internet (i.e. voice over IP and etc.), eventually leading to the abolishment of sector specific qualities thus applying mainly the ordinary competition law and basically rolling back of \textit{ex ante} regulatory approach, but in any event, this will take at least a decade to transform the whole industry.

Conclusions

All things considered, it is clear that electronic communications have gone through many phases of development and regulation efforts. From a policy perspective it means that any policy adjustments in the regulatory context cannot solely be debated as one-dimensional changes. Even though EU legislation aims to remove sector specific regulation, it can be only done progressively as competition in the market develops.

However, there are reasonable thoughts in years to come to witness major on-going developments in this field. To add, current progress, steep growth of the use of the internet, current stage of innovations, evolving development of technology and its impact on daily life and business activities, require for at least a minimum level of legislation (or its amendments), retaining the need of both regulatory regimes until sector specific qualities will completely abolish need for \textit{ex ante} regulatory intervention. On the other hand, hands-off approach based on confidence in market mechanisms has already taken a place in current EU legislation and competition policy based \textit{ex post} approach gains more weight in current EU legislation, thus slightly eliminating features which made electronic communications industry specific.
Hopingly EU policy will not stop evolving, thus encouraging further evolution of innovations, development of EU consumer rights protection policies and the rules concerning privacy and data protection, at the same time leaving enough space for the main EU objective in electronic communication field – deregulate the market by adopting \textit{ex post} regulatory approach, based on self-regulation idea.

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Official European Union website: https://ec.europa.eu


MOTIVATIONAL INTERVIEWING: THEORETICAL MODEL AND WORKING MECHANISM

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Abstract

Purpose – usual counseling methods seeking healthy life are less effective in contemporary society. Motivational interviewing is declared as one of the best ways for changing unhealthy behaviors in short time period. The aim of this literature review is to find out how the model of motivational interviewing is made up and how it is working in practice.

Design/methodology/approach – literature review about motivational interviewing theoretical model and working mechanism was made.

Findings – motivational interviewing is a patient centered counseling style which aims to support individuals to make adjustments in unhealthy behavior by reducing ambivalence and promoting self-directed changes. It has a number of characteristics which when used flexibly are crucial to the success of the counseling process. These are the demonstration of empathy, the development of discrepancy, the ability to roll with resistance and the promotion of self-efficacy. Motivational interviewing uses a guiding communication style to engage with patients, clarify their strengths and aspirations, evoke their own motivations for change, and promote autonomy of decision making. It has been successfully applied with cardiac patients, in particular for those who need to make lifestyle changes such as diet, exercise, alcohol and medication adherence.

Research limitations/implications – since we didn’t find any motivational interviewing research in Lithuania a question rises – how this technique works with Lithuanians.

Practical implications – empirical studies should be made on how motivational interviewing affects Lithuanians.

Originality/Value – motivational interviewing is an innovative counseling method in Lithuania. Knowledge about it could help patients change their unhealthy behavior.

Keywords: Motivational Interviewing, Theoretical Model, Working Mechanism.

Research type: literature review.

Introduction

Usual counseling methods seeking healthy life are less effective in contemporary society. People want to change in a relatively short time period. They are willing to see the real transformation of their unhealthy habits. Motivational interviewing is declared as one of the best ways for changing unhealthy behaviors in short time period. Despite
the fact that it is well known technique all over the world, it is quite new for Lithuanians. The aim of this literature review is to find out how the model of motivational interviewing is made-up and how it is working in practice.

**Design/methodology/approach**

Literature review about motivational interviewing theoretical model and working mechanism was made. The search of scientific literature was made in such data bases as Ebsco, PubMed, Science Direct. The search of educational literature was made in official sites of motivational interviewing www.motivationalinterview.org, www.motivationalinterviewing.org.

**Findings**

The concept of motivational interviewing evolved from experience in the treatment of problem drinkers, and was first described by Miller in 1983 (Rollnick, Miller, 1995). The fundamental concepts and approaches were elaborated by Miller and Rollnick in a more detailed description of clinical procedures in 1991 (Rollnick, Miller, 1995). These two documents let to form a clear definition of motivational interviewing (Rollnick, Miller, 1995): Motivational interviewing is a directive, client-centered counseling style for eliciting behavior change by helping clients to explore and resolve ambivalence. Compared with nondirective counseling, it is more focused and goal-directed (Rollnick, Miller, 1995). The examination and resolution of ambivalence is its central purpose, and the counselor is intentionally directive in pursuing this goal (Rollnick, Miller, 1995). Motivational interviewing uses a guiding communication style to engage with patients, clarify their strengths and aspirations, evoke their own motivations for change, and promote autonomy of decision making (Rollnick et al., 2010). Main results of this literature review are presented below according to the questions of the study:

1. How motivational interviewing is described theoretically?
2. How motivational interviewing is working on patients?

**Theoretical model**

An emergent theory of motivational interviewing on the one hand is proposed, emphasizing two specific active components: a relational component focused on empathy and the interpersonal spirit of motivational interviewing, and a technical component involving the differential evocation and reinforcement of client change talk (Miller, Rose, 2009). On the other hand the theoretical bases of motivational interviewing are outlined, focusing on self-determination theory (Medley, Powell, 2010).

It is important to distinguish between the spirit of motivational interviewing and techniques that are recommended to manifest that spirit (Rollnick, Miller, 1995). The overall spirit of motivational interviewing could be described as client-counselor
relationship and the therapeutic skill of empathic understanding (Rollnick, Miller, Butler, 2008; Miller, Rose, 2009):

- **Collaborative.** Motivational interviewing rests on a cooperative and collaborative partnership between patient and clinician. There is an active collaborative conversation and joint decision-making process.

- **Evocative.** Motivational interviewing seeks to evoke from patients that which they already have, to activate their own motivation and resources for change. A patient may not be motivated to do what consultant wants him or her to, but each person has personal goals, values, aspirations, and dreams.

- **Honouring patient autonomy.** Motivational interviewing also requires a certain degree of detachment from outcomes – not an absence of caring, but rather an acceptance that people can and do make choices about the course of their lives. To recognize and honor this autonomy is also a key element in facilitating health behaviour change.

The technical hypothesis regarding the efficacy of motivational interviewing states, that proficient use of the techniques of motivational interviewing will increase clients’ in-session change talk and decrease sustain talk, which in turn will predict behavior change (Miller, Rose, 2009). However, it is inappropriate to think of motivational interviewing as a technique or set of techniques that are applied to or “used on” people (Rollnick, Miller, 1995). It is an interpersonal style, a subtle balance of directive and client-centered components shaped by a guiding philosophy and understanding of what triggers change, and if it becomes a trick or a manipulative technique, its essence has been lost (Rollnick, Miller, 1995; Rollnick, Miller, Butler, 2008). The converging evidence suggests that the guiding philosophy and principles of motivational interviewing might help to foster readiness for participation in treatment (Medley, Powell, 2010).

There are three common styles of communication in health care: directing, guiding, and following (Rollnick, Miller, Butler, 2008). Authors represent these styles as a circle (Figure 1) where counselor should imagine himself as sitting in the center of a circle, able to reach out to use the appropriate style as needed (Rollnick, Miller, Butler, 2008). A skillful practitioner should be able to shift flexibly among these styles as appropriate to the patient and situation (Rollnick, Miller, Butler, 2008). However, motivational interviewing is a refined form of guiding style only.

![Figure 1. Three communication styles (Rollnick, Miller, Butler, 2008).](image)
Guiding is well suited to helping people solve behavior-change problems (Rollnick, Miller, Butler, 2008). A practitioner using motivational interviewing will conduct the discussion in line with a guiding style, paying particular attention to how to help the patient make his or her own decisions about behavior change. In contrast to the more general guiding style, motivational interviewing is specifically goal-directed, pays particular attention to certain aspects of patient language and involves competence in a well-defined set of clinical skills and strategies that are used to evoke patient behavior change (Rollnick, Miller, Butler, 2008).

Motivational interviewing involves enhancing a patient’s motivation to change by means of four guiding principles (Rollnick, Miller, Butler, 2008; Hall, Gibbie, Lubman, 2012):

1. **R: Resist the righting reflex.** It is a natural human tendency to resist persuasion. The patient himself but not counselor should be voicing the arguments for change. Motivational interviewing is about evoking those arguments from the patient, and that means first suppressing what may seem like the right to do – the righting reflex.

2. **U: Understand the patient’s motivations.** It is patient’s own reasons for change, and not counselor’s that are most likely to trigger behavior change. It means that counselor have to be interested in the patient’s own concerns, values, and motivations. In motivational interviewing one proceeds in a way that evokes and explores patients’ perceptions about their current situations and their own motivations for change.

3. **L: Listen to the patient.** Motivational interviewing involves at least as much listening as informing. When it comes to behavior change the answers most likely lie within the patient, and finding them requires some listening.

4. **E: Empower the patient.** Empowerment is helping patients explore how they can make a difference in their own health. The patient’s own ideas and resources are key here. An important role for counselor in this process is to support their hope that such change is possible and can make a difference in their health. The practitioner is an expert is facilitating the patients’ bringing their expertise to the consultation.

Motivational interviewing and self-determination theory developed along quite different pathways, with the former being driven more by practice and induction and the latter driven more by theory and experimental research (Resnicow, McMaster, 2012). There could be found pros and cons thinking about self-determination theory as the theoretical base of motivational interviewing (Deci, Ryan, 2012; Resnicow, McMaster, 2012). Self-determination theory is a macro-theory of human motivation that has been applied to health-relevant change and is centrally concerned with autonomous self-regulation comprising both intrinsic motivation and well-internalized extrinsic motivation (Deci, Ryan, 2012). According to self-determination theory, being autonomous refers to acting with a sense of volition and the experience of willingness (Deci, Ryan, 2012). Promoting patients’ autonomy or volition is important within motivational interviewing too (Deci, Ryan, 2012; Resnicow, McMaster, 2012). There is a similar interpersonal perspective to treating people within motivational interviewing and self-determination theory, and the intervention techniques used within these two approaches also have much in common (Deci, Ryan, 2012). Self-determination theory can be viewed
as a theory that explains the effects that occur when using motivational interviewing treatments (Markland et al, 2005 in Deci, Ryan, 2012).

Motivational interviewing has been quite congruent with self-determination theory, as both approaches focus on patients’ taking responsibility for making important health-related changes (Deci, Ryan, 2012). However, motivational interviewing was developed within the domain of health-behavior change and paid little attention to theory (Deci, Ryan, 2012). When Miller and Rose (2009) started to develop a theory for motivational interviewing its primary focus was on patients’ change talk as the central mechanism for promoting health-behavior change (Deci, Ryan, 2012). For counselor behaviors and overall spirit, total positive client change talk was the mediating variable, and has become an important construct in motivational interviewing (Pirlott et al, 2012). Change talk means having patients talk about their behaviour change-planning when and how to do it, enumerating the advantages of doing it, guessing how it might affect the people to whom they are closest (Deci, Ryan, 2012). Clients are encouraged to express their own reasons and plans for change using change talk (Resnicow, McMaster, 2012). As Deci and Ryan (2012) states, this raises some question about the relation of the two approaches, because autonomy seems recently to have been given less importance in motivational interviewing than was initially the case. To maintain strong similarity in methods of motivational interviewing and self-determination theory for promoting health-behavior change, the discussions of change talk will need to distinguish between autonomous and controlled change talk and between practitioners being autonomy-supportive rather than controlled in promoting the change talk (Deci, Ryan, 2012). Authors believe that support for autonomy is at the heart of person-centered approaches, including motivational interviewing, and that it should remain there (Deci, Ryan, 2012).

To sum up the theory of motivational interviewing the word “motivational” should be used only when there is a primary intentional focus on increasing readiness for change (Rollnick, Miller, 1995). Further, “motivational interviewing” should be used only when careful attention has been paid to the definition and characteristic spirit described above (Rollnick, Miller, 1995). It should also be useful to distinguish between explanations of the mechanisms by which brief interventions work and specific methods, derived from motivational interviewing, which are designed to encourage behavior change (Rollnick, Miller, 1995). Although motivational interviewing does, in one sense, seek to “confront” clients with reality, this method differs substantially from more aggressive styles of confrontation (Rollnick, Miller, 1995). Motivational interviewing should not be offered when a therapist behaves as mentioned below, because it violate the essential spirit of motivational interviewing (Rollnick, Miller, 1995, Rollnick, Miller, Butler, 2008):

- argues that the person has a problem and needs to change;
- offers direct advice or prescribes solutions to the problem without the person's permission or without actively encouraging the person to make his or her own choices;
- uses an authoritative/expert stance leaving the client in a passive role;
• does most of the talking, or functions as a unidirectional information delivery system:
  • imposes a diagnostic label;
  • behaves in a punitive or coercive manner.

**Working mechanism**

Motivational interviewing has been found effective in changing various health behaviors. Change talk goes beyond the “big four” lifestyle habits: smoking, excessive drinking, lack of exercise, and unhealthy diet but it also includes the use of aids, devices, medicines, etc. (Rollnick et al., 2010; Hall, Gibbie, Lubman, 2012). However, it is not a panacea, not all trials have been positive, and the size of effect has varied widely (Rollnick, Miller, Butler, 2008). Although empirical investigations strongly support the use of motivational interviewing, there is no theory to clearly explain how and why motivational interviewing works (Faris et al, 2009). Researchers are just beginning to know a little bit about it. Variability in outcomes across and within studies suggests the need to understand when and how a treatment works and the conditions of delivery that may affect its efficacy (Miller, Rose, 2009).

It is proposed that motivational interviewing is efficacious because it mobilizes clients’ inherent resources for motivation, learning, creativity, problem solving, and goal-driven activity (Faris et al, 2009). It works by activating patient’s own motivation for change and adherence to treatment that is why patients exposed to motivational interviewing have been found to be more likely to do positive changes and to follow the treatment schedule more strictly (Rollnick, Miller, Butler, 2008). This method involves helping patients to say why and how they might change, and is based on the use of a guiding style described above (Rollnick, Miller, Butler, 2008). There is something in human nature that resists being coerced and told what to do, that is why guiding style reduces patients’ resistance (Rollnick, Miller, Butler, 2008) and suites to consultations about change (Table 1) (Rollnick et al., 2010).

**Table 1. Contrasting directing and guiding styles (Rollnick et al., 2010)**

<table>
<thead>
<tr>
<th>Directing style</th>
<th>Guiding style</th>
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<td>“OK, so your weight is putting your health at serious risk. You already have early diabetes. <em>(Patient often resists at this point.)</em> ... Overweight is conceptually very simple, if you think about it. Too much in, not enough out. So you need to eat less and exercise more. There no way you can get around that simple fact.”</td>
<td>“OK, let’s have a look at this together and see what you think. From my side, losing some weight and getting more exercise will help your diabetes and your health, but what feels right for you? <em>(Patient often expresses ambivalence at this point.)</em> ... So you can see the value of these things, but you struggle to see how you can succeed at this point in time. OK. It’s up to you to decide when and how to make any changes. I wonder what sort of small changes might make sense to you?</td>
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</table>

*Patient replies with a “yes, but ...” argument.* | *Patient says how change might be possible.*
Patients often seem ambivalent or unmotivated, and practitioners typically try to advise them to change, using a directing style, which in turn generates resistance or passivity in the patient (Rollnick et al., 2010). Motivational interviewing is an alternative approach to discussing behavior change that fosters a constructive doctor-patient relationship and leads to better outcomes for patients (Miller, Rollnick, 2002). There are mentioned three principles which counselor should follow by applying the motivational interviewing for patients (Rollnick et al., 2010):

1. engage with and work in collaboration with patients;
2. emphasize their autonomy over decision making;
3. elicit their motivation for change.

It is recommended to use three core communication skills – asking, listening and informing – in the service of the guiding style to draw out the patients’ ideas and solutions (Rollnick, Miller, Butler, 2008; Rollnick et al., 2010). This shows that the psychologist wants to know about and respect their ability to make sound decisions (Rollnick et al., 2010):

- “Asking” open ended questions – it invites the patient to consider how and why he might change;
- “Listening” to the patient’s experience – this helps to “capture” patient’s account with brief summaries or reflective listening, to express empathy, to encourage the patient to elaborate and is often the best way to respond to resistance;
- “Informing” – it is made by asking permission to provide information and then asking what the implications might be for the patient.

Motivational interviewing aims to elicit the motivation to change from the patient, rather than to try to install this in them; it also aims to work with their strengths rather than just talk about problems and weakness (Rollnick et al., 2010). Rather than impose psychologist’s priority on patients, there should be conducted an overview by inviting them to select an issue or behavior that they are most ready and able to tackle (Rollnick et al., 2010). It is suggested to retain control of the overall direction of the consultation, and hand over to the patient control about the what, why, and how of change (Rollnick et al., 2010). Counselor certainly can and should offer his or her views and expertise, but within a style that is collaborative and emphasizes the patient’s freedom to make any final decision (Rollnick et al., 2010).

Technical and relational components are not rival or incompatible hypotheses (Miller, Rose, 2009). Psychotherapy research has long postulated a combination of specific (technical) and general or non-specific (relational) factors that influence outcome (Miller, Rose, 2009). Figure 2 illustrates a variety of pathways by which motivational interviewing may facilitate behavior change (Miller, Rose, 2009):

- consistent practice does significantly increase client change talk and decrease resistance (pathways 1 and 2);
- the natural language utterances of clients do predict behavior change (pathways 3–5);
• there is predicted a direct relationship between therapist style and client outcome (path 7);
• training clinicians in motivational interviewing should change practice behavior and improve their clients' outcomes (pathways 6, 8–10).

**Figure 2. Hypothesized Relationships Among Process and Outcome Variables in Motivational Interviewing (Miller, Rose, 2009)**

Motivational interviewing is a psychotherapeutic method that is evidence-based, relatively brief, specifiable, applicable across a wide variety of problem areas, complementary to other active treatment methods, and learnable by a broad range of helping professionals (Miller, Rose, 2009). A testable theory of its mechanisms of action is emerging, with measurable components that are both relational and technical (Miller, Rose, 2009).

**Conclusions**

Although motivational interviewing is introduced as effective and usable method for health behavior change there is no theory to clearly explain how and why it works. Evolving theory of this method is emphasizing a relational component focused on empathy and the interpersonal spirit of motivational interviewing, and a technical component involving the differential evocation and reinforcement of client change talk. There is assumption that motivational interviewing is congruent with self-determination theory because both approaches focus on patients’ taking responsibility for making important health-related changes. In practice this method is based on the use of a guiding style. There is proposed that motivational interviewing is working because it mobilizes clients’ inherent resources for motivation and works by activating patient’s own motivation for change. According to the fact that there is remaining need to understand when and how motivational interviewing works and that it is quite an innovative counseling method in Lithuania empirical studies should be made on how motivational interviewing affects Lithuanians.
References


EMPLOYEES’ ORGANIZATIONAL COMMITMENT AND EFFORT PROPENSITY: THE DIFFERENCE BETWEEN PRIVATE AND PUBLIC SECTOR

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Abstract

Purpose – The present study investigates the relationships of employees organizational commitment and effort propensity depending on a sector of organization (public and private sector).

Design/methodology/approach – A survey was conducted using questionnaire made up of Organizational commitment questionnaire (Allen, Meyer, 1990), Effort propensity questionnaire (Schnake, 2007), and sociodemographic questions. The respondents were 248 Lithuanian employees working in different public and private organizations.

Findings – It was found significant differences among the private and public sector employees for types of organizational commitment and effort propensity. Employees in the private sector are more affectively and normatively committed than employees in public sector. Besides, employees in the public sector withhold efforts much more than employees in the private sector. Whereas, there were no differences for extra-role performance, in-role performance, withdrawal, and propensity to turnover among the private and public sector of organization. Also analysis revealed significant differences in connections between organizational commitment and various aspects of effort propensity depending on a sector of organization. The conclusion has been made that there is a significant difference between private and public sector employee’s organizational commitment and effort propensity.

Research limitations/implications – The sample was not selected randomly and, therefore, may not represent all population of Lithuanian employees. In addition, questions asking employees quite a sensitive and possibly discreet aspects related to their propensity to withhold effort at work may cause social desirability effect. The future research will need to determine whether organizational commitment could predict different forms of effort propensity, and to expand the current model of commitment's implications.

Practical implications – The findings may give some references and be useful for managers and HR consultants seeking employees who tend to offer extra effort and less withdraw from work in various ways.

Originality/Value – This is the first study to examine the relationship between organizational commitment and effort propensity in Lithuania.

Keywords: effort propensity, employee, organizational commitment, private and public sector.
**Research type**: research paper.

**Introduction**

Over the years, considerable research has been devoted to the different withdrawal behaviors, such as lateness (Berry et al., 2012; Joelle et al., 2008; Koslowsky et al., 1997), absenteeism (Consiglio et al., 2013; Gellatly, 1995; Hausknecht, et al., 2008) and turnover (Gautam et al., 2001; Hallberg & Schaufeli, 2006; Ng & Butt, 2009; Soonhee, 2012. Wang et al., 2012). Not only the physical but also a mental absence can be a real challenge for the productivity of any organization. Unfortunately, the withholding effort or, contrary, offering various levels of efforts is equally newsworthy but lesser explorative element of withdrawal from work (Birati, Tziner, 1996; Kidwell et al, 1993; Schnake, 2007). Evidently, withholding behavior at work disrupt ordinary processes in the organization (Birati, Tziner, 1996). The organization meets with various loss of employees who withhold effort (Sagie, Birati, 2002). Sagie and others (2002) noted that generally employees waste 5 per cent of total work hours due to withholding effort at work. It means that employer pays salary for a job not ineffectively done. Thus a large company has heavy expenses if having huge amount of employees which withhold their effort. Withholding behavior affects the effectiveness of organization not only directly but also indirectly. According to Kidwell and Bennett (1993), the withholding behavior and mentally absent employee may set off squandering time in other employees in the organization or, even worse, may cause some moral issue, weaken motivation or commitment for those who fairly fulfill their duties.

According to Kidwell and Bennet (1993), withholding effort might be defined as the likelihood that an employee will give less than full effort in fulfilling obligations. Later Schnake (2007) suggested to employ a new construct investigating withholding effort. It is a propensity to withhold effort or effort propensity. As Schnake (2007) stated, a tendency to behavior in particular way instead of an actual behavior may be more informative because can be applied across different tasks and settings and is useful for avoiding difficulties with measuring an actual effort and behavior. Consequently, this paper refers to Schnake (2007) integrative model of effort propensity on a continuum ranging from withdrawal to offer an extra effort. Five levels of effort propensity are included in this model: propensity to turnover, propensity to withdrawal, propensity to withhold effort, propensity to offer expected level of effort (in-role performance), and propensity to offer an extra effort (extra-role performance). While turnover and withdrawal from work is in the focus of researchers attention, some scientists and practitioners encourage investigate not only the negative side of effort propensity but also turn attention to the propensity to effort in various levels (e.g., Schnake, 2007).

For years, research has focused on the factors that motivate employees to offer effort that would benefit themselves and their organizations (e.g., Maslow, 1948; Vroom, 1966; Locke, 1978; et al.). Recently the rapidly changing environment stimulates managers to search for new ways to increase the level of effort propensity. Some researchers agree that organizational commitment as a desireable and powerfull tool for most managers to
bind employees to the organization and enhance its productivity in some way may reduce a likelihood of withholding efforts (Kidwell, Robbie, 2003; Schnake, 2007). Especially this remark should bring to managers' or HR specialists' notice in Lithuanian organizations in public sector where employees generally remain in the organization because they need to. Their commitment mostly refers to an awareness of the costs associated with leaving the organization. Additionally, results from different countries demonstrate that public sector employees are less committed to an organization than in private sector (Lyons et al., 2006; Markovits et al., 2007). Also it seems likely that employees frequently withhold their effort in the public sector. Thus investigating the relationship between organizational commitment and effort propensity in private and public organizations in Lithuania may serve in understanding and moderating withdrawal behavior and withholding efforts.

Organizational commitment is quite new and little investigated subject of research in Lithuania, although it is one of the most important and explorative construct in organizational psychology and has unquestionable positive consequences to employees and organization. Due to a lively interest in organizational commitment there are many attempts to define the construct of organizational commitment and suggest different models of it (Allen, Meyer, 1990; O'Reilly, Chatman, 1986; Porter et al., 1974). Recently the most dominant model of organizational commitment in organizational commitment research arguably is the three-component organizational commitment, proposed by Meyer and Allen (1991) (Ertosun, Erdil, 2012; Gill et al., 2011; Neyer et al., 2012; etc). The model has been applicable across different countries (e.g., Gill, 2011; Hsiao, Chen, 2012; Nasr, 2012; Wasti, 2002), including Lithuania (Labatmediene et al., 2007; Kavaliauskiene, 2012).

Allen and Meyer (1990) defined organizational commitment as "a psychological state that characterizes the employee's relationship with the organization" and has implications for the decision to continue or discontinue membership in the organization (Allen, Meyer, 1990, p. 4). According to the three-component model of organizational commitment, it can take multiple forms, each characterized by a different psychological state (Allen, Meyer, 1990; Meyer, Allen, 1991). The authors of the model stated that affective commitment is experienced as emotional attachment to and desire to remain with the organization. Continuance commitment refers to an awareness of possible costs associated with leaving the organization. Finally, normative commitment reflects a sense of obligation to remain in the organization (Allen, Meyer, 1990; Meyer, Allen, 1991). As Meyer and others (2002) stated in meta-analysis all three components of commitment bind employee to the organization and decrease the likelihood of turnover. Also there is an evidence in many research that implications of different forms of commitment for employees and organization can differ (Meyer et al., 2002; Park, Rainey, 2007; Wasti, 2002).

As we know employee committed only because of the costs related with leaving the organization may perform below his or her capabilities or even withhold effort. Unfortunately, current research do not bring us a clear answer of how organizational commitment is related to the effort propensity. Only several investigations have been
made to assess the connections between organizational commitment and withholding effort excluding the various levels of offering effort (Kidwell, Robbie, 2003). Also literature suggests indirect evidences in predicting connections between commitment and effort propensity. Withholding effort was found to be negatively related to job satisfaction (Kidwell, Valentine, 2009) which is mostly found to be positively related to organizational commitment (Qamar, 2012; Wasti, 2002). Additionally, many authors have identified a connection between organizational commitment and organizational citizenship behavior which is closely related to extra-role performance in effort propensity model (Qamar, 2012; Wasti, 2002). Besides, it is well known that organizational commitment especially affective component is significantly positively related to performance and productivity (Meyer et al., 2002). Moreover, there is no doubt about the negative relationship between commitment and withdrawal behavior which is a part of effort propensity. For example, Koslowsky et al. (1997) demonstrated that lateness at work significantly correlates with low organizational commitment. Wasti (2002) found that affective and continuance commitment were negatively correlated with work withdrawal. Also there are many evidences that the more employees are committed to organization, the less they intend to leave the organization (Hallberg, Schaufeli, 2006; Labatmediene et al., 2007; Meyer et al., 2002; Wasti, 2002).

Based on this evidence it is obviously that present studies on organizational commitment and even more on effort propensity do not give us a clear and comprehensive explanation of how different components of organizational commitment correlate with different levels of effort propensity. However, several direct and indirect attempts to determine the relations between organizational commitment and effort propensity enable to hypothesize that organizational commitment will be positively related to propensity to offer expected and extra effort and, contrary, it will be negatively correlated with propensity to withdrawal and withhold effort. Therefore, the purpose of the present study was to investigate the relationships of employees' organizational commitment using Meyer and Allen's (1991) three-component model of organizational commitment and effort propensity depending on a sector of organization (public and private sector) in Lithuanian sample.

**Method**

**Participants**

The research involved 248 Lithuanian employees working in different public (N=104, 41,9 %) and private (N=144, 58,1 %) organizations. There were 74 (30%) males and 174 (70%) females. Participants' age ranged from 22 to 66 years (M = 39,53, SD = 11,43). The majority of respondents have had a Bachelor's degree (N=177, 71,4 %). 154 employees (62,1%) have been working for more than 10 years. About a half of respondents (N=116, 46,8 %) have been working in the current organization for 5 years of less, the rest of respondents (N=131, 52,8 %) have been working over 5 years in the current organization.
Instruments

Employees’ organizational commitment was assessed using the 18-item revised Organizational commitment scale (Meyer et al., 1993). Affective, Continuance and Normative commitment were each represented by six items. Items were rated on a 7-point Likert-type scale from 1 (strongly disagree) to 7 (strongly agree). The scale was translated into Lithuanian language using a two-way translation. A sample item from the AC scale was ‘I would be happy to spend the rest of my career in this organization.’ A sample item from the NC scale was ‘I do not feel any obligation to remain with my current employer’. A sample item from the CC scale was ‘I feel I have too few options to consider leaving this organization’. Cronbach’s α coefficients of reliability in this investigation respectively were 0.84, 0.72 and 0.79.

Effort propensity was measured using Effort propensity scale (Kidwell, Robie, 2003, taken from Schnake, 2007) consisted of 15 items. The scale was made of five subscales (3 items in each scale): extra-role performance, in-role performance, withholding effort, withdrawal, and propensity to turnover. Items were rated on a 7-point Likert-type scale from 1 (strongly disagree) to 7 (strongly agree). The scale was translated into Lithuanian language using a two-way translation. Cronbach’s α coefficients of reliability respectively were 0.73, 0.67, 0.59, 0.55, and 0.89.

Results

First of all the analysis of bivariate correlation among organizational commitment and effort propensity was made. The results yielded important associations with three components of organizational commitment and some forms of effort propensity (see Table I).

The extra-role performance was positively related to all three components of organizational commitment. But there was no significant correlation between in-role performance and all three components of organizational commitment. Withholding effort as well as propensity to turnover were found as significantly negatively related to affective, normative and continuance commitment. Finally, withdrawal behavior was negatively correlated with affective and normative commitment. The results showed that all three components of organizational commitment are related to effort propensity except in-role performance.
Table I. Descriptive Statistics for organizational commitment and effort propensity

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<th>Mean</th>
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<th>2</th>
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<th>5</th>
<th>6</th>
<th>7</th>
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<tr>
<td>1 Affective commitment</td>
<td>4.84</td>
<td>1.29</td>
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<td></td>
<td></td>
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<tr>
<td>2 Continuance commitment</td>
<td>4.12</td>
<td>1.23</td>
<td>.71**</td>
<td>1.00</td>
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<td></td>
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<tr>
<td>3 Normative commitment</td>
<td>4.11</td>
<td>1.19</td>
<td>.49**</td>
<td>.61**</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>4 Extra-role performance</td>
<td>68.8</td>
<td>18.1</td>
<td>.20**</td>
<td>.14*</td>
<td>.15*</td>
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<tr>
<td>5 In-role performance</td>
<td>72.0</td>
<td>7.34</td>
<td>.08</td>
<td>-.00</td>
<td>.09</td>
<td>.17</td>
<td>1.00</td>
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<tr>
<td>6 Withholding effort</td>
<td>28.3</td>
<td>10.1</td>
<td>-.21**</td>
<td>-.21**</td>
<td>-.24**</td>
<td>-.04</td>
<td>-.28**</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Withdrawal</td>
<td>12.0</td>
<td>5.69</td>
<td>-.15*</td>
<td>-.07</td>
<td>-.17**</td>
<td>-.07</td>
<td>-.26**</td>
<td>.59*</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>8 Propensity to turnover</td>
<td>7.71</td>
<td>4.62</td>
<td>-.53**</td>
<td>-.42**</td>
<td>-.38**</td>
<td>-.10</td>
<td>-.27**</td>
<td>.16*</td>
<td>.19**</td>
<td>1.00</td>
</tr>
</tbody>
</table>

* significant at p<0.05  
** significant at p<0.01

The Spearmen’s correlations were used in order to assess what demographic and social variables are correlated with organizational commitment and effort propensity. Table II presents these results. The analysis of results revealed that affective, normative, and continuance commitment are positively correlated with age as well as tenure of employees. Besides, affective and normative commitment were positively related to...
tenure in current organization, whereas there was no significant correlation between continuance commitment and tenure in current organization.

Also the findings revealed significant differences among the private and public sector employees for types of organizational commitment and effort propensity (see Table III). Employees in the private sector are more affectively (p<0.05) and normatively (p<0.01) committed than employees in public sector. Besides, employees in the public sector withhold efforts (p<0.05) much more than employees in the private sector. Whereas, there were no differences for extra-role performance (p>0.05), in-role performance (p>0.05), withdrawal (p>0.05), and propensity to turnover (p>0.05) among the private and public sector of organization.

<table>
<thead>
<tr>
<th></th>
<th>Private sector</th>
<th>Public sector</th>
<th>Z</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affective commitment</td>
<td>4.98</td>
<td>4.63</td>
<td>1.944</td>
<td>.04</td>
</tr>
<tr>
<td>Continuance commitment</td>
<td>4.12</td>
<td>4.11</td>
<td>0.136</td>
<td>.89</td>
</tr>
<tr>
<td>Normative commitment</td>
<td>4.37</td>
<td>3.77</td>
<td>3.796</td>
<td>.00</td>
</tr>
<tr>
<td>Extra-role performance</td>
<td>68.00</td>
<td>69.90</td>
<td>-0.961</td>
<td>.34</td>
</tr>
<tr>
<td>In-role performance</td>
<td>71.77</td>
<td>72.43</td>
<td>-0.639</td>
<td>.52</td>
</tr>
<tr>
<td>Withholding effort</td>
<td>26.87</td>
<td>30.29</td>
<td>-2.586</td>
<td>.01</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>11.69</td>
<td>12.53</td>
<td>-1.072</td>
<td>.28</td>
</tr>
<tr>
<td>Propensity to turnover</td>
<td>7.62</td>
<td>7.83</td>
<td>-0.364</td>
<td>.71</td>
</tr>
</tbody>
</table>

The analysis of present study revealed differences in connections between organizational commitment and various aspects of effort propensity depending on a sector of organization (see Table IV). It was revealed that affective commitment was positively correlated with extra-role performance (p<0.01) and in-role performance (p<0.05) and negatively correlated with withholding effort (p<0.01) as well as propensity to turnover (p<0.05) in private sector. Whereas affective commitment was positively related only to extra-role behavior (p<0.01) and negatively related to withdrawal behavior (p<0.01) as well as propensity to turnover (p<0.05) in private sector. Continuance commitment was found as significantly positively related to in-role behavior (p<0.05) and negatively to withholding effort and propensity to turnover (p<0.01) in private sector and there was found negatively correlated only with propensity to turnover (p<0.05) in public sector. Continuance commitment was found as significantly positively related to in-role behavior (p<0.05) and negatively to withholding effort and propensity to turnover (p<0.01) in private sector and there was found negatively correlated only with propensity to turnover (p<0.05) in public sector. Also the findings showed significant positive correlation between normative commitment and extra-role behavior (p<0.05) in private sector. Additionally, normative commitment was negatively related only to propensity to turnover in private sector (p<0.01), whereas there was a significant negative correlation between normative commitment and all three negative sides of withholding effort, that is, withholding effort, withdrawal, and propensity to turnover, in public sector organizations.
Table IV. Connections between organizational commitment and effort propensity in private and public sector

<table>
<thead>
<tr>
<th></th>
<th>Private sector</th>
<th>Public sector</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Affective</td>
<td>Continuance</td>
</tr>
<tr>
<td>Extra-role performance</td>
<td>.22**</td>
<td>.11</td>
</tr>
<tr>
<td>In-role performance</td>
<td>.18*</td>
<td>.18*</td>
</tr>
<tr>
<td>Withholding effort</td>
<td>-.22**</td>
<td>-.33**</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>-.07</td>
<td>-.16</td>
</tr>
<tr>
<td>Propensity to turnover</td>
<td>-.48**</td>
<td>-.31**</td>
</tr>
</tbody>
</table>

* significant at p<0.05
** significant at p<0.01

Discussions and conclusions

The present study has investigated the relationships of employees organizational commitment and effort propensity. The focus of attention was pointed to sector of organization (private vs. public) because of many evidences that employees in the public sector are less committed to an organization than in private sector (Lyons et al., 2006; Markovits et al., 2007). Furthermore, practitioners argue that employees in public sector in Lithuania withhold effort at higher level as compared with employees in private sector.

The findings revealed some important links and differences. First of all, the results indicated significant differences among the private and public sector employees in Lithuania for types of organizational commitment and effort propensity. Employees in the private sector are more affectively and normatively committed than employees in public sector. These findings supported previous research (Lyons et al., 2006; Markovits et al., 2007). Besides, as it was expected, employees withhold effort much more in the public sector than employees in the private sector. These results lead to consider practical issues related to public sector organizations in Lithuania. As we know many interventions are turn on finance and other resources which additionally depend on governmental policies. Consequently, managers or HR specialists working in public sector should bring their attention to create and develop organizational environment and job itself to motive employees to offer an extra effort at work and to feel attached to their organization. Empowering employees, working in team, sharing and delegating of control, improving communication, involving in decision making process, etc. may be very effective methods seeking commitment and effort (Ugboro, Obeng, 2001; Lyons et al., 2006; Markovits et al., 2007).

According to the findings, there were no differences for extra-role performance, in-role performance, withdrawal, and propensity to turnover among the private and public sector of organization although some authors noticed that public sector employees
demonstrate higher degree of organizational citizenship behavior (parallel to extra-effort performance) as compared to private sector (Sharma et al., 2011).

Also this study showed that all three components of organizational commitment are related to effort propensity except in-role performance. As was found by some recent studies (e.g., Qamar, 2012; Wasti, 2002) extra-role performance which is closely related to OCB was positively correlated to all three components of organizational commitment. Whereas, withholding effort as well as propensity to turnover were found as significantly negatively related to affective, normative and continuance commitment. Such result supported some previous ideas (Hallberg, Schaufeli, 2006; Kiddwell, Valentine, 2009; Labatmediene et al., 2007; Meyer et al., 2002; Wasti, 2002) that the more employees are committed to the organization and satisfied with job, the less they tend to withhold effort and leave the organization. Besides, many authors agree that high level of organizational commitment decreases the likelihood of withdrawal behavior which is a part of effort propensity (e.g., Koslowsky et al., 1997). The analysis of this investigation revealed that withdrawal behavior was negatively correlated with affective and normative commitment. Only there was no relationship between continuance commitment and employees' withdrawal in this investigation.

Finally, the results of the present study confirm that there is a significant difference in connections between private and public sector employee’s organizational commitment and effort propensity. In summary, different components of organizational commitment are more related to effort propensity in private sector organizations as compared to public sector organizations. Besides, organizational commitment was found as more significantly related to positive aspects of effort propensity (extra-role and in-role performance) in private sector, while it was more correlated with negative forms of effort propensity (withholding effort, withdrawal and propensity to turnover) in public sector.

This study has certain limitations. The sample was not selected randomly and, therefore, may not represent all population of Lithuanian employees in private and public sectors. In addition, questions asking employees quite sensitive and possibly discreet aspects related to their propensity to withhold effort at work may cause social desirability effects and thus affect the reliability of results related to effort propensity.

To conclude, the result of this study will hopefully serve for better understanding the relationship between organizational commitment and effort propensity not only in private and public sectors in Lithuania but also in other settings and cultures. From a practical point of view, the findings of this investigation may give some references and be useful for managers and HR consultants seeking employees who tend to offer extra effort and less withdraw from work in various ways. The future research will need to determine whether organizational commitment could predict different forms of effort propensity, and to expand the current model of implications of organizational commitment.
References


APPLICATION OF ISO 9001 AND EFQM EXCELLENCE MODEL WITHIN HIGHER EDUCATION INSTITUTIONS: PRACTICAL EXPERIENCES ANALYSIS

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Mykolas Romeris University, Lithuania

Abstract

Purpose – to systemise and analyse practical experiences of the application of the EFQM Excellence Model (EM) and ISO 9001 standard within Higher education institutions (HEIs). There is an aim to understand: 1) what are the main motives of the application of the analysed quality management (QM) means within academic institutions; 2) what are the most common issues occurring during the implementation; 3) what are the most common benefits.

Design/methodology/approach – practical experiences of HEIs from various countries are analysed and the data from 30 case studies (17 case studies focus on experiences applying ISO 9001 standard for quality management system (QMS) development and 13 case studies focus on experiences implementing EFQM EM) summarized. The sample of the research was formed after review of relevant scientific researches between 1995 and 2013 available in EBSCO, Emerald Management Journal Collection, ProQuest, JSTOR, Sage Publications: Sage Journal Online databases. Selection criteria of case studies was application of ISO 9001 and EFQM EM in HEIs from various countries. Research methods: systematic scientific literature analysis, content analysis.

Findings – the research revealed that the main motives of HEIs to apply ISO 9001 and the EFQM EM are related the most common to internal institutional needs, competitiveness in the market and requirements of the stakeholders. 18 fundamental issues of the application of the means were identified which are more often related to institutional problems than to standard/model issues. The implementation of both means within academic institutions conditioned the benefits linked with internal institutional changes. The most significant general benefits are related to the goals of the means and cultural changes of the institution.

Research limitations/implications – case studies publicised in English and Lithuanian languages only were analysed in the article. The inclusion of available researches in different languages (Spanish, Romanian and Czech) could provide a wider variety of the approaches in terms of the question analysed.

Originality/value – experiences of HEIs from various countries applying ISO 9001 standard and EFQM EM were systemised, analysed and compared in the article.

Keywords: Higher education institutions, quality management system, standard, quality management means, ISO 9001, EFQM Excellence Model.

Research type: research paper.
Introduction

International organization for standardization (ISO) started to collect data about ISO 9000 certified organisations since 1993. According to ISO reports 1,111,698 ISO 9001 certificates were issued in 180 countries between 1993 and 2011. The highest number of ISO 9001 certificates were as follows China (328,213), Italy (171,947), Japan (56,912), Spain (53,057), Germany (49,540), United Kingdom (43,564), India (29,574), France (29,215) etc. (ISO, 2012).

According to the European Foundation for Quality Management (EFQM) more than 30,000 organisations worldwide are using the EFQM EM (EFQM, 2012). The diffusion of the use of the EM can be observed through the number of the EFQM members and recognitions only. According to the EFQM most EFQM awards were issued to United Kingdom (44), Spain (33), Germany (26) and Turkey (21) between 1992 and 2006 (Allur, 2010). In comparison between 2006 and 2013 the highest number of the recognitions (at all levels) was issued to Spain (889), United Kingdom (320), Germany (174), Switzerland (139) and Colombia (130) (EFQM Recognition).

In 2008 according to J. Llach et al. (2011) the education sector was in 12th position out of the 39 on the rating board of ISO 9001 certified sectors. The number of certificates in the education sector between 2004 and 2008 increased more than 40 percent (Kasperavičiūtė, 2012). Meanwhile according to the EFQM education services sector is on the first place of 71 sectors that got any level recognition between 2006 and 2013 (EFQM Recognition).

It should be noted that it is unknown how many ISO 9001 certified HEIs there are in general. General numbers provided in the ISO reports about education institutions in 37th domain does not allow to identify them because the 37th domain includes various schools (e.g. driving), sports and recreational education and etc. (Ekonomines, 2008). Thus, ISO does not provide any detailed information about particular certified education institutions (in this case higher education) nor about the distribution of the certifications in education area across the countries. It is important to emphasize that the “popularity” of the QMS certified according to ISO 9001 requirements between HEIs cannot be identified nor based on ISO reports nor based on the reports of national standardization institutions (ISO members) (except single cases).

EFQM, comparing with ISO, provides the names of the recognised education sector institutions and the names of education sector institutions that are members of the EFQM. 720 educational services institutions achieved various recognitions between 2006 and 2013. Based on the EFQM members lists of 2011 and 2013 HEIs constitute respectively 50% and 70% of about 50 (10%) education sector institutions of more than 500 members in 2011, and of 49 (11%) education institutions of 444 members in 2013 (Kasperavičiūtė, 2011; EFQM list of members).

Thus, it is difficult and complicated to obtain the view of the diffusion of the use of ISO 9001 and the EM within HEIs (ISO 9001 in particular), because their representative institutions provide generic data lacking any specific details.
Practical experiences of HEIs from various countries are analysed and the data from 30 case studies (17 case studies focus on experiences applying ISO 9001 standard for QMS development (Basir, 2012; Chaudhry et al., 2011; Gelders et al., 1995; Hutyra, 2007; Leskauskaitė et al., 2012; Papadimitriou et al., 2010; Moreland et al., 1998; Lundquist, 1997; Misiiunas, 2007; Paunescu, 2005; Ruževičius et al., 2007; Sencila et al., 2007; Sohail et al., 2003; Singh et al., 2006; Thonhauser et al., 2006; Yun-Yao et al., 2004; Tucci et al., 2007) and 13 case studies focus on experiences implementing EFQM EM (Tari et al., 2012; Tari et al., 2011; Tari, 2010; Spasos et al., 2008; Davies et al., 2007; Tari et al., 2007; Farana, 2007; Tari, 2006; Steed et al., 2005; Hides et al., 2004; Osseo-Asare et al., 2002; Steed, 2002; McAdam et al., 2000) summarised. There is an aim to understand: 1) what are the main motives of the application of the analysed QM means within academic institutions; 2) what are the most common issues occurring during the implementation; 3) what are the most common benefits.

Why Higher education institutions apply ISO 9001 standard and the EFQM EM?

The question “why” raised is important because it defines the real reasons for the implementation of the analysed QM means. In the scientific literature it is stated that QMS will be more efficient and deliver more benefits when they are applied based on internal motives and not due to the pressure of external forces (Llopis et al., 2003).

The analysis of the case studies of the implementation of ISO 9001 standard and the EFQM EM within HEIs identifies the fundamental and the most common internal motives and external motives (Table 1). The results show that both ISO 9001 standard and the EM are being applied within HEIs more often because of internal motives: in case of ISO 9001 standard internal motives constitute 57.89% while external motives – 42.11%; and in case of the EFQM EM internal motives constitute 65.62%, while external motives – 34.38%.

The identified fundamental (the most common) general internal reasons of the implementation of the analysed QM means within academic institutions are related to the opportunity to improve internal processes and procedures of the institution, to the improvement of management, performance and effectiveness. The motive of the improvement of the processes and procedures (including documentation) was the most frequently reported reason of the application of standardized QMS which is directly related to the primary purpose of ISO 9001 standard. In the scientific literature it is often emphasized the aim of HEIs to optimize administrative processes (Yun-Yao et al., 2004; Misiiunas, 2007; Gelders et al., 1995; Tucci et al., 2007), identify the activities and adjust the documentation (Singh et al., 2006; Sohail et al., 2003). Ruževičius et al. (2007) states that the development of the administrative quality within HEIs is one of the fundamental requirements aiming to meet the needs of your customers and to achieve the goals set. It should be noted that like in case of ISO 9001 most of internal motives provided in Table 1 specific to the EFQM EM (self-assessment, more holistic view of the business, benchmarking, integration of management initiatives and tools and etc.) are directly related to the goals of the EM that helps organisations to develop a particular
management system, assess where they are on the path to excellence and understand any potential gaps. The self-assessment is one of the fundamental motives of the usage of the EM (a primary goal of the Model) and the comprehensive, systematic and sustainable review of the performance of the organisation.

### Table 1. Motives of the application of ISO 9001 standard and the EFQM EM in academic institutions

<table>
<thead>
<tr>
<th>ISO 9001 standard</th>
<th>EFQM Excellence Model</th>
<th>Frequency (of 14)</th>
<th>Frequency (of 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>External motives</strong></td>
<td><strong>Internal motives</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due to the competitiveness in the market [1;2;3;4;5;6;7]</td>
<td>Due to the competitiveness in the market [16;17;18;19]</td>
<td>7 (50%)</td>
<td>4 (44%)</td>
</tr>
<tr>
<td>Due to the pressure/requirements of the stakeholders [5;6;8]</td>
<td>Due to the pressure/satisfaction of the needs of the stakeholders [18;19;20]</td>
<td>4 (29%)</td>
<td>3 (33%)</td>
</tr>
<tr>
<td>Due to the national requirements [2;9]</td>
<td>Due to the national requirements [16;21]</td>
<td>2 (14%)</td>
<td>2 (22%)</td>
</tr>
<tr>
<td><strong>External motives</strong></td>
<td><strong>Internal motives</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due to the improvement of the processes and procedures (including documentation) [1;2;5;8;11;12;13]</td>
<td>Due to the improvement of the performance and effectiveness [4;12]</td>
<td>7 (50%)</td>
<td>2 (14%)</td>
</tr>
<tr>
<td>Due to the management improvement [12;14]</td>
<td>Due to the management improvement [19;22]</td>
<td>2 (14%)</td>
<td>2 (22%)</td>
</tr>
<tr>
<td><strong>External motives</strong></td>
<td><strong>Internal motives</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due to the image improvement [2;10;11]</td>
<td>Due to the self-assessment [16;17;21]</td>
<td>3 (21%)</td>
<td>3 (33%)</td>
</tr>
<tr>
<td>Due to the clear definition of the objectives and quality policy [5;8;11]</td>
<td>Due to the external assessment [17;19]</td>
<td>3 (21%)</td>
<td>2 (22%)</td>
</tr>
<tr>
<td>Due to the permanent necessity to improve quality [1;8]</td>
<td>Due to the lack of resources / the more effective utilisation [18;20]</td>
<td>2 (14%)</td>
<td>2 (22%)</td>
</tr>
<tr>
<td>Due to the requirements of the leadership [6;15]</td>
<td>Due to the improvement of the services delivered [20;24]</td>
<td>2 (14%)</td>
<td>2 (22%)</td>
</tr>
<tr>
<td>Due to the identification of the quality issues [2]</td>
<td>Due to the more effective policy and strategy [19]</td>
<td>1 (11%)</td>
<td>1 (11%)</td>
</tr>
</tbody>
</table>


Regarding *general external motives* both ISO 9001 standard and the EFQM EM the most common are seen as competitive “weapons” responding to challenges of the market. Universities being in the competitive environment must become service providing institutions that meet the needs of their customers, therefore ISO 9001 certificate is evidence that a university is managed properly, that the needs of the customers are identified and the environment of satisfying their needs is established, as states Hutyra.
The competitive environment promotes the pursuit of the responses to the challenges, therefore it is essential to manage the organisation in a systematic and clear way (i.e. invoking the EFQM EM and standardized QMS) (Farana, 2007) and to seek to become modern, progressive and a leading university at national level in order to meet the needs of the customers and partners who are using services of the university (Steed, 2002). Burli et al. (2012) suggests that some engineering institutes in India gained international recognition because they had ISO 9001:2000 certificate. Yun-Yao et al. (2004) emphasizes that competitiveness was one of the reasons of the implementation of ISO 9000 within HEIs in Taiwan (following the Me-too strategy, considering other institutions have ISO 9000 and assuming this is the main means in the competitive environment).

Another important general motive of the application of QM means is the pressure / requirements of the stakeholders. Hides et al. (2004) pointed out that „owing to pressures from a range of stakeholders (e.g. government, students and local communities) for a wider and improved range of services from Higher education sector in UK, linked with simultaneously increasing pressure on resource limitation, a consortium of UK universities is implementing EFQM EM self-assessment as a means for addressing these issues“. Steed (2002) emphasizes that „a university has a fundamental responsibility as an employer to meet the needs of the staff and must also satisfy the various demands of the funding bodies and numerous other agencies to which it is accountable“. The requirements of the customers was one of the reasons of the implementation of QMS within HEIs in Netherlands, Australia, Austria, Belgium, New Zealand, UK (Lundquist, 1997). The application of ISO 9000 standards within academic institutions in USA and UK was related to the pressure of the industry as one of the stakeholders to prepare more qualified employees (Thonhauser et al., 2006). It is important to note that private sector organisations often indicate “the pressure of the customers“ as one of the fundamental motives aiming ISO 9001 certificate, naming it as „necessary evil“ which is required by customers and stakeholders (Sampaio et al., 2009).

The research results show that the motives of the application of ISO 9001 standard and the EM within HEIs are more often related to internal institutional needs aiming to improve internal institutional processes and procedures (respectively 62% (±4%) average of internal motives and 38% (±4%) average of external motives). Evaluating an impact of external factors on the application of the means, on the one part it could be affirmed that nor the application of ISO standard nor the application of the EFQM EM is not a significant pressure from the outside, but a subjective action based on internal motives. On the other part it could be suggested that the application of both means is the impact of specific pressure from the outside. Regarding the most significant (the most often indicated) motives, there is an evident dominance of the motives of the competitiveness in the market and the pressure / satisfaction of the needs of the stakeholders. The factors of the competitiveness or the survival in the competitive environment and the pressure of the stakeholders explain the changes within HEIs, while the aim of institutions themselves to improve the performance, processes etc. shows their decision to implement these changes.
The issues of the application of ISO 9001 and the EFQM EM within HEIs

The implementation of QM means within HEIs is not without obstacles. The analysis of the case studies of the implementation of ISO 9001 and the EM within HEIs revealed 18 fundamental the most common their implementation issues (9 for each of the means) (Table 2). Two types of the issues are distinguished: institutional issues and standard / model issues. Institutional issues are related to particular internal organizational factors and include the lack of senior management and staff commitment, support and motivation, the lack of resources, the shortage of quality culture within institution, the increased workload etc. Standard / model issues are the problems that could be conditioned by the specifics of ISO 9001 standard and the EFQM EM, i.e. the difficulties understanding / interpreting ISO 9001 standard / the EFQM EM, the time-demanding implementation, the red-tape and bureaucracy and the constraint on academic and creative freedom.

The research results show that while developing the standardized QMS based on ISO 9001 requirements slightly more often organisations confront with institutional issues than with standard problems (institutional issues constitute 55.17%, standard issues – 44.83%). Whereas in case of the implementation of the EFQM EM institutional and model issues constitute equally 50% each. Respectively 53% (±3%) average of institutional issues and 47% (±3%) average of standard / model issues.

The research revealed that the lack of staff commitment, support and motivation, the lack of resources and the shortage of quality culture within institution are general institutional to ISO 9001 and the EM implementation related issues. The lack of staff commitment, support and motivation is one of the most common barriers pointed out when developing QM means (64% in case of ISO 9001 and 36% in case of the EM). The reasons of the absence of staff support could be related to many factors: both internal institutional factors (the shortage of quality culture within institution, leadership turnover and insufficient commitment, the lack of resources, the increased workload etc.) and the specifics of ISO standard and the EFQM EM themselves (it is difficult to understand and apply them in academic environment, their implementation is time-demanding, they create constraint on creative freedom and require lots of red-tape). Othman et al. (2007) found out that the dissatisfaction of academic staff with the implementation process of ISO standard in Malaysian colleges was higher than of non-academic staff due to the amount of the red-tape, due to the pressure from senior management to participate in the process, and due to „the doing all the jobs“ (academic staff perceived their responsibilities as being teachers more than administrators) as well as due to the thinking that the means being implemented won’t improve the present situation. Some researchers state that the efficient stimulus to operate appears when the perspectives of the results aimed are visible and the satisfaction with the ongoing process is felt. Fear and distrust are the biggest barriers for the successful start of the actions (Serafinas et al., 2007).
Table 2. The issues of the application of ISO 9001 standard and the EFQM EM within academic institutions

<table>
<thead>
<tr>
<th>ISO 9001 standard</th>
<th>Frequency (of 11)</th>
<th>EFQM Excellence Model</th>
<th>Frequency (of 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GENERAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of resources [3: 4: 8]</td>
<td>3 (27%)</td>
<td>Lack of resources [11: 12: 16]</td>
<td>3 (27%)</td>
</tr>
<tr>
<td>Shortage of quality culture within institution [1:4]</td>
<td>2 (18%)</td>
<td>Shortage of quality culture [11: 16: 17]</td>
<td>3 (27%)</td>
</tr>
<tr>
<td><strong>Standard / Model</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of information about the implementation of the model [11: 12: 16: 19]</td>
<td>4 (36%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constraint on creative freedom [4: 5]</td>
<td>2 (18%)</td>
<td>Constraint on academic freedom[17]</td>
<td>1 (9%)</td>
</tr>
<tr>
<td><strong>SPECIFIC TO PARTICULAR</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leadership turnover [5]</td>
<td>1 (9%)</td>
<td>Lack of support from quality unit [11: 12: 20]</td>
<td>3 (27%)</td>
</tr>
<tr>
<td>Red-tape and bureaucracy [4: 6: 7: 10]</td>
<td>4 (36%)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


The difficulties understanding / interpreting ISO 9001 standard and the EFQM EM, the lack of information about the implementation of the model, the time-demanding implementation of QM means and the constraint on academic / creative freedom are general issues of the implementation of the means. The most significant issue in the category of the „standard / model“ is the understanding / interpreting of ISO 9001 and the EM (accordingly 45% and 55%). Most often this is linked to terminology and „not knowing where to start“. Steed (2002) emphasizes that „although the terms like performance management, benchmarking, customer focus are widely used in other sectors and are fundamental seeking excellence, in the context of the university they do not „sound well““. Therefore the researchers point out the need to adapt the EM to the specifics of the organisation (HEI context) (Spasos et al., 2008, Davies et al., 2007). The terminology of ISO 9001 is defined like „over technical or over specific“ (Paunescu, 2005; Basir, 2012; Sohail et al., 2003). Van der Berghe (1997) suggests that this characteristic of ISO standard is the advantage (flexibility opportunity, applying it in different sectors) and at the same time the disadvantage (raises the feeling of the insecurity and becomes the subject of discussions and resistance). The ISO system was developed for the industry and production sector, therefore its applicability within educational sector is quite complicated and complex phenomenon (Misiūnas, 2007). There was a feeling in the
institutions that the content of some procedures was not related “neither the language nor the concepts” as Moreland et al. (1998) observed in his research.

The lack of the information about the implementation of the model (36%) is related to „not knowing where to start“. This is the lack of particular relevant information (initial knowledge) which, as Tari (2012, 2010) suggests, is gradually resolved through the teaching. Some authors state that the lack of proper understanding of ISO standard conditions the concerns and mimesis, what enables the occurrence of the inflexible and bureaucratic system (Ismail et al., 2006).

Another significant obstacle for successful implementation of the EFQM EM within HEIs is the lack of time (55%). It is emphasized that the process of the use of the EFQM EM is „time-demanding“ (Osseo-Asare, 2002). As the research of Ch. Singh et al. (2006) showed academic staff was dissatisfied with the time spent on „more paperework“ than in the classrooms.

The research revealed that the lack of senior management commitment implementing EM within UK (Steed, 2002, Hides et al., 2004), Spain (Tari, 2010) and Jordanian (Tari et al., 2012) universities, also the barrier of the red-tape and bureaucracy developing standardized QMS, are the most often indicated (36% each) issues typical for the specific means. It is proposed that particular ISO requirements are too difficult for academic environment and this can result the over-red-tape (Gelders et al., 1995; Lundquist, 1997). Gamboa et al. (2012) state that although the red-tape and bureaucracy is one of the most often criticized barriers, bureaucracy can also play a positive role in education institutions acting as a defence mechanism against third parties and promoting a reflection on practices intended to simplify processes. Thus, the bureaucracy is a necessary evil forcing to be more organised.

**Benefits of ISO 9001 standard and the EFQM Excellence Model**

The research shows that in many cases both the implementation of QMS of ISO 9001 standard and the implementation of the EFQM EM within HEIs resulted internal benefits (respectively 89% (±4%) average of internal and 11% (±4%) average of external benefits). In case of ISO there are 85.19% internal benefits and only 14.81% external benefits. In case of the EFQM EM there was 93.10% internal and 6.90% external benefits.

For both means typical general internal benefits include the staff commitment to quality, clear goals and strategy, the identification of weaknesses and areas for improvement / quality issues and performance and effectiveness improvement. The staff commitment to quality (56% in case of EFQM EM and 36% in case of ISO 9001) and the identification of weaknesses and areas for improvement / quality issues of the institution (respectively 78% and 27%) are the most significant benefits in the category of the general internal benefits (Table 3).
## Table 3. The benefits of the application of ISO 9001 and EFQM EM within academic institutions

<table>
<thead>
<tr>
<th></th>
<th>ISO 9001 standard</th>
<th>EFQM Excellence Model</th>
<th></th>
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<tbody>
<tr>
<td></td>
<td>Frequency (of 11)</td>
<td></td>
<td>Frequency (of 9)</td>
</tr>
<tr>
<td><strong>GENERAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff commitment to quality [4; 6; 7; 9]</td>
<td>4 (36%)</td>
<td>Staff commitment to quality [12; 13; 16; 17; 18]</td>
<td>5 (56%)</td>
</tr>
<tr>
<td>Identification of quality issues and prevention [3; 4; 7]</td>
<td>3 (27%)</td>
<td>Identification of weaknesses and areas for improvement / quality issues of the institution [12; 13; 14; 15; 16; 18; 20]</td>
<td>7 (78%)</td>
</tr>
<tr>
<td>Clear goals and strategy [1; 3; 4; 7; 10]</td>
<td>5 (45%)</td>
<td>Clear goals and strategy [14]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td>Performance and effectiveness improvement [2; 3; 11]</td>
<td>3 (27%)</td>
<td>Performance and effectiveness improvement [19]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td>Collaboration development [3; 5]</td>
<td>2 (18%)</td>
<td>Collaboration development [14; 16]</td>
<td>2 (22%)</td>
</tr>
<tr>
<td><strong>EXTERNAL</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Clear defined roles and responsibilities [3; 4; 5; 6; 7; 9; 11]</td>
<td>8 (73%)</td>
<td>Emergence / enhancement of the understanding about quality [12; 13; 15; 18]</td>
<td>4 (44%)</td>
</tr>
<tr>
<td>Assurance of the control and evaluation [4; 5; 6; 7; 8; 10]</td>
<td>6 (55%)</td>
<td>General / holistic approach to performance improvement [13; 15; 17; 18]</td>
<td>4 (44%)</td>
</tr>
<tr>
<td>Documentation management improvement [3; 4; 5; 6; 8]</td>
<td>5 (45%)</td>
<td>Quality Award received [19]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td>Management improvement [5; 7; 8; 11]</td>
<td>4 (36%)</td>
<td>Self-assessment [17]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td>Staff satisfaction [3; 4; 5]</td>
<td>3 (27%)</td>
<td>Benchmarking [17]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td>Identification of the needs and expectations of customers [3; 4; 11]</td>
<td>3 (27%)</td>
<td>Integration of other management initiatives and tools [17]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td>More effective resource management [1; 3]</td>
<td>2 (18%)</td>
<td>Internal collaboration improvement [17]</td>
<td>1 (11%)</td>
</tr>
<tr>
<td><strong>SPECIFIC TO PARTICULAR MEANS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Image improvement [3; 4; 5; 9]</td>
<td>4 (36%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improvement of the competitiveness of the institution [5; 11]</td>
<td>2 (18%)</td>
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</table>

(1) Misiūnas, 2007; (2) Leskauskaitė et al., 2012; (3) Singh et al., 2006; (4) Paunescu, 2005; (5) Sohail et al., 2003; (6) Lundquist, 1997; (7) Moreland et al., 1998; (8) Senčila et al., 2007; (9) Chaudhry et al., 2011; (10) Gelders et al., 1995; (11) Hutyra, 2007; (12) Tari et al., 2012; (13) Tari, 2010; (14) Spasos et al., 2008; (15) Tari, 2006; (16) Steed et al., 2005; (17) Davies et al., 2007; (18) Steed, 2002; (19) Farana, 2007; (20) Tari et al., 2007.

For both means the collaboration development is a general external benefit. The essential external benefit of the standardized QMS within HEIs is the improvement of institution’s image ensuring the external customers that HEI provides quality services which result in higher student numbers, feedbacks etc.

The research results show that internal benefits of the implementation of both ISO standard and EFQM EM are related to their *goals* (identification of weaknesses and areas for improvement of the institution, self-assessment, general approach to performance improvement etc.), *requirements for QMS* (document management improvement, identification of the needs and expectations of customers, clear defined roles and responsibilities, assurance of the control and assessment etc.) and affect *cultural changes of the organisation* (staff commitment to quality, enhancement of understanding about quality).
Conclusions

The research results showed that the motives of the application of both ISO 9001 standard and the EFQM EM within HEIs are more often related to internal needs of the institutions (respectively 62% average of internal motives and 38% average of external motives). Institutions relate the application of quality management means the most common to opportunity to improve internal institutional processes and procedures, with satisfaction of the needs of the stakeholders and their pressure and with competitiveness in the market. The factors of the competitiveness or the survival in the competitive environment and the pressure of the stakeholders explain the changes within HEIs, while the aim of institutions themselves to improve the performance, processes etc. shows their decision to implement these changes.

The implementation of QM means within HEIs confronts with various issues. According to the research data the difficulties of ISO 9001 and the EM are more often related to institutional issues than standard / model problems (respectively 53% average of institutional and 47% average of standard / model issues). For both means the most common issues experienced are staff commitment, lack of support and motivation (institutional) and difficulties understanding / interpreting standard / model (standard / model) and time demanding process (in case of the EM).

Both the implementation of QMS of ISO 9001 standard and the implementation of the EFQM EM within HEIs resulted in internal benefits (respectively 89% and 11% averages). The most common pointed out general benefits are the identification of weaknesses and areas for improvement / quality issues of the institutions and the staff commitment to quality. A fair amount of significant benefits are related to requirements for QMS (clearly defined roles and responsibilities, assurance of the control and assessment, document management) and affect the cultural changes of the institution (enhancement of the understanding about the quality).

References


THEORETICAL ASPECTS OF INNOVATION DEVELOPMENT

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Abstract

Purpose – Innovation is defined as an economic stimulus and the key factor of scientific and technological progress as well as international competitiveness. Therefore it is essential to identify theoretical conceptions and approaches of innovation development and review the use of innovation value chain.

Design/methodology/approach – analysis of scientific literature.

Findings – Innovation plays a significant role of business growth and is a principal factor of survival in competition and incentive of economic development. The importance of the innovation value chain awareness has been brought out as it significantly contributes to the successful development of innovation.

Research limitations/implications – the theory of innovation in manufacturing sector and service sector has not been distinguished enough yet.

Practical implications – comprehension of innovation concepts and innovation value chain helps to see multiple connections throughout the entire innovation process: from the beginning to the end. The information gained regarding to the innovation value chain helps managers to focus on innovation as a complete product and strengthen weaknesses.

Originality/Value – The topic of innovation was analyzed for few previous decades, however, the decision on the mutual understanding on innovation concept have not been highlighted. The paper reveals the systematic conceptual overview on comprehension of innovation and the importance of innovation development process in today’s fast changing competitive market.

Keywords: innovation, innovation value chain, knowledge.

Research type: scientific literature review.

Introduction

Last decades have brought important changes in the international business competition in response to faster pace of innovation and disappearing boundaries in
organizational structure. Innovation has been recognized as a highly significant factor and an engine of renewal in today’s fast changing and competitive business environment. Innovation, whatever type or extent, has a purpose to create or develop a new product or process that would increase company’s profit and strengthen the position in market. Competition is the main reason firm’s innovate, therefore different firms innovate differently. Comprehension of ‘innovation’ is wide and depends on why and where it is being developed in companies, organizations, institutions or systems. In order to succeed and create value, innovating companies, organizations and other bodies have to estimate the tools and resources to achieve expected results. This paper presents the conceptual framework – innovation value chain – which helps to emphasize the strengths and weaknesses in organization’s innovation performance. The aim of the paper is to show the theoretical concepts of innovation and to reveal significance of innovation value chain.

The Conception of Innovation

Theoretical and practical understanding of innovation and it’s significance for business has been changing and improved during last decades. However, there was no dominated theory and concept of innovation distinguished and no mutual agreement found among academics and entrepreneurs on how to conduct an innovative process successfully.

Conway and Steward (2009) have stated that innovation represents a delivery of a new product to the market or the introduction process of new ideas that can solve firm problems. Ideas that are designed to reorganize, reduce costs, improve the organization's networks, develop new systems are also considered to be an innovation as well as the generation, acceptance and implementation of new ideas, processes, products or services.

According to Lewin and Massini (2003) and Nelson and Winter (1982), innovation emerges from two main sources: i) internal research and development (R&D) which is based on the company's expertise and knowledge, and ii) the imitation of innovations that were introduced by other companies. R&D not only provides new opportunities and enables new methods of production but also supports the penetration to new markets and re-creation of company’s operations and processes which would enable to serve new markets (Knight, Cavusgil, 2004).

The importance of innovation activity is not negotiable and has been mentioned in a number of academic studies (Damanpour et al., 2009; Prajogo, 2006; Ganotakis and Love, 2012; Bogers and West, 2012). Innovation is defined as an economic stimulus, scientific and technological progress and social development condition. Therefore, innovative activities which interrelate creativity, education and entrepreneurship are considered to be productive activities directed towards any system, process or product transition from a lower level to a higher level. These transformations aim to meet the changing needs of society and keep up in the competition with other market participants.

According to Schumpeter (1963) and Drucker (1985), innovation is entrepreneurial area which aims either to radically change the product using an invention or apply
advantages of technology that has not been used in production previously (Stripeikis and Ramanauskas, 2011).

Love and Roper (2009) has noted that innovation is a process rather than an occurrence which embraces many activities, starting from the identification of innovative products to their development, production and the fulfillment of marketing strategy. Authors argue that there are four stages of new product development: identifying new products, product design and development, product engineering and product marketing, but it cannot be assured that the same combination of internal and external knowledge will be sufficient in all stages of the new product development process.

As indicated earlier, the development of innovation results in organizational change. By fostering the innovative process, organizations are using internal and external resources in order to answer market needs and maintain competitiveness or to be ahead of rivals.

**Theoretical Approaches of Innovation Development**

The study of innovation has been a relevant topic as academics, policy makers and entrepreneurial representatives consider innovation as an initial basis of economic welfare, the main factor of change and a competitive advantage. Innovation researches have introduced a variety of innovation conceptual models based on different approaches.

Most of researches were based on Schumpeter’s theory of innovation factors where the main motives for innovation were market size and structure. However, after the comprehensive disclosure of specific industries and knowledge management features, these factors were stated no longer relevant. It is argued that external factors, such as external learning, knowledge surplus and the method of management are considered to be much more important than specific features of the whole industry. Therefore innovation can reduce costs of production, increase production and quality of goods or services and create new markets. Any innovation that has a demand in comparison with other products should increase company’s profitability (Webster, 2004).

Innovation concept is characterized by the aspect of innovation development speed which can be interpreted dually. First, the pace of innovation is based on duration of initiation of innovation, development of innovation and the new product delivery to the market. According to Stalk (1993), in the world where product life cycle is shortening steadily because of the rapidly changing environment and customer needs, the ability to innovate becomes increasingly important. These circumstances have a significant impact not only to introduce new products to the market but also do it faster than the competitors (Prajogo, 2006). Second, the pace of innovation is related to how quickly a company is able to embrace new technologies. This approach is based on five categories of innovators, formulated by Rogers (1983): primary innovators, early successors, early majority, late successors and laggards. Naturally, the early innovation successors will benefit more significantly, although with a higher degree of risk (Prajogo, 2006).

According to Hong et al (2012), companies involve in the development or implementation of innovation activities, because they seek to create a new or significantly
improved product or process to increase profit and maintain or expand a market share. Regarding significant innovations companies have a chance to dominate in the market or become an industry monopolist. Arias-Aranda (2001) states that innovation concept is related to the company’s innovativeness stability and continuity over time, as companies strive to remain competitive.

New models of innovative research emphasizes the importance of innovation development process, pointing out that innovators must work closely with the key customers, suppliers and institutions that are enrolled in the innovation system. For this reason, innovators often do not generate innovative products alone but build teams or networks among reliable partners (Laursen and Salter, 2006). Banbury and Mitchell (1995) argues that concept of innovation is related to the company’s innovation strategy and opportunities to introduce new products to the market, i.e. be an early entrant. In some cases, these companies are trying to create new markets by a strategy based on the first-mover advantage (Prajogo, 2006).

The systematic approach to innovation has been set due to the multiplicity of the innovation concept. Innovation is regarded not only as an innovative feature, but as an ongoing process - from research and development to the new products, i.e. goods or services in the market. The process involves a number of entities that forms the innovation system. There are many participants in the innovation dissemination process so it is determined by various factors such as barriers between promoters of innovative products and consumers, selected dissemination method, technology features, characteristics of the product, market and other external factors (Bagdzevičienė and Vasilieuskaite, 2002).

Among many methods of seeking to distinguish innovations into certain categories, the most characterized remains the distinction between product and process innovation, although this demarcation is sometimes very blurry and unclear. This issue of separation between product and process innovation is important because it allows a comparison of manufacturing and service sector companies. Closeness between product and process innovation is much stronger in services than in manufacturing. This happens mainly because of users that make the processes in the service sector very clear and the overall quality of service is immediately tangible and evaluated by consumers (Damanpour et al, 2009).

New products and services are at the top of necessity for economic growth. Therefore it is relevant to review the scientific literature on what is the relationship between innovation and business performance and to discuss the importance of innovation and the value it gives to the company.

Knowledge derived during the process of innovation development is an essential element of new technologies creation. The knowledge intensity and know-how of young, entrepreneurial companies helps them to grow in the international scope and contribute to the development of unique products. Knowledge that promotes the production of unique goods or services allows global companies to satisfy specific market needs, thus increasing their market share and sales and also helps to ensure a unique product
supply. Global companies seek to balance innovation and knowledge base so that they could offer relatively superior quality products (Autio et al, 2000).

Entrepreneurship and innovation naturally complements each other and forms an integral part of a successful business. Both of these elements require creative thinking and the ability to take the risks. Entrepreneurship comes from small businesses capabilities and the ability to affect the availability of resources and introduce innovation thus transforming existing markets (Steensma et al, 2000). Innovation stimulates the birth of new ideas and development of creative process, and also reflects the willingness to abandon obsolete technology replacing it to modern one. Entrepreneurial companies seek to continuously develop products and management techniques that improve the company's organizational structure and management (Lumpkin and Dess, 1996). In general, innovation is an important entrepreneurial process in respect of each company's competitiveness in the market. Concentration to the international market can also enhance technological competencies. Companies use technology to upgrade or improve the product development process and the products itself, as well as adjust products for the international market. Information and communication technologies help to learn more about customers and competitors, to search for networks or make communication among stakeholders more efficiently.

According to Miller and Friesen (1984), the company also points out that in the innovation process important is not only the technological aspect, but also the ability to offer customers unique and specific products. The ability to offer unique products comes from the innovative and knowledge-intensive enterprise capabilities. By offering these exceptional products the company creates customer's loyalty, because they cannot buy it anywhere else. Also, the company obtains value because it is separated from other competitors and can easily enter the international market or become an international company. This approach is applicable to companies whose products are characterized by innovative features, maintain excellent customer service and uses know-how (Knight and Cavusgil, 2004).

Innovation plays a significant role not only at the industrial level but is also very important at country and continental level, so developed countries economic policy debate, and various international organizations and institutions documents emphasize that innovation is a key engine for economic growth (OECD, 2001; OECD, 2005). Casson (2000) notes that internationalization and entry into new markets abroad are also considered as innovation, therefore internationally born companies are particularly innovative (Knight and Cavusgil, 2004).

The Innovation Value Chain

Each company developing innovation or willing to do it the future must be concerned about innovation development process so that investment in innovation would bring maximum benefits in the short-term and in the long-term. The establishment of a certain innovation process structure is an important step before implementing innovation. Referring to the established structure innovative company collects the knowledge
essential for innovation development and it’s transformation to goods or services. Afterwards these competencies can be employed in company’s growth and increase of profit and market share.

Innovation value chain (IVC) is a conceptual framework and modeling tool that enables to highlight the strengths and weaknesses of company’s innovation performance features. Innovation value chain is generally used to analyze the performance of high-tech sector companies where the key factor of successful growth is the development of radically innovative products or services (Ganotakis and Love, 2012).

New technology-based firms entering innovative products to the market not only improves their performance but also raises an overall competitiveness of the economy, even in the recession. If a greater share of companies would offer innovative goods or services and implement innovation in company’s organizational structure (new ways to produce goods or provide services, improvement in operational capabilities and marketing, etc.), it would not only contribute to fill the gap of productivity that results because of competitors, but also confront the future pressure from developing countries (Porter and Ketels, 2003).

The significance of innovation value chain is described as a compilation of information through product and process innovation and showing the most important links in the entire innovation process. The result of innovation value chain reflects in the company’s growth and productivity outcomes when company implements different types of innovation. The knowledge of innovation value chain helps companies to prioritize necessary innovation, focus the management on weak links of the innovation value chain and to the relationship of the company’s operating processes. It is stressed that external research and development complements internal research and development and knowledge resources of supply chain therefore investment to the external R&D can bring a non-direct benefit from innovation (Ganotakis and Love, 2012). According to Hansen and Birkinshaw (2007), in order to improve innovation, companies’ directors should look at innovation as a process from the idea to the outcome and focus on three innovation value chain stages: first, to generate ideas; second, to select the best ideas and develop products, and third, to spread the innovative products across organization, local channels and customer groups.

Ganotakis and Love (2012) provides innovation value chain scheme (see Figure 1) which is based on Roper et al (2008) study. Innovation value chain is interpreted as companies three key relations: first, collection of different information required for innovation; second, transforming accumulated knowledge to the physical state of innovation; and third, the use of innovation and it’s impact on the company’s growth and productivity rates.
The main advantage of innovation value chain is that it shows multiple connections throughout the entire innovation process: from the beginning to the end. The information gained regarding to the innovation value chain helps managers to focus on innovation as a complete product and during it’s development time focus on the weakest segments of innovation value chain. Analyzing this innovation value chain structure, company has an advantage of it’s competitors, because it reallocate finance while seeing whole process of innovation development. As well, the company using the innovation value chain is able to plan more precisely the results and benefits that innovation will bring after it is introduced to the market.

**Conclusions**

The importance to adequately understand the conception of innovation, how innovation is born and performs within businesses emerges because of the intense relation between innovation and economic welfare. Innovation is not only a factor of economic efficiency but also a determinant of value creation in goods or services and promotion of company's sustainability. Innovation is defined as an economic stimulus, scientific and technological progress, social development and the condition of international competitiveness. However the understanding of innovation is a wide range, therefore the systematic overview on the conception of innovation has been highlighted. The paper reviews the diversity of innovation conceptions and suggests main theoretical approaches of innovation development. As well this study examines the innovation value chain, which is a conceptual framework demonstrating strengths and weaknesses in the innovation performance. The benefits of the innovation value chain reveals in demonstrating the most important interconnection in the overall innovation process from...
knowledge sourcing to the knowledge exploitation which results in productivity and company’s growth.

References


LEGAL ISSUES AND REGULATION OF POLITICAL PARTIES IN LITHUANIA DURING THE INTER-WAR YEARS

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Abstract

Purpose – The research discusses the compounds of social – political parties, their development and legal regulation.

Design/methodology/approach – The research is based on qualitative research, which helps to identify and define the problems of legal regulation of political parties. Method of data and documents analysis, content analysis, and historical method are used.

Findings – The research tries to avoid considerations of political issues, but legal and historical issues are discussed. It concentrates on the general legal principles of the formation of political parties and associations and their changes. It considers the development of party system regulation and studies the practical problems of legal and factual reality mismatches. In order to carry out a comprehensive scientific study the existing de jure legal framework and the consequent de facto reality is reviewed. The research proves not only that there were some differences between existed legal framework and de facto reality. Also, it defines the requirements to the general principles of regulation of political parties and determines correspondence of existing legal regulation to basic democratic standards.

Research limitations/implications – Documents are the most important form of available data. Documents can contain data recorded in monographs, journals, magazines, articles, acts, judgments, official documents etc. Documents can also make up part of records maintained by various individuals and institutions such as libraries, archives, the police etc. The existing judgments, reports and circular notes of Seimas of the Republic of Lithuania, the Ministry of Interiors Affairs, chiefs of staff of districts and police are scientifically significant. However, it should be noted that not all documents have been maintained.

Practical implications – The research pays attention to the changes of legal regulation of political parties and its dependence on regime. Moreover, it compares legal regulation in different periods of development of the regime of the Republic of Lithuania.

Originality/Value – It should be noted that the political aspect of the party system in Lithuania has received a lot of attention but the historical—legal aspect has been examined quite superficially by the clerisy of Lithuania. Separate authors highlight one or another historical period of Lithuania’s statehood. Most relevant to subject of the research were studies conducted by E. Šileikis (“Politinių partijų instucionalizavimas”, 1997), where he analyzed the development of the political parties from the ancient Greece to the present day. Moreover, he presents the
historical development of regulation of political parties in Lithuania, and outlines more extensively the significance of modern political parties.

Keywords: association, political party, party system, legal regulation, assembly.

Research type: research paper.

Introduction

After the First World War, when Lithuania regained its independence, a favourable legal situation to regulate political parties in Lithuania has arisen for the first time in history. It is generally agreed that a political party is perhaps the only social unit so closely related with the State and its governance. Maybe that's why its significance is extremely important for the states with a democratic system. This article discusses legal regulation of one of the social units, i.e. political parties.

Given the fact that the policy pursued by the State is directly dependent on the prevailing political system which consists of all political parties in the State, it is important to consider not only legal acts which were in force at that time, but also administrative acts enacted on their basis and their influence on political parties in order to properly evaluate legal regulation of the political parties.

This article describes the first attempts to regulate political parties in the independent Lithuania, prerequisites for the development of multiparty system; it analyses the regulatory changes after the Nationalists’ takeover, which took place in 1926, providing foothold for one-party system in the country.

1. Legal framework for political parties in Lithuania in 1919–1926

P. Leonas has stated that political parties are formed “...only where there is a minimum guarantee of political freedom”¹, because “…dictatorship <...> cannot exist alongside political freedom”². The real demand for political parties comes to light when there is freedom of thought, freedom of assembly and association. The Constitutionalists tend to unanimously agree that it is the regime that directly affects the regulation of political parties, margins of their freedom of action and responsibilities, the individual rights and obligations.³ The margins of political parties’ activities are established in the legislation, which is directly related to the political regime, which determines the margins of freedom of action of the political parties.⁴

In order to regulate public organisations, the Interim Government adopted the Law on Societies on 10 October 1919. The Law on Societies, which regulated the activities of public organisations, assigned their supervision to the interior affairs authorities. The first article of the Law on Societies laid down a definition of the society: “A society (union,  

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² Ibidem.
³ Ibidem. p. 5.
party, etc.) is a group of several persons who have set some clear objective of common work and are working in concert with each other under certain statutes to attain this objective.”

Article 5 of the Law on Societies prescribed for an application-and-rule-based procedure for setting up the societies; it established that a notification on setting up a society must be filed to the county governor with the signatures of the founders verified by a notary, a police chief or a municipal authority, which must include names, surnames, occupation and residence of the founders. It should be noted that two notions which are different in legal meaning are used in the same article of this Law: “notification” and “application”. The first notion expressing only formal information provided to the institutions is confused with the notion meaning a formal application to the authority with a request for an administrative service, i.e. to issue a permit; to issue a document confirming a certain legal fact: to make an administrative decision which expresses the will of authority; etc. Such inaccuracy in the notions caused by the legislature led to the law interpretation ambiguities.

The Law on Societies established general safeguards of a democratic legal State. For example, Article 28 prohibited the participation in the activities of unregistered societies; Article 29 forbade setting up of the societies whose aim was contrary to the State criminal laws. The country governor and the Citizen Protection Department of the Ministry of the Interior were able to suspend the activities of any organisation if its activities were against the laws of the Republic of Lithuania, whereas the said Commission was able to close the organisation if it did not comply with the statutes. The Law did not elaborate on what would be considered as non-compliance with the statutes in legal sense, leaving the right to judge on this issue to the law enforcement officers.

It should be noted that only declaratory constitutional provisions guaranteeing freedom of societies and unions applied until the Law on Societies came into force. In the absence of legal act adopted which regulated the possibilities of exercising this right, the right *de facto* would have been “dead”. It follows that this Law created a legal mechanism, which established the procedures for setting up political parties, created legal conditions to formalise the setting up of the first Lithuanian political parties.

In conclusion, the Law established one of the fundamental principles of a democratic state – a principle of free setting up of political parties. Moreover, the established regulations laid down the principles of a multiparty democratic political system and a parliamentary republic; whereas the principles of organising the highest state authority by way of general election, the highest authorities, supremacy of civil representation – the Parliament – and the division of power were established together with legal acts regulating elections. The Law provided equal conditions for all to set up political parties in accordance with the legislation in force and to participate in the political struggle for power under the defined and predictable rules. The adopted legal acts could be considered as a legal basis for the elections of the Constituent Seimas which were held in April 1920; while political parties established on the basis of such legal acts and fighting for power in democratic elections formed in the country “...a multiparty system which was a tool to

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1 The Law on Societies. *Official Gazette*. 1919, No. 15 · 249.
secure democracy”¹, i.e. such a system where more than two parties could actually compete for the right to form the government. Despite the said, this Law has been characterised by highly liberal regulation on constraints to the freedom of societies and unions: the administrative staff and officials of the interior affairs system retained a wide discretion to make decisions on constraints to the freedom of societies and unions.

It should be noted that all constitutions of the inter-war Lithuania somehow provided for the possibilities to restrict the constitutional human rights and freedoms. They prescribed on the constitutional level for the imposition of emergency rule which was a key instrument to restrict the citizens’ democratic rights and freedoms. A possibility to impose the emergency rule and principle consequences of such imposition were included in the base laws of the country: Article 16 of the Provisional Constitution of Lithuania of 10 June 1920 prescribed for a freedom of press, expression, assembly, associations for all citizens of Lithuania; however it also established that during war, or to remove the imminent threat to the State the constitutional guarantees may be suspended by way of laws: Article 32 of the Constitution of Lithuania of 1922 established that a President of the Republic may impose martial law or any other emergency rule not only in case “of war, armed uprising”, but also in case of “other dangerous upheavals” and this act must be approved by the Seimas. The Extraordinary State Protection Statutes² of 5 March 1919 regulated the status of martial law in a more detailed way: however the scientists criticised this act for its broad regulations which actually provided grounds for war commandants’ “arbitrary behaviour in using administrative coercive measures and denying the proclaimed <…> democratic rights and freedoms”³. War commandants were empowered not only to use coercive measures against individuals, but also against press, societies, industry and trade offices, i.e. to suspend press publications, ban meetings, close offices. Exercising their right to issue binding orders, war commandants published the rules which entitled them to control the activities of societies and organisations.

Such legal situation was caused by the fact that the Extraordinary State Protection Statutes have been full of rules with vague hypothesis that gave the commandants the so-called discretionary power, i.e. allowed discretion. According to the Supreme Tribunal, the Extraordinary State Protection Statutes “only generally indicate that war commandants may resort to repression against all and everything that is dangerous for public order or for the army, and a war commandant is assigned to judge about such danger himself”⁴. Broadness and generality of the provisions in the Statutes made it possible for war commandants to supplement and specify the provisions through their orders in accordance with the “tasks” set at that moment.

⁴ Vyriausiojo Tribunolo 1924 – 1933 metų visuotiniųjų susirinkimų nutarimų rinkinys. 1933. Volume XII, Kaunas.
Martial law in the country was imposed regularly. Such regular imposition of martial law made it possible to lawfully limit the legitimate constitutional rights and freedoms, including free setting up of political parties, their operation and political rights. On the other hand, how many such opportunities were caught \textit{de facto} depended only on the officers who possessed broad discretion to decide on what would happen with these rights in future. It must be recognised that although the officers possessed extensive powers they were not likely to abuse the rights held.

It follows that although constitutional acts indirectly declared free setting up and operation of political parties, this legislation should not be considered in isolation, without taking into account the entire system of legal acts of the Republic of Lithuania that were in force at that time. As a result, despite the legislature’s attempts to establish the principles of setting up political parties and their operation consistent with the minimum standards of democracy, a regular imposition of emergency rule and incompletion of its legal regulation as well as regulation of political parties in force should be seen as at least at the first glance complying with the minimum standards of a democratic state but not preventing potential abuse of rights.

2. Legal framework for political parties in Lithuania in 1926–1940

After the takeover on 17 December 1926, the power was concentrated in the Nationalists’ hands who were active opponents of a multiparty system and called “...to break all ties with the unfortunate practice of the past”, when “not people but the Central Committees of Parties govern”.\footnote{Lietuvių tautos valia. 1 February 1927, p. 3.} Respect for the principle of freedom in the country was slowly lessening by down-grading its significance; this principle was regarded as synonymous with the splitting and confrontation of the nation. The President publicly declared his dissatisfaction with the multiparty system. In his view, a multiparty system harmed the unity of the nation, whereas its deficiency led to all of the major woes of the country. The Seimas protested against decisions of the Nationalists’ Government. Therefore A. Smetona, using his constitutional right (the 53 article of the Constitution) to do so, dissolved the Seimas. The Third Seimas was dissolved on March 12, 1927 and new elections were not called until 1936.

Despite the fact that the Constitution of 1922 has actually ceased to have effect from the turn of the takeover organised on 17 December 1926, the Nationalists avoided to suspend the Constitution \textit{ex lege}. Having fully ignored the legitimate procedures for amending the Constitution, on 25 May 1928 the Nationalists’ Government officially issued a document approved by the President’s decree which was called the Constitution\footnote{The Constitution of the State of Lithuania. \textit{Official Gazette}. 1928, No. 275-1778.} and which had a form typical for democratic constitutions. Despite its adoption circumstances, the issued Constitution repeated provisions of the Constitution of 1922, which proclaimed freedom of speech and freedom of the press, freedom to assembly and freedom of associations and unions. Although the Nationalists’ Government after the
takeover did not make immediate decisions on radical changes in the legal system (the Constitution of 1922 and other key legislation de jure remained in force), still the country has experienced changes that have been achieved by the institute of emergency rule, subtly manipulating incomplete legal provisions. Martial law, which was continuously imposed, also contributed to such a situation.

The situation has even more changed when the Seimas adopted a new Constitution without any debate on 11 February 1938. This Constitution was characterised by full exclusion of the citizens from participation in the State governance process, strengthening of the executive power, especially the power of the President, which meant constitutional legalisation of leadership. The Constitution of 1938 did not promote the freedom of association, of assembly, freedom of the press but, on the contrary, it emphasised the obligation of a citizen towards the State: Article 17 of the Constitution provided that the citizen enjoys his/her freedom without prejudice to any other rights and always remembers his/her duties towards the state. Thus, the obligation of a citizen to be faithful to the State was established on the constitutional level. In addition, Article 25 of the Constitution declared that the State protects citizens’ freedom of public action, especially in the press, associations and assemblies, by watching if such an action is not following the direction harmful for the State. The Constitution of 1938, bringing to the fore the State interest instead of the human interest, has, in the main, denied one of the basic principles of a democratic state which was prescribed in previous Constitutions of Lithuania, i.e. the State is made to serve man. Criticising such constitutional framework, K. Račkauskas said that “What is harmful to the State, and, especially, what is the direction of action that is harmful to the State are vague and non-legal concepts. It is difficult to find two people who had the same opinion on these concepts. The content of these notions depends on what worldviews have the President, the Minister of the Interior and even the local police chief. Imposing such too general concepts and obligations, the powers that are enabled to behave arbitrary and the idea of the rule of law is killed.”

In summary it should be noted that the constitutional rule per se did not negate democratic rights and freedoms but bringing to the fore the State primacy instead of that of man’s, limiting the powers of parliament and restricting the participation of the nation in the governance created favourable conditions to limit the democratic rights and freedoms.

Moreover, the constitutional changes, in fact, enforced on the constitutional level everything what has already been created by other legislation and administrative measures. For this reason, the Law on Societies of 1919 was in force until Article 69 of the Law on Societies as of 1 February 1936 repealed it, i.e. for almost ten years after the takeover. The Nationalists’ administration made use of the institute of emergency rule, its poor regulation, also ambiguity of legal definitions in the Law on Associations and too broad disposition of rights which were in hands of administration enabling to use their

1 The stenograph of the Seimas, IV session, 69 plenary Sittings of the Seimas. 11 February 1938, p. 35-42.
3 The Law on Societies. Official Gazette. 1936, No. 522-3626.
convenient methods of ruling in the country, and thus avoiding the need to adopt new legislation governing activities of the associations immediately after the takeover.

Almost the majority of discussions were held on the articles of the Law expanding the list of data that must be specified in the statutes as compared with the analogous third article of the Law on Societies as of 1919, and, on this pretext, imperatively prescribing to revise the statutes of societies pursuant to the law requirements and to submit them to Minister of the Interior by 1 April 1936. Under the cover of such formal requirements, it was established that in case the society fails to submit the revised statutes on time, or in case it submits the revised statutes but it is not issued the authorization of the Minister of Interior to act by 1 July 1936, the society was deemed to be closed. Theory emphasises that such recognition of political parties is caused by new legal framework in the country which obliges political parties to communicate their needs and activities resulting in not only legal recognition of the State, but also paying attention to the permit for political parties to engage in their activities. With the help of such, at first sight, small correction of the Law the state administration was permitted to close all the societies which did not cater for the power.

Unfortunately, despite the declarative provisions on the freedom of association, the new Law on Societies expanded the opportunities to suspend activities of the society. Article 46 of the Law established that the county governor has the right to warn or suspend the society or its branch when the society or its branch does not comply with statutes or fails to fulfil the requirements prescribed by the Law on Societies. In such a case, the society or its branch is suspended until the reason for suspension is removed. If such a reason is not removed within six months, the Minister of the Interior acquired the right to close the society or its branch. In addition, Article 47 of the Law on Societies granted the right to the Minister of the Interior to close a society in case the society or its branch did not have a legitimate management. Furthermore, in accordance with Article 48 of the Law, the Minister of the Interior has the right to suspend the society or its branch for half a year, or close the society or its branch in consideration of security of the State or nation, or “in consideration of other State or nation needs”.

It should be acknowledged that although the newly adopted Law was full of declarative provisions about the freedom of association and political attitudes on freedom, after lifting the veil of declarative statements one could see that actually there were not any safeguards prescribed; whereas a new legal framework on societies developed the mechanisms allowing public administration to exercise greater control over activities of the societies and to close those societies which goals opposed the state governance, or refuse them a permission to act. Moreover, the legal regulatory model selected has created convenient legal and administrative tools that allowed to eliminate unfavourable political parties, which criticised the current government, and to prevent the establishment of potential opposition, thus providing grounds for the formation of one-party system. In view of the foregoing and the fact that a new version of the Law mainly focused on regulation of the control exercised over the activities of the society and its

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liquidation, and, given the current political circumstances, these changes acquired an “anti-democratic touch”.

In this context, remembering the fact that martial law imposed by the Nationalists on 17 December 1926 was permanently in force on the entire territory of Lithuania, it is natural that there is a reasonable doubt as to real enforcement of the constitutional rights and freedoms, including political ones, in Lithuania. Taking into account the above-mentioned circumstances, it is not surprising that with the emergency rule in the country the Minister of the Interior exercised his right granted by the Law on Societies to stop activities of the societies to half a year, or to close them “in consideration of security of the State or nation, or in consideration of other State or nation needs”. In preparation for the elections to the Seimas in 1936, the Nationalists gradually moved to the one-party system: on 7 November 1935 the press reported that state security authorities observed that “... the Central Committees of the Lithuanian Popular Peasants’ and the Lithuanian Christian Democrats, i.e. the parties in opposition, making use of the disturbances of public peace in some places caused lately by the anti-state element, began to act in the direction adverse for the state. <...> The war commandant <...> by Resolutions No. 627, No 628, has suspended the operation of the Lithuanian Christian Democrats and the Lithuanian Popular Peasants’ parties for the entire period of martial law from 6 November this year.”¹ Just a few months after this message, the Lithuanian News Agency issued another message reporting that in 1936 “… pursuant to the decisions made, the Lithuanian Christian Democrats Party, the Social Democratic Party of Lithuania, Lithuanian Popular Peasants' Union, the Lithuanian Youth Union and the organisation “Lithuanian Farmers’ Unity” with all branches of the organisations in Lithuania were closed on 6 February”. Such decision of the Government was based on its struggle against “fragmentation harmful to the nation and the state”; it was claimed that the organisations closed were acting against “the existing order in the country”, “not only did not assisted the government in the important work of building the unity of the nation, but in various ways hindered this work”; they were accused of “seeking to undermine the authority of the national government, to discredit it in the eyes of the public by secretly distributing open proclamations against the government, or by disseminating various disturbing rumours and fabrications”. Attempts were made to prove that “the organisation <...> has degenerated in its oppositionism”, and it is, therefore, necessary to close these organisations which do much harm to the society and the State; it is argued that “closure of the organisations trespassing the margins of loyalty (Loyalty to whom? To the existing de facto legislative requirements adopted in breach of the principles of the democratic state? Author’s remark)” must be understood as the attempt to maintain harmony, unity in Lithuania. By appealing to the nationalism and the country’s independence, it was explained to the public that the means chosen was in the nation’s interest: “… we, being a small nation, have to take care of not using our resources for

internal party bickering and even more for fighting against disturbance of peace and order, which can destroy our independence”\(^1\). Attention should be drawn to the fact that, regardless the situation that the closed organisations were considered to disturb the unity of the nation, to endanger security of the State and the nation, it was declared that setting up of organisations itself and their activities are not harmful; even more, they are tolerable and welcome provided that these organisations are loyal and “contribute to the creative work of the state and the nation”. In such a way, in accordance with Article 48 of the Law on Societies the Minister announced the closure of all parties, except for the Nationalists’ Unions on 6 February 1936.\(^2\)

It follows that every new wording of the Law on setting-up political parties and regulating their activities made it easier to restrict the constitutional rights and freedoms, enabling to expand the scope of such restrictions. The executive and military government has concentrated more and more powers in its hands. It is therefore not surprising that imposing the emergency rule in the inter-war Lithuania raises reasonable doubts about the soundness and adequacy of the extent of such rule. It must be recognised that although before the Nationalists’ takeover this institute made it possible to quickly respond to the unstable situation after the First World War, both domestically and externally, after 1926 it seemed not to protect the nation and the state security any longer but strengthened powers of the head of the state, protected these powers and restricted political rights. Making use of statutory provisions, which at least complied with the minimum standards of democracy but which had too broad and ambiguous definitions and did not prevent potential fraudulent misuse of the law, the state government made decisions, which essentially denied the essence of a legal State as a form of democracy and reaffirmed that nudum jus does not have any real effect. Since after the Nationalists’ takeover a legal system was created, which lacked sufficiently developed legal safeguards to ensure compliance of the government with the law, the principles of political freedom, freedom of setting-up societies and political parties, and their operation were denied making use of incomplete and imperfect legislation and extremely broad discretion right concentrated in the hands of administrative officials. This resulted not only in preventing rise of any possible opposition but it destroyed namely the fundamentals of the party system and legal State, though de jure it was not prohibited.

**Conclusions**

All legal acts regulating elections, setting-up of political parties and their activities providing a foundation for the development of multiparty system in the country were enacted before the elections to the Constituent Seimas, which took place in 1920. Although the legislature’s choice of regulatory model could be regarded as complying with the regulatory standards of a democratic State (statutory free setting up of political

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1 *Ibidem.*
2 *Ibidem.*
parties and their operation; regulated access to the political struggle for power), it should be recognised that the democratic regime in Lithuania was compromised by regular imposition of emergency rule.

In the period of 1926-1940, legal framework for political parties has little by little moved away from the regulatory standards of a democratic state, gradually creating legal environment for the activities of only one political party. The political parties in opposition were eliminated from participation in the political struggle for power.

In the period of 1919-1940, legal framework for political parties is characterised by incompletion, i.e. rules governing the issues of closing political parties or suspending their activities, frequently had a vague hypothesis, which was ambiguously defined, or was too much abstract, therefore granting a broad disposition right to the political machinery staff to make decisions, which affected the scope of protected human rights in the country.

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THE CULTURE OF CHILDREN SOCIALIZATION CENTERS AS THE ASSUMPTION FOR SUCCESSFUL STUDENT RESOCIALIZATION: THEORETICAL INSIGHTS

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Abstract

The term student in this article is used meaning a member of formal education who lives and educates in a children socialization center.

Purpose – discuss the culture of children socialization centers as a theoretical assumption for successful student resocialization.

Methodology/approach – the concept of student resocialization process used in the article is based on the idea of social constructivism (Berger, Luckmann, 1966) which says that students construct their subjective reality by the interaction in a social system and a specific environment. The correlation between the culture of children socialization centers and student resocialization process is based on the principle of operating system (Targamadzė, 2006) where changes in the system’s one structural element affect other structural elements. Methods: analysis of documents and scientific literature, comparison.

Findings: The composition of children socialization center culture is determined by historical context, non-traditional structure and features of operation. According to researchers communities of children socialization centers have authoritarianism-oriented attitude that is demonstrated by discipline, hierarchical relationship, punishments, isolation from society etc. Humanistic attitude is needed for successful student resocialization: this is proved by scientists and established by the legislation. During the process of resocialization students adopt values, norms, behavioral models, roles existing in the culture of children socialization centers. In addition to this, the culture of these institutions must be harmonized with the culture of the society. As a result, children socialization centers have to make reasonable analysis of their culture, recognize limitations and try to change it, external factors cannot make transformations.

Research limitations/implications – only theoretical assumptions were made which have to be proved empirically.

Practical implications – preconditions of successful student resocialization were discussed as guidelines for the process of changing the culture.

Originality/Value – the features for the culture of children socialization centers were highlighted. Based on the conclusions, problems for new researches can be created.

Keywords: children socialization centers, culture, student resocialization.

Research type: literature review.
Introduction

A successful resocialization of potential delinquents and delinquents is the essential precondition for their favorable future that is the integral element in the future of the whole society. During the process of criminal law making every country takes its own direction in order to find a way to avoid juvenile delinquent misbehavior, however, regardless of different experience levels, they are focusing on education and prevention. Lithuania has implemented the system of minimal and medium care that is based on the help for children in their nearest environment and on the priority of child interests; yet should a legal ground arise, juveniles are often separated from their family and sent to children socialization centers (The law of the Republic of Lithuania on children minimal and medium care, Official publication, 2007-07-19, No. 80–3214; 2010, No. 31–1473). The legislation defines the objectives for these non-traditional schools of general education, however, they are both complicated to implement and substantiate, i. e. these schools are meant for helping students to undergo their misbehavior, preparing them for independent life and successful integration into the society. According to this, during the implementation of children minimal and medium care measures the culture of children socialization centers (defined as a set of values, norms, attitudes, rules of behavior, rituals and other elements that prevails in the behavior of students and is declared to be a correct way of thinking and acting) is assumed to have the biggest influence on student personal changes.

According to Duoblienė (2011) researchers and school community members had long too narrow understanding about the culture of schools as a complex phenomenon. However, more and more attention is paid to school microclimate, prevailing attitudes, values and other cultural elements, despite the fact that these cultural elements are not attributed to the organizational culture. The image of the culture of children socialization centers can be drawn referring to writings of different researchers: Merkys et al (2002) give a quite detailed description of different cultural elements; Alifanovičienė and Šapelytė (2009) describe attitudes and viewpoints of pedagogues concerning implementation of medium care measures that are directly related to their practical experience; Bieliūnienė et al (2010) analyze rules and norms of children socialization centers as viewed by students and pedagogues; Indrašienė et al (2011) analyze the principles for the creation of family related environment, organization of educational activities etc. A fragmentary analysis of issues concerning the culture of children socialization centers show that this complex phenomenon is still not treated as the essential part for the mission of educational institution. The culture is considered to be the core element not only in the relationship between the communities of children socialization centers, principles of activity, limits of control and personal individuality, and educational environment, but also in the results of institution operation that are really complicated. In order to prove this position the article gives grounds on the relationship between culture and student resocialization process and gives reasons for treating the culture as a precondition for the increase of efficiency of the medium care measures.
Discussion on Children Socialization Centers Culture

Researchers Trice and Beyer (1984), Schein (1990), Hofstede (1994), Jucevičienė (1996), Stoner et al (2000), Robbins (2006), Ravasiand Schultz (2006), Amstrong (2009) gives a different interpretation of the definition for organizational culture, however, most of them say that the object of this phenomenon is values, norms and attitudes adopted by the organization members and evident in their behavior. Vveinhardt (2012), conducting a deep analysis of definition for organizational culture, names the following elements: beliefs, habits, norms, principles, attitudes, values, expectations and ideals of people group that are expressed through philosophy, symbols, climate, rituals, ceremonies, traditions, stories, myths and physical environment. It is obvious that culture as a complex phenomenon cannot be simple to assess and to understand; organization members on the whole can be unconscious about some of its elements, but these elements can be constant and accepted as unquestionable truth. As a result this not only makes the institution unique, but also creates a necessity to preserve and transfer existing attitudes, traditions and certain behavioral models. A distinctive culture of these institutions can be identified outwardly by non-traditional process of education, school buildings, the level of isolation from the society, existing myths known by local community and media – this presuppose the linkage between a culture expression and discipline, order and obedience. However, based on the law the philosophy of these organizations should be dominated by the essentials of national consciousness, transfer of society accepted values, education about national maturity, and all this should emphasize humanistic idea of child’s self-realization (The law of the Republic of Lithuania on children minimal and medium care, Official publication, 2007-07-19, No. 80–3214; 2010, No. 31–1473).

Having analyzed the features of organizational culture researchers (Hofstede et al (1990), Trice and Beyer (1993), Jucevičienė et al (2000)) underline the culture links to the anthropological concept; they especially emphasize the importance of external circumstances and social relationship. The formation of children socialization center culture is likely to be significantly influenced by historical context (ideologies of different epochs, legislation in place), non-traditional circumstances, structure, and principles of operation management. Merkys et al (2002) who made a research on student supervision and rehabilitation concepts in children socialization centers drew a conclusion that paradigms of punishment (isolation) and education (integration) identified in the culture of these institutions contradict one another. Referring to the ideas of M. Foucault and E. Goffman this research identifies strict routines, compulsory employment, detailed regulation of behavior rules, unified living spaces, permanent supervision etc. Alifanovičienė and Šapelytė (2009) analyzed the attitude of pedagogues working in children socialization centers and found that cultures of these general education schools are authoritarianism-based because they express the need of strict punishments in the process of rehabilitation to maintain order, structured environment and detailed regulation of operation management. In addition to this they exhibit a strong orientation to isolation from the family, community and society while expressing
trust in their institution’s process of “normalizing” the students. Other researches (Bieliūnė et al (2010), Indrašienė et al (2011)) also identify the same above mentioned features of children socialization center culture. Hence taking into account children socialization center culture related features of preservation and reproduction through the socialization of new members an assumption can be made that today these characteristics is still attributed to the composition of culture in children socialization centers. Languid changes in the culture of these general education schools are supposed to be related not only to lack of in-house initiatives but also to institutional insularity, absence of competitiveness indicators and stability that is backed by the applicable law.

An international establishment of humanistic ideas in juvenile delinquency prevention and resocialization was made as far back as 1990 in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). After changing the mission of children socialization centers in the law of the Republic of Lithuania on children minimal and medium care (Official publication, 2007-07-19, No. 80–3214; 2010, No. 31–1473) the staff of children socialization centers are obliged to know student individuality, allow their self-expression, make unfold their abilities, develop their professional skills, respect their rights etc. This is a humanistic orientation to the renouncement of the authoritarian relationship with delinquents and to the enforcement of their rights and interests. Probably in order to make an external influence on the cultural composition of these general education schools a description of operating model for children socialization centers (Official publication, 2011, No. 62–2946) gives detailed provisions that must be followed by the staff (neutralize a negative children past experience; eliminate the elements of criminal subculture in children communication; suggest models of socially accepted behavior and give examples; avoid criticizing children and public dispute of their misbehavior or personal traits); suggests a possible attitude towards students (following the principles of individualization, involving children into the decision-making related to them, priority of children interests and cooperation); names values of conduct(respect, honesty, goodwill, cooperation, share and exchange of information, innovation, creativity, professional development, flexibility, adaptation to change etc.). Legal regulations are obviously not relevant measures for changing the culture of children socialization centers as changes cannot be forced they have to be accepted by the community and determined by awareness. However, these regulations are still a clear instruction on objectives that have to be set by organization administrations as guidelines for better performance in their work.

**Resocialization in the Children Socialization Centers**

Many researchers give a similar concept of juvenile resocialization: Prakapas and Katinaitė (2008) treat resocialization as a period of learning new values, norms and roles that comes after a desocialization; Juodaitytė (2002) says that the core element of this process is a transformation of own knowledge, values, norms, status, roles and skills, and accepting new ones. Other researches (Merkys et al (2002), Mathiesen (1999), Mardoyan
et al (2010) etc.) also emphasize redeeming of previous social status through a set of assistive instruments while the success of this process is related to the ability to integrate among society members. In order to define critical objectives that come in parallel with ideas of educational work, complex assistance and discipline the term *resocialization* is synonymously used with such terms as rehabilitation, repeated socialization, reformation and adaptation. Although some researchers (Liaudanskienė and Leliūginė (2007); Lengvinas (2009); Žilinskienė and Tumilaitė (2011) etc.) treat the idea of resocialization as controversial because of the preparation for the independent life outside the institution while being isolated from the society, however, the situation in children socialization centers is a bit more favorable. These institutions of general education have a possibility to partly ensure the successful resocialization because students can test their adopted values, roles and behavioral models outside children socialization centers. The question is whether these organizations use this possibility while creating cooperative networks, close relationship with student families and local community.

It seems that there is no clear national policy for juvenile resocialization; however, there is set of individual programs that lacks alternative punishments, assistance in the process of integration into the society and local community initiatives. Although children socialization centers are institutions of education they are assigned a function of resocialization that is in detail described in the legislation and refers to the development of socially valuable skills, the change of values and attitudes in order to gain personal benefits for students and to contribute to the community well being. After an in-deep analysis of Risk-Need-Responsivity and Good Lives resocialization models Žilinskienė and Tumilaitė (2011) give theoretical insights on resocialization practice in Lithuania which show that the focus is still on risk management and the main objective is benefits to the society. Although the resocialization is usually carried out in closed institutions, the declining of the alternative punishments in places of imprisonment creates preconditions for the model of good lives. As a result more and more programs oriented to the skill development and encouragement to change are implemented. One of such programs is the cognitive behavioral program *Equip* that currently is implemented in children socialization centers. An assumption can be made that these programs are used to help those schools efficiently realize the objectives set in the legislation.

Analyzing the factors of successful student resocialization emphasis should be put on individual needs, abilities, experience and motivation of every student as these elements are of great importance in the resocialization process. According to Merkys (2002) a successful resocialization in children socialization centers is possible only when students are able to see and critically rethink the whole spectrum of values predominant in the society, when examples of socially accepted behavior are presented in the natural environment and when students are purposely assigned certain roles, they have a possibility to adopt socially acceptable cultural models and combinations of these models. Valickas (1997) stresses that attitudes and values of asocial juveniles are often faintly interiorized, their expression needs certain social environment. The author believes that demonstration of human-shared values, presentation of acceptable behavior examples, favorable circumstances, speech and conduct of pedagogues that motivates and helps to
change are the most important prerequisites for the successful resocialization. A conclusion can be made that student preparation for successful integration into the society is closely related to the adoption of socially accepted norms, values, attitudes, ideals etc. and the transformation of perceived cultural elements. All this should be purposely planned and implemented while evaluating individual achievements and reflecting on the conduct of students and administration members. Therefore an assumption can be made that during the process of resocialization in children socialization centers the main focus should be given to relationship, attitudes, and values in the conduct of educators, created environment and applied educational policy.

The importance of children socialization center culture in student resocialization

Academic writings analyze different aspects of socialization process of organization members and its relation to the organization culture. Some researchers (Kammeyer-Mueller and Wanberg (2003); Morrison (1993)) seek for factors of successful socialization and one of these factors is a comprehension and adoption of organizational culture, while other (Van Maanen, Schein (1979); Allen (2006); Žukauskaitė (2009)) provide methods and strategies for favorable socialization that helps to improve psychological and emotional status of new members, to get necessary information, to make new connections and to accept new roles. Considering the status of assumed organization, its field of operation and its objectives researchers (Cooley (1999); Jučevičienė et al (2000); Targamadzė (2006)) named the factors that promote and hinder the socialization of organization members. Hence the culture is obviously important both to the socialization of organization members and to the results of their activity. If the resocialization is treated as a repeated socialization, the results of these researches is applicable to the aspect discussed in this article in order to point out the importance of culture to organization members (students and pedagogues) and their results of activity.

Having analyzed the concepts of children socialization center culture and resocialization, these components proved to be related by values, norms, rules of behavior, rituals etc. The culture is assumed to be a purposely built strategy or a naturally formed phenomenon that is extremely important in the process of resocialization: it basically determines the rules of behavior for organization members, their norms, attitudes, ways of encouragement and punishment that are used for the change of asocial attitudes, adopted roles and models of behavior. The relationship between the two shows that the successful resocialization and meaningful future relies on the composition of the organizational culture. Therefore these schools of general education, as institutions of nontraditional education and the ones that have complicated objectives, have to be aware of the culture complexity and foster its willful changes.

The Ministry of education and science initiated the implementation of cognitive behavioral program Equip where one of the most important objectives is the creation of positive culture in children socialization centers that is based on mutual understanding between communities and cooperation. The main focus in the creation of positive culture here is put on formation of positive attitudes towards students, demonstration and
promotion of prosocial behavior, identification of student abilities and cooperation. This is also established by the law. Meanwhile Alifanovičienė and Šapelytė (2009) say that the juvenile resocialization policy implemented in children socialization centers is not clear, first of all, with regard to paradigms: the attitudes of pedagogues are prevailed by both humanistic ideas and authoritarian tendencies. This shows that the culture of children socialization centers is built on conflicting components that are often the reasons for non-efficient performance. Supervision and structured environment that is believed to be of great importance in the process of resocialization should be linked to the control of the environment that would not encourage or provoke the expression of asocial student behavior rather than to authoritarianism-based relationship. The change in the principles of organizational culture related educational process organization, evaluation of children behavior, provision of assistance and other principles is likely to create preconditions that would lead to student motivation for change and is likely to improve the performance efficiency in these schools of general education.

Conclusions

The culture of children socialization centers as a complex phenomenon consists of organization values, norms, attitudes, beliefs etc. that are prevailing in the institution’s philosophy, the behavior of its members and environment. Academic writings give a fragmented analysis of the culture phenomenon, however, researchers emphasize that communities in children socialization centers have authoritarianism-oriented attitude that is demonstrated by discipline, hierarchical relationship, punishments, isolation from the society and etc. Meanwhile, the legislation encourages humanistic attitude towards juvenile delinquents, declares the importance of cooperation, giving credit to student abilities, ensuring their rights and mutual assistance.

The composition of the culture is determined by historical context, non-traditional structure and features of operation. The culture of children socialization centers is preserved and reproduced through the socialization of new organization members. Although the culture has a feature of preservation and reproduction, cultural changes are advisable and should be implemented, but this should be done by the organization itself being aware of limitations and changing only certain its components. The legislation and international programs implemented to make resocialization more successful is also significantly important in the process of changing the organization culture.

A successful student resocialization is determined by creating suitable environment for students to adopt internationalized values, accepted models of behavior and accepted roles, and then giving a possibility to test these cultural elements outside the children socialization center. In this situation a great emphasis should be put on suitable educational environment, relationship between students and pedagogues, and individualized educational policies. In addition to this, the culture of these institutions must be harmonized with the culture of society.

The relation between children socialization center culture and student resocialization is identified by values, norms, rules of behavior, rituals etc., therefore the
composition of these organizational cultures has a direct linkage with efficiency of student behavior correction and the successful student integration into the society. The unified principles for organization of education process, evaluation of children behavior, provision of assistance etc. are assumed as important ensuring suitable environment for children to feel safe, motivated to change and willing for positive behavior correction.

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LAW OF OCCUPATION, JUS POST BELLUM AND RESPONSIBILITY TO PROTECT. SEPARATE OR COMPLIMENTARY TOOLS FOR RESTORING HUMAN RIGHTS ORDER AFTER MASS ATROCITIES?

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Abstract

Purpose Article compares three different mechanisms (law of occupation, jus post bellum and responsibility to protect) possibly applicable in the final phase and aftermath of hostilities where mass atrocities and other human rights gross violations occurred.

Design/methodology/approach Article consists of three parts. The first presents the content and scope of application law of occupation with the attention put on responsibilities towards occupied population. The second focuses on jus post bellum principles guiding just restoration of human rights order. Finally, the third part analyzes responsibility to protect doctrine within the framework of responsibility to rebuild the rule of law.

Research limitations/implications Research is limited to analyze (within the framework of relation between human rights and sovereignty) the scope of three tools used to prevent atrocities.

The relation between these two terms is crucial for the article’s evaluation on applying law of occupation, principles of jus post bellum and responsibility to protect for restoration of human rights order.

Findings The whole article evaluates the role of law and principles of just war while dealing with mass atrocities and human rights law. This method helps to underline an effective solution for future conflict resolution and prevention. Responsibility to protect and just post bellum when executing the rules provided by the law of occupation constitute the only effective method used by international community to assist post conflict states in human rights capacity building.

Practical implications Article’s main thesis is to point out that in extreme circumstances only a combined application of law of occupation, jus post bellum and responsibility to protect guarantees stable and constant human rights reconstruction in post conflict areas.

Originality/Value Article evaluates three different regimes under the criteria of their connection with human rights and state sovereignty. In doing so it finds the new way of their possible interconnection and proper way of complementary application. In relation to the previous researches it treats law of occupation, jus post bellum and responsibility to protect as interpretative guidance in bridging and strengthening the coexistence between two international values: human rights and sovereignty.

Keywords: law of occupation, jus post bellum, responsibility to protect, responsibility to rebuild, mass atrocities, human rights

Research type: research paper
Introduction

The recent interventions and their aftermath raised a question of possible legal and social means to reach properly organized post conflict order based on human rights values. The lack of results has become evident especially in the context of Libya. Mass atrocities as the biggest human rights violations cannot be dealt with while using standard human rights protection mechanisms and procedures. There are different methods which may be applied as solution here – among them law of occupation and concepts of *jus post bellum* and responsibility to protect. All are the rules of different character and foundation. However, every aims to end hostilities or atrocities completely and fairly.

Through analyzing their content and main goals this article discusses the relation between the three methods. The first - law of occupation consists of binding legal norms applicable in every situation when a territory is actually placed under the authority of the hostile army. Every occupying power is legally obliged to restore and ensure, as far as possible, public order and safety. The second, *jus post bellum* is directed towards the restoration of public authority or the empowerment of domestic constituencies. It deals with the termination phase of conflict. Based on just war theories, not legal requirements as law of occupation, *jus post bellum* seeks to provide terms for the end of conflict through *inter alia* guidelines for the construction of peace treaties or continuous fighting prevention. The third – responsibility to protect doctrine by different means provides assistance in improving the capacity to protect populations from mass atrocities.

Article underlines the necessity of their complementary usage. It focuses on their common goals and explains in which manner they should be used to guarantee respect for basic human rights and people’s peaceful development. The main thesis suggests that international community by applying them wisely can obtain greater fairness and sustainability in conflict termination and peacemaking.

1. Law of occupation

In order to define the law of occupation we must first deal with term occupation itself. Article 42 of the 1907 Hague Regulations (HR) by occupation understands a situation of a territory actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised. This covers only conflicts of international character. The present examples of such situations include *inter alia* occupation of the Gaza Strip, West Bank and East Jerusalem by Israel and occupation of the area surrounding *Nagorno Karabakh* by Armenia.

Occupation is a factual state of affairs with its legal consequences. This state may be lawful – when the particular occupation is exercised within the scope of *jus ad bellum* as enshrined in the UN Charter¹ or unlawful when it is against these rules. However, its legality does not influence the applicability of law of occupation. Common article 2 of the four Geneva Conventions establishes their application to any territory occupied during hostilities without determining the legal status of these hostilities (also in situations where the occupation of state territory meets with no armed resistance).

Law of occupation consists of regulations mainly enshrined in articles 42-56 of the 1907 Hague Regulations, articles 27-34 and 47-78 of the Fourth Geneva Convention² and is established in customary international humanitarian law³. These rules describe the relation between the occupant and occupied territory, its population and laws. The main rule obliges occupying party to “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”⁴. Also, the occupant does not acquire sovereignty over the territory and must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the international law of occupation⁵.

Occupation is based on the factual state of exercising authority over a territory by occupant not his mere presence⁶. In other words it is only a temporary situation, and the rights of the occupant last as long as the occupying power executes authority over a territory. The moment it withdraws from or is driven out of the territory the occupation ceases to exist. The occupation may also end with a transfer of authority to a local community whether and as long as from this moment it can freely execute its sovereignty over a territory.

Law of occupation provides occupied population with a range of rights which in any circumstances cannot be renounced even by the subjects of these rights⁷. Also article 47 of GC IV forbids concluding any agreements between the occupying power and the local authorities which can deprive the population of occupied territory of the protection afforded by international humanitarian law.

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⁴ Art. 43 HR.

⁵ Art. 55 HR names an occupying party merely as an “administrator”, *supra* note 1.


⁷ Art. 8 GC IV.
The main rules of the law applicable in case of occupation correspond with human rights established in international human rights treaties mainly ICCPR\(^1\) and ICESC\(^2\). The civic and political rights protected by law of occupation include *inter alia* prohibition of collective or individual forcible transfers of population from and within the occupied territory as well as transfers of the civilian population of the occupying power into the occupied territory (art. 49 IV GC), prohibition of forced enlistment in the occupier’s armed forces (art. 51); right to a fair trial (art. 71-76 IV GC). Within the framework of economic, social and cultural rights law of occupation provides populations with: to the fullest extent of the means available to it\(^3\), the occupying power must ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation (art 55 IV GC), prohibition of destruction, confiscation and reprisals and against private property (art. 53 IV GC). Also occupied population by general rules of IHL is free from arbitrary killing, tortures, corporal punishment, medical and scientific experiments and other acts of brutality (art. 32 IV GC).

Moreover, the simple existence of armed conflict and occupation does not exclude protection guaranteed by human rights regime. The coexistence of these two branches of international law is evident. Law of occupation as a part of international humanitarian law is a kind of *lex specialis*\(^4\) to human rights law which must be applied both in peace time and war\(^5\). Occupying power bears responsibility under two legal regimes. Human rights in the time of occupation have their limits and some of them can be derogated. Law of occupation builds the framework of these limitations.

It may be argued that law of occupation governs three general areas. Firstly, it explains the question of sovereignty, secondly, it provides rules concerning civic and political rights of population under the occupation, thirdly it stipulates for the insurance of economic, social and cultural rights. The latter two are particularly important for the restoration of human rights order in the middle and after the occupation. As a legal mechanisms international humanitarian law and human rights law should be understood as a basic tool for the protection of populations suffering mass atrocities. Law of

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\(^3\) „to the fullest extent of the means available to it“ - typical limitation of the obligations towards realization of economic, social and cultural rights. It is worth to mention that economic, social and cultural right as enshrined in ICESC are younger than those from Geneva Conventions,


occupation is a particularly adequate and sharp tool limiting states' authority (also intervening states) over the territory it occupies and its people. This tool needs an ethical manual to be properly and effectively used. Often, law of occupation is the first step in founding the human rights protection in places where the conflict and atrocities are still on. It should be applied in accordance with the principles of just war especially with a focus on the future *jus post bellum* issues which may rise right after the occupation ends.

2. *Jus post bellum (Justice after war)*

*Jus post bellum* as a more philosophical and at the same time complex idea covers the termination phase of war. *Jus post bellum* widens the classical just war theory based on two notions of *jus ad bellum* and *jus in bello*. G.J. Bass puts this issue within the three questions: the obligations to restore the sovereignty of a conquered country, the rights and obligations that belligerent states retain in the political reconstruction of a defeated power and obligations of victorious states to restore the economy and infrastructure of a defeated state. Bass does not directly involve human rights arguments in his vision of post-conflict resolution. Quoting Burke's - “peace often means accepting a host of injustices” - he disagrees with most human rights activists that there is no real peace without justice. He argues that peace is sometimes more valuable than human rights themselves.

On the other hand as R.E. Williams and D. Caldwell point out: “the constraints grounded in traditional just war theory do not offer sufficient guidance for judging postwar behavior and that principles grounded in the concept of human rights are needed to complete our understanding of what constitutes a just war. A just peace exists when the human rights of those involved in the war, on both sides, are more secure than they were before the war”. Human rights then should go in pair with justice. They are complementary values which support each other during times of crisis. None of them prevails. Every conflict resolution stands on the gentle balance between what is right and what is just.

These ideas may be put in three terms already mentioned in a previous part: sovereignty, civic and political rights and economic social and cultural rights. Once again the relation between sovereignty and human rights is emphasized. Firstly, post conflict situation demands a clarity about sovereignty. Without it none human rights could exist. Sovereignty is a *sine qua non* condition of human rights order. This simplification also

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underlines the nexus between legal provisions and just war principles. Both seek to correctly organize purposes and conflict resolution methodology.

Among just post bellum principles five of them are predominant. These are: just cause for termination, right intention as to the peace terms, public declaration and authority over the peace terms (peace making transparency), differentiation between political and military leaders, and combatants and civilians and proportionality of peace terms. The aim of these principles is to create a just consensus between the rights of winners and rights of defeated. As already mentioned this policy should take into account human rights dialogue between communities. This can include: punishment against the aggressor (two genres: compensation to the victim for losses incurred and accountability for war crimes), victim security system, civilians immunity from the consequences economic sanctions etc. This raises a question of combating impunity for gross human rights violations. Every population which suffered a mass atrocity should be given the right to know, the right to justice and the right to reparation. These rights are of both individual and collective character. Especially in post war phase, “if people have not been treated rightly during the war, it will make reconciliation (and at the same time human rights order – T.L.) vastly more difficult than if they had been afforded some respect”.

The sole policy of just war and jus post bellum is a mere explanation of how to organize things. This explanation however does not provide us with sharp and legally binding tools. It simply guides about the proper usage of already existing but also about the creation of new normative tools as for example responsibility to protect doctrine.

3. The responsibility to protect

In 2001 International Commission on Intervention and State Sovereignty prepared a report titled Responsibility to Protect. This document presents a new approach to deal with mass atrocities around the world. It redefines the classic interpretation of sovereignty as a common responsibility of state itself and international community. According to authors State sovereignty is not a privilege. It means responsibility of legal and moral nature - the protection of its citizens from genocide, war crimes, crimes

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1 For more detailed description of these principles see: Orend, B., Justice after War, Ethics & International Affairs, Volume 16.1 (Spring 2002).
against humanity\(^2\) and ethnic cleansing\(^3\). If the state is unable or unwilling to fulfill this obligation, the international community shall assist or replace it in doing so\(^4\). Report examines the concept of responsibility to protect in three parts: responsibility to prevent, responsibility to react and responsibility to rebuild.

Through prevention both state and international community should address the root and direct causes of conflicts that put populations at risk. State must devote more resources to exhaust every option before military intervention. Democracy, rule of law, trust building and human rights approach – these are the possible methods of prevention.

If the preventing measures fail, international community must react through different legal, diplomatic, economic, social or security means\(^5\). Military intervention is *ultima ratio* here. It must respect the principles of: right intention (to halt or to avert human suffering), last resort (exploration of peaceful means), proportionality (minimum necessary to secure human protection objective) and reasonable chance of success\(^6\).

The last component, responsibility to rebuild is not discussed as loudly as the preceding two. It is mainly caused by the common agreement on its necessity and importance. The problem is that every application of responsibility to protect is different and evaluated case by case. This goes also for responsibility to rebuild. What efforts should be taken to guarantee stable and permanent resurrection of the state of law? There are many approaches to this question. The Commission’s report focuses on help with recovery, reconstruction and reconciliation\(^7\). However, the main feature of responsibility to rebuild is the creation of “human rights capacity” - a legal and moral capacity of states to execute their sovereignty in accordance with their international human rights obligations. The core obligation of assisting international community is to perform a responsible trusteeship over sovereignty of assisted state as long as it is necessary to reconstruct “human rights capacity”. International community executes its

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\(^1\) War crimes – acts committed during an armed conflict that violate international humanitarian or human rights law as understood in Geneva Conventions and Additional Protocols.


\(^3\) Ethnic cleansing is not officially recognized as a distinct crime under international law, but entails a purposeful policy designed by one ethnic or religious group to remove, by violent and terror-inspiring means, the civilian population of another ethnic or religious group from certain geographic areas. Thus, ethnic cleansing is encompassed in crimes against humanity, which includes the forcible transfer or deportation of populations. Definition from ICRtoP’s Toolkit on Responsibility to Protect, available at: http://responsibilitytoprotect.org/ICRtoP%20Toolkit%20on%20the%20Responsibility%20to%20Protect.pdf [accessed 1 April 2013]


\(^5\) For the example list of such measures see: Bellamy, A., Mass Atrocities and Armed Conflict: Distinctions, and Implications for the Responsibility to Protect, The Stanley Foundation, 2011.


\(^7\) Responsibility to rebuild, idem, pp. 39-45.
authority in the name and for the local community. This responsible trusteeship should be performed in accordance with law of occupation and *jus post bellum* principles.

The purposes of responsibility to rebuild should be devoted to human rights language. Economic and social rights are of particular importance here. International assistance should orbit around well organized health care, employment and education systems. This is where human rights fruitful environment is established. Responsibility to protect focuses on long term consequences and as such juxtaposes human rights of both generations.

Human rights capacity cannot exist without sovereignty. Responsibility to protect brings this idea to the surface of international policy and decision making. States could not expose themselves from critics about their human rights performance simply by depending on principle of sovereign equality and non-intervention. Responsibility to protect as such switches the notion of sovereignty from a privilege to responsibility, which turns the idea of humanitarian intervention upside down. Sovereignty goes in pair with human rights. Each state has legal and moral duties to respect, protect and fulfill human rights of its own people. These People are the subject of sovereignty and it is their collective right to have it executed in a manner that is compatible with their basic human rights.

**Conclusions**

Genocide, crimes against humanity, war crimes and ethnic cleansing as mass atrocities cannot be dealt with standard human rights mechanisms from both universal (UN Charter and treaty based) and regional systems. International community has limited sort of tools with which it can respond to these gross human rights violations. Often, the reaction of international community takes form of humanitarian intervention with a state occupation as a one mean of peace restoration. Such situation is unstable and brings a lot of difficulties while applying human rights standards.

Law of occupation, *jus post bellum* and responsibility to protect are three complementary tools to achieve a post conflict human rights order. Each presents similar purposes while being of different character. However, all three of them are evidently connected with human rights regime and altogether should be interpreted within its context. Firstly, law of occupation as part of international humanitarian law plays an important role in realization of basic human rights during a period of armed conflicts. It is applicable parallel to human rights regime. It provides the state parties with the exact legal framework as to the human rights application in the extreme situation of occupation. Secondly, *jus post bellum* as a part of just war philosophy focuses on the effective conflict resolution. Its main purpose is to guarantee long lasting peace. This peace, however, should not be achieved without respecting human rights of both victorious and defeated. *Jus post bellum* should be considered as a guidance when applying legal norms of law of occupation and human rights law. Finally, responsibility to protect combines legally binding norms of human rights and just war philosophy in one doctrine. Due to conflict of interest among the permanent Security Council members it
has still not build its normative framework. However, its constant progress and evolution from a mere idea into a matter of international politics raise high expectations as to its future application. The main idea of responsibility to protect is to treat sovereignty as responsibility not as privilege. Human rights regime does not oppose sovereignty as such. It creates its conditions. States are not capable of denouncing their international obligations by shielding themselves under the aegis of sovereign immunity. Responsible sovereignty can establish and execute its “human rights capacity”. International community is obliged to control its members' execution of responsible sovereignty. It shall treat law of occupation, *jus post bellum* and responsibility to protect as complementary tools while fighting with mass atrocities in the times of extreme crises. Complementary usage of these three systems facilitates establishing the prosperous transition where the relation between human rights and state sovereignty does not contradict but reciprocate each other.

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PRE-TRIAL SETTLEMENT OF DISPUTES WITH CUSTOMS IN LITHUANIA: DEVELOPMENT OF LEGAL REGULATIONS, IT'S PROBLEMS AND PROSPECTS

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Abstract

Purpose – the aim of this article is to analyse and examine development of Lithuanian legislation governing the pre-trial settlement of the disputes with customs authorities (prior to accession to the European Union, and after it); discuss the practical problems related to regulation of the pre-trial litigation procedures and provide suggestions for the improvement of legal framework in order to ensure transparent and cost-effective resolution of disputes with customs.

Design/methodology/approach – analysis of relevant issues is based both on theoretical (analysis and synthesis, historical, systematic, comparative) and empirical methods (analysis of documents, generalization of professional practice (analysis of courts practice and practice of other dispute settlement bodies (institutions) in Lithuania), statistical analysis of data concerning use of pre-trial and trial disputes resolution procedures in Lithuania). The article consists of an introduction and three chapters.

Findings – procedures for the pre-trial settlement of disputes with customs in Lithuania are quite complex, diverse and are governed by different laws (legal documents), including the European Union law. The main legal documents are not compatible with each other and they do not provide a detail list of mandatory pre-trial dispute settlement procedures.

Research limitations/implications – article analyzes legal regulations of pre-trial disputes with customs since restoration of Lithuanian independence to the present days, with particular emphasis on developments relating to entry of Lithuanian Republic to the European Union, as well as formation of the case law on the application of these legal regulations.

Practical implications – article presents proposals for the improvement of current legislation – Regulations on Investigation of Complaints in the Custom of Lithuanian Republic approved by order No. 1B-540 of the Director General of the Customs Department under the Lithuanian Ministry of Finance on 19th of May, 2004.

Originality/Value – article presents practical problems of the pre-trial settlement of customs disputes (linking these problems with relevant case law), which are not widely discussed in the Lithuanian legal doctrine and specific academic legal literature.

Keywords: pre-trial litigation, customs authorities, disputes with customs, customs law.

Research type: research paper.
Introduction

Customs of the Republic of Lithuania can be defined as the entirety of customs offices (authorities) responsible for the enforcement of customs legislation. It has a particular responsibility for the economic security of the state border, as well as the safety of the public life of the country and the formation of the budget. The customs authorities are assigned to ensure compliance with international trade laws and other legal acts, to collect import duties and taxes, apply the customs supervisory measures in the most effective way (Povilauskienė, 2006). The customs authorities also have a very important role in the European Union customs policy based on free movement of goods, people, services and capital.

The main acts of law regulating the activities the customs – European Community Customs Code, other European Community customs legislation, Law on Customs of the Republic of Lithuania, Law on Tax Administration of the Republic of Lithuania – establish the obligations of individuals (taxpayers) to perform certain customs procedures in accordance with the laws and the European Community customs legislation procedures to calculate, pay and declare taxes and duties administered by the customs authorities. However, in practice there are many cases when the person concerned (the taxpayer) and the institution in charge of the supervision of his (her) fulfillment of obligations – customs office – do not agree on the compliance with the duties, their distribution and calculation and taxes to be paid. In order to avoid such situations, and, if they happen, in order to solve the dispute, European Community laws as well as national laws provide appropriate measures, establish the right of appeal to the people concerned against the customs authorities and officials decisions and actions (Medelienė, 2012).

Analyzing the current number of disputes against the customs authorities in Lithuania (data presented since 2006 in the annual activity reports of Customs Department under the Lithuanian Ministry of Finance and the Commission on Tax Disputes under the Government of the Republic of Lithuania (Lietuvos Respublikos muitinė>Apie mus>Leidiniai [interactive]. [accessed 2013-03-09]. <http://www.cust.lt/web/guest/700>; Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės >> Veikla >> Planavimo dokumentai >>Veiklos ataskaitos [interactive]. [accessed 2013-03-09]. <http://www.mgk.lt/veiklos-ataaskaitos>), we can observe that in recent years (especially since 2009) there is a clear tendency that the number of complaints of various subjects concerned against the customs authorities (and their officials) is increasing, i.e. various subjects are quite active in using their right to initiate disputes with customs using the pre-trial procedure:
Figure 1 shows that the number of the disputes with customs solved using pre-trial procedures is usually larger than number of disputes, investigated using trial (judicial procedures) (having compared number of disputes investigated in the Tax Disputes Commission and The Chief Administrative Disputes Commission and Supreme Administrative Court of Lithuania as the final judicial appeal instance for resolution of disputes with customs (INFOLEX.PRAKTIKA. Teismų apžvalgos, konsultacijos, nutarimai, sprendimai, nutartys [interactive]. [accessed 2013-03-09]. <http://www.infolex.lt/praktika/>). These tendencies show that there is a clear need for rational legal pre-trial dispute resolution procedures. Similar attitudes also prevail in the scientific literature, for example Andruškevičius (2008) emphasizes that the use of pre-trial procedures against the customs authorities are welcome, as it helps to regulate the increasing judicial workload. It is necessary to mention that since the year 2007 until 2011 number of all administrative disputes settled in the Supreme Administrative Court of Lithuania has grown from 1313 cases till 2571 cases (Lietuvos vyriausiojo administracinio teismo 2011 metų veiklos apžvalga, 2012) and, as shown in Figure 1, number of judicial disputes with customs has almost doubled.

The legal regulation of the pre-trial disputes against the customs authorities in Lithuania and its development

Implementation of person's (both natural and legal person, e.g. corporate entity) rights and their need for protection in customs sphere, require the state to determine the institutional control mechanism to each customs office. The control procedures as well as the ways of settlement of administrative disputes must be established. In the scientific literature (Pranevičienė, 2003) it is mentioned that the control of the administrative subjects can be implemented by disputing the legal acts and actions of the administrative subjects not only direct to the court of law but also using pre-trial procedures (by applying departmental or administrative chain of command to another public administration institutions) or by submitting a complaint to other specialized
administrative dispute settlement institutions (quasi courts or pre-trial administrative litigation committees (tribunals, commissions).

Analysis of the legislation relating to the customs in the Republic of Lithuania confirms that the model of pre-trial settlement of disputes with customs historically exist for quite a long period of time. The provisions which made pre-trial disputes with the customs obligatory came into force on 1 July 1996 in the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic. The Lithuanian Customs Code, which came into force in the Republic of Lithuania on 1 January 1998, set the legal framework for a modern customs system organization, which with annexes was in force until Lithuania’s accession into the European Community on 1 May 2004. In Lithuanian Customs Code, the provisions of Title IX “Appeal” provided a procedure of appeal against all decisions adopted by the customs (not distinguishing them into different types or categories).

According to the Lithuanian Customs Code, Article 228 complaints regarding the customs decisions had to be submitted to the customs office, which adopted (or failed to adopt) a decision in connection with the Customs Code, as well as other customs laws and other legislation attributed to the competence of the local customs office or Customs Department under the Ministry of Finance of the Republic of Lithuania, if the disputed decision was adopted exactly by this institution. As the primary version of the Lithuanian Customs Code, Article 229 established, the relevant regional customs decision adopted after the investigating the individual’s complaint, could have been appealed to the Customs Department or to the court. This legal regulation shows that the primary Lithuanian Customs Code established a relatively simple (double)-stage dispute settlement system under which any appeal against the decision of the customs authorities may be reviewed under administrative (departmental) procedures [1] in the institution that made the decision, and then in the event of unsatisfactory decision at his (her) option (at the discretion) the person could apply to the court [2]. However, since June 1, 2002 when changes of the Lithuanian Customs Code Title IX came into force, the order regarding the obligation of pre-trial procedures was tightened, and it was provided that complaints relating to the decisions (or failure to make them) made by the territorial customs can be submitted only to the Customs Department.

Fundamental changes in the pre-trial dispute settlement system with the customs took place after Lithuania’s accession to the European Union on May 1, 2004. The European Union customs legislation started to be applied in the Republic of Lithuania direct (first of all, the European Community Customs Code), which inter alia provide and establish the fundamental legal safeguards regarding the control of the customs

authorities and the right of appeal against the decisions made by the customs authorities. The Community Customs Code (Article 243 paragraph 2) left the right for each country to determine whether the person concerned, who initiated the dispute against the Customs’ decisions relating to the application of customs legislation (or failure) must first lodge a complaint to the customs office, or he has the right to appeal to another judicial or equivalent dispute investigation institution. Similar attitudes prevail in the European Court of Justice (Case C-1/99, Kofisa Italy Srl v. Ministère des finances, Servizio della Riscossione Tributi [2001] ECR I-00207).

Analyzing the implementation of the European Community Customs Code into the Lithuanian national legal system after May 1, 2004, we can see that, in accordance with national legislation – the Law on Customs and Regulations on Investigation of Complaints in the Customs of Lithuanian Republic approved by Order No. 1B-540 of the General Director of the Customs Department under the Lithuanian Ministry of Finance (May 19, 2004) – complaints concerning the territorial customs authorities and special customs authorities decisions related to the application of customs legislation, and failure to make such decisions are submitted to investigate to the Customs Department under the pre-trial procedure. Complaints regarding the Customs Department’s decisions and failure to make them are presented to a special pre-trial administrative disputes investigation institution – The Chief Administrative Disputes Commission or a court. Thus, in Lithuania the chosen and applied model for settlement of disputes with customs can be characterized in such way that before resorting to court or other administrative dispute resolution institution, it is necessary to take advantage of pre-trial litigation. First the complaint must be submitted to the customs office which is assigned to perform such litigation functions. It should be observed that, in regulating the appeal against the customs authorities’ decisions related to the application of customs legislation after Lithuania’s accession to the European Union, earlier provisions on compulsory pre-trial review of a decision under administrative (departmental) procedures in the office, which made the decisions, were repealed.

On the other hand, from May 1, 2004 the Republic of Lithuania introduced additional separation of disputes with the customs as non-tax and tax disputes with customs were distinguished (Medeliéné, 2011). According to the version of Law on Tax

4 Customs legislation (customs law) - European Community customs legislation, legislative provisions of the Lithuanian international treaties, provisions of Lithuanian legislature, which make the customs responsible for enforcing them, legislature of the customs that is under its authority and International treaties and agreements with the customs other countries (Customs Law of the Republic of Lithuania: Article 3, Paragraph 5).
Administration May 1, 2004\(^1\), which is applicable when the customs authorities administrate its assigned duties related to taxes (as far as it does not collide with the European Community customs legislation), tax disputes with customs authorities may arise from decisions taken by the customs authorities, when taxes are recalculated and a taxpayer has to pay taxes. Disputes may also arise regarding the decision to refuse to refund (offset) the tax overpayment (difference). A special mandatory pre-trial tax litigation procedure with the customs is established. According to this procedure decisions made by the local tax authorities (regional customs) must be appealed in the mandatory form to the Customs Department, and the latter authority's decisions – by choice to the specific tax litigation authority – Commission on Tax Disputes under the Government of the Republic of Lithuania – or the court. For this reason, it is often stated that the current national law has two different pre-trial customs appeal procedures – non-tax (administrative) disputes with the customs and tax disputes.

**Current problems of legal regulation regarding the disputes with the customs in Lithuania**

Since, as mentioned above, the pre-trial dispute litigation with customs system in Lithuania is quite complicated, in each case it is especially important to identify correctly the order and how a dispute should be dealt with between a person who has received decision (or an action) made by the customs or customs official and thus influencing his rights or legitimate interests. This rather theoretical problem also have a great practical importance, since the person's abilities to use means of legal defence in the most effective and shortest way depend on the establishment of particular litigation procedures, especially fair procedures of appeal. Examining provisions of the national law it is possible to distinguish certain problematic areas and aspects connected with the practical application of these provisions.

First of all, it must be emphasized that the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic provide not only the mandatory pre-trial procedures of investigating complaints relating to the application of customs legislation, but also mandatory procedures regarding complaints due to the decisions made by the customs officials. According to the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic Section 6.1 such complaints first of all must be investigated in the departmental (administrative) office, which employs particular customs official and only then the complaint may be submitted to other dispute settlement institutions\(^2\). However, the Article 243 of the European Community Customs Code, and the Article 88 of the Law on Customs\(^3\) provide only a mandatory dispute

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settlement procedure regarding the decisions made by the customs institutions (authorities) (see also B. J. M. Terra, P. J. Wattel, 2008). It is debatable whether such Regulations on Investigation of Complaints in the Customs of Lithuanian Republic comply with the national laws and (or) European Union law and therefore must be revoked, since according to the practice of the European Court of Justice (Case C-213/89, R. v. Secretary of State for Transport, ex parte Factortame Ltd [1990] ECR I-2433) any provision of a national legal system which might impair the effectiveness of European Union law constitutes the right to require from Member State or national court to set aside such national legislative provisions.

Secondly, attention should be paid to the fact that the European Court of Justice in Case C-213/99, José Teodoro de Andrade v. Director Alfândega da de Leixões [2000] ECR I-11083 has pointed out that the Community Customs Code, Article 243 gives the person concerned the right of appeal not only against written decisions made by the customs office or an official, but also against actions, i.e. when a decision is not adopted, there are no official records or reports about them. This opinion is also supported in the scientific literature (Europos Sąjungos teisė. Seminarai, 2006). However, the Law on Customs and Regulations on Investigation of Complaints in the Customs of Lithuanian Republic use the concept “the decision made by the customs office” or “the decision made by the customs official” when non-tax disputes with customs are defined. Thus, the national law does not regulate how the person concerned could appeal against the actions made by the customs offices (or customs officials) regarding the application of customs laws. It must be observed that in practice these actions are sometimes not registered officially with a written document. So the right of appeal against the actions made by the customs offices (especially in case when they have an unwritten form) can be deducted only directly from the rules established in European Union Law (Community Customs Code). In this case it is necessary to mention, that according to the practice of European Court of Justice (Case 26/62, N. V. Algemene Transport – en Expedite Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen [1963] ECR-1) any citizen of European Union has a right to rely on European Union law in any case which is settled in national court. Accordingly, the national court is obliged to defend and implement the right of a person to appeal against the actions made by the customs offices even if this right is not clearly defined in national law (legislation) at the present moment.

Thirdly, there are lots of problems regarding practical pre-trial disputes with the customs investigation, which are related to the legal classification of the disputes. Some authors (Medelienė, 2008) believe that Lithuania has chosen a mandatory pre-trial investigation of complaints, and the above mentioned classification of complaints against the customs is complete, i.e. according to the procedures set in the Law on Customs all disputes regarding the decisions made by the customs are investigated, except for the tax disputes, which are investigated under the procedures set in the Law on Tax Administration. It must be mentioned that such position on the mandatory procedures of the pre-trial settlement with customs is debatable from both theoretical and practical point of view. As already mentioned, in accordance with the Law on Customs the dispute can only arise due to the decision made by the customs office (or its official) relating to
the application of customs legislation (customs law). However it is obvious that mandatory pre-trial procedure is not applied to certain disputes concerning some categories of decisions of customs or customs officials’ and other legal acts that are under the competence of customs. For example this procedure is also not applied when there is a failure to make decisions (inactivity) as well as in other cases when legal acts imperatively establish separate, special procedures for settlement of disputes with customs. Some of these exceptions are directly defined in the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic, Section 1 (for example disputes on disciplinary matters of Customs officials; disputes, regarding the proceedings of the customs officials and their decisions adopted under the provisions of Criminal Code and Code of Criminal Procedure and so on)¹.

Investigation practice regarding disputes with customs confirms that in addition to these mandatory listed categories of disputes, other administrative disputes may also arise, for example from the tax legal relations regulated by the Law on Tax Administration. It sets a specific legal basis for customs activity (see Law on Customs, Article 5)². This law gives the right of appeal against any tax authority (official’s) activity or inactivity (Law on Tax Administration, Section 144)³. The law provides that the disputes regarding the tax authorities’ actions or decisions that are not considered to be connected with taxes, are investigated according to the Administrative Proceedings Law of the Republic of Lithuania⁴, i.e. without mandatory pre-trial dispute resolution procedures and the person can file a complaint directly to the court. Such disputes could be disputes regarding certain tax duties recovery measures, established in the Law on Tax Administration of the Republic of Lithuania (Law on Tax Administration Article 106)⁵. Investigating these disputes the pre-trial procedure is not applied (The Commission on Tax Disputes under the Government of the Republic of Lithuania, 24 October 2006 decision in the case AB “L1” v. Customs Department under the Ministry of Finance (case No. S-355 (7-347/2006); The Supreme Administrative Court of Lithuania, 13 June 2008 ruling of the board of judges in the administrative case individual enterprise of R. V. v. Vilnius Territorial Customs Office (case No. A²⁶¹-939/2008).

Fourth, the major issue in practice remains Article 4 of the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic, which establish complaints regarding the unfoundedly paid import and export duties and taxes (i.e. essentially complaints regarding unfoundedly paid or recovered customs duties as well as tax refund)⁶. These complaints can be investigated to such an extent that they are not

¹ Regulations on Investigation of Complaints in the Custom of Lithuanian Republic. Official Gazette. 2004, No. 84· 3060
covered by the Law on Tax Administration and other tax calculation and recovery regulating laws. However, as already mentioned, according to the Law on Tax Administration (Article 2, Paragraph 20), the customs as a tax administrator’s decision to refuse a refund (offset) overpayment (the difference) may be the subject of the tax dispute. Therefore it can be concluded that the legal norm set in the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic, Paragraph 4 is not clearly formulated from the legal point of view, and the existing legal regulation hinders appropriate qualification of a certain arising dispute, determination of its legal nature and the right of appeal. Attention must be paid to the fact that according to the formulated practice regarding to disputes with customs authorities (The Supreme Administrative Court of Lithuania, 13 June 2008 ruling of the board of judges in the administrative case UAB “Energetikos tiekimo bazė” v. Customs Department under the Ministry of Finance (case No. A525-932/2008); 13 August 2006 ruling of the board of judges in the administrative case UAB “Damava” v. Customs Department under the Ministry of Finance (case No. A5-883/2006), the disputes regarding the refunding (offsetting) the overpaid taxes should be assigned to the category of tax disputes and to they must be investigated in accordance with the procedures of customs disputes.

**Perspectives of improvement of legal regulation of pre-trial dispute settlement with customs in Lithuania**

Identified problems, regarding the disputes with the customs in Lithuania, imply the need to improve the existing legal regulations. In the author's point of view, it is necessary to adjust the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic (Paragraphs 5.1, 6.1, 8, and other provisions, which are set in the other articles of this legal document), which establish that the person concerned has the right of appeal against the decision made by the official of Customs Department, regional customs or special customs authorities, connected with the application of European Community customs legislation (customs law), Law on Customs of the Republic of Lithuania as well as the application of other legal acts attributed to the competence of the customs. It is suggested to abolish the reference to the decision made by the customs official as the object of the dispute with the customs or imperatively define the concepts of the decisions made by the customs officials and/or customs authorities/institutions). It is also appropriate to abolish the provision regarding the compulsory departmental appeal to the same institutions against decisions (or failure to make decisions) adopted by the officials of the Customs Department, the regional customs or special customs authorities (Regulations on Investigation of Complaints in the Customs of Lithuanian Republic, Paragraph 6.1) In order to achieve a clearer and more effective legal regulation it should be established in Regulations on Investigation of Complaints in the Customs of Lithuanian Republic that each person has the right of appeal not only against a decision (or a failure to make a decision), which is applied to him (her) directly and individually,
but also against legally binding actions (or activities) made by customs authorities (or officials) relating to the application of customs laws.

In addition it is necessary to supplement the Paragraph 3 of the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic, with a provision that the provisions of Regulations on Investigation of Complaints in the Customs of Lithuanian Republic are not applied for investigation of administrative disputes that are not connected with application of the customs legislation (customs law) and which are investigated under the procedures set in the Law on the Administrative Proceedings. Also a debatable issue is a possibility to abolish Paragraph 4 of the Regulations on Investigation of Complaints in the Customs of Lithuanian Republic, which provides that the complaints regarding the overpayment or recovery of import or export duties and taxes are dealt according to this legal act to an extent not regulated by the Law on Tax Administration and other taxation laws, because such complaints are now generally dealt with according to the tax dispute proceeding rules.

Conclusions

Analysis of the legislation relating to the customs in the Republic of Lithuania confirms that the model of pre-trial settlement of disputes with customs historically exist for quite a long period of time. In recent years there is a clear tendency that various subjects are quite active in using their right to initiate disputes with customs using the pre-trial procedure.

It is necessary to mention that after Lithuania’s accession to the European Union procedures for the pre-trial settlement of disputes with customs in Lithuania became quite complex, diverse and are governed by different laws, including the European Union law. From May 1, 2004 the legislature of the Republic of Lithuania introduced separation of disputes with the customs into two main categories: non-tax and tax disputes. Both of these disputes resolution procedures have special pre-trial litigation rules.

However Lithuanian legislation do not provide a detail list of mandatory pre-trial dispute settlement procedures, since practice shows that other administrative disputes with customs may also arise which are solved without mandatory pre-trial dispute resolution procedures. So there is a need for the improvement of current legislation and its provisions since some of them may not even comply with the law of European Union.

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The Commission on Tax Disputes under the Government of the Republic of Lithuania, 24 October 2006 decision in the case *AB “L1” v. Customs Department under the Ministry of Finance* (case No. S-355 (7-347/2006)).
UNINSURED DEPOSITOR RIGHTS PROTECTION IN BANK INSOLVENCY

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Abstract

The objective of the article is legal instruments protecting uninsured depositor in bank insolvency. The paper is focused and reviews issues relating to the unprofessional depositor with typology of insolvent Lithuanian bank “Snoras”. According to this view, the paper analyses legal aspects of the bank’s specific obligations to the depositor under Lithuania’s bank insolvency rules and regulations. The purpose is, by means of different methods, to investigate depositor’s rights protection concept covering uninsured bank’s product - deposit certificates. This paper reveals the content of legal norms regulating uninsured depositors in bank insolvency (laws, secondary legislation, especially court decisions of Lithuania), analyzes what problems arise in an attempt to ensure depositor rights and discusses the impact for uninsured depositor ex ante and ex post bank insolvency. The main issue of the paper: what are the legal techniques protecting uninsured depositor rights under bank insolvency frameworks? The issue based on the typology of insolvent bank “Snoras” which actively disseminated deposit certificates to the customers in order to improve the bank's financial stability, without increasing the share capital of the bank, for that reason, bank misinformed the owners of deposit certificates that such a product is treated as insurance object. The paper is written from the Lithuanian law perspective.

Purpose – to investigate depositors’ rights protection terms covering uninsured bank’s product- deposit certificates.

Design/methodology/approach – Purposely to explore the actual meaning of legal norms and legislations as well as content and to analyze the literature and jurisprudence the systematic, analyses, synthesis, comparative methods were used.

Findings – all depositors have full interest to be treated as insured with the consequent of compensation. Deposit protection is designed to compensate some classes of depositors in case of bank failure. In Lithuania depositors protections scheme is limited to protecting small depositors (up to 100.000 EUR). On the other hand, it contains problems of “moral hazard” (set of incentives for the protected to behave differently: irresponsibly, carelessly or less conservatively- simply because of the existence of protection). However, before bank “Snoras” became insolvent, one class of depositors were misinformed about the terms and their rights protected by selling specific bank’s product – deposit certificates. For that reason, firstly they received treatment as uninsured creditors. On the other hand, legal principle “know your customer” is now a widely accepted obligation on banks. However, the legal principle “know your bank” or the principle “know your contract” applied to depositors or unprofessional customers have some specific rules
and is not applied directly. The rule - once customers sign a contract they are generally bound, even if they have not read its terms - is partly illegal. Yet banking contracts are still standardized in Lithuania. The securities laws nowadays should demand not only “formal” written agreements with the clear description and professional consultation before signing the contract with private customers (depositors) in areas such a fund management or deposit certificates. Even if the clauses are found to have been incorporated in a contract, they may be construed against a bank. The contra proferentum rule is applied in cases of ambiguity or where other rules of construction fail. If it is applicable, it results in a contract being construed against its makers. Exclusion clauses must explicitly state that they extend to a bank’s oral, as well as written, misrepresentations, include its failure to exercise reasonable care and skill and cover both direct and consequential losses.

**Practical implications** – The paper is focused on particular misleading legal interpretations of the unprofessional client in the context of insolvent Lithuanian bank “Snoras” typology. Another significant issue, analyses problematic aspects of the bank’s obligations, which are very specific in bank bankruptcy frameworks. Thus, bank insolvency affects not only public interest but private interests as well as. Customers' interests are also effected, for that reason, it is necessary to investigate the depositor rights protection area and the first question to consider is, what bank behavior is legally untolerated and unacceptable to depositor certificates holders in bank insolvency? The issue based on the fact that Lithuanian bank “Snoras” actively disseminated deposit certificates *ex ante* bank insolvency. So what happens *ex post* and is there any legal chances to treat deposit certificates as an insurance object with the compensation to depositors? The issue is relevant to Lithuania banks depositors, academic society as well as the jurisprudence of Lithuania.

**Originality/Value** – Processes of bank insolvency are recurrent phenomenal. The banking industry has faced great legal and economic challenges in the last few years of financial crisis. Lithuania is not an exception. Two Lithuanian banks faced insolvency almost in a year. These cases require new legal viewpoint in the area of depositor rights protection and market discipline. Furthermore, due to the bank insolvency, not only public interests but the private interests as well as depositors are affected. Besides, recent new jurisprudence has formed in Lithuania courts, in the context of bank consumers (depositors) - unskilled, unprofessional and unpracticed on occasion specific bank products (certificate of deposit) – so it requires a new legal viewpoint in order to identify legal relations between secured and unsecured depositors.

**Keywords:** Bank insolvency, bank, uninsured depositors, deposit, deposit certificates.

**Research type:** research paper.

**Introduction**

Processes of bank insolvency are recurrent phenomenal. A noteworthy feature of banks insolvency that bank’s failure can postulate a country’s legal and financial resources and risks. It is universally known that the bank sector had great legal and economic challenges in the last few years of financial crisis. Lithuania is not an exception. Two banks faced insolvency¹ cases almost in a year. These Lithuania banks insolvency

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cases have implemented social, economical and legal changes which require a new legal attitude. Furthermore, not only public interests but the private interests as well (as depositors) are affected in bank insolvency. It is widely known that banks traditionally borrow money from depositors (and others) which is typically repayable either on demand or on relatively short notice and then much of that money to a variety of borrowers. Moreover, deposit insurance has traditionally served two purposes: consumer protection and the prevention of bank runs. This article focuses on consumer (depositors) protections which is based on the new jurisprudence of Lithuania, in the context of bank depositor protection - unskilled, unprofessional and inexperienced. Following this the main issue of the paper is legally intolerable and unacceptable bank behavior which leads to the breach of depositor rights.

Basically, in the case of insolvent bank the interest of creditors is more complicated due to the existence of different types of depositors (insured and uninsured). Indeed, some lawyers argue that “ideally the system should be designed to ensure that there are controls on the behavior of management while at the same time ensuring that those who deposit money in banks have to take some responsibility for their actions”². On the other hand, the relationship of banker and customer is primarily that of creditor and debtor³. The amount deposited by a customer becomes part and parcel of the bank’s own money. Moreover, the behavior of bank “Snoras” management was potential fraudulent⁴.

To continue, depositors are often treated as a privileged class due to state support and insurance system⁵. Unfortunately, sometimes banks are faced with temporary liquidity problems which lead to the necessity of seeking assistance from the Central bank or necessity to provide high risk products into the market in order to keep their capital on required level. However, sometimes it leads to bank liquidation (bankruptcy). When the bank is liquidated in Lithuania it is reliable that all the creditors (depositors) will receive full payment of the amounts they are owed (in Lithuania up to 100 000 EUR equivalent⁶). Deposit insurance is nowadays needed because it is impossible to avoid a commitment to protect depositors. However, it is hardly reliable that those creditors who are uninsured can expect to implement their financial claim from the general asset pool. For that reason, naturally - all depositors have full interest to be treated as insured

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⁴ The review of bank “Snoras” bankruptcy process made by Central bank of Lithuania and presented to the Republic of Lithuania Seimas [interactive] [accessed 2013-03-13]. http://www.lb.lt/seimo_posedijie_ab_banco_snoras_bankroto_proceso_apzvalga_1
deposits (with the right to compensation). Though, some creditors of a bank received special treatment as secured and some of them were misinformed about the terms and their rights on previous contracts of deposit.

**General legal framework of bank deposits and insured bank products in Lithuania**

First of all, analyzing depositors’ interest to be treated as insured depositors, it should be taken into account that under the most basic service bank can provide as a depository for depositors' money. This is the essence of commercial banking. It provides a legal definition for banking. Accordingly, it is described as a bank-customer relationship. In general, a customer is regarded as an uninsured general creditor, whose claim is subordinate to those of preferential claim holders (insured depositors) and to those of insured creditors. As a general creditor, in case of bank insolvency, the uninsured customer acquires a dividend based on the amount of the surplus remaining after the settlement of insured and preferential claims. Usually, the public generally holds its deposits with banks in the form of accounts, others as a form of long-term or short-term deposits, or derivative financial instruments (e.g. deposit certificates). However, multifunctional banks in Lithuania hold the public’s money in other forms as in various collective investment schemes, funds, and insurance products as deposit certificates.

Secondly, most developed countries (included Lithuania) have established schemes that protect depositors from the possibility that their bank will become insolvent. It should be noted, that “deposit insurance and regulatory intervention (i.e., the bail-out and closure policy) are standard regulatory instruments employed to avoid systemic banking crises”. It is necessary to focus that deposit insurance provides a guarantee to depositors that their claims will be repaid (generally up to a maximum) and so eases depositors’ fears in times of perceived financial weakness, but what happens with the similar products. Deposit insurance as well as other prudential measures does not completely eliminate the instability in banking or defaults made by bank. To illustrate, “bank runs may still occur from the wholesale side, from uninsured depositors, or from short-term creditors that terminate their roll-over contracts or demand additional collateral”. Nevertheless, borrowers could induce severe “moral hazard” (set of incentives for the protected to behave differently - irresponsibly, carelessly or less conservatively - simply because of the existence of protection). In fact, as it is mentioned in scientific literature

5 ibid
“deposit insurance could even undermine stability by encouraging banks risk-taking, due to decreased market discipline from depositors”.

Due to Lithuanian law on insurance of deposits and liabilities to investors, depositor is understood and should mean “a natural or legal person holding a deposit with a bank, a branch of a bank or a credit union, with the exception of the entities whose deposits under this Law may not be covered by insurance”. To add to, insurance event legally should mean the moment when “institution of bankruptcy proceedings against a bank or taking of a decision of a supervisory authority on discontinuation of banking activities, acceptance of deposits or provision of investment services where the bank is not able to settle with creditors”. The object of insurance according to Lithuania law is treated as deposit insurance coverage which should be provided for depositors’ deposits in Litas and in a foreign currency. However, “insurance coverage may not be provided to the debt securities (deposit certificates) issued by the same insured or the liabilities arising out of own acceptances and promissory notes, the mortgage bonds issued under the Republic of Lithuania Law on Mortgage Bonds and Mortgage Loans, also the deposits of or liabilities to the following entities: 1) the Bank of Lithuania; 2) insurance undertakings; 3) credit institutions; 4) financial brokerage firms; 5) the insurance undertakings operating under the Law on Insurance; 6) pension funds; 7) management companies; 8) the undertakings engaged in leasing (financial lease); 9) collective investment undertakings”.

To consider, there were a few cases analyzing the legal issues of deposit certificates in Lithuania court practice under the framework of bank insolvency. One of the major victory for bank “Snoras” deposit certificate holders was a decision of the Lithuania Court of Appeal, announced in 2013 01 10. The case investigated the legal relationship between deposit certificates, deposit and depositors rights in bank insolvency. It should be noted that, the idea that bank insolvency law must align itself with modern bank insolvency practice and principles, the customer in this research is understood as depositor- unprofessional client. To continue, the article pays attention to the impact of legal relationship between banks and their customers (depositors).

Deposit v. Deposit certificate. Delimitation of insured and uninsured deposits.

Bank “Snoras” typology and consequences of deposit insurance. First of all, we should consider the principal justification for deposit insurance - “know your customer”,

1 ibid
5 The Republic of Lithuania, Court of Appeal, Civil Division, 10 January 2013 ruling of the board of judges in the civil case V. M. M. v. insolvent bank “Snoras”(civile case No. 2-145/2013).
which is now a widely accepted obligation on banks. However, the principle “know your bank” or the principle “know your contract” for bank’s depositors ex ante have some specific rules. When the specific provisions of nonperforming loans were increasing a lot of insolvency problems were considered naturally in bank “Snoras”, in the end 2009. The capacity rate decreased up to 7.19 %, meanwhile the capacity of other bank reached 13, 5 %.

2011 12 07 bankruptcy was announced to AB “Snoras”\(^1\). Secondly, in view of these points, it is known that, bank “Snoras” actively disseminated deposit certificates\(^2\) to the customers in order to improve the bank's financial stability, without increasing the share capital of the bank. Deposit certificates were treated by the bank and presented to potential depositors as means equivalent to the terms of deposits. To add to, in order to sign the contract, more than market value interests were suggested to the clients\(^3\). Thus, in fixed deposits the rate is usually higher in long-term deposits\(^4\) than in short-term deposits or in deposits payable “at call” (meaning “on demand”). Furthermore, the rate may depend on the deposited amount but not on uncertain bank’s targets. From the practical point of view, the bank’s profit is, principally, the difference between the interest that it pays to its customer and the amount which it earns by investing the amounts deposited with it.

*De iure*, as it was mentioned, deposit certificate is not insured bank product according to Lithuania law (*chapter I*). Such a bank’s product is understood as securities, specifically, “*a bank certificate is a written bank document containing a statement on the monetary contribution and granting the depositor the right to receive that contribution and interests subject to the time-limits stated therein*”\(^5\). On the other hand, *de facto* such deposit certificates were supplied and presented to the customers (depositors) in the Lithuania market as equivalent to the bank “Snoras” deposit instruments. Contracts were included terms with the obligation that the deposit is insured and un-professional customers are treated with the highest level of legal protection. Moreover, the contracts of deposit certificates misinformed the customers (depositors), disclosed some unfair terms and lead to sign a contract associated with a high risk terms\(^6\). Bank “Snoras” was not suspected as unreliable. To continue, it should be considered these main breaches of depositors rights according to Lithuania bank “Snoras” typology.

**Depositor rights protection. Disclosure of information in the contracts of deposit certificates.** Deposit certificates contracts were signed under the legal framework of

\(^1\) The Republic of Lithuania, Vilnius district court decision, Civil Division, 12 December 2011, in the civil case Central bank of Lithuania v. AB “Snoras” (civil case No. B2-7791-611/2011).

\(^2\) ibid

\(^3\) Public information of the association of bank „Snoras“ depositors. www.indelininkai.lt [interactive] [accessed 2013-03-10]

\(^4\) A deposit that can be withdrawn only after a specified period of time: for example, a three month deposit or a six-month deposit. These deposits pay interest at close-to-market rates and are also known as fixed deposits.


service agreement\textsuperscript{1}. According to the Lithuania law, consumers “means a natural person, who expresses his intention to buy, buys and uses goods or services to meet his own personal, family or household needs are outside his business or profession”\textsuperscript{2}. Additionally, contract of deposit is legally understood as public contract. Furthermore, due to Lithuania Civil Code which regulates obligation of the provider of services to furnish information before the contract for services is entered into force, the provider of services is bound to provide the client with detailed information concerning the nature of the services that are provided, the terms of their provision, the price of the services, the schedule for the services, possible consequences, and any information which may have an influence on the client’s determination to enter into the contract. Eventually, on the basis of the service contract bank as the entity of financial broker, providing the client with investment services, the client is treated as an unprofessional client category\textsuperscript{3}.

Certainly, ipso facto the obligations to the bank goes from Lithuania Law on Markets in Financial Instruments, which regulates the safeguard of investors also defines “non-professional client (a customer who is not attributed either to professional clients or to eligible counterparties)”\textsuperscript{4} Furthermore, “a financial brokerage firm must clearly and comprehensible supply to clients and potential clients all the required information on the basis whereof they would be able to understand the essence of the investment services and financial instruments that are being offered as well as the risk typical thereof and to take investment decisions on an informed basis. The information may be provided in a standardized format. Besides, a financial brokerage firm must supply the information about financial instruments and proposed investment strategy, including guidance on and warning of the risk which is typical of certain investment strategies or investments in certain financial instruments”\textsuperscript{5}.

Alternatively, similar position is followed in opposite law systems, as in Common law Jurisdictions. A signature of a document is a formal device there, and means that parties can treat a contract as concluded. The Rule is the subject to a number of limited exceptions; non est factum; fraud and misrepresentation; undue influence and unconscionability; and that document did not appear to be contractual. Nevertheless, it may also be that there is an exception where the signature was otherwise written in circumstances in which it did not signify the customer’s assent to be bound. An absent signature, however, customers (depositors) may be able to argue that the bank’s written terms have not become part of the contract. The bank has to establish that customers

\textsuperscript{1} The Republic of Lithuania, Vilnius district court decision, Civil Division, 12 December 2011, in the civil case Central bank of Lithuania v. AB “Snoras” (civil case No. B2-7791-611/2011).
were given adequate notice of them. This is a question of fact and a court will give attention to all circumstances of a case.

Essentially, in the particular case of bank “Snoras”, it was identified that service agreement on deposit certificates and contracts’ description (annexes) part were not reasonable in order to make the decision that the bank informed the customer rightly about all potential risks. One of the major legal arguments is the fact that the risks and the characters of financial instruments which were regulated in the bank “Snoras” contract’s annexes were made and introduced by the bank to the customers, appointed to the professional clients as well as to the unprofessional clients (unskilled and unqualified). Overall, the court made the positive decision to the deposit certificates owners based on these arguments: i) if the client is not directly, explicitly informed about deposit certificates as financial market instruments it should be treated as insurance object ii) The Court noticed that deposit certificates is not insured by the state insurance system and the bank “Snoras” did not clearly disclosed all necessary information under the consumers rights protection which was required in order to sign the contract. In such a circumstance background, extraordinary situation formed, and after bank insolvency it was declared that the owners of deposit certificates have no right to insurance object (bankruptcy administrator refused to fulfill such a creditor's claim). Lastly, the Court announced that deposit certificates should be treated us objective of insurance.

**Unfair actions and specific terms in deposit certificates.** Due to service contracts regulation, which is regulated by the Republic of Lithuania Civil code, it is required that the parties would treat each other with fair behavior not only during performance and execution of the contract but also before signing the contract. It means that parties should disclose all information (included negotiation process), which is fundamentally important and significantly or relevant in order to make an agreement. Therefore, Lithuania Court of Appeal made a reasonable decision based on the facts that the bank “Snoras”, before signing the contract, needed to disclose all the information he had about the specific bank product - deposit certificate. Also, he had the obligation to collect and evaluate the information about the client's investment experience and capacities or abilities understand the risks and make a decision - sign or refuse to sign on financial instrument agreement. It means the bank should identify and make more reasonable and detailed decisions whether the investment instrument is suitable for the client or not.

Up to a point, when a depositor who has been granted and qualified as unprofessional client category, is left by his own to evaluate independently of all potential and possible risks of financial instrument, in such scenario, the client is not applicable for such customer information and the situation should be treated as a law breach according

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2 The Republic of Lithuania, Court of Appeal, Civil Division, 10 January 2012 ruling of the board of judges in the civil case V. M. M. v. insolvent bank “Snoras” (civil case No. 2-145/2013).
to the client’s knowledge, skill and experience levels. Furthermore, the ability to carry out a proper evaluation of investment risk independently is significant as well.1

It should be taken into account, that conditions of deposit certificate contracts should be considered deeply, in details, should be individualized with the separate confirmation of signature which should be made by the owner of deposit certification. In that particular case, a customer is denying that description or annexes of the contract were presented by the bank properly, to add to he have never had the experience with financial instruments before. It is presumed, due to the jurisprudence and law of Lithuania, that the obligation of the bank is to provide the court or FSA (Financial Services Authority) with the evidences about the proper implementation of obligations in disclosing all necessary information to the client. Particular information includes the clauses about the contribution of the risk inherent (granting of the deposit certificate) and information about the performance of the contract. Also, it should be noted, that the bank as a subject, which bears the obligation of proving a circumstance related to his duties, falling due to execution of the contract. Consequently, the bank must assume the obligation of risk factors and means of evidences, as well as to disclose terms of contract content properly.

In bank “Snoras” insolvency case, the bank did not provide any further evidences of such a fact, except the purchase agreement of the deposit certificate under detailed standard conditions (expresses the statements of deposit certificates owners, it declares “that he fully familiar with the description and agrees with its terms”2).

Comparatively, in Britain, there were some cases where depositor said “some clauses which I have seen would to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient”3. That approach was applied in another leading Court of Appeal decision, where nothing was done to draw the customer’s attention to the relevant condition: it was merely one of four column’s width of conditions printed across the foot of the delivery note. Consequently, the court held that it never became part of the contract between parties.4

**Standard terms in the agreements of deposit certificates. Contra preferentum rule.**

Standard terms also enable the bank to set parameters (or at least to attempt to do so). Thus, by terms which are usually represented by the counterparts and the confirmation that the written contract is the entire and final agreement between the parties is required. According to Lithuania law, “standard conditions shall be such provisions which are prepared in advance for general and repeated use by one contracting party without their content being negotiated with the other party, and which are used in the formation of contracts without negotiation with the other party. Besides, standard conditions

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1 The Republic of Lithuania, Court of Appeal, Civil Division, 22 November 2012, (civile case No. 2-2098/2012)
3 Royal Courts of Justice, EWCA Civ 6, 12th November 1987, Interfoto Picture library limite v. Stiletto visual programmes limited, Case No. 480669,
prepared by one of the parties shall be binding to the other if the latter was provided with an adequate opportunity of getting acquainted with the said conditions”1. What’s more, it is agreed2 (on the standard term implementation) that in case one part acceding the agreement so that standard contract terms are binding on the other party only if the standard contract developed party revealed the clauses to another party. Lastly, the fact that the other party has been properly introduced to the standard terms of the contract must be proved by the party which developed and prepared standard terms as a contract.

**Rationality in the contracts of deposit certificates.** Qualifying uninsured deposits as insured or whether there was a misunderstanding or not, the criteria of reasonableness is also applicable3 i.e. party claiming that it was wrong behavior must be considered in the considerations as prudent, careful person, under the same circumstances behavior (means that other normal and reasonable person, knowing the true statements of affairs in a similar situation would sign the same transaction)4.

**Bank as more substantial part of deposit certificates contracts.** The legislator indicated that the financial sector, which includes a significant part of the banking sector in Lithuania, is attributable to one of the most social sensitive sectors and the situation in this sector could have a significant impact on the country’s economy, citizens trust and economic subjects trust and confidence in the country's financial system. It is declared in the Financial Stability Act general provisions5. In order to strengthen the use of the financial system, this system should be sustainable, therefore, it is necessary to ensure applicable and timely implementation of financial stability and effective remedy. Afterwards, these provisions indicate that the stability of the financial system is understood as public interest6.

To conclude, from the eighteen century banks have attained a high reputation as regards creditworthiness and honesty in dealings. The public trust is enhanced by the fact that banks are strictly controlled and supervised by the Financial Services Authority. In countries like Germany, the Netherlands, and Switzerland there are general business conditions for accounts and deposits, drawn up by associations of banks. In Britain banks have now adopted codes of practice when dealing with personal customers. 7However, due to Lithuania central bank law, there is no direct obligation to the Central bank of Lithuania to control the products of the banks and especially terms of contracts. To add to, association of banks in Lithuania also is not providing any particular

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2 The Supreme Court of Lithuania, Civil Division, 25 September 2012 ruling the board of judges I.J. v. “Balticums draudimas” (civil case No. 3K-3-516/2006).
4 The Supreme Court of Lithuania, Civil Division, 9 October 2000 ruling the board of judges L. L. v. V. L., D. B. L., I. B (civil case No.3K-3-974/2000).
6 The Supreme Court of Lithuania, Civil Division, 20 February 2012 ruling of the board of judges in the civil case A.P., D.V. v. DNB Nord bank (civil case No. 3K-3-58/2012.)
recommendations on the standard terms implementation e.g. contracts of the deposit certificates (except very general code of good banking practice which are not legally binding and with very general provisions\(^1\)). Regarding the law in Lithuania, the banks should take their own risks of their products included operational risk (information obligation, fair behavior of their employees etc.). Presumably, the customers must pay attention to uninsured deposits (especially deposit certificates) and their conditions themselves or take private consultants before signing the contract. It is recommended to apply an act the courts may well use them as a basis for implying terms into the bank-customer relationship.

**Conclusions**

Existing depositors insurance compensation system in Lithuania gives rise to “moral hazard”: there is no incentive for depositors take care in their choice of bank. For that reason they were not careful enough analyzing the contract terms of deposit certificates before signing the contracts. However, due to the Lithuania’s court practice, courts treated and defined the legal conditions, under which uninsured depositors could be treated as insured. Bank “Snoras” practice was unsafe, unsound and illegal banking practice. Such a misbehavior of the bank should require regulatory actions *ex ante* in order to avoid disputes *ex post*.

Even if the clauses are found to have been incorporated in a contract, they may be construed against a bank. *The contra proferentum* rule is applied in cases of ambiguity or where other rules of construction fail. If it is applicable, it results in a contract being construed against its makers.

Exclusion clauses must explicitly state that they extend to a bank’s oral, as well as written, misrepresentations, include its failure to exercise reasonable care and skill and cover both direct and consequential losses. Supervisory authority should draw new rules and obligate all Lithuania banks to keep them in order to control such banking product as deposit certificate. FSA should have the right to take sufficient formal actions *ex ante* bank insolvency e.g. standardizes bank’s contracts, restrictions of banking activities or banking license due to the misinforming the bank depositors with their rights.

Yet banking contracts are still standardized in Lithuania. The securities laws now should demand not only “formal” written agreements with the clear description and professional consultation before signing the contract with private customers (depositors) in areas such a fund management or deposit certification. It is recommended to apply an act or secondary legislation (e.g. by FSA) the courts may well use them as a basis for implying terms into the bank-customer relationship. One of the options is to draw the act which will ensure the detailed proves up to the signing the contract (e.g. annexes, detailed form of the contract’s description, video or audio records in electronic file or similar). Eventually, it will let to recognize the disclosed information to the customer).

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The rule - once customers sign a contract they are generally bound, even if they have not read its terms - is disputed. Justification for this rule focuses on form, not substance. It should be noted that the jurisprudence of Lithuania takes the right position protecting consumer (depositors) contracts as a weaker part in the context of bank insolvency.

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PENALTY CLAUSES WITHIN DIFFERENT LEGAL SYSTEMS

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Abstract

In this article the regulation in regard of penalty clauses within two different legal traditions, i.e. common law tradition and continental law tradition, is analyzed. In general a penalty clause implies a fixed sum, which has to be paid by a party for the failure to perform its contractual duties timely and duly. In common law world penalty clauses are rendered unenforceable, whereas civil law countries, including the Republic of Lithuania, consider such clauses enforceable to the extent that the stipulated amount is not excessive. Moreover, in the article attempts to reach a uniform regulation throughout various legal instruments are revealed.

Purpose: to analyze the regulation of penalty clauses within different legal systems.

Methodology: a systematic method was used in order to ascertain the content and true meaning of the legislation concerning penalty clauses, whereas comparative method allowed comparing such legislation among different jurisdictions. On the basis of analytical method conclusions were withdrawn.

Findings: common law courts on the basis of just compensation principle may declare a clause, which stands for a penalty, unenforceable, whereas civil law courts may only reduce grossly excessive amount. However, under major soft law instruments, such as the UNIDROIT Principles\(^1\), PECL\(^2\) and DCRF\(^3\), the divergence from common law rules of non-enforcement of penalty clauses is evident. Although there is a lack of binding transnational rules that control the enforceability of penalty clauses across the countries, it seems that today the most feasible solution consists of the approval of national rules, which would shield the enforcement of penalties in international commercial contracts in common law jurisdictions.

Research limitations: in the light of the civil law system terms of liquidated damages and penalty clause are used interchangeably, since both are enforceable. However, a distinction between the two can be made on the basis that a liquidated damages clause is used to estimate damages in case of breach, provided that there has been an actual harm to the plaintiff, whereas

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a penalty clauses is used to establish a penalty to be paid in case of breach with the intent to encourage performance. The latter also does not require proof of any real damage.

Practical implications: the article initiates a discussion on the importance of ensuring the legal certainty in contractual relations, particularly in the field of enforceability of penalty clauses, not only on the national but also on the international level.

Originality/Value: in the law of contracts the clash of common law and civil law in respect of the treatment of penalty clauses has drawn a lot of attention of scientists and researchers; however, the question of this article, i.e. how to eliminate the clash between two different legal systems and to achieve binding uniform regulation that would control the enforceability of penalty clauses, remains of high importance.

Keywords: common law system, civil law system, penalty clause, liquidated damages.

Research type: general review.

Introduction

The law on penalty clauses perfectly reflects the tension found throughout contract law, which is common to most jurisdictions and to all periods of contractual history. In the common law world penalty clauses have been void for three centuries (McCormick, 1935). Such level of legal uncertainty has been reached throughout the means of paternalistic interference with contractual freedom. On the other hand, civil law perhaps went too far in the other direction. For example, in accordance with the Napoleonic Code, which was the basis for other European civil codes, if parties entered an agreement, it meant they stated the law, which could not be modified by the court, even if the amount to be paid for the breach was excessive (Fontaine and De Ly, 2009). Nevertheless, today some degree of convergence between common law and civil law systems, which will be further in this article explained, has happened.

I: The Common Law Approach

In common law world there is a strict distinction between liquidated damages and penalty clauses (Mattei, 1997). The distinction between the two is based on their different nature, i.e. the former is used for compensatory purposes, whereas the later is used to deter the breach. In other words, the liquidated damages clause represents a genuine pre-estimate of damages, while the penalty clause is stipulated as in terrorem of the offending party (Miller, 2004). Even though these functions may overshadow one another (especially in cases where the intention of the parties is not clear, or where they tend to include both a coercive and compensatory element to the clause), the general rule under the common law is that a payment clause is only enforceable when it functions as a liquidated damages clause. So despite the fact that contractual parties are free to bargain all matters, common law judges maintain a broad level of discretion over the choice of remedy (Farnsworth, 1970).

It seems that common law judges tend to avoid the introduction of any form of punitive damages (in addition to compensatory damages) for the breach of a contract
because supposedly “the mere availability of such a remedy would seriously jeopardize the stability and predictability of commercial transactions, so vital to the smooth and efficient operation of the modern [...] economy”. According to the common law theory of “efficient breach”, it is considered that as long as the aggrieved party receives monetary damages compensating for its expectation loss, breach will be more efficient than performance (Posner, 2011). Moreover, under the common law conception of damages, awarded damages should compensate the claimant and not exceed his actual loss. Based on such conception of damages the House of Lords in one of its cases stated that a clause in a contract that stipulates for a sum, which is in excess of the actual loss of the obligee, is considered illegitimate. Common law judges distinguish liquidated damages from penalty clauses by comparing the clause, which may include either penalty or liquidated damages, with conventional damages. In case of substantial difference between the two, it would be concluded that the liquidated damage clause is a penalty and therefore unenforceable (McKendrick, 1997). Further it would be presumed that the contract was silent on a certain amount, which was set out to be paid as damages for the breach of contractual obligations, and a conventional remedy would be awarded to the aggrieved party.

American law, which was greatly influenced by the Uniform Commercial Code and Restatement 2d Contracts, has formulated two conditions which must be satisfied in order for the stipulated sum not to fall under the definition of a penalty clause: (i) the stipulated amount must be reasonable (i.e. not grossly disproportionate) in light of the harm anticipated by the parties or the actual harm caused by the breach; (ii) due to subjective valuation, uncertainty, difficulty of producing proof of damages, or any other measurement problems it is difficult or impossible to measure – and thus prove – the presumable loss (Hatzis, 2002). Hence, today American courts apply one single test of reasonableness with two elements, namely the disproportion of the agreed sum and the difficulty of proof of loss, in order to determine whether a liquidated damages clause does not actually function as a penalty clause. Most other common law countries, such as

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1 The Court of Appeals of Maryland in General Motors Co v. Piskor, 281 Md. 627, 381 A.2d 16 [1977].
“Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty”.
England, Australia, Ireland and Canada, have similar rules in respect of liquidated damages and penalty clauses.\(^1\)

When classifying the clause either as a penalty or liquidated damages under English law, the court will take into account the intention of the parties as to its purpose in order to distinguish whether the clause is genuinely to calculate loss in advance or to punish a party, which is at fault for the breach of contract.\(^2\) In other words, the court will scrutinize whether the stipulated sum, which is intended by the parties to be compensation \textit{ex ante} (at the time of contract negotiation and drafting), is not “extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach”\(^3\). Nevertheless, in \textit{Jobson v. Johnson} the English court established different rules, compared to the general common law approach, in regard of clauses classified as penalties. According to \textit{Jobson v. Johnson}, if the clause is classified as a penalty, it is not simply struck out of the contract but rather “remains in the contract and [even] can be sued on”\(^4\). However, it was also added by the court that such clause “will not be enforced by the court beyond the sum which represents the actual loss of the party seeking payment”\(^5\).

It can be concluded that common law courts render penalty clauses unenforceable, though the English court ruling in \textit{Jobson v. Johnson} seems to show an exception to the general approach. However, it must be borne in mind that under English law a stipulated sum will be only enforced to the extent that it does not function as a penalty simply by “scaling-down” the clause to the actual loss, whereas if the actual loss is more, then the clause will act as a limitation on recoverable damages (Whincup, 1997). By “scaling-down” the clause and enforcing it to the extent that it does not function as a penalty the court is, in principle, modifying the clause, which could be viewed as confirming a subtle convergence of approach between common law and civil law traditions, especially since most civil law countries instituted the power of the judge to limit excessive penalty clauses.

\textbf{II: The Civil Law Approach}

In the narrow sense, penalty clause may be considered a sum of money, which is to be paid for the failure of performance of contractual duties (Vasarienė, 2002). It is

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1 See, for example, one of the leading cases on penalties, Dunlop Pneumatic Tyre Co Ltd v. New Garage and Motor Co Ltd [1915] AC 79, 86-87, where the House of Lords established the principles on how to determine whether a damage clause actually is a penalty and thereby unenforceable. This case was cited by the High Court of Australia in Ringrow Pty Ltd v. BP Australia Pty Ltd [2005] HCA 71, as well as by the Supreme Court of Ireland in O’Donnell v. Truck and Machinery Sales Limited [1998] 4 IR 191. The Supreme Court of Canada has adapted a similar approach in Elsley v. J.G. Collins Ins Agencies, [1978] 2 S.C.R. 916, 946, and does not allow for any recovery of an amount exceeding the actual damage.

2 The Court of Queen’s Bench in Law v. Redditch Local Board [1892] 1 QB 127, at 132.


5 Ibid.
important to note that civil law countries share the same concept, under which the penalty clause is defined as a provision seeking to encourage the performance of contractual obligations (Ambrasienė et al., 2009). Under the civil law system penalty clauses can be viewed as the kind of liquidated damages that would not be enforceable in common law countries due to the public policy, which prohibits clauses designed to deter the breach by requiring the payment of extra-compensatory damages. In contrast to common law jurisdictions, penalty clauses do not have to be a reasonable estimate of what future damages will be, because civil law judges only check the general reasonableness of a penalty clause at the moment of enforcement rather than at the time of contract negotiation and drafting. It means that if the clause seems reasonable ex post, it may stand although it is unreasonable ex ante, which is an unlikely outcome in the common law perspective.

In Europe penalty clauses have been enforceable since Roman times, as under the classical Roman law there was a rule of the literal enforcement of penalty clauses, with a purpose to encourage performance of contractual obligations (Zimmermann, 1990). The Napoleonic Code, as enacted in 1804, followed the mentioned classical Roman law rule of literal enforcement of penalty clauses. The regime introduced by the Napoleonic Code did not discriminate between penalty clauses and any other contract clause. So if parties had included a penalty clause into the contract, then it could have been possible to challenge such clause only by challenging the entire contract (at least up until 1975). Many European civil codes were based on the Napoleonic Code and provided similar rules of the literal enforcement of penalty clauses (Garcia, 2012).

Nevertheless, in recent years the liberal Roman principle of the literal enforcement of penalty clauses has been progressively abandoned. There has been a widespread trend in European laws towards narrowing the scope of penalty clauses and allowing courts to reduce the amount, if they find it excessive. For instance, in 1975 Article 1152 of the French Civil Code was amended to provide: “Nevertheless, the Judge may reduce or increase the agreed-upon penalty if it is manifestly excessive or ridiculously small. Any contrary stipulation will be considered not written” (Schlesinger et al., 1988). The rule as it applies to excessively high penalty clauses is substantially in accord with the German Civil Code Section 343\(^1\), Swiss Code of Obligations Article 163\(^2\) and other European laws. For example, Article 6.73-3 of the Civil Code of the Republic of Lithuania also legitimates the reduction of manifestly excessive penalty clauses\(^3\), but, as the Supreme Court of Lithuania provided, due to the principle of freedom of contract the amount should be still higher than actual damages\(^4\). This Continental law evolution shows some degree of convergence between civil law and common law, if it is true that common law courts, as

\(^4\) The Supreme Court of Lithuania, Civil Division, 12 October 2007 ruling of the board of judges in the civil case J. N. v. T. M., V. M [case No. 3K-7-304/2007].
Jobson v. Johnson shows, are becoming somewhat more liberal in their interpretation of the ban on penalty clauses.

The process of evolution was encouraged by the Council of Europe, which in 1971 issued a Resolution on Penalty Clauses, with the aim of recommending a uniform application of penalty clauses for the member states to use. According to the Resolution, courts may reduce the penalty amount, if it is manifestly excessive, or if part of the main contractual obligation of the contract is performed. The Explanatory Memorandum to the Resolution in determining whether a penalty is manifestly excessive provides a list of factors, which include: (i) the comparison of the pre-estimated damages to the actual harm; (ii) the legitimate interest of the parties, including non-pecuniary interests of the obligee; (iii) what category of contract it is and under what circumstances it was concluded, with emphasis on the relative social and economic position of the parties; (iv) whether it was a standard-form contract; (v) and whether the breach was in good or bad faith. Many European codes have followed the Resolution to allow courts to reduce excessive penalty clauses, while national courts began establishing lists of criteria, which are similar to those set out within the Explanatory Memorandum, for determining the excessiveness of penalty clauses. Thus, the Resolution might be viewed as the European civil law model of penalty clauses, provided that main characteristics are: (i) the validity of penalty clauses, which may have the effect of coercing a party to perform its contractual duties; (ii) the judicial review of penalty clauses on the grounds of manifest excessiveness, or on the grounds of partial performance; and (iii) the obligee’s entitlement either to the penalty or to specific performance, with the exception of delay.

In sum, even though some degree of convergence between common law and civil law systems seems to exist, a contract clause penalizing one party for non-performance or breach of the contract will still be met with a different response in common law versus civil law jurisdictions. Most common law courts on the basis of just compensation principle may still declare a clause, which stands for a penalty, unenforceable, whereas civil law courts may only reduce grossly excessive amount.

III: Attempts to Reach a Uniform Approach

Nowhere in the law of contracts has the clash of common law and civil law notions seemed as irreconcilable as in the treatment of penalty clauses (Perillo, 1994). The lack of transnational rules that control the enforceability of penalty clauses in international commercial contracts puts at risk the will of the contracting parties (Garcia, 2012). Many attempts have been made in order to harmonize two different legal approaches, but harmonization projects usually opted for civil law principle of enforcement of penalties.

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2 Ibid. Article 7.
3 The Supreme Court of Lithuania, Civil Division, 12 October 2007 ruling of the board of judges in the civil case J. N. v. T. M., V. M [case No. 3K-7-304/2007].
subject to reduction. Such a choice involved the understandable rejection of common law approach, and it was the main reason why the UNCITRAL Uniform Rules\(^1\) failed to come into force (Solorzano, 2009).

Outside the domain of treaties, major soft law instruments, such as the UNIDROIT Principles, PECL and DCFR, have tackled the issue of transnational regulation in regard of penalty clauses. However, none of them is legally binding for states, albeit potentially useful because parties may designate one of them as applicable law. The UNIDROIT Principles\(^2\), PECL and DCFR\(^3\) resolved the issue, similarly to the UNCITRAL Uniform Rules, by following the civil law principle of enforcement of penalty clauses subject to reduction.

Further we will analyze different views towards the United Nations Convention on the International Sale of Goods (CISG)\(^4\), which is an instrument setting rules for the transnational regulation over agreed sums. Some authors state that the validity of penalty clauses is directly governed by the CISG, and therefore avoids any need to resort to domestic national law under Article 4 of the CISG (Schlechtriem and Schwenzer, 2010). Even though the CISG does not expressly address the issue of penalty clauses, Zeller (2011) asserts that when the amount of the contractual clause is judged to be more than the actual damages, the excess can be accommodated within the CISG by two its general principles, namely freedom of contract and compensation for losses. According to Zeller (2011), penalty clauses fall under Article 74 of the CISG, since the first sentence this Article addresses situations where the contract simply is silent on the consequences of a breach of contract, while the second sentence caps the losses to the sum, which the party ought to have foreseen “at the time of the conclusion of the contract”. Article 7.4.2 of the UNIDROIT Principles may be used as guidance in defining the scope of Article 74 of the CISG to include “(1)[…] any loss which [aggrieved party] suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from

\(^1\) Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance and Draft United Nation Convention on Contract Clauses for an Agreed Sum Due upon Failure of Performance. Official Record of General Assembly, Thirty-eighth Session, Supplement No 17 (A/38/17, annexes 1 and 2).

\(^2\) UNIDROIT Principles of International Commercial Contracts 2010, Article 7.4.13(1) [interactive]. [accessed 2013-03-14]. <http://www.unidroit.org/english/principles/contracts/main.htm>. “(1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm. (2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances”.


its avoidance of cost or harm; (2) such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress”. In this vein one could conclude that Article 74 of the CISG allows recovering damages that have gone beyond the confines of a breach between two parties.

However, traditional commentaries on the CISG have consistently concluded that the validity of a penalty clause must be determined by reference to domestic national law under Article 4 of the CISG (Honnold and Flechtnered, 2009). The CISG Advisory Council provided that all domestic protection mechanisms\(^1\) generally remain applicable to agreed sums, because the CISG is not concerned with questions of validity. It means that in the event of breach the validity of a penalty clause will depend on the applicable domestic national law, according to which such clause may be rendered valid in some jurisdictions and invalid in others (Graves, 2012). Nevertheless, the CISG Advisory Council added that both legal systems prohibiting penalty clauses and legal systems employing a reduction mechanism must respectively decide whether a stipulated sum is a genuine pre-estimate of the loss, or whether a penalty amount is excessive by applying an international standard rather than domestic one\(^2\).

In conclusion, Article 4 of the CISG provides that domestic law governs the validity of fixed sums, however, one must apply international standards in interpreting and applying that domestic law – notwithstanding domestic interpretations to the contrary (Hachem, 2011). It is reasonable to agree with Garcia (2012) that due to the lack of binding transnational rules in the realm of enforceability of penalty clauses, today the most feasible solution consists of the approval of national rules, which would shield the enforcement of penalties in international commercial contracts in common law jurisdictions.

**Conclusions**

1. Common law courts may either declare a clause, which penalizes one party for non-performance or breach of contract, unenforceable on the grounds of just compensation, or if it is English courts settling a dispute between the parties, leave such clause enforceable to the extent that it does not function as a penalty.

2. Although major soft law instruments, such as the UNIDROIT principles, PECL and DCFR, are non-binding, the divergence from common law rules is evident, as they opted for the principle of enforcement of penalty clauses subject to reduction on the grounds of manifest excessiveness.

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\(^1\) The CISG Advisory Council Opinion No. 10, 2012, at 3.3 [interactive]. [accessed 2013-03-14] <http://www.cisg.law. pace.edu/cisg/CISG-AC-op10.html>. The following protection mechanisms concern the validity of agreed sums: (i) “Where domestic laws establish fixed amounts for agreed sums, these provisions determine to what extent an agreed sum is valid”. (ii) “Where a legal system denies enforceability to agreed sums classified as penalties, the function of the clause determines the validity of the entire clause”. (iii) “Where a legal system provides for the reduction of excessive sums, such provisions determine the extent to which an agreed sum is valid”.

\(^2\) Ibid, at 4.2.2.
3. Under the CISG domestic protection mechanisms remain applicable to fixed sums, meaning that it is up for member states to decide whether to deny enforceability to fixed sums, which are classified as penalties, or provide for the reduction of excessive amounts.

4. Despite the lack of transnational rules in the realm of enforceability of penalty clauses, today the most feasible solution consists of the approval of national rules, which would shield the enforcement of penalties in international commercial contracts in common law jurisdictions.

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PROJECT–BASED UNIVERSITY: THEORETICAL INSIGHTS

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Abstract

Purpose: To provide a review of projects as a social force for the optimization of universities and to set the research guidelines for the integration of information and communication technologies (hereinafter ICT) into the overall university entrepreneurship strategy.

Methodology: Using different techniques of the analysis of scientific literature trying to justify the transformation of the object of research – a university – from organization to project–based organization in Lithuania.

Findings: 1. To discuss the changing attitude towards the project management; 2. To promote the concept of a university as a project–based organization; 3. To propose alternatives for the entrepreneurship education of universities through the use of ICT.

Research limitations/implications: A general review provided in the article on the basis of the examples of good practices of foreign countries and insights of the Lithuanian scientists reveals the need for more detailed research on the subject analysed both nationally and internationally. There is an apparent need for broader theoretical and empirical research as well as the necessity for interdisciplinary discussions in order to get a better understanding of the subject and development of perspectives thereof in social sciences.

Practical implications: Even though the application of technologies is mentioned in the project management term itself – „Project management is the application of knowledge, skills, tools and technologies in the implementation of a project in order to meet the needs of all participants” (PMI, 2004) – however, detailed research on the integration of the ICT into the project management and university entrepreneurship strategy is very limited. A general review of a university as a project–based organization presented in the article defines the basis for research, the core of which was selected to be an impact of ICT on the promotion of entrepreneurship of higher education institutions.

Originality/Value: Given the constant change of innovations and market needs, a general review of a project–based university contributes to the performed modern research of a public management structure. Also, taking into consideration the prevalence of the ICT, the application, popularity and constant development thereof, the research was chosen deliberately because of the added value created by technologies and their impact on the sustainable growth of Europe. Thus the creation of a model for entrepreneurship education of universities is being initiated in Lithuania.
Keywords: Project–based organization, Project–based university.
Research type: general review.

Introduction

In the face of globalization universities are going through a period of changes and transformations, which leads to the necessity to focus on on–going changes by forming modern structures of public management functions. According to Aydin Ugur (2009), it is impossible to move away from innovation and market needs in today’s social reality, thus, the social organisation form of the society is gradually changing (Castells, 2005). The idea of the New Public Management (hereinafter – the NPM) – to apply the principles of private business in the public sector – is based on the overall quality management, flexible management and the idea of business culture (entrepreneurial power) – is being rapidly implemented in universities. One of the factors of the NPM changing traditional functional management in the 21st century is project management (Locker, Gordon, 2005), which has become one of the main tools for the implementation of a modern organization strategy over the last decade (Neverauskas, Zdanytė, 2011). The organization of both the public as well as private sector, which is project – oriented and implements its strategic goals with the help of projects, is a project organization (Srivannaboon, Milosevic, 2008). Even though higher education institutions of Lithuania are carrying out a number of projects, relatively little research has been conducted on their compliance with strategic goals of universities and the realization of the European Union’s strategic goals by projects. Taking into consideration the fact that over the 2007 – 2013 period financial support in the amount of about 2.4 billion litas is planned to be allocated from the European Union (hereinafter – the EU) Structural Funds for the development of science and studies of Lithuania¹, while during the 2014 – 2020 period the EU investments into youth are planned to be increased the most as compared to other areas of funding, thus, the number of projects carried out by higher education schools is likely to rapidly increase. Project management skills have become essential in striving for both the successful implementation of projects and increase in the value thereof, as well as for success of the entire organization (Lungys, 2006). The impact of the project (–s) on the overall welfare of the organization has become the most important of all (Ramanauskiénė, 2010), while Neverauskas and Zdanytė (2010) illustrate the strategic importance of project managers and project team using a term ,,agents of change”.

Approach to the discipline of project management is expanding and at the same time the revolutionary change of the perception of project goals and their management can be noticed. The latest project management research associates project management with a social context, emphasizes the maximum control of environment affecting the performance results (Florescu (2012), Zekic, Luka (2012), Neverauskas and Zdanytė

Pursuant to the Organizational Project Management Maturity Model (OPM3) proposed by the Project Management Institute, which includes the processes ensuring organizational strategic interests in the efficient and successful implementation of projects, the Article emphasizes the contextuality of projects and their impact on the implementation of strategic goals of universities. The aim of this work is to provide a general review of projects as social force on the optimization of universities by highlighting the impact of information and communication technologies (hereinafter – the ICT) on entrepreneurship education of higher education institutions.

### Defining a project–based university

Higher education institutions play an important role in the process of the creation of a knowledge–based society. In order to adapt to market needs, universities are changing the centralized business model: they are implementing reforms and introducing advanced management principles. E. Butkus, G. Viliūnas (2006), R. Adomaitienė (2002), I. Bartkutė and L. Kraujutaitytė (2007) have been engaged in the research of management reforms of higher education institutions implemented in Lithuania and models of foreign countries and research of mechanisms for the improvement of the formation, implementation and management of higher education institutions. Given the fact that the implementation of reforms in foreign universities (such as universities of the United States of America, Great Britain, Finland, etc.) was started much earlier than in Lithuania, the issues examined in works of foreign scientists reveal the challenges that the Lithuanian higher education institutions are currently faced with. The works of researchers E. V. Groves, M. W. Pendlebury and D. K. Stiles (1997), who have been researching the Great Britain’s higher education institutions, could be distinguished here as those naming the lack of the strategic planning of universities as one of the factors slowing down the reforms. The research performed by S.Ch. Anyamele (2005) is important internationally, as she analyses the Finnish universities as entrepreneurial institutions, and is engaged in the research of the increase of the effectiveness, efficiency and accountability of higher education institutions. The Article is based on the necessity declared by S. Ch. Anyamele to continuously promote the university changes by applying flexible management and accountability structures, implementing strategic planning and looking for non–state funding opportunities (Anyamele, 2005). In the view of the fact that „in striving for quality and competitiveness, each modern organization must associate its operations with the strategic documents and provisions of development programs of the EU as well as the national ones” (Pilipavičius et al, 2011), project management in universities is becoming the key tool not only for the implementation of additional funding goals, but of strategic goals as well. Project management has been widely examined in scientific literature:

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1. Project management as a measure for increasing competitive advantage was examined by K. Jugdev and G. Mathur (2006), S. Srivannaboon and D. Z. Milosevic (2008);
2. In his research, A. Jaafari (2007) distinguished key features of a project organization and continues the study of project quality management;
3. S. J. K. Cicmil (1997) examined the factors of the efficiency of project management;
4. H. R. Kerzner (2013) examined the project management maturity models.

Still, one has to admit that priority is given to the analysis of private sector project management. For instance, D. Zekic and S. Luka (2012) stated that „Managing a company as a Project is a future that has already started”, and singled out the need for the „development of information systems for modern entrepreneurial – Project management”. Still, it has to be admitted that project management in the public sector and particularly in higher education institutions has not been studied thoroughly. However, initiatives of individual researchers, like the research of the assessment of project management maturity of universities conducted by E. Meilienė and R. Čiutienė (2010), are worth mentioning here. Usually, one of the areas of project management is chosen as a research object. The project management model is not analysed in full in a respective organization, which would not only contribute to the implementation of goals of a particular organization, but also to the national goals and goals set by the European Union. The need for research of organizations of the public sector as project organizations in Lithuania is also worth mentioning here. Given the above context, in accordance with the scientific literature analysis, the influence of universities on the increase of a potential of the state economy is considered to be possible through the adoption of innovative methods, implementation of flexibility, cooperation with business sector and increase of the efficiency of project activities. An advanced growth is a development of economy based on knowledge and innovations, which includes strengthening of knowledge and innovations, improvement of educational quality, growth of scientific research, use of the possibilities provided by information and communication technologies for entrepreneurship education. This is confirmed by the theory of coexistence and coevolution of social technologies (Nelson, R. R. & Nelson, K., 2002), which states that social technologies not only help to realize the already created physical technologies, but also allows for the emergence of new physical technologies. According to the author (Nelson, R. R. & Nelson, K., 2002), the latter process has been determined by new forms of organization, cooperation and synergies. Given the exceptional importance of project management in modern world, the necessity for entrepreneurship education in

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2 The Mayor of the New York City Michael Bloomberg officially declared the 3rd of November 2005 to be an International Project Management Day, which, upon the initiative of the Project Management Institute (PMI), the United States – based international organization uniting project managements specialists, was
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universities through the use of ICT in Lithuania is emphasized. Given the sensitive situation of the national universities, in the view of demographic and competitive aspects as well as on the basis of the performed review of scientific literature, the need for joining forces in search of a common solution at the national and international levels arises.

Impact of information communication technologies on entrepreneurship education of higher education institutions

Androulla Vassiliou, European Commissioner for Education, Culture and Youth, states in her presentation on the planned EU funding for 2014 – 2020 that it is necessary to take into account the labour market needs and promote the cooperation and joint work of education institutions and employers by exchanging their good practice1. The action of the promotion of entrepreneurship of individual EU countries indicated in the European Commission’s report for 2012 highlight the necessity to join forces and seek for a common solution at the EU level. A call for the submission of proposals for projects in education for entrepreneurship, encouraging to create and test entrepreneurship incentives, indicator systems and programmes2, announced by the European Commission in 2012, only reaffirms the fact that the EU has not yet formed a common mechanism for the entrepreneurship education strategy, the implementation of which was started as of the beginning of the nineties. The report on the entrepreneurship education in higher education presented by the European Commission3 indicates that the EU is lagging far behind the United States of America (hereinafter – the USA) on many aspects. The efficiency of the model applied in the USA is confirmed by the rating of the Times Higher Education World University Rankings 2012-20134. The joint project of the highest ranking Universities of Harvard and Massachusetts5 (which has recently been joined by other interested universities) can be considered as an example of the promotion of competitiveness and entrepreneurship education. Specifically, the online education project called edX demonstrated how enterprising universities join together and apply information and communication technologies (hereinafter – the ICT) in order to remain competitive in the global environment. It should be emphasized that in case of these

5 Article “U.S. universities still remain the best”, 16-03-2012, “Lietuvos žinios”.

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universities as well as other leading universities, the ICT are integrated not only in the implementation of projects, but also in the achievement of strategic goals. Given the fact that in November 2011 the European Commission took an important step by setting up a working group on entrepreneurship education\(^1\), it is likely that entrepreneurship education through the use of ICT within the project limits will be given more attention in Lithuania and the European Union as a whole. Pursuant to the introductory general review of this Article, the analysis of universities as project–based organizations as well as the research of the application of ICT in entrepreneurship education projects carried out in universities of Lithuania are planned for in Lithuania in order to create a model for entrepreneurship education through the use of ICT in Lithuanian universities. The trends for the empirical study are being formed, the key structural parts of which include the following:

1. Analysis of a university as a project – based organization;
2. The research of the application of ICT in entrepreneurship education projects carried out by universities;
3. The creation of a model for entrepreneurship education with the help of ICT.

Based on the derived intervention scheme (resources – activities – results – effect), it is speculated that treating a university as a resource and entrepreneurship education as an activity, it would be possible to create a university management model enhancing the entrepreneurship of universities. Empirical research model was developed in order to confirm such a speculation.

The initiative of the model of innovative entrepreneurship education of universities through the use of ICT is the outcome of recommendations for the use of 2014 – 2020 EU Structural Support, which emphasizes the lack of intervention logic. Therefore, for the ensurance of successful operations, the partnership of the public and private sector as well as developments of the technologies changing the overall culture of thinking and acting in modern society combined in the model for the exploitation of synergistic effect are identified as strategic goals of the new programming period.

The idea of technologies is not born in the heads of individual inventors or geniuses working in a social vacuum, but it comes as a result of various social forces and processes (Williams & Edge, 1996). Given this fact, on the basis of the concept of ,,institutions as social technologies” (Nelson, R. R. & Nelson, K., 2002), the relation of entrepreneurship education projects carried out by higher education institutions with the ICT, the application and use thereof in project management is being emphasized. According to Fuller, a higher education institution as a place of generation of new ideas and knowledge justifies the concept of a university as a social technology (Fuller, 2003). Of course, in case of Lithuania, it is too early to apply the concept of a university as a social technology proposed by Fuller (2003), however, it cannot be denied that the current situation in

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\(^1\)European Commission press release “Entrepreneurship education on the increase”. Access over the internet:
Lithuania does not form the policy of science, technologies and innovations, which in turn leads to the need for further research and applicability at the national level.

**Figure 1. Empirical research model**

**Conclusions**

The example of the absorption of the EU funds portrays that the art of project management is still too difficult to master. Project management takes dominant positions in rapidly changing and globalized world, because it is a scheme of successful organization, which helps to achieve strategic organizational goals. Thus it is obvious that the perception of principles of this form of management and its application in universities through the use of ICT for the sake of strategic entrepreneurship education goals is a challenge in the sense of both scientific and practical application. After the performance of review of scientific works analysing the issues of project management, key areas of research were distinguished, which revealed that most researchers chose the analysis of the private sector project management.
In order to provide a general review of projects as a social force for optimization of universities, the impact of information and communication technologies on the entrepreneurship education of higher education institutions is singled out.

In accordance with the derived intervention scheme (resources – activities – results – impact), treating a university as a resource by promoting entrepreneurship through the use of ICT as an activity, an empirical research model is being formed.

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GREENING POLISH AND LITHUANIAN TAX SYSTEMS

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Abstract

Purpose – The aim of this paper is to provide a brief overview of environmental tax reform issues and greening national tax systems in Poland and in Lithuania.

Design/methodology/approach – The author applies definition of environmental tax reform, environmental taxes and their classification used by EEA, Eurostat and OECD.

Findings – The environmental tax reform has not yet been implemented in either country. However, we can observe single steps towards greening of national tax systems.

Research limitations/implications – The scope of this paper does not allow for thorough analysis of ETR issue and its implementation, however, may serve as basis for further research.

Practical implications – This paper shows that it is desirable to investigate thoroughly on relation between lowering PIT/CIT rates (social contributions) and raising of environmental taxes.

Originality/Value – The issue of greening Polish and Lithuanian tax systems has been relatively seldom discussed in both countries.

Keywords: greening tax system, environmental taxes, environmental tax reform

Research type: research paper

Introduction

A political system transformation that took place in the beginning of 90’s of the XX century has led to a major change in Polish and Lithuanian economies. It has also triggered social changes and among them a visible growing social interest in environmental protection. Nevertheless, a need for an economic growth related to development of industry and new investments may often outweigh social interest in clean water and unpolluted air. These concerns has been expressed in Principle 4 of Rio Declaration\(^1\) which reads as follows: “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”. Sustainable development is being understood

as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Our Common Future, 1987). Implementation of sustainable development policy requires effective tools capable of modeling human behavior to a satisfactory extent. A properly designed, environmentally-oriented tax system may become one of such tools.

The objective of this paper is to provide a brief analysis of an issue of environmental taxes in Polish and Lithuanian national tax systems and to answer a question of whether we may observe implementation of environmental tax reform in either of these countries. At the same time, the paper is aimed at providing a brief insight into the process of greening national tax systems in Poland and in Lithuania in the XXI century. The foregoing will require, however, introducing necessary background which are concept of market-based instruments for protection of the environment, issue of environmental taxes and environmental tax reform.

**Market-based Instruments for Protection of the Environment**

Protection of the environment may be achieved through variety of different measures, policies and instruments, such as cap-and-trade permits systems, taxes and charges on pollution and use of natural resources, subsidies, deposit-refund systems, technology/performance standards, society involvement or voluntary approaches (Towards Green..., 2011, p.37). All of these instruments may be divided into three main categories: regulatory measures (command and control policies), market-based instruments and voluntary approaches.

Whereas regulatory measures are still most widely used method for environmental policy, market-based instruments, and in particular taxes, have been playing a larger role in addressing environmental pollution issues during the past decade (Market-based instruments..., 2005, p.68). Specific needs of environmental protection often require a precautionary approach which is best secured by laying down minimum (protection) standards: emissions ceilings, air quality standards, vehicle emissions standards, fuel quality standards etc. However, after such minimum standards have already been laid down, human behavior may be influenced by use of market-based instruments such as taxation, subsidies or permits trading scheme and not only regulatory measures.

Regulatory measures in comparison to market-based instruments are disadvantaged in a way they do not raise any funds and do not provide any incentives for innovation. The very nature of taxation is raising funds for public expenditure. Funds earned from environmental taxation may be used for consolidation of public finance, but may also be spent on protection of the environment. The second advantage of market-based instruments are incentives for innovation. Undertakings, in order to gain a better position vis-à-vis their competitors will normally seek to introduce variety of abatement measures what may lead to introducing new technical solutions. (Towards Green..., 2011, p.39).

Implementation of market-based instruments such as taxation coerce business undertakings to take external costs ('externalities') of their activity, i.e. damage to the
environment, into account and include them in prices (Bartniczak, 2011, p.11-22). When such externalities are not included in prices, they can encourage activities effects of which are costly to society, e.g. related to health care (Hamilton, 2000, p.8). In other words, costs of damage to the environment not borne by business undertakings are borne by whole society which is contrary to well-established (i.e. in art. 191 of The Treaty on the Functioning of the European Union) polluter pays principle according to which costs of such damage (pollution) should be borne by polluter. The question is, however, which taxes may be perceived as instruments for environmental protection and, thus, called environmental taxes?

**Environmental Taxes and Environmental Tax Reform**

The crucial issue for considerations on environmental taxes and environmental tax reform is a definition of environmental taxes. Such definition has been proposed by the Organization for Economic Co-operation and Development (Environmental taxes..., 2001, p.9) and reads as follows:

’a tax whose tax base is a physical unit (or a proxy of it) of something that has a proven, specific negative impact on the environment.’

Although the term environmental taxes may be interpreted as relating to environmentally, not fiscally, motivated taxes, motivation is not part of the definition. It has been decided that all taxes on energy and transport are included in the definition, whereas, VAT is excluded due to its specific characteristics (Environmental taxes..., 2001, p.9-11). OECD (2001) distinguishes between four main categories of environmental taxes:

- energy taxes (including CO₂ taxes)
- transport taxes
- pollution taxes and
- resources taxes (excluding taxes on oil and gas).

Even though, as it was mentioned before, motivation is not a part of the definition of environmental taxes, taxes on oil and gas were excluded for purely motivational reasons as they are designed to capture resource rent (Environmental taxes..., 2001, p.12-13).

The diagram below shows total environmental tax revenue by type of tax (taxes on pollution and resources, on transport and on energy) in the European Union (27) countries 2000-2011. What is interesting, it shows that revenue raised from pollution and resources taxes is only marginal to revenue raised from transport taxes and energy taxes which is visibly predominant in this respect.

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Environmental tax definition gives essence to so called environmental tax reform (ETR) which is defined as:
‘reform of the national tax system where there is a shift of the burden of taxes, for example from labour to environmentally damaging activities, such as unsustainable resource use or pollution’ (Environmental tax..., 2012).

The key word is a shift which means that the aim of ETR is not making aggregate amount of taxes imposed (net taxation) higher, but putting an emphasis on newly introduced or already existing environmental taxes. The aim of ETR is simply making certain, harmful to the environment, goods or activities more expensive while lowering taxes imposed on labour and/or capital (Śleszyński, 2001, p.19-20). Therefore, it has been argued that ETR may lead to so called double dividend that is diminishing harmful impact on the environment and providing benefits for society by boosting employment while at the same time keeping net taxation level unchanged (Podgajniak, 2005, p.49).

However, it is often believed that ETR may also lead to negative effects such as regressive taxation and weakened competitiveness of national undertakings vis-à-vis undertakings established abroad. It is assumed that imposing taxes on energy and transport would impose a heavier burden on low-income households than on high-income households, since the former spend larger share of their income on these goods (Kosonen, 2012, p.1).

Can We Speak of Environmental Tax Reform in Poland and in Lithuania?

The concept of environmental tax reform assumes a shift, at least partial, of tax burden from labour/capital to environmentally damaging activities. However, in order to make such a shift real, revenue raised from taxing environmentally damaging activities should be substantial in order to cover for decrease in revenue from taxation of labour and/or capital. According to Eurostat data for 2011 (Environmental taxes, 2012)
environmental taxes in Poland constituted 7.89% of total revenues from taxes and social contributions, whereas, in Lithuania 6.58%. This situation has not changed significantly between 2001 and 2011. The diagram below shows percentage of revenues from environmental taxes in total revenues from taxes and social contributions for the period of 2001-2011 in Poland, Lithuania and the average for the EU (27 countries).

**Figure 2. Share (%) of revenue from environmental taxes to total revenue from taxes and social contributions in the EU, Poland and Lithuania 2001-2011.**

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<td>Poland</td>
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In 2001 environmental taxes in Poland constituted 6.38% of total revenues from taxes and social contributions and in Lithuania 8.98%, whereas, the average for the EU was 6.63%. In 2011 the figure went up to 7.89% in Poland (1.51% increase) and went down to 6.87% in Lithuania (2.4% decrease) as well as the average for the EU (0.46% decrease). Moreover, in 2011 in both countries share of pollution and resources taxes in total revenues from taxes and social contributions was marginal – 0.65% and 0.2% respectively (the average for the EU was 0.27%). This allows to conclude that purely environmental (taking into consideration their motivation) taxes could not serve as a sole basis for any shift of tax burden whatsoever. On the other hand, shares of revenues accrued from all environmental taxes in total revenues from taxes and social contributions might be called substantial. Though, the question is whether we may observe the shift between taxes on labour/capital and environmental taxes?

Most important taxes imposed on labour and capital are personal and corporate income taxes. Looking at PIT and CIT rates under the period of 2001-2011 we may observe a substantial cut in personal income tax (PIT) rates both in Poland and in Lithuania and a significant cut in corporate income tax (CIT) rate in Poland. The cut in CIT rate from 27% to 19% was effected in Poland in 2004 and alteration of three PIT rates (19%, 30%, 40%) with two rates (18% and 32%) took place in 2009 (since 2004 entrepreneurs could choose 19% flat PIT rate). At the same time, there was a cut in PIT rates in Lithuania. Originally, since 2002 there were two PIT rates: 15% and 33%. The higher rate was lowered to 27% in 2006, thereafter to 24% in 2008 and eventually disappeared since 2009. Basic CIT rate in Lithuania has not change under this period with exception for 2009 only when it was raised from 15% to 20% and afterwards went back to 15%. Given there were no changes in tax base under that period resulting in significant broadening of tax base, such decrease in PIT/CIT rates is an evidence of
lowering tax burden on labour and capital. These changes in personal and corporate income tax rates may raise a question of whether they were related to explicitly environmental tax reform or not. And if not explicitly, can we speak of implicit correlation between lowering of PIT/CIT rates and growing share of environmental taxes in tax burden? In other words, has there been a shift of tax burden between PIT/CIT and environmental taxes?

Diagram 3. Total environmental taxes as percentage of GDP in Lithuania, Poland and EU (27) 2001-2011.

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<tr>
<td>Lithuania</td>
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<td>Poland</td>
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The diagram above shows that although environmental taxes as percentage of GDP under the period of 2001-2011 has stayed almost at the same level in the EU (27), their “importance” in Poland grew by 0.5% and fell in Lithuania by 0.85%. Comparing this with changes in PIT/CIT rates a slight shift of tax burden in Poland might be claimed, while there has been no visible shift in Lithuania.

Under the period of 2001-2011 we can observe just a slight change in revenues from environmental taxes to total revenues from taxes and social contributions ratio, both in Poland and in Lithuania. At the same time we may observe just a slight change in total environmental taxes to GDP ratio, which in addition is negative in Lithuania. For this reason a significant shift of tax burden to environmental taxes that could stem from lowering PIT and CIT rates cannot be observed. Moreover, there has been no explicitly expressed political will to shift tax burden in such a way. A slight shift in case of Poland for its limited significance cannot be regarded as an evidence of implementation of environmental tax reform, even implicitly. Therefore, the conclusion seem to be that cuts in PIT/CIT rates were effected regardless of the concept of environmental tax reform and were not related to ‘environmental’ shift of tax burden. Nevertheless, this does not mean we cannot observe a process of greening national tax systems.

Greening Polish and Lithuanian Tax Systems

The expression greening of a tax system seem to be often used interchangeably with environmental tax reform as it is associated with the same essence being shift of tax burden to environmental taxes (i.e. OECD Round Table...1999, p.2-3; Bachus, 2012, p. 3). Greening of national tax system is usually measured using two indicators: the
revenues from environmentally related taxes as a percentage of GDP, and the revenues from environmentally related taxes as a percentage of the total tax revenues for a country (Bachus, 2012, p. 3). Taking into consideration the period of 2001-2011 in Poland and in Lithuania, “importance” of environmental taxes in relation to GDP and total tax revenues did not change significantly. Therefore, in terms of the abovementioned measures we cannot observe any substantial quantitative change. However, it should be also considered whether we may observe any qualitative change. For the purpose of this paper such qualitative change shall be considered as greening tax system even without shifting tax burden. Thus, the question is whether we may at least speak of greening Polish and Lithuanian tax systems in the XXI century.

Taking into account the definition of environmental taxes proposed by the OECD, the following Polish taxes are considered to be environmental (Taxation trends..., 2012):

- excise duties on petrol and other motor fuels/ electricity/ fossil fuels and natural petroleum gas, fuel fee,
- excise duty on cars and tax on means of transport,
- levies on environment exploitation, forest tax and payments for The National Fund for Protection of the Environment and Water Management.

National Polish authors add to the list of environmental taxes also tax on extraction on minerals, charge on alteration of agricultural land use etc. (Bartniczak, 2011, p. 162-163). According to data for 2010 (Taxation trends..., 2012), a vast majority that is over 60% of revenue raised from environmental taxes came from excise duties on petrol and other motor fuels, approx. 10% from fuel fee and only 8% from levies on environment exploitation and payments for The National Fund for Protection of the Environment and Water Management. In a way, excise duties are very efficient and convenient source of budget revenues (Gomułowi cz, 2011, p. 574) and, thus, a very important figure in Polish budget. Nevertheless, even though such excise duties are imposed on units of substances or proxies (e.g. electricity) that have negative impact on the environment, the motivation for imposing them is far from the need to protect the environment.

At the same time, analysis of National Tax List provided for in Eurostat publication (Taxation trends..., 2012) shows that current list of environmental taxes in force in Lithuania consists of:

- excise duties on oils and other oil products,
- conveyance taxes,
- pollution taxes.

According to data provided by Eurostat (Taxation trends..., 2012), in 2010 revenues raised from excise duties on oils and other oil products amounted to over 95% of all revenues from the abovementioned environmental taxes. However, representatives of Lithuanian financial law (Miškinis, 2011, p.268-269; Sudavičius, 2011, p.416-434) provide a different list of environmental taxes:

- tax on the use of state’s natural resources,
- tax on oil and gas,
- pollution tax,
- forest tax.
The foregoing shows that national authors do not perceive excise duties on oil products and conveyance taxes as environmental taxes. On the contrary, they include tax on oil and gas and tax on the use of state’s natural resources which concerns the use (extraction) of minerals, water, building plots and wild animals. It may be pointed out that the second list consists of taxes classified as environmental due to their subject which are parts of the environment rather than presumably negative impact on the environment (except for pollution tax). Nevertheless, it is worth noting that exclusion of excise duties on oil and oil products from environmental taxes, makes the whole category of environmental taxes in Lithuania marginal in respect of their share in total tax revenues.

When it comes to new environmental solutions in Polish and Lithuanian tax system, it should be noted that it is important to take into account not only taxes which are not considered to be environmental as such, however, these solution itself are promoting protection of the environment. The example of this may be art. 17.1.4 of Polish Corporate Income Tax Act\(^1\) which provides for exemption of income gained by associations and foundations acting, \textit{inter alia}, for protection of the environment in the amount spent on such protection. This exemption has been included in the Act since its introduction in 1992. A similar exemption has been provided for in the art. 28.1 and 28.2 of Lithuanian Corporate Income Tax Act\(^2\). This provisions allows certain associations and foundations to reduce tax base with the amount spent, \textit{inter alia}, on protection of the environment (within certain limits). This reduction of tax base has been included in the Act since it was introduced in 2002 and was amended two times already.

It is worth considering the following three examples of environmental tax solutions: a tax on extraction of copper and silver, a waste disposal tax and packaging charge. The tax on extraction of copper and silver has been introduced in 2012 by a Tax on Extraction of Certain Minerals Act\(^3\). Even though, this act is general, in reality it imposes tax on KGHM Polska Miedź S.A. (KGHM) only as it is the only taxpayer that deals in Poland with excavation of copper and silver. For this reason, introduction of this tax caused a fierce discussion. Those who were against it claimed it is a ways for the Polish Treasury to seize KGHM’s profits backdoor. Regular way being paying out of dividend by KGHM to its shareholders and among them the Polish Treasury, which controls over 30% of KGHM’s shares. Notwithstanding the fact, that each state has a right to capture part of profits generated by extraction of its natural resources, this tax has been imposed solely for capturing of resource rent and not for environmental reasons. In this respect it is similar to taxes on oil and gas which are OECD has excluded from the range of environmental taxes.

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On the other hand, waste disposal tax is an example of purely environmental tax in its very nature. It has been designed and will be introduced since July 1\textsuperscript{st} 2013 by amendment of Act on Keeping Order and Cleanliness in Municipalities\textsuperscript{1} to tackle problem of uncontrolled and illegal waste disposal which resulted in polluting of environment, especially forests. Until now, each real estate owner has been obliged to have an agreement for waste treatment with a waste management undertaking (private or municipal). The undertaking was in charge of waste disposal for agreed fee. The main disadvantage of such system was lack of supervision of fulfillment of the obligation to conclude agreements with waste management undertakings. Therefore, there was a large number of those who did not and this have had detrimental effects to the environment. The situation shall change with the introduction of the waste disposal tax. The tax will constitute a revenue of municipalities and will be paid by owners of real estate located in territory of particular municipality. In exchange for the revenue from waste disposal tax, municipalities will be obliged to organise and manage waste disposal on their respective territories. The tax rate is not uniform and may vary from one municipality to another, depending on the use of discretionary powers entrusted to municipality councils for specifying the amount of the tax. Even though the waste disposal tax has been vastly criticized for disputable criteria for calculating its amount, provided for in the Act on Keeping Order and Cleanliness in Municipalities, it is an important move towards proper waste management and, thus, also an important step in greening Polish tax system.

The Lithuanian example of purely environmental tax is pollution tax introduced by Pollution Tax Act\textsuperscript{2} which was introduced in 1999. This tax has not only been imposed on sources of pollution harmful to the environment, but also revenues gained from it serve for financing of protection of the environment. Pollution tax provides for taxation of specific sources of pollution which are emissions of certain substances (like SO\textsubscript{2}, NO\textsubscript{x}, PM) from stationary sources to the air, water and soil, certain products such as tyres, batteries, car-batteries and parts of car engine as well as certain packages (i.e. glass, paper, metal, PET packages) and emissions from means of transport depending on the type of fuel. This tax is imposed on legal and natural persons who conduct economic activity. Revenues accrued by pollution tax are income of national tax budget and local self-governments’ budgets, however, all of such revenues has to be spent on issues related to protection of the environment. Therefore, they constitute direct source of financing tasks in the field of environmental protection what is indisputably beneficial to the environment as such expenses do not need to “compete” with other expenses in national and local budgets.

\textsuperscript{1} Ustawa o utrzymaniu porządku i czystości w gminach. Consolidated version of 17.02.2012, Dz.U. z 2012 r. poz. 391.
Conclusions

As the expressions environmental tax reform and greening tax system are used interchangeably and seem to be bearing similar meaning, it would be advisable to differentiate between them. Environmental tax reform should be primarily associated with quantitative measures of shifting tax burden between taxes labour/capital and environmental taxes, whereas, greening tax system should be rather associated with qualitative factors such as direct aim (protection of the environment) of imposing of a particular tax and the way expenses accrued by such tax are spent.

The analysis of environmental taxation in Poland and in Lithuania under the period of 2001-2011 leads to the following conclusions:

- we cannot observe implementation of environmental tax reform in Poland, comparing to the beginning of this period, even though there seem to be slight shift of a tax burden from labour and capital to environmental taxes and environmental taxes constitute slightly higher percentage of GDP,

- we cannot also observe implementation of environmental tax reform in Lithuania, moreover, comparing to the beginning of this period environmental taxes seem to lose their significance as they constitute lower percentage of GDP than in 2001 and lower percentage in revenues from taxes and social contributions.

Therefore, we cannot observe implementation of environmental tax reform under the period of 2001-2011 in either country. Nevertheless, in qualitative terms (without visible shift of tax burden) we may observe an ongoing process of greening national tax systems in both countries. Due to European Union requirements in the field of environmental protection and due to constant development and raising of standard of living, which environment is part of, the process is expected to be continued.

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THE DEBATE OVER PROPOSED NEW MARRIAGE LAW AS AN EXAMPLE OF THE SOCIAL CHANGES IN THE INTERWAR POLAND

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Abstract

**Purpose** - the article aims to present the arguments used in the debate over the proposed new matrimonial law in the interwar Poland. The new codification was prepared in order to replace the previously existing regulations, that were completely different in the various parts of the country. Due to the opposition to the new legislation it never came into force. It should be noted that this opposition had a mass character, that was induced by the attitude of the conservative circles and the dominant religious groups. The author aims to show the various types of the arguments used in the debate (related i.e. to the position of the family, the development of the nation) and to indicate the usefulness of the analysis of the discussion on the law of marriage to reflect on contemporary discussions over controversial legal projects.

**Design / methodology / approach** - research for the article was based on the analysis of the selected papers issued in the interwar period that referred to the proposed new marriage law.

**Findings** – the goal of the research is to show that both proponents and opponents of the new matrimonial law used an extremely wide range of arguments. These arguments were not only of a religious nature. Legal and sociological arguments were also used during the debate.

**Research limitations/implications** – the article focuses only on the selected sources from the analyzed period, so it is only an introduction to the further research, that can also involve studies on the marriage law in the interwar Europe.

**Practical implications** - article may serve as a contribution to the discussion on the changing views regarding the nature of the marriage, its secular and religious implications as well as the role of the family in the state policy in the 20th century Europe.

**Originality/value** – the problem of the codification of the marriage law in the Second Polish Republic has been already widely discussed by the researches (Godlewski 1967: Krasowski 1994: Górnicki, 2000), so the aim of the article is to concentrate mostly on the diversity of the arguments raised during the debate over the proposed new marriage law.

**Keywords**: marriage law, Second Polish Republic

**Type of research** - literature review

Introduction

The unification of the various legal systems that had been left behind by the former Prussian, Russian and Austrian authorities was a major issue for the Polish government
after Poland's resumption of independent statehood in 1918. It was particularly important to create a new marriage law. Until then this matter was regulated by five different legal jurisdictions, based on three different systems of marriage law: secular, mixed and denominational. The secular system of the matrimonial law was represented in the former Prussian sector by the regulations of the German Civil Code of 1896 (BGB). In this system civil marriages were obligatory and the divorces were allowed, regardless of spouses' religious affiliation. Similar regulations, based on the Hungarian provisions of 1894, were in force in the small enclave of Spisz and Orawa. The regulations of the Austrian Civil Code of 1811 (ABGB) prevailed in the former Austrian sector. In this jurisdiction the marriage could be entered into a mixed, alternative form – both denominational and secular. However, the divorces were not granted to the Roman Catholics. Finally, the denominational system of marriage law was represented by the Russian matrimonial legislation of 1832 and 1836 that were in force in the central and eastern parts of the country. In these regions the complete jurisdiction in marital cases belonged to the ecclesiastical courts\(^1\). Contradictory legislations in various parts of the country led to a state of legal uncertainty and chaos, including cases of the so-called “legal bigamy”\(^2\).

Therefore, almost from the beginning of the Second Republic development works on the new marriage law were carried out by the Codification Commission. After years of struggle the proposal of the new marriage law, authored by the principal referent – prof. Karol Lutostański – was finally adopted by the Subcommittee of the Codification Commission on the 9\(^{th}\) March 1929\(^3\). The proposal was subsequently approved by the Codification Commission on the 28\(^{th}\) May 1929, sent to the Ministry of Justice in December 1929, and finally published in 1931, together with the principles of the proposal\(^4\). According to the proposal marriage could be optionally concluded before the head of the registry office or in the presence of a cleric of one of the state-recognized denominations. The provisions in the Chapter 8\(^{th}\) of the proposal provided for separation and divorce. The proposal allowed a judgment of divorce that had to be preceded by an obligatory period of separation. According to the proposal the jurisdiction in the marital cases would belong to the common courts\(^5\).

The publication of the proposal led to a wave of criticism, that would eventually block the legislative process and postpone the codification of the Polish marriage law.


\(^4\) Projekt prawa małżeńskiego uchwalony przez Komisję Kodyfikacyjną w dniu 28 maja 1929 (1931): Lutostański (1931).

which continued to vary from region to region until the outbreak of World War II¹. The problem of the failure of the unification efforts became a subject of extensive scientific literature after 1945. The publications issued in the PRL period contrasted the modern character of Lutostański’s proposal with the backwardness of its critics². Also the contemporary scientific literature tends to concentrate in the first place on the fierce opposition of the Roman Catholic Church and the conservative circles towards the proposal of the new marriage law³. In this discussion the most extreme examples of the arguments used by the opponents of Lutostański’s proposal are often mentioned⁴. However, the purpose of this short paper is not to focus on the most controversial views presented by the opponents of the secular marriage law in the Second Polish Republic. It tends rather to show on the examples of various publications the most frequent arguments used in this heated debate, that influenced the Polish political life in the fourth decade of the 20th century.

I. Arguments related to the legal order and religious tradition

Prof. Karol Lutostański, speaking in support of the Codification Commission proposal – while appealing also to the Polish March Constitution of 1921 – expressed the opinion, that the regulation of the marriage law, including the jurisdiction of the courts ruling in the marital cases, should belong to the state authorities: “The role of non-governmental organizations, such as churches, in state, can be only of only concurrent, not substitute or guiding nature in those areas, that attract the social and public life of the country. This view on the relation of the state and its laws to the church laws is reflected in the Constitution and the codification of the marriage law must stick to the Constitution”⁵. In his further statements Lutostański emphasized the necessity of unifying the marriage law and the right of the citizens to conclude the marriage optionally in denominational or secular way, which derived from the constitutional equality principle. It was also raised that the spouses’ right to terminate the marriage should not be restricted when it is consistent with his beliefs. Consequently the necessity of giving the exclusive jurisdiction in marital cases to the common courts was underlined: “Finally, concerning the court jurisdiction, the transfer of marital cases to the common courts (...) doesn't interfere in any way with the citizens' right to submit the case to the consistory court of proper denomination, which would examine it within its ecclesiastical power”⁶.

¹ For a detailed list of publications on the codification of the Polish marriage law see also: Plaza (2001), p. 82-98.
² As an example of such approach cf. Godlewski (1967), p. 757.
⁴ For example: Cieślak (1931), Trzeciak (1932).
⁵ Lutostański (1931), p. 27.
⁶ Lutostański (1931), p. 41.
The necessity of introducing a modern marriage law appeared also in statements of numerous lawmakers and scholars that supported the legislation proposed by the Codification Commission. In my article I'd like to present an example of such opinions – a rather unusual one. Sylwia Bujak – Boguska, a lawyer and a feminist, published a short article about the new marriage law in 1932, in which she stated: “The high moral level and the justice of the principles of the new marriage law are undisputed, and the overall construction of the new marriage law proves clearly, that the Polish legislators – while referring with great talent to the most rational monuments of the Polish legal thought – were at the same time capable of detecting the citizens' moral and legal needs of utmost importance, that are related to probably the most important institution of common life, which is marriage”.

Because it is impossible for this short paper to present the enormous number of publications issued against Lutostański's proposal, let's focus on some significant statements. An interesting example of such collection of polemical articles is a survey prepared by the Polish Association of Catholic Intellectuals (Związek Polskiej Inteligencji Katolickiej) for some prominent scholars and politicians. The main question in the survey was following: “Are the principles, on which the proposal [of new marriage law] is based on, fair and healthy, as well as consistent with the beliefs and customs of the Polish society? What would be the influence of the proposed new marriage law on the moral, national and public life of Poland, if it comes into force?”. With such an overall question, the survey contained a whole range of arguments invoked against the proposed law.

To no surprise, first of all the respondents pointed at the conflict between the proposed marriage law and the religious beliefs of the vast majority of the Polish society. Citing legal arguments, some of the respondents in the survey stated, that the proposal was unconstitutional and inconsistent with the provisions of the Polish Concordat of 1925. The necessity of respecting the opinion of this majority ruled out the legal permission for civil marriages and divorces (O. Balzer, O. Halecki, L. Piniński). One of the respondents, Dr. M. Thullie wrote: “Because for both the Roman Catholics and Eastern Orthodox (...) marriage is a sacrament, which granting can't be interfered by the government, the proposal of the Codification Commission, that transfers the whole jurisdiction to the state, is a provocation against the Catholic and Orthodox population of Poland, which must be firmly condemned.” Some authors opted to combine the identity of the Polish nation with the Catholic religion. Noted architect Stefan Bryła stated: “Our nation is Catholic and deeply tied to faith and – on the other hand – the Catholic religion is the...
strongest bond that connects and consolidates the nation”\(^1\). Another respondent considered the proposal as inconsistent with “the spirit and tradition of Polish nation”\(^2\). Similar opinions appeared also in the other publications. As Zygmun Sitnicki noticed in his article published in “Głos Sądownictwa”, the percentage of non-denominational persons in Poland was so small, that introducing civil marriages, inconsistent with the religious principles of the overwhelming majority of citizens, might even become a threat to the Polish state: “99% of the Polish population is strongly tied to the religion. (...) If we also take into consideration the low cultural level of the masses in Poland and the neighbourship with the Soviet Union, we must come to the conclusion that any loosening of the powerful social brake, which is religion, seems dangerous and harmful”\(^3\).

The necessity of respecting the legal traditions of the Polish society appeared also in two private proposals of the new marriage law, prepared by the researchers who rejected the Lutostański's proposal. Zygmun Lisowski, the author of the first proposal, was a noted Professor of Law at the Poznań University\(^4\). Already in the introduction to his proposal Prof. Lisowski pointed that the future marriage law should comply with the beliefs of the majority of the society: “The reform of the marriage law (...) should not consist in the complete destruction of the existing order, but rather in its improvement, that would be based on the rules provided by the beliefs and customs of the society. (...) It rarely happens for a new legal system, that is different in its essential points from the previous system and unfamiliar to the society, to be met with the recognition and acceptance by this society”\(^5\). That's why Prof. Lisowski proposed that the members of the Roman – Catholic Church (and other state-recognized denominations) should follow the provisions of the internal law of their church with respect to the conclusion of marriage and the ways of its termination. Another proposal, authored by Rev. Jerzy Jaglarz, also opted for the denominational marriages\(^6\). Rev. Jaglarz was also an author of other publications, in which he argued against the new marriage law\(^7\).

II. Arguments related to the condition of the family

The aforementioned survey also revealed arguments related to the various aspects of the condition of the Polish family. The acceptance of legal separation and then divorce based on spouses' mutual consent was considered by some scholars as the introduction of so-called trial marriages (O. Balzer), the proposal was also accused of setting forth to many grounds for separation, that sometimes could led to termination of marriage in

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\(^{1}\) Ankieta… (1932), p. 41.

\(^{2}\) Ankieta… (1932), p. 38 (J. Janota – Bzowski).


\(^{4}\) Lisowski (1934).

\(^{5}\) Lisowski (1934), p. 5.


\(^{7}\) Jaglarz (1931), Jaglarz (1932).
ridiculous situations (O. Halecki)\(^1\). Although the authors of the proposal emphasized, that it favored the spouses' equality, its critics pointed out that the relatively easy way to be granted a divorce would cause the victimization of women. Prof. Leon Piniński stated: “Such marriage law would be indeed very comfortable for those men, who would be glad to find in the institution of marriage a comfortable way of satisfying their own selfish desires and sensual lust, but would also prefer to be easily liberated from the heavier responsibilities, which are united with the marriage and the family life. On the other hand such legislation would be generally very unfavorable for women, except for those, who are already experienced in immorality, or would quickly become so”\(^2\). Sometimes the reasons for the rejection of the new marriage law proved to be very far-reaching. For example, according to an article published by the Supreme Court Judge Jan Hroboni the allowance of the separation by mutual consent for the childless couples would led to increase in the number of abortions\(^3\). Basing on his own observation of divorced couple, J. Hroboni persuaded, that it was impossible for them to achieve happiness: “I couldn’t find happiness in those new marriages, that were concluded by previously divorced spouses. The first relationship was often a dissonance, because one can’t erase from the book of life and treat as neutral events such prominent facts, as the first marriage vows and the first sunny days of living together”\(^4\). Economic reasons against the new marriage law were also mentioned. For example, Prof. O. Balzer pointed out that the divorces would cause additional difficulties in providing financial support for children born in subsequent relationships and may deprive the children from the divorced families of moral models. On the other hand Prof. L. Piniński argued that complete taking over the function of maintaining the civil registrations by the governmental authorities would become an additional burden for the state budget\(^5\). In his already mentioned publication in “Przegląd Sądowy” Zygmunt Sitnicki criticized Lutosłański’s proposal from “the practical point of view”, claiming, that the proposed procedure of conclusion of marriage is too complicated and maintaining the whole civil registration by the government would result in additional and excessive costs\(^6\).

III. Arguments related to the development of the country and the nation

Arguments of demographic nature were also used. Some researchers compared the effects of the introduction of the civil marriages and divorces in various countries. Statistical data (gathered for example by Rev. Stanisław Podoleński\(^7\)) supplemented by various research were provided for this subject. The aforementioned survey for the Polish

\(^1\) Ankieta... (1932), p. 5, 31-33.
\(^2\) Ankieta... (1932), p. 25. Prof. Piniński partially based his article on the views of the noted Polish legal scholar – Prof. W. Abraham (1929).
\(^3\) Hroboni (1932), p. 6.
\(^4\) Hroboni (1932), p. 7
\(^5\) Ankieta... (1932), p. 7-8 (O. Balzer), p. 17-18 (L. Piniński)
\(^7\) Podoleński (1926)
lawmakers also contained similar arguments. Prof. Leon Piniński stated: “There are countries where the divorces are condemned and considered a reprehensible move by the traditional public opinion. In such countries divorces, albeit permitted by law, are treated as rare exceptions. (...) However, in the other cases – for example in France – the allowance of divorces led to the moral corruption, even though a significant part of the Catholic provincial population strongly condemns divorces for religious and ethical reasons”.¹ Piotr Dunin – Borkowski, a conservative politician, watched with concern the decline of the marriage institution in the United States: „At the same time the matter of the indissolubility of marriage is not treated seriously enough in this country. The staggering divorce rates growing with each year (...) lead to the assumption that it would be very difficult for the American society to keep the puritan moral high ground after the rejection of the indissolubility of marriage”. Prof. Oswald Balzer reminded of the connection between the religious structure and the allowance of divorces: „It is so: [the divorces] were recognized by many other countries; but for the most part these are the countries with predominantly Orthodox, Lutheran or Protestant population. It is possible to fully explain the allowance of divorce from their position: they accepted the standard, that is recognized by the majority of their population”.²

Two countries were particularly often referenced as an element of discussion with the foreign marriage laws: Italy and the Soviet Union. Some authors cited the Italian legislation of 1929 as an example of modern codification, respecting the rights of the Catholic Church members, although this Act was nevertheless considered too liberal in conservative circles³. On the other hand, the Soviet way to regulate the marriage law was presented in a very negative manner, for example in this opinion by J. Hroboni: “In the Soviet Russia, where marriage is based only on contract, and therefore can be dissolved at any time even with the consent of only one spouse, the statistics show that an average marriage lasts only for three months”⁴. Piotr Dunin-Borkowski also underlined: “The Bolshevism attempted, without the support of the tradition, to base the social life on a different platform than the family life”⁵. It should be noted, that in many pamphlets the equation of the marriage law in the Soviet Union to the Lutostański’s proposal served as an insult to the latter.

An article by Dr. Ignacy Czuma from the Catholic University of Lublin, published in 1931, can be regarded as another interesting example of diverse arguments raised against the new marriage law⁶. In his argumentation he appealed of course to the aforementioned issues of the discrimination of the Catholic part of the Polish society, as well as to the possible inconsistency between the provisions of Lutostański’s proposal and the Constitution or the Concordat of 1925. The main part of Dr. Czuma’s article was devoted to the negative influence of the liberalization of the marriage law on the Polish family and the

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¹ Ankieta... (1932), p. 21-23.
² Ankieta... (1932), p. 12 (O. Balzer), p. 28 (P. Dunin-Borkowski).
⁵ Ankieta... (1932), p. 27.
⁶ Czuma (1931)
Polish society: “Morality of divorces, trial marriages, generally: the morality of loosening the sexual discipline means for Poland a morality of the predominance of the sexual consent and sexual satiety over the good of the country”\(^1\). Therefore the future development of Poland was especially important as the country was endangered by the neighboring countries: “If our family is disciplined and firm, if our family houses are not converted into trysting places, our nation will be more capable of sacrifice, perseverance and efforts. It will be inclined to sacrifice and work, not to mindless comfort and weakness of the will and the soul (...) Within the next decades our future for the next centuries will probably be determined, therefore Poland has to become a camp of moral discipline, intensified order of our will and the readiness to systematic and sustained effort”\(^2\). The proposal of new marriage law didn’t meet the requirements of such legislation, particularly in terms of its liberal approach to the stability of marriage: “In this way the Polish legal system is to obtain a uniformed, universal and extremely broad divorce law (...) and – moreover – it will receive a novelty in the form of legalizing and favoring the trial marriages”\(^3\). In the conclusion Dr. Czuma spoke unfavorably of the new proposal: “Weakness and meanness are coming to voice in Poland with the provisions of the new marriage and divorce laws (...)\(^4\).

**IV. New generation of scholars = new approach?**

The discussion on the new marriage law lasted till 1939. A new generation of the legal professionals continued to engage in this dispute. Symptomatic for this situation were two articles published by two researchers shortly before the outbreak of the World War II in “Współczesna Myśl Prawnicza”, a legal magazine edited by young lawyers. This dialogue started with a short article by Bohdan Sałaciński\(^5\). Considering the shape of the future codification of the Polish marriage law, Sałaciński spoke in favor of the secular concept of the regulation of this matter. First of all Sałaciński reflected on the history of the marriage law and stated that its secularization was an effect of “natural evolution”. He recalled the legal chaos occurring in Poland in this matter and pointed that “the strongest order in marital cases” could be observed in the former Prussian sector, where the civil marriages were obligatory. In Sałaciński’s opinion the necessity of creating a unified and universal marriage law for the entire country was the reason to support the secular legislation: “The educational (...) role [of the government] doesn’t rely on breaking the uniformity of law and creating thousands of opportunities of getting around the regulations. Because the reality of law means the morality of law and honesty of law”\(^6\). Sałaciński continued with citing other reasons for the necessity of the secularization of the marriage law: the problem of evading the regulations of the ecclesiastical law, the

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\(^{1}\) Czuma (1931), p. 8.
\(^{2}\) Czuma (1931), p. 10.
\(^{3}\) Czuma (1931), p. 17.
\(^{4}\) Czuma (1931), p. 18.
\(^{5}\) Sałaciński (1938), p. 5-9.
\(^{6}\) Sałaciński (1938), p. 7.
need of unifying the citizens with a universal law, finally the assurance of the Constitutional principle of equality. In the conclusion Sałaciński encouraged other young lawyers to join the debate over the shape of the future marriage legislation in Poland.

Opposite point of view was presented by a 30-year-old scholar Dr. Juliusz Sas – Wisłocki in an article published in „Współczesna Myśl Prawnicza” in May 1939. In his article Dr. Sas – Wisłocki defended the denominational regulation of marriage law and emphasized: „It is obvious that in the system of the future Polish national law also the marriage law has to comply with the spirit of the Polish nation, and because Polish nation is a Catholic nation, its laws and its government can not be inconsistent with the regulations of the Catholic religion and the canon law. Lutostański’s proposal does not meet these requirements”2. In his further reflections Dr. Sas – Wisłocki stated that only the denominational legislation introduced in the former Congress Poland was „an achievement of Polish legal thought that truly flows out (...) of the spirit of the Polish Nation” and the future marriage law should refer to it. To no surprise, Dr. Sas – Wisłocki strongly opposed the Lutostański’s proposal. What's interesting, he also spoke unfavourably of the unofficial proposals by Prof. Lisowski and Rev. Jaglarz, claiming that they were insufficient. Finally, in June 1939 Dr. Sas – Wisłocki published in „Współczesna Myśl Prawnicza” his own proposal of marriage law, based on the denominational system3.

Conclusions

Probably no other legal issue provoked such heated debates in the interwar Poland, as did the problem of the codification of the marriage law. It is particularly important to note that this debate never had a chance to lead to a conclusion, because it was brutally interrupted by the outbreak of the World War II. The unification of the legal system (including the marriage law) proceeded quickly in 1945 after the seizure of power in Poland by the Communist Party. The civil marriages were finally implemented, leaving no place for further discussions.

Is it justified to use the example of the debate from over 80 years ago while analyzing changes in contemporary society and discussing contemporary legal acts? In my opinion – yes. Although the issue of the admissibility of the civil marriages and divorces doesn’t raise such controversy any more, it seems that the current discussions over the definition of the marriage or legalizing civil unions may bear some resemblance to the debate over the Lutostański’s proposal. Also in the current debate both supporters and the opponents of the new liberal solutions are appealing to a very broad set of arguments, some of which haven’t changed that much since the interwar period. This paper aimed to give examples of such arguments. As indicated, only some authors sought to support their statements with a logical line of argumentation, or with references to the

1 Wislocki-Sas, Wytyczne... (1939), p. 8-13.
2 Wislocki-Sas, Wytyczne... (1939), p. 8.
legal systems or social research. Nevertheless, even they frequently resorted to personal attacks, envisioning the grim consequences of the introduction of the new marriage law. Such effects can be easily observed also during the contemporary debates over controversial legal subjects. It is obvious that the balanced opinions raised in the public discourse remain frequently overshadowed by populist statements. This second type of criticism was described by Prof. K. Lutostański in one of his polemical articles, as relying on: “an apparent distortion of opponent’s texts and thoughts, on attributing him intentions, that he didn’t harbor at all, on disgraceful tracing of the mischievous deceptions in a serious public work, that was undertaken in search of the best forms of the national legislation. In resorting to this method, the critics of the proposal prove conclusively that they can’t afford a serious scientific criticism (…)”

In conclusion, I would like to add that the subject of the marriage law in the interwar Poland is related to my planned Ph.D. dissertation, that will be devoted to the rulings in the divorce cases in the former Prussian district of the Second Polish Republic. The planned dissertation will concentrate on the issue of sustainability and stability of the civil marriage in a predominantly Catholic society in the context of the social changes in the last years before the outbreak of the World War II.

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1 Lutostański (1932), s. 289.
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THE CHANGING APPROACH TO THE HEALTH POLICY AND GOVERNANCE: INSIGHTS FROM LITHUANIA

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**Abstract**

**Purpose** – The aim of this review is to present the changing approach to the health policy and governance and to provide an overview of the appropriate public governance model which would allow the practical realization of contemporary health policy and governance in Lithuania.

**Design/methodology/approach** – A literature search was carried out in order to describe the context of contemporary health policy and governance. The analysis of the draft Lithuanian Health Programme 2020, as well as the EU legislation, has also been made. The review analyses the logic of the main public governance models, defines the features of traditional public administration, the New Public Management and the New Public Governance in a summarised way, by emphasising their nature in the current Lithuanian health policy and governance.

**Findings** – Health policy both on a global scale and in Lithuania tends to apply the integrated “bottom-to-top” models, which are based on networking, partnership and cooperation. The attitudes prevailing in Lithuania on the improvement of health policy and governance reflect the logics of the New Public Governance (NPG). The NPG could be the theoretical framework which might allow the practical realization of prevailing ideas in Lithuania on health policy and governance improvement.

**Research limitations/implications** – The small scope of this review and the necessity for a more detailed empirical data analysis cannot lead to overall generalizations. The Lithuanian Health Programme 2020 has not been approved by the Seimas yet.

**Practical implications** – The review provides the practical features that would be essential in order to achieve the objectives of contemporary health policy and governance.

**Originality/Value** – Prevailing ideas on the improvement of health policy and governance are changing, and previously applied theoretical models of public governance no longer meet the realia of these days. Assurance of effective, interdisciplinary health policy and governance should be based on the appropriate public governance model providing the basis for the implementation of the principles of contemporary health policy and governance.

**Keywords:** Health policy and governance, Health in All Policies, Traditional Public administration, New Public Management, New Public Governance

**Research type:** General review
Introduction

In the last decades the health policy and governance stepped outside the boundaries of the sectoral approach to the solution of health issues and has become a problem of not only health, but also other areas of public governance. Based on the modern concept of public health and the definition of health by WHO, health care includes comprehensive physical, social and psychological wellbeing, not only the absence of illness or disability (Preamble to the Constitution of the World Health Organization, 1946). Thus, health policy is treated as a general function of governance by recognising health as the social and economic value.

A change in the discourse of health policy and governance has lead to the development of the “Health in All Policies” (HiAP) approach, which focuses on the contribution of public policies to the maintenance and improvement of public health. In order to implement this approach, the possibilities must be provided for various public sectors to affect health; cooperation techniques and mechanisms must be developed to coordinate the actions of various institutions, and the inclusion of the stakeholders in decision-making and development processes of public health must be encouraged (Howard and Gunther, 2012). Assurance of effective, interdisciplinary and integrated health policy and governance should be based not only on the international and national experience or science-based evidence, but also on the appropriate public governance model, providing a basis for the implementation of the principles of contemporary health policy.

For a long time, health in Lithuanian national strategies was mainly being associated with the health care system and treated rather from the sectoral point of view, while more pronounced changes in health policy and governance towards the HiAP approach are noticeable only in the recently approved strategic documents: the Draft of the Lithuanian Health System Development in 2011-2020\(^1\) and the Lithuanian Health Programme of 2020\(^2\). The measures of this Programme should be implemented in a collaborative effort by all public sectors. Thus, in Lithuania, the prevailing ideas on the health policy and governance are changing, and previously applied theoretical models of public governance (for example, the traditional public administration or the New Public Management) no longer meet the realia of these days.

Therefore, the ambition of this review is to take a deeper look into the changing ideas dominating in respect of the improvement of health policy and governance in Lithuania, and to provide insights into public governance model which would help to facilitate and reflect Health in all sectors of Lithuania. The review describes the context of contemporary health policy and governance, the logic of the main public governance

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\(^2\) Draft Lithuanian Health Programme of 2020, prepared in implementing the clause of the contract on the provision of services for the analysis of the health care system (No S-3 of 2011-01-04) to provide recommendations on the goals and objectives of the Lithuanian Health Programme of 2011-2020
models, defines the features of traditional public administration, the New Public Management and the New Public Governance in a summarised way, by emphasising their nature in the current Lithuanian health policy and governance. This review also aims to respond to the core issue: which public governance model would allow the practical realization of changing approach to health policy in Lithuania and governance improvement.

I: The Context of Contemporary Health Policy and Governance: Movement from the Traditional Public Administration towards the New Public Governance

The second half of the twentieth century, particularly its end, featured an increased theoretical interest in public governance models. The academic discussion has different interpretations of not only the terms “public administration”, “public management” and “public governance” (Bileišis, 2012), but also the origin, assumptions, and operating principles of public governance models (Ferraz et al., 2012; Eliassen and Sitter, 2008). Public governance models are “accused” of normativism and instrumentalism and the lack of empirical evidence: it is often proposed to replace them with more empirically measurable theoretical approaches (Tumėnas, 2009). However, this review is not intended to get involved into an academic dispute about the normativism and empirism of public governance models. On the contrary, in order to examine which public governance model mostly reflects the HiAP approach, it is necessary to discuss in more detail the main theories of public governance.

The traditional administration may be considered as the oldest public governance model, which is associated with the intensive industrialisation that began in the second half of the nineteenth century. Since then, the main provisions on the approach to the public sector and civil servants have remained to this day. Many scientists have presented their interpretations of traditional administration (e.g., Wilson, Taylor, Gullick), but the bureaucracy model of Weber may probably be regarded as the culmination, which is basically the limitation of the state power (both democratic and undemocratic) by a legal regulation of the activities of officials. Weber compares the bureaucratic organization as a modern form of organization, determined and evolving along with mass democracy and market economy, with pre-modern forms, which are based on the traditional or charismatic authority and power. The prevailing idea in the development of the traditional model was rationalism, or, the so-called transformation of social action into a rationally organized action (as if a machine), which had a significant impact on authorities, the public worldview and the practical daily life (Kalberg, 2005).

A specific way of functioning of the traditional public administration includes the following key features: division of labour, hierarchy of authority, rules, anonymity and the application of ethos in bureaucratic activities and qualification (Hill, 2009). The traditional public administration establishes public services by using budget funds, the bureaucratic form of organization and public sector employees as the labour force. This public governance system has important advantages: it ensures stability, reliability, predictability and professionalism.
Although this review does not seek to determine exactly to what extent Lithuanian health policy and governance can be considered traditional, some long prevailed and ongoing features, such as basing health governance on hierarchy and written rules, and the approximation and hearing of draft legislation in the Government, indicate that the Lithuanian health policy and governance still have the features of traditional public administration.

However, the traditional type of public governance creates a model that can distort reality. Bureaucracy is displayed as more abstract, more formal and more logical than it actually is. Therefore, it can be stated that the operating principles of traditional public administration in contemporary world are losing their relevance. It has been argued that in the twenty-first century the traditional public administration may become a key obstacle to the change in the public sector. The public sector can no longer keep in step with a rapidly changing society of knowledge (Elliasen and Sitter, 2008).

Nevertheless, after the first wave of criticism towards the traditional public administration, associated with the prevalence of the New Public Management (NPM), the block of traditional public administration defenders emerges (Drechsler, 2005; Pollitt and Bouckaert, 2004). Bell and Hindmoor (2009) states, that governments have recently extended hierarchical controls at the national and regional levels, especially in areas such as alcohol or tobacco sale, genetically modified organisms, etc. Typical examples are smoking regulations where governments not only regulate who can buy tobacco products, where and at what price, but they also regulate where people are permitted to smoke (Kickbusch and Gleicher, 2012).

II: The New Public Management: an Entrepreneur's Mindset to the State!

The NPM doctrine was formed in approximately the eighth decade of the twentieth century. The emergence of the NPM doctrine is associated not only with the criticism of the traditional public administration model, but also with the rise of welfare states, the influence of theories of the New Right (Tullock, 1965), Public Choice (Niskansen, 1971), and transactions, i.e. costs (Coase, 1937). According to Charles B. Perrow (1972), the “traditional bureaucracy is a social technology that helped the West to achieve the current welfare, overspending and environmental pollution levels...”

Usually, the NPM doctrine is described by three key features: first – the NPM as an ideology is based on the achievement of efficiency on all levels of the public sector; second – the NPM as an object of scientific studies; and third – the NPM as a global public sector reform. Hence, the NPM is a doctrine that offers to “renovate” public governance in such a way that it would be capable of responding to rapidly changing environmental conditions by implementing innovations, using business energy and encouraging competition between public, private and non-governmental service providers (Osborne and Gaebler, 1992).

There is a general agreement that the NPM is composed of the four main structural elements: decentralization, privatization, private sector governance techniques, and “steering rather than rowing” (Lane, 2000). Public organizations are divided into separate
independent agencies, governance functions in organizations are decentralised, responsibility is delegated and hierarchy is reduced. The public sector is reduced, and the government moves, firstly, to agreement-based relations with the executive directors of public institutions and agencies; secondly, the executive directors contract with service providers. Moreover, the building of “remuneration in accordance with the results” system, accountability and the operating principle of government as a catalyst are encouraged (Eliassen and Sitter, 2008).

The NPM, as well as the traditional public administration model, is criticised. Recently, the NMP has been receiving an especially large amount of criticism; therefore it would be difficult to cover it all in the scope of this review (the works of Pollitt, Bouckaert, Dreschler, Gregory, Norman, Guogis and other authors). It is believed that the NPM is based on a poor diversity of assumptions, the reforms did not bring the expected result (Drechsler, 2005), and that the NPM is shrouded in myths (Tumėnas, 2008) which prevent its correct evaluation. Moreover, the operating principles of the public and private sectors are different: the public sector must not only ensure the effectiveness but also the benefits of immaterial nature, social justice and the provision of public goods (Pollit and Bouckaert, 2011).

The analysis of the Lithuanian health policy and governance (especially before 2010) shows the application of NPM operating principles in reforming the health care sector. In 2010 it was already stated that it is very important to use the principles of the NPM in health governance (Buivydas et al., 2010). Therefore, the personal health care network was optimised, decentralization was implemented, in-patient health care was restructured and the private share of health care was increased. The restructuring of health care services was aimed at reducing the functioning costs of the health care system, hospital governance, economic costs and investments necessary for individual hospitals: meanwhile savings were to be used for a more efficient functioning of in-patient health care institutions.

However, the health care reforms in Lithuania, focused on NPM, did not bring the expected impressive results: patient trust and satisfaction with health care services is not increasing, and there is no significant growth of positive indicators in the health sector (Euro Health Consumer Index, 2012). The implementation of the Lithuanian Health Programme for the year 1998 – 2010 was successful only in areas that have been based on greater resources (goals that were not recognized as the priorities of the Government of the Republic of Lithuania, such as significant reduction in alcohol consumption, were not achieved).

Therefore, ideas prevailing in Lithuania on the improvement of health policy and governance, most reflected in the draft Lithuanian Health Programme for the year 2020, began to change noticeably. Although there is still emphasis on “efficiency”, in the new context, this “efficiency” of health governance takes on a different meaning than in the NPM doctrine. The contemporary “effective” health policy and governance should focus on the reserves that lie outside the health sector boundaries, i.e. the inter-sectoral collaboration, the society’s (self) involvement, reduction of social inequalities and exclusion, various types and forms of partnership, leadership, development of skills in
other sectors, cooperation, reduction of corruption and increase of accountability. The new health policy and governance “trajectory” requires the application of a different public governance model than the NPM or the traditional public administration.

III: Life after the New Public Management: The New Public Governance

Although public governance and its modernization depends on each state’s constitutions, political systems, values and interests, according to A. Guogis (2010), namely the NPG is becoming the new public administration model of the beginning of the twenty-first century. Academic discussion both in the world and in Lithuania does not have a unanimous consensus (for example, the works of Guogis, Raipa, Denhardt and Denhardt, Bovaird and Loffer and others), as to how the NPG emerged, and what place this model should take in the “chain” of all public governance models. The NPG can be viewed through the NMP “prism” or, on the contrary, the NPG can be considered as a new “trend”, modifying the tools, techniques, and governance principles.

However, this review does not seek to prove whether the NPG model essentially changes the NPM or not. Both theoretical models arose from the necessity to modernize public governance and to solve the problems of public sector inactivity, and have been affected by certain political ideas (NPM – by the centre-right, and the NPG – by the centre-left). Nevertheless, the more the NPG is applied to improve the modern public administration and its areas, the more it differs from the NPM: uses a wider “range” of measures, includes more initiatives and incentives.

The NPG can be defined as the public administration model, enabling the society to participate in the adoption and implementation of public decisions (Martin, 2009), based on good inter-institutional cooperation, destroying boundaries between the public, private, voluntary and non-governmental organization sectors that supports social relations, partnership, transparency, responsibility and other ethical values, emphasizing the concepts of “democracy”, “self-esteem”, “citizen” rather than “market”, “competition” and “client” (Guogis, 2010).

Thus, the assumptions of the NPG provide for a certain modern government “course” and trend. Firstly, the public sector has to be able to operate in the “network” by collaborating with institutions of various levels (international institutions, regional and local authorities, private sector institutions and the representatives of NGO or the civil society) (Nakrošis, 2011). Secondly, the current public sector must ensure coordination, partnership and inter-sectoral collaboration. The problems that cannot be solved by one ministry or department (e.g., longer life expectancy, reduction of inequalities and social exclusion, health improvement), must be solved by various institutions by employing information and communication technologies (ICT), e-government and centralized control. Thirdly, modern government, especially in the countries of former Soviet Union bloc, faces the absence of trust in political institutions. Absence of confidence in political institutions is determined by the lack of accountability, low level of self-confidence and confidence in others, and insufficient elements of the social capital (Schyns and Koop, 2010). Therefore, according to D. Ferraz et al (2012), the application of the NPG in post-
Soviet countries is much more relevant than in Western Europe or the Anglo-Saxon countries, because they are more dominated by asymmetric information and mistrust. The focus of the NPG on transparency, reduction of corruption by using cooperation between all participants, mastering of e-democracy by increasing the professionalism of public officials and “street-level” bureaucrats (Lipsky, 1980), may increase trust and involvement, reduce inequalities and increase the social capital.

It should be noted that improvement solutions for various reforms and policies depend on each country's context of public governance and opportunities, offered by the context of different public governance doctrines. According to C. Pollitt and G. Bouckaert (2011), in many countries no public governance model exists in its pure form; hybrid action methods (consisting of several models or viewpoints) are much more typical for public sector reforms. Therefore, in the reforming of the public sector these authors suggest using a “menu” of different tools, consisting of different theoretical approaches of public governance.

Figure 1. Inter-sectoral Collaboration in Lithuania: “STOP war in roads” Initiative

However, although the NPG is still applied in a rather fragmented manner, it is increasingly viewed as a desirable example in various fields of modern public administration. The NPG, contrarily to other public governance models discussed, could be the theoretical framework which might enable the spread of the HiAP approach and allow the practical realization of prevailing ideas in Lithuania on health policy and governance improvement. For example, the successful inter-sectoral initiative in Lithuania (“STOP war in roads”) mostly focused on the decrease of road accidents and deaths, but made significant improvements in life expectancy, alcohol consumption and injuries. Responsible for the implementation of this initiative were not only Ministries of
Lithuania (e.g. Ministry of Transport and Communications, Ministry of the Interior, Ministry of Justice, Ministry of Health), but NGOs, media and private sector as well (see Figure 1).

IV: Prevailing Ideas on Health Policy and Governance Improvement in Lithuania

Improvements of health care system quality, its availability, transparency, health integration into all policies are some of the main goals and challenges of health policy and governance in this decade. The draft Lithuanian Health Programme 2020 states that “decision-making considering the country's health problems and responsibility for these decisions cannot be largely attributed to the health care system alone. Other public sectors must be more active and apply public health improvement measures more widely. Effective cooperation among all sectors is an essential condition for successful solutions of the program's objectives.”

Therefore, the goals of the Programme are to be achieved by reducing social inequalities in health relations, encouraging healthy behaviour, maintaining a healthier physical and social environment, and increasing the efficiency of the health care sector's structure and functions.

Ideas on health policy and governance improvement emerging in Lithuania, originated from the changes in the health concept used in international academic and practical discourse. For a long time health and its care has been viewed more from the perspective of disease diagnosis and treatment, rather than its prevention (Whitehead et al., 2001). The influence of social and physical environment factors on health and the interrelation of those factors is already being analysed by the modern concept of health. The same factor, for example, unemployment can lead to many other health damaging factors such as stress, unbalanced diet, bad habits (Final Report of the Assessment of Inter-institutional Collaboration Analysis, Analogous Experience in the EU Countries and the Existing Legal Framework in Lithuania, 2012). Theorists who analyze contemporary health policy and its governance practice in the world, emphasize the replacement of the “top-down” or hierarchical traditional public governance and decision-making model with an integrated “bottom-to-top” model which is based on networking, partnership of various modes forms and structures, co-operation between patients – doctors, doctors – policy-makers and administrators, administrators – NGOs and the private sector, based on consensus, dialogue, rather than hierarchical command and control (see Figure 2).

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1 Draft Lithuanian Health Programme of 2020, prepared in implementing the clause of the contract on the provision of services for the analysis of the health care system (No S-3 of 2011-01-17) to provide recommendations on the goals and objectives of the Lithuanian Health Programme of 2011-2020
Ideas prevailing in Lithuania on health policy and governance improvement, most expressed in the draft Lithuanian Health Programme 2020, are based on several core provisions, already discussed in this review. First of all, there is a prevailing provision of *health to everyone and everyone to health*, based on the HiAP approach. The HiAP approach, meaning the determination of health factors in different policies (from agriculture to finance, transport, education and housing policy) derived from the Alma Ata conference provisions back in 1978. They draw attention to the importance of other public policy sectors in ensuring health. The implementation of this approach is also encouraged by the WHO and the EU institutions. The WHO strategies “Health for All”, “Health for All in the Twenty-First Century”, and “Health 2020” emphasize the goal of providing individuals with full health potential based on various groups; the significance of the role of various agents (not only in the medical sector) in ensuring health is analysed, with the aim of values, ethical provisions, joint responsibility, and inter-institutional and inter-sectoral collaboration (Howard, Gunther, 2012).

Second, a provision is formulated that health policy and governance should be based on a holistic, overall approach. The role of education, culture, reduction of social inequalities and exclusion is important for health policy. Although the starting point, health indicators and achievements are different in each state in the application of this new approach, both the state and the public policies must be united by a common goal, oriented towards reducing inequalities and improving health indicators. Negotiation, coordination and delegation should be employed in order to implement this provision.
Third, an equally important aspect of the changing Lithuanian health policy and governance is the involvement of the entire society (not only patients), public, private, voluntary and NGO sectors in organizing of agendas of all public policies (and, of course, the health policy), decision-making and implementation. Health policy based on partnership and collaboration, as well as the involvement of various agents and sectors, might encourage the transfer of knowledge and information, enhance skills, and improve leadership. This provision implies a “win-win” strategy, where all the interested parties win and there are no “losers”. Cooperation of all sectors and public involvement might act as a network platform based on a statutory mechanism.

Thus, the Lithuanian vision for contemporary health policy and governance is to promote health and well-being in a sustainable way and to achieve this by strengthening disease prevention, health promotion and governance structures and mechanisms discussed above (Jakab, 2013) (see Figure 3).

![Figure 3. Lithuanian Vision: Health Policy Promotion in a Sustainable Way](image)

To summarise the ideas prevailing in Lithuania on the change and improvement of health policy and governance, it can be stated that they are based not on the traditional public governance model or assumptions of the NPM, but rather the NPG model analysed in the third section of this review. Naturally, the small scope of this review and the necessity for a more detailed empirical data analysis and other theoretical assumptions (for example, comparison of all aims and means of the Lithuanian Health Programme 2020 Project with the theoretical assumptions of the NPG) do not lead to overall generalizations, that namely the NPG is the theory which has greater possibilities for the practical implementation of the modern health policy principles. The Lithuanian Health Programme 2020 has not yet been approved by the Seimas, and the evaluation of the Lithuanian Health Programme 2020 carried out by the WHO, highlights the weakest link of the programme – the practical implementation guidelines (Comments to the Draft Lithuania Health Programme, 2020, 2012). Inter-institutional programs in Lithuania are difficult to implement because of lack of knowledge in how health is linked with other...
sectors, and because political interests and prevailing new approaches of health and its care are different.

**Conclusions**

Health policy and governance is one of the most intensive areas of public policy, where the dimensions of not only the health aspects, but also the social justice, general application or legality collide. Changing approach to the health policy and governance both on a global scale and in Lithuania, tends to apply the integrated “bottom-to-top” models, which are based on networking, partnership of various forms and structures, cooperation built on consensus and dialogue, rather than hierarchical command and orders or instructions. Health policy based on networks and inter-sectoral collaboration requires new models of work organization and public service provision: the application of traditional public administration and the New Public Management (NPM) did not bring the expected results, did not improve the quality of health services, and did not involve the society and all the interested parties.

The insights made in this review showed that the attitudes prevailing in Lithuania on the improvement of health policy and governance reflect the logic of the New Public Governance (NPG). This provides the possibility for the future development of the application of the NPG in the new health policy and governance trajectory not only on the normative but also on the empirical and practical levels. Recently, there has been an increasing need for the implementation of practical cooperation between all sectors and society involvement, thus, the “field” of measures granted by the NPG and complemented with other theories could implement the net platform of “Health in All Policies”.

However, it should be noted that solutions for improvement of various reforms and policy governance depend not only on international strategic documents, but also on the public governance context of each country and opportunities for the implementation of these documents after adapting them. Therefore, there is a risk, that even after the application of normative and practical provisions of the NPG for health policy improvement, they will not be implemented due to various factors depending not only upon the practical application of the NPG theory. In this case, the method of different tools “menu” can be used, i.e. the best measures applicable in the Lithuanian health policy and governance can be chosen from a variety of theoretical approaches of public governance and reforms.

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VALUE ADDED TAX SYSTEM AND DYNAMICS OF RATE IN THE PERIOD OF EUROPEAN UNION CRISIS

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Abstract

**Purpose** - the article aims to assess the economic efficiency of value-added tax as the prime indirect tax. The analysis focuses on flaws of the current value-added tax system; ways to eliminate the flaws and make European Union-wide improvements in the system are discussed. In her research article, the author also presents the research of the value-added tax rate dynamics in the European Union and assessment of value-added tax rate changes in Lithuania and Great Britain during the crisis.

**Design/methodology/approach** - descriptive method, analysis of scientific literature, statistical analysis of data, analytical method, mathematical analysis, analysis of legal instruments, and comparative analysis.

**Findings** – the author focuses on current scientific debates on ways to improve the value-added tax system according to the European Commission. In her article, the author presents the research of value-added tax rate dynamics in the European Union and the significance of value-added tax for the European Union budget revenue.

**Research limitations/implications** – in the next paper would be added the most recent data, now they do not exist.

**Practical implications** – the paper presents the theoretical framework for further study of value-added tax in European Union as basic material for classroom use.

**Originality/Value** – the author presents the research of value-added tax rate dynamics in the European Union during economic crisis.

**Keywords:** value added tax, indirect tax, dynamics, rate, European Union, economic crisis.

**Research type:** research paper.

Introduction

In the opinion of most scientists around the world value added tax (hereinafter referred to as VAT) is the best form of the common consumption tax. If the state has introduced such a tax, as it is in most developing countries, naturally, in most cases it will be the only tax of this type. One of the reasons why VAT has successfully taken roots in the global tax systems is that the European Union (hereinafter referred to as EU) has
been a good example. The EU introduced VAT very early and realized its benefit and this favourable experience encouraged to apply VAT in other states, too\(^1\).

Actually most developing countries have already had VAT and the ones that still don’t have it, are encouraged to introduce this indirect tax. Recently the European Commission together with population of the EU member-states have discussed about efficiency of VAT, its development level and other aspects related to VAT, especially in the view of its role in states with low income.

Value added tax in articles of some scholars is defined as a tax of wide scope applied in different stages of production. Its advantage is that revenue earned during production, is protected (other than retail sale taxes). In different countries one can come across taxes bearing the same VAT tax name, also one can come across the name of goods and services, however the purport of taxes may be not exactly the same\(^2\).

All member-states of the European Union basically adopted the same VAT model, which is regulated in the 6\(^{th}\) VAT Directive. No improvisation can exist among these states: all taxation, regulation, the subject and the rest is the same. However, currently the VAT system in the EU is operating in a not exactly unanimous principal: different VAT rates and individually selected groups of goods with granted exemptions are applied. The simpler VAT system would also mean reduction of tax payers’ and tax administrators’ operating costs and rise of the net profit of the budget. Thus, in view of regulation gaps in the VAT system and also serious difficulties that arouse during the financial crisis in the area of public finances, transition of the member-states from direct to indirect taxation, development of simpler and more efficient VAT system and grounding everything by economic assessment becomes important. The author makes the research of VAT rate dynamics in Lithuania and the European Union and analyses drawbacks of VAT system and possibilities how to remedy them.

### I. Flaws in VAT harmonisation and improvements to the system

Harmonisation of indirect taxes, VAT among them, has been debated since the dawn of the EU. In 1957 EC founding treaty, the provisions dealing with the harmonisation of indirect taxes are laid out in Articles 90 to 93 (Articles 95 to 99 in the new 1992 version). Article 99 states that “the EC shall consider how the legislation of the various member states concerning turnover taxes, excise duties and other forms of indirect taxation, including countervailing measures applicable to trade between member states, can be harmonised in the interest of the common market”\(^3\).

The key EU Directive that governs VAT is the Directive 2006/112/EC on the common system of value added tax, which basically replaced the sixth VAT directive 77/388/EEC

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of 1977. The directive is regularly amended. It means that the EU is improving VAT taxation to make the tax even better harmonised. VAT rates and tax allowances, still different in individual EU member states, pose questions for debates on ways to improve the VAT system and its regulation.

Taking heed of these facts and aiming to create a simpler, more efficient and robust VAT system at the Community level, the EC has outlined the main flaws of the system and proposed possible ways to eliminate the flaws, to make the VAT system more efficient and to make improvements.

“Simpler VAT system includes:

- Reducing the operational cost to tax administrations and taxpayers;
- Increasing the net benefit to the Treasury;
- Simplifying VAT compliance and regulation;
- Making VAT less susceptible to fraud.

Having analysed EC proposals, the on-going EU action programme Europe 2020 Strategy and legal instruments, the author’s discretion was singled out the most important key areas to improve the VAT system”

1. **Administrating of the VAT system.** The complicacy in the VAT regulations outcome in administrative burdens for businesses. Agreement with VAT accounts for almost 60% of the total burden measured and this is making the EU a less appealing place to invest\(^2\). The EU tax system lacks transparency and it has gaps: this gives rise to uncertainties about the applicable rules, and facilitates double taxation or tax discrimination. Businesses and citizens alike are interested to have any barriers to transactions inside the EU removed: the issue of cross-border loss compensation for companies needs to be tackled; the rules on VAT invoicing need to be simplified and modernised, which would then facilitate electronic invoicing. It is important to note that this proposal has been considered and, as of 1 January 2013, new provisions of the Law on Value Added Tax governing electronic VAT invoicing come into force (part of efforts to implement the directive 2010/45/EU). In contrast to the requirements of current legal acts, taxpayers, as of 2013, shall not be required to use any specific technology for electronic VAT invoicing\(^3\). Now that the requirements to hard copies and electronic copies of VAT invoices are the same, an emailed copy of a regular VAT invoice shall be deemed an electronic VAT invoice and treated as equal to a hard copy of a VAT invoice.

As proposed by the EC, one way to reduce the administrative burden on businesses is to exempt from VAT companies with their annual turnover below a certain threshold. In view of this proposal, as of 1 January 2012 Lithuania has raised its threshold for

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compulsory registration as a VAT payer from LTL 100,000 (around EUR 29,000) to LTL 155,000 (around EUR 45,000)\(^1\). It is an attempt to simplify VAT administration and improve its efficiency; besides, the threshold has been raised in hope to promote small business. Importantly, Lithuania’s present VAT registration threshold is one of the highest among EU states. Many states with economies, companies and turnovers considerably larger than those in Lithuania, have lower or very similar VAT registration thresholds, for example, the threshold is EUR 6,700 in Denmark, EUR 18,300 in Hungary, EUR 17,500 in Germany, and EUR 30,000 in Italy and Austria.

2. **Complex regulation of the VAT system.** The VAT regime is cumbered by the derogations for member states under EU VAT law and existence of numerous options, which leads to divergent rules across the EU. With regard to EU-wide coordination of tax policies, Businesseurope singles out VAT as one of priorities and argues that variations in VAT tariffs affect trade and capital movements, at the least in the medium period, and are wherefore topical for the functioning of the single market\(^2\). In a context of a trend towards rising consumption taxes, coordination of policies directed at raising standard VAT tariffs or limiting the application of reduced VAT tariffs may be useful\(^3\).

The issue of VAT deduction also needs deliberation. The VAT system based on payments, so that the VAT becomes deductible and payable when the goods and services are paid for, would be neutral for everyone. This system would also restrict VAT losses due to customer insolvency. With refund schemes for businesses fixed in a different Member State, the actual deduction of VAT is complicated and it takes a long time. This problem could be solved in One Stop Shop\(^4\). The One Stop Shop will foresee businesses to declare and pay the VAT in the Member State where they are established rather than where their customer belongs. The One Stop Shop system that is restricted to non-EU providers of electronic services is being extended to EU businesses and to telecom services and broadcasting. In the offing the intention is to expand the One Stop Shop to even more activities, including supplies of merchandise\(^5\).

“On 1 January 2015, the VAT rules on the place of supply of services will change for companies supplying telecommunication, broadcasting or electronic services to EU customers. The VAT becomes due where the customer belongs. This makes it necessary to broaden the current scope of the existing One Stop Shop system. Currently, a scheme is already in operation for non-EU businesses supplying electronic services. The scheme will now extend to both EU and non EU businesses and - in addition to electronic services -...”

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\(^1\) Tax changes for 2012. URL: http://www.finmin.lt/web/finmin/2012mokesciai [Retrieved 14/03/2013].


incorporate telecommunications and broadcasting services. It will allow suppliers to use a web portal in the Member State in which they are identified to account for the VAT due in other Member States on supplies of these services to private consumers\(^1\).

2. The Research of the Value-added Tax Rate Dynamics during the Crisis in the European Union

Right after the start of development of the value added tax system its regulations has been changing and improving. The countries have changed rates, exemptions and other relevant aspects that would facilitate the taxation process and would benefit to get closer to the Community target – to eliminate factors that generate competitive differences between the states, so they would not encumber free movement of goods and services but promote trade.

A lot of discussions arise regarding VAT rates. For years countries worked out what rates to apply in accordance with economic situation of the country in order to secure both collection of income to the budget and to avoid too big burden to population of the country.

VAT rates in member – states of the EU range from 15 % to 27 % (see Table 2). There are big differences not just in the level of standard rates, however countries apply different reduced rates and impose taxes on different groups of goods. The author of the article demonstrates the dynamics of the mean VAT rate in the EU in years 2000 – 2012.

Reference: made according to Eurostat data

Figure 1. Dynamics of mean standard VAT rate in the EU in years 2000 – 2012

Within 13 year-period the mean VAT slightly varied, however the biggest changes are seen since year 2009 when the standard rate of VAT started growing fast and the

mean rate rose by 1.2 percentage points, i.e., from 19.8% to 21%. Not all countries increased rates; some of them introduced reduced rates or changed their application. The biggest change of the standard rate was made in Hungary in years 2008-2012, when it increased by 5 percentage points and Latvia – 4 percentage points (see Table 2).

Each country increases rates of the tax having their own targets in mind. Whereas the analysis is focused on the 14 recent years, we can state that increase of rates in most countries depends on financial situation of the country during the crisis. One of the reasons – the increase of rate was necessary for finding a way how to reduce the budget deficit.

In the view of the revenue of the governments of the EU we can see that revenue of all 27 states of the EU dropped from 174.15 billion Euros from year 2008 to 2010. This can be associated with reduction of the taxing income, which dropped within this period by 179.4 billion. We should note that in year 2009 the difference was even bigger, however in year 2010 the revenue increased in all countries with exception of some. Meanwhile the revenue from VAT after a big drop by 72.89 billion Euros in year 2009, the revenue in year 2010 exceeded the revenue of year 2008 by almost 4 billion Euros. This can be associated with increasing rates of VAT and in some countries consumption is promoted (e.g. Luxemburg) by development of reduced rates, which can also make big influence on increase of the revenue. Germany collects most revenue from VAT, the second on the list is France. Meanwhile Bulgaria is a country, which depends on the consumption tax. There the consumption tax makes 50.8% of all taxes. Meanwhile Italy (22.8%) and Spain (23.6%) are least dependent on these taxes.

3. Assessment of Value Added Tax Rate Changes in Lithuania and Great Britain during the Crisis

The Republic of Lithuania became a full member of the EU in year 2004. Naturally, one of the stages for preparation to become a member was harmonization of legislation; and Lithuania also joined a common VAT system. The Law of VAT of the Republic of Lithuania defined application of this tax. The main change in VAT Law was that the margin for being registered as a VAT payer as of 1st January 2012 from 100,000 Lithuanian Litas (around 29 thousand Euros) was increased to the margin of 155 thousand Lithuanian Litas (around 45 thousand Euros) allowed under resolution of the Council of the EU.

As we can see in Table 1 that since introduction of VAT in Lithuania, i.e. from 1st May 1994 to 1st January 2009 18% VAT rate was applied. 18% standard VAT rate was applied in Lithuania until the beginning of the crisis. The country could never boast about surplus budget, however during the crisis ways had to be found how to increase the revenue to the national budget. In year 2009 the VAT rate was increased by 1

\[ \text{Total general government revenue from VAT. http://appsso.eurostat.ec.europa.eu/nui/show.do [Retrieved 10/05/2013]} \]
percentage point up to 19% and in year 2010 – by other 2 percentage points to 21%. However, as a result of disappointment in development of the Lithuanian economy the Ministry of Finance suggested to increase the VAT rate by other 2 percentage points (up to 23%) at the end of year 2011. Despite of such suggestions, yet VAT rate remained 21%.

Table 1. Change of VAT rate in Lithuania.

<table>
<thead>
<tr>
<th>Year</th>
<th>Standard rate</th>
<th>Reduced rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/05/1994</td>
<td>18</td>
<td>-</td>
</tr>
<tr>
<td>01/08/1994</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td>01/01/1997</td>
<td>18</td>
<td>-</td>
</tr>
<tr>
<td>01/05/2000</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>01/01/2001</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>01/01/2009</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td>01/09/2009</td>
<td>21</td>
<td>5</td>
</tr>
</tbody>
</table>

Most tax deductions were abolished during the period of crisis, e.g., for periodicals, cultural and passenger carriage services and meat products. Currently 5% rate is applied to pharmaceuticals and medical devices, however this reduction can be used by persons only who have a right to full or partial reimbursement for purchase of this type of goods under Social Insurance Law; and tax deduction of 9% is applied to books, heating and hot water in Lithuania. 0% rate is applied to internal and international transport.

Lithuania is one of countries that have to harmonize its expenses, since there is always lack of revenue. However, during the crisis the revenue significantly dropped – by 1.68 billion Euros, taxable – by 2.25 billion Euros and unlike in other countries, the revenue did not rise in year 2010. The revenue was not raised even after „the overnight tax reform “that was implemented in year 2008 when the burden falling on population and companies was raised.

Meanwhile the revenue from VAT that dropped almost by one fifth in year 2009 – by 0.62 billion Euros, in year 2010 rose up to 2.14 billion Euros (the rise of 0.22 billion Euros). This can be seen in Figure 2. In year 2011 8.502.5 billion Euros was earned as VAT. The revenue plan was achieved by 102.9 percent. The state budget received 243.3 billion Euros revenue more than planned from VAT. Compared to the year 2010 1.208,5 million Lithuanian Litas was transferred to the budget or in other words, 16.6 percent more. 4.542,4 million Lithuanian Litas was earned from VAT during the 1st quarter. The revenue plan was achieved by 99.7 percent and the state budget received 15.9 million

Lithuanian Litas of revenue from VAT less than planned. Compared to the 1st quarter of year 2011 122.7 million Lithuanian Litas revenue from VAT was transferred to the budget, i.e. 2.8 percent more than planned. Collection of this revenue was determined by changes in surplus payment and VAT arrears: actual revenue from VAT in the 1st quarter of year 2012 was 404 million Lithuanian Litas or 10.2 percent more than the 1st quarter of year 2011. In the 1st quarter (in year 2011 the actual revenue from VAT as a result of dropped VAT arrears and bigger VAT surplus payments was 474 million Lithuanian Litas, while in year 2012 the bigger level of VAT arrears and bigger VAT surplus payment actually dropped revenue from VAT only by 192.7 million Lithuanian Litas). In year 2012 total VAT revenue was 8,719.9 million Lithuanian Litas. Compared to year 2011 215.4 million Lithuanian Litas was transferred to the state budget or 2.5 percent more revenue from VAT, the plan of year 2012 was achieved by 97.6 percent and the budget received 211.3 million Lithuanian Litas less than planned. Having made assessment of VAT arrears and VAT surplus payments, the actual revenue from VAT in year 2012 was 41.9 million Lithuanian Litas or 0.5 percent less than in year 2011.\(^1\)

Reference: made according to Eurostat data

**Figure 2. Revenue from VAT in Lithuania in years 2000-2010, billion EUR**

One of the financially strongest states of the EU – Great Britain until year 2008 still had reduced VAT tax from 17.5% to 15%, since it was presumed that the state may lose 12.5 million pounds as a result of economic recession because of reduced consumption\(^2\). Other biggest member-states of the EU such as Germany and France did not approve to such reduction of VAT. Although the European Commission has no right to make orders to members of the EU on establishing of taxes, however the standard VAT rate may not

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\(^2\) Ray Barrell and Martin Weale The Economics of a Reduction in VAT. National Institute of Economic and Social Research, 2009.
be lower than 15% and not higher than 25%. One of the greatest changes in the VAT system without any mention of changes in rate is the amount when one must register as VAT payer. As of April 2012 this amount was increased to 77,000 pounds per year, the bigger margin than in Lithuania. Besides, there were changes in rates, however just the standard rate varied and there were no changes in zero or reduced rate application and exceptions.

Great Britain has retained a standard rate for a very long time and in year 2009 when most states were discussing about increase of this tax, this state made something unexpected and reduced the applied rate by 2.5 percentage point to minimal 15% rate. However, namely in year 2009, the highest budget deficit was registered in the state – actually 11.5% GDP\(^1\). Namely this determined that the standard VAT rate was restored to 17.5% and in year 2011 was raised to 20%.

However, when the standard rate was rising, there were no changes in reduced rates. From year 1997 and what is most important, throughout all period of crisis, one rate was reduced by 5% for child car seats, social dwelling and renovation of houses and also electricity and gas and also a reduced rate is applied to import under specific rules. Although it seems this state applies the reduced rate for just few areas, this state applies 0% in many areas (food, water, some pharmaceuticals, medical devices, books, newspapers and periodicals, internal ant international transport and elsewhere\(^2\).

Great Britain was one of the states, which in year 2009 experienced big drop of the revenue within the state. It reached 144.67 billion EUR, the taxable revenue dropped to 137 billion EUR. The drop of revenue from the tax in question was not very significant compared to general decline of revenue. This is demonstrated in Figure 3.

![Revenue from VAT](http://appsso.eurostat.ec.europa.eu/nui/show.do) [Retrieved 05/05/2013]

First, it should be mentioned that the first decrease of the revenue earned from the tax occurred in year 2008 (drop by 18.39 billion EUR from 131 to 112 billion). In 2009 it decreased even more and not just the crisis in Europe was guilty, but the decision of the government of Great Britain to reduce the standard rate to the minimal. However, as we can see such an action did not justify and the rate had to be restored to the initial level and this determined the rise of the revenue from VAT that reached the level of year 2008 (the increase from 21.35 billion EUR to 109.24 billion EUR). In Table 2 of VAT rates in EU states we can see how member-states changed the tax rates during economic regression. The analysis shows that most states increased the rate of VAT, except for Belgium, Denmark, Luxemburg, Austria, Slovenia and Sweden.

### Table 2. Comparative analysis of VAT rates in EU

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Standard rate</th>
<th>State</th>
<th>Year</th>
<th>Standard rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>1/01/2000</td>
<td>21</td>
<td>Luxembourg</td>
<td>1/01/1993</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>1/04/2004</td>
<td>changed</td>
<td></td>
<td>1/01/2009</td>
<td>25</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1/01/2007</td>
<td>20</td>
<td>Hungary</td>
<td>1/01/2012</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>1/04/2007</td>
<td>changed</td>
<td></td>
<td>1/07/2009</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>1/01/2010</td>
<td>20</td>
<td>Holland</td>
<td>1/10/2012</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>1/01/2012</td>
<td>20</td>
<td>Austria</td>
<td>1/01/1995</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1/01/2013</td>
<td>21</td>
<td>Poland</td>
<td>1/01/2011</td>
<td>23</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>1/01/2008</td>
<td>19</td>
<td></td>
<td>1/07/2008</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1/01/2010</td>
<td>20</td>
<td>Germany</td>
<td>1/01/2007</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>1/01/2009</td>
<td>18</td>
<td></td>
<td>1/01/2007</td>
<td>19</td>
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<tr>
<td></td>
<td>1/07/2009</td>
<td>20</td>
<td>Estonia</td>
<td>1/01/2011</td>
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<td></td>
<td>1/07/2010</td>
<td>23</td>
<td>Greece</td>
<td>1/01/2008</td>
<td>19</td>
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<tr>
<td></td>
<td>1/03/2010</td>
<td>21</td>
<td></td>
<td>1/07/2008</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1/01/2011</td>
<td>23</td>
<td>Ireland</td>
<td>1/01/2012</td>
<td>19,6</td>
</tr>
<tr>
<td></td>
<td>1/01/2008</td>
<td>21,5</td>
<td></td>
<td>01/01/2011</td>
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</tr>
<tr>
<td></td>
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<td>21</td>
<td></td>
<td>1/01/2009</td>
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</tr>
<tr>
<td></td>
<td>1/07/2011</td>
<td>21</td>
<td></td>
<td>1/07/2010</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>1/01/2012</td>
<td>23</td>
<td></td>
<td>1/01/2013</td>
<td>24</td>
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<tr>
<td></td>
<td>1/01/2013</td>
<td>23</td>
<td></td>
<td>1/01/2009</td>
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</tr>
<tr>
<td></td>
<td>1/01/2009</td>
<td>21</td>
<td></td>
<td>1/12/2008</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>1/01/2011</td>
<td>22</td>
<td></td>
<td>1/01/2010</td>
<td>17,5</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1/03/2012</td>
<td>17</td>
<td></td>
<td>4/01/2011</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1/4/2013</td>
<td>18</td>
<td></td>
<td>1/01/2011</td>
<td>17,5</td>
</tr>
<tr>
<td>Latvia</td>
<td>1/01/2009</td>
<td>21</td>
<td></td>
<td>1/01/2009</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>1/07/2012</td>
<td>21</td>
<td></td>
<td>1/07/2011</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>1/07/2012</td>
<td>21</td>
<td></td>
<td>1/01/2009</td>
<td>19</td>
</tr>
</tbody>
</table>

From the mentioned states during the economic crisis Ireland implemented a different VAT reform (not increased but reduced the rate), which at first in year 2008
increased the standard rate from 21 percent to 21.5 percent and in year 2010 it reduced it to 21 percent. However, from year 2012 the rate was increased to 23 percent. Besides, Portugal reduced the standard rate that was in effect since 1st July 2005 in year 2008 to 20 percent. Great Britain temporary reduced VAT rate that was in effect since year 2008 from 17.5 percent to 15 percent and in year 2010 it restored to 17.5 percent.

It should be noted that in year 2013 three states of the EU implemented VAT reforms, i.e., Check Republic increased the reduced rate as of 1st January 2013 from 14% to 15% and the standard rate from 20% to 21%. Cyprus increased the standard rate as of 14th January from 17 to 18%. Finland increased the reduced rate from 13.9% to 14.10% and the standard rate from 23 to 24%.

![Figure 4. Current standard VAT rates in states of the EU](image)

Reference: Data of the European Commission

As we can seen from Figure 4 the lowest standard VAT rate in year 2013 is in Luxemburg (15%). Lithuania, applying 21% VAT rate, alongside Belgium, Czech Republic, Latvia, Italy and Holland share 13-18 position. In this case, the mean VAT rate in the EU is 21.13%. Compared VAT rate with the one applied in the neighbour states we can state that Estonia applies the VAT rate that is lower by 1%, Latvia - the same and Poland – 2% higher.

Summarizing the above-mentioned we can state that making an overview of the rates applied in foreign countries we see that VAT is common in most states. Different rates are applied in different states. Most countries apply reduced rates that are determined for the basic goods. However, as a result of long improvement of taxes and harmonization in member-states of the EU, the tax systems remain diverse and complex.

Conclusions

VAT system defects are often recognizable: excessive administrative VAT burden on business, the VAT system regulatory complexity, inefficient revenue collection from VAT, a big fraud on VAT, the difference in tax rates applied in the member states and the
preferential tariff issues. The author of the article has signed out the most important key areas to improve the VAT system, which has been proposed by the European Commission: one of the grounds is to reduce the administrative burdens and promote cross-border activity. VAT is a key element in this respect. The complicacy in the VAT regulations results in administrative onus for business sector. Associated with VAT accounts for almost 60% of the total burden measured and this is making the EU a less engaging place to invest. The second area, which was singled out by the author - complex regulation of the VAT system. "The legal base for the harmonisation of VAT requires unanimity but does not specify the legal instrument to be used for that purpose. The use of Council directives gives Member States some freedom in transposing EU VAT law into their national legislation, taking account of their legal particularities. The outcome, however, is often that VAT legislation in the different Member States is inconsistent. Using Council regulations rather than directives would achieve greater harmonisation, enabling in particular the EU to avoid double or non-taxation or to set out the VAT obligations of non-established businesses."  

Having made analysis of the main provisions of the Green Book designated for improvement of VAT system we can make a conclusion that it is necessary to make corrections in the legal base and the process of lawmaking in order to reduce the administrative burden and improve operation of the general market. This can be achieved by replacing directives with regulations, developing counselling system and improving regulations for enforcement of legislation. Besides it is necessary to correct the procedure enabling to diverge from imposition of regulations, which would allow simplifying VAT system: its regulation and administration. The allowed diverging regulations should be abolished or they should be applied to all states, to make its imposition procedure more transparent so no exclusive conditions were provided for separate states. We can state that in order to unify VAT system and eliminate competitive distortion and change the procedure for Standard and reduced rates; one of the ways is to gradually reach standard rate harmonization and elimination of reduced rates or application of a uniform rate in all member-states.

In most states VAT plays a very important role in the system of all consumption taxes. In Lithuania VAT is one of the principal state revenue sources. VAT makes a very big share of collected taxable and government revenue (average 54.13% VAT share in taxable revenue during the period of 1999-2013 and average 47.7% VAT share in the government revenue).

During the recent financial crisis in the EU almost all states changed, i.e. increased rates of VAT in order to collect as much revenue from VAT as possible. In Lithuania, after increase of the standard rate by 3% in year 2009, the revenue from this tax dropped by 26.44%. This proves that the revenue of the planned tax have dropped even when the rate was increased during the crisis.

2 http://eur-lex.europa.eu/lt/treaties/index.htm [Retrieved 12/05/2012]
Experience of Great Britain tax system demonstrated that in the case of the economic crisis reduction of VAT rate in the world did not justify, in year 2009 the highest budget deficit was registered in Great Britain, even 11.5% of GDP: namely this determined that VAT standard rate was restored to the primary 17.5% level and in year 2011 was increased to 20%.

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Electronic sources:


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THE FEATURES OF THE HISTORY OF SOCIOLOGY IN LITHUANIA

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Abstract

The purpose – is to reveal the stages of the development of history of Lithuanian sociology and its specific features.

Methodology. The article is based on the survey of sources analysing the history of sociology, paying special attention to manifestations of sociology in Lithuania during various periods of time.

Findings. Sociology is one of the youngest academic disciplines established as a distinct field of study in Europe only in the 19th century. Three main fields of investigation can be distinguished in the history of Lithuanian sociology: the pre-war period, the soviet period and the post-soviet period. Each period is characterised by its peculiar opportunities for sociologists’ professional expression, challenges and achievements; as well as different topics and directions for sociological research. After the review of sources dealing with the history of sociology, it must be noted that there are three main stages of the development of sociology: (1) the period of 1960-1970, characterised by work study; (2) since the 1970s the main attention has been paid to social planning; (3) the period starting from 1989 is distinguished for the beginning of public opinion poll.

Research limitations/implications. This brief review of the history of sociology in Lithuania is rather fragmentary; a thorough analysis needs more time and more comprehensive studies.

Practical implications. The importance of the study shows in the fact that the research of the history of Lithuanian sociology can be helpful in analysing the issues of sociological professionalism and identity. The status of sociology as science and profession in society cannot be examined without taking into account the historical context of the country.

Originality/Value. This article is an attempt to summarise and systematise different approaches to the circumstances of sociology formation and their impact on the development of the discipline and profession.

Keywords: sociology, history of Lithuanian sociology, legitimacy of sociology.

Research type: literature review.

Introduction

Knowing the history of Lithuanian sociology is essential for understanding the rise and the entrenchment of sociology in society as a science and a profession. Sociology in
Lithuania, as any other science, has its own history and each historical period represents the efforts to develop the identity of the discipline (Pruskus, 2009). According to Kraniauskas, the history of a discipline is one of the most important strategies in constructing professional identity: "historical sense allows the formation of the distinctive features of a sociological identity" (2000: 105).

The boom of sociology in the United States, Western and Northern Europe has started approximately in the 6th decade of the 20th century. Although competing with other social sciences that have deeper traditions, sociology in Europe has evolved quite rapidly and has become a popular science. In Lithuania the situation is slightly different. According to Leonavičius (2002), although sociology has been trying to become a practical science for more than a century, still, in comparison with other social sciences, it faces more difficulties in penetration.

Today, there is a quite extensive discussion about the development of sociology as a scientific discipline and a profession. Contemporary sociologists show interest in the development and changes of sociology in Lithuania by discussing the sociological manifestations in different periods (Grigas, 1995; Vosyliūtė, 2002; Pruskus, 2009). Kraniauskas (2000; 2001a; 2001b; 2001c) has thoroughly examined the development of sociological discourse in Lithuania and analysed sociological texts: reviews of sociological studies and the problems of sociologists' education in Lithuanian high schools were provided (Leonavičius, 1999: Leonavičius, 2002; Matulionis, 2000; Pruskus, 2003). The development of sociology and the questions of its status are discussed in publications of various countries. Keen and Mucha (1994) compiled a collection of articles reviewing the development of sociology in post-socialist countries, in which Gaidys and Vosyliūtė (1994: 149-156) present the characteristics of Lithuanian sociology.

Based on a survey of works that are analysing the development of sociology, this article identifies the main stages of the historical developmental of Lithuanian sociology, their characteristic features and research areas.

**The History of Sociology**

Sociology, as separate science of public system, emerged only in the middle of the 19th century. The establishment of sociology as a discipline in the late 1830s is formally associated with Comte who believed that science could be also used to study the social world. The progress in natural sciences, the rise of Enlightenment, the decrease of religious influence · all this led to the emergence of sociology (Khan, 2008).

The 19th and 20th centuries were a period of many social upheavals and changes in social order that interested the early sociologists (Stolley, 2005). In the last quarter of the 20th century much attention was given to the history of sociology as a discipline. The period from the 1960s to 1970s was very intense · it was a decade of human rights, the period of students' protests, urban racial unrest, fights against poverty, the crystallisation of new feminist movements. According to Berger (1992), the discipline of sociology originated as an attempt to understand and to control as much as possible the transformations brought about by the process of modernity. It happened exactly in those
countries where the prominent traditions of sociology had formed first of all, i.e. France, Germany and the United States (Berger, 1992).

Sociology is one of the youngest academic disciplines. On the one hand, this means that the science has still a lot of opportunities to develop, on the other hand, social scientists often have to prove their right to exist (Suleymanov, 2010). In the end of the 19th century, social sciences were rapidly developing in Western Europe; this period is associated with the beginning of academic sociology in the United States (Keen and Mucha, 1994).

At the end of the 19th and beginning of the 20th centuries, European and U.S. universities started to teach sociology; the departments of sociology were established. The validation of Lithuanian sociology as an academic discipline began in the late 1918, when a decision to restore Vilnius University was made (Leonavičius, 1999). As for the existence of the studies of sociology in Lithuanian high schools, it should be noted that there were some rises, as well as quite a few serious moments, sociology departments were often closed and sociology courses were suspended from time to time.

The authors (Gaidys and Vosyliūtė, 1994; Grigas, 1995; Vosyliūtė, 2001; 2002; 2010; Kraniauskas, 2001a; Pruskus, 2009), who have analysed the development of sociology in Lithuania, have discussed the opportunities of sociological expression and the research trends during various periods (the pre-war, the Soviet period and the period after the Restoration of Independence).

Hereafter, the article briefly presents these periods and their specific features. The main focus is on the Soviet period, which, according to the scientists who have investigated the development of sociology, was significant to the formation of sociological discourse.

**Sociology in the Early Period**

The works of social phenomena researchers associate the rise of sociology in Lithuania with the end of the 19th and beginning of the 20th century, after first sparks of sociological thought appeared in newspapers 'Aušra' (The Dawn), 'Varpas' (The Bell) and 'Šviesa' (The Light). At the beginning of the 20th century, L. Janavičius, V. Kapsukas, Z. Angarietis were the first who analysed public phenomena, economist A. Rimka, historian A. Janulaitis carried out some specific sociological researches (Leonavičius, 1991). A. Rimka, in his sociological study of the social bases of national revival, notes the most eminent researches of public questions: J. Šliūpas, J. Andziulaitis-Kaltinėnas, J. Adomaitis-Šernas, P. Leonas and others. M. Riomeris in 1908 published the first Lithuanian sociological study of national revival (Luobikienė, 2001).

The development of sociology in the interwar Lithuania was particularly influenced by the publications of the professors of Lithuanian universities: K. Šaulys 'Sociology' (1920), K. Paltarokas 'The Social Question' (1921), A. Janulaitis’ translation of 'The Basics of Sociology' written by L. Gumplovičius (1929), as well as works by S. Gruodis, P. Dielininkaitis, P. Kuraitis, A. Maceina, S. Šalkauskis, also by lectures read to students and works published in the press (Pruskus, 2003). A significant contribution was made by
professor Petras Leonas who was teaching sociology at Vytautas Magnus University; his lectures on sociology were published only after his death (1939).

The above-mentioned authors are related to the beginning of the development of sociology as science in Lithuania (Pruskus, 2003; Leonavičius, 1991).

It is important to note that the aforementioned pioneers of Lithuanian sociological thought referred in their works to the concepts and theories that were used by foreign authors. For example, P. Leonas’ attitude was influenced by the sociological principles of Kovalevskij, Comte, Maunier, Gumplowicz, Sorokin, Spencer, Tönnies, Fouillee and etc. His concept of society is related to the methodological principles of evolutionism and neopositivism; the construction of his model of society is based on pluralism, social solidarity and democracy (Vosyliūtė, 2002). Leonas (1939) in his ‘Sociology lectures’ analysed such categories of sociology as social phenomena, social relations, social values, collective and private ownership, freedom and captivity, morals and immorality, democracy and autocracy.

The social issues related to the stratification of society, social justice, the improvement of the quality of life were typical to the positivist and Catholic thinkers, such as A. Maceina, S. Schulte and P. Leonas. Most works of Lithuanian intellectuals and sociologists criticised capitalist and socialist ideas. A. Maceina got his knowledge about the principles of the new regime from writings of Catholic modernist, especially from the French E. Mounier. Schulte, based on G.W.F. Hegel’s and partly on K. Marx's ideas, critically evaluated the capitalist regime (Pruskus, 2012).

Some groups of intellectuals interpreted the issues of society using the concepts of Comte, Marx, Spencer, Darwin, or Morgan. The basis for the first Lithuanian textbook ‘Sociology’ by Kazimieras Šaulys (1920) was the ideas of the French author Charles Antoine expounded in his book *Cours d'economie sociale*, which represented a Catholic perspective (Vosyliūtė, 2002).

Gaidys and Vosyliūtė (1994), in the article on the features of the development of Lithuanian sociology, claim that at the end of the 19th century sociology became an independent intellectual discipline, involving positivism (J. Šliūpas), liberalism (V. Kudirka), individualism (S. Daukantas). The period of the independent Republic of Lithuania (1918-1940) encouraged social thought, the discipline undergone the processes of validation.

Leonavičius (2002) expresses a slightly different approach to the emergence of sociology. According to the author, although Gaidys and Vosyliūtė referring to J. Šliūpas, V. Kudirka, S. Daukantas, used the term 'sociology', it is unlikely that at that time Lithuania had already differentiated the perspective of sociological reflection, as well as the attempts of P. Leonas and K. Šaulys to disseminate sociology in the interwar Lithuania were more than minimal. In Leonavičius' (2002) opinion, it is possible to talk about the beginning of sociological discourse only in the Soviet Lithuania, when, in the 6th decade, it was allowed to establish the official institutions of sociological researches in the structure of the allied Academy of Sciences.

According to Valantiejus, Lithuanian sociology faces a problem in the search of its roots: ‘On the one hand, “the first sociological swallows” refers to the works of the 7th
decade, on the other hand, the leaders of different movements in the era of Daukantas, Kudirka, Šliūpas are called sociologists, 'public social activists - ethnic activists' (1995: 83).

Early sociological theorists and their ideas were undoubtedly important to the development of social thought, but the 'true' sociology evolved only in the 1970s.

**Sociology in the Soviet Period**

Sociologists agree that the Soviet period was important to the formation of sociological discourse in Lithuania (Leonavičius, 1999; Leonavičius 2002; Pruskus, 2009; Matulionis, 2003; Vosyliūtė, 2001; 2002; 2010). The development of sociology in Lithuania during the Soviet period was characterised by prof. R. Grigas (1995) who described its applied nature when sociology was directly related to politics and ideology of the Soviet Union. In professor's view, ‘there is no reason to claim that the situation in Lithuania during the Soviet period would have been favourable to the development of sociology as an independent branch of science’ (1995: 9). Grigas (1995) identifies the lack of educated professionals as one of the problems of science development (up to the middle of the 9th decade, this kind of specialists were not prepared not only in Lithuania, but also in the former Soviet Union).

Matulionis (2003) notes, that in the Soviet times not only sociology but also other social sciences faced serious problems. First of all, they were ideologised and had to prove the supposed advantages of the Soviet society, unfavourable information was hidden. Despite the need for sociology in the Soviet society, sociologists were controlled and influenced by the prevailing ideology at the time, they were censored and even politically persecuted (Gaidys and Vosyliūtė 1994; Pruskus, 2009; Vosyliūtė, 2001, 2002, 2010; Grigas, 1995; Kraniauskas, 2001a). According to Pruskus, ‘it is also obvious that the continuous ideological supervision, a lack of more solid academic preparation, a shortage of an access to the latest literature and new research methods, applied in the West, significantly limited the opportunities of the professional expression of Lithuanian sociologists’ (2009: 71). However, as Vosyliūtė (2001) noted, even in spite of ideological impurities, social knowledge and ideas were disseminated.

During the Soviet period, the access to the ideas of Western sociology was limited, only few sociologists had the opportunity to analyse the sociological theories in Western science centres. Ordinary sociologists were mainly forced to conduct empirical researches; therefore it is not surprising that the public generally perceived sociology as an empirical science that originated from ideological ideas (Vosyliūtė, 2002; 2010). The Soviet sociological thought was influenced by Marxist ideas, some elements of Western theories and independent sociological thinking (Vosyliūtė, 2002).

According to Raškauskas (2008), during the period of socialism, sociologists have been allowed to speak about the impediments of social development and to suggest recipes. In the context of the intelligentsia’s research, sociologists have played a significant role. The aim of sociologists, who were institutionalised in Lithuania since
1969, was to scientifically justify party ideologies and to capture the presumed results (Raskauskas, 2008).

Pruskus (2009), in his analysis of sociology revival in the Soviet period, distinguished two major reasons for the rise of sociology: the first one is the introduction of scientific communism in Lithuanian high schools and the second one – science-based public management that was necessary for the establishment of communism and social planning, which required the exploration of social issues.

Pursuant to Kraniauskas (2001a; 2001c), the development of sociology discipline legitimisation reflected in magazines and periodicals. The author mentions such periodic journals as 'Komunistas' (Communist), 'Mokslas ir gyvenimas' (Science and Life), 'Šeima' (Family) and so on. Sociology legitimisation in Lithuanian started in 1964, when the magazine 'Komunistas' published the article by M. Damidavičius 'About teaching the course of scientific communism'; in the same year, the journal 'Komunistas' presented a new rubric 'Sociological researches' (Kraniauskas, 2001c).

Soviet sociological concepts covered both the Marxist-Leninists ideas and the elements typical to the Western theories. Such concepts as social attitude (Znaniecki and Thomas), social values (Durkheim and Parsons), the humanization of work (Friedman) and etc. were used without reflecting on their genesis (Vosyliūtė, 2002, 2010). After the political atmosphere had improved, the use of Western theoretical approaches (functionalism, phenomenology) and theories has gradually increased in Lithuanian sociology. Such concepts as ‘satisfaction with job’, ‘motives of job’, ‘content of job’ have been taken by Russia from the West, later these concepts were found in Lithuanian sociology as well.

After the 1980s, Lithuanian sociologists were familiar with such concepts as Max Weber’s on the organization of bureaucracy, Marx’s concepts on human relations, adaptation, authority, social structure and conflict; the theories of Freud, Skinner, and Piaget were used in family sociology (Vosyliūtė, 2002). The sociological perspectives, predominant in the 19th and 20th centuries, included positivism, liberalism and Marxism.

Although sometimes the Soviet sociology can be identified as a false consciousness or the benefits of its scholarliness may be underestimated, we cannot reject all that was achieved (Matulionis, 2003; Kraniauskas, 2001a).

**Sociological Researches in Lithuania**

Gaidys and Vosyliūtė (1994), depending on the nature of sociological activities, identified several periods of Lithuanian sociology formation: from the 1960s to 1970s – the researches of work sociology, from the 1970s – the stage of social planning, from the 1980s – the beginning of public opinion polls and the phase of independent national sociology.

Gaidys and Tureikytė (1997), in discussing the development of public opinion researches, note that empirical sociological researches in Lithuania were launched in the beginning of 7th decade. According to the authors, the first studies cannot be attributed to
the explorations of 'public opinion', because these studies did not represent all the population, researches were censored and the format of questions was restricted. Public opinion in the totalitarian state was unwanted, but there were studies of neutral topics such as family, demographic problems (Gaidys and Tureikytė, 1997).

Matulionis (2003) notes, social researches in Lithuania were of a relatively high level, although they were limited by the Soviet Union. Since the 1980s, sociologists have participated in the longitudinal study of the youth cohort, in which there were participants not only from the Baltic countries, but also the researchers from many other republics (Matulionis, 2003: Raškauskas, 2008).

In the Soviet period, the sociological research centres were instituted. In 1965 the Laboratory of Sociological Research was established at Vilnius University. In 1964-1965 the Department of Philosophy, Sociology and Law was opened at the Academy of Sciences. In 1966 the Laboratory of Social Research was founded. The activity of centres was limited and coordinated by sociological research control centres instituted by the Soviet authorities (Pruskus, 2009). According to Grigas, ‘despite the extent of applied sociological research, political and even psychological climate at that time was not favourable to more daring researches’ (1995: 13).

According to Gaidys and Vosyliūtė (1994), the writings of that era were required to emphasize the concepts of collectivism, a socialist type of personality. As Pruskus (2009) observes, sociological surveys were associated with the emancipation of people's thinking, but sociologists were obliged to observe methodological orientations being in compliance with Marxism-Leninism provisions. So it is not surprising that the Soviet period is characterised by the research trends that aimed to emphasise collectivism, commitment to society and other ideas, postulated in socialist period; the cult of work was emphasised, topics of religion, politics and nationality were rejected. Since the 1970s, after the formation of the concept of social planning, sociologists' study areas and the scope of work were expanded (see Table 1).

Despite the fact that the differences of social groups were analysed in the Soviet period, however, such aspects as social and psychological gaps between society layers were not studied. The focus was only on the social structure where strong social equality, democracy and the diversity of life were predominant, but there were no studies exploring how the social hierarchy emerges, how party, intellectual, cultural elite appears, the perception of society's values (Pruskus, 2009).

The situation has changed only in the years of independence. It was the time when research paradigms began to change, new theories of sociology and research models appeared, the scientific community started to establish the relations with representatives of various branches of Western sociology, which led to a progress in qualitative and quantitative research (Gaidys and Vosyliūtė, 1994). Although sociology as science, as well as researches, started to develop in Lithuania already at the beginning of the 20th century, the results of studies became available to society only after Lithuania regained its independence (Česnuitytė, 2007). Modern sociology in Lithuania began to develop more rapidly only in post-Independence era (Daujotytė, 1997).
Table 1. The Trends of Sociological Researches and the Topics in the Soviet and the Independence Periods

<table>
<thead>
<tr>
<th>The Soviet Period</th>
<th>The Period After the Restoration of Independence</th>
</tr>
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<tbody>
<tr>
<td>○ Workers' satisfaction with the process of work, payment, adaptation in teams;</td>
<td>○ Citizens' activity, the unity of nation;</td>
</tr>
<tr>
<td>○ The researches of employment opportunities;</td>
<td>○ Trust in Post-totalitarian conditions in the change of values;</td>
</tr>
<tr>
<td>○ The use of workers' time;</td>
<td>○ The types and features of national values, the change of values;</td>
</tr>
<tr>
<td>○ Social behaviour in work and leisure time;</td>
<td>○ The features and values of elite groups;</td>
</tr>
<tr>
<td>○ Social activity.</td>
<td>○ Family studies: the role of the woman in the family, single-parent families, cohabitation, birth control,</td>
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<td></td>
<td>ethical family composition;</td>
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<tr>
<td></td>
<td>○ Public opinion on integration into the European Union;</td>
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<tr>
<td></td>
<td>○ The Sociology of culture: cultural identity, the assessment and need of cultural values;</td>
</tr>
<tr>
<td></td>
<td>○ Social structures, the formation of the middle-class, the expression of interest, social mobility;</td>
</tr>
<tr>
<td></td>
<td>○ The researches of unemployment;</td>
</tr>
<tr>
<td></td>
<td>○ The sociological researches of cities.</td>
</tr>
</tbody>
</table>

Since the 1970s

| ○ Public, cultural, domestic activity;                                           | ○ The role of religion, power, sects, people's religious provisions;                                          |
| ○ Social structures (classes, social groups, institutions);                      | ○ Public opinion on integration into the European Union;                                                    |
| ○ The professional orientations of youth, the prestige of profession;           | ○ The Sociology of culture: cultural identity, the assessment and need of cultural values;                    |
| ○ Sociological family researches;                                               | ○ Social structures, the formation of the middle-class, the expression of interest, social mobility;         |
| ○ The issues of production and labour sociology (job satisfaction, the          | ○ The researches of unemployment;                                                                            |
|   microclimate of the team);                                                     | ○ The sociological researches of cities.                                                                      |
| ○ The investigations of students and lecturers' time budget;                    |                                                                                                             |
| ○ Workers' leisure.                                                             |                                                                                                             |

Sociology after the Regain of Independence

Twenty years of sociology in Lithuania after the restoration of independence was intense. Since 1990 in Lithuania, the disciplines of law, economics, and sociology have been restored or formed newly considering that they had been previously distorted in the period of the Soviet occupation. Sociology in Lithuania is only recently developed, and has not yet gained a sufficient level of activity (Viliūnas, 2004).

In independent Lithuania the structures and functions of a newly formed society have stimulated methodological changes: sociologists had to rethink the subjects of sociological researches. Research areas and topics of sociologists’ examinations were extended, the processes and phenomena which were banned in the Soviet period were started to be analysed. The research field of sociologists was broadened by the topics of civic activity, religion; the content of family research was changed (see Table 1).

The works of the sociologists of the post-socialist period reflect such theories as post-communist revolutions, social mobility, feminist approach, Z. Bauman’s postmodern theory, P. Bourdieus’s field of power, A. Gidden’s theory of structuration and etc. (Vosyliūtė, 2002). Sociologists have again reflected on the issues of state, citizen participation and national mobilisation. After the restoration of independence, the researchers focused on people’s values, L. Masiulis, I. Matonytė have analysed the characteristic of elite groups (Vosyliūtė, 2001).

During the Soviet period, sociological research has been mostly based on the method of respondents’ survey. Today, trust in the qualitative research methods is increasing among researchers, who aim at performing deeper studies (for example, in existential sociology). Qualitative methods are also popular in sociological studies of culture, women, rural communities, identity, etc. (Vosyliūtė, 2002). Sociologists have explored public opinion on the integration into the European Union, public opinion on this issue was also periodically analysed by the public opinion centres ‘Vilmorus’ and ‘Baltic Research’ (Vosyliūtė, 2001, 2002). Sociological studies have been carried out at the Institute of Culture and Arts (CAI) and Klaipėda (KU), Šiauliai (ŠU) universities. Former students have established new public opinion research centres (Sprint, Rait, European Research). CAI sociologists conducted the research of European values in Lithuania (Matulionis, 2011).

The new legitimacy of Lithuanian sociology, according to Kraniauskas (2001c), is found in 1989, when the Department of Sociology was established in Vilnius University and the studies of sociology were launched. Since 1990, a new journal ‘Filosofija. Sociologija’ (Philosophy. Sociology) has been published. These events symbolise the autonomy of sociological discourse (Kraniauskas, 2001a; 2001c). Sociology, which was considered as a part of philosophy science in the Soviet times, has formally separated from philosophy and is approaching economic sciences (Vosyliūtė, 2001).

Since 1990, Lithuanian sociologists have gradually taken over the universal experience of world sociology, they have started to feel stability and identify themselves as a community of world sociology (Vosyliūtė, 2002). Lithuanian sociologists are unified by the Society of Sociologists, which originated in the 8th decade of the 20th century. Since 1990, the Lithuanian Sociological Association is a member of the International Sociological Association (ISA) and since 2009 - a member of the European Sociological Association (ESA) (http://sociology.lt/LT/48/Apie-mus.htm).

Today sociologists are actively involved in the public sphere and the media; they conduct the surveys of public opinion and openly discuss the results.

Conclusions

After reviewing the sources that are dealing with the history of Lithuanian sociology, it must be admitted that the development of the history of Lithuanian sociology was not consistent. Analysing the questions of sociological status, the image or needs in Lithuania, a series of socio-political events that have hindered the continuous
development of sociology should not be forgotten. For a long time there were favourable conditions for the professional development of sociologists and the identity formation in Lithuania.

The period of the Soviet occupation and the Second World War led to the breakthroughs in Lithuanian social sciences. During the interwar period, there were no systematic studies of the development of Lithuanian sociology, the public was isolated from the sociological ideas that prevailed in the West. At the end of the Second World War, the earlier works of sociologists were rejected and only the heritage of Marxist-Leninist aspects were accepted.

Although during the Soviet period, it was observed that sociological theories can be used in understanding separate spheres of society, only the results of specific sociological studies that have been carried out in the West were invoked, but sociologists were influenced and controlled by the ideology prevailing in the Soviet Union at that time. The need of researches was relevant to the Soviet authorities, which aimed to control the entire human life.

Despite the heritage of post-war sociologists, on the academic level of sociology entrenchment, the domination of Soviet ideology restricted its development and narrowed the object. The works of that time had to stress collectivism, a socialist type of personality, the cult of work, and to reject such themes as religion, politics and national memory. The revival of sociology started approximately in 1960. The 'true' sociology in Lithuania emerged only in 1970, when the scope of sociologists' study expanded and not only working, but also social, cultural, domestic life and activity were described and analysed. Since the 1990s, the areas of sociologists' researches have been broadened: the new structures of society have been described.

The review of the history of sociology allows evaluating the progress and change of sociology as a scientific discipline and profession, revealing what was actual during particular period in our country, what was the influence of works by foreign authors, what areas of research and methods were at the centre of interest by social scientists.

Sociology in Lithuania even today is still relatively young and yet emerging science. Today, the developed countries recognise the importance of responding to global changes in the labour market and knowledge market with the use of social science experts, including sociologists. The author of this article expresses the opinion that in such pluralistic times and constantly increasing globalisation, the role and need of social scientists in society should increase. Sociologists are and will be useful as theorists, social process analysts, who should help people to respond and to understand changes that are ongoing in the country and the whole world. The future of sociology will depend on the quality of higher education and young scientists. Teaching sociology in secondary schools would also be a great opportunity to share the sociological perspective. Sociologists should communicate more with the public and emphasize the significance of the discipline in analysing various problems, which would increase the visibility of sociology and public support.
References


THE EXPERIENCE OF SEXUAL SELF IN THE CONTEXT OF THE FIRST ROMANTIC RELATIONSHIP

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Abstract

Purpose. To reveal how mid-adolescent girls are experiencing their "novice" sexual self in the space of first romantic relationship.

Methodology. The qualitative hermeneutic longitudinal research, with the Interpretative Phenomenological data Analysis (Smith et al., 2009).

Purposive sample. 9 female participants: 18 interviews' transcripts.

Findings. 5 thematic categories emerged which describe different aspects of being sexual in the first romantic bond: Individualistic Self; Open Self; Happy Self; Excited Self; Experimenting Self

Practical implications. Data have value for health educators, clinical psychologists, parents and teenagers themselves.

Research type: Empirical research paper.

Keywords: qualitative longitudinal study, adolescent girl, sexual self, romantic relationships

Introduction

The experience of being sexual is one of the essential aspects of the human being, which begins at birth and continues until the end of one's life. For a long time adolescents' sexuality was a research niche in which the subject matter was related to the analysis of sexual behavior statistics, initialization risks and health effects with little attention given to the intimate part of the experience (McClelland and Tolman, 2011). According to researchers, there is a need for additional studies related to sexual subjectivity (Crockett et al., 2003; McClelland and Tolman, 2011) that would focus on positive features of adolescent sexuality and address self-esteem, agency and personal strength that impact adult wellbeing.

Pubertal and cognitive development becomes the ontogenetic factors that stimulate the development of personality and sexuality of adolescents. During this period children are constantly seeking a balance between their desire to differentiate from family as well
as establish social and romantic relationships with their peers. During the period of middle adolescence girls begin to experience physical and psychological changes that reflect in them becoming noticed not only as young women but also as sexual beings. These new experience related to the sexual self begin in early teenage years and continue to develop in full force during the years of adolescence.

Sexuality and romantic relationships in adolescence are intricately intertwined (Rose, 2007). Importance of romantic relations for a young person's intimacy and identity development has been extensively studied (Kroger, 2000; Collins et al., 2009). However there are few studies that have been designed to analyzed 14-16 year old girls' experiences of sexual Self in the context of their first romantic relationship. Romantic relationships (RR) can be described as a voluntary dyadic relationship that both partners recognize as an exceptional emotional and physical bond (Collins, 2003). Studies of various countries show that RR is normative experience in adolescence, which is not yet sufficiently studied with particular emphasis on "the ability to have agency and pleasure in relationships" (Tolman, 1999, p.232).

Methodology

This study is a part of the qualitative longitudinal study which was conducted over a time period of 32 months. It was based on hermeneutic phenomenological epistemological position and interpretive phenomenological analysis of the data. The model of qualitative analysis has as its basic assumption that each person creates his/her own truth, which is also characterized by a certain personal and human "commonality of truth". The hermeneutical approach presupposes that the human experience is not available directly - it can only be communicated through speech or motion. In other words, it can only be interpreted and reinterpreted. The finding of analysis here is a result of a systematic analysis of empirical, fixed in text or video/stereo recording, access to the experience. It should be noted that the "empirical" approach in this document does not meet the conventional social science concept of the term - that is, it is not related to the meaning of "measured" but related to C. Gilligan's suggested meaning "in the experience". It is the "knowledge what we obtain through your senses, and which can therefore be considered as a reliable resource of knowledge about the human change" (cit. in Tolman and Brydon-Miller, 2001, p. 321).

It should be emphasized that the researcher also is an important participant in the interview. She represents a unique personal and professional experience, which can only partly be "brecketed". Findings in hermeneutical social science tradition are always the mutual result of interaction between the researcher and the participant, so the researcher must constantly reflect on her relationship with the investigative phenomenon. Thus, this study was conducted by 45 years old, heterosexual woman, middle-class, moderately conservative with a 21 year psychoanalytic psychotherapist background and experiences with young people. The researcher had no relationship or

1 widely accepted concept in the positivist paradigm of knowledge production and quantitative research.
contact with the sample used in the study. The fact that the principle investigator was of the same sex and an unknown researcher may have enhanced open communications and thereby increased the quality and validity of the findings.

**Research question**

In order to provide a deeper understanding of sexual development of adolescent girls’ the researcher formulated the following explorative question: "What are the experiences of girls as sexual subjects in mid-adolescence, and particularly, in the first romantic relationships?"

**Method**

Interpretative phenomenological analysis (IPA) as a data analysis method (Smith et al., 2009) consist of two levels of text analysis that includes phenomenological and interpretive procedures. In the first level of the procedure an attempt is made to go deeper into the text (step1). During this process the researcher attempted to address the phenomenological (descriptive) level in reference to typical phrases, key events and recurring themes (step 2). The most important requirement for the second level was to follow as close as possible the participant's story. The second level was important in that the researcher listens to the language of the adolescent in the interview but at the same time attempts to formulate major reoccurring themes in the interview process. The third step was to take these themes and isolate the major themes as well as begin to apply psychological interpretation of the themes. Notes are linked thematically, and then abstraction and connection of themes into categories are completed during step four of the analysis. Categories are revisited once more and categories of all cases are combined into major hierarchical units of meta-themes (step 5). Thus, the search for findings takes place analysing each case individually, and then performing the comparison of cases commonalities related to differences of themes.

**Participants**

Since the IPA was targeted to a detail analysis of the human experience, so a small but homogeneous sample is required. The participants for the IPA study should represent the “phenomenon on the study, not the population” (Smith et al., 2009, p. 49). All the girls claimed in their narratives that their fantasies and desires were heterosexual in nature.

The participants were selected from two Lithuanian cities. The participants volunteered for the study. Parental consent was acquired prior to conducting any interviews with the adolescents. All the meetings were conducted with participants whose psychological wellbeing was determined as healthy via analysis of the Youth Self Report, or YSR (Achenbach, Rescorla, 2001). No one was rejected because of the YSR scores lower than required for normal range.

IPA mainly is focused on the experience descriptions fixed in the text. Data of a larger-scale study (still ongoing) was used in this article: 9 transcripts from the "first
wave" (T1) of interviews (2011), 7 from the „second wave“ (T2, 2012, as 2 girls1 dropped out form „the second wave“), and 2 transcripts from the „third wave of interviews“ (T3), which were held in February 2013. According the study protocol, 5 more interviews from the „third wave“ still should be done in June 2013. More comprehensive information about the stories of First Romantic Relationship (FRR) is represented in Table 1.

Table 1. Description of participants‘ experience of the First Romantic Relationship

<table>
<thead>
<tr>
<th>Name</th>
<th>City</th>
<th>Interviews in which FRR episodes arise</th>
<th>Duration FRR</th>
<th>Age FRR</th>
<th>Attempts to flirt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gertrūda</td>
<td>Not Vilnius</td>
<td>T1-T2-T3</td>
<td>2 months</td>
<td>13.5 y.</td>
<td></td>
</tr>
<tr>
<td>Aistė</td>
<td>Vilnius</td>
<td>T1-T2</td>
<td>8 months</td>
<td>13.5 y.</td>
<td></td>
</tr>
<tr>
<td>Delfina</td>
<td>Not Vilnius</td>
<td>T1-T2</td>
<td>10 days</td>
<td>13.5 y.</td>
<td>5</td>
</tr>
<tr>
<td>Džeinė</td>
<td>Vilnius</td>
<td>T2</td>
<td>2 months</td>
<td>15 y.</td>
<td>2</td>
</tr>
<tr>
<td>Indrė</td>
<td>Vilnius</td>
<td>T1</td>
<td>5 months</td>
<td>13.5 y.</td>
<td>1</td>
</tr>
<tr>
<td>Izabela</td>
<td>Not Vilnius</td>
<td>T1-T2</td>
<td>4 months</td>
<td>13.5 y.</td>
<td></td>
</tr>
<tr>
<td>Ingrida</td>
<td>Vilnius</td>
<td>T3</td>
<td>4 months</td>
<td>15.5 y.</td>
<td>1</td>
</tr>
<tr>
<td>Viktorija</td>
<td>Vilnius</td>
<td>T1-T2</td>
<td>1.5 months</td>
<td>14.5 y.</td>
<td>11</td>
</tr>
<tr>
<td>Elena</td>
<td>Vilnius</td>
<td>T1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

*Ethics*

The study was approved by the MRU, Psychology Dep. Ethics Committee meeting (Protocol of 17th March, 2011). All the names were changed by pseudonyms chosen by the participants themselves.

*Findings and Interpretations*

This article discusses a variety of sexual Self experiences revealed by adolescent females in a space of their First Romantic Relationships (FRR). As can be seen from the given figures (Tab.1), the only girl - Elena (14 yr.) have had no personal experience of the first RR yet. However, she as all other eight girls pointed out a clear desire to have a special, close relationship with the boys they begun to feel at the end of early adolescence.

In the first wave of interview (T1), 3 out of 9 girls (Elena, Džeinė and Ingrida) did not have FRR experience, and the two of them gained this experience after one year (Džeinė, 2012) or two (Ingrida, 2013 ). Both girls had gone through their inexperience in this area differently: Džeinė was very concerned2, as it turned out later, even questioned

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1 *Elena and Indrė*
2 For me, it is not really *nice* that I did not have a boyfriend because I would like to have one [T1, 434]
her femininity\(^1\), and Elena distinguished for tentative thought "maybe I would like." Ingrida meanwhile was waiting and focused on the future planning\(^2\). Aistė’s, Gertrūda’s, Delfina’s, and Victoria’s FRR stories at T1 episode were broken, therefore their narratives were the most complete while Indrė and Izabela talked about their experiences in the relevant.

Further I will present five significant aspects of this FRR, - 5 major thematic categories which could be abstracted into the wide "Sexual Self in the space of the first romantic relationship" meta-theme. All categories mirrored the results of depth analysis of female adolescent participants' experience made by the investigator.

The abstract repeated themes related to the major 5 catagories are presented in the table 2 and following discussions.

**Table 2. The structure of meta-theme „Sexual Self in the space of the First Romantic Relationship”**

<table>
<thead>
<tr>
<th><strong>Meta theme</strong></th>
<th><strong>Thematic Categories</strong></th>
<th><strong>Participants(^*)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Individualistic Self</td>
<td>A, Iz., Df., Dž., V.,</td>
<td></td>
</tr>
<tr>
<td>4. Excited Self</td>
<td>A., Ing., Iz., D., V.</td>
<td></td>
</tr>
<tr>
<td>5. Experimenting Self</td>
<td>Dž, Iz, G., In., Ing., V., Df., A.</td>
<td></td>
</tr>
</tbody>
</table>

\(^*\) The first letter of participants' name.

**1. Individualistic Sexual Self**

During the interviews our girls narrated mainly individualistic way of experience\(^3\) of FRR. First experiences of staying in the committed RR, the couple was presented not as the unit\(^4\), or togetherness, but as individualistic experience of the single sexual Self in "I - OTHER" relationship (Gertrūda\(^5\); Dżeinė\(^6\)). The mutuality of FRR value has not been

\(^1\)When I did not have him, I just felt a little lack of confidence [T2, 206], I thought, either I completely did not know how to flirt or I am not of their type, I thought [T2 228] Hesitated. Perhaps only because of that, that I am unattractive? Or my temper others did not like? [T2, 214]

\(^2\)understand that you are attracted to boys, then already watching them not as the ordinary friends. Getting there ... think about it ... looks like there? when he will be your husband? what we gonna do there? [T1, 823].

\(^3\) [Without a boyfriend] there is no one to spend the time with... that remains when friends do not go out, there's nothing at home what to do [Aistė, T1,123]

\(^4\)If you go somewhere-then with him. You have someone to spend time with [Izabela, T1, 125]

\(^5\)I think that the communication has changed itself with the boyfriend a lot. It was like a turning point as I got rid of various fears <= What will (boyfriend) think of me, or whether he accepts me as I am [Gertrūda, T3, 317].

\(^6\) Just gives (me) strength, more confidence for myself in myself [T2, 197].
diagnosed, the word "we" sounded few in the texts (Ingrida¹). This finding reflects the idea of J. Rose that sexual organization in mid- adolescence gives for adolescents the opportunity to be with one another, rather than to be together (Rose, 2007, p. 42).

Describing the romantic relationships (RR), W.A. Collins emphasizes the perceived specificity of the relationship by both partners and that both partners RR should describe as "the presence in a pair", which is good for both (2003). In fact, these conditions are rather difficult task for a young person 14-15 years old who is just starting to transfer relations with parents and experience of relationships with friends into the friendship with persons of the opposite sex (Collins et al., 2009; Giordano at al., 2010). According to the authors, RR emotionalism is higher because this relationship represents a qualitatively new, exceptional place, which is less comfortable and usual than friendship to close friends (Giordano et al., 2010), but this is also a space in which both partners consider themselves to be equal (Galliher et al, 1999).

2. Open Self

Being open in the RR with a boyfriend - participants emphasized this exceptional attribution of feeling sexual. Openness has not been pre-given phenomenon as FRR's feature, but emerged as a personal contribution. In my opinion, it is nicely confirmed by Ingrida's insights: "[myself] began to behave differently when being with a boyfriend: more freely, more openly“ [Ingrida, T3, 118] or "He was the first person to whom I had never lied. Completely. If he asked then I answered that straight“ (Ingrida, T3, 450). So, FRR relationship was marked by safety telling the truth, which by the researcher is treated as a part of openness dimension in relation. For example during the interview process Izabela indicated that she was able to communicate more closely from both: a physical and psychological perspective. A new experience of greater openness in relationship with a boyfriend was different from the depth of openness in relation to parents or peers. Izabela describes intersubjective feature of this space in her narrative as „a place where you can talk about everything“. Several others (Džeinė, Gertrūda, and Viktorija) supported her data².

The results of this study demonstrated that being open in FRR increased the quality of the RR process. The courage to be open also gave a perception of the partner's ability to listen and accept the partner (Izabela)³, or an attractive personality characteristic of a partner: Indrė also emphasizes the sincerity⁴ of the boyfriend who gave her the strength and reduced the fears of opening up. These findings confirmed several studies in the field

¹We walked embracing one another. Then it was very good the nearness, warmth. That such safety. It was such a relief though. When next is a person whom I can trust, with whom I can feel also weaker. That I can let myself not to be the strongest at that time. [T3, 355].
²Is the one to whom you can tell everything, to be. Who supports you, who comforting you and who understands you and you can tell [him] everything? [T1, 951]
³Closer we can communicate, can talk about everything. [T1, 56] ‘important’ was his communication: honesty, openness [T1, 268]
⁴He is a sincere man. <> Such a person for whom you can trust most important secrets and really not be afraid that he tells it to someone. And so on. It was really a very sincere person [T1, 245]
of communication which analyzed the openness dimension in adolescents' romantic and other relationships (Canary et al., 1993; Rawlins, 1983; De Goede et al., 2012). However, the striving to be open in FRR was at the same time accompanied by the threat of being rejected.

As in the present study, Rawlins, who conducted the research with young adults emphasized the tension between the desire to open up to a friend and the fear of being humiliated or ostracized as an inherent feature in the first RR. Young people in this study aimed to assess the possibility to open up and to protect them from being hurt in advance. We did not note this tendency among the participants interviewed by me. Qualitative study with the students of different types of friendship strategies conducted by D.L. Canary and others revealed that openness (which includes opening up, discussing various relationships, advice, direct dealing with conflicts, and empathy) is one of many strategies of maintaining friendly relationship (Canary, 1993).

The nearest research to the age and nature of a study was a qualitative longitudinal study of 12 participants' romantic relationships and girls' self-esteem performed by N. Way (1995). Denying the dominant idea of some feminist studies which state that girls are devalued in relationship in early RR, not having their voice and passive (Martin, 1996; Thomson, 1990), N. Way found that participants were able to be proactive in relationships, telling their position and open, not fearing that their openness can break the fragile first RR. Repeated interviews revealed that girls' ability to tell what they feel or think, according to participants, deepened their relationships with the boys over time (Way, 1995: 2001). Our study not only emphasized the state of openness in the space of RR, but also the idea that openness in RR leads to more positive feelings than the relationships with relatives, classmates or family members (De Goede et al., 2012).

3. Happy Self

The third category, which designates the unique experience of girls in FRR space, was named as "happiness". The stories reveal that FRR induced a storm of positive feelings for our participants. It can be argued that this elated feeling transformed into experience of good in everyday life of participants (Aistė, Džeinė, Ingrida) which manifested as elation, impulse for new activity or cheerfulness (Gertrūda, Viktorija, Indrė). Viktorija, who shared some experience of short-term RR at a time of T1, the first FRR identified as a period of an absence of sadness (i.e. jocundity), which originates from

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1 I very worried. I thought not to be liked and there's something else will be. I was afraid to be rejected [Izabela, T1, 111]
2 Felt happy there. [Aistė, T1, 265] when you have a boyfriend, then you are happy there [ Aistė, T1, 515].
3 When I have a boyfriend <...> wake up in a good mood, everything is ok. And when you do not, no matter how long You sleep, You are always angry. Yeah and just everything is unwelcome. It seems that everything is going badly... and everything fails [Gertrūda, T2, 267]
4 Such more energetic, more determined to experience something new [Džeinė, T2, 341],
5 It was a lot of fun with him [ T1, 145] and I liked it very much [ T1, 154] and so – I have become perhaps even more cheerful [ T1, 297]
a care of a little older boyfriend\textsuperscript{1}. Aistė\textsuperscript{2} also talked about the happiness as sense of general good related to care. It is worth to note that a person who took care of a partner, but did not belong to the family circle, helped to feel the happiness. Thus, it was necessary to feel safe in order to feel happy in RR1. Thereby, FRR therefore was an important and significant because it helped to “transfer” a longing for a sense of security experience from home to peer environment, “I felt happy. Just because there is a person who really cares, who does not turn away”\textsuperscript{3}.

The sense of happiness in the first RR of the mid-adolescent girls was not studied as profusely as family happiness (Hoppmann et al., 2011) or in the studies of adolescent friendship (Demir et al., 2007; van Workum et al., 2013) or Well-being (Diener and Seligman, 2002). Z. Magen (1996) conducted many qualitative studies on happiness and pro-social involvement of 14-16 years old adolescents. The results indicated that adolescents felt happiest when they were able to find themselves again, to experience the „illumination“ that changed their view of the world and other people, but only in interpersonal relationships, which were distinguished by trust (Magen, 1996). This resonates well with the findings of my study, when happiness was experienced with the involvement in the first RR. We know from some other studies (Demir et al., 2007), that the individuals involved in the long-term dyadic relationships are happier than those having more partners or no partners at all. In their view, the very fact of having a partner was associated with increased happiness, and a deeper involvement also guaranteed a stronger experience of happiness.

4. Bodily Excited Self

The fourth category highlights FRR as a medium in which the girls' sexual Self is experienced most strongly and clearly differentiated along with the embodied satisfaction of excitement\textsuperscript{4}. This category vividly reveals the constituted body-psychic connection. The body “talked” stronger than the girls were accustomed to feel before; therefore it is easier to experience themselves as different compared to the everyday routine\textsuperscript{5}. The first sexual excitement also denotes a new personal property which Ingrida names “my wicked side”\textsuperscript{6}. At first girls recognized sexual excitement as the skin reactions (Ingrida\textsuperscript{7}, Viktorija\textsuperscript{1}, Izabela\textsuperscript{2}) or strong heart palpitations (Ingrida\textsuperscript{3} (Izabela)\textsuperscript{4}). It was

\begin{itemize}
  \item \textsuperscript{1} “It's sad to be alone, be RR! When you have it. Not only do the parents take care of?” [T1, 951].
  \item \textsuperscript{2} Liked one another.[T1, 177] you are important [243] just because there is a person who really cares, who does not turn away [T1, 266]
  \item \textsuperscript{3} [Aistė, T1, 265]
  \item \textsuperscript{4} I wanted to go home but after [T1, 623] and you wanted to run away from that? Hmm, because attraction was already. Did you experience that before? Nothing of the sort! [Izabela, T1, 639].
  \item \textsuperscript{5} Well, let's say, when kissing.. then is a bit different sensation [Aistė, T1, 416] well, it's a bit of excitement, well, maybe not a bit... there [T1, 419]. Maybe when kissing more then there is an excitation.. There is a special feeling: a bit of pleasure [Aistė, T1, 425].
  \item \textsuperscript{6} Oh this was serious! And in communication with the boyfriend I saw that I have such a., my wicked side”[ T3, 109].
  \item \textsuperscript{7} Maybe more such small quivers. From the touches. Well, he touches you and you straight experience something different. Not just like with a friend. More sensitive [T1, 461].
\end{itemize}
difficult to name these embodied emotions using everyday language because of the novelty of the experience, therefore girls used metaphors for that purpose: „butterflies“\textsuperscript{5}, "dragons" (Viktorija)\textsuperscript{6} or „ice cream“ (Ingrida)\textsuperscript{7}.

An unexpected emotional intensity for the girls themselves denotes not only new experience but also changes of everyday life. Aistė expressively described this as a milestone beyond which a new experience of Self opened up. Experience of sexual excitement is so strong and overwhelming by "otherness" of experience (usually associated with adulthood) that this experience changes the girl's life, her social activity direction: "well, when you're younger, you have not experienced love yet. Then you pay attention to the studies, extra school activity group ... And when you experience that feeling then you are thinking just about it. And the studies already do not matter, group activities are already irrelevant. You start studying poorly"\textsuperscript{8}.

An interesting phenomenon was observed, when girls took experienced sexual excitement as a measure of RR quality assessment. This is also used to evaluate the possibilities of relationships' prolongation. Gertrūda says that staying in yet another (third) RR she sought to understand by FRR body indications whether it is worthwhile to continue this relationship\textsuperscript{9}. The same idea also occurred in Ingrida’s speech at T3 time.

Unexpectedly, however, the analysis’ findings revealed that girls bravely associate their own sexual Self with sensations of embodied sexual attraction in the context of first RR and the active experiencing process in the body. These findings do not meet the earliest scientific investigations of expression of female sexual desire which were very closely related to the historical and cultural context. The first works related to the analysis of adolescent girls’ sexual desire came from the 9th decade of 20th century’s feminist-leaning ideas that female sexuality finds itself in an unequal position of power, where the girls' wishes and desires are devalued and their experiences separated from their own body sensations (Fine, 1988, Holland et al., 1996, Martin, 1996; Tolman 1994). M. Fine in her historical publication "A Missing Discourse of Desire" (1988) drew attention to the fact that a woman's sexual desire has to be equally valued, analyzed, and coming into existence in public discourse same as men's. The "New Wave" (Way, 2001) direction of empirical investigations (Martin, 1996; Tolman, 2002) inspired by these publications originated, focusing on analysis of adolescent girls' sexual subjectivity. D.

\textsuperscript{1}Small shivers went through the body. Just! <...>At seventh class.<..> Skin was a little bristled and, just, it was a pleasure! [T1, 515].
\textsuperscript{2}Small shivers are going along the stomach [Izabela, T1, 94].
\textsuperscript{3} As soon as I see him my heart starts to beat three times faster, it seems that I'll faint, while with the others is not. [T2,84].
\textsuperscript{4}Already I felt while going...legs were leaning, hands hanging down, well, heart was beating [T1, 623].
\textsuperscript{5}For the first time we met ...I do not know even, maybe then some „butterflies“ in the stomach start, as is said, to fly. [T1, 507]
\textsuperscript{6}How do you feel that sexual your body? He was rather „hot“: „butterflies“in the stomach flied or „dragons“ as such. [T1, 515].
\textsuperscript{7}as a cold ice cream in a hot day. The pleasant refreshment [T1, 458].
\textsuperscript{8} [Aistė, T1, 534]
\textsuperscript{9} further on, I noticed, nothing in that sense, any shivers absent and I don't want with him... to hurt, and better not to begin [deeper][T2, 551]
Tolman (2002; 2012) and K. Martin (1996) states that the denial of girls’ sexual desire and not expressing it has a greater negative significance for their development than its active disclosure (low self esteem and self love). Subsequent work in this area showed that about one third of girls can express their “erotic voice”, whereas M. Rasmussen has named girls who do not have it as girls with “wounded identities” (2004). According to Harris et al. (2000), girls (and women) are also their bodies and the satisfaction of their corporeality “becomes an integral part of the sense of happiness with one’s self” (Harris et al., 2000, p. 380). Sh. Lamb critically appraises these ideas highlighting the importance of sexual enhancement per se trying to emphasize that sexual desires have real enabling meaning for young girls, if they are experienced in interpersonal relationships where both partners are important to each other (Lamb, 2010).

The findings presented in this publication reflect the importance of the girls’ sexual excitement experience as it unfolds in the context of romantic relationships. Such experience, according to Sh. Lamb can be defined as experience of "healthy sexuality" (Lamb, 2010, p. 302).

5. Experimenting Self

Continuing the presentation of findings and their relationship with already existing scientific knowledge the fifth category is presented. It summarizes the active position of being sexual. The importance of research and investigations of adolescent identity and intimacy development is known from the classic works, but the findings of this study also provide additional contemporary grounding.

During the first interview wave, besides the desire unifying girls to create a psychological picture of the future boyfriend (Elena) or glancing at the appealing boy (Ingrida, Džeinė3), 6 girls had already had a real relationship, and they agreed to elaborate on moments they feel sexual while being in actual meetings with a boyfriend. These girls went through a whole range of different situations, all of which were related to the practicing of sexual behaviour. According to participant Indrė (14 y.), “everything begins from a message, from a meeting, from a small kiss. I do not know, I’m still in a "messages phase": we meet, of course, some conversations, but there are not yet foreplay. Of course, kissing”. This course of “traditional” sexual practices was also presented Aistė5 in T1 time. Experience of Izabela has shown that such a “succession

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1 Maybe I’d like close man of the other sex ‘have’. To be able to spend ‘time’, to be. When watching films, novels<> there are good boys, so interesting. And I would like to get some for myself[T1, 562]
2 Not so much to wait, but notice whether he will take any step or do I need this to do <> trying [laughs]. I try to show more and more attention, to look at him. if he notices me if he sees me as a friend or he thinks that I am a friend to him, whether he treats me in any other way than all the surrounding girls. [T1, 401] I wish he answer my messages [422].
3 {From 12y} was the desire to communicate with another gender, not like the girls, but with boys. Just communicate how to say as with the aliens from another planet. So it seemed, as a desire to get to know them in a different way than friends [T1, 455]
4 Indrė [T1, 482].
5 There were arm-in-arm when walking, there were a bit of petting, sitting on his knees and so [T1, 262]
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order” can’t be absolute, and that a different sequence of sexual practices is possible\(^1\) when sexual feelings soon progress into the first sexual relationship. The same findings also were published by other researchers. Holland et al. pointed out that sexual practices of adolescent girls are neither consistent nor predictable, and depend entirely on the details of relationship context, therefore they can not be unified (Holland et al., 1994).

Almost all the girls told about the experiences of the first kiss practicing in FRR (Gertrūda\(^2\), Izabela, Džeinė, Aistė). Kisses, as the first sexual practices, have not always been successful\(^3\), and demanded proficiency. Girls have been learning to do this in FRR (Gertrūda\(^4\), Ingrida\(^5\)). As emerged in the follow-up interview material, the first kisses were significant and memorable to all girls (Gertrūda\(^6\)), but later became a common practice\(^7\).

As text analysis of experience shows these sexual practices were very important to the formation of more intense sensations of sexual Self, which together took part in the comprehension of the “new feature”. Some of them felt senior (Izabela)\(^8\), more mature (Gertrūda), braver (Ingrida)\(^9\), of increased self-esteem (Delfina).

In conclusion we can say that girls are going through the expansion of Self limits, feature of Self “novelty” associated with being sexual in the middle adolescence. These exceptional experiences are characterized by intersubjectivity and they manifest in the expressive manner in the relationship with the romantic Other. Detailed peculiarities of sexual Self experience in the context of the first romantic relationship were presented in this publication.

Conclusions

1. Sexuality in the first Romantic Relationship is lived more as one sided, individualistic experience.

\(^{1}\) That \{ sexual relationship\} there were almost immediately. Because so we were just kissing and holding arms..., there embracing... And then it happened so there [Izabela T1, 403]

\(^{2}\) Can’t forget this kiss and you remember it all the time that is was something wonderful and unique! <,...,>That I was standing still and did not know what to do. Weak, drooping hands and standing [T1, 249] Shivers go and numb hands [T1, 245]

\(^{3}\) When I kissed for the first time – it wasn’t any impressive. Because it was just – a simple kiss on the lips. And when kissing a second time with tongues, it is then... then I sat an hour astonished, because it was something wow! [T1, 237]

\(^{4}\) When I told him „I do not know“, he said, everything will be fine, you just close your eyes and all went out by itself. I don’t even know how. [T1, 249].

\(^{5}\) I was uncomfortable because I could not imagine how to kiss. The first time I maybe did not feel anything special. It was just good, quiet, comfortable. [T3, 172]

\(^{6}\) Somehow, just the only one feeling in life, you will never not experience such [T3, 184]

\(^{7}\) Up there with those... kissing – behold, Jesus! A lot have been... kissing – it’s a very small simple thing! [Delfina, T1, 445].

\(^{8}\) Become more a part of adult life. That I’m no longer that little girl I was. .. Anyway, experienced [T1, 363]

\(^{9}\) I became braver, more self-confident. Started to appreciate myself differently. That I can be interesting in my nature, interests, and appearance. And both for myselfand the other. [T3, 103].
2. Understanding oneself as being extremely happy and extremely open make the first Romantic Relationship the important place where the novice Sexual Self is amplified.

3. Positive experience of being open and happy in intersubjective space has been continuously frustrated by the fear of being rejected.

4. The first Romantic Relationships gave girls a real safe experimental space through which they had expanded their Self boundaries with the new trials of sexual excitement and sexual practices, providing physical and psychological satisfaction.

References


DIFFERENT SOURCES OF SOCIAL SUPPORT FOR DIFFERENT IDENTITIES OF PROFESSIONAL ROLES: A SURVEY OF LITHUANIAN DOCTORAL CANDIDATES

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Abstract

The purpose of this study was to analyze whether the availability of social support can help improve the professional identity of Lithuanian doctoral candidates. This is because the lack of support may be detrimental to progress in doctoral studies and conversely, social support may have a significant impact on professional identity development and expression.

Methodology. The data were gathered through internet-based survey questionnaire. The instrument to measure doctoral candidates’ professional identity was developed and used. This instrument (27 items, α = 0.841) measures identity expression of 3 professional roles: researcher (α = 0.801), teacher (α = 0.844) and practician (α = 0.730). Also, social support (12 items, α = 0.740) was measured, the subscales are: supervisor support (α = 0.892), colleagues support (α = 0.819), and family and friends support (α = 0.720). Participants in this study were a sample of doctoral candidates (N = 124). The students represent a wide variety of profiles, ranging from technology and engineering to psychology and other social sciences.

Findings. The hierarchical multiple regression analysis indicated that in contrast to years of doctoral studies and science (study) area, social support has a significance in prediction of doctoral candidates’ professional identity (F = 2.91, p < 0.05). Analysis of the results revealed that researcher’s professional role identity was significantly predicted by supervisor support (p < 0.01) and colleagues support (p < 0.01). Also, colleagues support was a significant predictor of teacher’s professional role identity (p < 0.01), and all kind of social support (overall) was a significant predictor of practician’s professional role identity (p < 0.05).

Research implications. The outcomes of research can help us understand about how doctoral candidates’ professional identity „works”. Also, findings inevitably inspire new questions that lead to further research.

Practical implications. These results are important for doctoral candidates and organizers of doctoral programs, in order to improve the professional identity of doctoral students and to help them understand who they are and want to be after studies completion.

Originality/Value. This is an attempt to show that not only doctoral programs should be improved but also encouragement of supervisors and colleagues to provide a support for doctoral candidates is very important.

Keywords: professional identity, social support, doctoral candidates.

Research type: research paper.
Introduction

The increased in time-to-degree and attrition rates of doctoral candidates is a serious problem which exists in the academic world (West et al., 2011). Doctoral education attrition rates is approximately 50 % in some disciplines (McAlpine and Norton, 2006). This highlights the importance of identifying challenges and sources of support available for doctoral students.

One of the challenges doctoral students face is multiple identities and roles they hold in academic environment (Colbeck, 2008; Jazvac-Martek, 2009; Lovitts, 2005). On the other hand, social support is the factor that may have a significant impact on professional identity development and expression (Baker and Lattuca, 2010; Chapman et al., 2009; Colbeck, 2008; Dobrow and Higgins, 2005; Ghosh and Githens, 2009; Martinsuo and Turkulainen, 2011; Sweitzer, 2009).

So the purpose of this study was to seek answers to the question as to whether the availability of social support can help improve the professional identity of Lithuanian doctoral candidates. And if this is true, what source of support is important for different professional role identities?

Literature Review

An essential task for doctoral students is to develop an identity as a scholar as well as a member of a discipline. PhD students must develop self-images as legitimate members of professional scholarly communities who have responsibilities for contributing to the scholarly endeavors of those communities (Austin and McDaniels, 2006).

A professional academic identity that develops through the doctoral journey represents a dynamic configuration of elements that are internal (psychological) and developmental, and external, involving the social and disciplinary (Jazvac-Martek, 2009).

Individuals’ identities are typically associated with labels for social roles or positions. Role labels convey meanings and expectations for behaviour that have evolved from countless interactions among people in a social system. Once an individual has accepted and internalized meanings and expectations for a particular role, that identity becomes a cognitive framework for interpreting new tasks and experiences (Colbeck, 2008).

Roles are supported through the reactions and behaviours of other people in a social system and act to confirm the person as being occupant of a particular social position (e.g., researcher, teacher, dissertation-writer). An internalized identity (i.e., the role identity) motivates behaviour and dictates changes to external behaviours (Jazvac-Martek, 2009).

A sociocultural perspective on identity development focuses on the social contexts and interactions that shape doctoral students’ minds about which identities are valued in
a given community, which are available to them, and which are to be avoided (Baker and Lattuca, 2010).

Ibarra (1999) presented how people adapt to new roles by experimenting with provisional selves „that serve as trials for possible but not yet fully elaborated professional identities” (p. 765). This adaptation involves three basic tasks: (1) observing role models to identify potential identities, (2) experimenting with provisional selves, and (3) evaluating experiments against internal standards and external feedback.

West et al. (2011) explored the barriers and challenges students face while pursuing their degree. The relationship with chairs were identified as one of the most common challenges, while classmates, dissertation chairs, and the doctoral support center were identified as major sources of support for students.

The relationships are central determinants that contribute to the development of professional identity (Baker and Lattuca, 2010; Chapman et al., 2009; Colbeck, 2008; Dobrow and Higgins, 2005; Ghosh and Githens, 2009; Martinsuo and Turkulainen, 2011; Sweitzer, 2009) and contribute to the progress in doctoral studies (de Valero, 2001; Ives and Rowley, 2005; Pyhältö et al., 2012; Tenenbaum et al., 2001).

The relationship between doctoral student and research supervisor or scientific advisor has been shown to be an important factor impacting doctoral student’s professional identity development (Baker and Lattuca, 2010; Ghosh and Githens, 2009), engagement (Mainhard et al., 2009), degree completion and time to degree in doctoral programs (de Valero, 2001; Gardner, 2009; Spilett, 2004) and success in study process (Martinsuo and Turkulainen, 2011; Sweitzer, 2009). For instance, Pyhältö et al. (2012) showed that in faculties where the students’ and the supervisors’ perceptions of resources and challenges vis-à-vis the doctoral journey were similar, the students reported being more satisfied with their overall study process and supervisory support. Moreover, Ives and Rowley (2005) found that a constructive supervisory relationship was related to students’ progress and satisfaction with their doctoral studies as well as with the involvement in their thesis projects. Tenenbaum et al. (2001) mentioned three types of support that can be provided by scientific advisors: (1) instrumental support (including coaching, sponsorship, exposure to academic life, and opportunities for challenging assignments) is associated with student’s productivity (i.e., publications, posters, conference talks); (2) psychosocial support (including role modeling, empathizing, and counseling) contributes to student’s satisfaction with their research supervisor and with their graduate school experience; (3) networking assistance (including helping students make connections in the field) is associated to student’s productivity.

Scholarly community is another important factor in doctoral students’ study and developmental processes (Carter 2006; Chapman et al., 2009; Ghosh and Githens, 2009; Ibarra et al., 2005). For instance, Kim and Karau (2009) found that support of faculty members has an impact on research productivity of doctoral students. Positive relationships with colleagues contribute to students’ resilience (Hoskins and Goldberg, 2005), students experience in doctoral process (Hopwood, 2010; Pyhältö et al., 2009), competences developed during their studies, time-to-candidacy, and employment after finishing doctoral studies (Lovitts, 2005; Martinsuo and Turkulainen, 2011). Also, Golde
(2005) found that a misfit between doctoral students’ goals and expectations as well as the norms and practices of their scholarly community affected their persistence.

Support from family members is cited as critical to doctoral study process, providing the encouragement needed to persist and succeed. Especially for women, who usually have more responsibilities at home and for child care, problems in this domain seem more likely to impact them to a greater extent than their male counterparts (Maher et al., 2004). Sweitzer (2009) found that family support is regarded as the most important factor to first year success.

The feeling of isolation is one of the biggest challenges faced by students when making dissertations (Gardner, 2009). To avoid this problem, sufficient social support should be available for doctoral candidates. As mentioned above, social support from various sources (advisor, colleagues and family) contributes to the positive outcomes of doctoral students’ development and success in study process. However, empirical evidence about the social support sources that contribute to various aspects of doctoral student’s professional role identities is still scarce.

Participants

The data were gathered through internet-based survey questionnaire. Participants in this study were a sample of doctoral candidates (N = 124) from nine institutions of higher education in Lithuania. The participants were from the humanities (9.7%), physical (8.1%), biomedical (11.3%), technological (27.4%), and social (43.5%) sciences. Thirty-four percent of the respondents were male and 66 % were female. The mean age of the respondents was 28.5. Across the PhD candidates, 21 % were first year students, 16.4 % second, 22.6 % third, 31.5 % fourth, and 5.6 % were already finished their studies, but not defend their thesis yet.

Measures

The instrument to measure doctoral candidates’ professional identity was developed and used. On purpose to respond the need of instruments (in Lithuania and abroad) measuring professional identity of doctoral students, new instrument was developed. Based on the Social identity theory, an instrument measures different professional roles of doctoral students. The instrument (27 items, α = 0.841) measures identity expression of these 3 professional roles: researcher (9 items, α = 0.801), teacher (9 items, α = 0.844) and practician or service provider (e.g. psychologist) (9 items, α = 0.730). A five-step procedure (Fleming et al., 2011) was used to develop the instrument: systematic literature review, item generation, revision, external expert review and pilot. Three professional roles were selected from the range of roles presented in the literature. After systemize of potential criteria and indicators, items were generated and after careful review items were selected for the instrument. The instrument was sent with request for comment to tree scientists who specialize in the fields of research methodology and professional identity. After review of the comments and necessary changes made, the instrument was finalized.
Before use in a larger sample, the instrument was piloted with twelve doctoral students in psychology to increase clarity and usability of the instrument.

Social support (12 items, \( \alpha = 0.740 \)) was measured with three subscales: supervisor support (4 items, \( \alpha = 0.892 \)), colleagues and other PhD students support (4 items, \( \alpha = 0.819 \)), and support from family and friends (4 items, \( \alpha = 0.720 \)). Subscales were developed based on works of Martinsuo and Turkulainen (2011) and Caplan et al. (1975, see in Fields, 2002) in the field of social support.

**Results**

The analysis examined the extent to which social support can enhance the professional identity of doctoral candidates in Lithuania. The data analyses were conducted in two steps. In the first instance, the means, standard deviations, correlations and internal consistency estimates (Cronbach’s alpha) were computed for each of the variables. Secondly, a series of multiple (hierarchical) regression analyses were conducted.

The results of One Way ANOVA revealed that there is no statistically significant difference between men and women analyzing professional identity. The dimensions or subscales of professional identity of doctoral candidates are expressed almost equally: researcher’s professional role identity (M = 36.82, SD = 5.42), teacher’s professional role identity (M = 34.20, SD = 6.45), and practician’s professional role identity (M = 36.52, SD = 4.98). Social support is accessible from research supervisor or scientific advisor (M = 14.78, SD = 4.43), colleagues and other PhD students (M = 14.49, SD = 3.80), family and friends (M = 16.31, SD = 3.03). It means that respondents reported satisfactory levels of social support. This interpretation is based on the fact that the maximum score that can be obtained from each social support subscale is 20.

Correlation analysis revealed that researcher’s professional role identity was significantly correlated with social support from research supervisor (\( r = 0.33, p < 0.01 \)), colleagues and other PhD students (\( r = 0.31, p < 0.01 \)), as well as overall social support (\( r = 0.20, p < 0.05 \)); teacher’s professional role identity was significantly related with social support from colleagues (\( r = 0.30, p < 0.01 \)), family and friends (\( r = 0.21, p < 0.05 \)); and practician’s professional role identity was significantly related with overall social support (\( r = 0.18, p < 0.05 \)).

The hierarchical multiple regression analysis (Enter method) was used to analyze the importance of social support for doctoral candidates’ professional identity while controlling for years in PhD study programme and science (or study) area. The model provided a good fit to the data. The results are presented in Table 1.

The hierarchical multiple regression analysis indicated that a significant model emerged (\( F = 2.91, p < 0.05 \)). The contribution of the social support to the model was significant, thus social support was a significant predictor of professional identity of doctoral candidates. Stated differently, social support was significantly related to professional identity when years in doctoral studies and science (or study) area were controlled.
Table 1. Hierarchical multiple regression analysis of professional identity on social support and control variables

<table>
<thead>
<tr>
<th>Variables</th>
<th>R-Squared</th>
<th>Changed R-Squared</th>
<th>Standardized Beta (β)</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control variables</td>
<td>0.002</td>
<td>0.002</td>
<td>0.151</td>
<td></td>
</tr>
<tr>
<td>years in PhD programme</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>science (study) area</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All variables</td>
<td>0.068</td>
<td>0.065</td>
<td></td>
<td>2.909*</td>
</tr>
<tr>
<td>years in PhD programme</td>
<td></td>
<td></td>
<td>0.053</td>
<td></td>
</tr>
<tr>
<td>science (study) area</td>
<td></td>
<td></td>
<td>0.040</td>
<td></td>
</tr>
<tr>
<td>social support</td>
<td></td>
<td></td>
<td>0.259**</td>
<td></td>
</tr>
</tbody>
</table>

*p < 0.05, **p < 0.01

Table 2. Hierarchical multiple regression analysis of professional identity dimensions on social support subscales

<table>
<thead>
<tr>
<th>Variables</th>
<th>R-Squared</th>
<th>Adjusted R-Squared</th>
<th>Standardized Beta (β)</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Researcher's professional role identity</td>
<td>0.157</td>
<td>0.129</td>
<td>0.287**</td>
<td>5.552**</td>
</tr>
<tr>
<td>supervisor support</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>colleagues support</td>
<td></td>
<td></td>
<td>0.263**</td>
<td></td>
</tr>
<tr>
<td>family and friends support</td>
<td></td>
<td></td>
<td>0.018</td>
<td></td>
</tr>
<tr>
<td>overall social support</td>
<td></td>
<td></td>
<td>0.098</td>
<td></td>
</tr>
<tr>
<td>Teacher's professional role identity</td>
<td>0.112</td>
<td>0.082</td>
<td>0.065</td>
<td>3.763**</td>
</tr>
<tr>
<td>supervisor support</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>colleagues support</td>
<td></td>
<td></td>
<td>0.267**</td>
<td></td>
</tr>
<tr>
<td>family and friends support</td>
<td></td>
<td></td>
<td>0.159</td>
<td></td>
</tr>
<tr>
<td>overall social support</td>
<td></td>
<td></td>
<td>0.054</td>
<td></td>
</tr>
<tr>
<td>Practitioner professional role identity</td>
<td>0.049</td>
<td>0.017</td>
<td>0.126</td>
<td>1.546*</td>
</tr>
<tr>
<td>supervisor support</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>colleagues support</td>
<td></td>
<td></td>
<td>0.052</td>
<td></td>
</tr>
<tr>
<td>family and friends support</td>
<td></td>
<td></td>
<td>0.061</td>
<td></td>
</tr>
<tr>
<td>overall social support</td>
<td></td>
<td></td>
<td>0.290*</td>
<td></td>
</tr>
</tbody>
</table>

*p < 0.05, **p < 0.01

The subscales of social support were examined by regressing separately the each dimension of professional identity on each of the support subscales: supervisor support, colleagues and other PhD students support, and support from family and friends. The results are shown in Table 2.
The hierarchical multiple regression analysis revealed that researcher’s professional role identity was significantly predicted by supervisor support (p < 0.01) and colleagues support (p < 0.01). Also, colleagues support was a significant predictor of teacher’s professional role identity (p < 0.01), and all kind of social support (overall) was a significant predictor of practician’s professional role identity (p < 0.05).

The R-squared and adjusted R-squared measures the explanatory or predictive power of a regression model. It represents the proportion of variance in the outcome variable which is explained by the predictor variables in the sample (R-squared) and an estimate in the population (adjusted R-squared) (Miles, 2005). In this study, the highest R-squared value is for researcher’s professional role identity variable. It means, that 16% of the mentioned variable variation can be explained by different sources of social support. Also, as our indicator of generalizability – the adjusted R-squared value – is not much lower than the R-squared value (R-squared = 0.157 and the adjusted R-squared =0.129), it means that the model is not over-fitted to the sample.

**Discussion and conclusions**

This study analyzed what role do social support play in doctoral students’ professional identity development and what source of support is important for different professional role identities?

The hierarchical multiple regression analysis revealed that the contribution of the social support is significant, thus social support acts as a significant predictor of doctoral candidates’ professional identity while controlling for years in PhD study programme and science (or study) area. These results confirm other studies, that highlights the importance of social support for professional identity (Baker and Lattuca, 2010; Chapman et al., 2009; Colbeck, 2008; Dobrow and Higgins, 2005; Ghosh and Githens, 2009; Martinsuo and Turkulainen, 2011; Sweitzer, 2009).

To my knowledge, this study was the first attempt to show that different sources of social support contribute to different aspects of doctoral students’ professional identity. The results revealed that researcher’s professional role identity was significantly predicted by supervisor support and colleagues support. It shows that the relationship between doctoral student and research supervisor has the major impact for students’ progress or productivity. According to Tenenbaum et al. (2001), instrumental support provided by scientific advisors (such as coaching, sponsorship, exposure to academic life, etc.) contributes to student’s productivity (publications, posters, conference talks, etc.).

The findings supported the previous research into doctoral education, which suggests that scholarly community is the important factor in doctoral students’ study and development processes (Carter 2006; Chapman et al., 2009; Ghosh and Githens, 2009; Ibarra et al., 2005). This conclusion was based on the regression results that indicated the significance of support from faculty colleagues and other PhD students in the prediction of teacher’s professional role identity. It is contrary to the research results of Kim and Karau (2009) who found that support of faculty members has an impact on research productivity of doctoral students. Findings of the present study suggest that
interaction with faculty members contribute to the internalization of the norms, values and practices that are related to teacher’s competences developed as well as to teacher’s professional role identity expression.

In this study, overall social support was a significant predictor of practician’s professional role identity. And this part of results left some unanswered questions and space for future research. It is necessary to assess an employer support from working environment (if doctoral student is working outside the university), because this kind of support may impact doctoral students professional identity (Malfroy and Yates 2003), especially identification with professional role of practician or service provider.

Finally, the outcomes of research help us understand more deeply about how doctoral candidates’ professional identity „works”. The present study results indicate that ensuring sufficient amount of social support from different sources is essential task for institutions of higher education. To improve services for professional doctoral students, universities must turn their attention to support structures for doctoral candidates. Thus, universities or other institutions of higher education should enable and promote doctoral students to establish social networks with peers and other key figures of the scholarly community.

The present study was an attempt to show that not only doctoral programs should be improved but also encouragement of supervisors and colleagues to provide a support for doctoral candidates is very important.

References


PROMOTING SOCIALLY RESPONSIBLE DECISION ON SAFE FOOD CONSUMPTION VIA ON-LINE SOCIAL NETWORKING

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Abstract

**Purpose** – to determine the scope of on-line social networks in promoting socially responsible decision on safe food consumption.

**Design/methodology/approach** – analysis of scientific literature, synthesis, case study of an online social networking site sveikasvaikas.lt.

**Findings** – the scope of on-line social networks in promoting socially responsible decision on safe food consumption is described. Trends for further research revealed.

**Research limitations/implications** – this research paper is the background in order to create a socially responsible consumption model based on the impact of active participation at on-line social networks. Limitations of this paper are as follows: empirical analysis for promoting socially responsible decisions is carried out only by case analysis of a particular online social networking site sveikasvaikas.lt; in order to create socially responsible consumption model a deeper empirical analysis is necessary (a quantitative analysis is planned for the further research).

**Practical implications** – in the era of globally advertised non-natural food production the scope of on-line social networks in promoting socially responsible decision on safe food consumption is growing: giving the right information about the composition of the production, helping to come to a decision to use safe food. Case study reveals the possible types of social technologies to be used in this process.

**Originality/Value** – the scope of on-line social networks in promoting socially responsible decisions on safe food consumption is revealed in this paper. Only socially responsible business can remain and grow in the market.

**Keywords**: socially responsible consumption, corporate social responsibility, social technologies, decisions, public interest.

**Research type**: case study.
Introduction

Global socio-economic changes have impact on food consumption habits of society. The idea of socially responsible consumption is recognized as a willingness to express economic, social and environmental worries through consumption choices. Therefore, the active performance of consumers is wanted by most of the corporate social responsibility campaigns. However, there is still a challenge to promote socially responsible decision on safe food consumption via on-line social networks and to spread this idea rapidly and widely in today's society.

The goal of this paper is to determine the scope of on-line social networks in promoting socially responsible decision on safe food consumption. In order to reach the goal analysis of scientific literature, synthesis, case study of an online social networking site sveikasvaikas.lt are executed. This research paper is the background in order to create a socially responsible consumption model based on the impact of active participation at on-line social networks. This paper forms a framework for deeper analysis in the topic by executing empirical analysis for promoting socially responsible decisions carrying out only by case analysis of a particular online social networking site sveikasvaikas.lt, and by revealing spheres for a quantitative analysis's questionnaire.

Thirst chapter presents theoretical background on the topic. The second chapter presents case study on sveikasvaikas.lt. In conclusions the scope of on-line social networks in promoting socially responsible decision on safe food consumption is described and spheres for design of a qualitative analysis questionnaire.

Reasons and Initiatives for Socially Responsible Consumption

Famous American expert on industrial marketing strategy and organizations F. E. Webster was one of the first who had started discussing about the concept of socially conscious consumer. In 1975, he stated that the consumers are self-conscious, socially fair and responsible, if they value the public consequences of their personal consumption or seek the social changes using their buyer-power (Vilkė, 2012).

In the context of corporate social responsibility (CSR), the socially responsible consumer (SRC) behaviour express the activities which base the choice of purchase and usage of products and disposition of by-products, in order to reduce or eliminate any harmful effects and improve the long-term advantageous impact on society and environment (Paek and Nelson, 2012).

The goal of each consumer is to understand how to react to the negative impacts of consumption upon society and it is expressed through consumer purchase behaviour. The choice to buy and use any production or contraposition is as the reflection of consumers to the activities of corporations: impact on the society and environment, ethics, the voluntary reduction of consumption levels and other (Caruana, 2007).

The definition of socially responsible consumption (SRC) is still not clear and easy to explain its volume (Durif et al, 2011). The concept of SRC behaviour includes wide variety of consumer activities.
Talking about socially responsible consumption, there are used and other powerful expressions to explain such special profiles of consumption, e.g. green, organic, healthy, sustainable, efficient, rational, ethical, activist, conscientious, responsible and so on. Durif et al (2011), Fontelle (2010), Freestone and McGoldrick (2007), Honkanen (2006) and others tried to explain the differences between these definitions (look table 1).

**Table 1. Different profiles of socially responsible consumption**

<table>
<thead>
<tr>
<th>Profiles of consumption</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green/organic consumption</td>
<td>– avoids products that might endanger the health of the consumer or others; causes significant damage to the environment during manufacture, use or disposal; consumes a disproportionate amount of energy; causes unnecessary waste; use materials derived from threatened species or environments; involve unnecessary use or cruelty to animals [or] adversely affect other countries; – avoids products which are produced with pesticides, herbicides, inorganic fertilisers, antibiotics and growth hormones (animal welfare is important, and bioengineering and genetically modified foods are not accepted); – seeks to preserve nature;</td>
</tr>
<tr>
<td>Healthy consumption</td>
<td>– preserves health;</td>
</tr>
<tr>
<td>Sustainable consumption</td>
<td>– tries to guarantee that resources are not going to come to an end;</td>
</tr>
<tr>
<td>Efficient/rational consumption</td>
<td>– are consumed the minimum necessary amounts;</td>
</tr>
<tr>
<td>Ethical/activist consumption</td>
<td>– involves beliefs and values aimed at supporting a greater good that motivates consumers purchases; – is seen as a conflict area (only exists as a collective movement);</td>
</tr>
<tr>
<td>Conscientious consumption</td>
<td>– concerns with the individual impacts of consumption;</td>
</tr>
<tr>
<td>Responsible consumption</td>
<td>– tries not to cause damage; includes all the previous categories;</td>
</tr>
<tr>
<td>Socially responsible consumption</td>
<td>– purchases products perceived to have a positive (or less negative) influence on the environment or patronizes that attempt to effect related positive social change (two distinct aspects: the environmental aspect and the social aspect).</td>
</tr>
</tbody>
</table>


Different profiles of consumption are based on the personal motivations of consumers. As follows, the new multidimensional socially responsible purchase and disposal scale reflects three aspects (Durif et al, 2011):

- *the influence of firms’ SRC performance on consumer purchase behaviour*,
- *consumer recycling behaviour and*
consumer avoidance and usage reduction of products harmful to the environment.

It is still analysed why value of social responsibility has a weak impact on the decision-making process when actually purchasing foodstuff is vital in understanding and changing behaviour of each consumer towards sustainable consumption (Young \textit{et al}, 2010). European Commission (2007) had identified main factors influencing food choice, which include:

- biological determinants (hunger, satiety, gustatory qualities, taste, sensory aspects);
- economic determinants (income, cost, availability of foods);
- physical determinants (ease of access to food, education, specific skills, time constraints);
- social determinants (culture, family, peer-group pressures, meal patterns);
- psychological determinants (mood, stress, guilt);
- beliefs, attitudes and knowledge about food.

The knowledge, innovations, modern technologies and finances have changed the patterns of production and consumption in the entire world in the period of economic globalization. The combination of technologies and greater supply of cheap labour were involved in transforming raw materials and adding different additives into saleable foodstuffs. As a result, there were outspread the range of production at the international market (Strange and Bayley, 2008).

The drastic changes in food production and consumption in Europe Union are still necessary in successfully facing the challenges of deficiencies and making the European agro-food system more elastic in the periods of growing instability. Inspired by this fact Europe tries to solve different socio-economic problems, including esurient of consumers welfare. The opportunities to be the first in winning the stable place in the world market and positively address the challenge for sustainable producing healthy and safe food in a nowadays world of uncertainty and scarcities should be weighted by the agro-food sector in each country (European Commission, 2011).

In “A Renewed EU strategy 2011-14 for Corporate Social Responsibility” is stated that \textit{“the revision of the Sustainable Consumption and Production Action Plan may provide an opportunity to identify new measures to facilitate more responsible consumption”}.

Moisander (2007) was analysing the reasons and objectives of socially responsible consumers’ actions and practices engaged in selecting, purchasing and using products and services. He had highlighted that the socially responsible consumers drastically reduce the purchases of production to minimum because they truly care for the environment. The consumers strictly refuse to buy any foodstuff that is not absolutely necessary. It should be noted, that such a radical environmentalist approach of consumption is quite hard to adopt in consumption-oriented and increasingly convenience society. Unfortunately, it is quite hard to define the socially responsible consumption strategies by the fact that there are still no agreed common criteria for which foodstuff
are ecologic, healthy or safe and which are not. Any general features of green production may be outlined.

Kronenberg and Iida (2011) had identified that the socially responsible consumption is refinement rather than simplification of the consumption habits that reveal with economic globalization, innovative and technological progress and the development of trading flows, open access to variety of goods from far away. Even when newfangled food production is “more environmentally friendly, overall environmental pressures related to their consumption are likely to increase because of increased consumption levels” (ibid).

The active performance of consumers purchasing the foodstuff is wanted by most of the CSR campaigns. The social activists, non-governmental organizations and businesses in food sector carry out surveys, believing that if consumers state they would like to buy and use safe and healthy production, food sector companies will certainly follow out it and suggest socially responsible production (Devinney et al, 2006).

Each consumer personally makes a decision to support socially responsible practices which may have an effect on his/her own purchase behaviour. Nevertheless, the food sector companies need not only to reflect to consumers needs and wishes, loyalty and willingness to pay an extra price, but to manage the brand image, reputation and resilience compared with the competitors too. (Smith, 2007).

Socially responsible initiatives of business help companies to deal voluntary with their social and environmental effects which go beyond regulatory or/and legal requirements. Such initiatives are frequently accepted as business strategy in which consumer demands drive corporate responsibility and sustainability (Smith et al, 2010).

The sustainable consumers could be described as those who assess their own motivation by interest or dissatisfaction and buy products labelled with eco-friendly or fair trade symbols. Karsaklian and Fee (2012) had identified four prototypes of sustainable consumers:

- the “idealists” – recycle and save energy,
- the “able and willingly” – choose environment over economic growth,
- the “OK, I’ll do it” – buy ethical products because others do, and
- the “unwilling responsibility-takers” – buy ethically, despite not accepting environmental protection as their responsibility.

Accelerating the demand for more environmentally friendly, healthy and socially responsible food consumption as a rule is not always correspondent with the productivity of company’s activities. Hereby, “sustainable demand shifts are translated into sustainable supply shifts". In recent years, “consumers become more and more conscious of the impact they have on the environment and on their own health through their food choices” (European Commission, 2011). As a result they pay much more attention to CSR-related issues, but sometimes they face with significant barriers: requirements to pay an extra price for “extra quality and safety”, insufficient or inadequate awareness and lack of easy access to the information, which are necessary for right decision making. Some organizations (enterprises, NGO’s, concerned groups) help consumers make sustainable choices (Renewed EU strategy 2011-14 for CSR, 2011).
For today's society, the effects of labels are of two kinds. Firstly, they distinguish the different types of products that are offered in the market. On the other hand, labels give information to consumers about the quality of products and therefore promote their willingness-to-pay for CSR, this means more money to gain the welfare (Etile and Teyssier, 2012). Consumers prefer correctly labelled foodstuff and ethical brands.

One example of an online social networking (sveikasvaikas.lt) in exploring the labels of food products are be discussed in the next chapter of this paper. In the case study of sveikasvaikas.lt website background is presented, web design and social networking activities are analysed.

**Case study: on-line social networking at sveikasvaikas.lt**

Healthy food topic is popular in various types of social networking sites: blogs, social networking platforms (twitter, facebook, etc.), and among special online networks. For the analysis of a particular social networking site analysis sveikasvaikas.lt was chosen for two reasons: (a) it is the biggest healthy food promoting site in Lithuania; (b) it has a healthy food catalogue (unique feature of social networking sites on healthy food in Lithuania) which is growing fast and going to international sphere (already working in United Kingdom). Case study is executed using information on sveikasvaikas.lt and follow-up pages.

Sveikasvaikas.lt site is moderated by public organization *Sveiko vaiko institutas* (eng. *Institute of Healthy Child*). Site is being developed since 2009 March. Site began as a healthy food catalogue which was being created not only by creators of the page, but visitors of the page as well. During first three days page received 70 000 visitors. The same year sveikasvaikas.lt at Internet awards “Login” was given a prize for the best internet initiative. By 2011 sveikasvaikas.lt decided to go international, and since 2012 sveikasvaikas.lt is producing healthy food products.

Sveikasvaikas.lt is keeping socially responsible its management also. Philosophy, value, goal, and principles of activities and actions are declared (see table 2). Website design is chosen simple, with clear structure. Colour panel is kept with green shades. Green is well chosen for the topic of the site, as green represents sincerity (Labrecque and Milne, 2012).

**Table 2. Philosophy, values, goals, and principles of activities and actions at sveikasvaikas.lt**

<table>
<thead>
<tr>
<th>Philosophy</th>
<th>Everything you put in your tummy is becoming a part of you. Happy tummy, happy you.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>Transparency. You can ask us everything. As a mother.</td>
</tr>
<tr>
<td>Goal</td>
<td>Credibility. Our products are on our tables every day.</td>
</tr>
<tr>
<td>Principles</td>
<td>Our products are: safe, beneficial, in high level of quality.</td>
</tr>
</tbody>
</table>

*Source: sveikasvaikas.lt (translated by authors)*
At sveikasvaikas.lt social networking is carried out in 4 ways as follows: *social networking facebook plugin in sveikasvaikas.lt website*, *facebook page*, *blog*, and the most important two ways *food product catalogue* and *eco route*.

**Social networking facebook plugin in sveikasvaikas.lt website.** Social networking facebook plugin allows creating easy way discussions, engagement in wanted topic with registered and non registered visitors of the page. Sveikasvaikas.lt uses facebook plugin in their section *Kurkime kartu* (eng. *Lets create together*). In this section visitors are requested to give their opinion on developing sveikasvaikas.lt project (sveikasvaikas.lt website and other sites or activities evolving from the idea of sveikasvaikas.lt). Visitors are able to give positive/negative feedback on activities carried out under the name of sveikasvaikas.lt, or to give suggestions what they are expecting to find in the page. As those discussions are organized via facebook tool, all comments are personal, in case someone engages in lively discussion, they know with whom are they consulting and they are able to discuss more privately if they wish to. In this way live network of safe food enthusiasts is being affirmed via networking tool.

**Facebook page.** Facebook it is a wide profile social networking platform, which increases possibility to real time sharing of various information. Users may communicate in three ways on Facebook platform: personal messages, posting “on wall“, sharing comments in shared information section. Sveikasvaikas.lt facebook page has over 16 thousand followers. Facebook page is used to announce 4 major types on information: (a) activities announcements; (b) engagement in site development invitations; (c) competitions announcements; (d) information on articles in media on food products. Though information in a facebook page is rarely updated, followers’ number is growing, discussions on food products and activities of sveikasvaikas.lt are happening.

**Blog.** Term “Blog” is derived from words “weB“ and “LOG“ and is given a meaning of internet diary. Sveikasvaikas.lt is keeping their blog with articles about (a) activities of sveikasvaikas.lt and (b) information on articles in media on food products. Each topic creates a discussion: support or knowledge sharing between enthusiasts of safe food.

**Food product catalogue.** In food product catalogue there are given food products from local grocery stores. Each product is described with picture, title and E supplements (see example in Figure 1). E supplement list with detailed explanations is given. All food supplements are taken from given sources. Information is freely uploaded, with no tendencies to a product or supplier. Page moderators ask for page visitors to inform about any peculiarity they see in already existing product information. Each product after registration is checked and given one of five safety categories (from *ecological to banned in some countries*). It is possible to mark product as “possibly with animal origin substances” which allows including vegans to the social network, and “products with GMO¹”. Inside each product description there is registrar marked, there is possibility to give feedback on product information, or to give more detailed description. Open discussions are encouraged.

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¹ Genetically modified organisms.
Figure 1. Example of product description at lt.inbelly.com

Eko maršrutas (eng. Eco route). Eco route is a separate page in sveikasvaikas.lt domain. Page was designed to assist consumers and organic farmers more easily find each other. It was created with the help of European Union financing. Page seeks for Eco route to lead to responsible farming, and later on to responsible ecological country. Page moderators state: “Due to inappropriate agricultural activities, we get not only harmful to health products, but irreversible nature. Harmful substances in the soil enter the groundwater and prolong our streams and lakes, and most importantly, dug wells, which consume more than one-third of Lithuania. Page designed to help consumers and organic farmers more easily find each other.”. Eco route is being developed by farmers and consumers. Farmers may register their farms in this page if their production corresponds to ecological product criteria. Consumers contribute to Eco route by registering purchased ecological products. This way a social web and internet map of ecological product providers is being created.

Sveikasvaikas.lt is fast growing project which in five years of existence has created three related online social networking platforms and began healthy product line. In marketing healthy food sveikasvaikas.lt uses various social technologies, main of which /digital social media/ is making the biggest impact on consumers decision to consume ecological food products.

Conclusions

Different profiles of socially responsible consumption behaviour are based on the wide variety consumers' activities and their personal motivations.

1 Green leaf sign marks ecological product.
2 Translated by authors.
The active performance of consumers should be encouraged by the socially responsible business to ensure the welfare of society and remain prosperous in future.

To encourage socially responsible decision digital social media type of social technologies was used in the case study. Digital social media was adapted via three levels on integration of decision making for socially responsible consumption: informing, consulting, integrating.

In order to reveal full effect of digital social media on decisions for safe food consumption, a quantitative analysis of digital social media users is necessary.

References

Scientific literature:


Legal documents:

Internet sites:
PREDICTING THE CHANGE OF CHILD’S BEHAVIOR PROBLEMS: 
SOCIO DEMOGRAPHIC AND MATERNAL PARENTING STRESS FACTORS

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Abstract

Purpose: evaluate 1) whether child’s externalizing problems increase or decrease within 12 months period; 2) the change of externalizing problems with respect to child gender and age, and 3) which maternal parenting stress factors and family sociodemographic characteristics can predict the increase or decrease of child’s externalizing problems.

Design/methodology/approach: participants were evaluated 2 times (with the interval of 12 months) with the Parenting Stress Index (Abidin, 1990) and Child Behavior Checklist 1.5−5 years (Achenbach, Rescorla, 2000) questionnaires.

Findings: Child’s externalizing problems decreased within 12 months period. There were no effects of child’s age, gender and age*gender interaction on externalizing problems change within 12 months period. Higher initial level and more negative change within 12 months period of maternal parenting stress related to child characteristics, more stressful events in family life predicted the increase of child’s externalizing problems.

Research limitations/implications: maternal parenting stress and child’s externalizing problems are related and may influence each other simultaneously. Child’s externalizing problems decrease within one year period in overall 2−5 years old children group. The change of child’s aggressive behavior and hyperactivity, distractibility should be evaluated individually, separately from each other.

Practical implications: maternal parenting stress and child’s behavior problems are closely related to each other, it may be meaningful organize intervention for mothers in order to prevent child’s externalizing problems increase.

Keywords: maternal parenting stress, externalizing problems, childhood, toddlerhood, longitudinal research.

Introduction

Externalizing or behavior problems are the most common form of maladjustment in childhood (Dishion, Patterson, 2006), and may be related to maladjustment, socialization, behavioral, academic performance, relationship and acceptance with peers problems in
adolescence and later life (Campbell et al, 2000; Moffit et al, 2002). If externalizing behavior is ultimate and persistent, it may be a risk factor for delinquent behavior in future (Mesman, Koot, 2001).

There is evidence that child's externalizing problems may decrease with age through childhood to adolescence (Campbell, 1995; Prinzie et al, 2006; Leve et al, 2005). Most significant decrease of behavior problems occurs when child is 3–4 years old as a result of child’s socialization process and cognitive, language, moral development. Child learns how to control his aggression, impulses, desires and more properly expresses his wishes, accepts the rules of eligible behavior. However researchers who study child’s behavior problems and psychopathology in early and middle childhood sustain that child behavior problems remain stable. Despite it may decrease over time, children with more problems stay in the highest levels over time (Baker et al, 2003; Heller et al, 1996). According to these results, the stability and change of child’s externalizing problems should be evaluated with respect to child’s development and his biological age.

It is important to evaluate child's behavior problems in early childhood as it predicts maladjustment and behavior problems in later life. Also it seems that prevalence of externalizing problems or its evaluation for parents in Lithuania may be problematic area. According to the results of international studies, our country has the leading position of child problems prevalence: Lithuanian parents have evaluated their children as having the most behavioral and emotional problems (Rescorla et al, 2011; Rescorla et al, 2007).

Parenting stress as a psychological reaction to the demands of being a parent has been identified as one of the most common daily concerns faced by parents. Parenting stress arises when the parent’s expectations about the resources needed to meet the demands of parenting are not matched by available resources (Deater–Deckard, 2004, p. 5). Parenting stress is closely related to concurrent child’s emotional and behavior problems and vice versa, influences each other (Mäntymaa, Puura, 2012; Baker et al, 2003). Sometimes it is difficult to evaluate which factor stronger influences the other and the causality. However, it is obvious that higher parenting stress is related to child’s internalizing, externalizing problems, and the more problems has the child, the more parenting stress the parent perceives. It is important to evaluate relationships between child’s problems and parenting stress in toddlerhood and early childhood as higher parenting stress in early childhood predicts child’s behavior problems in preschool age and school years (Abidin et al, 1992; Ashford et al, 2008; Goldberg et al, 1997; Theule et al, 2011; Mäntymaa, Puura, 2012; Baker et al, 2003).

Externalizing problems is more prevalent among boys than girls (Williford et al, 2007) as boys seem to be more hyperactive, more often demonstrate oppositional behavior. Also parents who raise boys perceive more parenting stress than parents who have daughters (Deater–Deckard, 2004; Williford et al, 2007; Perminas, Viduoliene, 2012). Child’s problems as well parent’s functioning, his/her behavior with the child, parenting stress level may be related to child’s health status (Hullmann et al, 2010; Perminas, Viduoliene, 2012; Weinstein et al, 1992). Compared to parents of healthy children, those who raise disabled or chronically ill children are more likely to be
distressed, depressed, restricted in their parenting roles, socially isolated, have more health complains.

As the prevalence of child’s externalizing problems depends on child’s age, gender, health status and stressful family life events, researchers should take into account these variable when evaluate stability and change of child’s externalizing problems, parenting stress and its interrelationship.

**The purposes of this study are** to evaluate 1) whether child’s externalizing problems increases or decreases within 12 months period; 2) evaluate this change with respect to child gender and age, and 3) find which maternal parenting stress factors and family sociodemographic characteristics can predict the increase and decrease of child’s externalizing problems.

**Participants**

We have chosen mothers as participants in our study as mothers usually are the primary caregivers (Craig, 2006; Hook, Wolfe, 2012; Craig, Mullan, 2011). Also mothers are more sensitive to notice the minor change of children’s internalizing or externalizing problems than fathers or other persons of child’s close environment.

563 mothers of children aged 2–5 years participated in the study. The age range of the mothers was 21 to 49 years with a mean 32.6 (SD = 5.6) years. Children who were the focus of the mothers’ answers were 281 (50%) boys and 282 girls, with the age means 49 months (SD = 8.6) and 50 months (SD = 8.0), respectively. The level of the mothers’ education is as follows: 262 respondents had received university education (46.5%), college or vocational training – 134 (23.8%), secondary school – 139 (24.7%), less than a secondary school – 28 (5.0%). Marital status: married 422 (75.0%), never married 79 (14.0%), divorced 59 (10.5%), widowed 3 (0.5%). In 453 (80.5%) families child’s parents live together, 110 (19.5%) – separately. 211 (37.5%) participants have no employment at this moment, other 62.5% work full or half day.

**Methods**

We used *Parenting Stress Index* (PSI, Abidin, 1990), the most widely used measure of the parenting stress (Deater–Deckard, 2004). PSI has Child domain scale which evaluates those aspects of parenting stress that arise from the child’s behavior (hyperactivity, distraction, child’s mood, child’s demandingness, etc.). Also PSI has Parent domain scale which evaluates those aspects of parenting stress that arise from within the parent (sense of parental competence, role restriction, parent’s depression, relationship with spouse, social isolation and parent’s health). Also PSI evaluates Family life stressors that are often beyond parent control (eg., loss of the job, death of a close family friend). The reliability coefficients for these two domains were 0.92, 0.93 at first time (T1) and 0.92, 0.95 at second time evaluation (T2), respectively.

*Child behavior Checklist 1,5–5* (Achenbach, Rescorla, 2000) consists of 99 items and was used as an instrument evaluating child’s externalizing (attention, aggressive
behavior) problems. Externalizing problems refer to behavior problems in this research and may be used as synonyms in article. Cronbach’s α for Externalizing problems scales were 0.90 (at T1) and 0.92 (at T2).

We asked additional information about sociodemographic characteristics: child’s and mother’s age, time period child is attending the kindergarten, mother’s education (lower (secondary school) vs. higher (vocational training, university)), mother’s employment status (works full of half day vs. does not work), family income status (having sufficient income vs. not having sufficient income), family status (child’s parents live together vs. child’s parents live separately), mother’s pregnancy and child’s health status (child is ill more often than other children vs. child’s health is like others or child is more healthy than others).

Procedure

Mothers were asked to answer questions of the PSI in consideration of child and answer questions concerning demographics and child’s health status. The questionnaires were anonymous and participants gave them back in envelopes, however, participants were asked to compose the unique code (related to demographics of each participant) in order to link the 1st evaluation with the 2nd evaluation which was performed 12 months later.

Results

As children up to 3–4 years may have more behavior problems and it may decrease more significantly within one year period, we evaluated the change of externalizing problems in younger (aged 24−41 months (2–3.5 years), N=120) and older children (aged 42–69 months (3.5–6 years), N=443) groups.

Results of repeated measures ANOVA revealed significant decrease of externalizing problems in overall sample: time 1 evaluation mean 13.1, time 2 evaluation mean 12.4, F(1, 559)=4.601, p=.032, η²=.008. However, there were no significant age (F (1, 559)=1,467, p>.05, η²=.003), child’s gender (F (1, 559)=2,221, p>.05, η²=.004) or age*child’s gender (F (1, 559)=.011, p>.05, η²=.000) effects for externalizing problems change.

Also the change of stressful life events in family life within 12 months period was evaluated in order to assess if there were any major family life changes that may have impact on child’s externalizing problems or maternal parenting stress. Results of repeated measures ANOVA did not revealed any significant changes of stressful life events in overall sample (F (1, 559)=1,189, p>.05) or with respect to child’s age or sex status (F (1, 559)=1,563, p>.05, and F (1, 559)=0,042, p>.05, respectively).

Children whose externalizing problems scale score increased within 12 months period (T2−T1 score >0) were assigned to Increased group (N=238), others were assigned to Decreased externalizing problems group (N=325).
Correlations between variables and comparisons concerning initial scores of child's externalizing problems, maternal parenting stress scales between Increased and Decreased participant groups were evaluated in order to have a view about the initial status of problems and stress level in these groups.

Pearson’s correlations coefficients of the variables are presented in table 1. The change of child's externalizing problems score (T2–T1) may be a positive (if externalizing problems increase within one year) or negative (if externalizing problems decrease within one year). The change of externalizing problems score is positively correlated to T2 externalizing problems, both T2 parenting stress domains and both the change of parenting stress domains scores, and negatively correlated to T1 externalizing problems, both T1 parenting stress domains scores. This means that the more externalizing problems had the child and the more parenting stress perceived the mother at T1 evaluation (higher score), the more significant decrease of externalizing problems and parenting stress level was within one year period (lower or negative score).

Table 1. Correlations between externalizing problems and maternal parenting stress variables.

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</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1.0</td>
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<td></td>
<td></td>
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<tr>
<td>2.</td>
<td>.440*</td>
<td>1.0</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>3.</td>
<td>−.446*</td>
<td>.477*</td>
<td>1.0</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>4.</td>
<td>.544*</td>
<td>.309*</td>
<td>−.184*</td>
<td>.477*</td>
<td></td>
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<tr>
<td>5.</td>
<td>.410*</td>
<td>.222*</td>
<td>−.128**</td>
<td>.645*</td>
<td>1.0</td>
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<tr>
<td>6.</td>
<td>.072</td>
<td>.053</td>
<td>.120</td>
<td>.042</td>
<td>.169*</td>
<td>1.0</td>
<td></td>
<td></td>
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<tr>
<td>7.</td>
<td>.312*</td>
<td>.548*</td>
<td>.267*</td>
<td>.404*</td>
<td>.331*</td>
<td>.073</td>
<td>1.0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>.203*</td>
<td>.324*</td>
<td>.150*</td>
<td>.348*</td>
<td>.495*</td>
<td>.100***</td>
<td>.645*</td>
<td>1.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>.158*</td>
<td>.113**</td>
<td>.018</td>
<td>.068</td>
<td>.086***</td>
<td>.289*</td>
<td>.044</td>
<td>.062</td>
<td>1.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>−.205*</td>
<td>.191*</td>
<td>.410*</td>
<td>−.516*</td>
<td>−.239*</td>
<td>.050</td>
<td>.493*</td>
<td>.252*</td>
<td>−.024</td>
<td>1.0</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>−.176*</td>
<td>.111**</td>
<td>.265*</td>
<td>−.240*</td>
<td>−.402*</td>
<td>−.042</td>
<td>.321*</td>
<td>.529*</td>
<td>−.015</td>
<td>.482*</td>
<td>1.0</td>
</tr>
</tbody>
</table>

Note: significant at *p<.001, **p<.01, ***p<.05 level.

The results of independent samples t tests presented in table 2 reveal that participants with increased externalizing problems had lower initial problems and parenting stress related to child characteristics scores.

271
Table 2. Comparison of initial levels of externalizing problems and parenting stress between increased and decreased externalizing problems children groups.

<table>
<thead>
<tr>
<th></th>
<th>Mean (st. deviation)</th>
<th>t</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Externalizing problems decreased</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Externalizing problems at T1</td>
<td>14.4 (6.3)</td>
<td>8.58</td>
<td>&lt;.001</td>
</tr>
<tr>
<td>Maternal parenting stress, child domain at T1</td>
<td>101.5 (18.5)</td>
<td>2.54</td>
<td>.011</td>
</tr>
<tr>
<td>Maternal parenting stress, parent domain at T1</td>
<td>119.8 (22.0)</td>
<td>1.75</td>
<td>n.s.</td>
</tr>
<tr>
<td>Family life stressors at T1</td>
<td>6.8 (6.8)</td>
<td>−1.4</td>
<td>n.s.</td>
</tr>
</tbody>
</table>

Note: T1 – 1st evaluation, T2 – 2nd evaluation after 12 months. N.s. – not significant.

Table 3. Predicting child’s externalizing problems increase within 12 months period: final model.

<table>
<thead>
<tr>
<th>Predictor variable</th>
<th>B (SE)</th>
<th>Odds ratio</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child gender (h.c.=male)</td>
<td>−0.153 (0.214)</td>
<td>0.858</td>
<td>n.s.</td>
</tr>
<tr>
<td>Child age</td>
<td>0.005 (0.016)</td>
<td>1.005</td>
<td>n.s.</td>
</tr>
<tr>
<td>Time-period attending kindergarten</td>
<td>0.005 (0.012)</td>
<td>1.005</td>
<td>n.s.</td>
</tr>
<tr>
<td>Mother’s age</td>
<td>0.012 (0.019)</td>
<td>1.012</td>
<td>n.s.</td>
</tr>
<tr>
<td>Mother’s education (h.c.=lower education, secondary school)</td>
<td>0.261 (0.239)</td>
<td>1.299</td>
<td>n.s.</td>
</tr>
<tr>
<td>Mother’s employment status at T2 (h.c.=works full/half day)</td>
<td>0.298 (0.226)</td>
<td>1.347</td>
<td>n.s.</td>
</tr>
<tr>
<td>Family income status at T2 (h.c.=having sufficient income)</td>
<td>−0.163 (0.292)</td>
<td>0.849</td>
<td>n.s.</td>
</tr>
<tr>
<td>Family status at T2 (h.c.=child’s parents live together)</td>
<td>−0.270 (0.278)</td>
<td>0.763</td>
<td>n.s.</td>
</tr>
<tr>
<td>Child’s health status at T2 (h.c.=is ill more often than others)</td>
<td>−0.669 (0.358)</td>
<td>0.512</td>
<td>n.s.</td>
</tr>
<tr>
<td>Mother’s pregnancy at T2 (h.c.=pregnant)</td>
<td>−0.887 (0.408)</td>
<td>0.412</td>
<td>0.030</td>
</tr>
<tr>
<td>Externalizing problems at T1</td>
<td>−0.234 (0.027)</td>
<td>0.791</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Maternal parenting stress, child domain at T1</td>
<td>0.075 (0.011)</td>
<td>1.078</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Maternal parenting stress, parent domain at T1</td>
<td>−0.010 (0.007)</td>
<td>0.990</td>
<td>n.s.</td>
</tr>
<tr>
<td>Family life stressors at T1</td>
<td>−0.012 (0.016)</td>
<td>0.988</td>
<td>n.s.</td>
</tr>
<tr>
<td>Change (T2−T1) of maternal parenting stress, child domain</td>
<td>0.076 (0.009)</td>
<td>1.079</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Change (T2−T1) of maternal parenting stress, parent domain</td>
<td>−0.011 (0.007)</td>
<td>0.989</td>
<td>n.s.</td>
</tr>
<tr>
<td>Family life stressors at T2</td>
<td>0.043 (0.018)</td>
<td>1.044</td>
<td>0.017</td>
</tr>
<tr>
<td>Constant</td>
<td>−4.245 (1.208)</td>
<td>0.014</td>
<td>&lt;0.001</td>
</tr>
</tbody>
</table>

Notes: h.c. = category in brackets is a higher category. N.s. – not significant.
For evaluating the hypothesis of child’s externalizing problems change (decreased vs. increased within 12 months period), binary logistic analysis was conducted with separate blocks for each group of predictor variables: 1) sociodemographic variables, 2) initial level (T1) of child’s externalizing problems, 3) initial level of maternal parenting stress and 4) maternal parenting stress change (T2−T1) during 12 months period variables. A logistic regression with child’s externalizing problems change status (decreased vs. increased) was statistically significant, $\chi^2(3, 17)=193,713$, $p<0,001$, Nagelkerke pseudo $R^2=0,391$ for the final model with all predictor variables. The reference (comparison) category for child’s externalizing problems change status was the decrease of externalizing problems (T2−T1 difference of externalizing problems score is equal to “0” or negative). Odds ratios and other statistics for final model are presented in table 3.

In this model, the absence of mother’s pregnancy at Time 2 evaluation (odds ratio (OR)=0,412, 95% confidence interval (CI)=0,185−0,918), lower initial level of child’s externalizing problems (OR=0,791, 95% CI=750−835), more parenting stress concerning child characteristics at T1 (OR=1,078, 95% CI=1,054−1,103), less positive or more negative change within 12 months period of parenting stress concerning child characteristics (OR=1,079, 95% CI=1,059−1,099) and more family life stressful events within past year (OR=1,044, 95% CI=1,008−1,082) predict the increase of child’s externalizing problems. Exposure of other sociodemographic variables, initial level and the change of parenting stress concerning maternal characteristics, initial level of family life stressors do not significantly contribute to the risk of externalizing problems increase.

Discussion

The results of this study showed the decrease of externalizing problems within 12 months period in 2−5 years old children sample. These results are similar to those other researchers have presented (Campbell, 1995; Prinzie et al, 2006; Leve et al, 2005). However the decrease of behavior problems in our study is relatively very 273stma (effect 273stma of 0.2 are considered 273stma (Cohen, 1988)), in this case the effect size reaches only 0.008. Although the change of externalizing problems was statistically significant, it was 273stma because the participants in this study were normally developing children’s sample, with no major stressful events in family life, so the change effect was 273stma.

There were no significant effects of child’s age 273stma273*gender interaction on change of behavior problems. Other authors mentioned that there was decrease in aggressive behavior after toddlerhood period. Trembay (2000), Caron et al (2006), Frick et al (1993), Stormshak et al (2000) propose that different forms of behavioral problems (hyperactivity, distractibility, attention problems vs. Aggressive behavior) may have different etiology, among which are cognitive control deficits and genetic influences. In this study aggressive behavior and attention, distractibility problems were evaluated together, so the 273stma273273 of decrease in different age groups may occur because of this factor.
Consistent with others (Abidin et al, 1992; Ashford et al, 2008; Theule et al, 2011; Mäntymaa, Puura, 2012) we have found that maternal parenting stress related to child characteristics as well stressful events predict the increase of externalizing problems. The results show that maternal parenting stress and child’s behavior problems may be contemporaneously related to each other as the 274stma274274a change (greater increase or more slender decrease) predicts the increase of behavior problems. Mother’s pregnancy at 2nd evaluation was evaluated as potential stressful event for family, but the pregnancy during 2nd evaluation predicted the decrease of child’s behavior problems. It could be related to reduced mother’s reactivity towards child’s behavior problems.

Blader (2006) presented the results of his study and 274stma274274 that the 274stma274274 and most sustained decreases in externalizing behavior arose among children 274stma parents reported high parenting stress at 1st time 274stm of evaluation and low parenting stress after one year, and parenting stress 274stma274274 were not attributable to 274stma274274 in behavioral symptoms. In this study we also determined that decrease of externalizing problems was related to higher initial externalizing problems and parenting stress levels. It is possible that 274stma274 who perceive more parenting stress are more sensitive to the 274stma274 situation concerning child’s behavior, they may change their behavior and child rearing practices, and child’s behavior problems decreases as the result. It would be interesting and meaningful to evaluate parenting style’s as mediator’s role between parenting stress and child outcomes one year past.

**Conclusions**

Child’s externalizing problems decreased within 12 months period.

There were no effects of child’s age, gender and age*gender interaction on externalizing problems change within 12 months period.

Higher initial level and more 274stma274274a change within 12 months 274stma274274ar maternal parenting stress related to child characteristics, more stressful events in family life predicted the increase of child’s externalizing problems.

**References**


Social transformations happen all over the world in various forms and affect our social, legal, technological and political environment. We invite young researchers to look critically at those changes and share the results they have obtained.