MYKOLO ROMERIO UNIVERSITETAS

Research papers
"Societal Innovations for Global Growth"

Mokslo darbai
„Socialinės inovacijos globaliai plėtrai“

2014, 1(3)

" Societal Innovations for Global Growth"

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Editorial team

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''Societal Innovations for Global Growth'',
2014, No. 1(3)
ISSN 2335-2450 (online)

THE SYMBOLIC SYSTEM OF THE CONTEMPORARY EUROPE: ITS MEANING AND ROLE IN THE CONSTRUCTION OF THE EUROPEAN IDENTITY

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Abstract

Purpose – to provide the philosophical analysis of the formation of the symbolic system of the European Union as a political, economic and socio-cultural region.

Design/methodology/approach – The research has multidimensional approach and it involves the concepts, theories, methods from Philosophy, Sociology and Cultural Studies. It is used the logical and comparative analysis of sources. The author uses the concepts and methods of Russian scholars of semiotics and French post-structuralism.

For the purpose of the research, there is not strict distinction between Europe and the EU although it is clear the two are not the same. People are capable of feeling a sense of belonging to Europe in general, without feeling an attachment to the EU at all or vice versa.

Findings – A symbolic systems of contemporary Europe can be analyzed on three basic levels: the level of the pan-Europe (Europe as the historical-cultural and geographic region), the level of the European Union (Europe as the political and economic union of the integration of 28 states) and the level of the separate state (France, Denmark, Lithuania, etc.).

The European Union policy uses the special social technologies which have goal of creation the concrete symbols. Such symbols will be embodied the ideas, concepts and values of newest European identity. It is important to search the ways and forms which to provide that the meanings and values of basic symbols of that system will be share all people who belongs to the new space of the integrated European society. For example, the results of the sociological survey among representatives of Russian Federation can help to understand the nature of construction of the national identity of the largest federative state.

Research limitations/implications – The important of a research reveals in the suggestion that from the end of the XX century Europe and Russia have experienced the period of the global socio-cultural and political-economic transformation. In the time of the real and potential political, financial, cultural crisis and natural and technological catastrophes all nations and countries can be able to give the "responses" on the "challenges" of the XXI century. The former symbolic systems of the world after collapse of the USSR has been destroyed. The new symbolic systems of the

different countries and regions are creating. In the modern system the norms and values are coded in forms which are the basic for consciousness and behaviour of the European and Russian people. In the theoretic-methodological aspect the implication of the research is actualized by the necessity to conduct the comprehensive analysis and interpretation of the various types of symbols (social, ethnic, mythological, religious, artistic, political) of the contemporary Europe which are the specific indicators of the transformation of concepts, patterns, norms and values which happened in the European and non-European societies.

Practical implications – Each member state of the European Union has the most important traditional mechanisms for socialization its citizens like its educational system and science. It is necessary to create a special dictionary of the symbols of the different societies of the contemporary European national and cultural space. The materials of this research can give a new view on the developing of the societies in the time of current global multicultural situation.

Originality/Value – the concept "symbolic system of culture" gives us new view on solve of the issues on the all-European identity. The information and transmitting of the official symbols of the European Union will help the nations as the new members of the European union to feel her/his-self as the part of the all-European model of the political and economical space. On the other hand, there is a need to ensure the information and transmit of the cultural symbols of the different ethnic/social groups of the each states of the EU. At primary and high school each person have to know and respect the multicultural diversity of the different nations of the European Union by studying meanings of the symbols of the particular European cultures.

Keywords: symbolic system of culture, symbols of European Union, European identity

Research type: conceptual paper..

Introduction

The European identity is one of the important issues of modern Social Sciences and Humanitarians. With evolution of the European Union from an economic union towards the political and legal union, the discussion about the European identity has been increasingly controversial. The link between European and other identities has been still puzzle for contemporary scholars. It has become a stimulus for political elites to search social technologies for construction of common European identity in new political, economical and legal conditions.

There are different characteristics of identity. First of all identity is flexible, dynamic and changeable phenomena. The identity is not something that is always present, it is context related. It is the result of aspirations and traditions as well as of exchange and reciprocity. In the context of symbolic interventionism identity is represented itself in certain symbolic forms.

It is important to note that European citizenship depends on national citizenship. European citizenship is complementary to national citizenship but it does not replace it. The European Union started searching for answers to various questions on how to communicate better, how to get citizens more involved and on how to get citizens to identify with the EU. The EU provides the

common functions: citizenship, law, taxations, foreign policy, border control and educational system. What are the material forms of these functions? It can be the particular symbols.

The contemporary symbolic system of Europe

Symbol is one of the most key concepts of Philosophy, Cultural Anthropology, Sociology, Psychology, Ethnology, Political and Cultural Studies. A cross-disciplinary analysis offers the opportunity to become aware of the significance of symbol for social and cultural reality and political life.

Symbols belong to the oldest and most basic inventions of human mind, society and culture. It is a sense-perceived form for expression of ideas, ideals, concepts, beliefs, norms and values of culture. Symbol is a sense-perceived form for expression of ideas, ideals and spiritual values of culture. It is a bridge connecting the visible with the invisible. As symbols are interrelated the subjective and objective worlds they give to meanings of things, phenomena and processes.

Symbol has a deeply dialectic nature. Each symbol potentially has numerous meanings. The special feature of the nature of symbol is that it can keep meanings of the different historical cultural epochs. For example, rose can be seen as Christian symbol. At the same time at the context of the modern advertisements it signifies an idea of beauty. Therefore it is very important to know the historic, cultural, ethnic, religious, political contexts of the function of the concrete symbol.

Symbols play significant role in all spheres of human and social activities: philosophy, mythology, art, aesthetics, educations, politics, advertisements, so on. Symbol has several main functions in society and culture. Cognitive function lies in the fact that any symbol serves as the form of expressing notions, which possess different semantic shades for interpretation. That's the reason why decoding the symbol implies that the man perceiving it undertakes some efforts at some definite time and ideological context. On the basis of one's personal views on spiritual and ideological concepts in other cultures, a person can move closer to the cognition of the symbol from another culture. In socializing function symbols are to be the way of comprehending ideas and values, In this case symbols have some definite traditions in interpreting their meaning, which are registered by the systems of science, religion, philosophy, arts, education. Symbols have adaptive function. They help the individual to cognize and take as the basic those notions, values and norms, which are accepted in the society. Symbols prove to be some adaptive scheme of people's acquiring some definite ways of world perception and cognition. Being some kind of medium helping people to adapt to the surrounding world and cultural environment, the symbol implies such behavior that suits the rhythm of some human group and nature. The essence of identification and integrative function is the following: symbols work as the means of integrating people into social groups and communities. Symbols fix individual's social status, and help to express social interrelationships.

Cultures of different times and places have represented themselves in various symbols. The symbolic system of culture is the collection of symbols embodying ideas, notions, values, beliefs,

standards, customs, rituals, traditions and technologies, which aim is to characterize life activity of a social community in the definite historical period.

Symbol is a mechanism of intercultural communication among various participants in historic and spatial dimensions. In each culture individuals and social groups are connected to each other through a common system of encoding and decoding. Symbolic communication is a basis of human socialization which brings about the shared cultural concepts, ideas, norms, values, patterns.

Symbols as the tool of shaping of the conception of European identity

The modern Europe can be seen as the complex system of the different system of symbols. Each system is not at the stagnation. European symbolic system is developing and opening for the symbols of the new members of the European political, economic and cultural space. In the context of the EU it is very important to search social technology for the agreement and concordance of the symbolic systems of the ethnic/national cultures of the various European states and regions.

The symbolic system of Europe can be analyzed on the certain levels: states, national, regional and local. It would be noted that the European symbolic system is a result of the long history of the intercultural communications of different nations, religions and civilizations. In this article the regional level of the symbolic system of the European Union is the object of the special research interest. The political symbols play the key role in the process of supporting stable function of the EU symbolic system. Political symbols are symbols signifying the ideas, ideals, notions and values which are widely used by the political actors with uniting them in groups and inspiring them to take political actions.

Symbols are used the powerful tool of political building and identity formation, designed by elites to foster the political and institutional legitimacy of a political entity. F. Foret writes: “A symbol is both an image of unity and a tool to make it occur”(2009:3). Therefore the symbolic construction of the conception of the European identity can be seen as the current project of the European elites. The manipulation of the symbols reflects the identity’s technology used by the state, which socialize the nations into bearers of loyalty towards the common political and economical union.

The EU imitates nation-states by delivering proper common symbols in order to stimulate a European political community. These include a flag, an anthem, a national day, a motto and euro notes and coins. In other words, the EU uses the particular symbols to construct common modern European identity by involving the special symbolic technology.

Four main trends of the interpretation of official symbols of the European Union

The literature analysis of the symbols of the EU displays different trends to understanding of the meanings and role of the symbols at the constriction of the modern European identity.

Firstly, there is the official interpretation of the EU symbols. If a person does not know the meaning of these symbols she/he can look up the interpretation of these symbols in the some documents (3). This fact reveals the civil component of European identity. In this case symbol is simply treated as a material object representing idea and concept. This tradition of interpretation is the result of the developing of the rational philosophical concept of the West European civilization since of Aristotel's logic.

Secondly, this issue has led to pursuit of social technologies to designed to add to the meanings to the US's symbols. It is illustrated by the fact that the twelve stars on the European flag are seen as 12 months of year, 12 signs of zodiac, 12 hour positions on the face of a clock. It reminds the very old European tradition (from the Medieval epoch) of combining the dictionaries of signs, emblems, allegories and symbols.

Thirdly, the scholars, religious figures and artists try to open the deep hidden meanings of the EU symbols. They see the foundations of these meanings grounded in the common sources of the Western civilization. These sources go back to historical lineage beginning with ancient Greek democracy and philosophy, constituting with the precedent of Roman law, the Latin language and the shared influence of Christianity. A good example to illustrate this trend is the fact that "unity of diversity" was adopted as the European Union's motto on 4 May 2000 following a contest called "motto for Europe. It was inspired by a Latin language motto by Nobel prize winner E. T. Moneta "In varietate unitas!"

The historical-cultural analysis of the EU symbols can disclose the inner meanings of these symbols. I would like to note that each symbol is potentially open to a new interpretation in various political, historical, cultural, religious contexts. But I is important to note that to interpret symbol correctly it is necessary to have some knowledge of philosophical and religious ideas, concepts, beliefs, political trends, historical facts and reality, cultural traditions of ethnic groups. If we lack this knowledge we are not able to interpret properly symbols. The common European political and cultural heritage is source of the shaping of the West European philosophical concepts/notions (freedom, human rights, democracy, peace, labor, etc.) which have relevant values. Remarkably the search of these symbols with deep philosophical or religious meanings can be seen as the attempt to construct the pan-European identity on the high spiritual values. But deal with the reality of contemporary society at the time of globalization.

There is fourth trend. I would like to note only two major challenges. Firstly, in the old time religion was instrumental in the development of national identities. However, in XX-XXI centuries a society is becoming increasingly secular and tolerant. That is why the philosophy of postmodernism uses the concept of "simulacrum". It is the empty form: everybody can put his/her meanings in it.

In XX–XXI centuries the development of mass-culture has been promoted so that in the symbol become prevailing the exsoteric (non-sacral) interpretation. In the context of advertisements the symbol are revealed as "empty" form for any some kind of interpretations. In modern culture the process of profanation of the meaningful content of the symbol is further aggravated. That is caused by the general crisis of spiritual values, reconsidering of social, political, moral norms and the formation of new aesthetic concepts.

Secondly, there is an increasing number of migration process in recent decades. What do we see? It is obvious that the ethnic-racial map of Europe has been changing very rapid. There has been a continuous growth of majority diasporas sharing values and norms of Islam, Buddhism and other religions. What is the reaction of the culture under influence of the total globalization process of last century?

So, today the EU consists of 28 states each of them has own social-ethnic structure, religious traditions, cultural values and political preferences. How is constructed the pan-European cultural identity by the social technologies? What are the social technologies which can help to construct the European identity as soon as possible? It is well-known we live at the time of the tremendous influence of mass-media and wider mass-culture. It was not a matter of chance philosopher H.-G. Gadamer called a human being of the XX century a “mass-man”. The Western mass-media translates the symbols of the EU and that has great effects. For example, “Eurobarometer survey” shows that annually there are more and more people who are able to recognize the flag of the European Union is increasing. And the building of the EU Parliament is well-known picture of any political and economic television or print news.

EU’s symbolic model of the shaping European identity

The EU government has been shaping the universal model of the integration using the particular symbols and implying the ideals and values. The identity technologies of the European identity belong to the methods of identity construction by political authorities. The effect of the symbolic policy of EU is evident. The formal institutionalization of symbols by EU institutions (the Commission, Parliament and Council) are significant.

EU-wide public opinion survey “Eurobarometer” provided some quantitative knowledge about the idea of European identity (2012). There are the results of the Standard Eurobarometer 77 “Values of European – Spring 2012” that shows that human rights, peace, democracy, respect for human life, individual freedom, the rule of law, equality, solidarity, tolerance, religion have seen the basic values of the contemporary European peoples. Human rights, rule of law are most common values of European states and they can emphasized for a common European identity.

The official symbols of the European Union are assumed to express the fundamental notions and values of the European Union. These symbols perform the positive function for the stabilization of the symbolic system of the European political culture. These symbols must shade the problems connected with the process of ethno-cultural identification in multi-national political and economical community. The key political idea behind the introduction of these European symbols is to modify the consciousness of the peoples of the political entity to which they belong. A feeling of common identity and strong connection with Europe helps in getting support for EU policies.

In the situation of multiculturalism of modern Europe each person has a good chance to choose what meanings the EU symbols carry meanings for him/her personally. In this connection it is very important to underline the value of “respect for other cultures” which is one of the basic

values of the modern European policy. Intercultural dialogue can not be effective if the participants do not share values of tolerance, trust and openness to cooperation. Intercultural dialogue, as main tendency for modern cultural policy, have to main basis for the substainable development of the Europe.

I have come to the following conclusion. In common words identity is what allows a person to understand his/herself and his/her connection with a particular group. The symbols are seen as the markers of distinguishing an individual from the other groups. Cultural symbolic artifacts reflect what is happening in society and contribute to rethinking the way it works.

The importance of the research reveals in the suggestion that the EU government has been shaping the universal model of the integration using the particular symbols and implying the ideals, concepts and values. The collective identity is not simply a result of implementing top-down model of identity politics. According H. Walkenhorst, "most importantly, certain domestic conditions have to be met in order to achieve a situation where elites or social majorities allow a government to replace older identity structures with new ones" (2008). The formal institutionalization of the official symbols are provided by EU institutions (the Commission, Parliament and Council).

The national identity consists of two components, a cultural and a civil one. The identity technologies of the European identity belong to the methods of identity construction by political authorities (Laffan: 2001). The effect of the symbolic policy of EU is evident. One of the important challenges for European integration is the strengthening of the sense of a European belonging. The global purpose of the EU innovation is to give meaning to the official symbols on the both the cultural and civil level. C. Shore in his book "Building Europe: the cultural politics of European integration" writes that the process of constructing the theoretical framework with which to assess how the numerous EU policies and programmes affect cultural life for European peoples (Store, 2000).

Russian experience of the construction of the national identity can be useful for other countries and wide communities as the mechanism of perception understanding and attitude to symbols is seen as universal everyone. From the ancient past to current day the central concept of the Russian national identity is the concept "Russian idea". It is one of the most important concepts at the history of Russian philosophy, art, literature, religion and politics. It means that all nations have common mission at history. The author's survey about the perception of the Russian state symbols by the young citizens of Russian Federation shows the following results at 2014 year. In this survey 190 respondents (between the ages of 18-25) participated. The results of the survey indicate that there is such thing as one national Russian identity shared by majority of young people. Civil component of Russian national identity is based on shared symbols. 91 % respondents agree with the opinion that the official symbols of Russian Federation express the ideals and values of an unite for all peoples of the Russian state. 65 % students think that the official Coat of Arms and Flag of Russian Federation are the expression "state political ideas and values", 46 % consider "historical and cultural ideas and values" and 18 % say "spiritual and religious ideas and values". 85 % people know all words of a national anthem. 42 % respondents have the national symbol in the home.

Symbolic diversity as the value of the European model of education

In a changing modern world there is increasingly necessary to search the meanings of the symbol which can to bind all nations and countries together. Use of the symbols of European Union is part of the efforts to enhance the acceptance of the ideal of European unity. A European identity is not always present, but rather arises in certain contexts or situations and receives mostly a more cultural interpretation. The study of symbols of European integration is important to our understanding of how the EU becomes constituted as a political and social-cultural reality.

The European people have to opportunity to learn the symbols and their meaning of the society and culture of the each state of the EU. In future cultural period it will allow to find the technology to bring up the values which will accept the majority of people. These values will be foundation for the growing of whole European identity.

The study of symbols of European integration is important to our understanding of how the EU is constituting as a political and social-cultural reality. There is a important to find the social technologies which can provide the creation of the system of symbols which will be embodied the ideas and values of the common wide European identity. It is also necessary to search the educational ways which to provide that the meanings and values of basic symbols of that system will be share all people who belongs to the new space of the integrated European society. That is why it is actual to conduct for the specialist examinations of the perception and interpretation of various European symbols in every country of the EU. The results of these examinations should be generalized in the uniform federal program of development of domestic national culture.

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

PLAGIARISM SCANDAL IN ACADEMIA: A CASE STUDY

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Abstract

Purpose - The aim of this article is to analyze the issue of academic plagiarism. The article aims to evaluate plagiarism case in Lithuania from the point of view of academic management and to compare it with similar cases occurred publically in other countries trying to track the similarities and differences in dealing with this problem.

Design/methodology/approach - It is an axiom that the highest aim of science is a pursuit for truth and knowledge. Academic integrity, production of the original and innovative knowledge should lay in DNR of a scientist. But it‘s not always the case. As in any other profession, there are individuals in science who tend to sacrifice the highest professional values and norms for their personal interests, such as academic career, degree, recognition, etc. Academic frauds are coming to public more and more often around the world. Media is announcing top lists of science scandals annually. Obviously academic plagiarism is not among them and is not considered as shocking as falsification of the data, for example. The publicizing of academic misconduct is extremely painful for many individuals and institutions as it is breaking the careers, reputations and personal relationships. Typically cases of plagiarism reveal malfunctioning and moral illnesses of institutional, national or even global science systems, as well as problems of academic ethos in general.

In Lithuania there were only several science scandals during the whole history of Lithuanian science, i.e. there were only several cases to become public. As elsewhere in the world, academic communities are extremely conservative and hermetic ones and as such they tend to solve their own problems and conflicts internally. Whistleblowers or mavericks are ostracized from it. The most famous science scandal in Lithuania is related with plagiarism case, which started in 2002 and is still not over. As the scandal has moved beyond the walls of a particular university, it involved governmental and legal institutions, wider academic community. The scandal revealed that there were no measures, procedures, regulations and even moral judgement to address it.

Findings - Recently there is a significant increase of facts and articles in science journals on plagiarism in academia around the world, although commonly it becomes known only due to the titanic efforts of single victims of plagiarism or whistleblowers. These cases first of all are publicized by scientists of the countries with old academic traditions and having developed tools of research

and publishing ethics, such as United States, Australia, Great Britain, Germany, etc. Meanwhile the situation is much worse in the countries where there are no policies and tools at place to deal with academic plagiarism nor on institutional neither on governmental level as it is demonstrated by the case study of plagiarism in Lithuania. Globally there are several major problems raised by the cases of plagiarism: lack of reliable and systematic measures against the plagiarism, unwillingness and inconsistency of academic institutions towards plagiarism issues, collision between ethical and legal interpretation of plagiarism cases, severity of consequences in case of whistleblowing on plagiarism. Having no procedures and standards for addressing and punishing the plagiarism leads to situation where a single whistleblower has to sacrifice not only hers or his academic career, but even a whole life for some changes to happen. The issue of research misconduct moved from mezzo and macro levels to individual level make a huge damage, and a set of systematic tools should be created to avoid it.

Research limitations/implications - As in any case study, there are methodological limitations related to the choice of available information sources and subjective judgements prevailing in interviews of interested parties of the scandal.

Practical implications The author of the article aims to attract attention of top-level management of academic institutions as they are most of all responsible for a cultural change towards zero-tolerance of plagiarism in academia. Academic institutions should have policies and regulations how to deal with plagiarism both at faculty and students level.

Originality/Value Although there were many articles in national media on the development of the plagiarism scandal, it is a first attempt to analyse this case in academic terms and applying case study methodology, to give it more systematic evaluation and to compare it with other plagiarism cases in other countries and different scientific cultures.

Keywords: academic misconduct, plagiarism, academic institution management.

Research type: case study.

Introduction

Recently there has been a significant increase in scholarly research on academic plagiarism. Multiple authors urge to pay attention to huge numbers of retracted articles from academic journals due to reasons of academic misconduct or fraud, plagiarism among them. It is not a new phenomenon in science, but recently it becomes a topic of the discussion more and more often. Today the reasons of academic plagiarism increase are explained mostly by the implications of new global conditions which became an inevitable part of any scientist activity and career. As Luke and Kearins put it, "while developments in technology have resulted in software which aids in identifying plagiarism, similar developments have resulted in wide-ranging access to academic research, both past and present, for a global audience. Taken together, the information age, the urge for academics to publish and the systemic issue of publications as currency in the increasingly

competitive marketplace of academia, present a number of risks. Failure to appreciate and manage these risks by upholding espoused values and acting consistently and decisively upon breaches threatens to jeopardize the foundations of academia" (Luke, Kearins, 2012, 887). Development of information technologies and academic environment expressed by the imperative of 'publish or perish' are the two most powerful forces to produce more academic texts and to refer to increasingly widening and more and more available basis of previously made scientific work. Plagiarism is a very complex problem which needs to be discussed and the ways to tackle it must to be systematic, i.e. encompassing all the stakeholders of academic research: authors, researchers, higher education institutions, academic journals, wider academic community and global society as such.

Although statistics on plagiarism show "distinctive temporal and geographic patterns that may reveal underlying causes" (Fanga et al. 2013, 1136), the common feature in dealing with plagiarism is obvious: globally academic institutions still are not certain how to act in front of this phenomenon and thus are unwilling or not able to solve this problem. Plagiarism is a serious challenge even for countries and institutions with old research traditions, but for the transition period countries such as Lithuania, being a post-soviet country striving to quickly adapt to new social and behavioural standards of Western democracies, it is even harder to solve it.

The aim of this research is to analyse the case of plagiarism scandal which took place in Lithuania. In the beginning of the article we review recent publications on plagiarism underlining the most relevant and important issues for interpreting our case. As the case discussed here has involved many various stakeholders of national science system, it is important to stress the systematic approach to the problem of plagiarism. After the analysis of the case we will discuss it in terms of most relevant theoretical insights and will provide some recommendations concerning the positive changes in similar situations.

Theoretical background

The majority of authors writing on plagiarism mainly discuss the differing notions of plagiarism, problems of student plagiarism and issues related to plagiarism detection tools. Plagiarism detection tools nowadays allow to check and evaluate a huge body of research papers of various categories and to analyse its similarity indices (see Ison, 2012; Zhang et al., 2014). Meanwhile relevantly little research has been done on plagiarism on faculty level so far. As the object of this article is academic plagiarism, we will discuss only those authors who write exactly on this particular aspect. We would like to stress several important issues in light of which we will deal with the analysis of our case.

Judging the prevailence of academic plagiarism. As noted by Elliott et al. (2013), plagiarism in academe is caught rather by accident than by design. How can we measure the prevalence of academic plagiarism actually? By what kind of accidents cases of plagiarism become known?

Some authors say, we can decide upon "two main sources of information about scientific misconduct: organizational reporting (from funding agencies, universities, and research institutes) and survey data (collected directly from researchers themselves). Each gives a distinctly different impression of the prevalence of misconduct" (Restivo, 2005). If we judge according organizational reporting, it is rather difficult because we don't know to which numbers to compare the number of reports on academic misconduct, besides "there is the problem of underreporting, confounded by differences in definitions and delays in completing investigations" (Restivo, 2005). Second source of information on academic misconduct is much more alarming: "in contrast, questionnaire surveys that ask scientists whether they have observed any of a variety of behaviors that qualify as misconduct suggest much higher rates" (Restivo, 2005). There is a limitation of researchers' survey data due to resistance from scientific societies (ibid).

Numerous surveys of scientists' attitudes have been published during last decade of research on plagiarism. Bartlett and Smallwood (2004) described the survey conducted about plagiarism by two University of Alabama economists who asked 1,200 of their colleagues if they believed their work had ever been stolen. A startling 40 percent answered yes. The authors conclude that the responses from researchers still represent hundreds of cases of alleged plagiarism and we can view it only as 'a tip of the iceberg' as only single cases are reported to authorities (Bartlett, Smallwood, 2004; Shepherd, 2007).

According the survey made by iThenticate in 2012, "plagiarism is a regular problem in scholarly research: A study of more than 400 researchers, authors, and editors at scholarly publications reveals that while most agree that plagiarism is a serious problem on the rise, tactics to prevent or detect plagiarism are often inconsistent or absent. [...] Overall, 95 percent of editors and 84 percent of researchers reported that they "occasionally" or "regularly" encounter instances of plagiarism. Sixty percent of those surveyed believe plagiarism is increasing" (iThenticate, 2012). The problem of academic plagiarism becomes more and more obvious, but there is a lack of activity in solving it.

The surveys on researchers' view on plagiarism generally reveal that it is a huge problem, but academic community is doing almost anything about it (in terms of reporting or preventing from plagiarism their own work). If we look at what alleged plagiarists say, we can understand deeper roots of such point of view. Long, Errami, George, Sun, and Garner (2009) looked at responses from 60 "duplicate authors." Of these, 28% denied doing anything wrong, 35% admitted that they had "borrowed" from previously published authors, 22% said they were co-authors who were not involved in writing up the manuscript, and 17% said they did not realize their names were on the article in question" (cited in: Fox, Beall, 2014, 344). These answers above all indicate low awareness of researchers on plagiarism, academic writing rules and standards (which may differ depending on the region or publishing policies and traditions), but also institutional malicious practices of formal authorship in academic publishing. Formal authorship may mean many things, but first of all it is a symbolic reflection of a relationship existing between academic elite and 'simple' researchers or their subordinates.

Third quantitative method allowing to judge on prevalence of plagiarism is *numbers of retracted articles* due to academic fraud in academic journals. "A detailed review of all 2,047 biomedical and life-science research articles indexed by PubMed as retracted on May 3, 2012 revealed that only 21.3% of retractions were attributable to error. In contrast, 67.4% of retractions were attributable to misconduct, including fraud or suspected fraud (43.4%), duplicate publication (14.2%), and plagiarism (9.8%). Incomplete, uninformative or misleading retraction announcements have led to a previous underestimation of the role of fraud in the ongoing retraction epidemic. The percentage of scientific articles retracted because of fraud has increased ~10-fold since 1975" (Fanga et al, 2013, 17028). Although the increase indicated by this review is impressive, we hardly can be certain about this data (in 1975, when internet was only a dream, there were neither plagiarism detection tools, nor it wasn't a common practice for academic journal to check the originality of the submitted articles). Besides, even today there are still many journals which do not apply plagiarism detection tools, don't have antiplagiarism policies and do not announce the retractions or do not indicate the reasons of retraction. The editors of academic journals are discussing whether they are capable to play a role of "policeman of scientists" and other challenges caused by academic plagiarism (Lewis et al., 2011; Martin, 2013).

The fourth source on plagiarism cases is *whistleblowing*, but we can judge it only as a qualitative method which usually means huge individual sacrifices of a whistleblower and reveals monstrous systematic problems of science and higher education. The fact that the report of whistleblower saw a daylight is telling that the efforts to solve it internally, inside the academic institution or publishing venue, was unsuccessful. Publicity is the last measure desperate whistleblowers are trying to use. As various cases of whistleblowing illustrate, some efforts lead to changes in national science systems (e.g. David Baltimore case in USA or the case analyzed in this article), but some lead to nowhere (Bartlett, Smalwood, 2004; Cabral-Cardoso, 2004; Sonfield, 2014). The need to blow the whistle on plagiarism is caused by the unwillingness of universities to solve the problem of plagiarism. As Sonfield put it, "reparation for plagiarism, even non-financial reparation, works in slow and mysterious way" (Sonfield, 2014, 82). We further review the major reasons universities are so unwilling to solve the problem of plagiarism.

Another dominant issue reiterated by the researchers writing on academic plagiarism is *unwillingness and inconsistency of academic institutions towards abating the plagiarism*. Luke and Kearins, reviewing the literature on cases of academic plagiarism conclude that "a key source of confusion seems to be the inconsistent, often invisible stand taken on plagiarism by academic institutions. Interestingly, it seems such incidences are resulting in emerging agreement on the need for academic plagiarism to be more comprehensively and systematically addressed (Clarke, 2006), such that penalties are consistently applied, rather than overlooking or excusing cases as isolated or unintended and not requiring action. Publications documenting academic plagiarism cases (Bartlett and Smallwood, 2004; Kock, 1999) reveal no systematic processes on the part of institutions in dealing with the issue" (Luke, Kearins, 2012, 886).

Apparently there is a huge gap between the declared values and norms in ethics codes and actions universities take in facing the cases of plagiarism: „While universities often promote high-

sounding ideals and would generally wish to be seen to uphold high academic standards, it is argued that silence and complicity surround the way in which instances of plagiarism in academic publications are often dealt with. Actions (and inaction) by academic leaders in universities in dealing with cases of academic plagiarism speak volumes in terms of the values academic institutions profess, and those they actually uphold" (Luke, Kearins, 2012, 881). Although universities have developed codes of ethics, their principles are not incorporated into daily actions (Cabral-Cardoso, 2004, 83). The reasons why academic plagiarism is thriving are related with organizational conditions existing in academia: "the faculty member believes he or she can get away with it; the controls at the universities are so lax that everyone is tempted to "steal" ideas; penalties are rarely imposed for plagiarism; plagiarism is usually caught by accident rather than by design" (Elliott et al., 2013, 92).

From the point of view of professional ethics, plagiarism is making a multiple damage to academe and revokes its confusion: "it is the mixture of law or rule-breaking and social misrepresentation and deception that gives plagiarism its bitter taste", claims Hannabuss (2001, p. 312) adding that plagiarism "are breaches not just of rules (...) but also of the norms, values, expectations, assumptions, and moral beliefs of whole communities. This is why such communities react in the complex ways they do" (cited in Cabral-Cardoso, 2004, 77).

The moral damage and severity of consequences of plagiarism are extremely painful for academic community as to no other profession: „Science largely stands on the assumption that community members behave ethically and on the trust relationship scientists build with their peers (Weinstein, 1979). "Reliance on their honesty and professional capabilities may well seem the only practical way in which science can proceed", admits Grayson (1995, p. 4). Citing Kohn, she adds: "unlike other professions where honesty is merely regarded as highly desirable, the whole edifice of science is built upon honesty" (p. 19). In other words, science is ethically vulnerable and, therefore, misconduct is a more serious matter to the scientific community than to most other professions. In fact, it is the reputation of science as a whole that is at stake when individual misconduct is exposed which helps to understand why the scientific community is so embarrassed when that happens and shows particular difficulties in dealing with cases of deception and fraud" (Cabral-Cardoso, 2004, 76-77). In contemporary conditions the trust and unwritten belief in academic integrity is not enough, science system needs to be designed so that it manages research integrity of its members.

The inconsistency and lack of action towards fighting the plagiarism is the role model or signal for the rest of the academic community in the institution. Community isolates the participants of plagiarism case (first of all, the whistleblowers) and keeps neutral position adhering to the rule of silence and secrecy in case of institutional scandal. The silent position and complicity of academic community, indecisive top-level figures of academic institutions, lack of substantive sanctions for plagiarists create an environment tolerant for plagiarism, in which risk to be punished is so minor to compare with benefits brought by plagiarism (Luke, Kearins, 2012; Cabral-Cardoso, 2004; Elliott et al., 2013).

In the countries which may be considered as leaders in research and higher education, the big scandals of academic plagiarism led to formation of the structures of external control of academia as academic institutions hiding under the shred of autonomy showed up as not capable to tackle academic misconduct internally. "Although the problem of fraud emerged in the United States and seems to have been most intense there, other countries with substantial programs of scientific research, including Great Britain, Japan, Germany, France, and Australia, have all put in place procedures to detect and regulate misconduct in science. In an enterprise funded by public money, it is not surprising that governments set up systems for assuring accountability, but that they did without them for so long" (Heilbron, 2003). The examples of structures of external control are governmental committees or ombudsman's office on research integrity (e.g., Office of Research Integrity in USA), other independent bodies investigating the allegations on research misconduct, enforced by various ethical infrastructures and legal acts (officers of research integrity, protection of whistleblowers, etc.).

Some authors stress that external control of academic misconduct should not concentrate only on punitive measures, but should demonstrate positive rewards and educational approach first of all: "Higher education deals with many difficult issues by relying on academic judgment, consensus and sharing good practice. Plagiarism is one of these complex issues. Its detection and deterrence form part of daily challenges in twenty-first century universities. Increasing punitive measures or embarking upon simplistic band-aid solutions is unlikely to have any sustainable effect. Viewing plagiarism as a learner-centred issue of learning and teaching practice (pedagogy) means it is best managed, like other complex issues, through dialogic processes, academic research, collegial action, effective policy and reflexive teaching" (Sutherland-Smith, 2014, 40). Just as plagiarism is a complex issue so is the training for researchers of various stages on how to avoid plagiarism and there is a need for new strategies of it to be developed (Fisher, Partin, 2014, 353).

To sum up, major negative consequences preventing academic institutions from taking actions against plagiarism are:

- harm for the reputation and societal prestige of academic institution;
- threat to the reputation and career of alleged plagiarist;
- damage for the reputation of academic journal which published publications with facts of plagiarism; threat of legal process (for reasons of copyright infringement, for libel or inappropriate dismissal);
- moral and academic damage for the researcher whose work has been plagiarized;
- threat to societal expectations towards science and its quality;
- negative example for students who can justify their plagiarism as a common practice, etc.

A lot of restrain to actions of academic institutions and journals comes *from collision between ethical and legal interpretation of plagiarism cases.* "Academic plagiarism is often not a truly legal issue. While the law is relatively clear with regard to copyright infringement, academic plagiarism generally does not involve such infringement under the law. Thus, while copyright infringement is clearly a legal issue, academic plagiarism is generally a professional and moral issue, governed by established academic ethical standards, and by university and other professional

guidelines and policies, where they exist (Mirchin and Strong 2011; Nimmer 2004; Patry 2007; Stearns 1992)" (Sonfield, 2014, 79-80).

The object of copyright law is narrower than academic notion of plagiarism, it only covers the results of creative activity, not the process itself. Thus according legal interpretation of copyright infringement, the copyright law does not cover other forms of plagiarism, i.e. stealing the authorship of ideas, procedures, systems, methods, conceptions or separate data. Not everything that is not forbidden by the law is moral or just thing to do. Thus plagiarism is related to academic integrity and is a breach of professional or academic ethics. That's why the academic institutions are the first instance responsible for dealing with plagiarism. As there is always a strong chance that the alleged plagiarizer will sue the academic institution, journal or a whistleblower for the libel or any other sanction he or she would have appointed basing on the fact of plagiarism, it stops those institutions or individuals from any actions or clear decisions. Academic institutions fear to imply legal consequences for the plagiarizer on the basis of ethical judgement. Even if institution chooses to apply academic sanctions (e.g. to exclude the retracted publications from plagiarizer's publication list and CV, to review his tenure or position received and to diminish it or not to promote him or her, to revoke the scientific degree the person received fraudulently, etc.), legal consequences occur in any case. That's why "legal actions involving a charge of plagiarism are rarely brought to the courts, and when they very occasionally are brought to the courts, they are generally returned to the universities or other institutions to be dealt with internally and administratively" (Sonfield, 2014, 80).

It also explains why legalistic approach dominates in dealing with plagiarism in academic institutions: "Plagiarism management discourses are often framed by legal concepts of authorial rights, and plagiarism policies outline penalties for infringement" (Sutherland-Smith, 2014, 29). As noticed by Reidenbach and Robin (1991), "the legalistic stage of moral development is described by as "adhering to the legality of an action rather than the morality of an action" or, in other words, "law equates with justice and there is no difference between what is legal and what is right and just" (p. 276). [...] In cultures of this kind, codes of conduct, when they exist, necessarily reflect this legalistic approach. Questions can therefore be raised about the effectiveness and even the need of a code: "we already know we have to comply with the law, don't need a code to tell us that" (cited in Cabral-Cardoso, 2004, p. 83)

The last important issue related to plagiarism is a *process and consequences of whistleblowing*. Even in legal and academic environments experienced with protection of whistleblowers negative consequences for the persons who reported the facts of research misconduct seems to be inevitable. „The only study that has examined negative outcomes resulting from filing allegations of research misconduct was conducted more than 15 years ago (Lubalin et al., 1995). That study used ORI records to identify complainants, located them, and then asked them to complete a mail-return questionnaire about their experience with the allegation review process. The study reported that more than two-thirds of complainants (69%) had experienced negative consequences of some severity. Examples of negative outcomes included loss of the complainant's position, denial of promotion, loss of research resources or opportunities, and a

variety of hassles and pressures resulting from filing an allegation of research misconduct and proceeding through the review process. In addition, more than one-fourth of those in the study (27%) had experienced three or more negative consequences. One may surmise from reading the report that the stress of potentially experiencing negative consequences from making a report can be a deterrent to reporting, especially since reporting is a time consuming process with little or no benefit to the scientists who make those reports" (Bonito et al, 2012, 309).

It is also important to mention that the most severe negative consequences for whistleblowers were caused by officials of academic institution: "institutional officials, as a group, are involved in almost all (88%) of the cases that experienced the most serious negative outcomes, while only about a quarter of the accused (24%) and fewer colleagues (18%) and professional societies (6%) are reported to be responsible for such outcomes" (Lubalin et al., 1995, 23). There is significant negative impact on personal lives of whistleblowers, as revealed in the survey of the whistleblowers on research misconduct. The surveyed whistleblowers reported the following areas of negative outcomes: physical health (27.9%), mental health (51.5%), finances (33.8%), self-identity (17.6%), self-esteem (22.1%), marriage (25.0%), family (23.5%), spouse/partner (27.9%), children (14.7%) (Lubalin et al, 1995, 44). Also this important survey showed that even after having suffered from multiple negative outcomes, the majority of the whistleblowers would blow the whistle again: "surprisingly, 60% of those who suffered one or more adverse actions as a result of their whistleblowing would do so again, and 15% probably would do so" (Fox, Beall, 2014, 342-343).

There are studies aiming to draft the psychological profile of a plagiarist, but not so much attention was given to a portrait of a whistleblower in academia. Some of the typical traits for the portrait would be the importance of personal responsibility in the face of bureaucratic misconduct and obstruction, the commitment of the whistleblower to the mission and interests of his or her institution, the courage and perseverance required to pursue allegations of official misconduct and to face the subsequent retaliation, the principles for the reform generated by the acts of whistleblower (Vaughn, 2012, 60). Thus the whistleblowers, suffering severe negative outcomes from their act of seeking the truth and trying to correct the imperfect social systems, are important actors in raising and dealing many social dysfunctions, plagiarism among them. Unfortunately, academia seems to be one of those hostile environments reluctant to be improved by the efforts of a single individual who is showing its problems to outer world. The change in culture of academic institutions is crucial for dealing with plagiarism and other forms of research misconduct: „the academic community must fundamentally evolve to encourage and support those who report incidences of plagiarism; i.e., the whistleblowers. In some segments of academia and at some universities, whistle-blowers have been discouraged by colleagues and supervisors from reporting plagiarism. This inaction sends a dysfunctional and inappropriate message to the potential whistle-blower, the plagiarist, and the community, especially when the whistleblower is punished and the plagiarist is not (Cabral-Cardoso, 2004; Titus et al., 2008)" (Lewis et al., 2011, 504).

Type of hierarchical relationships in academia is one of the reasons programming the plagiarism as a prevalent practice among researchers of different status. Martin (1994) called it "institutionalized plagiarism" and the case analyzed in our article maybe viewed as example of this

kind. The pattern of hierarchy embedded in academic institutions creates an environment conducive to plagiarism and other research misconduct: „In a number of social circumstances, plagiarism is such a pervasive and accepted practice that it is seldom considered worthy of concern or mention. [...] In scientific research, the phenomenon of "honorary authorship" is commonplace. In typical cases, a supervisor or laboratory director, who has done little or none of the research, is listed as co-author of a research paper (LaFollette, 1992:91-107). [...] Some heads of university laboratories demand their name on every publication (institutionalized plagiarism in a competitive setting)“ (Martin, 1994).

Martin points to several arguments against institutionalised plagiarism, but the most important among them is reinforcement of hierarchies: “it reinforces the power and position of elites. By gaining official credit for the work of others, the status and authority of elites is enhanced, while giving relatively little status and authority to subordinates whose work has been given less than its fair share of credit. […] In structures of unequal power, subordinates and clients seldom have the resources to challenge the elites“ (Martin, 1994).

Martin urges to call things by their real names and to apply term of plagiarism to common practices of ‘institutionalized plagiarism’ as a way of challenging those practices: „In situations of intellectual exploitation, the demand for proper acknowledgment of work can be a subversive one. Since hierarchical and bureaucratized work structures foster institutionalized plagiarism, demanding fair credit for work done exposes and challenges these structures“ (Martin, 1994).

Having in mind this kind of relationship among the managers and subordinates in academia it is not surprising that the plagiarism of published texts is just one of the forms academic plagiarism can take. Almost invisible and hard to prove is a plagiarism of ideas and concepts which takes place during the process of peer-review of submitted papers, projects and applications for grants. In this kind of plagiarism ideas are being published earlier than their original authors manage to do that. “Given the crucial relation between credit and priority in science, the plagiarism that hurts the most is one that deprives a scientist of his or her priority. That is, not a plagiarism that appropriates a published claim, but one that takes it *before the author can publish it*. […] This is supported by empirical findings of scientific misconduct. Data by the Office of Research Integrity (ORI) […] shows that the majority of cases of plagiarism in U.S. biomedicine between 1992 and 2006 involve the peer review process of manuscripts and grant applications, not printed articles. Furthermore, these cases typically involve the plagiarism of ideas, research questions, and protocols” (Biagioli, 2012, 460).

Considering all this, it is not surprising that whistleblowers should be prepared for various obstacles and retaliations. Luckily, today whistleblowers may receive some kind of support and advice in forms of consulting with research integrity officers, reading the guidelines for whistleblowers (e.g. *Association of Information Systems Guidelines for the victims: how to deal with plagiarism*, 2003), expecting anonimity or confidentiality ensured by regulations of organizational investigation, etc. These measures can’t prevent from all the possible retaliations but being better prepared for all possible negative outcomes is also very important (Bonito, et al., 2012).

Research methodology

Many authors have noted, the methodology of case study is most appropriate form to explore academic plagiarism. As noted by Lewis et al. (2011), "given this nature of faculty plagiarism, case study methodology has been the primary and most influential research method for this topic".

The data for the case analysis was collected from the primary sources (interviews with the Whistleblower, explanations provided by the major actors during the court process) and secondary sources (mass media publications, protocols of court).

We will briefly describe some national context and experience in dealing with plagiarism by starting with a short review of plagiarism cases and some research done on plagiarism by Lithuanian researchers. Then we will move on presentation of major actors and timeline of major events of the case. As it is quite lengthy timeline (spanning to 12 years), we divide it into 3 logical parts and comment after each of it.

Short overview of experience on dealing with plagiarism in Lithuania

Lithuania restated its independence from Soviet Union in 1990. Many reforms were introduced and a lot of progress was achieved, although majority of governmental structures of new state were not newly established but in fact were modernized soviet bureaucracies with new names (most of academic institutions among them). After almost 25 years of independence the heritage of Soviet mentality and organizational hierarchies still can be traced, especially in universities which are especially conservative institutions due to their autonomy. Instances of plagiarism and the way of dealing with it on national science arena can partly be explained by the type of scientific hierarchy preserved from earlier political and societal system. As the research integrity, ethics codes and plagiarism is rather new ethical notions and tools in the science of Lithuania, unsurprisingly there are difficulties in dealing with these issues.

Not much research has been done on the situation of academic plagiarism in Lithuania so far. Two studies are important to our case. In 2011 the analysis of ethics codes of 21 higher education institution in Lithuania was made with a focus on the definition of plagiarism and its application. Results of this analysis demonstrated that it is mentioned only in part of ethics codes, it is not clearly defined and mostly applied only to students. "Analysis of Ethics Codes of 14 state and 3 non-state universities and 4 state research institutes in Lithuania revealed that a formal definition of plagiarism is not provided for all members of the community: some academic organizations still had no Codes in the middle of 2011; in some Codes plagiarism was not mentioned at all; the definition was not provided in all codes. Such results imply lack of a definition and clearness of the issue in Lithuanian academic community, which appears in answers of its individual members. Thus, the conclusion is simple: taking for granted that academia has deep awareness of the forms of plagiarism is deceptive and may not ensure self-regulation; clear formal rules are called for by the

members” (Novelskaitė, Pučėtaitė, 2013, 244). Judging on the results of this study we can say that ethical regulation existing in Lithuanian academic institutions is weak and inefficient to deal with plagiarism properly.

Another significant research on plagiarism in Lithuania has been published recently. The survey of Lithuanian journal editors, reviewers and authors aimed to find out if respondents encountered plagiarism, self-plagiarism and how they understood originality of a paper. “Survey results and comments demonstrated that scientific dishonesty as well as plagiarism and self-plagiarism is a burning issue for the Lithuanian researchers: 76% of respondents have encountered some sort of plagiarism cases” (Dagienė, 2014, 1292). Also the survey revealed that only 34% of journals check the submitted articles with plagiarism detection tools. 53% of journal editors answered that they do not check the manuscripts and expect reviewers to identify plagiarism, “this way passing on the responsibility for prevention of plagiarism onto the shoulders of reviewers and confirming that they follow traditional work methods that do not include options offered by contemporary technologies” (Dagienė, 2014, 1290).

Before starting the analysis of plagiarism scandal it is important to mention that there were more scandals in the country that became public. Several cases became publicly known and majority of them were situations where students blamed their supervisors or professors for plagiarizing their bachelor or master thesis in their articles or monographs. Only one case was rather quickly solved in legal process as the student sued his two professors for plagiarism of his bachelor thesis in their book. It was proved in the court and professors were sentenced to pay a compensation for the student. Other scandals of plagiarism did not turn that clear direction. Despite the ironic articles in the media and some pressure from academic community, the alleged professors, with some administrative consequences, remained to work at their academic institution. It is very common for public life of Lithuania in general as resignation due to reputation scandal is absolutely unusual practice among political figures and other high-level actors.

The analysis of plagiarism scandal

The plagiarism scandal we are analyzing in this article is the most famous case of plagiarism in history of Lithuanian academe. It became so famous because of wide range of institutions involved in it and quite extensive temporal scale as it lasted for 12 years (and it is not completely over so far). The analysis of this case is concentrated upon reactions of various stakeholders so that it would be possible give this case a more systematic and complex interpretation. The major actors of the case will be defined as:

Plagiarist – ex-doctor of technical sciences in whose doctoral dissertation the Whistleblower found data used from her doctoral dissertation without references

Whistleblower – doctor of technical sciences who found the facts of plagiarism and reported it to various institutions; her own dissertation was supervised by the Professor, the father of the Plagiarist

University – one of the biggest technical universities in Lithuania

Journal – peer-reviewed journal published by University since 1995 together with National Academy of Sciences, publishing scholarly articles in the field of science of the Plagiarist and the Whistleblower

Professor – father of Plagiarist; co-author of Plagiarist; supervisor of doctoral dissertation of the Whistleblower; 1986-1991 dean of one faculty of the University; member-expert of National Academy of Sciences; vice-editor of the Journal which published articles of the Plagiator together with various co-authors.

*Supervisor of the Plagiarist*_– professor, famous scientist, member-expert of Lithuanian Academy of Sciences; first chair of the Senate of the University; head of the department.

Timeline for the major events of plagiarism scandal and discussions

Prehistory of the plagiarism scandal

For better understanding of the relationships and roles of all the actors in this case it is necessary to make a short introduction into the prehistory of this scandal. The roots of this scandal actually lay almost two decades earlier, when the Whistleblower was a doctoral student working under the supervision of the Professor. In those Soviet times the supervisors and senior academics could uncontrollably make use of their hierarchical position and were able to use and manipulate the work of researchers and doctoral students they supervised as being their own (type of master-servant relationship). They could require that their names must stand on every significant publication and invention their supervised researchers made.

This was exactly the case in the department at the time of the Whistleblower's doctoral studies. As she did not want to adhere to such rules and to create a priority and credit for others, she was hiding results of her experiments for dissertation from the supervisor, i.e. Professor. (The gender dimension of this case is also important: the Whistleblower being of a gender which is traditionally is a minority in the technical sciences, could be automatically disposed to certain depreciating attitude.) According the words of the Whistleblower, her supervisor saw her dissertation for the first time only when it was ready to be defended. After a year the Whistleblower defended doctoral dissertation, her supervisor also defended his habilitation thesis in Soviet Union, so that nor the process neither the results of it were known to the colleagues at the University. As the data of thesis was related to experiments with material used for aerospace needs, it was considered as secret and could be used only with special permission. The Whistleblower was not able to read it, but she presumed that the data of her experiments and doctoral dissertation, as well as others could be used without references, as being achieved by the Professor. Afterwards the Whistleblower faced a lot of administrative obstacles and was made to leave the department. Probably she had to be eliminated as a person who knows the truth and is not satisfied with it. At the University she changed the departments twice, but was not given a full tenure and always struggled to gain a position worth of her achievements. After the Whistleblower

raised the issue of plagiarism, she worked part time at the University. She was fired after 4 years from the beginning of the scandal.

The roots of the plagiarism scandal lays in the situation which can be simply put this way: the Professor, being a supervisor of several doctoral students, freely used the data and results of experiments made by them without any references, as his own property. According the Professor, he “created” a database from the results his doctoral students produced and used it to his own mind: for his habilitation thesis, for his son’s, i.e. Plagiarist’s doctoral dissertation and various publications. Those who protested this kind of order at the department were eliminated from it, as it was in the case of the Whistleblower. The plagiarism scandal related to the doctoral dissertation of the Plagiarist in all instances has been interpreted as a result or continuation of the activities of the Professor as a supervisor and as a scientist. As a consequence, all the court processes and publications involved both the father and the son.

Timeline of plagiarism scandal

Part 1: Dealing with plagiarism allegations internally at University

2002 05 03	Plagiarist defended doctoral dissertation in the University
2002 11 29	The Whistleblower informed in written the Senate of the University on the alleged facts of plagiarism in the doctoral dissertation of the Plagiarist. The Plagiarist left his work at the Department where he defended the dissertation.
2003 01 13	Board of professional ethics of the University investigated the report of the Whistleblower and approved the allegations. It said that the Plagiarist while preparing his doctoral dissertation was plagiarizing the results defended in previously defended dissertations at the University by other authors (1984, 1985, 1992) which were prepared under supervision of the Professor; the board also concluded that the Plagiarist was not processing the experiments in the laboratory himself the results of which he presented in his dissertation.
2003 01 23	Plagiarist protested the conclusions of the Board of Professional Ethics and required to withdraw them.
2003 04 15	Special commission appointed by the Senate of the University mainly confirmed the previous evaluation of the Board of Professional Ethics of the University and suggested to apply sanctions
2003 04 17	The supervisor of the Plagiarist put the explanation to the Special Commission that lack of the references in the dissertation of the Plagiarist was “due to the bad knowledge of the Copyright law“
2003 04 21	The Senate of the University decided to apply administrative sanctions to the Professor and Supervisor of the Plagiarist (reprimands). Professor dismissed from the position of vice-editor of the Journal, later this year he left the work at the University.
2003 04 23	National Science Council allocates the support for the publication of the monograph by the Plagiarist and the Professor.
2003 12 08	Scientific commission of the Senate of the University recommends for publication the monograph of the Plagiarist and Professor which further uses the plagiarized data.
2004 01 16	Monograph of Plagiarist and Professor is published by the publishing house of the University

First reaction of the University was rather quick and seemed that it took decisive position: Board of Professional Ethics confirmed the allegations in plagiarism, also provided ethical evaluation of the Professor and the Supervisor of the Plagiarist: "Plagiarist, Professor and Supervisor breached the norms of ethics code in terms of tolerance to academic misconduct and to inappropriateness of plagiarism"; "Professor has created the conditions for his son [i.e. Plagiarist] to prepare his doctoral dissertation in improper way while being a vice-editor of prestigious scientific journal he published in it 4 articles with data from the experiments announced in previously defended dissertations and allowed to attribute the authorship of the data to his son as well"; "Supervisor [of the Plagiarist] being the head of his doctoral studies committee and supervisor of the dissertation did not protested categorically this case of research misconduct" (cited from the Protocols of Court process).

Special commission of the Senate of the University once again investigated all the related material and mostly confirmed the previous conclusions made by the Board of Professional Ethics: "the allegations expressed in the report of the Whistleblower concerning the improper use of her and other dissertations' data in the Plagiarist's dissertation and in the articles published in the Journal partly confirmed to be true"; "the dissertation lacks references to primary sources. Thus the doctoral student [i.e. Plagiarist] breached the warranty on originality and genuine authorship of the dissertation he has signed"; "the committee of doctoral studies and its chair have not ensured that the requirements of copyright and other rights law would be respected" (cited from the Protocols of Court process).

As it can be seen, the Special commission, trying to translate ethical evaluation into legal discourse moved to the notions of copyright and further on did not use the terms of plagiarism and research misconduct. It was one of crucial points where the legal and ethical confusion started. University had only code of ethics but no enforcing rulings or procedures which could be enacted in such a case. It had to take legal actions, and didn't have a great choice of them. It applied administrative sanctions for the Professor (reprimand, loss of the position of vice-editor of the Journal) and for the supervisor (reprimand), but took no further actions towards the Plagiarist (he lost possibility to further work at the University). It may be interpreted that University avoided taking the further decision and passed it to other institutions (or hoped that the Whistleblower will stop there).

The fact that University having confirmed the facts of plagiarism took no further action (revoking the degree) allowed the Plagiarist together with the Professor to publish and continue using plagiarized data; the University not only didn't stop, but even helped to publish it as it was local publishing house of the University. We can see striking ambiguity in actions of the University: on the one hand, it admits the plagiarism in writings of its scholars, on the other hand announces that it is a quality scientific research and publishes it.

Part 2: Reactions of Legal and Governmental institutions

2003 09 30	The Whistleblower applied to legal institutions due to copyright infringement in the doctoral dissertation of the Plagiarist and four related articles. Office of the Prosecutor General started preliminary investigation.
2006 11 16	Without any notice the spouse of the Whistleblower (who was working as associate professor) was dismissed from the University in the mid-term.
2006 12 04	The University fired the Whistleblower
2006 12 11	Whistleblower applied to the President of the Republic
2007	Media starts writing about the scandal of plagiarism (mostly by initiative of the Whistleblower, willingly giving interviews to anyone who would be interested to hear the story).
2007 06 14	The round table discussion “Towards academic integrity: how to tackle the plagiarism in science?” organized in Republic President’s Office
2007 06 27	Board of National Union of Scientists reacting to the plea of Whistleblower proceeded investigation and concluded that majority of the data used in the dissertation and conclusions of the Plagiarist coincide with the ones presented in previously defended doctoral dissertations.
2007 09 17	President’s Office on the basis of the results of the discussion on academic plagiarism drafted the recommendations for all the governmental and academic institutions for the prevention and management of plagiarism, including the recommendation to establish the Ombudsman’s Office for academic ethics and procedures
2008 01 22	Ministry of Science and Education urged the University to react to the report of the Whistleblower on the facts of plagiarism of her dissertation.
2008 09 15	Office of the Prosecutor General dismissed the investigation of the case due to extinctive prescription

As the University avoided taking the decision concerning the doctoral degree received for the plagiarized dissertation, the Whistleblower looked for it outside the University. She periodically wrote letters to numerous academic, governmental and legal institutions urging to evaluate the case and to take measures to revoke the doctoral degree achieved in fraudulent way. 8 expert examinations were processed during this period by various expert groups and all of them more or less agreed that there were “elements of plagiarism” or used other abstract formulas avoiding the responsibility to name the problem by its name.

The list of institutions to which the Whistleblower applied is wide and involves all the organizations governing the science system: National Science Council, National Science Academy, Ministry of Education and Science, Ombudsman of the Parliament, Parliament Committee for Education, Science and Culture, Union of Scientists, etc. The reactions of all the institutions had one common pattern: all the institutions viewed the allegations made by the Whistleblower as her personal problem, not as a problem of education and science system. They were reiterating that it is not their responsibility, were re-sending the letters of the Whistleblower to each other and generally recommended to apply to legal institution as it is the case of intellectual theft (Bagdonaitė, Navickas, 2007).

The investigation of the plagiarism case in legal institutions was very complicated and uneven, it was dismissed and renewed for several times. The major problem for legal judgment of the case was that the plagiarized material was not in textual format, but as data of the experiments expressed in form of tables and diagrams. According the Copyright law, data or results of experiments are not considered as an object of copyright. Another obstacle the legal institutions faced was reluctance of academic institutions to play a role of experts for legal institutions. National Academy of Science, asked by the legal institution to process an expert examination of the related dissertations, constituted the expert group who in their decision avoided the categorical evaluation, used neutral terms: it said that there were „signs of plagiarism" but it was difficult to say exactly who stolen what from whom. As legal institution offered to provide supplementary material, the Academy answered that 'there is no need for suplementary material and it would not have an impact on the conclusions of expert group". The situation was absurd. The scientists who only were capable to judge academic texts avoided direct evaluations and legal institutions who needed to take clear decision were able to do it only if they had clear answers from the scientists.

In one of many expert conclusions scientists even tried to explain the occurrence of plagiarism by Soviet rules of science. The experts explained that during the Soviet times the rules of writing academic works were contradictory and thus it is possible that the supervisor writing his own habilitation thesis had a right to use the experiments, results and data created by his students as his own, even not being an author of those publications and not referring to them as the primary source (Bagdonaitė, Navickas, 2007).

This interpretation shows that some scientists knew that in Soviet times it was a norm that supervisor treated the results of the students whom he supervised as his own, i.e. that academic authorship could be the result of hierarchical position, not of the actual research. The comment of the chair of National Science Council expressed in the interview for the press adds to it: "As a person I understand the Whistleblower who dedicated all her life to destroy the doctoral degree of the Plagiarist. Of course, it needs to be done" (Jackevičius, 2011). Nonetheless, the chair was sceptical about accusations of the Whistleblower concerning the formal supervision of the Professor. In his words, in the country there were more similar cases and there were several examples when the plagiarism cases reached the court. "The court does not pay attention to these facts. An in case of the Whistleblower the court was not able to identify any criminal action in the way the Professor supervised his students. These allegations has no sense, there are no precedents in the legal practice. The court does not know how to prove it, they do not pay much attention to the conclusions of institutions, they concentrate on the procedural rather than the ultimate issues", said the chair (Jackevičius, 2011). These words approve the existence of ill practices of supervision and improper authorship entrenched in science system coming from Soviet times and admits that it is impossible to prove it.

The investigation conducted by the legal institutions lasted for 5 years, exactly as long as the term of the prescription is; it was dismissed due to the limitation. The investigation encompassed the analysis of doctoral dissertations of the Professor, the Plagiarist and several other researchers of the same department of the University. The allegations against the plagiarism in the Professor's

habilitation thesis were removed. The decision said that although from the formal point of view there were signs of criminal ownership of authorship (lack of references to original sources of data), it was unintentional” (Tvaskienė, 2014). The decision concerning the Plagiarist’s dissertation said: “although the facts of inappropriate authorship in the dissertation were identified, the criminal investigation process is stopped due to the term of limitation”.

The Whistleblower managed to attract the attention of the President’s office. The discussion on the plagiarism and the recommendations prepared by the President’s office were widely publicized in mass media, but academic and governmental institutions remained took no radical actions.

Part 3: Outcomes of the scandal

2009 04 30	Law on Science and Studies introduced new structural entity, The Office of Ombudsman on Academic Ethics and Procedures which should investigate allegations in research misconduct
2010 12 21	Government changed the regulation on doctoral studies and introduced new procedure of recalling the scientific degree in case research misconduct facts were identified (it applied to previously attributed degrees as well).
2011 09 12	The publication of the article “The University still has not revoked the doctoral degree received for the plagiarism”
2011 12 21	Senate of the University comprised new group of experts in the related field of science and asked it to confirm or deny the fact of ‘breach of research integrity’ in dissertation of the Plagiarist comparing it to 4 previously defended dissertations (including Whistleblower’s)
2012 04 25	The expert group by voting took a decision that in the Plagiarist’s dissertation the principle of research integrity was breached and recommended to revoke the scientific degree attributed for it.
2012 04 30	Rector of the University issued decision to revoke doctoral degree from the Plagiarist.
2012 05 24	Plagiarist sued the University for ‘illegally revoking his doctoral degree’ and required to return it.
2012 05 30	Professor sued the Whistleblower for libel towards his person spread via media in the period of 2007-2011.
2013 06 18	The first Ombudsman for Academic Ethics and Procedures was appointed (although actual activity started only after half a year, at the end of 2013, as finally the office was allocated and number of staff was approved).
2014 04 14	Court refused to satisfy the requirements of the Plagiarist and decided that the University was right.
2014 07 10	Court decided that the Whistleblower was guilty for libel towards the person of the Professor and sentenced her to pay rather solid compensation to him.

The major outcomes of the plagiarism scandal were legal and structural changes of national higher education system: the right to revoke the scientific degree gained in fraudulent way and the institution of the Ombudsman were introduced. There was a lot of resistance towards the institution of Ombudsman for Academic Ethics and Procedures as it took 4 years for this institution to actually start working (delays in approving its rules, in appointing the Ombudsman, in supplying

the place for the office and the team for it). As much time (4 years) and pressure from the mass media was necessary for the University to apply new right to revoke the doctoral degree from the Plagiarist.

After the degree was revoked, the Plagiarist sued the University for taking off his degree. Research misconduct issues moved to the court again. As the third parties, the father of the Plagiarist (the Professor) and the Whistleblower were involved. The Plagiarist blamed various “procedural breaches”: the expert group had no competence to evaluate his dissertation, the legal institutions previously took decisions that there were no copyright infringement in his dissertation so there were no need to renew the institutional investigation, the varying terms of “research misconduct” and “academic misconduct” in legal acts were pointed, etc. A the court the Professor and the Plagiarist while explaining the creation of “database” were diminishing the research and experiments of the Whistleblower saying that she only did the work of laboratory technician, that production of experiments data and diagrams did not require “intellectual effort” and it was made by a machine itself, that the Whistleblower was in no case “famous scientist”, that she is determined to personally destroy the career of the Professor and the Plagiarist. The hearings at the court required one more expertise of the dissertations, called the experts as witnesses of dissertation writing process and participants of the process of revoking the degree.

The court concluded that the Plagiarist’s degree was revoked correctly, i.e. due to research misconduct (publicizing in the dissertation the results of other researchers’ as his own). The court also reprimanded the University that having in mind the conditions of the case, only after the enormous efforts of the Whistleblower and only after 10 years it took measures to properly examine the allegations in research misconduct and to revoke the degree (Tvaskienė, 2014). The Plagiarist put an appeal concerning this decision and at the moment the court is preparing material for renewed hearings.

As the legal investigation could not find any proves (or intention) of the Professor to plagiarize the data of the researchers he supervised, The Professor sued the Whistleblower for the libel concerning her allegations expressed in mass media. He won the case. The Whistleblower put an appeal concerning this decision and at the moment the court is preparing material for renewed hearings.

The Whistleblower is hiring the lawyer and is participating in the legal processes just from her own resources without any support from any institution or individuals. She continues to fight, as she believes, for the sake of Lithuanian science. She experienced all the negative retaliations as a whistleblower, mentioned by the Lubalin et al.(1995).

Discussion and recommendations

The plagiarism scandal revealed all the “classical” symptoms of such cases described in academic literature: the issues and scale of the plagiarism showed up to be much deeper and wider than we can judge according the single cases that see the daylight. Unwillingness and inconsistency

of academic institutions towards plagiarism is more than obvious: it took 10 years for the University to revoke the degree. Ethics codes of the academic institutions in Lithuania are just vein declarations which do not translate into consistent actions or into supporting rulings and procedures. The academic institutions in Lithuania have very little experience in making and applying ethical judgments. Even more confusion is introduced by differing notions of copyright and plagiarism found in contradictory legal and ethical discourses. Additionally, the case should be understood as resulting from the wider political and societal context: immature democracy and Soviet heritage has formed special academic environment where the reasons of research misconduct are entrenched into existing hierarchies and thus are extremely difficult to solve. As the case showed the causes of plagiarism may rest more on the hierarchical patterns of science than on available information technologies or 'publish or perish' requirements. Hierarchical or even familial relations may stand above any principles of academic ethics for years without attracting anyone's attention.

On the governmental level there is an obvious lack of consistency and will to implement positive changes. Structural and legal changes are introduced and implemented vaguely, facing a lot of invisible resistance from the hierarchies of science system. As the plagiarism scandal showed, it takes 4 years for the norms of the law to become applicable in practice, 10 years to revoke the degree for the plagiarism. And all this is responsibility not of private business or individuals, but of governmental and academic institutions. These facts are quite illustrative and speak for themselves. Due to titanic efforts of the Whistleblower the significant changes on national level became possible: the Office of the Ombudsman for Academic Ethics and Procedures established, the first doctoral degree revoked, the plagiarism issue being widely discussed in public discourse. All these results make use for all the academic community, for numbers of researchers of present and future generations. The only problem is the price of it. It is hard to feel joy or to be proud of it knowing how hard, how intimidating and how destructive the academic community was towards the Whistleblower. The weight of issues of mezzo and macro level (research misconduct) is too heavy to lie on the shoulders of one individual. The main lesson that should be drawn from this case is the necessity of mechanism of safe reporting (i.e., confidential or anonymous). To the author's experience, academic community in Lithuania is especially resistant towards anonymous reporting on research misconduct (newly established Office of Ombudsman for Academic Ethics also does not accept anonymous reports).

Having in mind the implications of this case, several more recommendations could be drawn to the academic and governmental institutions. At the level of academic institutions it is crucial:

- To raise the level of academic writing standards by training sessions and by reviewing the curricula of study programmes at all educational levels;
- To review the codes of ethics by clearly defining plagiarism and by emphasizing of its application both to students and the faculty, to introduce the supporting rulings and standard operational procedures in case of plagiarism and other cases of research misconduct;
- To investigate the allegations in plagiarism not as isolated cases solved by *ad hoc* committees but create a system of bodies and procedures;

- To rely not on legal, but on academic sanctions ensuring the responsibility and consequences for research misconduct (e.g. in case of plagiarism to recall the publication from the publication list, to review the position gained on the basis of such publications, re-certification prior to the term, informing of other institutions, publicize the plagiarists, to ask to return money received for the scientific production (numbers of publications) or participation in the projects, to remove such persons from the institutional positions responsible for academic decisions, etc.);
- To create the mechanisms of safe reporting on research misconduct.

At the national level of higher education and science system several measures should be applied first of all:

- To collect the information on the cases of research misconduct in the data base available for academic institutions.
- To create the procedures to be applied in case of publication retraction: what institutions and how the plagiarist must inform, what are the consequences if he or she fails to do so, etc.
- To foresee the systematic consistency in reaction towards the cases of research misconduct: universities and journals should take measures by retracting the improper publications, by correcting the relevant information in their internet sites, etc.
- To introduce the sanctions applied by National Science Council in case of research misconduct case (the Council could refuse to hire such researchers as experts, could require to return the allocated support if the misconduct occurred during the project activities financed by the Council);
- To create the mechanisms of safe reporting on research misconduct.

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

SUSTAINABLE DEVELOPMENT: TOWARDS A CONSTRUCTION OF NEW GENERATION OF MULTICHANNEL CYCLONES

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Abstract

Purpose – the aim of this research is to measure air purification effectiveness in one–level cyclone when the granite, wood, wood ash, glass particles are up to 20 μm and up to 20 to 50 μm in size.

Methodology – the experiments were performed when average airflow velocity in channels are 18 m/s, 16 m/s, 12 m s and 8 m/s. The particle concentration in air inlet and outlet ducts is determined by weight method.

Findings – by comparing the obtained data with each other, it was found that the best air cleaning efficiency is when air distribution ratio in cyclone’s channels is 50/50. Granite and wood particles are separated most effectively. Best air purification efficiency of 85–86% has been registered when the cyclone was separating the pollutant particles up to 50 μm in diameter.

Practical implications – the research results will be available not only for business enterprises, but also for people interested in environmental technologies, scientists and other researches. The results of researches will be used in the preparation of scientific publications in international databases of refereed scientific journals. The implementation of applied research will ensure the continuity of long-term development. Use of technology solutions will help to prevent air pollution. Solution of social problems will be promoted – open knowledge society and infrastructure development, which will allow creation of new jobs and solve overall social problems. So the project will positively influence on the economy and sustainable regions development.

Originality/Value – The new and original research is carried out within the framework of project “*A new generation of multichannel cyclone design. Acronym DAKACIKAS”*. The project is supported and co-financed by the European Union and the Republic of Lithuania.

Keywords: sustainable development, channel, concentration, cyclone, efficiency, solid particle, clean air.

Research type: research paper.

Introduction

Environmental degradation, dwindling natural resources, biodiversity loss, health impacts attributed to environmental pollution encourages the public to take effective measures to combine economic, environmental and social needs (Čiegis, Zeleniūtė, 2008).

A new approach to our environment and to the further economic development is formed in the twenty-first century, as the non-complex, unbalanced approach to economic development without the eco-factor considering, also causes negative consequences for the development of the economy. The means of sustainable development are different in developed and developing countries. The most serious problems of developing countries are very rapid population growth, poverty, gender inequality, imperfect education and medical system, while developed countries are mainly facing with excessive consumption of natural resources and environmental pollution problems (Pushnov, Berengarten, 2011). Therefore, it is obvious that if decisive actions to reduce contradictions in the system “human – society – nature” in the planet are not taken in the planet, humanity will inevitably face with environmental problems and negative consequences (Blumberga et al., 2012).

In 2009, the main Lithuanian sustainable development objective of the renewed National Sustainable Development Strategy remains the same – in terms of economic and social development, to reach the average 2003 year rate of EU member states of the efficient resources use by 2020 year, according to indicators of environmental pollution – to not exceed the allowed limits of the EU norms, to comply with requirements of international conventions limiting environmental pollution and the impact on the global climate (Pan, 2006). The realization of this aim is only achieved by implementing newest technologies, which cause less adverse environmental impact. Thus, this strategy focuses on scientific progress and knowledge, but not on the implementation of technologies which require a lot of resources.

The competence and authority of the scientists are increasing during scientific researches of the project. Scientists can focus on selected activities and the realization of scientific ideas into practice (Avci and Karagoz, 2003). In the future scientific innovations can and must be directly accessible to the concerned economic entities and enterprises. Public bodies, research and academic institutions and enterprises, which are interested in the research and development works of mechanical air treatment equipment, have an opportunity to use developed inventions of scientists for reducing particulate matter emissions.

New generation of multichannel cyclones research providing the investments to the development of air treatment device (multi-channel cyclone) model directly contributes to the implementation of the principles the National Sustainable Development Strategy (2003). Based on the equality principles, conditions of scientific work are equal for all scientists, regardless of gender, race or ethnic origin (Kenny and Gussman, 1995). All scientific studies are carried out without any additional necessary subcontract from the outside. This helps to avoid purchasing costly scientific services. After implementation of this project new product will be designed (air purification device), which will be able to find its niche in the realization not only in Lithuania, but also in foreign markets.

According to the treatment method a new generation multi-channel cyclone is attributed to the dry air treatment equipment and can be used in various areas that are associated with particulate matter emissions to the atmosphere (Fazilat et al., 2012; Meier and Mori, 1999). Cyclones gained a wide application in almost all industries, such as construction, building materials, mechanical engineering, chemistry, cooking, woodworking, in paper, furniture manufacturing, in motor vehicles repairing, agriculture areas, in energy facilities and so on (Baltrėnas et al., 2012). Solid particles are generated in various processes of the materials: grinding, combusting, in chemical reactions, drying, transporting dry materials, etc. (Blachman and Lippmann, 1974; Boisan et al., 1982).

Currently fabric and electrostatic filters which are relatively expensive and their operation is complicated are commonly used. Conventional cyclones are also widely used, however only particles up to 20 μm in diameter are effectively cleaned, and this is not sufficient. Designed new generation multi-channel cyclone can clean air contaminated with solid particles (dust) up to 1 μm in diameter.

Multi-channel cyclone is an alternative to electrostatic and fabric filters (Raouf et al. 2010). The advantages of these devices: they have simple constructions, do not have moving parts, their operation is cheap, dusty air cleaning can take place in high temperature and humidity. This device can clean air contaminated with life-threatening solid particles (dust) up to 1 μm in diameter (Kaya and Karagoz, 2008.)

In the evaluation process of the global economy in terms of sustainable development, there is a need to tackle many of the economic problems on a global scale, although some of them are local (Bernardo et al, 2006; Sadighi et al. 2006). It is clear that our residents can develop their activities only combing them with nature's processes, with a capacity of nature, its reality, because our overall ecological system connects all of us. We are obliged to ensure that the current economy would be green. This fact does not deny the need to act in that way that environment would become more cost-effective (Staniškis ir kt., 2005).

Our country's government and the scientific community understand that every vital link of regional system has its own requirements and priorities for supporting sustainable development (Vaitiekūnas and Jakštonienė, 2010). Regional ecosystem will be more viable, if the balance between the damage of natural processes caused by anthropogenic activity and artificial and natural reconstruction of natural processes will be achieved. For this concept realization, specific

recommendations for the improving ecological status of each environmental sphere are prepared and economic and legal mechanism based on the basic economic interests is being developed.

Theoretical background

Normal operation of hollow cyclone is based on widely spread principle of solid particles separation, when centrifugal forces occur, which are caused by vortex air flow movement within the housing of cyclone. Treatment efficiency of these cyclones is approximately 75-85%, and the air contaminated with particulate matter with a size of more than 20 microns in diameter is cleaned. This efficiency is not sufficient to achieve, the objectives of EU Directive 2008/50/EC for ambient air quality and cleaner air in Europe.

Multi cyclone is the scientific innovation which is designed for industrial and power boilers in order to clear the air (gas) flow of particulate matter. The project target group of implementation is enterprises, in which can be installed the cleaning device, in order to ensure clean air quality, contributing to one of the EU and Lithuania's main strategic objectives: to implement measures eliminating or reducing negative impact on the environment, i.e. contribute to cleaner production assurance.

The operation of multi-channel cyclone is based on centrifugal forces and additional filtration process occurring during the operation (Hu et al. 2005) Additional filtration occurs due to the interaction of peripheral air flow from subsequent channel and transit air flow, which flows towards the axis of the cyclone (Ingham abd Ma, 2002). Air flow is filtered through a peripheral flow – curtain, which occurs behind the curved parting area of half-rings, thus increasing the efficiency of air purifying (Gimbun et al. 2005).

A new generation multi-channel cyclone is designed for reducing general air pollution (Jakštonienė, et al. 2011). There are channels in the cyclone, in which dusty air is affected by filtration and centrifugal forces. In this way a high treatment efficiency is achieve, over 93% of fine solid particles (dust) with the diameter of 1–5 μm are separated (Gujun et al. 2008). Designed constructions of multi-channel cyclones, which can be used to clean greater amount of air without changing the diameter of the device, are studied in the project. New generation multi-channel cyclone can be implemented in the energy industry (power plants), for smoke cleaning, in wood (wood processing, paper and furniture manufacturing), building materials, agriculture and other industries (Hoffmann and Stein, 2002).

The air purification efficiency of multi-channel cyclone structure depends on the aerodynamic parameters of polluted stream – speed, resistance, concentrations and nature of particulate matters (contaminants) in contaminated stream. Therefore, studies focus on the processes of flow dynamics taking place in the cyclone.

Research methodology

The examined experimental stand of a new-generation air cleaning device is arranged at the Laboratory of Technologies for Environment Protection of Vilnius Gediminas Technical University.

Two-phase airflow tangentially enters through the entrance hole and reaches the first cyclone channel, which is limited by the peripheral wall and first curvilinear half-ring. The two-phase air flow tangentially flows though inlet and enters first channel of cyclone that is restrained by peripheral wall and first curvilinear half-ring. The flow moving from the previous channel encounters half-ring wall and is distributed into two flows: peripheral and transitional.

Part of the peripheral flow moves into repeated filtration in the cyclone; whereas, the transitional flow – into the following channel towards axis of the device and outlet of the cyclone. In this way the airflow is distributed evenly in channels with different curves and is filtered through the spaces between half-rings. The turbulent flow influences the activity of centrifugal forces, and additional filtration effect occurs in flow distribution zone. The overall effect of forces influences precipitation of particulate matter on the bottom of six-channel cyclone. The cleaned air which has gone through all six channels of cyclone flows out of the system through the outlet.

Results and findings

The analysis of pollutant shows, that wood particles from 0 m to 20 micrometers in air cleaning efficiency is 93.5% at 16 m/s for the average air flow rate and a 50/50 peripheral and transit flow distribution ratio. The average density of all kinds of solid particles of polluted air cleaning process is optimal for a large 16 m/s air velocity cyclone channels. Cleaning efficiency is optimal with regard to the prevailing distribution of transit traffic relations cases (50/50), the set of contaminated small dispersion to 20 m sized solid particles flow treatment efficiency of 77.6% (granite), 71.5% (glass) and 66% (wood ash) (Fig. 1).

One level four-channel cyclone is achieved maximal 86.7% of the air cleaning efficiency at 16 m/s for the average air flow rate of the cyclone channels contaminated high-density granite small dispersion of solid particles to a size to 50 micro meters and 50/50 flow distribution relationships.

The average density of the solid particles (glass) of polluted air cleaning process is optimal for a large 16 m/s air velocity cyclone channels. Cleaning effectiveness is of polluted air flow from 0 to a size 50, the average density of particles of pollutants 83.7% at the 50/50 flow distribution relationships.

Low-density solid particles (wood) of polluted air cleaning efficiency reached a maximum at 16 m/s the average speed of the cyclone channels. Small dispersion particles up 20 to 50 μm micrometers in contaminated air stream is cleaned efficiently at 50/50 streams of distribution relationships, reaching 85-86% (Fig. 2).

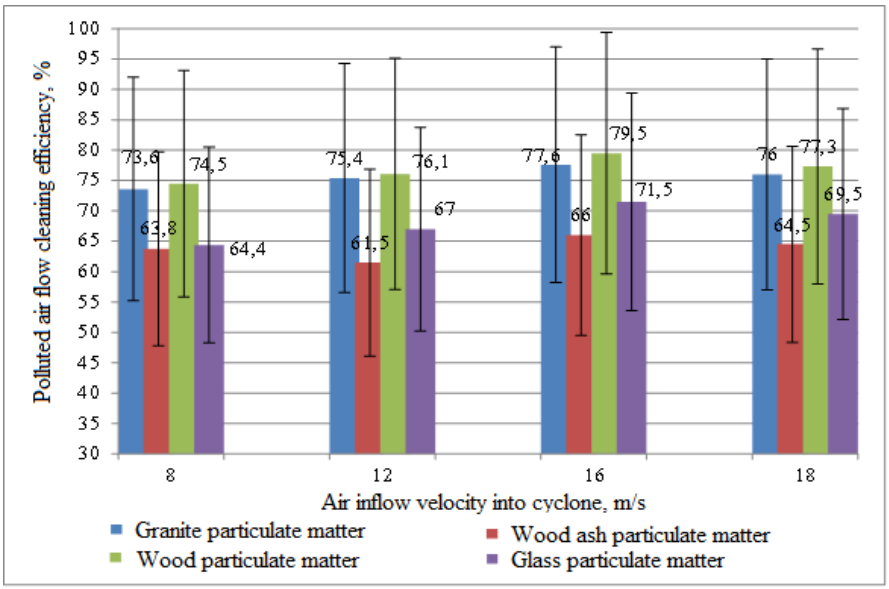

Figure 1. Dependence of overall cleaning effectiveness of air flow polluted by particulate matter (up to 20 µm) in cylindrical one-level four-channel cyclone on air inflow velocity into cyclone, when the case of flow distribution ratio is 50/50

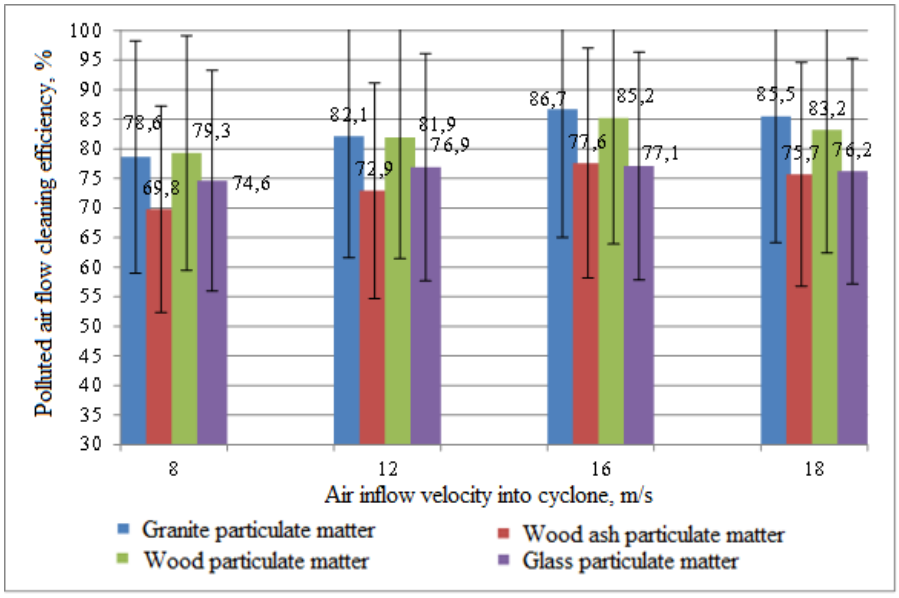

Figure 2. Dependence of overall cleaning effectiveness of air flow polluted by particulate matter (up to 20 to 50 µm) in cylindrical one-level four-channel cyclone on air inflow velocity into cyclone, when the case of flow distribution ratio is 50/50

Conclusions

Multi cyclone is the scientific innovation which is designed for industrial and power boilers in order to clear the air (gas) flow of particulate matter. The project target group of implementation is enterprises, in which can be installed the cleaning device, in order to ensure clean air quality, contributing to one of the EU and Lithuania's main strategic objectives: to implement measures eliminating or reducing negative impact on the environment, i.e. contribute to cleaner production assurance. This will ensure the coherent part of the industry and energy development companies – to improve environmental approach and its coordination with the social and economic development needs.

Scientists have opportunities to focus on selected activities and realization of scientific ideas in practice. Scientific innovations can be used in companies. Mechanical air cleaning equipment can be provided to using such as scientific inventions which designed to reduce emissions of particulate matter, also, the research and development work would be performed of the interested state bodies, scientific and academic institutions and businesses.

In the present experimental investigation, the highest purification efficiency of 77-79% has been demonstrated by the one-level four-channel cyclone in purifying the air flow polluted with solid finely dispersed granite particles of high density reaching 20 μm in diameter, which was moving in the cyclone channels at the average velocity of 16 and 18 m/s.

Air purification efficiency of 85-86% has been registered when the cyclone was separating the pollutant particles up to 50 μm in diameter.

Air purification efficiency of the one-level four-channel cyclone increases by about 10 % with the air flow velocity increase from 8 m/s to 16 m/s.

Acknowledgements

The research is carried out within the framework of project “*A new generation of multichannel cyclone design. Acronym DAKACIKAS”* (Project No.: VP1-3.1-ŠMM-10-V-02-016) under the *Operational Programme* for the *Development of Human Resources* 2007-2013, priority axis 3 “Strengthening research abilities”, measure VP1-3.1-ŠMM-10-V “*Promotion of high level international research*”. The project is supported and co-financed by the European Union and the Republic of Lithuania.

The aim of the project is to carry out high-level international researches, in order to create a model of multi-channel cyclone, which would have a high cleaning efficiency of air contaminated

with small solid particles. In order to achieve the aim, the task is set – to develop design of new generation cyclone using scientific research results.

After successful execution of the project, a new generation of cylindrical multi-channel cyclone, it will be possible to use in the gas (air) flow treatment from small solid particles. It will be possible to reduce the dimensions of multichannel cyclone, while maintaining the same performance.

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

CAUSES AND POTENTIAL SOLUTIONS OF GLOBAL FOOD PRICE INCREASE

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Abstract

Purpose – There is a significant increase in Food prices all over the world. Rate of annual increases in prices of all kinds of food is more than 100 percent. However, this can lead to long-term food crisis. The research aims to find out the factors that contribute to a large increase in food prices, as well as to predict the likely consequences of food price increases. Then potential solutions related to specific problems should be highlighted.

Design/methodology/approach – In this study was developed a problem tree with different assumption, in which several factors were determined, which were contributed to central (global food price increase) and general problems. These problems were separated by cause and consequences, they were structured and ordered hierarchically. Thereby was determined a problem tree, in which were outlined the possible direct and indirect causes of the food price increases, and some of their consequences. Then the negative elements shown in the problem tree were translated into targets and proposals for solution.

Findings – Through outline the problem tree can be improved, that in global market of foods both demand and supply are influenced by many factors. The most important factors affected demand are: increase of population and urban population all over the world and increase of income level and internal migration in emerging countries. Supply is influenced by the following factors: a decrease in the yield of agricultural crops, low level of productivity in agricultural sector, as well as reduction in food crops production area because of unfavourable weather and increased production of biofuels. Most of general and specific factors, which affect food price increase, are related to each other causally, but there are separate factors too.

Research limitations/implications – Most effective solution to the problem is increasing of agricultural productivity at the same time investments into agricultural researches and rural infrastructure.

Keywords: food price increase, demand, supply, problem tree, objective tree
Research type: research paper

Introduction

Foods are essential consumption goods, so demand for foods is continuous, and it is increasing in line with population of the world. At the same time agricultural land is limited on the earth, so food production can not be increased indefinitely. Moreover area of arable land is decreasing continuously. Partly, this is a result of climate change, which has caused desertification in some parts of the world. The other problem is the widespread biofuel production today. For this required oil crops are grown in areas, where food crops were grown previously.

All in all, an unfavourable trend emerged recently, whereupon supply and demand changes in the opposite direction in food market (demand increases and supply decreases permanently), after all, consumer prices increased significantly.

Global food prices have increased permanently since June 2010, and global food price indices are higher than 200 percent since 2011, which is the same as global food price increase level in 2008.

Global food price increase in 2008 hit the net food importer developing countries, while net exporters realized benefit. The price increases enhanced poverty, malnutrition, and vulnerability to external shocks in poorest regions of the world. However, some analysts thought that rising prices will offer new revenue-generating opportunities for farmers in developing countries, whereby farming can contribute to economic growth increasingly. However, this was not realized due to current prise rising.

The current long-term global price increase is different from the crisis of the year 2008 in several ways. In point of food price increase different views were emerged among experts and analysts in 2008. According to some experts current price increase was not caused by supply decrease, but it was caused by a strong demand growth beginning in the Far East and by weather conditions (drought in Eastern Europe, extreme weather in Central Europe, etc.) However, according to other experts prices are forced up by speculation on commodity market. The most disputed topic is the food-shortage caused by production of biofuels and its upward pressure on prices of food raw materials.

Current prices are clearly favor for major exporter countries such as Australia, New-Zealand, United States, Canada. Food price soaring hit the poorest countries. The price increase is expected to hit about 70 African and Asian countries.

Basic hypothesis of this research is that the food price increase began in June 2010 was caused by increase in demand of foods and decrease in supply of raw materials. Both processes were induced by simultaneous presence of several factors. Increase of demand is mainly due to the population growth, the income level increase in emerging countries and internal migration. Decrease of supply is caused by factors such as less arable land on agricultural production because of climate change, more and more widely spread in production of biofuels, as well as decline in agricultural crop yield due to unfavourable weather conditions in recent years. Of course, many other processes also contributed to global food price increase, which are related to each other causality.

Basic objective of this research is to reveal the factors that contributed to the global and long-term food price increase, which is permanent since 2010. These factors were categorized, and targets or rather propose solutions were assigned to problems. Execution of this a problem and objective tree analysis was carried out.

Theoretical background

According to FAO report global food prices have increased since June 2010 permanently, and the global food price indices[1] are higher than 200 percent since 2011. The real food price indices are below the nominal rates somewhat, however, there was observed a significant increase in those changes. This food price increase trend seems to be sustained both in nominal and in real terms (Figure 1).

However, the food price index measured by FAO is an average rate, which value is increased by sugar and dairy commodity primarily (sometimes even more than 250 percent), this rate approached 200 percent on market of meat, grain and vegetable oil products several times (Figure 2).

There was a global food crisis in 2008, but researchers did not assume to be repeated in such a short period of time, and that the latter one would be so permanent. Food price increase of the year 2008 occurred after a declined trend of prices, which lasted for about three decades. Analysts and experts debated about factors that primarily contributed to global food price increase in 2008.

Causing factors of price increase were as follows: an increase in biofuel production (food crops were replaced with industrial plants on agricultural areas), extreme weather conditions in the major agricultural countries (e.g. drought in Australia and the Ukraine), energy and oil price increase (which increased the costs of inputs and transport). Price increase was confirmed by bad government policies, which was responded (e.g. export bans, import subsidies, speculative trade) (Rosegrant, 2008; Braun et al., 2008). Further difficulties are caused by rapid population growth. One of the biggest challenges is the food supply of enormous growing population (Braun, 2008).

Thus, price increase came as a result of supply and demand imbalance, which developed on market over the years. Many factors affect demand and supply, which continue to increase between the two quantities for a long time. On the supply side, one of the direct factors is shown that production of cereals and oilseeds will grow smaller and smaller every year. The annual average growth rate of production was 2.2 percent between 1970 and 1990 and only 1.3 per cent in 1990 and that will continue to decline. (However, it should be remembered that the high prices encourage farmers to grow plants in large quantities and to cultivate more earlier not cultivated lands (e.g. forest, fallow, etc.). In addition to production, productivity is also growing less and less. Global aggregate yield increased average by 2 percent between 1990 and 2007, while it increased

[1] The FAO Food Price Index is a measure of the monthly change in international prices of a basket of food commodities. It consists of the average of five commodity group price indices, weighted with the average export shares of each of the groups for 2002-2004.

by 1.1 percent between 1970 and 1990. On the other hand, demand growth is caused not only by the growth of the world's population but by increased income levels in some developing countries. Hereby not only long-life food consumption per capita will be improved, but consumers will buy meat-, dairy- and vegetable oil productions in larger quantities, and finally, demand of cereals and oilseeds will be stimulated. (Trostle, 2008).

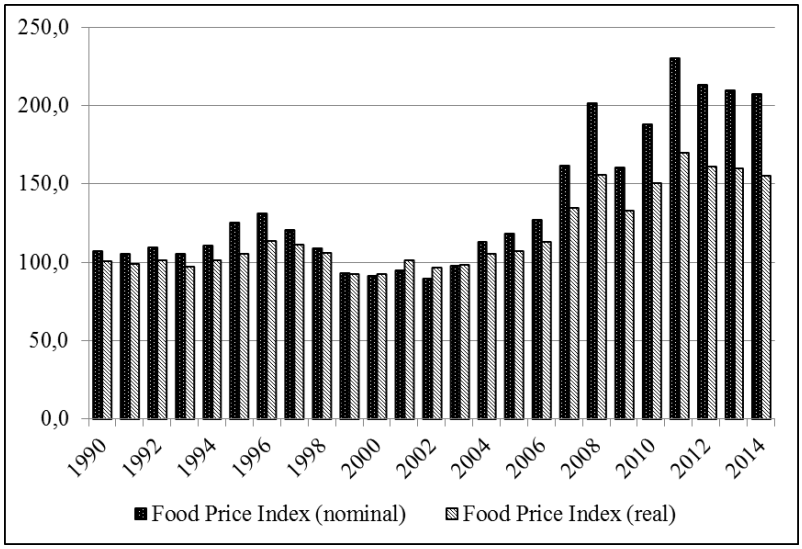

Figure 1. Global food price indices, measured by FAO

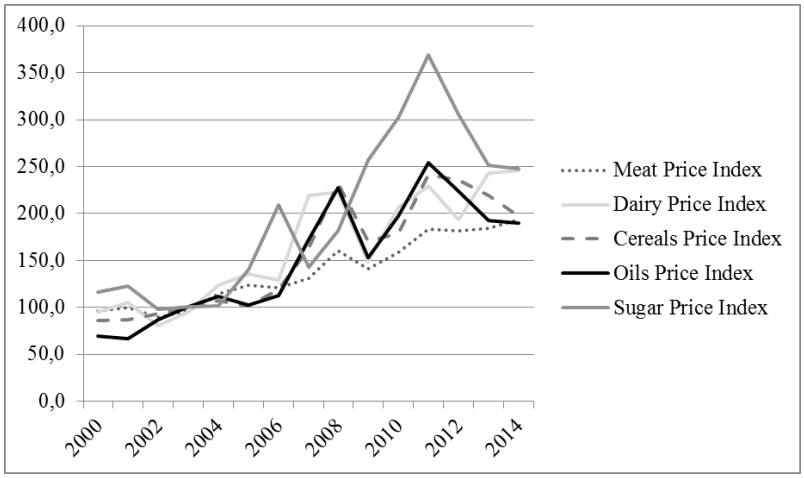

Figure 2. Indices of food prices, measured by FAO

Consequently, the main causing factors of global food price increase are the following:

- more widely biofuel production;
- world’s population growth;
- change in consumption pattern in emerging countries;
- a high degree of migration between sectors in developing Asian countries;
- devaluation of US dollar;
- climate change;
- unfavourable weather condition in the past few years;
- speculation, as well as various national policies;
- large increase in costs of agricultural production.

Global and regional responses to price increase offered support of food aid and social protection. Reactions were different at level of countries. For example, China and India increased investments in agriculture and social protection by 27 and by 24 percent in 2008 (Braun, 2008).

Short-term impact of the price increase is divergent by country- and product groups considerably. High world market prices affect different ways in developing countries, depending on product that price increased in the country, structure of the economy, distribution among poorer households, local conditions of production, price subsidies and other policies (Ivanic – Martin, 2008; Hertel and Winters, 2006; Aksoy and Izik-Dikmelik, 2008).

Biggest losers of global food prices increase are low-income countries and those consumers (e.g. Middle East, North Africa, CIS, South America). They spent on food a large proportion (50%) of income. They buy long-term foods such as corn, wheat, rice, soybeans, etc. These countries are in need of food imports, therefore they are vulnerable and often forced to purchase the stocks at a high price. These countries participate in a smaller amount of food aid benefits. There are no adequate strategies to overcome the problems (Trostle, 2008). According to Brinkman et al. (2009) these low-income, vulnerable groups include the urban poor, the rural landless, pastoralists and small farmers. In this research there was established that in developing countries people belonging to low social class spend 50-80 percent of their income on foods. The middle class is also at risk in most developing countries, which spend 35-65 percent of their daily expenditure on foods. (In these countries, more than 80 percent of the populations live on incomes less than 10 dollars per day.) So population in developing countries is the most vulnerable by the high global food prices.

The high degree of food price increase is a problem on the world's food aid too. It is difficult for UN World Food Programme in two ways: on the one hand as a result of higher prices fewer people can buy food, therefore the number of hungry people is increasing, on the other hand, within the programs less food may be purchased and donated to the deprived.

According to FAO, 37 countries had to cope with the food crisis. Because of shipping costs, market structures and national policies, global food price increase has affected in different ways in each country. The general consumer prices was increased by inflation of food prices all over the world, but especially in developing countries, where food consumption is the biggest part of total consumption. The least developed countries with high rates of weakening purchasing power of the

food security and livelihood risk. In the least developed countries food security and livelihood are risked by high prices and by weakening of purchasing power. In these countries 50-70 percent of income is spent on foods, but wages do not follow the price increase. This situation was aggravated by low real wages and rising unemployment because of the financial crisis. Overall, people can buy less food, their nutrition becomes one-sided and renounce other products and services that are necessary for maintenance and welfare (e.g. clean water, sanitation equipment, education, health). While funds for food aid and social protection are limited. Ultimately, risk of malnutrition and hunger is increasing (Braun, 2008). The FAO estimates that the number of undernourished people increased by 848 million to 963 million between 2003 and 2008, which was caused mainly by the food crisis (FAO, 2008). The World Bank reports that due to food price increase 44 million people became extremely poor and hungry in developing countries since June 2010 (The World Bank, 2011). Food insecurity may leads to conflicts, strikes and limited trade policy by governments. For example in many developing countries (Burkina Faso, Cameroon, Cote d'Ivoire, Egypt, Haiti, Indonesia, Senegal, Somalia, New Guinea, Mauritania, Mexico, Morocco, Uzbekistan, Yemen), riots broke out, in other developing countries (Malaysia, Indonesia, Pakistan, Peru) demonstrations were organized in 2008 (Trostle, 2008). These countries may face financial problems because of drastic price increases.

Most farmers do not profit by high world market prices because there is no surplus or yield, or has no storage capacity. Their only liquid assets is crop yield, it is even sold in the cereal crop harvest season (at a low price). However, they buy food all year round, even during a period of scarcity (at a higher price). More than 80 percent of farmers are net buyer, so high food prices can have a negative impact on them.

On World Economic Forum (in Davos) water-food-energy risk is one of the main items on the agenda, in addition to macroeconomic imbalances and widening of informal economy. According to the forum the most important threat of depletion of resources is the rapidly growing population and rising wealth. Water, food and energy needs are expected to increase by 30-50 percent for the next two decades. Meanwhile, the economic disparities will be growing, therefore short term solutions will be highlighted even more in mining, production and consumption. However, this long-term sustainability will be at stake. The lack may lead to social and political instability, geopolitical conflict and irreversible environmental damage.

Safety of food supply is menaced increasingly by current extreme price fluctuation on global agricultural markets. In interest of reduce vulnerability of countries it is essential to improve market functioning and right equipment of countries.

Price fluctuations are normal occurrence basically and are essential for function of competitive market. Essence of the price system is that if a commodity is rare, its price will increase, through consumption of the commodity and investment in the production decline. Today, however, the effectiveness of the price system is queried, as price changes turn into uncertain more and more, and that extreme fluctuations take longer. Although, in the course of history there were not extreme price fluctuations in agricultural products market such as in recent years.

There is an international agreement that global food system is increasingly vulnerable to extreme price changes. Domestic markets are also reached by shocks quickly, because markets are integrated into the world economy increasingly. In addition to price fluctuation defencelessness is increased by extreme weather conditions of new exporter countries, growing demand for agricultural products and effects of various macro-economic factors such as exchange rate fluctuations, changing interest rate systems, etc..

Extreme price fluctuations generate costs, because market actors find it difficult to plan in advance and to adapt to the changing market. Over a certain level of unpredictable change traditional solutions can not be adopted successfully. Farmers are faced with strong income volatility caused by price fluctuation. It will reduce their savings, and they delay their production decisions, and risks will be increased by actual production.

Previous policy responded price volatility proved to be unsuccessful (budget cuts, targeted consumer subsidies, safety nets, export restrictions, training of food reserves, etc.). Each country should create coherence and cooperation rather than individual solutions, in order to global supply and transparency of market mechanism will be realized (especially in the major commodity exchanges).

Furthermore the existing financial funds (e.g. the IMF Compensatory Financing Fund) should help to provide import financing or guarantees for reduce the barriers of credits and currencies for countries most affected by the previous food crises.

Furthermore, countries should hoard security foodstuffs. Hereby price fluctuation will not be eliminated, but its consequences will be reduced significantly. Long-term vulnerability of countries should be reduced by diversification of agricultural production. Hereby productivity will increase, competitiveness and sustainability will be realized (FAO, 2010).

Protective measures have been taken in some countries in 2007, in order to high world market prices not to spread over domestic consumer markets. (However, local prices were raised by some measures higher level than world market prices.) The aim of measures of the exporter countries was that the local production of food and raw materials not going out of the country, thus ensure a sufficient quantity of the domestic food supply, and prices do not rise. Such measures were: elimination of export subsidies, introduction of an export tax, quantitative export restrictions, introduction of export bans, reduction of import duties, customer support. These measures have changed the world market price conditions. Food supply reduced in the rest of the world, while global demand and prices also continued to increase. As a result an extraordinary price increase began in April 2008, which has been never experienced before (Trostle, 2008).

A key question is: how far high world market prices spread over the local markets? One of reasons is that welfare of poorer social classes and farmers is determined by domestic prices. Another reason is that the price-transmission rate affect both producers and consumers steps to price-adjustment steps (decreasing consumption and increasing production). These can only be achieved when world market prices appear in some domestic markets (Imai et al., 2008).

Degree of price-transmission depends on following three main variables:

- currency exchange rate (due to conversion of prices expressed in US dollars in local currency)
- tariff barriers (which may restrict or promote the cross-border flow of goods)
- time horizon of adjustments (usually lags in marketing and policy can delay the transmission of world prices at national level, but if these lags persist for a long time, a significant difference occurs between the two prices (Timmer, 2008).

New challenges and opportunities for agriculture

Increase of agricultural production would be a solution of food price increases, the security of supply and the growing problems of poverty. Both in developing and in developed countries some producers tried to take advantage of earlier price increase. They invested in expanding production. However, if prices fell, they could not pay their debts. As a result of the financial crisis of the year 2008 banks have limited the opportunities for borrowing. As a result of the expansion of the production grain production increased by 11 percent in developed countries, while it increased only by 0.9 percent in developed countries. If Brazil, China and India will not be taken into account, the latter countries with an overall production declined in by 1.6 percent (FAO, 2008).

A further challenge is climate change, which involves risk of more volatile weather and temperature, drought as well as floods. Because of rising prices, general pollution and climate change (e.g. more areas have to been irrigated because of drought), competition for land, water and other natural resources will be intensified. Struggle for resources and a general dissatisfaction on regional and global markets (due to prices) called attention again to foreign direct investment (FDI) opportunities in agriculture.

To such relationships is applied a conduct codex, in which are laid down participate obligation of local farmers, respect for private property, the right compensation, sustainable management of natural resources and policy rules for trade.

Overall, to future challenges may be responded by the policy and decisions of agriculture investment. It also includes possibilities. It is important to play a significant role by several international financial institutions (e.g. The World Bank). These should gather private capital and lend it out in agricultural sector. In the future, it is essential that these institutions focus on agricultural purposes (Braun, 2008).

As well as another three complementary policy initiatives would be required:

- to promote the growth of agricultural production
- to eliminate the vagaries of market
- to promote social protection and let children get nutrients (pension scheme, unemployment programs, nutritional intake early in life, etc.).

In research and development as well as investment in rural infrastructure, Agricultural production can be increased by investment in research and development and in rural infrastructure. United States plays a key role in boosting of agriculture by investment in research

and by yield growth reforms. The 15th international agricultural research centre of CGIAR (Consultative Group on International Agricultural Research) is at the cutting edge of increase of agricultural productivity in developing countries. Its aim is to achieve sustainable food security and to reduce poverty by agriculture, forestry, fisheries, policy and environment researches and related functions in developing countries (Rosegrant, 2008).

Special national strategies must be country-specific and take into account a country's priorities should fall within national competence. However, now, unreliable and incomplete informations are available from effects of food security, and other policy measures taken in each country are unreliable and incomplete information is available (Benson et al., 2008).

Research methodology

In this research a problem and objective tree analysis was used. Problem tree analysis method shows negative aspects of an existing situation. There should be a negative situation, because the "why?" question applies to it. This should be formulated possible the most general. This will be the starting point that is the central problem. This level is above the concrete situation, often a combination of social, economic and environmental problems. To this belong causes and effects. The specific problems are located below the central problem, and central problem is resulted by these. There is a causal relationship between these problems. Problem tree represents this connection in a hierarchical tree format, and at the top of it are the main problems (consequences). At the bottom of the hierarchy starting problems are found, many of these are jointly contribute to the appearance of a high-level problem (DFID, 2011).

If problems are not related to each other causality, these can be represented simultaneously. Furthermore, there will be such problems that simultaneously cause several higher-level problem, namely, these have more than one connection. When a problem tree is being drawn up, minor problems are assigned below higher-level problems accordance with its most important link.

Overall, a problem tree can help to identify the causes and effects of a problem, to explore interactions between the reasons and can establish solving strategies.

During outline an objective tree problems have to be translated into goals. The objective tree is a mirror image of the problem tree that is to say, each problem is converted to targets. On three levels structured targets (general, specific, operative) make up the marrow of logical framework of the strategy. There are specific objectives on lower levels, overall goals on middle levels, and strategic goal is found on the top of objective tree. The cause and effect relationship is followed by means and targets relationship. Targets related to similar areas are grouped and listed under common name.

Overall, objective tree describes the future situation and determines actions required to achieve this future situation.

If problems were identified in the problem tree correctly, and also problem tree was built up rightly it will be the objective tree well-structured and give a good solution.

As shown by the title and the main topic suggestion in this study the substantial, world-wide and long lasting food price increase was determined as a central problem. Basic hypothesis is that the general problem related to price increase is a considerable growth of demand for food and decrease of supply. However, in addition to these factors general problem also include increased cost of production of agricultural products, a variety of stock market speculation in the markets of agricultural products, weakening of the US dollar and wrong government policies that was given to price increases.

In this study was developed a problem tree with different assumption, in that were determined several factors, which were contributed to central (global food price increase) and general problems. These problems were separated under cause and consequences and were structured and ordered hierarchical. Thereby was determined a problem tree, in that were outlined the possible direct and indirect causes of the food price increases and some of those consequences. Then the negative elements shown in the problem tree were translated into targets and proposals for solution.

Results and findings

The problem tree, which explores relations of food price increases, is shown in figure 3.

General causing factors of fast increase of food prices are the massive increase for foods in the world, the agricultural products and the reduction of decreases of food supply, the increases of food costs, and the spread of stock market speculation commerce of agricultural products.

Need of foods, and increasing demand is inducated by three main processes. One of causes of increases of demand in recent years is the dynamic growing of whole population. The world’s population growth rate declined from the 1970’s, but world's population still grows 75 million (1.1 percent) persons per year, mainly in developing countries. The other two processes are interrelated. On the one hand there was an intensive income level rise in developing emerging income level decrease, that lasts in present. On the other hand primarily in these countries, but also in other developed regions a massive process of urbanization was begun. The urban residents in the world are growing. The traditional agricultural sector, the agricultural production is left by more and more, the people were moved to cities, and they signed on in industrial sector. Direct and indirect causes of migration between downtown and sectors are varied, but the main direct cause of migration is the huge differences between urban and rural incomes. Large geographical distance is offset by the higher income. In addition, migration may also be contributed by targets, such as increasing the level of education, to avoid rural social and cultural "captivity", and following family members. Migration between urban and rural areas in developing countries is growing at an increasing rate even though the urban labor surplus and the unemployment rate are rising. Migration from rural areas is a prerequisite for urbanization as well as economic growth, and it provides resources for development of rural areas in developing countries, but it also has got a numerous negative effects. It is possible that a huge flow mass can not be absorbed in the cities, so

that the migrants do not reach an adequate level of public goods. As a consequence, there will be an increase in crime and develop the slums. Urbanization causes imbalances inequality between population distribution of, as well as inequality between urban rural areas (Lall et al., 2006).

The other hand the level of education of developing countries was improved. More and more got a better qualification and got a work in the sector that needs a higher qualification.

Internal migration between sectors, and thereby the urbanization cause problems, because more and more significant manpower leave agriculture. The number of people is reduced, who are producing primary commodity of food for themselves and the society in industry. Thus agricultural production is reduced too. Meanwhile the number of people is growing who needs food. The internal migration is also linked to income level rise, because by migration of agricultural sector an extreme industrialization process is started, the industrial production is growing. A higher income level can be reached, than by the agricultural production. Because of the recent increase in income level consumption habits of society have changed in some developing countries. Rice and wheat may come to the forefront instead of sorghum and millet. Consumption of corn, wheat, meat and dairy products have increased significantly in these countries. More animal products, fruits, vegetables and processed foods are consumed.

Global increasing demand of foods is although influenced by population growth, that doesn’t mean problem itself. It comes with the fact, that in the emerging countries the income level is rising. Growth of global demand for foods exceeds growth of population. That means, that the population in developed and emerging countries needs a higher quantity of foods, than earlier. So foods are bought much higher quantity than necessary for subsistence food. These foods are squandered, when it isn’t eaten. On the other hand – due to the increasing scarcity of food goods – in many countries around the world people are starving, because they don’t get enough quantity of food.

Other problem is decrease of food supply that strengthens the price raising effect of increasing demand. Decrease of supply is attributable of five main causes, the link between these is less close, than between the elements of demand. Although between these triggering facts there are overlaps. The first triggering fact is the reduced crop yield of agricultural products. One of causes is the more extreme weather in last years (droughts, rainy summers, etc.), because as a result of this crop yield is reduced significantly.

Other cause that can be also linked to extreme weather is that the soil water started to lessen. That comes with the drying up of soil, and eventually with growing of irrigations costs. There’s a fact, that leads to reducing of yield crop, and that’s also the general problem of global food supply: low level of sources are invested in the agricultural research and development, and in using modern technology. The infrastructure on countryside is underfunded too.

If there won’t be an investment in research and developing, there can’t be ennobled plant species with high yield crop. In default of new technologies and developed infrastructure effectiveness of production reduces largely. An other problem is the above mentioned internal migration between sectors in developing countries. Therefore number of manpower in agriculture reduces largely. The fourth difficulty is the low level of food reserves.

Last but not least it should be mentioned the decreasing area of food production agriculture-perhaps the most disputed theme in the world. In last years – the much discussed – climate change caused environment changes on number parts of world (desertification etc.), that doesn’t fit to living conditions of plants there. An another cause of reduced agricultural area of food production is, that in recent times biofuel producing is emerged in developed and emerging countries, so on growing areas plants are grown for bioethanol and biodiesel production (oil-plants, maize, sugar cane, etc.). A triggering cause of biofuel productions popularity is, that in recent times the price of petroleum was risen significantly, so it can be a governmental purpose to replace these with biofuels.

Food prices of the world are rising due to changes contrary of demand and supply, and rising of producing costs (material-, energy-, delivering costs). Observing the material costs, it can be determined, that agricultural area - consistenced with mentioned above - is decreasing. Seed and feed plants are also decreased all over the world, so overall by plant growing and animal breeding factory costs of seed and feed is increasing significantly. In recent times fertilizer and pesticide costs are increasing too. Between costs of energy the costs mechanical works are growing which casuses are the above mentioned rising costs of petroleum. This contributes to high costs of transport.

Another problems are various speculations of stock on the market of agricultural products. By wrong governmental policies in different countries the prices of foods were more exacerbated. Export prohibitions and import limitations are introduced by some countries, by those the foods in world trade were fallen back, so their supply was decreased more.

In the above mentioned problem tree the structured negatives were converted to solution suggestions. Prepared objective tree can be seen on figure 4.

By compilation of problem tree some causes and also consequences are emerged, those were causing factors of central problem, so they can’t be ignored, but can’t be turned into goals. By these factors conversation can be limited, because facts can’t be influenced by people (eg.: climate change, extreme weather, decreasing of petroleum supplies), or they are hardly influenced (eg.: speculation of stock),

Increasing of food demand can’t be turned back totally, because two of its inducing facts (population growth, rising income level of emerging countries) can’t be stopped, thus final goal must be the minimalization of increasing of demand. This could be realized, if in each country migration of sectors could be minimalized. So the population growth of cities would be slowed down. If wages would be raised in agriculture, and people would be encourages to stay in countryside, manpower wouldn’t migrate from agricultural sector to industrial sector.

So supply of food is concerned too, because manpower in agriculture can produce more primary commodity of foods, than it would be flown to industry. Higher productivity can be reached by increasing the sources in agricultural researching and developing, more developed technologies and in rural infrastructure. Furthermore even yield crop can be increased with ennobled plants of higher yields. This could be reached possibly by central (national or even regional) support of costs of irrigation. However the loss of yield crop by extreme weather can’t be replaced.

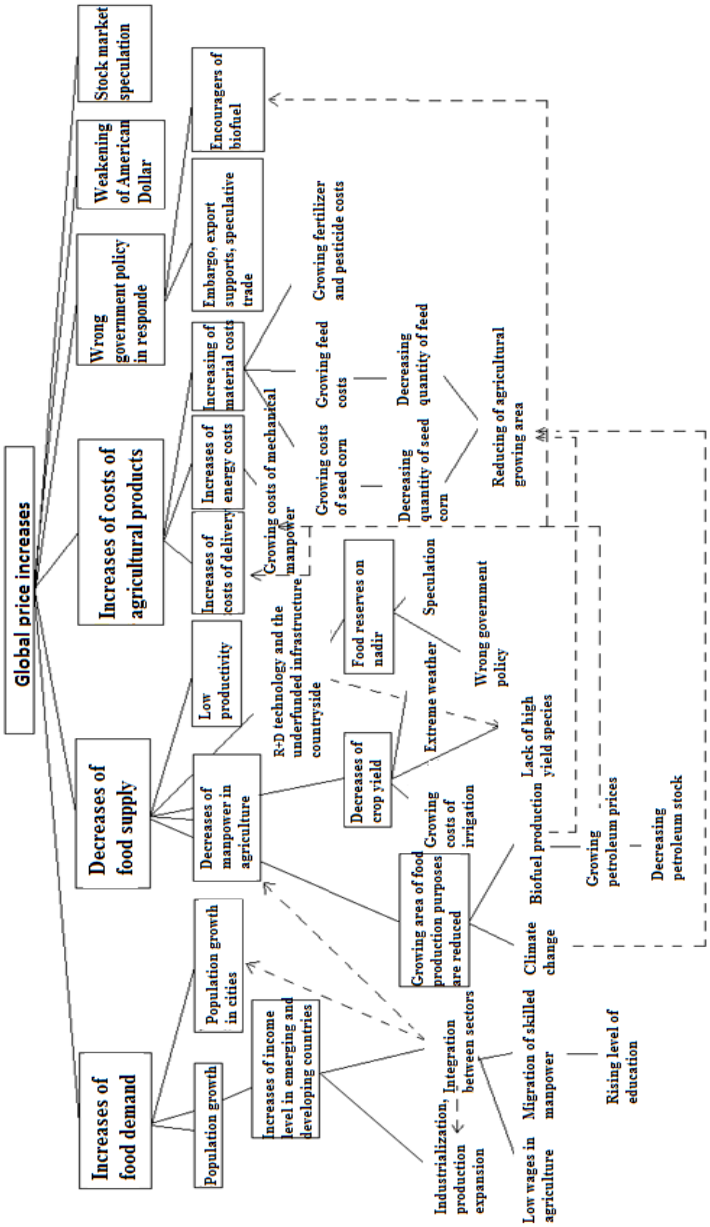

Figure 3. Problem tree of the global food price increase

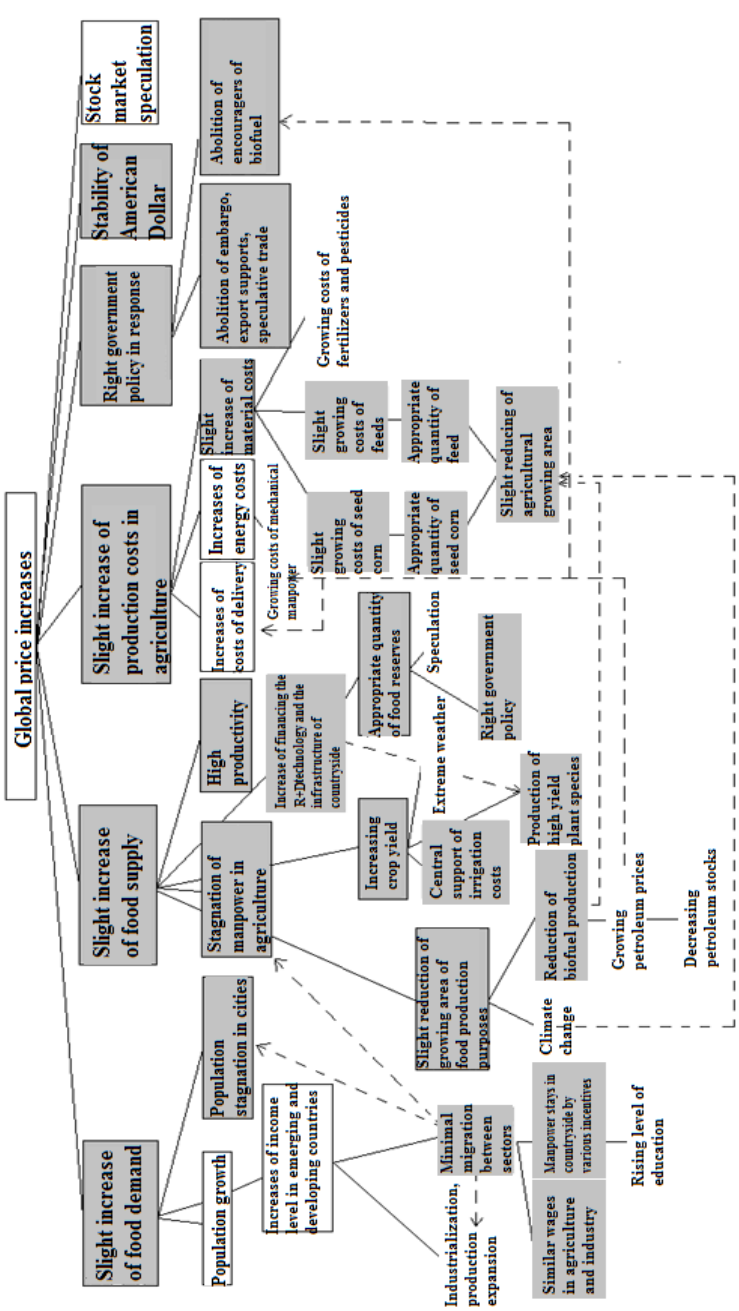

Figure 4. Objective tree of global food price increase

Various speculation decisions can be influenced hardly too, but with right governmental policy enough quantity of food reserves can be made. Growing area of food plants will be reduced in future, so primary goal is to minimalize this reduction.

Not all factors – that affects supply - can be influenced (extreme weather, reducing of soil water, speculation), but all of general problems can be changed less or more. Thus instead of decreasing supply of food it can be a goal a slight increase of supply. It’s optimal, if the rate of increasing supply and demand is the same.

Next goal is to reduce the costs of agricultural production to reach a stagnation or slight increase of global food prices. However as increasing of petroleum prices, energy prices and transfer costs is inevitable, and the cost of various industrial materials (fertilizers, pesticides, etc.) can be influenced limited, so primarily by reducing the costs of seed and feed should be realized.

Instead of a general problem, wrong policy as respond to increased prices it can be a solution, if these policies would fit to principles of efforts of increasing food price problem. Export inhibition and import supports should be withdraw. There wasn’t a massive effect of weaken American Dollar, but the goal is to maintain the stability of Dollar.

If the suggested solutions could be realized, global food prices would increase less, than in last months.

Conclusions

In June 2008, food prices peaked in real terms never experienced before in the previous twenty years. However, from this time on prices started to decrease slowly, and as a result of the economic crisis (due to the decline in demand) values were back before the price increase period. In the summer of 2010 because of bad weather, which was characterized for the whole year, crop quantity lagged behind considerably in many countries compared to the yields of the previous years. It was only to be expected that food price increase will be unavoidable. However, many people did not expect that it is becoming involved increasingly and will have exceeded the peak of the year 2008 in February 2011. So increase of global food price - that started in 2010 - began similarly as the increase in 2008, but it seems to be a longer process. Therefore, it would be appropriate to learning from the negative experience of previous years, to analyze causing factors and to divert variable adverse process with some means in positive direction. Causing factors were very similar in both of cases.

Through outline a problem tree can be improved that both demand and supply are influenced by many factors in global market of foods. The most important factors affected demand are: increase of population and urban population all over the world and increase of income level and internal migration in emerging countries. Supply is influenced by following factors: a decrease in yield of agricultural crops, low level of productivity in agricultural sector, as well as reduction in food crops production area because of unfavourable weather and increased production of biofuels.

As well as, of course, many other factors contributed to food price increase, which do not affect demand and supply directly. These factors are such as an increase in cost of production of agricultural products, typical futures market speculation in agricultural products, weakening of US dollar against other currencies. Most of general and specific factors, which affect food price increase, are related to each other causality, but there are separate factors too.

After all global food price increase took a considerable change because deliberate and chance occurrences took place together and at the same time in the world, and negative particular effects were strengthened, which had various effects on food price changes.

Food price increase hit the population of low-income, food-importer countries mostly, where number of hungry and undernourished people will continue to grow in the future. (Due to the food price increase began in 2010 number of hungry people has grown with 44 million people all over the world.) While high-income countries are not affected by price increase so strong. Because of higher food prices the poor do not receive enough food, it causes irreversible health, productivity and well-being consequences in the long run. The number of malnourished children is gradually increasing in developing countries. The social gap is increasing even more between the poor and the rich, as well as between poor and rich countries.

Suggestions

In this study there were mentioned some national political measures. In certain countries there were introduced several trade barriers in order to local protect against high world market prices (e.g. elimination of export subsidies, introduction of export taxes, quantitative export restrictions, export bans, etc..), and other intervention measures were implemented. Purpose of these measures to ensure the appropriate quantity and to keep up the local prices. However, these provisions have considerably changed the world market price conditions. As in the rest of the world food supply is reduced, while global demand and prices also continued to increase. Thus trade policy measures mean solution only short-term and in local level. Another solution is needed to solve the problem of long-term global food price increase.

According some people global solution and international cooperation is needed for the problem of global food price increase. However, the question arise within the framework of which organizations, associations, institutions should have discussions, hold together the participating states and co-ordinate the performance of the solutions. However, in connection with international solutions, it is questionable whether the proposed measures and steps taken so far are sufficient to set off negative process of reversing, and whether for solution of problem of price rise nations are able to implement an efficient institutional system based on international cooperation.

The solution of this problem was the liberalization of agriculture in England in the 19th century. Nowadays it was not a good solution, because there would be a significant decrease in agricultural production in EU and in the USA, the current developing countries would be industrialized, agricultural sector would not be able to transfer elsewhere. Overall, these countries

could produce even less food, which quantity is able to satisfy less demand, which is rising with population growth (Ianchovichina, 2011; Hoekman, 2011). This continues to increase the problem of global food prices.

Thus solution of the problem of food price increase should be sought in main causing factors such increase in demand and decrease in supply. On the demand side, population grow is an irreversible process, furthermore, industrialization and rising level of education are favourable and desirable processes, so these should not be changed. Migration and its main direct causing factor, the low agricultural wages may be changed. The excessive urbanization and migration from agricultural sector to industrial sector should be prevented. People should be kept in rural areas. Its solution is that, adequate mouth existence and living conditions should be given to agriculture workers. In addition they should receive a fair income. Agricultural and industrial wages should be equalized. Agricultural supports should be given also in developing countries. On the other side, price increase would stop or turn back when increasing needs of the world's population would be satisfied that is to say when the current relative low level of supply would be increased. This solution lies in production technology. Size of cultivated arable land can not be increased (thus land as a special means of production is limited), therefore, the only solution is to increase agricultural productivity.

Overall, to increase productivity, a huge amount of capital should be involved into agricultural researches and into development of rural infrastructure. This is currently only implemented in some countries in the form of foreign investment. In the future, it should be laid stress on this, in that should assume a role governments, the private sector, as well as the resource-poor but capital rich countries and several international financial institutions.

Nearly 37 million people are hungry or undernourished in Africa, which is 10 percent of the population. In these areas, structural changes are needed. In short-term social safety nets should be developed and reliable information from food market should be collected. It must also ensure for small producers the essential tools and production technologies (high quality seeds, fertilizers, feed, etc). However, it is needed a serious technological and financial investment in medium and long term. Furthermore it is needed improvement of food storage, distribution and sale infrastructure in developing countries. This improves the productivity of agriculture, and it will be able to cope with the food crisis.

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

HOW DO WE UNDERSTAND THE PRINCIPAL OF “MONEY FOLLOWS THE CLIENT” IN THE CONTEXT OF DEINSTITUTIONALIZATION OF CHILD CARE

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Abstract

Purpose – During the last decades all around the Central and Eastern Europe there are implemented child care reforms moving away from the notion of a “state-parent” and focusing on individual children’s needs and rights, working towards supporting families in their child upbringing duties. These reforms caused the change of principals of financing, moving from principal “money follows the provider” to principal “money follows the client”. At the beginning of 2014 in Lithuania there was approved a plan of deinstitutionalization of child care and disable people with a goal to change reliance on residential institutional care towards services aimed at keeping children within their families and communities. However there are still a lot of unanswered questions, especially planning budget for children: who is the client? what are the needs of the client? how and when do we recognize the client? what we are able to propose for the client? what is the goal of our actions? how much do we need to reach this goal? has anybody counted? who is responsible for reaching this goal?

Thus, the purpose of this paper is to analyze the concept of deinstitutionalization of child care in Lithuania comparing it with the child care reforms in other Eastern Europe countries, to provide some proposals on budgeting of child care which would contribute to proper implementation of this reform.

Design/methodology/approach – The main applied empirical method is documentary research conducted by examining primary sources, i.e. legal acts, strategic documents, official speeches, also analysis of professional publications, statistical data and comparative analysis.

Findings – (1) Despite the changes of social care services financing model – the transition from financing services which is based on provision of resources to refund the whole expenditures necessary for the provision of services according to the estimated costs, to the purchase of services when the cost of service is fixed to a particular client, we still rely on residential institutional care services looking for the best institution for a client rather than financing preventive services for children and their families. (2) In Lithuania there are a lot of excellent strategies and programs in the field of child rights protection and child welfare but the result – the number of abandoned and

institutionalized children is still the same. That shows that we lack a comprehensive and multifunctional strategy covering not only social care and protection but also education, health care, justice and finances. All spheres of governances should be matched with the best interest of the child. (3) The essence of “money follows the client” in the context of deinstitutionalization is not to help the client but to invest in client. The earlier we start investing in children the cheaper and more effective result we may reach.

Research limitations/implications – this research paper is the background in order to give insights on the deinstitutionalization of child care process. It was limited by the lack of official documentary sources and data, severe data comparability, domain specificity.

Practical implications – the paper provides the opportunity to assess the process of deinstitutionalization of child care and gives practical proposals for optimization and better development of it in Lithuania.

Originality/Value – The research paper is one of the first which presents the analysis of deinstitutionalization process in Lithuania from the perspective of budgeting planning. It does not compare the costs of residential and alternative child care (it is already approved by several international researches that residential institutional care is more expensive that alternative care), but it does compare the costs of preventive services and costs of child care which is already the consequence of the lack of suitable investment in appropriate time.

Keywords: deinstitutionalization, child care, social services, budget, investment.

Research type: research paper

Introduction

During the last decades all around the Central and Eastern Europe there are implemented child care reforms moving away from the notion of a “state-parent” and focusing on individual children’s needs and rights, working towards supporting families in their child upbringing duties. These reforms caused the change of principals of financing, moving from principal “money follows the provider” to principal “money follows the client”. At the beginning of 2014 in Lithuania there was approved a plan of deinstitutionalization of child care and disable people with a goal to change reliance on residential institutional care towards services aimed at keeping children within their families and communities. However there are still a lot of unanswered questions, especially planning budget for children: who is the client? what are the needs of the client? how and when do we recognize the client? what we are able to propose for the client? what is the goal of our actions? how much do we need to reach this goal? has anybody counted? who is responsible for reaching this goal?

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What is “deinstitutionalization”?

Residential institutions were central part of social policy in most of Central and Eastern Europe and the former Soviet Uninion. They served dual role of social protection and social regulation. The use of institutions to care for vulnerable children reflected the social philosophy: collective upbringing was more effective in raising the new Soviet citizen (Tobis , 2000). The movement to a market economy has not changed the reliance on residential institutions. Communities built up around these institutions, with the majority people living in those communities directly or indirectly economically dependent on them. Many earn their living by working in the institutions or supplying it with goods and services. For example, the mayor of Akmene region recently announced that regional policy does not mean a good infrastructure, but some state institutions in that region. As there were a lot of free buildings in Akmene region, municipality has decided to open children home, residential institution, in Agluonu village. At the moment this institution is the center of the village, not far away is a school where all these children are educated. So mayor, as the chief of municipality, is very happy that these (institutionalized) children saved the village (Siauliu naujienos, 2014).

The fact alone that hundreds of thousands of children have to live in residential institutions when other possibilities exist is in itself a violation of their rights. Residential care as a long-term environment for children may deprive them of emotional nourishment and the development of social skills besides being associated with increased risk both during care and following it. It may limit the children’s ability to bond and form a lasting relationship with others. Besides contributing to the delayed physical, mental and social development, it can directly cause anxiety and personal uncertainty, passivity, aggressiveness, and inclination to antisocial behavior (Gudbrandsson , 2004).

Deinstitutionalization is a concept often used in international literature to describe the development away from residential institutions. On an individual level, it means that persons leave an institutional life for participation in community life. It is approved that institutions despite their educational functions cannot make institutionalized persons more productive and only community-based services may empower people to support themselves. That causes a decrease of demand on economic social support what is one of the main goals of each government. On an organizational

level, deinstitutionalization is when institutionally based services are being dissolved and community-based forms of support are being developed as the alternatives. It is important for the government to make services available not only for special groups of society, some target groups as social risk families, poor families and etc., but services available for everybody. That is why it is important to mention deinstitutionalization on a cultural level, because that touches the values of society and acceptance of everybody as an equal citizen comparing to the others having a right to participate in community life and to choose when and what services to use. When a person gets the opportutnity to control his own life, he does not ask for special services (Ericsson , 2000).

Deinstitutionalization and transformation of children's services is a systematic, policy driven change from reliance on residential institutional care towards services aimed at keeping children within their families and communities. It is not just about closing institutions and reducing numbers of children in those institutions. First and foremost, it is a paradigm shift that moves away from the notion of a "state-parent", focuses on individual children's needs and rights, and works towards supporting families in their child upbringing duties (Jarosiewicz-Wargan, 2013). Understood this way, deinstitutionalization entails a comprehensive transformation of the child welfare and protection system, building broad family and parent support services to ensure that separation of a child from his/her family really is a last resort and, if separation is necessary, guaranteeing that quality alternative care can be provided in a family or a family-like environment.

It is relatively easy to close an institution but very much harder to replace it with a coordinated collection of community-based arrangements that offer the support and opportunity needed and wanted by children and their families. Many potential consumers of services do not see the service system as helpful as they see their needs.

When an institution is the only or main employer in a community then its closure threatens the local economy. National or regional governments often recognize the need to offer subsidies to promote investment in communities that have been devasted by, say, the closure of a factory, but how often is the same action taken following closure of a residential institution?

Consequently, every effort in society that aims to ensure the future of our children, needs to focus on this double edged question: how can we empower the family to fulfil it's basic role in the upbringing of children and simultaneously ensure an effective mechanism of intervention when the family fails to do so – in a manner that is more supportive than destructive to the best interest of the child.

Accordingly, deinstitutionalization means giving more power of choise and control to the client – family in general and the child. The basic principal in protecting children is working *with* families rather than working *on* families because only "families are really experts in their own families" (Gudbrandsson , 2004). The fact that person acquires more rights also means that he has the greater responsibility for his own life. Changing the mechanism of the interaction, service delivery structures also should be changed. Social services should reflect the needs of the person which he cannot meet individually (Dunajevas, 2012/6).

Deinstitutionalizaiton in Lithuania is not a new process in social care system. On 1994 in the concept of Social support approved by the Government it was stated that support in the

community has a priority to centralized support and priority is given to family care than to institutional care. On 2000 in the Social services directory, approved by the Minister of Social security and Labour, first was given the legal definition of deinstitutionalization saying that it is the progressive restructuring of residential social care institutions and implementation of new alternative to institutional care social services programmes in the community. On 2001 in the Programme of the Government for the period of 2001-2004 there was stated a priority of family care of abandoned children. In the Civil Code of Lithuania, in force from 2001, it is also stated that family is the first option of care for a child separated from his birth family.

On 2006 with the new Social services law it was expected that reform of childcare system will evolve faster. There was changed the model of funding of the residential institutions but as it is prescribed below this changement, introducing the purchase of social care services, was more on paper and did not work so clearly in the reality. On 2007 Government has approved The Strategy of child care system reorganization. The main goals of it was till 2012 to make possibilities for a child to live in his biological family providing needed social services for a family and secondly to ensure the family care for a child separated form his birth parents. Unfortunately, the results were not achieved (National audit office, 2014). One of the main problems is that in fact government does not analize the roots of the problems and concentrates on working with the consequences, children living in the social risk familes or institutionalized children. But why does the family becomes social risk family, what kind of problems they usually meet, what kind of services are expected by the family and what is proposed, how does it work and how do the children needs are met in these families are still not answered. Other very important question is the funding mechanism and the involvement not only of the Ministry of Social security and Labour but also of all the other Ministries and municipal agencies that play very important role in empowering families to upbring their children.

On 2012 there was again approved a new programme of Child welfare where there are several measures related to deisntitutionalziation (for example, the improvement of foster care system). But it also does not cover the main source of the problems. On 2013 there was approved the Plan of deinstitutionalization for children and disabled people for the period of 2014-2020. One of the main goals of it is to creat a system of preventive measures to help family having difficulties in upbring her children. The main number which may show that the measures of preventive and interventive services really work and families are better empowered to take care of their children is the decrease of the children separated from their brith families and taken to the childcare system. But in this Plan there is not such an evaluation criteria. Again we are working more with consequences than with the roots of the problem. This Plan mostly is related to the financing mechanism of EU. Many NGOs are worried that the big sum of money may float to the construction of small group homes that will reduce the number of children living in large institutions but does not solve the problem of residential care. One of the biggest shortages of this Plan is that it does not touch the reform of funding mechanism which is one the the essiantial measures willing to change childcare system and to creat cost effective services according to the needs of the chidren without enormously growing budget expenditures.

The current funding of childcare system

Most social care systems combine a number of financing approaches, but usually they are grouped into four types (Mansell, Knapp, Beadle-Brown and Beecham, 2007):

- Out-of-pocket payments by service users or families;
- Voluntary insurance;
- Tax-based support, funded from direct and/or indirect taxes and with services provided on the basis of need;
- Social insurance, funded through contributions linked to employment, with services provided on the basis of need.

The four main financing approaches differ in various ways, including the balance between private and public (societal) funding, the nature and extent of risk pooling, the nature and extent of government intervention, and the contribution (if any) to redistributive policies.

In Lithuania child care facilities are financed through tax-based support, usually mixing central state budgeting with municipal budgeting. Till 2006 the dominant principal to allocate the resources was known as principal of „money follows service provider", when responsible state agency was paying already existing provider, residential child care institution, in proportion to the number of „beds", „buildings" or „staff of defined categories". The main providers were state or municipal agencies. Nongovernmental or private agencies were financed only through various different social services programs. On 2006 with the new Social services law there were implemented first intentions of market principals in social care system, determing the purchase of social care services. The background of this service purchase contract should be the needs of potential services recipients, which are evaluated by the municipality. This system had to create the conditions, first of all, for competition of different providers, secondly, for improvement of services provided and thirdly, for new initiatives in social care system, alternative models of social care, which are more cost efective and better for the recipients. Unfortunately, despite the changed mechanism of budgeting, the essence remains the same – as the dominant child care providers are state and municipal agencies the „purchaser", state or municipality, is interested to finance first of all its own agencies and providers than to buy needed services from the others (Žalimienė L., Lazutka R., 2009/2).

Analyzing data provided above first of all it should be mentioned that the biggest change in residential child care system was on 2010 when most of the state children home were put under the responsibility of municipalities but total number of institutions even grew up, because on 2009 there were 64 state and municipal child care institutions and on 2010 there were 67 of them. The number of NGO residential institutions is amost the same and the number of family type care grew up only 17 %. That shows that the main child care provider still remains state or municipal institution and financing is build not on the needs of the child but on the existing possibilities to get some of these needs met. For example, in the website of the municipality of Šilutė (www.silute.lt) it is stated that municipality organizes social care services for children purchasing services from state

and municipal institutions. Municipal institutions are financed directly through grant mechanisms as it is stated in the Government order on the method of social service funding and the calculation of funds. Municipality as the owner of the institution should maintain the staff and the building. All these expenses together with the expenses for everyday needs are calculated and divided per child living in institution. In such a way municipality gets the price of child care services and simulate the purchase of it. As the budgeting of the municipal institution does not depend on the number of children and the services provided, it is stable and planned for the year, municipalities are not interested to search for better service provider, maybe more appropriate for individual client, because that causes additional municipal budget expenses.

Table 1. The number of residential child care institutions and the number of children under the residentail care

	year	2006	2007	2008	2009	2010	2011	2012
Orphanages	number of institutions	5	5	5	5	5	5	5
	number of children	416	391	372	336	339	362	327
Children home for disable children	number of institutions	4	4	4	4	4	5	4
	number of children	733	724	711	701	713	709	677
State children home	number of institutions	33	33	33	32	7	7	7
	number of children	2772	2643	2554	2267	464	441	407
Municipal children home	number of institutions	21	23	23	32	60	58	57
	number of children	942	1023	993	1176	2860	2698	2600
NGO children home	number of institutions	14	15	15	20	17	18	18
	number of children	404	445	453	543	486	555	566
Total	number of institutions	77	80	80	93	93	93	91
	number of children	5267	5226	5083	5023	4862	4765	4577
Social family (family based care)	number of units	36	35	37	37	39	47	48
	number of children	277	258	276	279	302	373	408

Source: EU Network of Independent Experts on Social Inclusion (2014, p. 30)

According to the report of National audit Office of Lithuania (National audit office, 2014) each child under the foster, social family or residential care gets the same amount of money per month from the state budget which has not been changed from 1999 and is equal to 520 Lt (about 150 EUR). Social family (family based care unit) gets supplementary 520 Lt for each child per month from the state budget and additional funding from municipal budget that depends on the number of children fostered. State residential institutions are maintained from the state budget and the average monthly sum spent per child in this type institutions is 3477 Lt. All other child care services providers – municipal and NGO children home additional financing get from municipal budgets. On 2012 the average price of these services in municipal residential institution was 2265 Lt per child and in NGO residential institution – 2413 Lt. As it is mentioned above real purchasing of child care

services under the rules of public procurement is only in the case of NGO, private children home or children home of the other municipality.

In the Government order on the method of social service funding and the calculation of funds there are given several criteria of social care price, stating from what it depends. For example, the price consists of two parts. The stable one depends on staff wages, building utility costs, other administrative costs and the variable part depends more on social care recipients, because it consists of the expenses for nutrition, clothing, transportation and other needs of social care recipients (education, nursing and etc.) It is also stated that municipality determines the maximum size of the social care funding costs for its local population. So it is not clear if this variable part of social care price maybe different for different social care recipients in the same institution or it differs only for the different institutions and what if the recipient needs more services than are included under the maximum size of funding costs of particular municipality. The initiatives of providers to deliver more or less of a particular service and the needs of the client usually are orientated towards the possibilities of the provider but not in contrary. For example, staff wages, building utility and other administrative costs are calculated separately from what the client needs but for some of them there should be more specialized staff, specific living conditions which are not needed by others. At the moment there are two options – to finance additional services for all the social care recipients in one particular institution (because the costs of staff are stable and do not differ according to the client‘s needs) or to limit posibilities to get needed specific services.

According to the report of National audit Office of Lithuania (National audit office, 2014) children needs are not adequately met in residential institutions, they do not feel safe and they are not properly prepared for independent life. One of the main reasons is the lack of individual evaluation of children needs and the efforts to find the most suitable ways to meet them.

What does child real needs?

Children need care and protection for many years. But giving them food, clothes and shelter is not enough to ensure their normal development. Children need individual, loving care and attention so that they can grow to become adults who are able to form stable and secure relationships with others. Each child needs a supporting, caring environment, including his or her immediate and extended family, friends and neighbors, kindergarten or school, other community groups and structures and a wider world. Dr. Urie Bronfenbrenner, a child development theorist, developed the ecological model to explain how family, community and cultural factors influence child's development (Jarosiewicz-Wargan, 2013).

When and where does the state should intervene? That is the question related not only to the public interest to ensure the wellbeing and safety of the child but also to the family autonomy and the respect of her private life. Under the international and national laws first of all parents are responsible for the upbringing of their child. But family „should be afforded the necessary protection and assistance so that it can fully assume its responsibilities with the community“ (UN

Child rights Convention). Each government should make suitable conditions for families to get needed services. As it is seen from the Bronfenbrenner‘s ecological model „suitable conditions“ is not only the question of social protection policy. It covers employment, health care, education, justice, also environment, infrastructure and all other factors that make direct or indirect but not less important influence on wellbeing of the child. Looking from the money perspective it is clear that „suitable conditions“ are funded through different budgets. First of all centralized or decentralized, municipal, budgets, secondly, through the budgets of different responsible ministries and their programs. As the aim of all governmental and municipal activities is the same – the welfare of the people, it is obvious that there may be many similar programs with the same recipients and services provided but funded through the different budgets.

Source: Jarosiewicz-Wargan (2013, p. 11)

Figure 1. *Child ecomodel*

For example, day care center for children may be municipal or private, for pre-school age and school age children, for children from social risk families and all the others. The aim of these services is the same – to provide appropriate care of the child, to educate, socialize him and to make conditions for his parents to participate in the labour market, to get some needed incomes and to pay taxes, used for all the state or municipal programs. Take a look at the program of Children day care centres which is partly funded from the state budget (~68 %), municipal budget (~18 %) and other resources (Department of Supervision of Social Services under the Minsitry of Social security and Labour, 2013). The recipients of these services are social risk families and poor

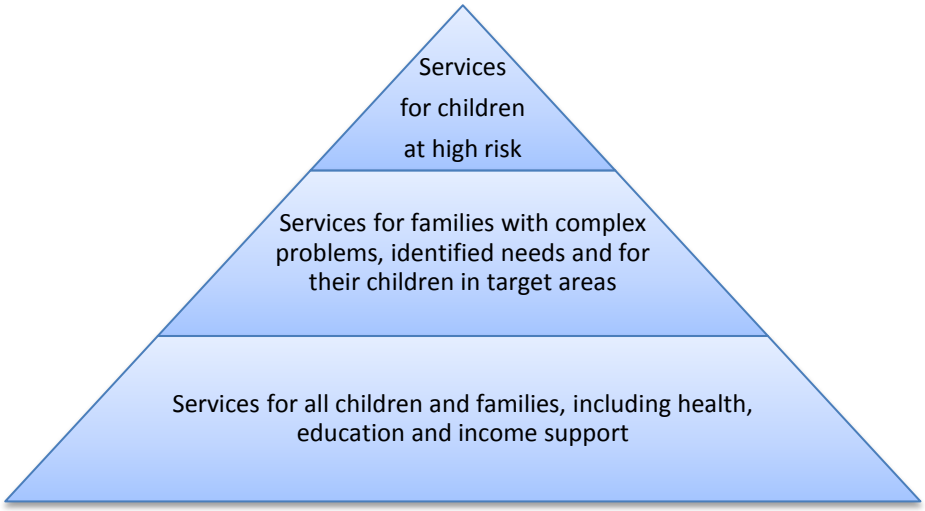
families, who are getting social benefits (The order of the Minister of Social security and Labout of 27 December 2012 No A1-585). But according to the report of this program, the real recipients of these services are children from social risk families and poor families. Adults, parents, usually get only common services as information and consulting. In general per year there are spent more than 12 mln. Lt for this program (7,879 mln. Lt from state budget, 2,208 mln. Lt from municipal budgets and the rest is comming from private sources). Funding is based on grants mechanism, financing service providers and report of this program is based on the evaluation of the provider‘s situation, how many resources has got one children day care centre, provider, but not on how much does the service provided for one recipient cost. For example, on 2013 there were 6274 children who are indicated as the clients of financed children day care centres. As it was mentioned above, from all the funds there were spent about 12,034 mln. Lt for this program. Dividing per child and per month we get that children day care centre service for one child per month costs aproximately 160 Lt. According to all the general everyday expenses the sum is not big, even small. Of cause the services received are different, usually they cover nurtition and after school activities. Specific services, as psychological help, is provided only in several centres and not for all the clients. Than means that children day care centres usually provide general services which are needed not only by social risk or poor families but also by all other families and their children. Especially this problem is important in rural areas, where there are not a lot of leusure activities for children. If there is created an infrastructure of children day care centres, the staff employed, there is good practice and job experience, why these services cannot be provided for others? For example, for after lessons group at school parents usually pay about 150 Lt per month for one child and it does not cover nurtition and additional activities. It is almost the same amount of money as for children day care centre activity. In such a way families who does not fit to the target group – social risk or poor family – could buy services of children day care centre and the state together with the municipality may cover the expenses of the target group. As a result there would be more services provided for chidlren and families in particular area, children from target group would be better integrated (at the moment they are discriminated, because children from other families cannot participate in the actitivites of children day care centre) and the service provider would be interested to promote, improve its services, and make it more cost effective.

Another example is the program of complex preventive services for families in crisis. On 2013 the budget spent is 53 % from state budget (~ 250 000 Lt), 23 % municipal budget (~ 110 000 Lt) and 23 % other resources (~ 110 000 Lt) (Department of Supervision of Social Services under the Minsitry of Social security and Labour, 2013). The services are financed through the grant mechanism, funding the service providers. The services provided are various, for example, information, consulting and the psychological help or assistance of social worker. The main recipients are social risk families and their children. The number of service recipients under this program on 2013 was 2036. Dividing all the budget for one recipient we get that one complex service cost 230,8 Lt for one client. But it is not taken into the account that usually these services are provided periodically, the recipients are changing and the services provided differ. However this program as the program described above covers the same target group, only proposes more

specialised services. Also it should be mentioned that psychological help for children and their parents should be also provided at school, psychological pedagogical centers. These services are financed from other funds, related to education programs.

In conclusion, we may find a lot of such different examples where one service provider should act under different programs providing almost the same services for the same target group. Then the simple question arises – why do we need such difficult, complicated and expensive to administer funding system? And do we really purchase social service if there is not prescribed the service and there is not calculated its fee?

The pyramid of services used for child welfare and family support, making suitable conditions for child upbringing, shows where should be put the biggest resources.



Source: Jarosiewicz-Wargan (2013, p. 13)

Figure2. *Service reciepients pyramid*

In general the primary, universal support services are financed through user charges (for example, specialised training), social insurance (for example, health care services) or tax-based support (for example, education). According to the Eurobarometer data, lithuanians are the least satisfied with the availability and quality of services comparing to the average EU citizen. Action plan of social inclusion for the period 2014-2020 states that there are not enough services for the child and family. It is the lack of day centers services for rural and disadvantaged children living in families, positive parenting skills strengthening services and other social services for families. Social services are unevenly developed in different municipalities. Denied support for families and their children creates greater problems – children are institutionalized, poverty is passed on from generation to generation, child care and social service costs are increasing (The order of the Minister of Social security and Labour of 22 October 2013 No A1-588). It sounds perfect and let us

think that government understands the real problems and that expenditures are growing going up to the pyramid. However how much resources do we get for the primary services? Or we may ask in different way – what is supply of primary services? According to the principles of market economy, supply is caused by growing demand. If there is no demand for spesific services, there is no supply of them. But does it work in social services system? And who should really formulate the demand? For example, talking about children day care centers all we know that exists a big lack of municipal kindergartens, so in the biggest towns of Lithuania there was a demand of such services and private providers appeared. However the cost of these services is approximately 5 times bigger than in municipal kindergarten for one child per month and not all the parents are capable to pay. In such a way we should remember the main goal of these services – to provide appropriate care of the child, to educate, socialize him and to make conditions for his parents to participate in the labour market – which is more related to public than private, family, interest, so the demand also should be formulated by public authorities. The empirical data shows that it works and gives noticable results.

For example, Education Development Center in conjunction with the Education and Information Technology Centre and four municipalities (Anyksciai, Klaipeda region, Panevezys, Panevezys region) in 2011-2013 implemented the EU financed project "The creation and testing of the optional children's education funding model“. Funding model based on the principle "money following the child" enabled municipalities to administer unanimously informal education of children, manage children's choice of activities and allocate funding according to the needs of the children. This funding model improved the informal education funding availability and geographical coverage and facilitated the activities of informal education sector to the greatest number of children (http://pvu.weebly.com/modelis.html). It shows that from one side demand of children to be involved in the leisure, after school activities always existed but there were no posibilities for them to take part in, from the other side, implementing principle „money following the child“ encouraged providers which already existed to atract more children or new initiatives to be created. In such a way greater supply caused growing demand. It is stated that more children are involved in after school activities less problems they meet in the future, so the extention of demand of these activities – the goal of this project – was achieved.

The meaning of the principal “money follows the client”

The principal „money follows the client“ is defined as a system of flexible financing for long-term services and supports that enables available funds to move with the individual to the most appropriate and prefered setting as the individual‘s needs and preferences change (Wayne L. Anderson, Joshua M. Wiener, Janet O'Keeffe, 2006). This principal was introduced developing the deinstitutionalization of disabled people and it is suggested as one of the most suitable budgeting principals in child care system reform (FISCO, 2009). Planning budget for children in the context of deinstitutionalization should be answered several important questions:

1) *Who is the client?* It is clear that in general the client is a child. But how and when do we recognize the client? At the moment according to the prepared plans of deinstitutionalization it seems that the client is the one who has already reached the top of the service pyramid, the child who is already separated from his family. According to the statistical data the number of children deprived of parental care per year does not change a lot; that means that the root of the problem still remains and the plans orientated towards institutionalized children will not solve it. The goal of the government is to prevent child climbing up to the service pyramid. This can be achieved by adequate, appropriate and accecible primary and secondary services such as income support, inclusive education and community based rehabilitation.

Returning to the budgeting issues, it should be planned for two target groups: first of all, for all the children, then for children in difficulties and social risk families, and secondly, for institutionalized children.

It is really hard to help family in upbringing her children when parents have already lost their motivation to be quite good parents. At the moment child rights protection system works as the controlling institution – family should be noticed as having problems and only then she may receive appropriate services. But that motivates differently when you are sent to some complex service center and when you come to it personally because you have heard that specialist may suggest you in child upringing duties. Services provided to the families should not be understood as punichment for bad commitment of parental duties but as an opportunity to learn, to participate, to share own opinion, to be recognized and acknowledged. Start working with a family earlier may help to save some money. And even if no litas or euro will be saved but the outcome and the result achieved will be more valuable for the same money. It is already approved by several studies that higher costs are related to higher level of needs (Mansell, Knapp, Beadle-Brown and Beecham, 2007). It is obvious that it is easier and cheaper to feed hungry animal when he has not eaten for one day but when he is starving for several days his needs become higher. So the goal of the government is to meet the needs at the beginning in order to prevent hard consequences not only to concrete individuals but to society too.

Institutionalized children are another target group in planning budget. According to the statistical data, half of the children, deprived of parental care, are put under the foster care of the family, usually it is an extended family. And half of them are entering residential institutions. For residential child care on 2012 there were spent 73,2 mln. Lt (65 %) of state budget resources and 34 mln. (30 %) of municipal budget resources. 5 % of residential institutions incomes come from the charity funds and other sources. The cost of residential care of the child is 2 times higher than social family care and even 4 times higher than foster care in a family. These numbers approves the conclusions already made by different other researches comparing costs of residential childcare facilities to family and community-based alternatives that residential care is cost ineffective. How ever it is important to ensure that discussions and decisions changing the balance of children care are not solely based on costs but on the interconnections between costs, needs and outcomes. The main goal of these changes should never be to close down residential childcare institutions or to reduce numbers of childen in those institutions. Instead, the goal –the country‘s long-term vision of

what situation of its children should be like – must be rooted in children‘s rights and the quality of their life. Before planning future of any child residing in the to-be-closed institution, it is essential to assess each child‘s individual strengths and needs so that proposed future community and family based services are tailored to those needs and abilities. Identifying specific individuals ready to transition to the community at reasonable cost is one of the biggest challenges. Targeting strategies are difficult to develop because each individual is unique and will have their own transition needs.

2) *What are the needs of the client?* It was already overlooked what does the child needs. But we still lack comprehensive understanding of child’s needs covering all the spheres of family life and of governing. For example, at the moment there are many discussions about implementation of the principal “money following the child” in informal education system (as it was discussed above) but there is a problem – state does not have additional funds to finance it. But government should start looking for additional budget not only in the same pocket but also in the pockets of the other programs and other ministries if cutting one program additionally financing other will help to achieve better results. Also it should be investigated if the similar services by their nature and content do not exist under the name of the others. For example, as it was discussed above, the Child day care centers program usually proposes for children from social risk and poor families after school activities. It should be evaluated if these activities may be approved also as informal education and get additional financing from the Ministry of education expanding its customer base. It should be mentioned that at the early stage there is a need of universal services and activities which may help to integrate all the children and to avoid discrimination according to their family status, material conditions and etc. Only when these measures do not help to avoid growing needs of the client, we should look for some specific solutions.

As it was discussed above planning deinstitutionalization of children living in residential care their needs should be assessed. The assessment should focus on the child’s need for permanency and stability, with the ultimate aim to ensure a secure environment with life-long bonds that will support the child into adulthood. Thus, depending on the child’s individual circumstances, there should be proposed one of these long-term goals (Jarosiewicz-Wargan, 2013):

- reintegration of the child back into his/her birth family, combining with the adequate family support;
- adoption;
- transition to independent living for older children.

It is not enough to make and execute a decision of a child’s reintegration into his/her family. The root causes of the family crisis that led to the child’s institutional placement must be addressed through an appropriate, individually selected and well coordinated services for the family. Many children who have been long-stay residents of the institutions have lost contact with their families, or have only occasional and quite limited contact, so there may be no possibility of their returning to the family home.

It is apparent that deinstitutionalization efforts cannot be expected to become a reality without effective programmes to strengthen and expand foster care. This involves creating an

infrastructure that regulates the basic element of a successful foster care, including recruitment, assessment, training, support, monitoring and funding.

Alternative temporary placement, such as in a foster family or a community-based small group home, will have to be considered if none of above mentioned long-term solutions is currently possible for the child. It is generally agreed that foster family care is the least restrictive and most nurturing out-of-home placement for children in need of temporary substitute family care. However, the foster family may become a permanent care for those children that cannot be reunited with their parents. Foster care is especially attractive choice when out-of-home placement is unavoidable: it provides the child with an alternative family; it is potentially capable to accommodated for the different needs of children due to its flexibility; and finally, it is cost effective comparing to residential care (Gudbrandsson , 2004). It should be mentioned that foster care can also be harmful to childen if there is no professional support offered to foster families. The psychological, social and economical burdens of such care can be huge, especially if families are unsupported in their caring roles, and many of them are unable to provide the necessary intensity or quality of support for long periods. Breakdown of long-term placement can result in repeated placement with harmful effects for the child. That is why as one of the most important measures of deinstitutionalization is to creat needed complex services for families. This family support contains financial support for carers, employment-friendly policies, educational programmes, counseling and respite services. Indeed the same services are needed to all the families having difficulties in upbringing their children and as it is already mentioned the main function of the state is to provide carers (birth parents or foster parents) needed information and skills, which would make them to succeed.

Small group homes are residential services that provide care in a home-like environment for a limited number of children until they can return to their families or a long-term alternative living arrangement is achieved. All the countries implementing deinstitutionalizations plans meet one risk that small group homes might replace residential institutions and the number of children in care in the country will hardly change – children will simply be moved from large institutions into those new facilities. Small group living may be developed as an option for "hard to place" children – those for whom family reintegration, adoption and fostering is imposible.

3) *How to achieve the best result?* Each reform process must be well thought through and planned, with clear division of roles and responsibilities. The action plan should include:

- What are the real needs of the child;
- What should be done to achieve them (specific activities);
- Why it is important – what change is expected as a result;
- Who should be responsible for each activity;
- When the activity should be completed;
- What resources will be necessary and who may better manage them;
- What indicators can be used to measure progress.

The action plan should be binding for all child welfare actors, from central government to community levels. It is obvious that more than one agency will be involved. At the moment such

multiple-need, multiple-provider context develop some problems as boundaries between services and agencies are not clear and stable, providers in the health, education, social care, housing and other sectors have different underlying cultures, different eligibility critieria. The difficulties of coordination across agencies and budgets could be exacerbated if provision is spread across public, voluntary (non-profi, charitable) and private (for-profit, commercial) sectors. That causes cost shifting and the risk that gaps emerge between service systems and some needs or some individuals get missed altogether. Accordingly, coordination is a fundamental requirement of community-based care systems. State agencies (central or local) should ensure full strategic planning, legal and financial frameworks for provisions, access, allocation and quality of the services provided. Non-state providers take an important role in child care system but they operate within different legal frameworks, often pursue different motivations, and respond to different incentives.

Several options of funding using the principal „money follows the client"

It is already approved that early interventions, social services provided to family and child in place and on time, give more benefits. The states are encouraged to invest in primary social services because these social investitions are of higher economical return (ESTEP, 2013).

Primary services are more universal, they should be provided to all interested groups and the state should ensure the possibility to get needed services and to choose, if it is possible, the service provider. The principal of "bag" funding is already used financing education and health care services in Lithuania. Many NGOs and private providers seek that the same system will be implemented providing social services. However in a recent research ordered by the Ministry of Social security and Labour it is said that such model of funding cannot have a priority comparing to the existing model of funding through various programs and projects, grant mechanisms, because social services are not the element of market economy (ESTEP, 2013). It is not the topic of this article to disclose the market nature of social services but it should be stressed that using the principal "money follows the client" helps us to identify the client, his needs and to construct demand of services. It can also make easier to look for the appropriate way of financing through user-charges, tax reliefs or some other measures because money and services are related to concrete individual and his needs. As it was discussed above, state may cover the expenses of target groups but that support also shouldn't be long-lasting because it demotivates people involved.

Using the principal „money follows the client" is one of the best ways shifting the financial incentives from residential institutions to community-based social services. The key component of this principal is the flexible transfer of funds between different budgets or budget categories. The transition from institution-based to community-based system demands very careful pacing of the transfer of resources, just as it needs the careful management of the movement of people and staff. If there is a plan made to transfer a child living in residential institution to community-based services the budget for residential care should also be transmitted to the community-based services

funds. In residential institution living expenses, housing, food, clothing, education, recreation, medical services and transportation are provided. When the child is passing to community, those basic life supports will have to be provided and these news services will require funding. The transmition of finances is also one of the most important factors making deinstitutionalization quicker and more effective. For example, government may count how much does the general packet of services for the child and the family cost and transmit these money to the municipality. It is up for the municipality to choose how to use these money – to purchase social services or to pay for residential care. As it was told before residential facilities cost much more than community-based services, so if for example one general packet of services for one client costs 200 Lt per month the municipality should look for the best way to use these resources. At the moment such a system is not possible because municipality cannot use 520 Lt of foster care benefit that comes from the state budget for community-based services if the child is reintegrated into his birth family and cannot use its own municipal budget resources for community-based services if the child is cared in a foster family because, as it was discussed above, the residential institutions and many social service providers are financed through grant mechanism and that makes them less flexible.

Also it should be taken into account that injections of additional money will almost always be needed in the short-term to allow the balance of care to shift. The number of children living in the institution may go down, but those still there will require care 24/7 and will require staff, so the reduced number will not make money available in direct proportion to the decline in the institution's census. Community services are likely to be less expensive on a per client basis than residential care. However, there are several factors that limit actual saving of the government. First, creating alternative social services require an initial investment in capital, staffing, training, and other resources. Second, government savings from the use of community-based social services are likely to accrue only after the number of individuals in a residential institution decreases. Finally, new services generally increase the number of individuals who receive assistance. Residential institutions serve only a small portion of vulnerable individuals. Community social service would assist not only current recipients (the institutionalized) but also many others who previously received no assistance. Thus the target population for community-based services would be significantly larger than those individuals who receive residential care. The increase in the number of recipients provides much-needed assistance to previously unserved people but will require additional resources beyound the money saved by closing residential institution.

However only breaking the cycle of disadvantage in early years and investing in children through a preventative approach allows reducing the risk of poverty and social exclusion. This implies not just providing children with adequate living standards: it also means helping them live up to their full potential through an integrated approach bringing them the best educational and health outcomes.

Conclusions

(1) Despite the changes of social care services financing model – the transition from financing services which is based on provision of resources to refund the whole expenditures necessary for the provision of services according to the estimated costs, to the purchase of services when the cost of service is fixed to a particular client, we still rely on residential institutional care services looking for the best institution for a client rather than financing preventive services for children and their families.

(2) In Lithuania there are a lot of excellent strategies and programs in the field of child rights protection and child welfare but the result – the number of abandoned and institutionalized children is still the same. That shows that we lack a comprehensive and multifunctional strategy covering not only social care and protection but also education, health care, justice and finances. All spheres of governances should be matched with the best interest of the child.

(3) The essence of “money follows the client” in the context of deinstitutionalization is not to help the client but to invest in client. The earlier we start investing in children the cheaper and more effective result we may reach.

Suggestions

(1) Costing must bear in mind quality („best value“ not „lowest price“)

(2) In order not only to draw the goals which state would like to reach during the deinstitutionalization process but also to plan concrete implemenation measures, responsible institutions first of all should collect the data, calculate unit costs of different types of services, identify number of children using different types of services and and manage the services.

(3) Created system of funding should be flexible and simple because its adminsitration should not be more expensive than the value we can reach through it.

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''Societal Innovations for Global Growth'',
2014, No. 1(3)
ISSN 2335-2450 (online)

RESEARCH ON PERSONNEL EVALUATION AND ITS RELATED ISSUES IN THE DEVELOPMENT OF A FINANCIAL SERVICES COMPANY

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Abstract

Purpose – Personnel evaluation as a research object has been extensively studied in foreign literature and various studies. Evaluation criteria regarding the staff employed in specific sectors such as financial services can be defined in the light of various aspects, where the uppermost facets will be both the individual indicators and soft competencies. Considering the need for personnel evaluation, applying a variety of evaluation methods and analysing assessment results, it is possible not only to increase the motivation of each individual, but also to improve the overall company's performance. The study aims to evaluate views of employees on the measurement methodology of employees' efficiency. An essential condition for personnel evaluation is their understanding of the whole evaluation process and its importance in relation to personal development and motivation aspects. The study established that employee evaluation is seen as a routine process to mark employees' past performance and to determine plans for the future. Nevertheless, employee evaluation process and the results could be used much more efficiently, realizing opportunities to improve employee's motivation in the context of the future, as well as gaining important information on innovative solutions in the field of customer service as long as exactly the staff is directly related to customers and understands the range of problems. They are the ones that are able to offer creative solutions. As shown by the survey results, the evaluators are not interested in expanding the boundaries of the evaluation process binding it with future development.

Design/methodology/approach – The research methodology is based on a survey of employees linked with the personnel evaluation process and its impact on personal motivation and

growth. The article analyses scientific research in the context of personnel evaluation, as well as reflects the study of effectiveness evaluation in connection with the people employed particularly in the financial sector as well as explores feedback of employees.

Findings – based on the research, reflected in the theoretical and practical parts of the study, the key factors that affect efficiency of employees have been defined. Based on the results of the survey of employees representing financial services industry the most important and most urgent issues directly affecting efficiency of employees have been identified. The study also analyses the staff views on the measurement methodology of employee efficiency, their understanding and impact on the motivation of employees.

Research limitations/implications – the research has been conducted anonymously. The study neither mentions nor analyses particular persons providing financial services, the research is of a presumptive nature.

Practical implications – As a result of this research, practical proposals that can be taken into consideration when performing personnel evaluation procedures have been developed, for instance, transparency of the evaluation criteria, motivation, and feedback.

Originality/Value – the research summarises evaluation of employees' perception and attitude to the work efficiency evaluation procedures, their expedience and impact on motivation in the future.

Keywords: personnel evaluation, evaluation methods, effectiveness of personnel evaluation

Research type: research paper

Introduction

Today management of human resources has become a significant area of management which is also an important factor affecting competitiveness of an enterprise. The way an enterprise attracts, retains, and motivates its employees has become one of the most important and controversial issues in ensuring successful existence and development of an organisation. Most often the new employees start working with enthusiasm, willingness to achieve the set goals and participate in the implementation of the enterprise goals, yet the work efficiency decreases in the course of time. An enterprise is inclined to achieve its goals with the help of its employees, due to this reason the process of determining efficiency of employees turns out to be an important aspect in any enterprise, especially under the conditions of today's fierce competition. From the theoretical point of view, the necessity to perform personnel evaluation is well-grounded. A sufficient methodological apparatus is developed in order to perform such an evaluation. Peiseniece (2009), when assessing problems of personnel evaluation in the banking sector, stresses that the human resources evaluation methodology is quite complicated, and there is a wide range of methods and indicators the use of which is not clearly defined. Furthermore, the theory still offers even newer models of this methodology. Peiseniece (2009) expresses an opinion that in evaluating personnel in bank financial services organisations there are contradictions between the

"real" or financial return. Employees' lack of understanding of evaluation results influences work relations among colleagues, affects inaccurate interpretation of evaluation results and relations with their direct superiors, as well as leaves its impact on the loyalty towards an organisation in general. In Latvian organisations, human resources managers as the main factors obstructing evaluation of personnel management have indicated the lack of organisation's management support, time, and information system in performing personnel evaluation. The aim of the research is to evaluate employees' opinion on the measurement methodology of personnel efficiency, comprehension and its influence on employees' motivation; to identify problems that leave direct impact on employees' work efficiency in financial service organisations. The study established that employee evaluation is seen as a routine process to mark employees' past performance and to determine plans for the future. Nevertheless, employee evaluation process and the results could be used much more efficiently, realizing opportunities to improve employee's motivation in the context of the future, as well as gaining important information on innovative solutions in the field of customer service. Staff is directly related to customers and understand the range of problems. They are the ones that are able to offer creative solutions. As shown by the survey results, the evaluators are not interested in expanding the boundaries of the evaluation process binding it with future development.

Theoretical background

Cs Canada (2012) in its research asserts that the personnel management is in the hands of enterprise managers. Nowadays enterprises / organisations have to work in a very complex and challenging environment which encompasses financial crises, technological changes, competition, and globalisation that leave a particular impact on an enterprise. Greatly because of this enterprise efficiency depends on personnel managers who effectively deal with the abovementioned issues. Efficient enterprise management can be attained with positive practice of human resources management where efficient personnel management is sort of an added value of organisations, ensuring at the same time competitiveness of an enterprise in the market.

David and Woodrow (2012) highlight that nowadays it is crucial not to perceive a person as a means, it is necessary to bring an individual's well-being to the forefront. There are two main verities in relation to personnel management: well-being of an individual interrelates with work quality of personnel in order to ensure the potential of efficient personnel management, i.e., the more satisfied an employee is, the more efficiently s/he performs his/her work duties. In its turn, the second verity is based on the consideration of morals and legislation on behalf of a manager, thus ensuring high operational capacity of organisation's employees. It is possible to conclude that both verities bring well-being of a particular person to the forefront, not the goals of an enterprise. Accordingly it can be derived that employees' efficiency is greatly influenced by the enterprise management when implementing purposeful employee management, as well as by an employee and his/her degree of motivation.

Modern organisations operate in an environment characterised by a high degree of complexity and diversity from the economic, social, political, and cultural point of view. Anthony et al (2009) have discovered that scientists studying human resources management since 1990 have already tried to specify a link connecting human resources management, an enterprise and an individual – which appears to be the best experience, knowledge and strategy that shall be applied in order to satisfy all parties involved. Scientists have come to a conclusion that strategic management of human resources increases enterprise’s efficiency and reduces personnel turnover which, in its turn, means efficient activity of an enterprise – high efficiency of employees, transfer of experience and knowledge, as well as loyalty of employees. Human resources shall be adequately valued and consequently motivated. Evaluation of personnel management is a process when processes and programmes of personnel management are evaluated, and the added value of the personnel management practice in an organisation established (Bratton, 2007). When evaluating the personnel management, it is possible to establish the efficiency of personnel management functions and the benefit an organisation gains though the implementation of personnel management functions.

Carrying out the research it was stated that there is a variety of different opinions, explanations and standpoints on what is understood by the employee efficiency. Summarizing opinions of different scientists, it is possible to set forward significant questions in relation to employee efficiency:

In what way are the functions determined within an organisation fulfilled, according to which an enterprise is or is not capable of developing, successfully competing in the market and profiting?

How efficient is the fulfilment of functions in order to obtain a maximum profit with the existing materials and nonmaterial resources of an enterprise?

How is an employee motivated to accomplish the goals of an organisation, considering interests of employees?

When looking for the answers to these questions, it is possible to conclude that the research object – it is not only enterprise personnel, it is human recourses management in general, which is a comparatively abstract notion. The research carried out by Ozolina-Ozola (2011) indicates that the professional literature presents numerous and considerably different definitions as well as uncertain distinction between components of human resources management and evaluation. In addition, it is necessary to acknowledge different explanation of the term “effectiveness” in Latvian and English-American understanding. According to the English-American terminology, “*effectiveness”* is explained as an indicator reflecting the ability to create the result desired (Dictionary.com, LLC). Yet it should be admitted that “effectiveness” does not reflect the way resources are used to achieve the goal. In order to determine that, foreign researchers use a term “*efficiency”* that describes the extent to which various resources are used, for instance, time, effort, or expenses for achieving a goal. In the Latvian language, the notion “efficiency” is more linked with the conceptual understanding of productivity or economy. It should be admitted that when speaking about efficiency practically, both of the abovementioned aspects are analysed.

Researchers Arthur and Boyles (2007) express an opinion on the interrelation between human resources management and the results of an organisational performance, paying attention to conceptual and empirical questions. Researchers have defined five components of an organisation's system of human resources management and in order to evaluate one there is different methodology that might be exploited:

1) principles of human resources management (values, convictions, and norms, allocation of resources and awards of an organisation);
2) policy of human resources management (goals and objectives of an organisation in the context of human resources management);
3) programmes of human resources management (activities of human resources management);
4) practice of human resources management (involvement and participation of managers and employees in organisation's processes of human resources management);
5) climate of human resources management (perception of organisation's principles, policies, and processes of human resources management and their interpretation from the employees' perspective).

When analysing research by different authors on impact of human resources management on results of enterprise activity, it can be concluded that they are quite contradictory. For instance, Huselid (1995), Becher and Gerhart (1996), Richard and Johnson (2004) in their empirical research prove that efficient human resources management is linked with positive indicators of enterprise activity. In their turn, Wright et al (2005), Katou and Budhwar (2009) establish the relationship among human resources management and personnel skills, attitude, and behaviour.

In their research, Arthur and Boyles (2007) have defined the key issues related to the evaluation of employees:

1. goals of human resources management are not linked with the goals of an organisation (sacrifice employees' interests);
2. human resources activities cannot be accurately measured since performance is influenced by many other factors;
3. resistance of managers and employees during the evaluation process (fear from being "unveiled", "acute" issues may not be favoured by managers, etc.);
4. responsibility for the interpretation of evaluation results – overall and individual evaluation.

When summing up conclusions of various researchers and research results, the authors have defined the main factors influencing employees' efficiency.

Employees' efficiency shall be studied in the context of organisational culture, employees' competence and motivation, etc., hence analysing these concepts together it is possible to obtain a maximum clear, understandable and objective opinion on employees' efficiency by influencing any of the factors or objectively assessing all of the factors.

Table 1. Factors influencing employees' efficiency

(Compiled by the authors through the analysis of scientific papers on the evaluation of employees' efficiency)

Efficiency-influencing factors	Comments
Strategy of human resources management	The choice of a strategy of human resources management is one of prerequisites for successful enterprise performance. Consequently an employee would be interested in maximizing the use of his/her potential to accomplish the goals of an enterprise.
Loyalty / trust in an enterprise	Support and loyalty of employees in any decision-making processes relating to an enterprise, trust in an enterprise.
Ability of an employee to work in an enterprise using his/her knowledge, skills, competencies, opportunities provided	Great importance is placed on employee's attitude, knowledge, skills and competencies that directly influence the way an employee carries out his/her duties, thus having impact on the work efficiency.
Organisational culture	Organisational culture expresses an attitude of an organisation towards its employees, thus an employee is or is not satisfied with it; it also shows the relationships among colleagues and other key aspects that facilitate or hinder the quality of the duties performed.
Professional growth of an employee	In order to ensure effectiveness, an employee has to develop him/herself on an ongoing basis, work on his/her self-development; it has to be admitted that self-development is possible also within the frames of the one and the same position – by deepening and improving one's knowledge, competence. It is important to strive for development and to achieve it in order to avoid stagnation or even an opposite process.
Individual values	On the basis of personal values and necessities of every individual, it is possible to determine the reasons why an individual works in a particular enterprise, besides that, the individual's values determine the degree of interest of an employee in a particular position or duties, what possible development/growth can be attained in future.
Personnel satisfaction with work	A satisfied employee is a happy employee; in its turn, a happy employee is productive and positive in fulfilling his/her duties.

When analysing the studies related to practice and problems of personnel evaluation in Latvia, it is possible to conclude that evaluation of employees is a quite popular method of human resources management in Latvian organisations. On the basis of the research conducted by Peiseniece (2009), it is possible to conclude that 88% of the respondent organisations conduct personnel evaluation. As it is highlighted by the research authors, small enterprises practically do

not conduct such kind of evaluation. In their turn, the findings of the research conducted by Kalniņa (2010) illustrate that only 28% of organisations carry out evaluation of employees’ efficiency within the context of working time, remuneration, personal life of employees, and fulfilment of job responsibilities. These survey results are inconvenient for employers as most often they demonstrate the real situation disclosing it in a negative light – overtime work, obligation overload, taking one’s work home, payment that does not correspond to one’s position, skills, or input, enterprise goals are made more important than personal interests. The most popular method of personnel evaluation in Latvia is personnel survey (Peiseniece, 2009) that is used in 80% of enterprises. Only 8% of organisations use complex personnel evaluation with a wider range of methods. Ozoliņa-Ozola (2011) points out that personnel evaluation is of quite a low quality as the choice of methods and indicators used does not ensure acquisition of objective information.

Research methodology

In order to conduct the research, a method of a questionnaire was utilized with the aim to identify the factors that have direct influence on employees’ work efficiency, as well as to evaluate employees’ opinions on the methodology of their efficiency measurements, their understanding and influence on personal motivation. The research was conducted anonymously in financial services organisations. Questionnaires were distributed both via e-mail and directly polling the respondents. The study neither mentions nor analyses particular persons providing financial services, the research is of a presumptive nature.

The questionnaire was primarily developed for the research purposes; it included a general part (gender, age, length of service in the field) and a research part with 11 questions enabling to come to conclusions regarding the general understanding of a personnel evaluation process, preparation for it, as well as employees’ evaluation of feedback during the post-survey period. The study results were presented in percentage against the total number of the respondents. The questionnaire included both direct questions, evoking a particular response and questions requiring evaluation from 1 to 5 according to the Likert scale. The questionnaire also provided an opportunity to express one’s own opinion.

Results and findings

143 respondents participated in this survey. The gender distribution of the respondents was the following: 78% female and 22% male respondents, the average age of the respondents was 36.2 years with the youngest respondent being 23 years old, while the oldest one was 42. This allows concluding that comparatively young staff is employed in the field of financial services. The work experience of the financial sector representatives participating in the survey was distributed in the following way: 7.7% had been working in this field for less than a year, 23.1% for 1-3 years, 42.4%

for 5-8 years, and 27% for 8 or more years. This distribution confirms that financial sector does not demonstrate marked personnel turnover since almost 70% of all employees have been working in banks for more than 5 years.

According to the survey results, it was possible to conclude that 98% of all respondents had participated in annual employee evaluation interviews and had a clear idea on the procedure of the evaluation process and the feedback.

Enterprises in the financial services sector most frequently position themselves as attractive, competitive employers offering interesting, motivating working places for employees. Most often employees are offered to work in a team, thus accomplishing enterprise and individual career goals. Usually enterprises of this sector have defined personnel management processes that are carefully managed, and evaluation of employees is carried out on a regular basis. In financial sector enterprises, personnel evaluation is mostly conducted in three aspects:

- evaluation the perspective of the past regarding performance, goals and objectives achieved;
- employee's competencies according to the position occupied;
- future perspectives related to the career growth, setting goals and objectives for the upcoming period.

Evaluation as such is only the concluding element of the evaluation cycle. It can take place only when objectives, results to be achieved are clearly defined, particular requirements for a position are put forward, as well as evaluation of performance and results conducted.

In most cases personnel evaluation is assessed by the respondents positively – 58% of the respondents respectively. Unfortunately it should be concluded that a comparatively great part – 34% – perceive an interview neutrally which, in its turn, reflects employees' indifference and lack of interest to some extent. Respectively, 8% of the respondents take employees' evaluation negatively, mainly considering this to be additional stress and doubts regarding the significance of an evaluation process in the future.

Table 2 represents the respondents' opinions on their own understanding why personnel evaluation is conducted. The respondents were allowed to mark several options.

Table 1 represents the personnel perception of the necessity to conduct an evaluation process. As it can be seen from the obtained survey data, the respondent evaluation is distributed quite equally concerning the most significant areas of evaluation. Approximately 31 – 32% of the respondents understand that evaluation is instrumental in assessing the performance during the previous year and setting the priorities for the following year; they realize its role in evaluating competencies and determining the necessity for further development of an employee with regard to the upcoming year. 14.3% of employees link evaluation with the necessity to express it numerically, i.e., by attributing particular points on an assessment scale. Other justifications emphasizing the necessity of personnel evaluation are relatively insignificant according to the respondents' opinion.

Table 2. Opinion of survey participants on the necessity of personnel evaluation
(prepared by the authors according to the survey results)

Grounds for the necessity of personnel evaluation	Assessment in %
To evaluate individual achievement of an employee during the previous year;	32,8
To evaluate competencies of an employee;	31,2
To agree upon employee's development needed;	32,3
To agree upon priorities for the following year;	32,3
To evaluate an employee with a numerical value;	14,3
To find new potential talents;	6,4
To provide an employee with a feedback;	8,6
To motivate an employee;	6,4
To express constructive criticism;	2,7
To allow an employee to speak on the issues of interest;	2,4
To find out future plans of an employee;	1,2
So that a bank has reason/grounds to terminate the employment;	3,6
To evaluate the remuneration level for the following year	2,4

Despite the fact that respondents expressed understanding on the necessity of evaluation, almost 49.8% of the respondents would still prefer not to participate in the evaluation process if it were voluntary. 67% of the respondents believe that employees' evaluation is more important for enterprise managers rather than for employees themselves.

When assessing the individual preparation process, 22% of the respondents admitted that they had not undertaken any particular preparation, for 65% the preparation time was 1-3 hours, yet 13% of the respondents indicated that they had spent more than 3 hours preparing for the evaluation. 72% of the respondents respectively believe that during the annual evaluation process they would like to place a greater emphasis on things that are important to them as well as on the wish to develop. However this is usually taken into consideration formally.

Answering the question whether respondents are satisfied with their evaluation results, 40% of the respondents gave a positive answer, 26% of the respondents showed a negative attitude, while 34% of the respondents regarded it to be rather formal. These results allow concluding that employees working in the financial services sector perceive the evaluation process quite seriously, yet they wish to receive a higher degree of awareness from the evaluators' side.

The final part of the questionnaire was devoted to the analysis of the evaluation process itself and the feedback. When using the Likert scale from 1 (very badly) to 5 (very well) to evaluate the way the respondents felt during the evaluation, the average assessment value was 3.6. It should be noted that 16% of the respondents presented assessment of 1 or 2 points, while the maximum value of 5 points was indicated by 3% only. Agitation, perplexity, and lack of confidence were indicated as the main factors affecting one's well-being.

When assessing the supervisor of the evaluation process, the average value given by the respondents was 4.8. The majority of the respondents indicated that the evaluator felt comfortably and securely during the process as opposed to the person being assessed.

When analysing respondents' answers to the question whether the annual personnel evaluation is serving as a motivating factor in order to improve individual performance, it must be concluded that 48% of the respondents think that the envisaged personnel evaluation is motivating, 33% of respondents believe it to be partially motivating and only 19% of respondents suppose that it does not affect their motivation. A more profound analysis of what exactly determines the motivation of employees to achieve the results is illustrated by the current situation in the modern labour market. 34% of the respondents indicated that the evaluation result is important as they are afraid of being dismissed, 27% of the respondents are afraid of salary cuts and 17% of the respondents are afraid of downgrading. It should be particularly emphasised that the respondents commented that it was difficult or almost impossible to find new jobs in the regions outside Riga.

When assessing the evaluation process itself, 62% of survey participants indicated that they would change the evaluation system. The main changes offered by the respondents in order to improve the evaluation process:

- ✓ to introduce a more detailed analysis of fulfilment of job assignments,
- ✓ to evaluate work results according to the regional specifics,
- ✓ to analyse mistakes made by employees,
- ✓ to draw up and analyse individual budgets,
- ✓ to perform a more constructive evaluation process, without talking about the same things each and every year,
- ✓ to evaluate the motivation of an employee to work and achieve results,
- ✓ to carry out a deeper analysis of customer and colleague references,
- ✓ to evaluate the correspondence of duties, working time and salary for each person individually.

When assessing feedback after the evaluation process, 48 % of the respondents indicated that they felt positive changes, 31% of the respondents did not feel any changes at all, while 21% of the respondents believed that evaluation had a negative impact.

Annual employees' interview is one of the most important and significant yearly activities in financial services organisations within the frames of the personnel management process. For the employees, it is an opportunity to obtain structured and objective feedback on the results achieved, to see his/her input in the business strategy implementation, as well as to understand the

connection between his/her competencies and work performance and results, in general. On the other hand, for an employer, it is an opportunity to conduct an utmost accurate evaluation of company's personnel, to analyse personnel competencies in the context of existing or future positions, to assess coordination of the goals of the enterprise as well as any particular individual, and to determine the possibilities for future growth.

These days Employee Satisfaction Surveys are used as one of significant personnel evaluation methods. It should be noted that in Latvia such surveys are widespread in enterprises of various sectors. It was determined during the research that Nordea Bank in Latvia that is a financial services organisation was also conducting an annual Employee Satisfaction Survey (ESI) for general study of satisfaction and motivation of employees of Nordea bank. The findings are used in a personnel management process in order to establish plans of personnel management activities. It should be admitted that such studies and analysis of their findings constitute a significant part of a personnel management process. The given study is sufficient enough and includes three basic modules: development, remuneration, and organisation's image. The study ensures an opportunity to determine the realistic opinion of employees regarding a wide range of questions, thus providing the bank managers with a great overview on the degree of satisfaction of the bank employees, in addition, the level of the employee satisfaction can be measured by individual countries or individual branches. The bank employee satisfaction survey 2013 in Latvia indicated a high satisfaction degree being within the limits of 70-80% in the corresponding research categories.

Conclusions

An enterprise is interested in achieving its goals with the help of its employees, greatly because of this the process of determining employees' efficiency plays a very important role in any enterprise, especially under the conditions of today's fierce competition. From the theoretical point of view, the necessity to conduct personnel evaluation is well-grounded. A sufficient methodological apparatus is developed to carry out such an evaluation.

Peiseniece (2009), when assessing problems of personnel evaluation in the banking sector, stresses that the human resources evaluation methodology is quite complicated, and there is a wide range of methods and indicators the use of which is not clearly defined. Furthermore, the theory still offers even newer models of this methodology. Peiseniece (2009) expresses an opinion that in evaluating personnel in bank financial services organisations there are contradictions between the "real" or financial return. Employees' lack of understanding of evaluation results influences work relations among colleagues, affects inaccurate interpretation of evaluation results and relations with their direct superiors, as well as leaves its impact on the loyalty towards an organisation in general. In Latvian organisations, human resources managers as the main factors obstructing evaluation of personnel management have indicated the lack of organisation's management support, time, and information system in performing personnel evaluation Peiseniece (2009). The aim of the research is to evaluate employees' opinion on the measurement

methodology of personnel efficiency, comprehension and its influence on employees' motivation; to identify problems that leave direct impact on employees' work efficiency in financial service organisations.

Efficiency of employees may be affected by objectively evaluating all the factors at the enterprise that influence employees' efficiency, since the productivity of an employee depends not only on the employee him/herself, but also on the organisation, Personnel evaluation is an integral part of personnel management that allows measuring the level of employees' efficiency in the enterprise. Especially now, during the period of economic fluctuations, the issue of personnel evaluation is important for every employer as it is essential to gather information on the personnel preparedness, the level of qualification, conformity and readiness to perform certain tasks in order to achieve the goals determined by the organisation.

Based on the efficiency concept definition and the researchers such as Anthony et all (2010), Sally et all (2009), Campus Security Report (2007), Spencer and Spencere (2013), Lorri (2013), the authors have summarized the main factors that affect employees' efficiency:

- Human Resource Management Strategy – Human Resource Management Strategy is one of the prerequisites for a successful activity of an organisation, as employees would be interested in making the maximum use of their potential to achieve business objectives of an organisation.
- Trust / belief in the company – support and loyalty of employees in any decision-making processes relating to an enterprise, trust in an enterprise.
- The way employees work in a company using their knowledge, skills, competencies, and provided opportunities – importance of employees' attitude, knowledge, skills and competence that directly affect the way employees fulfil their duties and having an impact on their work efficiency.
- Organisational culture – organisational culture shows the company's attitude to its employees, thereby an employee is or is not satisfied with it; it demonstrates relationships between colleagues, etc. important aspects that facilitate or hinder the quality of performed duties.
- Professional Development of Employees – In order to ensure effectiveness, an employee has to develop him/herself on an ongoing basis, work on his/her self-development; it has to be admitted that self-development is possible also within the frames of the one and the same position – by deepening and improving one's knowledge, competence. It is important to strive for development and to achieve it in order to avoid stagnation or even an opposite process
- Individual values – On the basis of personal values and necessities of every individual, it is possible to determine the reasons why an individual works in a particular enterprise, besides that, the individual's values determine the degree of interest of an employee in a particular position or duties, what possible development/growth can be attained in future.
- Personnel job satisfaction – A satisfied employee is a happy employee; in its turn, a happy employee is productive and positive in fulfilling his/her duties.

Financial services organisations have established a deliberate and well-grounded process of personnel evaluation, though, taking into account the results obtained during the survey, employees assess this evaluation quite formally. They believe it is needed primarily for enterprises,

not for the employees, thus this is a point to be improved by the managers of financial organisations, explaining the significance of the evaluation process to their employees.

During the course of the study it was determined that employees do not understand the personnel evaluation process till the end, thus they do not make a sound use of their possibilities, managing the development of their personal competencies, but also using this opportunity to discuss important issues and receive answers that is proven by the proposals of employees for improvement of the evaluation process. The authors conclude that employees do not perceive the preparation process for the evaluation seriously and pay attention only to the sections that are evaluated, without taking an advantage of becoming more prepared consequently asking questions regarding the important issues.

On the basis of the survey of the personnel employed in the sector of financial services, the authors have summarised the most significant and topical problems that have direct influence on the evaluation of the employees' performance: remuneration system, lack of understanding regarding the necessity of interviews and/or not using interviews to solve important issues, nonconformity of the number of employees to the amount of functions carried out, material responsibility for mistakes made by employees, drawing up an individual budget and its analysis. The abovementioned issues are the key aspects that reflect the employees' dissatisfaction that subsequently have impact both on the motivation of employees and their work efficiency.

Employee evaluation, which has eventually become some kind of a routine process, should be exploited as an important contribution to human resource exploration. As established in the present study, an employer primarily uses evaluation to determine the employee's value in the light of one's salary. The authors emphasise that much more substantial conclusions can be drawn emanating from the evaluation process where the focus is placed on defining employee's ability and uniqueness. This could greatly contribute to an individual's motivation, career growth as well as to give maximum effect to an employer, in terms of effective use of human resources when implementing innovative ideas.

Suggestions

When summarising scientists' conclusions and findings revealed by the survey, the authors have put forward the following suggestions for enterprise managers of the corresponding sectors to improve the evaluation process of employees working in the financial services sector:

- In order to reduce the lack of understanding of employees regarding the need for annual evaluation and/or use of interviews to solve issues significant for the enterprise, managers should explain the essential role of the evaluation process and its most important aspects before the evaluation process takes place, thus stimulating employees to get prepared for the evaluation and emphasising the possibility to express their opinions and wishes in particular. During the evaluation process, stress of employees can be avoided by ensuring comfortable and trust-evoking ambience,

as well as paying special attention to understanding employees' values, motivation, and interests as well as by answering their questions which they feel are crucial at some particular period of time.

- To assess personal achievements and indicators of each individual, correspondence of function fulfilled and working time, tasks of drawing one's personal budget, and the opportunity to provide employees with a possibility to present reasoned and objective assessment of conditions and factors as well as to determine future goals and objectives together with one's direct superior.
- Bank management team should develop the methodology that allows analysing all mistakes made by employees, determining the causes and reasons for the mistakes that would convince employees about the involvement of a manager in the aspect of diminishing risk from the mistakes made.
- In order to avoid formality of the evaluation of employees' future development or difficulties when they cannot achieve particular goals, during the pre-evaluation process, the top management should assess whether the goals set can be achieved taking into account the level of economic and social development of a country and a region.
- Evaluation of employees should be paid particular attention, not only emphasizing the aspect of the past, but actively exploiting the obtained results for the future development, holding a hand on pulse to anticipate employees' potential. Future perspectives are essential when expecting innovative solutions in the sector of customer service ensuring a more efficient use of human resources.

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''Societal Innovations for Global Growth'',
2014, No. 1(3)
ISSN 2335-2450 (online)

THE DECADE OF PATENTING IN LITHUANIA

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Abstract

Purpose – to identify patenting trends, as well as possible strengths and weaknesses, after the modern legal and innovation infrastructure was put in place. A comprehensive analysis for the reasons underlying such strengths and especially weaknesses is not provided because this is the object for the future research. The paper provides an overview of the historical and regulatory context, as well as socio-economic context. Key patenting indicators over the period of 2003-2013 were analyzed in the paper – patent application numbers, sectorial breakup of the patent applications, conversion, and current status of these patents.

Design/methodology/approach – data were gathered from the WIPO Patentscope database, using the advanced search queries in order to search for patent applications originating from Lithuania and the search was narrowed to Asia-Europe Office. Then the current status data were gathered from the EPO Espacenet Advanced Search database, searching for the patents codes, which were identified through the WIPO database. Codes identify the status of patent application. Overall, 111 Lithuanian patent applications have been identified and collected from 2003 to 2013. Historical analysis, logical analytical, systematic, comparative and descriptive statistical methods were used for the analysis.

Findings – 111 international patent applications over 2003-2013 have been collected. Two strongest fields of technology revealed in the Lithuanian patenting – human necessities (34 patents applications) and chemistry (20 patents applications). The field of human necessities makes 27,2% of all patents applications and chemistry makes 16% of all applications. Individuals provided the biggest part of patents applications – 53% of all patents. Companies applied 37% applications, while universities provided only 10% of all applications. 46% of the applications failed to convert into patent grants or failed to be maintained by their applicants.

Research limitations/implications – due to relatively low number of applications over the target period there was no need to select representative samples and sample the data. EPO

Espacenet Advanced Search database do not provide important information about 33% of all patent applications. 46% of the applications failed to convert into patent grants. This is concerning, which deserves additional scrutiny and will be addressed in follow-up research.

Practical implications – the research revealed that individuals provided the biggest amount of patent applications in two strongest fields of technology – biotechnology and laser industry. The key patenting indicators (number of patent applications, how many applications have been issued as patents and the current status of these patents) were indicated in the research.

Originality/Value – patents are considered central for the modern innovative economy and essential for the national competitiveness. Thus it is important to study patenting in order to understand the functioning and effectiveness of the intellectual property rights system, national innovation system and general socio-economic performance at the macro and micro levels.

Keywords: Lithuania, patents, European patents.

Research type: research paper.

Introduction

Lithuania has restored independence from the Soviet Union in 1990. Since then, the country underwent a period of very rapid legal reform and modernization, as well as transition to market economy. Lithuania also succeeded in establishing a modern system of intellectual property rights, including the national patent system and preconditions for national applicant to seek protection at the international level.

Patents are considered central for the modern innovative economy and essential for the national competitiveness. Thus it is important to study patenting in order to understand the functioning and effectiveness of the intellectual property rights system, national innovation system and general socio-economic performance at the macro and micro levels.

The paper presents the study of the patenting by the Lithuanian nationals over the period of 2003-2013 (total 11 years) at the national patent office and the European patent office. The paper does not investigate the period of 1990-2003, although some empirical data from this period is provided. The period of 1990-2003 can be described as the transitional period, where the legal environment and the innovation system was only in the process of being created, while the society underwent dramatic socio-economic changes. Study of this period would require adjustment to the changes and hence is difficult and non-indicative.

The purpose of this study for the 2003-2013 period is to identify patenting trends, as well as possible strengths and weaknesses, after the modern legal and innovation infrastructure was put in place. We do not aim to provide a comprehensive analysis for the reasons underlying such strengths and especially weaknesses, since this is the object for future research. The paper provides an overview of the historical and regulatory context, as well as socio-economic context. Building on this, the paper analyses key patenting indicators over the target period – patent application

numbers, sectorial breakup of the patent applications, conversion (how many applications have been issued as patents) and current status of these patents.

Historical analysis, logical analytical, systematic, comparative and descriptive statistical methods were used for the analysis.

Historical and regulatory context

Within the first decade of re-established independence (1990-2000) Lithuania has created the full-fledged independent legal framework for intellectual property rights, including patents, trademarks, design, copyrights and other rights. It is noteworthy that Lithuania had long standing patenting tradition in the Soviet Union, hence the reemerging country immediately had the necessary resources and expertise for setting up the independent patent system.

Taking advantage of this expertise and infrastructure, the State Patent Bureau was established in Lithuania on April 12, 1991. Simultaneously modern judiciary dealing with intellectual property disputes was set up in 1990-1993. In 1992 Lithuania became a member of the World Intellectual Property Organization. 1992 also marks the first patent regulations adopted through executive decisions and the start of acceptance for the national patent applications by the State Patent Bureau, as well as conversion of the Soviet Union IP rights into national rights.

First comprehensive patent law in Lithuania was adopted in 1994, the same year when Lithuania joined the Patent Cooperation Treaty (PCT). The law was amended several times and re-enacted in 2005 and 2010 in order to bring it up to the modern standards. Lithuania also became the member of the Paris convention in 1994 (ratified the Paris convention in 1996), and became the associated member of the European Patent Office. Being an associated member of the European Patent system allowed the simplified extension of the European Patents in Lithuania. It was also a step towards Lithuania becoming full member of the European Patent system.

First European Patent was extended to Lithuania under the national procedure in 1996. State Patent Bureau of the Republic of Lithuania started feeding the national patent application data to the EPO Espacenet databases in 2000. Lithuania joined WTO/TRIPS in 2001 and became full member of the European Patent Convention in early 2004, becoming the 30th member of the EPO. From 2005 Lithuania provides generous support for converting the national patent applications into the European Patent or through the PCT procedure.

During the 2000-2004 period Lithuania has implemented the EU ACQUIS (legal framework) including all directives and regulations pertaining to legal protection of intellectual property rights and joined the EU as the Member State as of May 1, 2004.

The State Patent Bureau of the Republic of Lithuania is the executive body responsible for the legal protection of industrial property (inventions, designs, trademarks and service marks, semiconductor product topographies) in Lithuania. In the patent field the State Patent Bureau accepts and registers national patent applications, as well as PCT applications, also issues and registers national Lithuanian patents. Lithuania chose non-examination approach to the national

patent applications. This means that the State Patent Bureau of the Republic of Lithuania does not perform search and review of the patentability of the national patent applications. Instead only formal check of the formalities is performed. As a result the Lithuanian national patent system is essentially a conduit for the international patent applications (if they are sought) or a path to a limited national legal protection, which may be challenged at any time on patentability grounds.

Unfortunately, national patent issuance situation in Lithuania was erratic. An overall decrease in patenting was notable trend in the first decade 1993-2003 of the national patent system in Lithuania. This trend may be explained by the turbulent legal and economic environment.

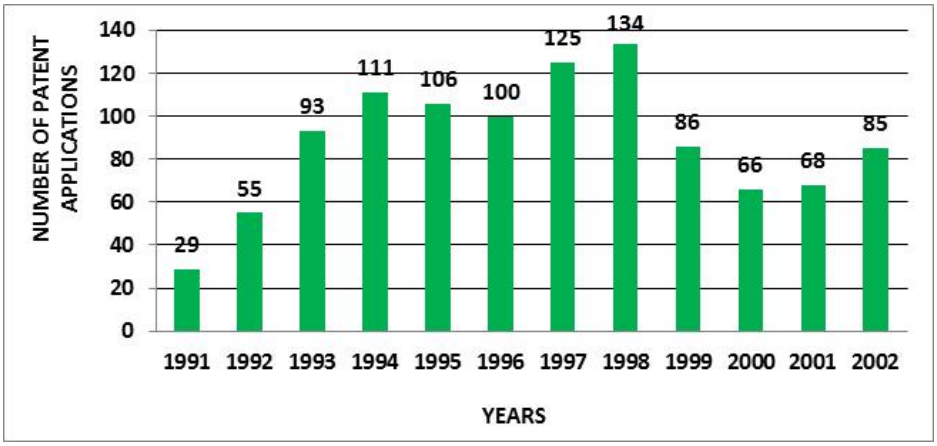

Figure 1. Number of EP/PCT patent applications from Lithuania (from 1991 to 2002)

During the 1991-2002 period number of patent applications very fluctuated. According to the Annual Report of the State Patent Bureau of the Republic of Lithuania the biggest amount of patent applications was provided in 1998 (134 patent applications) and in 1997 (125 patent applications), while the smallest amount was in 1991 (29 patent applications). 85 patent applications were applied in 2002 and this number is four times bigger than in 2003 (only four patent applications were applied). In the decade of 2003-2013 number of patent applications decreased markedly.

This trend was reversed only in the next decade with the pickup in socio-economic development, acceptance of the European and PCT patenting ways and government financial support for patenting.

Socio-economic context

As indicated in the *Development of Socio-economic Behaviour and Attitudes of Baltic Nationalities* (1999), since 1994 the Lithuanian economy can be described as follows: slow economics, comparatively lower inflation grows in export volumes. Every second of unemployed

has a vocational education, the demand for lawyers, physicians, teachers of foreign languages is still increasing. The development of export has a significant influence on the economic growth of Lithuania and it is necessary to promote the export business. Lithuanian economy loses long term growth in comparison to Asian economy.

At the *Operational Programme for Economic Growth for 2007–2013* are provided the main reasons of slow establishment of clusters in Lithuania: "lack of trust among clustered entities; discrepancies in the technology and management level of different businesses; underdeveloped business information systems; lack of competencies and experience in working with partners; ineffectiveness of professional and branch associations; ineffectiveness of innovation system". Discrepancies, as well as underdeveloped systems, disturb to provide quality services and to create a sustainable value. Lithuanian enterprises have a very limited number of people with needed skills and competencies. The management and promotion of processes is more difficult because of ineffectiveness. Although Lithuania has almost all needed components of innovation system, but the system itself is not effective.

According to the *Global Competitiveness Report* (see: http://www.weforum.org/issues/global-competitiveness) published by the *World Economic Forum*, in 2001 Lithuania was in the 43rd position from 75 participating countries, in 2002 – 39 (among 80), in 2003 – 40 (among 102), in 2004 – 36 (among 104), and in 2005 Lithuania was 43 among 117 participating countries.

***Table 1*. Ratings of Lithuanian's competitiveness factors on Europe**

		Lithuania's position on Europe		
		Strong	**Neutral**	**Weak**
1.	Macroeconomic environment	8	3	10
2.	Technological level: innovations and spread of technologies	0	4	17
3.	Human resources: education, health care and labour productivity	3	4	4
4.	Public infrastructure	0	1	7
5.	Public administration institutions	1	5	21
6.	Domestic competition and clusterisation	1	6	4
7.	Sophistication of businesses	2	9	13
8.	Environmental protection	0	4	5

Source: Comprehensive Study of Sources (Factors) of Growth and Competitiveness of the Lithuanian Economy. Vilnius, 2006, p. 123.

1–13 position shows a strong position, 14–21 position – neutral, and 22–29 position – weak. As it can be seen, Lithuania is the weakest in public administration institutions and technological

level. The strongest area is a macroeconomic environment, although there are only several fields where Lithuania occupies a strong position.

GDP level per capita is the main factor according to which the support of Structural Funds is provided to the EU. As it is indicated in the *The Evaluation of Social and Economic Development of the Region* (2010): “increase of GDP level becomes slower 0.2% every year”. Therefore, considering the fact that GDP in Lithuania is 50% lower than the average in the EU states, it is important to provide more attention to the country’s development. Labor force is concentrated in the sectors of industry and agriculture. However, the number of employees is increasing in the service sector.

According to Rakauskienė and Ranceva (2013), the phenomenon of international emigration is the process which influences both social and economic situation in the world. Due to emigration the negative demographic indicators (for example, low birth rate, high mortality rate, etc.) are decreasing further, the state budget and social security budget revenues are reducing. Development of high technologies, innovations and modernization of the economy is slower because of the emigration.

The emigration caused the problem of “brain drain”, when the best specialists are leaving the country because there is no possibility to use their abilities in Lithuanian market. Rakauskienė and Ranceva (2013) provided the main reasons of emigration: the lack of opportunities of self-expression, self-realization, interesting creative work, as well as high cost of studies in Lithuania. Young people leave Lithuania because they cannot to realize their professional potential. The lower cost and better quality of studies abroad, as well as more possibilities to find a work after the studies contribute to emigration. Many of them stay abroad and after the studies.

The 2003-2013 was the period of the ultra-rapid socio-economic development in Lithuania. The country also experienced a very significant downturn in 2009. Overall the country has leapfrogged closer to the EU averages in terms of socio-economic development.

2003 was very successful for Lithuanian economy – Lithuanian GDP increased most in the EU by 10,3%. As it was noted, Lithuania became a member of the European Union in 2004, allowing the economy to continue to grow.

The EU accession put more attention to innovation and modern technologies. Lithuania along with the other Member States focused adopted national innovation measures and achieving the Lisbon Strategy goals. In the period of 2001-2004 Lithuania adopted and started implementing national innovation promotion programmes, including The Lithuanian Science and Technology White Paper Implementation Programme, PHARE Small Project Fund, FP5, etc.

In 2005 and 2006 GDP grew by 7,8%. In 2007 GDP increased by 9,8%. At the end of 2008 the economic development stalled – a downturn caught on the previously strong growth. In 2009 the Lithuanian GDP went down by almost 15%. The growth of the GDP was restored in 2010 and 2011. Despite the fact that Lithuanian economy continued to grow, in 2012 the GDP decreased by just 2,7% and in 2013 GDP slightly accelerated to 3% growth.

The 2003-2013 period in Lithuania is marked by the major attention to innovation development, promotion of R&D and high technology industries. During this period large part of the EU support (the EU Structural funds) was also channeled into the economy through established

programmes and projects in order to fasten innovations development in Lithuania. During the 2007-2013 period 6,8 billion EUR worth of EU funding were allocated in Lithuania (see: http://www.kpmg.com).

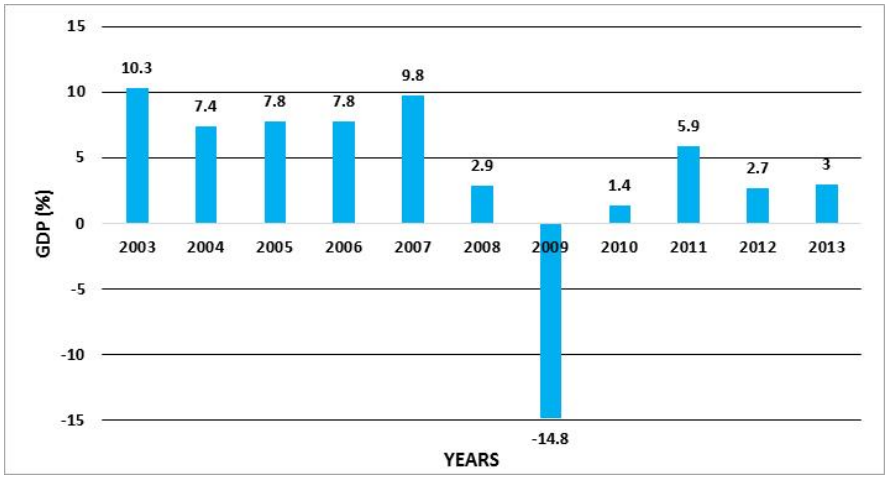

Figure 2. Lithuanian GDP in 2003-2013 (see: http://www.gfmag.com)

The first *High Technology Development Programme* was confirmed in 2003, later in 2006 it was renewed after the 2007-2013 development programme. In 2003 a new science and study reform was confirmed. A competitive science funding was enabled with this programme. Five Integrated Science, Studies and Business centers (valleys) were established in 2007: *Saulėtekis* Valley, *Santara* Valley, *Santaka* Valley, *Nemunas* Valley, and *Marine* Valley. In 2010 the *Innovation Strategy,* the *Research Council of Lithuania*, and MITA (A*gency of Science, Innovations and Technologies*) were established.

The aim of the *High technology development programme for 2011-2013* is to develop hi-tech trends: biotechnology, mechatronics, laser technology, information technology, nanotechnology and electronics. Another programme – *Industrial biotechnology development programme for Lithuania for 2011-2013*. This programme was created in order to fasten biotechnology industry development in Lithuania, create pharmaceutical and veterinary products, and create materials and products from renewable raw materials by using biotechnical methods. One more EU Structural Funds Project is *Technology and Science for Innovative Enterprises*. Activities of the project will encourage the cooperation between science and business institutions, technology transfer, and protection of intellectual property.

In 2009 Lithuania has further reformed science and study system. The aim of this reform is to create and develop links between the business and universities, to increase openness of the science and study system. The reform provided further independence for the universities, set forth

incentives for commercialization of science, also, established full university ownership of the academic intellectual property and intellectual property produced as a result of publicly funded research. Some incentives for faculty – the authors and inventors – were also introduced, however their adequacy is subject to criticism.

Overall, 10% of the EU Structural Funds distributed by Lithuania were targeted for a higher education, research, and innovation.

Biotechnology and laser industries are historically the strongest among Lithuanian high tech industries. These industries are successors to the pre-1990 military science research complex and were always adept at patenting. Biotechnology and laser industries have been the main beneficiaries of the Lithuanian innovation targeted policies.

Lithuania has more than 25 research and manufacturing companies in the biotech field, focusing on pharmaceutical proteins, nucleic acid and enzyme biochemistry, as well as eukaryote and prokaryote recombinant biotechnology. Lithuanian researchers have developed most advanced restrictase enzymes in order to manipulate genes – the technology, which was acquired by Thermo Fisher Scientific in 2010. Lithuanian researchers also developed first generic filgrastim and human growth hormone products with the recombinant biotechnology. Biotechnology in Lithuania and now contributing over 1% to the country’s GDP.

Lithuanian laser industry is another national hi-tech industry champion. Every 10th laser used in the world is manufactured in Lithuania (see: http://www.madeinlithuania.lt). Fundamental research is carried out by 11 science and laser technology research centers. 86% of production is exported to nearly 100 countries (the largest are the EU, USA and Japanese). Laser manufacturing sector of Lithuania increases about 15–20% per year (see: http://www.enterpriselithuania.com/en/sectors/electronics-and-laser-industry/).

National and EU support, focus on promoting innovation and R&D, rapid acceptance of modern technologies seemingly revitalized patenting in Lithuania. By 2013 Lithuania had the second highest increase in innovation growth in the EU between 2008 and 2012 (see: http://www.investlithuania.com/en/sectors/rnd/lithuania-an-emerging-biotech-investment-destination).

Empirical inquiry into 2003-2013 patenting in Lithuania

By 2003 Lithuania has established modern legal system and modern intellectual property legal protection regime. 2003 also marks the beginning of the aggressive innovation public policies in Lithuania. Thus, the period beginning in 2003 and ending in 2013 (last year for which data is available) has been chosen as the period for empirical study.

Overall, since 2003 the number of patent applications both by the private (individuals and companies) and public parties (universities, research institutes) is exploding. As it was demonstrated in the previous sections from 2003 the socio-economic situation in Lithuania has been supportive of innovation and likely had a positive influence on the patent volume.

Typical patent prosecution in Lithuania involves the national patent application as a step towards the international (European Patent or PCT) application. As it was noted the patentability of the claimed invention is not assessed at the national level. Only during the second step at the European Patent Office or the designated PCT bureau the search and review may be performed. Furthermore, the international patent application charges are significantly higher than national fees. All of this combined is a barrier, which somewhat filters more valuable inventions, which are further pursued as patents at the international level.

Assuming the above, the study of Lithuanian international patenting was designed. For the study the Lithuanian patent applications submitted through the PCT procedure over 2003-2013 were gathered and analyzed. Lithuanian patent applications submitted through the PCT procedure choose European patent office as the designated PCT office.

Due to relatively low number of applications over the target period there was no need to select representative samples and sample the data. Instead all available applications were thoroughly analyzed, thus providing maximum reliability for the study.

Data were gathered from the WIPO Patentscope database (see: http://patentscope.wipo.int/search/en/search.jsf), using the advanced search queries in order to search for patent applications originating from Lithuania (that is - [LT] – search tag) and the search was narrowed to Asia-Europe Office. Then the current status data were gathered from the EPO Espacenet Advanced Search database (see: http://worldwide.espacenet.com/advancedSearch?locale=en_EP), searching for the patents codes, which were identified through the WIPO database. Codes identify the status of patent application. Overall, 111 Lithuanian patent applications have been identified and collected from 2003 to 2013.

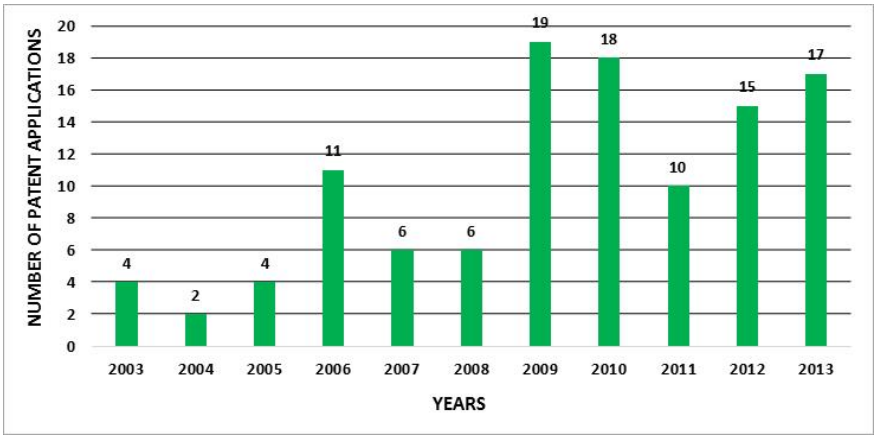

Figure 3. Number of EP/PCT patent applications from Lithuania (from 2003 to 2013)

In 2004 only two international patent applications by Lithuanian nationals have been identified. It is the smallest number of patent applications through the target period in Lithuania. In 2003 and 2005 four patent applications have been filed. Thereafter very significant growth may be

observed. The highest volume of international patent applications was seen in 2009. Thereafter the volume of patent applications slightly decreased.

The database of the 2003-2013 Lithuanian patent applications featuring their *PCT Bibliographical Data*, *International Application Status Report*, *International Preliminary Report*, and *Written Opinion of the International Search Report* documents have been created for the purposes of the study. Current legal status of the patent applications was verified through the EPO Espacenet database (see: http://worldwide.espacenet.com/?locale=en_EP).

In the study the patent information was analyzed and distributed to seven main groups. These groups have been selected according to the WIPO International Patent Classification (see: http://patentscope.wipo.int/search/en/search.jsf) (IPC). Although IPC is exhaustive, for the purposed of the study, the EPO standard was adopted assigning all patent applications to 7 main groups: chemistry, electrical engineering, fixed constructions, human necessities, mechanical engineering, performing operations, and physics. Every patent application has a letter and number which are provided in their *PCT Bibliographical Data* document. These numbers and letters show the field to which the patent application falls.

As it was explained, patent applications have been divided into 7 groups: chemistry, electrical engineering, fixed constructions, human necessities, mechanical engineering, performing operations, and physics.

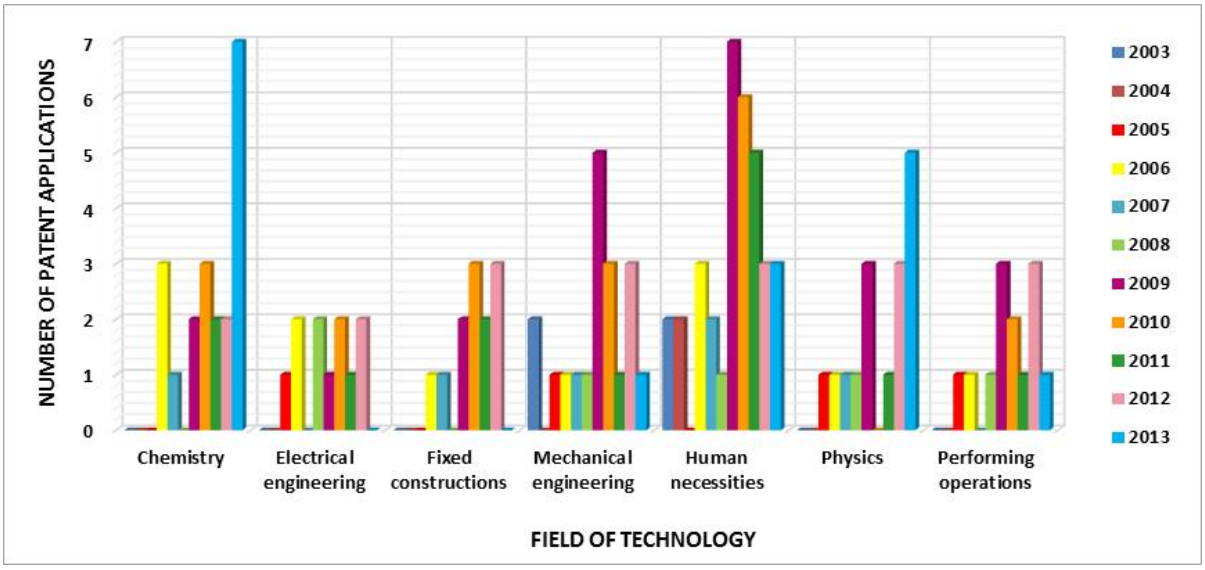

Figure 4. Patent applications divided into categories

The biggest group is human necessities (34 patents). Only in 2005 there was no patent application in this group. The second group has 20 patent applications (chemistry) and the third group (mechanical engineering) has 19 patent applications.

2013 has been most fruitful year for patent applications in the chemistry field. Overall, chemistry and human necessities fields dominate and are the strongest areas in Lithuanian patenting. These fields of technology are representative of the laser and biotechnology industry innovative activities. The field of human necessities makes 27,2% of all patent applications. Chemistry makes 16% of all applications.

The smallest groups are performing operations (13 patents), fixed constructions (12 patents), and electrical engineering (11 patents). These are dominated by individual applicants and SMEs.

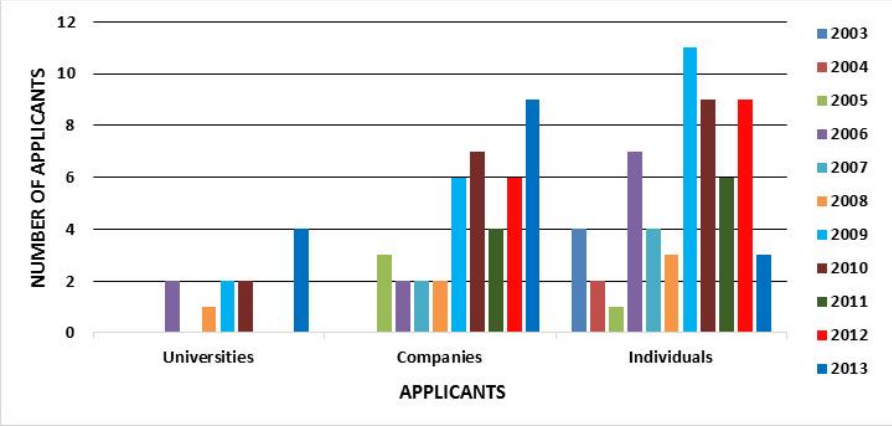

Figure 5. Applicants of patent applications

Individuals provided the biggest part of patent applications – 53% of all patents. Companies applied 37% applications, while universities provided only 10% of all applications. *Archiprojektas* UAB was the most active applying applications, it provided three patent applications. Biotechnology institute applied five applications – it is the biggest number of applications in the field of universities.

Not all patent applications become granted patents. Through the international search and review process the defects (lack) in any of the patentability are identified and may become an obstacle to grant of the patent. Defects generally shall be addressed during the patent prosecution process either by abandoning the patent application (not pursuing the grant) or by making amendments to the patent application, but this does not seem to the strong sides of the Lithuanian patentees. Also, Lithuanian applicants are not good at maintaining their patents.

According to the EPO database 46% of all patents are lapsed, ceased or withdrawn, or they failed to enter into the national or European phase (51 patents). Another 11% of patents have requests for (preliminary) examination or they got the maintenance fee reminder (12 patents). Destiny of these patents is not clear – they may become lapsed patents or may maintain the position of the granted patents. EPO database do not provide information about 33% of patent applications (37 patents). All the rest (10% or 11 patents) are granted patents.

Conclusions

1. Lithuania has been able to capitalize on the modern legal system, access to the international patent systems, and a period of strong economic performance in 2003-2013 in producing spectacular (more than fourfold) growth of the international patent applications by the Lithuanian nationals.

2. 111 international patent applications filed by the Lithuanian nationals over 2003-2013 have been collected from the WIPO Patentscope database and the EPO Espacenet database. Two strongest fields of technology revealed in the Lithuanian patenting – human necessities (34 patent applications) and chemistry (20 patent applications). The field of human necessities makes 27,2% of all patent applications and chemistry makes 16% of all applications. Individuals provided the biggest part of patent applications – 53% of all patents. Companies applied 37% applications, while universities provided only 10% of all applications. *Archiprojektas* UAB was the most active applying applications (3 patent applications). Biotechnology institute applied five applications – it is the biggest number of applications in the field of universities.

3. Current status of the analyzed patent applications (and patents) is not very optimistic. 46% of the applications failed to convert into patent grants or failed to be maintained (supported) by their applicants. This is concerning, which deserves additional scrutiny and will be addressed in follow-up research.

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''Societal Innovations for Global Growth'',
2014, No. 1(3)
ISSN 2335-2450 (online)

ADMINISTRATIVE-TERRITORIAL REFORM AS A PRECONDITION FOR EFFECTIVE DECENTRALIZATION OF POWER IN UKRAINE: ADAPTATION TO THE EUROPEAN STANDARDS

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Abstract

Purpose – analysis of the current state of administrative and territorial structure of Ukraine and the problems that it generates; justifying necessity of full administrative-territorial reforms in the country in line with EU standards.

Design/methodology/approach – conclusions about the present problems of administrative-territorial device are done on the basis of legal acts analysis, which regulate the issues of powers of public power local organs in Ukraine, and also practices of their application. Therefore the important constituent of a source base of the work are administrative acts of the corresponding organs which operate on territory of the Transcarpathia area. The determination of directions of administrative-territorial device of Ukraine improvement is carried out using the comparative legal analysis of analogical reforms which were conducted in the countries of Eastern Europe.

Findings – the administrative-territorial device reforms in Ukraine as constituent of the general administrative reform should precede the structural reform of state and local governments and implemented in accordance with the general EU standards.

Research limitations/implications – research was limited by the analysis of the Ukrainian legislation and practice of its application, analysis of Eastern Europe experience in the reforms implementation, and also by the analysis of unified classification of territorial units in statistical reporting system of the European Union: the Nomenclature of Territorial Units for Statistics;

Practical implications – research results can be used in the conceptions and strategies of improvement of administrative-territorial device of Ukraine. They can also be used for forming and planning of normative acts which regulate a certain question.

Originality/Value – research contains original author ideas, grounds, conclusions and suggestions, on the basis of the analyzed empiric material;

Keywords: administrative-territorial device, local organs of public power, decentralization of power;

Research type: conceptual paper.

Introduction

Today is an obvious need for a comprehensive administrative reform that would ensure decentralization of public administration in Ukraine. The discussions about methods and effects of decentralization do not stop in scientific sources, as evidenced by the content of National report “New course: reforms in Ukraine” (Heytsy, 2010); however, along with the intensification of the processes associated with the implementation of systemic reform of public governance in the country, they started to talk about this issue at the highest level of governance also.

The aim of modern reforms is preparing the state for global political, economic and cultural changes that are predicted in the coming decades, as Ukraine wants to become equal partner for EU countries. To achieve this objective, reforms in Ukraine should touch the modification of the state structure, the system of making power solutions and financing system.

Theoretical background

The decentralization research in Ukraine to some extent implemented in the works W. Averyanov (1997), V. Bordenyuk (2005), I. Koliushko (1997), M. Pukhtynsky (2012), M. Kharytonchuk (2000), V. Shapoval (2005) and others. Each of the researchers considered and analyzed the decentralization from the standpoint of his scientific interest and covered under his own vision problems that arise. But most of them emphasized the priority to the need to reform the system of power in modern Ukraine. The author's view of the problems associated with the implementation of decentralization of public administration in Ukraine and possible directions of their overcoming by legal means is given in this paper. Accordingly, the aim of the proposed paper is the means of legal mediation decentralization of executive power substantiation through outlining the current problems of the administrative-territorial structure and defining the legal ways of its improvement. These issues are of great practical legal significance, because their solution involves specifying strategic directions of state building process in Ukraine and ensuring rights and freedoms of citizens.

Research methodology

There are multiple definitions and understandings of decentralization actually. In general terms, the essence of decentralization is in distributing the functions and powers to implement a unified state power, which originally belongs to the people, among relevant authorities on the one hand, and state and local governments - on the other. The first case refers to the division of functions and powers to implement a unified state power primarily between the highest organs of

state, which is reflected in the principle of division of powers into legislative, executive and judicial. This way of decentralization of state power, reflecting the principles of relations between the Parliament, the President and the government, is covered, as is known, the notion of «forms of government» (Bordenyuk V., 2005). In decentralized countries the power of making decisions is not concentrated in only one central authority, but in a multiplicity of authorities. But at the same time we should understand, that decentralization is the process of power delegating to public authorities or agencies that have legal personality themselves and are not hierarchically subordinated to the central authority. They are self-governing. Each of them, according to Seerden and Stroink (2002), is organized as a centralized body itself, which means that within this decentralized authority, hierarchy prevails from the top to the bottom. That’s why the interpretation of the term administrative decentralization as the process of broadening and strengthening the rights and powers of administrative units or lower bodies and organizations, while narrowing the rights and responsibilities of the respective center (Tikhomirov, 1995) is not correct in all cases.

According to the French administrative doctrine, close but not identical with the concept of decentralization is the concept of deconcentration of power. As Breban states (1988) the deconcentration is just a "technology of management", that means the distribution the state functions within the system of executive power, but also under decentralization involves the transfer of case management agencies that have a certain independence in relation to the central government. Deconcentration can also be seen as the first step in a newly decentralizing government to improve service delivery (Utomo, 2009).

Such understanding of the concepts of decentralization and deconcentration is generally accepted in the theory of European law today (Seerden and Stroink, 2002).

The decentralization classification on different forms and types can be made based on various grounds. Different typology of decentralization has been developed by Smith (2001) and Ribot (2004). According to Smith the decentralization divides into five basic forms, such as deconcentration, delegation, devolution, partnership, and privatization. Opposed to the previous point of view, Ribot separates decentralization from not-decentralization. Decentralization includes democratic decentralization and deconcentration, whereas not-decentralization comprises privatization and non-privatization.

According to Cohen and Peterson’s (1999) classification approach, the distinction is made between territorial decentralization and functional decentralization. Territorial decentralization is a process whereby the Constitution or an Act of Parliament attributes a rather general and vaguely described jurisdiction for a limited territory to autonomous authorities having a distinct legal personality. Seerden and Stroink (2002) add that this is realized by giving those authorities bodies that are directly elected by the citizens living on their territory.

The concept of “functional decentralization” or “decentralization by services”, as determined by Chapus (2001), refers to a form of government according to which the decision-making as to well-defined tasks of general interest is entrusted to an autonomous public authority having legal personality and enjoying a relative degree of financial independence from the central authorities

(Seerden and Stroink, 2002), either parastatals under the control of the government or to units outside governmental control, such as NGOs or private firms (Cohen and Peterson, 1999).

Results and findings

With regard to the decentralization in Ukraine, it should be noted that the functional decentralization manifested here quite weak. According to the Law of Ukraine “On the Cabinet of Ministers of Ukraine” Cabinet of Ministers of Ukraine (Government of Ukraine) is the highest body in the executive branch[1]. It directs, coordinates and supervises the activities of central and local executive bodies. That means that all executive agencies, those who possess executive and administrative powers are in subordination (either direct or indirect) of the Cabinet of Ministers of Ukraine. That is, normative regulation and practice of government entities traced territorial rather than functional decentralization.

But in spite of that sometimes these concepts are mixed and replaced one another. We should note the fact that in Ukrainian scientific circles there is not enough clear idea about the types of decentralization and the characteristic features of each species. For example, recently in several major cities of Ukraine a series of roundtable discussions titled "Functional decentralization in Ukraine" was provided. However, the questions that became the subject of discussions and formed the basis of roundtable abstracts dealt mostly principles underlying the draft law on administrative divisions in Ukraine, identifying areas, where can act effectively authorities, principles of organization of local communities and others (Dnepropetrovsk: The government must become as close, effective and inexpensive as possible, 2014). It is obvious that these are issues that characterize the content of territorial rather than functional decentralization.

Thus, the issue of administrative decentralization in Ukrainian doctrine is reduced to the question of territorial decentralization of public administration. Practical aspects, namely, the legal regulation of the decentralization process, concern mainly the territorial component as well, that is the empowerment of local non-governmental structures, which are local self-government organs. In particular, this year the concept of local government reform and territorial organization of power in Ukraine was approved by the Cabinet of Ministers of Ukraine (dated April 1, 2014 p.), that contains software standards for the reform of local authorities and local governments[2].

At the present time according to the Law "On Local Self-Government in Ukraine" at the district and regional level of organization and activity of self-governing bodies the representative organs (councils) do not have their own executive bodies and therefore have to delegate the

[1]Про Кабінет Міністрів України. Закон України. [On the Cabinet of Ministers of Ukraine. Law of Ukraine]. [interactive]. 27.02.2014. № 794-VII . [accessed 2014-10-10]. http://zakon4.rada.gov.ua/laws/show/794-18

[2] Про схвалення концепції реформування місцевого самоврядування та територіальної організації влади в Україні. Розпорядження Кабінету Міністрів України. [On approval of the concept of local government reform and territorial organization of power in Ukraine. Cabinet of Ministers of Ukraine Resolution].
[On the Official site of Vephovna Rada of Ukraine]. April 1, 2014. № 333-р

implementation of their decisions to public state authorities (local administrations)[1]. The above fact leads to the transition of independent self-governing bodies de jure into the state-dependent de facto.

So, one of the directions solving problems associated with irrational system of local government is the providing in the laws, including the Law "On Local Self-Government in Ukraine" along with other elements of the system of local government that has developed within a single district and region, the presence of executive departments of districts and regional councils (executive committees, departments, management) and giving them executive and administrative powers. Consequently, that will cause the transition of local administrations to bodies that carry out mainly oversight powers over the implementation of executive and administrative powers of local self-government and separate local authorities.

Implementation of these program regulations will certainly be a real step in implementing the ideas of decentralization (in the form of the territorial decentralization) and deconcentration of state power in Ukraine.

At the same time we consider that the decentralization is not a one-time power transfer from the state government to the local governments, but a complex process that includes such elements as the ability of public authorities to transfer and local governments to receive and dispose of authority effectively; determining the powers that should be supplied; mechanism of transmission of the authority; mechanism of interaction of state and local governments; issues of territorial administrative reform and so on. That is the analysis of the problems of decentralization of power should be transferred to the level of analysis of its problem issues.

The first obligatory part of the decentralization process is the definition the powers in respect of which should be implemented decentralization. The difficulty of this issue lies primarily in the fact that the definition of a particular amount of powers, that must be transmitted, is not constant and may vary depending on the socio-economic and political situation in the country.

Besides, the determination of competence correlation of local and national authorities depends no less on other components of decentralization discussed above, namely, the capacity of public authorities to transfer and local governments - to receive and effectively dispose of authority, the existing mechanism transfer of authority and the mechanism of interaction of state bodies and local authorities.

However, despite the complexity of the issue, the starting point, in our opinion, should be the requirement of compliance with the Constitution of Ukraine, which laid the legal foundation for separation of powers of local authorities. In the 119th article of the Principal Act it mentioned the main activities of local administrations, and in 143d article - basic local issues[2]. The status Laws of Ukraine "On Local State Administrations in Ukraine" and "On Local Self-Government in Ukraine" that provide the constitutional separation of powers on lower level of legal regulation must not only comply with the Basic Law, but also follow his logic.

[1] Про місцеве самоврядування в Україні. Закон України. [On the Local Government in Ukraine. The Law of Ukraine]. [On the Official site of Vephovna Rada of Ukraine]. 21.05.1997. № 280/97-ВР

[2]Конституція України. [Constitution of Ukraine]. *Vidomosty Verhovnoyi Radi Ukrayini.* 1996. № 30.

The constitutional regulation of the functions and powers of local public authorities conducted using both objective and functional principles. Accordingly, the laws "On Local State Administration of Ukraine" and "On Local Self-Government in Ukraine" define the powers of local state administrations and local governments primarily on the basis of objective competence. The regulation on the basis of functional governance accomplished only in respect of supervisory powers. Hence, most of the powers of local authorities and local self-governments are in related jurisdiction, which in practice leads to the problem of distinguishing between the powers of local public authorities, and therefore the implementation of decentralization of public administration and government in general.

Therefore, the solution of the problems outlined above shall not be limited by the distribution of branch powers among entities of higher and lower levels. First, decentralization has to apply to certain functions, in which appropriate "set" of specific powers is carried out. This approach will not only help to avoid a number of legal problems in the law implementation, but will response the basic norms of the Constitution.

However, as suggested, the territorial decentralization of public administration and reforming local authorities and local governments in the above manner should be done after the reform of the administrative-territorial structure of Ukraine. That should be explained as follows.

The transformation of local government in agencies that have their own executive bodies raises the questions of necessity the existence of district state administration branched system within the region. Since the monitoring activities of district state administration shall relate mainly the collection and analysis of information on the implementation of own and delegated local government powers, which is mainly the report analysis on the state and local programs, the implementation of national standards for providing social services, etc.; it is evident that a large staff of district administration workers with a jurisdiction on one or two dozen local communities only becomes unnecessary.

With regard to the issue of excessive fragmentation of communities in Ukraine, it should be noted that the country was formed by the 12 thousand of local communities, more than 6 thousand communities have less than 3000 residents of people, the 4809 communities have less than 1000 individuals and in 1129 communities there are less than 500 people each[1]. Most of them do not form the executive bodies of village councils, there are no government institutions, utilities and more. Local governments of such communities cannot practically carry out the powers provided them by law, so the additional decentralized powers of the government are not possible to fulfill.

However, the problem of excessive amounts of administrative baseline units can be partially solved by creating an effective legal mechanism of a voluntary association of several local communities into a one and also by a government encouragement of this process. The

[1]Про схвалення концепції реформування місцевого самоврядування та територіальної організації влади в Україні. Розпорядження Кабінету Міністрів України. [On approval of the concept of local government reform and territorial organization of power in Ukraine. Cabinet of Ministers of Ukraine Resolution].
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consolidation of district administrative units cannot be done by residents on a voluntary basis. Only the Parliament of Ukraine defines the territorial structure of the state according to constitutional norms. Therefore, we believe that the reform of local authorities and local governments, the implementation of decentralization of state power shall be developed alongside the draft reform of the administrative-territorial structure of Ukraine. The issue of legal status and competence of these bodies should also be associated with changes in their jurisdiction. Therefore, we believe that a reasonable and practically useful are those draft concepts of the administrative-territorial reform, which include reducing the number of districts and consolidation in the structure of the administrative-territorial division areas.

The need for administrative reform in Ukraine to ensure the success of the decentralization of power is determined also by the fact that at present the districts in Ukraine differ both in terms of area and population. In particular, Tachivski district of Transcarpathian region has a population of 172,389 people, and Perechyn district of the same oblast - 31 790 people. Accordingly, the first area is 1818 km², and the other – 631 km² (according to the data of State Statistics Service of Ukraine).

In addition, the feature of the territorial organization of power in Ukraine is the existence of regional importance cities. Their number varies and ranges from 2 to 18 in each oblast. Their characteristic feature is that the executive bodies of these cities councils are undertaking a range of functions that are performed by state local governments in urban areas and cities, that are not of regional importance.

That is the cities of regional significance have the right to self-government, and other towns and villages of the region depend on the district state administration. It follows that the right to self-government in different locations, with approximately the same infrastructure and the same need to provide services to residents, is carried out in different ways. This contradicts the principle of ubiquity of self-governing and also the norms of the Constitution of Ukraine, which does not provide local communities of different statuses.

Moreover, Antonenko, Kravchenko and Pittsyk (2005) state that the experience of reforms in Latvia and of Denmark the experience of Eastern European countries shows that the countries, that have successfully implemented a complex administrative and territorial reform, have been achieved a high level of socio-economic development and civil society. However, Tokar, Hontsiyazh and Nowakowski emphasize that the goal of reforming depends also on strengthening the system of local self-government (Administrative Reform. Polish experience for Ukraine, 2000).

One of the assumptions of administrative-territorial division of Ukraine is its compliance with the recommendations of the European Union on the Nomenclature of territorial units for statistical purposes. Since European integration processes of modern Ukraine moved from abstract definitions and statements to concrete actions is of big importance to follow the EU requirements and standards in the state building process.

The NUTS classification (Nomenclature of territorial units for statistics) is a hierarchical system for dividing up the economic territory of the EU for the purpose of the collection, development and harmonization of EU regional statistics, socio-economic analyses of the regions

and framing of EU regional policies. The NUTS regulation defines minimum and maximum population thresholds for the size of the NUTS regions: NUTS 1 (3 million-7 million), NUTS 2 (800 000 - 3 million), NUTS 3 (150 000 - 800 000)[1]. For practical reasons the NUTS classification is based on the administrative divisions applied in the Member States that generally comprise two main regional levels.

To meet the demand for statistics at local level, Eurostat has set up a system of Local Administrative Units (LAUs) compatible with NUTS. At the local level, two levels of Local Administrative Units (LAU) have been defined: The upper LAU level (LAU level 1, formerly NUTS level 4) is defined for most, but not all of the countries. The lower LAU level (LAU level 2, formerly NUTS level 5) consists of municipalities or equivalent units in the 27 EU Member States.

Ukrainian oblasts almost meet the requirements of NUTS2, which is one of the reasons of pointlessness of changes at this level of territorial structure. Just two oblasts, Donetsk and Dnipropetrovsk, as of January 1, 2014 exceed these indicators (according to the data of State Statistics Service of Ukraine). That is why the focus in the reform should to be done in the part of sub-regional and baseline.

There is also a tactical reason not to focus on this level. A large number of qualified professionals, that are able to be active agents of reform, including territorial and local government reform, is concentrated in the oblast level. It is necessary to mobilize this resource and make these specialists participate in carrying out reforms of the existing local authorities.

Conclusions

Thus, we can conclude that decentralization, which is declared in state policy documents, to be conducted in the form of territorial decentralization, i.e. the transferring of powers and responsibilities to authorities that are directly elected by the citizens living on their territory. Territorial decentralization in Ukraine affects the distribution and redistribution of powers between local state bodies and local self-government, which necessitates changing the structure of the last by giving them the right to form executive bodies at all levels of management (including district and regional). Obviously, the above process must be preceded by the reform of administrative-territorial structure, which would lead into compliance the structure of administrative-territorial division with the extent of powers which should be vested and was conducted in accordance with the European Union requirements.

[1]Regulation (EC) No 1059/2003 of the European parliament and of the council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS). [https://www.eur-lex.europa.eu/LexUriServ]

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

LAW DEVELOPMENT TRENDS IN THE EUROPEAN UNION

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Abstract

Historically, there was a gradual secularization of law (some functions that belonged to the Church were transferred to the State or to the disposition of secular people, so to say there was a separation between law and religion) as well as the liberalization of law (separation of law from political dependence). All this led to a discussion about the law as a relatively autonomous system, it allowed a formation of a new legal mechanism and new institutions as well as their service staff. In modern times due to the growing criticism of legal order situation changes: law as a system of rules and as a science turns to social sphere and to turns to experience of other social sciences.

Purpose. The purpose of this research paper is to analyze the main legal development trends in the European Union countries and the historical background of those tendencies.

Design/methodology/approach. In order to achieve the purpose, the main legal development trends in the European Union Member States are analyzed, the primary tendencies are defined.

Findings. The results of the research show that the convergence of legal science with other sciences is often criticized: on the one hand, it is criticized that social sciences do not know the specifics of legal science, and on the other hand, formalization of legal categories detaches too much from legal reality. Integration of social sciences to the sphere of modern law is not a phenomenon without problems: it does not solve legal reality and conflicts of legal science as well as it creates a new reality which is neither purely legal, nor purely scientific. Disciplines like philosophy of law, sociology of law, legal economical analysis and legal politology are hybrid derivatives of social sciences. They investigate law with various aspects of social sciences, which starts a discussion not only about legal science, but also opens a discourse on legal practices, that are discussed in this article.

Keywords: legal knowledge, law, social discourse, natural law, positive law.

Research type: research paper.

Introduction

The increasing openness of legal science to neighboring disciplines, especially the economy, sociology and history, becomes more and more surprising, but also inevitable phenomenon in modern law. On-going movements of law and economy, law and society in the world promote interdisciplinarity of legal science and by that demolishes it’s isolation created by traditional legal formalism. It changed approach to primary function of law – transformation turns from conflict resolution into a legal public administration. Influenced by ideas of individualism and realism, the legal regulation of society is no longer just an object of legal science analysis.

Recognition of individualism and realism as fundamental ideas promoted discussion of legal science with other sciences. Theoretical paradigm of legal instrumentalism turned towards modernization: started to look for relations with post structuralism, theoretical criticism and that stimulated socio-legal discourse. Another reason for legal regulation strictly matches reality is that law must be effective to social reality, the law has to find a causal link between legal regulation and regulated social environment. When thinking about legal regulation of society, models of legal efficiency offered are history; sociology and legal economy have to be constructed.

The stronger legal interdisciplinary is the more epistemology of legal realism is replaced by new social constructivism, which complements the methodology of individualism with rational factor – social discourse, social self-reflection and auto-organization[1]. What this new methodological paradigm means to legal science? Legal constructivism for legal knowledge provides tools of society awareness and rejects implied or unknowable society hypothesis. This does not mean that law must fully reflect social system, which is hardly possible with modern society that is characterized by high fragmentation and social differences, however, not getting into deep discussion on dependence or independence of legal science to other discourses, legal discourse is focused on knowledge, directing cognitive search through autonomous or heteronomous and other systems.

Theoretical background

The oldest critique, where can be seen search between scientific arguments and interpretability, is the critique of law. Critique of law as a legislative technique was known in Ancient times, this is to say that not every legal rule was considered as the law. During Renaissance influenced by outlook of individualism legal rule dissociated from law, so legal rule faces various

[1] G. Teubner, *Pour une épistémiologie constructiviste du droit*/Annales. Paris: Armand Colin, 1992, 6, p. 1150.

legitimacy and other problems and it is a reason for crisis in XIX century[1]. Ideological cause of the crisis, we can associate with so called "sacralisation" of legal rule[2]. Since French Revolution in 1789 throughout nineteenth century and early twentieth century J. J. Rousseau statement that a legal rule is infallible dominated, which almost no one challenged.

The rule of law is the rule of a legal rule: the concept of legality concurs with the concept of legitimacy that is to say public authorities' and private persons' practice is in compliance with the laws adopted by the Parliament[3]. The law is increasingly identified with the laws passed by parliament. However, according to H. Kelsen, if all legal rules (laws) are considered as law, legality collide legitimacy, and it becomes unclear how to develop further the concept of legality[4]. Positive criticism was and is a condition for the improvement of legal rule.

Based on classical concept of legal rule (law) legislative power derives from sovereign, nation or its representatives. According to this concept, power is legally recognized only within the validity of legislative power, directly appealing to the need of general will.

However, such a proactive concept of legal rule was frustrated by a new public law doctrine in the beginning of XX century in Europe, which developed a concept of conduct rules under which formal legislative power (parliament) is no longer a creator of law. A legislative power was demythologised in the West[5]. Even supporters of proactive concept acknowledge that the principle of representation which is based on the organization of legislative authority, in this respect, is open to criticism. Parliamentary legislation was recognized as unable to express general will and its expression was recognized as doctrinal myth[6].

Legal concept of legislative power begins to look for starting point at sociological concept of legislative power. According to E. Durkheim, a common consciousness reveals this concept, so we have to deal with (and reinforce) social phenomena, separating them from the actors considering themselves as conscious. Social facts are not a result of our will, but also they are described from a side[7]. Therefore, sociological legislative power do not determines those facts, but it gives them a form of the legal rule (law).

In the development of sociological concept of the legislative power it was recognized that the state does not exist as an individual (I never had a dinner with a legal entity), so, according to L. Duguit, common will inevitably becomes a cover for the individual desires of public power. Duguit defines legal rule not by the author, but by the content: *the law is the common needs expression of the active conduct rules*[8]. In the beginning of XX century the content and purpose of the law is emphasized, thus refusing a classical category law of the common will. The form of the law was not

[1] J.-C. Bécan, M. Couderc, *La loi*. Paris: Dalloz, 1994, p. 61.
[2] L. Favoreu, *Konstituciniai teismai* (*Constitutional courts)*. Vilnius: Garnelis, 2001, p. 20.
[3] J.J. Rousseau, *Rinktiniai raštai (Selected writings)*. Vilnius: Mintis, 1979, p. 23.
[4] H. Kelsen, *Grynoji teisės teorija (Pure theory of law).* Vilnius: Eugrimas, 2002, p. 199.
[5] J.-C. Acquaviva, La loi dans l'état de droit: la thèse/ l'université de droit, d'économie et des sciences d'Aix-Marseille. – 1989, p. 59.
[6] J.-C. Bécan, M. Couderc, *La loi*. Paris: Dalloz, 1994, p. 77.
[7] E. Durkheim, *Sociologijos metodo taisyklės* (*The* Rules *of* Sociological Method). Vilnius: Vaga, 2001, p. 48.
[8] L. Duguit, *L'Etat, le droit législatif et la loi positive*. Paris, 1901, p. 5.

important to A. Eismen, Duguit. Any rule, even if it would be released by a sovereign, is not a law, if it does not reflect the common needs[1], – wrote Duguit.

Such scientific approach demystified a will of legislative power and the criticism of parliamentary activities promoted to re-evaluate and justify its functions. Western Europe faced crisis of parliamentarism in third decade of twentieth century[2]. As parliament gets its power from the nation and establish that power in Constitution, so competence of the parliament must be limited within constitutional control of laws. As a result, legislative power is not a sovereign and it is possible not to accept its will.

On the other hand the will of legislative power is a myth because of:

• Members of parliament cannot discover it during parliamentary debates – each express their own subjective opinion and no one can claim to express what is called *spirit of law*[12]. Also, members of parliament are not competent enough: only a few of them are lawyers.

• A group of people that is too large cannot effectively engage in legislation. Today Aristotle thoughts on this question are very relevant: *The best regime should consist of democracy and tyranny, even though that some would consider them as regime*. Righteous one is those who combine more [regimes], because the regime is better if it consists a various number of them. Laws regime seems to have had no element of monarchy, but only oligarchic and democratic and is more inclined to oligarchy[13]. Signs of oligarchy arises where the laws are expressed in a stronger and more influential interest groups, in which case the representative democracies are in fact just fiction, whose real name - an oligarchy.

• Laws arise from anonymous procedures and are often characterized as false, incomplete, with unclear will, so jurisprudence and doctrine becomes a real legislator, filling the content of these laws[14]. Doctrine is managed by concept: if not express attributes of purposeful law, then the doctrine does not focus on them, but is directed to the formal description of attributes.

After Second World War laws concept criticism was supplemented by legislative practice criticism. Proponents of legalism supported the idea that law will always find a way of self-improvement until there will be an opportunity to release those laws and increase the number of laws making various modifications, additions and changes. However, this legislative practice will inevitably violate principles of legal technique: constancy of laws, generality, its coherence and others. On the other hand, democracy development leads to legal inflation, which is particularly intensive during social change period. A huge number of adopted laws, its dynamic change creates instability of social process as well as reduces establishment and effectiveness of human rights and freedoms[15]. Law moved away from its essence due to the abundance of laws, as it became more specific, rather than general, temporary rather than stable, a law become not an expression of legal

[1] L. Duguit, *L'Etat, le droit législatif et la loi positive*. Paris, 1901, p. 5.
[2] J.-C. Bécan, M. Couderc, *La loi*. Paris: Dalloz, 1994, p. 79.
[12] J. Commaille, *L'esprit sociologique des lois*. Paris: Presses universitaires de France, 1994, p. 53.
[13] Aristotle. *Politcs.* Vilnius: Pradai, 1997, p. 106.
[14] J.-C. Bécan, M. Couderc, *La loi*. Paris: Dalloz, 1994, p. 81.
[15] J.-C. Bécan, M. Couderc, *La loi*. Paris: Dalloz, 1994, p. 82.

rule, but a tool of management. Legal law became a political law that expresses not a public needs, but the will of managing group, which expresses impact of groups' interests. In this way the opposition between different society groups is growing.

Legislation of this kind is a cause and consequence of social skepticism[16]. J. Locke have noted that *the first and cornerstone of natural law, which is subject even to legislative power, is society and (as far as it is compatible with common good) protection of every individual of that society*[17]. In order to reduce social skepticism due to legislation, it is necessary to protect each individual's needs and interests of all social groups and combine them. A compromise of different social groups' interests is one of the most important requirements for the content of law.

Social sciences in their empirical studies confirmed a need for legislature to have more knowledge of the social reality. Society order due to the knowledge of sociology is transferred to the laws that cannot be in conflict with general social order and express interest of only one or a few powerful groups[18]. Social criticism of legislative practice has opened opportunities to develop the modern concept of law and procedural requirements of law adoption process. In the second part of twentieth century polemic have started between the initiator of the sociology of law E. Ehrlich and the author of *The Pure Theory of Law* H. Kelsen; this polemic still remains highly relevant today and incite discussions. Summaries of these discussions emphasized that the law must respect not only formal, but also the law's content criteria[19]. According to Hegel, *In legislature's image <...> it is important not only to recognize that the law is binding rule for all, but it is more important internal moment – to the content in the defined universality*[20]. It means that legal rules by their content must express the essence of law, so it aims to turn to the concept of law and to develop it.

By defining law it is important not to consider the mere fact what is determined by law, because the law will not be only a legal form of expression, but also its content, so to say law itself. In other words the law will not be necessary; any order in a legal form will be called as *law*. In such a case, it would be meaningless to discuss what law is and this article (ratio of law and legal order, so to say ratio of content of law and its form) would be rendered meaningless. When law separated from legal order as content from the form, we can talk about the characteristics of the form and content requirements to the form. In this respect it is important to know what law is and to identify its basic, most important features. Determination of the concept of law becomes necessary precondition for assessing the content of the law. Therefore, the concept of law is very important and relevant: from this point creation of laws and criticism starts.

Concept of law gets many attention of legal science. To understand what law is become relevant after Lithuania regained its independence, when there was a need develop its national legal system, which is free from political dictate and oriented to the regulatory requirements of

[16] J.-C. Bécan, M. Couderc, *La loi*. Paris: Dalloz, 1994, p. 42.
[17] J. Locke, *Esė apie pilietinę valdžią (Essay on civil government)*. Vilnius: Mintis, 1992, p. 115.
[18] A. Holand, L'evaluation législative comme auto-observation du droit et de la societé// Presses universitaires d'Aix-Marseille/ Evaluation législative et lois expérimentales. –1993, p. 21.
[19] L. Mader, *L'évaluation législative*. Lausanne: Payot, 1985, p. 150.
[20] G. W. F. Hegel, *Teisės filosofijos apmatai (Philosophy of law)*. Vilnius: Mintis, 2000, p. 317.

democratic society. There are several reasons for the relevance of concept of law: first of all, long prevailing of etatistic law concept, that maintained every governmental imperative, turned into a binding rule, as law. Volitional orders of political authorities, rather than theoretical considerations led to what law is and what law is in need for a political authority. Questions on the essence of law essence were “removed” from the competence of jurisprudence. Separated from the original concept of jurisprudence it has become one of the most damaged areas of science by political regime, one of the most ideological social sciences.

Secondly, transition to a different system of values reveals the inadequacy of legal definitions. Therefore, it is necessary to rethink how these readjustments act the security of human rights, how it is consistent with prevailing law concept in Lithuania[21].

Thirdly, any legal order was considered as law because of the influence of etatistic law concept. Today we do understand a risk of such an approach. Legal order was assessed whether it complies with the Constitution, the principles of law. Only knowing what law is, we would be able to know what legal orders will be considered as lawful; only answering what is law we will be able to understand relation between law and legal order and we will be able to deal with the challenges posed by this relation.

The concept of law always gets a lot of discussion, because only when the right idea of law is formulated, it is possible to identify the object of legal science. The concept of law is determined by the rules of procedure, in practice resulting from legal proceedings and other legal phenomena, so the concept of law is very important because it is the basis for us to understand the legal phenomena surrounding us and to distinguish them from non-legal.

Matter of the concept of law is always relevant and will receive attention of legal theorists. The concept of law becomes particularly necessary when for the legal imperatives you want to bend not only the application of law but also the legislation, when this concept is based on the values that can bind the legislature[22].

It can be stated that the general law concept is dynamic, it depends on natural and changing actual situations. And just because of that legal theory will remain dynamic and fueling the debate on science.

Same term of law is not unambiguous: we have human right, natural rights, object-oriented law (legislative framework), positive law (defined in the state), individual right (duties of a particular person's self-imposed permissible behavior).

Law is a social science. Social life is characterized by diversity and pluralism of opinions. The concept of law also feels the pluralism of legal ideas, therefore the concept of law has to take into account the semantic pluralism[23]. Many authors agree that talking about law and its implications, we observe two most noticeable extreme obstacles in its definition: the first – definition

[21] A. Vaišvila, *Teisės teorija (Theory of law)*. Vilnius: Justitia, 2000, p. 14.
[22] H. L. A. Hart, *Teisės samprata (Concept of law)*. Vilnius: Pradai, 1997, p. 11.
[23] S. Goyard-Fabre, L’Etat de droit// Cahiers de philosophie politique et juridique/ Centre publications de l’université de Caen. -1993 Nr. 24, p. 24.

commonality, and the other – terms has various meanings[24]. In order to find the right definition it is necessary to overcome these obstacles, i.e. to identify common features. Requirement of such versatility greatly complicates the search for the concept of law. Moreover, legal anthropology shows the limits of boundaries of the concept of law, because different societies have very different legal traditions. In order to open up the search of common attribute the concept of legal universalism must take into account legal history and comparative law.

The right also includes two different terms: one that talks about a system of rules of conduct, establishing some order in society, and the other that defines the word as a science.

Given the legal definition of these two areas, we see two different perspectives for their solution. If the system of rules of conduct dictates „natural“ direction of investigation to science, than these two concepts of right coincides and are no longer negotiable. And if the opposite – than the law as a science is constantly constructed, developed and criticized, and he also impacts the law as a system of rules of conduct.

Law as a system of rules of conduct historically evolved by following the needs of society, so we can say that society finds itself as it is, and then itself obey to it. It should be immediately noted that definition of a right, as a system, outputted from observation (empirical).

Law as a system is a product of culture, it is constructed by public. Animal communities have no rights, the principle of force dominates there. Every society by their behavior recognizes and upholds, what is law, in accordance with certain rules – the rules of conduct.

However, modern society is characterized by the fact that the legal system has become autonomous. Historically, little by little law was secularizing (some features that belong to the Church were transferred to the state, layman disposition, or in the other words, separation of law and religion), as well as the liberalization of the law (separation of law from political dependence).

All this has led to talk about the law as a system relative autonomy, allowed the formation of a new legal mechanism and the new authorities and their service staff. Interpreting Max Weber, it can be said that such historical processes were the rationalization of social relations[25]. It is important to understand the processes that led to such a result.

For such an outcome the biggest role, undoubtedly, was played by the legal formalization, that was started to control by the state. However, the legal system, which began to form rapidly eighteenth century, today receives a lot of radical criticism. He caused the development of new technologies, which influenced social processes and new ideology of the end of nineteenth century.

Renaissance man was taken to realize gradually as the center, where meets all of the earth and sky connections, divine mind, spirit. Changes of theological attitudes is accompanied by changes in the concept of rights. The right also had to be thought of, it was no longer set as a part of the order of creation. Like everything else in the world, it had to be understood by the spirit of the human.

With the spread of the Renaissance and other numerous sixteenth century ideas, the

[24] M. Miaille, Définir le droit // Droits / Revue française de théorie juridique (définir le droit /2). -1990, Nr.11, p.41.
[25] M. Miaille, Définir le droit // Droits / Revue française de théorie juridique (définir le droit /2). -1990, Nr.11, p. 43.

freedom of individual is exalted, but it is possible only in the state where social life is based on the contract, under which everyone waive their rights in favor of close person. The law is only a normative expression of this contract: *the law is the only force that melts crowd into one nation body*[26]. A. Volanus stressed that the law must be helpful for all and in any way do not serve for someone else will.

The progressiveness of Lithuania's legal doctrine in sixteenth century was determined by the fact, that its authors were referring to Plato, Aristotle, Cicero, and especially to the principal provisions of which were embodied in the ancient democracy and the idea of Christian humanism. Succeeded in linking the ancient and Christian concept of right, which is called jus naturale, natural law.

However, when the Reformation started, until now acknowledged legal thinking faded. Protestant conception of law conflicted with Catholic. In Western Europe at the sixteenth century started to spread church reformation and its influence limitation, trend. The reformers were skeptical about the human ability to create a human law, which would be reflected in the eternal law, and explicitly denied that the task of the church is a human law establishment. Such skepticism has enabled occur rights theory – legal positivism, which state law treats as morally neutral, as a tool, not as a goal, as a way to publish the sovereign will and ensure their obedience to it will. Such as important is another side, which liberated the law from the theological doctrine and direct influence of the church.

Moved away from theological doctrine N. Machiavelli, T. Hobbes, B. Spinoza, H. Grotius, then J. J. Rousseau, J. G. Fichte and G. F. Hegel who started who started to derive natural law from reason and experience, not the theology. The few of the epoch of the many authors thoughts enough to illustrate the relationship between law and new developments in the law.

The famous Dutch lawyer H.Grotius had no doubt, that in law a lot depends on what he called "free will", i.e. introduction of a law, and may very well be changed without coercion of the mind. However, some relationships are necessary, neither the will nor the authority can not change them. A concept of natural and positive law was commonly recognized. More than a century later, it was still a common practice, and this is evidenced by the words with which Ch. Montesquieu began his treatise The Spirit of Laws: *Laws in most general sense are necessary relations, arising from the nature of things*[27].

Science stated revolutionary idea that the physical world is a mechanical system in which everything that happens can be explained geometrically interrelated body movement. Based on this principle the great triumph of science – I. Newton theory of planetary motion – was still in the future, but Hobbes understood the principle and made it the center of his system. In his view, each event is a movement, and all natural phenomena must be interpreted in the digestion of complex phenomena in their constituent elementary movements. So Hobbes attempted social phenomena associate with the natural sciences, structurally dissociating and analyzing them. Only mind can

[26] A. Volanas, *Rinktiniai raštai (Selected writings)*. Vilnius: Mokslo ir enciklopedijų leidykla, 1996, p. 152.
[27] В. С. Нерсесянц , *Право и закон*, p. 209.

create real laws, way of deduction from axioms. What is the axiom in the science of law? Law is a social phenomenon, in a society, primary cell is a human being, so you need to find the key features of human nature, and by setting them, it is possible to create all particular legal system. This work must be done by the state, which determines the social contract to ensure the welfare of the people - of human beast make real human being[28].

Law and the Law on the ratio of the change, especially with regard to the sources of law clearly revealed when to make arrangements started not one person – a monarch or a small group of individuals, but the parliament, which is not represented individually, but overall – the interests of the nation. J.J. Rousseau especially focused on this principle, who by developing the social contract theory, argued that the nation – all citizens, must to participate in the legislative process. Since the eighteenth century end, Western European countries legal systems are developed in accordance with this law concept. In spite of the nation's criticism, this concept of law has become one of the major Western European countries legal systems element.

The law according to Rousseau, is an act of common will. Since the law can not express personal interests that do not coincide with the general will, laws have commonality character[29]. When nation – the sovereign – expresses the common will, it is reflected in the law. Rousseau's thoughts shows a new turn toward the active society, urges people to actively contribute to the legislative process, to express a common will.

Rousseau has the biggest fault for "will" concept usage in political context. However, it is often forgotten that the Enlightenment author pointed out – in order for will to be fair, it must be common. However, most modern parliamentary decisions, of course, are not required to have the necessary commonality. Consequently any solution occurs if it helps to increase the number of votes, for supporting the government measures. With the all-powerful sovereign parliament, which is not limited only to authorize common rules, we have arbitrary power.

Rousseau transferred sovereignty to the people, which it entrusts elected representatives, permitting the law, and the law given the undisputed legitimacy, in this respect, it becomes a "legal right." Sovereign act, based on the social contract, according to Rousseau, is generally correct and useful. Law as an act of common will is a legitimate right, the only real imperative, which reformed structure inherited notions of democracy promoters. However, as rightly pointed out by Rousseau, universal will is different from the will of all, as a universal (general) will includes all the common interests, therefore will of all only covers part of summed personal interests. Rejection of extreme interests from will of all, everything that's left is general will. In other words, Rousseau talks about the rudiments of social compromise - need to look at the different social groups common interests, excluded the extremes. Later, the concept of the rule of law has developed the concept of the social compromise, as an alignment of different interests.

Rousseau strongly criticize organized social groups (political parties, public organizations) that are trying to compete with the sovereign – the nation. These groups will become common within

[28] T. Hobbes, *Leviathan*, p. 143.
[29] J.J. Rousseau, *Rinktiniai raštai (Selected writings)*. Vilnius: Mintis, 1979, p. 97.

the group, but partial in respect of the state. Since people voting in parliament are less than people living in the country, occurs a threat to manipulate the general will. In order to respect the common will, it is necessary for every citizen to express his opinion.

Results and findings

In modern times, ratio between law and the Law measured on rationalism point of view. *You have to do only those things that our mind is able to know for sure and definitely*, - said the creator of the modern philosophy R. Descartes. Similarly thought and one of the largest contemporary liberalism authority Kant, who proposed to set up a tribunal to *confirm the legitimate demands of mind, on the other hand, to remove an unjustified claims – not orders, but on the eternal and immutable laws of mind*[30].

Hobbes, Rousseau and other philosophers before Kant treated law empirically (the analysis of nature and human characteristics), I. Kant, Fichte – formally (ideal and real formalization), and Hegel distinguished the original absolute assessment of law and the Law[31]. According to Hegel legal laws differently from the laws of nature are not absolute. They can be accepted or not. In cases of conflict, the question is, what is law? Hegel argued that people in conflict situations, must search for mind in law[32]. This has to be done by legal science. In modern times (which is also represented by Hegel's view), law and the Law are not merged and standing against each other, because the law is as a "qualified" right.

Such anti-positive concept, especially strong in the last century, began to oppose legal positivism, rejecting not only the inherent right and any metaphysics, without making the distinction between law and positive law-making (state legislative). The term „positive“ used in respect of law, derived from Latin positio (established). Attempts to derive law from the well-intentioned idea clearly visible from the beginning of the modern legal positivism - from Hobbes, who defined law as *the command of the one who has the legislative power*[33]. Legal positivism have based doctrine which recognizes the actual existence of a functioning law, set only by a state. Any law is recognized as the right: if you have a law, it is the right.

H.J. Berman considers the modern period of time before the Second World War, and the contemporary period - after 1945[34]. Over the past century in both east and west Europe, positivism was useful for government which have reached a political victory, which by law could express their will without impinging law raised critical and oppositional sounding "reasonableness", "perfection" and other requirements. Legal positivism began to use the key achievements of the natural sciences. By rejecting "speculative" philosophical metaphysical methods, positivists switched to the

[30] I. Kant, *Politiniai traktatai (Political writings)*. Vilnius, 1996, p. 47.
[31] В. С. Нерсесянц , *Право и закон,* p. 289.
[32] G. W. F. Hegel, *Teisės filosofijos apmatai (Philosophy of law)*. Vilnius: Mintis, 2000, p. 39.
[33] T. Hobbes, *Leviathan*, p. 268.
[34] H. J. Berman, *Teisė ir revoliucija* (*Law and revolution).* Vilnius: Pradai, 1999, p. 18.

real (positively existing) facts "strictly scientific" observation. Positivism refused theoretical abstractions and engaged in positive rule of law description and their comments, as well as the logic formal construction and systematization of those rules.

Legal positivism represents the concept, that any law is a right. And while the legal history of legal positivism (determined law) doctrines history takes only a moment compared with the naturally formed evolution of law, legal positivism today holds significant positions, as the evolution of today formed a functioning institutions (parliament, constitutional court, etc..) and their activities principles without which we could not imagine contemporary legal system.

According to legal positivism positivists – it is logically and empirically observed formally and officially recognized as generally obligatory reality (determined by excluding metaphysics). Only the obligation, which is guaranteed by a penalty, positivists see the sense of rule of law. Law is mandatory in its nature, and understood, according to J. Austin as a sovereign order[35]. If the sovereign commandment is positive (is "positive law"), then what is negative (not positive) with respect of "positive law"?! Maybe that, what is not regulated by law? Of course this question cannot be answered by positivism itself, and its name is the most absurd.

Proponents of legal positivism, when speaking about law in their theoretical discussions, remains within the legislature, all that is right, is associated with the rule of law (legal relations, subjective rights, etc..), so the right is derived from the "rule of law" (normativism), ie legislative norms, and legal norms arising from the relationship logically correct to call not non-legal, but a statutory relationship. Normativism sets full attention to the form of laws (link with the state, formality, global binding, etc..), so positive right could be declared as: issued by the State, official rules (laws), form of expression. If equate the right with the law, normativism loses its essence - the contents, its genesis, the status of the relationship with other social norms.

Talking about the positive law, law as an objective value materializes and formalizes, so this positive law, which already has the legal form of the typical characteristics of one of the most important features – the role of the state and its law. However, it should be noted that the state is already not pithy, but formal, not right in general, but the element of positive law. Only in legal state, positive law may become a legal law.[1] Positive law can become a legal law only if the positive law is limited by law pithy requirements, the law will be equipped by revealing the content of the legal nature, a combination of different social interests, in order to express the social compromise and evenly distributed exercising of rights and duties.

Above mentioned content of law i.e. concept of law, legal Law as a societarian law, necessarily requires the concept of form to be sure that the contents of that form have to be seen, interpreted, and not only the volitional nature, the legal Law – it is not just the formal attributes corresponding to the concept of positive law, but manageable by purposeful, valued criteria concept of law. The modern legal Law – means the initial, act of all binding norms, which formulates common law rules, representing the public interest in different social compromise, the state adopts

[35] H. L. A. Hart, *Teisės samprata (Concept of law)*. Vilnius: Pradai, 1997, p. 58.
[36] D. Beinoravičius, *Teisės samprata kaip metodas (Legal concept as a metho*d). Vilnius: Logos, 2013, p. 46.

the highest representative body by special legislative procedures, or the whole nation referendum, with supreme legal force in relation to other acts, regulating the most important social phenomena of public life.

Any concept becomes tested hypothesis only when it is weighed in practice and evaluated in experimental criticism. Of course, only the conceptual origins of the legal effectiveness of the law is not enough, legal state provides the legal tools, that can be effective only in one case - if the government itself will be real.[1] If you will be passing the laws and their implementation is left for amateurs, these laws will be only "legal movement for movement". Democratic legislation requires implementation of regulatory rules, the procedural provisions. Legal values enshrined in the implementation of the law is crucial not only to the laws and other normative acts, but the individual's needs and technological environment of the public and other criteria.

With regard to the requirements of the laws, regulatory limits, of course we have a pragmatic sense to talk about the positive law, which establishes birthright legal values and requirements for them. Probably the longest remains the only approach that analyzes the substantive law, and is rounded off with the practical applicability, which links the concept of legal analysis to the facts of exploration of jurisprudence.

Today, the most important aspects of the control of law in positive law, are the problems of constitutionality of the law, because any law or any other act must not oppose Constitution. The Constitution is value which expresses the positive law, and its evaluation and interpretation have to be seen through the prism of the concept of law, it must be evaluated, come out of the limits of positive law. Then the Constitution becomes flexible, pithy rights, and at the same time valuable features, giving meaning of highest power legislative act.

The so-called "positive law" "victory" was partially recognized by the anti-positivist (Hegel, Kant's followers, existentialists, phenomenological law, anthropology school representatives and others.). However, according to them, this is what is called a "legal positivism" can be explained only by principles of law, in the context of the most important ideas. Law of modern times in Western Europe is going through ratio of the two concepts - positivism and anti-positivism.

Conclusions

1. One of the most important achievements in the discussion is that a growing number of legal scholars support the idea to search for legal features without legislative limits. It promotes to research law from different aspects and causes its complex analysis. Questions are started to ask: how law differs from non-legal areas, the laws from other rules. This separation in modern legal philosophy continues to promote the development of Neopositivism.

2. Individualism becomes more important during the period of Renaissance, exaggerating the importance of the individual and subjectivity valued on the basis of his freedom. A part become

[37] D. Beinoravičius, *Teisės samprata kaip metodas (Legal concept as a metho*d). Vilnius: Logos, 2013, p. 48.

more important than the whole, so legal rule become small, independent and important center, law as a whole die off, because any legal rule becomes law.

3. The legal rule aims to create an objective law, so to say to have law reflecting the needs of whole society, but with a weakening of law and its influence, the legal rule cannot break free from subjectivity: it often embeds influential groups, class interests and from a perspective of society needs, so these legal rules remain subjective, because are limited to the subjective will of legislative power, which in specific cases cannot be objectively measured, as legal rule is detached from law being independent small “center” it isolates itself from a search of whole society social compromise.

4. Due to the significant number of legal rules, it moved away from its essence, as it become more specific rather than general, temporary rather than stable, the legal rule have not became a rule expressing the law, but become a management tool. Legal rule became political rule that is not expressing the needs of society, but the will of managing groups, which expresses the interests of group power. In this way, the opposition of different society groups becomes stronger, the social order is destabilized, because it is directed not to create a social compromise, but to make an influence.

5. The most important aspect of legal control in positive law becomes the problem of constitutionality of legal rules, because legal rule or any other act cannot be valid if it contrary to the Constitution. The Constitution is legal value that expresses positive law and its evaluation, interpretation must be explained through the concept of law, so then evaluating it must come out of the positive law limits.

6. Legal constructivism for legal knowledge provides instruments for society knowledge and rejects the hypothesis of implied or unknowable society. This does not mean that law must fully reflect social system, which is hardly possible in modern society, characterized by high fragmentation and differences of social systems, however not involving on dependence or independence to other discourses; legal discourse is focused on knowledge directing cognitive search through autonomous or heteronomous and other systems.

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''Societal Innovations for Global Growth'',
2014, No. 1(3)
ISSN 2335-2450 (online)

FUTURE OF VALUE ADDED TAX IN EUROPE

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Abstract

– Since the birth of the Value Added Tax, only 50 years ago, it has come to be adopted by more than 130 countries, including not only all OECD[1] members, but also many developing countries. The actual VAT system generates high and disproportionate risks for business, the unpaid tax collectors, due to non-legitimate traders committing fraud. Fraud-prevention measures taken increase the complexity of the current VAT system for legitimate traders, create legal uncertainty when doing business in the EU and shift risks to legitimate traders. The complexity of European VAT system and the legal uncertainty multiply VAT disputes and litigation in the Member States and at the Court of Justice of the EU. So now is an appropriate time to reflect on the VAT system. What it has established properly or not. However, Member States of European Union are not accepting the following situation there the rates of VAT are too different and there is no adequate mechanism to redistribute VAT receipts to mirror actual consumption. My purpose in this paper is to stimulate further interest in the VAT system in European Union and propose the theoretical guidelines for the new VAT system to establish in Europe, which has been extraordinary maltreated in the academic literature until nowadays.

Purpose – My purpose in this paper is to stimulate further interest in the VAT system in European Union and propose the theoretical guidelines for the new VAT system to establish in Europe, which has been extraordinary maltreated in the academic literature until nowadays.

Methodology/approach – The study provides to estimate the future of the VAT system, and to distinguish the difference between the theoretical approach and the point of view of the business sector. Therefore this paper includes the detail analyze of legal documents and scientific literature.

[1] The Organization for Economic Co-operation and Development (OECD) (in French: *Organisation de coopération et de développement économiques*, OCDE) is an international economic organization of 34 countries founded in 1961 to stimulate economic progress and world trade. The OECD originated in 1948 as the Organization for European Economic Co-operation (OEEC), led by Robert Marjolin of France, to help administer the Marshall Plan (which was rejected by the Soviet Union and its satellite states). It is a forum of countries committed to democracy and the market economy, providing a platform to compare policy experiences, seek answers to common problems, identify good practices and coordinate domestic and international policies of its members.

Findings – The main intention of EU is still to have a common system of VAT where VAT is charged by the seller of goods - an origin based VAT system. Like other taxes, VAT is subject to evasion. However, VAT offers distinctive opportunities for evasion and fraud through: abuse of the credit; and refund mechanism.

Originality/Value – The current VAT regime in the EU was introduced with the removal of fiscal frontiers in 1993. This paper develops and offers a strategy to finalise the creation of VAT system in Europe and also prospect the real improvement made by UE until today.

Keywords: Value added tax, VAT, European union, Fiscal system.

Research type: general review.

Introduction

"*The reform of our VAT system is not a 100 metre sprint, but a long-distance run."*[1]

In 1954, in France the new tax named: the "value added tax" appears. Since then, the French public finance science gives for VAT the position of extraordinary important tax role for the national budget. Since its birth only 50 years ago, it has come to be adopted by more than 130 countries, including not only all OECD[2] members, but also many developing countries. So now is an appropriate time to reflect on the VAT system. What it has established properly or not. My purpose in this paper is to stimulate further interest in the VAT system and propose the theoretical guidelines for the new VAT system to establish in Europe, which has been extraordinary maltreated in the academic literature until nowadays.

In 1954 the Value added tax coverage was limited, but in 1968 France moved to a full VAT system that reached the broader sector. The first full VAT in Europe was established in the European Economic Community in 1973.

The European Union has lived with a transitional VAT system for cross-border trade for many years since 1973. During these years the cross-border trade has developed and the internal market in Europe now sees substantive trade both in goods and services. However, the transitional VAT system is causing significant administrative burdens and unacceptable risks for business and tax administrations. There is difficult to trade within the EU than to export goods to or import goods from non-EU countries.

[1] Šemeta, A., Commissioner responsible for Taxation and Customs Union, Audit and Anti-fraud. *Speaking Points on the Strategy for the future of VAT. The press conference.* 2011. Brussels. SPEECH/11/852, p. 3 – 3.

[2] The Organization for Economic Co-operation and Development (OECD) (in French: *Organization de coopération et de développement économiques*, OCDE) is an international economic organisation of 34 countries founded in 1961 to stimulate economic progress and world trade. The OECD originated in 1948 as the Organization for European Economic Co-operation (OEEC), led by Robert Marjolin of France, to help administer the Marshall Plan (which was rejected by the Soviet Union and its satellite states). It is a forum of countries committed to democracy and the market economy, providing a platform to compare policy experiences, seek answers to common problems, identify good practices and coordinate domestic and international policies of its members.

The transitional VAT system is creating high costs and significant administrative burdens to doing business by the cash flow impact on business where traders have to wait for VAT refunds to be made. As the cost of compliance has become disproportionate, the use of technology to lower costs of compliance to the maximum extent is missing, as the efficient use of technology requires a clear, certain, simple and uniformly applied EU VAT system. The cost of VAT collection is increasing for tax administrations.

The VAT system generates high and disproportionate risks for business, the unpaid tax collectors, due to non-legitimate traders committing fraud. Fraud-prevention measures taken increase the complexity of the current VAT system for legitimate traders, create legal uncertainty when doing business in the EU and shift risks to legitimate traders. The complexity of European VAT system and the legal uncertainty multiply VAT disputes and litigation in the Member States and at the Court of Justice of the EU. So, what kind of future are we preparing for Europe?

Theoretical background

I. The current VAT system in the EU

On 11 April 1967 the first two VAT Directives were adopted, establishing a general, multi-stage but non-cumulative turnover tax to replace all other turnover taxes in the Member States. However, the first two VAT Directives laid down only the general structures of the system and left it to the Member States to determine the coverage of VAT. It was not until 17 May 1977 that the 6th VAT Directive[1] was adopted which established a uniform VAT coverage.

On 1 January 2007, the 6th Directive was replaced by the VAT Directive nº 2006/112/EC[2]. It brings together the various provisions into one piece of legislation, and gives a clearer overview of EU VAT legislation. The VAT Directive guarantees that the VAT contributed by each of the Member States to the Community's own resources can be calculated. It still allows Member States many possible exceptions and derogations from the standard VAT coverage and it does not set out the rates of VAT to be applied in Member States, only a minimum rate of 15% fixed. This means that VAT rates still differ widely. Currently, Member States apply a standard rate of between 15% and

[1] The 17 May 1977 Council adopted the directive 77/388/EEC of on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment. The EU authorities are abolishing tax controls at internal frontiers for all transactions carried out between Member States, approximating the value-added tax (VAT) rates applicable to those transactions and making provision for a transitional phase of limited duration that will ease the transition to the definitive arrangements for the taxation of trade between Member States.

[2] The 28 November 2006 Council adopted the Directive 2006/112/EC of on the common system of value added tax. This directive codifies the provisions implementing the common system of VAT, which applies to the production and distribution of goods and services bought and sold for consumption within the European Union (EU). To ensure that the tax is neutral in impact, irrespective of the number of transactions, taxable persons for VAT may deduct from their VAT account the amount of tax, which they have paid to other taxable persons. VAT is finally borne by the final consumer in the form of a percentage addition to the final price of the goods or services.

25%. They may also apply 1 or 2 reduced rates of at least 5%. The VAT coverage also still differs from one Member State to another Member State.

In 1993 the fiscal frontiers are abolished. The Commission of EU proposed moving from the pre-1993 "destination based" system, where VAT is effectively charged at the rate of VAT applicable where the buyer is established, to an "origin based" system, with VAT being charged at the rate in force where the supplier is established. In 1995 prof. F. Vanistendael explained what “the most important motive for achieving the final VAT is not so much the satisfaction of allowing the taxpayer to fulfil his intra-Community tax obligations in the same way as his domestic tax obligations. The basic motive is that the present transitional system contains a distortion in tax burden between intra-Community transactions and domestic transactions to the advantage of the former”[1]. However, Member States are not accepting the following situation there the rates of VAT are too different and there is no adequate mechanism to redistribute VAT receipts to mirror actual consumption.

Therefore, the European community adopted the Transitional VAT System, which maintains different fiscal systems without frontier controls. The main intention of EU is still to have a common system of VAT where VAT is charged by the seller of goods - an origin based VAT system. Like other taxes, VAT is subject to evasion. However, VAT offers distinctive opportunities for evasion and fraud through:

- abuse of the credit;
- and refund mechanism.

Moreover, the opportunity exists for outright fraud through the construction of business activities with the sole purpose of defrauding the exchequer, because some categories of business can be entitled to net refunds of VAT from the revenue authorities. While many papers speak of a tax named “VAT”, many do not capture any of distinctive features of the Value Added Tax. In the French scientific papers we can find often a VAT synonymous – “the consumption tax”. But, the VAT has quite distinct structure in terms of its collection throughout the production chain. The VAT is preferable to a turnover tax, when it works, as it should.

The VAT fraud has a many faces, the archetypal form the most discussed – is carousel fraud, which highlights the depth and potential scope of the difficulties associated with the control of VAT refunds. The fraud mechanism works as follows:

- Firm A, registered for VAT in one Member State, import goods from firm B;
- Firm A indeed VAT invoice to its consumer, firm B fails to remit the VAT payable, and disappears;
- Firm B then exports the goods, and – on the strength of the invoice issued to it by firm A – claims a refund for VAT that has not, in fact, been paid;

[1] Vanistendael, F. *A Proposal for a definitive VAT System Taxation in the Country of Origin at the Rate of the Country of Destination, without Clearing*. 1995. 4 EC Tax Review, Issue 1, pp. 45–53

The goods are brought back into the other country one more time, and the carousel keeps on turning. In reality, the fraud schemes are often more complex than this example. But the essence remains the generation of the refund claims that do not correspond to VAT actually paid.

An estimated €193 billion in VAT revenues (1.5% of GDP) was lost due to non-compliance or non-collection in 2011, according to a study on the VAT Gap in Member States[1]. The Commission worked on the question how we can reform the VAT system in Europe to eliminate theses losses. During this study the amount of VAT due and the amount actually collected in 26 Member States between 2000-2011 were calculated. The main factors contributing to the VAT losses are also presented. In this study the Commission opened the debate on the possibility of strengthening the principle of joint and several liability for the payment of tax with due regard for the principles of proportionality and legal certainty. Any changes of the VAT system must reduce considerably the possibilities for fraud, exclude new risks and generate no disproportionate administrative burden for companies, and ensure tax neutrality and non-discriminatory treatment of operators.

Algirdas Šemeta, Commissioner for Taxation, announced after the presentation of this study on the VAT Gap in Member States: "our ambitious reform the VAT system, the EU measures to combat tax evasion and our recommendations for national tax reforms, are all targeted in the right direction. We know the problem; we have identified solutions to it, and now it's time for Member States to act. Today's figures will serve as a baseline to assess their progress in improving VAT compliance in the years ahead."

The EU hope establish a definitive VAT system operating within the EU in the same way as it would within a single country, based on the principle of taxation in the country of origin. Recent discussions with Member States confirmed that this principle remains politically unachievable. This deadlock is even recognized by the European Parliament – until now a fierce defender of the principle of origin – which has called for a move towards the destination principle. The Commission has come to the conclusion that there are no longer any valid reasons for keeping this objective, and will propose that it should be abandoned. Abandoning the origin principle makes it possible to launch substantial efforts to devise alternative concepts for a properly functioning destination-based EU system of VAT.

II. The “Good” VAT system

Why VAT system become so popular in the world? VAT system is effective in terms of raising revenue and are cost-effective to administer compared with other taxes. Actually VAT is collected by businesses at each stage of the production and distribution chain. Along the stages of the value chain, businesses are charged a tax for the inputs they buy to produce further goods or services, but can recover that tax in the price of the good or service they sell to the next supplier.

The economic attraction for the state is significant. VAT is better for economic growth than

[1] The last study on the VAT Gap in the EU was published in 2009. No IP/06/697. Brussels. In the framework of its strategy to combat tax evasion and fraud, the European Commission today published a study carried out by an external contractor on the gap between the amount of VAT due and the amount received in 25 Member States.

income taxes, in that VAT has less negative impact on the economic decisions of households and businesses than income tax:

- VAT does not discourage savings;
- VAT does not discourage investment.

In international trade, VAT has proven to be the preferred alternative for customs duties in the context of trade liberalization. The importation tax and zero-rate export not affect international competiveness. From a distributional perspective, there is a debate: some see it as a regressive tax, affecting lower income earners more than higher ones. The consumers have a choice to buy or not buy certain items. Any debate on distributional issues needs to focus on the entire tax and benefit system, and not just on one tax in isolation. The European Commission, in December 2010 in its Green Paper on the Future of VAT suggested that a "broad-based VAT system, ideally with a single rate, would be quite close to the ideal of a pure consumption tax that will minimize compliance costs". In an open economy, the revenue of VAT is primordial to the country. EU VAT system cannot be abandoned, the detail study of actual legislation prove the major interest on VAT system.

We are waiting a simpler, more efficient and robust VAT system for the future. The reform process in EU should ultimately act on the VAT system as following:

- EU VAT Code is expected. Such code would lay down rules adapted to modern business models. A taxable person should only deal with the tax authorities of a single Member State;
- Neutrality requires equal rules governing the right of deduction and very limited restrictions on the exercise of that right;
- Modern methods of collecting and monitoring of VAT should maximize the revenues actually collected and limit fraud.

The reform process gives us the "Mini One Stop Shop System"[1]. The mini One Stop Shop comes into force on 1 January 2015 and will allow taxable persons supplying telecommunication services, television and radio broadcasting services and electronically supplied services to non-taxable persons in Member States in which they do not have an establishment to account for the VAT due on those supplies via a web-portal in the Member State in which they are identified. This scheme is optional, and is a simplification measure following the change to the VAT place of supply rules, in that the supply takes place in the Member State of the customer, and not the Member State of the supplier. This scheme allows these taxable persons to avoid registering in each Member State of consumption. The mini One Stop Shop mirrors the scheme in place until 2015 for supplies of electronically supplied services to non-taxable persons by suppliers not established in the European Union. This measure proposed by the Commission to reduce the administrative burdens and supported by the High Level Group of Independent Stakeholders on Administrative Burdens – is of course still a high priority.

When we are predicting a "good" practice of VAT system, a balance must be found among the objectives of three stakeholders: the state, businesses, and consumers. The state's aim is to increase its budget, allowing for the businesses invest in the country and attract and retain

[1] European Commission, October 2013. *Guide to the VAT mini One Stop Shop*. Brussels.

businesses while creating new jobs. Businesses act as unpaid tax collectors in a VAT system. It is quiet normal when businesses want to compete and deliver a sustainable profit without risking violating the VAT rules. However, the final consumer is looking for a fair tax.

By consequence, the real “good” VAT system in EU should be design as follow:

- as single rate tax system;
- as broad base system with minimal exemptions to avoid distortion of purchase decisions and to provide transparency;
- system witch apply the destination principle;
- introduce a function-based European organization and integrated tax administration starting by the integration of VAT and income tax;
- and ensure coordination between VAT, income tax, and customs agencies with unique taxpayer identification numbers.

III. The future of VAT

The VAT is the most prevalent form of consumption tax in the world. Viewed globally, the advance of the VAT is the most significant development in the field of taxation in the past 50 years. The march of VAT started in the 1960s in the EU. Where the introduction of the harmonized VAT is a nonnegotiable condition for Members States. Australia is the latest industrialized country that has converted to VAT. India is set to introduce a dual VAT, levied separately at the state as well as the federal level. So, what kind of future are we preparing for European VAT system?

The last the European Commission communication on the Future of VAT in December 2011 presented heavily anticipated Communication to the European Parliament by the Council and the European Economic and Social Committee. The stated aim of this Green Paper was to launch a broad based consultation process on the functioning of the current EU VAT system[1].

The Commission has made two purposes:

- in the long term, to set out the future EU VAT system, which continues to raise revenue but which also increases competitiveness;
- and in the short term, to list the priority areas for further action in the coming years—with a view to moving towards those objectives.

After the introduction of the common VAT system, the problems created by the lack of harmonization became more evident. While time a new VAT system is starting to emerge, known as “the future VAT system”. The outstanding growth and spread of the tax has been characterized as “the most important event in the evolution of tax structure in the last half of the 20th century”, and

[1] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT—Towards a simpler, more robust and efficient VAT system tailored to the single market. No COM(2011) 851 final. 2011. Brussels.
<http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm> [Accessed 21-09-2014].

as "an unparalleled tax phenomenon"[1].

In 1985 the European Commission presented the White Paper Under heading "removal of fiscal barriers", the paper contained several measures concerning VAT, which were in turn subdivided into three main areas, namely: tax base; tax rates; and arrangements applicable to cross-border transactions. In the summer of 1987, following the White Paper strategy, the Commission issued a Global Communication outlining its proposals for indirect taxes with a view to completing the internal market. By 2000 the Commission had decided apply the transitional VAT system. The new VAT system is based on: on the one hand the transitional VAT system contained a number of shortcomings, which required urgent action, and on the other hand it was the progress establishing a definitive VAT system.[2]

By consequence, the new VAT system should be based on:

- simplification of current EU VAT system;
- modernization of the same system;
- more uniform application;
- and stronger administrative co-operation.

In order to achieve these objectives, the detailed action plan should be established and future priorities should be listed. As a result, during the last 20 years the new legislative instruments within the VAT field have been approved and many areas of VAT have been modernized. It is clear, that in a future VAT system will represent a significant improvement on its predecessors.

When all these proposed measures will be put together, it will certainly be said that this is an ambitious work-plan with an equally ambitious timetable. It is true that many issues which are important for practitioners are still left out. It must also be recognized, that we need to deal with many problematic areas of the VAT.

Moreover, if the timetable is respected by the EU, we might finally have a definitive VAT system by 2020 – 2030. The key questions is followings: what new approach for reform the Commission will choose, if the proposal to Member States will respect the current economic and financial needs, and if new EU VAT system will stay neutral and more efficient.

Many believe that the VAT is popular because it is the consumption tax best suited to the revenue needs of states in an increasingly globalized economy. Even those who recognize the role of key regional and international institutions in developing process of VAT system in EU often attribute the motives behind the promotion to the merits of the policy instrument itself.

To explain how VAT system can be transformed, it's necessary to focus on the tax's history as a policy idea or instrument whose acceptance has been highly political, and shaped by local conditions.

The developing process of the VAT system in European Union ignores the difficult political,

[1] Cnossen, S. *Global Trends and Issues in Value Added Taxation*, *OCFEB Research Memorandum*. 1998. Erasmus University Rotterdam, The Netherlands.

[2] Communication of the Commission to the Council, the European Parliament and the European Economic and Social Committee. *Review of VAT strategy priorities.* No COM(2003). 2003.

economic, and moral questions that often accompany décisions introducing a new regulation in European Union.

Research methodology

The study provides to estimate the future of the VAT system, and to distinguish the difference between the theoretical approach and the point of view of the business sector. Therefore this paper includes the detail analyze of legal documents and scientific literature.

Results and findings

In order to ensure a successful outcome of the work on the European VAT system, we should continue to further explore the avenue of a definitive system through studies and impact assessments with the involvement of business and Member States. A transparent and efficient collaboration between the European institutions and the business is crucial.

Conclusions

1. The VAT is the most prevalent form of consumption tax in the world. Viewed globally, the advance of the VAT is the most significant development in the field of taxation in the past 50 years. The march of VAT started in the 1960s in the EU. Where the introduction of the harmonized VAT is a nonnegotiable condition for Members States.
2. An estimated €193 billion in VAT revenues (1.5% of GDP) was lost due to non-compliance or non-collection in 2011, according to a study on the VAT Gap in Member States[1]. Any changes of the VAT system must reduce considerably the possibilities for fraud, exclude new risks and generate no disproportionate administrative burden for companies, and ensure tax neutrality and non-discriminatory treatment of operators.
3. The VAT system generates high and disproportionate risks for business, the unpaid tax collectors, due to non-legitimate traders committing fraud. Fraud-prevention measures taken increase the complexity of the current VAT system for legitimate traders, create legal uncertainty when doing business in the EU and shift risks to legitimate traders. The complexity of European VAT system and the legal uncertainty multiply VAT disputes and litigation in the Member States and at the Court of Justice of the EU.

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4. After the introduction of the common VAT system, the problems created by the lack of harmonization became more evident. While time a new VAT system is starting to emerge, known as "the future VAT system". The outstanding growth and spread of the tax has been characterized as "the most important event in the evolution of tax structure in the last half of the 20th century".

5. The main intention of EU is still to have a common system of VAT where VAT is charged by the seller of goods - an origin based VAT system. Like other taxes, VAT is subject to evasion. However, VAT offers distinctive opportunities for evasion and fraud through: abuse of the credit; and refund mechanism.

Suggestions

To ensure a successful development and simplification of the European VAT system, we should continue to further explore the avenue of a definitive system through studies and impact assessments with the involvement of business and Member States.

VAT fraud schemes develop rapidly, but the impact of this situation to EU economy can be evaluated and unmasked rapidly, we possess all keys to do it[1].

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

PILLARS OF STATEHOOD IN THE PREAMBLE TO THE CONSTITUTION OF THE REPUBLIC OF LATVIA

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Abstract

Purpose – The goal of this paper is to describe the prerequisites for adoption of the preamble of the Constitution of Latvia (Satversme), the need for the preamble, its content and complex elaboration process.;

Design/methodology/approach – The conclusions of the paper are based on analytical, diachronic and comparative research methods.;

Findings –. The paper puts special emphasis on the preamble as means for upholding the continuity of the State of Latvia and protecting the Latvian language and culture. At the same time, the author highlights turning points and complicated moments in the history of Latvia as a state, reflecting on popular attitudes towards these milestones.;

Research limitations/implications – The goal of the paper is achieved by analysing the role of a preamble in strengthening the legal identity of a state and the pillars of its statehood, as well as its contribution to the preservation of core values of the state;

Practical implications – The paper will give a practical assistance for the application of the preamble of the Constitution of Latvia (Satversme).;

Originality/Value – The author in the paper will analyze the new preamble of the Constitution of Latvia (Satversme) and gives some remarks on the procedure of the constitutional amendments.;

Keywords: pillars of statehood, preamble (introduction) to the constitution, need for a preamble, genesis of a preamble, its content and objectives;

Research type: research paper.

Introduction

On 19 June 2014, the Parliament of the Republic of Latvia (Saeima) adopted the expanded preamble to the Constitution (*Satversme*).

The goal of this paper is to describe the prerequisites for adoption of the preamble of the Constitution, the need for the preamble, its content and complex elaboration process. This goal is achieved by analysing the role of the preamble in strengthening the state's legal identity and preserving its pillars of statehood. The paper puts special emphasis on the preamble as a means for upholding the continuity of the State of Latvia and protecting the Latvian language and culture. At the same time, the author highlights the milestones in the history of the State of Latvia and reflects people's attitudes towards them.

The author's proposed hypothesis is based on the assumption that the preamble would strengthen pillars of Latvia's statehood, protect the core of the Constitution and raise public awareness about the State of Latvia.

1. Need for the preamble to the Constitution, its adoption and content

1.1 Latvia's Constitution, adopted on 15 February 1922, is one of the oldest constitutions in Europe. It was adopted nearly four years after the proclamation of the state and two years after the hard-fought War of Liberation, during which the independent, democratic State of Latvia, established as a result of nation's desire for self-determination, had to withstand the pressure of other countries and political forces. Back then, no one doubted the goal of founding and fighting for the State of Latvia. The commission which drafted the Constitution considered adopting an expanded preamble, but ultimately it opted for a short introduction: "The people of Latvia, in freely elected Constitutional Assembly, have adopted the following State Constitution". Such a preamble may be considered one of the most concise introductions. According to Ringolds Balodis, during the entire occupation period this preamble, together with the body of the Constitution, was undoubtedly a stark reminder to the people of Latvia of once-lost freedom, freely elected parliament and the will of the nation.

According to experts in constitutional law,[1] it was impossible to agree on a more expanded preamble because its adoption required a two-thirds vote. Absence of the 5% election threshold made it nearly impossible to agree on an expanded preamble because most of the political parties elected to the parliament had one seat or just a few seats. Moreover, back then there was no apparent need to include a more explicit description of the purpose, essence and basis for the establishment of the State of Latvia in the preamble, or introduction, of the Constitution. The core

[1] Pleps J. *Dažas domas par Satversmes preambulu*. Jurista Vārds, 22.10.2013, pp. 32-33; Balodis R. *"Satversmes ievada (preambulas) komentārs"*, unpublished source.

values of the state were not included in the introduction to the Constitution because the “fathers” of the Constitution considered them self-evident. Back then, there was no need for the Constitution to emphasise and explain to the population of a democratic state the overall perception of the state, its purpose and essence, aims, fundamental values and basic principles underlying its functioning in order to promote people’s general and constructive participation in political processes. Not many other constitutions contained this kind of explanation.

1.2 However, drastic changes have taken place in Latvia since its establishment. Latvia has endured a long period of occupation, during which the totalitarian occupation regimes attempted to wipe out the collective memory of the people of Latvia about their state, as well as the purpose and essence of the state; in this way they sought to eliminate a possible resurgence of similar nationalistic sentiments. This experience still affects the public attitude towards the State of Latvia.[1]

The referendum of 18 February 2012 on granting official language status to the Russian language became the impetus for drafting a preamble that would articulate the core principles of the state. The need for an expanded preamble became even stronger after the referendum when the suggestion to grant citizenship to all non-citizens was voiced. Attempts to undermine the core principles of the State of Latvia split society – native Latvians, much like non-natives loyal to the State of Latvia, felt humiliated.

Therefore, the Saeima asked the Constitutional Law Commission of the President of Latvia to find a solution to the matter. On 17 September 2012, the Commission led by E. Levits,[2] together with some of the most prominent Latvian experts in constitutional law, conducted extensive research on the topic. An investigation of contemporary constitutional law theory provided conclusive evidence that the Constitution has a solid core embodying the constitutional identity of the State of Latvia. Concurrently, the Commission refuted the claims of certain political parties that provisions of the Constitution are irrevocable. The Commission proposed that the purpose, basic principles underlying the functioning of the state and constitutional identity of Latvia should be described in an expanded preamble.[3]

[1] Levits indicates that “in my opinion, Latvia has the lowest self-awareness in the European Union”. See Levits E. *Satversmes preambulā būtu jāatsedz Latvijas valsts jēga un būtība*. Jurista Vārds, 24.09.2013, pp. 4-7; Levits E. *Izvērstas Satversmes preambulas iespējamā teksta piedāvājums*. Jurista Vārds 24.09.2013, pp. 9-19. However, Paul Goble, member of the Honorary Council of the Museum of the Occupation of Latvia, says that “one of the best characteristics of Latvians is openness to others; however, often it becomes their weakness because the others abuse the openness in order to change the opinions on the nature of Latvians in ways that enable them to undermine the foundations of the nations and impose their will”. See Goble P. *Apsveikums Latvijas okupācijas muzeja 20.gadadienā, 2013.gada 1.jūlijā*, unpublished source.

[2] The initiator and author of the preamble, distinguished Latvian legal expert and political scientist, co-author of the Declaration of Independence of Latvia, former Minister for Justice, former judge of the European Court of Human Rights, judge of the European Court of Justice.

[3] Opinion of the Constitutional Law Commission of the President of Latvia published on 17 September 2012 regarding the constitutional foundation of the state and inalienable core of the Constitution. Available at: http://www.president.lv/images/modules/items/PDF/17092012_Viedoklis_2.pdf. Last accessed on 13 October 2014.

1.3 Many constitutions adopted by democratic countries after World War II contain preambles and even additional references in the body of the text that reflect the principles underlying the country's statehood, its national and constitutional identity. The constitutions of Estonia and Lithuania adopted in 1992 are clear examples. Thirty-seven out of 50 constitutions of democratic states analysed so far contain preambles which reflect the underlying concepts of the state; five of them reveal these principles in the body of the text, and only eight constitutions do not have an expanded preamble. Clear preambles of constitutions and other laws are considered the best practice in contemporary legislative theory.[1]

1.4 The draft preamble to Latvia's Constitution was subject to extensive public debate – several open meetings of the Legal Affairs Committee of the Saeima were held, and a research conference was organised that included experts from Estonia and Lithuania. Professor Vytautas Sinkevičius and Professor Milda Vainiute, who attended the conference, encouraged the Latvian legislature to draft an expanded preamble to the Constitution.[2]

Drafting of the preamble met with unprecedented resistance mainly from opposition parties in the parliament. Some politicians from the Alliance of Political Parties the Concorde Centre tried to misinform the general public about the progress and the aim of the expanded preamble by accusing authors of the preamble of "privatising" the Constitution and attempting to organise a coup.[3] Others claimed that adoption of the preamble requires a referendum.[4]

Some of the constitutional law experts invited to the discussion also expressed opposing views on the purpose and content of the preamble.[5] They claimed that the Constitution does not need to be supplemented with an expanded preamble. The author of this paper, however, is among those who consider that an expanded preamble was necessary for political rather than legal reasons.

2. Main elements of the preamble and their significance

[1] Levits E. *Satversmes preambulā būtu jāatsedz Latvijas valsts jēga un būtība*. Jurista Vārds, 24.09.2013, pp. 4-7; Levits E. *Izvērstas Satversmes preambulas iespējamā teksta piedāvājums*. Jurista Vārds, 24.09.2013, pp. 9-19.

[2] Articles by these researchers have been published in the most popular legal journal in Latvia *Jurista Vārds*. See Vaiņute M. *Konstitūcijas preambula: Lietuvas piemērs. No politiski filozofiskas abstrakcijas līdz tiesiskam imperatīvam*. Jurista vārds, 02.04.2014, pp. 12-18; Sinkevičs V. *Dažas piezīmes par Lietuvas Republikas Konstitūcijas preambulu.* Jurista vārds, 25.02.2014, pp. 15-18.

[3] Cilēvičs B., *Konstitūcijas privatizācija.* Available at: http://www.delfi.lv/archive/print.php?id=43649969. Last accessed on 13 September 2013.

[4] See, for example, *Preambulas ierosinājums raisa diskusiju par valsts pamatiem, identitāti un mērķiem*. Jurista Vārds. 22.10.2013, No.43 (794); *Turpinās diskusijas par Satversmes grozītā ievada pieņemšanas procedūru.* Jurista Vārds, 08.07.2014, No. 26 (828), pp. 6-8.

[5] Balodis R. *Par likumprojekta "Grozījums Latvijas Republikas Satversmē" pieņemšanu*. Jurista Vārds, 08.07.2014, No. 26 (828), pp. 9-11; Balodis R. *Par* likumprojektu "Grozījums Latvijas Republikas Satversmē". Jurista Vārds, 18.03.2014, No. 11 (813), pp. 9-11; Mits M. *Par likumprojekta "Grozījums Latvijas Republikas Satversmē" pieņemšanas procedūru*. Jurista Vārds, 08.07.2014, No. 26 (828), p. 14; *Turpinās diskusijas par Satversmes grozītā ievada pieņemšanas procedūru*. Jurista Vārds, 08.07.2014, No. 26 (828), pp. 6-8.

2.1 Regarding the content of the preamble, its first paragraph declares that the existing State of Latvia was proclaimed on 18 November 1918, and thereby it establishes the constitutional identity of our country and its continuity. It emphasises that Latvia was not established in a haphazardly identified territory. On the contrary, it occupies historical Latvian territories defined in Article 3 of the Constitution. This is a reference to the historical roots of the people of Latvia stretching back to the period before the founding of their state. These historical lands were united upon founding the State of Latvia. The Constitutional Court of Latvia in its ruling on the Russia–Latvia border agreement explained that “Latvia was formed by uniting the ethnographical regions historically inhabited by Latvians”.[1]

This means that there is an original and inherently inextricable link between the Latvian nation and the State of Latvia: the State of Latvia can exist only in Latvian territory whose territorial integrity is beyond question. And contrariwise, the State of Latvia cannot exist without the Latvian nation.

Therefore, the preamble reflects the role of the Latvian nation in the founding of the State of Latvia and the restoration of its independence, as well as the preservation and development of the Latvian language and culture.

The State of Latvia was established as a result of the Latvian nation’s right of self-determination. Its desire for a state of its own was first put in writing by our distinguished politician Miķelis Valters in an article, published in 1903, entitled “Away with autocratic rule! Away with Russia!” The article exhorted: “Latvians, break away from Russia!”[2] The Latvian people suffered greatly for 15 years before this goal was finally achieved.

At that time, an independent, democratic Latvia was only necessary only for Latvians. Independence was not handed to us on a platter. Neighbouring countries attempted to destroy the emerging, still unstable state, and Latvians had to fight to keep their own national state.

If we look into the minutes of the ceremonial sitting of 18 November 1918 of the People’s Council on the proclamation of the State of Latvia, we see the immense desire of Latvians for a state of their own.[3]

Thus the State of Latvia was established by the Latvian nation as an embodiment of its political will. Previously, Latvians had been a culture-nation without its own national state. The founding of the State of Latvia is legitimised by two basic political and legal principles. The first basic principle is the desire of the Latvian nation to establish the State of Latvia; this was materialised by founding its own state. From the perspective of public law, it is a constituent power *(pouvoir constituant)*, which is not, nor can it be, legally regulated and which becomes a basic norm

[1] Paragraph 20 of the ruling of the Constitutional Court in case No. 2007-10-0102 passed on 29 November 2007. Available at: http://www.satv.tiesa.gov.lv/upload/2007_10_0102_Robezligums.htm. Last accessed on 14 October 2014.

[2] Šēnbergs D. *Patvaldību nost! Krieviju nost!…kāda valsts vīra simt četrdesmitā gadskārtā.* Magazine *IR*. Available at: http://www.ir/2014/5/7/patvaldibu-nost-krieviju-nost Last accessed on 7 May 2014.

[3] See excerpt from the minutes of the ceremonial sitting of 18 November 1918 of the People’s Council on the proclamation of the State of Latvia. Available at: http://www.historia.lv/alfabet/T/ta/tautas_padome/dokumenti/1918.18.11.htm. Last accessed on 13 October 2014.

of the state if it is realised. The constitution of a democratic country envisages that the desire of a nation to establish its own state is inalienable and immutable; therefore, the majority is not entitled to deprive a minority that desires to maintain the statehood of its state or the right to self-determination. The second basic principle is the right of nations to self-determination. The Latvian nation, therefore, cannot be deprived of this right.[1]

The preamble outlines the main objectives of the state: to guarantee throughout the centuries the existence and development of the Latvian nation, its language and culture. This is the conceptual basis for establishing the State of Latvia. This paragraph of the preamble also ties together the timeline (*throughout the centuries*), since the nation's scope of time includes the former, current and future generations. *To guarantee* means that the state and its policies within the framework of the democratic system and the rule of law create and maintain the basis for existence and development of the Latvian nation, its language and culture. This reference is based on the same principle as in the preamble of the Estonian Constitution, which was adopted in 1992.[2]

A very important goal is to ensure freedom, as well as promote the welfare of the people as a whole and of each individual. In this context, welfare is to be promoted among individuals and the people as a whole. Here the term *welfare* is used in a broad sense: it includes not only material welfare but also mental, social and cultural welfare.

1. The second and third paragraphs of the preamble contain references to turning points in the history of the State of Latvia after its proclamation. It must be emphasised that this is not an account of the history of Latvia, but rather an assessment in the context of the legitimacy of the state; therefore, it is an expression of the political and legal attitude towards these events. Specifically, these paragraphs refer to four major turning points following the founding of the state on 18 November 1918:

2. Founding of the State of Latvia as a result of the War of Liberation (1918–1920). Without political will and victory in the War of Liberation, the State of Latvia would have been lost along with many of the newly established states of that time.

3. Consolidating the constitutional system with adoption of the Constitution thus concluding the process of establishing the State of Latvia.

4. Non-recognition of and resistance against the occupation regimes. The plural is used in order to encompass both the Soviet and the Nazi regimes. The people of Latvia have endured immense suffering and loss from both of the above-mentioned occupation regimes. Practically all families in Latvia have suffered from at least one regime – and in many cases from both occupation regimes.

5. The main point here is that the people of Latvia did not recognise these regimes and resisted them. The continuity of the State of Latvia is based on those who refused to recognise the occupation regimes and resisted them rather than those who collaborated with them.

[1] Likewise the preamble of the Constitution of Slovenia refers to "the fundamental and permanent right of the Slovene nation to self-determination".

[2] Estonia "shall guarantee the preservation of the Estonian nation, its language and culture throughout the ages".

6. The regaining of freedom and renewal of national independence on the basis of the continuity of the state. Here the Constitution consolidates the doctrine of the continuity of the state enshrined in the Declaration on the Restoration of the Independence of the Republic of Latvia of 4 May 1990; at the same time it emphasises the highest purpose of an independent state – freedom.

Moreover, the attitude of the people towards their nation’s history and experiences is reflected – they honour their freedom fighters, commemorate the victims of foreign powers and condemn the crimes committed by the Soviet and Nazi occupation regimes.

Pro-Russian political parties in the parliament, as well as outside it, were especially opposed to mentioning the occupation in the preamble. They denied the occupation altogether, accused the coalition of rewriting history and so on.[1]

2.3 The fourth paragraph of the preamble reveals the overarching principles of the functioning of the State of Latvia. These principles are typical of contemporary Western democracies, and they also touch on features specific to Latvia.

Latvia is described as a democratic, socially responsible and national state. These important concepts that characterise Latvia’s political system had not been mentioned previously in the text of the Constitution. The political and legal content of these concepts is further expanded in the chapters on the institutional system and human rights, the laws adopted by the Saeima, the binding legal acts of the European Union, decisions of the Constitutional Court and other relevant courts. Now that these principles are enshrined in the preamble, they can promote a deeper understanding among the general public.

In this context, freedom and welfare are to be promoted among individuals and the people as a whole. Here the term *welfare* is used in a broad sense. It includes not only material welfare but also mental, social and cultural welfare. First and foremost, welfare depends on each individual’s desire and effort; therefore, the state cannot be expected to guarantee welfare. Nevertheless, the objective of the state is to ensure conditions that enable individuals to achieve welfare.

The functioning of the state is based on human dignity, freedom and human rights. It is specifically stated in the preamble that Latvia protects fundamental human rights and respects ethnic minorities. Although that can be inferred from Chapter 8 of the Constitution, the preamble specifically emphasises the rights of ethnic minorities in order to prevent abusive interpretations.[2]

It is also stated that Latvia cannot be left unprotected, and the people of Latvia should protect the sovereignty, as well as the independence, territory, territorial integrity and the

[1] See, for example, transcript of the plenary sitting of the Saeima of the Republic of Latvia of 27 March 2014. Available at: http://www.saeima.lv/lv/transcripts/view/233. Last accessed on 14 October 2014.; Pimenovs I. *Kam es piekrītu un kam es nepiekrītu preambulā.* Available at: http://www.delfi.lv/archive/print.php?id=44326031. Last accessed on 24 May 2014.; Гильман А. *Оккупация – это хорошо.* Available at: http://rus.delfi.lv/archive/print.php?id=40129041. Last accessed on 14 October 2014.

[2] See comments made by Ilma Čepāne regarding the Draft Law on the Amendments to the Constitution of the Republic of Latvia, plenary sitting of the Saeima of the Republic of Latvia of 27 March 2014. Transcript. Available at: http://www.saeima.lv/lv/transcripts/view/233#LP1075_115. Last accessed on 1 October 2014.

democratic political system of the State of Latvia. This is everyone's right and a moral obligation; in specific cases, it is even a legal obligation (e.g., military service, protection of the above-mentioned fundamental values under the criminal law). This obligation especially applies to the representatives of the people of Latvia – public officials.

2.4 The fifth paragraph of the preamble refers to values on which the Latvian society and identity are based. These values are prerequisites for the functioning of a democratic state based on the rule of law along with its legal system. Of course, the list is not all-inclusive; it contains only the most significant values and influencing factors. However, an individual is not obliged to abide by them. Everyone is allowed to shape his or her system of values and identity by using some or none of factors referred to in this paragraph. This is a fundamental human right.

It also outlines the geopolitical location of Latvia – we are a part of the European cultural space. It refers to the core of the identity of Latvia's society which stems from Latvian roots (the Latvian language, traditions and folk wisdom), from universal human values which, to a great extent, have developed from ideas of the Enlightenment, as well as from Christian values which have shaped the entire European cultural space. This sentence indicates openness and tolerance, which are characteristic of the Latvian nation.

It must be stressed that it makes no direct reference to the attitude towards the church, which is defined in the second sentence of Article 99 of the Constitution – namely, the church shall be separate from the State.

According to the Statement of the Saeima on the National Role of the Latvian Language adopted on 2 February 2012,[1] the Latvian language as the only official language serves as the basis for democratic participation and a cohesive society.

The Latvian language has to be shared by everyone who feels a sense of belonging to Latvia, regardless of origin and national self-identification.[2] Without it, full-fledged democratic participation and a cohesive society are impossible. Therefore, it is the duty of the state to strengthen the role of the Latvian language as the language that is truly shared and jointly used by all the peoples residing in Latvia.

Ensuring freedom and promoting welfare among individuals and the people as a whole is an immensely important goal.

Here the term *welfare* includes not only material welfare but also, and predominantly, mental, social and cultural welfare. First and foremost, welfare depends on each individual's desire and effort; therefore, the state cannot be expected to guarantee welfare. Nevertheless, the objective of the state is to ensure conditions that enable individuals to achieve welfare.

There is a reference to individuals' relations to society and their place within it. To the best of their ability, individuals have to take care of at least themselves, their relatives and the common good of society. It is a moral reminder promoting civic awareness instead of selfishly seeking to

[1] Statement of the Saeima of the Republic of Latvia on The National Role of the Latvian Language adopted on 2 February 2012. Available at: http://likumi.lv/doc.php?id=243710. Last accessed on 14 October 2014.

[2] For example, Article 3 of the Constitution of Spain states that Castilian is the official language and that "all Spaniards have the duty to know it and the right to use it".

benefit from society. It means that individuals are expected to make a positive contribution; however, if they are incapable of doing so, they may rely on the solidarity of society – that is, society will take care of them. An individual is obliged to act responsibly toward other people, the state, the environment, nature and future generations. Unlike the situation described above, here, instead of making a positive contribution, individuals are required to act responsibly, i.e., not to harm the aforementioned values.

2.5 The sixth paragraph of the preamble refers to Latvia's role in and obligations towards the international community. As a small country, Latvia has to take an active part in global politics. In this regard, Latvia has two goals – first, to defend its own interests; and second, to contribute to sustainable and democratic development of the world and a united Europe. Currently, a united Europe is predominantly manifested in the European Union; therefore, the preamble assigns the state the task of taking an active part in functioning of the European Union and shaping its future.

Sustainable development is a concept which so far has not been reflected in the national constitutions. It is matter that has come into the global focus rather recently. Latvia's constitutional legislature believes that the matter of responsibility towards future generations should be raised to the constitutional level.

2.6 The preamble concludes with the introductory phrase of Latvia's national anthem, "God Bless Latvia", which adds an emotional touch to the wording of the preamble.

Conclusions

1. The preamble can be regarded as a summary of Latvia's statehood. It reveals the circumstances in which the State of Latvia was founded, its main historic milestones, the foundations of the state, its overarching principles and basic values, its national identity, and the basic constitutional principles and the values shared by society – features that previously had not been included in the wording of the Constitution.

2. The renewal of Latvia's independence following the Soviet occupation was based on the doctrine of continuity. Today's Latvia is the same State of Latvia that was founded in 1918 rather than a new state. The principle of continuity is further reinforced by the fact that the Constitution adopted in 1922 has been valid for more than 90 years.

3. It is the task of the State of Latvia to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries.

4. The functioning of the State of Latvia is based on recognition and protection of human rights and respect for ethnic minorities.

5. The preamble is an integral part of the Constitution; its wording by far exceeds merely declarative status. The preamble does not establish an individual's subjective rights; instead, it is a source of inspiration to those who enforce, interpret and apply the laws.

6. The main aim of the preamble is to promote a deeper understanding of Latvia's statehood and to strengthen efforts aimed at creating a cohesive society.

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

EUROPEAN ARREST WARRANT IN CONFLICT WITH NATIONAL CONSTITUTIONS

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Abstract

Purpose – The European Arrest Warrant (EAW) may serve as an example for demonstrating the challenges of the European Union’s further development. The creation of this genuine institution means a landmark in the integration. It was not without reason that the Member States were concerned about the introduction of a new, "automatic" way of extradition. The question of having different criminal laws because of the cultural, historical and moral diversity was turned into legal problems that national constitutional courts had to solve.

Design/methodology/approach – We have examined the decisions of different European constitutional courts (among others the EAW decisions of the German Federal Constitutional Court, the Polish, the Czech and the Hungarian Constitutional Court) and confronted them with each other and with the practical, everyday functioning of the EAW.

Findings – We draw conclusions by answering the question whether the right constitutional problems were questioned before the constitutional courts and the judges have interpreted well the true meaning of a closer judicial cooperation in the light of their national constitutions.

Research limitations/implications – We tried to understand how the national constitutions interacted with such a new European legal instrument, and what could have been the reasons behind the different lines of arguments.

Practical implications – It is a pending question in the European Union whether the full harmonization of the Criminal Codes is possible in the Member States. The conflict of the EAW showed the difficulties of the integration of criminal law.

Originality/Value – The author of the paper experienced closely the functioning of EAW, not only in Hungary, but also when worked for the Italian Ministry of Justice. The personal interactions revealed some of the difficulties in international cooperation caused by the implementation of the framework decision on the EAW.

Keywords: European Arrest Warrant, constitution, implementation of framework decision; judicial cooperation in criminal matters

Research type: research paper.

Introduction

The Hungarian Constitutional Court has dealt with the European Arrest Warrant (EAW) relatively late, in 2008[1], four years after Hungary's accession to the EU. At that time constitutional concerns were already raised and resolved by a number of European constitutional courts. In February 2014, the Hungarian Act on the EAW was put on the Constitutional Court's agenda again[2]. To the decision four judges have attached dissenting opinions, which marks a strong counterforce as regards the interpretation followed by the majority. It is very interesting to investigate what are the factors that tend to put the EAW in conflicts with national constitutions.

Theoretical background

It was the EU's concept of the internal market and the spill over effect of the integration that led to the necessity that instead of extradition a new system was needed for the surrender of suspects or convicted persons from one Member State to the other. The free movement of persons applies also to persons who committed crimes in one Member State and later travelled freely to the territory of another Member State[3]. But the principle of sovereignty from the “classical” international law still prevails thus the latter State has the legal authority over this person (who should have faced criminal proceedings or serve sentence if he or she had not crossed the borders).

The "classical" extradition[4] requires a formal extradition request sent through diplomatic channel to the State of which territory the requested person currently staying, equipped with the arrest warrant or the final sentence that contains the detailed description of the offences for the examination of double criminality. The granting may be refused by the government because of several grounds, such as the ban on extradition of own nationals.

The introduction of the European Arrest Warrant in 2004 aimed to accelerate the whole process by creating the decision-making quasi automatic and decentralised. This was “the first European instrument to implement the principle of mutual recognition” (A. Vitorino, 2005).[5] However, only the Framework Decision on the EAW[6] remained common in the Member States, the legal regulations, due to the legal nature of framework decisions, vary from State to State because

[1] 32/2008. (III. 12.) AB decision
[2] 3025/2014. (II. 17.) AB decision
[3] See Article 22 of the Schengen Borders Code (OJ L 105, 13 April 2006, p. 1): “Member States shall remove all obstacles to fluid traffic flow at road crossing-points at internal borders (…)”
[4] For example see the European Convention on Extradition (Paris, 13 December 1957)
[5] A. Vitorino, 2005. Foreword to R. Blekxtoon et al., eds., Handbook ont he European Arrest Warrant, 2005, T.M.C. Asser Press, The Hague, p. 1
[6] 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedure between member states. Official Journal L 190 , 18/07/2002 P. 0001 - 0020

of the different ways of incorporating it into national laws. (Before the entry into force of the Treaty of Lisbon in 2009, this legal instrument was typical for the intergovernmental "third pillar" legislation, to which the judicial cooperation in criminal matters belonged.)

Research methodology

The objective of this paper is to analyse the legal situations in which the EAW stood in conflict with national constitutions and draw conclusions in order to understand the possible ways of further integration in criminal matters. Already on 27 of April 2005 the Polish Constitutional Tribunal made a decision[1], then on 18 July the German Federal Constitutional Court declared unconstitutional the German piece of legislation that implemented the EAW Framework Decision[2]. The Czech Constitutional Court, however, came to the conclusion that the wording of their Charter[3] left room for it to be interpreted in harmony with the obligations towards the EU.[4]

Table 1. Main constitutional problems

Country	Questions
Poland	– ban on extradition of nationals;
Germany	– proportionality of the ban on extradition of nationals; – no judicial review against the granting decision; – subsidiarity, preserving national identity and statehood in a single European judicial area;
Czech Republic	– ban on extradition of nationals (2006); – personal liberty / speciality rule (2013);
Hungary	– double criminality (2008); – personal liberty / detention before surrender (2014)

The Hungarian Constitutional Court has referred to several Constitutional Courts' decisions in its own decision of 2008, in spite of that the legal arguments thereof could not really be used. The Hungarian Constitutional Court was asked not about the constitutionality of the implementing Act on the EAW, but in the context of international treaties (with Norway and Iceland[5]). Hungary

[1] P/105. of 27 April 2005
[2] 2 BvR 2236/04 of 18 July 2005
[3] Charter of Fundamental Rights and Freedoms, part of the constitutional order of the Czech Republic
[4] Pl. ÚS 66/04. of 3 March 2006
[5] Council Decision 2006/697/EC of 27 June 2006 on the signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

follows the dualist model as regards international law, and the Constitutional Court has competence for the preliminary review of Acts implementing international treaties.[1] The question concerned the double criminality test, and the majority of the constitutional court judges agreed that the list of crimes exempted from the double criminality test was in conflict with the "nullum crimen sine lege" principle in Hungary in one point, namely the "illicit trafficking in hormonal substances and other growth promoters", which was not punishable under the Hungarian Penal Code at the time of the decision-making[2].

Results and findings

We could share the opinion of the Czech Constitutional Court[3] that the enumeration of criminal offenses which do not require dual criminality "in view of the values shared by the EU Member States, is criminal in all of them", and "In addition, in adopting this Framework Decision each EU Member State expressed its agreement that all criminal conduct coming within the categories defined in this way will also be criminally prosecuted." This view optimistically emphasizes the principle of mutual trust, however gives no consideration to eventual discrepancies as regards differences in the substantive criminal law throughout the EU.

The difference may result accidentally (as in the case of Hungary, where it was just the Constitutional Court that has temporarily eliminated the "illicit trafficking in hormonal substances" crime from the Hungarian legal system)[4]. But there are deeper, systematic problems in the "area of freedom, security and justice": criminal law is a product of history and culture, it reflects the values and overall philosophy of a society. For example, the prisoner that manages to escape from the prison will be punished for this act in Hungary[5], although in other European Member States (for example in Germany) prevails the view that it is the task of the law enforcement agencies to prevent such events therefore in itself it does not constitute a crime. In short, the integration of the Member States has been accelerated, but has not reached a level yet where all the European societies could share one common Criminal Code.

Conclusions

The Hungarian Constitutional Court had to face the problem about the constitutionality of the EAW only at a later stage of its implementation, and in the context of international treaties.

[1] The petitioner was the President of the Republic.
[2] The 47/2000. (XII.14.) AB decision annulled the relevant provisions of the Criminal Code because they violated the principle of legal certainty (derived from the rule of law) by operating with uncertain legal terms.
[3] Point 103.
[4] See footnote 13.
[5] Art. 283 of Act C of 2012 on the Criminal Code

The constitutional question was not the constitutional ban on extradition of own nationals, as it was before the Polish, German and Czech cases, but the double criminality. The decision was not made unanimously; neither was the next decision on the EAW.[1] In the broader international context, the conflicts by implementing the EAW in the Member States show that closer judicial cooperation in criminal matters not only a complex issue, but it refers to the question: what kind of integration the EU is heading, therefore touches upon sensitive issues.

Suggestions

"Mutual trust" is a complex requirement: it assumes factual knowledge as a basis for trust, but it is also possible that it works vice versa, knowledge comes by cooperation. The EU made a lot of efforts to put together experts and build networks throughout the whole Union. These efforts are necessary, but not enough. It is up to the persons to develop interest in getting to know other countries' people, culture, history, and realise similarities, unless we will not have anything common.

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5. 3025/2014. (II. 17.) AB decision
6. European Convention on Extradition (Paris, 13 December 1957)
7. 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedure between member states. Official Journal L 190
8. P/105. of 27 April 2005
9. 2 BvR 2236/04 of 18 July 2005
10. Pl. ÚS 66/04. of 3 March 2006
11. Council Decision 2006/697/EC of 27 June 2006 on the signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

[1] To be noted that one can observe that constitutional court judges who hold professorship in criminal law or international law attached dissenting opinions in both cases.

12. 47/2000. (XII.14.) AB decision
13. Act C of 2012 on the Criminal Code

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

CONSTITUTION AS A NATIONAL SYMBOL: THE EXAMPLE OF LATVIA

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Abstract

Purpose – The goal of the paper is to analyse the constitution as one of the symbols of national statehood.

Design/methodology/approach – The report considers the symbolic function of a constitution and its role in national statehood. Conclusions contained in the report are drawn by applying analytical, dogmatic, historical and comparative research methods.

Findings – The paper intends to prove the impact of the constitution in reinforcing the status of the official state language and the doctrine of continuity of a state. It also outlines the presence of constitutional mythology whose task is to promote a uniform opinion in accord with national interests on the necessity and goals of forming a state, on constitutional development of national statehood and on future challenges. The constitution, together with the constitutional system and fundamental rights of an individual, determines the constitutional identity of a state and reflects the constitutional development of national statehood.

Research limitations/implications – By using constitutional law theory and Latvia as an example, the author is going to make some general conclusions.

Practical implications – The paper will be useful for better understanding of the foundations of the national statehood of Latvia.

Originality/Value – The author aims to explain the constitutional identity of a state, constitutional values reflected in the constitution, and the constitution’s role in shaping national statehood. The author also will analize the constitutional mythology in the modern constitutional state.

Keywords: Constitution, constitutional identity, constitutional value, symbolic function of constitution, constitutional mythology

Research type: research paper

Introduction

Every state has its symbols of statehood that reflect the meaning, the most significant values and the historical development of the state. Habitually, the symbols of statehood are the coat of arms, the flag, the anthem, the state decorations and money.1 One more symbol of national statehood is the constitution of the state.

In the article the author will analyse the meaning of a constitution as a symbol of national statehood and its influence on a state and society. The analysis will be based on the Constitution of the Republic of Latvia (hereafter – Satversme)2 and its influence on statehood of Latvia. At the same time, the analysis will be based on the verities of the theory of constitutional law that are sufficiently general to be applied to any modern democratic state. To illustrate separate ideas, the author will provide references to the constitutional experience of other states.

To achieve the aim of the article, first, the author will analyse the theoretical aspects of the issue. In this section the concept of constitution as a symbol of national statehood will be examined, the symbolic function of the constitution described and the notion of constitutional identity of a state established. The research methods used in the article will be shortly described as well.

In the article, the Satversme as an example will be analysed, elaborating on the factors that have made the Satversme to become a symbol of national statehood. Attention will be paid to the most important constitutional values of statehood of Latvia and their representation in the text of the Satversme.

Theoretical background

The definition of the concept of constitution has both a theoretical and practical meaning. The definition of the concept of constitution determines the scope of the matters that are regulated by the constitution and are to be analysed within the Course of Constitutional Law.

In the theory of constitutional law, the first constitutions classically were regarded as sets of technical rules that provided the procedure of enforcing the state power.3 Professor Georg Jellinek defined a constitution as legal rules that prescribe the state authorities, the procedures of their establishment, their competencies and mutual relationships, and the relationship between a

1 Ducmane K. 2013. Latvijas valstiskuma simboli. In: Latvieši un Latvija. Akadēmiski raksti. III sējums. Atjaunotā Latvijas valsts. Stradiņš J., Jundzis T., Zemītis G. (red.) Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 266. - 308.lpp.

2 Latvijas Republikas Satversme. Valdības Vēstnesis. 1922, Nr.141.

3 Grimm D. 2012. Types of Constitutions. In: The Oxford Handbook of Comparative Constitutional Law. Rosenfeld M., Sajó A. (ed.) Oxford: Oxford University Press, p.101.

person and the state authorities.1 Such understanding of a constitution is indicated also by the titles chosen by legislators, for instance, the official title of Oliver Cromwell’s constitution in 1653 was ‘The Instrument of Government’.2 The constitution of the Duchy of Courland and Semigallia in 1617 was entitled ‘Formula Regiminis’.3

An official implementation of the concept of constitution indicated an essential development of constitutionalism. First of all, a constitution determined the limits of state authorities. The main feature of a constitution is the self-limitation of state authorities, i. e. the power is not absolute, no matter which state authority exercises it. The phenomenon was described by Alexander Hamilton as a limited constitution.[4] A modern state is a constitutional state, where the power of the state is effectively limited via separate legal principles, traditions and institutional mechanisms.[5] Constitutionalism as a model of state administration is based on the principles of rule of law, democracy and human rights.[6]

Limitation of state power and subordinating it to the authorities of law means that a constitution is not a politically neutral legal document. A constitution reflects the political ideology of the respective constitutional system, the basic principles of the life of the state and society and the most essential constitutional values. A constitution can be regarded as a social contract, i. e. as a democratically accepted obligation of all citizens of a state in the name of themselves and the further generations to live according to the basic values incorporated in the constitution, to observe them and to ensure the legitimacy of the state authorities and the decisions adopted by them.[7]

In the contemporary theory of constitutional law, there is a tendency to expand the concept of constitution by increasingly incorporating the elements of political philosophy and ideology of the respective constitutional system in it. A constitution encompasses not only the legal, but also the historical, political, national, cultural and other extra-juridical factors that characterize the state. A constitution contains also particular pre-constitutional and extra-constitutional facts, assumptions, postulates, principles of law and other types of principles. It, in turn, has allowed admitting that a constitution includes ‘coded’ references about the history of the state, traditions,

1 Еллинекъ Г. 1908. Общее учение о государстве. Санкт-Петербург: Издание Юридическаго Книжнаго Магазина Н. К. Мартынова, с.371

2 The Instrument of Government. Gardiner: Constitutional Documents of the Puritan Revolution [accessed 2014-10-16]. <http://www.constitution.org/eng/conpur097.htm>

3 Valdības formula Kurzemes un Zemgales hercogistē. In: Apsītis R., Blūzma V., Lazdiņš J. 2006. Latvijas tiesību avoti. Teksti un komentāri. 2.sējums. Poļu un zviedru laiku tiesību avoti (1561 – 1795). Rīga: Juridiskā koledža, 210. - 220.lpp.

4 Hamilton A. 2010. The Federalist No.78. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, pp. 591 – 601

5 Sajó A. 1999. Limiting Government. An Introduction to Constitutionalism. Budapest: Central European University Press, p. xiv

6 Rosenfeld M., Sajó A. 2013. Constitutionalism: Foundations for the New Millenium. In: New Millenium Constitutionalism: Paradigms of Reality and Challenges. Yerevan: Njhar, pp. 11 - 22

7 Lietuvos Respublikos Konstitucinio Teismo 2004 m. Gegužės 25 d. nutarimas. Lietuvos Respublikos Konstitucinis Teismas [accessed 2014-10-16]. <http://www.lrkt.lt/dokumentai/2004/n040525.htm>

language, circumstances of establishing the country, development of statehood and the goals of the state.[1]

This expansion of the notion of constitution reflects the concept of constitutional identity.2 The constitutional identity within the context of European integration has become an essential guarantee of the independence of a national state. Nowadays the determination of the ultimate limits of European integration is not so much an issue of the sovereignty of a state as that of a constitutional identity.3 The retention of the constitutional identity of the Federal Republic of Germany is the limit to which the Federal Constitutional Court of Germany is ready to allow a closer European integration.4 Similarly, constitutional courts of many other member states of the European Union have used the opportunity to define the elements of constitutional identity or values to mark the perspective of retention and development of their national statehood.

The formulation of a constitutional identity and its inclusion in the concept of constitution unequivocally makes a constitution into a symbol of national statehood. The text and spirit of a constitution defines the most important elements of the national statehood, whose retention and development ensures the existence of a national state. Thus the symbolic function of a constitution manifests, that is, a constitution defines the respective country as a political unit, confers legitimacy upon it and formulates the goals of the state politics. A constitution ensures the establishment and maintenance of the respective state’s system.5 A loyalty obligation towards the constitution (constitutional patriotism) is demanded from the citizens.6

The inclusion of the state’s goals, society’s values and the historical development of the national statehood into a constitutional regulation promotes the formation of a constitutional mythology. Within the frame of constitutional rights, myths about the beginnings of the national statehood, values, history and development perspectives are formed. Largely, within the frame of constitutional law it is necessary to deal with the issues of identity of the state and nation, which requires the integration of methodology and verities of other social sciences into the science of constitutional law.7 The legislator advances these processes by generously including the material

1 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedoklis “Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu”. In: 2012. Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. Konstitucionālo tiesību komisijas viedoklis un materiāli. Rīga: Latvijas Vēstnesis, 56. - 60.lpp.

2 Jacobsohn G.J. 2011. The formation of constitutional identities. In: Comparative Constitutional Law. Ginsburg T., Dixon R. (ed.) Cheltenham and Northampton: Edward Elgar, pp. 129 – 142

3 Hābermass J. 2012. Postnacionālā konstelācija un demokrātijas nākotne. Rīga: Zinātne; Hābermass J. 2013. Par Eiropas konstitūciju. Rīga: Zinātne.

4BVerfG, 2BvE 2/08. Das Bundesverfassungsgericht [accessed 2014-10-16].
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5Elkins Z., Ginsburg T., Melton J. 2009. The Endurance of National Constitutions. Cambridge: Cambridge University Press, p. 38

6Habermas J. 1997. Citizenship and National Identity. In: Habermas J. Between Facts and Norms. Cambridge: Polity Press, pp. 499 – 500

7Levits E. 2011. Uzruna Cicerona balvas saņemšanas sarīkojumā. Latvijas Vēsture. Jaunie un jaunākie laiki, Nr.3(83), 11. - 16.lpp.

necessary for the constitutional mythology into the texts of constitutions and especially their preambles.1 A striking example is the Preamble of the Hungarian Constitution in 2011.2

Research methodology

In order to analyse the genesis of the Satversme as a symbol of national statehood and the factors influencing it, the author has used the historical research method. The historical development of Latvia’s statehood and politically-social processes allow identifying the most essential factors that favoured the role of the Satversme as a symbol of national statehood.

The phenomena of constitutional law of a national state cannot be viewed separately from the constitutional development processes in Europe and the verities of the theory of constitutional law. Comparative and dogmatical research methods will be applied to include and consider the analysis of Latvia’s statehood issues in the wider context of development of constitutionalism.

Sociological research methods will be used analysing the problems of defining the constitutional values. Analysing the amendments and the text of the Satversme, the author will present which constitutional values are considered as the most essential by the Latvian society and will describe the reasons why the particular values have gained such attention.

Results and findings

In the context of European constitutionalism, the Satversme is a unique constitution. The most accurate description of more than 90 years of the Satversme’s lifespan would be ‘a constitution with a heavy fate’.3 The Satversme was adopted on 15 February 1922 at the Constitutional Assembly and came into force on 7 November 1922.[4] The *coup d'etat* on 15 May 1934 transformed the parliamentary republic into an authoritarian state, seemingly suspending the operation of Satversme.[5]

Usually after *coups d’etat* constitutions lose their political meaning and legal character and become the objects of the history of law. The contrary happened to the Satversme. During the authoritarian regime and even more during the soviet occupation, the Satversme became a symbol of Latvia as an independent democratic republic.

1 Orgad L. The Preamble in Constitutional Interpretation. Social Science Research Network. [accessed 2014-10-16]. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1686745>

2Horkay Hòrcher F. The National Avowal. 2011. In: The Basic Law of Hungary. A First Commentary. Csink L., Schanda B, Varga A. (ed.) Budapest: National Institute of Public Administration, pp. 71 - 107

3 Heniņš A. 1995. Satversme ar grūtu likteni. Neatkarīgā Rīta Avīze, 15.februāris.

4 Likums par Latvijas Republikas Satversmes spēkā stāšanos un ievešanu. Valdības Vēstnesis, 1922, Nr.141.

5 Pilsoņi! Valdības Vēstnesis, 1934, Nr.107.

After the occupation of Latvia, the doctrine of continuity of the Republic of Latvia was based also on the Satversme, emphasizing that the annexation of the Republic of Latvia by the USSR occurred by violating the national constitutional regulation. On 23 July 1940, Kārlis Zariņš, the ambassador of Latvia in London, submitted a memorandum to the Foreign Office of the United Kingdom, where he indicated that he would continue to represent interests of the Republic of Latvia and qualified the acts of the USSR in Latvia as illegitimate. K. Zariņš also indicated that the People's Saeima by declaring accession to the USSR broke Article 1 of the Satversme, which can be amended only via a referendum.[1] Alfrēds Bīlmanis, the ambassador of Latvia in Washington, also objected to Latvia's incorporation into the USSR that occurred by breaking Articles 1, 76 and 77 of the Satversme and by brutal force.[2]

The meaning of the Satversme has to be particularly highlighted in connection to the national resistance movements against the occupational regime. The Central Council of Latvia, where the representatives of the five largest political parties of Latvia joined to collaborate, in its political platform in 1944 emphasized the validity of the Satversme and the necessity to resume the state authorities of Latvia on terms of the Satversme.[3] In its memorandum on 17 March 1944, the Central Council of Latvia emphasized repeatedly the validity of the Satversme and called to form a government of the Republic of Latvia on terms of the Satversme. The memorandum was signed by 190 political and public figures of the Republic of Latvia.[4]

On 8 September 1944, the Central Council of Latvia adopted a declaration on restoration of the Republic of Latvia. It stated that 'the people of Latvia have taken over the sovereign power in the territory of the state of Latvia that has been freed from foreign rule and the Republic of Latvia has been restored as a sovereign state. [..] The Satversme, from this day till the reform of the Satversme, acts as the fundamental law of the restored State of Latvia in its liberated territory."[5]

In the exile, upon the request from bishop Jāzeps Rancāns, the deputy President of the state, the senators of the Senate of Latvia rendered responses to two particular questions, 'Is the Satversme of Latvia of 1922 still in full force and effect, and, if affirmative, which state authorities according to the Satversme are legitimate and still exist *de facto*.'[6]

In their resolution, the senators substantiated the existence of the Republic of Latvia based on the doctrine of continuity and the validity of the Satversme, and acknowledged the rights of J.

1 Note of K. Zarins, Latvian Envoy in London, Protesting against the Incorporation of Latvia into U.S.S.R. as being Unconstitutional and Illegal. 1978. In: Latvian – Russian Relations. Documents. Second printing. Lincoln: Augstums Printing Service, Inc., pp. 209 – 210

2 The Latvian Minister in Washington does not Recognize Incorporation of Latvia into the Soviet Union. 1978. In: Latvian – Russian Relations. Documents. Second printing. Lincoln: Augstums Printing Service, Inc., p. 211

3 Latvijas Centrālās padomes platforma. 1973. Grām.: Bīskaps Jāzeps Rancāns. Dzīve un darbs. Dr. H. Tichovska redakcijā. [B. v.]: Astras apgāds, 186. lpp.

4Ducmanis M. 2001. Nepakļaujoties ne boļševikiem, ne nacistiem. Latvijas Vēstnesis, 5.maijs, Nr.69.

5Deklarācija par Latvijas valsts atjaunošanu. Virtual museum Occupation of Latvia. [accessed 2014-10-16]. <http://www.occupation.lv/#!/en/eksponats/05192>

6 Latvijas Senāta senatoru atzinums par Latvijas Satversmes spēkā esamību un Saeimas pilnvarām okupācijas apstākļos. 1948. Latvju Ziņas, 17.aprīlis.

Rancāns to act as the President of the state. The senators pointed out the validity of the Satversme, 'The Satversme of 1922 must be still acknowledged as being in full force and effect [..] Wherewith, all the state authorities and officials determined by the Satversme, as well as the distributors and representatives of the sovereign power of the State of Latvia are fully valid and to be respected. The extent to which every one of them currently is able to fulfil their duties, considering the occupation of Latvia and the international circumstances, is another matter and does not alter the abovementioned conclusions.'[1]

One of the main goals of J. Rancāns activities was to popularize and strengthen the idea of a democratic republic and the Satversme. He called 'to protect [..] the Satversme, which is the legal foundation of Latvia, and, alongside with our ambassadors, to do everything that is possible to protect and liberate the independent Latvia.'[2]

The opinion of the Latvian exiles on validity of the Satversme was not unanimous. A part of exiles considered that the Satversme is fully effectual and, based on that, the statehood of Latvia should be restored *de facto*. The abovementioned conclusion of the senators was particularly important – that the Satversme is in force and determines the legal system of the State of Latvia. Another part of the Latvian exiles denied the validity of the Satversme and continued the approach of K. Ulmanis regime on the issue of constitution. This part of exiles acknowledged only separate principles of the Satversme, not the validity of the Satversme itself.

The authority of the Satversme and the conviction that the independent State of Latvia should be restored on the basis of it consolidated in these discussions in the exile. In the exile, the first commentary of the norms of the Satversme was prepared and published.[3] Professor Arveds Švābe clearly wrote, 'Anyone who in their simplemindedness or meanness advocates that the constitution of 1922 is no longer in force or is useless [..] helps our enemies to destroy the legal foundation of the State of Latvia and to dig a grave for our independence.'[4] The movements of national resistance, in turn, demanded the regime of soviet occupation to restore the Satversme, associating it with the restoration of independence and democracy of the state.

The issue about the use of the Satversme was resumed in the independence restoration process of the Republic of Latvia. The declaration of 4 May 1990 'On the Restoration of the Independence of the Republic of Latvia'[5] restored the Satversme's validity in the territory of the Republic of Latvia, but its effectuality was suspended until the adoption of a new redaction of the Satversme, except Articles 1, 2, 3 and 6. On 21 August 1991, the constitutional law 'On the Republic of Latvia Status as a State' fully restored the validity of the Satversme.[6] The restoration of the

1 Ibid.

2 Šilde Ā. 1985. Valstsvīri un demokrāti. Bruklina: Grāmatu Draugs, 228.lpp.

3 Vanags K. 1948. Latvijas valsts Satversme. [B.v.]: L.Rumaka apgāds Valkā.

4Švābe A. 1947. Gaitu sākot. Tiesībnieks, Nr.1, 1. - 2.lpp.

5 Par Latvijas Republikas Neatkarības atjaunošanu. Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1990, Nr.20.

6 Konstitucionālais likums "Par Latvijas Republikas valstisko statusu". Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1991, Nr.42.

Satversme and separation of Latvia’s legal system from the legal system of the USSR marked a clear political orientation of the restored statehood as well. The constitutional law is based on the axiom that the Republic of Latvia belongs to the Western legal system, which acknowledges and implements the standards of a democratic state – rule of law, human rights, division of authority, protection of private property and market economy.1 The 5th Saeima, in turn, began its work on 6 July 1993 by adopting a statement about the full validity of the Satversme.2 The restoration of the Satversme symbolized the restoration of independence of the State of Latvia based on the state continuity doctrine.

The Republic of Latvia, after its proclamation on 18 November 1918, formed as a democratic, socially oriented state, where justice ruled and which was based on the principles of Western democracies.[3] The constitutional system defined in the Satversme is based on the principles of people’s sovereignty, state sovereignty, democratic republic, rule of law, socially responsible state, national state and European integration. These fundamental principles of a constitutional system mostly are the heritage of the European constitutionalism that is partly reflected in the text of the Satversme, partly developed in the application practice of the Satversme, especially in the judgements by the Constitutional Court.[4]

Inspecting the conformity of the integration of Latvia into the European Union to the demands of the Satversme, the Constitutional Court also defined the fundamental values of the constitutional system. The Court acknowledged that ‘the State of Latvia is based on the core values that among other include the fundamental human rights and personal freedoms, democracy, sovereignty of state and people, division of authority and rule of law. The state is obliged to guarantee these values, and they cannot be infringed by the statutory amendments to the Satversme.’[5]

The theory of constitutional law, in turn, acknowledges that an unwritten core of the Satversme exists that defines the constitutional identity of the State of Latvia, i. e. the state's legal identity and the identity of its state system. The core of the Satversme is inviolable, namely, the constitutional legislator, according to Articles 76–79, is entitled to amend the Satversme only in a way that the amendments do not conflict with the core of the Satversme. The elements of the state's legal identity that form the core of the Satversme are the nature of the State of Latvia as a

11991.gada 21.augusts un konstitucionālā likuma "Par Latvijas Republikas valstisko statusu" pieņemšana. 21.augusts. [accessed 2014-10-16]. <http://www.21augusts.lv/par-21augustu>

2 Latvijas Republikas 5.Saeimas pirmās sēdes 1993.gada 6.jūlijā stenogramma. Latvijas Republikas Saeima. [accessed 2014-10-16]. <http://saeima.lv/steno/st_93/060793.html>

3Stradiņš J. 18.novembra Ulmanis (Latvijas Republikas pirmais Ministru prezidents). 2003. In: Kārlim Ulmanim 125. Caune A., Millers T., Stradiņš J. (red.) Rīga: Latvijas vēstures institūta apgāds, 24. - 25.lpp.

4 Pleps J. 2013. Latvijas valsts konstitucionālie pamati. In: Latvieši un Latvija. Akadēmiski raksti. III sējums. Atjaunotā Latvijas valsts. Stradiņš J., Jundzis T., Zemītis G. (red.) Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 119. - 122.lpp.

5 Par likuma „Par Lisabonas līgumu, ar ko groza Līgumu par Eiropas Savienību un Eiropas Kopienas dibināšanas līgumu” atbilstību Latvijas Republikas Satversmes 101.pantam: Satversmes tiesas 2009.gada 7.aprīļa spriedums lietā Nr.2008-35-01. 2010. In: Latvijas Republikas Satversmes tiesas spriedumi 2008. Rīga: Tiesu Namu Aģentūra, 325.lpp.

national state of the Latvian nation, the territory of the state defined in Article 3 and the principle of its unity, the composition of the Latvian people as a sovereign, and the prohibition to deprive the Latvian people of its sovereign authority. The core of the Satversme also includes the principles of a democratic state, rule of law, socially responsible state and national state as the elements of state system's identity.[1]

The practice of the Constitutional Court and the verities of the theory of constitutional law clearly mark the most essential fundamental values of the statehood of Latvia. At the same time, analysing the amendments of the Satversme from a sociological perspective, it is possible to recognize, which are the values the constitutional legislator has considered as being in need of constitutional protection by securing them in the text of the Satversme. Professor András Sajó has accurately concluded that constitutions mostly are written out of fear. With the help of constitutions, their authors aim to prevent the repetition of possible threats to society and the state system, which have occurred in the past.2

After enactment on 7 November 1922, the Satversme has been amended thirteen times. The amendments mostly have had an ideological character. In this context, the amendment of 2005 should be mentioned first. Reacting on the debates about the necessity of a legal regulation for the same-sex partnerships, the legislator amended Article 110 of the Satversme. The amendment defined a marriage as a union of one man and one woman.[3] The decision excluded a possibility to introduce the legislative procedure of registering the same-sex partnership, that is, it would call for an amendment of the Satversme. Similarly ideological was the last amendment of the Satversme – an expanded Preamble (introduction) that defined the goals of the state, the main events of the development of national statehood, the fundamental principles of the state system, the values of the society and a person's duties towards society.[4] With the help of the Preamble, the legislator has incorporated into the text of the Satversme a range of elements of constitutional identity.

A remarkably essential issue in the constitutional system of Latvia is the protection of the constitutional status of the Latvian language. In the text of 1922, the issue of the Latvian language was not constitutionally regulated. The jurisprudence acknowledges that the language in which a constitution has been adopted is considered as the official language.[5] After the restoration of independence, however, the issue of the protection of the Latvian language had become constitutionally significant. In 1998, the amendment of the Satversme secured the official status of the Latvian language as a State language.[6] In 2002, the amendments were made to further secure

1 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedoklis "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu". In: 2012. Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. Konstitucionālo tiesību komisijas viedoklis un materiāli. Rīga: Latvijas Vēstnesis, 126. - 134.lpp.

2 Sajó A. 1999. Limiting Government. An Introduction to Constitutionalism. Budapest: Central European University Press, pp. 5 - 9

3Grozījums Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2006, Nr.1.

4Grozījums Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2014, Nr.131.

5Osipova S. Valsts valoda kā konstitucionāla vērtība. 2011. Jurista Vārds, 18.oktobris, Nr.42(689).

6Grozījumi Latvijas Republikas Satversmē. Latvijas Vēstnesis, 1998, Nr.308/312.

the official status of the Latvian language. The legislator defined the Latvian language as the working language of the Saeima and the municipal structures, and established the persons' rights to receive the response from the state and municipal institutions in the Latvian language. A solemn vow (oath) of parliamentarians was also introduced, in which, among other, it is promised to strengthen the Latvian language as the only State language.[1] Not taking into account the existing regulation, the status of the Latvian language is strengthened also in the Preamble of the Satversme. It defines the existence and development of the Latvian language through the centuries as one of the goals of the state. The Preamble of the Satversme's also states that the Latvian language is one of the factors constituting the identity of Latvia in the European cultural space. The legislator also deemed necessary to define that the Latvian language as the only official language is one of the foundations of a united society.[2] Overall, it can be concluded that securing the Latvian language required three amendments of the Satversme. The Latvian language as a concept in the text of the Satversme is used eight times.

Several amendments address the issues of Latvia's membership in the European Union. In 2003, the amendments formed the legal framework for Latvia's participation in the European Union.[3] They were of technical character, prescribing only the procedures of participation in the European Union. Nevertheless, the first sentence of the second part of Article 68 provided a substantial limitation of foreign operations. The delegation of competencies of the Latvian state institutions to the international authorities can be allowed on condition that it strengthens democracy. The Satversme prohibits a closer integration of Latvia into unions that include authoritarian or semi-totalitarian states or are not based on the values of democratic states and rule of law. The amendment of 2004 provided the rights to citizens of the European Union to work in the local government.[4] The amendments to the Preamble of the Satversme define expanded regulations of the principles of the foreign policy of Latvia and the attitude towards European integration processes, though the first sentence of the second part of Article 68 already was a clear point in the text of the Satversme.[5]

Concepts of 'freedom' and 'independence' are used explicitly often in the Preamble, and both the introduction and the text of the solemn vows (oaths) of the state officials included in the Satversme emphasize the importance of the State of Latvia. It indicates the key values the legislator has assigned protection – the State of Latvia, its independence, personal freedom, the Latvian language and belonging to Europe. Considering the historical development of Latvia's statehood, it can be concluded that the protection of these values was determined by the jeopardy during the soviet occupation. Thus it marks the peculiarity of the text of the Satversme. From the perspective of social values and political ideology, the text focuses on the context of nowadays and the past. The future perspective, in turn, mostly is structured as a way of interpretation of the Satversme.

1Grozījumi Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2002, Nr.70.
2Grozījums Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2014, Nr.131.
3Grozījumi Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2003, Nr.76.
4Grozījumi Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2004, Nr.159.
5Grozījums Latvijas Republikas Satversmē. Latvijas Vēstnesis, 2014, Nr.131.

The legislator has used the amendments mostly to solve the problems of today and the past, leaving the future issues to the implementers of the Satversme.

Conclusions

A contemporary constitution reflects the constitutional identity of a state, characterizing the fundamental principles of its constitutional system, the values of society, the goals of the state, the historical development of statehood and other issues important to the respective statehood. The constitutional identity determines the possibilities of a state to participate in the European integration processes and in the international community.

The constitutional identity forms in the course of the historical development of the respective state, identifying the most essential values of the respective statehood. In the case of Latvia, the analysis of amendments to the Satversme shows that these values are the own state, the independence of the state, personal freedom, the Latvian language and belonging to Europe.

The notion of constitutional identity expands the scope of a constitution by the constitutional norms insinuating into the social values and political ideology. It creates preconditions for a constitutional mythology to develop, namely, a version of the identity of a state and a nation and the historical development of the statehood is formed within the constitutional law.

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‘‘Societal Innovations for Global Growth‘‘,
2014, No. 1(3)
ISSN 2335-2450 (online)

THE LEGAL FORMS OF PART SOVEREIGNTY AUTHORITY OF THE STATE DELEGATION (TRANSFER) AND PERSPECTIVE OF INTEGRATION OF UKRAINE INTO THE EU

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Abstract

Purpose. The subject of the report is to determine the limits of delegation of sovereign authorities of the state to supranational institutions in the context of European integration of Ukraine. Such delegation shall be in accordance with the criteria complementarities and ensuring of the content core of human rights, sovereignty and territorial integrity of Ukraine, inter alia, proportionality in restricting of human rights, the practical utility, procedural economy and democratic legitimacy in decision-making.

Design/methodology/approach. Compared the experience of Germany, France, and Czech Republic to determine the mechanism of delegation of authority of state into institutions of the EU and verify its legitimacy by constitutional justice. Disclosed feature jurisprudence of the Constitutional Court of Ukraine on understanding the nature of the supranationality in law as an example the case of the Rome Statute, in which the Court has demonstrated quite conservative position, recognized jurisdiction of the International Criminal Court as well as supranational.

Findings. Integration of Ukraine into the supranational institutions is stipulated by its internal policy factors and this challenges the state to form efficient authorities, a single and flexible legal system that must include the mechanisms of its approaching the generally recognized principles and norms of international law, as well as the methods of its unification in accordance with the requirements of supranational institutions – thus forming a networking structure of public authority of supranational level.

Research limitations/implications. The limitations of means of implementation (transformation) of international treaties in the legal system of Ukraine, which are formal restrictions on the deepening of European integration country is reveals. The basic form of protection of national interests in process of the delegation of sovereign powers into supranational institutions is defined, inter alia economical negotiations and cooperation, deepening of export substitution, diversification and liberalization of national economy.

Practical implications. Enhancing mechanisms for consultation between local authorities and the state government, parliamentary and judicial constitutional review are considered as a

balanced and deliberative decision-making in foreign policy. The Constitutional Court of Ukraine shall intensified internationally conformal method of interpreting the Constitution of Ukraine in the light of ensuring a balance between constitutional values and general principles of international law and Parliament – Verkhovna Rada with coordination with President and Cabinet shall occupied active position for implementation structure legal, economical reform and e-government.

Originality/Value. In the Report draws on ideas Ingolf Pernice, Jürgen Habermas, Ivan Yakovyuk and others scientists concerning the nature of supranational power and grounding concept network structure of public authority.

Key words: constitutional review, delegation of part’s authorities of state, European integration, international treaties, supranational power.

Research type: research paper

I. Introduction

Course of integration of Ukraine into the European Union is due to some internal and external political factors which simultaneously have the character of challenges for further development of Ukrainian statehood. The subject of this article is to determine the limits of delegation of sovereign authorities of the state to supranational institutions in the context of European integration of Ukraine. Such delegation shall be in accordance with the criteria complementarities and ensuring of the content core of human rights, sovereignty and territorial integrity of Ukraine, inter alia, proportionality in restricting of human rights, the practical utility, procedural economy and democratic legitimacy in decision-making. The article will be compared the experience of Ukraine, Germany, France, and Czech Republic to determine the mechanism of delegation (transfer) of authority of state into institutions of the EU and verify its legitimacy by constitutional justice.

In the context of development of Ukrainian state, it is important to ensure human rights and freedoms and continuity of statehood, since the lack of their own statehood in the history of Ukraine, usually accompanied by increased levels of human rights violations. It is respect for human rights is a critical criterion for the transfer of sovereign powers of the state to supranational institutions. A Ukrainian specific in this regard is that the transfer of authority should contribute to improving the quality of human rights protection and improvement of humanistic direction of state activity, along with the formation of the national state.

In first part will determinate limits of delegation (transfer) of authority of state into supranational institution. The basic form of protection of national interests in process of the delegation of sovereign powers into supranational institutions is defined, inter alia economical negotiations and cooperation, deepening of export substitution, diversification and liberalization of national economy. Secondly, we will make comparative analyses of experience of constitutional jurisprudence on supranationality and foreign affairs issues. Thirdly, enhancing mechanisms for consultation between local authorities and the state government, parliamentary and judicial

constitutional review are considered as a balanced and deliberative decision-making in foreign policy are devoted. For example, the Constitutional Court of Ukraine shall intensified internationally conformal method of interpreting the Constitution of Ukraine in the light of ensuring a balance between constitutional values and general principles of international law and Parliament – Verkhovna Rada with coordination with President and Cabinet shall occupied active position for implementation structure legal, economical reform and others measures. Fourthly, we will devoted issue on integration of Ukraine into the supranational institutions is stipulated by its internal policy factors and this challenges the state to form efficient authorities, a single and flexible legal system that must include the mechanisms of its approaching the generally recognized principles and norms of international law, as well as the methods of its unification in accordance with the requirements of supranational institutions – thus forming a networking structure of public authority supranational level. Fifthly, we will analyze nature of the network structure of the delegation of sovereign powers into supranational institutions. Sixthly, we will find basic foreign and internal factors of integration of Ukraine into the supranational institutions. Finally, consider the nature and prospects of forming a network of public power.

II. Theoretical background

The theoretical basis of research constitutes advances in modern doctrine of constitutionalism. In particular, taken as a basis the idea of multilevel constitutionalism (Ingolf Pernice, Jean-Denis Mouton, Günter Teubner), studies the phenomenon of cross-border cooperation, the network nature of power in the EU (Frank Shorkopf), the interaction Parliament and judicial review when delegating (transfer) of power by supranational institutions. Also used for economic analysis of law (John Eatwel, Jayashuriya Kanishka), liberal constitutionalism (Andras Sajo, Stanislav Shevchuk), supranationality as phenomenon in EU law (Francois Borella, Pierre-Caps Stephan, Ivan Yakoviuk).

The author provided his research at the paradigm, according to which nature of the constitution is meta-juridical, as based on the social value of a particular historical type of society and provided the appropriate legal means as an act of constituent power of the people in the activity entities of powers. Because of this crucial role in the transfer of sovereign powers to supranational institutions of the state agrees with the inherent values that it seeks to protect.

III. Research methodology

The basis of researches is a working hypothesis that the globalization of constitutional law is ensured through the mechanism constitutionalization of international law. This mechanism is as follows:

- Legitimate mechanism of delegation (transfer) of sovereign authorities of nation states to supranational entities subject to compliance with democratic standards of the popular will in which frameworks originates global sovereignty;

- International legitimacy to create a global law is manifested through a the algorithm of actions and procedures: a) formation of public power institutions of global character who make the decisions on the basis of founding treaties, b) the legitimacy of the exercise of authority of supranational institutions provided via parliamentary and judicial review, which would not allow the possibility of abuse of authority and weakening the principles of independence of States Parties supranational entities.

According to a comprehensive approach studied phenomenon supranationality, integration and globalization in constitutional and international law by: a) extrapolation of empirical evidence on the doctrine of constitutionalism and the dynamics of political and legal institutions; b) determine the relationship of social values and constitutional phenomena and processes; c) analysis of the hierarchy of constitutional values and the definition of the normative nature of the constitution, d) study the structure of the Constitution and its impact on the integration process; e) comparative legal analysis of these phenomena on the basis of complementarity and convergence.

IV. Results and findings

1. Constitutional regulation of delegation power in Ukraine

Constitution of Ukraine indirectly gives the answer to the question about the limits of possible climb-down’s of Ukraine when concluding international treaties and provides a solution of a problem of a degree of delegating a part of sovereign authorities of the state. Though the Constitution does not directly specify the procedure of delegating the above authorities, the criteria of limits of its implementation are defined generally.

First of all, one has to note that it is necessary to abide to the principle of steady provision of constitutional values (art. 157 of the Constitution). If the international treaty of Ukraine infringes the core of basic rights and freedoms, the Ukrainian sovereignty or territorial integrity, it is necessary to estimate deliberately the balance of its provisions with the above constitutional values. In case of not proportional invasion of the above international treaty into this sphere, it is reasonable to use such a tool as the right of appeal of at least 45 people’s deputies with the aim to solve the problem of compliance with the constitutional procedure of international treaty ratification. The Constitutional Court, in turn, will be related to the essential criteria specified in art. 157 of Constitution, according to which it will check the necessary validity of the international treaty conclusion.

Since participation of Ukraine in the systems of collective security, cooperation in the field of justice, economy, environmental protection etc is important, the Constitutional Court will, most probably, bear an exorbitant burden of responsibility. Therefore, one may not exclude that in the nearest future the problems of regulating the mechanism of delegating by the state a part its

sovereign authorities to supranational institutions must be solved, and the relevant changes should be introduced to the Constitution.

The question arises about the criteria that could be used to determine the degree of a risk that “liquidation of independence” of the state could be foreseen on the basis of the international treaty. Since according to art. 159 of the Constitution the draft law concerning the amendment of the Constitution pertains a preliminary constitutional control before being examined by the parliament, this problem is a prerogative of the Constitutional Court that interprets the provisions of the Constitution according to the law supremacy principles. One may assume that since we deal with the foreign policy aspect of the state sovereignty category (i.e. with independence), such international treaties or constituent acts of supranational entities must ensure a wide sphere of independent solving by Ukraine the foreign policy problems that relate its national interests.

Integration of Ukraine into the supranational institutions is stipulated by its internal policy factors and this challenges the state to form efficient power institutions, a single and flexible legal system that must include the mechanisms of its approaching the generally recognized principles and norms of international law, as well as the methods of its unification in accordance with the requirements of supranational institutions. Self-definition of Ukraine in its integration to well-known supranational institutions depends on the formation of the mechanism of interaction between the institutions of the civil society and the state, as well as on the stability of the political system and the system of parliamentarianism. Preservation of a margin appreciation is important for the participation of Ukraine in the integration processes with the aim to prevent possible risks for Ukraine as a political nation.

2. Comparative analyze of experience of delegation power to supranational institutions

A. Germany

In particular, by analyzing the decisions of the Federal Constitutional Court of Germany in cases *Solange I*[1]*, Solange II*[2] and *Lisbon*[3]*,* the European Union is considered in modern German doctrine as an association of sovereign states[4]. FCC Germany formulated the rule for limits delegation of certain powers of the state institutions of the EU who do not have to encroach upon the essence of sovereignty (Solange I), which is the state's ability to provide adequate protection of human rights and freedoms (Solange II). In conjunction with the Lisbon Case this means that Germany has delegated powers of the EU as far as they are necessary for the realization of its sovereign foreign policy goals and objectives of the Union cannot reduce level of constitutional guarantees of human rights and fundamental freedoms (substitutional criteria). Thus, the FCC has produced quality criteria the transfer of authority of state to supranational institutions - the transfer to the extent permitted under which ensured quality protection of human rights and

[1] BVerfGE 37, 271 («Solange I» case, 1974)
[2] BVerfGE 72, 339 (Wuensche Handelsgesellschaft «Solange II» case, 1986)
[3] 2 BVerfGE 2/08 (Lisbon Case, 2009).
[4] Shorkopf, Frank. 2009. European Union as an Association of Sovereign States: Karlsruhe’s Ruling on the Treaty of Lisbon, *German Law Journal*, 10(10): 1219-1240.

freedoms. Against this background, of note is article 157 of the Constitution of Ukraine, since it prohibits changes leading to restriction of human rights, elimination of independence and territorial integrity of Ukraine.

B. France

French Constitutional Council recognized that Treaty of Lisbon in light respect of French constitutional order, *inter alia*, national sovereignty and the constituent power thus recognized the existence of a Community legal order integrated into domestic law and distinct from international law, these constitutional provisions enable France to participate in the creation and development of a permanent European organization vested with a separate legal personality and decision-taking powers by reason of the transfer of powers agreed to by the Member States, respect of human rights and fundamental freedoms, organization of public power and institution need requires of a revision of the French Constitution[1]. After this case French Constitutional Council established that the Treaty establishing of the Constitution for Europe also need a revision of the Constitution[2].

C. Czech Republic

Czech situation with the ratification and implementation of the Lisbon Treaty is original, because this agreement was seen twice by the Constitutional Court on the constitutionality. In the first case, such proceeding initiated by members of the Upper House of Parliament in 2008, and in 2009, after its final ratification by the Senate - 17 senators for appeal.

In first case, In April 2008 a group of eurosceptic ODS Senators from the Upper House took questions about the Treaty to the Constitutional Court and the ratification process was suspended. The Senate's submission concerned, generally, next elements of the Lisbon Treaty: a) the exclusive competencies of the European Union, although the Czech Constitution permits under Article 10a the transfer only of "certain powers" to an international organization; b) the general passerelle clause and the specific passerelle clause in criminal law; c) the binding force of an international treaty concluded by the Union by a qualified majority in the Council, regardless of Czech opposition to the treaty in the Council; d) possible conflict between the human rights provisions of the Charter of Fundamental Rights and Czech constitutional human rights standards and others. On 26 November 2008 the Constitutional Court decided unanimously that that the elements of the Lisbon Treaty which had been referred to it were compatible with the Czech Constitution[3]. As remarked Ton van der Brink, the inspiration the Constitutional Court derives from the Bundesverfassungsgericht in Karlsruhe is obvious; it is even mentioned explicitly. This becomes even more obvious regarding the issue of the relation with the European Court of Justice, in which the European Court is granted the primary responsibility of competence delineation between the EU and the Member States. According to the Czech court, the new relation between the national

[1] French Constitutional Council. Decision No. 2007-560 DC December 20th 2007 [interactive]. 2007 [accessed 2014-10-20]. <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/a2007560dc.pdf>

[2] French Constitutional Council. Decision No. 2004-505 DC Novewmber 19th 2004 [interactive]. 2004 [accessed 2014-10-20]. <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2004505DCen2004_505dc.pdf>

[3] Constitutional Court of Czech Republic, Pl. US 19/08

system of fundamental rights protection and the Charter of Fundamental Rights of the European Union did not cause any constitutional objections either[1].

In the opinion of the Czech President Vaclav Klaus Lisbon Treaty contradict relevant provisions of the Constitution of the Czech Republic. In October 2009 President Klaus insisted on obtaining what he called “footnote”, to be added to the Lisbon Treaty to guarantee that the Charter of Fundamental Rights, to which the Treaty gives legal status, could not be used to counter the Beneš decrees and allow potential property claims by Germans expelled from Czechoslovakia after World War Two[2]. The Czech court also dealt with the objection of the loss of sovereignty in a totally different way than the German Constitutional Court. In a rather fundamental consideration (which referred to its earlier Lisbon 1 decision) the Czech Court concluded that national sovereignty is not a goal in itself, but a means to realize fundamental values on which the state under the rule of law is based. ‘Pooling’ sovereignty can, according to the court, even strengthen national sovereignty, provided the transfer of sovereignty is a voluntary decision and the Czech government participates – under specific certain conditions to be determined in advance – in the joint exercise of sovereignty at the European level. Furthermore the Czech court would retain its possibility to review EU law against the ‘essential core’ of the Czech Constitution, as it had been doing before[3].

3. Implementation (transformation) of international treaties in the legal system of Ukraine

Statutory entrenchment in the Constitution of Ukraine of the norms (Article 9) and generally recognized principles of the international law (Article 18) is due to the content of the rule of law, which in this context means the state's respect to the international law and effecting mutually beneficial international cooperation with other countries and international organizations. The Constitution of Ukraine does not directly address the issue of the rule of generally recognized principles and norms of the international law in the national legal system.

In accordance with article 9 of the Constitution of Ukraine, international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The parliament's adherence with a due process of international treaties ratification is an essential condition for validity of international treaties in Ukraine, which are used as an ordinary law. In this case, the position of an international treaty shall comply with the Constitution and can only be applied to an extent not inconsistent with the Fundamental Law. It is therefore advisable to review briefly the procedure for ratifying international treaties.

The Constitution establishes the rule, where under the ratification of international agreements must comply with the requirement that an international agreement is not contrary to

[1] Ton van der Brink, The Czech Constituttional Court and the Treaty of Lisabon [interactive]. 2014 [accessed 2014-10-20] <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729751>

[2] The Decrees of Edvard Beneš expelled some three million former Czechoslovak citizens of German ethnicity to Germany and Austria at the end of World War II for their alleged collaboration with the Nazis.

[3] Constitutional Court of Czech Republic, Pl. US 29/09.

the Fundamental Law. The Law of Ukraine "On the Regulation of the Verkhovna Rada»[1] in this respect imposes a duty of the President and the Cabinet of Ministers as subjects of legislative initiative in introducing a bill on ratification of an international treaty of Ukraine to make simultaneous suggestions on reservations to treaties, objections to reservations, bills or proposals for adoption of laws or amendments to laws concerning implementation of the international treaty of Ukraine (Articles 193 - 196 of the Verkhovna Rada Regulation of Ukraine). These requirements are intended to enable the Parliament to choose acceptable options in determining that the treaty contradicts the Constitution of Ukraine: whether to ratify it with reservations; to ratify the treaty after making the necessary amendments to the Constitution, to refuse to ratify the international treaty as unacceptable in terms of constitutional values and general trends in the national legal system, etc. A draft law on ratification of an international treaty is considered by the Parliament immediately. In accordance with Article 200 of Regulation, when consenting to be bound by an international treaty of Ukraine, the Verkhovna Rada must simultaneously confirm any reservations made by Ukraine when signing the treaty, withdraw them, consent to reservations of other parties to the treaty or object to them, and can independently formulate and express reservations in accordance with the provisions of the Vienna Convention on the Law of Treaties 23 May 1969.

The Constitution established that ratification of international treaties that contradict it is only possible after introducing relevant amendments to the Constitution. When international treaties concerning Ukraine's accession to the Common Free Market Zone, there were discussions about the observance of constitutional procedures. Therefore, during ratification of an international treaty issues about conflicts between international treaties and constitutional provisions may arise. In this case, the President, the Cabinet of Ministers may ask the Constitutional Court to give an opinion on the constitutional provisions that should be amended pursuant to the international treaty.

At the same time, the activity of constitutional courts when addressing matters of constitutionality of international treaties tends to be low. The Parliament has a discretionary power to initiate decisions to receive opinions of the Constitutional Court concerning the conformity of an international treaty to the Constitution of Ukraine (Article 194 and part 2 of Article 199 of the Verkhovna Rada Regulation). However, when deciding whether to give consent to a mandatory effect of an international treaty of Ukraine the Verkhovna Rada is bound by the legal position set out in the opinion of the Constitutional Court. A draft law on ratification of an international treaty is considered under a common procedure for the bills consideration.

When ratifying an international treaty the Verkhovna Rada must simultaneously give an official confirmation of reservations made by Ukraine when signing such treaty, withdraw them, consent to reservations of other member states, or object to them, and can independently

[1] On the Regulation of the Verkhovna Rada: the Law of Ukraine 10 February 2010 No. 1861–VI. *Bulletin of the Verkhovna Rada of Ukraine*. 2010. No. 14-15, 16-17.

formulate and express reservations in accordance with the provisions of the Vienna Convention on the Law of Treaties dd. 23.05.1969.

A draft law on ratification of an international treaty shall include a procedure and terms of its entry into effect in Ukraine in accordance with the provisions of such international treaties and the Vienna Convention on the Law of Treaties. Based on the law on ratification of an international treaty, the Chairman of the Verkhovna Rada shall sign a ratification instrument to be endorsed by the Minister of Foreign Affairs, if the treaty provides for the exchange of such instruments.

Considering participation of Ukraine in the supranational and/or intergovernmental systems of integration, the question arises about the volume of authorities of the state delegated to the higher level, i.e. to the supranational institutions. Quite recently the question arose about the amount of delegating the sovereign authorities of Ukraine to the Common Economical Space (CES), however, such delegating is specified quite abstractly – the Law concerning ratification of the Treaty on establishing CES specifies that Ukraine is under integration into this supranational institute within the framework specified by the Constitution. Thus, there exists a necessity to determine this delegation mechanism.

The Constitutional Court defined the International Criminal Court as the institution that complements the national bodies of criminal justice. Its jurisdiction, contrary to that of the European Human Rights Court, is related to the initiative of not only the participating state but also to own initiative, when the state, under which jurisdiction the person is, suspected in committing a crime specified by the Statute, “does not want or is incapable to carry out investigation or duly initiate the criminal case”[1]. It is obvious that it would be difficult to the Constitutional Court of Ukraine to differentiate the notion of the principle of subsidiarity of law-protection institutions and that of the principle of complementarity of the public and power institutes. In particular, there is no characteristic of the collision between the provisions of art. 55 and those of section VIII of the Constitution, including art. 124 of the Constitution, that specify the legal protection system in Ukraine and organizational principles of justice in Ukraine, respectively.

4. The basic form of protection of national interests in process of the delegation of sovereign powers into supranational institutions

A. Economical negotiations and cooperation

Economic cooperation, deepening specialization, competitiveness and harmonization of interests in the global market makes it possible to determine the optimal paths for national integration strategy. In example, EU-Ukraine Association Agreement provides for a gradual convergence of the parties to the common values (the rule of law, democracy, market, human rights), deepening the participation of Ukraine in the policies, programs and agencies of the EU. Strengthening of trade and economic relations between Ukraine and the EU provides, in turn, strengthen the protection of national interests, inter alia, the harmonization of export and import market, the development of market infrastructure (exchanges, wholesale and virtual marketplaces,

[1] Constitutional Court of Ukraine, Conclusion of CCU № 3-в on July 11, 2001.

balanced infrastructure competition and natural monopolies in the goods market, services, etc.) in order to ensure convergence of Ukrainian legislation with the acquis communautaire. This convergence of legislation gives Ukraine a strategic perspective on the benefits. At the time, the Czech government has set as access to its energy market conditions for the strict observance of the cartel (antitrust), competitive and energy legislation, what significantly contributed to the convergence of the Czech legislation with the acquis communautaire.

The increase in trade and economic relations between Ukraine and the EU, the adaptation of Ukrainian legislation to the EU legislation will give an opportunity to strengthen the national interests of Ukraine, a strategic vision to strengthen its position in the global market, improve the quality of administrative services to the public. A kind of "retraction" in an open and democratic procedures for decision-making based on the balance of interests in stratification in society can give optimization organization of public authority in Ukraine and to enhance its capabilities in the implementation of national interests at the regional (European) and global level.

B. Deepening of export substitution

Scheduling and strategic development of the economic system provides a legitimate state intervention in determining priority areas of the economy and their stimulation with taxation, subsidies, access to the limited resources on a competitive basis. Strategic planning provides support for employment of the population based on lifelong education employees and to identify priority areas of the economic system. The experience of Japan shows that is not always the traditional structure, resources and procedures of the national economy can be used as basis of strategic planning as a way leads to stagnation and devolution economic system[1]. One consequence of economic development of strategic planning is export-oriented and import-substituting selection model of economic growth[2]. Selection of these models or their certain harmonious combination enhances to deepening of the structuring of the national economy, increasing its self-sufficiency and competitiveness. Orientation Ukrainian export-oriented economy mainly on energy-intensive heavy industry without applying innovation, providing environmental, rationalization of employment policy does not allow dynamically developing economic system, which has not been completed structuring processes.

C. Diversification and liberalization of national economy

Integration in the economic system is achieved through sustainable development, due to the limited resource. A necessary condition for this process is the formation of "economic citizenship", based on the rationality of free initiative, of individual mobility view of opportunities and qualities integration with its duties and responsibilities in order to the welfare, forming associations to participate in economic activity[3]. Social integration is achieved through welfare and guarantees of economic freedom as an integral part of freedom of the individual that is provided constitutional

[1] Ojimi V. 1970. *Japan’s industrialization strategy*. OECD, Japanese Industrial Policy. Paris: OECD.
[2] Eatwell, John. 2004. *Import-substituting and export-oriented economic growth.* Economic Theory. Ed’s: J. Eatwell, M. Milgate, P. Newman. Moscow, INFRA-M Publishing, p. 430-434.
[3] Kanishka, Jayasuria. 2006. *Economic Constitutionalism, Liberalism and the New Welfare Governance*. The Neoliberal Revolution: Forging the Market State, London: Palgrave MacMillan. p. 5-6.

means (Article 23 of Constitution of Ukraine). Under these conditions the discretion of the government and administration should be limited to a reasonable range exclusively on the basis the law as a result of a consensus in the community. The degree of interference of public authorities in the sphere of economic freedom must be balanced and not infringe on the nature of its content. Therefore, when economic reform is justified formation of institutions of economic systems that have consistently follow economic rules and procedures and have sufficient freedom of self-regulation because economic processes by their nature are dynamic and cannot be subjected to excessive legislative regulation.

5. Network structure of the delegation of sovereign powers into supranational institutions

A. Basic constitutional values and Constitutional Court

Today is an important problem of ensure of the state sovereignty in process of the delegation in accordance with the principle of subsidiarity its individual sovereign powers to supranational power, because there is danger of erosion. However, adequate guarantee of state sovereignty ensure, which is objectively limited by limited material resources are democratic decision-making process and accountability of government institutions empowered in foreign policy. In particular, control over supranational power is provided through judicial review of legislative acts. This is the main criterion for checking human rights are secured constitutional and international legal protection in the recognition of the supremacy of the national constitution.

B. Verkhovna Rada, President and Cabinet in foreign affairs

The Constitution of Ukraine establishes the following system of separation of powers of government foreign policy. In particular, under Article 85 of the Constitution to the Verkhovna Rada comprises: determining the principles of domestic and foreign policy; hearing annual and special messages of the President of Ukraine on the domestic and foreign situation of Ukraine; announcement by the President of Ukraine of war and peace, affirm the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine; approval decisions on granting Ukraine loans and economic assistance to foreign countries and international organizations, as well as the receipt of Ukraine from foreign states, banks and international financial institutions loans not covered by the State Budget of Ukraine, to exercise control over their use; approving decisions on providing military assistance to other countries, the direction of the Armed Forces of Ukraine to another country or on admitting units of armed forces of other states on the territory of Ukraine; approval within two days of the appeal of the President of Ukraine decrees on the introduction of martial law or state of emergency in Ukraine or in its particular areas of general or partial mobilization; provision of law, consent to be bound by international agreements of Ukraine and denouncing international treaties of Ukraine.

President of Ukraine in the sphere of foreign policy provides the following powers: ensure the independence, national security and the succession of States; drawn with messages to people with annual and special messages to the Verkhovna Rada of Ukraine on the domestic and foreign situation of Ukraine; represents the state in international relations, the foreign political activity of the State, conducts negotiations and concludes international treaties of Ukraine; decides on the

recognition of foreign states; appoints and dismisses heads of diplomatic missions of Ukraine to other states and international organizations; accepts credentials and letters of recall of diplomatic representatives of foreign states; submit to the Verkhovna Rada of Ukraine on appointment of the Minister of Defence of Ukraine, the Minister of Foreign Affairs of Ukraine; heads the National Security and Defense Council of Ukraine; submit to the Verkhovna Rada of Ukraine on the declaration of war and in the event of armed aggression against Ukraine decides on the use of the Armed Forces of Ukraine and other established under the laws of Ukraine's military forces (Article 106 of the Constitution). Cabinet of Ministers in accordance with Article 116 of the Constitution: provides state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy, the Constitution and laws of Ukraine, acts of the President of Ukraine; take measures to ensure the defense and national security of Ukraine; organizes and ensures the implementation of foreign economic activity of Ukraine, customs.

These constitutional provisions confirming the dominant position of the President in foreign policy, since the President determines the main directions based on the law on the principles of foreign and domestic policy, which ensuring is based on the Cabinet of Ministers. Parliament has legislative and supervisory powers mainly in the sphere of foreign policy. Thus the question of the transfer of authority to supranational institutions requires amending the Constitution of Ukraine.

C. Local self-government and cross-border cooperation

Participation of Ukraine in the international law formation is realized on the state level via the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine and the Ministry of Foreign affairs. On the level of the regional and local authorities, such formation of international rules takes place within the framework of a cross-border cooperation (hereinafter referred to as the CBC).

As the analysis of the mechanisms of rapprochement of national legislations[1] shows, within the CBC framework this is the most optimal by: i) legislation rapprochement, when the general course of the state in a certain sphere, the rapprochement stages and ways (in a form of programs, plans, model acts) are determined; ii) legislation harmonization, when the common approaches and concepts of national legislation development are agreed, the general legal principles and particular solutions (scientific concepts) are formulated, and iii) adoption of model legal acts (general norms, legal standards).

Harmonization of the Ukrainian legislation within the CBC framework is possible towards two directions, i.e. the internal and external harmonization. In the first case one may ensure harmonization in three ways: i) development of own legal rules that could be introduced into acts and adopted within the CBC framework; ii) harmonization of the Ukrainian legislation by adopting the normative acts on the basis of taking into account those of partner states; iii) harmonization of the current Ukrainian legislation by accepting or reflecting international treaties, in particular, the European Framework Convention on Cross-Border Cooperation of Territorial Communities and

[1] Vilkova, N.G. 2002. *Treaty law in the international turnover*. Moscow: Statut Publishing.

Authorities. An international degree of harmonization of rapprochement of national legislations just means the degree of the CBC efficiency.

When concluding multi-lateral treaty, harmonization is achieved by introducing a single legal regime based on such a treaty. This treaty ensures high degree of harmonization of managing solutions of regional authorities. However, it is often hard to achieve a full-scale treaty, since such treaties are rather of a framework character. Adoption of programs of complex development of a particular European region seems important here. Based on the above program, conclusion of a multilateral CBC cooperation treaty for certain areas looks more optimal. It is natural that such treaties and conventions may specify a mechanism of reservations that allows the parties to take part in the CBC not fulfilling the duties reserved.

Adoption of decisions on the CBC treaty and complex development program realization is a necessary component of the legal culture of realizing the regional policy in this sphere. According to the generally recognized principles and norms of international law, the state represented by its regional authorities and bodies that represent the interests of their territorial communities shall independently determine the institutional and procedural forms of actions specified in these local international acts. The problem in Ukraine is that the Law concerning the local self-governing prohibits the local self-governing bodies to delegate their authorities to the local self-governing associations and this widens the CBC capabilities from the domestic territorial community side. The institutional CBC crisis in Ukraine is also enhanced by the fact that on the intermediate level of public power the regional authorities represent the interests of territorial communities, while the executive entities are the state agents on the regional level. This creates additional difficulties in coherence of the policies of territorial communities in the CBC field.

Therefore the efforts on agreeing the policies with the CBC in this triangle are coordinated via the network of public organizations and scientific institutions, recommendations of which not always enter the decisions of the state authorities and local self-governing bodies. These relatively independent specific analytical centers assist in codifying the rules and customs in the CBC sphere. Quite often just the public organizations[1] become initiators of implementing the joint projects. However, the most efficient projects within the CBC framework could hardly be imagined without the active participation of the intermediate-level authorities of neighboring countries. Therefore, such projects, as a rule, require mainly an institutional support from authorities.

6. Basic factors of integration of Ukraine into the supranational institutions

A. Foreign factors

The essence of European constitutionalism is the deconcentration of power by the practical implementation of the principles of subsidiarity and proportionality. In Ukraine, there are many problems with the practical implementation of these principles - the rule of law components. The value of these principles cannot be overemphasized - it is that they constitute the essential core of

[1] Suli-Zakar I. 2004. *Strategic Development Programme for the Carpathian Euroregion Interregional Association*. Nyiregyhaza.

understanding the European principle of good governance, expressing the introduction of specific mechanisms for effective and equitable public authorities[1]. Therefore, the central problem of constitutional reforms is the transformation of the institutional framework of the EU, it is aimed at optimizing and saving judicial procedures, including the legislative measures and judicial procedures.

In view of need for constitutional reform in Ukraine its main task in the context of the European integration process has become: the inclusion in the text of the Constitution clause on respect and implementation of European values in Ukraine; determine the mechanism of delegation of sovereign powers of the state to the EU; constitutional recognition of the principles of subsidiarity and proportionality to the definition of the institutional and procedural tools for their implementation; consistent implementation of decentralization of public power in Ukraine and the mechanisms of cross-border co-operation of local public authorities with the local authorities of the Member States of the EU; specification of the Constitution of Ukraine foreign state functions in the context of European values.

According to the legal traditions of Ukraine legislative, administrative and judicial practice should take into account the recommendations of the Venice Commission of the Council of Europe, Parliamentary Assembly of the Council of Europe, the provisions of the founding (constituent) treaties of the EU, and acquis communautaires of EU.

However, the Russian factor also plays a decisive role in the process of European integration of Ukraine. After the collapse of the USSR foreign policy of the Russian Federation based mainly on the revanchist sentiments[2], as evidenced by the evaluation Russia Revolution dignity and signing of the EU-Ukraine Association Agreement.

B. Internal factors: need for reforms public administration and justice

The core of the state sovereignty today is national defense, diplomacy and internal security, which is done by providing policy-making constitutional authorities as required by due process. This situation is in the conditions of legal execution Ukrainian statehood has far-reaching consequences. The need for self-determination in Ukraine today's globalized world makes determining the optimal model of its integration in supranational structur because it is necessary to provide informational, economic, political and military components of national security. Thus, the interests of nation-states that have not yet fully formed are carried out in postmodern conditions that put a constitutional requirement to determine the model of a self-sufficient state.

[1] Birkinshaw, Patrick. Supranationalism, the rule of law and constitutionalism in the Draft Union Constitution, *Yearbook of European law*, 2004, No 23, p. 199–233.

[2] To exemple, Russian foreign minister Serguey Lavrov in his interview to Russian broadcast NTV has said: "We can not lose Ukraine, as it is not a group of individuals who have committed a coup and seized power, not the Nazis, who continue to march in Kiev and other major cities have resorted to acts of vandalism, destroying monuments and glorify Hitler's henchmen - Lavrov stressed. - Ukraine for us - very close, brotherly people having shared with us the historical, cultural, philosophical and civilizational roots, not to mention the language and literature." In: http://zn.ua/POLITICS/lavrov-my-ne-mozhem-poteryat-ukrainu-156444_.html

Now not enough treat state sovereignty in the traditional spirit[1], because there is a tendency to increase the efficiency supranational institutions, which states delegate some of their sovereign powers that previously did perceived ambiguously. In other words, the limits of state sovereignty eroded. This is because the state is not always able to because of limited political and economic resources to identify effective public policy. And in Ukraine, which by its capacity is the average power, it is necessary to seek legal mechanisms for determining the delegation of their sovereign powers in a way that was not affected by substantial elements of state sovereignty.

Today there is a crisis Ukrainian constitutional law, which is more a more positivist nature[2]. It does not allow interpreting complex issues of constitutionalism, which are based not changing constitutional values and principles[3]. In turn, traditional domestic doctrine appeals to the idea of the sovereignty of Parliament, the concept will of the legislator, expressing the possibility of a parliamentary majority in its sole discretion to take arbitrary decisions. In turn, the arbitrary decision-making contrary to the rule of law as the fundamental principles of constitutionalism - the system power limit arbitrariness and effective guarantees of human rights and fundamental freedoms[4].

Today, in general it should be noted the deep crisis of the concept of popular sovereignty, as it often is identified in the national law of the positivist idea of belonging of all power to Parliament. The rule of law stipulates that parliament is connected right and cannot take arbitrary within the meaning of the law. These laws are subject to judicial constitutional review over compliance with fundamental constitutional values and principles that are unchanging. They are just filled with concrete meaning through rules that defines the constitutional court by addressing the constitutionality of the law.

7. Network of public powers?

A. Constitutional Court and internationally conformal interpretation of Constitution

In deciding intersection between the national and international level of human rights protection, the primary basis is the degree of constitutional guarantees that should be effective and operative in the protection and restoration of human rights and fundamental freedoms. From the point of view of the constitutional law, such criterion is proper application of an internationally conforming interpretation of the Constitution and laws of Ukraine. Ukraine takes steps to implement the international standards of human rights within the Council of Europe by adhering to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (hereinafter - the ECtHR) and the practice of the European Court of Human Rights (hereinafter - the ECHR). In the framework of the Partnership and Cooperation Agreement Ukraine cooperates with the European

[1] Alexander V. Zinoviev. 2006. Sovereignty, Democracy, the State. *Jurisprudence*, 6, p. 20-28.
[2] Shevchuk, Stanislav. 2001. *The basis of constitutional juriprudence*. Kyiv: Ukrainian Center for Legal Studies Publishing.
[3] Kommers, Donald P. 1997. *The Constitutional Jurisprudence of the Federal Republic of Germany*, 2nd Ed., Durham and London : Duke University Press.
[4] Sajo, Andras. 2001. *The self-limitation of power (short course of constitutionalism),* Moscow, Yurist Publishing.

Union[1]. In order to improve European integration, Ukraine and the EU have endorsed an Association Agreement in order to create an in-depth and comprehensive free trade area[2].

However, the most effective is the system of interaction in the field of human rights at the level of Ukraine's legal system - the law of the Council of Europe. The regulations of the ECHR are reflected in the national legal system of Ukraine both by direct reference to the provisions of the Convention when enforcement regulations are adopted by competent authorities, and through the transfer of the fundamental principles of the Convention into the national legal system of Ukraine.

The Constitutional Court of Ukraine monitors compliance with the constitutionality of legislative provisions assenting to the mandatory effect of international treaties of Ukraine. Also, as a public authority of Ukraine, the purpose of the CCU is good faith compliance with international agreements, including the regulations of the ECHR. However, there is a quite ample legal practice that shows a steady ongoing process of the national legislation harmonization with the regulations of the ECHR.

Given a growing importance of the international law impact on the national legal systems, and the ongoing relationship of all legal systems in Europe, due to these gradual processes the bodies of constitutional jurisdiction are not limited only to their domestic law any longer - instead, while exercising their functions, they apply rules of the international law, including the regulations of the ECHR.

In exercising their constitutional and legislated authority, bodies of constitutional jurisdiction provide reasons for their decisions, referring to international instruments and backed by interpretation of the international law appropriate for a particular case. It should be emphasized that, referring to the rule of the international law (in most cases an international treaty), the bodies of constitutional jurisdiction interpret their constitutions subject to the provisions of international legal instruments and their interpretation by international courts, adapting this legal heritage and experience to a specific situation, to a legal fact being the subject of proceedings.

Thus, an internationally conforming interpretation of the constitution by the constitutional courts is a part of a mechanism for bona fide implementation of international treaties by the state, i.e. an element of implementation (transformation) of generally recognized principles and norms of the international law in the national constitutional system. Unlike a conventional reference to an international act, an internationally conforming interpretation is remarkable because bodies of constitutional jurisdiction provide a constitutional mechanism of international law transformation, which is due to the form of the statehood, specifics of the judiciary system, peculiarities of law enforcement, identifying the constitutional system of a certain country.

A special feature of the internationally conforming interpretation of the constitution is that in cases where the legal situation causes ambiguous understanding of international legal instruments and acts of their interpretation by international courts, they are applied by constitutional courts in

[1] Угода про партнерство і співробітництво між Україною та Європейськими Співтовариствами та їх державами-членами від 14.06.1994 р. [interactive]. 1994 [accessed 2014-10-20]. <http://zakon4.rada.gov.ua/laws/show/998_012>
[2] Сушко, Олександр та ін. Угода про Асоціацію Україна – ЄС: дороговказ реформ [interactive]. [accessed 2014-10-20]. <http://www.kas.de/wf/doc/kas_32048-1522-13-30.pdf?120912135109>

the light of the constitutional principles and norms of a particular country. The provisions of international agreements apply in their constitutionally significant aspects; their other provisions that are ambiguous in terms of the Constitution of Ukraine are not taken into account. In this way constitutional courts ensure supremacy of the Constitution in its international legal aspect.

B. Parliamentarianism and regulatory policy

Laws and other regulations contain legal requirements that regulate typical situations and specifying their purpose and detail on the constitutional provisions. Under these conditions, there is a hierarchy of legal norms: Constitution - the law - subordinate regulation. Thereof, the content of the laws and regulations except the provisions of the constitution are linked content acts of constitutional law. According to the Constitutional Court jurisprudence "in Article 92 of the Basic Law of Ukraine establishes the principle of priority (the rule of) law in the other legal acts, through which the legal regulation of the major public relations. List of issues that are regulated by the laws of Ukraine, under this norm is mandatory, meaning that all decisions concerning them should be made in the form of law "[1]. Accordingly the right to make laws when it is exercised directly by the people of Ukraine, belongs exclusively to Parliament and cannot be transferred to other bodies or officials[2]; law delegating legislative functions of Parliament other authority provided by the Constitution of Ukraine[3].

Under these conditions, the distribution becomes important law-making authority between parliament, the executive and local government. Substantive areas of law determined by constitutional recognition range of issues (Article 92)that are regulated exclusively by the law as an act of parliament. This does not preclude the adoption of laws by the Verkhovna Rada on other issues. In the text of the Constitution contains the reservation on the need for laws on certain issues. This primarily refers to the constitutional regulation of the institution of human rights and freedoms. The Constitution also provides for the division of authority in foreign policy between the President, the Cabinet, Foreign Minister, which are subject parliamentary oversight and judicial review.

C. Share of representation and deliberative democracy in supranational institution

Democracy presupposes that in the society provided a balance of interests of the majority and minority interests in concretized guarantees minority rights. Balance the interests of the majority and the minority follows from the principle of equality. People have the same capacity for self-determination or to rational action or planning their lives. Accordingly are established democratic procedures formation of public authorities and public control over implementation. Ensure adequate representation of nation states to supranational level indicates the degree to guarantee democratic decision-making standards. Therefore, when providing representation to be considered not only the political and economic weight, as well as demographic, historical and cultural factors, and the main criteria should serve - balance of interests of the majority and the

[1] Constitutional Court of Ukraine, Decision of CCU № 4-рп/2008 on April 1st, 2008.
[2] Constitutional Court of Ukraine, Decision of CCU № 15-рп/2000 on December 14th, 2000.
[3] Constitutional Court of Ukraine, Decision of CCU № 15-рп/2009 on June 23rd, 2009.

minority. Therefore does not exist of direct correlation between the establishment and the nation-state strength: how much important is the balance of interests of both small and large states

D. Subsidiarity, coherence policy and regionalism

The value of the subsidiarity principle in constitutional law has two aspects: 1) it is based on the dignity and freedom of the individual and expressing his free will and initiative of entry into economic relations; 2) justifies the legal mechanism of separation of powers from the lower to the upper levels of public authority, providing self-sufficiency expessis verbis appropriate level of government capable of independently and responsibly perform appropriate tasks and scope of government functions. Implicit principle of subsidiarity provides: a) autonomy and self-regulation; b) initiative and self-organization; c) weighing interests and coordination of economic agents. The Constitution of Ukraine principle of subsidiarity is not fixed; If the system to interpret it, the individual elements of the principle of subsidiarity appear fragmented: the constitutional guarantees of local self-government (Article 7), the coupling state law and its respect for human dignity (Article 3), the freedom of development of the individual (Article 23) guarantees the right to protection and legal aid (Articles 55 and 59).

Today the current issues in Ukraine are problem of providing balanced social and economic development of the regions with their diversity, i.e. the principles of coherence. This principle expresses guarantees uniform economic and social development of local groups. It is based on the account of socio-economic, environmental, geographic and demographic, cultural, ethnic and historical features of all parts of Ukraine. The balance will be provided a unified approach in the implementation of state regional policy, alignment of regional development through economic and financial leverage. Regarding the of local residents balance means a access to government services and relatively equal redistribution within specific administrative units. These parameters of functioning of public power will provide strengthening the role of the regions.

E. Core of supranationality

Overall, the global law can be considered in perspective in terms of two aspects. First, since the mid-twentieth century, there began a search for common, universal values that can be the basis for a new world order. Not always nation-states can solve environmental issues, the problem of scarcity of natural resources, sustainable development of society, development of high technology, ensuring dialogue with other human civilizations etc. Therefore, not all nation-states have sufficient resources and power for proper resolution of most of this range of issues under modern conditions. Their solution lies in the modern interpretation of national sovereignty, which is provided through instruments of the parliamentary system, judicial constitutional control, mechanisms of power deconcentration and subsidiarity. These are the mechanisms that serve a basis for the systems of German federal lands' and federal bodies' participation in the policy development of the European Union[1].

[1] Kiiver Ph. 2009. German Participation in EU Decision-Making after the *Lisbon* Case: A Comparative View on Domestic Parliamentary Clearance Procedures. *German Law Journal*, Vol. 10, No 8, p. 1287–1296.

Under such circumstances, there arises a question as to the quality of the institutional framework of the supranational institutions and the nature of its legitimacy. Of course, the principles of nations' participation in decision-making in supranational institutions must comply with those of the founding, approximate and reflective legitimacy. The empirical approach to formation of the European Union's legal personality suggests that there should be elements of consociation democracy, stipulating a democratic procedure of government institutions formation (e.g., direct elections to the European Parliament and elections of the President of the European Parliament); a network of advisory bodies, whose participation in the decision-making is a necessary condition of legitimacy; weighted and balanced regional policy aimed at ensuring coherence (their uniform and coordinated development). Means of parliamentary and judicial constitutional control enable to ensure the balance of powers and inviolability of the principle of *ultra vires* in the course of national authorities' participation in executive decision-making in the supranational institutions.

Therefore, one can speak of formation of specific mechanisms of the inter-civilizational dialogue and shared values inherent in the human civilization in general. The inter-civilizational dialogue is to formulate common approaches to weighting the universal constitutional values that must become the basis for formulating the rules and procedures, as well as organization of government institutions at the universal level of public authority. It is clear that such discourse cannot take place exclusively within the framework of the Western law tradition or liberal constitutional tradition: this can cause rejection of other legal traditions and blocking procedures of global law legitimacy. Thus, the mechanism of the global law formation must combine mechanisms of implementation/transformation of the international law and constitutionalization. On the one hand, it is necessary to ensure a proper legitimate mechanism for delegation of sovereign powers of nation states to supranational institutions subject to adherence with the democratic standards of the people's will. In this context, one will be able to speak about global sovereignty. On the other hand, the international legitimacy of the global law formation is viewed through a certain algorithm, a sequence of steps for solving a number of problems that nation states are currently unable to decide competently on the basis of constituent and approximate legitimacy. Of course, under such circumstances global public institutions will be formed, which will make decisions on the basis of Treaties. The legitimacy of the exercise of powers by such supranational government institutions will be guaranteed by means of parliamentary and judicial control, preventing possible abuse of power and impairment of independence principles of the members of such supranational associations. An important component of legitimacy of the global law should be guarantees of individuals' direct access to international jurisdiction in terms of verifying compliance with the fundamental rights and freedoms in the activities of supranational associations.

V. Conclusions

These conditions can serve as the material basis for the deepening of the European integration of Ukraine and the increasing influence of foreign policy on EU policy with the prospect of EU membership.

Today the EU is public authorities are the newest type of formation - the Federal Constitutional Court of Germany has defined the nature of the EU as "an association of sovereign states"[1] as the form of government it is intermediate between the federation and confederation, which can be called "power networks that is inherent in the words Jean-Denis Mouton "network sovereignty"[2]. European scientists in determining the content of EU integration, allocate a rising trend the ethnic factor and attenuation of nation-states and their role in world integration processes, though not giving a sufficient argument last position due to the uncertainty of the fact of the formation of the European people. However, an attempt to interpret the term of European unity only through the institutional framework of the EU is questionable in terms of the formation of the sovereignty of the EU as a multinational state[3] like the category "Soviet people" in the Soviet Union. Instead, the EU law makes legal order, which provides integration of the European Communities to provide acquis communautaires and national identity of the participants. This the order of things is partly formed in the absence of political will to action and weakening the efficiency of state institutions, which are more likely to delegate decision-making or structures of civil society or local and intermediate authorities (at sub-national level) or supranational institutions[4]. The Court of Justice in one of its decisions noted that the EEC Treaty imposes an obligation on Member States as they have delegated certain sovereign rights of States[5].

Thus, unlike the Confederation EU have permanent institutions. EU institutions take decisions by consensus, not, as is commonly the confederation – it is enough to absolute or qualified majority. If we talk about the mechanism of the EU, was provided by the conclusion of multilateral agreements between European countries in specific areas of cooperation. However, to ensure decisions of the EU by means of constitutional and administrative tools. An important role is played by the case law of the European Court of Justice.

[1] 2 BVerfGE 2/08 (Lisbon Case, 2009).

[2] Mouton, Jean-Denis. 1998. *European construction and transformation of the Nation-State*. The Transformation of nation-state in Europe at the dawn of the 21st century. European Commission for Democracy through Law. Collection: Science and technique of democracy, No. 22. Strasbourg: Council of Europe Publishing. p. 161-164.

[3] Pierre-Caps, Stephane. *Constitutional Images of te Nation-State*, *supra note* 28, p. 39-41

[4] Borella, Francois. *The Weakening of the political will of the Central State in Europe*, *supra note* 28, P. 132.

[5] *Van Gend & Loos v Nederlandse Administratie der Belastingen* (1963) ECR 1.

VI. Suggestions

With link due to constitutional reform in Ukraine its main task in the context of the European integration process has become: a) the inclusion in the text of the Constitution clause on respect for and implementation of European values in Ukraine; (b) identifying the mechanism of delegation of the sovereign powers of the state by the EU constitutional recognition principles subsidiary and proportionality specifying the institutional and procedural tools for their implementation; (c) consistent implementation of the decentralization of public administration in Ukraine and the mechanisms of cross-border cooperation of local public authorities with the local authorities of the Member States of the EU; (d) the Constitution of Ukraine in the specification of the foreign state functions in the context of European values.

Tomorrow marked weakness of the Ukrainian state as self-sufficiency in decision -making is enhanced not influence decision -making at supranational and international level, which reduces the competitiveness and prestige in the international arena. The democratization of decision -making in the direction of deepening the principles of democracy and transparency, deconcentration of power, the implementation of the principles of subsidiarity is the main mechanism of deepening legitimacy of public authorities of Ukraine, Ukraine's national interests in the international arena. The above mentioned criteria should go to Ukraine on the basis of participation in global processes of globalization and integration. As the empirical evidence of successful integration of foreign countries internationally failing to meet these requirements leads to the phenomenon of failed state that threatens the identity and self-sufficiency of the nation, increasing threats and challenges to national interests and national sovereignty.

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16. BVerfGE 37, 271 («Solange I» case, 1974)

17. BVerfGE 72, 339 (Wuensche Handelsgesellschaft «Solange II» case, 1986)

18. *Van Gend & Loos v Nederlandse Administratie der Belastingen*, (1963) ECR 1.

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''Societal Innovations for Global Growth'',
2014, No. 1(3)
ISSN 2335-2450 (online)

JOINT OR SEVERAL LIABILITY FOR UNPAID VALUE ADDED TAX: PROPOSED AMENDMENTS TO THE LAW ON VALUE ADDED TAX OF LITHUANIA COMPARED WITH THE LAW OF EUROPEAN UNION AND OTHER MEMBER STATES

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Abstract

The purpose of the article is to reveal the problem of Lithuanian law (legislation and case law) associated to liability for businesses' unpaid value added tax (hereinafter – VAT) on frauds using 'missing trader'.

Design/methodology/approach: VAT is an indirect tax, paid to business by the customer, who uses purchased goods for his own needs. Business is charged by the VAT on difference between output VAT (VAT on business' output supplies) and input VAT (VAT on business' input supplies). Some businesses use a fraud to avoid the payment of VAT by purchasing or selling goods to business subjects that are called 'missing trader' (a subject who does not pay the VAT to the budget on the transactions and its commissioners cannot be found). There is no such legislation in Lithuania, which requires VAT payer to be liable on its contractor's VAT obligation, if the contractor does not execute his own obligations on VAT. Though, as it is indicated on the case law of the Supreme Administrative Court of Lithuania (according to the EU case law), VAT payer (taxable person) who did or could know that the transaction concerned was connected with a fraud committed by the seller loses the right to deduct the VAT he has paid to the seller.

On 2014 the draft changing the Law on Value Added Tax (hereinafter – The Draft) was submitted to the Lithuanian Parliament. The Draft was prepared according to the Article 205 of the European Council Directive 2006/112/EC of 28 November 2006 (hereinafter – Directive 2006/112/EC) on the common system of VAT, though The Draft received a negative reaction from the business subjects and some public institutions.

The paper deals with Lithuanian and EU case law on joint liability for unpaid VAT, also the Directive 2006/112/EC and the legislation of other member states, where the joint liability is provided by national law.

Findings – the EU legislation on joint liability for unpaid VAT and the practice (case law) of European Court of Justice (hereinafter - ECJ) is consistent, meanwhile there is no legislation in Lithuania, the Lithuanian case law is directly guided by the ECJ case law on similar cases.

Research limitations/implications – the case study is based on EU law;

Practical implications – the review of the provisions of The Draft, provisions of Directive 2006/112/EC, the other member states legislation on Directive 2006/112/EC and the case law of ECJ provides that in some aspects Lithuania seeks to apply the more strict provisions than the legislation of other member states.

Originality/Value: there were no reviews on joint or several liability for unpaid VAT in Lithuania.

Keywords: value added tax (VAT), joint or several liability;

Research type: case study.

Introduction

Tax system is one of the mechanisms that influence economic development and ensure the most important state functions. State funding usually depends on the size of the state budget and the size of the budget depends on the efficiency of the tax system.[1] So combating tax fraud effectively is decisive for ensuring economic growth and funding of state interests.

Tax fraud reduces the amount of revenue that should be used for the public services, distorts the internal market and prevents fair competition[2].

VAT is the tax, which constitute the major proportion of taxes collected to the national budget of Lithuania (It is predicted that in 2014 VAT makes 43,5 per cent of national budget revenues[3] in six months of 2014 it took 46,59 per cent of budget revenues[4]). So the fraud on VAT can make a vast impact on budget revenue.

Within the VAT system, businesses act as unpaid tax collectors. VAT is an indirect tax customer, who uses purchased goods for his own needs, pays the VAT to the seller of goods, i.e. business which is a registered VAT payer).[5] Business is charged by the VAT on difference between output VAT (VAT on business' output supplies) and input VAT (VAT on business' input supplies). The tax is calculated at each stage of production and of the distribution chain on the basis of the value added to sold goods and services.[6]

Some businesses use VAT fraud to avoid their obligations.

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[2] 22/03/2012 Decision on administrative case No. A556-1292/2012 of Supreme Administrative Court of Lithuania

[3] Predictable state revenue by the type of tax in 2014. http://www.finmin.lt/finmin.lt/failai/veiklos_kryptys_biudzetas/2014/fm_pajamos_pagal_mokescius_2014.pdf

[4] http://www.finmin.lt/finmin.lt/failai/nacionalinio_biudzeto_surinkimas/ketv/Ataskaita_2014_m_Ipusm.pdf

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VAT fraud, such as carousel (missing trader fraud), false deductions, black economy, or under-reported supplies are common types of VAT fraud in European Union member states (hereinafter - Member States).

On the law of the European Union (hereinafter - EU) there are some different legal instruments to combat VAT fraud. One of those instruments is laid down on Article 205 of Council Directive 2006/112/EC of 28 November 2006[1] on the common system of value added tax (hereinafter – VAT Directive). The Article establishes a rule of a joint liability. There is said that Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.

Currently in national law of Lithuania there are no such provisions for joint or several liability. This year the Draft law on changes of Article 35 and the addition of Article 91[1] of the Law on Value added tax No. IX-751[2] was discussed, but the changes still are not adopted.

According to this it is important to discuss the content of the document and compare it with the law of other Member States.

1. The most common types of VAT fraud

Missing trader fraud, also known as Missing Trader Intra-Community (hereinafter - MTIC) fraud, is the abuse of the VAT rules on cross-border transactions within the EU. The fraudster must obtain a VAT registration number to enable him to purchase goods VAT free from another EU member State. The fraud relies on the fact that no VAT is chargeable on these transactions. He then sells on these goods in the Lithuania to other VAT registered businesses, at prices inclusive standard VAT (21 per cent). Lithuanian businesses pay the VAT to the fraudster who promptly goes missing without accounting for the VAT due.[3]

‘Missing trader can also be known as 'the acquirer', or 'the hijack trader', depending on the particular facts. So is called the entity that defaults on its VAT liability.[4] ‘Missing trader’ usually is a bogus business, or chain of businesses, deliberately set up to obtain VAT repayments (or a company that used to carry on real business, but after the change of shareholders gets involved into VAT fraud), and goes missing when repayment has been made. [5]

There are number of different kinds of MTIC frauds:

[1] Council Directive 2006/112/EC of 28 November 2006. [2006] OL L347/1

[2] Draft law on changes of Article 35 and the addition of Article 911 of the Law on Value added tax No. IX-751 http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=473339

[3] Missing VAT customers: Fraud indicators http://www.hmrc.gov.uk/manuals/dmbmanual/dmbm875550.htm

[4] What is VAT fraud?: examples of different types of VAT fraud: missing trader intra-community (MTIC) fraud: descriptions of those involved in MTIC fraud http://www.hmrc.gov.uk/manuals/vatfmanual/VATF23520.htm

[5] Missing VAT customers: Fraud indicators http://www.hmrc.gov.uk/manuals/dmbmanual/dmbm875550.htm

Acquisition fraud. As it was mentioned above, a 'missing trader' purchases goods from a supplier from another EU state. A cross-border transaction within the EU (or also between EU and third countries) is VAT charge free, so the supplier does not have to charge VAT.

The missing trader then do not pay to the budget the standard rate VAT (21 per cent) he charges on supplies to Lithuanian customers and Lithuanian customers pays him.

Carousel fraud. The 'missing trader' purchases goods from a supplier located in another EU State. Then the 'missing trader' sells the goods to a Lithuanian and charges VAT. Then the 'missing trader' disappears without paying the VAT to the budget. The buying business sells the goods to a second business and charges VAT. It pays the excess VAT received from the second business to the budget. The same happens on a chain of transactions - sale between the second business and third and any subsequent business. The last customer in the chain sells the goods to a so called 'broker'. The 'broker' sells the goods to an EU customer without charging VAT as this is a cross-border transaction not charged by VAT. Then the 'broker' reclaims the input VAT he has paid purchasing the goods. When the 'broker' reclaims the VAT not paid by the 'missing trader' in the beginning of a chain, the budget gets a loss.[1]

Contra-trading. On contra-trading 'broker' does not submit the claim. This makes the detection of such fraud even more difficult. Instead of making the claim, he uses a 'clean' deal chain. This means that he purchases goods from another EU state, and no VAT is payable on that transaction.

In contra-trading the first 'broker' does not submit a claim to obtain a refund of the VAT charged to it. The fraud can be stated only when the other 'broker' in a chain or another innocent party in a chain claims for a refund of input VAT.[2]

Missing traders can be also used to VAT fraud inside national market. For example, Lithuanian customer pay the 21 per cent VAT to the fraudster who promptly goes missing or on his accounting no purchases of such products are found. The missing trader does not make the purchases of goods that are written in the invoices.[3] Customer (the gainer of fiscal benefit) seeking for deduction of VAT usually gets these goods from subjects who are not registered as VAT payers or there are no such goods purchased at all (this scheme is also popular for purchase of services).

Usually the price of goods including VAT paid to fraudster gets back to Lithuanian customer by "unofficial" ways, so that Lithuanian customer gets fiscal benefit by deducting the VAT he paid to missing trader and also gets cash for his needs (such as bribes, salary of his employees that is not accounted, income of shareholders without paying individuals income tax, social insurance taxes, etc.).

[1] What is VAT fraud?: examples of different types of VAT fraud: missing trader intra-community (MTIC) fraud: acquisition fraud http://www.hmrc.gov.uk/manuals/vatfmanual/VATF23530.htm

[2] What is VAT fraud?: examples of different types of VAT fraud: missing trader intra-community (MTIC) fraud: contra trading http://www.hmrc.gov.uk/manuals/vatfmanual/VATF23550.htm

[3] 07/11/2011 decision on administrative case No. A-442-2481/2011 of Supreme Administrative Court of Lithuania

2. Instruments to combat the VAT fraud

The instrument that permits to Member States to enact measures under which a person is to be jointly and severally liable to pay a VAT payable by another person entered into force by the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment.

Article 21(3) of Sixth Directive permitted Member States to enact measures under which a person is to be jointly and severally liable to pay a sum in respect of value added tax payable by another person made liable by one of the provisions of Article 21(1) and (2).[1]

Member states implement these provisions of VAT directive differently. Some of them transfer the abstract text of the provision to their national law, while the others chose to define exact types of contracts where the doctrine is applicable.

For example, Article 51a(3) of the Belgian Value Added Tax Code provides that 'In the case of warehousing arrangements other than customs warehousing, the warehouse-keeper, the person responsible for the transport of the goods from the warehouse as well as, where applicable, his principal, are jointly and severally liable towards the State for the payment of the tax, together with the persons who are liable for the tax…'. This provision of joint and several obligation is worded unconditionally, with the result that it applies to the warehouse keeper even where he acts in good faith or no fault or negligence can be imputed to him.[2] ECJ has held that national measures which bring about, *de facto*, a system of strict joint and several liability go beyond what is necessary to preserve the public exchequer's rights.[3] Imposing responsibility for paying VAT on a person other than the person liable to pay that tax, even where that person is an authorised tax warehouse-keeper bound by the specific obligations referred to in Directive 92/12, without allowing him to escape liability by providing proof that he had nothing whatsoever to do with the acts of the person liable to pay the tax must, therefore, be considered contrary to the principle of proportionality. It would clearly be disproportionate to hold that person unconditionally liable for the shortfall in tax caused by acts of a third party over which he has no influence whatsoever. [4]

On the other hand, ECJ stated that it is not contrary to European Union law to require the person other than the personal liable to pay the tax to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment[1977] OL L 145

[2] 21/12/2011 Judgment in Case No. C-499/10 of the Court Justice of European Union. Vlaamse Oliemaatschappij NV v. FOD Financiën.

[3] 11/05/2006 Judgment in Case No. C-384/04 of the Court Justice of European Union, *Commissioners of Customs & Excise v. Federation of Technological Industries and Others*

[4] 21/12/2011 Judgment in Case No. C-499/10 of the Court Justice of European Union. Vlaamse Oliemaatschappij NV v. FOD Financiën.

participation in tax evasion [1] The fact that the person other than the person liable to pay the tax acted in good faith, exhibiting all the due diligence of a circumspect trader, that he took every reasonable measure in his power and that his participation in fraud is excluded are important points in deciding whether that person can be obliged to account for the VAT owed. [2]

So, as we can see from the case law of ECJ, implementation of the Article 205 has to act like the liability is applied for taxable persons that know or should have known about fraud in a supply chain they takes part. Knowledge of such person has to be proved, but there is a limit of proportionality principle. The conditions have to be set up so that innocent traders would not become liable, even when he had not enough measures to reveal the fraudulent actions of his contractor.

Maybe the most widely known measures fighting the VAT fraud was adopted by the United Kingdom (most ECJ cases are also carried by taxable persons of the United Kingdom). Clause 18 of the Finance Bill 2003 of United Kingdom has given to the tax administrator a power to make VAT payers jointly and severally liable for unpaid VAT when telephones or computers are supplied by another taxpayer. Such instrument can be applied for a taxpayer who knows, or has reasonable grounds to suspect, that VAT would not be paid.[3] The provisions have been updated by the subsequent legislation and reflect developing EU case law. The legislation relates to the joint and several liability rules in section 77A of the Value Added Tax Act 1994. [4]

Joint and several liability for unpaid VAT is applied to supplies of equipment for use as a telephone or a computer, devices for use with satellite navigation systems, camcorders and other portable electronic devices for playing music and games such as iPods, hand-held or portable DVD players, etc. [5]

According the tax administrator of United Kingdom, regulations were designed to tackle VAT fraud. Because of legislative uncertainty Tax administrator of the United Kingdom seeks to give recommendations for taxpayers what behaviour of a contractor may be fraudulent. Tax administrator consider the objective evidence that demonstrates how customers conduct on their business and the nature and characteristics of the supplies they make and receive to establish whether they knew or had reasonable grounds to suspect that VAT would go unpaid. The regulation includes two 'rebuttable presumptions': consumer will be presumed to have reasonable grounds

[1] 21/12/2011 Judgment in Case No. C-499/10 of the Court Justice of European Union. Vlaamse Oliemaatschappij NV v. FOD Financiën.

[2] 21/12/2011 Judgment in Case No. C-499/10 of the Court Justice of European Union. Vlaamse Oliemaatschappij NV v. FOD Financiën.

Also on the cases 27/09/2007 Judgment in Case No. C-409/04 of the Court Justice of European Union, Teleos plc and others v. Commissioners of Customs & Excise. 21/02/2008/ Judgment in Case No. C-271/06 v. Netto Supermarkt GmbH & Co. OHG v. Finanzamt Malchin.

[3] http://www.tax.org.uk/tax-policy/public-submissions/2003/joint-and-several-liability-reasonable-checks

[4] http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_CL_001600

[5] http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_CL_001600

for suspecting that the VAT on the supply would be unpaid if consumer have purchased the specified goods for less than the: lowest open market value of the goods or price payable for them by any previous supplier. [1] These presumptions may be rebut by providing evidence that the low purchase price of the goods was not connected with the failure to pay VAT by another. [2]

Also there are few exemptions. Joint and several liability rules for VAT unpaid on the supply of specified goods will not be applied in circumstances where VAT goes unpaid as a result of genuine bad debts, or VAT goes unpaid as a result of genuine business failure, or goods are bought by a business for its own use, rather than onward sale.

So, as we can see, the rules of evidence are not clearly defined on this type of cases, so every situation should be analysed separately, what has been done by developing case law.

In parallel of joint and several liability for unpaid VAT in United Kingdom uses the measure of loss of the right to claim input tax. This means, that in the cases, when joint and several liability provisions cannot by applied, tax administrator applies the ECJ case law and its doctrine of abuse of rights directly, especially on 06/07/2006 Judgment in In Joined Cases C-439/04 and C-440/04 of the Court Justice of European Union (Axel Kittel v. État belge and État belge v. Recolta Recycling SPRL). This is also seen on above mentioned ECJ cases attending Commissioners of Customs & Excise.

Court of Appeal following the ECJ's decision determined the test whether the trader "should have known that its transactions were connected with fraud. That could be established by demonstrating that it ought to have known that the only reasonable explanation for the circumstances in which the transactions in question were undertaken was that they were connected with fraud."[3]

So, it is clear, that the legislation of the United Kingdom allows the tax administrator to apply the joint or several liability provisions on limited situations (above mentioned presumptions takes act and makes it easier to build solid evidence), on other situation decisions of ECJ are applied directly.

3. Instruments to combat VAT fraud on Lithuania

As it was mentioned above, there is no such legal statute law provisions that could fight VAT fraud as a measure of administrative (i.e. not criminal) law instrument.

[1] It is important to mention, that similar presumptions exist in Slovak VAT Act. http://web1355.highspeed.webhoster.ag/ggi/index.php/taxation/vat/337-amendment-to-the-slovak-vat-act-has-introduced-joint-liability-for-slovak-vat

[2] http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_CL_001600

[3] Court of Appeal case Mobilx Limited and Others v HMRC [2010] EWCA Civ 517. Basic interventions: Input tax interventions: Input tax incurred by a taxable person who is relying on his right to deduct for fraudulent ends http://www.hmrc.gov.uk/manuals/vatfmanual/vatf42700.htm

Article 64 Law on Value Added Tax of Republic of Lithuania No IX-751[1] has only provisions for deductible VAT, where is stated that on the grounds established by the Law on Tax Administration, the amounts of input VAT specified in VAT invoices held by the VAT payer:

1) May not be deductible without taking into account that the VAT invoice conforms to all the requirements laid down in this Article;

2) May be deductible without taking into account that the VAT invoice does not conform to all the requirements laid down in this Article.

Actually, the rule makes a background to deny the taxpayers right to deduct the input VAT, but only when there are circumstances stated on Law on Tax Administration.

The Supreme Administrative Court of Lithuania (Lietuvos vyriausiasis administracinis teismas, hereinafter - LVAT) has chosen the other way in its case law. SACL directly takes into effect the case law of ECJ. Such practice has begun by the 27/10/2004 decision on administrative case No. A-1-355/2004 of Supreme Administrative Court of Lithuania and has been developed by 19/10/2009 decision on administrative case No. A-438-1097/2009.

According to the ECJ cases Halifax (C-255/02), Optigen Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd (C-354/03, C-35503 and C-484/03), Axel Kittel and Recolta Recycling (C-439/04 ir C-440/04), Mahagében and David, C-80/11 and C-142/11) LVAT developed a practice whereby the taxpayer should be considered liable for unpaid VAT, when there are transfers with ‘missing trader’ and the tax payer is considered that liability is applied for taxable persons that know or should have known about fraud in a supply chain they takes part. The newest practice is set on 05/02/2013 decision on administrative case No. A-602-705/2013.

There are no limits for special kinds of goods or presumptions when the tax payer can be considered liable for obligations of his contractor, but on 11/04/2013 decision on administrative case No. A-442-724/2013 LVAT stated, that according the case law of Lithuanian courts, the tax payer cannot be bound to carry the obligation of his contractor, when the contractor is not considered as a VAT fraudster (‘missing trader’) and tax administrator do not has proof evident facts of tax payer’s knowledge on VAT fraud.

In our opinion these decisions of LVAT implement the ECJ case law on cases that are similar to the measure of loss of the right to claim input tax in the United Kingdom.

Lithuanian tax administrator – State Tax Inspectorate under the Ministry of Finance of Republic of Lithuania on 2005 also adopted the Recommendations on testing reliability of future business partners (hereinafter - Recommendations). These Recommendations were amended on 25/02/2014 and provide 8 pages of data on contractor and his actions that must be checked before starting the business transactions.[2]

[1] Law on Value Added Tax of Republic of Lithuania (Žin. 2002, Nr. 35-1271)

[2] State Tax Inspectorate under the Ministry of Finance of Republic of Lithuania. Būsimų verslo partnerių patikimumo patikrinimo rekomendacijos. 2014-02-25 No. (21.9-32-1)-143-117.
file:///C:/Users/R%C5%ABta/Downloads/BUSIMU_VERSLO_PARTNERIU_PATIKIMUMO_PATIKRINIMO_REKOMENDACIJOS.pdf

Actually, Recommendations are not tied to a particular legal act, which is implemented, but there are references to the Law on Value Added Tax of Republic of Lithuania, the Law on Corporate Tax of Republic of Lithuania and above mentioned 25/02/2013 decision of LVAT. Recommendations also are not the executive act of some legislation and are not mandatory for tax payers.

This year the Draft law No. XIIP-1743(2) on Changes of the Article 35 and the Addition of Article the 91^1 of the Law on Value Added Tax No. IX-751 (hereinafter - Draft) was discussed[1], but the changes still are not adopted. There was offered to add the Article 91^1 that deals with joint or several liability for unpaid VAT.

The offered provision of Article 91^1 stated that the VAT payers who purchased goods and/or services or on the supplies to each other or at the moment of signing a contract known or it is proved that should have known that VAT on these supplies will not be paid is jointly on severally liable on paying to the budget the VAT excluded on above mentioned contract.

As it could be seen, the provision is quite abstract, but it contains main requirements of ECJ practice – it should be proven that the tax payer knew or should have known that contact VAT will not be paid to the budget.

The draft of Article 91^1 also has no special provisions on exemptions, whet the provision should not be applicable. Also it is not clear how this provision will be taken to act, will there be some subordinate legislation acts.

As it was mentioned above, the practice of ECJ, including cases on joint or several liability and proportionality principle, emphasize that liability is applied for taxable persons that know or should have known about fraud in a supply chain they takes part. The conditions have to be set up so that innocent traders would not become liable, even when he had not enough measures to reveal the fraudulent actions of his contractor.

Sure, the draft implements the requirement to prove the knowledge of the tax payer other than the tax payer liable to pay that tax, but it is essential to acknowledge, that The Draft does not distinguish contracts based on fraud and contracts based on accidental conditions that determined the budget VAT loss.

It is clear, that actually in the system that exists in Lithuania, the tax payer cannot be forced to carry on obligations of his contractor while the main reason causing application of such liability is existence of fraud or other malicious actions, that are made deliberately with an intension not to pay VAT on the VAT chain, according to case law of ECJ and LVAT.

The Draft of an Article 91^1 also does not make references to subordinate legislation acts. According the fact, that a tax payer may be compelled to carry the obligations of other subject, in our opinion, there should be discussed the legislation of such acts implementing the provision of Article 91^1: in what cases it could be applicable, how the innocent tax payer can prove his absence of knowledge (or what are the main aspects, that the fair tax payer should react to).

[1] Draft law No. XIIP-1743(2) On Changes of the Article 35 and the Addition of the Article 91^1 of the Law on Value Added Tax No. IX-751

Even if the provisions of the Draft correspond to the main requirements of case law (doctrine of ‘know or should have known’) it makes a difference between what circumstances should be proven as known – budget loss in any case, deliberate actions of not paying VAT or VAT fraud.

The last actions taken on the Draft was the deliberation of the Draft in the Committee of economics and finance of the Parliament, further actions on adoption of the Draft are not announced.

Conclusions

The provisions of Article 205 of VAT directive allow the Member States to impose responsibility for paying VAT on the person other than the person liable for payment of VAT. Member states have several ways to do this. Some of them have legal provisions on charging the liability, also the practice of ECJ comes to act.

Commonly these instruments are used to combat VAT fraud, when transactions are planned in the way of budget loss.

It does not matter how widely joint or several liability is applicable (for special kind of goods or services, if there are exemptions made), the main principle remains the proof that the tax payer other than the person liable for payment of VAT knew or should have known that VAT would go unpaid and it depends on the contractors deliberate actions.

The Draft of Article 91^{1} of Law on Value Added Tax of Republic of Lithuania deals with joint or several liability on paying VAT but provisions are quite abstract and make accent on the knowledge that VAT will not be paid and not the knowledge of VAT fraud committed, as it is stated on ECJ case law.

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"Societal Innovations for Global Growth", 2014, No. 1(3), 207 p.
ISSN 2335-2450 (online)

Texts are not edited.

Published by Mykolas Romeris University, Ateities g. 20, LT-08303 Vilnius, Lithuania