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CONTEMPORARY PLACE OF MATERIAL VALUES
LIABILITY OF LEGAL PERSONS FOR VIOLATIONS OF INTERNATIONAL CRIMINAL LAW

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Abstract

Purpose – The purpose of this article is to provide the reader with some information on the development of liability of legal persons for violations of international criminal law, its implementation practice in common and civil law countries as well as its perspectives of development in the European Union;

Design/methodology/approach – The first part of this article presents the theoretical basis of this topic, which using analysis and comparative-historical methods distinguishes the scope of liability of legal persons for violations for international criminal law in different historical periods; next, legislation is discussed, which had impact to the development of liability of legal persons; finally, the scope of corporate liability and legal regulation is compared. The second part of this article, using the method of document analysis, examines the practice of liability of legal persons across countries with different legal traditions. Court judgments, which have impact to the present topic, are presented. Finally, using generalization and other methods, last part presents the need of further development of corporate liability in the European Union as well as it presents impact of case law to the development of corporate liability;

Findings – Corporate liability for violations of international criminal law originated in common law countries as far back as in the 18th century, whilst first business representatives on the basis of personal responsibility were convicted in International Military Tribunals in the middle of the 20th century. At the end of 20th century and beginning of the 21st century, many international, regional and national institutions recognized that corporate liability is a priority of national prosecution and international jurisdiction is regarded just as an additional measure and a measure of last resort. The Arab Spring provoked such type of cases in civil law countries. It should be noted, that such form of liability of legal entities, both according to common and civil law practice, is in
accordance with international law, but can’t be considered as a part of international customary law. According to data of 2013, corporate liability for grave breaches of international law is not established on the European Union level, however, notwithstanding this fact, 22 out of 28 European Union member states, in principle, allows such form of corporate liability in their own domestic laws. For constitutional and statutory reasons it is difficult to achieve the unification of corporate liability on the national level, however committed grave breaches of legal persons pose a great threat both in national and international level. For all these reasons, there is the need to harmonize jurisdiction of corporate liability in national prosecution as well as the relationship of implementation of such liability on international and national levels; finally, there is the need to rely on the good foreign practices;

Research limitations/implications – This article examines liability of legal persons for genocide, war crimes and crimes against humanity. The development of corporate liability, its case law in different legal systems, i.e. how countries having different jurisdictions deal with issues of corporate liability, is presented either. Finally, this article presents the relationship between national and international law and possible perspectives of corporate liability in the European Union;

Practical implications – This study provides information on the development of corporate liability for violations of international criminal law since the 18th century to the present, it also presents examples of case law, relevant to corporate liability issues and issues of passing of laws and assessment of litigation. Issues of corporate liability are important in the future context of international law harmonization and regulation. As the number of legal entities involved in armed conflicts and contributing to grave breaches raise, this issue in its turn raises problems of legal assessment and legal status of such offences, besides, these problems may get evident in the European Union soon;

Originality/Value – The study provides a new context of corporate liability, which, according to the present information, has been only very little examined in Lithuania. This is an interdisciplinary study, that combines works of professor Dr. I. Vėgéla, professor Dr. R. Drakšas, Dr. E. Sinkevičius, Dr. D. Soloveičikas and other academic works on criminal corporate liability and international criminal liability for grave international breaches. In Lithuania, issues of liability in international humanitarian law were analyzed by professor Dr. J. Žilinskas and professor Dr. D. Žalimas. In this article, collected information and case law assessment is an actual and a conceptual analysis of works of foreign authors and case law.

Keywords: liability of legal persons, individual responsibility, International Criminal Law, international customary law;

Research type: research paper.
Introduction

Peace as well as security is everyone’s desire, right and duty. International Military Tribunals are established for the purpose of tackling with the most serious crimes, where the highest state officials and officers are convicted on the basis of individual responsibility. Still, in the European Union (hereinafter – EU) as well as in the whole world, measures bypassing such human rights are developed in parallel to the development of measures for human rights protection. In Libya, Mali, Syria and in other countries armed conflicts, ethnic cleansing, extermination of civilians are not just a consequence of state policy. In the 21st century, besides states, these processes also involve companies, corporations as well as other legal entities, and their committed offences may escape unpunished due to legal lacunae. Under these conditions legal persons are allowed to make money from sale of prohibited-to-trade guns, production of poisonous gas, construction of prohibited walls, supply of logistic measures, deportation of civilians etc. This article deals with issues of corporate liability for all these crimes.

1. The development of liability of legal persons

Originally, liability of legal persons is derived from common law system. During the 16th to 18th centuries, when liability of legal persons was developing, many civil law countries complied with societas delinguere non potest provision, meaning that a legal person is not bound by criminal law. Unlike in civil law system, nowadays in common law countries a boundary between civil and criminal sanctions is very narrow, and, as a consequence, liability of legal persons for criminal acts was established more than two hundred years ago. At the very beginning, the United Kingdom (hereinafter – UK) as well as the United States of America (hereinafter – USA, US) law systems applied institution of torts law, it included not only tort and its damage in the meaning of civil law – other acts were included likewise, which in civil law countries are regarded as public law offences (Ingmann, 1991). Another feature of Anglo-Saxon (common) law tradition, which was one of the first incentives for the development of liability of legal persons, was that punitive damages, besides punitive damages itself, also included a fine imposed in the favor of victims (Sunstein et al, 1998). Nowadays, the system of corporate liability exists in the USA, where claims for committing genocide, war crimes, crimes against humanity are filed against legal entities in accordance with the Alien Tort Statute (hereinafter – ATS), allowing
aliens to bring private tort suits to the USA courts on the basis that genocide, war crimes or crimes against humanity\(^1\) allegedly were committed under international law or the treaties contracted by the USA\(^2\). This Statute was adopted 1789, but much more attention to it came only in 1997 when courts started hear cases regarding tort suits.

After the World War II, International Military Tribunals, aimed to convict all individuals who contributed to the World War II, were established by international community. The International Nuremberg Military Tribunal and the International Military Tribunal for the Far East were established (latter was established in Tokyo). The Statutes of the Tribunals established only personal responsibility. In this way, in the first internationally accepted criminal proceedings civil or criminal liability of legal persons, which allegedly committed crimes of genocide, war crimes and crimes against humanity, was eliminated. Despite the fact, that the very first Military Tribunals did not foresee corporate liability, legal debates, whether representatives of legal entities were supposed to be liable for their significant contribution to committed crime, started in 1946. Already in 1946-1949, in the processes of International Nuremberg Military Tribunal, which were administrated by the USA, first representatives of legal entities, businessmen and industrialists were convicted. They were charged guilty on the basis of personal criminal liability in the cases such as Flick\(^3\), IG Farben\(^4\) and Krupp\(^5\). Bruno Tesch was one of industrialists who were condemned to death for producing poisonous gas for Nazi concentration cameras; he was sentenced in the UK administrated Military Tribunal in 1946. This case, also so-called Zyklon B case\(^6\), divulged issues of liability legal entities, which significantly contributed to people deaths in concentration cameras. It is worth noting, that even Japanese businessmen were accused of complicity in crimes against humanity, yet further developments of corporate liability neither in the Nuremberg

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\(^2\) Alien Tort Statute (adopted and entered into force 24 September 1789 as a part of the Judiciary Act), Title 28 of the United States Code § 1350.
Tribunal, nor in the Tribunal for the Far East did not appear in the fifth decade of the last century.

International criminal law made a big step forward in nineties of the last century. Article 6 of the Statute of International Nuremberg Military Tribunal and Article 5 of the Statute of International Military Tribunal for the Far East established personal responsibility. Moreover, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone, the Special Tribunal for Lebanon were established additionally, although all Statutes of these Tribunals established responsibility only on a basis of personal criminal responsibility. On 17 July 1998 the Rome Statute was adopted, it established the International Criminal Court (hereinafter – ICC, Court), which started to operate from 1st July 2002. This is the first permanent international court having jurisdiction over crimes of genocide, war crimes and crimes against humanity. It should be noted, that the main principle of this Court is its complementarity, i.e. the Court prosecutes for the heinous crimes only under those circumstances where states are unwilling or unable to prosecute themselves. Prosecution of legal entities for complicity in committing genocide, war crimes or crimes against humanity in many cases in national law is impossible, whereas the ICC, because of its nature enshrined in Article 25 of its Statute, may prosecute a person on the basis of individual responsibility in such cases. On the other hand, the ICC is regarded as a measure of last resort in the battle against such offences. Furthermore, the Rome Statute does not establish that states are not allowed to prosecute legal entities for committing crimes of genocide, war crimes, crimes against humanity or they are not allowed to prosecute on the basis of complicity in these crimes. In addition, international law has a generally accepted principle that criminal prosecution of these crimes as a priority falls within state’s jurisdiction and international justice may be only a measure of last resort in the battle against such heinous crimes.

At the international level, a wider debate on the topic of liability of legal persons started in the eighties of the 20th century. Documents of Council of Europe\(^1\) on criminal liability of legal persons only recommending to consider a possible application of such liability. In overall, recommendations (made by international community) on corporate liability or individual liability historically are equal only to the field of environmental crimes (Möhlenschlager, 1999). In 1988, Committee of Ministers of Council of Europe adopted a

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recommendation “Concerning Liability of Enterprises Having Legal Personality for Offenses Committed in the Exercise of Their Activities”. In the field of economic offences, this document recommended to foresee a possibility to limit or to prohibit certain activities of legal entities in national law; however this recommendation did not clearly specify what kind of law and for what kind of offences it should be adopted in national law. More than 10 years later in 2003, soft liability of legal persons for grave breaches of international law was established in the United Nations resolution. Article 3 of this resolution establishes that transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law. Article 11 of this resolution establishes that transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

In this aspect, the Resolution on measures to dismantle the heritage of former communist totalitarian systems No. 1096 adopted by Parliamentary Assembly of the Council of Europe is also relevant, it states that “The Assembly also recommends that criminal acts committed by individuals during the communist totalitarian regime be prosecuted and punished under the standard criminal code”. Following this, prosecution of the most serious crimes and punishment for these crimes is exercised primarily on the basis of the standard criminal code in member states of the Council of Europe and the EU, whilst international law is just a complementary legal tool for the qualification of such crimes.

In summary, liability of legal persons for the grave breaches against international law originated in common law system. In civil law system this kind of liability for a long time

was acknowledged only for some offences. Genocide, war crimes and crimes against humanity are punished on the basis of individual responsibility in the International Military Tribunals, yet the question of liability of legal persons remains relevant since the beginning of such crimes. This type of liability is in accordance with international law, moreover, there is some relevant case law concerning this issue. Firstly, liability of legal persons is exercised on national level, but it may not be regarded as a part of international customary law at present, however the need of the development of corporate liability has increased in recent decades.

### 2.1. Case law on corporate liability in common law system countries

Liability of legal persons for serious crimes is best developed in common law system countries. For example, in the USA and Canada courts have examined questions of files admissibility on corporate liability for the most serious crimes, moreover, they have established case law on convicted enterprises. On the other hand, even in the USA, decisions in some significant cases are still not clear-cut.

Let’s start with *Sosa v. Alvarez-Machain* case, which was dealt in the Supreme Court of the US. In this case, the Supreme Court held that an answer to the question, whether legal entities are supposed to be responsible for the violation of the ATS, depends on whether international law forbids some specific activities. According to this rule, legal enterprises are to be held responsible under the ATS only if corporate liability exists in international law.

Liability of a legal person for breach of international criminal law was *expressis verbis* denied in so-called *Kiobel* case. This case was initiated by Nigerian immigrants against Dutch, British and Nigerian fuel enterprises which, according to plaintiffs, aided and abetted Nigerian armed forces to commit crimes against humanity. These crimes were committed against citizens protesting for the protection of environment. In this case, the court held that according to the review of international law, corporate liability was not a

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part of international customary law and, as a consequence, the US courts had no jurisdiction to hear the case. According to this, it may be asserted, that the court found that corporate liability for grave breaches of international law was not a part of international customary law at that time. The judgment in Kiobel case was appealed to the Supreme Court of the US in April 2013. Unfortunately, the Supreme Court did not address the question of corporate liability for committing crimes against humanity. The Supreme Court limited case examination only to the question of extraterritorial application of the ATS. The Supreme Court held that “a mere fact that a corporation is within the territory of the USA is not a sufficient basis for the enterprise to be held liable under the ATS”. It should be observed that it is not very evident from the lines of this judgment, whether the Supreme Court upheld the conclusion made by lower court regarding the question of corporate liability or left this question unanswered. Many scholars, who analyzed this decision, argued that this decision should be regarded as allowing corporate liability, as the main argument of the Supreme Court was that corporations are usually registered in different countries all around the world, so it was too much to say that it is enough for the defendant, as a corporation, to do business in the USA, to be held liable under the ATS. Legal scholars assessing these arguments stress that the only possible interpretation of this decision is that legal entity, in principle, may be held liable under the ATS, yet the mere fact that an entity is within the territory of the USA is not enough for corporate liability to arise.

In addition, according to decisions of other courts, it may be argued that there is no such rule declaring that legal entities may not be prosecuted under international criminal law. In cases Sinaltrainal v. Coca-Cola Co., Romero v. Drummond Co., Doe VII v. Exxon Mobile Corporation, Sarei v. Rio Tinto, Kadic as well as in other cases, different courts of

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<sup>1</sup> Decision of US Supreme Court:


<http://opiniojuris.org/2013/05/08/kiobel-inst-symposium-is-corporate-liability-jurisdictional/>.

<sup>3</sup> Decision of US Court of Appeals, 11th Circuit:

<sup>4</sup> Decision of US Court of Appeals, 11th Circuit:

<sup>5</sup> Decision of US District Court of Columbia:

<sup>6</sup> Decision of US Court of Appeals, 9th Circuit:
Sarei v. Rio Tinto (dec.), no. 02-65256, 2011.

<sup>7</sup> Decision of US Court of Appeals, 2nd Circuit:
the USA affirmed that legal persons which aided and abetted to genocide, war crimes and crimes against humanity may be held liable under the ATS.

Another case was heard in Canadian courts in 2008. The main fact of the case was that Canadian corporations “Green Park International” and “Green Mount International” were accused of construction of buildings in the occupied Palestinian territory. Legal representatives of the accused corporations argued that the Geneva Convention, i.e. the main source of international humanitarian law, was not applicable in this case. The court was of the same view and ruled that it did not have jurisdiction to hear this case according to *forum non conveniens* rule\(^1\), i.e. the rule rendering a discretionary right to decide the court whether a file is admissible, if there exists another court, which is more suitable, and whether a case could be heard according to the principle of fairness. Worth noting, that the Canadian court, when it rejected its jurisdiction in this case, did not mention whether the plaintiff was a natural or a legal person. Under Canadian law, the term “person” covers both natural and legal persons, therefore, a conclusion may be drawn that corporate liability is permitted even under different factual basis.

An overview of case law of common law countries suggests that these countries have developed mechanisms according to which corporations may be held liable for committing genocide, war crimes and crimes against humanity. Both the USA and Canadian courts have established that corporate liability is in line with international law, but cannot be regarded as a part of international customary law. Despite this, these countries still do not have a clear-cut case law, especially when courts deal with issues of jurisdiction and application of international law in domestic courts.

### 2.2. Case law on corporate liability in civil law system countries

One may notice a different case law in civil law countries. Questions on corporate liability have been dealt in French, Dutch and Swedish courts. Both in Sweden and Germany liability of legal person for grave international breaches may be the matter of litigation, however liability of a legal person is possible only in non-criminal context.

One recent example of corporate liability for grave breaches of international law was heard on the basis of civil suit in France. French courts examined activities of French legal enterprise in the occupied Palestinian territory; plaintiffs claimed that a tram line, crossing

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the occupied Palestinian territories, was in breach with the Hague and Geneva Conventions on the Law of War. The Court of Appeal confirmed the decision of a court of first instance and stated that only states are subjects of international law and, as a consequence, provisions of international humanitarian law and its conventions are applied only to them, therefore, conventional provisions cannot create obligations to legal entities. Supporting its arguments, the court stated that legal entities are recognized only to a very limited extent in international conventions and, consequently, they cannot be litigants in a case in a context of international law. It may be pointed out, that this decision of the Court of Appeal of the French Republic referred to case law on the ATS practice developed by the US courts, however, the Court of Appeal did not uphold arguments based on the ATS on the basis that “this case was of a national application nature” (note: in the USA, the ATS is applied in international legal disputes). This case supports the idea that corporate responsibility is still not considered as an element of international customary law but rather possible form of responsibility at the national level.

Commenting this decision, Kelly (2010) argues that such conclusion, which was made by the French court, cannot be treated as denial of international criminal law application, as the Court of Appeal examined only questions of the Geneva and Hague Conventions. Prosecution of crimes against humanity is based on international customary law, as a reason, a legal person may be held liable for committing such crimes either, in the same line it may be stated that liability for genocide is not limited to natural persons likewise.

In another case, Dutch businessman Frans van Anraat was found guilty for committing war crimes and genocide. Van Anraat was convicted for supplying Saddam Hussein with means for the creation of chemical weapon during the Iran-Iraq War. The Supreme Court of the Netherlands stated that Van Anraat was aware that these poisonous gas were intended to kill Kurdish civilians, therefore, he was convicted for the breach of international customary law. On 24th April 2013 the Supreme Court ordered him to pay 400,000 euros compensation to victims of genocide¹ and sent him to 17 years imprisonment for complicity in genocide².

In Sweden, another case dealing with committed crimes against humanity in Sudan in 1997-2003 is being examined. A Swedish fuel corporation “Lundin Petroleum” and the

Minister for Foreign Affairs are accused of complicity in attacking civilians for the purpose to evict them out of mineral-rich lands. In Sweden, if complicity in crimes against humanity is established, natural (rather than legal) persons have to face liability for these crimes.

Nevertheless, in many EU member states individual responsibility for violations of international criminal law is the only mean in the battle against corporate crimes. For example, in Germany, corporate liability practically does not exist (in Germany legal entity may be held liable only for offences of public order, however, such offences in any way does not result in criminal liability; potential liability may be limited only in a form of an administrative fine, confiscation of tools used for commission of a criminal act, confiscation of profits obtained through illegal activities, inclusion to the so-called “Black List”, limitation of activities of a company and winding up of a company). For example, German non-governmental organizations “European Centre for Constitutional and Human Rights” and “Global Witness” started investigations against a natural person, i.e. against a chief manager of German timber company for aiding and abetting Congolese militia and armed forces to commit serious violations of human rights against civilians. It is thought that the manager of German company supplied Congolese armed forces with financial and logistic support, therefore, homes of civilians were destroyed, civilian women were raped and civilians were treated in other inhuman way. It should be stated, that these Swedish and German examples presuppose that there exist many basis for sanctions in civil law countries, and, as a reason, harmonization of sanctions for liable legal entities may face man statutory obstacles.

Lithuanian criminal procedures allows corporate responsibility in criminal matters, however according to the Supreme Court of the Republic of Lithuania criminal liability for legal entities (corporations) derives from the perpetrators individual criminal responsibility. Corporate responsibility under Criminal Code of the Republic of Lithuania Article 20 is possible to state if natural person’s fault exist. This includes awareness of entity owners and shareholders. According to court practice corporate responsibility appears if owners or shareholders knew that person in charge discharging managerial responsibilities, benefiting or having interests from the crime. Owners or shareholders have to been proven to

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encourage or enable preconditions for such offenses\(^1\). Following this, corporate responsibility in Lithuania for legal persons is possible, but it is closely connected to the role of individuals in particular crime.

In general, it may be noticed that some civil law countries have established institution of corporate liability in their own domestic laws. On the other hand, when questions of application of international criminal law in domestic cases are dealt and when questions of owners (shareholders) role in crime or admissibility of complaints are dealt, obstacles for corporate responsibility arise. If a legal person is found guilty for an offence, usually victims are awarded with damages. It may be identified that the status of a legal person might be a tool for promotion of corporate impunity as well as it might become a shield for interested groups to cover their violations of international law.

3. Perspectives of liability of legal persons in the European Union

After the Rome Statute has been ratified, the EU is an important player in harmonization process of laws of EU member states. In this way supranational law is created obliging member states to recognize certain human rights standards. Another way to harmonize laws may be achieved through directives, as member states are obliged to implement directives, though they are free to choose implementation methods due to their own peculiarities.

As the EU Council has stated, the ICC is an essential tool for the prevention of grave breaches of international humanitarian law. Principles of the Rome Statute as well as other principles according to which the ICC operates are fully in line with principles and goals of the EU. In addition, all EU member states as well as the EU itself ratified the Rome statute. Thus, the EU is the first regional organization to sign a cooperation agreement with the ICC. The EU Council decision of 21 March 2011 on the ICC and on the action plan sets 5 policies of the EU, which the EU and the Court will develop in the near future\(^2\):

1. Co-ordination of EU activities to implement the objectives of the action plan;
2. Universality and integrity of the Rome Statute;
3. Independence of the ICC and its effective and efficient functioning;
4. Co-operation with the ICC;

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\(^1\) The Supreme Court of Lithuania, Criminal Division, 10 January 2012 ruling of the Plenary board of judges in criminal case legal entity „P“ (case No. 2K-P-95/2012).

5. Implementation of the principle of complementarity.

Corporate liability for grave violations of international law according to the policies of the action plan may also fall in the harmonization field of the EU. The EU cooperation with the ICC sets objectives of cooperation, universal recognition of the Rome Statute and effective functioning; as a consequence, diverse regulation of corporate liability in different countries and different legal traditions may become a new field for harmonization. Furthermore, the need of corporate liability emerges not only on a theoretical level in the EU. According to the International Court of Justice decision, for example, subsidiary organization of the Dutch corporation “Riwal corporation” was in breach with international humanitarian law for supplying means (cranes and a platform) for the construction of the separation wall in the occupied Palestinian territory. This is a great example when the EU legal entity was held liable for the violation of international humanitarian law. It may be presumed, that in the near future such examples may occur even more, as regulation of corporate liability gives a green light for such criminal activities in some member states. In the light of all the above-mentioned arguments, there is the need to develop harmonization in the field of corporate liability for violations of international humanitarian law in the EU.

The first EU member state to establish corporate liability in its criminal law was the Netherlands. The Netherlands established this type of liability already in 1976, only after a few decades this trend began to spread throughout other criminal codes of other states. In 1990, basis for corporate liability was established in Belgium, Denmark, Finland; later on almost all EU member states established basis for such liability in their national laws, except Bulgaria, Germany, Latvia and Sweden – here corporate liability is not possible or it is subject to certain exceptions.

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Table 1. Overview of legislation on criminal responsibility of legal persons in EU member States

<table>
<thead>
<tr>
<th>European Union states</th>
<th>Status on corporate liability</th>
<th>The year of legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Yes</td>
<td>2006</td>
</tr>
<tr>
<td>Belgium</td>
<td>Yes</td>
<td>1999</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>The is no</td>
<td>There is no</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Yes</td>
<td>No info</td>
</tr>
<tr>
<td>Croatia</td>
<td>Yes</td>
<td>2003</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Yes</td>
<td>2012</td>
</tr>
<tr>
<td>Denmark</td>
<td>Yes</td>
<td>1996</td>
</tr>
<tr>
<td>Estonia</td>
<td>Yes</td>
<td>2001</td>
</tr>
<tr>
<td>Finland</td>
<td>Yes</td>
<td>1993</td>
</tr>
<tr>
<td>France</td>
<td>Yes</td>
<td>2005</td>
</tr>
<tr>
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<td>There is no</td>
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In the absence of laws regulating liability of legal persons for violations of international criminal law, convenient conditions for impunity may be designed for entities

to abet Governments, organizations or other groups in committing genocide, war crimes or crimes against humanity. Obviously, such situation is contrary to the declared EU principles of democracy, openness, equality, rule of law and equity. On the other hand, currently, liability for committing genocide, war crimes and crimes against humanity is not established on the EU level, and this type of cases fall within the exclusive jurisdiction of national courts. Moreover, implementation of corporate liability cannot be foreseen as an exclusive mechanism of international humanitarian law, therefore, there is the need for cooperation and complex integration of both the EU law and international law in such cases.

In overall, it can be argued that the unification of corporate liability of member states with different legal traditions in the EU would cause particularly big statutory problems and maybe even constitutionally obstacles. At present, only 22 out of 28 member states regulate issues of corporate liability. Besides this, in this sphere there still exists the need for harmonization of law as entities may escape unpunished for the above-mentioned offences.

Conclusions

1. Liability of legal persons for genocide, war crimes and crimes against humanity for the first time was establish in the Alien Tort Statute in the United States of America on 24 September 1789. Historically, this type of liability is associated to common law countries, though first business representatives on the basis of individual responsibility were convicted in International Military Tribunals during the period 1946-1949. International Nuremberg Military Tribunal, International Military Tribunal for the Far East and other International Military Tribunals as well as permanent International Criminal Court also applies personal liability rather than corporate liability. After the Arab Spring questions regarding corporate liability have been started to rise not only in common law countries but in international, regional organizations as well as in EU member states of civil law tradition.

2. According to the American, Canadian, French, Dutch, Lithuanian etc. case law on corporate liability a conclusion is drawn that liability of legal persons is a matter of domestic prosecution on a priority basis; international jurisdiction acts only as an additional tool and a measure of last resort. Neither Statutes of International Military Tribunals not the Statute of the ICC as well as most civil law countries do not have an institution of liability of legal persons for committing genocide, war crimes and crimes against humanity. Notwithstanding this, practice of common and civil law countries sets up
that this type of liability is allowed both on international as well as on national level. Moreover, this kind of liability both according to practice of common and civil law countries is in line with international law but is not regarded as a part of international customary law.

3. According to data of 2013, on the EU level liability of legal persons is not yet established, though 22 out of 28 EU member states has such a kind of responsibility in their own domestic laws. Liability of legal persons for heinous violations of international law, i.e. genocide, war crimes and crimes against humanity is a matter of growing relevance in the field of international criminal law. Such crimes are evidenced by selling banned weapons, producing poisonous gas, building forbidden separation walls, supplying logistic means, deporting civilians and other criminal acts, which might be committed directly by legal entities or accomplice together with other abettors, e.g. states, governmental organizations, political and terroristic organizations etc. As a consequence, there is a growing need to harmonize jurisdiction on liability of legal persons, the relationship of such liability between international and national level as well as follow good foreign practices.

Suggestions

1. A battle against committed violations of international criminal law by entities requires additional national, regional and international legal tools, since the existing mechanisms do not create effective system of liability of legal persons. The system of liability of legal persons was more efficient if national legislation provided joint liability of legal persons as well as civil, administrative and criminal liability for committing genocide, war crimes and crimes against humanity; finally relevant procedural rules have to be established. Hereby legal entities were threatened by sanctions of civil, administrative and criminal law in the EU member states, thereunto legal entities committing serious crimes risked to face penalties on the basis of individual responsibility as well as they risked to lose their status as a legal entity.

2. In the EU, harmonization of corporate liability is conceivable only after consideration of constitutional and statutory peculiarities of regulation on corporate liability, moreover, various systems of member states have to be assessed. Firstly, the EU influence in harmonizing liability of legal entities is supposed to take place in the sphere of domestic law, e.g. member states according to their national peculiarities could include standards of liability of legal persons for serious crimes of international law into their domestic law. It is advised to incorporate the good foreign state practice into national law, e.g. the practice on jurisdiction of courts of the United States of America as well as it is advised to consider foreign practice on the relationship between national and
international level of these violations. Employment of such experience in the battle against corporate impunity could help to integrate transnational and national tools on corporate liability of legal persons.

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POSSIBILITIES TO ESTABLISH LEGAL DEFINITION OF “FAMILY” FOR THE NEEDS OF FAMILY POLICY

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Abstract

Purpose. Implementation of family policy is based on groups of instruments helping to achieve aims of the policy. One of such group of instruments is law of the state. To this end, law serves by establishing legal categories involved and institutionalized in legal system, which confer legal status on the subjects of the state. The state seeking to address particular groups of persons upon the implementation of public policy needs a clear definition of addressees of certain orders or permissions, as well subjects submitted with certain rights and obligations.

Thus, the purpose of the article is to provide proposals on the legal definition of “family” and “family members” which would contribute to proper implementation of family policy. The formulation of such proposals is chosen to be based on the analysis of functional fields of family policy.

Design/methodology/approach. The article analyses current definitions of “family” and “family members” laid down in different laws of the Republic of Lithuania and how these definitions might be developed, i.e. what criteria should be used for the definition of “family” seeking to direct the legal regulation only to those subjects which are at the target of family policy.

First of all, the paper presents possible approaches to the analysis of the establishment of “family” definition. Later on, analysis of current situation is introduced. In Lithuania, there are more than 200 laws with references to “family” or “family members”, however, only about 30 laws provide definition of “family” or “family members”, which appears to be different in most cases. The article seeks to discover the criteria for use of different definitions and trying to justify the use of different definitions in particular situations.
For the second, analysis of limitations for the definition of “family” is presented. Restricting requirements come from various sources; the paper describes three of them: constitutional restrictions, requirements originating from European laws and the “cultural” restrictions argument.

Finally, the article describes the criteria primarily based on functional fields of family policy provided for in political strategies and activity plans as the most appropriate criteria for the differentiation of definitions of “family” and presents proposals on the creation of legal definition of “family” and “family members” for the needs of implementation of family policy.

The article is based on fundamental ontology and is displayed in positivist approach. Methods of systematic analysis, statistical analysis, content analysis and descriptive analysis are used.

Findings. Research reveals that the use of definitions of family and family members in laws of the Republic of Lithuania is chaotic and fails to be systematic. It draws inference that definitions are just being copied from one law into another and were not evenly amended afterwards. Having evaluated the possible ways of systematizing the application of different definition seeking to describe the relevant addressees and at the same time to retain it relevant it is proposed to formulate different definitions in accordance with a set of aims (why definition is needed at all), i.e. to establish a joint property, to establish blood relations, to establish maintenance relations, to avoid conflict of interests, etc.

Research limitations/implications. Research is build-up upon and restricted within several presumptions. First, it is considered that a legal definition of family is inevitable, the question is whether it is necessary to use a single definition in all regulated cases, or there can be a number of different definitions; in the latter case it is necessary to ground the need for differences. Secondly, law is primarily regarded as one of the means to embody public policy, particularly, family policy. Finally, the article develops the complex issues relating definition and restrictions or obstacles to define family and family members, thus the work does not contain a detailed analysis of particular restrictions or obstacles.

Practical implications. Article presents proposals for development of family definition in laws of the Republic of Lithuania.

Originality/Value. The research contributes to and presents an original viewpoint in the public policy discussion on the need and possible ways to determine “family” and “family members” following the State Family Policy Concept adopted by the Seimas of the Republic of Lithuania in 2008, and the subsequent Ruling of the Constitutional Court of the Republic of Lithuania declaring that the definition of family used in the Conception was inconsistent with the Constitution of the Republic of Lithuania.

Keywords: family policy, family definition, family members/
Introduction

In everyday life, it is more or less clear what it is meant by “family” talking about family life, family relations and family matters. Every society or even parts of society have different understanding of what is family, as it comes from a set of highly organic, moral and localized values. Understanding of “family” is embedded in local morality, in religion, and in traditional values\(^1\). However, it is much more complicated when “family” has to be determined in legal terms.

Generally, it is held that the manner in which the state has to regulate what is “family”, what elements “family” should include, or what rights and obligations are granted or submitted to family members, is subject to particular legal and related requirements. In other words, it appears that the legislator is not entirely free to decide *ex-parte* on the legal definition of family and implications thereof. A good example is the State Family Policy Concept, approved by the Seimas of the Republic of Lithuania, which laid down a definition of family, where family is held to consist of spouses and their children (including adopted), if any. Besides, it provided that family may also be incomplete or extended\(^2\). Such definition which did not include cohabiting persons either with or without children into the definition of a family instigated a wave of indignation in the society and later on, in September 2011, the Constitutional Court of Lithuania declared that to the extent that the provisions of Item 1.6 of the State Family Policy Concept consolidate the notions of the harmonious family, multi-child family, extended family, family living through a crisis, incomplete family, family at social risk, and family that are founded (were founded) exclusively on the basis of marriage, is in conflict with Paragraphs 1 and 2 of Article 38 of the Constitution of the Republic of Lithuania\(^3\) which provides that

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“the family shall be the basis of society and the State. Family, motherhood, fatherhood and childhood shall be under the protection and care of the State”\(^1\).

Accordingly, the article analyses in what extent the state should regulate what is family, and what guidelines it should follow when it determines family constitution, regulates family relations in the light of public policy, in particular, in field of family policy.

**Theoretical background**

The notion of family and content of family relations in legal policy has been analysed in different research works in several dimensions, and assessed in the corresponding scales as follows:

1) Public policy dimension, in which the question of *to what extent a state may interfere into regulation of private (family) relations* is raised. I.e. on one marginal side one may claim that the state may regulate all relations as it decides on its own what social relations should be regulated; on the other marginal side one may state that the state should not interfere into private sphere of social life. Analysis in such dimension may be found in the research works of Lynn D. Wardle\(^2\) (Brigham Young University Law School), Johann W. Mohr\(^3\) (Professor at Osgoode Hall Law School, York University, Toronto, Canada), Franz-Xaver Kaufmann\(^4\) (University of Bielefeld, Germany), etc.

2) Sociological dimension, in which the question of *to what extent the official (legal) regulation of family life should be based on cultural constraint argument, and to what extent it should be based on universal comprehension argument* is being raised. This means, that one the one side, the family definition and family relations regulation may be grounded on the tradition, morality and religion of the society, on the other, that the matters discussed should be based on universally accepted rules. Such analysis may be found in works of Adriaan Bedner and Stijn van Huis\(^5\) from Leiden University.

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Netherlands), Wibo van Rossum\(^1\) from Utrecht University School of Law, Masha Antokolskaia\(^2\) from VU University, Amsterdam, etc.

3) Legal dimension, which in its nature is closely related with the sociological dimension, raising the question whether the family definition and regulation of family relations should be established in the national laws or should they be regulated universally, i.e. by rules of harmonization or unification of family law. Many works of this kind of analysis are being carried out in Utrecht University (the Netherlands), e.g., by Katharina Boele Woelki\(^3\); as well by Ersin Orucu\(^4\) from University of Glasgow, Prakash Shah\(^5\) (School of Law, Queen Mary, University of London) (UK), Caroline Forder\(^6\) from Maastricht University, Jonathan Curci\(^7\) from University of Turin Law School (Italy), American researchers, e.g. Fernanda G. Nicola\(^8\) (Washington College of Law, American University), etc. As well, the question has been raised by Gediminas Sagatys\(^9\) in Lithuania.

**Research methodology**

The paper is based on considerations involving the previously mentioned dimensions, however, seen in the light of Lithuanian legal regulation. First of all, the question relating the extent to which the state can interfere into private (family) matters is approached. This analysis as well includes the overview of the present situation in legal regulation of family and family members’ definition and the rights and obligations submitted to them. A paper presents a more detailed analysis of the differences of family members’ definition in separate laws regulating the legal regulations of similar nature.


\(^8\) Nicola, F. G. 2010.

Secondly, the research involves analysis of sociological and legal arguments (second and third dimensions as mentioned) which would allow generating guiding criteria for the definition of “family” and “family members”. Restricting requirements come from various sources; the paper describes three of them: constitutional restrictions, requirements originating from international laws and the “cultural” restriction argument. Analysis is performed taking into account Lithuanian social situation and the existing legal background.

Thirdly, in accordance with the inference drawn in the previous stages of the research, a list of criteria for the determination of “family” and “family members” for the sake of public policy is presented thus making guidelines for the legislator which could be used in the process of family policy formation.

The research is based on fundamental ontology and is displayed in positivist approach. It makes use of such methods as systematic analysis, statistical analysis, content analysis and descriptive analysis.

Results and findings

The first approached dimension relates political, or more particularly, public policy attitude towards the problem of the definition of family and family members. As the question is raised on the need of legal definition of “family” for the sake of public policy, the nature of the research itself presupposes the answer. To put the analysis in other perspective, it would be possible to challenge the relation between politics and law (to argue whether law is superior to policy or otherwise), but according to the formulation of the theme, law is seen as an instrument helping to achieve the aims of particular policies. In such perspective, implementation of family policy is based on groups of instruments helping to achieve aims of family policy. One of such groups of instruments is law of the state. To this end, law serves by establishing legal categories involved and institutionalized in legal system, which confer legal status on the subjects of the state. The state seeking to address particular groups of persons upon the implementation of public policy needs a clear definition of addressees of certain orders or permissions, as well as subjects submitted with certain rights and obligations. This perspective implies that the state is legitimized to interfere into family life insofar it is necessary to communicate a message to “family members”, certain addressees – be it persons living together, persons bond by maintenance relations, persons raising children, etc. The state has to establish in disambigous manner to what persons it addresses a particular message.
Currently, in Lithuania there are more than 200 laws mentioning family or family members, however, only 30 of these laws contain family definition. Besides, almost all of these definitions are different. The definitions of family members include such alternative elements (i.e. family members): a spouse, a cohabitant, child (children), adoptee (adoptees), close relatives, affinities (marriage based relatives). In some laws the definition of family members includes only a spouse, children and adoptees; in some it also includes a cohabitant and affinities. One definition of family members in the Law on Public Administration fails to include a spouse into the list of family members. An explanation to such diversity of family members could be the need to address different persons in different situations, generalizing all the persons to be addressed by particular provisions as “family members”. In such case, similar legal relations should be treated similarly, i.e. provisions regulating similar legal relations in different laws should provide the same family members’ definition (or, where the definition is different, there should be objective reasons to make the difference). The research work involved analysis of family members’ definitions in several groups of similar legal relations laid down in different laws. One possible example could be an overview of family members’ definition relating the restriction to employ family members in directly subordinate positions laid down in different laws. Although there are no objective grounds for different treatment of family members, all the examined laws provide different family members’ definitions. For example, the Labour Code provides that persons, who are connected by close blood relationship or by marriage (parents, adoptive parents, brothers, sisters and their children, grandparents, spouses, children, adopted children, their spouses and children, as well as spouses’ parents, brothers, sisters and their children), shall be prohibited from holding the office of servants at one state and municipal institution and a state or municipal enterprise, if their service also involves direct subordination of one of them to the other, or the right of one of them to control the other. However, according to the Law on Civil Service, a person shall not be eligible for the civil service whose spouse, partner, close relative or a person related to him by marriage performs the duties of a civil servant in a state or municipal institution or agency in the event that they would be related by direct subordination according to the posts held by them. Moreover, the Law on Courts provides

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a very narrow definition of family members in the same context. This law provides that a
judge may not be appointed to work at a court or a court division where his spouse,
children/adoptive children, parents/adoptive parents, brothers, sisters/adoptive brothers,
sisters work as Chairman, Deputy Chairman or Chairman of a division respectively. To sum
up, some laws do include partners or spouses’ relatives, some do not. Without going into
details, the same situation is in other public sectors where similar legal relations are
regulated by different laws (social security, social support relations, compensation in case
of death of a family member, etc.). This makes it obvious that definitions of family and
family members are laid down without a reasonable system. This implies the question –
how the situation should be corrected and what criteria for the definition of family should
be used?

The deliberation on definition of family and content of legal family relations calls for
the analysis in the other two mentioned dimensions, i.e. sociological and legal dimensions.

The question on the extent to which the family definition and content of legal family
relations should be based on cultural, traditional, religious grounds, is a complex one. The
greatest criticism of cultural restraint arguments is that same culturally-imbedded rules do
not coincide with the modern notion of human rights; thus tradition is not “holy” and
should not be protected at any rate, as even culturally-laden family rules are not an end in
themselves, but rather a means by which to promote a desired regulation of human
relations. On the one hand, not in all cases the cultural argument is embedded in national
legislation, even when it is not bound by international obligations. As Masha Antokolskaia
states, “each country, has, of course, a predominant ideology regarding family law
matters, which is generally the ideas of the majority of the population, or the élites
dirigeante. Thus pertinent family law is either a reflection of the predominant values of the
majority, or a compromise between the values of the various groups”2. As well, she
presents examples of Irish and Italian divorce referendums as good illustrations of the
phenomenon when ongoing struggle between the conservative and progressive “cultures”
in the field of family law reaches the point of ideological confrontation3. Thus, socially
sensitive issues, including family matters, are usually formalized, established in laws as the
result of ideological outbreak or in pushed forward situations making use of a one-day
majority in legislation procedure.

and Harmonisation of Family Law in Europe; Antokolskaia, M. 2008.
3 Ibid.
The second aspect of cultural constraint argument is grounded on the idea which is supported with a number of research works\(^1\) that only such regulation which has support in society may be effective. Especially this applies to socially sensitive regulation issues, among which is family law and family-related issues (particular fields in social protection, labour relations, etc.). Especially this phenomenon was evident in cases when it was sought to transfer the Western model of family law into Eastern countries. For example, in 1890, in Japan, a draft Civil Code based on the Napoleonic code was put forth, but met with vehement opposition from powerful conservatives regarding the sections concerning family relations. The provisions concerning familial rights were seen as incompatible with the Japanese *iye* system, which expected full obedience of “inferior” members and was therefore rejected\(^2\).

Thus, the analysis of cultural restraint argument claims that seeking to reach the social acceptability and proper implementation of legal provisions, the latter should compatible with the social opinion. Accordingly, in highly polarized societies, the legal provisions should be based on a compromise between the disagreeing positions.

The second dimension for the deliberation on definition of family and content of legal family relations concerns the extent to which the regulation should be established in national laws and the extent to which the regulation of family matters should be internationalized. As to the content of this dimension, it closely relates the previously referred dimension, i.e. whether the regulation of family life should be based more on cultural arguments, or universal ones. As was already mentioned, many authors in Europe, as well as in the USA, focus their analysis on this dimension. However, Lithuanian situation has its specifics, which should be discussed.

First of all, it should be mentioned, that the legal status of “family members” in Europe is constantly changing. Initially, both the European Commission on Human Rights and European Court of Human Rights were reluctant to extend the protection of Article 8 of the European Convention on Human Rights\(^3\) to unmarried parents. Only towards the late 1980 they adopt the more progressive stance that “very weighty reasons would have to be advanced before a difference of treatment on the ground of birth out of wedlock


could be regarded as compatible with the Convention". The case of Berrehab in particular introduced a more liberal application of Article 8 whereby marriage was no longer stipulated as a prerequisite to establishing the existence of family life. However, now according to the European Court of Human Rights, Article 8 of the Convention ensures the right to respect for his family rights to different “families” – marriage-based families, non-marital families engaged in family relations, families with one parent, families with both parents irrespective of the time of birth of children, families without children, families of the same sex and families between close relatives (e.g. between brothers and sisters). Such expansion of the interpretation of “family” definition must be (willingly or reluctant) accepted in all Parties to the European Convention of Human Rights. In such case Lithuania is bound by the explanatory mandates issued by the ECHR, and this has been confirmed by the Constitutional Court of the Republic of Lithuania, which in this and other similar cases relies on the case-law of the ECHR, and refrains from using cultural arguments.

Both the European Court on Human Rights in case of Marckx v. Belgium, and the Constitutional Court of the Republic of Lithuania in the mentioned ruling held that the concept of family life is not confined to families formed on the basis of marriage and that it may cover other de facto relationships.

Accordingly to what has been analysed, deliberations in political, sociological and dimensions in Lithuanian context provide particular framework and guidelines which might serve as criteria for the formulation of the possible definition of family for the sake of public policy.

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1 Inze V. Austria. ECHR. Judgement of 28 October 1987, No 8695/79.
5 Ruling of the Constitutional Court of the Republic of Lithuania of 28 September 2011 on the compliance of the provisions of the State Family Policy Concept as approved by the Resolution of the Seimas of the Republic of Lithuania No. X-1569 “On the Approval of the State Family Policy Concept”.
6 Ibid.
Conclusions

1. The use of definitions of family and family members in laws of the Republic of Lithuania is chaotic and is lacking a systematic approach. It implies that definitions are just being copied from one law to another and the further amendments were not harmonised.

2. Research works analyzing family definition and content of family legal relations may be grouped into three categories: first, research works analyzing political dimension, i.e. to what extent a state may interfere into regulation of private (family) relations; secondly, research works analyzing sociological dimension, i.e. to what extent the official (legal) regulation of family life should be based on cultural constraint argument, and to what extent it should be based on universal comprehension argument; and thirdly, research works analyzing legal dimension, i.e. whether the family definition and regulation of family relations should be established in the national laws or should they be regulated universally.

3. Having considered the inference of research works in related fields, and taking into account national peculiarities of social and legal systems of Lithuania, the following criteria for the establishment of definition of family and family members in laws of the Republic of Lithuania for the needs of public policy may be listed:

   a) first of all, the family definitions used in different situations have to directly address persons to whom the policy makers refer. In other words, the definition must be clear and explicit and depend on the situation where it is used. As well, a definition should not create any obstacles to reach persons to whom it is directed (e.g. definition should not narrow the scope of application of a particular provision referring to family members just to the limits of marriage-based family);

   b) secondly, definition should not induce social discontent, as seeking a provision to be effective it has first of all be acceptable in the society. Besides, when the society displays plurality of attitudes, the definition or even use of a definition should be based on compromise between distinct social approaches.

   c) the third criterion is closely related to both previously mentioned criteria: a family definition should be based on de facto relations rather than formally established relations. Such approach would help to reach directly the particular addressees of the provisions. Besides, as referring to the existing relations rather than encouraging following certain behaviour it should not raise outrage in the society.

   d) the last criterion is explaining the previous criterion on de facto family relations: each definition should be primarily based on functional fields of family policy. The design of definition should depend on the aim of public policy which demands to define a family or family members. The legislator should be encouraged to formulate different definitions in
accordance with a set of aims (why definition is needed at all), i.e. to establish a joint property, to establish blood relations, to establish maintenance relations, to avoid conflict of interests, etc. E.g. in support for housing relations the aim of regulation requires to address people living together, in relations of helping persons with low income the aim of regulation is to address persons with the same income resource; in case of death of breadwinner the regulation is aimed to address persons bound by maintenance relations, etc.

Suggestions

The article infers the following suggestions:

1) First of all, policy makers should determine aims of family policy sought by particular laws and particular regulation situations;

2) Secondly, a systematic approach on the precision and legal technique should be adopted (placement of definition, reference making, and precision in defining (naming particular groups of persons, such as brothers, sisters, or referring to blood-relation, etc.) helping to refer to de facto situation of family relations;

3) Definitions of “family” and “family members” used in different laws should be harmonised under the prepared system in accordance with the aims of regulation and other criteria referred above.

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PRICE-ANDERSON ACT: A MODEL TOWARDS HARMONIZATION OF EUROPEAN UNION CIVIL LIABILITY FOR NUCLEAR DAMAGE?

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Abstract

International civil liability for nuclear damage is embodied by two major instruments: International Atomic Energy Agency (IAEA) 1963 Vienna Convention on Civil liability for Nuclear Damage and Paris Convention of 1960 on third party liability (OECD) with its amending protocols. Major problem arises because of lack of coherence among contracting parties and for this reason supplementary conventions and protocols has been adopted but sufficient results has not been achieved. After Fukushima accident harmonization of liability regimes remains essential in the European Union. Paradox occurs with third party nuclear liability rules whereas nuclear states follow the principles of channelling, limited liability of the operator and exclusive jurisdiction of the courts on contrary non-nuclear states adhere to opposite principles due to international law. The coexistence of heterogeneous compensation systems shows the need for legal framework harmonization at European Union or even global level. Civil liability for nuclear damage in the USA is regulated by the Price-Anderson Act which is being regularly revised. This model provides extraordinary nuclear occurrence which prevents nuclear installation operator from tort law defences however it creates strict liability for nuclear operators in case of a nuclear accident thus provides economic channelling instead of legal channelling. This paper analyses Price-Anderson model compensation system and its possible adjustments to European Union civil liability for nuclear damage framework.

Purpose – analyze the Price-Anderson model compensation system in the light of European Union civil liability for nuclear damage framework harmonization;

Design/methodology/approach – paper is based on document analysis, systemic, comparative analysis method by comparing different legal acts and its implications;

Findings – USA legislative base provides an effective compensation system with economic channelling model in case of nuclear accident, however there is still a lack of harmonized regime throughout European Union. Existing international regime provides rather the labyrinth approach whereas international conventions at different speeds regulate liability, insurance and compensation system for nuclear damage. Commission expressed the need to provide adequate
compensation model however several issues has to be dealt or even amendments to the primary law has to be made;

Research limitations/implications – analyze USA civil liability for nuclear damage regime in the light of cohesion and harmonization of European Union framework;

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

Originality/Value – only a few authors have analyzed some aspects of nuclear liability there is still a lack of academic comprehension of nuclear liability regimes and insurance issues in the light of harmonization at European Union level. This work provides insights into nuclear liability and compensation issues and will certainly be valuable in practice when improving legislative framework and developing nuclear projects;

Keywords: Price-Anderson Act, Nuclear damage, Vienna Convention, Paris Convention, nuclear insurance pool, strict liability, economic channelling, legal channelling;

Research type: research paper.

Introduction

Referring to endless debates in American society, certainly one of the most accurate has been the over the safety and economic viability of nuclear energy (Brownstein, 1984). Forms of Government subsidisation of nuclear power industry include the sponsorship of research, enrichment of fuels, and disposal of nuclear wastes also nuclear utilities makes payments into a trust fund.1 By 1954 only federal Government was involved in the nuclear power development and due to the adoption of Atomic Energy Act, the Atomic Energy Commission (hereinafter - AEC) was established which allows for the licensing and operating of nuclear power plants for commercial purposes2. Apparently not considered by Congress in 1954, was the effect that unlimited liability would have the ability of the industry to raise money from investors or on the potential of suppliers to enter the industry.3 Until then it was obvious that nuclear power would not exist without some limitation on liability, and Congress passed the Price-Anderson Act(hereinafter- PAA or Act), currently the amendment to the 1954 Atomic Energy Act. The main purpose of the Act is to ensure availability of large pool funds to provide orderly compensation to those who incurred damages from nuclear incident no matter who is liable. PAA provides “omnibus coverage” which means that all those who are harmed will be provided availability of funds. The legislation ensures an amount of

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compensation paid by private sector at no cost to the public or government. USA is not member to either Vienna or Paris Convention. On May 21, 2008 country deposited instrument for ratification of Convention of Supplementary Compensation (hereinafter – CSC) at the IAEA. Relatively the amount of compensation in USA is higher than international regime provides. The nuclear compensation system based on international conventions has been widely criticised as conventions originated in early 1960’s and since then principles haven’t changed much. Continuing discussion on lack of harmonisation at EU compensation system for nuclear damage we will analyze American compensation system which could serve as a feasible model to apply at European Union level in the light of harmonization process.

1. Price – Anderson Model of compensation for nuclear damage

The PAA became law in 1957 as a part of amendments to the Atomic Energy Act of 1954. The Act sets a limit on the monetary liability of companies for a nuclear accident, and defines the procedural mechanisms for the industry’s insurance coverage. This insurance protection consists of two tiers. Under the Nuclear Regulatory Commission’s (hereinafter - NRC’s) corresponding regulations, and referring to latest amendment of 2005, nuclear reactor owners must obtain $375 million in insurance liability coverage from a private insurer, referred to as primary financial protection according to the first tier. Second tier occurs in the event of an accident that exceeds $375 million in damages, the operators of the 103 operating nuclear reactors covered under the Act must pay up to $111.9 million per reactor to cover costs in retrospective annual premiums per year. This means that the potential total insurance pool financed by private interests is about $12.6 billion ($375 million primary financial protection and $111.9 million from each of the 103 reactors). Through the Price-Anderson Act, the U.S. nuclear power industry has more than $12 billion in liability insurance protection to be used in the event of a reactor incident. Additionally, Congress can modify or increase these coverage limits at any time through legislation. If the entire insurance pool is exhausted, state and local governments can petition Congress for additional disaster relief. In such case public or federal government does not pay insurance costs as it is directed to utilities. The act has proven so successful that Congress has used it as a model for legislation to protect the public against potential losses or harm from other hazards. Congress has extended the act several times, making significant alterations, most recently in the Energy Policy Act of 2005.

PAA provides an insurance system to benefit the public in the event of a nuclear power plant accident. The costs of this insurance, like many costs of nuclear generated electricity, are borne by the industry, unlike the corresponding costs of some other power sources. Costs from hydropower mishaps, such as dam failure and resultant flooding, for example, are borne directly by the public. The 1977 accident at the Teton Dam in Idaho caused $500 million in property damage, but the compensation covered utmost $200 million in low-cost government loans (Cravens, 2008). In this
case insurance pools\(^1\) in relation to nuclear industry covered costs which exceeded $221 million (Cravens, 2008).

The Three Mile Island accident in 1979 showed the ability of PAA to effectively provide care for the public. At the time of the accident, the private insurance pools had $140 million in first-tier. The pools collected insurance money from across the country at a central claims office in Harrisburg. These adjusters provided financial coverage to evacuate families as well as cover their living expenses with the request that any unused funds be returned (Berkovitz, 1989). The insurance pools indemnified 636 individuals and families for lost wages as a result of the accident and paid approximately $71 million covering claims and litigation costs related to the Three Mile Island accident (Berkovitz, 1989).

### 2. The evolution and problems of Price-Anderson Act

The Price-Anderson Act was adopted in 1957 and this model divided insuring costs between the nuclear operator and government. This Act required operator to provide insurance coverage for $60 million and government to add $500 million in case of nuclear accident.\(^2\) PAA creates strict liability in the event of nuclear accident. Anyone who might be held liable for nuclear damage including the supplier also exercises the liability insurance coverage (Brown, 1999). According to the amendments of 1966 the “extraordinary nuclear occurrence” provision was included which means that NRC or Secretary of Energy determines whether damages were substantial to person offsite and property offsite and all claims referring to this type of tort law were entitled to one federal court which will be responsible for adjudicating all claims and distributing compensation damages.

Quite drastically amendments were adopted in 1975 with new concept of compensation system which included “retrospective premium” thus constrained a second tier. After damage exceeds the amount covered by nuclear operator which was up to $60 million than additional amount of $5 million per power plant is endorsed. Retrospective premium means that nuclear operators received license form regulator and therefore they have to input the appropriate amount of money in case of accident (Heyes, 1998). In addition to that Government had to cover damages exceeding $60 million which was up to $500 million.

Nuclear operators are not liable for the entire costs of their own nuclear accidents, and the financial strain for this risk is inappropriately transferred to taxpayers. Since corporations under Price-Anderson are only responsible for two percent of the estimated cost of a serious accident, nuclear power corporations can ignore the dangers that reactors impose on American communities. In 1982 taking into account the Three Mile Island accident, Sandia National Laboratory prepared a

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\(^1\) The Insurance Institute defines an insurance pool as a group of insurance companies that pool assets, enabling them to provide an amount of insurance substantially more than can be provided by individual companies to insure large risks such as nuclear power stations.

study on behalf of the NRC which evaluated that damages from a nuclear accident could be estimated up to $314 billion – or more than $560 billion in 2000 dollars. Since that study, the NRC has developed adjudicative improvements to the probabilistic risk assessment. In comparison the Chernobyl catastrophe damages reached about $358 billion. The $10.5 billion provided by private insurance and nuclear reactor operators represents less than two percent of the $560 billion in potential costs of a major nuclear accident. Since nuclear reactor operators have their liability capped through Price-Anderson that means taxpayers could be responsible and the public inadequately compensated for hundreds of billions of dollars in costs from an accident or a terrorist attack. The amendments were adopted in 1988 whereas the liability of the nuclear industry was increased up to $9.87 billion and thus balanced between remission of defence provisions, determination sources and omnibus coverage.

In 2005 Energy Policy Act was adopted which extended PAA until 2025. This amendment requires operators to provide $375 million primary financial protection and to contribute $111.9 million to Secondary Financial program including 5% for legal costs per reactor.

Despite various positive factors, several problems related to PAA occur which will be discussed above. Higher risk reactors including older, relicensed reactors with ageing parts are not capable to carry correspondingly higher levels of insurance coverage and PAA does not stipulate security requirements to protect against terrorism at insured reactors. Several authors argue that Act distorts the economic viability of the nuclear power industry since taxpayers cover the industry’s insurance costs (Lowenstein, 1976; Dubbin J. A. and Rothwell G. S., 1990). Price-Anderson Act was introduced by Congress as a temporary solution referring to the refusal of private insurers to cover the risks of nuclear power. While $12.6 billion is not enough amount, since costs of damages exceeds this sum also the “retrospective premiums” might be considered as an up-front guarantees since operators do not have to pay until accident occurs. The Price-Anderson Act might obscure the Government’s financial obligations which in the nuclear accident are unavailable from the nuclear industry, thus possibly increase the burden on taxpayers. The Act has no fault liability for reactor operators, and injured victims are precluded from directly suing vendors or manufacturers responsible for the accident it also might poses legal hurdles to victims seeking compensation also such regulation leaves opportunity to bypass responsibility to adjudicated claims. PAA states that jurisdiction over an accident falls to the federal district court thus restricts plaintiffs’ ability to handle any state laws which is beyond federal protections. Furthermore, no fault liability limits reactor operator accountability even if they are reckless or criminally negligent and assures operators from punitive damages that are not covered under their private insurance coverage.

3. Global approach of nuclear damage compensation system

Vienna Convention on Civil liability for Nuclear Damage (hereinafter – Vienna Convention) was adopted at the diplomatic conference at IAEA in 1963 and is open to all States. Vienna Convention has been amended once by 1997 Protocol which increased the deprived maximum liability up to 300 million SDRs (about 360 million Euros). Vienna Convention does not fix an upper ceiling for the operator however it may be limited by legislation of each State bearing that compensation ground is not less than US $ 5 million. Due to the Vienna Convention operator is obliged to provide insurance on the imposed liability and in case there is no possibility to grant adequate insurance, the State covers difference between specified liability amounts.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage (hereinafter - 1997 Protocol) and the Convention on Supplementary Compensation for Nuclear Damage (hereinafter - CSC) were initial instruments that increased liability amounts also widened the scope of covered damage and the rules of jurisdiction. CSC is open to all States despite they are parties to Vienna Convention or Paris Convention or even are neither a party to any of these conventions.

The Convention on Third Party Liability in the Field of Nuclear Energy (hereinafter – Paris Convention) was adopted in 1960 including members of the OECD with several non-European countries. The Convention does not apply to nuclear incidents or damage occurring outside territory of the contracting states unless operator’s national law provides contrarily. Third party liability for nuclear activities covered by international conventions reflects an early identification and prevention of nuclear damage system also put forward the impetus to create a decent system of efficient protection of victims in case of an accident as well as to foster the progress of nuclear market. After the adoption of the Paris Convention contracting parties acknowledged that liability amount not sufficient to cover nuclear incident damage therefore several amendments to the convention were made and later on the Brussels Supplementary Convention provided three tier systems and established additional State compensation tier with public funds compensation tier. Paris Convention imposes minimum liability amount of 5 million SDR to nuclear operator and maximum of 15 million SDR. However most of the contracting parties have higher operator’s liability amount, for example Germany has unlimited liability for nuclear operator. Therefore Steering

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2 Value in gold 29 April 1963. Equal to 235 million Dollars (based on US$ gold value on 10/08/2012 of $1650/oz)
3 Australia, Canada, Japan, Korea, Mexico, United States of America are not Contracting parties of nuclear liability conventions.
5 The SDR is International Monetary Fund reserve asset. 1 SDR = 1.29500 USD (Approx. rates as of 2013 March)
Committee for Nuclear Energy adopted non-binding recommendations to raise the liability amounts up to 150 million SDR.

Despite various intentions to create links between these two mechanisms a considerable risk of legal gaps remain. None of the conventions are applied to damage suffered in the territory of a contracting party to other convention. Both conventions implemented to nuclear accidents and the damage suffered on high seas may result in simultaneous application. Joint protocol should have been the answer to the lack of existing links however not all Member States acceded this protocol. Fukushima accident accelerated the need find solution to the patchwork, therefore Commission provided a questionnaire to public referring to harmonisation aspect which is analysed in the following part.

4. Harmonization of civil liability regime at European Union framework

Nuclear liability regimes remain governed by national laws, which in Member States reflect the provisions of either the Paris Convention or the Vienna Convention. Amongst them, some apply legal channeling principle alongside in compliance with unlimited liability. There are five Member States (Austria, Cyprus, Ireland, Luxembourg, Malta) not bound by any Convention, thus applying common tort law rules to nuclear liability which imposes obligation for operators, transporters and suppliers held unlimitedly liable. The gap between the potential costs and the effective amounts for which nuclear operators are liable and covered by insurance creates several problems. Thus, not only victims are not treated equally, since not all of them will receive compensation for the same types of damage; Competition rules in different Member States could be distorted, since the amounts for which operators might be held liable varies at each Member State and they will have to estimate large amount of the costs which are not covered. The gap between compensation provided by the operator and the State creates a governance problem and might precede an impact on public budgets (Schwarz, 2006).

Commission has launched public consultations document in order to find out what would serve as precondition to harmonization of liability rules. Questionnaire covers possible options for harmonization at EU level such as for Euratom to accede to a particular convention. Other options cover traditional methods as new binding or soft-law regulation. However it should be taken into account that new legislations might lead to a bigger patchwork instead of clarification.

Possible option would be harmonization through ratification of the Amended Paris Convention by all Member States but several obstacles occur. Firstly, OECD membership would be a precondition for such accession and not all countries are members (Lithuania, Latvia, Malta, Cyprus, Bulgaria, and Romania). Non-member countries might adhere to OECD but only with unanimous assent of the existing contracting parties. In this case the need to phase out of one of the Conventions is mandatory as participation in both would not be favorable.

Other option might be Euratom’s accession to one of the Conventions notably the Amended Paris Convention. This scenario is also quite controversial as Euratom’s jurisdiction in external
matters goes in line with internal jurisdiction and article 101 of Euratom Treaty can’t precondition the Community to accede the Amended Paris Convention (Handric, 2012). Referring to Article 184, Community has legal personality and is considered as a subject to international law. However Paris Convention related to accession does not introduce option for supranational entity to accede it and necessary amendments have to be made.

Questionnaire provides part related to insurance pools, whether to achieve sufficient means of compensation operator’s pool or insurance pools should be taken into account. In this regard worth mentioning that effective compensation mechanism is reached by adding the pooling system as operator solely or in compliance with State and public funds is not capable to provide such huge amounts of compensation. Therefore worth taking into account an option of creation of insurance pools throughout the European Union similar to the one existing in the USA referring to economic channeling. As of January 2013 there are currently 185 nuclear power plant units in Europe and 17 units in five countries are still under construction (e.g. France has 58, United Kingdom 15, Sweden 10, Germany 9 NPP units). Therefore the creation of insurance pool might occur some obstacles from countries having more operating units, as they would have to pay bigger amount in case of nuclear accident.

Several concerns were said reflecting the amount of compensation imposed by national laws. Here exists wide variation as well as there are countries with blank indemnity also countries that set the minimum amount to the operator as it is imposed by international conventions, also there are countries setting higher amounts than convention’s required minimum. It has to be taken into account that possible variation according to the convention caps does not preclude additional problems as such of State aid question whereas when a State decides to impose to the operator higher amount than is defined in the conventions also there is often used possibility for State to cover certain amount up to required by national legislation. However when State decides to impose current amount to the operator and of course mandatory financial coverage in necessary but the rest amount up to the obliged cap has to be covered by the State than is quite questionable situation of alleged State aid issue according to Art 107 Treaty on the Functioning of the European Union (hereinafter -TFEU). Article says that aid granted through State resources in any form favoring certain undertakings, affecting trade between Member States is incompatible with internal market. In this case State provides a guarantee to compensate the rest of amount defined in national legislation that is necessary to cover damage costs. According to TFEU such measure should be notified to Commission and clearance received in order to provide coverage. Referring to what is said questionnaire provides several options: currently by increasing the amounts and capped liability covered also introduced option with unlimited liability and possibility to involve all related parties to compensation without any channeling. The option with unlimited liability is quite controversial and theoretical as countries whose national legislation imposed blank indemnity also provide financial security limit gaps because none of the insurers would provide the unlimited amount insurance. From other point of view the imposed unlimited liability system would not lead to a sufficient compensation system as in such scenario operator will bankrupt following the accident State obligation to cover the costs until same scenario is reached. And is such case related parties are not
included into compensation system as the accident might occur because of technology supplier fault
or fuel supplier or other related party fault not only the operator’s fault. Of course such channeling
liability idea was at the outset to ease the procedures for victims to adjudicate claims for damages
without need to prove fault. Presumption was made that operator is solely responsible for the NPP
object. If there is a need to provide adequate and timely compensation but not just theoretically
strong background constructing the obligation to provide unlimited compensation which is
impossible to implement.

Conclusions

Nuclear liability regime at the USA is governed by Price-Anderson Act which is regularly
reviewed in order to reflect changing situation of NPP variety and reflecting the lessons learned
from previous accidents so as to provide orderly compensation without subsidies form Government.
Therefore insurance pools and mandatory implication for operator to cover damage costs by setting
the two tier system is quite innovative method and with economic channeling instead of legal
channeling is more effective related to compensation when accident occurs.

International liability system is quite complex as it covers two major instruments namely
Vienna and Paris conventions with several amending protocols which not of them are yet in force
because of lack of the countries ratifications. However these instruments do not work by
supplementing each other rather regulating the same object with acceded different countries sets
two different frameworks and instead of facilitation the solutions provide quite an intricacy into
whole process.

The need for harmonization at European Union level becomes more urgent in case the
accident occurs and sufficient measures need to be taken to improve the existing system thus to
provide adequate compensation. However liability system at European Union level is still divided
into Vienna-Paris regimes and there is no separate legislation adopted so far. Therefore
Commissions launched public questionnaire on nuclear liability should give more clarification on
further legislative initiative to find a solution from existing patchwork.

Suggestions

Reflecting the need to harmonize European Union nuclear liability system certain measures
have to be taken. To ensure orderly and adequate compensation economic channeling model
whereas all parties related to nuclear activities should be involved, might serve as a precondition to
reflect lessons learned from previous accidents and the compensation provided. This model would
not be only theoretical background to ensure high compensation amounts but also provide the
implementation and compensation in a timely manner without bankruptcy of the operator or
involvement of State with additional payments that adhere to State aid issues.
In addition to the establishment of economic channeling, insurance pools throughout European Union would be as a part of harmonization and thus would construe a two tier system in case of accident. However several obstacles should be solved before, as in USA operators are required to pay “retrospective premium” in relation to the license issued by the NRC. Trying to apply such model at EU level would be necessary to solve the so called “central regulator issue” as currently referring to Nuclear Safety Directive amendments the contrary initiative is ongoing for regulators to remain as much independent as possible. In this case possible subordination with a “central regulatory body” would be needed and the level of competence should be defined or even the amendments to EU legislation have to be done.

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THE EUROPEAN COURT OF HUMAN RIGHTS’ CASE LAW ON THE RIGHT AGAINST SELF-INCRIMINATION IN CRIMINAL PROCEEDINGS

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Abstract

Purpose – The aim of this article is, according to the theoretical application principles of the right against self-incrimination, to give an overview of case law concerning infringements of this right in criminal proceedings as well as to give an overview of fields where the scope of this right can be limited and these limitations may be justified according to the principles set in case law of the European Court of Human Rights (hereinafter – ECtHR);

Design/methodology/approach – The theoretical basis of the topic is presented in the first part of the article. In this part, according to the analysis and comparative methods, principles, types of compulsory measures and criteria of the right against self-incrimination are excluded, as infringements of the right against self-incrimination are based on these grounds in the ECtHR jurisprudence. This part compares various scholarly approaches how the right of self-incrimination has emerged as well as it compares criteria for determining violations in different cases dealt by the ECtHR. The second part of the article, according to the document analysis method, examines the ECtHR jurisprudence on the right against self-incrimination. After an overview of relevant case law, examples of various infringements of this right and their legal assessment are presented. This part seeks to give an overview of the relevant case law of the ECtHR, which have impact to the issue of this article. Lastly, according to generalisation and alternative methods, the final part gives information on the justified limitations of the right against self-incrimination, this part also explains why such limitations do not infringe the European Convention on Human Rights (hereinafter – ECHR). Last part also presents examples of alternative practise of member states on the right against self-incrimination which is in line with human rights standards;
Findings – The right against self-incrimination has been in existence for more than 200 years and it is derived from a prosecutor’s obligation to prove the guilt of the accused (in this article only the expression “accused” is going to be used, as most infringements of the right are established after presentation of indictment to the accused). The ECtHR has developed forms and criteria for determining infringements of this right. The common basis for assessment of such infringements is the principle of reasonableness, however, in its case law the ECtHR additionally invokes compulsory powers and their extent in order to get some evidence; the extent of public interest in crime investigation and in conviction; the existence of relevant procedural measures and the assessment of evidence achieved according these measures. The ECtHR case law provides that it is prohibited to torture or intimidate a person in order to get his plea of guilt, it is also forbidden to conduct an intrusion into the body of the accused if such intrusion is against the will of the accused. Moreover, before presentation of the gravamen to the accused and assurance of proper rights of defence to the accused, it is prohibited to compel a person to admit of having committed an offence. Especially significant are those cases, when there is no obligation to prove the guilt, as the accused may get particularly vulnerable in these cases. Improper application of procedural averment measures and methods in order to get plea of guilt are not allowed in the ECtHR case law either. On the other hand, the right against self-incrimination is not absolute and member states are permitted to establish certain compulsory measures against the accused. In other words, it is allowed to use evidence, collected using compulsory powers when repetitive criminal acts were committed, in court, if such evidence are treated only as additional evidence in secondary proceedings and they do not conform the main basis of conviction. In criminal investigations of some offences (such as disposition of drugs or falsification of documents of vehicles) public authorities and officials are given a wider discretion to use compulsory powers and, as a consequence, limitation of the right against self-incrimination may be justified according to the ECHR in such cases. Such limitation may be justified by public safety, road safety and public interest protection objectives;

Research limitations/implications – This article analysis the right against self-incrimination of accused in the ECtHR jurisprudence. Following issues are analysed in the study: which compulsory powers do not infringe the right, which criteria are used to determine whether there was an infringement of the right, which actions are not consistent with the Article 6 and other provisions of the ECHR and, finally, which limitations of the right may be justified. According to the theoretical principles of the right against self-incrimination, some practical suggestions are provided as well as it is presented how the assessment of the offence differs according to the nature of the offence (e.g. repetitive criminal acts, disposal of drugs, etc.) and the scope of the right;
Practical implications – This article presents relevant case law of the ECtHR on the right against self-incrimination and its limitations. In national criminal prosecution application and evaluation of formed criteria in the ECtHR gives an additional mechanism of law assessment. More importantly, the mere application of the principle of the reasonableness does not form a clear-cut case law and for this reason the content of the right against self-incrimination gets vague, not systematic and not effective. Consequently, issues dealt in this article are relevant for their practical nature, as this article suggests assessment criteria of legal situations, which have already been recognised on national and regional levels. Furthermore, this article is significant for its examination of proper application of the right against self-incrimination;

Originality/Value – This study provides relevant case law of the ECtHR on the right against self-incrimination in criminal proceedings. In Lithuania the right against self-incrimination derives from the Constitutional provisions. Article 31 expresses the right not to incriminate yourself, a family member and a close relative. The historical analysis and assumptions of formation of this right was examined in the article “Prohibition to compell the Persons to give Evidence against themselves as the Constitutional Guarantee in the Criminal Procedure” by professor Dr. R. Jurka. In detail this issue was presented in guide “Rights to a fair trial under the European Convention of Human Rights (Article 6)” by Dovydas Vitkauskas and Sian Lewis-Anthony. Foreign scholars as J. R. S. Forbes, R. Müller and other scholars have also analysed this issue, however, relevant case law of the ECtHR on the right against self-incrimination and its limitations have not been widely analysed in Lithuania. Issues analysed here are significant, as the assessment of the right against self-incrimination and its infringements are dynamic and changeable in the ECtHR jurisprudence, moreover, these issues raise problems in national criminal proceedings.

Keywords: right against self-incrimination, case law of the European Court of Human Rights, accused;

Research type: research paper.

Introduction

In democratic countries it is recognised that it is not enough only formally to set up the law on the right against self-incrimination, so for this reason member states are obliged to establish a relevant model of criminal proceedings, which was able to ensure a real possibility for the accused to use his rights. According to the ECtHR case law, states are encouraged to establish and apply such mechanisms of the right against self-incrimination, that they were able to protect the accused in the relationship with public authorities. The
right against self-incrimination has deep historical and constitutional roots in many countries. This right is related to the presumption of innocence and the right to a fair trial. Consequently, it is important to understand and apply this right according to principles such as the principle of equity, prohibition to abuse powers, procedural protection of participants of criminal process and protection of personal privacy.

1. The theoretical principles of the right against self-incrimination

The right against self-incrimination is one of the essential rights in criminal proceedings ensuring compatibility of the relationship between the accused and public authorities. There is no unanimous agreement between scholars on the question where this right was derived from. Traditionally, it is considered that the right against self-incrimination formed right after 1641, when English courts were prohibited to force the accused to swear and plead the guilt (Davies, 2000). Jurka (2006) and Liutkevičius (2011) complement Davies classical theory with insights of other authors. In accordance with these authors and other authors Jurka and Liutkevičius examined, the right against self-incrimination was not considered as a legal source in England in the 17th century, and as a consequence, this fact does not allow to deduce that such right existed in the context of English law. According to many other scholars, only in 1791 in the USA the right against self-incrimination became a source of law, as it was laid down by the 5th Amendment of the Constitution of the USA. In the USA, this right became an integral part of prosecution’s burden to prove the accused is guilty. Other authors, as Helmholz (1997), Ambos (2002) are of the view that this right is derived from old roman or canon law sources. Nevertheless, the right against self-incrimination is neither absolute, nor static. After many years of emergence of this right, the ECtHR assessed and formed both case law on application of this right and its minimal theoretical principles in the contemporary European context.

The main principle of the right against self-incrimination was formed in Barbera, Messegue and Jabardo v Spain\(^1\) case. In general, it is argued, that in criminal proceedings the prosecutor is obliged to prove the guilt of the accused and that validity of the accused’s guilt should be without doubt. However, this principle is not absolute and the prosecutor’s duty, which was established by the ECtHR case law, to prove the guilt is based on evidence received from the accused or the suspect in some cases. The application of

\(^1\) Judgement of European Court of Human Rights: Barbera, Messegue, Jabardo v. Spain, no. 10590/83, § 70, 77, ECHR, Court (Plenary), 6 December 1988.
this theoretical principle threatens to the right against self-incrimination. Theoretically, breach of this right may occur not only in situations where the accused is forced to plead his guilt or when there are doubts about the validity of evidence, presented by the prosecutor. In some situations, this right may also be infringed when various compulsory powers are being used. Saunders v United Kingdom\(^2\) indicated that the use of compulsory powers against the accused creates a situation when the accused is worn down and agrees to give testimonies against himself. Other types of compulsory powers may determine testimonies of the accused against himself likewise. First of all, this might be factual compulsion by officials, which is mostly related to a physical compulsion, as it was established in Jalloh v Germany\(^3\) case, or it may be a psychological pressure, as it was established in Gäfgen v Germany\(^4\) case. Officials may use deception, e.g. they may use secret investigation techniques. In such cases, it is of especial importance to assess whether specific compulsory measures did not go beyond the scope of the right against self-incrimination.

The assessment of infringements of this right was presented in Jalloh v Germany\(^5\) case by the ECtHR. This case established that the right against self-incrimination is infringed according to the fact, whether there was a possibility to obtain evidence in other ways without the use of compulsory measures or pressure to the accused. Examining the right against self-incrimination, Mahoney (2006) suggests to use a test as a guide for determining an infringement of the right. According both to this test and the ECtHR case law, a conclusion may be drawn that establishing whether there was an infringement of the right against self-incrimination three main criteria have to be assessed every time:

1. The nature and degree of compulsory powers, used for the purpose to obtain some evidence;

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\(^2\) Judgment of European Court of Human Rights: Saunders v. The United Kingdom, [GC], no. 19187/91, § 68, ECHR, 17 December 1996.

\(^3\) Judgment of European Court of Human Rights: Jalloh v. Germany, [GC], no. 54810/00, § 68-72, ECHR, 11 July 2006.

\(^4\) Judgment of European Court of Human Rights: Gäfgen v. Germany [GC], no. 22978/05, § 108, ECHR, 1 June 2010.

\(^5\) Judgment of European Court of Human Rights: Jalloh v. Germany, [GC], no. 54810/00, § 97-119, ECHR, 11 July 2006.
2. The nature of public interest in investigation of a case and in sentencing the accused;
3. The existence of relevant protective procedural measures and the use of information obtained using these measures.

The content of these criteria is revealed in the ECtHR jurisprudence as well as in O’Halloran and Francis v United Kingdom\(^1\) and Funke v France\(^2\) cases. Commenting the first criterion on the nature and degree of compulsory powers in O’Halloran and Francis v United Kingdom case, the ECtHR stressed that, first of all, it has to be concerned on direct compulsion, which may be expressed in several ways, e.g. risk of fine if the accused refuses to testify. Assessing circumstances of the case, the ECtHR stressed that in the sense of Article 6 of the ECHR wider discretionary rights are conferred during an interview of a accused if a narrow procedural issue is resolved, e.g. only the refusal to give a driving licence or an identity card to the policeman. The nature of compulsion in situations, where officials had a free access to all documents of the accused, cannot be justified. Examining the second criterion, namely, the nature of public interest in case investigation and conviction, the ECtHR stressed the seriousness of the offence and the severity of sentence. However, the examination of this criterion is a matter of assessment in every case and it would be difficult to exclude what kind of sentence or public interest was essential to constitute an infringement of the right against self-incrimination. Examining the third criterion the ECtHR highlights the particular importance of evidence, which determine whether the accused is guilty. Especially difficult cases are those which are subject to pre-established presumptions. For example, in cases where a person may be sentenced without guilt, forced testimony against oneself comprise potential conditions for the breach of the right against self-incrimination. In cases, where both the fact of the offence and guilt have to be established, the extent of pressure to testify is wider, as the proof of the accused’s guilt cannot be based on the mere use of his testimonies.

Constitution of the Republic of Lithuania in Article 31(3) provides the right against self-incrimination. The goal of this provision is to prevent any form of forced testimony against accused, their family members or close relatives. This constitutional provision covers both substantive as well as procedural law. In some cases Lithuanian courts are not elaborating the substance of the rights against self-incrimination. Courts formally apply and consolidate Articles 80(1), 82(3), 83 of the Code of Criminal Procedure of the Republic

\(^1\) Judgment of European Court of Human Rights: O’Halloran ir Francis v. The United Kingdom, [GC], no. 15809/02, 25624/02, § 40, 114, ECHR, 29 June 2007.

of Lithuania\(^1\). This law specifies subjects\(^2\) that enjoy the right, but the whole concept of this right in Lithuania is based on case law. On the other side in many cases Lithuanian courts are relying directly on ECtHR case law as it was done in R. B.\(^3\) case and other cases. This practice suggests that the ECtHR case law is a significant resource that complements the national law and broadly applicable principle of reasonableness. According to the practice of foreign countries it may be argued, that in most cases the question whether there was an infringement of the right is solved according to the reasonableness criterion in a particular situation as well as according to the legal regulation\(^4\). In Danish legal system, the use of compulsory measures is related to personal duties. For example, a person has a duty to properly inform police officers about his identity. According to Polish law, a person may lose protection from the compulsory measures used by police officers when it is impossible to arrest him resistless, as it was established in Berlinski v Poland\(^5\) case. As a consequence, coercive measures used by officers may be justified in some cases. Despite this, there exists different limitation scope of the right against self-incrimination in different countries.

In overall, it can be said that the right against self-incrimination has originated more than two centuries ago, whilst according to some authors, it originated even in ancient times. Although this right is assessed on the basis of the principle of reasonableness in national law of member states, the ECtHR case law has excluded types of coercive measures infringing this right. The ECtHR case law, according to relevant coercive measures, has formed a test for determining whether the right against self-incrimination was infringed. Criteria of this test include the nature and degree of coercive measures used in order to get some evidence; public interest in criminal proceedings and in sentencing; the existence of relevant protective procedural measures and the use of information obtained using these measures.

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1 The Supreme Court of Lithuania, Criminal Division, 23 November 2010 ruling of the board of judges in criminal case V.B. (case No. 2K-517/2010).
3 The Supreme Court of Lithuania, Criminal Division, 28 May 2013 ruling of the board of judges in criminal case R.B. (case No. 2K-290/20132K-214/2013).
5 Judgement of European Court of Human Rights: Berlinski v. Poland, no. 27715/95 30209/9, § 61-62, 43, ECHR, 2002-IV.
2. The ECtHR’s Case Law on the Right against Self-incrimination in Criminal Proceedings

Before the overview of relevant case law of the ECtHR on the right against self-incrimination, it should be noted, that this right falls into the scope of Article 6 of the ECHR. Right to a fair trial laid down in Article 6(1) and (2) of the ECHR means application of principles such as adversarial process, equality, the presence of the accused in the trial, the possibility of counter-defence, the right against self-incrimination, the prohibition of unjust foreign trial in criminal proceedings. The right against self-incrimination is an essential human right in criminal proceedings, this principle has been examined by the ECtHR and its case law has been formed by now.

In *Bogumil v Portugal*\(^1\) case the ECtHR established that officials are allowed to use coercive measures only to certain extent according to Article 6 of the ECHR. Such allowed coercive measures may be used to obtain certain evidence existing independently from the will of the accused. It was found that coercive measures cannot be used in order to obtain the plea of guilt, documentary evidence or other information, which could be obtained only using physical impact to anatomical integrity of the accused. It should be noted, that expertise or tests of urine, hair, fingerprints, voice and DNA does not infringe Article 6 of the ECHR, as such expertise and tests are objective and does not depend on the will of the accused. Contrary, in order to gather physical evidence against the will of the accused (e.g. drugs), priority has to be given to medical measures rather than other assumptions (e.g. law protection assumption). It means, that in order to gather physical evidence from the accused it is not enough for the existence of preventive assumptions; there should exist a reasonable suspicion that a person, for example, is selling or using drugs. In those cases where drugs or other psychotropic matter are related to the integrity of the accused, decisions of specialists for the specific action are of specific importance.

Gathering physical evidence and consent to give physical evidence against the will of the accused is closely related to admissibility to use suppression measures. In *Magee v United Kingdom*\(^2\) and *Shabelnik v Ukraine*\(^3\) cases the ECtHR constituted that Article 6 of the ECHR prohibits to take into account the plea of guilt which was obtained using threat and when the accused was arrested straight after his plea of guilt or when he was not

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\(^1\) Judgement of European Court of Human Rights: *Bogumil v. Portugal*, no. 35228/03, § 68-70, ECHR, 2008-II.

\(^2\) Judgement of European Court of Human Rights: *Magee v. The United Kingdom*, no. 28135/95, § 34-43, ECHR, 2000-III.

\(^3\) Judgement of European Court of Human Rights: *Shabelnik v. Ukraine*, no. 16404/03, § 42-50, ECHR, 2009-V.
allowed to see his legal representative (except those situations where the accused did not put any effort or was not interested in this right). All these considerations imply, that in order to get the plea of guilt of the accused, it is forbidden to use any pressure forms against the accused, especially in those cases where his legal representative is not present or the suspect is not formally recognised as the accused. Nevertheless, it the accused is reasonably accused of committing an offence, it is allowed to use measures of suppression (which are characterised by coercive measures) and they may be used against the accused, however, procedural guarantees have to be assured for the accused in every case.

There is no clear-cut case law of the ECtHR on the issue where the applicants were punished for actions which go beyond the limits of criminal prosecution and when penalty was imposed regardless the acquittal of the original charges. For example, in *J.B. v Switzerland*\(^1\) case, according to Swiss law a person was punished as he did not provide documents, proving his investment, to public authorities. In *Shannon v United Kingdom*\(^2\) case the applicant refused to cooperate with an investigator and, as a reason, the applicant was punished. In these cases the applicants were acquitted of the original charges, however, according to seized documents in primary cases they were punished in secondary cases. In both these cases the applicants were recognised as victims of the infringements of the right against self-incrimination. They were recognised victims despite the fact, that they were obliged to present such documents under the law and despite the fact, that penalties received were relatively small.

Assessing the accused’s silence or refusal to cooperate in criminal proceedings, it should be mentioned, that sometimes certain situations may arise where legitimate coercive measures (e.g. suppression measures) determine certain consequences for the accused, however, they are usually justified according to the aims of the criminal proceeding. Nevertheless, even in those situations, remaining in silence cannot form a basis for the final judgement. For example, in *Beckles v United Kingdom*\(^3\) the applicant did not defend himself and remained silent all the time during criminal proceedings. Such silence was one of the consequences for the jury to convict the accused, however, this was an infringement of the right against self-incrimination according to the practise of the ECtHR. In this case, even the fact that the jury was improperly instructed about the

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\(^1\) Judgement of European Court of Human Rights: *J.B. v. Switzerland*, no. 31827/96, § 70 , ECHR, 2001-II.

\(^2\) Judgement of European Court of Human Rights: *Shannon v. The United Kingdom*, no. 6563/03, § 34-36, ECHR, 2005-IV.

\(^3\) Judgement of European Court of Human Rights: *Beckles v. The United Kingdom*, no. 44652/98, § 52-60, ECHR, 2002-IV.
grounds for the conviction was assessed by the ECtHR and, for this reason, the ECtHR constituted that the UK national court failed to assure the applicant’s right to a fair trial.

Derivative infringements of the right against self-incrimination are situations when violations of other provisions rather than Article 6 occur, however, such violations may disregard the essence of the right against self-incrimination likewise. Usually such infringements occur due to torture in criminal proceedings. One of the examples in the ECtHR case law – during pre-trial investigation the applicant was forced to take emetics in order to get some evidence – drugs from his stomach. Such action was regarded as violation of Article 3 of the ECHR. Another example of such derivative right occurred when conviction was based on testimonies of tortured witnesses, as it was in Osmanağaoğlu v Turkey case.

In the case law of the ECtHR specific examples of infringements of the right against self-incrimination are infringements when the accused is convicted because of remaining in silence or because of his confession or other measures or methods, if such acts are not allowed in criminal investigations:

1. The use of the accused’s silence in primary inquiry without the presence of the representative, when the accused was arrested straight after the inquiry, as happened in John Murray v United Kingdom case;
2. The use of plea of guilt, which was obtained straight after the arrest and when the accused was threatened and it was refused for the accused to see his legal representative, as indicated by Magee v United Kingdom case;
3. The use of the plea of guilt obtained from an accused without the presence of his legal representative in conviction of the accused, as indicated by Shabelnik v Ukraine case;
4. Infiltration of the informer to the camera of the accused for the purpose to obtain information about the robbery, given the fact that the majority of the accused confessions were provoked by continuous surveys, and the informer knew all the information prior his infiltration, as it was indicated in Allan v United Kingdom case.

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1 Judgement of European Court of Human Rights: Osmanağaoğlu v. Turkey. 12769/02, § 50, ECHR, 2009-III.
2 Judgement of European Court of Human Rights: John Murray v. The United Kingdom, [GC], no. 18731/91, § 59-67, ECHR, 8 February 1996.
3 Judgement of European Court of Human Rights: Magee v. The United Kingdom, no. 28135/95, § 34-43, ECHR, 2000-III.
4 Judgement of European Court of Human Rights: Shabelnik v. Ukraine, no. 16404/03, § 42-50,49, ECHR, 2009-V.
5 Judgement of European Court of Human Rights:
Another example of similar violation of the right against self-incrimination was the use of legal instruments to force the accused to collaborate with officials of public authorities for the conducted business transactions and the subsequent conviction of the accused for fraud, when this conviction was based on the information obtained during collaboration, as indicated in *Saunders v United Kingdom* case.

On the other hand, even very undesirable acts of public authorities may be without prejudice to the right against self-incrimination in some situations. In such cases, when proper prerequisites of law supervision were taken into regard, there was no dishonesty and acts did not violate rights of a person (those acts did not amount to torture or threatening) the right is not going to be infringed. Such case law was established in *Bogumil v Portugal* case.

In overall, the right against self-incrimination is established in Article 6(1) and (2) of the ECHR and it is derived from the essential right to a fair trial. In some cases, the violation of this right is derived from the breach of Article 3 and other provisions of the ECHR. Examples of infringements of this right occur not only by making an impact to a person or his relatives, but as well in other forms such as the use of silence of the accused, the use of improper tools and methods of criminal proceedings.

### 3. Justified limitations of the right against self-incrimination

After an overview of principles of the right against self-incrimination and the relevant ECtHR case law, it should be stressed that not all acts of public authorities amount to infringements of this right. There exist some examples of regulation of the right against self-incrimination, which are considered as reasonably limiting the scope of the right in the jurisprudence of the ECtHR.

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Table 1. Examples of violations of the right against self-incrimination and justified limitations of the scope of this right according to the jurisprudence of the ECHR

<table>
<thead>
<tr>
<th>The fields of the right against self-incrimination</th>
<th>Examples on violation of the right against self-incrimination</th>
<th>Examples on justified limitation of the right against self-incrimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compulsion to confess during the pre-trial investigation</td>
<td>• Confession obtained using torture; • Confession obtained without presenting indictment to the accused or without the presence of the legal representative of the accused, if such confession acts as a basis for conviction; • Confession obtained by infiltration of secret informer and by provoking the confession of the accused if the subsequent conviction is based on such confession.</td>
<td>• Plea of guilt obtained with the presence of the legal representative of the accused and straight after the presence of indictment; • The use of confession obtained by infiltration of secret informer or by following the accused, however, such measures cannot conform the main basis for conviction.</td>
</tr>
<tr>
<td>Repetitive criminal acts</td>
<td>• The use of evidence in secondary case, which was obtained in primary case where the accused was acquitted, and when such evidence are essential for conviction.</td>
<td>• Transposition of the burden of proof to the accused in secondary cases if his intention to commit a crime in primary case was proved (for example, the accused was caught in airport with drugs when in other drug possession case his guilt was proven).</td>
</tr>
<tr>
<td>Drugs disposition crimes</td>
<td>• The use of drugs extracted from the body of the accused, without the presence of the responsible medic, but exclusively by the decision of public officer; • The use of drugs found without search warrant during the party as an evidence in the court, when such action infringes the principle of adversarial process.</td>
<td>• The use of drugs extracted out of the body of the accused by the decision of responsible medics and without any threat to life or health of the accused; • The use of drugs as an evidence in the court, without prejudice to the principle of equality.</td>
</tr>
<tr>
<td>Other crimes (Counterfeiting of transportation documents)</td>
<td>• Request for the owner of the vehicle to provide driving licence when there is no infringement of the use of the vehicle in relevant case.</td>
<td>• The request to present a driving licence when there was speeding or other contravention of laws; • The imposition of fine to the owner or user of vehicle for presentation or hiding counterfeited identity or vehicle documentation.</td>
</tr>
</tbody>
</table>
Speaking about limitations of the right against self-incrimination it is worth noting, that certain limitations may be justified in situations where transportation is used or there is presumption to believe that transport documentation was counterfeited. Those situations, when national law sets some sanctions for speeding, counterfeiting or other contravention of law, limitations of the right against self-incrimination may be justified by public interest. This is also confirmed by the above-mentioned O’Halloran and Francis case, where the ECHR stressed, that the requirement for the driver, who was speeding, to present his documents was without prejudice to the right against self-incrimination. The ECHR does not treat such a requirement as illegitimate measure, as public interest requires to assure road safety, moreover, the applicant knew all the laws requiring to present his documents in case of speeding. In Weh v Austria case, a fine was imposed to the vehicle owner, who was speeding and, moreover, he indicated wrong and non-existent personal data. According to the ECtHR, indication of wrong documents cause a threat to public interest and road safety and, for this reason, such limitation of the right cannot be regarded as an infringement.

According to the ECtHR case law, another possible limitation of the right against self-incrimination is situations where evidence has to be extracted from the body of the accused. In such cases, this limitation arises from the accused failure to obey his procedural duties or from objective medical threats. The ECtHR set up that it is allowed to extract hidden drugs from the body of the accused on the condition that these acts are executed for medical reasons and by a decision of medics (but not by decision of police officers), and such actions are not going to be regarded as violations of the right against self-incrimination. In Bogumil v Portugal, the ECtHR set additional conditions: the extraction of drugs from the body of the accused cannot cause any threat to life or health of the accused; moreover, the fact of extraction of drugs cannot conform the main basis for the conviction, in other words, such act cannot be regarded as the main proof in the case and can only be regarded as a secondary proof.

However, the ECtHR, after considering repetitive criminal acts in Salabiaku v France drug smuggling case, noted that the burden of proof for the question of proving the guilt

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1 Judgment of European Court of Human Rights: O’Halloran ir Francis v. The United Kingdom, [GC], no. 15809/02, 25624/02, § 54,57-58, ECHR, 29 June 2007.
3 Judgement of European Court of Human Rights: Bogumil v. Portugal, no. 35228/03, § 68-70, ECHR, 2008-II.
4 Judgement of European Court of Human Rights:
may be transposed to the applicant in secondary cases. Such transfer of burden of proof is not regarded as a breach of the right against self-incrimination, if such person was caught possessing drugs in the airport and criminal acts of this person and his intention to commit a crime were proved in another case (for example, in drugs possession case). In *Lee Davies v Belgium*¹ case, the ECtHR constituted that drugs, which were found during the private party and without search-warrant, may be regarded as the main basis for the conviction. In such cases the only condition is that reception of drugs as a proof was without prejudice to the principle of adversarial process. These cases are significant as they allow to presume that the ECtHR case law on the right against self-incrimination encompass repetitive criminal acts, that is those situations when acts of the accused may be qualified as different, but relevant to each other criminal offences. Moreover, in secondary case the transfer of burden of proof is possible only with a condition that the primary offence was proved and the presumption of secondary offence is undeniable.

Finally, assessing situations where the accused was forced to plead his guilt, it is worth to note, that the limitation of the right against self-incrimination may be justified, if in such way obtained evidence does not constitute the main basis for conviction. In *Latimer v United Kingdom*², *Schenk v Switzerland*³ and *Khan v United Kingdom*⁴ it was formed, that the plea of guilt obtained torturing the accused can never be justified, but physical evidence, obtained when the accused plead his guilt, are possible to use, however, they cannot constitute the main basis for the conviction. Such evidence may be used only as secondary evidence. Usually such additional evidence are a secret plea of guilt, obtained at a dash after arrest and without the presence of the legal representative, confessions obtained by infiltration of a secret informer, other similar confessions, when secondary procedural rights or other procedural rights guaranteed by the ECHR for the accused are violated.

In general, according to Article 6 of the ECHR, not all limitations of the right against self-incrimination are going to be regarded as infringements. The use the plea of guilt of the accused as secondary evidence in national law of member states is not forbidden

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¹ Judgement of European Court of Human Rights: *Davies v Belgium*, no. 18704/05, § 33-36, ECHR, 2009-II.
² Decision on admissibility: *Latimer v. The United Kingdom (dec.*), no. 12141/04, ECHR, 2005-IV.
⁴ Judgement of European Court of Human Rights: *Khan v. The United Kingdom*, no. 35394/97, § 35-36, ECHR, 2000-III.
according to the ECtHR jurisprudence. Moreover, finding drugs in the body of the accused or extraction of drugs from the body of the accused as well as compulsory request of documentation of transportation owner for his violation of rules of road are not regarded as infringements of the right against self-incrimination. Even in those situations, where limitations of the right against self-incrimination are justified, public authorities, responsible for the pre-trial investigation or criminal proceedings, are obliged to obey procedural rules, and for this reason every situation has to be examined according to the principle of reasonableness and the right to a fair trial. Any limitations of the right against self-incrimination have to be assessed according to public safety, road safety or public interest objectives.

**Conclusions**

1. According to various scholars, the right against self-incrimination originated more than 200 years ago. This right is derived from the right to a fair trial and it is also derived from the principle that the prosecutor has the burden of proving the accused guilt. Traditionally, in national criminal process the infringement of the right against self-incrimination is assessed by the principle of reasonableness. The ECtHR has formed some types of examples when this right might be infringed, and they may be apparent from the use of physical and psychological measures against the accused as well as the use of illegitimate coercive measures. Theoretical test to assess whether there was an infringement of the right against self-incrimination has been set by the ECtHR. This test has three criteria: the nature and degree of coercive measures used in order to get some evidence; the nature of public interest in criminal proceedings and conviction; the existence of relevant procedural measures and the use of information obtained in this way.

2. According to the ECtHR jurisprudence, the use of torture or threat for the purpose to obtain some information from the accused is prohibited. Every time during the examination of infringements of the right against self-incrimination there should be assessed whether actions used against the accused were objective and whether or not dependant from the will of the accused. In criminal proceedings, for the purpose to obtain the plea of guilt of especial importance are procedural rights, relevant to the right against self-incrimination. Examples of such procedural rights are right to defend and right to know the charges. There is forbidden to use evidence from the main proceedings as the main basis for conviction in secondary proceedings, when repetitive criminal acts were committed and the accused was acquitted in the main proceedings. Remaining in silence
or refusal to cooperate with public authorities in some situations may have impact to the procedural status of the accused, however, such actions can never conform the main basis for the conviction. Moreover, cases when there is not required to prove the guilt of the accused are especially significant, as the accused may get vulnerable in such cases. The use of illegitimate proving tools and methods for the purpose to force the accused to plead his guilt is not allowed in criminal proceedings.

3. The right against self-incrimination is not unconditional and, for this reason, member states are allowed to set up some limits for certain offences and these limits are not going to be regarded as infringements of the ECHR according to the ECtHR jurisprudence. In cases of repetitive criminal acts the use of coercive measures for the purpose to obtain some evidence is allowed, however, evidence obtained in such a way cannot conform the main ground of judgement. Moreover, the use of such evidence may only be additional in secondary proceedings. In the view of some offences (such as disposition of drugs or counterfeiting of transportation documents) public authorities are allowed to use wider discretionary rights in limiting the right against self-incrimination and such actions are not going to be regarded as infringements of the ECHR.

**Suggestions**

It is proposed to follow criteria, formed by the ECtHR, such as the nature of offence, the scope of penalty, the type of coercive measures, the use of evidence in secondary proceedings, when assessing infringements of the right against self-incrimination in national law. Criteria formed in the ECtHR could be regarded as a secondary tool for solving issues of the right against self-incrimination, which might be additional to the principle of reasonableness and constitutional guarantees, traditionally used for determining violations of the right against self-incrimination in national law.

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Internet sites:


CIVIL SERVICE AS AN INTEGRAL PART OF DEMOCRATIC AND LEGAL STATE WITH PARTICULAR FOCUS ON SOCIETAL CONDITIONS IN SLOVAK REPUBLIC

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Abstract

Abstract: The author states in this paper that a civil service is one of the indicators of the political relations in the state reflecting the society. In a democratic state, including the Slovak Republic, civil service is based on democratic values in its internal organization as well as within its activities as a whole. Civil service is not understood uniformly in law theory. Civil service has two sides – organizational and legal. Civil service includes a wide area of organizational and controlling relationships. Civil service in its legal form represents a complex legal institute with an inter-disciplinary character; it incorporates standards of multiple legal areas, mainly administrative, constitutional and labour law.

Purpose: The main purpose of this scientific article is an analysis of civil service as a legal institute in new democratic conditions of Slovak Republic.

Methodology - approach: In this scientific paper we apply a systematic approach to chosen problematic, we use principal methods of analysis and synthesis, as a general methods of scientific knowledge, as well as comparison, deduction and induction methods.

Findings: Garnering of civil service in the Slovak legal system constitutes necessary and important prerequisites for quality and trouble-free process of implementation of executive power in the state.

Research limitations – implications: The civil service is a complex multilateral phenomenon which includes a wide range of social relations. Civil service has a comprehensive, interdisciplinary character.

Practical implications: Performance of the tasks in the civil service in the Slovak Republic is implemented by civil servants through civil service relations. Civil service relations are conceived as public relations.
Originality – value: The present scientific contribution is original in its character, brings new, findings which have not been published yet.

Key words: State, civil service, legal institute, legal order, state-employee relationships

Research type: Viewpoint - Author’s own new perspective view at the issue.

Introduction

Embedding the civil service institute in the legal order of the Slovak Republic (hereinafter the SR) transformed the civil service in a form corresponding to relations of a contemporary democratic state. It changed the legal position of state employees in a principle and fundamental manner but at the same, it created important and inevitable preconditions for quality and failure-free process of executing the executive power in the state. Since the privatization in the national economy brought for many the opportunity to prove themselves successful in the private sector, the civil service often loses capable and initiative people, because work in in private sector brings better financial evaluation compared to what can be offered by civil service. The current questions that need to be answered are how to adjust the civil service to quickly changing society conditions and how to increase the reputation and social acknowledgement of civil service, but also how to improve lagging of the civil service behind the private sector.

Theoretical background

The legislation for civil service must be based on a changed role of the state, on qualitatively new position of public sector in our society, but it must also be comparable to the modern legal forms of civil service in other democratic countries, especially within the European Union. Currently, the general civil service legislation in the Slovak Republic consists of the following acts:

- Act no. 400/2009 Coll. on civil service and on amendment and supplement other acts;
- Act no. 73/1998 Coll. on civil service members of: the Police Force, of the Slovak Intelligence Service, of the Prison Wardens and Judiciary Guards Corps of the Slovak Republic and of the Railway Police, in wording of later legislation (hereinafter only as the Act on Civil service);
• Act no. 370/1997 Coll. on National Service in the Armed Forces, in wording of the Act no. 401/2000 Coll. in wording of later legislation;
• Act no. 200/1998 Coll. on Civil Service of Customs Officers and on amendments to certain laws, in wording of later legislation;
• Act no. 315/2001 Coll. on the Fire and Rescue Corps, as amended by later regulations

The civil service in the Slovak Republic in the few past years has been going through substantial changes, which are also finding its expression in law theory. The Civil service as a legal institute, regarding the legal position of state employees, was almost removed in the previous period of social development from legal order; this legal institute experiences its renaissance only in the new and democratic conditions after the year 1989.

The term „service“ is very general, abstract and with a wide range of meaning, allowing several possible alternatives of its comprehension. The term „service“ in the expression „civil service“ or „public service“ is a little bit more factual, because it suggests with the pertinent adjective more explicit and real content.

The term „service“ is used quite frequently and traditionally to designate state activities, mainly in the area of state administration, public order, safety, but also in the areas of health, culture or education. It is undoubted that the adjective „civil“ in the pertinent expression signalizes a narrow connection of this term with state organization, activities of state and state apparatus, with execution of state power. If very simplified, the civil service represents execution of a certain activity performed for a state, or based on being authorized to do so, but at the same time, it also hints at a connection of a certain subject with the state. It can be a one-time matter or a relatively permanent one, performed in an employee relationship for a reimbursement or from a certain function title.

The term „service“ itself has at least two meanings:
  a) Activity which is a subject of a service obligation;
  b) Alliance with a different subject, including a legal alliance.

In the context of public administration, the term „service“ is used as a designation for:
• A task, a public administration mission, (public administration as a service to public);
• A subject, substance of its activity (public administration provides and ensures public services);
• Employees of public administration and for their legal position;
• Some authorities or fields of public administration. (Čebišová, 2001)
The service in the sense of a certain obligation towards to whom it is being provided (public, state), in conjunction with this designation (public, state) creates the terms „public service“ or civil service. As we have already stated, activities performed in public administration in all of its areas – i.e. in state administration, local administration and even in statutory corporations – as well as the pool of persons performing service on behalf of a corporate body of public law are considered a public service. Compared with the above, the civil service is a more specific term, because civil service is considered „only“ an activity performed within state administration, as well as a pool of persons performing the service „only“ on behalf of the state and in relation to the state.

In legal theory, the term „civil service“ is not understood uniformly; civil service can be understood in several meanings. Civil service can be looked at:

1. On a level of its organization, i.e. as a part of the state organization system, as a part of the state apparatus;
2. From the perspective of a certain activity: activity of state employees when performing state functions;
3. As a group of persons: it delimits a certain group of persons (state employees) in civil service;
4. As a legal order: it expresses a manner of organizing legislation regarding state employees;
5. As a legal relationship: it represents a legal relationship of the state employees towards the state;
6. As a legal institute, i.e. in the sense of summary of legal standards governing a specific, homogenous group of social relationships.

The organizational matter of state service is a part of the organizational system of the state; the civil service is a part of state apparatus. A state apparatus is a hierarchically organized system of state organs, state institutions and specific areas of state apparatus, which has the ability to realize the controlling and power state activities. The specific areas of state apparatus also include areas of state coercion, police, army and other security forces which are by the state and by the law authorized to apply and enforce law, decide on application of state power and force or directly execute them.

The civil service is mainly subject of the administrative law science as it points out the complicated nature of the mentioned institute, which includes a wide range of theoretical and practical matters. The civil service is an inevitable and important part of the state organization of society whose social function is conditioned by the tasks and functions of the state performed by the employees in civil service. The state determines the legal regime of state employees so it preferentially ensures fulfillment of state (public) interests.
However, to a larger or smaller extent, also the interests of the employees reflect in the organization of civil service.

When somebody performs a certain activity for a state, from its authorization, it can be simply said that he/she is in civil service. Civil service can be understood as activity of state based in performing state functions such as activities of state apparatus employees performed in state-employment relationship. “As a result of division of labour, the civil service creates a subsystem of social work and falls under the Labour Law. However, it is also a part of the organization-legal system of the state apparatus, and because of that falls under the system of Administrative Law”. Also other authors point to the complex character of civil service, stressing its complicated nature and presenting that the problems of civil service have wide-ranging, interdisciplinary character within the law.

The term „civil service“ in the Slovak Republic has dual meaning – to label the activity of employees of state apparatus and to label the legal order of such people. Unlike the general employment regime, the civil service represents a different and a specific legal regime regarding the fact that it must cover the specifics of the regime with a service nature.

In a legal meaning, a civil service can be defined as a set of legal standards, which govern the position of state apparatus employees (state employees). These standards govern the creation, course and termination of legal relationships in civil service, law, obligations and responsibilities of employees in civil service; that means that they govern the legal regime of state employees.

The term „civil service“ can also be understood as the legal relationship to a certain part of state apparatus. The term „civil service“ is also used to label the legal relationships of employees working in state administration or other state institutions, or this term can even mean a group of people or their activity. Civil service is a term serving to call the legal regime of persons in „the service“ of a state – so called state employees. (Hendrych et al, 1998)

Mrs. M. Veselá in connection with limitation of civil service says: „Civil service is a term serving to indicate legal, civil-service relationships of employees working in state administration. Civil service can also represent a certain group of such persons (employees), or their activities.“ (Veselá, 1997)

K. Nový characterizes civil service as a “legal regime of persons working in the state apparatus; while stating that the institute of civil service includes a wide complex of social relationships which are governed by regulations from various fields.” (Nový, 1999)

Civil service can be characterized as a collection of legal standards, which govern the position of employees of state apparatus.
J. N. Starilov states that civil service is a serious social-legal phenomena, and can be looked at from various angles: political, social, organizational, psychological, ethical, sociological and, of course, legal.

In the legal meaning, civil service represents a complex legal institute, which includes standards of various areas (constitutional, administrative, labour and others). The civil service institute is created by legal standards governing civil service relationships varied in character and meaning. The standards regulating the civil-service relationships mutually interconnect with each other and in its entirety create the institute of civil service. The institute of civil service is therefore formed by legal standards, which govern: inception of the state-employment relationship, principles of the service, rights and duties of a state employee, and termination of the state-employment relationship.

The modern legal institute of civil service is a summary of legal standards, which regulate relationships created during the organization of the civil service system itself, the status of state employees, i.e. legislation of the position of state employees in their employment relationships, as well as mechanism of fulfilling tasks in civil service. There are three large areas in the state-employment relationship system under the legal regulation of civil service:

1. Forming and organization of civil service system organization;
2. Legislation of position of a state employee (his/her statute);
3. Mechanism of performing civil service. (Starilov, 1996)

Legal means used in the area of legislation of civil service, despite its complexity, have uniform regulative fundaments. They all function in a distinctive and specific environment typical for the legal regime of civil service. This specific legal environment of the civil service system also uses distinctive means and manners of legal regulation: allowance, prohibition, obligation, subordination, control, state trust, loyalty etc.

The system of standards regulating the civil service distinguishes standards to substantive and procedural. The substantive standards in the civil service institute anchor the fundamental characteristics of this institute. These include: principles of civil service, the term „state employee“, his/her rights and duties, legal limitations, terms, warranties and compensations, attestations, disciplinary liability etc. The procedural standards regulate relationships that aim towards meeting obligations (rights and duties) contained within the substantive regulations. In the civil service institute, we find specific procedural regulations regarding acceptation of an employee into the employment in civil service, disciplinary behavior, termination of employment in civil service etc.

The civil service includes many various controlling, organizational and other relationships and connections that require legal regulation in the form of various legal forms via state-employment standards. The civil service standards have distinctive features
of administration-legal regulation since regulating social relationships, which exclude legal equality of subjects of these relationships.

Standards of public law, mainly standards of administrative and constitutional law – while applying a specific method of centralized, power regulation – prevail in the legal regulation of organization and functioning or civil service.

The civil service as a legal institute represents a summary of legal standards, which regulate mutually and narrowly related relationships arising within the organization of civil service, as well as relationships that govern the position of state employees.

Civil service has two sides, organizational and legal. In this regard, civil service is characterized as an organizational-legal institute, which has its organizational forms and is governed by legal standards. In this sense (organizational-legal), the civil service institute includes standards regulating the civil service organization (this follows up on the state apparatus organization) and standards governing the legal regime of state employees.

**Research methodology**

The methodology of the article is focused on enriching of the goals of the research. The final knowledge is able to be used in theoretical sphere in further development of state service as a legal institute, as well as in practical sphere in development of norms in the area of state service.

**Results and findings**

With the above stated in mind, there is an obvious certain complexity and complicacy in regarding limitation of the term „state service“. Even in compliance with the above, it is necessary to understand the term „civil service“ comprehensively, both as an organization of civil service and well as legal regime of a state employee who participated in performing the state tasks via the employment relationship.

The term „state employee“ (policeman, professional soldier, custom officer, fireman, etc.) imminently corresponds with the term „civil service“. This term means a natural person in state-employed relationship to the state, performing according to the pertinent state law a service in an authority. State employees perform activities in public (state) interest, within their scope of authority and competency. They are state representatives, they can act and perform in the name of state, they imminently participate in state power,
are equipped with specific rights and duties and remain under some obligations even after termination of state employment.

The term „legal status” of an state employee is relevant in connection to this. However, it is necessary to state that defining the term „legal status” regarding a state employee is in legal theory accompanied by certain opinion variety. That is why we will discuss this term in the upcoming part in detail.

The term „legal status” is understood as legal relations of employees of public (state) administration, or other bodies (judges).

Legal status represents „delimitation of a certain group of subjective rights and duties” as states P. Hungr. (Harvánek et al, 1995)

E. Barány understands the term legal status as a „set of rights and duties of subjects of the law“. (Barány, 2002)

„The public-law status should express the legal relationships that connect a citizen with the option of entering the public administration. It is a collection of subjective authorization of citizens included in legal order, allowing participate to enter in administration of public matters directly or via representatives. It does not automatically mean that the provisions allowing this entry are binding for the citizen”.

The private legal status of an individual is based on the structure of the privacy law. It is created by jurisdiction of judges, and it comes into existence and is conditioned by objective law. It includes equal position on subjects. It arises based on the private will of an individual and it contains private interests that are not affected by the state, but rather protected by it. The private legal status of an individual is influenced by the principle of private autonomy – by acknowledging a human being. There is the principle of directory rule when the participants can adjust their relationships as they agree upon, they can deviate from the law.

M. Kálenská in her specialized papers focused on legal position of public (state) employees uses the term „status”. This term „indicates whether the employment of certain professions is governed by the same or different normative acts”. In this meaning, it is typically inquired whether the employment conditions of certain employee categories have the same or different status. In labour law theory, the term „status” is identified with a complex of legal rules allowing the employment principally from outside. It is a summary of standards applied for a certain type of legal relationships”. The author closes the characteristic of the term „state” stating that she understands it as a „legislation regarding position of an employee in an employment, i.e. in legal-technical interpretation”. (Kálenská, 1994)

From the mentioned overview of opinions regarding defining legal status, it is possible to state that the understanding of this term as a summary of rights and duties
prevails. We agree with these presented opinions while stating that in case of legal status of state employees, it is a set of rights and duties which are based on the state-employment relationship, on the legal standards regulating these employments and thus creating the status of a state employee.

State employees, as subjects of public-law relationships, have their specific status, i.e. they have the option to use power-controlling authorizations, they realize specific rights and duties following from the state competency (state apparatus); state employees are representatives of state, they are in a fixed relationship with the state. The state employees are representatives of public law. The specific public-law status of state employees in civil service is related to the fact that the state employees have specific, special rights and duties, prohibitions and limitations, but also compensations or preferences.

State employees as a category of employees „in civil service“ are differentiated from several points of view. One of the most important differentiation criteria is their classification based on the competencies and characteristic of the authority of the body they work in. In this light, they are the following:

1. Employees in state and administrative bodies with a function that implies their authorization to perform outwardly (control, decide, check); the law lends them the right to act in the name of state and it gives to their acts a quality of administrative acts with specific authority and protection;
2. Employees in state institutions (i.e. teachers, physicians) whose activities are based mainly in performing services, but whom also have certain authorizations towards citizens (e.g. issuing confirmation of incapacity for work, certification of passing exams, etc.);
3. Employees in state or administrative bodies or state establishments performing (unlike the previous groups) works or services without any direct legal effects (e.g. clerks, accountants, etc.).

State apparatus employees can also be classified based on the legal character of their acts, which expresses the participation on realization state-power authorizations. They are classified as:
1. Employees who can issue legal acts, i.e. they are endowed with authority;
2. Employees who can issue binding instructions to their subordinates, decide within internal relationships and are not endowed with authority;
3. Other employees who perform assigned works and their acts do not have any immediate legal relevancy.

A state employee in the Slovak Republic is for execution of civil service integrated in an authority within a certain field of civil service. Personal authority, as a personal
authority of service authority, ensures meeting the tasks of the service based on the state-employments relationship. The civil service in the meaning of our legislation is performed in the individual types of civil service.

Performance of tasks in civil service in the Slovak Republic is being executed by state employees via state-employment relationships. The state-employment relationships are designed as public-law relationships. The characteristic features, which reflect the public-law characteristic of state-employment relationships, are based on the character of these relationships themselves, as legal relationships in which the state employees realize the execution of civil service, i.e. they immediately participate in execution of state power, in realization of state function. The specifics of fulfilling the tasks must correspond to the specific character of these relationships; the public-law character of state-employment relationships is in direct correlation with the character of performing tasks executed in the pertinent legal relationships.

Conclusions

Based on the above stated, it is possible to state that the civil service is one of important legal institutes, which include a wide range of theoretical and practical matters. The civil service forms a certain system of social relationships; a substantial part of them is by their character, purpose and organization anchored in the organization of state apparatus where they are, beside others, the most extensive part of organization of state administration.

The civil service is an inevitable and important part of state organization of society; the social function of civil service is determined by tasks and functions of state provided by state employees. The civil service is a historical, social and legal phenomena and it has a strong political and power aspect.

In a democratic state, including the legislation of the Slovak Republic, the civil service is typically built on principles of professionalism, political independency, efficiency, flexibility, impartiality and ethics and it is based on democratic values – in its internal organization as well as in its entire activity. The condition of civil service is a reflection of the society; it is one of the indicators of political situation in the state.

The civil service in the Slovak Republic has a complex, wide-ranging character; the civil service has interdisciplinary character. The institute of civil service includes an entire complex of social relationships, which are regulated by standards of multiple (several) legal areas.
Suggestions

There is a need to upraise the prestige and societal recognition of state service, as well as to mitigate the lag of state service after the environmental sphere.

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Books and articles:

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2. Act no. 73/1998 Coll. on civil service members of: the Police Force, of the Slovak Intelligence Service, of the Prison Wardens and Judiciary Guards Corps of the Slovak Republic and of the Railway Police, in wording of later legislation (hereinafter only as the Act on Civil service);
4. Act no. 200/1998 Coll. on Civil Service of Customs Officers and on amendments to certain laws, in wording of later legislation;
5. Act no. 315/2001 Coll. on the Fire and Rescue Corps, as amended by later regulations
OWNWORKING CAPITAL OF ENTERPRISES: METHODOLOGICAL APPROACHES TO ANALYSIS

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Abstract

The purpose of this paper is analysis of the existing methodological approaches to own working capital calculation, their critical assessment and outlining the most relevant approach in current economic conditions.

Approach. In this paper there were analyzed different views on own working capital (OWC) calculation methodology, as there are a lot of alternative ways of its essence definition and of its mathematical calculation. During this research there were used general and specific scientific methods, such as: abstract and logical, systematic approach, induction and analysis. By using these methods it is found that nowadays there is no unified point of view on the methodology of own working capital calculation.

Findings. Own working capital is a core element in business, as it helps to evaluate financial stability and efficiency of a company. As a result of an analysis it is suggested a new approach to calculation of this index. So own working capital is a calculated amount of the current assets, prepaid expenses, non-current assets and minus disposal groups current liabilities

Research implications. Own working capital is a base of a strong financial position and also a source for covering the assets. Own working capital means that the entity can pay its liabilities and also has enough financial resources for development and investing.

Practical implications. Use of valid practical recommendations for OWC definition will lead to accurate and true information about financial position of a company, which is
useful for internal users to make managerial decisions and for external users to improve investment attractiveness.

Originality. Determination of a unified and the most relevant methodology for own working capital calculation will result in correct displaying of financial indexes, which define financial equilibrium of a company’s assets and passives.

Keywords: own working capital, current assets, net working capital, assets, current liabilities.

Research type: research paper.

Introduction

The theory and practice of financial management is full of different ratios which are used to evaluate financial firmness and investment attractiveness of enterprises. Very important among them is own working capital (OWC). And the problem of determination of a unified and scientifically based methodology of own working capital calculation is still unsolved and, as this fact breaks the unity of methodological base for financial standing of companies’ analysis. As a result, the financial standing can be distorted.

The importance of this index is caused by the fact that determination of value of own working capital is one of the main tasks of working capital sources analysis. Own working capital is characterized by balanced financial flows, which defines the ability of enterprises to be liable for their activity and to assure sufficient profitability for operating in a competitive environment.

Theoretical background

Business activity reflects the level of the material, financial and other resources use efficiency, and at the same time characterizes the quality of management and potential development of the company.

The enterprises activity can be defined as the motivated at the macro and micro level process of economic relations management aimed on ensuring their development and effective use of all resources to achieve market competitiveness and on formation of the modern innovation and investment potential of market relations and the national economy as a whole.

The issues of the own working capital calculation are discussed in scientific papers: Grydchena (2002), Danulyuk (2004), Bugrimenko (2008).
Own resources of a company play a great role as, on one hand they provide financial stability, and on the other hand – property and operating autonomy of a company, which is necessary for commercially viable activity.

Own working capital is an element of the productive capital of entities which is used for running the business, such as current assets. It is important that working capital and own working capital are different definitions. The first one consists of only of own resources, the second one – is the source covering of current assets. The growth of own current assets amount defines the growth of enterprise’s capabilities to pay its liabilities and to the level of its liquidity increase. Moreover, this index defines different aspects of business activity (Fig. 1).

**Fig. 1. Characteristic aspects of business activity of the own working capital [1, 2]**

Analysis of own working capital is important for three reasons:
1) the rate of turnover of funds depends on the size of annual turnover;
2) with the size of turnover and, therefore, associated with the reversibility of the relative magnitude of fixed costs: the faster the turnover is the less per turnover accounted for these costs;
3) accelerate the turnover of the some stage of circulation causes accelerate turnover at other stages, and also leads to the release of funds that can be used in other parts of the enterprise.

The financial condition of the company, its liquidity and solvency depend on how quickly the funds invested in current assets are converted into cash. The period of stay in circulation is largely determined by internal conditions of the company and all effective management strategies of its property.
Own working capital refers to the mobile assets of the enterprises, which can be converted into cash during a year or production cycle. The research of the composition and structure of the sources of own working capital shows which capital company operates mainly - their own or borrowed, or contains shaped structure risk for investors, whether it is favorable for the efficient use of working capital of the enterprise.

If an enterprise has an own working capital it is able to pay not only short-term liabilities but also has reserves for business acquisition. The appropriate own working capital amount depends on the sphere of business activity, product sales volume and market condition. Lack of them defines an inability to pay short-term liabilities, and their surplus – irrational resources consumption (2006, No. 81).

**Research methodology**

The index of own working capital depends on assets structure and on the structure of the source of financing. And the main and permanent source of own working capital growth is profit (Bugrimenko, 2008). So, prof. Efimova considers that OWC is that part of an equity which can be directed to current assets formation, while the amount of net current assets defines the need of financing. According to the results of our research on the methodology of the determination of own working capital there is no one unified approach (table 1).

<table>
<thead>
<tr>
<th>№</th>
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<th>Approach to OWC calculation</th>
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<tbody>
<tr>
<td>1</td>
<td>Chupis, Tsal-Tsalko, Philimonenkov</td>
<td>Equity – Non-current assets</td>
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<tr>
<td>2</td>
<td>Kononenko, Mahanko</td>
<td>Current assets, including deferred expenses – (Long-term liabilities and security + Current liabilities, including deferred income)</td>
</tr>
<tr>
<td>3</td>
<td>Sheremet, Miroshnyk, Kovalchuk</td>
<td>Current assets – Current liabilities</td>
</tr>
<tr>
<td>4</td>
<td>Blank</td>
<td>Current assets – Long-term liabilities – Current liabilities</td>
</tr>
<tr>
<td>5</td>
<td>Bondar</td>
<td>(Equity + Security for expenses and payments + Deferred income) – Non-current assets</td>
</tr>
<tr>
<td>6</td>
<td>Lyubushin, Lescheva</td>
<td>Equity – Long-term liabilities – Non-current assets</td>
</tr>
<tr>
<td>7</td>
<td>Chernelevski</td>
<td>Equity + Current liabilities – Non-current assets</td>
</tr>
<tr>
<td>8</td>
<td>Ivahnenko</td>
<td>Equity + Security for expenses and payments + Long-term liabilities – Non-current assets</td>
</tr>
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</table>
As we can see the most common approach to the own working capital calculation in home and international analytical practice is that the index equals to equity minus non-current assets. And net working capital equals to current assets minus current liabilities. Also these approaches are common-used:

\[
\text{Own Working Capital} = \text{Current assets (including deferred expenses less 1 year)} - \text{Current liabilities (minus security for expenses and payments less 1 year and deferred income less 1 year)}
\]

\[
\text{Own Working Capital} = \text{Equity + Security for expenses and payments more 1 year + Long-term liabilities + Deferred income more 1 year}
\]

The first method of calculation of the own working capital is used in western accounting and analytical practice and financial management systems. In English literature, this index is also called, working capital and net working capital, the economical essence of which - the amount of working capital, which will remain owned by the company after paying its current liabilities. In a sense, it is a characteristic of "free" maneuver and financial stability of enterprise in a short-term period. Increase of the amount of working capital in the dynamics of ceteris paribus is seen as a positive trend.

The scientific findings have a right to exist, and the differences in opinions only confirm the uniqueness and complexity of not only an accounting but also an analytical work on working capital. After analyzing these algorithms of the calculation of own working capital (Table 1), we note a common feature in all these methods is that working capital does not include deferred expenses (except method 2).

National Standard № 1 "General Requirements for Financial Statements" (2013, No. 73) defines that "in the deferred expenses reflect costs that occurred during the current or previous reporting periods, but belong to the following periods". Deferred expenses include: rent, costs for advertising, subscriptions, insurance and other amounts paid in advance and are associated with the provision of enterprise services and more. According to the changes in National regulations (standards) №1 the "Deferred expenses," that at the beginning of this year to represent in the third section of the balance sheet at the time this article indicates in the second section "Current assets". The attribution of deferred expenses to current assets due to the fact that the costs paid in advance, that is made for profit expected in the future, is the result of profits gained in one year or the operating cycle of the company. Therefore, deferred expenses keep cash assets of the enterprises.
According to Regulation (standard) accounting 27 "Non-current assets held for sale and discontinued operations" (2003, No. 617) non-current assets - disposal groups are recognized and held for sale derecognized in the fixed assets. In non-current assets held for sale and disposal group depreciation is not charged.

**Results and findings**

Considering the above, we propose the following algorithm for calculating working capital (within the meaning of balance sheet items):

\[
\text{Working capital} = \text{Current assets} + \text{Deferred expenses} + \text{Non-current assets and disposal groups} \quad (3)
\]

Regarding the number of methods 2, 4, 6 and 8 (Table 1), they take into account the long-term liabilities, but usually long-term loans are used to create fixed assets, not working. In view of the foregoing, we think there is an acceptable method that most number 3: "Current assets" - "Current liabilities". Considering proposals for calculating the amount of working capital, the proposed method of calculating own working capital will look like this:

\[
\text{Own Working Capital} = \text{Current assets} + \text{Deferred expenses} + \text{Fixed assets and disposal groups} \quad (4)
\]

**Conclusions**

As already mentioned, OWC is one of the key figures in the analysis of the financial condition of a company, because not only does it use calculated financial ratios, which can determine the financial balance between the financial assets and liabilities of the entity, but also serves to evaluate the satisfactory structure of the balance sheet and financial viability.

The positive value of this index means the availability of financial sources, potentially ready to finance investment in current assets. Negative value indicates to involvement as a source of financing current assets payable and it should be considered as having problems with liquidity and financial stability of the entity. If this indicators equal to zero it means a
full load of capital in current assets. Incorrectly or insufficiently accurate determination of the amount of own working capital according to the balance sheet leads to a distortion of some financial ratios and, consequently, inadequate assessments of the financial situation of enterprises.

The proposed method of calculating own working capital is the most appropriate and adequate for a business environment in the current conditions. Using the proposed approach will facilitate a more complete and objective use of the information contained in the company's balance sheet. It will also eliminate contradictions and differences in the methods of determining their own working capital.

Suggestions

Evaluation of the own working capital involves determining the effectiveness of the entity by applying a comprehensive evaluation of production and financial resources efficiency use, which forms the optimal ratio of growth of key indicators and determines intermediate and final results.

According to analysis of the enterprises own working capital evaluation reveal of the opportunities to mobilize from various sources of financial resources and to use them effectively, providing income and growth of capital. The proposed method of calculating the WOC is aimed to reflect accurate and reliable information about the financial situation and the figure is a result of the company during the reporting period.

So, the reviewed methods of calculation of the own working capital are given to optimize the business, to ensure the liquidity and solvency of both short and long term. In modern conditions the use of this described model for determining optimal own working capital as part of a balanced scorecard improves the efficiency of planning and controls activities of financial management.

Literature

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NON-STATE ANNUITY INSURANCE: CURRENT SITUATION AND PROSPECTS IN UKRAINE

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Abstract

Purpose – to isolate problems and identify areas for further development of non-state annuity insurance in Ukraine.

Approach/methodology – article is based on qualitative and quantitative research approach. Information going from the last information of literary sources, reviews on similar problems, statisticians, academic articles, consequently it is secondary data collection method. Methodological basis for the study served: laws and regulations on pension insurance and private pensions in Ukraine, materials of the State Statistics Committee of Ukraine, materials State Commission for Regulation of Financial Services Markets of Ukraine, regulatory guides, information and analytical collections, scientific works of domestic and foreign scholars on the organization and development of pension insurance, information provided by the administrators of pension funds for its publication.

Findings – the research has shown that non-state pension insurance in Ukraine is not very popular like in another country abroad. However, the part of depositors is growing annually. From data of Derzhfinposlug a maximal amount of the celled pension contracts of nonstate pension fund is exactly with physical persons. In the article are also exposed the basic ways of perfection of nonstate annuity system.

Topicality of the research to the issue of social innovations. The problems of a market economy Ukraine the functioning of pension funds holds an important place. Each year the expenditures of the Pension Fund of Ukraine increased due to demographic growth among seniors and ineffective social policy. Pension fund can not own, contributory pension pay, therefore increasing the amount of subsidies to the Pension Fund of the State Budget.
Introduction

Processes of globalization, which began on the border of XX and XXI ages captured not only economic life of leading countries of the world, but also affected systems of social safety net of citizens in these countries. The states faced with problems that have a tendency to deepening and require changes in the key trends of social safety net. These issues include such problems: demographics (aging of population, increased of life-span, decline of birth-rate), economic (unemployment, worsening of proportion between workers and pensioners), social (poverty in the richest countries, "thin" market basket of countries with a transitional economy).

One of such problems is a necessity of improvement of the pension providing which is related with the decision of contradictions between the necessities of present time and necessity of the strategic planning. Negative demographic tendencies and instability of macroeconomic situation are strengthened by the necessity of providing balanced of the national pension systems on the basis of story and insurance principles of the pension providing. According to demographic projections of population aging in the world will progress over the next four decades. According to UN projections to 2050, the ratio of working age population to the population of retirement age (over 65 years) in developed countries decline from 4.5 today - to 2.2, and in some countries is even greater: in Japan - 1.5, France - 1.4 in Germany - 1.2, Italy - 1. This means that the people who will receive a pension will be more than taxpayers (Shevchuk, 2010).

From data of demographic prognosis the aging of population in the countries of the world will make progress during next four decades. In this connection, appears an urgent problem to change the old and search the new ways to improve lives of society, among that a leading place occupies reformation of the pension system.

Theoretical background

In the most countries of the world the pension systems improve on distributive or story principle. At the beginning of 90th of the last century The World Bank worked out the three-level model of the pension system, directed on warning the crisis of aging of
population. This model was the basis of most developing countries, according to market principles. Each country has its own pension system, which in one way or another intertwined various schemes, but in almost all countries, there are two main elements - required and optional pension.

In most European countries there is a tendency to slow and careful implementation of storage elements and the growth of private pensions (partial) to provide income retirees. It is assumed that by 2020 the proportion of the distribution system in pension payments will drop from 84% to 64% savings component increasing from 12% to 29%, while the share of voluntary private pension triple - from 1.5% to 4.5% (www.fimiz.ru/cfin/tmpl-art_oo/id_art-660181).

In 1991 Ukraine has begun the transition to the development of the pension system based on insurance principles. On the basis of the Pension Fund of Ukraine established a system of collection and distribution insurance and employer contributions to pension payments. This was the beginning of the transition to traditional in countries with developed market economy principles of pensions. The main goal of public policy in the pension system in Ukraine is to implement an effective and clear pension reform, aimed at ensuring a worthy standard of living of the elderly and other groups of citizens who are unable to work, adequate their vital needs, the creation of effective mechanisms to protect the rights and interests of citizens, ensuring transparency of the system.

Today in Ukraine there is 3-level pension system consists of mandatory state pension insurance (I level), funded system of compulsory state pension insurance (II level) and the system of voluntary private pensions (III level). The largest share of pensions in Ukraine falls on the first level, while the world's biggest share belongs to the second level. Solidarity (compulsory) retirement system at the present stage forming a basic pension resources in the form of mandatory contributions of citizens and their employers. High interest rates make the last contribution to conceal the actual payroll, thereby reducing revenues to the Pension Fund, which is becoming scarce. There is a need to compensate a lack of funds to pay pensions through the State Budget of Ukraine. The introduction of the second and third levels should solve the problem of low pensions and to enable citizens to receive pensions, their respective earnings in the period of employment (The Law of Ukraine "On Private Pension Provision" on July 8, 2011).

Today the private pension system is safe, and in most cases and privileged means of providing retirement of a higher standard of living than that it is able to provide a social system. Private Pension Fund - is the most reliable way to secure pension benefits in addition to state security, as under the legislation of Ukraine, non-state pension funds can not be declared bankrupt (www.udau.edu.ua/library).
As the foreign, experience leading countries prefer non-state pension funds. Particular feature of the American model of distributive pension system is that the amount of the pension is determined regressive: the higher fees, the lower the percentage of that amount as a citizen receives pension benefits. This mechanism provides a redistribution of income from the more affluent citizens to the poorest, and operates on the principle of solidarity (Rudick, 2010). Funded Pension System - is a system in which resources are focused on personal accounts and their amount increases as a result of investing. These pension systems have become popular in Southeast Asia and Latin America (Rudick, 2010).

To achieve these objectives, the government measures are taken in accordance with the pension reform, part of which is a further development on private pensions and insurance, because insurance contributions by individuals entrepreneurs about specific conditions, causes narrowing of their rights in the compulsory state pension insurance.

There are two conceptual approaches to government intervention in the formation and development of the private pension system, one of which reduces the interference to a minimum, so that private pension provision is seen as a self-regulating system in a market economy.

The task of government - to institutional regulatory framework of these schemes. Another conceptual approach is based on the guarantee of effective pension fund activities, prevent the loss of depositors’ funds and taking all the risks.

In Ukraine there is an urgent need for the creation and development of private pension funds as a mandatory element of private pensions. Private pension funds, on the one hand, are able to effectively and intelligently raise funds individuals and employers to form additional retirement savings, and on the other - a source of long-term investment and innovation for the real sectors of the economy that contribute to overall economic development.

Non-state pension funds of Ukraine are very difficult conditions and therefore can not acquire the ability to significantly affect the efficiency of the economic system. The need for policy development based on the formation mechanisms of voluntary pension insurance, increased state control and regulation of such funds due as a result of negative trust and non-state pension funds that in the current situation is one of the essential factors of people to distrust any financial institutions.

Given the important role of the social institution of private pensions, retirement funds need to preserve and create conditions for their multiplication and insurance. There are three lines of defense pension funds of private pension provision (the refinery), namely:
- Set the requirements for diversification trends of pension assets;
- Prohibited misuse of pension assets;
- A requirement delineation and separation of pension fund assets from its founders and employers;
- Non-state pension funds can not be declared bankrupt and liquidated under the laws of bankruptcy;
- Set high demands on the order of creation, licensing and operation of the administrative, asset management company, custodian;
- Provides a clear separation of functions accumulation, storage and asset management non-state pension funds and internal controls of entities that provide services of non-state pension funds;
- Perform their duties subject refineries controlled by the National Commission for the State Regulation of Financial Services, the National Commission for Securities and Stock Market, the Antimonopoly Committee of Ukraine, the National Bank of Ukraine;
- Activities of refineries may exercise only entities whose employees are qualified and received a qualification certificate.

State supervision and control of private pensions exercise: The National Commission for the State Regulation of Financial Services (the activities of non-state pension funds, insurance companies and banks), the National Commission for Securities and Stock Market (the activities of persons managing the assets of private pension funds, and custodians), the Antimonopoly Committee of Ukraine (enforcement of legislation on economic competition protection in private pensions and insurance) and the National Bank of Ukraine (control over the NPF custodians, banks that offer pension deposit accounts).

As for Ukraine, today government regulation and public oversight should focus on the creation of and compliance to the legal framework for the protection of consumers of financial services and the development of competitive financial services market in Ukraine.

Protecting retirement savings and multiplying by investment income for the purposes of future pension payments to members in the hands of financial institutions that manage assets of non-state pension funds. Thus, it is how these organizations operate as build relationships with the fund and how to control largely dependent ability to fund for payments.

State Commission for Regulation of Financial Services Markets of non-state pension funds assets management and non-public pension public making significant efforts to develop a funded pension system and especially non-state pension funds of Ukraine. There are two sets of problems that hinder the formation of a funded pension system and private pensions. First - linked to the corporate environment, which includes the non-state pension funds and the second - in state regulation.

For corporate problems, while market services non-state pension funds is quite small, and the scope for action of all participants an incredibly wide unity among them does not
yet exist. To improve the situation it is appropriate to introduce a single procedure of determining the net value of pension unit as the Regulations on the procedure for determining the net asset value of the non-state pension funds, which does not meet any requirements or needs of the market has since its approval in 2004. The presence of such an order to strengthen the credibility of the non-state pension funds, as will enable investors to compare the activities of different funds, be aware of what is happening to their pension money, and on this basis to make informed decisions. And the world experience proves there is no other way to gain the confidence of depositors than open and understandable information system performance evaluation assets.

Also, please pay attention to increase the supply of quality instruments for investing pension funds. Because their assets are long-lasting and more resistant to the action of inflation than debt instruments should allow to increase the proportion of shares held by non-state pension funds at least 50 percent. The increase in assets of non-state pension funds and the introduction of mandatory funded systems need to improve the quality of shares state pension funds puts on the stock exchange. Pension funds may invest only in stocks of issuers elite, while the Property Fund now offers for sale through the stock exchange low-quality securities.

It should also allow private pension funds to buy mutual funds. Throughout the world there is such a practice, for the same reduced risk of fund management. Moreover, these funds are diversified and have always non-state pension funds can get.

The problems associated with state-level way. First of non-state pension funds and the creation of three-tier pension system in Ukraine said in a presidential decree of 1998. But after decades of relevant state institutions to receive pensions under the existing public system has changed. They believe that it is necessary only to reform, to increase the resources of the Pension Fund, rightly assign state pensions. But in Europe in the early 90s of last century to understand that the state pension can provide a living wage. But everything else should be at the expense of the second and third levels, the development of which is the same priority as filling pension system (Koch M, 1997).

In recent years, instead of the integrated development of the pension system is one-sided extension resources of the Pension Fund. And the money in the fund is not enough. And despite the fact that in Ukraine, in particular, one of the highest in the world of mandatory PF tax - 35.2%. And the average retirement age a little over a third of the average wage then in Europe, where reality has a three pillar pension system - at least 70%. If one considers money issued in "envelopes" that, according to the Ministry of Economy, the ratio will be 14%.

Income Pension Fund established at nearly 80 % of the State budget and directing in the financing of current tax revenues, the government distorts the aspect ratio and so
weak economy. From the macro-financial imbalances affected the whole society. By the way, all of the economic crisis in Ukraine rozpochynalya problems in the public finances. Consequently, pension policy should be guided by a modest increase in the state pension accelerated rate of increase in pensions funded pension system and, in particular - with its private component.

**Results and findings**

By the state on 31.12.12 in the State register of financial institutions there is the information about 94 non-state pension funds (farther – NPF) and 37 administrators of NPF.

The system of the non-state pension providing during the last years develops dinamically enough and has potential for subsequent development of the pension providing of population. Basic performance of NPF and their growth rates indicators are resulted in Table 1.

**Table 1. Basic performance of non-state pension fund of Ukraine indicators after 2010-2012**

<table>
<thead>
<tr>
<th>non-state pension fund</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Growth rates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011/201</td>
<td>2012/201</td>
<td></td>
<td></td>
</tr>
<tr>
<td>general amount of the celled pension contracts (thousand of units)</td>
<td>69,7</td>
<td>75,0</td>
<td>61,4</td>
<td>+ 7,6%</td>
</tr>
<tr>
<td>An amount of participants is after the celled pension contracts (thousands of persons)</td>
<td>569,2</td>
<td>594,6</td>
<td>584,8</td>
<td>+ 4,5%</td>
</tr>
<tr>
<td>General assets of non-state pension fund (mln. of Uah)</td>
<td>1 144,3</td>
<td>1 386,9</td>
<td>1 660,1</td>
<td>+ 21,2%</td>
</tr>
<tr>
<td>Pension payments (mln.grn), including:</td>
<td>925,4</td>
<td>1 102,0</td>
<td>1 313,7</td>
<td>+ 19,1%</td>
</tr>
<tr>
<td>from natural persons</td>
<td></td>
<td></td>
<td></td>
<td>+24,3%</td>
</tr>
<tr>
<td>from natural persons-businessmen</td>
<td>0,2</td>
<td>0,2</td>
<td>0,2</td>
<td>0,0%</td>
</tr>
<tr>
<td>from entities</td>
<td>884,6</td>
<td>1 051,2</td>
<td>1 254,9</td>
<td>+ 18,8%</td>
</tr>
<tr>
<td>Pension payments (mln.of Uah)</td>
<td>158,2</td>
<td>208,9</td>
<td>251,9</td>
<td>+ 32,0%</td>
</tr>
<tr>
<td>Amount of persons which got (get) pension payments (thousands of persons)</td>
<td>47,8</td>
<td>63,1</td>
<td>66,2</td>
<td>+ 32,0%</td>
</tr>
</tbody>
</table>

*Table continues in the next page*
Table continuation from previous page

| An income (loss) is from investing of assets of non-state pension fund (mln.of Uah) | 433,0 | 559,9 | 620,3 | + 29,3% | + 10,8% |
| Sum of charges which are compensated due to pension assets (mln. of Uah.) | 64,6 | 86,6 | 106,6 | + 34,1% | + 23,1% |

By the state on by 31.12.2012 administrators of non-state pension fund 61 403 pension contracts were celled with 48 924 depositors, that on 18,1% less than, than in 2011 year, from what 2 396 (or 4,9% from the general amount of depositors) are depositors legal entities which 1 254,9 million, and 46 528 depositors (or 95,1% from the general amount of depositors) – physical persons Uah of pension payments (95,5% from the general volume of pension payments by system of NPZ) is on.

Thus by comparison to the end of 2011 the amount of contracts with legal entities diminished on 20,1%, and with physical persons - on 10,6 %. (Figure.1)

![Figure 1](image)

- amount of pension contracts with individuals
- amount of pension contracts with entities

**Figure 1. Dynamics of amount of the celled contracts, 2010-2012 years (Results of private pensions in 2012)**

By the state on a 31.12.2012 amount of participants of non-state pension fund some diminished on 1,7 %, or 9,9 thousands of persons in comparing to the analogical index last year and made 584,8 tis.osib. (Figure.2)
The amount of participants of non-state pension fund by the state on 31.12.2012 made 584 788 persons, that on 1,7% less index last year.

Most participants of nederzhanikh of pension fund by the state on 31.12.2012 made persons in age from 25 to 50 years - 64,8%, or 379 022 persons. Specific gravity of persons under age 25 in the general amount of participants was 4,9%, or 28 382 persons (on 1,3% less than, than in 2011 year) 1, persons from 50 to 60 years – 23,6% or, more senior 60 years – 39 623 persons, that makes 137 760 persons 6,8% general amount of participants. (Figure.3)
In the cut of all age-dependent groups after the amount of depositors majority is made by men (Ris.3) Volume of the prepaid pension payments was increased on 19,2% in comparing to the analogical index of 2011 and by the state on 31.12.2012 made 1 313,7 million Uah.

Pension payments (non-permanent and on a certain term) by the state on 31.12.2012 made 251,9 million Uah, increased on 20,6% by comparison to 2011 year payments (non-permanent and on a certain term) 66 166 participants, that was 11,3% general amount of participants of NPZ.

General volume of assets, formed non-state pension fund, by the state on 1.12.2012 makes 1 660,1 mln.grn. All for 2012 the assets of non-state pension fund grew on 19,7% (or on 273,2 million Uah) in comparing to the end of 2011 (Figure.4).

The mechanism of cash flows in the pension system through the NPF plays a key role in shaping the investment resources for domestic economic development. Introduced by the new pension system to reallocate cash flows so as to form the main benefits and contributions through the second and third level.

The maturity of the scheme as may be determined by the degree of distribution of services among small and medium enterprises and individuals. According to the State Commission for Regulation of Financial Services Markets maximum pension contracts NPF is with individuals. But at the present stage of development of the pension system, they are determining shareholders funds, since the average amount of pension contributions for each prisoner kontarkt from individuals is much smaller than that of law. However, in the
early stage of the financial resources of pension funds position themselves mainly to large investors, which is a legal entity (Libanova E, 2004).

Conclusions

Thus, the main ways of improving refinery can be defined as follows:
- To improve the related regulatory framework, based on the already gained experience in implementing NPF;
- Optimal for the members' relationship between risk and returns in investment portfolios;
- Should be abolished regulatory restrictions on currency transactions and to consider the introduction of risk management and prudent investment of funds;
- Regulators should only allow investment in such assets, for which you can apply the valuation methods are the same for all funds;
- Increasing the efficiency of investment portfolio - thanks: permission investing in derivatives from the perspective and in order to hedge the introduction of legislation in the General Conditions of the risk management limits to the share of equity that can hold NPF;
- Compliance with the maximum permissible investments by monitoring compliance with statutory restrictions on the investment of pension assets, which should be based on their average values.

Suggestions

As a result, a comprehensive study of private pension funds in Ukraine can draw the following conclusions:

1. Non-state pension fund - a legal entity that is a non-profit organization (non-profit organizations) functions and activities conducted solely for the purpose of accumulating pension contributions for participants. The assets of the pension fund generated from contributions to the pension fund and the investment income from the investment of pension assets.

2. The main areas of state regulation of investment of a fund determined to increase the investment attractiveness of existing financial instruments for investing pension assets, the adoption of a legal act in order to simplify foreign exchange transactions pension funds, starting in Ukraine of independent rating agencies, which would make estimates (assigning rating) corporate and municipal securities, development of the legal framework
of the financial markets, the introduction of restrictions on the risk of the investee NPF, expanding areas of pension assets by improving the conditions of issue of existing and introduction of new financial instruments, primarily protected from the effects of inflation.

3. Development of a civilized market and create conditions for management companies have always been a priority for the Ukrainian Association of Investment Business.

4. To reduce the impact of the crisis must be done through the introduction of new financial instruments, including the government, which will have a floating rate of return.

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DEVELOPMENT TRENDS OF EUROPEAN UNION COUNTRIES TAX SYSTEMS IN THE PERIOD OF GLOBAL ECONOMIC CRISIS (YRS. 2008-2012)

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Abstract

**Purpose** – the article examines changes in tax policies and tax systems of European Union member states since the start of global economic crisis;

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

**Findings** – in the period of the global economic crisis European Union countries applied different approaches towards taxation – some member states (i.e. Lithuania, Latvia, Estonia, Greece) increased tax rates, expanded tax base of already existing taxes or even introduced new types of taxes, while other member states (i.e. Germany, United Kingdom, France, Finland) has tried to decrease tax burden, lowering rates of some taxes, introducing tax reliefs and etc. However there is a quite clear trend that in the period of global economic crisis countries of European Union started to rely more heavily on indirect taxes and the role of state budget revenue from indirect taxes is rising;

**Research limitations/implications** – this research paper is the background in order to give insights on the directions of taxation policies in different European Union member states. Limitations of this paper are as follows: empiric analysis of tax systems focuses on data about four major direct and indirect taxes – personal income tax, profit, value-added tax and excise duties. Other types of taxes fall out of the scope of this article;

**Practical implications** – the paper presents the theoretical framework for further studies of taxation policies in European Union as well as basic material for academic discussions on the efficiency of methods to overcome negative impact of global economic crisis on economies of European Union countries;

**Originality/Value** – the author presents the research on the application of major direct and indirect taxes in the European Union and the changes of tax rates, tax basis and
tax reliefs during the global economic crisis as well as evaluates Lithuanian experience on reforming of its tax system in the regional context;

**Keywords:** tax system, tax policy, tax reform, global economic crisis, taxes in the European Union;

**Research type:** research paper.

**Introduction**

The primary goal of each state is economic growth and establishment of a favorable environment for the country's material and spiritual well being. So the state's role in fiscal policy in the economic life takes on a special importance. Fiscal policy measures that can be used to stabilize the economy when the economy is in decline include: government spending/income policy, the state property sales and management of this process, policy on social benefits (pensions, subsidies and etc.), state budget deficit reduction policy, tax policy, public debt (domestic and foreign) management.

One of the factors that help to stabilize the economy in the event of economic downturn is an efficient tax system. It has to promote rapid economic development and to ensure a stable income for budget of the state; also it must be fair and proportionate to the tax distribution and secure fair competition in the market. Of course it is difficult determine the optimal level of taxation to ensure social development, general well-being and quality of favorable conditions for business. The efficiency of the tax system is an important tool for the development of national economic potential. One of the main tools in order to ensure well-being of the society is public sector funding, which depends on the revenue collected in the national budget. The most important source of the financial resources since used since the ancient times is taxes. Their collection is determined by state of the economy and efficiency of the tax system (tax administration). The priorities and the principles on which the tax system is formed directly determine its effectiveness. It’s also important to mention that tax system directly affects not only the redistribution of income, but also the financial situation of economic operators, encourage (or discourage) the growth of national economy. By adopting the relevant tax laws, the state can promote rapid economic development or otherwise – bring the economic development to the edge of stagnation and decline, combat inflation, unemployment or to focus on budget deficit reduction. Regulation of the economy through the tax system is practiced in most countries and is considered to be an effective measure, although there is also an opinion that the state should not interfere in the whole economic life of the country (Wilson-Rogers N., Pinto D., 2009).
The main problem of regulation of the economy through the tax system and taxation policy can be defined in such way: if economic situation in the state deteriorates, less income from taxation is collected, and the state encounters problem of budget deficit. If the politicians decide to balance the state budget, they can choose to reduce government spending or increase tax rates. In both cases, the total expenditures will decline and the situation will get worse. By raising taxes or cutting spending, the government outweighs the automatic stabilizers acting in the tax system. Accordingly the aim of this article is to give insights on the directions of taxation policies in European Union member states after global decline of the World economy starting from the yrs. 2007-2008 and to compare it with national Lithuanian experience in tax reforms adopted since the end of 2008.

Theoretical background and research methodology

In order to study efficiency of tax reforms in the context of the global economic crisis the author of this article has selected the comparative method as the main tool for the research. Using this method, it will be possible to accept or reject the main hypothesis - tax system reforms which led to increased tax rates, expanded tax base of already existing taxes or introducing of new taxes was ineffective and led to a recession of main macroeconomic indicators, such as gross domestic product (GDP) growth rate, inflation rate and unemployment rate and on the other hand countries which applied policies related to reducing of taxes (even in short periods of time) show better results of economic recovery.

The comparative method allows the comparison of different national tax systems. The application of this method is effective tool because any deficiencies and inconsistencies in tax system reform can be pinpointed by comparing experience of one country (i.e. Lithuania) with the experience of other countries with different practice of taxation. Comparative method in this study provides an opportunity to make a significant contribution to the verification of hypothesis and unification and standardization of methodologies. Countries which were involved in research include Lithuania, Latvia, Estonia, Greece, the United Kingdom, Germany, France and Finland. Data about overall

tendencies in the taxation policies of European Union member states was retrieved form annual Eurostat reports “Taxation trends in the European Union”¹.

Origins and concept of the global economic and financial crisis

The world today is still facing a crisis in the economy and financial system (further in this text – the Crisis) which affects to a greater or lesser extent most of the countries in the world, including European Union. The global economic and financial crisis was sparked by the outbreak of the U.S. subprime mortgage crisis and financial crisis of 2007–08. The recession affects the entire world economy, with greater detriment to some countries than others, but overall to a degree which made it the worst global recession since World War II. The starting point of the Crisis may be related to the events in 2007 when the U.S. Federal Reserve was forced to take measures to ensure the banking system liquidity (Soros, 2009).

The current global crisis in the economy is distinguished from the former ones by its crisis level. As was mentioned before, it has affected the majority of the world's economies and in this respect it surpasses even the Great Depression (years 1929-1939). On the other hand, both of these crises have many aspects in common: in fact, both the crisis was caused by the disruption of the financial markets in the United States. Their main features - a huge credit expansion and the use of new financial instruments.

It is true that the modern financial markets use particularly complex derivative financial instruments (a complex variety of financial contracts). Although these derivatives (i.e. futures contracts, forwards contracts, swaps, options), have been developed in order to spread and reduce financial risk, but as the experience of last few years (particularly years 2007-2008) have demonstrated, banks and investment companies failed to adequately assess the risks of their actions and of course it was one of the reasons that caused the current global financial and economic crisis². Of course there are other essential aspects which we can point out as the cause and main highlights of today's Crisis - it is the turmoil in stock exchanges, which caused the real estate bubble burst and the world economic globalization. It's clear that the processes in the real estate market were also the primary factor that to the current Crisis.

It should be emphasized that the lessons of the Great Depression had not been wasted, and now the response of the governments of various countries in the economic downturn was much faster and more efficient than, for example, in 1929. It seems that The Great Depression was the stimulus that made the creation of an economic theory of state regulation, which methods are quite successful even today when we have to deal with the challenges of our time (Romer, 2011). There are two main traditional approaches of tax policy in order to combat economic crisis and its negative impact on national economy: 1) rising of taxes in order to ensure balance of state budget (fiscal policy proposed and applied by US president H. Hoover in 1930’s in order to combat the Great Economic Depression); 2) lowering of tax rates and increasing expenditures of state budget (fiscal policy proposed by famous economist J. M. Keynes in the middle third of the Twentieth century).

Fiscal policy of rising of taxes was widely used in many countries of the world in the beginning of the Great Economic Depression of 1930’s. For example, in the beginning of the Great Economic Depression in 1929, US president H. Hoover took the approach that the government has to balance its budget. Facing the reduction in tax revenues and increasing budget deficit he was convinced that the elimination of the deficit will restore business confidence and improve the economy. In 1932, H. Hoover proposed to increase taxes in order to achieve balance of state budget. It was the largest tax increase in U.S. history. However this model of fiscal policy was the opposite of that required during the hard times because the whole economy fell further even after these reforms.

These experiences paved the way for the so called Keynesian revolution, which took place in the years following the publication of J. M. Keynes study *General Theory of Employment, Interest, and Money*. In this study, one of the most famous economists of the Twentieth century, J. M. Keynes argued that government spending and tax policy should aim at full employment and price stability, rather than balancing the budget. Supporters of J. M. Keynes argued that higher taxes reduce the purchasing power of the people and has the suppression or anti-inflationary effect on the economy in nature. So according to the Keynesian theory and its later modifications, development of the national economy is related to monetary policy as interest rate cuts increases investment and hence economic growth. Decision of the government to encourage investment is considered to be the best method of giving a realistic outcome and social benefits. George. J. M. Keynes suggested dependence: savings + taxes = investment + government spending (Heilbronet R., 1995).

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The start of global economic and financial crisis in 2008 and 2009 initiated worldwide interest in Keynesism theory and the implementation of its ideas in practice. Instead of ideas of classical economics, which proposed to increase taxes or cut spending during economic downturns, supporters of Keynesism theory argued that in the event of economic downturn, there is a need to stimulate increase of public spending, cut taxes and reduce the interest rate (Deepak Nayyar, 2008). Some aspects of these ideas also were strongly proposed by other famous economists, such as Steven Pressman (2009) and N. Gregory Mankiw (2008).

The ideas of Keynesian macroeconomic theory were directly used in practice while preparing and enacting the American Recovery and Reinvestment Act of 2009 (commonly referred to as the Stimulus or The Recovery Act), which is an economic stimulus package enacted by the United States Congress in February 2009 aimed at creation of new jobs, stimulation of investment and consumption during a recession. The Recovery Act included increased spending (up to 831 billion USD) on education, health, infrastructure, including the energy sector, as well as additional financing for extended unemployment benefits and other social protection measures. In particular The Recovery Act provides that 37 percent of financial spending for stimulation of economy would be used for various tax credits. Widespread number of tax deductions and tax credits, temporary reduction of some taxes and a number of incentives for businesses to invest in equipment were also enshrined in The Tax Relief Act of 2010. Since 2008, various incentives to lower some taxes were also implemented by other major players of world economy – China, Japan and Russia.

Different approaches towards taxation policy in member states of the European Union since 2008

The effects of the global economic and financial crisis have hit the countries of the European Union with increasing force from the second half of 2008. Reacting to these events some of them reduced taxes (especially in the period after an immediate start of the Crisis (yrs. 2009-2010)). Meanwhile other states have increased them in order to try to collect more revenues to the state budgets. It quite difficult to establish quite clear tendencies in a taxation policies adopted by certain states since some of them even changed them for quite a few times in the whole period of analysis (yrs. 2008-2012), i.e.

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some types of taxes were increased while others were lowered at the same time and etc. It is necessary to mention, that according to the founding treaties of European Union, member states has quite a lot of freedom in order to pursue their own national tax policies since regulation of main direct taxes (personal income tax (further – PIT) and corporate income tax (further – CIT)) is not harmonized (excluding certain non-core aspects of taxation) and there are a lot of possibilities left for member states to individualize certain forms of indirect taxation (for example, to make decisions on the standard rates of value added tax (further – VAT) and excise duties or to introduce their reliefs).

However since one of the main aims of this article is to provide material for discussions on the efficiency of methods to overcome negative impact of global economic crisis on economies of European Union countries, the analysis is concentrated to main methods of taxation policy applied in order to avoid negative consequences of the Crisis. As it was mentioned in the first chapter of the article, there are two main ways applied in order to regulate the economy through the tax system in the event of economic downturn – rising of taxes (classical point of view) and lowering of taxes (lowering of tax rates, introducing tax credits and tax reliefs, narrowing of tax basis and etc.; this point of view is proposed by supporters of Keynesism theory).

For this reason the author of the article analyses four European Union countries which followed (or in certain periods of the Crisis tried to follow) classical point of view on taxation policy – Lithuania (it’s experience is described in separate chapter of the article), Latvia, Estonia and Greece – and four European Union countries – Germany, United Kingdom, France and Finland – which decided to apply different approach on taxation and has tried to decrease tax burden, lowering rates of some taxes, introducing tax reliefs and etc. (see Table 1 – Table 2). In order to evaluate efficiency of tax reforms, certain macroeconomic indicators (such as changes in GDP growth, unemployment and inflation rates) of these countries will be compared.

Table 1 shows that in the aftermath of the Crisis selected countries (Latvia, Estonia and Greece) completed tax reforms which led to increasing of VAT rates, changing of PIT and Social insurance tax rates to a higher level than was before the start of the Crisis. It is necessary to mention that fundamental changes to its tax system were completed by Greece were some new taxes (for example, excise duties on electricity, taxes on immovable property) were introduced and completely new progressive PIT tax system started to function.
Table 1. List of selected EU countries which increased taxes after the start of the Crisis (yrs. 2008-2012)

<table>
<thead>
<tr>
<th>Country</th>
<th>Type of tax</th>
<th>Tax policy measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latvia</td>
<td>VAT</td>
<td>Standard VAT rate increased from 18 % till 21 %</td>
</tr>
<tr>
<td></td>
<td>PIT/ Social insurance tax</td>
<td>Top rate of PIT increased from 23 % (2009) till 26 % (in 2010) and remained at 25 % (yrs. 2011-2012)</td>
</tr>
<tr>
<td></td>
<td>Excise duties</td>
<td>Since 2008 excise duties for tobacco, alcohol, fuel and some other types of goods were increased</td>
</tr>
<tr>
<td>Estonia</td>
<td>VAT</td>
<td>Standard VAT rate increased from 18 % till 20 % and reduced VAT rate increased from 5 till 9 %</td>
</tr>
<tr>
<td></td>
<td>Social insurance tax</td>
<td>Tariffs of social insurance tax were increased from 0,6 % till 2,8 % and from 0,3 % till 1,4 %</td>
</tr>
<tr>
<td></td>
<td>Excise duties</td>
<td>Rising of excise duties for fuel, electricity (by 40 %) and tobacco (by 20 %)</td>
</tr>
<tr>
<td>Greece</td>
<td>VAT</td>
<td>Standard VAT rate was increased till 23 % and reduced VAT rate increased from 5 till 9 %</td>
</tr>
<tr>
<td></td>
<td>PIT/ Social insurance tax</td>
<td>Introducing of progressive PIT tax (higher PIT rates for persons earning high income)</td>
</tr>
<tr>
<td></td>
<td>Excise duties</td>
<td>Excise duties for fuel, tobacco and alcohol were increased and excise duty on electricity was introduced</td>
</tr>
<tr>
<td></td>
<td>Other taxes</td>
<td>New taxes for taxation of high value immovable property, rising of other taxes (road tax)</td>
</tr>
</tbody>
</table>

In comparison Table 2 shows that after the start of the Crisis (especially in the years from 2009 to 2010) other selected states, such as Germany, UK, France and Finland decreased standard and reduced VAT rates, especially those applied to certain types of goods and services which are important to socially vulnerable persons and groups of society (i.e. food products, catering services) and eased PIT applied to people on low incomes (increased PIT exempt amounts of income, reduced rates of PIT applied for the taxation of low incomes).


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Table 2. List of selected EU countries which decreased taxes after the start of the Crisis (yrs. 2008-2012)\(^1\)

<table>
<thead>
<tr>
<th>Country</th>
<th>Type of tax</th>
<th>Tax policy measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>VAT</td>
<td>Lowered reduced VAT rates for certain services (accommodation services)</td>
</tr>
<tr>
<td></td>
<td>PIT/ Social insurance tax</td>
<td>Increased PIT exempt amounts of income, introduced tax reliefs for taxpayers who are purchasing new eco-friendly cars</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>VAT</td>
<td>Lowered standard VAT rate (from 17,5 to 15 %) in the period from December 2008 to December 2009</td>
</tr>
<tr>
<td></td>
<td>Other taxes</td>
<td>Introduced immovable property tax reliefs in the period from of September 2009 to December 2009</td>
</tr>
<tr>
<td>France</td>
<td>VAT</td>
<td>Lowered reduced VAT rates for certain services (2009)</td>
</tr>
<tr>
<td></td>
<td>PIT/ Social insurance tax</td>
<td>Decreasing by more than 50 % rates of PIT for low income persons</td>
</tr>
<tr>
<td>Finland</td>
<td>VAT</td>
<td>Decreased reduced VAT rates (for example VAT rates for food products (yrs. 2009-2010) and rates for catering services (since 2010))</td>
</tr>
<tr>
<td></td>
<td>PIT/ Social insurance tax</td>
<td>Reduced rates of progressive PIT tax (2009-2010), eased taxation of people on low incomes</td>
</tr>
</tbody>
</table>

The main object of this comparison is to find out whether countries which implemented Keynsistic approach towards taxation (or at least some elements of this approach in their taxation policies) seem to perform better and show better results of economic growth and stability (see Table 3)

\(^1\) Taxation trends in the European Union [interactive]. [accessed 2013-10-10].
Table 3. Changes in main macroeconomic indicators of selected countries after the start of the Crisis (yrs. 2009-2010)\(^1\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Latvia</td>
<td>-17,96</td>
<td>17,32</td>
<td>3,26</td>
<td>-0,3</td>
<td>19</td>
<td>-1,2</td>
</tr>
<tr>
<td>Estonia</td>
<td>-13,90</td>
<td>13,07</td>
<td>0,09</td>
<td>2,3</td>
<td>17,3</td>
<td>2,9</td>
</tr>
<tr>
<td>Greece</td>
<td>-1,96</td>
<td>9,38</td>
<td>1,35</td>
<td>-3,5</td>
<td>12,5</td>
<td>4,7</td>
</tr>
<tr>
<td>Germany</td>
<td>-4,72</td>
<td>7,49</td>
<td>0,23</td>
<td>3,6</td>
<td>7,1</td>
<td>1,2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>-4,90</td>
<td>7,45</td>
<td>2,12</td>
<td>2,1</td>
<td>7,9</td>
<td>3,3</td>
</tr>
<tr>
<td>France</td>
<td>-2,55</td>
<td>9,43</td>
<td>0,10</td>
<td>1,4</td>
<td>9,8</td>
<td>1,7</td>
</tr>
<tr>
<td>Finland</td>
<td>-8,02</td>
<td>8,25</td>
<td>1,60</td>
<td>3,7</td>
<td>8,4</td>
<td>1,7</td>
</tr>
</tbody>
</table>

The study of changes in tax systems in the context of the Crisis, shows that the countries that have chosen Keynesian economic recovery policies (Germany, Finland, the United Kingdom and France), i.e. countries which introduced tax cuts of at least short scale, seem to perform better economically. Their main macroeconomic indicators (GDP growth rate, unemployment rate and inflation rate) investigated in period from 2009 until 2010 was better: GDP growth ratio in 2010 increased at a higher pace (from minus to plus rates) and it shows the signs of growing economy. Meanwhile after tax increases chosen by countries, such as Greece and Latvia, the economy of these countries has continued to fall quite significantly in 2010 (GDP growth rate remained at negative level). Only Estonia’s economy showed modest growth, however, this improvement is rather symbolic after the massive economic downturn in 2009. In 2010 the unemployment rates in the countries, which decreased taxes, remained quite stable (about the same percentage as was a year before), and although in other countries (Latvia, Estonia and Greece) unemployment continued to rise quite significantly.

It is important to mention that the changes in the course of the main macroeconomic indicators described above may not be explained only by changes in taxation policy of

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certain countries since there are lots of other significant factors which require more detail survey and statistical comparisons (such as structure and condition of economies before the start of the Crisis, other means for the stimulation of economies, which were chosen and implemented by each state individually, for example increases in government spending and etc.). Nevertheless data which was the object of the analysis proves that in the short term (yrs. 2009-2010) rising of taxes haven’t worked as a model of successful economic policy.

It is also important to note that after the year of 2010, data on taxation policies of European Union countries shows that most Member States of the European Union have shifted away from policies of tax cuts to increasing of the overall tax burden (comprising direct and indirect taxes and social contributions). According to the data provided in the annual reports of Eurostat (2012 and 2013) overall taxation trends in European Union remains as such ¹:

- Average standard VAT rates have risen strongly by 1.5 points in only four recent years and currently (in 2012) stand at 21 % (it’s important to mention that VAT standard rate was well below 19.5 % in 2008);
- The adjusted top corporate income tax (CIT) rates in Europe were cut insignificantly from a 24.0 % average in 2008 to 23.5 % in 2012;
- After sharp decline in period from 2008 until 2009 there has been a broad trend to increase top personal income tax (PIT) rates, especially since 2010 (average top PIT rates rose from 37,2 in 2010 to 38,1 % in 2012).

Also a quite clear trend can be distinguished that in the period of global economic crisis countries of European Union started to rely more heavily on indirect taxes (consumption taxes) and the role of state budget revenue from indirect taxes (consumption taxes) is rising ².

**Lithuanian experience of taxation reforms in the aftermath of the global economic crisis**

Since the end of the 2008’s Lithuania has experienced a deep economic crisis, which was followed by a large GDP decline (real GDP growth constituted -14,8 in 2009), rapidly

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rising unemployment – 13.7 % in 2009 and 17.8 % in 2010) and the budget deficit (- 9.2 %
in 2009 and - 7.1 % in 2010) \(^1\). These processes were also followed by the increase of
shadow economy.

The causes of the crisis were both the external and internal. External causes are
associated with the events which shook the world in 2008-2009 - the start of global
economic crisis and its consequences for Lithuania: shrinking of export markets and
withdrawal of foreign capital from Lithuania as well as Lithuanian stock exchange fall. To a
certain extent the Crisis was also caused by high imported oil and gas prices in Lithuania.

Internal causes of the Crisis were related to the fact that the very fast growth of
Lithuanian economy since 2004's was related to the growth of domestic demand. Despite
constant growth of the gross domestic product (GDP), budget expenditures exceeded
revenues from year to year. Formation of the deficit budget and decreasing of the personal
income tax rate while economy was growing was one of the mistakes made by the national
government. It is necessary to mention that before the start of the Crisis, Lithuania granted
tax incentives for mortgage loans, so the majority of loans were directed to the real estate
market, which led to the formation of real estate "bubble" which has exploded in the end
of 2008's.

Lithuanian national budget revenue is collected mainly from the VAT, excise duties
and income tax. Revenue from these four types of taxes forms more than 90 % of whole
state budget revenue. Accordingly, main tax reforms in Lithuania after the start of the Crisis
were aimed at reforming of these taxes. Lithuania has made crucial decisions to reform its
tax system in December of 2008 and these reforms included:

• rising of VAT rates (from 18 % to 19 % and from 19 % to 21 % since July of 2009) and
withdrawing various VAT tax reliefs (exemptions);
• rising of excise duties for fuel, cigarettes and alcohol products (excise duties for
some types of fuel products were increased by more than 200 % and tax reliefs
(exemptions) for certain producers of alcoholic beverages (small breweries) were
abolished;
• rising of corporate income tax (from 15 to 20 percent);

The only opposite taxation polic y mean was decreasing of personal income tax for
certain types of income (from 24 to 15 percent), although it was followed by and
introduction of separate compulsory health insurance contribution of 6 % (instead of

\(^1\) Global Finance: Country Economic Reports & GDP Data [interactive]. [accessed 2013-09-29]. <
allocating 30% share of PIT to compulsory health insurance fund), bringing the combined tax rate on employment income to 21%.

Table 4. Changes in rates of VAT, PIT and CIT in Lithuania and EU after the start of the Crisis (yrs. 2008-2012)

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average standard VAT rate in EU</td>
<td>19,4</td>
<td>19,8</td>
<td>20,4</td>
<td>20,8</td>
<td>21</td>
</tr>
<tr>
<td>Standard VAT rate in Lithuania</td>
<td>18</td>
<td>19/21</td>
<td>21</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Top average PIT rate in EU</td>
<td>37,9</td>
<td>37,2</td>
<td>37,9</td>
<td>37,6</td>
<td>38,1</td>
</tr>
<tr>
<td>Top PIT rate in Lithuania</td>
<td>24</td>
<td>15/20</td>
<td>15/20</td>
<td>15/20</td>
<td>15/20</td>
</tr>
<tr>
<td>Average CIT rate in EU</td>
<td>24</td>
<td>23,9</td>
<td>23,7</td>
<td>23,4</td>
<td>23,5</td>
</tr>
<tr>
<td>Top CIT rate in Lithuania</td>
<td>15</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

Data provided in Table 4 shows that Lithuanian policy on VAT rates is quite comparable to the general policies applied by the other European Union countries (standard VAT rate in Lithuania is equal to average standard VAT rate in European Union), however even after tax reforms in the year of 2008, top rates of PIT and CIT tax remains lower in Lithuania than top average tax rates applied by the other European Union countries.

It is necessary to note that experience of Lithuanian tax reforms in economic crisis can be evaluated controversially. In general Lithuania, as some other European Union countries which were analyzed in previous chapter (i.e. Latvia, Estonia and Greece) has chosen fiscal policy of rising taxes while facing consequences of global economic crisis, however, this policy didn’t ensure rapid stabilization of national economy (main macroeconomic indicators continued to decline in the yrs. 2009-2010 and started to improve only in 2011) as well as stable growth of state budget revenue from taxes (see Figure 1).

Figure 1 shows that state budget revenue from taxes fell from 22 345 006,3 Lt (2008) till 15 310 491 Lt (2009) and slightly rose only from 2011 when it reached 16 355 466,5 Lt in 2012. It’s also necessary to mention that tax reforms in Lithuania haven’t changed overall structure of state budget revenue as income from indirect taxes in Lithuania constitute the majority of state budget revenue (~ 70% of all income from all taxes in the period from

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2008 until 2012). This fact points out that Lithuania is following global taxation trends in European Union and relies on indirect taxation as a main state budget revenue source.

Figure 1. State budget revenue in Lithuania from taxes (yrs. 2008-2012)

Conclusions and Suggestions

In the period of the global economic crisis European Union countries applied different approaches towards taxation – some member states (i.e. Lithuania, Latvia, Estonia, Greece) increased tax rates, expanded tax base of already existing taxes or even introduced new types of taxes. Other member states (i.e. Germany, United Kingdom, France, Finland) has tried to decrease tax burden, lowering rates of some taxes, introducing tax reliefs and etc.

The countries that have chosen Keynesistic economic recovery policies (Germany, Finland, the United Kingdom and France), i.e. countries which introduced tax cuts of at least short scale, seem to perform better economically. Their main macroeconomic indicators (GDP growth rate, unemployment rate and inflation rate) investigated in period from 2009 until 2010 was better.

However after the year of 2010, data on taxation policies of European Union countries shows that most Member States of the European Union have shifted away from

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1 Ibid.
policies of tax cuts to increasing of the overall tax burden. There is also a quite clear trend that in the period of global economic crisis countries of European Union started to rely more heavily on indirect taxes and the role of state budget revenue from indirect taxes is rising.

Lithuanian tax reforms in economic crisis can be evaluated controversially. In general Lithuania has chosen fiscal policy of rising taxes while facing consequences of global economic crisis, however, this policy didn’t ensure rapid stabilization of national economy. Besides this fact recent taxation trends shows that Lithuania is following global taxation policies European Union and relies on indirect taxation as a main state budget revenue source.

It is suggested that the tax rate reduction in the event of economic crisis or slowing of the increase of tax rates works out as possible best economic strategy of the state, because it helps to avoid possible negative impact on the country’s economic condition.

**Literature**

Books and articles:

Internet sites:


THE COMPETENCE EDUCATION OF CAREER FORMATION IN THE CONTEXT OF LIFELONG LEARNING

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Abstract

Purpose – to explore having competences of career formation of the young people and their education in the context of lifelong learning.

Design/methodology/approach – according to the existential philosophy where the most important thing is the person’s actualization in the existing area and humanistic philosophy which accent the respect to the person’s right to freedom, equality, the expansion of natural abilities and features, revelation of the personality.

Qualitative data collection and processing methods have been used in order to perform the research. The data of the research are collected by the half structured interview method.

Findings – the hypothesis have confirmed: the majority of the young people do not have enough knowledge and skills in the projection sphere of a successful career and which are necessary if you want to integrate in the rapid changing labour market and to develop all life. The importance and relevance of these knowledge and abilities highlight seeking a successful career. According to the data of Lithuanian Labour exchange, there are too many some professions and the lack of other professions in the dynamic labour market. The acquired knowledge of career formation of the young people would give ability to fixate in the dynamic labour market and to keep balance in it.

Research limitations/implications – the information given in the research reveals the opinion of the young people (18-23 year). The evaluation of the young people may change due to the fact of the changing economic and demographic situation, acting other external
factors. The conclusion has been made only generalizing the opinions of the young people from Lithuania and appreciating the attitude of the young people from other countries to the possibilities of career formation have not been applied.

Practical implications – this research will get an opportunity to correct and to concretize functions of the researches of professional career, consultation of the professional and career activity and the main ability spheres of the career formation.

Originality/Value – the research develops new competences, acquired peculiarities, the planning of career, realization, management of the young people, the meaning of emigration and social disjuncture acquiring education and realizing the vision of a successful career. Also, the importance and relevance of conception of lifelong learning is emphasized in order to keep the competitive ability in the dynamic work market.

Keywords: the formation of career, competence, education, lifelong learning.

Research type: viewpoint.

Introduction

XXI century – it is a century of rapidly improving and changing technologies. The rapid globalization and changing demographic situation give more possibilities to acquire new knowledge and skills and also the necessity to develop the process of lifelong learning. The fundamental feature of knowledge society is data flows, scientific and technological potential, the great labour force is involved to the projection of knowledge, transmission, selling, care, accumulation (Giddens, 2005). There is preceded from the hierarchical system and specific work skills to general knowledge and permanent learning. Every individual has an ability to develop his or her abilities and to seek personal career and financial stability according to individual endeavors, possibilities despite social position, sex and race. According to this, the individual conception is maintained which based by the same standards for everybody and which refused the rights of the government to limit choices and possibilities of successful and talented individuals to seek a high career (Hayek, 2002). On purpose to seek this, the person has to follow new tendencies of the labour market, acquire more knowledge in his or her professional sphere in order to be a professional and an attractive specialist, to improve in the personal life because characteristics and skills of the person also perform the important function in the process of education. The formation of career continues all the life and it is a very important part of it. In developing of the conception of the career and activity possibilities of the person it is not enough to have the normal form of the career which is based by the system of the hierarchical stairs. It is necessary to acknowledge new forms and types of the career, to contact with peculiarities.
of career management, economic and political changes determining the variation of the labour market. It becomes difficult to choose the perspective sphere which would be useful and corresponding abilities to the society, so for this reason there is necessity of the person to combine his or her possibilities, hobbies and individual features with the situation in the labour market and society. The current situation of Lithuania reveals that the majority of the young people do not have right knowledge about the formation of career, it’s management, they do not follow enough tendencies of the labour market, they do not afford to find the balance between their seeks and possibilities dynamics which are in the society (Kučinskienė, 2003). According to the data of Lithuanian Labour exchange (2013 the 1st quarter) every ninth registered unemployed person is younger than 25 year. In 2013 of the 1st April there were 26, 7 thousands of the young unemployed person until 25 year and it made 11,6 percentages of all unemployed persons registered in the Labour exchange (the data of Lithuanian Labour exchange, 2013). Also, according to the barometer of resettlement possibilities (2013), the most chances to fixate successfully in the labour market has representatives of specialties of engineers, doctors, accountants, programmers, and the least chances has social pedagogues, workers, lawyers, psychologists, economists but nevertheless social sciences are the most popular among the entrants – this kind of speciality has been chosen by 42 % entrants (according to the data of LAMA BPO, 2013). According to the Statistics Lithuania (2013), 54 thousand people left Lithuania last year and almost of them every second person is 20-29 year. All of these suppose the importance and meaning of the formation of career in the modern society. The formation of career and the necessity of management have been analyzed by the following scientists of Lithuanian and foreign countries J. Holland (1973, 1985), L. Gottfredson (1996, 1994), D.E. Super (1980), L. Jovaiša (2009), K. Pukelis (2002), N. Petkevičiūtė (2006), J. Ruškus (2008), D. Augienė (2009), R. Rudžinskienė (2011, 2012, 2013), V. Tūtlys (2013), A. De Vos, J. Segers (2013), D. Bown-Wilsons, E. Parry (2013), J. Reuter (2013), etc.

The hypothesis of the performed research: the majority of the young people do not have enough knowledge and skills in the sphere of a successful career formation which are necessary if you want to integrate into the rapidly changing labour market and to develop the whole life.

The object of the research: the formation competence education of having career of the young people (18 – 29 year).

The aim of the research: to explore having competences of career formation of the young people and their education in the context of lifelong learning.

The tasks are: to base theoretically the importance of competence education of career formation in the context of lifelong learning, to emphasize peculiarities of career formation and education of the young people, to determine the problems which are
confronted by the young people forming their career seeking to gain access to the labour market and to explore the information which has the young people about the conception of lifelong learning.

The methodology of the research: according to the existential philosophy where the most important thing is the person’s actualization in the existing area and humanistic philosophy which accent the respect to the person’s right to freedom, equality, the expansion of natural abilities and features, revelation of the personality.

Theoretical method of the research: qualitative data collection and processing methods have been used in order to perform the research. The data of the research are collected by the half structured interview method.

Research limitations: the information given in the research reveals the opinion of the young people (18-23 year). The evaluation of the young people may change due to the fact of the changing economic and demographic situation, acting other external factors. The conclusion has been made only generalizing the opinions of the young people from Lithuania and appreciating the attitude of the young people from other countries to the possibilities of career formation have not been applied.

Practical implications: this research will get an opportunity to correct and to concretize functions of the researches of professional career, consultation of the professional and career activity and the main ability spheres of the career formation.

Theoretical aspects of career formation

The meaning of the word career originates from the Latin word *carraria* which means the life way of the person or from the France word *carriere* which means the direction of activity, area, profession. Parsons (1909) is kept the father of the modern projection theory of career and practice, but American Super (1957) was the first who introduced the concept of career.

The formation of career is determined as a systematic process which gives ability to persons to realize their education, employment and leisure potential developing, self-consciousness and ability to take decisions (Rudžinskienė and Paulauskaitė, 2012). According to the scientists Pukelis and Pundzienė (2002), the formation of career – permanent endeavors of the person to envisage tendencies of the labour market and in the predictive changes context to explore and to plan development processes of the professional activity on purpose to stay in the constantly changing labour market and to give a sense his or her life. The formation of career consists of several parts – education to career and planning of career (Pukelis, 2003). Also, the researches of labour market are
The changes of labour market are rapid and hardly prognosticated because of being an intensive modernization of economic and labour force migration (Augienė, 2009). Therefore, it is important to project and to manage our career systemically and responsibly considering to changes of the labour market, political and social reforms which has an influence to the education system, activities of organizations, and an establishment of business, unemployment, emigration and micro sphere of the person. The career is important because that it is one of the most important priorities of the life for many people which has ability to satisfy physiological, social, safety, material, social acceptance, self-actualization demands. Furthermore, being at school, the young people should try to know themselves, to understand what they expect from their future profession, what they are able to do, how they can develop their skills because studying at schools gives general knowledge. It is noticed that it is difficult to imagine differently a successful career than a process which is planned, developed and managed by the person (Rosinaitė, 2008). The successful career is understood differently by every individual, so for this reason career is determined as a process of the life which involves behavior and provisions. The modern conception of career takes a wider spectrum because career may be not associated with professional activity or a particular choice of the work. An individual may identify his or her career with the choice of the life style, for example, a housewife or a baby tender is associated with the choice of the life style. The suitable professional decision is very important and it is interrelated to conscious objective of the person to find a place in the life and the work world (Augienė, 2009). How person conceptualizes himself and his wishes, thus his professional self-view is developed. In the theory of Super (1980), the most important abstracted feature is a professional self-view stimulating a professional becoming of the personality and forming the way of the career because an individual (Augienė, 2009) chooses the way which gives more effective self-expression means.

The education of competence

Changing situation of the labour market the majority of employers expect from future employees not only the specific qualification, knowledge but also personal features which are necessary to perform the corresponding work, desire to improve, to progress, to seek higher and more progressive results of the work. Everything determines the importance of the competence education. Competence (in Latin competentia) – it is the sphere of questions and phenomena and it fines who acquaint with it perfectly (Dictionary of international words, 2008). It is ability to perform the specific work professionally. Competence involves skills, knowledge and personal features. Knowledge is necessary in
order that individual would have theoretical and practical basis about the specific sphere, skills including practical side of the activity which is achieved by the repetition method and personal features, provide motivation, let to find mission in one or another profession. In this case, the individual becomes the professional of the specific sphere.

Therefore, not everybody of employable persons do a professional activity for specific political, economic, social and personal reasons and this reduces productivity and economic growth of the nation. In the conclusions of performed research of unemployed career formation in Lithuania villages, there is indicated that there is available work places (Rudžinskinė, 2011) but unemployed persons cannot work because of inadequate qualification and work and social politics is not flexible and does not encourage unemployed persons to integrate to the labour market. The majority of unemployed persons do not have strong motivation to integrate and their integration is complicated for the hostility, apathy, disappointment. EU is foreseen the strategy of economic growth “Europa 2020” and there are foreseen five the most important aims where encouragement of employment and social involvement are involved.

**Lifelong learning**

A professional development – a process which lasts all life and it is determined by changing tendencies in the labour market, performing social and economic nation politic, personal changes in the life of an individual. Lifelong learning is a process of education where assumptions, conditions, possibilities and natural learning processes are created which progress using such possibilities (Jankauskienė and Toleikienė, 2012).

According to the work report of lifelong orientation politic system of Europe 2008-2010, lifelong orientation is accepted as an essential lifelong dimension which helps to seek social and economic aims. Also, lifelong learning is the most important principle of UNESCO education and learning (the data of UNESCO, 2012). This principle seeks to secure possibility to develop competence for people despite from their social stratification.

Lifelong learning is the main principle of education system of Europe and the essential aim is to ensure possibilities of lifelong learning seeking to protect efficiency, to lower social disjuncture, unemployment and so for this reason the programme of lifelong learning has been created (PLL) and its duration is from January 2007 till December 2013. There are given 6, 9 milliard euros and 27 countries participate in this programme and Lithuania, too. This programme includes school education (Comenius), higher education (Erasmus), professional education (Leonardo da Vinci) and adult education (Grundtvig) (the data of Euroguidance, 2012).
An adult education is a social practice which involves education of adults and culture by the widest meaning and the whole of person reproduction activities (Jatkauskienė and Tolutienė, 2012). An adult education is appropriated to persons having professional, social and personal experience of their activities but who want to acquire new skills and experience. Those individuals have ability to realize their wishes by self-education method getting only minimal assistance in the process of education. Self-education is an education happening in the daily life or in the workplace (Šliogerienė, 2007).

The main four aims are represented in the memorandum of Lifelong learning published in 2000: an active public-spirit, social integration, personal completeness and possibility to employ. The aim of this strategy is to create a competitive society of knowledge. Lifelong learning memorandum (2001) presents a new paradigm of lifelong learning where lifelong learning could promote not only to expansion aims of strategically EU and its country members but also could promote to the fact that lifelong learning would become not the rhetorical possibility of the person but the real part of the life (Gedvilienė and Zuzevičiūtė, 2007). This is presented in the security strategy of Lifelong learning (2004).

The main principle of lifelong learning is a voluntary desire to educate. Responsibility, motivation and ability to search learning possibilities of the student are very important there.

**Competence of the young people policy**

The young people are the members group of the society including the period of personal formation and moving to self-sufficient life in the society of persons from 16 to 29 year according to the decision of LR Seimas due to the concept of young people policy of the state (1996). According to the data of Lithuania Statistics department (2009), the youth makes 22,7 percentages of all people in this country. The main activity aspect of country institutions which guarantee successful development of the country are directly related to formation of suitable conditions to the youth to develop and educate as an educated, moral and public-spirit individuals who actively enter to the political, social, cultural and economic public life.

The number of registered unemployed young persons in 2009 was 79, 6 thousand. According to the data of the European Commission, 5, 5 million young people are unemployed in the EU and unemployment level reaches 20 percentages (2013). What were the reasons of this number of unemployed persons? The reasons are the lack of work experience and competence. Also, according to the data of the European Commission, today young people from 15 to 24 year do not have work and they do not study (2013).
majority of the young people have too little knowledge about the performing of career and education of competence, so it is difficult for them to compete in the labour market.

The method of the research

The half structured interview has been chosen performing this research due to possibilities to analyze widely the personal experience of people in the sphere of the forming of career. It is experimented to determine consistent pattern what skills are not enough if you want to project a successful career, how young people appreciate the perspective of lifelong learning and especially education possibilities of non-formal studies and self-learning and how they are applied in the daily life and in the work sphere.

The analysis of the research data

In this research 7 informants have been chosen to participate in the interview. The research was on the 28th June – the 2nd August in 2013. The one informant was a high school graduate and others were informants studying the bachelor’s studies every day. The informants have been chosen from Kaunas, Šiauliai, Raseiniai and Kuršėnai. The average of questioned persons was 22 year. It is possible to state that in such age the majority of the young people face to the real situation of the labour market in Lithuania and they actively try to fixate in the professional sphere. Performing a half structured interview it has been seeking to determine conceptions of the life vision of the young people career and a successful career. According to Savickas (2012), we can find hints that the formation of the life is the assumption of a career formation in the structure investment of the career project which are based by construction, deconstruction, reconstruction and activity. Also, Kardelis (2012) states that making reference to short stories (short tales) which are told by the client, the consultant forms “himself, identity and career” of the client. The given questions to the informants have been about career and their vision of the successful career and reveal having knowledge about career, its projection and indicate the purpose of the specific career. All of 7 informants have indicated that career is related to the development, professional and fixation in the labour market. The informant of No. 3 have emphasized that it is important to plan career and the informant of No. 5 have added that career opportunities are growing constantly with the increasing professional work. All the informants have stated that the term of career is related to professionals who occupy a high status and responsible functions and the informants of No. 1, No. 3 and No. 6 do not
relate their studies to career because they work in their free time. More than the third part of the participants does not have a clear and successful vision of career. According to the outgivings of the informants, it is possible to state that the successful career for the young people firstly associates with the prestigious workplace, ambitious plans and profitable earnings.

During the interview, the given question “How do you understand the projection of career?” reveals the having knowledge of the young people about the planning of career, the formation of it and if it is pay enough attention to the education of the young people in the education institutions, how they can comprise priorities considering to their abilities, hobbies and tendencies of the labour market.

The formation of career has been imagined as a planning of career by 6 informants. The understanding of the formation of career and the planning of career is different. The formation of career differs from the planning career by the aspect that the formation of career takes not only the planning of career but also the researches of the labour market. The informants talking about the formation of career have not mentioned the actuality of the labour market researches. Only two persons of the questioned people have stated that they have been interested in the tendencies of the labour market and usually the young people only have heard about present work market but they have not had any correct data.

The informants of No. 4 and No. 7 have stated that they are going to follow the labour market after their studies. So, it is possible to make an assumption that the young people do not have competence of the formation of career.

The question “What the young people do in order to seek a high occupation of career and would become the professional of their sphere?” emphasizes the personal endeavors of the individual seeking a successful career.

The informants have stated that it is important to think about their future education, career and a workplace beforehand. They have indicated several methods how it is possible to acquire new competences: voluntary, a hobby, the reading of literature, the work with a computer. However, the informants have not related this to the education of competences which help to fixate in the labour market or a professional sphere because they think that they are developing now.

All the informants have stated that the most important thing to develop a successful career is the personal efforts and inputs of the individual. The majority of respondents have indicated resolution, a persistent work, endeavors, a wish to develop as the main criterions seeking the status of the professional and the high status of career.

In order to show peculiarities of competence development of the young people it has been questioned about the programmes, seminars, course performing at their education
Institutions and the participation of the young people in it. The informants have mentioned several possibilities to acquire new competences: ERASMUS, the centre of foreign languages, voluntary, clubs, clusters, seminars, conferences of the particular professions representatives. The informants have confirmed that the education institutions give opportunities to develop and acquire new competences. Nevertheless, the informants have indicated that they have not used all the given possibilities. 50% of the questioned people have participated in seminars and conferences, 17% of the informants have become the representatives of their professions clubs or have started after-school activities but no one of the informants have used the possibilities of ERASMUS or the centre of foreign languages. They have stated that they did not participate in those activities for the lack of time and finance. The one informant has told that some education places are not suitable for the demands of the disabled people. This case increases social disjuncture, does not give equal possibilities to seek education and to fixate in the labour market.

In order to emphasize the main criterions which have influence to the career choice of the young people, the question has been asked: What criterions have been the most important choosing their studies? According to the performed work market researches of Lithuanian Labour exchange (2013, the 1st part of the year), it has been noticed that there are too many workers in the social sciences and there is a deficit in the technological sciences. It is seeking that young people would consider to their abilities, hobbies and tendencies of the labour market choosing the studies.

Furthermore, the most important criterion for the informants has been the tendency to the particular sphere and work according to their hobbies choosing the studies. The informants have stated that they are happy about their present studies and told that they have chosen their studies according to the having abilities.

The informants have had a question: What do you think, what knowledge, skills and personal features are necessary for the representatives of your chosen profession? From the given data, it is possible to state that the informants have ability to show skills, personal features and knowledge which are necessary to the representatives of their professions. Moreover, it is important to emphasize that all the 7 informants have stated they have necessary features and they seek to acquire necessary knowledge and skills. It shows the comparison of informants’ affirmations and description of Lithuania professions according to the professions’ list of AIKOS (Open Information Consultation and Orientation System). The comparative analysis highlights the general tendency: the informants have allowed for the recognition of ourselves, applied their abilities choosing the professional way. Also, the informants have emphasized the necessary features, abilities and knowledge of the particular profession representatives and the necessary knowledge and abilities
reflect in the professions description of AIKOS (Open Information Consultation and Orientation System). The career relation to the hobby is one of the most successful components of the career. It makes the basement of future career planning and formation.

Moreover, the young people have not had knowledge about the researches of the labour market, so they have been asked what factors have had the decisive influence for their chosen profession. Only 2 informants of 7 have tried for their career purposefully and others have chosen their studies programme due to the originated circumstances. Furthermore, the informants have indicated that the most important factors were the influence of the people round about and the chosen examinations of school leaving. It reveals the importance collaboration of parents, pedagogues and education institutions in the career development of the young people. It is necessary to provide formation knowledge of career, information about studies programmes, professions to the young people because the speeches of the authoritative persons have influence for their choice, acquired knowledge preparing to school and preliminary examinations.

5 respondents of 6 are studying at university and they get a nation sponsorship for their studies. It is the nation investment seeking to prepare specialists and to encourage the economic growth and competitive ability among countries of the world. By the time of the half structured interview, the informants have discussed about emigration phenomenon because of the great emigration indexes of the young people. This phenomenon has been evaluated positively by the all informants and more than the third part was ready to emigrate. The informants who have chosen emigration have been asked to show the reasons determining this decision. The main given emigration reasons of the informants are given in the following: better financial possibilities, a high status in foreign countries and more responsible functions.

The given reasons are related to the professional self-image, rising self-esteem and self-worth.

It is obviously that it is important to the young people to satisfy the present ambitions, to get an appreciation and appropriate payment.

Also, there was a question to the informants: What do you think about the system of the present education and about the situation of the labour market in Lithuania? The youth have mentioned the problems such as: prosperous bribery, the remained “soviet thinking”, the bureaucratic system, little attention to the employment of the disabled people and career development at schools.

They have emphasized that it is necessary to reconstruct the present system of education and to solve the main problems seeking to make competitive conditions in the labour market. The informants have suggested the following methods of the problems solution: it is important to give more knowledge of the career formation to the young
people, to make the professions map, to encourage the internecine collaboration of business and education institutions, to raise qualification of pedagogues.

What would be achieved considering to these aspects? The professions map is necessary to the young people choosing their life way, to pedagogues and teachers of andragogy who would raise their qualification knowing the newest tendencies of the labour market and may offer the specific information to the youth. If pedagogues got new competences, more andragogy representatives would emerge who would introduce the professional world to the young people and in this case the youth would be encouraged to find their strongest features, to learn those subjects which are the most successful for them, to understand what they want from their future workplace and what career would be successful for them. So, using this method the nation would have the young specialists seeking to become as a professional, to manage to think widely in their sphere, to implant innovations, to establish business which would encourage the growth of economic. If economic increases, the number of workplaces will be bigger, emigration will lower and the earning will increase. In addition, the larger earnings would be paid for the specialists and they would seek a high status of career in Lithuania and the foreign countries would be only as a rising place of apprenticeships, course or competences. Also, having more money the young people have more possibilities to use various course, to travel and to acquaint with other cultures and innovations. This encourages initiatives, sociability, public spirit, a wish to get knowledge and development. The perspective of lifelong learning is encouraged having a demand to develop and to recognize more new things.

Moreover, seeking to emphasize having knowledge of the young people about the conception of lifelong learning and attitude to the perspective of lifelong learning, the question has been given to the informants during the interview: Do you know what the conception of lifelong learning is and have you ever heard about it? 29 % of the questioned persons have heard about this conception, 43 % of the informants have heard little about it and 28 % of the informants have heard this conception the first time during the interview. It is possible to suppose the general tendency from the given data that: the conception of lifelong learning is not known very well by the young people and there is not enough information to this relevant theme.

Nevertheless, the conception of lifelong learning is analyzed too little, all the informants have agreed that the idea of lifelong learning is very important, necessary and it should be encouraged.

The informant No. 1 has mentioned that the elders are studying at their university. However, not all of the informants have wanted to use the possibility of lifelong learning. This reflects in the answers of the question giving to the informants: Would you use the possibility of lifelong learning? Even though, 71 % of questioned persons would use this
possibility but 29% of informants have stated that they are not going to use the perspective of lifelong learning. It is possible to explain this tendency that not all the informants have understood the conception of lifelong learning.

During the interview, the informants have been asked to explain the phenomenon of lifelong learning. They have emphasized the following features: formal and non-formal education, perfection and permanent learning of the new things. The informant No. 5 indicated that lifelong learning becomes not possibility but necessity due to rapid rising of technologies and the dynamic labour market.

Even though, all the informants have agreed that the idea of lifelong learning is necessary but nobody have known about the decisions of Lithuania government, the Ministry of Education and Science of Lithuania, European commission, performing projects of EU, which encourage the lifelong learning. This shows the lack of the information and too little concernment by the implementing decisions.

At the end of the interview, the informants have been asked to wish something to their contemporaries seeking a successful career and planning it. The informants have stated that a young person has to keep his or her ears open to the advice of the people roundabout but only personally to take the particular decision, also they have encouraged not to resist temptation to fear of difficulties and negative reaction, to disassociate from the influence of the people round about, they emphasized the necessity of efforts, regular learning and perfection in order to seek the aim.

The research has revealed the knowledge of the career formation having of the young people, emphasizes peculiarities of competence education in the context of lifelong learning, the lack of planning and formation of career, insufficient interest in order to seek a successful management of career. Also, the most important problems have been found during the research and these problems rise in the acquirement sphere of the formation of career and new competences.

**Conclusions**

The hypothesis have confirmed: the majority of the young people do not have enough knowledge and skills in the projection sphere of a successful career and which are necessary if you want to integrate in the rapid changing labour market and to develop all life. The importance and relevance of these knowledge and abilities highlight seeking a successful career. According to the data of Lithuanian Labour exchange, there are too many some professions and the lack of other professions in the dynamic labour market. The
acquired knowledge of career formation of the young people would give ability to fixate in the dynamic labour market and to keep balance in it.

Moreover, the youth who are planning their career have regarded to their abilities and hobbies. The providence of the young people about their necessary knowledge of their profession representatives, skills, personal features reflect in this research but it is important to mention that they do not have enough information about the researches and tendencies of the labour market adding that their decisions have been based by hearsays and unchecked sources. The distorted or false image of the labour market does not allow to plan, to realize and to manage career successfully. The social environment has the decisive influence of career planning for some young people, so a close collaboration of education institutions, parents and education system is very important. Moreover, the young people state that there is a lack of qualified teachers of andragogy, pedagogues giving professional information and consultation in the education institutions. The education and training institutions give ability to get new competences by the formal or non-formal method, but the young people are not able to use such possibilities due to little information, concernment, the lack of time and little earnings and for these reasons it becomes more difficult to integrate to the labour market, to keep competitive ability, to raise qualification and to take a higher positions in the professional sphere. Also, the importance of collaboration of education and training emerges with the business sector.

One of the requirements from the professional sphere to the young people seeking to fixate in the labour market is work experience but it is necessary to regard to the given limited possibilities in order to get such experience in the period of learning and practice.

The young people rarely regard to the tendencies of the labour market projecting a successful career, they do not have obvious perception in the sphere of career planning and realization, they follow by coincidences.

The lack of competences and work experience disturb to fixate in the labour market. Also, during the research, there has been regarded to the social disjuncture looking from the position of the young disabled people to acquire education or new competences because some education places are not tailored to their specific needs. Emigration is described as a possibility to get higher and stable earnings and to take higher position in the profession, and to take more responsible and higher functions.

The majority of the young people do not have enough information about the perspective of lifelong learning and some of them indicate that they have never heard about this concept. The young people are not interested to follow performing projects and programmes of EU and the Ministry of Education and Science of Lithuania, even though a long-lasting formal, non-formal, self-learning method and personal perfection are appreciated positively. The majority of the young people would use non-formal, self-
learning and formal education in the future. The necessity of the conception of lifelong learning is accepted in the modern world of knowledge.

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ASSESSMENT OF THE BANKING SYSTEM OF UKRAINE
BY A MULTIPLICATIVE MODEL

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Abstract

The essential part of market relations in Ukraine is an adequate modern banking system. The real economic sector, flexibility and elasticity of monetary system, soundness of national currency and other depend on it. The level of its stability fully characterizes the state of economy in general and the ability to meet its obligations and to ensure profitability at the level of adequate functioning in a competitive environment. In such circumstances, requirements for stability and efficiency of banking system and individual bank are rising significantly. Financial stability of banking system should be not only short term objective, but also strategic, on which, in its tern, will depend the dynamics of market-style reforms and upturn of social standards.

It also ensures the necessity to search modern forms of analysis and state estimate of banking system of Ukraine by, among the others, mathematical methods that will help to make appropriate conclusions about suitability and possibility to use practically the chosen model.

Design/methodology/approach

The financial stability of banks in the money-market and the banking system of Ukraine will be estimated according to the calculation and monitoring of banks to observe the basic standards, established by the NBU. Analyzing the limits of their usage by a
multiplicative model, it will be possible to conclude about the situation of some individual banks and the banking system as a whole.

**Findings.** According to the research, it is possible to conclude that multiplicative model is suitable to estimate both individual bank and banking system situation. Also, it can be used practically to analyze stability “level.”

**Research limitations/implications.** The output data for the multiplicative model are economic regulatory ratios for banks and their observance by selected banks of group I and II (by assets).

The research will be made in two stages. The stability of the individual bank is determined on the first stage and the stability of banking system in whole or its separate subsystems are determined on the second one.

**Practical implications.** According to the estimates that were held, it can be assumed that the situation of banks in group II is more stable.

**Originality/Value.** According to the median indicator the stability assessment of the banks in group II is higher than in group I (0.03>0.025), while the stability assessment affinity of group II is lower, that is better (0.69<1.97).

**Keywords:** The financial stability of the bank, the banking system, economic ratios, multiplicative model.

**Research type:** research paper

### Introduction

The essential part of market relations in Ukraine is an adequate modern banking system. The real economic sector, flexibility and elasticity of monetary system, soundness of national currency and others depend on it. That is why the stability of banking system is the key of successful economic development for our country’s policy. It also plays the direct part in formation of highly proficient and productive economic system and financial market.

### Theoretical background

The problem of ensuring the financial stability of banking system is widely studied by such famous foreign economists as Bernd R., Dolan E. G., Miller R. L., Rose P. C., Cinque J. F. (Jr.). Among ours can be mentioned Azarenkova G. M., Baranovsky O. I., Vasiurenko O. I., Voloshyn I., Dziubliuk O., Kliusko L. A., Kolodizev O. M., Kovalenko V. V., Moroz A.,
Naumenko V., Pogorelenko N. P., Prymostka L., Sydorenko O. M., Sheludko N., Shmatov O. and others.

The aim of the article is to estimate both the modern situation of banks in groups I and II and the banking system of Ukraine in whole by analysing the banks of the second level to follow economic ratios according to the multiplicative model.

**Methodology**

Critical situations that were reflected considerably on the stable functioning of the banking system of Ukraine were the precondition of negative tendencies in banking scope. So the further development of banks and increasing of their competitiveness are impossible without strengthen of their investors or clients’ confidence. The requirement of this process is the wide availability, credibility and information clarity of bank activity results, their reliability and financial responsibility and, as a result, their financial stability.

The financial stability of both banking institutions on money-market and banking system of Ukraine can be estimated by the following studies:

1) by rating assessment system (to generalize the characteristic of bank position in the market of financial services);

2) by calculating the indicators of financial stability made by the NBU on the basis of the IMF recommendations (to estimate and monitor the soundness and vulnerability of the financial system for strengthening its financial stability);

3) in terms of basic financial indicators of bank activity, such as, those are based on both the structure and capital adequacy and the structure of the debt and borrowed funds, and the quality of bank assets, and indicators that characterize the dynamics of assets and liabilities (to determine the banking system and the place of an individual bank in the system);

4) on the basis of calculation and monitoring the banks to follow the basic economic ratios (for macroeconomic monitoring of banks to follow the main factors of work and their comparison with the established limit values).

The special attention here should be paid to the fourth study, where the NBU economic ratios are used as a criteria to estimate bank activity. The National Bank of Ukraine always checks the banks to follow ratios. That is why, by analyzing the limits where they are filled according to the multiplicative model, it will be possible to draw a conclusion about situation of both individual banks and the banking system.
The multiplicative model of individual banks or banking system situation assessment is comparable. So, it should be used to compare banks together. Here they can be divided into groups by assets, region or time.

The output data for the multiplicative model are economic regulatory ratios for banks and their observance by selected banks of group I and II (by assets).

The list of economic ratios is given in Table 1.

Table 1 Economic regulatory ratios for banks

<table>
<thead>
<tr>
<th>Ratio No</th>
<th>Ratio</th>
<th>Formulating of limitation</th>
<th>Limitation type</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1</td>
<td>Regulatory capital</td>
<td>Sum (thousand / UAH) to the definite date</td>
<td>≥</td>
</tr>
<tr>
<td>R2</td>
<td>Regulatory capital adequacy</td>
<td>no less than 10 percent</td>
<td>≥</td>
</tr>
<tr>
<td>R3</td>
<td>Regulatory capital / Total assets ratio</td>
<td>no less than 9 percent</td>
<td>≥</td>
</tr>
<tr>
<td>R4</td>
<td>Regulatory capital / liabilities ratio</td>
<td>no less than 10%</td>
<td>≥</td>
</tr>
<tr>
<td>R5</td>
<td>Quick liquidity ratio</td>
<td>no less than 20 percent</td>
<td>≥</td>
</tr>
<tr>
<td>R6</td>
<td>Current liquidity ratio</td>
<td>no less than 40 percent</td>
<td>≥</td>
</tr>
<tr>
<td>R7</td>
<td>Short-term liquidity ratio</td>
<td>no less than 60 percent</td>
<td>≤</td>
</tr>
<tr>
<td>R8</td>
<td>Maximum credit risk exposure per single counterparty / Regulatory capital</td>
<td>no more than 25 percent</td>
<td>≤</td>
</tr>
<tr>
<td>R9</td>
<td>Total large credit risk exposure / Regulatory capital</td>
<td>no more than 800% of Regulatory capital</td>
<td>≤</td>
</tr>
<tr>
<td>R10</td>
<td>Maximum credit exposure to single insider / Share Capital</td>
<td>no more than 5 percent</td>
<td>≤</td>
</tr>
<tr>
<td>R11</td>
<td>Maximum aggregate credit exposure to all insiders / Share Capital</td>
<td>no more than 30 percent</td>
<td>≤</td>
</tr>
<tr>
<td>R12</td>
<td>Investment in securities issued by single entity</td>
<td>no more than 15 percent</td>
<td>≤</td>
</tr>
</tbody>
</table>

The sequence of bank situation assessment:

1. According to the standards listed in Table 1, ratios R1 – R6 can be classified as “the more the better”, and ratios R7 – R12 can be classified as “the less the better.”
2. In a normalized form ratios R1 – R6 are determined by the formula:
\[ z_i = \frac{x_i - x_{in}}{x_{in}}, \quad i = 1, 2 \ldots k \]
where \( x_i \) is an actual value of ratio;  
\( x_{in} \) is lower allowed value.

For further calculations of ratios bounded above (R7 – R12) we will use the following formula:
\[ z_j = \frac{x_{iu} - x_j}{x_{iu}}, \quad j = 1, 2 \ldots J. \]

3. The general bank situation assessment by value part, that was made on “no less than” scheme, it will be defined by:
\[ Z_1 = \left( \prod_{i=1}^{k} z_i \right)^{1/k} \]

4. The general bank situation assessment by value part, that was made on “no more than” chart, it will be defined by:
\[ Z_2 = \left( \prod_{j=1}^{J} z_j \right)^{1/J} \]

5. Integrated general bank situation assessment that meets the case (one-sided constraint) can be defined by formula:
\[ Z_{o1}^{[2]} = (Z_1 \cdot Z_2)^{1/2} \]

6. We define the median of allocation of stability assessment for paired comparison of general stability assessments of banks that join different classificational or regional groups.

Stability assessments of these banks also make two multipliers, where the values of stability assessments are increasingly ordered:
\[ Z_{o11}^{[2]} = \{ Z_{o11,1}^{(2)}, Z_{o11,2}^{(2)}, \ldots, Z_{o11,n}^{(2)} \} \]
\[ Z_{o12}^{[2]} = \{ Z_{o12,1}^{(2)}, Z_{o12,2}^{(2)}, \ldots, Z_{o1n,m}^{(2)} \} \]

We take median of variational series as the assessment of distribution center for random variable (stability assessment):
Thus, the system with higher median can be more resistant. We will treat proportion of variational series to its median as a normalized concentration measure:

\[ d_1 = \frac{Z_{o61,\max}^{(2)} - Z_{o61,\min}^{(2)}}{medZ_{o61}^{(2)}}. \]

To calculate the bank stability assessment some banks of groups I and II were chosen. The calculated data of normalized quantity can be seen in Tables 2 and 3.
Table 2. Calculations for groups $Z_1$ and $Z_2$ of banks in group I (on 01.01.2012)

<table>
<thead>
<tr>
<th>Ratio No.</th>
<th>Ratio calculated value</th>
<th>Ratio actual value</th>
<th>$Z_1$ calculations</th>
<th>$Z_2$ calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Ukrsotsbank</td>
<td>Ukrsibbank</td>
<td>First Ukrainian International Bank</td>
</tr>
<tr>
<td>R1</td>
<td>1200000001</td>
<td>4390758000</td>
<td>26770000000</td>
<td>854 071 000</td>
</tr>
<tr>
<td>R2</td>
<td>9,99</td>
<td>12,75</td>
<td>18,52</td>
<td>15,86</td>
</tr>
<tr>
<td>R3</td>
<td>8,99</td>
<td>11,37</td>
<td>9,44</td>
<td>11,17</td>
</tr>
<tr>
<td>R4</td>
<td>19,99</td>
<td>32,21</td>
<td>61,9</td>
<td>55</td>
</tr>
<tr>
<td>R5</td>
<td>39,99</td>
<td>61,51</td>
<td>67</td>
<td>68,34</td>
</tr>
<tr>
<td>R6</td>
<td>59,99</td>
<td>77,36</td>
<td>68,2</td>
<td>77,65</td>
</tr>
<tr>
<td>R7</td>
<td>25,01</td>
<td>16,45</td>
<td>7,43</td>
<td>12,97</td>
</tr>
<tr>
<td>R8</td>
<td>800,01</td>
<td>44,81</td>
<td>7,43</td>
<td>78,61</td>
</tr>
<tr>
<td>R9</td>
<td>5,01</td>
<td>3,42</td>
<td>2,19</td>
<td>3,76</td>
</tr>
<tr>
<td>R10</td>
<td>30,01</td>
<td>5,5</td>
<td>2,66</td>
<td>12,54</td>
</tr>
<tr>
<td>R11</td>
<td>15,01</td>
<td>0,76</td>
<td>2,09</td>
<td>6,13</td>
</tr>
<tr>
<td>R12</td>
<td>60,01</td>
<td>2,95</td>
<td>6,48</td>
<td>2,02</td>
</tr>
</tbody>
</table>
### Table 3. Calculations for groups $Z_1$ and $Z_2$ of banks in group II (on 01.01.2012)

<table>
<thead>
<tr>
<th>Ratio No.</th>
<th>Ratio calculated value</th>
<th>Ratio actual value</th>
<th>$Z_1$ calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>OTP</td>
<td>Erste Bank</td>
</tr>
<tr>
<td>R1</td>
<td>1200000001</td>
<td>2700000000</td>
<td>284719000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OTP</td>
<td>Erste Bank</td>
</tr>
<tr>
<td>R3</td>
<td>8.99</td>
<td>17.32</td>
<td>13.54</td>
</tr>
<tr>
<td>R4</td>
<td>19.99</td>
<td>32.48</td>
<td>37.33</td>
</tr>
<tr>
<td>R5</td>
<td>39.99</td>
<td>50.39</td>
<td>81.4</td>
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<tr>
<td>R6</td>
<td>59.99</td>
<td>74.33</td>
<td>109.75</td>
</tr>
<tr>
<td>R7</td>
<td>25.01</td>
<td>12.61</td>
<td>16.96</td>
</tr>
<tr>
<td>R8</td>
<td>800.01</td>
<td>36.43</td>
<td>100.94</td>
</tr>
<tr>
<td>R9</td>
<td>5.01</td>
<td>2.02</td>
<td>4.08</td>
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<tr>
<td>R10</td>
<td>30.01</td>
<td>4.66</td>
<td>0.4</td>
</tr>
<tr>
<td>R11</td>
<td>15.01</td>
<td>2.17</td>
<td>2.1</td>
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<tr>
<td>R12</td>
<td>60.01</td>
<td>7.34</td>
<td>4.7</td>
</tr>
</tbody>
</table>
Thereby, received results we use to calculate general stability assessments of banks in groups I and II.

Table 4. Stability assessment for banks in group I

<table>
<thead>
<tr>
<th>Bank</th>
<th>Ukrsotsbank</th>
<th>Ukrsibbank</th>
<th>First Ukrainian International Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>$Z_1$</td>
<td>0,040265796</td>
<td>0,028648411</td>
<td>0,05155786</td>
</tr>
<tr>
<td>$Z_2$</td>
<td>0,012599532</td>
<td>0,045715111</td>
<td>0,006007631</td>
</tr>
<tr>
<td>$Z_{oc}$</td>
<td>0,0253665</td>
<td>0,0654833</td>
<td>0,015487</td>
</tr>
</tbody>
</table>

We put received results in order, and define the median and normalized swing for banks in group I.

$Z^{(2)}_{\text{I}} = \{0,015;0,025;0,065\}$

$medZ^{(2)}_{\text{I}} = 0,0253665.$

$d_1 = \frac{0,0654833 - 0,015487}{0,0253665} = 1,97$

By analogy we calculate the results for banks in group II.

Table 5. Stability assessment for banks in group II

<table>
<thead>
<tr>
<th>Bank</th>
<th>OTP</th>
<th>Erste Bank</th>
<th>Pivdenny Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>$Z_1$</td>
<td>0,007312358</td>
<td>0,092801</td>
<td>0,03120853</td>
</tr>
<tr>
<td>$Z_2$</td>
<td>0,029852817</td>
<td>0,006806</td>
<td>0,011921411</td>
</tr>
<tr>
<td>$Z_{oc}$</td>
<td>0,0109147</td>
<td>0,0316</td>
<td>0,029982</td>
</tr>
</tbody>
</table>

$Z^{(2)}_{\text{II}} = \{0,011;0,03;0,0316\}$

$medZ^{(2)}_{\text{II}} = 0,029982.$

$d_2 = \frac{0,0316 - 0,01092}{0,029982} = 0,69$

Additional Analysis of Results

Thus, by comparing the banks in groups I and II, it is possible to conclude that Ukrsibbank ($Z_{oc} = 0,065$) is the most stable among the others. But, if we compare the
groups of banks, the stability assessment, according to the median indicator, of banks in group II is higher than in group I (0.03>0.025), while the stability assessment affinity of group II is lower, that is better (0.69˂1.97). In toto, it is possible to say that the situation of banks in group II is more stable according to sum-total of estimates.

**Conclusion**

Hereby, the mathematical model that consists of two stages was made to estimate stability of banking system. The stability of the individual bank is determined on the first stage and the stability of banking system in whole or its separate subsystems are determined on the second one.

**Suggestions**

According to the research, it is possible to conclude that multiplicative model is suitable to estimate both individual bank and banking system situation. Also, it can be used practically to analyze stability “level.”

**Literature**


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CREDIBILITY OF THE BORROWER AS THE MAIN INDICATOR OF THE CREDIT RELATIONS EFFECTIVENESS

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Abstract

This article reviews the main theoretical and methodological basis for determining of the borrowers credibility and the essence of creditworthiness as the main performance evaluation indicator of the credit relations between the borrower and the lender.

The possible directions of improvement of mechanisms to ensure the borrowers credibility are proposed.

Purpose. Disclosing theoretical principles of credibility analysis and identification of practical prospects for improving the efficiency of modern analysis methods of the borrowers’ creditworthiness

Findings. The issue of credit relations, determining the most efficient ones, the study of Western European experts are given much attention. In particular, the question of the formation of monetary policy in the banking institutions are reflected in the works of foreign economists L. Bernstein, E. J. Dolan, G. Kotler, V. Leskisa, F., E. Reed, E.Chysly, P. Rose, J. Cinque, Van Horn JK, D. Mc Potts, D. Karlslysy, K. Dyhts and others. Theoretical foundations of credit relations between entities are highlighted in the works of A.A. Peresadova, T.V. Mayorov, A.A. Frost, V.S. Stelmaha, B.S. Ivasiv, V. Vitlinskiy, P. Belenky, A. Halchynskiy, V. Zagorski, A. Epifanov and others.

Research limitations/implications. This research is limited of local process of disbursing collateral and non-collateral loans.

Practical implications. Recommendations that made in the study can be used in the process of reviewing potential borrower.
Originality/Value. The study clearly shows the theoretical aspects of assessing the creditworthiness of the borrower and identified the current problem which Ukrainian banks faced by Ukrainian banks in the retail lending.

Keywords: creditor, borrower, liquidity, solvency, financial state, credit risks, level of solvency.

Research type. Basic research

Introduction

Client’s credibility is a concept that describes the borrower's ability to pay its debt.

The changes which are taking place in the Ukrainian economy are suggested significant changes in the relationship between commercial banks and individuals. High-risk banking activities are primarily related to the conditions and performance of its clients.

Analysis of the structure of the Ukrainian banking system indicates that more than a third of them have the specific credit portfolio. Lending operations of the bank are one of the most profitable today.

Theoretical background

The starting point in assessing the possibilities of a potential individual who wishes to obtain a loan, is that a bank determines the possibility of the borrower to return the basic sum of the loan, according to the contract, and pay interest on it.

One of the main way to avoid non-repayment loan is the prudent selection of potential borrowers. The main instrument of such selection is the financial analysis of client with the position of its creditworthiness.

There are a lot of methodologies for assessing the borrowers - methods of analysis of the client financial condition and its reliability in terms of timely repayment of the loan. However, currently existing methods of analysis are focused on creditworthiness of borrowers to address local issues for the creation of credit scoring.

Credit markets in Ukraine are developed under the pressure of public instruments and factors, a major of which do not meet the requirements of the market system, were aimed to compensate for losses having suffered domestic producers, the population, as a result of reformation of certain economic mechanisms. Only from 1996 gain significance regulatory processes of macroeconomic processes in which the state uses financial instruments of indirect action. Debt from the borrowers to commercial banks at the
present time in Ukraine by professionals is determined high. In Ukraine the level of NPLs exceeds the figure in developed countries several times. The problem is that there are some factors that threaten the achievement of the credibility of borrowers. (Fig. 1) (Заверуха І. Б., 2005)

**Figure. 1. Factors that threaten the achievement of the credibility of borrowers.**

- tax pressure and changes in legislation
- salary arrears
- presence of credit indebtedness to banks
- high cost of credit resources

Giving credit there might be the risk of non-returning. Therefore, the financial institution should implement some work on determining the creditworthiness of the borrower, including the review of the financial condition of an individual, lender's ability to compensate for the loss affecting the borrower's financial losses, etc.

In addition, the borrower should also realistically assess their ability to pay and justify the loan sum and the ability to timely and fully repay the funds. Thus, the credit can be identified as the main criterion that ensures the effective functioning of credit relations between the lender and the borrower. Insufficient attention to determining the borrower’s credibility meant that a lot of loans were not returned at all or they are partially returned belatedly on established terms. In particular, the loans granted by commercial banks in 2004 - 29 million UAH, 2005 - 409 million UAH, 2006 - million UAH, 2007 - 32709 million UAH. This is explained by the general instability of the financial market in the country, high rates of inflation, not imperfection of legislation, the lack of information characterizing financial condition of borrowers and others.

In practice, nowadays, commercial banks based on their own and foreign experience, are starting focusing on assessing the financial opportunities the borrower. In this case, the program uses rapid analysis of the borrower’s financial condition and creates informational customer base, which contains information about the credit history of the borrower, its reputation. Analytical capabilities of this approach are limited by the absence of a single regulatory framework of reference (comparative) values of financial indicators in their respective fields.

Evaluation of the financial condition of the borrower should consider quantitative and qualitative indicators (factors ) which could have some affect on the liabilities of the borrower, with the definition of the level of their likely impact on compliance with the
credit agreement by establishing the optimal values and the corresponding points for each of the parameters (factors).

In particular, the qualitative characteristics of the borrower are:
- financial status of the client (the presence of property and documents, which will approve such fact);
- social stability of the client (stable work, goodwill, marital status, etc.);
- age of the client;
- Credit History.

Criteria were chosen in such way that the most significant are:
- the income the borrower and his family;
- the ratio of loan-to-collateral value (LTV);
- ratio of income and loan size (DTI);
- Availability bank accounts and the amount of revenue on these accounts;
- positive credit history.

Regarding the indicator "positive credit history", it should be noted that in Ukraine, functioning credit bureau partners who have certain banks. As of 01.10.2013 in Ukraine operates 183 banks, and the information that is on the Internet, the total number of partner banks index reached 150, which is a significant increase compared to 2009 (75 partner banks).

In addition, the results credibility of the borrower should be the credit class definition. Borrower should be also characterized by several features (Fig. 2.).

Figure. 2. Features of the credibility

![Diagram showing features of the credibility: goodwill, mobilization of available funds, financial position]
At the same time, the bank assesses income which receives from crediting of the specific cost the borrower, and compares it to its average profitability. The level of bank profits should be associated with a measure of risk of lending, the bank estimates the amount of income that a borrower receives from his terms of the possibility of the paying interest to bank due to the implementation of proper financial performance, and determines the degree of risk he/she would take over in this situation. The Bank also considers:

- Targeted use of of credit resources;
- Repayment;
- Availability of credit.

**Results and findings.** Credit risk is determined by the probability when the borrower will not be able or does not wish to fulfill its obligations under the loan agreement. The credit risk of the bank carried out at two levels according to its causes - at the level of each individual loan and loan portfolio level as a whole.

The main causes of credit risk of the individual loan:

- The inability of the borrower to establish adequate cash flow;
- Liquidity risk of collateral;
- Moral and ethical characteristics of the borrower.

Overall, the banking sector is characterized by higher riskiness in comparison with other activities. This feature is caused by the specifics of the functions performed by each commercial bank. Banks have many partners, customers, lenders, financial condition which directly affects their position. The Bank is very diversified and includes the operation fundraising, factoring, leasing, providing clients with cash, etc. Implementation of each banking transaction is associated with the possibility of multiple risks.

Despite the fact that banking is subject to numerous risks, the banks themselves are intended to personify reliability and security. As bankers are working mostly with other individuals’ money, they should attempt to reduce the risk of the activity even more than other entrepreneurs. Hence, risk management is considered as one of the main areas of bank management. The scheme of classification methods of credit risk are described in Fig. 3. (Терещенко О., 2012)
In terms of the management of banking risks, they should be divided into external and internal. The external risks are arising in the external environment of the bank and not directly dependent on its activities. It is the political, legal, social and general risks that arise in the case of worsening economic crisis in the country, political instability, war, prohibition on payments abroad, consolidating debts, embargo, cancellation of import licenses, natural disasters (fires, floods, earthquakes) privatization, nationalization, inadequate regulation and others. Effect of external risks to the effectiveness of the bank's exceptionally high, risk management is the most difficult and sometimes even impossible.

The internal risks are arising directly in connection with the activities of a particular bank. The wider range of customers, partners, relationships bank, banking, services, the more internal risks accompany its activity. Internal risks are to identify, assess, minimize and continually monitor. The task of management is to manage domestic banking risks by using appropriate methods.

The largest group of banking risks constitute financial risks which are defined by probability of losing money and are associated with unexpected changes in volume,
profitability, value and composition of assets and liabilities. The financial risks include foreign exchange, credit, investment, market, liquidity and market movements in interest rates, inflation, etc.

Credit risk means the possibility of financial loss by failing to meet their obligations. An important component of credit risk is the risk of an industry that is associated with uncertainty about the prospects of the industry borrower.

In determining the level of credit risk there should be taken into account the geographical risk, which is divided into regional and country risk - the location of the borrower. The latter is accompanied by foreign borrowers and loans due to the influence of factors specific to that country which the borrower is in.

Regional risk is determined by a specific administrative or geographic region that is characterized by conditions different from the average for the country as a whole. The differences may relate to climate, national, political, legislative and other characteristics of the region that affect the condition of the borrower and thus become part of the credit risk.

Liquidity risk associated with the probability that the bank will not be able to meet its obligations on time or lose some revenue due to the excessive amount of liquid assets.

The risk of inflation - is the probability of future depreciation of money, the loss of purchasing power. Inflationary processes to some extent inherent in most economies. This overall economic phenomenon and therefore banks cannot significantly affect it. At the same time banks are able to use high inflation to increase the profitability of their operations. Given the nature of its activities banks obtain an existent chance to be among those who have taken the advantage of the rapid inflation in their favor at the expense of significant increases in cash supply and credit of the multiplier in the lending process. However, the risk of inflation has a negative impact, which appears in the depreciation of bank assets and funds of the bank owners - share capital.

Insolvency risk means the probability that the bank can not meet its obligations even if the rapid realization (sale) of assets. The risk of insolvency is closely related to liquidity risk and the risk of bankruptcy and is derived from the remaining risks. That is why the management should be based on continuous control of the level of total risk that takes the bank.

Significant among financial risks takes a group price risks associated with the ability to change the yield or value of the assets and liabilities of the bank. The three main banking risks relating to the group, the risk of changes in interest rates, foreign exchange and market risks.
Risk of interest rates changes - is the probability of financial losses due to the volatility of interest rates in the market for a certain period in future. Interest rate risk is present in the activities of borrowers, lenders, security holders and investors.

The credibility of the borrower’s ability means the ability of the individual completely and in a specified time to fulfill all the conditions of the credit agreement. In the world banking practice client’s credibility has always been and remains one of the main criteria in determining the feasibility of establishing the credit relationship. Creditworthiness is interpreted not only as an opportunity to return the basic amount of the debt and the interest on it, but for the consumer to meet its obligations. Therefore, the capacity for repayment is associated with the client’s moral character, his reputation, skill and field of activity, the degree of investment capital into real estate, the ability to generate cash flows.

The process of analyzing and evaluating client’s credibility consists of two phases: assessment of the moral and ethical quality of the borrower, his reputation and intentions to repay the loan and the borrower’ prediction of the future. Assessing the creditworthiness of the client, banks actually determine the level of credit risk which assumes, establishing credit relationships with the client. Every commercial bank should formulate its own documented and approved by the Management Board borrower’s creditworthiness evaluation method. Banks should also determine fundamental and technically informed financial criteria for economic evaluation of customer borrowing and methods of its analysis.

Banks in the analysis can develop and apply their own metrics and group methods, the choice of which depends primarily on the specific segment of the market that caters to the bank (branch characteristics, category of borrowers), and the level of specialization of the bank (mortgage, investment, trade), types of loans (short-term) strategy and policy bank (safety, risk, aggressive) lending staff qualifications, level of technical support and analytical work in the bank.

In an analysis of the bank there are able to use various sources of information, which generally consist of three groups:
- Information received directly from the client;
- Internal information;
- External sources of information.

Wide use in domestic and foreign practice entered coefficient method.

The method of coefficients is reduced to calculation of correlation between individual indicators or groups of indicators characterizing the financial position of the borrower.
The advantage of this method is the ease of financial ratios, but its application should be aware of some limitations and drawbacks, resulting in underestimation, which can be an inadequate picture and make wrong conclusions.

Grading system of the borrower’s creditworthiness should be developed by each bank individually depending on the loan policy, strategic plans, market research and general quality requirements for loans that are offered by the Central Bank. Thus, the rating systems reflect the specific approach to the evaluation of the quality of bank loans and can vary significantly from bank to bank. Indeed, customer’s credibility which is too low for one bank might be desirable for customer at another bank.

In fact, the level of risk the client determines the riskiness of the bank, as the risks faced by the borrower are banking risks in establishing credit relationships. In international banking practice, there is agreed that every major bank develops its own rating system to assess creditworthiness the borrower. This allows to not only make an informed decision on the loan, but also determine such credit conditions that limit the credit risk of the bank and will be the basis for an agreement.

In general, the process of determining borrower’s credibility is largely creative, not mechanical and requires credit managers depth knowledge economy - the skills of collecting, organizing and comprehensive understanding of the actual material. In the process of lending there is a need to accumulate diverse and divers information about the borrower. This is not an easy task, as often in real economic terms there is not much time allotted for making decisions about the possibility and terms of credit. Analysis of the decision-making process for giving loans, made in credit departments of commercial banks in Ukraine, showed that judgments about the creditworthiness the bank employees rely largely on subjective evaluations, their intuition and personal relationships with clients.

It is advisable to distinguish between three types of risk on the loan agreement, the borrower and the way of loans. Credit risk in respect of the credit agreement reflects the degree that the borrower cannot meet its obligations to the bank to repay the debt under the terms of the agreement, and the bank cannot use the time of the loan to cover possible losses. The credit risk on the borrower reflects the degree that the borrower cannot meet its obligations to the bank to repay debt under the terms of the agreement and subject to the influence of different factors. Credit risk with respect to the method of the borrowing reflects the degree that the bank will not be able to timely and fully take benefit providing loan to cover possible losses. The specificity of each risk determines the importance of assessment of the credit risk in each case.

Quantitative analysis of the degree of credit risk should be complemented by qualitative analysis - definition sources (factors) of the risk. These factors should be organized into three groups:
those that are not depended on the bank;
- miscalculations of borrower;
- bank errors.

Client with a long and particularly large debts should be taken under personal control.

Internal way to reduce degree of risk is to use the tools of Management and Marketing as a rational combination of various methods based on utilization of economic-mathematical models, their experience and intuition of experts.

The main methods are limiting, provisioning, obtaining the additional information. Thus, limitation - is setting the upper limit of credit that can be given to one borrower or group of related borrowers. This limit can be maximum rate of risk per borrower, which is used by central banks to control credit risk.

The mechanism of reducing credit risk should be used in combination with other factors which reduce the number of problem loans. The most important one should be considered to comply with the credit operations, the bank employees are to be in contact with borrowers to prevent non-performing loans.

Credit enhancements held to an acceptable level. Each subject should be choosen as a specific lending method of reducing the credit risk of the borrower.

The uncertainty of the situation with the credit agreement is worse for establishing the presence of credit risk. Therefore, risk measurement is necessary.

Mechanisms to reduce credit risk should be used in combination, along with other factors reduce NPLs: compliance to lending operations in contact with the borrower, prevention of problem loans.

Credit check - an indispensable condition for the successful implementation of the program of bank lending. Continuous monitoring helps managers identify problem loans in advance and verify that the actions of employees are with the essential requirements of credit loan policy.

The main purpose of monitoring loans is to avoid the credit risk over the limit.

It is known that exposure to credit risk is constantly changing as conditions change, which is available for any given loan. Changes in general economic conditions weaken the position of some borrowers while increasing the demand for lending to potential customers. Individuals may have health problems or lose their job, which adversely affect their ability to repay the loan. The market value and liquidity of indications may also vary and requires constant monitoring.

Therefore, the main requirement for control procedures - a consistency checking and evaluation of credit risk. According to statistical research, 80% of problem loans are due to insufficient control the level of credit risk. Other causes, such as inadequate assessment of
the loan and the borrower's creditworthiness, improper structuring, mistakes in the loan agreement, generating about 20% of problem situations in lending.

Given the importance of control as a method of credit risk management in banks, banks can use various forms of control methods for checking credit structure units depending on the specific activities of the bank and its clients' needs and opportunities, market characteristics and particular situation.

Based on the foregoing, there should be highlighted the main features of the structural unit to monitor the loans.

- Periodic inspection of all loans granted by the bank (at least once a year).
- Systematic review of the major credits (every 30 or 90 days).
- Spot check and credit portfolio of loan documents.
- Detailed procedures for checking credit which aims to ensure control over major terms of each loan agreement.
- Continuous monitoring of problem loans. Increasing the frequency of inspections in response to acute problems.
- Supervision of indicators.
- Submission of documentation of bad loans and the amount of potential losses on credit transactions.
- Assessment of risk exposures of loan portfolio and making recommendations on the amount of reserve funds.

The validation process loan includes the following steps:

- Checking the completeness and accuracy of documentation in the loan business;
- Check the conformity of the basic payment planned schedule;
- Checking the quality and condition of any indicator;
- Assessment of obtaining at its disposal of the loan legal rights in court actions to the borrower;
- Evaluation of conformity issued by credit policy of the bank and credit standards established by regulatory authorities;
- Forecast possible changes in the financial condition of the borrower.

Conclusions

It should be noted that the process of lending to individuals even today remains a very difficult procedure, between the client request to a financial institution and the process of disbursement sometimes it may take more than one day (it is very big index cash loan. If we are talking about autoloan—minimal time for disbursing is two days.
(including preparing the registration document for the car)). To optimize this process, the Customer must provide valid information (regarding income and credit history). The big problem is that the banks, which are the partners to the credit bureaus often submit false information (in bad faith and / or due to an error in the software). To improve the process of evaluation of solvency should be considered as official income and informal income, as of today, most borrowers are employed officially, but receive a minimum income (1147 UAH). According to resolution of NBU № 23 from 25/01/2012, Banks should every year, assessing the borrower's ability to pay for the loan Thus, by controlling the bank loans by the Bank Management is possible to assess the overall risk of the loan portfolio and identify future needs for increasing bank capital.

**Literature:**

1. Закон України «Про банки і банківську діяльність» від 04 липня 2013 р. № 406-VІІ (зі змінами та доповненнями).
THE IMPACT OF FOREIGN CAPITAL ON THE BANKING SYSTEM OF UKRAINE IN THE CONTEXT OF GLOBALIZATION

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**Purpose** - the purpose of this paper is to study the theoretical and practical aspects of the organization of banks with foreign capital in Ukraine, its impact on the national banking system in the present conditions and find ways to improve.

**Design / methodology / approach** - this paper presents the essence and importance of foreign capital in banking activities in Ukraine. The research design uses a multi-method approach; methods used induction and deduction, comparison, analysis and statistics NBU.

**Findings** - for the efficient operation of the banking system of Ukraine should gradually develop a network of foreign offices and raise the technical and communication capabilities of domestic banks. In today's globalized financial banking system has certain disadvantages operations that require immediate correction.

**Research limitations / implications** - These findings were made by analyzing the key literature and statistical data of the National Bank of Ukraine.

**Practical implications** - This paper presents the advantages and disadvantages of the existence of foreign capital in the banking system of Ukraine and chosen among the full range of benefits of functioning of banks with foreign capital.

**Originality / Value** - issues related to the analysis of foreign capital and its impact on financial stability, profitability of the banking system of Ukraine and the economic security of the state as a whole, become especially important and in need of constant research.

**Keywords**: bank with a foreign capital, foreign bank, banking system, financial market, wave foreign capital.

**Research type**: general review.
Introduction

The characteristic features of the manifestation of globalization and international integration in the financial relations are entering foreign capital in domestic financial markets and strengthening its influence on the development of national financial systems. The inflow of foreign capital can have both positive and negative effects, depending on macroeconomic conditions and institutional environment that exists in the country. You must comply with a number of financial risks associated with the rapid increase in the share of foreign banking capital, which may result in the loss of sovereignty in monetary policy, increased instability; unexpected liquidity fluctuations are likely outflow of financial resources. Therefore, issues related to the analysis of foreign capital and its impact on financial stability, profitability of the banking system of Ukraine and the economic security of the state as a whole, become especially important and in need of constant research.

Theoretical background

Scientific sources are served definitions of "foreign capital", "bank with foreign capital", "foreign bank" and so on. In works Ostrovskoi O. foreign bank is treated as a bank that is deemed under the law of a foreign country in which it is registered. It is not defined in the formulation of the proportion of foreign capital to be invested in banking institution to become a foreign bank, but indicates registration in accordance with the law. "Encyclopedia of Banking", edited by W. Stelmaha takes the definition of a foreign capital as a bank that operates in the country and the capital of which partially or wholly owned by foreign investors. Based on the above definitions of a foreign bank and a bank with foreign capital are identical. In "The financial and economic dictionary" definition of bank filed against foreign capital, that is a bank that operates in a country and the capital of which partially or wholly owned by alien investors. Thus, this concept is identical to the previous definition, but the authors instead of foreign capital, used the term "barbarian".

Domestic legislation explains the term "bank with foreign capital" as a bank in which the proportion of capital owned at least one foreign investor is at least 10%. This interpretation takes into account the participation of foreign capital in the bank, which’s share of more than 10% and does not consider the possibility of multiple investors invested funds under this part.
Research methodology

Presence in the economy of any state large amounts of foreign capital is a sign of macroeconomic stability, high level of investor confidence in its legislative, executive and judicial branches of government. It is important not the level of democracy in the country as its political stability. Prevent foreign banks in the domestic banking system is not profitable either for economic or political reasons, but such a step to go, providing conservation opportunities for real competition with domestic banks by foreign financial institutions. However, it is clear that the prospects and consequences of the functioning of foreign capital in the domestic banking sector are mixed. For the purpose of foreign investors - not to increase the welfare of the population of the investee, and maximize profits for its owners and shareholders.

Advantages and disadvantages of being foreign capital in the banking system of Ukraine highlighted by many researchers. In my opinion, among the full range of benefits of functioning of banks with foreign capital in Ukraine should be singled out key:

1. Attracting foreign capital in the banking sector has a positive effect on the economy of Ukraine, thus accelerating the development of financial markets, expanding the range of services and their quality.

2. Positive in the activities of banks with foreign capital to the economy of Ukraine is the rapid introduction of advanced, technology banking, new methods of banking business, in particular, the experience of financial management, crisis management, and advanced marketing techniques.

3. The introduction of foreign experience of banking and of international financial transactions. Implementation of bank risk insurance and international experience in financial recovery, reorganization and restructuring of commercial banks.

4. Reduction of banking services: credit long-term growth and the timing of their provision. Foreign banks may be an important source of long-term financing of capital projects and support businesses need loans at lower interest rates.

5. Increased competition in the banking market as a result - increasing the efficiency of the banking system, extending the range of quality services, improves qualification of bank employees, especially beneficial for the borrower.

Between 2008-2009, banks with foreign capital increased by 6, but the number of banks with 100% foreign capital remained unchanged, indicating lack of foreign investment in the banking sector. The largest share of foreign assets in 2009 was controlled by investors from former parent - Russia and Austria. Other big banks with foreign capital owned by the French, Italian, Hungarian, German, Swedish investors that shows a special
interest in controlling the Ukrainian banking business financial institutions of the European Union. (Table 1)

**Table 1. The presence of banks with foreign capital in Ukraine 2008 -2013 years**

<table>
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<td></td>
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<tr>
<td>Number registered Banks</td>
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<tr>
<td>The number of banks that have licenses to conduct banking activities:</td>
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</tr>
<tr>
<td>of them with foreign capital</td>
<td>47</td>
</tr>
<tr>
<td>including the 100% foreign capital</td>
<td>17</td>
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</table>

In 2009 there were 53 foreign banks, with the number of banks with 100% foreign capital remained unchanged (17 banks). After 2009 the Ukrainian banking market went Dutch ING. Then the representation eliminated the German Dresdner Bank. 2010, it's made the British HSBC and Polish Rekao, Czech group PPF sold Home Credit Bank, a Dutch-Israeli TBIF Financial Services - VA in the Bank. Their banks in Ukraine have lost Bank of Georgia (80%) and Russia's "Renaissance Capital". His representation also eliminated the German Bayerische Landesbank and South Korean Kookmin Bank.

It should be noted that at the beginning of 2011 reduced the total number of banks that have licenses to conduct banking activities from 182 to 176, compared with the previous period, while the number of banks with foreign capital on the contrary increased from 51 to 55.

The number of banks operating in Ukraine leading position at the end of 2011 is Cyprus. The capital of this country belongs to the 12 banks that hold the largest share in the total number of banks with foreign capital - 20.34%, and 15.25% of banks with foreign
capital in Ukraine controlled by the Russian Federation. The third largest number of banks owned by Austria (10.17%). Other countries have less than 10% of banks with foreign capital.

Analyzing the share of assets controlled by foreign investors in Ukraine, we can say that it does not depend on the number of banks that belong to these countries. The largest share among these countries in the banking system of Ukraine is occupied assets of Russian banks (21.7%), which by the number less than Cyprus banks. In second place - Austrian banks, the share of assets is also higher than in Cyprus and is 21.4%, although the number of banks in Austria is twice smaller. This situation stems from the fact that Austria has more than 90% of such powerful banks as "Ukrsocbank" PAT "Raiffeisen Bank Aval" and JSC "Nadra" bank, which are the largest banks, and owning a significant proportion weight of all assets Ukraine's banking system.

The share of assets owned by Russia is 21.8%, which is very different from Austria. It should be noted that in 2011, compared to 2010, it remained unchanged. A large proportion of total assets occupy such banks in as: PJSC "VTB Bank", "Prominvestbank" and a subsidiary bank "Sberbank" Russia, which owns 100% of the share capital, and is fully subject to the foreign owner. Also, a significant proportion of foreign assets of the banking system of Ukraine belong to France (8.9%), despite the fact that French banks only 5% of the total number of banks with foreign capital. Netherlands, Germany and the UK have more banks, but the share of their assets is much lower.

Noting the presence of new trends in the domestic banking system, which were formed under the influence of banks with foreign capital, it should be noted not only the versatility and inconsistency but also increase the possibility of a larger problem of character.

Results and findings

Among the negative effects of foreign capital on the Ukrainian market should pay attention to the following:

1. Structural risk "dependent development". Branches of banks with foreign capital may create additional risks for the banking system, including the main - the risk of bankruptcy of the parent bank, worsening social, economic and political risks.

2. Possible uncontrolled outflow of capital from the country, as shareholders of banks with foreign capital generally invest in those sectors and countries where income and security are higher.
3. The presence of banks with foreign capital weakens still inadequately developed banking system. Local banks that are unable to compete with foreign banks go bankrupt, leading to financial instability in the country.

4. Foreign banks may carry out speculative activities without providing a full range of quality banking services.

5. Implementation of these risks could cause destabilization of the banking system, reducing public confidence in the Ukrainian banks threatened seizure of foreign banks banking market of Ukraine.

In particular, it is important to note that the appearance on the Ukrainian market of major banks with foreign capital with cheap credit, high quality customer service can increase its influence on management trends and processes of credit resources in the real economy. Accordingly could decline the opportunity not only to domestic commercial banks and the NBU and influence the development of the national economy of Ukraine. This, above all, must be that bank capital - both domestic and foreign - if it operates in Ukraine shall ensure the effective development of the national economy in accordance with certain government strategic directions.

In Ukraine used methodology for assessing the participation of foreign investors in the banking system, which includes a set of indicators suggested by the National Bank of Ukraine:

- share of foreign capital in the authorized capital of the banking system;
- number of banks with 100% foreign capital;
- number of banks with foreign capital (in which more than 10% of the capital owned by a foreign investor).

Banks with foreign capital are two groups of banks: the controlled domestic owners and those controlled by foreign owners. Moreover, analyzing the degree of participation of foreign investors in the share capital of Ukrainian banks should focus on the fact that a number of banks, where the share of foreign investors - 90%. In fact, they can be treated in the same group with banks with 100% foreign capital, as these institutions are under the complete control of foreign owners. At the same time banks, where the share of foreign investors does not exceed 50%, should be considered as controlled Ukrainian capital.

Thus, we agree with the opinion of scientists that evaluate the participation of foreign investors in the banking system of Ukraine should be as follows:

1) banks under control of foreign capital (if foreign ownership participation in the share capital exceeding 90%);
2) banks dominated by foreign capital (If foreign ownership participation in the share capital greater than 50% but less than 90%);
3) foreign banks, but under the control of national owner (if foreign ownership participation in the authorized capital of less than 50% and greater than 10%).

International experience lit that effective regulation of growth the presence of banks with foreign capital must clearly understand the motives of their entry into the country, including: the desire to capture new markets and obtain high profits, the ability to exploit the potential of the retail banking services, the use of more favorable regulatory environment under conditions of incomplete implementation of international standards of banking regulation, supervision and relatively weak liberal licensing desire to expand the business, which is difficult to implement in the mother country through greater competition and limited available resources.

An important issue is the use of profits from subsidiaries. Some practitioners and scientists predict that the greater the share will go abroad. In this respect, the law shall be displayed following rules:
- during the first three years of operation branch has placed no less than 80% of their income in Ukraine;
- over the next two years - at least 60%;
- all subsequent years - not less than 50%.

Conclusions

Thus, the current period of development of the banking system and economy Ukraine presence of foreign banking capital has become an integral part of the domestic banking system, as foreign investors are investing in the national economy not only their own capital, but also promote the use of international experience of the banking business, the transparency of banking activities, establishing relations with foreign countries, the integration of the banking system in the international financial sector. The process flow of foreign capital is objective and has a number of advantages and disadvantages for the domestic banking system and the economy as a whole. Affiliation most powerful big banks to foreign investors could lead to outflow of financial resources, increased instability, unexpected liquidity fluctuations, loss of sovereignty in monetary policy. Therefore, banks with foreign capital will strengthen the culture of banking business in Ukraine only if the hedging their functioning in Ukraine.
Suggestions

In world practice, the procedure regulation of branches of foreign banks in different countries is very different. Common is a desire to create a work environment, adequate economic situation and the directions of the banking system, thus reducing the maximum level of financial risk.

Banks with foreign capital can raise the cultural level of the banking business if hedging their functioning in Ukraine, which will reduce the negative impact of this process:

1. Considering the risks branches of banks with foreign capital in Ukraine, especially important is the issue of supervision of branches of foreign banks, as the principles and procedural aspects of these subsidiaries are principally supervisory authorities of the country of origin of the parent bank. To this end, more appropriate is to improve the national system of supervision of branches of foreign banks that operate in parallel to the system of supervision of their work from abroad.

2. The legislation to consolidate the increasing requirements of banks and placement of mandatory income in Ukraine according to the size of bank capital under foreign control.

3. Possible uncontrolled outflow of capital from the country, worsening competitiveness of Ukrainian banks. Hence the importance of the development of a foreign banking modernization and creation of conditions for development of the financial market and improving the investment climate in Ukraine by minimizing the risks of entry of foreign capital in the banking market.

Literature


MORAL AND ETHIC VALUES IN EMPLOYMENT
AS A FACTOR OF INNOVATIVE COMPONENT
OF EMPLOYMENT POTENTIAL IN UKRAINE

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Abstract

Purpose - to show the role of moral and ethic values in the conditions of knowledge economy development and increased competition towards innovative development to employment potential in Ukraine; to determine the main problems and reasons of employees' value demoralization; to propose measures for their improvement.

Design/methodology/approach – investigation results based on such research methods as observation and questionnaire were used in the article. The results of transformation mentality diagnostics within motivation monitoring revealed the trend of changes in values orientation in employment.

Findings – the causes of employees' moral and ethic values loss were formulated; the questionnaire showed the priority of labour characteristics that are the most attractive for the modern participants of social and labour relations; types of employees' labour mentality as a basis for moral and ethic values formation were defined; monitoring results of employed population and motivation directions of different employment groups were determined; measures for restoration of moral and ethic values in Ukraine employment were proposed.

Research limitations/implications – the article is the beginning of further investigation of concrete moral and ethic component influence upon employment potential development, particularly, in quantity aspect.

Practical implications – the investigation results can be used to develop the modern concept of national culture formation and the morality of social and labour relations.

Originality/Value – the influence of moral and ethic values on employment was determined; the causes of morality loss in modern conditions were systematized; the
measures of improving moral and ethic component of social and labour relations on the institution level were proposed.

**Keywords:** employment potential, moral and ethic values, social and labour relations, Ukraine.

**Research type:** general review.

**Introduction**

It is human (employees') knowledge and skills that are the most significant resource of enterprise, region and state development with the change of labour character, economy knowledge development and its penetration into almost all the spheres. However, innovative, creative and progressive people being highly productive component of employment potential develop the most efficiently in proper moral climate, worthy wealth and clearly formed moral and ethic values. Nowadays moral component is an unused reserve of employment potential development in Ukraine. Such component is investigated by economic science the least; therefore, it requires deeper study.

The experience of developed countries shows that underestimation of the role of morality, behaviour ethic norms in a society leads to the destruction of many labour values, the loss of labour culture, its age sense in a society life that reflects negatively in labour productivity, leads to the loss of economic growth opportunities, deteriorates the state of social and labour relations, reinforces antisocial phenomena and problems in social employment dealing concerning long-term unemployment, disqualification and degradation of a personality.

The newly formed market environment in Ukraine contradictory affected the development of the society, its social and labour potential and, particularly, its moral component. Moral component of social and labour potential reflects the value orientation of the population, the peculiarities of employment culture, mentality morality that become the basis for the formation of employment motives, activity or passive employment behaviour at labour market; form the definite attitude to knowledge renovation and constant education and professional development.

The changes of population's value orientations taking place during the years of market economy transformations have ambiguous nature and not always promote positive changes in the economy of Ukraine. Market environment, need for survival, market competition impact on the importance of work and money in everyone's life; lead to the change of value orientations that motivate a man's behaviour at labour market, his decisions concerning the necessity of employment potential development. Spontaneous
processes of employment value deformation become quite regular in situations of catastrophic reduction in material well-being, social insecurity, inadequate correlation of labour cost and manpower cost, false abolition of labour norm system at enterprises, the increase of official and hidden unemployment, employment shadowing.

**Theoretical background**

The features of social and employment potential formation in Ukraine have been repeatedly highlighted in the works of T. Kostenko (2011), O.Grishnova (2011), M. Semikina (2012), A. Kolot (2010), O. Gerasymenko (2010) and some other Ukrainian researchers.

In particular, the monograph "Labor relations: problems harmonization" (2012) by M.Semikina and Z.Smutchak (2012) have been systematized approaches to theoretical and applied aspects of harmonization of industrial relations, as part of the formation of moral and ethical values. Among which highlighted the following: class-antagonistic approach, organizational and regulatory approach, socio-cultural approach, sociopsychological approach, humanities approach.

A. Kolot (2010) made significant contribution to the study of the moral values structure and ethical behavior of Ukrainians. In his book "Socialization relations at work in the context of sustainable development" he stated that the main obstacle to the establishment of socially responsible behavior was deepening disparity between the need to improve the moral and spiritual potential of society and the actual situation with regard to undesirable changes in the structure of values and social norms of behavior of members of society and its institutions.

However, the influence of moral and ethic values renovation was elucidated insufficiently.

We consider moral and ethic values as moral models, notions, requirements that give a possibility for a man to assess the reality and orientate in it.

The formation of innovative component of employment potential is greatly influenced by employment mentality; we consider it as social and economic category that generally reflects the level of national employment consciousness of a society, social groups of population, separate individuals, the perception of employment meaning, value orientations, interests and needs which determine the incentive motives of definite employment behaviour.
Research methodology

The article considers the investigation results based on the following methods: observation and questionnaire. The results of mentality transformation diagnostics within motivation monitoring, revealed trends in the changes of value orientations in employment.

Results and findings

The sociological investigations of modern scientists as well as questionnaires conducted by the author confirmed the alarming fact that the ideals of fair and productive work lost, to some extent, its former great importance not only for young people but for 2/3 respondents of older generation. The role of "work meaningfulness" taking into account its "rather important value" does not become one of the primary factors that determine the final choice of employment according to the majority of respondents (64%). Interest in work, meaningfulness of work takes the fourth place according to priority after such important values as "decent wages", "social security" and "stability of employment". "Opportunity to show creative initiative", "to achieve self-realization in work" occupies the last places after opportunities to build a career, to get social package, the second education or profession at the expense or partially funded by an enterprise.

Observations prove that in priority conditions of surviving problem the dominant motive of employment for the most of employees is their striving to get reimbursement of labour efforts primarily in cash form. Value orientations of employees are objectively shifted toward the rise of personal interests, primarily toward obtaining stable, guaranteed and decent income. At the same time, young people perceiving discrimination at labour market do not often understand it as getting income "by all means". Phenomenon immorality of labour rights violation leads to the fact that the morality of income sources becomes a relative concept. Obtaining income is not always within the legal framework; it is promoted by employment shadowing which takes large scale.

Moral component transformations of social employment potential would not contradict to the principles of market economy, if the enrichment of some society members did not take place at the expense of others. A separate theme is the destruction of the moral principles concerning the use of official positions for one's own benefit, large scale corruption, misappropriation of property, land and other resources. The manifestation of patriotism to one's own enterprise, employment activity, striving to professional self-development, inventions and rationalization lose their sense for many
employees taking into account the phenomena mentioned above. As a result some part of population is willing consciously or unconsciously to obtain great income by all means making no essential efforts, leaving aside the ideals of diligence, striving for knowledge, creative and professional growth. The destruction of value orientations in employment becomes, to our mind, one of the deep ideological bases of shadowing economy, amounts of which cover almost half of gross domestic product.

Social conflict character is indisputable in the country where producers of material and spiritual values are humiliated by poverty with redistribution of power, status and resources around them.

The manifestation of deformed transformation of value orientations which inhibits the development of social and employment potential is enterprise employees' difficult adapting with market conditions. It occurs ambiguously concerning different age groups. Consciousness restructuring of older age groups (especially, women) has the most difficult form; it is more difficult for them to change employment behaviour, to acquire new information than for younger people at the age of 30.

Accordingly, in the context of social and employment potential development, the influences of employment mentality are primarily actualized; we consider them as social and economic category which reflects generally the level of national employment consciousness of a society, social groups of population, separate individuals, the perception of employment sense, value orientations, interests, needs that determine incentive motives of definite employment behaviour (Semikina, 2003). At the same time, employment mentality is primarily influenced by national mental characteristics. Specific features of national employment mentality were formed under the influence of long-term action of a set of geographical, historical, economic, political, religious, cultural and other factors; it objectively reflects in population motivation in employment, has an impact on result nature of employment motivation and even on the course of market reforms.

It is important to understand that the qualitative changes of Ukrainian employment mentality will require longer period of time than market transformation of economics. It is quite clear that every new generation will compare new needs in employment with needs and customs of older generations even in a new economic environment with new roles of social and political institutes; thus, some negative features of employment mentality will be objectively reflected in indefinitely long period of time and will impact on employment motivation and results.

Thus, employment mentality is formed rather thoroughly in motivation sphere. M. Semikina’s (2002) works are very valuable as to this essential aspect. The results of mentality transformation diagnostics conducted by the scientist within motivation
monitoring revealed the following trends in the changes of value orientations in employment (Semykina, 2002):

- First, in the conditions of market transformation, life standard decrease and unemployment increase the problems of obtaining the highest possible income (wages) took the first place according to the significance for the most respondents (86-94%); the guarantees of social security and employment took the place. The significance of work matter, its usefulness for a society that was noted by motivation researchers in 70-s-80-s, disappears in the list of significant motives for most respondents; the problems of competition among employees, sanitary and hygienic conditions of work, relations with management, the opportunities of qualification growth, participation in enterprise affairs occupy the last places.

- Second, employment motives of industrial enterprise employees reflect almost full decrease of interest in innovations, inventions, rationalization because of the lack of necessary social and economic incentives.

- Third, the lack of close connection between wages and obtained education does not stimulate enterprise employees to qualification growth and further investment in labour force for competition growth that leads to the degradation of employment potential, the loss competition perspectives for not only separate employees but the whole branches and regions.

- Fourth, the dissatisfaction of most employees with their wages ruins such employment values as striving to effective work, following the rules of work and technological discipline, careful attitude to enterprise property, the economy of working time, materials and raw materials.

The employment mentality of respondents was typed depending on the assessment of dominant employment motives and the degree of adaptation to the conditions of market environment according to characteristic features (dominant employment motives, employment and professional mobility) (Semykina, 2002):

1) The first type of employment mentality involves the group of respondents from 14% of interviewed: they are the individuals aged under 30 with higher and high special education, most of them are men oriented on high income with any labour efforts; the income is not always guaranteed; however, they are ready to risk with the place and matter of work, study or restudy. Most of such respondents are observed in share and private enterprises (38 and 45% accordingly).

2) The second mentality type includes 37% of all respondents. They are individuals aged 45 older than 45 with high and high special education; most of them are women who prefer employment guarantees, obtaining small but guaranteed wages because of the lack of employment choice; they do not strive qualification growth, professional career,
consider maximum labour efforts to be unnecessary in work; most of them work at state and share enterprises (64 and 23% accordingly).

3) The third mentality type involves 40% of respondents; among them are individuals aged 25-45 mostly with higher education who are oriented on guaranteed average income, strained work, communication with people, knowledge and abilities realization, inclined to professional mobility; however, they do not want to risk with the change of employment. Most of them work at share enterprises.

4) The fourth type of employment mentality includes the representatives of the last interviewed group (9% of respondents); they are mostly employees of older age (older than 50) who work at state enterprises, have significant length of employment and experience at the enterprise, have high, high special and higher education; they consider social usefulness of their work and recognition in the collective but not wages to be significant value for them; they do not strive to change the direction and the place of their employment; they are not inclined to professional mobility.

The types of employment mentality reveal that most of respondents (46%) are oriented at social security – employment and wages guarantees (even not high salary) without intensive efforts for study and restudy; it shows pattern orientations and is explained with the lack of employment choice at market, undeveloped social needs, the lack of belief in achieving desirable material well-being due to active employment efforts. Such features of employment mentality do not reflect employees’ market thinking which is necessary for the formation of people oriented on their own competitiveness growth, on the one hand, and show undeveloped character of competitive environment, the lack of necessary social and economic reasons, on the other hand (Semikina, 2003).

Revealed trends in employment mentality transformation can be assessed more as negative resulted from the deficit of worthy employment in Ukraine, deformations in the assessment of fair and productive work. The advantage of material orientation direction over spiritual orientations (interest in work matter, its importance for a society, striving of innovative knowledge), humiliating of spiritual interests indicate that the strict model type of **exactly economic person** is formed in the conditions of market transformations and is spread in Ukraine. We consider that the strict model type of exactly economic person do not correspond to the strategic interests of Ukraine and providing the development of innovative social and employment potential. The way to solve the problem may be giving opportunities to satisfy material needs due to employment that stipulates the motive to work matter and creates stimulus for the development of human capital. It deals with available new places of work, essential increase of wages, various possibilities to get desirable income by employment on legal basis, maximum development of employees’ intellectual potential in the interests of competition advantage growth. In other words, it is
important to stimulate the development of a social man model enriching a set of material and spiritual needs (Semikina, 2003).

Specific role in the processes of employment mentality transformation and building a social man model must belong to employers who should accept new value orientations of young generation in employment as a fact if they want to have progressive, active, effective young employees.

According to O. Grishnova (2011), it is important for workplaces meant for young employees not to have routine employment duties, but duties promoting the development and improvement of human skills. These requirements are important for all the people (of any age); however, older employees are unlikely to change their usual work because it is not interesting enough while a young man does not choose such a work. If a young man requires certain competences, it is important to encourage him and promote his study (Grishnova, 2011).

It is of paramount importance for the practice of progressive development of regional social and employment potential to base on youth types in employment. O. Grishnova and T. Kostenko (2011) proposed a splendid achievement concerning it; they conditionally divided youth into six groups depending on the most important group of motive factors and developed propositions as to the main directions of different employees’ motives:

1. The first most numerous group (23.4% of interviewed young people) includes young people for whom interest is the main motivating factor. These employees willingly take up new challenges, especially researches, find new decision variants, establish new contacts, and acquire new competences without expecting on any award as they satisfy their interest in it. The basic condition of employees' successful work with this type of motivation is the innovative activity of an organization, available new interesting tasks and jobs. The proper evaluation of such employee’s work results in the form of wages is background condition for attracting this employee; however, it is the work content, interest that motivates him to active employment.

2. The second group (16.4%) includes young people who need employment for self-realization. The main idea for such people is the opportunity of career growth, study and self-improvement. Such employees should be motivated with not comfortable work conditions or high wages but an opportunity “to grow” at the workplace. The basic condition of successful work of an employee with such a motivation type is an understanding of his necessity in a company, the opportunity for professional and career growth, fair assessment and decent payment for qualified work. At the same time, such employee requires clear tasking, control and providing all necessities for his job.
3. The third group (15.8%) involves the young people for whom their job is a creative process. Such people differ by creative attitude to their job and other activities. It is important for such employees that their work develops their abilities, gives independence and space for creativity. Many young people announce that they want to do creative work; however, not all the people have inclinations and abilities to creative activity. At the same time, not all the jobs require such employees. It is proper staff recruitment that is important in this case. If a creative person has found a creative job, the problem of employment motivation has already been solved (naturally, with normal average market wages).

4. The fourth group (15.2%) includes young people who need a job for the sake of money. Their work should bring such an income that might satisfy their numerous needs for the young people with such type of motivation. If only motivator is money (it does not happen too often), an employee differs with pragmatic nature and ability to defend his interests rather rigid. Only high salary may be the condition of his productive work. Such employee's loyalty is measured with the amount of his wages. He should be managed with the help of material interests considering control as a means of avoiding abuse.

5. The fifth group (11.4%) involves the young people who chose a job seeking high status and power. The young person with such motivation type gets a job and wants to occupy a prestigious position at once; an opportunity to manage is the basic motive which motivates him to work. In this case, it is important to stress the importance of this employee for a company, to point out his duties and to enlarge them if they are fulfilled.

6. The sixth group (10.2%) includes young people for whom a job is a means of socialization, communication possibility. The young people with such motivation type appreciate work in a friendly team, they do not seek to career heights and high salaries; however, favorable attitude from management and colleagues is of paramount importance for them. Such people are not motivated hard and expensively; however, do not forget to give them due consideration. They are good at administrator positions in beauty salons and fitness centers, manager and sales consultant positions.

It is clear that for every group their own type of innovative behaviour is characteristic depending on applied motivating instruments. The development of innovative nature of social and employment potential of such persons will depend on these aspects.

Conclusions

Thus, the investigation results helped to formulate the reasons for the loss of moral and ethic values of employed population, particularly: difficult adaptation to market...
conditions, employment mentality features, etc. The questionnaire results revealed the priority nature of employment being the most attractive for modern participants of social and employment relations. Workers' employment mentality was typed as a basis for the formation of moral and ethic values. The results of motive monitoring of employed population and motive trends of different employee groups were considered. Measures to restore moral values in employment at the institution level in Ukraine were proposed.

Suggestions

Based on the mentioned above, we consider appropriate:
- to develop modern state concept of forming national culture and moral nature of social and employment relations;
- to develop a code of labour honour for employers and employees with the participation of social partners; to predict its acceptance to the content terms of collective agreements and treaties;
- to provide promoting fair and productive work in official economic, restoration of labour values, the principles of high morality, social responsibility for work results, the use of natural resources with the help of mass media and cultural institutions;
- to direct the education of young people on the formation of diligence, respect to labour, working professions; to form conscious understanding of employment value and its key role in providing one's own well-being with the help of art works, films, in education institutions with the support of the state.

Mentioned above indicates that it is time for systematic and scientific investigation of the social and employment potential of the state, specific targeted investments of the development of moral and ethic component of the potential using the tools of socio-economic mechanism which should have a social, psychological and economic influence upon a person at all levels and promote gradual formation of value orientations being adequate to the needs of movement to informative society.

Literature

WEALTH CREATION IN THE KNOWLEDGE ECONOMY. REFLECTIONS ON THE CRISIS OF SPAIN AND PORTUGAL

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Abstract: Following the principles and theory of wealth creation in the knowledge economy, the purpose of the paper is to enable an in-depth diagnosis of a nation’s actual knowledge driven competitiveness foundations, with the aim to aiding in the definition of the possible vision, objectives and lines of action to embrace in order to enable innovation and sustainable economic growth. In order to perform the in depth diagnosis a thorough review of diverse studies and methodologies will be carried out. Among them we will specially consider the “Global Competitiveness Index” (WEF), the “World Competitiveness Yearbook” (IMD), and the different IC models that apply to the IC macroeconomic dimension. As a consequence of the review and thinking on the specific requirements of peripheral countries of the European Union, the suitable methodology or combination of methodologies will be chosen and later on will be used for reflecting on the cases of Spain and Portugal. The reflections arising from the paper have mainly practical implications and will guide in the decision making process not only savers and investors but also government and institutional authorities.

Keywords: Competitiveness, innovation, intellectual capital, intangibles, knowledge based-development, nation.

1. Introduction

During the last fifteen years some fundamental changes have occurred in the world and more specifically in the way the world economy creates wealth. These changes are summarised by Laurence Prusak (Neef, Dale 1998) as follows:
A) The globalization of the economy, which is putting terrific pressure on firms for increase adaptability, innovation, and process speed.
B) The awareness of the value of specialized knowledge, as embedded in organizational processes and routines, in coping with the pressures of globalization.

C) The awareness of knowledge as the distinct factor of production and the role in the growing book value to marked value ratios within knowledge-based industries.

D) Cheap networked computing, which is at last giving us a tool for working with and learning from each other.

Since 1998, when Prusak wrote about the changes, an unstoppable progress on multimedia and information and telecommunication technologies has completed the above mentioned four changes.

Reflecting on the content of the changes we arrive to the conclusion that knowledge has become the fundamental factor of wealth creation in the present economy, because there is no sustainable advantage other than what a firm knows, how it can utilize what it knows, and how fast it can learn something new.

As a consequence of such great importance of knowledge as an economic factor a new phrase or expression has become almost commonplace. It is the phrase “knowledge economy” or the equivalent “knowledge-based economy”. There are many definitions of this phrase or combined concept and two of them have been selected for the relevance in their content. They are the following:

“... one in which the generation and exploitation of knowledge has come to play the predominant part in the creation of wealth. It is not simply about pushing back the frontiers of knowledge; it is also about the most effective use and exploitation of all types of knowledge in all manner of economic activity” (DTI Competitiveness White Paper 1998)(Brinkley, 2008)

“economic success is increasingly based on upon the effective utilisation of intangible assets such as knowledge, skills and innovative potential as the key resource for competitive advantage. The term “knowledge economy” is used to describe this emerging economic structure” (Economic &Social Research Council 2005)(Brinkley, 2008)

The purpose of the paper is double:

First finding out the suitable methodology or framework in order to enable an in-depth diagnosis of a nation’s actual knowledge driven competitiveness foundations, with the aim to aiding in the definition of the possible vision, objectives and lines of action to embrace in order to enable innovation and sustainable economic growth.

Second applying the suitable methodology or framework to the in-depth diagnosis to the Spain and Portugal cases and using the insights given by the in-depth diagnosis for having some light on the future economic development possibilities of both economies and on lines of action to be taken in order to foster innovation and sustainable economic growth.
2. Wealth Creation in the Knowledge Economy

Wealth creation in the knowledge economy context is closely linked with the concept of competitiveness. There are many definitions of country competitiveness. Among them one of the most cited is the OCDE official definition that follows:

“The degree to which a country can, under free and fair market conditions, produce goods and services which meet the test of international markets, while simultaneously maintaining and expanding the real incomes of its people over the long term”. (OECD “official” definition 2002) (Garelli, 2002)

At the same time relationships among country competitiveness, wealth creation and knowledge economy are stressed in the following citations:

“Nations themselves do not compete, rather, their enterprises do. There is no doubt that competitive enterprises are the main engines of a country’s competitiveness”.

“The role of nations in shaping the environment in which enterprises operate influence their competitiveness”.

“Competition among nations can be seen in the areas of education and know-how. In a modern economy, nations do not rely only on products and services, they also compete with brains. The ability of a nation to develop an excellent education system and to improve knowledge in the labor force through training is vital to competitiveness”. (Garelli 2002)

“It is well understood that sound fiscal and monetary policies, a trusted and efficient legal system, a stable set of democratic institutions, and progress on social conditions contribute greatly to a healthy economy.

I have found that these factors are necessary for economic development, but far from sufficient. These broader conditions provide the opportunity to create wealth but do not themselves create wealth.

Wealth is actually created in the microeconomic level of the economy. Wealth can only be created by firms. The capacity for wealth creation is rooted in the sophistication of the operating practices and strategies of companies, as well as in the quality of the microeconomic business environment in which a nation’s companies compete. More than 80 percent of the variation of GDP per capita across countries is accounted for by microeconomic fundamentals. Unless microeconomic capabilities improve, macroeconomic, political, legal, and social reforms will not bear full fruit”. (Porter 2005)

And because wealth can only be created by firms, the following Peter Drucker citations on efficiency and effectiveness will complete the landscape of wealth creation principles in the knowledge economy at nation or country level. They are:
Efficiency is the ability to get things done correctly. Managers who are able to minimize the cost of the resources they use to attain their goals, are acting efficiently.

Effectiveness, on the other hand, is the ability to choose appropriate objectives. An effective manager is one who selects the right things to get done. A manager who selects an inappropriate objective is an ineffective manager. No amount of efficiency can compensate for lack of effectiveness.

The manager’s need to make the most of opportunities implies that effectiveness rather than efficiency is essential to business. The pertinent question is not how to do things right, but how to find the right things to do, and to concentrate resources and efforts on them. (Drucker, 1967)

The above fundamental citations pave the way for the more systematic description of wealth creation foundations in the knowledge economy that follows:

The advent of the knowledge economy has fundamentally changed the basis of wealth creation in modern social communities and knowledge and other human based intangibles have become the fundamental resources for wealth creation.

The theoretical foundations of wealth creation in the knowledge economy are mainly found at the micro level in the modern strategic management discipline and more specifically in the three well known following perspectives: the resource based view, the dynamic capabilities based view and more recently the knowledge based view.

These theoretical foundations at the micro level have to be complemented at the macro level with recent developments on what is called strategic management of intangibles in cities, regions and nations. These recent developments are based on a complex body of principles and theories, such as institutional and evolutionary economics, cultural and social economics, systems theory, systems and innovation, triple helix, regional science and more recently knowledge based development.

Based on the above mentioned theoretical foundations some basic principles on wealth creation in the knowledge economy context can be deducted (Viedma & Cabrita, 2011). They are the following:

1. Wealth or poverty of a specific nation is strongly dependant on the number of competitive or excellent companies that the specific nation has.
2. Government does not create wealth but contributes to facilitate or to hinder wealth creation.
3. An excellent or competitive company is the one that achieves long term extraordinary profits due to the fact that has a business model with sustainable competitive advantages.
4. In the knowledge economy sustainable competitive advantages are mainly based on intangibles. Consequently strategic management of intangibles or intellectual capital becomes a fundamental task.

5. In order to achieve business excellence strategy perspective is the key one.

6. Business excellence is always due to good strategy formulation and superior strategy implementation.

7. Good strategy formulation and superior strategy implementation is always a human task and strongly depends on the quality of the top management team and the key professional people.

8. In a continuous changing environment business models quickly get out-of-date and as a consequence of that, innovation in business models becomes an urgent need.

9. In any company the essential activity to perform is always innovation in the business model so it can be converted in an excellent or competitive business model.

10. Companies alone do not create wealth. They need the collaboration of other companies, universities and research institutes, financial institutions, government and other organisations and institutions and specially the existing ones in the cluster, region or nation where the company is located. In other words they need to be active part of a territorial open innovation system and of, what some authors like to call, knowledge based ecologies.

11. When in principle 4 we state that strategic management of intangibles or intellectual capital is a fundamental task for gaining and sustaining competitive advantages we refer mainly to companies but strategic management of intangibles needs also to be applied to the government of clusters, regions or nations in order to build territorial open innovation systems or knowledge based ecologies.

Following the criteria of the above principles this paper is dealing with wealth creation at the macro level in the knowledge economy context and consequently mainly considers knowledge based ecologies that have been mentioned in principle 10. Because that reason some more details are given on these ecologies.

As it has been said before in the knowledge economy firms alone are unable to create wealth. They need to be part of a suitable micro cluster, cluster, region or nation where innovation is considered a key competitiveness factor and where knowledge and learning capabilities (i.e. technical and learning skills and capabilities, knowledge infrastructure, networking capacity, values systems and attitudes) are the main ingredients that conduce to innovation systems and innovation processes. That means that...

---

We consider, in this particular context, that innovation in business models, encompass all types of innovations, including products, services, processes, technical, management, etc.
governments should play a role, not only in providing macroeconomic stability, adequate incentives, and the technology and financial infrastructure for firms to compete, but also in promoting the types of linkages (across the triple helix of industry, government and universities) and institutions and a collaborative trust-based innovative culture, that are the sine qua non conditions for a sustainable economic development.

3. Finding out methodologies and frameworks for an in-depth diagnosis of a nation’s knowledge driven competitiveness foundations.

Trying to find out methodologies and frameworks for an in-depth diagnosis of a nation’s knowledge driven competitiveness foundations, we quickly realize that World Competitiveness Report from World Economic Forum (WEF) and World Competitiveness Yearbook from International Institute for Management Development (IMD) are the two most relevant considering their historic performance and scientific approach. The analysis of alternative methodologies and frameworks other than the two mentioned above has not been made in this paper. More information dealing with this analysis can be found in RICBS (Viedma & Martins 2006). The criteria for selecting these methodologies have two support points. The first point concerns the scientific foundation and the second point refers to the systematic information on competitiveness of developed economies, which over a long period of time these methodologies have provided.

In section 3.1 we will note the main competitiveness methodologies and frameworks. Next in section 3.2 we will describe the IC community frameworks or in other words the IC community contributions to enable an in-depth diagnosis of a nation’s knowledge driven competitiveness foundations.

Subsequently in section 3.3 we will introduce NICBS as the methodology that synthesizes and embodies the micro and macro principles of wealth creation formulated and described in section 2.

Finally in section 3.4 we integrate the WEF competitiveness framework into the NICBS framework in order to produce the Enhanced NICBS framework, that later on will be used for reflecting on the crisis of Spain and Portugal.

3.1 Competitiveness frameworks.

We have stated in section 3 that the two main methodologies and frameworks were the following:

There are other methodologies such as the European Innovation Scoreboard (EIS2011) and K4D (K4D2011) World Bank that cover specific aspects and consequently are less relevant considering the specific purpose of the paper.

Following in figures 1 and 2 we illustrate the main factors or components of the two above mentioned methodologies.

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Figure 1: The 12 factors of competitiveness of W.E.F. (Klaus et al, 2011 pp.9)
3.2 IC Community frameworks

Considering that the mode of wealth creation has shifted from a mass-production economy to an economy of knowledge, where the key drivers of growth are intangible (Romer 1986; Drucker 1993), national level IC has recently emerged as a new topic of research, where the focus is on understanding intangible drivers of national wealth creation.

The IC community efforts have crystallized in a set of IC models at nation level. Some of these models are noted in figure 3 that follows.
Figure 3. IC community contributions. Source: Hervas, J.L. 2010

A more systematic approach of IC community contributions can be found in a new recently issued book on National Intellectual Capital (Yeh-Yun Lin.C, Edvinsson Leif, 2011), where National Intellectual Capital Models proposed by individual researchers are listed. An excerpt of this list with some key features is given in figure 4.

In addition C.Y.-Y.Lin and L. Edvinsson have proposed a new National Intellectual Capital Measurement Model that includes a carefully selection and validation of indicators. In figure 5 we include the variables in each type of capital of their model.

Finally we would like to stress that some researchers are discussing the IC community contributions. In that sense they are arguing:

National level IC has recently emerged as a new topic of research, where the focus is on understanding intangible drivers of national wealth creation. However, given that reporting and valuation systems for national competitiveness already exist, why is an IC perspective needed? (Stahle and Poyhonen 2005)

The IC perspective should re-focus to return to its original roots, and to concentrate on knowledge-creation and innovation. (Stahle and Poyhonen 2005)
<table>
<thead>
<tr>
<th>Country/researcher</th>
<th>General basic model</th>
<th>Dimensions</th>
<th>Nature of indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden (Rembe 1999)</td>
<td>Skandia Navigator</td>
<td>• Human capital • Market capital • Process capital • Renewal capital</td>
<td>• Financial indicators • Descriptive indicators</td>
</tr>
<tr>
<td>Malaysia (Bontis et al. 2000)</td>
<td>Skandia Navigator</td>
<td>• Financial wealth • Human capital • Market capital • Process capital • Renewal capital</td>
<td>• Descriptive indicators • Intangible indicators • Financial indicators</td>
</tr>
<tr>
<td>Sweden (Spring Project 2002)</td>
<td>Skandia Navigator</td>
<td>• Business recipe • Human capital • Structural capital • Relational capital</td>
<td>• Innovation indicators • Competence indicators • Industrial indicators • Company–universities indicators</td>
</tr>
<tr>
<td>Madrid, Spain (Pomeda et al. 2002)</td>
<td>Skandia Navigator</td>
<td>• Human capital • Organizational capital • Technological capital • Relay capital • Social capital</td>
<td>• Descriptive indicators • Intangible indicators • Innovation indicators</td>
</tr>
<tr>
<td>EU Countries (Bounfour 2003)</td>
<td>IC-dVAL Approach</td>
<td>• Resources • Processes • Outputs</td>
<td>• Financial indicators • Descriptive indicators • Innovation indicators</td>
</tr>
<tr>
<td>Arab Region (Bontis 2004)</td>
<td>Skandia Navigator</td>
<td>• Financial wealth • Human capital • Market capital • Process capital • Renewal capital</td>
<td>• Descriptive indicators • Intangible indicators • Financial indicators</td>
</tr>
<tr>
<td>Finland (Stähle and Pöyhönen 2005)</td>
<td>Skandia Navigator</td>
<td>• Human focus • Market focus • Process focus • Renewal &amp; development focus</td>
<td>• Industrial indicators • National indicators • Financial indicators</td>
</tr>
<tr>
<td>Israel (Pasher and Shachar 2007)</td>
<td>Skandia Navigator</td>
<td>• Financial capital • Human capital • Market capital • Process capital • Renewal &amp; development capital</td>
<td>• Financial indicators</td>
</tr>
<tr>
<td>EU Countries (Weziak 2007)</td>
<td>Skandia Navigator</td>
<td>• Human capital • Relational capital • Structural capital • Renewal capital</td>
<td>• Financial indicators • Descriptive indicators</td>
</tr>
</tbody>
</table>

Figure 4. IC Comunity contributions from Yeh-Yun Lin.C and Edvinsson Leif, 2011
3.3 NICBS framework.

In this section we describe the highlights of NICBS methodology and framework. NICBS is a methodology that synthesizes and embodies the micro and macro principles of wealth creation formulated and described in section 2. Some excerpts of the main features of NICBS (Viedma & Martins, 2006) are given as follows:

NICBS was primarily conceived as a learning strategy tool to help nations, and the microclusters within them, make the transition (from $S_n$ to $S_{n+1}$ in Fig.6) to more competitive knowledge economies by:

1) Enabling an in-depth diagnosis of the nation’s actual knowledge-driven competitiveness foundations.
   - What are the resources, competencies, traditions, patterns of behaviour, etc. that act as path-dependencies in the nation’s way to growth?

2) Aiding in the definition of the possible vision, objectives and lines of action to embrace sustainable economic growth.
   - What is the model of excellence that we want for the nation?
   - What competencies, values and attitudes should we promote to enable innovation and sustainable growth?
3) Developing awareness of a nation’s potential risks and opportunities.

   - How does the nation cope with change?

   Specifically, the first two points are basically attained through disclosure skills and competencies; social and legal frameworks; technology upgrade and use; market access and openness; the quality of primary education, universities and research centres; industry-based collaboration, etc. for both the nation as a whole and each of the core microclusters. The third point, to which we assign the greatest importance, is the result of a dynamic and systematic assessment of the nation’s innovative capacity, in the face of first-class competitors, and a process of cross-fertilised analysis. Moreover, carrying out a rigorous diagnosis (point 1) is an essential step before embarking on the definition of the vision and the objectives (point 2).

   Figure 6 depicts the NICBS’s main constituents and linkages, which are subsequently explained.

   The general structure of the NICBS is grounded in regional innovation systems theory (Andersson and Karlsson, 2002; Carlsson et al., 2002; Enright and Roberts, 2001; Cooke and Schienstock, 2000; Cooke et al., 1997) and more specifically on the Furman et al. (2002) model for assessing a nation’s innovative capacity and Viedma’s (2003) Cities’ Intellectual Capital Benchmarking System (CICBS), chiefly in relation to the nation’s microclusters’ capacity for competitiveness. It is made up of two sub-models and the linkages between them, as well as a set of indicators and extensive questionnaires to operationalise them. The nation’s competitiveness intellectual capital platform (hereinafter NCICP) represents the bundle of core resources and competencies (capabilities, when tied to the vision and objectives) that are bound together by core activities. In conjunction with the norms, guides and principles set by public and private institutions (institutions and regional governance building block); the technological skills and capabilities (technology block); the environmental quality of life, as determined by public services, cost of living, and other territorial endowments (living-environment-based resources block); and an educated, skilled and values-nurtured human broad base with the aim of creating, sharing and using knowledge (human capital and social capital blocks), these core resources and competencies condition economic actors’ patterns of behaviour, shape the nation’s culture, and determine the extent to which the nation as a whole is capable of supporting and fostering an innovative and competitive productive system as displayed by the microclusters. In essence, the NCICP represents the intricacies of resources and relationships that, assuming macroeconomic stability (economy performance block), can either boost or hinder microclusters’ wealth creation capacity.
Figure 6. NICBS’s main components and linkages.

However, to gain a comprehensive view of the nation’s capacity to grow, we must consider the microclusters’ ecology of value chains and supportive business environment—as that is where an economy’s real possibilities for growth reside—and also the quality and density of information and knowledge exchanges between the two subsystems, which is what the nation’s microclusters’ competitiveness intellectual capital frame (MCICF) aims for: to unveil the microeconomic environment and capacity for innovation at each of the nation’s core microclusters. The MCICF builds mainly on Porter’s (1990, 1998) cluster-based theory of competition and Viedma’s (2003) methodology for assessing microclusters’ core competencies. Finally, the linkages between the national competitiveness platform and the microclusters account for the strength of the system as a whole. It is the density, quality
and dynamism of these exchanges that grants the system the mechanisms for self-renewal and the ability to generate knowledge-driven ideas that enable long-term economic growth (see thick black arrows in Figure 6).

3.4 Integrating WEF competitiveness framework in the NICBS framework = Enhanced NICBS.

Section 3.3 has supported NICBS as the most complete methodology for an in-depth diagnosis of a nation’s knowledge driven competitiveness foundations. Nevertheless and because systematic information on the indicators and factors of the different building blocks that integrate the NCICP is not available for the specific cases of Spain and Portugal, we considered that an imaginative solution was needed in order to make it possible an in depth diagnosis of Spain and Portugal knowledge driven competitiveness foundations.

The imaginative solution comes from integrating WEF competitiveness framework in the NICBS framework or more precisely from replacing in the NICBS framework the NCICP platform by the WEF competitiveness framework. We will call the new generated framework Enhanced NICBS and its structure is shown in figure 7.

The NICBS framework gives us the possibility for an in-depth diagnosis of a nation’s knowledge-driven competitive foundations. In sections 4.1 and 4.2 some of the main features corresponding to the crisis of Spain and Portugal are described.

4.1 Reflections on the crisis of Spain

Reflections on the crisis of Spain are mainly taken from 2.1: Country/Economy Profiles of The Global Competitiveness Report 2011-2012 (Schwab, 2011). Figures 8 and 9 show the details of Spain’s Global Competitiveness Index and the most problematic factors for doing business.

![Figure 8. Spain. Global Competitiveness Index.](image)
Some comments on the content of both figures are given next:

“Spain regains some ground to place 36th this year, after two years of sharp decline that led it to fall from 29th place in 2008–09 to 42nd place last year. This year’s progress can be attributed to slight improvements in several areas measured by the Index, as well as a deterioration in the performance of other economies that previously ranked ahead of Spain. Despite a sluggish economic recovery and an important weakening of its macroeconomic stability (falling from 66th to 84th position), the country has managed to improve its performance thanks to a greater use of ICT (up from 29th to 24th) and its resilience in terms of R&D investment and innovation capacity. Further improvement of these growth-enhancing factors will be crucial for its future recovery and a much-needed economic transformation. Overall, Spain’s competitive edge is hampered by its macroeconomic imbalances. Its very high and increasing public deficit (134th), its high level of public debt (108th), and its enduring very low national savings rate (83rd) have caused a great deal of distress in its financial markets and are asphyxiating access to financial resources—both in equity investment (85th) and in access to loans (99th)—thus jeopardizing future investment plans.

Regaining macroeconomic stability not only by decreasing the public deficit but also by adopting the necessary reforms to boost growth should be a priority in the short run. The rigidities in the labor market (134th)—both in terms of hiring and firing practices
(137th) and in the disconnect between wage setting and productivity levels (126th) that eroded much international competitiveness in the past decade—are worrisome. These rigidities have not allowed it to adjust rapidly after the economic crisis and the bursting of the construction bubble, and have left a substantial share of the labor force out of work. Moreover, despite high educational enrollment rates (Spain ranks 3rd at secondary and 18th at university levels), the inadequate educational system seems to fail to provide a large share of the population with the skills necessary for participating in an increasingly knowledge-driven economy. While Spain can still leverage its large market size (13th) and its world-class infrastructure (12th), addressing these structural weaknesses and further developing its innovation performance will be crucial for the country’s sustainable economic growth”.

The above reflections correspond with NCICP, the lower part of the NICBS model, the one that gives sustainability to the whole system.

The paper does not cover MCICF, the upper part of NICBS where the wealth is essentially created, because there is not systematic and up to date information available on clusters, microclusters and economic sectors.

4.2 Reflections on the crisis of Portugal

Reflections on the crisis of Portugal are mainly taken from 2.1: Country/Economy Profiles of The Global Competitiveness Report 2011-2012 (Schwab, 2011). Figures 10 and 11 show the details of Portugal’s Global Competitiveness Index and The most problematic factors for doing business.

![Global Competitiveness Index](image)

**Figure 10. Portugal. Global Competitiveness Index**
Some comments on the content of both figures are given next:

“Despite the country’s critical financial situation, which led to a recovery plan earlier in the year—and notwithstanding the negative economic forecasts for the next two years as the consolidation plans start to reduce public spending—Portugal improves its competitiveness performance slightly and moves up one position to 45th place. This positive development is largely led by an increase in ICT use throughout the economy (18th) and an improvement in the quality of its overall infrastructure (12th), especially of roads (5th). Despite this slight progress, the country still holds one of the poorest competitive positions among advanced economies and suffers from serious weaknesses. In addition to the well documented macroeconomic difficulties of a national savings rate below 10 percent (128th), a high deficit (122nd), and high public debt (128th) that hinder the availability of financial resources for local companies, the economy suffers from rigidities in its labor market (136th) and a disconnect between salaries and productivity (112th) that have hampered Portugal’s capacity to remain internationally competitive. Moreover, the traditional lag in company R&D (41st) and other innovation-oriented investments have prevented it from moving toward higher-value-added activities, so it suffers the consequences of fierce competition from cheaper production sites, such as Eastern Europe and China. Addressing these weaknesses by adopting the necessary reforms and preserving growth-enhancing investments will be crucial to boost the competitive edge of the economy and set the national economy on a path of growth after a decade of stagnation.”

The above reflections correspond with NCICP, the lower part of the NICBS model, the one that gives sustainability to the whole system.
The paper does not cover MCICF, the upper part of NICBS where the wealth is essentially created, because there is not systematic up to date information available on clusters, microclusters and economic sectors.

Conclusions

After an introduction on the fundamental changes that have occurred in the world and more specifically in the way the world economy creates wealth, the paper tries, in section 2, to highlight the close relationship between wealth creation and competitiveness and to formulate the principles of wealth creation on the knowledge economy context.

Relying on the principles of wealth creation in the knowledge economy, section 3 tries to find out the suitable methodology or framework in order to enable an in-depth diagnosis of a nation’s actual knowledge driven competitiveness foundations. For achieving this specific purpose a critical review of competitiveness frameworks and IC community frameworks are carried out. Next and as a consequence of the critical review we conclude stating that probably NICBS is the most complete and comprehensive methodology. Nevertheless and for practical purposes we decided in section 3.4 to integrate WEF competitiveness framework into the NICBS framework producing what we call Enhanced NICBS framework.

Finally and in section 4 we use the Enhanced NICBS framework for reflecting on the crises of Spain and Portugal. Nevertheless the reflection is incomplete because the lacks of available information on microclusters’ competitiveness intellectual capital frame (MCICF), where wealth is fundamentally created. Future quality research is needed in this particular issue for achieving better results in the in-depth diagnosis.

The paper tries to contribute in the search for methodologies and frameworks that facilitate at a nation level to an in-depth diagnosis of actual knowledge driven competitive foundations, giving at the same time some light on the future economic development possibilities and on lines of action to be taken in order to foster innovation and sustainable economic growth.

Literature


CHANGES IN THE LITHUANIAN FOREIGN TRADE DURING THE GLOBAL CRISIS

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Abstract

The role of the Lithuanian foreign trade in the economy is increasing from year to year. Specific changes have occurred in the period of the global economic financial crisis. The contraction of the Lithuanian traditional export markets determined decline in exports and contraction of the country’s manufacturing. The article studies the results of analysis of foreign trade changes occurred in consequence of the crisis. The article studies changes of the general foreign trade indicators - foreign-trade turnover, exports, imports and trade balance, changes in the trade with major groups of states and individual countries;

Purpose – the purpose of the article is an overview of Lithuania's foreign trade trends, structural changes of trade during the economic crisis, examination of the causal links of the changes. The article studies changes of the general foreign trade indicators - foreign-trade turnover, exports, imports and trade balance, changes in the trade with major groups of states and individual countries;

Design/methodology/approach – Lithuania is a relatively small state, thus it can not produce all necessary products. The country participates in the international division of labour, which contributes to more efficient use of available national resources to produce high-quality, competitive products and to participate in international trade of goods, in the international trade. The global economic crisis has caused a contraction in global markets. The contraction of the Lithuanian traditional export markets caused the decline in the country's export and the contraction of the country's manufacturing. These processes must be considered; they will inevitably recur, it is necessary to learn from the past in order to avoid mistakes in the future;

Findings – at the beginning of the crisis, the Lithuanian foreign trade turnover and exports were contracting faster than GDP. In the middle of the crisis, at the beginning of 2010, the importance of exports was emphasized to come out of the crisis. Thanks to these
efforts, as well as due to recovery of foreign markets, exports began to grow, which led to the development of production. The crisis has caused some other changes in the Lithuanian foreign trade structure by partner countries;

**Research limitations/implications** – Lithuania export dynamics has caused quick recovery of the country’s economy. The volume of exports of goods was increased by traditional sectors. Markets of non-EU countries are becoming more and more important. The Lithuanian economy experienced a structural break - a switch from the internal to the external market demand;

**Practical implications** – The analysis highlights the need for properly identifying of economic, foreign trade policy facilities during the change of economic conditions;

**Originality/Value** – The article provides a detail analysis of changes in the Lithuanian foreign trade trends, the country's trade with major groups of countries and individual countries;

**Keywords**: foreign trade, economic crisis, international trade policy;

**Research type**: research paper.

**Introduction**

In this period of developing globalization and integration, the meaning of international trade grows fast. International trade is the essential factor of economic growth and benefit of each country. It is an integral part of daily life because countries trade with each other trying to gain the biggest possible economic profit. The bigger is the profit gained, the better is the social life in a country. International trade is a very complex process, which is influenced by various factors: economic situation in the country, political and legal aspects, level of economic integration, monetary policy and others. The international trade is especially important for small countries, which cannot produce all the necessary goods because of small available market and little production abilities. The volume of the Lithuanian foreign trade depends on state of foreign markets the output is exported to.

Today all the countries carry on international trade; therefore, it is important for Lithuania to develop its participation in international trade, specialization in production, and cooperation, all the more that the membership in the European Union gives an opportunity to base on the EU market and to ensure the economic development of the country. Export development is a prerequisite for economic growth. The meaning of the foreign trade value for the Lithuanian economy was especially during the global economic
financial crisis, it showed how dependent the economy of Lithuania is from the successful activity of related markets.


This article studies what changes caused by the economic crisis in the Lithuanian foreign trade. The exploration period is 2005 – 2012. The article studies changes of the general foreign trade indicators- foreign-trade turnover, exports, imports and trade balance, changes in the trade with major groups of states and individual countries.

**Foreign trade trends in Lithuania**

The originated global economic financial crisis of 2008 has caused essential changes of economic processes. Economic consequences of the crisis largely depend on the selected economic policy of the government. The Lithuanian government has chosen the austerity policy with budget spending cuts and tax increases as the main highlights. Pension payments, various social benefits and expenditure on such public services as health, education and public safety have been reduced. Increase in taxes and public spending cuts have helped to reduce budgetary expenditure, but it has caused the decline of the revenue stream from the private sector. Increases in population and corporate taxes would appear to increase the budget revenues. But simultaneous reducing of expenditure and wages causes decline in domestic consumption and production, and thus the treasury revenue. Demand depression has a negative impact on the business. Business has reduced wages and salaries and employment as well. There was another economic policy option – to rely on the Keynesian economic theory and to stimulate the aggregate demand and strive to ensure employment of the population.

**Table 1. Lithuanian foreign trade / GDP ratio**

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</tr>
</thead>
<tbody>
<tr>
<td>Export / GDP ratio</td>
<td>0.453</td>
<td>0.467</td>
<td>0.435</td>
<td>0.496</td>
<td>0.443</td>
<td>0.565</td>
<td>0.651</td>
<td>0.700</td>
</tr>
<tr>
<td>Foreign trade turnover/ GDP ratio</td>
<td>1.049</td>
<td>1.107</td>
<td>1.055</td>
<td>1.148</td>
<td>0.935</td>
<td>1.202</td>
<td>1.388</td>
<td>1.455</td>
</tr>
<tr>
<td>GDP index as compared to previous period, %</td>
<td>107.8</td>
<td>107.8</td>
<td>109.8</td>
<td>102.9</td>
<td>85.2</td>
<td>101.6</td>
<td>106.0</td>
<td>103.7</td>
</tr>
</tbody>
</table>

Source: Compiled by the author based on the data of Statistics Lithuania.
As we can see from table 1, GDP fell by 17.7 per cent points as a result of the economic crisis in 2009 compared with 2008. The calculations carried out by the author show that during the period of 2000–2005 both the country’s export / GDP ratio and foreign trade turnover / GDP ratio were constantly increasing, and the latter index exceeded the limit of one in 2005. Data provided in Table 1 shows that after 2005 the trends in both indices were changing. Particularly significant changes were caused by economic and financial crisis. In 2009, both analyzed indices decreased; however, the next three years were the period of a significant growth in these indices. In 2010, foreign trade indices exceeded the level observed in 2007. In 2011, the foreign trade turnover exceeded the level reached in 2010 by 29.0 per cent, in 2012, in compared to 2011 – 11.5 per cent. Such a growth was based on a comprehension that only exports could help the country’s economy to get out of the economic crisis.

Figure 1. Lithuanian foreign trade and GDP in 2005-2012 (LTL million).

1 Here and in other cases, when there is no reference to any statistical data, the data received from Statistics Lithuania are used as a source.
Figure 1 shows trends of the Lithuanian foreign trade and GDP for the years 2005-2012. There is distinctly seen a negative impact of the last economic financial crisis on the country's economy. In 2009 compared to 2008, GDP decreased by 18,0 percent, exports of goods - by 26,6 per cent., imports - by 37,9 per cent. On the positive side, imports contracted more than exports, leading to the decrease of foreign trade deficit. In 2010-2012, the situation started to improve. In 2010 compared to 2009, GDP grew by 4,0 per cent, exports – 32,7 per cent, imports – 34,5 per cent. In 2011 compared to 2010, GDP grew by 11,5 per cent, exports – by 28,9 per cent, imports - by 29,2 per cent. In 2012 compared to 2011, GDP grew by 6,4 per cent, exports – by 14,4 per cent, imports - by 9,0 per cent. The rapid development of exports has been going on for three years, it is about 1,5 times higher than the pre-crisis level of 2008.

An increase in exports in 2012 was influenced by an increase in exports of petroleum products – by 11,7 per cent, boilers, machinery and mechanical appliances, parts thereof – 33,0 per cent, cereals – 2,1 times. An increase in imports was influenced by an increase in imports of crude petroleum – by 8,2 per cent, boilers, machinery and mechanical appliances, parts thereof – 9,6 per cent, plastics and articles thereof – 15,0 per cent.

Foreign trade trends are affected by random factors as well. For example, in 2012, good grain harvest, which demonstrated a 43 per-cent increase from 2011, has had positive impact on exports. The recurrent troubles on the Lithuania - Russian border have a negative impact on the foreign trade. Long-term repairs in the “ORLEN Lithuania” refinery have a negative impact as well.
Figures 2 and 3 exhibit the structure of changes in the foreign trade by BEC. There are not all but only the basic indicators of the structure. The goods contained in the figures made 89,4 per-cent of the total Lithuanian exports and 96,7 per-cent of imports in 2012.

![Figure 3. Structure of and changes in imports by BEC in 2005-2012 (LTL million)](image)

The important index characterizing the development and updating of production is a share of investment goods in the total imports of goods. The figure 3 shows that the volume of imports of investment goods practically doesn’t change, their share in total imports makes 11,8 per-cent in the last two years. It is difficult to expect for a sustainable economic development without the growth of investments.

**Main Lithuanian foreign trade partners**

The figure 4 contains information on changes in the structure of the Lithuanian exports by country groups. It should be noted that the EU share in the Lithuanian export structure in 2009, which was the year of the deepest crisis, increased by 4 percentage
points compared to 2008. In subsequent years, the EU share declined. Export development was intensified to the CIS countries. Lithuania has a well-diversified export structure. The Lithuanian traditional export markets suffered no major economic shocks during the crisis and they are currently growing. It is expediental to enhance export diversification in developing exports towards rising markets.

Figure 4. Lithuanian exports by country union in 2005-2012 (per cent). CIS - Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan. EFTA - Iceland, Lichtenstein, Norway, Switzerland.

Figure 5. Lithuanian imports by country union in 2005-2012 (per cent).
In practice, there were no significant changes in the country’s imports structure by country groups. The share of the CIS countries increased slightly, the share of EFTA and other countries decreased.

The main Lithuanian exports partner countries during long years remain the same: Russia, Latvia, Germany and Poland. However, the date of 2012 contained in the table are incomplete, because Estonia squeezed into the quartet of the traditional countries, exports to this country made 7,8 percent of the total Lithuanian exports in 2012, and the United Kingdom with 6,3 percent of the total exports. Exports to Estonia increased gradually – 5,0 per-cent of the total exports in 2010, 6, 6 per-cent in 2011 and 7,8 per-cent in 2012. The rapid progress of exports was caused by the originated niche on the market of oil products, when an oil products company went bankrupt. The share of exports decreases in the trade with Poland, and one of imports increases. For the most part, this is caused by the variable rate of the Polish zloty. When the zloty exchange rate falls, the competitiveness of the Lithuanian exports falls.

The main Lithuanian imports partner countries during long years remain the same: Russia, Germany, Poland and Latvia. In 2012, imports from Russia accounted for 32,2 per cent of Lithuania’s total imports, from Germany – 9,8 per cent, from Poland – 9,7 per cent,
from Latvia – 6.1 per cent. Beyond the limit of these four countries were the Netherlands - 5.5 per cent of total imports, Sweden – 3.2 per cent, Italy - 3.2 per cent.

Conclusions

The last economic financial crisis has highlighted the meaning of export, international trade in general for the country's economy. Lithuania is a comparatively small country, it cannot therefore produce all the necessary products. The country takes a part in the international sharing process, which helps to use the available resources of a country in a more effective way, to produce a high quality and competitive production and to participate in the international exchange of goods as well as in the international trade.

The policy of the Lithuanian government caused contraction of the domestic consumption during the crisis. As a result, the Lithuanian economy experienced a structural break - a switch from the internal to the external market demand. Only development of exports was able to support the economy of the country and to provide assistance in getting out of the crisis. An effective export development provided by an intensive work of business in the discovery of new markets and maintaining an appropriate level of competitiveness of goods.

Figure 7. Main Lithuania’s import partner countries 2005-2012 (per cent).
Lithuania has a well-diversified export structure. The Lithuanian traditional export markets suffered no major economic shocks during the crisis and they are currently growing. It is expediential to enhance export diversification in developing exports towards rising markets.

The situation with investment goods imports does not improve. There is no breakthrough in investment goods imports. Competition increases on the foreign markets, it is necessary to update the production, so it is necessary to encourage investments and not from just abroad.

**Literature**


NATURAL AND CULTURAL PROTECTED HERITAGE 
AND PROBLEMS OF ITS ADMINISTRATION IN LITHUANIA

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Abstract

Purpose. The aim of this research is to identify the main problems of heritage administration in Lithuania by analyzing the legislation concerning the concept “heritage”, reviewing the administrative structure and functions of responsible institutions and summarizing the results of experts’ survey.

Design/methodology/approach. The research is based on qualitative research, which helps to identify and define the problems of protected heritage governance in Lithuania. The respondents were Lithuanian employees working in different public bodies in charge of or related to the protected heritage. For better understanding of the issue, analysis of the scientific literature, comparison and survey methods are used during the research.

Findings. Lithuanian protected heritage policy is still having some features of traditional public governance model, although it is possible to spot some single steps towards “bottom-up” approach which is typical to the economically developed countries on a global scale. On the basis of survey results, Lithuanian protected heritage system would need some changes.

Research limitations/implications. There is an apparent need for a more detailed research and discussions on the subject analyzed, as well as comparison thereof with the international practice. Furthermore, the research results may lack empirical evidence and generalizability. This could be done in further researches.

Practical implications. The research focuses on the functions of the public institutions in charge of the protection of the heritage in Lithuania.

Originality/Value. Only a few authors have analyzed some aspects of protected heritage administration and there is still a lack of academic insights into this field. This paper will contribute to future research on similar topics.
Keywords (3-5): Protected areas governance, protected heritage, Traditional Public administration, New Public Management, New Public Governance

Research type: research paper.

Introduction

Lithuania is one of the developing countries, where heritage is still centrally managed and based on hierarchical governance system. Decisions are being adopted and implemented according to the integrated “top-down” approach. In such system every institution, department or division has clearly defined functions and implements delegated tasks.

In the theoretical part of this paper the term “heritage” is analyzed from the legal point of view by defining “heritage” concept. Hereinafter, institutions that are responsible for the administration of protected heritage, are briefly presented, emphasizing bureaucratic governance structure. To supplement this understanding, the theoretical public governance models are shortly described by highlighting the main characteristics. The paper focuses on characteristics of the theoretical public governance models that are found in the governance of protected heritage in Lithuania. In addition, a more detailed analysis of delegated functions is performed in order to identify if these functions are precisely formulated and can not be interpreted in different ways. In the second part of this paper an applied qualitative research methodology is overviewed and results as well as findings of this research are discussed.

Theoretical background

From the general point of view, heritage is understood as a value which is inherited from the past and can be transferred for future generations. The heritage can be saved, sustained, governed and used by individual person, country in global scale to strengthen the cultural diversity, attract tourists, develop economic potential or in a similar way. Cultural and natural heritage is an invaluable property of every society and for the whole humankind. Because of these reasons, heritage and its protection is a relevant topic for scientists and practitioners all over the world as well as an important field of activity incorporated into constitutions, national strategies, legislation and international agreements. Protection of the unique culture and historical continuity of a country is becoming an extremely important task in the context of globalization.
Heritage concept according to law

There is a general understanding in the world that heritage can be divided into tangible and intangible types of heritage. UNESCO adopted a convention concerning the protection of the world cultural and natural heritage in 1972. The Republic of Lithuania joined the Convention in 1992. There were 190 countries that have adhered to the World Heritage Convention till 2012. This convention is intended for the protection of tangible heritage. For the regulation of intangible heritage, UNESCO adopted another convention, the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003, which Lithuania also joined in 2006. According to the convention concerning the protection of the world cultural and natural heritage, there can be three categories of heritage, such as: 1) natural 2) cultural 3) natural and cultural.

The term “heritage” is referred to in the national legislation of Lithuania starting from the Constitution and Sustainable Development Strategy down to the laws and implementing legislation. However, there is no definition of heritage concept or it’s clear division into types in those documents. Only separate legal acts have been adopted, with two of them pertaining to tangible cultural heritage, one – to the protected areas, and the remaining three to intangible cultural heritage (Bagočius et al, 2011). According to these legal acts, heritage could be divided into Cultural (movable, immovable, intangible) and natural heritage objects (territories and their natural values). Such distribution is based on the definitions that can be found in aforementioned legal acts, namely definition of “cultural heritage”, “cultural heritage object” and “heritage object”. However a concept of “natural heritage” is not defined. Concept “cultural and natural”, which would mean “mixed heritage”, is also not explained. Summarising these insights it can be stated, that heritage definitions do not correspond to the convention regulations and are interpreted differently in the national legislation. As an example of different interpretation, a comparison could be made between two legal acts regarding the existing categories of cultural heritage: the Protected Areas Act divides cultural heritage into 8 categories, while

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1The United Nations Organization for Education, Science and Culture (UNESCO) was founded on 16 November 1945.
3National sustainable development strategy. Valstybės žinios. 2003-09-19, No. 89-4029
6Law on protected areas. Valstybės žinios. 1993, 63-1188. Republic of Lithuania

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the Immovable Cultural Heritage Act into 13 categories. It can be concluded, that individual legal acts are not compatible with each other in Lithuania. Consequently, it should be noted that the priority must be given to the international agreements and one should follow them in order to find out unclear concepts. The national legislation needs to be reviewed and supplemented by relevant concepts, ensuring compatibility and consistency. Otherwise, the concept of heritage is complicated even on the theoretical level and, as a result, its protection can not be properly implemented in practice. This, in its own right, might affect natural and cultural heritage values, especially its conservation for future generations.

**Institutions responsible for administration of heritage in Lithuania**

Governance of heritage is delegated to various institutions in Lithuania, depending on the type of heritage (natural or cultural) as well as the supervisor (national or local governance). There are two levels of protected heritage governance in Lithuania: state level and local level (table No. 1). The heritage policy is developed and its implementation is coordinated on the state level, while the local level implements policy decisions, performs maintenance and monitoring tasks. It is impossible to draw a strict boundary between cultural and natural heritage because these values usually exist next to each other in reality. For this reason, changing regulations of one may irreversibly destroy valuable objects protected under the other type of regulations. Due to the complexity and closeness of these values, institutions must communicate actively and cooperate with each other.

Administration of heritage protection includes heritage policy development and implementation. The cultural policy of the Republic of Lithuania is developed by the Government, the Seimas, and the State Cultural Heritage Commission (table No. 1). Other institutions include the Ministry of Culture (cultural heritage) and the Ministry of the Environment (natural heritage).

There is a variety of institutions which are tasked with implementation of the heritage policy, are different; e.g. Cultural Heritage Department and Cultural Heritage Centre on the central level, and their subdivisions, heritage protection units of municipalities on the local level.

The State is in charge of protected areas for natural heritage on the central level. On the local level, there are 39 directorates of protected areas, which are accountable to different founders and are situated across all Lithuania and in municipalities, too.

Governance of heritage could be regarded as a joint effort, as there are different institutions which manage several territories the local level: the Ministry of Culture (3
directorates), municipalities (2 directorates) and the State Service for Protected Areas (other 34 directorates).

There are more institutions which are associated with heritage, but they are responsible for the control functions or only just have been included into the management process.

Thus it is quite easy to get confused in such a big variety of institutions responsible for performance of similar functions. The confusion is further reinforced by the legislation which fails to provide for the clear definition of each institution’s competences. For instance, point 4 of paragraph 27 in the Protected Areas Law says that protection and management of state owned protected areas is organized by the State Protected Areas Service, while the further point 8 of the same law indicates, that protection of values, organising maintenance and management in the landscape complexes is responsibility of the relevant local directorates.

The same situation of similar functions can be noted in the implementing legislation, where the same mandate is delegated to several institutions clarifying it by “according to their competence”.

So the same mandates are given to several institutions to perform the same activities. For this reason it is not clear enough which institution is responsible for what part of the work. In order to define the limits of functions and responsibility, the first thing to do would be to determine relation between natural and cultural heritage, to identify their complexity. Secondly, there is a need to simplify the processes of protection and management, so that specialists of both areas, as well as society, could understand it easily. Cultural and natural values are often close to each other in practice and different legal regulation does not ensure appropriate protection of these values.

To summarize, it can be stated that such fragmentation of heritage governance between various institutions complicates the implementation of general environment policy.

Like other post-Soviet Union countries, Lithuania is in the developing countries category. Governance of heritage is centralized in Lithuania, because the country is not big and adheres to its traditions (Mierauskas, 2013). Lithuania, as a member of the European Union, implements international agreements and complies with the conservation requirements for administration and starts to appreciate the importance of stakeholders role, society support for saving the natural and cultural values. For this reason it is attempted to transform the administration of heritage from strict protection and traditional “top-down” approach to more preventive and more collaborative approach, satisfying the public interest. Below the main public governance models are briefly presented.
Table 1. Natural and cultural heritage administration in Lithuania (created by author)

<table>
<thead>
<tr>
<th>Heritage Policy Level</th>
<th>State Institutions</th>
<th>Local Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop</td>
<td>Seimas; Government; National Cultural Heritage Commission</td>
<td>Ministry of Environment; Ministry of Culture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Local Municipalities</td>
</tr>
<tr>
<td>Implement</td>
<td>State Service for Protected Areas</td>
<td>Department of Cultural Heritage; Centre for the Lithuanian Cultural Heritage</td>
</tr>
<tr>
<td></td>
<td>Municipalities</td>
<td>39 directorates of protected areas (different founders)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10 territorial subdivisions</td>
</tr>
</tbody>
</table>

There are three main models in the public governance theory: traditional public administration, new public management, new public governance. One typical model usually does not exist. A combination of them can often be found in the governance of state. Each model has some advantages and some disadvantages.

Traditional public administration. As a model, traditional public administration emerged in the second half of XIXth century, with beginning of intensive industrialization. A lot of features of this model remained till nowadays. Traditional public administration focuses on the analysis of governance process and standard procedures, but not the results. This model is characterized by the following key features: strict hierarchical structure run by politicians, salaries are based on the job position and years of experience. It should be noted that bureaucracy is inefficient, opposes innovation and does not demonstrate creativity (Puškorius, 2000).
The new public management doctrine was developed approximately in the eighties of the last century. There is a general agreement that this model is composed of the four main structural elements: decentralization, privatization, private sector governance techniques, and “steering rather than rowing” (Osborne and Gaebler, 1993). Moreover, this model is based on the building of “remuneration in accordance with the results” system and the accountability is encouraged (Puškorius, 2000).

The new public governance can be defined as the public administration model, empowering the society to participate in the decision making and implementation process, destroying boundaries between the public, private, voluntary and non-governmental organization sectors (Guogis, 2010).

To sum up, Lithuanian protected heritage policy is still having some features of traditional public governance model, although it is possible to spot some single steps towards “bottom-up” approach which is typical to the economically developed countries on a global scale.

Research methodology

In order to find out what are the main protected heritage administration problems in Lithuania, qualitative research was carried out using a qualitative research methodology (Bitinas et al., 2008). Semi-structured interview was used as a method, which allows to receive detailed information on the topic of the research. Analysis of documents and literature was also used.

During the survey, experts of Lithuanian public institutions and non-governmental institutions active in the field of heritage protection were interviewed. Respondents were selected according to their work experience which had to be longer than 5 years in the field of heritage protection; thus, the responses returned were based on their individual and collective working experience. The quantity of interviewed experts was 8, two of them work in the Ministries, three from the directorates of protected areas and the remaining three represent non-governmental organizations.

Collected data was analyzed dividing them by themes, subthemes, systemizing the same approaches, checking expressed opinions with the legal acts, summarizing and distinguishing the main categories.

Open type questions were asked about the communication between institutions, cooperation between different heritage protection bodies, as well as expediency of functions distribution and existing administrative problems.
The first group of questions was focused on the intensity of collaboration: what national and international institutions are the experts communicating with; sharing good practices; functions performance by other institutions; involvement of stakeholders into the management process.

Secondly, it was attempted to ascertain appropriateness of delegated functions. Questions were asked to identify any duplication of functions, the excess or lack of functions, inflexibility, unclear definitions, level of autonomy to make decisions, performance effectiveness.

The third group of questions was prepared to identify administrative problems regarding protection of heritage. It was important to find out whether they are facing any conflicts of interests, corruption and if there is a need to redistribute functions or reorganize all administrative system.

**Results and findings**

A big quantity of data was collected from the semi-structured interview of experts. Answers were processed by the themes, combining similar opinions and identifying the main approaches or ideas. Then these answers were classified into the following categories: “evaluation of collaboration”, “evaluation of functions distribution”, “evaluation of functions performance”, and “evaluation of administration system need for improvement”.

According to the first category, it can be stated that collaboration is quite active between institutions both at national and international scale. The main factors which encourage collaboration are implementation of delegated functions, international projects, financial support, conferences.

The results of functions distribution evaluation were controversial. From one point of view, functions are not duplicated and are inevitably evenly distributed because of the workload. Moreover it was noted, that the perception of several bodies being responsible for the same function is incorrect. From the non-governmental organizations point of view, there are as many as 14 institutions that do the same work and each of them does not know which institution for which part of that work is responsible.

Evaluating performance of functions, all respondents were rather critical and mentioned such aspects as following one’s own narrow interests in the protection of heritage, ignoring the statutes of other institutions while preparing own executive acts. For instance, conservationists are preserving grassland, but foresters want to plant it with forest. What is more, respondents mentioned also cases of certain personal attitudes in
implementation of official duties, when priority of work performance depends on how quickly You completed work for that institution.

Respondent opinions regarding the things to improve were similar. All of them stated, that there is a need for improvement, but first it would be necessary to perform an inventory of recourses and management. Among the problems identified was the lack of financing, employee turnover, often interests conflicts, complexity and frequent changes of legislation, low level of public awareness, corruption, avoiding responsibility, imitation of work, activity becomes self purpose.

It is interesting to note that thoughs expressed by experts about administration of Lithuanian heritage can be identified as deviations of bureaucratic organization criteria that were described by prof. Palidauskaitė (Palidauskaitė, 2011). By citing her words “It is important to prevent deviations”.

After the results were summarized, they were put into a SWOT matrix. A SWOT analysis helps to identify the positives and negatives inside administration system and outside of it, in the external environment.

Table 2. SWOT matrix

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active collaboration in national and international level</td>
<td>Legislation: complexity, frequent changes, a big quantity. Decisions delayed because of many institutions Avoiding responsibility Employee changes Conflicts of interest Corruption Occuring personalism</td>
</tr>
<tr>
<td><strong>Opportunities</strong></td>
<td><strong>Threats</strong></td>
</tr>
<tr>
<td>Absorb financial support effectively Share good and bad practices Delegate excessive functions to other institutions Redistribute functions Give more autonomy to make decisions Awareness raising Create compensation mechanisms Relate duties and responsibility</td>
<td>Ineffective use of funds Lack of finance to perform delegated activities Long coordination procedures can affect the quality of work Institutions look after their own interests</td>
</tr>
</tbody>
</table>
The matrix shows that respondents tend to evaluate critically and identify the essential shortcomings of heritage administration system. Because of this reason, respondents did not mention strengths, but were concentrated on weaknesses or threats. A lot of opportunities support the fact that administration system would need some changes.

Analysis of the results from interviews demonstrates that there are a lot of shortcomings in the administration system of heritage, which have a direct impact to conservation of valuable objects in Lithuania. For this reason it is very important to take timely actions in order to ensure adequate protection of heritage.

Conclusions

There are different concepts in the legislation of Lithuania concerning the term “heritage”. They need to be compared, analyzed and their terms must be unified. An important task would be to specify necessary concepts and bring them in line with international agreements.

There are a lot of institutions in Lithuania that are responsible for administration of heritage. It is recommended to found one institution responsible for the protected heritage instead of several which are now closely associated. An important objective would be to reach a clear distribution of functions between public institutions.

Governance of protected areas of heritage has some features of traditional public administration. Moreover, this governance has all the administrative deviations. It is important to prevent deviations.

The interview of experts demonstrated that the role of institutions and their interaction is not effective enough due to a big quantity of organizations, duplication of functions, different interests, frequent changes of legislation. This necessitates improvements in the administrative system for protection of heritage.

Literature

Books and articles:


Legal documents:


Internet sites:


IDENTITY CRISIS AND MANIFESTATIONS OF NARCISSISM IN TECHNOLOGY AGE

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Abstract

The purpose of this article is to provide a reflection on a broad scope of cultural narcissism. Special attention is focused toward the hidden and defenceless aspects of this phenomenon. To uncover this phenomenon via technical tools such as consumerism society reflected in mass media; with the example of Facebook an empirical research made on Mykolas Romeris University students were used. This critical study shows how social media influences growth of an extensive socio-cultural state. Furthermore, by collecting data from the critical audience in order to get the sufficient results about mass media impact on our personal life and self-image. At the same time we tried to get the results about a loss of the role of authorities, devotion in society and belief that with the help of social networking we not only get a lot of attention and admiration from others but also, we become immortal.

Design/methodology/approach – Literature overview from other field scientists such as psychologists, sociologist, social work specialists and mass media experts were used to provide a large scale and open view on the subject of narcissistic society. Therefore, it is about creating self-image and self-esteem as well as how the others prove and respond on our image. The article discusses about each of these themes with regards to the problems faced by our present society. It also seeks for solutions of problems created by social networks to our self-esteem level. Due to the negotiable fact and in order to prove or disprove the actuality that the present worldview without authorities had been stocked in narcissistic and lonely cage, the research was done by questioning university students of an average age of 19 who answered questions about the extent of their social media usage and the link to personal or authorities (for example, parents, philosophers, God etc.).
students also took part in a personality assessment measuring exhibitionism, dominance, self-imagining, self-sufficiency and the trust of authorities in their lives.

**Findings** – The narcissism construction was briefly reviewed along with contemporary issues in understanding different presentations and uncovering this phenomenon with the help of literature and personal data collected among the university students below twenty years of age. Selections from the theoretical literature were explored in order to offer a nuanced conceptualization of the narcissism but never taken for granted.

**Research limitations/implications** - The research is limited to the scientific literature and data collection from researchers in the field of humanities and sociology.

**Originality/Value** – Social networks, advertising, mass-media and other technology tools have significant effects on how we communicate and, ultimately, how we see ourselves. This research will help evaluate their effect. This kind of research, to best of author’s knowledge, has not yet been presented in Lithuania.

**Keywords**: narcissism, culture, social networks, *Facebook*, identity crisis.

**Research type**: a general review and research.

**Introduction**

Narcissism is considered as one of the principal socio-cultural dilemma of the present days. It is quite obvious that most of our time nowadays is spread somewhere in the midst of technologies; from mass media to advertising (consumer and branding culture). This phenomenon is not controllable. However, we can control social networks but, we do not wish to do this since it is a source of entertainment and hugely enhances our self-esteem. As a matter of fact, social media offers a perfect platform for the endorsement of self-obsession. This leads to the situation that progressively media-saturated, individualist and consumerist societies are promoting a culture of tremendous narcissism in new media technologies, more specifically, by exploring the structural components of the most popular social networking site - *Facebook*. This article will emphasize the link between the use of this form of media and the narcissistic subjectivity as well as narcissism in our contemporary culture.

**Theoretical background**

The beginning of the term Narcissus lies in the Greek Mythology, where Narcissus falls in love with his own mirror image and was so fascinated by it that he could not move away until he died. In recent times, from social point of view, narcissism is considered to be
a clinical personality disorder\(^1\) with a high level of self-absorption, manipulative behaviour and lack of empathy along with necessity of attention (Wallace and Baumeister, 2002). At the inferior level, sub-clinical narcissism was found among psychologically healthy people who have parallel features (Bergman 2011). Cultural narcissism represents loyalty to ones desire for courage and strength of mind despite consequences in the future (Cambell 1987 and Lusch 1982) this tendency is following with the help of advertising slogans such as “you deserve the best”, “just do it” or by buying specific products with the value or virtue behind it, such as – Bacardi rum, “you will get friends” or by Thomas Hilfiger clothes- “the freedom”. Briefly, one will get attention and appreciation from ones friends and others who will see one with specific brand, famous people or ability to go whatever you want. Furthermore, this process of buying goes together with showing off. Consequently, it gives meaning to the existence of cyberspace because with the help of technologies, there is a bigger chance to reach broader audience and to demonstrate the commodities one can afford to buy, services he can avail and of course, the places one can afford to go.

At this juncture social networks come in. Recent studies by Cambell and Buffard (2008) and also Baldwin and Stroman (2007) in their current researches have explained that technologies and more precisely, social networks (in our case, Facebook), offers the ideal stage for incentive of self-obsession. From this point of view, individualists, consumerists and media-related societies are affecting a tremendous narcissism and self-importance (McLuhan 1992:100), with regards to this we would like to highlight some specific and important causes brought from Facebook fundamental performance style.

It began with one of the first social networks named www.sixdegrees.com established in 1997 with the idea that within six people we are all connected to each other. Unfortunately it ended being popular even before Facebook came up in our lives. Facebook took the market with a very innocent idea; to create an online book with faces before academic year in order to help recognize class members\(^2\). Today, Facebook is one of the most popular and the most visited websites and social networks in the world, as of September 2012 Facebook reached one billion active users and on April 2013 there were one billion and eleven million active users, what for us is specifically important- 8, 7 percent users are fake (more than 87 million people through all Facebook). Also, worth mentioning is that 7.5 million users are children under 13 years old and 5 million under 10

\(^1\) Though, term “narcissism” is mostly frequently associated with Sigmund Freud (1914) who distinguished two different types of libido as ego-libido (directed to ego) and object-libido (directed to the object). Therefore, before the Freud was Havelock Ellis (1898) who first used the term addressed to his clinical patient “Narcissus-like” directed to his self-love feature.

\(^2\) The same idea still exists in Lithuania – we have vignette after the graduation from high school or university and we keep in old fashioned paper manner.
years old with active profiles, violating the site’s terms and service.¹ There are numerous duplicate profiles also along with profiles for business and organizations as well as for pets and new born babies (personal profiles).

At this point we came to our main hypothetic issue of the identity loss. Following the structure of how Facebook has been made from “profile picture”, “home”, “about me”, “what’s on your mind”, “news feed”, “photo albums” and application sections such as “facedouble” – for the purpose to find in whom from celebrities you are alike, “compare people” and “compare hotness” and others such as “which Desperate housewife you are” or “which character from Sex and the City you are”.² Necessary to notice the construction of the title of these applications - it is not structured like “comparing with this character you are mostly alike to...” Therefore, it is a clear allusion to the fake identity from mass media created products directly infiltrated in your incredulous and subsequent insecure personality with the hope to be more than you are – celebrity. Possibly that is the reason and one of the most important aspects of social networking is the freedom to imagine changing: “The greatest freedom cyberspace promises is that of the recasting the self: from static beings, bound by the body and betrayed by appearance, Net surfers may reconstruct themselves in a multiplicity of dazzling roles, changing from moment to moment according to whim” (Boler 2007: 151 also Rosen 2012:10). Facebook profile picture functions as the perfect escape from isolation as well as alienation from the real society with the hope to be accepted in the cyberspace therefore, it becomes an obsession for the endeavor for attention and collecting process of ‘ikes’. Mueller affirms with the intention to narcissism: “like that eternally distracting pool of Greek lore, the Facebook profile can become an abyss of self-love that consumes one entirely and even the most socially competent among us tend to enjoy photo-documenting our social success, so that those poor souls who are less gifted might at least witness our revelry” (Mueller 2008). Since identity is “constructed rather than socially imposed” (Bosma 1994: 70), meaning you are not inheriting your identity from your ancestors Facebook gives its users a possibility to build an arrogant virtual personality – more improved than successors genuine identity in the actual world is – it comes a self-importance feature. The main reason why it happens so is the sense of supremacy and power which to users is given together with the ability to develop a meticulous image and self-deliberated identity through this feature, proceeds as an opiate that alleviates the anxiety and distrust often connected with modern individuality

formation. Consequently, this ability to elaborate one’s identity and just center on positive self-imagine along with user’s need for appreciation mutually with autonomy of expression and security brings towards the endorsement of narcissism in online space. That is, users start to see themselves as the expression of their image in the “mirror of machine” (Turkle 1995: 9). This indication results users hope addressed to others as an idea that other users will see them as one is demonstrating via her/his profile and expectations for acceptance (Twenge and Campbell 2009: 110). However as a final point it can bring the narcissistic personality to disorder since the user starts to become addicted to the reaction of self-imagine (by collecting ‘likes’) and losing their social skills in real world (Carpenter 2012: 483 also in Buffardi and Campbell 2008: 1307). The American Academy of Pediatrics had form even the new expression as “Facebook depression” experienced by the youth when they start to demonstrate the same symptoms as a person with depression, for more to defined as “depression that develops when preteens and teens spend a great deal of time on social media sites such Facebook” (O’Keeffe and Clarke-Pearson 2011: 804). Another problem mentioned in Valkenburg, Peter and Schouten (2006: 587) is the regularity with which adults and teenagers use the social networking sites, that influences their social self-esteem and health. Undoubtedly, it could have positive impact to their confidence however more often it has a negative one. Consequently, addicted user with very low self-confidence degree may even get worse especially if they are comparing or competing their lives with those of their Facebook “friends” (Meh dizadeh 2010).

Concluding needs to be mentioned one final observation which comes as a feedback from the social networks - the idea of immortality. Therefore, it is interesting that our present understanding came in our subconscious mind that if you are not online - you are probably dead (“You are dead – then you are disconnected”). Even worse, if you cannot find your name in browsers or no results comes up then you most likely never existed at all (“I google, ergo sum”1).

Need to be mentioned that, it is even impossible to delete Facebook’s account if your close one would die because nobody knows password and without not knowing it makes this procedure even unworkable consequently to this, even if the person deceases people keep living virtual life by posting condolences to the deceased one or to the relatives and friends of one. Along with this network existence, users can prolong the life of a deceased with the special attention during some occasions, for example for the birthdays or commemoration of the death where they can keep posting reactions or reflections

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addressed to the person who is not alive anymore. It seems like it is impossible to escape from this vicious circle even after death.

Generally there have been raised many questions how technologies and more precisely social networks are affecting our personal lives and especially our identities. Various studies have been looking to different angles concerning personal self-esteem, as we overlooked briefly in this section with the example of Facebook as technological tool affecting our identity (even after life).

In order to get the results from our environment and to fulfil the lack of information in this discussed theme, it was decided to question adolescents in Lithuania from one of the Universities and their choices in authority, use of internet and of course social networks.

Research methodology

In duration of one month we decided to examine Mykolas Romeris University first year students from Social Science Department. The questions were published and were open via online program (www.apklausa.lt) and could be answered any time. The questionnaire was developed by using existing designs. Twenty four items measure self-efficacy and the use of social network Facebook connected with their personal interfere rather than online. The items were measured on two possible answers ‘agree’ or ‘disagree’ and by personal choice to select appropriate answers from the given ones. Based on gender and age, students were asked to answer about their use of internet and social networks: whether they are regular users, where they are looking for the answers in regards of various questions or tasks they receive, which social network sites they use, the time they spend using them, do they take importance on their profile picture and how often they change it, do they take meaning to their personal social sites and is it important the other peoples’ opinion about it, does it influence their feeling of satisfaction of themselves etc.

The sample was collected via online program and using existing consumer panel. The trial in a four week period contained 98 participants aged 18- 20 years; 75 female and 23 males; most of respondents – 51 use social networks and media in general regularly from one hour till three and 31 participant from three hours up to five hours per day in order to update their personal pages, 13 – respondents are spending more than five hours per day. To a question do they feel addicted to the social network Facebook, most of respondents answered negatively – 71 and 27 answered positively in that regard, between two choices to go to the bar or theatre or to chat online - gladly most of students answered that rather
would go to the bar or theatre – 93 participants then would chat online - 5 applicants. Hence, most of our questioned ones have more real – 78 than virtual (Facebook) friends - 20.

**Results and findings**

The aim of this data collection was to investigate the addiction level in use of social networks as well as authority (the question where do they look for the answers) in addition to human interaction in students everyday life, knowing that it became more simple to communicate just online instead of personally as well as to get less attention and appreciation from others, putting it in the Facebook language, it gives less ‘likes’. Our findings draw attention to the discussion between addiction in social networks and reality. Since, it gave a positive respond to seductive and comfortable escape possibility from the real world with your authentic self imagine without a possibility to change your own identity through the help of pictures and other communicative tools. Lithuanian students’ results also demonstrate though, most of the responders think they are not dependent on social networks, unfortunately, they spend at least from one till three hours just by checking other peoples profiles. From the position of authority, according to our results, there was no association between authority and internet as we tried to draw a line in between these two - most of the students thought that it is just easier to look for answers in the internet and not because they disrespect their teachers or parents.

According to the previous theoretical introduction to Facebook phenomenon and the structure which moves towards narcissism to the most of the regular Facebook profile users and our collection of sample with little results. Naturally, it is hard to come to a conclusion and final findings. In order to give valuable results it is necessary to do empirical research in regards of this topic with much broader scale of questions and participants and maybe by using correlation method or The Narcisstic Personal Inventory (NPI) of course, if we would look from psychological or sociological point of view but still there is the question how to measure it philosophically or culturally?

**Conclusions**

Based on characteristics of contemporary narcissism evaluated in this study namely, in the theoretical part, by explaining the lack of identity and security (which goes together with media consumerist and a desire to escape from the personal isolation) as well as
anxious experience in our technologically sophisticated society. As we did through our overview, in all times and periods people tried to escape from themselves and from boredom or harsh reality but it never was so numerous, with so many tools to do it.

Due to the current impact of social media and similar new media technologies on the lives and identities of individuals in contemporary society, it is for the most part unreasonable, if not impossible, to suggest that the use of this media could be drastically reduced or rejected if they would use the advice of Lasch who suggested to return to the basic values such as family, self-reliance, nature, community and as he advised - The Protestant work ethic (Vakinin). This return “to the basics” seems a bit utopian idea – as we can see, Lash was publishing in the 70s’ and up till now situation still the same and we take leave to declare is getting even worst. Consequently, there are many articles in foreign literature with concern of narcissism from point of view of different sciences, unfortunately discussions about cultural narcissism in Lithuanian language started just in popular literature but there was no research from sociological or humanities science perspective. It is necessary to enlighten and to escalate this problem with regards of informative tools and researches not just from psychological field but also from sociological and humanities sciences point of view maybe then we will stop to seek for attention and acceptance in virtual space.

Suggestions

As we mentioned, it is obvious that it is not so easy to escape from technologies, and according to IT specialists, even impossible, especially when we are obliged to use social networks not just to get attention or to spend time (as in our research case), but also to promote ourselves as our work positions (professional social network’s example – Linkedin).

The most important is to start protecting children from the technological narcissism caused by social networking in order to stop the work of our identity thief. As known, that just 18 percent of parents made their child as Facebook friend, as for the suggestion, it seems to be the best way to monitor the child. For contrast 62 percent of parents of teenagers (13-14 years old) did so, but mostly it is too late to take the actions knowing, that just 10 percent of parents had open conversations about proper online behaviour and dangers. 1

1 “Why Parents Help Their Children Lie to Facebook About Age: Unintended Consequences of the Children’s Online Privacy Protection Act” http://www.consumerreports.org/cro/magazine-
As consumer reports inform parents of pre-teenagers who use Facebook, they need to ask to delete the account or to inform Facebook by using its application “report an underage child” form. For parents who have 13 years old children and older, need to know that there exists monitor activities and they just need to join the circle of their child’s Facebook friends or to ask to do it for the older siblings. Surprisingly, not so many parents know that they have this right to do it furthermore as we mentioned before, Facebook administration is not putting clearly that it is illegal to use Facebook profile without the permission of parents under the age of 13.

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CONTEMPORARY PLACE OF MATERIAL VALUES

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Abstract

Purpose – to highlight contemporary attitude of society to material values and to determine their contemporary place in the hierarchy of values. To explore new ideals and instruments of satisfaction of needs. To examine the influence of modern media environment to human value orientation.

Methodology – Complex principles were used in the research: such as combination of scientific and logical levels of cognition; analysis of specific historical features from general assumptions to the fundamental conclusions; unity of the ontological, gnoseological and axiological aspects of the analysis; combination of the system and structural approaches to the object of study. Usage of comparative method allowed to match processes of determining the values of the society in different historical conditions and compare different approaches to the consideration of the hierarchy of values in society.

Findings – it was proved that origins of values are the archetypes of culture as the first principle of human existence and the source of the formation of social relations; basic values of society were structured in order they can be used for satisfaction of human needs. It was found that core values of society such as freedom, justice, equality, solidarity, dignity are concentrated in the basic value of "human rights". influence of factors on human behavior correspondingly the formation of values were shown

Research implications – consist in the fact that the obtained findings complement and systematize knowledge about modern society, in particular the importance of human values.

Practical implications – the conclusions of the research contribute to clearer understanding of the process of society modernization in the new socio-cultural context. Terms of research can be used for the preparation of further scientific work on this theme.
Originality – it was found that the society is in a critical moment before the neglect of moral values in the preference to material.

Keywords: material values, society, priorities.

Research type: viewpoint.

Introduction

It is a known fact that more and more people choose material values as a priority. It is connected with many factors, but the main is illusion that if you obtain wealth you will instantly reach all other life goals. Most of people believe that everything can be purchased. This misconception results in a number of new errors. But people with such opinion are in the relative safety compared to people who furiously deny the importance and usefulness of material values, because they are in a double dependency from public opinion and also forced to neglect satisfaction of their own needs. Such conditions are dictated by the current structure of society in which a person originally has the minimum resources which are necessary for normal life. To satisfy needs of individual self-realization people begin strive for material well-being, because they think that it will help make them more noticeable among competitors.

Theoretical background

Significant contribution to investigation of values problematic including the nature and the origin of values, their classification and systematization were made by national and foreign scientists such as: S.Avaliani, V.Andruschenko, I.Bychko, N.Bondarenko, V.Blyumkin, Vassyleko, M. Kagan, I.Nadolnyy, O.Ruchka, V.Tuharynov, V.Shynkaruk etc. Important meaning has works of national and foreign scientists dedicated to the nature of material values, particularly by S.Anisimova, V.Bakirova, M.Holovatoho, S.Goncharenko, O.Drobnysko, A.Zdavomyslova, Yu.Surmina etc. To the problem of systematization of values devoted scientific works by M.Boryshevskoho, I.Vaschenko, S.Voznyaka, O.Vyshnevsko, L.Mysiva, H.Sytynka, P.Sytinka etc.

Research methodology

Research was prepared with the usage of scientific methods of investigation. System approach allowed to sight the current socio-cultural situation in the society and to identify discrepancies in this area. To define subject of research, summarize of achievements and outstanding issues in the area of values, develop and clarify conceptual and categorical
apparatus of the subject areas of research were used separately or integrated methods of comparison and analogy, analysis and synthesis. Complex approach was used in order to form the concept of "value orientations of society."

In research the method of expert survey was also used, which made it possible to analyze the current state of society in the investigated areas and the role of administrators in the formation of value orientations of society. Methodological foundation of work was dialectical and sociocultural approaches that helped to explore specific sociocultural development of society as a problem of nowadays. The research is based on the theory of cognition, theories of synergy and social forecasting.

**Results and findings**

First of all, it should be mentioned that there is no single approach to the definition of "value" as a concept in scientific literature. Many philosophers, sociologists, economists, educators, psychologists focused on the problem of finding nature of social values, it indicates the diversity and complexity of the concept. In the most scientific papers values are considered as material and ideal things that are important to human society from the point of needs and interests, and which are understood as necessary, important for their life activity and self-realization. This approach makes it possible to distinguish the material values which are satisfying material needs and spiritual values that define the spiritual development of the individual, group or society. In the context of specific purpose of research it is important to clarify the nature of material values and their place in the structure of national identity and role in society. Nowadays among various classifications functional principle is widely used, which is based on the the separation of values by sector of human activity. According to this the values are divided into material (or utilitarian) and spiritual. Material values include real, substantive values that are necessary to satisfy material needs of human. For higher order values belong truth, goodness, beauty, freedom, wisdom, that are moral-esthetic ideals and principles. They admitted as higher absolute, eternal, fundamental value dominants, which serve role of basis in human life.

Undoubtedly, the hierarchy of values can be changed, it is quite movable, because every person, every type of culture creates its own hierarchical value system, specificity of which is determined by the degree of importance of its elements, their role in the life of individual or society. Thus, the principal (the highest) values of European antiquity were considered as beauty, proportionality and truth. Triad faith, hope and charity were dominant in the Christian middle ages. Such values as fortune (wealth, honors), body (strength, health, beauty), soul (mind, memory, will and moral virtues) gained the high status, in the Renaissance. Sense was considered as the highest value in the epoch of
rationalism (XVII-XVIII c.). Natural impulse of human, his strength and ability to rule were appreciated the most during the time of influential antyrationalism of Nietzschean type (Kuznetsova, 2011). So the role of value dominants can perform various values in different times. Obviously, the higher level of the value scale takes a certain value, the lower its (value) mobility. So values which are close to the human needs are more dynamic (first of all it refers to material values). Values dominants, represented as general human values are relatively stable in the axiological hierarchy. They aren’t set by a separate subject, but they are formed during a long time at one or another culture and are fixed in the public consciousness. Their semantic updates are usually seen only in times of crisis soul-searching, and leveling of the value system. Sometimes in the value structure can occur changes that cause appearance of a new leading value dominant. Performing the role of "axiological spring", it transfers activity to all other parts of the value system, which can cause cardinal changes in one. The social necessity in a new type of value dominants appears in case of absence of relevance of existing orientations and rejection of individuals from the previous values. Among the subjective, internal determinants may be distinguished first of all interests, needs, motives of behavior of the individual, which cause unequal emotional and sensual responses on value objects of reality in different periods of life. Permanent "migration" of axiological dominants from one level to another in scale of values can also be influenced by life experience of individuals which overestimate their own priorities. Among the objective, external determinants the most important is social environment in which individual provides activity. Socio-cultural space can be recognized as universal factor that always determines value system of each individual. Of course, an individual has own inherited inclinations, personal psychological characteristics, according to which he also can be form values, in addition each person has ability to evaluate events and make his own choices. However, considering the external determinants of value system, it is necessary to take into account the socio-cultural space as one of the factors that actively influence the public consciousness, the formation of value system.

Results of investigation that was conducted by Razumkov Centre in cooperation with the Foundation "Democratic Initiatives" Ilko Kucheriv from March 30 to April 4, 2012 indicate the uncertainty in the hierarchy of values, and ignoring the priority of spiritual values. During investigation 2,009 respondents over 18 years were interviewed in all regions of Ukraine, in Kyiv and the Crimea. Such selection shows adult population of Ukraine by the key socio-demographic indicators. Selection of respondents was built as stratified, multistage and random with quota at the last stage. The survey was carried out in 132 locations (including 79 cities and 53 villages). Theoretically error does not exceed 2.3% with a probability of 0.95. Respondents had to answer the question "What is more important: freedom or wellbeing?". According to the results of the survey 30.2% of
respondents chose the answer: “Of course, it is important both freedom and prosperity, but in exchange for own welfare I am ready to give up share of rights and civil liberties”, 37.3% of respondents chose the answer “Of course, it is important both freedom and prosperity, but for all personal freedoms and guarantees of citizens’ rights I am ready to face with material difficulties” and 32.5% of respondents, in accordance chose the answer “It is difficult to answer”.

![Bar chart showing responses to the question: What is more important: freedom or wellbeing?]

Figure 1. What is more important: freedom or wellbeing?

Thus, only 37.3% of the surveyed population is acutely aware of the value of their rights and freedoms in comparing to material values.

Personal values are always derivatives from values of social groups and communities. They are reflection of an individual or a group of general values. Another thing is that the values of different individuals differ in the interpretation of the content. Because there are no two individuals in the same society that would have the same values: one will place greater emphasis on something, the other - less. This allows to assert that any changes that happen in social and cultural space (war, revolution, economic growth / recession, technological innovations, demographic changes, etc.) cause transformation of values in public and individual consciousness. Also it is necessary to note that modern human is always surrounded by media sphere, besides, it is his own choice. Special axiological importance of the mass media gains in crisis and critical periods when processes of
neglecting of basic social values take place in society, forcing general moral dominants on
the lower levels of the value scale. That's when mass media claim to the role of mediator in
finding values. Important point is that mass communications are not only provide the
ability to cover large audiences but also bring to society a whole new set of values
dominants that can "grow in" into the mass consciousness, force out previous values of
recipient, social groups or whole society. Widespread negative standards and norms of
behavior often form in mind curved characteristics of vital references. A good example is
the serials where negative characters are presented in a positive context, also as popular
television games propagate values of prosperity, sometimes even "forcing" to ignore moral
principles. In the hierarchy of values of the inner world of many people (especially young)
emptiness was formed on the upper levels of the scale. Moral and ethical dominants often
reduce their status, when they are on the same level with the values of consumerism and
hedonism. This trend is most clearly can be found in advertising text, in which we often
see mismatching of advertised item and group of values to which it relates. Of course,
appealing to values in advertising texts is quite natural and necessary. However, their
exclusion from higher levels of value scale, reducing their value content, substitution them
by material realities can result in quite unpredictable consequences.

Source of many social problems is covered in value orientations which define the
deeds and activities of people. Therefore we shall consider those significant ideals that
dominant in modern consciousness, and are imposed by various public institutions.
Perhaps the most powerful institution is the notorious cult of money. Personal success in
most cases is directly linked to this factor. Money is seen as a universal way to solve any
problem and achieve all the goals. To get them people often getting married without love,
keep working, committing crimes. Another factor that dominates the public consciousness
is the cult of force. It, in the same way as money, is seen as a way to solve all the problems
in cause of absence of intellect and finance. This value orientation cultivates in the crime
and police serials, it is promoted in detectives and action movies. People forget about true
values by focusing only on themselves, their physical capabilities and resources. For a
modern society completely other heroes are necessary to follow them. Unlike current
"superheroes" they should differ by the power of the spirit, and the estimation of the true
and the beautiful. The third value of the modern world is enjoying, hedonism in a variety of
forms. Unfortunately, exactly that passion crushes love as the highest value. As evidence of
a misunderstanding of the true purpose of marriage there is statistics of the divorces of
half of marriages. Not less serious forms of harmfulness pleasures became smoking, drug
addiction, alcoholism and gambling. Another kind of such pleasures is hypertrophied
humor. It has lost elegance and came close to vulgarity nowadays. Such dominance of
humor from show business actually resulted in loss of social satire and neglecting of
important social problems. We have to admit the extreme insignificance amount of programs which raise judgment, cognitive interests. Next value orientation consists in searching for glory and fame. Weak consciousness of present-day human is not looking at the greatest that have achieved eternal fame, but trying to imitate the pseudo-"stars". Media shows "the beautiful life" in pursuit for it youth, not making it clear that success is forming only by hard work and practice. This value also includes an orientation on fashion esthetics, outrageous, defiant behavior and non-traditional looks. Spread of this attitude shows a deep spiritual crisis that makes a person incapable to adapt to the difficult realities of nowadays life. Who forms these pseudo ideals of our time? In most cases media is the distributer of all these effects, propagator of mass culture with questionable taste and quality. They are making famous one-night celebrities in chase of profit, imposing false values to our society by forcing imitate the new "elite". A product of this mass culture creates seeking for fame and money filmmakers, producers, businessmen, TV personalities, singers, actors, DJs etc.

Conclusions

The concept "value" is an element of culture that regulates progress of satisfaction of needs and realization of interests. Core values of society have always been at the top of the value pyramid, but recently they have become at the same level as material ones. Cooperation of individuals and society is mostly caused by common social and personal values. Values act as social criteria for selecting certain variants of behavior for a particular situation, outline the contours of the ideal human society, making this ideal charming and thus determine the intensity level of desire to realize it. Needs and interests form human behavior. Needs can be satisfied and the interests realized in different ways by different objects. But they have different meanings for individuals and communities for their normal functioning and development, so usually they have different attitudes towards them. As a result, society is reviewing their value scale by choosing the easiest path.

Suggestions

In these difficult circumstances when each individual faces choice of values the state should not be separated. State, in our opinion, is required to take immediate measures to guard the public health from the cultivation of pseudo-values in public institutions, to
protect the eternal orientations that have always been morally favorable for the community.

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