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CONTENT

PREFACE

We are very pleased to present the publication of this new issue. Every year we publish articles on various areas of scientific research, the authors of which are well-known scientists: professors, doctors of sciences, and doctoral students who are taking their first steps in science.

This issue of the journal was published as part of the XXIII International Scientific Conference of Turiba University "Communications and development of interdisciplinary competencies in the digital age".

The information space through the global network expands human capabilities, allowing to overcome geographical, political boundaries, making the world values of culture accessible to everyone for contemplation, "virtualizing" the economic sphere of human life. The speed of dissemination of information flows leads to a situation of total digitalization of social processes and people's lives.

Most of the studies that are presented in this collection invite the reader to get acquainted with the current problems and solutions that are associated with the use of communication technologies. Considering the fact that solving problems alone is inefficient and costly, our authors joined forces not only within Latvia, but also looked for like-minded people outside the country. To overcome the consequences of the crisis, it is necessary to strengthen international scientific cooperation and exchange of information between countries. Changes in the communication system entail changes in the value system of an entire generation of the digital age. The category of "digital culture" is becoming the subject of scientific and methodological reflection. The problem of "cultivating" digitalization and its global consequences is actualized in the situation of modernization of educational processes. Digital culture generates the need to update the principles and methods of work in higher education, focused on the future specialist of the digital age.

This issue contains eleven scientific articles covering a wide range of key issues in economics, communication, education, information technology and law, representing a wide geographic distribution of research contexts. The volume includes articles by authors from Lithuania, Latvia, Moldova, Ukraine and Uzbekistan. In total, 8 educational institutions are represented in this issue of the scientific journal.

The journal includes articles by our colleagues from Lithuanian universities, Mykolas Romeris University and Kazimiras Simonavičius University, which are devoted to topical issues in the field of law. Of great interest is the article

by Dr. iur. **Eglė Bilevičiūtė,** which analyzes the features of remote administrative proceedings and legal regulation. Of no less interest is the article on the main problems of legal regulation and case law of criminal liability for cybercrimes in Lithuanian law, which was presented by Dr. iur. **Giedrius Nemeikšis.** Researchers from Mykolas Romeris University **Jurgita Milišauskaitė** and PhD **Jolanta Sondaitė** presented in their article the results of a study of an important topic for family dispute resolution professionals, because the issue of forced family mediation is becoming more and more relevant in society. **Ramūnas Jucevičius** from Kazimieras Simonavičius University introduces readers to the regulation of civil proceedings in Lithuania in the field of consumer protection.

The article by a young researcher from Latvia, **Gvido Lošaks**, is also devoted to the issue of law, in which the regulation of a group of companies in Latvia is considered, the question is raised whether the interest of the group is really recognized in the Latvian Concern Law.

Dr. sc. soc. **Renate Cane** from Vidzeme University of Applied Sciences presented an article co-authored by a young researcher from Riga Stradiņš University **Liene Vindele**. This article also belongs to the field of law and explains the importance of protecting intellectual property in today's technological era, when intellectual property can be created not only by people, but also by technology.

Researchers from Uzbekistan, Professor **Rano Nazarova** and **Nigora Bukharova,** analyzed the possibilities of restoring and strengthening the tourism and hospitality sector after the Covid-19 Pandemic in the Republic of Uzbekistan. The results of the study are of great interest to countries in which the tourism industry is one of the leading in the national economy.

The issue of the journal also provides an overview of research in the field of communication. First of all, I would like to highlight the article by scientists from Latvia and Moldova, PhD **Valerija Drozdova** and PhD **Micaela Taulean.** In their study, the authors concluded that in addition to communicative language competence, which is vital to academic success, students are expected to have knowledge and skills about how to study and how to collaborate with students from other cultures. The study was conducted in Latvia and used examples of intercultural competence in the academic environment of Moldova.

The article by PhD **Lāsma Šķestere** from Riga Stradiņš University is very topical and will arouse great interest among the readers of the journal. In the study, the author assesses the influence of the media on setting the

agenda by conducting a survey of Latvian politicians and compares it with the results of a survey in Finland. Representatives of ethnic groups receive daily information from different news sources, as a result of which the level of trust in the media depends on the format of the media and the chosen language.

Latvian researchers **Natalija Sotikova** from Turiba University and Dr. sc. soc. **Renate Cane** studied how the experience of foreign students studying at a university in Latvia is reflected in their communication on social networks, and what is its connection with the formation of loyalty to the university where they study.

Turiba University researchers Dr. sc. ing. **Dmytro Mamchur** and **Anton Kolodinskis** presented the results of the creation and development of an information and communication technology laboratory at Turiba University, which enables students of the Faculty of Information Technology to gain practical skills in the development and operation of digitally controlled devices, which are currently one of the main technologies in modern society.

On behalf of the editorial board and authors who presented the results of their research, we are pleased to present you the 13th issue of the journal Acta Prosperitatis.

We sincerely hope that the information provided will be useful to you, you will enjoy reading the journal and that it will give you new ideas, introduce you to new things and help discover new opportunities. We should like to thank all the members of the Editorial board for their hard work. Many thanks are also due to the contributors to this issue for their forbearance and patience in the necessarily long process of preparing papers for publication.

Co-editor-in-Chief,
Daina Vasilevska

ACTUAL ISSUES OF REMOTE COURT HEARINGS IN ADMINISTRATIVE PROCEDURE

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Abstract

The aim of the e-Justice strategy is to improve the implementation of the right to justice, cooperation between judicial authorities and the effectiveness of justice itself. Much attention has been paid to the computerization of court proceedings. Remote court hearings were recognized and described in the legal acts of the European Union and Lithuania already at the beginning of the second decade of the 21st century. However, this approach has not been widely used due to technical problems and insufficient regulation. The Covid-19 pandemic affected all life and the economy. In order to preserve the human right to justice, not to interrupt the work of courts, remote court hearings were held. It has been found that in administrative justice, especially when organizing the work of quasi-judicial structures, such hearings can be applied almost without problems. Therefore, the organization of remote meetings in administrative courts and quasi-judicial organizations was continued during the non-quarantine year, depending on the wishes of the participants in the proceedings. However, the widespread use of teleconferencing and videoconferencing in the work of courts has identified the need to improve Lithuania's legal framework. The article analyses the peculiarities of remote administrative procedure and legal regulation.

Keywords: administrative procedure, remote court hearings, teleconferencing, information technology, e-justice

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Introduction

The right to justice is one of the most important human rights. Information technology has changed the way we work, the way people and companies communicate with each other, and public administration. With the introduction of information technology and videoconferencing, the physical presence of the parties and other participants in a case is becoming less and less mandatory; also, many courts no longer consider it a serious obstacle for a party to attend a court hearing remotely.

A decade ago, the Council of the European Union adopted the first five-year Multi-annual European e-Justice Action Plan 2009–2013 (Council of the European Union, 2009). The concept of e-Justice was defined as the use of information and communication technologies in the field of justice comprising the fields of civil, criminal and administrative law (Berger, et al., 2019). E-Justice must be reliable, accessible and trustworthy for everyone. In addition, it is also important that Member States themselves, with their judicial authorities, can ensure trust in e-government in accordance with the fundamental principle of mutual trust and cooperation (Gerards & Glas, 2017).

The Court of Justice of the European Union (CJEU) in "The year in review. Annual report 2020" (Court of Justice of the European Union, 2020) stated that "The process of digital transformation began in the European Union well before 2020. However, this year will go down in history not only on account of COVID-19 and its consequences, but also for the turning point that it represents in terms of digitisation and the use of videoconference technology in the context of hearings at the CJEU".

In a state governed by the rule of law, the essential function of administrative justice is to protect a person from illegal actions or omissions of public administration entities by legal means (Kurpuvesas, 2007). The use of the latest information technologies is essential for the development of an optimal institutional framework for administrative justice and the legal framework governing its activities. The importance of using such technologies has grown especially during the pandemic.

Under the influence of the Covid-19 pandemic, no separate guidelines or research have been prepared specifically on the use of e-Justice tools in administrative proceedings, and there is no separate case law of international courts dealing specifically with the peculiarities of remote administrative proceedings. General guidelines for all court proceedings and studies by foreign researchers occasionally mention the use of e-Justice

remedies in administrative proceedings among other types of court proceedings, with general recommendations. However, episodically analysing the use of e-Justice remedies in administrative proceedings, it is emphasized that this type of process is best suited to digitization and teleworking.

The aim of the article is to analyse the main e-Justice measures in the field of administrative proceedings, the European e-Justice in the context of the justice strategy. When analysing the application of e-Justice measures, attention was paid to the organization of remote administrative hearings as the main measure, the significance of which became most evident during the pandemic, and to the improvement of the Lithuanian remote administrative process.

1. Principles and strategy of e-Justice

The European e-Justice Strategy (Commission of the European Communities, 2008) stated that the European e- Justice's primary objective is to help justice to be administered more effectively throughout Europe, for the benefit of citizens. The first hallmark of priority projects should be that they help legal professionals work more effectively and citizens obtain justice more easily. They must also contribute to the implementation of existing European instruments in the field of justice and, potentially, involve all or a large majority of Member States. The European e-Justice system should aim to ensure better access to justice and facilitate access to out-of-court redress incross-border situations. The strategy stated that electronic means should facilitate the implementation of EU judicial cooperation instruments through judicial cooperation networks and facilitate the use of videoconferencing (Commission of the European Communities, 2008). The latest 2019–2023 Strategy on e-Justice (Council of the European Union, 2019) states that European e-Justice aims at improving access to justice in a pan-European context and is developing and integrating information and communication technologies to provide access legal information and the workings of judicial systems. The development of electronic tools for e-Justice now allow for digital judicial proceedings using secure electronic channels, secure communication between judicial authorities, easier information for citizens on legal provisions and access to certain national registers under the responsibilityof Member States or professional organisations. In the world e-Justice is realized through different means: web portals, websites, e-mail, e-documents, e-cases and databases.

On 2nd December 2020 the European Commission adopted a new set of measures to modernize the EU's justice systems. The main document is the Communication on digitalisation of justice in the European Union (European Commission, 2020c). The Communication analyses challenges for justice systems in the digital age and proposed a toolbox for the digitalisation of justice: financial support to Member States, to harness the potential for creating long-term impact; legislative initiatives, to set the requirements for digitalisation in order to promote better access to justice; IT tools, which can be built upon in the short to medium term and used in all Member States; promotion of national coordination and monitoring instruments. To exercise their rights and have full access to justice, individuals need access to information. They can already use public information tools such as EUR-Lex, giving access to legal information, and the European e-Justice portal, giving access to information on justice, but they need better and more efficient ways to access personal information and documents. Furthermore, whenever possible, Member States should recur to the use of videoconferencing. The use of videoconferencing in judicial proceedings, where permissible by law, substantially reduces the need for burdensome and cost-intensive travel and may facilitate proceedings. The 2019–2023 e-Justice action plan cites the use of videoconferencing in cross-border proceedings as a priority (European Commission, 2020c).

The Lithuanian Court Information System LITEKO is designed to improve the quality of the work of the court as an organization, increase the transparency of the work of the judiciary, improve the administration of work in the court and the judiciary, facilitate the work of judges and court staff, and provide electronic services for other organizations and the public. The purpose of LITEKO is to electronically process the data of cases pending and examined in Lithuanian courts, to record the course of proceedings and to provide conciliation and public electronic services provided for in legal acts. LITEKO tasks: to computerize the processing of documents and case data in courts; automate the control of procedural deadlines; automate the workload calculation and case allocation processes for judges; automate court information disclosure processes; to automate the processes of exchange of data processed by courts with information systems and (or) registers of other institutions; automate the processes of conciliation and the provision and management of public electronic services (Nacionalinės teismų administracijos direktorius, 2016).

2. Teleconferencing as a means of remote justice. Possibilities and legal regulation of remote process

The use of videoconferencing in court proceedings is provided for in various European documents (Council of the European Union, 2000, 2001a, 2001b, 2004; European Parliament & Council of the European Union, 2007), but this possibility is rarely used for cultural, linguistic, or technical reasons, although videoconferencing is more often useful: it saves time and money, requires less travel, more flexible litigation, and so on. However, video conferencing offers cost savings, distance solutions, and ease of administration (Devoe & Frattaroli, 2009).

European e-Justice portal submits *Guide on videoconferencing in cross-border proceedings* (Guide on videoconferencing in cross-border proceedings, 2013), which covers the use of videoconferencing equipment in cross-border court proceedings in the European Union.

On 30th June 2021 the European Commission for the Efficiency of Justice (CEPEJ) submitted *Guidelines on videoconferencing in judicial proceedings* (European Commission for the efficiency of justice, 2021). These guidelines set out the main measures that States and courts should take to ensure that the use of videoconferencingin legal proceedings does not infringe the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) (European Convention on Human Rights, 1950), and meets the requirements of the Convention for the Protection of Individuals about Automatic Processing of Personal Data (Council of Europe, 1981). The guidelines cover all legal proceedings. It is stated that **videoconferencing refers to a system that allows two way and simultaneous communication of image and sound enabling visual, audio, and verbal interaction during the remote hearing**. In the first part, the Guidelines address procedural issues concerning all types of judicial proceedings, emphasising the particularities of criminal proceedings. It is for the court to decide, in accordance with the applicable legal framework, whether a particular court hearing should be held remotely to ensure the general fairness of the proceedings. In the second part, the Guidelines address the technical and organisational requirements for videoconferencing in judicial proceedings (European Commission for the efficiency of justice, 2021).

The International Commission of Jurists provides detailed analysis and guidance on the use of videoconferencingand similar technologies in court proceedings (International Commission of Jurists, 2020). They emphasize

the need to ensure that the judiciary can always function effectively to ensure a fair trial in an independent and impartial tribunal, as the United Nations Human Rights Council emphasizes the special role of the judiciary in ensuring human rights, especially in emergencies (Human Rights Council, 2020).

Digital procedures should facilitate the assistance of all parties to the proceedings. It must be ensured that all parties have all the procedural rights they previously had in conventional, non-digital systems. In addition, e-justice systems need to consider the legal responsibilities of lawyers, which serve the interests of their clients and the rule of law in general. The digitization of justice systems should be sufficiently coherent and linked to other e-government authorities and remain flexible to take account of ever-changing requirements, as well as the diversityof IT systems in different countries (The Council of Bars and Law Societies of Europe, 2021).

One of the problems with the digitization of court work is the provision of electronic evidence. It should be noted that the definition is given in the guidelines of the Committee of Ministers of the Council of Europe **Electronic evidence in civil and administrative proceedings** (Council of Europe, 2019): **"Electronic evidence" means any evidence derived from data contained in or produced by any device, the functioning of which depends on a software program or data stored on or transmitted over a computer system or network** and states that electronic evidence, includingoral testimony given at a distance, should be treated in the same way as other types of evidence, in particular as regards its admissibility, authenticity, accuracy and integrity.

3. Impact of the Covid-19 pandemic on the remote process

While possible before in many countries, the Covid-19 crisis accelerated the use of remote – or video-hearings in courts in many European countries. It is unlikely that video-hearings will disappear with the end of the pandemic. Looking forward to the best possible use of remote hearings for the future, and to a new understanding of how justice is done outside a physical courtroom, collecting, and comparing the different legal frameworks and experiences in as many countries as possible can provide invaluable resources. Lawyers are understood to be conservative, but during the

pandemic, judges were ready to adapt to new circumstances and use technology because they had to (Sanders, 2021).

Beyond the immediate health and economic impact, the Covid-19 crisis created a wide variety of challenges for the society, and more specifically for public administration and legal and constitutional systems (European Commission, 2020b). It is important to speed up reforms to digitize judicial procedures and provide permanent and easy access to justice for all.

The European Commission for the Efficiency of Justice 2020 made a declaration **Lessons learnt and challengesfaced by the judiciary during and after the Covid-19 pandemic** (European Commission for the Efficiency of Justice, 2020a). The declaration states that **"The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe supports the Organisation's member States in improving the efficiency and quality of theirjudicial systems in order to ensure that they operate in line with the standards of the Council of Europe and meet the needs of those seeking justice."** (European Commission for the Efficiency of Justice, 2020a). The judicial systems must be prepared to ensure the continuity of judicial work and access to justice. In this context, the CEPEJ wishes to remind member States of the following important principles: human rights and rule of law; access to justice; safety of persons; monitoring case flow, quality, and performance; cyber justice; training.

The Covid-19 pandemic has already paved the way for digital litigation in many European countries. The Council of Bars and Law Societies of Europe has provided lawyers with several guidelines for the use of teleworking tools and the conduct of telecoms litigation (The Council of Bars and Law Societies of Europe, 2020), noting that Covid-19 has changed the way lawyers perform their functions and communicate with the courts. There are two inter-related aspects to the use of remote conferencing tools: consultations and meetings by lawyers with their clients and others by remote means and remote participation in Court hearings. If lawyers use telecommuting, it requires remote meetings, whether with clients, interviewing potential witnesses, internal management meetings, negotiations with other parties: everything that has been done face-to-face in a lawyer's practice must be transferred to the Internet. Because the courts had to grant access to services during the coronavirus pandemic, remote meetings became necessary. However, this required several issues to be resolved. The United States Joint Technology Committee Bulletin (JRC Quick Response Bulletin, 2020) provides important guidelines to help courts succeed in virtual hearings. Court leaders should consider which case types or

proceedings are most appropriate for virtual hearings. While all case types or proceedings may be able to be held virtually, there may be challenges for each one. There are many technologies that can be used for virtual meetings. Videoconferencing provides more robust features that could enable most hearings to occur. The specific features of the technology need to be considered: ease of use by judges, court staff, attorneys, litigants, witnesses, other participants; availability of the technology and required equipment for all participants; ability to access the solution remotely; security of the solution; ability to control access to hearings by participants; cost. When reviewing the rules of the hearing, court leaders should consider those that prohibit or restrict the participation of all participants in the virtual hearing, including witnesses and interpreters. Courts should consider obtaining signatures remotely and exchanging documents using technology or develop other options for collecting signatures on physical documents. Courts can create protocols for obtaining documents before hearings through electronic submission portals such as *OneDrive, Google Drive, Dropbox* (JTC Quick Response Bulletin, 2020).

Central and Eastern European Law Initiative Institute (CEELI) submitted **Practical guidelines for remote judging in Central and Eastern Europe** (CEELI Institute, 2021b). The purpose of this document is to summarize the current reality and provide practical advice on how to organize remote meetings. There are currently a large range of viable software platforms in use by courts across the CEE region. These include Cisco's Webex, Zoom, JITSI, Google Meet, Microsoft Teams, Skype, Polycom Real Presence, BlueJeans, PEXIP, and TrueConf, as well as bespoke platforms for courts. In considering a platform for remote proceedings, judges should review whether they are easy to use, reliable, able to provide an appropriate image of the judge, the courtroom, and the participants on the computer screen; considered sufficiently safe from security breaches; provide specific tools so that the judge can control the procedures and prevent misuse; provide each party equal opportunities to participate (CEELI Institute, 2021b). The CEELI Institute conducted a study to determine which platform is used to conduct remote hearings (CEELI Institute, 2021a). Results obtained: Zoom – 35%; Microsoft teams – 35%, Skype – 25%; JITSI – 17%, other – 15%, own platform – 10%, Cisco's Webex – 8%, Polycom Real presence – 4%, Google meet - 4%, TrueConf – 2%, PEXIP – 2%. Out of the provided platforms, ZOOM and Microsoft Teams were the most used and considered the most reliable.

Researchers at *The Arctic University of Norway* present a collection of articles on civil justice during the Covid-19 pandemic (Civil Justice and

Covid-19, 2020). As the process of administrative cases in terms of IT application is very close to civil proceedings, this study is relevant to the development of the Lithuanian administrative process considering the challenges caused by the pandemic, especially since the said study also covered Lithuania. Researchers at the university said that despite differences between countries' legal systems and the impact of the pandemic, several common issues could be identified related to changes in the law, complete (or partial) closure of courts, switching to online or remote proceedings, the use of written proceedings and legal costs and justice quality. The researchers note that the COVID-19 pandemic is driving and will continue to drive the digitization of processes, despite the lack of high-speed internet, the right hardware (cameras, microphones) and the right software (file management software, video conferencing software, etc.).

4. Application of remote proceedings in administrative proceedings

The means of remote communication referred in Article 581 (5) of the Code of Administrative Offenses of the Republic of Lithuania (Lietuvos Respublikos Administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas, 2015) are: **A witness may be questioned by means of audio-visual remote sensing in the presence of acoustic and visual obstacles to his or her identity. In that case, the testimony of the witness shall be recorded by means of an audio or video recording making it an acoustic and visual obstacle to his identification or shall be recorded in the interview report.** The same provision is fixed in Article 59 (5) of the Law on Administrative Proceedings of the Republic of Lithuania (Lietuvos Respublikos administracinių bylų teisenosįstatymas, 2016). Article 37^1 of the Law on Courts of the Republic of Lithuania (Lietuvos Respublikos Teismų įstatymas, 2002) establishes the use of electronic files, information, and electronic communication technologies in courts. However, the Law on Courts does not generally provide for the possibility of holding court hearings using information and electronic communication technologies, i. e. remotely. On 5th May 2021 the President of the Republicof Lithuania initiated amendments to the Law on Courts and other related laws aimed at ensuring greater efficiency, openness and transparency of the judiciary, speed of court proceedings and higher quality

of proceedings (Aiškinamasis raštas, 2021), but the amendments have not yet been adopted.

Article 13 of the Law on Administrative Proceedings (Lietuvos Respublikos administracinių bylų teisenos įstatymas, 2016) regulates the use of information and electronic communication technologies and other technical means in court. It is argued that the court may use any technical means to conduct the proceedings, record evidence and investigate.

The description of the procedure for the use of video conferencing and teleconferencing technologies in civil and administrative cases was published in 2012 (Lietuvos Respublikos Teisingumo ministro įsakymas, 2020) (the latest wording was approved in 2020). This description sets out the general principles for the use of these technologies.The current version of the specification is based on Article 13 (7) of the current version of the Law on Administrative Proceedings: **The participation of participants in the proceedings, witness, specialist, expert, interpreter in court hearings can be ensured by using information and electronic communication technologies (via video conferencing, teleconferencing, etc.). When using these technologies in accordance with the procedure established by the Minister of Justice of the Republic of Lithuania (hereinafter – the Minister of Justice), reliable identification of the participants in the proceedings and objectivity of submitting explanations, testimonies, questions, and requests must be ensured.**

Law of the Republic of Lithuania on Pre-Trial Administrative Disputes (Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymas, 2020) from 1st January 2022 directly established the basics of the use of information and electronic communication technologies in the pre-trial stage of the administrative process. The most important new provisions are: a complaint (request) to the Administrative Disputes Commissioncan be submitted in writing via e-delivery system, by other electronic means of communication, postal item, direct; a complaint (request) submitted by electronic means must be signed with a qualified electronic signature, except in cases when it is submitted via e-delivery system; electronic delivery services for natural persons when they send electronic items via e-delivery system to the Lithuanian Administrative Disputes Commission and its territorial subdivisions will be provided free of charge.

The Supreme Administrative Court of Lithuania in its review of activities in 2020 (Lietuvos Vyriausiojo administracinio teismo 2020 metų veiklos apžvalga, 2021) stated that the telework model had been partially applied

in court for two years now, and the culture of telework had already developed. All means and conditions of teleworking and legal regulation have been created. Only the intensity of telework changed during the pandemic. In 2020 Lithuanian courts examined 11081 electronic administrative cases (Lietuvos teismai, 2020).

The Vilnius Regional Administrative Court's activity review for 2020 (Vilniaus apygardos administracinio teismo2020 m. veiklos apžvalga, 2020) states that some cases have already been heard remotely. The court quickly adapted to IT news and handled several cases remotely, almost completely avoiding oral proceedings. It is mentioned that formal cross-platform litigation (such as *Zoom* or *Microsoft Teams*) is not legal and appropriate amendments should be adopted to remove any doubt as to the legitimacy of such remote meetings. In the last quarter of 2020, most cases were heard by written procedure or remotely.

Following the onset of the pandemic and the announcement of quarantines in Lithuania, the *Lithuanian courts* portal provided recommendations to the courts on the work, in which remote court hearings were presented as one of the options for organizing court work. On 27th August 2021 the Council of Judges approved the latest recommendations on remote court hearings (Rekomendacijos dėl nuotolinių teismo posėdžių, 2021). The recommendations are based on a summary of existing legislation, case law (including international case law) and the European Commission for the Efficiency of Justice guidelines on videoconferencing in judicialproceedings as of 30th June 2021 (European Commission for the efficiency of justice, 2021). The recommendations state that the procedure for remote court hearings using videoconferencing technology in court proceedings is established by the Description of the Procedure for the Use of Videoconferencing and Teleconferencing Technology in Civil and Administrative Proceedings (Lietuvos Respublikos Teisingumo ministro įsakymas, 2020); Description of the Procedure for the Use of Video Conferencing Technologies in Criminal Proceedings (Lietuvos Respublikos Teisingumo ministro įsakymas, 2021); Description of the procedure for the use of videoconferencing equipment in court proceedings (Teisėjų tarybos nutarimas, 2014).

The purpose of the Council of Judges' recommendations for 2021 is to provide advice to courts and litigants (persons involved in the case, their representatives by law or assignment, and other litigants as determined by theirprocedural rights and responsibilities) in organizing and attending remote court hearings and on procedures for setting standards and ensuring good practice in the administration of justice. The guidelines

specify: **Remote court hearing – a court hearing that takes place in an oral procedure using videoconferencing or teleconferencing equipment (hereinafter – videoconferencing technology), when the hearing judge (panel of judges), the clerk of court and the participants in the court session use videoconferencing technology, not being physically present on the same court premises or in another place of trial in cases prescribed by procedural law.** A remote court hearing can be organized as a full remote or a mixed remote. The guidelines may be applied to civil, criminal, administrative and oral proceedings to facilitate the organization of remote litigation and to ensure the effective exercise of the right of participants to justice. The recommendations define the main principles of organizing and attending remote court hearings, indicate the recommended use of conference (audio-visual) equipment, highlight important aspects of the preparation of court and litigants, as well as the most relevant issues during the hearing and identify other relevant information and ensure the processes run smoothly. The recommendations pay particular attention to the protection of the rights of litigants, such as the right to a fair trial, the right to be heard, equality, and the principle of effective judicial protection (Rekomendacijos dėl nuotolinių teismo posėdžių, 2021).

The *Lithuanian courts* portal states that remote court hearings can take place in Lithuania and abroad. Remote court hearings can be held in all national courts. Special stationary video conferencing equipment for remote court hearings has been installed in the Supreme Court of Lithuania, in the Lithuanian Court of Appeal, Vilnius Regional Administrative Court, in the Supreme Administrative Court of Lithuania, in Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys regional courts, in the district courts of Vilnius, Klaipėda and Panevėžys, in Kaunas and Šiauliai district courts and in Alytus, Marijampolė, Kaišiadorys and Vilkaviškis district courts. In Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys regional courts, mobile videoconferencing equipment is also stored, which can be delivered to any court or any other place in the district, if necessary, if a participant in the proceedings is unable to attend the court hearing due to important reasons (Lietuvos teismai, 2021).

The European Commission 2020 report on the application of the rule of law (European Commission, 2020d) states that Lithuania is one of the few Member States where an electronic case management system and court statistics are available in all courts. In most courts, electronic means are also available for transmitting cases, serving summonses, or monitoring the progress of proceedings.

From 2021 The EU Justice Scoreboards (European Commission, 2021) show that the efficiency of justice systems in most Member States continues to increase. The use of digital solutions in civil, commercial, administrative and criminal matters often requires appropriate regulation through national procedural rules. The European Commission has identified a maximum possible score of 12 points for assessing the opportunities for various actors to participate in the use of distance communication technologies (such as video conferencing) and the current situation regarding the admissibility of digital evidence. In Lithuania, the possibilities provided in administrative cases were assessed: the admissibility of evidence submitted only in digital form - 12 points; the oral part of the process can be performed only by remote communication technologies – 10 points; interpretation can be performed using telecommunication technologies – 8 points; experts can be heard using remote communication technologies – 6 points; witnesses may be heard using telecommunication technologies – 4 points; parties/ defendants/victims can be heard using telecommunication technologies – 2 points (European Commission, 2021).

Conclusions

The use of information technology has enabled the public justice service to continue its activities during the health crisis. However, the development of IT solutions, such as online services, remote court hearings and video conferencing, must always respect fundamental rights and the principles of a fair trial.

Remote court hearings are organized as e-phenomena of the development of the concept of justice. These hearings have many advantages, saving time and money, as the distance between the different participants in the process is no longer relevant. However, there are also problems with the level of information technology and computer literacy. Of particular importance are the identification of the participants in the proceedings, the maintenance of confidentiality, and the involvement of a lawyer. These problems have the least impact on the administrative justice process.

The conduct by courts of remote hearing has been one of the significant changes to the administration of legal system caused by the Covid-19 pandemic.

The importance of remote court hearings was assessed during the Covid-19 pandemic. The convenience and usefulness of remote meetings was positively assessed by the representatives of administrative courts and *quasi*- judicial

institutions, the participants of the meetings. However, the development of the process has shown that the Lithuanian legal framework does not sufficiently regulate the organization of remote meetings, teleconferences, and video conferences. Although remote justice was recognized more than ten years ago, there was no problem due its low demand.

The use of videoconferencing should not infringe the right to a fair trial and the rights of defence, such as the rights to attend one's trial, to communicate confidentially with the lawyer, to put questions to witnesses and to challenge evidence.

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ACADEMIC AND INTERCULTURAL COMPETENCES OF INTERNATIONAL STUDENTS IN HIGHER EDUCATION

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Abstract

International education is crucial in Europe; almost all higher educational institutions (HEIs) have international students studying part or full time in English. However, students are often not prepared for the academic process and are not always interculturally competent to study in the international environment. Authors of the present research suppose that apart from communicative language competence, that is vital for the success of studies, learners are expected to possess knowledge and skills on how to study and how to cooperate with students with other cultural backgrounds. The study aims at investigating what academic requirements students as HEI applicants should be prepared for before entrance to the university and what competences, as a result, are required of them for a successful process of studies. Theoretical findings on academic and intercultural competences are presented and the framework of these competences describing skills, abilities and knowledge is compiled. The empirical research includes a case study in Latvia and examples of intercultural competence in the academic environment in Moldova. Insights from theory and the framework may lay background for future research and may benefit different stakeholders of the HEI – international department, students and the academic personnel.

Keywords: dialogue of cultures, international education, higher education, academic competence, intercultural competence

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Introduction

As the tendency of today's world is that countries and societies become multicultural, there is a set of theoretical and practical problems for pedagogical science, related to the peaceful coexistence, communication, mutual respect and enrichment of different cultures. The interaction between people with diverse cultural background was mentioned at the Council of Europe as a consequence of a meeting of Heads of States and Governments in 1997 within the concept of democratic citizenship in Europe. In 2005 the Heads of State or Government of the Council of Europe (Online 1) expressed a strong determination to ensure a broad and diverse intercultural dialogue, which should be based on shared values so that diversity becomes a source of mutual enrichment. They agreed that there should be a cross-cutting policy on intercultural dialogue which covers different areas such as culture, youth, security, media, immigration and education.

Educational internationalization in higher educational institutions (HEIs) in Europe has become a trend for several decades. Almost all universities around the world have international students studying full time or part time as exchange students in the country outside the country of their origin. Often the language of studies is English used as a **lingua franca** both for students and academic personnel (lecturers). In the present article notions **international students or internationally mobile students** are used to define people travelling from their home countries to study at HEIs abroad and for whom English is not their first language or the medium of instruction in their previous educational experience. Students and lecturers are often of different cultural background, having different academic experiences. Meeting in the international environment both students and lecturers experience some difficulties understanding each other – linguistically and culturally.

There is now a more culturally, socially and linguistically diverse student population in universities in many countries (Hyland, 2006: 6).

Moreover, sometimes students come for studies academically unprepared: they are unaware of the study process as such, do not fully understand

lecturers' requirements and do not always possess highly developed academic skills. As a result, students sometimes may have poor academic performance and achievements, whereas academic personnel may not be fully satisfied with students' work and are unable to explain the reasons for students' failures. In this paper we explore the theoretical basics of academic and intercultural competences, look at the academic requirements universities may have towards students, do a research of students' and lecturers' perception of the academic process – hurdles both of them have in the process of work and, as a final result, compile a framework of academic and intercultural competences with their possible components.

1. Theoretical background

1.1. Competence: definition

For some time, the term *competence* has been too loosely bandied about in scholarly literatures (Deardorff, 2009), with surprisingly little attention to its many semantic and conceptual landmines (Spitzberg and Cupach, 1984, 2002). Competence has been variously equated with understanding (e.g., accuracy, clarity, co-orientation, overlap of meanings), relationship development (e.g., attraction, intimacy), satisfaction (e.g., communication satisfaction, relational satisfaction, relational quality), effectiveness (e.g., goal achievement, efficiency, institutional success, negotiation success), appropriateness (e.g., legitimacy, acceptance, assimilation), and adaptation (Deardorff, 2009).

Leeds-Hurwitz (1989) point out that competence includes: cognitive (knowledge), functional (application of knowledge), personal (behaviour) and ethical (principles guiding behaviour) components, thus the capacity to know must be matched to the capacity to speak and act appropriately in context; ethics and consideration of human rights influence both speech and actions. Typically competence does not depend on any one single skill, attitude, or type of knowledge, instead engaging a complex set of skills, attitudes, and knowledge. Skills typically mentioned as most directly relevant to an understanding of intercultural competences include: observation, listening, evaluating, analysing, interpreting, relating (including personal autonomy), adaptability (including emotional resilience), the ability to be non-judgmental, stress management, metacommunication (the ability to communicate about communication), moving outside an interaction to discuss what has occurred or will yet occur.

UNESCO (2013, p. 12) defines the word competence as 'having sufficient skill, ability, knowledge, or training to permit appropriate behaviour, whether words or actions, in a particular context.'

1.2. Communicative language competences, academic competence: context and definitions

Students who apply to study in a foreign language need to possess the required level of the communicative language competence. Communicative competence was studied by an array of linguists (Chomsky, 1965; Hymes, 1972; Canale & Swain, 1981; Bachman, 1995; Widdowson, 1996; et al.). All of them influenced and formed the basis for the development of the communicative language competences (CLC) proposed in the document Common European Framework of Reference for Languages (CEFR) (2001, 2018), which seems to have provided the most comprehensive description of these competences. CEFR divides CLC into linguistic, sociolinguistic and pragmatic competences (Drozdova, 2021, p. 100). CEFR describes in detail the requirements towards each language level from A1 to C1 levels and is used by different educational stakeholders, including the personnel who process students' documents for university admission. Usually students are informed on their requirements concerning the language level and are obliged to submit a copy of language certificate prior to admission, for example, IELTS, TOEFL IBT, TOEFL PBT, TOEIC, FCE (First Certificate in English), CAE (Cambridge Certificate of Advanced English) and others. (Online 2)

The present study aims at investigating what other skills, knowledge and abilities except CLC are required of students for their academic success in the multicultural environment, it is in this regard that **academic** and **intercultural competences** are studied here. Academic competence is not much studied, defined and clarified. McGrew (2013 in Drozdova 2021, p. 107), for example, developed the model of Academic Competence and Motivation (MACM) applicable to the field of educational psychology aiming to help school psychologists understand better individual differences of learners when dealing with 'learning-related assessments and instructional planning.' The model included three domains: orientation towards self (motivations), volitional controls (cognitive strategies and styles), and orientation towards other (social ability) (McGrew, 2013, p. 5). Karpińska-Musiał (ibid) mentioned academic competence in regards to an academic lecture – professional/ disciplinary skills and knowledge needed to structure a lecture.

The ACES-2 project conducted in partnership with the Pennsylvania State University and University of Florida has defined academic competence in the following way: Academic competence reflects the skills, attitudes, and behaviours that contribute to students' academic success. These skills and attitudes fall within two broad domains – academic skills and academic enablers. Academic skills include basic and complex skills such as reading, writing, mathematics, and critical thinking skills. Academic enablers are the skills, attitudes, and behaviours that facilitate a student's learning. (Online 3)

Drozdova (2021, p. 108) studied academic competence 'in the context of a university lecture, to describe the lecturer's ability to prepare for a lecture before a lecture: to process the information, to structure a presentation, to be able to study the information and to arrange it in a competent way.'

The present study is interested in how students can be prepared before their admission to the university to attend lectures in a foreign language, to take notes, participate in lectures, prepare for classes and assessments and to write texts of different academic genres. Students come with some academic competence – study in the secondary school, vocational school, courses; however study in HEI implies special academic skills that may differ from students' previous experience.

Students are expected to develop diverse academic competences during their studies, and previous studies have also indicated that many of these competences do actually develop at university (Tuononen and Parpala, 2021, p. 2).

Academic competence may include the following academic skills: critical thinking, empirical research literacy, synthesis of knowledge and assessment of information, time and project management, teamwork skills, problem-solving, self-management skills, analytical competence, citation skills (Nouri et al., 2019; Wisker, 2019; Annen & Eggimann, 2006; Petric, 2007; Semeijn, 2006 in Tuononen & Parpala, 2021, p. 2).

The authors suppose that one of the key academic skills for international students, studying in a HEI in a foreign language that is important to consider is note-taking (NT). It is a mathemagenic activity that enhances and promotes learning; and it is highly connected with listening skills and with the work of memory. Drozdova (2021, p. 218) attributed NT to a 'genre of academic writing with notes as the final product of this activity, proves to be a vital element of the students' study process in the institutional context that aims at fostering the retention of the lecture material.'

Other skills that may constitute academic competence are reading for information, writing texts for academic purposes and speaking skills, including participation in lectures, seminars, conferences and answers at the exam. Skills of working with big amounts of information – learning materials in the English language – course materials handed in by a lecturer, reading materials found individually on the Internet or in the library by a student are to be added too. These skills include reading, processing and interpretation of information.

High level of academic writing skills may include various forms of written tests, for example, multiple choice, question – answer; essays and others; skills on writing reports and the highest level of academic performance would be writing articles for publication, course papers, bachelor's, master's and PhD theses.

Since the target audience of the present study is international students studying in English as lingua franca, we will define **academic competence** as skills, abilities and knowledge required for students' successful operation in the institutional context in the academic environment in a foreign language (English).

1.3. Intercultural competence: context and definition

The dialogue between cultures in higher education is realized through the study of different subjects/university courses in English. Through such dialogue, purposeful intercultural learning promotes the formation and development of a critical understanding of one's own culture and tradition as well as that of the newcomer. It also contributes to overcoming ethnocentrism, developing tolerance, recognizing equal opportunities for all, and developing conscious and responsible social behaviour. The principle of "culture through language" is traditionally used in teaching intercultural communication and for developing **intercultural competence**. There is a strong conviction in pedagogy that the formation of intercultural competence takes place mainly while learning foreign languages or studying in a foreign language.

Scholars (Alptekin, 2002; Battaini-Dragoni, 2008; Bennet, 2007; Byram, 1997, 1998; Corbett, 2003; Deardorff, 2006; Fantini & Tirmizi, 2006; Lussier et al., 2007; Scollon & Scollon, 1995; Neuneret al., 2003) throughout the past 30 years have defined **intercultural competence** in its various iterations. Most researchers preferred a more general definition of the construct as

opposed to specific, delineated components as to exactly what constitutes intercultural knowledge.

Intercultural competence is the ability to skilfully navigate in a complex environment characterised by an increasingly diverse range of people, cultures and lifestyles, in other words, the ability to 'interact effectively and appropriately to with other people who are linguistically and culturally different from themselves' (Fantini & Tirmizi, 2006, p. 12). Spitzberg (2009, p. 381) defines competence as an ability or a set of skilled behaviours. He, however, points out that any behaviour or ability can be considered competent in one context and incompetent in another. Therefore he concludes that competence cannot be defined by any behaviour or ability. It is rather a social evaluation of behaviour.

The definition deemed most applicable to institutions' internationalization strategies was one derived from Byram's work on intercultural competence. It was summarized as follows:

> Knowledge of others; knowledge of self; skills to interpret and relate; skills to discover and/or to interact; valuing others' values, beliefs, and behaviours; and relativizing one's self. (Byram, 1997, p. 34)

The concept of **intercultural competence** described by Byram (ibid) has refocused the goal of language education with culture integrated into language study. The use of the term **intercultural** reflects the view that EFL learners have to gain insight into both: their own and the foreign culture (Kramsch, 1993).

Intercultural competence emphasizes the mediation between different cultures, the ability to look at oneself from an "external" perspective, analyse and adapt one's own behaviours, values and beliefs (Byram & Zarate, 1997). An interculturally competent learner therefore displays a range of affective, behavioural and cognitive capacities (Byram, 2006, pp. 22–26): attitudes/affective capacities (acknowledgement of the identities of others, respect for otherness, tolerance for ambiguity, empathy); behaviour (flexibility, communicative awareness); cognitive capacities (knowledge, knowledge discovery, interpreting and relating, critical cultural awareness).

The successful process of studies by an international student requires the following skills and competences of a student:

- **'sociocultural knowledge'** (CEFR, 2001, p. 102): student's knowledge of the society and culture he is currently studying in, as well as basic understanding of cultures of other students in a group. This knowledge

may help to establish rapport and foster student's learning processes and make him establish appropriate interpersonal relations with lecturers and other students, taking into consideration that other lecturers' and students' cultural or religious values, beliefs and attitudes can differ from his values and beliefs;

- **'intercultural awareness'** or **'intercultural competence'** (CEFR, 2001, p. 102) – his prior sociocultural experience and knowledge, relation between culture of a student and other group-mates as well as
- **'intercultural skills'** and **'know-how'** (savoir-faire) (CEFR, 2001, p. 104) – student's ability to bring his/her culture and cultures to the audience. This is especially significant, since international students often represent cultures diverse and often very different one from another, and students need to cooperate with each other both in the lecture room and outside (for example, Turiba University students often represent diverse cultures from Uzbekistan, India, Russia, Germany, Pakistan, Kazakhstan, France, Lithuania and others countries.)

International students need to cope with challenges in the new culture and try to adjust to the host culture in order to achieve a successful learning process. We suppose that the process of studies by students in the multicultural environment would be incomplete without **intercultural competence or intercultural communication competence** (Skujiņa u.c, 2011), since study in the international context requires intercultural sensitivity, "understanding oneself and others in a context of diversity"; ability "to interact and communicate with those who are perceived to have different cultural affiliations" (Barrett 2014, p. 16), ability to interact outside habitual cultural environment, that is based on the knowledge of habits of one's social and ethnic groups, critical thinking skills and positive attitude towards unknown environment (Skujiņa, 2011 in Drozdova 2021, p. 108).

As a result, in the present study we use the concept *intercultural competence* in the meaning: ability, **'specific attitudes, knowledge, understanding, actions and skills'** (CEFR, 2001, p. 10), skills to deal with people of different cultural background. Intercultural competence is needed **'to understand oneself and others in a context of diversity, and to interact and communicate with those who are perceived to have different cultural affiliations'** (ibid., p. 11).

1.4. Methodology

Since the aim of the present work was to study the academic and intercultural competences in the institutional context, the methodology chosen was varied. First, the authors used the secondary type of research, including the study, analysis and review of theoretical literature (books and articles) that enabled to shape the theoretical part and to develop the framework for the empirical part of the present article. The second method included discussion among students (23c respondents) from Balti State University "Alecu Russo" in Balti. Third, primary research, i.e. qualitative research, a case study that involves open-ended data analysed in a descriptive way including interviews and questionnaires was used. Three stages of two interviews and a questionnaire were carried out in Turiba University – two among students of the faculty of International Tourism (11 interviewed and 24 questioned) and the third among lecturers (19 interviewed) of the same HEI. All data was analysed and further described by the authors.

The following contextual factors were considered (Brown, 2001, p. 479): institutional context, since the study was carried out in universities (a research site), with the target group (population) being students and with the purpose of serving institutional need and pedagogical context (teaching methods and lecturing styles of lecturers and note-taking skills of students) (ibid.).

2. Results and Discussion

2.1. Intercultural competence in the academic environment, Moldova

International students from different countries around the world leave their home countries and travel abroad to continue their higher education. This, in turn, might expose them to different intercultural barriers in communication and understanding the other culture; and requires them to adapt to the new culturally diverse environment. Students from Bălți State University "Alecu Russo" have been having a chance to participate in mobility programs by studying abroad in several Erasmus Programme countries in the universities of Norway, Spain, Italy, Germany, Latvia, Romania and others for more than ten years. Thanks to the mobility

programmes that have emerged, knowledge of intercultural communication has become a necessity. Those students who decide to apply to academic mobility programmes for the singular purpose of studying are exposed to some difficulties in many areas of their social and academic life. The majority of respondents (95%) admit that returning back to the home university they admit that they experienced some psychological and physical changes because of the unfamiliar environment. Almost all internationally mobile students experienced a common phenomenon that is called **culture shock** and felt that they had all had "symptoms" described by Oberg of being culturally shocked in the new academic environment. Internationally mobile students are asked to get over those difficulties and negative changes, and try to adjust and adapt to the new social and academic environment in order to create a comfortable climate for the learning process. Kalervo Oberg, who coined the term "culture shock", states culture shock is experienced by every new comer to another environment (1960, pp. 142–146).

Almost 80% of internationally mobile students agreed that from the very beginning they were excited to meet new group-mates and professors, new courses and new challenges. And even they had some living problems; they accepted them as just part of the newness. Later on the students started to notice the differences: they had to deal with transportation problems, shopping problems, communication problems, academic problems (meeting new courses and new requirements). The period of "internal crisis" was the reason why internationally mobile students become aggressive and start to complain about the host culture, people, academic staff etc. They started to reject the host country, complaining about local customs and traditions; and noticing only the unpleasant things that bothered them. Not many students took a positive attitude to the people of the new culture. Some of them remained frustrated rejecting the new culture and feeling uncomfortable in the new academic environment. About 75% of internationally mobile students suffered from several problems: insufficient linguistic and cultural skills, prejudice, homesickness and loneliness. Besides they mentioned problems of interpersonal dialogue with local students or even with the students from the Eastern part of the world because of lack of knowledge about cultures they belonged to.

The psychological impact of the influence of the host culture on the newcomer is expressed as follows: the international student feels emotional disorder, psychological confusion, even physical stress begins to appear. As Berry states (2005, pp. 697–712) **'different behaviours of sojourners**

compared to natives makes them mentally disturbed and feel incapable to protect themselves from mistakes as a result, culture fatigue emerge'. At the same time the new environment can have not only negative affects but positive intellectual impact upon the cultural and intercultural growth of international students. Cultural shock and misunderstanding the reality of the new environment may be also a positive force for educational impact to stimulate, motivate, and enhance the culture traveller's intercultural competence. According to the Wu, Garza and Guzman (2015), cultural intelligence is the ability to adapt successfully across different cultures; it consists of three dimensions including the emotional, motivational and physical in addition to the cognitive. We believe that international students should be strongly motivated to act on the new understanding of cues that they experience in the host culture. Some researchers as Adler (1975), Dodd (1995), Byram (1997, 1998, 2002, 2006) state that culture shock can be the right way to intercultural learning, to self-awareness and personal growth.

2.2. Case study in Latvia

Academic competence

Previous research on communicative competences of academic personnel by Drozdova (2021) allowed the author to reveal areas of interest for the present study – difficulties students have while studying in English in the multicultural environment. This data may help us understand what academic skills students need to possess, as well as, what components the academic competence may comprise.

Eleven students of the faculty of International Tourism (Poland (3), Ukraine (1), Lithuania (1), Belarus (2), Uzbekistan (1), France (2) and Latvia (1)) participated in the preliminary interview. Respondents were all students of Turiba University, some of them being full-time students, whereas some of them Erasmus students who studied part-time at the HEI.

Having analysed students' answers about their experience of studies in English it became evident that all of them improved their language skills in the first year of studies. On the one hand, some students stated that studies in English forced them to look for translations in L1 while preparing for lectures or tests; on the other hand, some students stated that the study process was simplified because of the literature available in English that allowed them to prepare for lectures and assessments.

Respondents were asked if they saw differences in studying in L1 or in English. Most students stated that studying in a foreign language was a "double load" since they were forced first to translate into L1, ask for peer-help from their group-mates or look for the explanations of new concepts. Some students from Lithuania, Uzbekistan and Belarus of lower level of English stated the difficulty of study process in English because of the limited knowledge of vocabulary, especially professional vocabulary in the English language. Students mentioned that they were forced to read in L1 before preparing for assessments, asked other group-mates from the same country of origin for translations into L1.

All students who were asked about the difficulty in understanding specialized terminology in English admitted that they needed a period of adaptation which lasted for several months before subject-field terminology was activated in the brain. Students stated that the problem in understanding professional terminology in English was also often connected with misunderstanding of concepts and the lack of knowledge of the exact translations of terms in L1. According to students several weeks were needed before they got used to new terminology.

Students and later lecturers confessed that students come with different levels of English language knowledge which can be an obstacle both for lecturers and students; some of them lack not only academic competence, but also communicative language competence.

Students stated that listening skills for academic purposes were developed more in the first year of studies, whereas writing for academic purposes was yet on the "shoulders of students", as well as reading skills were dependent on students' diligence to read additionally for the courses. Academic writing skills in English were stated to be developed later when students were expected to write term papers, reports and works of other academic genres.

Note-taking

Note-taking (NT) or note-making was studied as one of the important academic skills necessary for the successful process of studies in HEIs. It was defined as *'a mathemagenic activity'*, that gives birth to learning and facilitates it (Rothkopf, 1996), *'a crucial component of the educational experience'* (Dunkanel & Davy, 1989) used to retain information for recall during a test and to promote successful material acquisition (Drozdova, 2021, p. 64).

Twenty-four students of the Faculty of International Tourism filled in a questionnaire. They represented such countries as Germany (8), Turkey (3), Latvia (5), Belarus (2), Portugal (1), France (1), South Korea (1), Netherlands (1), Tajikistan (1) and China (1).

Having analysed the answers of students on NT it was possible to reveal problems students usually have while taking notes. Eleven options were offered (e.g., lecturer's intonation or stress, understanding of specialized terminology, unclear terminology, pronunciation, use of anaphora, use of cataphora, lecturer's accent and others), and students were asked to name what possible difficulties they have while listening to lectures in English and while taking notes.

Irrespective of language proficiency all students noted difficulty in understanding specialized/professional terminology; 17 respondents mentioned pronunciation of some specific words and 16 respondents stated accent of a lecturer as a difficulty in NT.

Students were asked on what deficiencies they have while taking notes. Ten options were provided to students, among them (Drozdova, 2021, p. 133): missing the idea while taking notes; not managing the lecturer's speech rate; forgetting what was said and not being able to take notes; forgetting what was said because the lecturer changes the theme too fast; not knowing meanings of terminology used; not being able to recognize where the main and supporting idea in discourse is and some others.

Sixteen respondents stated that they missed the idea while taking notes, 14 mentioned that they could not take notes because the lecturer changed the theme/topic too fast, 11 respondents could not manage lecturer's speech rate because it was too fast, as well as 11 students stated that they forgot what was said and could not take notes because the lecturer did not explain new concepts.

Intercultural competence

The previous research (Drozdova, 2021) also showed that students experienced different cultural problems while studying in the multicultural environment in a foreign language. Students' answers were studied and analysed and an overview is provided here.

Students were asked about the use of international examples during a course of lectures. All respondents admitted the necessity of international

examples in lectures and stated that **'lecturers were aware that it was international environment and used it for the benefit of culturally-mixed groups'** (ibid., p. 126). They were asked about preferences of lecturing styles by lecturers and their difficulties in understanding different lecturing styles. Answers showed that processing and understanding of different lecture styles – **memorization or reading, participatory or interactive, conversational or talk-and-chalk style** (Dudley-Evans & Johns, 2007; Bereday & Mason, 1983; Goffman, 1981; Frederick, 1986 in Drozdova, 2021, p. 63) can be a cultural issue too. For example students from Uzbekistan who got used to a more autocratic teaching style in their home country, "respect for scholars", tendency to listen carefully without interruptions (Lewis, 2006, p. 386) prefer and accept **reading style** of a lecturer, whereas students from France, Latvia and other countries like to participate in the lecture, enjoy asking questions and interrupting lecturers. Students from these countries mentioned **interactive** and **conversational styles** as the most applicable.

Students were asked about the problem in understanding lecturers' and other students' speech. They stated that one of the difficulties they encountered was pronunciation. One of the reasons of misunderstanding mentioned by students was pronunciation and local accent of speakers that was not familiar to them. For example, a student from Belarus mentioned that he could not fully understand students from Turkey and Azerbaijan; a student from Malaysia mentioned lecturers' problem in pronunciation, which in his opinion, made him not fully understand lecturers' discourse. He stated that it was due to the influence of L1 on the English language of the speakers.

Asking for clarification and explanation was another cultural point. Many students from China, for example, were reluctant to ask questions in the course of a lecture, but later wrote to lecturers or asked for individual consultations; as well as students from Uzbekistan or Azerbaijan were afraid to interrupt lecturers.

Students mentioned that speech may also be a cultural issue, for example, a student from Ukraine said that for her a slow speed of lecture delivery caused more difficulty and did not help in understanding a lecture; she also stated that Ukrainians are used to speaking faster than Latvians. However a student from Lithuania complained that he could not adjust to the fast speed of lecture by lecturers.

It was also noticed from contact with students of different cultural backgrounds that styles of education and educational procedures may vary and it can also have an effect on the learning process and academic performance, as a result. For example, Erasmus students from France noted that they had different study process in their home university, that is, a semester consisted of courses that were taught in succession instead of all courses taught in parallel.

Analysis of the results of interviews administered to lecturers

Nineteen lecturers from Turiba University were asked about the success of students studying in English in a multicultural environment. All respondents were experienced academic personnel lecturing in English from one to twenty years. They delivered soft science subjects, such as Marketing, Human Resource Management, International Management, Tourism Economics and others.

Sixty-four percent of lecturers stated that they chose conversational style, whereas only 18% stated that they preferred reading lecturing style. Lecturers mostly chose such types of activities as discussion (10 answers), group work (8 answers), students' presentations (8 answers), case-studies (5 answers), games (3 answers) and others.

Lecturers were asked if students needed to know professional terminology in L1 prior to the acquisition of it in English. Eight respondents answered that no prior knowledge was needed, although they agreed that in that case students were expected to work harder. Six respondents expected students to know terminology in L1 prior to the acquisition of it in a foreign language.

Asked about difference in working with domestic students and international students lecturers admitted the advantage of work in international groups. According to them **'international students had better language skills, wider horizons in professional matters and more practical skills than domestic students'** (Drozdova, 2021, p. 146).

Lecturers mentioned such difficulties of students that hinder from successful studies as poor language knowledge. According to them, students cannot follow the lecture, there are more chances of misunderstanding a lecture, they may have difficulty in expressing their ideas at a deeper level, they may fail understanding definitions and the content. Another difficulty mentioned was the inability of some students to switch from L1 to English: It's difficult for them to realize that speaking in a foreign language is different from

speaking in your mother tongue. It takes time to realize the particularities of the foreign language they are studying in, to start thinking in that language. A foreign language can't be simply equated to its grammar or vocabulary.

Lecturers also stated that there was a strong cultural factor. According to some of them, students from Central Asia are reluctant to ask questions or to participate actively in a discussion, since in their home countries, the lecturer is the authority and a student has a role of an obedient listener who follows the lecturer's instructions. The lecturers complained that this attitude obstructed students from successful interaction in the lecture and made them social outsiders in the class.

As a result of the study the framework of academic and intercultural competences was developed and the following components in respect to students studying in HEI in a foreign language in a multicultural environment were suggested in Table 1.

Table 1

Framework of academic and intercultural competences and recommendations to students

Academic competence	**Intercultural competence**
Student's ability to learn, to acquire new academic knowledge; the ability to analyse, synthesize the information, to structure a presentation, to take notes, to be able to study the information and to arrange it in a competent way (preparing for lectures and tests) in a foreign language; the ability to present subject-related information in a coherent and cohesive way.	Student's sociocultural experience and knowledge, relation between culture and other stakeholders in institutional context, as well as 'intercultural skills' and 'know-how' (savoir-faire) (CEFR, 2001, p. 104). Student's ability to bring his/her culture into relation with cultures of other stakeholders, adapt and be able to live in the academic and social environment of another culture.
Possible recommendations to students on how to develop the academic competence	**Possible recommendations to students on how to develop the intercultural competence**
• Develop your listening skills - prepare yourself for listening of big amounts of information; • be able to analyse and synthesize the information of a lecture; • be able to work with a big amount of literature in English;	• Be able to accept students and lecturers of different cultural background; be ready to accept culture of the host country and to share your culture with others; • develop your intercultural skills; • be culturally prepared in order to avoid culture shock;

• be able to study the information in English and to arrange it in a competent way (preparing for lectures); • be able to help yourself in lecture comprehension (ask the lecturer for clarifications, explanations, exemplifications; apply for peer-help from your group-mates, look for translations in L1; if you are not ready to process all the information of the course in English, read additional information in English or L1); • learn the techniques of taking notes in English (e.g. shortened forms, abbreviations of the terminology of the given subject, possible graphic, numerical forms of concepts); • be able to use your academic writing skills; • be able to participate in a lecture in English (individual work (e.g. presentations), group work, games, peer-work, etc.).	• be able during the lectures to give examples of your culture for the benefit of culturally-mixed group; • prepare yourself to different lecturing styles of a lecturer that may differ from the style in your home country (e.g. interactive, reading, conversational, etc.); • be able to understand speech (difference in pronunciation) of people of different cultures, • be able to adopt to different speed of lecture delivery; • be flexible and open to new cultural challenges in the educational environment.

Conclusions

Considering the above discussion on skills and abilities requested from students studying in English as lingua franca in a multicultural environment it was concluded:

1. The CLC by students (linguistic, sociolinguistic and pragmatic) is not enough for their successful performance in the academic environment in the institutional context. Studies in HEI in a foreign language also require skills, abilities and knowledge to study (academic competence) and readiness and ability to interact successfully with people of different cultural backgrounds (intercultural competence).
2. Although students cannot fully develop their academic and intercultural competences before their application for studies, they can become acquainted in advance with what academic study skills they will need; may find possible ways to improve those skills as well as have to be ready to develop academic and intercultural competences in the process, especially in the first year of studies.
3. The analysis of academic competence through the answers of students revealed that

- Irrespective of the level of the English language proficiency students can have problems in comprehension of a lecture and taking notes while listening to a lecture delivered in a foreign language. NT as an important academic skill is a part of academic competence and it can be complicated because of the fast speed of lecture delivery, students' lack of knowledge of professional terminology used in the course of a lecture, lecturer's choice of lecturing style, lecturer's pronunciation during the lecture.
- Students develop such methods and techniques as translation into L1, asking for clarifications and explanations of terminology, applying for peer-help, reading for information in L1. These techniques help students to comprehend a lecture and prepare for lectures and tests.
- Acquisition of specialized/subject-field/professional terminology is a time-consuming process that may take several months before new vocabulary is activated in the brain, however the process can be facilitated if students have prior knowledge in the field or know the terminology in L1, as well as find equivalent terminology in L1.
- At least one year is need for students to develop knowledge of professional terminology, to adapt to professional studies in a foreign language, id est., to develop academic competence.

4. The study showed that intercultural competence engages a complex set of skills, attitudes and knowledge and may include, for example, observation, listening, evaluating, adaptability, analysing, interpreting, stress management, metacommunication and many other skills.
5. Cultural dialogue that happened in the present study allowed looking at the problem of intercultural communication of students from different angles. Internationally mobile students from Moldova emphasized such cultural phenomenon as culture shock experienced by most of them in the new academic environment, while international students from different countries studying in Latvia mentioned such factors as lecturing styles, difference in educational procedures, difficulty in understanding speakers' pronunciation and accent and the influence of L1 on foreign language.

In conclusion the authors consider that students can help themselves before entrance to university by listening to lecturers or other presenters (e.g. Youtube, video or podcasts); reading extensively literature of different genres to extend general English language vocabulary and professional texts to better understand subject-field terminology of their future profession.

Since most of the academic and intercultural competence is developed during the first year of studies HEIs may provide a special course that trains students' competences, including, for example, academic writing, listening and NT skills, academic reading and speaking and other skills of academic competence, as well as a course in intercultural communication.

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PROCEDURAL MECHANISM FOR THE IMPLEMENTATION OF PUBLIC INTEREST IN THE CONTEXT OF CONSUMER RIGHTS PROTECTION

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Abstract

The practice of the last few years shows a significant increase in the number of consumer applications to public authorities for protection of their violated rights. As the main guarantor of consumer protection in the field of public administration, the State Consumer Rights Protection Authority bears a heavy administrative burden as a result. Consumer surveys show that they are indifferent to their rights, both in terms of their content and their protection. On the other hand, rules of civil procedure designed to ensure the right of access to a court are not an appropriate guarantor of public interest for consumers due to their complexity. As a consequence of all these circumstances, the current legal mechanism for consumer rights protection does not ensure a prompt and efficient process.

Keywords: consumer rights, protection, public interest, right of access to a court, public administration.

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Introduction

Relevance of the subject. The United Nations regulatory framework has been providing guidance for more than three decades that governments should establish or maintain legal and/or administrative measures to enable consumers to or, as appropriate, relevant organisations to obtain

redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible. Such procedures should take particular account of the needs of low-income consumers (UN General Assembly Resolution, 39/248, 1985).

The importance of consumer protection is also emphasized in national regulations. Paragraph 5 of Article 46 of the Constitution of the Republic of Lithuania enshrines the provision that the state protects the interests of consumers. Establishing the protection of consumer interests at the constitutional level first of all presupposes the significance of protected values and establishes the existence of public interest in consumer relations. The Constitution thus obliges state institutions to protect consumer rights. As a result, the state must establish an appropriate consumer protection mechanism, which should be effective.

Despite universally declared standards, consumers often face problems in defending their violated rights. This is shown by both case law and statistics in the field of public administration, as well as the position of consumers themselves. It is recognized that traditional litigation will not be appropriate in many consumer contexts. Most disputes between traders and consumers involve relatively small amounts of money, and the value of the claim will not justify the expense of seeking legal advice or going to court. Moreover, in many cases consumers and businesses may prefer a quick resolution to their dispute over the long drawn-out process of litigation. They may also seek to maintain their relationship after the resolution of the dispute or, at least in the case of businesses, to maintain a good reputation for future consumer dealings (Corones, 2016, p. 201).

The problem of the research: the current legal regulation does not ensure a quick out-of-court process for the protection of consumer rights and does not ensure a flexible judicial process.

The object of the research is the implementation of consumer protection mechanism in the field of public administration and access to justice.

The purpose of the research is to reveal and show the effectiveness of the consumer rights protection mechanism in public administration and access to justice and its relationship with public interest.

The tasks of the researches:

1) to analyse the implementation of the protection of public interest in the field of public administration on examining the practice of the State Consumer Rights Protection Authority;

2) to determine the advantages and shortcomings of legal regulation in the realization of the consumer's right to access to the courts.

The article raises and tests the hypothesis – does the current legal regulatory framework meet the expectations of consumers in defending their violated rights as an object of public interest?

The methods of the research:

1) the analogy method aims to evaluate the effectiveness of the realization of public interest in the field of consumer right protection in the Lithuanian State Consumer Rights Protection Authority and in court.
2) the methods of comparative and systematic analysis reveal the historical peculiarities of the implementation of the concept of public interest in Lithuanian civil proceedings, assess the changes in the legal regulation and practice in the protection of consumer rights;
3) the document analysis method, which reveals and evaluates the sources of law governing consumer rights protection and it ratio with public interest.

Abbreviations: SCRPA – the State Consumer Rights Protection Authority.

1. Consumer rights protection as a category of public interest implementation

Pursuant to Item 8 of Paragraph 1 of Article 12 of the Law on Consumer Protection of the Republic of Lithuania and Section 7 of this Law, SCRPA protects the public interest of consumers. If it is identified that public interest of consumers has been violated, SCRPA shall take measures to terminate the violation of public interest. In this way, SCRPA addresses the seller or service provider, offering them to terminate the breach of public interest within 14 days of receipt of this offer, and instructs the seller or service provider that SCRPA will file a lawsuit or statement (complaint) to protect public interest, unless the seller or service provider terminates the breach of public interest. Also, if SCRPA finds that the terms of the consumer contract are unfair, it shall apply to the seller or service provider to change, cancel or eliminate the unfair terms or conditions when concluding contracts with consumers within 14 days of receiving the offer, as well as instructs the seller or service provider that SCRPA will apply to the court with a claim or statement (complaint) for invalidation or amendment of the

unfair terms (conditions) if the seller or service provider does not comply with the offer of SCRPA.

In analysing the activities of SCRPA, statistical data should be distinguished according to the initiated administrative investigations in the field of consumer rights violation and initiated legal proceedings. As shown in Chart 3, in the period from 2015 to 2021, SCRPA has initiated 495 administrative proceedings against economic entities, notifying them of the termination of the violation of public interest of consumers. Respectively, in 2015 there were 119 proceedings, in 2016 – 97 proceedings, in 2017 – 69 proceedings, in 2018 – 54 proceedings, in 2019 – 39 proceedings, in 2020 – 54 proceedings, and in 2021 – 63 proceedings. The overall average per year is not high – about 70 proceedings. To date, an agreement process is still ongoing in 76 cases, of which 10 cases are from 2018, 8 cases from 2019, 24 cases from 2020 and 34 cases from 2021 (Notices concerning the termination of a breach of public interest of consumers). These data show that consumer rights protection in public administration is still taking a long time to resolve. This situation imposes a significant administrative burden on SCRPA.

The initiation of legal proceedings is a final measure in the protection of public interest. So, if the violation of public interest is not terminated, SCRPA shall apply to the court with a claim or statement (complaint) for the protection of public interest. However, SCRPA's practice in defending the public interest in court is not extensive. According to statistics shown in Chart 3, between 2015 and 2021, the authority has filed 28 lawsuits. Respectively, 4 lawsuits were filed in 2015 to protect public interest; 3 lawsuits – each in 2016 and 2017; 4 lawsuits – each in 2018 and 2019; 3 lawsuits in 2020 and 7 lawsuits in 2021 (Actions to protect public interest in the field of consumer rights). Thus, over the last seven years, the average number of lawsuits per year is just 4 cases.

The analysis of the case law, where the institution has approached the courts to protect public interest in the context of consumer rights, also reveals a small number of cases examined. The practical activities of SCRPA shows (Figure 1) that in the period from 2015 to 2022, 21 court decisions were issued recognizing the violation of public interest. Respectively, in 2015, 3 cases of violations of consumer rights were identified (Vilnius City District Court, 2-36687-391/2015, 2015; Vilkaviškis District Court, 2-1367-831/2015, 2015; Marijampolė District Court, 2-4803-570/2015, 2015), in 2016 – 1 case of violations (Vilnius City District Court, 2-1165-987/2016, 2016;), in 2017 – 3 cases of violations (Vilnius City District Court, e2-5679-433/2017, 2017; Vilnius City District Court, e2-5575-807/2017, 2017 Kaunas

District Court, e2-1009-475/2017, 2017), in 2018 – 4 cases of violations (Kaunas District Court, e2-8469-451/2018, 2018; Klaipėda District Court, e2-1817-901/2018, 2018; Vilnius City District Court, e2-22185-862/2018, 2018; Vilnius City District Court, e2-23143-608/2018, 2018), in 2019 – 3 cases of violations (Vilnius City District Court, e2-4426-1089/2019, 2019; Vilnius City District Court, 2-30732-820/2019, 2019; Vilnius City District Court e2-9704-960/2019, 2019), in 2020 – 3 cases of violations (Šiauliai District Court, e2-10685-1051/2020, 2020, Kaunas District Court, e2-10705-921/2020, 2020, Vilnius City District Court, e2-1786-294/2020, 2020), in 2021 - 2 cases of violations (Vilnius City District Court, e2-17625-1134/2021, 2021; Vilnius City District Court, e2-20295-862/2021, 2021), and in 2022 – 2 cases of violations (Klaipėda District Court, e2-1291-1030/2022, 2022; Vilnius City District Court, e2-3753-1077/2022, 2022).

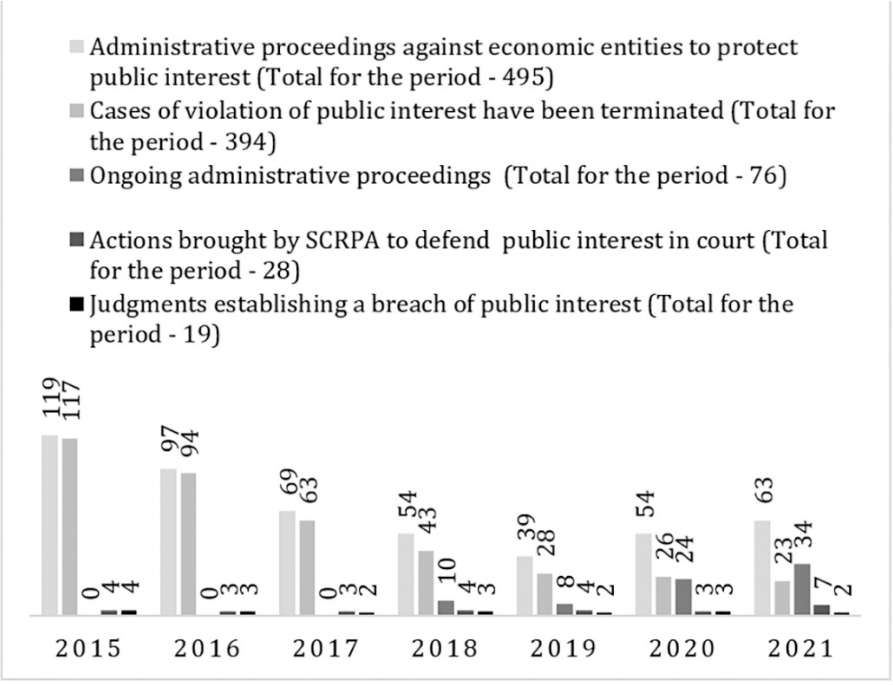

Figure 1. **Statistics of public interest protection in the field of consumer rights in 2015–2021**

2. Peculiarities of the implementation of public interest in the protection of consumer rights in the State Consumer Rights Protection Authority

The State Consumer Rights Protection Authority is an agency under the Ministry of Justice, which was established to implement public policy in the field of consumer protection. SCRPA is the main institution responsible for the enforcement of consumer policy and market surveillance of non-food products and tourism services. SCRPA carries out enforcement actions in the following areas: unfair commercial practices, misleading advertising, e-commerce, product safety, market surveillance of non-food products, tourism market surveillance, unfair contract terms and other violations of consumer protection requirements. In addition to its consumer protection enforcement functions, SCRPA is also the main alternative dispute resolution (AGS) body. SCRPA also performs a variety of monitoring activities in different fields in order to avoid consumer protection infringements and provides traders with methodological support regarding efficient compliance with legal requirements. Being the main consumer protection body in Lithuania, SCRPA organizes and conducts educational activities for consumers, traders and service providers and every year undertakes more than 80 seminars for traders and consumers, performs various consumer awareness raising activities, prepares publications and participates in TV and radio shows. The mission of SCRPA is to ensure a high protection level of consumers in the Republic of Lithuania through the building of a consumer rights protection system aligned with European Union law (Status of the State Consumer Rights Protection Authority).

Nevertheless, the State Audit Report of the State Audit Office of the Republic of Lithuania of 16 July 2019 states that the coordination of the implementation of the consumer rights protection policy is insufficient and does not adequately ensure that institutions take effective measures to protect consumer rights (State Audit Office of the Republic of Lithuania, No. VA-4, 2019). As a result, the State Audit Office recommended to ensure that the performance of institutions responsible for consumer protection is periodically assessed and that the information required for the development of consumer protection policy is managed. Pursuant to this recommendation, the Ministry of Justice of the Republic of Lithuania has prepared a description of the procedure for coordinating activities in the field of consumer protection. The description stipulates that state authorities shall annually

provide information on activities of the subjects of out-of-court settlement of consumer disputes in accordance with their competence. The annual review of the state of consumer rights protection and activities in the field of consumer rights protection in 2020 highlighted the issue of consumer complaints (Annual Review of the State of Consumer Rights Protection and Activities in the Field of Consumer Rights Protection in 2020). During 2020, 14,582 consumer requests and complaints were received by state institutions, of which 9,462 were substantiated, i.e. 65 percent of complaints. 9,928 consumer requests were received by SCRPA and 4,654 by other institutions. Thus, the majority of applications, nearly 70 percent, in 2020 were processed by SCRPA. It is therefore appropriate to further analyse the long-term activities of SCRPA in the context of consumer requests.

During 2021, 42,212 consumer applications were made to SCRPA regarding possible violations of consumer rights or information on the protection of consumer rights. Respectively, in 2020 there were 34,914 applications, in 2019 – 31 126 applications, in 2018 – 27 573 applications, in 2017 – 25 037 applications, in 2016 – 20 042 applications, and in 2015 – 16 603 applications. During the mentioned seven-year period, consumers applied to SCRPA as many as 197,507 times. Figure 2 below shows the apparent increase in the number of applications from 2015 to 2021. Since 2015, consumer access to the service has increased by 60 percent and the average processing time for applications increased steadily from 5 working days (2015) to 15 working days (2021), i.e. 3 times in seven years. The increase in the number of applications is also consistent every year. Applications to SCRPA were submitted requesting them to deal with a wide range of issues, including disputes between consumers and businesses, as well as information or clarification on consumer protection, non-food market surveillance and supervision of tourism service providers.

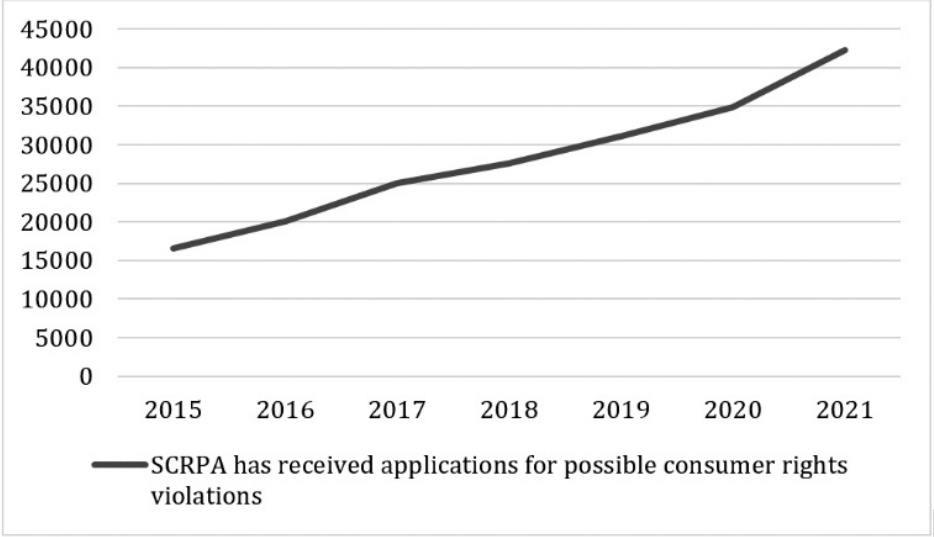

Figure 2. **Applications for possible consumer rights violations**

In order to assess the effectiveness of SCRPA's activities, it is important to examine the results of handling of the complaints. Between 2015 and 2021, SCRPA investigated and responded to 44,015 consumer complaints. Respectively, in 2021, SCRPA examined and answered 8979 consumer complaints, in 2020 – 8646 complaints, in 2019 – 6594 complaints, in 2018 – 6319 complaints, in 2017 – 5739 complaints, in 2016 – 4050 complaints, and in 2015 – 3688 complaints. The number of consumer complaints received has gradually increased over this period. This can be seen from Figure 3, which also shows that out of the 44,015 consumer complaints mentioned, 4,096 were referred to competent authorities, 7,631complaints were suspended or refused, 3,097 times SCRPA response or explanation was provided and information requested, and 30,469 consumer complaints were examined out of court. It is also important to note that the number of consumer complaints investigated has increased by 59 percent since 2015.

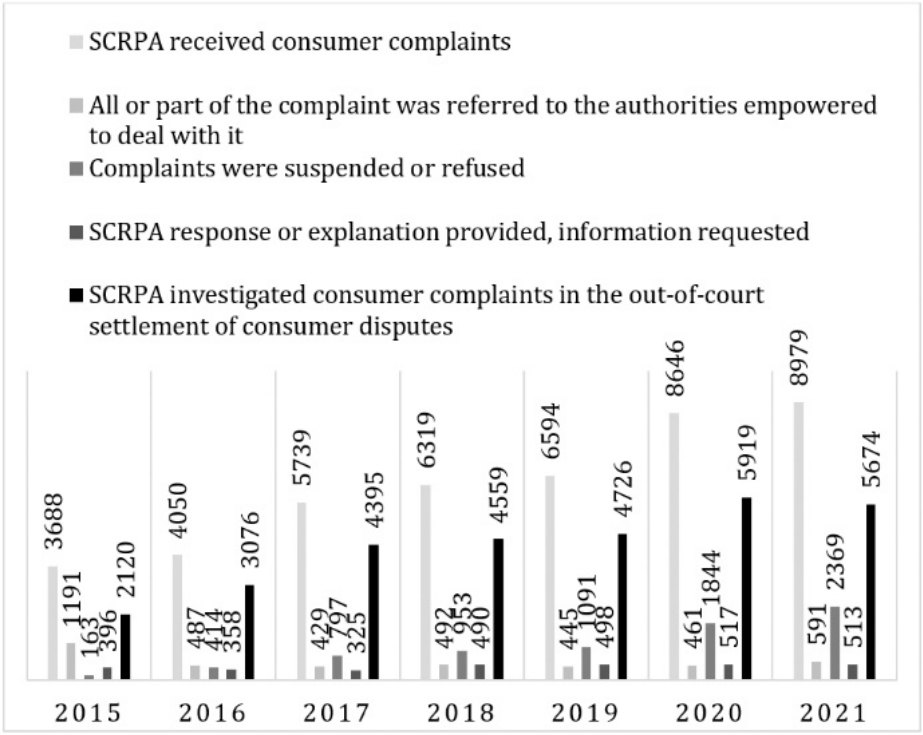

Figure 3. **Results of the handling of consumer complaints received by SCRPA**

Thus, the next stage of the investigation needs to focus on the results of consumer dispute resolution. An important aspect in this respect is the length of consumer dispute resolution. In 2021, the average duration of a dispute was 66 calendar days. Respectively in 2020 – 72 days, in 2019 – 79 days, in 2018 – 64 days, in 2017 – 56 days, in 2016 – 56 days, in 2016 – 43 days. There has also been an increase in the length of consumer dispute resolution over the last few years. One of the factors that may have led to an average increase in the duration of dispute resolution is the increase in the total number of consumer applications.

With the number of applications to SCRPA growing rapidly and in order to reduce the workload of other departments of SCPRA related to counselling, the Personal Services and Counselling Division was established in 2021. This Division provides prompt and comprehensive advice and service to users and legal entities orally, by telephone, e-mail and on SCRPA Facebook account. In essence, the entire counselling process is consolidated in the

Personal Services and Counselling Division, with only exceptionally complex cases requiring specialist knowledge referred to specialized divisions. According to the report of the analysis of applications and inquiries of persons submitted by the institution in 2021, the achieved result is extremely prompt – the efficiency of provision of consultations and the smoothness of the process. The time for providing consultations has been reduced to 1–2 working days (for inquiries that require additional information to be collected – up to 5 working days), although it was often necessary to consult on complex issues and resolve conflict situations. As mentioned earlier, in 2021, SCRPA's specialists provided 42,212 consultations, of which 23,000 inquiries were answered by the Personal Services and Counselling Division. Although the increase in the number of consumer inquiries (an increase of 35% since 2018) has been addressed through the creation of the new Division, has this solved the problem? It will be possible to give a clear answer after at least a few years of practice, but today it can be assumed that such a structural reform of SCPRA will help consumers to provide more information than to resolve actual out-of-court disputes, because the statistics show that the problem is not in consumer consultation but in resolving their disputes.

3. Consumer rights violations and their protection at the courts

Despite the fact that the state has established an institutional mechanism for the protection of consumer rights in the field of public administration, consumers face problems in accessing the courts. Legal studies show that consumers face a number of challenges in accessing justice (Loos, 2015, pp. 123–125):

1) The first problem is that consumers are not aware of consumer rights. Where consumers believe they are not entitled to a remedy or where, already from the outset, the monetary value of a potential claim does not outweigh the assumed cost and effort in obtaining that remedy, consumers will simply take their losses. Where consumers want to enforce their rights by taking legal action, they are faced with formal proceedings and language that is difficult to understand for laypersons.
2) The next obstacles are related to the practicalities of communication between the parties: the consumer may need written evidence of

his/her complaint, or may have to notify his/her complaint within a fixed or a reasonable period after its (presumed) discovery. The first of these obstacles relates to the requirement that a party, before being allowed to go to court, in some legal systems must be able to prove that prior communication has taken place between the parties.

3) Another obstacle is the fact that the consumer must be perseverant. A court procedure takes a long time, in particular if the court orders the hearing of witnesses or requires an expert opinion. Where such means of gathering evidence are used, in many countries the procedure is likely to take over a year. Moreover, where the parties are given the possibility to appeal against the judgement, the length of the procedure is more than doubled.
4) The most important burden involved with submitting a claim to the court in a consumer case is undoubtedly the fact that the consumer's claim often is of a relatively low financial value, which often does not justify bringing the claim in the first place. Costs for travelling, legal assistance or when costs are incurred during the hearing of witnesses and expert opinions may be higher than the value of the claim. Most problematic for consumers is the fact that the losing party is required to pay the other party's legal fees. These costs cannot be controlled by the consumer in any other way than by refraining from the procedure altogether.

Looking at the peculiarities of Lithuanian legal regulation on the implementation of public interest in the context of consumer protection, it should be noted that despite the fact that the Lithuanian Constitution declares the importance of consumer protection, the implementation of the right of an individual consumer to apply to a court in Lithuanian civil proceedings is not fully harmonized with the requirement enshrined in the Constitution (Jucevicius, 2020, pp. 32–43). The possibilities of the consumer as an individual to defend his/her violated rights in Lithuanian civil proceedings are associated with only a few benefits. First, the consumer's action can be brought in the court of his/her place of residence. Second, consumers are exempt from stamp duty in cases of unfair terms in consumer contracts. However, in terms of procedural protection of rights, consumers in Lithuanian civil proceedings are not provided with appropriate procedural guarantees, as in certain cases: peculiarities of family, employment, public procurement and concession cases should be mentioned. In these cases, the proceedings are conducted exclusively with the court granting more rights and

obligations than in the normal individual proceedings in order to ensure more effective protection of public interest. Consequently, these and other remaining issues related to the examination of an individual claim are resolved by applying the general rules of civil procedure. The problems identified in the protection of individual consumer rights in civil proceedings presuppose a lack of effectiveness of the public interest protection mechanism. This is also shown by the case law of Lithuanian courts in consumer rights protection cases (Case statistics reports, Table 1).

Table 1

Report on civil proceedings (in the courts of first instance)

Cases on the protection of customer rights by calendar year	The remaining untried cases at the beginning of the reporting cycle	Received cases	Cases heard	Duration of proceedings		
				up to 6 months	from 6 to 12 months	12 months and longer
2021	41	104	85	52	22	11
2020	36	95	90	59	24	7
2019	18	66	49	36	10	3
2018	16	55	53	32	16	5
2017	9	40	34	15	13	3
2016	13	35	36	24	11	1

Several important aspects can be noted in the evaluation of these statistics. First of all, there is a clear increase in the number of cases received in court each year. The number of cases received in the last two years (from 2020 to 2021) represents 50% of all cases received in that period. Second, the duration of the proceedings has lengthened. Naturally, the second aspect is directly determined by the first. These two aspects are directly related to the effectiveness of consumer dispute resolution. Also, the fact that the number of consumer applications in SCRPA has increased significantly in recent years, at the same time, shows that consumers as individuals are trying to seek justice in court on their own.

Assessing the results of the cases examined, it can be said that SCPRA has succeeded in defending consumer rights in the context of public interest, but the number of lawsuits and cases heard is confusing. In order to see the real situation, the information provided by consumers themselves should also be taken into account.

The latest survey commissioned by SCRPA shows that consumers are not always aware of the content of their rights and the possibilities to defend them. The survey was conducted in early December 2021. A total of 1,004 respondents were interviewed (Consumer surveys).

The proportion of the population who are satisfied with their awareness of consumer rights protection is 49%. As many as 22% of those surveyed said their rights as consumers had been violated. The result is higher compared to previous years.

During a 12 month period, only 10% of the respondents have addressed a seller in writing regarding a violation of consumer rights. And this number is similar to previous year. And only 5% of the respondents have approached the bodies protecting consumer rights regarding infringement of their rights. This comes up to 16% from an overall number of consumers whose rights were violated.

As many as 61% of respondents who had their rights violated, but did not apply to consumer rights protection institutions, generally indicated that they did not want to waste time on writing an application. Only 6% of respondents used the services of SCRPA.

This survey shows that the situation in the context of consumer protection is complicated. It also shows that the SCRPA's data on consumer protection and data on litigation in consumer protection are just the tip of the iceberg. This means that the latency of consumer rights infringements is high. Consequently, there are significantly more cases of violation of consumer rights than are identified in the field of public administration of state institutions and case law in the administration of justice. It is important to note that consumers are one of the largest social groups in society. And even if we convert the statistics data proportionately to a larger group of the population, there would be more than two hundred thousand cases of consumer rights violations per one million inhabitants a year.

Conclusions

1. The ratio between the administrative procedures initiated by SCRPA and those still open shows that public interest is not effectively protected in the context of consumer protection. The main reason is that cases of possible violation of consumer rights in the field of public administration take too long to be resolved.

2. The practice of SCRPA over the last seven years has shown a significant increase in the number of consumer applications to the authority, both for information on their rights and for out-of-court consumer rights protection. SCRPA is most burdened with out-of-court consumer rights protection issues. As the number of pending cases in the institution increases, the terms of dispute resolution become longer. Despite the establishment of the Personal Services and Counselling Division within SCRPA, attention needs to be paid to increasing the efficiency of out-of-court settlement of consumer disputes.
3. Consumers' rights of access to justice implementation is not extensive. However, this is due to consumers' lack of awareness of the violation of their rights, on the other hand, the regulation of Lithuanian civil proceedings does not provide sufficient guarantees in the field of consumer rights protection. The effective implementation of public interest in the context of consumer rights must be ensured not only in the field of public administration but also in the administration of justice by the courts.
4. Recent consumer surveys show that there is a significant factor in latent consumer infringements: more than half of actual infringements remain unidentified. One of the key points in this regard is the lack of education for consumers about their rights and remedies.

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THE RECOGNITION OF THE INTEREST OF THE GROUP INLATVIAN GROUP OF COMPANIES LAW

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Abstract

The Latvian Group of Companies Law focuses on creditor and minority shareholder protection and is less concerned with pursuing the interest of the group. This research paper will look at the regulation of group of companies in Latvia. It will question whether the interest of the group is effectively recognised in the Latvian Group of Companies Law. The methodology used will be that of legal doctrinal and comparative research, legal theory method and reform agenda research. The research paper will conclude that creditor protection under Article 27, paragraph 5 of Group of Companies Law (Koncernu likums) is ineffective.

Keywords: group of companies, recognition of the interest of the group, Koncernu likums, Latvian Group of Companies Law, creditor protection, external shareholder protection, minority shareholder protection

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Introduction

A corporation is a legal entity that is distinct from its member. In other words, a corporation has a separate legal personality from its shareholders. The legal entity is capable of enjoying rights and being subject to duties. This premise is described as legal personality (Davies, 2008, p. 33). The group of companies emerged with the ability of a company to purchase or own stock of other legal entities (Blumberg, 1987, p. 55). In Latvia, it is acknowledged that economic concentration has progressed significantly and a group of companies' structure is used commonly.

A group of companies is regulated by a specially designed code of Group of Companies Law (*Koncernu likums*). The main purpose of separately regulating a group of companies is the protection of creditors and minority shareholders (Cabinet of Ministers decree No. 292 as of 6th May 2009). However, the group of companies is formed in order to pursue the interest of the group. The interest of the group is achieved by exercise of control (Dine, 2006, p. 43). It points to potential differences in concern between the purpose of *Koncernu likums* and market demand of the control.

This research paper will look at the regulation of group of companies in Latvia. It will question whether the interest of the group is effectively recognised in Latvian Group of Companies Law. The research paper will examine Latvian Group of Companies Law, more precisely: how a group of companies is organized; the right to give instructions; external shareholder and creditor protection.

From the perspective of recognition of the interest of the group current studies does not address the issue in satisfactory manner despite the identification of problem. The literature focuses more on matters of formation, capital and disclosure requirements in the fields of banking law, tax law and competition law.

Doctrinal legal research methodology will be used to focus on the letter of the law rather than the law in action. The regulatory basis for *Koncernu likums* is "the law on affiliated companies" (*Konzenrecht*) laid down in German *Aktiengesetz (AktG)*. The Portuguese group of companies' law (*sociedades coligadas*) implemented in *Código das Sociedades Comerciais* (*CSC*) is also based on German *Konzenrecht.* Comparative research method will support interpretation of legal norms because *Koncernu likums* is characterised not only as being vague and ambiguous, but also insufficient due to shortage of case law in respective fields (Grīnberga, 2020a, p. 7). As this research examines a comprehensively diversified environment of regulation of a group of companies, the legal theory will contribute to overcoming the shortcomings. Moreover, in the development of the conclusion, the reform agenda research intensively evaluates the adequacy of existing rules.

1. The definition of the group of companies

Article 2, paragraph 1 of *Koncernu likums* defines a group of companies as a dominant undertaking and one or several dependent companies. A dominant undertaking and a dependent companies create parent and subsidiary companies respectively. It is important to highlight Article 1, paragraph 1 of *Koncernu likums,* which provides that under the scope of *Koncernu likums* undertaking can be any type of commercial or capital companies and a natural person. A capital company or commercial company is a private limited liability company or a stock companydetermined by Article 134 of the commercial law (*Komerclikums).* Hence, the applicability of *Koncernu likums* compared to German model (*AktG*) is extended to private limited liability companies and natural persons.

Decisive influence is the key factor in forming a group of companies because a parent company (a dominant company) is a company with the decisive influence over one or more companies (Article 2, paragraph 2 of *Koncernu likums*) and a subsidiary (a dependent company) is a company under the decisive influence (Article 2, paragraph 3 of *Koncernu likums*). Moreover, the subsidiary can be under the decisive influence of multiple companies (Article 2, paragraph 3 of *Koncernu likums*) and *Koncernu likums* is not applicable, if a natural person holds all stock or shares of a company (Article 2, paragraph 4 of *Koncernu likums),* as well as in case of mutual participation the decisive influence can be also present (Article 5 of *Koncernu likums*).

According to Article 3, decisive influence is established by a group of companies contract or participation (*de facto* group). A group of companies contract is a management contract, a transfer of profit contract and both contracts are included in one (a management and transfer of profit contract). The management contract (*pārvaldes līgums*) determines that a company subjects its management to another company and shall be entered into writing. The transfer of profit contract (*peļņas nodošanas līgums*) determines that all or part of profits is transferred to another company and shall be entered into writing. German Article 291 of *AktG* (the control agreement and the profit or loss absorption agreement) has been transposed as a group of companies contract as described in Article 3, paragraph 2 of *Koncernu likums.* German Article 292of *AktG* (other inter – company agreements) of agreements of profit pooling and the company lease or surrender has not been transposed in *Koncernu likums, with the* exception of German Article 292 of *AktG* of partial absorption of profit or loss agreement because transfer of profit contract in Article 3, paragraph 2

of *Koncernu likums* covers it. A participation in Article 3, paragraph 3 of *Koncernu likums* should not be interpreted as a simple participation in Portuguese group law (Article 483 of *CSC*) or as a participation in Dutch group law provisions (Article 2:24c of Burgerlijk Wetboek (*BW*)), but rather as German majority participation (Article 16 of *AktG*). The decisive influence in participation stands, if at least one of these circumstances is present: majority voting; control over majority of votes; has the right to appoint or remove majority of members of supervisory or executive body; has exercised the right to appoint majority of members of supervisory or executive body during the accounting year. Additional conditions shall be taken into account in order to determine company's "majority' voting, appointing and removal rights: other companies' or persons rights who/ which act in its interests (Article 3, paragraph 4 of *Koncernu likums*); held shares or stock on behalf of another company or person, as well as shares or stock held as collateral should be excluded (Article 3, paragraph 5 of *Koncernu likums)*; shares or stock held by company itself, its subsidiary or person acting in its interests should be excluded from total voting rights (Article 3, paragraph 6 of *Koncernu likums)*. Participation group of companies is created more often than contractual (Grīnberga, 2020a, p. 8).

The decisive influence can be direct or indirect. It can be complicated to identify indirect decisive influence. The reason for that is Article 4, paragraph 3 of *Koncernu likums,* which specifies that indirect decisive influence be exercised through another subsidiary company or a person who acts in the parent company's interests. Indirect decisive influence is generally and broadly defined, therefore, covers all possible indirect group of companies' subjects, with no specific criteria or case – law established. The main tool to interpret indirect decisive influence is Article 3, paragraph 3 of *Koncernu likums*. As a result, actions and rights are assessed in a diversified and complex environment of group of companies, which makes it difficult to identify the parent company in an indirect decisive influence relationship.

The takeover of a company is an instrument of creating and organizing group structure. *Koncernu likums* company takeover is comparable to German integration (Articles 319 and 320 of *AktG*) and Portuguese total domination (Articles 488–491 of *CSC*). In a takeover, corresponding companies retain legal independence, and therefore is not analogue to reorganization in the general company law (*Komerclikums*) or amendments to the articles of association. Article 35, paragraph 1 of *Koncernu likums* provides that a takeover of a company can take place, if one company owns

100% of shares or the stock. Besides that, Article 36, paragraph 1 of *Koncernu likums* institutes that a takeover of a company can be possible, if 90% ormore of shares or the stock is owned. *Koncernu likums* compared to German model (Article 320 of *AktG)* has a lower level of the share or the stock concentrationnecessary for performing takeover (integration) of the company. The duty toacquire remaining shares or parts of a company, whenever owning 90% of shares (as it is in Portuguese system (Article 490 of *CSC*)) is not implemented in *Koncernu likums*. The outcome of wholly owned or 90% owned subsidiary takeovers is the same; all shares or the stock of the subsidiary is owned by the parent company set by Article37 of *Koncernu likums.* Article 38 of *Koncernu likums* prescribes compensation as remedy for excluded shareholders. Compensation shall be in the form of a stock or shares of the parent company.

2. The right to give instructions in the group of companiesstructure

Based on the Article 26 of *Koncernu likums,* a parent company has the right to give binding instructions, which can be detrimental to a subsidiary's independent or autonomous interests. The precondition for exercise of such right is the conclusion of a management contract or a management and transfer of profit contract. Instructions can be detrimental with the meaning of losses caused to the subsidiary, but still within the interests of the parent company or any other company in the group. Instructions are binding because a subsidiary is not entitled to refuse to comply with issued instructions, even if a subsidiary considers the opposite. The exception for refusing tocomply with given instructions is "manifestly" not in the interests of a parent company or a group. In the event when the supervisory board does not give required consent, the parent company shall be notified. The parent company can issue repeatedly respective instructions and required consent of the supervisory board is notneeded anymore. Furthermore, Article 18 prohibits a parent company from giving instructions to a subsidiary in order to terminate, amend or keep in effect a group of companies contract. Article 27 of *Koncernu likums* clarifies that binding instructions shall be given with the care of an honest and conscientious manager with respect to a subsidiary. Instructions inducing suspension of operations (administrative procedure), insolvency or liquidation (by a court order) is prohibited. It is important to highlight that

Article 27 of *Koncernu likums* obligation of the care of an honest and conscientious manager is analogous to Article 169 of *Komerclikums* performance of obligations as an honest and careful manager would. The power to give instructions is not far – off from the framework for limited liability companies in general company law (Article 210, paragraph 2 of *Komerclikums*), which grant the right to the meeting of shareholders to take decisions on issues that are in the competence of the board of directors or the council. It shall be acknowledged that a transfer of profit contract without added management contract brings only economic changes (Houwen et al., 1993, pp. 236–238). Therefore, the absence of legal structural changes, the right to give binding instructions is not bestowed on the parent company in the respective group of companies relationship.

According to Article 41, paragraph 1 of *Koncernu likums,* the right to issue binding instructions is provided in case of a takeover of companies, if 1) a management contract or 2) a management and transfer of profit contract is concluded. The difference is the parent company is entitled to give binding instructions to the taken over subsidiary without considering the disproportionality between the benefit of a group and prejudice of a subsidiary.

The parent company's right to give instructions to the *de facto* group of companies is regulated differently than contractual group of companies. Article 29, paragraph 1 of *Koncernu likums* construes the restriction to induce a subsidiary to enter into disadvantageous transactions or any other detrimental measures unless compensation for losses incurred as a result of disadvantageous transactions or detrimental measures is made. Article 29 of *Koncernu likums* is identical to German Article 311 of AktG. In literature it is understood that German Article 311 of *AktG* entitles the parent company in *de facto* group structure to give instructions to the subsidiary, but these instructions are not binding (Emmerich et al, 2001, p. 413). The same conclusion can be made for Article 29 of *Koncernu likums* because the board of directors of a subsidiary is induced merely by the parent company's issued instructions. Consequently, Article 29 of *Koncernu likums* indirectly recognises the power to give instructions of the parent company by limiting scope of it. The aforementioned instruction issuing is contrary to the Portuguese (*CSC*) system, where in a *de facto* group of companies the power to give instructions is governed by general company law rules. In order to maintain autonomy and independence of the subsidiary, power to give instructions or directions can be exercised only at arm's length with limited central control (Engracia, 2005, p. 376). In contrast,

Koncernu likums allows the exercise of a centralized management model to the greater extent in *de facto* group structure.

3. Creditor protection

Creditor interest protection in a group of companies structure is linked with preservation of the subsidiary's own independent and autonomous interests. By virtue of the inability of *Komerclikums* as general company law to safeguard those interests, a separate framework for protection of creditors in a group of companies structure has been established in *Koncernu likums*.

Article 19 of *Koncernu likums* sets the maximum amount transferable by a subsidiary to a parent company on the basis of an agreement on the transfer of profit contract. The maximum amount cannot exceed profit of the reporting year prior to the transfer. As stated in Article 20, paragraph 1 of *Koncernu likums,* in a relationship of a group of companies contract, a parent company has the duty to compensate losses incurred by a subsidiary in a reporting year, unless it can be indemnified from reserves (profit deduction). Losses of a subsidiary may be compensated only from those reserves, which are accumulated during the term of the group of companies contract. This is an obvious deviation from general company law principle of limitation of liability of the company settled in Article 137, paragraph 2 and 3 of *Komerclikums,* i.e. the company is not liable for the obligations of its shareholders and vice versa.

The notion of losses in a reporting year is fitting for transfer of profits, but is in question for safeguarding other interests of the subsidiary. Article 20, paragraph 1 of *Koncernu likums* matches German Article 302 of *AktG* and Portuguese Article 502 of *CSC*. In Germany, it is detected that losses from withdrawing assets whose value increases over time can stretch to multiple years, e.g. immovable property, participation in different companies, as well as profitable production plant (Wymeersch, 1993, p. 104). According to Portuguese (*CSC*) system, transfer – pricing, profit manipulation and use of subsidiary's facilities without payment are also considered as actions outside the framework of the concept of losses in a reporting year (Engracia, 2008, p. 29). It is a matter of concern whether Article 20, paragraph 1 of *Koncernu likums* will cover losses from withdrawing assets and accounting manipulation. In Portugal, the risk of circumventing duty to compensate losses of a subsidiary in a reporting year is limited by providing in Article 501 of *CSC* direct liability of the parent company for the subsidiary's creditors.

According to Article 27, paragraph 5 of *Koncernu likums,* a creditor can raise a claim for losses suffered, insofar as satisfaction of his or her claim is not covered by the subsidiary, if a management contract or a management and transfer of profit contract has been entered into. From the wording of Article 27, paragraph 5 of *Koncernu likums* it is not clear whether a creditor can claim losses suffered only from the parent company's lawful representatives or also from the parent company itself. Important consideration can be made to the argument that Article 27, paragraph 5 of *Koncernu likums* is under the section of liability of lawful representatives of a dominant undertaking (parent company). German Article 309, paragraph 4 of *AktG* is identical to Article 27, paragraph 5 of *Koncernu likums.* In the German case law an extensionof the creditor's right to directly satisfy claims for losses suffered against the parent company itself is established, based on Article 309, paragraph 4 of *AktG* (BGHZ Urteil vom 24 Juni 2002). So far Latvian lower court case law reflects an approach of limiting rights of subsidiary's creditors only to satisfaction of losses suffered from parent company's lawful representatives, therefore, excluding the parent company itself (Judgment of the Chamber of Civil Cases of the Riga Regional Court of 17 September 2013, Paragraph 7).

If a management contract has not been entered into, the parent company, in line with Article 33, paragraph 1of *Koncernu likums* has the duty to compensate or grant the relevant right to claim compensation for losses caused for disadvantageous transactions (or any other disadvantageous measurers) within a reporting year. A parent company cannot circumvent previously mentioned obligation on grounds of suffered losses by the same transactions. The difference with Article 20, paragraph 1 of *Koncernu likums* is that the scope of Article 33, paragraph 1 of *Koncernu likums* is narrowed down to disadvantageous transactions or other detrimental measures only. Disadvantageous transactions or other detrimental measures are not analogous to losses in Latvian Civil law (Grīnberga, 2020b, p. 2). Referring to transparency rules of Article 30 of *Koncernu likums,* in a report on dependency, disadvantageous transactions or any other detrimental measures should be singled out. However, Article 33 of *Koncernu likums* is identical to German Article 317 of AktG. The same criticism of the German (*AktG*) model of subsidiary's interest protection in *de facto* group can also be applied to Article 33 of *Koncernu likums*. It is not always evident, whether a transaction or a measure will be detrimental, which explicit transaction and to what extent (Houwen et al., 1993, pp. 236–238). Moreover, it is confidential information, therefore, other than shareholders, it is difficult to access

(Böhlhoff & Budde, 1984, p. 170). To counterbalance opacity of the report on dependency Article 31 of *Koncernu likums* constitutes mandatory examination by an auditor. The report on dependency together with annual financial statements is submitted to the Enterprise Register, which means the report on dependency is kept in the respective subsidiary's Enterprise Register case file (Strupišs, 2007, p. 13). The dependency report is not included in the list of restricted accessibility information (Decree of the Chief State Notary of the Register of Enterprises of the Republic of Latvia for 2021 No. 1-7/68). By submitting a written statement of reason, creditors can receive the report of dependency. The liability of the parent company for the subsidiary's creditors in *de facto* group is set in Article 33, paragraph 4 of *Koncernu likums* that states - even though a group of companies contract has not been entered into Article 27, paragraph 5 of *Koncernu likums* shall apply.

4. External shareholder protection

External shareholders in Koncernu likums are protected as minority shareholders. Shareholders of a subsidiary, which are recognised by Article 22, paragraph 1 of Koncernu likums, are precluded from receiving minority shareholder status: " the other party" to a group of companies contract; the parent company of "the other party" to a group of companies contract; a shareholder who is associated with " the other party" to a group of companies contract, on the basis of a group of companies contract entered into; a shareholder who holds all shares or stock of "the other party" to a group of companies contract. Interests of minority shareholders in a group of companies are balanced by indemnity, compensation (exit right) and redemption (buy out).

Rules on indemnity are stipulated in Article 23 of *Koncernu likums.* Minority shareholders shall receive appropriate indemnity annually, if a transfer of profit contract has been entered into. The minimum amount of indemnity is average profit from shares or the stock, which is calculated from profit before entering into a group of companies contract and further profit prospects. Indemnity payment may as well be received as due share of the profit for stocks or shares of the parent company.

The compensation mechanism instituted in Article 24 of *Koncernu likums* provides minority shareholders the exit right, if a group of companies contract has been entered into. Minority shareholders have the right to demand acquisition of his or her shares or the stock for appropriate

compensation. The obligation to acquire minority shareholders shares or the stock lies on the "other party" of the group of companies contract or in other words, correspond to the parent company. Compensation may be in a form of: share or stock of the parent company or money. Article 24 of *Koncernu likums* exit right of minority shareholders is indistinguishable from the settlement payment model vested in German Article 305 of *AktG*. In reference to Article 12, paragraph 3 of *Koncernu likums*, for conclusion of group of companies contract the acceptance of three quarters of the equity capital represented at a subsidiary's shareholder's meeting is required, which means that the minority shareholders role for negotiating appropriate compensation is confined (Wymeersch, 1993, p. 103).

Nonetheless, minority shareholders can seek judicial review of determination ofappropriate compensation, according to Article 24, paragraph 7 and 8 of *Koncernu likums,* which balances the interests of the parties affected by the group of companies contract. Moreover, determination of compensation for minority shareholders in the form of money in Article 24, paragraph 4 *Koncernu likums* has been scrutinized for not taking into account further profit prospects of the subsidiary as it is in Article 23, paragraph 3 of *Koncernu likums.* Assessment of profit prospects include margin of the subsidiary's future profits, which minority shareholders would be able to receive, if he or she had retained shares or the stock (Strupišs, 2007, p. 21). Precise indicators ofthe value of further profit prospects *prima facie* cannot be identified; it changes case by case. Notwithstanding, the exclusion of further profit prospects brings greater certainty. Reasonably potential financial gains are traded for legal certainty. Further, Article 23 of *Koncernu likums* rules on indemnity and Article 24 of *Koncernu likums* compensation mechanism have significant distinction in application scope. Rules on indemnity govern minority shareholders in circumstances, in which they remain in a participation position, while compensation mechanism regulates minority shareholder exit rights, i.e. withdrawal of participation in a company. This specific discrepancy is grounds for justifying separate settlement arrangements.

Moreover, minority shareholders of a subsidiary may request a buy out in line with Article 47 of *Koncernu likums*, if a parent company has acquired (directly or indirectly) 90 % of shares or stock of a subsidiary, but is not carrying out a takeover.

Conclusions and recommendations

1. *Koncernu likums* is a comprehensive and advanced set of rules for corporate groups. It is generally accepted that detrimental exercise of decisive influence in a participation relationship shall not be permitted at least to the same extent as under a group of companies contract. Hence, contractual and *de facto* groups are separately regulated. Establishment of a *de facto* group does not lead to complete subordination, interests of subsidiary are predominant and the parent company's right to exercise detrimental influence is limited. Anyhow, centralized management can be incorporated in both group of companies forms and no impediments or obstacles for pursuing the interest of the group can be detected. The takeover of a company has been criticized for being impractical and unnecessary adoption of German law because the parent company does not gain "anything" that would not be available to it without it. The aforementioned criticism is unreasonable on the grounds that in case of a takeover of company binding instructions can be issued without considering disproportionality between the benefit of a group and prejudice of a subsidiary, which is not granted simply with the conclusion of a management contract or a management and transfer of profit contract.
2. The ability to "steer" the group of companies has to be closely linked withadditional liability and other protective measures in the benefit of externalshareholders and creditors. External shareholders under the concept of minority shareholders in *Koncernu likums* are appropriately protected. Active and passive side of an intra – company relationship is taken into consideration. Separate settlement arrangements for rules on indemnity and compensation mechanism are justified and assured. Creditor protection under Article 27, paragraph 5 of *Koncernu* likums can be improved.
3. The interpretation of Article 27, paragraph 5 of *Koncernu likums,* by which creditors cannot directly satisfy claims for losses suffered against the parent company,is contradictory to the purpose of *Koncernu likums* to protect creditors. The parent company in a contractual group can issue binding instructions that can be even detrimental, but has no direct liability to creditors. Direct liability of the parentcompany would protect autonomous and independent interests of the subsidiary. It would also safeguard the subsidiary from asset withdrawal and accounting

manipulation. The application of Article 27, paragraph 5 of *Koncernu likums* is also important for the *de facto* group of companies.

4. Taking into account legal norm interpretation methods, it may be concluded that liability can be directly extended to the parent company within the Article 27, paragraph 5 of *Koncernu likums* and German case law proves it. In the light of all the abovementioned, there is no need to amend Article 27, paragraph 5 of *Koncernu likums* because the parent company's direct liability can be ascertained by the change in case law.

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INFORMATION AND COMMUNICATION TECHNOLOGIES LABORATORY OF TURIBA UNIVERSITY

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Abstract

The paper presents results on establishment and development of Information and Communication Technologies Laboratory at Turiba University. The aim of the laboratory is to provide IT department students the possibility to study and gain practical skills on the development and operation of digitally controlled devices which is currently one of the mainstream technologies in modern society. The paper provides an analysis of typical tasks which are in demand while developing digitally controlled devices, and describes laboratory equipment targeted to meet necessary requirements. The main aims of the laboratory establishment as well as the equipment used and skills which could be acquired with the use of this equipment are described. The students' projects implemented with the use of laboratory equipment in the Spring semester of 2022 are also described in this paper. All the equipment developed along with other laboratory facility are practically used to improve both knowledge and practical skills of the IT department students, which can help them to be more competitive at the labour market after graduation.

Keywords: ICT laboratory, IoT, microcomputers, software, hardware, control, sensors

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Introduction

The underlying idea of a laboratory was to provide the possibility both for students and researchers to work with equipment used in modern IT systems. The work on the laboratory infrastructure started in November 2021.

First of all, the most intensively developing areas of life where information technologies could be practically used were analysed. These are smart technologies, such as Smart Buildings, Smart Cars, Internet of Things, Robotics, Computer Vision and many others which involves deep integration of hardware and software.

Aiming to provide students practical experience in work with such systems, the basic equipment for Internet of Things (IoT) course, such as set of different sensors, small bots, such as line follower, RC-car, small-sized microcomputers such as Raspberry PI and Arduino, Robotic Arms, etc. were purchased.

With these sensors and additional equipment students can develop their small projects within the scope of the IoT course, as well as use them in student research works.

Another important aim of this laboratory is the possibility to carry out research work in IT-related field. A set of hardware equipment was purchased which is planned to be used for research on AI implementation in the field of industrial automation, computer vision, indirect measurements, etc.

To be more flexible in gaining necessary parts and components for devices, the laboratory is equipped with 3D-printer, which itself is also an object of research: its control algorithm written in C++ can be modified to research on different operation modes and their efficiency can be compared.

All these assumptions were taken into account during the laboratory establishment and will be described in more details in the following chapters.

1. Basic principles of Turiba University ICT laboratory

Modern society implies deep integration of digital technologies with the all other technologies, such as electrical, mechanical, hydraulic and other devices, decision making processes, automation solutions etc. One of the most important advances in the use of digital technologies is possibility to integrate all engineering and control technologies into a single environment able to perform itself autonomously with the minimum involvement of a

human interaction. Such approach is considered as the most promising nowadays, as it is aimed to replace the human labour with the machine being controlled with the use of digital technologies. This solution allows one to eliminate the probability of human errors during performance, improve the quality of operations, decrease human labour expenses, – thus, it is considered as a proper solution both from technical and economic points of view (Shafique et al., 2020).

Such changes in social and industrial trends requires novel specialists with the modern skills, who are able to design, develop and maintain digitally integrated systems. These specialists should, on the one hand, get all necessary knowledge to work with digital systems, such as be familiar with different programming languages, algorithms, computer system architectures, etc., and, on the other hand, should have at least basic knowledge of computer hardware, sensors and actuator basic operation principles.

With all these modern trends in mind, Turiba University established the Information and Communication Technologies Laboratory (ICTL), which is equipped with a basic set of a hardware, sensors and actuating devices and aimed at teaching students necessary elementary skills needed to integrate digital technologies with other engineering technologies.

One of the most widely spread areas which implies such cooperation, is the Internet of Things (IoT), which represents itself as a physical object equipped with sensors, processing device, software and other technologies aimed at exchanging data between interconnected devices using communication technologies such as the Internet (Madakam et al., 2015). Thus, Turiba University IT department introduced a related course into curriculum, aiming to use ICTL facility for acquiring practical skills.

2. Laboratory Hardware

To get students acquainted with the basic principles of hardware control with the use of microcontrollers, a set of simple digitally controlled electromechanical devices are used in the ICTL. They are Line Following cars, Spider Robot, automatic planting system EcoDuino and Robotic Arms. In order to learn basic principles of developing both simple and sophisticated control algorithms for IoT devices, the ICTL uses single-board computers such as Raspberry PI, Arduino and micro: bit. Also, laboratory facility include a set of different IoT sensors, such as different types of

temperature sensors, humidity sensors, smoke sensors, sound sensors, motion sensors, Hall sensors and many others.

Soldering Skills

One of the necessary skills in IoT systems development is soldering. As the majority of such systems consist of semiconducting electronic elements, it's good to have some practice with soldering printed board elements. With this aim, ICTL uses do-it-yourself (DIY) Robot Kits, such as Line Follower (Latif et al., 2020). These kits contain detailed instructions for device assembling, soldering and testing. The image of the assembled line follower is presented in Figure 1.

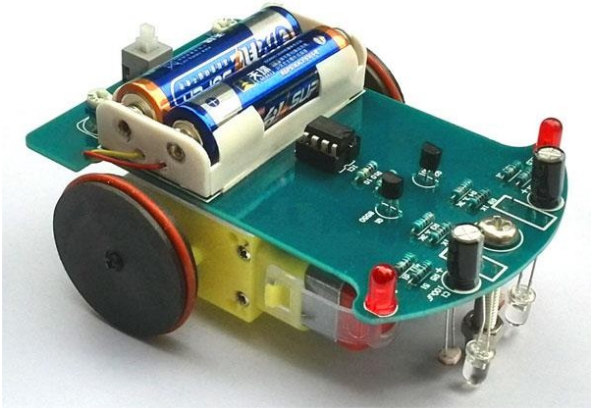

Figure 1. **Appearance of line following bot**

This robot includes two low-power electric motors to drive the robot wheels on both sides, LED and photoreceptor which forms sensor circuit, and LM393 chip with the control software algorithm. Car driving is based on the principle of the light reflecting difference between white and black items. Photoreceptors sense the length of the light wave reflected from the surface of a certain colour, and sends "on" or "off" signal to one of the wheel driving motors. As it states from its name, the robot should "follow" the black line drawn on a white surface, while this line should remain between the robot wheels (Figure 2). If the line curves, one of the sensors senses black coloured surface, and sends "off" signal to the wheel motor placed at the same side as the sensor, while the opposite wheel still rotates. Once sensors sense white surface again, it sends "on" signal to the motor wheel.

This is how the robot can make a turn, and this basic algorithm is programmed within LM393 chip.

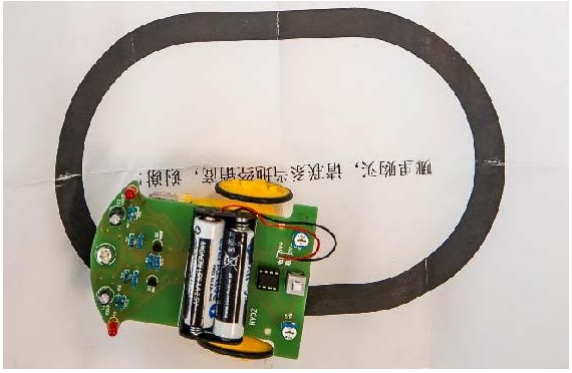

Figure 2. **Line following bot tracking black line route**

With the use of this robot kit, students could not only learn soldering and basic electronics principles, but also, with the use of additional programmer device, they can modify control algorithms and compare their efficiency.

The use of sensors

Another important skill in the IoT is the use and processing of data from sensors. With the aim to provide this type of knowledge, ICTL uses kits such as EcoDuino automatic planting system (Alvarado Moreno et al, 2018). This system could use different types of sensors, such as humidity, temperature, light intensity etc. To control the plant growth process, it could use different types of microcontrollers, such as Atmega32U4, or single board microcomputers such as Arduino or Raspberry PI. With this kit, students could learn signal processing, starting from collecting analogue signals, representing them in digital form with the use of analogue-digital converters (ADC), adjusting them to real-life values, processing signals or representing the values to users, computing and performing control signals. In the simplest case, the planting system uses single soil moisture sensor, which should be installed in the soil near the plant, and an electrically driven pump installed in the water tank. Sensors analyses soil moisture, and, depending on software settings, produces a control signal to start or stop pumping. Students can trace the signal transformation route starting from its analogue form, coming from the humidity sensor, then its transformation into digital form with the use of inner ADC, signal processing with the use of control software,

computing control signal to the pump and sending it back to physical device. Additionally, the system could be equipped with networking devices, such as WiFi or ZigBee modules to send all information to remote PC for representation with the user interface. The image of EcoDuino is presented in Figure 3.

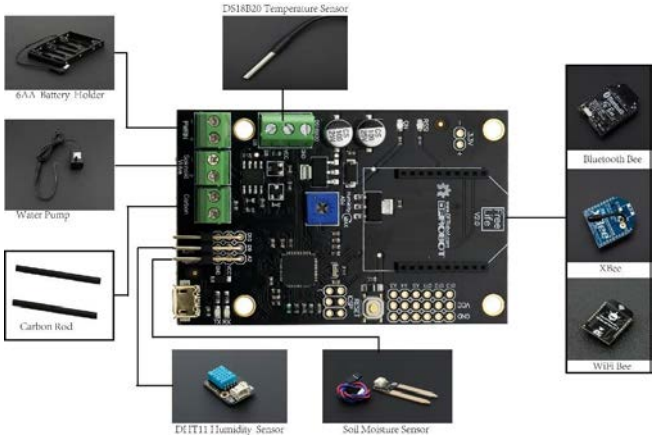

Figure 3. **EcoDuino system components**

Study of control algorithms

Another one important component in developing IoT systems is understanding the principles of development of control algorithms. One of the most popular solutions to meet this aim is the use of robotic arms. The robotic arm represents itself as a mechanical programmable device resembling a human arm. Nowadays typically it is an electronic device, with the use of electrical stepper motors to perform arm movements and a processing device to perform control algorithm execution. Typically, robotic arms could have 2 to 7 degrees of freedom, which determines the complexity of their control algorithms and operation performance. Robotic arms currently are widely used in different industries; thus, the study of their operation principles could help students to gain some practice with typical real-life tasks.

ICTL is equipped with two different robotic arms: simple Robot Arm Kit for micro:bit and more advanced Arexx RA-1-PRO robot arm.

The first one is a special kit designed to operate with either micro:bit or Raspberry PI single board microcomputers (Ball et al., 2016). Apart from the microcomputer, this kit contains 16-channel servo drive control board to control arm movements in different directions. The micro:bit microcomputer

could be programmed with the use of one of the popular programming languages, such as Python or JavaScript. After source code designing, it translates into *.hex file, which could be sent to the microcomputer with the use of a USB connection. Additionally, the micro:bit is equipped with a Bluetooth module, which allows one to establish remote control to the device. Also, Bluetooth allows students to develop smartphone-based software to control robotic arm movements. The image of micro:bit Robot Arm Kit is presented in Figure 4.

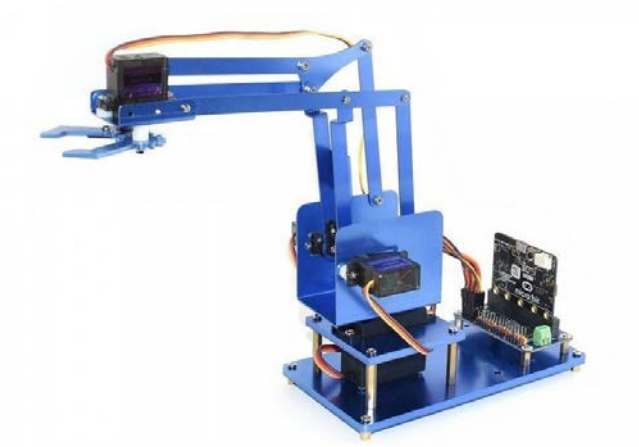

Figure 4. **Appearance of micro:bit Robot Arm Kit (assembled)**

The second device is more complex, larger in its dimensions and can perform more complex operations. It contains 6 servo motors, control board and adapter for programming in C language via USB (Buck et al., 2019). This arm could provide students the possibility to gain real experience with lower level programming, paying attention to direct interaction with the hardware of the robotic arm. The image of Arexx robotic arm is presented in Figure 5.

Figure 5. **Arexx robotic arm**

Another solution which could be used to study control algorithms, is Totem Maker Gripper Bot. This device provides the possibility to study remote control algorithms, with the use of Bluetooth data transmission, and also it could be used as a base for developing small- sized sample of a self-driving robotic car while equipped with video camera and more powerful control device, such as Raspberry PI.

Study of computer vision systems

Modern IoT systems could also provide the possibility to recognize shapes and even more complex images, which could be used for different purposes, such as developing software for security systems, self-driving car algorithms, shape and object recognition, indirect dimensions computation etc. With this aim, ICTL uses web-cameras and specialized Raspberry PI cameras, which allows to carry out research such as the study and research of image recognition algorithms and systems.

The use of 3D printer for the laboratory needs

An important thing for successful ICTL development is the possibility to have all the necessary parts and components for IoT devices. However, it is not always possible to purchase them and get them as quickly as needed. To

evade this restriction, ICTL uses 3D printer, which, on the one hand, is used to create the parts necessary for IoT devices, and, on the other hand, could be used itself in student research projects to investigate its control algorithms, modify them and compare their efficiency. Also, students have the possibility to learn principles of developing drawings for 3D printing, use design and control software with different settings.

3. Student Projects

As result of the first 5 months of ICTL existence, several student projects were implemented within the IoT course, which were presented during the final exam. Figure 6 shows micro:bit Robot Arm controlled project with the use of Android application operating via Bluetooth, and Figure 7 shows a sample of a developed control algorithm script.

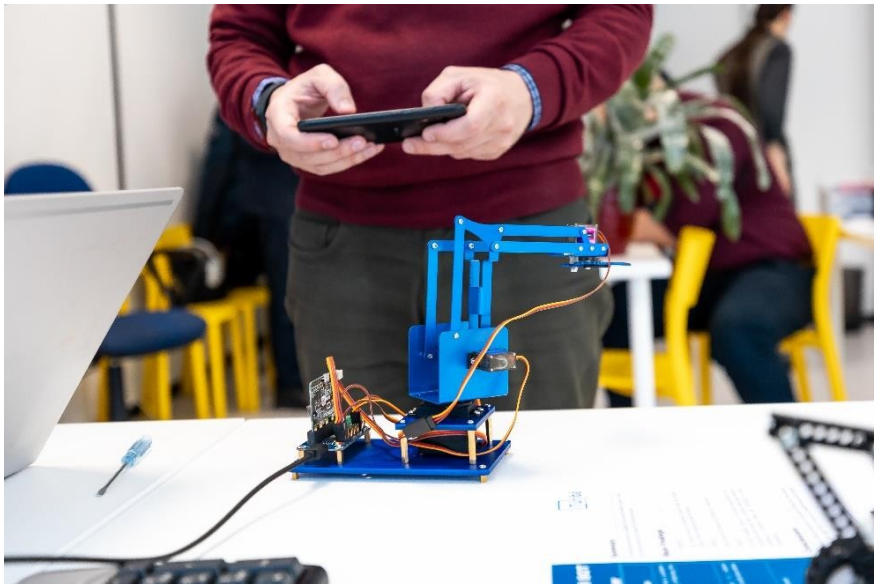

Figure 6. **Testing of micro:bit Robotic Arm project**

Figure 7. **Sample of developed control algorithm script for micro:bit Robotic Arm**

Figure 8 shows line following bot projects. Two independent students have implemented this project with the separate development kits.

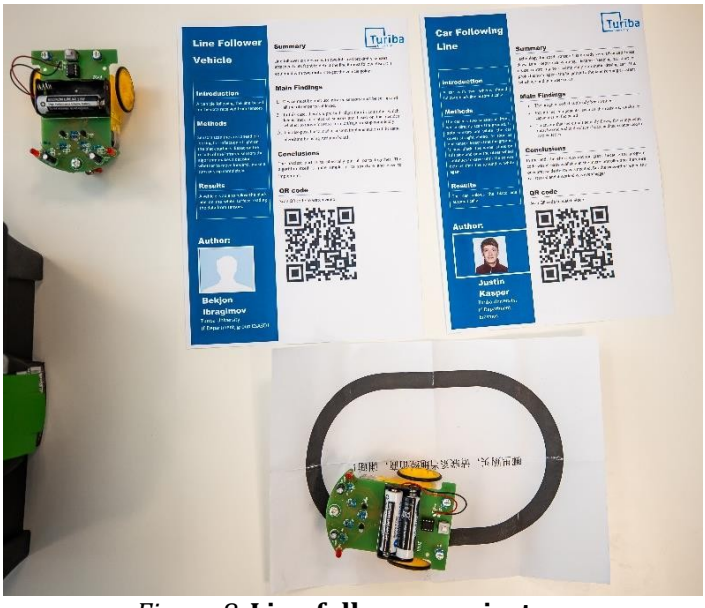

Figure 8. **Line follower project**

Implementation of the EcoDuino project involved a lot of hardware debugging and adjusting operations, as this was one of the most complex projects during this course (Figure 9).

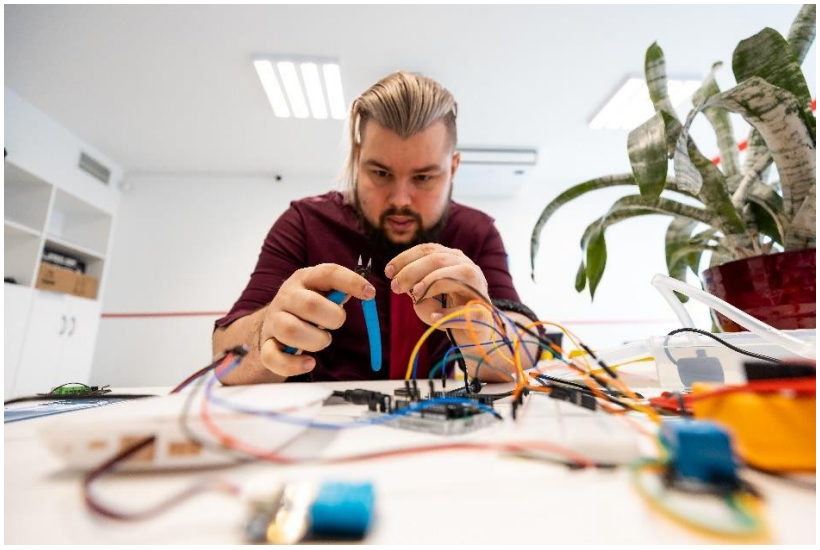

Figure 9. **Debugging process during EcoDuino project implementation**

Another project implemented during this course relates to Gripper Bot remotely controlled with a Bluetooth Android application (Figure 10).

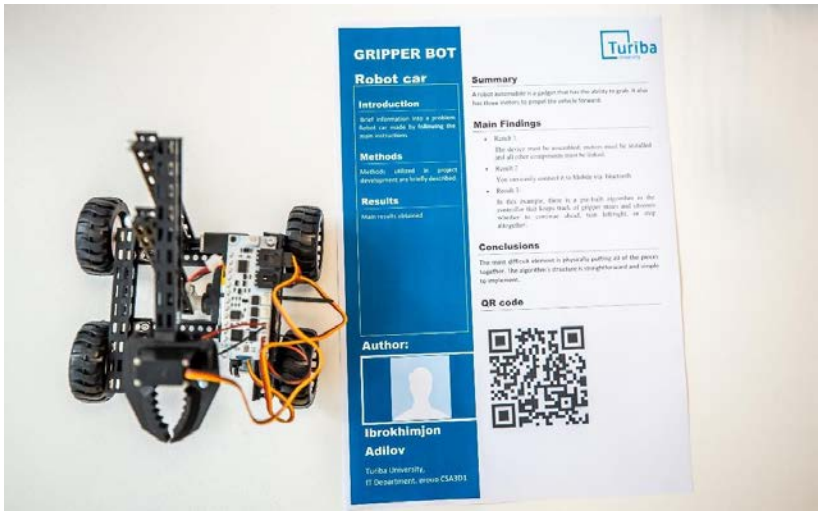

Figure 10. **Gripper Bot project**

4. Researches based on ICTL

Another important aim of the laboratory is the possibility to use its facilities to provide scientific research work. Thus, ideas that arose during the laboratory infrastructure establishment, were realised as 2 published scientific papers and another 2 papers submitted for publication. Another research direction relates to the investigation of different types of sensors within the ideas of Smart Buildings and Self-driving cars. The main control algorithm for such systems typically could be implemented within microcontrollers or microcomputers, such as Raspberry PI or Orange PI, which have enough computing resources to perform preliminary processing and control signals, and also to transmit information to more powerful computing device via network. Currently, the laboratory infrastructure is used to provide experimental work on the use of computer vision for providing indirect object dimensions measurement, which could be practically used in different areas of the industry where there is a problem or complexity in direct measurements implementation.

Conclusions

The paper presents an overview of the results obtained during establishment of ICT laboratory at Turiba University and its operation during the first five months of its existence. The idea of the laboratory establishment as a media to provide students practical skills in development, operation and maintenance of digitally controlled devices, which have become one of the most rapidly developing mainstream technologies in IT society during last decade, was justified. The basic knowledge and skills which could be gained in the laboratory while working with different types of technologies, was explained and substantiated. The results obtained during student project implementation within the scope of IoT course were demonstrated. The necessity of the laboratory in development IT-related scientific work at Turiba University, was shown. In general, the results gained could be considered as a good starting point for the laboratory, which allows students gain necessary knowledge to be more competitive in the modern IT labour market.

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FAMILY DISPUTE RESOLUTION PRACTITIONERS' SUBJECTIVE EXPERIENCE AND ATTITUDE ON COMPULSORY FAMILY MEDIATION IN AUSTRALIA

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Abstract

The goal of this research is to examine the advantages and limitations of compulsory family mediation (CFM) as well as to understand subjective experience and attitude towards CFM from the perspective of family dispute resolution practitioners in Australia. The qualitative research method was chosen for this research. Information was collected using the semi-structured interview method. The data analysis method was based on inductive thematic analysis. In completion of the data analysis, 4 main themes were identified: CFM is better option for conflict resolution, limitations caused by factors outside of the process, mediators create safe space to process disputes & emotions, the benefits of CMF on mediators. Findings of this study suggest that the practice of CFM is worth being embraced and that there are benefits to be had from an increased use of compulsory family mediation, both for families and legal system in Australia. The practitioners are optimistic of compulsory family mediation, which they believe will enhance society's quality of life. CFM also has benefited mediators' personal lives by strengthening their personal values and beliefs, and how they perform their jobs as family mediators.

Keywords: compulsory family mediation, alternative dispute resolution, family dispute resolution practitioner, qualitative research, semi-structured interview, thematic analysis

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Introduction

Although mediation was traditionally conceived of as a voluntary process, this is no longer true. Public policy makers, as part of their ongoing effort to reduce government spending, appear increasingly inclined to divert all manner of family law disputes out of the courts and into mandatory mediation programs.

Compulsory family mediation (CFM) is an important topic of concern to family dispute resolution practitioners and the entire society. In recent years the Lithuanian government has increasingly promoted the use of mediation in family law matters, particularly in cases involving children, and there has been continuing debate about whether such a process should be mandatory. Since January 1st, 2020, The Law on Mediation of the Republic of Lithuanian provided a number of changes, including mandatory mediation in resolving family disputes (Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo Nr. X-1702 pakeitimo įstatymas, 2017). Australian policymakers took this step in 2006, enacting reforms which require parents in conflict to make a 'genuine effort' to resolve their dispute through a 'family dispute resolution' (FDR) process before being eligible to apply for court orders (Rhoades, 2010).

While the effectiveness of CFM has been and continues to be the subject of close evaluation, little empirical work has been done to examine the advantages and limitations of CFM services and even fewer studies have focused on the impact of the CFM work on family dispute resolution practitioners (FDRPs) themselves (Lundberg & Moloney, 2010). Raines (2018) mentions that while some of the peer mediation evaluations examine broader impacts on peer mediators, they generally do not delve deeply into the ways in which mediation changes the worldview or personal interactions of the mediators. This qualitative research seeks to fill this knowledge gap.

The goal of this research is to examine the advantages and limitations of CFM as well as to understand the subjective experience and attitude towards CFM from the perspective of FDRPs in Australia.

1. Theoretical framework

Compulsory family mediation advantages and limitation

FDR at present is mandatory or compulsory in Australia indicating that people who intends to resolve disputesrelevant the child care are required to attend FDR before actually litigating. Although other countries were hesitant to implement mandatory family dispute resolution, Australia has fully embraced family mediation. However, there are scenarios that are exempted to such process such as family violence or child abuse. An evaluation conducted found that one quarter of cases are successfully screened-out or excluded of family mediation because of these situations (Kaspiew et al., 2009).

Compulsory family mediation has its benefits and limitations. Some couples may benefit while others do not. But, attending the process and being invested to it will definitely have an impact on all the people involved. The end goal of mediation is to reach a mutual agreement or consensual settlement regarding conflicts and disputed matters that were introduced during the determination of key issues needed to be resolved (Beck et al., 2011). The basic tenet of mediation was the belief that if the parties worked out their own settlement agreement, they would be more satisfied. As a result, they are more likely to adhere with the agreement for a long time.

Several studies have illustrated that even if two parties did not reach an agreement, simply participating in the mediation process is beneficial to them (Edwards et al., 2008; Ferrick et al., 2008). One benefit of family dispute resolution is that it is more economical than litigations. Scholars and practitioners' interest to investigate this subject and the possibility of increased compliance with custody agreements encourages the court to provide mediation services at low or no cost at all for those who had been historically excluded from the court system including those who belong to the lower socioeconomic groups, women, and minorities (Beck et al., 2011). Therefore, it helps couples who are experiencing financial troubles. They would likely be less able to afford an additional legal process to obtain a parenting plan as well as the divorce.

Another proposed benefit of compulsory family mediation is that couples and children resolved their issues much more quickly, thus, preventing it from escalating. The court, on the other hand, also has its own benefits which is the reduction in returns to court. Although few have been evaluated for effectiveness, those that have been evaluated have been promising. There are some dispute resolution practitioners and scholars that strongly argue that couples benefit from mediation whether they reach an agreement or not. The argument is that the mediation process itself is beneficial because it teaches couples about how to negotiate and help them concentrate on the needs of their children instead of focusing on their differences. Although it was termed as mandatory or compulsory family mediation, it is actually meant the opposite. It is not true mediation which must be a voluntary process whether entry occurs through a court annexed programme or a governmental or private agency (Clarke & Davies, 1991). Usually, the parties enter mediation because they understand its advantages and wish to work in a cooperative rather than in a confrontational manner.

The Relationships Australia, Inc. (2017) enumerated some of the benefits of compulsory family mediation including the promotion of cooperation and communication between all the people involved resulting in an enhanced ongoing parenting relationship. Additionally, the outcome can result in the provision of a structure in which future disputes can be resolved more readily. Given that, if parents are faced with problems in the future, they are more likely to have an idea of how to manage their issues and they will be more open to resolving it. Since mediation entails voluntary participation, the individual's control in the decision-making process is maintained as there are no imposed decision. They formulate their decisions based on what they really want to achieve by the end of the mediation process. More importantly, mediation is less stressful than going to court proceedings. Therefore, they will not be heavily burdened emotionally, psychologically, and financially.

The feminist critique of family law mediation focuses on the nature of power imbalance and domestic violence among intimate relationships and also the consequences of those phenomena for dispute resolution (Semple, 2012). Feminist critiques stressed that there is a power imbalance in the mediation process. Power, in the mediation process, can be defined as the ability of a person to bring about desired outcomes (Gewurz, 2001). Feminists suggest that because of gender roles and stereotypes, the male party will frequently have more power than the female party. The first reason that can explain this is that the source of male power is tangible resource imbalances. In a

conservative and traditional family, men are the ones providing for the family, thus, earning higher incomes and possess more property than women. As a result, they assert themselves to be above their partners after the dissolution of their relationship eventually putting women in a disadvantaged position (Lahey, 2010). For that reason, it can be assumed that wealth creates power.

Aside from the financial advantage of men, they are also superior with regard to intangible resources such as status, dominance, self-esteem, and reward expectation (Regehr, 1994). These resources may adversely affect women particularly their psychological wellbeing that may result in depression, fear of achievement, and guilt arising from the end of the relationship (Shaffer, 1988). This implies that the key factor that will play a vital role in the power imbalance is the will to win or the lack of it, which puts women in a substandard situation.

Family dispute resolution practitioner challenges and emotions management in mediation

A FDRP is generally described in various previous studies as an independent person who helps couples or people that have negatively been impacted by divorce to resolve their parenting disputes (Field & Crowe, 2015). The fundamental role of FDRPs is to provide assistance to the parties involved in parenting disputes specifically in resolving all or some of the disputes between them (Field & Crowe, 2007).

In Australia parents who intend to divorce or separate are encouraged to seek an out-of-court agreement through family dispute resolution practitioners who focus on CFM. These mediators are often faced with the challenge of managing emotions that usually characterize such disputes, without which his or her role cannot be effective.

Cooper and Field (2008) pinpoint some challenges that FDR practitioners face in compulsory mediation,including being subjected to a range of legal and ethical obligations arising before or after the mediation. The practitioner also finds it difficult to attain some of the abstract elements such as fairness which is considered the basic tenet of neutrality.

Emotional intelligence is one of the characteristics that a FDR specialist must have in order to effectively deal with the excessively emotional environments that characterize mediation processes. According to Larsen (2018) managing the emotional environment is significant in the process

since excess emotions can blur rational information processing of the individuals involved. It can also lead to physical violence which may come with other ethical concerns. The mediator, therefore, has the duty to decode the emotional experience of the disputing parties, help the disputant parties to understand their emotions, and to facilitate them in reappraising the emotional experiences for the purpose of allowing a change in their mindset. Emotional self-regulation and emotional self-awareness are elements that a mediator needs as good meditation practice. Douglas (2012) states that emotional self-awareness helps in circumventing the effects of emotional contagion as well as emotional counter-transference while emotional self-regulation helps the mediator to maintain professional boundaries by identifying and consciously acting upon his emotions.

Generally, family dispute resolution as a mediation process requires that mediators are emotionallyintelligent to manoeuvre the negative impacts of the heightened emotional environment in the mediation process. Practitioners, however, are faced with the challenge of achieving some of the abstract requirements such as fairness and independence.

Mediation work impact on mediators

Being a mediator has a significant impact on the individual's overall wellbeing. It affects him or her psychologically, emotionally, and socially. These effects can either be positive or negative. Working as a conciliator bears huge responsibility. There is a necessity for the person to perform his or her job, thus, they should be able to see both points of each party demonstrated in their arguments. Having to stand in the middle of two people especially those who assertively disagree with each other is an extremely challenging and demanding job. It is inevitable for one not to be influenced and affected by it. In fact, one study found that witnessing the cost of conflict and the ongoing struggle with it and through it is a source of repeated frustration for mediators or family dispute resolution practitioners (Raines, 2018).

Raines et al. (2013) emphasized the importance of having mediators. They added that the world will function better if there are mediators assisting people who are unable to resolve their differences. Mediator's work can be rewarding both spiritually and financially. The spiritual satisfaction is achieved by the fulfilment they obtain when they know that they have the ability to help others. Of course, financially, since there are necessary skills and qualifications to be a mediator, and the occupational hazard associated

with it, mediators get their fair share in this aspect. Mediators may be earning higher than other paying jobs, but one study suggested that it is more than money that motivates them to do their work. They claimed that they are driven to work efficiently because of their desire to assist others in the resolution of their disputes, model and teach conflict management skills, as well as empower others as they seek to avoid the costly and unpleasant litigation process or improve their relationships (Raines et al., 2013). For this reason, they are willing to accept less pay as long as they are able to do this for this cause. One of the reasons for this is simply because mediators, peace workers, and conciliators see their work as a calling or a vocation rather than a job (Raines, 2018). Even though their work is hard, they still do it because they genuinely believe that it matters, and it needs to be done.

These professionals often share stories of their toughest cases and through that they seek advice helping them enhance their skills and they are able to exchange tips and perspectives as part of reflective practice (Hedeen et. al., 2010; Moore, 2014).

Literature review reflects both sides of being a family mediator. There is fair share of challenges in CFM work and it could eventually lead to physical or emotional fatigue. However, most of the conversations tend to have a transcendental impact on mediators. These personal transformations seem to be an unexpected benefit of the repeated practice of conflict resolution skills and processes.

This research approaches the utility of CFM through the lens of FDRP subjective experience and attitude. Through qualitative inquiry, the research approaches the experience of FDRPs by triangulating through a line of questioning on the impact of CFM on FDRP service delivery, perceived advantages and limitations of this form of mediation and finally, the personal experiences and attitudes of individuals serving as mediators.

2. Methodology

Research participants. The participants of the study collected in the principles of a purposive, convenient, and snowball sample. Participants were recruited based on their experience and/or expertise in the field of family mediation. Accredited Family Dispute Resolution Practitioners are listed in public registries, Australian Family Dispute Resolution Registry www.fdrr.ag.gov.au and Australian Mediation Association www.ama.asn.au.

Members of this participant pool were expected to meet the criteria:

1) Accredited family dispute resolution practitioner.
2) Minimum one year of experience in compulsory family mediation.
3) Agreement to participate in the study.

A total of 6 participants participated in the study – 4 women and 2 men. By profession 3 lawyers, 1 psychologist and 2 nurses were selected.

Participants were from 48 to 71 years of age with 1–15 years of experience in family mediation field.

Table 1 displays the information of research participants: participant code (M – male and F – female), age, education, compulsory family mediation number, mediation type, profession and years of experience as a family mediator.

Table 1

Information of the research participants

Parti-cipant code	Age	Education	Compulsory Family Mediation number	Media-tiontypes	Profession	Years of experience in Family Mediation
M1	48	Master of Law	~30	Family Mediation	Lawyer & FDRP	~ 4 years
M2	59	Master of Law	~100	Family mediation	Lawyer & FDRP	~15 years
F3	52	Master of Law	~200–300	Family Mediation	Lawyer & FDRP, Mediation Mentor	~11 years
F4	55	Bachelor of Psychology	~50–100	Family Mediation	Psychologist & FDRP,	~5 years
F5	71	Master of Mental Health	~200–300	Family Mediation	Nurse, Children Mental Health & FDRP	~10 years
F6	62	Bachelor of Medical Science	~ 25	Family Mediation	Nurse & FDRP	~1 year

Procedure. Emails were sent to over 300 accredited Family Dispute Resolution Practitioners with invitation to participate in the research interview outlining the topic of the research, the objective and main research questions. It was also explained confidentiality of the participation, that identity will not

be disclosed, and data obtained during the study will be used only for scientific purposes.

Once the acceptances to participate in the research were received, the best suited time for interview was scheduled based on the time difference in Australia. Before each interview the participants were introduced to the research topic and the objective again. Also, a consent to participate in the study form was signed or read and video recorded as a choice by the participant.

Interviews were conducted using Skype, Zoom or Whats App. Video and audio were recorded using Skype, Zoom and Voice recording software. Planning and consent offered a wide enough time frame to schedule interviews for a time most convenient for participants, taking in consideration time difference between Australia and Lithuania. Before the interview the form of consent to participate in the study was signed or verbally read and video recorded as a proof of consent by all the participants.

Data Collection Method. A semi-structured interview process that involved asking open-ended questions was used for this qualitative research, because this method allows participants the freedom to express their views in their own terms. This is an important point, because in everyday conversation, we regularly use 'formulations' of what others have said to us to clarify our understanding of prior interactions (Roulston, 2014). After posing each open- ended question to the research participant, the interviewer follows up with probes seeking further detail and description about what has been said (Roulston, 2014). The interviews were set up to gain insight into how compulsory family dispute resolution is practiced and to gain expert views on advantages and limitations associated with compulsory family mediation as well as find out what impact such work has on Family Dispute Resolution Practitioners.

Data Analysis Method. An inductive thematic analysis method by V. Braun and V. Clarke (2006) was used in this qualitative data analysis process. Thematic analysis is the most appropriate method of data collection to use to answer this research questions. This form of analysis offers the most flexibility to identify, analyse, and report patterns within data, and provides a rich, detailed, and complex account of the data (Clarke & Braun, 2017).

An inductive thematic analysis approach to data coding and analysis is a bottom-up approach and is driven by what is in the data. Thematic analysis is a method for systematically identifying, organizing, and offering insight

into patterns of meaning (themes) across a data set. Through focusing on meaning across a data set, thematic analysis allows the researcher to see and make sense of collective or shared meanings and experiences. The many forms thematic analysis can take means that it suits a wide variety of research questions and research topics (Clarke & Braun, 2017).

3. Results

In the process of thematic analysis four themes emerged that revealed the subjective experiences and attitude of FDRPs towards CFM:

1) CFM is a better option for Conflict Resolution.
2) Limitations caused by factors outside of the process.
3) FDRPs create safe environments to process disputes & emotions.
4) The benefits of CFM work.

CFM is a Better Option for Conflict Resolution theme shows how CFM has become a more viable option to the traditional court conflict resolution. This theme has three sub-themes: **positive view on CFM, facilitation of communication, self-determination and flexibility in the agreement, cost-effective and time efficient.**

Positive view on CFM discusses how FDRP's and the courts have a positive point of view on CFM from theirown case experience. Courts are turning more to compulsory mediation as a first line of conflict resolution. FDRP's in this study all had positive view on CFM: "I'm an advocate for more and more compulsory mediation, not only in this space but across the board because I see it as, um, being an important part of access to justice. From my perspective, yeah. I'm all for compulsory court ordered mediation, not only in the family law space, but in other areas as well." (M1: ref.3)

Facilitation of communication – CFM offers more opportunities for opposing parties to communicate about the conflict and learn how to communicate with each other. The facilitation of communication allows parties to express the desires when they may not have otherwise. Better communication taught through conflict mediation also teaches better conflict mediation for the parties in the future.

The biggest problem in conflict resolution is that once there is a conflict people don't believe they can have constructive communication with the other person. And the biggest advantage of compulsory mediation is communication even though they are hesitant to talk to each other; the mediator helps to

facilitate communication between the parties and once they realize that the other party is as upset and distressed as they are, it helps to rebuild the empathy and be kinder to each other. "So, the big advantage is that people actually communicate, I've had clients that say, you know, it's actually really sad, but they say 'this is the best conversation we've ever had in our marriage'. It's terrible, but it's kind of nice, but it's pretty awful to see a conversation with a total stranger there in between you of this conversation." (F4: ref. 2)

Self-Determination and flexibility in the agreement – CFM allows both parties to have a hand in creating an agreement. This allows for more of a chance that both parties can have what they want. Creating agreement through mediation allows for more options for agreements compared to what courts may offer. Both parties and the child can be thought of while creating agreements in mediation. "Well the advantage is that it's very respectful so people keep control of their own decisions, so if the couple go to the court somebody else makes the decisions for them but in mediation they can make their own decisions" (F3: ref. 1). "Because compulsory mediation kind of makes people have to stop and consider, sorting things out themselves when they don't want to. They want to give it to someone else to do. And if it's not compulsory, that's what they're going to do." (F4: ref. 2).

CFM is more optimal option for family dispute resolution based on factor of being more **cost-effective and time-efficient**. All mediators agree that CFM saves time and money. Mediator F5 mentions the case where sometimes people go to court and spend a lot of money and time, realize the dispute could go on forever and come to mediation to make an agreement instead. "The cases where it does help sometimes they've been through a long court process where they spend all their money and they realized the dispute could go on forever and so they basically just give up, listen to each other and make the agreement. So that's one example of when it really helps." (F5: ref. 3).

The theme of **Limitations Caused by Factors Outside of the Process** talks about limitations to the process that are not conceived from the process, but from the outside factors. This theme has three sub-themes: **non-compliance with an agreement, government funded mediation, low cooperation of lawyers.**

Non-compliance with an agreement is one of the limitations. Agreements made during compulsory mediation are not always upheld by the parties. Parties can deviate from the agreement and break apart what had been done in mediation to get to the resolution. "The problem is with the

compliance, sometimes a parent will agree to certain things and then breach the compliance, not, not do what they agreed to do. And that's because there's noconsequence […]. Like the court doesn't jail people or fine them. […] the fact that there's no consequence of breaching the agreement is a problem in mediation." (F6: ref. 1). "I also had a client who agreed to put in some safety measures, like some railings on his house, up above the stairs or on the veranda. And he agreed to do that and then he could have his daughter over to stay overnight. But the next day after he made the agreement, he was ringing up the mother's saying, I want the child overnight, you know, so he, he didn't do what he said he'd do. That happens." (F6: ref. 2).

Government funded mediation has its limitations. Governments only fund a limited number of mediations. Parties have to wait longer for government funded service. "One of the limitations is it's kind of an offshoot of the compulsory. It's because of the government funding. So because the compulsory, the government funds a limited amount of the compulsory, it's often regarded that if, if it's not successful in the first mediation or very quickly, then it hasn't been successful and they need to go to court." (F4: ref. 1). "One of the limitations, the parents still have to wait a long time to get mediation by the government funded services. Uh, they can wait eight months to get the mediation finished with me. It's much, much faster with a private mediator." (F6: ref. 1)

Low cooperation of lawyers – Parties have lawyers that are unsupportive of the compulsory mediation as a resolution. Lawyers may want their clients to pursue court resolution as to acquire more in the agreement and get more money themselves. Some lawyers don't understand the mediation process. "For me it's the inability to be able to put together an enforceable agreement quickly at the end of the mediation when you've come to an agreement, um, that is probably the most difficult thing because what happens is lawyers then get hold of the agreement. And say: "what the hell are you doing this for?" And they can tear it apart. Um, and convince the parties not to go ahead, and say you should be going for more money than this." (M1: ref. 1). "And even with the,compulsory, but a lot of that is because the lawyers are using family violence to bypass Compulsory Mediation. Yes. All they need to do is put in an exemption. I went to a professional development with a family court judge who said that that's what's happening. Cause you know, it takes money away from the lawyers if it's not solved."(F4: ref. 1).

The theme of **Family Dispute Resolution Practitioners Provide Safe Space to Process Disputes and Emotions** discusses how compulsory family

mediation is a process that involves people dealing with heavy emotions and how FDRP's provide a safe space where parties can resolve their conflicts without confrontation, feeling safe and heard. This theme has four sub-themes: **assessing for safety, connecting with non-voluntary participants, working with emotional and psychological aspects of negotiation, coping with their emotional experiences at work.**

Assessing for safety is the first step in a mediation process and it is also a constant job. FDRPs constantly assess situations, meetings, and conversations for emotional or physical threats to both parties and children involved. "I ask both parties about violence before mediation. So, we had a pre-mediation session and I ask if there is a court order that prevents them being in the same room. And I ask them if they're comfortable being in the same room. And so I assess the safety, uh, frequently that's my job is to, um, constantly assessing for safety." (F6: ref. 3). "So, you know, they might've been in a really controlling relationship and they've got out or usually escaped […] they might have spent time in a refuge or they might of had to have family violence orders to keep them apart, but it can be quite helpful for them in the recovery from that type of relationship to actually participate in mediation if it's well managed." (F4: ref. 4).

Connecting with non-voluntary participants is a part of pre-mediation process for family dispute resolution practitioners. CFM has taught mediators how to work with individuals who are non-*v*oluntarily in mediation. Most techniques involve longer pre-mediation meetings where benefits and consequences are outlined to the non- voluntary participant. Most mediators saying that with non-voluntary participants it takes more time in pre- mediation session to get them on board and ready for productive negotiation. "They take a lot more time and the pre-mediation phase, there's a lot of discussion with them, a lot more listening and you're almost having a private session with them before the mediation has even started to get them to come on board." (M1: ref. 1). "And with them, it's kind of, even though it's compulsory, it's kind of a sales job to help them to understand the benefits to them. That's my experience with the ones that are reluctant. We've got to shift the frame that they were operating from. 'I'm being forced to do this' and shifted to, 'this is an opportunity for me to save a lot of money, save a lot of time and get a better outcome'. So that's my approach." (F4: ref. 1).

Compulsory family mediation is filled with a range of emotions and attitudes. Family dispute resolution practitioners are **Working with emotional and**

psychological aspects of negotiation trying to provide safe space for the parties involved. “Where there's children, there's a lot of emotion […] Because they wouldn't be going into the mediation unless there's a dispute or disagreement and they are emotional, and where there are children,the larger their children are at stake. Um, and everybody wants to do the right thing by their children.” (M2: ref.2, ref.3). “And I guess…. Sometimes very very recent separation of the parents isn’t great for the mediation because the grief and anger is just so extreme that they are not ready to have a discussion, it's just too early. […] you know maybe if it’s only two weeks since he had an affair, suddenly decided to separate and she is so hurt, and anger she brings to that mediation is just not very helpful because I cannot help them to have that discussion, I’m not there to discuss morals, I'm there to help make the arrangements for the children.” (F3: ref.2, ref.3).

Coping with emotional experiences at work is also very important part of mediators’ work; there is a range of emotions FDRPs experience conducting family mediation work themselves. FDRPs also create safe environment where they can process their own emotions at work. They have several techniques and ways of dealing with emotional experiences. “Frustration. [laughing] I get frustrated that people are stuck and won't move. Most frustrating thing is when I know that counselling would help. <…> And they, and they refuse to go. So yeah, that's, that's frustrating. But it's their life, so I can only do so much.” (F6: ref. 4). “Sometimes I might feel angry and that's something that I have to manage very carefully. For example some really high clients will turn around and try to fix fights with me and I have to just ‘play it with a straight bat’, not get involved in the emotion, just keep being respectful, keep being neutral, not be triggered at all by their behaviour even though their behaviour is designed to make me cross.” (F3: ref. 12).

Theme **The Benefits of CFM Work** discusses how compulsory family mediation has benefited FDRPs personal lives and how they perform their jobs as mediators. This theme has two sub-themes: **personal development** and **professional development.**

Personal development – compulsory family mediation work has positively impacted the personal lives of FDRPs. Some have changed how they deal with relationships and conflict in relationships. Others expressed changes in themselves, in their values, growing more compassionate and empathetic. Some emphasized a reinforced belief. “Look, it's given me more of an understanding of how horrible some people's lives are. I guess I didn't realize just how awful it is, so it's probably made me more empathic for

people. Um, you know, like there's people that live for years not talking to each other in the same house. Like they text each other literally for years. Why would you do that. It gives you insights to how awful and that's not even going into the high levels of violence and all of that. Such sad lives. Oh, I think more compassion for the challenges that people have." (F4: ref. 2). "It's influenced my attitude to conflict, you know any conflicts that I have in my own life I deal with them differently because I'm a mediator and much more likely to negotiate than probably would have been if I haven't been a mediator." (F6:ref. 2).

Professional development – compulsory family mediation has positively impacted FDRPs in their roles as mediators. Some apply principles that they've learned from previous cases to future cases. FDRP cite listening, neutrality, and building trust as key components of the job. Others learned more about what's important for children in this process such as making sure they have a relationship with both parents. "[…] that they are part of my life and I don't use mediation as separate to the way I live my life, particularly. […] So some people go to work and I worked nine to five and there a police officer or they're a psychologist or they're a public servant or lawyer. And then when they come home and they're not that, I think with mediators are mediators all the time in the sense of the psychological makeup. We used to have family meetings. And we'd have little mediation session.We used to sit around and talk through the issues. And a lot of times my daughters would say you're putting your mediator hat on dad." (M2: ref. 5). "[long pause] Maybe it has enabled me to be more deeply informed of what's important for children. Even though I'm a child health nurse, but I hadn't, it's just added on another layer or many layers to my understanding about the needs of the children, particularly when parents are separated. So it's deepened my knowledge and I think it just enables and informs me to be more effective because I've deepened my knowledge and experience. [long pause] I think, because I'm a female, and I was a mother, I think that I absolutely had to become more informed and aware of the need for children to have a relationship with their father when parents separate. And how from the developmental point of view for children that the fathers play the role for children lives." (F5: ref.1, ref.2).

4. Discussion

The thematic review of the responses brings forth a central tenet reiterated by FDRPs – **CFM is rapidly gaining status as the preferred option of conflict resolution in family disputes**. The mandatory requirement imposed by courts has facilitated the change in attitude towards mediation, report Beck and colleagues (Beck et al., 2011). Prior to this mandate, the global trend was to opt for direct court proceedings over voluntarily choosing mediation (Ibid.). Respondents in the study report a general understanding that is a **positive view of the mediation process** and that CFM bears results that are beneficial for all parties involved. FDRPs emphasize the point with their experiences that the courts they work with are routing cases back to mediation as the first line of conflict resolution. One study found that "With few exceptions, study after study concludes that mediation is consistently favoured as compared with adversarial interventions" (Pearson, 1994, p. 63).

Next, CFM is changing the **communication paradigm between disagreeing parties**. Specifically, the FDRPs report creating norms for discussion that are respectful towards all. When mediating couples with prior history of abuse or coercion, the communication channels established by the mediator can also lead to better, equitable agreements (Beck et al, 2011). Indeed, FDRPs note that smaller steps towards better communication is foundational to the success of CFM and future conflict resolution. Better communication is also referred to by FDRPs as a crucial step in building a base of agreement, developing **flexibility and enhancing self-determination for both parties**. This base is the foundation for the broader mediated agreement. As the parties work through theirissues and concerns, FDRPs expand the possibilities of agreement that can occur through mediation. It allows forboth parties to have a hand in creating an agreement and more of a chance that both parties can have what they want. Most of respondents agree that parents know their children and circumstances better than anyone else in order make better decision for themselves.

Saving time and money are two constant benefits of CFM that are highlighted by the respondents. Kelly (1996) agrees in her study that "mediation ... was significantly less expensive" than an adversarial process (Kelly, 1996, p. 376).

CFM is not immune to the challenges of multiple external threats that can derail the entire mediation process or render it useless. FDRPs try to shelter from the impact of factors such as non-compliance with agreement and unhelpful scouting by lawyers. Each CFM consists of multiple pre-meditation and meditation meetings that FDRPs and all parties invest both their emotions and time. These efforts can be on hiatus or completely disenchanted if there **isn't enough government funding** to sustain the mediation process. FDRPs report that the lack of authority to compel the parties to conform to the mediation agreement and the lack of consequences for non-compliance are key constraints to mediation working as intended. Additionally, unhelpful consultations and recommendations by lawyers can bring about both non-compliance with the mediation derived upon agreement as well as prolonging issues by taking them back to court. In parallel qualitative research by Lundberg & Moloney (2010) participants also mentioned having same reactions from lawyers of not fully seeing mediation process as valuable, more like a hurdle to begin litigation.

This clearly highlights the point that CFM is vulnerable to considerable external threats that can derail the entire mediation process. Finally, **limited government funding support** to disputing parties in CFM can be disruptive to the process and not be in time to be beneficial to the parties.

FDRPs create a safe space and structured environment that encourages civil and thoughtful communication, focused on the inclusion of ideas, concerns and the best interests of all parties that is relatable and stress reducing for families in mediation. This approach is also helpful to frame mediation as a viable alternative to court to **non-voluntary participants**. While FDRPs are unanimous that CFM is considered better alternative than going to court by opposing parties, they also indicate that negative consequences of going to court are not the conversation they want to have with non-voluntary participants. While being supportive and empathic where needed, FDRPs employ different strategies to prepare participants to ensure they can participate in the mediation process. Priming the participants in longer pre-mediation meetings to help them understand the benefits of CFM is a technique used to get non-voluntary participants to comply and attend mediation meetings.

It is also useful to assess the environment for both physical and emotional safety of all parties and the mediators' own self. FDRPs report that at this stage they leverage their mediation skills because the heavy emotions and serious concerns need to be both acknowledged and contained

to not derail the mediation progress. FDRPs use multiple strategies and tactics to control the flow of and move the discussion on difficult topics forward. The mediator balances the delicate role of mediating the conversation without becoming the decision maker in the process. This phenomenon has also been quantitatively examined by Zarankin and colleagues (2014) who report that mediators will work towards consensus building and agreement between the differing parties to lessen the emotional exhaustion felt by all involved by improving the mediation process (Zarankin et al., 2014). However, Douglas (2012) talks about lawyers in his research who are unused to acknowledging emotion and may fear exploring the clients' emotional experiences and may be apprehensive about being drawn into the negative spiral of conflict thus distorting their capacity to advise their clients.

In some instances, FDRPs report in being purposefully cognizant of manipulative behaviour, aimed at both the opposing party and the mediator. This awareness of manipulation is at the helm of the recognition by most respondents that they are vulnerable towards empathizing over the tough times the parties in mediation may be facing. This echoes the finding by Beck et al. (2011) that disequilibrium can derail any mediation proceedings where one party may wield more power over the other, such as in the cases of families with documented domestic violence. FDRPs report the importance of maintaining these emotional aspects of the ongoing negotiations as part of their role as mediators. FDRPs have opinions on such grave issues as domestic violence but must remain professionally impartial. CFM work can be emotionally burdening; one respondent brought up "conflict fatigue" (F3) and "anger" (F3) while others "frustration" (F6; M1) or "sadness" (M1). Qualitative research of FDRPs' experiences by Lundberg & Moloney (2010) confirmed similar results of negative emotions responses like "frustration" and "sadness", in addition to "overwhelm" "helplessness" and "despondency", "frustration" also being the dominant one for most participants. All the respondents give high importance for engaging in professional supervision to debrief from "conflict fatigue" and process the emotions in order to look after their own psychological needs. This phenomenon has also been qualitatively examined by Lundberg & Moloney (2010) who agree that work with family breakdowns can lead to negative consequences and highlights the need to consider FDRPs as higher than normal risk of occupational related stress, they often interact with clients' psychological problems and high conflict, which can lead to emotional exhaustion. He agrees with the

need of greater understanding of how FDRP could be supported to remain productive at work.

CFM work is deemed beneficial by FDRPs for both personal and professional reasons. Respondents indicate becoming "[sic] more empathetic" and "compassionate", others "less superficial" and "more tolerant". The parallel research of Lundberg & Moloney (2010) "suggests that there is ample evidence that empathic engagement and quality of relationship are important ingredients for effective helping and for effective FDR" (p. 212). And he agrees that personal qualities like empathy and compassion mentioned by respondents, can assist extensively in CFM work. Overall, the respondents indicate a pervasiveness of being a mediator, as a lens through which they see their professional and personal life. This finding furthers research conducted across contexts that posits mediators being motivated both as a person and professionally due to the work that they do (Molė & Sondaitė, 2019; Raines, 2018).

This work is one of the first inquiries into understanding the perspective of mediators towards CFM. The learning from this study provides a foray into uptake of CFM both by practitioners, courts and parties in mediation. This is helpful in furthering theoretical understanding of mediators' role in CFM. The themes highlighted in this work can serve as a framework for understanding the nuances of CFM implementation in Lithuania and in other countries.

Conclusions

Most respondents answered having a **positive view on CFM**, also mentioning some limitations that occurred outside of the process. The emergent theme was the immense benefits imparted by CFM changing the communication paradigm between disagreeing parties – the role of FDRP as the communication facilitator and mediator are central to this broader goal. Through this skillset, FDRPs can empower weaker parties to voice opinions, to express their desires and to discuss parenting, as well as bring forth ways to connect with non- voluntary parties. The emotional support and management provided by FDRPs also contributes to both the process of dispute resolution, but also to support disputing parties to leverage their **self-determination**. CFM being **cost- effective** and **time-efficient** process are other constant benefits in comparison to the court. Besides multiple advantages of CFM, few

limiting factors emerged outside of the process, such as **non-compliance with an agreement, limited funding support for government funded mediation, and low cooperation from lawyers**, that can be potentially threatening to the process of mediation.

The emergent theme was the importance of *FDRPs* in **creating a safe space** where disputing parties can discuss and come to agreeable terms to then present to the court. FDRPs create an emotionally and physically safe environment for dispute discussion which helps to ease the tone of discussion which can be agitated and manipulated by outside factors mentioned before or **emotional and psychological aspects of negotiation**, as well as domestic violence. FDRPs try to shelter from the impact of these factors and direct their focus on emotional support and management of the parties. Despite the inherent challenges that FDRPs experience while undertaking their roles in cases of CFM, the work satisfaction levels are high. The main challenges were "conflict fatigue", the difficulty of fostering positive emotions of parties in high conflict disputes and work-life balance. As both their time and breadth of experience with mediation increase, FDRPs detail that contentious and difficult disputes are both manageable and can be resolved amicably and equitably.

The work in CFM is certainly challenging and FDRPs experience negative emotional responses however it can also be rewarding. The process of CFM leads to the unexpected **benefit of both personal and professional development** in FDRPs which is an asset that they can leverage in their future cases and personal life. Overall, the respondents indicate a pervasiveness of being a mediator, as a lens through which they see their professional and personal life.

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INFLUENCE OF THE COVID-19 PANDEMIC ON THE DEVELOPMENT OF TOURISM AND MEASURES OF CREATING SUSTAINABLE TOURISM IN UZBEKISTAN

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Abstract

The Covid-19 pandemic plunged the whole world into a protracted economic crisis, dealing a significant blow to all branches of human activity. Some areas have suffered serious losses, in particular, the tourism industry. This article discusses measures to restore and strengthen the tourism and hospitality sector after the pandemic in the Republic of Uzbekistan. A Safe Tourism program has been developed in the Republic of Uzbekistan; tourists will use tourist services, follow the sanitary and hygienic rules during trips. This project will provide travelling individually, choosing a destination and booking what they need during travelling online.

The purpose of the article is to analyse the situation in the world and Uzbekistan as well, during the pandemic, as well as to develop practical measures to rehabilitate the tourism sector from the consequences of the economic crisis associated with the pandemic. New offers are being considered in the tourism market to attract tourists to our country. The primary attention in the paper is focused on the development of electronic platforms for the formation of "online tourism", architectural sights and monuments combining the history of different peoples and religious denominations. The article also provides information about alternative medicine, and lists of several of treatment

methods used by our ancestors and actual nowadays. The report summarizes some of the study results, concluding that the tourism business of Uzbekistan needs to radically rethink existing business models through innovation and digitalization of tourism. Examples of the development of such market segments as agro and eco-tourism are given. This segments are currently beginning to develop and are of interest to tourists. It is mentioned that Uzbekistan is among the top 10 countries in terms of security.

Keywords: pandemic, crisis, online tourism, UNWTO, safe tourism

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Introduction

In the current conditions of the global coronavirus pandemic, economic sectors are experiencing not the best of times. The Covid-19 pandemic has affected all sectors of the economy; the tourism industry has proved to be the most vulnerable to the threat of the coronavirus. Coronavirus has not bypassed the Republic of Uzbekistan, the tourism industry has significant potential for development and is a strategic sector of the economy, whose share in the country's GDP is more than 6% (The Law of the Republic…, 2019).

The Covid-19 pandemic plunged the whole world into a protracted economic crisis, dealing a crushing blow to all sectors of the economy. Some areas have suffered particularly serious losses. Among them is tourism, according to the estimates of the World Tourism Organization (UNWTO). In 2020, the number of international tour trips decreased by 60–80% (Decree of the President…, 2020). The data shows that it is several times higher than the impact on the industry of the economic crisis of 2008, when the decline was only 4% (Zohrabyan, 2020). The contribution of tourism to the economy is significant; the inflow of foreign currency, promoting regional development, employment and entrepreneurship. The restoration of the tourism industry is a priority task of international importance. About 330 million people worldwide are employed in the sphere of culture and tourism. As a result of the pandemic, 10% of them lost the opportunity to work. A significant part of such people are women and young people. When the industry is trying to recover in new conditions, constantly changing rules and regulations make this task far from easy. UNWTO called for a "sustainable recovery of the tourism sector" to "create a balance between the needs of people and the planet for the well-being of all" (Loguntsova,

2020). In Uzbekistan, the shock caused by this pandemic has also contributed to increased responsibility. New regulations and laws for creating of sustainable tourism are being developed, and special attention is being paid to the development of rules to ensure safe tourism.

1. Materials & methods

The crisis is an opportunity to rethink the development of tourism. The restoration should include the change of the sector, tourist destinations and enterprises, the restructuring of the tourist ecosystem, the improvement of services and measures for safe tourism, the implementation of innovation and investment in sustainable tourism.

At its core, tourism is an experience that includes; acquaintance with local landscapes, sights of historical significance, tasting the taste of local food. The primary function is assigned to people engaged in the field – whether they are guides, hotel operators or persons providing other services that make travel unique or help in conducting business and enter international markets. Our response measures should be focused, first of all, on the human factor and fulfill the promise not to leave anyone without attention. The crisis should become an opportunity to ensure the correct distribution of profits from tourism, to change the industry forward on the path to a safe and sustainable sector of the economy.

According to data from UNWTO, the negative impact of the coronavirus was reflected in a reduction in international tourist arrivals in the first quarter of 2020 by 67 million US dollars and export losses worth 80 billion US dollars (Loguntsova, 2020). At the same time, the crisis led to the loss of a vast number of jobs in the tourism industry in the world, the social sphere of life also suffered, by more than 30 per cent. Employees, entrepreneurs engaged in the tourism business need to develop a fixed plan and improve the quality of tourist reception. Taking into account the rather impressive losses, the tourism industry needs to be restored, and follow the requirements that have arisen in the fight against the pandemic. Many countries have already started developing and implementing a certification system of tourist facilities for safety from the epidemic. For example, Spain was one of the first to create and approve new sanitary protocols for tourism at the state level. Thus, tourism begins to function in a new reality, which involves strengthening control over the strictest possible compliance

with sanitary standards to exclude the possibility of a repeat of pandemic outbreaks. Almost 1.4 million foreign tourists visited Spain in May 2021. Last year, the figure for this month was 0, according to data from the National Institute of Statistics (INE) (The tourist flow…, 2019). A highly likely consequence of the crisis will be: much more attention of tourists to their safety, sanitary and epidemiological situation in the country. Where people gather: at airports, at train stations; people will undoubtedly wear masks, and personal hygiene will become fundamental, and tourists will observe all this – to protect their health and the health of their loved ones.

Based on history, epidemiological diseases that shook the world have occurred before, for example, during the First World War. Despite the current situation, tourism could get back on its feet and survive these difficult periods. Thus, the history of global economic crises proves that after a short period, tourism will receive a new surge for development. Experts note that such a severe crisis in the tourism business has not been observed since the Second World War. As practice shows, each subsequent situation creates opportunities for developing new types of services in the tourism industry, giving options for the development of new directions. We can forecast that soon in the future, the demand for online tourism, digital technologies and mobile applications regarding the tourism industry will grow (Providing support and…, 2020).

Currently, the development of "online tourism" is underway in Uzbekistan. The Ministry of Tourism and Cultural Heritage and its national PR centre is launching a new website that will allow people to organize virtual tours of Uzbekistan. That will be the first platform which will offer virtual tours throughout Uzbekistan. The site covers three primary routes, which allows people to make virtual trips around Uzbekistan. It will be possible to organize online business for representatives of the tourism industry, cooperate with owners and managers of hotels, tour operators, guest houses and guides.

Security on the territory of the Republic of Uzbekistan, for both citizens and tourists, is at a high level. Thus, the President of the Republic of Uzbekistan Sh. M. Mirziyoyev issued a decree, which emphasizes the importance of providing sanitary and epidemiological safety for tourists (Decree of the President…, 2020). For the functioning of both internal and external tourism: expanding transport routes, improving the quality of transport services, widely promoting tourist products, as well as strengthening the image of our country as a safe place for travel and recreation. For this purpose, Uzbekistan has developed the project "Uzbekistan. Safe travel guaranteed" (Decree of the President…, 2020). The project is a new system of

sanitary and epidemiological safety for tourists based on world standards. At the same time, the Ministry for the Development of Tourism and Cultural Heritage of the Republic of Uzbekistan, together with the Ministry of Health, have developed and are supplementing the "register of safe objects", on the basis of which tour operators will form tourist routes. Certification of business entities (catering services, accommodation facilities, transport services, etc.) is voluntary. An essential part of this project is the organization of training and advanced training of tour operators, tourism facilities and related infrastructure. Tourists will start travelling individually, and, choosing a destination, can book what they need to travel online. Participants in the tourist market need to focus on the creation of new touristic destinations. Considering, the demand, to offer new tourist products for potential visitors of the country. To date, 2079 architectural monuments and 4308 archaeological sites are under state protection in Uzbekistan (Cultural Heritage of Uzbekistan, nd). To restore the tourism industry and increase the demand for tourist services, at the initial stage, work is underway to develop the country's infrastructure and develop new areas in tourism.

2. Results

During the pandemic, the whole world realized that the future of humanity is dependent on science and medicine, that medicine is the sector on which people's lives depend. In turn, there is an opportunity for the development of such a direction as medical tourism in the tourist market. After the quarantine was completed, when the borders were opened again, humanity realized the need for care and health reinforcement and the medical tourism industry is growing in demand.

Medical tourism in Uzbekistan is a young and successfully developing local tourism area. Today, there are a large number of private clinics in the Republic equipped with modern medical equipment, offering inpatient and outpatient services, surgical treatment and dental care at attractive prices, most of these clinics also accept international insurance. Most enormous flow of arrivals to Uzbekistan for rehabilitation and medical services over the past ten years has been observed among tourists from CIS countries. 40% of the total number of tourists who arrived turned to alternative medicine services (The largest flow…, 2021). From this pie chat we can observe the flow of tourists from CIS countries in the period from 2011 till

2021 years (Figure 1). Mostly travellers for treatment came from Kazakhstan, Kyrgyzstan and Tajikistan.

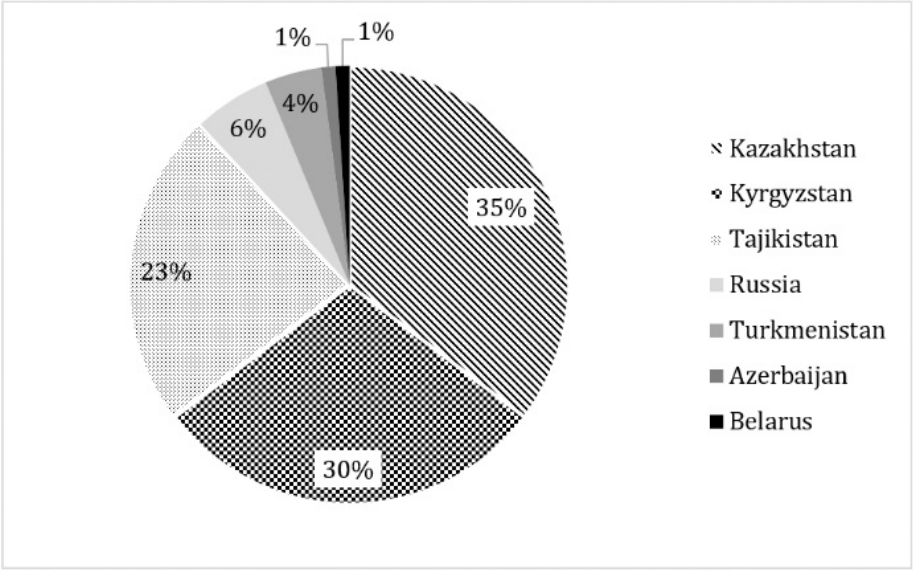

Figure 1. **Statistical data of tourists arriving from the CIS countries on medical tourism for 2011–2021**

Medical centres in the regions (Tashkent region, Surkhandarya region, Fergana region), where there are mineral springs beneficial for the gastrointestinal tract with qualified specialists working there are in demand. Treatment in Uzbekistan will be a convenient option for foreigners travelling in Central Asia or temporarily residing in its territory. Sanatorium "Zaamin" – convenient location and mountain air of the Jizzakh region turn a miracle health resort into a real picturesque corner. It is here that mud treatment procedures are carried out, and therapeutic mud is brought from Lake Balykli. The picturesque mountain landscape of Zaamin, clean air and plenty of sun are ideal conditions for carrying out preventive procedures for children and adults with respiratory diseases. High-quality, inexpensive laboratory tests, diagnostic tests and basic medical procedures can be easily included in your travel schedule. It is known from history that it was in Uzbekistan that the brilliant doctor Avicenna's was born, whose name is known and revered worldwide. The works he wrote laid the fundamental foundation for the study of medicine. Avicenna's name is still alive in

Uzbekistan. That is, those who prefer alternative methods of treatment will appreciate qualified specialists of Uzbekistan offering acupuncture, hirudotherapy, mud therapy, water and spa treatments, climatotherapy, homeopathic treatment and massage therapy. So, for example, in the Ferghana region of Uzbekistan, at the entrance to it from the Kokand side, there is a remarkable area - the Buva Bastom. This part of the region is an arid desert with migrating sand dunes (there is very little sand left at the moment). Psammotherapy (translated from Latin – sand treatment) was known in ancient times. Hot sand treatment is mentioned in the writings of Herodotus, Galen and Avicenna. There is evidence that the Mayan Indians also knew about this amazing method. At the end of the century before last, psammotherapy began to spread in European countries, in particular, in Dresden Dr. Fleming opened the first psammotherapy clinic, in which various diseases of the joints were successfully treated. In Russia, the first who began to use psammotherapy was the famous doctor Nikolai Vasilyevich Pariysky, and in 1889 he even wrote a work on the benefits of sand baths for healing and strengthening the body. One such sandy place also surrounds the mausoleum of Bastom Buva. The village has its own history. Here is the mausoleum of one of the sheikhs of the 11th–12th centuries, Hozha Baezid Bastomiy. The mausoleum is considered one of the holy places, which is visited every year by thousands of people from all over our country, not only for pilgrimage purposes. Sand is recognized as curative, people suffering from arthritis, kidney diseases, infertility find their healing here.

The sanatorium “Bastom buva” (Buwaydinsky district of the Fergana region) is also located in this area. The sanatorium is distinguished by the fact that the treatment is carried out using mineral water with a temperature of 80 °C, obtained from a depth of 2850 meters, which belongs to the group of iodine-bromine therapeutic waters. The source contains 21 elements of medicinal salts. Healing water is a cure for many diseases.

Khoja Ubbon is located on a small hill of Rauza in a very large frame building. Outside, there are tall, vertically placed tugs at all four corners. These structures were built no earlier than the middle of the last century. A complex of buildings adjoins the mazar (burial place): an extensive mekhmonkhona (living room), a mosque. “Chashma Khan” is a burnt brick building. The building is divided into two parts, each covered with a dome. There is a well in the western half of the building, with slightly bitter water.

The mausoleum of the revered Saint Khoja Ubbon is located in the Bukhara region. According to legend, from the age of 15, Khoja Ubbon lived in

seclusion in the desert, near a spring. Here he lived until old age, was revered as a skilled healer, to whom people disfigured by a severe skin ailment were attracted.

People coming from different places, often very remote, live here, away from civilization for 2–3 months. The effect of such treatment exceeds expectations, and therefore the flow of people who want be cured of the disease does not stop.

The Mazar of Khoja Zaffaron is a cult complex in which a well with sacred water occupies a special place. This place is well known to residents of the surrounding villages and districts. The study of the water showed the presence of various valuable minerals in it. From time immemorial, patients with jaundice have come here to be treated. According to an ancient legend, Zaffaron was the mentor of Khoja Ubbon. There is a legend that Zaffaron is the son of Caliph Uthmon.

The history of the origin of this place is fascinating; at one time, Genghis Khan came to the Uzbek lands, ordered to gather all those suffering from leprosy in an area near Samarkand, vitiligo patients also got there, no one understood why, the Uzbeks who lived in the direction of Samarkand and Bukhara were very scared of what was happening. So, at that time, a wealthy man lived in that area, his nine-year-old son began to have vitiligo, which progressed rapidly. Being afraid of evil tongues, the father ordered the servants to leave the boy in the desert, but the boy did not die. He was found by a local tabib (healer) who lived in the desert and treated people. Having picked up the boy, he left him at home, the boy helped with the housework, drank from the chashma (spring), tanned and the vitiligo spot disappeared. Since then people have been coming to these places for treatment.

The treatment process includes: drinking well water (bitterly salty in taste) and sunbathing. From 7.00 to 10.00 and from 16.00 to 19.00. Of course, all this at first glance looks quite bland and resembles the Middle Ages – an abandoned village (hamlet) consisting of small adobe barracks divided into small rooms in which 3–5 people live and cook their own food. Sunbathing is taken on takyrs (dry clay areas with fractured surfaces) between low sandy mounds. The territory is conditionally divided into two parts-male and female. In the second half of 2022, a world-class Silk Road Samarkand resort with a medical and business cluster will open in Samarkand. The complex is positioned as unique not only for Uzbekistan but also for the entire Central Asian region. Four hotels will be located in the medical cluster of the resort under the Wellness Park Hotel brand. Each of these boutique

hotels will have its medical specialization. The first is preventive medicine (preventive direction), the second is detox, the third is restorative medicine with rejuvenation programs, and the fourth is respiratory medicine. All crafts of Uzbekistan will be collected on the territory. Its guests will be able to touch the history and traditions of the country, get acquainted with its colourful heritage. Artisans will "settle" on the streets of this ethno town, who will show and tell everything about the ancient crafts of Samarkand and the whole of Uzbekistan. You will be able to see wood carvings, watch pottery, silk paper making, jewellery and carpets.

The Republic of Uzbekistan is a secular state where representatives of various religions and faiths live. According to official data, 2,225 religious organizations and 16 different religious denominations have been registered in the country (Uzbekistan – religions and confessions, nd).

As a result, there are a considerable number of ancient sites, objects and architectural monuments that cover all religions of the world. So, one of such architectural monuments can be called the Cathedral of the "Sacred Heart of Jesus", which is well known as the "Polish Church". The temple, located in the city of Tashkent, belongs to the Roman Catholic Apostolic Administration and is considered to be in operation today. The Roman Catholic Church is very popular not only in our country but also all over the world since this architectural structure was built before the First World War and has been repeatedly reconstructed over a century of existence.

The following example is the Cathedral of the Assumption of the Mother of God, also known as the Holy Dormition Cathedral, is the Orthodox cathedral of the diocese of the Russian Orthodox Church in Tashkent, where various religious events are held annually and Orthodox holidays are widely celebrated.

A real example of a religious trend that was widely spread in the territory of present-day Uzbekistan, particularly, from Khorezm region of the country, are the monuments of Zoroastrianism. Many scientists and researchers consider Central Asia, and in particular ancient Khorezm, the birthplace of Zoroastrianism and its prophet Zarathustra. Archaeological research links the Zoroastrian doctrine and its worship of fire and natural elements with the religious views of the primitive Khorezmians. Thus, by visiting our country, you can see with your own eyes where the religion of Zoroastrianism originated from.

3. Discussion

The revival of the "Great Silk Road" is of great importance in the history and culture of the country. The main tourist route intersects with 32 large and small cities of Central Asia. Noteworthy is the fact that there are more than 7 thousand historical monuments in Uzbekistan, many of which are included in the UNESCO World Heritage List (The Great Silk Road, nd). Among them are such pearls of the East as the cities of Samarkand, Bukhara, Khiva, Shakhrisabz, Tashkent, Kokand and Termez.

Recent events that happened in neighbouring States: the terrorist attack in Kazakhstan and the unstable political situation in Afghanistan may negatively affect the influx of tourists to Uzbekistan. It should be noted that the Republic of Uzbekistan is among the top 10 countries in the world in terms of security (Uzbekistan has entered …, 2020). Uzbekistan is a country of safe tourism. This is indicated by statistical data. In 2019, Uzbekistan entered the top five safest countries in the world for single tourists. These data were presented in the annual report of the online travel service Wegoplace (Tourist police, nd).

In June 2019, the Tourism Safety Department was organized, which currently employs more than 40 employees. In parallel with Tashkent, in the same year, departments for safe tourism were formed in Samarkand, Bukhara and other cities.

Conclusion

The task of the tourist police is to create safe conditions for the stay of foreign tourists who sincerely want to get acquainted with our unique country and, of course, from its best side.

The tourism business of Uzbekistan is on the path of a radical rethinking of existing business models, the creation of new tourist destinations, as well as through the introduction of innovations and digitalization into the industry. The tourism industry has always been and will be in demand, especially after a long self-isolation, a huge number of people want to go on a trip, discover the unknown or retire with nature.

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THE CHALLENGES OF THE DIGITAL AGE: THE PROBLEMS OF CRIMINAL LIABILITY FOR CYBERCRIMES IN LITHUANIAN LAW

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Abstract

The spread of digital technology and the convergence of computer and communication devices have changed the way people communicate, do important jobs, and so on. However, this digital age has also opened up a wide range of possibilities of using computer technology for criminal purposes. Therefore, the purpose of this research paper is to specify the main problems of legal regulation and case law of criminal liability for cybercrimes in Lithuanian law. So, the analysis was based on three main questions: the difficulties in legal regulation of cybercrimes in Lithuanian criminal law; the problematic relation between cybercrimes and other related crimes as well as the problems of applying some composition features of cybercrimes in Lithuanian case law. The research was carried out by employing the logical, the systematic, the linguistic, the historical, the comparative and the synthesizing research methods as well as the analysis of legal documents. The analysis shows that the legal regulation of criminal liability for cybercrimes in Lithuanian law has considerable problematics compared to international standards, as well as some composition features of cybercrimes are inappropriate for their application in practice and there many problems with ratio between this kind of crimes and similar crimes in Lithuanian case law.

Keywords: cybercrimes, criminal liability, Lithuanian law, criminal code, case law, legal regulation

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Introduction

With the rapid development of technology, communication and information systems, the 21st century is described as the advanced digital age, but the emergence and development of new technologies has influenced the emergence and expansion of new forms of criminal behaviour. The global Covid-19 pandemic, the development of information and communication technologies and the ever-increasing number of smart devices connected to the Internet have led to an increase in cyber security risks in Lithuania and other countries in 2020. According to the data of the Ministry of National Defence of the Republic of Lithuania, the number of registered cyber incidents increased by 25 percent over the year, from 3,241 cyber incidents in 2019 to 4,330 incidents in 2020 (National cyber security status report, 2020). Meanwhile, according to the World Research Centre "Juniper", in 2019, cyber-attacks cost as much as $ 2 trillion in losses. Today, this type of crime is considered to be the fastest growing in the world – it is estimated that more than 700 million users fall victim to cybercrime each year. In addition, more than half of the intrusions occur through mobile devices. Such facts justify the need to take appropriate measures not only to prevent all such cases, but also to have a properly functioning legal framework in this regard. Nevertheless, it is necessary to note the tendency, especially in Lithuanian law, that developing new technologies have allowed traditional criminal offenses to move to the electronic space, which has led to incorrect application of criminal law provisions, as the Criminal Code contains a number of articles criminalizing similar or even identical signs of the composition of the criminal offense. Therefore, the natural question arises whether the current regulation of the Lithuanian Criminal Law in cases of cybercrime is clear and precise enough to bring those guilty of such crimes to justice? To this end, the regulation of the Lithuanian Criminal Law to punish persons for cybercrime is assessed both through the information technology prism and compared to international regulatory standards and the practice of its application in court proceedings.

The object of the research is legal regulation and case law of criminal liability for cybercrimes in Lithuanian law.

The purpose of the research is to analyse specific problems of legal regulation and case law of criminal liability for cybercrimes in Lithuanian law.

The tasks of the researches:

1) to analyse the difficulties and problems in legal regulation of some composition features of cybercrimes in Lithuanian criminal law;
2) to reveal the problematic relation between the cybercrimes and other related crimes, according to Lithuanian case law;
3) to identify main problems of applying some composition features of cybercrimes in Lithuanian case law.

The methods of the research: The research was carried out by employing the logical, the systematic, the historic, the linguistic, the synthesising analysis methods and the analysis of legal documents.

Abbreviations:

- The Directive 2013/40/EU – the Directive 2013/40/EU of the European Parliament and of the Council of 12.08.2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA;
- The Budapest Convention – the Convention on Cybercrime (ETS No. 185), Budapest, 23.11.2001;
- The CC- the Criminal Code of the Republic of Lithuania;
- Art. 196 of CC – Criminal liability for Illegal data interference;
- Art. 197 of CC – Criminal liability for Illegal system interference;
- Art. 198 of CC – Criminal liability for Unlawful Interception and Use of Electronic Data;
- Art. 198-1 of CC – Criminal liability for Unauthorised Access to an Information System;
- Art. 198-2 of CC – Criminal liability for Unlawful Disposal of Installations, Software, Passwords, Login Codes, Codes and Other Data;
- Art. 182 of CC – Criminal liability for Swindling;
- Art. 168 of CC – Criminal liability for Unauthorised Disclosure or Use of Information about a Person's Private Life;
- Art. 210 of CC – Criminal liability for Commercial Espionage;
- Art. 214 of CC – Criminal liability for Production of a Counterfeit Electronic Means of Payment, Forgery of a Genuine Electronic Means of Payment or Unlawful Possession of an Electronic Means of Payment or Data Thereof;
- Art. 215 of CC – Criminal liability for Unlawful Use of an Electronic Means of Payment or Data Thereof.

1. The issues of legal regulation of criminal liability for cybercrimes in Lithuanian law

Articles 196-198-2 of the CC establishes the main provisions providing for criminal liability in Lithuania for various cybercrimes, the formation of which was influenced by Lithuania's accession to the Budapest Convention, as the previous CC provided only 3 criminal offenses – destruction and alteration of computer information, destruction or alteration of computer programs, appropriation and dissemination of computer information. The last and most relevant amendments to these articles were made on 11.06.2015, by the Law of the Republic of Lithuania No. XII-1777, taking into account mainly the Directive 2013/40/EU. These amendments modified Art. 198-2 of the CC, providing for additional alternative features of the objective side "imported" and "granted access", the structure of paragraph 1 has also been reformulated and liability differentiated according to the damage caused by the offense. However, this can only be considered as a cosmetic correction, taking into account the amendments requiring more attention related to Art. 196 and Art. 197 of the CC provision of qualifying compositions, i.e. the act was committed against many information systems (Para. 2 of Art. 196, Para 2 of Art. 197 of CC) or the act was committed using someone else's personal data (Para. 2 of Art. 197 of CC).

First of all, regarding the latter qualifying feature, it should be noted that the use of someone's personal data reflects an accusation of identity theft, which is understood as obtaining personal data and their use in order to effect the confidentiality, availability and integrity of electronic data or information systems (Kalpokas & Marcinauskaitė, 2012). The Directive 2013/40/EU requires that Member States should take the necessary measures to ensure that unauthorized access to data or systems by another person in order to gain trust of a third party, thereby harming the legitimate holder of the identity, would be considered as an aggravating circumstance, unless those circumstances already apply to other crimes punishable under national law. So, this legal provision of Directive Articles was implemented directly in Art. 196 and Art. 197 of CC. Nevertheless, it is doubtful whether this qualifying feature reflects really the higher risk of these crimes, which is formally considered according to the CC. This question arises when modelling different situations: 1) after the accused has received the victim's identification data from another person, he logs on to the victim's account and destroys the data contained in it – this is a crime according to Para. 1 of Art. 196 of CC; 2) otherwise, the accused breaks the security system by

himself, logs on to the victim's account and destroys the same data. According to this, in the first case a person would be charged with Para. 2 of Art. 196 of CC (for the destruction of data) while in the second case – the person's act would be qualified in accordance with Para. 1 of Art. 196 of CC, i.e. in the first situation it would be considered as more serious crime with a qualified composition of crime than in the second one. Therefore, it is doubtful that according to legislator's will, a person, who can independently access the victim's information system in the second situation, because of his greater knowledge in informatics and cybernetics, is dangerous than another person who can perform essentially only half of what the first one has done. Such a legal regulation of composition's features of cybercrime could be criticized as not fully reflecting the seriousness of these crimes.

Another problematic qualifying feature – "committing the act to a number of information systems" in Art. 196 and Art. 197 of CC, which is too abstract and difficult to assess. In its conclusion, the Legal Department of the Chancellery of the Government of the Republic of Lithuania noted in their conclusion No. NV-3278 that this qualifying feature does not fully comply with the principle of legislative clarity, which means that **inter alia** legal regulation must be precise, clear and unambiguous. However, the accompanying material for this project did not provide an explanation of the criteria used to propose this particular starting point. Nevertheless, the incorporation of this qualifying feature may be clarified and attention should be drawn to Para. 13 of the preamble of the Directive 2013/40/EU, which mentions the impact on many information systems, but the aim of the directive is to impose stricter sanctions for a number of affected information systems as well as to impose stricter sanctions for the use of a new cybercrime attack through a "botnet". Also, the European Commission's proposal COM/2010/0517 - COD 2010/0273 of 30.09.2013 draws attention to the use of "botnets", which often lead to large-scale cyberattacks. Considering the fact that EU institutions drew so much attention to the threat of "botnet", this question should be considered by the Lithuanian legislator in order to provide a direct legal regulation since it is a phenomenon in CC regulation. The new concept "botnet" would allow to specify an abstract term "a number of information systems", although some researches are sceptical about the possible non-compliance with the principle of technical neutrality (Marcinauskaitė, 2013).

Another important problem can be seen in the assessment of the CC with the criminal law of other countries and the Budapest Convention. It should

be noted that a number of countries have also taken over the cybercrime provided for in the Budapest Convention – computer fraud, as this composition is provided by countries such as Germany, Switzerland, Austria, Estonia, Latvia and others. According to the Budapest Convention, Computer fraud is – intentional, unlawful act resulting in the loss of another person's property by entering, modifying, destroying or revoking access to such data or by affecting the operation of a computer system with fraudulent or unfair intent to obtain illegal economic benefits for himself or for another person. The CC of Lithuania does not provide for this composition. It should be noted that the Cybercrime legislation – country profile (Lithuania) of the Council of Europe‘s Project on Cybercrime of 30.05.2007 provides that Article 8 of the Budapest Convention on Computer Fraud, is implemented by three articles of the CC, i.e. Art. 196, Art. 197, Art 182 of CC. Thus, the CC uses the composition of fraud (Art. 182 of CC) instead of the new composition of the criminal offense. However, such implementation of Article 8 of the Budapest Convention is problematic, because in accordance with Article 8 of the Budapest Convention, the economic benefits accrue after affecting the computer data or information system, whilst Art. 182 of CC the characteristic of the objective side of the act is essentially determined by the use of deception. In this case, the difference is that in the case of Lithuania, in order to assess the receipt of economic benefits in relation to criminal law, it is necessary to incriminate Article 182 of the CC, and thus to establish a deception.

Based on this, the problematic question arises as to whether fraud is possible in the case of cybercrime? On the one hand, in analysing the concept of cybercrime, such crimes are not characterized by a social dialogue of manipulation between the subject and the victim. On the other hand, the Supreme Court of Lithuania notes in criminal cases No. 2K-587/2005, No. 2K-375/2012 that fraud may also be used against the electronic system, but its perception is different, i.e. according to the court of cassation, if the code is entered and the command is given by a person who does not have the right to perform operations in the electronic system, he presents himself to the operating system as another person with such right and thus misleads the electronic system. In this case, however, there is an unjustified refusal to delve into the very essence of deception which according to the Supreme Court of Lithuania is understood as a misrepresentation of objectively existing facts resulting from the distortion of the perpetrator's objective truth in the victim's consciousness, which leads to the victim's useless disposal of property, i.e. deception is manifested in the fact that the distortion

of an objective truth must lead the victim to make a decision which is unfavourable to him (criminal cases No. 2K-327/2014, No. 2K-33-303/2017). Given this specific definition of fraud, the question arises as to how fraud can be used against an information system if it simply follows the intended operating algorithms and the information system itself is unable to make independent decisions. These are subjective criteria that are inappropriate in the context of cybercrime. Therefore, incriminating Art.182 of CC in such cases would be contrary to the principle of legality, as it is not possible to establish a sign of deception. A situation arises where the criminal act of the subject remains only partially assessed from the point of view of criminal law - the impact on the electronic data or information system is assessed, but not the receipt of material benefit. Therefore, following the practice of other countries and the regulation of the Budapest Convention, it would be useful to provide for a new composition that would provide for criminal liability: "to any person who, by unlawfully exposing electronic data, software or information systems, has obtained a property advantage for himself or for third parties". Such a composition would allow for a full assessment of the perpetrators' actions under criminal law.

2. The problems of Application of Criminal Liability for Cybercrime in Lithuanian case law

2.1. The problematic relationship of cybercrimes with other criminal activities

The courts are faced with a number of problematic issues in resolving the competition between norms of criminal law, determining the relationship between the general and special norms and qualifying the act. For example, failure to address the question of whether a rule providing for a traditional criminal offense can also be applied to the qualification of a criminal offense committed in cyberspace may lead to an unjustified impeachment of a number of offenses constituting an ideal coincidence, for example the relation of Art. 198 and Art. 168 of CC. This problematic issue arose in a case of the Supreme Court of Lithuania, in which the situation, when the perpetrator using a laptop and the login data seen and memorized, logged in to the victim's e-mail account, copied the non-public electronic data and subsequently disseminated this information, was assessed by the lower courts on the basis of the coincidence of the two offenses mentioned.

However, according to the Supreme Court of Lithuania in criminal case No. 2K-138/2015, it was correctly observed that the lower courts did not take into account the fact that Art. 168 of the CC criminalized violation of a person's private life not only in the physical but also in the electronic space, and the actions of illegal disclosure or use of information about a person's private life enshrined in Art. 168 of the CC are more specific than those provided for in Art. 198 of the CC, therefore the norm of Art. 168 of the CC shall be considered special with regard to Para. 1 of Art. 198 of the CC and Art. 198 of the CC incrimination is excessive.

Another problematic situation may exist when assessing the problematic relationship between Art. 198 and Art. 210 of the CC. In the case law of the lower courts, the situation when the perpetrator instructed the showroom consultant to print on paper the customer's mobile telephone subscriber numbers, detailed invoices and this non-public electronic data illegally obtained from the company's internal system, was assessed only in accordance with Para. 1 of Art. 198 of the CC on the grounds that these data met the requirements for confidential data (Vilnius Regional Court case No. 1A-338-312-2014). However, information unlawfully intercepted by the perpetrator could also be considered a commercial secret, as provided for in Art. 1.116 of the Civil Code of the Republic of Lithuania, if the company has established a procedure for the protection of knowledge constituting a commercial or technological secret, efforts have been made to maintain the confidentiality of such information by storing it in an information system that was accessible only to its employees. As a result, the perpetrator's act in such circumstances could be classified as commercial espionage under Art. 210 of CC. However it should be noted that these circumstances, as established by the lower court alone, are not sufficient, as the court must verify whether such information has real or at least potential commercial value. However, according to the Supreme Court of Lithuania in its review of the case law No. AB-44-1, recognizing certain information as a commercial secret would allow the act to be classified under Art. 210 of CC, treating it as a special in relation to Art. 198 of CC, because the misappropriated information is of a more detailed nature, covering not only the confidentiality of the data but also the principles of fair farming.

Thus, the courts overestimate the element of the data form when dealing with cases, i.e. as electronic data may also be the subject of other criminal offenses, it is necessary to address the issue of competition, otherwise the perpetrator's offense will be incorrectly classified or the number of offenses will be unduly identified. It should be noted that the norms of Art. 168 and

Art. 210 of the CC include not only electronic data, however, in addition to the general features with regard to Art. 198 of the CC, they are distinguished by their specific features – knowledge of private life, content constituting a commercial secret, data confirming the identification of an electronic payment instrument. Therefore, the above-mentioned norms undoubtedly have priority over the norm established in Art. 198 of CC.

It should be noted that a number of uncertainties have also arisen for the courts in distinguishing the crimes provided for in Chapter XXX of the CC from crimes against the financial system, specifically Art. 214 and Art. 215 of CC. The Supreme Court of Lithuania has made it clear in case No. 2K-375/2012 that situations in which the perpetrator illegally logged on to the company's account using the data of the company's electronic banking account generator in order to fraudulently acquire foreign assets for his own benefit and thus transferred the relevant amount of money from the company to his own account without the company's knowledge – cannot be assessed and qualified in accordance with Art. 198 and Art. 182 of the CC. There is a reasonable basis for the position of the Supreme Court of Lithuania because, according to its meaning, generated passwords, identification codes and etc., corresponds to the data attribute of the user authentication means (Art. 215 of CC). Illegal use of such data in the execution of a payment order fully complies with the features of the act provided for in Art. 215 of CC and shall be assessed as illegal execution of a financial transaction using the data of the means of verification of the user of a foreign payment instrument. As a result, the data of an electronic payment instrument cannot be considered the subject of Art. 198 of CC.

2.2. Problems of interpretation of composition features

One of the most common evaluative features in criminal law is related to damage, which is a somewhat specific feature in cybercrime in particular due to technical aspects. First of all, it should be mentioned that in assessing whether cybercrime has caused significant damage, it is not appropriate to refer to Para. 1 of Art. 212 of CC, which links significant damage to 150 MGL (EUR 7500), as an analogy in criminal law is not possible, the application of this provision is not an appropriate option. The Supreme Court of Lithuania has also noted this in case No. 2K-188-489/2015, pointing out that Para. 1 of Art. 212 of CC is applied in criminal offenses to the economy and business order, which are regulated in Chapter XXXI of CC. Secondly, it must be borne in mind that these offenses may cause not only pecuniary damage but also

non-pecuniary damage, such as damage to reputation. Moreover, in not all cases may actual damage occur, for example, cases where data is destroyed but it can be recovered. Although in this case the logic can be seen from a technical point of view and the success of recovering the deleted data could be said to have no legal consequences, but it is possible to agree with the deliberations of some researchers that, even with that possibility, it cannot exclude criminal liability, since such an attempt by the perpetrator to erase the data is in itself dangerous, i.e., it shows the perpetrator's intended intent to cause harm (Sauliūnas, 2010). Therefore, even if copies of those data remain, such a situation should be considered as a circumstance beyond the control of the offender and the act should be classified as an attempt to have an unlawful effect on personal data (Art. 196 of CC).

Another problematic feature in terms of the application of the CC – connection "in violation of information system security measures" provided for in Para. 1 of Art. 198-1 of CC, whereas it is not clear what constitutes a breach of the security measures of the information system. Under Article 2 of the Budapest Convention legislation must be adopted to provide for criminal liability for intentional and unlawful access to all or part of a computer system. The Convention also provided for optional features (such as breaches of computer system security measures, etc.) that could be additionally recognized as mandatory by States. Meanwhile, Art. 3 of Directive 2013/40/EU has stipulated that unauthorized access must be prosecuted if it is an unlawful intentional connection in breach of a protection measure. In doing so, the Directive has been criticized by P.M.F. Freitas and N. Goncalves (2015) for failing to provide a definition of what constitutes a security measure, which is tantamount to a breach of a security measure, in determining the sign of an illegal connection to the IS. In turn, the case law of Lithuanian courts on this issue differs, especially in cases where an illegal connection to electronic banking using someone else's identification data is being assessed. The Supreme Court of Lithuania has developed a clear case law on this issue in cases No. 2K-138/2015, No. 2K-4-507/2016 and so on by noting that: 1) the authentication procedure that allows the user to be identified in the information system can be considered as one of the means of ensuring the security of this system; 2) the unlawful input of data identifying a legitimate user by misleading the system shall be considered a breach of the security measures of that system and 3) illegal access to the information system (Internet banking system) in violation of the restrictions on access to the information system established by means of authentication cannot generally be considered insignificant from the point of view of

criminal law, especially if it allowed other illegal actions in the system. On that basis, it can be argued that, according to the Supreme Court of Lithuania, the unlawful input of data identifying a legitimate user by misleading the system constitutes a breach of the security measures of that system and constitutes an unlawful connection to the information system. As a result, Art. 198-1 of the CC may be applied in conjunction with Art. 215 of the CC. In short, an information system security measure is vulnerable if it is misled by another person. However, it is doubtful whether this is in fact a breach of the security system or a misrepresentation of the information system itself, as the security system itself is functioning correctly and is not in itself infringed, and a breach could only be established if the perpetrator had affected the password security system in such a way that it did not work at all or did not function properly, e.g. the security system would accept any combination of numbers or letters. In these cases, a proper malfunction of the protective functions is clearly visible and would undoubtedly be considered to correspond to the feature of Art. 198-1 of CC. As a result, arguments of the Supreme Court of Lithuania concerning the breach of the security system are also questionable, since, from a technical point of view, it is irrelevant to the information system itself who physically enters the required passwords. Otherwise, if we assume that only the person to whom the electronic banking system is connected can enter the data without misleading the system, a situation arises where, in order to establish an infringement, it is sufficient for the data to be entered by another person instead of the lawful user of the electronic banking system, even if he does so lawfully. In this case, the complete dependence of the breach of the information system security measures on illegality is visible. It can be seen that according to the case law of the Supreme Court of Lithuania, the application of Art. 198-1 of the CC is unreasonably complicated by the complex composition of a criminal offense with 2 acts, illegal connection and violation of the security measures of the information system. However, such a situation is flawed, as the legislator has clearly and unequivocally singled out several features into minima with an independent regulatory burden.

Conclusions

1. Although criminal liability for cybercrimes in the CC was determined by the harmonization process with the Budapest Convention and EU law standards, the analysis has showed that not all international standards are properly implemented in the CC, i.e. the qualifying feature – "by making use of other person's personal data" (Para. 2 of Art. 197 of the CC) does not fully reflect the seriousness of such crime, while the qualifying feature - an act committed "in respect of the computer data of a number of information systems" (Para. 2 of Art. 196 and Para 2 of Art. 197 of the CC) is too abstract and difficult to assessed accurately.
2. The analysis of criminal liability for cybercrimes in the CC justifies the necessity of proper implementation of Art. 8 of the Budapest Convention by criminalizing of the Computer-related fraud, that could help to assess properly accused person's actions according to criminal law. Since there is a relevant issue regarding the use of the "botnet" in EU law, it is appropriate to harmonize Art. 196 and Art. 197 of the CC with this EU standard by setting such an aggravating qualifying feature.
3. Regarding the problematic relationship between cybercrimes and other classical crimes in Lithuanian case, the analysis shows that lower courts overestimate the element of data form i.e., in case of electronic data the court usually apply criminal liability for cybercrimes, disregarding unreasonably the general and special norm competition rules. The analysed examples justify that in these cases priority should be given to legal norms that distinguish electronic data as subject of crime with special features, such as information about person's private life, commercial information or data related to electronic payment instruments.
4. Considering the interpretation problems of composition features of cybercrimes in Lithuanian case law, the content of qualifying feature "incurring major damage" in Para. 2 of Art. 196 and Para. 2 of Art. 197 of the CC should not be associated with the indicated major property damage standard set for crimes against the economy and business order, because sometimes electronic data can be deleted without any property damages. Also, Lithuanian case law regarding unauthorised access to an electronic banking system, should be criticized, because Art. 198-1 of the CC with qualifying feature "damaging the protection means of the information system" should be incriminated to accused person only if functions of the protection means are disrupted in fact.

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FRAGMENTED AND YET INFLUENTIAL: MPS' PERCEPTIONS ON THE MEDIA IN LATVIA

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Abstract

More than 30 years have passed since Latvia gained its independence, however, systematic studies of present-day relationship between media and politics are still missing. Latvia is a country where choice of media is largely determined by ethnicity. Representatives from ethnic groups acquire their daily information from different news sources, as the result the trust levels in media depend on the media format and the language of choice. This study adds to the literature by studying the perceptions of Latvian Members of Parliament on media agenda-setting power. Drawing on surveys of Latvian parliamentarians, the agenda-setting power of media is assessed and compared to the survey results in Finland. The results reveal that politicians in Latvia and in Finland think that, in general, media have a massive influence on politics, but the power of written press in Latvia is less evident. And although MPs acknowledge that media can have a significant influence on how decisions are made, the greatest impact will be observed during political debates that can be covered by the media. This study also demonstrates that even though Latvia scores high in the world press freedom ranks, MPs do not trust the media to a large extent and that can be a dangerous signal for the functioning of democracy. The results offer valuable information about the influence of media in countries outside Western Europe and provide a basis for further discussions on surveys as a method for studying the power of media agenda-setting.

Keywords: political agenda-setting, media power, political elite, MPs, survey, comparative research

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Introduction

In the article "Minimal and Massive! Politicians' Views on Media's Political Agenda-setting Power Revisited" Juho Vesa, Helena Bloomberg, and Christian Kroll (2015) encouraged debate on the validity of the survey method for studying the agenda-setting power of media. By surveying Finnish parliamentarians on how they perceive the power of the media on politics, the researchers concluded that news media has a strong influence on topics that dominate political discussions, but the impact of the media is less evident on policy-making processes. They emphasized that surveys can be used to study the power of the media, especially in countries with other types of media systems. In response to this call, Latvian lawmakers were surveyed to get a comprehensive picture of how politicians around the European Union perceive the agenda-setting power of media.

Following the line of thought of Finnish colleagues, this article aims to uncover the perceptions of Latvian MPs on agenda-setting power of media and to compare them to the beliefs of Finnish parliamentarians. On paper, both countries have parliamentary systems, where multiparty competition is ensured, and freedom of speech is respected. The picture, however, changes, when sociological and political conditions are examined that have influenced the actual performance of media in Latvia and in Finland.

Hallin and Mancini have defined Finland and other Nordic countries as most typical examples of the Democratic Corporatist model. According to them, the Democratic Corporatist media system can be characterised by these features: a significant degree of political parallelism; early development of a mass- circulation press and a high newspaper circulation nowadays; historically strong party press that provides external pluralism, broadcasting relative autonomy in political issues; strong state intervention combined with protection for press freedom; strong professionalism and institutionalized self-regulation (Hallin, 2004).

There have been numerous studies that tested whether Nordic countries correspond to the Democratic Corporatist model (Ørsten et al., 2008). Hallin and Mancini acknowledged that "media systems are not homogenous" (2004, p. 12), and that "the differences among these models, and in general the degree of variation among nation states, have diminished substantially over time" (2004, p. 251). Juha Herkman notes that recently the Finnish media system and political culture has witnessed radical changes. There has been overall marketization of the Finnish media: the decrease in press

subsidies, the diminishing role of public service broadcasting and concentration of Finnish media in the hands of large corporations (Herkman, 2009, p. 77).

Several studies have applied Hallin and Mancini's models to Eastern European countries. Some scholars have tried to draw parallels between "Mediterranean or Polarized Pluralist Models" and Eastern European countries (Jakubowicz, 2008; Wyka, 2010); however, several researchers refute this assumption by emphasizing that media systems developed in Central and East Europe will not deviate from western models because different media models are rooted in broader differences in the political, economic, social, and cultural structure of particular societies (Balčytienė, 2012; Voltmer, 2013a). The Baltic countries are characterized by low numbers of newspaper reach and circulation, poorly institutionalized systems of media self-regulation, the highest levels of press freedom, together with the highest levels of foreign ownership (Herrero et al., 2017; Balčytienė, 2012). Some efforts to strengthen public service media and few media professionalization activities are evident in Latvia; however, there are high levels of political parallelism and great influence of political public relations on media content. Balčytienė identified that there are certain elements from the Polarized Pluralist model, the Liberal model and the Democratic Corporatist model. She emphasized that journalism has undergone a late professionalization in the Baltics and that corresponds to the Polarized Pluralist model. However, there are some elements present from the Liberal model, such as a laissez-faire media policy and strong tabloid and commercial media, as well as certain aspects from the Corporatist model, tight regulation of media regarding preservation of national identity (Balčytienė, 2012). Thus, the researchers call to name Latvian media system as a hybrid, as it suffers from a lack of one dominant paradigm.

1. Linguistically divided media audiences

In the Baltic countries, the development of the news media was closely related to the history of the country. During Soviet occupation in the second half of the twentieth century, all three countries were incorporated into the Soviet Union. Everything that was connected to the cultural sphere, including the news media, printed press and films, was supervised by the Communist Party. However, despite the control system, the Baltic countries were able to preserve their cultural heritage and protect their languages against russification. The cultural sphere, particularly the literary and cultural

press, theatrical performances, national song and folk-dance festivals, performed diverse functions such as education and political mobilization (Balčytienė, 2012). Thus, the society became diversified along ideological lines, and even today media choice is largely determined by ethnic groups. This has affected the development of the media system that has not yet been fully separated from the existing political system.

The Latvian society is linguistically divided. According to the Central Statistics Bureau of the Latvia, 37% of the population in Latvia use Russian language at home. As a result, representatives of different ethnic groups acquire information from different sources. Latvians trust and use the media in Latvia, whereas the Russian-speaking minority (which makes up 25% of the total population) prefer TV channels provided by the media in Russia. 89% of Russian speakers use Russian language media and only 9% media in Latvian language (Latvijas fakti, 2020).

Another important factor characterizing the media system is public confidence in the news media. For the news media to fulfil its function, a very important prerequisite is that people trust the news media provide to them. There are several challenges that traditional news media face today. There are many alternatives to traditional media, so-called alternative and partisan media that function as news media. The rise of social media has made politicians less dependent on news media to reach their audiences, providing channels to attack traditional news media (Groshek & Koc-Michalska, 2017). Fake news, disinformation and misinformation has been spreading in news media than ever before (Benkler et al., 2018).

According to data from The European Broadcasting Union, in Finland only 19% of the population do no trust the media, whereas in Latvia 30% of population answer that they have low or no trust in the media. Compared to the average level in the EU, trust in traditional media in Latvia is higher (65% trust in radio, compared to 57% average in the EU, and 63% trust in TV, compared to 49% average in the EU). In Finland 78% of population have trust in radio and 76% in television. The proportion of people in Latvia who say they trust the written media is lower as well, 48% of the population trusts the written press (in 2020, 36% in 2019) in Latvia, and 71% in Finland (The European Broadcasting Union, 2020).

Taking into account the differences between Latvian and Finland, the strategy of this study is to find out whether Latvian MPs agree with their colleagues in Finland that media power is massive by asking them the same set of questions used in previous studies. To uncover a more nuanced

picture of the media environment in Latvia, additional questions were asked about the trust in Russian and Latvian language media.

Theory and Hypotheses

Political communication researchers have tried to uncover what influence the political agenda for last 50 years. One of the main hypotheses of agenda-setting studies is that the mass media (newspapers, television, and radio) influence what politicians think about. Scholars refer to the effect of media on political agendas: when an issue receives more attention by media, politics will follow.

One of the dominant theoretical concepts of communication during the past decades has been agenda- setting. McCombs and Shaw introduced their notion of agenda-setting by quoting Cohen: "The press may not be successful much of the time telling people what to think, but it is stunningly successful in telling it readers what to think about" (Cohen, 1963, p. 13). The agenda-setting is based on the assumption that the news media have a significant impact on the perceived importance of issues held by the public. To test this hypothesis, McCombs and Shaw compared the news media agenda with survey responses from public (McCombs & Shaw, 1972). Since the first study, conducted during 1968 US presidential election, hundreds of studies have been carried out helping agenda-setting to develop into a rich theory. One of the dimensions or subareas of agenda-setting theory studies how the media agenda is related to the policy agenda. In other words, how media influence decision makers. Political agenda-setting scholars have focused their attention on the agenda interaction between the media and politicians.

The question "How powerful is the media agenda setter?" has been studied from several perspectives and has led to contradictory results, depending on the media outlet, issue, political agendas, the period studied (Walgrave & Van Aelst, 2006), as well as the strategic interests of political actors (Van der Pas, 2014; Green-Pedersen & Stubager, 2010) and the methods used in the studies. Recently, the traditional time-series approach has been complemented with surveys (Van Aelst & Walgrave, 2011; Vesa et al., 2015), interviews (Davies, 2007) and experiments (Helfer, 2016), thus enhancing our understanding how various actors depending on circumstances are influenced by actions of the media. Despite growing number of studies, still very little is known about how responsive politicians are to media agenda-setting power across different countries.

Earlier studies in Belgium, Sweden, Netherlands, Denmark, and recently in Finland have confirmed that media is amongst the most powerful political agenda setters. Vesa, Bloomberg and Kroll (2015) argued that it is reasonable to expect roughly similar findings in other countries as well. To test this assumption the following hypotheses were formulated:

H1. The Latvian MPs perceive the media to be one of the most important political agenda-setters.

If the Latvian MPs agree that the media has an impressive agenda-setting power, do they accept various dimensions of the media's power on politics? S. Walgrave and P. van Aelst have stated that "there is no such thing as the political agenda but only an archipelago of different loosely associated political agendas" (2006, 94). They propose to arrange political agendas on a continuum from substantial to symbolic. Symbolic agendas are ones that do not have direct political consequences, whereas substantial have a direct impact (Walgrave & Van Aelst, 2006; Vesa et al., 2015). The survey of Finnish parliamentarians revealed that the news media has a strong influence on which topics dominate in political discussions, but the impact of the media is smaller on policy making processes. To find out whether Latvian MPs think similar, the following hypothesis was included:

H2. The news media affect symbolic political agendas much more strongly and more often than substantial political agendas.

Do MPs tend to exaggerate the power of media? In 2011, Van Aelst and Walgrave conducted a massive survey of MPs in Sweden, Denmark, Belgium, and the Netherlands. They found out that the MPs that are frustrated about their limited personal influence on the political agenda try to shift responsibility for their own political shortcomings to the media. In 2015, Vesa, Bloomberg, and Kroll (2015) cross-validated previous findings by using another indicator of negative attitudes: trust in the news media. The researchers did not find evidence that levels of trust are somehow related to the perception of agenda- setting power of the media. To find out whether Latvian MPs agree to the perception of their colleagues in Europe, the following hypothesis was included:

H3. The less MPs trust the media, the more agenda-setting power they attribute to it.

Since the end of 20th century when the first surveys of MPs were carried out in Europe, the media landscape has changed dramatically, and nowadays it is important to bring into discussion the impact of social media on politics. Internet and social media created new 'hybrid media systems' that have

expanded the number of actors who can shape the political communication environment (Chadwick, 2013). Despite an increasing number of studies (Jungherr, 2016; Barbera et al. 2019; Peeters et al., 2019), researchers have not come to an agreement on the role of social networks in setting political agendas. To clarify whether MPs acknowledge the importance of social networks and whether they see it as a powerful tool, the following hypothesis was formulated:

H4. MPs who see social media as a valuable tool in political battle will attribute more agenda- setting power to the media.

2. Survey Data

This survey targeted all legislators in Latvia. In February 2017, an email containing an invitation letter and a link to an online questionnaire was sent to all factions of the Parliament. A week later, the researcher was invited to the faction meetings to present the idea of this research and to distribute questionnaires. After a couple of days, the researcher contacted political party groups to remind the MPs about this survey. As only 25% of the politicians responded to the survey, the researcher made one more visit to the Parliament to hand out the questionnaires a short time before the plenary session. At the beginning of March 2017, the last questionnaires were collected to analyse the results. It can be concluded that the effort to contact politicians several times contributed to satisfying the response rate.

Of the 100 members of the Parliament, 52 completed the questionnaire, resulting in a response rate of 52% (Appendix, Table A1). The distribution of political party groups as well as government and opposition status among the respondents was roughly the same as in the Parliament. However, not all parties were equally represented. The party in opposition "Saskaņa" was underrepresented among the respondents with 29% response rate, while some of the parties such as "Latvijas Reģionu apvienība" and "Vienotība" were overrepresented with response rates over 60%.

To compare Latvia with other countries, the set of questions was borrowed from earlier studies (Vesa et al., 2015; Van Aelst & Walgrave, 2011). First of all, the MPs had to answer to the questions – "How often do the following actors succeed in setting a new problem on top of the political agenda?" The MPs were asked to evaluate the influence of various actors in scale 1 to 5

(1 – very rarely, 5 – very often). As Figure 1 shows, the Latvian MPs think that the power of radio and television to set new problems on political agenda is strong. In the opinion of the respondents, only the Prime minister has greater influence. However, the power of the written press is less evident and only the influence of the parliamentarians was evaluated less important.

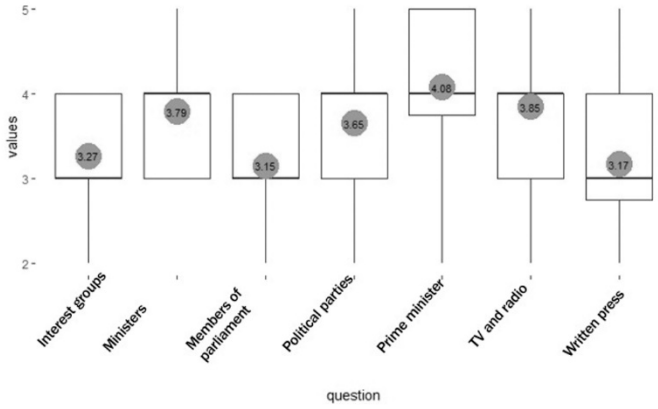

Figure 1. **"How often do following actors manage to set an issue to political agenda?" Latvian MPs' perceptions (scale 1–5 (very often))**

To further test H1, the answers of Latvian MPs were compared to the answers of Finnish MPs (Figure 2). The Finnish MPs think that the power of television and radio to set news agenda is stronger than that of other political actors. Only the Prime minister can compete for this position. Unlike politicians in Latvia, Finnish MPs ranked the written press as the third important actor, and that reflects the strong position of press in Finland (Vesa et al., 2015, p. 7).

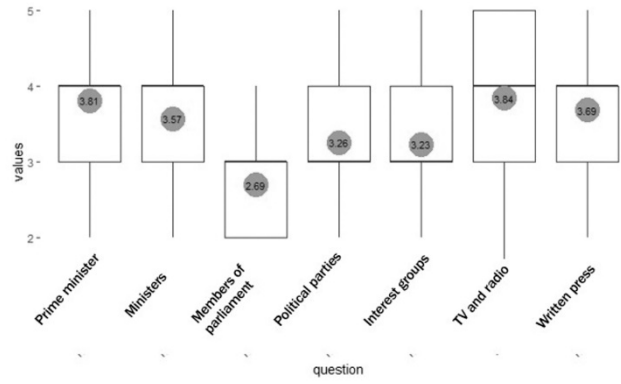

Figure 2. **"How often do following actors manage to set an issue to political agenda?" Finnish MPs' perceptions (scale 1–5 (very often))**

To get full understanding about MPs' perceptions on media influence in the long-term, the following question was asked: "How much influence have the following actors had on politics during last decade?" The results (Figure 3) indicate that the news media's long-term influence on politics has been quite significant. The respondents rated media as the third most important agenda-setter, following political parties and ministers. When comparing Figure 1 with Figure 3, one can conclude that media is and has been among the TOP 3 political agenda-setters for the last 10 years. Therefore, H1 is supported.

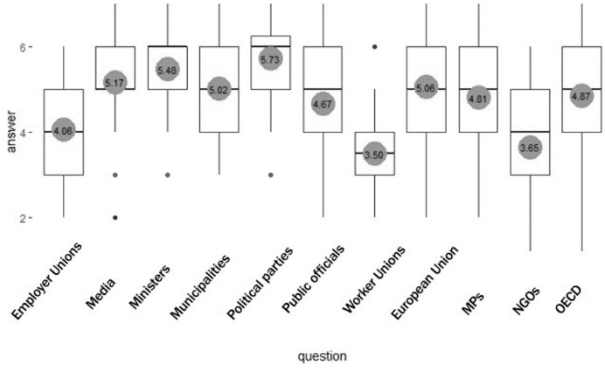

Figure 3. **How much influence have the following actors had over what political decisions have been made during the last 10 years? MPs' perceptions (scale 1–7 (very much))**

The second hypothesis (H2) predicts that media has more power on political discussions and less on actual political making process. To find out the answer, the MPs had to answer two sets of questions. First of all, they were asked to provide answers to the question "How often is an issue discussed in the following places because the media have raised it?" As one can see in Figure 4, according to MPs, media have the strongest influence on discussions in cafés and corridors– 64.5% agree to that. These are places where most of political negotiations, political gossips and lobbying takes place (Vesa at al., 2015, p. 10). Importantly, the journalists can access these places and participate in political discussions. The MPs perceive that the second most affected agendas are the meetings of political party groups. On the one hand, these are quite substantial, because party groups discuss most important issues of a day and the voting strategy for the next day's plenary sitting. On the other hand, these are the meetings where parties often plan what issues will be raised on symbolic agendas. Approximately half of respondents agree that the news media often affect the work of parliamentary committees. The standing committee meetings are very crucial part of parliamentary work in Latvia. The main function of committees is to consider draft laws, proposals and submissions that latter will be considered at plenary sittings. However, committee meetings are often attended by the media and that can influence what discussion will be held. Almost the same number of MPs (48%) agreed that media quite often affect attention paid to issues in the meetings of governing parties (the Coalition Council's Meeting). These meetings provide a forum, where major political figures of political parties gather every week to discuss what, when and how issues will be voted in the Parliament and the Government. The media representatives do not attend these meetings, but after each of them press briefings are held, so MPs use this as a platform to disseminate their symbolic agendas.

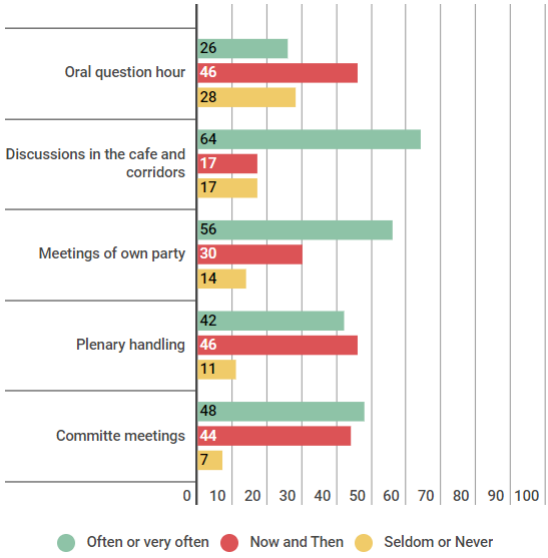

Figure 4. **Latvian MPs' perceptions on how often is an issue discussed in the following places because media have raised it (percentage)**

According to MPs, the least affected by media are the answer sessions to parliamentary questions. Only 26% agreed that it is "very often and often affected by media". These sessions provide opposition parties the opportunity to "grill" ministers in front of the media. However, quite often ministers refrain from participating in these sessions and choose to answer MPs' questions in written form. Thus, in 2017 when this survey took place only 7 sessions were held. This is very different from Finland where question hours are very popular. Question hours are broad-cast live on the parliament web page and on television, and usually there is a live audience as well. Finnish MPs think that the media have the strongest influence on the question hour due to prior media coverage (Figure 5). According to Finnish parliamentarians the parliamentary standing committee meetings are the least affected. In contrast to Latvian Parliament, committee meetings are held behind closed doors (Vesa et al., 2015, 11).

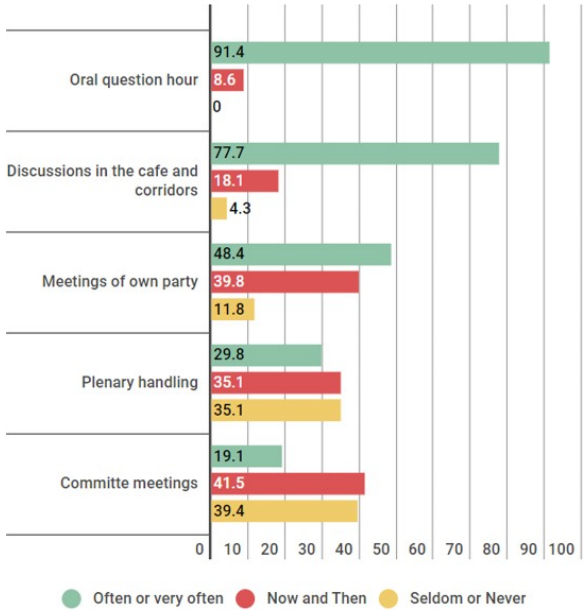

Figure 5. **Finnish MPs' perceptions on how often is an issue discussed in the following places because media have raised it (percentage)**

To further test H2 the MPs had to answer the question about media's ability to influence what and how issues are discussed in the society and in the Parliament. Figure 6 states that according to the MPs the media affect the most how issues are discussed in the society. Seventy-five percent of MPs answered "very much and quite a lot". Most MPs agree that the media can also influence how, but not what issues are discussed in plenary sessions. Forty-seven percent of MPs don't believe that the media affect what issues government make proposals about. Almost the same number of parliamentarians don't think that the media influence what issues are discussed in the plenary sessions.

To summarize, the MPs' answers show that the media have a great deal of influence on symbolic agendas. Although in some questions MPs indicated that the media can have an effect on what decision will be made, most of MPs' responses indicated that the media can have a greater impact on the political debate that could be covered by the media. Thus, one can conclude that the media affect more strongly symbolic agendas and H2 is supported.

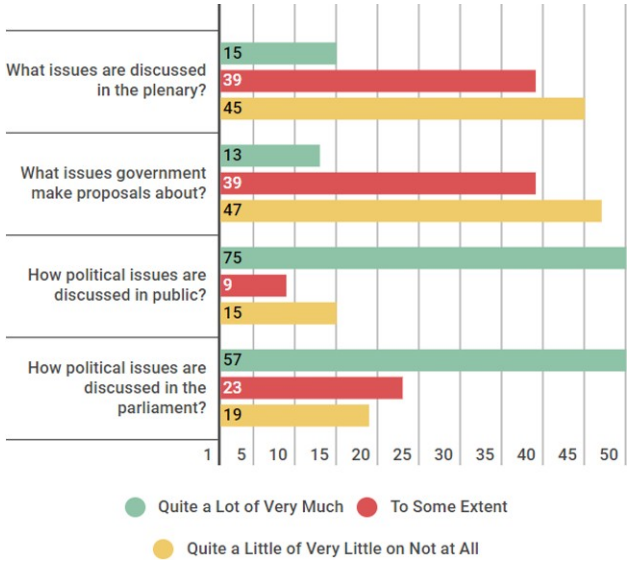

Figure 6. **Latvian MPs' perceptions on the media influence on political issues (percentage)**

To understand whether weaker positions of the written press to set the issues on the political agenda could be connected to trust levels several questions were asked about the media's truthfulness, trustworthiness and the competence of media. As one can see in the Figure 7, the MPs do not trust the media to a large scale, especially the Russian-language media. Only seventeen percent of MPs agree that Latvian- language media are unbiased and only nine percent that Russian-media language in Latvia are unbiased. MPs are particularly sceptical about the media's trustworthiness, ability to display full picture and to report truthfully. Only eight percent of MPs are convinced that Latvian-language media display a complete picture and only five percent believe that Russian-language media display a complete picture. MPs don't believe that Latvian and Russian media report truthfully (twenty-one percent agreed about Latvian language media and nine percent about Russian language media).

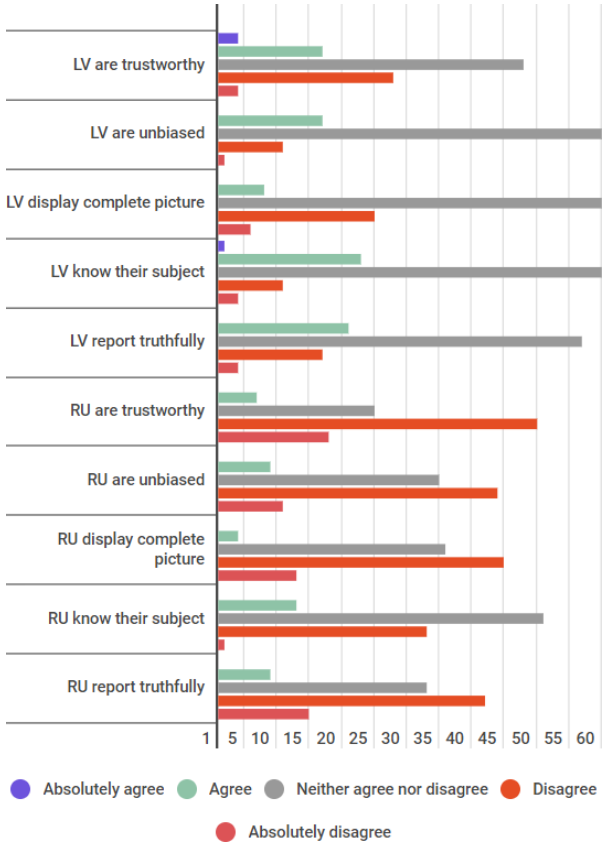

Figure 7. **Latvian MPs' perceptions on Latvian-language and Russian-language media**

To test whether the trust level in media is related to the agenda-setting power of media (H3), correlation tests were used between two variables "media's agenda-setting power" and "trust in media". "Media's agenda-setting power" is a sum of questions that measure the power of the written press, radio and TV to set political agenda (Figure 1) (Cronbach α = 0.745). The variable "trust in media", is a sum of questions: "Media reports truthfully; is trustworthy; knows their subject; display complete picture and is trustworthy" (Cronbach's α = 0.857) (Figure 7). Results showed that the correlation is not strong (r = +.02, p >.05). To further test this hypothesis, the author used Pearson correlation for Latvian language and Russian language media separately. There were no statistically significant correlations (r = +.01, p>0.05 (Latvian language media) and r = -0.2, p>0.05 (Russian-language media)). Therefore, H3 must be rejected. And once again

the finding echoes previous studies, there is no evidence that trust in media is related to the perception of trust in media (Vesa et al., 2015).

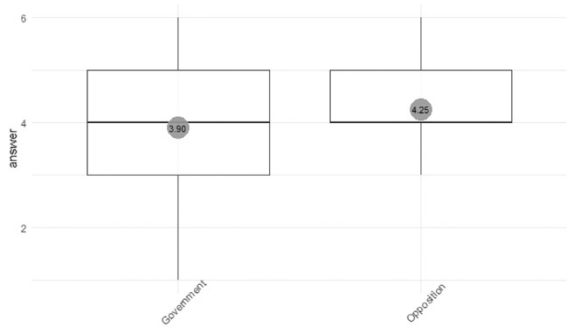

Figure 8. **"How powerful tools are social media for reaching your political goals?" Latvian MPs' perceptions (scale1–5 (very useful))**

To test the fourth hypothesis: "MPs who see social media as a valuable tool for political battles, will attribute more agenda-setting power to media", the correlation analysis was carried. The first variable represents MPs' perceptions about the power of TV, radio and written press to put issues on top of the political agenda (Figure 1) (Cronbach $\alpha = 0.745$). The second variable is answer to the question "In your opinion, how powerul tools are social media for reaching your political goals?" (Figure 8). The hypothesis failed to capture the strength of tied connection between agenda-setting power and MPs perceptions about use of social media for political goals. The data didn't confirm that MPs who see social media as a valuable tool for political battles, attribute more power to media ($r = -0.06$, $p<0.67$). The Hypothesis 4 must be rejected.

Conclusion

The relationship between the media and politicians has been in the centre of attention in both communication science and political science for several decades. The mass media plays a significant role in modern democracies, and many studies have intensively analysed how these actors interact. Since the raise of the popularity of political communication studies researchers have tried to explore various methods to describe the depth of this interaction.

A comparative approach can tell us how MPs in various countries with diverse media and political systems think about media power, and whether there are any meaningful differences in their perceptions.

Most of social science researchers focus on one national system, and as a result, their theories and conclusions are limited and unbiased. Comparative research can challenge universal assumptions allowing to see some issues in relation to alternatives. Esser and Hanitzsch argue that comparative research is a valuable tool for broadening our understanding of communication processes, as it opens up new avenues for research (Esser et al., 2012, p. 3).

This study reveals that Latvian MPs think very similar to their colleagues in Finland when it comes to general statements about the agenda-setting power of media. However, the difference lies in the type of media. Like other Nordic countries, Finland has a long history of the written press, but Latvia had to take a different path towards development of democratic institutional framework, diverse media and civic society. As a result, MPs of Latvia do not see the written press as one of the most powerful actors that can have a major influence on the political agenda.

To uncover how MPs in Latvia evaluate the media and how much belief they put in the media system that they have helped to create, several questions were asked regarding trust in media. The results showed, that Latvian MPs are very critical about the objectivity of media. They are especially judgmental towards Russian language media. MPs don't see them as trustworthy, unbiased and being able to display the full picture. Taking into account that the most important functions of media in democracies is to provide unbiased, trustworthy information to the citizens about how the government is managed, MPs perceptions can be seen as a dangerous signal to the society.

Since the first surveys were conducted in Netherlands, Sweden, Belgium and Denmark, the media landscape has changed and news online media as well as social media has gained more power. This study was able to take a glimpse of MPs' perceptions and found out that the politicians see them as an important asset in the political battlefield. Therefore, one of the suggestions for future surveys of MPs could be to refine the questionnaire adding questions that could reveal the power of social media on a political agenda.

This study shows that the survey can be used as a valid method to study perceptions of MPs on agenda- setting power of media. The general set of questions about the power of media can give a comprehensive picture how media influence is evaluated in different countries. Nevertheless, it is

important to take into account different formations of media systems that developed under particular historical conditions. Thus, the researcher concludes that the findings of earlier surveys in Western EU countries can be generalized to other EU countries but there are some socio-political and cultural-historical peculiarities that must be taken into account. To conclude, the author hopes that these findings will inspire future surveys of elite politicians in countries with various political and media systems.

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Notes

Out of 100 MPs in Latvia 52% participated in the survey. Table A1 provides summary of data about MPs who participated in the survey. The questionnaire was organised in routine parliamentary session and no party refused to participate.

Appendix

Table A1

Characteristic of Latvian MPs

Characteristic	**Government**, N = 35[1]	**Oposition**, N = 17[1]
age	57 (49, 66)	56 (47, 64)
specialisation		
more than two	25 (71%)	11 (65%)
one or two	10 (29%)	6 (35%)
years_mp	6.0 (4.0, 6.5)	7.0 (3.0, 10.0)
language		
Latvian	32 (91%)	11 (65%)
Russian	3 (8.6%)	6 (35%)
gender		
Man	30 (86%)	13 (76%)
Woman	5 (14%)	4 (24%)

[1] Statistics presented: Median (IQR); n (%)

EXPERIENTIAL MARKETING IN COMMUNICATION OF LOYALFOREIGN STUDENTS ON SOCIAL NETWORKS

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Abstract

Nowadays, experiential marketing is of great interest to researchers and practitioners. The use of experiential marketing helps to promote brands, because consumers take into account the experience when choosing a particular brand, product, service. Experiential marketing, which involves concepts such as satisfaction and loyalty, can influence the recommendation messages that customers distribute.

With the rapid development of social media communication, the amount of recommendation messages in the Internet environment has also increased. This is also very relevant in the field of higher education. It is on social networks that loyal foreign students can share their impressions and experiences with other potential foreign students about Latvian universities and Latvia as a destination for higher education, thus becoming distributors of marketing messages.

The aim of the research is to investigate how the experience of foreign students studying at a university in Latvia is reflected in their communication on social networks, and what is its connection with the formation of loyalty. Research methods: survey, descriptive analysis technique crosstabs, T-Test.

The study concludes that foreign message publishers have a higher average level of loyalty to the country of study than those

who do not engage in such social network communication, as well as a higher average level of loyalty to their university. The potential of the recommendations in this group is quite high, and it can be used to promote the recognition of the country as an educational destination and its universities.

Keywords: experiential marketing, loyalty, satisfaction, foreign students, social networks

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Introduction

With increasing competition in education services, higher education institutions are paying more and more attention to the needs and desires of their consumers, namely students (DeShields et al, 2005; Smorvik & Vespestad, 2019). Experiential marketing can be used to attract and retain foreign students and build their satisfaction and loyalty in a highly competitive world. In a situation where the number of domestic students is declining, one of the ways of development is to actively attract foreign students. Internationalization trends in the higher education sector have been observed for 30 years. The export of higher education in Latvia has become an important sector of the national economy. As the number of foreign students in Latvia increases, in the long run it is necessary to be aware of the factors forming experience in higher education, their impact on the satisfaction and loyalty of foreign students, which is able to influence the reports of positive recommendations. In this context, the recommendations of loyal students, who envisage sharing their experience of the destination/ university of higher education within the framework of this study, become important. The rapid increase in the use of the Internet and social media platforms has accelerated the development of electronic recommendation messages. It is on social networks that loyal foreign students can share their impressions and experiences with other potential foreign students about Latvian universities and Latvia as a destination for higher education, thus becoming distributors of marketing news.

The aim of the research is to study how the experience of foreign students studying at a university in Latvia is reflected in their communication on social networks, and what is its connection with the formation of loyalty. The research method used is a survey, a descriptive analysis technique, namely a table of intersections, a T-Test. In the course of the research, the

potential of publicity of Latvia as a destination for higher education among a group of loyal foreign students in the context of experiential marketing was analysed.

1. Communication of loyal consumer advice on socialnetworks in experiential marketing

Nowadays, companies try to offer their customers the best experience of brand interaction. It aims to differentiate the brand and its products from other companies and creatively entertain customers (Rohatgi, 2011). An experience-based marketing strategy can become the most important basis for a brand's competitive advantage. Researchers recognize that experiential marketing adds value to a company and provides several benefits: differentiation from competitors, building relationships with all customers, attracting new customers, and strengthening relationships with existing customers by fostering their loyalty (Puti & dan Dewanto Hadisumarto, 2012). Experiential marketing is a multifaceted concept, its main ideais based on such concepts as experience, consumer experience, the value of experience.

Experiential marketing is also associated with concepts such as satisfaction and loyalty. The term loyalty refers to "a deep commitment to re-purchase or promote a favourite product/service in the future, thereby facilitating re-purchases of the same brand or brand group, regardless of the impact of the situation and marketing activities aimed at encouraging switching" (Oliver, 1999, p. 34). Brand loyalty is explained as a complex mix of attitudinal and behavioural elements (Oliver, 1999), which is expressed in a deep commitment to continue to promote the products/services (including brands, companies) in the future through repeated purchases. Loyal customers recommend a brand or company to other consumers, disseminate positive testimonials, and are often willing to pay more for a product/service (Lima & Fernandes, 2015; Rai & Srivastava, 2014; Wu & Ai, 2016).

Loyalty is associated with customer satisfaction, which has been demonstrated in several empirical studies (e.g., Araci et al., 2017; Sukmaputra, 2018; Septiano & Sari, 2020; Kuswardani & Yani, 2020; Noor et al., 2020). Satisfaction is defined as a condition characterized by the fulfilment or exceeding of an individual's needs, desires and expectations as a result of the purchase, consumption of a product/service, and which encourages repeat purchases

and loyal attitudes (Anton, 1996). Fornell (1992) pointed out thatloyalty is a function of satisfaction, loyal customers are not always satisfied, but satisfied customers have every chance to become loyal. Several studies have found that loyalty- promoting factors include consumer satisfaction (Fornell, 1992; Carpenter, 2008; Oliver,1980), trust (Casaló et al., 2007; Chaudhuri & Holbrook, 2001), and affection (Fullerton, 2003). The higher the satisfaction, the lower the likelihood that the consumer will switch to another brand, the greater the likelihood of building loyalty, and this is also the case in the tourism industry (Wu & Ai, 2016; Manthiou et al., 2016; Milman & Tasci, 2018). This is particularly important in this context, as foreign students arriving in the country are both students and tourists, and their experience in the field of tourism can affect both their satisfaction and loyalty.

Kao, Huang, & Wu (2008) have found that there are four characteristics of experience related to experience satisfaction, which in turn have a positive relationship with loyalty. These are:

- immersion – during consumption a person fully immerses himself in experience, forgetting time, enjoying the process;
- the surprise, novelty, uniqueness that consumers feel when using a service or product;
- involvement or interaction between consumers and the product/ service;
- joy, enjoyment, what consumers feel from their experience.

Opportunities to build loyalty become relevant, as the recommendations of foreign students to other potential students when returning to their country are one of the ways to promote and guide the country/university in the international higher education market.

Sukmaputra (2018) wrote about the positive relationship between experiential marketing and customer loyalty, revealing that the use of experiential marketing can increase loyalty by about a third. Knowing what the experience of foreign students is made of, what factors influence it, organizing the learning process, offering different activities, it is not possible to guarantee that the experience of all students will be the same, because it is influenced by many factors (university, relationships with colleagues and others, people inside and outside university, previous experience, psychological condition, etc.). It is important to conduct research on the factors influencing the experience in a specific target group in order to find out how it can be influenced, how to create a positive experience for foreign students, who can later become loyal due to this experience, and disseminate

positive information about the country and marketing recommendations in the form of reports.

T. Arismunandara et al. (Arismunandar et al., 2019), studying the example of a cafe and the application of experiential marketing in its communication, concluded that experiential marketing has a positive effect on customer loyalty and satisfaction both directly and indirectly, mostly through dimensions such as feelings and compliance. Referring to the positive relationship between experiential marketing and customer loyalty, I. Santi et al. (Santi et al., 2020) concluded that there were positive correlations, namely:

- Experiential marketing has a significant positive impact on customer satisfaction;
- Customer satisfaction has a significant positive effect on customer loyalty;
- Experiential marketing has a positive and significant impact on customer loyalty. Similar results have been demonstrated by other authors (e.g., Koduah & Farley, 2016; Celep et al., 2017; Pratminingsih et al., 2018; Abadi et al., 2020).

Shieh & Lai (2017) also used the Schmitt (1999) model (five dimensions) as a basis for exploring the relationship between experiential marketing and loyalty, they focused on brand loyalty and identified the positive relationship of the five strategic modules (dimensions) with brand experience and brand loyalty.

In contrast, Widowati and Tsabita (2017) pointed out that experiential marketing has a significant effect on customer satisfaction, while customer satisfaction has a significant effect on customer loyalty, however, experiential marketing does not have a significant effect on customer loyalty, so customer satisfaction as an intermediary. Other studies (e.g. Astuti & Respati, 2020) suggest that customer satisfaction is an intermediate variable between experiential marketing and customer loyalty. Subawa et al. (2020) concluded that experiential marketing has a significant and positive effect on repeat purchases.

S. Ueacharoenkit (2013) points to the link between brand experience and loyalty, noting that today consumers not only buy products/services based on the functionality of the products, but also value the experience offered. It facilitates the application of new marketing strategies, such as emphasizing how to meet customer needs and build loyalty based on experiential marketing concepts. Soderlund and Sagfosse (2017) found experimentally that if an

experienced service/product manufacturer/brand puts in more effort, they are more likely toachieve higher customer satisfaction and loyalty.

N. Adzhani and M. Simanjuntak (2021) found that customer experience has an impact on customer satisfaction, there is a greater correlation between variables of customer experience such as competence, problem solving, fulfilment of promises, time value, but less correlation with availability, customer identification, help and personalization. This study also showed a positive and strong relationship between customer satisfaction and loyalty.

Communication also plays an important role, as it can influence the level of loyalty. Hossain and Chonko (2018) have shown that two-way communication promotes higher consumer loyalty.

Experiential marketing requires that loyal customers become distributors of positive feedback by sharing brand impressions. Consumers also seek information before making a purchase decision in order to reduce uncertainty and perceived risks. In addition to mass media channels, word of mouth and electronic referral marketing are also used in the decision-making process (Bronner & De Hoog, 2011). The scientific literature has analysed the impact of experiential marketing on referral marketing using customer satisfaction as an intermediate variable, and the results of the study confirmed that experiential marketing influences both referral marketing and customer satisfaction (Artanti, 2016). Referral marketing is important because it involves concepts such as satisfaction and loyalty. There are several studies that show a significant effect of satisfaction on referral marketing (Heitman et al., 2007; Hennig-Thurau et al., 2002; Söderlund, 2006; Wangenheim & Bayón, 2007). Anderson (1998) found that very satisfied and very dissatisfiedcustomers are more likely to start transmitting referral marketing messages.

Referral marketing is closely linked to interpersonal communication, which is an integral part of everyday life. People share information with their friends, neighbours, colleagues. The sharing of thoughts, opinions, information, news and other content between people can be called “word-of-mouth” communication or experiential marketing communication (Berger, 2014).

According to traditional communication theories, marketing has a significant impact on the recipient's intentions to act and future behaviour (Park, 2016). Thanks to multilateral exchange, a single recommendation marketing message can reach and potentially affect many recipients (Brown, Broderick & Lee, 2007). A unique recommendation marketing effect that sets it apart from other traditional marketing effects is the positive feedback mechanism

between the recommendation marketing report and product sales (Duan et al., 2008). Organizations are looking for new ways to achieve and maintain competitiveness in markets where consumers are becoming more cautious and demanding, and in an increasingly competitive environment. One of the directions of differentiation is the positive recommendations made by satisfied consumers (Sweeney et al., 2005).

Positive referral marketing messages are effective for several reasons:

- they are personalized because the informant presents the information in an appropriate form accepted by the recipient;
- they save the recipient time and money in finding relevant information;
- where information is transmitted through informal sources, it shall be independent because the informant has no personal interest in selling the service, thus increasing the reliability of the information (Sweeney et al., 2005).

The development of information technology and the proliferation of online social networks have significantly changed the way information is transmitted and extended the traditional limitations of referral marketing (Laroche et al. 2005). If in the past recommendation marketing was targeted at one or a few friends, now these messages are seen all over the world (Duan et al., 2008). Due to the spread of electronic technologies, virtual interactions between consumers have increased (Goldsmith, 2006; Litvinet al., 2008). Online or electronic referral marketing can be explained as the informal communication with consumers about the characteristics and use of specific goods, services or their sellers via Internet technologies (Litvin et al., 2008). As a result, electronic recommendation marketing is playing an increasingly important role in consumer purchasing decisions. Electronic recommendation marketing, which is becoming more and more successful on online networks,provides people with useful feedback and opportunities to obtain quality information before consumption. Many studies have noted that online reviews affect sales of experience goods (Zhao et al., 2016).

Several studies have focused on the link between recommendation marketing and experiential marketing. Made Aristiawan et al. (Made Aristiawan et al., 2019) studied the effect of experiential marketing on referral marketing using satisfaction as an intermediate variable. They found that experiential marketing had a positive but insignificant effect on referral marketing, however experiential marketing had a positive and effect on satisfaction, while satisfaction had a positive but insignificant effect onrecommendation marketing. Respectively, they concluded that experiential marketing affects

referral marketing through satisfaction. In contrast, Puijaistuti & Rusfian (Puijaistuti & Rusfian, 2019) investigated the impact of experiential marketing on online referral marketing in the example of a restaurant, concluding that experiential marketing has an impact on its formation. This means that by creating an unforgettable experience for restaurant visitors, customers will be happy to distribute their feedback electronically.

There is not much research on recommendation marketing in higher education and specifically in the target group of foreign students. Cownie (2016) concluded that both foreign and local students in the UK have about the same tendency to leave both positive and negative feedback about their university, faculty and experience. D. Sipila et al. (Sipila et al., 2017) found that at different stages of decision-making that students go through, the marketing of recommendations has different, but sometimes very significant, effects on the behaviour of these consumers/ students, and through referral marketing, universities are able to help prospective and current students make decisions. Le, Dobele and Robinson (Le et al., 2018) conducted an online referral marketing study among university students, finding that they actively use social media to obtain information about the university. Through this communication, students typically seek information on topics such as reputation, career prospects, the study process, administration, and student life.

2. Methods

The central element of the empirical research is a student survey, which examines the factors that are most important for foreign students when choosing a destination country and university studies, the relationship between these factors and satisfaction and loyalty to Latvia as a higher education destination and the Latvian higher education institution. The survey dataprovide an opportunity to determine the publicity potential of Latvia as an educational destination for a group of loyal foreign students in the context of experience marketing.

Descriptive analysis technique – intersection table, as well as T-Test was used to process the research data. Crossover tables (cross tabulations) are a two-dimensional method of analysis that allows you to look at the relationships between two variables, such as comparing the differences between agreeing and disagreeing with a statement between satisfied and dissatisfied respondents. The T-Test is a two-dimensional method of analysis

that allows you to compare the differences in the mean values of a characteristic between two groups, such as the average satisfaction of men and women, and to determine how significant these differences are.

The survey of foreign students took place in two phases: November and December 2018, and April and May 2019, with four months in total. The method of conducting the survey was a questionnaire, the techniques of non-probable samples – accessibility and snowballs were used for selecting respondents.

The questionnaire consisted of 21 questions. Based on it, the factors that are most important for foreign students when choosing a destination country and university studies were first explored. The second group of questions allowed to determine the factors forming the experience of foreign students, satisfaction with these factors in Latvia/university, and loyalty to the state/ university. The third group of questions presented in this study allows to study how the experience of foreign students studying at a university in Latvia is reflected in their communication on social networks, and what is its connection with the development of loyalty. Six higher education institutions were selected for the analysis based on their rating and the number of foreign students, as well as their location (Riga, the capital of Latvia). A total of 674 analysis questionnaires were received. The distribution of the obtained valid questionnaires by higher education institutions was as follows: University of Latvia – 122; Riga Technical University – 112; Baltic International Academy – 110; Riga Stradins University – 104; Turiba University – 130; RISEBA School of Business, Art and Technology – 96. The number of male respondents was 399, the number of female respondents was 275.

3. Results and discussion

The relationship between loyalty and satisfaction at both the state and university level allows the identification of foreign students as consumers of Latvian higher education. For this purpose, it was studied how the experience of foreign students studying at a university in Latvia is reflected in their communication on social networks, and what its connection with the formation of loyalty is. A descriptive analysis technique called intersection table analysis was used for this purpose.

For the sake of convenience and visibility of the analysis, total satisfaction was divided into two levels (satisfied and dissatisfied), total loyalty was divided into three levels (low, mediumand high loyalty). As the respondents are foreign students and their experience depends on both their stay in the country and their studies at the university, loyalty and satisfaction were surveyed at both the national and university levels.

The overall layout of the loyalty and satisfaction crossover table at national level is based on the responses of 571 respondents (Table 1).

Table 1

Relationship between satisfaction and loyalty levels at the national level (table created by the authors)

Group	Indicator	Low loyalty	Average loyalty	High loyalty	Total
Dissatisfied	Number	31	8	19	**58**
	Proportion, %	5.43	1.40	3.33	**10.16**
Satisfied	Number	39	54	420	**513**
	Proportion, %	6.83	9.46	73.56	**89.84**

Table 1 shows a very close relationship between loyalty to the state (including willingness to recommend it to other potential students) and satisfaction with it. The largest group is satisfied with high loyalty – 73.5% or almost three quarters. In second place with only 9.46% are respondents satisfied with average loyalty. Satisfied respondents with low loyalty or those who will most likely not recommend fellow people to travel to Latvia are in third place with 6.83%. 5.43% of respondents have low loyalty with dissatisfaction, but another 3.33% would recommend others to travel to Latvia despite dissatisfaction (although this proportion is obviously negligible). Another 1.4% are dissatisfied with the average loyalty.

The overall scheme of the intersection table of the relationship between loyalty and satisfaction at the university level is based on the answers of 587 respondents (Table 2).

Table 2

Relationship between satisfaction and loyalty levels at the university level (table created by the authors)

Group	Indicator	Low loyalty	Average loyalty	High loyalty	Total
Dissatisfied	Number	64	14	27	**105**
	Proportion, %	10.90	2.39	4.60	**17.89**
Satisfied	Number	26	38	418	**482**
	Proportion, %	4.43	6.37	71.21	**82.11**

Similar to the intersection table at the national level, the profiling of respondents at the university level shows a very close relationship between loyalty to the university and satisfaction with what is best achieved by the combination of a high level of loyalty and satisfaction for most respondents. The largest group is satisfied with high loyalty – 71.21%. Inthe second place with less than 11% are dissatisfied respondents with a low level of loyalty. In third place with 6.37% are satisfied respondents with average loyalty. Another four and a half percent of respondents would recommend the university they are studying at, despite their own dissatisfaction with it; about the same number would not recommend choosing a country and a university for higher education. The remaining 2.4% of respondents show average loyalty along with dissatisfaction.

Satisfaction of foreign students with lectures in an interactive form was investigated in orderto find out the content of possible recommendation reports (Table 3).

Table 3

Attitudes towards lectures in an interactive form (for those who did), N = 594 (table created by theauthors)

Answer	Number	Percentage
Disagree	46	7.74
Rather disagree	36	6.06
Rather agree	213	35.86
Agree	299	50.34

As can be seen from the table above, the majority (practically four-fifths of the respondents who had interactive lectures) admit that they liked them.

Similar to the attitude towards interactive lectures, it is necessary to find out whether foreign students liked the events organized for students (Table 4).

Table 4

Agreeing with the statement "I liked the events organized for students", N = 674 (table created by theauthors)

Answer	Number	Percentage
Disagree	64	9.50
Rather disagree	33	4.90
Rather agree	184	27.30
Agree	281	41.69
Hard to answer	1	0.15
I don't care	15	9.94
There were no such events	67	4.30
There were events, but I did not participate	29	2.23

The majority of students (69%) enjoyed the events designed and organized by the students. About 14% did not like them, about 10% indicated that they were not interested in them, but another 4% did not have such events. Slightly more than 2% did not participate.

The following questions make it possible to find out the activity of foreign students on social networks (Tables 5 and 6).

Table 5

Consent to the statement "I share my impressions of Riga/Latvia on social networks", N = 674 (tablecreated by the authors)

Answer	Number	Percentage
No	140	20.77
Sometimes	275	40.8
Yes	259	38.43

From the distribution of answers to this question, it can be concluded that the majority (about 80%) share their impressions of Riga/Latvia on social networks, moreover, those who do it regularly or repeatedly and sometimes represent numerically similar groups (about 40%).

Table 6

Consent to the statement "I share my impressions about the university and students from Latvia on socialnetworks", N = 674

(table created by the authors)

Answer	Number	Percentage
No	232	34.42
Sometimes	269	39.91
Yes	173	25.67

The proportion of surveyed students who share their impressions of the university and Latvianstudents on social networks is slightly lower (about 66%), although the majority practice this activity. The remaining third indicated that they do not publish content about the university and students on social networks.

The next 2 questions allow to find out the content of communication among foreign students who share information about Latvia/university on social networks (Table 7).

Table 7

Answers to the question "If you share information about Latvia, what exactly is this informationabout?", N = 674

(table created by the author)

Answer	Number	Percentage (of total respondents)
Trip	450	66.77
Meeting with friends	250	37.09
Lectures	169	25.07
Entertainment	262	38.87
Others	60	8.90

This table provides a more detailed overview of the topics covered in students' publications on social networks; it should be noted that the answers to this question could also indicate more than one option. Travel came in first with two-thirds of the responses; the second is entertainment (almost 39%) and meeting with friends (37%), followed by lectures (25%) and other events (8.9%).

Once the activity of foreign students on social networks has been clarified, it is necessary to find out whether this information arouses interest among these students' friends (Table 8).

Table 8

Answers to the question "My friends on social networks are interested in my messages from Latvia", N = 674

(authors-shaped table)

Answer	Number	Percentage
No	70	10.39
Sometimes	219	32.49
Yes	282	41.84
Does not publish information on social networks	86	12.76
Another answer	17	2.52

According to the students' own opinions and observations, their friends on social networks areinterested in their reports from Latvia (in total, almost three quarters of the respondents agreedwith this statement). One tenth did not agree with this statement, but another 13% answered that information is not published on social networks.

It is also known whether there is a connection between the sharing of information about Latvia and Riga, as well as about the university and students on social networks and the degree of loyalty to the state and the university, respectively. The basis for such research is the assumption that the most loyal respondents will most often be those who share their impressions and thus promote the recognition and popularity of Latvia and their higher education institution, positively influencing their recognition as a destination for higher education. To perform such an analysis, students were divided into two groups: those who publish information on social networks and those who do not. It should be noted that separate grouping variables were created for the publication of news about the country and the university. Loyalty levels are then measured and compared in each group, and the extent of the differences is used to determine how significant they are. Such an analysis procedure is called a T-Test, which is intended to compare the means of a certain variable in two non- overlapping groups (e.g. men and women; those who publish news and those who do not, etc.) (Table 9).

Table 9

T-Test for levels of loyalty to the state between groups that publish and do not publish news aboutLatvia on social networks
(table created by the authors)

Answer	Size of groups	Average loyalty rate	95% confidence interval	
Not published	108	2.79	2.63	2.94
Publish	476	3.27	3.21	3.34
Combined for both groups	584	3.18	3.12	3.24

The results of the analysis show that the level of loyalty is higher for the group that shares its impressions of Latvia on social networks (3.27 against 2.79 for those who do not share). If these data came from a random sample that would allow a general degree of accuracy to be generalized to all students with a certain degree of accuracy, the confidence intervals would indicate statistically significant differences in loyalty levels between the two groups.

It is now necessary to examine the distribution of loyalty to the university among the groups that share and do not share impressions about the university (Table 10).

Table 10

T-Test for levels of loyalty to a higher education institution between groups that publish and do notpublish news about Latvia on social networks (table created by the authors)

Answer	Size of groups	Average loyalty rate	95% confidence interval	
Not published	188	2.74	2.61	2.88
Publish	403	3.32	3.26	3.39
Combined for both groups	591	3.14	3.07	3.20

The results of the analysis show even greater differences between the groups than when comparing loyalty to the state in the two groups. The level of loyalty to the university is higher for the group that shares its impressions of Latvia on social networks (3.32 vs. 2.74 for those who do not share), even taking into account that the group of non-publishers here is larger (188) than when comparing loyalty at the national level (108). If these data came from a random sample that would allow a general degree

of accuracy to be generalized to all students, then the confidence intervals would indicate statistically significant differences in loyalty to the university between the two groups.

Another issue that needs to be explored is the relationship between student loyalty and the follow-up of their publications on social networks. The reason for this is the active aspect of loyalty, namely, the readiness to recommend, to recommend Latvia as a country of residence during studies and a university as a potential place of study.

The first step in this task is to check how much members of each basic level of loyalty (low, average or high) share news on social networks that contain their impressions of the state and the university. Given that the level of loyalty and sharing / non-sharing of data are nominal variables, this is best done through the analysis of intersection tables.

The following table shows and compares loyalty to those who share their impressions of Latvia and Riga on social networks and to those who do not practice it (Table 11).

Table 11

Loyalty to the state and sharing of news about Latvia and Riga
(table created by the authors)

Group	Indicator	Low loyalty	Average loyalty	High loyalty	Total
Do not share	Number	29	17	62	**108**
	Proportion, %	4.97	2.91	10.62	**18.49**
Share	Number	46	48	382	**476**
	Proportion, %	7.88	8.22	65.41	**81.51**
Total	**Number**	**75**	**65**	**444**	**584**
	Proportion, %	**12.84**	**11.13**	**76.03**	**100.00**

The table shows that two thirds (more than 65%) of the respondents to both questions belong to the group of high-loyalty publishers. Only one tenth of the respondents do not publish about their impressions of living in Latvia and Riga. At the same time, about 8% of respondents who share their impressions of life in Latvia and Riga show low loyalty.

It is now necessary to look at the distribution of loyalty to the university between publishers and non-publishers (Table 12).

Table 12

Loyalty to the university and sharing of information about it
(table created by the authors)

Group	Indicator	Low loyalty	Average loyalty	High loyalty	Total
Do not share	Number	61	24	103	**188**
	Proportion, %	10.32	4.06	17.43	**31.81**
Share	Number	31	28	344	**403**
	Proportion, %	5.25	4.74	58.21	**68.19**
Total	**Number**	**92**	**52**	**447**	**591**
	Proportion, %	**15.57**	**8.80**	**75.63**	**100.00**

A similar picture can be seen here, although the group of high-loyalty publishers is slightly smaller (58%). In second place are respondents with high loyalty, who do not share their impressions of the university on social networks (17%). They are followed by another tenth of disloyal respondents who publish their impressions of the university.

It is significant that in both cases, namely when looking at the share of news publishers by loyalty levels at the state and university levels, the quantitatively largest group is publishers with a high degree of loyalty. Due to the combination of high loyalty and active publishing, they can also be considered as a qualitatively different group. For this group, the question of interest is whether their friends on social networks follow their publications about Latvia and, respectively, about the university. In a way, it is a question of feedback to the publications created by the most loyal students about Latvia and the university.

To answer this question, it is first necessary to divide the sample of respondents into two categories. One of them will be respondents who publish information about Latvia (or,respectively, a university) on social networks and at the same time show the highest degree of loyalty. The second category includes all other students, regardless of the degree of loyalty, who publish information about their impressions of the country and the university. The next step is to find out what proportion in both groups indicates that their friends are interested in their publications (Table 13).

Table 13

Follow-up by publishers about the country
(table created by the authors)

Group	Indicator	Friends are not interested	Friends are interested	Total
Publishers – average andlow loyalty	Number	13	71	**84**
	Proportion, %	2.87	15.67	**18.54**
Publishers – high loyalty	Number	26	343	**369**
	Proportion, %	5.74	75.72	**81.46**
Total	**Number**	**39**	**414**	**453**
	Proportion, %	**8.61**	**91.39**	**100.00**

A similar table has been created for higher education institutions (Table 14).

Table 14

Follow-up of publishers' information about the university
(table created by the authors)

Group	Indicator	Friends are not interested	Friends are interested	Total
Publishers – average andlow loyalty	Number	11	44	**55**
	Proportion, %	2.88	11.52	**14.40**
Publishers – high loyalty	Number	21	306	**327**
	Proportion, %	5.50	80.10	**85.60**
Total	**Number**	**32**	**350**	**382**
	Proportion, %	**8.38**	**91.62**	**100.00**

The intersection tables above confirm the assumption that high loyalty, together with the expression of loyalty on social network publications, positively correlates with peer interest in both the state (75.7%) and, even more so, the university (80.1%). In the future, this means that the interest of foreign students in the opportunities provided by Latvia to obtain higher education will remain or even increase.

Conclusions

Research has shown that experiential marketing adds value to higher education institutions. Experiential marketing is associated with such concepts as satisfaction, loyalty, recommendation marketing. Referral marketing involves sharing your views, impressions, experiences about a particular

company, place, organization, face-to-face situation, and more. In addition, with the development of modern communication technologies, electronic oronline referral marketing is increasingly being used, sharing impressions on social networks, specialized networks, e-mail, chats, forums, etc., rather than face-to-face, but with modern communication means. Research has shown that experiential marketing can have an impact on traditional and online referral marketing, meaning that by creating an unforgettable experience that appeals to consumers, they will be happy to share their experiences and feedback both online and face-to-face. In addition, traditional and online referral marketing is an important source of information for students, incl. foreign students who make decisions about the place of study, choice of higher education institution and other related decisions before entering an educational institution. Traditional and online recommendations can be an important source of information. Recommendation marketing communication is especially prevalent on social media today. The students themselves, while studying at the university and after graduation, are ready to share their experience and feedback, thus disseminating recommendations (both positive and negative).

The results of the research show how the experience of foreign students studying at a university in Latvia is reflected in their communication in social networks, and what its connection is with the formation of loyalty. Most students (about 80%) share their impressions of Latvia and Riga on social networks; for higher education this indicator is lower (66%). This can be explained by the widest possible range of impressions provided by life in the country as a whole than the range of impressions offered or caused by the study process as part of this stage of life of foreign students. Sharing information on social networks is mostly in the form of recordings or pictures of travel (66% of respondents) and meeting friends (less than 40%). According to the observations of foreign students – survey respondents, their friends on social networks are interested in their reports from Latvia; this is indicated by almost ¾ respondents, given that just over a tenth of respondents do not publish such information at all. Students who publish news have a higher average level of loyalty to the state than non-publishers, as well as a higher average level of loyalty to their university. Two thirds of the total number of respondents show a high level of loyalty (from 3 to 4) and indicate that they publish news about Latvia on social networks. Thus, the publicity potential of Latvia as a destination for higher education in this group is quite high and can be used for the marketing, recognition and popularity of the state and its universities.

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THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE TECHNOLOGICAL AGE

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Abstract

The last two decades have seen a huge technological development, also known as the technology explosion, making it easier for anyone to access any kind of information, including of course intellectual property, anywhere in the world, and this has created new challenges for the protection of intellectual property. But nowadays, technology not only allows access to any work of authorship or invention, it is also capable of creating works of authorship or inventions itself, leading legal scholars to debate whether works created by technology can be protected if they are not human-made. As is well known, almost all national laws only recognise an author or inventor if it is a human-made work, but what about a painting or invention created by artificial intelligence? Are such works becoming vulnerable and freely available to everyone today? The methodological basis of this article is based on general scientific approaches (analysis and synthesis, deduction and induction, comparison, analogy and a systemic and structural-functional approach). The article also draws on court decisions, legislation, legal literature, publications and doctrine. Conclusions are drawn using the method of scientific induction and deduction. The aim of this article is to explain the importance of intellectual property protection in today's technological age, where intellectual property can be created not only by people but also by technology.

Keywords: intellectual property, copyright, inventions, artificial intelligence, innovation

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Introduction

Intellectual property is one of the leading drivers of innovation and the more valuable the innovation, the more likely it is that someone will want to acquire it. The value of intellectual property depends mainly on the strategy for commercialising it into commercially viable value. In general, innovation can be seen as a new way of thinking about how business should be developed and how new ideas and technologies can be successfully commercialised. Innovation can be protected by intellectual property rights and plays an important role in enhancing the competitiveness of technology-based businesses, whether such businesses commercialise new or improved products or provide services based on new or improved technology.

Recent researches show that intellectual property rights intensive industries such as patents, trademarks, industrial designs and copyrights generate 45% of the gross domestic product and 63 million jobs per year in the European Union (EU) – 29% of all jobs (European Union Intellectual Property Office, 2020). In addition, companies using intellectual property rights are growing faster and more resilient to economic crises (European Patent Office, European Union Intellectual Property Office, 2019).

Technological developments have made access to various works of authorship or inventions much easier and faster, but rapid technological developments have also created many legal challenges to the existing intellectual property rights system and doctrine.

As early as 1925, US Supreme Court judge Benjamin Cardozo noted that "new generations bring with them new problems, which require new rules, to be exemplary according to the rules of the past, but at the same time to adapt themselves to the needs and the justice of another day and hour" (Conklin, 2020). Even today, influenced by technological developments, legal scholarship is seeking new solutions to find a balance between the traditional and stable system and the new legal challenges.

As is well known, the intellectual property system is designed to stimulate human innovation and creations, but nowadays new technologies such as artificial intelligence are increasingly entering the development of various

processes, making it more and more difficult to distinguish between human and technological processes. Thus, raising questions in legal doctrine on how to resolve the clashes caused by new technologies with the existing system of intellectual property law, balancing legal protection for both human and technological creations.

This article will explore the role of intellectual property in the new technological age, and the challenges that the technological age has brought to the growth of the field. The research methodology is based on general scientific approaches – analysis and synthesis, subtraction and induction, comparison, analogies and a systemic and structural functional approach.

1. The definition of intellectual property

According to the Convention establishing the World Intellectual Property Organisation, intellectual property includes rights in literary, artistic and scientific works, performances, phonograms and broadcasts, inventions in all fields of human activity, scientific discoveries, designs, trademarks, service marks, trade names and indications, protection against unfair competition and all other rights arising from intellectual activities in the fields of industry, science, literature and the arts (World Intellectual Property Organization (WIPO), 1967).

The United Nations (UN), when it adopted the Universal Declaration of Human Rights in 1948, set out the rights that were considered essential for human beings, and copyright was included in this document. Article 27(2) of the Declaration states: "Everyone has the right to the protection of the moral and material interests resulting from scientific, literary or artistic works of which he is the author" (The United Nations, 1948).

Although there is no uniform definition of the term "intellectual property" in national laws and regulations, it may be considered that intellectual property is the right to certain products of the human mind which have intangible value. Intellectual property does not protect ideas as such in their absolute sense, but specific expressions of ideas (copyright) or the practical use of ideas (knowledge, information) in useful products. Intellectual property rights are divided into two groups: industrial property rights and copyright.

Such rights include the prohibition to use someone's intellectual property without their prior permission. According to an accepted definition, the object of industrial property is the protection and promotion of inventions, innovations and industrial or commercial creativity. The various intellectual property rights include trade secrets, patents, trademarks, geographical indications, designs, copyrights and related rights, as well as new plant varieties (Vindele, 2021).

Since the 18th century, a national system of intellectual property rights has begun to emerge in almost every country in the world, creating property-like rights over man-made knowledge. Since the 19th century, intellectual property rights have also been enshrined in numerous international treaties to ensure harmonised and similar legal protection in different countries. The intellectual property system plays an important role in helping a company to gain and maintain an innovation-based advantage (Vindele, 2021). However, as Professor Janis Rozenfelds points out, there have also been legal systems that have not recognised intellectual property rights, such as the Soviet legal system (Rozenfelds, 2010).

The 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was a key event that fundamentally changed the international framework for intellectual property law. It requires all Parties to the Agreement to establish a set of minimum substantive standards for the protection of intellectual property that go beyond what most developing countries would have been willing to provide at the time, and even beyond the standards of many developed countries (World Trade Organization, 1994).

Intellectual property has unrestricted, global mobility, allowing it to be easily moved and conveniently transported anywhere in the world. However, its protection is also territorial. The role of international treaties and conventions is therefore essential to ensure that authors' interests are protected in many countries at the same time. On the basis of these international instruments, a copyright created in one country under its laws must operate and be protected in another country under its laws (Grudulis, 2006).

In fact, it can be argued that the purpose of intellectual property rights is to encourage the creation of new works, whether works of art or inventions, including the same technologies. The purpose of the right is, in turn, to increase the incentive for the individual to continue to create new inventions or works, while helping the development and improvement of both the creator and the users of those works.

It is considered that intellectual property protection strategies will continuously evolve over time as technology develops, issues such as adapting to this changing environment with flexible rules on copyright, patents, trade mark and design protection or even trade secrets will need to be taken into account, and how the broadest and strongest means of protecting intellectual property will be provided, both to promote legal certainty and to encourage new investment in private companies, universities, businesses through public-private cooperation to support research and development (European Parliament, 2020).

2. Definitions of authorship and patentability in law

According Copyright Law of the Republic of Latvia, an author can only be a natural person whose creative activity has resulted in the creation of a particular work, while a work is the result of the creative activity of an author in the field of literature, science or art, regardless of its form, expression and value (Copyright Law, Article No. 1). Copyright applies to literary, scientific, artistic and other works, including works in progress, irrespective of the task and value of the work, the form or manner of expression. As regards protected works, Article 4 of the Copyright Law of the Republic of Latvia contains a list of works, such as literary works (books, pamphlets, speeches, computer programs, lectures, appeals, reports, sermons and other similar types of works), dramatic and musical-dramatic works, screenplays, literary projects for audio-visual works, musical works with or without text, audio-visual works, drawings, paintings, sculptures and graphic works and other works by an author (Copyright Law, the Republic of Latvia, 2000).

For example, the Law on Copyright and Related Rights (LCRR) of the Lithuania Republic provides that the owner of copyright is the author, another natural or legal person holding the exclusive economic rights of the author in the cases provided for in this Law, as well as a natural or legal

person to whom the exclusive economic rights of the author have been transferred (Law on Copyright and Related Rights, the Republic of Lithuania, 1999). In contrast, Copyright and Related Rights Act of Slovenia states that the author is the natural person who created the work. According to the Slovenian Copyright and Related Act, copyright works are individual intellectual works in the fields of literature, science, and art, expressed in any mode, unless otherwise provided for in this Act (Copyright and Related Rights Act of Slovenia, 2016).

Thus, in general, it can be concluded that the copyright regulations explicitly provide for the natural person as a mandatory condition for the protection of a work.

On the other hand, although patent legislation, unlike copyright legislation, does not so explicitly state that the inventor may be a natural person, Article 12 of the Patent Law of Republic of Latvia provides that the inventor or his successor in title is entitled to a patent. This means that the inventor can only be a natural person (Patent Law, the Republic of Latvia, 2007). For example, the Estonian Patent Act states that the right to apply for and to become the owner of a patent is the right of the inventor and the successor in title of the inventor (Patent Act, the Republic of Estonia, 2015). In contrast to the Latvian legislation, Patent Law of Georgia explicitly states that the inventor is a natural person who has made an invention by his intellectual and creative work. According to Article 18 Patent Law of Georgian, the inventor's authorship is a permanently protected inalienable right (Patent Law of Georgia, 2010).

Although the US Copyright Act does not make specific claims for human authorship (U.S. Copyright Act, 1976), it is the current policy of the US Copyright Office to reject claims for works not authored by a human author, a position that has also been taken in US case law, on the assumption that authorship is a human phenomenon. For example, in the famous monkey selfie copyright case in the United States, the court held that an animal cannot own authorship. The US Copyright Office stated that “only works created by humans can be protected under United States law, which excludes photographs and works of art created by animals or machines without human intervention” and that “the Office will not register works produced by nature, animals or plants. Similarly, the Bureau cannot register a work purportedly created by divine or supernatural beings” (Compendium of U.S. Copyright Office Practices, Copyrightable Authorship, 2021).

In summary, it can be concluded that most national legislation focuses specifically on the rights of the natural person and that, when it comes to the involvement of technology in the creation of intellectual property, artificial intelligence or computer programs are not comparable to the natural person and, accordingly, are not considered as authors or inventors for the purposes of most legislation and do not have a right to authorship or to be recognised as an author.

However, as technology becomes more influential in the creation of various works of authorship, the interpretation of the law is also changing, for example, in 2021, for the first time in India, the Copyright Office recognised an artificial intelligence tool – the RAGHAV Artificial Intelligence Painting App – as a co-author of a copyrighted work of art (Sarkar, 2021). In the same year, South Africa became the first country to issue a patent naming an artificial intelligence tool – DABUS – as the inventor (Conlon, 2021). Thus, making us realise that humans are no longer the only source of creativity, as technologies such as AI can also create artistic and innovative works without human intervention.

Although the legal framework in most countries restricts the right to recognise technologies as authors or inventors, recent precedents mark an era of change in recognising AI as a co-author or inventor, so that increasingly the legal doctrine will have to address this issue, as it is the protection of works created by AI, recognising and protecting the interests of those who develop these technologies, that will be increasingly relevant (European Parliament, 2020). The development of AI and related technologies raises questions about the protection of innovation itself and the understanding of intellectual property rights in relation to the materials, content and data created by AI and related technologies, which may be of an industrial or artistic nature and create a variety of commercial opportunities. In this context, it is important to distinguish between human creativity supported by AI and creative works produced by AI.

Similarly, the European Union, faced with rapid technological developments and a global policy context in which more and more countries are investing heavily in AI, has presented both a proposal for a legal framework for AI and a revised coherent plan for AI to the European Commission (Gesine von Essen, 2021).

The European Union's objective to become a world leader in AI technologies, to protect the EU's digital and industrial sovereignty, to ensure its competitiveness and to foster and protect innovation, requires a structural

reform of EU industrial policy to enable it to lead the way in AI technologies while respecting cultural diversity. The EU's global leadership in AI requires an effective intellectual property system fit for the digital age, enabling innovators to bring new products to market. Strong safeguards are essential to protect the EU patent system against abuses that harm innovative AI developers. An anthropocentric approach to AI is needed to ensure that technology remains a tool for human benefit and the common interest (European Parliament, 2020).

3. The definition of artificial intelligence

The development of artificial intelligence systems dates back to the 20th century. Intelligent systems were first developed in the 1950s and 1960s, but did not become widespread at that time. This was due to the low performance of computers at the time and the very low penetration of electronically accessible data. It was therefore more practical to use programmable systems. This changed at the end of the first decade of the 21st century, when electronic data became abundant and high-performance computers became widely available (The Ministry of Environmental Protection and Regional Development Republic of Latvia, 2020). Artificial intelligence itself has evolved to the point where it can perform certain tasks without human intervention. To date, inventors and researchers have published more than 1.6 million AI-related scientific publications and filed patent applications for almost 340,000 AI-related inventions (World Intellectual Property Organization (WIPO) (2019).

Artificial intelligence is rapidly becoming part of our everyday lives. The main areas where AI technologies are used are telecommunications (Internet, radio and television, video conferencing); transport (airspace/ aviation, autonomous vehicles, driver/vehicle recognition); medical sciences (biomechanics, drug discovery, genetics/genomics, medical imaging, neuroscience, public health), accounting for 42% of all AI-related patents. The majority of AI-related patent applications are filed with patent offices in the United States (152 981 applications) and China (137 010 applications). Applications under the WIPO Patent Cooperation Treaty account for 20% (67662) of the total number of AI-related applications (World Intellectual Property Organization (WIPO) (2019).

Currently, national laws and regulations do not provide an explanation of the term AI, nor is there a common definition of the term in different legal

sources worldwide. Artificial intelligence is in fact considered as a descriptive system with intelligent behaviour based on the ability to analyse the environment and take actions or decisions with a certain degree of autonomy in order to achieve specific goals. AI systems can be purely software-based (e.g. virtual assistants, image analysis systems, search engines, speech and facial recognition systems) or embedded in hardware, such as robots, autonomous machines, unmanned aerial vehicles or Internet of Things applications (European Commission, 2018). Professor Andreas Kaplan and Professor Michael Henlein (ESCP Business School, Paris, Sorbonne Alliance) define AI as "the ability of a system to correctly interpret external data, learn from such data and use this knowledge to achieve specific goals and objectives through flexible adaptation" (Kaplan & Haenlein, 2019). AI is also understood as technology that performs certain tasks that would otherwise require human intelligence. According to the English mathematician Alan Turing, a device (program) can be considered to be an artificial intelligence if it can successfully pretend to be a human neutral observer (Turing, 1950).

AI systems rely heavily on data and consequently need to access and use data, which may consist of images, songs or human creations that are protected as intellectual property. So, in general, it can be concluded that the main task of AI is to achieve the task at hand and to facilitate human activities by extracting human-generated knowledge and information.

However, AI technology has developed to such an extent that AI itself, while functioning as a real human intelligence and yet not being a natural person, is capable of creating objects, and in practice this object is no longer created by a physical platform, but by an object created by a natural person and possessing the characteristics of human intelligence. Thus, the AI object itself is capable of creating new, original works which could accordingly be assimilated to a work created by a natural person.

The conflict in the various legal systems of the world has been exacerbated by the issue of the grant of patent rights to DABUS (Device for the Autonomous Bootstrapping of Unified Sentience), an artificial intelligence system developed by Stephen Thaler. It envisaged two separate inventions without human intervention, and therefore AI was named as an inventor in patent applications for these inventions. The proposal to attribute inventions to AI not only created new legal challenges, but also divided the global IP community as to whether AI can or should be allowed to be named as an inventor for patents related to inventions made using AI (Thaler, 2015). This is a striking example of the constant movement of the

technological world which has shaken the stability of the legal system. The IP legal system must therefore respond to the challenges posed by these developments in a flexible manner, minimising the negative impact but at the same time ensuring that innovation and new technologies are encouraged.

Eran Kahana, an intellectual-property lawyer at Maslon LLP and a fellow at Stanford Law School, disagrees: "The machine is just a tool. That is all it is. The tool can be phenomenal, but it's just a tool that is used by a human being". Just as a monkey does not, and cannot, grant copyright to AI (Cullinane, 2018).

There are also opinions that AI is nothing without human input. The algorithms that run a company are based on the expertise of programmers and it is nothing more than a tool, albeit a powerful one, that scientists and engineers can use to solve problems.

And yet, sometimes, these computer programmes are programmed to demonstrate skills that their creators have not learned. This process is often automatic and independent of human intervention. Consequently, there are views that 'authorship' (the right to be recognised as the author) should be redefined to include both human and non-human authors. For example, Ryan Abbott, Professor of Law and Health Sciences at the University of Surrey Law School in the UK, argues that granting invention and authorship to non-humans are innovative new ways to foster the growth and development of AI (Abbott, 2016). These are important issues that need to be addressed to better prepare for an increasingly automated future.

As the use of AI in various fields, including creative fields, is growing, and in order not to hinder its benefits, a legal solution is needed, also on complex issues such as property rights. Our legal framework must therefore adapt to the realities of today's world, and quickly.

To avoid fragmentation of the Single Market and diverging national rules and guidelines, a Regulation of the European Parliament and of the Council establishing harmonised rules in the field of artificial intelligence (AI Act) and amending certain Union legislative acts is currently under preparation, strengthening the EU's competitive edge by encouraging confidence in the safety and reliability of AI, to strike a balance between public protection and business incentives to invest in innovation. In particular, the European Commission proposes to assess the impact and implications of AI and related technologies under the current system of patent law, trademark and design protection, copyright and related rights, including the applicability of legal protection of databases and computer programs, the protection of

undisclosed know-how and business information ('trade secrets') against unlawful acquisition, use and disclosure, the need for a more comprehensive legal framework for the economic sectors in which AI is involved, thus allowing European companies and relevant stakeholders to expand their activities, and the need to create legal certainty; stresses that the protection of intellectual property must always be reconciled with other fundamental rights and freedoms (European Parliament, 2020).

4. Case Thaler v Comptroller General of Patents

Can an artificial intelligence (AI) be an inventor, and can its owner apply for a patent? These were the two main questions asked by the UK Court of Appeal in Thaler v Comptroller General of Patents, the so-called DABUS case (England and Wales Court of Appeal (Civil Division) Decisions, 2021). Dr. Thaler is the owner of an artificial intelligence apparatus called DABUS and had invented two inventions. He filed a patent application with the UK Intellectual Property Office naming DABUS as the inventor and claimed ownership of the patents himself on the basis that the inventions invented by the machine should be assigned to its owner. The UK Intellectual Property Office refused to register the AI machine as an inventor because only a natural person can be an inventor of a patent within the meaning of the UK Patents Act. The UK court also rejected the patent applications for DABUS. The Court held that an artificial intelligence is not a natural person and therefore cannot be construed as an inventor under the UK Patents Act 1977.

The applications designating the DABUS AI system as the inventor were filed in several jurisdictions, including the European Patent Organisation. A similar decision was taken by the European Patent Office (EPO) to abandon these patent applications because they named the AI system as the inventor. As the EPO Board of Appeal pointed out in its decision, under the European Patent Convention (EPC), the inventor named in a patent application must be human. Under the EPC, the designation of an inventor is a formal requirement to be fulfilled by a patent application under Articles 81 and 19(1) of the EPC (European Patent Convention, 1973). The assessment of this formal requirement takes place prior to and independently of the examination of the merits and does not include any consideration of whether the subject matter of the application meets the requirements of patentability. In its decision, the EPO Board of Appeal held that the name submitted by the applicant did not comply with Article 81 of the European

Patent Convention for two reasons. First, it concluded that only a human inventor could be an inventor within the meaning of the EPC. Second, the device could not confer any rights on the applicant. Therefore, the claim that the claimant is an assignee because he owns the machine does not meet the requirements of Article 81 of the EPC in conjunction with Article 60(1) of the EPC (European Patent Convention, 1973).

Also, the US Supreme Court ruled that the word "individual" should be understood as a natural person, thus under the US legal system, only a person can be an inventor. Similarly, the German Patent Office refused to allow Ms Thaler to register the applications, which led to the case being brought before the German Federal Patent Court, which ruled that AI inventions are patentable but that a natural person must be named as the inventor (European Patent Office, 2021).

On 30 July 2021, Judge Jonathan Beach of the Federal Court of Australia issued a decision in the Stephen Thaler and Commissioner of Patents case which allowed AI to be considered as an inventor, stating that an inventor can also be an AI system or device (Abbott, 2021). This court decision confirmed that AI can be an inventor under the Australian regime, but contradicts decisions in the UK, the European Patent Office (EPO) and the US which have held that the inventor must be a natural person.

Although the US, UK courts and the EPO Board of Appeal have consistently held that inventors must be natural persons, given the decisions in South Africa and Australia confirming AI machines as inventors and the rapid development of technology, it is foreseeable that legislators and courts will increasingly face questions about the extension of patent rights.

Conclusions

While AI raises numerous questions in the legal community, its importance cannot be doubted: AI is the fastest growing technology in the world, with the potential to transform people's lives and contribute to national economies. In the US, for example, 13.2 million of the patents and applications currently registered are related to AI (The United States Patent and Trademark Office's (USPTO), 2021).

Taking into account the distinction between AI-assisted human creations and AI-created works, it is AI-created works that raise new regulatory challenges for IPR protection, such as issues of ownership, inventiveness

and appropriate remuneration, as well as issues related to potential market concentration. Furthermore, it is considered that intellectual property rights relating to the development of AI technologies should be distinguished from intellectual property rights relating to works created by AI. Where AI is used only as a means to assist the author in the creation process, the current IP framework should continue to apply.

It should be noted that there are concerns that redefining authorship by granting copyright to non-human authors would shake the current legal system and create further uncertainty. For example, unlike human authors, who have a lifetime limitation, AI programs could exist in perpetuity. This assumption challenges the previously established term of copyright protection granted to authors (life of the author plus 70 years in the US).

Today's advanced AI systems have "created" countless works, including musical compositions, art, compositions, recipes and potentially patentable inventions. However, most national legal frameworks and IPR policies reject the idea of non-human authorship or inventiveness. On the other hand, inventors do not necessarily own patents; in fact, most patents are owned by companies. Ownership rights can be transferred from an individual to a corporation by agreement or by operation of law.

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