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CONTENT

INTRODUCTION

The present journal "ACTA PROSPERITATIS" is the fifth collective monograph issued by the Turiba University. The task of this journal is to promote academic and applied research within Turiba, as well as to popularize the results of the research, involving in this process as authors and editors the teaching staff and doctoral students. The aim of the journal is to study and provide the opinions and suggestions of well-known Latvian and foreign professionals and experts in their respective fields. The long-term goal of the journal is to be included into the databases of internationally citable publications, thus facilitating the international recognition of local research and international cooperation, as well as strengthening the academic and intellectual potential of the Turiba University. Therefore, all manuscripts are supplied in English and blind peer reviewed.

Each edition of the journal is devoted to a specific set of problems – some of the most topical issues in the fields of communication, management, law, and tourism. The theme of the fifth edition is "LAW AND SOCIETY" and it is devoted to the major issues in the field of law.

This edition is particularly devoted to the 10th anniversary when Latvia together with 9 other countries joined the European Union (EU), thereby achieving one of the main aims of its foreign policy. The accession to the European Union gave Latvia the opportunity for sustainable development; however it was also an ordeal to be competitive on the free market. The National Development Plan of Latvia for 2014–2020 (NDP) envisages that during the 10 years since Latvia became a EU member, it has experienced a considerable national economic growth rate. Unfortunately, the growth was not sustainable and there was a sharp fall. Although the growth indicators in Latvia exceed the average EU indicators, Latvia is rated in the European Union as a "modest innovator", a country with low indicators in the field of innovation.

What have we achieved in the past 10 years to take the country a step closer towards the ideal that we have set? This question determines the themes and approaches of the articles written by the researchers from Latvia, as well as from the neighbouring countries within the EU (Germany, Bulgaria) and beyond (Ukraine).

Dr. jur **Holger Buck**, Professor for International and German Business Law, HTW Saar University of Applied Sciences, Saarbrücken (Germany) in his article "THE EUROPEAN PATENT WITH UNITARY EFFECT" provides an analysis of the respective legal documents and judgements regarding the new EU patent with unitary effect. In December 2012 the European Patent Package passed the EU legislation. The reduction of languages was a major barrier to the idea of an EU patent registered on a one-stop shop basis. The European patent with unitary effect is embedded in an already well established international and

European patent scheme and is linked with the "classical" European Patent and the European Patent Office. He points out that the new Unified Patent Court shall have an exclusive jurisdiction.

The author of the article "TOWARDS IMPROVEMENT OF BULGARIAN ANTITRUST ENFORCEMENT IN THE ABUSE OF DOMINANCE FIELD: OTHER EU MEMBER STATES' EXPERIENCE" **Ralitza Dimitrova**, PhD from Technical University of Sofia (Bulgaria), writes about the problems of antitrust enforcement in her country. In this article one can find answers to questions regarding abuse of dominant position and criminal liability for such an abuse. The author focuses mainly on the different types of liability for antitrust infringements, and special attention is given to the possibility for criminalization of these violations. A conclusion is made – while hard-core cartel cases justify criminalization, abuse of dominance cases does not warrant criminal sanctions, and that Bulgarian authorities should consider raising the public awareness towards the evils of antitrust violations, as well as strengthening private antitrust enforcement.

Masters of Science in Economics, researchers at Albert College **Armands Kalniņš** and **Sanita Čerpinska** in their article "CONTRIBUTION OF QUALIFACATION PAPERS IN THE FIELD OF PERSONNEL MANAGEMENT TO THE DEVELOPMENT OF ORGANIZATIONS" give an insight into personnel management problems in the training process. The research done deals with the topics and results of qualification papers in the field of personnel management of Albert College and its contribution to the development of Latvian organizations. The researchers argue, that human resources management in Latvia is often criticized; and therefore considerable improvements have to be proposed which could be useful also to other organizations.

Researcher from Lesia Ukrainka Eastern European University (Ukraine) **Natalia Karpchuk** wrote an article on "THE UNITED KINGDOM'S EXPERIENCE IN MULTILINGUALISM FOR RESOLVING UKRAINE'S LANGUAGE POLICY CHALLENGES". The author points out that citizens of every state speak different languages which may lead to conflicts or friendly co-existence, and that both the United Kingdom and Ukraine are multilingual states, though with a different language situation. The goal of the article is to study the progress of the UK in its efficient language policy in order to look for recommendations concerning the elaboration of an efficient language policy in Ukraine. The article focuses on the legal grounds and the mechanisms of the realization of the UK's language policy directions.

Egija Reca, researcher from the Turiba University (Latvia), covers a very important problem of tourism labour market. Her article "TOURISM LABOUR MARKET AND THE VIEWPOINT OF INDUSTRY EMPLOYERS" analyses one of the driving forces of the Latvian economy – tourism. The paper reviews the economic perspective and importance of tourism as a separate industry, examines its development where the puissance of the travel expenditures as a

major source of income and employment for many nations is acknowledged. Tourism can significantly improve a country's GDP, and positive tendencies can also be indicated in the Latvian tourism industry. Besides, the paper reflects on human resource issues including labour needs, characteristics of the complex nature of the labour market in tourism industry. The main challenges of the labour market in the tourism industry are identified and characterized.

Candidate for doctoral degree in law from the Turiba University (Latvia) Mg.iur **Ernests Saulitis**, substantiates the concept of public person functional assets in Latvia. His article "PUBLIC PERSON FUNCTIONAL ASSETS: INSIGHT IN CONCEPT" explains the features of resources which are available to public person management. The author points out that the most important issue faced by the public person resources available in the case, is its legal nature, as the public person discretion in this area is determined by public law. Thus the aim of this article is to provide an insight into the resources in the public person possession which is used for the execution of specific public functions and tasks, corresponding terms and problems, and offers the author's view on the public person's functional assets conception.

The importance of the protection of intellectual property is analysed in the article of the researcher at the Turiba University Dr. iur **Ingrida Veiksa** "EXHAUSTION OF COPYRIGHT AND INTERNET". The author stresses that nowadays more and more copyright protected works are made available in the digital format, and increasingly the rights to use them are acquired on the Internet. The right to distribute an embodied work is exhausted from the moment when this work is sold for the first time. But the so-called "exhaustion of distribution rights" is not clear in the digital environment.

The articles give us a chance to learn more about legislation in Latvia and different European countries, under diverse circumstances. We are thankful to the authors for their input in the field of law science and we wish every success to the readers in implementing the latest findings in their further research.

To sum up, all the aforementioned articles offer a comprehensive insight into the legislative processes and topical problems and represent a serious step towards academic achievement at the Turiba University; they could be of considerable interest to students, academicians, researchers, and professionals of their respective fields.

THE EUROPEAN PATENT WITH UNITARY EFFECT

Holger Buck, Dr. jur.
Professor for International and German Business Law
htw saar University of Applied Sciences, Saarbrücken, *Germany*

Abstract

The aim of this article using a descriptive method and providing an analysis of the respective legal documents and judgements is to inform about the new EU patent with unitary effect. In December 2012 the European Patent Package passed the EU legislation. Since three Member States opposed the concept, the European Patent Package uses the legal regime for enhanced cooperation. The reduction of languages was a major barrier to the idea of a EU patent registered on a one-stop shop basis. The EU's unitary patent might enter into force in 2015 after at least 13 instruments of ratification for the Agreement on a Unified Patent Court have been deposited. The history of the proposal dates back from the 1970's up to the current Patent Package. The European patent with unitary effect is embedded in the already well-established international and European patent scheme and is linked with the "classical" European Patent and the European Patent Office. The new Unified Patent Court shall have exclusive jurisdiction.

Keywords: European Patent Package, Unified Patent Court, enhanced cooperation, unitary character and effect, language issue, framework of international and European patent protection, link with European Patent Convention/European Patent Office

Introduction

The aim of this contribution is to familiarise company managers and lawyers with the EU patent with a unitary character hopefully soon coming into force. In December 2012 Regulation (EU) 1257/2012 and Regulation (EU) 1260/2012 on the creation of a unitary patent protection passed the EU legislation and in February/March 2013 the Agreement on a Unified Patent Court was signed. For decades the language issue was the nearly unsurmountable obstacle to implement a EU-wide patent. Currently four Member States of the EU do not participate to the full extent:

- Croatia and Spain refuse to participate in total; therefore the two countries do not take part in the enhanced cooperation and did not sign the Agreement on a Unified Patent Court;
- Italy does not take part in the enhanced cooperation, however signed the Agreement on a Unified Patent Court and
- Poland participates in the enhanced cooperation, however stands clear of the Unified Patent Court.

Given this situation, the other 25 Member States (including Poland, however not Italy) could only make use of the new legislative tool of enhanced cooperation to legislate the two regulations. Secondly, 25 Member States (including Italy, however not Poland) signed the Agreement on a Unified Patent Court with the aim to create the accompaning appropriate judicial system. These three legal instruments, namely:

- *Regulation (EU) No 1257/2012* of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the field of the creation of unitary patent protection.
- *Council Regulation (EU) No 1260/2012* of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.
- *Agreement on a Unified Patent Court [and Statute]* of 11 January 2013.

form the so-called European Patent Package.

The research methods used in the present article were: descriptive method based on works of the EU law scholars, analysis of legal documents and visualisation of information for illustration.

1. Established Possibilities of International and European Patent Protection

Inventors and their lawyers should consider the new European patent with unitary effect embedded in the already well-established international and European patent scheme when they seek for patent protection.

Any state grants intellectual property rights such as patents, trademarks and designs; however protection is restricted to the territory of the respective state (according to the internationally recognized principle of territoriality). Such national protection does not cover the requirements for internationally active companies. Along with protection in their home markets, these companies need additional protection in their target markets. The transborder protection of IP rights commenced as early as 1883 by virtue of the *Paris Convention for the Protection of Industrial Property Rights*, which set up a union for the protection of industrial property and which was followed by neighbouring specific international agreements for trademarks ("Madrid system" of 1891), industrial designs ("Hague system" of 1934) and patents.

Transborder patent protection can be acquired by the proprietor of a technical invention in different ways such as:

- by filing a single international patent application with the International Bureau of WIPO (World Intellectual Property Organization, Geneva) under the *PCT* (*Patent Cooperation Treaty of 1970*). Currently an invention can be protected in 148 Member States under the PCT; all Member States of the EU adhere to the PCT. The applicant chooses in which country or countries he simultaneously wishes to protect his invention. To avoid expensive translations the applicant is advised to use one of the "publication languages" (Arabic, Chinese, English, French, German, Japanese, Korean, Portuguese, Russian or Spanish). This kind of international application does not amount to a globally protected patent (a "worldwide patent" does not exist), but leads to a bundle of individual national and nationally enforceable patents in all the countries designated by the applicant (Tritton 2008, 69–71; WIPO 2014a). From 2001–2013 a total of 217 PCT applications sought for protection in Latvia (Patent Office of the Republic of Latvia 2014);
- by applying for a separate national patent in any Paris Convention country (176 Member States including all Member States of the EU) in which protection is sought. Due to the principle of national treatment which treats non-nationals and nationals equally (art. 2(1) Paris Convention) any patent applicant from a Member State has access to the national patent protection system in every other Member State. Such an application for registration must be filed with the respective national patent office(s) in the official language(s) of that/those country/countries. As that route to patent protection in various countries is quiet circumstantial, an applicant should only use the Paris Convention if he wishes to gain protection in a Paris Convention country that is not a Member State of the PCT (WIPO 2014b);
- "classical" European Patent: by submitting a European patent application to the EPO (European Patent Office, Munich) under the *EPC* (*European Patent Convention of 1973*). It is suggested that the applicant uses one of the official languages of the EPO (English, French and German). Such a "European patent" leads to a bundle of individual national patents in one or more of the 38 Member States of the EPC designated by the owner of the invention to be patented; if the proprietor wishes that the granted patent becomes effective in a Member State he has to request validation at the national level (EPO 2014; Kur and Dreier 2013, 97–104; Tritton 2008, 84–85). All EU Member States are signatory states of the EPC. In 2012 applications from France, Germany and the United Kingdom represented more than 50% of the applications originating from EPC countries; the EPO counted 57 Latvian applications in the same year (EPO 2013). As the European Patent is a regional patent in terms of the PCT patent proprietors can link both regimes and can obtain a European Patent via the PCT (Kur and Dreier 2013, 104–105; WIPO 2014d).

2. Impact of the EU's Patent Package and Enhanced Cooperation

As to the situation within the European Union it should be emphasized that the EU is more than a free trade zone. Its economic system encompasses a common market. The EU is pursuing the accomplishment of its "internal market" (sometimes called "single market") rather than just generating the sum of 28 national markets.

Table 1

Extracts from TEU (Treaty on European Union) and TFEU (Treaty on the Functioning of the European Union) regarding the internal market and uniform protection of intellectual property rights

"[The Member States] ... determined to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the *internal market* ... and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields ..." (preamble of the TEU)
"The Union shall establish an *internal market* ... It shall promote scientific and technological advance." (art 3(3) TEU)
"The *internal market* shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties." (art. 26(2) TFEU)
"In the context of the establishment and functioning of the *internal market*, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide *uniform protection of intellectual property rights throughout the Union* ..." (art. 118(1) TFEU)

EU-wide unitary patent protection with uniform legal conditions and effects for all the EU Member States on a one-stop shop basis would contribute to realising that major goal of the EU much better than the solution of a bundle of patents; it would eliminate market restraints resulting from the territorial aspect of national protection. So far there already exist two EU-wide industrial property rights with unitary effect, namely the Community trademark from 1996 and the Community design from 2003 (Buck 2005, 591 and 593; Tritton 2008, 419–420 and 562–563). With around 1.1 million applications for a Community trademark and around 700,000 applications for a Community design (OHIM 2014, p. 5) these two tools of the EU are very successful and widely used by the industries.

Discussions about a common patent system within the EC came up already in the 1950's (Luginbühl 2013, p. 305). Early attempts made by the European Community to create a community patent equally valid in all the Member States

failed. Both the Community Patent Convention of 15 December 1975 (Cook 2010, p. 533) and the Agreement relating to Community patents of 15 December 1989 were not ratified by enough Member States.

The next steps taken were the proposal for the Community Patent Regulation of 5 July 2000 which failed in its first version and following long controversial political discussions the proposal for a Regulation on Translation Arrangements for the European Union Patent of 30 June 2010.

As at the end of 2010 the unanimity of the Member States regarding the translation agreements was not in sight (recital 10 of Council Decision of 10 March 2011), the procedure of enhanced cooperation was implemented by virtue of the Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection.

Table 2

Extracts from TEU and TFEU regarding enhanced cooperation

"1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union. Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States ...
2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it ...
4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States ..."(art. 20 TEU)
"Any enhanced cooperation shall comply with the Treaties and Union law ..." (art. 326 TFEU)
"Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States." (art. 327 TFEU)
"1. When enhanced cooperation is being established, it shall be open to all Member States ... It shall also be open to them at any other time ..." (art. 328(1) TFEU)
"1. Member States which wish to establish enhanced cooperation between themselves ... shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect ... Authorisation to proceed with the enhanced cooperation referred to in the first subparagraph shall be granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament." (art. 329 (1) TFEU)

Enhanced cooperation according to art. 20 TEU and art. 326–334 TFEU is a flexible concept of law-making introduced in 1997 into EU law. It allows a number of Member States to cooperate more closely in specific policy areas (Lamping 2011, p. 882). The procedure is carried out under the auspices of the EU without abandoning the legal framework of the EU or restricting the scope of application of primary law. Enhanced cooperation leads to a "multi-speed Europe". The Council Decision of 11 March 2011 authorised enhanced cooperation in the area of the creation of unitary patent protection upon the request of first 12 and then 13 more Member States (including Latvia). On 13 April 2013 the judgment of the Court of Justice of the European Union (joint cases C-274/11 and C-295/11) dismissed the actions of Italy and Spain against the Council Decision of 10 March 2011 and confirmed the legality of enhanced cooperation in EU patent law (Jaeger 2013, p. 389).

On 17 December 2012/11 January 2013 the Patent Package was enacted.

The Patent Package has not yet entered into force. The Agreement on a Unified Patent Court was signed between 19 February and 5 March 2013 by 25 Member States of the EU, interestingly including Italy, however not by Spain which opposed, not by Croatia and not by Poland. Both enhanced cooperation and the Agreement provide that they shall always be open to further Member States (art. 328 TFEU and preamble of the Agreement). Italy which is not participating in the enhanced cooperation nevertheless wishes to participate in the Agreement with respect to European patents granted for its territory and therefore signed the Agreement. Croatia which acceded to the EU on 1 July 2013 after the two regulations were already enacted and the Agreement was already signed did not yet notify if it wishes to participate in the enhanced cooperation or to sign the Agreement. On 22 March 2013 Spain brought action to the Court of Justice of the European Union (case C-146/13) claiming that Regulation (EU) 1257/2012 is unlawful. The court case is pending (Haedicke 2013, p. 609; Jaeger 2013, p. 389). On 18 November 2014 the Opinion of Advocate General Bot proposed to dismiss the action of Spain (case C-146/13).

Apart from these court proceedings the scheme shall enter into force:

- four months after the deposit of at least thirteen instruments of ratification including the ratifications by France, Germany and the United Kingdom (Member States in which the highest number of European patents had effect in 2012), or
- four months after the date of entry into force of the amendments of Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction, and the recognition and enforcement of judgments in civil and commercial matters, concerning the relationship between that regulation and the Agreement,

whichever is the latest (art. 89 of the Agreement; Grabinski 2013, p. 310). As of November 2014, five Member States have finished the ratification process (cf. Figure 1).

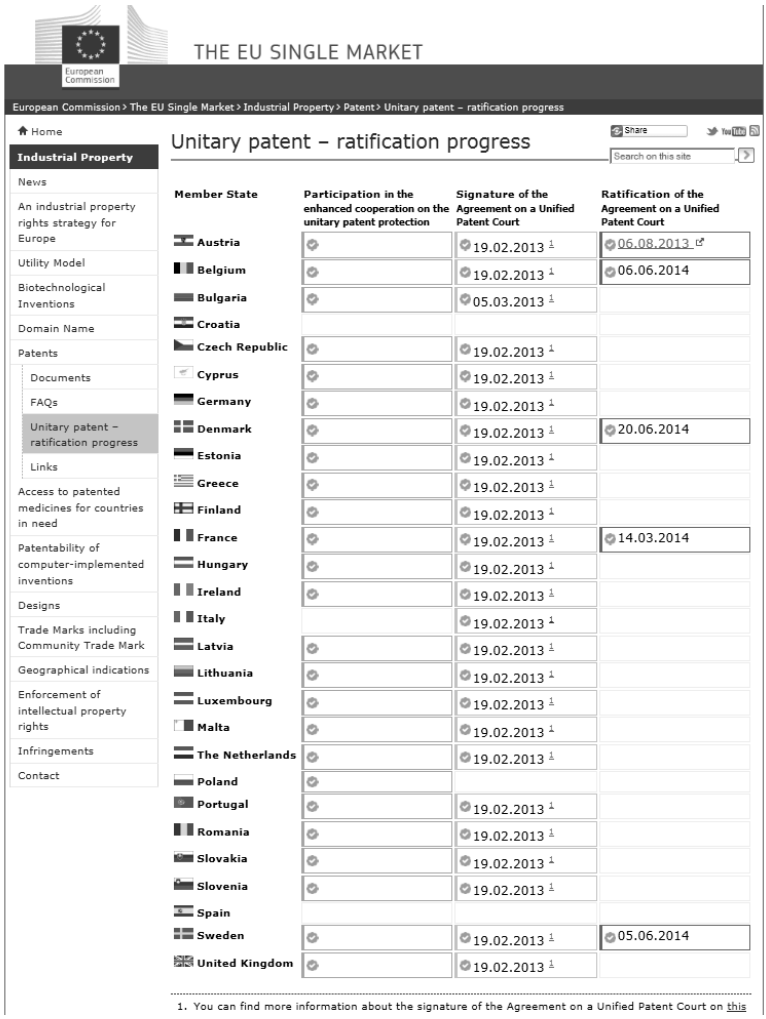

Figure 1. Ratification progress as of November 2014 (EU Commission 2014)

Regulation (EU) 1257/2010 and Council Regulation (EU) 1260/2012 do not yet apply as their application depends on the entry into force of the Agreement (art. 18(2) Regulation (EU) 1257/2012; art. 7(2) Regulation (EU) 1260/2012). The legislative procedure to adopt the Patent Package is criticised claiming transparency deficits (Pagenberg 2012, 587–588; Stjerna 2013; 7–8).

3. The Language Issue

As the EU relies on multilingualism there are 24 official languages within the EU, all of which are also working languages. If a proprietor of an invention seeks multi-state patent protection and if he has to translate the application and most

importantly the patent description and the patent claim and if he is obliged to file in all or at least several official languages the language issue becomes a strong obstacle for any patent application. This has led to the idea of reducing the number of languages to be used; EPO for example relies on only three official languages (English, French and German) if the applicant wishes to avoid expensive translations. However, on the level of the European Community/ Union all patent law proposals including a reduction of languages led to unsurmountable difficulties and to the failure of the proposals for over 40 years. Lastly Italy and Spain have blocked the various projects especially referring to the example of the OHIM (Office for Harmonization in the Internal Market) (Lamping 2011, 900–901; Luginbühl 2013, 305–306). OHIM as a non-institutional EU body uses also Italian and Spanish as office languages. The smaller Member States such as Latvia did not raise the language issue.

Table 3

Working languages of International, European and EU IP Offices (Buck 2014, p. 6)

	Working languages of EPO	Working languages of OHIM	Working languages of WIPO (PCT)
used for:	European patents	Community trademarks and Community designs	Internationally registered patents
	English	English	English
	French	French	French
	German	German	German
		Italian	
		Spanish	Spanish
			Arabic, Chinese, Japanese, Korean, Portuguese, Russian

Art. 118(2) TFEU sets out a specific legal basis for language arrangements.

Table 4

Art. 118(2) TFEU

"The Council, acting in accordance with a special legislative procedure, shall by means of regulations establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament."
(art. 118(2) TFEU.

This path is used in Regulation (EU) 1260/2012 to adopt the Patent Package. The existing trilingual language regime of the EPO is adopted and English, French and German are the languages of the proceedings (art. 6(1) Regulation (EU)

1260/2012). Spain brought a second action to the Court of Justice of the European Union (case C-147/13) arguing that Regulation (EU) 1257/2012 discriminates persons whose mother tongue is not English, French or German; the case is pending as well (Jaeger 2013, p. 389). On 18 November 2014 the Opinion of Advocate General Bot proposed to dismiss that second action of Spain as well (case C-147/13).

4. The Difficulties with the Judicial System

The next issue that has caused long discussions is the judicial system. The Community Patent Convention of 1975 wished to give respective jurisdiction to the European Court of Justice. The draft agreement from the second decade of the 2000's for creating a patent court with exclusive jurisdiction for both European patents issued by the EPO and EU patents was designed as an agreement between EU Member States and other members of the EPC. On 8 March 2011 and on request by the Council of the European Union of 6 July 2009 the Court of Justice delivered its Opinion that such a court of law would violate EU law (Opinion 1/09). The Unified Patent Court as designed by the Patent Package excludes participation of third countries and is based on an agreement only to be concluded between EU Member States.

5. The *Acquis* in the field of EU Patent Law

Most EU Member States are signatory states of the PLT (*Patent Law Treaty*, 2000), with the exception of Bulgaria, Cyprus and Malta, and all are members of both the Paris Convention and the WTO with its TRIPS Agreement *(Agreement on Trade-Related Aspects of Intellectual Property Rights*, 1994). As the aims of PLT and TRIPS are to harmonise and to streamline formal procedures and to mandate certain standards for national patent protection and enforcement (Tritton 2008, p. 63; WIPO 2014c; WTO 2014) national substantive patent law of the Member States is internationalised to a certain degree (de-facto harmonization). The Paris Convention and the EPC lead to fragmentary harmonisation of the substantive law of patent validity (Cook 2010, 528–532).

Once in force the Patent Package creates the EU patent with unitary character and the Unified Patent Court within the large majority of Member States. As mentioned above 25 Member States participate in the enhanced cooperation with the exception of Croatia, Italy and Spain and 25 Member States have signed the Agreement on a Unified Patent Court with the exception of Croatia, Poland and Spain.

The Patent Package establishes new substantive patent law, a specific application procedure and creates a new law court (for the following: Grabinski 2013, p. 310; Haedicke 2013, 610–612, 614 and 616; Luginbühl 2013, 307–309; Pagenberg 2012, 583–584; Romandini and Klicznik 2013, 534–536 and 539; Unified Patent Court 2014).

5.1. Substantive Law

The achievements of the Patent Package and the main features of the European patent with unitary effect may be summated as follows:

1. The substantive law of the European patent with unitary effect is fragmented and spread out in various sources of law including national law of the participating Member States (Haedicke 2013, p. 610).
2. The European patent with unitary effect is a European patent granted with the same set of claims respecting all the participating Member States according to the EPC that additionally benefits from unitary effect in all participating Member States after being registered as such (art. 2(c) and 3(1)(1) Regulation (EU) 1257/2012).
3. The European patent with unitary effect shall enjoy unitary character, provide uniform protection and have equal effect in all participating Member States (art. 3(2)(1) Regulation (EU) 1257/2012).
4. The European patent with unitary effect may only be limited, transferred, revoked, or lapsed with respect to all participating Member States (art. 3(2)(2) Regulation (EU) 1257/2012).
5. The European patent with unitary effect forms an object of property for its proprietor. It may be fully or partially licensed (art. 3(2)(3) Regulation (EU) 1257/2012). A transfer of ownership or a license follows the national law of the country where the owner has his residence (art. 7(1) Regulation (EU) 1257/2012).
6. The proprietor of a European patent with unitary effect enjoys uniform protection.
7. The proprietor of a European patent with unitary effect enjoys the right to prevent any third party from committing acts against the protection according to the applicable national law (art. 5(1) and (3) Regulation (EU) 1257/2012). The scope of that right and its limitations are uniform (art. 5(2) Regulation (EU) 1257/2012). The proprietor must respect third rights based on prior use of the invention (art. 28 Agreement on a Unified Patent Court).

   To the proprietor is conferred the right to prevent any third party, not having his consent, from

   a. making, offering, placing on the market or using a product which is the subject matter of the patent, or importing or storing the product for those purposes,
   b. using a process which is the subject matter of the patent or, where the third party knows, or should have known, that the use of the process is prohibited without the consent of the patent proprietor, offering the process for use within the territory of the Contracting Member States in which that patent has effect,
   c. offering, placing on the market, using, or importing or storing for those purposes a product obtained directly by a process which is the subject matter of the patent

(art. 25 Agreement on a Unified Patent Court); exempted are acts done for non-commercial or experimental purposes (art. 27 Agreement on a Unified Patent Court).

8. Actions for damages shall be based on the laws of the participating Member States (recital 13 of Regulation (EU) 1257/2012).

5.2. Application Procedure

The application procedure is highlighted as follows:

1. the procedure to examine and gain a European patent with unitary effect is not an autonomous one:
    a. first the proprietor of the invention applies for a European Patent according to the EPC and
    b. secondly simply applies for registration in the Register for unitary patent protection no later than one month after the publication of the European Patent (art 3(1)(1) and 9(1)(g) Regulation (EU) 1257/2012).
2. The European patent with unitary effect is strongly linked with the EPC and its office (the EPO), to which extensive administrative tasks are delegated according to art. 9 Regulation (EU) 1257/2012. Surprisingly, the European patent with unitary effect is not administered by the OHIM which is the EU body responsible for the registration of Community trademarks and Community designs. It is granted by a non-EU institution, i.e. the EPO, under the rules and procedures laid down in the EPC (Art. 2(b) Regulation (EU) 1257/2012). It is registered in the Register for unitary patent protection being part of the European Patent Register kept by the EPO and under the provisions of the EPC (art. 2(d) and 2(e) Regulation (EU) 1257/2012).
3. Protection shall commence in the participating Member States on the date of publication by the EPO (art. 4(1) Regulation (EU) 1257/2012).
4. The proprietor shall pay the renewal fees to the EPO (art. 11(1) Regulation (EU) 1257/2012).
5. There shall be an enhanced cooperation between the EPO and the national patent offices of the participating Member States (recital 22 of Regulation (EU) 1257/2012.
6. The languages of the administrative proceedings are the languages used in the proceedings of the EPO (art. 2(b) Regulation (EU) 1260/2012; art. 14 of the EPC). As long as high quality machine translations are not yet available, the language regime for the European patent with unitary effect is as follows:
    a. where the language of the proceedings is French or German, a full translation of the patent specification into English shall be submitted by the applicant,
    b. where the language of the proceedings is English, a full translation of the patent specification into any other official language of the EU (including a language of a non-participating Member State!)

shall be submitted (art. 6(1) and (2) Regulation (EU) 1260/2012). The granted patent will be published in the chosen and legally binding language whereas the translation is only for informational purpose and without legal effect.

5.3. Litigation, Mediation and Arbitration

The Patent Package establishes a new law court and the following dispute settlements:

1. The settlement of disputes relating to European patents and European patents with unitary effect (e.g. arising from patent infringements) or revocation proceedings will be dealt with by a single court, i.e. the Unified Patent Court (art. 1, 3 and 65 Agreement on a Unified Patent Court).
2. The Unified Patent Court will consist of
    a. a Court of First Instance with seat in Paris and sections in London and Munich sitting in a multinational composition of three judges and local and regional divisions to be determined later,
    b. a Court of Appeal with seat in Luxembourg sitting in a multinational composition of five judges (art. 6–9 Agreement on a Unified Patent Court).
3. The Unified Patent Court shall apply Union law in its entirety and shall respect its primacy. It shall cooperate with the Court of Justice of the European Union to ensure the correct application and uniform interpretation of Union law, as any national court, in accordance with Article 267 TFEU in particular.
4. Decisions made by the Court of Justice of the European Union shall be binding on the court (art. 20–21 Agreement on a Unified Patent Court).
5. The Unified Patent Court shall base its decisions on
    a. Union law, including Regulation (EU) No 1257/2012 and Regulation (EU) No 1260/2012,
    b. the Agreement on the Unified Patent Court,
    c. the EPC,
    d. other international agreements which are applicable to patents and binding on all the Contracting Member States,
    e. national law (art. 24 Agreement on a Unified Patent Court).
6. The Unified Patent Court has extensive exclusive jurisdiction, e.g. for actions for actual or threatened infringements of patents (art. 32 Agreement on a Unified Patent Court). The Rules of procedure of the Unified Patent Court are worked out by a preparatory committee.
7. The Court of Justice of the European Union has competence to control the application and interpretation of the law on the European patent with unitary effect that is based on EU law and the interpretation of art. 28(1) TRIPS-Agreement which is an integral part of the EU's legal order.
8. A patent mediation and arbitration centre is established with seats in Ljubljana and Lisbon (art. 35 Agreement on a Unified Patent Court).

Conclusions

It is expected that the new regime will be applicable starting in 2015 or later depending on the national ratifications.

The aim of the Patent Package is for Europe/the EU to remain a power house of innovation. It is questionable whether that aim is fulfilled with the final not optimal compromise. There is a good reason to criticise the complexity of the regime and the lack of certainty (cf. Max Planck Institute for Intellectual Property and Competition Law 2012, p. 1; Pagenberg 2012, 588–589).

The substantive law on the European patent with unitary effect is split

- as not all Member States participate and
- into different legal sources of various law makers including non-EU law (EPC and national law) even if the European patent with unitary effect is to be regarded as mainly an industrial property right pursuant to the EU law. The reason for the fragmentation can be found in the long history of legislation including the disputes about the language scheme that finally led to the use of enhanced cooperation and in the attempt to avoid the jurisdiction of the European Court of Justice in interpreting patent law. The implemented legal technique truly is unique in EU law (cf. Jaeger 2013, p. 390). Such territorial and substantive fragmentation does not exist in the laws on the Community trademark and on the Community design which being well established and strongly used for years could not serve as examples of best practice.

When the proprietor of an invention finally applies for the granting of the European Patent with unitary effect he will have four options to gain protection for his invention in the EU Member states/European states:

- he may obtain either a national patent in the country he selects,
- a European patent with unitary effect in the participating Member States,
- a European patent taking effect in one or more contracting states to the EPC or
- a European patent with unitary effect validated in addition in one or more other contracting states to the EPC which are not among the participating Member States of the EU (recital 26 of Regulation (EU) 1257/2012).

During a consultation launched by the European Commission in 2006, over 2500 replies from stakeholders asked for a European patent system that provides incentives for innovation, ensures the diffusion of scientific knowledge, facilitates technology transfer, is available to all market participants and is legally certain; the replies testified the disappointment with the lack of progress in the EU patent project. An overall support was expressed for a unitary, affordable and competitive EU patent (Proposal for a Council Regulation (EU) of 30 June 2010 on the translation arrangements for the European Union patent, COM (2010) 350 final, p. 4). The costs of a European patent based on the EPC were especially targeted by stakeholders, the costs of an average European patent reaching

€ 12,500 if validated in 13 states only (Proposal for a Council Regulation (EU) of 30 June 2010, p. 2). It is estimated that the costs of an EU patent with unitary effect would be less than € 6,200 (EU Commission 2010). It can be doubted that a reduction of costs for the average application is true (of the same opinion Pagenberg 2012, p. 583). Already the significant reduction of costs is a positive result of the European patent with unitary effect.

Inventors and companies bringing forward technical progress are well advised to take advantage of the new patent scheme and profit from EU-wide protection provided on a one-stop shop basis as soon as the patent package has entered into force.

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TOWARDS IMPROVEMENT OF BULGARIAN ANTITRUST ENFORCEMENT IN THE ABUSE OF DOMINANCE FIELD: OTHER EU MEMBER STATES' EXPERIENCE

Ralitza Dimitrova, PhD
Chief Assist. Prof., Faculty of Management,
Technical University of Sofia, *Bulgaria*

Abstract

Stable market economy and economic growth are impossible without free competition. The free and effective competition requires that companies should not get involved in practices that build monopolies and prevent other firms from entering the market. With a view to the accession to the EU, Bulgaria's antitrust legislation was fully harmonized with the EU law. However, in the course of its enforcement the antitrust legislation naturally shows some shortcomings while, on the other hand, the anticompetitive practices naturally change. The article presents a brief comparative analysis of the antitrust legislation and enforcement in the field of abuse of dominant position in three EU Member States – Bulgaria, France and Ireland, in order to identify measures to enhance the effectiveness of Bulgarian antitrust enforcement. The author focuses mainly on the different types of liability for antitrust infringements and special attention is given to the possibility for criminalization of these violations. A conclusion is made while hard-core cartels cases justify criminalization, abuse of dominance cases do not warrant criminal sanctions and that Bulgarian authorities should consider raising the public awareness towards the evils of antitrust violations as well as strengthening private antitrust enforcement.

Keywords: dominant position, abuse, competition, antitrust enforcement, criminal liability

Introduction

Stable market economy and economic growth are impossible without free competition. Competition gets companies to improve quality, reduce costs, enrich the variety of goods and services offered while at the same time gives them the opportunity to compete with other firms and to act on the market according

to their own interests. It also guarantees consumers high quality products and services at lower prices.

Free and effective competition is seen as an essential element both of the internal market and of the national markets of the European Union Member States. In order to fight antitrust violations and guarantee effective competition and consumers' welfare the EU and its Member States have adopted a comprehensive antitrust legislation.

The free and effective competition requires that companies should not get involved in practices that build monopolies and prevent other firms from entering the market. Anticompetitive or exclusionary practices such as predatory pricing, exclusive supply or purchase agreements, tying the sale of two products or price discrimination restrain competition and damage consumers' interests.

Bulgaria adopted its current Protection of Competition Act in 2008 (published in State Gazette No. 102 of 28 November 2008). With a view to the accession to the EU, Bulgaria's antitrust legislation was harmonized with the EU law. However, on the one hand, the antitrust practices change and, on the other hand, in the course of its enforcement the antitrust legislation naturally shows some shortcomings and inconsistencies.

The present article analyses the antitrust legislation and its enforcement in Bulgaria, France and Ireland in order to identify measures to improve the Bulgarian antitrust enforcement and enhance its effectiveness towards abuse of dominant position violations.

1. EU Member States' Antitrust Regulations

Antitrust enforcement in the EU Member States is naturally inspired by and harmonized with EU antitrust law. It is a centralised administrative model, in which the authority to investigate the violations and to take decisions is conferred mainly on administrative bodies (competition authorities), united in the European Competition Network. However, the judiciary is also an important actor in the antitrust enforcement, because the decisions of the administrative bodies usually are subject to judicial review. Besides, in some jurisdictions sentencing is in the exclusive discretion of the court. Civil actions for damages are considered by the courts too.

Traditionally antitrust violations incur administrative sanctions for corporations and/or physical persons, and some jurisdictions provide for criminal sanctions (even imprisonment) for such violations. Generally, most legislations provide for civil liability, i.e. the possibility for injured private parties to seek a compensation for damages caused by the antitrust infringement. With a view to facilitating and promoting damages actions by private individuals and businesses, various documents have been adopted at EU level. On 17 April 2014 the European Parliament even approved a proposal for a directive which will help private parties claim damages

stemming from violations of the EU antitrust rules (Proposal for a Directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union).

Administrative liability for antitrust violations is preferred by the majority of the EU Member States. Although the use of criminal sanctions in the field of antitrust violations has been subject of serious and comprehensive consideration at International and European Union level, and in France (Parleani 2008: 3; Idot 2008: 14), most of the EU Member States do not provide for criminal sanctions for antitrust legislation violations (this is the case in Italy, Austria, Luxemburg) (Idot 2008: 16). It is said that the reasons for this hostility against criminalization of antitrust law are double, both practical and theoretical – administrative procedures are considered more effective than criminal procedures, whose duress is considered to be inappropriate for the economic sphere; the imprecise character of the violations of the antitrust law, related to its economic nature, appear to be incompatible with the principle *nulla poena sine lege certa* which must prevail in criminal law; the legislations, strongly influenced by the Roman law (for example the German and the Italian legislation), refuse up to this moment to accept the corporate criminal liability (Idot 2008: 17).

However, it is noted that, in spite of an important movement for decriminalization of the competition law during the last twenty years, at least on the Continent (Idot 2008: 15), still some Member States provide for criminal liability for antitrust violations too (for example France, Germany as far as bid rigging is concerned, Norway, Denmark, etc). Moreover, guided by the need to get their antitrust enforcement more effective, some jurisdictions like Great Britain, Ireland and Estonia have introduced criminal liability for antitrust violations in their legislations and Ireland recently has even increased the criminal sanctions for certain types of violations in order to strengthen further the antitrust enforcement.

Usually the jurisdictions that provide for criminal liability for antitrust violations, apply it only to certain types of violations. For example, in Norway and Denmark that provide for both administrative and criminal liability for antitrust infringements, criminal sanctions are limited to prohibited agreements (Section 30 in connection with Section 10 of the Norwegian Competition Act of 2004, and respectively § 23 (3) and (4) in connection with Section 6 (1) of the Danish Competition Act – Consolidation Act No. 700 of 18 June 2013).

While discussing the different EU Member States models, it should be reminded that Regulation No. 1/2003 frames their antitrust enforcement in two ways. Firstly, it allows Member States to provide for criminal enforcement of Articles 81 and 82 EC Treaty [now Articles 101 and 102 Treaty on the Functioning of the European Union (TFEU)] (Article 5). Secondly, the Regulation restricts the possibilities for Member States to enforce their national competition laws in isolation from the enforcement of Articles 81 and 82 EC Treaty (Wils 2006:15). Member States cannot criminalize the enforcement of only their national

competition laws, because, as we know, they must guarantee equivalent protection of the EU's interests (Wils 2006:17).

1.1. Bulgaria

Bulgarian regulation against abuse of dominant position is provided for in Chapter Four "Abuse of Monopoly or Dominant Position" of Title Two "Restriction of Competition" of the Protection of Competition Act (PCA).

Article 21 PCA prohibits "the conduct of undertakings enjoying monopoly or dominant position, as well as the conduct of two or more undertakings enjoying a collective dominant position that may prevent, restrict or distort competition and impair consumers' interests". The provision lists the most frequent types of prohibited conduct: imposition of purchase or sale prices or other unfair conditions, limiting production, applying dissimilar conditions for equivalent transactions, making the conclusion of contracts subject to acceptance by the other party of supplementary obligations, unjustified refusal to supply goods or to provide services.

The Supreme Administrative Court (SAC) holds that the offence under Article 21 PCA requires the **simultaneous existence of four elements**: (1) the **quality "undertaking"** of the offender within the meaning of the PCA; (2) its **dominant position on the relevant market** – product and geographic market under § 1, item 15 of the Supplementary Provisions of PCA; (3) particular **anticompetitive conduct** of the undertaking; and (4) **real or potential anticompetitive effect that damages consumers' interests** (case No. 4971/2011, IV Division of SAC, case No. 6687/2011, Five-judges panel of SAC). The absence of whichever of the elements prompts the conclusion that there is not an abuse of dominant position (case No. 13238/2011 Five-judges panel of SAC).

Regarding the first element of the offence, the **addressees** of the general prohibition under Article 21 PCA are the **undertakings**. According to § 1, item 7 of the Supplementary provisions of PCA "undertaking" shall mean any natural person, legal entity, or unincorporated entity which carries out economic activities, regardless of its legal and organisational form. The provision has a broad scope and envisages the concept of undertaking adopted in the EU antitrust law.

The proof of the offence under Article 21 PCA requires further that the undertaking **holds a dominant position on the relevant market.** The notion of a dominant position in the Bulgarian antitrust legislation is envisaged in Article 20, paragraph 1 PCA. According to this provision dominant shall be the position of an undertaking which, in view of its market share, financial resources, possibilities for market access, level of technology and economic relations with other undertakings may hinder competition **on the relevant market**, as it is independent of its competitors, suppliers or customers. With a view to determining the dominant position of the undertaking, the relevant market should be defined. According to § 1, item 15 of the Supplementary Provisions of PCA the "relevant

market' shall consist of a relevant product market and a relevant geographic market, in compliance with the EU law.

In Bulgaria, the dominant position of an undertaking is not illegal *per se* (case No. 6812/2008 of SAC). The undertaking **must have abused its position**, performing particular anticompetitive conduct, which has caused or may have caused negative effect for consumers (case No. 7785/2011, IV Division of SAC).

The court also retains that undertakings abuse their dominant position when their actions have the aim or effect the prevention, restriction or distortion of competition (case No. 6687/2011, Five-judges panel of SAC).

The fourth element of the offence under Article 21 PCA requires a **real or potential anticompetitive effect that damages consumers' interests**. This requirement is formulated by the Bulgarian lawmaker as "may prevent, restrict or distort competition and impair consumers' interests".

The infringement of the prohibition laid down in Article 21 PCA brings an **administrative liability**. The Bulgarian Criminal Code does not provide for a specific definition and respective criminal sanction for conduct that restricts competition. It should be noted that according to Article 99 PCA infringement of the provisions of the act brings administrative liability, if the conduct concerned does not represent also a criminal offence. In other words, if the conduct in question covers the definition of another crime, provided for in the Criminal Code, the offender may face criminal liability.

According to Article 100 PCA the infringement of Article 21 PCA brings a pecuniary sanction in an amount not exceeding 10 per cent of the total turnover in the preceding financial year on an undertaking or an association of undertakings. Under Article 11 of the Methodology for setting fines under the PCA, the pecuniary sanction for an undertaking or association of undertakings for infringement of Article 101 TFEU is increased up to 25 per cent of the basic amount in order to achieve deterrent effect. However, the pecuniary sanction for an undertaking can't exceed the legal maximum amount of 10 per cent of the total turnover.

Under Article 102, paragraph 1 PCA along with the undertaking also the physical persons that have contributed to the commission of the infringement shall be liable to a fine of BGN 500 to BGN 50,000, if the infringement does not constitute a criminal offence under the Criminal Code.

The investigation of the possible infringement and the imposition of sanctions are conferred to the Bulgarian Commission on Protection of Competition.

The infringement of the prohibition of Article 21 PCA brings also **civil liability** for the offender if the infringement has caused damages (Article 104, paragraph 1 PCA). Entitled to an indemnity are all physical persons and legal entities which have suffered damages even where the infringement has not been directed against them. The civil action is brought before the competent civil court and is governed by the rules of the Civil Procedure Code.

Protection of competition in Bulgaria is patterned upon the EU model. Both the formulation of the prohibited conduct and the respective sanctions (their nature and methods for determination) are harmonized with the EU antitrust law. Antitrust enforcement is conferred on an independent body, so we can say that it is a centralised system. However, the court also plays an important role in the antitrust enforcement – it reviews the decisions of the competition authority and considers the civil actions for damages. The competition authority performs successfully its activities in deterring antitrust violations, but still the enforcement needs strengthening. Unfortunately the civil antitrust enforcement is not well developed in Bulgaria and doesn't contribute to the effective deterrence of antitrust violations and abuse of dominant position in particular.

1.2. France

Antitrust violations in France are prohibited under the French Commercial Code (FCC).

Article L420-2 FCC establishes two offences – abuse of dominant position under paragraph 1, and abusive use of economic dependence, under paragraph 2.

Article L420-2, paragraph 1 FCC prohibits the abusive exploitation of dominant position in the internal market or in a substantial part of it. Further, the French lawmaker gives examples of some of the most frequent types of such conduct: refuse to sell, tie-ins or discriminatory sell conditions, as well as rupture of established commercial relations with the only motive that the partner refuses to submit itself to unjustified commercial conditions.

Article L 420-2, paragraph 2 FCC prohibits, insofar it is capable to affect the functioning or the structure of competition, the abusive use by an undertaking or a group of undertakings of the state of economic dependence of a client or supplier. This prohibition is an original contribution of the French lawmaker and does not have a counterpart in the EU antitrust legislation. Therefore, its analysis remains beyond the aims of the present article.

The definition of the offence under article L420-2, paragraph 1 FCC, contains **four elements**. Three of them are formulated in the same text: (1) an undertaking; (2) possession of dominant position; and (3) abusive use of this position. For the fourth element the abuse of dominant position prohibition under Article L420-2 FCC refers to Article L420-1 FCC – the prohibition of abuse of dominant position is implemented if the conduct in question has as its object or can have as its effect the prevention, restriction or the distortion of competition (4).

The prohibition of Article L420-2 FCC concerns **undertakings and groups of undertakings**.

The French antitrust legislation does not provide for a definition of the concept of a **dominant position**. A dominant position is defined as the power to obstruct effective competition in a market. This means that the considered undertaking has an important place on the market thanks to its strong market share in the

market which is disproportionate to that of its competitors, its position and its manner of commercial actions. (Holmes and Davey 2004: 118) Thus, the concept of a dominant position is applied by the French antitrust enforcers according to the EU experience.

To assess whether an undertaking has a dominant position, the Competition Council (*le Conseil de la concurrence* – the predecessor of the present *Autorite' de la concurrence*) refers mainly to the market share criterion. However, it is not the only criterion – the Council also considers the market accessibility, the importance of the required investments to exercise the activity, the existence of potential competition, the existence of market entrance barriers, (Holmes and Davey 2004: 118,119) the relative disproportion in market shares between the leading undertaking and its competitors; the economic structure of the market, and, in particular, the intensity of competition in the market and the possibility for competitors to enter the market; and certain other behaviour and performance criteria (Vogel and Vogel 2011: 107).

The dominant position is naturally identified with reference to a certain **product and geographic market**.

In France the dominant position **is not illegal *per se***. It is said that all behaviour by an undertaking in a dominant position is not abusive. Behaviour must be abnormal (ie, beyond what is necessary to protect the legitimate interests of the undertaking in question) (Vogel and Vogel 2011: 107). Generally all practices that exceed the limits of normal competition performed by a undertaking holding dominant position, and which do not have any other justification than the elimination of real or potential competitors or the acquisition of unjustified advantages, are considered abusive (for example predatory pricing, practices such as eviction of competitors, etc.) (Le Portail de l'Economie et des Finances 2014).

It is said that for an activity to fall within article L420-2, the French Competition Authority requires that it be both anti-competitive and abusive. In its opinion, this is normally the case with 'practices having as their object or effect the elimination of competitors', or practices by which undertakings try 'to eliminate competitors or to prevent the arrival of new competitors on the market'.

As far as the third element is concerned, the prohibition applies only if the effect, real or possible, of the conduct, is enough serious, enough tangible (Le Portail de l'Economie et des Finances 2014). It is accepted that the abusive exploitation of a dominant position consists of an act which has actual concrete effects on the functioning of a market. However, Vogel quotes a recent decision which has held that a review of effects is necessary only in the absence of an anticompetitive object and points out that, in his opinion, this case-law is going against the new approach adopted by the European Commission (Vogel and Vogel 2011: 109).

Although the formulation of the rule differs slightly from the formulation of Article 101 TFEU, the provision undoubtedly is in compliance with the EU antitrust law.

After the Law on the modernisation of the economy was passed on 4 August 2008, the French Competition Authority performs all activities of competition regulation and handles both preliminary inquiries and full investigations, which had been previously split between two different bodies – the *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF)* and the *Conseil de la concurrence*. Under Article L464-2 FCC the French Competition Authority may impose pecuniary sanctions to organizations and undertakings. The sansctions' amounts shall be proportionate to the gravity of the violation, the damages caused to the economy, the individual state of the organization or undertaking, taking into consideration, where applicable, any repeating of the infringement. The statutory maximum of the fine is 10 per cent of the turnover, and for offenders which are not undertakings – Euro 3 million. The Competition Authority may also enjoin on the undertaking or organization to stop the anticompetitive practice or order the publication of the decision for the sanctioning in the media.

The persons who have suffered damages caused by the violation, may seek an indemnity under the French legislation. If the offender is an undertaking, the matter falls within the jurisdiction of the civil court and if the offender is the State or a state entity – within the jurisdiction of the administrative court.

Regarding the liability for antitrust violations France has adopted a **dual or hybride** (Leyssac 2008: 23) antitrust regime that allows both administrative and criminal sanctions to be applied for abuse of dominant position. This is a specific feature that differentiates the French antitrust model from the models which do not provide for criminal liability for infringements of the antitrust provisions. Article L420-6 FCC makes it a criminal offence for a physical person "to fraudulently take a personal and decisive part in the design, organization or implementation of the practices referred to in Article L420-2". The French lawmaker has preferred to establish a particular offence that requires the fraudulent and decisive participation in the practices prohibited under Article L420-6 FCC. Actually, as it will be discussed below, the description of the offence is enough precise only at first sight. The penalty applicable is a prison sentence of four years and a fine of 75,000 euro. Additionally, the court may order that its decision is published in full or in summary in the newspapers which it designates, at the expense of the offender. Originally the provision of Article L420-6 FCC was applicable only to physical persons. Afterwards the so-called "Perben II" Act extended its scope also to legal entities.

Over the years following its adoption Article L420-6 FCC has triggered an extensive debate over its wording and, in more broad aspect, on the use of criminal sanctions in the economic sphere. Experts have pointed out that the text's formulation is imprecise and thus the rule has a too large scope of application which can lead to negative effect in deterring antitrust violations (Leyssac 2008: 21). First of all, the provision envisages all types of violations – all agreements (hard-core or not, horizontal and vertical), as well as the abuse of dominant position. It also endangers everyone who fraudulently takes part in the

conception, organization or performance of such practices. It is assumed that this redaction of the provision risks causing negative effect. It works strongly against the objective to achieve effective deterrence of the most serious forms of conduct. The experts conclude that Article L420-6 must be reserved only for hard-core agreements (Parleani 2008: 9).

It is said that the criminal sanction can retain its place in the antirust law, but under two conditions. First, it must be limited to physical persons – criminal liability of legal entities doesn't have any justification in this field, owing to the existence of administrative sanctions. Second, it must be clearly limited to the most serious violations – the hard-core violations (in French – *les ententes injustifiables*) (Idot 2008: 20; Parleani 2008: 9; Leyssac 2008: 24).

Actually the French Competition Authority has used the opportunity under Article L240-6 FCC to lodge files with the Prosecutor's Office extremely rarely. Moreover, all cases of criminal prosecution concern horizontal violations, in other words "cartels"; the vertical violations or the abuse of dominant position remain outside the scope of application of criminal sanctions (Parleani 2008: 3).

The analysis of the jurisprudence shows a clear trend – the criminal sanctions are reserved only for hard-core offences (*ententes injustifiables*), like in most other states (Leyssac 2008: 23).

Therefore, although the legislation provides for criminal sanctions for both prohibited agreements and abuse of dominant position, they are limited to the first category antitrust violations and in particular for hard-core violations. The administrative liability remains the main tool in the French antitrust enforcement. We can thus conclude that the French enforcers retain that abuse of dominance cases do not warrant criminal sanctions.

Although the antitrust enforcement is conferred on an independent administrative body, the French antitrust model sees also an important role of the judiciary. First of all, the criminal sanctions are imposed only by the criminal judge. Second, the actions for damages fall within the jurisdiction of the court too. Third, the decisions of the French Competition Authority can be appealed before the court.

1.3. Ireland

Antitrust violations are prohibited in Ireland under the Competition Act of 2002. According to Section 5, subsection 1 any abuse by one or more undertakings of a dominant position in trade for any goods or services in the State or in any part of the State is prohibited. Subsection 2 specifies the most frequent types of anticompetitive practices: directly or indirectly imposing unfair purchase or selling prices, limiting production, applying dissimilar conditions to equivalent transactions with other trading parties, making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by

their nature or according to commercial usage have no connection with the subject of such contracts.

The analysis shows that the prohibition is based on **four elements**. In *Competition Authority v. Irish League of Credit Unions* (Judgement of 8 May 2007 of the Supreme Court, 2005 No. 077, p. 37) the Court has discussed the following issues: whether the defendant is an undertaking or, alternatively, an association of undertakings (1); the relevant market, both product and geographic (2); does the defendant hold a dominant position in the relevant market (3); and whether the defendant has abused its position (4). The Court has evaluated all the elements of the alleged Section 5 violation, referring to the constant case-law of the Court of Justice of the European Communities.

Under the Irish legislation the concept of "**undertaking**" has a broad scope in compliance with the EU antitrust law. According to Section 3, subsection 1 of the Competition Act 2002 it covers the individuals, the bodies corporate and unincorporated bodies of persons as far as they are engaged for gain in the production, supply or distribution of goods or the provision of a service.

Regarding the concept of a **dominant position**, it is said that the High Court considered in detail various tests of dominance. In its assessments the court considered classic indicators of dominance as market share, number of competitors, barriers to entry and expansion, and availability of competing products (Holmes and Davey 2004: 189). More particularly, in the above cited *Competition Authority v. Irish League of Credit Unions* the Court has applied the concept of a dominant position established in *United Brands v. Commission* and has considered the market share of the defendant and the possible entry barriers which prevent or would prevent anyone else entering the market.

The **relevant market** is determined in a similar manner as under the EC Law and the EC guidance and precedents are influential (Holmes and Davey 2004: 189).

Section 7 of the Competition Act of 2002 makes the conduct prohibited under Section 5 **a criminal offence**.

Ireland first introduced criminal liability for antitrust infringements in 1996, but in the period 1996–2002 there were no criminal prosecutions (Calvani and Carl 2013: 297), even for hard-core violations relating to prohibited agreements (cartels). The adoption of the Competition Act of 2002 strengthened Ireland's antitrust policy, through providing more effective tools and more severe penalties. *Galway heating-oil cartel cases* produced the first in Europe criminal competition law conviction by jury following a trial, and the first custodial sentence of a criminal defendant under competition legislation and, of an individual for competition law violations (Galbreath 2007: 12).

The sanctions for violations of the prohibitions under Sections 4 and 5 are provided for in Section 8 of the Competiton Act 2002, as amended by the Competition (Amendment) Act of 2012. An undertaking or individual convicted on indictment for abuse of dominant position faces a fine up to Euro 5 million or 10% of the turnover, whichever is greater. On summary conviction (these are less

serios offences) the offender may face a fine up to Euro 5,000 (class A fine) (the Fines Act 2010). It should be noted that although Section 8 provides for imprisonment for antitrust violations, this sanction is imposed only for hard-core offences under Section 4, i.e. for hard-core cartels. Other antitrust violations, even if prosecuted in the criminal court carry only fines.

Although the Competition Act 2002 criminalizes both prohibited agreements and abuse of dominant position, the competent authorities determine whether to take enforcement action in the criminal or in the civil courts. The practice shows that hard-core violations always prompt criminal prosecution, while other types of antitrust violations result in proceedings aimed at compelling the parties to stop their illegal activity. Such proceedings are generally brought in the civil court (Irish Competition Authority's web site). On the web site of the Irish competition authority is presented only one abuse of dominance case – the quoted above *Competition Authority v. Irish League of Credit Unions* – and it was prosecuted civilly. Civil remedies include injunction or a declaration that an act breaches the Irish or EU competition law (Section 14A, subsection 3 of the Competition Act 2002 as amended by the Competition (Amendment) Act 2012). Without prejudice to subsection 3, where an abuse of dominant position is alleged in an action under Section 14A, subsection 1, by the Authority, the Court may order the dominant undertaking to discontinue the abuse, or to adopt measures to cease its dominant position or adjust this position as may be specified in the order (eg by way of sale of assets) (Section 14A, subsection 4 of the Competition Act 2002 as amended by the Competition (Amendment) Act 2012) (Cahill 2004: 274). In *Irish League of Credit Unions* the Authority sought the sanction under Section 14 (7) of the Competition Act 2002 (Decision of the Irish High Court (Kearns J) made and adopted on 22 October 2004, [2004] IRLHC 330THE HIGH COURT [2003 No 8680P]), and ultimately the Court injuncted ILCU from disaffiliating credit unions who have been threatened with disaffiliation.

If the Competition Authority retains that there is enough evidence for a hard-core violation, it refers the matter to the Director of Public Prosecutions so that the offender be prosecuted on indictment in the Circuit Courts (for offences committed before 1 July 2002) or in the Central Criminal Court (for offences committed after 1 July 2002), or prosecute the case itself in the District Court, if it determines that the offence does not warrant prosecution on indictment. Under the Irish law the judiciary plays an important role in the antitrust enforcement. Although the Competition Authority has the main responsibility for enforcing Irish competition law, it does not have the power to grant civil remedies or impose criminal sanctions. The sanctions for antitrust violations are imposed only by the court (Irish Competition Authority's web site; Cahill 2004: 274). This feature distinguishes the Irish antitrust enforcement from the other EU Member States and brings it closer to the US antitrust enforcement.

The analysis shows that while the prohibitions under Section 4 and Section 5 of the Competition Act of 2002 were obviously modelled on provisions now incorporated in TFEU and its language is almost identical, the sanctions, and in particular that of custodial sentences, owe much to the American experience. Thus, whereas the substance of the law is European, criminalization reflects the American approach to sanctions (Calvani and Carl 2013: 299).

The Competition Act of 2002 entitled the private parties to seek indemnity for damages (Section 14), which has been an element of the Ireland's antitrust policy since the Competition Act of 1991. Thus the law reaffirmed a commitment to both deterrence and compensation (Calvani and Carl 2013: 298).

The Competition (Amendement) Act of 2012 introduced provisions that aim to strengthen the antitrust enforcement by increasing the amounts of fines and imprisonment terms, as well as providing for disqualification a person from being a director of a company in summary criminal and in civil proceedings, and making it easier for private individuals to prove an action for damages against a cartellist. The amendments show that the Irish lawmaker draws a clear distinction between the hard-core violations and the abuse of dominant position, subjecting to the most severe sanctions only the first category of antitrust violations.

Conclusion

The comparative analysis of the antirust enforcement models of the three EU Member States leads to the following conclusions.

Criminal liability is widely regarded as justified and having the necessary deterrent effect only in hard-core violations cases, involving price-fixing, limiting production, market allocation and bid rigging. That's why France and Ireland limit criminal liability only to prohibited agreements and especially to hard-core cartels, leaving monopolization outside its scope of application. Both countries rely mainly on administrative sanctions for undertakings. Civil liability is an important tool and both jurisdictions make efforts to enhance private litigation in compliance with the EU antitrust policy.

Recently there have been some calls for criminalization of antitrust violations in Bulgaria. Although the introduction of criminal sanctions can improve the effectiveness of Bulgarian antitrust enforcement against hard-core cartels, criminalization of monopolies (abuse of dominant position) doesn't seem appropriate in the view of the experience of other EU Member States. Such a measure risks leading to either overdeterrence or underdeterrence. Instead, in order to get its antitrust enforcement in the field of abuse of dominance more effective, Bulgaria should consider measures to enhance the society's intolerance against antitrust violations, as well as to strengthen the private litigation so as to become more effective and achieve its twofold purpose – to compensate the damages suffered by private parties and deter antitrust violations.

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CONTRIBUTION OF QUALIFACATION PAPERS IN THE FIELD OF PERSONNEL MANAGEMENT TO THE DEVELOPMENT OF ORGANIZATIONS

Armands Kalniņš, Mg.paed., Mg.oec (equated),
Sanita Čerpinska, Mg.oec
Albert College, *Latvia*

Abstract

The research problem of the current paper deals with the topics and results of the qualification papers in the field of personnel management of Albert College and its contribution to the development of Latvian organizations. The aim of this study was to analyze the possible contribution of qualification papers of Albert College in the field of personnel management to the development of Latvian organizations. The research methods in the context of this study included monographic analysis, analysis of documents, content analysis, comparative and logical analysis, graphical method, as well as generalization for empirical studies of the qualification papers of students which was done for several years and used as case studies.

Students of Albert College write qualification papers based on a concrete organization. It is possible for the students to choose the topics for the qualification papers which are worthy and relevant to the organization where they have their placement/internship. Such a choice allows making judgements on the priorities of human resources management in the specific organization.

Functions of the human resources management may be examined in several ways. Nevertheless, it is possible to determine the major functions such as recruitment, motivating personnel, competence evaluation of personnel and others. In general, human resources management in Latvia is often criticized. Therefore definite improvements are suggested which may be useful to other organizations as well. The present paper reflects on one of the most vital and feasible suggestions to be taken into account – e.g. contribution of qualification papers (topics, results) of Albert College in the field of personnel management to the development of Latvian organizations could be most relevant for implementation.

Keywords: personnel management, human resources management, qualification papers

Introduction

Since the restoration of the independence of Latvia and joining the EU the role of personnel management at enterprises and institutions in the country has changed considerably (moving away from a narrow understanding of the concept of "personnel management"). The impact of professional higher education on the country's overall long-term growth can be measured by analyzing a certain field (e.g. personnel management) of qualification paper choice at the institutions of higher education in the long run, if they are worked out based on the analysis of the performance of a definite organization. The present article describes the study of the impact of the choice of topics, conclusions and proposals made in the qualification papers of Albert College on the development of the organizations' personnel management.

The aim of this study was to analyze the possible contribution of qualification papers of Albert College in the field of personnel management to the development of Latvian organizations.

The tasks of the research were as follows:

- to provide characterization and classification of personnel management process to be able to analyze more accurately the most pressing personnel management issues;
- to describe the requirements for personnel specialist training for profession;
- to define and analyze the choice of Albert College qualification paper themes and characterize the results of the analysis done.

The research methods in the context of this study included monographic analysis, analysis of documents, content analysis, comparative and logical analysis, graphical method and generalization. For empirical studies the qualification papers of the students for several years have been used as case studies.

Albert College students work out their qualification papers on the basis of a particular organization (company, institution, foundation), conducting the analysis of its performance and naming the problems (especially – in their conclusions), as well as offering the problem solving opportunities in the paper proposals. Students can choose only the topics that have emerged in the organization in which they have their placement/internship. Such a choice provides an indication of the personnel management priorities of the organization and qualification paper's contribution to the development of that organization, as organizations do not accept research topics which appear obsolete for them. The article is based on Albert College program "Institution Organization and Management" (qualification – Personnel Specialist) requirements and themes of qualification papers (related to the personnel management processes) and, accordingly, the results of their analysis (typical examples being selected). Although the topics are chosen in accordance with the current issues in the field of personnel management in the organizations of Latvia, the research

problem of the study is the topicality ("popularity") of the themes relating to the necessity of a more distinct classification of the personnel management processes and, thus – opportunities for the optimization of the effect of these processes in organizations.

Therefore, the suggested discussion is on whether qualification papers (and more generally – professional education, vocational training etc) affect the development of the country (in this case – a particular field and a particular institution of higher education, which can later be generalized), because the development of organizations is part of the national development.

To address the problem, the aforementioned tasks were designed and fulfilled. Such an approach to solving the problem involves the need to classify personnel management processes in order to focus more clearly on the current issues (choosing the themes of qualification papers) and to determine the need of encouraging innovations in the qualification paper topicality.

As public information is practically not available for this kind of research in Latvia, the present research can be considered as an innovative approach. It was not possible to find corresponding research approaches in databases either; therefore such publications could not be included in the article. Having analyzed the potential impact (indirectly as well – i.e. selection of themes, the results obtained etc.) of the qualification papers of Latvian higher education, one can come to conclusion that in the long run it would be possible to influence the personnel management process improvement in the organizations of Latvia and thus contribute to the overall development, which is essential. It also allows contributing to the development of the field of research.

In this article, first, the authors will turn to the personnel management process characteristics (including their classification) to determine their consistency with the current professional training requirements, specifically – to training for the personnel specialist profession (and their links to personnel management processes), and finally – the analysis of the themes of the college program qualification papers and the results obtained (conclusions and recommendations) to identify the choice of the most important personnel management topics, as well as the relevance of conclusions and recommendations. This paper also provides the classification of the functions of personnel management approaches and highlights related issues, but the practical analysis done could be useful for future scientific research.

1. Characterization and classification of the personnel management process

First, the authors of the present article will turn to the personnel management processes (functions) for their possible classification by analyzing the major works which focus on the personnel management issues and are frequently used in the students' papers. Personnel management processes are set in professional literature in different ways: in detail (Armstrong), or addressing the most pressing processes on the basis of the author's conceptual viewpoint, etc. A different classification of them can be found in the studies of prominent Latvian authors (Dombrovska, Ešenvalde, Forands, Voročuka etc.). Thus, special value in this article is given to the publications in Latvian, because their range is not extensive, but the use of them in qualification papers and other studies is frequent and substantial. This paper analyses only the literature most often included in Albert College students for their qualification paper research, as the classification of other types of personnel management functions (topics), even if it were available, would have no significant impact on the choice of qualification papers and research. So, the selection of scientific literature in the theoretical part is conceptually rather limited.

Some authors focus more on human resources management processes, compared with personnel management. In assessing the similarities and differences in human resources and personnel management, it can be concluded that there is much in common (i.e. business strategy role, responsibility of Heads of departments for their employees' management, one of the main aims being the choice of appropriate employees for proper positions, etc.) (Armstrong 2008; 2009). However, there are also differences, e.g. personnel management is generally focused on "lower management level" of employees (performers), but human resources management ensures a focus on the work of the department Heads (which actually allows to successfully allocate responsibility for the management of employees), in which an essential role is given to building the organization (corporate) culture (Armstrong 2008; 2009 etc). All in all, while there are differences, these processes have many similarities.

Human resources are the most difficult resources in the company for management, also entrepreneurship management – for example, (Dombrovska 2009).

It is emphasized that the personnel is one of the most relevant and almost unpredictable factors which is characterized by a variety of different, difficult to manage "properties" (Forands 2007). It is often pointed out that the personnel manager must be a strategic business partner (Ešenvalde 2007) and that the task of personnel management is the realization of human potential energy in the form of economic success (Voročuka 1999; 2003; 2009). So, the personnel management processes are associated with the achievement of the company's (also in most cases – other organizations') aims.

Let's address in greater detail the characteristics of the personnel management process in the most well-known publications. M.Armstrong's human resources (personnel) management process and related issues highlight: the human resources management issues (models, concepts, strategies, objectives paying attention also to understanding of intellectual capital, etc.); human resources management practices (personnel divisions, personnel specialists and their performance related issues); the behavior of the employees in the organization (human differences, motivation, confidence (belonging), organization's functioning and organizational culture; work and employment (employment relationships, the psychological contract); performance types and roles (organization building, organization's development, planning of the working places and roles involving their analysis); human resources management process (human resources policy, competencies, knowledge management, job (roles, positions) analysis and description) providing the organization's labour resources (human resources planning, recruitment and selection of personnel, introduction into the organization, leaving it); work indicators management (including personnel (performance) evaluation); human resources development (strategic development, education, personal development planning, driver skills development, career/promotion management, including succession planning); remuneration management (systems, work (job) analysis etc., wage-related issues); relationships with employees (relationship management processes, negotiations, leadership, employees involvement in management, communication, etc.); labor safety and security, social issues; other human resources management issues (employment contracts, ensuring equal opportunities, protection of personal data, solution of conflicts, disciplinary sanctions, personnel tracking systems, etc.) (Armstrong 2008; 2009 etc.).

Armstrong in his publications has provided a conditional classification of personnel management processes which is extensive, with different degrees of immersion addressing all the key personnel management processes.

It is also important to analyze the classification of personnel management processes developed by Latvian authors. L.R.Dombrovska focuses on such processes and related issues as human resources capital management aims, functions and role; human resources capital guaranteeing (personnel planning, recruitment and selection, integration (adaptation), human resources capital development (personnel evaluation, education, knowledge management, motivation and stimulation, wage setting, career management, characteristics of personnel divisions, management of changes, record keeping, legal issues) (Dombrovska 2009; etc.). As can be seen, though the author structured human resources management processes in another way (one can discuss the reasons for such an allocation), she essentially addresses the most pressing processes of the field.

I.Ešenvalde's vision of the systematization of personnel management processes is different (characterizing the development of personnel management, their roles and functions in the organization): human resources planning; position (job)

analysis (as the basis for many personnel management processes); personnel recruitment (selection); staff evaluation; staff education (training) and development; staff motivation and rewarding; work time organization; team building and management; organization of healthy work environment (staff and health care); internal work relationships and their management (including recruitment and dismissal, adaptation, disciplinary issues, relations with trade unions, etc.); organizational culture issues; management issues of changes; evaluation of personnel management effectiveness (Ešenvalde 2007). The author focuses not only on personnel management key processes (which in general are similar), but also on conceptual issues in contemporary organization management which can affect it significantly (organization culture; managing changes; teams, etc.).

I.Forands described personnel management processes as its organizational methods (in addition paying attention to the factors influencing personnel work – conflicts, managing changes, stress, groups, organizational culture, managers etc.): making reserves (planning / forecasting); selection; adaptation; education; evaluation; direction (career, development); motivation (Forands b.g.). Further I.Forands focuses on detailed and extensive personnel management issues (strengthening personnel management "conceptual framework": the essence of management, conformity to natural laws, factors affecting human development, employment, etc.): knowledge management (education); personnel management key issues (planning, policy, strategy, objectives, reserves, career, assessment, etc.); personnel selection (recruiting); staff adaptation (Forands 2007). Though such a division of personnel management processes may seem controversial, it helps to gain a broader perspective (support) in the practical personnel management work, as well as in the research and analysis of corresponding processes.

I.Voronču ka focuses in detail on a number of personnel management processes: personnel management key issues (policy, strategy, planning, personnel economy and personnel management, etc.); job (positions) analysis (evaluation); personnel search and selection (recruiting); employee evaluation (Voronču ka 1999; 2003; 2009).

It is possible to determine the most relevant processes that are set out in all major personnel management books: general personnel management issues, personnel selection, staff motivation, training, employees evaluation, etc. However, also in the theory in general less attention is paid to some other very important and pressing issues of personnel management: career management (succession planning), talents development, adaptation closing stages, stress management, personnel consulting, ethics in personnel management, etc.

2. Requirements to training for personnel specialist profession

The study program "Institution Organization and Management" is established in accordance with the professional standard "Personnel Specialist" (20 March 2001,

the Cabinet of Ministers Regulations No. 141 "Regulations on the first level professional higher education", etc.) requirements. The study program is based on the personnel specialist professional standard, approved in accordance with the Cabinet of Ministers regulation Nr.461, 18 May 2010, "Regulations for the classification of professions, main tasks and corresponding qualifications essential for the occupation and occupational classification application and updating procedures order" Annex 2 – "Personnel Specialist Occupational Standard", professional code – 2423. The profession standard foresees that a personnel specialist (professional code – 2423 07) works for companies that can form an opinion that state and municipal organizations, as well as communities (foundations and funds) personnel management processes are led by specialists of other professions.

However, it is not true, as the Cabinet of Ministers Regulations No.500 "State and local government posts catalogue", June 1, 2010 (later – the Cabinet of Ministers regulations Nr.1075 "State and local government posts catalogue", 30 November 2010) foresaw that similar tasks can also be performed in public institutions (hereinafter – Catalogue). Crafts Directory No30 of the Catalogue "Personnel Management" has determined that this group includes related posts to the personnel management functions when employees deal with, for example, personnel policy development and implementation, personnel planning and recruitment, selection, retention, evaluation and development. Catalogue requirements which can be attributed to the training of personnel specialists acquiring the profession, show the posts family of I, II and III levels. These requirements are set in curriculum design to prepare professionals to work in public administration as well. On the other hand, there is no description of special requirements for the work in societies' personnel management.

Students both in a number of courses ("Ethics and Personnel Management", "Record-keeping for Personnel Management", "Labor and Social Rights", "Personnel Management Problems and Solutions", etc.), and during the field placement/internship learn the basic issues of personnel management. During the first field placement/internship students are due to analyze a substantial number of personnel management system components:

- describe the role and functions of the personnel management in the organization;
- provide general characteristics of the organization staff (number of employees, employees education levels and other information);
- outline the process of documentation in the organization, prepare the samples of orders on the personnel;
- describe the personnel registration system (personnel data systematization and storage) in the organization;
- give the job description and updating of procedures in the organization;
- outline the personnel search and selection (recruitment) procedures in the organization;

- outline the legislative procedures of labor relations in the organization, describe the documents with which the employee is acquainted on being recruited;
- describe the new employee's adaptation measures in the organization;
- describe the costs of creating a post;
- describe the wage system in the organization, wage formation and the factors influencing it;
- describe the types of holidays and the procedures for granting them in the organization;
- outline the training and professional development arrangements in the organization ("Tasks of Field Placement/Internship I" (8 credit points) for the program "Institution Organization and Management" 2012).

In their turn, later student placement/internship tasks ensure a focus on the most systemic and complex aspects of personnel management:

- characterize the organization's personnel management policy and strategy;
- characterize the personnel division (specialist) place in the organization's structure and operational tasks;
- characterize the use of the Professions Classification and job categories determination in the organization;
- outline the motivation measures in the organization;
- outline the employees (competencies) procedures for evaluation in the organization;
- set out the guidelines for employees career development and their promotional activities in the organization (Field Placement/Internship (8 credit points) Tasks for the Program "Institution Organization and Management", 2013).

Personnel specialist professional standard in accordance with the Cabinet of Ministers, 18 May 2010, regulations Nr.461 "Regulations for the Professions Classification, the main tasks and corresponding qualifications for the profession, and Professions Classification use and updating procedures" referred in Annex 2 (profession code – 2423 07) (hereinafter – Regulations) provides the summary of such basic tasks of professional activity of the personnel specialist as:

- to maintain personnel documentation;
- to provide personnel data collection, systematization and analysis;
- to carry out the personnel recruitment process;
- to organize the new employees entering the company's life;
- to organize training for the staff;
- to participate in staff performance assessment and competency systems development and maintenance;
- to stimulate employees motivation and contribute to formation of payment system;
- to follow labor relations regulatory compliance with regulatory requirements;
- to consult the employees.

This means that during the field placement/internship according to the aforementioned tasks students acquire practical professional competencies and, as shown in the further analysis – most of them are paid attention to in the qualification papers as well.

The model themes of the course and qualification papers include topics that correspond to major personnel management processes (they are regularly updated according to the employers and state examination commission's recommendations): basic questions of personnel management; personnel planning and administration; personnel selection (recruiting); adaptation of the staff; staff education; employees career management; staff motivation; employees evaluation; wage system; occupational health and safety; stress management; personnel documentation; ethics in personnel management, etc. ("Model themes of qualification papers in the program "Institution Organization and Management" 2012; "Course paper model themes in the course "Personnel management and ethics" and the potential course paper supervisors", 2013).

So, the program content (study courses, field placement/internship tasks, course and qualification papers) encourages a purposeful, systematic and elaborate way of addressing the research of pressing personnel management processes.

3. Themes of the qualification papers and analysis of the results

In the chapters above theoretical characteristics of personnel management functions were given, the study program eligibility to the requirements of the training for profession were analyzed, the field placement/internship tasks were set out (at that time personnel management processes were studied, research skills were improved and material for qualification papers was collected), the model themes of course and qualification papers were analyzed, which in the manner of recommendations indicate the topicality of personnel management processes in general, but allow to choose the most urgent research topic both for the organization and the student.

Overall, the most popular topics of qualification papers in this study program (in accordance with personnel management functions) are:

- staff motivation (as a whole and its various aspects, as well as managers' (Heads') motivation, non-monetary stimuli improvement, as well as their impact on the efficiency and competitiveness of the company, etc.);
- personnel search and selection (recruitment), including the related issues (job interviews, tests, etc.), search as a service, relationship with the education/training process;
- personnel evaluation (performance evaluation and competency assessment, leading employees, separate groups of employees, competence models);

- personnel management development, policy and strategy (including the impact of organizational culture, intellectual capital development opportunities, etc.);
- adaptation, the first and last days of work, etc.
- communication in personnel management (including opportunities of the development of the staff public presentations skills);
- staff education (including training motives and their changes);
- the management of stress at work and occupational burnout prevention, etc.

Among the other topics it is necessary to note staff resistance to change and its management methods, the role of the manager in personnel management, characteristics of the emotional expression of different level managers, etc. The proportion of the most popular topics of the college study program "Institution Organization and Management" in the period from 2004 to 2014 (the period during which the students graduated from college) in accordance with the personnel management functions is shown in Table 1.

Table 1

Qualification paper topics in the period from 2004 to 2014 in accordance with personnel management functions, their number (Kalniņš 2014)

Topics group	Total number	Number in extra-mural studies	Number n day department
Personnel motivation	60	48	12
Personnel search and selection	41	31	10
Personnel assessment	31	22	9
Personnel management policy and strategy	30	25	5
Personnel adaptation	16	14	2
Communication in personnel management	12	11	1
Personnel education/training	11	5	6
Labor stress management and occupational burnout	10	7	3
Issues of labor legislation	9	8	1
Ethics in personnel management	8	6	2
Conflicts management in personnel management	7	5	2
Personnel documentation	5	4	1
Team work	5	4	1
Wages	5	4	1
Psychological relations in personnel management	5	5	–

Direct mediation	3	3	–
Labor safety	3	3	–
Career development	2	1	1
Other topics	10	3	7
Total	**273**	**209**	**64**

In comparison with the theoretical approaches, practical studies may focus more on the work of the personnel management division (its performance evaluation), personnel specialist's (manager's) role, personnel forecasting, knowledge management, job analysis, job management achievements, managers' development etc. Probably topical issues can become those of the organizations' relations with employees (availability for work), social security issues, intergenerational cooperation in personnel management, personnel information system issues, the personal data protection, etc. There may also be an increase of interest in so far less-chosen topics.

Frequently the chosen groups of themes of the qualification papers by full / part-time students (total) are presented in Figure 1.

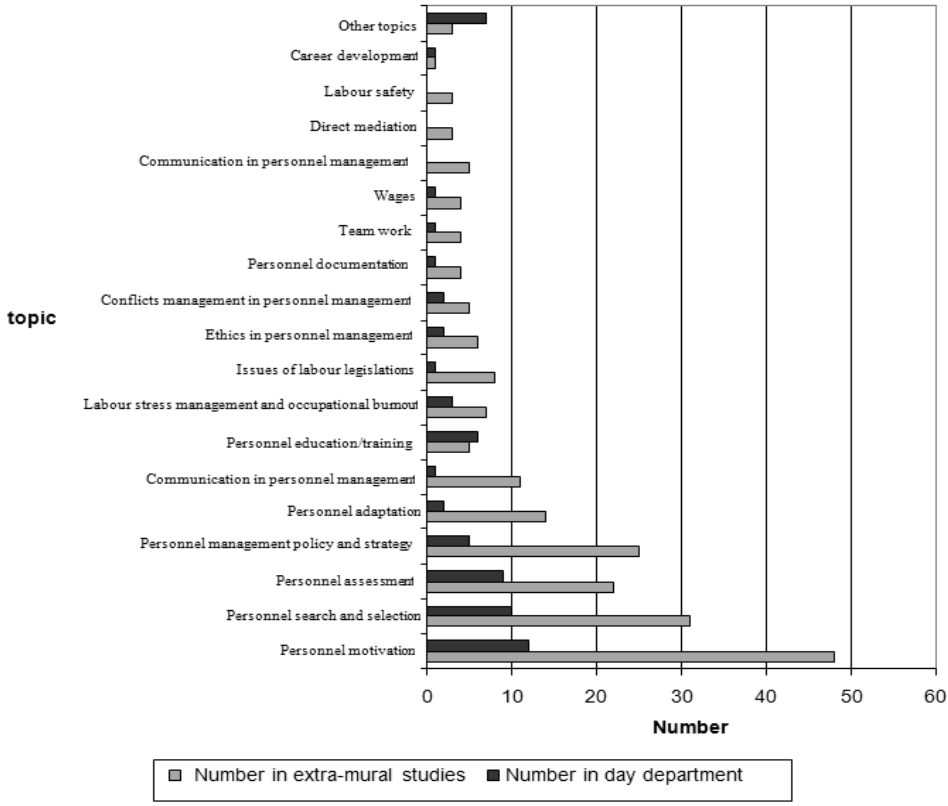

Figure 1. Groups of themes of the Personnel Management qualification papers in full / part-time studies (Kalniņš 2014)

As can be seen, interest in personnel management processes and topics is different in full-time (day groups) studies, in which students are mainly studying without previous work experience, and part-time studies (evening and Saturday groups) with a dominating number of students who have work experience, moreover – also personnel management. The differences in the choice are reflected and analyzed below in this section.

More than a third of the qualification paper topics differ from the most popular ones, but the most frequently chosen themes, almost a fifth – are related to staff motivation. Relatively less selected topics are related to the basic issues of strategic personnel management issues (8%), reflecting the will to address a specific personnel management process for research. As can be seen, the choice of priority topics is similar in general; the differences are relatively not significant, though relatively more popular with full-time students are issues of the staff training process (it may be due to both the students' personal experience and the needs of the organization). Although the research of motivation is undertaken rather often, it cannot be regarded as a substantial leading topic in terms of the choice, compared with part-time students' choice.

Almost a quarter of part-time students' qualification papers focus on staff motivation, which is evidently a high priority choice. A positive development is the fact that 12% of students study strategic key issues of personnel management, which shows the organizations' interest to study conceptually the most important processes in the personnel management.

A significant predominance is the choice of studying staff motivation; students much more focus on personnel management policy and strategy, compared to full-time students. More studies are also selected on staff adaptation and communication topics.

The State final examination report (hereinafter – the Report) of 2012/2013 academic year stated: "Qualification papers span the state and local government sectors, as well as the private sector and various businesses. They analyzed and studied issues of contemporary problems relating to work organization and management". An important finding was that "in the proposals of many papers specified measures were outlined for particular institutions and enterprises" (the Report).

In general, the content of the qualification papers yields evidence (the scope of the article does not allow to focus on it in more detail), that personnel management practice in many Latvian organizations is evaluated critically (when sometimes even simple steps are not taken), suggesting substantial improvements which could be useful in other organizations as well. However, the examples of the personnel management "best practice" of many organizations have also been studied including the recommended improvements. This indicates significant differences in the organization of personnel management process. (Gudevičs 2013, and others).

Analyzing the best qualification paper topics (in the period since 2011) the study showed that among the most popular topics are: personnel management improvement – 3 papers, personnel search and selection – 2 papers, but relatively many (4 papers) focus on different topics – the last working day, work stress management, mobbing and bossing, succession planning options.

Conclusions and recommendations of the student papers point to a number of necessary practical improvements. Many imperfections are revealed in the selection, adaptation, education of personnel, etc. (Osadčaja 2012, and others). Let's focus on some of the most characteristic and original conclusions made in the qualification papers that can help organizations improve personnel management processes. When researching personnel management policy, problems to attract qualified personnel are revealed – employees are not satisfied with the teaching and training effectiveness (consequently – formally), which significantly reduces the competitiveness of the company. It is concluded that before learning the qualification of the employee should be assessed, and later – his/her satisfaction with the results, otherwise the resources are used inefficiently (Gudevičs, 2013). The choice of the personnel requires clear and comprehensive criteria by which candidates in job interviews can be evaluated. The importance of experience in a job interview to ensure objectivity has been stressed recommending a more frequent use of group interviews (Kristiņa 2013). Inadequate planning and insufficiently organized staff adaptation result in significant additional costs, increase employees fluidity. Too much depends on the professionalism of the employee's direct manager and his interest in the quality adaptation, but the organization of the process does not contribute to it. It is recommended to introduce a compulsory interview with new employees after the first stage of adaptation, to see the results of the adaptation. (Osadčaja 2012). Employers are still using few motivational activities and it can be recommended for them once again to pay attention to similar proposals. While improving non-monetary motivation it is possible to increase profits without increasing costs, because the employees will work more efficiently.

The solution is not only the managers' education/training, but also a recommendation to involve the staff in the planning and implementation of important tasks, which motivates (Sizova 2012). An objective and complex personnel evaluation is needed dealing with competences and achievements (active interest and loyalty are recommended as a mandatory addition to the evaluation criteria). At the end of evaluation specific training (with career options) should be offered in the company (Komļeva 2012). When analyzing succession planning opportunities, it was found out that it does not only provide a stable staff, but allows reduced costs, although initially this process is expensive, time-consuming, often there is a lack of information on the importance of succession. It is also recommended to develop succession plans, offering their stages (Dzene 2012). In most cases employees encountered with the psychological terror situation of mobbing and bossing, withhold the situation rather than deal with it. It is necessary to educate

senior managers to identify measures for mobbing and bossing prevention (Mitjko 2012). These are certainly significant suggestions for personnel management improvement in the organizations of Latvia. The article can be a very good opportunity to focus on the popularization of cognition and discuss the optimal solutions to promote the impact of higher professional education on the country's overall long-term development and research. This practical scientific study may indicate a different direction of research on the classification of the personnel resources management functions, the necessity of it, the impact on future research, opportunities and investment in the theoretical and practical development of personnel management.

Conclusions

1. In the theoretical literature there is no unified classification of the personnel management process, which creates practical problems in managing systemic personnel management processes.
2. Personnel Specialist Profession Standard defines essential tasks of professional activity, but it does not cover all the tasks to be paid attention to in the current personnel management process.
3. Albert College students in their qualification papers generally focus on the most pressing and frequently described in the theory personnel management processes.
4. The most prospective and innovative qualification paper topics have been chosen, which enables the development of more advanced organizations.
5. Contribution of Albert College qualification papers in personnel management, taking into account the number constraints, is essential in the development of specific organizations.
6. The lack of unified classification of personnel resources management functions can be in general a disturbing factor in the development of personnel management at Latvian companies and institutions because the most necessary research topics could be more rarely chosen if they are not included in this classification (for the time being each higher education institution deals with it separately). On the other hand, on promotion of research-based classification of personnel resources management functions an additional opportunity to address to the systemic and innovative research topics would appear.

Recommendations

1. Latvian higher education institutions should study personnel management processes and make recommendations on their classification, which further on could help to determine the current qualification paper topics for future research in the development of personnel management in Latvian organizations.
2. LR Ministry of Education and Science (also Ministry of Welfare) in accordance with the results of the study should update the personnel specialist professional standard, focusing on the current changes in personnel management processes on the basis of the relevant results of higher education qualification papers and the research done.
3. Latvian higher education institutions in collaboration with entrepreneurs and public administrations should consistently promote the choice of topical qualification paper themes and the results obtained to determine the most pressing research fields in personnel management.
4. Latvian higher education institutions should promote qualification paper verities, as organizations often repeat the mistakes in personnel management, already committed by other institutions.

Suggestions for discussion

1. Is the classification of the personnel resources management functions and the conceptual determination/evaluation (i.e. a general significance of the results) of qualification papers scientifically important issues and do they require a continuation of the research?
2. How to optimize the impact of the topicality and results of the qualification papers on the long-term development of the Latvian organizations?
3. How to secure best the most prospective choice of the qualification paper topics focusing both on the current situation //events and the themes that are still not well recognized, but can come to the forefront soon?

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THE UNITED KINGDOM'S EXPERIENCE IN MULTILINGUALISM FOR RESOLVING UKRAINE'S LANGUAGE POLICY CHALLENGES

Natalia Karpchuk
Associate Professor of the International Information Department, Lesia Ukrainka Eastern European National University, *Ukraine*

Abstract

The citizens of every state speak different languages which may lead to conflicts or a friendly co-existence. So, the concept of "multilingualism" is quite topical for the research of a state's policy in the language sphere. The European Commission defines "multilingualism" as 1) the ability of societies, institutions, groups and individuals to engage, on a regular basis, with more than one language in their day-to-day lives, 2) the co-existence of different language communities in one geographical or geo-political area or political entity. The UK develops and implements a number of efficient steps in the sphere of multilingualism and language policy. At last Ukraine has chosen the way of the EU integration development which requires the adherence to norms and regulations of the EU in various areas, including the language policy. Both the United Kingdom and Ukraine are multilingual states, though with a different language situation. The goal of the article is to study the progress of the UK in its efficient language policy in order to look for recommendations concerning the elaboration of efficient language policy in the author's native state. The article focuses on the legal grounds and the mechanisms of the implementation of the UK's language policy directions.

Keywords: multilingualism, language policy, regional languages, the European Commission, language strategy

Introduction

In the 21st century human communities are becoming increasingly complex with a variety of domestic relations, and without successful communication they are not able to develop the understanding of the past and confidence in the future. As the result they might have difficulties in relations with other communities. It is the communication failures that become the source of exclusion, xenophobia and racism. Language policy is part of a national policy, an integral component of a

particular political course of a state concerned with official efforts to affect the relative status and use of one or more languages.

The United Kingdom is the country of many languages with dominating English which is practically a Lingua Franca for the whole world. However, nowadays the state pays much attention to the development of other local languages and supports the minority languages. The author considers the UK's experience to be a possible pattern to follow for Ukraine. At present Ukraine faces a very serious problem which constantly disturbs the society – that is how many state languages the country should have: only Ukrainian, Ukrainian and Russian or other minority languages should be granted the status of state ones. Ukraine is composed of many nationalities; according to the National Population Census of 2001 the state is composed of 130 nationalities and ethnic groups, the largest population being Ukrainians (77,8%), Russians (17,3%), Belorussians (0,6%), Moldavians (0,5%), Crimean Tatars (0,5%), Bulgarians (0,4%), Hungarians (0,3%), Polish (0,3%), Romanians (0,3%) etc. (Про кількість та склад населення України за підсумками Всеукраїнського перепису населення 2001 року, 2003)

The United Kingdom historically consists of many nationalities as well that speak different languages but, unlike in Ukraine, they seem to develop peacefully. The nations of the United Kingdom as part of the multinational EU cooperate in the communicative sphere where communication does not guarantee peace and prosperity, but without it peace and prosperity are impossible.

The topicality of the subject is determined by the problem that the UK's experience in the sphere of language policy is not well-researched in Ukraine in comparison with linguistic aspects of the Germanic languages which have been in the focus of academic attention for decades. For instance, the history of the Germanic languages has been researched by the following Ukrainian scientists: I. Shevchenko (Шевченко, 1998), H. Yavorska (Яворська, 2000), M.Kocherhan (Кочерган, 2006); Germanic languages morphology was studied by G. Pocheptsov (Почепцов, 1987), M. Mostovyi (Мостовий, 1993), M. Olikova (Олікова, 1997), and lexicology by Ye. Horot (Гороть, 1996), A. Nikolenko (Ніколенко, 2007); the discourse analysis was in the focus of attention of O. Vorobiova (Воробьева, 1993), K. Serazhym (Серажим, 2002), N. Karpchuk (Карпчук, 2006), etc. Besides language policy is an inseparable part of the general communication policy of a state; in Ukraine its state communication policy is on the stage of creation with drastically negative results of recent months after former President V. Yanukovych failed the signining of the Association Agreement with the EU in November 2013.

The author has set the goal to study the legal grounds and the mechanisms of the realization of the UK's language policy directions in order to look for recommendations concerning the elaboration of an efficient language policy in the author's native state. Within the set goal the author analyzed legal documents of the EU, the UK countries and Ukraine in the sphere of multilingualism and language policy, initiatives concerning English and minority languages development, web-sites of language communities.

1. The policy of multilingualism of the European Union

On 15–16 March 2002 at the meeting in Barcelona the EU Council set a target "mother tongue plus two" and introduced a "linguistic competence indicator" that involves the study of at least two foreign languages from the earliest age and is aimed at "strengthening individual multilingualism". (Barcelona European Council, 2002)

Nowadays the European Commission stresses that an ability to communicate in foreign languages provides better opportunities for mobility and employment, enhances the EU's competitiveness and trade opportunities in a globalised world and fosters social inclusion and active citizenship. Communication in foreign languages is therefore recognised as one of the eight key competences of the Commission's lifelong learning policy. (Council conclusions on language competences to enhance mobility 2011) In the sphere of the language policy the role of the European Commission is to coordinate with national governments the achievement of the goal of multilingualism and objectives of the language strategy. Languages should not be an obstacle to the participation in society and marginalized language groups should be identified, represented and included in society. (Language policy, 2014)

Directorate-General for Education and Culture (DG EAC) (Commissioner Androulla Vassiliou), responsible for education, culture, youth, sport and language, cooperates with policy makers and civil society across Europe to ensure effective implementation of the strategy of multilingualism. In this area, the DG EAC priorities are to:

- ensure the availability of information in all the official EU languages;
- guarantee the involvement of regional and minority languages;
- guarantee the inclusion of people with hearing problems;
- promote early learning of languages;
- promote bilingual education. (Language policy, 2014)

Multilingualism has been part of the EU Community policy, legislation and practices since the time of the Treaties of Rome, but at that time it was exclusively associated with the language regime for the European institutions, including their contacts with authorities and citizens in the Member States. However, multilingualism became a separate EU policy only in 2007 under the initiative of President José Manuel Barroso. (High Level Group on Multilingualism. Final Report. Brief version, 2007, 1) The main reasons of the significance of such policy were the enlargement of the EU, the Single Market, the increase of the mobility within the Union, the revival of the regions, the advent of the knowledge society, migration into the EU and globalisation. To combat these challenges the Commission set up the High Level Group of Multilingualism in September 2006. The tasks of the Group were:

- to provide support and advice in developing initiatives, as well as fresh impetus and ideas for a comprehensive approach to multilingualism in the European Union;
- to bring about an exchange of ideas, experience and good practice in the field of multilingualism and make recommendations to the Commission for actions in this domain. (High Level Group on Multilingualism. Final Report. Brief version, 2007, 2)

The High Level Group of Multilingualism understood "multilingualism" as the ability of societies, institutions, groups and individuals to engage, on a regular basis, with more than one language in their day-to-day lives. In this context, a language is defined neutrally as a variant which a group ascribes to itself for use as its habitual code of communication. This includes regional languages, dialects, and sign languages. In addition, the term multilingualism is used for referring to the co-existence of different language communities in one geographical or geo-political area or political entity. (High Level Group on Multilingualism. Final Report. Brief version, 2007, 2)

Learning foreign languages has an intercultural value for cultures and promotes openness, stimulates and enhances the ability to communicate and cooperate with others regardless of frontiers. As a result, immigrants lose their stereotypes and learn the language of the country; they have a motivation to learn a foreign language. The European Council Resolution of 21 November 2008 on a European strategy for multilingualism calls on Member States and the Commission to promote multilingualism in order to strengthen social cohesion, intercultural dialogue and the building of Europe and support multilingualism as a factor of European economic competitiveness, mobility and employment of the population. (European Council Resolution on a European strategy for multilingualism, 2008)

The Eurobarometer survey held in 2012 showed that around nine in ten Europeans (88%) think that languages other than their mother tongue are useful for personal development. Two thirds of Europeans (67%) consider English as one of the two most useful languages, and less than one in five mention German (17%), French (16%) and Spanish (14%). There is a broad consensus among Europeans that everyone in the EU should be able to speak at least one foreign language. More than seven in ten Europeans (72%) agree that people in the EU should be able to speak more than one language in addition to their mother tongue. Although most Europeans support the notion that everyone in the EU should be able to speak a common language, this view does not extend to believing that any one language should have priority. Eight in ten Europeans (81%) agree that all languages spoken within the EU should be treated equally. (Special Eurobarometer 386, 2012, 7)

The European Union lays the grounds of the language policy for all its member states. Ukraine has decided to choose the eurointegration way of development. It is sure to be a long process which needs the adaptation of its legislation to the EU legal basis including principles of multilingualism. The author believes that

effective and efficient language policy could contribute to strengthening the cohesion of the Ukrainian society and promoting the absolutely urgent interregional dialogue. To elaborate the recommendations the author thinks it necessary to study the directions of the UK's language policy.

2. The realization of the EU multilingualism in the United Kingdom

The modern society generates complex language needs and it is not enough to master only one language. Language competence (particularly in several languages) is a key defining feature of a citizen. In the UK an important economic, social and political issue appeared – the deficit of languages, which provoked the development of "Agenda for languages". British experts and politicians recognize that the majority of the citizens of the state are linguistically poor, despite the linguistic richness of the Kingdom. (An Agenda for languages, 2013)

The fact is that there is a rooted assumption that the United Kingdom is characterized by monolingualism with the dominance of English, which is enough to meet all the needs and expectations of the modern society. (Sumaski, 2001, 25) However, for the whole world and for the Kingdom as well multilingualism is a norm that promotes peace, growth and prosperity of nations, trade, business competitiveness and employment, social inclusion, mutual tolerance and respect for cultural and national heritage, openness and personal development of individuals. Owing to multilingualism one can understand and appreciate the stranger. Multilingualism is the basis of preservation of cultural and linguistic diversity, which is postulated in the EU motto "united in diversity". (Gorter D., Cenoz J., Nunes P. et al. (n.d.))

The nations of the United Kingdom elaborate language policies in accordance with their national, regional and institutional needs in the global context of a multilingual and multicultural European Union. However, a paradox is that in the UK people speak more languages than in any developed country, but the majority of the people are monolingual (only 33% say they know some other language than English). English is the international language of politics, commerce, science, but only 31% of Europeans speak English. (An Agenda for languages, 2013) Not speaking foreign languages, the Kingdom is at risk of being excluded from the European community, because it does not show any interest in the development of European identity. The neighboring countries treat this attitude as a cultural and linguistic isolation. (Sumaski, 2001, 29)

The United Kingdom does not have a general policy of multilingualism though the main stress is put on trilingualism offered by the EU, i.e. "native language plus some other language of the EU plus some world language". In all controversial discussions concerning multilingualism the idea of the prestige of bilingualism, particularly through formal training (not just speaking a minority

native language to which a person belongs) is common, although there is some bias regarding the status of various languages. The issue of the state support of communities' languages is still disputable. (Taylor, 2013, 3)

The "pillars" of the EU language policy are cultural awareness and intercultural understanding, but the United Kingdom is an exception to this rule because it has the largest number of monolingual citizens (62%) which is the result of the status of English as a Lingua Franca and the reluctance of the British to learn foreign languages. (Special Eurobarometer 386, 2012, 11) However on the state level and on the level of local communities much has been done to develop regional languages and support the languages of minorities. In fact in the UK there is no special policy of multilingualism but in practice a great number of measures are taken which the author indends to study in order to find the practices suitable to Ukraine.

3. Language policy for English

No ethnic language has become so widespread as English. The process began back in the days of British colonialism and successful trade of the British Empire in XVIII century. It continued with the increase of political, economic and military might of the United States. Today the opinions are voiced about the appropriateness of the use of English as the universal language of the EU, which would greatly simplify communication and would save a lot of the EU money on translations. However, this situation would definitely level the value of national languages of member countries, would violate the EU principle of the preservation of national cultural diversity. Besides, there is a danger that the English language would not be associated with a specific culture and acquire some new characteristics up to a variety of pidgin. (Sumaski, 2001)

In our linguistically multicoloured world it seems clear that using only English, the United Kingdom may be dependent on the goodwill and language competence of other people and be excluded from the activity of establishing and maintaining relations with other countries, for international communication requires linguistic diversity, sensitivity and flexibility. In the context of the multilingual EU the British government aims to better adapt to the demands of modern economy and global competition. International labor market, multinational copporations require the knowledge of other languages.

In 2000 the Nuffield Foundation conducted a study in which it stressed that the citizens of the United Kingdom lack the necessary language skills, and the government has no coherent concept of learning foreign languages. (Languages: the next generation, 2000) To improve the situation in December 2002 the National Strategy for England was published which was an 8-year plan for transforming the national language capability, the main task of which was to improve languages teaching and learning. (Basic documentation on English and UK policy, 2012)

National Language Strategy set out to change the negative attitudes of students and adult citizens to learn foreign languages by introducing learning other languages at a primary school level. The strategy identifies two important goals: language competence and intercultural understanding. To achieve the goals, the government outlined three new priorities:

- the study of foreign languages starts at primary school (children aged 7–11);
- the system for determining language capability should be introduced;
- the study of foreign languages should be done in vocational schools, not only in universities. (Languages for all, 2002, 8)

From 2007 to 2009 the project "Our languages" was conducted within which curricula and educational materials in Cantonese, Somali, Yoruba, and training materials in Arabic, Chinese, Japanese, Russian, Punjabi were developed. The final meeting was held in the House of Lords with the participation of the European Commissioner in multilingualism. (Our Languages, 2008)

In November 2009 the Centre for Information on Language Teaching and Research (CILT) launched a national project to attract employers to promote the study of foreign languages in partnership with 200 school language projects. CILT also introduced a new Diploma in Languages and International Communication. At the initiative of the Center BBC program "Why languages matter" appeared and an extended report on the languages was published in The Guardian, The Times, The Telegraph. (CILT: the National Centre for Languages, 2013)

In November 2012 the British Academy successfully held a week of languages that became the basis of a new festival in November 2013, the aims of which were to attract not only educational institutions, but also politicians, the business community of the Kingdom to discuss, explore all the benefits of learning languages. In 2013 the British Academy released the report "Lost for Words" which proved that low language capability in Parliament, in government departments and agencies threatens the future security of the Kingdom, its global influence and world leadership. (Languages, 2011)

Since September 2013 up to the end of 2015 a new program of the British Academy "Born Global: Rethinking Language Policy for 21st Century Britain" has been operating. The study conducted by the Confederation of the British Industry was the impetus. The study has underlined that 70% of employers appreciate foreign language skills, particularly in working with clients, customers, suppliers. The goal of the program is to find evidence that the language capabilities improve employment of adults, and to convince young people to learn the languages at school and university. (Born Global: Rethinking Language Policy for 21st Century Britain, 2013).

However, one should emphasize that the National Language Strategy applies only to England and other countries of the Kingdom are implementing the language policy on their own and there is only a partial consensus on languages learning. The experience of Scotland is an example, where the Scottish Executive Education Department funded projects aimed at developing the language policy,

specifically, a national pilot study of foreign languages in primary schools, two projects of teaching the Gaelic language, projects of speech success evaluation. (Languages for all, 2002, 13)

4. Language policy for Welsh

The United Kingdom ratified various parts of the European Charter for Regional or Minority Languages for Welsh (Wales), Gaelic (Scotland), Scots (Scotland, Northern Ireland) and Irish (Northern Ireland) in 2001, and for Cornish (Cornwall peninsula) in 2002. In addition, a number of laws that regulate the functioning of languages in the UK were elaborated. (Basic documentation on English and UK policy, 2012)

Thus, in 1993 Welsh Language Act was adopted which introduces equality of English and Welsh in Wales and imposes obligations to treat both languages equally in the provision of public services. Under this Act the British government established the Welsh Language Board the aim of which was to promote and encourage the use of Welsh in all spheres, especially in business. (Welsh Language Board, 2011)

Since 2011 Welsh has acquired the official status according to the Welsh Language (Wales) Measure which:

- introduces the position of the Welsh Language Commissioner;
- makes up the Commissioner's Advisory Panel;
- defines the provisions for language standards;
- establishes the Welsh Language Tribunal, abolishing the Welsh Language Board. (Welsh Language (Wales) Measure, 2011)

For the period of April 2013 – March 2015 the Commissioner is under provisions of the Strategic Plan the aims of which are to:

- influence the consideration given to the Welsh language in policy developments;
- listen to opinions and concerns about the Welsh Language and try to ensure justice for individuals;
- broaden and strengthen the Welsh language commitments of organizations and improve the experience of Welsh speakers;
- promote and facilitate the use of the Welsh language and to create a healthy organization and operate appropriately. (Welsh Language Commissioner, 2012)

5. Language policy for Gaelic

The Gaelic language received some recognition and support after devolution and the establishment of the Scottish Parliament in 1998. The Gaelic Language (Scotland) Act of 2005 establishes the Gaelic development body – Bòrd na

Gàidhlig to guarantee the status of Gaelic as an official language of Scotland demanding equal respect for the English language. The authority of the Body included:

- to increase the number of those who use and understand Gaelic;
- to encourage the language use;
- to simplify access in Gaelic both in Scotland and anywhere. (The Gaelic Language Act, 2005)

The Strategy for Scotland's Languages stresses that Scotland is a multilingual nation which apart from Gaelic, Scots and English (the languages that are always associated with Scotland) uses Chinese, Italian, Polish, Urdu and the British sign language. The starting point for the Strategy was the Barcelona agreement in 2002 signed by the Kingdom, which states that EU citizens should achieve a high level of language proficiency in the mother tongue and two foreign languages. For the Scots it may mean "mother tongue plus some other language of Scotland plus some language of a European neighbor". The Strategy emphasizes as well that in all activities of the Parliament of Scotland the language policy is based on openness, accessibility and reflects the changing landscape of the Scottish community and linguistic diversity. (A Strategy for Scotland's Languages. Response by the Scottish Centre for Information on Language Teaching and Research, n.d.

6. Language policy for Scots

Scots is another language in Scotland which status is still uncertain, despite the fact that it was the Scots language that has been the official language of the state for centuries. The problem is that Gaelic is clearly identified as a separate language, and Scots resembles English too much because of the age-old influence of the dominant language, so it is often interpreted as a dialect of English. This view was clearly embedded in a 1952 government report "It is not the language of educated people anywhere, and could not be described as a suitable medium of education and culture". (Glen, 2010)

Official recognition came in 1991 when the Scottish Office Education Department advocated the inclusion of the Scots language in the curriculum for children aged 5–14. There was international recognition in 1993 when the European Bureau of Lesser Used Languages recognized Scots as a minority European Language. (Application of the Charter in the United Kingdom, 2010, 33) Following the Scots Language Working Group Report, the Scottish Government will take the opportunity to develop a policy framework for Scots with reference to the European Charter for Regional and Minority Languages. (Scots Language Policy, 2013)

7. Language policy for Irish

The Irish language was recognized for the first time under the Belfast Agreement of 1998 under which a cross-border body promoting the Irish language (Foras na Gaeilge) was established. (The Agreement: Agreement reached in the multi-party negotiations, 1998, 24) Irish has got the status of a working and official language of the EU since January 1, 2007. (Eumatters web-site, 2011)

The Government of the Northern Ireland adopted the 20-Year Strategy for the Irish Language 2010–2030 (20-Year Strategy for the Irish language 2010–2030, 2010) based on the Constitutional status of the language and the Government Statement on the Irish Language published in December 2006. (Statement on the Irish Language, 2006)

The objective of the Government policy in relation to Irish is to increase the use and knowledge of Irish as a community language achieving the goal of bilingualism of the citizens (English plus Irish).The aim of Government policy is to:

- increase the number of families throughout the country who use Irish as the daily language of communication;
- provide linguistic support for the language; ensure the use of Irish or English in public discourse and in public services and that over time more and more people throughout the State will choose to do their business in Irish;
- ensure that Irish becomes more visible in the society, both as a spoken language and in literature. (20-Year Strategy for the Irish language 2010–2030, 2010)

The Government recognizes the importance of English for all areas of communication as an international language and a part of citizens' bilingualism, but also stresses the need to maintain linguistic identity through extensive use of Irish.

8. Language policy for Cornish

The Cornish Language Partnership was set up in 2005 to oversee the implementation of the Cornish Language Development Strategy. (Cornish Language Partnership, 2005) The Partnership includes language organisations, local authorities and a number of other organisations who have come together with the aim of promoting Cornish and developing it further in Cornish life. The programme of work it is undertaking is funded by the Department for Communities and Local Government and by Cornwall Council.

The policy, which was proposed by the Partnership, includes the extension of bilingual signage to the whole of Cornwall and ensures that Council departments will give consideration to the use of Cornish in a wide range of applications. The Council sees the Cornish language as a vital part of Cornwall's contemporary culture and of its heritage and accepts its responsibility under the European

Charter for Regional or Minority Languages to safeguard and promote the language in accordance with the principles laid down in that Charter). (Cornish Language Partnership, 2005)

9. The best practices of the UK in the spere of multilingualism

Having analysed the experience of the UK in the sphere of multilingualism the author sees it necessary to sum up the best practices:

- the elaboration of a Language Strategy (National Language Strategy for English, Welsh Language (Wales) Measure, Strategy for Scotland's Languages, 20-Year Strategy for the Irish Language 2010–2030, Cornish Language Development Strategy) and the realization of a number of projects within the Strategies to change the negative attitudes of students and adult citizens to learn foreign languages and to persuade the adults that language capabilities improve employment and standards of living;
- the stress on the necessity of bilingualism for the citizens' prosperity;
- the introduction of legal documents that guarantee the equality of regional languages and English in the provision of public services (Welsh Language Act, Gaelic Language (Scotland) Act);
- the introduction of the position of the Commissioner who is in charge of promoting the use of a respective regional language (Welsh Language Commissioner);
- the establishment of a NGO to safeguard the language (Cornish Language Partnership);
- the development of web-sites aimed at promoting regional languages and making them popular (the site of the Welsh Language Commissioner, the site of the Gaelic development body – Bòrd na Gàidhlig, the site of Foras na Gaeilge for the Irish language, the site of Cornish Language Partnership);
- English remains the language that unites the whole society without diminishing the role of regional languages.

10. Language challenges in Ukraine

In 2007 Rasumkov Centre conducted a survey based on the assumption that bilingual citizens compose a huge group in Ukraine. The results showed that only 21,5% of citizens could not define their mother tongue – Ukrainian or Russian. This percentage is a little higher in the East (25,5%) and in the South (32,2%); here the number of bilinguals equals to those who consider Ukrainian a mother tongue or even exceeds them. (Через білінгвізм до русифікації: як двомовні громадяни стають російськомовними, 2012)

The sociological monitoring data prove that the popular political ideas of bilingualism in Ukraine do not bear close scrutiny as for the last decades the process of homogenizing bilingual environment has taken place. The Institute of Sociology of the National Academy of Science of Ukraine states that from 1992 to 2011 the number of those who use Ukrainian at home has increased from 36,8% to 42,8%, concerning Russian it has decreased from 32% to 17,1%. For the same period in the West of Ukraine the number of bilinguals has decreased from 19% to 6% owing to enlargement of Ukrainian speaking people. Unfortunately, in Ukraine because of the absence of efficient language policy the category of bilingual citizens is a link to the total Russification. For example, in the South 54%, in the East 64% of bilinguals have started to use Russian as their mother tongue. (Через білінгвізм до русифікації: як двомовні громадяни стають російськомовними, 2012)

In 2012 the Supreme Council of Ukraine adopted the law on the Grounds of State Language Policy (came into force in August 2012, cancelled in Fabruary 2013, in March the cancellation was delayed) (Набув чинності мовний закон, 2012) which guarantees the usage of regional languages on the territory of Ukraine. It envisaged the official bilingualism in the regions where national minorities go beyond 10%. The law was motivated by the the European Charter for Regional or Minority Languages ratified by Ukraine in May 2003, came into force on January 1, 2006. (Закон України "Про ратифікацію Європейської хартії регіональних мов або мов меншин", 2003) The Charter provisions were said to be applied to the following languages, Byelorussian, Bulgarian, Gagauz, Greek, Jewish, Crimean-Tatar, Moldavian, German, Polish, Russian, Rumunian, Slovakian and Hungarian.

The Party of Regions tried to promote the idea of necessity of bilingualism. The new law provoked not only discussions in the society; it caused broad protests which covered the West, North and Centre of Ukraine. The matter is that the law created the preconditions for the implementation of the Russian language as the second state language but in fact it introduced Russian as the only universal language on the whole territory of Ukraine. The Parliament deputees of the majority faction were the first to demonstrate the total ignorance of Ukrainian which for the recent years has been positioned as the language of rural badly-educated population. All the provisions about the protection and development of regional languages were stated on the paper only. Though it was clear the other regional languages would never be equal with Russian. Besides no money was allocated necessary to conduct official communication using the mentioned languages.

The author's point of view is that the spread of two languages in one state is the condition of unstable equilibrium with tendencies either to turn into monolingualism or to disintegrate the state into separate parts according to a prevailing language. The author is convinced that the domination of one state language in Ukraine is the basic prerequisite for the development of regional languages for interpersonal communication and cultural development (like the example of the UK shows).

Ukrainian as the only state language will encourage the formation of national identity and pride of being a Ukrainian. This idea is proved by the present situation in Ukraine, i.e. in the time of a military conflict with the Russian Federation more and more citizens of the counry give up using Russian which is associated with the language of the aggressor and start speaking Ukrainian and enjoy it.

11. Recommendations for Ukraine in the sphere of its language policy

Taking into account the language problem in Ukraine and the studied UK's experience in this field the author recommends the following:

- it is essential to elaborate the law on the state language in Ukraine (the draft of this law was created in 2008 but was not adopted) directed at providing functioning of Ukrainian as the state language on the whole territory of the state and at ensuring citizens' rights to use the language;
- it is necessary to clearly define all the spheres of the state language usage, primarily in state authority bodies, educational and cultural institutions;
- the deputees must be obliged to use Ukrainian in Parliament (private communication can be the only exclusion);
- the Ministry of Science and Education should give the same amount of hours for learning Ukrainain in all secondary schools irrespective of the region;
- regional languages are used in all spheres of communication only on the respective regional level, for all-nation communication Ukrainian is used;
- the Strategies of the Language Development should be elaborated for both the state and all regional languages;
- the positions of the Commissioners responsible for the regional languages development should be introduced;
- it is necessary to develop interactive web-sites to promote the citizens with the important information in their native languages, to master their language skills, to participate in different projects etc. This initiative should be supported not only by sponsors but on the state level as well;
- it is obligatory to teach regional languages at schools to achieve fluency even by people for whom a regional language is not a mother tongue;
- in schools with a dominating minority the education can be provided in a regional language with obligatory learning of Ukrainian (in some districts of Western Ukraine the teaching is in Romanian and Hungarian, children are absolutely fluent in the language but hardly know Ukrainian);
- the level of knowledge of foreign languages is pretty low so the Program to Promote Language Learning should be created; the deputees and the heads of state authority should become an example to follow.

As a result of such steps the EU language principle "one plus two" will be kept, the policy of multilingualism will be introduced, there is the language which unites the diversed Ukrainian society and at least the languages issue does not disturb the state.

Conclusions

Being composed of many nations, the European Union strives for ensuring the equality of all the languages of its citizens. To achieve this goal the EU introduces the policy of multilingualism to support the official languages and to promote the study and use of at least two foreign languages. The countries of the United Kingdom follow this EU's languages approach, elaborate and implement a number of successful steps to develop their reagional languages being united by English on the state level. The UK's experience in this field is helpful for resolving the Ukraine's language policy challenges which determines the topicality of the author's research.

In order to settle the languages problem in Ukraine and to elaborate effective and efficient language policy the norms and principles of the EU as well as the experience of other multilingual states should be studied. The nations of the United Kingdom create language policies in accordance with national, regional and institutional needs in the global context of a multilingual and multicultural European Union.

Ukraine faces the challenges of Russification, the loss of national identity on the background of multiligualism implementation under the highly-disputable Law on the Grounds of State Language Policy. Having studied the UK's positive experience in its languages sphere, the author suggests 1) introducing only one state language of the nation – Ukrainian with direct legal and civil support, 2) creating National Languages Strategies for state and regional languages, 3) setting up the positions of Regional Languages Commissioners (like in Wales), 4) making up the Program to Promote Language Learning for both regional and foreign languages. The author represents the point of view of Ukrainian-speaking Ukrainaians, so the recommendations above may seem disputable for the Russian-speaking part of the state's population.

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TOURISM LABOUR MARKET AND THE VIEWPOINT OF INDUSTRY EMPLOYERS

Egija Reča
Turiba University, Riga, Latvia

Abstract

Tourism industry has experienced a continued growth for many decades already, and tourism higher education has a very close relationship with the economic development of the industry. This paper seeks to examine tourism labour market and its challenges to tourism industry in Latvia. The paper reviews the economic perspective and importance of tourism industry as a separate branch; it examines its development where the puissance of the travel expenditures as a major source of income and employment for many nations is acknowledged. Tourism can significantly improve the country's GDP and such positive tendencies can also be indicated in Latvia. Besides the paper reflects on human resource issues in tourism industry including labour needs, as well as characteristics of the complex nature of the labour market in tourism sector. The main challenges of labour market in tourism industry are identified and characterized. Consequently, a research question has been developed: what tourism skills and competences are perceived as being important for the entry-level employees according to the opinion of managers from different levels, and if the findings coincide with the current situation in the labour market. On the basis of conducting explorative research by using quantitative approach, the main results of the current paper acknowledge the importance of different soft-skills required for tourism industry entry-level positions and reveal the importance of qualitative preparation process of students, which are able to meet the labour needs of the tourism industry.

Keywords: tourism labour market, tourism labour constraints, tourism industry employers

Introduction

Over the past six decades tourism has experienced a continued growth and deepening diversification to become one of the fastest growing economic sectors in the world, turning tourism into a key driver for the socio-economic progress. This global spread of tourism in industrialized and developed states has produced economic and employment benefits in many related sectors – from

construction to agriculture or telecommunications (World Tourism Organization, 2013, 2). That consequently points to the positive impact of tourism on the social and economic development of any country. Also the fact that tourism gives an opportunity for millions of people in the world to engage in an industry with enormous choice of jobs can't be excluded.

The contribution of tourism to economic well-being depends on the quality and the revenues of the tourism offer. However, initial infrastructure investment is needed as more people travel. Thus additional tourism infrastructure is being built and people are employed to service the needs of tourists. The more visitors go to a destination, the more hotels, restaurants, and ancillary tourism services are needed, and the more jobs in travel and tourism are created (Turner, Sears, 2013, 64). In 2013, international tourist arrivals in the world significantly grew by 5% to 1087 million, generating US$ 1.4 trillion in export earnings and compiling 9% of the direct, indirect and induced global GDP (World Tourism Organization, 2014, 3). Furthermore, for the full year 2014 UNWTO forecasts 4% to 4.5% growth (UNWTO, 2014, 1).

The benefits of the travel and tourism–related jobs are further multiplied through the economy to the suppliers that support the industry. Travel and tourism is a particularly attractive option for stimulating development in rural and low-income countries, and regions that have previously relied heavily on subsistence agriculture, natural resource extraction, or informal self-employment (Turner, Sears, 2013, 64). Tourism cannot only generate stable income and employment for local inhabitants, but also promote cultural heritage, what is appreciated by both visitors and the population.

The aim of the paper is to study characteristics and challenges of tourism labour market and to indicate the skills and key elements that will drive the labour market of tourism industry in the 21st century. Thus the results of the present research could bring benefit to the stakeholders – both tourism higher education providers in Latvia and, to some extent, also those involved in human resource development, as well as entrepreneurs in the tourism industry.

1. Economic perspective of tourism and hospitality industry employment

Tourism is a very wide and comprehensive industry. Travel expenditures today are a major source of income and employment for many nations (Edgell, 2006, 4). Consequently, for many transitional countries, tourism is seen as an area of the national economy that has potential for growth and development, often offsetting other industries which are contracting. It is expected that tourism can improve the country's GDP and increase employment (Becic, Crnjar, 2009, 205). Furthermore, it means that the potential of tourism industry can't be disregarded and appropriate actions have to be taken in order to increase not only the employment rates, but also the quality of the services and human resources as

they are closely linked with the economic development of the industry. One way of doing that is increasing the quality and compliance with the requirements of the market of the provided education.

Latvian advantageous geographical location, economic activity, scenic richness of the diverse and unpolluted environment, cultural resources, and the unique cultural heritage is creating favorable conditions for competitive Latvian tourism product and tourism infrastructure in the context of the Baltics and Europe (Ministry of Economics of the Republic of Latvia, 2012). That may be acknowledged also with the fact that in Latvia in the year 2013, according to the statistics of the Ministry of Economics of the Republic of Latvia, international visitors consumed more than 608.4 million worth of goods and services produced by the Latvian economy, which is an increase of 11.5% compared to the year 2012. At the same time, also the number of tourist arrivals to Latvia has increased by 1,09 million between 2009 and 2013, and it is predicted that the number of international visitors will continue to increase (Latvijas Republikas Ekonomikas ministrija, 2014). Accordingly that means that in order to be able to meet the specialized demands of the increasing tourism activity, the tourism sector will have to improve the supply of a skilled workforce.

The tourism industry has also substantially contributed to employment. In the year 2013 global tourism provided employment for more than 266 million people worldwide according to the UNWTO statistics, generating one in every eleven world's total jobs, and it is widely believed that service industries are one of the major potential growth areas of post-industrial societies (Brackenbury, 2002, 53). The Latvian tourism industry contributes significantly to employment, nationally providing much higher direct employment than the mining industry, information and communication industry, real estate activities and more than the agriculture, forestry and fishing industries combined. Figure 1 below presents the tourism industry employment in Latvia in recent years according to the data of the Central Statistical Bureau of Latvia.

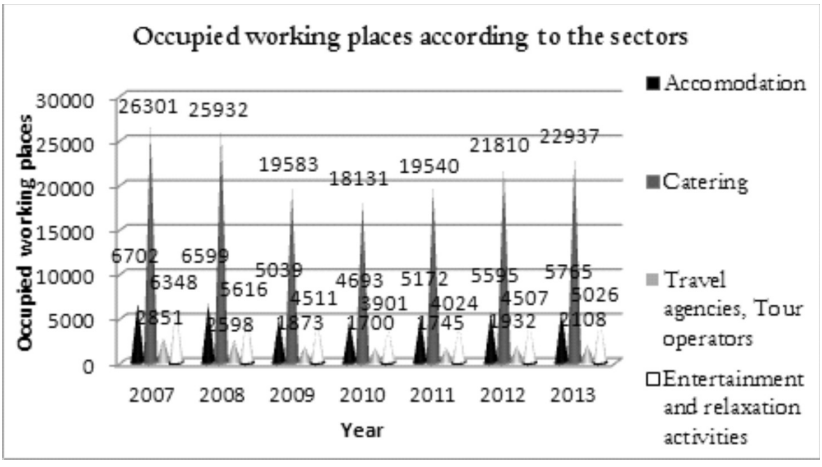

Fig. 1. The number of occupied working places by sectors (Central Statistical Bureau, 2014)

Altogether the positive uptrend could be noticed in the employment numbers since the year 2010, despite the rapid downtrend from 2007 till 2009, which means that tourism industry employment in Latvia has a tendency for recovery. In addition, according to the Latvian economic expert assessment, tourism industry is recognized and ranked in a third place among the industries with the biggest growth potential in Latvia, after finance industry and research and development industries, leaving behind trading, transport and Information technologies industries (Kasalis et. al., 2013, 66).

However, it is important to acknowledge that tourism provides both direct and indirect employment. Companies such as hotels, restaurants, travel agencies, tour operators, airlines and cruise lines provide direct employment because their employees are in contact with tourists and form tourists' experience. However, through the supply of goods and services needed by tourism-related businesses, such as aircraft manufacturers, construction firms and restaurant suppliers, indirect employment is created, which has to be taken into account (Gaur, 2011, 15). According to WTTC, in 2013 travel and tourism directly supported 25,500 jobs (2.9% of total employment) in Latvia. This is expected to rise by 4.7% in 2014 and rise by 2.4% pa to 34,000 jobs (3.9% of total employment) in 2024. (see Fig. 2) (World Travel & Tourism council, 2014, 1). This includes employment by hotels, travel agents, airlines and other passenger transportation services (excluding commuter services). It also includes, for example, the activities of the restaurant and leisure industries directly supported by tourists.

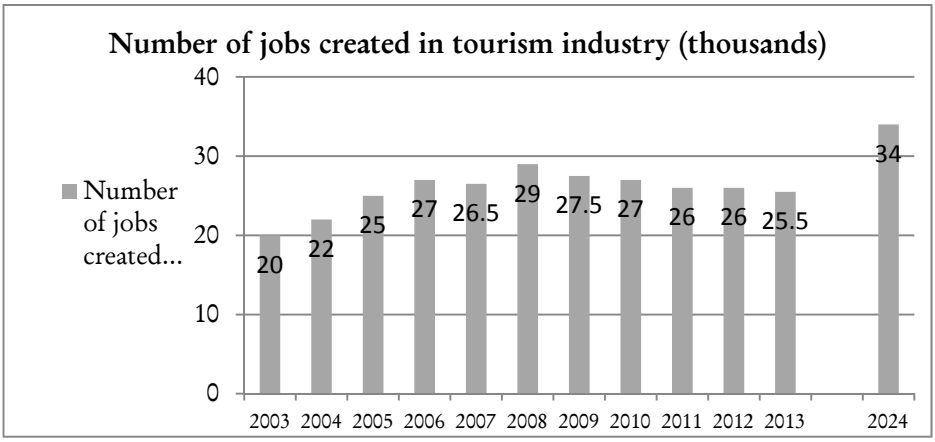

Fig. 2. The number of jobs created in tourism industry from 2003 to 2013 with estimation of the year 2024 by WTTC (thousands) [Figure created by the author]

However, according to the data of World Travel & Tourism Council (2014, 1) in 2013, the total contribution of travel & tourism to employment, including jobs indirectly supported by the industry, was 7.8% of total employment (70,000 jobs). This is expected to rise by 4.0% in 2014 to 72,500 jobs and rise by 1.6% pa to 85,000 jobs in 2024 (9.8% of total).

2. Characteristics of tourism labour market

Employees are the most important assets in the tourism organizations and are a key to the success of service-sector companies, because of their critical role in customer interactions; and an unskilled employee should be even perceived not just as a potential harm to the industry, but also as a real threat to the people safety, as the work in the industry is related with a direct service. To achieve a competitive advantage in an increasingly competitive marketplace, the success of an individual organization is, to a large extent, dependent upon employee contribution and commitment. Beech and Chadwick (2006, 90–91) assert that the management of the customer-employee encounter is one of the most difficult but crucial tasks for tourism managers with major implications for the service quality. While the industry offers well-qualified individuals, e.g. graduates; exciting, dynamic and rewarding international career opportunities, the industry also needs a vast number of operational staff.

Unfortunately, in Latvia the increase of tourism industry demand has been disproportional to the population, as there are more catering establishments as it would be necessary to meet the demand. Such a development tendency could be noticed already for many years, as it is very common in the industry, that by the increase of the number of catering establishments, the quality decreases (Eglīte et. al., 2012, 65).

The interdisciplinary aspect of tourism is becoming more and more significant in the labour market, i.e. recent challenges in the tourism industry have a direct impact on the expectations the industry has regarding the specific knowledge and competencies of managers and employees, as well as on the overall vocation-oriented competencies. Vocational training is seen as a key prerequisite for the operational effectiveness of the sector. It has, for instance, been noted that when employers recruit graduates they are typically seeking individuals with not only specific academic skills and knowledge in a certain subject, but with capability to be proactive, to see and respond to problems creatively and autonomously. In order to meet the demands of the tourism industry both on a personal and job career level, people need to acquire competencies that enable them to cope with the changing circumstances of the business world (ibid, 160). Today employers are looking for more flexible, adaptable workforce as they themselves seek to transform their companies into being more flexible and adaptive in response to the changing market and customer needs (Zehrer, Mössenlechner 2009, 159). Competitiveness and productivity in the industry nowadays depend on the skill levels, professionalism, commitment, passion, loyalty and soft skills of the workers (International Labour Organization, 2011, 37).

One of the experts of the Latvian Bartenders Federation believes that the biggest problem in the industry is the attitude and motivation of the entry-level employee himself (Eglīte et. al., 2012, 66). Also the participants of the International Labour Organization meeting agreed that motivated workers are the most talented

employees – willing to stay with their company. Some of the soft skills needed, including language and communication skills, courtesy, discipline, conscientiousness, self-confidence, adaptability, creativity and punctuality, can be enhanced through training (International Labour Organization, 2011, 36). That is sometimes seen as the best scenario, as a lot of enterprises do feel a shortage of qualified employees, so they choose to train their employees themselves in order to improve and assure the quality.

Several studies have been conducted in terms of job requirements in tourism-related fields (Eglīte et. al., 2012, 65; Zehrer, Mössenlechner, 2009, 161), and a number of qualifications have been identified. The experts believe that the main skills which employees lack and which will always be necessary for future employees in the industry are as follows: experience; organizational skills and time management; high sense of responsibility; ability to work in a high stress environment; communication skills; motivation; decision-making abilities; planning and improvisation abilities; ability to work in a small team; ability to accept the working hours distinctive to the industry.

3. Labour constraints – difficulties and challenges of tourism labour market

As the success of the tourism industry and ultimately of the destination depend on the quality of employees, the biggest human resource challenge for the tourism industry is recruiting and retaining employees with the right skills, knowledge and attitudes to their work. Accordingly, the most important and emerging challenges explored and described in greater detail below are: labour turnover affected by changes in demand, pay issues, changing employee expectations and age issues. All of these challenges could be noticed in almost any sector within the tourism industry and are affecting employees and presenting tourism industry and tourism managers with significant challenges; furthermore, also possessing a threat to the future expansion of the industry.

3.1. Labour turnover

The demand for labour is a derived demand as labour is needed when a commodity or service are required. Employment in tourism sector is thus directly related to expenditure on goods and services provided by the sector. The resulting demand derived for labour will also depend upon the price of labour relative to other factors of production, for instance, if the price of labour rises, producers will attempt to use more machinery (capital) where this is technically possible (Tribe, 2003, 278–279).

Labour turnover in the tourism industry is generally accepted as an inevitable and natural process. Some perceive labour turnover to be beneficial as it enables manipulation of workforce size according to the demand and thus enables the

control of labour costs. Additionally, new recruits can bring new ideas and experiences to make organizations more dynamic and innovative. Those who do not perceive labour turnover to be disfunctional argue that staff mobility facilitates skill acquisition. Nevertheless, labour turnover is a cost to tourism business and can create severe operational difficulties. High labour turnover affects the quality of services and goods. It also incurs high replacement, recruitment and selection costs, as well as training costs which can subsequently reduce profitability and affect organizational morale (Beech, Chadwick, 2006, 91–92).

According to the questionnaire made by State Education Development Agency (Valsts izglītības attīstības aģentūra, 2012, 26) it could be indicated that the labour turnover in 2010 was not higher than in average 10% per year in 73.2% of all the companies of tourism industry sectors in Latvia (see Fig. 3).

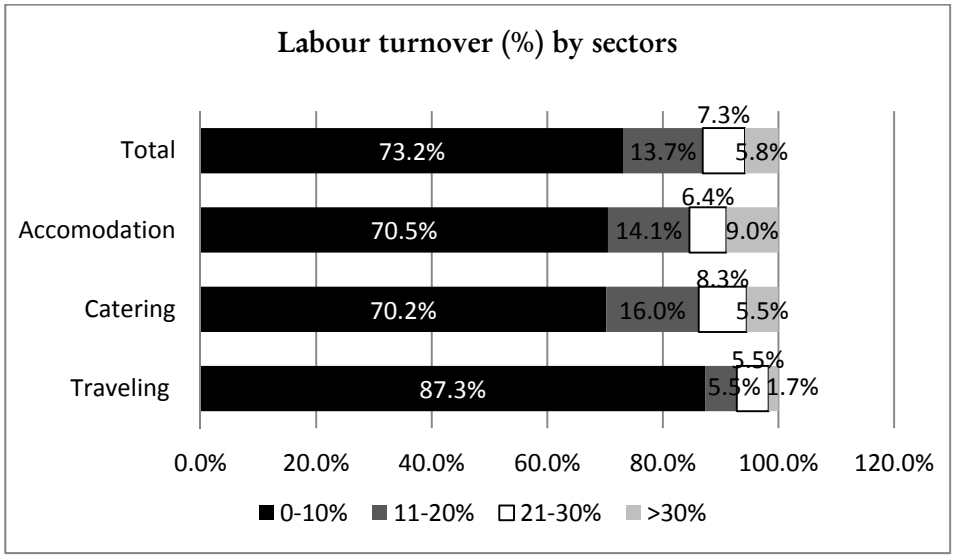

Fig. 3. Labour turnover in percentage by sectors
(Valsts izglītības attīstības aģentūra, 2012, 26)

It can be noticed in the Figure above that in comparison with other sectors, the highest labour turnover could be indicated in accommodation and catering services sectors – 29.5% of accommodation sector and 29.8% of catering sector have a turnover higher than 11%.

However, the State Education Development Agency has discerned that tourism industry in Latvia has an active labor market, because the jobs in the industry are in high demand and usually there is a large number of applicants for free vacancies. For instance, comparing the number of unemployed people and the number of the industry vacancies, a labour quantitative discrepancy could be seen, as, for instance, in September of 2011 there were 2014 unemployed cooks, but there were only 115 vacancies on the market at that time. (Valsts izglītības

attīstības aģentūra, 2012, 32) Periodicity, seasonality and lack of psychological strength are the main reasons, which explain the active labour turnover.

3.2. Employee expectations

Today's generation of graduates holds distinctive perceptions and ideals towards work and there appears to be a gap between hospitality graduates' perceptions and the reality of the workplace, which may cause problems. Several societal changes over the past few decades have impacted greatly employees' definitions of what constitutes preferred employment, and today's generation of hospitality employees hold vastly different expectations towards work than those of previous generations (Beesley, Davidson, 2013, 270). Today's graduates are ambitious, with over 80% expecting promotion within 2 years of commencing work. According to McCrindle, Hooper (2006, 11) the three most important aspects of employment for today's graduates are positive relationships with colleagues, interesting work, and continuous opportunities for learning. When accepting a job, salary ranks sixth after training, management style, work flexibility, staff activities, and non-financial rewards. Graduates are socially driven, have a need for recognition, inclusion in workplace decisions, and seek to be understood and accepted. To retain this generation of graduates, employees need to provide job variety, feedback and reward systems, flexible work practices, autonomy, career development, and empowermen – all within a work-life balanced environment. As students progress through their degree programs and gain industry experience (either through part-time work or internship programs) they become increasingly disillusioned with the industry's capacity to meet their expectations and explain the low conversion rate of graduates who enter or remain in the industry (Beesley, Davidson, 2013, 270).

3.3. Age

There is also a common opinion in the industry that only young people should be working in hospitality sector because of the specifics of the industry (Eglīte et. al., 2012, 66). However, the same as in any other industries also in tourism and hospitality industry the experience is very important and highly appreciated, because experienced workers are the ones who can provide the industry with their acquired knowledge. According to the questionnaire made by the State Education Development Agency in 2010, there were more than 70% of all the people employed in tourism industry aged till 45 (see Fig. 4).

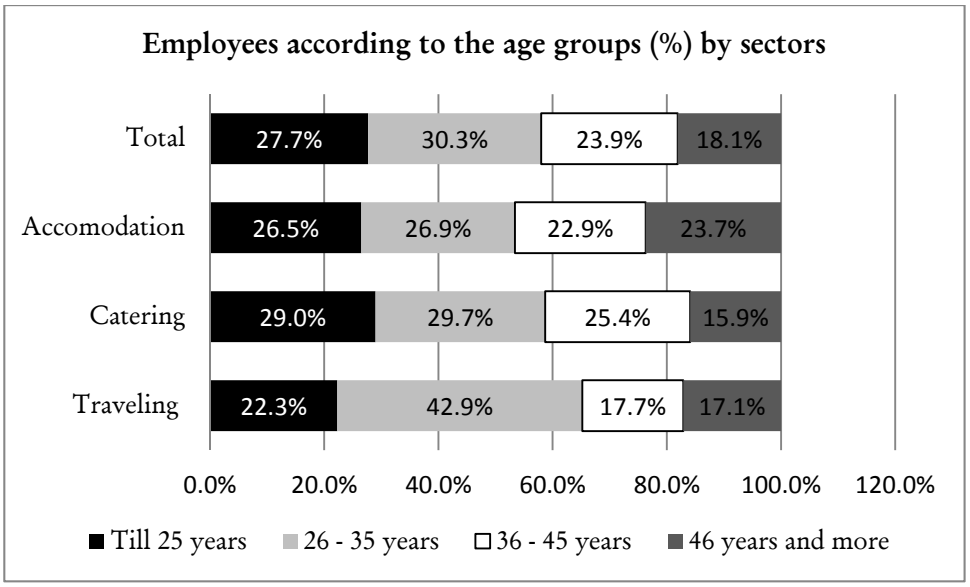

Fig. 4. The number of employees according to the age groups (%) by tourism industry sectors (Valsts Izglītības Attīstības aģentūra, 2012, 25)

The examined statistics indicate that the age issue could be perceived as a problem in tourism industry in Latvia as young people till age 35 are more required in tourism labour market. However, for that to alter, first of all an overall perceptions about the industry have to change.

4. Methodology

The research comprised analysis of primary and secondary data, where secondary data consist of the already existing literature on labour market of tourism industry (scientific journals, books, statistical data etc.) and primary data as a first-hand information consist of mixed methods research as both quantitative (questionnaires) and qualitative (analysis of vacancies in job advertisements) data complement each other by research, which, as a result, leads to more valid, reliable findings and conclusions. However, in the current paper the author analyses the quantitative data and compares them with the secondary data by official institutions of the country thus generalizing the research results.

The already existing data collected for other purposes are used in the present research as secondary data (Veal, 2011, 182). A literature search was undertaken using the term "industry" across electronic databases and search engines. Filters were applied to limit results to literature published after 2000 in order to obtain the most relevant data pertaining to the emerging labor crisis within the hospitality industry. Selection of the articles was based on both the title and

abstract in terms of their relevance to the topic under investigation. A "snowball" technique was also used to identify additional sources from references cited within the articles. Particular attention was given to articles published in dominant tourism and hospitality journals and relevant government reports to ensure quality and data relevance (Beesley, Davidson, 2013, 267).

According to the purpose of the research considering the selected paradigm of pragmatism this research is explorative, as it is directed towards exploring the relationships between concepts and phenomena and explaining the causality and/or independency of these

(Clark et. al, 1998, 9). The patterns and ideas have been studied. In order to ensure data validity and reliability there are multiple methods applied in the paper to research the phenomena. As the survey is the most widely used means of gathering data in social science research on obtaining people's responses to questions, methodology of survey was applied which is conducted by applying the tool of questionnaire. The questionnaire gave an access to broad quantitative data, which further was analyzed by MS Office Excel and SPSS software with a view to generalizing the results to a population. The analysis comprised four main stages: analysis of descriptive statistics; validity and reliability analysis; test of empirical distribution and analysis by applying non-parametric tests.

The questions of the survey cover many aspects regarding the evaluation of graduates' personal and professional knowledge and skills in different subjects and importance of the same personal and professional skills and knowledge necessary to succeed in tourism business. The survey included Likert-style scale rating questions (from 1 – smallest to 6 – highest value) and category questions. Cluster sampling was created comprising the employers in whose enterprises the graduates of the study year 2012/2013 were having their internship. The total number of respondents was 91 and the questionnaire was filled in during May – June of 2013. The main elements of the questionnaire included the following: 1) Introduction; 2) Importance of potential employees' knowledge in different courses; 3) Evaluation of graduates' knowledge in the same courses; 4) Importance of potential employees' different skills; 5) Evaluation of graduates' skills; 6) Descriptive information about the company and the respondent.

5. Findings and Discussion

5.1. Frequency

In order to find out the fields which are represented most by the respondents – employers, analysis of frequencies was conducted by SPSS software (see Fig. 5).

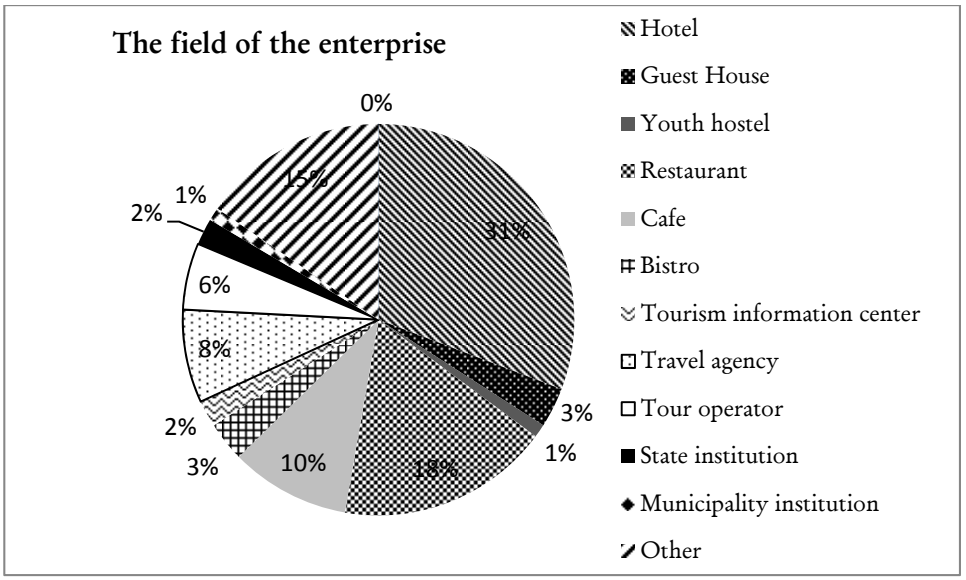

Fig. 5. The field of the company, where the respondent is involved, %

From the frequency distribution chart it can be seen that the biggest part of the respondents are operating in hotels (31%) followed by restaurants (18%) and other (15%) fields not mentioned in the list. At the same time the chart also represents which are the fields, where students have chosen to do their internships the most.

However, according to the Central Statistical Bureau of Latvia information, in the year 2010 tourism industry consisted of 3442 enterprises, out of which 62% were catering establishments, followed by 21% accommodation establishments and 17% of tour operators and travel agencies united (Valsts Izglītības attīstības aģentūra, 2012, 25). It could be seen that the industry predominantly consists of catering establishments, although according to the compiled questionnaire the biggest part of the respondents are operating in accommodation sector.

The frequency distribution chart showed that in the questionnaire mostly large companies were represented with 41 and more employees (30 companies or 35%) followed by companies where 6–15 employees were employed (25 companies or 30%) and medium-sized companies with 16–40 employees employed (17 companies or 20%), what is marking students' significant interest towards larger companies, where to do their internship.

According to Lursoft data of the year 2012, in comparison with the overall situation in Latvia, where enterprises with 2–5 people employed (48.11%) and companies with 1 person employed (33.37%) were dominating, the situation in enterprises of graduates' internship places differed significantly. For instance, if the data above indicate the predominance of companies employing 41 and more

employees (35%), then the overall of these enterprises in Latvia compile only 0.45% of all Micro and small enterprises (Lursoft, 2013).

From the frequency distribution it can also be seen that the acquired data represents mostly the opinion of the top-level managers or the owners of the company (45%) and mid-level managers (44%), which means that the data mostly represents the opinion of the decision-making bodies and could be evaluated as more representative of the real situation.

In order to possibly indicate a gap between what are the skills and the necessary knowledge for future employees and what is available on the labour market, two comparative Figures were made, taking into account only the evaluation provided by the industry employers. Figure 6 represents and describes the evaluation of graduates' current skills and knowledge in employers' opinion, but in Figure 7 the importance of the same skills is evaluated.

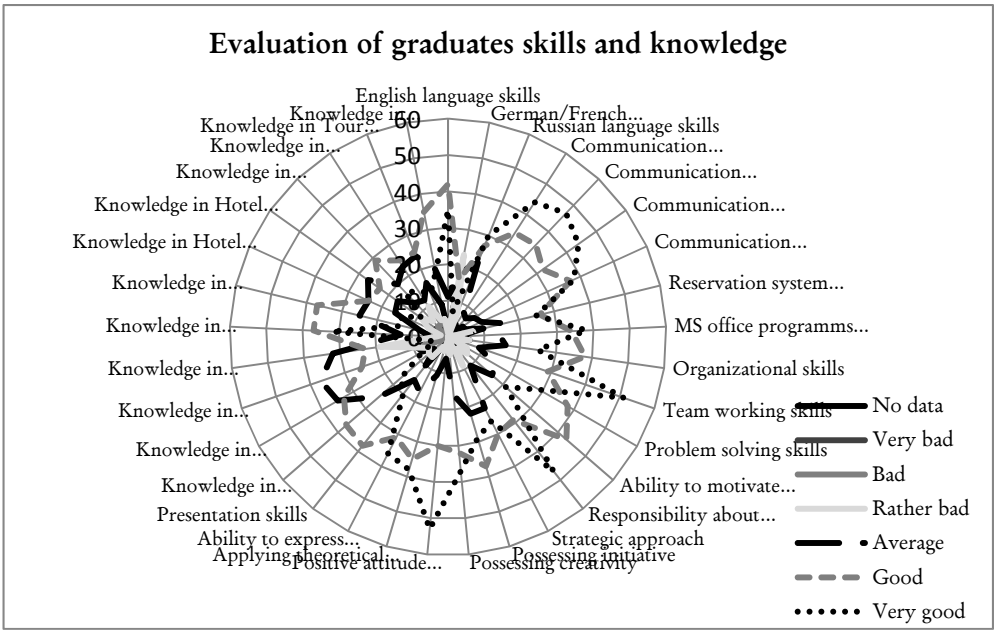

Fig. 6. Evaluation of graduates skills and knowledge

As the current situation and practical labour market demands are taken into account, their comparison indicates the knowledge and skills where they need to be paid special attention to in order to improve and develop them in HEI study programs.

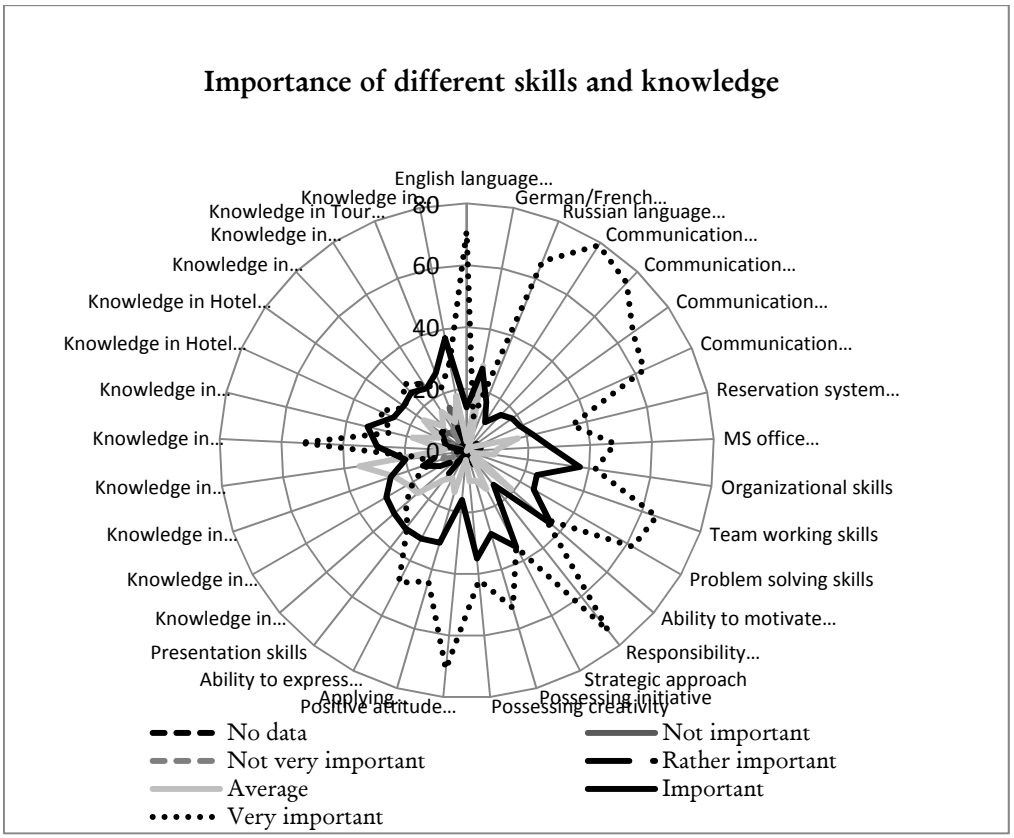

Fig. 7. Importance of different skills and knowledge for future employees

The personal skills in the chart showing which graduates' skills are evaluated as being the highest and most needed are: *positive attitude towards the job*; *responsibility about one's actions and decisions; team working skills* and *communication abilities with colleagues*. Furthermore, the same skills are also thought to be very essential for future employees according to Figure 7, where the importance of different skills can be seen. However, the *English language skills* and *communication skills with guests* are considered as very important for future employees, but are evaluated not to be on a good level for graduates, revealing a gap which should be paid attention to.

According to the professional skills and the knowledge gained in different subjects and fields, the most inherent for the graduates are: *knowledge in Psychology*; k*nowledge in Personnel Management* and *knowledge in Tourism and Hospitality Industry Management*. In addition, the same knowledge is evaluated as important, consequently not indicating a gap between the current situation and demand of knowledge on the labour market.

5.2. Cronbach's alpha

In order to verify data validity and reliability Cronbach's Alpha test by SPSS software is applied. The conducted Cronbach's Alpha validity and reliability analysis shows an excellent internal consistency between the issues under investigation and an extremely high validity ($\alpha = 0.958$ which is > 0, and even a higher data reliability is represented ($s = 0.957–0.959$) (Gliem, Gliem, 2003, 87).

5.3. Kruskal Wallis

Kruskal Wallis test is applied to analyze the difference between the opinion of 12 groups according to the field of the enterprise (Baggion, Klobas, 2011, 23) where the student has been working, regarding their opinion on the importance of the knowledge and skills necessary to successfully fulfil all the duties in the working place. The data show that in most of the cases there is no significant difference between the opinion of the 12 groups of respondents according to the field of operation of the enterprise (Hotel, guest house, youth hostel, restaurant, café, bistro, tourism information center, travel agency, tour operator, state institution, municipality institution, other) and the importance of potential employees' professional and personal knowledge and skills with p-value between 0.062 and 0.956, which is > 0.05. Thus the above mentioned results may be generalized. For instance, the importance of the presentation skills, language skills, problem solving skills, team working skills etc. are not dependent on the working field, and needs to be on a high level for any job in the industry. However, there is a very significant difference within opinions of the respondents regarding the Importance of potential employees' knowledge in *Hotel Management and Reservation Systems* (p-value = 0.000); importance of potential employees' knowledge in *Catering Management and Organization* (p-value = 0.000), importance of the English language skills for potential employees (p-value = 0.026), importance of possessing communication skills working with foreign tourists (p-value = 0.027), importance of possessing the skills of applying MS Office programs (p-value = 0.005), which means that these data cannot be generalized and it has different importance according to the operational field of an enterprise. The difference may be explained by the fact that, for instance, the knowledge of the specific *Hotel Management and Reservation Systems* is important only for those employed in the hotel industry, which is only a part of the whole industry, while this knowledge is not useful for others. Surprisingly, that also the importance of the English language skills is dependent on the field of the enterprise, as usually it is considered that tourism industry in general is associated with good language skills.

Kruskal Wallis test is also applied to analyze the difference between the opinions of 4 groups according to the number of the people employed in the company regarding the importance of the skills and knowledge necessary to successfully fulfil the work and the evaluation of the student's skills. It was expected that there could be seen some differences according to the size of the company where the student is working, because of the specific division of the responsibilities in large companies,

which means also that the skills could be considered in a narrower aspect. However, the results indicate that in most cases there is no significant difference between the opinions of the 4 groups of the respondents according to the size of the company (1–5 employees, 6–15 employees; 16–40 employees; 41 and more employees) and the importance and existence of different personal and professional skills and knowledge for the employee with p-values between 0.084 and 0.991, what is >0.05. Thus these obtained results may be generalized. However, there is a significant difference in the opinion of the respondents regarding the importance of the potential employees' knowledge in *Hotel Management and Reservation Systems* (p-value=0.033) and knowledge in *Hotel Operations and Management* (p-value=0.007), which means that these data can't be generalized.

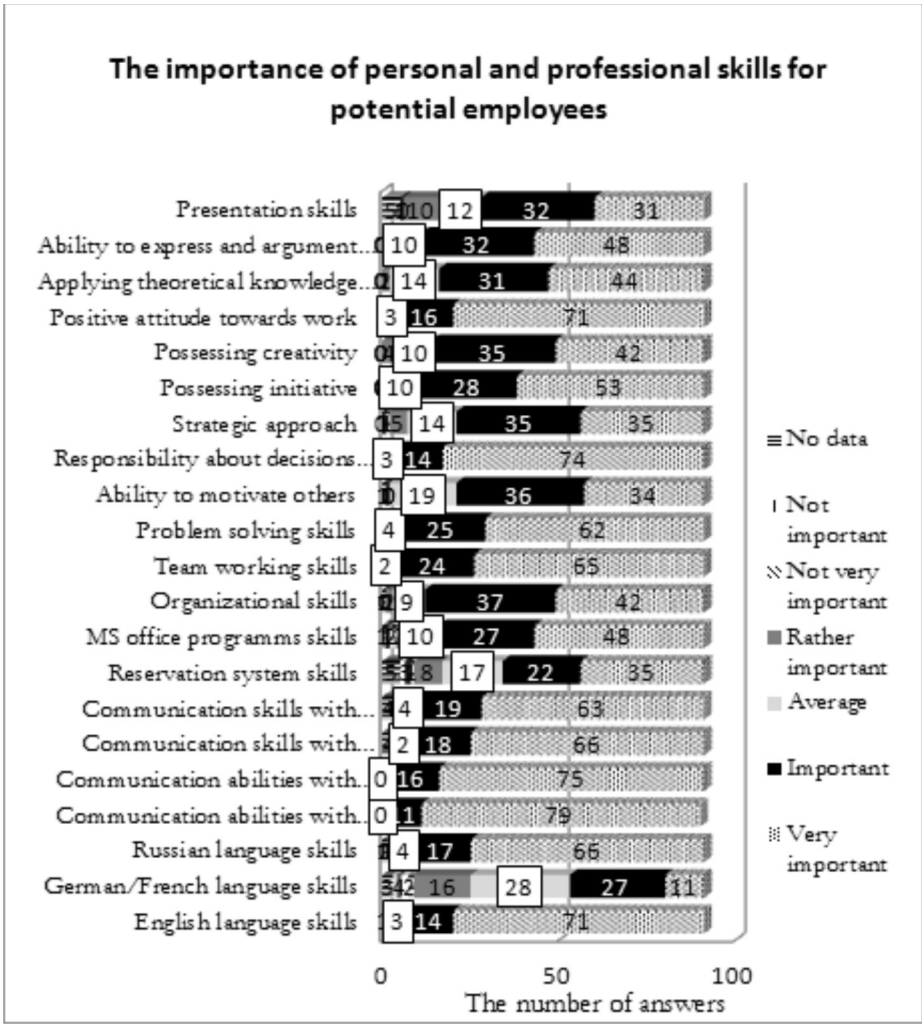

Fig. 8. The importance of professional and personal skills for potential employees evaluated by employers (n=91)

In Fig. 8 the evaluation of the importance of personal and professional skills for the potential employees could be seen according to the opinion of employers of the industry.

According to the results, as the most important skills are mentioned communication abilities with guests (87%) with the mean value of 5.8242 considering all the answers for this variable from 1 (minimum possible) to 6 (maximum possible); communication abilities with colleagues (82%) with the mean value 5.8242; positive attitude towards the work (78%) with the mean value of 5.6923 and the English language skills (78%) with the mean value of 5.6484. All of the mentioned skills have been selected most frequently by the respondents as the answer to the question indicating mode value of 6.00 points. The skills mentioned, according to the results, mostly indicate that the most important are the skills, which can't be taught at school or HEI, but usually are acquired naturally or by experience. Except the English language skills, which should be taught and acquired by studying them. The skills which are considered as less important are the German/French language skills (with mean value of 4.0549) and reservation system skills (with mean value of 4.5824), which means that these skills could be topical only for some of the fields, not to all the tourism industry, for instance, reservation skills according to the results are important for hotels and the German/French language skills are important for other fields, except, restaurants and cafes, which is surprising as it could be expected that language skills are especially important when working in the catering sector.

Conclusions

Following the conducted analysis of secondary data and a survey carried out among the employers in the tourism industry, several tendencies and conclusions of the tourism labour market can be outlined.

As tourism industry and its positive contribution to the social and economic development of any country have been noticed for many decades already, it has to be admitted that there still exist some issues and challenges that are precluding the possible development of it. The contribution of tourism to economic well-being largely depends on the quality; while the quality of the services provided is closely linked with human resources. That, accordingly, places human resources as the first component of this important and inevitable chain. It has been acknowledged that tourism industry in Latvia contributes significantly to employment and a tendency of increase can be noticed. To utilize the labour force effectively, the most important condition is that students are provided with adequate education and skills, so the supply of a skilled workforce could be improved; however, tourism higher education still faces uncertainties in terms of the content and the nature of tourism degrees, and this furthermore restricts employment opportunities for tourism graduates.

Quantitative analysis of employers' questionnaire proved that such professional skills as MS office programs skills, reservation skills and presentation skills are evaluated as less important for future employees. That may indicate a problem between the industry and education system, where educated specialists and their knowledge are not enough appreciated, however, are being taught in HEI and graduates are not able to apply their acquired knowledge in the practical life.

It has also been proved by the results of the questionnaire that professionalism and ability to communicate are the key elements that will drive the tourism industry in the 21st century as such skills as communication abilities, positive attitude towards work and the English language skills are evaluated as most important by employers. This probably is the trend that creates a challenge for tourism educators, as these are the skills which can be hardly taught while sitting in the school bench, so an innovative approach should be applied in the future.

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PUBLIC PERSON FUNCTIONAL ASSETS: INSIGHT IN CONCEPT

Ernests Saulitis
Department of Law, Turiba University,
Riga Municipality Property Department, *Latvia*

Abstract

Resources which are available to public person management are a complex of complicated legal issues. When solving this problem we have to deal with different law and term conflicts. The concept of public property contradicts to the absolute nature of the property rights; however, also other resources which are in public person's possession and may be termed as "property" in civil law conception, by their nature are limited on the basis of law. Taking into consideration the multiplicity of resources used by a public person, even an elementary usage of legal terms causes problems. Analyzing the terms which contain laws and regulations governing the functioning of public person available resources, we are facing a situation that the interpretation of their terms cannot be applied which is provided under civil law doctrine. Thus it is necessary to find out the aim of legislators by selecting the terminology which was used in the regulations and their changes in the course of time. However, the most important issue faced by the public person resources available in the case, is its legal nature, as public person discretion in this area is determined by public law. Thus the aims of this article is to provide an insight to the resources in the public person possession which is used to the execution of specific public functions and tasks, corresponding terms, problems and offer the author's view to the public person's functional assets conception.

Keywords: Public person property, public property, functional assets, public things

Introduction

Civil rights experts are disposed rather critically towards designations attachable to the term "property" as, according to their opinion, these are economic or other kind of characteristic features having rather vague relation to the legal essence of this concept, because: "... *for the purpose of rights* in rem *all owners are equal in exercising their rights*." (Balodis, 2007: 34) Viewing the issues related to

the public property (Saulītis, 2011: 172–178), the essential legal difference exactly from the civil property concept – possibilities to alienate are legally restricted since it is a part of public domain (Saulītis, 2011: 172–174), was already highlighted. Thereby the nominal civil owner – state or local government, does not enjoy full property right as it was restricted from its beginning. "Public things" concept as allotment and right to use based in the public law and does not resulting in private law, except the cases when the allotment of the public law with individual right to use has taken place, is relatively correctly compatible with the equality principle of all civil owners. It also allows to define in the framework of legal doctrine of Germany that: "*The concept of things in public law it is not a concept property* in rem *of civil law*..." (Paine, 2002: 409) Even more so because in compliance with the civil rights regulation in Germany the property is only material (BGB, 1896), but the public things functioned as right of use or limitation to right of use. Thus the duty of public person is actually reduced to obligation to provide individuals with equal and equitable access to allotment of right of use.

Nevertheless, regulations of allotment of right of use do not solve the issues of limitations to the proprietary right of public person existing within the framework of normative regulation. It is also the basis for addressing the concept of functional or administrative assets. The concept of public property is based on the idea that the normative regulation includes definition of types of civil property which can be owned only by a public person, usually a state, and the prohibition to alienate this property or to create a situation which is put on the same level as such legal situation is an essential condition. (Saulītis, 2011: 173) At the same time property objects which are used for the purposes of ensuring administration functions or tasks are available to public persons. The concept of administrative function and task in the law domain and normative regulations of Latvia is rather abstract. It must be emphasized that administrative functions can be implemented in a public-juristic manner or private-juristic manner. (Wolff at al., 2010: 601–602) Privatization of administrative functions and tasks (Storr at al., 2010: 217–219) does not change the question as such and its implementation regarding the private law as it is being formulated within the framework of two-stage theory. The conceptual question remains the same: is it a function carried out by a public person for the interests of society or is it a private law-driven initiative of a public person? At the same time it must be noted that administrative decisions in today's situation actually possess no private law features and it is only the decision of legislator that determines the jurisdiction of controlling the final decision in general or administrative courts.

French law with its doctrine of "*domaine public*" concept is the best-known legal system that recognizes the public (public) property idea. However, it is prudent considering the concept of property. According to this concept the case in a special legal status or capacity in the public domain. H. Arbousset refers to a number of public property related concepts; including M. Hauriou developed the idea of an administrative property. (Arbousset, 2005: 63) At the same time,

however, to avoid the concept of "property" in relation to the use of all public possessed the property in order to prevent law and the concept of conflict between the branches of law. In case of public property, these assets or property objects usually have natural origin – public rivers and lakes, seashores and air space as well as socially important artificial formations like roads and ports. The public thing concept solves only the issue of equal access right to the properties intended for public needs or resources with a special economic value. Artificial formations like the buildings for the needs of various administrative functions and state administration establishments, car parking lots outside the general purpose road network or movable property necessary for carrying out state administration task are not public property in a direct sense and also its subordination to the public law regulations is limited. Meantime identification of these assets with private law-governed property owned by a public person does not agree with the restrictions stipulated in the regulative enactments. Even though possibly the concept "administrative property of public persons" indeed characterizes the domain of legal relationships under discussion better, the traditions of judicial idea and the fact that property under supervision of public persons exist in most various legal and natural forms must be taken into consideration, then for the purpose of this article a term "functional assets of public persons" (hereinafter referred to as functional assets) will be offered.

The study period comprises the last 10-year recent trends with historical insight. Research methodology is based on a various literature and practice sources exploration. An analytical, comparative and historical research method has been used for the study.

1. Assets and property: content of the concept

In order to avert the contradiction between the concept of civil property and the legal and natural diversity of the property available to public persons, the concept of assets is frequently used in the regulative enactments of other countries. As an example we can mention the Estonian State Property Law (Riigivaraseadus, 1995) or Lithuanian State and Local Governments Property Administration, Use and Liquidation Law (VSTVNDJI, 1998). But it can be concluded from the Public Person Property Code (CGPPP, 2006) regulations in France that term ''*biens*'' – properties, is used contextually as a term designating all kinds of assets. There is not a single act in the normative system of Latvia which would regulate all issues related to the assets available to public persons. Two regulative enactments – Law on Prevention of Squandering of the Financial Resources and Property of the Public Persons (PpFLMINL, 1995) (hereinafter – LPSFRPSLG) and Law on Alienating the Property from the Public Person (PpMAL, 2002) (hereinafter – LAPPP) provide a significant outlook at the issues related to the assets in hand of public persons.

Due to the limited space here, it is not useful to elaborate on the understanding of the concept of property, yet it is necessary to clarify its content in the context of previously mentioned regulative enactments. LPSFRPSLG employs terms "financial resources", "property" and ''possession'', while LAPPP deals with terms "property", "property right", as well as ''immovable property'' and various derivatives. Even though the use of term ''property'' in LPSFRPSLG can be established in its initial edition, concept ''immovable property'' appeared considerably later. Rights of financial means and property as an immaterial property separated from the other property of person do not indicate at the situation that in the context of these regulative enactments legislator would have thought of property solely as of the body of rights translatable into money. It does not correspond even more to the Dr.iur. E. Kalnins' (E. Kalniņš) explanation of property concept,"*...besides the liabilities of right holder and those material properties to which the rights, included in property's constitution, pertain, are not implied in the constitution of property*" (Kalniņš, 2010: 143). It is also indicated in the doctrine that: *"Eventually, according to the third opinion the concept of ''property" presupposes the entire body of properties translatable into money that the legal subject possesses.*" (Kalniņš, 2010: 143) According to the explanation of Dr.iur. J. Rozenfelds the concept of property in the Civil Law of Latvia (CL, 1937) (hereinafter referred to as CLL) is put as 1) rights; 2) a synonym to designate individual material properties. (Rozenfelds, 2000: 12) Moreover, the research of material provided by this author makes it possible to draw a conclusion that an opinion about the property as a right can really be considered as well-grounded and the use of this term in order to designate also the legal object is a particularity developed in Latvian civil rights in the course of history. (Rozenfelds, 2000: 12)

How should we understand the "property" for the purpose of LPSFRPSLG and LAPPP? In the very title of LPSFRPSLG as well as in further text the distinction between financial resources and property is made. One cannot fully deduce from paragraph (2) of Section 2 of LPSFRPSLG that for the purpose of this law the financial resources mean the money available exactly to the public person which in general corresponds to, for instance, the explanation provided in Clause (5) of Section 1 of Financial Collateral Law (FNL, 2005). It is also highlighted in Clause (1) of Paragraph (2) of Section 2 of LAPPP by which such property rights as securities, shares in the company etc. are excluded from the scope of the law. Thereby it can also be deduced that for the purpose of both these regulative enactments "property" by no means implies merely the right of public person to material property; it also implies such a right to immaterial property, like the already mentioned types of financial assets. Nevertheless, it should be elucidated whether the concept of property in these regulative enactments implies merely a body of rights or the dual approach of CLL has remained.

No matter how proper from the point of view of Dr.iur. E. Kalnins would be the opinion of the positive property (assets) as ""Positive property" is only a comprehensive designation of all rights translatable into money and belonging to one holder of rights," (Kalniņš, 2010: 144), eclecticism in the most varied domains

is characteristic to the Latvian legal system. From the regulations under Section 3 of LPSFRPSLG: "1) actions shall be such as to achieve the objective with the minimum utilisation of financial resources and property; 2) property shall be alienated and transferred to the ownership or use of another person at the highest price possible; 3) the ownership or use of property shall be acquired for the lowest price possible." it can be directly deduced that by concept "property" in this regulative enactment one may understand rights as well as property or possession objects. Yet, a certain consequence can be established which brings closer various understandings of the property concept: acquiring of rights and objects as well as their transfer to the third parties are translatable in our universal measure of value – money. Therefore it can be concluded that regardless of the composition of a certain property – be it a right or an object – an essential feature for the purpose of LPSFRPSLG is the translatability of this object or right into money. It brings us to conclude that the concept of property in these regulative enactments lie closer to the concept of assets since there is no particular difference in the classification of certain property or liability in the sense of rights in rem, but rather in its economic significance and value.

2. Functional assets: concept

The idea of public things is based in ensuring the access to essential resources for the society in general. Free availability institute includes also the prohibition of discrimination and the principle of allotment transparency. In literature and case-law a distinction is made between the allotment of the public property for ordinary or public use (Paine, 2002: 415–417) and allotment of public property for individual or special use (Paine, 2002: 418–420). French law doctrine of the public domain is traditionally divided into three parts: natural public domain (the navigable waters of the coastal zone, underground communication and transport tunnels, underground waters) (Morand-Deviller, 2012: 48–58), artificial public domain (public roads and buildings, agricultural roads, highway's, artificial navigation channels, property which use for different public services) (Morand-Deviller, 2012: 59–68) and movable public domain (different types of national treasures and values). (Morand-Deviller, 2012: 68–71) *Dr.iur.* F. J. Paine indicates that public property must be broken into four categories: public property for public use, public property for special use, public property for use in establishments and public property for use in administration. (Paine, 2002: 415) German legal doctrine points out that property transferred for a public use can lose its status of public thing if, for instance, a new road is built and traffic is organized in a different manner. (Paine, 2002: 415)

If in case of France the intention to include the public property in public domain and thereby also subject all administration objects to control can be explained by the tradition which is secured in the regulative enactments, then in the concept of German public property the wish to consider objects which are used for ensuring

merely administrative functions (public properties used in public establishments and administration) as public property is not sufficiently substantiated. Due to these considerations other sources in German legal doctrine indicate at the public property also as to a modified private law-governed property or public property. (Wolff at al., 2010: 164–166) Criticism directed towards this concept is more focused on the sense of allotment and goal which, in essence, contradicts the concept of private law-governed property (Wolff at al., 2010: 166–168). Meanwhile the doctrine indicates at the regulations under Section 906 of the German Civil Code as publicly legal right-of-common (Paine, 2002: 411) which in its nature corresponds to the restrictions of property use under CLL. If no subjective public right to use of property exists for third parties or use as such, for instance, to attend an establishment for receiving of documents has only subordinated meaning, and then there is no grounds for considering such object as a public property.

It must be noted that the sense of public thing does not lie in exposing a property to regulations of public law, but rather in meeting the general rights and interests of the public or ensuring the equal access to the resources of general economic significance under supervision of public persons (Saulītis, 2011: 174). Properties available to or owned by the public persons usually have two possible statuses: they are object of public property in the capacity of asset or it is a person's property governed by the civil law which in general case is used for ensuring the administrative functions. Distinction is made in compliance with the status of property or asset in the regulative enactment. The limit is determined by the fact whether the legislator has considered the respective property (asset) to be alienable or the regulative enactment defines it as exclusive public property object. By defining public person's property object governed by the civil law as a public property the actions related to this property is subjected to the order of the public law ensuring the general public interest. Yet it does not rule out the right of further action of the public person regarding this property as a property object governed by the civil law, including the right to alienate this property. Thereby public persons' property objects governed by the civil law intended for ensuring the administrative functions can be considered as the group of assets of public person the main sense of which is its use for administrative functions or **functional assets**.

Why does one need to introduce a new category of public persons' property objects? The answer is in part provided previously – identification of public persons' property object governed by the civil law with the public thing does not reflect the actual legal relationships properly. It becomes a public thing due to the public's interest to use this property for satisfaction of their needs. Indirect use, for instance, by attending the institution located in the building to solve certain issues does not make this building a public thing. Even more, the inventory of establishment does not become a public thing although it is freely available to private persons – it has no public rights to demand from the institution certain actions to be taken regarding this property. The second aspect – the use of

property concept in the respective normative regulation results in more clashes among issues and rights than it provides answers to the imposer of rights and the recipient. Also the use of property object concept can be controversial since public persons hold the right of use of property object possessed by other person or the very property object exists as a right which is also the subject of the right of use. In order to ensure the coherence of rather varied right institutes and concepts, one of solutions is to use the terminology of other fields which embrace broader circle of legal issues than the scope of the certain field. Such solution is even more substantiated if within the framework of the very sector one of interpretations of the concept is dual and, once transferred to other field, it creates only new collisions.

3. Functional assets: understanding

Separation of public person's functional assets from other types of property objects or assets in hand of public persons is necessary since the essential characteristic of functional assets is the fact that by discontinuing to use them for ensuring the administrative functions, these objects are no longer subjected to the legal order of public property. It does not change the condition that by regaining the status of civil property to the full extent the public persons' property objects governed by the civil law are subjected to the regulation of public law included in LAPPP and LPSFRPSLG. However, the assets necessary for implementation of administrative functions can be characterized with one more feature. Even though they are property objects with civil status, these assets possess the status of public person's property as long as they are being used for the purposes of public administration. In compliance with the normative regulations of Latvia public persons can transfer such property object to each other without remuneration provided that it is returned if the property object is no more used for the implementation of certain function. (LAPPP, Section 42)

Controversial views on administrative functions and tasks have developed in the public rights doctrine of Latvia in the course of the history. Dr.iur. K. Dislers (K. Dišlers) points out at tasks from which the functions are derived (Dišlers, 1938: 30) as primary, normative regulations of modern times (VPIL, 2002) and doctrine (Načisčionis, 2003: 41–43; Levits, 2002: 51) indicate at function as the basic element but other recent authors return to the concept of national task (Krastiņa, 2014). Concept of functional assets is directly related to the administrative functions and tasks because it is the necessity for implementation a function or administrative tasks that lays a legal basis for the special classification of such property object. It must be noted that such necessity might not arise if only the amendments of 2007 (GPpMAL, 2007) to Section 42 of LAPPP did not introduce a principle that a public person upon transferring immovable property can determine the administrative functions for the purpose of which the immovable property is transferred as well as to stipulate that in case the transferred

immovable property is no longer used for implementation of administrative functions, the other public person returns this property without remuneration. The current version of Section 42 of LAPPP actually introduces a new proprietary rights category – a restricted or terminated proprietary right which a public person holds regarding the functional asset for the period when this object is used for implementation of administrative function.

The provision expressed in such manner did not bring about essential controversies. The idea itself is not new since a similar regulation is included in Section 134 of the Basic Law for the Federal Republic of Germany (GG; 1949). It can be understood from the text of provision that it regulates a complicated set of issues related to the succession of German Empire ownership as well as takeover of properties for implementation of administrative functions. There are no more commentaries to the provision but from the sources, for instance, from the cases reviewed in literature (Brunn, 2012: 289–294) and case-law (BeVerfG 403/02, 2002) it can be concluded that the most frequent object of disputes in case or federal administration and land or local municipalities are over the returning the property after it is no longer necessary for the implementation of certain administrative function or remuneration claims if returning is not possible. If the question about jurisdiction and method of settlement of such disputes is not so far solved in Latvia, then in Germany such disputes are being solved in administrative courts and, as it can be deduced from the cases, they reach also the Constitutional Court. Such approach shows that it is necessary to create an efficient mechanism for solving the disputes over the public administration property and one of the options is to settle such disputes in administrative courts.

The idea on public person's property objects as assets which are intended to be used for the implementation of a certain administrative function appears in the Latvian normative regulation as the Law on Completion of State and Local Government Property Privatisation and Utilisation of Privatisation Certificates (VPĪPPSIPL, 2005) in 2005. This idea in case-law is received with understanding and has become the part of case-law. (SKA-460, 2012) Meanwhile, the Senate of the Supreme Court has consequently indicated that it is not sufficient for refusal of proceedings regarding the property object to only refer to some of administrative functions as it is also necessary to provide grounds on the ways it will be utilized as well as such need must actually exist even though in the future. (SKC-378, 2009) It leads to the conclusion that the functional assets of public person within the framework of economic reform are secured only in case if they are actually used for the implementation of administrative functions. But in case of remuneration-free transfer procedure under Section 42 of LAPPP the receiver of property object acquires a restricted or terminated proprietary right. (SKC-1370, 2013) It is witnessed also by the regulation implied in paragraph (2^4) of Section 42 of LAPPP, respectively in case the transferred immovable property object has become unsuitable for the implementation of administrative function or tasks – it does not remain in the possession of the public person and it must be given for alienation but the acquired means must be transferred to the state budget.

If in case of Germany the origin of provisions (GG Art.134) can be traced down in history and are understandable, then we can think the cause of actual version of Section 42 of LAPPP to be the inability of Latvian public administration to reach an agreement in relatively insignificant issues and the lack of efficient mechanism for dispute settling. In particular it can be attributed to the local governments since they are not simple state administration establishments and the principle of unity of state administration under Section 6 of the State Administration Structure Law as well as resulting hierarchy of state administration can be referred to the local governments to the limited extent. The principle of unity of state administration firstly pertains to private persons who have rights to the consequent work of any kind of state administration establishment. No doubt, it is possible to envisage the functional subordination of administration establishments of various levels in order to ensure efficient administration but it by no means create direct subordination relations in these domains. Thereby it must be understood that the principle of unity of state administration does not create direct hierarchical relations between the direct administration establishments and local governments except the cases provided in the normative regulations.

It must be noted that when the Latvian state amended the regulations implied in Section 42 of LAPPP it did not manage to use them for settling the dispute because the authors of the idea had forgotten one important factor – there is no legal provisions so far which would ensure an enforcement of the respective decisions. In this way the legal provisions created in order to solve a certain case actually changed the legal nature of property objects in hand of Latvian public persons thus creating the concept of restricted or terminated proprietary rights in Latvian civil rights. At the same time it can be concluded that the regulations under Section 42 of LAPPP have created a necessity for a special legal classification of public persons' property objects if they are used for the implementation of administrative functions. It must be noted that division of administrative functions and tasks among the administrative subjects is the prerogative of legislator. Legislation is a political process which can be influenced by different factors and division of functions can significantly affect the financial means of local governments, including the facility to fulfill their liabilities if the division of functions affects their proprietary rights.

Conclusions

1. Inclusion of public person's property objects intended for the implementation of administrative functions and tasks into the category of public things is not grounded if a private person does not hold subjective public rights to the use of such property or it is subordinated to other subjective public right of other private person.
2. Public persons' civil property objects necessary for the implementation of administrative functions can be considered as functional assets since their

key significance is the use of these property objects for ensuring the administrative functions and public person can hold only terminated right to such property object;

3. Functional assets of public person have several characteristics:
   - use of certain property object for the implementation of administrative functions even though intended only in future is considered as primary;
   - within the framework of economic reform the functional assets of public person are not subjected to privatization if these assets are or will be used for the purposes of implementation of administrative functions;
   - public person is obliged to return the functional asset to its original owner if the necessity or possibility to use this object for the implementation of certain administrative function has ceased to exist.

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EXHAUSTION OF COPYRIGHT AND THE INTERNET

Ingrida Veiksa, Dr. iur.,
Assoc. Professor, Dean of Law Faculty, Turiba University, *Latvia*

Abstract

The present papers deals with exhaustion of distribution rights on the Internet. Any author of literary or artistic works has a number of exclusive economic rights, including the right to distribute the work created by him. In accordance with the provisions of law, distribution is the act by which copyright or neighbouring rights of the original or copy of the object are sold or otherwise alienated. The right to distribute a work is exhausted from the moment when it is sold or otherwise alienated in the European Union for the first time and if it has been done by the author himself or with his consent. But this condition applies only to works embodied in concrete material objects (CD, DVD, book, tape, photocopy etc.).

Nowadays more and more works are made available in the digital format, and increasingly the rights to use them are acquired on the Internet. And in this digital on-line environment the problems arise regarding evaluation whether electronically accessible works are considered to be embodied in material objects and if it could be assumed that these works are distributed and this distribution falls under the exhaustion of rights.

The aim of the research is to evaluate, first, whether copyright protected works accessible on the Internet have to be recognized as distributed and, second, whether these works are subject to the exhaustion of distribution rights.

To solve these unclear issues, the author of the present article analysed the law (both international and the EU, and national), looked into the doctrine (although these matters are not widely described there), as well as summed up conference reports of researchers and practitioners from different countries.

Keywords: copyright, distribution rights, exhaustion of rights, the Internet

Introduction

The author of literary or artistic works has a number of exclusive economic rights, including the right to distribute the work created by him. In accordance with the provisions of law, distribution is the act by which the copyright or neighbouring rights of the original object or its copy are sold or otherwise

alienated. The author's rights in the European Union are protected for the entire lifetime of the author plus 70 years after his death. However, the author cannot always use his exclusive rights during all the provided time, because once the material carrier on which his work is materialized is lawfully sold or otherwise alienated, the further trace of this copy is no longer possible. For example – buying the book on the pages of which the novel is printed, the owner of the book can sell or donate this book to any person, but the right of the author of the novel to control further distribution of his work (in this particular book) has exhausted.

The right to distribute a work is exhausted from the moment when this work is sold or otherwise alienated in the European Union for the first time, if it has been done by the author himself or herself, or with his or her consent. But this condition applies only to works embodied in concrete material objects (CD, DVD, book, tape, photocopy etc.). The question arises – what is "distribution" and how is it regulated on different levels of law – on international, EU and national level?

Nowadays, however, more and more works are made available in the digital format, and increasingly the rights to use them are acquired on the Internet. As in this case – whether electronically accessible works are considered to be embodied in material objects? Can it be assumed that these works are distributed and this distribution falls under the exhaustion of rights?

The European Court of Justice (CJEU) has ruled on this question in relation to distribution of used software (UsedSoft v. Oracle 2012, C-128/11). And the Court has held that the distribution rights are exhausted if the copyright owner, who allowed downloading software from the Internet to the media, has awarded the rights to use this copy indefinitely. However, the Court has also stated that the license which refers to a specific amount of users (volume license), secondary beneficiary is not entitled to split and resell it to different users. However, despite the CJEU ruling, the Latvian Copyright Act makes it clear that "distribute" on the Internet means "making available by wire". Consequently, these rights can't expire within the meaning of Article 32 of the Copyright Law.

To solve these unclear issues, the author of the present article analysed the law (both international and the EU, and national), looked into the doctrine (where these matters are not widely described), as well as summed up conference reports of researchers and practitioners from different countries.

The aim of this research is to evaluate, first, whether copyright protected works accessible on the Internet have to be recognized as distributed and, second, whether these works are subject to the exhaustion of distribution rights.

The research methods used were: monographic or descriptive method, logical – constructive method – comparison of legal norms with empirical results; graphical method – visual summarisation of information for illustration and analysis. The research methodology was based on the research done by foreign (Stewart, M., Friscor, M., Blomqvist, J. etc.) and Latvian (Gulbis, R., Grutups, A.) scholars, as well on the comparison and analysis of international, the EU and national legal norms.

1. The author's rights and the term of their protection

The concept of 'intellectual property' shall cover copyright and related rights, as well as industrial property and this right is absolute, but the items are without physical substance and are subjects to the special provisions governing acquisition, exhaustion and duration of rights (Grutups and Kalnins 2002, 20). One of the types of intellectual property rights is copyright, and this right is of limited duration. Contrary to the ownership of the physical object that will continue as long as this physical object exists, copyright has limited time of protection.

Copyrights consist of two parts – moral and economic rights of the author. Copyrights as economic rights are governed by the same rights as movable property rights. Moral rights are an integral part of the authors' personality and cannot be transferred to other persons during the lifetime of the authors (Copyright Law 2000, 14). Moral rights are transferred to the author's heirs after his or her death, although not completely. Any other person – natural or legal person, shall only gain the author's economic rights (Copyright Law 2000, 16). Intellectual property has the particular characteristics that it cannot be consumed until it has been attached to some intangible mode for delivery. Copyright creations such as musical compositions, computer programs, movies or novels are embodied in physical goods, that is, CDs, DVDs or books respectively. The physical delivery good itself is not copyright protected; only the content of delivery good is (Watt 2014, 290).

Any copyright system should balance two rights of interest to the society: rights that are envisaged for copyright owners and reasonable demand rights of an organised society (Stewart 1983, 5). The laws of different states on copyrights foresee different restrictions i.e. cases when the work created by the author can be used by society without requesting the permission or without payment. The restrictions and limitations are justified by the rights of the society to avail the copyright materials for a definite purpose (exhaustion of rights after the first sale) or special rights of certain user groups (e.g. disabled persons) with the aim of creating a balance between the owner's rights and the users' interests.

Exclusive rights to the distribution of the work primarily serves the author or his successor in ensuring his economic rights, stating that after the first sale or work or its copy distribution rights to the alienated work or a copy thereof shall exhaust. Thus, attempts to strike a balance between the rights of copyright subject regarding to recover investments to creation of the work and gaining profit, on the one hand, and in accordance to the civil circulation interest in ensuring the free movement of goods within the territory, on the other hand (Gulbis 2011, 1).

Article 7, paragraph 1 of Berne Convention for the Protection of Literary and Artistic Works (hereinafter – Berne Convention) states that the term of protection granted by this Convention shall be the life of the author and fifty years after his

death. Before the adoption of the new Copyright Law (2000), in the Law on Copyright and Related Rights (1993) was guaranteed the minimum time limit, required by the Berne Convention. However, the EEC in 1993 adopted a Directive harmonizing the term on copyright and certain related rights (Directive 93/98/EEC) for which the main objective was to harmonize the duration of copyright protection in different EU countries. Directive established a longer duration of protection – the author's lifetime plus 70 years. Now in all the EU countries, this period is 70 years after the author's death. After that period, the work becomes public domain and anyone can use it freely. However, it is intended for one exceptional case, where the author's right exhausts before the deadline. This exception applies only to one author's right – the right of distribution, and it exhausts only in one case – when the author's work embodied in concrete material objects (media) is legally (with the author's permission) alienated (sold or presented) to another person.

2. Distribution rights

Under the first basic meaning of the term "distribution," it relates to copy-related rights. In the broader sense, it is the making available of the original or copies of a work or an object of related rights to the public: (i) by sale or other transfer of ownership; or (ii) by rental, lending or other transfer of possession. In a narrower sense, it is the making available of the original or copies of a work or an object of related rights to the public by sale or other transfer of ownership (Friscor 2004, 283).

The right of distribution is most commonly understood as covering the dissemination of protected subject matter which is caused by the change of ownership of a copy, whether an original or the result of an act of reproduction, which takes place in connection with a sale or other transfer of ownership (Blomqvist 2014, 119).

Since the concept of distribution and its scope were not termed in well-established and precise terminology at the time, it is also relevant to observe that it only makes sense to discuss a 'first' distribution in relation to transfer of ownership, because rental and lending under the basic rules of property law would normally not enable a subsequent further dissemination of the objects beyond the control of the owner (Blomqvist 2014, 120).

Distribution rights are regulated at both international and European Union, and national level.

2.1. International regulation of distribution rights

Berne Convention provides for authors of literary and artistic works exclusive rights of authorizing the distribution of the cinematographic adaptations or reproductions of their works (Article 14 (1)(i)). Article 14 bis (1) grants the owners of copyright in cinematographic works to the same right. The concept of "distribution" as used in these provisions means "putting into circulation" of

copies; that is, the first distribution of copies of works (with which the right of distribution may be exhausted). An implicit right of such first distribution may be deduced, as an inseparable corollary, from the right of reproduction provided by Article 9 of the Berne Convention (Friscor 2004, 283).

The Rome Convention on Protection of Performers, Phonogram Producers and Broadcasting Organisations Rights (hereinafter – Rome Convention) does not provide for a right of distribution.

WIPO Copyright Treaty (hereinafter – WCT) in Article 6 sets that authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership. It provides, that the right of distribution refers exclusively to fixed copies that can be put into circulation as tangible objects (Calame et al. 2014, 2). So, only fixed copies that can be put into circulation as tangible objects are subject to the right of distribution under WCT.

Same does WIPO Performers and Phonogram Producers Treaty (hereinafter— WPPT) in Articles 7 and 12.

This right, in the official titles of those Articles, are referred to as "right of distribution." The issue of the exhaustion of the right of distribution, if any, is left to national legislation. Under the two treaties, "distribution" is used in the narrower sense (Friscor 2004, 283).

On international level no rental and lending is considered as distribution.

2.2. EU regulation of distribution rights

On the EU level distribution right is defined in three directives:

1. Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (hereinafter – Rental and Lending Directive 92/100/EEC) – in Article 9;
2. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (hereinafter – Copyright Directive 2001/29/EC) – in Article 4;
3. Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (hereinafter – Software Directive 2009/24/EC) – in Article 4.1.c.

Directives state that the Member States shall provide distribution rights:

1. in Rental and Lending Directive 92/100/EEC: the exclusive right for performers, phonogram and film producers and broadcasting organizations to make available their performances, phonograms, films and broadcasts, to the public by sale or otherwise, (Article 9.1).
2. in Copyright Directive 2001/29/EC: the exclusive right for authors, in respect of their works to authorise or prohibit any form of distribution

to the public by sale or otherwise. (Article 4.1). Recital 28 in the preamble to Directive 2001/29/EC state, that copyright protection under this Directive includes the exclusive right to control distribution of the work incorporated in a tangible article. Further it clarifies, that rental and lending rights for authors have been established in Directive 92/100/EEC.

3. in Software Directive 2009/24/EC – the exclusive rights of the rightholder include the right to do or to authorise any form of distribution to the public, including the rental, of the computer program (Article 4.1.c).

In Directives 92/100/EEC and 2001/29/EC only sale or otherwise alienation (gift, presentation etc.), but not rental or lending of work or neighbouring rights object is considered to be a distribution. In Directive 2009/24/EC distribution to the public includes as well a right to rent software. In all directives object has to be incorporated in a tangible article.

2.3. Regulation of distribution rights in Latvia

At the level of national legislation, the concept of "distribution" is with differing meaning, either according to the broader sense or according to the narrower sense. In accordance with this, two legal techniques are used for achieving the result required by the provisions of the WCT and the WPPT referred to in the preceding point. Either a right of first distribution is provided for (that is, a right of distribution corresponding to the narrower concept of "distribution", which is exhausted with the first sale of the copies concerned) along with a right of rental, or a general right of distribution (corresponding to the broader concept of "distribution," is granted, which is, in general, exhausted with the first sale of the copies concerned; however, with the exception of rental as a sub-category of distribution in the cases where the treaties provide for a right of rental (Friscor 2004, 283).

In Latvia the national Copyright Law (hereinafter – Copyright Law) defines the distribution as an activity by which the original or copy of the copyright or neighbouring rights object is sold or otherwise alienated (Art.1 Point 11). Additionally, with respect to the use of the neighbouring rights, objects rightowners have the exclusive rights to distribute: fixation of performance (Art.48 Part 3 Point 3), phonogram (Art.51 Part 1 Point 1), film (Art.50 Point1), fixation of broadcast (Art.53 Part 1 Point 6) and photographic image of the screen from a broadcast (Art.53 Part 1 Point 3) (Bukaldere et at 2014).

So, the Latvian national law states that only a sale or other alienation of physical copy is distribution, and it does not apply to the lease or rental of this copy.

3. Exhaustion of distribution rights

Exhaustion of any rights in general means losing the enjoyment of rights by exercising them in a certain way (Friscor 2004, 288). In the field of copyright and related rights, the principle of exhaustion of rights is applicable to the right of distribution. As a rule, the right of distribution, in respect of a copy, is exhausted with the first sale of that copy, or with other first transfer of the property right in that copy. Therefore, the doctrine on which the principle of exhaustion of the right of distribution is based is called the "first-sale doctrine." The purchaser of a copy of a work and/or object of related rights is free to do certain acts regarding that copy, such as resell it, and in some cases, rent it (but not reproduce it), because the right of distribution of the owner of copyright and/or object of related rights in respect of the given copy has been exhausted (Friscor 2004, 289).

The exclusive rights exhaust as soon as the protected product has been brought to the market by the copyright owner or his licence. It is important to note that this doctrine applies to the physical good onto which the copyright creation is embodied, and not to the copyrighted creations itself (Watt 2014, 291).

A parallel-imported product is a legitimately manufactured product under intellectual property protection that is first placed into circulation in one country, and then is imported to a second country without the consent of the owner of the intellectual property rights (IPRs) such as copyrights that are attached to the product in the second country. In contrast to pirated copyright-protected or counterfeited products, parallel-imported products are legitimate products. However, they may not carry the original producer's warranty and may be packaged differently (Watt 2014, 287).

Generally, copyrigh confers the right to prevent others from taking certain actions such as making, selling, and using a protected product. However copyrights do not confer the right to control the product after it has been placed on the market either by the right holder himself or with his consent. The copyright owner loses his privileges to control further commercial distribution after the first distribution of protected products (Papadopoulos 2003, 329).

3.1. International regulation of exhaustion of distribution rights

Exhaustion of copyrights is neither mentioned in the Berne Convention, nor in the Rome Convention.

Aspects of exhaustion have been negotiated in connection with Trade-Related Aspects of Intellectual Property Rights Agreement (hereinafter – TRIPS) and in WCT. Both the TRIPS and the WCT Treaty make an express reference to exhaustion of rights. According to Article 6 of TRIPS, member states are free to regulate the question of exhaustion. Regarding exhaustion, Article 6(2) states that nothing in this Treaty shall affect the freedom of contracting parties to determine the conditions, if any, under which the exhaustion of the right applies after the

first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author. There are no specific rules or standards regarding exhaustion of copyright set by WCT. (Calame et al. 2014, 2).

So, regulation about of exhaustion of distribution rights on international level is very poor. But the regulation is found in the EU law and national law.

3.2. The EU regulation of exhaustion of distribution rights

On the EU level exhaustion of distribution rights is defined in three directives: in Rental and Lending Directive 92/100/EEC (in Article 9.2), in Copyright Directive 2001/29/EC (in Article 4.2), and in Software Directive 2009/24/EC (in Article 4.2). Directives state that Member States shall provide exhaustion of distribution rights:

1. in Rental and Lending Directive 92/100/EEC: The distribution right shall not be exhausted within the Community in respect of an object as referred to in paragraph 1, except where the first sale in the Community of that object is made by the rightholder or with his consent, (Article 9.2).
2. in Copyright Directive 2001/29/EC: the distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent (Article 4.2). Recital 28 in the preamble to Directive 2001/29/EC states, that first sale in the Community of a work by the rightholder or with his consent exhausts the right to control resale of that object in the Community. Further – in the next Recital (29)it is said, that the question of exhaustion does not arise in the case of rental and lending of the original and copies of works or other subject-matter which are services by nature;
3. in Software Directive 2009/24/EC: the first sale in the Community of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program (Article 4.2.).

Under the EU law the distribution right shall be exhausted within the Community, if the owner or with his consent a copyright protected object is sold or presented to other person, but rental and lending rights are not subject to exhaustion.

3.3. Regulation of exhaustion of distribution rights in Latvia

In Latvia Copyright Law Article 32 sets that the right to distribute a work shall be exhausted from the moment when such work is sold or otherwise alienated in the European Union for the first time if it has been done by the author himself or herself, or with his or her consent. The current provisions on the exhaustion of distribution rights were introduced by the amendments valid from May 1, 2004 and the territory of the exhaustion of distribution rights was amended from

Latvia to the European Union according to the requirements of Directives 91/250/EEC, 92/100/EEC, 96/9/EC and 2001/29/EC (Bukaldere et al. 2014).

So, in Latvia the exhaustion of rights applies only to works embodied in concrete material objects or the copies which are sold or otherwise alienated.

In legal doctrine one can find the idea that the exhaustion of the rights within EU room includes not only software embodied in concrete material objects, but also online transmitted copies, and that Article 32 of Latvian Copyright Law regarding distribution of software online does not comply with the Software Directive (Gulbis 2012, 135–136).

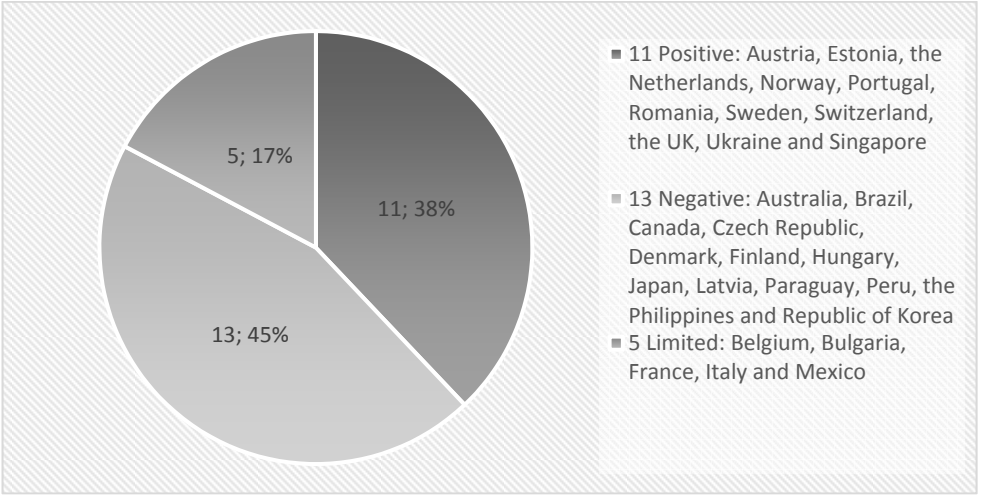
This idea is further enhanced by the Court of Justice of the European Union (hereinafter – CJEU) Judgment on the use of software distribution UsedSoft v. Oracle (of July 3, 2012; C-128/11), which will be analysed in the next sections of this Article.

4. View to possible on-line exhaustion in selected countries

On September 14–17, 2014 Toronto, Canada an AIPPI Congress was held, where participated Members of a National or Regional Group from Countries all over the world.

AIPPI is an international association for the protection of intellectual property. It is a non-profit organisation which unites practitioners, academics and owners of intellectual property. It is the world's leading non-government organisation for research into, and formulation of policy for, the law relating to the protection of intellectual property. Scientists and practitioners, who wish to become a member of AIPPI, may join particular National or Regional group. According to the Statutes (AIPPI 2014, 24) all Members of a National or Regional Group are Members of AIPPI.

One of the four questions on the agenda of the Congress was devoted to exhaustion issues in copyright law. During the preparation of the issue a series of questions were asked to 27 regional and national groups, and one of the blocks of questions related to the exhaustion of the right online. The author of this article offers an overview of national reviews of the possibility to extend the exhaustion of distribution right to the internet environment.



4.1. Countries with positive attitude to on-line exhaustion

National groups of 11 countries (Austria, Estonia, the Netherlands, Norway, Portugal, Romania, Sweden, Switzerland, the UK, Ukraine and Singapore) opined that there should be on-line exhaustion – 38% from overall countries.

The Austrian Group points out that considering the rapid technical development and the common practice to acquire copyright protected works by means of download, there is a need to regulate online-exhaustion.

The Dutch Group opines that the exhaustion of rights for works that are being distributed online is in line with the principles of free movement of goods and services. Furthermore, the rightholder would have an opportunity to seek additional remuneration on top of the compensation which he or she already obtained upon the first sale, which could be in conflict with the principle that the right owner must have the opportunity to obtain a reasonable compensation for his creative efforts.

The Norwegian Group points out, among other things, that if there were no on-line exhaustion, the right holder's position would de facto be strengthened to the detriment of the purchaser. For the purchaser also an investment in software (or another copyrighted work) will become a "sunk" investment, inter alia because there will be no "'second-hand" markets.

The UK Group indicates a similar observation. The principle of exhaustion is designed to prevent unjustified monopoly control of intellectual property rights by rights holders and in particular (for the EU) prevent unjustified fragmentation of the internal market by restricting cross border trade. With appropriate conditions there is no reason that this principle cannot be ap plied to intangible forms in a way that does not undermine the existing justification and is future proof for developments in technology.

The Swedish Group opines that the difference between copies stored on tangible media (such as a CD or DVD) and downloaded copies are the method of distribution, whereas the economic transaction remains the same. The Romanian Group seems to have a similar view. The Swedish Group also points out that this is a reasonable and fair development of the principle of exhaustion, especially that sophisticated digital rights management (DRM) systems are available to rightholders and introducing a mechanism permitting the transfer of "purchased" digital works to a third party is not a technical impossibility today for the many digital online marketplace operators. The Swiss Group has a similar view. The Swiss Group also opines that on balance, accepting on-line exhaustion would lead to a more secure and more competitive digital economy.

The Singaporean Group opines that if we accept the argument that once copyright owners have reaped the benefits of their exclusive rights by the commercial exploitation of their works, they should not be allowed to use copyright as subsequent barriers to the distribution and circulation of the copyright works. Consequently, there is no reason why there should not also be online exhaustion of downloaded copies while the Group also indicates some differences with downloaded copies and copies stored on tangible data media (AIPPI 2014).

4.2. Countries with negative attitude to on-line exhaustion

National groups of 13 countries (Australia, Brazil, Canada, Czech Republic, Denmark, Finland, Hungary, Japan, Latvia, Paraguay, Peru, the Philippines and Republic of Korea) opined that on-line exhaustion should not be recognised – 45% from overall countries.

Latvia points out that Copyright Law does not recognize on-line exhaustion or exhaustion in the case of downloaded copies of copyrightable works. The exhaustion of rights applies only to works embodied in concrete material objects or the copies thereof and which are sold or otherwise alienated. The Copyright Law includes provisions arising out of the implementation of Directive 2001/29/EC; therefore, the explanation provided within the respective preamble Point 29 may be referred to, namely "The question of exhaustion does not arise in the case of services and on-line services in particular". The Copyright Law includes the reference that it contains legal provisions resulting from the Directive 91/250/EEC in the legal protection of computer programs. According to the ruling of Court of Justice of the European Union (CJEU) in the case UsedSoft v. Oracle, this Directive should (as *lex specialis* in relation to Directive 2001/29/EC) be interpreted as allowing to apply the principle of exhaustion to the download (intangible) copies of software. Downloaded copies are not embodied, they are not distributed, but have been made available. It does not comply with provisions of exhaustion of rights (Bukaldere, Veiksa, Valle, 2014).

Some Groups indicate, as a ground for denying exhaustion of downloaded copies that downloaded copies are not fully comparable with copies stored on tangible

data media and thus online exhaustion of downloadable copies could pose a great danger of opening floodgates to copyright infringement. Whether or not downloaded copies are fully comparable with copies stored on tangible data media was discussed under a separate title above.

The Canadian Group points out that it may be inappropriate to apply the exhaustion doctrine to digital works, as the rationale for the first sale doctrine was meant to prevent copyright holders from controlling the subsequent sale or other distribution of the physical substrates with which the conventional copyright works were associated, while the Group notes that this question is difficult to answer with a simple yes or no.

The Finnish Group opines that as the downloaded copy is always a new digital copy of the downloaded work, the scope of on-line-exhaustion will therefore be broader than the scope of exhaustion of distribution right related to tangible copies since the latter is limited only to the redistribution of a particular copy sold or otherwise permanently transferred with the consent of the rightholder (AIPPI 2014).

4.3. Countries with limited attitude to on-line exhaustion

National groups of 5 countries (Belgium, Bulgaria, France, Italy and Mexico) agreed to on-line exhaustion to a limited extent or on some conditions – 17% from overall countries.

The Belgian Group opines that the full equal treatment, conceived as a general rule, of both tangible and intangible copies is definitely not an acceptable solution because (1) in the *Used soft* judgment, the European Court of Justice itself seems to indicate that so-called intangible copies may be compared with tangible copies only in (very) specific situations; (2) more importantly, it should be kept in mind that the exhaustion cannot result in a limitation of the exclusive right of communication to the public, including the exclusive making available right; and (3) moreover, Directive 2001/29 itself states that "the question of exhaustion does not arise in the case of (...) on-line services (...) every on-line service is in fact an act which should be subject to authorisation where the copyright or related right so provides". The French Group have a similar view.

The Bulgarian Group opines that due to the fact that the downloaded copies are easily reproducible and difficult to control (especially when it comes to the territorial limitations of the first sale concept) the copyright holder should be guaranteed that his/her copyrights are not violated in applying the distribution right exhaustion concept and therefore, if on-line exhaustion of downloaded copies is provided for in the national legislations, explicit exceptions and imitations should be also stipulated in the respective legal frameworks so as to protect the essential absolute character of the copyrights worldwide.

The Italian Group opines that in order to preserve the good functioning of the copyright system in the on-line scenario, it deems that the principle of the

exhaustion should apply in certain circumstances to the downloaded copies (only), provided that it is possible to apply technical measure that can actually prevent the free multiplication of the said copies by the buyer.

The Mexican Group notes that since the manner in which works contained in digital supports can be easily reproduced, copied, transferred, used and/or distributed, it shall be established in the Law that the original acquirer of the work in that digital support has to make their own copy unusable on resale, just as if the program was sold on in a tangible medium.

The US Group indicates that it does not take a position as to whether there should be on-line exhaustion of downloaded copies. They point out that there are many who believe the first sale doctrine for on-line or digital copies should be follow the common law principles of the first sale doctrine codified in the subsequent Copyright Acts while many others believe such a policy of online exhaustion of downloaded copies would create substantially more harm to copyright owners than provide any lawful benefit to consumers (AIPPI 2014).

It was planned to include an answer to this question in final Resolution, but the national thoughts and beliefs on this issue was so different, so it was decided that the issue has to be left to the next congresses (AIPPI, 2014, 3).

5. Nature of rights in on-line environment

In the digital world, fewer and fewer tangible data media are used for the distribution of copyrightable works. Software, music, films, games or e-books may be downloaded or streamed from online-shops for permanent or temporary use. One of the issues is whether or not such distribution involves a sale or a licence (AIPPI 2014, 2).

With the advent of the World Wide Web and improved connections and bandwidth, the activities and types of users of the Internet have expanded and changed. Many individuals now experience the Internet as consumers. There is also a growing social aspect to Internet activity. The Internet also provides new, often easier, ways of committing established types of unlawful activity, including copyright infringement. The ease with which copyright material can be shared online and the fact that the Internet transcends geopolitical and jurisdictional borders have made it challenging for rights holders to enforce rights (Muir 2013, 256).

The exhaustion of rights in the work and/or object of related rights embodied in the copies in respect of which the right of distribution is exhausted does not extend to any other right, such as the right of reproduction, and to any non-copy-related rights or transformation rights. It also does not extend to the right of [interactive] making available of works and objects of related rights to the public (Friscor 2004, 289).

Exhaustion principle is to be applied both to distribution of computer program recorded on a tangible medium and to its online distribution. Latter is to be

concluded at the EU level, but not at the Latvian level because of incompatibility of Latvian Copyright law in this particular issue to the EU Directive 91/250/EEC (codified version: 2009/24/EC) on the legal protection of computer programs (Gulbis 2011, 1).

Therefore, in the new digital environment the existing concept of exhaustion of distribution rights no longer meets interest and a reasonable demand of information society, so this regulation should be reviewed.

5.1. Judicial decision

On 3 July 2012 CJEU in case *UsedSoft v. Oracle* has recognised exhaustion of copyright for permanent copies of computer programs downloaded online under certain conditions.

On 3 July 2012 CJEU made a ground-breaking decision that affects many of our clients across the Baltic States who (re)sell software licences (local software vendors or software distributors) and companies (end-users) who acquire software and licences for their own business. Court found that software copyright holders have no right to block resale. The Court ruled that trading "used" software licences is legal and that a copyright holder of such software cannot oppose resale. The exclusive right of distribution of a copy of a computer program covered by a licence is exhausted on first sale. This applies to downloaded software as well as software bought on CD/DVD (Sorainen 2012).

The court concluded that the transfer by the copyright holder to a customer of a copy of a computer program constitutes a first sale of a copy of a program within the meaning of Article 4(2) of Directive 2009/24, regardless of whether the copy of the computer program was made available in tangible or intangible form.

The Court points out, however, that if the licence acquired by the first acquirer relates to a greater number of users than it needs, that acquirer is not authorised by the effect of exhaustion of the distribution right to divide the licence and resell only part of it. Furthermore, the Court stated that an original acquirer of a tangible or intangible copy of a computer program for which the copyright holder's right of distribution is exhausted must make the copy downloaded onto their own computer unusable at the time of resale (Sorainen 2012).

CJEU has held that a distribution rights are exhausted if copyright owner, who allowed downloading software from internet to the media, has awarded the rights to use this copy indefinitely. The Court points out, however, that if the licence acquired by the first acquirer relates to a greater number of users than he needs, that acquirer is not authorised by the effect of the exhaustion of the distribution right to divide the licence and resell only part of it. Multi-user-licences can't be split up and sold separately, because they are intended for sale in a package, so the price is set accordingly.

The judgment of CJEU has developed a conflict between judicial decision and Latvian national law. Latvian Copyright Law makes it clear that "distribute" on

the Internet means "making available by wire". Consequently, these rights can't expire within the meaning of Article 32 of the Copyright Law.

According to the necessity required by digital environment, there should be done legislative amendments at both level – in EU and national laws.

5.2. Statutory regulation

Existing regulation

On-line distribution via the Internet is considered to be a subject to making available rights, not distribution rights. Making available of a work over the Internet does not qualify as 'publication' in the sense of Article 3(3) of the Berne Convention. One might argue that this is not obvious when the making available takes place in such a way that the author allows members of the public to produce copies of the work, once downloaded (Blomqvist 2014, 34).

Recital 29 in the preamble to Directive 2001/29/EC states that, unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, every on-line service is an act which should be subject to authorisation. Recital (29) states, that the question of exhaustion does not arise in the case of services and on-line services in particular.

Further, Article 3 of Directive provides, that member states shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them. Making available rights are not subject to exhaustion of rights. It is defined in part 3 of Article 3, that the right of making available to the public shall not be exhausted.

As we see – under the EU law the right to authorise or prohibit any communication to the public of their works by wire or wireless means shall **not** be exhausted by any act of communication to the public or making available to the public.

Proposed amendments to national regulation

Since on-line exhaustion or exhaustion in the case of downloaded copies of copyrightable works is not recognized by the Copyright Law, a lot will depend on the implementation of CJEU ruling in Latvia.

But some amendments could be made to the Copyright Law, keeping the requirements of the Directive. The main issue is that during on-line availability the number of copies of object may not increase, otherwise it is infringement of reproduction right.

The term of "distribution" is defined in Section 1, point 1. This definition could be amended as follows: " distribution – an activity by which the original or copy of the copyright or neighboring rights object is sold or otherwise alienated; as

well made available to the public by wire or by other means, on the condition that number of copies of object does not increase".

The Exhaustion of Distribution Rights is defined in Section 32 of Copyright Law. The second sentence of Section could be amended as follows: "This condition applies only to works embodied in concrete material objects or the copies thereof and which are sold or otherwise alienated; as well made available to the public by wire or by other means, on the condition that number of copies of object does not increase."

If such amendments are made, then exhaustion principle will be applied both to distribution of works recorded on a tangible medium and to its online distribution and compatibility of Latvian Copyright Law in this particular issue to the EU Directives will be ensured.

Conclusion

Under the current Latvian law exhaustion of rights concerns only the rights of distribution in relation to all kinds of copyright-protected works, given that they are embodied in concrete material objects.

The judgment of CJEU in case UsedSoft v. Oracle has developed a conflict between judicial decision and Latvian national law. According to the necessity required by digital environment, there should be introduced legislative amendments at both levels – in the EU and national laws. Some amendments could be made to the Copyright Law, keeping the requirements of the Directive. The main issue is that during on-line availability the number of copies of object may not increase; otherwise it is infringement of the reproduction right.

The exhaustion of distribution rights defined in Latvian Copyright Law could be amended with enlarging of exhaustion of distribution rights in case when the copyright protected object is made available to the public by wire or by other means, on the condition that the number of copies of the object does not increase.

If such an amendment is made, then exhaustion principle will be applied both to the distribution of works recorded on a tangible medium and to its online distribution and compatibility of Latvian Copyright Law in this particular issue to the EU Directives will be ensured.

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KOPSAVILKUMS

VIENOTĀ SPĒKA EIROPAS PATENTS

Holgers Baks, dr.jur., profesors

Raksta mērķis ir informēt par jauno Vienotā spēka ES patentu, izmantojot aprakstošo metodi un analizējot attiecīgos juridiskos dokumentus un izteiktos viedokļus. 2012. gada decembrī Eiropas patentu pakete ieguva juridisku spēku Eiropas Savienībā. Tā kā trīs ES dalībvalstis neatbalstīja šo jēdzienu, Eiropas patentu pakete realizē tiesiskās iespējas ciešākas sadarbības veicināšanai. Izmantojamo valodu ierobežojums bija galvenais šķērslis Vienotā spēka Eiropas patenta apstiprināšanai "vienas pieturas aģentūrā". ES Vienotā spēka patents varētu tikt oficiāli ieviests 2015. Gadā, pēc tam, kad vismaz 13 Nolīguma ratifikācijas dokumenti tiks pieņemti par Vienotās patentu tiesas izveidi. Priekšlikuma vēsture ilgst no 1970. gada līdz pat esošajai Vienotās patentu paketes izveidei. Vienotā spēka Eiropas patents ir iekļauts jau labi zināmajā starptautisko un Eiropas patentu sistēmā un ir saistīts ar "klasisko" Eiropas patentu un Eiropas patentu iestādi. Jaunizveidotajai Vienotā patenta tiesai jāpiešķir sevišķas pilnvaras.

KĀ BULGĀRIJĀ UZLABOT ANTIMONOPOLU LIKUMU IZPILDI, KAS VĒRSTI PRET DOMINĒJOŠĀ STĀVOKĻA ĻAUNPRĀTĪGU IZMANTOŠANU: CITU ES DALĪBVALSTU PIEREDZE

Ralica Dimitrova, PhD

Brīva un efektīva konkurence paredz, ka uzņēmumiem nav jāiesaistās darbībās, kas sekmē monopolu izveidi un kavē citu uzņēmumu iekļaušanos tirgū. Sakarā ar iestāšanos Eiropas Savienībā Bulgārijas antimonopolu noteikumu izpildes likumi tika pilnībā saskaņoti ar ES likumdošanu. Taču likumu pret konkurences ierobežošanu īstenošanas gaitā neizbēgami bija vērojami arī trūkumi, kaut gan, no otras puses, pret konkurenci vērstās darbības arī mainās. Rakstā veikta īsa pret dominējošo stāvokli vērsto likumu un to īstenošanas salīdzinoša analīze trijās ES dalībvalstīs – Bulgārijā, Francijā un Īrijā, lai veiktu pasākumus, kas sekmētu Bulgārijas antimonopolu likumu izpildi. Autore galvenokārt pievēršas dažāda veida atbildībai par antimonopolu likumu pārkāpšanu, īpašu uzmanību pievēršot krimināltatbildībai par šo likumu neievērošanu. Autore secina, ka par karteļu noziedzīgu darbību ir paredzēta krimināltatbildība; savukārt, par dominējošā stāvokļa ļaunprātīgu izmantošanu krimināltās sankcijas nav paredzētas, un Bulgārijas atbildīgajiem varas pārstāvjiem vairāk jāpievērš sabiedrības uzmanība antimonopolu likumu neievērošanas sekām, kā arī personīgai atbildībai par šo likumu neievērošanu.

PERSONĀLA VADĪBAS JOMAS KVALIFIKĀCIJAS DARBU IEGULDĪJUMS ORGANIZĀCIJU ATTĪSTĪBĀ

Armands Kalniņš, Mg.paed., Mg.oec (pielīdzināts)
Sanita Čerpinska, Mg.oec

Pētījuma temats: Alberta koledžas personāla vadības jomas kvalifikācijas darbu temati un rezultāti, to ieguldījums Latvijas organizāciju attīstībā. Izpētes mērķis: analizēt iespējamo Alberta koledžas personāla vadības jomas kvalifikācijas darbu ieguldījumu Latvijas organizāciju attīstībā.

Pētījuma metodes, kuras tika izmatotas izpētē: monogrāfiskā analīze, dokumentu analīze, kontentanalīze, salīdzinošā un loģiskā analīze, grafiskā metode, ģeneralizācija; empīriskajā izpētē – gadījumu analīze, izmantojot dažādu laika posmu studentu kvalifikācijas darbus.

Alberta koledžas studējošie izstrādā kvalifikācijas darbus, pamatojoties uz konkrētas organizācijas izpētes bāzes. Studentiem iespējams izvēlēties tikai tādus kvalifikācijas darbu tematus, kas ir aktuāli tai organizācijai, kurā notiek kvalifikācijas prakse. Šāda izvēle ļauj spriest par šo organizāciju personāla vadības prioritātēm un kvalifikācijas darbu ieguldījumu organizāciju attīstībā.

Cilvēkresursu vadības funkcijas var tikt klasificētas dažādi. Tomēr iespējams noteikt tās pamatfunkcijas (personāla izvēle, motivēšana, kompetenču novērtēšana un citas).

Kopumā cilvēkresursu vadība Latvijā bieži tiek kritizēta, bet ieteiktie uzlabojumi var būt noderīgi arī citās organizācijās. Šajā publikācijā tiek analizēti būtiskākie kvalifikācijas darbu ieteikumi, konstatējot, ka Alberta koledžas personāla vadības jomas kvalifikācijas darbi (temati un rezultāti), to ieguldījums Latvijas organizāciju attīstībā ir būtisks.

APVIENOTĀS KARALISTES DAUDZVALODĪBAS PIEREDZES IZMANTOŠANA UKRAINAS VALODU POLITIKAS UZDEVUMU RISINĀŠANĀ

Natālija Karpčuka

Katras valsts iedzīvotāji runā dažādās valodās, kas var novest pie konfliktiem vai draudzīgas līdzāspastāvēšanas. Tādējādi "daudzvalodības" jēdziens ir aktuāls, it īpaši pētot valsts realizēto politiku valodu jomā. Eiropas Komisija definē "daudzvalodību" kā 1) sabiedrības, institūciju, grupu un atsevišķu indivīdu spēju ikdienā regulāri sazināties vairāk nekā vienā valodā, 2) dažādu valodu kopienu līdzāspastāvēšanu vienā ģeogrāfiskā vai ģeopolitiskā teritorijā vai politiskā vienībā. Apvienotajā Karalistē tiek izstrādāti un realizēti vairāki efektīvi pasākumi daudzvalodības un valodu politikas jomā. Beidzot arī Ukraina ir izvēlējusies virzību uz integrācju Eiropas Savienībā, kas paredz ES normu un likumu ievērošanu dažādās jomās, tajā skaitā arī valodu politikā. Gan Apvienotā Karaliste, gan Ukraina ir daudzvalodīgas valstis, lai gan ar atšķirīgu situāciju

valodu jomā. Raksta mērķis ir izpētīt Apvienotās Karalistes progresu tās efektīvajā valodu politikā, lai rastu rekomendācijas veiksmīgas valodu politikas izstrādei autores dzimtenē. Raksta autore pievērš uzmanību Apvienotajā Karalistē realizēto valodu politikas virzienu tiesiskajam pamatojumam un mehānismiem.

TŪRISMA NOZARES DARBA TIRGUS IZAICINĀJUMI UN DARBA DEVĒJU VIEDOKLIS

Egija Reča

Tūrisma nozare ir piedzīvojusi strauju izaugsmi jau vairāku dekāžu garumā, un augstākā izglītība tūrismā ir cieša saistīta ar nozares ekonomisko attīstību. Šajā darbā tiek pētīts tūrisma nozares darba tirgus un tā izaicinājumi Latvijā, kā arī tūrisma nozares, kā atsevišķas industrijas ekonomiskā perspektīva un nozīmība, tās attīstība, apzinoties to, ka tūrisma izdevumi kalpo kā galvenais ienākumu un nodarbinātības resurss daudzām valstīm. Tūrisms var ievērojami uzlabot valsts iekšzemes kopprodukta pieaugumu, un šāda pozitīva tendence ir vērojama arī Latvijā. Rakstā tiek atspoguļoti arī personālvadības izaicinājumi darba tirgū, ieskaitot darba tirgus specifiskās prasības un tā komplekso raksturojumu. Attiecīgi ir izvirzīts pētījuma jautājums: kādas tūrisma prasmes un iemaņas, pēc darba devēju un dažādu līmeņu menedžeru domām, tiek uzskatītas par svarīgām sākuma līmeņa darbiniekiem, un vai rezultāti atbilst pašreizējai situācijai darba tirgū? Izpētes rezultātā, izmantojot kvantitatīvās metodes pieeju, tika apliecināta dažādu '*soft-skills*' nozīmība tūrisma nozares sākuma līmeņa amatos, kā arī tika atklāts studentu kvalitatīvas sagatavošanas procesa būtiskums.

PUBLISKO PERSONU FUNKCIONĀLIE AKTĪVI: IESKATS KONCEPCIJĀ

Ernests Saulītis

Ar publisku personu pārvaldībā esošajiem resursiem ir saistīts sarežģīti juridisku jautājumu komplekss. Risinot šīs problēmas, ir jāsaskaras ar dažādiem tiesību un terminoloģijas konfliktiem. Publiska īpašuma koncepts ir pretrunā ar īpašuma tiesības absolūto raksturu. Arī citi resursi, kas atrodas publisku personu rīcībā un kurus var nosaukt par „īpašumu" civiltiesību izpratnē, pēc savas būtības ir ierobežoti, jo rīcību ar tiem ierobežo normatīvais regulējums. Ņemot vērā resursu daudzveidību, kurus publiskas personas izmanto publisko mērķu sasniegšanai, pat elementāro juridisko terminu lietojums var radīt zināmas problēmas. Analizējot normas, kas ir ietvertas normatīvajā regulējumā, kas nosaka rīcību ar publisko personu rīcībā esošajiem resursiem, saskaramies ar situāciju, ka nav iespējams veikt to interpretāciju, izmantojot tikai civiltiesību doktrīnu. Līdz ar to, šo normu iztulkošanai nepieciešams noskaidrot likumdevēja mērķi un tā izmaiņas laika gaitā. Tomēr vissvarīgākais jautājums, ar kuru saskaras publiskās personas, rīkojoties ar to valdījumā esošajiem resursiem, ir izpratne par šo rīcību regulējošo

tiesību normu juridisko dabu, jo publisko personu rīcības brīvību šajā jomā ierobežo publiskās tiesības. Šā pētījuma mērķis ir sniegt ieskatu tiesiskajā regulējumā, kas saistīts ar resursiem, kuri atrodas publisku personu rīcībā un tiek izmantoti, lai nodrošinātu konkrētu publisko funkciju un uzdevumu izpildi atbilstošajā terminoloģijā, problēmās, kā arī piedāvāt autora viedokli par publisko personu funkcionālo aktīvu koncepciju.

AUTORTIESĪBU IZBEIGŠANĀS UN INTERNETS

Ingrīda Veikša, Dr.iur.

Šis raksts tiek veltīts autordarbu izplatīšanas tiesību izbeigšanai interneta vidē. Literatūras un mākslas darba autoram tiek garantētas virkne mantisko izņēmuma tiesību, tai skaitā tiesības izplatīt savus radītos darbus. Saskaņā ar tiesību normās noteikto regulējumu izplatīšana ir darbība, ar kuru autortiesību vai blakustiesību objekta oriģināls vai kopija tiek pārdota vai citādi atsavināta. Autora tiesības izplatīt darbu izbeidzas ar brīdi, kad darbs pirmo reizi ticis pārdots vai citādi atsavināts Eiropas Savienībā, ja to izdarījis pats autors vai ja tas izdarīts ar viņa piekrišanu. Tomēr šis nosacījums attiecas tikai uz konkrētiem materiālos nesējos (diskos, grāmatās, fotokopijās u.tml.) ietvertiem darbiem.

Mūsdienās darbi aizvien vairāk ir pieejami digitālā formātā, un aizvien biezāk to izmantošanas tiesības tiek iegūtas internetā. Kā ir šādā gadījumā – vai elektroniski pieejami darbi ir uzskatāmi par materializētiem, vai var uzskatīt, ka šie darbi tiek izplatīti un uz šo izplatīšanu attiecas tiesību izbeigšanās?

Lai risinātu šos neskaidros jautājumus, raksta autore analizēja tiesību normas (gan starptautiskās, gan ES, gan nacionālās), aplūkoja doktrīnu (kas gan par šiem jautājumiem nav plaši aprakstīts), kā arī apkopoja dažādu valstu zinātnieku un praktiķu konferencēs referētos pētījumu rezultātus.