

PROCEEDINGS

Estonian Academy of Security Sciences

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SISEKAITSEAKADEEMIA
ESTONIAN ACADEMY OF SECURITY SCIENCES

Tallinn 2013



SISEKAITSEAKADEEMIA
ESTONIAN ACADEMY OF SECURITY SCIENCES

Proceedings
Estonian Academy of Security Sciences
Tallinn 2013 (12)

Connecting Security

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Published by: Estonian Academy of Security Sciences
Kase 61, 12012 Tallinn
Estonia

Address for Submission: teadusinfo@sisekaitse.ee
Homepage of the Journal: <http://www.sisekaitse.ee/proceedings/>

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ISSN 1736-8901 (print)
ISSN 2236-6006 (online)
ISBN 978-9985-67-228-0 (print)
ISBN 978-9985-67-229-7 (pdf)

Printed by: Paar OÜ



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FOREWORD

Lauri Tabur

Editor-in-Chief

The present issue of the Estonian Academy of Security Science, **Proceedings**, brings the publication into a new era. Having bound the contributions of almost one hundred authors in the past twenty years, the **Proceedings** has become one of the most recognisable science magazines in the sphere of internal security in Estonia and surrounding countries. Different approaches of the development of the security environment and what the developmental patterns are of the organisations of internal security have brought to the **Proceedings** more international and national partners, who have helped to develop the peer reviewed publication into a science magazine of good quality with an international circulation. Nevertheless, our work to keep the high quality of the **Proceedings** continues. From this issue forward, **Proceedings** will be published in English along with the renewal of the international editorial board. The aspect of becoming a publication in English has been under consideration by the board for a long time. International interest in the articles published in the **Proceedings** and the Estonian Academy of Security Science's interest to enable our Estonian readers more

original international knowledge and information were the most important reasons why this step was finally advanced and approved. The Board always welcomes feedback from our readers.

Despite the renewed format, we will still keep the approach of the themes of internal security as broad-based as possible. Modern approaches of safety and security have not been matters on their own, something dealt with in dark offices under the veil of secrecy for a long time. A broad-based approach for security also means that we understand the influences the very different processes in society have on the safe life of our people and on the safe coexistence of society. Violence and fatal results are merely final products of a process gone awry. Reasons or the methods we can use to prevent those results may be hidden somewhere far away. This is why sometimes the mission of the **Proceedings** is to go further than traditional approaches of security and deal with topics the editorial staff see are significant for our safe living environment.

This renewed issue of the **Proceedings** is opened by a positive case study about the process of bringing the IT-Agency of the EU to Estonia, made in cooperation by Ketlin Jaani-Vihalem and Ramon Loik. The process of bringing the IT-Agency to Estonia also involved several disputes on the location of the Agency, which were carried out on several levels. At the same time, these disputes took place in the framework of a legal basis and due to the changes made in the decision making process the Treaty of Lisbon brought about, the whole situation was rather complicated. On one hand, Estonia as a candidate for the location of the Agency had to stand up for its interests in the intergovernmental negotiation situation. On the other hand, the logicalities and peculiarities of a formal decision making process had to be taken into consideration. Today it can be said that

establishing the IT-Agency in Tallinn can be regarded as a positive example of Estonia's EU related politics. Being a small country and taking part in the decision making process of the EU gave Estonia valuable experience. As a result of the named experience some improvement activities have already been implemented in Estonia's policy making process. For example, the functionality of a coordination body on the government level has been complemented and in its context a separate format for discussing the questions considering the EU has been established. Since finding allies and establishing coalitions are universal presumptions for being successful in the EU decision making process, the application process also presents an opportunity to develop advanced negotiation skills.

The second article in the **Proceedings** is written by Mari-Liis Mänd and Shvea Järvet, who concentrated on secondary school students' willingness to defend one's country and its connection with the national defence subject taught at school. Although according to the national curriculum for Estonian gymnasiums national defence is taught as an optional subject, there are some schools where taking the course is compulsory for boys only, or it is compulsory for all students. As one of the most important outcomes of the study, the authors emphasise the differences in the will to defend one's country between the students who have taken the national defence course and those who have not. Students who have studied national defence feel they have a higher willingness for defence than those who have not taken the course. The results of the survey also showed that those not having taken the national defence course found that taking the course would increase their will for defence; students having taken the course found that participation has raised their will for defence.

In the third article of the Proceedings Marianne Paimre discusses Estonian local media channels' reflections from 1993 to 2009 on the topics related to narcotics. The author aims to map the tonality of the reflections in different periods and the connection between the tonality and the spreading of narcomania in the society. Considering the fact that the number of users of opiates in Estonia per 10 000 inhabitants is relatively high in the context of the EU and that the number of crimes committed by the users of narcotic substances is high, the topic has been prominently presented in the mass media of Estonia and of many other countries as well. Active presentation in public media establishes different images of the topic in the consciousness of people; the images may affect the behaviour of the risk groups positively or negatively. However, as Paimre concludes in her work, the tonality of the topic has remained largely criminal (negative) in the Estonian media, it has been presented more like a medical or wider social problem in recent years. Every different approach has definitely been influencing the budgets of the institutions involved and thus in the methods with which the state has been trying to control this phenomenon.

Different approaches to penal policy cover the biggest part of the present Proceedings. With the help of a model developed by Gary S. Becker, Indrek Saar, a docent of the Estonian Academy of Security Sciences, opens the topic of the effectiveness of criminal punishment. There are two general conclusions to be emphasised in Saar's approach. First, the level of punishment maximising the well being of the society is positively linked with the marginal expenses on the violation of law and negatively linked with the degree of detecting the violations of law. At the same time, while optimising the level of punishments, other aspects, such as recidivism of offenders, corruption

in the criminal justice system or the influence of the punishment on the fiscal systems in general have to be taken into consideration. Second, while forming the structure of punishments, pecuniary penalties should generally be favoured to non-pecuniary penalties. The reason for this is that the implementation of pecuniary punishments costs less to the society. Implementing non-pecuniary penalties is optimal when the aim of the punishment is incapacitation, or restriction, or if an optimal pecuniary punishment exceeds the value of the assets derived from the crime. Nevertheless, while adapting Becker's model for the Estonian system, Saar does not aim to critically evaluate Estonian penal power. The main aim is to use the model as illustrating theoretical viewpoints and associating it with the legal system valid in Estonia.

The second article dedicated to penal policy is written by a group of authors lead by Lithuanian scientist Aleksandras Dobryninas. The group has examined the topic of legal protection and the trust for the penal system in Lithuania. The topic of trust for public institutions is continuously of high interest to sociologists and criminologists around the world. The authors of the article are especially interested in the sphere of safety, in which the methods implemented for creating the feeling of safety in the society might in some cases be somewhat different from those having real influence on the problems jeopardizing safety. In this light some of the conclusions made by Dobryninas *et al.*, deserve additional attention. According to the authors, the more the people of Lithuania have been in contact with the institutions in question, the lower is the trust they have for legal protection and the penal system. Similarly to the crime victim surveys made in Estonia, the level of trust for the police as an institution is an exception in these surveys, where it has a

positive connotation even among those who have been victimised.

The last collaboration of the **Proceedings** finishes the discussion on the topics concerning penal policies. In her article Ilona Michailovič analyses the results of a survey focusing on studying the connections between restorative justice and victimisation. In the article the author takes Lithuania as an example and examines the different aspects of restorative justice. With the signs of general disturbance and instability in the background, many modern societies are trying to find ways for directing the members of the society to behave so there would be no conditions favouring the act of committing future crimes and at the same time, if a crime has already been committed, the societies are looking for the ways of working off the consequences in such a way they would not reproduce crime. According to Michailovič, implementing the process of conciliation and compensation in the Lithuanian legal system is one of the possible actions to be taken. This applies especially when considering the offences in which minors are involved, in which punishment may have an irreversibly negative effect on a young person. According to the author, a restorative approach has a positive environment and is ready to be implemented in the society.

On behalf of the entire Editorial Board I hope this issue of the **Proceedings** creates interesting thoughts and a wider meaning to the sphere of internal security which will also carry into the future. Should you feel the approaches need further discussion or development, we would be happy if you contacted the editorial staff and let us know of the matter. We are also open to new academic approaches, which in a academic format would support our mutual pursuit for creating policies which lead to living in a more secure environment.



**SMALL STATE PERFORMANCE
IN THE EU DECISION MAKING PROCESS**
CASE OF THE IT-AGENCY ESTABLISHMENT TO ESTONIA

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Keywords: EU decision-making process, IT-Agency, EU JHA/AFSJ,
liberal intergovernmentalism, small Member States

INTRODUCTION

The establishment of *European Agency for the operational management of large-scale IT systems in the Area of Freedom, Security and Justice* (also *IT-Agency* or the *agency*) with its Headquarters in Tallinn, Estonia (approved in September 2011) may be considered as one of the most positive outcomes of the Estonian EU Justice and Home Affairs (JHA) policy so far. It was in Estonia's best interest to create a capable EU body that would effectively support the internal security and law enforcement cooperation within the Schengen area. Estonia considered the IT-Agency as a good opportunity to participate more actively in the EU JHA domain and decided to stand as a candidate country to secure its location. The process demanded comprehensive commitment and a lot of extra national resources (*see also* Jaani-Vihalem & Loik 2013).

During the same period, the entry into force of the Lisbon Treaty brought about principal changes in the decision-making processes considering the EU JHA, which have forced to abjure to the inter-governmental approach and supported the increased role of supranational institutions. As a result, Estonia had to customise two different decision-making processes at the same time – exclusive jurisdiction of the EU Council (from here on *council*), which was partly preserved according to the Treaty of Amsterdam and the co-decision procedure. In order to protect its strategic interests, Estonia had to be able to successfully manage in both of these decision-making processes.

Estonia has continuously been supporting more effective implementation of IT-systems. It has also been done when the EU JHA has been considered, especially in Schengen cooperation, where on

the area without internal borders we have to fight with abuses by using innovative methods. The Schengen information system (SIS), visa information system (VIS) and the fingerprint database identifying asylum seekers (Eurodac) have thus been necessary *compensatory measures* for the EU law enforcement authorities. The safety of the EU largely relies on the flawless functioning of appropriate IT-solutions. In order that this could be assured and developed, the foundation of the agency for the operational management of large-scale IT-based security systems in the AFSJ was an important step to further develop the EU JHA cooperation.

The establishment of new EU bodies, especially the decentralised agencies,¹ has not been a linear process framed by uniform standards. Since the EU agencies have been founded in different Member States (also MS),² in order to make the public perception of the EU better (see European Commission 2008), they have also become so-called subjects of bargain, which is why reaching the agreement to establish an agency in a certain country may cause complex negotiations with some significant influence on the relationships between MS. The process of the IT-Agency establishment included also disputes on different levels. At the same time those negotiations were carried out in the framework of the preceding legal basis of the agency, which were brought along with the treaty reforms. The Republic of Estonia, as one of the candidates for the country of location, had to be capable to present its interests in the intergovernmental negotiations, as well as respect the peculiarities of a formal decision-making process.

¹ *Decentralised agencies* are independent legal entities operating according to the EU public law and mainly fulfil some technical, scientific, operational and/or regulative tasks.

² For brevity, MS is used for both plural and singular, Member States and Member State.

Establishing the headquarters of the EU IT-Agency to Tallinn could be considered as a positive *case* for further research on how a small MS could be successful in the EU decision-making.

Although there have been several researches focusing on defining the success or the extent of impact of small countries in EU cooperation (e.g., Beinaroviča 2012; Golub 2013; Lehtonen 2009), but the scope has rarely been set on explaining the specialities of internal security issues. As a result, the actuality of the study lies in the necessity to explain what could be considered efficient when looking at Estonia participating in the EU JHA decision-making process. For that purpose, an explanatory case study object to get a detailed understanding about the options and the processes connected to it were carried out (see, among others, George and Bennett 2005; Gerring 2005; Baxter & Jack 2008; Dul & Hak 2008; Laherand 2008; Flyvberg 2011). The data was collected by eleven detailed expert interviews from Estonia and the EU institutions involved.³ Relevant documented sources as articles, legal acts, proposals, overviews, guidelines and memos, *etc.*, were used for empirical input of the study.

In order to reach the target of the study (i) an analytical overview of the EU JHA cooperation aims was presented and the liberal intergovernmental approach as a theoretical framework were evaluated; (ii) formal decision-making process of the EU JHA, the position and potentiality for shaping the decisions are described in detail; (iii) the aspects for Estonia as a small MS being efficient

³ In order to get information as versatile as possible, the experts were chosen according to a pattern in which all important roles would be present (incl., initiators, facilitators, decision-makers, accomplices). When categorising, the roles and positions during the period of the establishment of the agency and their position in the decision-making chain were also taken into consideration.

in the decision-making process of the EU JHA are defined, taking the establishment of the IT-Agency as an *ex post* case, incl., (a) description of central enabling and preventing aspects as detailed as possible; (b) analyses of whether Estonia relied on the success models of small countries in the establishment of the IT-Agency and in what extent did these support the success, as well as (c) the extent of the impact of the intergovernmental approach and the main aspects of what enabled Estonia to succeed are deduced. As a result, some suggestions for increasing the effectiveness in the EU decision-making processes are proposed.

SET OF MAJOR AIMS FOR THE EU INTERNAL SECURITY DOMAIN

Development of some prompt aims in the sphere of EU internal security can be discussed relevant to the Treaty of Amsterdam. At the Tampere European Council (1999) the necessity to establish an area based on freedom, security and justice (AFSJ) stated as an aim in the Treaty of Amsterdam, was approved. This would be supported by the first strategic plan – Tampere Milestones – that proposed direct political guidelines for the EU JHA by a certain action plan (European Council 1999). By commencing the *Tampere Process* as a basis for the cycle of strategic planning was established.⁴ While

⁴ *Tampere process* was followed by the Hague Programme (2004–2009), which in turn was followed by the Stockholm Programme (2010–2015). The programmes and the goals that were set, aimed to map actual problems and offer suitable solutions for the EU internal security. For example, the Tampere process mainly concentrated on reaching the aims set in the Treaty of Amsterdam, thus the main focus was on developing a uniform asylum and migration policy, creating an area offering legal protection, fighting against crime and strengthening sectoral activities directed outside the EU (see European Council 1999).

setting the aims for following The Hague Programme, the event of 9/11 and its demands for internal security cooperation were taken into consideration. This is why in addition to improving the principle of free movement, more attention has been drawn to assuring safety and consolidating internal security cooperation (Council of the European Union 2004). The Stockholm Programme was more citizen-orientated, focused mainly on citizenship and fundamental rights, solidarity and partnership issues when considering the matters of migration and asylum (see Council of the European Union 2009b).

Until the Lisbon Treaty, setting strategic aims for EU security concerns was mainly an intergovernmental matter (Carrera & Guild 2012, p. 2). Composing the Stockholm Programme and especially its operational programme was influenced by the soon to be enforced Treaty of Lisbon and the significant increase of the importance of EU institutions. Although the changes brought about by the Treaty of Lisbon had been approved by the MS, still transferring from previous practice to the new organisation of cooperation was difficult. For example, MS found that while composing the operational programme the commission had gone significantly further, compared to what had been agreed upon in the programme itself (Carrera & Guild 2012, p. 3). It is important to note that the plan to establish the IT-Agency was proposed by the Stockholm Programme.

Since joining the European Union on May 1st 2004, the Estonian government has stated principles and aims to rely upon when considering the activities involved in the relationship with the EU (see the website of the Government Office: *Estonia's European Union aims and policies*). The outcome of the latter is a framework

document that in the beginning was called *The Government's European Union Policies*, later *Estonia's European Union Policies* (EUPOL).⁵ The EUPOL is a document from which one can find the most important political aims the government relies on with matters related with the EU. Among others, the judicial questions and home affairs have always been a part of the EUPOL. One of the most important aims of the first EUPOL was making Estonian citizens more familiar with Europe and ensuring citizens' safety and security (Government Office 2004).

The second EUPOL focused on improving the EU JHA cooperation by stimulating cross-border activities, establishing a safer Europe and cooperating with third world countries (Government Office 2007, pp. 31-36). It is important to note that by establishing a safer Europe, widening the Schengen area of justice and commencing the use of SIS II and VIS were also considered important. In the half-year priorities (from the 1st half on 2009 to the 2nd half of 2010) it was constantly mentioned that Estonia supports the establishment of the IT-Agency and wishes to present its candidacy as the host country (see Government Office 2009a, 2009b, 2010a, 2011b). The current EUPOL (2013) emphasises the influence of the principal changes arising from the Treaty of Lisbon on the whole decision-making process of the EU in the spheres of the previous so-called *third Pillar* competencies when setting aims for the JHA. As a result it is referred that there is a need to harmonise the legislative drafting more than before. The interests of Estonia are

⁵ The first similar document was adopted for years 2004–2006, followed by strategies covering longer periods, 2007–2011 and 2011–2015. EU Secretariat (EUS), ministries and non-state organisations have contributed to composing the EUPOL (see also Government Office 2011a).

thus stated as making cooperation more effective when combating drug and cyber related crime, human trafficking, commencing the use of new IT solutions and unifying information systems. The importance of Schengen co-operation, more successful migration management and better need for personal data protection have been highlighted (Government Office 2011a, p. 42).

THEORETICAL PERCEPTION ABOUT IT-AGENCY ESTABLISHMENT

The intergovernmental approach was dominant in the EU JHA cooperation until the Treaty of Lisbon reforms. The establishment of the IT-Agency was discussed before the Treaty, which is why it is reasonable to evaluate the process of the agency establishment in the context of the intergovernmental theory. When analysing the case, one might assume that the preferences of Member States involved were mainly based on the aspects of assuring safety; at least none doubted its significance. For Estonia the question about the location was in principal – an option to ‘get closer’ to Europe and thus ensuring its position in the EU. In addition, Estonia saw a perspective that bringing the agency to Tallinn would also approve the international business and educational environment (see Pomerants 2013).

Andrew Moravcsik explains European integration through the intergovernmental theory. Among other approaches, he relies on Robert Putnam’s *two-level game theory*. According to the latter, the integration of the EU can be characterized as a so-called *game* on two levels: first on an internal and second on an international level. On the first level national interests are shaped, on the second

level these are tested in the form of intergovernmental negotiations (Putnam 1988). Liberal intergovernmentalism is a further development of Stanley Hoffmann's intergovernmentalism, according to which in international cooperation countries rely on rational self-interest and integration is possible only in the spheres of the so-called low politics (Hoffmann 1965).

Liberal intergovernmentalism springs from an assumption that the main establishers of politics are rational states (Moravcsik & Schimmelfennig 2009, p. 68). The growth of the EU can also be explained through the realisation of the interests of the (member) states. According to the theory, countries strive to achieve their goals by intergovernmental negotiation and by using bargaining strategies. The EU is rather composing a suitable framework for the countries to co-ordinate politics and the countries are using it to realise their interests. When choosing a suitable way of behaviour the countries try to find a solution that is the most profitable at the time. Critics claim that intergovernmentalism is focusing only on broad changes, in which MS has greater competence and which is why the theory is incompetent to explain the every-day or routine decision-making processes of the EU (Moravcsik & Schimmelfennig 2009, p. 73; see also Bache & George 2006).

Liberal intergovernmentalism explains that countries cooperate only if mutual interests exist and only in the extent of interests. The theory is explained through three main processes (two of which have been derived from Putnam's *two-level game theory*): (1) shaping national interest(s); (2) international bargaining; (3) and protecting one's (national) preferences intergovernmentally. Establishing national interests depends on the speciality of the sphere and on how those help cope with the globalising world.

In the context of the EU as a whole, Moravcsik emphasises basing on economic interests when establishing interests, but at the same time he does not exclude geopolitical interests. The result of international negotiations depends on the countries' relative capacity to bargain, which in turn connected with the countries' levels of dependence on the results and with how well they have been informed of the preferences of other countries. The countries not really connected with the result of the negotiation may not express readiness to cooperate and thus force others interested in the matter to make significant admissions. At the same time those who have been successful in finding out the competitive preferences can manipulate in order to protect their own interests. (Moravcsik & Schimmelfennig 2009, pp. 70-71)

Upon the establishment of the IT-Agency a common ground for the necessity of the establishment was tried to be found. Until the final moment officials had to work hard to convince Germany that the best solution is to establish the agency and Germany had to support it (Lilleväli 2013). Still the MS did not do that in solitude, the help of institutions was significant, too (Tudorache 2013). The negotiations to find a location for the agency were carried out in the bargaining situation. Estonia started to introduce its candidacy very early and tried to map the interests of other Member States as quickly as possible (Lepassaar 2013; Põllu 2013), which in turn gave better levers for the capability to bargain. There was no doubt in France's capability to realise its interests.

Sometimes the cost of the negotiation can be disproportionately big for a party (Moravcsik & Schimmelfennig 2009, p. 71), which means the time, human or financial resources may not be in balance with the desired result. Federalists and neofunctionalists

thus propose a solution, which would mean involving ideological actors as intermediates, their greater package of knowledge and contacts should enable them to guide the actions of state governments more optimally and thus reach the best solutions in negotiations. Liberal intergovernmentalism claims that the best regulators for the costs are the states themselves, because the existing information is available to the states and institutions and thus upon making the decision the same grounds are relied on (Moravcsik & Schimmelfennig 2009, p. 71).

Taking the establishment of the IT-Agency and the negotiation over its location as an example, the latter is valid. Estonia and France were equally informed of the interests of the MS and of the readiness to support either one or the other candidate. Taking part in the negotiation process was not 'cheap' for either of the parties, it demanded finances, people, expertise and time, which probably neither of the side would have been ready to delegate to some third party.

International bargaining often takes place in the cooperation frameworks of international organisations. According to liberal intergovernmentalism international organisations (EU included) have been formed to help countries to set certain rules to solve important questions in decision-making processes and thus to assist countries to negotiate better and at lower costs. In the case of the IT-Agency it is also interesting to follow the change of the delegation of the sovereignty. In the initial phase the intergovernmental approach was dominant, but after the beginning of the discussions over the legal basis it was transferred to the so-called community method and the matter of qualified majority. According to liberal intergovernmentalism it could be stated that the MS saw the new

decision-making process as a tool to help reach common goals at lower costs. At the same time, the changes in the decision-making process brought about by the Treaty of Lisbon were not dependent on the difficulties arisen at the establishment of the IT-Agency. What is more, the whole decision-making process and the delegation of sovereignty appeared to be more difficult because in addition to the in-council discussion agreement the European Parliament had to also achieve agreement.

In the process of the establishment of the IT-Agency it was also important to keep in mind the practical procedures before and after the enforcement of the Lisbon Treaty. Discussions over the necessity of the establishment of the agency and proposing its legal basis both happened during the period of time of co-decision making and qualified majority were not dominant yet in the sphere of EU JHA. Main negotiations on the legal basis and the location of the agency were carried out according to the rules of the new decision-making process. It is important to note that the practice of establishing decentralised EU agencies has been different from time to time (see European Parliament, Council of the European Union and European Commission 2012). Although every EU agency has its statutes, which are preceded by following the formal decision-making process, the content of the statutes does not rely on mutual logics. There are also no fixed rules about how to make an agreement on the matters of the location. While proceeding with the legal basis of the IT-Agency, the decision-making process set by the Treaty of Lisbon in which legal acts were mainly discussed in a legislative standard (co-decision) procedure and in which the European Commission had the right to present legal acts, the proposals were simultaneously proceeded

by the council and by the parliament (General Secretariat of the Council 2010).⁶

ESTONIA'S NATIONAL DECISION-MAKING IN EU JUSTICE AND HOME AFFAIRS

When Estonia was about to join the European Union the main rationale and logic of the national decision-making process was settled and a suitable coordination system to support the latter was made. The main load when arranging the matters of the EU was on Government Office, specifically on the Secretariat of the European Union (Government Office 2009). Similarly to the decision-making processes on the level of the EU, only the proceeding of legislation was nationally regulated. When dealing with other matters, such as the candidacy to become the location of the agency, only the solutions the most suitable at the moment and few guiding provisions were to be relied on. Since the establishment of the IT-Agency involved two parallel processes, a legislative one and negotiations on the location, both aspects have been dealt with when assessing the national decision-making process.

⁶ In the Council the decisions are first given to working teams in which the main negotiations between the MS for compromises take place. If necessary, the draft legislations are then discussed in special committees and before they are taken to the Council they are also discussed in the Permanent Representatives Committee (Coreper). The Council is chaired by the EU Presidency, which rotates every six months. The Presidency is responsible for finding compromises in order that the draft legislation could be taken onwards (Government Office 2009). In the European Parliament every draft legislation is appointed to a committee responsible to report. The rapporteur is responsible for carrying out a thorough discussion about the proposal received from the commission. If necessary he/she also has to involve other relevant parties. Finally, the rapporteur has to compose a summary report, which is then, with the legislative proposal, presented to the parliament for decision (European Parliament 2013). The legislation adopted is published in the Official Journal of the EU (General Secretariat; Council of the EU 2010).

When preceding legislation and other EU issues the central role was of the coordination body's (COB). In addition to approving Estonia's viewpoints prepared by the ministries to be presented to the government, the COB had to ensure smooth exchange of information between different parties of the decision-making process and solve all possible disagreements. It was also for the COB to decide in which cases it is important to state the government's positions and which ministry is responsible for the national implementation of the EU legislation (Government Office 2005, p. 27) The tasks of the COB were fulfilled by the representatives of Eesti Pank (Estonian National Bank) and all ministries, it was formally managed by the secretary of state, and in practice it was managed by the director of the secretariat of the EU of the Government Office. When shaping Estonia's viewpoints on the legal basis of the agency, national decision-making process had to be followed, at the same time the discussions about Estonia being a possible location for the agency started already before proposing its legal basis (see Lepasaar 2013; Lilleväli 2013; Pihl 2013; Põllu 2013).

Although the proceedings' framework has been quite clear and unambiguous, it cannot be said that shaping Estonia's interests and positions has always run smoothly. The main bottlenecks to be brought out can be relatively limited resources of time and people, which always do not enable one to analyse the interests of Estonia in depth, which is why the shaped viewpoints may sometimes be superficial. At the same time the substance of Estonia's viewpoints and added analysis of influence based on the draft legislation appoint how successful Estonia is in protecting its interests in the EU decision-making process.

Based on what was previously described, it cannot be claimed that Estonia has not had a viewpoint on some important initiative. Regardless of the tense timeframe the deadlines given in the proceedings of legislative drafts were followed. The viewpoints of Estonia were introduced and discussed at COB meetings, approved at government meetings and finally confirmed by the EU Affairs Committee of the Riigikogu (parliament).⁷ Should a case for revision of a position arise, a proceeding similar to the one during which the initial viewpoints were shaped is carried out. National decision-making process ends when the legislative act of the EU has been enforced and adopted into the national legal system. In some cases (for example directives) Estonian legislation has to be changed, in some cases EU legal acts are directly applicable.⁸

⁷ The situation became more complicated by the Treaty of Lisbon, according to which for carrying out the necessary subsidiarity control, national parliaments had eight weeks from the moment the commission officially presented the draft legislation (Official Journal of the European Union 2010). In Estonian practice, the Riigikogu started carrying out the subsidiarity control according to the viewpoints the government had already approved, which meant a greater timely pressure on the executive branch – Estonia's positions had to be developed and approved in approximately six weeks from the presentation of the legislation in order that the Riigikogu could have time to present its opinion on the draft legislation.

⁸ What was different from the proceedings of legislation was there were no national rules set for making decisions about other EU related matters. Generally, the Riigikogu Rules of Procedure and Internal Rules Act (2003), the Government of the Republic Act (1995) were followed. According to the Government of the Republic Act, the government could be asked to approve Estonia's position on almost every matter considering the EU the prime minister or a minister finds as important. Certainly the government had to be presented legal drafts considering the matters making decisions upon which was in the competence of the Government of the Republic, or which the government had to present to the Riigikogu for receiving its positions. It was also compulsory to send the government the proposals considering putting up Estonia's candidates for the positions of the EU.

OPPORTUNITIES FOR SMALL COUNTRIES TO PROMOTE THEIR INTERESTS

The formal number of votes is not the only indicator stating the power and efficiency of MS in the EU decision-making process. For Estonia, establishing the IT-Agency was not a regular proceeding of a legal act. In addition to the capability to participate in the decision-making process, Estonia was expected to be willing to present its interests convincingly in a negotiation process where there are no fixed rules. It is common to think that the possibilities of a small country to stand for their interests are quite moderate when compared to major countries. Nevertheless, establishing the IT-Agency to Estonia is a sign of certain patterns of behaviour being profitable for a small country when achieving its strategic aim.

Tiina Randma-Liiv (2004) has analysed the challenges to the governance upon Estonia joining the EU. Increasing professionalism and ensuring continuity in every branch of politics are goals we need to move towards if a country wants to influence the decisions being made in the EU (Randma-Liiv 2004, p. 110). It is unrealistic for a small country to be equally involved in discussions concerning all spheres of politics, which is why a reasonable choice of topics the most important for the country has to be made and only the spheres that are of priority have to be focused on. For a small country it is a challenge to ensure a professional approach even in the areas of priority. Becoming a top specialist in Estonia is not very difficult because competition is rather limited. However, being a top specialist in Estonia is not necessarily comparable with being a professional also on the EU level because in Estonia there are no corresponding opportunities for educating and developing oneself, discussing or debating

with top specialists of the same area, it is also often impossible to specialize only on one sphere (Randma-Liiv 2004, p. 110).

A successful coordination system on a national level helps achieve results in a decision-making process of the EU. On one hand, the success of coordination is ensured by the presence of a special unit dealing with EU matters and using it for inspection and hierarchical subordination (Randma-Liiv 2004, p. 111). On the other hand, Randma-Liiv suggests that coordination is a matter of administrative culture, in which relationships between parties upon making decisions plays an important role. She also stresses that instability does not do any good to a coordination system since instability causes the loss of *institutional memory* and the continuity of tasks and officials, which are of vital importance in order to ensure efficiency in the EU decision-making process. Many of the presumptions Randma-Liiv considers as fruitful participation, in the context of Estonia as a small country in the decision-making process of the EU, had been fulfilled years before the discussions over the location of the IT-Agency were held.

In the study *Dwarfs in international negotiations: how small states make their voices heard*, Diana Panke stresses that the success in international negotiations often depends on the financial capability of the countries involved (Panke 2012, p. 316). Resources are needed in order that we could have enough officials who could define national interests and positions. At the same time a country needs diplomats and experts at the negotiations, which also requires resources. Small countries usually have smaller budgets and as a result they are usually more limited to recruit sufficient number of staff. It is more difficult for smaller delegations to get a thorough overview of the interests of the others, which in turn makes it more

difficult to find suitable compromises. At the same time it does not mean that small countries cannot be successful in the process of negotiations. By setting the right priorities small countries can achieve their goals well even in international negotiations. Panke has suggested two types of strategies small countries mostly use: (i) capacity-building strategies, and (ii) shaping strategies. Capacity-building strategies are not as result-orientated as they are oriented to improving the conditions, using the strategies oriented to change. Shaping strategies, on the contrary, are focused on influencing the result of the negotiation; the strategies of constructive convincing or rational bargaining are also being used. (Panke 2012, pp. 317-318)

Small countries can increase their efficiency by gathering as much as possible the background information about the object of the bargain. Direct contacts and good relationships would be established and maintained with the representatives of both non-state organisations and private sectors. Establishing the so-called institutional memory in a sphere (for example, extending the period of assignment of a diplomat involved in the negotiation process) helps to increase the efficiency and thus the small country's knowledge in a specific sphere is significantly better than this of other countries. (Panke 2012, p. 318) In order to influence the course of negotiations small countries generally have the same arsenal of strategies to use as major countries have. According to Panke, those strategies involve causal, moral and legal convincing, (re)framing and coalition-building, bargaining and value-claiming. The first three can be categorised as convincing strategies and the last three as bargaining strategies. Reframing can be in either category. Although small MS generally have more limits to succeed depending on the specific conditions of the abovementioned strategies and context.

Causal convincing can offer success if a small country has prioritised its interests and has thoroughly dealt with the interests of the topic. Moral convincing is effective if the arguments a small country uses in order to defend its interests emphasise its size (smallness) and thus express the likelihood of impartiality in the matter concerned. Legal convincing can be used in the presence of good legal analyses. The success of small countries depends also on the aspect whether the limited resources have been used for expertise or whether the competencies of officials have been increased. Success can be granted if a small country does not focus on its self-interest but on protecting ground of common interests. Building a coalition at bargaining can be considered successful if the coalition is big enough to put its interests across or it is capable of establishing a blocking minority. Bargaining as a strategy serves the interests of small countries if they want to show themselves as neutral dealers. Claiming for value is reasonable to use if the object of the negotiation is dividable by nature. (Panke 2012, pp. 320-322) One may conclude that the first to define its interests clearly has a bigger chance to succeed.

STIMULUS FOR CREATION OF THE IT-AGENCY

Initial ideas about the necessity to establish the IT-Agency reach back to 2001 when the European Parliament drew the council's attention to the problems in the Schengen information system (SIS) and suggested creating a special agency that would be financed by the EU (European Parliament, 2001). A few years later the parliament made a similar suggestion (European Parliament, 2003). Both

suggestions were left unnoticed by the Member States. Cooperation in the EU JHA from the beginning of the 2000-s could be described by intergovernmental approach, which meant that cooperation was present only when the council found it reasonable.

The SIS that was established as a compensatory measure for the Schengen, visa information system (VIS) and European fingerprint database for identifying asylum seekers (Eurodac) were to be administrated and developed by the Commission of the European Union. MS had authorised France to provide technical support for the establishment of SIS and VIS (Official Journal of the European Union 2000 and 2008). For this reason the data-centre for SIS and VIS was established in Strasbourg, France. Backup servers were decided to be placed in Sankt Johann im Pongau, Austria. Already in 2001 it was clear that the infrastructure of the SIS does not enable adding new users, which is why the council assigned the commission to develop a new version for the system (Official Journal of the European Union 2001, article 2). The commission's work was effortless, the development of the system was never finished and Member States' expenses were growing. At the same time the commission tried to start the VIS, but the development of the system was not going without failures, too (Lilleväli 2013). Thus, relations between the commission and France had become intensive (Coelho 2013). The situation was even more complicated by the fact that the developments were carried on simultaneously with the elaboration of the legal acts.

A few years later the dissatisfaction of the Member States and of the European Parliament was so big that the council and the parliament decided to make a joint declaration (The Council of the European Union) in addition to the legal bases in order to implement

the SIS II and VIS (Official Journal of the European Union 2006, 2007, 2008a and 2008b). In this declaration the commission was asked to evaluate the influence of the detached agency to be established that would administer the information systems and present proposals for corresponding legislative acts. According to the declaration the agency had to commence its work at least five years after the adoption of the legal basis of the SIS II and VIS (European Commission 2009), or in other words in 2013 the latest. Hence, the implementation of the joint measures was in the Member States' wishes and need to cooperate, which thus proved the domination of intergovernmental logic in the EU JHA at that time.

After the evaluation, on 24 June 2009, the commission presented its suggestions for the legal basis of the IT-Agency – corresponding draft legislations of the regulation of the European Parliament and the council (Commission of the European Union 2009a and 2009b). Presenting two separate legal acts was necessary because the competition of the agency was partly related with the regulation of the areas of the *First Pillar* and partly of those of the *Third Pillar*, and before the Treaty of Lisbon entered into force it was impossible to regulate both spheres according to the regulations. Later the legal basis was changed and the IT-Agency was regulated only by the corresponding regulation.

Discussions about the legal basis began in the expert group dealing with the matters of Schengen in September 2009. The discussions with the European Parliament that followed lasted for almost two years. Estonia shaped its position considering the legal basis of the IT-Agency in the government level in July 2009 (Document Registry of the Government Office 2009a); the Riigikogu approved those a few months later, in September 2009 (European Union

Affairs Committee of the Riigikogu 2011). The regulation of the IT-Agency was passed by the council in September 2011 (Official Journal of the European Union 2011). This was preceded by a long consultation period during which the contents of the legal basis of the agency and the matters considering the location were negotiated on. On one hand, establishing the agency can be considered as a typical proceeding of a legal act of the EU, which followed the formal decision-making process (Põllu 2013). On the other hand, there were intensive negotiations on the location, which were characteristic to intergovernmental approach, where there are no uniform rules agreed upon and in which the realisation of the interests of the MS depend on its effectiveness in the negotiations.

It was already in 2007 when the establishment of the IT-Agency was discussed in Estonia (Lepasaar 2013; Lilleväli & Põllu 2009; Põllu 2013). Having heard of the idea at an EU level meeting in Warsaw in the same year, Mr Jüri Pihl, the Estonian minister of the interior at the time, asked the diplomats of the ministry to find out more about the establishment of the agency and to analyse the options to present Estonia's candidacy to become the country of location (Pihl 2013). The analysis presented to the minister showed that Estonia's outlooks on becoming a candidate were not bad at all. This gave basis for further working on the idea (Märting, Adson, Jaani, Põllu 2007; Põllu 2013). Initial consultations with the members of the government were followed by a detail discussion on the level of officials. In addition to the officials of the ministry of interior, representatives of the EU Secretariat of the Government Office and of the ministry of foreign affairs were also involved (Põllu 2013).

The concept describing the interests of Estonia and its realisation plan were finalised by the summer of 2008. The ministers' decision

to approve it was reached in a consensus at a government session (Pihl 2013; Põllu 2013). The conception was to support Estonia's candidacy with three main arguments – (i) there are no EU agencies in Estonia, (ii) Estonia's candidacy is supported by the country's positive IT-image and (iii) according to the decision made in 2003 by the Council of the EU (Council of the European Union, 2004) new EU agencies will be established in new MS (Lilleväli 2013, Põllu 2013). The principles of the composition of the offer were also described in detail, the expenses on the realisation were assessed and a tangible value that the establishment of the agency would bring to Estonia was brought out (Memo of the Government 2008).

In addition, the conception involved developing a decent project organisation, composing a detailed offer and a marketing strategy needed, as well as validating important decisions on the government level. According to the initial plan the location and construction process of server rooms were to have been done in cooperation with Finland, later this plan was abandoned (Põllu 2013). To sum up, this conclusion was a complete one, which was believable for the ministers, possible to be realised and profitable in the future. An analysis like that would have been very difficult to compose if there had not been top specialists of the area relying on their competences, efficient information gathering, maintaining capabilities and analysing skills.

Presenting its candidacy was also in accordance with the government's principles of pro-activity in the EU policies (Lepasaar 2013), which in turn proved the members of the government that the decision bringing the country obligations like that had not been triggered merely by emotions. In addition, at that time Estonia did not have any goals as big as this worth striving for (Kotli 2013)

and the economic situation was generally approving making decisions as such. It is probable that a few years later Estonia would not have dared to think about an offer as competitive as this (Lepassaar 2013). Thus, the national decision-making process was smooth. The interests and goals of Estonia and the realisation of the latter, had been clear and accepted from the very beginning.

On the EU decision-making level the main feature to enable the establishment of the IT-Agency was mainly the mutual interest of the MS (see Põllu 2013), which was supported by the compromise solution reached in the course of the negotiations on the locations in Estonia and France and by the general support of the European Parliament to establish the agency (Coelho 2013). From Estonia's point of view the decision made by the Council in 2003 (Lilleväli 2013), Estonia's positive IT-image (Põllu 2013) and the adaption of qualified majority (Tudorache 2013) have to be brought out. The main obstacles could have been Germany's hesitation about the necessity of the establishment of the agency (Lilleväli 2013; Põllu 2013; Tudorache 2013), the dilatory strategy of France at the negotiations on the location (Lilleväli 2013; Pomerants 2013; Põllu 2013), and the co-decision procedure with the European Parliament. The mutual interests of the MS had already been expressed in the joint declaration of the European Parliament and the Council, and were added to the legal bases needed for the implementation of the SIS II and VIS (Tudorache 2013). By establishing the agency the MS expected to find a solution to their problems and thus obtaining general support from the council was relatively easy (Lilleväli, Põllu 2009).

In the course of the discussions about the location, Estonia's positions were supported by the Council's decision from 2003 and

Estonia's positive IT-image, both of which had been created to support Estonia's candidacy as already mentioned. Adapting qualified majority at the council was also useful for Estonia because forming coalitions had become easier. In general, establishing the IT-Agency was encouraged by the compromise made between Estonia and France. The compromise seemed to be a righteous and balanced solution for the subjects of the process, for the presidency and for the other MS who finally did not have to *take sides* (Põllu 2013).

It took a lot of effort to convince Germany (Tudorache 2013). The existent 'encumbrance' that had appeared at the establishment process of the SIS and VIS (mainly financial and maintenance related problems) tended to be adapted to the agency also (Lilleväli 2013; Tudorache 2013) and it was the commission's role to disprove those hesitations. For a certain time the process was held back by France's dilatory strategy (Pomerants 2013), which aim was to avoid looking for a compromise when considering the location. Being aware of the Council's decision from 2003, France took a position according which establishing the IT-Agency did not mean founding a new one but customising an existing practice (Lilleväli 2013; Põllu 2013; Council of the European Union 2009a). As a result, France did not find it necessary for a long time to have consultations with Estonia; it was instead expecting its rhetoric to be efficient. Finally it made the process longer as the general opinion among the MS tended to be in favour. The process was made significantly more difficult by the co-decision process. In spite of the parliament's support for establishing the IT-Agency, its vision and expectations were different of those of the council. Lengthy disputes over defining the legal basis of the location, the location's decentralisation and defining

the countries allowed to be involved in the work of the agency (see Coelho 2013) made the process longer and finally forced the council to give in.

ESTONIA'S CAPACITY TO REALISE ITS INTERESTS ON THE EU LEVEL

Analysis guides to options that on one hand, Estonia's participation in the establishment process of the IT-Agency was comparable with taking part in the proceeding of any other legal act of the EU (interview with Põllu 2013), but on the other hand it required a country as small as Estonia to make an effort that was far greater than usual as national interests of the country were at stake. When defending those interests the logics of formal decision-making process when preceding a legal act and the so-called unwritten rules of negotiation when disputing over the location had to be taken into consideration.

Estonia had been practicing the setting of EU directed goals and wording its priorities since 2004. Hence, when discussing the matters of the IT-Agency, it was useful for the government to rely on the document defining Estonia's EU policies (EUPOL 2007-2011) and on the principles set in it that coincided with Estonia's readiness to take a role that is more proactive when shaping the politics related to the EU (Lepassaar 2013). In a later phase, striving to become the location of the IT-Agency became a separate goal in the EUPOL and a priority when considering Estonia's activity in the direction of the EU (Government Office 2009a, 2009b, 2010a, 2010b). The necessity for defining priorities, especially in the context of small countries being a part of international negotiations,

has also been emphasised by Panke (2012). Estonia's commitment in the competition of becoming the host of the EU IT-Agency was evident in many features – visibility in the country's willingness to invest into human and financial resources, in its pro-activity on all levels of EU decision-making and in its constant will to seek some suitable solutions.

Estonia validated all its interests and options related to the IT-Agency by using a formal national decision-making process (see memorandums of the government 2008a and 2008b, document registry of the Government Office 2009a, 2009b, 2010). According to Randma-Liiv (2004) an efficient decision-making process is based on an effective co-ordination system, which in Estonia had been established before joining the EU and from which the central co-ordination body (COB) was developed. However, during the process the COBs activities were focusing on co-ordinating Estonia's viewpoints and unification with EU legal acts. The issue of the IT-Agency had developed into such an important national goal that information about it was spread in different formats even though there was no formal obligation to do so. Nevertheless, partly depending on the experience gained from the IT-Agency, the functions of the COB have been amended to some extent (Lepassaar 2013). Among other aspects of *Europeanization* a separate format for discussing and making decisions about important matters of the EU has been created – the so called COB2, which comprises deputy secretary generals.

In the course of the process the professionals involved included officials of the ministry of the interior and of the institutions in the administration of the ministry, the director of the Secretariat of the EU, officials from the ministry of foreign affairs, diplomats of

Estonian embassies and of Permanent Representation of Estonia to the EU, the whole cabinet headed by the ministers of the interior and of foreign affairs and the prime minister, the president of Estonia and the workers of the Office of the President, Enterprise Estonia, EU Affairs Committee of the Riigikogu and Estonian MPs (Lilleväli 2013). The *ex-ante* analysis about Estonia's outlooks in the competition of becoming the location of the agency based on the knowledge and experience of the officials, the thorough conception of Estonia's candidacy that followed unanimous approval from the government. Establishment of the headquarters of the agency in Tallinn illustrates the aspect that Estonia was capable of working professionally when defending its interests. Intense cooperation and belief into the set goals were the keywords for the team used to characterise their cooperation (see Kotli 2013; Lepassaar 2013; Lilleväli 2013; Pomerants 2013; Põllu 2013; Särglepp 2013).

It is quite typical for small countries that a professional in his/her homeland is not yet a professional in international cooperation (Randma-Liiv 2004), but it was not true when considering the officials of Estonia. In the course of the proceedings of the legal basis, Estonia succeeded in convincing the EU Presidency to deal actively with the topic, to find compromises and the MS to direct the disputes over the legal basis in the most suitable direction for Estonia (Lilleväli 2013). At the same time the Estonian candidacy was being introduced and this too demanded excellent negotiation skills. Estonia's candidacy was not taken seriously in the beginning, not because of Estonia's low efficiency but because of a rival who was too strong and beating that rival was considered to be impossible by many (Kotli 2013; Tudorache 2013).

When establishing the IT-Agency and negotiating on the location, Estonia used most of the strategies available, not consciously but rather intuitively (Põllu 2013).

In order to reach its goals, Estonia had to be very active in the discussions over the legal basis of the agency and try to direct the discussions into the most suitable way. To achieve that Estonia could easily rely on the previously created positive IT-image of the country. As characterized by the expert K. Põllu (2013): *'Estonia gained from the fact that we had developed a suitable IT-image and that we were a new Member State without any agencies. By coincidence we were to apply for the agency the was most suitable to Estonia's profile. The appearance of this agency made 'the motors of Estonia' roar. Estonia started to use the background that had already been strategically developed.'* The quickly popularised nickname for the agency as 'IT-Agency' was successfully linked with Estonia's innovative image, which was later successfully used (Kuningas-Saagpakk 2013; Lepassaar 2013). In order to make this image even more expressive and to compose Estonia's offer, additional consultations with Estonian experts of the IT sector were carried out (see Pihl 2013; Põllu 2013).

Hence, the wider audiences were involved and Estonia was really committed in reaching the set goals. Based on the interviews it appears that the country's good IT-image brought success throughout the process (Lepassaar 2013; Lilleväli 2013; Põllu 2013). Estonia started to become more and more influential already before representing the specific legal basis. By making contacts with the representatives of the EU institutions and of other MS, Estonia started introducing its vision of the role and functions of the IT-Agency and later expressed its readiness to represent the candidacy (Lilleväli

2013; Põllu 2013). Here the stability of the professionals involved and the *institutional memory* that thus formed also had to be emphasised. Kristo Põllu's participation in the process of the establishment of the IT-Agency started already during the time the negotiations on the legal basis of the SIS II were being carried out (Põllu 2013). Piret Lilleväli joined the project in the beginning of 2008 (Lilleväli 2013). Both were on the frontline in discussions carried out in Estonia and on the EU level.

The continuous 'lobbying' was finally fruitful when the goals and role of the IT-Agency were put into the legal basis, the desired vision for Estonia was seen (Lilleväli 2013). Thus, Estonia used many opportunities, incl., causal convincing and re-framing – emphasising the need to establish the IT-Agency as a competence centre for maintaining and developing large-scale information systems, which would be in the interests of all EU MS (Lilleväli 2013). When analysing the establishing process of the IT-Agency, it can be said that Estonia used bargaining strategies the most. Negotiations on the location appeared to become classical examples of bargaining – in the beginning they tried to form coalitions, then they used the power to direct the negotiation the most suitable way and then they took measures to increase their self-interest. Estonia also started to look for coalition partners from amongst its neighbours and then widened the circle first for the so-called new MS and then to the rest of the MS (Lepassaar 2013; Lilleväli 2013).

When introducing its offer and its candidacy a special 'sales strategy' was relied on (see The Ministry of Foreign Affairs 2008). According to the strategy the approach had to be broad-based, but had to be adjusted when necessary (Lepassaar 2013; Pomerants 2013). Diplomatic representations in the EU Member States (Kotli

2013), members of the cabinet (Lilleväli 2013, Põllu 2013) and other main actors of the process – the officials from the ministries of the interior, of the foreign affairs and of EUS were involved (Lepassaar 2013; Lilleväli 2013; Põllu 2013). Meetings took place in most of the EU MS capitals (Kotli 2013). Support for Estonia increased, although the competition with France was generally seen as quite hopeless (Kotli 2013). From time to time the strategy used was adjusted, for example when the proximity of Russia as a security risk appeared in the rhetoric of France (Kuningas-Saagpakk 2013; Pihl 2013; Põllu 2013).

Still Estonia did not succeed in bringing the entire agency to Estonia (Lilleväli 2013; Põllu 2013). It was partly caused by some MS changing their initial orientation, which caused some agreements to lose their validity at a certain time (Lilleväli 2013). Looking for the compromise with France was inevitable (Lepassaar 2013; Euobserver 2010). In the course of the negotiations with France, Estonia exploited the decision made by the Council in 2003 and thus expressed its legitimate expectation as a new MS to propose its candidacy for the location (Lepassaar 2013; Lilleväli 2013; Põllu 2013). In order to convince France, several meetings were organised (e.g., Ministry of the Interior, press release no 231, 2009) and the support by the media was to be brought in, which later became irrelevant (Kuningas-Saagpakk 2013; Põllu 2013).

Disputes over various solutions offered by France as alternatives were followed (Kuningas-Saagpakk 2013; Põllu 2013). Estonia's fortitude and willingness to settle on only one condition – headquarters to Tallinn, servers to Strasbourg – came as a big surprise for France (see Kuningas-Saagpakk 2013; Lepassaar 2013). Usually countries have several positions in international negotiations, as

well as positions to withdraw. Estonia did not have anything like that, because making compromises was the last opportunity to reach the goal. Hence, it can be claimed that Estonia did not take the position of a dealer, as Panke had suggested for small countries (2012). Instead it can be said that Estonia proved its capability of being an equal partner.

The value was claimed by both parties during the process. France was interested in assuring its position and employment in Strasbourg (Coelho 2013), Estonia wanted to become closer to Europe and improve its economic and educational environment (Pomerants 2013). As a result, France made a point of its prior experience and practice in maintaining SIS II and VIS, Estonia – on the contrary – of its legitimate expectance to bring the agency to Estonia. The compromise the countries made (see Ministry of the Interior, press release no 97, 2010), was as equitable as it could have been in a situation like that (Presidency 2010). Transferring the whole agency to Strasbourg would have been opposed by many countries and also by the commission and European Parliament (Tudorache 2013), because in this case the change brought about to the (criticised) situation would have been of a questionable extent. Bringing the whole agency to Tallinn would probably have driven a wedge between Estonia and France and probably between Estonia and Austria, too, because the latter was also interested in maintaining the same situation, which meant back-up servers being in Austria, in Sankt Johann im Pongaus (Põllu 2013). At the same time it would have meant an additional financial load on the Estonian government (Põllu 2013), which in the situation of financial crisis would have been very complicated to reason.

Estonia achieved most of the set goals during the process (Põllu 2013). None of the challenges dealt by Randma-Liiv and exposed to Estonian public sector in the EU decision-making process were unattainable. The skill of setting priorities, their purposeful usage and the competences of the officials involved were ensured in the establishment process of the IT-Agency. It can also be claimed that the correct usage of the negotiation strategies suggested by Panke helped Estonia to realise its goal. Nevertheless, the aim would not have been reached if there had not been the convincing will to become the host for the agency, if the decision-making period had not been before the financial crises and if the proposal content had not been attractive enough.

CONCLUSIONS

Considering the decision-making process revisions on the EU level, the period of the IT-Agency establishment was a difficult one. The establishment of the agency was discussed before the Treaty of Lisbon, and a proposal for its legal basis was also presented when the previous supporting document was still valid. Even the content of the legal basis was discussed in a considerable extent before the end of 2009, but the negotiations on the location and the adoption of the legal basis were all to take place after the Lisbon Treaty had come into force. Amendments in the EU JHA decision-making process caused the position changes of the process participants. The previous MS-centred approach had been replaced with co-decision procedure.

Similar transformations can also be pointed out during the establishment process of the IT-Agency. Until the Treaty of Lisbon the whole process could be characterized as mainly intergovernmental. It was depending on the willingness of the MS in council when the discussions over the necessity to establish the agency would start. Previous attempts of the European Parliament to get support for establishing a separate agency had gone to waste because the Member States had not seen it as necessary. After the real expenses for MS had become disproportionally increased and thus obstacles to extend the Schengen area had appeared, they were finally ready to take some joint measures.

In the discussions considering the EU legal acts countries mainly focus on their self-interest. The same tendency applied in the case of the IT-Agency. Although the council had approved the necessity to establish a separate agency already in 2007, there were continuous disputes over the justification and added value the agency would

bring. Despite having adapted to the principle of qualified majority, Germany's opposition to establish some new EU agencies significantly hampered the negotiations on the legal basis. There were no signs of changes to be seen in the practices of the Member States. Although the establishment of the agency was finally approved in the council, it was clear what had caused Germany to change its mind. The dispersion of hesitations may finally have been brought about by the changes in the decision-making process, which also included Estonia and the council convincing Germany about the additional value and the cost-effectiveness the establishment of the agency would bring for the EU JHA.

The amendments that had come into force by the Lisbon Treaty made the European Parliament an important figure in the process. This reform lifted the balance between institutional powers. Although the previous decision-making process had also intended discussing the legal basis of the IT-Agency with the parliament, it now had to be done considering the whole package, incl., the location. The Lisbon revisions limited the power of the MS and gave some legal and political advantages to the parliament. Hence, the establishment of the agency was literally dependent on the approval of the European Parliament. The council was thus forced to approve the legal basis accepting the motions to amend made by the parliament, reflected especially by the interview with MEP C. Coelho (2013). Estonia, France and Austria had nationally shaped their interests considering the location of the agency. Realising one's interests was achieved by using classical type of negotiations; getting support from other MS became vital. To help the European Parliament approve the final compromise, Estonia and France had to attend interpellation sessions and convince the deputies about their advantages.

Putting up its candidacy was a great challenge for Estonian officials having to work hard to reason especially the cost-effectiveness of establishing the agency's headquarters to Tallinn. There was a threat of making wrong decisions in a situation that was new to Estonia. In hindsight it can be said that Estonia used its existing potential and the achievement satisfied sufficiently all parties involved. The aspect that Estonia had already started to create a coordination system for the EU affairs before its full membership offered a basis on which could later be relied on when activities directed to the EU are being carried out. Another important factor was the tradition of wording Estonia's strategic EU goals and framing the governmental activities.

The whole process researched could be characterised as a broad-based involvement from the Estonian side. The support for presenting its candidacy to host the IT-Agency was reached by cabinet consensus. The main arguments to support Estonia's candidacy had been chosen difficult to contradict – Estonia wished to present its candidacy to become the location of the IT-Agency because it has no EU agencies. The argument was supported by the Council decision from 2003 to establish the agencies to new Member States. Secondly, the right timing may be more important than it usually is considered to be. It is difficult for a small country to deal with several paramount priorities at the same time, especially if the general financial situation does not support these expenses. As expert J. Lepassaar (2013) described it 'Actually we were very lucky with the context, because in 2010 it would have been very difficult to sell. Fortunately the decision was made before there was an immense pressure to limit all expenses.'

In connection with that, the goals have to be supported by a thorough action plan, but one also has to be ready for flexibility. Estonia had decided to come out with a competitive offer. When introducing

the offer, some special sale strategies were relied upon – Estonia's candidacy would be introduced to a circle as wide as possible. In order to get support and stabilise positions a thorough 'tour of EU capitals' was carried out. Viewpoints were introduced on several levels – officials met with their colleagues in the ministries of interior and of foreign affairs, diplomats had their conversations to introduce the candidacy in the country they were at, there were also regular meetings on the level of the ministers of interior and of foreign affairs. What is more, on their visits the prime minister and the President of the Republic of Estonia entered the issue of the IT-Agency into their agendas. The topic was discussed whenever possible at the Riigikogu EU Affairs Committee (see Aarma 2013). The highlights were changed when necessary and some important nuances were added.

Although Estonia had grown its support group significantly during the process, it was not enough to win the negotiations. So, Estonia decided to go for a compromise. An alternative would have been to continue alone but probably it would have given France the advantage (see Tudorache 2013). Finding a compromise with France presented Estonia as a 'ripe' MS that is ready to make concessions in order to achieve a mutual goal even if it influences national interests. One may conclude that through the course of negotiations Estonia showed itself as a convincing and self-assured partner trying to find a suitable agreement with France. As a big and old MS France could also offer some additional deals, which Estonia constantly refused. It seems that Estonia used correct convincing and bargaining strategies when realising its interests. In the different phases of the process various strategies that depended on the situation were used. Estonia proved itself as an equal partner in EU level cooperation and thus did not limit itself to the role of a neutral dealer.

Upon summarizing the process, it appeared that Estonia achieved most of the presumptions that enable small countries to influence the results within the international negotiation process. Some shortcomings, as the matter of headquarters security (see Pihl 2013; Põllu 2013) or limited opportunities to communicate in French (see Kuningas-Saagpakk 2013) were either possible to quickly reply or had no significant importance to the final results. The compromise was a good possible solution at the time. France could well save its reputation in accordance to the decision made by the Council already in 2003. The agreement with Estonia and the fact that the headquarters of the IT-Agency established in Tallinn, promoted France as a generous and cooperative EU Member State. Estonia proved to be courageous and persistent, but also a cooperative partner willing to react quickly at critical points, as well as make some concessions in order to achieve mutual EU security goals.

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**THE RELATIONSHIPS OF THE WILLINGNESS
FOR THE DEFENCE OF ESTONIA AMONG
UPPER SECONDARY SCHOOL STUDENTS
WITH THE SUBJECT 'NATIONAL DEFENCE'
TAUGHT AT SCHOOL**

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Keywords: national defence course, defence willingness,
patriotism, security theories, survey, security policy

INTRODUCTION

The general principle is that each country's security is the foundation of an independent state. However, there is no way to defend the country if the people do not want to defend their country. The security of Estonia is ensured through its membership in NATO and in the European Union, the first of which, with its collective protection nature, is the cornerstone of Estonia's security and defence. (See Estonian National Security Policy Concept 12.05.2010) The main prerequisite for the implementation of collective defence is the primary defence capacity, which will help to ensure the military defence of Estonia. It is also important to pay attention to the will of the young people of secondary school age to defend their country, because in a couple of years they will be the real forces in the national defence. In Estonia, for the students in the upper secondary school, it is possible to choose an elective course 'National Defence' which is taught on the basis of the constitution to become aware of their national defence related duties and rights and learn the types of military service. Through the learning activities is acquired the theoretical knowledge in the field of national defence, which are fixed through practice. The National Defence Studies aim to lay the foundation for understanding the principles for the Estonian National Defence, to develop civic awareness and willingness, if necessary, to protect Estonia. (Gymnasium National Curriculum, National Defence Course subject program 6.01.2011) Consequently, passing the national defence education course can be regarded as one of the methods to increase the defence willingness of young people, however, it has never been analyzed in Estonia in the past.

The Estonia's National Security Policy Concept and the National Defence Strategy (31.12.2010), however, have indicated the importance for the raising of the nation's defence willingness, as it is a prerequisite to the implementation of the primary defence capacity and a basis for the effective functioning of the system of collective defence. However, the controversy is that the concept of the will for defence has not clearly been defined in Estonia. Therefore, a mapping study was carried out among the secondary school students of the Estonian capital Tallinn, in order to find an answer to the problem, which is the willingness for defence and the extent to which completion of the national defence education course will increase the defence willingness of young people. The aim of the study was to identify the relationship between those who completed the subject of national defence education and to compare the will for defence of the young people who have studied national defence compared to those who have not. In the study data was collected through a semi-structured web based questionnaire in which 630 secondary school students participated among whom were students who had studied national defence and students who had not studied the subject. This article presents an overview of theories of security, the theoretical approaches of the will for defence and Estonia's national defence system, plus providing the more important findings of the empirical study. In addition, a definition of the will for defence is provided on the basis of theoretical sources and empirical data.

THEORETICAL TREATMENT OF SECURITY THEORIES AND DEFENCE WILLINGNESS

The states of the world are different due to their geographical, state administration and political peculiarities and therefore each state has developed, in accordance with their needs, a suitable security and defence policy. In the course of formation of international relations have emerged various security theories, which can be taken as the basis for a national security policy. In most cases, the term 'security' is used in connection with the country in which its people can feel safe and protected, with an exclusion of the external threat looming for the country and its political autonomy. (Magenheimer 2001, p. 10)

When furnishing the concept of a security concept and determining the scope thereof, different authors have proposed different approaches. Representatives of the school of realism emphasize high valuation of security, considering that international relations are conflictual and solved solely by war (Jackson & Sørensen 2010, p. 59) and where the government's role is to ensure public order and internal security (Lebow 2010, p. 59) valuing political survival and security and peace. (Jackson & Sørensen 2010, p. 59) Realism as a theoretical base dominated throughout the Cold War period, as it gave war a simple but effective explanation. Classical realists proceeded from the position that countries aim to dominate over other countries and that such beliefs allowed them to wage wars, therefore national security had to also be the priority of peaceful countries. The bottleneck of realism is the fact that this theory remains weak in explaining the changes in the global economy and rearrangements within the country. (Keohane 2002, pp. 6-7) As opposed to realism,

the school of liberalism is based on the principle that states are not in constant fear for their safety, but rather peace-oriented. (Morgan 2000, p. 56) The theory emphasizes the cooperation of an individual and the collective of individuals, such as the state, corporations and organizations. (Jackson & Sørensen 2010, p. 97) However, the neoliberal school approach is based on the strong links between the nations and on international relations, where the power is an effective instrument in political relations on the assumption that hierarchy operates in international politics. (Keohane & Nye 1977, p. 23) In contrast to the pessimistic understanding of global politics of the school of realism, neoliberalism argues that countries have now more common interests and a greater ability to recognize this. The goal of neoliberalism is to understand how to promote, preserve and perpetuate the cooperation of international institutions. (Sterling-Folker 2010, p. 132) However, conceptualizing security has an increasingly important role. Smith (2000) classifies the security theories and their practitioners as follows: an alternative defence theory, constructivist theory, the Copenhagen School securitization theory, critical theory and feminist theory. The fundamental principle of the alternative defence theory is ensuring national security cannot be accomplished at the expense of each other, but must be carried out through joint efforts (Booth 1990, p. 35). The creator of constructivist theory Alexander Wendt changed the idea of anarchy with the principle that when countries cooperate, international anarchy is characterized by cooperation. (Wendt 1992) If two individuals or political entities have a similar identity, perception of the risk arising from one another decreases in spite of the relationship of tangible military power. (Rousseau 2006; Uudeberg 2009, p. 15) Constructivists provide global security policy concept and threat

perceptions in different contexts (McDonald 2013) and argue that a shared identity was crucial in explaining the creation of NATO. (Rathbun 2011)

Based on the problem of this study, out of the described security theories, alternative defence and constructivist theory can most be associated with the Estonian security and defence policy. Security of Estonia is ensured through its membership in NATO and in the European Union, the first of which with its collective protection nature is the cornerstone of Estonia's security and defence. The main prerequisite for the implementation of collective defence is the primary defence capacity, which will help to ensure the military defence of Estonia. (Estonian National Security Policy Concept) The necessity and importance of an independent defence capability is also provided by the North Atlantic Treaty, Article 3, according to which in order to more effectively achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack. Application of independent defence capacity requires a human's free will to stand up for their country. As one of the aims of the elective 'National Defence Studies' is to generate the readiness, if necessary, to defend Estonia, it will lead to the creation of an independent defence capacity. The study found the answer to the research problem and outlines the basis of whether the elective subject 'National Defence Studies' fulfils its purpose. Since both the alternative defence theory as well as the constructivist theory, are based on the collective defence and cooperative basis, the research problem and theories concerned, are mutually related. The alternative defence theory is in concordance with the Estonian national

security and defence policy, as according to this theory, the provision for national security cannot be done at the expense of each other, but must be carried out through joint efforts. (Booth 1990, p. 35)

ESTONIAN NATIONAL DEFENCE

The term ‘national defence’ does not denote only the army created to protect the territory of the country, but is part of national security policy and foreign policy, which acts as an instrument of state or civil power. (Kutsar 2007, p. 23) Huntington (1957, p. 1) pointed out that one part of a national security policy is national defence. The aim of Estonian national defence is to maintain the Estonian national statehood and sovereignty, inseparable and indivisible integrity of its land, territorial waters and airspace, constitutional order and public safety. To achieve these goals, based on the principles of total defence, are deployed the entire nation and the power sources of the people and the state. (National Defence Act, 12.06.2002)

Today, 95 years have passed from the birth of the Republic of Estonia and 22 years have passed from the restoration of independence. In 2004, Estonia joined NATO and the European Union, whose membership has ensured the security of Estonia. (Estonian National Security Policy Concept)

The aim of Estonia’s security policy is to ensure the survival of the Estonian state and the nation, for achieving of which must be ensured Estonia’s sovereignty, territorial integrity, constitutional order and public safety. (National Defence Strategy, 31.12.2010) Estonia’s defence policy is based on a credible deterrent, through which the possible Estonian security compromisers must be convinced that

the damages of an attack on Estonia outweigh the possible benefits. Based on a strong defence spirit, Estonia operates for ensuring a credible deterrence and for the organization of effective protection in six main directions of activity, namely the military defence, civilian sector support for the military defence, international operations, ensuring internal security, ensuring sustainability of vital services and psychological protection. The main task of the Estonian national defence is to prevent a possible military attack against Estonia and to ensure that Estonia would be able to successfully defend itself. The basis of the national defence is the strong defence willingness of the Estonian nation, because the national defence can only be successful if the entire nation takes part in it. The prerequisite for creation of defence willingness is national self-awareness, self-confidence and self-esteem - Estonia defends itself in any case and no matter how overwhelming the opponent is. If Estonia temporarily loses control over part of the territory of the country, Estonian citizens should provide resistance against the adversary in this area. (Estonian National Security Policy Concept) Pursuant to the Constitution of the Republic of Estonia (28.06.1992), the duty of an Estonian citizen is to defend the country's independence and to be loyal to their country. Consequently, the weightiest factor in the defence of the country and the people is the willingness to do that. Estonia's defence capacity is ensured by the defence willingness of the people, making the creation and retention of it is the basis of Estonia's statehood. National Defence Studies has been an elective provided in the national upper secondary school curriculum of Estonia since the year 2011, which aims to lay the foundation for understanding the principles of the Estonian National Defence, to develop citizen awareness and willingness if necessary, to protect

Estonia. Kant (1997, p. 43) and Kodelja (2011, p. 133) considered that defence willingness and love for homeland are human emotions that must arise naturally and that cannot be forced.

In connection with the concept of defence willingness, Dirk Walther Oetting (1998) highlights as interdependent factors the general defence willingness, service motivation and motivation to fight of the society. The defence willingness is a dominant position in the country and the society, that the possession, maintenance and operations in the war of the armed forces are right and proper. Oetting sees the society's defence willingness as the basis on which are based peace as well as wartime service motivation and the motivation to fight during the war. Stefan Sonderegger (1986) defines defence willingness as a positive attitude of the society towards military defence, the objective of which is maintenance of peace, freedom and independence. Society's collective defence willingness is a basis for the service motivation of each individual citizen and soldier. According to his vision, defence willingness is formed in interaction of six components, addressing the historical, political and military, outside of the service, personal and the communal-social component.

The international security environment is diverse and changing, which results in an enlarged concept of security and the security issues arising in the areas where they did not occur earlier. Military conflicts involve both in their preparatory as well as in their active phase, usage of forceful non-military measures. In such an environment, state security can be ensured only by the broad concept of national defence, which also includes non-military activities and requires strong internal security. (Estonian National Security Policy Concept) It is therefore a mistake to think that the defence of a state

is related only to the people dealing with the area of security, also important are the actions that bind the military and the civil society and the spread of defence related knowledge. (Estonian Ministry of Defence 2013) Estonia is an integral part of the international security environment that is constantly changing. In relation to globalization has diminished the importance of geographical distances, due to which problems occurring in more remote areas may also affect Estonia. Since the restoration of independence of Estonia, the main direction of Estonia's international activities has been the closest possible integration to the democratic western world. In 2004, when Estonia became a NATO member, Estonia also became a part of NATO's collective defence, which is a priority for the state. The principle of Estonia in the implementation of foreign and security policy is the principle of the indivisibility of security, which means that the threat to the security of our allies also damages Estonia and vice versa. Securing indivisible security takes place both through development of bilateral defence relations, as well as through the strengthening of NATO's collective defence.

Consequently, the Estonian security policy is based on a spacious approach to security, which binds together the national security and national defence, which implements the foreign, defence and security policy for achievement of the security policy objectives of the state as a whole. Security is ensured through its membership in NATO and in the European Union, the first of which, with its nature of collective protection is the cornerstone of Estonia's security and defence policy. (Estonian National Security Policy Concept) For the functioning of a collective defence, it is necessary to have an independent defence capability. Thus, it can be argued that Estonia's security rests on two pillars, one of which is collective defence and

the other an independent defence capability. The last pillar, in turn, is the nation's readiness of its citizens to step out actively to maintain the security of the state until the arrival of allies.

The foregoing may be summarized in the form of an illustrative diagram, which shows that the foundation for maintaining the national security is the people's will to defend themselves, as a result of which, implementation of an effective collective protection is possible.

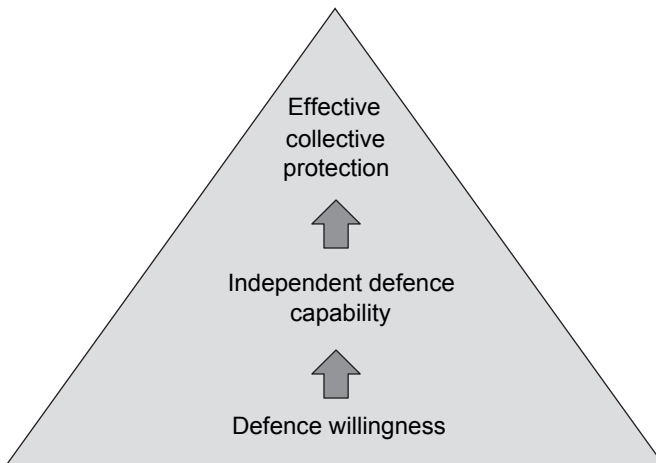


Figure 1. Functioning of collective defence (compiled by the authors based on theoretical starting points)

SURVEY METHODOLOGY

This article relies on the data of the study conducted in 2013 in the Institute of Internal Security of the Academy of Security Sciences in the framework of the Master's thesis of Mari-Liis Mänd, supervisor Shvea Järvet. The aim of the study was to identify the relationships between those who completed the subject of national defence education and to compare the will for defence of the young people who have studied national defence compared to those who have not. For achieving the goal of the work it was important that sampling would be formed of both the students who have studied national defence and of those who have not. In the course of the study a mapping survey was conducted, which allows to describe and evaluate a variety of phenomena and compare the opinions of different groups of respondents and to find causal connections between the phenomena. (Lavrakas 2008; Neuman 2011) To find answers to the research problem was formed a sample according to the method of *purposive sampling*, which is based on a purposeful, rather than random, a sample of a specific target group or case, where the most suitable respondents have been selected for obtaining material information. (Teddlie & Yu 2007) Schools of Tallinn were selected to conduct the study on the grounds that they include both the schools with a long tradition of teaching national defence and the schools that have only started. This sampling provides a cross section of different schools and their students' attitude towards national defence studies. As for providing an objective assessment it was essential that the students completed the national defence course, the secondary schools that taught national defence education in the academic year 2011/2012 were selected to participate in the study. Achieving

the objective of the study requires also the involvement of the students who have not studied national defence and therefore a sample was formed from the students of the secondary schools of Tallinn containing both those who had studied national defence and those who had not. In order to obtain reliable data, the study had to be conducted among students in as many schools as possible and prior to this year national defence was taught in schools in Tallinn (in 30 schools) mainly in the 2011/2012 academic year (see Table 1)

Table 1. Formation of the sample of the study of *defence will*

	Number of Schools	Number of students	
2011/2012 academic year Secondary School in Tallinn	59	8223	
In 2011/2012 academic year Secondary School in Tallinn teaching national defence	30	5439	
2013 questionnaires received for the will for defence study	24	The number of students who studied national defence 287	The number of students who did not study national defence 343
		In total were received 630 correctly completed questionnaires	

In total in Tallinn in the 2011/2012 academic year studies were carried out in 59 secondary schools, of which 30% or 18 also taught national defence. Since secondary school students are mostly minors and the topic of the study can be sensitive to express an opinion, due to ethical concerns the managements of all schools

were addressed for their consent for conducting the survey, providing them for examination with the survey questionnaire and the questions to be asked from the students. The objective of the research was explained to the management of the schools, wherein the students' anonymity and confidentiality were promised and ensured. It was explained that the information collected is only to be used for statistical analysis and for the development of national defence studies. Of the 30 directors of 28 secondary schools that consented to participate in the study, responses were received from 24 or 80% of the schools who taught national defence. The questionnaire survey was answered by a total of 287 students who had studied national defence and by 343 students who had not, or a total of 630 students (Table 1). Data were collected from students through web-based semi-structured questionnaires in order to get as many students opinions of defence willingness as possible. Developing the research instrument was based on the main issues of the theoretical approach and therefore questions were asked about the definition, the level and the teaching of defence willingness. The semi-structured questionnaire survey included multiple-choice questions and open-ended questions of which it was possible to express an opinion in the respondent's own words to avoid directing by the researcher.

THE RESULTS OF THE SURVEY

A total of 630 students answered the semi-structured questionnaire survey presented for carrying out the study, of whom 287 students had studied the National Defence Studies and 343 students had not studied National Defence. 42% of the respondents who had studied National Defence were female and 58% were male (see Figure 2) and out of those not having studied National Defence Studies, 72% were female and 28% were male. The average age of all respondents was 17 years.

Based on the subject program of the national defence studies taught in general education and vocational schools on the basis of the Estonian national secondary school curriculum, this subject seeks to provide awareness in the students, pursuant to the constitution, of their national defence related obligations, rights and of the idea of the types of military service. Through the learning activities is acquired the theoretical knowledge in the field of national defence, which are fixed through practice. The National Defence Studies aim to lay the foundation for understanding the principles of the Estonian National Defence, to develop civic awareness and willingness, if necessary, to protect Estonia. (Gymnasium National Curriculum) As a result, passing the national defence education course can be considered as one way to increase the defence willingness of young people. The study sought to find out how the upper secondary school students of the schools in Tallinn define the concept of defence willingness, how do they evaluate the level of their own defence willingness and how is the defence willingness of young people related to completing the subject of National Defence Studies.

Since the concept of defence willingness is not uniquely defined in Estonia, both the students having passed the subject of National Defence Studies and those not having passed the subject were asked with an open question of what the concept ‘defence willingness’ means for them. In asking the question no selection of answers were given, in order to not disperse the students’ objectivity and not to direct them when responding.

Questions received a total of 496 correct answers from the students having learned the national defence studies and 257 answers from those not having learned national defence studies. Responses were coded in order to get a clearer structure and an overview of the students’ thoughts. Coding is a method that allows forming organized groups of similar answers. For that was used content analysis, in the course of which all open answers were allocated a code and six categories were established from the answers with similar codes. (Saldaña 2009) Content analysis is used when the aim is to describe and define something new, but on the phenomenon of interest there is not enough raw data or theories and it is therefore necessary to check, understand, compare, categorize the data collected. (Bazeley 2013) Consequently, the content analysis is the most suitable method to analyze the open responses of this research.

The table summarizes the differences of the answers of the respondents who have learned national defence doctrine and of those who have not learned national defence in defining the concept of defence willingness.

Table 2. Differences of defining of the concept of defence willingness of the students who have passed the National Defence Studies course and of the students who have not (compiled by the author)

Have passed the National Defence Studies course	Have not passed the National Defence Studies course
free will, motivation, love for motherland	free will, responsibility, protection of culture
less frequently linking with a war and a weapon	commonly associated with war and weapons
linking of defence willingness with collective defence	linking of defence willingness with security
bringing alternatives to weapons	bringing non-military aspects
relationship with the National Defence Studies and the level of defence willingness	relationship between wasting of life and in case of a conflict, escaping from Estonia

Comparing the responses of the students who have passed the National Defence Studies course with the students who have not passed the course, based on the survey results, it can be observed that the students who have passed the National Defence Studies Course link the defence willingness more closely to the state or the homeland than the students who have not passed the National Defence Studies Course, who unlike the former, more frequently leave the object to be protected vague. Thus it can be concluded that the students who have passed the National Defence Studies course have better knowledge of national defence and of the provision for state security after completion of the National Defence Studies course, as a result of which they are better able to provide explanations to the concept of defence willingness. Therefore, a very important goal and a role of the subject have been fulfilled. The next aspect that should be brought out in the comparison is linking the defence willingness with war,

weapons and death. Those who passed the National Defence Studies course do not associate defence willingness as often with the above words than the students who have not passed the National Defence Studies course. It can be concluded that the students who have learned the National Defence Studies are more knowledgeable of the structure and functioning of the Estonian national defence system than the students who have not learned about the National Defence. Today's security environment does not always require fighting with a weapon in contributing to national defence or protecting the country, but offers a number of alternatives for that. The responses of those who passed the National Defence Studies course reflected such knowledge more than the responses of those not having passed the National Defence Studies course. Also the students who have passed the National Defence Studies course are able to link it more with a free will, motivation and the love for the motherland, which is also supported by the theoretical approach to defence willingness. Taking into account the analysis of the students' responses and the principle of collective defence, the definition of defence willingness was prepared as follows: **freely motivated readiness to stand out for maintaining the security of the state until the arrival of the Allies and together with the Allies to resist the attack.**¹ By definition, the idea does not change even if the allies' aspect is left out – the free will motivated willingness to stand up for the national security and resistance to attack. However, as both the basis of the Estonian security policy as well as the national defence strategy indicate that Estonia's security is ensured on the basis of the principle of collective defence, the author also added the collective defence aspect to the definition.

¹ The definition has been prepared taking into account the results of this study, based on collected empirical data, associating with the theoretical approach.

Table 3. The results of the survey

	The mean value of the students who learned national defence	Standard deviation of the students who learned national defence	The mean value of the students who have not learned national defence	Standard deviation of the students who havenot learned national defence	Significance of T-test
Assessment of the level of defence will	3.01	0.81	2.8	0.95	0.01**
Comparison of the level of the defence will of the students who learned national defence on a voluntarily and mandatory basis	3.21	0.72	2.74	0.87	0.000**
Comparison of the level of the defence will of the students who learned national defence on a mandatory basis and of the students who have not learned national defence	2.74	0.87	2.8	0.95	0.55

As one important result of the study may be highlighted the difference of the levels of defence willingness of the students who have passed the National Defence Studies course and of those who have not. More students who have passed the National Defence Studies course evaluate their defence willingness high or rather high, than the students who have not passed the course. The difference of the levels was checked by calculating the T-test,² as a result confirmed that the difference of the evaluations between the students who have passed the National Defence Studies course and those who have not passed the course is statistically highly significant and **the defence willingness of the students who have learned national defence is higher than that of the students who have not learned national defence.**

Based on the results of the study and on the basic theoretical positions related to defence willingness, the described results suggest that schools should address more the history of the war and the so-called Estonian military success story. It helps students build stronger personal and historical connections with the country. It is also necessary to handle the operation of a collective defence system more comprehensively, as a number of responses revealed that Estonia is a weak country that cannot resist other countries and therefore, applying defence activity would be self-destructive. As the Estonian security and defence source documents point out that Estonia's security is based on an efficient collective defence, it is important to explain to students the step by step the functioning of the system and their role in it. (Estonian National Security Policy Concept)

² The paired samples test, which gives the answer how likely the datasets differ from each other (Tooding, LM. 2007, p 154)

We might argue that, probably, the defence willingness of the students who had passed the National Defence Studies course was higher already before passing the course? Results of the study also showed, however, that most of the students who had not passed the National Defence Studies course found that passing the course could increase their defence willingness and the students who had passed the National Defence Studies course confirmed that participation in the course had increased their defence willingness. In addition, the results highlight that both the students who had passed the National Defence Studies course and those who had not passed the course unanimously agreed that the National Defence Studies course is a necessary course.

Although in the national curriculum of upper secondary schools, National Defence Studies is an elective, some schools have made the subject compulsory only for men others for everybody. Thus, also schools where the National Defence Studies is a mandatory subject and not an option for students also participated in the study. This provided an opportunity to compare the difference of the levels of the defence willingness of the students passing the National Defence Study course on a voluntary and on a mandatory basis with a T-test (see Table 3). For that purpose were identified the mean values of the assessments of the students who had passed the National Defence Studies course on a compulsory and a voluntary basis, which were 2.74 and 3.21 respectively. The probability of the significance of T-test was $p = 0.000$. The obtained results were observed on the significance level $p \leq 0.01$. The comparison revealed that respondents who had passed the National Defence Studies course on a voluntary basis assessed their defence willingness to be higher than those respondents who passed the course on a mandatory

basis. Also, both the students who had passed the National Defence Studies course and the students who had not passed the course were unanimous in that the National Defence Studies should be a voluntary course for all students. **Thus, from the standpoint of raising the defence willingness of young people it is essential for the National Defence Studies to remain in** schools as an elective, so that students could choose whether or not they want to learn the subject. The importance of free will in emerging of defence willingness is also confirmed by the theory and the definition of defence willingness prepared on the basis of the students' responses and the Estonian security policy documents.

Since in most schools across Estonia, students can choose whether they would like to pass the National Defence Studies course or not, it was important from the point of view of the development of the National Defence Studies as a subject to identify the reasons why the subject is selected or discarded. The survey also showed that the National Defence Studies is mostly elected for the reason that it looks interesting and is often discarded, because there is no information on this subject. In order to make sure that the students do not leave the National Defence Studies unselected due to ignorance, it is necessary to organize in schools information briefings introducing National Defence Studies. There students would meet the National Defence Studies teacher, receive an overview of the course content and the differences compared to other disciplines.

Describing and analyzing the results of the survey, the researcher focused on four key aspects. A comparison of the definitions of defence willingness provided by the respondents who had passed the National Defence Studies course and by those who had not passed the course, the results are assembled in table 1. In addition,

the difference of the levels of defence willingness of the two groups of respondents was evaluated. The survey also showed that the defence willingness of the students who had passed the National Defence Studies course is higher than that of the students who have not passed the course. Also various aspects were looked at which enable an assessment of the difference in attitudes of the students who have passed the National Defence Studies course and of those who have not passed the course towards National Defence Studies. For example, it was found that the students who have passed the National Defence Studies course and the students who have not passed the course have different attitudes towards the necessity of the National Defence Studies course and towards the National Defence Studies course as a preparation course for military service. The level of National Defence education is generally highly valued in schools. The survey resulted in the fact that this is contributed too by having a National Defence Studies teacher with practical experience and who attends the study tours.

SUMMARY

The article searched for an answer to the problem, what is the willingness for defence and the extent to which the completion of the national defence education course will increase the defence willingness of young people. The aim of the study was to identify the relationship between those who completed the subject of national defence education and to compare the defence will of the young people who have studied national defence and of those who have not. The research strategy was a mapping study and the study sample was formed on a purposeful sampling method. A total of 630 students participated in the study from 24 upper secondary schools of Tallinn, of whom 287 had passed the National Defence Studies course and 343 had not.

Based on the constructivist and alternative defence security theory, on the theoretical principles of defence willingness, on the analysis of Estonian security policy documents, analysis and the responses received from the empirical study and on the analysis thereof was compiled the definition of defence willingness as follows: free will motivated readiness to step out for maintaining the security of the state until the arrival of the Allies and to resist the attack together with the Allies. The resulting definition was used in interpreting the study results. The study results showed that passing the subject of National Defence Studies may raise the defence willingness of young people and the defence willingness of the students who have passed the course at school is higher than of those who have not passed the course. Also, the study identified that the defence willingness of the students who studied the subject

voluntarily is higher. Thus, Kodelja's and Kant's theory that defence willingness and love for homeland are human emotions that must arise naturally and that cannot be forced was confirmed. Thus, from the point of view of rising the defence will from an Estonian national security aspect it is important to have the national defence education in schools rather as an optional subject. Since this study was conducted among the secondary school students in Tallinn, then the results are valid in Tallinn and in the next stage it would be necessary to carry out a survey based on a probabilistic random sample among the secondary school students across a wide section of Estonia. In a follow-up study it would be needed to pay attention to the extent to which the willingness for defence of the students who have learned national defence voluntarily is higher than the students who have learned the subject on a mandatory basis, because the assumption is that the defence will of those who have learned national defence on a voluntary basis should be higher already before commencing the relevant studies.

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CHANGES IN FRAMING DRUG ISSUES BY THE ESTONIAN PRINT PRESS IN THE LAST TWO DECADES

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Keywords: illicit drugs; media representation; press; media frames;
post-socialist transition; Estonia

INTRODUCTION¹

Illicit drugs have been one of the social problems e.g., among social injustice, unemployment, poverty, HIV *etc.*, that started to spread more in newly independent Estonia (Ahven 2000; Lagerspetz & Moskalewicz, p. 178). Estonia in the twenty-first century lies in the top rank in Europe for several drugs-use related indicators e.g., use of opiates and number of drug related deaths per million inhabitants (World Drugs Report 2010). When only approximately 50 drug-related offences were recorded back in 1995, then by 2009 this figure had increased more than twentyfold (see Fig. 1). This article examines how issues of illicit drugs have been represented in the Estonian press between 1993 and 2009. It is necessary to study media representations, as the role of the media in shaping public perceptions on drug issues and forming drug policy could be important (Clegg Smith *et al.* 2008; Hansen & Gunter 2007; Noto *et al.* 2006).

Great changes have taken place in the Estonian drug situation and in the reaction by the state to the drug problem in last two decades. Use of illicit drugs was evidenced already in the Soviet Estonia (Kärdi 1993); however it was not a social problem yet. The alarming figures concerning illicit drugs went up in Estonia in the first half of the 1990's: 8 registered addicts per 100,000 inhabitants in the 1980's increased to 15 in 1992 and 25 in 1995 (Lagerspetz & Moskalewicz, p. 179). The number of drug-related offences was on the increase as well (See Fig. 1). Still, drugs did not feature among the national priority issues during the first half of the 1990's. However, in the

¹ Translations of Estonian language media texts into English are made by the author.

second half of the 1990's the state engaged in action, to tackle the problem: a national prevention programme was set up; some laws related to drugs were adopted; and Estonia joined at least part of the UN Drug Convention (Lagerspetz 2005).

Around the turn of the millennium there was an avalanche of cases of infection with HIV among drug addicts, triggering scare in public and making the state do something about the problem. It was feared lest AIDS should transmit outside of the drug addicts' community and endanger everyone. The state set up new institutions (e.g., Estonian Drug Monitoring Centre in 2001 and Health Development Institute in 2003) and worked out a new drug prevention strategy (2012). However, use of drugs among the population has significantly grown in the new millennium (Talu *et al.* 2009). A token of lessening of the severity of the drug problem in the society currently is the lower rate of registration among intravenous drug users of new HIV cases and drug related crime.²

Drugs are associated with different issues and areas (crime and control, legal issues, health and medicine *etc.*) and problems and the framing of illicit drugs could and should be very complex in the mass media as well (Gossop 2007). It is important to study media representations to understand how the media tackles such a new issue – what is highlighted in the media discourse, what is omitted and how journalists have framed the topic. Understanding how the media frames specific issues is therefore a prerequisite to an understanding of the dynamics surrounding the formation of public perceptions of these issues (Shih *et al.* 2008).

² Registered drug crime may rather reflect direction of police priorities elsewhere (see e.g., Anvelt 2012).

MEDIA FRAMING

'Frames' root in a social constructionist perspective and 'media framing' deals with the presentation of issues in the media. These concepts have been investigated by many researchers from several disciplines in the social sciences; however scholars are not on consensus about the meaning of 'frame' and 'framing'. (Entman *et al.* 2009) Some scholars define framing in general terms as the 'central organizing idea or story line that provides meaning to an unfolding strip of events' (Gamson & Modigliani 1989, p. 143). In media studies, term 'frames' are often used when speaking about selection and salience, inclusion and exclusion of things in media content, or how the content is emphasized or deemphasized (Entman 1993). It is related to social power of journalism since journalists decide what is significant among other things, what are the sources used and what context to give to certain news (de Vreese 2005).

In this article the author is guided by Kohring and Matthes's (2002, p. 144) definition of framing who define frames as perspectives. According to them, the media deal with certain issues in different ways and therefore the issue is covered in different frames. For example, when conceiving of oil drilling, the audience may be presented with frames such as economic costs of gas prices, unemployment, environment, dependency of the state on foreign energy sources *etc.* (Zaller 1992) Frames are alternative ways of defining issues, endogenous to the political and social world (de Vreese 2005, p. 53). It is important to study how media frames the certain issue, as frames help readers to perceive the problem. These are the texts that shape the images people develop about the thematic (Entman 1993).

Concerning illicit drugs, Hughes and her colleagues found that criminal justice was the dominant frame in the Australian media in the 2000s (2011). Studies from Finland have shown (Hakkarainen 1992) that drugs were construed by the Finnish media mostly in the criminal justice context between 1970 and 1980 but at the turn of the millennium the aspect of providing support to addicts become more prominent. In the last decades, the social dimension started to recede and the more individualised stance came to the fore emphasizing the individual's own responsibility to govern his behaviour (Hellman 2010).

Media frames tend to change during development of the problem. For instance, Nisbet and colleagues (2003) examined the issues of biotechnology and stem cell research in terms of its variation in the prominence of frames across different stages of issue development. According to Shih *et al.*, coverage of public health epidemics has been highly event based, with increased news coverage corresponding to important events such as newly identified cases and governmental actions. They found that media concerns and journalists' narrative considerations regarding epidemics did change across different phases of development and across diseases (Shih *et al.* 2008). In this article, the author is interested in how frames representing drug issues have been changed in the Estonian print press in the newly independent Estonia.

METHOD AND SAMPLE

Frames could be found using content analysis of press articles (Semetko & Valkenburg 2000). They can be understood as groups of several independent text elements working together to create a story (or portrayal), each of which can send different signals to the reader (Entman 1993). Hence it is important to study different variables in the texts. If several texts show the same systematic grouping of text elements, one can call this specific and systematic combination a frame (Kohring & Matthes 2002). In this article, themes of articles have been the most important variables to indicate possible frames, complemented by information sources (institutions, agencies, media, citizens *etc.*), 'voices' (representatives of various sectors who are either authors of opinion articles or given voice in an article), the level of representation of the drug problem (general, national, group, individual), attitudes, the topicality of the article – drug abuse or drug related crime, geographical dimension *etc.* SPSS was used in data analysis and mapping frames. Close reading (Kain, no date) enabled the testing of the media's framing.

The sample consists of 738 press articles, with the key topics being 'drugs', 'drug addiction', 'drug related crime' *etc.* Regarding 1993-1995, the sample included 25 newspapers in Estonian of larger circulation, in order to learn as accurately as possible how the drug discourse started to form. Print versions of 'Postimees' (PM) and 'Eesti Päevaleht' (EPL) as major Estonian dailies are under analysis in 2000-2009. It is argued, that on the basis of the national dailies, broader conclusions could be drawn (Clegg Smith *et al.* 2008).

20% of articles ($n=148$) were tested for reliability by the other coder. Value of Scott's π was 0.87.

CHANGING FRAMEWORK IN REPRESENTING DRUG ISSUES

Although the aim of this research was not to study representation of drugs during the Soviet era, it is worth mentioning as an introduction that such issues as drug addiction, prostitution, AIDS, *etc.*, did not fit well with the communist ideology and they were not allowed to be discussed in public. If illicit drugs were however mentioned in the media then they were represented as an issue of Western societies or a local medical problem. (Meylakhs 2009, p. 378) When censorship was abolished at the end of the Soviet Era, the Estonian press started to cover formerly proscribed themes, including addiction and drug crimes. The author found only 10 drug-related articles in the Estonian language print media of wider circulation published between 1985 and 1991. Mostly the therapists and medical experts (Jänes 1989; Liiv 1989) wrote about addiction. Thus one can say that illicit drugs were then perceived in the medical frame (especially psychiatry).

Societal changes inherent to the transition period shaped the Estonian media. In the first half of the 1990's news coverage and the whole content of media became stepwise market-driven and changed principally. Experienced but old-fashioned journalists were replaced by a younger ambitious workforce often without much formal education. (Lauristin & Vihalemm 2002) Newspaper's outlook and content changed dramatically. Newspapers became thick and dyed, tabloid-line types were created and content switched from 'ideology orientation' to a 'human interest' presentation (Harro 2001). Representation of the drug topic as well started to relate to sensational aspects.

Beginning of the 1990's: Addiction as a Distant Problem

Altogether 157 articles on drug themes appeared in twenty five analysed newspapers and magazines during 1993-1994. At the beginning of the 1990's the topic of drugs was mostly reported by the emergent of the 'yellow' press (Liivimaa Kroonika, Post *etc.*). As this new media promoted a hedonistic lifestyle and illustrated this with stories of movie stars and bestselling musicians, drug use by celebrities appeared frequently. 20% of the articles in 1993-1994 were about the drug use of Western celebrities. Thus drugs use was often depicted in the hedonistic frame.

Such stories about Western celebrities in the first half of the 1990's sometimes stated explicitly that drug use is good or drugs should be legalized. For example, in 1993, Liivimaa Kroonika printed the opinion of a well-known actor, Jack Nicholson: *'Every person should be free to do as they wish /.../ I am in favour of legalizing narcotic substances'*. (Liivimaa Kroonika 1993). In the Post newspaper, members of a well-known band were quoted to have said the following: *'Unlike alcohol, marihuana is not a violent substance. It makes everyone happy', believe the musicians of 'UB40'*. (Post 1994)

Still, the favouring attitude was more apparent by reading between the lines, so to say, rather than in the direct praise of drugs. For example, Liivimaa Kroonika wrote about the well-known actress Jessica Lange: *'when I was twenty years old, I went to a party somewhere every night: I danced like a maniac, used drugs and alcohol. After a few hours' sleep I looked wonderful again ...'*. (Liivimaa Kroonika 1995)

In 1993-1994 the articles on drug related crime and combating it in other countries constituted 15%. Thus the drug problem was construed in the Estonia media as a far-away problem, concerning foreign actors, singers and other show business figures on the one hand and Columbian and Mexican drug barons on the other hand. However Estonian drug discourse started to form as well, e.g., 13% of articles informed readers about illicit drugs and drug addictions as a new phenomenon in Estonia.

Emergence of Criminal Justice Framed in the Mid-1990's

In 1995 drugs made headlines due to two events and the issue started to be associated more with crime and negative sanctions. Drug themes fell into criminal justice framework. However, criminal aspects were often overshadowed by compassion and sympathy e.g., in respect to drug couriers. At the end of July the bigger daily newspapers reported that four Estonians were caught in Bangkok trying to smuggle heroin. Still the criminal offence was shaded by compassion displayed to compatriots. (Paimre & Harro-Loit 2011) The attitudes toward the drug traffickers were rather more sympathetic than bad.

After the Estonian drug traffickers were caught in Thailand, another drug related news bomb exploded in the press in the summer of 1995. Namely, the police had cut down a poppy field that belonged to a farmer from Viljandi. The obscurity in the given case is the fact that poppies were cultivated completely publicly: the minister of agriculture himself had brought the crops into Estonia. (Pöld 1995; Paet 1995; Paet & Lõhmus 1995) In other words – misunderstanding expressed even at a high level – why cannot one grow opium poppies? Here journalists sometimes quite analytically

and explanatory explained the situation (Ruussaar 1995). Both of these two cases in 1995 produced lots of articles (see Fig. 1) and apparently put people to think and discuss drug issues. If only 12 articles on drug issues appeared in *Postimees* and *Päevaleht* in 1993-1994, then 65 articles were published in 1995.

From the position of development of the drug discourse it is important to notice new spokesmen joined in and new sources were disclosed, in particular Estonian authorities of a different level (32% of articles on drug themes in 1995) and police officers and lawyers (28%). As compared to the earlier situation, leaping into prominence in 1995 were topics of drug-related crime and the combating thereof, for instance ‘Estonian drug couriers abroad’ (22%), ‘drug related crime’s analysing/review aspect’ (6%), ‘news of Estonian crime and police (6%)’ and ‘court news’ (2%). Strengthening too was the political and legal-theoretical aspect. Shift from representations from the individual level to the state level (74%) was visible.

Drugs Acquired a Wider Framework by the Turn of the Millennium

In 2000, media coverage on drug issues was higher than ever – 283 articles on drug themes appeared in ‘*Postimees*’ and ‘*Eesti Päevaleht*’ in 2000 (Fig. 1). The criminal-justice frame was still prevailing (e.g., Estonian crime and police news formed 15% and court-news 7% of all the analysed articles in 2000). However, the Estonian media started now to focus on HIV issues as well.

AIDS panic started in autumn 2000 when a woman was discovered in Narva who was about to give birth and was both HIV+ and an injective drug addict (Kalikova 2000; Rand 2000). After a while, the newspapers started to give more and more information about new HIV cases. The number of infected people that were

discovered started to increase rapidly during the 2000's and the media's reaction to that was quite panic stricken. (Eesti Päevaleht 2000c) Besides panic, more tolerant attitude emerged in respect to injecting drug addicts and several editorials appeared (Mumma 2000; Sommer 2000; Sikk 2000; Eesti Päevaleht 2000b). It was just the AIDS topic that conveyed to the drug discourse a more humane aspect, with more suggestions as to how the addicts could be helped. Interviews with the next-of-kin of the virus carriers were published (Ammas 2000).

Thus, in contrast to the prevailing criminal justice frame, drug issues were discussed in a more human-centred manner expressing the need to help addicts. Possible solutions to drug problems mentioned in these articles suggested to create better life conditions in the eastern part of Estonia, to develop the system of medical and rehabilitation care, drug prevention *etc.* This frame of toleration of drug addicts suggested that addicts who are people like 'Us', but have failed in their lives.

Despite the fact that drug issues obtained criminal coloration and social concern, the hedonistic frame emerged as well in the media. E.g., Postimees Arter stated: *The new generation of Estonian youth and wealthy doesn't kill their daily routine with whiskey but with illicit drugs instead. /.../ Wearing clothes designed by well-known fashion designers, they are preparing to unload their tensions by partying ...* (Valme 2000)

Already in the second half of the 1990's, young artists have sometimes expressed their tolerant attitudes towards drug use: [Artist M. Sobolev:] *Actually, instead of drinking cheap Bulgarian wine at some exhibition opening, amphetamines should be served just to see what happens ...* [K. Kivimaa adds:] *The use of drugs and*

stimulants among teenagers is becoming more common, one might even say natural, especially in connection with the rave culture, taking ecstasy is just part of the rave /.../ I prefer drugs to alcohol /.../ an LSD trip has been one of the most important experiences of my life ... (Sobolev 1996; Kivimaa et al. 1996)

Addicts as Threat to 'Us' in the 2000's

In the 2000's, there has been a noticeable fading of interest in the Estonian print press' paper versions to the drug topic. 69 articles on drug themes appeared in 'Postimees' and 'Eesti Päevaleht' in 2005 and only 58 in 2009. Analysis of the topics showed that the share of 'tolerating the drug addicts' had increased, still keeping significantly below the crime and court news. In parallel to this, a new frame 'addicts as a threat' appeared. This means, the press had started to present the drug addicts as a threat to the wellbeing of the so-called ordinary people or 'decent' citizens. (Päärt 2000; Postimees 2000) E.g. rumours spread that drug addicts stab the 'respectable' people in public transport just for the sake of fun with syringes and stuck the needles into lemons in food stores to clean them, wherefore we are all in danger of contracting AIDS and hepatitis (Alasoo 2000; Sikk 2000).

In 2005, the media reported in 25 articles about the plan of Tallinn City Government to erect a day centre for drug addicts. When people of the given residential district learned about opening of the centre, a wave of protest was triggered and the case was picked up by the media. (Rooväli 2005; Olvet 2005) For instance one local resident voiced his fear lest the currently peaceful residential district should become a scene of proliferation of drug business and intravenous drug use: *We are not squeamish, but these quarters cannot accept*

and ingest so many institutions of that kind /.../ You must not be an oracle of Delphi in order to predict what will start going on in the park with the arrival of drug addicts (Olvet 2005a).

The Headmaster of a Gymnasium also voiced his opinion that opening of the centre would generate problems in the given district: *Upon the opinion of the headmaster erection of the centre will jeopardise safety of many people living there, incl. students of the Gymnasium and their family members and he urgently requests to reconsider the suitability of the centre in that area of cultural and environmental value and currently as yet peaceful residential district. (Olvet 2005b)*

Whereas there were also a few advocates of the drug-centre idea. The statement of Postimees rounded the discussion up as follows: *The protest-prone citizens should still pose a question to themselves: where and how the public authority, be it the state or local municipality, should solve the problem? Should they do it abroad? Now, with care centres for drug addicts being at issue, we should remember the former positive experience gained in Estonia. (Eesti Päevaleht 2005)*

Despite the new topics emerged (youth problems, life of addicts etc.), the criminal justice frame has been dominating during the new millennium. For example 14% of analysed articles were crime news, 12% court news and 10% of articles were about Estonian drug smugglers in 2009. In addition, drug crime in the other countries consisted 5% of analysed articles in the same year. In 2009, one could distinct as well the aspect of favouring drugs legislation. Analysis of web-versions of the same dailies reflects dominance of criminal justice frame and increase in hedonistic frame by 2009. (Paimre 2013)

CONCLUSIONS AND DISCUSSION

Different frames in representation of illicit drugs have formed in the two last decades (see Table 1). In the early years of the newly independent republic, when drugs were still a relatively novel idea for Estonians, the hedonistic frame emerged in the light papers. On the one hand, the presentation of drugs in the hedonistic framework could have been prompted by the fact that this was completely uncharted territory for Estonian journalists. On the other hand, it could have been foreseen already then that the foreign press translations of celebrity scandals would appeal to the reader or, in other words, such accounts were simply aimed to boost sales. Even articles about Latin-American drug-czars were more newsworthy than analyzing drug issues in Estonia.

1995 marked an important shift in framing of illicit drugs due to the publication of the so-called Thai and ‘poppy war’ cases. Suddenly the general public became fully aware that drugs also mean police investigations and harsh sentences. It is most likely that due to the coverage of these cases, drugs had acquired a criminal justice and even a conflict frame (in ‘poppy war’). At the same time frame ‘drug couriers as victims of success ideology’ appeared.

As soon as the society attached some importance to drug issues, drugs acquired a wider framework by the turn of the millennium in the Estonian print press (see Table 1). Different social aspects became more visible. When HIV began spreading among intravenous drug users, the fear that this infection would not be confined to the addicts alone was also forward in the media. The headlines teemed with buzzwords like ‘crisis’ ‘epidemic’, *etc.*, all suggesting even the emergence of a crisis-frame. The main concern

was that soon the virus will travel from Narva to Tallinn and none of us will be safe. The fact that drug abuse was starting to present a threat to 'Us' resulted in the media becoming especially eager to address the issue. Frame 'toleration of drug addicts' appeared.

After the turn of the millennium the press started to lose its appetite for drug-related subjects (see Fig. 1). The criminal justice aspect was dominant depicting drug issues. Already in 2005 by examining the articles published in the two biggest Estonian dailies one could detect public reluctance to the idea of helping addicts and setting up drug treatment centres in 'their backyards'. Thus, a danger-frame came into being: addicts were perceived as posing a threat to the well-being of 'decent citizens'. Such openly hostile sentiments towards 'junkies' as expressed in the papers most certainly do not bode well for the implementation of a national drug strategy placing additional emphasis on assisting the addicts. This frame of threat and scorn is in strict opposition to the EU drug policy documents reflecting concern and humanity. (EU Drugs Strategy 2012)

The prevailing criminal justice frame indicates that the government decisively started to combat drugs by delegating the actual task to the police, border guards, lawyers, *etc.* Unfortunately it could result in a skewed media portrayal of such a multifaceted subject matter as illicit drugs are. As Bell argues (1983) 'This kind of media coverage of drugs educate audiences to a resigned, alienated passivity, systematically ignoring the broader social context of drug use and focusing on the individual victim as a publicly confessing example of the consequences of drug consumption'. However, this is not just an Estonian problem, for example, the criminal-justice framework has been dominating in the Australian media (Hughes

et al. 2011) as well in Finnish papers in earlier times (1970s-1980s). According to the studies on Finnish media (Hakkarainen 1992; Hellman 2010), it may take several decades before the press starts to address the issue in its full complexity.

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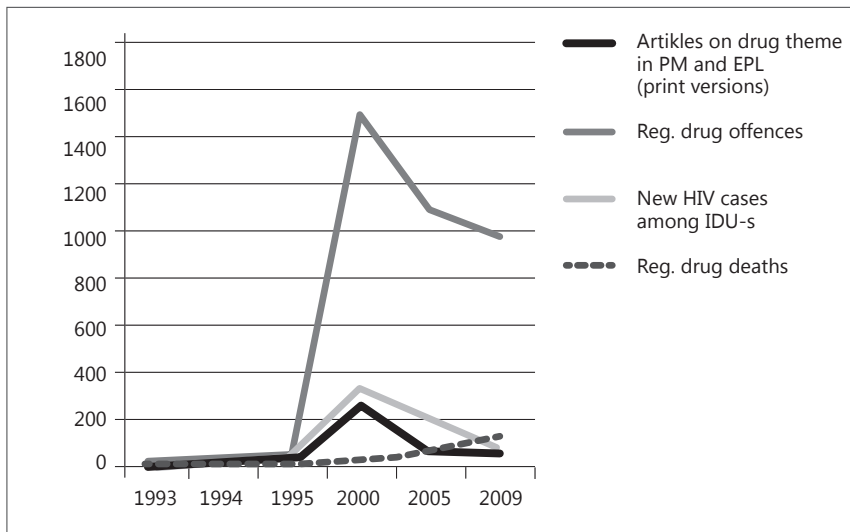
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ILLUSTRATIONS

Figure 1. Changes in the spread of drug issues and in the coverage of the Estonian main dailies



Data on drug situations: the Ministry of Justice and the National Institute for Health Development (TAI).

Table 1. Changes in the drug situation, drug policy and media coverage

	Soviet time (until 1991)	Beginning of the Estonian Republic (until 1995)	1995 and the second half of 1990s	Turn of the millennium	The 21th century
Spread drug related problems	Scant	Began to spread	Increasing tendency	Increase in drug crime, Spread of HIV among IDU*-s	Stably high
Drug policy	Very repressive	Denial of drug problems	Beginning formulation of national drug policy	Creation of Estonian drug policy	Repressive with some softening
Intensity of press coverage	Low (prohibited topic until the 2 nd half of the 1980s)	Increasing, but no interest by mainstream media	Increasing	Peak of coverage	Decreasing
Main frames in the press coverage	An issue of Western societies & medical problems.	Hedonistic frame in yellow press	Criminal-justice frame intensifies. 'Drug courier as a victim of success ideology' appears	Drugs acquire wider framework (e.g., social aspects). Criminal justice frame dominates, 'tolerating of drug addicts' appears.	Criminal-justice frame prevailing. Perspective 'addicts as a threat to the decent people' intensifies.

* IDU – intravenous drug user

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WILL EFFICIENT PUNISHMENT PLEASE STEP FORTH!

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Keywords: efficient punishment, monetary punishment,
non-monetary punishment

INTRODUCTION

Topics related to punishment implemented by the state have been discussed by philosophers, jurists, sociologists, criminologists and many others. A significant input has come from economists who have been actively involved in the debate from the second half of the 20th century. (Bentham 1907; Becker 1968)¹ As a result a diverse economic theory about efficient prevention of offences and punishing offenders has been developed.² Due to limited resources economic aspects of punishment are also prioritised in practice (Penal Code; Jareborg 2005, pp. 529-530; Lappi-Seppälä 2009, p. 350).³ The relevance of the economic approach arises also from the fact that it is concentrated on the deterrence of offences (Penal Code; Marsh *et al.* 2004),⁴ which in turn is a part of the basic concepts of the penal policy. Thus the input made by economists could be significant in the political decision making process when developing the penal system.

¹ The roots of the economic approach date back to the thinkers of the 18th century; see Bentham, J; the founder of the modern economic theory of law enforcement is obviously Becker.

² Here and from here on, an offence is an act that in legal acts has been defined as a punishable deed; people, who commit those acts are called offenders.

³ For example the penal power system arrangement project started in Estonia in 2011 aims among other things for economy, although the central idea is *ultima ratio*, see Penal Code and the corresponding explanatory note for the corresponding act to amendment law 16.07.2013; One of the most known general principles of penal power *ultima ratio* has been associated with efficiency and the control on expenditures in literature, also, see, Jareborg, N.; In Finland the aim of criminal policy is defined from the economic point of view, it is more precisely aimed to minimise the costs of crime and crime control, see Lappi-Seppälä, T.

⁴ Deterrence, besides retribution and rehabilitation, is considered to be the third philosophical aim of punishment, see for example Marsh, I., Cochrane, J., Gaynor, M.; In Estonian Penal Code § 56 it has also been stated that upon sentencing a person preventative aspects are taken into consideration, see Penal Code.

The aim of this article is to present economic theses on the efficient punishment of offenders, drawn from the respective literature. Research problems are the following:

- 1. What should be the level of punishment?*
- 2. In which proportion should monetary and non-monetary punishment be implemented?*

In order to carry out the analysis, theoretical literature found in scientific databases (ScienceDirect, Thomson Reuters Web of Knowledge, Scopus, JSTOR) and amongst the publications in National Bureau of Economic Research was surveyed. The following keywords were used: optimal law enforcement, punishment, sanction, fine, imprisonment and incapacitation. In addition, if the material referred to in the articles was found important to the analysis, it was worked through. When selecting the articles the before mentioned research problems and more specified approaches to the topic were considered. Upon formulating the theses the adapted Becker's model was used to obtain optimal conditions by minimising the social loss function with respect to monetary and non-monetary punishment.⁵ Based on the optimal conditions three theses were defined (Theses 1, 3 and 4). The remaining two theses (Theses 2 and 5), which illustrate the efficiency of punishment in specific situations, were formulated intuitively based on literature.

Comparing the analysis with the ones made in the same sphere (Shavell 1993; Eide 2000; Polinsky & Shavell 2007), it can be said

⁵ Adaption is especially necessary for demonstrating the developments in the literature after the Becker's seminal paper, see Becker's original model in Becker 1968.

the newness of the present one is primarily in three aspects. First, to the author's knowledge the latest similar work was published in 2007, after which some authors have made a significant input by developing the existing theory. Second, what is different from previous analyses is that when demonstrating the main results Becker's model is used almost in its original form, which enables to ensure technical simplicity and traceability at the same time keeping mathematical precision.⁶ Third, the derived rules of efficiency are used to make associations with the context of Estonia (Ginter 1999). Nevertheless it is not aimed to give a systematic and critical evaluation to the penal power of Estonia; it is rather aimed to illustrate theoretical viewpoints and associating it with the current legal system.

The scope of the article is significantly limited. First, monetary and non-monetary punishment as the only political instruments is dealt with, presuming the determination of the detection rate of offences. Since the detection rate is depending on factors that are relatively difficult to be changed, such as the level and the structure of the budget of the public sector, technological level of the criminal justice system and the aspects of the police tactics, the present approach seems more reasonable.⁷ Second, the analysis is carried out in the conditions of strict liability, which means the basis for sentencing a person is the fact that an offence was committed, not the person's will or incautiousness that are usual when

⁶ The uniqueness of Becker's model is in its macro level being in its focus, that is the total number of offences is optimised, generalisation of which in order to study specific questions is too vast, but it is easier to be followed intuitively; see the original model in Becker 1968.

⁷ The given limitation simplifies the analysis but it does not contort the results. The only aspect not dealt with is the potential increase of efficiency arising from the change in the detection rate.

a fault-based liability is considered. Aspects connected with optimising the detection rate and with fault-based liability are briefly commented and the related literature is referred to. Third, the effects of involving the private sector in the field of legal protection, which have already been studied by many researchers, are not looked at (Friedman 1984).

The outline of the work is the following. In the first chapter an analytical framework for deriving efficient punishment is introduced. In the second chapter the conditions for the efficiency of monetary punishment are presented, in the third chapter non-monetary punishment and combining the latter and monetary punishment are focused on. In the second and third chapter first the theses are presented, after which there is a discussion that lead to the theses. At the end of the article there is a short general summary of the analysis made.

ANALYTICAL FRAMEWORK FOR OPTIMISING PUNISHMENT

The question of what a punishment should be like can be characterised as normative or evaluative. Giving a convincing answer presumes defining a criterion that is unambiguous, measurable and which would then enable comparing different alternative penal policies. When dealing with problems in which a society as a whole is considered, economists mainly use a welfare economic analytical framework in which the aim is the maximisation of social welfare, the latter formulated as a function of the welfare of individuals. Similarly to Becker, in the present study also social

welfare is defined as a sum of the welfare lost due to offences, or as a social loss function using the following formula:⁸

$$SK = K - T + V + F \quad (1a)$$

where

$$K = K(N) \quad (1b)$$

$$T = T(N) \quad (1c)$$

$$V = V(\alpha, \mu, \beta, M, N) = \alpha N(\mu + \beta)M \quad (1d)$$

$$F = F(\alpha, N) \quad (1e)$$

$$N = N(R, M, \mu, \alpha) \quad (1f)$$

When generalising, the social loss function (1a) consists of the following four components: K is the cost to the victims of offences, T is the benefit from the offences or benefit for the offender,⁹ F is the fiscal cost for the government that are brought about when detecting and proceeding offences,¹⁰ V is the cost to the government and to the offenders connected with the punishment. Functions (1b)-(1f) define

⁸ Basically Becker's model is used, but the logic of the model of Polinsky and Shavell is used when expressing the costs of punishment. When compared to Becker, Estonian-based notation has been used. See Becker 1968 and Polinsky and Shavell 1984.

⁹ Here benefit is rather like net benefit, which also includes non-monetary benefits (for example satisfaction from the offence), and related costs have been subtracted (for example the cost of transportation on the offenders way to the crime scene). The minus preceding T in function (1) expresses the fact that an offender gains benefit from the performance, which in turn decreases the value of the loss function and increases the welfare of society. In the given paper the traditional approach is used, which means the benefit gained from an offence is considered as a social benefit. The expedience of an approach like that has been dealt with Stigler 1974, p. 56 and Friedman 1993.

¹⁰ Here government is a decision maker who decides upon the structure and level of the punishment and besides organising the matters related with the public it also is responsible for the functioning of the criminal justice system. Public budget is not defined separately; its existence is the default. Component F expresses the part that is connected with the detection and preceding of the offences related to the budget. It is also important to note that the government's fiscal cost is passed on to the people, mainly as a higher tax burden, thus its increase and decrease is directly affecting people's welfare.

the factors the four core components of the loss function depend on. Those factors are the total number of offences N , the detection rate of offences α (where $0 \leq \alpha \leq 1$),¹¹ the cost per one unit of penalty to the offender μ (for example the loss of income in a year spent in prison)¹² and to the government β (for example the cost to the prison system per year for keeping an offender in prison), the level of non-monetary punishment R . The parameters α , μ and β are fixed, that is the government can change only parameters R and M while N , K and T adapt automatically. It has to be stressed that in the model strict liability is presumed, it means all detected offenders are punished whether or not they had a will to act according to the law. For this reason there is no need to define a separate criterion that would define offences people are not punished for.

In order to evaluate the punishment's influence on social welfare it is important to define the direction and shape of the connections between the variables. It is presumed that the benefit gained from offences, the cost to victims, the cost of punishment and the cost of detection and proceedings are positively associated with the number of offences, that is $\frac{\partial T}{\partial N} > 0$, $\frac{\partial K}{\partial N} > 0$, $\frac{\partial V}{\partial N} > 0$ ja $\frac{\partial F}{\partial N} > 0$. In addition to that, the marginal benefit from offences is decreasing ($\frac{\partial^2 T}{\partial N^2} < 0$) and the marginal cost of offences to victims is increasing ($\frac{\partial^2 K}{\partial N^2} > 0$).¹³ The total number of offences is presumed to be negatively

¹¹ The detection rate here and from here on expresses the proportion of the detected and punished offences to the total number of crimes committed.

¹² It may depend either on the conditions of punishment, for example on the quality of the prison environment, or on the income of the people when they are not imprisoned.

¹³ The marginal damage caused by offences and the marginal benefit correspondingly reflects the loss and benefit associated with an additional offence. Thus $\frac{\partial^2 T}{\partial N^2} < 0$ marks that the offender gains less and less benefit from every additional crime committed, $\frac{\partial^2 K}{\partial N^2} > 0$ shows that the bigger is the total number of offences, the more every following offence costs.

associated with monetary and non-monetary punishment, that is $\frac{\partial N}{\partial R} < 0$ and $\frac{\partial N}{\partial M} < 0$, which means that increasing the level of punishment limits the number of offences. Emanating from this we can define punishment's influence on the costs of imprisonment. First, the higher the monetary punishment, the lower are the costs of implementing the punishment, $\frac{\partial V}{\partial R} = \alpha \frac{\partial N}{\partial R} (\mu + \beta) M < 0$. Second, the influence of non-monetary punishment on the cost of imprisonment can either be positive or negative: extending incarceration increases the cost of implementing the punishment, but at the same time the total number of offences and corresponding cost decrease since the number of individuals who have to be punished decreases. Formally $\frac{\partial V}{\partial M} = \alpha N(\mu + \beta) + \alpha \frac{\partial N}{\partial M} (\mu + \beta) M$, where $\alpha N(\mu + \beta) > 0$ and $\alpha \frac{\partial N}{\partial M} (\mu + \beta) M < 0$.

As it can be seen, punishment is presumed to limit the number of offences, because if, for example $\frac{\partial N}{\partial R} = 0$, then $\frac{\partial SK}{\partial R} = 0$, that is monetary punishment would have no influence on the social welfare and thus it would be optimal not to establish that. Although in literature one may find sceptical viewpoints about the deterring influence of punishment (Marsh *et al.* 2004), empirical studies have proven there are negative associations between offences and punishment and the detection rate (Eide 2000; Lauridsen 2009). Using the economic theory potential offenders' behaviour and reaction to punishment can be defined with mathematical precision. So to say, economists generally presume that individuals have a certain aim, usually they are aiming to maximise their personal welfare. The function determining an offender's personal welfare can be defined in the following way:

$$\tau = \alpha(t - R - M\mu) + (1 - \alpha)t \quad (2)$$

The equation (2) represents the expected benefit function. It can be seen that the expected benefit τ depends on whether the offence is later detected or not. To be more precise, when the offence is not detected individual benefit equals t , *i.e.* the benefit gained from the offence. If the offence is detected individual benefit equals $t - R - M\mu$, *i.e.* the difference between the benefit gained from the offence and the punishment. Therefore, according to equation (2) the individual is assumed to make decisions based on the expected benefit that is weighted sum of the described two states, where the weights are the probability of not being caught $1 - \alpha$, and the probability of being caught or the detection rate α , respectively.

As it can be seen, an increase in punishment decreases the expected benefit ($\frac{\partial \tau}{\partial R} = -\alpha$, $\frac{\partial \tau}{\partial M} = -\alpha\mu$), which thus makes it less attractive to commit offences, which in turn should result in negative association between offences and punishment, as it was presumed before. For example, should a person have a choice whether or not to steal 500 euros when the detection rate is 20% and monetary punishment 1500 euros, then according to the function (2) the expected individual benefit is $\tau = 0,2(500 - 1500) + (1 - 0,2)500 = 200$ euros, which would mean that committing an offence would increase the individual's welfare. Should the punishment be increased to 3000 euros, the expected benefit would be -100 euros and a person would not offend. At the same time similar logic only applies for people whose attitude towards risk is neutral. If potential offenders are afraid to take risks, that is they are risk averse, then they would prefer a benefit that is smaller than 200 euros, but which would be 100% and possible to be earned legally. Thus they may not offend even when the expected benefit is positive. In the present article people are expected to be neutral towards risk taking, the

influence of risk sensitivity on the conditions of optimality are intuitively commented in the following chapters.

When relying on the loss function (1) and the expected benefit function (2), optimal level and structure of punishment can be found when minimising the social loss function. It is technically reached when differentiating the loss function with respect to monetary punishment R and non-monetary punishment M . An approach like that guarantees economically efficient punishment will be found. Namely, in the field of economics the usage of limited resources is considered efficient if it is not possible to improve a person's situation without worsening the situation of another. In the context of punishment it means that a punishment is efficient when the situation of at least one person is improved without worsening the situation of another. In practice it is impossible to be implemented one on one, since generally punishment worsens the situation of an offender. For this reason efficiency is usually defined in a form that is a bit milder, that is in the form of potential efficiency: a punishment is efficient if the welfare arising from it is greater than the loss.¹⁴ This is in accordance with the loss function (1) presented in this article, in which the benefits and costs are summarised. For example, if the increase of a monetary punishment minimises the value of the loss function, that is it increases the welfare of the society, it means that someone's welfare increases more than someone's decreases, which means that the efficiency increases (Friedman 1993). Hence essentially the criterion of optimality in this analysis is efficiency and thus optimality and efficiency are from here on used as synonyms.

¹⁴ This is also known as Kaldor-Hicks criterion; see for example Zerbe *et al.* 2006, pp. 12-13.

OPTIMISATION OF MONETARY PUNISHMENT

Upon optimising monetary punishment it is usually presumed that the implementation of the latter does not bring about any further expenses for society, for this reason it is a transfer in the society: monetary punishment is an expense for an individual but revenue for the government. In the context of the society's loss function (3) it means that $(\mu + \beta) = 0$, which is why $V = 0$. Thus the loss function is simplified:

$$SKF = K - T + F \quad (3)$$

Based on the equation (3) it is possible to define the first conclusion that has become a classic in literature:

Thesis 1. An efficient monetary punishment equals the quotient of the marginal cost of the offence and the detection rate.

Upon the derivation of Thesis 1 the first step was to minimise function (3) with respect to R .¹⁵

$$\frac{\partial T}{\partial N} = \frac{\partial K}{\partial N} + \frac{\partial F}{\partial N} \quad (4)$$

According to the equation (4), when minimising the social loss function the level of monetary punishment found should be of a kind in which the marginal cost of offences $\frac{\partial K}{\partial N} + \frac{\partial F}{\partial N}$ and the marginal

¹⁵ Differentiating the function with respect to a certain variable gives the marginal value of the corresponding variable. Since in the minimum and maximum points of the function the marginal value is always zero, then if after differentiating the function is made equal to zero one can define a condition in which SK is minimised or maximised. When differentiated $\frac{\partial SK}{\partial R} = \frac{\partial K}{\partial N} \frac{\partial N}{\partial R} - \frac{\partial T}{\partial N} \frac{\partial N}{\partial R} + \frac{\partial F}{\partial N} \frac{\partial N}{\partial R} = 0$ when dividing both sides with $\frac{\partial N}{\partial R}$ and relocating the expressions, one gets (4). In the presence of the minimum point the following has to be true: $\frac{\partial^2 SK}{\partial N^2} = \frac{\partial^2 N}{\partial R^2} \left(\frac{\partial K}{\partial N} - \frac{\partial T}{\partial N} + \frac{\partial F}{\partial N} \right) + \left(\frac{\partial N}{\partial R} \right)^2 \left(\frac{\partial^2 K}{\partial N^2} - \frac{\partial^2 T}{\partial N^2} + \frac{\partial^2 F}{\partial N^2} \right) > 0$, in order to make it valid it is enough if $\frac{\partial^2 F}{\partial N^2} = 0$ ja $\frac{\partial^2 N}{\partial R^2} = 0$.

benefit of offences $\frac{\partial T}{\partial N}$ are equal. From the conditions (4) it can also be seen that $\frac{\partial T}{\partial N} > \frac{\partial K}{\partial N}$, because $\frac{\partial F}{\partial N} > 0$. Thus it is optimal to over deter individuals, which means only those offences are allowed which marginal benefit is higher than the marginal cost for the victim.¹⁶ For example, in a situation in which $\frac{\partial T}{\partial N} = \frac{\partial K}{\partial N}$, *i.e.*, people are neither over- or under deterred, it is optimal to increase the level of punishment to some extent. Although the accompanying decrease in the number of offences does not have a significant influence on the welfare of the society as the marginal benefit for offender and marginal cost for victim are almost equal, the fiscal cost accompanying the process of investigation and proceedings decrease, which is why the welfare of the society increases.¹⁷

Considering the fact that according to function (2) a person commits an offence only when his/her benefit t is at least equal to the expected punishment, that is $\frac{\partial T}{\partial N} = \alpha R$,¹⁸ and thus when substituting this condition in the equation (4) and dividing the both sides of the equation with the detection rate α , the result is the optimal rate

¹⁶ Under deterrence means similarly that only those crimes are committed from which the offenders gain less benefit than the victims lose, absolute deterrence means that benefit and loss are equal.

¹⁷ Since most of the previous authors have assumed that the costs related to detection are only connected with the detection rate (they do not depend on the total number of crimes committed), mostly the optimality of under deterrence have been stressed when optimising the detection rate. Namely, if in the situation of absolute deterrence the detection rate decreases the costs related with the detection also decrease, at the same time the influence of additional offences arising from the decrease in the level of the expected punishment on the welfare of the society is marginal. Still Polinsky and Shavell have in footnotes referred to the possibility of over deterrence if the costs related to the detection depend on the total number of offences. The given assumption has also been relied on in this paper, since it seems more realistic.

¹⁸ Then the expected benefit gained from an offence is zero. In addition, as function (2) expresses an expected benefit (τ) from one offence, one should notice that the benefit gained from that offence at the individual level equals the marginal benefit of offences at macro level, that is $t = \frac{\partial T}{\partial N}$.

of monetary punishment R^* , which was also used when defining Thesis 1:

$$R^* = \left(\frac{\partial K}{\partial N} + \frac{\partial F}{\partial N} \right) / \alpha \quad (5)$$

Implementing rule (5) causes the loss caused by an offender to the government and victims turn into the expenses of an offender, which causes the offender to commit only efficient offences, where the expected benefit exceeds the expected costs. It is also seen that the greater the marginal cost of offences, the more strict punishment are optimal to be implemented. This also guarantees marginal deterrence of offenders, which means offenders are directed to commit offences that have a smaller loss.¹⁹ Usually punishment implemented in practice is in accordance with the conditions (5). An example from the Traffic Act (Traffic Act, 17.06.2010, enforced on 01.07.2011 – RT I, 31.12.2010, 3 ... RT I, 01.06.2013, 1), according to § 227 the fine received for exceeding the speed limit is directly associated with the extent of the offence committed, that is how great was the threat caused to others in traffic. Thus punishment formed according to rule (5) should influence people to avoid exceeding the speed limit heavily.

Condition (5) also appoints that the lower the detection rate the rougher the punishment has to be. Negative association between punishment and the detection rate arises from the fact that in order to keep the number of offences optimal, a lower detection rate has to be compensated for with tougher punishment. Example given, in Estonia the percentage of solved registered crimes is around 50

¹⁹ Need for that was already expressed by Bentham 1907, p. 178, p. 181; the term of marginal deterrence was brought to the literature by Stigler, see Stigler 1974, p. 57; later authors have analysed the concept of marginal deterrence by optimising offences and the detection rate at the same time, this is excluded from the scope of the given analysis, see for example Shavell 1992; Friedman 1993.

(Ministry of Justice 2013). Considering the fact that the police is informed of every 4 crimes out of 10 (Ahven *et al.* 2010, p. 64), it can be said that the detection rate is 20%. Thus in order to calculate optimal punishment the marginal cost of an offence should be divided by 0.2. It also means that the level of actually implemented optimal punishment is significantly higher than the cost borne by victims. This is widely used in practice also. For example it might seem unfair to demand a person pay 31 euros fine if he/she has not paid a 5-euro parking fee that is 6 times less than the fine (Tallinn public parking area and parking fee 2012). According to Thesis 1 there is no conflict: if the detection rate is for example 20% and a marginal fiscal cost of offences is added, for example $\frac{\partial F}{\partial N} = 2$ euros, then the fine should fall into this magnitude, because $\frac{5+2}{20\%} = 35$.

Thesis 1 is simple in nature, as according to this the level of punishment only depends on two variables, the marginal cost of the offence and the detection rate. Practice is a lot more complex: according to Thesis 2 it can be said that upon forming optimal punishment additional aspects associated with offenders (clauses a, b, c and d) and with the criminal justice system (clauses e, f, g, and h) have to be taken into consideration.

Thesis 2.²⁰ The level of efficient punishment depends, besides the detection rate and the level of marginal cost of offences, on the following conditions:²¹

²⁰ Thesis 2 considers all punishment, non-monetary included. A few specialities associated with non-monetary punishment are brought out in the next chapter.

²¹ In Thesis 1 it is the equality between the expected punishment and the associated marginal costs that is defined, because if condition (5) is multiplied with the detection rate, the result is $\alpha R^* = \left(\frac{\partial K}{\partial N} + \frac{\partial F}{\partial N} \right)$.

- (a) whether the offenders are of recidivistic character;**
- (b) whether the offenders have insufficient information;**
- (c) whether the offender has voluntarily confessed having committed the offence;**
- (d) whether offenders are risk seeker or risk averse;**
- (e) whether in the court system mistakes are made or people are “afraid” to make mistakes;**
- (f) whether there is corruption in the criminal justice system;**
- (g) whether offenders are sentenced by implementing an out-of-court settlement procedure;**
- (h) whether the government considers the influence of the punishment on the whole fiscal system.**

Clause (a) is connected with the practice to punish previously sentenced offenders or recidivists more severely.²² When bringing in an example from the Estonian Penal Code, then according to § 215 the punishment for an unauthorised use of a movable which belongs to another person is up to one year in prison, but if a person has previously been sentenced for a similar offence, then the punishment is up to 3 years in prison. Evaluating the expedience has caused economists some trouble. For example, if offences are committed only by people who gain more from the offence than lose, it is considered

²² Here and from here on recidivists are people who have committed an offence at least twice.

to be an efficient offence and there is no need to punish them harder even if they are caught for the tenth time. At the same time the percentage of recidivistic offenders is relatively high, which among those having served their sentence in prison is 40-50%, (Ahven *et al.* 2010) which is why the economic argument brought here does not seem too convincing.

There are still some arguments for imposing heavier sentences on recidivists. For example, Posner (1985, p. 1216) argues that since the stigmatising influence of punishment for recidivists decreases, heavier punishment should be implemented. Polinsky and Rubinfeld (1991, p. 300) illustrate that in certain conditions implementing heavier sentences on recidivists may be optimal since it enables to implement heavier sentences on people who are more likely to commit offences. A few years later Polinsky and Shavell (1998) discussed that if recidivism is in the situation of under deterrence punished more harshly,²³ it may deter first time offenders from committing offences, since people perceive the heavier sentence for the second offence already as a cost when they are committing their first offence. Mungan (2010) explained the rationality of imposing heavier sentences for repeated violations as the latter are more difficult to be detected. This means that people who have already been punished have more knowledge and experience, which makes it more difficult to detect them.²⁴ Although investigation authorities have more information about recidivists and the process of detecting repeated violations should be easier, the violators may be more successful in implementing their previous knowledge and thus they should be punished more harshly.

²³ The prerequisite for under deterrence is important; otherwise increasing deterrence is no longer efficient.

²⁴ The first to mention this aspect were Polinsky and Rubinfeld, but it was Mungan who carried out an analysis in more detail.

Otherwise their expected punishment is more lenient due to a low detection rate and the number of offences increases. Actually it was already more than ten years before Mungan's paper when Bebchuk and Kaplow (1993, p. 220) illustrated that people who are more difficult to be caught should be punished more severely, but they did not link it with recidivism.

In the previous analysis it was presumed that potential offenders are risk neutral and that they have complete knowledge of punishment and detection rates. In reality people are likely to over or under estimate the detection rate, which means that when evaluating the optimal punishment the rate perceived by people should be used since their behaviour depends on it.²⁵ If risk-seeking offenders are taken as an example then the cost of risk to undetected offenders should also be added to social welfare. In this case optimal punishment might decrease since the related social loss from additional violations may be smaller than the benefit gained from the reduction of the risk load. (Polinsky & Shavell 1979; Kaplow 1989) What is more, as it was mentioned in the previous chapter, people who are less willing to take risks are also less likely to commit offences, which is why the desired level of deterrence can be reached with punishment of a more lenient kind.

The last clause that is directly connected with offenders in Thesis 2, which is clause (d), applies in situations in which offenders voluntarily report to law enforcement institutions when they have violated the law. It has been illustrated that optimal punishment for those confessing one's violation equals the expected punishment since it creates a stimulus to confess one's offences,

²⁵ Bebchuk and Kaplow (1992) showed the importance of that aspect when detection rate and punishment are optimised simultaneously.

at the same time it saves money for the government (Kaplow & Shavell 1994). For example, if the detection rate is 10% and the pecuniary fine is 2000 euros, the fine should be 200 euros if the offence is confessed. In this case there is no difference for a violator to report his/her offence or not because when he/she does not report the expected punishment is 200 euros and when he/she does report the punishment it is still 200 euros. Presuming that people usually prefer telling the truth they usually confess to their offence. As a result the level of deterrence does not change but the government saves money.²⁶

Clause (e) in thesis 2 refers to aspects related to a sentencing process that should be considered when optimising punishment. For example, Png (1986) showed that if there is a risk of punishing a person who is not guilty or if a person who is guilty is freed from the punishment the level of offences committed increases. The reason for that is that if a person chooses between committing or not committing an offence then not committing does not seem as attractive because then also is a risk of getting punished. The solution here is to increase the punishment rates in order to achieve an optimal level of deterrence. Andreoni (1991), and Feess and Wohlschlegel (2009) also refer to the fact that a punishment that is too harsh may decrease the detection rate and decrease the level of deterrence. Namely, the court, being afraid to make mistakes, may more frequently find the offender not guilty. Thus more severe punishment may decrease the detection rate because in order to sentence a conviction the court needs greater evidence of the offender really being guilty.

²⁶ If people prefer to lie a little more lenient punishment should be imposed, for example 199 euros. In this case the level of deterrence decreases a little but people confess their crime.

In order to be more economical when using the resources of the criminal justice system, it is common in practice to penalize criminals implementing the out-of-court settlement procedure.²⁷ Although it significantly saves money for the court system (Landes 1974, p. 168), it results in inflicting more lenient punishment and the number of offences increases (Polinsky & Rubinfeld 1989; Polinsky & Rubinfeld 1988). In order to adjust this influence it is optimal to establish higher punishment rates than the ones stated in the conditions (5) because it would generally increase the level of punishment agreed upon in the settlement procedure (Polinsky & Shavell 2007, p. 436). Similar situation arises when illegal agreements are made, for example if a violator bribes in order not to serve the sentence. If the bribes are smaller than the punishment, the expected punishment in the form of expected bribes is smaller and the number of offences committed increases (Becker & Stigler 1974). Thus when comparing the conditions (5) it is efficient to increase the terms of punishment (Polinsky & Shavell 2001). At the same time researchers have shown that the higher punishment may increase corruption, arising from the corruptive deals being more valuable for the officials and it may also increase the number of offences committed since it is easier for offenders to make corruptive deals (Chang *et al.* 2000, p. 43). In addition to that, Kugler, Verdier and Zenou (2005) have shown that in the context of organised crime inflicting harsher punishment may in certain conditions become more attractive to criminal organisations and thus the crime rate would increase,

²⁷ In Estonia it is regulated by Code of Criminal Procedure, 12.02.2003, enforced on 01.07.2004 – RT I, 2003, 83, 558 ... RT I, 05.07.2013, 2.

too.²⁸ Thus in a situation of corruption an optimal solution may not be dubious, it should rather be tried to control corruption.²⁹

In the last clause of the Thesis 2 punishment' influence on the whole fiscal system is referred to. For example, Garoupa and Klerman (2002) showed that if the government does not aim to maximise the welfare of the society but instead wishes to maximise fiscal revenues it is more reasonable for the government to declare expected monetary punishment that is higher than the damage caused, it means offenders should be over deterred as it increases the fiscal revenue gained from punishment. Rouillon (2010) reached a similar result in the model maximising the welfare of the society. He took into consideration the influence of the fiscal revenue gained from monetary punishment on deadweight loss or efficiency cost of taxation.³⁰ Since the named revenue enables to decrease tax burden and as a result deadweight loss also, it may become optimal to lay down expected punishment that is higher than the damage caused when committing the offence. In order to demonstrate Rouillon's result formally the society's loss function (3) can be adapted in the following way:

$$SK = K - T + F + \lambda(F - aNR) \quad (6)$$

Upon comparing that with function (1) there is an additional parameter λ that represents marginal deadweight loss of taxation that is the ratio of change in deadweight loss to change in tax revenue. It

²⁸ In the present paper optimal punishment for organised crime is not analysed since respective literature on the matter is relatively scarce. It is still worth mentioning that imposing more severe sentences for organised crime may, in certain situations, increase the number of offences made, see for example Chang *et al.* 2005; Garoupa 2007.

²⁹ Optimal punishment for corruption is not focused on. It has been written about for example by Besley 1993; Mookherjee & Png 1995.

³⁰ The deadweight loss of income taxation in Estonia has been empirically estimated by Staehr 2008.

has been multiplied with $(F - aNR)$, which is expressing the fiscal position of the criminal justice system, that is the difference between spending and the revenue gained from monetary punishment. Thus in the situation of fiscal position of the criminal justice system is positive, that is $F < aNR$, $\lambda(F - aNR)$ represents decrease in deadweight loss of taxation. If the fiscal position is negative, the same term represents an increase in deadweight loss because fiscal deficit has to be financed with tax returns. When minimising function (6) in association with R the following condition is formed:³¹

$$R^* = \left[\frac{\partial K}{\partial N} + (1 + \lambda) \frac{\partial F}{\partial N} \right] / a + \lambda R \left(\frac{1}{E_R} - 1 \right) \quad (7)$$

where

$$E_R = - \frac{\partial N}{\partial R} \frac{R}{N}$$

When comparing the result with condition (5), it can be seen that condition (7) has been added a component $\lambda R \left(\frac{1}{E_R} - 1 \right)$ representing marginal change in the deadweight loss of taxation. In addition there is a multiplier $(1 + \lambda)$ preceding the marginal fiscal cost that reflects the accompanying marginal deadweight loss. It seems that if the responsiveness of offences towards monetary punishment is not elastic ($E_R < 1$) then optimal punishment is higher than conditions (5) because in this case $\lambda R \left(1 - \frac{1}{E_R} \right) > 0$.³² If the elasticity is high enough a punishment lower than condition (5) may become optimal instead.

³¹ The result of differentiation is $\frac{\partial K}{\partial N} \frac{\partial N}{\partial R} - \frac{\partial T}{\partial N} \frac{\partial N}{\partial R} + \frac{\partial F}{\partial N} \frac{\partial N}{\partial R} + \lambda \frac{\partial F}{\partial N} \frac{\partial N}{\partial R} - \lambda aN - \lambda aR \frac{\partial N}{\partial R} = 0$, upon dividing both sides with $\frac{\partial N}{\partial R}$, taking into consideration the associations $\frac{\partial N}{\partial R} = E_R \frac{N}{R}$ and $\frac{\partial T}{\partial N} = aR$, one gets condition (7) if the expressions are relocated.

³² In this case elasticity expresses the proportional change of offences if the level of monetary punishment changes by 1%. In the presence of an inelastic reaction ($E_R < 1$) the proportional change of offences is smaller than the proportional change of punishment, in the presence of an elastic reaction ($E_R > 1$) it is bigger than the proportional change of punishment.

OPTIMISATION OF NON-MONETARY PUNISHMENT

The second type of punishment besides monetary punishment set in Estonian Penal Code is imprisonment, if there has been a criminal offence and arrest and if there has been an act of a misdemeanour. Implementing this punishment is less convenient for the state and for the society as a whole because these involve high costs. Other non-monetary forms of punishment, such as electronic supervision, community service or limitation of certain rights usually need more resources than monetary punishment as well. For example, although a person supposedly creates additional value when doing community work there is still a need for supervision and in addition to that, a person could have created more additional value at the same time being somewhere else (either doing another work or working at his/her home), which can be considered as a loss in productivity. Although in the present article imprisonment is considered as non-monetary punishment, the presented general conclusions can be adapted for other forms of non-monetary punishment, too.³³

What is different when comparing monetary punishment and imprisonment is that when imprisonment is considered $(\mu + \beta) > 0$ in equation (1), because having a person in a custodial institution produces costs to both the imprisoned person and for the institution implementing the punishment. Consequently the first optimality condition for imprisonment can be presented.

³³ Researchers have not drawn much attention to comparing alternative non-monetary forms of punishment. Discussion on the pros and cons of death penalty when compared to imprisonment has been offered for example by Friedman 1999 and Shavell 1987.

Thesis 3. The monetary equivalent of an efficient imprisonment equals the sum of an efficient monetary punishment and the marginal cost of imprisonment.

In order to form Thesis 3 loss function (1) was minimised with respect to M and the following result was obtained:³⁴

$$\mu M^* = \left(\frac{\partial K}{\partial N} + \frac{\partial F}{\partial N} \right) / \alpha + M(\mu + \beta) \left(1 - \frac{1}{E_M} \right) \quad (8)$$

where

$$E_M = - \frac{\partial N N}{\partial M M}$$

The first component of optimal rule (8) is identical with rule (5) but additionally $M(\mu + \beta) \left(1 - \frac{1}{E_M} \right)$ representing the marginal cost of imprisonment has been added.³⁵ If its value is positive then it is optimal to over deter, since then $\alpha \mu M^* > \frac{\partial K}{\partial N}$. But it is more realistic to assume that the reaction of offences towards the length of imprisonment is inelastic, that is $E_M < 1$, which means that extending the time of imprisonment increases the cost of imprisonment because the number of offences does not decrease significantly and people finding themselves in prisons spend a longer time there. If the marginal cost of imprisonment is big enough, or it is bigger than $\frac{\partial F}{\partial N} / \alpha$, then $\alpha \mu M^* < \frac{\partial K}{\partial N}$ or it is optimal to under deter. Basically it all refers to the fact that the lower the elasticity is the less attractive it is to extend the time of imprisonment since the costs accompanying imprisonment increase. In addition to that, optimal imprisonment

³⁴ As a result of differentiating (s. footnote 21) $\frac{\partial SK}{\partial M} = \frac{\partial K}{\partial N} \frac{\partial N}{\partial M} - \frac{\partial T}{\partial N} \frac{\partial N}{\partial M} + \frac{\partial F}{\partial N} \frac{\partial N}{\partial M} + (\mu + \beta) \alpha N + M(\mu + \beta) \alpha \frac{\partial N}{\partial M} = 0$, when dividing both sides with $\frac{\partial N}{\partial M}$, taking into consideration the associations $\frac{\partial N}{\partial M} = -E_M \frac{N}{M}$ and $\frac{\partial T}{\partial N} = \mu M$, one gets condition (8) if the expressions are relocated. In the presence of the minimum point the following equation has to be valid: $\frac{\partial^2 SK}{\partial M^2} = \frac{\partial^2 N}{\partial M^2} \left(\frac{\partial K}{\partial N} - \frac{\partial T}{\partial N} \right) + \left(\frac{\partial N}{\partial M} \right)^2 \left(\frac{\partial^2 K}{\partial N^2} - \frac{\partial^2 T}{\partial N^2} \right) + (\mu + \beta) \alpha \left(1 - \frac{1}{E_M} \right) \left(\frac{\partial N}{\partial M} + M \frac{\partial^2 N}{\partial M^2} \right) > 0$. If $E_M < 1$ and one assumes that $\frac{\partial^2 F}{\partial N^2} = 0$ and $\frac{\partial^2 N}{\partial M^2} = 0$, this condition has been fulfilled.

³⁵ Basically it is a development of Becker's (1968, p. 182) condition (21).

is longer the greater is the marginal cost of the offence $\frac{\partial K}{\partial N}$ to the victim, this in turn ensures marginal deterrence. This type of pattern can also be observed in practice. For example, according to § 113 of the Penal Code the sentence imposed for murdering a person is imprisonment for up to fifteen years, but if the murder has been brutal or he/she has been torturing the victim, he/she could face a life sentence.

When considering non-monetary punishment all specialties brought into Thesis 2 in the previous chapter apply. Still it should separately be emphasised that if the government considers the influence of punishment on the fiscal system as a whole, then the optimal length of imprisonment is generally shortened since implementing imprisonment does not result in getting fiscal revenue (unless E_M is not high enough for great savings to appear due to lowered costs on imprisonment). Upon sentencing recidivists with more severe punishment in addition to deterrence there is the argument of incapacitation: since recidivism is an indicator of a person being more likely to commit offences it might become optimal to keep them in prison for a longer period of time (Posner 1985, p. 1216). Risk aversion may not limit optimal imprisonment as much as it does when monetary punishment are considered since on every level of punishment the costs of imprisonment are now lower, which in turn makes extending imprisonments more attractive.³⁶ An important specialty appears when implementing fault-based liability: if the system of a court that has full information about the offences made and about the benefit gained from them, it is possible

³⁶ More thorough discussion on the influences of imprisonment on people with different levels of sensitivity towards risk, see Polinsky and Shavell 1999.

to prevent all offences for which people could be punished.³⁷ For this reason the cost of imprisonment can be ignored because no punishment is implemented and the condition of an optimal imprisonment is simplified to $\mu M^* \geq \left(\frac{\partial K}{\partial N} + \frac{\partial F}{\partial N} \right) / \alpha$, which means it has to be equal or greater than the proportion of the marginal cost to the detection rate.³⁸

Previously monetary and non-monetary punishment has been analysed separately and the starting point was that it is possible for the government to implement only one form of punishment. In practice they are implemented at the same time and a question has arisen – which is more efficient and which would be the optimal combination of the two. Thesis 4 answers that question.

Thesis 4. Monetary punishment is more efficient than non-monetary punishment.

In order to prove (first shown by Becker 1968, pp. 193-198; see also Polinsky and Shavell 1984, p. 95), it shall be assumed that both monetary and non-monetary punishment is implemented. If now

³⁷ Namely, the court can always impose a sentence that would ensure that the expected punishment would exceed the benefit gained from committing the offence, which would then result in not committing further offences. For example, one may assume that a person is driving under influence of alcohol and $K = 500$. If $\alpha M = 500$ was declared and it was implemented only when $T < 500$ then people whose income is $T < 500$ do not commit that crime (because $T < \alpha M$). People whose benefit is $T > 500$ commit the crime (because $T > \alpha M$), but they are not punished. Not punishing can be explained by the fact that driving under influence may have been purposeful for the society (for example there had been a need to go and help someone really quickly). If deterrence is not possible at all (for example if a crime is committed in the affect situation), it is not optimal to punish. In practice the court system obviously does not have the needed information in order to implement sentences so precise and cannot avoid punishing even when using the model of rational offenders. See for example Shavell 1985 and 1987.

³⁸ It may be greater than the marginal cost because punishment is not implemented in reality.

imprisonment could be shortened a bit and monetary punishment be increased in a way that the expected punishment for the offender $\alpha(R + M\mu)$ does not change then the number of offences N stays the same. At the same time the cost of punishment decreases because the length of imprisonment M shortens. Thus the only change in the society's loss function (1) is the decrease in the value of component V .³⁹ In conclusion the welfare of the society increases and the same logic applies each time monetary punishment is not maximal, *i.e.* does not equal the offender's wealth.

Although in literature it has become classical to say that monetary punishment is more efficient than non-monetary, there are certain situations in which the favourability for monetary punishment disappears.

Thesis 5. Non-monetary punishment is more efficient than monetary punishment in the following conditions:

- (a) an efficient punishment is too high if it exceeds the person's wealth,**
- (b) the aim of the imprisonment is incapacitation.**

In practice imprisonment is mainly used when the offences are very severe. Although when certain offences are considered, for

³⁹ To be more formal, if one differentiates loss function (1) with respect to R , at the same time keeping μ , β and α fixed, one gets:

$$\frac{dSK}{dR} = \frac{\partial K}{\partial N} \frac{dN}{dR} - \frac{\partial T}{\partial N} \frac{dN}{dR} + \alpha(\mu + \beta)M \frac{dN}{dR} + \alpha N(\mu + \beta) \frac{dM}{dR} + \frac{\partial F}{\partial N} \frac{dN}{dR}$$

If $\frac{dM}{dR} < 0$ and $\frac{dN}{dR} = \frac{\partial N}{\partial R} + \frac{\partial N}{\partial M} \frac{dM}{dR} = 0$, that is non-monetary punishment is changed exactly so much that the number of offences stays the same, the derivative of the loss function when compared to monetary punishment is $\frac{dSK}{dR} = \alpha N(\mu + \beta) \frac{dM}{dR} < 0$, that is the value of the loss function decreases and the welfare of the society increases.

example a murder or extortion that includes taking one's freedom, implementing monetary punishment would appear grazing one's sense of justice, then implementing imprisonment is also supported by Thesis 5. Namely, monetary punishment can become exhausted and the need for implementing imprisonment may arise in the four following cases: the offender's wealth is low, benefit gained from the violation is high, costs from the offence are very high and the detection rate is very low (Shavell 1993, pp. 265-266). In all of those cases optimal monetary punishment can exceed the value of the offender's wealth. For this reason in order to implement optimal punishment, monetary punishment has to be complemented by a non-monetary punishment.⁴⁰ At the same time the final efficiency of implementing imprisonment depends on the fact of whether the welfare arising from additional deterrence exceeds the cost of the imprisonment, which means it may also be optimal to discard imprisonment (Polinsky 2007, p. 412).

When most of researchers have concentrated on optimal deterrence upon analysing imprisonment, then Shavell (1987) analysed the conditions of optimality in cases where the aim of imprisonment was incapacitation, which is impossible to achieve by implementing monetary punishment. A significant difference between approaches to deterrence and incapacitation is that when the latter is considered the optimal extent of imprisonment does not depend on the detection rate since it does not affect the costs of imprisonment nor the damages the offender causes when not imprisoned. For example, Shavell's analysis shows that imprisonment is optimal only when the damage caused by the offender when not imprisoned exceeds

⁴⁰ In addition, under fault-based liability monetary and non-monetary punishment are equivalent since punishment is not implemented.

the cost of imprisonment. Exploiting the same logic, the optimal length of imprisonment is optimal until the cost arising from imprisonment is lower than the damage caused by the offender when not being imprisoned. For example, should a person become less likely to commit serious crimes in the course of growing older it is no longer optimal to give him/her a life sentence. In practice it is also possible to prematurely release prisoners, offer parole, replace imprisonment with punishment that are less costly, such as community work or electronic supervision, which in the terms of the logic described can be considered absolutely justified. Miceli (2010) was the first to integrate the approaches to incapacitation and deterrence into one model, which enabled to show that if compared to conditions (8) optimal imprisonment can either be extended or shortened. The term of imprisonment is extended if inmates caused more damage by committing a crime than gained benefit from it, because committing violations that are inefficient is not possible when in prison. If inmates committed inefficient violations or the benefit gained was bigger than the damage caused, their optimal term of imprisonment shortens, which although increases the number of violations and also increases the welfare of society.

Researchers have also brought out several additional reasons for preferring non-monetary punishment that all deserve to be mentioned. One of those is the existence of corruption upon detecting violations and upon sentencing people. Namely, if it is possible for an offender to buy himself/herself out by bribing, then for the government the expected expensive prison sentence for the given crime committed becomes a less expensive monetary punishment.⁴¹

⁴¹ Supposedly it was mentioned first by Becker and Stigler 1974, p. 5; formal analysis was carried out by Garoupa and Klerman 2004.

In addition to that, using non-monetary punishment may become more efficient if it is the government's aim to exploit non-monetary punishment for drawing offenders' attention to the extensive damages caused by the given crimes (D'Antoni & Galbiati 2007). Achieving the same with monetary punishment is more difficult since the public might interpret it as the government's wish to increase fiscal revenue. According to Friedman implementing non-monetary punishment rather expresses the tendency of the powerful sentence, so to say, to over punish (Friedman 1999). This for the reason that when implementing monetary punishment there is always someone who gains from it because in the course of implementing monetary punishment wealth is transferred from the offender to the state. Thus implementing a punishment should be inconvenient enough for the imposer, like imprisonment is because of the accompanying high costs. This decreases the possibility of a punishment being implemented too often.

CONCLUSION

Since the 1960's many authors have contributed to the optimal law enforcement literature. The aim of this paper was to present the main theses on optimal punishment based on economic literature. This was achieved by surveying the respective literature found in scientific databases (ScienceDirect, Thomson Reuters Web of Knowledge, Scopus, JSTOR, NBER). Based on the survey a mathematical model was composed that was used to replicate the core results from prior studies. The core optimal rules for optimal punishment were obtained by minimizing social loss function with respect to fines and imprisonment. However, several extensions of the basic theory were presented intuitively.

The results can be briefly summarized in two general conclusions. First, the level of punishment that maximizes social welfare is positively associated with marginal cost of offences, including direct damage to victims as well as financial burden borne by the public and negatively associated with the detection rate. However, several additional aspects should be also taken into account such as the offender's record of prior offenses, corruption in the criminal justice system or the effects of punishment on the entire fiscal system. Second, concerning the structure of penalties, fines should be used to the fullest extent before employing non-monetary penalties due to the lower costs. However, non-monetary penalties become more attractive when the optimal fine exceeds the offender's wealth or incapacitation is the aim of a sanction.

Optimal rules presented in this paper are more or less in accordance with policies in practice. However, economists should pay

more attention to several practice-relevant issues such as rehabilitation or application of alternative non-monetary penalties. In addition, much more empirical research is needed to increase the policy relevance of this research area.

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CONFIDENCE AND TRUST IN CRIMINAL JUSTICE INSTITUTIONS: LITHUANIAN CASE¹

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Keywords: criminal justice, feeling of safety,
public confidence, fear of crime, victimology

¹ The article has been delivered within the framework of the Project '**Public Confidence in Criminal Justice Institutions in Lithuania and its Determinants**' which is in progress at Vilnius University. The Project is funded by a grant (No. SIN-07/2010) from the Research Council of Lithuania. The Project is performed in cooperation with the Lithuanian Social Research Centre.

INTRODUCTION

Confidence in criminal justice (CJ) institutions is one of the most vexatious problems in modern democratic states. The purpose of CJ institutions in a democratic society is to defend and protect the interests of the civil society and to provide high-quality security services to the citizens. As far as in democratic societies CJ institutions, as 'power structures which should be controlled by the public, its members must be aware of the quality of the services and the principles of the work of CJ institutions and of the defence and protection of fundamental human rights. Public non-confidence in such institutions might be an indicator signalling the lack of inter-communication and the functioning of criminal justice being perceived as self-oriented and non-serving for the public interest. On the other hand, public non-confidence in CJ has direct implications for the efficiency of its performance: non-reporting criminal offences, etc., impairs daily operations of CJ officers.

There are a number of surveys and research conducted worldwide exploring confidence in CJ. Many surveys of this nature mainly emphasise such aspects as attitude toward individual CJ institutions and their effectiveness, fear of crimes, victimisation and the feeling of safety and security. Comprehensive surveys exploring public confidence in CJ institutions have been carried out in the United States, Canada, Australia, United Kingdom and continental Europe. As one of the latest surveys we can mention the JUSTIS research project, which covered a comparative analysis (2011) of public confidence in the police and criminal courts in Europe.

Confidence or non-confidence in CJ institutions is influenced by the following factors:

- Feeling safe and secure, assessment of odds of becoming a victim of crime and assessment of the level of crimes. People, who feel safer do not think they can become victims of crime and believe crime rates are stable or decreasing, are more confident in CJ institutions. (Allain *et al.* 2006) Those thinking crime rates are increasing and a risk of becoming a victim of crime is high appear to be less confident in CJ institutions (Latimer and Desjardins 2007) *i.e.*, people who feel insecure also have lower confidence in CJ institutions. (Tufts 2000)
- Having had contacts with the police and crimes is associated with lower ratings for these institutions (Tufts 2000; Gannon 2005; Allain *et al.* 2006; Latimer and Desjardins 2007); a prior status of a victim of crime is associated with poorer satisfaction with police performance, but has no influence for the evaluation of courts and correctional institutions. (Tufts, Allain *et al.*)
- Influence of the mass media and situations where attitudes toward one episode are generalised to wider tendencies or phenomena. (Roberts 2007)
- Lack of knowledge on the performance of CJ institutions. There is a prevailing public opinion that courts impose too mild punishments and the CJ system cares more about offenders than for crime victims. (Roberts 2007)

Likewise, it should be noted that many surveys have revealed low levels of confidence in CJ as compared to other social institutions.

In Lithuania, systematic surveys on the confidence placed in institutions have been carried out since 1993. Public confidence in the police and courts has been researched along with other institutions. The first comprehensive study in Lithuania ‘Is the Lithuanian Society Safe? The Experience of Victimisation of Lithuanians and their Attitude towards Criminal Justice and Public Safety’ (Dobryninas, Gaidys) was carried out in 2004. The issues analysed included victimisation experience, experience of contacts with CJ, public attitudes towards crimes and penalties, sources of information on criminal justice, crime control and prevention programmes, feeling of security and assessment of human rights in Lithuania. In this connection, we should also mention regular surveys held by the Ministry of the Interior² since 1996 to analyse the aspects of confidence in the police (Vileikienė 2010), research studies performed within the framework of other international surveys (e.g., the aforementioned JUSTIS), individual surveys of Lithuanian researchers (Procedural Justice in Lithuanian Criminal, Civil and Administrative Justice (project leader G. Valickas), etc.

² See Public attitudes towards the police, perceptions of security and public security ratings in Lithuania (http://www.vrm.lt/fileadmin/Padaliniu_failai/Viesojo_saugumo_dep/naujas/Gyventoju_apklausa_2011__02.23_.pdf); Evaluation of the public’s sense of security and performance of law enforcement agencies (http://www.vrm.lt/fileadmin/Padaliniu_failai/Viesojo_saugumo_dep/naujas/Gyventoju_apklausa_2010.pdf); Rating of criminal justice institutions; Attitudes of private individuals and officers (http://www.vrm.lt/fileadmin/Padaliniu_failai/Viesojo_saugumo_dep/naujas/KJ_vertinimas.pdf), etc.

In 2011–2012, a new sociological survey was carried out under the project ‘Public Confidence in Criminal Justice Institutions in Lithuania and its Determinants’.³ The purpose of the survey was to analyse on a complex basis the manner of the coexistence and interaction of several social phenomena; public attitudes towards and confidence in CJ institutions, feelings of safety and security, fear of crimes and attitude toward criminal penalties. The survey aimed at finding out public attitudes toward CJ institutions, assess the level of confidence in such institutions and dynamics thereof as well as to assess victimisation experience of Lithuanian people, identify the groups at risk and key determinants of risks for victimisation. In parallel, the survey covered such issues as the public’s feeling of security, levels of fear of crimes and determinants thereof with a view to describing a mechanism of how the experience of victimisation and prior contacts with CJ institutions interact with public confidence in such institutions and the overall feeling of security.

The paper presents the first findings of the above-mentioned survey where confidence in CJ is analysed and assessed in the light of the feeling of safety and security, victimisation and criminal penalties.

³ On 6-28 June 2011, a representative survey was conducted by UAB SIC by order of the Vilnius University. The CAPI (computer assisted personal interview) method was used to interview 1006 respondents aged from 18 to 75. The sampling method involved stratified multistage sampling. The margin of statistical error for overall results is $\pm 3.1\%$ at the 95% confidence level.

THEORETICAL ASPECTS OF CONFIDENCE IN CRIMINAL JUSTICE

The recent survey of confidence in CJ was undertaken having regard not only to earlier surveys conducted in Lithuania and abroad, but also to certain theoretical insights that enabled approaching the problem from a slightly different perspective. This important theoretical research aspect has to do with the ambiguous conception of the terms ‘confidence’ and ‘trust’. In sociology, confidence in institutions is usually associated with the performance of the roles assigned to them. Such interpretation of confidence presupposes a possibility to ‘participate in functional systems’ and has nothing to do with interpersonal relations. (Luhmann 2000) In the given context an individual appears to be pulled into the system and his confidence in the institutional elements thereof rather bears the nature of passive satisfaction or dissatisfaction. On the other hand, ‘trust’ can be interpreted in the context of interpersonal relations in the light of identity. In the latter case, a person tends to assume certain commitments (risks) in respect of those whom the person trusts or distrusts. (ibid)

Actually, ambiguity of the terms ‘confidence’ and ‘trust’ is faced when attempting to measure public attitude toward CJ; trust as a social-psychological category and confidence as a systemic-functional category. In fact, all the concepts of confidence or trust in CJ try to take these psychological (micro) and sociological (macro) aspects into account in one or another way.

One of the first criminologists endeavouring to shift from the macro-analysis of confidence in CJ to the micro-analysis of trust in CJ was Sherman (2002). Focusing on the US criminal justice

system, Sherman noted that despite obvious progress made by the CJ system the improvements achieved had little impact on Americans' attitudes toward the criminal justice system. According to Sherman, there are two broadly framed questions that must be answered in order to change the situation:

a) What does the public expect from the criminal justice system? Are these expectations reasonable? How does the public perceive various components of the CJ system? Is the system considered fair? Is the system seen as effective? How does the public judge CJ institutions? Where do citizens get their information? How much of public opinion is rooted in personal experience?

b) What factors currently affect public confidence? What has been learned about the way public confidence in the CJ system is built?

Sherman's analysis of confidence in CJ is to a large extent tailored to the cultural, social and political context of the United States. However, there is one important aspect going beyond the national specifics of criminal justice. Sherman points out that the majority of Americans have more confidence in the police than in courts and prisons. Sherman tries to explain this phenomenon by invoking global changes in societies; modern egalitarian cultures demonstrate raised expectations and decreasing confidence, people are less likely to obey the law out of a sense of communal obligation and more likely to obey laws supported by personal morality. Basing on Tyler's theory of procedural justice, Sherman maintains that

when building citizen trust in criminal justice, effectiveness and fairness matter less than respect of cultural changes and treating citizens as equals.

Sherman's insights are not limited to the United States. In 2007, a similar phenomenon was observed by Roberts in his analyses of confidence in Canadian criminal justice: confidence in the police greatly differs from any other CJ ratings. Again, it was attempted to explain the phenomenon from the psychological angle; institutions that are less visible and 'less-fighting' criminals attract lower confidence rating from the public. A bit later, while reviewing the confidence surveys conducted in Australia, Roberts and Indermaur arrived at a conclusion that the criminal justice system is not homogeneous; it consists of different institutions which may demonstrate different levels of confidence. The authors provide an example of the evaporation effect, *i.e.*, the evaporation of confidence moving through the criminal justice system from the police through courts to corrections. The authors' recipe of how to improve confidence in different CJ institutions is similar to that provided by Sherman; institutions should optimise the perception that they are really protecting the interests of citizens. The latter aspect may be directly linked to such issues as a feeling of safety/security, attitude toward victims of crimes and reception of the system of penalties in the public.

A feeling of safety and security on the individual or public level is being built when no threats, fears or worries are felt in the short-term or long-term perspectives. According to Maslow's hierarchy of needs, the need of safety follows right after fundamental physiological needs (1943). The feeling of safety and security is not only the absence of physical risks, but also being sure of the secure

economic and social future. Both the feeling of security/safety and the circumstances it is built on have to do with trust and confidence in criminal justice.

During 20 years of transition to a new economic, social and political regime, people in the post-communist world were exposed to numerous transformations and reforms that made them feel uncertain about their future. This exacerbated the quality of life. The feeling of insecurity is undoubtedly an important problem in present times, especially in regards to one of its components – security against crimes. This problem is tightly linked to another important issue, *i.e.*, victims of crimes and their relationships with CJ.

The policy towards victims of crimes is admitted to be important both on a national and international level. Politicisation cannot be avoided in the area of victims of crimes. In turn, this affects confidence in the criminal justice system in general. To analyse the victimological experience of people, we can draw a line between those without victimological experience and victims of crime. People with victimological experience attract the status of a victim of crime. However, the status of victims appears to be perceived in society quite stereotypically, through the very fact of being victimised only. It is necessary to categorise crime victims who cooperate with CJ institutions. They might be attributed to the type of ‘ideal victims’, *i.e.*, persons who, after becoming victims of crime, report to the police and cooperate with the CJ system, including courts. Such victims are also referred to as ‘real victims’ for their participation in the CJ system. (Hall 2010) Reporting to the police and cooperation with CJ institutions is evidenced not only by the fact of the commitment of a crime which must be reported to CJ institutions, but also adequate confidence in such institutions.

Confidence in the CJ system and its symbolic values also effect public attitudes toward victims of crime. This is of particular relevance with regard to compensation schemes for the victims. In this case, compensation for damages to the victims cannot be based on an abstract social agreement between the state and the citizens. In this agreement, public confidence in law enforcement institutions is of particular importance. (Hall 2010)

Confidence in the CJ system is tightly related to the reaction of the public or individuals to their violated expectations about security and safety. Unfulfilled expectations due to a crisis in moral-interpersonal relations, criminal activities or even criminal policy pursued by a state may lead to the feeling of uncertainty and insecurity which, in turn, transfers the individual to a differed level of trust where he or she has to choose one of behavioural options to ensure his or her security and safety. The legislative and executive authorities try to invoke criminal laws to measure confidence in the CJ system. As it is known, with a view to ensuring public security and safety, such laws constitute only one element of the overall securing of social justice and societal safety. However, the practice of application of the laws often determines not only public confidence in criminal law enforcement authorities, but also public attitudes to the very punishment and the principle of enforcement of social justice in a state.

Garland argues that the intensity of punishment, the tools used for inflicting pain and the forms of suffering permitted in penal institutions are determined not only by reasonability and benefit-seeking, but also by customs, habits and feelings. For example, in Soviet years criminal law was believed to be above and the measure of, justice. Application and enforcement of penalties

was administered by the communist party and central authorities, which performance was not a question for public confidence but was rather accepted as a status quo. The state's attitude toward a crime and strict response thereto (e.g., imprisonment, deportation, exile, death penalty, etc) also conditioned the specific state of an individual in society.

According to Foucault (1976), it is a theoretical paradox when a sovereign who regulates life is also in the capacity to regulate death. The power to determine the right to live always presupposed the capacity to take life. 'It is the right to take or allow life' (Foucault). After the reinstatement of Lithuania's independence, confidence in the state and the system of its institutions has been gradually implemented in parallel with policy of personal liability for the decisions made. At the same time, the state's attitude toward penalty is cardinally changing too, moving from 'government coercion and punishment' toward the punishment for acts of mischief and individual prevention measures. In legal doctrine, there have been continuous debates as to the objectives (purpose) of punishment. (Drakšas 2008; Sakalauskas *et al.* 2012; Švedas 2006) Attitudes toward penalty and punishment of a person are linked to the fundamental and vital value – the principle of justice. However, the perception of a just penalty and practical application of the principle of justice depend on a number of circumstances: perfection of the valid criminal laws, understanding of what is just by the judge applying provisions of the Criminal Code of the Republic of Lithuania and the moral criteria prevailing in a society, etc. (Drakšas 2008) For example, empirical analysis of the psychology of justice has confirmed that when judging on the punishment and its fairness individual members of society usually follow the retributive

psychology of harm. (Kuklianskis, Gimelstein, and Justickis 2005; Reches 2010) Therefore, the toughest penalties imposed by criminal law attract the highest level of confidence.

Public opinion polls on penalties for committed crimes and findings of the polls provide CJ professionals a sufficient perspective of the attitudes prevailing in the country and enable corresponding 'adjustment' of such attitudes, so that penal policy pursued by the country would receive support from fellow citizens. On the other hand, public attitudes toward penalties are not always adequate, especially in cases of changes in punitive policies. It should be emphasised that the spectre of crimes is extremely wide, ranging from severe crimes and felonies to offences not requiring imprisonment. There are several reasons for a crime being directly associated with imprisonment by society members. First, from historical perspectives, imprisonment as a punishment is the best identifiable and correspondingly, most acceptable method. Second, associations between punishment and prison are derived from the news media, populist political spin and certain groups of interests. (Roberts and Hough 2011) Therefore, confidence in CJ institutions and rating of CJ in general can be portrayed by the public rating of penalties and dynamics thereof.

EMPIRICAL ASPECTS OF CONFIDENCE IN LITHUANIAN CRIMINAL JUSTICE

Feelings of Safety and Confidence

One of the most common indicators characterising the feeling of safety is having a belief in the future, being certain about one's own situation or the situation of others in the perspective of time. In the assessment of future perspectives, certain worries or insecurity about the future were expressed by 72% respondents.⁴ The most frequently voiced worry (78%) was insecurity about having sufficient funds to live in the future.⁵ Likely loss of funds for living is little linked to any wishes or actions; these are external and difficult to forecast, the circumstances for which the respondents have expressed their non-confidence in respect of the future. Non-confidence in respect of the future may be also influenced by the odds of losing a job and/or becoming a victim of a crime – such events can be little controlled by the subject of the event. On the other hand, worries that family relationships may worsen in the future (31% of the respondents are worried and 60% not worried) could be associated with trust, as many things appear to be within the family members' powers.

Quite a large share of the population (63%) is very worried or somewhat worried about the future of the state.⁶ In this case, uncertainty about the future and inability to have control over it could be linked to confidence/non-confidence.

⁴ “When thinking of your own future and of the future of others, how would you describe your feeling about the future of the state (for your relatives, yourself, your friends and acquaintances)? Very worried; Somewhat worried; Not at all worried”.

⁵ “Are you worried about having insufficient funds for living in the future? Very worried; Somewhat worried; Not at all worried.”

⁶ Fears in post-communist countries have been analysed in detail by Shlapentokh and Shiraev 2002.

As many as 50% of the respondents share the opinion that the level of public safety and security has decreased compared to 1989 (20% said it has increased).⁷ Such responses suggest that confidence in the power or competence of public authorities to ensure security has decreased in parallel with reduced confidence in being safe in one or another sense, in one or another circumstance. When interpreting the data above, one should have in mind that 20 years ago the respondents were younger and stronger; and this sole reason is enough to make them feel safer and more secure.

Many surveys have reconfirmed that the odds of becoming a victim of a crime are rated as the lowest in the living environment, higher in one's own city or region and the highest in Lithuania. In the given survey, the chances of becoming a victim of a crime were rated by the respondents as high by 23%, 35% and 55% respectively⁸ (difference is significant at $p < 0.05$). Presumably, this is the effect of media influences: the situation in Lithuania is judged on the basis of resonant events portrayed in media communications, while the situation in one's living environment is usually measured based on one's own experience. These indicators represent the coexistence of trust and confidence. Trust is associated with the feeling of safety in one's own living environment, where a subject may exercise the freedom of choice to a certain extent, while confidence relates to the feeling of safety (security) non-safety (insecurity) in Lithuania, where the subject stands only as an observer.

⁷ "Do you think the feeling of safety/security in Lithuania has increased, decreased or remained the same as compared to 1989?"

⁸ "Is the risk of becoming a victim of crime in Lithuania (your city/town, your living environment) very high, high, low, very low, difficult to say?"

The respondents have been asked about feeling safe or unsafe in 14 different situations. The responses suggest that people have a feeling of maximum safety/security in company with their friends (91% for safety and 5% for non-safety) and a feeling of maximum non-safety/insecurity – during the dark hours in unlit areas (17% for safety and 78% for non-safety). Those particular situations have to do with trust as they are associated with the risks that a subject may avoid.

There are no doubts about the direct rating of the performance and functioning of institutions being associated with confidence; this rating covers competences, resource bases, financial capacities, what we have and what is given.

Table 1. Rating of institutional performance in ensuring public safety and security in Lithuania (%)

	Good	Neither good, nor bad	Bad	Difficult to say
Police	39	38	20	4
President	35	38	19	9
Local communities	34	37	12	17
Mass media	32	41	21	6
Imprisonment establishments	21	34	17	28
Courts	19	37	35	9
Local authorities	18	47	29	6
Prosecutor's Office	18	39	31	12
Government	12	37	46	4
Seimas (Parliament)	8	30	58	5
Parties	6	36	49	9

In Lithuania, the police, the President, local communities and the media attract the highest confidence level, while parties, the parliament and the government represent the lowest confidence rates (difference is significant at $p < 0.05$).

The survey also explored whether the Lithuanian people feel certain worries or fears in respect to CJ representatives themselves.⁹ 44% of the respondents reported they would not be afraid to report a police officer for violations and 35% of them said they would be afraid to do so. This undoubtedly refers to the matter of trust in the police. These indicators, as linked to the feeling of safety/security, may seem to be somewhat contradictory and ambiguous in the light of relationships between trust and confidence. An idealised model illustrating the relationships is presented in Table 2.

Table 2. Relationship between trust/confidence and the feeling of safety/unsafety

	Safety/security	Unsafety/insecurity
Trust	When situations can be chosen and influenced, and there is a linkage to interpersonal relationships. Low risk.	
Distrust		When situations can be chosen and influenced and there is a linkage to interpersonal relationships. High risk.
Confidence	No freedom of choice or influence. The situation is given as such. Low risk.	
Non-confidence		No freedom of choice or influence. The situation is given as such. High risk.

⁹ “Would you be afraid to report a policeman for the violation of law? Yes, I would; No I wouldn’t; Difficult to say.”

In the above model, trust is one-to-one associated with safety/security and distrust – with unsafety/insecurity. In reality, there is always a combination of a certain degree of safety/security and unsafety/insecurity as well as a certain degree of trust and distrust. The same refers to confidence and non–confidence. When we speak about any real situation, we virtually always have a combination of some components of both trust and confidence. In reality, there are numerous unique combinations.

The deliberations above may also apply to the findings of quantitative surveys, presenting percentages of those feeling safe/secure and unsafe/insecure. Yet, the quantitative relationship between trust and confidence could be somewhat more difficult from the empirical point of view.

Confidence in CJ Institutions

Already the first findings of the surveys conducted in Lithuania in 1993 demonstrated that the police and courts attracted quite low confidence. For example, only about 20% of the respondents said they had confidence in the police and courts in 1993. Analysis of dynamics of the confidence in the police demonstrates several interesting regularities. Confidence in the police would sharply drop after resonating criminal events. The first dramatic decline in the confidence in the police was recorded in November 1993 right after a well-known journalist was murdered in Lithuania. Then the confidence in the police halved to 10%. Similar situations were observed in December 1996 (storekeeper from Panevezys killed four racketeers in self-defence) and November 2007 (in Skuodas district drunken policeman killed three children in a car accident). On the other hand, a positive trend in this connection is that confidence

in the police would revert to original levels in a couple of months. Such a sharp fall in the ratings and gradual reverting to the earlier level should probably be approached as a momentary reaction to the events that have shaken the public.

Despite some fluctuations, confidence in the police has been gradually growing (though insignificantly) and the number of those having confidence in the police has been exceeding the number of those who don't have confidence. The situation with courts looked a bit different. The first years of surveys of confidence in institutions demonstrated similar ratings of confidence in the police and courts. However, later findings have pointed to an increasing (though insignificant) gap between the ratings of confidence in these two institutions. As opposed to the police, there are more people having no confidence in courts than those who confide in them. Similar trends of courts attracting lower confidence than the police are characteristic to many EU countries. Some foreign researchers dealing with the analyses of the findings of empirical surveys have observed that the local police attract more positive ratings from the public than do local courts and prisons. (Tufts 2000; Roberts 2007; Gannon 2005)

Findings of the survey (Table 3) show that the police enjoy the highest level of public confidence as compared to any other CJ institutions (59% of the respondents reported having confidence and 36% having no confidence). In case of the prosecutor's office and courts (39% vs. 42 % and 37% vs. 47% respectively), the number of people having no confidence is higher than that of those who have confidence. Proportion of people having and not having confidence in imprisonment establishments is more or less the same (29% vs. 32%). However, as many as 39% of the respondents have no opinion at all (differences are significant at $p < 0.05$).

Table 3. Confidence in CJ institutions (%)¹⁰

	Fully have confidence and rather have confidence	Rather have no confidence and fully have no confidence	Difficult to say
Police	59	36	5
Prosecutor's Office	39	42	19
Courts	37	47	16
Imprisonment establishments	29	32	39

Attention should be paid to the proportion of the respondents who gave no ratings for certain institutions. Some institutions are more contacted by and more visible to the public (e.g., the police), while others, such as imprisonment establishments are quite confined. It is not surprising that quite a large number of the population have no opinion about them. One more important aspect is that ensuring public safety/security as is one of the most obvious functions of the police, while activities of the prosecutor's office and courts are not as visible to the public as are those of the police. Courts, prosecutors' offices and prisons mainly attract public's attention through controversially depicted events.

Likewise, a noteworthy finding is that 1/3 of the Lithuanian population measure the performance of CJ through the lens of their own experience, or experience of family and friends. Differences in the opinions of those who have had contacts with CJ institution and those who had not are illustrated in Table 4.

¹⁰ Do you have full confidence, rather have confidence, rather don't have confidence or fully have no confidence in the institutions? Differences are significant at < 0.05.

Table 4. Opinions of persons having had contacts and having not had contacts with CJ institutions regarding the performance of the police and courts in ensuring the public's safety in Lithuania (rating 'bad' or 'very bad', %)¹¹

	Police	Courts
Persons having had contacts with the police, prosecutor's office or courts about their own problems, or problems of their family and friends	26	41
Persons having had no contacts with the police, prosecutor's office or courts about their own problems, or problems of their family and friends	17	34

As we can see, there exist statistically significant differences between those who have had contacts with CJ institutions and those who had not. The survey findings have revealed that those who had their problems or problems of family and friends settled at CJ institutions gave lower ratings to the performance of the police and courts in ensuring public safety/security in Lithuania.

Confidence and Victimization Experience

Confidence in CJ institutions and trust in their representatives or performance thereof are influenced by both direct and indirect victimisation experience of people. Confidence and trust in CJ institutions may be determined by a degree the performance of the CJ officers who meets the expectations of a victim of crime. The survey disclosed not only the number of Lithuanian residents who have been victims of crime over the past five years, but also the number of their relatives and persons in the neighbourhood who

¹¹ Chi-squared test; the data are statistically significant at $p < 0.05$.

have suffered from different criminal acts. 33% of Lithuanian residents have had direct or indirect victimological experience (15% have been victimised personally and 18% have family members of friends who have been victimised).

Confidence of people, who have directly or indirectly experienced victimisation, in law enforcement institutions may also be influenced by the measurement of risk of becoming a victim of crime.

Table 5. Risk of becoming a victim of crime (%)

	Direct experience	Indirect victimological experience		No victimological experience	
	<i>Victims of crime</i>	<i>Family, friends</i>	<i>Neighbours</i>	<i>No victimological experience</i>	<i>Total</i>
I feel no worries	26	26	28	41	37
I am worried	69	70	65	52	57
Difficult to say	4	4	7	7	7

69% of the respondents with direct victimological experience feel they are at risk of becoming another victim of a crime. 26% of those being victimised don't have such fears (differences are significant at $p < 0.05$). Among those having no victimological experiences, respondents feeling no risk of becoming a victim of crime accounted for 41%.

31% of the respondents with direct victimological experience believe there is a risk of becoming a victim of crime in their living environment. 60% of the victims of crime feel safe/secure in the

living environment and feel no risk of becoming victims of crime. 43% of the victims of crime share the opinion that there is a risk of becoming a victim of crime in their own city or region, and 61% of them believe the risk of becoming a victim of crime is high in Lithuania.

The protection of the rights of crime victims in Lithuania is rated as ‘good’ by 18% of the victims of crime and as ‘bad’ by 45% of the victims of crime.

Trust of crime victims in law enforcement institutions is also illustrated by the rating of the performance of law enforcement institutions with regard to their work with victims of various crimes.

Table 6. Rating of the performance of law enforcement institutions with regard to their work with victims of various crimes (%)

	Having been victimised	No victimological experience	Total
Good	25	32	29
Bad	61	43	49
Difficult to say	14	25	21

Nearly one half of the Lithuanian residents (49%) gave bad ratings for the performance of law enforcement institutions with regard to their work with victims of various crimes (differences are significant at $p < 0.05$). There was a difference in the ratings by the respondents with direct or indirect victimological experience and those who have not been victimised. 25% of the respondents who have been victimised rated the performance of law enforcement institutions as ‘good’. Among those having no victimological experiences, good ratings for the performance of law enforcement institutions accounted for almost one third (32%).

61% of the respondents with direct or indirect victimological experience gave bad performance ratings to the law enforcement institutions responsible for the work with victims of various crimes. Among those having no victimological experiences, bad performance ratings accounted for 43%.

A comparison of public confidence in the police, prosecutor's office and courts (see Table 3) with confidence of victims of crime in the mentioned institutions demonstrates that the number of those with no confidence in the institutions is higher than the number of those who confide in them. As we can see in Table 7, every second victim of crime has confidence in the police (50%) as compared to nearly 60% of Lithuanian people expressing confidence in the police. Likewise, there are more victims of crime who don't have confidence in the police: 45% of them stick to the opinion that there can be no confidence in the police. Among Lithuanian residents, such opinion was supported by 36% of the respondents.

With regards to the prosecutor's office and courts, confidence was expressed by one third of victims of crimes (32% with regards to the prosecutor's office and 34% to courts). As compared to the Lithuanian public's confidence in these institutions, there is lower confidence on the part of the victims of crime: every second victim of crime has no confidence in courts (52%) and prosecutor's office (51%). If compared to the Lithuanian residents, no confidence in courts was expressed by 47% of the respondents and in the prosecutor's office by 42%.

Table 7. Confidence of crime victims in law enforcement institutions (%)

	Confidence	Non-confidence	Difficult to say
Police	50	45	5
Prosecutor's Office	32	51	17
Courts	34	52	14

Victims of crime found it more difficult to rate the performance of the prosecutor's office and courts. 17% of the victims of crime had no opinion about the prosecutor's office and 14% about courts.

Confidence and Punishment System

This survey, *inter alia*, aimed at identifying what statutory sanctions for crimes have effects on public confidence in the CJ system and to what extent an institutional judgment of individual's acts meets public expectations. For this purpose, the Lithuanian residents were offered a set of preventive measures for choosing the ones that they find, *inter alia*, likely to mobilise their trust in their safety and security and to have a positive impact on the criminogenic situation in the country.

Table 8. Assessment of the effectiveness of measures contributing to the better criminogenic situation (%)¹²

	Very effective and effective	Ineffective and very ineffective	Difficult to say
Technical (situational) measures that make commitment of a crime harder	83	11	6
Society's participation in safety/security increasing programmes	79	13	8
Detection and punishment of perpetrators	71	22	7
Legal and moral education	67	23	9
Improvement of living conditions	67	24	9

The table above points out that the respondents place the highest level of trust, and consider to be the most effective in ensuring their safety/security, various technical measures that make commitment of crimes harder, *i.e.*, installation of alarm systems, security cameras, etc. (83%); 79% of the respondents were positive about participation in the programmes ensuring public safety/security, for example, in Safe Neighbourhood and other similar programmes. However, they tend to trust less and consider ineffective (or doubt the effectiveness of), such measures as legal and moral education (33%) and improvement of living conditions (33%). People who have been victims of crimes within the past five years assess the aforementioned measures similarly to those who have not had victimisation experience. However, measuring implementation experience and disappointment in the procedure or outcomes of the measuring

¹² Differences are significant at $p < 0.05$.

of implementation in the former group have implications for trust in them. Therefore, this group of respondents are of the opinion that participation in the measures aimed at ensuring public's safety/security is less effective.

The analysis of public attitudes toward person's punishment for the committed crime encompassed, *inter alia*, the attempts to find out whether people still tend to deal with these issues by means of repressive criminal justice or place the highest levels of trust in the strictest sanctions on a perpetrator. The respondents were asked to assess: 1) types of penalties to be imposed on a person for the commitment of a crime; 2) penal measures to be imposed on persons of the full legal age who have been released from criminal liability or punishment; 3) penalties excluded in the Criminal Code which are popular in public discourse (death penalty, physical punishments).

When measuring public trust and expectations about subjection to the above-mentioned forms of punishment, it is worthwhile noting that imprisonment has been a number of years the most frequent penalty imposed on offenders by Lithuanian courts. For example, in 2009, this type of penalty accounted for 45.2% and in 2010 for 43.6% of total penalties imposed. However, a sentence was deferred to about 31% of persons on whom the sentence of imprisonment has been imposed.¹³ Accordingly, the sentence of imprisonment is presumed to have been nonetheless most trusted within the system of judicial power despite alternatives to imprisonment being enshrined in the Criminal Code.

¹³ Statistics Lithuania 2011. Crime and Law Enforcement Activity 2010. Vilnius, p. 24.

Table 9. Assessment of punishment effectiveness (%)¹⁴

	Very effective and effective	Ineffective and very ineffective	Difficult to say
Sentencing to a term of imprisonment	78	13	9
Arrest	77	17	6
Fine	76	21	3
Restriction of liberty	76	19	5
Life imprisonment	75	15	10
Public works	68	28	4
Death penalty	64	22	14
Physical punishment	37	48	15

The findings of the survey suggest that Lithuanian residents also believe imprisonment to be the most effective type of punishment: sentencing to a term of imprisonment of up to 20 years was chosen by 78% of the respondents, arrest by 77%, life imprisonment by 75%, although the latter penalty is often characterised in legal doctrine as the social death penalty. (Müller–Dietz 1972; Weber and Scheerer 1988) There are very few respondents seeing life imprisonment as an absolutely ineffective sanction. Unfortunately, the death penalty still has quite many supporters in Lithuania. As many as 64% of the respondents believe this penalty is effective. For the sake of objectivity, it should be noted that 22% of the respondents consider the death penalty to be ineffective or absolutely ineffective

¹⁴ Differences are significant at $p < 0.05$.

and another 14% have doubts as to its effectiveness.¹⁵ Such attitudes, to a certain extent, can be explained such that when asked about penalties, respondents first of all think of severe crimes (murders, severe health injuries) and, consequently, first express their confidence in such penalties that should be proportionate to the committed crimes. Therefore, we can presume in this connection that stereotyped public attitudes built over decades toward the strictest penalties and their meaning have been changing redundantly and public ‘justice’ is often a reflection of the attitudes of CJ officers and their confidence in the sanctions prescribed by criminal law.

Yet, somewhat more favourable for Lithuania is the fact of increasing positive attitudes of Lithuanian people toward non-prison penalties. For example, the penalty of restriction of liberty is sought by the legislator to control the offender and provide them assistance without subjecting to imprisonment. This penalty is considered to be the most effective in case-law (e.g., it accounted for 14% of total penalties imposed in 2009 and for 15% in 2010). Positive opinion about the penalty was shared by 76% of the respondents. Likewise, the respondents are favourable with regards to the penalty of fines (76%) and of public works (68%). The summarised findings of the survey give grounds to presume that most of the respondents have confidence in penal sanctions, too, since their attitudes toward penal sanctions are basically favourable.

¹⁵ In Lithuania, death penalty was cancelled after the Ruling of the Constitutional Court of 9 December 1998 On the death penalty provided for by the sanction of Article 105 of the Criminal Code wherewith the death penalty was declared unconstitutional. On 21 December 1998, the parliament adopted the Law Amending the Criminal Code whereby the death penalty was replaced by life imprisonment.

Table 10. Assessment of the effectiveness of penal sanctions (%)¹⁶

	Very effective and effective	Ineffective and very ineffective	Difficult to say
Compensation or elimination of pecuniary damage	87	9	4
Forfeiture of assets	84	10	6
Prohibition to exercise a special right	83	12	5
Deprivation of the right to do certain work or engage in certain activities	72	21	7
Prohibition to approach a victim	72	19	9
Deprivation of public rights	59	28	13

The following penal sanctions appeared to be seen as the most effective in reducing crimes in society: compensation or elimination of pecuniary damage to aggrieved persons (87%), forfeiture of assets (84%), prohibition of the exercise of a special rights (83%), prohibition of approaching a victim (72%) and deprivation of the right to do certain work or engage in certain activities (72%). It is also noteworthy that, according to the respondents, the most ineffective measures include deprivation of public rights (28%) and deprivation of the right to do certain work or engage in certain activities (21%). Some portion of the respondents doubted the effectiveness of the deprivation of public rights (13%), prohibition to approach a victim (9%) and deprivation of the right to do certain work or engage in certain activities (8%).

¹⁶ Differences are significant at $p < 0.05$.

The findings of the survey suggest that residents tend to associate the sanctions of criminal justice with the idea of the enforcement of justice rather than with the mildness or strictness of the sanctions. Confidence in one or another sanction prescribed by legislation virtually reflects the respondents' ability to assess advantages and disadvantages of the practical application of the sanction to a real individual in a specific social environment, as well as the rational assessment of measures that the practical implementation of can ensure their security/safety and eliminate the risk of becoming a victim of crime.

GENERAL CONCLUSIONS

Measurements of confidence in CJ by means of sociological quantitative survey methods have long-lasting traditions in Lithuania. The paper describes a survey conducted in 2011 which, on the one hand, continues the tradition by analysing confidence in CJ through the lens of the feeling of safety/security, victimisation and criminal penalties and, on the other hand, offers a new consideration of the survey findings, taking into account different interpretations of the terms 'confidence' and 'trust' in social sciences. In this respect, confidence in CJ is linked to social and institutional systemic assessment aspects, while trust in CJ is associated with micro-social and social-psychological issues of identity.

The feeling of safety/security has associations both with trust and confidence in CJ. Trust refers to security in an individual's living environment, situations which, at least to a certain extent, can be controlled by an individual, while confidence has rather to do

with the national level. The police, the President, local communities and the media attract the highest confidence level with regard to ensuring safety/security in Lithuania, while Parties, the Parliament and the government represent the lowest confidence rates.

The findings of the survey do not contradict the results of other surveys and studies conducted in foreign countries and confirm the hypothesis that having had personal experience of contacts with CJ institutions is associated with lower confidence in these institutions and lower ratings for their performance as compared to individuals who have not had contacts with CJ institutions.

Victims of crime also place lower confidence in law enforcement institutions. Only the police are seen more positive than negative. People with direct or indirect victimological experience tend to be more worried about their safety/security and have more fears of becoming a victim of crime. Likewise, unsafety and fear attain higher degrees when people living in the neighbourhood become victimised.

With regard to measures ensuring public safety/security, we can conclude that people tend to place higher levels of trust and consider more effective, various technical (situational) measures that make commitment of a crime harder, *i.e.*, installation of alarm systems, security cameras and participation in programmes aimed at ensuring safety and security, etc. However, people with victimological experience have lower trust in such measures and find them to be insufficiently effective.

More than two thirds of the Lithuanian residents still place higher levels of confidence and are more positive about the penalty of imprisonment. This approach is basically in line with the actual situation in Lithuania where imprisonment is a frequent penalty

imposed on offenders. The death penalty also appears to have quite a big number of supporters in Lithuania.

However, positive public attitudes toward preventive measures and non-prison penalties point out the gradual rooting of a more humanistic approach to criminals and that public's reaction to the violation of public safety/security is not always related to the principle of retribution.

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ISSUES OF THE VICTIMISATION EXPERIENCE AND FEAR OF CRIME IN LITHUANIA IN THE CONTEXT OF RESTORATIVE JUSTICE

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Keywords: victimisation, restorative justice, fear of crime, criminal justice

INTRODUCTION

Political, economic and social change that started in Central and Eastern Europe in 1989 changed the countries of the region and their societies in a radical way. One of the most important features of the transformation processes there was the parallel growth of two phenomena, namely crime and fear of crime. During the 1990s both of them acquired scale and dimensions unknown earlier in the region. The very fact that both of these phenomena, crime and fear of it, often develop in a parallel way, may suggest not only a statistical correlation between them, but also a causal relation. It might seem evident to think about fear of crime as being generated by crime, its volume, development and structure. However, this correlation is by no means evident in criminological literature. It is usually assumed that fear of crime results from the 'objective' security situation, *i.e.*, real threat of crime, or real risk of being victimised by various kinds of offences. Unfortunately, the problem is not as simple as that and it seems that relations between crime and fear of it are of a much more complicated character. This may be illustrated by the fact that the volume and incidence of crime in Western Europe is usually still higher than in its Central and Eastern counterparts; but indicators regarding fear of crime are just the opposite (Czapska *et al.* 2004).

Fear of crime as a serious public problem must be treated as seriously as preventing and reducing crime. If this fear remains within certain limits, it can be useful: people who perceive the threat of various dangers usually act prudently and effectively protect themselves from victimisation. But if the level of fear exceeds certain

limits, it becomes harmful. First of all, this phenomenon can significantly change people's lifestyles as well as create a feeling of dissatisfaction with the state's internal functioning and destroy the authority of criminal law and justice. This in turn can cause 'private' justice to appear, especially when a society judges the actions of the courts to be very gentle, perceiving the courts to be more worried about the criminals than the victims. Thus the fear of crime also reduces society's approval of criminal law reform and such criminal policy measures as decriminalisation or re-socialisation, causing an increase in criminalisation and the repressive nature of criminal law (Kury & Krajewski 1996).

Another very important factor in the fear of crime is the perception of the local community in the consciousness of the people. This first of all speaks about phenomena described by the term 'incivilities' such as the noisy behaviour of neighbours, various groups of young people wondering aimless and frequently being noisy, the presence of drug addicts, drunks and other 'strange' people, etc. These factors, together with the poor social ties of the inhabitants in a specific residential quarter have a decisive significance on the level of the fear of crime.

Victimisation risk may cause fear of crime, which may be explained, for example, through the social control perspective at the level of social groups, stating that this fear is the result of the community feeling, informal control disintegration in the closest environment. It is conditioned by victimogenic risk factors that certain persons are subject to victimisation more often than others: primarily, space factors related to the contemporary crime ecology. The so-called defensible space concept underlines the advantages of such architectural and urban planning where the possibility of

territory and people observation would be higher, thus the functioning of informal control. Situational factors, pertaining to the life-style of the individual, also are of importance in victimogenic risk. According to the routine activity theory (life-style theory) the victimisation level depends on the everyday human activity. More active people more often create the opportunities for falling victims.

This article analyzes some of the problems of victimology. Among them, the aspects of the fear of delinquency and the feeling of safety are overviewed. The first part of the article describes the results of research that was carried out at the Faculty of Law of Vilnius University. The goal of the research was to analyze the feeling of safety of young persons who go to entertainment places at night. The article also analyzes the feeling of safety of persons who became the victims of crimes as well as some problems linked to the notification of law enforcement institutions about the crimes committed. In this context restorative justice is presented as a method to improve the stance of criminal justice to the victims of crimes (the third part of the article).

THE RESPONDENTS' FEELING OF SAFETY AND THE FEAR OF CRIME

Victimisation surveys are one of the most frequent methods used in crime surveys. Respondent surveys about whether they had been the victim of criminal offences and about the close friends and family of the victims provide data about the level of the society's victimisation while the responses to the questions of whether the crime was reported to the police and what the reaction of the police was

provide data about latent criminal offences. The first national representative victimisation surveys in Lithuania were conducted in 1997 and 2000.

The most recent data confirms what has long been the trend: young people between the ages of 16 and 24 are the most victimised group, regardless of whether it is crimes of violence or crimes of property. Inevitably there are one or two exceptions to this trend, but in general over two decades of British Crime Surveys consistently reproduce this finding. Of course, this is a measure of the level of risk, the frequency by which young people are victimised. Explanations for this trend are usually located in lifestyle and routine activity theories. Young men are the group most likely to spend leisure time in public spaces, frequenting pubs and nightclubs, staying out late at night and generally not being very afraid of these environments. Hence, they are more heavily victimised than other age groups. Young women between 16 and 24 are also the most heavily victimised age group among the female population, reproducing the findings from the male population. As the age group becomes older the risk of victimisation reduces, meaning that the older you are the less likely you are to be victimised. This can also be explained using lifestyle or routine activity explanations (Green 2007, p. 95).

In October 2010 and November 2011, students of the Criminology branch of the Faculty of Law of Vilnius University carried out the survey “Conflict Situations at Vilnius Night Entertainment Places”, the purpose thereof was to determine the general opinion of young people frequenting Vilnius night entertainment locations on conflict situations at night time and the incidence thereof, as well as the feeling of safety in and close to such locations. A total of 100

persons who go to entertainment places (bars, clubs) at night were interviewed (semi-structured interview).

Night-time economy studies are carried out for example in the United Kingdom (Finney 2004; Swann 2010). It was back in 2010, that London announced one of the parts of its crime prevention programmes, having defined specific targets for 2011–2014. “The night-time economy in the City continues to be very popular, with a large number of people now visiting the City specifically to socialise there in the evenings. This raises a number of concerns for the community including violence, noise, urination in the streets and other anti-social behaviour. The Safer City Partnership aims to reduce the negative impact of the night-time economy in order to ensure everyone in the City can enjoy the benefits that a safe and vibrant night time economy can bring” (City of London 2012).

The survey conducted for the purpose of the present paper allowed the conclusion that the peak hours for the night violence to be escalated are the late evening and night hours (from 6 p.m. to 6 a.m.), also on weekends.

The age range of the respondents was from 19 to 32 years of age. Since the surveyors sought to interview at entertainment locations, thus the respondents accordingly were visitors and guests of such specific locations. As far as the frequency of attending Vilnius night entertainment locations is concerned the answers chosen most often was visiting the places once a month (40%). One fifth of the respondents chose the answer ‘once per week’.

About half of the respondents had not involved into any conflict situation at night entertainment locations during the past year, and only about one third of them had never had a chance to observe the situations in action. Furthermore, the fact that the person gets

involved into such situations (and how often) depends on a number of reasons including the consumption of alcohol. It also partly depends on the locations and places that the person concerned visits. As to the possibilities to strengthen the safety feeling, two proposals prevailed in the responses: better lighting of the streets and larger numbers of police patrols. Also worth noticing was the proposal to educate the society about the effect of alcohol as alcohol is one of the most important reasons for conflict situations at night entertainment locations. As evidenced by the data of the survey the respondents were feeling more safe than unsafe at night entertainment locations and on the way home.

It should be noted that on the basis of the data of January 2012 some bars and nightclubs were described as safer than others. The III police commissariat of the Vilnius Region Police Commissariat organized in the territory served by it the contest “The Safest Night Bar – 2011” (Vilnius Region Police Commissariat 2013). The purpose of the contest was to reduce the number of criminal offences and violations in nightclubs and their vicinities and create a safer environment for the entertainment in nightclubs.

Different people use different strategies to compensate for the inherent contradiction between a belief in a just world and the knowledge that bad things can and do happen to good people. People may use different methods to defend themselves against being victims of crime. For example, people may decrease the frequency of night time activity away from home or install burglar alarms in response to their fear of crime. In a survey of college students Tweksbury and Mustaine (2003) found that those students who were more fearful were more likely to use self-protective measures. Ironically, however, they found that students who feel safer in their homes

were actually more likely to use these self-protective measures than those who feel unsafe. In addition, students living near fast food restaurants and those who spend more time with strangers were found to be less likely to use these measures. This latter finding may be due to the fact that people who are frequently exposed to strangers are less afraid of them and therefore find it less necessary to defend themselves from them (Meško *et al.* 2007).

It should be noted that on the basis of data from a 10–13 April 2008 Representative Survey of Lithuanian Residents, 17% of Lithuanian inhabitants feel safe or very safe in Lithuania, 48% more unsafe and less safe and 35% neither safe nor unsafe (neutral). It is expedient to point out that the 2008 representative survey of Lithuanian residents investigated what factors mostly increased the feeling of being unsafe among Lithuania's residents. According to the data from this survey, the feeling of being unsafe was mostly heightened for Lithuania's residents by rising prices and inflation (81%), crime (62%), illness related problems (41%), small pensions (26%), the risk of unemployment (20%), the ravaging and contamination of the environment (18%), etc. (Nusikalstamumas Lietuvoje 2008).

CRIMINAL VICTIMISATION EXPERIENCE

When one considers the fear of crime and feeling of safety, it is important to take into consideration the trust that residents have in law enforcement institutions and the status of the victims of crimes in criminal proceedings.

Another trend of studies under discussion is the issue concerning the contacts of victims with the system of criminal justice.

Investigation shows that victims more frequently tend not to report to the police about the crime committed. “Like all previous studies, analysis of the 2007/08 British Crime Survey data revealed that the seriousness of the offence, however measured, is the most important factor influencing victims’ decisions to report crime /.../ Over time, the public have become more realistic about the police’s ability to solve crime. A much greater percentage of respondents in 2007/08 cited that the police ‘could do nothing’ or ‘would not be interested’ as a reason for not reporting their crime” (Tarling & Morris 2010).

According to the data from a survey seeking to investigate whether Lithuanian society is safe, 34% of respondents who had been the victim of criminal offences did not contact the police. Respondents, who did not contact the police, usually did not contact them due to the following reasons: they did not believe that the police would help (53%), the police did not inspire trust (14%), they found the perpetrator themselves (3%), etc. After comparing these results with a 1997 international victimisation survey, it can be seen that the prevailing reason at that time was also the victim’s confidence that ‘the police can do nothing’ (Dobryninas & Gaidys 2004, p. 24). Thus, on the basis of data from victimisation surveys, people who have experienced victimisation usually do not contact the police due to a lack of confidence in police assistance.

Attention should be focused on the important problem of protection of the rights of crime victims in the criminal process. It can be asserted that the protection of victims’ rights and legal interests is directly connected to their legal status. Only after handing down an appropriate decision and drawing up the procedural documents can it be stated that the crime victim has all of the rights specified by law. Thus, if these actions are not taken, *i.e.*, a person is not

recognised as a victim, he essentially loses the basis for the effective legal protection of a crime victim.

Another instance would be the influential study of Shapland, J., Willmore, J. and Duff, P. of the passage of victims of violence through the criminal justice system, in which they reported a decaying of satisfaction with police responses, a hunger for information and control, an interest in monetary compensation that was far outweighed by a yearning for symbolic recognition and an experience of their vicissitudes in criminal justice as, in effect, a form of 'secondary victimisation'. The reiterated complaint made by victims after cross-examination in court was that they were made to feel on trial, as if *they* were the wrongdoer (Rock 2007, p. 51).

The 1983 European Convention on the Compensation of Victims of Violent Crimes and the 2004 European Union Council Directive 2004/80/EC relating to Compensation to Crime Victims lay out the obligation of the states to pay compensation, if it has not been paid from other sources, to persons who experienced serious health disorders resulting from violent intentional crimes or to dependants who lost their supporting person due to such crimes. Such compensations are paid from the special-purpose fund. The Criminal Code of the Republic of Lithuania foresees the measure of criminal impact — a contribution to the fund of crime victims. In 2005, in Lithuania, the Law on the Compensation of Damage Resulting from Violent Crimes, the purpose of which is to protect the rights and lawful interests of persons who suffered from violent crimes, was adopted; under this Law, the Programme of the Fund of Crime Victims is established.

Experience has shown that NGOs can play an important role in ensuring the protection of victims' rights. Meanwhile the possibilities of such organisations to directly participate in defending victims' rights are limited in Lithuania. This is one of the most important deficiencies in the system for defending crime victims.

RESTORATIVE OUTCOMES FOR VICTIMS

In this context the ideas of restorative justice should be analyzed as means to improve the status of the victims of crimes in the criminal justice system. According to Monika Płatek the idea of a stolen conflict of Nils Christie was simple and convincing. The call to give conflict back to those it belongs was strong enough to agitate and convinced many. At the same time traditional punitive justice generally brought no satisfaction and inequality. The result of both is that the restorative justice is in fashion. Alternative dispute resolution techniques reached all kinds of court procedures: civil, administrative and criminal as well. Fashion? Not an adequate term. It is both the need to counteract the neoliberal tendencies smuggled into the criminal justice policy and make criminal justice more efficient in terms of the quality of a court made decision and also in terms of reasonable time. The orientation towards restorative justice is also part of looking for a better way of solving problems. It helps the growing tendency to perceive crime as problem to solve and therefore to make room for victims say (Płatek 2007, p. 136). Attempts to assess the role of victims within restorative justice processes are believed by the sheer variety of restorative justice practices, while efforts to evaluate those processes in terms of their potential benefits

for victims are hampered by the wide range of contexts in which they operate. As a rapidly evolving international phenomenon, restorative justice initiatives have been adopted in many different countries encompassing a variety of legal jurisdictions and widely differing cultural contexts.

In the European Union there is no country which has not applied some individual models of restorative justice in criminal cases, except for Lithuania. In most European countries, mostly applied models of restorative justice is mediation — intermediation seeking the reconciliation between victim and offender. At the moment the Law Institute of Lithuania is carrying out a project ‘Restorative Justice Perspectives in Lithuania’.¹ The goal of the project is to create a comprehensive scientific basis and preconditions for implementation of mediation in Lithuania. One more goal of the research is to find out why in certain cases the perpetrator and the victim do not reconcile (due to fear, lack of the feeling of safety, etc).

According to Dignan (2007) the evaluation of restorative justice initiatives is still in its infancy and much of it is uneven quality. Most funded research has been predominantly offender-oriented, with a particular focus on the impact that restorative justice might have on reconviction rates. Much less emphasis has been placed on its possible impact on victims when formulating research strategies and most studies to date have concentrated on a fairly narrow range of issues relating broadly to ‘victim satisfaction’ ratings.

Mediation is part of a broader framework of restorative justice. This approach to criminality provides a model of justice that relies

¹ The Project “Restorative Justice Perspectives in Lithuania” is financed from the Research Council of Lithuania funds (Agreement No. MIP-016/2013). This Article is the part of the research project.

on the restoration, in maximum possible scope, of the situation from before the crime, reparation to the victim and the solution of the conflict that originated between the offender and his victim from the crime.

According to Wemmers and Cyr (2004) it is unacceptable that in practice, the only option for victims to participate in the criminal justice system is through restorative justice programs. While restorative justice should be available for those who have an interest in meeting the offender, victim surveys show that some victims are not interested in mediation. For those victims who are not interested in mediation, it should still be possible for them to be informed, consulted and considered by authorities. Regardless of whether the offender is given community service in lieu of mediation or is referred back to court, victims' interest in the case must always be recognized and respected. Restorative justice offers victims more than just input into the process: it allows the victim to be a part of the solution. While restorative justice is often presented as a rival of conventional criminal justice, the two can be complementary.

Mediation, for example, a recent development in victim assistance, particularises the way orthodox powers have been relocated within innovative criminal justice programs away from the criminal trial. Mediation has been identified as benefiting the victim personally, in terms of its retributive aspects and society, in terms of the welfare of the victim and their return to civil life. Mediation proves how victim power is being relocated by the state, for the sake of the consolidation of power under the state (Kirchengast 2006, p. 215).

At an academic level, the need to introduce and start applying pilot mediation programmes in juvenile criminal cases in Lithuania is underlined. After an evaluation of the experience with mediation

in juvenile cases, it would be possible to gradually introduce mediation into adult criminal cases (Michailovič 2008). When considering the implementation of mediation in Lithuania, it is of special importance that society would approve such an initiative and collaborate actively in its implementation. Representative investigations of various strata of society and victims, conducted in many states, show that society is open to accept new tendencies in the approach to juvenile delinquency. Experts of the science and policy of criminal law are convinced that the process of reconciliation between victim and offender, currently the real alternative to penal measures, will still gain in importance in the future.

CONCLUSION

The main factors shaping the phenomenon of a fear of crime are direct victimisation experience (*i.e.*, becoming a crime victim) and an indirect victimisation experience (*i.e.*, contacts with individuals who have had a direct victimisation experience). But the fear of crime is caused not only by the victimisation experience and the crime rate, but also by the society's assessment of crime, which is in turn covered by the media. It is no secret that the main information source for significant social events and problems in modern society is the media.

Considering who usually becomes a victim, where these people live, under what circumstances they become a victim and what lifestyle they have, it is possible to strive to prevent victimisation. But on the other hand, it is necessary to keep in mind the undesirable side effect of victimisation prevention. Explaining to people that they face a threat of becoming a victim due to certain reasons can actually make them more careful, but on the other hand, as is shown by the surveys that have been conducted, it often causes an exacerbated feeling for fear and a continuous state of stress. The prevention of this phenomenon is no less than significant than the prevention of crime.

The victimisation survey provides information on what persons are especially in the danger of victimisation and what situations are most dangerous in this respect. It is especially important when speaking about practical victimology, which is oriented towards the provision of assistance to the victim. Victimology should be treated not only as an empirical subject but also as the practical activity in the field of improvement of the position of victims.

SUMMARY

This paper deals with the important issues in the field of victimisation experience, feeling of safety and fear of crime in Lithuania. The article reviews the principal results of the respondents' feeling of safety and the fear of crime. On the basis of many victimisation surveys, it is possible to assert that there is great promise for victimisation surveys in Lithuania, the result of which must be directed to improving the system for assisting crime victims. This paper underlines the need for creation of the infrastructure of help and assistance for the victims of criminal offences. Crime victims must have an opportunity to select the possibilities for restorative justice measures in the criminal procedure.

The results of the surveys conducted in Lithuania show the necessity of increasing confidence in the law enforcement institutions, improving their ability to provide assistance by improving their qualifications and orienting them to provide assistance to society. Special attention must be paid to introducing legal education programmes in education institutions, thereby acquainting people with their rights and the activities of the law enforcement institutions.

Speaking of the implementation of mediation, of special importance is that society and political parties would approve the initiatives of such type and collaborate actively in their implementation. Representative investigations of various strata of society and victims, conducted in many states, show that society is open to accept new tendencies in the approach to juvenile delinquency. Experts

of the science and policy of criminal law are convinced that the process of offender and victim reconciliation, the currently real alternative of penal measures, will gain still more importance in the future.

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