

PROCEEDINGS

Estonian Academy of Security Sciences

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VERSATILE SECURITY

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Estonian Academy of Security Sciences

XVII

VERSATILE SECURITY



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Submission Contact

<i>Postal address:</i>	<i>Estonian Academy of Security Sciences</i>
	<i>Kase 61, 12012 Tallinn</i>
	<i>Estonia</i>
<i>E-mail:</i>	<i>teadusinfo@sisekaitse.ee</i>

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FOREWORD

Helina Maasing
Editor-in-Chief

It is my pleasure to introduce the sixth issue of the Proceedings of the Estonian Academy of Security Sciences, which is indexed by the 1.2 Classification of the EBSCO database. Although from the historical point of view, the Estonian Academy of Security Sciences has published original security-related research papers for almost two decades and has hosted the works of more than one hundred authors. The mission of our journal to foster an academic discussion on scholarly works and research pertaining to internal security remains.

Insecurity may arise for different reasons. Before we can tackle insecurity threats, we need to address a rather broad variety of questions, which are also reflected in the present issue of the Proceedings. This issue is opened by Kadi Luht et al with an empirical research on how individual differences in temperament and self-esteem, and other personal factors such as gender, knowledge, and skills as well as tobacco and alcohol consumption are related to schoolchildren's pre-injury risk-taking behaviour in the domains of traffic, water, and fire safety. The results of the study showed that students with higher extraversion/surgency, negative affectivity, tobacco users, and those of the male gender had higher odds of belonging to the medium and high-risk groups. Understanding these factors is critical in developing new prevention or educational

programmes regarding youngsters understanding of and behaviour regarding safety issues.

The second research article is published by Ülle Vanaisak, who analyses the need to expand the rights of city and rural municipality public order officials. The author is debating from the legal-dogmatic aspect whether to give city or rural municipality public order officials more police “tools” (e.g. use of physical force, special equipment or a weapon) to ensure order in public spaces.

Keith Little wrote a policy essay on understanding Russia’s approaches to asymmetrical warfare. This paper was submitted in the framework of the International conference “Hybrid threat in a law enforcement context”, which was held in Tallinn on the 15th and 16th of May 2018. The author writes that in the Russian case, it is essential to comprehend its history, to understand the experiences it felt through the 1990s, because it has shaped the current form and output of domestic and foreign policy agendas.

The final paper is by Professor Piotr Mickiewicz, who wrote a policy essay reflecting his approaches to the large-scale migration across the Southern Mediterranean, which have stemmed from a combination of security concerns and humanitarian imperatives. As he points out the most serious problem is the reference to the legitimacy of conducting humanitarian activities, aimed at saving life at sea, because the noble idea has become the weapon of smugglers and illegal immigrants.

As you see from the short preview of the papers, insecurity may arise for different reasons. The Estonian Academy of Security Sciences is continuing to monitor and research internal security issues from a variety of aspects to provide professionals and societies with additional insights into this interesting world.

RESEARCH ARTICLE

PERSONALITY, PERSONAL
RELATED FACTORS AND
HEALTH RELATED BEHAVIOUR
AS PREDICTORS OF PRE-INJURY
RISK-TAKING BEHAVIOUR IN
SCHOOLCHILDREN

Kadi Luht, MSc, PhD student

*Estonian Academy of Security Sciences
Rescue College;
University of Tartu
Institute of Education*

Margo Klaos, MA, PhD student

*University of Tartu
Institute of Social Studies*

Kenn Konstabel, PhD

*University of Tartu
National Institute for Health Development*

Diva Eensoo, PhD

*University of Tartu
Institute of Family Medicine and Public Health*

Keywords: Pre-injury risk-taking, temperament, alcohol, smoking,
self-esteem, gender, schoolchildren

ABSTRACT

Temperamental and personality differences play an important role in risk-taking behaviour and thus would be one of the key factors in intervention programmes aimed at reducing the harmful health effects of risky behaviours in adolescents. The present study aims to clarify how individual differences in temperament and self-esteem, and other personal factors such as gender, knowledge and skills, as well as tobacco and alcohol consumption are related to schoolchildren's pre-injury risk-taking behaviour in the domains of traffic, water, and fire safety.

We investigated 699 sixth-graders, using the data from a study "The effectiveness of health promotion in Estonian schools". Self-reported web-based questionnaires were used to measure pre-injury risk-taking behaviour, temperament, self-esteem, gender, knowledge, skills, alcohol and tobacco use. By the level of the pre-injury risk-taking behaviour the subjects were divided into three groups: low, medium, and high-risk. Students with higher extraversion/surgency, negative affectivity, tobacco users, and those of the male gender had higher odds of belonging to the medium and high-risk groups. Subjects with higher effortful control had lower odds of belonging to the medium or high-risk groups. Multilevel structural equation modelling revealed that pre-injury risk-taking behaviour is related to higher extraversion/surgency, lower effortful control, and the male gender.

The main focus in preventing excessive risk-taking behaviour is to work with children's self-knowledge of their stimulation seeking, and their ability to focus attention to control dangerous situations. When planning safety-related health promotion interventions at school, it is useful to consider personal differences related to temperament and gender. At the same time, improving the students' safety-related knowledge and self-management skills is essential.

INTRODUCTION

Injuries are an important issue concerning public health, since they are the most frequent cause of death among children and youths (GHE 2016), and risk-taking behaviour is a significant predictor of injuries (Bijttebier, Vertommen and Florentie 2003). Road traffic injuries, drowning and fire-related burns together accounted for nearly half of the global burden of injury deaths in 2015; injuries create nearly half of deaths in 5-29 year old males and a quarter in same age females (GHE 2016).

For young people, risk-taking behaviour and risk-management are important in the identity-forming processes. Risk-taking behaviour is described as “the participation in behaviour which involves potential negative consequences (or loss) balanced in some way by perceived positive consequences or gain” (Gullone and Moore 2000). Effective risk-management at school assumes an overview of different aspects and knowledge of risk factors. Effective adolescent health programmes before and during the second decade of life have a substantial effect on reducing the burden of health problems well into adulthood (Catalano et al. 2012). One of the key factors for implementing school health programmes successfully is to establish the health education curriculum as a home for all topics (WHO 2107). On the basis of reviewed articles, it can be concluded that effective interventions that address a certain risk factor will probably affect different problem behaviours (Catalano et al. 2012). If adolescents already have basic safety knowledge and skills, then they should have the capacity to modify their behaviour to be safer and healthier, but this is not always so, therefore adolescents are an important target group of secondary prevention work (Peden et al. 2008).

An important role in risk-taking behaviour are personal differences related to temperament and personality traits (Honomichl and Donnellan 2012; Vermeersch et al. 2011; Eensoo et al. 2007; Boles et al. 2005). Temperament refers to behavioural tendencies and attentional capacities that form the early core of individual differences in personality (Rothbart 2004). For measuring temperament in adolescents the Early Adolescent Temperament Questionnaire-Revised (EATQ-R) is used. The scales in EATQ-R are: 1) Extraversion/surgency - reflects the

degree to which a child is generally happy, active, and enjoys vocalising and seeking stimulation; 2) Negative affectivity - reflects the degree to which a child is shy and not easily calmed; 3) Effortful control - reflects the degree to which a child can focus attention, is not easily distracted; 4) Affiliativeness involves warmth, love, closeness, emphatic concern, and a desire to nurture others (Kail and Barnfield 2011). Evans and Rothbart (2007) have shown that dimensions of temperament are related to the Big Five (BF) personality factors. Although investigators believe that childhood temperament and adult personality are strongly overlapping constructs (Rothbart and Ahadi 1994; Rothbart, Ahadi and Evans 2000; Caspi and Shiner 2006; Clark and Watson 2008; Boles et al. 2005), associations between risk-taking behaviour and temperament (Bijttebier, Vertommen and Florentie 2003; Boles et al. 2005; Vermeersch et al. 2011; Honomichl and Donnellan 2012) have not been studied as thoroughly as associations between risk-taking behaviour and personality traits (Anitei et al. 2014; Ibrahim et al 2015; Taubman-Ben-Ari and Yehiel 2012), especially in adolescents. Mostly, associations between temperament and general risk-taking behaviour have been studied in adolescents (de Haan, Egberts and Heerdink 2015; Kim-Spoon, Holmes and Deater-Deckard 2015), and less research has been done studying how adolescents' temperament is involved in pre-injury risk-taking behaviour.

Self-esteem is a personality trait that describes a person's overall evaluation of his or her worthiness as a human being (Pullmann and Allik 2000). It has been shown that self-esteem may engage in a greater number of general risky behaviours (Auerbach and Gardiner 2012) and after exposure to mortality-related-risk information participants reported higher intentions to take driving risks (Jessop, Rutter and Garrod 2008). Babinton et al (2009) found that self-esteem doesn't correlate many of the risk behaviours, but adolescents who reported lower self-esteem reported not wearing a helmet when riding a motorcycle and suicidal activities. Also, it has been found (Oktan 2014) that there are different self-esteem levels in adolescents with and without self-injurious behaviour, but it is not a significant predictor. Less attention has been given to adolescent self-esteem and engagement in risk-taking behaviour in the domains of safety (water, fire, and traffic safety).

Knowledge is one of the basic factors in the most common determinants of health (Tarlov 1996; Barclay and Fleming 2003). Wasserman et al

(1988) found that more highly educated people are more likely to use seat belts while driving and wear helmets when riding on a bike than people with a lower education. Some studies have shown that safety knowledge does not necessarily lead to safer behaviour (Schieber and Vegega 2002; Zeedyk et al. 2001). At the same time, it has been observed that young children may have the knowledge, but do not use it in real situations (Briem and Bengtsson 2000; Zeedyk et al. 2001). Although knowledge on the part of children has no effect, or only a short-term effect, on preventing risk-taking behaviour, it would be an important topic to consider in basic systematic prevention work. Some studies have shown that self-reported driving skills could predict risk-taking behaviour in traffic (Eensoo, Paaver and Harro 2010; Sümer, Özkan and Lajunen 2006) and that children between 14–25 years of age overestimate their ability to swim (Avamidis and Butterly 2012). Less research has examined how adolescents' knowledge and skills are involved in engaging in risk-taking activities in the safety domains (water, fire, and traffic safety).

Numerous studies have found that adolescents engaging in multiple risk behaviours, such as smoking and drinking, are at a higher overall risk of injury (Green and Kreuter 2005; Pickett et al. 2002; Zuckerman and Kuhlman 2000) and therefore these should be a part of studying fire, water and traffic related risk-taking behaviour in adolescents.

Many researchers have studied how personal factors are related to overall risk-taking behaviour (Zuckerman and Kuhlman 2000; Gullone and Moore 2000), but less is known about how personal factors are related to pre-injury risk-taking behaviour.

The aim of this article is to clarify how personality related factors such as temperament and self-esteem, personal factors such as gender, knowledge and skills, and health related behaviour, such as alcohol and tobacco use are related to schoolchildren's risk-taking behaviour in the domains of water, fire and traffic safety.

MATERIALS AND METHODS

PARTICIPANTS

The study “The effectiveness of health promotion in Estonian schools” was carried out in a randomly selected sample of sixth-grade students from the four biggest counties in Estonia. For the sampling, schools were divided into three groups: Estonian-based city schools, Russian-based city schools and county schools. A two stage sampling technique was implemented with a random selection of schools on the first stage as primary sampling units from each stratum. Then, in the second stage, one of all the possible sixth grades was sampled by a simple random sampling method. The sample of the study included 1033 sixth-grade schoolchildren. In this work an Estonian language school sample ($n = 699$) with a mean age of 12.8 ($SD = 0.4$) years was used; where 49.4% of subjects were male, and 72.1% from city schools.

PROCEDURE

Adolescents filled in web-based self-reported questionnaires in their classroom at school. Before the study, children and parents completed an informed consent form. Every child received his/her unique code. While the students were completing the questionnaires, only a research assistant was present. This was to ensure confidential and independent responding, and to provide assistance to the children if necessary. No school representative was present. The research project was approved by the Research Ethics Committee of the University of Tartu.

QUESTIONNAIRES

The self-reported web-based questionnaires asked about the schoolchildren’s behaviour in the domains of traffic, water, and fire safety during the last 12 months; they were also asked about gender, knowledge and skills in different risk areas and about tobacco and alcohol use (Table 1).

TABLE 1. Measures of behaviour in safety domains, knowledge, skills and health related behaviour

Measure	Description of measure/examples
Behaviour	Responses were measured with a 5-point scale ranging from <i>never</i> to <i>very often</i> in three risk areas. Scores of traffic and water behaviour were obtained by means of answered items so that higher scores were related to higher risk-taking behaviour.
Traffic (7 items, $\alpha = 0.70$, mean score 4.24 (SD = 0.62))	e.g., "Do you use your seatbelt in the backseat while riding in a car?" (Eensoo et al. 2007)
Water (3 items, $\alpha = 0.73$, mean score 3.02 (SD = 1.11))	e.g., "Have you jumped head first into water?" (McCool, Ameratunga and Moran 2009)
Fire (1 item, mean score 3.93 (SD = 1.19))	"Have you played with matches, lighters or something like these?" (Fessler 2006)
Knowledge	Multiple choice questions concerning knowledge about topics related to traffic, fire and water safety were with one right answer. The right answer rate was standardised on a 100-point scale.
Traffic 9 items	e.g., "How should you cross the road after leaving the bus?"
Water 8 items,	e.g., "Are you allowed to be in a boat without a lifejacket?"
Fire 20 items,	e.g., "What is most dangerous for humans in case of fire?"
Skills score	How many skills from three domains of safety he/she has.
Traffic	"Do you have a bicycle driver's license?" (yes and no)
Water	"How far can you swim?" (400m or more - yes and less than 400 m - no)
Fire	"Can you make a campfire?" (yes and no)
Health related behaviour	"Have you ever used....?" (Merenäkk et al. 2003) Subjects were categorised according to if they had ever used a substance
Tobacco use	<i>users and non-users</i>
Alcohol use	<i>users and non-users</i>

For measuring personality factors, the *Early Adolescent Temperament Questionnaire – Revised* (EATQ-R, Hsu 2011) Estonian version and the Estonian version of the Rosenberg Self-Esteem Scale (ERSES, Pullmann and Allik 2000) were used (Table 2).

TABLE 2. Measures of the temperament (EATQ-R) and self-esteem (ERSES)

Measure	Description of measure/examples
EATQ-R	Items were rated on a 5-point scale ranging from almost always untrue of you to almost always true of you. The four-factor structure of the EATQ-R was used and expressed by the mean scores of the scales.
Effortful control (18 items, $\alpha = 0.72$)	e.g., "When someone tells me to stop doing something, it is easy for me to stop"
Extraversion/surgency (15 items, $\alpha = 0.68$)	e.g., "I enjoy going to places where there are big crowds and lots of excitement"
Negative affectivity (18 items, $\alpha = 0.80$)	e.g., "I get upset if I am not able to do a task really well"
Affiliativeness (16 items, $\alpha = 0.83$)	e.g., "I enjoy exchanging hugs with people I like"
Self-esteem (8 items, $\alpha = 0.66$)	Items were rated on a 5-point scale ranging from strongly disagree to strongly agree. The ratings were summed. Higher scores represented a higher level of self-esteem. e.g., "I am able to do things as well as most other students"

STATISTICAL ANALYSES

For data analysis, SPSS 20.0 was used. Variables were described by percentages or by means and standard deviations. Correlations between risk-taking behaviour in traffic, water, and fire domains were expressed by Pearson correlation coefficients. Pre-injury risk-taking behaviour was a dependent variable in further analyses. Participants were divided into three groups by their level of risk-taking behaviour. Simple multinomial logistic regression analyses were used to clarify associations between risk levels and independent variables. To clarify the relationship between pre-injury risk-taking behaviour, personality, personal related factors, and health related behaviour in a complex manner, structural equation modelling (SEM) was used by AMOS. Values of $p < 0.05$ were considered statistically significant.

RESULTS

Correlation analysis showed that risk-taking behaviour in traffic, water, and fire domains were statistically significantly correlated (between 0.26 to 0.36) and Cronbach alpha was 0.6 between the behaviour measures of traffic, water, and fire safety. Next, the total risk-taking score was obtained by means of the behaviour measures of the three safety domains. Descriptions of the used variables are presented in Table 3.

TABLE 3. Description of the variables.

Variable	Scale	N	Mean (SD)
Total risk-taking score	1 to 5	670	3.71 (0.80)
Effortful control	1 to 5	515	3.32 (0.45)
Extraversion/surgency	1 to 5	515	3.16 (0.42)
Negative affectivity	1 to 5	515	2.83 (0.54)
Affiliativeness	1 to 5	515	3.52 (0.64)
Self-esteem	1 to 5	610	3.52 (0.63)
Knowledge	0-100	675	57.27 (13.62)
Skills score	1 to 3	472	1.11 (0.86)
		N	%
Tobacco use (% of users)		622	36.1
Alcohol use (% of users)		608	59.4

For comparing subjects by different risk levels the subjects were divided into three risk groups according to the total risk-taking score ($n = 670$) 25th and 75th percentile values: low ($n = 151$; 22,5%), medium ($n = 360$; 53,7%), and high-risk ($n = 159$; 23,7%) groups. Predicting the likelihood of belonging to the high and medium-risk groups, compared to the low-risk behaviour group by personality, personal measures and health related behaviour, using simple multinominal logistic regression analyses

(Table 4), revealed that the high-risk group differentiated more strongly from the low-risk group than the medium-risk group in effortful control, extraversion/surgency, negative affectivity, gender, and tobacco use. Affiliativeness, knowledge, skills and alcohol use differentiated significantly only between the high-risk and low-risk groups.

Self-esteem was not significantly associated with different levels of risk-taking behaviour in safety domains.

TABLE 4. Likelihood of belonging to the high and medium-risk groups compared to the low-risk group by personality, personal measures and health related behaviour.

	Medium- vs low-risk group OR (95% CI)	High- vs low-risk group OR (95% CI)
Gender (<i>boys vs girls</i>)	2.42 (1.68-5.03)*	3.16 (1.27-7.86)*
Effortful control	0.40 (0.17-0.96)*	0.30 (0.1-0.92)*
Extraversion/surgency	2.67 (1.03-6.91)*	6.54 (1.90-22.39)*
Negative affectivity	3.40 (1.51-7.67)*	6.49 (2.30-18.29)*
Affiliativeness	0.66 (0.33-1.34)	0.35 (0.15-0.83)*
Self-esteem	1.06 (0.96-1.17)	0.99 (0.88-1.12)
Knowledge	0.98 (0.95-1.01)	0.95 (0.92-0.98)*
Skills score	1.44 (0.97-2.12)	2.06 (1.27-3.33)*
Tobacco use (<i>users vs non-users</i>)	3.09 (1.29-7.42)*	8.21 (2.97-22.67)*
Alcohol use (<i>users vs non-users</i>)	1.93 (0.99-3.77)	2.66 (1.01-7.01)*

For clarifying the relationship between pre-injury risk-taking behaviour, personality, personal related factors, and health related behaviour in a complex manner, SEM was used. First, all independent variables significantly associated with pre-injury risk-taking behaviour by simple multinomial logistic regression analyses were included into the model directly and also gender through all the independent variables. Variables with non-significant associations were removed from the model. The best model explained pre-injury risk-taking behaviour in students (n = 699; NFI and CFI >0.90; RMSEA <0.06) by effortful control, extraversion/

surgency and gender. Students with lower effortful control and higher extraversion/surgency were more prone to risk-taking behaviour. We found that boys contribute to higher risk-taking behaviour directly and girls through higher extraversion/surgency.

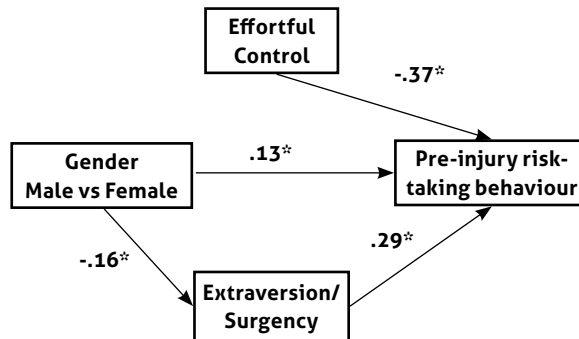


FIGURE 1. A structural equation model predicting pre-injury risk-taking behaviour.

* $p < 0.001$, all standardised direct effects were statistically significant.

DISCUSSION

The purpose of the present study was to clarify how the personality factors of temperament and self-esteem, and other personal factors of gender, knowledge, skills, tobacco and alcohol use, are related to school-children's risk-taking behaviour in safety domains. This study focuses on children's risk-taking behaviour in the domains of water, fire, and traffic safety, which are the main causes for injury deaths in children (GHE, 2016). For analyses subjects were divided into risk groups as done previously (Eensoo et al. 2007), but in this study, a middle-risk group was added. By the levels of risk-taking behaviour, the high-risk group differentiated more clearly from the low-risk group than the medium-risk group.

For measuring temperament, the EATQ four-factor model was used. A questionnaire for measuring temperament was created for children

and adolescents aged between 9 and 15 years (Ellis and Rothbart 2001). Our study showed that the temperament component of extraversion/surgency (high-intensity pleasure, low level of shyness and fearfulness scales) was significantly associated with risk-taking behaviour, and it is also a significant predictor of risk-taking behaviour in the final model clarifying associations of personal factors in a complex manner. Extraversion/surgency describes a person's emotional reactivity toward higher positive affect levels and is related with the personality trait of Extraversion and is also related to impulsivity, sensation-seeking and activity (Rothbart and Ahadi 1994; Rothbart, Ahadi and Evans 2000). Earlier it has been shown that impulsivity measures excitement-seeking, disinhibition and thoughtlessness are associated with higher risk-taking in traffic by teenagers (Eensoo, Paaver and Harro 2011). It has also been shown that children with higher impulsivity and activity levels demonstrate more general risk-taking behaviour (Boles, et al. 2005). The present study shows that higher negative affectivity (aggression, depressive mood and frustration scales) predicts higher risk-taking behaviour. Negative affectivity shows the person's experiences of negative emotions and is related to the personality trait neuroticism (Rothbart and Ahadi 1994; Rothbart, Ahadi and Evans 2000). Earlier it has been shown that in adolescents, aggression is associated with alcohol consumption and smoking (Merenäkk et al. 2003). Our study showed that the temperament component effortful control (activation, inhibition control, and attention scales), was associated with risk-taking behaviour and was a significant predictor in the final model. Effortful control explains the person's ability to regulate their responses to external stimuli. It has been shown that effortful control predicts self-reported and parent-reported general risk-taking behaviour (Honomichl and Donnellan 2012); lower behaviour activation control and behavioural inhibition control are associated with higher scores of aggressive risk-taking behaviour (Vermeersch et al. 2011). From the personality traits of the BF, consciousness is associated with effortful control (Rothbart and Ahadi 1994; Rothbart, Ahadi and Evans 2000). Lower effortful control, shown as lower consciousness, predicts higher risk-taking behaviour. It has been shown that lower consciousness predicts higher risk-taking in traffic using simple logistic regression analyses in a cross-sectional study (Eensoo et al. 2007) and also in a longitudinal study (Luht et al 2018), and is associated with alcohol use and experiences with drugs in adolescent years in regression analyses (Merenäkk et al. 2003). The present study shows that lower

scores in affiliativeness (affiliation, perceptual sensitivity, and pleasure sensitivity scales) predict higher risk-taking. Affiliativeness is described as the tendency toward involvement with and caring about others, and is related with the BF personality trait openness (Rothbart and Ahadi 1994; Rothbart, Ahadi and Evans 2000). It has been shown that lower openness predicts higher risk in traffic in adolescents (Eensoo et al. 2007; Luht et al 2018). It can be summarised that for the prevention of risk-taking behaviour in teenagers in the domains of safety, it might be useful to educate themselves, to enhance their knowledge about the possible risks of their temperament and personality tendencies, and additionally to enhance their self-regulation abilities.

In this study lower self-esteem did not predict higher risk-taking behaviour as found in earlier studies by Oktan (2014) and Babington et al (2009) in adolescents. Self-esteem describes a person's overall evaluation of his or her worthiness as a human being (Pullmann and Allik 2000). It has been shown (Pullmann and Allik 2000) that people with lower self-esteem have greater sensitivity to self-intimidation and anxiety-provoking stimuli. The same pattern can be observed in studies that show that people with lower self-esteem have higher scores in general risk-taking behaviour (Auerbach and Gardiner 2012; Jessop , Rutter and Garrod 2008).

Our study, as well as earlier studies (Hillier and Morrongiello 1998; Bijttebier, Vertommen and Florentie 2003) found that gender is the key factor related to risk-taking behaviour. Boys take more risks when swimming (Howland et al. 1996), and boys are more interested in fire and playing with fire (Dadds and Fraser 2006; Perrin-Wallqvist and Norlander 2003). Approximately 70% of male and 44% of female students in secondary education have reported playing with fire (Perrin-Wallqvist and Norlander 2003). Earlier studies of teenagers have shown that gender-related differences do not reveal differences in behaving in traffic as a pedestrian or using a seat-belt while driving a car, but have shown differences in more extreme behaviour: boys ride more motor-bikes and they race more frequently in traffic (Eensoo, 2007).

Lower knowledge predicts higher risks in the present study. Earlier studies have shown controversial associations between knowledge and risk-taking behaviour. In a U.K. study (Zeedyk, et al. 2001) it was found that

better knowledge did not play a role in risk-taking behaviour. Cook and Bellis (Cook and Bellis 2001) found that the relationship between knowledge and risk-taking is complex and that people who had taken more risks tended to perceive their behaviours as less risky. This is explained by the theory that knowledge alone does not guarantee correct behaviour, but could carry out an intended behaviour, eg, “before acting people need to know why they should act, what actions they needed, when or under what circumstances, how to do it and where” (Green and Kreuter 2005).

The Skills score is a significant predictor of higher risk in our study using logistic regression analysis. Earlier it has been shown, through self-reports, that higher scores in driving skills and lower scores in safety skills are related to higher risks in traffic (Eensoo, Paaver and Harro 2010). Therefore, effective injury prevention programs should enhance driving and safety skills.

Our study shows that health related behaviour, such as having ever consumed alcohol and using tobacco products are significantly associated with risk-taking behaviour in safety domains. Earlier studies have shown that tobacco and alcohol use are the main factors for accidents (Peden et al. 2008), and that smoking and alcohol prevention are important topics for preventing injuries (Green and Kreuter 2005), which confirms the results of our study in adolescents.

Our study showed that the personality factors of temperament, and personal factors of gender, knowledge, skills, alcohol and tobacco use are important predictors for schoolchildren’s pre-injury risk-taking behaviour, but when analysing data in a complex manner the most persistent predictors are effortful control, extraversion/surgency, and gender.

Altogether, these results suggest that when planning health promotion in the safety domain, personal differences should be understood. Personality factors (temperament measures) have shown to be significant predictors of risk-taking behaviour and these could be considered in educational programs. Integrated promotion work with tobacco and alcohol use prevention, could have positive effects on pre-injury risk-taking behaviour.

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Contacts:

Kadi Luht

Rescue College

Estonian Academy of Security Sciences

Kase 61, 12012 Tallinn, Estonia

E-mail: kadi.luht@sisekaitse.ee

Phone: +372 696 5466

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RESEARCH ARTICLE



CITY AND RURAL
MUNICIPALITY PUBLIC
ORDER OFFICIALS AS
BODIES CONDUCTING
STATE SUPERVISION
PROCEEDINGS – THE NEEDS
AND OPPORTUNITIES FOR
INCREASING THEIR RIGHTS

Ülle Vanaisak, MA

Estonian Academy of Security Sciences

Police and Border Guard College

Lecturer

Keywords: public order, competent law enforcement agency, state supervision, direct coercion, general and special measures, city government, rural municipality government, public order official

ABSTRACT

The article brings out the need to expand the rights of city and rural municipality public order officials to apply special measures when providing public order, incl. the right to take persons in a state of intoxication to recover from the intoxication. The author also gives an overview of the problems related to the city and rural municipality public order officials (hereinafter CRMPOOs) applying direct coercion, and makes recommendations for improving respective regulations. The research method applied is legal-dogmatic – the author gives a systematic overview of the present situation, and of the needs for change via the analysis of legal provisions (descriptive study). Upon examining documents, the author also gives an overview of the Estonian Qualifications Authority's occupational qualification standards for public order officials and the Estonian Academy of Security Sciences' curricula for public order officials. In addition to that, recommendations are made for enhancing the curricula and standards.

The author of the article interviewed the prefect of the North Prefecture and the director of the Tallinn Municipal Police Department, who stressed the importance of assigning additional rights to public order officials. The article might be of interest for the ones drafting legislations, organising the work of city and rural municipality public order officials, developing training programmes, and for lecturers. On an international level, there is an opportunity to compare the opportunities of units of local municipalities to contribute to the protection of public order more than before.

INTRODUCTION

A law enforcement agency is an institution, body or person, who according to a law or regulation has been assigned to conduct state supervision. In Estonia, competent law enforcement agencies are the ministries, agencies/boards and inspectorates, but also those city and rural municipality governments where a respective public order official or unit has been established. According to the Law Enforcement Act, state supervision is an activity of a law enforcement agency to prevent a threat, ascertain and counter a threat or to eliminate a disturbance (Laaring *et al.*, 2017, pp. 13).

Law enforcement agencies can ascertain and counter a threat or eliminate a disturbance only when they are active and apply respective measures. The measures of state supervision are, like any other activity in administrative procedure, dividable in to issue state supervision related administrative acts (Laaring *et al.*, 2017, pp. 16). Those administrative acts are meant to achieve a certain legal outcome, and for acts where the aim is not to create rights or obligations, but to create factual consequences (e.g. notifying or the application of direct coercion) (Explanatory notes to draft legislation 49 SE, pp. 46, ref Laaring *et al.*, 2017, pp. 76). Since 2014, when the Law Enforcement Act (hereinafter LEA) was enforced, law enforcement agencies have had a clear system of administrative coercive measures – in addition to penalty payment and substitutive enforcement, rules for applying direct coercion appeared. In the fifth chapter of the Law Enforcement Act, it has been stated that direct coercion shall mean affecting of a natural person, animal or thing by physical force, special equipment or a weapon. Physical force, special equipment or a weapon may be used by the police. Other law enforcement agencies may use physical force, special equipment or a weapon only in the cases provided by law. Public order officials working for a city or rural municipality government are given no right to apply direct coercion, at the moment they can apply for professional assistance from the police, but this may not be suitable for solving a situation quickly (Law Enforcement Act 2014, § 57¹, 57², 74, 75).

The problem is especially burning upon conducting supervision according to the Law Enforcement Act, according to which city or rural municipality public order officials have surveillance competence over the general requirements for behaviour in a public place (Law Enforcement Act 2011, § 55 subsections 1, 2, 3). The list of special applicable measures is a lot more limited when compared to that of the police, and as mentioned before, they have no right to apply direct coercion (Law Enforcement Act 2011, § 55-57², see table 1). On one hand, the legislator gives the CRMPOOs a right to intervene, but on the other hand, they cannot finish the situation and solve it since they do not have the right “tools” – to apply the right measures and use direct coercion.

Attempts have been made to solve the problem – in February 2017 the Minister of the Interior, Andres Anvelt, wanted to coordinate and gather comments on the draft legislation amending the Law Enforcement Act and other related acts. The aim of the amendment was, in addition to the right to check and establish intoxication by alcohol and the right to take persons in a state of intoxication to recover from the intoxication, to assign the CRMPOOs who have passed respective courses and training a right to apply direct coercion. It was considered to give them a right to apply physical force and handcuffs (Ministry of the Interior, 2017). The draft legislation was not coordinated and never proceeded by the Riigikogu, however, there is still a social need to amend the respective acts. The legislator attributes the public order officials a competence to conduct state supervision in the areas important for the specific public order officials (see table 1), but their powers to apply special measures and use direct coercions do not support the fulfilling of tasks assigned to them by law.

The plan to amend the rights received a lot of feedback from Estonian society as a whole. For example, in Reporteritund on Vikerraadio, broadcast on the 9th of March 2017, it was discussed whether and how much the state can delegate its monopoly of force (Ojakivi, 2017). On the show, the following people explained their standpoints: Raivo Küt (Deputy Secretary General of the Ministry of the Interior), Aivar Toompere (Director of the Tallinn Municipal Police Department), Jüri Saar (Tartu University’s professor of criminology). Opinions were also expressed by Jüri Mölder (city secretary of Tartu) and Helen Kranich (senior adviser, representative of the Office of the Chancellor of Justice).

As always, opinions were divided into two groups – there were those who supported assigning additional rights to the CRMPOOs and those who were absolutely against the idea. The main contra argument involved the impossibility of delegating the state’s monopoly of force to a local government unit. It was brought out that due to the constant streamlining and delayering, and with the lack of police officers, they want to assign the police’s duties to local government units instead (Ojakivi, 2017). At the same time, there were examples given of city government’s public order officials being unable to fulfil their tasks efficiently and finish them correctly since they have had to wait for the police. Public order officials of the Tallinn Municipal Police Department (hereinafter MUPO) called the ambulance for an intoxicated person. After the person had been given first aid, he needed no medical supervision, instead there was a need to take him to a sobering-up house. While the MUPO were waiting for the police to arrive, the officials could have done it themselves. Instead, they had to call the police since the MUPO have no right to take persons to recover from intoxication (Law Enforcement Act 2011, § 42 subsection 1), the police arrived 48 minutes later (Ojakivi 2017). Another example was of a case involving a person who attacked a MUPO official checking tickets on a bus and then escaped. An accompanying MUPO official, who had previously worked in the police and thus had been trained to apply direct coercion lawfully, could not use force to stop the offender since it was forbidden for him to do so (Law Enforcement Act, § 75 subsection 1).

1. DATA AND METHODOLOGICAL APPROACH

Local government units could be the advocates of security in their community. This means prevention, but also a rapid and efficient response to breaches of public order. According to the Constitution of the Republic of Estonia, all local matters are determined and administered by local authorities (Constitution of the Republic of Estonia, 1992, § 154 subsection 1), which means that “the aim of a local government is to give the local community a right to decide upon questions concerning local life” (Madise, 2017, pp. 929-930). Upon assigning public order officials, we have created opportunities to increase the capabilities of local government units to solve public order related problems (Ministry of the Interior 2015, pp. 39). Therefore, an opportunity to analyse problems related to the application of the Law Enforcement Act appears, and recommendations to introduce the necessary amendments to the law can be made (Ministry of the Interior 2015, pp. 40). So far there have been no thorough studies on the competences of the CRMPOOs and also no such studies on their rights to conduct state supervision, which would answer the following questions: which measures enable the CRMPOOs to fulfil the tasks assigned to them by law, do the CRMPOOs need the right to apply direct coercion in order to bring the arrangements in to force?

The study focuses on the needs and opportunities to expand the rights of city and rural municipality public order officials (who have a right to prevent threat, ascertain and counter a threat or eliminate a disturbance (Law Enforcement Act, 2011 § 6 subsection 1, § 2 subsection 4)) upon conducting state supervision. The title of the article is: “City and Rural Municipality Public Order Officials as Bodies Conducting State Supervision Proceedings – the Needs and Opportunities for Increasing their Rights”.

The research problem is formed as a question: which additional rights would enable the city and rural municipality public order officials to fulfil their legal duties in providing public order?

Research questions:

1. Based on the Law Enforcement Act and special acts, which rights do city or rural municipality public order officials have to conduct state supervision?
2. Based on which laws do the CRMPOOs need additional rights (e.g. the right to apply different special measures and direct coercion)?
3. Is it efficient to ask for professional assistance from the police to apply direct coercion?
4. How to guarantee the CRMPOOs apply the measures and direct coercion purposefully and proportionally?
5. Is it possible to acquire the competences of checking and establishing a state of intoxication, taking persons to recover from intoxication and applying direct coercion based on the current curricula?

Research tasks:

1. To give an overview of the acts of law which allow the city and rural municipality public order officials to conduct state supervision. To categorise the applied measures, to assess whether it is necessary to exercise direct coercion to apply them. To compare the duties and rights of CRMPOOs and other law enforcement agencies brought in the same acts of law.
2. To give an overview of the bases and means of applying direct coercion, to explain which means of direct coercion could be exercised by CRMPOOs.
3. To give an overview of the legal bases for providing professional assistance and of the related problems.
4. To find out, whether the valid occupational qualification standards for public order officials and the respective curricula include the topics of checking and establishing a state of intoxication, taking persons

to recover from intoxication and applying direct coercion in the extent needed for the work of CRMPOOs.

5. To develop recommendations to amend the acts of law regulating the work of the CRMPOOs, respective occupational qualification standards and curricula.

The research method applied is legal-dogmatic, which is very common in law – the author gives a systematic overview of the present situation and of the needs for change via the analysis of legal provisions. It is a descriptive study, in which a systematic overview of a phenomenon is given (Lagerspetz 2017, pp. 87). Upon examining documents, an overview of the Estonian Qualifications Authority's occupational qualification standards for public order officials, the Estonian Academy of Security Sciences' curricula for public order officials is given, and recommendations for enhancing them are made. To support the methods and obtain practical confirmation of the need to amend the acts of law, the director of the Tallinn Municipal Police Department and the prefect of the North Prefecture were interviewed.

2. THE COMPETENCE OF THE CITY AND RURAL MUNICIPALITY TO APPLY THE MEASURES OF STATE SUPERVISION ACCORDING TO SPECIFIC LAWS, THE NEED TO APPLY DIRECT COERCION

In the first chapter, the author gives an overview of the acts of law allowing the city and rural municipality public order officials to conduct state supervision. The duties and rights of other law enforcement agencies to apply the measures and direct coercion are compared with these of the CRMPOOs. By categorising the measures applied according to specific laws, the author assesses whether there is a need to exercise direct coercion to apply them.

There are 79 local governments in Estonia that are divided into 15 towns and 64 rural municipalities (The types and names of, and division lines between settlement units, 2017).

Subsections 1 and 2 of § 53¹ of the Local Government Organisation Act state that a local government may form a law enforcement unit in a rural municipality or city, or appoint an official who engages in law enforcement. The main function of such a body is to participate in ensuring the public order and to exercise supervision over compliance with the rules adopted by the rural municipality or city council in the jurisdiction determined by the local government (Local Government Organisation Act, 1993). According to the Ministry of the Interior, there are 125 such officials in Estonia – 80 in Tallinn, 19 in Tartu, seven in Pärnu, four in Narva, three in Narva-Jõesuu, Saaremaa and Viimsi, two in Maardu, Tori, Nõo, Kohtla-Järve, and one in Kohila. In addition to that, there are 23 officials with different titles whose job descriptions involve the protection of public order, working in local governments (Link, 2018).

Kesner stresses that local governments should administer their local problems as much as possible (2017, pp. 590). There are 19 specific laws according to which the state has given the CRMPOOs a competence to conduct state supervision (data from the electronic State Gazette, 12.09.2018), and a right to apply two to ten special measures stated in the Law Enforcement Act (see table 1). Similar principles have also been

brought in the statute of the Tallinn Municipal Police Department – according to § 6, subsection 1 sub-indent 3, the duties of the law enforcement agency include the application of general and special measures of state supervision brought in the Law Enforcement Act, Alcohol Act, Tobacco Act, Trading Act, Packaging Act, Waste Act, Traffic Act, Customer Protection Act, Public Transport Act, Building Code, Nature Conservation Act, Earth’s Crust Act, Public Water Supply and Sewerage Act, Advertising Act, Heritage Conservation Act, Tourism Act, and other legal provisions and acts of law (statute of the Tallinn Municipal Police Department, 2014).

The Chancellor of Justice points out that upon applying law enforcement measures, we need to keep an eye on the aim (solving of a problem), on time criticalness of the incident, and on the weight of the persons’ rights and freedoms or legal rights. This helps to decide which measure to apply and how to achieve the aim. Solving of the problem has to be efficient and purposeful, however, the rights and freedoms can be limited as little as possible. This means a will to find simple, humane solutions that are informal as much as it is legally possible. The general and special measures of law enforcement can be used only when there is no other way to solve the problem (Chancellor of Justice, 2016, pp. 3).

Table 1 indicates the acts of law in which the city and rural municipalities (CRMPOO) have been given a right to conduct state supervision. The overview refers to those paragraphs that have stated the content of the supervision competence; the allowed special measures; the right to issue a precept and use penalty payment as a means of administrative coercion. The last line indicates whether the CRMPOOs can apply the same measures and means of administrative coercion when compared to other competent law enforcement agencies (e.g. have the same competence as the police to conduct supervision over the requirements for the behaviour in a public place, however, the list of special measures the police can apply is significantly longer, see table 1, line 8).

To sum up, it can be said that according to similar laws, different law enforcement agencies usually have a right to apply three to ten measures of state supervision (the total number of measures is 25, two of which are general and 23 special measures). The measures are divided into those regarding the processing of personal data (LEA chapter 3, division 3,

subdivision 1), measures applicable with regard to a person suspected of being in a state of intoxication (same chapter, subdivision 2) and other state supervision measures (same chapter, subdivision 3).

From amongst those measures regarding the processing of personal data, the CRMPOOs may mostly conduct questioning and acquire documents (Law Enforcement Act, § 30), issue summons, apply compelled attendance (Law Enforcement Act, § 31, whereas only the police can apply compelled attendance) and the establishment of identity (Law Enforcement Act, § 32). According to the traffic, heritage conservation and advertising acts, the CRMPOOs have no right to deliver summons to persons. A law enforcement agency has a right to summon a person to its office to fulfil their duties. Summoning is allowed for preventing, ascertaining or countering a threat or for eliminating a disturbance. Only the law enforcement agency that has the respective competence can summon persons (Laaring *et al.*, 2007, pp. 105-106). Probably CRMPOOs may need to summon people to their office to question them based on the Traffic Act, Heritage Conservation Act and Advertising Act; therefore, it would be reasonable to insert this special measure into the respective acts of law. According to the Law Enforcement Act, the CRMPOOs have a right to process personal data by using monitoring equipment, e.g. with the help of a stationary video camera in a city environment (Law Enforcement Act, § 34). A similar right could be applied upon conducting state supervision according to the alcohol and tobacco acts (e.g. when eliminating a disturbance – to stop a minor consuming alcoholic beverages or using tobacco products in a public place) and Traffic Act (when taking care of parking violations).

When looking at the measures applied when a person suspected of being in a state of intoxication is being dealt with, the CRMPOOs have no rights to apply any special measures. In order to make supervision more efficient, the CRMPOOs working mostly according to the law enforcement and alcohol acts, should be given a right to apply additional special measures. The city and rural municipality public order official's competence of exercising state supervision over the compliance with the general requirements for behaviour in public places is the same as that of the police (see Law Enforcement Act, § 57¹ sub-indent 1, 2). In a public place, it is forbidden to sleep in a way that disturbs others and prevents them from using a bench in a bus stop or a park. Usually in cases like

TABLE 1. Surveillance competence of city or rural municipalities public order OFFICIALS, BASED ON THE LAW ENFORCEMENT ACT AND SPECIAL ACTS (COMPILED BY THE AUTHOR)

Act	Surveillance competence	Applied measures	
Alcohol Act (AA)	AA § 49 subsection 4 – State supervision related to compliance with the requirements connected with the retail sale of alcoholic beverages and the restrictions on the consumption of alcoholic beverages shall be exercised by rural municipality or city governments in their respective administrative territories.	According to AA § 49 ¹ , the special measures stated in §§ 30, 31, 32, 49, 50, 51 and 52 of the Law Enforcement Act.	
Building Code (BC)	Subsection 2 of § 130 – The local authority exercises state supervision by carrying out the following functions: 1) Verifying whether the building or the building design documentation of construction works, including any construction work that has a permanent connection or functional link to the shore, conforms to the detailed spatial plan, the relevant local special spatial plan, the design specifications or other requirements rendered operative by the location of the construction work. 2) Verifying whether construction works or the building of construction works conforms to the requirements, including the pre-use safety inspection of the construction works. 3) Verifying the existence of the building notice or building permit and the correspondence of the information stated in that notice or permit to actual facts. 4) Verifying the existence of the use and occupancy notice or use and occupancy permit and the correspondence of the information stated in that notice or permit to actual facts. 5) Verifying the correspondence of the upkeep and use, and occupancy of construction works to the requirements rendered operative by the purpose of use of the construction works. 6) Verifying whether the requirements for the use and protection of local roads are complied with.	According to § 131 of the BC, the special measures stated in §§ 30, 31, 32, 49, 50, 51 and 52 of the LEA.	
Waste Act (WA)	Subsection 4 of § 119 of the WA – Local governments shall exercise constant supervision over compliance with the local government waste management rules within their administrative territories.	According to § 119 ¹ of the WA, the special measures stated in §§ 30, 31, 32, 45, 46, 49, 50, 51, 52 and 53 of the LEA.	

Precept and the application of the administrative coercive measure	Differences when compared to other LEAs
<p>Precept is compiled based on subsections 1-4 of § 28 of the Law Enforcement Act, the upper limit of penalty payment for each imposition thereof shall be 9,600 euros.</p>	<p>A law enforcement officer has a right to supervise the consumption limits of alcoholic beverages when minors are concerned, and additional permissions to impose the special measures stated in §§ 37-40, 42, 47, 48 of the Law Enforcement Act, and a right to apply direct coercion.</p> <p>Additional measures are connected with the checking and establishment of intoxication by alcohol, and the carrying out of security checks and examining persons.</p>
<p>§ 133 of the BC – In the event of non-compliance with an enforcement order, the law enforcement agency may resort to a means of compelling the compliance following the procedure provided in the Substitutive Performance and Penalty Payment Act. In order to compel the compliance, the maximum rate of the compulsory payment for natural persons is 6,400 euros and for legal persons 64,000 euros.</p>	<p>The allowed special measures are the same for everybody (Technical Regulatory Authority, Environmental Inspectorate, Estonian Civil Aviation Administration, Estonian Road Administration, National Heritage Board, Rescue Board, Health Board, Estonian Maritime Administration, Food and Veterinary Office).</p>
<p>According to § 119³ of the WA - Upon failure to comply with a precept, the upper limit of penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 32,000 euros.</p>	<p>Although the surveillance competence is the same, the Environmental Inspectorate have a right to exercise direct coercion.</p>

Act	Surveillance competence	Applied measures	
Trading Act (TA)	Subsection 3 of § 21 of the TA	According to § 22 of the TA, the special measures stated in §§ 30, 31, 32, 49, 50 and 51 of the LEA.	
Environmental Supervision Act (ESA)	§ 6 of the ESA – Local authority-based environmental supervision	According to § 65 ¹ of the Forest Act, the special measures stated in §§ 30, 31, 32, 45, 46, 47, 49, 50, 51, 52 and 53 of the LEA can be applied.	
General Part of the Environmental Code Act (GpECA)	State supervision to check the compliance with the requirements stated in subsection 2 of § 62 ¹ of the GpECA, and §§ 38 and 39, but not with those stated in subsection 7 of § 38 and subsection 3 of § 39, is conducted by the Environmental Inspectorate and a local government unit.	According to subsection 2 of § 62 ² of the GpECA, the special measures stated in §§ 30, 31, 32, 50 and 51 of the LEA can be applied.	
Law Enforcement Act (LEA)	Subsection 2 of § 57 ¹ of the LEA Supervision of the general requirements related to behaviour in a public place is conducted by: 1) Police 2) Rural municipality or city government	According to subsection 1 of § 57 ² of the LEA, the special measures stated in §§ 30, 31, 32, 34, 44, 49, 50, 51, 52 of the LEA	
Traffic Act (TrA)	Subsection 3 of § 187 of the TrA – The rural municipality or city government organises parking in the paid parking areas of the local authority. Subsection 1 of § 193 of the TrA – Traffic supervision over the fulfilment of the stopping and parking requirements in the territory of the local authority is conducted by police officers, assistant police officers or other officials exercising traffic supervision within the competence granted to them by law and by the rural municipality or city government.	According to subsection 2 of § 196 ¹ of the TrA, the special measures stated in §§ 30, 32, 44, 53 of the LEA. Subsection 2 of § 196 ² of the TrA – A rural municipality government or a city government has the right to: 1) Take a vehicle to a guarded place of storage or to a police authority on the ground and in accordance with the procedure set out in § 92 of this Act. 2) If necessary or in the event of a threat, prohibit or limit traffic.	
Nature Conservation Act (NCA)	Subsection 2 of § 70 ² of the NCE – State supervision over the fulfilment of the requirements arising from this Act in the events provided for in § 6 of the Environmental Supervision Act is exercised by the local authority or an agency of the local authority.	According to subsection 2 of § 70 ³ of the NCA, the special measures stated in §§ 30, 31, 32, 49, 50 and 51 of the LEA can be applied.	

	Precept and the application of the administrative coercive measure	Differences when compared to other LEAs
	According to § 23 of the TA - Upon failure to comply with a precept, the upper limit of the penalty payment imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 640 euros.	The allowed special measures are the same for everybody (Consumer Protection Board, Health Board).
	FA § 65 ⁵ – In the event of failure to comply with a precept, the maximum penalty payment imposed in accordance with the procedure provided for in the Substitutive Enforcement and Coercive Payment Act is 32,000 euros.	Subsection 1 of § 15 of the ESA – A state environmental inspector and a local authority environmental inspector whose duty is to protect standing crop, game and fishery resources, are allowed to carry a service weapon and use a service dog and handcuffs when performing their official duties.
	§ 62 ⁵ of the GpECA – In the event of failure to comply with a precept, the maximum penalty payment imposed in accordance with the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 32,000 euros.	In addition to that, according to §46 of the LEA (detention of a person), the Environmental Inspectorate have a right to apply the stated special measure and direct coercion.
	According to subsections 1-4 of § 28 of the Law Enforcement Act, the upper limit of penalty payment for each imposition thereof shall be 9,600 euros.	Although the surveillance competence is the same, the PBGB have additional rights to apply the special measures stated in §§ 33, 37-42, 45-48 of the LEA and a right to apply direct coercion.
	According to the TrA, the CRMPOOs have no right to impose a penalty payment, however, subsections 1-4 of § 28 of the Law Enforcement Act, according to which the upper limit of penalty payment for each imposition thereof shall be 9,600 euros, can be applied.	Police officers have additional rights to apply the special measures stated in §§ 31, 33, 37-42 of the LEA and a right to apply direct coercion.
	§ 70 ⁶ of the NCE – The maximum rate of the coercive payment imposed in accordance with the Substitutive Enforcement and Coercive Payment Act in the event of failure to comply with a prescription is 32,000 euros.	The Environmental Inspectorate have an additional right to apply the special measures stated in §§ 45, 46, 52, 53 of the LEA and a right to apply direct coercion.

Act	Surveillance competence	Applied measures	
Heritage Conservation Act (HCA)	§ 44 ¹ of the HCA – State and administrative supervision over compliance with this Act and requirements of legislation established on the basis thereof shall be exercised by the National Heritage Board and rural municipality or city government according to their competence in case the rural municipality or city government have been assigned the competence of supervision on the basis of a contract under public law entered into between the National Heritage Board and the local government council.	Subsection 2 of § 44 ¹ of the HCA – the special measures stated in §§ 30, 32 and 49–52 of the LEA.	
Packaging Act (PA)	Subsection 3 of § 26 of the PA – The rural municipality and city governments are obliged to exercise supervision over the acceptance of return, collection and recovery of packaging and packaging waste in their administrative territory.	§ 26 ¹ of the PA – the special measures stated in §§ 30, 31, 32, 49, 50, 51, 52 and 53 of the LEA.	
Advertising Act (AdA)	Sub-indent 4, subsection 2 of § 30 of the AdA – The rural municipality or city government within its administrative territory with regard to outdoor advertising.	§ 31 of the AdA – the special measures stated in §§ 30, 50 of the LEA.	
Consumer Protection Act (CPA)	Sub-indent 2, subsection 2 of § 61 of the CPA - The rural municipality or city government with regard to compliance with the requirements for indicating the prices of the goods offered or services provided to consumers and the requirements relating to the labeling and instruction manuals of goods within their administrative territory.	Subsection 2 of § 62 of the CPA – the special measures stated in §§ 30-32 and 49-51 of the LEA.	
Tobacco Act (TobA)	Subsection 3 of § 32 of the TobA – Rural municipality and city governments – compliance with the requirements related to retail trade in tobacco products and products related to tobacco products and with the prohibitions and restrictions on the consumption of such products within their administrative territory, except compliance with the requirements established for smoking rooms.	Subsection 1 of § 33 of the TobA – the special measures stated in §§ 30, 31, 32, 44, 49, 50, 51 and 52 of the LEA.	
Tourism Act (TourA)	Sub-indent 4, subsection 2 of § 30 of the TourA – City and rural municipality governments shall exercise supervision over the compliance with the requirements set for accommodation establishments in their administrative territory.	§ 30 ¹ of TourA – the special measures stated in §§ 30, 31, 32, 49, 50, 51 and 52 of the LEA.	

Precept and the application of the administrative coercive measure	Differences when compared to other LEAs
§ 44 ² of the NCE – Upon failure to comply with a precept, the upper limit of penalty payment applied pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 1,300 euros.	The special measures are the same for the National Heritage Board.
§ 26 ² of the PA – Upon failure to comply with a precept, the maximum rate of a penalty payment imposed pursuant to the procedure provided by the Substitutive Enforcement and Penalty Payment Act is 32,000 euros.	The allowed special measures are the same for everybody (Environmental Inspectorate, Customer Protection Board, Tax and Customs Board, Food and Veterinary Office).
§ 32 of the AdA – Upon failure to comply with a precept, the upper limit of the penalty payment imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 3,200 euros.	The allowed special measures are the same for everybody (State Agency of Medicines, Health Board, Agricultural Board).
According to subsections 1-4 of § 28 of the LEA, the upper limit of penalty payment for each imposition thereof shall be 9,600 euros.	The Customer Protection Board have additional rights to apply the special measures stated in §§ 52, 53 of the LEA.
According to subsections 1-4 of § 28 of the LEA, the upper limit of penalty payment for each imposition thereof shall be 9,600 euros.	The Estonian Tax and Customs Board have additional rights to apply the special measure stated in § 45 of the LEA, and a right to apply direct coercion. Police officers have an additional right to apply the special measures stated in §§ 47, 48 of the LEA and a right to apply direct coercion.
According to subsections 1-4 of § 28 of the LEA, the upper limit of penalty payment for each imposition thereof shall be 9,600 euros.	The allowed special measures are the same for everybody (Rescue Board, Health Board, Police and Border Guard Board).

Act	Surveillance competence	Applied measures	
Precious Metal Articles Act (PMAA)	Sub-indent 2 of subsection 2 of § 42 of the PMAA – A rural municipality or city government, in the case of engagement in the area of activity within its administrative territory, over compliance with the requirements pertaining to the manufacture of articles of precious metals and the retail of articles of precious metals.	§ 43 of the PMAA – Special measures stated in §§ 30, 31, 32, 49, 50 and 51 of the LEA.	
Public Transport Act (PTA)	Subsection 2 of § 80 of the PTA – The rural municipality government or the city government exercises supervision over compliance with the requirements of a rural or urban regular service authorisation, taxi licence, vehicle card and service provider card as well as over those arising from a public service contract awarded by it, a public law contract concluded by it and those established on the basis of subsection 8 ¹ of § 1 of this Act.	Subsection 3 of § 81 of the PTA – Special measures stated in §§ 30–32, 45, 49, 50 and 52 of the LEA.	
Public Water Supply and Sewerage Act (PWSSA)	According to subsections 1-6 of § 15 ⁴ of the PWSSA.	§ 15 ⁵ of the PWSSA – the special measures stated in §§ 30, 31, 32, 49, 50 and 51 of the LEA.	

	Precept and the application of the administrative coercive measure	Differences when compared to other LEAs
	<p>§ 45 of the PMAA – Upon failure to comply with a precept, the upper limit of penalty payment imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 640 euros.</p>	<p>The allowed special measures are the same for everybody (Tax and Customs Board, Customer Protection Board).</p>
	<p>Subsections 1 and 2 of § 82 of the PTA – The authority exercising state supervision has, within the limits of its competence, the right to make a compulsory precept for the purpose of terminating an infringement of the requirements or performance of the duties and obligations provided for in this Act, legislation established on the basis thereof, regulations of the European Union and international agreements.</p> <p>Upon failure to comply with a precept specified in subsection 1 of this section, the person exercising state supervision may impose a penalty payment in accordance with the procedure provided for in the Substitutive Enforcement and Penalty Payments Act. The maximum penalty payment payable by a natural person is 1,300 euros and the maximum penalty payment payable by a legal person is 6,400 euros. The penalty payment imposed for the purpose of attaining the performance of an obligation or duty must not exceed 6,400 euros with regard to a natural person and 32,000 euros with regard to a legal person.</p>	<p>The allowed special measures are the same for everybody (Estonian Road Administration, Ministry of Economic Affairs and Communications, Police and Border Guard Board and Customer Protection Board).</p>
	<p>§ 15⁶ of the PWSSA – Upon failure to comply with a precept, the maximum rate of the penalty payment imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 3,200 euros.</p>	<p>The allowed special measures are the same for everybody (Estonian Competition Authority and Environmental Inspectorate), but the Environmental Inspectorate has a right to apply direct coercion.</p>

that, the person liable for public order has no sense of time or space, an ambulance is called to check their health. After rendering first aid, it is dangerous for the person to remain in the same place because of their condition – they may get involved in an accident or become a victim of an attack, or they may be aggressive towards their surroundings. In such a case, the person should be taken to a police house of detention or to a detention cell to recover from intoxication (Law Enforcement Act, 2011 § 42 jj). Only the police have such a right. Taking a person to recover from intoxication foresees describing the signs of a state of intoxication, checking and establishing a state of intoxication (Law Enforcement Act, 2011 § 37 jj). According to the valid law, only the police have such a right.

Usually in a public place it is forbidden to consume alcohol or a substance causing intoxication (see Law Enforcement Act § 55 subsection 1 sub-indent 5, LEA § 55 subsections 2, 3). A competent law enforcement agency has a right to intervene and eliminate a disturbance, usually there is no need to apply any other measure besides questioning (Law Enforcement Act 2011, § 30) and precept (Law Enforcement Act 2011, § 28). If a minor is consuming alcoholic beverages, there is a need to check their intoxication since intoxication is always a threat for a minor, and therefore they need supervision (Explanatory notes to draft legislation 49 SE, pp. 72). Only the police have a right to check and establish a state of intoxication. In the near future, when the duties and responsibilities of Local Government Councils' (hereinafter LGC) units to react to minors' risk behaviour are probably expanded, it will also be important to amend the Law Enforcement Act (hereinafter LEA) so that the CRMPOOs would also have the respective competence.

Therefore, upon conducting state supervision according to the alcohol and tobacco acts, the CRMPOOs should also have a right to check and establish a state of intoxication, to check and establish intoxication by alcohol on site, to establish consumption of a narcotic drug or psychotropic substance or another intoxicating substance, or a state of intoxication caused thereby, and to take a person to recover from intoxication (that is, to apply all the special measures stated in §§ 37-42 of the LEA).

Other special measures of state supervision (LEA 2011, chapter 3, division 3, subdivision 3) are measures that cannot be categorised by any features. Since these are important for many law enforcement agencies

exercising state supervision, it was not reasonable to put them in special acts. The special measures in the subdivision have been ordered according to the gradual increase in the extent of the infringement of fundamental rights. Prohibition to stay and detention of a person both limit a person's freedom of movement, but the first one is temporary and less prejudicial and therefore it has been stated before the detention of a person. (Laaring, *et al.*, 2017, pp. 135).

When other special measures of state supervision are concerned, the CRMPOOs apply the examination of a removable (LEA, § 49), entry into premises (LEA, § 50), examination of premises (LEA, § 51) and taking a movable into storage (LEA, § 52). According to the law enforcement, traffic and tobacco acts, they have a right to apply the prohibition to stay (LEA, § 44). A vehicle can be stopped (LEA, § 45) according to the waste, environmental supervision and public transport acts.

The legislator has expressed their wish to assign the CRMPOOs a right to apply the special measure of entering into premises according to § 50 of the Law Enforcement Act, as it is allowed according to 17 specific acts (see table 1 – only the Traffic Act does not include such a right). Entering into premises is a state supervision measure which involves entering a fenced or marked immovable, building, dwelling or room without the consent of the possessor. It also includes opening doors and gates or eliminating other obstacles. The entering into premises only involves entering, being in it and observing it. Its aim is to find out whether there is a threat (R.R. administrative appeal to receive compensation for damages, 2015). Entering into premises without the consent of the possessor involves infringing such fundamental rights as the inviolability of the home and a right to family and private life. Therefore, the application of this special measure must be considered carefully and it must be proportional to the infringed fundamental rights (Laaring *et al.*, 2017, pp. 158). Force might be needed to break or open an object (door, lock, window, gate, fence). Force can be needed if the possessor physically prevents officials from entering (Laaring *et al.*, 2017, pp. 165). Similarly to the officials of the Environmental Inspectorate, Tax and Customs Board and police officers, the CRMPOOs could have a right to apply direct coercion upon entering premises according to the alcohol, waste, environmental supervision, law enforcement and nature conservation acts. Whether they are given the respective right in the future, or they will use the help of the

Rescue or Police and Border Guard Board, will be decided separately for every single case, taking the threats into consideration.

When taking people to recover from intoxication, a security check is usually carried out and the person is examined – in the sake of safety, it is recommended to carry out a security check (LEA, § 47). The security check involves frisking a person to make sure the person does not carry any items or substances that may cause a threat to them or other people. However, in practice there can be situations in which it appears the person has such forbidden substances or objects in their pockets, which they could use to attack the officials while they are being transported. If the person does not take the objects from their pockets after the person conducting the security check has asked them to do so, the security check transfers into the examination of a person (LEA, § 48), this means that the law enforcement officer has to have an opportunity to take the objects from the person's pockets. Dangerous and forbidden items have to be taken into storage as a movable (LEA, § 52). In the valid legislation, the CRMPOOs are allowed to do so according to the law enforcement and tobacco acts (and seven more specific acts), but they should also have this right upon conducting supervision according to the Alcohol Act.

Persons are allowed to be detained (LEA, § 46) according to the waste and environmental supervision acts. The need may also appear if, according to sub-indent 5 and 6 of subsection 1 of § 46 of the LEA, there is a necessity to hand over a person in need of assistance due to his or her state of health or age, over to a competent person for the purposes of providing assistance, or if there is a necessity to detain or hand over a child less than 16 years of age without the company of an adult over to his or her parent or legal representative.

In the sake of legal clarity, it is necessary to review the city or rural municipality's competence to conduct supervision according to the LEA. According to grammatical interpretation, CRMPOOs could exercise supervision solely over the general requirements for behaviour in a public place, as stated in § 55 subsections 1, 2, 3 (LEA 2011). This is also referred to by Pars: "In the section in question, the application of special measures is allowed only when conducting supervision over the general requirements for behaviour in a public place as stated in § 55. Since in this section, there is no reference to § 56, which states the prohibition

on causing excessive noise, light effects and pollution, the city and rural municipality officials have no right to apply the measure in the presence of disruptive noise, light effects and pollution. As a general law enforcement agency, the Police and Border Guard Board have a right to apply the measure based on subsection 2 of § 6 of the Law Enforcement Act since the ascertainment and countering of a threat or the elimination of a disturbance are not in the competence of any local government law enforcement agency” (Laaring, *et al.*, 2017, pp. 187). At the same time, the Criminal Chamber of the Supreme Court (misdemeanour matter of OÜ Plussprima, based on § 266 of the Penal Code, 2016) have referred to it when on the 16th of August 2016 Tallinn City Government punished a legal person for not respecting the general requirements for behaviour in a public place (Penal Code 2001, § 262 subsection 2). Therefore, the CRMPOOs must be given a right to exercise supervision over the prohibition on causing excessive noise, light effects and pollution, as stated in § 56 of the Law Enforcement Act.

2.1 APPLICATION OF DIRECT COERCION

The sub-chapter gives an overview of the means of direct coercion public order officials of city and rural municipalities could apply, and suggests solutions that would guarantee the lawful application of direct coercion.

Direct coercion is alongside the substitutive enforcement part of the system of administrative coercive measures, which is used to influence the person who does not voluntarily comply with the compulsory administrative act (an obligation or prohibition posed on a person with the help of a general or special measure) to give up resistance and start executing the obligation or prohibition, by directly influencing either the person himself, an object or animal. Direct coercion has to be applied proportionally, therefore it has to be:

- Appropriate and in accordance with the aim (appropriate for achieving the aim).
- Essential (involves the least possible intervention).

- Proportional to the aim (it cannot be more burdensome than the legal interest protected).

The means of administrative coercion can be used multiple times, they can be changed if needed and used only to achieve the desired aim. Before applying coercion, the parties have to be issued a precept (an administrative act) to comply with the obligation, informed of the term of compliance, warned of the coercive measure to be applied (unless there is a need for rapid application). Execution is allowed if the term of compliance has passed or if the administrative act has been issued for immediate enforcement provided the person has not yet complied with the obligation.

In the 2017 draft legislation, it was sought that the CRMPOOs were given a right to apply direct coercion based on the Public Transport Act and it was considered to give them a right to apply physical force and use handcuffs (Ministry of the Interior, 2017). There are more acts of law according to which they should have a right to apply direct coercion, especially in cases where there is a need to take a person to recover from intoxication, to conduct a security check, to examine a person, to apply the prohibition of stay or to enter premises.

In addition to applying physical force and using handcuffs, the Estonian Academy of Security Sciences also recommended to start using gas weapons. In their reply to the Ministry of the Interior, they reasoned their recommendations as follows: “In order to apply physical force and handcuffs, the officials need to be in a good physical shape and have acquired the respective technique. If a public order official does not succeed in applying physical force and handcuffs, they can only withdraw and call the police to help them. Should the attack continue, the public order official could at least have equal rights with every adult – a right to use a gas weapon (gas spray). Otherwise the public order official has to carry a personal gas spray upon fulfilling their duties, and rely on the self-defence regulation when blocking an attack. Using gas according to the Law Enforcement Act when blocking an attack while conducting state supervision is more appropriate since it would be followed by documenting the incident and providing first aid that are not required upon exercising regular self-defence. In addition to that, using a gas weapon would be helpful when blocking a group attack, which is very likely to appear

with groups of intoxicated people. Of course, one always has to consider the requirements for proportionality, appropriateness and humaneness, warning, etc. For example, gas cannot be used in the means of public transport where it could harm third persons, or in cases it is not proportional to the desired aim” (Parts, 2017).

Kiviste has compiled a learning material concerning the influence of the means of direct coercion (see drawing 1).

The Supreme Court emphasises that the application of a special measure is reasonable only when the more lenient measures have become exhausted or such measures are not suitable due to the peculiarity of the given situation. In the event of the existence of a bases to apply a special measure, the officials have to avoid harming people’s health, causing pain and degrading them in an extent that is greater than absolutely necessary in the given moment (administrative case of Taivo Ild and Lea Nõmme, 2008, pp. 20).

First the public order official can intervene just by being present and communicating with people. This does not influence the people’s freedoms intensively, but has a preventive influence on the person liable for public order. The application of physical force undermines a person’s dignity intensively, it causes pain and bodily injuries. Performing striking or suffocation techniques can cause fatal injuries or death. If handcuffs are applied too tight or a gas weapon is used, pain is caused, but they rarely cause bodily injuries. Cut and thrust weapons (telescopic baton) can cause pain if hits are made to muscles. Hits to the heart, spine and head are forbidden since these can cause fatal injuries or death.

It is appropriate for a public order official of a city or rural municipality to apply such measures of direct coercion that involve the application of physical force and handcuffs. Their service weapons should therefore be a gas spray and a telescopic baton. Giving public order officials a right to apply direct coercion to exercise special measures is necessary, because at the moment they cannot finish the tasks they are assigned by the state, and therefore it is necessary to involve police officers in the work of public order officials. Currently the latter can use special measures only if the person they deal with is cooperative.

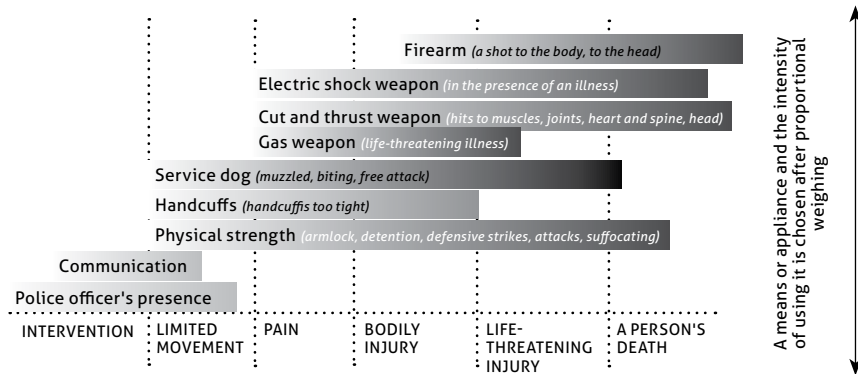


Figure 1. The choosing of means for direct coercion and the application of it (Laaring, *et al.*, 2017, pp. 284; compiled by Jaak Kiviste)

A person who finds a public order official has violated their rights or restricted their freedoms, can challenge the activities of the public order official. The challenge is reviewed by the city or rural municipality council. Upon the dismissal of a challenge or if the person finds that their rights have also been violated upon conducting the challenge proceedings, it is possible to file an appeal to the court to protect their rights. In addition to that, it is possible to bring disciplinary proceedings against a public order official for the wrongful breach of their official duties. For unlawful use of violence, it is possible to punish a public order official for the abuse of authority pursuant to criminal procedure (Penal Code, § 291).

Public order officials and the police could have similar general requirements for employment in service and similar requirements for professional qualification. Public order officials should also pass a medical examination before they are employed (Police and Border Guard Act 2010, §§ 38-42). This would help to guarantee that city and rural municipality public order officials have the personal characteristics suitable for working with people and also the needed physical capabilities. This would also help to mitigate the risk of affecting people's constitutional rights in too great of an extent.

2.2 APPLICATION OF PROFESSIONAL ASSISTANCE FROM THE POLICE TO APPLY DIRECT COERCION

The subchapter gives an overview of the legal bases for providing professional assistance and of the related problems.

If a CRMPOO needs to apply direct coercion to execute an administrative act, then currently they have no right to do so. According to subsection 6 of § 6 of the Law Enforcement Act, the police are obliged to render assistance to other law enforcement agencies, including LGC units, in the execution of an administrative act if the execution constitutes the application of direct coercion (LEA, 2011). Professional assistance is rendered according to the Administrative Cooperation Act, and the application for professional assistance shall be in written form (Administrative Cooperation Act, 2003, § 19 subsection 3). The application has to provide: who is the application to; why the applicant cannot fulfil the task themselves; what would be the estimated costs of fulfilling the task if the applicant fulfilled the task themselves; whose rights or which interests are protected; the legality of the application for personal assistance, incl. the competence of the administrative authorities to render assistance to issue the applied administrative act or to make a measure (Government of the Republic, 2002). Pilving (2015, pp. 181) indicates these requirements are too formal and incompatible with the general principle for the choice of form stated in the Administrative Procedure Act. Therefore, the application could be made orally, via telephone or email. The most typical cases that have required the application of direct coercion in the framework of professional assistance (e.g. to recover and apprehend an attacker, to influence a person who has failed to comply with a percept) have also required responding quickly, and in such cases no written applications to receive professional assistance have ever been compiled, not even after assistance has been rendered. In the example of Tallinn MUPO, such situations have required a quick response and often professional assistance has arrived too late. According to A. Toompere, they have given up on turning to the police (Ojakivi, 2017).

The decision to apply direct coercion is made by the body applying the measure – CRMPOO. According to Aedmaa (2004, pp. 477), the basis for applying direct coercion as professional assistance is a law

enforcement related administrative act issued by the other law enforcement agency, which can never be of little importance. In the explanatory notes to the draft of the Law Enforcement Act (Explanatory notes to draft legislation 49 SE, pp. 25), it is referred to the standpoint of the Administrative Law Chamber of the Supreme Court (see decision No. 3-3-1-68-05, dated 20 December 2005), which indicates that upon rendering assistance to apply direct coercion, the police have to make sure the administrative act according to which direct coercion is applied is legal. It is also said that the police do not have to find out about all the legal issues based on which the act was issued. At the same time it is emphasised that an administrative act should never be executed if its legal defects become evident in the very beginning (Explanatory notes to draft legislation 49 SE, pp. 25). The police are responsible for their actions upon exercising administrative coercion. What is more, Pilving (2015, pp. 182) stresses that every agency must be responsible for the legality of their acts, therefore, the police can only be responsible for the legality of the application of direct coercion.

In the example of the Tallinn Municipal Police Department, the biggest problem lies in the ineffective cooperation between administrative authorities, since there are not enough police officers in the North Prefecture or they do not have enough time to render professional assistance to eliminate breaches of public order. Such situations may create a sense of impunity in the person subject to the measure, and challenge the authority of the body applying the measure. Pilving (2015, pp. 178-179) lists the characteristics of professional assistance (as a law enforcement agency, the police cannot refuse to intervene in dangerous situations): administrative authorities cooperate, limit themselves to single cases, support fulfilling the task of the other agency, and rendering professional assistance on one's own initiative is forbidden. According to subsection 3 of § 18 of the Administrative Cooperation Act, the police may refuse to provide professional assistance if the provision of professional assistance would excessively impede the achievement of their own objectives (Administrative Cooperation Act, 2003). The written application for professional assistance has to include the estimated costs of fulfilling the task if the applicant fulfilled the task themselves (Government of the Republic, 2003). Since no written applications are compiled in reality, the costs are not calculated either. It would be reasonable to calculate the costs of the body providing professional

assistance since this would help to see whether calling the police to apply direct coercion is reasonable when compared to a competent law enforcement agency applying direct coercion themselves.

3. THE ENHANCEMENT OF THE OCCUPATIONAL QUALIFICATION STANDARDS AND CURRICULA FOR PUBLIC ORDER OFFICIALS

The chapter gives an overview of the valid qualification standards for public order officials and of the curricula compiled based on them. Links are created with the curricula for police officers.

In 2014, the Estonian Qualification Authority developed level 5 and 6 occupational qualification standards for public order officials that also meet the requirements of the European Qualification Framework (EQF). The Occupational Qualification Standard (OQS) is a document which describes occupational activities and provides the competence requirements for occupational qualifications and their levels (Estonian Qualification Authority, 2018). OQSs are used for compiling curricula, incl. when assessing the learning outcomes. The existent OQSs for public order officials are valid until 2019, however, the information in them is rather general. Checking and establishing a person's level of intoxication and taking a person to recover from intoxication are special measures of state supervision that basically could be among the following work units and tasks of level 5 OQS: supervision, conducting of the procedural acts of supervision, supervision over the requirements for behaviour in a public place, state supervision (Estonian Qualification Authority, 2018). Level 6 OQS includes the same competences, but also the application of a precept and a measure of administrative coercion. Neither of the levels has the competence of applying direct coercion.

The existing curricula includes outcomes that rely on the competences described in the occupational qualification standards. First the threshold level (basic level) is described. A student who has achieved this level has successfully completed the curriculum and achieved the described learning outcomes. Assessment criteria describe how and via the application of which methods the achievement of the learning outcomes is assessed, and also what are the prerequisites for obtaining a certain grade. When describing the criteria, one has to be very detailed and tell which level of knowledge and skills are required from the student (Pilli 2009, pp. 9-18).

Level 5 and 6 curricula for public order officials were confirmed at the Estonian Academy of Security Sciences in 2016 and 2017 respectively. The outcomes of the curricula are similar, but the students of the level 6 curricula for public order officials have to have a degree in higher education, in their curriculum they have management assignments and the skill of representing a body conducting extrajudicial proceedings in a court. In both cases, the study process is finished with a final examination that is equal with the professional examination. In order to assess the achievement of the learning outcomes, the students have to take a test, solve a case and compile a document. The case of level 5 involves conducting a legal analysis of the intervention of a public order official and the documentation of the application of a special measure (Estonian Academy of Security Sciences 2016, pp. 4). The case of level 6 involves solving a case challenging the acts of a body conducting extrajudicial proceedings, in addition to that, a respective document is compiled (Estonian Academy of Security Sciences 2017, pp. 5).

The content of the studies and the teaching methods are linked with the learning outcomes. On both levels, the matters concerning the rendering of professional attendance and the applying of direct coercion are theoretically dealt with as opportunities for a public order official to execute the measures of state supervision. It is not taught how to check and establish a level of intoxication and how to take a person to recover from intoxication. If the duties of public order officials change, there will also be a need to enhance the competence requirements in the occupational qualification standards and curricula. The section in the occupational qualification standards that is related to the application of direct coercion should be amended as follows: “in order to execute the measures of state supervision, the person applies direct coercion purposefully and proportionally”. As it was brought out in the beginning of this chapter, everything related to taking a person to recover from intoxication can be considered among the work units and duties of a public order official described in the standard. However, it is recommended to use more detailed wording when describing the competences, since these help to establish more specific learning outcomes and enable the ability to plan more practical instruction to accompany the theoretical approach.

In the Estonian Academy of Security Sciences, police officers are taught on the levels of vocational and professional higher education. In addition

to that, advanced training is provided for the officials who work in the police, but have higher education in some other field (KHR curriculum). The direct coercion related instruction provided for public order officials is the most similar to the topics focused on in the KHR curriculum: legal basis for applying direct coercion, incl. the obligation to provide assistance, documentation; falling techniques, standing, distance and movement; apprehension techniques; releasing from different holds; the application of handcuffs and security checks; cut and thrust weapons of the police and different striking techniques, blocking of a cut and thrust attack. The studies conclude with a pass/fail exam during which the students demonstrate their skills of blocking an attack and apprehending a person. The volume of theoretical and practical studies (incl. the pass/fail exam) is 30 academic hours.

Both theoretical and practical instructions are given to teach checking and establishing a level of intoxication and taking a person to recover from intoxication. The theoretical instruction includes the lawful application of measures, and during the practical lessons the students learn how to use an indicator device and an evidential breathalyser. They also practice taking a person to recover from intoxication. These topics are covered in eight academic hours.

4. EXPERTS' RECOMMENDATIONS FOR ASSIGNING ADDITIONAL RIGHTS TO OFFICIALS

The chapter gives an overview of the recommendations provided by two experts who explained why it is necessary to assign additional rights to public order officials conducting state supervision.

On the 12th of October 2018, the author interviewed two experts in the area to receive assurance for the need to amend the respective acts of law brought out in the previous chapters. Both of the interviewees have abundant work experience in the area of protecting public order. Prior to conducting the interviews, the interviewees were sent the author's recommendations for amending the acts of law and asked to assess the necessity for it.

Aivar Toompere has been working as the director of the Tallinn Municipal Police Department since 2017. He has 109 officials working for him, 88 of them have a right to conduct state supervision and carry out misdemeanour procedures. Aivar Toompere is a former police officer, he worked in the police for more than 30 years, incl. in higher positions; in his final seven years of service he was the director of the Police and Border Guard College of the Estonian Academy of Security Sciences.

Kristian Jaani has been working as the prefect of the North Prefecture since 2013 and as a police officer since 1995. He has 1380 subordinates, approximately 300 of them work in patrol.

Toompere explains that 45 of the 88 MUPO public order officials have a background in security (rescue, police, prison). 36 officials have received police training; in 2017, 13 of them were awarded with the level 5 occupational qualification for public order officials. Toompere claims that the professional preparation of public order officials is equal with that of active police officers. In reality it may be even better since training for small groups is more efficient. All officials doing fieldwork receive regular self-defence training where they are also taught how to exercise direct coercion and use tear gas. The trainers have either been from the Estonian Academy of Security Sciences or police instructors. Everybody who is

interested can regularly participate in shooting training. According to Toompere, it is reasonable if there is only one authority that deals with an intoxicated person – checks and establishes their intoxication and takes them to recover from intoxication. He emphasises that the MUPO officials are capable of doing it. In addition to that, Toompere brings out the problems appearing when state and misdemeanour procedures are carried out in parallel, if the ones breaking the law do not respect the legal orders, escape from the scene, and do not appear when summoned. Turning to the police for professional assistance has not been efficient since the police have had other important tasks to fulfil (Toompere, 2018).

When asked the question of how to guarantee that upon assigning greater rights to the MUPO public order officials they do not start violating people's constitutional rights (e.g. choosing a too intensive measure or applying direct coercion when there is no need for it), Toompere says: "There is functioning internal auditing in the Tallinn Municipal Police Department and our requirements for health-related, physical and special preparation are similar to those developed by the police. In addition to that, there are regulations for the organisation of work and other legal provisions we apply." (Toompere, 2018). To illustrate the situation, Toompere also refers to security workers with only a basic school diploma, who have received 66 hours of training and have a right to apprehend people, conduct security checks and examine persons, use special equipment when needed, use weapons and a service dog (Toompere, 2018).

Toompere brings out Latvian municipal police as a good example. Apparently their Police Act also states the rights and obligations of the MUPO. These are similar to the rights and obligations of the police, however, there are some differences. For example, the Latvian MUPO have no rights to conduct criminal procedure and carry out surveillance proceedings (surveillance procedures). Otherwise their rights are similar to those of the police. Another example Toompere gives concerns the Warsaw municipal police who also have a right to apprehend people, a right to carry a weapon and check people's documents (Toompere, 2018).

According to Jaani, Tallinn City Council and the North Prefecture have made a cooperation agreement that states which authority solves the incident in the presence of joint competence (e.g. who responds to the call for service in the case of the failure to comply with the rules for keeping cats and dogs). In addition to that, there have been different raids carried out in cooperation between the two authorities, e.g. the ones concerning the checking of taxis according to the Public Transport Act (Jaani, 2018).

Jaani brings out that in a situation involving taking 300-500 people in a month to recover from intoxication in the Tallinn region, it is reasonable to have the city council's public order officials (MUPO) apply the respective special measure. That means that it is justified to give the public order officials a right to check and establish a state of intoxication, to check and establish intoxication by alcohol on site, to establish consumption of a narcotic drug or psychotropic substance or another intoxicating substance, or state of intoxication caused thereby, to take a person to recover from intoxication, to conduct security checks and to examine a person. Jaani stresses and gives several examples supporting the idea of the MUPO taking people to recover from intoxication mainly from public places, e.g. from children's playgrounds, parks, means of public transport where the intoxicated people violate the public order the most. In such cases it may, but does not necessarily need to, be needed to apply direct coercion. Jaani thinks that if a MUPO official does not respond to the incident it blemishes the general reputation of public order officials – people generally do not care whether it is a police officer or a public order official dealing with them.

According to Jaani there is no controversy in delegating the state's monopoly of force to public order officials. As an example he brings out the voluntary assistant police officers who may apply direct coercion to exercise special measures when conducting supervision over the requirements for the behaviour in a public place (Jaani, 2018).

Both experts claim that the current package of special measures the city's public order officials have often does not enable them to finish solving the situations according to the 19 special acts of law. They stress that Tallinn public order officials are capable and competent to apply more special measures and even direct coercion, if needed, to conduct

supervision over public order (Toompere, 2018; Jaani, 2018). The Tallinn Prefect, Kristian Jaani, finds that after the administrative reform that made local government units bigger, the broadening of the rights of public order officials working elsewhere in Estonia, has become topical too (Jaani, 2018).

5. CONCLUSIONS AND RECOMMENDATIONS

There are 18 different acts of law according to which rural and city municipalities have the competence to conduct state supervision. There have been multiple times Ülle Madise, the Chancellor of Justice, has pointed out that the quality of draft legislations and general legislation continues to be in decline and the language used in our legal system is becoming more and more difficult to understand (Madise, 2018). When analysing the competence of rural and city municipalities to conduct state supervision, different discords appeared when the aim of the supervision and the content of the applied measures were compared (see more in table 1). Upon applying any special measure, one has to assess the peculiarities of the specific situation and consider whether the special measure would enable the aim to be achieved so that the public authorities would not apply the coercive measures in an extent that is greater than what is essential in the given situation. In order to harmonise the supervision conducted by the rural and city municipalities, the author has listed recommendations to apply a number of special measures and direct coercion.

To add the special measure of summoning to the traffic, heritage conservation and advertising acts. Therefore, to amend subsection 2 of § 196¹ of the Traffic Act, § 44¹ subsection 2 of the Heritage Conservation Act, § 31 of the Advertising Act by adding LEA § 32 to the list of applied measures.

To add to the alcohol and tobacco acts a right to process personal data by using monitoring equipment. Therefore, to amend § 49¹ of the Alcohol Act, subsection 1 of § 33 of the Tobacco Act by adding LEA § 34 to the list of applied measures.

To add the rights to check and establish a state of intoxication, to check and establish intoxication by alcohol on site, to establish consumption of a narcotic drug or psychotropic substance or another intoxicating substance, or state of intoxication caused thereby, to take a person to recover from intoxication, to conduct security checks and to examine a person to the alcohol and law enforcement acts. Therefore, to amend § 49¹ of the

Alcohol Act and sub-indent 1 of § 57² of the Law Enforcement Act by adding §§ 37-42, 47 and 48 of the LEA to the list of applied measures.

To add a right to take a movable into storage to the Alcohol Act. Therefore, to amend § 49¹ of the Alcohol Act by adding LEA § 52 to the list of applied measures.

To add a right to apprehend a person (to hand over a person in need of assistance due to his or her state of health or age over to a competent person for the purposes of providing assistance, or if there is a necessity to detain or hand over a child less than 16 years of age without the company of an adult over to his or her parent or legal representative). Therefore, to amend sub-indent 1 of § 57² of the Law Enforcement Act by adding sub-indent 5 and 6 of § 46 of LEA to the list of applied measures.

To enhance the alcohol, waste, environmental supervision, law enforcement and nature conservation acts by giving the city and rural municipalities a right to apply direct coercion, which here is connected with the special measure of entering the premises. CRMPOOs should have a right to use the following measures of direct coercion: physical force, handcuffs, gas and cut and thrust weapons.

To expand city and rural municipalities' supervision competence over the prohibition on causing excessive noise, light effects and pollution as stated in § 56 of LEA. Therefore, the following amendments should be made to § 57¹ of the Law Enforcement Act: "Supervision over the general requirements related to behaviour in a public place". Also, the wording of subsection 1 of § 57² of the LEA should be changed as follows: "In order to execute state supervision over the general requirements related to behaviour in a public place stated in § 55 of this act, and the prohibition on causing excessive noise, light effects and pollution stated in § 56 of this act, a law enforcement agency may apply..."

According to Aivar Toompere, the director of Tallinn Municipal Police Department, submitting an application to the police to receive professional assistance to apply direct coercion is not efficient and lately they have given up using this opportunity (Ojakivi, 2017). According to sub-indent 2 of subsection 3 of § 18 of the Administrative Cooperation Act, the police may refuse to provide professional assistance if the provision

of professional assistance would excessively impede the achievement of their own objectives (Administrative Cooperation Act, 2003). If the public order officials of a city or rural municipality had a right to apply direct coercion, they could counter a threat or eliminate a disturbance quicker. This would probably mean smaller expenses as well.

The obligatory written format of the application as described in the professional assistance regulation, should be changed since it is too burdensome. Therefore, subsection 2 of § 19 of the Administrative Cooperation Act should be changed as follows: “the application for professional assistance should be in a form enabling written reproduction”. What is more, it should be considered to enhance the application for professional assistance established by the Government of the Republic (Government of the Republic, 2003) by adding the estimated costs of the one rendering professional assistance.

Upon observing the documents, it was found that the occupational qualification standards for level 5 and 6 public order officials do not include the competences of applying direct coercion and the taking of a person to recover from intoxication. There are also no such learning outcomes in the respective curricula of the Estonian Academy of Security Sciences. Therefore, in the future when the duties of public order officials change, the occupational qualification standards for public order officials have to be amended as follows:

- A public order official checks and establishes a person’s level of intoxication and takes him/her to recover from intoxication.
- In order to execute the measures of state supervision, the public order official applies direct coercion purposefully and proportionally.

Relying on the new competences, it is also needed to enhance the existing curricula for public order officials in order to make the covered topics, the learning and assessment methods, and the time spent on them more specific (see table 2).

TABLE 2. Amendments to the curricula for public order officials (compiled by the author)

Learning outcome	Topics	Teaching and assessment methods, volume
<p>The public order official checks and establishes a person's level of intoxication and takes him/her to recover from intoxication.</p>	<p>Level of intoxication and types of it. Basis for checking and establishing a person's level of intoxication. Basis for checking and establishing a person's level of alcoholic intoxication. The procedure for the establishment of the presence of a narcotic drug, a psychotropic substance or another intoxicating substance in a person's system, or the procedure of establishing a person's level of intoxication caused by these substances. Taking of a person in a state of intoxication to recover from intoxication. Documenting.</p>	<p>Contact learning lessons: Lecture-seminar – 2 academic hours. Practical tasks – 6 academic hours.</p> <p>Individual studies: Compiling of the reports for conducting state supervision procedure – 4 academic hours.</p>
<p>In order to execute the measures of state supervision, the public order official applies direct coercion purposefully and proportionally.</p>	<p>Legal bases for applying direct coercion, incl. rendering assistance to an injured person. Documenting. Falling techniques, standing, distance and movement. Apprehension techniques: releasing from grasps. The application of handcuffs and the conducting of security checks. The use of cut and thrust and gas weapons, different striking techniques, blocking of a cut and thrust attack.</p>	<p>Lecture-seminar – 4 academic hours. Practical exercises – 16 academic hours. Demonstration – 2 academic hours.</p> <p>Individual studies: Documenting of the application of direct coercion and familiarising with the literature focusing on the lawful application of it – 10 academic hours.</p>

Therefore, in order to achieve the new learning outcomes, the study period should be 52 hours longer. 38 academic hours of the additional 52 hours should be spent on conducting contact learning lessons and 14 hours should be for individual studies. A longer study period also means the training becomes more expensive – 1626 euros per trainee (Kähari, 2018). However, without the respective training, it is impossible to check and establish a level of intoxication, take people to recover from intoxication and be ready to apply direct coercion lawfully. The training would minimise the risk of public order officials violating people’s fundamental rights upon fulfilling their duties. Officials who do not pass the training for public order officials and do not apply for occupational qualification, will not get a right to apply direct coercion and special measures.

In 2017 there were 13 officials participating in the training for public order officials organised by the Estonian Academy of Security Sciences. All of them were awarded with the respective occupational qualification. There are 11 officials participating in the training held in October 2018. Although there is a great interest in participating in the training, not everybody can partake due to the lack of money. The Estonian Academy of Security Sciences is capable of conducting two trainings in a year during which 50 officials in total could be trained. Since the training is expensive, but the skills are necessary for public order officials, the Ministry of the Interior could consider supporting the training of the first one hundred public order officials.

In order to provide sufficient legal protection, it is reasonable to amend the Local Government Organisation Act by stating requirements for the employment of public order officials, defining which persons cannot be employed and specifying the aspects related to the medical check of public order officials.

According to the expert interviews, it appears that the amendments to the acts of law brought out in the article are especially needed in Tallinn. It became clear that many of the public order officials have a background in security (they have previously worked in the areas of police, rescue or prison) and they have in-depth knowledge of law (of administrative, penal and misdemeanour procedure, legal provisions of LGCs) and long-term experience in police work. In Riga and Warsaw similar “town guards” have rights that are comparable to those of the police. It was also

indicated that the greater rights applied for should also extend to the public order officials in other Estonian towns and rural municipalities who pass the professional training and examination.

Recommendations for further studies:

To compare the state supervision competence of Estonian city and rural municipalities and their right to apply direct coercion with similar administrative authorities of other countries. As we know, there are units like the Estonian MUPO in Germany, Poland, the Netherlands and Latvia – to study their historical development into law enforcement agencies that have a right to apply special measures and use direct coercion.

To give an overview of the competences of all Estonian law enforcement agencies to apply the special measures stated in different acts of law and their right to apply direct coercion; to propose amendments to acts of law, and to develop a model for the application of direct coercion according to the intensity of the application of a special measure.

Contacts

Ülle Vanaisak

Estonian Academy of Security Sciences

Kase 61, 12012 Tallinn, Estonia

E-mail: Ylle.Vanaisak@sisekaitse.ee

Phone: +372 526 9085

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POLICY ESSAY



UNDERSTANDING RUSSIA'S
ASYMMETRIC APPROACH

Keith Little, MPhil/DPhil

University of Oxford

Finance and Management

*Independent Consultant: Political and policy advisory,
Operations and Stabilisation*

Keywords: Asymmetrical Warfare – Russia – Putin

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ABSTRACT

Asymmetry and particularly Russia's approaches to asymmetrical warfare needs further discussion, because even now, the evidence indicates that this is still poorly understood. And although we read good words telling us of the need to listen in order to understand, do we really do this? The risk from confused thinking is misperception, which leads to bad decisions. Whatever are the defined statements, Russians perceive NATO to be advancing a policy of encirclement, and NATO perceives Russia to be pursuing a more aggressive foreign policy. In this situation, both parties are subject to heightened risk of committing errors of judgment. In the Russian case, it is essential to comprehend where Russia has come from; to understand the experiences it felt through the 1990s, because it has shaped the current form and output of the domestic and foreign policy agendas. In this approach we use *Placement Theory*, developed by Harvard historians Richard Neustadt and Ernest May in order to find out how experience has shaped policy. From this analysis we can begin to understand why and how Russia under Putin has accumulated command of levers of control over security, economics and the media; and begin to develop an idea that the state has a higher significance to the people. If the West can understand these positions it might develop a more sophisticated response to issues being presented in a broad spectrum of approaches by Russia.

INTRODUCTION

In a recent popular television documentary the chief discussant raised the idea that the primary cause of the American civil war was the notional value of property; this being something that was completely alien to the American Indians (Great American..., 2017). The war represented a clash of two absolutely different value systems, embodying the failure of European man to understand or care about the impacts of their material wants, and which led to catastrophic and tragic results for the indigenous peoples. In the emerging United States, as well as in the United Kingdom, two fundamental principles of society were and still are the rights of the individual and the protection of property, and the protection of these principles underpins each legal system. In Russia, although the notion of property rights is not remotely alien, it is less well developed; and Western notions of economic rationality still sometimes struggle against different Russian values. Many apartment owners would prefer to allow a property to lie vacant rather than reduce the price; and the economic rationale of pricing might be ignored if it would mean leaving a local resource redundant: many would prefer to utilize a local asset at a higher price than import a product or service at a lower price.

Even if the rule of law is universally respected in Russia, the rule of the state operates on a higher plane; the notion that the ultimate authority of the state is of a higher order than that of the individual still resides. And if the state is the primary power, then the mobilisation of assets to protect its position or to further its interests becomes a condition of rational decision-making. So, the rationality of approach in Russia is sometimes different. In the West, the prioritisation of state rights above those of the individual could only conceivably happen under a condition of all-out war, and nothing like this has been experienced since World War II. However, in Russia, acquiescence to the will of the state is a more accepted principle, is a more normative behavior and is more widely accepted by the population. In consequence, this delivers more and essentially different powers to the state leadership than would be expected in a western democracy.

Wherever we operate, we need to understand the differences in how government and other systems function in order to improve our capability of predicting their behaviors and how we negotiate with different systems; we also need to comprehend how language and signals are used. And yet, in our relations with other countries, and particularly with Russia, despite all of the guidance and clear knowhow of the literature, which intelligently informs and commands us, how often do we actually and really listen? In a recent meeting, a British Foreign Office official told the seated audience, with no sense of irony: ‘So many times, and in so many ways we have tried to tell the Russians, but they simply aren’t listening.’ (Non-attributable comment, March 2017). And one wonders what was in the mind of the United States State Department when it published a tender in 2013 – at a most sensitive time - for the refurbishment of premises in the port of Sevastopol (U.S. Department of State, 2013). If we don’t understand the differences and we don’t even attempt to listen properly, it is hardly a surprise that we end up in difficult situations.

1. HISTORY THROUGH A RUSSIAN LENS

One of the greatest American historians of the post-war era, Richard Neustadt, together with Professor Ernest May, taught a course at Harvard, JFK School of Government, called the *Uses of History*. On this course, one of the simplest but most effective analytic tools used was called 'Placement.' The authors explained:

“Government officials in this country, not least the in and outers, lacking long experience are prone to project on relative strangers the meaning of things in their own heads, assuming an undifferentiated rationality. Or at the opposite extreme, officials may take strangers to be what they represent, crudely conceived: ‘cookie-pushing diplomat’ or ‘military mind’ or ‘narrow specialist’ or ‘mere politician.’ [They] tend to view each other in stereotypical ways (and grow edgy with each other when the expectations turn out wrong).” (Neustadt, & May, 1986)

Neustadt and May continued to explore for weaknesses in our decision framing and analysis by explaining that experts' backgrounds required them to look for models of behavior that explained and solidified such stereotyping. 'Placement' means using historical information to enrich original assumptions about another person's outlook. Under *Placement* one would articulate the original definition – even using the stereotypical view – of a person or organisation, then lay out the relevant time line of historical events in that person's or organisation's life, looking for critical inference points that might have impacted an influence. Then one attempts to infer if and how events have molded the person's (or organisation's) outlook or reaction. The theory continues, that if we can understand this, we can use this knowledge to test against current events.

In a domestic environment such analysis is difficult, and still concludes with an approximation, but the assertion by *Neustadt and May* was that even a five per cent increase in understanding makes the effort worthwhile. Admittedly, the analysis within a Russian framework is especially tough and demands credible experience, but it still needs to be done. It is more than just useful – it is necessary to have an understanding of

Russia's recent history in order to comprehend the current approaches and capabilities of its key people and organisations.

During the 1990s Russia was subject to multiple internal threats to its existence: resulting from a disastrously designed privatisation process; of regional forces to secede and which might increase the possibility of a break-up of the integrity of the country; and of corruption and criminal activity. The impact of these forces during such a short period cannot be over stated, because the experience of how things went so badly wrong during this time has shaped the formation of Russia's recovery.

“When Anatoly Chubais was put in charge of the State Committee for the Management of State Property (GKI) in October 1991, privatization was not at the top of Russia's reform agenda. Price liberalization and control of the budget were the top priorities. Politicians and the public were debating whether Russia should be privatizing at all before macroeconomic problems are solved. No privatization program existed at the time. In fact, the very name of Chubais' agency reflected the government's ambivalence about privatization.

A year and a half later, privatization has become the most successful reform in Russia. By September 1993, more than 20% of Russia's industrial workers were employed in privatized firms.” (Boysco, Schliefer & Vishny, 1993)

Such was the heralding of their own recommendations to the Russian Government by the consultant teams of economists, principally from Harvard and Chicago universities in 1993. The Harvard team - brought in by Yavlinsky and Chubais under Yeltsin had recommended rapid privatization policies. It was a disaster and almost destroyed the country. Many Russians and others were skeptical. By the early winter of 1999, the regional Minister of the Economy of Novosibirsk Oblast was asked what was his main policy concern. His answer was ‘to prevent my people from starving to death this winter.’(Little, 1999)

To begin with, the command style economy was such that its cost structure presented a formidable barrier to the success of the privatisation process. This is because it comprised of a system of complex transfer pricing across firms, and where the positioning of manufacturing assets

was decided by strategic determining rather than a 'western' market economic criteria; pricing was an artificial construct. For example, a tractor production plant in Krasnoyarsk in Central Siberia received steel from the western part of Russia, and engines were transported from Chelyabinsk, nearly 2,400 km to the west. Then most of the manufactured output would be transported by rail perhaps 3,000 km or more to the agricultural heartland of southern Russia. In sum, almost every component of the tractor would have been transported about 5,000 km even before it began its working life.

The plant also would have provided for its employees a medical service, living accommodation associated with the job, the provision of basic food supplies such as bread, and even hairstyling and other services. The cost of all of these functions would have been absorbed into the organisational structure of the plant. But on privatisation, all service business units were made discrete entities, frequently making them very suddenly not economically viable.

To complicate this picture, because of the geographical spread and isolation of resources across huge distances, and Russia's dependency on primary resource exploitation at source, many production plants were the sole operation in the district. These *monocompany* towns suffered greatly. For instance, in more isolated communities, the power supply to a large plant would operate in isolation from the electric power grid. When a company became privatised, the manufacturing or production plant would buy in power from the now discretely owned power plant. However, the advantage lay in the demand of the manufacturing or producing unit, which would be able to effectively control the pricing of electricity supply from the power generator that would have no alternative customer. So, in effect, the effort to move towards a liberal market economic structure itself created huge distortions, having the effect of creating a disproportionate spread of wealth to a few, while the rest of the economy withered sometimes to destruction.¹

¹ Many regional economies were insolvent. This led to Regional Administrations taking control of economic activity, coordinating payments between firms in non-cash payments.

Through the 1990s a number of large finance and industrial groups (FIGs) began to take shape, owned and led by individuals and small groups who had amassed stockholding control over key natural resources.

Within this emerging economic structure, the owners of key assets and natural resources who produced goods for export were able to accumulate immense wealth. The ruble was very much undervalued, which allowed those with hard currency incomes to buy up more assets and accumulate huge wealth.

The background to this situation is that after post-privatisation most firms outside of the natural resources sectors were technically insolvent, creating a deep economic depression that ruined the state's tax base. This resulted in public servants going unpaid for years - including the police, the military, customs officers, medical personnel, teachers and an array of other state employed civil servants. In order to raise cash, and on the suggestion of the FIGs, the government organised auctions of more key state held assets in order to generate capital income, but the auctions were rigged. For example, oil fields bought by *Sibneft* were purchased for about \$200m, when their real value was estimated to be about 75 times this amount; in 2000, *Sibneft* sold about \$3bn worth of oil.

Two different dynamics began to develop. The sectors of the economy able to generate foreign currency became very wealthy. And this focused wealth thrived around Moscow and in centres of natural resource and export production. The rapid consolidation of ownership over huge provinces of the economy, and such concentration of wealth among a relative few was on an extraordinary scale. These relative few were able to afford imported goods, and their high demand drove up prices. A new service sector formed in these centres and a middle class began to develop. But in other business sectors production stalled and the level of manufacturing output fell and many firms quickly became technically insolvent. Three factors contributed to this situation. First, the general level of uncertainty was high, second, the economy had become unstitched at many points, and third, the oil price was at a historical low meaning that the government was receiving only a fraction of past import revenues.²

² At this time the gas price was tied to the price of oil, meaning that Russia's income from gas exports was also affected by fluctuations in the oil price.

The social consequences of these dynamics were verging on catastrophic. Firms in depressed sectors had no cash to buy raw materials or pay wages. And because of the concentration of employment in huge enterprises it would mean that whole regions could have laid-off most of the workforce, or be employing them without having the ability to pay. Under these conditions, regional administrations were either the only entity with liquidity and organisational capability to respond.

The case of Krasnoyarsk is interesting because it illustrates most of the dynamics that were happening at this time. The distinct characteristic of this region – about the same size as France, Germany and the U.K. combined – was that Krasnoyarsk has a few jewels – aluminium, nickel and other precious metal producers, plus the requisite power generation. They had given up on economic advice from external experts. Their primary aim was to keep anybody who possible could - in work and to maintain whatever production they could. In most places cash was already gone. Except in the few dollar-generating exporters, the regional administration organised a trade by bartering in goods and wages. That meant, bags of sugar, vegetables, spoons: anything that maintained survival and was also trade-worthy. The Administration took over the coordination of accounts payable between enterprises – and significantly, where it was owed payment into its own account, accepted stock in lieu of debt. And herein is the key to the oligarchs and to the policies of Putin - which very quickly followed.

At the same time, the FIGs economic power grew, and brought them to the interface of political control, which became another element of fighting between the groups; violent contests between competing individuals and groups was common. Typically, groups would contest for the control of an economic asset, and once won, the winning FIG would typically move an entire political and administrative team from its ‘home region’ into the region of the newly purchased asset. This group might then use its political power base to contest for the control of other economic assets in the region – delivering an increasing concentration of economic and political power.³

³ During the Yeltsin period a key feature of regional governance was the general absence of regulations and legal infrastructure. This permitted regional administrations to set their own legislative frameworks, including for example, energy pricing structures in power generation and supply. This delivered a huge advantage to those

These contests were never clean. For example, in Krasnoyarsk, control over power generation was critical because the local aluminium smelters demanded massive amounts of electro-energy in the smelting process. The other key determinant in this context was control over the regulation of power pricing - this being a function of the regional administration. So, power over assets and electricity pricing decision-making delivered huge political and economic influence in the region.⁴

To illustrate this dynamic: the group owning the *Sibneft* oil company, which was owned and controlled by Boris Berezovsky and Roman Abramovich, and based in Omsk, being capital rich, moved into the metals business and took control of parts of the Central Siberian aluminium business in Krasnoyarsk. *Sibneft/Omsk* group was then able to take control over the regional administration in Krasnoyarsk and transferred its political and administrative team from Omsk to Krasnoyarsk. But *Sibneft Group* was never able to assert total control because of the balance of power held by the owners of *Norilsk Nickel* located in the north of the region, and because another contest for control of aluminium assets was being fought further east around Irkutsk and which would begin to compete.⁵ The major shareholder of *Norilsk* was then Vladimir Potanin of the *INTERROS Group*.

To give some colour and perspective to this, the key industrial assets in Krasnoyarsk included the hydropower dam at Divnogorsk on the Yenisei River just outside town; on the dam's commissioning in 1972 it was the biggest generating hydropower plant in the world. *Kras Aluminium* plant was one of the largest aluminium smelter plants in the world and used

in control of regional power generation because pricing was entirely discriminatory, so electricity prices became one more negotiating chip.

⁴ Care is needed in describing events of the 1990s. Certainly, the murder of key shareholders in Russian business was common, as were unusual deaths, such as the crash of a helicopter in 2002, carrying the Governor of the Krasnoyarsk Region, General Alexander Lebed, who was also the architect of the victory in the war in Chechnya and was a major public figure.

⁵ Essentially because a second huge power broker in the far north of the Krasnoyarsk Krai *Norilsk Nickel*, which was even more economically valuable than *Kras Aluminium* and the hydropower plant, and owned by a different FIG controlled by Vladimir Potanin, *INTERROS*. But because of *Norilsk's* key strategic value as the largest nickel and palladium producer in the world, a key shareholding in *Norilsk* was also held by the state.

most of the power generated by the Divnogorsk hydro plant; in 2008, *Kras Aluminium* had an income of more than \$15bn. (Rusal, 2018)

In parallel with the accumulation of oligarchic FIG power, the most valuable new firm to be created was based on the collected assets of the gas-producing sector forming the new *Gazprom*, led by Viktor Chrenomyrdin and Rem Vyakhirev. On privatisation, Chernomyrdin – as the Minister of Gas – managed to lock together the state’s control over separated gas producing, distribution and selling assets across the country. President Yeltsin appointed Chernomyrdin prime minister in 1992. This process was significant because as the state had retained total control, Putin was later more easily able to remove the former leadership and install his own personnel over this production and financial organ that generated huge cash streams and had powerful regional influence.

To the Russian citizen, the hard experiences of these changes were an expression of ‘gangsterism’, and corruption. A very few grew wildly rich and very many became very poor: this was how capitalism was and is still largely understood in Russia. Understanding this, and understanding the process of Russia’s experiences since Gorbachev’s time is important, because it underpins how the state was re-positioned, why it planned to re-assert its control and why this reassertion has remained essentially popular. Herein are the roots of the issues Putin responded to. The FIGs were becoming more powerful than the state, with some oligarchs displaying political aspirations – like Mikhail Khodorkovsky.

A second discrete feature of this time was an emerging momentum of some regions to reduce their connections with Moscow; particularly in some of the predominantly Muslim republics and those having economic power, such as the Republics of Tartarstan and Bashkortostan, and also some of the regions in the northern Caucasus. Some of these regions also have within their territories key strategic defence and industry manufacturing. These ‘republics’ with their own presidents and governments tended to maintain state control of the oil exploitation, and used their relatively affluent positions to invest regionally, and to maintain their financial controls.

At the core of Putin’s approach was a powerful fear that the Russian Federation could disintegrate. Faced with an extremely volatile situation

in 2000, the new president, Vladimir Putin, set a political course to ensure the integrity of the country. This required that no part of the state should fall under the political dominance of any financial and industrial group. Putin's first action was to orchestrate the security structure of the country to insure his effort. His second point of emphasis was to form a response to the political and economic dynamics popularly perceived as 'gangsterism', which were perceived as being pervasive throughout the country. With this approach he was able to carry the country with him, and for successfully reversing the powers of perceived gangsters, and bringing measured prosperity to the general population, he is popularly thought of as a strong leader by very many in Russia.⁶

An analysis and assessment of the measures and policies used by the Presidential Administration post-2002 is not the subject matter of this paper, Nonetheless, it is important to understand some of the mechanisms undertaken, as they have, for example, impacted on the current capabilities of the Russian leadership in its approach in foreign relations. For instance, it is not difficult to understand how the critical experiences and knowledge that was accumulated inside the Presidential Administration in the domestic arena after 2000 provided the Russian leadership with lessons in managing and manipulating diverse arrays of assets ranging from security and intelligence through to commerce. And, the experience provided an appreciation of its reach in leverage and capability coming from having control and a synchronising approach over a broad range of different domains. At the same time, in the Chechen conflict and in the later short war with Georgia in 2008, that the shock of realisation of how far Russia's military had wasted away was experienced.

After Putin came to the presidency, there is no question that the growth of huge nationally integrated FIGs was brought under tight control by the Kremlin. The Administration orchestrated closely its controlling moves across all of Russia's key industrial assets under the office and leadership of the president. Dissent was quickly and effectively neutralised. For example, by the early 2000s the whole of the aluminium sector was integrated across the whole country under a single firm *Rusal*, nominally controlled by Oleg Deripaska. Whereas *Sibneft* was in early

⁶ Putin was also fortunate that the oil price rose from its floor price in late 1998 by a factor of x4 by 2001, and continued to rise.

control under Abramovich, this was sold or shifted to Oleg Deripaska's *Basic Element* Group by 2005. Similarly, *Rusal* took a control over Norilsk Nickel⁷. Deripaska had accumulated a controlling stock ownership in the aluminium business in Eastern Siberia, but he follows the command of the Kremlin. So, if a *Deripaska* or an *Usmanov* (metals), or an *Alekperov* (oil), nominally own substantive or controlling stockholdings in these businesses, there is no question that the state has the ultimate power to direct business and state policy. And, where there has been any questioning of its authority, the state has taken control and appointed its political leaders to chief executive and chair positions, such as Igor Sechin at *Rosneft*, which swallowed the assets of Mikhail Khodorkovsky's *Yukos*; *Sibneft* assets were bought by *Gazprom* in 2005, forming the new *Gazprom Neft*.

1.1 IN THE POLITICAL ARENA

Since Putin came to power, his chief internal political actions have mirrored those engaged on the economy. So, in the Russian domestic political arena Putin's concern has been to shore up the visceral and real fear of political fragmentation, and this was done via the creation in 2003 of the political party *United Russia*, who in 2017 held 76% of the seats in the Federal Parliament. However, parliament is not a fountain of power in the Russian Federation.

If the Russian Constitution was originally envisaged as a federal system, the policies driven by Putin have reformed this into a unitary system. In Russia, real power resides in the office of the directly elected president, and the president appoints the prime minister and all other ministerial posts. More important, after Putin's introduction in 2004 of a constitutional reform bill, gubernatorial elections were ended and the governors became appointees by presidential decision, shutting down any pretense to a federal system of representation; President Medvedev reversed this in 2009 making regional governors directly elected once more, but Putin reversed *this* in 2013.

⁷ By 1996, Roman Abramovich being very close to President Yeltsin, had an apartment inside the Kremlin.

The issue of direct relevance is that the president is able to appoint persons into positions of strategic sensitivity. In a sense, the effort is less one of a determined effort to create an autocracy and eliminate democracy, but is rather an approach to make the *state* through its government more effective. Opposition is seen as a nuisance. Experiences of the 1990s are still raw: having an *opposition* is seen as an effect that created disintegrating forces in Russia during the 1990s. This is very difficult for someone coming from a western democracy to understand.

More detailed issues such as the creation of civil society in Russia are broad issues outside the remit of this discussion. Insofar as it touches this discussion, the interpretation inside the Kremlin is that civil society as such in Russia should also support the aims of the state. And foreign support to NGOs, is interpreted as attempts by the USA to subvert the state. And, while in 2016-2017 such allegations of alleged Russian interference in American and other elections gained huge public media and political coverage, it should be acknowledged that Russia has its own direct experience of western ‘interference’ in its own elections, and which has impacted on Russia’s attitude towards western polity. For example, the United States spent tens of millions of dollars supporting its preferred candidates in each of Russia’s presidential elections - supported through organisations such as the International Republican Institute and the National Democratic Institute, each respectively being the international arm of the U.S. Republican and Democrat Parties.

One of the most common questions asked by foreigners about the Russian political system is whether Vladimir Putin is a general expression of the Russian people’s political will, or is he and the ruling elite substantively something else. Without question, it is a fact that the ruling power bloc squeezes out of the system any real opposition to its political decision-making, but it does not prevent the expression of opposing voices.

1.2. REBUILDING A SEVERELY DEPLETED MILITARY

It was estimated that by 2010, Russia’s military hardware was between 70-80% obsolete, and the military industrial complex (MIC) having

been subject to the socio-economic and industrial blight of the 1990s. (Ivanov, 2003) The policies of Putin and Medvedev in successive defence (GPV) plans of 2010, 2015 and 2020 have been to restore the capability of the military to a capability that would be on a par with NATO⁸. The Administration determined that in order to achieve this target one of the requisite policies needed was to have direct control over the MIC in order to direct capital expenditures and strategic direction. As privatisation destroyed the economy, it took with it the MIC. As FIGs grew, they also accumulated large segments of the old MIC: it needs to be understood that the key persons mentioned above are also often controllers of industrial feedstock into the MIC, and as owners of the key economic fabric, are also key owners of substantial parts of the military industrial producing sectors. With an aim to illustrate the levers of policy, the case of *Kontsern Traktorny Zavod (KTZ, TPlants.com)* is interesting.

In 2009, KTZ was owned jointly by Mikhail Bolotin (80% shares) and Albert Bakov (20%): *KTZ* manufactured machinery and vehicles for the agricultural, machine building, road construction, transport and military sectors. Before the deep economic recession of 2008, *KTZ* had undergone an expansion plan, acquiring other manufacturing plants in Russia, Ukraine, Belarus and overseas. The situation *KTZ* found itself in by 2009 was that it was unable to finance its debt, which had been originally borrowed in Moscow at a high rate of interest. Bolotin sought to restructure the debt on the international finance market, and attempted to negotiate with *KTZ's* creditors. At the same time *Vneshekonombank (VEB)*, representing the original lending institutions, took the action of sacking the board of *KTZ* and appointed its own management team. This happened despite there being no legal structure for this under Russian law (Interfax, 2011). Bolotin and Bakov were threatened with the loss of the enterprise unless they accepted *VEB's* restructuring plan for the company. As a part of the revision, the plants manufacturing military vehicles were sold to *Uralzavodmash*, and railway carriage production sold to a firm owned by Oleg Derpiaska. *Uralzavodmash* is a part of the *ROSTEC Group* founded by order of Vladimir Putin in 2007 in order to bring the military industrial complex under a single umbrella. *ROSTEC* now comprises more than 700 enterprises through 13 holding

⁸ GPV *Gosudarstvennaya Programa Razvitaya Voruzhenniye* (State program for the development of the military)

companies. It also owns *Rosoboronexport*, which manages all Russian military exports. The CEO of *ROSTEC* is Sergei Chemezov who was elected to the Supreme Council of *United Russia* in 2012. Chemezov graduated from the Military Academy of the general Staff of the Armed Forces of Russia, and is said to have lived in the same apartment building as Putin when they were both KGB agents in East Germany in the 1980s (The Economist, 2007). By agreeing the deal, Bolotin and *TKZ* kept ownership of the assets of the plant producing for civil sectors; it is unclear if Bakov held onto his 20% share holding.

The MIC employs between 20-30% of all labour employed in manufacturing in Russia, and earns \$15bn in export revenues per annum. The CEOs of key MIC enterprises are appointed by the Kremlin. Clearly, the MIC is critical to Russia's foreign policy, and as a key local employer and wealth producer, firms are able to exert influence over regional economies and politics.

Of equal significance is the centralisation of controls over the military that Putin has initiated. The operational significance is that *who* manages what, and how and when they are appointed is code for policy. For example, in February of 2016 the new National Guard was formed, bringing together troops from the OMON and SBOR into a single unit (Rosgvard webpage 2018; The Moscow Times, 2016). The key feature of this is that the new unit sits under the command of the National Security Council over which Putin has direct control, whereas each unit was formerly under the intermediate command of the Ministry of Interior. In sum, the new organisation has between 350,000 and 400,000 troops under its command.

With regards the personnel and how they are appointed, this can be illustrated by the case of Sergei Shoigu, the current Head of the Army and Minister of Defence (MOD) since 2012. Shoigu had been a long-serving Minister of Emergency Situations (EMERCOM). Then in 2011, he was appointed from the list of the *United Russia* party to the position of Governor of Moscow Oblast. Since then, his successive second in commands at the MOD have followed his path: Andrei Vorobyov, who was appointed Governor of Moscow Oblast in 2012, followed Ruslan Tsalikov.

The essence of this is that messaging issued from the national leadership can be sent out and executed very quickly through its political appointees. And because of this very close coordination of and between physical assets - if and when there is a need to realign resource allocation between defence and politics, then this can be coordinated without hesitation or obstruction.

As we saw in the foregoing, the appointees occupying all of the key political posts are people whom have been known and become trusted by the president - many of whom also come from St. Petersburg. Of Putin's administrative *kitchen cabinet* of ten years ago: Igor Sechin, former deputy chairman of the Presidential Administration, is now the CEO of *Rosneft* - Russia's major oil producer; Vladimir Surkov, former Chief of Staff of the Presidential Administration is Deputy Prime Minister; Alexei Miller, CEO of *Gazprom*, comes from St. Petersburg; Nikolai Tokarev and Sergei Chemezov, CEOs of respectively, *Transneft*, the national pipeline company and *ROSTEC*, were each former KGB colleagues in East Germany of the president.

Russian industrial groups were and still are very much vertically and horizontally integrated. What most western economists do not understand is that even if this is not an efficient use of resources, it offers the state the capability to cross-subsidise and control transfer pricing throughout large swathes of the industrial fabric of the country. And, as the case of *TKZ* illustrates, show how and why the state has control of and uses the levers it has available to orchestrate strategic decision-making over any part of the political or industrial infrastructure. It is through this form that the state is capable of influencing and even controlling decision-making in and between industrial groups.

This form of corporate governance also allows opaque financial flows, which makes it very difficult for outsiders to understand the structure of the Russian economy. For example, until 2004, the state statistics agency *Goskomstat*, made publicly available data on the level of inter-enterprise debt existing between Russian enterprises, and which served to illustrate the current technical insolvency of many firms. General liquidity in the economy is maintained from revenues pumped into the economy by companies receiving revenues from gas, oil and mineral exports. When oil and gas prices are high, the state is able to coordinate flows of capital

to support strategically protected parts of industrial production. But lower oil and gas prices are damaging to the Russian economy because this reduces the state's essential ability to inject liquidity into the parts of the economy that might be less efficient, but which are strategically important. External influences such as sanctions imposed by other states might create some pressure on this coordination, but their impact can be misapprehended and overstated. This is because the political cadre is able to control cross pricing across businesses to absorb external impacts.

Looking at international interventions in Russia through a Russian lens, some clear images emerge from their domestic experiences since 1992. From a Russian viewpoint, the period represents a failure of the West to provide assistance at a time when Russia struggled. And how 'market liberalisation' was introduced into the economy, based on the recommendations of foreign experts, came to be understood as a primary cause of the country's economic problems, contributing to the emergence of widespread corruption that touched almost every aspect of public and private life, and whose legacy is still experienced. The experiences of this time clearly led to the formation of the approach and policies of the new president, and whose *Putinomics* provided the framework of the so-called *sovereign democracy*. (Petrov & McFaul, 2005) Sovereign or managed democracy has led to a broad and deep aggregation of state control over the industrial and political structures of Russia. Out of this, the most significant factor to emerge for the Russian population is that Putin reversed their declining livelihoods after he became president. By relative standards, Russia and its people have prospered and the state has become stabilised. Against a background of this relative success, and because of their still nascent experiences of property ownership and their negative experience of 'capitalism', the people are content to support the president.

Looking outwards: while Russia was moving through these redesigns, Russia's chief *competitor* from the Russian point of view was promoting so called *colour revolutions* in the Middle-East, North Africa and in Russia's near abroad, and that is to say, within what Russia refers to as its sphere of influence. At the same time, Moscow interprets these events as a planned expansion of both NATO and the European Union into Ukraine and Georgia. What is *probable* is that whereas NATO defines its advances as non-aggressive, to Russia this is an aggressive attempted

expansion. And some of the sensitive nuances not acknowledged by NATO have been watched closely in Moscow. For example, it is felt that the European Union has largely ignored the civil rights of *Russians* living in new Member States⁹. Another has been the issue of Romanian passports in Ukraine.¹⁰ It is the scope for interplay between hard and soft issues that provides some of the ground for manoeuvre, and for the formation of Russia's asymmetric responses.

⁹ For example, popular opinion in Russia focuses on the experience of Russians in Estonia being a reason to protect the rights of Russians in Ukraine: 'Vremya Pokazhat' *Channel 1, Russia tele-channel*, 01.2017

¹⁰ 'Ukraine's other Security Threat – Romania', 25.01.2010, *Wikileaks* <https://search.wikileaks.org/plusd/cables/10KYIV120_a.htm>

2. ASYMMETRIC APPROACHES TO CONFLICT

Russian Chief of General Staffs, Viktor Gerasimov, referred to the *Arab Spring* and the *Color Revolutions*, and which he alleges were stimulated by ‘Western’ interventions, as illustrations of non-kinetic foreign policy strategic actions that might incorporate a military format.

“The focus of applied methods of conflict has altered in the direction of the broad use of political, economic, informational, humanitarian, and other nonmilitary measures — applied in coordination with the protest potential of the population.” (Galleotti, 2014)

And yet over here this is frequently referred to as a *Gerasimov* invention.

The application of an asymmetric approach is really about countering an opposition’s strength with an alternative response; something made very possible by advancing technology and communications, which have eroded significantly the gap between tactical and strategic effect. But we should note that Gerasimov never claimed anything specifically new about asymmetrical strategies and tactics in his article. His main point was that asymmetrical approaches have now become a focal point of military planning research. And in Russian policy the notion of an asymmetrical approach is not new, having been discussed in the 2003 Defence White Paper drafted by the then Minister of Defence, Sergei Ivanov (de Haas, 2011). In this document Ivanov stated that ‘not only do military forces come into conflict, but that political command systems as economic infrastructure and general populations are also targets.’

2.1 WHAT DOES AN ASYMMETRIC APPROACH LOOK LIKE?

Asymmetric approaches are focused where there exists a current lever of power or influence beyond the immediate capability of the opposition to mitigate, and might be a pragmatic response to ground truth. For instance, consider the possibilities for the United States – with all of its

power, money and traditional resources – to project influence in North Korea: short of threatening obliteration, it has a probability of impact close to zero. The United States is able to threaten North Korea with war, and one can argue that this has impacted on Pyongyang, but this is not an asymmetric approach. Alternatively, one might make a case that Pyongyang has indirectly influenced the U.S. through its direct ability to influence South Korea and other countries in the region. This is because there are few open channels for the U.S.: the language is different, and there is no American historical or cultural affinity, or economic power. By comparison, consider the scope of Russia to influence a neighboring country like Estonia; the scope of potential influence has high possibilities. There is a language crossover and a Russian population inside Estonia, and common economic and political ties rooted in their recent histories.

Of growing interest are forms of influence using social media sources, mining so-called ‘big data’, and which tends to use less overt methods. The *MIT Technology Review* notes that, for example, *Google* responded to nearly 8,000 requests for data from U.S. Government agencies in the first six months of 2012 (Simonite, 2012). Data mining is a valuable defence policy, but its research and analysis has irritated sensitivities in the civil rights lobby. For instance the *Defense Advanced Research Project Agency (DARPA)* began in 2002 a program called the *Information Awareness Office (IAO)*, to analyse big data in order to assess behavioral impacts that might be tactically used. But the *IAO* was closed in 2012 by the government, aware that the use of private data might infringe private citizens’ information rights (The Washington Post, 2013). And it is no accident that the Russian Government has applied pressure to U.S. social media firms in order to have access to the data on its servers for activities based in Russia.^{11 12} But while big data analytics is a current frontier, other levers of influence have been applied for some time. What seems probable is that the success of targeted asymmetric actions is going to be related to the target’s amenability to influence.

¹¹ LinkedIn was shut down by the Russian government in late 2016.

¹² For example, *Cambridge Analytica* and companies it is closely associated with are engaged in mining big data in order to discover behavioural trends that can be used to sway public opinion. In 2017, it is alleged that the ‘Leave’ campaign spent almost its entire campaign budget on a group of closely connected companies.

2.2.1 Drivers of Russia's foreign policy

The driver of foreign policy has come to be formed around a response to the perceived attempts by NATO to exert influence in Russia's near abroad – considered by Moscow to be its own sphere of influence. And this fundamental opposition sustains the continuing deep absence of trust with the United States. The strength of this lack of trust of the U.S. often comes as a shock to western analysts; it is a deeply and commonly held belief across Russian society that the U.S. continues unabated in its aim to encircle and bring down the current Russian state.

In reflection of this broader strategy, Russia bases its policies on the protection of its physical interests and strategic assets. These are prioritised on two tiers:

Tier 1 Assets are of significant strategic value, the loss of which might impact on domestic security, and which therefore are a vital component and driver of foreign policy. These assets will be defended aggressively.

Tier 2 Assets are of value, and therefore worth defending, but only if their defence results in no significant loss in another policy domain or to a different target. It might also be considered that the loss of a Tier two asset, even if causing a problem, would not impact significantly or create a shift in Russian domestic policy.

This is expressed in Figure 1.

The *impact* is measured as the effect of the removal of control over this asset. *Scope of action* refers to the capability and willingness to act in response to a threat or perceived threat to Russia¹³.

¹³ There are other assets, such as the location of Russia's military bases in Armenia and Kazakhstan. And we could add to this list the newly developed naval and air force bases located in Syria.



Figure 1. Impact and action of Russia's foreign policy

RUSSIAN TIER 1 ASSETS

Kaliningrad

Kaliningrad was given to Russia as a part of the Potsdam Conference in 1945 and is now an integral part of the Russian Federation. Its location as an exclave territory presents huge strategic value to Russia that it would not give up. And it can be expected that Russia will defend Kaliningrad as it would any other part of the country. At the same time, Kaliningrad's unique strategic strength is also a weakness, because land access requires transit through other states.

Sevastopol naval base

Sevastopol Russian naval base was founded in 1783. Its location gives Russia pre-eminent access and control over the Black Sea as well as access and the possibility to project itself into the Mediterranean Sea and beyond. It is inconceivable that Russia would volunteer to relinquish control.

Gas pipelines to Europe

The value of the pipelines is that they secure foreign currency income to the treasury from gas exports, which is vital to the economy. And revenue from exported gas and oil allows the government to maintain what is very probably an inefficient industrial infrastructure. The supply and even transit of gas also has an impact on the energy security of client nations – some of which are entirely dependent on imported Russian gas, and which presents Russia influence over these countries internal decision-making.

RUSSIAN TIER 2 ASSETS*Belarus independence*

Belarus is as complex a neighbor to Russia as Ukraine. Until recent times, its position offered a viable military strategic buffer. Whether this still applies to the same degree is questionable. However, it is still essentially very close to Russia economically and culturally. And President Lukashenko has always been a close ally to the Russian Administration. Without a friendly Belarus land transit to Kaliningrad this might be altogether different.

Russians in Ukraine

Ukraine is a particularly complex issue because of its history. Ukraine has existed as a modern state since the dissolution of the Soviet Union in December 1991. And within its territory, which was of the Soviet Republic of Ukraine, the population was made up of a number of different ethnic demographic groups: Russians living in the east and south of the country dominate the numbers, particularly in urban areas. Though one factor in this regard that separates Ukraine from both Estonia and Kazakhstan is that Russian families in Ukraine have lived in the regions for more than two hundred years, whereas Russian families were placed in the other two Soviet Republics for strategic reasons during the Soviet period, and particularly since the end of World War Two.

Russians living in the near abroad

There are Russians living abroad throughout Europe, but in some regions of neighboring states, Russians comprise the majority of local populations. The relevant issue is to consider if there are conditions under which Russia would respond, to protect the rights of 'Russians' living in neighboring states.

The 'pretext' argument – that Russia uses these peoples as an excuse for intervention - does not sufficiently recognise the complexity of the widely different contexts experienced in different places. For example, Russians in Kazakhstan and Estonia each number approximately 20% of the population. In Kazakhstan, non-Kazakh speakers certainly suffer subtle discrimination because knowledge of the Kazakh language is a requirement for entry into the civil service and all public-sector employment. Yet Russian is a state language in Kazakhstan, and is still the language spoken by 84% of ethnic Kazakhs; it is the language of business, and Russian language television still has more channels. Kazakhstan's economic ties with Russia are very close, and both are founding members of the Eurasian Economic Area (EEA). Russians in Kazakhstan are more densely grouped in the far north, and have equal voting rights.

The presence of discrimination against the Russian diaspora might be used to serve as a convenient pretext explanation for an intervention on their behalf, but the fact of Russia's history of not intervening in other countries on behalf of Russians suffering some degree of alleged discrimination indicates the need for a different explanation.

In measuring the *scope* to act to protect an interest, a decision must be on which levers are available to actually protect that asset. There is no historic analogue of Russia accelerating to a similar position to defend Russians' civil rights in Ukraine or elsewhere¹⁴. Yet it was the defence of such rights against their alleged infringement by Ukrainian authorities that was presented as a legitimate cause for Russia to support its 'nationals' in Donetsk and Lugansk Oblasts. The real cause of Russian intervention was the threat of losing the Black Sea port of Sevastopol. This immediately forced a Russian policy action because the loss of Sevastopol would severely damage Russia's strategic capability. Sevastopol grants Russia, if not absolute control of the Black Sea, then a fundamental footprint over it. The very major fear was that the Ukrainian government were planning to evict the Russian military from the port and grant access to the US Navy, with the effect of very much altering the balance of power in the Black Sea and the region¹⁵.

Russia has no *Tier 1* assets in the Baltics, which is why despite Russia's vociferous defence of ethnic Russians' civil rights in Estonia and Latvia through the political representative chambers and the Council of Europe, no physical actions have been made. Because of this, the probability is extremely low of an analogous action to 'Crimea' occurring in Estonia or Latvia.

A second question arises, which is whether Russia has the scope and capability to destabilise the Baltic region in the way it has in the eastern oblasts of Ukraine.

¹⁴ Though popular views have been expressed inside Russia that action in the eastern Oblasts of Ukraine is necessary in order to prevent ethnic Russians in this region from suffering the lack of statehood Russians in Estonia and Lithuania have experienced since becoming independent.

¹⁵ The US Department of Defense issued a tender for the refurbishment of premises in Sevastopol naval base, whilst still under Russian occupation, and under lease to the Russians.

Russia could easily create problems in Latvia and Estonia, but does not have the scope to make an enduring change, because if there is frustration in Russian nationals, there is no evidence of their will to become a part of the Russian Federation. Even if sensibility to Russian language and culture is strong in the northeast of Estonia and Tallinn, and in the southeast of Latvia and the Latvian ports, there has never been any evidence of a wish of these peoples' to actually become a part of Russia or to give up European Union citizenship.

This does not mean that the situation could not change, because the scope for the misunderstanding of regional aims and interests by external parties insensitive to others' interests is clear. But it would demand one of three conditions: a threat or perceived threat to the Russian state from inside Estonia; or a threat to the integrity of the Kaliningrad exclave; or a threat to a Tier 1 asset that Russia might respond to by acting in the Baltic theatre.

The factor that could lead to Russia intervening in this region is to respond to a perceived threat from NATO. It is quite clear that the suggestion of Ukraine joining both NATO and the EU was a serious concern for Russia, and was the primary cause of Russia's policy in the south of Ukraine. And while Estonia, Latvia and Lithuania has neither Tier 1 nor Tier 2 Russian interests, and as each is already a member of both organisations, the scope for a miscalculation could lead to new issues in the region. This is because it can be the simple misinterpretation of a situation that can lead to strategic miscalculation, and the experience of Sevastopol serves to illustrate this as a type of tactical error that can be made without a clear understanding of the context and without clear expressions of intent. The U.S. expressed through its policies a lack of understanding of key sensitivities in the region and poor foresight, though there is little doubt that the Ukrainians did not foresee some kind of Russian reaction. At the same time, it seems likely that Russia has contrived to create a situation in eastern Ukraine, which it finds difficult to escape from.

2.2 LEVERS OF ASYMMETRIC CAPABILITY - WHICH LEVERS ARE AVAILABLE, AND HOW ARE THEY COORDINATED

The intent of an asymmetric policy is to influence and control. The military may be a part of the approach, but it could be employed in a relatively minor role, when there are so many other, sometimes more powerful means of influence available. Understanding the possible levers of influence is therefore important to understanding how policies are implemented.

2.2.1 Business, economics and finance

It is reasonable to assume that a country will employ policies and mobilise its resources to boost its level of business income in an overseas territory. But as discussed above, Russia has a tactical capability, experience and scope to coordinate its resources to a degree that is well beyond most states.

Any of the countries in Russia's near abroad could be used to illustrate its reach and capability. For example, Georgia's dominant trade partners are its close neighbors, not member states of the European Union. Its power grid is interconnected regionally, and its industry standards and regulations are coordinated with Moscow, not Brussels. In Ukraine, similar conditions apply. With regards finance, Russian banks operating in Ukraine hold 20% of all loan capital, which delivers significant power to influence contracts, and Russia remains the main foreign investor. Added to this, the Russian government's degree of influence over its own 'oligarchs' is so comprehensive that it can critically influence the terms of payment or non-payment of loans, granting a range of influences across a local political situation.¹⁶

¹⁶ 'Extortion, bribes and threats: a Kyiv bankers laments', 15.10.2009, *Wikileaks*, https://search.wikileaks.org/plusd/cables/09KYIV1777_a.html

At the same time the priority issues of citizens in Georgia and Ukraine are less about NATO or European Union membership, or even Russia: the priorities are *jobs, the economy and countering corruption*. (Wikileaks, 2010) And even if Georgians prefer to lean towards the European Union as a balance to Russian influence; and even if Georgians do express a positive outlook on NATO membership - NATO membership was recorded in one American survey close to the U.S. Administration, to be the seventeenth most important factor of concern. (IRI, 2016) What this means is that Russia is able to use levers of economic influence as a strategic tool to counter the influence of, for example possible future membership of the European Union and NATO.

In Estonia, the key physical infrastructure assets: of power and gas supply, oil, and of transport logistics were largely established by and are integrated into Russian networks. None of this is of critical strategic value or has any financial significance to Russia because the markets are very small. But they offer useful means of influence, and thus the maintenance of channels of influence to affect these assets is a significant part of Russian policy.

Were Russia to try to assert influence, then it has the channels: through, for example, the influence of trading power from purchasing goods and services from Estonia, or of selling gas into the region. There is also the option to deflect domestic opinion by capital investment and job creation – establishing an economic dependence that may become a powerful sway over domestic opinion.

This can be illustrated through various possible scenarios. For instance, it is quite conceivable that Russia would use its intelligence services to acquire privileged competitive information in a business tender – information that could then be passed to the competing commercial entity. In another potential situation, it is conceivable that a national non-Russian commercial entity might propose an open tender in order to diversify supply away from dependency on a supply route. The Russians might focus intelligence on finding out the pricing strategy and undercut the alternative market supply. Under a second scenario, we might consider how a port authority or a transport organisation with Russian leaning management or ownership control, and employing ethnic Russian personnel – or even influenced by a Russian leaning state ministry – decides

to choose a Russian builder for the construction of a new terminal, or for the supply of new equipment. This scenario is based on an actual case, recently the subject was given close scrutiny in the Estonian and Latvian press.¹⁷

Because its control over its domestic government and other organs is complete, the Russian leadership is capable of employing a wide array of levers through different approaches in order to aggressively influence decision-making in other states.

For example, the economic investment bank *Vneshekonombank* (*VEB*) is the Russian bank for the development of foreign economic affairs, which has the resource of the Russian Treasury behind it, and is used as a tool of foreign policy. For example, *VEB* could be instructed to supply cheap finance to a commercial enterprise – granting it a clear competitive advantage.¹⁸

We should also recognise that Russia's capability to create severe problems in its near abroad is also potent. In the European gas market, gas supply is used as a strategic tool of influence. The strategic foreign policy aim of Russia is to consolidate its position as Europe's major supplier. The major policy approach is to negotiate individual supply contracts with states in order to maximise negotiating influence. It is possible to provide more than one anecdotal case of Russia buying 'influence' in government ministries of European Union member states.

An illustration of this form of influence was experienced in the Baltics in the Spring of 2017, illustrated through a significant change of the routing of Lithuania's gas supply. Each of the Baltic states has been following policies intended to loosen their dependence on imported Russian gas.

¹⁷ *Globaltrans* Andrei Filatov. Alexander Eliseev. It is not difficult to trace through open sources connections between the political and commercial spheres that cross the Estonian border into Russia.

¹⁸ Evgeny Buryakova, a *Vneshekonombank* employee was caught and imprisoned for espionage, acting as an operative of the SVR, handled by its officers in New York. And Anna Chapman was another low-level accomplice to the Russian spy network, and another example of the reach of the state into foreign countries commerce and government. <http://abcnews.go.com/International/russian-spy-evgeny-buryakov-deported-united-states/story?id=46601947>.

For instance a floating LNG platform was leased, which enabled the purchase of Norwegian gas from *Statoil* as a strategic alternative to Russian supply. Then early in 2017, Lithuania recommenced purchasing Russian gas from *Gazprom*. (Gegelevicius, 2017; The Baltic Times, 2016)

It is also interesting how Russian natural gas supply to Germany has become so important, and how Germany's policy contrasts with the European Union's energy security policies, which are designed to reduce Europe's dependency on a single or few suppliers (European Commission, 2018).

Through the *Nordstream 1* pipeline Russia already supplies 30% of Germany's gas. By 2019 *Gazprom* plans to build the *Nordstream 2* pipeline that will increase this figure to 50%. The critical Russian objective of *Nordstream* is to increase European purchase of its gas and to remove Russia's dependence on transiting gas through Ukraine, which will lose an income of \$2 billion per year in transit fees from *Gazprom* when the pipeline comes on-line in 2019.

The Russian owned and managed pipeline being built for use in *Nordstream 2* will use building yards in Sweden for the construction of the pipes, rather than have them manufactured in Kaliningrad. This will create jobs in a relatively depressed part of Sweden. And in Latvia, it is reported that the *Ventspils* dockyards will be used for the *Nordstream 2* project, bringing millions of USD investment and new jobs. Even if the Latvian Ministry of Foreign Affairs makes its objection heard, the provision of investment and jobs prevails. (The Baltic Course, 2017) Will this influence regional opinion towards Russia?

Russia understands these features. And these regional ground truths form the bases of its asymmetric approaches designed to maintain and extend its influence.

2.2.2 Opinion-forming influence

As discussed in the foregoing, politics inside the Russian Federation has been fashioned under Putin to dovetail with the strategic objectives of the state. Through a system of appointments, political leadership has

been grafted onto and integrated into the business and military branches in order to keep strategic planning within a tight-knit group of key decision-making at the presidential level. The term formerly used was *siloviki*, but this is probably out of date and is too generic. There was a fashion until about ten years ago for Putin to have Saturday morning meetings of a handpicked core group of about ten – a sort of kitchen cabinet, at his dacha outside Moscow. This practice is reported to have become obsolete, but what remains the same is that Putin personally selects those around him and locates key personnel across all the levers of power.

When it comes to expressing its influence in a foreign state, the integration of political and business interests inside Russia signals that the same type of measured policies will be applied in other states where Russia has an interest.

But the reach of Russian domestic political influence needs a receptor on the other side of the border in order to deliver impact. On the one hand, business and political interests are well coordinated, having been established since before independence. But Russia has understood that the Russian diaspora needs organising. And the Ministry of Foreign Affairs is the chief coordinator of softer influence approaches and pressures expressed through NGOs working under the Russian flag, and of media channels coordinated to express a position and to erode opposition.

In its near abroad – in Estonia - the ethnic Russian population is around 20% of the population, and in certain sub-regions such as Tallinn, is closer to 50%; and in smaller sub-regions like Narva in Estonia and Daugavpils in Latvia, Russians comprise more than 90% of the population. But how far is Russia capable of exploiting this? In part, this will depend on the tension inside Estonia. Clearly there is some divergence of aims and cultural influence between the *Estonian* population and parts of the Russian community in Estonia (and in Latvia). But a Russian affiliated political party formed the government in 2017, and Russian community associations co-exist alongside the Estonian community, signaling degrees of cohesion between the Estonian and Russian communities. The question arises, would Russians in Estonia seek their own independence, and forego the freedoms connected with their European Union citizenship? This is very doubtful, and there is a risk of over-stating the degree of influence the Kremlin has.

Nonetheless, cultural and other groups numbering Russian membership, and being sponsored through Russian agency organisations exist to promote and coordinate the Russian position. These include the Russian language television and radio media, and newspapers, social media, trade unions, even Russian language schools in the education system, and cultural organisations such as *Russkiy Mir* (Russian World) and *Rosstrundnichestvo* (Russian friendship), but their influence can be overestimated.

At the inter-government level, Russia also exploits the political interfaces between western democratic institutions to pursue its own interests, being very active in lobbying European Union institutions and the Council of Europe, each of which has various committee representations for liaison with Russia. The significance of this lobby to Russia is that debate in inter-government decision-making can be used to further its own aims.

2.3 HOW TO RESPOND?

The term ‘hybrid warfare’ is a recent invention, which has come into fashion and been latched onto in the swell of debate following the paper issued by Viktor Gerasimov on *asymmetric* approaches. This has heated a debate in the military about cyber and counter-influence campaigns, but without displaying much evidence of a comprehension of actual Russian policy and interests. One of the problems is that the ‘hybrid approach’ has quickly become associated with ‘little green men operating without a badge’, which is a very narrow interpretation, and misses the sense of what an asymmetric approach really is.

The military has very much gelled around information operations, and seems to think that a ‘counter-hybrid’ approach signals a need to counter the information operations of the Russians. That is to say – influence and counter-influence through messaging and communications that has become a key focus of operations, when the reality is that this form of influence is one of many levers available and employed in an asymmetrical tactical approach, and is arguably of a lesser impact. The danger is that the military chooses to respond to issues that it has a discrete

tactical capability in, ignoring the others. And in this case, who manages the other responses and who coordinates a response? It seems no one. As a beginning, we would be far better off staying with the original term, which defines something that is clear and is more easily understandable. Asymmetry is clear, but 'hybrid' is a word that is confusing and should be avoided because the term does not have a universal meaning. (Sapronova, 2013)

The emphasis of responses needs to be targeted in the first place into more effectively understanding the Russian position, and in understanding the impact on others of our words and actions. For instance, little attention is given on the impact of the financing of civil society organisations and in electoral campaigns inside Russia by western governmental and quasi-governmental organs. We should also question our assumptions about a different society, and which is frequently value overladen by our own.

We can move forward by improving our understanding. And from this should come more clear messaging, from which we should be able to reduce the risk of actions being made out of basic misunderstanding. And because the level of our current competence in comprehending regional sensitivities is low, two risks are clear. First, the probability of an event happening due to a misunderstanding is unnecessarily high. Second, the message received in Moscow can equally be misunderstood, and could encourage Russia to test us. Very obviously, a situation where two parties do not understand each other's actions is rich with danger.

We also need to listen to those living under our own banner with some care: to understand more closely their agendas and aims, and whose messaging is, qualitatively speaking, sometimes poor. And we also need to understand the priorities of peoples in countries where these potential risks might lie. They are far less interested in 'Russia' or 'NATO membership' than they are interested in jobs, the economy and local measures to counter corruption. (Wikileaks, 2010a) And when it comes to these material interests, this is where Russia understands its near abroad well, and knows how to design effective actions that will appeal to regional populations.

What is required is a deeper understanding of how pressure is used as a tool in decision-making.

We need to track and understand the interconnectedness of Russia's government and business interests, and know how these are being used as tools of foreign policy. And in response, we need to track Russian organs operating, and understand, for instance, the objectives of Russian NGOs, and become more educated about the pressure they apply and levers of influence they use. At the same time, we need to appreciate our own internal weaknesses, and comprehend how these are exploited by Russia. If it perceives a threat, Russia will exploit any fissures.

We also should be aware of and be more objective about the legitimate civil rights of all citizens and not see these things only through a particular lens. Above all, we need to promote transparent government. And at the same time understand how western institutions are exploited by Russia, and not ignore how organisations here might seek to exploit Russia for their own aims. In the first case, for example, of non-transparent financial markets, which encourage channels like money laundering and make the work of organised crime much easier than it could be; in the second, of data harvested through social media used by national governments.

Countering asymmetric approaches is not just about information operations, because Russia can operate many coordinated levers across a wide arc. And most of all, asymmetric approaches are by and large not a military issue and in most likelihoods do not warrant a military response. But by responding in a military format, the possibility is to create a new and different set of issues and signals that risk being perceived as threats, and to which Russia will respond. To which some will argue, 'but Russia already took Crimea.' To this point, I would state that Russia's action was illegal, but at the same time needs to be understood within its correct context.

There are threats from Russian actors engaged in illegal and corrupt practices, from London to Tallinn, attempting to subvert transparent economic, judicial and political process. As Galleotti points out, it would be wiser and more effective for our own authorities to understand these more completely, and allocate resources to counter them, rather than to

engage in spending more on a military response. (op cit Galeotti, 2014)
The military doesn't even begin to counter this threat.

Contacts:

Keith Little

University of Oxford

E-mail: keith.little@oba.co.uk

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POLICY ESSAY



COMBATING THE SMUGGLING OF MIGRANTS TO THE EU BY SEA – SOURCES AND POTENTIAL TYPES OF REACTION

Piotr Mickiewicz, PhD

Polish Naval Academy

Professor at Faculty of Command and Naval Operations;

Lower Silesia University

Director of the Institute of Security and International Relations

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ABSTRACT

The scale of smuggling of migrants by sea and the migratory pressure preclude creation and application of processes aimed at reducing primary sources of migration as a principal method of immigration policy. To solve this problem, it is necessary to take measures to eradicate illegal immigration. A special importance should be attached to the issue of combating irregular migration in sea basins. It is essential to separate the issue of limiting the possibility of trafficking people by sea from the issue of saving lives at sea, especially when the noble idea has become an instrument in the hands of smugglers and illegal immigrants. Rescue practice should also not exempt from the obligation to assess the appropriateness of taking such action and to apply any legal consequences arising from an unfounded call or demand for help. It is therefore justified to skilfully apply the terms 'immigrant trafficking' and 'illegal entry' with regard to migrants with all the consequences created by Palermo Protocol. It is also important to consider ceding to the EU force the right to control the sea basins of the Member States (abandonment of the flag State status in relation to illegal migrant trafficking) and to ensure full compliance with the SOLAS Convention with regard to the right of visit and the right to escort the vessel back to its port of origin. The article is an original interpretation of the provisions of documents allowing effective combating of illegal transfers of persons to the EU.

INTRODUCTION

The phenomenon of immigration into the European Union is a consequence of global economic and social transformations accumulated in the areas of political and economic instability (Arab Migration..., 2004, Flahaux & de Haas, 2016, p. 1-10, Evidence on internal, 2018, p. 1-10). Its current form is – to a large extent – not a refugee process or illegal immigration, but an organised form of people transfer conducted by smuggling groups, which requires a different prevention formula than was used between 2012-2017. It must take the form of closely correlated long-term enterprises eliminating the causes of migration and actions aimed at combating illegal immigration, and the solidary cooperation of the Member States, which are currently pursuing an individualist policy. The EU migration policy should be conducted on the basis of the modified *Council Decisions* of 26.04.2010 (Council Decision, 2010) and the *European Migration Program* (European Agenda, 2015a). In my opinion, the third of the existing documents (EU Action Plan against migrant smuggling, 2015) contains duplicate entries in the field of migration (Communications, 2015).

With reference to the provisions of the *Council Decision*, it is justified to introduce solutions allowing for common jurisdiction with regard to the phenomenon of people transfer and smuggling with the use of EU sea basins by the European Union and Member States. This solution will allow partial alleviation of the individualistic attitudes of the Member States with regard to migration projects, which was perfectly illustrated by the example of the *Mare Nostrum* operation.

The undoubted advantage of the *European Migration Program* is the correct correlation with *The European Agenda on Security* (European Agenda, 2015b) and the unambiguous definition of strategic goals for migration policy. The main disadvantage is the excessive focus on long-term activities, at the expense of preventive measures. The restriction was the improvement of the existing migration procedures. The basic tools “allowing to take control over the constant inflow of people” are relocations of migrants and financial support of border states in the field of border control (European Agenda, 2015a p. 4-5). The area of activities,

defined as “levelling the attractiveness of the EU as a destination for emigration” includes measures to combat organised crime, specialising in human trafficking and human smuggling (European Agenda, 2015a p 7-9). However, it does not include actions against criminal groups in border states.

This limits the possibility of effective eradication because the purpose of these groups is not to provide an immigrant to a specific “recipient”, but to organise the possibility of reaching the EU. However, the mode of action is to bring about a situation in which the immigrant will be in need of humanitarian aid. In this situation, the basic instrument of migration policy in the form of “*increasing the control capacity of the EU institutions in the field of control of external borders and the first stage of asylum procedures*” can be applied to a limited extent. Also, the projects concerning *working in partnership with third countries to tackle migration upstream* and the legalisation of temporary stay (blue card, return policy) should be assessed similarly. These undertakings limit the scale, but will not stop the current inflow of migrants. Therefore, it is necessary to change the way the Mediterranean Task Force operates. Currently, its main task is to help migrants at sea, not to combat their illegal transfer. The priority objectives of its activity were:

- Actions in cooperation with third countries.
- Regional protection, resettlement and reinforced legal avenues to Europe.
- Fight against trafficking, smuggling and organised crime.

Reinforced border surveillance contributing to enhancing the maritime situational picture and to the protection and saving of lives of migrants in the Mediterranean.

Assistance and solidarity with Member States dealing with high migration pressure (Communications, 2013, p.16).

The basic form of action in this area is, however, conducting patrol activities in the form of monitoring the sea basins in order to ensure effective border control and ensuring protection of those in need and saving the

lives of migrants (European Agenda, 2015 a p.3-4). It is also necessary to change the way the anti-migration operations are carried out. They were focused on patrol activities, detection of the unit transporting migrants and providing assistance at the time of threat to health or life. In practice – delivering them to European Union ports. However, the provisions of the Palermo Protocol (United Nations, 2010), which was the basis for the construction of a formula for operational activities, allowing effective combating of the illegal transfer of people by sea. However, it requires the use of its other provisions and the adoption of new procedures to eliminate the existing political and administrative restrictions.

RESTRICTIONS OF THE CURRENT FORMULA OF OPERATIONAL ACTIVITIES

The EU migration and asylum policy is rightly constructed on the basis of the so-called *comprehensive approach* (Brekke 2017, p. 19-39). It is focused on the implementation of processes eliminating the primary causes of migration in the countries of origin and assumes conducting, quite strictly, cooperation with transit states. It also takes into account the needs of the European labour market and humanitarian issues. From 2016, it also refers to the problem of the environmental integration of immigrants and the financial possibilities of the social system of the Member States. Unfortunately, this comprehensive approach excluded the sphere of practical actions aimed at combating the illegal transfer of migrants. The activities of the transit states, the naval forces of the EU countries and the Union itself as well as the system of protection of the EU's external borders, together with the border systems of the Member States, have not been correlated in this area.

In my opinion the main mistake of operational activities aimed at eliminating the illegal migration of migrants is their concentration in sea basins, at the expense of projects carried out jointly with transit states (Frontex Agency, 2018a, p.18-19; Liberti, 2014; Mickiewicz 2009, s. 260-264, European Commission, 2018, p. 2-3.). Allowing transit states full freedom in organising activities aimed at blocking access to sea border areas is one of the reasons for the current migration boom. The inability to control land routes significantly limits the possibility of effective monitoring of offshore migration routes. In addition, this monitoring is carried out strictly defensively, in the form of the control of selected sea basins by periodic patrolling and searching for immigrants. Such a formula, as evidenced by the experience of the so-called blocking activities, carried out on the Adriatic in 1993-1995 and the Bordex operations, is expensive and ineffective. It is assumed that the maritime patrol system detects about 4% of migrant transport units or classic smuggling (Mickiewicz, 2009, p. 262-264; Kubiak & Starobrat, 1999, p.110-114). The necessity of using migration procedures additionally increases the cost of operations, which has already been clearly demonstrated by data regarding the effectiveness of such operations (HERA, INDALO and

NAUTILIUS, MINERVA, HERMES or POSEIDON) (Mickiewicz 2007, p. 129-141; Mickiewicz 2009, p. 262-264).

They acknowledge the patrol activities as the basic formula of the activity of the external border control system, also the forms of migrants' transfers were not included. The transporting unit – as a rule – has a small, so-called, *effective reflection surface*, which makes it difficult to detect them using technical means of observations (radar)¹. The way of sailing and the length of the crossing route that is covered by the units transporting migrants, in practice allows for covert arrival of immigrants ashore. In my opinion, another mistake in previous activities has been and is the excessive application of the provisions of the international law of the sea in the field of saving health and life at sea. The Solas'74 Convention (International Convention..., 1980)² regulating these formulas confirms the principle that has been in force since 1910 that *each capital* [navigating vessel - ed. PM] *is obliged to provide assistance to any person at sea in a life-threatening situation, as long as it does not expose his ship, crew or passengers to risk* (International Convention ..., 1980, art. 8)³. This provision imposes, on every sea user, the obligation to take immediate rescue action, focused on taking a survivor from the sea on board of his own

¹ It is the ability of the object to reflect, among others, radar waves. It depends on the size of the cross-sectional area of the object, the material from which the object is made or what it has been covered with, and its shape. Using the analysis of the collision of the Bieszczady sea yacht with a length of 13m, it should be noted that the surface of the reflection of such a unit is approx. 0,3 m². The probability of detecting an echo (signal) of such a unit, having the navigation mark included and equipped with a system increasing the surface of reflection, from a distance of 12 nautical miles is estimated at approx. 45%.

² Its provisions include records specifying the behaviour of the unit in the event of saving life, the technical equipment of the unit, etc.

³ “After a collision, the master of each of the vessels in the collision is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to the other vessel, her crew and her passengers. He is likewise bound so far as possible to make known to the other vessel the name of his vessel and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound. A breach of the above provisions does not of itself impose any liability on the owner of a vessel”.

unit or taking him from a damaged (more often, abandoned by the crew) unit. However, this right does not specify a change in the status of an immigrant in the event of assistance. Meanwhile, the general rule was to recognise him as a survivor or victim of a maritime accident, without investigating the causes of the situation in which he found himself (The situation..., 2016, p. 11, How does...; Frontex Agency, 2018a, p.7,8-9, 11-12,17). Rescue operations were also continued in the field of transport to the EU, as state units are directed to home ports. In them, migration actions are implemented, usually with excessive consideration of the status of a marine accident victim. The consequence of such an approach was the change in the legal status of an immigrant who – being a victim of an accident at sea – arrived legally in the European Union. This status also justified the fact of the lack of documents and created a situation in which – for humanitarian reasons – a positive decision on the right to stay could be obtained.

The described procedure and the above conditions were not the only consequences of the failure of this formula to combat illegal immigration at sea. Focusing on the search for individuals and allowing the use of the provisions of the law of the sea by migrants led to the taking over of the procedure by organised criminal groups, which further *exacerbated* the practice. Lack of reaction to the actions of persons managing the units (smugglers) resulted from other provisions of the law of the sea, defining the powers of a *non-flag* state to apply sanctions to the navigational vessel. It allows action to be taken against such an individual in the event of, among other things, the rights of piracy and human trafficking. In practice, EU naval forces have not used this possibility in the form of pursuit activities against crews abandoning the unit and leaving migrants, simulating damage of the unit or deliberately damaging them.

RESTRICTIONS OF THE CURRENT FORMULA OF THE ASYLUM PROCEDURES

The basic disadvantage of the instruments implemented by the European Union is their inadequacy to the potential migration scale, lack of possibility to enforce general use of the Dublin procedures by member states and limited, real, and not declarative support from other member states of attempts to reduce the scale of immigration by organised crime groups. An important role is also played by other administrative consequences, in particular the lack of the EU single, wide list of *safe countries*⁴ and – although to a lesser extent – a relatively broad definition of the concept of a *refugee* in the application of the asylum procedure. A significant role is also played by the primacy of the humanitarian factor in the asylum procedure, which directly translates into the scale of refusal of asylum and deportation. The European leader in the application of this procedure, the Federal Republic of Germany, in 2014 deported 64% of people who were refused asylum (Eurostat Statistics, 2018a), and the average in the entire European Union does not exceed 40% (Eurostat Statistics, 2018b). This situation has not been changed by the *European Migration Program* from 2015, as it is focused on the implementation of long-term projects limiting migratory pressure. To a small extent, its provisions focus on actions aimed at combating the organised transfer of people, especially those carried out by organised criminal groups. In my opinion combating organised crime, specialising in human trafficking and human smuggling is not a priority activity, and in addition it focuses on groups working within the EU (European Commission, 2018, p. 10-11, The situation...2015, point K-Z, point 1-12.) Meanwhile, this practice is practiced by groups operating in border states. Their goal is not to provide an immigrant to a specific “recipient” or place, but to organise opportunities to reach the EU. The method of action assumes, first of all, bringing about a situation in which the immigrant will require humanitarian aid (European Union Committee 2017, point 18-24, Questions and Answers

⁴ According to the press releases, such lists in 2016 were owned by only 12 European countries, i.e. Austria, Belgium, Bulgaria, the Czech Republic, France, Ireland, Luxemburg, Malta, Germany, Slovakia and the United Kingdom.

p.2). Therefore, the basic form of the transfer is not so much conducting him through the EU external border, but to force the so-called sea users, preferably associated with the Member States, to undertake a rescue operation. As a result, the rescued, e.g. from a drifting unit, the immigrant becomes a survivor who legally arrived in the territory of that Member State and makes an appropriate asylum application. As a victim of an accident at sea, he could also lose his documents, which makes his identification difficult, and therefore the possibility of refusing asylum. In this situation, another of the migration policy instruments in the form of increasing the control capacity of the EU institutions in the field of external border control and the first stage of the asylum procedures can be used to a limited extent (Action Plan point 1 and 3). The problem is not the form of applying the asylum regulations by the border states, but the applied form of the inflow of migrants and its scale (European Union Committee 2017, p. 1, European Commission, 2018, p. 1-4 and 14-16). The projects concerning the *cooperation with transit countries and the origin of immigrants* as well as the package of measures related to the legalisation of temporary stay (blue card, return policy, other elements of the labour migration policy) should be assessed the same way. Of course, these undertakings can bring about the effect and reduce the role of the so-called primary sources of migration in countries creating the phenomenon and reduce the level of migratory pressure. However, they will not stop the current influx of migrants.

POTENTIAL FORMS OF EFFECTIVELY COUNTERACTING IMMIGRATION BY SEA

Transformation of the phenomenon of migrants' inflow into an organised transfer of people results in the need to change the approach of the migration control process by the EU institutions. It is necessary to recognise, as a starting point, not so much to condition the humanitarian and needs of the EU labour market, but also to take into account the possibilities of the social system of member states and social attitudes. Taking into account these factors leads to the conclusions that one should leave the primacy of the concept of *slightly open doors*, allowing the admission of a selected group of immigrants needed in the EU (Frattini 2008; d'Kancs & Lecca, 2017, p.19-23, 27-28, Replacement p. 89-95). It should be supplemented by detailed programs, not ideas, shuttle migration, and above all through a radical increase in the efficiency of the external border control system. First and foremost – the European Border and Coast Guard, which replaces the Frontex Agency, should be able to fully apply its competences (Regulation 2016/1624). In my opinion, the main problem limiting the effectiveness of its activities are problems with the composition of officers and the scale of financing, and the purpose of the amounts spent (European Union Committee, 2017, point 26-28). In the first place, the solution should be to abandon the concept of financing operations that do not reduce the volume of migration (Scazzieri & Springford, 2017; Feller⁵, 2013; Frontex Agency, 2018b, p. 18-22, 38-39). This applies in particular to projects focusing on humanitarian and rescue operations off the coast of Africa, as it was the case in 2015 with the financing of *Triton* operations. The right decision was to finance migration projects of non-EU countries, but Turkey became their main beneficiary for 2016-2018 (Second...2018, p. 5-9). However, this did not affect the scale of migration from Africa, so it is reasonable (Frontex Agency, 2018b p.17-19) to implement similar solutions in cooperation with Morocco and ultimately with Libya (this requires earlier support of the internal stability processes of this country). Another goal should be to increase the number of officers directed to activities from the border authorities of Member States. However, not to the so-called *Hot Spots*, but just to operational activities related to the interception and return of

⁵ He proposes focusing on financial support for migrants' countries of origin. I do not agree with this view.

migrants. Other institutions, in particular Europol⁶, should be obligatorily included in these activities, as the transfer by sea was dominated by organised criminal groups (Frontex Agency, 2018b, p. 32-35). Another area of activities less related to the subject of this article should be the unification of the refugee status in Member States, especially the so-called group B refugees, de facto refugees and displaced persons. They may reside in the Member States without having the right of asylum, for more specific humanitarian reasons.

I think that with regard to operational activities, the increase in the effectiveness of projects carried out in the sea areas should be considered as their goal. They should be focused on the following issues:

- Changing the primacy of humanitarian and rescue projects in the sea areas in a way that prevents their use for migratory purposes.
- Finding a formula to respect the provisions of the international law of the sea with regard to the issue of *freedom of navigation*⁷ and the obligation to save life at sea, allowing effective action against individuals involved in the illegal transfer of persons (similar to regulations on the manner of controlling individuals suspected of human trafficking).
- Financing the undertakings of the European Border and Coast Guard aimed at sea control and not conducting asylum procedures, as was the case in 2014-2016 in relation to the Frontex activities.

⁶ Europol did not consider it appropriate to undertake, in 2013-2015, cooperation in combating illegal immigration, considering that this is not a criminal offense.

⁷ Usually, this is the right to unrestricted navigation in the open sea and the right of innocent passage through the territorial sea.

THE POSTULATED FORMULA FOR CONDUCTING RESCUE AND HUMANITARIAN OPERATIONS IN SEA AREAS AND RESPECTING THE PRINCIPLES OF FREEDOM OF NAVIGATION AND THE OBLIGATION TO SAVE LIVES AT SEA

The main form of operational activities, proposed in May 2015 and carried out since the middle of the same year, in the field of combating illegal immigration in the Mediterranean is the operation *EUNavfor Med* (ABC News, 2015). It provides for the possibility of destroying the smugglers' units intercepted by border guards and naval forces. In view of the conditions described above, the detection of such units should be considered as another example of inefficient and costly ventures (the same as – described above – operations of the *Bordex*, *Mare Nostrum* and *Triton* series). Therefore, it is necessary to abandon the current forms of action, closely linking the search for units that conduct the transfer of immigrants along with humanitarian and rescue operations. The currently applied procedure assumes that – after the detection of such a unit – the rescue system is launched. These are strictly defined rescue procedures undertaken by the Sea Rescue Coordination Centre. They are brought down to sending rescue forces to the area of the unit discovered, taking over the immigrants and their transport to the shore (to the EU countries) to conduct migration procedures (How does Frontex...).

It is reasonable to depart from the automatic application of this solution and to implement rescue procedures in justified cases. The leading principle should be, also resulting from the provisions of the cited *Council Decision* of 26.04.2010. Point 1 of this document recognised that *the purpose of border surveillance is to prevent unauthorised border crossing, combat cross-border crime and stop people who have crossed the border illegally or undertake other means towards such people* (Council Decision, 2010, p.1). This provision, however, eliminates the practice of action, because the leading principle was to remain *non-refoulement*, a ban on returning to the border of people who may face persecution in their country of residence. The use of the turning back mechanism therefore requires the adoption by the EU of a *list of safe countries* that is binding for all member states.

The second solution should be to take a different practice than the one used to date, the principles of the *Palermo Protocol* approach (United

Nations, 2000). In the conducted operational activities, the provisions of art. 3 par. Should be used to a bigger extent than the provisions of art. 7. In the paragraph cited, the notions of *immigrant smuggling* and *illegal entry* were defined. The first term means *organising, in order to obtain, directly or indirectly, a financial or other material benefit, the illegal entry of a person into the territory of a Country of the Party, of which such a person is not a citizen or in which s/he has no permanent residence*. On the other hand, the *illegal entry means crossing the border without meeting the necessary requirements for legal admission to the host country*. Guided by these definitions, the migrant's transfer will be defined by the concept of *immigrant smuggling*, which can be classified as *human trafficking*. This form of crime at sea makes it possible to carry out an inspection of such an entity, disregarding the authority of the State of registration of the flag and the State having jurisdiction over the given water body. The use of the second definition, that is *illegal entry*, completely shifts the responsibility from the crew transferring immigrants and evokes the need to apply – towards illegal immigrants – procedures, resulting from the provisions of the law of the sea and asylum in force in the EU. The application of the principle of defining the carriage of unauthorised persons by sea eliminates in practice all restrictions contained in art. 7 of the Protocol, related to the compulsory compliance with the provisions of the law of the sea, in relation to the powers of the flag state.

The maritime interests of the countries make it necessary to apply the provisions of the international law of the sea, especially in relation to the rights of the coastal state in its sea areas and the principles of the freedom of navigation in the open sea during operations to combat the illegal transfer of persons. However, the application of these provisions should not restrict the rights of states to use sea control, to the extent also defined in the law of the sea. The preservation of the full jurisdiction of a coastal state with respect to the EU units (and Member States) involved in anti-immigration operations should not be an invariable rule. One should not only recognise the possibility of the captain's own choice of the method of operation, not force him to wait for permission to act by the institutions of the coastal state, exercising jurisdiction over a given water area. According to me it is also reasonable to consider whether Member States should not decide to transfer the right to control vessels sailing under their flags to the European Union or the institution conducting the operations, that is, the EU Border and Coast Guard. This solution allows to significantly shorten the reaction time, because the

literal application of the provisions of existing solutions requires the submission of a fact to the leading institution (Coordination Centre), and this is obliged to obtain appropriate approval from the authorities of the state having jurisdiction over the given basin or performing functions of the flag state. This extends the time from detection to undertaking operations and allows those who engage in irregular migration of migrants to take appropriate measures, e.g. in the form of self-sinking of the unit or getting rid of immigrants from it. With regard to the open sea, the principle should be the immediate application of the Palermo Protocol against the smuggling of migrants in the form of an inspection of a suspect unit, without the need to verify its flag state and consent of this state for carrying out an inspection.

TABLE 1. The proposed scope of control forces' activities in the case of detecting an entity suspected of the illegal transport of persons

Stage of operation	Proposed actions
Approaching and identifying the unit	The necessity of identification is not necessary when we acknowledge that the crew deals with human trafficking. A procedure should be introduced that allows for a qualification other than as castaways, for persons who, upon approaching the inspection unit, take actions requiring rescue operations.
Reasonable suspicion about the individual's criminal activity in non-controlled waters	Introduction of regulations, allowing in such a case for taking control measures to state units of EU member states and abandoning the principle of restricting actions to monitor their traffic.
Request for information from an entity considered suspicious of criminal activity	<p>Absolute enforcement of providing information and documentation on property rights, registration and travel-related aspects, as well as information on the identity, citizenship and other relevant data of persons on board.</p> <p>The rights to detain the ship, carry out a sea inspection and question the persons on board.</p> <p>Application of criminal sanctions for unauthorised crossing of the state sea border with passengers and crew, instead of obligatory information about the possibility of imposing sanctions.</p> <p>Extensive application, including by extorting, the order to change course and to go to the departure port of the voyage, and not only beyond the territorial waters or the adjacent zone.</p>

Source: Council Decision of the 26th of April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2010/252/UE.

It is also necessary to delineate the operation of combating the illegal transfer of people and the operation of saving lives. This demarcation should apply even when it is necessary to take rescue action against persons being illegally transported. Excessive primacy of rescue operations during the EU’s anti-migration operations is widely used by the organisers of the illegal transfer of people. When the migrant transport unit is detected, the crew and passengers strive to obtain the status of a survivor, damaging the unit or causing it to sink slowly (in time to enable the EU sea force to undertake effective rescue operations). As a result anti-smuggling operations of EU naval forces will get involved in expensive rescue operations.

TABLE 2. The cost and efficiency of operations in the Mediterranean Sea

OPERATIONS	PEOPLE RESCUED	SMUGGLERS ARRESTED	NAVAL FORCES		COSTS
			VESSELS	AIRCRAFT	
Mare Nostrum X 2013-X 2014	45 500	500	7	6	108 mln € (estimated cost 18 mln €)
Poseidon I-VIII 2016	37 479	74	19	3	
Triton X 2014-V 2015	63 637	500 arrests for human and drug smuggling/trafficking and 13 arrests for illegal fishing (in 2016)	11	5	23,2 mln €
X 2015 – V 2016	60 738		11	5	23,2 mln €
VI-XII 2016	38 750		9	5	37,4 mln €
Hera, Indalo Minerva VII-IX 2016	1440	76 plus 12 tons of drugs	3	2	3.2 mln €
Sophia Phase 1, VI-IX 2015	26428 plus 38915 rescued through EUNAVFOR Med aero-naval support	89 plus 303 removed vessels	4	6	103,5 mln €
Phase 2, X 2015 – III 2016			6 (X-XI 2015 – 9 vessels)	6	59 mln €
Phase 3 III-VI 2016			9	6	23.6 mln €

Source: *European Commission, 2016; Koller, 2017; EPN Concept..., 2016.*

Pointing to this dissonance, it should be emphasized that the law of the sea clearly imposes on the participants of shipping and coastal states the obligation to save life at sea. This principle is one of the superior ones and should not be subject to any changes, especially the liberalising obligation to save life. Also in relation to people trying to enter the European Union illegally. However, it should be seen in the formula set out in the SOLAS' 74 convention and the recommendations of the International Maritime Organization. These records require immediate rescue and help. It is possible and justified to apply the provisions of the Brussels Convention of 1957 (International Convention 1957) the field of the so-called status of a *blind passenger* in the context of rescuing individuals from units and arrested individuals with migrants. It is defined as the person who illegally got on board the unit, i.e. does not exhaust the definition of the passenger. S/he should have a transport document specifying the conditions of carriage. The lack of such a document allows for the recognition of a person as a *blind passenger* and allows him to be dropped in the first port, in which the authorities will agree to accept him. The law also allows you to charge him with a 200% rate of transport costs (Maritime Code, Art. 177), which should also be the principle of conduct, mainly used to deter potential migrants.

Pointing to this solution, it should be emphasized that the SOLAS'74 convention stipulates that a castaway should be delivered to the port. In the case of units with migrants, the rule should be that it is the port from which they left. The place of departure of the unit is possible to be verified, by applying the *right of visit and inspection* in relation to the inspection of documents (Convention 1985, art. 22, 23)⁸, especially the Ship Log⁹. In the absence of such a document or the un-scheduling of the route of navigation, the crew, in particular the captain/skipper, commits a crime, which allows for proceedings before maritime courts and

⁸ The Rights of Visit and Search, Capture, Angary and Requisition is the right to control the unit on the full sea in the form of document control and the possibility of its inspection. It can be used, among others, against individuals suspected of piracy and human trafficking. The detailed rules are set out in the Convention on the High Seas 1958 (Article 22 and 23).

⁹ It is an obligatory, kept on a regular basis, for which the unit's captain is responsible. He has the obligation to make all the information about navigation, its operation and important events in it. Among other things, the dates and times of leaving the port.

should result in revoking the rights. When undertaking a rescue operation, the naval forces of the Member States should be obliged to carry out both rescue operations and obtain access to documents which the captain is obliged to take away upon leaving the unit. A properly kept Ship Log should also contain a list of persons on board the unit. The lack of such a list should also be treated as evidence that the crew dealt with human trafficking. The law states that in such a case it may be detained by any sea user and legal sanctions shall be imposed on it by the flag state or the place of registration of the unit. This solution makes it possible in practice to bring to the port of the flag state or registration of a unit with crew and migrants, being in this case a kind of “evidence in the case”.

The application of the provisions of the law of the sea in relation to crimes in the form of smuggling and human trafficking allows the crews of migrant transport units to also be sanctioned in terms of their right to work at sea. Towards such persons, in addition to legal sanctions, one can initiate a procedure for withdrawing the rights, which are granted by various institutions, but which are sanctioned by the International Maritime Organization.

Experiences resulting from the current form of migrants’ transfer to the EU area indicate that there may be a situation where the crew leaves the unit near the coastline of a member state. Lack of documentation may thus make it impossible to identify the unit. The solution to limit such a form of transfer may be the wider use of the navigation monitoring system, based on the guidelines of the European Agency for Safety of Navigation (EMSA). It may be reasonable to include smaller vessels in this system and to oblige all users of European sea waters to have a transmitter of this system under the threat of shipping in the territorial waters of the Member States. This solution creates the possibility of monitoring entities potentially involved in smuggling people or their “turn back” when crossing the territorial waters. Both solutions increase the effectiveness of operations to combat the illegal transfer of persons, without violating the principles of saving human life at sea. Especially that the only – considered by EU politicians – alternative to these solutions is the concept of destroying damaged units, after taking over immigrants-survivors from their decks. This solution also raises legal doubts, because the principle of destroying someone’s property is not the same as the idea of functioning of the rule of law.

SUMMARY

Combating the illegal transfer of people by sea – for technical reasons – is a complicated task, by definition ineffective and expensive. Potential illegal immigrants as well as people organising their transfer may use the liberal nature of the provisions of the law of the sea with regard to the freedom of navigation and the control power of state services. For this reason, the concept of counteracting this phenomenon should be characterised by a comprehensive approach, aimed at increasing the effectiveness of control projects. The most serious problem is the reference to the legitimacy of conducting humanitarian activities, aimed at saving life at sea, because the noble idea has become the weapon of smugglers and illegal immigrants. This feature means that operations to combat the illegal transfer of persons should rationally separate rescue operations from operations to combat the illegal transfer of persons. The practice of conducting rescue operations should also not release from the obligation to assess the legitimacy of taking such measures and to apply any legal consequences of the unjustified challenge of assistance or requesting them to be granted.

Contacts:

Piotr Mickiewicz

E-mail: pmickiewicz@wp.pl

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