

ISSN 2787-9356



# Law, Business & Sustainability Herald

Volume 1  
Issue 1

Prague - 2021

ISSN 2787-9356

Law, Business and Sustainability Herald  
is an open-access, peer-reviewed  
scholarly e-journal.  
<http://lbs herald.org>

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**Publisher:**

[Oktan Print \(Czech Republic\)](#)  
5. května 1323/9, Praha 4, 140 00.  
<https://www.oktanprint.cz/>  
[oktanprint@email.cz](mailto:oktanprint@email.cz)

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**Publication schedule**

LBSHerald is published four times a  
year, on February 25, May 25, August  
25 and November 25.

**Type of publication:** electronic

**Country of publication:**

Czech Republic

Date of Issue: 2021 May, 25

# Law, Business and Sustainability Herald

Volume 1 Issue 1

2021

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## EDITORIAL INTRODUCTION TO THE FIRST ISSUE

I am happy to welcome you on behalf of the Editorial Board of Law, Business and Sustainability Herald.

Today I have the opportunity to present the first issue of the Law, Business and Sustainability Herald. We have cherished for a long time the idea of a journal in which anyone can freely express their views on sustainable development. I am proud that we managed to publish this journal together.

We focused on law and business, but we also welcome research done in other subject areas. The principle of sustainability is the main thing for us. After all, we not only look back in search of wisdom but also look ahead. Every day we think about what kind of world we will leave to our descendants.

For the first issue, we selected only the best articles. At the present stage, our acceptance ratio was 38.46%. This issue contains legal and economic articles. Let me say few words about the content of the current issue.

The goals of sustainable development are global. States and stakeholders ensure their implementation at the national level. The quality of public administration in sustainable development directly follows from the quality of the legislative framework. In this issue, the authors drew attention to the judiciary. Together with my colleague Rostyslav Sopilnyk we considered accessing a genuinely independent and impartial trial. So, we have made recommendations for the development of the sixteenth sustainability goal. Olesia Bordun drew attention to the security of the judicial power for sustainable development.

Business, particularly large, is one of the leading players in the field of sustainable development. In the current issue, you will see the research results in the areas of corporate social responsibility, personnel management and quality. Teamwork is vital to solving a big problem. A large team of authors (Lyubov Lypych, Oksana Zelenko, Sergeii Zelenko, Myroslava Kushnir, Oksana Khilukha) made significant efforts to develop recommendations on the construction of KPI-based motivation policy for advancing sustainable procurement logistics of agricultural enterprises. Ilona Petryk proposed an in-depth theoretical study of the features of restructuring business processes for sustainability. Vlastimil Vicen, Eva Ruzinska and Andrii Yevstakhevych explored the transparency of social responsibility of large Ukrainian enterprises in the crisis.

Each article and the entire issue show a clear connection to the ideas of sustainable development. Our journal is open access. All materials can be distributed under the terms of the CC BY 4.0 International license. We believe that the proposed recommendations will contribute to sustainable development. We ask you to spread the knowledge as much as possible and, if possible, use it in practice. If you have suggestions or recommendations, please contact the corresponding authors of the articles and me. And remember that you always can take part in sustainable development as our author. We hope for further productive cooperation!

*Sincerely,*

*Juliusz Piwowski, DSc, Professor,*

*Editorial Board Chairman*

# Construction of KPI-based motivation policy for advancing sustainable procurement logistics of agricultural enterprises: competence approach

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*Received: 2021-02-17*

*Accepted: 2021-04-21*

*DOI: <http://doi.org/10.46489/lbsb.2021-1-1-1>*

**Abstract.** In challenging economic conditions, motivational mechanisms capable of maintaining sustainable logistics management of agricultural enterprises are declining. This study aims to specify the forms of connecting the motivational policy, KPI and sustainable logistics of agricultural enterprises. As a result of theoretical research, we have proved that the competencies of logistics managers can be the appropriate connector. We have considered the hypothesis that there are key competencies that logistics managers recognize as the most important and most often implemented for advancing sustainable procurement logistics. To confirm the hypothesis, we collected data from interviews with logistics managers of Ukrainian agricultural enterprises. To process the data, we used the method of integrated ABC-XYZ analysis. As a result, we found that the AX group (the most important and frequently used competencies) includes the high general qualification and the ability to assess the effectiveness of logistics operations and processes objectively. Unlike other studies, the novelty of the presented results is as follows. We advocate the idea of the motivational influence of performance indicators and propose to form KPI system taking into account the importance and frequency of using the established competencies of logistics managers. Our proposals are a prerequisite for developing a flexible motivational policy for sustainable procurement logistics.

**Keywords:** sustainable development goals, logistics system of the enterprise, logistics management, motivational strategy, key performance indicators, key competencies of managers

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## 1. INTRODUCTION

The agricultural sector plays an essential role in the economy of Ukraine, providing 9% of GDP, 18% of employment and 6% of tax revenues. The dynamic development of the national agro-industrial complex ensures the competitiveness of Ukraine's economy. It is also a tool for Ukraine to enter the export markets of other countries and take a leading position in the most substantial suppliers of agricultural products. Already, Ukraine is in the top 3 most noticeable suppliers of agricultural products in the EU and occupies a significant place in world trade (Dankevych, E., Dankevych, V., & Chaikin, O., 2017).

Competitive advantages of agricultural organizations depend not only on the available material resources and the level of their use. Intangible factors play a crucial role, the most important of which is management. The effectiveness of management in a competitive environment depends on the timely implementation of new approaches to respond quickly to new challenges (Anokhina, M. Y. et al., 2020). Beside this, we should take into account sustainability issues.

Agro-industrial enterprises play a significant role in achieving the goals of sustainable development in Ukraine. In previous studies, the authors have shown their involvement in reducing rural poverty (goal 1) (Gaspart, 2013), achieving food security (goal 2) (Dar, & Laxmipathi Gowda, 2013), and ensuring responsible production (goal 12) (Cavalett et al., 2016). In the internal organizational dimension, agro-industrial enterprises aim to participate in sustainable economic growth (goal 8) (Ciglovska, 2018).

The first stage of production in agricultural enterprises is procurement. Production, financial, sales and organizational activities directly depend on its condition (Volkonskaya, 2020). We can interpret material (raw materials, capital, capital) and human (labour and entrepreneurial skills) resources as a system in this process (Dubrovsky, 2004). In this system the following processes take place:

- acquisition, storage, provision of production with raw materials, auxiliary materials and production equipment, spare

parts and materials for maintenance and repair of equipment;

- marketing activities related to procurement and supply processes;

- ensuring the economical turnover of agricultural products.

The latter process demonstrates the entry of material flow into the logistics system (Milan et al., 2018).

The task of procurement logistics is to effectively manage material flows to provide the company with material resources and satisfaction of production needs in materials with maximum economic efficiency (Kaur & Singh, 2019). In this context, its goal is to minimize total costs. Such costs include those arising in the process of moving goods and services (products, raw materials, materials) from the sphere of production (from places of creation, extraction) to the sphere of consumption (including final and intermediate, as well as production-consumption) (Gayfullina & Nizamova, 2020).

Effective management and timely use of logistics tools in the activities of agricultural enterprises demonstrates several advantages. It becomes possible to timely determine the needs of the enterprise in fixed assets, accurate assessment of the optimal areas of their use and maintenance and repair of agricultural machinery, equipment, buildings and more.

Logistics managers work to achieve the relevant goals. Thus, we assume that the possibility of advancing sustainable procurement logistics of agricultural enterprises depends on the quality of motivational policy. This policy should fully ensure the development of competence and engagement of managers.

### 1. 1. Literature Review

In recent years, we have seen an increase in the number of studies on sustainable logistics. Soysal, M., & Bloemhof-Ruwaard, J. M. (2017) investigated the evolution of the concept of sustainable logistics management. They proved that there is a high demand for more effective ways of providing environmental and social responsibility. Abbasi, M., & Nilsson, F. (2016) described the challenges logistics management faces in achieving sustainability. Researchers

attributed these challenges to consumer preferences, management difficulties, network imbalances, and technological and legal uncertainties.

Wichaisri, S., & Sopadang, A. (2013) revealed the content of a sustainable logistics system that includes economic, social and environmental components. Sandberg, E., & Abrahamsson, M. (2011) described in detail the potential of logistics to obtain sustainable competitive advantages. They concluded that managers should develop managerial knowledge, cross-functional teamwork, control, training, and supply chain relationships to support this capacity.

In the main activity of agricultural enterprises, it is possible to apply the methods of in-house logistics (Grabara, J., C. Dima, I., Kot, S., & Kwiatkowska, J. (2011). Such instruments can help solve the problems of optimising the size of enterprises, determining the need for fixed assets, organisation of their productive use, and even human resources management. Björklund, M., & Forslund, H. (2018), in the study of sustainable logistics, emphasised the importance of using logistics and customer KPIs, which opens opportunities for building a KPI-based motivation policy for advancing sustainable procurement logistics of agricultural enterprises.

### ***1. 2. Theoretical basics of KPI-based motivation policy construction***

In preparing this study, we proceeded from the assumption that advancing sustainable procurement logistics of agricultural enterprises should be grounded on a KPI-based motivation policy.

The activity of any agricultural enterprise is mainly cyclical. We recognise logistics management as a management cycle that can be studied using the structural, process and functional approaches (Grabara, 2013).

As for an open system, the theoretical foundation of logistics is the general theory of systems and its tools: systems approach and analysis. The systems approach is a comprehensive study of the object as a whole from the standpoint of systems analysis

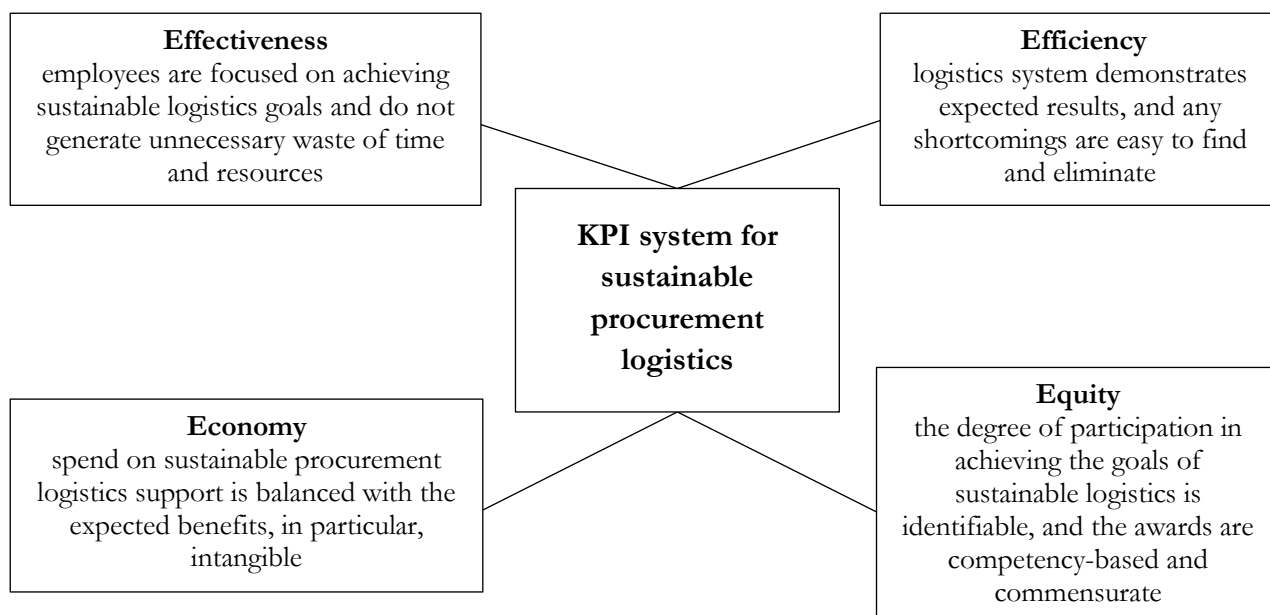
(Dubrovsky, 2004). Based on the findings of de Bruijn H., ten Heuvelhof E.F., & in 't Veld R. (2010), we suppose that the process approach is crucial in the study of logistics operations and functions and related logistics costs. Also, we can use a functional approach to examine the management of individual objects, which are the parts of logistics operations and affects the formation of logistics costs (Somov, D., 2018).

For efficiency of procurement management, three goals are the core: faster, better, cheaper. Taking into account scarce resources, only two of these goals are reachable. Based on this assumption, we see the point in talking about the separation of two crucial criteria (for example, "cheaper" and "better", or "cheaper" and "faster"). It leads us to the admission of KPI system necessity. Its primary purpose is to measure and track the productivity of logistics processes. Besides this, KPI systems have proved their efficiency as a motivational instrument (Hall, D., R. Huscroft, J., T. Hazen, B., & B. Hanna, J. (2013).

A well-developed KRI system is a basis for a correct assessment of the effectiveness of logistics process management in agricultural enterprises, namely in the sphere of procurement logistics (Sergeeva, 2019).

The primary purpose of using a KPI system in procurement logistics is to monitor, control and evaluate the efficiency of the logistics system as a whole (Guo, X., Chen, T., Chen, K., & Tang, Y. 2020). Assessing the effectiveness of procurement logistics can bring light to the competitive advantages and bottlenecks of management. The importance of a high-quality evaluation process is unambiguous to stakeholders (Wannes, A., & Ghannouchi, S. A. 2019), in particular, to the in-house logistics staff.

Depending on the situation, managers can ground on various principles to form a KPI system. As for our research, a possible approach is to classify the elements of the KPI system by defining principle criteria (Hamann, P. M., Schiemann, F., Bellora, L., & Guenther, T. W., 2013) like effectiveness, efficiency, equity and economy (Davis, P. et al., 2013) (Figure 1).



**Figure 1. Schema of principles for the development of KPI system for sustainable procurement logistics**

*\*Source: Wannas, A., & Ghannouchi, S. A. 2019; Hamann, P. M., Schiemann, F., Bellora, L., & Guenther, T. W., 2013; Davis, P. et al., 2013.*

To gain motivational value, the evaluation of KPI should include four stages: internal evaluation, external expert evaluation; benchmarking; assessment of compliance with industry standards (Wang, Y., & Hao, Y. (2013).

Our personal experience in the agricultural sector and communication with logistics managers shows the following. In Ukrainian agricultural enterprises, the KPI system usually corresponds to the principle of "pyramid". The "top" - is the enterprise's mission, which in terms of cost optimisation means achieving the maximum level of profitability. For logistics managers, their "top" is often the percentage of logistics costs in the price of goods. This approach is fragmentary and cannot demonstrate sustainability in logistics, so it is inefficient to develop a motivational policy. Achieving efficiency, integrity, and sustainability of procurement logistics depends on the KPI system designed to consider the hierarchy of crucial competencies of managers studied, particularly by Bahua M.I. (2018).

The logistics of Ukrainian agricultural enterprises are rather complex and not efficient enough. At the studied enterprises, the sphere of logistics management includes promotion, manipulation, storage, transportation and maintenance of stocks. According to managers,

most enterprises urgently require reforms in their motivational strategy to promote sustainable logistics management. Therefore, there is a need to improve the motivational policy in the field of procurement. One way to achieve this goal is to implement a controlling system based on a structured KPI list (Guo, X., Chen, T., Chen, K., & Tang, Y. 2020). For sufficient efficiency, this process, as dependent on the human factor, should be accompanied by a revision of the motivational component (Grabara, J., Cehlar, M., & Dabylova, M. 2019).

Based on a review of sources and theoretical analysis, we formulated the following research question.

RQ<sub>1</sub>. What key competencies should we consider most important for constructing the KPI-based motivation policy for advancing sustainable procurement logistics of agricultural enterprises?

To answer this question, we must confirm the following hypothesis.

H<sub>1</sub>. There are key competencies that logistics managers recognise as the most important and frequently used for advancing sustainable procurement.

## 2. METHODS

Recent research on sustainable logistics management shows a high level of integrity and accumulation of applied experience (Grabara,

2013). However, currently, there are no empirical studies based on which it would be possible to confirm our hypothesis.

We found the hypothesis confirmation scheme by analysing some of the data we collected during the previous study of agricultural enterprises' sustainable logistics. We obtained the initial data by conducting a series of interviews with logistics managers of Ukrainian agricultural enterprises in 2016-2019. These data, in particular, contained answers to the following questions: "Which of the competencies do you consider the most important for advancing sustainable procurement?" and "Which of the competencies do you use most often for advancing sustainable procurement?". Due to the limitations of the previous study model, we excluded these data. We decided to use them in a separate original study related to constructing a KPI-based motivation policy for advancing sustainable procurement logistics of agricultural enterprises.

We interviewed 65 logistics managers. All respondents gave their explicit consent to the use of survey data for research purposes based on confidentiality.

After studying the scientific sources, we identified the key logistics managers competencies, which significantly affect the achievement of KRI and are easy to recognise in agricultural enterprises procurement activities (Grabara, J., C. Dima, I., Kot, S., & Kwiatkowska, J., 2011; Sandberg, E., & Abrahamsson, M., 2011). The importance of these competencies coheres with the results of subsequent studies (Björklund, M., & Forslund, H., 2018; Dankevych, E., Dankevych, V., & Chaikin, O., 2017; Gayfullina, M.M., & Nizamova, G.Z., 2020; Kaur, H., & Singh, S.P., 2019).

Such competencies include high qualification (mastery in theory and practical tools of logistics) and abilities to:

- understanding the specifics of the industry and region;
- understanding the characteristics of the enterprise;
- analyse and forecast stocks and needs in them;

- react quickly to changes in the market these conditions;
- establish business relationships;
- analyse the structure of logistics costs and optimise it;
- assess the effectiveness of logistics operations and processes objectively;
- develop, improve, and implement new systems to optimise the logistics department's work;
- generate reports on logistics costs (in terms of month, quarter, year);
- coordinate document flow of logistics processes;
- the rational management of financial flows for the implementation of logistics operations.

We processed the data using the method of integrated ABC-XYZ analysis (Bulinski, J., Waszkiewicz, C., & Buraczewski, P., 2013). We coded the interview data and performed a study in three stages.

At the first stage, we grouped key competencies into three groups: "A", "B", and "C". To do this, we calculated the share of respondents who acknowledged the importance of a particular competence. Then we sorted the competencies by weight and calculated the accumulated share. We calculated the accumulated share of positions for each of the competencies and got the value of the  $IND_{abc}$  indicator. This indicator represents the ratio of the accumulated amount of the share to the accumulated share of positions. For group "A" items  $IND_{abc}$  is from 3,077 to 3,508 (accumulated amount of share is nearly 80%), in group "B" - from 1,272 to 2,400 (nearly 15%), in group "C" - from 1,000 to 1,163 (nearly 5%).

In the second stage, we performed an XYZ analysis. To do this, we calculated the average frequency of competencies uses. Respondents rated the frequency on a scale from 1 to 3, where 1 - daily, 2 - monthly, 3 - quarterly. The concordance coefficient was  $W = 0.753$ . The value of  $\chi^2 = 54,216$  is greater than the tabular value ( $\chi^2_{0,01(2)} = 9,210$ ). The most frequently used competencies were assigned to group X, the rest to Y and Z.

In the end, we formed an integrated ABC-XYZ matrix of the logistics managers' competencies.

### 3. RESULTS

At the first stage of the study, we obtained the following results of the ABC analysis (Table 1).

The most important for sustainable procurement logistics are such competencies as high qualification (1), the ability to assess the effectiveness of logistics operations and processes objectively (2), The ability to analyse the structure of logistics costs and optimise it (3). We included these three competencies in group "A".

**Table 1. ABC analysis of the logistics managers' competencies**

Competencies sorted by weight	Share of respondents, %	Accumulated amount of the share, %	Share by number, %	Accumulated share of positions, %	IND <sub>ab</sub> <sup>c</sup>	Group
High qualification (mastery in theory and practical tools of logistics)	29,231	29,231	8,333	8,333	3,508	A
The ability to ability to assess the effectiveness of logistics operations and processes objectively	26,154	55,385	8,333	16,667	3,323	
The ability to analyse the structure of logistics costs and optimise it	21,538	76,923%	8,333	25,000	3,077	
The ability to develop, improve, and implement new systems to optimise the logistics department's work;	3,077	80,00%	8,333	33,333	2,400	B
The ability to analyse and forecast stocks and needs in them	3,077	83,077	8,333	41,667	1,994	
The rational management of financial flows for the logistics operations realisation	3,077	86,154	8,333	50,000	1,723	
The ability to generate reports on logistics costs (in terms of month, quarter, year)	3,077	89,231	8,333	58,333	1,530	
The ability to establish business relationships	3,077	92,308	8,333	66,667	1,385	
The ability to react quickly to changes in the market conditions	3,077	95,385	8,333	75,000	1,272	C
The ability to coordinate document flow of logistics processes	1,538	96,923%	8,333%	83,333%	1,163	
Understanding the specifics of the industry and region	1,538	98,462%	8,333%	91,667%	1,074	
Understanding the characteristics of the enterprise	1,538	100,000%	8,333%	100,000%	1,000	
Total	100,00	-	100,00	-	-	-

Source: Own research

During the interview, some managers commented on these competencies as follows:

(1) "Of course, the skill of sustainable procurement logistics comes with experience. But in our team, it is considered a bad tone to "gain knowledge on the fly". The specialist must have the basic skills" (Mykhailo, 44).

(1) "Qualification of a manager is his main resource. We cannot admit unskilled workers to the procurement logistics processes" (Ivanna, 38).

(1) "We are proud of the principle of sustainability, which we practice in procurement logistics.

The implementation of this principle grounds on involving the managers who have the appropriate qualifications" (Taras, 33).

(2) "Sustainable procurement logistics is about a mature and clear view of logistics operations. Its achieving requires the ability to assess effectiveness" (Zenovii, 60).

(3) "We always strive to reduce logistics costs. Advancing sustainable procurement logistics is no exception. Therefore, managers must be able not only to analyse the main costs but also to suggest ways to optimise them" (Mariia, 34).

In the second stage, we obtained the analysis results of the competencies frequency (Table 2).

We found that managers most often tend to use such competencies as (1) qualifications;

(2) the ability to evaluate the effectiveness of logistics operations; (3) the rational management of financial flows for the logistics operations realisation.

**Table 2. XYZ analysis of the logistics managers' competencies**

N	Competencies	Frequency			Group	
		daily	monthly	quarterly	ABC	XYZ
1	High qualification (mastery in theory and practical tools of logistics)	v			A	X
2	Understanding the specifics of the industry and region			v	C	Z
3	Understanding the characteristics of the enterprise			v	C	Y
4	The ability to analyse and forecast stocks and needs in them		v		B	Y
5	The ability to react quickly to changes in the market conditions		v		B	Y
6	The ability to establish business relationships		v		B	Y
7	The ability to analyse the structure of logistics costs and optimise it		v		A	Y
8	The ability to assess the effectiveness of logistics operations and processes objectively	v			A	X
9	The ability to develop, improve, and implement new systems to optimise the logistics department's work;			v	B	Z
10	The ability to generate reports on logistics costs (in terms of month, quarter, year)			v	B	Z
11	The ability to coordinate document flow of logistics processes		v		C	Y
12	The rational management of financial flows for the logistics operations realisation	v			B	X

Source: Own research

The third competence fell into group "B" according to the ABC analysis. Here is a typical statement of the manager, which characterises this competence:

*"Advancing sustainable procurement logistics requires specific knowledge, skills and abilities. However, we try to find the best ways to direct financial*

*flows to perform our daily tasks. It is about rationality in the work of the logistics manager"* (Dmytro, 54).

Based on the results, we formed an integrated ABC-XYZ matrix (Figure 1).

	X	Y	Z
A	1, 8	7	-
B	12	4, 5, 6	9, 10
C	-	3, 11	2

**Figure 1. Integrated matrix of ABC-XYZ analysis results**

Source: Own research

#### 4. DISCUSSION

The competencies presented in the integrated matrix have significant potential in developing motivational policies of agricultural enterprises. The proposed approach helps implement the robust relationship between the critical competencies of the logistics manager, performance and motivation.

The question of ways to improve the management system of Ukrainian agricultural enterprises using logistics tools is highly relevant. A high-quality KPI system with a motivational component allows considering the specifics of the goals, objectives, operating conditions of agricultural enterprises to achieve sustainable development.

The functioning of agricultural enterprises against the background of the unstable economic situation in Ukraine and limited resources significantly narrow the possible framework of motivational policy. Identified key competencies can serve as a guide in this situation. The use of different combinations of motivational tools based on the competencies identified in this paper is essential. Such tools allow agricultural enterprises to develop, increase their capacity, and maintain a leading position in the country's agricultural market and abroad. In this light, the construction of the KPI-based motivation policy considers the requirements of the competence approach to developing competitive advantages of agricultural enterprises.

Implementation of motivation policy based on KPI and competence approach can be helpful to achieve sustainability of procurement logistics and has the following advantages:

- enrichment of motivational tools and increasing employee engagement;
- involvement and retention of professional specialists interested in the sustainability of procurement logistics;
- translation of priorities and tasks of the enterprise;
- optimal use of the payroll;
- increasing the effectiveness of monitoring the implementation of sustainable development goals;

The proposed approach helps spread knowledge about the relationship of personal

responsibilities of the enterprise's logistics managers and strategic goals.

***This study has the following limitations.***

*Geographical.* This study uses data obtained by interviewing managers of Ukrainian agricultural enterprises. In a re-survey based on data from other countries, the results may be different due to economic, social and cultural variations.

*Practical.* The main disadvantage of KPI is that the interpretation of the results may not always be correct. This problem can be avoided by approving the evaluation strategy and objective evaluation rules when developing a KPI-based motivation policy.

#### 5. CONCLUSION

In this study, we found how to form a KPI-based motivation policy of agricultural enterprises from the competency approach standpoint. During the theoretical study, we found that procurement logistics is the area in which the agricultural enterprise can achieve sustainable development. We substantiated the feasibility of constructing a motivational policy based on KPI and identified a missing element: the competence of logistics managers. During the empirical study using the method of integrated ABC-XYZ analysis, we processed interviews with managers of logistics of agricultural enterprises. We found that the most critical competencies are high qualification and the ability to assess the effectiveness of logistics operations and processes objectively (group AX). We insist that interweaving tasks for the development and use of these competencies (as well as competencies were belonging to the AY, BX, BY groups, if resources allow) will ensure the development of the agricultural enterprise and achieving sustainable procurement logistics.

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# Large enterprises of Ukraine, sustainable development and social responsibility: transparency in times of crisis

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*Received: 2021-02-24*

*Accepted: 2021-04-23*

*DOI: <http://doi.org/10.46489/lbsh.2021-1-1-2>*

**Abstract.** After the Revolution of Dignity in Ukraine, the crisis conditions have produced challenges in the work of large enterprises and reduced attention to social responsibility. This work aims to identify bottlenecks in the communicative activity of large enterprises on social responsibility. Based on a literature review, we have established a theoretical link between social responsibility, efficiency and transparency. We formulated hypotheses about the connection between enterprise leadership and transparency of social responsibility. To discover the transparency of big business in a crisis, we used the original simple method, which helps us assess the availability and adequacy of information on social responsibility. Using it, we analysed the websites of leading Ukrainian companies in the post-crisis period. According to the study results, we partially confirmed the hypothesis of a higher level of transparency provided by enterprises that are revenue leaders. The obtained results can be helpful for public authorities to develop a national strategy of sustainable development and managers to improve the representation of achievements in the field of social responsibility.

**Keywords:** sustainability, big business, communications, non-financial reporting, corporate social responsibility

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## 1. INTRODUCTION

In the search for new ways of economic and social progress, the concept of sustainable development has gained worldwide recognition. This concept requires the restructuring of socio-economic systems to preserve and increase the economic, human and natural potential of states, taking into account the interests of future generations (Aras, G., & Crowther, D., 2009). The principle of sustainable development poses new challenges to governments and enterprises (Raco, M. 2005). In particular, it manifests itself in the form of a requirement to conduct business based on social responsibility. The breakdown of old profit-oriented business models, which has been brewing for decades, took the form of a global movement in economically developed countries at the beginning of the 21st century (Halisçelik, E., & Soytaş, M. A. 2019). This movement reflected a change in worldviews, the humanisation of social relations and approaches to doing business.

Large enterprises of Ukraine need new management decisions in social responsibility due to the imperfection of state mechanisms for sustainable development, poorly developed business culture, lack of scientific, educational, informational support for implementing socially responsible activities (Lipych et al., 2018). Due to detachment from global trends in the development of socially-oriented entrepreneurship, domestic managers are often using outdated notions of social responsibility (Vasylytsiv, T., Lupak, R., & Rudkovsky, O., 2019). Managers often present social responsibility as a kind of charity, inexpedient and harmful activity for the company in anticipation of the next wave of socio-economic crisis (Koloheida, O., Lukach, I., & Poiedynok, V., 2017). Changing the conservative policy of Ukrainian enterprises in social responsibility will mean approaching the exemplary business practices of developed countries. Such practice will allow the implementation of a new model of the national economy, in which the highest priority is not profit but national well-being and sustainable development.

As we observed, crisis conditions after the Revolution of Dignity in Ukraine caused numerous difficulties in the functioning of large

enterprises. The crisis has affected the transparency of social responsibility management as a result of its decay. In this article, we tried to identify some bottlenecks in the communicative activity of large enterprises on social responsibility.

### *1. 1. Literature Review*

We have observed many scientific papers where the authors discussed sustainable development, transparency and social responsibility of business. Let us describe the most important articles that influenced this work.

Kolk, A., & van Tulder, R. (2010) emphasised the crucial role of large enterprises in achieving sustainable development through the prism of social responsibility. Lee, M., & Kohler, J. (2010) based on non-financial reports of medical companies, investigated the response to the crisis that arose due to limited access to drugs. This article proves the importance of transparency for competition, social responsibility, and companies' transformation in crisis conditions. Pejić Bach, M., Ante Omazić, M., & Zoroja, J. (2015) analysed the transparency of social responsibility of banks based on the development of their websites. Researchers have noted a downward trend in the transparency of subsidiaries of multinational banks in less developed countries. Bhullar, M. (2019) empirically established the link between sustainable development and corporate social responsibility goals and stressed the importance of disseminating knowledge in this area among different groups.

Park, H., & Ha, M. (2020) investigated the relationship between social responsibility and transparency of Korean companies. Researchers stressed that transparency is one of the foundations of social responsibility. This study confirmed the direct impact of social responsibility on transparency. Nair, R. et al. (2019) focused on the transparency and quality of information the company provides to investors. In this context, the researchers stressed the debate over the appropriateness of non-financial disclosure. Nair, R. et al. emphasise the lack of significant links between CSR disclosure and financial transparency. Hendijani Zadeh, M. (2020) found a clear link

between the transparency of the company's environmental and social reporting and the level of payments to investors. The scientist stressed the importance of this connection in the light of high information asymmetry. Muñoz Pasadas, R., & Tirado Valencia, P. (2014), based on data from Spanish companies, clarified the relationship between responsibility, corporate governance and transparency.

Baraibar-Diez, E., & Luna Sotorrío, L. (2018), in their study, pointed out that transparency mediates the transformation of the results of social responsibility measures into the company's reputation. Kang, J., & Hustvedt, G. (2014) emphasised the connection between transparency, social responsibility and consumer trust in the company. Their empirical study proved the lasting impact of the transparency of non-financial reporting on consumers' intentions to purchase the company's products. Dehghani Soltani, M., Shiri, A., Nesari, T., Raoufi, M. (2018) proved the impact of transparency and social responsibility on brand sustainability and business efficiency. Mora Mayoral, M. J., & Martínez Martínez, F. R. (2018) described possible directions for developing corporate social responsibility strategy, taking into account the principle of long-term sustainability.

Watts, S. (2015) considered the organisational, informational and cultural factors of corporate transparency in social responsibility. His paper links social responsibility reporting to organisational transparency. Tejedo Romero, F., Ferraz Esteves Araujo, & Oaquim F. (2018) noted the importance of disclosing information about the company's human capital, which is evidence of internal social responsibility.

Most researchers take into account reports on social responsibility, but this method is not applicable in the realities of Ukraine. In Ukraine, the relevant reporting has not become so widespread that we can consider it a proper basis for research. The outlined situation requires clarification of the theoretical foundations and methods for a practical and straightforward assessment of large enterprises' transparency of social responsibility in a crisis.

### ***1. 2. Theoretical basics of social responsibility and transparency of large enterprises in Ukraine***

Social responsibility is a global trend to which Ukrainian enterprises are gradually joining. Relevant initiatives are inherent primarily in large enterprises (Kolk, A., & van Tulder, R., 2010). We can explain it by the availability of significant financial and material, and labour resources, some of which managers can allocate to address social responsibility. In addition, large enterprises mainly have their brand, image, i.e. intangible assets, the value of which depends on attracting investment and expanding the range of loyal consumers (Dehghani Soltani, M., Shiri, A., Nesari, T., Raoufi, M., 2018). So, let us take a closer look at the content and features of social responsibility and the importance of transparency.

Social responsibility is a synthetic category, has long been developed and supplemented with new elements. At the present stage, the UN and governments support social responsibility at the international level. At the transnational level, this concept is promoted by large enterprises, recognising it as one of the keys to sustainable economic development (Pejić Bach, M., Ante Omazić, M., & Zoroja, J., 2015). In Ukraine, the concept of social responsibility has acquired unique regional shapes. To some extent, it distorted due to the crisis in the economy and society. As a result, in the absence of a systemic public policy (Mostenska, T., & Bilan, Y., 2015), this gave rise to discrete social responsibility measures and reduced the transparency of communications. Thus, we recognise two main problems of social responsibility of large Ukrainian enterprises: a) implementing non-systemic charitable measures; b) building an opaque system of social responsibility.

In the theoretical dimension, understanding the concept of social responsibility is still developing. Numerous attempts of large domestic enterprises to adopt foreign practices into domestic realities confirms the importance of this concept. Given the lack of theoretical and methodological support, state and market control, CSR reduces to a particular minimum set, which involves compliance with the state's requirements,

investors, and rare charity events (Lee, M., & Kohler, J., 2010).

Social responsibility belongs to the sphere of strategic management and is a component of corporate strategy (Hendijani Zadeh, M., 2020) and, in most cases, is initiated from the outside (Lee, M., & Kohler, J., 2010). The exception is a charity (Vasylytsiv, T., Lupak, R., & Rudkovsky, O., 2019), which does not require transparency.

The social responsibility of large enterprises in Ukraine is voluntary, as long as it does not concern the legally regulated aspects. Because of this, it is rather challenging to assess the quality of social responsibility or compare the levels of social responsibility of individual enterprises. However, we can detect transparency in the management of social responsibility of large enterprises, which is of great importance in the exit from the crisis. Transparency can be a demonstration of the attention to the financial and social aspects of the crisis. We consider transparency to be one of the markers that testify to the existence and effectiveness of social responsibility management.

Leading companies traditionally spread the model of business behaviour in the environment. Depending on the model and depth of integration of the concept of social responsibility into corporate strategy (Hendijani Zadeh, M., 2020; Park, H., & Ha, M., 2020; Muñoz Pasadas, R., & Tirado Valencia, P., 2014), we can assess the level of transparency of social responsibility depending on the profit or revenue leadership.

Based on theoretical research, we formulated the following research question:

RQ<sub>1</sub>: Do leading companies sufficiently ensure the transparency of corporate social responsibility?

Within this question, we considered two hypotheses:

H<sub>1</sub>: If social responsibility depends on the amount of profit, the group of profit leaders should have a higher level of transparency of social responsibility.

H<sub>2</sub>: If social responsibility depends on the amount of income, the group of income leaders should have a higher level of transparency of social responsibility.

## 2. METHODS

To analyse the transparency of social responsibility of large enterprises in the post-crisis period, we used the following method.

Using previously accumulated materials, we took into account the data from 2016. This year was marked by a gradual recovery of business after the crisis of 2014-2015. Analysis of the transparency of communicative activity of large enterprises this year will allow us to determine the extent of their participation in the process of achieving sustainable development goals in crisis conditions.

According to the rating of 200 largest companies of Ukraine in 2016, the five most profitable companies in 2016 included NJSC Naftogaz of Ukraine, PJSC PivdGZK, PJSC Naftogazvydobuvannya, PJSC Zaporizhstal, SE Ukrainian Sea Ports Authority. On the other hand, the top enterprises in terms of revenue include NJSC Naftogaz of Ukraine, SC Energorynok, PJSC Ukrgasvydobuvannya, PJSC ArcelorMittal Kryvyi Rih, LLC ATB-market. To create a comparison base, we rejected NJSC Naftogaz of Ukraine and supplemented the list of PJSC NorthGZK by profit and LLC Kernel trade and LLC Tedis Ukraine by revenue. We formed groups of leading companies I (profit leaders) and II (revenue leaders).

We limited ourselves to the study of ten companies, which, given their leadership position, are obliged to demonstrate a high level of transparency of social responsibility.

To assess the level of transparency of corporate social responsibility, we have developed a method that evaluates a set of binary indicators  $x_n$  (they can take values 0 or 1), grouped into theoretical groups.

I. Transparency:  $x_1$  - the presence of a report on social responsibility in free access on the Internet;  $x_2$  - availability of information about social responsibility on the website;  $x_3$  - availability of contacts for more detailed information on social responsibility.

II. Consistency and completeness:  $x_4$  - compliance of the report with one of the international standards of non-financial reporting;  $x_5$  - the presence of a comparison of results with previous reporting periods;  $x_6$  - compliance of the social responsibility

management system with the Principles of the UN Global Compact.

According to the given list, we assessed the level of social responsibility (SR) as the sum of social responsibility indicators.

We collected the data by analysing the official websites of these companies during 2018. The proposed method has certain limitations, which we will clarify in part of the discussion. However, collecting empirical data by processing enterprises' websites is a typical method (Pejić Bach, M., Ante Omazić, M., & Zoroja, J., 2015) with several advantages: low cost, reduced subjectivity, reduced data collection time. We supplemented the analysis with data on the general index of transparency of the enterprises studied.

### 3. RESULTS

Systematic and transparency of social responsibility are its principles, as defined in international standards. One of the essential international standards of social responsibility is the UN Global Compact. The GC includes ten principles, grouped into four groups: human rights, labour relations, the environment and anti-corruption. Ukraine has a Global Compact Network - the official representative of the UN Global Compact. As of 2018, 9531 participating companies from 162 countries were registered

in the global network, and 47121 public reports were submitted. There are 22 registered participants in Ukraine, of which 9 are public organisations, three universities, four small and medium enterprises, four business companies and two business associations. According to the search results on the main page of the UN Global Compact, we identify 60 participants from Ukraine, of which 18 were companies (Our Participants, 2018, May 16).

The desire to join the company to the Global Compact can be a factor in the transformation of business processes, management models and mechanisms, strategic and operational activities of the company to adapt to the requirements of the principles of GC and contribute to achieving the Sustainable Development Goals. At the same time, the presence of a relatively small number of Ukrainian enterprises in the network indicates a lack of significant interest. Thus, it is possible to assume that as a global standard of social responsibility, the UN Global Compact serves as a theoretical guideline for companies that have decided to embark on the path of social responsibility.

The study showed an insufficient level of communicative activity of large enterprises. The results were presented in Table 1.

**Table 1 The results of the survey of the level of social responsibility of the leading enterprises of Ukraine**

Name of Company	Revenue, UAH billion	Profit, UAH million	SR
Group I			
PJSC PivdGZK	14,61	5903,59	0
PJSC Naftogazvydobuvannya	9,20	5412,15	3
PJSC Zaporizhstal	33,16	4690,08	3
SE Ukrainian Sea Ports Authority	7,30	3854,37	0
PJSC NorthGZK	15,11	3613,10	3
Group II			
SC Energorynok	131,02	1283,49	0
PJSC ArcelorMittal Kryvyi Rih	52,96	2704,12	6
LLC ATB-market	48,38	1605,43	3
LLC Kernel trade	42,61	185,33	3
LLC Tedis Ukraine	42,42	-1224,42	1

*Source: Own research*

Based on the study results, we assume partial confirmation of the second hypothesis because of the higher average SR points. We can reveal the partiality of the proof as follows.

Only one group II company, PJSC ArcelorMittal Kryvyi Rih, posted on the website generalised information on social responsibility principles, ongoing projects, and a GRI report on social responsibility. There is no data on social responsibility on SC Energorynok (Group II), SE Ukrainian Sea Ports Authority and PJSC PivdGZK (Group I) sites.

The enterprises that scored 3 points did not receive points according to the indicators from the second theoretical group (consistency and completeness). The submitted reports are not comparable. These reports commonly do not take into account standards, and there is no comparison of indicators with other periods. Also, there is no evidence on companies' websites or reports about compliance with the UN Global Compact Principles. LLC Tedis

Ukraine scored one point due to the availability of information about social responsibility on the website. The obtained results are generally consistent with the data of the transparency rating and complement it (Zinchenko A., Reznik N., & Saprykina M. (2018).

#### 4. DISCUSSION

Our study showed that data on social responsibility are moderately entirely (SR = 3) disclosed by companies that prepare non-financial reports. For the most part, in times of crisis, the transparency of social responsibility of large enterprises is questionable. Available data are declarative, and companies provide them in the form of fragmentary information messages. This approach may indicate the absence of a comprehensive strategy for social responsibility in a crisis.

Among the non-financial reports for previous periods, which were available on the Internet as of 2018, we found the following (Table 2).

**Table 2. Non-financial reporting of large enterprises**

Position in the ranking of the top 200 (2016)	Name of Company	The name of the report	Reporting period	Reporting standard
6	LLC DTEK TRADING	Integrated report 2017. Financial and non-financial results.	2017	GRI, UN GC
10	SE "NAEK "Energoatom"	Non-financial report	2016	GRI
24	PLLC METINVEST B.V.	More than steel. Social report	2015-2016	GRI
51	AH The Mironivsky Hliboproduct	Innovations for sustainable development. Non-financial report	2017	GRI
88	SE NPC Ukrenergo	The results of the first reforms. Non-financial report	2017	GRI
141	LLC ASTELIT	Digital technologies of humanity. Social report	2017	GRI, UN GC
146	FE Coca-Cola. Beverages Ukraine Limited	Social responsibility report	2015-2017	Voluntary

*Source: Own research*

The most popular standard for non-financial reporting is GRI. In the framework of an arbitrary form of reporting, large enterprises

mainly consider the UN Sustainable Development Goals as a structural factor.

However, we must emphasize that the available non-financial reports do not provide

objective evidence of a holistic social responsibility management system. We found that the results presented in the reports are mainly the result of the implementation of quality management systems, environmental management and human resource management, and project management in terms of charitable, sponsorship and philanthropic activities of enterprises.

As we noted in the study, social responsibility, as a process of harmonizing stakeholders' interests, has a clear connection with the activities of any enterprise. Unfortunately, in the conditions of the crisis, most Ukrainian large enterprises do not realize the potential of social responsibility to the full. In our opinion, the factors influencing this situation are:

- lack of knowledge about models, mechanisms and standards of social responsibility;
- low capacity to attract additional resources;
- conscious selfish business development strategy;
- operation of the enterprise in the shadow or semi-shadow economy.

Based on the study results, we proposed and tested a new tool for assessing the transparency of social responsibility. This tool is of practical importance for developing a social responsibility strategy as an element of the national strategy for sustainable development. In the management of large enterprises, our method will provide additional data to assess the representation of achievements in social responsibility.

Based on the study results, we recommend that large companies fully and transparently cover their socially responsible activities. We also advise paying attention to the provisions of the SA8000 and ISO26000 standards, which contribute to social responsibility activities, improvement of the management system and transparency.

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***This study has the following limitations.***

**Methodical.** The technique used is imperfect because it does not apply the tools of mathematical statistics. Its benefits are simplicity, economy and clarity.

**Time and Location.** We researched large Ukrainian enterprises in post-crisis conditions. The use of the methodology for enterprises in other countries and timelines can give different results.

**Practical.** Implementing transparency recommendations in enterprises will not make sense unless it is backed up by real action.

## 5. CONCLUSION

In this article, we explored the participation of large Ukrainian companies in achieving sustainable development goals by conducting and covering activities related to social responsibility. Based on the author's tool for assessing the transparency of social responsibility, we examined the data of several large leading companies in terms of profit and revenue. We found that in post-crisis conditions, the activity of enterprises to cover the results of social responsibility is low and not transparent enough. We found that information on the social responsibility of large enterprises in Ukraine is poorly structured, non-transparent and does not provide sufficient grounds for determining the degree of relationship between enterprises' level of social responsibility and the amount of their income or profit. We have recommended that large enterprises bring information about social responsibility activities they performed to a broader audience.

The obtained results serve as a guide for the development of a social responsibility strategy as an element of the national strategy for sustainable development and suitable for use in the management of large enterprises to improve the representation of achievements in the field of social responsibility.

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# Security of the judicial power for sustainable development: a Ukrainian case

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*Received: 2021-03-15*

*Accepted: 2021-05-02*

*DOI: <http://doi.org/10.46489/lbsb.2021-1-1-3>*

**Abstract.** In this article, we have explored the constitutional principles of judicial security on the example of Ukraine. We found that researchers have not paid enough attention to the security system of the judiciary in Ukraine in the framework of sustainable development. We used the doctrinal legal research methodology to answer four research questions. First, we explored the content of the security concept in Ukrainian law. Secondly, we have established the extent to which the Constitution of Ukraine covers the security of the judiciary. Third, we described the distinction between internal and external threats to the security of the judiciary. Fourth, we have summarized the specific threats to the security of the judiciary mentioned in the Constitution of Ukraine. For each of the issues, we have provided recommendations to achieve sustainable development of Ukraine in the course of legal reform. As part of the discussion, we voiced recommendations for the participation of judicial self-government and the Higher Council of Justice in ensuring the security of the judiciary. Our results complement the knowledge of the legal nature and constitutional principles of the judiciary. The presented recommendations can be used in formulating proposals for sustainable development strategies and directions of judicial reform.

**Keywords:** security of the power branch, threats to the judiciary, judiciary reform, sustainable development goals.

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## 1. INTRODUCTION

One of the goals of sustainable development is to ensure equal access to justice for all (Djeffal, C., 2018). Access to justice is also a condition of a fair trial within the meaning of the European Convention on Human Rights (Vuille, J., Luparia, L., & Taroni, F., 2017).

When we talk about national security, we mean protecting citizens from external threats (McCormack, T., 2015). However, how can we describe the state of protection from threats posed by a particular branch of government? Access to justice depends on the state as a whole (Roach, K., & Sossin, L., 2010), but barriers to access in one way or another concern the judiciary (Johnson, C. L., 2021). Equal access to justice cannot be achieved if there are certain threats in the judiciary (Bernatt, M., 2019).

Traditionally, the development of the conceptual foundations of the judiciary's security takes place within the methodological framework of the principle of judicial independence (Randazzo, K. A., Gibler, D. M., & Reid, R., 2016). It is in this paradigm that the Decision of the Council of Judges of Ukraine dated October 2018 reads: "Security of judges and protection of court premises is one of the main guarantees of independence of judges and the justice system in general... situation with protection of courts, personal safety of judges and members families, court employees, ensuring the safety of participants in the trial remains extremely critical" (Council of Judges of Ukraine, 2018). But the security of the judiciary is a complex issue for which we must take a systematic approach (Chan, K.-W., 2011). Thus, we aim to explore the current realities and constitutional aspects of ensuring the security of the judiciary in Ukraine.

### 1. 1. Literature Review

The link between effective justice and sustainable development is evident. Tsintzos, P., & Plakandaras, V. (2020) proved that the judiciary is part of social capital and supports sustainable development. Chemin, M. (2009) proved the existence of a causal effect of the judicial system on specific components of sustainable development.

Sustainability in the state can be achieved only based on the approved rule of law. Gutmann, J., & Voigt, S. (2018) argue that there is a link between sustainable development and the state's degree of the rule of law. Applied aspects of implementing the principle of the rule of law Gomes, T. M. R. C. (2017). According to the study results, the scientist confirmed the influence of the rule of law on sustainable development.

The condition for the rule of law is an absolute separation of powers. Poor distribution of power poses a threat to each of the branches. Hamilton, J., & Slutsky, S. (2017) noted that only a robust judicial branch of power ensures complete separation of powers. Kovács, K., & Scheppele, K. L. (2018) described the problems that affected the development of Hungary and Poland. Such problems arose from the violation of the described principle and linked threats to the judiciary of these countries.

Prylutskyi, S., & Strieltsova, O. (2020) noted the presence of chronic problems in the organization and reform of the judiciary in Ukraine. Scholars touched on the issue of judicial independence in the light of geopolitical fluctuations. Romanenko, Y. O. (2018) analysed the impact of judicial reform on access to justice. The researcher noted the presence of negative trends, which we regard as threats to sustainable development.

Cooper, C. S. (2007), while examining the evolution of the concept of "court security", rightly notes that its content in the 70-80s of the twentieth century included the content of physical protection of the court and its occupants. However, in the XXI century, this concept already describes the protection of "all elements of judicial operations" and is fundamental to ensuring the integrity, continuity and independence of justice and is generally a prerequisite for achieving the rule of law. Campbell, C. F., & Reinkensmeyer, M. W. (2007) noted that the concept of court security covers a wide range of issues and ranges from the physical protection of judges to education, from workplace violence to data integrity and architecture.

The analysis of certain groups of threats is typical for empirical studies of the security of the judiciary. For example, Greacen J. M., & Klein R. J. (2001) addressed aspects of court security, such as policies and procedures, access security, security of movement in court, movement and retention of defendants, threats to judges and court staff, implementation and forecasting, training and coaching, as well as technical and technological equipment.

There is also a debate in scientific research about the appropriateness of excessive spending on the judiciary's security. Gould, J. B. (2007) identified problems with inconsistencies in public expectations about security measures and the limits of their implementation, inconsistent monitoring of security measures, and significant gaps between increased public expectations about security and the realities of limited resources to perform these tasks.

Sarre R., & Alikki V. (2013) investigated court security. In methodological terms, researchers emphasize accessibility to a safe court as a condition for respect for the right to a fair trial. According to the research of Sarre R., & Alikki V., it is concluded that the goals of securing the court can be achieved with proper prior preparation and collection of information, development of the correct design of court security and the processes that take place in it. According to scholars, court security should be addressed by the court administration while noting that "strict" security is necessary but insufficient to ensure public access to a secure court (Sarre R., & Alikki V., 2013).

A review of sources shows that, despite the urgency of this problem, comprehensive studies of the constitutional principles of judicial security in Ukraine have not been conducted.

### ***1. 2. The theoretical and legal background of the judiciary's security role in the process of sustainable development of Ukraine***

In the Annual Report, the Higher Council of Justice (Ukraine) (2019) noted an increase in legislative initiatives that threatened the constitutional guarantees of judges' independence. As HCJ noted, there are too many ways the legislative and executive powers can intervene and interfere judiciary. It can

endanger or threaten the independence of the judiciary.

Analysing the Law of Ukraine "On National Security of Ukraine" (2018), we found that ensuring the security of the judiciary is (unreasonable, in our opinion) not mentioned in this Law. According to paragraph 2 p. 1 art. 4 of the Law, judicial authorities belong to the system of civil control and carry out judicial control following the provisions of art. 9. According to this article, decisions, actions or omissions of public authorities, officials and officials may be appealed in court, and the courts exercise control over the execution of court decisions. Also, p. 2 art. 11 of the Law stipulates that citizens who believe that decisions have violated their rights, freedoms or legitimate interests, actions, the inaction of the components of the security and defence sector or their officials, have the right to go to court. A natural question that arises in this context is whether a threat to national security should not be considered a threat to the judiciary, whose bodies are involved in measures related to national security? This question, of course, is beyond the scope of our study but is promising for further research.

Insufficient attention is paid to the security of the judiciary in the National Security Strategy of Ukraine, which is, according to p. 1 art. 26, the main document of long-term planning, which defines the main directions of state policy in the field of national security. At the time of writing, the latest document is the Strategy of National Security of Ukraine "Human Security - Country Security" (Ukaz Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 14 veresnia 2020 roku «Pro Stratehiiu natsionalnoi bezpeky Ukrainy» No 392/2020 (Prezydent Ukrainy), 2020).

In line with the title of this Strategy, we see an essential emphasis on personal security. How does this affect the positioning of the security of the judiciary in the system of national security measures? Let us look at p. 46 of the Strategy, which begins with the following provision: "The citizen must feel safe". Thus, one of the responsibilities assigned to the state to implement the constitutional principles of individual legal responsibility and the inevitability of punishment is to establish adequate access to justice, improve the pre-trial

investigation of criminal offences, and trial, criminal proceedings and execution of court sentences. In the same paragraph, we should note that there is such a part as "ensuring transparency, accountability of state bodies, the integrity of officials"; in other words, even the obligation to continue judicial reform has been diffused and merged with the administrative reform that is of concern.

No less paradoxical is the fact that the Strategy contains measures inherent in judicial reform. For example, "improve legislation on the organization of the judiciary and ensure fair justice". This requirement we can find in the paragraph describing the task of "ensuring the well-being and security of citizens, who need resources that, with the involvement and efficient use of external sources, can ensure sustainable and dynamic economic growth".

A cursory analysis showed that in the conditions of insufficient completeness of theoretical and methodological support of activities related to the security of the judiciary, the latter is not included in the system of measures related to national security, and therefore remains out of the attention of security researchers. In turn, the exclusion of this issue from the agenda of security research does not allow the proper development of theoretical provisions, indicating the emergence of a vicious circle.

In this paper, we have considered the following research questions:

RQ<sub>1</sub>. How is the concept of security covered in Ukrainian legislation?

RQ<sub>2</sub>. To what extent does the Constitution of Ukraine cover the issue of security of the judiciary?

RQ<sub>3</sub>. Is there a distinction in the Constitution of Ukraine between internal and external threats?

RQ<sub>4</sub>. Do the Constitution of Ukraine identify specific threats to the security of the judiciary?

## 2. METHODS

The Constitution of Ukraine strictly regulates the functioning of the judiciary. Thus, we performed research based on the doctrinal legal research methodology.

To answer the research questions, we first explored the concept of security using an

information base of legal terms, supported by the Verkhovna Rada of Ukraine. We have summarised the essential criteria that can be applied in analysing the norms of the Constitution of Ukraine, connected with the judiciary.

Therefore, we conducted a qualitative analysis of the Constitution of Ukraine to identify provisions relating to the ontological security of the judiciary, the delimitation of threats by source (internal and external) and the specification of individual threats. We also discussed the possibility of clarifying the subjects of ensuring the security of the judiciary in the process of sustainable development goals achieving.

The following arguments can confirm the adequacy of this technique.

1. We performed research from the standpoint of a systems approach. We represent the security of the judiciary in the form of a system with separate elements and connections between them.

2. In Ukraine, there is no special law, which can cover all legal relations related to the security of the judiciary.

3. In Ukraine, there is no strategy for developing the judiciary consistent with sustainable development goals.

## 3. RESULTS

### 3.1. *The concept of "security" in Ukrainian law*

The laws of Ukraine do not contain a definition of "security". In the bylaws of Ukraine, the term security figures as (Bezpeka, 2020):

– the absence of unacceptable risk associated with the possibility of causing any harm to life, health and property of citizens and the environment;

– the absence of unacceptable risk associated with injury or death, damage to the environment;

– the absence of unacceptable risk associated with the possibility of harm and/or damage;

– a set of measures and human and material resources designed to protect civil

aviation from acts of unlawful interference and other unlawful encroachments;

- the property of the object to ensure the absence of risk of harm to human health, property and the environment;

- a condition in which the risk of harm or damage is limited to an acceptable level;

- state when no threat to life, health, property, animals, plants, and the environment exceed the maximum risk;

- preventing the use of explosives, which is against the law and threatens public order;

- prevention of use that is against the law and threatens the order;

We found that the available definitions are highly diverse. However, these definitions have specific characteristics that we can consider when studying the judiciary's security.

First, concerning the essence of security, we observe the interpretation of the relevant term to denote the state, properties or properties of the object and a set of measures and actions to prevent the occurrence of an undesirable event.

Second, bylaws contain different terms (threat, risk, illegal encroachment) to denote events whose occurrence is undesirable to achieve security.

Third, groups of adverse events are detailed in bylaws depending on the type of security. Such groups may include damage to an individual, a group of people, property damage, damage to the environment, as well as damage to law and order.

Fourth, in some legal acts, there are absolute and relative assessments of harm, the prevention of which indicates safety. In particular, we are talking about the wording "no risk", which is evidence of the absolute inadmissibility of the occurrence of an adverse event, or the absence of harm that "exceeds the marginal risk" or risk that is "limited to an acceptable level."

Thus, we reach an intermediate conclusion that defining the concept of "ensuring the security of the judiciary" should assume the possibility of modifying individual elements depending on the characteristics of the elements included in the content of this concept.

### ***3. 2. Does the Constitution of Ukraine cover the security of the judiciary?***

The Constitution of Ukraine (Konstytutsiia Ukrainy, 1996) has the highest legal force in Ukraine. So we based on the analysis of its content, which helps us establish general trends in the legal security of the judiciary.

Article 6 of the Constitution of Ukraine enshrines the separation of powers. In the second paragraph of this article, we find an indirect indication of the fundamental threat to the judiciary - the exercise of its powers by other branches of government. Indeed, otherwise, there is a risk of usurpation of power, which negates the security of the judiciary.

This provision is fundamental and can be interpreted from different angles. Its significance for preventing the ontological threat to the judiciary (threat to its existence) is obvious.

The ontological security of the judiciary is also enshrined in the provisions of p. 14 of the first paragraph of Article 92. It says that the judiciary, proceedings, the status of judges are determined exclusively by the laws of Ukraine. To a greater extent, this norm aims to resolve possible threats to the judiciary's influence at the level of bylaws. However, in conjunction with the second paragraph of art. 125 enshrines in the Constitution of Ukraine a multi-component mechanism for ensuring the security of the judiciary at the court level, which "may be formed, reorganised and liquidated only by law". The President of Ukraine submits the draft law after consultations with the HCJ.

However, this threat is, to some extent, ephemeral. The current state of regulatory and legal support for the functioning of state bodies and, in particular, the judiciary creates confidence in the impossibility of the first type of threat. Therefore, we observe the legal community and society increasing attention to the second type of threat. Even in its Judgment, the Constitutional Court of Ukraine, in the case of the constitutionality of Article 375 of the Criminal Code of Ukraine, stated that "public relations in the field of justice are under constitutional protection in order to prevent actions contrary to the purpose of justice and prevent court decisions, which in essence

cannot be an act of justice" (Constitutional Court of Ukraine, 2020). Thus, the Court shifted the emphasis on the expediency of constitutional protection as a tool for preventing internal threats to the justice system.

Article 124 of the Constitution of Ukraine, by its structure, contains norms aimed both at ensuring ontological security and preventing other threats to the security of the judiciary. In particular, the first and second paragraphs of this article enshrine the only possibility of administering justice in the courts, which is an element of the system of ontological security. The third and fourth paragraphs focus on establishing the court's jurisdiction, and the fifth on the direct participation of the people in the administration of justice.

Beginning with Article 126 of the Constitution of Ukraine, the legislator has paid considerable attention to two aspects of the security of the judiciary: the distinction between internal and external threats and the establishment of principles for overcoming more specific lower-level threats. The latter, however, are directly related to ontological threats. One such threat, illustrating the proposed distinction, is non-compliance with court decisions. The non-enforcement of court decisions is a systemic and permanent problem in Ukraine and raises numerous complaints to the European Court of Human Rights (Voitovych, P., Ennan, R., & Voloshyna, V., 2020).

In Article 1291 of the Constitution of Ukraine, the first paragraph indicates the obligation to enforce a court decision. This is an element of the ontological security of the judiciary. The ECHR considers the right to a fair trial to be "illusory" in the event of non-enforcement of a court decision (Brems, E., & Gerards, J. (Eds.), 2013). The second paragraph imposes on the state the obligation to enforce the judgment. Otherwise, imposing such an obligation on the judiciary would create a set of external threats. At the same time, the exclusion of the judiciary from participating in the enforcement of court decisions is in itself a threat. Therefore, the third paragraph clarifies that "the court exercises control over executing a court decision".

### ***3.3. Internal and external threats to the security of the judiciary***

The provision of the fourth paragraph of Article 62 of the Constitution of Ukraine is essential when assessing the modern mechanism for ensuring the security of the judiciary. It defines the entity responsible for compensation for pecuniary and non-pecuniary damage in the event of revocation of a court judgment on the grounds of injustice. According to the logic of separation of powers, the responsible subject, in this case, should be the judiciary. However, in the Constitution, such a subject is the state. We interpret this provision as an element of the mechanism for ensuring the security of the judiciary. Its purpose is to distinguish between internal and external threats to the judiciary. If an unjust decision is a threat of an internal nature (since judges can only cause it), then the imposition of an obligation to compensate the judiciary's related damage can be considered a significant threat from an external source.

The same approach we found in Article 126 of the Constitution of Ukraine. Paragraphs 1 to 5 provides guarantees aimed at preventing external threats to the security of the judiciary by establishing requirements related to the independence and immunity of the judge. Note the complementary provision of Article 126, paragraph 4, concerning the fourth paragraph of Article 62. This paragraph establishes the functional immunity of a judge and, at the same time, determines the only possibility of prosecuting a judge in the event of an internal threat (commission of a crime or disciplinary offence). It is worth noting the imperfection of the wording of this paragraph, which we associate with the attempt to combine in one constitutional provision the principles of ensuring the internal and external security of the judiciary. Thus, according to the rules established by international standards, to ensure the independence and impartiality of judges, the latter must have immunity for the ordinary administration of justice. Horodovenko V.V. (2020) performed detailed review of this issue. Thus, in our opinion, the legislator should pay more attention to the delimitation of elements by the source of threats. In particular, the issue of a judge's functional immunity (element of the prevention of external threats) should be

distinguished from bringing a judge to justice for committing a crime or disciplinary misconduct (element of prevention and overcoming of internal threats).

Such a recommendation is also helpful for reconstructing Article 126 of the Constitution of Ukraine. We observe that with some exceptions, which are more related to the judge's labour rights, dismissal of a judge relates to the judiciary's internal security issues. The same considerations apply to grounds for termination of service, which pose a set of internal threats to the judiciary. Paragraph 8 of Article 126 contains a guarantee of the personal safety of a judge and members of his family. On the one hand, it points to the security vector of the article as a whole.

On the other hand, we believe that placing such a guarantee in this place does not correspond to the article's logic. We also noted the imperfection given in terms of applying the term "personal security", as this concept is narrower than the "professional security" of a judge. The same remark we can sound to the last paragraph of Article 129, which establishes a guarantee of respect for the court and the judge.

By its construction, Article 129 is devoted to forming constitutional preconditions for ensuring the right to a fair trial. At the same time, it contains the provision as mentioned earlier concerning the security of the judiciary. The finding that the perpetrators have been prosecuted for contempt of court or judge indicates that contempt is a threat. This threat is obviously due to the peculiarities of ensuring the right to a fair trial. So, the fifth paragraph of Article 129 should be included in a separate article on the security of the judiciary.

### ***3.4. Concretization of threats to the judiciary's security and their impact on opportunities for sustainable development***

Sustainable development means that we leave our descendants with a better situation than we live in today. Any legal reform must comply with this postulate. The security of the judiciary will ensure that the rights of our descendants are better protected than ours.

In this context, we can identify several modern features of the security of the judiciary.

Addressing the fundamental aspects of the security of the judiciary (which include the authority and independence of the judiciary), the legislator in the Constitution clarified specific threats that may have a conflict with human rights. As follows from the content of Article 34, one of such threats is disseminating information that poses a threat to justice. Detailing the restrictions on the formation and operation of organisational structures of political parties in the judiciary (given in the third paragraph of Article 37 of the Constitution of Ukraine) indicates the threat of politicisation of the court.

Articles 127 and 128 are devoted to the requirements for judges and the procedure for their appointment. As the systematic analysis of these articles shows, their provisions aim to prevent several threats to the personnel security of the judiciary. The provision of Article 130 is also devoted to a particular type of security of the judiciary (financial security). In addition to establishing financial guarantees for the functioning of the courts and the activities of judges, the first paragraph of Article 130 enshrines the guarantee of certain "appropriate conditions". Nevertheless, the interpretation of the corresponding concept was not offered. So, we have a reason to consider it to some extent redundant in the design of the analysed article. In particular, the state does not directly deal with the issues of organisational support of justice. These powers belong to the State Judicial Administration of Ukraine. Therefore, funding guarantees would be sufficient to establish the grounds for the financial security of the judiciary.

We also found a good moment. In the construction of Article 130, again, as in Article 129-1, the legislator provided additional levers that allow the judicial authorities to contribute to the security of the judiciary. Thus, according to the provisions of the first paragraph of Article 130, the costs of maintaining the courts are determined by the parliament during the adoption of the Law of Ukraine "On the State Budget". However, the Higher Council of Justice is involved in this process by submitting proposals that should be taken into account in the State Budget of Ukraine.

#### 4. DISCUSSION

The Constitution of Ukraine contains certain elements that indicate the security of the judiciary. However, a positive impact on sustainable development arises when the provisions of the Constitution are in force. To this end, the Constitution and Laws of Ukraine confer powers on specific entities. The most important powers (in the conditions of established functioning of the security system of the judiciary) are control.

Articles 130-1 and 131 clarify the primacy of control within the system. According to the provisions of art. 130-1, for protection of professional interests of judges and the decision of questions of the internal activity of courts judicial self-government operates. Although the special law on the judiciary (according to which judicial self-government operates) somewhat smooths out the wording of this article, we should pay attention to two bottlenecks.

First, we consider it inexpedient to limit the powers of judicial self-government by protecting only the professional interests of judges. The concepts of professional interests, professional rights and professional security intersect in separate elements but are not identical. Furthermore, in this list, the concept of professional interests is perhaps the narrowest.

Second, the current wording does not shed light on whether the internal affairs of the courts include security issues and, if so, why these issues do not apply to judges.

Also relatively narrow are the areas of participation of the Higher Council of Justice in ensuring the security of the judiciary. They arise from the powers enshrined in Article 131. The analysis of the list of powers given in the first paragraph of this article indicates the participation of HCJ in ensuring the elements of ontological (p. 7), personnel (p. p. 1-4) and professional security of the judge (p. p. 5, 5).

As we can see from the above analysis, the powers of the HCJ defined in the Constitution of Ukraine are the most widespread and have not been aimed at fully establishing the role of this authority in ensuring the security of the judiciary.

Analysing the construction of Article 131, we found another weakness. It illustrates the

incompleteness of the regulatory framework for the formation of organisational and legal mechanism for ensuring the security of the judiciary.

We are talking about paragraph 10 of Article 131, which states that "According to the law, bodies and institutions are established in the justice system to ensure the selection of judges, prosecutors, their professional training, evaluation, consideration of cases of their disciplinary responsibility, financial and organisational support of the courts".

First, the placement of this provision in this article should specify the role of the HCJ. Secondly, as evidenced by the results of a preliminary analysis of the Constitution's provisions, each of the above areas has its own "shadow". These are threats to the financial, organisational, personnel security of courts and the professional security of judges. The threats could become a "bridge" from the powers of the HCJ to these bodies. Third, we disagree with the attribution of judicial security to the sphere of "financial" or "organisational" support of courts. Therefore, we recommend the legislator include "ensuring the security of the judiciary" in paragraph 10 of Article 131 of the Constitution of Ukraine.

#### *This study has some limitations.*

The principle of the rule of law operates in Ukraine, and the Constitution of Ukraine has the highest legal principle. We have not investigated the provisions of the law on the judiciary. This legislation contains a more detailed description of the procedures for ensuring the security of the judiciary, which may complement, but do not contradict our observations.

This study's scientific significance and novelty are that the results we have obtained complement the knowledge of the judiciary's legal nature and constitutional principles. The Verkhovna Rada Committee on Legal Policy and the Judiciary can use the presented recommendations in formulating proposals on the Strategy of sustainable development and directions of judicial reform. Also, our research may be helpful for scientific institutions and foreign partners of Ukraine implementing joint projects in the field of judicial security.

## 5. CONCLUSION

This study demonstrates a systematic approach to the security of the judiciary in Ukraine. We have found that the security of the judiciary is insufficiently covered in strategic documents related to sustainable development. Based on the analysis of bylaws, we identified features of interpreting the concept of "security". We have established that the Constitution of Ukraine contains provisions concerning the judiciary's ontological, personnel and financial security. The study confirmed that the Constitution distinguishes between internal and external threats to the security of the judiciary, but it is not clear enough. We have set out in the Constitution specific threats to disseminating information, independence and financial security of the judiciary. We discussed the possibility of clarifying the powers of judicial self-government and the High Council of Justice to ensure the security of the judiciary. Finally, we set out proposals for the improvement of norms concerning the security of the judiciary in the light of the sustainable development of Ukraine.

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# Restructuring of business processes for sustainability: revealing the potential of reengineering and Kaizen

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*Received: 2021-02-19*

*Accepted: 2021-05-10*

*DOI: <http://doi.org/10.46489/lbsh.2021-1-1-4>*

**Abstract.** In times of crisis, companies suffer from instability. One way to improve the situation is to restructure business processes. I aimed to explore how companies can restructure business processes for sustainable development. I used qualitative research methods to reveal reengineering and Kaizen methods as the most popular. I examined the peculiarities and general stages of redesigning business processes. After that, I researched the strategy to maximize performance while improving the quality of the business process. As I saw, the high level of risk during radical changes is understandable because most of the variables in the operation of new logistic business processes are not precisely known and, therefore, challenging in the context of forecasting. Basing on the results, I propose a new algorithm for restructuring business processes in the supply chain. Results and recommendations can be helpful for business and government during sustainability goals achievement.

**Keywords:** quality improvement, logistic business, sustainable development, process management

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## 1. INTRODUCTION

The modern dynamic world in which the openness of borders, information technologies, the rapid flow of information and the constant desire to control it create conditions of high competitiveness, whose dynamics are constantly growing. Under these conditions, the requirements of enterprises regarding goods, business processes, management, and partnership, style of coordination of activities, selection, training and qualifications of employees increase significantly become a time requirement. Environmental variability generates a large number of threats, which indicates the need to adapt to the enterprise. Adaptability, qualitative and quantitative changes, primarily in processes that threaten business operations, is a prerequisite for ensuring market competitiveness (Cheng et al., 2012). However, adaptation, a significant change in the business paradigms, is also a risky strategy in which such mechanisms of transforming enterprises from complex systems into simple require the implementation of proven management tools, business processes, or leading specialists' involvement. Reengineering is one of the most progressive, radical and effective ways to make positive changes in the company. Typically, redesigning is a fundamental review that requires some preconditions, one of which is the inevitability of a crisis in any enterprise without qualitative changes (Perez et al., 2021). Due to sustainable development goals (Resolution adopted by the General Assembly on 25 September 2015), constant modernization and restructuring of the business is inevitable.

### 1.1. Literature review

The business processes and supply chains optimisation attract the attention of an increasing number of scientists. The general study of the nature of business processes and their details is essential for sustainability (Fischer et al., 2021). A knowledge-intensive adaptive business process management that can be both individual and collective is crucial (Kir et al., 2021). When evaluating and developing business processes, it is essential to choose practical and efficient methods (Erasmus et al., 2020). This also applies to their implementation (Guizani et al., 2021).

Reengineering is one of the methods to make business processes more effective. A functional analysis approach for business processes reengineering must be straightforward and easy to use (Daniilidis et al., 2011). Its implementation needs a lot of knowledge and research (Omidi et al., 2016). The next step is the constant improvement of reengineering of business processes to make the whole process successful (Chen et al., 2016; Ellatif et al., 2018).

Another method that can be successfully used in restructuring business processes is Kaizen (Jimenez AÑon et al., 2019). It is widely used in management (Maarof et al., 2016).

Based on the results of previous research, I can formulate the following research question:

RQ1: Can reengineering and Kaizen be useful in business processes restructuring?

## 2. METHODS

The article aims to explore the theory of how companies can restructure business processes for sustainable development. To achieve this goal, I used qualitative methods of research. I researched research on business process redesign and compared the results with my observations. The study has the following structure. First, I singled out the types of reengineering. Then I established ways of using reengineering in business processes. As I have found, the main weakness of reengineering theory is the fuzzy differentiation of stages. I researched stages of the business processes' redesign based on reengineering on the example of a logistics business. This allowed me to outline the strategy to maximize performance while improving the quality of the business process. In part of the discussion, I took into account the results and my own experience in logistics companies and suggested new ways to reconstruct business processes based on reengineering and Kaizen.

## 3. RESULTS

### 3.1. Types of reengineering

There are two conceptually different types of reengineering. They are distinguished depending on the current problems and the need to introduce changes in business processes. Thus, reengineering can be helpful to improve the business processes or redesign

existing business processes into entirely new ones.

Overall, reengineering aims to establish a new framework for process functioning, with new parameters, threats, performance, and more. Redesign implementation should give a whole new level of efficiency in redesigned business processes since otherwise, the redesign will be an irrational, unprofitable and rather harmful tool. After successfully implementing reengineering processes, business processes should receive positive changes, often of a radical nature, improvements that will not be inherent in the threats to business processes inherent in previous activities (Guizani et al., 2021). The redesign can include both individual functional units of the enterprise and its entire structure. The reconstruction of this scale also creates conditions for transforming, building and maintaining relationships with suppliers, partners, employees and more. Introducing changes in the relevant business processes involves conducting a structural analysis of the processes examined, their detailed classification and identification of critical weaknesses, opportunities and threats, and the potential of the existing system (Omidi et al., 2016). The so-called SWOT analysis of business processes before reengineering allows managers to build a harmonised strategy for implementing new business processes and avoid significant risk in their further functioning. The improvement as a kind of redesign allows managers to improve the functioning of relevant business processes to a certain level. The improvement includes strengthening some business processes that were considered promising but with explicit threats (Daniilidis et al., 2016). Given the specifics of reengineering, the improved business process can be arranged in a hierarchical model that analyses the most inappropriate but irrelevant value-added processes in the business process under review. Such a degree in processes radically changes, thus changing the system itself and eliminating its apparent weaknesses. This process is promising, and managers are more likely to report this reengineering format.

### ***3.2. Ways of using reengineering in business processes***

Reengineering is the process of transformation, improvement enterprise based on well-financed steps based on the identified targets transform business processes simple algorithms, which is difficult to control the human factor or environmental has no significant effect, and thus the level of work not be aligned.

Reengineering aims to change the function and processes, which requires a significant level of involvement of partners, employees, and clients (Reijers et. al., 2021). Changing the function allows you to quickly correct errors at work, change processes, change work rules. The added value of business process engineering is based on modern information technologies, in which it is important not to manage material flows but to have information and preventively adapt all other logistic flows: material, financial, human.

Regardless of the type, reengineering aims to introduce radical changes in business processes. In reengineering, it is typical to replace enterprise management systems with somewhat automated systems, monitoring and collecting indicators of business processes and performing analytical and forecasting functions based on established algorithms. The increase in automation processes in the company's production areas is also typical. As we know, then the human factor is reduced, quality and efficiency rise. The business process can aim at creating a finished product or service. It is a system of well-organised material flows. It has a sufficiently specific list of threats, such as technological, logistic, financial, and other processes.

### ***3.3. Stages of the redesign of business processes based on reengineering***

When grouping activities aimed at redesigning business processes, it is typical to use the following stages: analysis of business processes that potentially operate inefficiently and whose improvement is not possible without significant changes; the grouping of business processes according to a typical flow (business processes that are in contact with each other) (Zhang et al., 2020); elements are evaluated, and an ideal business process design

is created; structural comparison of *de jure* (modelled) and *de facto* (business processes currently implemented in the enterprise); a practical model is created after removing unnecessary (not included in the new model) business processes and analysing existing ones; the business project is implemented, and its results are evaluated, and the level of project return and the success of the changes received is calculated.

Reengineering is useful when there is a significant bureaucratic system in enterprises that have traditional operating rules, some tasks, but their level of logic and efficiency is not high. Typically, these are workflow processes that are becoming more and more archaic in the context of electronic workflows. Reengineering focuses on radical changes and innovative way of implementation. Traditional as a factor of "ease", the organisation of business processes in an enterprise is usually destroyed, despite significant resistance managers involved in reengineering (Erasmus et al., 2020). Despite this innovative type of change, reengineering also aims to quickly adapt employees to new processes, develop new traditions with relevant officials, and automate operations, which will increase efficiency.

In logistics, redesign opens up new opportunities for companies with many risks, limitations, low customer service, and more. Logistic as science aims to improve, this, in turn, is one of the critical elements of a reengineering process (Umeda et al., 2020). Given this fact, the restructuring of logistics business processes is usually a more efficient process than in other areas of activity because companies are already focusing on improvement, change and innovation in development.

Reengineering of logistic business processes should be divided into the following stages: identification of the main threats of business processes; and Identification of new, alternative, innovative approaches to creating logistic business processes; redesign of logistic business processes and training of new HR systems; introduction of new business processes in the enterprise along with ensuring operational control and regulation systems (Kumar et al., 2014).

The first stage is an analysis of the main threats, complicated business processes that slow down the flow of logistics processes, cause disruptions in the work of the company, radically different from the leading companies in the industry. The next step is to identify specific parties with those responsible for identifying the most relevant factors to overcome the weaknesses of the process (Yazan et al., 2011). After determining the main elements that affect the business logistics process, ideas and a plan to implement the best of those proposed in the enterprise will be created. According to working with ideas, a detailed plan for implementing the relevant project is being developed. The final stage is introducing innovations, changes and improvements that fundamentally change the flow of business processes in logistics. By implementing relevant innovations, control, and, if necessary, correction of distortions in the business process resulting from a given reengineering strategy is carried out.

Effectiveness of implementing innovative solutions in logistics business processes, in particular in managing material flows, forecasting the volume of deliveries, possibilities of intensifying existing logistics solutions, improving information flows, ensuring an appropriate level of consumer information security, financial flows are elements of logistics (Ellatif et al., 2018). Optimisation of production processes, its economics, finance, and logistics is to not only ensure the stability of the competitive activities of the company and its partners but also reduce costs, free up resources in circulation, providing the possibility of developing an investment plan, intensification of business processes in logistics, providing growing end product quality trends.

In order to develop logistics systems that focus on flexibility, willingness to innovate in traditional business formats, strengthen partnerships, and provide quick responses to inquiries from business microenvironment entities, it is essential to be ready to isolate the most influential business processes and balance the most inefficient processes and conduct them their structural analysis (Taymouri et al., 2020). In this formatting approach to identifying paths, reengineering examples

motivate employees from other departments' enterprises that do their work more efficiently and help train workers to avoid future errors.

Reengineering is not a continuous process, but without continuous training, self-critical analysis, and search for best practices, it is impossible to determine the level of risk in the construction and operation of existing business processes in enterprises and start engineering changes (Tan et al., 2021).

3.4. The strategy to maximise performance while improving the quality of the business process.

The company's business logistics processes integrate interdependent and related functions and logistics operations aimed at achieving and effectively implementing the company's logistics strategy.

Logistics business processes focus on planning, organisation, control and regulation of material, information, financial and human flows. Considering that all flows are interrelated and extremely important, the level of criticality of which depends on the specific activity of the enterprise, the nature of the products or services produced, the level of competitiveness of the operating environment, solutions used in the field of logistics business processes, and especially those in the field of engineering which should be based on maximising efficiency while improving process quality. This strategy is usually based on several areas of interest during business process restructuring: threats to the company's logistics system; on identification processes that are not logical and unnecessary, without creating added value to business processes; business process automation; opportunities to achieve synergistic effects through cooperation with potential partners; to shorten product life cycles through better quality control of production (achieved by reducing product life and promoting after-sales service strategy) (Ruiz et al., 2017).

Typically, redesigned business processes are as follows: reverse logistics flows; relations with consumers, partners and other contact recipients of the enterprise; services and after-sales; logistic flows during the delivery of raw materials; logistic flows during warehouse logistics; production logistics; logistic flows related to the sale of products to intermediaries

or final consumers; management of customer databases, their orders, a record of cooperation history, etc.; advanced staff training; logistic business processes related to product development and commercialisation of the project (Nabelsi et al., 2015).

The company's activity is a multifunctional system that covers many business processes at various levels and subordination, but most of them are associated with the flow and optimisation of any of the classic flows: information, material, financial or human. A multifunctional corporate system is a system that is always more or less involved in logistic business processes, and therefore their redesign is associated with changes in many areas of the company's operations. Considering the above, generally, all logistics business processes can be grouped, and one of the traditional divisions is the division into primary and auxiliary processes. The main business processes related to logistics include processes aimed at creating value for the consumer in achieving the company's goals (Budiono et al., 2012). These processes shape the system; therefore, their organisation mainly depends on the performance of the enterprise. Ancillary processes can affect the operation of some specific operations, support the core and contribute to enterprise performance, can create bottlenecks, but their identification is often difficult because, in the case of an inefficient ancillary process, the other can compensate and eventually the problem will be challenging to identify.

The implementation of reconstruction in logistics business processes should take into account the typical goals that are set as indicators of the efficiency of reconstruction decisions: reducing production costs, both from the point of view of variables and from the point of view of fixed costs, will allow a more compelling price strategy for the company; implementation is possible at the expense of more informed decisions of those responsible; improving the quality of the final product or service; reducing the speed of order processing, in particular by creating a multi-threaded system and modularity in production; shortening the product life cycle, mainly in the area of product planning and marketing; standardisation of all logistic business processes, which will allow for

more cost-effective processes of organising the flow of goods, as well as increase the possibilities of cooperation of activities of various enterprises in the framework of partnership, outsourcing or other types of cooperation; elimination of all elements of the business process that do not create enough value for the consumer and the company compared to the size of the investment (Maarof et. al., 2016).

In this way, redesigning allows managers to analyse inefficient processes and model a relatively new project envisaged by redesigning and implementing it in an already tested, ready-to-change logistics system.

#### **4. DISCUSSION: Reconstruction of business processes based on reengineering and Kaizen**

Reengineering business processes are based on radical changes in employee behaviour and task perception within existing systems.

A radical change of approach in creating logistic business processes is impossible without systematic, cooperative, integrative transformations and continuous improvement. Changes during reconstruction often increase the system's reliability, adaptability, speed and willingness to cooperate, disseminate knowledge and experience. However, according to Kaizen philosophy, there is no limit to improvement, and therefore there are no perfect business processes. After rebuilding, the company improves performance, adapts to changes and operates at a new level (Laruna et al., 2013). At this stage, identifying a new level of business process must be started again, which can be achieved if each worker will understand the importance of further changes. Therefore, redesigning as a process and willingness to make changes in logistic business processes must be continuous. They must show the readiness of the company to realize the importance of changes and the need for their continuous implementation.

In business logistics processes, cooperation plays an important role, which in turn helps to increase company stability, reduce demand sensitivity and increase service diversity. Any significant change in engineering should include working on the company's strategy, tactics, and sometimes operational action plans (Fisher et

al., 2021). Decisions taken during the rebuilding of logistic business processes should focus on forecasting demand, and therefore flow patterns, structure, rhythm and quantity of product deliveries, host capabilities, amounts of raw materials needed to ensure continuity of production and final demand, the level of network unification as part of logistics cooperation business processes.

Reengineering of logistics business processes should be carried out according to a particular algorithm, which aims to introduce appropriate changes very close to the needs and objectives of the company. The changes can be radical and illustrate the classic reengineering or the nature of refining, refining a particular process. In this situation, we can talk about improving Kaizen. According to the algorithm, the first step is to determine the need for change, which allows us to choose the right strategy and approach to process restructuring. The next step is to identify the base model that will need modification. There are two options: to use existing business processes in the enterprise or as the best case studies of leading enterprises in the industry (Kir et al., 2021). Reengineering cannot be performed on an ongoing basis. Either way, time will be spent on adapting and identifying new bottlenecks, which indicates the interruption of engineering processes. In the case of Kaizen, these principles should be applied continuously, starting to plan further changes in parallel with the implementation of existing ones. Implementing business processes in a short period is crucial for the successful restructuring of business processes, but sometimes the market dictates the conditions for rapid change. In such a situation, Kaizen rules should apply. Supply chains are characterized by the complexity of their flows, large number and high requirements for process coherence. In the case of an established corporate strategy for radically complex changes, restructuring must be carried out using engineering. However, if the processes requiring adaptation are complementary, partial and not critical in the supply chain, Kaizen principles are recommended (Alas et al., 2012). The high level of risk during radical changes is understandable because most of the variables in the operation of new logistic business processes are not

precisely known and, therefore, difficult in the context of forecasting. The algorithm for restructuring business processes is presented in Figure 1.

Therefore, current market conditions require enterprises to be dynamic, adaptable and ready to take risks and implement non-trivial ideas. It is up to the company to choose the path to implement it and consider the difficulties and risks of choosing the Kaizen concept of reengineering (Looy et al., 2021). In any case, the company must be in constant motion, which must restructure logistic business processes concerning forecasted,

future market conditions or consumer expectations.

Logistics business processes should work closely with the results of the company's marketing department because they allow managers to get the most current information on market trends, consumer expectations, the current shortcomings in the work of the enterprise or its products. The use of marketing information helps better establish partnerships and understand the expected results of the implementation of innovation in the enterprise in more detail.

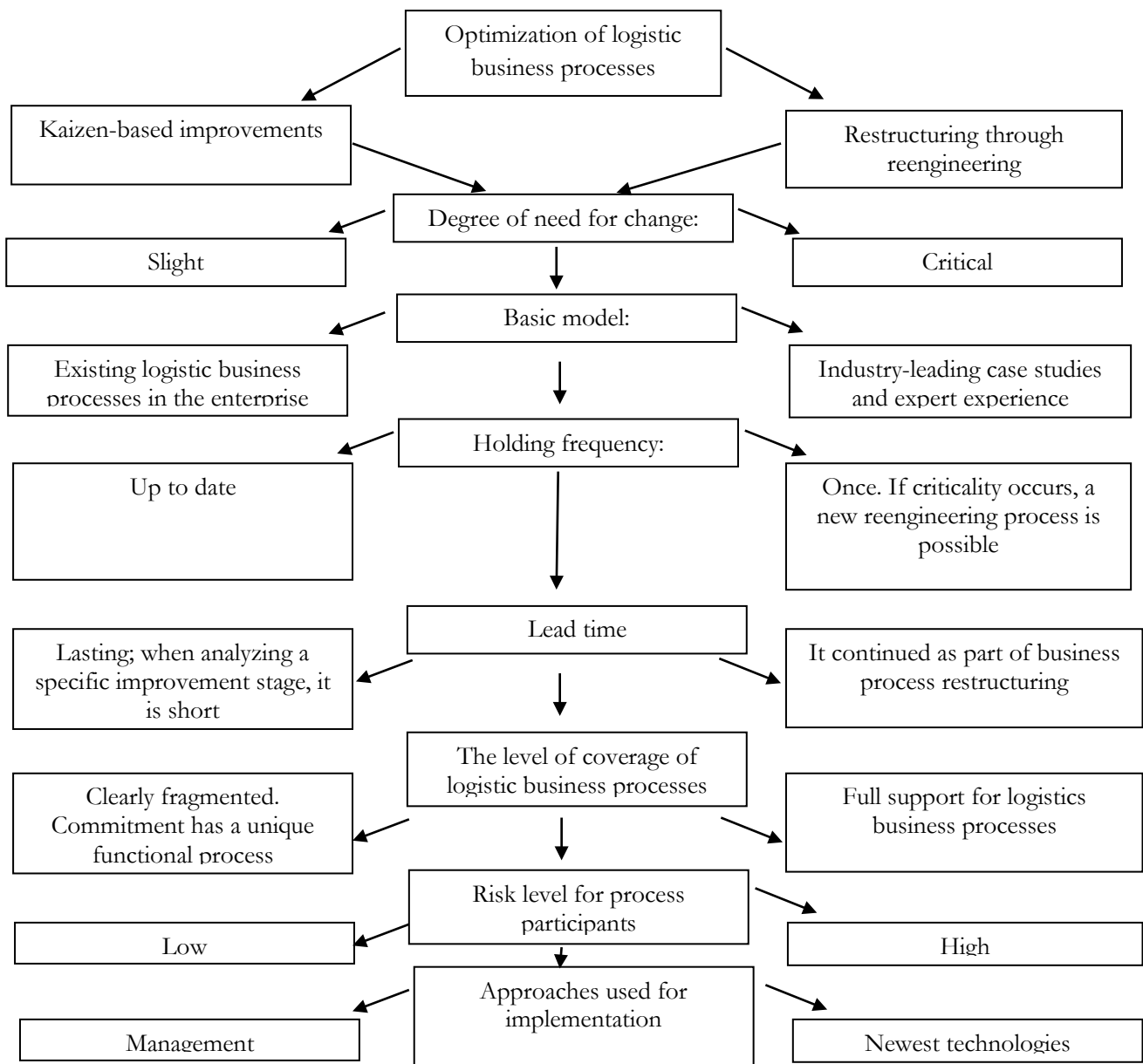


Figure 1. Algorithm for restructuring business processes in the supply chain

Source: Own research

Reengineering logistics business processes also allow for a more efficient selection of supply chain participants. Usually, the selection of potential partners in the supply chain is based on the analysis of their ability to meet the goals of the enterprise, but in the case of reengineering processes is also their assessment of the ability to make radical changes, including for robust synchronisation of business processes. The involvement of additional partners often allows expanding the scope of activities and meeting the needs of consumers in a more differentiated way (Jimenez AÑon et al., 2019). The analysis of partners in the supply chain can not be determined due to diversity as management, goals, consumer needs, features of existing interpersonal relationships. However, the analysis must be carried out and, based on it, must select partners to reengineer business processes. Who will not be able to this process?

Given that the analysis of supply chain entities is carried out in order to increase the level of competitiveness of all its participants (Chen et al., 2016), essential factors for choosing whom to conduct further reengineering are:

- an explicit specialisation of the enterprise, which fully corresponds to the life cycle of the analysed business process;
- the presence and level of conflict resolution;
- the level of structuring of areas of responsibility;
- availability and/or readiness to deploy an information system to ensure the continuity of information flow in the analysed business process;
- partially mutually cooperative logistics business processes, which involve incomplete interconnection and partial differences in goals;
- partner companies that redirect own available assets for the implementation of relevant orders, thereby implementing the required level of efficiency in small periods;
- there is diversity in certain areas of activity;
- the volume of cooperation is not significant;

– mutually cooperative logistics business processes, which in turn require changes and improvements in existing relationships within certain logistics business processes.

Optimising and improving the efficiency of business processes in enterprises requires reporting efforts using new methods. One of them is the restructuring of processes, depending on the scale and needs of the enterprise. One of the methods used may be a combination of reengineering and Kaizen or using them separately. The practical application of restructuring will improve the performance of enterprises.

### *Limitations.*

This study is theoretical. Its results can be the basis for further empirical research on reengineering for sustainable development. The use of results in enterprise management should be limited to the development of a reform strategy and as a guide for enterprises seeking to engage in sustainable development.

### **5. CONCLUSION**

On the way to promoting sustainable development, businesses may experience financial collapse. To support the efforts of enterprises, I suggest managers pay attention to the significant potential of reengineering tools and Kaizen. In this paper, I revealed some shortcomings of modern approaches to business process reconstruction and proposed an algorithm for restructuring business processes in the supply chain. In conclusion, I would like to express the following considerations.

Logistics reengineering of business processes is updating the rules and procedures of an enterprise in connection with new market conditions. It can present different formats for building relationships both inside and outside the company. Raising the level of computerisation speeds the exchange of information increases the level of transparency of business processes, and increases the security and trust of partners. Creating conditions for essentially other areas of activity contributes to the diversification of production and the increase of skills and employees.

The nature of operations and the supply chain makes it desirable to switch logistic

business processes from management based on functional membership to management based on the synergy of all systems and flows in one process with a simple hierarchical structure of inter-related subprocesses.

Given the urgency of making changes to companies in a regular format, using reengineering or improving business processes using Kaizen principles, managers can get benefits that are unattainable with non-systemic changes, operational management commands or changes based on the experience and knowledge of the company's employees and not on market requirements.

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# Access to a genuinely independent and impartial trial: a review of the sixteenth sustainability goal completeness

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*Received: 2021-03-03*

*Accepted: 2021-05-12*

DOI: <http://doi.org/10.46489/lbsb.2021-1-1-5>

**Abstract.** The sixteenth sustainability goal is about equality in access to justice. However, according to some events in Eastern Europe, access is insufficient. The court must be genuinely independent and impartial. In this regard, we decided to find arguments in favour of expanding the sixteenth sustainability goal. A review of the sources and a theoretical study indicated a clear link between judicial independence and sustainable development. We used the method of doctrinal research. ECtHR cases have become our data for qualitative analysis. We have reaffirmed that judicial independence is the condition of the rule of law. It means conduction of proceedings without any pressure or interference on a judge, particularly from other branches of government. We argue that the entire independence of the judiciary appears on the background of the subjective and objective independence of the judge. In addition, this study demonstrates that judicial independence is a condition for sustainable development. It is associated with public trust and public confidence in the reality of such independence. In the example of equality of parties, we pointed out that there is no need to detail the sixteenth goal further. With our study, we wish to breathe new energy into the sixteenth goal of sustainable development.

**Keywords:** access to justice, the right to a fair trial, sustainable development, sustainable development goals, ECtHR practice.

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## 1. INTRODUCTION

As we know, the sixteenth goal of sustainable development (United Nations, 2015) is equal access to justice. Practice shows that there can be different types of justice, access to which is provided by states. In a weak democracy or dictatorship, access to justice is not a sound basis for sustainable development. In this case, we have to apply specific criteria, as the European Convention recommends (European Court of Human Rights, & Council of Europe, n.d.). Article 6 of the Convention details the right to a fair trial as the right of everyone to access an independent and impartial trial. This article contains other requirements for the court, which are crucial for sustainability. Alsheban, Dr. A. (2017) noted that international human rights instruments refer to a fair trial by “an independent and impartial tribunal”.

Independent and impartial trial is a prerequisite for a democratic society (Parliamentary Assembly, 2010). Judicial independence is essential for ensuring the rule of law and a fundamental guarantee of a fair trial (Consultative Council of European Judges, 2001). Judicial independence and its separation from the executive are the cornerstones of the rule of law, from which there can be no exceptions (Hoffmann-Riem, W., 2014). Hossain Mollah, A. (2012) emphasized that an independent judiciary is “the sin qua non of democracy and good governance”.

De jure judicial independence is not systematically related to sustainability, whereas de facto judicial independence is highly significantly and robustly correlated with growth (Voigt, S., Gutmann, J., & Feld, L. P., 2015).

The method of selecting and retaining justices of courts has a significant and direct effect on entrepreneurial activity (Dove, J. A., 2015).

Judicial reform can stimulate judicial efficiency and entrepreneurship (Chemin, M., 2009).

The country's levels of democracy and peacefulness had a significant and positive relationship with citizens' confidence in the courts (Boateng, F. D., 2020).

### 1. 1. Literature Review

The issue of ensuring judicial independence is relevant for all countries. Keith, K. J. (2017), on the example of The International Court of Justice, proved the importance of independence procedures.

Boryslavska, O. (2021) noted the particular relevance of judicial independence in the context of judicial reforms in several Eastern European countries (Serbia, Northern Macedonia, Poland, Hungary, Romania, Moldova, and Ukraine).

Kovács, K., & Scheppele, K. L. (2018) investigated modern threats to judicial independence in Hungary and Poland, showing how first the constitutional courts and then the ordinary judiciary were brought under the control of political forces.

Rudenko, M., Malinowska, I., & Kravtsov, S. (2021) described the problems of an independent court in the light of the purification and lustration initiatives in Ukraine.

Hossain Mollah, A. (2012) investigated the status of independence of the judiciary in Bangladesh. From the beginning of British colonial rule, the scholar proved that separation of the judiciary from the executive had been a continuing debate.

Armendáriz, P. (2020) explored the primary determinants of internal judicial independence in three Latin American countries (Chile, Peru, and Ecuador). He proved that judges' autonomy from politicians does not necessarily follow the same path as lower-court judges' independence from their hierarchical superiors.

The independence of the judiciary is a condition of the rule of law. Spano, R. (2021) noted that the rule of law is a constitutional principle under the European Convention on Human Rights. The author reflects on the "symbiotic" relationship in judicial independence between the Strasbourg Court and the Court of Justice of the European Union.

The independence of the judiciary is directly related to the trust in the judiciary. However, Armendáriz, P. (2020), in the example of Ecuador, proved that citizens' trust and support for the judiciary could increase despite decreasing levels of judicial

independence, which arise from the approval of the executive performance.

Yeung, L. L. (2019) investigated the impact on judges' deviation from independence and impartiality. The author emphasized that citizens have lower levels of trust in the judicial system if courts and judges are biased and unpredictable.

The existence of an independent court is vital for the development of state power in general. As Kim, J. (2007) proved in the example of Korea, the increased level of enforcement has become a cornerstone for the consolidation of the rule of law and good governance.

Voigt, S., & Gutmann, J. (2015) emphasized that the actual independence of the judiciary correlates with lower levels of corruption.

There are problems with assessing the independence of the judiciary. Therefore, the standards of the organization of the judiciary remain relevant. Piana, D. (2017) examined judicial reform in Italy based on European standards and noted their importance for judicial independence. Kosař, D., & Spáč, S. (2018) researched judicial independence and accountability measuring methods. The authors stressed the importance of developing assessment methods in the context of new challenges.

Vuille, J., Lupària, L., Taroni, F. (2017) tried to identify opportunities to assess the independence of the judiciary based on an analysis of the European Convention on Human Rights. The authors recommended that states pay attention to the effectiveness of the legalization of the right to a fair trial.

Sakara, N. (2021) investigated specific criteria of a fair trial based on the case-law of the ECtHR. The author argued that the relevant criteria should be the basis for reforming national legislation.

### ***1. 2. Theoretical basics of judicial independence***

Judicial independence is, in procedural terms, the complete independence and impartiality of judges. Judges must be impartial, free from any connection, attachment or prejudice that affects or may be perceived as

affecting the judge's ability to make independent decisions about parties.

Judicial independence should be guaranteed by the state and enshrined in the country's Constitution or laws (Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1985). Justice requires that everyone has the right to a fair and public hearing in a competent, independent and objective court following the principles enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other instruments. States must have an independent judiciary (Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1985). Following a study of the situation in Ukraine, the Parliamentary Assembly of the Council of Europe stated that the reform of the judiciary and the justice system should be aimed, *inter alia*, at eliminating all forms of corruption in the judiciary while ensuring the independence of the judiciary (Parliamentary Assembly, 2010). However, as stated in the Opinion of the European Commission for Democracy through Law (2004), the principle of independence is not in itself a guarantee of a democratic model if it is not subject to the rule of law.

The independence of the judiciary is not an end in itself but a necessary condition for the realisation of the human right to a fair trial. Without judicial independence, the right to a fair trial cannot be realised, and the judiciary's credibility is undermined (The Committee of Ministers of the Council of Europe, 2010). The judiciary must hold the trust not only of the parties but also of society as a whole. The judge must be genuinely free from any prejudice or influence and be so in the eyes of society.

According to the Bordeaux Declaration, society has an interest in ensuring the rule of law through fair, impartial and effective justice. A fair administration of justice requires equality in the prosecution and defence and respect for the independence of the judiciary, adherence to the principle of separation of powers, and the binding force of final judgments (Consultative Council of European Judges, Consultative Council of European Prosecutors, 2009). The Bangalore Principles state that the independence of the judiciary is a prerequisite

for the rule of law and a fundamental guarantee of a fair trial (Judicial Group on Strengthening Judicial Integrity, 2002).

The independence of the judiciary generates the independence of courts and judges. Real judicial independence has three preconditions:

- the presence of political will (Bachmann, K., & Fatić, A., 2019);
- practical adherence by judges to the standards of judicial ethics (Simental Franco, V. A., 2017);
- clear link between judges' independence and their responsibilities (Mocan, N., Bielen, S., & Marneffe, W., 2020).

We can distinguish between external and internal independence. External independence means the independence of the judiciary from the influence of the legislative or executive branches. Internal independence means that the judges feel no illegal influence in decision-making.

In this study, we aim to justify the possibility of specification the sixteenth goal of sustainable development. We believe that not just access but access to an independent and impartial trial is essential for sustainable development. At the same time, independence for sustainable development must be real, not declarative. Focusing on European and international standards of the judiciary and the case-law of the European Court of Human Rights, we have considered the following research questions.

RQ<sub>1</sub>. What is the meaning of the real independence of the judiciary?

RQ<sub>2</sub>. Are there general criteria for real independence of the judiciary?

RQ<sub>3</sub>. Can we attribute other elements to the independence of the judiciary?

## 2. METHODS

Sustainable development goals have a global impact. The government of each state tries to adapt them to domestic legislation. Such adaptations, and especially the ways to achieve the goals, can vary significantly from country to country. Reducing deviations is achievable if the goals are as specific as possible.

This study is structured as follows. First, we defined the content of the real judicial

independence. Then we summarised the criteria, the fulfilment of which testifies to the achievement of real judicial independence. Finally, we explored the possibility of developing an independent trial concept on the principle of equality of parties.

The general method we used in this study is doctrinal research (Pradeep M., D., 2019). We obtained data for qualitative analysis from open sources. Everyone can repeat our research and convince the accuracy of the conclusions.

We have considered the limitations of the ECtHR case-law study (Weiden, D. L., 2009; Hrestic, M.-L. (2013)).

## 3. RESULTS

### 3.1. The real judicial independence

Analysing the case of *Bochan v. Ukraine* (No. 2) (Application no. 22251/08), we have seen that the key issue is trust that courts in a democratic society should get in society. Only independent and impartial courts can evoke such trust. As stated in *le Compte, van Leuven and de Meyere v. Belgium* (Application no. 6878/75; 7238/75), the court must be independent of both the authorities and the parties to the proceedings.

A sign of independence is whether the court functions independently (*Moiseyev v. Russia* (Application no. 62936/00). In *Feldman v. Ukraine* (no. 2) (Application no. 42921/09) ECtHR, deciding whether the court can consider independence within the meaning of Article 6 § 1 of the Convention, drew attention, inter alia, to the existence of guarantees against external pressure and the question whether court showed signs of independence.

We can find the meaning of signs of independence in the case file of *Belilos v. Switzerland* (Application no. 10328/83). In this case, ECtHR noted that the court is a jurisdictional body that decides issues within its competence based on the rule of law, following the established procedure. So, the court must meet several other requirements: independence from executive power, impartiality, and stability. The trial must provide the accused with guarantees, some of which Article 6 § 1 of the Convention contains.

In the case *Altay v. Turkey* (No. 2) (Application no. 11236/09), the applicant alleged a double violation of Article 6 § 1 of the

Convention. On the one hand, they complained that an independent and impartial tribunal had not heard his case. The state security courts were a different structure from the criminal courts of general jurisdiction. On the other hand, he complained about the lack of a fair trial by the State Security Court in respect of his conviction based on coercive evidence.

In the case of *Agoudimos and Cefallonian Sky Shipping Co. v. Greece* (Application no. 38703/97), the applicants complained that the legal interference in the proceedings against them, in which the NAT Fund had been a party, had violated their right to a fair trial under Article 6 § 1 of the Convention. The court confirmed that, in principle, the legislator has no prohibition in adopting new provisions that have retroactive effect. Such provisions may govern rights arising under applicable law. Nevertheless, the principles of the rule of law and the notion of a fair trial embodied in Article 6 preclude any interference by the legislature in administering justice to influence the settlement of a dispute. The only exception can be the cases of reasons arising out of the general interest. So, the ECtHR found a violation of the Convention.

## **2. Criteria of real judicial independence**

Judges must be impartial in making judgments, free from any connection, attachment or prejudice that affects or may be perceived as affecting the judge's ability to make independent decisions. In *de Cubber v. Belgium* (Application no. 9186/80), ECtHR states that it is the responsibility of each state to establish courts under the principles of impartiality.

In order to determine whether a court is independent, it is necessary to pay attention to the appointment method and the term of their powers, as well as to the existence of guarantees against external pressure and the presence of signs of independence (*Bochan v. Ukraine (No. 2)* (Application no. 22251/08)). For example, the six-year term of office of the members of the Board of Appeal in the case of *le Compte, van Leuven and de Meyere v. Belgium* (Application no. 6878/75; 7238/75), ECtHR noted as a guarantee of judicial independence.

The ECtHR acknowledges the existence of two components of impartiality: subjective and

objective (*Pullar v. The United Kingdom* (Application no. 22399/93)). In *Campbell and Fell v. The United Kingdom* (Application no. 7819/77; 7878/77), ECtHR has stated that assessing the independence of a court cannot be limited to subjective criteria but also considers objective ones.

Criteria of impartiality within the meaning of paragraph 1 of Art. 6 of the Convention are defined as follows. According to the subjective criterion, the personal beliefs and conduct of the individual judge are taken into account, i.e. whether the judge was biased or impartial in the case. The objective criterion is the absence of any doubts about its impartiality (*Belukha v. Ukraine* (Application no. 33949/02)). In terms of subjective criteria, the court's impartiality is recognised until evidence to the contrary is provided (*Pullar v. The United Kingdom* (Application no. 22399/93)).

In *Bochan v. Ukraine (No. 2)* (Application no. 22251/08), the applicant complained under Article 6 § 1 of the Convention about the outcome and unfairness of the civil proceedings, arguing that the courts were not independent and impartial. In particular, they complained that the city and regional courts had rendered their decisions under pressure from the Supreme Court of Ukraine, which was interested in a particular outcome. In this case, the ECtHR emphasised that impartiality should be determined according to a subjective criterion based on the behaviour of an individual judge. At the same time, noted ECtHR, it is necessary to take into account the objective criterion, namely - whether there were sufficient guarantees to eliminate any doubts about judicial independence.

In *Daktaras v. Lithuania* (Application no. 42095/98), the ECtHR stated that Article 6 § 1 of the Convention contained two aspects of the impartiality requirement. First, the court, while hearing the case, must be subjectively impartial, i.e. no member must show any personal interest or bias. A judge is considered to be impartial if there is no evidence to the contrary. Secondly, such a court must be objectively impartial, i.e. it must provide sufficient guarantees to exclude any legitimate doubts in this regard. According to the second criterion, it is necessary to determine whether there are facts, the

establishment of which may cast doubt on the impartiality of judges.

Impartiality should be determined by subjective assessment based on a particular judge's personal beliefs and conduct in a particular case. No member of the court should show any personal commitment or prejudice (*F Salov v. Ukraine (Application no. 65518/01)*).

In the case of *Findlay v. The United Kingdom (Application no. 22107/93)*, ECtHR emphasised that subjectively the court should not be exposed to emotions, objectively - should not allow any doubts.

In *Romanov v. Ukraine (Application no. 63782/11)*, the ECtHR stated that the absence of impartiality means the absence of a court established by law. A judge who participated in the case's decision in the court of the first instance may not participate in its retrial after the case's return by the court of higher instance. In this case, it is a question of eliminating doubts about the impartiality of the court. Failure to comply with this rule means that the appeal is considered by a court whose impartiality is under question.

In *Remli v France (Application no. 16839/90)*, one of the judges expressed a racist argument. The plaintiff, therefore, lodged a complaint alleging that the court hearing his case was not impartial. The Commission concluded that a dismissal procedure was possible in this case.

In *Buscemi v. Italy (Application no. 29569/95)*, the applicant complained about the bias of the President of the Juvenile Court. He stated that his case had not been heard by a court whose chairman he could have debated. In this regard, the ECtHR emphasised that judges must exercise sufficient restraint in the performance of their duties to guarantee a reputation for impartiality.

In *Sovtransavto Holding v. Ukraine (Application no. 48553/99)*, ECtHR stated that impartiality is not always realised. So, the applicant complained that his case had not been considered impartially. The government insisted that Ukrainian law provided many guarantees for the impartiality and independence of the courts and their members. The applicant did not deny the existence of Ukrainian law of rules guaranteeing the independence and impartiality of the courts. However, he insisted that

compliance with these rules is not always ensured in practice.

Based on the European Court of Human Rights case law, we argue that the impartiality of the court is determined based on subjective and objective criteria. Subjective criterion means the absence of personal interest or bias in the personal beliefs and conduct of a particular judge in a particular case; objective affects the functional activities of the court, means no doubt about its impartiality.

#### **4. DISCUSSION: DEVELOPING AN INDEPENDENT TRIAL CONCEPT (ON THE EXAMPLE OF PARTIES' EQUALITY)**

Our research proves that equal access to justice does not always mean fulfilling the sixteenth goal of sustainable development in the spirit of sustainability. We convince that the sixteenth goal should be expanded (at least in national sustainable development strategies) by including the characteristics of the court to which access should be provided. Such a court must be independent and impartial. But why not improve this goal further? Consider, for example, the principle of equality of parties, which has a logical link to both the idea of a fair trial and equal access to justice.

A fundamental aspect of the right to a fair trial is that the consideration of a criminal case, including procedural elements, must be adversarial. In this process, the principle of equality of parties, i.e. prosecution and defence, must be ensured. Equality is one of the foundations of the modern concept of a fair trial. It is first and foremost crucial for everyone to have access to justice and the opportunity to exercise the right to judicial protection freely, quickly, and without hindrance, regardless of belonging to a particular social group or other personal characteristics. The content of this principle we can disclose in the following elements:

a) equality of all participants in the trial before the law and the court, regardless of race, colour, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language and other characteristics;

b) equality of procedural rights concerning proving legal position before a court, as well as obligations arising from procedural law;

c) equality of the application of the substantive and procedural law by the court, regardless of the legal and social status of the person, the factual and legal circumstances of the case;

d) access to a single judicial system for all, which provides the possibility of considering the merits and appealing.

In the *Luca v. Italy* (Application no. 33354/96), the applicant complained of violating his right to a fair trial. He had no opportunity to question the prosecution witnesses. He asserted that he had been convicted based on testimony given to the prosecutor by another accused in connection with the case. However, the applicant was not allowed to interrogate the second accused or to obtain his explanations. The ECtHR pointed out that the national law primarily conduct the admissibility of evidence, and, as a general rule, national courts give the general assessment of this evidence. Guided by its case law, the ECtHR emphasised that, according to the Convention system, cross-examination of prosecution witnesses, in the broadest sense, does not necessarily have to take place during a trial. Although evidence, including prosecution evidence, usually has to be examined during a trial, specific circumstances, such as those mentioned in this case, make it difficult or impossible to repeat previously given evidence in open court. In such cases, Article 6 requires only that the accused be given an appropriate opportunity to rebut that evidence, at least during the trial. The ECtHR completely rejected the government's argument that it was necessary to defend the second accused's right to remain silent, as he had been summoned to repeat at a public hearing the statements he had made earlier. However, the main issue, in this case, was not the right to remain silent. The second accused retained the right to remain silent and not to testify against him. However, if he used this right, his previous testimony could be used against other persons as serious evidence of guilt only if the first accused had previously had the opportunity to cross-examine him at a certain stage of the proceedings. The ECtHR, therefore, found a violation of Article 6 §§ 1 and 3 (d) of the European Convention on Human Rights.

The principle of equality of parties in the process (in the sense of a "fair balance" between the parties) requires that the court give each party a reasonable opportunity to present the case in conditions that do not put that party at a significant disadvantage vis-à-vis the other party. Thus, in *Kuznetsov and others v. Russia* (Application no. 184/02), the applicants alleged a violation of Art. 6 of the Convention because they were denied a fair trial, namely:

a) the judge of the first instance treated them with prejudice and openly demonstrated a preference for the other party;

b) in their case, the principle of equality of the parties was not ensured;

c) the court refused to consider their evidence and came to completely erroneous and unfounded conclusions.

We draw on these examples and insist that reflecting the requirement of independence and impartiality is sufficient to significantly improve the wording of the sixteenth goal of sustainable development. An independent and impartial tribunal is governed solely by the law. Given the excellent quality of the law, it will mean no risk of inequality, lack of protection or excessive length of proceedings.

The resulting research suggests that the independence and impartiality of the judiciary is a condition for compliance with the sixteenth goal of sustainable development. The independence of the judiciary testifies to the rule of law and the permanence of democracy.

The results of this study can be helpful for future sustainable development planning. States can use these recommendations as a basis of a national sustainable development strategy for meeting the sixteenth global goal.

### *Limitation*

We have abstracted from the current worldwide situation in ensuring the independence of the judiciary. This study can serve as a basis for future study of facts and data concerning the independence of the judiciary and its impact on sustainable development.

In this study, we relied on a European approach to an independent court. Dissemination of the study's findings to other

regions requires clarification of local features of law and culture.

This study is basing on the ECtHR case law. New ECtHR decisions may necessitate clarification of the study's findings.

## 5. CONCLUSION

In this study, we briefly discussed the prospects for an expanded interpretation of the sixteenth global goal of sustainable development. We argued that sustainable development should be based on access to an independent and impartial trial. We have established that the independence of the judiciary is a condition of the rule of law. It consists of the administration of justice without any pressure or interference from other branches of government. The real independence of the judiciary appears in the background of the subjective and objective independence of the judge. Judicial independence as a condition for sustainable development is associated with public trust and public confidence in the reality of such independence. In discussion, we pointed out that the concept of judicial independence can cover a lot of fair trial elements for sustainable development. The study results have the potential for implementation at different levels of government, in rule-making and law enforcement, which will breathe new energy into the sixteenth goal of sustainable development.

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# Law, Business and Sustainability Herald

Volume 1 Issue 1

2021

Date of Issue: 2021 May, 25

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