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Selected factors of the pedagogical profession of the Slovak teachers in Hungary (status and job satisfaction)

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Abstract

Purpose: Slovak national education in Hungary as a complex phenomenon is not sufficiently researched. Many aspects of this national education appear to be problematic. In our paper, we decided to analyse two of them – the status of the teacher and the job satisfaction of these teachers. The aim of the paper is to analyse the perception of the profession and the status of teachers by Slovak teachers at national schools in Hungary depending on gender, type of school, nationality and age of teachers and simultaneously to find out if there is any correlation between job satisfaction and gender and school types of the teachers.

Methods: In this paper, the authors analyse data from a survey conducted in 2019, using a sample of 139 teachers of Slovak ethnic schools in Hungary. **Statistical analyses:** Relations between job satisfaction, gender, and type of school are verified by non-parametric tests.

Results: The status of teachers on the basis of age shows the biggest difference in the perception of the social significance of the profession. Teachers of the younger age group 24-35 consider it the least important. The teachers of the monolingual school considered the teaching profession to be the most demanding in terms of time and administration. In relation to gender, men perceived financial evaluation and legislative support negatively, women perceived them in a neutral level. The analysis results show that the teachers' gender was not significant in terms of job satisfaction. Considering the type of school statistically significant differences weren't found between the groups.

Conclusion: Since our sample covers almost the entire population of Slovak teachers in Hungary, the analysis showed positive perception of the position and content of teachers' work.

Keywords: Slovak ethnic education system. Hungary. Teachers' status. Job satisfaction.

1. Introduction

Intelligence of minorities, as well as Slovak intelligentsia, has a decisive role in preserving national culture and language abroad (Šutaj, Heldáková, Regináčová, 2017). School is undoubtedly the most important factor in preserving the Slovak language and Slovak nationality at all, not only in Hungary but also in other countries. Currently, Slovak education in Hungary is facing a number of problems (Heldáková & Kalistová, 2019). The most significant obstacles to the functioning and improvement of Slovak education in Hungary are the weak knowledge of the Slovak language (many children in Slovak families no longer speak Slovak); lack of qualified teachers; absence of Slovak textbooks or textbooks in Slovak language; low number of students; the fragmentation of Slovak schools in Hungary; lack of funds (Szabóová Marloková, 2014, Heldáková & Szeghy-Gayer, 2021; Heldáková, 2021)

Nowadays there are three types of ethnic schools: monolingual schools, bilingual schools and schools teaching the ethnic language as a separate subject.

Monolingual schools are the ones educating their students in the ethnic language (with the exception of Hungarian language and literature and foreign languages).

In bilingual schools, students are educated in two languages, with 50 % of the lessons being taught in the ethnic language (with the exception of Hungarian language and foreign languages). The decree does not specify the subjects

to be taught in Slovak, leaving this up to the schools themselves. The respective institutions specify the subjects to be taught in Slovak in their own education programs, at their sole discretion. A precondition of meeting the above legal requirement is having a sufficient number of teachers fluent in Slovak.

In schools teaching the ethnic language as a separate subject, students are educated in Hungarian; however, the class schedule contains also the ethnic language and literature and “Slovak studies”. At these schools, the compulsory number of Slovak language lessons is 5+1 (i.e. five lessons of Slovak language and one lesson of Slovak studies per week) and, by law, all pupils have to attend Slovak language lessons. (Uhrinová, 2016)

Slovak national education in Hungary is directly and indirectly supported by the National Slovak Self-Government in Hungary, the Union of Slovaks in Hungary, the Slovak Self-Government of Budapest, and others (Heldáková, 2020).

Selected researched aspects – teaching profession and its status:

A key part of teachers' profession is the level of its prestige and the perception of their status by the teachers themselves (Ingersoll & Collins, 2018). Status refers to teachers' social status considering the recognition of the significance of the teachers' function and their capability to perform it. According to Pavlov (2014), status, i.e. prestige (respect, significance) is a feature of individuals (teachers at school, a certain category of teachers) or the profession as a whole. The results of the “Global teacher status index 2018” international survey indicate that in Hungary, the status of teachers in society is relatively low (24.4), as Hungary ranked almost last of the 35 surveyed countries (Dolton, et al., 2018).

The survey conducted as part of the TALIS study (OECD, 2019) was aimed at how teachers perceive the social recognition of their profession. Of the teachers from 48 countries taking part in the survey, just over 10% of teachers from Hungary agreed that the teachers' profession is valued in society (the OECD average was 25.8%). This survey also confirmed that only 4.5% of teachers in Slovakia agreed with the statement, being the lowest rate among all other OECD countries. According to this survey, teachers in both Hungary and Slovakia think that social recognition of teachers is critically low. According to the TALIS study (OECD, 2019), increasing the prestige of the teachers' profession is key to attract new candidates and also helps introducing new people to the profession, replacing retiring teachers and keeping current teachers in their careers.

So, the shortage of teachers is an international problem and more attention needs to be paid to teachers' satisfaction with their jobs (Toropova et al., 2019).

Selected researched aspects – job satisfaction:

Job (dis)satisfaction is an important part of overall satisfaction with life. It is defined as the work-related positive attitudes and feelings of a person – these are important for the success of the organization as a whole (Armstrong & Taylor, 2014). Job satisfaction affects the general quality of life and both of these significantly affect the individuals' work performance. It is particularly important in the teaching profession, as its lack is often associated with work-related stress and burnout. Lower levels of job satisfaction, when combined with stress, may be caused by numerous factors, such as: increased workload, students / pupils having behavioural problems, parent-teacher relationship issues, conflicts with colleagues, lack of support by the school management or insufficient autonomy. Conversely, support, autonomy or positive emotions to students / pupils, parents or colleagues may have a positive effect on job satisfaction and reduce the sensation of stress (Skaalvik & Skaalvik, 2009).

Teachers' job satisfaction is influenced by many factors, e.g. gender, age, number of years of teaching experience, working conditions, administrative burden, or control (Ma & MacMillan, 1999).

2. Methods

Survey sample

The data analysed in this paper come from the survey conducted in 10 Hungarian counties between January and April 2019, using a sample of 139 teachers of ethnic schools. Survey sample: Respondents – teachers – were selected from schools of all three types teaching Slovak, both in cities and villages. The selection criteria of the survey sample were employment (working as an educator of Slovak or in Slovak currently or in the past) and the availability of the respondent, regardless of the identification criteria (age, location, gender). The survey sample included men (18.7%) and women (88.3%). The age of the respondents in the sample was 24 – 68 years ($M=48.77$, $SD=10.017$). The average age of women was 49.49 years, while the average age of men was 43.44 years. 7.3% taught at monolingual schools,

48.2% at bilingual and 43.1% at schools teaching the ethnic language as a separate subject. 54% claimed to be of Slovak ethnicity, 18.2% claimed to be Hungarian, while 27.7% claimed to be both Slovak and Hungarian.

Methodology and statistical analyses

Status of teachers:

We surveyed the respondents' evaluation of the position of the Slovak teacher in Hungary through one structured question with an orientation on the monitored areas characterizing his status. All four items of the question were identically scaled – respondents answered on a seven-point rating scale from 1 to 7 for each item, with: 1 = strongly disagree and 7 = strongly agree. The wording of the question was as follows:

How would you evaluate the position of a teacher teaching Slovak language at national schools in Hungary?

- *The profession of Slovak teachers is socially significant.*
- *The profession of Slovak teachers is financially sufficiently recognised.*
- *The teaching profession is generally time-consuming and administratively demanding.*
- *Political and legislative support is satisfactory.*

We analysed the individual items in relation to the gender of the teachers, the type of school they teach, their nationality and age. For the purpose of the frequency analyses used in this case, teachers were divided according to age into three groups (younger, middle and older).

Age categories of teachers in absolute and relative numbers

<i>Age</i>	<i>Category</i>	<i>N</i>	<i>%</i>
24 – 35	younger	18	12,9%
36 – 50	middle	55	39,6%
51 – 68	older	66	47,5%

Job satisfaction:

The level of teachers' job satisfaction was measured using the following statement: I am satisfied with my job. Respondents had to choose the appropriate option from a scale; the score was then calculated using a seven-point scale, where 1 = “I fully agree” and 7 = “I don't agree at all”.

Correlations of job satisfaction, gender and type of school were verified by non-parametric tests (Kruskal-Wallis and Mann-Whitney).

3. Results

Status of teachers

Table 1: **Descriptive characteristics – status of teachers based on gender**

		The profession of Slovak teachers is socially significant	The profession of Slovak teachers is financially sufficiently recognised	The teaching profession is generally time-consuming and administratively demanding	Political and legislative support for teachers is satisfactory
Gender	male	N	16	16	16
		Mean	4,50	3,75	6,19
		SD	2,00	1,95	0,91
female		N	121	121	121

Mean	5,40	4,87	6,16	4,45
SD	1,57	1,61	1,12	1,49

In relation to gender, men perceived financial evaluation (M=3.75) and legislative support (M=2.80) negatively, women perceived them in a neutral level: financial evaluation (M=4.87) and legislative support (M=4.45). In terms of time and administration, the average scores of both groups were almost identical. Women consider the profession of pedagogue to be more socially important. Based on the Mann-Whitney U test, differences between men and women were demonstrated in terms of perceptions of financial evaluation ($p<0.05$) and legislative support for the teaching profession ($p<0.001$).

Table 2: **Descriptive characteristics – the status of teachers based on the type of school**

Type of school		The profession of Slovak teachers is socially significant	The profession of Slovak teachers is financially sufficiently recognised	The teaching profession is generally time-consuming and administratively demanding	Political and legislative support for teachers is satisfactory
monolingual	N	10	10	10	10
	Mean	5,10	4,90	6,70	5,10
	SD	1,10	1,45	0,48	1,66
bilingual	N	67	67	67	67
	Mean	5,46	4,78	6,43	4,15
	SD	1,58	1,82	1,02	1,56
Slovak taught as a subject	N	60	60	60	60
	Mean	5,13	4,67	5,76	4,24
	SD	1,78	1,59	1,12	1,56

Within the individual types of schools, the biggest differences were found in perception of time and administrative complexity of the teaching profession and in legislative support. The most demanding in terms of time and administration were considered by teachers to be teachers of a monolingual school (M=6.70), and the least demanding teachers of schools where Slovak language is taught as a subject (M=5.76). Similar results apply to political and legislative support – teachers of a monolingual school rated it as the most satisfactory (M=5.10), and teachers at bilingual schools (M=4.15) and schools teaching Slovak language as a subject rated it neutrally with almost the same average score (M=4.24). Based on the Kruskal-Wallis test, differences between individual types of schools were demonstrated within the perception of the time and administrative complexity of the teaching profession ($p<0.001$).

Table 3: **Descriptive characteristics – the status of teachers based on nationality**

Nationality		The profession of Slovak teachers is socially significant	The profession of Slovak teachers is financially sufficiently recognised	The teaching profession is generally time-consuming and administratively demanding	Political and legislative support for teachers is satisfactory
Slovak	N	74	74	73	72
	Mean	5,32	4,82	6,29	4,19
	SD	1,73	1,72	1,09	1,62
Hungarian	N	25	25	25	24
	Mean	5,20	4,64	5,92	4,50

	SD	1,84	1,60	1,07	1,69
Slovak and Hungarian	N	38	38	38	37
	Mean	5,21	4,65	6,13	4,32
	SD	1,35	1,68	1,06	1,37

When comparing perception of the status of teachers on the basis of nationality, we can state that teachers of Slovak, Hungarian, as well as Slovak and Hungarian nationalities responded to individual items almost identically. Smaller differences can be seen in the time and administrative complexity, which is considered the most demanding by teachers declaring Slovak nationality (M=6.29) and the least demanding by teachers of Hungarian nationality (M=5.92). The Kruskal-Wallis test did not show differences between groups of teachers based on their nationality.

Table 4: **Descriptive characteristics – the status of teachers based on age**

Age		The profession of Slovak teachers is socially significant	The profession of Slovak teachers is financially sufficiently recognised	The teaching profession is generally time-consuming and administratively demanding	Political and legislative support for teachers is satisfactory
24 – 35	N	18	18	18	17
	Mean	4,61	4,94	6,44	3,88
	SD	2,00	1,73	0,70	1,83
36 – 50	N	55	55	55	54
	Mean	5,49	4,69	6,21	4,29
	SD	1,57	1,77	1,11	1,51
36 – 50	N	66	66	65	64
	Mean	5,30	4,71	6,06	4,35
	SD	1,57	1,59	1,14	1,54

The status of teachers on the basis of age shows the biggest difference in the perception of the social significance of the profession. Teachers of the younger age group 24-35 years (M=4.61) consider it the least important (in the neutral field of the scale). Middle- and older-generation teachers perceive it in the positive field of the scale with very little difference in the average score. It is similar in the perception of political and legislative support - it is considered the lowest by the younger age category (M=3.88), which evaluates it in the negative field of the scale. The slightly higher average score (already in the neutral field of the scale) is attributed to it almost equally by the middle and older generation of teachers. The Kruskal-Wallis test did not show any differences between the different age groups of the teachers.

Gender and job satisfaction

In this section, we examined the correlations of job satisfaction and the gender of the teachers. In terms of average scores, men achieved M=5.56, SD=1.93 and SE=0.483, while women achieved M=6.08, SD=0.93 and SE=0.085. No statistically significant differences were found.

Table 5: The correlation of job satisfaction and gender

Independent Samples T-Test

	W	df	p
I am satisfied with my job	886.500	0.601	

Note. Mann-Whitney U test.

School type and job satisfaction

In addition to gender, we examined the correlation between job satisfaction and the type of school of the teachers. We found no statistically significant difference between the respective school types ($H(2) = 1.870$, $p = 0.393$). The average scores for the respective school types were very balanced in all cases. Considering the respective groups, teachers of bilingual schools were the most positive, while the lowest average score was achieved by teachers of the monolingual school.

Table 6: The correlation of job satisfaction and the type of school

Type of school	Mean	SD	N
bilingual	6.060	1.242	67
monolingual	5.900	0.568	10
Slovak language as a subject	6.000	1.000	59

Discussion and conclusion

The results presented herein showed a positive perception of the status and content of teachers' profession. Compared to the international surveys presented herein (Dolton 2018, OECD 2019), Slovak teachers in Hungary generally consider their profession to be significant in society. Despite the fact that according to the above-mentioned surveys, teachers in Hungary and Slovakia perceive that the social recognition of the teaching profession is critically low, in our case the profession of Slovak teacher in Hungary was perceived as socially important by 74.9% of respondents. Within the genus, more women than men, more older than younger. In the type of school, teachers of bilingual schools considered their profession to be the most important (compared to the other two types, however, this was negligible), within individual nationalities the perception of social significance was almost identical.

Respondents have a rather neutral view of financial recognition and legislative support, being even negative in some cases. It is quite logical that the teachers' financial recognition directly correlated with their gender, while the type of school did not have a significant influence on it. Men perceived it more negatively than women. Low social status is also a result of feminization (dominance of women among teachers), which is also related to low salaries and respect in society. Legislative support was perceived by men much more negatively than by women. As far as the school type is concerned, the differences in perception were not as large as in terms of gender; the most significant.

"The teaching profession is generally time-consuming and administratively demanding" – it were predominantly teachers of the monolingual school, who agreed with this statement, while teachers of schools where Slovak was taught as a subject, agreed least. A partial explanation to this is the teachers' preparation for the lessons held exclusively in Slovak, since the school declares that Slovak clearly dominates the educational process (Marloková-Szabóová, 2019).

The present results also show that gender does not have a significant impact on the job satisfaction of Slovak teachers in Hungary. The gender structure of teachers could be considered as a certain limitation of the analyses, but this corresponds to their real situation and copies women's share among teachers in Hungary, like in other countries, teachers are mostly female (OECD, 2017).

Our results also show that the type of school does not correlate with teachers' job satisfaction. In this context, the results obtained are in line with those of Sultana, Sarker and Shafillah (2017) and Nasima and Alam (2015), who claim that there was no significant difference between the job satisfaction of teachers at public and private schools and universities. Teachers of bilingual schools expressed the highest level of job satisfaction, so we can assume that a potential increase in the number of bilingual ethnic schools would lead to an increase in the job satisfaction of teachers and, possibly, to a more successful preservation of Slovak ethnicity in Hungary.

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Tax challenges for businesses: the specific situation of solar photovoltaic power plants constructed on the territory of another member state

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Abstract

Over the last decades, the manner of conducting a business and its locations have changed very much. These changes have many consequences, in different fields. One of these field is taxation, both from the direct and indirect taxes perspectives. It is obvious that the developments in conducting a business have not been accompanied by corresponding ones in the field of taxation, although many efforts are made in this regard especially in the last decade. These unbalanced developments give rise to various loopholes, inconsistencies, the result of which are either in the detriment of the taxpayer or of the states. A practical example in this regard is represented by the tax treatment of a business consisting in the construction of solar photovoltaic power plants on land and on water on the territory of other member states, under a services contract. Specifically, we will examine, whether, from the perspective of direct company taxation, such a power plant qualifies to be considered a permanent establishment and what would be the issues related to such a qualification. From the indirect taxation point of view, firstly, the question arises whether such a plant could be considered a fixed establishment and, secondly, irrespective of the fixed establishment aspect, whether the special rules on the supply of services related to immovable property apply. The analysis will show that there is no clear-cut answer and that the uncertain character of the applicable law, case-law can lead to different results; at the end of the day, the tax treatment highly depends on the specifics of the case and on the importance given to each factual component.

Keywords: solar photovoltaic power plants, direct taxation, permanent establishment, value added tax, fixed establishment, services connected with immovable property

1. Introduction

Solar photovoltaic power plants represent an important source of the renewable energy and they play a significant role in the process of changing our consumption habits to more environmentally friendly ones. This article does not address, however, environmental issues. The author shall focus on the possible tax aspects regarding the construction of such solar photovoltaic power plants, on land or/and water, under a services contract, on the territory of another member state.

The tax implications of such works will always depend on the circumstances of the case, therefore, prior to making a tax assessment, a thorough analysis of the facts has to be made, usually under the provisions of the services contract and of the situation on site. It is important to highlight that the tax assessment has to be made from all possible perspectives, both from the perspective of direct and indirect taxes, and in case of the former, both from the perspective of corporate and individual taxation.

Under this article, the author shall examine only the taxations issues related to direct and indirect taxation of the company acting as supplier of the construction/installation services. However, the implications related to individual taxation should not be disregarded and must be always taken into consideration in examining a cross border supply of services that implies a human resource.

Firstly, considering the nature of the supplied works, the manner in which they are carried out, the duration of the supplier's presence on the territory of another member state, a tax assessment should imply an analysis in order to determine whether the requirements for the creation of a permanent establishment ("PE") and a fixed establishment are met ("FE").

It should be noted that the concepts of permanent establishment and fixed establishment are not interchangeable. The permanent establishment is a structure specific to direct taxation, defined and explained in the OECD/UN Model Tax Conventions and their Commentaries. Fixed establishment is a VAT specific notion, being defined in the

Regulation implementing¹ the VAT Directive² and developed by the case-law of the CJEU. Moreover, while the permanent establishment is a concept of international tax law, borrowed by the EU tax legislation, the fixed establishment is an autonomous concept of EU.

Secondly, from the VAT point of view, is important to examine the nature of the services consisting in the construction of solar photovoltaic power plants, in order to determine their place of supply and all the consequences in this regard.

This paper shall focus on these three aspects. However, attention always should be paid to the facts of the case, because other tax issues might arise, such as, for example, the issue of composite supplies, from the VAT point of view, when the supplier provides also the materials/goods which are incorporated in the construction works.

2. Permanent establishment

The contractual provisions, defining the object, the rights and obligations of the parties, their responsibilities etc. are decisive in the process of analysing the creation of a permanent establishment. Various constellations can be imagined in this respect which cannot be covered entirely by the following analysis, but hopefully valuable insights can be provided through it.

2.1. Notion

The notion of permanent establishment is defined in art. 5 of the OECD/UN Model Tax Conventions, based on which states have concluded bilateral conventions on the avoidance of double taxation.

Essentially, the provisions of art. 5 of the OECD/UN Model Tax Conventions, regulate three types of permanent establishment: (a) the “basic-rule PE”: para. 1, with the examples from para. 2; (b) the “construction PE” generated by a construction site: para. 3 and (c) the “agency PE”: para. 5.

The other paragraphs of art. 5 of the OECD/UN Model Tax Conventions concern instances in which the presence in another state does not give rise to a permanent establishment (preparatory and ancillary activities, independent agents and the situation of controlled companies).

The author focuses her analysis on the provisions of art. 5 of the OECD Model Tax Convention and its related Commentaries due to their more developed character and also to the fact that the UN Model Tax Convention, as a matter of principle, follows the works of the OECD.

In order to determine whether, in a particular case, a permanent establishment is created, one has to resort to the interpretation provided to the articles of the OECD Model Tax Convention through its Commentaries, elaborated by the Committee on Fiscal Affairs of the OECD. Although their interpretative value is not binding, the authorities of the states resort to these Commentaries for the purpose of interpreting the bilateral conventions on the avoidance of double taxation, elaborated on the basis of the OECD Model Tax Convention.

From the author’s point of view, in cases which imply the supply of services consisting in the construction of solar photovoltaic power plants, the analysis of a permanent establishment creation, most of the times, should be made by focusing, primarily, on the “construction PE”, which has a more extensive and, at the same time, restrictive content than the “basic-rule PE” and functions, as a rule, as *lex specialis*. The same value of special rule must be attributed to the “construction PE” in relation to the “agency PE”, in cases in which it can be argued that the requirements for the existence of the last one are met, by virtue of the objects and activities that are distinctively provided for the former one.

2.2. The “construction PE”

The “construction PE” is defined in art. 5 para. (3) of the OECD Model Tax Convention through its alternative and even interchangeable³ objects (building site or construction or installation project) and the minimum period

¹ Council Implementing Regulation (EU) no. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, OJ L 77, 23.3.2011, p. 1–22.

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1–118.

³ Reimer, E. 2015. in Reimer & Rust (eds), *Klaus Vogel on Double Taxation Conventions*, 4th edn, Kluwer Law International BV, The Netherlands, article 5 at m.no. 196.

requirement of more than twelve months⁴. The human resource element is, therefore, immaterial, even if, in practice, a “construction PE” implies the use of workers.

While the minimum period reflects the requirement of permanence, to be observed also under the “basic-rule PE”⁵, the object of the “construction PE” represents the specific difference from other categories of permanent establishments, as the focus is shifted to the work performed by the taxpayer and its objects. Considering the last assertion, a “construction PE” could exist even in situations where a territorial stability lacks or the power of the taxpayer over the facilities is shared with other taxpayers⁶.

Point 50 from the Commentaries on art. 5 of the OECD Model Tax Convention provides an interpretation of the general object of a “construction PE” defined as one term: “building site or construction or installation project”. This interpretation, which has an exemplificative nature, helps the taxpayer in identifying the typical objects and the activities that are in the scope of this type of permanent establishment. From the wording of point 50 from the Commentaries on art. 5 results that the typical objects, on one hand, include structures fixed on the ground (buildings, roads, bridges, canals, pipe-lines and other similar) and, on the other hand, complex machines, installed in an existing building or outdoors.

According to this classification, a solar photovoltaic power plant on land can be included in the scope of typical objects of a “construction PE” because it is fixed on the ground. The question is whether a power plant on water can be included in this scope, in cases where the solar panels are not fixed either to the bottom of the water or to its shores. In the authors opinion, such a classification should not be excluded, considering the rationale of the “construction PE”. Moreover, such a plant on water can be classified as a complex machine installed outdoors.

The identification of the object of a “construction PE” is not sufficient, as it does not lead to a permanent establishment *per se*. As it was mentioned above, an utmost attention must be given also to the works executed by the taxpayer. Examples of activities that are in the scope of a “construction PE” include constructions, renovations, excavating, dredging, installation of a complex machine⁷, therefore, actions that amend/transform substantially the object of work, here being included also important reparation works. Simple maintenance and redecoration actions are excluded, as well as other activities that are not significant enough to amount to a substantial intervention on the buildings. Works executed under a guarantee shall also qualify, depending on the nature of the activities. However, the work provided during a guarantee should not be included in the computation of the minimum period requirement, but, depending on the period of execution, guarantee works could lead to the creation of a distinct permanent establishment⁸, regardless if the previous works resulted in a permanent establishment.

In addition, pursuant to the OECD, immaterial actions such as on-site planning and supervision are included, but it seems that such activities are restricted to the erection of a building. Therefore, based on the OECD Commentaries it is arguable whether on-site planning and supervision activities related to the construction/installation of solar photovoltaic power plants could give rise to a PE under the special “construction PE” clause, due to their improbable classification as buildings. By employing the concept of “building” separately from other categories of constructions (roads, bridges etc.), it results that this notion is used in a restrictive sense, as “a structure with walls and a roof, such as a house or factory, to give protection to people, animals, or things⁹”.

The personal scope, i.e., the persons, structures that could create a “construction PE” on the territory of another state, is defined through the objects and the activities covered by this type permanent establishment: companies, persons carrying an independent activity, any other enterprises irrespective of their legal form, including partnerships¹⁰. It is the author’s opinion that in the personal scope should be included also companies and individual persons carrying such activities illegally or without a proper authorisation, because the exclusion of such categories of persons would lead to a more favourable tax treatment of the non-compliant taxpayers.

It is of no relevance if the taxpayer acts as a direct contractor or a subcontractor, without any relation to the client. In situations of subcontracted works, both the general contractor and the subcontractor could create distinct permanent

⁴ The conventions on the avoidance of double taxations concluded between states usually provide for lower minimum periods, e.g., 6 or 9 months.

⁵ The permanence requirement is considered to be fulfilled in case of a basic-rule PE “where a business had been carried on in a country through a place of business that was maintained for less than six months”. OECD. 2017. *Model Tax Convention on Income and on Capital: Condensed Version 2017*. OECD Publishing, ISBN 978-92-64-28795-2, http://dx.doi.org/10.1787/mtc_cond-2017-en, commentary on article 5 para. 1, point 28.

⁶ Reimer, E. 2015. in Reimer & Rust (eds), *Klaus Vogel ...*, m.no 179, 181 and. 198.

⁷ OECD (2017), *Model Tax Convention ...*, commentary on article 5 para. 3, point 50.

⁸ *Ibidem*, point 55.

⁹ Definition of building from the Cambridge Business English Dictionary © Cambridge University Press.

¹⁰ OECD. 2017. *Model Tax Convention ...*, commentary on article 5 para. 3, point 56.

establishment, if the minimum period requirement is observed by them individually, even if only the subcontractor executes actually the activities covered. In such a scenario, the general contractor qualifies for a “construction PE”, subject to the requirements of the legal possession of the site, access control, the overall responsibility of the works¹¹. The question arises whether a general contractor shall qualify as a “construction PE” in cases in which the responsibility of the management of the solar photovoltaic power plant, *lato senso* (including the organisation of work, the responsibility of the workers safety, the provisions of the necessary equipment, the testing activities), is shifted to the subcontractor. It is the author’s view that such a scenario would generate qualification difficulties, because it is hard to imagine that the general contractor would have no responsibilities over the construction site, considering the inherent legal rights and obligations in its relation to the client.

The logical step, after the determination of the material and, implicitly, of the personal scope of the “construction PE”, is to establish whether the minimum period requirement is observed. The OECD Model Tax Convention provides for a minimum period requirement of more than twelve months, but the conventions on the avoidance of double taxation concluded between states may provide for different minimum periods, depending on their agreement (6,9 or even 12 months). If the condition of duration is not met, no “construction PE” is created, even if there will be an office or workshop, for example, associated with the construction activity which would meet the requirements of other types of permanent establishment¹².

The minimum period requirement is of an objective character, i.e., irrespective of the taxpayer’s initial intention to maintain or not to maintain the site or the project for a certain period and of the causes that led to the prolongation of the initial prefigured period. Moreover, this period is calculated in months, without being linked to a calendar year, as it is provided for the computation of the 183 days rule under some of conventions on the avoidance of double taxation. It is not clear how a calendar month should be calculated, but considering that the temporary interruptions are disregarded, it can be assumed that even months with several days of work or with no work at all should be taken into consideration.

Evidence of the fact that the minimum period requirement has an objective character is emphasised by its starting and ending points. As such, the minimum period requirement begins to be calculated from the moment the work starts, including the period during which preparatory work is carried out (e.g., building planning office)¹³. Temporary (e.g., lack of materials or staff) or seasonal interruptions, including those caused by weather conditions, will have no effect on the calculation of this period. The period of existence of the site will be calculated until the completion of work, taking into account also the period during which any tests, rectification works are carried out or during which the equipment is removed from the site, if any, or until the moment of a definitive abandonment of construction¹⁴.

The “construction PE” is considered to exist from the first month of the minimum period requirement, and not from the day after the expiration of this period. Therefore, if the minimum period requirement is exceeded, an *ex-post* examination will require a retroactive qualification of a permanent establishment¹⁵, with all the tax pertaining consequences.

Difficulties might arise in cases in which the supplier of such works enters in more than a contract having as object the construction of more than one power plants on the territory of the same state, similar or not (on land and on water), in different capacities (general contractor and subcontractor). In such situations, provided that the object and the related activities requirements are fulfilled, the questions are whether an aggregation of the sites or projects has to be made, more precisely of the time spent on previous sites and projects.

As a rule, the minimum period requirement should be applied to each individual site, excepting the situations where the substance-over-form principle would indicate that a series of sites or projects should be considered as a one site or project, as the OECD recommends in point 51 of the Commentaries to art. 5 para 3 of the Model Tax Convention, by employing the “coherent whole commercially and geographically” expression. By applying this principle, states are encouraged to disregard the abusive practices of the taxpayers, which, by using different tax planning practices, avoid the creation of a “construction PE”.

In the author’s opinion, the difference between typical objects should, as a rule, result in different and distinct project, as long as they do not form a commercial and geographical unity. A difference in the nature of the activities, as long as they concern the same typical object of work, is of no importance. From this perspective, the question arises whether the solar photovoltaic power plants on land should be considered as different projects from those constructed/installed on water, in cases in which they are in the benefit of the same client, under different contracts,

¹¹ *Ibidem*, point 54.

¹² *Ibidem*, point 49.

¹³ *Ibidem*, point 54.

¹⁴ *Ibidem*, point 55.

¹⁵ *Ibidem*, commentary on art. 5 para. (1), point 34.

and whether the geographical location of the sites is relevant. Separate objects and contracts would point the fact that the commercial unity is lacking and that a possible geographical proximity of the sites is of no relevance. The same argument cannot be upheld in situations in which the projects have as object the construction of similar power plants, i.e., only on land or only on water, as illustrated below.

However, the most difficult is to determine the necessity of an aggregation in cases in which the difference is represented at the level of the supplier, of the client or from a geographical perspective, or a mixed combination thereof. Until the 2017 amendment, the Commentaries to the OECD Model Tax Convention have argued in favour of the aggregation or more sites and projects with regard to the works of one supplier for two or more clients¹⁶ and even with regard to a geographical aggregation¹⁷. Therefore, the fact that a project is split between different clients, even unrelated, could be immaterial. Also, from the geographical perspective, for example, it could be immaterial if a service contractor has undertaken the execution of solar photovoltaic power plants on different parts of a territory, if all the projects are covered by the same contract, concluded with the same client, or with related parties and if the works are coordinated from the same place by the same supplier.

Through the amendments made in 2017, the Commentaries also address the possibility of aggregation in cases in which more than one supplier is involved¹⁸. Pursuant to the relevant factors indicated by the OECD, the fact a contract, covering different activities, is concluded with the same client by affiliated suppliers, at the same time or subsequently, should not prevent the aggregation and, therefore, the creation of a “construction PE”.

As a conclusion, the “construction PE”, applied to the particular case of solar photovoltaic power plants, reveals the difficulties of excluding such structures from its scope, considering the nature of the activities and their inherent duration. In addition, possible tax planning strategies put in place by the taxpayers in order to avoid the cumulations of periods are challenged by the anti-abuse provisions and recommendations as to their application from the OECD.

In reality, as the author tried to illustrate above, the practice does not always find a clear-cut answer in the definition of the “construction PE” and the interpretative Commentaries of the OECD in this regard.

3. VAT issues

3.1. Fixed establishment

The concept of fixed establishment is specific to the VAT field. Although both the VAT Directive (2006/112/EC) and the Implementing Regulation (282/2011/EU) use the concept of fixed establishment, a definition is to be found in art. 11 of the Implementing Regulation, representing an illustration of CJEU’s case-law on this concept.

The existence of a fixed establishment is of importance from the point of view of the place of supply of services, under the general rules. As such, if a fixed establishment is deemed to exist, for the services supplied by it, the taxable person would be regarded as established on the territory of the state where the fixed establishment is situated. In such a case, if the recipient of the service is established in the same state where the fixed establishment is located, the supply would qualify as a domestic one (with VAT) and not as intra-Community or extra-EU one (exclusive of VAT), even if the same rule of determining the place of supply of services applies: business to business (B2B). Similarly, if a fixed establishment is the recipient of the services and is located on the territory of the same member state with the supplier, the fixed establishment will have to pay and then deduct the VAT invoiced by the supplier, instead of applying the reverse charge mechanism excluding a VAT payment.

The ECJ case-law on this subject reveals the following requirements that have to be fulfilled, on a cumulative basis, in order for a fixed establishment to exist:

- (a) „a sufficient degree of permanence and an appropriate structure in terms of human and technical resources”.
- (b) „the ability of the fixed establishment to receive the services supplied and to use them for its own business needs/to provide the services”.

It should be pointed out the fact that the requirements mentioned above are analysed on case-by-case basis, which makes this concept highly uncertain.

With regard to the specific situation of solar photovoltaic power plants, first of all, it is not certain when such a plant will have a “sufficient degree of permanence”, in terms of days, months or years and how relevant are the temporary, seasonal interruptions in this regard¹⁹. Moreover, there is no indication whether the sufficient degree of

¹⁶ *Ibidem*, commentary on art. 5 para. (3), point 51.

¹⁷ *Ibidem*, commentary on art. 5 para. (3), points 51 and 57.

¹⁸ *Ibidem*, points 52 and 53.

¹⁹ CJEU, 4 July 1985, Case 168/84, *Gunter Berkholz v Finanzamt Hamburg-Mitte-Altstadt*, ECLI:EU:C:1985:299.

permanence test should be examined for each project/site or for all the projects/sites contracted by the services provider on the territory of another member state, regardless of their commercial and geographical liaisons and objects.

Then, in terms of the existence of an appropriate structure of human and technical resources, a contract under which the service supplier undertakes the obligation to perform the services with its employees and equipment should not raise any question. A different scenario is when the services supplier does not use its employees and equipment, but rather leased ones. The fact that the service supplier does not use resources of its own does not exclude *per se* the creation of a fixed establishment. However, it is important to determine whether the supplier of construction services “has the right to dispose of those human and technical resources in the same way as if they were its own”²⁰, an analysis which might imply a degree of subjectivism.

From the perspective of the second condition, it must be established whether the fixed establishment has the ability to provide the construction services on an independent basis²¹, i.e., whether the service supplier has a management team/person on site entitled to make the necessary decisions. The fulfilment/nonfulfilment of this requirement is difficult to be determined and often is overlooked by the tax administrations. The complex scenarios may involve, for example, a general contractor to whom belong the management decisions and one or more subcontractors which bring the human and technical resources elements. In such situations, arguments both in favour and against the creation of a fixed establishment, either belonging to the general contractor or even to the subcontractor, can be upheld, on a case-by-case basis.

3.2. Place of supply of construction services

Considering the nature of the works related to the construction/installation of solar photovoltaic power plants, an important aspect that needs to be analysed, from the VAT point of view, is whether these works represent services connected with immovable property, which, under art. 47 of the VAT Directive, have the place of supply in the member state where the immovable property is located.

Where this special rule applies, the supplier must either invoice the services with the VAT of the member state where the immovable property is located and most probably register for VAT purposes in that member state or, if the member state in question has implemented the provisions of art. 194 of the VAT Directive, the person liable to collect the tax will be the beneficiary, under the reverse charge mechanism. In this last case, the supplier has no obligation to register for VAT purposes in the member state where the immovable property is located.

The definition of the “immovable property” concept is provided in art. 13b of the Implementing Regulation (282/2011/EU), while art. 31a from the same Regulation provides further guidance regarding the services connected with immovable property. Also, important guidance in this regard is provided through the Explanatory notes of the European Commission, from which the following are relevant for the purpose of this paper.

First of all, in order to apply the special rule regarding the place of supply of services connected with immovable property, the service must be linked to one or more specific immovable property, i.e., the service must relate to one or more identified or clearly identifiable immovable property²².

Then, in order to be considered as related to immovable property, a service must have a connection with it. It should therefore be assessed, first, whether the service refers to an asset that can be considered immovable property [one of those listed in art. 13b(a) to (d) from the Implementing Regulation]. Secondly, if the answer to the first question is in the affirmative, it should be assessed whether there is a sufficiently direct link between that service and the immovable property to which it relates, so that it is considered a service related to immovable property, using the criteria of art. 31a of the Regulation²³.

In order to determine the connection, the provisions of art. 31a of the Implementing Regulation are relevant. Art. 31a para. (1) provides guidance on services that can be considered as connected with the immovable property. Art. 31a para. (2) provides a list of examples of services that should be considered as connected to immovable property. Art. 31a para. (3) provides a list of examples of services which are not to be considered as being connected to

²⁰ CJEU, 7 April 2022, Case, C-333/20, *Berlin Chemie A. Menarini SRL v Administrația Fiscală pentru Contribuabili Mijlocii București - Direcția Generală Regională a Finanțelor Publice București*, ECLI:EU:C:2022:291, paras. 41 and 45.

²¹ CJEU, 17 July 1997, Case C-190/95, *ARO Lease BV v Inspecteur van de Belastingdienst Grote Ondernemingen te Amsterdam*, ECLI:EU:C:1997:374.

²² European Commission, 2015. *Explanatory notes on EU VAT place of supply rules on services connected with immovable property that enter into force in 2017 (Council Implementing Regulation (EU) No 1042/2013)*. point 20.

²³ *Ibidem*, points 37-39.

immovable property²⁴. Art. 31a para. (1) functions as a residual rule, in cases in which a service cannot be included in the lists of paras. (2) or (3).

Considering this, in the author's view, the construction services may be included in the scope of art. 31a(2)(d), which covers "the construction of permanent structures on land, as well as construction and demolition work performed on permanent structures such as pipeline systems for gas, water, sewerage and the like."

Art. 31a(2)(d) refers to two types of services: on the one hand, the construction of permanent structures and, on the other hand, the construction and demolition works carried out on existing permanent structures and provides explicit examples of several permanent structures, referring to pipeline system for gas, water, sewerage. As is results from the wording of the provision, the list is not exhaustive. Other examples of permanent structures covered by that provision include cooling and heating systems²⁵.

Therefore, in so far as a solar photovoltaic power plant can be regarded as "permanent structures on land", its construction/installation constitutes a service connected with immovable property.

It is questionable whether the solar photovoltaic power plants on water, especially if the power panels are not anchored in land, could qualify as a service connected with immovable property under this provision. In such a case the services might qualify as connected with immovable property under the residual provision of art. 31a(1), specifically under letter a). Art. 31a(1)(a) provides that services connected to immovable property **must be derived from immovable property which is a constituent element of the service and is central and essential for the services provided**. Such a service **cannot be provided without the underlying immovable property**, which implies that it must be provided in relation to a specific immovable property. **The result of the service must come from the immovable property concerned. In other words, the service is derived from the immovable property where that property is used to provide the service, provided that the property constitutes the main and dominant element of the service provided**²⁶.

From the author's point of view, services related to the construction of both on land and on water solar photovoltaic power plants meet the conditions of art. 31a(1)(a), considering that the immovable property is important for their construction, but it is questionable whether land or water is the dominant or the main element for the provision of these services.

4. Conclusions

The author's endeavour had the purpose of showing the readers that doing business abroad requires an in-depth analysis of the related tax implications. The specific example of a supplier of services consisting in the construction of solar photovoltaic power plants was taken both considering the increase of such services in the context of their need for environmental purposes and their ability to raise less questions.

However, as the author has tried to show, the later assertion is relative. From the perspective of the direct taxation, despite the more developed definition of the permanent establishment and guidance provided by the OECD, there are still a number of issues to which cannot be provided a certain answer, due to their interpretative nature.

Significant uncertainties arise regarding the qualification of a construction project as a fixed establishment, from the VAT point of view, especially when determining the sufficient degree of permanence and the ability of the fixed establishment to provide the services. The provisions regulating the place of supply of services connected with immovable property are clearer. However, the determination of the place of supply is not sufficient and does not exclude the issue of the fixed establishment and vice-versa, a correct VAT assessment requiring the analysis of both.

While it is obvious that detailed rules cannot be enacted so as to cover all the possible practical situations, it is also evident that the tax regulations are not updated to the current practices and transactions, increasing the legal uncertainty both for the taxpayers and for the tax administrations.

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²⁴ *Ibidem*, point 124.

²⁵ *Ibidem*, point 172.

²⁶ *Ibidem*, point 139.

Business analysis of a privately-owned pharmacy institution

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Abstract

The subject of this paper is to identify the specifics of business analysis with a focus on pharmacy institutions. In this paper, the use of actual financial data in financial ratio analysis as a segment of business financial analysis is demonstrated. After the outbreak of the COVID-19 pandemic, more attention has been focused on pharmacy facilities. A financial analysis was performed for a pharmacy operating in the private sector. The aim of this paper is to present the specifics of the business analysis of the pharmacy with a focus on financial aspects (financial performance).

Keywords: privately-owned pharmacy institution, business analysis, financial analysis, specifics

Introduction

Pharmacists in the community no longer combine medications. There has been a big change in their role. Now their main function is based on ensuring a secure supply of medicines (Jesson & Bissell, 2006). In today's healthcare environment, not only do pharmacists need to be drug experts and highly educated clinicians, but they also need to understand that healthcare, and pharmacy, in particular, is a job that requires effective managers.

Using financial information to track only the individual success of a company, without careful customer orientation, decision making and market analysis, can lead to the ultimate failure of a pharmacy establishment. While good financial management decisions for customer service issues can have a positive impact on business, nothing goes so far as honest service and customer care.

Users of financial statements may consist of a multitude of individuals. However, they are widely classified as internal or external users. This could include individuals such as:

- * Owners who monitor the company's profitability (internally);
- * Managers who make decisions in the first place that affect the business of different departments and divisions (internal);
- * Lenders, current shareholders and potential investors who assess the financial strength of the company to make appropriate decisions in this regard until borrowing or investing money in the company (externally).

It is necessary to monitor the activities and accounting systems for the integrated organizational units responsible for generating performance evaluation reports. Of particular importance for the sustainable operation of a pharmacy is the planning, organization and control of resources to ensure that the goals of the profit-oriented organization are met. An adequately positioned accounting system whose product is represented by financial statements (balance sheet, income statement, cash flow statement) has a particularly important role in this. Managerial accounting is used to refer to various reports and supplementary information provided to internal users of accounting system information.

Pharmacy managers know that understanding the external operating environment is key to a company's success. Managers routinely examine the work environment to assess the strengths, weaknesses, opportunities and threats of the company (SWOT). However, both internal and external SWOT information is not sufficient to fully understand the business. To assess the overall business, in addition to considering the competitiveness, internal and external business environment, a detailed financial analysis is required. It can provide necessary and valuable information about an internal business. When examining past and present information, trends can be identified that help the manager of the pharmacy in making decisions regarding the appropriate allocation of resources and the overall direction of the business. For example, studying changes in sales over a period of several years can help a pharmacy

manager make decisions about staffing, inventory, or long-term capital investment. As sales grow steadily over time, the manager will have more confidence in hiring additional staff to meet customer service (Herist *et al.*, 2011).

The paper is organized as follows. The first chapter is dedicated to reviewing the literature in the field of business analysis with a focus on financial analysis. The second chapter presents the data and methodology used. The results of the research and discussions are presented in the third chapter. Concluding remarks are given at the end of the paper.

2. Literature review

The business analysis deals with the assumptions and rules of sound thinking, first, of the company as an object, and then as an active entity that operates successfully for a long time (Tintor, 2009). Analysis of financial statements (financial analysis), as part of business analysis, is a particularly important activity when managers have complete information about company strategies, and a number of institutional factors make it unlikely to fully disclose this information to capital suppliers (Knežević *et al.*, 2019). There are various business analysis techniques: Problem analysis (PA), Root cause analysis (RCA), Duration Analysis (DA), Activity-based costing (ABC), Benchmarking (BM), Outcome analysis (OA), Technology analysis (TA) and Business process analysis and activity elimination (BP&AE); (Grant, 2016). The results obtained by applying financial ratio analysis can be used for the purpose of benchmarking, i.e., for the purpose of searching for best practices that lead to exceptional improvements (Anand & Kodali, 2008).

It is the accounting information system that produces financial information, and its product is financial statements as a source of financial information. In order for this system to give its maximum, it is important that it is digitally dimensioned (Knežević *et al.*, 2021a). As pointed out by Obradović *et al.* (2021), the public availability of financial statements of companies is a prerequisite for monitoring their business. The literature on financial statement analysis attempts to improve fundamental analysis and identify market inefficiencies with respect to financial statement information (Jackson, 2021). Companies use the DuPont model to analyse business profitability, and this model includes three components: net profit margin, asset turnover and financial leverage. This model is based on the relationships between these three components (Mishra *et al.*, 2009).

Financial statement analysis applies analytical tools and techniques to financial statements and data to perform measurements and relationships that are significant and useful for decision making (Bernstein, 1993). Financial analysis involves the use of quantitative information from the financial statements, i.e., the income statement, balance sheet and cash flow statement to arrive at a relationship between the items reported by the company in accordance with the accounting standards for reporting. By doing this, the company is able to assess its decisions during the financial year or a given period and consider its strengths, weaknesses and areas that need attention in the organization (Knežević *et al.*, 2021 b). In addition to describing what is the focus of financial analysis, it can be seen as a discipline that uses analytical tools to identify trends and relationships in financial statements and other financial data and information, to provide an adequate platform for the diagnostic process aimed at monitoring and forecasting information. (Knežević, *et al.*, 2019).

As a frequently used managerial technique, ratio analysis is considered an important technique for analysing financial statements. Financial analysis is one of many tools that are useful in valuation because it assists the CFO in measuring returns and risks. There are so many different financial indicators analogous to the possible combinations of financial items that appear in the balance sheet, income statement and cash flow statement that are parts of the annual statement. As Tan *et al.* (1997) state, the popularity of ratio analysis is often attributed to its ease of use and the fact that it controls size so that comparisons between companies and within companies can be meaningfully made.

Ratios can be classified in different ways to meet a specific purpose. In general, the purpose for which ratios are used and the type of data available determine the nature of the analysis. One of the divisions is the following.

- 1) Liquidity ratios are used to test the company's ability to meet its obligations as they fall due, i.e., to pay received obligations on invoices, to cover operating costs and unexpected cash needs.
- 2) Solvency ratios that serve as a measure of the company's ability to respond to long-term liabilities.
- 3) Efficiency ratios which determine how efficiently a company uses its resources.
- 4) Profitability ratios, which observe the relations of various forms of earnings with total assets or capital and shows the earning capacity of the company.

2. Data and methodology

The case study applied in this paper is based on the data of a pharmacy institution operating in the private sector in Serbia. This is the HEALTH INSTITUTION PHARMACY "ZDRAVLJE LEK" KRAGUJEVAC, founded on

December 26, 2014. The activity is "retail of pharmaceutical products in specialized stores - pharmacies". The institution was registered as small for the entire observed period (according to the classification on categorization. In its offer, in addition to the usual range of products, "ZDRAVLJE LEK" also has a line of products of auxiliary medicinal products, as well as top quality cosmetic products that are produced in the Republic of Serbia. They are present at 14 locations throughout Serbia, and further expansion is planned.

The paper uses ratio analysis, which is often applied in the performance analysis of profit-oriented organizations. For the analysis, financial data from the financial reports of the pharmacy institution "ZDRAVLJE LEK" for the period from 2016-2020 were used.

The following table presents the number of employees by year, as well as the size of the company. The largest number of employees was recorded in 2020. The pharmacy institution was classified as a small enterprise in all observed years.

Table 1. Data on the number of employees and the size of the pharmacy institution ZDRAVLJE LEK for the period from 2016-2020

Name	2016	2017	2018	2019	2020
Source: author's work based on statistical data					
Number of employees (based on working hours)	19	12	31	46	49
Company size	2	2	2	2	2

3. Research results and discussions

For the needs of financial analysis, the analysis of liquidity, solvency, profitability and efficiency was performed. The list of financial ratios used comes from three sources: Foster (1986), Koh *et al.* (1989) and Knežević *et al.*, 2019.

(a) Liquidity analysis

The liquidity of a company is important for sustainable business. The liquidity of the company represents the ability of the company to settle due liabilities (observed in the shorter term), while the liquidity of assets is the speed of converting assets into cash. The following table presents three types of financial ratios: current liquidity ratio, quick liquidity ratio and cash liquidity ratio for the period from 2016-2020.

Table 2. Liquidity ratios (2016-2020)

Name	2016	2017	2018	2019	2020
Current liquidity ratio (General liquidity ratio)	1,15	1,01	1,11	1,02	1,03
Quick liquidity ratio (Rigorous liquidity ratio)	0,39	0,44	0,56	0,46	0,59
Cash liquidity ratio	0,12	0,03	0,23	0,03	0,25

Source: author's work based on financial information

As can be seen based on the calculated values of the ratios in Table 2, the current liquidity ratio is below the desired orientation norm of 2:1, but is in line with the lower limit of 1:1. The highest value of current liquidity ratios was reached in 2016, where every dinar of short-term liabilities was covered by 1.15 dinars of current assets. There are insignificant variations of this indicator in all observed years (2016-2020). The quick liquidity ratio provides a more pervasive measure of liquidity than the current liquidity ratio. The accelerated liquidity ratio is below 1, which should attract the attention of financial managers, who should analyse the causes of this trend over the years. The highest value of the quick liquidity ratio was observed in 2020, where each dinar of short-term liabilities was covered by 0.59 dinars of monetary assets (current assets less inventories). The cash liquidity ratio shows approximate values by years.

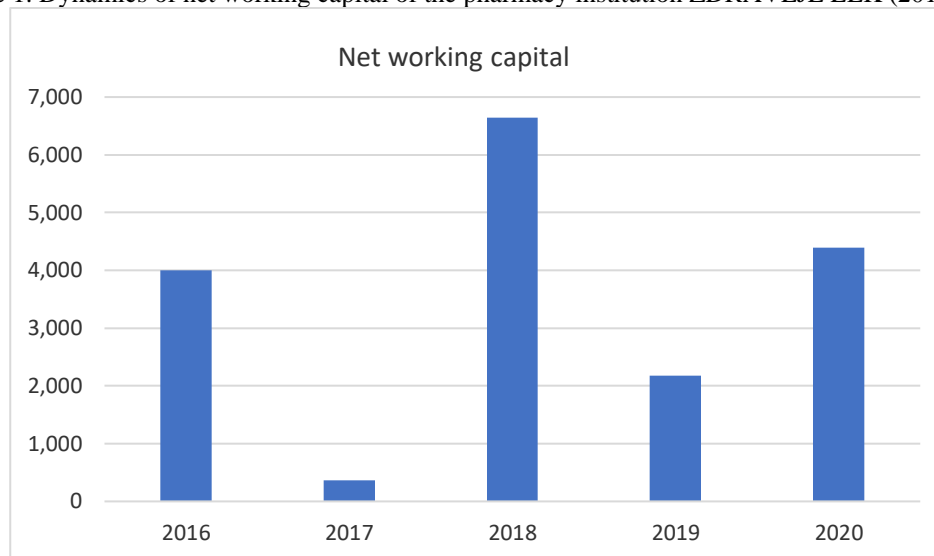
Net working capital is presented in the following table and its trend in Figure 1 for the observed five-year period (2016-2020).

Table 3. Net working capital of the pharmacy institution "Zdravlje Lek" (in 000) for the period (2016-2020)

Name	2016	2017	2018	2019	2020
Net working capital	3.998	370	6.641	2.179	4.389

Source: author's calculation based on financial data

Figure 1. Dynamics of net working capital of the pharmacy institution ZDRAVLJE LEK (2016-2020)



Source: Table 3

Net working capital is positive in all observed years and shows variations (Figure 1). The highest value of net working capital was recorded in 2018, and the lowest in 2017. It is used to measure the short-term liquidity of organizations, and can be used to gain an impression of the ability of company management to use funds efficiently (without compromising liquidity), and can be used to assess the ability of profit-oriented organizations to grow rapidly.

(b) Solvency analysis

The financial ratios presented in the following Tables 4 and 5 were used for solvency testing, as well as the dynamics of solvency ratios showing the ratio of assets and sources of assets in Figure 2.

Table 4. Solvency ratios of the pharmacy institution ZDRAVLJE LEK (ratio of assets and sources relatively expressed - in%); (2006-2020)

Name	2016	2017	2018	2019	2020
Financial leverage	9,45	6,91	7,03	10,65	8,98
Interest coverage ratio	3257	125,25	-41,4	-34,8276	-32,58
Indebtedness ratio	0,87	0,85	0,86	0,93	0,86

Source: author's work based on financial information

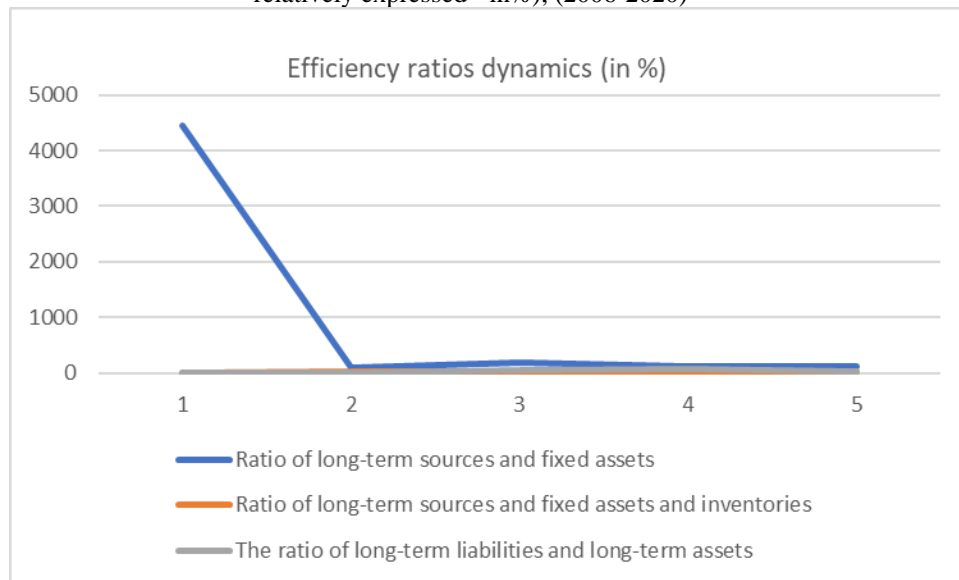
As can be seen from the previous table, the financial leverage ratio and the interest coverage ratio show fluctuations by year, while the indebtedness ratio is fairly even with the exception in 2019. The ratio of interest coverage by the company earnings, which is especially important for analysts in banks, reached its highest value in 2016, while in the period 2018-2020 its values are negative.

Table 5. Solvency ratios of the pharmacy institution ZDRAVLJE LEK (ratio of assets and sources relatively expressed - in%); (2006-2020)

Name	2016	2017	2018	2019	2020
Ratio of long-term sources and fixed assets	4445,65	105	179,44	110,69	113,95
Ratio of long-term sources and fixed assets and inventories	19,91	24,54	36,75	30,07	39,66
The ratio of long-term liabilities and long-term assets	0	0	61,19	70,09	37,80
The ratio of total liabilities and (equity) principal	662,10	553,94	640,82	1351,16	606,82

Source: author's work based on financial information

Figure 2. Dynamics of solvency of the pharmacy institution ZDRAVLJE LEK (ratio of assets and sources relatively expressed - in%); (2006-2020)



Source: Table 5

(c) Profitability analysis

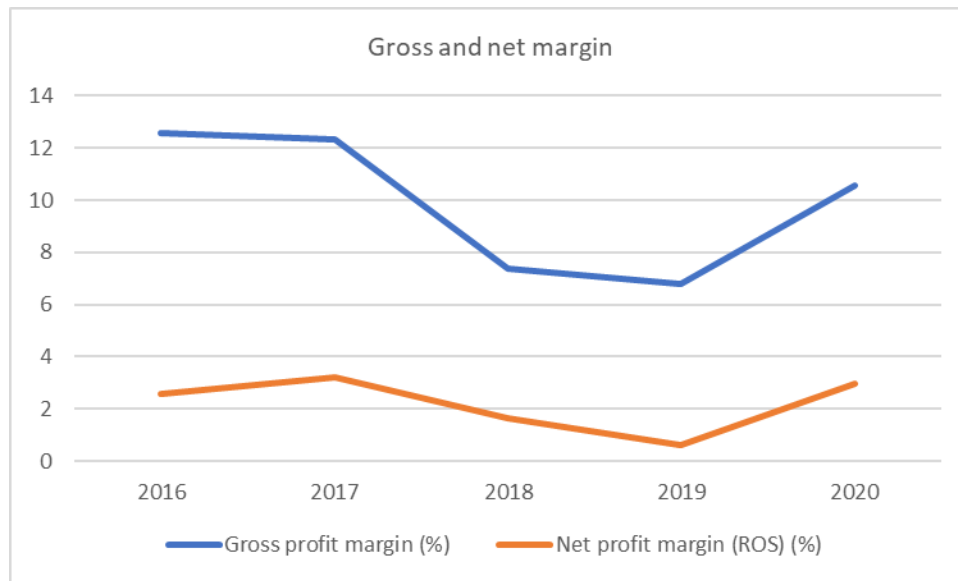
Successful firm managers must understand the determinants of profitability and have an overall long-term or strategic focus on management (Melvin *et al.*, 2004). When considering the profitability of a profit-oriented organization, it is important to consider all possibilities for its improvement (Mitrović *et al.*, 2021). Identifying determinants that affect the profitability of the company is an important task of company management (Milašinović & Mitrović, 2020). Companies face numerous challenges in their business (Jovanović *et al.*, 2017). For the analysis of profitability, the following financial ratio was calculated (gross and net profit margin - Table 6); rate of return on capital and assets - Table 7). In addition, forms of earnings from the official income statement form and some alternative financial measures are presented (Table 8). Further, the dynamics of gross and net margins, ROA and ROE, different forms of income from the income statement and some alternative financial measures are presented in Figures 3,4 and 5.

Table 6. Gross and net profit margin of the pharmacy institution "ZDRAVLJE LEK" (in%); (2016-2020)

Name	2016	2017	2018	2019	2020
Gross profit margin (%)	12,56	12,32	7,37	6,79	10,58
Net profit margin (ROS) (%)	2,59	3,20	1,65	0,61	2,95

Source: author's work based on financial information

Figure 3. Dynamics of gross and net margin of the pharmacy institution ZDRAVLJE LEK (2016-2020)



Source: Table 6

One of the most important operating ratios is the percentage of gross margin, which is calculated as gross profit divided by net sales (Table 6). This ratio is often cited by market analysts when there is a change, even a 0.5-1% change, positive or negative. Understanding the factors that can affect this ratio will help pharmacy managers understand their business and make better decisions. Gross profit is determined as total net sales less the cost of goods sold (COGS). When there is a change in the percentage of gross margin, the main factors are either reduced sales prices due to increased market competition or increased inventory costs. Certainly, all this requires a more detailed analysis.

The highest gross margin was recorded in 2016 of 12.56%, which shows that the pharmacy, after deducting the purchase costs, earned 12.56 dinars for every 100 dinars of sales revenue. The highest net margin was realized in 2017 of 3.20%, which indicates that for every 100 dinars of net sales revenue, 3.20 dinars of net profit was realized. Both gross and net margins show variations over the years.

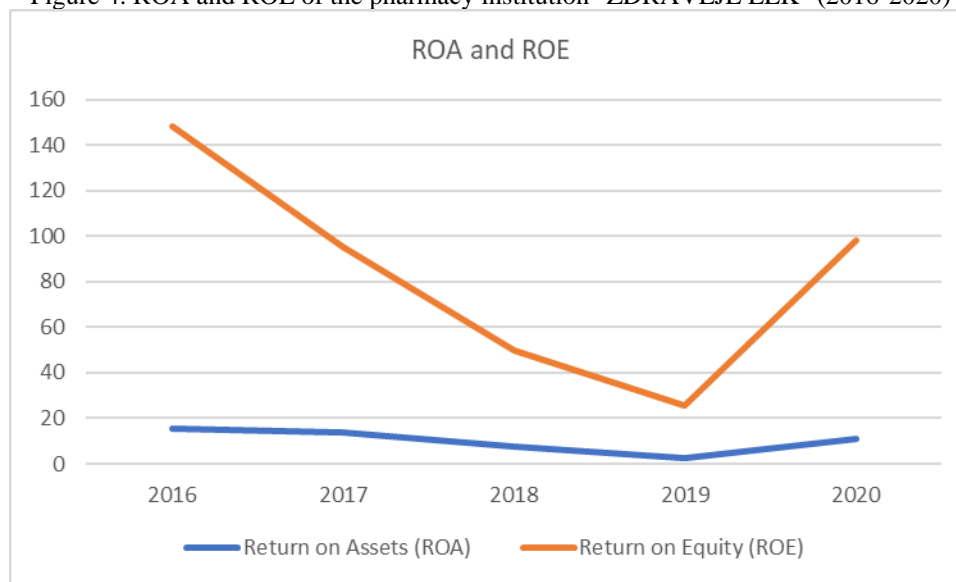
Profitability is what should show how profitable investments are (looking at total assets and capital). ROE measures return on equity. Shareholders invest capital to achieve a return on invested money and this ratio shows how well a company invests shareholder money. It is used by investors and senior managers. Return on equity is a ratio that represents more than the estimated profit; it is a measure of efficiency (Knežević *et al.*, 2019). The rate of return on assets and the rate of return on capital are presented in Table 7 for the period 2016-2020.

Table 7. Return on assets and rate of return on equity in% (2016-2020)

Name	2016	2017	2018	2019	2020
Return on Assets (ROA) rate	15,65	13,77	7,80	2,42	10,91
Return on Equity (ROE)	148,19	95,16	49,88	25,73	98,03

Source: author's work based on financial information

Figure 4. ROA and ROE of the pharmacy institution "ZDRAVLJE LEK" (2016-2020)



Source: Table 7

As can be seen from Table 1 and Figure 1, the rate of return on assets shows variations over the years, with a sharp decline in 2019. The standard measure of financial success for any business, farm or other enterprise is the return on equity -ROE (Melvin *et al.*, 2004). The rate of return on capital also shows variations by year, with the lowest recorded value in 2019. The highest value of both ROA (15.65%) and ROE (148.19%) was achieved in 2016.

For a more detailed insight into the achieved periodic results, the following table was prepared:

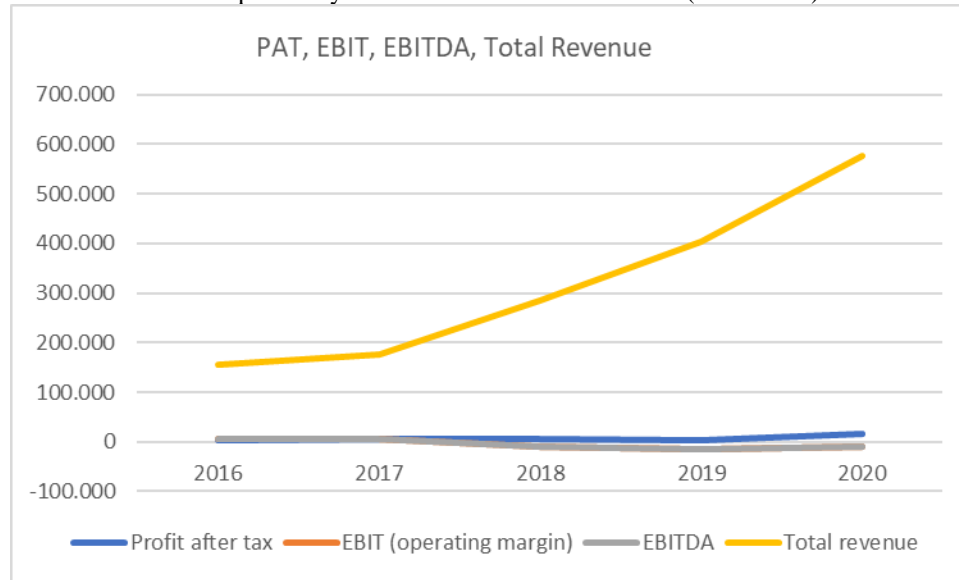
Table 8. Forms of earnings from the income statement and alternative measures of the pharmacy institution "ZDRAVLJE LEK" for the period 2016-2020 (in 000 dinars)

Name	2016	2017	2018	2019	2020
Profit after tax	4.030	5.643	4.403	2336	15.762
EBIT (operating margin)	6514	6.513	-10.764	-14140	-11.045

EBITDA					
	6.531	6.562	-10.540	-13.681	-10.146
Total revenue					
	155.830	176.568	284.855	402.603	576.757

Source: author's work based on financial data

Figure 5. Dynamics of total revenues, net profit, EBIT and EBITDA of the pharmacy institution "ZDRAVLJE LEK" (2016-2020)



Source: Table 8.

Based on Table 8 and Figure 5, it can be seen that the most significant growth is shown by total revenues, while EBIT and EBITDA are negative in the period 2018-2020. This points to the conclusion that the management of the pharmacy institution should focus on controlling operating costs in the period from 2018-2020. Net profit shows a pronounced growth in 2020, while the lowest value was recorded in 2019. It is necessary to pay attention to the movement of operating income and operating expenses in periods where negative values of earnings before interest and taxes (EBIT), as well as earnings before taxes, interest and depreciation (EBITDA), and to make a comparative analysis of operating income and operating expenses for each of these years separately, to determine whether operating expenses are growing faster than operating income and why. In addition, it is necessary to look in detail at the structure of operating expenses by year, both in value and dynamics.

(d) Analysis of efficiency (activities)

In order to assess the efficiency of the observed entity, Table 9 and Table 10 were prepared. Table 9 shows the calculated values of the following financial ratios: average time of collection of receivables, average time of payment of liabilities to suppliers, average time of inventory turnover. Table 10 presents the turnover ratios: total assets, fixed assets and current assets. The observed period is five years (2016-2020). The dynamics of individual efficiency indicators is presented in Figure 6.

Table 9. Average time of collection of receivables, average time of payment of liabilities and average time of inventory turnover in days (2016-2020)

Name	2016	2017	2018	2019	2020
Average time of collection of receivables	8,41	16,73	16,65	21,76	25,16
Average payment time to suppliers	44,82	67,99	65,04	71,60	77,31
Average inventory turnover time	39,24	46,27	38,32	40,52	37,66

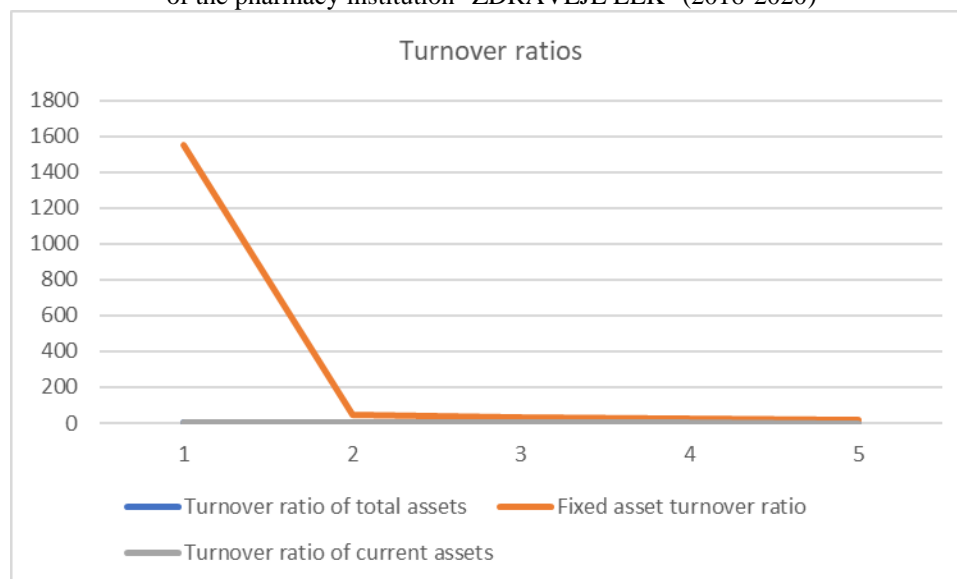
Source: author's work based on financial information

Table 10. Turnover ratios: total assets, fixed assets and current assets (2016-2020)

Name	2016	2017	2018	2019	2020
Turnover ratio of total assets	6,05	4,30	4,31	3,96	3,71
Fixed asset turnover ratio	1548,96	47,08	33,92	26,65	20,66
Turnover ratio of current assets	6,07	4,74	4,94	4,65	4,52

Source: author's work based on financial information

Figure 6. Dynamics of turnover coefficients of total assets, fixed and current assets of the pharmacy institution "ZDRAVLJE LEK" (2016-2020)



Source: Table 10

As it can be seen from the data in Table 9, in all observed years (from 2016-2020), the pharmacy institution on average collects faster receivables than it pays its liabilities to suppliers, which has a positive impact on liquidity flows. The pharmacy was the most efficient in collecting receivables in 2016. The average turnaround time shows slight variations over the years, and the highest efficiency in this regard was recorded in 2020. The turnover ratio of total assets shows slight variations over the years; the turnover ratio of current assets shows a marked decline in 2017 compared to 2016, and after that, slight variations, from 2018-2020; while the turnover ratio of current assets shows similar values by years, except in 2016, where it was slightly higher (Figure 6). Observing the efficiency, it is noticeable that 2016 was the best in terms of turnover of assets, fixed and current assets.

It should also be noted that the financial statements at the end of the year can give a pinker picture of the financial situation than those at any other time of the year. It is a known fact the control of financial reports and accounting documentation by tax and other bodies, it starts from the end of the year. Therefore, it is important to consider the movement of monthly and quarterly financial indicators (Van Horne & Wachowicz, 2008). It is also important to point out that some aspects of activity analysis are closely related to liquidity analysis.

4. Conclusions

Proper business, and within it, financial analysis is especially important for the management of a pharmacy. Comparative financial data, e.g. comparing the current data of the observed pharmacy institution with the standards or comparing financial data covering several periods to assess trends.

There are several tools that can be used to analyse financial statements, of which the ratio analysis is probably the best known and most widely used. Financial ratio analysis is used to measure company characteristics such as profitability, liquidity, solvency and business efficiency. Financial ratios play an important role in assessing the business performance and position of any profit-oriented organization.

Future directions of research could be directed towards examining the quality of earnings of this institution by combining profitability and cash flows. In addition, it is useful to supplement this analysis by comparing the obtained values with the key competitors of this profit-oriented organization, as well as with the target values. This would provide a much broader picture of the financial performance of the observed organization.

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Analysing liquidity using the cash conversion cycle and fraud

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Abstract

Liquidity management in a company can be analysed through a dynamic approach (Cash conversion cycle - CCC) or a static approach (current ratio). This article describes the CCC approach and shows how static liquidity measures can serve the purpose of fraud if used exclusively, while the CCC can provide a useful addition to assessing a company's liquidity, giving a more transparent picture of a company's liquidity. In this context, the importance of evaluating liquidity through the CCC approach is emphasized, and it shows the number of days it takes for a company to convert its investments in inventories and other resources into cash flows from sales, which is particularly important indicator for sustainable business.

Keywords: dynamic liquidity, static liquidity, profit-oriented companies, fraudulent actions

1. Introduction

A drop in a company's liquidity leads to a higher risk of bankruptcy which makes a good assessment of it important. Liquidity as a reflection of “proximity of assets or liabilities in cash” (Statement of Financial Accounting Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises) is described by FASB in this manner. Lenders often include in loans the minimum liquidity measures that borrowers must maintain. The interest of investors and analysts is in the company's ability to generate cash and have enough cash at its disposal to meet daily requirements, and suppliers are interested in whether the company will regularly have cash available to pay for purchased goods. Further, liquidity is also important to external auditors because of responsibilities such as assessing business continuity issues.

In view of the increasing emphasis on risk assessment in companies, accountants for profit-oriented organizations dosing such tasks, as well as internal auditors, can also benefit from reliable liquidity measures by helping management better understand vulnerability. The most commonly used measure when assessing the liquidity of a company, is the current liquidity ratio and its variations, such as the accelerated ratio. However, these measures do not include the “proximity” measure described by the FASB, other than the fact that “current” generally indicates that assets will be converted into cash or consumed during the normal business cycle of the enterprise and liabilities will be liquidated using working capital or by creating other current liabilities.

It is of special importance to include the time dimension in the liquidity analysis to adequately interpret the liquidity position because it is not enough to use the liquidity ratio (current and fast ratio) to adequately interpret the liquidity position. Consideration of the Cash Conversion Cycle (Oner, 2016, p. 67) (hereinafter CCC) together with traditional liquidity measures will lead to a more thorough analysis of the liquidity situation of the company. Since CCC has three components, namely the average collection period, days of inventory outstanding and average payment period; firms could also achieve a shorter CCC through managing those three components independently. For better efficiency in managing a business through the CCC, the following decisions are required on: (a) the appropriate collection period, (b) the optimal level of inventories (given their book value) and the corresponding liabilities (Kourtis et al., 2019); p. 10).

Due to numerous reasons, many companies face liquidity problems, which makes it even more important for small businesses. These companies have less short-term and long-term financing at their disposal, compared to larger companies. Using logic it can be noticed that where less funding is available, more funds must be kept in liquid form to meet daily transactions and urgent requirements, while otherwise, less working capital can be kept while meeting the need for cash equally quickly and efficiently through borrowing. A good assessment of a company's liquidity is important because a drop in liquidity leads to a higher risk of bankruptcy. FASB describes liquidity as a reflection of

"proximity to a cash asset or liability" (Statement of Financial Accounting Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises).

2. Fraudulent financial reporting and its consequences

Financial crime and fraud have probably existed since the beginning of trade (Dorminey *et al.*, 2012, p. 556). Forensic accounting applies not only accounting and auditing, but also economic, business and legal concepts and procedures for the issues under consideration (Rezaee & Burton, 1997, p. 479). In addition to benefiting society by providing education on forensic accounting, students who acquire this knowledge have a direct benefit (Kramer *et al.*, 2017, p. 4). As Kranacher *et al.* (2008, p. 506) state, "fraud and forensic accounting are a growing area of specialization, not only for professional accountants, but also other professionals in related fields such as law, criminology, sociology, psychology, intelligence, computer forensics and other forensic sciences."

Fraud in financial statements refers to the use of manipulative actions in the preparation and disclosure of accounting information used by various stakeholders. The application of such activities gives an unrealistic picture of the financial position and performance of a company, but it seems to meet expectations regarding the price of company shares, as well as for remuneration management (Kourtis *et al.*, 2019). Such fraudulent practices lead to a weakening of confidence in the transparency and reliability of financial statements in the business decision-making process, which reduces and/or misdirects investments and curbs economic growth and development (Özcan *et al.*, 2019). As leaders in the field of fraud point out, a fundamental approach to combating fraud is to maintain valid training and education of today's accounting students to be better prepared for fraud prevention, detection and investigation as future auditors (Peterson, 2004, p. 265).

The fact that accounting fraud causing large economic losses has led to increased efforts to prevent these losses as well as developments and changes in the areas of both auditing and forensic accounting (Kılıç, 2020). When analysing the business operations of companies based on cash flows, it is necessary to be careful because the positions of this statement are also the subject of manipulative actions (Milašinović *et al.*, 2021). It is not uncommon for the quality of financial statements (balance sheet, income statement and cash flow statement) to be impaired due to manipulative actions (Dimitrijević *et al.*, 2018; Dimitrijević *et al.*, 2021). Earnings management is often analysed as a manipulative form of financial reporting (Milojević *et al.*, 2019). Manipulating cash flow statement items is much more difficult than the balance sheet and income statement items (Dimitrijević, 2015). In order to reduce the number of fraudulent activities, it is necessary to develop the profession of a forensic accountant, and give more importance to forensic accounting in educational institutions in the field of economics and management (Knežević *et al.*, 2021a, Knežević *et al.*, 2021b).

4. Static liquidity measures and their application

Different techniques are used for business analysis purposes, with the most commonly used being ratio analysis (Mitrović *et al.*, 2021). Within the ratio analysis, the liquidity ratio, the solvency ratio, the indebtedness ratio and the profitability ratio are used. Data from publicly published financial reports are used to apply the ratio analysis. One of the conditions for conducting an analysis of a company's business is the availability of its financial statements (Obradović *et al.*, 2021). Further, when analysing business, it is necessary to consider the audit opinion (if any) (Brown *et al.*, 2020). The analysis of the company's business must not be conducted only at the end of the period, but it is necessary for the management to be acquainted with the situation in the company at all times (Srebro *et al.*, 2021). The problem of insolvency can lead to the bankruptcy of companies (Jovanović *et al.*, 2017).

In addition to frequently used techniques of financial analysis, one of the most common is ratio analysis (Vujić *et al.*, 2021; Milojević *et al.*, 2021; Knežević *et al.*, 2019; Travica *et al.*, 2021; Simonović *et al.*, 2019, Knežević *et al.*, 2021). Financial parameters can be analysed using different methods, and can also be used to measure productivity (Knežević *et al.*, 2015). Financial data from the company's annual report are useful, both in the analysis of companies and entire sectors (Bogićević *et al.*, 2021.) Data from financial statements are often used to test for possible bankruptcy (Milašinović *et al.*, 2019; Knežević *et al.*, 2021d). Financial information can also be used to evaluate strategic issues in organizations (Knežević *et al.*, 2014).

Static liquidity measures, such as current and quick ratios, have certain advantages over CCC. They are easy to calculate and focus on the liquidity of all current liabilities. The disadvantage of these measures is that they are metrics only at one point. In addition to the importance of holding cash and cash equivalents for efficient liquidity management, it is necessary to analyse liquidity in the form of the relationship between cash inflows and required cash outflows that occur over time. In addition, it should be emphasized that the users of financial statements cannot determine what the current ratio of the company was even the day before the date of the financial report, which is logical because financial items are used as termed "per day". It is a known fact that the current liquidity ratio can be the subject of manipulative actions.

To illustrate the manipulative actions regarding current liquidity ratios, an example is given below.

The example: The company has presented the following items within current assets in the balance sheet:

- The current assets of 1,000,000 monetary units and
- short-term liabilities of 750,000 monetary units

Based on the given data, the current liquidity ratio is:

$$\begin{aligned}\text{the current liquidity ratio} &= 1.000.000 \text{ m.u.} / 750.000 \text{ m.u.} \\ &= 1,33 \text{ m.u.}\end{aligned}$$

The value of current liquidity ratios indicates that this company can cover short-term liabilities with current assets 1.33 times.

If the company wants to achieve a higher liquidity ratio due to an existing or new loan, it could settle short-term liabilities, in which case the new value of the current liquidity ratio would be:

$$\begin{aligned}\text{the current liquidity ratio} &= 1.000.000 \text{ m.u.} / 250.000 \text{ m.u.} \\ &= 2,0 \text{ m.u.}\end{aligned}$$

The current liquidity ratio is now 2.0 [500,000 m.u. - 250,000 m.u.], which is a higher value than before, and is a more favourable picture from the aspect of liquidity. However, this manipulative activity can lead to a disturbance of the company's liquidity position, because the company has less cash available to meet unexpected obligations or unexpected needs. If we assume that short-term liabilities would not mature for another month, then the company's desire to present a better current liquidity ratio could cost a month of interest-free financing of liabilities and a month of return on cash that could have been invested elsewhere. It is important to emphasize another important fact, and that is that a high current liquidity ratio will also result from the accumulation of receivables, which is not necessarily desirable. The effects of extending the receivables collection period, an act that damages the company's liquidity, would not be obvious either through the value of the current liquidity ratio, or in a more conservative quick ratio.

It should be borne in mind that static liquidity measures have another drawback. The point is that they can be calculated quite easily, but the interpretation can be complex. Namely, the high value of these indicators is treated better, but it can also be a consequence of inefficient use of assets, while the lower value of this indicator, which is otherwise considered unfavourable, may be due to efficient use of working capital. Therefore, one needs to be very careful when interpreting this ratio number.

The current liquidity ratio of approximately 1.0 signals, according to the general interpretation, that the company is hardly in a position to cover short-term liabilities. However, if the company manages working capital in such a way that cash inflows and required cash outflows are highly aligned (with high precision), then this does not necessarily indicate an unsatisfactory liquidity position of the company. However, one needs to be careful in this situation because such financial constructions and values can be problematic. Regardless of the defined preferred values for the current liquidity ratio, it should be borne in mind that the issue of the threshold between good and bad current liquidity ratio is very complex. It is dangerous to generalize the value of this ratio (from 2.0), especially if we take into account the differences that exist between the industries observed, on the one hand, and differences in net working capital (working capital) management strategies between companies, on the other countries.

5. Conversion cycle in liquidity analysis

The Cash Conversion Cycle (CCC), was introduced by Verlin Richards & Eugene Laughlin in 1980 in the paper *The Approach of the Cash Conversion Cycle to Liquidity Analysis* (Richards & Laughlin, 1980). If we keep in mind that profit-oriented companies apply the accrual accounting concept, the importance of efficient monitoring of indicators related to cash flows, i.e. liquidity of companies, is even more emphasized. The application of the CCC approach to liquidity analysis makes it possible to eliminate the shortcomings of the application of static measures in liquidity testing. Cash for profit-oriented organizations is important to them, as is blood flow through the body. The fact is that money circulates continuously through the company, and if there are problems in this process, serious problems can arise in the company's business. As Banomyong (2005, p. 29) points out, for accounting purposes, CCC metrics can be used to measure liquidity and evaluate an organization (business). Shin & Soenen (1998, p. 67) point out that a positive link can be expected between working capital management and firm performance as investing in inventories and receivables can lead to higher sales.

Ideally, it is desirable for the company's management that the CCC has a negative sign, which means that the payables deferral is longer than the operating cycle. This situation occurs less frequently, and it is more likely to occur in non-manufacturing companies than in manufacturing companies. The reason for this situation lies in the fact that

mostly non-manufacturing companies sell stocks faster, mostly for cash, which affects the application of a shorter CCC.

This metric takes into account the time required to sell inventory, the time required to collect receivables, and the time the company is allowed to pay its bills without any penalties. Maintaining CCC at an optimal level is essential because excessive or underinvestment in CCC significantly affects a company's performance (Mutua Mathuva, 2014, p. 176). CCCs will vary by industry based on the nature of business operations, and it is calculated as follows:

(Cash Conversion Cycle – CCC) = Days Inventory Outstanding – DIO) + Days Sales Outstanding – DSO – Days Payable Outstanding – DPO)

$$CCC = DIO + DRO - DPO$$

Days Inventory Outstanding – DIO shows the number of days on average, how many stocks are turned during the year, with special attention paid to whether it is a trade or manufacturing company. It is calculated as follows:

$$\text{Days Inventory Outstanding} = (\text{Average inventory} / \text{Cost of sales}) \times \text{Number of days in period}$$

In other words, this financial ratio is used to measure the average number of days a company holds inventories before selling them. This ratio is specific to certain industries and should be used to compare with competitors. Therefore, it is important to keep in mind when interpreting the value of this financial indicator that the period required for individual companies to sell their stocks varies from one industry to another.

Stock retention time can be unrealistic, leading to erroneous conclusions from those who use and interpret it for the following reasons:

- The company could publish financial results that include shorter inventories but only due to the sale of large quantities of goods at a discount or due to the write-off of obsolete goods. An indicator of these activities is the decline in profit (profit) in parallel with the time of holding stocks.
- The company can change the way the cost of goods sold is calculated, by including more or less costs in general costs. If this method of calculation varies significantly from the method used in the past, it can lead to a sudden change in the measurement results.
- The person performing the calculation can use the amount of the final inventory balance instead of the average for the entire period. If the final inventory status differed from the average, it could result in sharp changes in measurement results.
- The company can move to such a contract, where the supplier produces and keeps inventory on behalf of the company, which devalues the measurement of inventory holding time.

Days Sales Outstanding - DSO measures the efficiency with which a company collects its receivables, i.e., how many times the company's receivables from customers (deferred payment/sale on credit) are converted into cash in the observed period. It is calculated according to the following formula:

$$DSO = (\text{Average Accounts Receivable} / \text{Total Credit Sales}) \times (\text{Number of Days})$$

The turnover ratio of short-term trade receivables shows the number of times the company can collect its receivables on average during the observed period. The higher the turnover, it is logical to state that the faster (shorter) collection of receivables. It is important to keep in mind that a company may have cash flow problems if receivables-related resources are tied to a longer period, as well as the fact that there is a problem in practice that management depreciates trade receivables on an unrealistic basis. Thus overestimating the value of this financial indicator. The turnover ratio of receivables can be calculated on an annual, quarterly or monthly basis.

The company's credit policy, among other things, determines the policy of deferred collection to customers. Enabling customers to pay deferred plays an important role in generating revenue, on the one hand, but, on the other hand, it results in increased costs and delayed cash inflows into the company. In order to minimize problematic (risky) receivables (e.g., disputed receivables) and raise money to finance current business activities, companies strive to collect their receivables as soon as possible without losing customers. In order to make an assessment of the collection of receivables for the purpose of making financial decisions, two coefficients are usually studied - the turnover of trade receivables and the average number of days related to the collection of these receivables.

The key elements in receivables management are:

- Defining the terms of sale: How much was sold on deferred payment and for how long? What will be the discounts for cash payments? How much will the penalties for late payment be?
- Defining credit policy: Who has been granted deferred payment?
- Collection policy: How much cash was collected?

$$\text{Ratio of trade receivables turnover} = \frac{\text{Annual sales revenue}}{\text{Average trade receivables}}$$

A higher DSO ratio may indicate a credit customer base and/or a company that is insufficiently committed to its collection activity. A low ratio may indicate that the company's credit policy is too rigorous, which can hinder sales. In order to reach a valid analytical conclusion, one should keep in mind the industry in which the company under analysis performs its business, then the company's business in the previous period, as well as whether the company applies aggressive credit policy and what are the general conditions related to the approval of loans, as well as the state of the entire economic environment in which the observed company operates.

Regardless of how the metrics were used in receivables management, it should be borne in mind that receivables are collectively composed mainly of a larger number of receivables, which does not provide insight into the collectability of individual receivables. It should be borne in mind that there are quality claims, and other claims that are not (disputed, suspicious), as well as outdated claims. Quality receivables are classified according to their maturity (up to 60 days, up to 90 days and over 90 days).

It should be borne in mind that the average period of collection of receivables varies from industry to industry. It is important for a company to compare its average collection period with other companies in its industry. Namely, DSO should be compared with companies within the same industry, ideally when they have similar business models and revenues. Further, it should be borne in mind that DSO is not a perfect indicator of the efficiency of corporate receivables, as fluctuating sales volumes can affect DSO, and any increase in sales often reduces the value of DSO. Like any metric performance indicator, a DSO should not be viewed in isolation, but should be combined with other related indicators.

Days Payable Outstanding - DPO is used to measure the number of days for how fast the obligations are paid according to the suppliers, observed on average, and is calculated based on the following formula:

$$\text{Days Payable Outstanding} = \text{Average Accounts Payable} / (\text{Cost of Sales} / \text{Number of Days in Accounting Period})$$

Accounts payable shows the time in days that a company needs to pay off its creditors. On the other hand, it also shows how long a company can use cash before paying it back to creditors. The longer a company delays the payments, the better (provided that suppliers tolerate such an approach to settling liabilities).

There is an opinion in the academic literature that the approach to using average liabilities to suppliers is incorrect, but that the balance of liabilities to suppliers should be taken at the end of the year. If the number of days increases during one period compared to another, it means that the company pays its obligations to suppliers more slowly. A change in the timing of trade payables may also mean changed payment terms to suppliers, although this rarely has a smaller impact on the total number of days. If the company pays the suppliers very quickly, it may mean that the suppliers demand shorter payment deadlines due to doubts about the company's ability to pay on time.

A shorter CCC is favourable and it is entirely possible to have a negative CCC. This would indicate that the company manages its working capital so well that, on average, it is able to buy inventory, sell inventory and collect the receivable before the corresponding obligation to purchase inventory is due.

Businesses may have negative CCCs, such as online eBay Inc. retail. and Amazon.com Inc. Online merchants often receive funds in their account to sell goods that actually belong to them and are serviced by independent resellers who use the online platform. However, these companies do not pay the sellers immediately after the sale, which keeps them in cash for a long time, so they often end up with a negative CCC. The blog at Harvard Business attributes negative CCC as a key factor in Amazon's survival of the 2000 dot-com bubble. Doing business with negative CCC has become a source of money for the company, rather than a cost to it.

The following are static liquidity measures of a domestic Serbian construction company. One of the conditions for conducting an analysis of a company's business is the availability of its financial statements (Obradović *et al.*, 2021).

Table 1 presents liquidity indicators and the value of the cash cycle, and the dynamics in Figures 1, 2 and 3.

Table 1. Financial liquidity indicators and CCC - domestic company

Financial indicators	2015	2016	2017	2018	2019
Current ratio	6,3	4,6	4,9	7,6	5,3
Quick ratio	6,0	4,45	4,12	7,48	5,26
Cash cycle	138	108	120	-92	-327

Source: author's work

Two static liquidity ratios are presented: the current liquidity ratio and the accelerated ratio (Figures 1 and 2).

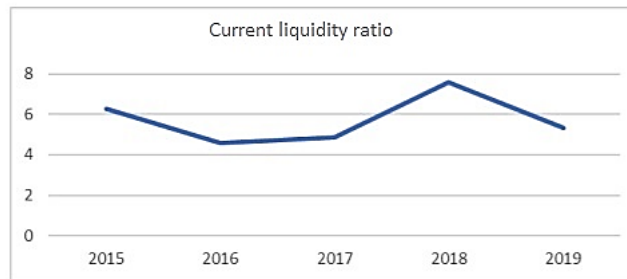


Figure 1. Current ratio of d.c. (2015-2019)

Source: author's work

The current liquidity ratio shows variations by years and extremely high values in all observed years. The lowest value of this indicator was recorded in 2016, while in 2017 the maximum value was achieved.

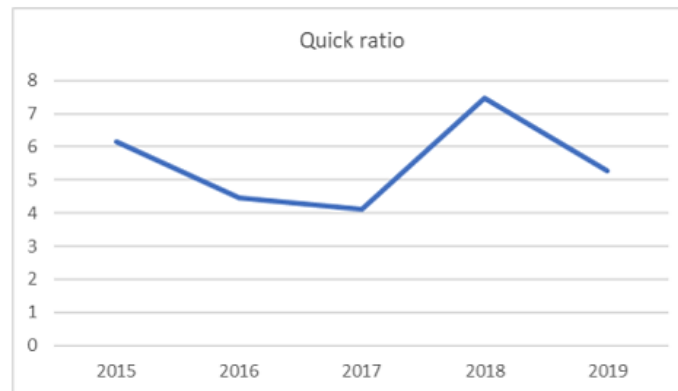


Figure 2. Quick ratio of d.c. (2015-2019)

Source: author's work

The accelerated ratio shows variations and high values by years, with the maximum value achieved in 2018 and the minimum in 2017.

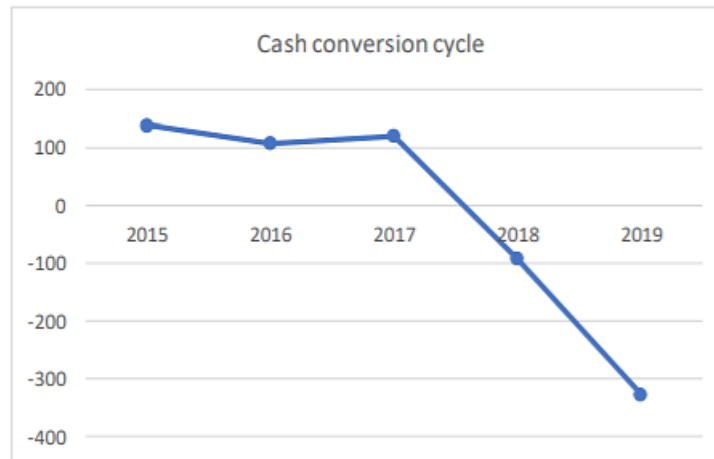


Figure 3. Cash conversion cycle of d.c. (2015-2019)
Source: author's work

As can be seen from the previous picture, the CCC of the domestic company is positive from 2015 to 2017, while in 2018 and 2019 it is negative. Looking at the data on the blockade of the accounts of this company, it was noticed that it was not blocked, which indicates that there are no serious signs of endangering liquidity.

Conclusions

It is important to understand the concept of the cash cycle formula because it helps to assess how efficiently a company operates. The liquidity position of a company is of special importance in today's globalized business environment, which is also highly competitive. An analyst can use this cycle to understand the business efficiency of a company. Analysts want to see a shorter cycle because it speaks to a company that is efficient and successful. In addition, the shorter cycle indicates that the company will be able to recoup its investments quickly and have adequate cash to meet its business obligations. On the other hand, if a firm has a longer cycle, then it means that the firm needs more time to convert its purchases (or production) of certain types of inventory into cash. Such a company can improve its cycle by either applying adequate measures to sell its inventory quickly or reducing the time required to collect receivables. The cash cycle formula can be used to compare companies operating in the same industry or to analyse trends to assess the performance of the observed company over time. Comparing the cash cycle of the observed company with competitors is very useful, as well as comparing the current business cycle of the company with that of the previous year, and can be useful in deciding whether its activities are on the path to improvement or not. The figure also helps assess the liquidity risk associated with a company's operations.

It is indisputable to conclude that static liquidity measures, regardless of the wide application they have in the circle of financial analysts, have shortcomings. In this context, the CCC approach is a very useful metric in assessing the efficiency with which a firm manages its working capital.

The time dimension is what makes the CCC approach different from traditional liquidity measures. Measures, such as current ratio and fast ratio, have a focus on static balance sheet values. Although useful for assessing a firm's ability to pay its bills on time, traditional liquidity measures are lacking when measuring a firm's overall cash management ability.

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Financial Analysis of the Company “Philip Morris Operations”, Niš

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Abstract

The financial statements of Philip Morris Operations were meticulously examined and analyzed in order to gain a better understanding of the company's financial performance. Balance sheets, income statements, and cash flow statements were among the financial statements examined. The financial performance of Philip Morris Operations was assessed utilizing horizontal and vertical analysis techniques, as well as identified key ratios, in order to determine the company's liquidity, profitability, solvency, and other critical criteria. As a result, the company's annual reports for the years 2018 through 2020 were the focus of the analysis. In each of the last three business years whose ratios were analyzed, the company has produced a profit, with each year's profit being much bigger than the year before. Several growth trends in positions such as net profit, net working capital and assets, operational income, ROA, ROE, and other indicators were observed throughout the financial study, confirming the company's performance.

Keywords: ratio analysis, financial statements, financial analysis, SWOT analysis, PEST analysis, tobacco industry.

1. Introduction

The company "Philip Morris Operations", based in Nis, is one of the largest companies in the tobacco industry in Serbia. The company is part of "Philip Morris International", a Swiss-American company whose main product lines consist of cigarettes and tobacco, which has been engaged in this business for 175 years. At the beginning of this century, on June 11, 2003, "Philip Morris International" privatized the Serbian tobacco factory DIN "Fabrika duvana" Niš. The DIN factory was already in operation for a very long time before it was bought by Philip Morris.

The main activity of the company is the production and sale of tobacco products. As of December 31, 2020, "Philip Morris Holland Holding BV" owns 87.5% of the company's total capital. Philip Morris is a large company with over 900 employees. The legal form of a company is a joint-stock company. "Philip Morris" is the owner of some of the most important cigarette brands, among which the most recognizable one is Marlboro, but also some others such as Parliament, L&M, Bond Street. The latest and current vision of the company implies the offer of products without tobacco smoke that would be less harmful to the health of consumers. The most famous brand from this product line is IQOS.

The purpose of this financial report is to offer information and recommendations about Philip Morris Operations' financial condition, performance, and changes in financial position. Another goal is to identify positive and negative patterns in the company's performance.

2. Materials and Methodologies

The process of financial analysis, but also its results, aim to identify and define the financial weaknesses and strengths of a company, by analyzing its financial statements, primarily the balance sheet and income statement, but also reports based on cash flows (Van Greuning, 2006). The main indicators that point out the positive or negative performances of the company can be found in these financial statements. In order to assess the performance of a company in the past, and thus determine the position of liquidity, efficiency, stability, profitability, and speculate on the future strategies of the company, a number of financial statements must be analyzed (Knežević *et al.*, 2019).

In this paper, we will use comparative or comparable financial statements (Knežević, 2019; Milojević *et al.*, 2021a., 2021b, 2021c; Srebro *et al.*, 2021) to set the optimal basis for comparing the financial performance of the joint-stock company "Philip Morris Operations" Niš. We will get coherent results when we compare the values of the previously

mentioned company from the financial statements relating to the following business years: 2018., 2019., and 2020. The company has made a profit in each of the last three business years, with each year's profit being significantly higher than the preceding one. The analyses we will use for this purpose are the horizontal and vertical balance sheet and income statement analysis, cash flow statement analysis and ratio analysis.

Financial ratio analysis provides us with more specific information on yield and risk measurement. These analyses produce conclusions by combining information from the balance sheets and cash flow statements. Financial ratios are sometimes used to determine company objectives (Knežević *et al.*, 2019). Managers analyze the so-called ratio statistics in order to identify the company's operations during a specific time period, in order to assess the financial situation and other performance, which should be utilized for future planning and control. These values are utilized to make comparing different sorts of data easier, which helps with the entire decision-making process. The major purpose of these analyses is to evaluate the company's current and prospective financial performances (Knežević *et al.*, 2019).

In order for the analysis to be more expedient, a very important aspect to take into consideration is the non-financial analysis of the company and its business. These types of analyses are conducted within the company with the aim to increase transparency, provide long-term planning and investment, reduce risk, to monitor one's own progress and social impact and comparability, but also to give a better presentation of acquired financial results (Vičentijević, 2017). One of the most important goals of conducting these types of analyses is to achieve a competitive advantage. Investing in factors such as human and intellectual capital certainly leads to an increase in the efficiency and effectiveness of the company, because they transform the value that is placed on the market (Dmitrović *et al.*, 2017).

3. Research & Results

3.1. Analysis of Balance Sheets

To examine a company's financial situation, financial data analysis incorporates a variety of approaches. When performing the horizontal analysis (Table 1), we will compare data from the base year (2020.) against data from 2019. and 2018. and offer the results as estimates. It will be calculating the share of individual asset positions in total assets and the share of individual liability positions in total liabilities for the vertical analysis.

Table 1. Horizontal and vertical balance sheet structure analysis from 2018. to 2020.

Balance Sheet (in thousands RSD)	Year 2018.	Year 2019.	Year 2020.	Vertical analysis 2018.	Vertical analysis 2019.	Vertical analysis 2020.	Index 2019.	Index 2020.
Non-current Assets	6,896,267	6,759,904	7,157,929	31.04%	27.61%	26.02%	98.02%	105.89%
Intangible assets	507,537	491,197	477,827	2.28%	2.01%	1.74%	96.78%	97.28%
Property, plant & equipment	6,351,692	6,232,873	6,643,319	28.59%	25.46%	24.15%	98.13%	106.59%
Long-term financial investments	16,723	11,696	13,349	0.08%	0.05%	0.05%	69.94%	114.13%
Long-term receivables	20,315	24,138	23,434	0.09%	0.10%	0.09%	118.82%	97.08%
Current Assets	15,201,505	17,475,866	20,125,923	68.42%	71.39%	73.17%	114.96%	115.16%
Inventories	1,669,482	1,368,833	1,863,629	7.51%	5.59%	6.78%	81.99%	136.15%
Accounts receivables	3,811,769	5,101,200	6,163,155	17.16%	20.84%	22.41%	133.83%	120.82%
Cash & cash equivalents	3,885,755	5,657,507	5,160,971	17.49%	23.11%	18.76%	145.60%	91.22%
Short-term financial investments	17,361	18,198	16,654	0.08%	0.07%	0.06%	104.82%	91.52%
Other current assets	5,817,138	5,330,128	6,921,514	26.18%	21.77%	25.16%	91.63%	129.86%
Total Assets	22,216,780	24,480,414	27,506,054	100%	100.00%	100.00%	110.19%	112.36%
Equity	15,569,556	16,501,008	16,686,730	70.08%	67.40%	60.67%	105.98%	101.13%
Long-term provisions	234,089	209,169	194,692	1.05%	0.85%	0.71%	89.35%	93.08%
Non-current liabilities		99,060	79,367	0.00%	0.40%	0.29%		80.12%
Long-term debt		99,060	79,367	0.00%	0.40%	0.29%		80.12%
Other long-term liabilities				0.00%	0.00%	0.00%		
Current Liabilities	6,941,968	8,102,728	11,031,457	31.25%	33.10%	40.11%	116.72%	136.14%
Short-term financial liabilities		114,061	93,122	0.00%	0.47%	0.34%		81.64%
Accounts payable	2,748,336	3,798,263	5,683,169	12.37%	15.52%	20.66%	138.20%	149.63%
Liabilities derived from tax on profit	3,112,033	3,238,177	4,124,751	14.01%	13.23%	15.00%	104.05%	127.38%
Other short-term liabilities	1,081,599	952,227	1,130,415	4.87%	3.89%	4.11%	88.04%	118.71%
Total Liabilities & Equity	22,216,780	24,480,414	27,506,054	100.00%	100.00%	100.00%	110.19%	112.36%

When it comes to assets, the trend in the movement of fixed assets shows a minor reduction when contrasted to working capital, which has been steadily expanding over time. In 2018., the percentage of fixed and working capital was close to 31 percent and 69 percent, respectively, while only two years later, the ratio of the same assets was 26 percent and 74 percent, indicating that working capital has increased over time (Figure 1). Changes in the accounts of inventory, receivables, and accruals influenced this growth. In comparison to the previous year, the cash and cash

equivalents account balance increased by about 46 percent in 2019., but it decreased by slightly more than 8 percent in 2020.

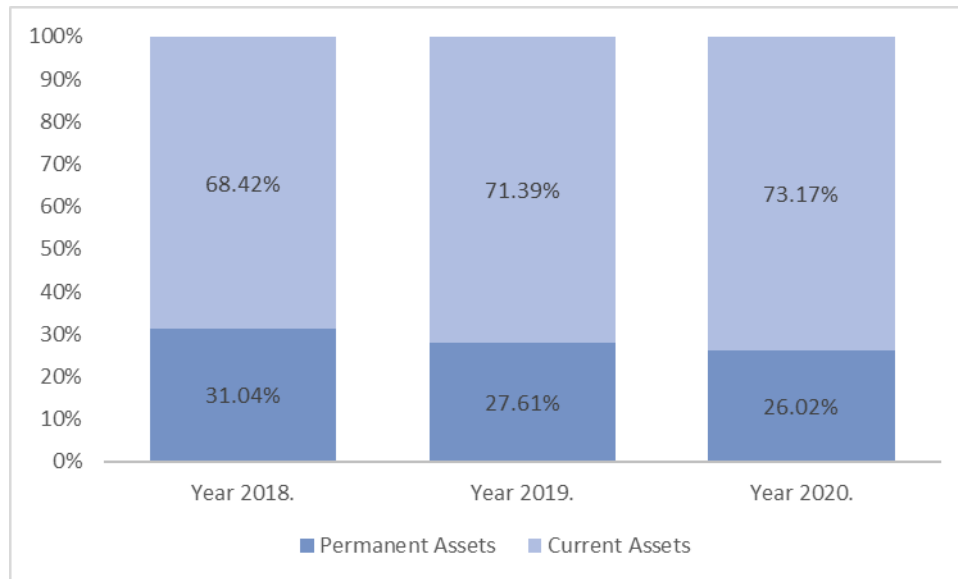


Figure 1. Structure of total assets.

A pattern of stability in the capital structure can be seen in liabilities. However, the share of retained earnings climbed dramatically in 2019. compared to the previous year, whereas it only increased by a little in 2020., continuing the upward trend. The share of capital in the structure of liabilities has been decreasing over time, with a difference of more than 10% between 2018. and 2020. With each passing year, the share of short-term liabilities climbed by a similar amount. Long-term obligations, which allude to financial leasing liabilities, are also present in 2019. and 2020., but they were absent in 2018.

When comparing the company's sources of cash over the past three years, it's clear that in 2020., the company's short-term liabilities climbed by 36% over the previous year. However, when we look at 2019., we can see that this is becoming a trend, with short-term liabilities up about 17 percent over the previous year. The most notable changes were in the account of operational liabilities relating to trade payables, which increased by about 50% in 2020. over the reference year 2018.

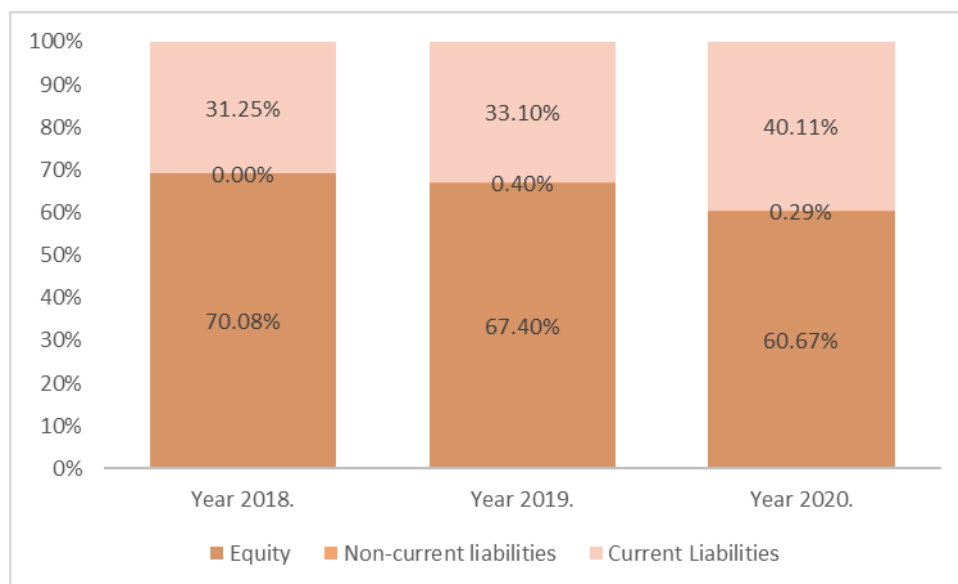


Figure 2. Structure of total equity & liabilities.

In comparison to 2019., overall funds and their sources of financing grew by 12% in 2020. In comparison to 2018., there is also an increase in assets and liabilities in 2019. In addition, compared to all preceding periods, working capital in assets and short-term liabilities in liabilities have increased significantly.

In all three years, net working capital is positive (Figure 3), but it will increase in 2019. before declining somewhat in 2020. The expansion in 2019. was fueled by an increase in own net working capital and the formation of long-term liabilities. However, a further decline in 2020. constrained the decline in the same locations as before. Because net current assets are positive, they imply that a portion of the working capital is financed through long-term debt.

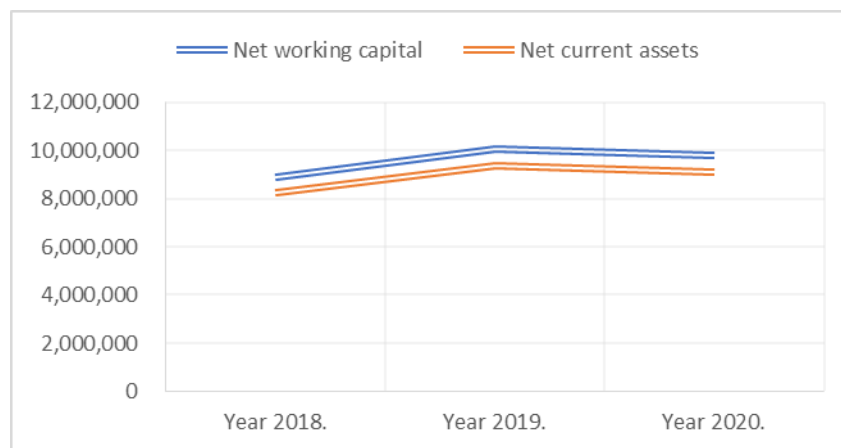


Figure 3. Overview of net working capital and net current assets.

3.2. Analysis of Income Statements

When performing the horizontal analysis, we will compare data from the following business years: 2018., 2019., and 2020, and give the results as estimations (Table 2). For vertical analysis, we will calculate the percentage of individual balance sheet items in total operating income, which we will use as a benchmark.

Table 2. Horizontal and vertical income statement structure analysis from 2018. to 2020.

Income Statement (in thousands RSD)	Year 2018.	Year 2019.	Year 2020.	Vertical analysis 2018.	Vertical analysis 2019.	Vertical analysis 2020.	Index 2019.	Index 2020.
Operating Income	21,345,372	22,597,937	23,786,112	100.00%	100.00%	100.00%	105.87%	105.26%
Income from goods sold	21,342,422	22,595,238	23,783,285	99.99%	99.99%	99.99%	105.87%	105.26%
Other operating income	2,950	2,699	2,827	0.01%	0.01%	0.01%	91.49%	104.74%
Operating Expenses	15,569,326	15,814,314	16,658,355	72.94%	69.98%	70.03%	101.57%	105.34%
Cost of goods sold	5,810,006	6,092,458	6,646,645	27.22%	26.96%	27.94%	104.86%	109.10%
Raw material costs, fuel & energy costs	819,672	890,637	889,210	3.84%	3.94%	3.74%	108.66%	99.84%
Salaries, wages & other personal indemnities	1,586,644	1,527,685	1,710,055	7.43%	6.76%	7.19%	96.28%	111.94%
Other operating costs	7,353,004	7,303,534	7,412,445	34.45%	32.32%	31.16%	99.33%	101.49%
EBITDA	5,776,046	6,783,623	7,127,757	27.06%	30.02%	29.97%	117.44%	105.07%
<i>EBITDA margin</i>	<i>27.06%</i>	<i>30.02%</i>	<i>29.97%</i>					
Amortization	1,149,264	1,332,645	1,390,324	5.38%	5.90%	5.85%	115.96%	104.33%
Earnings before interest & taxes (EBIT)	4,626,782	5,450,978	5,737,433	21.68%	24.12%	24.12%	117.81%	105.26%
Profit/loss from financing	82,649	60,321	49,814	0.39%	0.27%	0.21%	72.98%	82.58%
Financial income	153,772	126,467	127,357	0.72%	0.56%	0.54%	82.24%	100.70%
Financial expenses	71,123	66,146	77,543	0.33%	0.29%	0.33%	93.00%	117.23%
Results from other income/expenses	(120,242)	(24,631)	(35,817)	-0.56%	-0.11%	-0.15%	20.48%	145.41%
Other income	211,818	172,905	122,779	0.99%	0.77%	0.52%	81.63%	71.01%
Other Expenses	332,060	197,536	158,596	1.56%	0.87%	0.67%	59.49%	80.29%
Earnings before tax (EBT)	4,589,189	5,486,668	5,751,430	21.50%	24.28%	24.18%	119.56%	104.83%
<i>EBT margin</i>	<i>21.50%</i>	<i>24.28%</i>	<i>24.18%</i>					
Tax on profit	881,355	935,076	988,861	4.13%	4.14%	4.16%	106.10%	105.75%
Net profit	3,707,834	4,551,592	4,762,569	17.37%	20.14%	20.02%	122.76%	104.64%
<i>Net profit margin</i>	<i>17.37%</i>	<i>20.14%</i>	<i>20.02%</i>					

Operating revenues climbed slightly more than 5% in both 2019. and 2020. compared to the prior business year. Operating expenses, on the other hand, are rising, by 1.5 percent in 2019. compared to the previous year and by 5% in 2020. If we choose 2018. as the reference year, we can see that the same value rose in the following years by calculating EBITDA, or profit before interest, taxes, and depreciation. EBITDA, on the other hand, climbed by 17 percent in 2019 compared to the previous year, and by 5% in 2020. This suggests a slower fall in the EBITDA value growth pattern. Depreciation, and consequently business profit, i.e. EBIT value, follow a similar pattern.

Financial revenues fell by roughly 18 percent in 2019., before increasing marginally in 2020. Financial expenses follow a similar pattern. On a financial level, the significant changes in 2020. were due to an increase in positive and negative exchange rate differences, as well as positive and negative effects of the currency clause towards third parties, whose values in that year are increasing compared to previous years' values. Although the corporation makes a profit, there is a downward trend.

Other revenues and expenditures follow the same downward trend as financial revenues and expenditures. Other expenses, on the other hand, are overrepresented in comparison to other revenues. Although the gap between the value of other revenue and expenditure has been narrowing over time, it has had little effect on the realization of profit from other sources. As a result of other incomes and expenses the company has been losing money for the past three years.

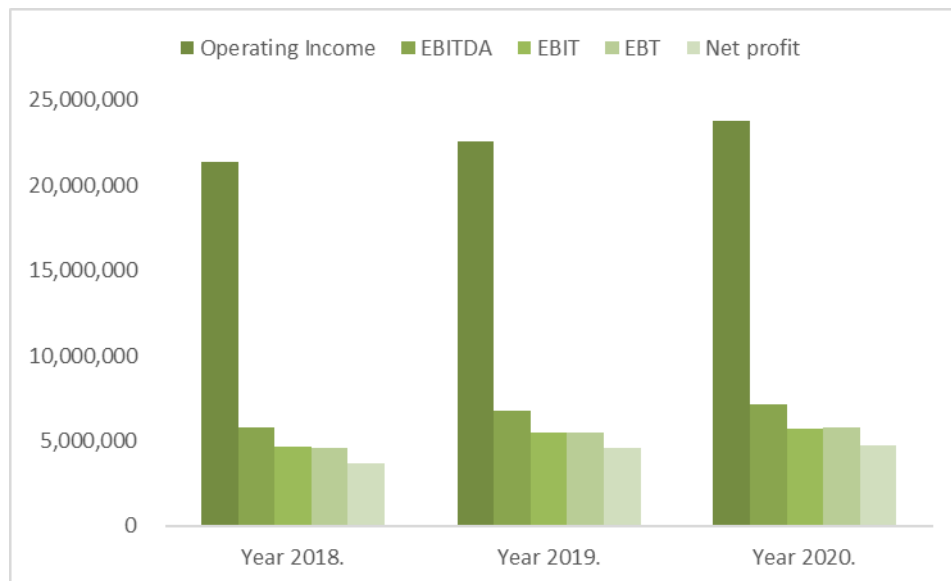


Figure 4. Revenue and profit trend.

The following details are noticeable while evaluating revenue and profit patterns (Figure 4). In 2019., operating profit (EBIT) climbed by about 17%, while it increased by 5% in 2020. In 2019., profit before taxes (EBT) climbed by over 20%, while in 2020 it increased by nearly 5% over the previous year. A similar tendency can be seen in the position of net profit, which is expected to increase by over 23% in 2019 and by around 5% in 2020. The corporation clearly made a profit in each of the three years, and that profit increased each year after that. However, there is a variation in the amount of profit in 2019. and 2020., with the profit in 2020. being much smaller than the profit in 2019.

3.3. Analysis of Cash Flow Statements

For all businesses, cash is quite vital. As a result, it is the focus of analyst study in cash flow reports. The company's lack of capital puts it in an illiquid position that could lead to bankruptcy (Knežević, 2019). In the case of the company under investigation (Table 3), it can be observed in the category of cash flows from operating activities that the company has an inflow of cash from operating operations for all three years, which conforms to previously studied balance sheets.

When we talk about cash flows from investing operations, the scenario changes. Intangible assets, such as the use of land gained from third parties, bought computer software licenses, and costs associated with the development and

maintenance of computer software, were all heavily financed. Intangible assets received the highest investment in 2018. and 2020., but just half as much in 2019.

There has been no financial influx from financing activity in the last three years, but there has been an outflow. Paid dividends are the most common source of outflows, with the greatest capital paid for this reason in 2020.

Table 3. Structure of the Cash Flow Statement from 2018. to 2020.

<i>Cash Flow Statement</i>	Year 2018.	Year 2019.	Year 2020.
Cash Flows from Operating Activities			
<i>Cash inflows from operating activities</i>	69,207,040	69,476,615	69,399,224
<i>Cash outflows from operating activities</i>	64,266,039	63,590,572	64,287,249
<i>Net cash inflows/outflows from operating activities</i>	4,941,001	5,886,043	5,111,975
Cash Flows from Investing Activities			
<i>Cash inflows from investing activities</i>	110,265	62,046	24,208
<i>Cash outflows from investing activities</i>	1,034,172	491,832	1,001,156
<i>Net cash inflows/outflows from investing activities</i>	(923,907)	(429,786)	(976,948)
Cash Flows from Financing Activities			
<i>Cash inflows from financing activities</i>	-	-	-
<i>Cash outflows from financing activities</i>	3,840,365	3,701,204	4,656,472
<i>Net cash inflows/outflows from financing activities</i>	(3,840,365)	(3,701,204)	(4,656,472)
NET CASH INFLOWS/OUTFLOWS	176,729	1,755,053	(521,445)

In 2019., cash inflows and outflows from all activities have a trend of growth (Figure 5), while cash inflows and outflows have a falling trend in the following year. The difference, that happened in the year of 2020., is that the company had a net inflow from business operations, but the other two types of activities had an outflow.

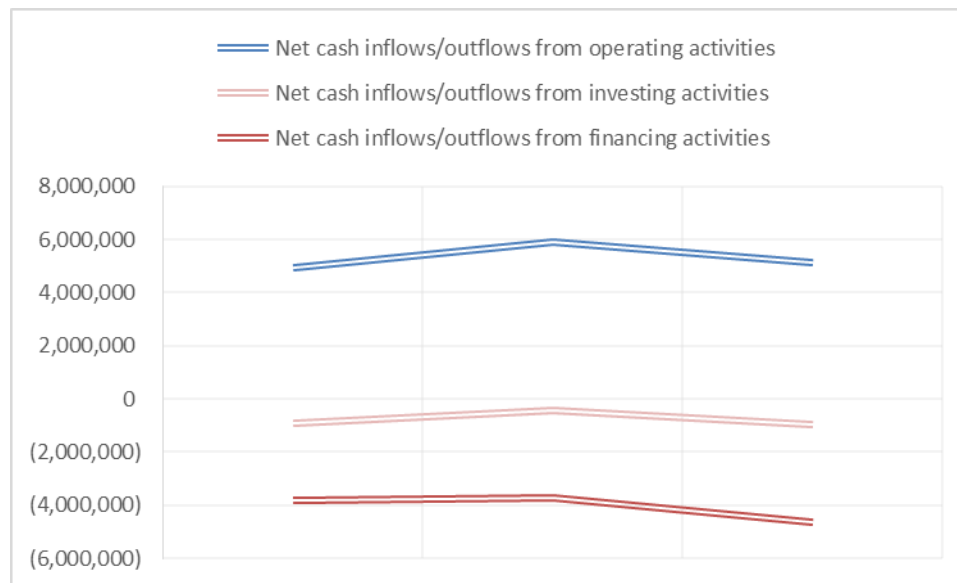


Figure 5. Net cash inflows and outflows from all operations for the years 2018-2020.

In 2019., the highest net cash inflow occurred (Figure 6). The corporation experienced a much smaller net cash inflow in 2018., and a significantly bigger net cash outflow in the final year of 2020., totalling half a billion dinars. However, as shown in this example, cash inflows from business activities are a crucial source of cash production for a firm (Knežević, 2019), thus net cash outflows from investment and financing do not constitute a significant danger to the company's overall business and liquidity.

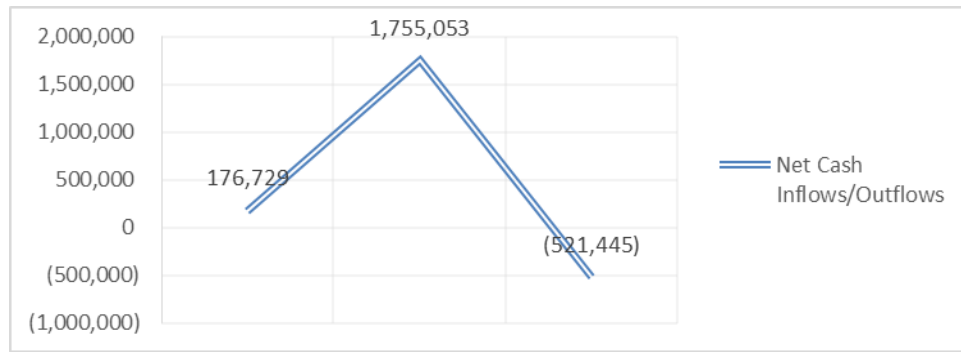


Figure 6. Net cash inflows and outflows for the years 2018-2020.

3.4. Liquidity ratio analysis

Working capital, liquid working capital, and net cash inflow from operating activities are compared to short-term liabilities in this liquidity ratio (Table 4). The current liquidity ratio, for instance, shows that in 2020., each monetary unit of short-term liabilities is covered by 1.82 monetary units of current assets, whereas the rigorous liquidity ratio shows that each monetary unit of short-term liabilities is covered by 1.66 monetary units of monetary assets.

On the basis of current and rigorous liquidity ratios for 2020., we can infer that liquidity is not a concern for the organization under consideration. When we analyze the same measures across time, we can see that the company's liquidity is slowly dropping, as seen by the liquidity ratio based on cash flow.

Table 4. Results of liquidity ratio analysis for the years 2018-2020.

Liquidity Ratios	Year 2018.	Year 2019.	Year 2020.
Current liquidity ratio	2.19	2.16	1.82
Rigorous liquidity ratio	1.95	1.99	1.66
Ratio of cash liquidity	0.71	0.73	0.46

3.5. Profitability ratio analysis

The chart's margins depict the proportion of each form of profit in total realized revenues from the company's sale (Figure 7). All four types of margins point to increased growth in 2019., but a modest decrease in 2020., with the EBIT margin remaining steady. Because EBITDA incorporates a high amount of debt in total sources of financing, it is always larger than other margins. For the time being, these margins have a stable tendency.

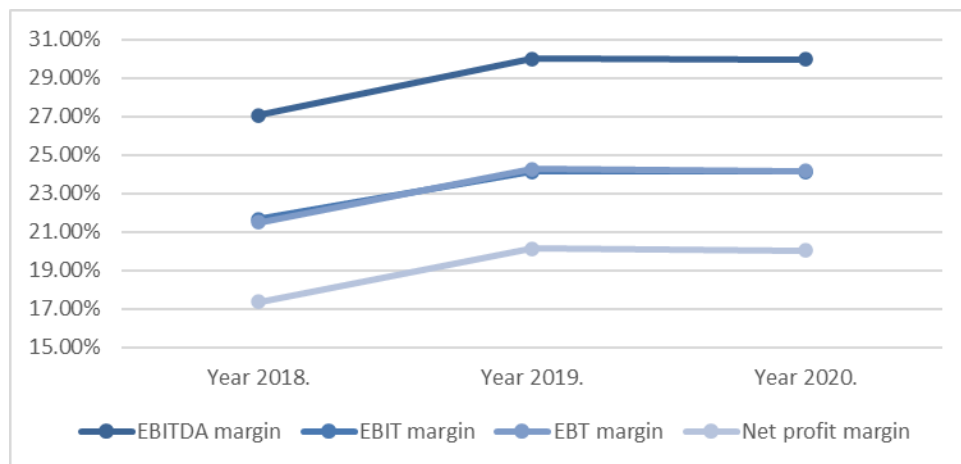


Figure 7. The trend of basic margins for the years 2018-2020.

The rate of return on investment is measured by ROA (return on assets) and ROE (return on equity) (Figure 8). We may validate that per 100 monetary units of average engaged business assets in 2019., 17.51 monetary units of net profit were realized, or 34.63 monetary units in 2020., by looking at the rate of return on total assets (ROA). According to ROE, the company made 27.43 monetary units of net profit per 100 monetary units of average engaged capital in 2019., and 57.08 in 2020.

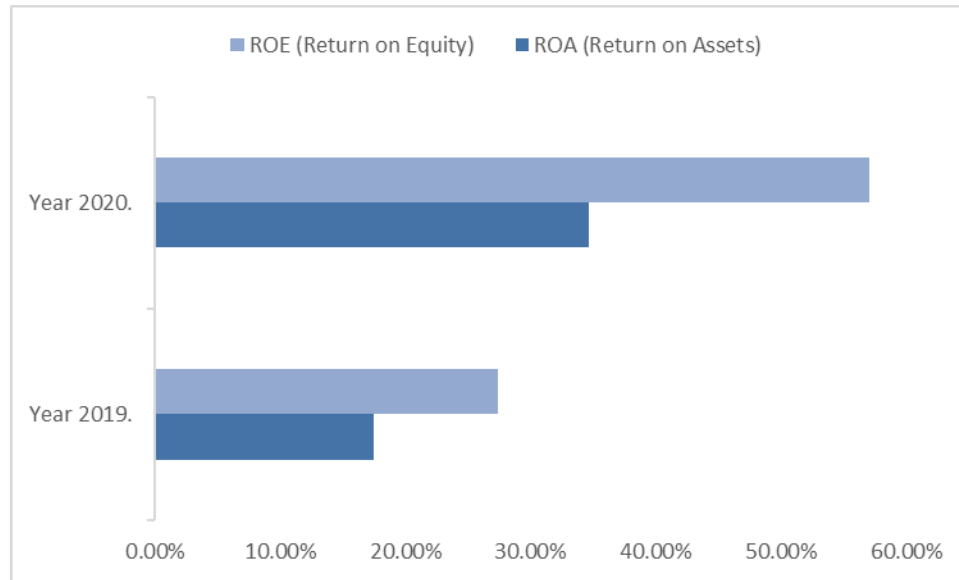


Figure 8. The trend of ROA and ROE for the years 2018-2020.

3.6. Solvency ratio analysis

The fixed asset coverage ratio, which is always more than 2, indicates that the corporation not only financed all fixed assets but also a significant portion of current assets with its own funds. The scenario is comparable in terms of real estate coverage ratio. The findings of these raids' analysis point to the company's excellent solvency.

The debt ratio shows that loans fell by 55 percent of the company's capital in 2018., 50 percent in 2019., and 33 percent in 2020. This means that over the last three years, a trend of increasing corporate debt has been seen. This does not necessarily imply that the company's solvency is in jeopardy. We can detect an increase in operating obligations in the form of short-term liabilities, which influenced this trend.

Table 5. Results of the solvency ratios analysis for the years 2018-2020.

Solvency Ratios	Year 2018.	Year 2019.	Year 2020.
Equity Ratio	2.258	2.441	2.331
Real Equity Ratio	1.845	2.068	1.880
Inventory to Working Capital Ratio	5.335	7.342	5.260
Current Assets to Working Capital Ratio	0.586	0.575	0.487
Debt Ratio	0.446	0.497	0.666
Cash Flow Coverage Ratio	n/a	0.777	0.529
Interest Coverage Ratio	65.053	82.408	73.990
Operating Cash Flow to Interest Expense Ratio	n/a	88.986	77.283

With the net cash earned in 2019. and 2020., the corporation will be able to satisfy all of its creditors. Which is good news for the company's liquidity. The interest coverage ratio by earnings, as well as the interest coverage ratio by net cash flow, is fairly high, therefore this is another excellent business outcome.

3.7. Activity ratio analysis

Activity ratios show how efficiently a corporation manages its assets and liabilities in order to maximize earnings. We can notice a decline in the value of the ratio as a result of current asset turnover, but this also suggests that current asset turnover time will increase. The amount of days it takes for current assets to turn around tells us about the long-term binding of current assets in the business cycle, which is not a good thing.

Table 6. Results of the activity ratios analysis for the years 2018-2020.

Activity Ratios	Year 2018.	Year 2019.	Year 2020.
Current assets turnover ratio	1.46	1.38	1.27
Turnover time of current assets	251	264	289
Inventory turnover ratio	4.46	4.60	4.66
Days of inventory on hand	82	79	78
Receivables turnover ratio	5.37	5.22	4.33
Days of sales outstanding	68	70	84

It is preferable to have a high inventory turnover ratio like ours is. So far, the specified ratio has been continuously increasing. As a result, the company's inventory is held less. The average number of days associated with collecting receivables from consumers is increasing, according to the research on customer receivables. In 2020., there is a significant increase, whereas the same growth in 2019. will be minimal. Receivables are considered liquid assets, but if they are not collected on a regular basis, the company's financial efficiency suffers (Knežević *et al.*, 2019).

3.8. SWOT analysis

This analysis is a straightforward method for assessing a company's strategic position. It is employed in the early stages of any project's planning. It is an acronym that stands for strengths, weaknesses, opportunities, and threats in English. The impact of external circumstances on a company's operations is revealed through this analysis. However, in order to do so, it is required to examine both internal and external elements, such as strengths and weaknesses, as well as opportunities and dangers.

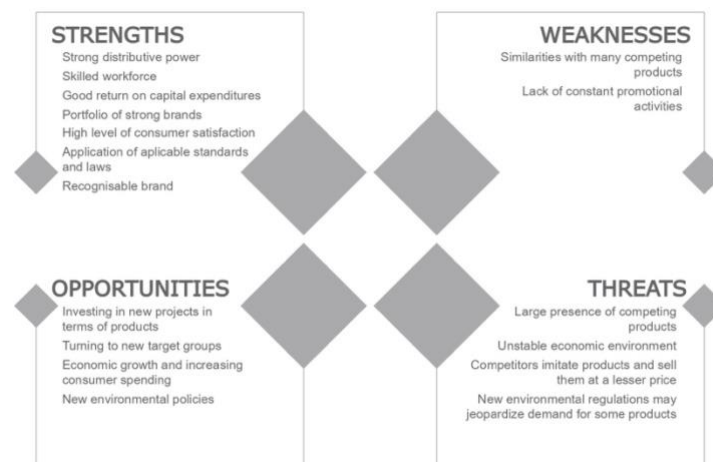


Figure 9. SWOT analysis.

3.9. PEST analysis

Pest analysis is a strategy for businesses to examine the significant external macroeconomic issues that influence their operations. External elements that can affect a company's profitability are measured using this method. Political,

economic, social, and technological factors are the focus of the investigation. It's utilized to detect present or prospective difficulties, allowing for better planning of how to deal with them.

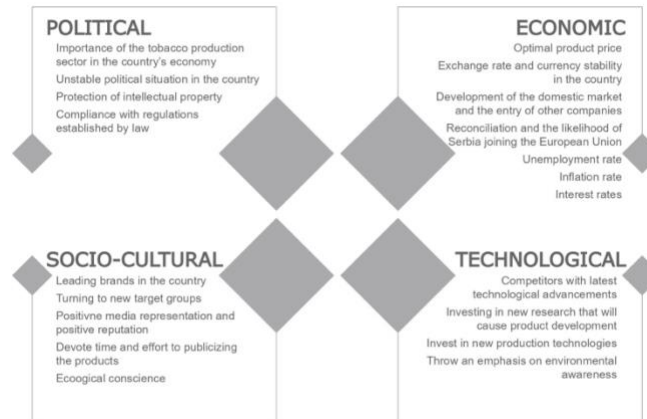


Figure 10. PEST analysis.

4. Discussion

This paper presents the analysis of financial statements collected for a period of time between 2018. and 2020. of the joint-stock company "Philip Morris Operations" that is based in Niš, Serbia. We can conclude that the results of the analysis conducted in this paper indicate that the company had excellent financial performances in the period covered by this analysis. Equity is much higher compared to borrowed capital, which gives confidence to creditors that liabilities can be covered at any time. Investments in fixed assets are not too high, which does not carry high business risk. Fixed assets and inventories are fully financed with long-term capital, based on which we can conclude that the company will be stable and solvent in the future.

Although according to liquidity indicators, the company's liquidity is declining compared to previous periods, it still indicates that the company is sufficiently liquid and can pay its due liabilities at any time. The consistency of ROA and ROE and their growth are a good basis for investors to invest in this company. When analyzing the results given by the ratios of the company's activities, certain minimal negative impacts can be noticed, such as the declining trend of the turnover of current assets and the ratio of trade receivables. There is also a trend in the growth of inventory turnover ratios, which is very favorable for one company. The analysis of the solvency of the company determines a very high degree of solvency, which is most pronounced in the ratio of fixed assets and the interest ratio. Also, other solvency ratios show that the company is quite solvent.

The company "Philip Morris Operations" as part of "Philip Morris International" is one of the leading companies in its industry in Serbia. The company has made a profit in each of the last three business years, with each year's profit being significantly higher than the preceding one. The financial analysis identified several growth trends, in positions such as net profit, net working capital and assets, operating income, ROA, ROE and other indicators, which confirm the success of this company. Similar results can be expected in the coming business years.

Conclusion

A primary approach to evaluating and comparing the financial performance of enterprises is a ratio analysis (part of the financial analysis), which deals with a set of metrics that are typically computed on the basis of inputs extracted from primary financial statements. Ratio analysis is widely used by managers, creditors and investors. Used with care, the ratio analysis is a simple technique that can reveal much about the financial position of a company and its performance. One or even several ratios might be misleading, but when combined with other knowledge of a company's management and economic circumstances, ratio analysis can tell us very much.

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Fraudulent Financial Reporting and Behavioural Approaches

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Abstract

Fraudulent actions in financial statements are intentional actions performed by an employee or manager, without reporting the actual data contained in the financial statements. When it comes to detecting and preventing accounting fraud, great importance is given to forensic accounting. One of the most commonly used quantitative models in forensic accounting is Beneish's M score model - a model that predicts the probability of manipulations in financial statements. Studies show that this model is a useful technique for detecting the behaviour of manipulators, and the results of the model can be applied to improve the quality of financial reporting, as well as to protect investors. In the following text, a case study will be presented, based on examples of real companies operating in the Republic of Serbia, which shows the application of Beneish's M score model and Altman's Z score test, and the obtained results show whether there are manipulative actions detected by the M score model, and whether companies work on improving their performance using the Z score test.

Keywords: Beneish M score Model, Altman Z score, fraudulent activities, behavioural approaches

1. Introduction

The incidence of abuse and fraud, whether in companies or academic institutions, has always been of interest to researchers as much as to practitioners and managers. The reason for this is the relative prevalence and increasing volume of corporate fraud. When a company internally suspects material fraud, it faces difficult choices. It can choose to conduct an internal investigation or hire external specialists. In addition, it may choose to disclose the investigation or take the risk of the investigation being leaked to the public (Friedrich, 201).

The most commonly used model in the detection of fraudulent actions is Beneish's M-score model, which has proven to be very significant for detecting the behaviour of manipulators (Knežević *et al.*, 2021a), and which helps forensic accountants to check financial statements published by companies. Indiana University Kelly School of Business accounting and auditing professor Messod Beneish, in his 1999 paper *"The Detection of Earnings Manipulation"* devised a quantitative model for the detection and disclosure of manipulative actions in financial statements. The model is based on the principles of forensic accounting, calling it the "probability of manipulation" or "PROMB" model. On the other hand, Altman's Z-score model (1968) is one of the most commonly accepted models when it comes to determining financial failures (Apan *et al.*, 2018). This method is widespread because it is based on accounting data and is simple to apply. For a better understanding of the mentioned tests, the following text will present a case study, which is based on examples of specific companies, the hotels of the Republic of Serbia, which will serve as an example. The hotels, whose financial reports will be used through the case study, are the Hotel Agroexport Belgrade, Avala Požarevac, Hotel Đerdap Kladovo, Borići Sjenica, Palisad Zlatibor, Hotel Putnik Novi Sad, Lepenski vir Pećinci and Vojvodina Novi Sad.

The paper is structured as follows. The first chapter refers to the literature review, the second chapter covers research and discussion. Furthermore, concluding remarks and literature review are given.

2. Literature review

Fraudulent financial reporting represents a serious social and economic problem, and it is increasingly prominent in the eyes of the public and regulators. Making business decisions based on information contained in false financial reports will have negative consequences for the entire society (Milašinović *et al.*, 2022). Fraudulent financial reporting

is often associated with company bankruptcy (Milašinović *et al.*, 2019; Srebro *et al.*, 2021). It is also treated as a critical problem for external auditors, both because of the potential legal liability for not disclosing fraudulent financial statements, and because of the damage to professional reputation resulting from public dissatisfaction due to undetected fraud (Knežević *et al.*, 2021b; Mitrović *et al.*, 2021; Milojević & Čović, 2021). The professions of accountants and auditors are deeply imbued with requirements for the application of ethical standards, primarily due to users' trust in financial reports (Mitrović *et al.*, 2022). Fraudulent financial reporting usually harms the organizations the most. The issue of fraudulent financial reporting from different angles is presented in the publication "Forensic Accounting, Investigations, Human Factors and Applied Tools" published by the Faculty of Organizational Sciences. The problem of fraudulent reporting was approached by a group of authors from an interdisciplinary perspective in the editorship of prof. S. Knežević (2021). In creative accounting, the primary goal of any business is to increase and strengthen its market position. Over the years, the manipulation of financial reports has also reached the territory of Central European countries (Durana *et al.*, 2022).

An important issue related to fraud prevention is the establishment of an effective internal audit and internal control system (Madolidi *et al.*, 2021). Fraud prevention is the elimination of the possibility or opportunity to commit fraud by developing and implementing risk management (especially fraud risk management), internal controls and fair corporate governance (Priantara, 2013). One of the ways to minimize fraud in the company is to improve the efficiency of internal audit. The magazine "Revizor (The Auditor)" deals with audit issues and other related topics. For decades, the development of this field has been encouraged by prof. J. Beke Trivunac.

Accountants' interest in "behavioural decision making" is particularly encouraging because much of accounting is concerned with evaluating information, forming judgments, and making decisions based on judgment (Einhorn, 1976a; 1976b). There are various neglected issues in reasoning research in the accounting domain. Broader use of behavioural decision/judgment methodology in accounting would be highly welcome.

Investors are often concerned that managers might hide negative information in filings. Information obtained from financial reports is of great importance for various interest groups and serves for the interpretation of results and analysis (Knežević *et al.*, 2019). With advances in textual analysis and the widespread availability of documents, it is possible to identify phrases that could be red flags indicating suspicious behaviour (Value Walk, 2013). They say there is evidence that phrases like "uninvoiced receivables" signal that a firm could later be accused of fraud.

Of particular interest for understanding the issue of the causes of fraud is the determination of the existence of a specific relationship between gender and fraud. Existing research suggests that women are more likely to report cheating than men (Kaplan *et al.*, 2009). Furthermore, women are more likely to engage in property embezzlement (Hilliard & Neidermeyer, 2018), shoplifting and benefit fraud, while men are more likely to be arrested for forgery and transport fraud (Steffensmeier *et al.*, 2015).

Behavioural red flags of fraud are common behavioural characteristics exhibited by fraud perpetrators (McFadden, 2016). The display of these behaviour patterns or traits is warning signs that suggest that the person in question may be committing fraud (Coenen, 2008). Early research on the behavioural of fraud identified the following: ego (Sutherland, 1949), financial problems, personal problems - such as extramarital affairs, gambling, family pressures and legal problems (Cressey, 1953) and CEO behaviour (Vance, 1983). Detecting fraud is a challenging task because fraudulent actions are buried in massive amounts of normal behaviour and true intentions can be obscured in a single snapshot. Indeed, fraudulent incidents usually take place in successive time steps to obtain an illegal benefit, which provides unique clues for investigating fraudulent behaviour by considering the complete sequence of behaviour rather than detecting fraud based on a snapshot of behaviour (Liu *et al.*, 2020).

Among the behavioural approaches and solutions to fraud, risk factors are mentioned (Ramamorthy, 2008):

- Sound tone on top, with control "leading the conversation"; alignment of incentive structures within the organization in a way that does not encourage fraud; an active board and audit committee that oversee management's performance and activities (as well as the work of external and internal auditors).
- Fostering a culture of integrity and ethics, with the support of the organizational code; enforcement, periodic ethical audits and enforcement of observed violations of the code; maintaining an ethics and/or whistleblower hotline; explicitly reward good behaviour.
- Routine background checks of new and experienced employees, as well as those for senior management appointments.
- Quick, decisive action to respond to fraud incidents so that employees and others are aware of the organization's serious commitment to confronting fraud problems head-on.
- Fraud awareness training, perhaps provided by internal audit professionals or consultants outside, including a description of ethics hotlines and instructions on what to do when encountering fraud; control self-

assessments consisting of process owners undertaking risk and control mapping (and including consideration of fraud risk in such conditions).

Manipulations in financial reports include, in addition to earnings, other indications that investors, analysts and other stakeholders rely on. In the absence of an economic theory of manipulations, Beneish (1999) relied on three sources to explain the variables that are based on the data from the financial statements. The first source refers to signals about future prospects that appear in the practical and academic literature. It is assumed that there is a greater chance for the appearance of manipulative activities when the future perspective of the company is very poor. Another source analyses variables based on accruals and cash flows (Healy 1985; Jones 1991). A third source considers variables derived from research on positive theory, which assumes that incentives for earnings manipulation are based on contracts (Watts and Zimmerman 1986). Based on the data from the financial statements, a model of eight variables was created.

Seven of the eight variables are designated as indices, because they are intended to detect irregularities that may result from manipulation when comparing measures of financial statements in the year of the first reporting violation with the previous year.

The eight variables used in the Beneish M-score model to detect manipulative actions are DSRI, GMI, AQI, SGI, DEPI SGAI, LVGI and TATA.

- **Days of Sales in Receivables Index (DSRI)**

$$DSRI = \frac{\text{Receivables (t)/ Sales (t)}}{\text{Receivables (t1)/ Sales (t1)}}$$

- **Gross Margin Index (GMI)**

$$GMI = \frac{\{ \text{Sales (t1)} - \text{Cost of Goods Sold (t1)} \} / \text{Sales (t1)}}{\{ \text{Sales (t)} - \text{Cost of Goods Sold (t)} \} / \text{Sales (t)}}$$

- **Assets Quality Index (AQI)**

$$AQI = \frac{\{ 1 - \text{Current Assets (t)} + \text{PP\&E(t)} \} / \text{Total Assets (t)}}{\{ 1 - \text{Current Assets (t1)} + \text{PP\&E(t1)} \} / \text{Total Assets (t1)}}$$

- **Sales Growth Index (SGI)**

$$SGI = \frac{\text{Sales (t)}}{\text{Sales (T1)}}$$

- **Depreciation Index (DEPI)**

$$DEPI = \frac{\text{Depreciation (t1)} / \{ \text{Depreciation (t1)} + \text{PP\&E(t1)} \}}{\text{Depreciation (t)} / \{ \text{Depreciation (t)} + \text{PP\&E (t)} \}}$$

- **Selling General and Administrative expenses Index (SGAI)**

$$SGAI = \frac{\text{Selling, General and Administrative expenses(t)/Sales (t)}}{\text{Selling, General and Administrative expenses (t1)/Sales(t1)}}$$

- **Leverage Index (LVGI)**

$$LVGI = \frac{\{ \text{LTD(t)} + \text{Short-term liabilities (t)} \} / \text{Total Assets (t)}}{\{ \text{LTD(t1)} + \text{Short-term liabilities (t1)} \} / \text{Total Assets (t1)}}$$

- **Total time accruals according to total assets (TATA)**

$$TATA = \frac{\begin{aligned} &\Delta \text{Current Assets (t)} - \Delta \text{Cash (t)} - \Delta \text{Short-term liabilities (t)} \\ &- \Delta \text{Current Maturities LTD(t)} - \Delta \text{Profit Tax (t)} - \Delta \text{Depreciation (t)} \end{aligned}}{\text{Total Assets}}$$

The Beneish M-score model is calculated using the following formula:

$$\text{M-score} = -4.84 + 0.92 \times \text{DSRI} + 0.528 \times \text{GMI} + 0.404 \times \text{AQI} + 0.892 \times \text{SGI} + 0.115 \times \text{DEPI} - 0.172 \times \text{SGAI} + 4.679 \times \text{TATA} - 0.327 \times \text{LVGI}$$

In the aforementioned study, conducted by Professor Beneish, a coefficient of -2.2 was determined, which suggests that companies with a higher coefficient than this are manipulating their earnings. One of the most commonly used models for predicting bankruptcy is Altman's Z-score model (Brown *et al.*, 2020; Matejić *et al.*, 2022). In 1969, Edward I. Altman developed this model using the statistical technique of discriminant analysis, which is known as multivariate bankruptcy prediction (Beneish, 1999). The model is calculated using the following formula:

$$Z = 1.2X1 + 1.4X2 + 3.3X3 + 0.6X4 + 1.0X5$$

X1 = Working Capital / Total Asset;

X2 = Retained earnings / Total assets;

X3 = EBIT / Total assets;

X4 = Market value of equity / Book value of total debt;

X5 = Sales / Total assets;

The reference value of this model is 1.8. If the analysed company has a result that is less than 1.8, there is a high probability that the observed company will go bankrupt.

3. Research and discussion

As already noted, in this case study, using data from the financial statements of the above-mentioned joint stock companies, Beneish's M-score model and Altman's Z-score test were applied. The results of Beneish's M-score model were obtained with the help of eight-factor variables, i.e., the coefficients - DSRI, GMI, AQI, SGI, DEPI, SGAI, LVGI and TATA, which were discussed in more detail in the previous chapter. As for Altman's Z-score test, due to the difference in financial reports and the industry to which the listed companies belong, a somewhat modified methodology was used than was mentioned in the previous chapter. The changes refer to the X coefficients, the formula for obtaining the Z-score indicator, as well as the reference value. The Z-score test is obtained with the help of the following formula:

$$Z = 3,25 + 6,56X1 + 3,26X2 + 6,72X3 + 1,05X4$$

X1 = Net working capital / Total assets

X2 = Retained earnings / Total assets

X3 = EBIT / Total Assets

X4 = Book Value of Equity / Total Assets

Using a slightly modified formula for obtaining Altman's Z-score test, there is also a change in the reference value, which in this case indicates that the observed company is in the "safe zone" if the result of the Z-score test is greater than 5.85; the company is in the "grey zone" if the result of the Z-score test is from 3.75 to 5.85. And finally, the company is in the "distress zone" if the result of the Z-score test is less than 3.75.

For the purposes of the case study, data from the financial reports of these hotels were used - balance sheet, income statement and cash flow statement. The systematized data of the positions of the balance sheet, income statement and cash flow statement, which were used for the purposes of the analysis, will be presented below. The financial reports were taken from the database of the Belgrade Stock Exchange, where the shares of the mentioned companies are listed. Within the following table (Table 1), the systematized balance sheet data of the listed companies will be presented.

Table 1: Systematized balance sheet data of the companies

	Agroexport		Avala Požarevac		Đerdap turist Kladovo		Borići Sjenica		Palisad Zlatibor		Putnik Novi Sad		Lepenski vir Pećinci		Vojvodina Novi Sad	
Position	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
Receivables	1399	1257	25346	30586	23697	18616	10325	12780	29870	12252	14736	18423	5125	11252	3838	3838
Current Assets	3580	3399	39887	48636	39618	50332	14116	25875	86607	89252	21443	27658	35216	42534	7865	8469
Properties, plants, equipment	71189	65393	83594	85541	310583	324854	246758	258473	1759993	1759522	243847	238045	308459	326947	92901	93056
Total Properties	104221	72032	123542	134417	350623	375505	260874	284348	1880100	1879620	265290	265703	343761	306576	101033	131966
Short-term Liabilities	22164	16513	38376	56378	98285	87609	150730	173201	433539	394916	154433	153035	73056	98133	9711	9635
Longterm reservations and obligations	6508	538	28325	20617	36426	56875	0	0	25424	26353	35246	35163	24005	24005	51947	52188
Long-term debt	0.06	0.01	0.23	0.15	0.10	0.15	0.00	0.00	0.01	0.01	0.13	0.13	0.07	0.06	0.51	0.40
Total Assets	104221	72032	123542	134417	350623	375505	260874	284348	1880100	1879620	265290	265703	343761	306576	101033	131966
Retained Earnings	6528	10905	6091	6753	12447	15137	3381	3896	4585	7878	57414	57961	8218	8605	301	528
Net Working Capital	-18584	-13114	1511	-7742	-58667	-37277	-136614	-147326	-346932	-305664	-132990	-125377	-37840	-55599	-1846	-1166
Book value of equity	50664	55041	54583	55245	197851	213050	110144	111147	895370	903248	74457	76075	239574	239961	40248	70143
Total Liabilities	53557	17051	68050	79172	152772	162545	150730	173201	984730	976381	120833	180628	104187	156615	61685	61823

Source: The authors

In the following table (Table 2), you will be able to see those positions of the income statement of the mentioned companies, which were used for the purpose of obtaining Beneish's M-score model, and Altman's Z-score test.

Table 2: Systematized income sheet data of the companies

	Agroexport		Avala Požarevac		Đerdap turist Kladovo		Borići Sjenica		Palisad Zlatibor		Putnik Novi Sad		Lepenski vir Pećinci		Vojvodina Novi Sad	
Position	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
Revenue from sales of products and services	35732	35199	28791	34346	166114	198728	5463	3934	413881	405915	79580	96219	95299	97247	46837	49186
Cost of goods sold	6855	4917	12164	8293	17599	23035	1173	1192	23446	30842	4398	5589	8050	7916	4860	5225
Depreciation costs	5911	5831	3353	3309	8990	10192	3851	5936	46334	45239	9061	8131	13834	13715	4177	4317
Costs of wages, benefits and other pers. expenses	9655	9709	16690	15133	39894	43272	6568	8208	345808	150070	40368	44935	33010	36041	44596	45222
Operating costs	15566	14930	20043	18442	48884	53464	10419	14344	192152	195309	49409	57566	46844	49756	48773	49539
Net profit	15856	4377	835	7077	12447	15137	423	515	4585	7878	1071	1618	25	387	301	528
EBIT	6242	5609	835	7877	12892	15595	498	606	8675	13458	1270	1990	363	729	581	751

Source: The authors

One of the most important positions of the financial report - cash flow statement is the position - cash flow from operating activities, and the data on it, of the observed companies, will be shown in the following table (Table 3).

Table 3: Systematized data of cash flows statements of the companies

	Agroexport		Avala Požarevac		Đerdap turist Kladovo		Borići Sjenica		Palisad Zlatibor		Putnik Novi Sad		Lepenski vir Pećinci		Vojvodina Novi Sad	
Position	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
Cash flow from operating activities	41993	40624	140944	159773	160363	217041	25131	30334	552635	491557	128837	135554	112995	116183	98839	103348

Source: The authors

With the help of all the above data from the financial statements, the results for Beneish's M-score model were obtained. Each of the extracted data was used to obtain the coefficients, which are necessary in order to calculate the M-score. In the following table (Table number 4), the obtained results of all eight coefficients, as well as the result of the M-score test, for all mentioned companies will be presented. Further, it should be noted that the TATA coefficient has been slightly modified and adapted to the industry to which the samples belong. The TATA coefficient was obtained with the help of the following formula.

$$TATA = \frac{(\text{Net Profit} - \text{Cash flow from operating activities})}{\text{Assets}}$$

Table 4: M-score test

Coefficient	Agroexport	Avala Požarevac	Đerdap turist Kladovo	Borići Sjenica	Palisad Zlatibor	Putnik Novi Sad	Lepenski Vir P	Vojvodina Novi Sad
DSM	0.91	1.01	0.66	1.72	0.42	1.03	2.25	0.95
GMI	1.01	0.76	1.01	1.01	1.02	1.00	1.00	1.00
AQI	1.33	0.78	0.95	0.92	1.00	0.94	0.90	0.77
SGI	0.99	1.19	1.20	0.72	0.98	1.21	0.98	1.05
DEPI	0.98	1.04	0.92	0.68	1.02	1.08	1.07	0.97
SGAI	0.97	0.77	0.91	0.14	1.04	0.88	1.08	0.97
LVGI	1.08	1.35	0.83	1.05	15.54	0.99	1.16	0.77
TATA	-0.50	-1.18	-0.54	-0.10	-0.26	-0.50	-0.29	-0.78
M-score	-4.82	-8.12	-5.09	-2.49	-8.98	-5.63	-2.81	-6.14

Source: The authors

If we stick to the reference value established by Messod Beneish in his study on the M-score model, which is - 2.22, we can conclude that none of the companies that served as a sample for this study manipulates their earnings.

Using data from financial reports, Altman's Z-score test was also calculated, the results of which will be shown in table number 5.

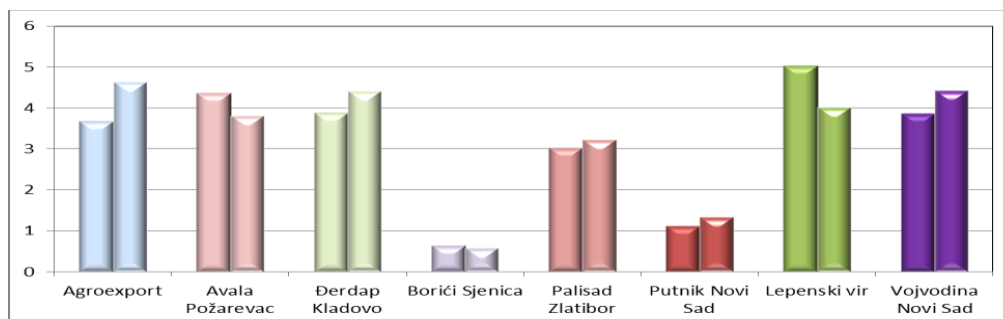
Table 5: Altman's Z-score test

Coefficient	Agroexport		Avala Požarevac		Đerdap turist Kladovo		Borići Sjenica		Palisad Zlatibor		Putnik Novi Sad		Lepenski Vir Pećinci		Vojvodina Novi Sad	
	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
X1	-0.18	-0.18	0.01	-0.06	-0.17	-0.10	-0.52	-0.52	-0.18	-0.16	-0.50	-0.47	-0.11	-0.14	-0.02	-0.01
X2	0.06	0.15	0.05	0.05	0.04	0.04	0.01	0.01	0.00	0.00	0.22	0.22	0.02	0.02	0.00	0.00
X3	0.06	0.08	0.01	0.01	0.04	0.04	0.00	0.00	0.00	0.01	0.00	0.01	0.00	0.00	0.01	0.01
X4	0.95	3.23	0.79	0.70	1.30	1.31	0.73	0.64	0.91	0.93	0.39	0.40	2.30	1.53	0.65	1.13
Z - score	3.68	6.46	4.37	3.81	3.88	4.42	0.64	0.58	3.03	3.22	1.11	1.34	5.03	4.02	3.86	4.43

Source: The authors

If we follow the reference values published in the magazine, "Altman Z-score test for the top 10 companies in Serbia by business income in 2012" by D. Lukač, we can see that the company "Agroexport" in 2017 was in the so-called "grey zone", while in 2018 the result of this test improved significantly, and the company was in the "safe zone". When we look at the hotel "Avala Požarevac", both in 2017 and 2018, it is in the "grey zone", the same case can be observed with the hotels "Lepenski vir Pećinci" and "Vojvodina Novi Sad". However, during the observed years, the hotels "Borići Sjenica", "Palisad Zlatibor" and "Putnik Novi Sad" have rather poor results of this test, and according to the reference values, they are classified in the so-called "distress zone".

Figure 1 - Graphic representation of the Altman Z-score test



Source: The authors

In the previous Figure (Figure number 1), the results of the Altman Z-score test for 2017 and 2018 are shown on the graph. It can be seen that during those two years some companies improved their performance and got the status of "safe zone", while some companies remained in the "grey" or "distress zone" during both observed years. In addition, it can be noted that the results of the companies' operations differ considerably during the observed years.

4. Conclusions

Beneish's M-score model is a forensics tool that is considered the best model for detecting the potential occurrence of manipulative actions in financial statements. It is a model that uses eight-factor variables that can be used to determine whether the observed company violates generally accepted accounting principles, and thus manipulates its financial statements. When it comes to Altman's Z-score test, it is the model that is considered the best technique when it comes to determining financial failure - bankruptcy.

The key aspects of fraudulent financial reporting are pointed out. Attention is also paid to the behavioural aspect of the fraud issue. In this paper, a case study was conducted, in which data from the financial reports of companies of the Republic of Serbia, whose shares are listed on the Belgrade Stock Exchange, were used as research samples. Within it, on examples of selected companies, and systematized data from financial reports - balance sheet, income statement and cash flow statement, the results of Beneish's M-score model and Altman's Z-score test were obtained. Beneish's M-score model showed no irregularities in terms of manipulative actions in the financial statements of the observed companies, looking at 2017 and 2018. When it comes to the Z-score test, some of the observed economic entities were in the "safe zone" during the two observed years (2017 and 2018), some of them are in the "grey zone", while some are threatened with bankruptcy.

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Spiritual and ethical marketing as a factor of strategic business leadership: holistic approach

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Abstract

The growing trend of interest in ethics and spirituality has influenced modern marketing. Ethical and spiritual marketing are evolving as separate disciplines. There is a strong connection and influence of the elements of spiritual and ethical marketing with the categories of business leadership and the potential for holistic development. The development of spiritual and ethical marketing in the organization leads to the holistic improvement of strategic business leadership through the easier overcoming of crisis, better satisfaction of needs, highlighting positive examples and performing roles, higher responsibility and authority as well as raising levels of power and behaviour, readiness to fight and influence groups.

Keywords: spirituality, ethics, marketing, business leadership

1. Introduction

The strategic marketing process and the marketing management literature predominantly deal with the identification of strategies and tactics for consuming marketing exchanges. The books, journal articles, and consulting activities are focused on identifying, developing, and servicing exchanges. Rarely are the moral or ethical dimensions of an exchange strategy integrated into the process. That is why there is a growing trend of interest in the spiritual and ethical approach to modern marketing as an important part of organizational strategic leadership. The paper is part of broader multi-year research in the field of interdisciplinary Orthodox leadership (Resimić, 2021), in this case of business.

2. Literature review

Spiritual marketing is defined as a valuable marketing concept that focuses not only on the mind and heart of the consumer, but also on the spirit of the consumer (Kotler, P., Kartajaya, H. and Setiawan I., 2010). "General Theory of Marketing Ethics" was written by Hunt, Shelby D., Lawrence B. Chonko and James B. Wilcox (1984). Donald P. Robin and R. Eric Reidenbach (1987) dealt with strategic marketing ethics. Authors such as Andrew, J. and Smith, D.C. (1996) define creative strategy as the degree to which a company designs and applies new marketing practices to different product categories. The challenges of managing business change by improving ethics and work ethic have been explored (Alshanty, A. M., & Emeagwali, O. L., 2019). Alifahmi (2008) studied spiritual marketing strategies from the perspective of need. The liturgical concept of marketing was developed (Ahmad Bambang, Andriani Kusumawati, Umar Nimran, Suharyono, 2021). Hirschman (1987) gave a holistic view of the role of man as a market subject. Steiner (1972) addressed the social responsibility of strategic marketing. Authentic spiritual identity as the basis of leadership authority has been addressed (Brecht, S. *et al.*, 2011). Lewis (2010) studied aspects of communication within Islamic marketing in a strategic sense while Kotler P. (2018) determined the connection between consumer behaviour and the intention to buy. Hastings (2017) emphasized inner spiritual power as a potential of ethical marketing leadership in his research. The cause-and-effect relationship of spiritual marketing and sustainable competitive advantage has been addressed by (Ahmad Bambang *et al.*, 2021). The impact of ethical marketing on the quality of social leadership has been addressed by Chonko, Lawrence B. and Shelby D. Hunt (1985). In general, we notice a growth trend of publications in this area, especially in the context of the growing crisis.

3. Metodology and data

The conceptual framework of the paper connects the variables of spiritual and ethical marketing that influence the development of strategic business leadership through a categorical apparatus of twelve elements: change, needs,

example, roles, responsibility, authority, power, behaviour, struggle, influence, groups and followership. Referring to the conceptual framework and the previously explained hypothetical research model, the theoretical influence between the variables in the research can be explained as follows. Improving spiritual and ethical marketing directly correlates with the quality of business leadership. There is little research on the impact of spiritual marketing on strategic business leadership and its sustainable development. Therefore, it is interesting to find out whether spiritual marketing affects the company's sustainable competitive advantage. We will connect the principles and values of spirituality and ethics with the main elements of the marketing mix and then show their impact on the mentioned elements of strategic business leadership. We will use secondary and primary sources of our own research conducted immediately before the pandemic.

3. Results and discussion

We will show the positive correlation of ethics, spirituality and marketing with business strategic leadership through the twelve mentioned elements of Orthodox leadership. Orthodox leadership is guided by the Lord Jesus Christ the Saints and the Gospel in the process of making positive changes, meeting needs, setting examples, performing roles, taking responsibility, gaining authority, gaining power, behaviour, struggle and influencing groups of followers (Resimić, 2021).

Changes in the market affect consumer behavior: The only constant on the market is changing. Constantly changing lifestyles, motivations and perceptions of consumers have influenced their shopping intentions and consumer expectations have changed (Usha Rani D. *et al*; Čelić *et al.*, 2021). The fact that, as Christians, we confess at the liturgy that we are "waiting for the resurrection of the dead and the life of the next century" changes our market behaviour, if we are not instant, weekend believers. Therefore, more emphasis should be placed on understanding the factors that result in spiritual marketing. By doing so, retailers could make better use of consumer intentions to buy. Further, globalization, recession, consumer empowerment, climate change, and media digitalization have radically changed marketing practices (Friedman, 2005). Innovation itself as a business change is characterized by two phases, discovery and commercialization. The discovery has spiritual inspiration. Porter argues that the innovation process cannot be separated from business strategies and the competitive environment (Afuah, 1998). Innovation is therefore what drives an organization to integrate technology, organization and market changes in order to preserve market expansion (Tresnati, R., Aspiranti, T., & Hidayat, R, 2011). It is a challenge for spiritual marketing strategic leadership to accompany these changes by improving ethics and work ethic. Alshanty, A. M., & Emeagwali, O. L. (2019) confirmed that there is a positive impact of market perception ability on corporate innovation. The crisis, whether social, economic, market or health is always a systemic change and requires an increased, synergistic effect of spiritual and ethical marketing leadership and the connection of these two important segments of every organization. In the end, from a spiritual point of view, death itself is a great change that evokes strong feelings at the very thought, so from the aspect of marketing ethical leadership, one should be very careful with messages such as: "Think in time about life insurance"?! Christians believe in eternal life and are not too afraid to secure the earthly, the transient one.

Do we need more eternal moral values or transient material things? There are two leading directions that shape the approach to moral philosophy: deontology and utilitarianism. In the modern marketing literature, they have been used as the basis for the "General Theory of Marketing Ethics" (Hunt, Shelby D., Lawrence B. Chonko and James B. Wilcox, 1984). According to Hoffman, K.D. *et al*, (2003, p. 139) the desire of the buyer to invest in a particular product or service is defined as the intention to purchase. Spiritual marketing (Alifahmi, 2008) is a marketing strategy and ability to understand and meet the needs, desires, and expectations of others (customers, employees, and other clients, and all related) and is based on the values God has taught us (moral, ethics, honesty, responsibility, fairness, togetherness, etc.). Spiritual marketing focuses on fulfilling God's will. God wants people to meet each other's needs and desires, as His creatures, so the products and services they sell should benefit the community. God also does not want to harm any creature, so spiritual merchants must sell products that do not harm others. This is the Liturgical Concept of Marketing, and it is important to believe that everyone will receive something in return from God in the justest way (Ahmad Bambang, Andriani Kusumawati, Umar Nimran, Suharyono, 2021). For ethical and spiritual marketing leadership, spiritual needs are hierarchically above material ones and seek a significant place for a creative society through self-actualization and self-transcendence as described by Abraham Maslow. Thus, the truth in marketing (Wind, 2008. vol. 49) from the point of view of Christianity enables the satisfaction of a higher need-freedom. "You will know the truth; the truth will set you free" (John 8:32). Consumers are therefore looking for companies that can give more than what money can buy. On the other hand, marketing also deals with bodily needs. Food is an important part of religious symbols, rituals and customs, so it should have a proper relationship with the spiritual or supernatural because it supports life (D. Usha Rani, M. V. Sudhakara Redy, M. Sreedevamma, 2003). As there is a kosher and halal standard in food preparation, an appropriate equivalent is needed in a market with a predominantly Christian population (Snježana Gagić, Ana Jović Vuković, Marko Petrović, 2017.) Another example

of the connection between food marketing and social leadership is Jamie Oliver, who makes problematic children's good people and chefs, which is a positive example of transformational marketing leadership and Orthodox culture needs such creators. Maybe some of the little ones will be great business or political leaders, so people, by satisfying the need for food, indirectly provide better leadership to the community.

Latent variables of spiritual marketing are shown by examples. The best indicator of spiritual marketing variables is ethical with the highest load factor of 0.8127 (Ahmad Bambang *et al*, 2021). We also list the results of research at a top clothing store in the UAE. The clothing store suffers significant sales losses although it is increasingly investing in traditional brand management strategies, focused on winning the minds and hearts of consumers rather than their spirit. Therefore, due to the limited focus of spiritual marketing in the company and the growing importance of this discipline in marketing, this study investigated the impact of spiritual marketing on consumer intentions to buy. The findings of the study revealed that there is a strong positive link between spiritual marketing and consumer intention to buy (Costa D., 2018).

Both the consumer and the marketing manager and the leader of the company should, in times of great suffering and crisis, remain people and not become slaves or, as Saint Bishop Nikolaj Velimirović used to say, "the property of their property". Instead, a person can develop his emotional, spiritual, educational, financial, social, political and cultural status (Hirschman, 1987) and sophisticated strategic marketing leadership should follow all dimensions of personality. Unfortunately, from the point of view of political marketing, we see that a number of people at the time of the election turn into a smaller box of groceries (analyses/elections-in-serbia-wholesale-and-retail) and their "leaders" into material goods as a reward for services to centres of power that take away strategic resources from the former.

In the struggle for the favour of the buyer or the voter, his human, divine role and nature are forgotten. Especially in the countries of the socialist-communist bloc, the buyer was not free in that sense. Above him, as a deity, stood a hierarchically determined state that determined what was more or less expedient for its citizen (Pušonja, 2009, p. 124). In the research we conducted just before the corona crisis, we also asked the question of business and social roles in the ethical context.

From the summary table 1, on page 196, it can be noticed that over 90% of the respondents agree with the views that both the worker and the peasant became a slave. The cross-tabulation on the role of the Serbian peasant in neoliberalism and the age of the respondents gave the following results:

Claims	Categories	Age			
		up to 35 years	from 36 to 45 years	from 46 to 55 years	over 55 years
A Serbian worker, peasant and businessman became a slave to neoliberal capitalism in his native country instead of being a rich, free, proud host and patriot.	I disagree	1	0	0	1
	I am not sure	0	1	1	1
	I agree	9	12	15	10

Marketing has evolved to a stage where capturing the mind of consumers through brand positioning and capturing the heart of consumers through emotional marketing are not enough. Marketing professionals now need to capture the spirits of consumers through spiritual marketing. The importance of spiritual marketing for the organization must not be underestimated, and responsible strategic leadership must change its marketing strategies in order to win the spirits of consumers. The last will be the first and the first the last (Matthew 20) and the buyer is the only real leader and director of the company because without him it does not exist. On the other hand, companies are responsible not to offending the eternal and priceless soul of the consumer by competing for his money. Leadership is tied to positive changes and influences, so today's companies are in trouble because consumers constantly monitor their market behaviour and every positive or negative action of the company is appreciated or criticized, and social media tools facilitate the spread of news, thus creating a culture of storytelling (Kotler, P., Kartajaya, H. and Setiawan I., 2010). Christian marketing leadership does not tolerate hypocrisy, to criticize others without seeing ourselves, but we need to carry each other's burdens and improve together and thus show responsibility in the market and in society as a community.

In order to reach the spirit of the consumer, it is necessary to build trust and it requires high authority. The authors proposed a model known as the "Model 3i" that focuses on brand identity, integrity, and image that together create reputational authority. The intention is to address the whole human being, which consists of body, mind, heart, soul

and spirit, so horizontal communication and values such as honesty, originality and authenticity are important (Brecht, S. *et al.*, 2011, p.23). Modern marketing requires the constant improvement of professional authority. However, the expertise is moving from purely expert to apostolic. One of the greatest leaders and apostles of strategic marketing, Philip Kotler, said that it is not difficult to learn or master marketing, but it is necessary to spend the entire career in order to become a perfect connoisseur of this discipline. Spiritual strategic marketing leadership requires a parallel moral age and the acquisition of not only marketing skills but primarily human virtues. The only one who has empathy and loves people can find the right ways to satisfy their true needs (Gudovic, 2017) which are increasingly going from material to spiritual. It should also be mentioned that the affirmation of marketing is important for a certain religion, e.g. Christian or Muslim risks creating an essentialist view that creates a very limited, static and stereotypical perception of Christian or Muslim consumers and businesses and related consumption and marketing practices. Essentialism includes elements of identity, e.g., to be a Muslim as an immutable and universal determinant. The ethical and spiritual marketing leadership we affirm instead encourages interaction between Islam or Christianity and marketing (Ezlem Sandi/col and Gilliz Ger).

From the aspect of Orthodox leadership, the will, God's and ours, is an important source of power (Resimić, 2021, p. 142). One of the views of Kant's "categorical imperative" is that "no one should act unless he is willing to maximize on the basis of which an act becomes a universal law" (Kant, 1964). The great philosopher simply logics that only good will can be universalized. So a reliable test for exceptions to universal rules is whether they can meet the criterion of goodwill. We voluntarily drink sweetened drinks and drive SUVs that endanger our health and our planet, and in general, it must be so. Historical experience and two millennia of reflection assure that we can do better. We all have the moral strength within us to make the right choice even when it is difficult, we just have to reconnect with it (Hastings, 2017). "I do not do the good I want, but the evil I do not do. (Rome. 14). We created evil ourselves, and good is from God, says the apostle, Paul. " Ethics is, therefore, a connection with religion for all areas, including marketing and leadership. For example, retailers might wonder if it is morally acceptable to sell a product if it is known to be potentially harmful to some customers. The Iron Law of Responsibility (Davis, 1966, p. 174) warns what firms can expect if they ignore the demands of socially expected responsibility: "In the long run, those who do not use power in a way that society holds accountable tend to lose it." Further, more ethics and morals in marketing and business bring savings due to fewer complaints, trials and damages to customers and higher profits due to a better reputation (Dana Zohar and Jan Marshall, 2009). Even a decade ago, 81% of the 248 corporate executives surveyed stated that profit maximization and social ethical inclusion are not contradictory concepts (Edmonds, Charles P., John H. Hand, 1976).

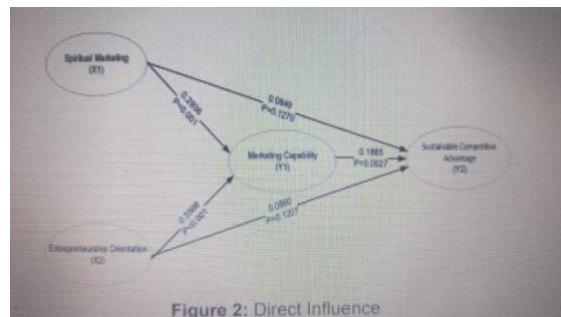
Kant also taught that the moral law in us should shape every action. The market is in crisis, and we must not lie about that (Petrović, 2002). If theft and lying were the social rules, and not the exception, business as we know it would be impossible. Both customers and employees would practice this behaviour much more, and the potential for consuming marketing exchanges would be significantly reduced. It is necessary to point out one important problem in the business of the company, which can occur as a lack of morals and ethics of management. This is fraudulent financial reporting (Knežević *et al.*, 2021), and it is the focus of forensic accounting (Milojević *et al.*, 2021; Knežević *et al.*, 2021a, Knežević *et al.*, 2021b), and it is important in investigations (Milojević *et al.*, 2020). It is not uncommon for fraudulent financial reporting to lead to corporate bankruptcy (Milašinović *et al.*, 2019; Brown *et al.*, 2020). However, the consequences of fraudulent financial reporting can also be felt by companies operating within the same sector (Srebro *et al.*, 2021). Also, greater commitment of management to the public availability of financial statements to their users is necessary (Obradović *et al.*, 2021). An important question is how the COVID-19 pandemic affects professionals (Marković *et al.*, 2020), but also how disasters affect the community (Adamović *et al.*, 2021), as well as digitization (Tornjanski *et al.*, 2021). Intellectual capital is gaining in importance today (Radonic *et al.*, 2020), and the accounting system should monitor the human resource management cycle more efficiently (Špiler *et al.*, 2021).

Spiritual crisis is the cause of material and marketing cannot fill the gap, but the behaviour of marketers must be ethically improved. This is a great challenge because the morality of the postmodern has gone too far in the anti-Christian direction (Abazovic, 2014). The Serbian people have a saying: "Move yourself - God will move with you." Minimal proactivity toward spiritual marketing can significantly encourage consumer intentions. Communication is therefore an important part of business leadership. If the trader does not feel the spirit of the consumer, he can negatively perceive the company's image. In the age of digital media, the way consumers think and interpret marketing messages through their emotions, moods, perceptions, desires and demands are quite diverse. Organizations must understand that these differences in consumer behaviour have a major impact on consumer intentions to purchase (Kotler P., 2018). Thus, there are "lifestyle" media, in traditional and digital form, that develop platforms for companies to talk to Muslim consumers, and Muslim consumers and businesses can communicate with each other (Lewis, 2010). Corporate social responsibility and business ethics have significantly different meanings. The social responsibility of a company is determined by the social contract between the company and the company in which it

operates (Steiner, 1972). In contrast, business ethics requires that an organization or individual behave in accordance with detailed rules of moral philosophy. Although these two criteria of behaviour are often reduced to the same, there are often deviations. For example, actions that any society defines as "responsible" in its social contract with business can be considered ethically neutral or even ethically unfounded by moral philosophers. In addition, morally grounded practices could be considered socially unacceptable (Donald P. Robin, and R. Eric Reidenbach, 1987). In general, leadership seeks to move from a mere change of behaviour to thinking about people in the circle of body, mind, and spirit. We can conclude that a major factor in the development of successful socially responsible and ethical marketing programs is the ability of business leaders and managers to incorporate core ethical values into the culture of the organization. (Sathe, 1986, p. 556) defines corporate culture as "a set of important assumptions shared by community members". He further points out that "the content of culture influences the direction of behaviour" (p. 556). Examples of the influence of religion on clothing as a form of consumer behaviour are also interesting. In the Islamic fashion market, the case of "burkini" as a combination of burqa and bikini is interesting, a modern invention by which Muslim women accelerate the search for fashion and leisure modelled on women of Western culture (Fitzpatrick, 2009).

Positive changes as a prerequisite for leadership mean a constant struggle with one's ex-self. When companies do not evolve into spiritual marketing and neglect to be a company that speaks with a human spirit (Kotler, P., Kartajaya, H. and Setiawan I., 2010, p. 34), maintaining competitiveness in the market struggle can be difficult. The impact of spiritual marketing on sustainable competitive advantage $P \text{ value} > 0.005$ accepts H_0 . Therefore, the variable spiritual marketing (Ks1) has a slight positive effect on the variable of sustainable competitive advantage (I2). Thus, better spiritual marketing slightly increases a sustainable competitive advantage, which shows a trajectory coefficient of 0.0849 with a $p\text{-value} = 0.1270$. Learning orientation, market orientation and product innovation have a significant impact on competitive advantage. However, spiritual marketing has a significant positive effect on sustainable competitive advantage through marketing capabilities that mediate the relationship between spiritual marketing and sustainable competitive advantage by 0.0548 (Ahmad Bambang et al, 2021).

Today, everything affects everything, so the religious-spiritual approach that connects everything (re-legare-reconnection, MR) is indispensable in modern marketing and business. The spirituality of marketing influences the development of strategic business (Brightman, 1994, vol.25). Ahmat Bambang and co-workers show this mutual influence in the following chart.



Promotion as an element of the marketing mix is also a form of influencing consumers in the direction of creating needs and ways to meet them. As Kotler pointed out, the main weakness of this consumer-oriented marketing era is that companies view consumers only as targets of their promotional campaigns. Ignoring ethics, promotion easily slips into the propaganda that emerged as a war skill and after Goebbels (Goebbels, 1934) continued to develop in business, politics, culture ... Ethical, Christian marketing leadership is, therefore, interdisciplinary necessary today. But it is difficult for deaf people to speak to deaf people from the noise, Nikolaj Velimirović would say. Love your neighbour has become "kill your neighbour" for profit. It is a lie from evil, and if people are deafened by the noise of propaganda "the stones will speak" (<https://pravoslavljepzv.wordpress.com/2016/04/19/kamenje-ce-progovoriti>). If moral approaches do not become a major part of business practice, society is likely to continue to impose corrective measures of influence through its legislators. It is evident that the pursuit of ethical marketing leadership lacks a unique collective influence on public opinion. A possible cause for such a deficit of influence is that the goals of such efforts are often unclear and do not fit into a comprehensive plan (Hill, 1982, p. 87). Social responsibility and ethics are often treated in corporate codes of ethics as factors of external influence for the strategic marketing planning process. It has been concluded that such codes are more profit-oriented than society's concerns (Cressey, Donald R., and Charles A. Moore, 1983). Further, (Chonko, Lawrence B. and Shelby D. Hunt, 1985) found that the existence of such codes is not a significant factor in explaining individual perceptions of ethical issues. Here is an example of a company from

Dubai that faced a drop in sales of children's shoes. A concrete positive impact was noticed only when the leaders at the top of the companies internalized certain consumer values of the company X, Y, Z? A study was conducted with the aim of examining the impact of spiritual marketing on consumer intentions about buying company products X, Y, Z. Specific objectives: 1. To examine and determine the factors that contribute to spiritual marketing. 2. Investigate and understand the relationship between the factors of spiritual marketing and the consumers' intention to buy in the company. 3. Formulate conclusions and make recommendations to the company on spiritual marketing and its impact on consumers' buying intentions.



Spiritual marketing and business leaders make an organization as a group of people with a common goal (Eric, 2000) noble, which in times of crisis can be the basis for better strategic positioning in the market (Milic, 2015). This is a challenge for strategic leadership because, in addition to the differences between societies and within society over time, subcultures with completely opposite expectations are part of all great cultures. Almost any response to one group's call for "socially responsible" behaviour is likely to provoke complaints from another group. Organizations must show their consumers that they share the same fears and concerns and understand them. Consumers care about companies that care about these fears and worries. This approach to marketing appeals to the human spirit or spiritual marketing (Kotler, P., Kartajaya, H. and Setiawan I., 2010, p. 21). The expansion of business, financial and Islamic leadership marketing is evident, and Christians can learn a lot from them. A review of the literature concludes that the basis of this change is the identification of Muslims as an unused and sustainable market segment caused by their purchasing power. Although geographically remote, it is united by the need for consumption and the ability to afford quality brands. In the business context, the Orientalist approach to marketing represents Islam incompatible with capitalist consumer ideology and categorizes Muslims outside the values and practices of Western consumer culture (Ezlem Sandi/col and Gilliz Ger). In general, research on new Islamist movements indicates that a sense of belonging in these communities occurs less through formal membership in a hierarchical structure and more through inclusion in shared modes of consumption and everyday life (Mandaville, 2010). There is a growth of consulting, research and communication companies or units within existing firms specializing in marketing to Muslims.

We all work together with great enthusiasm to destroy our communities. It is easy to blame the big sellers of the automotive industry for our congested and polluting roads, but their success depends entirely on our patronage. We don't just shop at Tesco and Walmart but willingly fit into their loyalty schemes. For example, the Tesco's club card program has over 16 million active members in the UK and its rival Sainsbury has over 19 million. By definition, loyalty is a "sense of devotion, duty" (Loyalty cards Tesco clubcard VS Sainsburys nectar card, n.d.). There is still great resistance and frustration due to the application of the concept of ethical marketing in any area of business. The result seems to be a kind of paralysis due to the implicit suggestion that inaction is the surest answer. Leaders must "interfere" in the ethical zone of their work because ignoring the social responsibility of certain events is generally rejected by the majority of society (Glueck, 1980). Only if employees at all levels know why (Koter, 1998) they will know how to change things in the direction of strategic ethical marketing leadership. The vision as an image of the desired future to which the organization aspires will increasingly contain a spiritual dimension. "The harvest is plentiful, but the labourers are few" (Jer. 3:15), so our goal is to continue future research in a narrow but correct way of ethical marketing business leadership.

4. Conclusions

We pointed out the need to raise the level of spirituality and ethics in modern marketing. We have noticed that leadership is born on changes, so they must be viewed ethically. In this paper, we have established a distinction between spiritual and material needs and warned that strategic business leaders must find a balance in meeting them with the help of the marketing sector. The examples of spiritual marketing strategic leadership were given. We have demonstrated the importance of the role of spiritual marketing in a company's strategic leadership. Indicated responsibility. We highlighted moral authority as a virtuous reputation of marketing leaders in relation to managerial knowledge and skills. The spiritual with the material power of market participation has been connected and we have pointed to the internal sources of spiritual strength for potential marketing leaders. We have noticed that moral behaviour in the market improves the strategic position of the company and have shown a direct correlation of spiritual ethical marketing with the main elements of strategic business leadership. In general, there is a lack of literature that takes a holistic approach to strategic spiritual marketing leadership, so our paper can be the basis for future studies. That is why we have proposed to adopt such an original, holistic approach to ethical and spiritual marketing in the context of strategic business leadership.

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International obligations of the Republic of Belarus in the field of human rights and trade union rights: a comparative legal analysis of the right to freedom of association

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Abstract

International obligations of the Republic of Belarus with respect to freedom of association have been monitored by two special international regimes: monitoring systems of the Human Rights Committee of the International Covenant on Civil and Political Rights and the Committee on the freedom of association of the Administrative Council of the International Labour Organization. Having different mandates and scopes, the bodies are united with the same topical subject and the task to protect it - namely, with the right to association, including the right to form and join trade unions. For a long while, international organizations observed the ineffective implementation of legal obligations by the Belarusian government. Since August 2020, the human rights situation with respect to all civil and political rights has deteriorated dramatically. Analyzing and comparing the nature of the right to association in *general* and the *lex specialis* right to form and join trade unions for the protection of his/her interests and by conducting a case study of the right to association in Belarus, authors challenge the effectiveness of the existing international legal instruments to influence the authoritarian government's activities. The Belarusian case proves that the existing international mechanisms are not instrumental to deal with the State whose activities aim to destroy the right to association including the independent trade union organizations if they are committed to strengthening human rights and culture of democracy.

Keywords: Right to association, International Labour Organization, destruction of the right to association, ineffective implementation, democratic participation, Belarus, trade unions.

Introduction

Since 1919, following the Treaty of Versailles when the International Labour Organization (hereinafter ILO) was established, the freedom of association has been recognised as a **principle**¹, and in 1944, it was included into the Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) as a **fundamental principle**². Aiming to inspire Members of the ILO and to remind that the principles of freedom of expression and freedom of association serve as a foundation on which the ILO is based, the Declaration paved the way to the Convention on Freedom of Association and Protection of the Right to Organise (hereinafter **CFA**) which elaborated the content of the freedom of association and stipulated that each Member of the ILO for which this Convention is in force undertakes to give effect to its provisions³.

¹ Part XIII of the Treaty of Peace of Versailles, 1919, section 1 [online] [cited 2022-07-31]. Available from Internet: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_441862.pdf.

² Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia), 1944, Art. I [online] [cited 2022-07-31]. Available from Internet: https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration.

³ Freedom of Association and Protection of the Right to Organise Convention, 1948 (№ 87), Art. 1 [online] [cited 2022-07-31]. Available from Internet: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087.

As an echo, in 1966, International Covenant on Civil and Political Rights (hereinafter **ICCPR**) included a proposition about the right to *freedom of association with others, including the right to form and join trade unions for the protection of his interests* (Art. 22)⁴. Additionally, this human rights treaty introduced a special provision – the third part of Art. 22, which directly referred to the CFA by saying: “*Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention*”⁵. The Republic of Belarus became a party to all the listed treaties and additionally, in 1992, it recognised the Human Rights Committee’s (hereinafter **HR Committee**) competence to receive and review individual communications⁶.

Being bound by the treaties and the general principle of law⁷ - *pacta sunt servanda*, Belarus government however has been openly refusing to recognise and enforce the HR Committee’s decisions for the entire decade. Hardly any progress could be observed in the implementation of the ILO’s Convention either. Recently, the Belarus government has limited the rights for freedom of association with respect to independent Belarusian trade unions and their members and de facto banned their activities which constitute the right to form and to join a trade union. A wave of repression following the contested presidential elections in August 2020 has never stopped: trade unions’ leaders have been arrested, new members are denied the right to join trade unions, all independent trade unions have been marginalised and are close to the full elimination by the State’s discriminatory policy. In July 2022 independent unions (the Free Metalworkers’ Union (SPM), the Free Trade Union of Belarus (SPB), the Belarusian Independent Trade Union (BNP), the Union of Radio and Electronics Workers (REP)) as well as Belarusian Congress of Trade Unions (BKDP) were dissolved by the Supreme Court of Belarus which upheld the General Prosecutor’s claim deeming their activities illegal, for being “politicised” and thus breaking the legitimate objective stipulated in their Statutes to protect the interests of workers, by mobilizing them for “popularization of illegal activities”⁸.

Despite constitutional provisions allowing appeal to international bodies and the State’s obligation “to create an internal and international procedure necessary for the full implementation of the rights and freedoms of citizens of the Republic of Belarus”, the ongoing “legal default” in the country combined with a lack of a proper strong and consistent reaction by the monitoring bodies of international organizations to the facts of non-implementation of their decisions by member states lead to the loss of people’s trust in the practicality of international human rights instruments⁹.

⁴ International Covenant on Civil and Political Rights, 1966, Art. 22 (1) [online] [cited 2022-07-31]. Available from Internet: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

⁵ Ibid, Art. 22 (3).

⁶ Optional Protocol to the International Covenant on Civil and Political Rights, 1966 (hereinafter **OP**).

Resolution of the Supreme Council of the Republic of Belarus, № 1393-XII, 10 January 1992.

⁷ Statute of the International Court of Justice, 1945, Art. 38 (1 (c)) [online] [cited 2022-07-31]. Available from Internet: <<https://www.icj-cij.org/en/statute>>.

⁸ Centre for Constitutionalism and Human Rights of the European Humanities University. Advisory opinion on the application of sources of international law governing the activities and protection of trade unions, prepared at the request of the Free Trade Union of Belarus, 28 June 2022 [online] [cited 2022-07-31]. Available from Internet: <https://cchr.online/amicuscuria_supremecourt/>.

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⁹ According to results of a research project on Human Rights Law Implementation (HRLIP): “*a number of these bodies (in particular the African and Inter-American and the UN treaty bodies) are under-resourced, but, at the same time, fail to mainstream implementation through their other mandates, or to maximize the potential collaborative opportunities with other organs. This is not only detrimental for implementation. Indeed, if there is a failure to coordinate protection and monitoring mandates, there is a missed opportunity to address structural causes of human rights violations and facilitate the requisite response by relevant actors, to try to ensure that such violations do not happen again. This absence of mainstreaming work on implementation is exacerbated by a tendency to see implementation of individual decisions as something distinct from, and less important than, the rest of the complaints procedure or these bodies’ other monitoring roles*”.

The situation gives a rise to the political, economical and social risks within the country. Moreover, the breach of the *pacta sunt servanda* principle by Belarus government which declared its “self-impunity” from any responsibility for non-implementation of international obligations making it a persistent states policy undermines the goal of the UN Charter *to build a foundation for freedom, justice and peace in the world*¹⁰ and jeopardises respect to international law and its regulatory functions.

Methodological notes

This article explores the situation from the legal perspective focusing on three questions:

- Shall a *lex specialis* right, namely, the right to form and to join trade unions, be interpreted broadly within the scope of the general meaning of freedom of association, in view of the modern concept of “democratic participation”?
- Are the mechanisms and legal remedies established by the United Nations machinery, including under the ILO auspices, able to respond effectively in case a national government refuses to implement the international standards and decisions issued toward this particular State especially when the State obviously *destroys the very right to form and join trade unions*?
- May or shall the doctrine on aggravated State responsibility be applied in order to strengthen the international regime of human rights protection and for the sake of democracy by designing a new legal mechanism and new status of an aggravated State?

The focus of the research is a phenomenon of the Freedom of Association (hereinafter **FoA**) and right to form and join trade unions (hereinafter **RTU**) as existing *lex generalis* and *lex specialis* frameworks. The latter have been established to facilitate and protect the workers’ movement and their involvement in democratic development at the national level. The current situation in Belarus chosen for this research will be analysed as a case study.

The first part is devoted to the substantive and the procedural peculiarities of FoA and RTU. Regulations with respect to the HR Committee and the control system of the ILO¹¹ will be applied with *mutatis mutandi* rule. FoA will be analysed through the concept of “democratic participation” and its practical application exemplified by the case of Belarusian workers and of employers. The second part presents an overview of challenges in the national implementation and the role of international remedies in protecting FoA of individuals and groups operating in an authoritative State. Following the observations and preliminary conclusions, a concept of the State Responsibility as a possible answer to the challenge is presented. Recommendations sum up the results of the research.

The research methodology is based on a combination of the analysis of academic research, acts of national and international law, judicial practice of national Belarusian courts, assessment of the first hand information and on documentary evidence on a number of cases collected by the Centre for Constitutionalism and Human Rights of the

See: Sandoval C., Leach Ph., Murray R., 2020. Monitoring, Cajoling and Promoting Dialogue: What Role for Supranational Human Rights Bodies in the Implementation of Individual Decisions? *Journal of Human Rights Practice*, Vol.12, Issue 1, pp. 71-100. doi: <https://doi.org/10.1093/jhuman/huaa009>.

¹⁰ United Nation Charter, 1945, Art.(s) 1-2 [online] [cited 2022-07-31]. Available from Internet:

<<https://www.un.org/en/about-us/un-charter/chapter-1>>.

¹¹ Unlike HR Committee as a specialised monitoring body of ICCPR, ILO has an extensive system of forms of mechanisms provided for by ILO Constitution, as well as an additional specialised subsidiary body - the Committee on Freedom of Association. Therefore, we assessed all forms of ILO activities for their qualification as a monitoring/control mechanism.

European Humanities University and under requests of civil society organizations - BySol¹², Raboczy Ruch¹³, as well as consultations with respect to jurisprudence/legal positions of the HR Committee and ILO.

1. Phenomenon of the Freedom of association (FoA) and right to form and join trade unions (RTU)

Before approaching the research question if the RTU shall be interpreted broadly within the scope of the general meaning of freedom of association and the modern concept of “democratic participation”, we define the relationship between the general FoA and the specific one - RTU.

The FoA is a fundamental freedom for every human being due to the very human nature and its need for socialisation. Academicians observe the value of association from different perspectives: for example, by prioritising a need of securing equal external freedom of individual citizens as it is seen by Kantians¹⁴ or by choosing the Rawlsian framework which explained the scope and limits of freedom of association applying *two moral “powers”*: a *sense of justice* and a *conception of the good*¹⁵. The concept “association” embraces manyfold diversities and we therefore classify them by kinds of associations, types of collective units and the rights comprising the FoA. The table below accumulates results of our legal analysis of scholars’ findings and helps to see a spectrum of diversities as well as to clarify the essence of the general term “association” and its minimum elements.

¹² BySol (The BYSOL Foundation) is a non-governmental organisation which was the response of Belarusian society to the wave of lawlessness and violence that struck Belarus in August 2020 as State repression against representatives of civil society with a position against the official Government. Organisation focuses on financial and organisational support of political prisoners, people who lost their jobs for political reasons and those who were forced to leave the country.

On 3 December 2021, BySol was officially recognized as an extremist group according to the Law “On countering extremism” №203-Z on 4 January 2007 (**Law on countering extremism** - further in) based on it’s activity for support of representatives of civil society with a position against the official Government and implementing the policy to conduct independent election and shift Lukashenko’s regime.

Law on Countering Extremism is a national legal means to prohibit activity of any organisation and to start administrative or criminal proceedings against its members and leadership for supporting the opposition to the government in any form, deeming such support an “infringement on independence, territorial integrity, sovereignty, foundations of the constitutional system, or public security” (Art. 1 of Law on countering extremism). So, Law on countering extremism is the legal basis for persecution of any citizens or organisations for participating in participatory democracy processes.

¹³ “Raboczy Ruch” is an initiative which unites Belarusian workers for protection of their political, civil and labour rights. It specialises in organisation of strikes (including potencial nationwide), legal and financial support of repressed workers as well as in information work to highlight human rights violations and crimes committed by Belarusian state-owned enterprises. On 18 October 2021 Raboczy Ruch was officially recognized as an extremist group.

¹⁴ Quong J., 2011. *Liberalism without Perfection*. Oxford: Oxford University Press, p. 15. Quoted from Brownlee K. and Jenkins D., 2019. Freedom of Association. In: *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta. Stanford University Press (further cited as *Brownlee and Jenkins (2019)*). [online] [cited 2022-07-31]. Available from Internet: <<https://plato.stanford.edu/archives/sum2019/entries/freedom-association/>>.

¹⁵ Rawls J., 1971. *A Theory of Justice*. Cambridge MA: Harvard University Press., 1993, *Political Liberalism*, New York: Columbia University Press. Quoted from *Brownlee and Jenkins (2019)*.

Table 1

Kinds of associations ¹⁶	Types of collective associations ¹⁷	Rights comprising the freedom of association (FoA) ¹⁸
<ul style="list-style-type: none"> • Intimate vs collective ¹⁹ • Voluntary vs non-voluntary • Hierarchical vs non-hierarchical • Impersonal/instrumental 	<ul style="list-style-type: none"> • Expressive • Commercial (including trade unions) • Religious • Recreational • Cultural • National and state associations 	<ul style="list-style-type: none"> • Right to admit • Right to exit • Right to exclude • Right to organizational autonomy, which includes all activities, consistent with its objectives²⁰

Based on the above classification, the authors have developed an approach assuming the diverse range of associations as being a single/homogeneous with the “FoA” (*lex generalis*) while “RTU” will be further assessed as *lex specialis*. This method enables to compare a combination “FoA et RTU” as equal elements of a pair.

Further taking the two elements as objects of the analyses we are going to identify the peculiarities of the RTU which will be revealed by addressing the following questions:

A. What are the sources for international obligations with respect to FoA and RTU arising for states: international custom, conventions or general principles?

B. Which of them can give rise to obligations for the Republic of Belarus?

C. What group of rights - political or social- FoA et RTU belong to?

D. Is there any difference in the scope of rights comprising FoA et RTU?

¹⁶ The taxonomy was developed by W. Hohfeld (1919) and advanced by L. Alexander (2008), K. Brownlee (2015). Hohfeld, W. [d. 1918], 1919. *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*, Walter Wheeler Cook (ed.), New Haven, CT: Yale University Press; Brownlee K., 2015. Freedom of Association: It's Not What You Think. *Oxford Journal of Legal Studies*, Vol. 35, Issue 2, pp. 267-282. doi:10.1093/ojls/gqu018; Alexander L. 2008, What Is Freedom of Association, and What Is Its Denial? *Social Philosophy and Policy*, Vol. 25, № 2, pp. 1-21. doi:10.1017/S0265052508080163 (further cited as *Alexander (2008)*).

¹⁷ The classification is based on research of R.A. Epstein (2008), K. Brownlee and D. Jenkins (2019). See: Epstein R.A., 2008. Should Antidiscrimination Laws Limit Freedom of Association? The Dangerous Allure of Human Rights Legislation. *Social Philosophy and Policy*, Vol. 25, Issue 2, pp. 123-156. doi:10.1017/S0265052508080217; Brownlee and Jenkins (2019).

¹⁸ Ibid.

¹⁹ As scholars underline, the taxonoming of different associations needs “the contrast” between the intimate and collective associations. This contrast, however, is somewhat forced since, in reality, these associations are fluid. See: *Alexander (2008)*.

²⁰ According to the definition developed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) an association is “an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have a legal personality, but does need some institutional form or structure”. See: OSCE/ODIHR. Guidelines on Human Rights Defenders, 2014 (further cited as *Guidelines*), p. 28. [online] [cited 2022-07-31]. Available from Internet: <<https://www.osce.org/files/f/documents/c/1/119633.pdf>>.

Schabas W.A., 2019. *Nowak's CCPR Commentary*. 3rd revised ed. N.P. Engel, Germany, XXVI, 1 172 p. P. 616 (further cited as *Schabas*).

E. Shall the RTU as *lex specialis* right be interpreted broadly within the scope of the general meaning of freedom of association taking into account also the modern concept of “democratic participation”?

The following table includes answers to the questions and provides consequent details to each relevant element of the pair “FoA et RTU”. Moreover, it is supported by a special box* with argumentation on the issues related to the question E - see below Table 2.

Table 2

Questions	FoA	Details re FOA	RTU	Details re RTU
A. Sources for international obligations arising for states with respect to RTU Options: 1.international custom 2.conventions 3.recognised principles ²¹	(1)international custom , (2)conventions	(1) - UDHR, Art. 20 - Declaration on human rights defenders ²² (1990) NB! Both “soft instruments” have a broad recognition by most States-parties to the main human rights conventions, proved to reach the <i>opinio juris</i> and counted here, therefore, as	(1) UDHR as international custom, (2) Conventions, (3) internationally recognised principles	(1) - UDHR, Art. 23 (4) (2) - ICCPR, Art. 22 ²⁵ ; - ICESCR, Art. 8 ²⁶ ; -CFA ²⁷ ; -ILO Convention (№ 98) ²⁸ ; -ILO Convention (№ 111) ²⁹ (3) <i>FoA as a general principle by several acts:</i> - ILO Constitution ³⁰ ; -Philadelphia Declaration; -ILO Declaration on Fundamental Principles and Rights at Work (1998)

²¹ The List of sources is a replication of the Art. 38 of the Statute of the International Court of Justice, 1945.

²² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter **Declaration on Human Rights Defenders**), adopted by the GA A/RES/53/144, 8 March 1999 [online] [cited 2022-07-31]. Available from Internet: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>>.

²⁵ Entered into force for Belarus on 23 March 1976.

²⁶ Entered into force for Belarus on 3 January 1976.

²⁷ Entered into force for Belarus on 6 November 1956.

²⁸ Right to Organise and Collective Bargaining Convention, 1949 (№ 98). Entered into force for Belarus on 6 November 1956.

²⁹ Discrimination (Employment and Occupation) Convention, 1958 (№ 111).Entered into force for Belarus on 4 August 1961.

³⁰ Entered into force for Belarus on 12 May 1954.

		international custom ²³ (2) -ICCPR, Art. 22 ²⁴		
B. Convention and /or other sources eligible in/for Belarus		Both groups of the sources are applicable in and for Belarus		All the mentioned sources are applicable in Belarus and for Belarus
C. What group of rights - political or social-	civil/political	Art. 20 part 1 and 2 of the ICCPR	civil/political and social	Art. 8 of the ICESCR and Art. 20 part 3 of the ICCPR

²³ About UDHR, see: Forsythe D., 2006. Human Rights in International Relations. 2nd ed. Cambridge University Press, Cambridge, 285 p. P. 29-40.

About the *opinio juris* or *consensus* of states see: Norwegian Ministry of Foreign Affairs (18 November 2021). UN consensus on strengthening protection of human rights defenders [Press release] [online] [cited 2022-07-31]. Available from Internet: <<https://www.regjeringen.no/en/aktuelt/un-consensus-on-strengthening-protection-of-human-rights-defenders/id2888654/#:~:text=Many%20human%20rights%20defenders%20are,a%20responsibility%20to%20protect%20them>>.

²⁴ Entered into force for Belarus on 23 March 1976.

<p>D. What is the scope of rights comprising FoA and RTU?</p>	<p>The protective scope of FoA is broad³¹. The legal form is unrestricted. The scope of the FoA guarantees its members freely to carry out activities of the association.³²</p>	<p>Restrictions have been introduced by:</p> <ul style="list-style-type: none"> - Art. 4 of ICCPR in the time of public emergency when it threatens the life of the nation and the existence of which is officially proclaimed according to procedure of Art. 4 - Art. 20 (2) of ICCPR and specify that they shall be: <ul style="list-style-type: none"> -(1) prescribed by law -(2) are necessary in a democratic society (3) in the interests of <ul style="list-style-type: none"> - national security or - public safety, - public order (<i>ordre public</i>), - the protection of public health or morals or -the protection of the rights and freedoms of others. 	<p>The scope of RTU is defined and depend on features reflecting its dual character:</p> <ol style="list-style-type: none"> 1. an individual right (by members of the trade union) and a collective one (exercised by a trade union as an association). 2. RTU is recognised as a civil/political and as a social right. <p>RTU is protected by Art. 8 of ICESCR and it comprises a range of rights/activities, including the right to strike.</p> <p>The term “his interest” is employed in Art. 22 of ICCPR. It is interpreted in different manner:</p> <ol style="list-style-type: none"> 1.to stress, that RTU includes also a fight for the civil rights of its members³³; 2.to restrict civil liberties narrowing the objective and activities of the TU to “commercial” or “economic” interests of members of trade unions. 	<p>Being a part of the ICCPR regime, beneficiaries of the RTU shall be entitled to the full range of the FoA.</p> <p>However, RTU is extensively regulated in Art. 8 of ICESCR which restricts trade unions to organisations for the promotion and protection of <i>economic and social interest</i>.</p> <p>The issue on scope of RTU and its relation to the FoA needs more interpretations through the case law and observations of the monitoring bodies which are lacking.</p> <p>Arguments provided by scholars indicate that trade unions are guaranteed not only the right to organise and have members but also the right to take action to protect the interest of members. The object and purpose of RTU are not limited to a mere claim to organise the trade unions. Trade unions are instead a means to serve the underlying object of organised protection of employees’ interests³⁴.</p>
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³¹ Schabas, p. 616.

³² Belyatsky et al.v. Belarus, № 1226/2004, HR Committee, § 7.2; Korneenko et al.v. Belarus, № 1274/2004, HR Committee, § 7.2.

³³ The wording “for the protection of his interest” was included into the Art. 22 (3) of ICCPR primary in view of the comments by ILO representatives. See: “A/C.3/SR. 1087, §§ 3,16, 33; A/C.3/SR. 1087, §§ 4-5. In paragraph 3 of the individual opinion in J.B. et al v.Canada, № 118/1982, it was pointed out that this passage refers only to freedom of trade unions but not to freedom of associations”. Quotes from Schabas, p. 616.

³⁴ Schabas, p. 622.

C. Shall RTU as <i>lex specialis</i> right be interpreted broadly within the scope of FoA meaning in view of the concept of “democratic participation”?	Democratic society is mentioned among the criteria for assessing imposed restrictions on FoA (ICCPR, Art. 22 (2)).	The concept of “democratic society” is revealed in human rights bodies’ observations as the one imposing a further restriction on the limitation clauses of the rights. It is a <i>burden of a state to demonstrate that the limitations do not impair the democratic functioning of society</i> . Since there is no single model of a democratic society, <i>the set of human rights of the UN Charter and the UDHR meet this definition</i> ³⁵	There are no specific clauses on democracy, democratic society or democratic participation in the <i>lex specialis</i> RTU conventions. However, those who are working on the rights to freedom to form, join and participate in trade unions are considered as human rights defenders ³⁶ according to the UN instruments.	ILO Declaration on Fundamental Principles and Rights at Work (1998) interrelates the trade unions’ goals with participatory democracy through setting its aim in the Preamble: “promote strong social policies, justice and democratic institutions” acting for “universal and lasting peace”.
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*Additional information to the discussion to the p. E, namely on the issue of “commercial”/“economic” nature of trade-unions v. “democratic participation”.

There are still views that narrowing the goal and paving the ways of operations for trade-unions only as of “commercial nature” will bring stability to the complex relations between Trade Unions and States and Employers. The price for this stability, however, includes attempts to “filter” the activities and prevent those which may jeopardise the economic interest of employers or the governments’ sovereignty.

Nowadays, however, international law observes the growing tendency to recognise the mandate of all individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means. It also includes *submissions to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights; making complaints about official policies and acts relating to human rights and to have such complaints reviewed etc*³⁷. As an example, the OSCE Guidelines on the Protection of Human Rights Defenders stipulates that the Declaration on Human Rights Defenders *covers also those who are working on the protection of the rights to freedom to form, join and participate in trade unions*³⁸. Several advanced scholars, including Stokke³⁹ and Schuch⁴⁰ see *participatory democracy through the four dimensions capturing also a legal citizenship, membership, legal status, rights and participation*. These tendencies are linked to the paradigm of the so-

³⁵ UN Commission on Human Rights. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4. [online] [cited 2022-07-31]. Available from Internet: <<https://www.refworld.org/docid/4672bc122.html>>.

³⁶ *Guidelines*, p. 28.

³⁷ Declaration on Human Rights Defenders, 1999, Art. 8.

³⁸ *Guidelines*, p. 28.

³⁹ Stokke K., 2017. Politics of citizenship: Towards an analytical framework. *Norsk Geografisk Tidsskrift - Norwegian Journal of Geography*, Vol. 71, Issue 4, pp. 193-207. doi:10.1080/00291951.2017.136945.

⁴⁰ Schuck P.H., 2012. Liberal citizenship. In: Isin E.F. and Turner B.S. *Handbook of Citizenship Studies*, pp. 131-144. Sage, London.

called *functioning democracy based on equality, participation and accountability*, presented at the OSCE High Panel Experts in October 2021⁴¹.

Moreover, in its observations by proceeding with the International Trade Union Confederation (ITUC) and of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 16 and 30 September 2020, [ILO] Committee on Freedom of Association recalls the International Labour Conference 1970 resolution concerning trade union rights and their relation to civil liberties, which emphasises that the rights conferred upon workers' and employers' organisations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal⁴².

The current development allows the bodies interpreting the notion "his interest" to put emphasis on the social interest of every person and entity, including trade unions, to be active in promoting rights and freedoms. This interpretation will be in line with the CFA aim to "promote strong social policies, justice and democratic institutions" acting for "universal and lasting peace".

Summing up the legal analysis based on the information comprised in tables 1 and 2 and additional argumentation on the role of broad interpretation of trade unions in "a functional democracy" above, we came to preliminary conclusions:

1. The relationship between the substantive peculiarities of FoA and RTU is based on an umbrella concept of FoA which covers all specific associations, including trade unions.
2. Ancorred in both Covenants - ICCPR and ICESCR, RTU may benefit from both of them. It is legitimate to apply the *lex generalis norms*, including the status of RTU as civil and political right, ICCPR. In this capacity the right belongs to individuals and groups of individuals/associations and is perceived as the right which must not be restricted if *the limitations do not impair the democratic functioning of the society*. Meanwhile, the ICESCR stipulates the scope of the RTU as the *lex specialis* provided as a list of rights/mandates for activities that RTU beneficiaries are eligible for, regardless if they are collective or individual rights.
3. It is proved that *democracy, democratic society and democratic participation* of the TU and its members became an integral part of the entire framework regulating FoA. Taken together - general principles of international law, international custom, conventions' provisions on FoA and the *soft law* instruments which support and develop international standards for the most effective implementation, the legal provisions established by ILO conventions and those belonging to the human rights regime constitute a solid platform for further State parties' implementation steps.

2. National implementation and the role of international means

2.1. Implementation as a matter of joint efforts

In this paper, we define the concept of "implementation" as *a process involving the activities of a State party aimed at effective fulfilment of international legal obligations, as well as the efforts of international bodies to monitor the implementation of international obligations by states in order to assist by interpreting the content of international*

⁴¹ OSCE. Democracy, human rights and security in the OSCE [online] [cited 2022-07-31]. Available from Internet: <<https://www.osce.org/odihr/odihr-at-30>>.

⁴² ILO. Observation (CEACR) - adopted 2020, published 109th ILC session (2021) [online] [cited 2022-07-31]. Available from Internet: <https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4060452,103154>.

legal standards and ensuring their uniform understanding and application in national judicial proceedings and practice.

We consider the doctrine of implementation and its definition derived from the content of Art. 2 of ICCPR, as well as from the jurisprudence and general comments of the HR Committee⁴³. Moreover, the doctrine also implies the opinion of some practitioners who are convinced that implementation is carried out through the direct application of the provisions of the Covenant and the decisions of the Committee by non-state actors⁴⁴. However, efforts of human rights activists and lawyers are not effective if national judges are not prepared for direct application of human rights law or State's officials are not willing to give effect to the international legal standards⁴⁵.

In the studies of the implementation from the perspective of *general legal obligations of States*, some scholars divide it into national and international implementation: thus, prof. I. Lukashuk singles out national implementation (*osuschestvleniye*, or realization), meaning measures for realization at the domestic level, and at the same time talks about implementation in the broad sense of the word, when creating a unified classification of implementation stages, including national and international levels. For Prof. A. Sibert "primary" implementation is the implementation that is carried out at the domestic level, and "secondary" implementation is the activities of international bodies, in particular the HR Committee, on consideration of state reports and individual complaints⁴⁶. It seems that an approach that conveys the idea of *secondarity* of international implementation, i.e., its *dependence* on the domestic one, should be viewed with a critical eye. Indeed, the division of implementation into "primary" and "secondary" - even if there are objective reasons for doing so, for example, paying the tribute to the principle of subsidiarity or to differences in mandate and actors - is not, in the authors' view, a fair and sustainable approach.

From the very beginning of the international human rights regime, it was declared to promote the perception of the implementation process that ensures its continuity and coherence, where the levels and methods of implementation are united by the goals of international legal protection. It is this view that restores the meaning of international regulation and the essence of individual mechanisms/institutions, and also revives the principles of international legal solidarity or *erga omnes* obligations. In their day, the classic scholars of traditional international law viewed human rights law as a special mode that emerged under international law to transition from the former "law of coexistence" to a different type of law, which they referred to as the "law of cooperation"⁴⁷.

⁴³ It should be remembered that the term "implementation" was not used at the time the universal international instruments for the protection of human rights were adopted. To illustrate, let's turn to Article 2 of the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR or the Covenant), which describes the actions that make up the essence of the concept of "implementation" (emphasis added. - authors.): "... State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. ...To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy; ...To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; ...To ensure that the competent authorities shall enforce such remedies when granted. The Human Rights Committee first used the term "implementation" in 1981 when preparing General Comments. The Committee used this term as an umbrella term, covering the full range of actions described by the ICCPR article mentioned above. It should be noted that the reluctance to introduce the foreign term "implementation" into legal terminology has led to certain difficulties and inconsistencies in the process of information exchange and communication between legal systems. At the same time, a review of the legislation and practice of some legal systems in the countries where Russian remains one of the languages of court proceedings, suggests a tendency towards the gradual introduction of this term into the legal vocabulary. See: Ulyashyna L., 2015. Introduction. *De facto implementation of international human rights standards: experience of ILIA alumni in Belarus*. Belarusian Human Rights House, Vilnius, 146 p. P. 8.

⁴⁴ The participants of educational programs on the direct application of international legal standards began to call this process *de facto* implementation. See: *Ibid*.

⁴⁵ Concluding Observations of the HR Committee, 2018, p. 5 [online] [cited 2022-07-31]. Available from Internet: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/346/88/PDF/G1834688.pdf?OpenElement>>.

⁴⁶ Sibert-Fohr A., 2001. Domestic Implementation of the International Covenant on Civil and Political Rights Pursuant to its Article 2 para. 2. *Max Planck Yearbook of United Nations Law*, Vol. 5, pp. 399-472. P. 400.

⁴⁷ Vasak K., 1982. Towards a Special International Human Rights Law. In: Vasak K. and Alstom P. *The International Dimension of Human Rights*, pp. 671-672. Unesco, Paris.

By introducing the inter-state legal complaint mechanism, which anticipated to form the basis of the "collective" human rights accountability of states, the international monitoring mechanism would manage to establish a unified working system of monitoring the implementation of international obligations. To this end, Article 41 of ICCPR contains provisions that establish the obligation to implement the erga omnes principle⁴⁸. However, the sceptics' predictions have proved true. *Human rights law, which began its development as a regime of a special nature, has stalled without ever challenging the state-centered structure of international law.*⁴⁹

It seems that partly, this fact explains the weakness of the monitoring system, including the HR Committee⁵⁰ and the ILO⁵¹. The division of implementation into national and international, in which a treaty body, when considering reports of states and individual complaints, sees its recommendations being ignored by states -- the main subjects of international law -- does not allow an individual or association of individuals to expect the international bodies to work with the causes of the problems in the standards implementation and not just with the results of the violations.

Summing up the information on achievements and challenges of the monitoring bodies established to observe and strengthen international obligations of State-parties one shall conclude that division of the process of implementation to national and international has been a reason for continuation of an old model in international law where no collective accountability based on the erga omnes obligations exist.

As a result, monitoring bodies confront individual states at the international level and individuals/trade-unions/associations of individuals depend on the will of their own states and in many cases become a target for reprisals for their criticism expressed in individual complaints submitted to international bodies. In many cases, even after positive decisions/views have been adopted by the international bodies, the State parties deny the obligation to enforce them.

Friedmann W., 1964. *The Changing Structure of International Law*. Stevens and Sons, London, pp. Xvi, 410. Pp. 40-44, 240-244 (further cited as *Friedmann*).

Crawford J., 2002. The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect. *The American Journal of International Law* [online]. 2002, vol. 96, № 4 [cited 2022-07-32], pp. 874-890. Pp. 874, 887. Available from Internet: <http://www.oas.org/dil/esp/xxxvii_curso_the_ilcs_leonardo_nemer.pdf>.

⁴⁸ General Comment № 31 [80]. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 2: "This mechanism, however, has unfortunately not been developed in practice, as states have almost never used this legal mechanism to respond to violations of states' international legal obligations in the area of human rights" [online] [cited 2022-07-31]. Available from Internet: <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0iW6Ttaxgp3f9kUFpWq%2fhW%2fTpKi2tPhZsbEJw%2fGeZRASjdFuUJQRnbJEaUhby31WiOPI2mLFDe6ZSwMMvmQGVHA%3d%3d>>.

⁴⁹Christoffersen J., 2009. Impact on General Principles of Treaties Interpretation. In: Kamminga M. and Scheinin M. *The Impact of Human Rights Law in General International Law*, pp. 37-62. P. 43. Oxford University Press, Oxford; Friedmann, p. 63.

⁵⁰ To illustrate: according to the report of the High Commissioner for Human Rights, only 11% of the total number of individual communications considered by the Human Rights Committee receive "satisfactory" responses from countries, i.e., Governments respond on the merits of the Committee's recommendations. See: The Human Rights Law Centre. The International Service for Human Rights. *Domestic implementation of UN human rights recommendations. A guide for human rights defenders and advocates*. 2013. Report by International service for human rights, The Human Rights Law Centre, p. Ii [online] [cited 2022-07-31]. Available from Internet: <https://academy.ishr.ch/upload/resources_and_tools/domestic_implementation_of_un_human_rights_recommendations.pdf>.

⁵¹ ILO mentioned that "there is no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, and the apparent lack of action on the part of the Government to follow up on the conclusions of the Conference Committee". See: ILO. Observation (CEACR) - adopted 2021, published 110th ILC session (2022) [online] [cited 2022-07-31]. Available from Internet: <https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122634,103154>.

2.2. Belarus: national mechanism of implementation of human rights obligations

The Constitution of the Republic of Belarus recognizes the supremacy of the universally acknowledged principles of international law and ensures that its laws comply with such principles⁵² and conclusion of international treaties that are contrary to the Constitution shall not be permitted⁵³. Moreover, everyone shall have the right in accordance with the international instruments ratified by the Republic of Belarus to appeal to international organizations to defend their rights and liberties, provided all available domestic means of legal remedies have been exhausted⁵⁴.

National legislation recognises the supremacy of the international obligations and refers to *pacta sunt servanda* via the following provision of the Law on the International Treaties⁵⁵: “*International treaties of the Republic of Belarus are subject to conscientious execution by the Republic of Belarus in accordance with international law. The norms of law contained in international treaties of the Republic of Belarus are subject to direct application, except when it follows from the international treaty that the application of such norms requires the adoption (issue) of a normative legal act, and have the force of that normative legal act, which expresses the consent of the Republic of Belarus to be bound by the relevant international treaty*”.⁵⁶

At the same time, in practice, the state authorities refuse to enforce the decisions of the international organisations/their bodies, despite the legitimate expectations of at least one hundred citizens that the decisions of the international bodies which found violations of their rights will be implemented by the state.

Additionally, according to the HR Committee, it remains concerned about the lack of reference to provisions of the Covenant that have not been incorporated, and to the interpretations and specific recommendations of the Committee relating, for example, to the regulation of the exercise of freedom of assembly and freedom of expression. In view of this, and noting that the Committee's Views are not widely circulated, the Committee is concerned that awareness and knowledge about the Covenant among government officials, judges, prosecutors and lawyers remains limited⁵⁷.

Meanwhile all main national Codes comprise provisions which recognize the priority of international treaties in cases when national law provides a lower protection:

Labour Code⁵⁸: *The Republic of Belarus recognizes priority of the conventional principles of international law and provides compliance to them of the legislation on work. If the international treaty of the Republic of Belarus establishes other rules, than those which contain in this Code then are applied rules of the international treaty*(art 8).

Law on Trade Unions⁵⁹: *The norms regulating the activities of trade unions, contained in international treaties of the Republic of Belarus, are part of the legislation of the Republic of Belarus and are subject to direct application, except when it follows from an international treaty that the issuance of an internal state act is required for the application of such norms.*

If an international treaty of the Republic of Belarus establishes other rules than those contained in this Law, then the rules of the international treaty shall apply (art 9).

To conclude, despite the national legislation provisions recognise the priority of international obligations, *de facto* there is no political will nor practical skills to apply international standards for improving the level of implementation by all branches of the Belarusian state, including courts. The next paragraph will illustrate the conclusion with specific cases related to FoA and the RTU and took place in the period August 2020 til July 2022.

⁵² Constitution of the Republic of Belarus, adopted 1994 with amendments 1996, 2004 and 2022, Art. 8 (1).

⁵³ Ibid, Art. 8 (3).

⁵⁴ Ibid, Art. 61.

⁵⁵ Law “On international treaties of the Republic of Belarus” № 421-Z on 23 July 2008 (with amendments).

⁵⁶ Ibid, Art. 36.

⁵⁷ Concluding Observations of the HR Committee, 2018, p. 5.

⁵⁸ Labour Code of the Republic of Belarus № 296-Z on 26 July 1999 (with amendments).

⁵⁹ Law “On Trade Unions” №1605-XII or 22 April 1992 (with amendments).

2.3. De facto implementation of the Right to form and join Trade Unions (2020-2022)

Before presenting cases from the Belarusian reality, it is important to highlight some issues related to the content of and the relations between the FoA and the RTU as well as to the applicable legal provisions.

Notes on application of *lex generalis* and *lex specialis*

The specific feature of legal regulation of FoA and RTU international standards which is crucially important for considering Belarusian cases is their “*umbrella*” character. Despite the existence of *lex specialis* norms for RTU, for example in ICESCR (Art. 8 part 3) and/or ILO Conventions, their ground is *lex generalis* - FoA, established by ICCPR (Art. 22. The latter appears also as a general principle of FoA (see Table 2).

Lex specialis prevail over *lex generalis* norms but do not exclude the State's obligation to guarantee the rights which belong to every human being. RTU beneficiaries may rely on legal provisions protecting other civil rights, like freedom of speech or assemblies.

ILO stresses this interrelationship *inter alia* through International Labour Conference 1970 resolution concerning trade union rights and their relation to civil liberties, which emphasises that the rights conferred upon workers' organisations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal⁶⁰.

Following this reasoning, the default interpretation of the content of the *lex specialis* (RTU) also uses the legal acts concerning the *lex generalis* FoA and related human rights⁶¹, as well as the provisions regulating the realization of other human rights related to FoA and RTU (e.g., freedom of peaceful assembly, freedom of expression) and enshrined in the relevant legal standards.

Background information

The following cases are directly connected to the civic movement in Belarus following massive violations and repression exercised by the government.

Since the rigged Presidential elections in August 2020, the country has seen an exceptional level of increased civic engagement and wide involvement of citizens, workers (*inter alia* united in trade unions) in participatory democracy processes. Those movements demonstrated *de facto* empowerment of people and their willingness to embrace self-governance and participate in the future democratic Belarus.

Numerous strikes in state-owned factories as well as petitions to articulate the political protest swept through the country. The protests were triggered by numerous cases of torture of peaceful assembly participants arrested for participating in protests. State authorities threatened to close factories and to dismiss protesting workers, which actually resulted in numerous dismissals and persecutions. According to the findings of the OSCE Moscow Mechanism Report⁶².

The mass participation of trade unions and their members in peaceful assemblies and strikes, different forms of expression (including placement of protest posters and leaflets in public places and windows of own houses, social media posting) were effective means of participatory democracy and rights protection, including economic and social rights of workers, i.e. the direct, narrowly defined subject of trade union activity. This is how trade unions responded to ongoing electoral fraud, legal default and massive violations of human rights (illegal detentions, tortures, etc) that threatened the existence of democratic rights and freedoms as such. The latter, accordingly, are crucial for the exercise of other rights for which they are the prerequisite, including FoA and RTU.

⁶⁰ ILO. Observation (CEACR) - adopted 2021, published 110th ILC session (2022). [online] [cited 2022-07-31]. Available from Internet: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122634,103154.

⁶¹ For example, General comment № 37 (2020) on the right of peaceful assembly (article 21) (hereinafter **General Comment № 37**). [online] [cited 2022-07-31]. Available from Internet: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGB%2bWPAXj3%2bho0P51AAHSqSubYW2%2fRxcFiagfuwxycuvi40wJfdPLI9%2fcedeDWBX%2fj2tgqDXgdjqx8wTKKbIoySyDPtsMO>.

⁶² BENEDEK W. OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus. 5 November 2020. P. 33. [online] [cited 2022-07-31]. Available from Internet: <https://www.osce.org/odihr/469539>.

Therefore, engagement of trade unions in the protests proved the workers' readiness to participate in practical democratic processes and in self-governance⁶³.

ILO highlighted that strikes and demonstrations relating to the Government's economic and social policies cannot be regarded as purely political strikes, which are not covered by the principles of CFA. In its view, trade unions responsible for defending socio-economic and occupational interests should be able to use strike or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organisations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes⁶⁴.

The State responded to the participation of trade union members in the processes of participatory democracy by mass administrative and criminal prosecution for peaceful assemblies and strikes, exercising freedom of expression, including later job dismissals from work as a form of discrimination on political grounds. These actions found their "legal" basis in the national law⁶⁵, which does not comply with international standards, thus breaching the *pacta sunt servanda* principle and Article 17 of the Declaration on Human Rights Defenders, which stipulates that national restrictions may be applied only if they are consistent with the state's international human rights obligations.

Below we examine the most typical cases of breaches of international standards of FoA and RTU in Belarus during the period under consideration and perform their legal analysis for violations of FoA and RTU in the context of participation of trade unions and their members in participatory democracy processes.

The national legislation of Belarus effectively deprives associations and/or their members of the right to peaceful assembly, regardless of whether the assemblies are held under the "general freedom of association" (FoA) or *by a trade union, that is, through lex specialis* - for example, in the form of strikes (*"stachki"*, or *"obschenatsionalnye zabastovki"*) as a special form of trade union activity.

Case on peaceful assemblies

In the face of the challenges of August 2020, the right to peaceful assembly could be effectively exercised by workers (including unionized ones) only in the form of spontaneous peaceful assemblies - as a direct response to ongoing developments (para. 14 of General Comment No. 37). However, the exercise of the right to spontaneous peaceful assembly, which may qualify as a legitimate reason for absence from the workplace, is not possible under any form of peaceful assembly, whether under authorization or notification procedure⁶⁶, thus breaching Article 21 of the ICCPR.

⁶³ International IDEA Strategy 2018–22. International Institute for Democracy and Electoral Assistance. Strömsborg. 2018. Pp. 5-6. [online] [cited 2022-07-31]. Available from Internet:

<https://www.idea.int/sites/default/files/reference_docs/international-idea-strategy-2018-2022-screen.pdf>.

⁶⁴ ILO. Observation (CEACR) - adopted 2021, published 110th ILC session (2022). [online] [cited 2022-07-31]. Available from Internet:

<https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122634,103154>.

ILO. The 2012 General Survey on the fundamental Conventions. International Labour Conference, 101st Session, 2012. Para. 124. [online] [cited 2022-07-31]. Available from Internet:

<https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf>.

⁶⁵ "The current national legislation, as well as the terms of the labor contract concluded between the claimant and respondent, do not provide for the right of the employee (claimant) to refuse to perform labor duties, including not going to work, in connection with joining the national strike". See: motivational part of the decision of the Court of the Polotsk district and the city of Polotsk on 17 May 2021 on the claim of Alexander Sergeevich Kapshul against Naftan Open Joint-Stock Company on reinstatement (case №36GIP211231/C/H).

⁶⁶ According to the Law "On mass events" № 114-Z on 30 December 1997 (with amendment) (hereinafter **Law on mass events**).

The authorization⁶⁷ and notification⁶⁸ procedures for holding peaceful assemblies in fact is based on the State's discretionary power to prohibit a peaceful assembly. There is a routine discriminatory practice established in Belarus in relation to peaceful assemblies organized by the opposition and (or) independent civil society organizations, including trade unions.

A representative example of these violations is the court ruling on the politically-motivated dismissal of Andrei Komlik-Yamatin. The worker was fired by OAO UKH MMZ company (100% of its stock is in national (state) ownership) for a number of actions related to participation in the processes of participatory democracy, including a strike. In analysing the employee's legal arguments regarding the legality of his participation in the strike, the court did not apply the norms of international law to interpret the existing norms of the national legislation, but rather used its narrow (literal) meaning only (despite its relevant statutory obligation to do otherwise): "The claimant's arguments that the strike was not declared illegal by the court decision are also not grounds for cancelling the disciplinary sanction, *since the decision to hold the strike was not taken in accordance with the established procedure*"⁶⁹. In doing so, the court demonstrated once again that the state is not prepared to consider RTU rights in the broad sense that includes workers' participation in larger democratic processes, but interprets the scope of their activities only in terms of protection of economic and social rights.

Notable is the courts' use of this legal reasoning in the chronological "evolution" of the state policy from mass rejection of claims in individual labour disputes related to the dismissal of union members for the above actions (after August 2020), to their use in court cases on compulsory closure of independent trade unions, which took place in June-July 2022, when the Prosecutor General defined these actions as "destructive" and attributed them to a trade union. This change demonstrates the complete destruction of the right to association for the trade union movement, beginning with the breach of individual human rights and moving on to collective rights.

Case on Strike

There are numerous cases of dismissals of workers in connection with their participation in strikes after the events of August 2020. The factual reason for such dismissals was temporary absence from the workplace. The "legal" grounds were: (a) a gross disciplinary act - absenteeism⁷⁰; (b) or non-fulfillment of labour duties without valid reasons by an employee who has an outstanding (unpaid) disciplinary sanction⁷¹. Since 30 June 2021 Labour Code was amended by special "political" grounds for dismissals: (1) absence from work in connection with serving an administrative penalty in the form of an administrative arrest that prevents the performance of labour duties; (2) forcing workers to participate in a strike, creating obstacles for other workers to perform their labour duties, calling on employees to stop performing their labour duties without good reason; (3) participation in an illegal strike, as well as other forms of refusal to perform work duties (in whole or in part) without good reason⁷².

ILO documented cases of dismissal proceedings against a large number of the striking workers and strike leaders and recalled that arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy⁷³.

International standards regarding strikes are rather general. As such, strikes are considered to be a form of exercise of freedom of association⁷⁴ and are subject to the general rules of exercise of this right, as provided by Article 22 of

⁶⁷ Law on mass events, Art. 5.

⁶⁸ Law on mass events, Art. 9-1. Since 26 June 2021 notification procedure was excluded.

⁶⁹ Decision of the Judicial board for Civil Cases of the Minsk City Court on 15 February 2021 on the claim of Andrey Komlik-Yamatin against UKH MMZ Joint-Stock Company on reinstatement (case № 2-10575/20/A)).

⁷⁰ Art. 42 (7) of Labour Code.

⁷¹ Art. 42 (6) of Labour Code.

⁷² Art. 42 (7) of Labour Code according to Law "On changing laws on labour relations" № 114-Z on 28 May 2021.

⁷³ ILO. 394th Report of the Committee on Freedom of Association. Para (s). 9 -12, 45. [online] [cited 2022-07-31]. Available from Internet:

<https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_776025.pdf>.

⁷⁴ Schabas, pp. 621-622.

Freedom of association, including the right to form and join trade unions. Joint statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, 23 October 2019. E/C.12/2019/3-CCPR/C/2019/1. Para(s). 3-4. [online] [cited 2022-07-31]. Available from Internet: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CESCR/CCPR_Joint_STM.pdf>.

ICCPR and *lex specialis*. At the same time, there is no unified international standard for the scope of claims that can be made during a strike, which is one of the reasons for the national restrictive approach that establishes only the economic and social nature of strikes and does not respect the need for good faith application of international treaties by a State, thereby excluding the possibility of full participation of workers as a social group in participatory democracy processes as such.

ILO underlines:

- “strikes and demonstrations relating to the Government’s economic and social policies cannot be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers’ organizations responsible for defending socio-economic and occupational interests should be able to use strike or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members”⁷⁵.

According to Belarus national law, a strike is possible only if there is a “collective labour dispute”⁷⁶ with “closed” list of reasons for dispute⁷⁷. So, workers are entitled have the opportunity by law to exercise their FoA and RTU in the form of a mass termination of the performance of labour duties, i.e. a strike, as an action to protect the interests of trade union’s members⁷⁸ in a collective way.

The peculiarity of Belarusian strikes was **not only collective suspension of work, but also participation in peaceful assemblies**, so we can analyse these actions *as breaching of*:

- (1) *Art. 21 in connection with Art. 19 of ICCPR.*

ILO also frequently stresses the importance of freedom of peaceful assembly for effective realisation of FoA and RTU⁷⁹;

- (2) *Art. 22 in connection with Art. 19 of ICCPR.*

The strikes aimed to protect the democratic rights and freedoms as the basis of the legal regime of statehood as such, and as the necessary precondition for effective realisation of economic and social rights. This statement is supported by ILO jurisprudence which excludes from strike’s legal regime only “purely political strikes”⁸⁰.

The breach includes not only the limitation of reasons for strikes but also a defacto unimplementable legal procedure for holding them established by the national law⁸¹. This restriction does not meet the criteria for a possible restriction of the right to peaceful assembly and FoA / RTU, provided for in Art. 21, 22 of ICCPR in connection with Art. 19 of ICCPR.

Venice Commission. OSCE/ODIHR. Joint Guidelines on Freedom of Association. Adopted by the Venice Commission at its 101st Plenary Session. Venice, 12-13 December 2014. Para. 61. [online] [cited 2022-07-31]. Available from Internet:

<[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e)>.

Bavis C. (2015). The Freedom of Association: The Emerging Right to Strike Consensus in International and Domestic Labour Law. *International Society for Labour and Social Security Law - Congress XXI Paper*, July 17, 2015. Pp. 10-11. doi: <http://dx.doi.org/10.2139/ssrn.2760171>.

⁷⁵ ILO. Observation (CEACR) - adopted 2021, published 110th ILC session (2022). [online] [cited 2022-07-31]. Available from Internet: <https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122634,103154>.

⁷⁶ Labour Code, Art. 388 (1).

⁷⁷ Labour Code, Art. 377.

⁷⁸ *Schabas*, p. 621.

⁷⁹ “Workers should enjoy the right to peaceful demonstration to defend their occupational interests”, “The right to organise public meetings constitutes an important aspect of trade union rights”, “Trade union rights include the right to organise public demonstrations”. See: Freedom of Association. Compilation of decisions of the Committee on Freedom of Association / International Labour Office – Geneva: ILO, 6th edition, 2018, 360 p. Pp. 40-41. [online] [cited 2022-07-31]. Available from Internet: <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf>.

⁸⁰ Freedom of Association. Compilation of decisions of the Committee on Freedom of Association / International Labour Office – Geneva: ILO, 6th edition, 2018, 360 p. P. 145. [online] [cited 2022-07-31]. Available from Internet: <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf>.

⁸¹ Labour Code, Art (s). 379, 389, 390.

We can conclude, following the language of HR Committee that the State “infringes on the essence of the right” / “is aimed at creating obstacles” in realisation of rights “exerting a deterrent effect”⁸²;

- (3) CFA, according to which “workers' organisations shall have the right to organise their activities and to formulate their programmes” (Art. 3). The fact that during these activities workers’s organisations breach national law can not be taken into account based on Art. 8 (2) of CFA. The implementation of an excessively difficult legal procedure for carrying out a strike, as well as limiting the reasons for holding it, deprives the trade union of the opportunity to act on a mass scale, which violates the requirements of the CFA.

Based on the above, we testify that the national legislation uses a narrow approach to understanding the subject of the activity of a trade union and the possible forms of its activity - the right to form and to join trade unions is interpreted narrowly and excludes the possibility of “democratic participation”.

(2) National Belarusian legislation includes discretion power to liquidate trade unions in the case of any “contradiction to the Constitution or other legislative acts of the Republic of Belarus”⁸³.

Thus, the Law on Trade Unions is arbitrary in terms of establishing the grounds for suspension and termination of trade unions - such legal norms violate the specified requirements of ICCPR (Art. 21) and CFA.

This power was realised by the State in July 2022 when all independent unions⁸⁴ were dissolved by the Supreme Court of Belarus which approved the General Prosecutor’s claim deeming their activities illegal, “politicised” and breaking the legitimate objective to protect the interests of workers stipulated in their Statutes, by mobilising them for a “popularisation of illegal activities”⁸⁵.

In view of the above, in the case of Belarus, we observe the systematic violations of FoA and RTU international standards both (1) through mass acts of law enforcement and the presence of relevant national legislation as the “legitimising” legal basis for these actions, and (2) through the lack of effective implementation of jurisprudence of competent international monitoring / supervisory bodies.

Thus, the State:

- Fails to apply both international law and the national legislation that establishes the priority of international law;
- interprets national legislation narrowly, with a clear political will to narrow down the role of a trade union as a special subject of FoA and RTU, participating in civic engagement.

This punitive approach resulted in the effective destruction of the trade union movement due to the forced shutdown of all independent trade unions in July 2022. Following this state policy, which denies the pacta sunt servanda obligation and the universal international legal regime of human rights protection, and thus forms the legal status of the “failed state”, the Belarus Ministry of Foreign Affairs issued an official statement⁸⁶ criticising the modern concept of human rights, claiming that only such concept of human rights should be applied that serves the sustainable development of a particular state with its peculiarities, and therefore, the international bodies have no monitoring powers. In fact, this statement is a “legal” argument, “legitimising” the above narrow interpretation and massive breaches of the FoA and RTU by the state.

⁸² Para. 36 of General Comment № 37, para. 36.

⁸³ Art. 5 (2) of Law on Trade Unions, Art. 5 (2).

⁸⁴ the Free Metalworkers' Union (SPM), the Free Trade Union of Belarus (SPB), the Belarusian Independent Trade Union (BNP), the Union of Radio and Electronics Workers (REP)) as well as Belarusian Congress of Trade Unions (BKDP).

⁸⁵ Centre for Constitutionalism and Human Rights of the European Humanities University. Advisory opinion on the application of sources of international law governing the activities and protection of trade unions, prepared at the request of the Free Trade Union of Belarus, 28 June 2022.. [online] [cited 2022-07-31]. Available from Internet: <https://cchr.online/amicuscuria_supremecourt/>.

Zerkalo. “Actively participated in destructive activities”. The Supreme Court liquidated independent trade unions, 19 July 2022. [online] [cited 2022-07-31]. Available from Internet:

<<https://news.zerkalo.io/life/18164.html>>. IndustriALL. IndustriALL condemns termination of Belarus’ independent unions, 15 July 2022. [online] [cited 2022-07-31]. Available from Internet: <<https://www.industriall-union.org/belarus-abolishes-independent-unions>>.

⁸⁶ “Utopia”. Deputy Foreign Minister of Belarus invited the world to abandon the concept of human rights. In Zerkalo on 27 July 2022. [online] [cited 2022-07-31]. Available from Internet: <https://zerkalo42.global.ssl.fastly.net/news/_life/18737.html?f&fbclid=IwAR05b2mkr3wAcmkqqaEYUTVvOrgBWbogkA9pxAH2NVqHLyrjOW29V0sNtFk>.

2.4. Impact of the international monitoring mechanisms

This part aims to answer the question on the effectiveness of international monitoring procedures and their ability to impact a behaviour of a national government which obviously *destructs the very right to form and join trade unions*. We will do this by: 1) assessing the level of a Belarusian state's record on implementation of international obligations in accordance with the *pacta sunt servanda* principle and 2) evaluating the effectiveness of the international monitoring bodies in influencing a State with a positive effect to RTU.

The part includes some descriptive elements on the procedural capacities of the two main international monitoring bodies: HR Committee and ILO institutions, towards Belarus. Then, we proceed with analysis of possibilities for national implementation. Conclusion to this part will serve as a departure point for further consideration on new models to enforce international obligations.

Methodologically, while there is an updated and user-friendly database with case law of the UN HR Committee, there have been problems with information available for the public when it comes to the ILO procedures.

Based on the received information, we prepared a table with the following features:

(1) formal requisites/legal basis of the status and mandates of the two international bodies - HR Committee and institutions of ILO;

(2) methods of monitoring and qualitative/quantitative indicators;

(3) indicators/examples of non-implementation and/or destruction of FoA/RTU;

(4) assessment of the State's good faith attitude towards implementation on a scale of 1 to 5, where -5 (excellent), -4 (good), -3 (satisfactory), -2 (non-satisfactory), -1 (destructive).

The grading is for research purposes only. It is based on results of evaluation of the information about the State's implementation records and assessments done by monitoring bodies in their reports and individual cases proving *the presence or absence of a good faith* of the Belarusian government *in fulfilling a treaty's obligations* or in other words an *(un)willingness* of the State to follow the principle *pacta sunt servanda*⁸⁷. In cases when analysed reports contain *proofs of engagement* of the State in activities aimed at *destruction of the rights or their limitations to a greater extent than that provided for it in general or specific limitation clauses*⁸⁸, the authors come to the conclusion about the level of a *destructive attitude*, or grade 1 (destructive).

By choosing the minimum grade authors apply the proposition that although a Government is entitled to limit individual freedoms, the *limitations may not be the purpose in and of itself*. Moreover, the State party shall not *misuse the means of stiffening of the borders found in the various special limitation clauses*⁸⁹.

Each time, a grade is given at the very beginning of the column and supported with data below.

⁸⁷ Vienna Convention on the Law of Treaties, 1980. 1155 UNTS 31, Art. 26. [online] [cited 2022-07-31]. Available from Internet: <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>.

⁸⁸ ICCPR, Art. 5.

⁸⁹ Schabas, p. 114.

Table 3

The level of implementation of international obligations enshrined in the ICCPR and ILA treaties by the Government of the Republic of Belarus							
(1)	HR Committee operates under the provisions of part IV of ICCPR and OP		ILO institutions: <ul style="list-style-type: none"> • ILO as a structure (operates under ILO Constitution); • ILO Governing Body (operates under ILO Constitution); • the ILO Committee on Freedom of Association (hereinafter ILOC) (operates under Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association (hereinafter Special Procedures)) 				
(2)	Methods of monitoring and indicators/proofs of implementation		Methods of monitoring and indicators/proofs of implementation				
	Reporting Art. 40 of ICCPR	Individual communications Art. 1 of OP	Reporting in connection with the receipt of ILO recommendations by the State Art. 22 of ILO Constitution (analysed by the Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR))	Representation of non-observance of ILO Conventions on behalf of industrial association of employers or of workers Art. 24 of ILO Constitution	Complaint of non-observance of an ILO Convention by another Member State Art. 26 (1) of ILO Constitution	Complaint of non-observance of an ILO Convention by delegate of General Conference Art. 26 (4) of ILO Constitution	Submission of an application to the ILOC by trade unions or international organisations Para. 31 of Special Procedures

(3)	<p>Facts about submitted reports: 1992 CCPR/C/52/Add.8 1997 CCPR/C/84/Add.7 2006 not submitted 2015 significant delay 20018 CCPR/C/BLR/CO/5</p>	<p>Facts about submitted communications: Up to June 2022 - 171 individual communications from Belarusian individuals are reviewed.</p>	<p>Facts about submitted reports and observations (for FoA and RTU): Since 1994 (year of shifting Belarusian official policy to an autocratic model) There have been 23 observations. The latest are following: - Observation (CEACR) - adopted 2021, published 110th ILC session (2022)¹¹⁶, report requested out of cycle for 2022; - Observation (CEACR) - adopted 2020, published 109th ILC session (2021)¹¹⁷, report received; - Observation (CEACR) - adopted 2019, published 109th ILC session (2021)¹¹⁸, report received.</p>	<p>Facts about submitted representation of non-observance (for FoA and RTU): Permanently, not all are published as they contain personal data inter alia</p>	<p>Facts about submitted complaints (for FoA and RTU): No</p>	<p>Facts about submitted complaints (for FoA and RTU): - Complaint (Article 26) - 2003¹¹⁹; - Trade Union Rights in Belarus. Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the Observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No 98). July 2004 (hereinafter Report)¹²⁰.</p>	<p>Facts about submitted cases (for FoA and RTU): - Case № 1885 (Belarus)¹²¹; - Case № 2090 (Belarus)¹²²; - Case № 1849 (Belarus)¹²³</p>
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(4)	<p>Facts and proofs on implementation with grading</p> <p>In 1992 and 1997 Our grade is 3, (satisfactory) The State report has received a general positive assessment by the HR Committee with recommendations to improve some legislative acts.¹²⁴</p> <p>In 2006 and 2015 Our grade is 2, (non-satisfactory) - No submission of the report means <i>unsatisfactory grade</i> due to the State's non-compliance.</p> <p>2018 - Our grade is 2 (non-satisfactory) During 2016-2019, the state announced the Interdepartmental Plan to implement the recommendations from the second cycle of the UPR at the UN Human Rights Council¹²⁵, which was seen as a certain show of goodwill. However, during the HR Committee session in 2018, the representative of Belarus reiterated its stand not to comply with the Committee's decisions¹²⁶. The HR Committee provided recommendations to revise laws and practices with a view to bringing them into full compliance with the provisions of Articles 22 and 25 of the Covenant including the</p>	<p>Facts and proofs on implementation with grading</p> <p>1997-2009 Our grade is 2, (non-satisfactory) due to the following facts: 2000 - the first HR Committee's view adopted, and 16 more views have been adopted. Among the cases are four cases of violation of the FoA. No implementation has been made, no efforts to increase the level of awareness of the state officials and public on the ICCPR and other remedies.</p> <p>2009-2020 Our grade is 2, (non-satisfactory) close to destructive) due to the following facts: dozens of new applications to the HR Committee have been submitted claiming violation of the FoA, the State changed its policy towards the HR Committee and refused to recognize and implement the HR Committee's views.</p> <p>2020-2022 - our grade is 1, (destructive) due to serious and massive human rights violations, including the FoA together with RTU and the declared policy of impunity for state officials for alleged</p>	<p>2003 – 2020: Our grade is 2 (non-satisfactory) -there is collaboration with ILO during Government's activities aimed at giving effect to the Report's recommendations; - only partial implementation of technical recommendations; - insignificant legislative changes that do not affect the basis of the legal system and continued negative law enforcement practice¹²⁷;</p> <p>2020-2022 Our grade is 2 (non-satisfactory) wing tendency to decrease to 1 (destructive), based on evidence and conclusions of ILO jurisprudence¹²⁸: (1 (destructive): there are unsatisfactory observations as Belarus failed to take measures on the most of the Report's recommendations, apparent lack of positive actions following consultations with independent trade unions; - Belarus emphasises 87 the politicisation of the ILO supervisory bodies in the context of the events of 2020, as a result of</p>		<p>2003 – 2020: Our grade is 2 (non-satisfactory) - Belarus wants to continue collaboration with the ILO, but acts controversially: only partial implementation of technical recommendations (formal participation of independent trade unions in the National Council on Labour and Social Issues (advisory body); publication of ILO recommendations, receiving direct contacts mission, insignificant legislative changes that do not affect the basis of the legal system and continued negative law enforcement practice, etc.), implementation of significant recommendations, including those relating to the basics of labour legislation and the termination of inappropriate law enforcement practice, is not carried out, essential violations of FoA and RTU international standards do not stop. Belarus refers to historical traditions and socio-economic realities of the country as the ground for failure to fully implement the fundamental ILO Conventions¹³⁰</p> <p>2020-2022: Our grade is 2 (non-satisfactory) with a strong tendency to decrease to 1, (destructive), based on proves and conclusions of ILO jurisprudence¹³¹: no actual implementation</p>	<p>United with Complaint (Article 26) - 2003</p>
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Answering the question (1) on the level of the Belarus implementation efforts, the data presented in the table -- both the HR Committee's monitoring results as well as the work of the ILO collective monitoring regime -- show that Belarus has demonstrated a negative tendency from the "satisfactory" implementation level in 1992-1997, according to the information from the HR Committee's through a "non- satisfactory" in 2003-2020, according to the ILO, to "destructive" in 2020-2022, according to both institutions.

Answering the question on effectiveness of the ability of the both monitoring mechanisms to influence the Belarusian State behaviour towards the implementation of international obligations in a good faith or in other words in compliance with pacta sunt servanda, one may conclude that no evidence of a positive impact by any of the bodies was found. Indeed, one may see that the State's behaviour has changed from "bad to worse". Objectively, the case of Belarus demonstrates also the ineffectiveness of international monitoring mechanisms in making a positive impact on a state which denies its international obligations.

3. Aggravated State Responsibility as a concept for a new international mechanism

The case of Belarus in relation to its breaches of FoA and RTU, and the assessment of data on Belarus' level of implementation together with the instruments designed to monitor States' behaviour against the *pacta sunt servanda* principle, clearly demonstrates the lack of effective means of influencing authoritarian States that refuse or /and evade the implementation of obligations to respect and ensure human rights as well as to observe international treaties.

Consequently, we arrived at the need to analyse whether there are legal grounds for creating appropriate new ways of influencing "failed" states by applying the Draft Articles of Responsibility of States for Internationally Wrongful Acts (hereinafter **Draft Articles**).

Draft Articles is not an international treaty but it does not mean that they are not binding. Draft Articles are considered to confirm the existence and content of international custom in this field (Art. 38 (1) (b) of the Statute of the ICJ) and are therefore legally binding. This statement is confirmed by:

- (1) tribunal practice. Even before the adoption of Draft Articles, a number of their norms were recognized by ICJ as codification of customary law (see the *Case Concerning the Gabčíkovo-Nagymaros Project*¹³³). Such qualification is confirmed by the subsequent jurisprudence of ICJ (see the *Case Concerning Ahmadou Sadio Diallo*¹³⁴);
- (2) theory of international law. Viljam Engström defines Draft Articles as evidence of established and developing customary law¹³⁵. Kristen E Boon¹³⁶, Sylwia Strykowska¹³⁷ have a similar take..

Building mainly on the gravity of internationally wrongful acts Draft Articles identify two categories of State Responsibility: (i) ordinary; (ii) aggravated.

Regime of *aggravated State Responsibility* takes place when the wrongful state act amounts to a serious breach of obligations owed to the international community as a whole¹³⁸. Antonio Cassese uses the term "community obligations" in the characteristic of aggravated State Responsibility. He states that the obligations whose breach may give rise to aggravated State Responsibility must be community obligations, this is, obligations (1) concerning a fundamental value (peace, human rights, self-determination of people, protection of environment); (2) owed to all the other members of international community, or to the State bound by multilateral treaty; (3) having as its correlative position a "community right", that is, a right belonging to any other State (or to any other contracting party, in the case of multilateral treaty); (4) this right may be exercised by any other State (or contracting party), whether or not damaged by the breach – the States that take action to invoke this class of responsibility do not pursue a personal or individual interest; they pursue a community interest, for they act on behalf of the whole world community or of the collectivity of States parties to the multilateral treaty; (5) this right is exercised on behalf of international community and not in the interest of the claimant State¹³⁹.

¹³³ Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ, para. 52.

¹³⁴ Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (Preliminary Objections) [2007] ICJ, para. 39.

¹³⁵ Engström V., 2002. *Who Is Responsible for Corporate Human Rights Violations?* Åbo Akademi University, Institute for Human Rights [cited 2022-07-31]. P. 13. Available from Internet: <<https://www.abo.fi/wp-content/uploads/2018/03/2002-Engstrom-Who-is-responsible.pdf>>.

¹³⁶ Boon, K.E., 2014. Are control tests fit for the future? The slippage problem in attribution doctrines. In *Melbourne Journal of International Law* [online], vol. 15, № 2 [cited 2022-07-31], pp. 330–377. P. 342. Available from Internet: <https://law.unimelb.edu.au/data/assets/pdf_file/0010/1586872/Boon1.pdf>.

¹³⁷ Strykowska S., 2018. The International Legal Issue of Attribution of Conduct to a State – The Case Law of the International Courts and Tribunals. *Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza* [online]. vol. 8, № 15 [cited 2022-07-31], pp. 143–155. P. 148. Available from Internet: <<http://ppuam.amu.edu.pl/uploads/PPUAM%20vol.%208/10%20Strykowska.pdf>>.

¹³⁸ Chirwa D.M., 2004. The doctrine of state responsibility as a potential means of holding private actors accountable for human rights. *Melbourne Journal of International Law* [online], Vol. 5, № 1 [cited 2022-07-31], pp. 1–36. P. 17. Available from Internet: <https://law.unimelb.edu.au/data/assets/pdf_file/0005/1680422/Chirwa.pdf>.

¹³⁹ Cassese A., 2003. *International Criminal Law*. Oxford University Press, Oxford. 472 p. P. 37.

Aggravated State Responsibility is codified in Articles 40 and 41 of Draft Articles and some authors (for example, Beatrice I. Bonafe¹⁴⁰ and Christian J. Tams¹⁴¹) describe the nature of this phenomenon through its provisions which define the scope of aggravated State responsibility and its procedural and material consequences.

Article 40 of Draft Articles determines the scope of aggravated State responsibility through wrongful act meeting by two criteria:

(i) objective - “an obligation arising under a peremptory norm of general international law”.

Draft Articles do not define “peremptory norm of general international law”. Authors of Draft Articles derive their essence from (i) the concepts of the *jus cogens* norms and *erga omnes* obligation as well as obligations towards the international community as a whole used in practice of international tribunals (see the *Barcelona Traction Case*¹⁴², the *East Timor Case*¹⁴³) and (ii) Art. 53 of the Vienna Convention according which peremptory norm of general international law is one which is: accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character¹⁴⁴.

The inter State communication under HR Committee procedure is conceived in human rights treaties as an *actio popularis* and serves the common interest. Nowak calls it “a universal public order”¹⁴⁵ whereas State parties are interested in each other's discharge of their obligations.

Disrespect of the generally recognized *pacta sunt servanda* principle as necessary condition of public and worldwide order demonstrated by the Belarus government towards monitoring bodies in the examined cases can be a violation of *jus cogens* norm¹⁴⁶.

Application of the *jus cogens* concept with respect to the case of Belarus might be most accurate due to the fact that acts of systematic torture allegedly committed by State officials against the people arrested for participation in peaceful actions and persecution of those who protested against the violence and impunity shall be taken as a legal reason for the international community as a whole;

(ii) estimated – “a breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation”.

The word “serious” signifies that a certain order of magnitude of violation is necessary in order not to trivialise the breach and it is not intended to suggest that any violation of these obligations is not serious or is somehow excusable. To be regarded as systematic, a violation would have to be carried out in an organised and deliberate way. In contrast, the term “gross” refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the law. The terms are certainly not mutually exclusive; serious breaches will usually be both systematic and gross. Factors which may establish the seriousness of a violation would include the intent to violate the norm; the scope and number of individual violations; and the gravity of their consequences for the victims¹⁴⁷.

In the case under consideration, Belarus meets all criteria of Aggravated State Responsibility:

(1) objective - “an obligation arising under a peremptory norm of general international law” based on the fact of persistent breaches of *pacta sunt servanda* and so disrespecting international order and UN Charter's goals

¹⁴⁰ Bonafe, B.I., 2009. *The Relationship Between State and Individual Responsibility for International Crimes*. Martinus Nijhoff Publishers, Leiden/Boston, 284 p. Pp. 17-23.

¹⁴¹ Tams C.J., 2002. Do Serious Breaches Give Rise to Any Specific Obligations of the Responsible State? *European Journal of International Law* [online], Vol. 13, № 5 [cited 2022-07-31], pp. 1161–1180. Available from Internet: <<https://academic.oup.com/ejil/article/13/5/1161/419874>>.

¹⁴² Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) [1970] ICJ, para. 33.

¹⁴³ Case Concerning East Timor (Portugal v. Australia) [1995] ICJ, para. 2.

¹⁴⁴ Materials on the Responsibility of States for Internationally Wrongful Acts. ST/LEG/SER B/25, U.N. Sales. № E.12.V.12. New York: UN, 2012. [cited 2022-05-18]. Pp. 260-263. Available from Internet: <<https://legal.un.org/legislativeseries/book25.shtml>> (further cites as *Materials*).

¹⁴⁵ Schabas, p. 923.

¹⁴⁶ Janis M.W., 1988. The Nature of Jus Cogens. *The Connecticut Journal of International Law*, Vol 3, Issue 2, pp. 359-363. P. 362 [online] [cited 2022-07-31]. Available from Internet: <<https://core.ac.uk/download/pdf/302393673.pdf>>; Kunz J.L., 1945. The Meaning and the Range of the Norm Pacta Sunt Servanda (1945). *The American Journal of International Law*, Vol. 39, № 2, pp. 180–197. Pp. 190-192. [cited 2022-07-31]. doi: <https://doi.org/10.2307/2192340>.

¹⁴⁷ *Materials*, p. 266.

and principles because Belarus systematically declares “self-impunity” from obligations to prevent and investigate facts of alleged torture, denies the obligatory nature of decisions of international organisations and obligatory character of international law, in general;

- (2) estimated – “a breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation” based on persistent character of these breaches as official State’s policy as well as on the fact that FoA and RTU are determined by international law as principle and precondition of “establishing peace” (unanimously adopted by ILO Members and endorsed by UN).

There are at least two practically important consequences of aggravated State responsibility (Art. 41 of Draft Articles):

(i) a duty of cooperation to bring to an end the serious breach. Obligation to cooperate applies to States whether or not they are individually affected by the serious breach. Cooperation can be institutionalised and non-institutionalized. Cooperation is to be performed through lawful means the choice of which will depend on the circumstances of the given situation. The obligation of cooperation entails an obligation of all states to join forces to establish such a mechanism;

(ii) further consequences that may be entailed under customary international law. This rule establishes the so-called “open-list” of consequences in the case of aggravated State responsibility: the possibility for application of the individual primary rules and also the conviction that the legal regime of serious breaches is itself in a state of development.

Therefore, we believe that it is legally possible to establish *a special legal regime for the procedure of the State under aggravated State responsibility*, including the development of systemic compliance by the other States that do not have the corresponding status and sanctions and other measures applied by them.

Conclusions:

Realisation of the Freedom of association (FoA) and the Right to form and to join trade unions (RTU) in Belarus are under threat and almost destroyed by the State’s legislative limitations and repressive practice toward those who exercise individual and collective freedoms and rights.

For Belarusians, and those employed in Belarus, the complex international and national frameworks established to protect these rights and oblige the states to implement international treaties have once again become formal and ineffective, just as it used to be in the Soviet era¹⁴⁸.

The article reveals that both Covenants - ICCPR and ICESCR as well as a number of the ILO conventions established frameworks enable members of trade unions to benefit from both the human rights conventions protecting freedom of assembly, association, speech and the special norms protecting individual and collective rights of workers.

Limitation of the mentioned rights including the right to strike could be legitimate if this is necessary in a democratic society. For members of a trade union, that means free participation in realisation of other civil liberties which are the essential basis for the realisation of the FoA and RTU and must not be denied only because of their membership in trade unions/labour associations.

Nowadays, the *democracy, democratic society and democratic participation* of the trade unions and its members has become an integral part of the entire framework regulating freedom of association and other civil freedoms in a democratic state.

A failure of the international human rights law to establish a strong monitoring mechanism which would include interstate communications as a means of exercising collective responsibility in calling to observe minimum human rights standards in the sphere of civil liberties, resulted in the situation when a state destroys individual rights and freedoms by imposing limitations and repression and simultaneously ignores international obligations disrespecting general principle *pacta sunt servanda* and a value of a *universal ordre public*.

The authors conclude that the international law with the *de facto* dysfunctional collective accountability regarding the *erga omnes* obligations shall be strengthened by introduction of a special legal regime with a procedure “Regime of a State under aggravated responsibility”, supported by a system of compliance mechanism run by other States that do not have the corresponding status and sanctions.

¹⁴⁸ Ludwikowski R.R. 1996. Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe. *Cardozo J.Int.*, № 73, pp. 73-162. [online] [cited 2022-07-31]. Available from Internet: <<https://scholarship.law.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1347&context=scholar>>.