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VILIUS MITKEVIČIUS

MULTIMODAL TRANSPORT OF GOODS: REGULATORY ISSUES

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1. RELEVANCE OF THE THESIS

The scientific research, conducted in the thesis, is relevant in several aspects.

Firstly, the research is relevant in scientific sense (*q.v. scientific novelty, the overview of the research*).

Multimodal transport, regardless of its development and importance both for economy and for environment (*q.v. novelty of the scientific research for a lawmaking process and it`s political significance*), has been reluctantly little discussed in scientific literature. Consistent legal analysis of multimodal transport, conducted in this scientific research, allows to fill the legal gap, existing in the legal doctrine, raises the awareness of society and participants of multimodal transport about this important institute.

Secondly, the lack of proper regulation of multimodal transport leads to legal uncertainty and unpredictability of court decisions. E.g. given the fact of unsettled case law on questions related to multimodal transport, the scientific research can be a beneficial source of soft law helping to evaluate disputes, which could arise, to forecast their outcome and to solve them in courts.

Thirdly, the research is relevant in scientific sense as particularly detailed analysis of the scope of direct application of the international conventions of carriage of goods is conducted in it, *inter alia*, whether a multimodal transport contract falls within the scope of these conventions (*and, as a result of that, the analysis of the degree the parties of a multimodal transport contract can enjoy the freedom of contract*). Both in the legal doctrine and in the case law of various countries, there is no unanimous assessment of these questions. The results, obtained in the scientific research, could help to unify dualism, sometimes, even pluralism on these questions and be an impulse for the change of legal thoughts thus contributing to the lawmaking on multimodal transport as well.

Secondly, the scientific research is relevant to a lawmaking process and is politically significant.

In 2015, the turnover of import and export in the European Union amounted almost 9580 billion Eur, while in Lithuania such turnover reached over 48 billion Eur[1]. In

[1] European Commission statistic database [interactive. Seen on 2017-08-23]. Access via the internet: <https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2017_en>.

comparison, in 2017, the whole budget of Lithuania amounted just a bit over 9 billion Eur[2]. Comparing that data alone, the value of goods imported to/exported from Lithuania in 2015 is fivefold bigger than the budget of Lithuania. At the European Union level, transport sector creates almost 3.7 % of European gross domestic product and about 5.1 % of work places in the European Union[3]. This shows that carriage of goods, of which significant part can be qualified as multimodal transport, is of an extreme importance to the economies of Member States, as well as it is widespread legal relationships in practice. The analysis on multimodal transport, conducted in the scientific research, and provided proposals allow to solve problems, existing in multimodal transport, reduce the costs and, thus, develop these relations (of multimodal transport) significant for the economy, thereby, the economy itself.

To be emphasized, that multimodal transport brings numerous benefits not only for the parties of this contract, but for society as well. Multimodal transport helps to reduce a load on transport infrastructure, is a subject to reaching for environmental goals, saves time and finances as well. Therefore, multimodal transport is of extreme importance both to economy and sustainable development of transport as one of the fundamental European Union objectives of transport policy[4]. An achievement of all these benefits is hardly imaginable without clear and adequate legal regulation of multimodal transport. In the scientific research the problematic aspects of multimodal transport are assessed as well as legislative proposals are presented. All of this is an assumption for the development of multimodal transport as the given analysis and proposals in the scientific research (in case of implementation) would ensure better conditions for the participants of multimodal transport to develop their activities, increase their legal certainty and reduce friction cost which are currently being incurred. I.e. the legal analysis, conducted in the thesis, and the results achieved create preconditions for the development of multimodal transport and achievement of benefits they bring.

[2] The Law on the Approval of the Financial Indicators of the State Budget and Municipal Budgets for 2017. TAR, 2016, No. 2016-29882, Art. 1.

[3] European Commission webpage. *Transport* [interactive. Seen on 2017-08-20]. Access via the internet: <http://ec.europa.eu/competition/sectors/transport/overview.html>.

[4] NIKAKI, T. Bringing Multimodal Transport Law into the new century: is the uniform liability system the way forward. *The journal of air law and commerce*, Vol. 78, No. 1, 2013. p. 75.

Finally, legislator can take advantage of this scientific research and its proposals by improving legal regulation of multimodal transport and the legal environment of these carriages.

Thirdly, the scientific research is relevant in the practical sense, i.e. the analysis concluded in the research and it`s findings are significant for the parties of multimodal transport.

Multimodal transport, as one type of the carriages of goods, is analysed in the thesis as well as the scope of direct application of the international conventions of carriage of goods. Given that international regulation of carriage of goods for the most part establishes regulation of mandatory manner, evaluation of the scope of these conventions has a direct impact to the scope of freedom of contract of the parties of multimodal transport contract to agree on the applicable law or the conditions of on the contract. The study of these issues and the results presented establish preconditions for greater freedom of contract and legal clarity for the parties of multimodal transport (or even freight transport), what determines the reduction of their friction cost being incurred.

Most surveys, in which the participants of freight transport were asked if they were satisfied with current legal regulation, showed that existing legal regulation cannot be considered satisfactory, it implies additional cost and thus reduce the attractiveness of multimodal transport. Furthermore, the surveys showed that new legal regulation would be welcome[5]. According to this, possibilities to resolve the problematic caused by non-existing legal regulation of multimodal transport are examined in the thesis, *inter alia*, the possibility to unify the legal regulation of multimodal transport thus creating greater legal clarity and reducing friction cost for the participants of multimodal transport.

[5] United Nations Conference on Trade and Development. Report No. UNCTAD/SDTE/TLB/2003. *Multimodal transport: The feasibility of an international legal instrument* [interactive. Seen on 2016-11-03]. Access via the internet: <http://unctad.org/en/docs/sdtetlb20031_en.pdf>; European Commission. Report TREN/CC/01-2005/LOT1/. *Study on the details and added value of establishing a (optional) single transport (electronic) document for all carriage of goods, irrespective of mode, as well as a standard liability clause (voluntary liability regime), with regard to their ability to facilitate multimodal freight transport and enhance the framework offered by multimodal waybills and or multimodal manifests* [interactive. Seen on 2016-11-03]. Access via the internet: <https://ec.europa.eu/transport/sites/transport/files/themes/strategies/studies/doc/2009_05_19_multimodal_transport_report.pdf>; BASK, A., EFTESTØL-WILKEKMSSON, E. *Is harmonised liability system a necessary Prerequisite for European Multimodal Transport? The Finnish Logistic Service Providers` Point of view* iš MAENPAA, O. et. al. *Oikeuden Historiaasta Tulevaisuuden Eurooppaan*, Suomalainen Lakimiesyhdistys, 2014, p. 49.

Eventually, various situations that occur during multimodal transportation are analysed in this scientific research. Provided insights allow for parties not only to evaluate better the potential risk or problems which could arise, but also, in individual cases, and to prevent, with the help of legal instruments, these risks and problems from rising hereby protecting their own interests as well.

2. THE OBJECT OF THE THESIS

The object of the thesis – multimodal transport as an institute of law, applicable legal regulation to multimodal transport and legal issues arising due to limitations of this legal regulation. The thesis focuses on international multimodal transport, which may be (or not be) the subject of legal regulation embedded in the international conventions of carriage of goods.

The analysis, conducted in this scientific research, is not limited to the regional level *per se*, however, the main focus is on the European Union level. Lithuania and its multimodal transport legal regulation is not a primary object of the research and is analysed only in conjunction to the analysis of the research object at international or regional level. Though, in separate cases when Lithuania`s regulatory peculiarities, comparing to common situation which is analysed, exist and this either has significant scientific value or is important for lawmaking or at practical level, the object of the research is analysed at national level as well.

3. THE AIM AND TASKS OF THE THESIS

The aim of the thesis – to provide a systematic and comprehensive analysis of multimodal transport institute and its legal regulation, *inter alia*, by identifying fundamental arising problems and providing both their analysis and possible solutions.

In pursuance of the aim, specified above, following tasks are raised and solved:

i) to examine the institute of multimodal transport and its relation to similar institutes, *inter alia*, types of contracts;

ii) to evaluate both legal regulation of multimodal transport and legal problematic caused by deficiencies of this regulation;

iii) to determine the scope of direct applicability of the international conventions of carriage of goods to a multimodal transport contract;

iv) to analyse the possibilities for multimodal transport legal regulation improvements with the aim to ensure legal and practical development and effectiveness of multimodal transport relations.

4. SCIENTIFIC NOVELTY, SOURCES OF THE RESEARCH

The object of this scientific research in legal doctrine for the most part is revealed by analysing a particular institute of transport law, not by assessing multimodal transport *per se*, what would allow to fill the gap existing in the legal doctrine and practice of multimodal transport.

Questions addressed in the thesis are relatively new to Lithuania`s legal doctrine. In the general sense, the problematic of transport law was analysed by E. Sinkevičius[6], A. Gineitis[7], D. Ambrasienė[8], V. Nikitinas[9], L. Jasutienė[10], but these authors in principle have not assessed multimodal transport in their research. On the other hand, multimodal transport in Lithuania was analysed by O. Drobitko[11]. However, the object of the thesis, comparing to the research conducted by O. Drobitko, differs significantly. Such significant questions, which were not been analysed in O. Drobitko`s thesis, as qualification of multimodal transport contract, determination of applicable law, the scope of direct application of the international conventions of carriage of goods to multimodal transport as well as its importance, rules for the determination of jurisdiction, possible application

[6] E.g. SINKEVIČIUS, E. Krovinių vežimo dokumentai, jų funkcijos ir teisinė reikšmė. *Jurisprudencija*, No. 1(103), 2008,; SINKEVIČIUS, E. Susitariančio vežėjo automobilių keliais atsakomybės už subvežėją teoriniai ir praktiniai aspektai. *Jurisprudencija*, No. 12 (102), 2007.

[7] E.g. GINETIS, A. *Krovinių vežimo jūra sutartinėms prievolėms taikytina teisė*. Doctoral dissertation. Social Sciences (law). Vilnius: Mykolas Romeris University, 2003.

[8] E.g. AMBRASIENĖ, D. Krovinių tarptautinio vežimo keliais teisinis reguliavimas. *Jurisprudencija*, No. 55(47), 2004.

[9] E.g. NIKITINAS, V. Vežėjo civilinės atsakomybės, reglamentuojamos CIM ir SMGS tarptautiniais susitarimais, lyginamoji analizė. *Teisė*, No. 84, 2012; NIKITINAS, V. *Vežėjo geležinkelio transportu civilinės teisinės atsakomybės, reglamentuojamos CIM ir SMGS tarptautiniais susitarimais, lyginamoji analizė*. Doctoral dissertation. Social sciences (law). Vilnius: Vilnius University, 2013.

[10] E.g. JASUTIENĖ, L. Krovinio siuntėjo jūrų transportu pareigos ir atsakomybė: jungtinių tautų konvencijos dėl sutarčių dėl tarptautinio krovinių vežimo visiškai arba iš dalies jūra analizė. *Socialinių mokslų studijos*, No. 4(3), 2012.

[11] DROBITKO, O. *Krovinių multimodaliniai vežimai: teisiniai aspektai*. Doctoral dissertation. Social Sciences (law). Vilnius: Mykolas Romeris University, 2006.

of measures, which would allow to resolve problems created by the lack of uniform multimodal transport legal regulation, are examined in the thesis.

Having evaluated research conducted by foreign authors, it must be noted, that much more attention is devoted to multimodal transport here. In general sense, problematic aspects of multimodal transport were analysed by R. de Witt in „*Multimodal transport*“[12], questions of law applicable to the multimodal transport were analysed by Marian Hoeks in „*Multimodal transport law*"[13], the possibility to solve the problem of lack of multimodal transport legal regulation at the European Union level was analysed by E. *Eftestøl-Wilhelmsson in „European sustainable carriage of goods: the role of contract law“*[14]. One of the newest legal doctrine source of multimodal transport - M. Spanjaart monograph „*Multimodal transport law*“[15]. Works by T. Nikaki[16], W. Verheyen[17], J. Ramberg[18] on multimodal transport topic also must be mentioned. However, it must be admitted that, compared to other branches of law, multimodal transport is not at high exploration level. The novelty of the thesis, compared to foreign research, reveals itself in several aspects. Firstly, no author has examined compoundly both current multimodal transport legal regulation and instruments, which could improve it and help solve existing multimodal transport problems as well. Secondly, despite of partial overlap of the object of the thesis and objects of research conducted by foreign authors, opposite conclusions of significant importance to the relations of multimodal transport are obtained in the thesis (partially, because of research of additional sources). Thirdly, the research is conducted taking into

[12] DE WITT, R. *Multimodal transport*. London: LLP, 1995.

[13] HOEKS, M. *Multimodal transport law: the law applicable to the multimodal contract for the carriage of goods*. Rotterdam: Erasmus Univ., 2009.

[14] EFTESTØL-WILHELMSSON, E. *European sustainable carriage of goods: the role of contract law*. New York: Routledge, 2016.

[15] SPANJAART, M. *Multimodal transport law*. New York: Routledge, 2017.

[16]E.g. NIKAKI, *supra* 4; NIKAKI, T. The Quest for an international multimodal transport convention: does the CMR liability system fit the bill? iš SOYER, B., TETTENBORM, A. *eds.* Carriage of goods by sea, land and air : unimodal and multimodal transport in the 21st century. Abingdon: Informa, 2014; NIKAKI, T. The UNCITRAL draft instrument in the carriage of goods [wholly] or [partly][by sea]: multimodal at last or still at sea? *Journal of Business Law*, 2005, pp. 647-658.

[17] E.g. Pvz. VERHEYEN, W. Freight integration: what is the way forward? *European Transport Law*, 2014, pp. 31-42; VERHEYEN, W. EEX(bis) and CMR: the return of parallel procedings? *European Transport Law*, 2015, pp. 145-170; VERHEYEN, W. Forum clauses in carriage contracts after Brussels I (bis) Regulation: procedural (un)certainty? *The Journal of International Maritme Law*, Vol. 21, 2015; VERHEYEN, W. National judges as gatekeepers to the CMR Convention. *Uniform Law Review*, Vol. 21, No. 4, 2016.

[18] E.g. RAMBERG, J. Freedom of contract in maritme law. *Lloyd's maritime and commercial law quarterly*, 1993, pp. 178-191; RAMBERG, J. The Future Laws of Transport Operators and Service providers. *Scandinavian Studies in Law*, Vol. 46, 2004; RAMBERG, J. *The Law of Transport Operators: In international Trade*. Stockholm : Norstedts Jur., 2005; RAMBERG, J. *Unification of transport law: difficulties and possibilities* iš *Scritti in Onore di Francesco Berlingieri*. Vol. II. Genova: 2010, pp. 813-819.

account the changing, mainly due to technological advancement, social relations and recent case law. Based on this, qualitatively new and original conclusions are drawn and proposed in this scientific research. Fourthly, the novelty of the thesis is manifested by the fact that the research is concluded partly at Lithuanian level despite it not being the primarily object of the thesis.

All the mentioned above determines the novelty of the scientific research at international, the European Union and Lithuania levels.

5. THE METHODOLOGY

The thesis has been concluded in the course of analysing and assessing legal doctrine, statutory law, case law and soft law.

Following methods are used in the thesis:

1) *linguistic* method: substantive terms are translated from English for the first time, generic meaning of legal norms and texts of doctrine is determined; linguistic expression of norms regulating the scope of direct application of the international conventions is assessed;

2) *systemic* method: the analysis of legal regulation of carriage of goods, case law and doctrinal positions revealing the scope of direct application of the international conventions; the analysis of conflict resolution applicable in case of collision between international conventions with aim to evaluate the possibility of adoption of uniform multimodal transport convention; the analysis of legal regulation and social relations evaluating changes in the legal regulation mind;

3) *comparative* method: regulation of international conventions of carriage of goods on the same question (*e.g. direct application of convention, limits of carrier`s civil liability, determination of jurisdiction, right to bring a claim directly to the sub-carrier for the damages incurred, etc.*) is compared; different interpretations of the international conventions between courts of different countries are compared;

4) *logical* method: the method is used to assess the doctrinal ideas, the facts determined in the research and their interface/causality with the problems and proposals to resolve the problems determined; is used structuring the research, distinguishing the key pleas, shaping insights, conclusions and proposals;

5) *historical* method: attempts to adopt uniform legal regulation of multimodal transport, the ideas proposed and causes of failure are assessed; historical circumstances, that triggered the implementation of limited carrier`s liability, and mandatory manner of international conventions of carriage of goods are assessed;

6) *analogy* method: the method is used in search of similarities among legal regulation, doctrines and legal institutes;

7) *teleological* method: the method is used with the aim to ascertain the purpose of the international conventions and the essence of their content; to ascertain the purpose of the article 6.811 of Civil Code of Republic of Lithuania.

6. STATEMENTS TO BE DEFENDED

The following key statements are defended in the thesis:

i) a multimodal transport contract falls within the scope of the Montreal convention, the Warsaw system and Hamburg rules but only in so far as a carriage is being performed by the mode of transport regulated by the particular convention. Additionally, providing special rules regulating multimodal transport are explicitly stipulated in the particular international convention, the CMR convention, the CMNI convention, the OSJD convention and the CIM rules also may be directly applicable to a multimodal transport contract, but only to the extent provided. These situations should be understood in a narrow sense. In other cases, international conventions of carriage of goods are not applicable directly to a multimodal transport contract;

ii) due to the different approach, existing in various jurisdictions, and due to the scope of direct application of the international conventions to multimodal transport and limited possibility for parties of multimodal transport contract to agree on law applicable to the contract and/or provisions of the contract, the problems of multimodal transport caused by fragmentary legal regulation could be resolved only via legislation at international or regional level;

iii) recent development of technology and social relations determines that mandatory freight carriage regulation, establishing limited carrier`s liability, should be seen as outdated. In pursuance of adoption of modern and uniform legal regulation of multimodal transport, it is expedient to embed regulation of dispositive manner which

would anticipate strict and unlimited liability of multimodal transport operator (**hereinafter – MTO**);

iv) an international convention, regulating multimodal transport, is considered as the best instrument solving existing legal problematic of multimodal transport. However, having regard to a low probability of such an instrument being created and adopted soon, lack of multimodal transport regulation should be resolved by adopting legal regulation at the European Union level;

v) the legal regulation of multimodal transport at the European Union level could achieve significant results unifying multimodal carriages in the European Union and increasing legal predictability of stakeholders of multimodal transport.

7. THE STURCTURE OF THE THESIS AND THE OVERVIEW OF THE RESEARCH

Based on the object of the research and it`s level of investigation, the thesis consists of four main parts:

1. In the first part of the thesis the institute of multimodal transport is analysed. During the analysis, qualifying features of a multimodal transport contract is identified, a multimodal transport contract as an institute and its qualification is assessed as well. Finally, a relation between a multimodal transport contract and other similar carriage contracts, such as through transport, successive carriage, freight forwarding as well as the criteria of their separation are analysed in the first part of the thesis. After the above examination, it is determined that:

i) multimodal transport (which previously used to be described by using the term "combined transport") exists if all the following conditions are met: a) on the basis of single contract of carriage, b) MTO agrees under its own responsibility throughout whole carriage, c) to perform the carriage with at least two different modes of transport;

ii) intermodal carriage is not considered as a separate means of carriage of goods, it should be treated as one mode of multimodal transport when cargo is carried with several modes of transport without its physical reloading;

iii) depending on approach of a legislator, multimodal transport contract can be considered as: i) *sui generis* contract, for which, as a rule, international conventions,

firstly, intended for regulation of carriage by particular mode of transport, are not applicable; ii) absorption contract, when dominant element (mode of transport) absorbs elements of other contracts (modes of transport); iii) mixed (combined) contract, which is considered as a chain of different contracts of carriage (of different modes of transport) containing features of all these contracts. According to this doctrine, as a rule, every regulation of particular mode of transport can be applied to a respective part (leg of carriage) of multimodal contract;

iv) qualification of multimodal transport contract *per se de jure* does not change the scope of application of the international conventions of carriage of goods. On the other hand, the qualification is of significant importance because an international or national legal "bypass", with the effect of indirect application of the international conventions to a multimodal transport contract, can be created if a multimodal transport contract is qualified as mixed contract. On the contrary, a legal "bypass" is not created in case of *sui generis* qualification without a provision, established in law, providing network regulation of multimodal transport. It is important to note that if qualification in national law has no impact on the right of multimodal transport contract parties to agree on applicable law, qualification at international level, on the contrary, restricts such a right significantly. This is because such qualification extends the scope of application of the international conventions;

v) if it is acknowledged that a multimodal transport contract is a mixed contract, it is thought, a reason why such a contract has been established would be refuted. I.e. a unique law institute *de facto* would be decomposed by separating carriage of goods contract and a forwarding contract (in so far as rights and obligations of MTO do not fall under field of contract of carriage of goods) so returning the parties of the multimodal transport contract to an archaic legal construction. For this reason, it is thought, a multimodal transport contract should be qualified as *sui generis* contract;

vi) a carriage should be qualified as through transport only if cargo is transported on the basis of a single contract which stipulates the liability of the carrier throughout all the period of the carriage and the cargo is transported with at least two individual vehicles of the same type. Having regard to the assessment of substantive manner, it is addressed, that a combined through transport contract and a multimodal transport contract are identical;

vii) an essential feature of a successive carriage contract is that several carriers are parties (as a carrier) of the same contract and at least one carrier has double status in the contract by being both a carrier and a freight forwarder as well (in separate stages of the carriage). It is also and a distinctive feature between a successive carriage contract and a multimodal transport contract as in case of multimodal transport a contract is concluded with one subject – MTO – who undertakes, under his name and risk, to exercise the carriage of cargo provided in the contract. As the key feature of successive carriage is parties of the contract and their legal status, a combined successive carriage contract (which differs from a contract of multimodal transport) can exist as well;

viii) depending on qualification of a contract as a carriage or forwarding contract, law applicable to a contract, rules for the determination of jurisdiction and, for this reason, applicable provisions of carrier`s liability differ;

ix) assessing traditionally, the key difference between a forwarding contract and a carriage contract is that the main obligation of freight forwarder is to organise a carriage, not to carry cargo by itself, as it is in the case of a carriage contract;

x) having regard to qualifying features of a carriage contract and classical forwarding contract, it is assessed, that they are different contracts by their essence. In case of multimodal transport contract MTO obliges, under its responsibility, costs and risk, to take care of cargo transportation and, acting as a principal or actual carrier, to deliver the cargo to the destination. On the other hand, freight forwarder obliges to organise the carriage of the cargo at the customer`s expense without taking obligation to perform a carriage by itself. By content and intensity these are obligations of different volume which cannot be considered as identical. MTO can fulfil the obligations of a freight forwarder, but, by no means, a freight forwarder should obtain other MTO` obligations and bear the same responsibility as these are the features to qualify a concluded contract as a multimodal transport contract;

xi) the distinction between a multimodal transport contract and specific contracts, existing in separate countries, on the basis of which a freight forwarder obtains an interim status between a freight forwarder and a carrier, should be considered on a case-by-case basis. In the case of such contract both situations could exist when a concluded forwarding contract *de facto* will be considered the same to a multimodal transport contract by its

features and when a concluded forwarding contract will be considered as a separate type of contract comparing to multimodal transport contract.

2. In the second part of the thesis, first of all, legal regulation of multimodal transport and its historical evolution is assessed. Having determined that there is no uniform international legal regulation on multimodal transport neither at international nor at regional (the European Union), nor at national (Lithuania) level, the resulting problems are addressed. After the above examination, it is determined that:

i) despite numerous previous attempts, there still is no uniform and/or international legal regulation of multimodal transport;

ii) in contrast to the lack of legal regulation in the multimodal transport field, carriage law distinguishes itself by a large number of the international conventions of carriage of goods: i) the carriage of goods by road is regulated by the CMR convention; ii) the carriage of goods by inland waters is regulated by the CMNI convention; iii) the carriage of goods by sea is regulated by the Hague-Visby rules and the Hamburg rules; iv) the carriage of goods by railway is regulated by the CIM rules and the OSJD convention; v) the carriage of goods by air is regulated by the Montreal convention and the Warsaw system. Even though some of these conventions nevertheless partly regulate multimodal transport, essentially each of these conventions is dedicated to legal regulation of the particular mode of transport. This is the reason why regulations introduced in these conventions differ. And, unfortunately, because of differences in qualification of the multimodal transport contract, interpretation of the international conventions and in the absence of a supranational institution having competence to ensure uniform interpretation of these conventions, law, applicable to a multimodal transport contract, liability of MTO, and its interpretation widely differs from country to country and is unpredictable;

iii) there are several regional/sub-regional multimodal transport regulatory mechanisms in the world: the Decision No. 331, passed in 1993 (partially amended in 1996), regulates multimodal transport in the Andes community; the Agreement on facilitating multimodal transport, passed in 1995, regulates such carriages in MERCOSUR custom union; the International agreement on multimodal transport, passed in 1996, regulates multimodal carriages in the ALADI association; the Agreement on multimodal transport, passed in 2005, regulates multimodal transport in the ASEAN association;

iv) national legal regulation on multimodal transport is established in the Netherlands, Germany, Estonia, China, Mexico, South Korea, India, Argentina and Brazil. Some of countries have replaced national legal regulation of multimodal transport by regulation at regional level mentioned above;

v) there is no legal regulation on multimodal transport in Lithuania;

vi) segmental (based on network-system) legal regulation disregards relations, existing during multimodal transportation when modes of transportation are being changed. Therefore, conflicts between the provisions of the international conventions of carriage of goods on the application of the conventions arise. Moreover, in such cases the question what legal regulation (law) should be applicable also arises as the same provisions and situations, irrespective of the aim of international conventions to unify applicable law, are interpreted differently by courts of different states. Due to an incomplete compatibility of the international conventions on multimodal transport, frequently national law, which, depending on the jurisdiction, defines differently the rights and obligations of MTO, to a multimodal transport contract must be applied. And because of legal uncertainty and case law which differs from state to state, *forum shopping* problem arises when parties of multimodal transport seek for, even with the help of a negative claim, case proceedings in a jurisdiction, where interpretation of law is most favourable, not in the one where a court process would be most convenient. Non-existing legal regulation is a direct reason of an increase of legal uncertainty, friction cost and the decline of attractiveness of multimodal transport and this makes it more difficult to achieve sustainable transport;

vii) uniform legal regulation on multimodal transport would increase better legal certainty, reduce friction cost and quantity of disputes on damage compensation, would allow the development of effective European transport system.

3. In the third part of the thesis, main legal uncertainties and arising problems, implied by shortcomings of the regulation of multimodal transport (such as the question of applicable law for a multimodal transport contract, *inter alia*, the scope of direct application of the international conventions of carriage of goods to multimodal transport contracts (*which is of a particular importance for the establishment of uniform legal regulation and legal certainty in multimodal transport*), determination of jurisdiction or

MTO`s civil liability system), are analysed in details. After the above examination, it is determined that:

i) law, applicable to a contract with an international element is determined by the Roma I Regulation in the European Union. According to the Rome I, parties cannot agree on application of an international convention as a law applicable to the contract. However, the parties may agree on the application of provisions of an international convention as contract terms in a multimodal transport contract. Whereas such provisions are being evaluated in the context of applicable law and its mandatory norms, the risk is present that such contractual conditions will be acknowledged null and void by the competent court. If no international element, as it is understood under the Rome I Regulation, exists in a multimodal transport contract, the applicable law is determined by national law, which, in separate jurisdictions, may allow parties to agree on an international convention as the law applicable to the contract;

ii) neither legal doctrine nor case law establishes uniform understanding of direct application of currently existing international conventions of carriage of goods to multimodal transport contract. Having evaluated the scope of application of these international conventions, it is concluded that a multimodal transport contract, only to what extent a carriage is being performed by the mode of transport regulated by the particular convention, falls within the scope of air carriage conventions and/or by the Hamburg rules. Additionally, only in so far as it is stipulated explicitly in the special provisions on multimodal transport of the CMR convention, the CMNI convention, the OSJD convention and the Hamburg rules, these conventions may also apply directly to a multimodal transport contract. These cases must be interpreted in a narrow sense;

iii) approach that the CMR convention, the CMNI convention, the OSJD convention, the CIM rules and the Hague-Visby rules are not applicable directly to a multimodal transport contract, except if and in so far as it is stipulated explicitly in the convention, is of significant importance. If the international conventions of carriage of goods does not have an effect of direct application and, e.g., the doctrine of network-system firstly must be applied for the application of these conventions, the international conventions are applicable to the parties of the multimodal transport contract because of the qualification of a multimodal transport contract by national law and the subsequent application of particular legal doctrine or legal rule existing in national law implying such

application of the international conventions, not because of the international conventions being a superior legal act to national law. This is of significant importance to the freedom of contract and national legal regulation. If an international convention of carriage of goods is applicable directly to a particular leg of multimodal transport, the legislator`s competence to pass laws on multimodal transport, in so far as the question is regulated by the international convention, is restricted. Herewith, freedom of contract of the parties of a multimodal transport contract to agree on law applicable to the contract and/or particular terms of the contract is significantly restricted because of, for the most part, the mandatory manner of the international conventions of carriage of goods. But if an international convention is not applicable directly to the contract and its application is based on a "bypass" of national law, the parties are allowed to agree on law applicable to the contract and/or particular terms of the contract, deviating from the provisions of the international conventions of carriage of goods in so far as it is allowed by (national) law applicable to the contract;

iv) provisions, established by the CMR convention, the CMNI convention, the CIM rules and the OSJD convention, explicitly providing for the cases when these international conventions are directly applicable to a multimodal transport contract, essentially establish cases when these conventions are applicable to whole multimodal transport contract (to all the carriage from the dispatch point to the delivery point), not only to the part of it (a separate leg of the carriage). I.e. in these situations *de facto* a unified legal regulation for the multimodal transport contract is present. This is because these cases are extremely specific and are understood only both strictly and in a narrow sense. If these cases are expanded incorporating additional modes of carriage, the concluded contract *in corpore* will fall out from the scope of application of these international conventions of carriage of goods. Thus, in every other case of concluding a multimodal transport contract on carriage by roads, railways, inland waters and sea (if the Hamburg rules are not applicable to the contract) it is allowed for the parties to determine (depending on to what extent the parties are allowed to enjoy the freedom of contract) or establish unified legal regulation for all the multimodal transport contract. If a part of the multimodal carriage (a separate leg) is performed by air or the Hamburg rules are applicable to the contract, unified legal regulation for all the multimodal transport contract could be established by "extending" the application of these conventions to all the contract.

Only if the carriage (according to a multimodal carriage contract) is performed both by air and by sea (providing the Hamburg rules are applicable) or it is desirable to select a different legal regime comparing to established by these conventions, or it is desirable to establish to a multimodal transport contract, regulated by the CMR convention, the CMNI convention, the CIM rules or the OSJD convention, a different (uniform for all the multimodal transport contracts) legal regime, it is not possible to establish a uniform legal regime to the whole multimodal transport contract in every case or a potential conflict situation arises;

v) the provided analysis of the international conventions of carriage of goods significantly contributes to solving problems existing in multimodal transport law. Hereby wider competence for the parties of a multimodal transport contract to agree on uniform legal regime covering the whole contract is established. Secondly, thus the possibility to adopt, as much as possible, a uniform legal regulation on multimodal transport, avoiding the most part of potential conflict situations with the international conventions, is established as well. However, it is admitted that the above described doctrine could be invoked widely if only it is adopted by a legal instrument, regulating multimodal transport, at international or regional level. On the contrary, in the absence of uniform interpretation of the scope of application of the international conventions of carriage of goods on multimodal transport in separate jurisdictions, legal unpredictability still exists;

vi) the scope of application of the international conventions of carriage of goods does not allow to avoid mutual conflict situations. By solving this question, the following must be taken into account: *i*) provisions of the international conventions, regulating conflict situations, if there is any; *ii*) the provisions of Vienna convention on the law of Treaties; *iii*) general principles such as *lex specialis derogat legi generali.* Furthermore, in special cases when no possibility to resolve the conflict situation by applying the above mentioned measures exists, a court decision, despite the way how it would be reasoned and supported, e.g., by the principles of equity, honesty and common sense, would imply legal unpredictability in any case. Such situation cannot be tolerated;

vii) rules governing jurisdiction, embedded in the international conventions of carriage of goods, both restrict the freedom of contract and do not submit a suitable *lis pendens* rule. This is the reason why, in separate cases, the situation of parallel proceedings in courts of different states is created. Regardless of the fact that the Brussel I(bis)

Regulation states that where the dispute falls within the scope of a specialised convention, Member States are participating, the rules (e.g. governing determination of jurisdiction in particular cases) set out in that convention and not those laid down by the Regulation should in principle be applied, the Court of Justice of the European Union has noticed that the fact remains that their application cannot compromise the principles which underlie judicial cooperation in civil and commercial matters in the European Union. This raises a question whether application of the international convention of goods, in so far as they govern jurisdiction, will not be restricted in the future because of the deficiency of the suitable *lis pendens* rule in the international conventions, as well as limitation of the freedom of contract by these conventions;

viii) a determination of jurisdiction for a multimodal transport contract is significantly defined by the fact whether an international convention of carriage of goods (as well as which one) is being applied to the contract. Therefore, an interpretation of the scope of application of the international convention of goods is of significant importance deciding jurisdiction in the dispute on multimodal transport. In the event of determination of jurisdiction according to place(s) of dispatch or delivery of cargo, the initial place of dispatch or the destination place of delivery provided for in a multimodal transport contract should be considered but not the dispatch or delivery places of separate legs of a carriage (interim places of dispatch or delivery);

ix) a uniform MTO`s civil liability system has a greater potential to provide an effective regime of MTO`s civil liability as well as to promote an expansion of multimodal transport in comparison to network or modified MTO`s civil liability system. Establishing its rules, strict and unlimited MTO`s civil liability should be chosen, or, if a limitation of liability is set however, the set restrictions should be of higher nature, restricting MTO`s liability as little as possible. Finally, in the establishing of such a system, *inter alia*, an economic analysis should be carried out in pursuance of determination the most suitable coherence between this system and existing international conventions of carriage of goods;

x) a situation when a consignor/consignee has the right to bring an action directly to a sub-carrier is criticized. Therefore, sole MTO`s civil liability under a multimodal transport contract should be set. I.e. subjects, having the right to bring an action for damages under a multimodal transport contract, should not have the right to bring an action against sub-carriers, invoked by the MTO, on no grounds, *inter alia*, tort law. However,

in a view of current legal framework and in order to maintain sub-carrier`s legal protection (as well as to reduce friction cost), MTO should include the Himalaya clause in multimodal transport contracts, establishing the right to MTO`s sub-carriers to enjoy all the rights MTO has, including the right to limit civil liability, under applicable legal regulation, if a direct legal action is being brought against a sub-carrier and a sub-carried is considered as a legitimate civil defendant by the competent court.

4. In the fourth part of the thesis, different legal "tools", potentially capable of resolving the existing muddle due to insufficient multimodal transport legal regulation, are examined. After the examination of these legal "tools" - *the Rotterdam Rules, a new international convention on multimodal transport, regional regulation of multimodal transport at the European Union level, application of the principle of freedom of contract* -, which can potentially help to unify multimodal transport legal regulation or, at least, to minimize the existing legal uncertainty due to deficiencies of current legal regulation, it is determined that:

i) the Rotterdam Rules, as one of the latest attempts to achieve at least partially a unified multimodal transport regulation, did not justify the hopes they had been given. Although the Rotterdam rules were signed back in 2008 December 11th and the European Union, via resolution of the European Parliament, encouraged its Member States to sign, ratify and implement the Rotterdam rules in 2010 May 5th, in 2017 September 1st the Rotterdam Rules have been ratified only by three countries and there is not much hope the rules will come into force anytime in future;

ii) the failure of the Rotterdam rules is conditioned by many reasons, including the fact that legal regime, established in the Rotterdam Rules, is applicable only if part of carriage is performed by sea, what does not allow to establish a fully unified multimodal transport legal regime. Network civil liability system, adopted by the Rotterdam Rules, also is seen as one of the Rotterdam Rules` deficiency. Finally, Article 26 of the Rotterdam Rules is to be interpreted as extending the scope of application of other international conventions of carriage of goods, and, wherefore, the Rotterdam Rules is assessed negatively as well;

iii) in pursuance of a unified multimodal transport legal regulation, undoubtfully, a new international convention on multimodal transport would be the best means of

achieving this goal. Although, because of abundancy of international legal regulation on carriage of goods, a new international convention on multimodal transport is not capable of achieving a uniform legal regulation applicable to all cases, the application still would be significantly wide (because of application of the conflict resolution rules, established by international law) to achieve the raised unification aim. I.e. it is possible to achieve that a new international convention would prevail over the international conventions of carriage of goods and ensure unified legal regulation on multimodal transport in every case except: i) if a carriage is regulated by special provisions of or the CMR convention or the CMNI convention, or the OSJD convention, or the CIM rules, which are designed to regulate specifically multimodal transport, and not every country, connected to the carriage, is a member state of the new convention, but, on the contrary, participates in one of the previously mentioned conventions, which is applicable to a particular carriage; ii) an international convention of carriage of goods is applicable directly to a carriage and a proceeding occurs in a country, which is not a member of a new international convention on multimodal transport, but, on the contrary, is a member of the directly applicable convention;

iv) assessing regulation, which should be establish by a new international convention on multimodal transport, two aspects are singled out: MTO`s civil liability system and a level of imperativeness of the convention. In the light of technical advancement, changing social relations, aim of legal certainty uniform strict MTO`s civil liability without liability limitation (which is common in the current international conventions of carriage of goods) is considered to be the most suitable. Herewith, a new international convention on multimodal transport should be non-mandatory manner: i.e. it should allow parties of multimodal transport contract both to agree on conditions deviating from established in the convention and to opt-out from the application of the convention to the agreed contract;

v) regardless of the current aspirations, in realistic terms, it is doubtful whether possibility to adopt a new international convention on multimodal transport is plausible at the moment. This is especially true with regards to the proposals on MTO`s civil liability given, which most likely would be rejected by the majority stakeholders of transport industry;

vi) the European Union has the competence to regulate the transport sector, *inter alia*, the multimodal transport. A mixed agreement between the European Union, Member States and external countries is considered as the best legal instrument in pursuance of unification of multimodal transport legal regulation. Such an agreement could ensure legal certainty at both international and the European Union level as well. Unfortunately, such an agreement, by its very nature, being a new international convention, is to face similar obstacles to those existing in case of adoption of a new international convention on multimodal transport, even though the participation of the European Union sets up better conditions for the adoption. Therefore, without prejudice to the importance of further development of the idea of mixed agreement on multimodal transport, it is considered, that, firstly, the European Union should pass an internal legal act on multimodal transport which would be applicable at regional level in pursuance of fast and efficient solution of existing muddle of multimodal transport. Such legal regulation could achieve significant results both in unifying multimodal transport at the European Union level and increasing legal certainty of a multimodal transport contract parties. Firstly, this could help to establish both a uniform qualification of a multimodal transport contract and a uniform interpretation of direct scope of application of the international conventions of goods to a multimodal transport contract in Member States. Secondly, such regulation would establish uniform legal regulation on multimodal transport despite applicable national law of Member State at the European Union level. Thirdly, such regulation in principle would establish uniform legal regulation on multimodal transport at the European Union level.

vii) freedom of contract, *inter alia*, soft law, is a significant "tool" softening the negative effects of the lack of unified legal regulation on multimodal transport. However, examining freedom of contract in the context of the question being analysed, two aspects are remarked. Firstly, parties are not completely free to agree on the law applicable to the concluded contract or on conditions of the contract applicable to their relations. Freedom of contract is restricted by: a) the scope of application of the international conventions of carriage of goods; b) provisions of the international conventions of carriage of goods on freedom of contract; c) provisions on parties rights to agree on applicable law to the contract; d) mandatory norms of applicable national law and/or the provisions of the public order of the competent court`s country national law. Secondly, due to the limitations of freedom of contract, multimodal contract parties cannot establish unified legal regime for

a contract concluded in every case by their own agreement thus assuring legal certainty between them. This means that alongside the development of freedom of contract, in parallel, a legislator should adopt legal instruments unifying, as much as possible (depending on the circumstances examined above), legal regulation on multimodal transport and resolving or minimizing legal problems arising due to the lack of such regulation.

8. MAIN CONCLUSIONS OF THE THESIS

1. A multimodal transport contract should be qualified as *sui generis* contract. Such qualification prevents, opposite to the situation if a multimodal transport contract would be qualified as a mixed (combined) contract, establishment of an international or a national "bypass", based on which the international conventions of carriage of goods would be applicable to a multimodal transport contract.

2. A multimodal transport contract only falls within the scope of the Montreal convention, the Warsaw system and the Hamburg rules (and only in so far as a cargo is transported by the mode of transport regulated by the particular international convention). In addition to these cases, only when it is stipulated explicitly in the provisions of the international conventions and only to the extent provided, the CMR convention, the CMNI convention, the OSJD convention and the CIM rules may also directly apply to a multimodal transport contract. These situations should be understood in a narrow sense. If these cases are expanded incorporating additional modes of carriage, the concluded contract *in corpore* falls out of the scope of application of these international conventions of carriage of goods. Such conception significantly broadens the scope of freedom of contract and creates assumptions for a national legal regulation on multimodal transport as well.

3. A uniform MTO`s civil liability system has greater potential to provide an effective MTO`s civil liability regime promoting an expansion of multimodal transport comparing to a network or a modified civil liability system. Establishing its rules, strict and unlimited MTO`s civil liability should be chosen, or, if a limitation of liability is set however, the restrictions should be of higher nature, restricting MTO`s liability as little as possible. MTO`s civil liability should be exclusive, i.e. subjects, having the right to bring

an action for damages under a multimodal transport contract, should not have the right to bring an action against sub-carriers, invoked by the MTO.

4. Despite of freedom of contract, *inter alia*, soft law, being a significant "tool" softening the negative effects of the lack of unified legal regulation on multimodal transport, it is not sufficient enough to resolve the muddle of multimodal transport caused by lack of legal regulation. Multimodal transport contract parties are not completely free to agree on law applicable to concluded contract or on conditions of the contract applicable to their relations. For that reason, parties cannot establish unified legal regime for a contract concluded in every case by their own agreement thus assuring legal certainty between them.

5. In pursuance of a unified multimodal transport legal regulation, undoubtfully, a new international convention on multimodal transport would be the best means of achieving this goal. Although, because of abundancy of international legal regulation on carriage of goods, a new international convention on multimodal transport is not capable of achieving a uniform legal regulation applicable in all cases, the application still would be significantly wide (because of application of the conflict resolution rules, established by international law) to achieve the raised unification aim. Regardless of the current aspirations, in realistic terms, it is doubtful whether possibility to adopt a new international convention on multimodal transport is plausible at the moment. This is especially true with regards to the proposals on MTO`s civil liability given, which most likely would be rejected by the majority stakeholders of transport industry.

6. In pursuance of fast and efficient solution of existing muddle of multimodal transport the European Union should pass an internal legal act on multimodal transport which would be applicable at regional level. Such legal regulation could achieve significant results both in unifying multimodal transport at the European Union level and increasing legal certainty of a multimodal transport contract parties. Firstly, this could help to establish both a uniform qualification of a multimodal transport contract and a uniform interpretation of direct scope of application of the international conventions of goods to a multimodal transport contract in Member States. Secondly, such regulation would establish uniform legal regulation on multimodal transport despite applicable national law of Member State at the European Union level. Thirdly, such regulation in principle would establish uniform legal regulation on multimodal transport at the European Union level.

9. LIST OF PUBLICATIONS

1. Krovinių vežėjo neatsargumas kaip neribotos civilinės atsakomybės taikymo pagrindas. Teisė, No. 101, 2016, p. 109-125. Access via the internet <http://www.zurnalai.vu.lt/teise/article/view/10447> (Article in scientific magazine "Law": "Carrier`s of goods negligence as a condition of unlimited liability").

2. Autonominiai automobiliai - šiandienos teisiniai iššūkiai rytojui. Teisė, No. 101, 2016, p. 126-144. Access via the internet <http://www.zurnalai.vu.lt/teise/article/view/10448> (Article in scientific magazine "Law": "Autonomous vehicles – Today`s Legal Challenges for Tomorrow").

3. Multimodalinio krovinių vežimo teisinis (ne)reguliavimas Lietuvoje. Teisė, No. 105, 2017, p. 135-154. Access via the internet <http://www.zurnalai.vu.lt/teise/article/view/11125> (Article in scientific magazine "Law": "(Lack of) Legal Regulation of Multimodal Carriage in the Republic of Lithuania").

4. Legal Regulation of Multimodal Carriage of Goods in Light of Modern Technologies: Time to Change. How Deep is Your Law? Brexit. Technologies. Modern Conflicts: 5th International Conference of PhD Students and Young Researchers: conference papers. Vilnius: Vilnius University Law Faculty, 2017, p. 250-257. Access via the internet <http://lawphd.net/material-of-conferences/>.

10. LIST OF PRESENTATIONS OF THE AUTHOR AT SCIENTIFIC CONFERENCES

1. The presentation „*Issue of legal regulation of multimodal carriage of goods: what way to choose?*" at the international conference „*The Role of Dialogue in Creating and Applying Law*". The University of Lodz, Poland, 2017.

2. The presentation „*Legal regulation of multimodal carriage of goods in light of modern technologies: time to change*" at the international conference of PhD students and young researchers „*How Deep is Your Law? Brexit. Technologies. Modern Conflicts*". Vilnius University, Lithuania, 2017.

11. INFORMATION ABOUT THE AUTHOR

Vilius Mitkevičius was born on 23 April 1988 in Trakai, Lithuania.

Education:

- 2007: graduated with honours Trakai Vytautas Magnus Gymnasium;
- 2007–2012: awarded a Master`s degree in Law (Commercial Law Specialization);
- 2013–2017: PhD candidate in Social Sciences at Private Law Department, Vilnius University Faculty of Law.

Scientific and educational experiences:

- 2014-2018: Lecturer of seminars on subject Civil Law (Law of Obligations), Department of Private Law of Vilnius University Faculty of Law Assistant lecturer on contract law at Vilnius University Faculty of Law;
- MIKALONIENĖ, L.; MITKEVIČIUS, V. General Partnership and Limited Partnership. In: MIKALONIENĖ, L., *et al. The Convergence and Divergence of Legal Forms of Enterprises: is Lithuanian legal regulation attractive in international context?* The scientific study. Vilniaus universiteto leidykla: Vilnius. 2017, ISBN 978-609-459-886-9, ISBN 978-609-459-885-2, p. 33-110;
- 10/2016-11/2016: Visiting Reasearcher. Max Planck Institute for Comparative Public Law and International Law, Hamburg, Germany.

Professional experience:

- 2018 – present: JSC „Lithuanian Railways“;
- 2015-2017: Vilnius University;
- 2010-2018: CJSC „Gelsauga“;
- 2010: Law firm „Motieka & Audzevičius“.

12. MULTIMODALINIAI KROVINIŲ VEŽIMAI: REGULIAVIMO PROBLEMATIKA (REZIUMĖ LIETUVIŲ KALBA)

Temos aktualumas. Disertacijoje atliktas tyrimas yra aktualus keliomis prasmėmis.

Pirmiausia, tyrimas yra aktualus moksline prasme (*taip pat žr. disertacijos naujumas, tyrimų apžvalga*).

Multimodaliniai krovinių vežimai, nepaisant jų vystymosi ir reikšmės tiek ekonomikai, tiek aplinkosaugai (*žr. tyrimo reikšmę įstatymų leidybos bei politine prasme*), yra sąlyginai mažai nagrinėti mokslinėje literatūroje. Tyrime atlikta nuosekli multimodalinių krovinių vežimo teisinė analizė leidžia užpildyti doktrinoje egzistuojančią spragą, didinti visuomenės ir net pačių multimodalinio krovinių vežimo santykių dalyvių supratimą apie šį reikšmingą institutą.

Antra, tinkamo multimodalinio krovinių vežimo teisinio reguliavimo nebuvimas sąlygoja teisinį netikrumą, teismo sprendimų neprognozuojamumą. Pavyzdžiui, Lietuvoje nesant susiformavusios aiškios teismų praktikos multimodalinio krovinių vežimo klausimais, atliktas tyrimas gali būti naudingas švelniosios teisės (angl. *soft law*) šaltinis tiek vertinant galimus kilti ginčus, tiek prognozuojant jų baigtį bei sprendžiant kilusius ginčus teisme.

Trečia, tyrimas moksline prasme reikšmingas, kadangi jo metu yra itin detaliai analizuojama tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo sritis, *inter alia,* tiesioginio taikymo multimodaliniams krovinių vežimams sritis, bei tuo nulemiama multimodalinio krovinių vežimo sutarties šalių sutarties laisvės apimtis. Tiek teisės doktrinoje, tiek skirtingų valstybių teismų praktikoje šis klausimas vertinamas nevienareikšmiškai. Tyrimo metu gauti rezultatai gali padėti vienodinti tarptautinių konvencijų aiškinimo dualizmą, ar, kartais, net pliuralizmą, būti impulsu teisinės minties pokyčiams bei tokiu būdu prisidėti prie teisės unifikavimo ir multimodalinio krovinių vežimo teisinio reguliavimo teisėkūros.

Antra, tyrimas yra aktualus įstatymų leidybos bei politine prasme.

2015 m. duomenimis Europos Sąjungoje importo ir eksporto apyvarta kartu sudarė beveik 9580 milijardų eurų, Lietuvoje – daugiau nei 48 milijardus Eur[19]. Palyginimui,

[19] Europos Komisijos statistikos portalas [interaktyvus. Žiūrėta 2017 m. rugpjūčio 23 d.]. Prieiga per internetą: <https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2017_en>.

2017 m. Lietuvos Respublikos biudžetas sudaro kiek daugiau nei 9 milijardus Eur[20]. Vien lyginant šiuos duomenis, į/iš Lietuvos 2015 m. transportuotų prekių vertė yra daugiau nei 5 kartus didesnė nei metinis Lietuvos biudžetas. Europos Sąjungos mastu, transporto sektorius sukuria beveik 3,7 % Europos bendrojo vidaus produkto ir apie 5,1 % darbo vietų Europos Sąjungoje[21]. Tai rodo, kad krovinių pervežimo sektorius turi itin didelę reikšmę valstybių ekonomikai, praktikoje yra itin paplitę, aktualūs bei dažnai susiklostantys teisiniai santykiai. Reikšminga dalis šių vežimų gali būti kvalifikuojami kaip multimodaliniai krovinių vežimai. Tyrime atlikta analizė ir teikiami siūlymai leidžia spręsti multimodalinio krovinių vežimo sektoriuje egzistuojančias problemas, mažinti kaštus ir tokiu būdu vystyti šiuos ekonomikai itin reikšmingus visuomeninius santykius.

Yra išskiriama, kad multimodaliniai krovinių vežimai pasižymi ne tik teisine nauda jų dalyviams, bet ir ekonomine nauda tiek santykių dalyviams, tiek visuomenei. Multimodaliniai krovinių vežimai mažina transporto infrastruktūros apkrovą, tai padeda siekiant aplinkosauginių tikslų, jie taupo laiką bei finansus. Todėl multimodaliniai krovinių vežimai, kaip viena iš krovinių vežimo rūšių, yra svarbūs tiek ekonomikai, tiek ir siekiant vieno iš Europos Sąjungos pamatinių transporto politikos tikslų - darnaus ir tvaraus transporto sektoriaus vystymosi[22]. Tai yra sunkiai įsivaizduojama nesant aiškaus ir tinkamo multimodalinio krovinių vežimo teisinio reguliavimo. Tyrimu yra sprendžiami multimodalinio krovinių vežimo teisėje egzistuojantys probleminiai klausimai, teikiami siūlymai dėl galimo teisinio reguliavimo. Visa tai yra prielaida multimodaliniams krovinių vežimams vystytis, kadangi pateikiama analizė ir teikiami pasiūlymai (jei jie būtų įgyvendinti) sudarytų geresnes sąlygas multimodalinio krovinių vežimo sektoriaus dalyviams vystyti savo veiklą, didintų jų teisinį tikrumą ir taip mažintų jų patiriamus papildomus kaštus. T.y. darbe atlikta teisinė analizė ir jos metu pasiekti rezultatai sudaro prielaidas multimodalinio krovinių vežimo vystymuisi.

Galiausiai, įstatymų leidėjas gali pasinaudoti atliktu tyrimu ir jo metu pateiktais pasiūlymais tobulinant multimodalinių krovinių teisinį reguliavimą ir teisinę šių vežimų aplinką.

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[20] Lietuvos Respublikos 2017 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas. TAR, 2016, Nr. 2016-29882, 1 straipsnis.

[21] Europos komisijos internetinis puslapis. *Transportas* [interaktyvus. Žiūrėta 2017 m. rugpjūčio 20 d.]. Prieiga per internetą: <http://ec.europa.eu/competition/sectors/transport/overview.html>.

[22] NIKAKI, T. Bringing Multimodal Transport Law into the new century: is the uniform liability system the way forward. *The journal of air law and commerce*, Vol. 78, No. 1, 2013. p. 75.

Trečia, tyrimas aktualus praktine prasme, t.y. tyrime vykdoma analizė ir pateikiamos išvados yra reikšmingos multimodalinio krovinių vežimo santykių dalyviams.

Disertacijoje yra nagrinėjami multimodaliniai krovinių vežimai, kaip viena iš krovinių vežimų formų, analizės metu yra vertinama tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo sritis. Tarptautiniam krovinių vežimo reguliavimui dažnu atveju įtvirtinant imperatyvų teisinį reguliavimą, šių konvencijų taikymo vertinimas turi tiesioginę reikšmę krovinių vežimo santykių dalyvių laisvės susitarti dėl sutarčiai taikytinos teisės ir/ar sutarties sąlygų apimčiai. Tokiu būdu, *inter alia,* yra sudaromos prielaidos didesniam teisiniam aiškumui, kas mažina multimodalinio krovinių vežimo dalyvių patiriamus frikcinius kaštus. Tai yra viena iš priežasčių, kodėl disertacijoje atlikta analizė reikšminga krovinių vežimo santykių dalyviams.

Daugelyje apklausų, kuriose krovinių vežimo santykių dalyvių buvo klausiama ar jie patenkinti esamu teisiniu reguliavimu, buvo pažymėta, kad esamas teisinis reguliavimas nėra patenkinamas, implikuojantis papildomus kaštus ir dėl to mažinantis multimodalinių krovinių vežimo patrauklumą, o naujas unifikuotas teisinis reguliavimas būtų laukiamas[23]. Disertacijoje yra vertinamos galimybės išspręsti (ne)esančio teisinio reguliavimo sukuriamą problematiką, *inter alia*, vertinama galimybė unifikuoti teisinį reguliavimą tokiu būdu sukuriant multimodalinio krovinių vežimo dalyviams didesnį teisinį aiškumą ir mažinant dėl tinkamo teisinio reguliavimo nebuvimo patiriamus papildomus kaštus.

Galiausiai, tyrime yra analizuojamos įvairios situacijos, susiklostančios multimodalinio krovinių vežimo atveju. Pateikiamos įžvalgos leidžia šių santykių dalyviams ne tik geriau įvertinti galimas rizikas ar galinčias kilti problemas, bet ir, atskirais atvejais, tam užkirsti kelią, naudojantis teisinių instrumentų suteikiamomis priemonėmis bei taip apsaugoti savo interesus.

[23] Jungtinių Tautų prekybos ir plėtros konferencijos pranešimas Nr. UNCTAD/SDTE/TLB/2003. *Multimodal transport: The feasibility of an international legal instrument* [interaktyvus. Žiūrėta 2016 m. lapkričio 3 d.]. Prieiga per internetą: <http://unctad.org/en/docs/sdtetlb20031_en.pdf>; Europos Komisijos studija TREN/CC/01-2005/LOT1/. *Study on the details and added value of establishing a (optional) single transport (electronic) document for all carriage of goods, irrespective of mode, as well as a standard liability clause (voluntary liability regime), with regard to their ability to facilitate multimodal freight transport and enhance the framework offered by multimodal waybills and or multimodal manifests* [interaktyvus. Žiūrėta 2016 m. lapkričio 3 d.]. Prieiga per internetą: <https://ec.europa.eu/transport/sites/transport/files/themes/strategies/studies/doc/2009_05_19_multimodal_transport_report.pdf>; BASK, A., EFTESTØL-WILKEKMSSON, E. *Is harmonised liability system a necessary Prerequisite for European Multimodal Transport? The Finnish Logistic Service Providers` Point of view* iš MAENPAA, O. et. al. *Oikeuden Historiaasta Tulevaisuuden Eurooppaan,* Suomalainen Lakimiesyhdistys, 2014, p. 49.

Tyrimo objektas. Disertacijos tyrimo objektas – multimodaliniai krovinių vežimai, kaip teisės institutas, jiems taikytinas teisinis reguliavimas ir dėl esamo teisinio reglamentavimo (jo turinio) kylanti problematika. Disertacijoje pagrindinis dėmesys skiriamas tarptautiniams multimodaliniams krovinių vežimams, kuriems gali būti taikomas (arba ne) tarptautinėse vienarūšėse krovinių vežimo konvencijose įtvirtintas teisinis reguliavimas.

Disertacijoje vykdoma multimodalinių krovinių vežimų analizė nėra ribojama regioniniu lygiu *per se*, tačiau pagrindinis dėmesys koncentruojamas Europos Sąjungos regioniniu lygmeniu. Lietuva ir joje esantis multimodalinių krovinių vežimų reguliavimas nėra pirminis tyrimo objektas ir analizuojamas bendrai analizuojant tyrimo objektą tarptautiniu ar regioniniu mastu. Tačiau, atskirais atvejais, kuomet Lietuvoje yra nustatoma tam tikra specifika, lyginant su bendrąja analizuojama situacija ir/ar tai gali būti reikšminga moksliniu, teisės kūrimo ar praktiniu lygmeniu, tyrimo objektas yra atskirai vertinamas ir nacionaliniu – Lietuvos – mastu.

Tyrimo struktūra. Atsižvelgiant į tyrimo objektą ir jo ištirtumo lygį, disertaciją sudaro keturios pagrindinės dalys.

Pirmojoje dalyje yra analizuojamas multimodalinio krovinių vežimo institutas. Analizės metu yra identifikuojami multimodalinį krovinių vežimą kvalifikuojantys bruožai, vertinamas multimodalinio krovinių vežimo sutarties institutas bei galimas tokios sutarties kvalifikavimas. Siekiant praktinės analizės reikšmės, tyrimo metu yra akcentuojama praktinė multimodalinio krovinių vežimo sutarties kvalifikavimo reikšmė. Galiausiai, pirmoje dalyje yra analizuojamas multimodalinio krovinių vežimo sutarties santykis su panašiomis sutartimis, kaip kombinuotojo krovinių vežimo, nuosekliojo vežimo, ekspedijavimo sutartimis, ir jų atribojimo kriterijai.

Antrojoje dalyje, pirmiausia, yra vertinamas multimodalinio krovinių vežimo teisinis reguliavimas bei jo istorinė raida. Tyrimo metu nustačius, kad nėra sukurto unifikuoto tarptautinio multimodalinio krovinių vežimo teisinio reguliavimo nei tarptautiniu, nei regioniniu – Europos Sąjungos – mastu, taip pat, kaip nėra įtvirtinto tokio reguliavimo ir nacionaliniu Lietuvos mastu, yra vertinama tokio teisinio reguliavimo vakuumo implikuojama problematika.

Trečioji disertacijos dalis skirta pagrindinių multimodalinio krovinių vežimo teisinio reguliavimo implikuojamų neaiškumų bei problemų analizei. Viena reikšmingiausių iš jų,

turinti itin didelę reikšmę šalių teisiniam tikrumui ir teisinio reguliavimo įtvirtinimui multimodaliniuose krovinių vežimuose, - multimodaliniai krovinių vežimo sutarčiai taikytinos teisės klausimas, *inter alia,* tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo multimodaliniams krovinių vežimams srities klausimas. Disertacijos trečiojoje dalyje yra atliekama išsami šio klausimo analizė įvertinant skirtingas pozicijas šiuo klausimu ir jų reikšmę multimodalinio krovinių vežimo santykiams. Papildomai, trečiojoje disertacijos dalyje yra analizuojamos kitos pagrindinės komplikuoto teisinio reguliavimo sukuriamos problemos: jurisdikcijos klausimas multimodalinio krovinių vežimo atveju bei multimodalinio transporto operatoriaus (**toliau – MTO**) civilinės atsakomybės sistemos klausimas.

Ketvirtojoje disertacijos dalyje yra vykdoma skirtingų teisės „įrankių“, galinčių padėti išspręsti egzistuojančią painiavą ir egzistuojančias problemas, kylančias dėl tinkamo multimodalinio krovinių vežimo teisinio reguliavimo nebuvimo, analizė. Šioje dalyje yra analizuojamos Roterdamo taisyklės, naujos tarptautinės konvencijos, unifikuojančios multimodalinį krovinių vežimą, sukūrimo galimybės, Europos Sąjungos multimodalinio krovinių vežimo teisinio reguliavimo regioniniu mastu galimybės, sutarčių laisvės principo sukuriamos galimybės sprendžiant egzistuojančią situaciją.

Tyrimo tikslas. Disertacijos tikslas – pateikti sistemingą ir išsamią multimodalinio krovinių vežimo instituto ir jo teisino reglamentavimo analizę *inter alia* identifikuojant pagrindines kylančias problemas bei pateikiant jų analizę ir galimus sprendimo variantus.

Tyrimo uždaviniai. Siekiant nurodyto tikslo, keliami ir sprendžiami šie uždaviniai:

i) išanalizuoti multimodalinio krovinių vežimo institutą ir jo santykį su kitomis, panašiomis, sutartimis;

ii) įvertinti multimodalinio krovinių vežimo teisinį reguliavimą bei jo implikuojamą teisinę problematiką;

iii) nustatyti tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo multimodalinio krovinių vežimo sutarčiai sritį;

iv) išanalizuoti galimus multimodalinio krovinių vežimo teisinio reguliavimo tobulinimo variantus siekiant užtikrinti teisinį ir praktinį multimodalinio krovinių vežimo santykių vystymąsi ir efektyvumą.

Tyrimo naujumas, tyrimų apžvalga. Nagrinėjama tema moksliniuose darbuose dažniausiai yra atskleidžiama analizuojant konkretų krovinių pervežimo teisės institutą

(problemą), bet ne analizuojant multimodalinius krovinių vežimus *per se*, kas leistų užpildyti egzistuojančią spragą teisinėje doktrinoje bei krovinių pervežimo praktikoje.

Lietuvos teisinėje doktrinoje disertacijoje nagrinėjami klausimai yra sąlyginai nauji. Bendrąja prasme, krovinių pervežimų teisės problemas yra analizavę E. Sinkevičius[24], A. Gineitis[25], D. Ambrasienė[26], V. Nikitinas[27], L. Jasutienė[28], tačiau jų darbuose multimodaliniai krovinių vežimai iš esmės nėra nagrinėti. Multimodalinius pervežimus išsamiau yra nagrinėjęs O. Drobitko[29]. Visgi, disertacijos tyrimo objektas, lyginant su O. Drobitko tyrimu, reikšmingai skiriasi. Disertacijoje yra nagrinėjami tokie O. Drobitko disertacijoje nenagrinėti klausimai kaip multimodalinio krovinių vežimo sutarties kvalifikavimas, sutarčiai taikytina teisė, tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo multimodalinio krovinių vežimo sutarčiai sritis bei reikšmė, jurisdikcijos nustatymo taisyklės, priemonių, kuriomis būtų galima išspręsti unifikuoto teisinio reguliavimo vakuumo sukuriamas problemas, galimas pritaikymas. T.y. disertacijoje nagrinėjami klausimai iš esmės Lietuvos teisinėje doktrinoje nėra nagrinėti.

Vertinant užsienio autorių literatūrą, reikia pažymėti, kad joje multimodalinio krovinių vežimo tyrimai yra gausesni. Multimodalinius krovinių vežimus bendrąja prasme yra nagrinėjęs R. de Witt knygoje „*Multimodal transport*“[30], Multimodalinio krovinių vežimo sutarčiai taikytinos teisės klausimus yra nagrinėjusi Marian Hoeks knygoje „*Multimodal transport law*"[31], galimybę multimodalinio krovinių vežimo teisinio reguliavimo nebuvimo problemą spręsti Europos Sąjungos lygmeniu nagrinėjo E.

[24] Pvz., SINKEVIČIUS, E. Krovinių vežimo dokumentai, jų funkcijos ir teisinė reikšmė. *Jurisprudencija*, Nr. 1(103), 2008,; SINKEVIČIUS, E. Susitariančio vežėjo automobilių keliais atsakomybės už subvežėją teoriniai ir praktiniai aspektai. *Jurisprudencija*, Nr. 12 (102), 2007.
[25] Pvz., GINETIS, A. *Krovinių vežimo jūra sutartinėms prievolėms taikytina teisė*. Daktaro disertacija. Socialiniai mokslai (teisė). Vilnius: Mykolo Romerio universitetas, 2003.
[26] Pvz., AMBRASIENĖ, D. Krovinių tarptautinio vežimo keliais teisinis reguliavimas. *Jurisprudencija*, Nr. 55(47), 2004.
[27] Pvz., NIKITINAS, V. Vežėjo civilinės atsakomybės, reglamentuojamos CIM ir SMGS tarptautiniais susitarimais, lyginamoji analizė. *Teisė*, Nr. 84, 2012; NIKITINAS, V. *Vežėjo geležinkelio transportu civilinės teisinės atsakomybės, reglamentuojamos CIM ir SMGS tarptautiniais susitarimais, lyginamoji analizė*. Daktaro disertacija. Socialiniai mokslai (teisė). Vilnius: Vilniaus universitetas, 2013.
[28] Pvz., JASUTIENĖ, L. Krovinio siuntėjo jūrų transportu pareigos ir atsakomybė: jungtinių tautų konvencijos dėl sutarčių dėl tarptautinio krovinių vežimo visiškai arba iš dalies jūra analizė. *Socialinių mokslų studijos*, Nr. 4(3), 2012.
[29] DROBITKO, O. *Krovinių multimodaliniai vežimai: teisiniai aspektai*. Daktaro disertacija. Socialiniai mokslai (teisė). Vilnius: Mykolo Romerio universitetas, 2006.
[30] DE WITT, R. *Multimodal transport*. London: LLP, 1995.
[31] HOEKS, M. *Multimodal transport law: the law applicable to the multimodal contract for the carriage of goods*. Rotterdam: Erasmus Univ., 2009.

Eftestøl-Wilhelmsson knygoje „*European sustainable carriage of goods: the role of contract law*“[32]. Vienas naujausių šaltinių multimodalinio krovinių vežimo tematika – M. Spanjaart monografija „*Multimodal transport law*“[33]. Taip pat paminėti T. Nikaki[34], W. Verheyen[35], J. Ramberg[36] darbai multimodalinio krovinių vežimo tematika. Visgi, tenka pripažinti, kad lyginant su kitomis teisės sritimis, multimodaliniai krovinių vežimai nepasižymi itin dideliu ištirtumu. Disertacijos naujumas, lyginant su užsienio tyrimais, pasireiškia per kelis aspektus. Pirmiausia, nei vienas minėtas autorius nėra kompleksiškai tyręs tiek esančio teisinio reguliavimo, tiek instrumentų, kurie galėtų jį patobulinti ir padėti išspręsti multimodaliniuose krovinių vežimuose egzistuojančias problemas. Antra, nepaisant to, kad dalis disertacijoje vykdyto tyrimo objekto sutampa su užsienio autorių tyrimo objektu, disertacijos tyrimo metu, iš dalies ir dėl papildomų šaltinių tyrimo, yra gaunamos priešingos išvados, turinčios ypatingai didelę reikšmę multimodalinio krovinių vežimo santykiams. Trečia, disertacijoje tyrimas yra vykdomas atsižvelgiant ir į besikeičiančius visuomeninius santykius, technologinę pažangą, naujausią patirtį ir teikiamos tuo grindžiamos, savo turiniu originalios išvados bei siūlymai. Ketvirta, disertacijos naujumas pasireiškia ir tuo, kad, nors Lietuvos teisinis reguliavimas nėra pirminis tyrimo objektas, disertacijoje dalis tyrimo yra vykdoma ir Lietuvos kontekste.

Tai lemia, kad disertacijoje atliktas tyrimas yra naujas bei reikšmingas tiek tarptautiniu, tiek Europos Sąjungos, tiek Lietuvos mastu.

Tyrimo metodai. Disertacija yra parengta analizuojant ir vertinant teisės doktriną, pozityviąją teisę, teismų praktiką bei švelniąją teisę (angl. *soft law*).

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[32] EFTESTØL-WILHELMSSON, E. *European sustainable carriage of goods: the role of contract law*. New York: Routledge, 2016.

[33] SPANJAART, M. *Multimodal transport law*. New York: Routledge, 2017.

[34] Pvz., NIKAKI, *supra* 4; NIKAKI, T. The Quest for an international multimodal transport convention: does the CMR liability system fit the bill? iš SOYER, B., TETTENBORM, A. *eds*. Carriage of goods by sea, land and air : unimodal and multimodal transport in the 21st century. Abingdon: Informa, 2014; NIKAKI, T. The UNCITRAL draft instrument in the carriage of goods [wholly] or [partly][by sea]: multimodal at last or still at sea? *Journal of Business Law*, 2005, pp. 647-658.

[35] Pvz. VERHEYEN, W. Freight integration: what is the way forward? *European Transport Law*, 2014, pp. 31-42; VERHEYEN, W. EEX(bis) and CMR: the return of parallel procedings? *European Transport Law*, 2015, pp. 145-170; VERHEYEN, W. Forum clauses in carriage contracts after Brussels I (bis) Regulation: procedural (un)certainty? *The Journal of International Maritme Law*, Vol. 21, 2015; VERHEYEN, W. National judges as gatekeepers to the CMR Convention. *Uniform Law Review*, Vol. 21, No. 4, 2016.

[36] Pvz. RAMBERG, J. Freedom of contract in maritme law. *Lloyd's maritime and commercial law quarterly*, 1993, pp. 178-191; RAMBERG, J. The Future Laws of Transport Operators and Service providers. *Scandinavian Studies in Law*, Vol. 46, 2004; RAMBERG, J. *The Law of Transport Operators: In international Trade*. Stockholm : Norstedts Jur., 2005; RAMBERG, J. *Unification of transport law: difficulties and possibilities* iš *Scritti in Onore di Francesco Berlingieri*. Vol. II. Genova: 2010, pp. 813-819.

Disertacijoje yra naudojami šie metodai:

1) *lingvistinis* metodas: esminės sąvokos naujai arba pirmą kartą verčiamos iš anglų kalbos, nustatoma bendrinė teisės normų ir doktrinos tekstų reikšmė; vertinama tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo sritį apibrėžiančių nuostatų lingvistinė išraiška;

2) *sisteminės analizės* metodas: krovinių vežimo teisinio reguliavimo, teismų praktikos ir doktrininių pozicijų analizė atskleidžiant tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo sritį; tarptautinių konvencijų ir jų kolizijos sprendimą reglamentuojančių taisyklių analizė sprendžiant tarptautinio multimodalinio krovinių vežimo unifikavimo galimybę; teisinio reglamentavimo ir visuomeninių santykių analizė vertinant teisinio reguliavimo minties pokyčius;

3) *lyginamasis* metodas: lyginami tarptautinių vienarūšių krovinių vežimo konvencijų įtvirtinami teisiniai reguliavimai tuo pačiu klausimu, pavyzdžiui, tiesioginio konvencijų taikymo, vežėjo civilinės atsakomybės dydžio, jurisdikcijos nustatymo taisyklių, galimybės reikšti tiesioginį ieškinį subvežėjui ir t.t.; lyginamas skirtingų teismų pateikiamas tarptautinių krovinių vežimo konvencijų nuostatų aiškinimas;

4) *loginis* metodas: pasitelkiamas vertinant doktrinines idėjas, nustatytus faktus ir jų sąsajumą/priežastingumą su nustatytomis problemomis/pasiūlymais problemoms spręsti; pasitelkiamas struktūrizuojant darbą, išskiriant svarbiausius argumentus, formuluojant įžvalgas, išvadas bei pasiūlymus;

5) *istorinis* metodas*:* vertinami bandymai sukurti multimodalinio krovinių vežimo unifikuotą teisinį reguliavimą, siūlytas idėjas ir nesėkmių priežastis; vertinamos istorinės aplinkybės, paskatinusios ribotos vežėjo civilinės atsakomybės įtvirtinimą teisiniame reguliavime ir imperatyvų tokio reguliavimo pobūdį;

6) *analogijos* metodas: ieškoma teisinio reguliavimo, doktrinų, institutų panašumo požymių;

7) *teleologinis* metodas: siekiama išsiaiškinti tarptautinių konvencijų teisinio reguliavimo tikslą; tarptautinių konvencijų normų tikslą ir turinį; Lietuvos Respublikos civilinio kodekso 6.811 straipsnio tikslą.

Ginamieji teiginiai. Disertacijoje yra ginami šie pagrindiniai teiginiai:

i) tiesiogiai multimodalinio krovinių vežimo sutartį, tiek, kiek pagal ją gabenama konkrečios konvencijos reglamentuojama vežimo rūšimi, reglamentuoja tik

Monrealio konvencija, Varšuvos sistema ir Hamburgo taisyklės. Papildomai, tais atvejais, kuomet tai eksplicitiškai numatyta specialiosiose tarptautinių krovinių vežimo konvencijų normose, skirtose multimodaliam krovinių vežimui, multimodalinio krovinių vežimo sutarčiai yra taikytina CMR konvencija, CMNI konvencija, SMGS susitarimas bei CIM taisyklės. Šie atvejai turi būti suprantami siaurai. Kitais atvejais tarptautinės vienarūšės krovinių vežimo konvencijos tiesiogiai multimodalinio krovinių vežimo sutarčių nereglamentuoja;

ii) dėl skirtingose jurisdikcijose egzistuojančio skirtingo tarptautinių vienarūšių krovinių vežimo konvencijų tiesioginio taikymo srities vertinimo bei ribotos galimybės šalims susitarti dėl multimodalinio krovinių vežimo sutarčiai taikytinos teisės ir/ar šios sutarties pagrindu susiklostančius šalių santykius reglamentuojančių sutartinių nuostatų, multimodalinio krovinių vežimo fragmentinio teisinio reguliavimo sukuriamas problemas galėtų išspręsti tik tarptautiniu ar regioniniu lygmeniu šiuos vežimus reglamentuojantis teisinis instrumentas;

iii) techninė pažanga, besivystantys ir besikeičiantys visuomeniniai santykiai lemia, kad imperatyvus krovinių vežimo teisinis reguliavimas, įtvirtinantis krovinių vežėjo ribotą civilinę atsakomybę, laikytinas pasenusiu. Siekiant modernaus bei unifikuoto multimodalinio krovinių vežimo sukūrimo, yra tikslinga įtvirtinti dispozityvų multimodalinio krovinių vežimo teisinį reguliavimą, įtvirtinantį vienarūšę griežtąją MTO civilinę atsakomybę, nenumatančią MTO civilinės atsakomybės ribų;

iv) tarptautinė konvencija, reglamentuojanti multimodalinius krovinių vežimus, laikytina geriausiu institutu sprendžiant multimodaliniuose krovinių vežimuose egzistuojančią teisinio reguliavimo problematiką. Visgi, yra mažai tikėtina, kad toks teisinis instrumentas greitu metu būtų sukurtas ir įsigaliotų, todėl egzistuojanti teisinio reguliavimo nebuvimo problema turėtų būti sprendžiama sukuriant regioninį reguliavimą Europos Sąjungos mastu;

v) multimodalinio krovinių vežimo teisinis reguliavimas Europos Sąjungos mastu galėtų pasiekti reikšmingų rezultatų unifikuojant multimodalinius krovinių vežimus Europos Sąjungoje bei didinant jų dalyvių teisinį tikrumą.

Disertacijos išvados:

1. Multimodalinio krovinių vežimo sutartis turėtų būti laikoma *sui generis* sutartimi. Toks kvalifikavimas „užkerta“ kelią, priešingai atvejui, jei sutartis būtų

kvalifikuojama kombinuotąja sutartimi, tarptautinio arba nacionalinio teisės „aplinkelio", kurio pagrindu multimodalinio krovinių vežimo sutarčiai būtų taikytinos tarptautinės vienarūšės krovinių vežimo konvencijos, sukūrimui.

2. Tiesiogiai multimodalinio krovinių vežimo sutartį, tiek, kiek pagal ją gabenama konvencijos reglamentuojama vežimo rūšimi, reglamentuoja tik Oro konvencijos ir Hamburgo taisyklės. Papildomai, tais atvejais, kuomet tai eksplicitiškai numatyta specialiosiose tarptautinių krovinių vežimo konvencijų normose, skirtose multimodaliam krovinių vežimui, multimodalinio krovinių vežimo sutarčiai yra taikytina CMR konvencija, CMNI konvencija, SMGS susitarimas bei CIM taisyklės. Šie atvejai turi būti suprantami siaurai, o konvencijose nurodytus konkrečius atvejus praplėtus papildomais vežimais, sudaryta sutartis *in corpore* nebepatektų į šių konvencijų taikymo sritį. Tokia samprata reikšmingai praplečia šalių sutarties laisvės principo taikymo sritį bei sudaro prielaidas nacionaliniam multimodalinio krovinių vežimo teisiniam reglamentavimui.

3. Vienarūšė MTO civilinės atsakomybės sistema turi didesnį potencialą, lyginant ją su segmentine ar modifikuota segmentine civilinės atsakomybės sistema, pasiūlyti efektyvų MTO civilinės atsakomybės režimą, skatinantį multimodalinių krovinių vežimų plėtrą. Nustatant jos taisykles, manytina, turėtų būti įtvirtinama griežtoji MTO civilinė atsakomybė nustatant neribotą civilinę atsakomybę ar, jei visgi civilinė atsakomybės limitai būtų nustatomi, jie turėtų būti nustatomi didesni. MTO civilinė atsakomybė turėtų būti išimtinė, t.y. subjektai, turintys teisę reikšti ieškinius dėl kroviniui padarytos žalos, jo praradimo, nepristatymo ar nuostolių, patirtų dėl krovinio vėlavimo, neturėtų turėti teisės reikšti MTO sutarties vykdymui pasitelktiems asmenims jokių reikalavimų.

4. Šalių sutarties laisvė, *inter alia* švelnioji teisė (angl. *soft law*), nors yra reikšmingas įrankis švelninant nesamo unifikuoto multimodalinio krovinių vežimo teisinio reguliavimo sukuriamus padarinius, visgi ji nėra pakankama sprendžiant multimodalinio krovinių vežimo teisinio reglamentavimo problemą: šalys nėra visiškai laisvos neribotai susitarti dėl sutarčiai taikytinos teisės ar dėl šalių santykiams sutarties pagrindu taikytinų taisyklių, kas lemia, kad nėra galimybės visais atvejais šalių susitarimu sukurti unifikuotą teisinį režimą sudaromai multimodalinio krovinių vežimo sutarčiai.

5. Siekiant unifikuoto multimodalinio krovinių vežimo teisinio reguliavimo, neabejotina, nauja tarptautinė konvencija, skirta šiems vežimams būtų geriausias instrumentas tikslui pasiekti. Nors, dėl gausaus tarptautinio vienarūšio krovinių vežimo teisinio reglamentavimo, nauja konvencija nėra pajėgi užtikrinti teisinio reguliavimo unifikavimą visais atvejais, pasinaudojus tarptautinėje teisėje egzistuojančiais kolizijų sprendimo įrankiais konvencijos taikymas galėtų būti pakankamai platus, kad ji pasiektų keliamą unifikavimo tikslą. Visgi, nepaisant siekiamybės, realistiškai vertinant, yra abejotina, kad galimybė sukurti naują tarptautinę multimodalinius krovinių vežimus reglamentuojančią konvenciją, šiuo metu yra reali. Ypatingai tas pasakytina atsižvelgiant į pasiūlymus dėl MTO civilinės atsakomybės, kuriems, manytina, nepritartų didelė dalis krovinių vežimo sektoriaus atstovų.

6. Siekiant greito ir efektyvaus egzistuojančios multimodalinio krovinių vežimo reglamentavimo problematikos sprendimo bei multimodalinio krovinių vežimo unifikavimo Europos Sąjungos mastu, Europos Sąjunga turėtų priimti vidinį teisės aktą reglamentuojantį multimodalinius krovinių vežimus regioniniu lygmeniu. Toks teisinis reguliavimas galėtų pasiekti reikšmingų rezultatų unifikuojant multimodalinius krovinių vežimus Europos Sąjungoje bei didinant jų dalyvių teisinį tikrumą. Pirmiausia, toks teisinis reguliavimas galėtų įtvirtinti vieningą multimodalinio krovinių vežimo sutarties kvalifikavimą valstybėse narėse ir tarptautinių vienarūšių krovinių vežimo sutarties tiesioginio taikymo srities vieningą vertinimą. Antra, toks teisinis reguliavimas įtvirtintų vieningą teisinį režimą Europos Sąjungoje nepriklausomai nuo taikytinos nacionalinės teisės. Trečia, toks reguliavimas Europos Sąjungoje iš esmės užtikrintų unifikuotą teisinį reguliavimą multimodalinio krovinių vežimo sutarties atveju.

13. AUTORIAUS MOKSLINIŲ PUBLIKACIJŲ DISERTACIJOS TEMA SĄRAŠAS

1. Krovinių vežėjo neatsargumas kaip neribotos civilinės atsakomybės taikymo pagrindas. Teisė, Nr. 101, 2016, p. 109-125. Prieiga per internetą <http://www.zurnalai.vu.lt/teise/article/view/10447>;

2. Autonominiai automobiliai - šiandienos teisiniai iššūkiai rytojui. Teisė, Nr. 101, 2016, p. 126-144. Prieiga per internetą <http://www.zurnalai.vu.lt/teise/article/view/10448>;

3. Multimodalinio krovinių vežimo teisinis (ne)reguliavimas Lietuvoje. Teisė, Nr. 105, 2017, p. 135-154. Prieiga per internetą <http://www.zurnalai.vu.lt/teise/article/view/11125>;

4. Legal Regulation of Multimodal Carriage of Goods in Litght of Modern Technologies: Time to Change. How Deep is Your Law? Brexit. Technologies. Modern Conflicts: 5th International Conference of Phd Students and Young Researchers: conference papers. Vilnius: Vilniaus universiteto Teisės fakultetas, 2017, p. 250-257. Prieiga per internetą <http://lawphd.net/material-of-conferences/>.

14. AUTORIAUS PRANEŠIMAI, PRISTATYTI TARPTAUTINĖSE KONFERENCIJOSE

1. 2017 m. vykusioje tarptautinėje konferencijoje „*The Role of Dialogue in Creating and Applying Law*“ Lodzės, Lenkija, universitete parengtas ir pristatytas pranešimas anglų kalba „*Issue of legal regulation of multimodal carriage of goods: what way to choose?*“.

2. 2017 m. vykusioje Vilniaus universiteto Teisės fakulteto doktorantų konferencijoje „*How Deep is Your Law? Brexit. Technologies. Modern Conflicts*“ pristatytas ir publikuotas pranešimas anglų kalba pavadinimu „*Legal regulation of multimodal carriage of goods in light of modern technologies: time to change*“.

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- MIKALONIENĖ, L.; MITKEVIČIUS, V. Ūkinės bendrijos. In: MIKALONIENĖ, L., *et al. Įmonių teisinių formų konvergencija ir divergencija: ar Lietuvos teisinis reglamentavimas yra patrauklus tarptautiniame kontekste?* Mokslo studija. Vilniaus universiteto leidykla: Vilnius. 2017, ISBN 978-609-459-886-9, ISBN 978-609-459-885-2, p. 33-110;
- 2016 m. stažuotė Makso Planko lyginamosios ir tarptautinės privatinės teisės institute Hamburge.

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- 2018 m. – dabar, AB „Lietuvos geležinkeliai“;
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