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MODERN APPROACHES IN QUANTIFYING ECONOMIC SECURITY. CASE STUDY OF ESTONIA, LATVIA, LITHUANIA AND REPUBLIC OF MOLDOVA

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Abstract. Economic security has been and will be a key concept in international economic relations. Nowadays the analysis of this concept became as urgent as it has never been earlier. This paper examines three approaches covering the quantitative analysis of the economic security. The process of economic security maintenance is carried out differently in each period of the history. That is why, economists have been keeping an eye on measuring it. Also, it is proved that threats are modified in the conditions of globalization, so that nowadays it appears another variable in this equation: national vulnerability and economic resilience.

Keywords: economic security, macroeconomic security, microeconomic security, critical thresholds, economic vulnerability, capacity for resistance, counteracting the crises, shock absorption


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1. Introduction

Some of the researchers refer that “economic security” has begun mainly after the end of the Cold War, but when studying carefully the history of the world, one could notice that people had been aware of the link between economics and national security since the ancient times. The issue of security and war has preoccupied the most outstanding thinkers of antiquity: Aristotle, Plato, Cicero, Xenophon, who have referred in their work to the issue of peace and war, of its consequences, of their impact on the progress of the nation. Renaissance thinking, which spread during the 14th -17th centuries, supports the idea of no war and safety and peace are those who maintain the progress and social development. The peak of the Renaissance period fits with the period of mercantilism – 16th – 18th century. They put on the first place the state, as the manager of all social, economic and political objectives for which it is generated as a provider of welfare and security for all economic activities. From this perspective, mercantilists claim that: “the economic dimension of security is
just part of national security, which is the main priority of the state”. The mercantilist's mistake, as noted throughout history was that not the import goods, including precious metals mean safety, but the involvement of these resources in the economic circuit.

Adam Smith (the doctrine of classical liberalism) detected the mistake and described in his famous work “An Inquiry into the Nature and Causes of the Wealth of Nations” concluding that: “trade and manufactures gradually contributed to better governance and order, as well as the security and freedom of the individual, which they had lived happily until then in a state of permanent war with neighbors and in a slavish dependency upon bigger and stronger states” (Smith 1962).

An open battle against the liberal's ideas was taken by socialist doctrine, which states that the planned economy is the basis of sustainable development and progress, and the state cannot exist outside this logic, its task being to “govern” the economy according to the politico-social goals of justice and equity. The socialists put the emphasis on the security of the poor in economic terms and against the powerful of the rich. The aim of this paper is to analyze the concept of economic security in conditions of globalization by making a study of the definitions, models and current approaches in quantifying economic security. Despite contemporary economic literature tackles various facets of economic security (Tvaronavičienė 2012; Białoskórski 2012; Balitskiy et al. 2014; Uberman, Žiković 2014; Baublys et al. 2015; Shadova et al. 2015) integrated approach towards economic security still has to be provided.

2. Approaches in economic security analysis

During the 20th century and early 21st century there were formed a series of definitions for economic security that used to define the synergetic approach that embodies itself in terms of the interests of the state, threatens stability, having the possibility of self-development, etc. Thus, security involves the protection of basic necessities, physiological, socio-economic, spiritual and situational resources, technologies, information and moral ideals, required for vital activity and prosperity of society. Walter Lippmann in the study “Discord and Collaboration. Essays on International Politics”, published in 1962, defined that, “a nation is safe insofar as it is not in danger of having to sacrifice essential values, if it wants to avoid war and, perhaps, when it is due, and to maintain them, taking victory in a war” (Buzan 2007), so the term “economic security” has undergone numerous changes. Ian Bellany-Director of the Centre for International Security Studies writes that “security, itself, is the relative absence of war” combined with a newly introduced psychological factor, represented by “a relatively solid conviction that any war that could take place would not end with a defeat” (Bellany 1981).

Laurence Martin uses economic approach to define safety: “security is to ensure the welfare of the future”. In the 1960s, welfare was considered as a direct result of economic growth, but the subsequent social and economic theories have disproved this hypothesis, arguing that just as important are the psychological and cultural factors (Laurence 1983). The notion of “economic security” is very often met in national strategies, included in international conferences agendas as in literature there is no clear definition of the concept and the less generally accepted one. In most works adjacent to the topic, are definitions or explanations concerning the concept, like for example: “safety of tomorrow,” which enters the substitution with other terms like: prosperity, welfare, adequate standard of living, economic independence, etc.

The concept of “national security” in a modern sense, it is a category, which includes: economic, social, political, intellectual, informational, demographic, genetic, psychological and other categories of security. But mainly these can analyzed on the three main levels:
- micro level - individual/household
- mezo level - enterprise or branch of economy
- macro level - countries or group of countries.

**Asiatic approach (macroeconomic)** Economic security is often defined in general terms as “economic security of one or another system is meant the sub-system status which provides the ability to achieve the purpose of the whole system” (Tambovtev 1995). However, this definition is a general one which underlines that economic security is seen from the perspective of production potential being the result of economic
policies promoted effectively. This lowers the state's exposure to threats, through the accumulation of vulnerabilities that may become a risk. In this context, for example, the Soviet economist, PhD in economic sciences, professor V. Senceagov said: “the essence of economic security can be defined as a situation when state institutions ensure the safeguarding of national interests, protection, development of social-oriented state and sufficient military potential” (Senceagov 2002).

Anglo-saxon approach (microeconomic). Having the changes on international market and the transformations that have occurred domestically, economic security tends toward the accumulation of new, important issues for the very existence of mankind. Thus, Mark Rupert, in his “International Relations Theory” defines the economic security of the individual as “stable incomes and other sources in order to maintain a standard of living in the present and in the foreseeable future which means: continuous solvency, predictable cash-flow, efficient use of human capital” (Rupert 2007).

Thierry de Montbrial, specialist in economics and political science, in his “English Journal” has focused his studies on the continuous development of the individual in society: “I believe that progress-considered the collective-lies in strengthening the external conditions of fulfillment of the life of each individual. Therefore, the major focus of the progress is the individual's security”. In the process of threats monitoring and quantifying the country’s economic security it should be used a full range of analytical indicators that would characterize all aspects of socio-economic life of the country (Montbrial 2012). In the context of providing sustainable economic security, for a given state it is much more important to obtain a stable growth of its economy, than high rates of economic growth, after a deep recession. We find this idea also in the works of John Kenneth Galbraith, one of the main representatives of institutionalism. He introduces for the first time the term “tehnostructure” a group of professionals in the field of organization and management for whom the primary purpose was the stability and constant growth not high rates of sales and monopolizing the market.

3. Methodologies and economic security quantification

3.1 Anglo-Saxon approach – Individual Economic Security

Seeing evolution in time, we categorize that the contemporary economic security studies (after the cold war) uses the Anglo-Saxon approach, which is based on the report of the world Organization of labor. It launched methodology of calculating an economic security index (ESI), starting from the identification of the 7 dimensions that make up the socio-economic security. Each of these dimensions is quantified through an index, calculated on the basis of other variables, Economic Security Index (ESI) is calculated according to the formula:

\[ ESI = \text{LMSI} + \text{EPSI} + \text{JSI} + \text{WSI} + 2\times\text{RSI} + 2\times\text{ISI} \]  

where:

- LMSI - Labour Market Security Index
- EPSI - Employment Security Index
- WSI - Work Security Index
- ISI - Income Security Index
- RSI - Representation Security Index
- SSI - Skill Reproduction Security Index
- JSI - Job Security Index

Income Security Index and the Representation Security Index are offered a double share, because elementary security wage is essential for life and safety representation is of paramount importance for those who are vulnerable.
In the report, “Economic Security for a Better World”, ILO researchers have divided the 90 countries subjected to analysis, representing 85% of the world’s population, into four categories, depending on their performance in terms of economic security. Thus, the first category is that of the example states, that are making tendencies (pacesetters), comprising the states, policies, institutions with good results. The second category is that of pragmatic states (pragmatists) and consists of countries with good results despite some political institutions less effective. The third category, conventionalist states (conventional), is including States with seemingly good policies and institutions, which, however, did not have good results. Finally, the last category is that of the states in which there are many things to do (much-to-be-done). This report classifies the states as follows (Table 1):

<table>
<thead>
<tr>
<th>Country</th>
<th>LMSI</th>
<th>EPSI</th>
<th>WSI</th>
<th>ISI</th>
<th>RSI</th>
<th>SSI</th>
<th>JSI</th>
<th>ESI</th>
<th>Place in the world</th>
<th>Category of economic security</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>0.955</td>
<td>0.951</td>
<td>0.938</td>
<td>0.912</td>
<td>0.995</td>
<td>0.888</td>
<td>0.811</td>
<td>0.977</td>
<td>1</td>
<td>Pacesetter</td>
</tr>
<tr>
<td>Finland</td>
<td>0.862</td>
<td>0.960</td>
<td>0.931</td>
<td>0.868</td>
<td>0.921</td>
<td>0.863</td>
<td>0.940</td>
<td>0.947</td>
<td>2</td>
<td>Pacesetter</td>
</tr>
<tr>
<td>Norway</td>
<td>0.981</td>
<td>0.762</td>
<td>0.940</td>
<td>0.941</td>
<td>0.910</td>
<td>0.863</td>
<td>0.750</td>
<td>0.926</td>
<td>3</td>
<td>Pacesetter</td>
</tr>
<tr>
<td>Latvia</td>
<td>0.662</td>
<td>0.544</td>
<td>0.633</td>
<td>0.694</td>
<td>0.571</td>
<td>0.652</td>
<td>0.615</td>
<td>0.587</td>
<td>27</td>
<td>Pacesetter</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0.593</td>
<td>0.475</td>
<td>0.665</td>
<td>0.622</td>
<td>0.563</td>
<td>0.686</td>
<td>0.673</td>
<td>0.556</td>
<td>30</td>
<td>Pragmatic</td>
</tr>
<tr>
<td>Estonia</td>
<td>0.583</td>
<td>0.570</td>
<td>0.555</td>
<td>0.627</td>
<td>0.540</td>
<td>0.699</td>
<td>0.591</td>
<td>0.525</td>
<td>34</td>
<td>Pragmatic</td>
</tr>
<tr>
<td>Ukraine</td>
<td>0.511</td>
<td>0.394</td>
<td>0.569</td>
<td>0.590</td>
<td>0.535</td>
<td>0.655</td>
<td>0.633</td>
<td>0.524</td>
<td>35</td>
<td>Much to be done</td>
</tr>
<tr>
<td>R. of Moldova</td>
<td>0.622</td>
<td>0.477</td>
<td>0.432</td>
<td>0.624</td>
<td>0.516</td>
<td>0.623</td>
<td>0.526</td>
<td>0.495</td>
<td>43</td>
<td>Much to be done</td>
</tr>
<tr>
<td>Romania</td>
<td>0.616</td>
<td>0.417</td>
<td>0.590</td>
<td>0.514</td>
<td>0.527</td>
<td>0.589</td>
<td>0.483</td>
<td>0.456</td>
<td>44</td>
<td>Much to be done</td>
</tr>
<tr>
<td>Nepal</td>
<td>0.295</td>
<td>0.114</td>
<td>0.138</td>
<td>0.340</td>
<td>0.289</td>
<td>0.132</td>
<td>0.126</td>
<td>0.051</td>
<td>90</td>
<td>Much to be done</td>
</tr>
</tbody>
</table>


International Labor Organization report strives for the first time in history, to assess the economic security of individuals and countries around the world. Use, to that end, statistics from surveys which was attended by approximately 48,000 workers from over 10,000 different jobs around the world (Figure 1).

3.2 Macroeconomic approach – Critical thresholds method

A significant influence on the process of ensuring economic security plays macroeconomic indicators and their dynamics over time. Evaluation of the main indicators characterizing the economic security lets out some
moments that can reduce the vulnerability of the national economy. Table 2 describes the situation at the present stage of the analysis method of critical thresholds.

### Table 2. Evaluation of the main macroeconomic indicators for 2013

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP/cap</td>
<td>Critical value</td>
</tr>
<tr>
<td></td>
<td>Latvia</td>
</tr>
<tr>
<td>GDP/cap</td>
<td>17.719 $ (50% from medium value of GDP/cap in UE)</td>
</tr>
<tr>
<td>Inflation rate</td>
<td>20%</td>
</tr>
<tr>
<td><strong>Commercial security</strong></td>
<td></td>
</tr>
<tr>
<td>% exports in GDP</td>
<td>70%</td>
</tr>
<tr>
<td>% imports in GDP</td>
<td>60%</td>
</tr>
<tr>
<td>% of 3 products groups imported from total imports</td>
<td>30-35%</td>
</tr>
<tr>
<td>% of 3 products groups exported from total exports</td>
<td>20-25%</td>
</tr>
<tr>
<td>Main export partner</td>
<td>25-30%</td>
</tr>
<tr>
<td>Main import partner</td>
<td>15-20%</td>
</tr>
<tr>
<td>Export/Import</td>
<td>95-100%</td>
</tr>
<tr>
<td>% of re-export from total exports</td>
<td>20-25%</td>
</tr>
<tr>
<td>% of underground economy</td>
<td>15-20%</td>
</tr>
<tr>
<td><strong>Financial Security</strong></td>
<td></td>
</tr>
<tr>
<td>% Gross State debt in GDP</td>
<td>65%</td>
</tr>
<tr>
<td>% Budget deficit in GDP</td>
<td>-3%</td>
</tr>
<tr>
<td><strong>Social security</strong></td>
<td></td>
</tr>
<tr>
<td>Unemployment rate</td>
<td>7%</td>
</tr>
<tr>
<td>Life expectancy</td>
<td>70 years</td>
</tr>
<tr>
<td>Education expenses, % in GDP</td>
<td>10%</td>
</tr>
<tr>
<td>Difference between incomes of 10% richest and 10% poorest</td>
<td>8 ori</td>
</tr>
<tr>
<td>% of R&amp;D expenses in GDP</td>
<td>2%</td>
</tr>
</tbody>
</table>


This methodology of assessment of economic security level starts with the most important macro-economic indicators-GDP-which means the sum of the value of all goods and services. Practice has shown that the Baltic countries’ reforms promoted in the European integration process have helped to stabilize the economic situation and also raising production within national economies. Since 2000, the Baltic Tiger economies

---

1 On the basis of World bank data for 2011
2 Baltic Tiger is a term that refers to any of the three Baltic States - Estonia, Latvia and Lithuania-during their economic deboom started after the year 2000 and continued into the present. The term is based on the terms “Asian Tigers” and “Celtic Tiger”, which refers to periods of rapid economic growth in East Asia and Ireland, respectively.
implemented liberalization and economic reforms, resulting in significant foreign investment, attracted not only business but also qualified and cheap labor compared to Western Europe. Between 2000 and 2004, the Baltic Tiger States had the highest rates of economic growth in Europe, this repeating the performance in 2005. For example, in 2004, Estonia's GDP grew by 7.8% and Latvian and Lithuanian with 8.5% and 7% respectively. In 2005, the rate of increase has accelerated, reaching 10.2 percent in Latvia, 9.8% in Estonia and Lithuania in the 7.5%.

**Commercial security.** The concentration of exports (which is itself a vulnerability of the economy) is characterized by indicators: 3 groups of goods export/total export and main export partner. This vulnerability can be seen as just one part of a coin, the other is dependence on imports. In the case of Estonia, Lithuania and Moldova, import and export is concentrated on the 3 product groups that represent 50% or more of the total. This figure talks about a high risk, especially since the main partner for Lithuania and Moldova continues to be Russia.

Relevant for the monitoring of national economic security is the security of the financial monetary system named: financial security — which is determined by the integrity, stability, and development, competitiveness and financial base for economic and social policies in order to ensure national security, and the development and protection of the national interest. Considering the current guidelines of the world it can be affirmed that there are no plans in the near future to establish a single model in social security, as was already done in European economic policy-the unification of the various components (the Customs Union, the single market together, currency).

In his research, Mărginean Ioan mentions that although it contained a series of common principles, providing welfare systems differ from one country to another. In the European Union, the most advanced example of the economic integration, social policy most likely will remain a national competence in accordance with the principles of subsidiarity, however, accepted by the EU — You can't yet talk about a so social model of the EU in the near future (Mărginean 2001). Only 8% of the world population lives in a country that offers a high level of social security and 5% of these “best social security states” belong to European countries.

These countries are characterized by the existence of a democratic regime, civil liberties and Government spending on social protection and is diminished the existence of social inequalities (ILO 2004). It is easy to notice that the threshold parameter method contains too much subjectivity, because the thresholds are levels of economic indicators for all states, despite specifics of each. All these thresholds are indicative levels, and states that have red level of indicators fails to declare insolvency. With account of these parameters can forecast certain phenomena, or formulate specific policies to improve the situation. To cope with the risks and threats of all kinds which affect the economic security of a state is necessary a political and economic strategy through advantageous treaties as part of alliances, which, at the same time ensuring a climate of proactive security.

For researchers in the field of economic security the approach developed by professor Lino Briguglio was the most complete. He began to explore the concept in terms of its quantification. His model represents economic security from the perspective of economic vulnerability and capacity for resistance (counteracting the crises and shock absorption).
3.3 Asiatic approach – National Economic Security

Economic security quantification model presented at Figure 2.

![](Figure 2. Economic security quantification model)


**The state’s economic vulnerability**

Up to now, measuring economic vulnerability has remained in the shadows. The vulnerability of countries is caused by:

- A high degree of economic openness is causing a particular sensitivity to economic conditions in relation to other states;
- Dependence on a narrow range of exports, giving rise to risks associated with the lack of diversification;
- Strategic Dependence from imports, in particular energy and industrial supplies;
- Periphery, insularity, which leads to high costs of transportation and marginalize the main shopping places.

According to UNCTAD (2013) and the World Bank, both the Baltic States and Moldova have a relatively high degree of openness, which leads to increased vulnerability of their economies. As the case of all four countries (Figure 3) economic vulnerability is not increased over time (despite the period after recent financial crisis), even though it is supposed to be increasing year by year as a result of economic globalization. Also the impact of accession and membership in the EU should also be considered as an important factor influencing the openness of the country. There is the fact that in Moldova there is a tendency to open the economy, but what is positive is that this process is not overly accelerated and gives the opportunity to develop immunity against external risks.
Two other factors indicating the vulnerability are two types of dependency. Addiction can be seen as a two-sided coin, where, it is not necessarily a relationship between the parties. From one side, the vulnerability of a country, especially a small one, is stemming from dependence on imports. In case if imports as food, industrial or energy (resources), plays a crucial role in the economic life of a country, are not derived from the inside, a state dependence on outsiders has a negative impact on the availability and price of goods (Figure 4).

The relationship between dependence on strategic imports and economic security is a specific one and well understood. Greater dependency is between energy security and economic security. The ability of the economy to function stably and sustainably is not just in appearance and working actors on the market, it is based on the get key strategic materials. When strategic materials must be obtained from outside the country, threatening security of supply is classified as a vulnerability to economic security.

On the other hand, a country might be dependent on exports. Such dependency could be a result of the large volumes of imports, but could also be an effect of other structural economic factors, forcing the country to stand passive in terms of commercial policy. In this case, smaller states have fewer capabilities to diversify exports because they are constrained by their small economies and they tend to have more of their exports from beneficiary countries (Figure 5).

---

3 Economic openness – the ratio of international trade (export + import) and GDP.
The state’s capacity of resistance. One of the main sectors of the crises counteracting state capability is the financial one. Within the financial sector, threats: “deficit” and “foreign debt” falls largely in the usual scenario for most countries of the world. Correlation between them feels when it comes to servicing external debt, the share of the national budget for it is growing continuously (Figure 6).

Monitoring of the budgetary deficit during the period 2000-2014 shows that, for the four countries, the financial crisis has had a major impact. Estonia and Latvia were able to recover relatively quickly without huge bailouts from the EU. From an economic perspective, the three Baltic States are now more viable than Moldova. From the analysis of the increase trend in the expenditure related to the maintenance of state debt...
we see continued growth, which has an effect on the budget deficit, demonstrates the difficult situation in which the Government of the Republic of Moldova is with regard to public debt. In the context of the monitoring of national economic security, it is necessary to highlight the fact that the share of foreign sources of financing of the budget deficit in the Republic of Moldova is about 65%, while the value of this parameter for the effective functioning of national economic system is about 30% (Figure 7).

In the context of economic security assurance, inflation and unemployment have an especially important role. The rate of inflation in the Baltic countries until 2008 has been too high, particularly in Latvia, where in 2007 he reached the maximum limit of 20.3% (Figure 8).

For Estonia, Latvia and Lithuania, unemployment rate was a serious problem after getting independence. Only after joining the EU significant improvements can be seen, unfortunately, more as a result of emigration than reforms and structural economic changes. In Republic of Moldova we can conclude that unemployment is not a problem, but it does not coincide with reality. A low unemployment rate is a result of the increase in
According to official statistics, 80 percent of migrants are over 25 years old - that is the motive power of the economy. This represents a huge vulnerability for Moldova's economy leads to a rise in poverty, the collapse of the pension system, the mass depopulation of villages, family separation, etc.

**Shock absorption capacity.** During shocks and crisis, the authorities and companies alike are trying to focus attention on enhancing the absorption capacity. Unlike the past year rule - use the latest austerity measures, the world economic crisis has drawn attention to the economic stimulus measures. General measures of economic stimulus from the fiscal policy and monetary were even combined with sector-specific solutions (for example, those in the auto industry, the development of infrastructure, the stimulation of exports, etc.). Some of these measures have even managed to mitigate the negative effects of the global crisis on the social plan. For example, the development of rural infrastructure in China has enabled migrant workers left without jobs in urban centers to return and is able to earn their living in native lands. At the same time, infrastructure development in Central and Western China allow moving sectors of productive capacities in labor intensive in the eastern regions where labor cost is low, which causes long-term maintenance of attractiveness.

From the point of view of flexibility, Estonia and Lithuania have a better capacity for resistance in comparison to Latvia and Republic of Moldova. In general, Estonia and Lithuania shall obtain more statistics favorable microeconomics efficiency, good governance, human and social development sustainability. Estonia has significantly better results in the legal basis, expressed through the fight against corruption, the protection of human rights and enforces the rule of law. (Annex 1). The countries flexibility analysis shows that there are numerous problems in getting resistance not only to counter the crisis, but also from the perspective of shock-absorbing. Unfortunately, all four countries have lack of strong policies for sustainable development. The improvements that we've seen for the Republic of Moldova are important to the economy's ability to adjust, but compared to the Baltic countries these are inadequate, as a result, the Government should with enthusiasm speed up reforms.

**Results and conclusions**

All these countries got independence not peacefully and in the same time they had to overcome the constraints of previous totalitarian and planned economy system. The first years of independence these countries were full of reforms and transformations. But still almost all the indicators analyzed show that all four countries have numerous problems. The conducted analysis revealed that Lithuania and Moldova are one of the most vulnerable countries within the chosen variation. This contradicts Briguglio et al. 2008 findings that Latvia is one of the most vulnerable states in the world. Briguglio research concludes that Latvia – 0.55, Lithuania – 0.357, that means Latvia is more vulnerable than Lithuania. The improvements in Estonia, Latvia and Lithuania are important concerning their resistance, but the recent crisis showed that they are minor and governments should place a greater emphasis on the policies affecting states’ economic resistance (Kokstaite 2011).

The era of globalization belong to strategic partnerships. These partnerships are determined by political and economic and security interests and is directly proportional to the degree of vulnerability, but also the dangers and threats that emphasize the respect of certain countries. The Baltic States are an example that EU means reinforcing economic power, risk reduction, ensuring the conditions for crisis management, the strengthening of stability, etc. The vector of European integration for the Republic of Moldova is more than a goal of foreign policy. Access timely, useful and beneficial to a huge market, offers the possibility of developing an economic system based on innovation, competitiveness, collaboration with international institutions, etc.

**References**


Laurence, M. 1983. Poate exista securitate națională într-o epocă nesigură? [There may be national security in an uncertain age], Encounter 60(3): 12.


## Annex 1

### Indicators that characterize shock absorbtion capacity. (2000-2014)

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**Source:** Economic Freedom Index 2014 [http://www.heritage.org/index/explore?view=by-region-country-year]
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PUBLIC SAFETY THROUGH ENSURING RIGHTS FOR DEFENSE

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Abstract. Reforming of public relations, occurring in Latvian requires the improvement of all laws, including criminal procedure law. Since the 1st of October 2005 in Latvia is in force the criminal procedure law (hereinafter criminal procedure law – CPL) which reformed the previously existing criminal procedure laws and introduced the new ones. The Article 1 of CPL defines the goal of CPL which consists in the establishment of such an order of the criminal procedure which ensures the effective use of rules of criminal law and fair settlement of criminal and legal regulations without the undue interference in private life. Personality should stand in the foreground as the most important value of society and state. Therefore, the main goal of the modern stage of forming up of legal state in Latvia is defense of rights and interest of an individual, his/her life, health, honor, dignity, provision of personal inviolability and complete safety (Sumbarova 2011). The article presents the system of security tools of participants of criminal procedure in Latvia, criminal procedure rules are analyzed, providing the security and safety of rights and legitimate interests of individual in criminal procedure and other laws.

Keywords: criminal procedure law, criminal procedure, participant of criminal procedure, safety

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JEL Classifications: F52, K14

1. Introduction

Public safety directly impacts processes of secure and sustainable development (Stańczyk 2011; Lankauskienė, Tvaronavičienė 2012; Tvaronavičienė, Grybaitė 2012; Šileika, Bekerytė 2013; Račkauskas, Liesionis 2013; Mačiulis, Tvaronavičienė 2013; Vasiliiūnaitė 2014; Zahars, Stivriņiece 2014; Matysik 2014; Tunčikienė, Drejeris 2015; Giriūnienė 2013). This paper is devoted the following public safety facet: ensuring rights for defense and safety of participants of criminal procedure in Latvia.

On the 1st of October 2005 in Latvia was in force the criminal procedure law which reformed many institutions of criminal procedure, including the institute of participants of criminal procedure. For many years the legal status of participants of criminal procedure is the object of study of scientists in the field of criminal procedure.
not only in Latvia, but also in the other European countries. The observance of rights of participants of criminal procedure inextricably connected with the observance of human rights guarantees. Careful attention of scientists is drawn to the security problems of participants of criminal procedure, defense of guarantees of their rights and further improvement of all laws, including the criminal procedure law. For example, such scientists as Meikališa (2000, 2008) Kazaka (2007, 2008, 2009), Sumbarova (2011) and many others.

2. General information

The object of the research in this article is the community of legal relations formed between the subjects of the criminal procedure, on the one hand – by individuals, ensuring the safety and protection of participants of criminal procedure and on the other hand – by individuals against whom are taken certain measures to protect them. Such legal relations during the investigation of criminal cases fall under the category of the the criminal procedure law, branch of criminal law.

The goal of this article is the analysis of innovative or existing rules of criminal procedure law, ensuring the protection of rights and legitimate interests of individual in criminal procedure. In writing this article the author used the following methods: comparative and legal, logical and legal, analytical, the method of classification, the study of regulatory and legal framework.

In the Article 1 of criminal procedure law which is in force in Latvia since the 1st of October 2005, the goal of CPL is stated which in the establishment of such an order of the criminal procedure which ensures the effective use of rules of criminal law and fair settlement of criminal and legal regulations without the undue interference in private life.

The issue of safety of an individual in the criminal procedure has drawn the attention of many scientists. The achievement of goal of criminal procedure means the creation of such circumstances that ensure the effective use of rules of criminal procedure and fair settlement of criminal procedure relations without undue interference in life of an individual. Guaranteeing of safety of individuals involved in the criminal procedure is directly related with the achievement of goal of criminal procedure law. Indeed, how fully and qualitatively will be provided the rights and legitimate interests of an individual in the criminal procedure depends the fair resolution of criminal procedure relations (Kazaka 2007).

To the issues related to the ensuring of safety of individuals in the criminal procedure has drawn the attention of many scientists, including the Latvian scientists Kavalieris (1997), Meikališa (2000, 2008) and others. Conflict resolution related to the ensuring of safety of participants of criminal procedure, occurring at the stage of pretrial investigation is seen in the observance of requirements of criminal procedural law by investigator – regulation of procedures of implementation of some investigative actions and formulation of proceeding decisions (Bulatov 2003). Traditionally, the concept “defense” in the criminal procedure related to the right of suspected and accused individual for defense. Such understanding of this term related to the criminal and procedural functions, such as: control of restriction of rights of an individual; prosecution; defense; passing a judgment by the court. In 2007 through the request of Ministry of International Affairs of Latvia at the Academy was carried out the research “the experience of foreign countries in cooperation of policy and educational institutions in ensuring of public order and prevention of wrongs. Within the frameworks of the research is revealed the topical issue of cooperation of the policy and society in ensuring of safety and defense of rights of minors, as well as in the prevention of wrongs committed by minors.

Safety belongs to the one of the most important basic needs of an individual and forms his/her quality of life (Meikališa 2008). The concept “safety” in the general sense means a state of safety and lack of threats. A safety in the criminal and procedural sense has its specific content. To ensure the safety of an individual in the criminal procedure means to establish the important guarantees of achievement of goal of criminal procedure: to identify the guilty of criminal act and if it is required to apply in respect of him/her a just punishment (Kazaka 2009). The human rights at liberty are declared in Article 3 of the Universal Declaration of Human Rights (1948), in the Article 9 of International Covenant on Civil and Political Rights (1966), in the Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), in the
Article 6 of the EU Charter of fundamental Rights (2010), in the Article 94 of the Constitution and other regulatory enactments.

In the Article 94 of the Constitution (Satversme 1922) is defined: everyone has the right at liberty and personal security with the caveat that to deprive or restrict freedom of an individual is possible only in the legally provided cases.

The Article of CPL indicates that the criminal procedure in conducted in compliance of internationally recognized human rights and without undue lying of criminal and procedural duties or disproportionate invasion of privacy. Thus, the human rights may be restricted only in cases, when it is required by the content of public security and only in the established order of CPL in accordance with nature and danger of criminal act. In the chapter 5 of CPL which is called “Individuals, implementing the defense” are determined, including the provisions, relating to the rights and obligations of such participants of criminal procedure as an individual against whom is initiated the criminal procedure, detainee, suspected, accused, convicted. Since the adoption of CPL, in many ways, and repeatedly have changed the rules, ensuring the defense of their rights and legitimate interests in the criminal procedure. The recent changes are effective as on June 25, 2014.

It is important to emphasize that the basis for the implementation of defense is expressed in the written form in the order established of CPL, the assumption of authorized official to conduct the criminal proceedings, concerning the commitment of a criminal act by an individual (part 1 of the Article 59 of CPL). Depending on obtained evidences of assumption are subdivided in the following way:

There is a real possibility of commitment by an individual of investigated criminal act (against a person can be initiated a criminal proceeding);

Certain facts give reason to believe that a criminal act has been committed by this individual (an individual can be detained);

The body of evidences gives reason for the assumption that most probably the investigated criminal act is committed by this individual (an individual may be suspected);

The body of evidences reason for prosecutor, directing the process to believe an individual that namely this individual has committed a specific criminal act (an individual can be accused);

The prosecutor, directing an individual, who does not doubt that the available evidences can convince the court that there are no reasonable doubts that this individual has committed a specific criminal act.

According to the part 3 of the Article 59 of CPL the assumption takes the form of statement, if:

An individual entitled to the defense in accordance with the procedure established by law confirms the correctness of the assumption of the prosecutor and they both claim that an individual has committed a specific criminal act;

The court after the evaluation of evidences establishes that an individual has committed a specific criminal act.

The basis for the implementation of defense for legal person is an expressed directing process by an individual in the established order of CPL, the assumption that physical person has committed a criminal act, namely, in the interests of this legal person, in the favor of this individual or in the result of his/her improper supervision or control (part 4 of the Article 59 of CPL).

For the purpose of improvement of measures of procedural defense, aimed at the more effective safety assurance of individuals, testifying in criminal cases, regarding serious crimes and their legal representatives, the threat to whom could affect the individual, testifying in criminal case on June 12, 1997, the Saeima of Latvian Republic were adopted three laws: “The Changes in the Criminal Code of Latvia”, “The Changes in the Criminal Procedure Code of Latvia” and “The Changes in the Law, regarding the operational activity”(Sheshukov 1997). In the Criminal Procedure Code of Latvia was included a new chapter 9A (Articles 106\(^2\) - 106\(^{10}\) on measures of criminal and procedural defense). Since the 1\(^{st}\) of October 2005 in Latvia is in force the Criminal Procedural Law in which are widely represented the measures of criminal and procedural defense. Article 24 of CPL defines the protection of an individual and property in the case of threat. Thus, an individual subjected to the threat in connection with the performance of criminal and procedural duties by an individual, has the right to require of implementation of legally provided measures for defense of this individual and his/her property by an individual, who directing this process. An individual, who directs
the process after receiving the above mentioned information depending on the particular circumstances, makes decision on the need to implement one or more of the following measures: to begin another criminal procedure to investigate the threat; to select the appropriate measure of restraint for an individual in whose interests is implemented the threat; to suggest the establishment of special procedural defense for an individual, subjected to the threat; to direct the law enforcement institutions to implement the defense of an individual and his/her property. If the mentioned measures are not able to prevent the real threat of life, an individual, directing the process refuses to use those evidences that cause the threat.

Under the threat of use of dangerous illegal acts against the subject of criminal procedure should be understood the deliberate acts that is committed by the accused or other individual, requiring to satisfy certain requirements or interfering to establish the truth in the criminal case in order to evade the guilty individuals of just punishment or committed out of revenge (Meikališa 2000). The right of the accused for defense also includes his/her right to the legal assistance provided by the lawyer. The legal assistance in the criminal proceeding renders the defender, who helps to maximize the activation of defense carried out personally by the accused and the consistent implementation of criminal and procedural function of defense as a whole. The participation of defender in the criminal proceeding is one of the most important guarantees of the rights of accused for defense.

The legal nature of activity of the defender is defined in the Article 79 of CPL. The defender is a practicing lawyer in Latvia, who is in the criminal procedure, at his/her certain stage or in the implementation of a separate procedural action is implemented the defense of an individual, who has the right for defense. One of the new institutions in the CPL is the institution of special procedural protection. The provisions are regulated in the fourth section of the CPL. The special procedural defense is defined in the chapter 17 of CPL (Articles 299-311 of CPL). These rules specify: content of special procedural defense; procedure for reviewing an application for the establishment of the special procedural defense; the suggestion of an individual, who directs the process to establish a special procedural defense; the recognition of an individual subjected to the special procedural defense; resolution to establish a special procedural defense or the refusal to establish it; enforcement of establishment on the special procedural defense; rights and obligations of defender and other individuals; rights and obligations of defended individual; production duties of procedural actions in the pretrial procedure; the peculiarities of trial; the termination of the special procedural defense; the disuse of evidences of defended individual. In the Article 299 of CPL is stated that the special procedural defense is the protection of life, health and other legitimate interests of victims, witnesses and other individuals, who are in the criminal procedure gives or gave evidences, concerning serious or particular serious crimes, giving the evidences on crimes provided for articles 161, 162 and 174 of the Criminal Law (hereinafter – CL) and individuals, the threat to whom may affect the said individuals. It is the task of the special procedural defense.

Guaranteeing of safety to an individual, giving evidences as a witness in the criminal procedure was relevant from the earliest times. It is possible to make a statement that the institution of the testimony in the criminal procedure is as old as the law itself. As states the Professor, Doctor of Law S. Kazaka (2008) the issue of defense of an individual, giving the evidences as a witness is related to the institution of testimony. In the Latvian sources of literature to the term “the special procedural defense” many authors provide many variations of interpretations. The Latvian scientist Meikališa (2000) suggests the following definition: “A special procedural defense it is a provided for CPL and the Law “On the operational activity” the pretrial investigation actions and investigation actions of the court as well as a set of the other measures aimed at the defense that are implemented, taking into the consideration the principle of voluntary, basing on the decision of the Prosecutor General in an appropriate order provided of CPL. In its turn, the Latvian scientist A. Kavalieris (1997) suggested the other definition of this term. He considers the special procedural defense as: “the system of measures regulated of CPL implemented of directing process by an individual, policeman or the other individual of the operational activity, whose goal is to prevent the infringement of life, health, property and other legitimate interests of an individual with the intent of coercion to change or refuse of testimony, the destruction of obtained evidence, the termination of criminal prosecution or not start it at all”.

Taking into the consideration the need to protect individuals involved due to the certain circumstances in the field of criminal procedure, special procedural defense is considered as an independent criminal and procedural
function, formulated by a set of protective measures implemented in compliance with the principle of voluntary
on the basis of the order of Prosecutor General or the court (Kazaka 2008). The decision on special procedural
defense is entitled to make only Prosecutor General of the Latvian Republic on the suggestion of an individual,
who directs the process in the procedure of which is the criminal procedure based on the materials of the
criminal procedure as well as if it is necessary after the hearing of threatened individual, his/her representative
or defender.
According to the part 2 of the Article 303 of the CPL, if an individual makes an application on the necessity
to establish for him/her a special procedural defense to the court, the decision on the establishment of such
defense makes the court. Such decision the court can make on its own initiative, if during the trial occurred a
need in a special procedural defense of an individual and this individual agrees with it. One should agree with
the opinion of Professor S. Kazaka (2008) who indicates that there can be such situation, when about the issue
of special procedural defense is necessary to think before until an individual is admitted subject to the special
procedural defense i.e. before an individual is recognized as victim, witness, suspect, accused, and etc., who
will testify on the corresponding of criminal act in the criminal procedure. It is necessary to take into the
consideration such a situation:
The state’s duty is to defend the individual, who promote the interests of the criminal procedure, it can’t be
limited; it means that this obligation appears before the criminal and procedural actions and is not terminated
due to their termination;
Operational and procedural actions are carried out in connection with a common need (the fight against crime).
They have many common objectives – the disclosure of a criminal act and etc., which are aimed at a single
final goal – the implementation of the criminal procedure;
The performance of obligations of an individual – the message to the law enforcement institution about the
planned or committed criminal act;
The message about a criminal act can occur during the operational activities which often occur before the
criminal proceedings.

In most cases the actions of this individual provides an opportunity for criminal proceedings. The above
mentioned means, that an individual should be considered as contributor to the initial stage. From what has
been said follows that measures on defense the use of which is possible during the operational activities before
the start of criminal procedure, must be considered as integral part of system of guaranteeing the safety of an
individual. One of the main reasons why individuals don’t apply for help in law enforcement institutions – it
is a confidence of these individuals that the state can’t protect them from the revenge of criminal individuals,
who very often has all the data about these individuals. Therefore, the availability of the necessity of use of
these measures may appear, namely, before the beginning of the criminal procedure (Kazaka 2008). The
modeling of optional versions of threats against an individual, giving evidences in the criminal procedure, the
choice of specific measures for defense always depends on the individual case and the danger level. On the
danger level of threats can influence the following factors:
The reality of threats;
The nature of the supposed damage;
The nature of put forward demands by the criminal;
The way with the help of which is suggested to implement the threats.

It is generally admitted that the issues of defense of rights and legitimate interests of an individual involved in
the criminal proceedings are among the main. This is proved by, for example, the fact that for the purposes of
defense of rights and freedoms of an individual at the international level are established and successfully
operates the special body – European Court on Human Rights (ECHR). In accordance with the part 3 of the
Article 303 of CPL, if necessary to suppress the identity of an individual the Prosecutor General in ruling
indicates that the data of identifying individual are subjected to be replaced by the pseudonym. In all fairness,
we note that indicated common approach is “met with hostility” by a number of scientists, who believe that
safety provision, even by such trivial methods as keeping under wraps the data about the identity, should be
implemented only after the appearance of real threats, already reported to the participants of the criminal
procedure.
The use in the criminal procedure of measures of safety, regarding the witnesses and victims by the means of classification of their data engenders a problem of so-called anonymous witnesses (victims) the data about whom are not available for defense team and individuals, presenting in the courtroom. This circumstance creates obstacles for the defense team in test and evaluation of evidences of such witnesses (victims). In the literature repeatedly have been made the suggestions to confer the right to an individual in the proceeding of whom is the case, right, if available the reasons to omit of the case papers the background information of “prosecution witnesses” (Tomin 1991). Lacking of data about the identity of the anonymous witness, the defense team can’t present in the rebutment of evidences the arguments of the possible interest of the witness in the outcome of the case, his inability objectively perceive the events of surrounding reality. In other words, the information about the identity of the witness has a fundamental importance for the assessment of his/her testimony. If these data are not available, it increases the probability of faulty assessment of reliability of evidences of the witness that can lead to the judicial error.

To comply with the international and legal and constitutional provisions the use of the mentioned measure to defend the victim should be marked with the additional guarantees that the procedure of judicial procedure was generally fair. Taking into the consideration the practices of ECHR (for example, judgment in case of Van Mechelen (Van Mechelen) and others against Netherlands on 23.07.97) (European Court 2000), to the additional guarantees of this measure of security refers:

The existence of sufficient justifications for the use of security measures, i.e., the procedural evidences, concerning the real threat to the life, health or property of the mentioned individuals. Any measures, restricting rights should be determined by the strictly necessity and therefore keeping under wraps from the protection of information about the identity of the witness is permitted only if impossible to use other, less drastic measures; the identification of identity of witnesses by the authorities, leading the processes, justification of reliability and credibility of evidences of these witnesses. The Latvian legislation provides the necessity of pronouncement of reasoned decree, directing the process of an individual and obtaining consent of the prosecutor to use safety measures;

The evidences of “secret” witnesses must be supported by the other evidencesand prosecution should not be based only on decisive extent on anonymous statements;

The provision to the defense the sufficient opportunities to ask questions to “secret” individuals. The accused has the right to interrogate himself the witnesses, who testify against him (section “e” of the 3rd Article of the International Covenant on Civil and Political Rights (section 3 “d” of the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms) (Sinichkin 2010).

To use the pseudonym, it is necessary to have in the case the evidences of real threat, in one or another way informed to a specific participant of criminal procedure. Among all measures of defense the most significant is not the inclusion in the protocol of investigative activity the personal data of the victim, his representative or witness. In protocols of the investigative actions are not specified not only the original data, but also any information which allow to identify the “secret witness” (Brusnicyn 2005). According to the part 1 of the Article 305 of CL for non-observance of due process of law of the special defense of individuals, as well as for the disclosure of identity data of the defended individual or his location, committed by an individual, who in the connection with fulfillment of the official duties or other circumstances were known the information about the specially defended individual and who was warned about the non-disclosure of this information is punished by the deprivation of freedom for a term up to one year or short-term deprivation of freedom or compulsory labor or penalty.

Intentional divulgence to the organization the methods, tactics, means of measures for the special defense or information involved into the implementation of measures to defend individuals, who committed by the defended individual, if in the result of these actions has come the death of an individual or were caused the other grave consequences are punished by the deprivation of freedom for a term up to one year or short-term deprivation of freedom or compulsory labor or penalty (part 2 of Article 305 of CL). Relating to the grounds of use of safety measures of ECHR, examining the case of Van Mechelen, pointed out that should be evaluated the real threat of revenge” and to consider the issue “whether the applicants will be able to carry out such threats or incite others to do it on their behalf”. As an argument in favor of the absence of grounds to use the pseudonym for one of the cases of ECHR pointed out that the “witness”, who at the early stages of
consideration of case identified one of the applicants as an individual, who committed crime and who didn’t use the protection of anonymity and never claimed that he was threatened” (Resolution of the European Court ...2000). Thus, the threats to witnesses may be taken as a justification of defense of the victim or the other witnesses to whose address such threats haven’t yet been received, but based on the situation may come or to be implemented.

In another decision of ECRH pointed out that the “investigator” apparently took into the consideration the nature of the environment of drug dealers, who….. used part of the threat or actual violence against addicts or other individuals, who gave evidences against them. Thus, the witnesses may fear reprisals on the part of drug traffickers and risk to sustain a bodily injury (The resolution of the European Court of Human Rights… 2006). On the basis of the above mentioned ECRH is not limited the reported cases only by those cases in which criminals come to the victim and express him/her the threats. It is referred to the threat not as about the characteristic of the situation in which there is a high probability of influencing on a witness (the threat of revenge, murder, bodily injury and etc.).

We believe that the form of the data, concerning the threats of security should not be associated only with requirements, specified to the evidences. However, it should be taken into the consideration that the regulation of specific security measures, relating to the property restrictions of the rights of citizens, provides for increased requirements for the justification of necessity of their use. For example, the bail hearing in the terms of confinement under guard as a means of ensuring safety (part 1 of the Article 274 of the CPL) require the judicial decision, getting of which without the evaluation of evidences is impossible (part 1 of the Article 274 of the CPL). Taking into the consideration the rigorous approach of the legislator to the use of preventive measures, including for the safety assurance of participants of the criminal procedure, is extremely interesting the practice of confinement under guard in the mentioned purposes. The study of the materials of the criminal cases, sent with the petition on the selection of the named measure in court, allowed to revealed in all cases the possibility of influence on the participants of the criminal procedure was confirmed by the indirect data, in most cases – information that to the suspected (accused) are known the data of the victim’s identity (usually in the cases of violence), witness (in cases of crimes, related to the illegal drug trafficking).

We note that in the sentence of the European Court of Human Rights on 26.04.2005 with the regard to case of Chodecki v. Poland was stated that confinement under guard is applied in the case, if the illegal actions of the suspected individual are in conflict with the public interests which must be evaluated higher than the freedom of one individual. Having studied the data of statistics of Latvian the first half of 2014 on the use of measures of procedural compulsion and procedural sanctions at the stage of pre-trial procedure at the level of the first-instance courts, it is possible to conclude that confinement under guard is used most of all the other measures of procedural compulsion. It was applied to 869 individuals and in 119 cases was dismissed in its use. The total number of used measures of procedural compulsion constitutes 912. It is important to point out that confinement under guard is the most restrictive measure of procedural compulsion which is largely restricts the human rights. One of the guarantees of rights of defense is the provision of assistance to defender of an individual in respect of whom has already been sentenced in considering his/her case by the court of second instance. ECRH in ruling of 13th May 2013 with regard to case of Artico (Artico) against the Italy (Ilyin 2005) on the 25th of April 1983 with regard to case of Pakelli (Pakelli) against the Federal Republic of Germany (Ilyin 2005) based on the fact that failure to submit to the sentenced individual of such assistance, if he/she has no sufficient means to pay for services of defender and if it requires the interests of justices is a violation of rights guaranteed by subparagraph “c” of section 3 of the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, within the meaning of the above mentioned rules in the presence of the corresponding application on the part of convicted the court must ensure the participation of the lawyer at this stage (Sinichkin 2010). The appointment of the lawyer should be implemented in the order of the articles 80, 84 of the CPL.

In addition, inadmissibility of divulgence of data of pre-trial investigation is possible to expend to the concept of inadmissibility of divulgence of the mere fact of investigative proceedings. And with this position we should agree as the regular use of provisions of CPL that will allow warning the participants of investigating actions
about the non-disclosure of data of pre-trial proceeding under the subscription with warning about the criminal responsibility, thus will contribute to the safety of witnesses and victims.

International acts in the field of human rights and fight against, providing the possibility to consolidate in the legislation the interrogation under pseudonym, at the same time establish that at that should be taken measures, providing the proportionality, related to the use of such means the restrictions of rights for defense and pursued aim, as well as allowing to protect the interests of accused in order to keep the fair nature of trial and the rights of defense would not have been completely deprived of its content. It is to be agreed with the opinion of Professor Sheshukov (1997) that the Latvian version of safety assurance of individuals, promoting justice, although taking into the consideration to some extent the international practice and contains benefits still suffers, in our opinion, quite significant disadvantages.

Conclusions

First of all, it is impossible to agree with the idea of the special procedural defense as a combination of not only specific procedural means, but as means of other legal defense used outside the criminal and procedural activity (security, change of location, job, identification data and etc.). All the combination of means of remedies introduced by the legislator of Latvia would be possible with some degree of conventions; it is needed to divide them into two groups and defined themas 1 – special procedural defense and 2 – special legal defense, radically different in principles of defense and their legal consequences. Namely the last circumstance is determined the necessity of delamination of subjects authorized to use one or another type of defense (Sheshukov 1997).

The analysis of positions of scientists in the field of providing of defense of rights and safety of participants of criminal proceeding, the conclusions made by the author in the course of this research, as well as the given practical positions and statistics provide the evidence of the further improvement of rule-making process for the research of institute of providing of defense of rights and safety of participants of criminal proceeding in Latvia.

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Šileika, A.; Bekerytė, J. 2013. The theoretical issues of unemployment, poverty and crime coherence in the terms of sustainable development, *Journal of Security and Sustainability Issues* 2013 2(3): 59–70. DOI: [http://dx.doi.org/10.9770/jssi.2013.2.3(5)](http://dx.doi.org/10.9770/jssi.2013.2.3(5))


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INTRODUCTION

Changes in the global environment inevitably lead towards harmony and responsibility. Recently more and more attention is paid to the companies, whose activities are based on the principles of corporate social responsibility (CSR hereinafter). Together with the development of socially responsible business ideas, opportunities to invest into such business appeared. Investing in socially responsible business is called as socially responsible investing – it is the practice of incorporating environmental, social and governance factors into the decision making (Umlas 2008; Šimberová et al. 2015; Laužikas, Mokšeckienė 2013; Wahl, Prause 2013; Tvaronavičienė et al. 2014; Ignatavičius et al. 2015; Goyal, Sergi 2015; Endrijaitis, Alonderis 2015; Scaringelli 2014; Dzemyda et al. 2015; Caurkubule, Rubanovskis 2014; Prause 2014; Bikas et al. 2014; Prause, Hunke 2014; Raudeliūnienė et al. 2014; Vasilūnaitė 2014; Mathur et al. 2013; Tvaronavičienė et al. 2013; Laužikas, Dailydaite 2013; Caurkubule, Rubanovskis 2014). Such investors see the investment as an extension
of their life – style or identity (Glac 2009). Umlas (2008) call such investors, unlike traditional or mainstream investors, as long-term investors because their goals go beyond return on investment to broader aims such as changing corporate behavior or increasing corporations’ accountability for their impact on society.

Socially responsible investments can be directed in three major directions: financial profitability of the investment, company's social activities and ecological integrity (Pivo 2005). Not always such integrity can be easily achieved; it depends on many factors, such as creativity, susceptibility to innovations, entrepreneurship eco-system etc. (Laužikas, Mokšeckienė 2013; Wahl, Prause 2013; Tvaronavičienė et al. 2014; Ignatavičius et al. 2015; Goyal, Sergi 2015; Scaringelli, Dzemyla, Caurkubule, Rubanovskis, 2014; Prusa, Raudeliūnienė et al. 2014; Vasiliūnaitė 2014; Mathur et al. 2013; Laužikas, Dailydaitė 2013; Caurkubule, Rubanovskis 2014).

With the social-economic development of the society, the number of relatively new – socially responsible funds has been increasing significantly during the past few years (Plakys 2009). Typically, such mutual funds concentrate in socially – economically strong and attractive countries or sectors (Bivainis, Volodzkienė 2008). For example, during the past few decades, Europe took the biggest part in the world (approx. 65%) of total assets in socially responsible investment market that is mainly inspired by growing number of such funds, especially in countries such as Belgium or France. Despite this fact, Baltic States market is still lagging behind significantly. Therefore, the main purpose of this paper is to analyze the opportunities of investment in socially responsible business in Lithuania.

2. CSR as the basis of socially responsible investment

Together with the changing role of the business, nowadays investing got a different meaning – as a socially responsible investing. SRI concept has been changed from the very beginning when it was associated only to the moral side of the investors. Nowadays SRI has wider and more flexible meaning – emphasizes not only the ethical or moral aspects, but the financial returns are no less important for the investor (Slapikaitė, Tamošiūnienė 2013).

As more and more investors are willing to incorporate their social and environmental beliefs into the investment decisions, socially responsible investing became a steadily growing market segment. Generally, socially responsible investing can be described as an investment strategy that seeks to maximize both financial return and ensure social welfare (Slapikaitė, Tamošiūnienė 2013; Howell 2008). Or in other words, it is trying reconcile two different objectives - investing for profit and implementation of social environment. Also it can be defined as a process that includes social activities and investing in environmental sectors capabilities (Bello 2005; Plakys 2009; Fowler, Hope 2007).

Talking about the content of such investments, it should be noted that socially responsible investing is essentially interested in promoting the adherence to the positive aspects of the company’s activity that are implemented through the corporate social responsibility strategy. But it also pays a lot of attention to industries and companies that act as “bad” for society. These industries and companies that include businesses involved in gambling, tobacco, weapons and alcohol are called as „sinful“ investment categories and are often eliminated from the investment portfolio (Carter 2007).

Although according to many economic theories, the primary role of business is profit maximization, recently the role of business in the society has been changed – it is expected from the business to be more active in actions related to social, environmental issues and other challenges, not only profit oriented (Kinnel 2009; Slapikaitė, Tamošiūnienė 2013). So, corporate social responsibility can be considered as a wide range of processes covering the entire product or service development process and environmental, social, financial and ethical aspects that affect the process. The main principles of corporate social responsibility are (Bagdonienė, Paulavičienė 2010; Climent, Soriano 2011; Rutkauskas et al. 2008):
Due to the economical and cultural specifics, application of CSR principles in Lithuania is still at an early stage of growth – there are not many companies and public organizations (non-profit organizations, business associations, academic societies) that apply CSR strategy in their everyday business, no CSR index fixed or CRS forum established yet. Therefore, the discussions about socially responsible investing have launched recently, accordingly issues and related problems about forming investment funds of such businesses are not widely analyzed in Lithuania. In view of the current situation, the next parts of this paper will be appointed for the analysis of socially responsible investment opportunities’ specifics in Lithuanian market.

3. Theoretical aspects of investment portfolio formation

The investment portfolio is described as a pool of financial assets – bonds, shares or derivative securities that can be formed in two different ways. The first one is when primarily deciding by what asset classes the portfolio should consist of, later the securities are selected. This way is called as “from the top to the bottom”. The second way is when selecting the most attractive securities without paying attention to the asset class – this way is called as “from the bottom to the top” (Valakevičius 2011).

In the traditional literature about investment portfolio formation, only two factors are assumed to directly influence the investment optimization problem:
- The expected portfolio return (positively influence);
- Risk (negatively influence) that is usually measured by the variance of returns.

Socially responsible investing that seeks to maximize both financial return and social good seek additionally includes social criterias into the portfolio formation. Investors that invest into socially responsible companies believe that by combining certain social criteria with rigorous investment standards, they can identify securities that will earn competitive returns and help build a better world (Glac 2009). Also, it is believed that companies that meet higher standards of social responsibility tend to be a better positioned for long-term performance and carry lower risk (Bogoslaw 2008; Cortez et al. 2009; Kalwarski 2008).

Despite the above mentioned differences, both types of investments, traditional investment and investing in socially responsible business, should be evaluated and compared according to the same principles – profitability, risk and diversification of the portfolio. According to the modern portfolio theory devised by H. Markowitz in year 1952 each investor seeks to maximize the expected portfolio return and minimize risk. In order to asses the set of he portfolios, the return of each portfolio and the standard deviation of the profitability should be calculated. H. Markowitz theory identifies three assumptions, which are made by the investors (Žilinskij, Rutkauskas 2012; Dzikevičius 2004; Chieffe et al. 2009):
- Investors care about profit and avoid risk;
- Decisions are rational;
- Decisions are made in order to maximize the benefits.

A comprehensive portfolio assessment requires the following data (Žilinskij, Rutkauskas 2012):
- Expected profitability of each financial instrument (in this research only shares will be used);
- Standard deviation of the profitability as the risk measure of each financial instrument;
- Covariance as the profitability proportion ratio of each financial instrument.

Although H. Markowitz theory gets a lot of criticism, as the portfolio cannot be solely measured by the standard deviation and average return, nevertheless the advantages of the modern portfolio theory will be used in the research – profitability and risk measures will be calculated and compared as the most important indicators of the investment portfolio performance:
(a) Treynor ratio that combines both – the profitability and risk. The higher Treynor ratio – the better it is. And if Treynor ratio is higher than the benchmark it means that the portfolio can be considered as efficient in accordance with market;

(b) Beta coefficient that measures the sensitivity of a share price to movement in the market price. If Beta coefficient is negative, the returns of stocks move to the opposite direction than the market. A beta below 1 can indicate investment with lower volatility (risk) than the market, Beta more than 1 can indicate higher volatility (risk) than the market);

(c) Sharpe ratio uses standard deviation to measure a fund’s risk-adjusted returns. The greater the standard deviation is - the greater portfolio’s volatility;

(d) Jensen’s alpha measures the risk-adjusted performance of an actively managed portfolio comparing to the market returns. A positive Alpha means that a portfolio has beaten the market, while a negative value indicates underperformance. (Rutkauskas, Martinkutė 2007; Valakevičius 2011)

The main axes for evaluating performance, as it was discussed before, are financial return and risk. Measuring the risk is not enough to compare different investments – the financial return should be evaluated as well. Therefore, the average profitability of the portfolios will be calculated as well.

4. Socially responsible business at Vilnius Stock Exchange

After discussing the concept of social responsibility and its driving forces, this part of the paper will analyze socially responsible investment opportunities in Lithuania based on the information available at Vilnius Stock Exchange (or Nasdaq OMX Vilnius). It is important to emphasize the fact that companies listed at Nasdaq OMX Baltic (including companies listed at Vilnius Stock Exchange) are classified according to the activities into certain industries. Classification into industries is based on Global Industry Classification Standard (GICS hereinafter) includes further sectors:
- Energy;
- Materials;
- Manufacturing;
- Consumer goods and services;
- Daily consumption of goods and services;
- Health care;
- Finance;
- Information technology;
- Telecommunications;
- Utilities (maid service).

The Figure 1. shows that most of the companies (47% of total or 15 companies) listed at Vilnius Stock Exchange are classified as consumer goods and services industry (industry 3000). The second place is for manufacturing industry (2000) where 6 companies at Vilnius Stock Exchange are assigned. The third place take companies from the Utilities industry (7000).
The company that declares itself as a socially responsible company, does not give the possibility to measure the performance of its socially responsible activities in the scope and quality. One of the criteria to show that the company can be considered as a socially responsible globally is being a member of the United Nations Global Compact (UN Global Compact). The worldwide largest voluntary corporate social responsibility initiative – UN Global Compact brings together businesses and organizations, United Nations Organization (UNO hereinafter) and the civil society on the basis of established universal principles in areas such as human rights, workers’ rights, environmental protection and the fight against corruption.

While analyzing Lithuanian companies that belong to the mentioned agreement (UN Global Compact), it is noted that this agreement has been accepted by 84 companies and organizations in Lithuania. Comparing to the other Baltic countries Lithuania is the leading country, in Latvia this Agreement has only 11 members - companies and organizations, in Estonia only 5 - mostly small and medium-sized enterprises. Figure 2 shows Global Compact’s members in Lithuanian by the type of organization. Small and medium-sized enterprises are dominating and compound 43% of total number of companies. The main obstacle to the development of CSR is that in Lithuania there is too little disperse of CSR practices that demonstrate the business benefits of CSR. Therefore, it is often that CSR is understood as extra-cost operations and its value for the company is almost immeasurable.

**Fig. 2.** UN Global Compact members in Lithuania
In order to examine the extent of socially responsible companies at Vilnius Stock Exchange, it is important to set the criteria by which a company can be considered as a socially responsible. In this research companies are selected to the portfolio if it meets any two of the below mentioned criterias:

- The company is the member of UNGlobal Compact;
- The company is the member of Lithuanian Association of the Responsible Business (LAVA), representing office of UN Global Compact in Lithuania, and extension of the activity of former organization NAVĮT (National Network of Enterprises);
- The company provides public reports about its socially responsible activity.

Source: www.unglobalcompact.org
Table 1. Socially responsible companies listed on Vilnius Stock Exchange market

<table>
<thead>
<tr>
<th>Company</th>
<th>Full name</th>
<th>Market</th>
<th>Industry Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>APB</td>
<td>Apranga</td>
<td>Vilnius Stock</td>
<td>Daily consumption of goods and services</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>CTS</td>
<td>City Service</td>
<td>Vilnius Stock</td>
<td>Industrial goods and services</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>IVL</td>
<td>Invalda</td>
<td>Vilnius Stock</td>
<td>Financial services</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>SAB</td>
<td>Šiaulių bankas</td>
<td>Vilnius Stock</td>
<td>Banks</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>LES</td>
<td>LESTO</td>
<td>Vilnius Stock</td>
<td>Utilities sector</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>TEO</td>
<td>TEO LT</td>
<td>Vilnius Stock</td>
<td>Telecommunications</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>UTR</td>
<td>Utenos trikotažas</td>
<td>Vilnius Stock</td>
<td>Personal care and household goods</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange</td>
<td></td>
</tr>
<tr>
<td>LNR</td>
<td>Lietuvos energijos</td>
<td>Vilnius Stock</td>
<td>Utilities sector</td>
</tr>
<tr>
<td></td>
<td>gamyba</td>
<td>Exchange</td>
<td></td>
</tr>
</tbody>
</table>

Source: http://www.nasdaqomxbaltic.com市场/?pg=industry&list%5B%5D=BAMT&list%5B%5D=BAIT&list%5B%5D=BAFN&sectors%5B%5D=8000

While analyzing companies listed on Vilnius Stock Exchange, it was determined that from the 32 listed enterprises only 8 of them are acting in accordance with the principles of social responsibility and meet formerly mentioned socially responsible business criteria (Table 1). Therefore, it is obvious that the idea of socially responsible business is not very popular among Lithuanian enterprises and the possibilities of socially responsible investment portfolio creation are rather limited.

From all of the socially responsible companies listed on the Vilnius Stock Exchange, two of them (Invalda, Šiaulių bankas) are assigned to the financial services industry, other two companies (Lesto, Lietuvos energijos gamyba) to the utility sector. The rest of the companies belong to the different industries. So, as the research results show, there are limited socially responsible companies listed on Vilnius Stock Exchange and they all operate in different industries. Forming the investment portfolio of such companies, the investments might be rather well diversified and that could accordingly reduce the investment risk.

In order to compare the investment portfolio formed by socially responsible companies to the traditional investment portfolio in risk and return, there should be selected the same industry first. Another important thing for comparison of the investment portfolios – to select similar sized companies in volume of sales and equity.

4. Investment portfolio’s formation – portfolio of socially responsible business versus traditional portfolio

For the further survey there were formed two different investment portfolios – one consisting of four socially responsible companies (SAIP1 hereinafter), another consisting of four ordinary companies that are acting in the same industry as socially responsible companies (TIP1 hereinafter). Each company’s shares takes equal proportion in the portfolio – 25 percent. The amount invested into each portfolio is 8 000 LTL and the portfolios were formed according to 04/01/2010 stock prices (Table 2).
After forming the portfolios, the following step is comparative analysis - the portfolios will be compared in portfolio returns, standard deviations, Sharpe and Treynor ratios, Beta and Jensen’s alpha. The profitability of the portfolios will be measured for the period 04/01/2010 – 17/01/2011, the risk ratios will be measured for 04/01/2010.

4.1. Portfolios’ profitability analysis

The analysis of the portfolios’ profitability was started on 04/01/2010, for 17/01/2011 the biggest price rise in portfolio SAIP1 was fixed of VBL company (Vilniaus baldai) - stock price jump by 73.95% and APB (Apranga) by 60.86%. In portfolio TIP1 the biggest changes were fixed to PTR company – stock prices rise by 48.46% and to KBL company (52.12%). Comparing the results, prices of socially responsible companies’ shares has rose more in the period 04/01/2010 – 17/01/2011 comparing to the ordinary companies (Table 3).

Table 3. SAIP1 and TIP1 portfolio profitability analysis, period 04/01/2010 – 17/01/2011

<table>
<thead>
<tr>
<th>PORTFOLIO - SAIP1</th>
<th>PORTFOLIO - SAIP1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Stock price, 04/01/2010</td>
</tr>
<tr>
<td>CTS</td>
<td>6.48</td>
</tr>
<tr>
<td>APB</td>
<td>2.70</td>
</tr>
<tr>
<td>UTR</td>
<td>1.14</td>
</tr>
<tr>
<td>VBL</td>
<td>8.99</td>
</tr>
<tr>
<td>Total:</td>
<td>3,026</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PORTFOLIO - TIP1</th>
<th>PORTFOLIO - TIP1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Stock price, 04/01/2010</td>
</tr>
<tr>
<td>PTR</td>
<td>1.07</td>
</tr>
<tr>
<td>LNS</td>
<td>0.08</td>
</tr>
<tr>
<td>SNG</td>
<td>0.17</td>
</tr>
<tr>
<td>KBL</td>
<td>0.52</td>
</tr>
</tbody>
</table>

Source: http://www.nasdaqomxbaltic.com/market/?pg=stats&lang=lt
Accordingly the portfolios’ values were calculated for the closing day 17/01/2011. Portfolio’s SAIP1 value was 19,111.26 LTL, and it means that the fund has generated more than twice of the invested funds including dividends. Meanwhile portfolio’s TIP1 value was lower and amounted to 13,914.03 LTL for the end of the period and that means that the portfolio of socially responsible companies is more profitable comparing to the traditional portfolio.

4.2. Portfolios’ performance and risk analysis

Continuing the analysis of two different portfolios, the next step is performance and risk analysis. In order to assess the variability of stock returns, the standard deviations must be calculated. The higher average standard deviation of the profitability means the greater deviation from the average yield – which in turn means the higher risk. The average profitability of the portfolio is the average return of all stocks profitability average, while the standard deviation is not equal to the average of the stocks standard deviations. The standard deviation of the portfolios is calculated based on the correlation and covariance between the stocks of the companies (Table 4).

Table 4. Portfolios’ performance and risk indicators comparison, period 04/01/2010 – 30/12/2010

<table>
<thead>
<tr>
<th></th>
<th>The average quarterly profitability</th>
<th>The standard deviation of the portfolio</th>
<th>Beta</th>
<th>Treynor ratio</th>
<th>Sharpe ratio</th>
<th>Jensen’s alfa</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAIP1</td>
<td>20.31%</td>
<td>10.53%</td>
<td>0.92</td>
<td>17.78</td>
<td>1.55</td>
<td>8.32</td>
</tr>
<tr>
<td>TIP1</td>
<td>16.90%</td>
<td>17.28%</td>
<td>1.92</td>
<td>6.74</td>
<td>0.74</td>
<td>-3.83</td>
</tr>
</tbody>
</table>

The average quarterly profitability of SAIP1 portfolio was higher (20.31%) comparing to the traditional portfolio TIP1 average quarterly profitability – 16.90%. Traditional portfolio standard deviation was greater (17.28%) comparing to the socially responsible investment portfolio standard deviation (10.53%) which in turn means the higher risk of TIP1 portfolio. The higher standard deviation of TIP1 portfolio was mainly caused by company’s SNG shares with the standard deviation of 28.03%.

Beta of TIP1 portfolio was almost twice higher than Beta of SAIP1 portfolio, which confirms the assumptions that the risk of TIP1 portfolio is higher comparing to SAIP1 portfolio risk. Also Beta ratio indicates that all companies shares are moving to the same direction as OMX Vilnius Index return.

Further estimating Treynor ratio which measures the efficiency of the portfolio based on risk (calculated Beta), or also called as reward-to-volatility ratio. Parallel evaluation of the portfolios indicates that SAIP1 portfolio has much better efficiency (SAIP: 17.78, TIP1: 6.74). As Sharpe ratio is related to Treynor ratio, it also shows better results of SAIP portfolio (Sharpe ratio 1.55) comparing to TIP1 portfolio (Sharpe ratio 0.74), and that means better efficiency of the portfolio management – each risk unit have more gain. Summarizing the results
of two different portfolios, it is obvious that the portfolio of socially responsible business (SAIP1) is more attractive on efficiency and risk basis.

In order to compare portfolios’ results to OMX Vilnius Index, Jesnen’s alpha was calculated. The ratio helps to indicate how portfolio ensures adequate returns in comparison to its risk. As seen from Table 4, Jensen’s alpha of TIP1 portfolio is negative (-3.83) and that means that the portfolio’s results are worse comparing to the market. And vice versa, SAIP1 ratio was positive (8.32) – that means that the formed portfolio generates better results than OMX Vilnius Index.

Conclusions

Socially responsible activity of the company is being determined by moral and material driving forces. Recently more and more companies with the main purpose – profit maximization together declares some more aims – such as sustainable development of the company, closer and more sustained business relations with interested parties: suppliers, customers, investors, government institutions.

The essence of socially responsible investing is not only focusing on investor’s needs but also on selected investment’s influence on society, employees, environment and market in which the company operates. Socially responsible investment funds are different from the traditional due to the companies that are included into the portfolio. Social activities of the companies can be assessed by positive filtering – responsible use of resources, education and training of the employees and society, equal rights and opportunities, etc., or by negative filtering – animal testing, tobacco or alcohol production, abuse of labor force, impact on the environment or other negative aspects.

From 32 companies listed on Vilnius Stock Exchange market, only 8 companies met the selected socially responsible criterias. For the further survey there were formed two different investment portfolios – SAIP1 of socially responsible companies and TIP1 of traditional companies. All selected companies were acting in the same industry. Also, while forming two different investment portfolios, it was found that there are limited opportunities to select socially responsible companies similar in size and sector to the traditional companies.

The portfolios were analyzed during the period 04/01/2010 - 17/01/2011. The research results show that SAIP1 portfolio generated better profitability results than TIP1 portfolio. Also, there was made efficiency and risk analysis of the portfolios for the period 04/01/2010 – 30/12/2010, and the results moved to the same direction – SAIP1 portfolio was more efficient and less risky compared to the traditional portfolio. Nevertheless, it should be noted that reliability of the research results is limited due to the small sample size - there are not so many socially responsible companies listed on Vilnius Stock Exchange market, also the selected periods are rather short. Therefore, the research results could be more precise by selecting wider sample size – including socially responsible companies established in other countries as well or selecting informal socially responsible criterias, not only official ones.

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COLLABORATIVE LAW AS A TOOL FOR MORE SUSTAINABLE DISPUTE RESOLUTION

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Abstract. The goal of this research is to define the concept of collaborative law and distinguish main characteristics of such dispute resolution procedure that can let us consider it as bringing society towards more sustainable dispute resolution. Thus the object of the research – collaborative law, as dispute resolution procedure, its main features and capability to be qualified as sustainable. The research is composed of introduction, three parts and conclusions. Introduction provides a brief overview of the object of that research and its goal, part one describes the evolution of collaborative law, in part two concept of collaborative law and its main characteristics are overviewed and in the third part analysis of sustainability in collaborative law process is presented. Conclusion gives main ideas of the assignment of that work in brief.

Keywords: sustainability, sustainable dispute resolution, alternative dispute resolution (ADR), mediation, collaborative law, litigation.

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JEL Classifications: O1, K00, K2

1. Introduction

Sustainability in contemporary society is a sign post for its development, adding new value but as well as creating new challenges. The striking feature of the sustainable development is that it ties together different areas of our life and activities, including but not limited to environmental concerns: social, political, and economic (Kaminskienė, Zaleniene, Tvaronavičiene, 2014). Still not all spheres of social interactions have already taken over the duty to ensure sustainability. Law and dispute resolution is one of the areas, where sustainability as a main goal for further development of contemporary society not often is discussed. As long as humans live in community, they are dealing with various conflicts. Everyone himself can decide how he should react to his conflicts with another person, will he be touched by another man needs, will he focus only on his own interests or will he choose not to engage into a conflict at all. In case of judicial conflicts, individuals, depending on their experience and knowledge, also advises given, are authorized to choose...
between litigation, arbitration, mediation, negotiation or wide range of other less popular globally methods of dispute resolution (Kaminskienė, Zalenienė, Tvironavičienė 2014), which in theory is divided into two big groups: adversarial and compromise based. In most legal systems within western countries litigation is predominant method of dispute resolution despite all its disadvantages and harm, which is being made to interrelations of the parties to a dispute. It is known that judicial process is very long, arduous and expensive. More over in most of the cases it is rather unpredictable process in sense of result, which rests solely in the hands of a third person – the Judge with granted power to impose legally binding decision on the parties. It is natural, that often parties are disappointed with the litigation result. Litigation process itself is a win-lose process, so there is almost always one party which is disappointed and willing to give an appeal. It turns dispute resolution process into a very long and complicated sequence of procedural actions mostly directed towards finding right and wrong parties than towards resolution of a dispute in its essence and rebuilding of peace. Certainly, traditional civil litigation cannot be named as truly sustainable notwithstanding last modernizations of the process (for example, court annexed mediation). What methods of dispute resolution can parallel traditional civil litigation neutralizing its imperfections and ensure more sustainable dispute resolution procedures to societies? We strongly believe that resolution of dispute in non-adversial form lead parties to a more sustainable social peace, which not only solves legal matters, but also helps parties to understand each other needs and offer mutually compromise based decisions. Such methods of dispute resolution as negotiation, mediation, facilitation bring more sustainability and grant the longevity of reached solutions. As well as collaborative law (hereinafter referred to as CL), which is the main subject of this research. Christopher M. Fairman (Fairman 2005) has named CL - an alternative dispute resolution (hereinafter referred to as ADR) newcomer, Pauline H. Tesler – “the next-generation” dispute resolution mode (Tesler 2001). As it was summarized by Susan Daicoff (Daicoff 2009), CL is non-litigate, non-adversarial mode of dispute resolution that emerged in 1990 as an alternative to existing modes of dispute resolution. It was stated that CL had a “meteoric rise” throughout the United States and Canada (Daicoff 2009). Collaborative law is such an exciting ADR model that many professionals wonder aloud why no one thought of it sooner (Gutterman, 2004). Collaborative law is oriented towards peaceful dispute resolution and seeks not only to formally find answers to legal issues, but searches for mutual agreement and orients dispute resolution process towards reestablishment of relations. Bearing in mind that such approach often leads to restoration of social peace, which is widely recognized as an inherent part of the conception of sustainable development (Langhelle 2000, p. 318), the goal of this research is to survey the evolution and concept of CL, also distinguish its main characteristics, searching for possibilities to qualify it as one of the methods of sustainable dispute resolution.

The subject matter of this article has not been addressed in legal literature yet. It is easy to find sources about sustainability and sustainable development in non-legal matters (for example Redclift 2005; Beckerman 1994; Norgaard 1988, etc.) as well as alternative dispute resolution (for example Riskin & Westbrook 1997; Nolan-Haley J 2001; Kaminskiene 2011 etc.) and collaborative law (Webb 1990; Tesler 1990; Gutterman 2004), but not linking together sustainability and new form of ADR – collaborative law. This article is mostly based on works of Stu Webb and Ron Ousky who can undoubtedly be named pioneers of CL since revealed the history and origins of the collaborative practice, Susan Daicoff, who has performed the broad analysis of CL, also Sherrie Abney, who looked at the CL beyond family disputes.

The authors present their research based on the following classical methods of social research: analytical, documental, historical, logical, systematic method and method of generalization.

2. Origins and the History of Emergence of Collaborative Law

The need of alternatives to a traditional litigation was clearly announced by legal practitioners and scientists in the middle of XX century. Step by step such methods of ADR as negotiation and mediation have entrenched in legal system of United States of America, Canada as well as big part of European Union member countries (United Kingdom, Sweden, Austria, Italy etc.). Still CL should be treated as one of the youngest ADR procedures that was developed by an attorney at law Stu Webb in United States of America in 1990 (Webb, Ousky 2011) to control the destructive and emotionally debilitating effects of divorce litigation (Tesler 2001). Despite the fact that some lawyers were practicing such method before, Stu Webb provided for CL definition.
and main rules of this process. The founder of CL was inspired to find a new approach towards dispute resolution and even developed a new legal profession – collaborative lawyer. After examination of various methods of dispute resolution Stu Webb decided that the most promising model is when two lawyers, each representing the interests of his party, take a case and work with their clients around a table in a “four-way” configuration trying to solve the case without going to the court (Webb, Ousky 2011). According to the founder of CL, this model was quite successful till one crucial issue has arisen. It appeared that number of lawyers is not interested in resolving disputes without litigation as they tend to see litigation as the best source of their income in legal practice. After such discovery, the main rule of CL was formulated: if you are a settlement (collaborative) lawyer, you withdraw from the case if it doesn’t settle and do not participate in the subsequent litigation process (Webb, Ousky 2011). After establishment of such rule as a fundamental idea of CL, Webb declared himself a collaborative lawyer and the new, collaborative approach began to develop.

It should be noted, that CL may be named as one of the hybrid processes of ADR, clearly developed from one of the basic ADR procedures – negotiation. Such origins of CL position it as a special form of legal negotiation, where parties are working together with each other and professional lawyers seeking peaceful dispute resolution without going to the court, thus - they are representing their clients only at pre-litigation meetings, but never at court hall.

From the 1990 till today CL practice has spread through the United States and grown from America to Canada, Europe and Australia (Rubin 2009). There were more than twenty years for innovations but at the same time the core element, that unique twist (Fairman 2005) of CL, the withdrawal provision (disqualification agreement), has remained the same. It should be stated, that CL firstly was applied mostly in family disputes. Nowadays it is applied in business cases as well, because ‘[t]he dissolution of a business can be as stressful as a divorce and in many cases is quite similar’ (Laredo, Bass 2013). And it is not the only fields of law, where CL is successfully applied. As F. S. Mosten presume: ‘The current nascent efforts to extend the collaborative process to business, probate, personal injury, intellectual property and other non-family areas of the law will continue and grow over the next two decades’ (Mosten 2011). CL is widely recognized as successful method to deal with disputes, which are accompanied by high level emotions and rise between people that are connected by long lasting relations.

3. Concept and Main Characteristics of Collaborative Law

As it was mentioned above, CL originates from legal negotiation and has emerged as an ADR method developed to neutralize negative side-effects of classical litigation. According to S. Webb, main litigation problems that lead to disappointment of the parties by civil litigation are the following:

1. The discouragement of open communication, when clients are in the background and only their lawyers communicate.
2. The emphasis is placed on competition, “winning” and “losing”, forgetting that common concern, and thus – common agreement between the parties should exist.
3. The difficulties in developing true facts without exaggeration and the tendency to hold back information.
4. The polarization of issues.
5. The escalation of parties’ feelings that lead to counter-attacks.
6. The lawyer’s alignment with a client’s view of facts, not trying to challenge the position of a client in order to see things in a more realistic manner.
7. The lawyer taking on the client’s problems.
8. The lawyer taking on responsibility for resolving conflict.
9. The diminishment of collegiality between lawyers with personality disputes or ego battles between them (Webb, Ousky 2011).

These characteristics of litigation led towards creation of inverse procedure, where lawyers are interacting between each other and their clients in order to figure out the mutual agreement. It turned to collaborative law that can be defined as a process for clients and their lawyers to agree to resolve their dispute through direct communication without involving courts (Rubin 2009). This process eliminates third-party decision makers and litigation, and at the same time seeks to resolve disputes with parties’ relationship remaining as intact as
possible. The clients are stimulated to look at the future for joint solutions and not to blame each other as in litigation process (Abney 2014). The idea of collaborative process is simple; it is a new type of ADR that puts more pressure on parties and their counsel to agree to an out-of-court agreement (Weidmer 2011). This is a voluntary, non-adversarial method of resolving conflict with win/win (not win/lose as in litigation) approach.

In order to reveal the concept of CL it is necessary to analyze its main characteristics, which make it different from legal negotiation so usual in contemporary society and mediation. First of all, the role of the lawyer in the dispute resolution process is different – the lawyer’s task is not to ‘divide the pie’ zealously seeking to get the biggest part of it for his client, but to foster collaboration between the parties in a problem-solving mode and enable them to ‘enlarge the pie’. According to P.H. Tesler (Tesler 2001), ‘unlike mediation, which uses a neutral, either as the sole professional or as the dispute-resolution manager of a process that includes adversarial counsel for the parties, CL, by contrast, has each party represented in negotiations by separate counsel whose role is limited to helping the clients reach agreement’. For some scientists lawyers-representatives in CL even look like co-mediators as they strive to negotiate a final result (Exon 2014).

Secondly, as it was mentioned above, lawyers, who are involved in CL procedures disqualify themselves from further representation of clients in subsequent court or arbitration proceedings. The participation agreement is the essential element of collaborative process (a “linchpin” feature or the hallmark); without this agreement signed a case cannot be called a collaborative case (Rubin 2009; Abney 2014; Daicoff 2009; Cameron 2011; Caruana 2010). There are three reasons, why this essential feature of CL is so important: clients are not afraid of the threat of litigation and they are sure they want to resolve dispute collaboratively; the lawyer’s focus on the settlement is 100 percent (so the process itself is going faster, cheaper, fairer); and parties are more honest with each other without a threat of the cross-examine in an adversarial proceeding (Abney 2014). Also disqualification agreement removes ‘prisoner’s dilemma’ and gives to the parties the freedom to choose the lawyer who fits with their wishes, interest, cost, etc (Daicoff 2009). This golden rule makes a fundamental ground of CL but also often serves as disadvantage of that ADR procedure. Especially in non-family cases the disqualification agreement can make collaborative process unattractive, because the lawyer risks to lose his potential honorarium, whereas the client risks to lose relationship with his lawyer, also to have additional time, effort and money expenses because of a necessity ‘to invest more time and money in educating new lawyers about the case. Although this is also true in family cases, the consequences of disqualification generally are much greater in non-family cases because of the generally larger financial stakes’ (Lande 2007). Nevertheless this rule is of essential importance.

Thirdly, during the course of CL process parties refrain from inducing litigation. No one may threaten to or resort to the courts during the pendency of a collaborative law representation (Tesler 2001). This rule does not mean that parties lose their right to go to court. The parties retain their right to access the court, and if they use this right - in such case both lawyers are automatically disqualified from representation of the same parties against each other.

Another essential CL characteristic may be found analyzing the collaborative process itself. CL process consists of few stages, which all are important and complement each other. In the first stage of collaborative process every party to a dispute communicates with his lawyer privately. It can be named preparatory stage. First step of this stage is reaching and signing a participation agreement between each client and their lawyers, also known as ‘four way agreement’ (Exon 2014) to apply collaborative process, to negotiate respectfully and in good faith, openly share information without courts or arbitration. It is very important that each party to this agreement has to be willing to go forward honestly and in good faith (Abney 2014). Attorneys often offer their clients only traditional litigation and are oriented to adversarial process as well as ready to zealously fight for the interests of their clients. Such lawyers usually are skeptical towards application of CL and may take no efforts to resolute dispute in amicable way. That is way the agreement between client and his lawyer is so important and may be identified as first stage of CL process. Second step in preparatory stage is gathering information about the concerns and goals of the parties to a dispute and formulating the initial positions. According to Sh. Abney (Abney 2014) lawyers meet their clients and work with them individually in order to
reveal the origins of the conflict, the needs and interests of their clients. The lawyer also tells to the client what particular information and details about the dispute they need to disclose in the collaborative process. It should be stated, that collaborative process has to be transparent (Abney 2014). Lawyer and his client must agree on as wide as possible disclosure of information. The third step is developing of initial positions that will be presented to the opponent. Like in legal negotiation, collaborative process also requires responsible readiness to face the other party to a dispute. Still the orientation of such preparation is different. CL lawyers should orient clients to listen to their opponents and to think of a compromise based solutions, which would be mutually agreeable to the parties but not to contest with each other.

After preparatory stage the dispute resolution stage may be started. This stage also has several steps and usually begins by signing of a participation agreement (in some literature (for example Webb, Ousky 2011) the disqualification agreement). The essence of this agreement is prohibition for the lawyers that are participating in a collaborative dispute resolution to represent their clients (parties to the dispute) in court or arbitration if the dispute is not resolved collaboratively. It is important that the same agreement is signed by the lawyers and the parties. It shows that all participants of the collaborative process hold the same norms of transparency, good faith, honesty and voluntary information disclosure (Abney 2014). After signing the participation agreement face to face meetings are usually started. It has to be mentioned that from this point of the process there is no specifics in collaborative process to compare it with legal negotiation except the unique communication. During such meetings clients and their lawyers are discussing the dispute issues and trying to solve the dispute reaching a win-win type settlement. Throughout the CL process lawyers speak to each other between meetings, clients may speak to each other between meetings and lawyers and their clients may speak to each other between meetings (Daiccoff 2009). Everybody can freely communicate, even an opposing lawyer is allowed to speak to another party. In legal negotiation normally lawyers are communicating with each other more than parties and there is a rather strict ethical rule for the lawyer not to communicate with the client from the opposite party overriding the presence of his lawyer. The graphical picture of a “four-way” communication structure in collaborative law procedure is showed in Fig 1.

![Fig. 1. A “four-way” communication in collaborative law process.](Source. Authors.)
The options in the collaborative process are limitless, that is why parties can reach a settlement to anything that is not against the law (Abney 2014). Also it is important to say that clients have a right to involve other independent professionals in the process, because anybody on whom all parties agree can attend the face-to-face meetings. These advisors may be financial specialists, relation specialists-divorce coaches, mental health professionals, child specialists and some other specialists depending on the type of the dispute to receive an objective opinion in one or another issue. Also a neutral facilitator could be involved (Abney 2014). In such situation CL merges with facilitation. In practice such mixed procedure is efficient and widely applied.

One more important characteristic of collaborative process is its’ confidentiality. Through all the process professionals have to hold to their own set of professional standards, including confidentiality (Maggio 2006).

In general collaborative process is very flexible. Except disqualification agreement parties can suggest the way of negotiating because there are no strict rules like in litigation. What concerns the control of the process, professional CL lawyers are central, because despite their clients’ active participation, they have a duty to preserve process and to secure it from hostility, stress and bad emotions. That new role of the lawyer creates new challenges for them, because such attitude to their functions in dispute resolution process is quite new. According to M. Rubin (Rubin 2009), that is why a new language must be learned by attorneys. It also shows a need for special education and skills of CL lawyers. According to L.J. Maier (Maier 2011) CL attorneys are trained in mediation techniques to help their clients to deal with emotions and impasses. But even the practice of CL representation changes the behavior of lawyers that start to work in this dispute resolution mode - lawyers learn to behave unlike they were trained at law school or used to handle litigation practice. Collaborative lawyers report that their clients were far more satisfied, relations with fellow lawyers became remarkably cordial, and negotiations became more creative, based on the “out of box” thinking, lawyers’ satisfaction with their work results expanded exponentially. Good collaborative lawyers recognize that they are members of a helping and healing profession (Tesler 2001).

Here it is important to mention that practicing CL often raises questions about ethical sides of that dispute resolution process. According to S.Exon (Exon 2014), CL practitioners must be competent because CL processes are not suitable for every dispute, that’s why they have to adequately inform their clients about the benefits and risks of CL, so the latter could make an informed decision whether to engage in such a processes. Generally ethical dilemmas in CL focus on limited scope of representation, obligation of the lawyer to withdraw, confidentiality, potential conflicts of interest, lawyer’s obligation to represent the client competently and diligently, balance of representation of the client and task to benefit all parties (Spain 2004). It is interesting that Colorado is the only jurisdiction in USA that prohibit a lawyer from participating in CL so long as a contractual obligation exists between the lawyer and the opposing party whereby the lawyer agrees to terminate the representation of the client. Absent such a contractual obligation, a lawyer may participate in the process referred to as CL provided that the lawyer complies with all of the rules of professional conduct (Ethical considerations in the collaborative and cooperative law contexts 2007).

The third stage of collaborative process – the closing. As well as in negotiation and mediation this stage can have different character depending on results of the process. In case of success, lawyers prepare agreement and clients sign it. In case of failure, participants are closing collaborative process without an agreement. P.H.Tesler notices that even when CL process ends without an agreement, it is extremely rare for clients to regret having attempted engage in collaborative relations (Tesler 2001). In this stage it is important to remember that CL lawyer cannot represent his client in further litigation but still can consult him to choose other ADR methods, which may be more effective in particular case.

Generalizing this chapter it should be stated that collaborative law dispute resolution process is a form of legal negotiation, where lawyers with their clients are working together in order to find mutual agreement without a recourse to the court. It differs from classic legal negotiation in one very important aspect – the same lawyer cannot represent the same client in the same case both in collaborative law procedure and in subsequent
litigation process. Collaborative process is confidential, flexible method, which requires from the participating lawyer to gain additional skills and knowledge.

4. Verifying Sustainability in Collaborative Law Processes

In order to distinguish sustainability in the collaborative law process it is required to select main criteria for such verifying. The following features characterising sustainable dispute resolution processes were established by the authors in the article ‘Bringing Sustainability into Dispute Resolution Processes’ (Kaminskiene, Zaleniene, Tvaronaviciene, 2014):

1. Privacy and confidentiality of the process;
2. Preservation and continuity of good relationships between parties to a dispute;
3. Necessity to deal with emotional part to a conflict during the dispute resolution process;
4. Necessity of providing individual approach towards possible dispute solutions;
5. Need to ground solution on mutual compromise;
6. Efficiency of dispute resolution procedures;
7. Convenience and accessibility of dispute procedures;
8. Perception of situation in different manner.

As it already can be seen from the analysis of the CL process performed in the second part of that article, CL fits the first criteria of privacy and confidentiality. The entire collaborative law process is confidential and private, the meetings are held only between parties and their lawyers (also specialists if needed). Parties are in open discussion about true needs, disappointments and feelings. This helps to find and understand all reasons of the disagreement. The communication between parties is effective. Thus confidentiality can encourage parties to talk openly and reach creative solutions. In case of family business, it is also important, that confidentiality permits family business to remain private by avoiding public testimony in court and keeping sensitive documents out of the public records too (Lande, Mosten 2010). Law theorists predict that the aspect of confidentiality of the collaborative law process will cause it to become more attractive part of legal practice for the clients, because in the course of solving a dispute through collaborative process little or even none information is available to the public about private lives, assets and income of the parties. Especially this feature becomes relevant nowadays when public records become easily available electronically and it is only a matter of time before all open-court records and all private information becomes available online too. Collaborative-law agreements can help the parties to maintain their privacy.

Collaborative law fits the second criteria of sustainable dispute resolution procedure too – if parties want to find solution, reach the settlement, they must collaborate and do that together. Round table metaphor could illustrate CL philosophy. ‘[T]he collaborative law process might involve change as simple as seating the parties at a round table’, says M. Odendahl (Odendahl 2014). In collaborative law processes parties have to be a team, not enemies, if they want to reach a solution which satisfies both sides. Tesler (Tesler 1990) also admits that couples, who are choosing collaborative law process for their divorces desire to maintain a good relationship with his/her spouse after the dispute resolution process. Divorced couples know that they have to co-parent their children together, so the divorce process should be without stress, fear, anger and chaos. Clients, who do well in this model, need to be able to focus on more than just the biggest share of the pie. They need to place value on divorcing with integrity. Not everyone has those values and not everyone can step back and take that longer view when they are angry or frightened.

The third criterion says, that ‘truly sustainable dispute resolution process leads to a better understanding between the parties, an opportunity to express their views and be heard’ (Kaminskiene, Zalenienė, Tvaronaviciene 2014). CL perfectly fits this criterion also. CL process is not a blaming process like litigation, in this process parties with their lawyers are searching for the solutions directed to the future. Instead of blame there are conversations. The lawyers have to work with their clients to assist them in stating their concerns in a manner that ask for explanations and creates better understanding between each other (Abney 2014). In collaborative law process parties have to explain each other “why” the speaker’s belief is incorrect or the reasons behind why the person actually did lie. Especially this important feature plays an important role in solving family law disputes due to their sensitive nature. It is not easy to be respectful to another party,
communicate politely and not only speak, but listen to opinions and advises of the others – ‘understanding and diplomacy are necessary attributes’ in CL dispute (Cook 2006).

The fourth criterion states that sustainability in disputes is possible if parties are enabled to create individual dispute solutions by their own. M. Rubin (Rubin 2009) generalization shows, that CL also fits this requirement: ‘The clients control the process. Each client has a lawyer and the clients together with the lawyer shape the settlement. (…) As a result of the clients having negotiated the settlement themselves it produces agreement that endure far longer than any other process does’ (Rubin 2009).

The fair and mutual compromise for all parties – the fifth criterion also meets CL. The disqualification agreement purpose is to allow the parties openly communicate to find mutual solution for the issues under the dispute, having guarantees that none of the information disclosed is used against them in the possible upcoming litigation process. Because of this hallmark of collaborative law parties have to participate in the dispute honestly and in good faith, also try to reach a mutual compromise. As we can see from experimental research, in terms of the substantive outcomes of agreements, on the whole the clients viewed the CL process as one that involved “give-and-take” and compromise. For example ‘both David and Ron felt they had to compromise to some degree, but both were still pleased. Mary explained that although she received more than she had hoped for in terms of spousal support, she had to concede on the dissipation of a testamentary gift: Was it entirely fair? No. But it was fairer than I could have realistically ... accomplished in any other way.’ (Keet, Wiegers, Morrison 2008).

The sixth criterion is efficiency of dispute resolution method. In this research ‘efficiency’ is understood as reduced cost and shortened duration of the dispute resolution process. In CL process parties are free to choose the amount of meetings, some parties decide that one meeting is enough to reach a settlement, for others tree or four meetings are suitable amount, while others could meet for six months and still do not reach a solution. Of course, not only parties are responsible for the duration of the process and its cost. Certain burden lies on the professionals – CL lawyers, who have to seek for the most optimal correlation between time, cost and results of the dispute resolution process. In comparison with litigation a collaborative divorce process that ends by a compromise would be far less expensive and prolonged than the same divorce process that takes place at the courtroom by struggle, in which each side typically employs its own team of experts. But it is true that if the collaborative process fails and goes to litigation, the expense of all dispute resolution processes, including CL process and an upcoming trial, will be far greater, principally because the disqualification agreement charges that each party retains new counsel (DiFonzo 2009). Nevertheless that in some cases CL process is not less expensive than litigation, but parties are tend to be happier with creative solutions that hardly if never could be reached in a court system (McLean 2014).

Another criterion of sustainable dispute resolution process is dispute’s convenience. Similarly as in negotiation and mediation CL meetings are not restricted by a specific location, time, or date. Parties are free to choose any of these factors solely depending on their own opportunities, convenience and suitability. The only persons parties have to coordinate their plans in dispute resolution process are their CL lawyers that some time can even recommend certain frequency and intensity of the parties’ meetings to reach a decision favorably.

Perception of situation in different manner – the last criterion for the dispute resolution process to be deemed sustainable. What happens if the parties in the course of CL process reach an impasse but not the settlement? As Sherrie Abney (Abney 2014) says: ‘There are no guarantees that a dispute will settle in the collaborative process, but impasse does not automatically turn collaborative parties into litigants. As previously stated, the parties may agree that in the event of a deadlock regarding one or more issues, they will progress to another form of dispute resolution. They also may consent to a time limit for their negotiations, and if they fail to reach agreement in the time specified, they may agree to advice to mediation, arbitration, litigation, or to abide by an agreed-upon expert’s opinion (Abney 2014). If parties decide to go to litigation, they have amount of information, which they get through the collaborative process, that is important exchanged documents, agendas, notes, also they know the concerns or interests of another party, know another party’s feelings about
the subject of the dispute. Sherrie Abney concludes: ‘The collaborative process does not fail, but the participants may’ (Abney 2014).

Conclusions

Despite of the fact that sustainable development concept is rarely researched in the legal context, the connections between sustainability and dispute resolution process as a way out of socially undesirable dispute situations is already confirmed. One of the newest ADR methods that expands rapidly – collaborative law process – has the goal to overcome shortcomings of traditional litigation and to induce respectable and diplomatic approach to resolving different kinds of disputes, especially those, which deal with high level emotions and long relations.

The research enabled to state that collaborative law process can be treated as sustainable, because it is the process that orients lawyers and their clients towards confidential and private way of dispute resolution, where parties have to collaborate and work as a team together with their lawyers to reach mutually acceptable decision. Clients usually have an opportunity to express their opinion and they can be heard, the solution is not given by a judge, but created by parties themselves based on a mutual compromise. The collaborative law process is low in cost and short in time because parties decide how much time they can spend to solve the dispute, meetings can be held at any time and in any place and if the solution is not reached parties are free to use the gained amount of information in another dispute resolution process as well.

Collaborative law process should be treated as a tool for more sustainable dispute resolution, because it confirms all criteria listed for the dispute resolution process to be considered sustainable. Collaborative law process orients lawyers and their clients toward not only legal but also social peace, which definitely is more durable and long lasting than a judgment based on the rule of law notwithstanding true needs and interests of the parties.

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