COLLABORATIVE LAW AS A TOOL FOR MORE SUSTAINABLE DISPUTE RESOLUTION

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Received 5 May 2015; accepted 16 June 2015

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.

Reference to this paper should be made as follows: Kaminskienė, N.; Tvaronavičienė, A.; Sirgedienė, R. 2015. Collaborative law as a tool for more sustainable dispute resolution, Journal of Security and Sustainability Issues 4(4): 633–642. DOI: http://dx.doi.org/10.9770/jssi.2015.4.4(5)S

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, Tvaronaviciene, 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 (Kaminskiene, Zaleniene, Tvronaviciene 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 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 resolve 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. There is a “six-way” communication used throughout the process that means that 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
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 be seriously interested also in maintaining good relations with their ex-spouse over time. 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, Zaleniene, 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 three 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 expresses 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 collaborate 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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