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APPLICATION OF CONSTRUCTS IN COMMERCIAL DISPUTE RESOLUTION

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Abstract. Conflicts in the business sector, in particular causes of conflicts and conflict management, have been analysed in detail and described by a number of scholars. However, the stage of conflict evolving into a dispute and the involvement of the parties to the conflict into litigation as a form of dispute resolution has been analysed considerably less often, although the greatest damage to business is caused namely at this stage. This article discusses how constructs can be effectively applied in the litigation process to achieve successful dispute resolution. It analyses the reasons for choosing this method, as well as the participants and their influence on the course of dispute and its outcomes. The identified peculiarities of the litigation process are described and analysed in detail by invoking Lithuanian case law. Based on these peculiarities, the authors developed the methodology that, with the use of legal constructs, can help to model effective conduct of the parties for having their dispute resolved in court.

Keywords: dispute, conflict, construct, law, communication.

JEL classification: D74, K00.

1. Introduction

In the today's global business world, the concept once said in Benjamin Franklin's writing, "Remember that time is money" (1748:188), seems to be more relevant now than ever before. However, in order to arrive at and maintain a successful business model it is necessary to overcome challenges by creating effective teamwork, job satisfaction, efficiency, productivity, motivation, coordination and synergy throughout business units, functions and team members (Zorlu, Hacıoğlu 2012). It is not an easy-to-achieve task, as it requires an assessment and minimisation of social, cultural, communication and psychological interferences that are likely to emerge within a business group (among employees or different units) or outside it (among partners, contractors or customers). Unless identified and eliminated on time, such interferences lead to conflicts that, in turn, become a major obstacle for maintaining the successful business model.

The conflict is an interdisciplinary issue while the conflict occurs in actual life among individuals, societies, businesses, governmental organizations and states (Zorlu, Hacıoğlu 2012). Quite many scholars support the idea that the nature of conflict is related to ethnicity, cross cultural disputes, religious differences and socio economic inequality (Balkenohl 1971; Mitroff, Emshaff 1977; Wall, Nolan 1986; Litterer 1996; Robbins 1998; Bennett 2002; Jehn, Bendersky 2003; Fial *et al.* 2009;). Conflict in the business sector is usually characterized in terms of the range - the scope and intensity - of disagreements that arise among firms. These disagreements stem from various sources: from the goal divergence of firms, differing perceptions of reality, domain dissensus - that is, disagreements over roles – and from communication problems (Rosenbloom 1999). Interestingly, Fenn *et al.* (1997) draw a parallel between a conflict and disease which exists wherever it is conflict of interest, irrespective of whether or not claims have been submitted.

It is also noteworthy that many authors believe that properly managed conflict can improve group outcomes (Rahim, Bonoma 1979; Alper *et al.* 2000; Kuhn, Poole 2000; DeChurch, Marks 2001). In practice, however, executives on various levels directly responsible for conflict management are not always in the position of managing the situation successfully. Therefore, unless a conflict is managed in a proper manner and on time, even taking all reasonable efforts shall not prevent destructive

effects - decreased production efficiency, increased workforce rotation or, even, litigation. The latter, as it was mentioned above, is the point at which a conflict matures into a dispute.

A dispute is an individual phenomenon evolving from a conflict. Its main unique characteristic is that a conflicting party cannot any longer withdraw unilaterally and which commonly requires litigation or arbitration. It means that a dispute matures to a separate type of conflict only if conflict management fails and one of the parties to the conflict invokes statutory methods for resolution thereof. Once a conflict matures to a dispute, decisions lose their advisory nature and become binding to the conflicting parties. The concepts of *conflict* and the resultant *dispute* have been graphically revealed by Acharya and Lee (2006). These definitions and their use in business have been also analysed by Mitkus and Mitkus (2014).

Further analysis of the literature revealed a kind of curious situation. Currently, there are ample scholarly publications addressing business conflicts on various levels in order to understand the causes and outputs of conflicts and how to manage conflicts successfully. Although it was emphasised by Wilkinson (2001) that dispute between firms in distribution channels and business networks has a long history in marketing, peculiarities of judicial dispute resolution seem to be insufficiently analysed, although it is namely the level at which the greatest harm and, at the same time, losses are inflicted upon business. Some aspects of dispute resolution have been also analysed by Keršulienė, Urbanavičienė (2007), Mitkus, Šostak (2008), Kaklauskas *et al.* (2008), Keršulienė *et al.* (2010a) Keršulienė *et al.* (2010b), Šostak, Makutėnienė (2013) and other authors.

In this paper, the authors will follow a broad approach to a business conflict considering it, in the broadest possible sense, a disagreement between two or more persons (or their groups) and also presuming that a conflict, unless properly managed, creates negative consequences. The article analyses only litigation-related methods of dispute resolution while the analysis is limited to disputes between independent business entities and excludes conflicts within an organisation.

2. Commercial disputes as peculiarities of conflict resolution techniques

Disputes are usually resolved through litigation. Case law has shown that there are certain peculiarities distinguishing litigation from the conflict management process. The following characteristics of litigation as a dispute resolution technique can be identified:

1. A dispute resolution procedure is strictly regulated. The procedure is laid down in the codes of procedure (code of civil procedure, code of criminal procedure) and in other laws (hereinafter referred to as "the Law"). The Law strictly regulates the procedure of provision of evidence, time limits (for serving claims, pleadings, etc.), sitting order (who has the right to put questions/petitions, etc. and when), etc. This procedure cannot be changed by a mutual agreement of the parties (except for their right to withdraw a claim, conclude a peaceful settlement in case litigation, i.e., judicial dispute resolution, is terminated by the initiative of the parties.

2. Disputes are resolved by a third person (court). A decision of the court is final and binding. This defines an important characteristic of judicial dispute resolution: the parties do not have to persuade each other that they are right; instead they have to persuade the third person, that is, court.

3. The parties to a dispute are usually irreconcilably far apart, the defeated party does not admit the court decision (i.e., the result of dispute resolution) to be just and/or lawful.

4. Constructs play a special role in the process of dispute resolution (in consideration of evidence, production of arguments, adoption of decisions). This judicial dispute resolution peculiarity is addressed below in a separate section.

An analysis of judicial dispute resolution requires identification and description of the parties involved in judicial dispute resolution, as well as identification of the role they play in the dispute resolution. Business disputes usually involve two parties to a conflict: plaintiff and respondent. A plaintiff is a dispute subject having a claim against the other party to the dispute. A plaintiff can be a contractor with whom the customer failed to settle accounts, a customer dissatisfied with the quality of construction works performed by the contractor, a bank issuing a loan, etc.

A respondent may admit or deny the claim or admit it partially. As claims are rarely admitted in practice, this case is excluded from further analysis. Below we will analyse claim denial situations.

Other parties involved in litigation include witnesses, experts and court. A brief description of these participants, their roles (Table 1) and influence in respect of each other (Fig. 1) is presented below.

Table 1. Role played in the litigation process
(source: compiled by authors)

Participants	Role played in the litigation process
Witnesses	Witnesses are subjects having information on the question at issue. However, in case of technical disputes witnesses often lack professional knowledge of the question at issue. The lack of specialised knowledge puts witnesses in the position when they are not able to judge on what they have seen (heard, etc.). To sum up in simple terms, witnesses can be characterised as persons "who saw but fail to understand".
Experts (expert witnesses)	Experts are subjects having specialised knowledge to assess the question at issue. Both parties are allowed to participate in choosing expert witnesses (judicial experts) and express their opinions as to the biasness or competence of expert witnesses, etc. Therefore, expert opinion is a sufficiently reliable source of information on the question at issue. To sum up in simple terms, experts are persons "who did not see the issue but have knowledge of it".
Court	Court is commonly comprised of one or three persons, who resolve(s) disputes, i.e., adopt(s) a final decision binding to both parties. Judges must be impartial, i.e., they must not be interested in the outcome of the dispute in any manner and must have no close connections (family, etc.) with the litigants. Judges are lawyers. As a rule, they don't have specialised knowledge of the question at issue. To sum up in simple terms, judges are persons "who did not see the issue, do not have specialised knowledge of it (in case of technical sort of disputes) but take a final decision".
Parties to a dispute	They are well aware of the question at issue, often know the truth and the right way the dispute should be resolved. However, at least one party is commonly unfair and both parties are interested in the outcome of the dispute. Therefore, explanations of the parties to a dispute are not a reliable source of information.

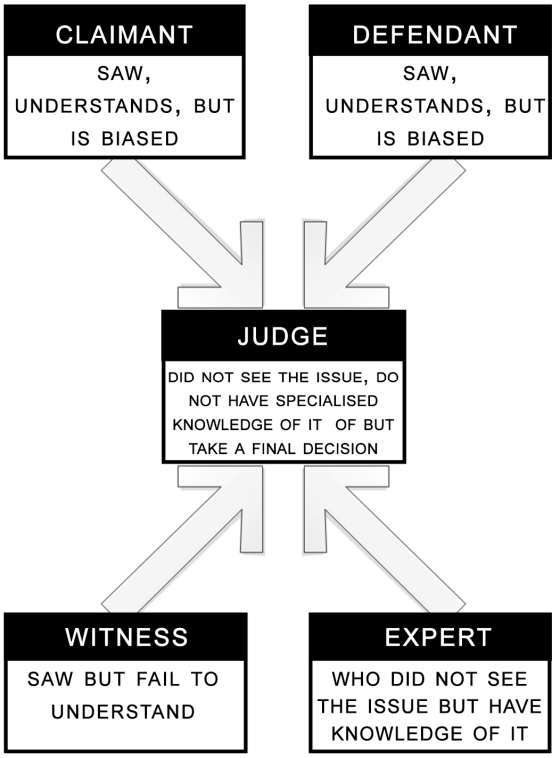

Fig. 1. Participants of dispute resolution
(source: compiled by authors)

3. The role of constructs in dispute resolution

Before going into a broader analysis of constructs and their role in dispute resolution, it is important to note that constructs by their nature have much more in common with psychology than with law, communication or conflict resolution sciences. Although the litigation process is strictly regulated, a final decision in business disputes resolution is passed by a person(s). Therefore, in order to achieve favourable dispute resolution it is necessary to understand how the behaviour of litigation participants, information processing and production of arguments (i.e., communication) influence others and court and, finally, lead to dispute resolution. According to the authors, it is practical to plan rational behaviour during litigation using a concept constructed by psychologist G. Kelly (1991a, 1991b). According to Kelly, a person creates "a theory" composed of a finite number of dichotomous (bipolar) constructs: where there is no thin, there must be no fat, where there is no good, there must be no bad. Constructs are bipolar by their nature. The Kelly's theory says that constructs are organised. Constructs are not floating around chaotically. Instead, they are hierarchically arranged, like are scientific notions. Some constructs are subordinate to, or "under" other constructs. It should be noted that the term *construct* as used in the literature of social psychology is basically consistent with the term *social schema*

(Bartlett 1932; Carmichael *et al.* 1932; Craik, Lockhart 1972; Posner, Keele 1968; Anderson 1984).

Ghosh and Gilboa (2014) who have analysed a historical perspective of the term "schema" offer the following definition of the schema:

"A schema is a memory structure capable of representing extremely complex constructs employing this information to influence encoding and retrieval of episodic memory, and guide elaborate, context-specific patterns of behaviour. We propose based on the history of the term and current neurobiological research that this structure would require an associative network structure, basis on multiple episodes, lack of unit detail, and adaptability. It would also have a capacity for chronological relationships, hierarchical organization, cross-connectivity, and embedded response options".

The concept of constructs (social schemas) is used to investigate influences on memory formation and retrieval (Bartlett 1932; Carmichael *et al.* 1932; Craik, Lockhart 1972; Posner, Keele 1968; Anderson 1984; Mitkus 2008; Mitkus 2010); cognitive neuroscientists have investigated the influences of semantics and knowledge congruency on memory for almost two decades.

As we can see, constructs (social schemas) are a broadly used attribute of human state of mind which may perform a positive or negative function depending on the situation. The authors have noted that constructs have specific application in litigation. The use of constructs while thinking, providing arguments and construing is particularly inherent in professional lawyers – counsels, judges, etc. This is determined by the very nature of law and the system of organisation of law which is analysed below.

Probably the most frequent question to be answerer by court is existence or nonexistence of facts. Actually, there can hardly be any other option in law. Accordingly, we have a dichotomous construct which is illustrated in Figure 2.

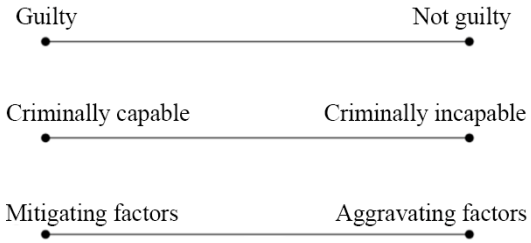

Fig. 2. Dichotomous legal constructs (source: compiled by authors)

The dichotomous constructs in Figure 3 basically are in conformity with the Kelly's constructs. However, even though constructs inherent in persons are dichotomous, i.e., having two opposite poles, persons they may attach an interim value (not necessarily the end pole) to the issue (things, items, circumstances, etc.) they judge upon. For example, one person's acts may be seen by others as "a bit wrongful", "partially wrongful", "almost wrongful", "near-wrongful", etc. However, it is inherent in litigation and legal thinking that the question at issue (item, circumstances, etc) should be, as a rule, attached only the end values of construct, i.e., jury members have to say "guilty" or "not guilty").

The above-described characteristic of litigation leads to the conclusion, that the main task of litigants is to prove and persuade the court that a certain circumstance should be attributed to a certain pole of the construct. In reality, it would be quite difficult to put all life situations into dichotomous (binary) schemas. Therefore, in some cases the law establishes interim values of construct. For instance, the new Criminal Code of the Republic of Lithuania introduced limited criminal capacity which is the interim value in the criminal capacity construct. Obviously, this act of legislator was first of all determined by practical difficulties to attribute an offender to one of the two construct poles.

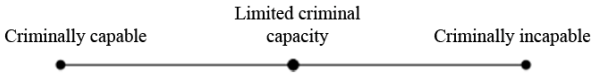

Fig. 3. Criminal capacity construct (source: compiled by authors)

In cases when interim construct values are established under the law, we have a dichotomous construct with fixed interim values. However, the fixed interim construct values are not always set by the law. A circumstance to be established may have any end value or interim value of construct. For example, the size of damage established by the court may range from zero (no damage is established or ordered for some reasons) to the maximum claimed by the plaintiff (see Figure 4).

Fig. 4. Damage size construct (source: compiled by authors)

Even if there are statutory interim values of construct, it is often not easy to take a right decision in legal terms. Therefore, legal constructs have the characteristics of organisation and hierarchy described by George Kelly. It means that in each dispute (case) the court should examine the situation on the basis of a number of systemic con-

structs. A final decision in the case (dispute resolution) is passed after the situation is examined using the entire system of constructs. A system of key construct in cases (disputes) regarding compensation of damages in a construction design is shown in Figure 5.

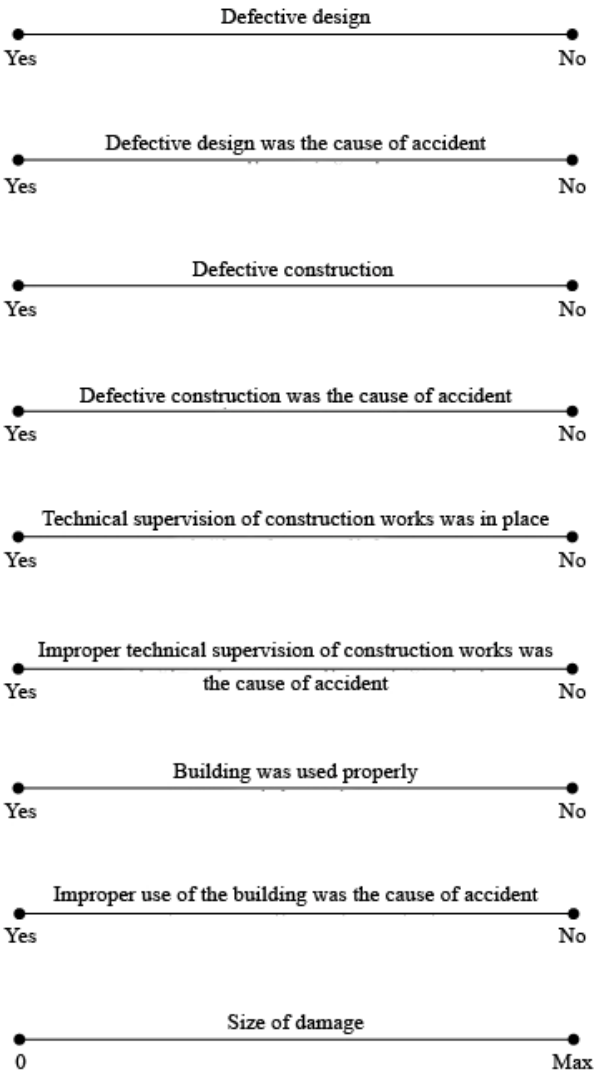

Fig. 5. System of main constructs in case of dispute for damage caused by falling down of building (source: compiled by authors)

In fact, if decisions were passed on the mere basis of the dichotomous construct "guilty – not guilty", the law (court decision) would not be able to perform its function to impart justice properly and pass decision having considered and examined all relevant circumstances. Assessment of the facts of a dispute in accordance with the system of constructs allows the assessment to be more precise, just and comprehensive. The law allows the court to use the entire system of constructs for passing its decision. For example, if a contractor is found guilty for defective construction work, the court may order damages taking, *inter alia*, into consideration that the customer failed to carry out technical supervision properly, gave wrong instructions, supplied materials of substandard quality, etc. Having considered all the circumstances above, the court may reduce the amount of damages ordered to be paid to the customer.

4. Rules of attributing facts of a dispute to the poles of construct in cases of ambiguous information

In some cases, a proper assessment of the situation may be complicated simply because of the lack or inconsistency of data. It means that inconsistent or controversial information does not allow the judge to attach unambiguously one or another value of construct to the circumstance at issue. The court cannot disallow dispute resolution on the mere ground that, for some reasons, it cannot decide to which pole of the construct a circumstance or situation should be attributed.

The law has provided for certain rules to apply in ambiguous cases:

– the principle of balance of probability (preponderance of the evidence) in civil litigation;
– distribution of the burden of proof;
– application of the principles of law.

According to the principle of balance of probability, the court, while assessing evidences and adopting decision in civil proceedings, shall not necessarily be absolutely confident of the existence or non-existence of a fact. It may consider that a circumstance existed if the court, on judge's internal belief, considers that the occurrence of the circumstance was more likely than not. Below we provide some case-law examples.

The plaintiff and third persons claimed damages from the respondent caused by fire that broke out in the part of the house owned by the respondent. There was a question of responsibility for the fire because the attic was used by many co-owners of the house. Although there was no direct evidence in the case that the fire broke out in the part of the house owned by the respondent and expert opinion was premised on probability, the Supreme Court of Lithuania, having regard to the corpus of evidence and following the principle of the balance of probabilities, considered the conclusion of lower-instance courts, which read that the fire broke out in the part of the house owned by the respondent, to be well-founded (V.K. *v.* G.R., 2012).

Another example of application of the principle of the balance of probabilities can be seen in the case of Ž.M. *v.* R.J., 2011. On 28 May 2007 the plaintiff, Ž. M., concluded a preliminary agreement of purchase and sale of a land plot and

residential house being designed with UAB Ostrio whereby UAB Ostrio was obliged to build a residential house and sell the house with the land plot to the plaintiff for LTL 500,340. Construction works were managed by the respondent, R.J. On 1 July 2008, the respondent signed a note reading the following: "I, R.J., address (*sensitive data*), Kaunas, and personal ID number (*sensitive data*), hereby receive ten thousand litas (LTL 10,000) from Ž.M., personal ID number (*sensitive data*). The debt will be repaid on 30 November 2008. The guarantor for debt repayment is K.A., personal ID number (*sensitive data*)". On 26 November 2008, the plaintiff Ž.M. and UAB Ostrio signed an agreement of purchase and sale of a land plot and residential house whereby UAB Ostrio sold the plaintiff a land plot covering 0.0911 ha and a house which construction was 70% completed for LTL 380,340. The plaintiff argued that the respondent failed to repay the debt by the time limit set in the agreement (30 November 2008) and therefore the repayment thereof should be ordered by the court. The respondent disagreed to the claim stating that the relationship between the respondent and the plaintiff was of a different nature than debt relationship. The respondent managed the construction of plaintiff's house and the amount of LTL 10,000 received from the plaintiff was intended and used for the completion of roofing of the plaintiff's house.

In compliance with the principle of the balance of probabilities applied in civil litigation, the chamber of judges established that it was more probable that the disputed amount was included in the final price (LTL 380,340) by a mutual agreement of the parties to the dispute as plaintiff's payment for construction contract works, and this meant the discharge of the respondent's obligation under the note of 18 July 2008 to repay the disputed amount to the plaintiff.

The principle of distributing the burden of proof is differently applied in civil and criminal litigation. In criminal litigation there exists a long-established principle that all ambiguities should be interpreted in favour of the accused. It means that the accused is not obliged to give explanations, he may tell lies, he may not be compelled as a witness against himself, but he shall be found guilty once the prosecution gathers all the required evidence against him. If there is any reasonable doubt about guiltiness of the accused, he shall be considered innocent.

The burden of proof is somewhat different in civil cases. The rule applicable in criminal proceedings shall not apply in civil proceedings as in the latter case the principles of equality and *audi alteram partem* should be complied with. There is no accused person in civil proceedings (respondent is not the accused). The main rule is that each party must prove whatever it states. It means that the plaintiff must prove all allegations stated in the statement of claim and the respondent must prove all statements in his defence statement. Where parties fail to discharge this obligation, the circumstances are considered to be not indicated and the court attaches relevant construct values to them.

Exceptions to this rule are laid down in the Code of Civil Procedure and case law. Let's take an example of defective construction disputes. Contractors often argue that defects occur due to improper use of the building. In this case, the rule of evidence formulated by case-law is as follows: the customer (owner/user of the building) has to prove the very defect only and is not required to prove contractor's unlawful acts and the causal link between the unlawful acts and the damage. In order to shirk responsibility, the contractor has to prove the existence of circumstances eliminating his responsibility (the building was improperly maintained by the user, the damage was caused by persons hired by the customer, etc.) (DNSB Taurakalnio namai, Vilnius *v.* UAB Santechnikos verslas, 2014; A. K *v.* J. P., 2012; AB If P & C Insurance AS *v.* UAB Įrengimas, 2009; A. K. *v.* UAB Mobusta, 2011; AB Panevėžio statybos trestas *v.* UAB AK Aviabaltika, 2004; E.M. *v.* UAB Mindija, 2005). In turn, where any of the parties fail to prove the existence of certain circumstances they shall be considered to have not occurred.

The rule of the principles of law applies in cases when there is no statutory regulation of one or another relationship and the principles of law - justice, good faith, reasonableness, righteous expectations, proportionality – are invoked. In other words, these are cases when compliance with all the requirements of legal norms produces a construct determining such consequences that obviously contradict the basic principles of law. It is not a rare phenomenon in case law.

The above principle is well illustrated by the ban on alcohol advertising (VšĮ Lietuvos nacionalinis radijas ir televizija v. Valstybinė vartotojų teisių apsaugos tarnyba, 2009). The ban was imposed on any alcohol advertising at day time. Formally, the ban covered direct broadcasts of basketball tournaments because they showed beer ads in basketball arenas and on players' T-shirts. The case for imposition of fine for such "advertising" was heard by the Supreme Administrative Court of Lithuania which did not impose any fine for the "advertising" on the ground of the principle of law: "laws cannot require what is impossible". It means that the court applied the principle of law and treated the situation as "not

guilty" although, basing on all facts and interpreting the law literary, the situation under the dichotomous construct "guilty – not guilty" should have been qualified as "guilty".

The analysis of the process of judicial dispute resolution in the light of application of legal constructs reveals that the entire litigation process consists of efforts of the parties to a dispute to prove and persuade the court that the situation should be assessed in such a way that, in accordance with as many constructs as may applied to the situation, it would be favourable to that particular party to the dispute. For example, the plaintiff claiming for damages may have to prove and persuade the court that the other party was obligated to perform works in compliance with certain quality standards, that the works do not comply with the standards and elimination of defects costs x amount of euros. The other party, as a matter-of-fact, has to prove contrary circumstances that different quality standards should apply, that the defects were caused by the user of the building, etc.

Wrong understanding of construct of a particular dispute may lead to the situation when a party to the dispute proves the circumstances that are used against the party itself. We shall provide the following case-law examples.

UAB Bioetan LT wanted to persuade the court that the contractor has to compensate for improperly performed construction works (Investicinių projektų vykdymo grupė *v.* UAB Bioetan LT, 2013). In compliance with the Civil Code, this duty is attached to the contractor only if the customer (employer) properly performs his duty to inspect the works and assess their quality upon acceptance thereof. In this case UAB Bioetan Lt stated that "it signed object-related statements without verifying the compliance between stated volume of works and actually performed works and their quality, it trusted the plaintiff and signed the statements in order not to spoil mutual relationships and future cooperation prospects". Hence, the customer itself produced information proving the circumstance unfavourable to it, i.e., the customer accepted the performed construction works without having inspected them, i.e., in an inappropriate manner. The court issued a decision unfavourable to the customer which was based, *inter alia*, on the above-mentioned information provided by the customer.

The authors of this article have noted the influence of this system of strict legal constructs on the thinking of lawyers (judges, counsels). Usually, they consciously or unconsciously formulate their statements, questions, etc. in such a way that statements or answers to the questions would enable attribution of one or another circumstance to a certain value of the construct. This is a common reason of misunderstanding between counsels and their clients. The latter often don't understand the acts of their counsels (statements, explanations, questions) because clients, who are not lawyers, may be not aware of legal constructs. Therefore, counsels should necessarily explain the impact of legal constructs on the thinking and conduct of lawyers (in particular, judges), as well as to explain what constructs will have influence on the outcome of the case and in what form the court should be persuaded so that to attach positive values of the constructs to certain circumstances. Practice has shown that a number of misunderstandings and, even, conflicts between counsels and their clients occur on the aforementioned ground.

With regard to constructs used in judicial proceedings, it should be noted that, in certain cases, judges may also use their personal constructs. The Civil Code stipulates that a judge may also decide a case on the basis of general principles of law: good faith, reasonableness and justice. Although these principles in many cases are understood almost identically, they can be interpreted very differently in practice. It is not a rare case when the parties to a dispute seek an absolutely different (contrary) decision and both of them ask the court to pass the decision based on the same principle of justice. Likewise, different judges also treat these principles in a variety of different ways in practice.

In this context, the case of UAB Eika *v.* UAB Vingio kino teatras (regarding the construction of Vingis movie theatre) appears to be a very interesting example. UAB Vingio kino teatras brought an action before the court stating that on 12 March 2002 the respondent and other construction undertakings were invited to bid in the tender for the general contractor of construction of the extension to Vingis movie theatre. According to the plaintiff, the final bid submitted by the respondent on 19 April 2002 contained all the characteristics of an offer. The same day the plaintiff faxed a letter of intent whereby he accepted the offer and thus concluded a contract. On 23 April 2002, the respondent faxed a letter stating that he refuses to sign the contract with the plaintiff because the respondent participates in another transaction on more favourable terms. The plaintiff requested to order the respondent to pay damages suffered by the plaintiff as a result of unlawful termination of the contract.

There was a question of good faith on the part of UAB Eika in this case. The Supreme Court of Lithuania (UAB Vingio kino teatras *v.* UAB Eika, 2005) stated that "case records confirm that UAB Eika was not acting in good faith". The Supreme Court of Lithuania sent the case back for *de novo* hearing by the Lithuanian Court of Appeals. The

opinion of the Lithuanian Court of Appeals on the issue was rather strange (UAB Vingio kino teatras *v.* UAB Eika, 2005):

"The respondent participated in the negotiations with an intention to conclude the contract. He did not initiate termination of the negotiations. The respondent notified of his decision not to sign the contract only upon receipt of the text of the contract when he saw that the volume of works under the contract was less than it was negotiated about. The respondent explained the court that he indicated having found another construction object in the reply to the plaintiff simply because the respondent did not want to spoil good relations with the plaintiff in order to cooperate with him in the future. That was why the respondent formulated his reply in the aforementioned manner. There is no evidence in the case of respondent having found another construction object or having concluded another contract. Therefore, this mere circumstance is not sufficient to be regarded as the proof of bad faith of the respondent".

5. Conclusions

Unmanaged conflicts in the business sector may, and often do, turn into disputes, i.e., a destructive stage which often ends without any winners. As we can see from the literature analysis, this part of conflict resolution has been very little analysed although there are certain peculiarities that must be taken into account in order to achieve successful results.

The process of dispute resolution can be described by means of psychological constructs. In case of litigation, constructs are already encoded in the law. An effective litigation strategy requires the right identification of dispute constructs and of the values of construct poles. The case-law analysis has shown that the participants of the dispute resolution process not always identify constructs correctly and provide the court with information unfavourable to them which, in turn, leads to an unfavourable dispute resolution outcome. Therefore, it would be useful for the lawyers representing the parties to litigation to make a list of constructs relevant to the case, to identify the circumstances to be proved and the manner the evidence should be produced so that to persuade the court to attribute factual circumstances to the favourable values of constructs.

Although constructs and their poles are actually encoded in the law, factual circumstances of the disputes are attributed to the construct poles by persons who decide the dispute, i.e., by judges. The case-law analysis demonstrates that, in certain cases, different judges attribute the same facts to the opposite poles of construct. Therefore, it is also necessary to take into consideration the views of particular judges to certain circumstances while developing litigation strategy.

This article provides the analysis of the principles of likely application of psychological constructs. Detailed recommendations for the development of litigation strategy taking into account constructs of particular cases, methods of identification of judges' internal constructs and other issues related thereto should be the subject matter of further research studies.

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