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# COURT MEDIATION IN HUNGARY WITH SPECIAL EMPHASIS IN TRAINING AND ADMINISTRATIVE LAW CASES

## 1. Mediation in Hungary

### 1.1. Historical background

In Hungary the rise of alternative dispute resolution (hereafter: ADR) methods has been observed since the early 2000s: the adoption of the 2002 Mediation Act and its increasingly widespread application, first in the field of criminal and then in civil and family cases, is a forerunner. In the field of consumer redress, the growing number of cases handled by conciliation bodies and the granting of substantial rights to the Financial Conciliation Board are both contributing to the growing awareness of ADR.

In addition, ADR for legal entities is also becoming more common. Although the focus of the legislation is on human conflicts, out-of-court solutions are also available for disputes between companies since 2002 through market-based mediation services.

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However, in business-to-business transactions and disputes the most popular form of ADR is arbitration. Until 2017, the framework for arbitration in Hungary was defined by Act LXXI of 1994 on Arbitration, which follows the model law adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. Our first Arbitration Act provided an adequate framework for the development of domestic arbitration, but in order to enable Hungarian businesses to achieve a higher percentage of permanent arbitration in Hungary in their contracts with foreign counterparties, a new Arbitration Act was necessary in 2017.[2]

The selection of impartial, independent arbitrators with appropriate expertise, and the speedy conduct of arbitration proceedings, which is also in line with the 2006 amendment of the UNCITRAL Model Law, can be ensured more effectively by the new Arbitration Act, which contains mostly dispositive rules similar to the former Act, by putting the organisational framework of permanent arbitration in Hungary on a new footing and by filling the regulatory gaps that have arisen in the application of the current Act. One of the most important provisions of the new law, Act LX of 2017 on Arbitration, is that it transfers to the Arbitration Court attached to the Hungarian Chamber of Commerce all commercial cases to be settled by a permanent arbitral tribunal in Hungary.[3] In addition, there are permanent arbitration courts in specific sectors such as: agriculture (since 1997)[4], sport (since 2001)[5] and concessions (since 2021).

2 See in details: L. Kecskés, A választottbíráskodás jogi szabályozása Magyarországon (in:) L. Kecskés, P. Tilk Péter (eds.), A választottbíráskodás és más alternatív vitarendezési eljárások jogi szabályozásának alapjai Pécs, PTE ÁJK 2005, pp. 50–94.

3 On the structure of Hungarian ADR system see in details: J. Glavanits, B.B. Wellmann, Az alternatív vitarendezés helye a jogrendszerben, Budapest 2020.

4 See more: I. Varga, Hungary (Chapter 4.) (in:), C. Liebscher, A. Fremuth-Wolf (eds.), Arbitration Law and Practice in Central and Eastern Europe. Second Edition Huntington 2020, pp. 281–398.

5 See in details: D. Szekes, A Sport Állandó Választottbíróság új eljárási szabályzatáról, „Gazdaság és Jog" 2019, No. 9, pp.15–21.





The wider uptake of ADR could also be an important step towards reducing the workload of the courts. Despite a steady decrease in the number of cases pending beyond 2 years in Hungary since 2010, the number is still quite high.

### 1.2. Evaluation of the current regulation on mediation

There were some criticism concerning the Hungarian Mediation Act right after its enactment. One of its early opponents stated that it could be criticised for the relatively low training and graduation criteria. Although the political aim behind the 2002 Mediation Act was to ease the already overwhelmed court system and make it more effective in general, the regulator did not consider serious training a necessity or appear to have any real interest in that field.[6] It was only in 2009 that a regulation was first issued regarding the requirements on mediation training programs. According to Regulation No. 63/2009 (XII.17.) of the Ministry of Justice, a 60 hours long, registered training program is mandatory to become a mediator officially. The training must contain the following knowledge spheres:

- basic knowledge and skills on theory of conflicts,
- basic knowledge and skills on negotiation,
- technical and methodological knowledge and skills on mediation,
- knowledge and skills on process management and dynamics,
- knowledge and skills on questioning techniques,
- mediation knowledge and skills attached to different levels on conflicts,

6 J. Révész, Mediation without Trust: Critique of the Hungarian Mediation Law. Mediate.com, 16th May 2005.

- mediation knowledge and skills regarding problematic participants,
- knowledge and skills on psychology, and
- knowledge on the regulation of mediation.

It is questionable however that all the necessary skills can be learnt in 60 hours. That is possibly the reason why registered mediators are required to participate regularly in post-graduate training, or at least on conferences and special events on mediation. If the registered mediator does not earn sufficient credit points from this mandatory further education, he/she must be deleted from the register.

Since the first introduction of mediation, institutions of higher education have developed an adequate response for those who feel the 60 hours training is not enough time to study to become a mediator. In the next table I show the LLM or other postgraduate programs, that are specialised for mediation training – all much longer than 60 hours, as they last at least 2 university semesters.

Table 1. Hungarian post-graduate training programs on mediaton (Source: Glavanits, 2022[7])

| Institution | Postgraduate program |
|---|---|
| University of Debrecen Faculty of Education for Children and Special Education | general and family mediation |
| Eötvös Lóránd University, Faculty of Education and Psychology | general and family mediation |
| Pázmány Péter Catholic University, Faculty of Social Sciences | general mediaton |
| Semmelweis University, Faculty of Public Health | community and family mediation |
| John Wesley Theological College | mediation in helping professions |
| Eötvös Lóránd University, Faculty of Law | mediation in economics (LLM – only for lawyers) |

7 J. Glavanits, Közvetítés és békéltetés – képzési, továbbképzési lehetőségek és fejlődési irányok, (in:) J. Glavanits, N. Papp (eds.) A fogyasztóvédelem egyes akutális kérdései: a békés vitarendezés lehetősége a 21. század technológia-intenzív közegében, Budapest 2022, pp. 35–44.





| | |
|---|---|
| Eötvös Lóránd University, Faculty of Law | mediation in economics (for other than lawyers) |
| University of Miskolc, Faculy of Law | general and juditial mediator |
| Metropolitan University – Faculty of Business, Communication and Tourism | mediation and ADR |
| University of Pécs – Faculty of Law | mediator |
| Széchenyi István University – Faculty of Law | conflict resolutor – mediator |
| Széchenyi István University – Faculty of Law | ADR and mediator (LLM- only for lawyers) |
| University Szeged – Faculty of Law | general and juditial mediator |

In comparison with other Member States of the EU, we can conclude that for the moment Hungary has an active and (perhaps) proactive mediation practice.[8] The awareness of citizens concerning mediation is growing[9], partially thanks to court mediation from 2013 onwards, and mandatory mediation in family law from 2014 onwards. As we will see in the following chapters, the number of registered mediators is growing, and the judicial system is making huge efforts to raise the number and type of cases in which they recommend the parties to participate in mediation.

## 2. Mediators and court mediators

A distinction should be made between natural persons who are on the register of mediators kept by the Minister responsible for justice, and mediators who are professionally qualified mediators, and between mediators employed by a legal person and court mediators. While the former

8 See in details: M. R. Grosu, Chapter 14: Hungary, (in:) N. Alexander, S. Walsh, M. Svatos (eds.) EU Mediation Law Handbook : Regulatory Robustness Ratings for Mediation Regimes, Alphen aan den Rijn 2017, pp. 403–433.

9 An empirical survey published in 2016 showed that 1/3 of the participants were familiar with the term "mediation". See in details: D.Á. Asztrajan, K.A. Tóth, Kutatás a mediáció ismertségéről és a mediáción való részvétel arányáról Magyarországon. Közép-Európai Mediációs Intézet, Budapest 2016.

carry out their activities in return for a mediation fee freely agreed with the parties, court mediators are court secretaries, judges or magistrates on secondment appointed by the President of the National Office for the Judiciary, who are appointed to carry out the duties of court mediators after having completed professional training and who carry out their activities free of charge.

According to the data of the registry maintained by the Ministry of Justice, there is almost constantly an increasing number of mediators in Hungary.

Table 2. Number or registered and deleted mediators
(Source: Hungarian Ministry of Justice[10])

| Year | New natural person | New legal person | Deleted members |
|---|---|---|---|
| 2015 | 219 | 33 | 188 |
| 2016 | 143 | 13 | 39 |
| 2017 | 118 | 17 | 119 |
| 2018 | 100 | 14 | 56 |
| 2019 | 126 | 15 | 17 |
| 2020 | 122 | 15 | 34 |
| 2021 | 127 | 8 | 70 |
| Total | 955 | 115 | 523 |

Certified court mediators have no official dataset, but according to the latest publications of Turcsánné Molnár, more than 400 court officials (judges and magistrates) have completed the obligatory course to become a mediator.

10 The official register is available here: https://inyr.im.gov.hu (accessed 15.11.2022).





Table 3. Court mediation trainings and participants
(Source: Turcsánné Molnár 2020[11])

| Official training programs ending with certificate to become a court mediator | | |
|---|---|---|
| Year | Number of training programs | Participants |
| 2013 | 4 | 97 |
| 2014 | 5 | 116 |
| 2015 | 2 | 50 |
| 2016 | 3 | 57 |
| 2017 | 2 | 32 |
| 2018 | 3 | 45 |
| 2019 | 4 | 60 |
| Total | 23 | 457 |

The numbers show that there is no shortage of mediators in Hungary, however we should note that the fact that someone is a registered mediator means automatically that he/she is an active mediator. This is especially true in a court mediator's case, where we can observe that even those who will never be mediators in practice nevertheless take part in the training programs, to raise their knowledge on the subject, and therefore to be able to make better decisions on cases that are to be sent to mediation. However, this judicial awareness crucial: the more successful cases are closed, the more the participants will favour mediation in their next conflict.

Also in the case of advocates: it is not necessary that someone who has registered themselves as mediators will conduct the procedures on a daily basis, but will be able to use the toolkit of mediation (and peaceful conflict resolution) in the general legal work.

11 K. Turcsánné Molnár, Bírósági közvetítés Magyarországon a kezdetektől 2019. év végéig, (in:) J. Glanits (ed.) Bíró és mediátor. Válogatott tanulmányok a közvetítői eljárás elméleti és gyakorlati kérdéseiről, Győr 2020, pp. 11–39.

## 3. Mediation process in courts

There is no official database or published statistics on court mediation in Hungary, but fortunately there are researchers among the judicial board. The latest official data was published in 2020 by Katalin Turcsánné Molnár, who is a leading representative of court mediation in Hungary. She collected data on the overall cases as follows.

Table 4. Hungarian court mediation in numbers (Source: Turcsánné, 2020[12])

| Year | Arrived cases – total | Finished cases | Administrative closure | Mediation processes | Closure without agreement | Closure with agreement | Ratio of agreements |
|---|---|---|---|---|---|---|---|
| 2012 | 5 | 5 | - | 5 | - | 5 | 100% |
| 2013 | 295 | 295 | 94 | 201 | 93 | 108 | 53,70% |
| 2014 | 1281 | 1068 | 412 | 656 | 263 | 393 | 59,90% |
| 2015 | 1716 | 1713 | 614 | 1099 | 604 | 495 | 45% |
| 2016 | 1748 | 1664 | 745 | 919 | 419 | 500 | 54,40% |
| 2017 | 1787 | 1758 | 783 | 975 | 435 | 540 | 55,40% |
| 2018 | 1299 | 1497 | 678 | 819 | 409 | 410 | 50,10% |
| 2019 | 1193 | 1141 | 395 | 746 | 394 | 352 | 47,20% |
| Total | 9324 | 9141 | 3721 | 5420 | 2617 | 2803 | 51,70% |

The table shows a more-or-less stable number of cases, but we should highlight that the years 2019 and 2020 were highly affected by the consequences of COVID-19 pandemics, therefore the number of cases declined – hopefully temporarily. This is not a unique situation: an extensive empirical survey showed that the courts faced the same problem worldwide,[13] though the pandemic also

12 K. Turcsánné Molnár, Bírósági..., op. cit., pp. 21–23.

13 G. Matteucci, D. Shimoni (eds.), ODR in 30 Countries, 2020. Mediation in the COVID-19 Era, available at: https://aidrn.org/wp-content/uploads/2020/05/ODR-in-30-Countries-2020-Mediation-in-the-COVID-19-era.pdf (accessed 14.11.2022).





raised the possibility of online court mediation processes as well.[14]

## 4. Mediation in administrative law cases

### 4.1. Conciliation for a settlement vs. mediation?

As for the practice, it is often subject of debate whether the judge is a de facto mediator during the process of court-assisted conciliation towards a settlement. The European Code of Conduct for Mediators exacerbates the confusion by defining mediation as "*any process where two or more parties agree to the appointment of a third party – hereinafter "the mediator" – to help the parties to solve a dispute by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State*"[15]

The next table shows closed cases in first instance administrative courts that have resulted in settlements.

Table 5. Closed cases at first instance of administrative courts (Source: National Office for Judiciary, 2022)

| Type of closing/ time | 2018 | | | 2019 | | | 2020 | | | 2021 | | | 2022 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Jan-June | July-Dec | Total | Jan-June | July-Dec | Total | Jan-June | July-Dec | Total | Jan-June | July-Dec | Total | Jan-June |
| Settlement | 2 | 4 | 6 | 11 | 9 | 20 | 14 | 10 | 24 | 13 | 7 | 20 | 16 |
| Other | 7900 | 7054 | 14954 | 8673 | 6621 | 15294 | 14917 | 8896 | 23813 | 11373 | 8801 | 20174 | 9559 |
| Total closing | 7902 | 7058 | 14960 | 8684 | 6630 | 15314 | 14931 | 8906 | 23837 | 11386 | 8808 | 20194 | 9575 |

The role of conciliation for a settlement can play an important role in the context of widening the judicial route and the limits of the possibilities for ex officio review, es-

14 See in details: J. Glavanits, Mediáció és pandémia, (in:) J. Glavanits (ed.) Bíró és mediátor – Válogatott tanulmányok a közvetítői eljárás elméleti és gyakorlati kérdéseiről, Győr 2020, pp. 345–360.

15 European Code of Conduct for mediators, Brussels 2 July 2004, available at: https://rm.coe.int/cepej-2018-24-en-mediation-development-toolkit-european-code-of-conduc/1680901dc6 (accessed 14.11.2022).

pecially if substantive law gives discretion to the administrative body. It is therefore necessary to provide the appropriate procedural framework to enable parties to reach an agreement. Of course, the parties are not negotiating whether the activity was unlawful, but how the alleged infringements can be remedied within the margin of appreciation provided by the law, without the need for further administrative proceedings.

According to Section 65. of Act I of 2017 (administrative procedure code) to ensure reaching a settlement, the court:

a) shall inform the parties of the advantages and conditions of the settlement,

b) shall inform the parties as to the essence of the mediation proceedings, on the availability and conditions of such proceedings,

c) may present the settlement proposed by it to the parties – set in writing during preparation for the hearing or set on record during the hearing, and

d) may cite the parties to settlement proceedings.

When settling, the parties to the administrative law dispute may agree on the manner of resolving the administrative legal dispute or any disputed issue that is acceptable for them, if it is not in conflict with law, and may also agree on the manner of remedying the legal injury caused by the administrative activity as well. If the settlement complies with legal regulations, the court shall give its approval set in a ruling. In the approval ruling for the settlement, the court shall annul and abrogate the disputed administrative act or shall alter it in accordance with the terms as set out in the settlement. This settlement – approved by the court – has the the same effect as a judgment.[16]

16 Sections 65–67. of Act I of 2017.





### 4.2. Regulation of mediation in the field of administrative law cases

In Hungary it has been possible to choose mediation in administrative law cases since 2018. The significance of this is, among other things, that the official decision and procedure aimed at making it allow for the views of the client or other interested parties to be set out in a more emphatic and direct way. It thus can have a significant impact on the rate of client acceptance and voluntary implementation.[17]

The current regulation provides the possibility for the court to order mediation, if the parties and interested parties consent, whereby the parties and interested parties may attempt to settle the dispute amicably with the assistance of a court mediator – just like in family law cases. In the administrative law cases there is no mandatory mediation. For the duration of the mediation, which may not exceed two months, the proceedings shall be suspended. An appeal against this order may be lodged by a party or interested party who has not agreed to mediation.

The rules of the law on mediation (practically the Act LV of 2022) is applicable to court mediation *mutatis mutandis*. To ensure the success of the mediation, the court mediator shall not be a member of the panel hearing the case and the statements made there shall not be used in any further proceedings in the event of the mediation being unsuccessful. The court mediator shall inform the trial court of the outcome of the mediation, which shall, in the light of the outcome, either continue the proceedings if no settlement has been reached or if the settlement settles only part of the dispute, or examine the settlement and, if it is acceptable, issue a decision to that effect. The parties may make provision for the payment of the costs of

17 Cs. Kohlhoffer-Mizser, Benefits with mediation? Conflict management in Hungarian public administration. Technology Engineering Management Entrepreneurship and Learning, "International Journal" 2020, Vol. 26, No.1, p. 21.

mediation in the settlement agreement, failing which the parties will bear their own costs, and the court need not make provision for this in the order for payment of costs. If the settlement is approved, the court shall terminate the proceedings.

4.3. Promising areas of administrative law mediation

In almost all cases, the presiding judge will find that emotion lies behind the legally describable dispute, and that emotion is based on need. However, in a property dispute, both emotions and needs are irrelevant to the decision. This leads to the general phenomenon that property disputes often drag on because the parties to the dispute mutually initiate new proceedings against each other. A fundamental feature of both possession proceedings and notarial proceedings is that the dispute has deeper roots, often involving grievances accumulated over a long period of time – up to 10–20 years – which are incorporated in a claim or application for possession.[18]

Another promising area is community mediation, mainly between local governments and local civil groups on development or policy planning. According to Németh and Szabó, the sustainability of this participative and consensus forming community mediation is derived from the fact that the parties can correct their former agreement on the same matter repeatedly in the event of any changes in the environment or other conditions. This way, these community mediated agreements are more flexible than public contracts and local regulation in general. The mediation procedure in local decision-making processes is based on the wide exchange of information, sharing of knowledge and representation of civil society. As a consequence, more exact and more effective solutions may appear which are

18 L. Bisztriczki, Á. Hegedüs, Birtokvédelem és bírósági mediáció. Jegyző és Közigazgatás, XIX:4, 2017, pp. 30–32.





better suited to the specific concerns parties.[19] Community mediation can be divided – according to Németh and Szabó – between two main groups: (1) the aim is the solution for a given and by each participant in the same way regarded problem; so, for example the change in traffic regulation in a city, (2) restoration in a concretely damaging event, i.e., in the course of a victim-offender mediation, support and hearing of the partners, or participation of others (not directly meeting in this case) as listeners.[20]

## 5. Suggestions for further regulation

In the context of child protection mediation, Éva Malik has highlighted a concern regarding anyone who has spent "only" 60 hours in a training course: "*Mediation is practice-oriented, practice-intensive. While maintaining the relatively low 'entry requirement' of 60 hours of training, it is appropriate to consider the introduction of a trainee scheme and the use of the title 'trainee' up to a certain number of cases. The introduction of a possible trainee scheme should in any case be accompanied by an incentive system for those who are involved in mediation to be interested in receiving trainees, possibly co-mediation, supervision, even at institutional level. In particular, the introduction of supervision in procedures involving children (child protection cross-border) could be justified.*"[21]

We are convinced that 60 hours for a human relations facilitator, which by law must include considerable theoretical knowledge, is far from sufficient to enable him or her to conduct a fully-fledged mediation session to com-

19 V. Németh, Cs. Szabó, The effect of community mediations in practice through an analysis of two municipal case studies, "Belügyi Szemle" 2021a, No. 6, pp. 73–74.

20 V. Németh, Cs. Szabó, The characteristics of mediation according to fields of application, "Belügyi Szemle" 2021, No. 6, p. 95.

21 É. Malik, Gondolatoka polgári jogi közvetítő szakmai képzésről és továbbképzésről, "AKV Európai Szemle" 2018, No. 1, p. 47.

pletion. Regulation 63/2009 (XII.17.) provides for the following options for the practical part of training:

1) simulated case practice (aiming at reconstructing a mediation case that has taken place, evaluating the role of the mediator and the parties with the participation of the trainer and the members of the team organised during the training),
2) mentored case practice (which involves the actual conduct of a real mediation process, with the conduct of the mediation process and the evaluation of the role of the mediator and the parties under the continuous guidance of the trainer),
3) participation in a case discussion group,
4) preparation of a case study,
5) method-specific supervision (an instructor-led method of practice acquisition to analyse a mediation case that has taken place, to identify mistakes and best practices in the course of the case, in a group or consultative format. Method-specific supervision is based solely on the correctness of the methods used and not on the content or outcome of the mediation).

Based on practical experience, the training group members practice the techniques "on each other" with the help of the trainer, and in the case of more successful training sessions, they may be able to rehearse real-life situations with external actors or other professionals. The effectiveness and suitability of the above methods cannot be questioned – but the time allocated to them can be. Considering the time needed to discuss the lessons learnt and the theoretical knowledge to be acquired, it is difficult to assume that, for example, a group of 25 people (with 2 trainers) could all be able to carry out a mediation process in the time available for a practical session. Mathematically, there is no time for this in a 60-hour training course,





and the 60 hours do not even include the time needed for the exam.

A drastic increase in training time is not necessarily the answer, but the acquisition of practical knowledge cannot be abandoned, precisely because of the need to take account of the interests of consumers. The author of the present study envisages two solutions: either by raising mediation training to university level or by supplementing traditional training with practical training. Raising mediation training to university level could be an ideal solution because it is the best way to develop self-awareness, understanding of psychological phenomena and communication skills (especially questioning techniques). There is a degree of interconnection between the different professions in mediation that justifies the need to learn to make distinctions, to be actively prepared to recognise more easily, for example, an abusive situation or when the parties need a therapeutic process rather than mediation.

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