

# Global Answers in Conflict Management. Reasonable Time in Civil and Criminal Procedure

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## Abstract

In the area of conflict management, alternative dispute resolution, there are several subjects of research. We can lay stress on the methods we use, we can study forms of communication, the issue of contracts. Representatives from more than 50 countries, including the US and China, gathered in Singapore on Aug 7. 2019 for signing an international convention on mediation, adopted by the United Nations General Assembly and named after Singapore. Conflict management operates in cross-border disputes in civil law cases, of course it is well known in the field of criminal law, too –subject of compensation between of perpetrator and victim. The paper aims to emphasize the aspect of the borderless nature of conflict-management. The sphere of family law mediation, neighborhood conflict mediation, business mediation, mediation in inheritance debates can not be clearly separated from each other regarding the methods of mediation. Every conflict, every type of case has common paths during the mediation process. This article aims to summarize the position of mediation, with a special focus on civil procedures, based on Hungarian data on the regulation of the United Nations and of the European Union with the aim of displaying methods that are globally, internationally usable and applicable without borders. Timeframe for a procedure is an important, primary and also a conclusive question.

**Keywords**— mediation, alternative dispute resolution, conflict, trust, time

## Introduction

This article aims to summarize the position of mediation, through introducing the regulation of the United Nations, of the European Union with the aim of displaying methods that are globally, internationally usable and applicable without borders. Research argues that social capital as proxied by trust (McKnight, 1996), (Rousseau, 1998) increases aggregate productivity by affecting the organization of firms (Bloom, 2012).

However the field of business mediation can not be clearly separated from other mediation types, business mediation often fuse with them, furthermore research shows that mediation have to be viewed as complementary elements of an integrated system and that the key to successful dispute resolution in international

business is conscious and creative design of conflict management process. (Bühring-Uhle et al. 2006) Research show paths of the negotiation space and negotiation strategies, agreements between nations, firms, and individuals facilitate trade and ensure smooth interaction. (Ott and Ghauri, 2018)

Due to the increasing number of conflicts in the international arena, and the numerous attempts to settle them, the attention of scholars has recently turned to one of the most effective methods of conflict management, international mediation. The theoretical construction best describing and explaining the process and the outcome of mediation is the contingency model of international mediation. The main postulate of the model is that mediation is a context-driven process: the

attributes of the conflict in question, the participating parties, the identity of the mediator etc. all have an influence on what type of mediation strategy is selected, and thus what kind of outcome is achieved. The main innovation of the model is that it does not attempt to separate the mediation process from the wider political, economical and social surroundings of the conflict. (Szent-Iványi, 2004)

### **Procedure based on trust. Mediation, alternative dispute resolution**

- **Mediation**

Modern international conflict resolution offers a variety of tools for management and strongly encourages the emergence of conflicts, as effective conflict management does not only affect the business and economic development and efficiency of the business, but also the stability and development of the national economy. (Simkó, 2012)

Mediation is the process in which the resolution of the parties' conflict is supported and guided by a neutral third party, the mediator, until the parties reach an agreement.

Mediation is preceded by conflict. Conflict is a necessary or actual conflict of interests, in which situation the need of the stakeholders is to resolve the conflict.

Mediation is a conflict management process based on the aim, help the parties reaching a consensus. A real win-win outcome may be reached by the parties with the support of an independent third party. Methods in mediation are evaluation, restoration and transformation. In case of a conflict, escalation is based on evaluation, communicated by one party, this involves another evaluation, which are based on emotions. Observation without an evaluation is necessary and useful in the process of mediation, where the consensus has to be reached. Transforming the conflict to connection is one of the most important aim in mediation, where the interests are in the highest degree about trust, peace, assets,

economy. The restorative method is the method by which we can never be mistaken and will always be necessary during dispute settlement. Aim is to restore trust, peace, relations, emotions, assets, partnership, cooperation.

Mediation means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute. (United Nations Convention on International Agreements Resulting from Mediation, 2019)

- **Conflict**

Conflict can be considered as a breakdown in the standard mechanisms of decision making, so that an individual or group experiences difficulty in selecting an alternative. (Rahim, 2011)

We could ascertain that compromise and consensus are one in the same, but there are very important differences between the two definitions.

To compromise is to make a deal between different parties where each party gives up a part of their demand. In arguments, compromise is a concept of finding agreement through communication, through a mutual acceptance of terms—often involving variations from an original goal or desire.

The idea of compromise is usually based upon competing demands and some willingness to give up some part of the demands. Each party says they are willing to give up on getting a portion of their demands to get the other to make an agreement. If there is agreement they feel like they lost or won but neither party trusts the other to follow through. The compromise soon collapses and is often forgotten. This leaves both parties with an increasing sense of powerlessness, bitterness and distrust. The status of related companies in relation to the compromise is as follows: on the one hand they are not sure about their needs, on the other hand, it is urgent for them to agree

with the other party with their opinions and interests.

Conflict is a situation in which individuals are emotionally affected. In conflict interest are in

collision and trust is lost between the parties (Table 1.).

Table 1 Conflict Between Persons

Person 1	Person 2
collision of interest(s)	collision of interest(s)
loss of trust	loss of trust

The term conflict (Fink, 1968, Caputo&Marzi et al., 2018) has no single meaning. Most of the confusion around the definition was created by scientists from different disciplines who are interested in studying conflicts. The literature review of the conflict shows the conceptual complexity of the commonly accepted definition of conflict.

Reviews of the conflict literature show a conceptual sympathy for, but little consensual endorsement of, any generally accepted definition of conflict. There is tremendous variance in conflict definitions that include a range of definitions for specific interests and a variety of general definitions that attempt to be all-inclusive. Conflict can be considered as a breakdown in the standard mechanisms of decision making, so that an individual or group experiences difficulty in selecting an alternative. (Rahim, 2011)

## CONFLICT MANAGEMENT

Conflict-management is an activity and a kind of communication the methods of which can be applied extensively, internationally, regardless of borders. When people are able to understand and communicate their needs clearly, conflict may lead to connection. People have a common sense, that to solve, resolve, to transform a conflict is better than live with or in it. It is a common sense, that nonviolent communication (NVC) leads to effects, it is productive. This

paper would like to present some of the resources, of the living instruments, from which humans, business environment, legal entities can choose. The mission is to know how, where and when to make the right step in the space of alternative dispute resolution until we reach the solution, so mediation is an international tool with methodology to help humans and also legal persons to reach an agreement.

Conflict management is a creative facilitation for persons that can be used to develop profitable professional levels in society for individuals, businesses and focus on the dynamism and balance of conflict and harmony. Conflict management is one of the ways of achieving peace. Peace is nothing more than a change in the form of conflict or in the antagonists or in the objects of the conflict, or finally in the chances of selection. (Coser, 1998) According to the social meaning of conflict and peace (Lederach,1995) persons, organizations, working places, families, neighbours, states, consumers in different cultures can bring themselves to a position to do able to make their own decisions. Socio-moral climate is positively related to innovation. The positive relation between the socio-moral climate and innovation was mediated stepwise through debate and decision comprehensiveness. (Seyr and Vollmer, 2014)

Apart from some of the highlighted Hungarian examples, they give an insight into where the

alternative dispute resolution is today - alternative dispute resolution can be found in many countries in the world. To strive for peaceful conflict management and peaceful resolution of disputes, today we call court mediation, mediation, conciliation, arbitration, litigation, and arbitration services as an alternative dispute resolution.

Doing conflict management can be mediation, conciliation, facilitative (lead) negotiation, arbitration. To manage something means to lead something or somebody, holding the case in the hands of the conflict manager (mediator, arbitrator). From the word manage, "manus" has the latin meaning "hand". Hold the case in the hand and lead it from the conflict until solution.

After mediation trust may be even bigger than before the dispute as parties are more likely to perceive their business partners as reasonable and responsible people, with whom they can go through conflicts and resolve the problems in a proper manner, without court. (Zaleski, 2015)

Different leadership styles are associated with conflict resolution styles. Leaders who are predominantly in the transformative leadership style have adopted integrative and mandatory conflict management styles. Leaders who are mostly transactional style leaders, represent a compromise (unified) conflict management style. While the laissez-faire management style has adopted the avoidance conflict management style. (Saeed et al, 2014)

In Rahim's (2011) typology, organizational conflict management styles are:

- Integrating
- Obliging
- Compromising
- Dominating
- Avoiding

Leadership styles of leaders in the organization system are:

- Transformational

- Transactional
- Laissez-faire

Saeed and his co-workers (2014) consider integrating and obliging as constructive conflict management, while dominating and avoiding styles as destructive conflict management.

Their assertions have been confirmed in their study, according to which the transformational leadership style has a positive relationship with a constructive conflict segmentation and a negative connection to this style of leadership in the destructive conflict management style.

There is also a link between transaction management style and compromise conflict management style.

Partial connectivity can be demonstrated by the identification of laissez-faire leadership with a destructive conflict management style. However, the laissez-faire leadership has a negative relationship with constructive conflict management styles.

Examining business alternative dispute resolution, there is a proven relationship between leadership styles and conflict management styles among managers, executives, and in the management of interpersonal (managerial and subordinate) conflicts. (Saeed et al. 2014) Karam et al. (2019) state that leadership is one of the most frequently studied phenomenon in the field of management.

### **Trust**

Trust does not play a decisive role not only during the conflict management of legal entities but also in the conflict management of natural persons. Based on trust –this is the fundamentum mediation process can work. Several studies work with buyer-seller conflict management, as Celuch et al (2011) ascertains the aim to address how trust interacts with attributions to impact the effect of partner communication on conflict resolution perceptions in buyer-seller relationships.

Trust is a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behavior of another (Rousseau et al., 1998). Trust can be conceptualized as an orientation toward society and toward others that has social meaning beyond rational calculations. (Tyler, 1996)

Reserach examines environments in which agents are randomly matched to play a Prisoner's Dilemma, and each player observes a few of the partner's past actions against previous opponents. (Heller and Mohlin, 2017)

Trust is positive connection between persons, with the knowledge, with the security that one person can rely on the other person. Decision about trust is based on a complex personal status.

- Is the other person objective reliable? Objective criterias, for example: creditability, truthfulness, recommendations of other persons, transparency, followability on community pages.

- "I do not know it, but I feel it" Trust as a feeling often appears. Feelings about trustworthiness are able to change.

- There are personal relationships, interactions where trust is not a matter of judgement, trust is unconditional. (Lozoff and Kennell, 1977)

Conflict is everywhere. Can be found in human relationships and in business relationships. The businesses involved in the formal conflict are, of course, interested in the effective resolution of the conflict. It is not only a matter of conflict that needs to be resolved, but a solution must also be found to make the best use of the resources of the leaders and to ensure that their solutions not only provide short-term solutions but also, if possible, final solutions.

Recently, Alternative Dispute Resolution (ADR) has become an increasingly effective and popular strategy for conflict resolution. The ADR roster includes such well-known processes as arbitration, mediation,

conciliation, and, perhaps, negotiation. These processes can be used to settle existing disputes or to prevent disputes from developing. (Lieberman, 1986). Litigation is a disadvantage for businesses - the parties lose control, lawyers and the judiciary have power over the timing and procedure of conflict resolution, and as a result, the debate may take years.

Conflict coaching, which trains leaders to manage conflict through integrative training and follow-up, is more effective for empowering leaders to manage conflict within the organization and many different levels of the organizational hierarchy, while mediation, which relies on a balance of power and a dialogue-focused setting, is more effective for individuals on the same level of the organizational power hierarchy to come to their own solution through the help of a mediator. (Carden, 2018)

The participants in the conflict lose their ability to communicate with each other in the process of resolving the problem. This damages most business relationships and undermines trust and cooperation. In addition, the costs of litigation, court fees, litigation costs and lawyers' fees are significant to settle the conflict. Companies that participate in court proceedings may lose their competitive advantage.

On the other hand, alternative dispute resolution procedures have become increasingly common due to the benefits. Costs are lower, the process is simpler, less formalized, and communication between the parties is more sustainable and managed. If alternative dispute resolution methods are used, the agreement is reached only if both parties agree to voluntarily participate in the mediation procedure. Expressing their own intent on conflict management is a rationalized approach to conflict.

Although there are some remarkable differences between the various ADR procedures, a common feature can be identified: the dispute is mostly determined by the parties involved and the third party (the intermediary) has less power.

While in court cases the court has absolute jurisdiction to resolve the conflict and to enforce the decision, the parties will determine the outcome of the dispute through mediation, of course, in accordance with the rules and applicable law. In alternative dispute resolution, when the result is reached, that is, at the conclusion of the settlement, the parties may take into account a wider range of rules, especially their business interests (Bercovitch, 2001).

Therefore mediation and arbitration are procedures based on interests and rights. The fact that the business interests are taken into account also means that the parties may decide on the result based on their desired future relationship, and not only on the basis of their past behavior.

The settlement of alternative dispute resolution can help to rebuild relationships, restore the original status, establish new relationships, and maintain communication between the parties.

## TIME

Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act. (The Fundamental Law of Hungary 25 April 2011)

Mediation is at varying stages of development in Member States. There are some Member States with comprehensive legislation or procedural rules on mediation. In others, legislative bodies have shown little interest in

regulating mediation. However, there are Member States with a solid mediation culture, which rely mostly on self-regulation.

For the purposes of the Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

- (a) the parties agree to use mediation after the dispute has arisen;
- (b) mediation is ordered by a court;
- (c) an obligation to use mediation arises under national law; or
- (d) for the purposes of Article 5 an invitation is made to the parties. (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Article 2. Cross-border disputes)

In the Hungarian legal regulation there are several ways for businesses how to resolve disputes, how to resolve a conflict, how to continue with business partners. Courts fulfill the task to decide in the complaints of clients, to run the procedures of trials.

What is the number of mediators and how many cases are there yearly to solve. From the year of the Act on Mediation has become to effect, from the year 2007, can we observe an increasing will of natural and legal persons to initiate mediation? The number of registered mediators at Ministry of Justice between 2010-2016 were the following:

Table II. Registered mediators at Ministry of Justice Hungary 2010-2016

	2010	2011	2012	2013	2014	2015	2016
<b>Registered mediators at Min.of J.</b>	1272	1408	1578	1615	993	1041	1168

After three years of increasing in number of registered mediators, a relapse can be observed

in 2014, which has been followed by again with slow increase in 2015 and 2016. The

requirements of further training and continuative education of mediators included in the legal regulation may influence the issued registered mediators.

The numbers of incoming cases speak about stagnation despite of the Hungarian indicated title 'It is bad to litigate' (Ábrahám and Eörsi, 2003). Perhaps people and decision makers

change their minds and make the choice to choose alternative dispute resolution. Between 2010 and 2016, on the basis of data giving of registered mediators Table 2 shows the conformation of mediated cases, separately the cases with a successful agreement at the end and separately the cases without a successful end.

Table III. Incoming cases to registered mediators at Ministry of Justice Hungary 2010-2016

	2010	2011	2012	2013	2014	2015	2016
<b>Successful</b>	216	708	370	589	851	864	983
<b>Un Successful</b>	63	203	160	204	260	487	400

Conclusion of the Mediation Process according to Article 35. of Act on Mediation 2002. LV. provides that a mediation process is deemed concluded

- a) on the day the settlement is signed,
- b) on the day on which one of the parties informs the other party and the mediator of his withdrawal from the mediation process,
- c) on the day on which the parties unanimously declare in front of the mediator their request to close the mediation process, or
- d) after the end of the fourth month following the signing of the statement, unless otherwise agreed by the parties.

The mediator shall record the settlement made in the presence of the parties in the language selected for the mediation process and shall supply a copy of the settlement document to each of the parties. The settlement document shall be signed by the mediator and by the parties at the same time. The four months period to make an agreement and make our own decisions can be adopted as reasonable time.

ECHR Article 6. Right to fair trial provides that in the determination of his civil rights and

obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. (European Convention on Human Rights)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) To be tried without undue delay. (International Covenant Civil and Political Rights 14(3)(c))

According to article 14(3)(c) of the International Covenant and articles 20(4)(c) and 21(4)(c) of the respective Statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia, every person facing a criminal charge shall have the right "to be tried without undue delay". In the words of article 7(1)(d) of the African Charter, article 8(1) of the American Convention and article

6(1) of the European Convention, everyone has the right to be heard “within a reasonable time”. What it means to be tried “without undue delay”: In General Comment No. 13, the Human Rights Committee stated that the right to be tried without undue delay is a guarantee that “relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place ‘without undue delay’. To make this right effective, a procedure must be available in order to ensure that the trial will proceed ‘without undue delay’, both in first instance and on appeal. This view has been further emphasized in the Committee’s jurisprudence, according to which article 14(3)(c) and (5) “are to be read together, so that the right to review of conviction and sentence must be made available without delay”. (The Right to Fair Trial <https://www.ohchr.org/Documents/Publications/training9chapter7en.pdf>)

## Conclusion

Suggestion of author is to emphasize the importance as an obligation and possibility of having a decision in cases, conflicts, within a reasonable time. Mediation gives worldwide an international possibility to reach this aim. As provided by the United Nations Convention on International Settlement Agreements Resulting from Mediation Preamble states that the Parties to this Convention recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably. Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation. Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States, convinced that the establishment of a framework for international

settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations. (UN Convention on International Settlement Agreements Resulting from Mediation)

Parties of author’s country have the opportunity to decide: four month procedure in civil disputes and mediate or a proceeding with an uncertain length and litigate.

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