

## How is Mediation Integrated into the Dispute Resolution System of Civil Cases in Hungary?

Viktória Harsági

Prof. Dr., Department of Civil Procedure Law, Pázmány Péter Catholic University, correspondence address: Szentkirályi u. 28–30, 1088 Budapest, e-mail: [harsagi.viktoria@jak.ppke.hu](mailto:harsagi.viktoria@jak.ppke.hu)

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**Abstract:** The article deals with the integration of mediation into the Hungarian justice system, with particular attention to its historical aspects, the connection between litigation and mediation and the conditions for becoming a mediator, as well as the two types of mediation.

### 1. Historical Aspects

In Hungary, mediation was regulated quite early; a comprehensive regulation of mediation is contained in the *Mediation Act*,<sup>1</sup> adopted in 2002, six years before the *European directive*.<sup>2</sup> Therefore, due to the later adopted directive, the Hungarian Mediation Act had to be amended to the greatest extent in 2008. In accordance with Article 12, Member States had to bring into force the laws, regulations, and administrative provisions necessary to comply with this directive. Hungary “complied with its obligation of transposition in 2009. Act LXXV of 2009 amended the Mediation Act, provided for the professional training for mediators, reregulated registration in the mediators’ register and the striking off of mediators from the register in the case of a gross breach of duty, and permitted the use of video

<sup>1</sup> Act LV of 2002 on Mediation.

<sup>2</sup> 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, OJ L 136, 24.5.2008, 3–8.

conferences.”<sup>3</sup> Hungary is characterized by monistic regulation: there are no separate provisions for domestic and cross-border mediation.

The other major modification took place in 2012. Originally, a model of out-of-court mediation was developed; with the latter amendment, the possibility of court-annexed mediation was also introduced. From then on, the parties can choose which of the two possible forms of mediation they wish to use.

In a special area, there was mediation regulation even before this, therefore, the first real mediation in Hungary was introduced by Act CXVI of 2000 on *Mediation in Health Care*. In legal disputes between patients and doctors (hospitals, clinics, and health insurance companies), the parties concerned may choose it instead of legal action on a voluntary basis.<sup>4</sup>

In Hungary, the traditional fields of conciliation and mediation for a long time were *labor law* and *family law*.<sup>5</sup> Typical institutions of the socialist era were arbitration committees proceeding in employment law disputes, the use of which, however, was not based on the principle of voluntariness but on a binding provision of law.<sup>6</sup> Nowadays, its application is already widespread in many other areas, mainly in civil, family, labor, and, most recently, criminal and administrative matters. Mediation is typically employed in legal relationships with a longer time horizon, where cooperation is needed for years.

## 2. The Role of Mediation in the Hungarian Judicial System

Justice shall be administered by the courts, but an Act may also authorize other organs to act in particular legal disputes (Section 25 new Constitution of Hungary, in force since 2012). Thus, the legislator essentially opened the door to the “privatization of judicial activities” (e.g., arbitration or other

<sup>3</sup> Miklós Kengyel, Viktória Harsági, and Zoltán Nemessányi, “Hungary,” in *Civil and Commercial Mediation in Europe. National Mediation Rules and Procedures*, vol. 1, eds. Carlos Esplugues, José Luis Iglesias, and Guillermo Palao (Cambridge: Intersentia, 2013), 223; cf.: Tamás Gyekiczky, “A mediációs irányelv,” *Európai Jog* 9, no. 6 (2009): 24.

<sup>4</sup> Alice Decastello, “Mediáció az egészségügyben” (Budapest: HVG Orac, 2010), 62–128.; eadem, “Mediation in Health,” *Hungarian Medical Journal* 2, no. 2 (2008): 193–199.

<sup>5</sup> See: Beáta Nagy et al., “Parental mediation in the age of mobile technology,” *Children & Society* 37, no. 2 (2023): 426.

<sup>6</sup> Kengyel, Harsági, and Nemessányi, “Hungary,” 218.

judicial tasks carried out by notaries public). In comparison, the status of mediators may raise interesting questions, given that mediators have no decision-making authority, but due to their “qualification assists the parties in entering into a mutually acceptable settlement.” But the agreement reached during mediation is not an obstacle for the parties to bring their dispute before a court.<sup>7</sup>

The mediation procedure can fulfill its role well if it is not overregulated. The matters that must or should be regulated are concentrated mainly around the procedural input and output. In my opinion, the following issues should be determined by the law: a) who can be a mediator and under what conditions; b) how the mediation procedure starts; c) whether mediation can be made mandatory and, if so, in which cases; d) the time frames (end) of the mediation procedure; e) the question of the enforceability of the mediation agreement; f) the relationship between mediation and litigation. However, it is not worth regulating how the mediator conducts the mediation process to a significant extent. Overregulation in this area would be incompatible with the nature of mediation; a high degree of flexibility could be a good solution here.

According to the Mediation Act, the purpose of this law is to facilitate the settlement of civil and administrative legal disputes arising in connection with personal and property rights of natural persons and other persons, in which the parties’ right of disposition is not limited by the law. The scope of the law does not extend to other mediation or conciliation procedures regulated in a separate law, as well as mediation to be conducted during arbitration proceedings unless otherwise provided by a separate law or a decree issued on the basis of its authority (Section 1 of the Mediation Act).

Mediation is a specific pre-litigation procedure, conciliation, conflict management, and dispute settlement procedure conducted on the basis of the Mediation Act, the purpose of which is (based on the mutual agreement of the parties to a dispute) facilitating the creation of a written agreement containing a solution to the dispute between the parties, with the involvement of a third party (mediator) not involved in the dispute (Section 2 of the Mediation Act).

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<sup>7</sup> Miklós Kengyel, *Magyar polgári eljárásjog (Hungarian Civil Procedure)*, 11th ed. (Budapest: Osiris, 2012), 601; Kengyel, Harsági, and Nemessányi, “Hungary,” 217–218.

The duty of the mediator is to contribute impartially, conscientiously, and to the best of their ability in the creation of an agreement resolving the dispute between the parties during the mediation (Section 3 of the Mediation Act). According to the reasoning of the mediation bill, the mediator must conscientiously, impartially, and to the best of their ability, try to reconcile the opposing parties and, by not resorting to the judicial process, create an agreement between the parties. Within this activity, knowledge of people, quick recognition of situations, good communication skills, and conflict management skills are essential, so the people who complete the mediation course can manage and lead the mediation process effectively and efficiently, supplementing the experience gained during the course with the knowledge and practice acquired in their profession.

There is no place for the mediation procedure according to this law in guardianship, maternity, and paternity cases according to the Code of Civil Procedure, in cases related to parental custody (except for those initiated to settle the exercise of parental custody), in cases to dissolve adoptions, to enforce personal rights (except for lawsuits filed for the enforcement of certain personal rights related to belonging to the community), to change a town clerk's decision in a property protection case, and enforcement cases.

In matrimonial cases, the court's decision is required to establish the invalidity, validity, existence, or non-existence of a marriage and to dissolve a marriage. In matters subject to the termination of a registered partnership by a notary public, the notary's decision is required to terminate a registered partnership (Section 1 of the Mediation Act).

### **3. Who May Be a Mediator?**

In Hungary, a mediator may be a natural person or an employee of a legal person, or a so-called business without a legal personality. They should be listed in the register of mediators, which is kept by the Minister of Justice. Upon request, the natural person – who is not under the scope of guardianship affecting the capacity to act or is not under the scope of supported decision-making – who:

- a) has a higher education degree and at least five years of certified professional experience linked to the higher education degree,
- b) has completed the professional mediation training specified in the ministerial decree,

- c) has no criminal record and has not been restrained by a court order from practicing the activities of mediators.

A legal person who satisfies the following criteria must be admitted to the register: a) have the activity of mediation registered in the statutes, and b) have a member, employee, or subcontractor who is licensed to engage in professional mediation and whose license to engage in professional mediation has not been suspended. In addition to these requirements, the applicant should also provide proof of payment of the fee for admission into the register.

The Mediation Act makes it clear that a mediator can only be a natural person who becomes entitled to continue mediation activities by being listed in the register. The employee of the legal person becomes entitled to carry out mediation activities only if they are listed in the register as a natural person, as well as the legal person that employs them. An employee of a legal person may not be instructed by a member or company manager of the legal person regarding their mediation activity (Section 7 of the Mediation Act). According to the reasoning of the mediation bill, the primary reason for this is that the employee acting on behalf of the legal person in the mediation process can remain impartial and neutral.

The applicant must pay a fee for inclusion in the register. The natural person is obliged to prove, in the manner specified by the law, that they have acquired the theoretical and practical knowledge necessary for mediation activity by completing professional mediation training.

From March 2014 on (within the framework of court-annexed mediation), in addition to the persons and organizations listed above, a court secretary, a judge, or a judge placed on the disposition staff as defined in the Mediation Act may also perform mediation activities (Section 5–5/B of the Mediation Act).

#### 4. Training of Mediators

In order to become a mediator, one does not necessarily need to have a law degree. The Mediation Act requires any higher education degree (BA, MA, etc.) and a minimum of five years of experience (see point 3). The ministerial decree<sup>8</sup> No. 63 of 2009 specifies the requirements for the training of

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<sup>8</sup> 63/2009. (XII.17) IRM rendelet a közvetítői szakmai képzésről és továbbképzésről.

mediators. According to it, a maximum of 25 persons may participate in group training. The training subject must consist of a theoretical and practical part based on each other.

The theoretical part of the training, which is at least 60 hours long (with a duration of 45 minutes per hour), must include the following elements of knowledge and skills:

- a) basic knowledge and skills in conflict theory,
- b) basic knowledge and skills in negotiation,
- c) mediation technics and methodological knowledge and skills,
- d) process management and dynamic knowledge and skills,
- e) knowledge and skills in questioning techniques,
- f) mediation technical knowledge and skills suitable for various levels of conflict,
- g) mediation technical knowledge and skills related to the management of problematic participants,
- h) psychological knowledge and skills, and
- i) legal knowledge regarding mediation activity.

It can be seen that the training only deals with the legal background of mediation to a lesser extent; it is mainly intended to develop the skills that are indispensable in practicing the activity.

The theoretical training part can be divided into two modules of at least 30 hours. A module is a combination of the knowledge and skill elements that are part of the training, which can be handled independently compared to the other knowledge and skill elements. After mastering the module, the applicant can apply the knowledge and skills contained therein individually.

During the *practical part of the training*, the acquisition of practical experience – at least in relation to a completed mediation case – must be provided in one of the following ways: a) simulated case study, b) mentored case study, c) participation in a case discussion group, d) creating a case study, e) method-specific supervision. The purpose of the simulated case exercise is to reconstruct a mediation case that has taken place and to evaluate the roles of the mediator and the parties, with the participation of the instructor and members of the group organized during the training. During the mentored case study, a real mediation procedure is actually

conducted. The conduct of the mediation procedure and the evaluation of the role of the mediator and the parties are carried out under the continuous supervision of the instructor. Method-specific supervision is a method of gaining practice under the guidance of an instructor. It is used to analyze a mediation case that has taken place to reveal the errors and best methods that were used during it, in group or consultation form. During the method-specific supervision, the investigation of the mediation case is carried out solely on the basis of the correctness of the methods used and not on the content and results of the mediation.

An instructor with at least three years of experience as a mediation instructor must participate in the professional management and delivery of the training. The number of instructors must be adjusted to the number of members of the training group, with at least one instructor for up to 15 people and at least two instructors for groups of more than 15 people.

In order to ensure the appropriate professional level of mediation activity – to continuously maintain and develop the acquired knowledge and skills – the natural person is obliged to participate in further training. Continuing education takes place in consecutive continuing education periods lasting five years (Section 12/A of the Mediation Act).

The continuing education obligation (for the practicing mediators) can be fulfilled by obtaining continuing education credit points. The natural person included in the mediator's register must achieve credit points by completing at least two forms of further education from the following forms of further education: a) a theoretical training module, b) a practical training module, c) conducting a mediation procedure together with an instructor of the institution organizing the training, or d) participation in a mediation-related professional conference.

## 5. How to Initiate a Mediation?

Based on a mutual agreement, the parties may initiate the request of a natural person or legal person of their choice as a mediator in writing, by fax, or by electronic mail. If only one party initiates the procedure, the mediator can help the other parties join the initiative; no fee can be asked for this contribution. The parties – if the need arises – can initiate the invitation of several natural or legal persons simultaneously. The legal person shall notify the employee acting as a mediator in the case of the request. The request

must include: a) the name, address, place of residence or seat of the parties, b) the name of the natural person invited to mediate or the name of the legal person, c) if the party is represented by any representative, the representative's name and address, d) the subject of the dispute, and e) the foreign language intended to be used by the parties during the procedure. In the request, the parties must declare that, based on their mutual agreement, they wish to settle the dispute between them in the framework of a mediation procedure (Section 23 of the Mediation Act).

According to the reasoning of the mediation bill, the Mediation Act also defines the essential content elements of the application initiating the invitation of the mediator so that the mediator to be invited can decide on the merits of whether to undertake the mediation activity in the disputed matter based on the contents of the request. The request must specify that the parties wish to settle the dispute between them in the framework of a mediation procedure based on mutual agreement.

The Mediation Act allows the parties to indicate the foreign language in which they request the mediation process to be conducted. In the absence of such a designation, the language of the mediation procedure is Hungarian. Given that, based on the request of the parties, the mediator is aware of the language in which the parties wish to conduct the mediation procedure and accepts the request knowing this, it is not necessary to separately regulate the interpreter's participation in the mediation procedure.

The Mediation Act allows the requested mediator to declare in writing whether they accept the request within 8 days of receiving the request to initiate the mediation process. The mediator is obliged to declare in writing, by fax or electronic mail, whether they accept the invitation. The mediator is obliged to refuse the request in case of conflict of interest and may refuse in case of other obstacles (Section 24 of the Mediation Act). If the request is accepted, they are entitled to conduct the mediation process as a mediator. The deadline for making a statement is intended to provide the parties with the opportunity to start the procedure within the shortest possible time, and if the mediator rejects the request, the possibility to invite a new mediator within the shortest possible time. The Mediation Act determines in which cases the mediator is obliged to refuse the request for the sake of the impartiality and objectivity of the mediation process, but the law provides the possibility to refuse the request even if



the mediator to be appointed is prevented from accepting the request for other reasons. In this context, the law does not name the possible reasons for obstruction.

The law clarifies the reasons for conflicts of interest on the basis of which the mediator is obliged to refuse the request and also provides for rules regarding conflicts of interest arising after the completion of the mediation procedure (including the case when the mediator suspends activity). When determining the causes of conflicts of interest, the law sets a strict standard, primarily in order to ensure that the mediators participating in the mediation procedure cannot find themselves in a situation that could jeopardize their impartial position (Reasoning of the bill of the Mediation Act).

The mediator may not act if:

- a) the mediator represents one of the parties or is a supporter of one of the parties,
- b) the mediator is a relative of any of the parties,
- c) the legal person employing the mediator has a majority influence in the relationship with one of the parties,
- d) the mediator has an employment relationship with any of the parties, other legal relationships aimed at employment, and a membership relationship,
- e) the mediator is otherwise interested or biased in the case.

The mediator is obliged to inform the parties of the fact if they represented any of the parties within five years prior to the request or if they had an employment relationship, other legal relationship for work, or a membership relationship with any of the parties within the five years prior to the request. If the parties do not agree otherwise, the mediator may not act in the case.

Unless the parties agree otherwise, the person who participated in the mediation procedure as a mediator, representative of the parties, or an expert, as well as a mediator who has suspended activity in the legal dispute that was the subject of the mediation procedure, or the one that served as its basis or arising from the related contract or other legal relationship, may not act a) as an arbitrator, b) as a representative of one of the parties or c) as an expert (Section 25 of the Mediation Act).

## 6. The Course of the Out-Of-Court Mediation Procedure

The Act on Mediation contains only a few regulations on the course of mediation, as it is primarily determined by the parties. The law only defines the framework of the procedure. According to Section 28 of the Act on Mediation, if the mediator has accepted the invitation, the mediator invites the parties to the first mediation meeting and informs them of the possibility of representation. The parties may be represented by a person of legal age or a legal representative based on a power of attorney. The parties, and in the case of a legal person, the person authorized to represent them, must appear in person at the first mediation meeting and when the agreement is concluded and signed. During the initiation, conduct, and completion of the mediation procedure, the requirement of personal appearance does not have to be met if the mediation procedure is conducted using video conferencing (Section 35 of the Mediation Act). The mediator is to hold the mediation meeting in the location indicated in the register for carrying out mediation activities or in another place acceptable to the parties.

If any party does not appear in person at the first mediation meeting, the mediator shall not initiate the mediation procedure (Section 29 of the Mediation Act). If any party does not appear, this presumably means that the decision of the parties or one of the parties has changed after deciding to initiate the invitation to the mediator, i.e., the conduct of the mediation procedure is no longer considered appropriate for the settlement of the disputed case.

The mediator informs the parties at the first mediation meeting about a) the basic principles of mediation, the main stages of the mediation discussion, b) the process leading to the exploration of effective agreement possibilities, c) the costs of the procedure, d) the obligation of confidentiality imposed on the person and the expert possibly involved in the procedure, e) the possibility that the parties can separately agree on the obligation of confidentiality imposed on them, f) the fact that as a mediator in the case – if the nature of the case requires it – the mediator can only present the legal material and professional facts related to the case<sup>9</sup> (Section 30 of the Mediation Act).

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<sup>9</sup> Márta Nagy, *Bírósági mediáció* (Szeged: Bába Kiadó, 2011), 182–183.

By signing the declaration, the mediation process starts. According to Section 31 of the Mediation Act, the initiation of mediation proceedings interrupts the limitation. After the successful conclusion of the mediation procedure with an agreement, the limitation is governed by the Hungarian Civil Code<sup>10</sup> on the interruption of limitation, and in the case of ineffectiveness of the mediation procedure, by the Civil Code on the suspension of the limitation.

According to the reasoning of the bill of the Mediation Act, the law does not provide for the rules of a procedure known in civil litigation since the goal is for the mediation procedure to be conducted according to the rules established jointly by the parties and the mediator. The law specifies the main principles of the mediation procedure, e.g., that the mediator listens to the parties in detail; during the procedure, the parties must be present in person at the individual meetings; if possible, the parties can be heard during joint or separate meetings. In addition to taking into account these principles, the conditions and expectations agreed by the parties in connection with the procedure, with the involvement of the mediator, provide the procedure with the necessary content and rules. The law makes it clear that the mediator can communicate the information obtained during the separate meeting to the other party so that the other party can formulate and present its position taking this into account unless the party giving the information declares that the information cannot be brought to the attention of the other party.

Thus, the framework of the procedure is defined in general terms by Section 32. Based on this, in the mediation process, the mediator listens to the parties in detail, ensuring that the parties receive equal treatment. During this, the parties can explain their position based on their interests and present the documents available to them. The parties must be present in person at some of the meetings following the first mediation meeting unless otherwise agreed. Depending on the agreement of the parties, the mediator may conduct the mediation procedure both in the presence of the parties together or in the form of meetings held separately. The mediator may communicate the information received from one party to the other party in order for the other party to develop and present its position

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<sup>10</sup> Act V. of 2013 on the Civil Code.

taking this into account unless the party giving the information declares that the information cannot be brought to the attention of the other party.

At any stage of the meeting, the mediators may request or offer the parties the possibility of separate negotiations. Anything said during the special negotiation is strictly confidential, and the mediator may not pass it on to the other party unless the party participating in the special negotiation specifically requests it. This option is most often used when more than five or six people participate in the mediation or when it is a highly complex matter, or when it seems appropriate for married couples to have a female and a male mediator participate.<sup>11</sup>

According to the Mediation Act, the mediator may not conduct an evidentiary procedure (the objective of the mediation procedure is not to reveal the facts in an objective manner), but at the request of the parties, the mediator may involve an expert, if the parties consider that in order to develop the agreement in the disputed matter a person with sufficient expertise on the subject can provide assistance. The use of an expert, who does not necessarily have to be a forensic expert, takes place not on the basis of assignment but on the joint request of the parties. According to Section 33 of the Mediation Act, the expert is obliged to declare within 8 days after receiving the invitation whether they accept the invitation. Therefore, the law ensured the uniformity of the regulation of the mediation procedure by ordering the expert to apply the rules on conflicts of interest and confidentiality obligations of the mediator. As a general rule, the expert must present the expert opinion in writing, but depending on the agreement of the parties, the expert can also participate in mediation meetings in person. There is a fee and reimbursement for the expert's activities; the fee amount is freely agreed upon by the parties and the expert because it depends entirely on the parties' decision whether the expert is used in the procedure or not.

At the request of the parties, the mediator may hear other persons who are aware of the circumstances of the disputed case in the mediation procedure (Section 34 of the Mediation Act).

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<sup>11</sup> Zsuzsa Lovas and Mária Herczog, *A mediáció, avagy a fájdalommentes konfliktuskezelés* (Budapest: Wolters Kluwer, 2019), 126.

## 7. Closing the Mediation Procedure and the Mediation Agreement

The mediation procedure is closed:

- a) on the date of signing the agreement,
- b) on the day on which one party informs the other party and the mediator that it considers the mediation procedure completed,
- c) on the day on which the parties unanimously declare before the mediator that they request the termination of the mediation procedure, or
- d) after four months from the date of signing the declaration unless otherwise agreed by the parties.

The Mediation Act does not specify rules on the content of the mediation agreement. It only pronounces that the mediator shall record the agreement in the presence of the parties.<sup>12</sup> The reasoning of the bill only stated that at a mediation meeting, both parties present the main elements of the conflict that they consider essential. Then the parties attempt to resolve the dispute with the help of the mediator, settling it with a mutually agreed upon agreement if possible. A vital element of the mediation procedure is that the mediator ensures during the procedure that the discussion between the parties does not lead to the further escalation of the situation but to the development of a solution to the dispute by agreement. The mediator puts the agreement reached between the parties concerned participating in person into writing without any changes and then signs it with the parties concerned participating in person and the mediator, thereby ending the mediation procedure.

The mediator puts the agreement (concluded during the appearance in person of the parties) in writing in the language chosen for the mediation procedure and hands over the document containing the agreement to the parties. It is signed by the mediator and the parties appearing together in person. If the agreement is not put in writing, its fulfillment – in part or in whole – does not remedy the invalidity (due to the omission of the mandatory formalities). If a notary public, attorney, or legal adviser participated as a mediator in the mediation procedure, based on a written agreement reached during the procedure, they may not prepare a document producing legal effects, and the mediator, as an attorney or legal adviser, is not

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<sup>12</sup> Kengyel, Harsági, and Nemessányi, “Hungary,” 231–233.

entitled to countersign it either. If there is a change of name, incorrect name or number spelling, calculation error, or other similar typographical error in the agreement, the mediator will correct the agreement within 15 days of receiving the request based on the joint request of the parties (Section 35 of the Mediation Act).

The mediator is obliged to keep an annual, continuously numbered record of the mediation procedures conducted. By January 31 of each year following the current year, the mediator is obliged to provide the minister with data on the number of mediation procedures undertaken in the current year, the number of agreements reached during the procedures, the number of unsuccessful procedures (indicating the reason), and the nature of the disputes (Section 14–15 of the Mediation Act).

## 8. Enforceability

Mediation is fundamentally based on the principle of voluntariness, therefore, the mediation agreement does not lead to a writ of execution. In principle, they are not enforceable (an exception to this is an agreement concluded during healthcare mediation). “The mediation agreement is a contract, so it does not have, of course, *res judicata* effect. Participation in a mediation process does not hinder the parties from turning to court, even if the mediation was successful.”<sup>13</sup> If the parties still want the mediation agreement to become enforceable, then either the agreement must be recorded in a notarial deed, or the court must approve it (similarly to litigation settlements; see point 12).

## 9. Costs of the Out-Of-Court Mediation

There is a fee for the activity of the mediator, and the mediator can claim reimbursement of the incurred and verified expenses, as well as an advance payment of the fee and expenses. The amount of the fee to be charged in each case is freely agreed upon by a natural person or legal entity and the parties (Section 27 of the Mediation Act). If, at the first mediation meeting, the parties still request mediation, this fact shall be recorded in a written statement signed by both parties and the mediator. In the declaration, the parties and the mediator agree on the method of advance and payment of costs and

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<sup>13</sup> Ibid., 232–233.

fees arising during the procedure, including the cases of withdrawal and termination, and the parties can also agree on the confidentiality obligation imposed on them and on other issues they consider necessary. Unless otherwise agreed, the parties bear the costs incurred by participating in the procedure (e.g., travel) as well as the costs of any person invited to a hearing. The mediation fee and costs of the mediator, as well as the fee and costs of the expert, shall be borne equally by the parties unless otherwise agreed (Section 30 of the Mediation Act).

With regard to legal assistance, support can be provided to the party in the event that they participate in out-of-court mediation aimed at concluding the legal dispute, and legal advice is necessary for them before signing the agreement concluding mediation.<sup>14</sup> For the fee of the mediator, legal assistance is not available.<sup>15</sup>

## 10. Court-Annexed Mediation

For about ten years, only the out-of-court mediation model existed in Hungary. In addition, court-annexed mediation was introduced, as an alternative, in 2012. Court-annexed mediation activities may be carried out by court clerks, judges, and judges placed on the disposal staff. During their activities related to court mediation, they use the designation “court mediator.” If the parties and the court mediator agree, one or more mediators or court mediators may also participate in the proceedings (Section 38/A of the Mediation Act).

The parties to a litigious or non-litigious court proceeding may submit a joint request for court mediation to a competent court. The court shall inform the parties within 8 days of the name of the person acting as a court mediator, the date of the first information meeting, and the possibility of representation in the proceedings. During the mediation process, a judge acting in a litigious or non-litigious court proceeding may not act as a mediator in the same case. The court keeps the documents created during court mediation and ensures that copies are issued (Section 38/B of the Mediation Act).

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<sup>14</sup> Section 3 of the Act on Legal Aid.

<sup>15</sup> Kengyel, Harsági, and Nemessányi, “Hungary,” 234.

Court mediation is essentially free of charge; there is no fee to be paid to the court or an hourly rate to the acting court mediator. Many of the rules of out-of-court mediation detailed above do not apply to judicial mediation regarding its registration, control of the mediation activity, the request and fee of the mediator, the invitation of the parties, and the location of the mediation.

## 11. Mandatory Mediation

In certain family cases, the new Civil Code (Section 4:172 and 4:177) made it possible for the courts and the guardianship authorities to oblige to the mediation procedure. Therefore, it was necessary to amend the rules of mediation. In the case of a mandatory mediation procedure, the court or the authority obliges the parties to cooperate with at least one mediator in order to resolve their dispute – in whole or in part – by agreement; within the framework of this cooperation obligation, the parties are to a) jointly contact a mediator (with an invitation or request) and b) participate in the first mediation meeting (Section 38/C of the Mediation Act). The legislator simultaneously limited the fee for the first mediation session in these cases (Section 38/D of the Mediation Act). The parties are obliged to jointly initiate the mediation procedure by invitation, request, or in the manner specified by law within 15 days after the communication of the decision containing the obligation. The mediator is obliged to accept the invitation to conduct the mandatory mediation procedure unless there is a conflict of interest or the subject of the legal dispute does not belong to the mediator's field of expertise (if the mediator previously agreed to do so in a statement to the minister). The party obliged to use the mediation procedure proves the fulfillment of this obligation by submitting the certificate issued by the mediator to the court or the authority. The part of the agreement concluded during the mandatory mediation procedure, which is not the subject of the court or official procedure, can be written down separately (Section 38/E-G of the Mediation Act).

According to Section 124 of the Code of Civil Procedure, if the court obliges the parties to use a mandatory mediation procedure, it suspends the litigation at the same time. In order to start the mandatory mediation procedure, a suspended litigation procedure must be continued if a) either party proves that the mediation procedure has been completed,



b) either party proves that they participated in the first mediation meeting, but the mediation procedure has not started, or c) two months have passed since the notification of the mandatory decision to use the mediation procedure.

If the agreement reached in the mandatory mediation procedure complies with the law, and a party does not reach a settlement in the litigation, the party will reimburse part of the legal costs of the opposing party incurred in the mediation procedure, regardless of the outcome of the lawsuit. If the agreement reached in the mandatory mediation procedure does not comply with the law and in the absence of an agreement, the litigation must be continued on its merits, the party will reimburse half of the litigation costs incurred in the mediation procedure, regardless of the outcome of the lawsuit. In the case of a mandatory mediation procedure, if the party proves that it initiated the request for a mediator or appeared at the first mediation meeting and the request for the mediator or the initiation of the mediation procedure failed due to the other party's fault, the party's legal costs will be reimbursed by the other party. The defaulting party must prove the absence of fault (Section 86 of the Code of Civil Procedure).

## 12. The Relationship of Mediation to Litigation

The agreement reached in the mediation process does not affect the right of the parties to bring their claim to court or arbitration. If the law does not provide otherwise and the parties have not agreed otherwise, in court or arbitration proceedings initiated after the completion of the mediation procedure, the parties may not refer to the position or proposal expressed by the other party in the mediation procedure in connection with the possible resolution of the dispute or any declaration of recognition and waiver of rights made in the mediation procedure by the other party (Section 36 of the Mediation Act). According to Section 167 of the Code of Civil Procedure, if an agreement has been reached between the parties in a mediation procedure, in order to approve it as a settlement, either party may request a summons for an attempt at a settlement before the start of legal action.

Pursuant to Section 26 of the Mediation Act, in mediation proceedings – unless otherwise provided by law – the mediator is bound by a duty of confidentiality both during and after the proceedings. This makes it possible to create an atmosphere of trust during the mediation meeting,

in which the parties can honestly reveal their true interests and needs, and critical information can come to the surface. Therefore, according to Section 290 of the Code of Civil Procedure, a mediator or expert acting in a mediation procedure in a case affected by a legal dispute may refuse to testify.

If mediation has not yet taken place during the trial, the court has an obligation to inform about the possibility of mediation. The court may attempt during the proceedings to steer the parties toward a settlement. By this, the law encourages courts to promote the making of a court settlement between the parties.<sup>16</sup> In this context, according to Section 195 of the Code of Civil Procedure, before closing the pre-trial phase of the litigation, the court – if there is a chance of its success – attempts to persuade the parties to reach an agreement. The court provides information on the possibility of using mediation, its methods and advantages, the possibility of including an agreement reached in a court settlement, and the rules for suspending the proceedings. According to Section 238 of the Code of Civil Procedure, at any later stage of the trial, the court may attempt to have the parties settle the dispute or part of the disputed issues by settlement. In this way, the court can also inform the parties about the possibility of mediation. If the parties reach an agreement during mediation, they can submit it to the court for approval as a settlement. In this case, the court continues the procedure.

If the parties have taken part in a mediation procedure (regulated by law) after the closing trial admission (pre-trial) stage of the litigation, and the court subsequently approves the settlement, only 50% of the otherwise payable litigation fee should be paid, and this amount will be reduced with the mediator's fee plus VAT (but no more than HUF 50,000), provided that the mediation procedure is not excluded by law; however, the amount of the fee to be paid in this case cannot be less than 30% of the fee for the litigation procedure (Section 58 (4) of the Act XCIII of 1990 on Duties). If, despite the agreement reached during mediation, a party to the agreement takes legal action regarding the legal dispute settled by the agreement, the defendant's legal costs will be reimbursed by the plaintiff. The general rules for bearing legal costs apply if the plaintiff files a lawsuit solely for

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<sup>16</sup> Nagy, *Bírósági mediáció*, 187.

non-fulfillment of the terms of the agreement (Section 86 of the Code of Civil Procedure). According to the general provision on the bearing of court costs, the losing party covers the expenses of the successful party.

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