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Court Mediation Within Administrative Court Proceedings in Hungary[2]

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Abstract

Under the provisions of Act I of 2017 on the Code of Administrative Court Procedure, a brand new institution has been introduced in Hungary: as of 1 January 2018, in administrative court proceedings, the judge may, with the agreement of the parties, allow for a court mediation procedure in the cases in which the law does not preclude it. The primary method to approach the topic is the review of the relevant primary legal sources [actual law in the form of the constitution (Fundamental Law of Hungary), acts, governmental decrees, orders of the President of the National Office, court cases, etc.] and *secondary legal sources* (Hungarian and international scientific literature explaining the primary sources, the legal practice and also the specific circumstances determining the broader social environment) through which we may define relevant scientific problems, create our own definitions and prepare a catalogue of practical problems, specifically for Hungarian issues regarding the topic. Moreover, this article tries to build on the results of the interviews with judges, representatives of different defendants (administrative authorities) and others. Qualitative interviewing, including the interviewing of judges and other participants of such proceedings, is a relatively new method in the field of legal studies, at least in Hungary.

Keywords: administrative court procedure, court mediation, mandatory mediation, qualitative interviewing.

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Mediacja sądowa w postępowaniu sądowoadministracyjnym na Węgrzech[3]

Streszczenie

Na mocy przepisów ustawy I. z 2017 r. o kodeksie postępowania sądowoadministracyjnego wprowadzono na Węgrzech zupełnie nową instytucję: od 1 stycznia 2018 r. w postępowaniu sądowoadministracyjnym sędzia może, za zgodą stron, dopuścić sądową procedurę mediacyjną w przypadkach, w których prawo nie stoi temu na przeszkodzie. Podstawową metodą podejścia do tematu jest przegląd odpowiednich pierwotnych źródeł prawa [rzeczywiste prawo w postaci konstytucji (Ustawa Zasadnicza Węgier), ustaw, dekretów rządowych, zarządzeń Prezesa Urzędu Krajowego, spraw sądowych itp.] oraz wtórnych źródeł prawa (węgierska i międzynarodowa literatura naukowa wyjaśniająca źródła pierwotne, praktykę prawną, a także specyficzne okoliczności określające szersze środowisko społeczne), dzięki którym możemy zdefiniować odpowiednie problemy naukowe, stworzyć własne definicje i przygotować katalog problemów praktycznych, konkretnie dla węgierskich zagadnień dotyczących tematu. Ponadto w niniejszym artykule starano się wbudować wyniki wywiadów z sędziami, z przedstawicielami różnych pozwanych (władz administracyjnych) i innych. Wywiad jakościowy, w tym wywiad z sędziami i innymi uczestnikami takich postępowań, jest stosunkowo nową metodą w dziedzinie studiów prawniczych, przynajmniej na Węgrzech.

Słowa kluczowe: postępowanie sądowoadministracyjne, mediacja sądowa, mediacja obligatoryjna, wywiad jakościowy.

[3] Badania zostały sfinansowane przez Instytut Wymiaru Sprawiedliwości w ramach polsko-węgierskiej współpracy Polish-Hungarian Research Platform 2022 (projekt PHRP2).

Introduction

I visited the Warsaw Rising Museum (Polish: *Muzeum Powstania Warszawskiego*), dedicated to the Warsaw Uprising of 1944 at the end of 2022. On the one hand, it was uplifting because of the courage and self-sacrifice shown by the insurgents. On the other hand, it was a sad experience because there was so much pain, so many wounds and losses during those two months of the uprising… Unfortunately, there are conflicts in which you cannot reach a compromise – but if there are any chances for that, you have to have proper and effective techniques, even some institutionalised ones. Almost all the forms of ADR (*alternative dispute resolution*) are aimed at preventing the escalation of human conflicts both outside and within court proceedings – and that is the reason for the importance of mediation and court mediation, as well. In connection with the previous thoughts, we should also add that mediation is more effective when conflict is moderate rather than intense, and when the parties are highly motivated to reach a settlement, as they are in a hurting stalemate.[4]

In the 1990s, mediation in Hungary was initially regulated only for specific kinds of mediation (consumer protection, health care, etc.). The first general statutory regulation was adopted in the form of Act LV of 2002 on Mediation, which remains the primary legal source for mediation today. Directive 2008/52/EC was implemented in Hungary in 2009.[5] The regulation on mediation – with regard to the specifics of the different fields of law – is still diverse.[6]

A specific form of mediation, i.e. *court mediation*, has been available in Hungarian civil courts since 2012, and is an effective tool for enhancing customer satisfaction and timeliness in civil litigious and non-litigious cases. Moreover, under the provisions of Act I of 2017 on the Code of Administrative Court Procedure, a brand new institution has been introduced in Hungary: as of 1 January 2018, in administrative

4 D.G. Pruitt, *Negotiation and Mediation*, "Annual Review of Psychology" 1992, 1, p. 562.

5 Related to the Polish implementation see: M. Dąbrowski, *Assessment of the Correct Implementation of Article 4 of Directive 2008/52/EC of 21 May 2008 on Some Aspects of Mediation in Civil and Commercial Matters in the Polish Legal System*, "Krytyka Prawa" 2022, 3, pp. 5–19.

6 See some examples on the early Hungarian scientific literature response to the first legal sources: M. Nagy, *Bírósági mediáció*, "SZTE ÁJK" 2011, p. 13; K. Rúzs Molnár, *Mediáció a munkajogban*, "SZTE ÁJK" 2007, p. 131; Á. Dósa, *Konfliktusrendezés közvetítői eljárással*, "Literatura Medicina" 2001, 11; and https://birosag.hu/en/court-mediation (access: 12.11.2022).

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court proceedings, i.e. the judge may, with the agreement of the parties, allow court mediation procedure in the cases in which the law does not preclude it.

Within our Hungarian *court-related*, *centralised model* of mediation within administrative proceedings, which is well-known also in Germany or Slovenia, the court refers parties to mediation, the (court) mediation takes place in a court building and is conducted by court-based mediation practitioners. The mediators are drawn from the judiciary or other members of court personnel, the mediators are chosen and appointed by the court, and the costs of the mediation are treated as costs of the justice system. In most of the cases it means that these services are free.[7] By contrast, another form of court-related mediation is also used in some countries: the *marketplace model* represents a form in which the court outsources mediation services. The mediators are typically not employed by the court but are members of a panel of court-approved mediation service providers who set their own fees that the disputants pay.

From both the international and the Hungarian perspective, the implementation of the institution of court mediation has been affected by the fast spread of the different alternative dispute resolution methods outside of the traditional forms of court litigation. There was a great need for such a form of dispute resolution that exists within the organisation of the judiciary but, at the same time, is absolutely separated from the court procedure and is also independent of the judge who decides the case.[8] The goal of court mediation is to offer a tool for the parties that allows them to reach the best solution after they go to trial.[9] Court mediation allows them to soften their conflict by formulating their feelings and by clarifying the circumstances that resulted in the debate in question.

But why is it so important to have also a court-related mediation model beyond those institutions that belong to the classic private sector mediation model (also existing in Hungary) or to the community mediation model? The short answer is that a relatively balanced distribution of mediation services indicates a broad range of access points to mediation and that sustainable diversity is essential for the continued attractiveness of mediation as an adaptable and innovative alternative to traditional court procedures.[10]

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7 N. Alexander, *Making mediation law*, Singapore 2016, p. 8.

8 *A polgári eljárás alternatívája: bírósági közvetítés. A mediáció helye jogrendszerünkben*, p. 3. https://www.mabie.hu/attachments/article/99/A%20polg%C3%A1ri%20elj%C3%A1r%C3%A1s%20alternat%C3%ADv%C3%A1ja%20-%20b%C3%ADr%C3%B3s%C3%A1gi%20k%C3%B6zvet%C3%ADt%C3%A9s%20(1).pdf (access: 1.12.2022).

9 M. Nagy, op. cit., p. 136.

10 N. Alexander, op. cit., p. 13.

Within my previous essay on administrative court mediation,[11] that was the first part of my research within the "Polish – Hungarian Research Platform 2" scientific cooperation organised by The Institute of Justice in Warsaw, I tried to review the relevant primary and secondary legal sources (see in detail in Chapter 2), and since we have only a very limited number of scientific works explicitly dedicated to mediation within administrative court procedures in general or to the systematic overview of the practice within that field, the existence of scientific works related to mediation within civil and criminal court proceedings also predisposed me to make a *detailed comparison* between the three forms of court procedure in Hungary according to their rules related to mediation, i.e. I have been looking at similarities and differences, examining such topics as the existence of mandatory mediation within those three fields, also answering the question: "At which stages of the given procedure is mediation allowed"?

That first half of my research also proved that institutions of our modern era, such as mediation (and primarily administrative court mediation), perfectly meet the requirements in the scientific literature of good governance and similar phenomena.

So, what should the particular direction or task of my current essay be? Moreover, what are those aspects of the given issue in which unique results can be shown? There are at least two topics that could be presented in my research (and could fulfil the requirements mentioned): on the one hand, I treat mediation as a complex phenomenon of communication by enlisting the needed "tools" of the participants of such a process, and on the other hand, I collected some relevant data on that form of mediation, also relying on the interviews taken with judges and other participants of administrative court mediation.

Methods used

Following the goals mentioned above, the primary method to approach the topic is the review of the relevant primary legal sources [actual law in the form of the constitution (Fundamental Law of Hungary), acts, governmental decrees, orders of the President of the National Office, court cases, etc.] and *secondary legal sources* (Hungarian and international scientific literature explaining the primary sources, the legal practice and also the specific circumstances determining the broader social environment) through which we may define relevant scientific problems, create our own definitions

[11] Á. Rixer, *Court mediation within administrative court proceedings in Hungary I.*, [in:] B. Janusz-Pohl (ed.), *Mediation in judicial proceedings – conceptual and practical approaches in Polish and Hungarian legal framework*, Instytut Wymiaru Sprawiedliwości, Warszawa 2023. In the process of being published.

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and prepare a catalogue of practical problems, specifically for Hungarian issues regarding the topic.[12] Specific webpages run by courts or other authorities have also been used.

As Stokoe states in accordance with the relevant international literature, the methods to examine mediation usually encompass self-reported data, interviews, and survey responses.[13] This article will try to build on the results of the interviews with judges, the representatives of different defendants (administrative authorities) and others. Qualitative interviewing, including the interviewing of judges and other participants of such proceedings, is a relatively new method in the field of legal studies, at least in Hungary (raising the questions of its added value and adequate application, as well).

Within my research project, the interviews with judges and others took the form of in-depth, semi-structured conversations.[14] This technique allows for flexibility and a conversational way of communication. Also, this technique provides the possibility to focus on those matters which were most relevant for the concerned judge.[15] Qualitative, semi-structured interviewing fits particularly well in the interpretivist research approach that aims at understanding socially-constructed reality and human action in specific contexts.[16] In a *structured interview*, the interviewer uses a pre-established schedule of questions, typically referred to as a *questionnaire*, with a limited set of response categories, and asks each respondent the same set of questions to ensure the data's comparability.[17] In contrast to the rigidity of this type of interview, in a *semi-structured interview*, the interviewer relies on an *interview guide* that includes a consistent set of questions or topics, but the interviewer is allowed more flexibility to digress and to probe based on interactions during the interview.[18] The agenda for a *semi-structured* interview is never carved in stone.

Semi-structured interviewing is useful in studies where the goals are exploration, discovery, and interpretation of complex phenomena and processes and when

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12 The scientific antecedents of the present work in English are: Á. Rixer, *Features of the Hungarian Legal System after 2010*, Budapest 2012; idem, *Attempts of the Good State in Hungary – New Contents of Norms Created by the State*, "Iustum Aequum Salutare" 2013, 2, pp. 129–139.

13 E. Stokoe, *Overcoming barriers to mediation in intake calls to services: Research based strategies for mediators*, "Negotiation Journal" 2013, 3, pp. 289–314.

14 See in more detail: A. Madill, *Interaction in the Semi-Structured Interview: A Comparative Analysis of the Use of and Response to Indirect Complaints*, "Qualitative Research in Psychology" 2011, 4, pp. 333–353.

15 E.D. de Leeuw, J.J. Hox, D.A. Dillman (eds.), *International Handbook of Survey Methodology*, Taylor & Francis 2008, p. 317.

16 U. Jaremba, E. Mak, *Interviewing judges in the transnational context*, "Law and Method" 2014, 2, pp. 35–54.

17 K.M. Blee, V. Taylor, *Semi-Structured Interviewing in Social Movement Research*, [in:] B. Klandermans, S. Staggenborg (eds.), *Methods of Social Movement Research*, Minneapolis 2002, p. 92.

18 Ibidem.

combined with *documentary methods*.[19] Within my current research, I did have some pre-established questions given to all the respondents, but, at the same time, those questions were sufficiently broad. The interviewees were given the floor to express their further observations and thoughts related to the topic.

Those interviews were taken mainly by telephone. Contemporary scientific literature handles telephone interviews as an equally viable option to other established qualitative data collection methods. Apart from convenience factors, the focus is placed on the methodological strengths of telephone interviews, which have generally been second-rated in qualitative research.[20]

Forms and content of communication before, during and after the court mediation in administrative court proceedings

Within this chapter, I would like to present the most important aspects of communication related to court mediation in administrative proceedings. I have to emphasise that court mediation in administrative procedure is a very specific and relatively new institution that also requires the examination of the relations between all the participants of such a process beyond the basic legal aspects, i.e. beyond those provisions of Act I of 2017 on the Code of Administrative Court Procedure that provide rules for court mediation in administrative cases. Moreover, as my paper involves the combination of multiple academic disciplines in my research project, the need for interdisciplinarity requires, beyond jurisprudence, the involvement of psychology, media studies and other fields of science.

So, what are the most important layers or aspects of communication within that court-centred mediation in administrative cases in Hungary? Who are the absolutely unavoidable participants of such proceedings and of those types of communication?

1. The first one is communication between the judiciary and the society on (about) court mediation – in general.
2. The second one is communication between the judge (the proceeding court) of a particular case and the parties of that case about the court mediation.

[19] Ibidem, p. 93.

[20] M. Cachia, L. Millward, *The telephone medium and semi-structured interviews: a complementary fit*, "Qualitative Research in Organizations and Management" 2011, 3, pp. 265–277.

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3. The third one is communication between the court performing the tasks of court mediation and the parties of the particular case.
4. The fourth one is communication between the court mediator(s) and the parties of a particular case.
5. The fifth one is communication between the court mediators and the courts involved (the proceeding court and the court performing the tasks of court mediation).
6. The sixth one is communication between the courts involved.

I will write only about the first and the fourth type of communication in greater detail, because all the other aspects are laid down within the Hungarian legal sources by clear provisions with good interpretability.[21]

Related to the communication between the judiciary and the society about court mediation in general (point 1.), my first remark is that the courts' practice of advertising in Hungary is very moderate or restrained – it does not really exist beyond the own webpages of the courts. Law is one such profession, even globally, where lawyers, law firms and state-managed legal institutions are not allowed or are only partly allowed to indulge in advertising practices to promote their services. And even though there are some reasonable legal barriers related to advertising practices, we can observe that, for example, the Hungarian Chamber of Court Enforcement Officers (in Hungarian: *Magyar Bírósági Végrehajtói Kamara*) quite often advertises

[21] *Related to point 2.*, Section 65 par. (2) subpar. b) of Act I of 2017 on the Code of Administrative Court Procedure states that "In order to facilitate the settlement, the court (…) b) shall inform the parties of the essence of and the possibility and conditions of resorting to a mediation procedure", and under Section 69 par. (1) and (2) "The court shall order mediation if the parties and the interested persons have consented to it. During mediation, the parties and interested persons make an attempt to settle, the legal dispute with the involvement of the court" and "The court shall suspend the procedure until mediation has been completed but for two months at most." The proceeding court shall inform the parties within 8 days about the name of the court mediator, about the date of the first session, as well (Section 38/B. par. (4) of Act LV of 2002 on Mediation In addition, "The proceeding court shall examine the settlement and, if it complies with the laws, corporate it into an order with the effect of a judgment." Section 70 par. (3).

Related to point 3., Section 38/B. par. (3) of Act LV of 2002 on Mediation states that " (…) The parties of the proceeding shall submit their application for a court mediation process to the court performing the tasks of court mediation".

Related to point 5., Section 70 par. (2) of Act I of 2017 on the Code of Administrative Court Procedure expresses that Upon completing mediation, the court mediator a) shall put the concluded settlement in writing and send it to the proceeding court, b) shall inform the proceeding court that mediation was inconclusive if no settlement has been concluded or if any of the parties has requested so. Some provisions of Decree of the Minister of Justice no. 14/2002 (VIII.1.) on the rules of court administration are also closely connected with the topic of he given point.

Related to point 6., among others, Section 75 par. (3) of Decree of the Minister of Justice no. 14/2002 (VIII.1.) must be mentioned which is about the selection of the court mediators within a particular case, and Section 38/B. par. (3a) of Act LV of 2002, referring to the delivery of the official decisions between the proceeding court and the court performing the tasks of court mediation.

its own services in television commercials. Thinking about the need for advertising, *on the one hand* could be or might be counterproductive by highlighting legal solutions when the law must always remain an *ultima ratio*,[22] but on the other hand, court mediation – as a form of alternative dispute resolution – is not a mere legal institution, at least not a classical, deeply regulated one within our modern legal system.

Turning to the webpages of the courts, according to the order of the National Office for the Judiciary, the courts are obliged to put a detailed explanation on their webpages explaining what the main rules and advantages are, how to resort to the certain tool of mediation within administrative and civil court proceedings to the public.[23]

Even though those webpages[24] do exist, there are several problems related to them:

- firstly, in some cases, they introduce the content of the given legal source without substantive explanation. Moreover, the logic of the introduction follows the structure of the given action and not the way of thinking of an ordinary man or woman,
- secondly, practical information is quite often hidden in long texts, overwhelming those who are not lawyers. Some of those electronic leaflets are too short, too long, or even too detailed, lacking the stable characteristics, stable features of that specific genre that is a 'quick and easy-to-read' type description of court mediation.
- thirdly, the rules of court mediation within civil cases and administrative cases are introduced together quite regularly, without mentioning the differences or making it clear that they are not absolute equivalents,
- fourthly, at least two webpages do not contain the regulations in force, but offer the content of the previous regulation,

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22 In spite of the fact that lawmaking processes and individual decisions became part of the most broadly taken popular culture and media considers them as their own which quite often changes the operation method of law… Á. Rixer, *Features*…, pp. 28–29. We can also add that according to Turcsánné, the best way to inform the public or even the parties is still direct oral communication by the judge – in most of the cases. K. Turcsánné Molnár, *Bírósági közvetítés Magyarországon a kezdetektől 2019. év végéig*, [in:] J. Glavanits (ed.), *Bíró és mediátor – Válogatott tanulmányok a közvetítői eljárás elméleti és gyakorlati kérdéseiről*, Győr 2020, p. 30.

23 Section 9 par. (1)–(3) and Section 10 of 11/2014. (VII. 11.) Order of the President of the National Office for the Judiciary.

24 See for example the webpage of the Budapest High Court (Hungarian: *Fővárosi Törvényszék*) with some information about court mediation: https://fovarositorvenyszek.birosag.hu/20210526/1-mi-az-kozvetitoi-mas-neven-mediacios-eljaras (access: 14.11.2022).

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- and lastly, the authority application form used for court mediation in administrative cases is accessible only in Hungarian. One of the application forms says in Hungarian (*Ha a közvetítés során idegen nyelvet kíván használni, annak megjelölése*: …)[25] that if you would like to use a foreign language during the mediation, please indicate which one. If you would like to use Polish, you have to know Hungarian…

We should also consider that many of the contemporary problems of the Hungarian courts, in general, are still closely related to the *loss or lack of trust* towards all the institutional solutions of public administration and the courts. This scepticism prompts people to rely on informal practices as substitutes for the law (and ADR techniques do not belong to that scope of practice). Earlier, András Sajó pointed out in his masterpiece entitled *Illusion and Reality in Law* (1986) that the legal culture of Socialist Hungary was strongly determined by the fact that legal arguments, especially references to rights, played only a limited role in the conflict management strategies of citizens.[26] Sajó named this phenomenon the lack of rights consciousness. This phenomenon still persists in the post-transitory Hungarian legal culture due to the distortions of market economy transition and the general lack of trust,[27] i.e. *among others – the low level of institutional trust*, the weakness of channels suitable for lawful lobby activities, and the low level of participation in different decision-making processes.

To sum up, it is clear that communication on court mediation, even in administrative cases, should not be restricted to official webpages or information leaflets… This aspect is also highlighted by the fact that only a limited number of departments or at least courses within Hungarian higher education are dedicated exclusively to any form of (court) mediation. There are only two postgraduate specialist training courses focusing on the legal aspects of mediation: one in Pécs[28] and one in Győr…[29]

In addition, the communication on court mediation towards the society, i. e. informing the general public, should not appear exclusively in the form of webpages or classic information leaflets put somewhere in the lobby of a given court… The main difference between the civil law (continental Europe) system and the common law (Anglo-Saxon) system is in the role of court cases setting a precedent. The main

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25 See e.g.: https://birosag.hu/nyomtatvanyok/birosagi-kozvetites/kozigazgatasi-perhez-kapcsolodo-birosagi-kozvetitoi-eljarast (access: 14.11.2022).

26 A. Sajó, *Látszat és valóság a jogban*, Budapest 1986, p. 11.

27 B. Fekete, *Some Specific Central European Experiences May Help to Increase Understanding of the Legal Reality in The Western Countries*, "Droit et société" 2020, 1, p. 150.

28 https://ajk.pte.hu/hu/szakiranyu-tovabbkepzesek/jelentkezes! (access: 10.12.2022).

29 https://dfk.sze.hu/szakiranyu-tovabbkepzesek (access: 10.12.2022).

difference between the law schools that function within countries belonging to one of those systems is how they relate to the importance of practical aspects of the law in general. That is why "Law and Literature" courses are so popular in common law states: they also try to reach the meaning of the law and the way of thinking that helps us when solving legal problems, mainly by using certain cases – even though these cases are not real but fictitious ones… Nevertheless, these "Law and Literature" courses are becoming important elements of institutional efforts to improve the law school curricula in Europe in general and also in Hungary.[30]

What is this movement about? And why is it important in the context of the communication about court mediation? The answer is that the vast majority of the information about the law comes from different webpages, blogs, movies and from literature, from … And if it is so – even in the case of many law students – why should not we introduce legal institutions through fiction, not directly by using legal sources, but through well-known stories from fiction – in the case of mediation through stories in which we could find the portrayal of mediators or mediation processes. Moreover, it would be, and it could be a good direction also beyond the walls of law schools if someone wants to promote the institution of mediation within the broader society.

M*y fourth point was about the communication between the mediators and the parties of a particular case*. Section 75/A. par. (7) of the Decree of the Minister of Justice no. 14/2002 (VIII.1.) refers to some important rules of making and maintaining contact between the court mediators and the parties of the particular proceeding. But beyond the legal provisions, are there some questions that need to be asked? What essential skills do mediators, in general, and especially in administrative court cases, need? We can agree that communication skills are needed to speak and behave appropriately with the parties, such as maintaining (good) eye contact, listening effectively, presenting your ideas appropriately, writing clearly and concisely if an edited document is needed, and so on.

The classical functions of communication are to persuade, inform, and motivate, which help parties make better decisions also within court mediation. Several groupings try to enumerate the main aspects of communication,[31] and all those functions or aspects of communication are also mediator development areas. The five most important aspects of effective communication (listen, trust, focus and

[30] Á. Czine, A. Domokos, P. Nagy, A. Prieger, Á. Rixer, J.Z. Tóth, *"Jog és irodalom" kurzus a KRE ÁJK-n*, "Ügyészek Lapja" 2019, 1, pp. 99–104.

[31] E.g. in accordance with Aczél and Veszelszki the main functions of communication are leadership, service, cooperation, and knowledge. P. Aczél, Á. Veszelszki, *Kommunikáció üzletben és tudományban*, Wolters Kluwer Hungary 2021, p. 19.

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control, confidence and influence, clarity of the message)[32] are also well known. A mediator has to take them into account, as well.

One essential exercise in dispute mediation is the management of emotions: the management of not only the disputants' emotions but also the mediators' own feelings. To reach that, effective mediators tend to apply interpersonal affect regulation strategies (e.g. paraphrasing, active listening and reflective practices), aimed at emphasising cooperation and mutual understanding.[33] There are several reflective practices that help the parties reflect on their experiences and actions in order to enable the recognition of assumptions, frameworks and patterns of thought and behaviour – that shape their thinking and action.[34] With these strategies, mediators also promote assertive communication between the parties to the conflict.[35]

But, to be honest, a sophisticated psychological toolbar is not as needed in administrative cases as in criminal ones: in administrative cases the need for reconciliation or restoration is almost missing: the parties use the tools of mediation because of the possibility of a forthcoming long-term cooperation – that is, the role of emotions and the handling of those emotions is less important in administrative cases.

But, the most exciting question we can ask is the following: "Are there any differences between the skills required from a judge acting as a judge and a judge who steps in the role of a mediator?" From my perspective, we should not differentiate this. A *judge* should practice civility by being patient, dignified, respectful, and courteous – whatever their role in a court case or ADR process is.

And beyond the conceptual models used to explain the human communication process, especially the communication between the mediator and the parties, a new field of research has evolved related to the same topic: the need for holding virtual meetings and conducting online sessions.[36] Unfortunately, that institution still does not exist in Hungary. We are still lacking the legal foundations providing online court mediation proceedings also in administrative cases – mainly because of unsolved questions related to data protection.[37]

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32 See more: M. Fielding, *Effective Communication in Organisations*, JUTA Academic 2006.

33 C.F. Bates, *Empathy and Mediation*, [in:] A.M. González, I. Olza (eds.), *Accessing the public sphere through intercultural mediation*, Routledge 2022, p. 3, https://www.academia.edu/77468462/Empathy_and_Mediation (access: 2.10.2022).

34 https://www.participatorymethods.org/method/reflective-practice (access: 11.23.2022).

35 C.F. Bates, op. cit., p. 3.

36 The importance of that (research) topic has been continuously growing in Hungary. See e.g.: G. Kurunczi, A. Téglási, *Solutions and Challenges for Online Meetings of Electoral Bodies*, "Krytyka Prawa" 2022, 3, pp. 38–49.

37 J. Glavanits, *Mediáció és pandémia*, [in:] eadem (ed.), *Bíró és mediátor – Válogatott tanulmányok a közvetítői eljárás elméleti és gyakorlati kérdéseiről*, Győr 2020, p. 359.

After that detailed overview of communication related to court mediation, we should go deeper into the context in which the whole institution can be analysed. I will introduce some facts and data related to court mediation in administrative court proceedings in Hungary. My forthcoming chapter tries to introduce three relevant aspects of court mediation in administrative court proceedings: firstly, the number of cases settled via mediation, secondly, the general facts about the former training sessions on mediation organised for judges, and, thirdly I will also try to build in the results of some interviews conducted by me *with* judges, *with* representatives of different defendants (administrative authorities) and *with* other professionals involved in the organisation and the provision of training sessions for the judges.

Data and interviews on court mediation

I will begin with some data on court mediation in administrative court proceedings. *At this point we run into dificulties*: we do have the numbers of those cases in which settlements approved by the courts were reached in administrative court proceedings, but those numbers are aggregated ones, acquired by combining data on settlements reached *without* mediators, and data on those cases in which professional judges were involved as independent mediators (without having any right to make formal legal decisions, without having the right of approval).

I submitted a data subject access request (DSAR) to the President of the National Office for the Judiciary, asking for data on the numbers of settlements reached exclusively by court mediation in administrative court proceedings, but unfortunately, those data are not available.

Table 1. Aggregated numbers of settlements in administrative court proceedings in Hungary in the years 2018–2022

Year	Number of settlements
2018	6
2019	20
2020	24
2021	20
2022 (first 6 months)	16

Source: National Office for the Judiciary.

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What was the aggregated number of settlements in administrative court proceedings in the last five years? It was six in 2018, 20 in 2019, 24 in 2020, 20 in 2021 and 16 in the first half of 2022. These numbers are not very high, but we have to take into account that they are slowly increasing and that the total number of administrative court cases has been declining since 2019 at the same time. Therefore, we can say that these are not bad results or even relatively promising ones.

Just to give a detailed picture, about 40 judges and assistant judges in Hungary are entitled and officially assigned to court mediation in administrative cases.

My second topic within this subchapter is the form and the content of the training sessions on court mediation within administrative court proceedings. We have to highlight that between 2018 and 2020, a training session dedicated to that specific field was held and organised by the Hungarian Academy of Justice. Unfortunately, no such programmes have been held within the last two years. The reasons for this situation are quite interesting: *on the one hand*, the COVID pandemic can be mentioned,[38] and the fact that for such a sensitive field as mediation, online forms of training are not really suitable, even though an e-learning platform named CooSpace was opened for the users (for judges, here in Hungary) on 13 July 2017, including the more than 1,800-page long learning materials. But in my (private) opinion, the abovementioned reason was not the main one, but the fact that *two theoretical approaches to the goal of the courts, in general, have been competing (against each other) within the last few years*. According to the first one, the parties should have the right to decide about their own lives, if possible. Such a perspective means that we should strengthen all the forms of ADR. Still, another approach also exists parallelly, according to which a judge is there to make judgments, and whatever happens, this must remain their main role… and some judges think and allege that the second standpoint is the stronger one nowadays in Hungary.

As I have already mentioned, there is a specific institution, the Hungarian Academy of Justice, which operates as one of the departments of the National Office for the Judiciary, aimed to organise and provide training for judges and judicial staff. As we all know, high-level training sessions for judges, assistant judges, and other judicial employees can only guarantee professional judicial activity. The training of 11,000 employees working for the judiciary shall be performed partly centrally and partly on the level of regional courts and regional

[38] Giovanni Matteucci and his colleagues conducted a questionnaire about the situation in each country with regard to the operation of the Courts, the use of ODR and their opinion about online mediation to find out how mediators and the courts of 30 different countries coped with the many limitations and government restrictions caused by the virus. G. Matteucci (ed.), *ODR in 30 Countries, 2020 – Mediation in the COVID-19 Era*, 2020, https://www.academia.edu/43136391/ODR_in_30_Countries_2020_-_Mediation_in_the_COVID-19_Era) (access: 30.11.2022).

courts of appeal with the central coordination of training sessions by the Hungarian Academy of Justice.[39] Almost all the training sessions organised by the Hungarian Academy of Justice cope with the requirements of the provisions of the 63/2009. (XII.17.) Decree of the Minister of Justice and Law Enforcement on mediation training and further training.

Even though there have not been specific training sessions on court mediation recently, according to some inside information, a two-day training is planned for the next year, especially for appointed court mediators, to provide some further methodological knowledge…

Between 2018 and 2020 – as I have already mentioned above – there was a 60-hour long training for judges and assistant judges dedicated to the specific topic of court mediation.[40]

The training consisted of two parts, one theoretical and one practical, and the Academy also provided written materials, specifically a textbook on case law. Simulation exercises were also held to facilitate an understanding of the case law and the specific requirements beyond the legal circumstances, encouraging the judges to develop their skills through precedents similar to the real ones. Simulations were fully interactive exercises that tested the capability of judges to respond to simulated situations, even in those cases where specific non-conventional skills were needed.

Practising court mediators and other experienced judges were also involved as trainers both in the theoretical and the practical part of that training. According to the participants, it was a great success. The groups of 15 participants were mixed, consisting of both judges and assistant judges. In some cases, even well-known Hungarian actors (!) were also invited to play the roles of the parties.

My third point for this subchapter is the presentation of the results of the 12 interviews I conducted with judges, with the representatives of different defendants (administrative authorities) and other professionals involved in the organisation and the provision of training sessions for the judges. The interviewees comprised seven judges, one representative of an administrative authority, one lawyer, one mediator who was not a judge but is a jurist, one organiser of training sessions for judges and assistant judges, and lastly, one former provider of such training sessions, who is not a jurist.

It became evident to me at the very beginning that I had to conduct those interviews without questions that referred to specific cases. At the very end of that question formulation process, only three questions remained:

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39 https://birosag.hu/node/30699 (access: 30.11.2022).

40 K. Turcsánné Molnár, op. cit., p. 19.

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1) "What are the key skills required for a court mediator in administrative cases to succeed?"
2) "What should the content of the training courses dedicated to the court mediators be?" and
3) "What are the main obstacles that block the growth of the number of settlements reached by court mediation within administrative court proceedings?"

Answers given to the first question were very homogeneous: empathy[41] and initiative attitude are those features that are needed most if someone serves the public as a court mediator. Some also mentioned that several judges acting as court mediators make the mediation process rather formal because it is hard for them to leave those old habits behind… According to their answers, a huge gap can be detected between the opinions of judges *and* other interviewees: the vast majority of those judges thinks that judges, in general, are quite sensitive and empathetic when they act as mediators. Most other respondents alleged that, undoubtedly, that field is where they have a lot to improve…

You can already guess what the answers given to the second question were: you are right, the need for courses where judges can develop their empathy was mentioned by many respondents, and the need for examining real cases with colleagues from other courts were quite regularly highlighted. Most judges who were participants in the former training sessions were very satisfied with the content and with the materials offered.

The answers to the third question were not surprising either: several answers referred to the mandatory nature of administrative law and the fact that, in most cases, not both parties are interested in a settlement.

The importance of the mandatory nature of administrative law cannot be overestimated: in other words, all administrative authorities are strongly bound by the principle of legality: even the possibility of court mediation and the content of any settlement is strongly determined by the extent of the legal discretion provided by the law to the given administrative authority.

Many answers (the vast majority) pointed to the fact that administrative authorities had become interested in settlements only in those cases where that result served as a precedent for a vast number of similar, forthcoming cases, and the authority was able to express its legal standpoint through this specific institution on time or even in advance avoiding a considerable number of further cases. So, the

[41] See more on emphatic judge in the Hungarian literature: L. Barna, D. Juhász, S. Márok, *Milyen a jó bíró?*, "Miskolci Jogi Szemle" 2018, 1, p. 93.

authority, in some cases, tries to preempt the considerable number of additional legal proceedings by such settlements.

A further reason was also mentioned by one of the respondents: the traditional logic of the sound management of public finances is still incompatible with court mediation for many administrative authorities.[42]

Some answers referred to the given topic through the preparedness of the judges, saying that being a mediator is a separate profession and stable, well-established psychological knowledge is a prerequisite for those judges who act parallelly also as court mediators. Moreover, readiness to apply psychological knowledge in practice is not enough: regular (!) professional supervision is also needed.[43]

In accordance with the aforementioned results, we should say that it has become obvious that court mediators – at least within our system in which they are all appointed judges at the same time – must have a specific, continual education and specific training that is crucial to their success in the position of a court mediator. Without regular training, they can't qualify for or succeed in a role that requires not only the traditional skills of a legal professional but faces them also with very sensitive and partly new ethical questions.[44] A set of professional judicial ethics guides a judge on the moral obligations arising from their position as a judge. Also, it informs the public of the standards to which it holds a judge accountable, *but what about a judge performing as a court mediator*?

Closing remarks and further plans

To sum up, according to the interviews introduced above, principally, the need for continual further training of those judges who take part in court proceedings also as mediators is an unmistakable consequence. In addition, not only traditional skills and the knowledge of certain legal institutions are to be developed, but also psychological skills, both on a regular basis.

I have to admit that there are some further subquestions to examine related to our topic: the next research should answer, among others, such questions as "What are the reasons for the use of court mediation by the parties within administrative court proceedings? Why does the defendant (respondent), according to your experience, undertake participation within that process?" or "What are those case types

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42 See also some similar thoughts: A.E. Bokros, *A közvetítés lehetőségei a közigazgatási perrendtartás hatálya alatt*, "Jegyző és Közigazgatás" 2018, 1, p. 13.

43 See also similar thoughts: M. Munkácsi, *A mediáló és ítélkező bíró kettős szerepe*, [in:] J. Glavanits (ed.), *Bíró és mediátor – Válogatott tanulmányok a közvetítői eljárás elméleti és gyakorlati kérdéseiről*, Győr 2020, pp. 89–90.

44 See also: B.Sz. Gerencsér, *Ethics in autonomous public service: new trends*, Passau 2012, pp. 22–41.

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within administrative court proceedings in which court mediation is most frequently used? Should we broaden that scope of case types?" Such questions can be answered mainly by the judges and by the representatives of administrative authorities. Still, asking claimants (plaintiffs) those questions would be interesting.

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