

SUMMARY:

MEDIATION OF COMMERCIAL DISPUTES - DOMESTIC AND INTERNATIONAL PERSPECTIVES

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This paper addresses the mediation and its use in the both domestic and international commercial disputes. The milieu that serves as a source of the problems to be resolved during mediation is a specific one. It demands quick, cost-effective and confidential resolution of complicated disputes involving several parties. In general, this cannot be granted by the traditional ways of dispute resolution – litigation and arbitration.

Mediation is regarded as a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. On the other hand, there are several legal and legal-related issues that have to be discussed. And thus, the question that remains to be answered is: *Is mediation really as effective as it is told?* And in the case of a positive answer – *why it is not the most commonly used dispute resolution procedure?* The main goal of this thesis is to answer these queries.

Its first part focuses on the issue of mediation in general. Quite surprisingly, there is no exact definition of mediation neither in the legal acts, nor in the opinion of the ADR experts. In contrast, plenty of definition can be found after short research. This could be a problem especially in the connection to the searching for the borders between mediation and other similar proceedings. Per contra, it is not difficult to find the limit between mediation and the court-settlement system or arbitration. This task is obviously more important and since such distinction can be used in praxis.

The difficulties related to the definition of mediation can be explained by the fact that mediation is differently used worldwide. These different forms of mediation are described by the *theory of mediation meta-model* that explains the consequent occurrence of mediation in the very different situation: Both top commercial multi-billion-dollar disputes and the family disputes of different tribes in the third world.

Although extrajudicial, mediation has to obey relevant law systems. So this paper addresses mediation from the point of view of national, European and international law too.

The second part of this thesis is dedicated to the pre-mediation issues. Quite surprisingly there are a lot of queries to be answered even before the mediation starts. These concern especially the mediation clauses; however, the publicity of mediation is discussed too. A special attention is paid to the problems related to mandatory mediation. In this regard, the Italian and Czech examples are examined.

In the middle of the mediation proceedings, as well as in the middle of this paper stand the mediator and its rights and duties. One can say the mediation is only as good as its mediator and obviously this is true. Mediator as the corner piece of whole mediation proceedings has specific duties and rights which include the obligation of impartiality or the right to the payment for its performance.

The fourth part handles the main issues concerning the mediation procedure itself. It starts with agreement to mediate that is a specific contract that starts the mediation proceedings and determines the rights and duties of parties and mediator. The proceedings can be conducted as an *ad hoc* or as an institutional proceeding. Both version having some advantages and disadvantages are explained by the way of ICC's *ADR Rules* example. Furthermore, the issue of confidentiality as one of the principal characteristics of mediation is discussed from the different points of view. Finally, as the mediation agreement presents the typical outcome of the mediation proceedings, it cannot be skipped. The different issues are gone over in this respect, the recommended content and enforceability among them.

As was mentioned before, mediation is perfectly suitable for the different cases in everyday commercial business because of its flexibility. Thus sometimes it is used in connection with arbitration in order to propose an effective dispute resolution system called hybrid ADR procedures as the ARB-MED and MED-ARB are. But it is not only the combination but also the object of dispute that is resolved by mediation that proves mediation flexibility. As an example, its growing use in the field of investment disputes should be mentioned.