



CZECH NATIONAL PROJECT MEETING ON MEDIATION

12th January 2017

Attendees: JUDr. Nicole **Grmelová**, Ph.D. (University of Economics, Prague); doc. JUDr. Jiřina **Hásová**, Ph.D. (University of Economics, Prague); doc. PhDr. Lenka **Holá**, Ph.D. (Palacký University, Olomouc); JUDr. Věra **Knoblochová**, Ph.D. (Ministry of Industry and Trade of the Czech Republic); PhDr. Andrea **Matoušková** (Probation and Mediation Service of the Czech Republic); Mgr. Petr **Navrátil** (Ministry of Justice of the Czech Republic, Legislative Department); Mgr. Veronika **Navrátilová** (Ministry of Justice of the Czech Republic, Department of justice organization); Mgr. Jan **Štandera** (solicitor and registered mediator, University of Economics, Prague); Viktor **Vodička** (Czech Consumer Association); Mgr. Dana **Vrabcová** (mediator and member of the Association of Mediators of the Czech Republic); JUDr. Ing. Radka **Zahradníková**, Ph.D., LL.M. (judge, District Court for Prague-West and West-Bohemian University, Pilsen)

Guests: doc. JUDr. Zbyněk **Švarc**, Ph.D. (University of Economics, Prague)

Meeting began at 2 PM.

INTRODUCTION

- Doc. Hásová welcomed the participants and stated that the aim of the Czech Round Table on Mediation is to identify the problems especially in the field of mediation in business disputes.
- Dr. Grmelová informed about the project “Online Study Platform on Mediation”, in particular about the participating European partner universities and the goal of the project, which is to disseminate teaching mediation at universities and other institutions of learning; Whereas there are common tasks for all project participants (such as organizing teachers trainings and intensive courses), the University of Economics, Prague has been entrusted with two specific tasks. First, drawing up a

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methodology which could be used in teaching mediation, and second, developing a case study in the field of business disputes which could serve as model for practising mediation in class.

- Mgr. Štändera informed about the first project meeting in Riga (the first phase of the project will be focused on identifying problems in mediation practice so that these problematic situations could already be incorporated in education and training in mediation; the second phase of the project will deal with creating an online platform on education in mediation). Subsequently, Jan Štändera defined three groups of question for National Project Meeting on Mediation:
 - (1) education (problems identified in educational practice in the Czech Republic)
 - (2) mediation practice
 - (3) changes *de lege ferenda*

PROBLEMS IN EDUCATION

- Doc. Holá gave the participants a report on mediation lessons taught at Palacký University, Olomouc. Originally there were only courses at the Faculty of Education which trains future primary and secondary school teachers, now the university tries to create a systematic education approach in mediation at the Faculty of Law (to teach the law students to find common needs and interest of the parties in dispute and to build an agreement on these bases); ADR courses are not obligatory yet; theoretical lessons are optional for students in the 3rd year and practical lessons for students are optional in the 4th year (mediation and negotiation); students are given the opportunity to try a non-conflict solution in a model situation; there is an effort to establish a mediation clinic (real mediation under supervision).
- Dr. Grmelová asked about the number of students interested in mediation education. Doc. Holá stated that the courses have a limited capacity (max. 20 students) and the supply and the demand are almost on the same level.
- Dr. Zahradníková informed about mediation lessons at the West-Bohemian University in Pilsen – there is no course focused specifically on mediation, mediation is taught together with arbitration during a lesson about ADR. She pointed out the issue of values of today's society which results in numbers of lawsuits.
- Mgr. Vrabcová noted that the Mediation Exam means a significantly stressful situation which is hard to pass sometimes even for graduates of the basic training in mediation.
- Mgr. Štändera highlighted that a fundamental aspect of the issue is practical training which is invaluable. He also stated that students must learn how to manage stress already in model situations, otherwise there are unstable agreements.
- Doc. Holá reminded the participants that it is necessary to define the approach to “mediation” (facilitative vs. evaluative vs. transformative mediation).
- Dr. Matoušková held a presentation about education in mediation in Probation and Mediation Service of the Czech Republic – 420 hours in basic course focused on essential communication skills + simultaneously work under supervision; there is a difficult exam after one year of training – however the graduates of the basic course

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are mostly successful. She suggested that models of competences with special practical courses should be created.

- Doc. Holá identified a crucial problem – lifelong learning of certificated mediators is not taken for granted. She also pointed to missing comprehensive system of (lifelong) education of mediators in Europe.

MEDIATION IN PRACTICE

- Mgr. Vrabcová answered a question asked by doc. Švarc: Mediator asks the parties about their desires and possibilities. The parties have thus a chance to talk and the conflict is not so escalated.
- Doc. Švarc stated that people usually do not have a real idea about how a trial looks like.
- Mgr. Štandera noted that the goal of a mediator is to make the parties think about the development and consequences of a trial, about their possibilities and advocated positions and to explain them that they should abandon the idea of “destroying” the opponent.
- Dr. Zahradníková asked about mediator’s liability for damages. Mgr. Štandera responded that a mediator does not have legal liability for the contents of the agreement which is the final outcome of a successful mediation.
- Dr. Knoblochová stressed that the Czech Trade Inspection Authority, which became a subject of ADR in consumer disputes following an amendment to the relevant statutory provisions, faces difficulties finding mediators.
- Doc. Švarc emphasized the necessity of making a difference between consumer and commercial mediation – the parties show different approaches with respect to disputes between a consumer and an entrepreneur (B2C) and between entrepreneurs (B2B).
- Mr. Vodička informed the participants that the Czech Consumer Association is one of the subjects authorized to provide consumer mediation, but consumers hardly ever use the institute; they ask for information and advice, but not for mediation.
- Dr. Knoblochová noted that consumers may not be aware of the authorization of the Czech Consumer Association to carry out mediation as entrepreneurs are legally bound to inform about this possibility of dispute resolution only with respect to the Czech Trade Inspection Authority, but not with respect to the Czech Consumer Association (and another authorized organisation, the Czech Bar Association).
- Mgr. Štandera pointed out the issue of compensating damages associated with a spoilt holiday, because this is a situation resolved in consumer mediation very often.
- Dr. Knoblochová asked dr. Zahradníková if consumers solve the disputes with entrepreneurs in the court. Dr. Zahradníková answered that this is the case to a certain extent. Dr. Knoblochová assessed that the aversion towards a judicial solution could be caused by the length of the process and its costs.
- Mgr. Vrabcová opposed that the parties do not have enough information about ADR.
- Mgr. Navrátilová stated that the Ministry of Justice of the Czech Republic *de facto* does not perceive a difference between registered and non-registered mediators.

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- Mgr. Štändera emphasized the problem of different kinds of mediation and the question of mediator's specialization (on family issues, business etc.). Mr. Vodička asked if there should be a formal specification of specialization (eg. in a register kept by the Ministry of Justice). Mgr. Štändera does not prefer this solution.
- Doc. Holá stressed the lack of specialized education of mediators considering certain particularities of different kinds of mediation (business, consumer, family, health care etc.).
- Doc. Hášová accented an extreme importance of education and the first contact and meeting with a mediator, who could either support and discourage the parties.

CHANGES DE LEGE FERENDA

- Doc. Švarc referred to the disproportion between arbitrators and mediators. He highlighted above all a simple enforceability of arbitration awards which do not require the form of a notarial deed nor court approval in form of a consent decree – unlike a mediation agreement.
- Mgr. Navrátil stated that the court should meet the parties before ordering mediation session and thereafter decide if mediation makes sense in the particular case.
- Mgr. Navrátilová informed the participants that the Ministry of Justice of the Czech Republic is preparing an amendment of Law on Mediation, but the Ministry considers as necessary to receive specific proposals from experts.
- Mgr. Navrátil stressed that the Ministry of Justice does not prefer too detailed provisions which would order judges exactly what to do.
- Mgr. Navrátilová and dr. Matoušková pointed at the effort to integrate mediation lessons into the training schedule of the Justice Academy. However, there are two obstacles: insufficient interest and too complicated and inflexible process of approval.

CONCLUSION

- Doc. Hášová thanked for an interesting and helpful debate and summarized that the best dispute resolution is an agreement.

Meeting finished at 4:36 PM.

Written by: Ing. Klára Vítková

Approved by: JUDr. Nicole Grmelová, Ph.D.; doc. JUDr. Jiřina Hášová, Ph.D.; Mgr. Jan Štändera

ATTACHMENT

Signature list
PARTNERS:

