



**Sociology Doctoral Program**

**DOCTORAL THESES**

to

**Gabriella Lovász's**

Ph.D. dissertation titled:

**The effectiveness and reception of labour mediation from the point of view  
of social partners**

**Tutor:**

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professional researcher

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**Institute of Sociology and Social Policy**

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# 1. Introduction

## 1.1. Background

The subject matter of the research is related to the world of work.

In recent years we have heard a lot about social partners protesting (see for instance the strike at MÁV, the Hungarian Railway Company) or going to court in trying to determine the level of sufficient services during a strike, or for courts to establish the unlawfulness of the announced strike or the employer's conduct. The reason behind the conflicts, manifesting themselves in labour disputes, is often disagreement about employees' wages or the amendment of the collective agreement. In handling these disputes social partners often give preference to traditional strategies, such as strikes or litigation, which incur great losses for the parties involved. Mediation<sup>1</sup>, in turn, represents a softer method. While strikes, bilateral negotiations and court cases take up a lot of energy, time and money, mediation, a service free of charge for a period of eight days, usually helps disputing parties reach a consensus after only few rounds of negotiations. In Hungary only 5-10 cases per year are being dealt with by mediation. It seems that, compared with the number of potential conflicts, and that of strikes and court cases, there are only few cases settled by mediation (Berki 2005; Kántor 2005; KSH 2006a, 2006b).

In my thesis I sought to explore the reasons behind this, giving priority to the views of social partners. In order to do that it was necessary to examine the current state of Hungarian industrial relations, the typical conflict resolution techniques applied in the course of labour disputes and the attitudes that social partners and mediators take in conflict and communication. The latter is shaped by expectations and conventions of the sector, as well as those laid down in labour regulations, therefore we also looked at the mid- and macro levels of collective bargaining to the extent it was necessary for confirming the hypotheses and fulfil the goals set out for the study.

The literature on mediation available in Hungary is scarce and is primarily practice-oriented, building on experience and case studies, and covering, of course, the concept of mediation as well. The relevant pieces have been referred to in the theoretical part of the thesis. There is hardly any in-depth research on labour mediation with a theoretical approach. The study examining familiarity

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<sup>1</sup>Mediation means that an impartial person, whose cooperation/involvement was jointly requested by the parties, attempts to dampen tensions in order to move the parties involved out of the emotional and positional way of bargaining, and steers them towards a consensual agreement. This agreement is elaborated by the parties. Labour mediation in Hungary is a service provided by the state. The Labour Mediation and Arbitration Service (Munkaügyi Közvetítő és Döntőbírói Szolgálat, [MKDSZ](#)) is entitled to settle collective labour disputes that are institutionlized labour disputes. The parties make contact with each other, they clash their views and make an attempt to settle the dispute. The Labour Code interprets collective labour disputes as interest disputes which emerge as a result of the clashing of the interests of employee representation and employer representation organisations, as well as their alliance. The themes typically handled in mediation cases: wage disputes, privatization cases, collective redundancy, conclusion and amendment of collective agreement, work schedule (Act XXII of 1992 on the Labour Code; Tóth F. 2003).

with the MKDSZ (Táncsics 2002) represented a step forward in exploring the obstacles to using MKDSZ's services. The study confirmed what had previously been assumed, namely that enterprises have hardly any knowledge of MKDSZ. Another study explored additional factors (e.g. unsuccessful attempts at contact on the side of MKDSZ) affecting the use of mediation services by reviewing the damages arising in the course of conflict resolution (e.g. strikes) customarily used by social partners, and to assess the efficiency of MKDSZ (Balogh et al 2007). The study highlighted the fact that the operation of MKDSZ (mediation as well) is less aimed at prevention than to mitigate harm arising from conflicts in industrial relations. The present thesis goes further than this in that it takes a closer look at the factors that prevent (e.g. misguided stereotypes about the mediator) or promote the use of mediation, and explores in more detail several questions (e.g. why some mediators are more popular than others?).

The study conducted by Kántor (2006) focuses on the conflict resolution practices of the armed forces and provides detailed account of the activities of MKDSZ, but is not limited to the topic of mediation. An important proposition it puts forward is that the use of alternative methods is not typical in this field and is not supported by the legislation either. Three further studies should also be mentioned, which, however, are related to the domain of law but which are nevertheless relevant in this respect. They draw attention to a number of deficiencies while studying the legal regulations, which I will also make an attempt at in my thesis although on a smaller scale, as the character of my research demanded that different methodology (interviews and case studies etc.) be given priority. Rácz (2002) claims that although state intervention in settling disputes among social partners often causes controversy, the current level of development of the Hungarian economy would justify increasing it via making it compulsory to involve an external actor. The treatise of Rúzs-Molnár (2005) emphasizes the legitimate use of mediation in labour law disputes. Social partners and mediators have expressed similar views, which reinforced my intention to argue for the need to extend the scope of MKDSZ's activities to legal disputes as well.

The study conducted by Nacsa (2008) examines the regulation of mediation, both in Hungary and internationally, as an alternative method of settling collective interest or legal disputes. With respect to the Hungarian regulation, it sheds light on substantial anomalies (e.g. whether it can be used in legal labour disputes, the regulation tends to support a suppression of disputes). Based on the examination of the rules regulating the dispute resolution mechanisms in collective agreements, the same study concludes that such rules have principally not been elaborated.

In the past twelve years I have studied conflicts extensively. I have always sought to find out if there exists a truly efficient method to improve human relationships that have deteriorated. In the beginning I was primarily preoccupied with the reasons that bring about conflicts and the traditional

techniques that are used to handle them (e.g. those aiming for compromise), then gradually I began to focus on labour mediation. I discovered that mediation, which can be assessed a greatly advantageous method, is used only few times a year. This thesis is the result of my inquiry into the possible reasons behind the under-utilization of this technique. The present thesis is novel in that it draws a parallel between several sociological theories about industrial relations and conflicts (e.g. transactional costs theory, client-contractor), and the characteristics of social partners, highlighting communication styles, potential sources of conflict, etc.. My thesis attempts to compare the most important domestic regulations of labour mediation and the operation of state institutions with those of other countries having more experience in alternative ways of conflict resolution.

The empirical part of the thesis seeks to present for the Reader the widest range of factors assembled to this date, which affect the use of mediation.

### ***1.2. Problem statement***

As a result of asymmetrical power relations between the parties, employers, employees and interest representation organisations take a different approach to conflicts, which affects conflict resolution methods (Moerel 1994; Miller 1992/2002; Tóth A. 2002b).

Bilateral negotiations often do not yield results, labour lawsuits - on top of incurring substantial costs for the parties involved, as is the case with strikes - may sometime drag on for years (Pál [et al.] 2000; Tóth F 2003, KSH 2006a, 2006b). The result is a win-lose situation, which negatively affects the relationship between the parties. As a result of this, cooperation for the operation of the company, may deteriorate. It has a negative impact on productivity as well, it also makes it more difficult to ensure optimal working conditions.

MKDSZ reports reveal that 93% of the mediation cases were concluded with a written agreement and were provided free of charge, since none of them extended beyond the time limit that allows free services, except one or two cases (Gulyás 2003; Kántor 2004b, 2005, Kovács 2008)<sup>2</sup>. In case the agreement meets the interest and satisfaction of both parties, the relationship between the parties does not deteriorate further, on the contrary, it has the potential to improve (Barinkai - Herczog - Lovas (2003a)<sup>3</sup>. In that case the parties' inclination to cooperate, which is essential for the company's operation and efficiency, suffer no harm and may even improve, therefore the negative developments, spelled out in the previous paragraph, are not expected to occur. What follows from this is that it would be more beneficial to choose mediation as a technique to settle conflicts instead of the above strategies.

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<sup>2</sup>All those mediation processes which take less than 8 days and which are not repeated are provided free of charge (Kántor 2004b)

<sup>3</sup>They refer to the results of a longitudinal survey, carried out in England and in Wales, (Report on Family Mediation, Council of Europe, Strasbourg, 2000, p29).

As a result of the long lasting effects of the traditional methods and the small number of mediation cases, it seems justified to conduct a sociological study of the reasons why those involved in a dispute choose or reject labour mediation.

### ***1.3. Objectives***

The main objective of the study has been to explore the potential factors that are behind the fact that MKDSZ is contacted only on few occasions, that the number of mediated cases is small and that mediation is not widespread in Hungary. In addition, I seek to explore and examine the factors that motivate social partners to choose the method of mediation. Another objective I set for the thesis is to explore whether the fact that mediation has also been used with success in the hate-based, destructive phase<sup>4</sup> of a dispute may contribute to its more widespread use.

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<sup>4</sup>If we regard conflict as a process, we may break it down into several phases according to the fluctuation of the tension between the parties. The relationship between them deteriorates mainly in the destructive, or hate-based phase of the conflict. In that phase the parties may go as far as endangering the other's reputation, position or physical safety. (Göncz-Geskó-Herbai 1998)

## 2. Hypotheses

In addition to the above, I focused on the attitudes of bipartite actors of industrial relations towards mediation and the mediator. Based on this I carried out empirical testing of the following hypotheses:

### A.) Hypotheses about potential factors influencing the decision to use labour mediation.

#### 1.) Whether the parties decide to use labour mediation is influenced by the given conflict constellation.

*Explanation:* By conflict constellation I mean the concurrence of the following circumstances:

- Both the employer and the employee side recognizes the fact that there is a conflict.
- Both parties conclude that they are unable to handle the conflict.
- Both parties recognize that they need outside help.
- This outside help takes the form of labour mediation.
- Both sides show willingness to actually use mediation.

If these factors prevail simultaneously, then mediation can take place.

#### 2. Hypotheses about the relationship and communication between the employer, the trade union and the mediator:

##### 2.1.) The parties are usually less likely to opt for alternative ways to manage conflicts in case their relationship is not balanced.

*Explanation:* What may indicate asymmetrical power relations are non-existent or weak financial background; easily amendable content of the collective agreement; low union organisation rate, etc.

##### 2.2.) The degree to which parties are willing to use mediation is explained by the differences in the level of expectations. (For instance, if an enterprise the employee representation organisation would expect more regular contacts with the employer, while the latter would be satisfied with fewer meetings.)

*Explanation:* Different expectations are attached to the same issue, such as the relationship between the social partners or communication (For example, the employee representation organisation within an organisation expects more regular contacts with the employer, while the latter would settle with fewer meetings as well.)



2.3.) With respect to the relationship between the employer, the trade union and the mediator, it is a defining factor whether the parties trust the mediator or not.

*Explanation:* The mediation process should start only if the parties trust the mediator, either as a result of previous positive direct or indirect contact with the him/her. By direct contact I mean positive personal contact. In this case the parties are well aware of the substantial experience the mediator has in industrial relations and the results he/she has reached in the course of mediation (either because the mediator has informed them of those or he/she had already carried out mediation for them) and based on this and other factors they have a well-founded reason to assume that the mediator will be able to remain impartial. In case there had been no direct contact previously, the mediator may be recommended by others. If the parties trust the person who gave the recommendation, they will give the mediator the benefit of doubt. The degree of satisfaction with the mediator's professional experience and his/her authority in the specific area he/she is working are, in my interpretation, factors determining trust.

*2.3.1.) The employer and employee sides tend to choose a mediator who has a loose, rather than strong, connection with the other party.*

*Explanation:* Granovetter's definition puts forward that a party will be more willing to accept a mediator that the other party knows only, as opposed to a mediator that the other party is good on friendly terms with.

*2.3.2.) The presence of trust depends on the mediator's previous record in the world of work.*

*Explanation:* The use of this method and its efficiency depends on whether or not trust develops and on its level. This, however, is greatly influenced by the most recent and past record of the mediator in the world of work. Aspects to take into consideration include the mediator's past/present main job (whether he/she works/worked on the employer or on the employee representation side). It is less likely that an employer will have trust in a former trade union leader and consent to MKDSZ delegating him/her as a mediator.

*Recommendation:* In my view only more or less independent actors of the world of work (researchers, professors, etc.) would be best suited to fill the role of an impartial mediator from the point of view of social partners.

*2.3.3.) The level of trust may change in the course of the mediation process: it may decline or increase alike (e.g. when the professional skills that are expected from the mediator – such as showing empathy, containing tensions, approaching viewpoints – are appropriately applied in reality), or may remain the same as well.*

*Explanation:* If over time the level of trust toward the mediator increases compared to the starting point, it contributes to bringing about a successful outcome of the mediation process. If, however, it decreases, then successful outcome is more difficult to achieve. The level of trust toward the mediator may decrease to a point where the disputing parties no longer require the mediator's cooperation.

2.4.) In case the trade union has a strong bargaining position, the transaction costs related to the strike situation or the strike, may be lower for both parties.

*Explanation:* A trade union with a strong bargaining position can exert more pressure on the employer that shows greater willingness to reach an agreement rapidly, the strike may end sooner, consequently the transaction costs of the strike may be lower for both parties than as if the strike situation had lasted for a longer period of time. Except of course the larger the trade union, the higher the costs of direct action.

2.4.1.) *Increasing the size of the trade union might well be the key to increasing bargaining power.*

*Explanation:* If we accept that size is determined by the number of trade union members (and not by the size of the strike fund, for example), then it may be true that a trade union with more members is able to mobilize more people, therefore it is able to exert greater pressure on the employer and can more easily have its demands fulfilled, than a smaller interest representation organisation.

3. Hypotheses about the relationship between the trade union and the employer:

3.1.) The relationship between the trade union and the employer is influenced by the level of solidarity among trade union members and by the way this solidarity is achieved.

3.1.1.) *Individuals efforts to realise their self-interest are not favourable for the formation of balanced power relations between the trade union and the employer.*

*Explanation:* Cooperative behaviour is more likely to take place if individuals have a good reason to anticipate retortion as a consequence of their actions, or if the interest representation power of the trade union is very strong, which the individual is aware of. Under different conditions, however, when the individual is convinced that he/she will be able to resolve the problem without help and/or that there is nothing to expect from a weak trade union, then it is irrational for the individual to expect the trade union to undertake collective action.

3.2.) The absence of an appropriate level of solidarity among the employees concerned with respect to common interests, for example, makes it more difficult to reach the right conflict constellation and, indirectly, it can stand in the way of using mediation.

Explanation: Solidarity is influenced by factors such as differences in status, a priori history of the trade union, as well as its members' loyalty towards the trade union as a community, and the trade union's loyalty towards its members. The precondition for collective bargaining to occur is the emergence of collective conflict, which requires a strong trade union. However, there is no strong trade union without solidarity among the employees. I interpret group solidarity as a kind of unity which builds on the jointly generated benefits. Such benefits include holiday bonuses provided for trade union members, participation at events which aim to strengthen cohesion (e.g. in a sports' day), provision of allowance from the strike fund, or training opportunities, etc. In addition, (in)formal relationships within the trade union could be mentioned here as well – overcoming difficulties is easier when relying on such relationships, instead of trying to cope with them alone. I interpret solidarity as an invisible network that connects, organises and allocates public goods for people in exchange for their meeting certain obligations (such as paying membership fee, participating in direct action).

4. Hypotheses about uncertainty about the other party's reaction:

4.1 In case we accept that the court represents the hierarchy type of contract, while mediation stands for the market type contract, and taking into account the strong preference for coercive power in Hungary, then with the increase of uncertainty (i. e., the less we are able to predict the behaviour of the employer/trade union with respect to handling the conflict) going to court is a more likely option for the parties than mediation when they place themselves in the place of the opposing party.

4.1.1 *In case the level of the uncertainty described above is low but the opposing party foresees great likelihood of unfavourable, negative outcome as a result of the conflict (e.g. the employer wants to use force to resolve the conflict), then the chances are high that the hierarchical way, i. e. the court, will be opted for again.*

5. Hypotheses related to information asymmetry:

5.1.) The choice of labour mediation is influenced by information asymmetry.

5.1.1.) *The decision to involve a third party is influenced by the transaction costs in case there is unilateral or mutual information asymmetry among the parties.*

Note: It depends how costly it is.

6. Hypotheses about the attitudes toward the conflict:

6.1.) I assume that the low level of strike activity in Hungary indicates a low level of willingness to go into conflict, which is one of the reasons behind the low rate of the utilization of mediation, compared to developed market economies.

*Explanation:* It is likely that many conflicts are left unattended because the parties concerned do not come out with it and are afraid to speak openly about it. The conflict remains hidden, which further heightens tensions. It is probable that there are areas in the Hungarian labour market, where strike propensity is greater than the average, where people are braver, whereas in other areas the contrary may be true.

7. Hypotheses about typical conflict management strategies:

7.1.) In an effort to maintain the prestige, the employer seeks to resolve industrial disputes in-house.

*Explanation:* The employer and the employee representation organisation hold that successful resolution of a conflict guarantees that the power position, thus respect, authority and esteem can be maintained. The level of respect is influenced by the degree of willingness to settle a conflict within the confines of an organisation without outside help. Prestige and reputation are also determined by how much importance is attributed to employees' opinion and the organisation level within the trade union.

7.1.1.) *The efforts to preserve prestige appears on both the employer and employee sides but more frequently on the employer side.*

*Explanation:* In general, both sides overrate reputation and seek to maintain their prestige by trying to settle the conflict but such consideration emerges more frequently in the case of the employer.

8. The decision to choose mediation as a way to settle the conflict is influenced by the risks pertaining to the various conflict management techniques and the attitudes that parties take to them.

*Explanation:* Participation in strikes usually implies wage loss for the employees, as well as retaliation from the employers, on the other hand, strikes may have grave consequences for the employer. Litigation and mediation imply the involvement of external actors. How do the parties concerned feel about that? What risks do they attribute to these transactions, whether real or imagined? Depending on whether social partners want to avoid these risks or not, they may have different attitudes to mediation as well.

9. The decision to use labour mediation is influenced by the set of transaction costs of conflict management.

*Explanation:* Transaction costs may include the organisation of a strike, assessing the willingness to take part in strike action; in the case of litigation, choosing and contracting legal representatives and experts, preparing for the cases. Selecting the mediator and taking part in the also take up energy. Whether the social partners are likely to choose mediation as a way to resolve their conflicts depends also on the degree of the costs and benefits they attribute to the various strategies.

## **B.) Other hypotheses**

10. In light of the the number of conflicts that arise at the enterprises and which could otherwise be handled by mediation, the services offered by MKDSZ are hardly used by the companies that are familiar with it.

*Explanation:* A part of the conflicts that become public may reach the stage of strike or may not, while other conflicts remain hidden. All these could be managed with mediation, yet, in the majority of cases, this is not what happens.

11. An advantage of labour mediation is that it may equally be used with success in the destructive phase of the conflict as well.

*Explanation:* Mediation has been successfully used in various phases of conflicts and collective labour disputes, including the destructive phase as well. In this phase the relationship between the parties may suffer severe damage. In my view, the fact that mediation has been successfully used even in this phase of the conflict may help mediation become more popular.

12. Labour mediation may be used in the destructive phase of the conflict even when it implies that the parties attempt to do harm to the other party's reputation or enraged the other's safety.

*Explanation:* A conflict can be regarded as destructive not only when it has very serious consequences but also when there is a danger that the relationship between the parties may suffer severe damage (Barcy-Szamos, 2002, pp 16-17). The verification of the hypothesis would mean that the field in which mediation can be applied is greater: mediation may yield results not only in the segregation phase of the conflict but subsequently at the hate-based destructive phase stage as well. In the former phase „the parties are either unwilling or unable to communicate directly” (Göncz-Geskó-Herbai 1998., pp 23-24). In the latter, the parties seek to damage the relationship or harm the other's safety.

### 3. Research methodology

I used multi-stage, qualitative research methods. Beyond a review of the relevant theories and an overview of the most important institutions of labour mediation in Hungary and abroad, it was necessary to conduct an empirical investigations as well. The complexity of the issue demanded a broad scope for the research. The various target groups included mid- or macro-level employee and employer representatives, mediators and three companies with special characteristics from the point of view of mediation. Case study occasionally build on the analysis of company collective agreements and other documents as well. Furthermore, in order to get a more complete picture, it was necessary to analyse accounts of mediation cases, MKDSZ reports, the records of direct actions and statistics on the cases handled by the labour courts.

Interviews proved to be most adequate for verifying the hypotheses. Questionnaires, prepared for the mediators and the company representatives, also formed part of the research and served to complement the interviews and obtain information that can be systemized (e.g. the start date of the membership).

#### ***3.1. Selecting social partners***

Collective labour disputes often take place on the company level only. Sectoral conflicts have an impact on a greater scale as well. Therefore it was necessary to contact people who are themselves players in industrial relations and have relevant information about several companies.

##### **3.1.1. Trade union officials**

I conducted interviews with a number of trade union officials. In the end one person denied the permission to use the data from the interview, therefore my paper builds on nine interviews.

In selecting the interviewees, I used a non-probability sampling method, the so-called snow-ball method, which is often used in field research. I assumed that trade union leaders conversant with industrial relations know the people that have relevant knowledge and experience in the field. I started off on several paths in order to minimize the chances of getting similar, one-sided opinions.

The majority of the people I contacted are officials in sectoral, professional interest representation organisations or in peak organisations (e.g. in the Free Trade Union of Railway Workers (*Vasúti Dolgozók Szabad Szakszervezete*, [VDSZSZ](#)), or the National Association of Hungarian Trade Unions (*Magyar Szakszervezetek Országos Szövetsége*, [MSZOSZ](#)). They have good knowledge of the relevant legal regulations and are familiar with labour mediation, as well as with MKDSZ, they are well-informed of the attitudes of the employer side towards mediation and

have comprehensive understanding of the attitudes of the trade unions, operating in their segment of the economy, towards conflicts, mediation and employers.

The interview questions I had formulated previously can be grouped into the following thematic blocks: the perception of the conflict, labour conflicts, the frequency and themes of collective labour disputes, the cooperation between the employer and employee sides and their relationship, the conditions that influence the choice of the mediator in light of the available information about mediation. 80% of the questions posed at the interview fell into these categories, while the rest were generated by the answers. The questions were predominantly open, such as „Please describe the extent to which employee interest representation organisation(s) proved to be cooperative in a conflict situation.”

### **3.1.2. Employee organisation officials**

For the employer side I also used the snowball method to find interviewees. The criteria I took into consideration in the course of their selection included the length of their career in interest representation, comprehensive knowledge of the given professional field (e.g. food industry), knowledge of the attitude of employers operating in the given industry towards trade unions and mediation, awareness of the possibilities of labour mediation in the given area, knowledge of the legal background of industrial relations.

The interviewees (5 persons) included officials in sectoral or peak interest representation organisations (e.g. Alliance of the Public Road Transport Enterprises (*Közúti Közlekedési Vállalkozások Szövetsége*, [KKVSZ](#)), the National Association of Entrepreneurs and Employers (*Vállalkozók és Munkáltatók Országos Szövetsége*, [VOSZ](#)) actors/members in some institution of social dialogue (such as the Sectoral Social Dialogue Committee (*Ágazati Párbeszéd Bizottság*, *ÁPB*)).

The interview questions covered the same topics as in the case of trade union officials and I used the same method as in their case.

### **3.2. Selecting the mediators**

It took lengthy preparations to produce the research package for the mediators, which comprised of a questionnaire and an interview. The questionnaire was tested in a pilot survey as well. Based on the feedback I received this way, I designed two questionnaires: one with 59 questions for mediators who have already had experience in mediation, the other containing 16 questions for the other mediators. With the latter questionnaire I sought, among others, to find out the reasons why they had not carried out mediation yet.

The questionnaires provided a massive amount of information which, however, was useful and easy to organise, about the types of conflicts that labour mediation can be/is used for, the constellation that is necessary for it, the attitude and relationship of the parties involved in the conflict, and about communication between them, etc.

The information I gained from the interviews allowed a more accurate analysis. Interviews were necessary in the case of experienced mediators only, as they were able to provide a substantial amount of information and give concrete details of their experience (for example about the types of conflicts).

Many questions posed to the mediators and to interviewees from interest representation organisations were similar.

The information I gained from the mediators are comparable with, and often show similarity with, the information I obtained from the interviews with the social partners or, occasionally, the company case studies.

### **3.3 Selecting companies**

While there are more than one thousand companies (with collective agreements), numerous trade unions and employers that may be involved in labour disputes, the number of cases in which MKDSZ mediated hardly reaches 100 between 1996 and 2008. In order to provide a plausible explanation for this, we needed first-hand information, i.e. it was necessary to contact social partners on the company level.

However, results from all the organisations that used mediation services are not representative to the entirety of organisation in the country<sup>5</sup>, as their selection by MKDSZ does not take into account representativity criteria. Thus we did not have the possibility to use a larger sample.

It was therefore more practical to select individual cases displaying particular features, which can give a more nuanced picture about the reasons behind accepting or rejecting mediation. (Table 1.)

Table 1. **Criteria used to select companies**

<b>Particular features</b>	
Organisation 1.	Mediation ended with an agreement, which brought about an improvement in the relationship between the parties as a result of adherence to the points of the agreement.
Organisation 2.	The mediation process began but for some reason it came to a deadlock and no agreement was reached.
Organisation 3.	The parties refused to use mediation, mediation did not take place, the parties tried to resolve the conflict themselves.

<sup>5</sup> Domestically-owned companies were represented in the same proportion as companies in foreign ownership, or those in the country and operating in various segments of the economy (e.g. industry, commerce, etc.).



The selection was made easier by MKDSZ's reports on mediation cases which cover the aspects I spelled out above. In the end three trade unions were contacted in 2007, which differed both as to their ownership type, as well as to the segment of the economy they operate in. In the first case mediation was successful, it concluded in an agreement by the parties. In the second case mediation began but then came to a deadlock and no agreement was reached. The third company did not accept the mediation offer.

In order to obtain information for the case studies, I also conducted interviews with representatives of the employer side, as well as interest representation organisations at the company. The questions were similar to those formulated for the mediators and social partners but I made adjustments as well if it was necessary (e.g. which are the representative trade unions?). We interviewed all the trade union leaders wherever it was possible.

The answers revealed that the organisations established a concrete, easily definable relationship with the labour mediation service. We were able to uncover the reasons that prevented adherence to the agreement despite successful mediation, and which explain the fact the discontinuation of the mediation process and the failure to reach an agreement.

Beside the reasons that the parties cited when rejecting mediation and apart from specific characteristics of the company, we were able to shed light on additional motifs that came into play when MKDSZ's offer for a mediator was turned down by the parties: up until 2007 labour mediation was rejected in several cases.

The information obtained from the companies proved to be valuable. I was able to find answer to questions which often could not be answered as a result of the mediators' code of confidentiality or if interest representation organisations failed to give clear answers.

Nevertheless, I am keen to avoid making the mistakes that often arise in relation to case studies. I will refrain from drawing general conclusions about all the organisations with collective agreement from the results of the interviews with company representatives that had experience with mediation.

#### **4. Results**

For the sake of clarity, below I summarize the hypotheses in a table (2.) based on the results of the verification (whether it yielded unambiguous results and to what extent the hypotheses were verified).

Those hypotheses that were partially verified, or were verified but with some modifications (e.g. H12) are indicated under „partially verified (p)” in the table. In the case of the hypotheses that were unambiguously verified, there were some where the company case studies brought different

results. In one of the cases the hypothesis was fully verified or in two cases it was partially verified. If the hypothesis was verified in the case of the other target groups, then I accepted it even if it was not verified for two organisations. If the hypothesis could not be examined at least in the case of two target groups (and among these two organisations were in the company sample), then it was definitely not possible to examine it or it ended with uncertain results, depending on the results in the case of the third target group.

Table 2.: **Results of the hypothesis testing**

Unambiguous research results							Ambiguous results							
Result	No.	SP	M	C			Result	No.	SP	M	C			
				I.	II.	III					I.	II.	III	
Verified	<b>1.</b>	y	y	y	y	n	Verified rather than not	<b>2.3.3.</b>	na	p	y	y	na	
	<b>2.1.</b>	y	y	y	y	n		<b>3.2.</b>	y	na	n	y	p	
	<b>2.3.</b>	y	y	y	y	y		<b>4.1.</b>	p	p	n	na	y	
	<b>2.3.2.</b>	y	y	y	y	n		<b>4.1.1.</b>	y	p	n	na	y	
	<b>2.4.1.</b>	y	na	y	y	y		<b>5.1.</b>	na	y	n	y	n	
	<b>3.1.</b>	y	na	y	y	p		<b>5.1.1.</b>	na	y	n	y	n	
	<b>3.1.1.</b>	y	na	nv	y	p		<b>6.1.</b>	y	p	y	n	n	
	<b>7.1.</b>	y	y	y	p	y		<b>12.</b>	na	p	p	p	na	
	<b>8.</b>	y	y	y	y	n		Refuted rather than not/ not applicable	<b>2.2.</b>	n	na	n	p	n
	<b>9.</b>	y	y	n	y	n			<b>2.4.</b>	y	na	na	p	n
<b>10.</b>	p	y	p	y	y	<b>7.1.1.</b>	p		na	p	na	n		
<b>2.3.1.</b>	na	n	n	na	n	<b>11.</b>	na		p	n	na	na		
Not verified/ Not applicable														

Explanation. Target groups: SP= social partners; M = mediators; C = companies; responses: y=yes, verified, p= partially verified, n= not verified, na=not applicable

#### **4.1. Unambiguous results**

In Hungary the effectiveness of mediation does not necessarily motivate social partners to use it. In addition, the method does not look back on a long tradition here, other countries have far more experience in it. Labour mediation and the organisation that provides it are relatively new in our country. Until 2008 the number of cases per year often did not even reach ten. I presume that it will take more years before labour mediation becomes more wide-spread.

The comparison of statistics on strike actions and mediation reveals that over the past twelve years the number of mediation cases has remained one fourth of that of disputes involving direct action. The latter does not even include all the disputes that can potentially be settled with mediation. The social partners and mediators have ample examples of conflicts which mediation could have settled but the parties concerned did not request it and which resulted in negative outcome (e.g. a deterioration of industrial relations). The history of companies also revealed a large number of conflicts, either involving direct action or not, in which the parties failed to turn to a mediator. In light of this the assumption that in Hungary fewer cases are dealt with through

mediation than the number of potential cases has been verified. The central question of my paper was also answered: the low number of cases represents a problem.

The responses of the target groups confirm the assumption that a concurrence of factors is necessary for social partners to resort to the use of mediation, i. e. the recognition that there is a conflict and that it cannot be handled bilaterally, and that it is mediation that can provide genuine help.

It was also verified that a precondition to mediation is a balanced relationship between the social partners. We shed light on the factors that weaken trade unions (e.g. the lack of training), and the ones that strengthen them (e.g. the ability to take action) and which affect the trade union's relationship with the employer. The increase in the size, which is indicated by the size of membership and the level of organisation, also belongs to the latter group.

One basic attitude identified was that both employers and trade unions had aversions towards mediation. Before the process began, they had mistrust for the mediator, partly because they assumed that he/she will leak out confidential information. What lies behind such an attitude is deficient information or false ideas of the social partners.

The mediator's previous experience and record were also not indifferent for the social partners. However, instead of the main job he/she had, what mattered more was previous activity in a trade union. The parties were afraid that the mediator would lack the necessary professional expertise, or they continued to mistrust him/her despite the references proving his/her competence, as they neglected the possibility of impartiality. Mediators reported that if being given the benefit of the doubt helped to bring about successful outcome of the mediation, where the parties, transcending their personal interests, trusted each other and were able to cooperate.

It was confirmed from all the sides that social partners envisage conflict resolution in-house, without the involvement of external help. This is explained mainly by concern to maintain good reputation or prestige.

Even though not unambiguously, but it was verified rather than refuted that employers more frequently decline mediation with prestige considerations in mind. The majority believes that this is true on the trade union side rather.

Employers insist to settle conflicts „in-house” because they consider it a weakness if the company is unable to cope with internal problems and turn to a mediator. Components of the employer's prestige include impeccable reputation and the image of reliable, stable company with no problems.

Trade unions proved to have similar views as well. They sought to demonstrate their power by not letting a mediator get involved, declining to use mediation and negotiating with the employer themselves. They insisted on such an approach even when negotiations came to a deadlock. Those,

on the other hand, who had previously worked with a mediator and/or had extensive, though inaccurate, information about it, agreed to use mediation or suggested to apply exactly at this point.

Trade unions, reluctant to use mediation, had an additional reason to accept the involvement of an external party. They were aware that in Hungary it is very difficult to build on the strength of cohesion and solidarity. Individual games and opportunistic behaviour play an important part even when concluding employment contracts and they are also behind the low inclination to participate in direct actions. Trade unions believe that the involvement of an external party would have only aggravated this situation.

In my paper I mentioned two forms of solidarity. There is a group of people follow their self-interest, who either show, or do not show, solidarity for their own group: they either participate in the strike or they refrain from it. There is also solidarity towards other groups belonging to other organisations, occupations, and those with different status, which is displayed in a solidarity strike. Solidarity was less typical in the second form, while employees showed more solidarity along identical or similar interests.

All target groups believe that there is a contradiction between the individual's opportunistic compromise and the interests of the system, i. e. the trade union or the company. A conflict may well emerge again between the social partners, maybe even because of the very same issue. There is only interim peace and provisional calm between the employer and the trade union, or the trade union and employees. Unstable relationship between the parties is the hotbed of further conflicts.

In the case of the companies that rejected mediation or those that halted the mediation process, industrial relations were very tense. There was no decent/honest cooperation. What could have „settled” the conflict were political pressure on the management or turning to the court, or, as a last resort, strikes.

According to the notes in the theoretical part of the thesis, those individuals and groups, who generally pursue self-interest may still end up cooperating with each other occasionally. All three groups confirmed this. In Hungary cooperation between rational actors include negotiations between the employer and trade unions, as well as a successful warning strike, organised by trade union leaders within the legal bounds, which had no complications and which managed to meet the goals it had set. Even if temporarily, the parties in such a case display the willingness to cooperate.

It was verified in the case of two companies, and mediators' and social partners' reports also confirmed that the risks perceived to pertain to the conflict resolution strategy and the attitudes taken towards them, affect the decision whether to choose mediation or not. As to the transaction costs, this proved true for one of the companies only but was verified in the case of the other two target groups. Strike appears to be the typical conflict management technique, or, in the case of employer, forcing out a resolution are characteristic. In the case of more harmonious industrial

relations, bilateral negotiations also constitute an established practice. As we know, mediation is not a widespread method and the information people obtain about it is usually not accurate. This may also explain why social partners usually consider it more costly and risky than it is in reality. It was assumed, for instance, that it is the mediator who makes the decisions instead of them. The choice of the conflict management strategy depends on the attitude of those concerned to risk-taking. If the employee side is more likely to take risks, then it is more inclined to initiate a strike. If it is more likely to evade risks, then it is reluctant to take up the conflict, let alone to protest. Mediation is chosen by the parties if the employee side is not prone to evade risk, or if they consider it less costly than direct action, or if they expect more benefits than risks.

The hypothesis on the strength of the relationship between the mediator and those involved in the dispute was rebutted. On the one hand, it proved to be irrelevant in light of the information we obtained and, on the other hand, on several occasions it was not possible to examine it.

#### ***4.2. Ambiguous results***

A number of hypothesis adds to the group of assumptions that resulted in ambiguous results.

Changes in the level of trust towards the mediator could not be examined among social partners. The feedback from the mediators and the first two case studies suggested that positive correlation prevailed, rather than not, between the level of trust towards the mediator and the reaching of an agreement, but I also found examples of the opposite, as well as of the level of trust strengthening the intent to conclude an agreement, which however did not result in agreement.

Although the third assumption concerning solidarity proved more true than not, on the basis of the aggregate results, it does not qualify as confirmed. There was a lot of uncertainty in this respect: it was not possible to test the hypothesis in the case of the mediators and it was only partially verified for one company and remained unconfirmed in the case of the other one. In the latter case the employees showed solidarity towards the trade union, however, this did not lead interest representation organisations to the conflict constellation and, via that, to mediation. For them the involvement of an external actor was equivalent to requesting the cooperation of the sectoral trade union and negotiations with the employer were considered adequate in such an arrangement. The employee side ended up using mediation not so much because the employees agreed to do so or as a result of solidarity among them, but rather because they accepted the employer's suggestion.

The assumption about competition between mediation and litigation was found well-founded, even if in reality this is not possible. During the research it was clarified that mediation is best to use in the course of interest disputes, while a truly hierarchical solution can be used in legal disputes. The statistics on the annual number of lawsuits reveal that although the proportion of

labour lawsuits is small compared to all lawsuits, they still amount to tens of thousands. While these are predominantly individual cases and we do not have information about the number of collective legal disputes, their number is not negligible, especially if we take into account that social partners' appeals are usually not considered litigation cases. It is hard to decide which cases would have been suitable for mediation before they were turned into a legal dispute, however, the rate of strikes and other appeals suggest that the number of cases that may potentially be managed by mediation is far higher than the actual number of cases. However, since going to court is far from being the established practice and is not really a competitive strategy from the point of view of mediation, we should not run to conclusions here. The testing of the related hypotheses produced different results in the case of each target group and contradictory results within the target groups. For instance, wherever negative attitude was expected, we found that neither mediation, nor the court was chosen as a way to settle the conflict. In cases where social partners preferred turning the interest dispute to a legal one, legal actions were taken more frequently than using mediation, however, litigation was seen rather as a rival to bilateral negotiations than to mediation. In light of this the related hypotheses may be categorized among those with ambiguous results.

Contrary to the expectations, the testing of the hypotheses related to information asymmetry did not bring unambiguous results. In two companies the assumptions remained unconfirmed, in one of the companies and in the case of the mediators they proved true (rather than not). In this case the occurrence of information asymmetry did not necessarily result in the rejection of mediation, or its lack in choosing it. It was not possible to test it in the case of the social partners. Based on this I considered the relevant assumptions related to information asymmetry among the ones with ambiguous results.

It seems that mediation may be used in the destructive phase of the conflict as well. However, while both the deterioration of the relationship or assaults during the dispute may be considered destructive but it seems that it is the first case only in which mediation can be used, which makes the relevant hypothesis ambiguous. In the case of certain target groups either it was possible to examine the hypothesis to a certain degree, or it was not possible to test it at all, whether the fact that mediation can be used in the destructive phase of the conflict as well makes it more popular or not.

The hypothesis on expectations should be rebutted if it were clear in every case where it is possible to test that expectations related to communication and liaising between social partners did not make partners more likely to use mediation. In one case, however, it is very likely that it was exactly the expectation to receive additional information that increased the inclination towards mediation.

Only in few cases was I able to examine the hypothesis, and even in those it brought ambiguous results, whether a strong bargaining position implies lower costs of settling the conflict.

Finally, it is rather unconfirmed than confirmed that employers tend to reject mediation owing to prestige considerations more often than the employees. The majority of the responses suggest that it is the trade union side that does so more frequently.

### ***4.3 New elements***

All target groups mentioned new elements which in their view influence the decision to choose mediation and which were new compared to what was formulated in the hypotheses.

It was confirmed on all three sides that some social partners held certain stereotypes about the mediator: either that it is upon him/her to resolve the conflict, which he/she is able to do or not, or that he/she will represent the interests of one of the parties. „How come the mediator will not represent my interests? Doesn't he/she want to help? Does he/she side with the other party then?“ They instinctively equated mediation with litigation, which is why they were unable to understand what mediation is really about. They were unable to ignore the misconception that external intervention could not represent other than a hierarchical approach, mediation being one. They were unable to include into their value system the objectivity that pertains to mediation, as well as equal treatment, the importance of solidarity, the sense of unity and the possibility of a win-win outcome.

Journalists also often tend to depict the mediator as someone who resolves the dispute, which may deter the trade union from using mediation.

Nevertheless this stereotype came to prevent the use of mediation, wherever the parties considered prestige in the course of handling the dispute, but it actually promoted the use of mediation where the expectation was that the mediator should resolve the conflict.

It is an interesting feature that the recommendations of sectoral or professional trade unions getting involved in bilateral negotiations or staying in the background may also support the choice of mediation. When the interest representation organisations have already exhausted their advisory role, labour mediation was recommended to be used as a way to settle the dispute.

The principle of unilateral request of mediation services is a new element in the Hungarian environment. Its introduction would also contribute to the increase in the number of mediation cases, for in a conflict a previously recorded agreement would not necessitate assent from the other party to choose and use mediation.

### ***4.3. Recommendations***

Given that in Hungary collective agreements are usually concluded by social partners, it would be necessary to strengthen the position of trade unions so that they become matching partners

to employers during negotiations. On the other hand if the importance of social dialogue were recognised and it was applied at an earlier point, and even those employers got involved in it which previously had not done so, they would recognise and accept the fact that outside help was necessary. This could contribute to a more frequent use of mediation.

It is hoped that the results of this present research may be used to improve the efficiency of MKDSZ's operation, as well as to foster and maintain better communication patterns which positively affect the use of mediation, and to promote lobbying for legislation which may extend the scope of alternative ways of dispute resolution to legal disputes as well.

I am convinced that public awareness of MKDSZ's activities and mediation would be increased by more frequent media appearances and regular appearance at various forums, together with ensuring better organised PR activities on the side of MKDSZ's supervising bodies (e.g. the National Interest Reconciliation Council), publicizing the benefits of mediation via campaigns, connected to some event or occasion (e.g. connected to the mass redundancies as a result of the global financial crisis), and regular reports about successful outcomes of labour mediation. A clearer and stricter legal background would likely help as well: it would make the content of collective agreements, as well as the use of mediation, binding for all the actors of the sector when negotiating about sufficient services.

Ensuring full-time employment for mediators would probably represent a great step in promoting and strengthening trust towards them, as social partners would be less likely to question their impartiality. However, considering full time employment for mediators would be reasonable if the number of cases to handle multiplied and the number of cases per mediator required full-time professionals.

What represents a real alternative to settling disputes through the court are the proceedings administered by the Hungarian Labour Inspectorate which aim to settle legal disputes. Those conducting these proceedings (e.g. offence proceedings) have similar entitlements to legislative actors. Further research could focus on the relationship between these two organisations through studying the hierarchical order of conflict management techniques, established by the social partners.

It would be worthwhile to carry out a needs assessment of the Hungarian introduction of a preventive technique well-established in the United States, where social partners have an obligation to report a collective dispute to the Federal Mediation and Conciliation Service 30 days prior to an event, and the expiration of a collective agreement as early as 60 days in advance. As a result of such regulations, the Service is informed of the cases that have the highest chances of being handled through mediation. Introducing such regulations in Hungary would obviously increase the number of MKDSZ's cases but may not reflect real demand.



It would be equally useful to study whether there is demand on the micro level to introduce and follow rules on obligatory mediation, as well as to consider the chances of company level mediation, given that sectoral social partners, as well as peak organisations had already expressed such a demand several years back. A relevant study would help explore the advantages and risks associated with such measures.

Mediation has been used with success on several occasions in the destructive phase of labour disputes, understood as deteriorated relationship between the parties. It would be exciting an undertaking to explore the reasons why professionals are divided on this issue, if in other areas where mediation is used (e.g. family mediation) it has also produced positive results in a similar phase, and what opportunities restorative justice provides in similar cases.

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