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GOVERNANCE AND DEVELOPMENT OF ADR METHODS IN SLOVAK REPUBLIC AND ESTONIA

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ABSTRACT

Alternative dispute resolution (ADR) methods are experiencing considerable uprise in nowadays legal context of European Union member states. Their potential benefits and possible outcomes of court system unburdening, strengthening of national justice system, fundamental human right of person's access to justice facilitating and single market strengthening can be perceived as most relevant reasons of this effect.

One of the main aims of this thesis is to provide the foundation and recommendations for change in public perception and to promote the use of ADR mechanisms as well as their incorporation into the legal culture of the examined countries. ADR mechanisms are expected to continue to experience a steady growth all over the world and therefore the current state in Estonia and Slovakia, based on insufficient consideration of the topic's importance and very slow progress in ADR developments, which perpetuates the imbalances that the EU intends to address, needs to be changed.

The thesis helps to define and describe legal gaps and hurdles of mediation strengthening as one of the most common ADR methods within Slovakia and Estonia. In the outcome, the positive impact of voluntary standard settings as well as legislative policy development of the unified mediator's training programmes are presented as instruments enhancing governance of ADR methods.

Keywords: ADR, mediation, governance, Slovak Republic, Estonia

INTRODUCTION

"At worst, ADR is merely a highly fashionable idea, now viewed as worthy of serious discussions among practitioners and scholars of widely diverse backgrounds and professional interests. At best, the ADR movement reflects a serious new effort to design workable and fair alternatives to our traditional judicial systems."[1]

Alternative dispute resolution (ADR) mechanisms are generally recognized as effective, quick, relationship maintaining, access to justice facilitating and in certain situations economically more plausible choice for conflict settlement. For instance, Barsalona argues that ADR may be an effective tool in dispute incorporation, as it leads to effective prevention from extremely costly and even destructive litigation.[2] Thus, ADR mechanisms may be used in most areas of law (civil law, commercial law, family law etc.) for different types of disputes.

Technology has significant influence upon society of nowadays modern world, having impact on all aspects of person's everyday life, without ADR being an exception. Generally speaking, technology does not increase the amount of passed resolutions, nor does it decrease the amount of disputes themselves, but it can be used to facilitate the promotion of awareness regarding new options of conflict management and dispute resolution. In addition, internet platforms have become attractive for people who otherwise would not be interested in giving a chance to ADR methodologies.[3] Online dispute resolution (ODR) came to existence in European Union also

[1] Edwards H.T. (1986). *Alternative Dispute Resolution: Panacae or Anathema?. 99,* Harvard Law Review, 668.
[2] Reynolds, J. W. (2012). *ADR for the masses*. 90(3), Oregon Law Review, 691-702.
[3] Pesce F., Rone D., Laura Carpaneto, Cellerino Ch., Dominelli S., Montorsi E.G., Queirolo I., Solarte-Vásquez M. C., Toleikyte N., Tuisk T., Vebraite V. (2016). *Mediation to Foster European Wide Settlement of Disputes.* E-book, chapter 5.

thanks to the technological development, where the main purpose was to increase the trust and confidence of digital single market consumers, by making justice more accessible.

This research paper analyses dispute resolution mechanisms in the Slovak Republic and the Republic of Estonia, with specific focus on mediation. Thus far, the progress in the development of this ADR mechanism is uneven within the EU, with the main reason of this asymmetry being the ADR's governance scheme.[4] The usage of ADR methodologies is closely tied to their development. Ultimately, a more frequent use, accompanied by increased amount of discussions about the topic, should subsequently result in improved awareness and raise the interest of scholars, practitioners and, last but not least, the public, and encourage them to consider non-adjudicatory dispute settlement mechanisms.

While some countries, like Italy, took a step forward and have created a requirement of undertaking ADR sessions[5] before any court proceeding, or United Kingdom which utilises private companies, as well as judicial and government initiatives to promote mediation as well as persuade parties to use mediation[6], others, like Estonia and Slovakia, are lacking any proactiveness. They have transposed the ADR Directives into their national laws and obey ODR regulations[7], but they are not taking any additional steps to support development of ADR systems and ADR culture, unlike other countries with increased use and successful unburdening of court systems. Second subchapter of chapter number one of this thesis is specifically devoted to deeper analysis of legal documents concerning the ADR and ODR methods within the EU, complemented with table visualisation. The thesis also covers current differences within the EU, analysing existing voluntary standard-setting measures and drafting mediator's training model

[4] Governance as a term is used and defined within this text as a combination of both, legal and non-legal instruments.
[5] DECRETO 18 ottobre 2010, n. 180. Regolamento recante la determinazione dei criteri e delle modalita' di iscrizione e tenuta del registro degli organismi di mediazione e dell'elenco dei formatori per la mediazione, nonche' l'approvazione delle indennita' spettanti agli organismi, ai sensi dell'articolo 16 del decreto legislativo 4 marzo 2010, n. 28. (10G0203) (GU Serie Generale n.258 del 04-11-2010).
[6] The Directorate-General for Internal Policies of the Union. (2014). Rebooting the Mediation Directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU. Accessible: http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf.
[7] Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR). And Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes.

which could be implemented specifically into Estonian and Slovak national contexts and existing legislation.

The reason behind the thesis' focus on ADR and its methods is deriving from its important role within the process of legal development. An example can be made with ADR role in the area of human rights, where according to certain world-wide recognised legal documents such as the European Convention on Human Rights is the access to justice defined as a fundamental human right and ADR propose tools in form of the ADR methods, which may be used for widening of this access. There was also made an important ruling[8] by European Court of Human Rights in 1975 which strengthen this notion by stating that "one can scarcely conceive of the rule of law without there being a possibility of having access to the courts".

It is already known quite a lot about this topic, especially in countries with stronger ADR culture and because the research field has been well-established. However, the situation in individual countries such as in Slovakia and Estonia demonstrates a very slow progress in ADR developments, which perpetuates the imbalances that the EU intends to address.[9] Nonetheless, it is possible to look at it also positively as this situation provides opportunities by increasing the potential of the two countries in the development of ADR.

Another positive view can be based on connection of ADR with social development. Social development is highly influencing element of any legal system formation or functioning[10] and development of dispute resolution mechanism which can be nowadays also defined as an area of market as it is not only the states, but also the private entities who are using dispute resolution mechanisms and adjudication services within their commercial activities[11], creates a direct impact on legal system and ADR system development. Therefore the social development is also indirectly and gradually facilitating the ADR development within the two analysed countries as freedom to conduct a business[12] is recognised under the EU Charter of Fundamental Rights as

[8] European Court of the Human Rights decision, Golder v. United Kingdom, Appl. no. 4451/70, Judgment of 21 February 1975, para. 34.
[9] E.g. European Parliament resolution of 12 September 2017 on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (the 'Mediation Directive') (2016/2066(INI)).
[10] Benda-Beckmann F.V., Benda-Beckmann K. V. (2010). *Why Not Legal Culture*. 5 no. 2, Journal of Comparative Law, 104-117.
[11] Wagner G. (2014) *The Dispute Resolution Market*. 62 no.5, Buffalo Law Review, 1085-1158.
[12] In accordance with Charter of Fundamental Rights of the European Union Article 16.

essential right of all. However this phenomenon occurs evenly in all EU countries and therefore does not decrease the imbalances.

The development of ADR is also affected by the information technologies. Modern age, digitalization of information and online environment lead to creation of new platform which can be used for ADR services operating, easier access to information, communication facilitating or even providing the actual management of the disputes.[13] Furthermore, technology is the source of many disputes occurrence due to wide spread use of e-commerce. For this particular reason, EU has established and adopted a special regulation regarding the e-commerce and consumer protection known as Regulation on consumer ODR[14]. Technological development already has a significant impact on ADR and legal systems across the EU and it will, without any doubts, preserve this trend even in the future[15]. This proves a special potential of Estonia which is generally recognised as IT superpower within the EU and therefore fulfils the preconditions for effective ODR development. However, same expectations are not related to IT sector in Slovakia which, at the moment, lacks appropriate experts.

The results and outcomes of this work are built upon two complex research questions. What are the legal gaps, if any, and what are the possible obstacles of mediation spreading as one of the ADR methods within Slovakia and Estonia? What role and contribution may represent voluntary standard settings and mediator's training programmes in the ADR governance development of concerned countries?

The research applies qualitative research methodologies. The data collection and legal research of resources is followed by statutory interpretation and comparison of collected data, with its subsequent placing into the context of the research. Both legal and social sciences play role within the research, an example can be made by a jurisprudence and ethics. The data will be collected by analysis of different documents, academic writings, theories and laws. Systematic processing will be done by identifying and subsequent in-depth exploring of the problems, evaluating and structuring the acquired facts and formulating the observations with further propositions concerning the certain issue.

[13] Vagelis Papakonstantinou V. (2011). *Enhanced Dispute Resolution through the Use of Information Technology*. 8 no. 3, SCRIPTed: A Journal of Law, Technology and Society, 333-335.
[14] *Supra nota* 7.
[15] Rule C. (2015). *Technology and the Future of Dispute Resolution*. 21 no. 2 Dispute Resolution Magazine, 4-7.

One of the research aims is to provide the foundation and recommendations for changing of public perception and use of ADR mechanisms, incorporating them into the legal culture of the countries which are focus of this research, as they are expected to continue experiencing a steady growth all over the world, and therefore the current state in Estonia and Slovakia, which is based on insufficient consideration of the topic's importance, needs to be changed.

The organization of the rest of the text is divided into 3 main chapters. The first chapter contains a brief review of consensus building[16] and aspects of conflicts and legal disputes as such, with a short overview of mediation which was chosen from numerous other ADR methods for deeper study through the research. This part will summarise fundamental information of the thesis. The second chapter includes analysis of ADR governance and its contents, take a look on institutionalization of conflict management methodologies and elucidate the role of voluntary standard settings and self-regulations. The motivation behind the thesis' focus on voluntary measures is that there is already a compliant legal framework present within the EU, made by combination of supranational legislation and domestic legal provisions providing minimal rules on functioning of mediation. This framework will be also analysed within the thesis, however, the voluntary measures represent a valuable contribution to the legal systems and are assumed to be the reason of differences within the EU. The third chapter contains insights of current negotiator's training models, their accreditation schemes and educational programmes. This chapter will also comprise proposal of mediator's training model specifically drafted for Slovak and Estonian policy and legislative context. The draft is based on assumption that the unification of mediator's training models at national level of each country can be regarded as necessary step in order to ensurr certain quality level of provided mediation as of service within them.

[16] Susskind L. E. (2008). *Consensus Building, Public Dispute Resolution, and Social Justice*. Vol. 35 no 1, Fordham Urban Law Journal, 185-204.

1. LEGAL ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION

1.1. Conflict management

In order to resolve a dispute it is necessary to understand the origin and scope of the conflict itself. The word "conflict" has its roots in Latin word "confligere", meaning "together to strike", but nowadays can be found in the academic literature with numerous and complex characteristics, most often incorporating keywords as interaction, opposition and disagreement.[17] However, the general perception has evolved through the time as conflict is no longer defined solely as negative term but rather as a natural element of human behaviour, which raises awareness about specific problem and leads to eventually meaningful change and solution. Conflict as component in the decision making process, based on adverse ideas and their exchange also plays an important role in the system of democracy.[18]

Increasing amount of cross border commercial transactions is simultaneously raising the need for effective conflict management methods, as disputes are generally recognised as inevitable in conducting of any kind of business. Another triggering factor of current re-emerging discussions about conflict management, dispute resolution methodologies and their role within the European Union legal development is connected with complexity of emerged disputes as a result of their cross border character.[19] Alternative dispute resolution methods are offering flexibility which

[17] Lenz C. (2010). *Conflict Management*. 1 Yearbook on International Arbitration, 293-304.
[18] Sisk T. D. (2003). *Democracy and Conflict Management.*, University of Colorado. Accessible: http://www.beyondintractability.org/essay/democ-con-manag.
[19] (2015-2016). *Interview with Noah Hanft: The Future of ADR in Business*. Vol. 2 McGill Journal of Dispute Resolution, 60-65.

litigation cannot provide, for example when a specific part of ongoing dispute has a nonmonetary character, e.g. apology.[20]

Directive 2013/11/EU[21] highlights the role of national ADR and ODR infrastructures, which should be well established in order to ensure the access of consumers to alternative forms of dispute resolution. The main aim of these infrastructures is to strengthen the internal market and enhance the citizens' confidence in it, provide the comprehensive protection of consumers as well as widen their access to justice.

The recently adopted EU Directive concerning the tax disputes resolution mechanisms[22] was designed on the basis of need for effective resolution of common disputes deriving from interpretation of bilateral tax agreements and conventions in nowadays world of frequent cross borders operating businesses. The Council of the European Union acknowledged the capability of alternative methods for dispute resolution of matters concerning the interpretation and application of tax agreements and tax conventions[23], and encouraged the member states to use the alternative forms of dispute resolution, such as mediation, to settle this type of disputes.
Another area, which currently giving rise to discussions concerning the topic of conflict management and its role in legal development within the EU, is the area of civil aviation and air passengers' rights. This activity demonstrates the growing interest in conflict management and ADR methods within the business sector.[24]

However, there is no universal method of dealing with conflict. Any kind of conflict resolution process shall be therefore based on analysis, on case by case basis, in order to have effective outcome, and parties of a dispute may be, to a certain extent, included in the conflict management process and best fitting ADR mechanism determination, which, as a result, may influence their overall customer satisfaction.[25] Regarding the consensus building it is important

[20] Robbennolt, J. K. (2008). .*Attorneys, Apologies, and Settlement Negotiation*. 13 Harvard Negotiation Law Review, 349-397.
[21] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.
[22] Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.
[23] E.g. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC).
[24] Bollweg H.G. (2013). *Alternative Dispute Resolution (ADR) in the Aviation Sector in Germany*. 62 no. 3, Zeitschrift fur Luft- und Weltraumrecht - German Journal of Air and Space Law, 398-409.
[25] Douglas J. A. (2012). *Election Law and Civil Discourse: The Promise of ADR*. 27 no. 2, Ohio State Journal on Dispute Resolution 27, 291-320.

to distinguish a difference between "consensus" and "compromise". Compromise is based on agreement of the parties, where each side accepts the conditions of the agreement. Such outcome might result in only partial satisfaction of their desires. On the other hand, consensus, together with good negotiation skills, can lead to "win-win" situation, where interests of each party are met in the most satisfying way.

As knowledge of conflict management tactics and techniques can considerably contribute to negotiator's proficiency, it is important to mention Thomas-Kilmann Conflict Mode Instrument (TKI) which is used for determination of person's reaction and behaviour during the conflict situations. The instrument defines and describes five management styles, based on two dimensions of assertiveness and cooperativeness. As it can be understood from their naming, the assertiveness is a level of individual's motivation to achieve their own goals, while cooperativeness is a level of individual's willingness to allow the other party to achieve certain goals. There are five key styles of the instrument. The avoiding, which is recognised as uncooperative and unassertive style. The competing, which is recognised as uncooperative and assertive style. The collaborating, which is recognised as cooperative and assertive style. The accommodating, which is recognised as cooperative and unassertive style. And last but not least, the compromising, which is recognised as intersection of assertiveness and cooperativeness.[26] TKI is frequently used by negotiators, mediators and various other practitioners, not only from legal environment, who are dealing with conflict management and dispute resolution in their professions.

Alternative dispute resolution and non-adjudicatory dispute settlement mechanisms are techniques of conflict management created as counterweights and/or alternatives of litigation, facilitating the access to justice. The rest of this chapter will be devoted to analysis of fundamental issues concerning the mediation method, which was chosen from numerous of other ADR methods as a central interest of the research.

[26] Accessible: http://www.kilmanndiagnostics.com/overview-thomas-kilmann-conflict-mode-instrument-tki.

1.2. General overview of mediation

Mediation is a facilitative method of managing and resolving conflict through the neutral third party intervention. This third party has no power over the disputing parties and no authority for adopting any binding resolutions. The role of mediator is strictly limited to negotiation triggering and facilitating.[27] The mediator's skills are generally recognised to be directly connected with effectivity of mediation itself, as necessary theoretical knowledge of the conflict and of the mediation procedure, emotional awareness, creativity to propose solutions and handle various unpredictable situations, and also practical skills (e.g. in communication) are prerequisites for all parties satisfactory outcome.[28]

There are numerous principles which shall be satisfied during the whole process of mediation to eventually facilitate the conflict resolution. In certain cases parties of the mediation procedure shall comply with the principles beyond completion, for example they should follow the principle of confidentiality. Next table is addressed for this particular visualisation of most often implemented principles.

[27] Nataliia M. Gren N. M. (2016). *The Principles of Mediation*. No. 24, Journal of Eastern European Law, 75-79.

[28] Courtney Chicvak C. (2013-2014). *Concretizing the Mediator's Je Ne Sais Quoi: Emotional Intelligence and the Effective Mediator*. 7, American Journal of Mediation, 1-16.

Table 1. Examples of particular principles, observed and/or adopted by academics, practitioners and legislators

	Academics and practitioners	Legislators
Accessibility of information and/or procedures	- European Code of Conduct for Mediators[29] - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators[30]	- Directive 2008/52/EC[31] - Directive 2013/11/EU[32] - Slovak Mediation Act[33] - Estonian Conciliation Act[34]
Voluntariness of the procedure	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Independence of the mediator	- European Code of Conduct for Mediators	- Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Impartiality of the mediator	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Confidentiality of the procedure	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Time efficiency of the procedure	-	- Directive 2008/52/EC - Directive 2013/11/EU
Competence of the mediator	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act

Source: Directive 2008/52/EC, Directive 2013/11/EU, Slovak Mediation Act, Estonian Conciliation Act, European Code of Conduct for Mediators, Code of Ethic adopted by the AMS and the Chamber of Slovak mediators

[29] European Code of Conduct for Mediators., Accessible: http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf.
[30] Accessible: http://www.komoramediatorov.sk/files/SKM_eticky_kodex.pdf.
[31] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.
[32] Robbennolt (2008), *supra nota* 20.
[33] Zákon, ktorým sa mení a dopĺňa zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony 390/2015 Z. z.
[34] Lepitusseadus, RT I 2009, 59, 385.

In conclusion, fundamental principles of mediation procedures are generally well defined, incorporated into the observed legislations, and do not remain solely as ideas from academic writings.

However, as it is already mentioned above, there is no universal method of dealing with a conflict, and mediation is no exception. There are important pros of choosing the mediation instead of litigation. Generally recognised benefits, which are often repeated by many scholars and practitioners, start with widening of the access to justice, for instance in countries overwhelmed and often even deadlocked with amount of court proceedings (e.g. Italy[35] before implementing compulsory pre-litigation mediation sessions). It continues with mediation as potentially faster dispute resolution method (in comparison to litigation), and even possibly less costly than the court proceeding.[36] There is also positive element of parties' involvement and power over the procedure, which makes mediation much more attractive solution. Another crucial aspect is confidentiality of the process, which is in the contrast with generally public court proceedings, and even possibility to obtain intangible compensation in form of an apology[37], which is not recognised form of compensation within the court proceedings. Most frequently repeated cons regarding the mediation are as follows. Problematic process if parties are unwilling to cooperate, enforceability of mediation agreement and costs in mediation which may be possibly higher than costs in litigation when countries are lacking practitioners of mediation (e.g. Estonia)[38].

The literature explains that mediation may be voluntary, based on free will of the parties, and mandatory, based on law or court referral. Thus, the benefits of choosing mediation instead of litigation might be significant under specific circumstances, but the mandatory approach does not necessarily leads to fair settlement or satisfaction of all parties involved. Some critics argue that mandatory mediation might be in opposition with fundamental human right of the access to justice provided in Article 6 of the European Convention on Human Rights (ECHR), which was later incorporated also into the Article 47 of the Charter of Fundamental Human Rights of the

[35] Isaac K. I. (2011). *Pre-Litigation Compulsory Mediation: A Concept Worth Negotiating*. 32 no. 2, University of La Verne Law Review, 165-184.
[36] Hanks M. (2012). *Perspectives on Mandatory Mediation*. 35 no. 3, University of New South Wales Law Journal, 929-952.
[37] Levi D. L. (1997). *The Role of Apology in Mediation*. 72 N.Y.U. L. Rev. 1172-75.
[38] *Supra nota* 3.

European Union (CFREU), which contains a right for a fair trial[39]. If considered from this point of view, the mediation method's benefit of more accessible justice might be diminished, as it can have an opposite effect of limiting the fundamental right. And even though compulsory mediation on national level does not create any breach of EU law, as it is already known from 2008 when a crucial court decision[40], which provided grounds for Italian adoption of new legislative decree implementing the mandatory mediation sessions, was made by ECJ, the role and importance of human right of the access to justice is within this compulsory concept still arguable.

Other critics argue that the problem of mandatory mediation dwells in its questionable fairness as only court is perceived to provide "first class justice"[41]. Mediation as all other ADR methods has its pros and cons which need to be firstly considered in accordance with the relevant dispute, assessing the suitability of mediation. General criteria of this assessment may consist of defining the legal context, determining the amount and status of involved parties or relationship in between the parties.[42]

The number of manuals and standards for mediation processes is quite significant. However, as public mind set, national customs and social-political-economic environment all influence the development, operating and popularity of mediation procedures in each of the countries,[43] these elements need to be considered first in order to define a level of mediation culture development for distinguishing its role and acceptability within the society. Further analysis of the situation in Slovakia and Estonia will be provided later on, proposing specific ideas for resolving difficulties in their development path. Moreover, practitioners of mediation play an essential role in mediation culture development[44] and because of that, adequate attention shall be given to their trainings.

[39] In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 6.
[40] Decision of the Court (Fourth Chamber) of 18 March 2010, Rosalba Alassini v Telecom Italia SpA (C-317/08), Filomena Califano v Wind SpA (C-318/08), Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08).

[41] Gay C. R., Iyla D. T.(1991). *ADR - argument for and against use of the mediation process particularly in family and neighbourhood disputes*. 81, Queensland University of Technology Law Journal.
[42] Carducci G. (2012). *The Importance of Legal Context and Other Considerations in Assessing the Suitability of Negotiation, Mediation, Arbitration and Litigation in Resolving Effectively Domestic and International Disputes (Employment Disputes and Beyond)*. 86 no. 2 & 3, St. John's Law Review, 511-542.
[43] Palo G., Trevor M. B. (2012). *EU Mediation Law and Practice*. Oxford: Oxford University Press.
[44] Oscar T., Bing W. Ch. (2007). *Building a Mediation Culture in Hong Kong*. Vol. 9 no. 4 Asian Dispute Review, 125-127.

Mediation as a form of alternative dispute resolution is not purely defined as belonging to the legal domain, as there are other branches of knowledge overlaping with this topic. In general, ADR is an interdisciplinary field where legal sociology, psychology, politics, and ethics converge. General knowledge in all of these areas greatly contributes to the scope of a person's negotiation skills and any negotiator should be aware of their impact and importance. The next chapters will look closer into the negotiator's training models within the EU, proposing a new model addressing specifically the Slovak and Estonian legislative environments.

1.2.1. Analysis of mediation development in Slovak Republic and Estonia

Both countries, Slovakia and Estonia, have been members of the EU for more than a decade and their everyday activities are considerably influenced by the functioning of the Union. Mediation in Europe experienced a raise only in the late 90's, with Austria becoming pioneer. For the first time in the European history a mediation act, the "Zivilrechts-Mediations-Gesetz", was adopted[45], covering the mediation rules of civil law disputes in Austria. The Austrian example was followed by activity of other European countries where the focus on mediation started to grow. This new phenomenon was part of global movement towards the exploration and adoption of new legal measures concerning the alternatives of litigation.[46]

Credits are given to the European Council in Tampere[47] as initiator of the EU Mediation Directive 2008/52/EC[48] that called for the creation of the first out of court procedures of handling disputes, covered by harmonised European standard in October 1999. After the Directive's adoption, all EU member states, including the Slovak Republic and Estonia, were compelled to implement new elements of mediation law into their legislations within the next three years (due to 21 May 2011).

[45] Bundesgesetz über Mediation in Zivilrechtssachen (Zivilrechts-Mediations-Gesetz - ZivMediatG) StF: BGBl. I Nr. 29/2003 (NR: GP XXII RV 24 AB 47 S. 12. BR: AB 6780 S. 696.).
[46] Roth M., Gherdane D. (2012). *Mediation in Austria: The European Pioneer in Mediation Law and Practice*. Oxford Scholarship Online.
[47] Ingen-Housz A., Goldsmith J.C., Pointon G.H. (2006). *ADR in Business: Practice and Issues across Countries and Cultures*. Volume II, Kluwer Law International.
[48] *Supra nota* 29.

Mediation undergoes a constant development within the EU and within the separate countries simultaneously. However, a question of current gaps in legislation and in the functioning of mediation processes is rising. Nevertheless, there is always space for improvement in nowadays advanced world of constant changes and technical development. There are various instruments supporting the mediation governance progress, and not only prescriptive. The 2016 Report from the European Commission states that difficulties concerning the functioning of the national mediation systems in practice are related to low level of awareness regarding the mediation. A number of respondents in the public consultation had similar arguments, stressing also that judges and courts remain unwilling to refer parties to a mediation.[49] Further difficulties are tightly connected to the lack of active participation of experienced professionals.[50] This thesis will subsequently provide legal and non-legal proposals for dealing with these issues, together with analysis of who and how can contribute for mediation systems progress.

1.2.2. Legal background

The current mediation legal framework within the EU countries is based on the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, known as the Mediation Directive. Most importantly, the Directive explained the increasing importance of ADR and mediation as one of its methods in the current EU internal market, simplified and facilitated the person's access to justice, encouraged states to increase the use and awareness of mediation by implementation of harmonised minimum requirements of mediation into their national legislations, and assure that mediation is regarded as corresponding alternative to judicial proceeding.[51]

Another building stone of mediation's legal framework is the Treaty on the Functioning of the European Union which highlights the importance of access to justice and European Union's role to facilitate it as well as active contribution of European Parliament and of the Council while acting in accordance with the ordinary legislative procedure and in order to secure a proper

[49] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters.
[50] *Supra nota* 3.
[51] Lenz, C. (2012). *The EU Directive on Mediation The Implementation in Austria and the Preparations in Germany.* 2 Yearbook on International Arbitration, 375-396.

functioning of single market via development of mediation or other alternative dispute resolution methods.

Data protection Directive and General Data Protection Regulation are also relevant components of mediation legal framework, as personal data of parties to a dispute as well as of mediator are regarded as integral elements of any mediation procedure and their further processing may be required by law when mediator needs to be registered in certain national register of eligible mediation service providers or when drafting a settlement agreement.[52]

Table 2. Legal framework

<table>
<tr><th></th><th>EU</th><th>SK</th><th>EE</th></tr>
<tr><td rowspan="6">Mediation</td><td>Directive 2008/52/EC[53]</td><td rowspan="3">Mediation Act No 420/2004[54]</td><td rowspan="3">Conciliation Act[55]</td></tr>
<tr><td>Directive 2013/11/EU[56]</td></tr>
<tr><td>Regulation on consumer ODR</td></tr>
<tr><td>Directive 95/46/EC[57]</td><td rowspan="3">Act amending Mediation Act No 420/2004 and adapting of new law No 390/2015[58]</td><td rowspan="3">Labour Dispute Resolution Act[59]</td></tr>
<tr><td>GDPR[60] repealing Directive 95/46/EC</td></tr>
<tr><td>TFEU[61] Article 67 and Article 81(2)(g)</td></tr>
</table>

Source: author's research

Legislative development of first Mediation Act in Slovakia is closely connected with its EU membership, which triggered the discussions and subsequently a creation and adoption of new rules comparable to standards of other EU countries. On the other hand, the Estonian Conciliation Act was adopted only after the EU Directive enactment, with the aim of

[52] Palo G., Trevor M. B. (2012), *supra nota* 43.
[53] *Supra nota* 29.
[54] Zákon o mediácii a o doplnení niektorých zákonov 420/2004 Z. z.
[55] *Supra nota* 34.
[56] *Supra nota* 21.
[57] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Official Journal L 281, 23/11/1995.
[58] *Supra nota* 33.
[59] Töövaidluse lahendamise seadus, RT I, 28.12.2017, 18.
[60] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)**.** *Official Journal of the European Union*, Vol. L119 (4 May 2016).

[61] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union OJ C 59.

implementing its changes into the Estonian legislation, establishing unified principles of this alternative, non-adjudicatory dispute settlement method. Although Estonian legislation uses the word “conciliation” in its heading, the concept described in the Act indicate that drafters intended a similar concept of mediation as covered under the Directive 2008/52/EC. This diversification of terminology indicates insufficient awareness and knowledge of ADR methods within the country. Same inaccurate terminology is used in recently adopted Labour Dispute Resolution Act, where chairman of the labour dispute committee can be perceived as conciliator within the meaning of Estonian Conciliation Act, and labour dispute resolution proceeding is called conciliation what is the same term for dispute resolution proceeding according to the Conciliation Act.

2. ANALYSIS OF ADR METHODOLOGY GOVERNANCE

2.1. Institutionalization of conflict management methodology

To analyse the institutionalization of mediation as conflict management methodology, it is important to have a clear and unified picture of what is meant by institutionalization itself. In here, institutionalization is understood as a bottom-up process which aims to establish, organize and improve alternative dispute resolution methods, based on relatively narrow perspectives of programmes and activities managed by individual schools and local authorities, as means to achieve broader approach of EU standards consistency within the governance of ADR methods.

Sharon Press used the term of institutionalization, referring to any entity, both public and private, which is using the alternative dispute resolution methodologies in their operations, such as business conducting.[62] Therefore, this definition covers also mediation as a profession. Professional certification or licensure of professions, based on certain criteria such as knowledge and/or skills obtaining, has also a special role within the topic of institutionalization.[63] Assumption of the thesis is that the institutionalization of the principles and practices of individuals and entities regarding the specific ADR method of mediation, through the law, licensing and knowledge spreading encourages its actual position within the society and within the legal systems.

[62] Press S. (1997). *Institutionalization: Savior or Saboteur of Mediation.* 24 no.4 Florida State University Law Review, 903-918.
[63] Mosten F. S. (2004) .*Institutionalization of Mediation*. Vol. 42 issue 2, Family Court, 292-303.

Another important definition is the mediation "culture", which is, according to the Cambridge Dictionary, generally defined as a "way of life, especially the general customs and beliefs, of a particular group of people at a particular time".[64] Mediation culture within the legal context is dealing with concrete legal structures, rules and norms when dispute is arisen.[65]
As already stated above, one of the core assumptions of the thesis is that, unlike other countries with increased use and successful unburdening of court systems, Slovakia and Estonia are not taking further steps to support the development of a functional mediation system and solid mediation culture. Next part will be dedicated to this claim, discussing the concrete issues which are treated differently within the EU countries, comparing the Slovak and Estonian approach with approach of certain countries, mainly regarding the knowledge spreading via different instruments such as various mediation programs. This comparison will be based on criteria as relevance, social and legal impact, or efficiency.

First, considering the accessibility of mediation programs for youth, some examples of the Slovak and the Estonian lack of proactiveness can be found. Knowledge spreading through the various mediation programs designed specifically for youth are going to be discussed below, as they have numerous positive aspects such as violence prevention, conflict understanding and preparation of young persons for future optional profession as negotiators, general awareness building in regard to ADR methods and its increasing role in national legal systems, creative thinking, development of communication skills and much more.[66]

The youth targeted education does not encompass only the higher education offered at Universities, but also an education provided for people in earlier phases of life. In contrast with Italy, Sweden or UK, in Slovakia and Estonia these possibilities are lacking. For instance, there are numerous Italian high schools offering their students various courses focusing on development and strengthening of the communication as well as conflict resolving skills. One of these high schools is I.P.S.I.A (Istituto Professionale di Stato per l'Industria e L'Artigianato G. Benelli di Pesaro) that offers a program named "Progetto Accoglienza" which can be translated as "Welcome Project". This specific project was developed for the first year students, aiming at

[64] Cambridge Advanced Learner's Dictionary & Thesaurus,Cambridge University Press. https://dictionary.cambridge.org/dictionary/english/culture, accessed 9 Feb. 2018.
[65] Girolamo D.D. (2010). *Seeking Negotiated Order through Mediation: A Manifestation of Legal Culture*, 5 no 2 Journal of Comparative Law, 118-145.
[66] Nugent G. (2012). *Words Work: Teaching Youth Words That Work*. 18 no.4, Dispute Resolution Magazine, 20-21.

the improvement of the quality of students' life and their individual personal skills, all under the supervision of qualified mediator.[67]

Another example is set by Sweden, where numerous peer mediation and dispute resolution programs take place. The main aim of these courses is to influence the future generation by non-violent way of thinking and conflict resolving.[68] Last example will be made by UK approach which is again voluntary based and up to every school management to consider so far. Peer mediation programs are offered for students in many secondary schools as well as in certain primary schools. Peer mediation program is based on principle of pupil empowerment, allowing the student to actively resolve the matter of conflict under the supervision of neutral third party.[69] All of the aforementioned schooling programs create common grounds for necessary mediator skills for each of the participant. Both, Slovakia and Estonia, could consider implementing similar educational patterns in order to achieve stronger mediation culture within the countries, as there was, so far, nothing similar presented in these two countries, as found during the research of the thesis' topic.

Community, or also called neighbourhood mediation programmes[70], can be taken into account as another example of mediation institutionalization, whether these activities are established by governmental, non-governmental, profit or non-profit organization. Their educative role, encouraging the prevention of conflicts, have in community context a clear overlap with other disciplines, such as psychology and social work.[71] Some academics argue that dispute may actually offer opportunity to learn and create positive and productive effects, if it is handled in appropriate way. On the other hand, however, it may lead to destruction and violence if handled wrongly.[72] Therefore community mediation may be a decisive key for better community functioning, conflict resolving or even dispute avoiding, and could presumably affect everyday life of Slovak and Estonian society when presented and spread within these two countries.

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[67] Accessible: http://istitutobenelli.it.
[68] Singh W., Erbe N. D. (2016*). Creating a Sustainable Vision of Nonviolence in Schools and Society (Advances in Religious and Cultural Studies)*. Information Science Reference.
[69] Sellman E. (2011). *Peer mediation services for conflict resolution in schools: What transformations in activity characterise successful implementation?*. Vol 37 Issue 1, British Educational Research Journal.
[70] Almeida H. (2014). *Social and Community Mediation in Europe: Experiences and Models*. Coimbra: OCIS/FPCE.
[71] Blanco Carrasco M. (2016). *Mediation and the Social Work profession: particularly in the community context*. 29(2), Cuadernos de Trabajo Social, 275-283.
[72] Horowitz R. S. (2007). *Mediación. Convivencia y resolución de conflictos en la comunidad*. Buenos Aires: Grao.

Institutionalization of mediation can be also enhanced by governmental support, for example with financial support of various national level mediation projects and their consecutive management. Government may provide financial support to mediation centres, which would allow them to make their public assistance more accessible to wider population, thanks to the reduced operating costs. Government may also support research in the area of mediation, for instance by creating special groups of people whose task would be to analyse the current situation in each state and study the feasibility and effectivity of potential legislation and court rules changes in the area of mediation. Institutionalization of mediation through the solely governmentally established mediators' training centres may have an outcome of providing the minimum and common standards for fulfilment of mediator's profession within particular country.

In Slovakia, rather than governmentally established entities providing the mediation training, private entities create and organize such programmes[73]. Verified representatives of private sector are accredited by ministry of the Education, Science, Research and Sport of the Slovak Republic, and are subsequently granted permission to provide mediation trainings as their services. Situation in Estonia is quite similar, as the programmes organised by private entities[74] prevail over governmental inactivity concerning the options of mediation trainings.

2.2. Potential of voluntary standard settings and self-regulations

The research problem of this thesis, as already stated, relates to the ADR's governance. The progress in the development of mediation as of one of the ADR mechanisms is uneven within the EU countries, and there is an assumption within the thesis that voluntary measures represent a valuable contribution to the legal systems resulting in these imbalances. It has been proven that self-regulation[75], of for example lawyer conducting the mediator profession, increases the quality of provided services.[76] Optional advantage of self-regulation may be the reduction of regulation

[73] E.g. Inštitút zvdelávania a osobného rozvoja. Accessible: http://ivorsk.sk.
[74] E.g. Mittetulundusühing Eesti Lepitajate Ühing. Accessible: http://lepitus.ee/koolitus/.
[75] Self-regulation is in this research context interpreted as regulatory form of legal profession and legal practices.
[76] Chaserant C., Harnay S. (2015). *Self-regulation of the legal profession and quality in the market for legal services: an economic analysis of lawyers' reputation*. Vol. 39 issue 2, European Journal of Law and Economics, 431–449.

costs of a certain group applying certain self-regulation. Members' reciprocal control replaces a need for supervising controller and leads to cost reduction from redundant external norms and rules drafting. This form of self-regulation is most efficient in arrangements of smaller groups, so peers' control can take place.[77]

Examples of voluntary based standard settings can refer to codes of conducts, or also called model standards, of practice for mediators and codes of ethic. There are two angles from which a person can analyse the issues concerning the mediation procedure. First view belongs to mediators and second to lawyers representing the parties of the dispute. This thesis will focus on the view of the mediators. The table below visualize concrete matters of two different model standards of practice, highlighting the different objectives of code of conduct and code of ethic.

Table 3. Model standards of practice

	The European Code of Conduct for Mediators[78]	Code of Ethic adopted by two Slovak associations of mediators[79]
Content	Mediator's Competence	Management Of Mediation Procedure
	Mediator's Appointment	Mediator's Relationship With Other Mediators
	Management Of Mediation Procedure	Mediator's Commitment Towards His Profession
	Promotion Of Mediators' Services	Mediator's Relationship With Parties Of A Dispute
	Fees Setting	-
	Independent Conduct	-
	Confidentiality	-
	Impartial Conduct	-

Source: The European Code of Conduct for Mediators, Code of Ethic adopted by two Slovak associations of mediators

The European Code of Conduct for Mediators has its roots in 2002 when discussion paper on topic of ADR was published, and two years later the current Code of Conduct was created and

[77] *Ibid.*
[78] *Supra nota* 29.
[79] *Supra nota* 30.

adopted. This document contains a list of principles as visualised in table 3, available for voluntary commitment of any interested mediator, however, with no designed control mechanism as it is person's own responsibility to preserve his/her own commitment. In addition to individual mediators, organizations providing mediation services may also adopt, partially or as a whole, the European Code of Conduct. Moreover, they can also establish control mechanism evaluating the organization's mediators' commitment towards this code, if they are willing to do so.

In general, all codes of conducts deal with pillars of mediation procedure, containing the grounds for mediator's competence acquirement, basis of fees setting, describing mediator's importance of conduct to be independent and impartial, or further requirements which are commonly accepted as necessary for proper conduct of any mediation procedure.[80] Code of ethic covers rather the process of mediator's decision making than the performance of their roles.

There are currently two active associations of mediators in Slovak Republic, the Association of Slovak mediators (AMS)[81] and the Chamber of Slovak mediators[82]. Both of them have adopted the same, four-point long, Code of Ethic[83] which was initially drafted by the Chamber strictly for its own purposes, and later, with its approval, adopted also by the second association. This ethical code contains norms and principles of mediator's relationship with the parties of a dispute and, rules regarding the management of mediation procedure, and mediator's commitment towards his profession. However, this Code of Ethic is covering only issues that are already incorporated in Slovak Mediation Act[84] and lacks any further requirements for mediators' conduct that could contribute to the legal system and reduce imbalance between Slovakia and other countries with increased use and successful unburdening of their court systems.

Operating in Estonian mediation system are the Consumer Complaints Committee (this is not a mediation organization per se)[85], the Estonian Insurance Association[86] and Association of Mediators in Estonia[87]. And even though each of them deals with specific area of law (consumer law, insurance law and family law), they are active in using ADR mechanisms, including mediation, in their everyday functioning. Howeverm their officially published documents do not

[80] Kallipetis M. (2014). *Mediation Ethics in Europe*. 2, Dovenschmidt Quarterly 2014 65-[iii].
[81] Asociácia mediátorov Slovenska. Accessible: http://www.amssk.sk.
[82] Slovenská komora mediátorov. Accessible: http://www.komoramediatorov.sk/index.html.
[83] *Supra nota* 30.
[84] *Supra nota* 33.
[85] Tarbijakaebuste komisjon. Accessible: https://www.tarbijakaitseamet.ee/en/consumer-disputes-committee.
[86] Eesti Kindlustusseltside Liit. Accessible: http://www.eksl.ee/en.
[87] Eesti Lepitajate Ühing. Accessible: http://lepitus.ee/uhingu-info/.

include any voluntary standard settings which would be formatting and summarising additional requirements of involved parties' conduct. This analysis of current situation is just another example of lack of further proactiveness of Slovak and Estonian relevant organizations and institutions within the mediation governance.

2.3. Analysis of current promotion of mediation models within the EU

This subchapter discusses the propagation tools and designs of mediation procedures within the EU. There are different ways of promotion implementation, starting with adoption of legal measures such as enacting compulsory mediation session before any court proceeding (e.g. Italy[88]) or drafting and adopting certain rules and conditions of conducted activities (e.g. Slovak Mediation Act). However, certain government-supported mediation campaigns may be criticised by "turning against law", since excessive persuading of parties to a conflict in order to avoid any substantial social attention may occur.[89]

The current promotion models in Slovak Republic and Estonia are mainly based on legal measures, providing the legal framework for mediation mechanisms functioning within the countries and allowing subsequent access for practitioners or any other interested parties to review this framework. This can be considered as primary tool of awareness building. Technological progress and online platform as a basis for conflict resolution is another mean of justice access widening, awareness raising and promotion of mediation.

An option of mediation promotion implementation into the certain national system may be described by Greece example. A meaningful step, influencing Greeks' mentality, securing a smoother transformation of public opinion in the matter of mediation to be more positive, is the use of judicial mediation due to trustworthy status of judges in Greece. Key aspects of promoting precisely generated mediation models are contemporary conditions of certain country, its political situation, and social, cultural or economic context. Therefore, an evaluation of this situation plays an important role in promotion model successfulness. Many Greek academics

[88] *Supra nota* 5.
[89] Wu Y. (2015). *People's Mediation Enters the 21st Century*. 10 no. 2, Journal of Comparative Law 10, 25-43.

agreed, that rather less legal system invasive and modifying tools have bigger chance for success and satisfaction of nationals. As an example, we can mention the reform of law schools curriculums or imposition of mediation training requirements, which they are lacking to provide for judges mediators.[90] Developing and strengthening of the mediation culture is a naturally expected consequence of balanced mediation system promotion in each of the concerned countries.

The promotion of mediation in United Kingdom is based on different instruments in comparison with promotion of mediation in Slovakia and Estonia. These differences exist mainly due to fact that there is no unified Mediation Act in United Kingdom. However, the Act is substituted by case law and sectoral regulations.[91] Government, courts, and also private companies are all active contributors in promotion of mediation, and keep special focus on persuasion of pre-court parties to utilize mediation instead of litigation. Brochures and other information providing materials are often offered with an aim to raise awareness about options of dispute resolution, including the general information of mediation procedure. There is also an established program, aiming to facilitate the awareness of conflict parties, called "Mediation Information and Assessment Meetings".[92]

An example of judicial encouragement of ADR specifically of the mediation method in the United Kingdom can be found in the lawsuit of Halsey v Milton Keynes General NHS Trust[93], where the England and Wales Court of Appeal created guidelines containing the general rules for monetary sanctions for participants who refuse to undertake a mediation. By imposing costs deriving from participants' unwillingness to mediate, rather than adopting a compulsory approach of mediation procedure for all, the court have balanced the judicial way of ADR processes encouragement and the fundamental human right of person's access to justice covered by Article 6 of European Convention on Human Rights.[94]

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[90] Diamantopoulos G., Koumpli V. (2014). *On Mediation Law in Greece*. 67 no. 1, Revue Hellenique de Droit International, 361-394.
[91] Cortes P. (2015). *The Promotion of Civil and Commercial Mediation in the UK*. Research Paper No. 15-23 University of Leicester School of Law, Accessible: https://ssrn.com/abstract=2633215.
[92] Barlow, A. (2015). *Solidarity, autonomy and equality: Mixed messages for the family*. 27 (3), Child and Family Law Quarterly, 223-236.
[93] England and Wales Court of Appeal Civ 576, Case No: B3/2003/1458 and B3/2003/1582, 11.05.2004, Royal Courts of Justice Strand, *Halsey v Milton Keynes General NHS Trust*, https://docentes.fd.unl.pt/docentes_docs/ma/JPF_MA_29940.pdf.
[94] Nolan-Haley J. (2009*). Mediation Exceptionality*. 78 no.3, Fordham Law, 1247-1264.

However, it is important to mention that the United Kingdom, and particularly England and Wales, experienced the ADR culture development already in 1950's, when the first legislative proposals regulating the topic of ADR methods started to emerge. Reforms concerning the speed and accessibility of the UK civil justice system were subject of discussions for decades and in 1990's a topic of ADR with possibilities for early settlement of judicial cases started to play the central role in them.[95] Legal tradition also influenced the ADR culture development within the United Kingdom, as common law jurisdiction, such as the one of the England, integrated mediation and other methods of ADR into its jurisdiction much earlier than other EU member states and civil law jurisdictions, which started to incorporate these methods into their legal systems quite recently. Wide recognition, legitimacy and practice of these alternative methods to litigation lead to nowadays very strong ADR culture in the United Kingdom.[96]

On the other hand, Germany applied a special provision concerning the promotion of mediation in its Mediation Act (Act to Promote Mediation and Other Methods of Out-of-court Dispute Resolution[97]). This provision supports establishment of research projects, analysing mediation as one of the methods of conflict resolution in German legal system. Financial support of these researches is provided by federal state as well as member states, under specific criteria. German law also describes a lawyer's duty to inform the client about most favourable way for dispute resolution, which leads to lawyer's duty to inform about mediation, provided this is the most appropriate method for certain conflict resolution. This obligation makes the mediation procedure more ordinary.[98]

To sum up the answers for question of who can contribute to promotion of mediation, we can clearly state that individual practitioners, associations, academics, legislators, government and various legal entities can all participate and facilitate the process of promotion. It was proven that mediation can be more attractive to both users and practitioners if certain issues influencing the public perception are transformed in accordance with country's unique context. Awareness and knowledge of non-adjudicatory options and its functioning reduces the fear from unknown and increases the public trust. This can be facilitated by various, already mentioned and

[95] Hazel G. (2012). *What Is Civil Justice For? Reform, ADR, and Access to Justice*. Vol 24 issue 1, Yale Journal of Law & the Humanities, Article 18.
[96] Nadja A. (2002). *From common law to civil law jurisdictions: court ADR on the move in Germany*. Vol. 4 no. 8, ADR Bulletin, Article 3. Accessible: http://epublications.bond.edu.au/adr/vol4/iss8/3.
[97] Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung, BGBl. 2012 I, 1577.
[98] Vries T. (2012). *The Legal Regulation of Mediation in Germany*. No. 2, Acta Universitatis Lucian Blaga, 209-217.

analysed, means and methods. Sufficient sources, not only financial, but also technological (e.g. online platforms) and academic (e.g. researches), may considerably contribute to widening of the access for mediator's training, or interested party information and justice obtaining. The second chapter argues that the role of mediation governance in the Slovak Republic and Estonia is a key instrument in the mediation system strengthening.

3. NEGOTIATOR'S TRAINING MODELS

In general, a training model encompasses a process description for knowledge and skills sharing, acquiring and practising, typically based on certain data that ensure its effectivity. Within last few decades, a concept of training models and practical experiences as educational methods have obtained increased attention and importance, especially in legal sector. Subsequently, a question regarding the training programme's form emerged.[99] This chapter will analyse the matter in question and provide comprehensive overview of currently accessible training programmes within the EU as well as unique draft of mediator's training model, specifically suited to Estonian and Slovak legislative contexts.

The significance of a mediator's training model can be described by numerous examples, but the most important as well as the most relevant example for this thesis is when mediator's training model is subject to (national) legislative policy development, which is generally recognised precondition of good governance.[100] Furthermore, establishing and fostering skills, knowledge, values and overall capability to train participants, contributing to their personal and professional development, is another relevant example. Accordingly, it is reasonable to assume that adequate training may reduce the need for detailed financial and time-consuming quality control mechanisms of already completed mediation processes, by analysing whether they were fair and in compliance with law or any other relevant or applicable rules, as the training programme may prevent mediators from making mistakes based on lack of theoretical or practical skills.[101]

[99] Pinos, T. (1983). Advocacy training building the model a theoretical foundation. *Journal of Professional Legal Education* 1(2), 18-38.
[100] Karpen, U. (2010). Good governance. *European Journal of Law Reform*12 (Issues - 2), 16-31.
[101] Feasley, A. (2011). Regulating mediator qualifications in the 2008 EU mediation directive: The need for supranational standard. Journal of Dispute Resolution, 2011(2), 333-350.

However, there are also other examples which found during this research. For instance, voluntary based codes of conducts and model standards of practices are relatively widespread approaches, with the aim of facilitating the quality of mediation processes EU-wide, describing duties of the mediator during the process of mediation itself, rather than more detailed prerequisites for interested persons to become recognised as qualified mediators. Additionally, in countries without compulsory qualification system, any form of mediator's training may become a decisive factor, for parties to a dispute, in choosing of suitable mediator for their process of dispute resolution.

Overall, uniform rules of mediation training can establish and grant particular standard for mediation service. Uniform standards assume a particularly important role in nowadays global world where people travel not only across the borders, but also within each of the country's territory, more often than ever before. Therefore, trust of potential customers of mediation services towards created national mediation system with uniform requirements for mediator's qualification can be perceived as a safeguard of quality and accessibility to all interested customers.

3.1 Analysis of currently accessible training programmes within the EU

Design of training models and training programmes within the EU varies not only from one country to another, but also between private entities which often establish and organize training and qualification models and programmes. Form and components of mediators' training and constituents of mediators' qualification may be subjects to law, for instance in certain provisions of Slovak Mediation Act[102], but they can be also based on cooperation between the private and public sector of a specific country.[103] Example of this cooperation can be made by Austria, where a successful mechanism of cooperation between Ministry of Justice and training

[102] E.g. Article 8 about registration procedure of mediators.
[103] Yi, L. (2017). Global trend on the accreditation for mediators focused on the U.S. and European countries. *Journal of Arbitration Studies* 27(2), 121-[ii].

institutions has been created. If training an institution complies with legal requirements, which is subsequently proved during verification process concluded by Ministry of Justice, it can be listed as qualified in national register, provide mediators' training and issue a formal decisions to successful participants, which recognize them throughout Austria as competent mediators eligible to conduct mediation services.[104]

Legal requirements in Slovak Republic and Estonia regarding the mediator's qualification can be found in Slovak Mediation Act and Estonian Conciliation Act. And even though the EU Mediation Directive recognised importance of mediation training[105], there is no specification regarding the implementation of its content into the national mediation systems, as it is left up to each member state to decide to which extent it will be incorporated into their national legislations. Same lack of engagement can be found in the European Code of Conduct for Mediators[106] which states that training and education of mediators play key roles in their competence building, however, text of this document does not involve any further specification regarding the form and content of such training.

Article 8 paragraph 2 of the Slovak Mediation Act contains a list of requirements for a person to be recognised as qualified mediator under the Slovak law. Legal capacity, clean criminal record, finished higher education of at least second level, and a formal decision, proving successful completion of mediator's training, issued by a recognised training institution are main requirements listed in the Article. Situation in Slovakia is therefore comparable to Austrian approach, which was already discussed. Process of mediator's recognition is based on cooperation between Ministry of Justice and private entities, which after fulfilment of certain legal conditions, may organize training and assessment of interested persons. As a result, all qualified mediators shall be registered by Ministry of Justice into an organized and free accessible online register of mediators[107], which entitles them to conduct mediation services in accordance with law.

[104] Verordnung des Bundesministers für Justiz über die Ausbildung zum eingetragenen Mediator (Zivilrechts-Mediations-Ausbildungsverordnung - ZivMediat-AV). StF: BGBl. II Nr. 47/2004.
[105] Article 4 of the DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 on certain aspects of mediation in civil and commercial matters.
[106] Article 1.1. of the European Code of Conduct for Mediators.
[107] Accessible: https://obcan.justice.sk/infosud-registre/-/isu-registre/zoznam/mediator.

Article 9 of the same Mediation Act regulates training programmes and exam requirements for mediator's successful qualification. Training shall be longer than 200 hours and focused on legal education of all participants in various fields of law such as civil law, labour law, sales law, family law and consumer law. Additionally, a special emphasis shall be given on interpersonal communication, conflict theory and psychological aspects of conflicts as well as managing of the mediation process and drafting of the final agreement. Final exam shall contain evaluation of two types of knowledge, theoretical and practical one, while practical part is based on case analysis and agreement drafting.

In addition, Article 10a of Slovak Mediation Act comprises requirements for further education of competent mediators in Slovakia. A mediator is obliged and expected to be educated on continual basis. As an opportunity for further education, Ministry of Justice annually organizes seminars for mediators. If certain mediator does not participate at least once a year, the Ministry of Justice orders mediator's re-examination.

As presented, regulation of training programmes on national level, as covered by Slovak Mediation Act, incorporates many valuable rules, concepts and ideas. On the other hand, Estonian Conciliation Act does not contain any specific provisions devoted to mediator's qualification, as it rather focuses on mediators' conduct during the mediation processes. However, critical analysis of mediators' training as specified in Slovak Mediation Act may lead a critique to argument that even though final exam comprises practical assessment of participant, this examination is still done in written form and can be therefore perceived as incomparable, irrelevant and insufficient for real mediation skills examination. Furthermore, theoretical part of the legal education may differentiate in learning outcomes of mediators who have undertaken training programmes organized by different institutions, and learning outcome is therefore not in compliance with the notion of uniform level of mediators' qualities. This problem may be solved by creation of unified syllabus, applicable in all training institutions.

The main source of information and regulation of mediators' trainings in Italy can be found in Italian Administrative Decree 180[108]. In this EU member state, mediation is regulated as provided by organizations and Administrative Decree provides set of qualifications and rules which shall be followed by participants of mediation procedure as of service. However, they shall also follow specially drafted ministerial decrees concerning the mediation procedures which create uniform standard and procedural safeguards within the country.[109] Similar to Slovakia and Austria, competent mediators in Italy shall be recognised and registered by Italian Ministry of Justice.

The approach of the United Kingdom regarding the mediator's training as a part of mediator's qualification is same as in Estonia, which means that it is not specifically regulated by law. In contrast with Italy or Slovakia, there does not exist any legal requirement for registration of competent mediation service providers, however, participation at training programmes is common practise, as such training represents a valuable role in mediators' career.[110] An example of training programme can be made by so called Mediator Skills Training course organized by Centre for Effective Dispute Resolution (CEDR)[111], with headquarter in London. This programme is based on theory and skills-based practice, with certificate as a result of successful completing of the programme. Moreover, CEDR's Mediator Skills Training handbook[112] was created in order to supplement obtained knowledge of the courses and facilitate participant's understanding of course matters.

In conclusion, an effective training model shall be composed by theoretical and practical divisions in order to ensure participants' mediator's profession understanding and subsequent ability to provide services of high quality, as it can be understood from common practice, scholar arguments and contents of all reviewed training programmes.

[108] *Supra nota* 5.
[109] Hazel (2012), *supra nota* 95.
[110] McFadden, D. (2015). Developments in international commercial mediation: US, UK, Asia, India and EU. *Contemporary Asia Arbitration Journal (CAA Journal)* 8(2), 299-336.
[111] Accessible: https://www.cedr.com.
[112] Accessible: https://www.cedr.com/myportal/docslib/5-handbook.pdf.

3.2. Draft of mediator's training model, implementable into the Slovak and Estonian context

Following education and examination framework, which is going to be presented in a table format, followed by short commentary, shall be adopted at a national level, for instance by amendment of Slovak Mediation Act and Estonian Conciliation Act which are currently in force, in order to create consistent standard of competent mediators within each country, ensure certain quality of mediation procedures and safeguard trustworthiness of the system. Such implementation would be also in compliance with the view of European Parliament[113], which recently repeated its recommendation to create consistent standards for mediation services, taking into consideration local differences in mediation cultures.

[113] *Supra nota* 9.

Table 4. Training framework

Prerequisites	
Clean criminal record	
Legal capacity	
Theoretical part	Practical part
Legal foundation of mediation most related fields of law and national court system. This knowledge spreading shall be based on unified syllabus created by experienced practitioners of law and of mediation	Conflict management, problem solving exercises and case analysis as educational methods training various conflicts understanding and identify main interests of the parties within them
Brief history and general overview of Alternative Dispute Resolution methods	Negotiation skills and techniques
Phases of mediation process, main competencies, concepts and principles of mediator's conduct	Communication skills and techniques including the active listening
Knowledge of administrative requirements in order for mediator to be recognised as competent under the national law (if applicable)	Role playing and simulations – practice of all related and by the course covered skills
Theory of conflict	-
Basics of sociology	-
Basics of psychology	-
Basics of ethics	-
Legal writing	Agreement drafting
Understanding of Estonian Conciliation Act for participants of the training in Estonia, Slovak Mediation Act participants of the training in Slovakia and European Mediation Directive, Regulation on consumer ODR, Directive on consumer ADR for participants of the training in both countries	Discussions with experienced mediators, in order to obtain insight into everyday practice of mediators and create understanding and preparation for avoiding of most common problems or mistakes
Assessment	
Written exam with two forms of questions, short essay and multiple-choice questions	Simulation of mediation process and settlement agreement drafting

Source: author's contribution

Each element stated in the table represents, as assumed by the author of this thesis, an important value that directly influences and contributes to personal and professional development of each of the training participant. In addition, certain details shall be included in order to complete the draft of this training programme in a comprehensive manner.

The length of the programme shall be 60 hours, while at least 10 hours of the programme's length shall be devoted to person's participation and active role in various mock mediation sessions. Process of training shall be based on dynamic interaction within small groups of people (maximum 10), in order to create a possibility of providing individual feedbacks to all participants. Programme fee shall be unified by all training institutions and to all applicants, based on annual decision of each of the country's competent authorities, for instance by Ministry of Justice. Successful completion of the exam shall be confirmed by formal decision of a competent authority (e.g. certificate), proving person's knowledge and qualification to provide mediation as a service. A concept of re-examination shall be incorporated, guaranteeing stable level of person's proficiency as a mediator and ensure continuing education, which is necessary also due to legal changes over time. This re-examination shall be offered for free once in 2 years with additional requirement to conduct at least 50 hours of mediation per year in order to remain qualified mediator during this 2 year period of time. Outcome of this training programme is supposed to represent the creation of a new qualification and training system in Estonia and significant contribution to existing system in Slovakia.

CONCLUSION

The aim of the paper was to analyse the current situation of ADR methods and their governance in two particular countries, Slovak Republic and Estonia, in comparison with other EU member states. This aim was reached by identification of legal problems, or any other relevant obstacles, and by subsequent proposition of solutions which could contribute to strengthening of the national justice system, facilitating the awareness, transparency and public trust towards the national ADR systems as well as to increase the attraction and satisfaction of all persons involved in the functioning of ADR methods. Furthermore, by proposing the unification of the national approach of ADR methods governance, with special focus on mediation method, in order to establish consistent standard of mediators' competence within each for the research selected countries and ensure certain quality of mediation procedures. And last but not least, to guarantee equal treatment of mediators within each of the concerned countries.

An overview of covered problems, legal gaps and other obstacles refers to none or insufficient regulation of mediator's competence, neither nation-wide nor EU wide consistent regulation of mediators' competence, general lack of awareness and weak ADR culture. In addition, diversification of legal terminology, lack of experts and practitioners that directly influence costs of mediation services, insufficient promotion of ADR methods, lack of governmental involvement and state proactiveness within the ADR governance, courts' unwillingness to promote ADR methods and only limited requirements for mediators' conduct which are very often based on voluntary commitment without any control mechanisms are all findings of the research.

Furthermore, an issue of access to justice as of recognised fundamental human right was arisen. The problem derives from two opposite views regarding the right. On one side, ADR methods

are perceived as an access to justice facilitating due to their flexible character in comparison with litigation procedure and also due to outcome of particular alternative dispute resolution which may have a nonmonetary form, such as apology, which cannot be provided as outcome of litigation. On the other hand, a compulsory ADR method may have an opposite effect of limiting the fundamental right for a fair trial.

Solution process for discussed problems started with their identification and was followed by comparative analysis of concepts, rules and methods adopted by other EU countries, as well as by research and analysis of ideas proposed by scholars and experienced practitioners. Solution process was completed by formulating the overview of observations, with author's further propositions concerning the arisen matters suited for legislative context of Estonia and Slovakia.

Main results, assessments and proposals of the thesis, with aim to strengthen the national justice system and facilitate ADR governance development in Estonia and Slovakia, are as follows. Proposal for more active contribution and/or cooperation of public and private sector in promotion of mediation via organizing various educational programmes for all categories of people as well as for communities, which may have an outcome of personal and professional development, or even prevent violence.

Proposal for promotion of mediation awareness, developing and strengthening of the mediation culture via financial support of research projects analysing mediation as one of the methods of conflict resolution in each country and identifying country specific problems, via imposing of costs deriving from participants' unwillingness to mediate rather than adopting a compulsory approach of mediation procedure for all and via overall ensuring of speedy and accessible mediation service.

Draft proposal of mediator's training model, implementable into the Slovak and Estonian context, applicable at national level in order to establish consistent standard of mediators within each country. The outcome of the draft, if adopted, could be the creation of a new qualification and training system in Estonia, and significant contribution to existing system in Slovakia. Such unified training program could be perceived as especially important in nowadays global world of people travelling not only across the borders, but also within each of the country's territory more often than ever before.

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APPENDICES

Appendix 1. Examples of particular principles, observed and/or adopted by academics, practitioners and legislators

	Academics and practitioners	Legislators
Accessibility of information and/or procedures	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Voluntariness of the procedure	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Independence of the mediator	- European Code of Conduct for Mediators	- Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Impartiality of the mediator	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Confidentiality of the procedure	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act
Time efficiency of the procedure	-	- Directive 2008/52/EC - Directive 2013/11/EU
Competence of the mediator	- European Code of Conduct for Mediators - Code of Ethic adopted by the AMS and the Chamber of Slovak mediators	- Directive 2008/52/EC - Directive 2013/11/EU - Slovak Mediation Act - Estonian Conciliation Act

Appendix 2. Legal framework

	EU	SK	EE
Mediation	Directive 2008/52/EC	Mediation Act No 420/2004	Conciliation Act
	Directive 2013/11/EU		
	Regulation on consumer ODR		
	Directive 95/46/EC	Act amending Mediation Act No 420/2004 and adapting of new law No 390/2015	Labour Dispute Resolution Act
	GDPR repealing Directive 95/46/EC		
	TFEU Article 67 and Article 81(2)(g)		

Appendix 3. Model standards of practice

	The European Code of Conduct for Mediators	Code of Ethic adopted by two Slovak associations of mediators
Content	Mediator's Competence	Management Of Mediation Procedure
	Mediator's Appointment	Mediator's Relationship With Other Mediators
	Management Of Mediation Procedure	Mediator's Commitment Towards His Profession
	Promotion Of Mediators' Services	Mediator's Relationship With Parties Of A Dispute
	Fees Setting	-
	Independent Conduct	-
	Confidentiality	-
	Impartial Conduct	-

Appendix 4. Training framework

Prerequisites	
Clean criminal record	
Legal capacity	
Theoretical part	Practical part
Legal foundation of mediation most related fields of law and national court system. This knowledge spreading shall be based on unified syllabus created by experienced practitioners of law and of mediation	Conflict management, problem solving exercises and case analysis as educational methods training various conflicts understanding and identify main interests of the parties within them
Brief history and general overview of Alternative Dispute Resolution methods	Negotiation skills and techniques
Phases of mediation process, main competencies, concepts and principles of mediator's conduct	Communication skills and techniques including active listening
Administrative requirements in order to mediator to be recognised as competent under the national law (if applicable, e.g. application for registration into the list of mediation service providers)	Role playing and simulations – practice of all related and by the course covered skills
Theory of conflict	-
Basics of sociology	-
Basics of psychology	-
Basics of ethics	-
Legal writing	Agreement drafting
Understanding of Estonian Conciliation Act for participants of the training in Estonia, Slovak Mediation Act participants of the training in Slovakia and European Mediation Directive, Regulation on consumer ODR, Directive on consumer ADR for participants of the training in both countries	Discussions with experienced mediators, in order to obtain insight look into everyday practice of mediators and create understanding and preparation for avoiding of most common problems or mistakes
Assessment	
Written exam with two forms of questions, short essay and multiple-choice questions	Simulation of mediation process and settlement agreement drafting