

# TEACHING MEDIATION BY MEANS OF AN ONLINE PLATFORM\*

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**Abstract:** *The Czech Republic is a country with a high rate of litigation and a low rate of awareness about alternative dispute resolution (ADR) mechanisms. One of the ADR methods, largely promoted by the European Commission, is mediation. Mediation can be either voluntary or mandated by a law court. Citizens, businesses and judges alike are likely to make a wider use of mediation if they are familiar with how it works and take into account its holistic effects. Whereas a judgment delivered by a law court is likely to resolve a single dispute, a mediation processes can remedy a wide range of relations between business contacts in commercial issues, parents of children after divorce in family cases and neighbor nuisance to create a more amicable living environment in a community of people sharing a house. The aim of this paper is to introduce a new online study platform on mediation developed in the framework of an Erasmus+ strategic partnership of six EU Universities. The Online Study Mediation Platform is aimed at both teachers and students. It encourages its users to adopt an interactive approach towards teaching and learning mediation by engaging them in practicing mediation techniques and mock mediation in both, domestic and international settings on a variety of topics which may arise in day to day situations.*

*The Online Study Mediation Platform provides for a set of useful tools which trigger a gradual development of negotiating techniques employed in mediation. It stresses the principles upon which the mediation process is based and makes reference to a number of other resources which can be used in class to balance theory and practice. One of the intellectual outputs offered by the online mediation platform consists in methodological guidelines for teaching mediation at Universities. Experience shows that teachers may be reluctant to teach mediation to their students if they lack quality background documents on how to approach and structure the teaching process. The methodological guidelines bridge these knowledge and experience gaps by proposing a clear, yet a flexible way of organizing an entire mediation course at a University level. The mediation toolbox also includes short theoretical videos, longer videos on mock mediation sessions on a number of topics, a best practices manual, assessment guidelines and most importantly, a platform to practice mock mediation online with University students across the entire Europe.*

**Keywords:** *mediation, online study platform, teaching, ADR, negotiating techniques, methodological guidelines*

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## 1. INTRODUCTION

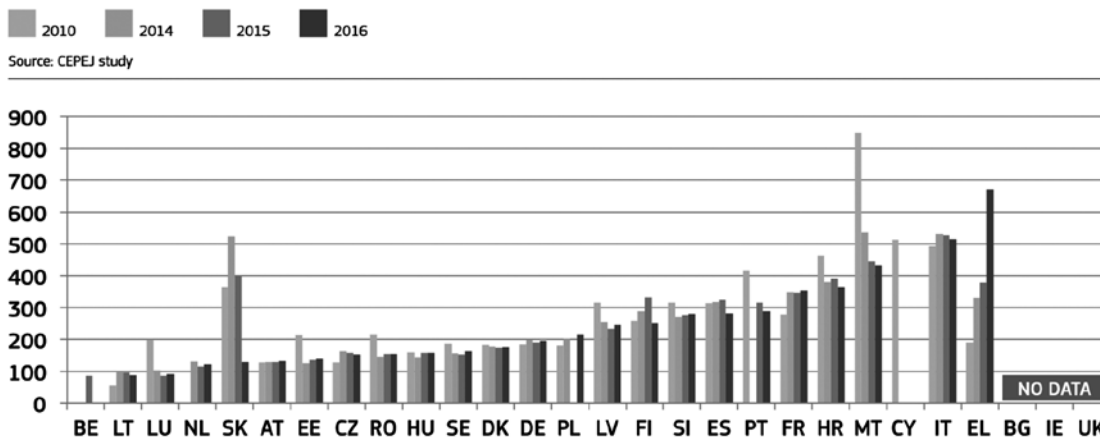
The length of litigation on civil and commercial disputes required by law courts may be discouraging in a number of EU Member States to enforce the rights of individuals, natural persons and legal entities alike. The Council of Europe, together with the European Commission regularly monitor the duration of civil and commercial procedure before national law courts. Statistical data seem to suggest that a certain north south divide continues to persist in terms of the duration of litigation in different EU Member States. The following figure shows that differences between the length of procedure among EU Member States are rather significant.

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**Time needed to resolve litigious civil and commercial cases (\*) (1<sup>st</sup> instance/in days)**



(\*) Under the CEPEJ methodology, litigious civil/commercial cases concern disputes between parties, e.g. disputes regarding contracts. Non-litigious civil/commercial cases concern uncontested proceedings, e.g. uncontested payment orders. Methodology changes in EL and SK. Pending cases include all instances in CZ and, until 2016, in SK. Data for NL include non-litigious cases.

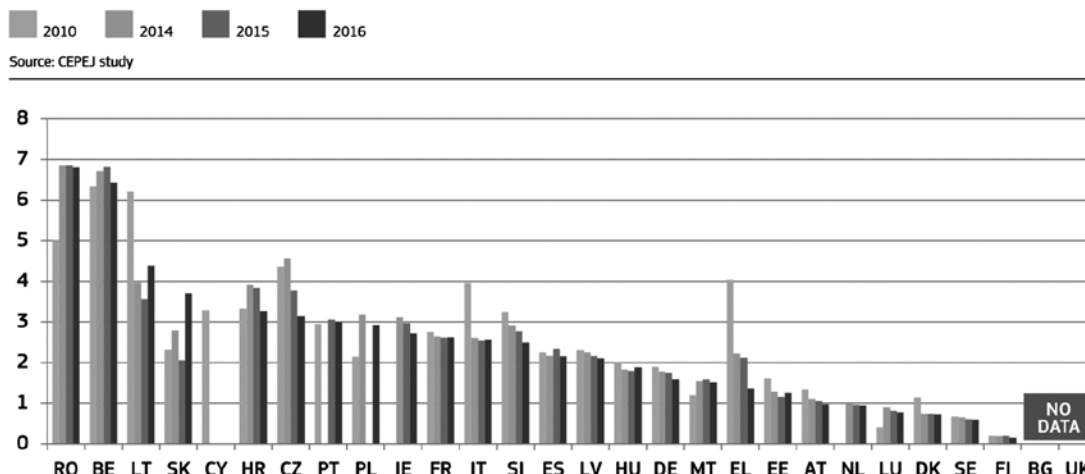
Figure 1: European Commission, The 2018 EU Justice Scoreboard [1]

Explanation of the abbreviations used in the figure above:

BE= Belgium, LT = Lithuania, LU = Luxembourg, NL = Netherlands, SK = Slovakia, AT = Austria, EE = Estonia, CZ = Czech Republic, RO = Romania, HU = Hungary, SE = Sweden, DK = Denmark, DE = Germany, PL = Poland, LV = Latvia, FI = Finland, SI = Slovenia, ES = Spain, PT = Portugal, FR = France, HR = Croatia, MT = Malta, CY = Cyprus, IT = Italy, EL = Greece, BG = Bulgaria, IE = Ireland, and UK = United Kingdom

Also, too many litigious cases are resolved by law courts, even though some of them can definitely be resolved successfully by alternative dispute resolution mechanisms [2]. The following figure shows that litigation in the Czech Republic and in a number of other EU Member States is chosen perhaps more often than necessary:

**Number of incoming civil and commercial litigious cases (\*) (1<sup>st</sup> instance/per 100 inhabitants)**



(\*) Under the CEPEJ methodology, litigious civil/commercial cases concern disputes between parties, e.g. disputes regarding contracts. Non-litigious civil/commercial cases concern uncontested proceedings, e.g. uncontested payment orders. Methodology changes in EL and SK. Data for NL include non-litigious cases.

Figure 2: European Commission, The 2018 EU Justice Scoreboard [1]

For explanation of the abbreviations see Figure 1 above.

The European Commission has no power to put pressure on national judges to decide more quickly, since this would interfere with the national judges' independence. However, the European Commission is well placed to promote alternative dispute resolution mechanisms, such as mediation. In line with this strategy, the European Commission proposed and the Council of the EU and the European Parliament adopted a basic regulatory framework of mediation in civil and commercial disputes which takes the form of a directive. As is the case with EU directives, they need to be transposed into national legal orders within the implementation period. For 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 implementation period expired on 21 May 2011, by which date EU Member States were supposed to adopt their national measures paving the way for a proper conduct of mediation in civil and commercial matters within their own territory [3].

Whereas the legal framework of mediation has been dealt with by a number of authors (see e.g. [4] - [7]), the use of mediation will not spread unless it is accompanied by the necessary education of mediators and future users of mediation. "University education must not necessarily train mediators, but rather form professionals who should be aware of the skills needed in mediation, or who know enough about mediation to direct their clients to mediation when the need arises." [8] This was precisely the reason why the European Commission decided to support the project aimed at creating an Online Study Mediation Platform.

This project takes the form of an Erasmus+ strategic partnership of six Universities across the European Union: the Turība University (Latvia), the University of Graz (Austria), the University of Genoa (Italy), the University of National and World Economy (Bulgaria), the Mykolas Romeris University (Lithuania), and the University of Economics, Prague (Czech Republic). Within the framework of this strategic partnership an open access online platform for teaching and learning mediation has been developed and made available at <https://mediation.turiba.lv>, with the main aim to disseminate the teaching of mediation and to gradually include it into secondary schools and University curricula either as a full-fledged independent course or as a part of courses dealing with conflict resolution, psychology, sociology, and/or law and litigation. Indeed, mediation is a multidisciplinary phenomenon which cannot be limited to questions of law, since without good negotiating skills even the best lawyer may be unable to resolve a single dispute as a mediator.

## 2. METHODOLOGY OF TEACHING MEDIATION

Many University teachers and lecturers may be reluctant to introduce a new class or a new course on a topic which requires extensive preparation and lacks the necessary resources, as to the methodological approach which should be adopted. The Online Study Mediation Platform provides an open access to methodological guidelines which offer an organized structure of classes and a number of interactive activities likely to raise students' interest in mediation. It suggests different negotiating techniques employed in mediation while not neglecting the regulatory framework thereof. The methodological guidelines also offer a number of options for organizing a final exam in a mediation course while proposing some model questions which may be used for the theoretical part of the test. Also, the methodology provides for a number of scenarios for practicing mock mediation on a number of topics, covering civil law, commercial law and criminal law. Some of these examples are also accompanied by model solutions of the mock scenarios. The methodological guidelines make reference to more resources which are available at the online mediation platform and will be discussed in the following subchapters.

### 3. BEST PRACTICES MANUAL AND VIDEOS

Since teachers who do not conduct mediation in practice may lack the necessary experience of when mediation is likely to be successful and when not, a best practices manual has been compiled and made available in the teachers section of the online platform which also features a student section, while both parts are accessible to everyone, teachers and students alike. The teaching section includes the methodological guidelines in English and Czech [9] mentioned above, the best practices manual, assessment guidelines, sample cases for mediation role plays, and links to useful resources, whereas the students part includes a mediation ABC, an ABC test, an E-book, training videos and video lessons as shown on the print screen below:



Figure 3: Structure of the Online Study Mediation Platform  
(Source: <https://mediation.turiba.lv>)

The difference between training videos and video lessons lies in their duration and objectives. Training videos contain examples of mock mediation cases in a number of areas (a commercial dispute, a civil law disputes, a criminal dispute, and a neighbourhood dispute) and enable students to observe the techniques used in mediation (such as rephrasing, reframing, mirroring, use of a flipchart, and/or using separate sessions with parties). Also, the approach of the mediator can be observed and discussed as well as the setting of the room where mediation sessions are to be conducted. On the contrary, video lessons are much shorter and more theoretical. They discuss topics such as the ABC of mediation, the methods of choosing a mediator, and special techniques employed in commercial mediation. Even though these online resources cannot fully substitute a teacher or a lecturer they are capable of rendering the class more varied and livelier and to draw students' interest in mediation, either as future accredited mediators or as future users of mediation [8].

### 4. ONLINE MEDIATION TRAINING TOOL

The online study mediation platform has developed a unique tool by means of which its users may conduct mock mediation across different universities within a single country or even in cross border situations. All students nowadays have been acquainted with distance communication methods online, such as Skype conferences. The online mediation training tool follows

this vein by providing a venue where those learning mediations can practice it both as mediators and as parties to mediation. These mock mediation sessions may also be recorded observing the necessary rules based on the EU's General Data Protection Regulation and critically assessed by lecturers and students in subsequent classes to improve the skills necessary to conduct a successful mediation. To find University teachers from other EU Member States or from within the same Member States lecturers may post their expression of interest at the Facebook page of the Erasmus+ project available at [Facebook.com/mediationnetwork/](https://www.facebook.com/mediationnetwork/). The section of the online platform providing the conduct of mock mediation is the only section which requires registration. The registration process, however, is hassle free and does not require the disclosure of any sensitive personal data.

## 5. CONCLUSION

The use of online tools in the teaching process has been subject to a number of scholarly papers [10]. Whereas online tools are unlike to substitute a teacher, they can render the class livelier and more interactive. Nowadays, teachers face a challenge of a lack of concentration on the part of students. This means that the use of monologue lectures can no longer draw the attention of students without involving them actively into the topics discussed. The author believes that the online study mediation platform is an ideal tool to foster EU wide dispute settlement and to provide University students with the gist of mediation which they will be able to use either as clients or following further training as professional mediators.

The teaching of mediation with the assistance of the online study mediation platform helps develop students' soft skills generally neglected in higher teaching. The practice of soft skills can convert teaching from being boring to being fun, in line with the legacy conveyed by Jan Amos Comenius, a renowned Czech philosopher and teacher, considered to be the father of modern education.

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