

# STRENGTHENING UNIVERSITY COOPERATION OSIJEK – PÉCS

## *SUNICOP*

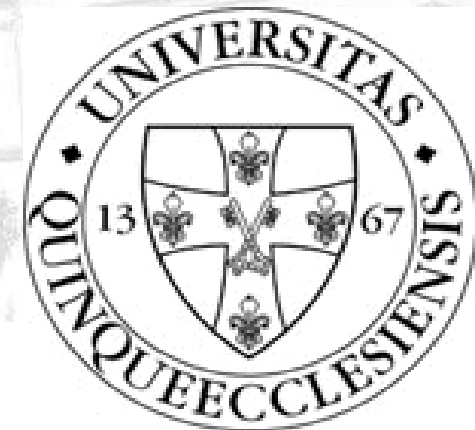


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# **MEDIATION IN FAMILY AND LABOUR LAW CONFLICTS**

**Anica Čulo Margaletić- Edit Kajtár**

**CONTEMPORARY LEGAL CHALLENGES:**

**EU – HUNGARY – CROATIA**

**Osijek, 16 – 18 February 2012**

- Starting point: **Mediation= a remarkable method with partly unexploited potential**

- Aim:

- **display the current situation**
- **map the critical areas**
- **offer solutions**

- The context:

- **Int.nal (Council of Europe, ILO)**
- **EU**
- **National**

- Specific fields: **labour** and **family mediation**

- Advantages

- Obstacles

- The way forward



Int.nal

## Council of Europe

- **ESC:** states have to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes
- **European Convention on the Exercise of Children's Rights:** underlines the importance of the principle of family autonomy and obligates the member states to promote mediation
- **Convention on Contact Concerning Children**
- **R (98) 1** of the Committee of Ministers to Member States on Family Mediation

# ILO

- **CEACR, CFA**
- Labour disputes - right to collective bargaining
- Resolution  $\approx$  prevention
- Independent, fast conciliation, mediation or arbitration procedures which have the trust of the parties have to compensate for the restrictions on the right to strike
- Mediation  $\neq$  right to strike (technique - fundamental right) not a substitute!
- Role: prevention + moderation


# European Union

- **common ground in form of a directive?**
  - Mediation Directive 2008/52/EC? (mediation in civil and commercial matters, just the basics)
  - No directive dedicated to labour issues (but intentions)
- **3 main channels to resolve labour disputes**
  1. Industrial relations (!)
    - Encouragement of collective bargaining,
    - Avoidance of conflict through dialogue,
    - Negotiation,
    - Workers' participation
  2. ADR
  3. ECJ



# Practice of other states

- **UK** (ACAS, accessibility + fast reactions + informality = drastic decrease: 1980-85: 400, 2007: 39 working hours lost due to industrial action/1000 employees, partnership + prevention)
- **US** (Uniform Mediation Act of 2001 + 2500, point of reference)
- **France** (disunity, power struggles, lack of information, inflexibility , but also growing interest, labour inspectors mediate)
- **Sweden** (since 1908 , National Mediation Office – freezes the dispute for 14 days)

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- **The roots of ADR go way back:**
    - ‘Its better to be harmed then to litigate’
    - ‘Gifts make the judge blind’
    - ‘The law’s nose is waxy’
  - **Alternative methods**
    - Trapped or choosen judges
    - Head of the extended family
    - Judge of the lake
    - Hunter-judge
    - Oldest shepherd
    - Court of the gypsies

## Various areas

- Healthcare,
- Victim-offender mediation,
- Family mediation,
- Child protection,
- Commercial cases,
- Education,
- Labour,
- etc.



# Labour mediation

- Different aims, imbalance of power
- Interest of the parties + the interest of the entire society → institutionalise (XIX-XXth century)
- WWII - US
- Labour law vocabulary
  - Individual/collective disputes
  - Rights/interest disputes



# Legal background

- Act LV of 2002 on Mediation
  - Confidentiality, impartiality, interest-based negotiation, open communication, trust, etc.
  - Training,
  - Judge's initiative,
  - Enforcability,
  - Confidentiality,
  - Open ways

- Act 22 of 1992 (Labour Code)

- negotiation,
- conciliation,
- mediation,
- arbitration
- Interest dispute
- Mediator as an expert of labour law?

- Act VII of 1989 on Strike

- obligatory 7 day cooling off period
- Employment contracts?
- Collective agreements!
- Ethical Codex!



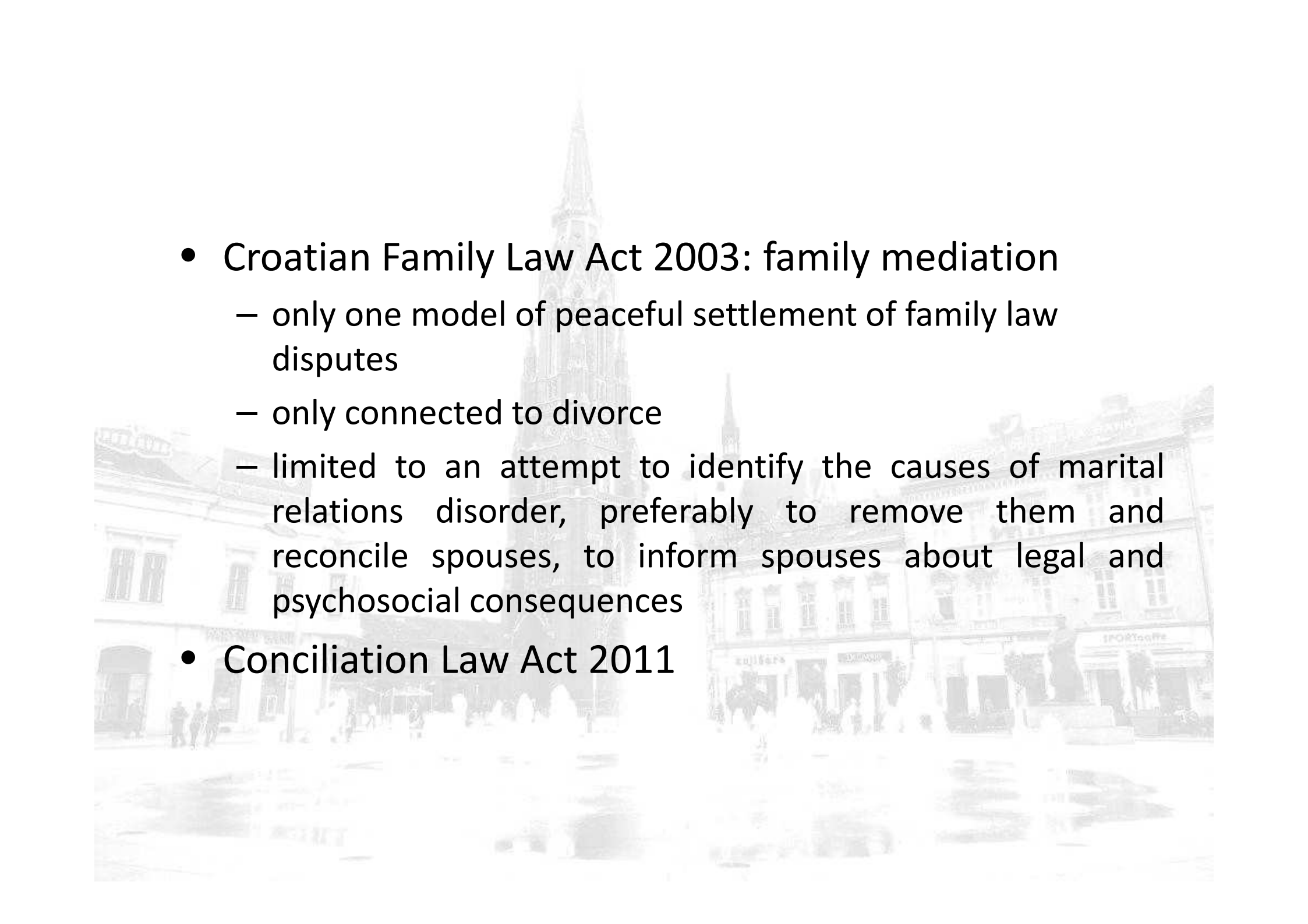
# Relevant Bodies

- Hungarian Mediation Association
- Labour Mediation and Arbitration Service
- Requests for mediation in collective disputes < rate of labour disputes
- Successful in 93% of the cases
- Rézler Gyula Mediation Institute
- Pay
- Transport sector (Volán), energy supply (Nuclear Plant of Paks), public sector (school, hospital)
- Successful: Paks Nuclear Power Plant

# Family mediation

- Conflicts between family members
- Divorce or termination of the family union
- Strong emotions, also psychological crisis, a more complex and layered conflict between family members
- The best interest of the child



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- Croatian Family Law Act 2003: family mediation
    - only one model of peaceful settlement of family law disputes
    - only connected to divorce
    - limited to an attempt to identify the causes of marital relations disorder, preferably to remove them and reconcile spouses, to inform spouses about legal and psychosocial consequences
  - Conciliation Law Act 2011

# Relevant Bodies

- Social welfare centres
- Council for marriage
- Approved expert persons



# Mediation: tried & tested

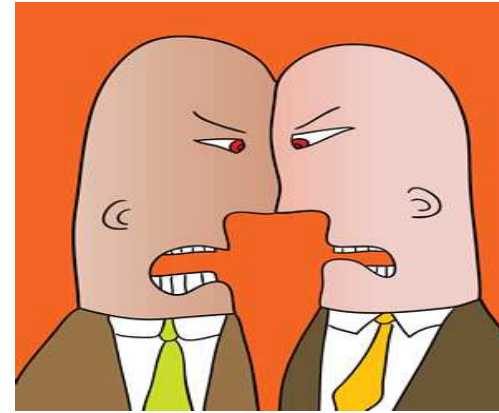


- Economic
- Confidential (safe environment)
- Easy, flexible
- The parties' process
- Voluntary
- The agreement last
- Future check-ups
- “Alarm clock”

## ...but seldom used Why?

- ‘Culture of mistrust’ (historical traumas)
- Disincentives (e.g. regulation of expenses)
- Possibility not to participate personally
- Children become a “weapon” in legal dispute
- Role and obligations of the mediator are not defined well (Croatia)
- Limited to cases of divorce (Croatia)

- Pride
- Prejudice, lack of trust
- System of trade unions
- Difficulties in specific cases: multinational companies
  - hard to access
- The MKDSZ only has access to large organisations
- No genuine will to settle the dispute (e.g. Free Trade Union of Railway Workers - Hungarian Railway Company)
- Wish to make a precedent

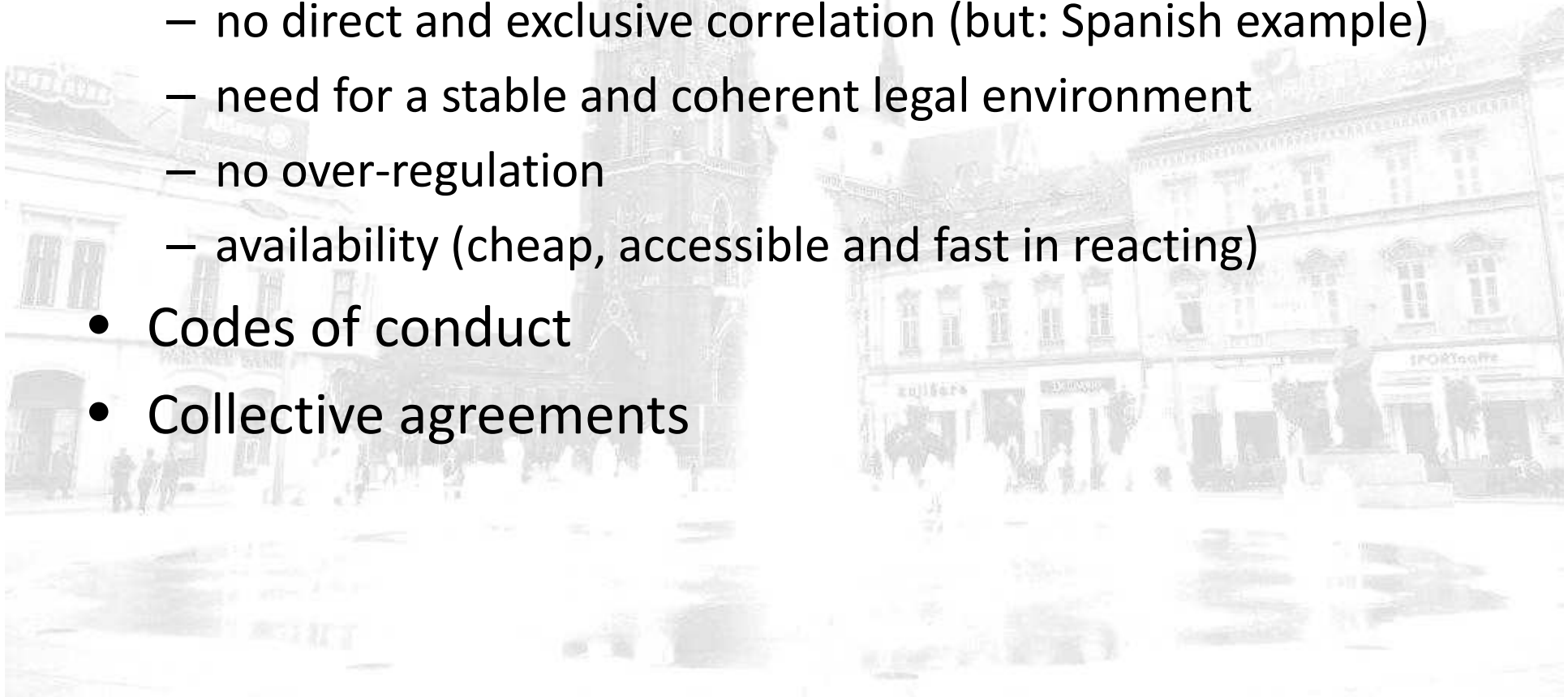


# The way forward

- Should be the “traditional” rather than the alternative way of dispute resolution
- but no miracle cure
- Trust, information
  - General and specific
  - Legal assistance



- Legal regulation
  - more appealing and effective (confidentiality, costs, enforceability, etc.)
  - no direct and exclusive correlation (but: Spanish example)
  - need for a stable and coherent legal environment
  - no over-regulation
  - availability (cheap, accessible and fast in reacting)
- Codes of conduct
- Collective agreements



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- Obligatory?
  - Monitoring
  - Former good experience
  - If one of the parties requests mediation – incentive for the other
  - Adaptiveness (shift towards pre-emptive mediation, counselling, awareness-raising)
  - New challenges
    - online mediation
  - **Mediation = a method capable of self-renewal**

**Thank you for your attention**



**Mediate  
Don't Litigate**