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What is ‘divorce mediation’ in Hungary? – An analysis based on Hungarian scientific mediation-related literature

ABSTRACT

Mediation is a well-known institution in Hungary; there are many committed trainers, and those who intend to become qualified as mediators may choose among different forms of training. Mediation functions in several fields, and divorce mediation and family mediation are among the most typical. The Mediation Act was accepted in 2002, and although in the early 2000s the mediation literature was narrow, today there are many legal and non-legal mediation-related publications. As both the rules of civil law and civil procedural law have changed, the paper examines how the Hungarian mediation-related literature defines ‘divorce mediation’ and ‘family mediation’ and how these approaches serve the purpose of this kind of mediation, such as the mediators’ tasks in this field. The aim is to conclude whether these approaches point in the same direction or diverge, and, primarily, specify whether there is harmony between the legal requirements associated with the dissolution of marriage and ‘divorce mediation’. A topic to be discussed is whether the issues that accompany divorce, upon the spouses’ mutual consent, can be arranged within the framework of ‘divorce mediation’.

KEYWORDS: divorce; divorce mediation; family mediation; mediation-literature; definitions

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I. INTRODUCTION

1. Aim of the paper

This study deals with Hungarian mediation-related literature (as detailed below) only from a very restricted angle – how the latter defines ‘divorce mediation’, the goal of these kinds of mediation, the main tasks of the mediator as third neutral person in these proceedings and the relationship between ‘family mediation’ and ‘divorce mediation’. A further aim of the paper is to identify how the authors, primarily mediators themselves, consider the connection between mediation (‘divorce mediation’ and/or ‘family mediation’) and the legal dissolution of marriage, the latter of which takes place exclusively before the court. The mediation-related literature to be analysed in further chapters of this paper is considered the ‘classic’ Hungarian literature on the field of mediation generally. These publications’ purpose is primarily educational, has a professional basis, and is deeply committed to mediation as an excellent ‘toolkit’ for solving conflicts on the basis of the autonomy of the parties. The following subchapters summarise the phrases used by the authors regarding the envisaged issues.

2. Background – The emergence and literature of mediation in Hungary

Mediation has been discussed and used in Hungary for approximately thirty years now. After the change of the regime in the mid-1990s, the first steps were taken to institutionalise mediation.¹ Attorneys, communication experts, social workers, experts in child welfare² and judges were equally active in this field. In 1999, a parliamentary resolution³ required the Ministry of Justice to develop regulations for the introduction of mediation procedures, and in 2002, the first and still effective Mediation Act was accepted by the Hungarian Parliament. At the same time, mediation-related endeavours could be seen in several legal and non-legal fields, and these mediations have been developing alongside each other since that time. Ten years after the ‘first visible step’, mediation became more well-known in the 2000s. In 2009, the Ministry of Justice and Order introduced a regulation on the professional training and further training of mediators, which regulates the requirements of being a mediator. Since that time, countless training courses have been held, and many people working in different legal and non-legal fields have shown an interest in mediation and mediation training.

¹ Pokol B., *Jogszociológiai vizsgálódások* (Rejtjel, Budapest, 2003) 42.

² Kardos F., *Gyermekközpontú közvetítés* (Kapcsolat 2000 Pszichológiai Betéti Társaság, Budapest, 2011) 90–91.

³ Resolution of the Parliament No 102/1999. (XII. 18).

The first mediation-related literature was published in the very early 2000s, as there emerged a demand for professional guidelines on mediation. However, this meant only sporadic publications, and no Hungarian language literature in a traditional sense existed in the mid-2000s.⁴

The Mediation Act of 2002, which diverted a range of legal disputes to out-of-court and extrajudicial processes, belonged to the legislative reforms introduced after the change of the regime⁵ and its articulated aim was to give a chance to a form of conflict resolution that avoids the court system.⁶ In spite of this goal, court mediation as a new legal institution in Hungary was built into the Mediation Act in 2012, and the new provisions on court mediation entered into force in the summer of that year. This development gave new impetus to mediation-related literature. New studies and papers on mediation grew in parallel with the popularity of training on mediation. The mediation-related literature has grown since the first publications, and mediation is being dealt with from several perspectives, such as conflict theory, communication and participation theory, education, psychology and family therapy such as law, including many fields of it, from restorative justice to the conciliation methods. It is worth mentioning that almost all kinds of mediation-related literature refer to the first thin books on mediation published in the very early 2000s.

II. THE DISSOLUTION OF MARRIAGE ACCORDING TO THE HUNGARIAN CIVIL CODE

Divorce is regulated in the Hungarian Civil Code (HCC), Act V of 2013, which entered into force in March 2014. The HCC replaced the previous family law, Act IV of 1952 on marriage, family and guardianship (the Family Act). Family law is contained in the Fourth Book of the effective HCC. Marriage terminates upon the death of either spouse or its dissolution by the court. Consequently, a divorce can only be obtained through a judicial process. No administrative procedure for the termination of marriage is allowed in Hungary. As regulated in the Family Act, the HCC states that the only grounds for divorce are the complete and irretrievable breakdown of married life. Either spouse may request the dissolution of the marriage if the marriage has completely and irretrievably broken down. Although earlier, Hungarian family law

⁴ Sáriné Simkó, Á. (ed.), *A mediáció. A közvetítői tevékenység* (HVG-ORAC, Budapest, 2006) 232.

⁵ Juhász E., *Törvény a közvetítői tevékenységről*, in Eörsi M. and Ábrahám Z. (eds), *Pereskedni rossz! Mediáció: a szelíd konfliktuskezelés* (Minerva, Budapest, 2003, 49–64) 49.

⁶ Gyekiczky T., *A határtalan egyezségkötés rögzített útjain. Adalékok a peren kívüli konfliktusfeloldás eljárásjogi szabályozásához*, in Wopera Zs. and Asztalos Zs. (eds), *Egyesülni polgári eljárásjog Európában* (HVG-ORAC, Budapest, 2009, 36–57) 42–43.

made it possible to dissolve the marriage upon the fault of either party, today, no divorce upon fault now exists.

Under the aegis of the complete and irretrievable breakdown as the sole ground of divorce, two types of divorce, divorce upon mutual consent of the spouses and divorce without mutual consent, can be distinguished. The reason why the marriage has broken down has to be investigated in the divorce proceeding if the spouses are not divorcing by mutual consent. The complete and irretrievable breakdown of the marriage can be established in particular if the marital life between the spouses has ceased, and, considering the process leading up to the termination of the marital life and the duration of the separation, there is no prospect of restoring it. In the case of divorce by consent, there is no presumption of an irretrievable breakdown, but, provided that the spouses have agreed on the accessory issues, the court does not have to investigate the reasons giving rise to the divorce. In such a case, the spouses have to agree on divorce and all accessory issues, clarify that their request for divorce is not the result of undue influence, and declare it as their final decision. The spouses must present their agreement about the custody and maintenance of any child, the non-custodial parent's right of contact with their child, if the claimant so requests, spousal maintenance, and the right to use the matrimonial home after divorce.

Mediation was not covered in the Family Act, but has been built into the HCC. According to the HCC, spouses can use a mediation procedure to resolve their relationship and other disputed issues related to the divorce based on agreement, either by their own decision or at the initiative of the court before or during the divorce proceedings, while the agreement that is reached because of the mediation process can be included in a lawsuit settlement. This rule does not mean that the mediation process is a mandatory element of divorce proceedings.

III. MEDIATION IN THE MEDIATION ACTIVITIES ACT

Act LV of 2002 on mediation activities (Act on Mediation) is the first Hungarian act to regulate mediation generally. The purpose of this Act is to facilitate the settlement of civil and administrative disputes arising in connection with the personal and property rights of natural and other persons, in which the parties' right of disposal is not restricted by law. Some family law proceedings are excluded from the scope of the Act, and it states that in matrimonial proceedings, a judicial decision is necessary for the dissolution of marriage. Mediation is defined in the Act. According to the definition it is a special procedure conciliating, preventing litigation or facilitating the end of the judicial or administrative procedure, managing conflicts and resolving disputes which purpose is to facilitate the creation of a written agreement containing a solution to the dispute between the parties with the involvement of a third party (hereinafter referred

to as a mediator) who is a neutral person and based upon the affected parties' mutual consent. Originally, the relationship between judicial and administrative litigation focused on the prevention of litigation. Later, it was modified to comply with the then-adopted HCC.

IV. MEDIATION IN THE HCC AND CIVIL PROCEDURAL LAW

During the recodification process of the HCC, which lasted between 1998 and 2012, mediation was emphasised in particular regarding family law proceedings. At the early stage of the HCC's recodification, the facilitating character of mediation was recognised, underlining that it might have a supporting function in divorce law and especially in settling accessory issues in the case of divorce upon mutual consent of the spouses.⁷ At this time, mediation was denoted as the counterpart of the strict legal proceeding. More and different significance was attributed to it than pure litigation prevention and conflict management. Mediation was indicated as a tool based on the voluntary participation of the parties that may facilitate peaceful divorce and the settlement of the disputed issues by agreement.⁸ Even if mediation was not heavily emphasised during the elaboration of drafts of the HCC, it is obvious that the drafter of the HCC saw a great future in it and made an effort to attach it to family law rules.

Mediation was planned to be attached to the Family Law Book of HCC in two fields, divorce and parental custody. Divorce mediation was seen to be able to resolve disputed ancillary issues, and future modifications were expected to be implemented in both substantive law and civil procedural law.⁹ The codification was based upon Recommendation No. R (98) 1 of The Committee of Ministers to Member States on Family Mediation. Although this European document does not prescribe the reconciliation of divorcing spouses, the Hungarian codification held that mediation might be used with the aim of reconciliation or the arrangement of disputed issues emerging in connection with the dissolution of marriage. As states should facilitate the approval of mediated agreements by a judicial authority or other competent authority where parties request it and provide mechanisms for the enforcement of such approved agreements according to the recommendation, the draft of HCC included that the mediation agreement could be a basis for divorce upon mutual consent. It was foreseen that a mediation agreement could not be converted directly into a lawsuit settlement.

⁷ Weiss E., A készülő Polgári Törvénykönyv családjogi könyvének a Kodifikációs Szerkesztőbizottság által elfogadott koncepciója, (2001) (4–5) *Polgári Jogi Kodifikáció*, (21–40) 24–25.

⁸ Kőrös A. and Makai K., Harmadik Könyv. Családjog, in Vékás L. (ed.), *Szakértői javaslat az új Polgári Törvénykönyv tervezetéhez* (Complex, Budapest, 2008, 391–570) 417.

⁹ Kőrös A., Makai K. and Szeibert O., Negyedik Könyv. Családjog, in Vékás L. and Gárdos P. (eds), *A Polgári Törvénykönyv magyarázatokkal* (Complex, Budapest, 2013, 237–360) 254–255.

The reason for this is that the content of a lawsuit settlement in a divorce procedure upon mutual consent is regulated accurately and in detail, and it must meet the requirements of enforceability.¹⁰

The elaboration of the rules of a special mediation procedure applicable in family law cases has been maintained as necessary, such as the modification of the civil procedural rules and the integration of child protection and child welfare mediation into family mediation. According to Act CXXX of 2016 on civil procedure, the court shall provide information on the possibility of using mediation, its method and benefits, the possibility of including any agreement in a court settlement, and the rules for suspension. This is in harmony with the procedural requirement for the judiciary that the court, if there is an opportunity of success, shall attempt to promote an agreement between the parties.

V. DIVORCE MEDIATION

1. Difference between divorce and dissolution of marriage

The HCC and the legal rules together do not use the phrase ‘divorce’, which is ‘válás’ in Hungarian. Although people, including even lawyers (when simplifying the proceedings for the dissolution of marriage), use the word ‘divorce’ every day, it is considered common usage. The proper legal terminology is ‘dissolution of marriage’, which is ‘házasság felbontása’ in Hungarian, a phrase that is used in HCC and all legal regulations. Sometimes the word ‘divorce’ is used as the synonym of dissolution of marriage but in some cases ‘divorce’ covers the splitting up of partners, whether spouses or cohabitants, and in further cases the word ‘divorce’ is used to mean the whole legal and non-legal process of the breakdown of a partnership, including the legal dissolution of marriage. While ‘dissolution of marriage’ is always used for the legal issue itself, ‘divorce’ thus has several and multifaceted meanings. The analysis of the mediation-related literature allows us to draw the conclusion that divorce is primarily understood not as a legal proceeding but as a long process with many non-legal and legal elements.

2. Meaning of divorce mediation

Neither the Mediation Act nor the HCC defines ‘divorce mediation’. Some definitions or attempts to define ‘divorce mediation’ may be found in the mediation-related literature. Although the literature refers to the significance of mediation in case of the dissolution of marriage and the fact that mediation may contribute to the arrangement

¹⁰ Kőrös and Makai, *Harmadik Könyv*, 418.

of accessory issues, the legal counterpart of 'divorce mediation' emphasises mediation as a facility and not the fact that mediation is a tool for arranging the legal issues of 'divorce' directly. Sometimes, 'matrimonial mediation' and 'divorce mediation' seem to mean the same thing: mediation between spouses.¹¹ 'Divorce mediation' is denoted as an 'additional element' to the court procedure directing the dissolution of marriage, and the judge may use mediation techniques to help allay the parties' anxieties and fears and help them better understand the parties' underlying interests.¹²

The primarily psychological, even if mediation-related, literature endeavours to mention that 'divorce mediation' probably includes issues such as the placement of the child, the distribution of assets and the contact between the child and the separate living parent.¹³ 'Divorce mediation' may be proposed to partners who clearly intend to dissolve their marriage, but cannot reach an agreement on the factors which 'impede divorce'.¹⁴

In the mediation approaches, it is usual to connect divorce mediation to family mediation and underline the autonomy of family members involved in mediation. Besides this traditional approach, there is another, child-focused approach to 'divorce mediation'. Mediators having expertise in child protection and child wellbeing emphasise the child-focused character of 'divorce-mediation'. This conviction or mediation trend has emerged from the Hungarian 'contact monitoring service', a special contact-focused form of mediation. According to this mediation approach, both the contact monitoring service and 'divorce mediation' come under the auspices of child protection services, with the consequence of helping to enforce children's rights. The consequence is that the mediator can only be a professional child protection mediator (psychologist, pedagogue, or social worker).¹⁵ This approach has recently been echoed in papers dealing with 'divorce mediation' and the child's interests. 'Divorce mediation' works as an opportunity for the child to receive attention during the procedure, and their interests have to be given priority during the dispute resolution.¹⁶ The same claim is accepted and repeated in a recent study.¹⁷

¹¹ Barcy M. and Szamos E., *"Mediare necesse est". A mediáció technikái és társadalmi alkalmazása* (Animula, Budapest, 2002) 62–63.

¹² Sáriné Simkó, *A mediáció*, 77.

¹³ Kozékiné Hammer Z., A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása, (2014) (2) *Alkalmazott Pszichológia*, (79–101) 89.

¹⁴ Kozékiné Hammer, A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása, 90.

¹⁵ Kardos F. and Ábrahám Z., Különélő szülő kapcsolattartása gyermekével – mediáció a legkisebbek védelmében, in Eörsi M. and Ábrahám Z. (eds), *Pereskedni rossz! Mediáció: a szelíd konfliktuskezelés* (Minerva, Budapest, 2003, 131–149) 132.

¹⁶ Kukity K., Juhász É. and Hunyadi K., A mediáció kérdése: a gyermek helye a válási mediációban, (2017) (1) *AKV Európai Szemle*, (98–105) 101.

¹⁷ Pilinszki A. and Watfa Zs., A válás folyamata és a mediáció, (2022) (1) *Esély*, (56–73) 61.

3. The purpose of ‘divorce mediation’

The goal of ‘divorce mediation’ seems to be as divergent as this kind of mediation’s definition, such as it exists. Different purposes are articulated and emphasised in different papers and contributions on mediation, or at least different purposes are underlined.

The goal of ‘divorce mediation’, which coincides with the goal of ‘family mediation’, is threefold. Conflict management, which helps couples and families resolve problems in their relationships, assists with basic ‘divorce’-related issues if divorce is unavoidable and supports in closing the past so those involved can get over any painful events as soon as possible after the divorce and focus their energies on shaping the future.¹⁸

Managing emotions and conflicts is a typical goal of ‘divorce mediation’, as are its educational benefits. Divorce mediation has an indirect goal, which is also an (indirect) goal of all kinds of mediation. The spouses accept that they are responsible for their own problems, as they know their own problems the best.¹⁹ The goal is not to reconcile the spouses, but to reduce the anger that has built up during the conflict²⁰ and the emotional burden of the divorce on the spouses.²¹ They need to become collaborative partners while still remaining connected, and instead of restoring the relationship, the focus is on deciding on the future relationship.²² An aim of ‘divorce mediation’ is to support ‘better communication tools, clearer boundaries [and] more secure parenting skills’ for the parents.²³

In some mediation-related literature, the focus is on the agreement. In some cases, only the aim of reaching an ‘agreement’ as quickly as possible is mentioned to help get over the painful events of the past as quickly as possible, and to focus energies on shaping their future.²⁴ Some literature connects mediation to divorce upon mutual consent, while others emphasise the connection to divorce without spouses’ mutual consent. If the debate between the partners is about the dissolution of marriage itself (and not about the accessory issues), and if it turns out that there is an overt or hidden interest behind someone’s opposition to divorce, mediation may have a *raison d’être*.²⁵

¹⁸ Feuer M. (ed.), *A családsegítés elmélete és gyakorlata* (Akadémiai, Budapest, 2008) https://mersz.hu/dokumentum/m633acseeg__175/#m633acseeg_173_p4 (2019, identical online version) (last accessed: 31.12.2024.).

¹⁹ Sáriné Simkó, *A mediáció*, 79.

²⁰ Barcy and Szamos, “*Mediare necesse est*”, 62.

²¹ Sáriné Simkó, *A mediáció*, 78.

²² Barcy and Szamos, “*Mediare necesse est*”, 62.

²³ Kozékiné Hammer, A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása, 93.

²⁴ Feuer, *A családsegítés elmélete és gyakorlata*; Sáriné Simkó, *A mediáció*, 78.

²⁵ Barinkai Zs., A válás és gyermekelhelyezés jogi problémái a mediáció szemszögéből, in Eörsi M. and Ábrahám Z. (eds), *Pereskedni rossz! Mediáció: a szelíd konfliktuskezelés* (Minerva, Budapest, 2003, 118–130) 123.

Some mediators refer to the fact that, according to their experiences, the aim of 'family mediation' relates to the agreement about the 'placement of the child' and contact between the child and the separate living parent, such as the assignment of the residence of the child.²⁶ The issues discussed in mediation are determined by the partners, and some authors consider the accessory issues of a divorce, upon the mutual consent of the spouses, as obligatory topics about which the partners have to agree. These are necessary but not necessarily sufficient issues to address, as parents may prepare for their parenting role after divorce.²⁷

Some further approaches connect 'divorce mediation' closely and directly to legal divorce, the dissolution of marriage. According to one approach, the goal of 'divorce mediation' is to create an agreement between the spouses with their active contribution at the end of the mediating process, which 'can be submitted to the court, making possible a simple and quick divorce proceeding'.²⁸ Even a psychological approach defines 'divorce mediation' as an idealistic method of arranging divorce instead of civil procedure if the spouses have articulated their wish to end their relationship and their aim is to end their relationship with a focus on the future and their future cooperation. This approach includes the agreement between the spouses that contains every item they accept jointly.²⁹

A study analysing the narratives of mediation within the Hungarian legal literature underlines that the papers (published until cc. 2012) identified the goal of mediation as improving communication between participants, and teaching them cooperation methods (among others), but nominating the goal of mediation as a form of child protection was a new approach.³⁰

4. Tasks of 'divorce mediation'

Opinions are diverging on the potential tasks of a mediator in 'divorce mediation'. Some literature focuses on emotional issues, while others focus on legal ones.

According to one author, divorce mediation addresses both legal and emotional issues in a complex manner.³¹ The tasks of 'divorce mediation' are balancing the power differences between the parties, achieving economic independence, developing better

²⁶ Sáriné Simkó, *A mediáció*, 78.

²⁷ Pilinszki and Watfa, *A válás folyamata és a mediáció*, 61.

²⁸ Kozékiné Hammer, *A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása*, 90–91.

²⁹ Kozékiné Hammer, *A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása*, 81.

³⁰ Ferenczi A., *A mediáció narratívái* (2012) (7–8) *Új Pedagógiai Szemle*, (118–129) 127.

³¹ Sáriné Simkó, *A mediáció*, 78.

conflict resolution skills for the future and enhancing the spouses' autonomy.³² In addition to reducing the emotional burdens associated with divorce, the goal is to also address the financial and legal aspects of divorce.³³

According to one mediator, the job of a 'divorce mediator' is 'to bury a relationship nicely'.³⁴ The task of the mediator is not to pacify the parties, as the mediator cannot have such a purpose. The mediator is a tool, and mediation is not therapy for couples.³⁵ However, in the classic 'mediation inside the family', a special situation is when the spouses divorce. Although the mediator should remain neutral and impartial in the sense that he or she should not take a position for or against any party, nor give advice to either party, they must strive to enable the weaker party to be on an equal footing and to prevent one party from exercising a dominant power over the other (which is typical in family mediations).³⁶

In the case of mediating couples (spouses who have already separated or divorced), the task of the mediator is to represent the family members' interests, points of view and needs towards other family members, such as encouraging them to articulate their emotions connected to their interests and needs.³⁷ Family law mediation is identified as mediation between couples. It focuses attention on the responsibility and independence of couples affected by the breakdown of marriage and the breakdown of matrimonial life.³⁸ Besides this, the mediator's task is to assist the spouses to reach a settlement, which will be included in a legal deed.³⁹

According to the 'permissive' approach, 'divorce mediation' is also available to partners whose relationship has deteriorated but may hope to remain together, and for those who have already decided on the dissolution of marriage but intend to solve it 'humanely and in a cultured way'.⁴⁰ Although some approaches distinguish between conciliation (pacification) and mediation, others summarise mediation as negotiation and conciliation.⁴¹

According to one approach to divorce mediation, such as child-monitoring service mediation, which is child-focused mediation with the aim of enforcing

³² Barcy and Szamos, "*Mediare necesse est*", 63.

³³ Sáriné Simkó, *A mediáció*, 78.

³⁴ Kardos, *Gyermekek központi közvetítés*, 82.

³⁵ Kardos, *Gyermekek központi közvetítés*, 82.

³⁶ Kertész T., *Mediáció a gyakorlatban* (Bíbor – ME ÁJK, Miskolc, 2010) 239.

³⁷ Sebes A., A közvetítő szerepektől a mediációig, in Aczél Á. et al (eds), *A társas szociológus* (ELTE Eötvös Kiadó – ELTE TáTK, Budapest, 2011, 97–112) 105.

³⁸ Nagypál Sz., A családjogi közvetítés (mediáció) alapelvei és sajátosságai, (2011) (1) *Családi Jog*, (17–22) 20.

³⁹ Lovas Zs. and Herczog M., *A mediáció, avagy a fájdalommentes konfliktuskezelés* (Wolters Kluwer, Budapest, 2020) https://mersz.hu/dokumentum/m735YOV1798__5/#m735YOV1798_3_p13 (last accessed: 31.12.2024.).

⁴⁰ Sáriné Simkó, *A mediáció*, 79.

⁴¹ Feuer, *A családsegítés elmélete és gyakorlata*.

children's rights, the task of the mediator is not to be neutral – she or he must be a non-neutral participant in the process. This kind of mediator should be openly pro-child in any conflict between the parents.⁴² This approach strengthens the opinion of the parent who represents the child's interests better, at least in the opinion of the mediator. If the parents (partners) reach an agreement, the mediator should undersign it as he or she is responsible for ensuring that the agreement is in the child's interests.⁴³

VI. 'DIVORCE MEDIATION' AS 'FAMILY MEDIATION'

'Divorce mediation' is regularly discussed as part of 'family mediation'. Some authors identify 'family mediation' as 'divorce mediation' or at least explain that the typical form of 'family mediation' is 'divorce mediation' or mediation between spouses (or other partners) whose relationship has broken down.⁴⁴

However, the approaches towards the meeting points between family – or family law – and mediation are diverging. It is typical in the legal literature that discusses mediation to deal with mediation connected to family – or family law or family issues – as a specific category of mediation.

One of the mediators uses the category of 'mediation inside the family'. In such cases, the typical topics are trust in each other, respect, appreciation, dignity, attention, reliability, communication, safety, family members' educational principles, predictability and understanding. The author emphasises the importance of emotions.⁴⁵ Another mediator differentiates between 'mediation inside the family' and 'family mediation' based on whether the mediator is a family member or a third party. The stability of a family is proven if the same family member does not always take on the role of the mediator, but several family members undertake this, or they take turns in this role.⁴⁶ Mediation dealing with conflicts between family members and couples specifies this kind of mediation as family law mediation.⁴⁷ The term family mediation combines the concept of family, which derives from the Latin familia, with mediation, reflecting the modern practice of resolving family disputes outside of court, with mediators belonging to the family. They are typically the wife and husband, and earlier spouses, usually with children.⁴⁸

⁴² Barinkai, A válás és gyermekelhelyezés jogi problémái a mediáció szemszögéből, 132.

⁴³ Barinkai, A válás és gyermekelhelyezés jogi problémái a mediáció szemszögéből, 132.

⁴⁴ Among others, Sáriné Simkó, *A mediáció*, 79.

⁴⁵ Kertész, *Mediáció a gyakorlatban*, 244.

⁴⁶ Sebes, A közvetítő szerepektől a mediációig, 108–109.

⁴⁷ Nagypál, A családjogi közvetítés (mediáció) alapelvei és sajátosságai, 21.

⁴⁸ Németh V., A mediáció jellemzői felhasználási területei szerint, (2018) (2) *Kultúra és Közösség*, (21–35) 21.

Family mediation is possible if the relationship among family members – typically spouses – has broken down or their conflicts need to be solved.⁴⁹

Family mediation provides space for taking both emotional and legal approaches to family conflicts and divorces with the aim of arranging the legal consequences and handling emotional aspects, such as complacency, frustration, haste, thoughtlessness and vulnerability.⁵⁰

According to one definition, ‘family mediation’ is a method for resolving practical conflicts that is based on a well-developed methodology that is constantly changing and draws on several theoretical sources, which are multifaceted and are based on psychotherapeutic methods, communication theories, and psychological and family therapy sources. In the family mediation approach, the family is perceived to form a system that affects all family members.⁵¹ Some other authors expound that family mediation is about reaching an agreement on the ‘placement of the child’ and contact between the child and the separate living parent, such as the assignment of the residence of the child.⁵²

A further approach is called ‘family law mediation’, which directly connects family-law-related issues – and particularly accessory issues in the case of divorce – upon the spouses’ mutual consent. According to the categories of mediation being connected (‘family life, family relations and partnerships’), the respective author distinguishes between divorce mediation, mediation in relation to the distribution of assets, the placement of children, access to children, contact, child maintenance, mediation related to educating children and mediation among non-close family members.⁵³ Mediation that deals with conflicts among family members and between couples suggests that this kind of mediation is a form of family law mediation.⁵⁴

VII. CONSEQUENCES

Even if ‘divorce mediation’ and ‘family mediation’ are special types of mediation, several authors are of the opinion that, as in the case of divorce, child custody, and family conflicts, judicial decisions do too little to resolve the disputes that arise between couples or other family members.⁵⁵

⁴⁹ Sáriné Simkó, *A mediáció*, 79.

⁵⁰ Feuer, *A családsegítés elmélete és gyakorlata*.

⁵¹ Sebes, *A közvetítő szerepektől a mediációig*, 100.

⁵² Sáriné Simkó, *A mediáció*, 79.

⁵³ Kozékiné Hammer, *A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása*, 89.

⁵⁴ Nagypál, *A családjogi közvetítés (mediáció) alapelvei és sajátosságai*, 21.

⁵⁵ Lovas and Herczog, *A mediáció, avagy a fájdalommentes konfliktuskezelés*.

There is no unified definition of 'divorce mediation' in Hungary. Some authors of the analysed publications define 'divorce mediation', while some identify 'divorce mediation' *and* 'family mediation', and there is also an approach which puts the spouses' children at the centre of mediation while emphasising that this sort of mediation has to be clearly child-focused, with a non-neutral mediator. The difference is between the classic mediation that emerges from the self-determination of the parties and child welfare and child protection mediation, which aims at the protection of the child's interests. This is a consequence of the fact that mediation exists in several different fields. This issue leads to another one, which requires expertise in mediation.

Many publications that are analysed in this paper underscore the purpose of 'divorce mediation', and many clarify the authors' viewpoint, even if this is not defined. Conflict management is acknowledged as an essential goal of mediation, with the benefit of helping couples cope with difficulties regarding their parental roles on the basis of smooth communication as a result of the mediation. The emotional part of mediation is widely acknowledged, in harmony with the understanding that divorce involves several stages, and the legal component is only one of these. Although it is accepted by authors with different expertise that 'divorce' cannot be identified with the legal dissolution of marriage, some literature connects mediation directly to the dissolution of marriage, or rather to the accessory issues of divorce upon mutual consent.

The task of 'divorce mediation' is as divergent as the goals of this sort of mediation. Some authors underline the twofold character of this mediation, while others refer to the significance of the 'burying the relationship nicely'. Besides the psychological benefits of mediation, opinions – or at least, emphasis – differ concerning whether mediation means pacification and conciliation or only negotiation between partners. A further issue is the neutrality of the mediator regarding the child's interests.

The authors locate 'divorce mediation' within the wider category of 'family mediation'. Sometimes, 'family mediation' covers mediation concerning family issues such as the educational principles of parents, but in other cases, 'family mediation' means mediation related to legal issues, primarily the accessory issues of divorce upon the spouses' mutual consent. This leads to the recognition that, according to some authors, the legal issues comprise only part of the package that mediation refers to and covers.

Even earlier, when the Family Act was in force, the legal issues were not uncomplicated, but their complexity has since grown. Although matrimonial property issues are no longer included as accessory issues in the effective HCC, the significance of issues connected to the child has become much more relevant than earlier. It is not my aim here to overemphasise the significance of legal issues, but the mediation-related literature does not seem to attribute to the legal issues the importance they are awarded in judicial practice and people's real lives. So, one of the typical descriptions of

mediation as a procedure through which ‘the husband and wife, after expressing and mutually accepting their intention to divorce, are able to discuss the issues involved in the divorce and reach a common agreement on child and property issues, then by mutual consent, with the jointly written agreement, the court will smoothly and quickly separate them’,⁵⁶ does not function in reality. The discrepancy between the expertise and tasks of the mediator and the complexity of the legal issues may be resolved if the mediator ‘transforms’ the parties’ words into their legal counterparts – or if the mediator is not a lawyer, then a lawyer transforms the parties’ own words into a legal document.⁵⁷ This approach may be approved and has also been applied recently. While this method may guarantee that adequate agreements are reached, it is not in harmony with either the ‘classic’ and ‘traditional’ approach to mediation or the legally simplifying approach defined in the mediation-related literature in Hungary.

⁵⁶ Kozékiné Hammer, A válás mediáció, avagy a párkapcsolat befejezését segítő humánus módszer bemutatása, 90.

⁵⁷ Juhász É. A. and Rúzs Molnár K., *Bevezetés a mediációba* (Iurisperitus, Szeged, 2024) 98–99.