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From conflict situations to the formation of legal disputes (civil proceedings)

I. INTRODUCTION

Conflict or conflict situation is basically as old as humanity itself. The reason is that since people have been living on the Earth, it has been impossible to think about a particular issue or a given situation in the same way. It inevitably happens that a certain person considers a specific situation in a completely different way than another person. It is almost impossible that everyone approaches a particular matter in the same way. This assumption must especially be true as *our own selfish, individual interests decisively influence the development of one's viewpoint*. As the title suggests, I am going to discuss the reasons why conflicts—natural or legal—arise between people, as well as what can be considered as a conflict and a conflict situation.[1] Conflict is always a disaccord, a disagreement between certain people (legal entities).[2] The Hungarian Explanatory Dictionary distinguishes among the following types of conflict: war, family, conscience and dramatic. A conflict or a conflict situation presupposes that both parties (people) are involved in a given situation and some kind of disagreement, conflict of interests exists[3] among them. A conflict is certainly such a situation with which everyone meets or have already met in different forms during different stages of our lives. The global form of conflict is the conflict of interests or confrontation among states, nationalities and territorial units, with the ultimate manifestation of war or armed conflict. Researches on conflict situations in the Hungarian special literature of Civil Procedure already emerged during the socialism,[4] and the science of (legal) sociology was vividly interested in the study of

[1] The word „conflict" comes from the Latin word „conflictus", -us (Masculine) and means: disturbance due to the simultaneous effect of two opposite motives. Source: http://dictzone.com/latin-magyar-szotar/konfliktus - downloaded on: 19th October 2016.

[2] Source: *Tudományos és Köznyelvi Szavak Magyar Értelmező Szótára [Hungarian Explanatory Dictionary of Scientific and Colloquial Words]* – meszotar.hu/keres- conflict – downloaded on: 1st September 2016.

[3] *The Explanatory Dictionary of the Hungarian Language,* Akadémiai Kiadó, Budapest, 1978, 754 p.

[4] Gáspárdy, Konfliktushelyzetek a polgári jogviszonyokban [Conflict situations in civil law relationships]. 1979, pp. 285-307.

conflict as a social phenomenon.[5] The study tries to focus on three questions: 1. Why do conflict situations emerge, what leads to a conflict of interests between two people? 2. If the conflict between the parties has already emerged, what is the behaviour and approach of the parties like? Do they intend to avoid the confrontation in all cases? Do they make any steps to end this situation? (*personal side*) 3. What organizational and institutional framework exists in order to handle a conflict situation (dispute) before it gets to court (*material side*)?[6]

II. DISCUSSION

In this study we want to reflect on conflict situations of family law relationships (based on marriage or connected by a common child) as well as non-family law, such as private law (civil law) conflicts—except labour law—until the phase of civil (legal) proceedings. Cases of civil and commercial law appear in the terminology of the European Union law as cross-border disputes. Current study only deals with such emerging conflict situations out of which civil proceedings may arise in Hungarian courts between legal subjects of Hungarian resident (seat). The study does not deal with labor related conflicts and conflict situations. Current study intends to typify emerging conflicts in such a way that civil proceedings of domestic civil courts are basically of *family law or private law (civil law)* origin. Such conflicts are considered as family law conflicts from which later proceedings are initiated in connection with divorce, exercising parental custody of common children, including the regulation of visitation rights, as well as the determination or modification of child support (rising, reducing); request for the termination of parental custody rights, challenging the presumption of paternity and establishing paternity. Conflicts are not of family law origin if they do not affect the child's life and the family status of any parties involved in the conflict, and civil (legal) proceedings are not initiated in this matter.

We apply this distinction as in a broad sense every kind of civil law conflict which is discussed in front of a local court (district court) can be classified into these two categories. The category of non-family law conflict (dispute) is a very broad one because it covers the area of legal obligations, property law and inheritance law disputes (conflicts) as well. The central questions of this research concerning both types of conflicts are the followings:

[5] Kulcsár, *Gazdaság - Társadalom – Jog, [Economy – Society – Law],* 1982; Kulcsár, *Jogszociológia, [Sociology of law],* 1997.

[6] Fleck, Jog és társadalom, jogszociológia, [Law and society, sociology of law], 2014, pp. 9-39.; Fleck, *Jogszolgáltató mechanizmusok az államszocializmusban – Totalitarizmus elméletek és magyarországi szocializmus. [Legal service provider mechanisms in state socialism – Totalitarianism theories and Hungarian socialism],* 2001.

1. Why does a conflict between people (legal entities) emerge?
2. What does a person (a legal entity) do to avoid the conflict with the other party?
3. What steps does the person—a legal and/or natural person (legal entity)—take in order to eliminate the existing conflict in the given situation, and what is his or her behaviour like?

Research data is partially based on responses of the questionnaire put together by the author, which questionnaire was filled out by people from different age groups.[7] Therefore, present study seeks to take potential human behaviours and possibilities of legal mechanisms into account. Conflict situations (conflict of interests, differences) stem from the fact that at least two people (entities) think of a specific issue or a situation differently, they form their opinion and establish their viewpoint in a different way. This life situation is real and actual in case the comparison of the two different views, ideas or positions has also been done (*real conflict situation*). The conflict is conditional or hypothetical if the comparison of standpoints has not been done by the affected parties yet and one of the two parties comes to a—usually incorrect—conclusion based on the other party's behaviour or statement (*conditional or hypothetical conflict situation*). As regards the different approaches of a given situation, the question is whether it can be solved, smoothed or eliminated. Such conflicts arise in a different way in the case of family law and private law (property law). As for cases of family law, there is always a previous community (tie) between the parties involved, for example, cohabitation or community of property in the case of marriages and marital relationships or partnerships, a common child or common family name can also be a connecting link between the two sides. In disputes not connected to family law, the emotional bond, *the emotional relationship between the two parties is usually missing, these kind of relationships are mostly connected to business and trade*. As a result of this, the attitude of the parties involved in a given situation is different in matters of family law and other types of disputes. The emotional attachment in the cases of family law often means an obstacle between the parties, especially if negative emotions prevail. The fight for the common child(ren) also contributes to the aggravation of relations between the parties. At the same time, negative emotions prevailing in family law cases are (can represent) barriers of the possible peaceful settlement. In conflicts lacking the family law nature the emotional link that binds the parties is usually missing. This can be advantageous in a sense that there is no prejudice between the parties which could help to come to a peaceful settlement in the dispute. As for cases of family law it is mainly the *personal nature* that prevails since the consequence of the worsen-

[7] With regards to the situation in Germany: Blankenburg – Gottwald – Strempel, *Alternative in der Ziviljustiz, Berichte, Analyse, perspective,* 1962.; Gessner, *Konflikt und Recht,* 1978.; Rottleuthner, Probleme der von Beobachtung Arbeitsgerichtsverfahren, 1978.

ing relationship between the parties is the formation of the conflict. In private law legal relations the focus is not on *personal relationships* but on *financial interests.* The formation of a conflict situation or conflict of interests in private law disputes is mostly in connection with financial and business accounts. In private law disputes (legal relations) the following aspects or viewpoints are very significant before the development of a conflict:

- Detailed and thorough regulation concerning the legal relationship between the parties;
- Compliance or non-compliance of the provisions of the contract or agreement of the legal relationship;
- Good faith and bad faith of the Parties concerned regarding the given contract (agreement)

The lack of regulation, agreements that are ambiguous or can be misunderstood, the affected parties' behaviour that is in opposition with good faith and decency may all contribute to the formation and intensification of a conflict situation. In private law disputes it can happen as well that the relationship of the affected parties becomes heated or tense, however, no contractual relationship is formed between them. It is enough to think of legal disputes related to neighbours' trespass, the violation of neighbourhood rules or the determination of easement.

What these disputes have in common is ownership and entitlements connected to property. However, the personal relationship in these cases is not based on family law (on kinship ties), here we are talking about personal (co-owner) relationships related to a certain property. In private law disputes it is not a negligible circumstance that before a possible conflict is formed, legal subjects shall all have a *thorough, careful and comprehensive inquiry considering all details.* The fair and correct inquiry by the parties affected can already exclude or at least minimize the chance that parties knowing all necessary information got to an incorrect conclusion and therefore create a conflict.

As for civil law legal relationships, the detailed, accurate and explanatory definition of the relationships' elements serves the prevention of the formation of conflicts. The detailed and interpretative regulation eliminates or reduces the sources of problems as well as the possibility of multiple interpretation. In private law legal relationships objective and subjective aspects simultaneously determine the relationship of the parties. The detailed definition of the content elements of the contract (agreement) entered into by the parties may be regarded as an objective circumstance influencing their relationship.

The other possible source of conflict between the parties is the compliance or non-compliance of the provisions of the contract (agreement) which *depends on the affected party.* Together with the accurate and detailed regulation of the contract (agreement) there is also *a human factor:* to what extent do the affected parties feel the provisions of the contract to be obligatory on themselves? Another human factor is the circumstance based on the subjective behaviour of a given,

concrete person, as well as the good faith or bad faith shown by the party during the period of the legal relationship.

Adhering and adapting to the provisions of a private law agreement determines the attitude—of good or bad faith—of the party during the relationship. If the party's attitude is already malicious, it can easily happen that the provisions of the agreement (contract) are not respected (or will not be respected) or *he or she tries to interpret them in such a way that it causes an injurious situation to the other party.*

The basic situation, of course, is obvious: somebody enters into a contract with another person because he wants to provide or offer services. In general and in principle, both parties have the common interest to establish and maintain a relationship which serves their mutual satisfaction. When some unforeseen, previously not calculated circumstance occurs, *one might ask why the new conflict situation occurred, whose fault it is.*

If any of the contracted parties act in a way which is in opposition with the regulations of the contract (by fault or involuntary), it already triggers a situation in which the other contracted party feels that the provisions of the contract do not concern him either or only a little, therefore, a conflict situation emerges between the parties. In order to avoid the emergence of a conflict situation a third party can be very helpful (via mediation or conciliation); either among legal frames or not.

Involving a third person can be a big step forward to put an end to a conflict situation.[8] It may happen that during a conflict situation—depending on its height—*there is no verbal communication between the affected parties,* therefore, involving a third party might just orient them towards dissolving the conflict as he undertakes the role to take the initial step between the parties not talking to each other. If the conflict between the parties is so deep that they do not even talk to each other, *usually the cause is connected to emotions.*

In emotionally motivated conflicts it often happens that the communication completely stops between the affected parties. Besides emotionally motivated conflicts we can differentiate between *conflicts of financial interests (business, trade).*

[8] In connection with the rich special literature of the question: Bándi, A közvetítés (mediáció) jogi szabályozásának továbbfejlesztése, [Further development of the legal regulation of mediation], 2000, 1-19.; Farkas, A közjegyzői tevékenység szerepe a viták megelőzésében: a jogi tanácsadás és a közjegyzői közvetítés (mediáció), mint ennek eszköze, [The role of notarial activity in the prevention of disputes: legal counselling and notarial mediation as its tool], 2000, pp. 9-12.; Anka–Bókay, Mediáció, egyeztetés, választott bíráskodás [Mediation, conciliation, arbitration], 2000, 12-15.; Kengyel, A polgári eljárásjog az ezredfordulón [Civil proceedings at the millennium], 2000, 718–719., 711–724.; Pokol, A jog elkerülésének útjai. Mediáció, egyezségkötés, [Ways of avoiding law. Mediation, settlement], 2002; Ujlaki, Fogalmi és terminológiai tisztázás igénye a békítés, kiegyeztetés és a közvetítés témakörében, [Need for the conceptual and terminological clarification of conciliation, settlement and mediation], 2001, 11-18.; Barabár, A mediáció jövője Magyarországon, [The future of mediation in Hungary. Establishing its foundations], 2007, 17-24.; Németh, A polgári ügyekben folytatott mediáció (közvetítés) Magyarországon [Mediation in civil proceedins in Hungary], 2007, 269-279.; Gyekiczky, A mediációról mint a polgári és kereskedelmi jogviták bíróságon kívüli rendezésének lehetőségéről, [On mediation, as an opportunity to settle civil and commercial disputes out of court], 2010; Gyengéné Nagy, Mediáció az igazságszolgáltatásban, [Mediation in the administration of justice], 2009, 681-692.

What is the difference between the two types of conflicts as the emotional heat can be found in both of them? As far as we are concerned, those disputes belong to the *category of emotional conflicts* which are usually preceded by some kind of *tension related to one's love life or relationship* and these previous grievances prevail from time to time in the damaged relationship between the parties.

As for conflict situations based on financial interests, material and accounting issues, the emotional (affective) factor may also emerge, however, a significant difference is *that parties are previously not connected by a similar relationship or partnership (love affair)* like in the previous case. In these conflicts the given emotions are the consequences of the emerged disagreement, and *the conflict is basically and fundamentally based on the different judgment of financial (trade) issues.* In the case of debates based on financial interests, the emotional aspect only plays a role as it does in any other kind of conflict situation. What possible ways and phases can a conflict situation and the period after that have?[9]

1. *Contacting* the opposing party or his/her legal representative usually happens before taking legal actions, in order *to settle the dispute out of court.* This only occurs if the parties want to settle the dispute out of court. In order to settle a dispute, the first step is always *contacting the opposing party or his/her* legal *representative.* Without contacting, there is no way to settle the (legal) dispute out of court.

2. If settling the conflict out of court is unsuccessful, (the party does not declare when so requested, or is unwilling to settle the dispute out of court), legal actions are taken (*civil proceeding*). Otherwise, steps taken in order to avoid the civil proceeding were successful (either in a way that a third party was involved) and there is no need to take legal actions (*this is the elimination of a civil lawsuit*).

3. The resolution of the conflict goes differently from the above mentioned steps if there is no contact between the parties after the emergence of the (legal) dispute and they do not even try to settle the dispute (consequence: civil proceeding is initiated in such a way that they did not even try to avoid it). Of course, the legislator's aim is to ratify such obligatory legal institutions which avoid the initiation of civil proceedings.

There is a stronger legal policy interest to avoid civil proceedings in such cases where mediation between the parties may work than in cases where the peaceful settlement of the dispute could only be tried with the intermission or suspension of an already ongoing civil proceeding.

Our point of view is that in certain types of family law conflicts (like the regulation, re-regulation of parental custody, visitation rights) *legislators should prescribe an obligatory mediation process.* Parties could only take legal actions on court in the same subject if the mediation procedure was not successful.[10]

[9] Felstiner–Abel–Sarat: The emergence of disputes and transportation: naming, blaming, claiming… 1980/1981.
[10] Sajó, A polgári per társadalmi funkciója, [Social function of civil proceedings], 1982, 321-367.

III. CONCLUSIONS

1. The settlement of the conflict situation prior to a civil proceeding is *basically determined by the existing legal environment. The laws and regulations in effect show us whether the party has to turn to a mediator prior to the initiation of the civil (legal) proceeding.* Naturally, there might be such legal disputes when the nature of the legal dispute excludes the requisition of a mediator (public administration proceedings, lawsuits of litigation, proceedings for the declaration of paternity, placing someone under conservatorship, termination of conservatorship or guardianship).[11] The national legislation in force—for the time being—does not make mediation procedure mandatory.

2. Until the legislative environment does not make it obligatory for parties to try to settle the conflict peacefully, *it is up to their free will* whether they turn to a mediator or not. Resorting to a mediator has additional costs, while the court mediation process is free of charge; however, the latter one can only be resorted to during ongoing civil (legal) proceedings and if the court mediation is successful, based on the settlement in the legal proceedings, court costs can be decreased by 50%, 70%, or even 90%.[12] Mediator activities are not free of charge, „mediators shall be entitled to remuneration for their services and shall be compensated for all substantiated expenses; they shall also have the right to request advance payments for fees and expenses".[13] Mediation can be advantageous if there is no relationship between the parties at all and the chance is minimal or there is no chance at all to establish any kind of connection between them.

3. Of course, the party affected in the legal dispute has to know about the possibility of the mediator in order to resort to it. The legislative power, the public media and various authorities (courts, administrative organizations) also play a crucial and intensified role in informing the public about the possibility of the mediation process. *Naturally, „mediation" between the affected parties can also work without resorting to a legal representative or a third person.* The goal is that all affected parties strive to avoid the initiation of a civil (legal) proceeding when it is possible and not strictly necessarily. Moreover, legislators aim at developing the culture of disputes and the peaceful settlement of disputes, so that mediation process would be the first step if a conflict situation occurs between certain parties and terminating it by themselves is unsuccessful.

4. The long-term empirical research of humanity's relation to conflict situations and the processing of the research data in the adult (18-75) age group is carried out by all participants filling out a questionnaire prepared by the author in

[11] http://birosag.hu/allampolgaroknak/mediacio/birosagi-kozvetitoi-eljaras - date of download: 29th October 2016
[12] 58.§ (1) (2) (3) of Act XCIII of 1990 on Duties.
[13] 27.§ (1) of Act LV of 2002 on Mediation.

advance. The content and the assessment of responses may be greatly influenced by the gender, age, educational level, occupation, marital status, life situation of respondents, as well as their knowledge and information on the existing legal regulations of eliminating conflict situations. Filling out the questionnaires in the ratio according to the research target (at least 1000 respondents, four different age groups (18-30 years, 31-45 years, 46-60 years, 61-75 years) has not been fully completed yet, therefore, it would be too early to report the results.

Based on our own personal professional experience we can confirm that applications handed in to courts on the level of district courts, prescribed by 11§ of Act XXX of 2008, entering into force on 1 January 2009, only a few plaintiff declarations have been made with regards to that before the lawsuit a mediation procedure had been initiated between the parties (121 § (4) of Act III of 1952 on the Code of Civil Procedure). Therefore, according to practical experience, mediation proceedings do not start at court level before a lawsuit is initiated, from which two possible conclusions can be drawn: 1. mediation procedures before civil proceedings are so successful that they are not followed by a legal proceeding; 2. legal disputes are at such a stage that in order to eliminate the conflict the party who wishes to enforce his interest initiates a proceeding without even attempting a mediation process beforehand. The possibility of avoiding legal proceeding ensured by Act LV of 2012 on mediation procedure is usually not taken advantage of by people (23.§ (1) and 28.§ (1) of Act LV of 2012. The following allegation can be interesting from legal sociological aspect as well: if a separate legislation has provided the use of mediators for those affected by a conflict situation since 17 March 2003, why is it that mediators' involvement in dispute settlements has remained sporadic and quite rare since then as well.[14] Looking at things from a practical point of view we can state that in already ongoing civil lawsuits, but at least according to court rulings suspending the trial (152 (3) of Code of Civil Procedure), in proceedings connected to the exercise of parental supervision and to the regulation of keeping contact, adhering to mediation does not happen based on the determination of parties affected by the conflict. Based on practical law enforcement experiences, mediation proceedings in front of a court mediator—for now—is only successful in the minority of cases.[15] The mediation procedure in front of a court mediator

[14] For further information, see: Lugosi, József: *The Possibilities of Access to Law in Contemporary Hungary* (ProfectusinLitteris IX), and Lugosi, József: *Personal Conditions of Judicial Prevention by Paralegroups* (Legislation and law application in the 21st century in Europe)

[15] As for court mediation, the following statistical data is available for the year of 2017 with regards to two different mediators: in the first quarter of 2017 the number of pending court cases after carrying out one or two sided court mediation: 7, of which 2 (28,57%) ended with an agreement, as for the other mediator this numbers were 8 and 2 (25%), 2017. In the second quarter of 2017 the number of cases in progress was 7, the number of cases ending with an agreement is 1 (14,28%) and 6,0 respectively, and the number of ongoing cases (5), the number of cases ending with an agreement is 1 (20%), or 6.0. However, the statistics do not give a complete picture of the effectiveness of judicial mediation because even if there is no agreement between the parties, they have talked to each other,

usually remains unsuccessful if one of the parties fully unwilling to cooperate with the mediator and the other party and therefore does not even appear in front of the court mediator.

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• and they can get closer to a possible solution in a court settlement - source: *Tatabánya Tribunal - Esztergom District Court data in 2017 on the basis of the relevant form.*

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