

## ***Managing Conflict and Fostering Democratic Dialogue***

***(In cooperation with Benjamin N. Cardozo School of Law, New York and Hamline University School of Law, Minnesota)***

July 7 - July 25

### **Course Directors:**

**Csilla Kollonay Lehoczky** is Professor of Law at Central European University, Legal Studies Department, and at Eötvös Loránd University, Faculty of Law. Received her J.D. in 1968 and her Ph.D. in 1987. Joined Eötvös Loránd University in 1969. Fulbright Professor at Stanford Law School in 1990-1991. Associate Dean at ELTE Faculty of Law from 1991 through 1995, Chair of the Labour Law Department from 1992 to 1997. From 1997 to 2000 and in 2002-2003 Dean of the Legal Studies Department of CEU.

[Lela P. Love](#) is Professor of Law and Director of the Kukin Program for Conflict Resolution at Benjamin N. Cardozo School of Law/Yeshiva University. Professor Love has served as a mediator, arbitrator, and dispute resolution consultant in a variety of community, family, commercial and public disputes. In 1993, she was awarded a citation by the City of Glen Cove for successfully mediating a long-standing dispute between the city and its Salvadoran community. Professor Love co-chairs the Committee on Qualifications and Training for Neutral's for New York's Unified Court System. She has assisted the State of Florida in implementing its mediator qualification requirements; developed a program for training mediator trainers and a teaching manual for the State of Michigan; and written a mediator's manual for a mandatory mediation program for Louisiana's Office of Workers' Compensation. Professor Love received her J.D. from Georgetown University in 1979, her M.Ed. from Virginia Commonwealth University in 1975, and her B.A. from Harvard University in 1973.

### **Program Faculty:**

[John Barkai](#) is Professor of Law and has been the Director of the Clinical Programs at the University of Hawaii Law School since 1978. He also teaches conflict resolution in the Japan and China, Focused Executive MBA Programs and for the Japan - American Institute of Management Science. Professor Barkai is chair of the ADR Section of the Hawaii State Bar Association, former chair of the Association of American Law Schools ADR Section, a founding member of the University of Hawaii's Program on Conflict Resolution, and the U.S. representative to APEC's ADR in Executive Education Project. He was a Visiting Senior Scholar at the City University of Hong Kong, and has taught negotiation and dispute resolution courses and workshops in Finland, Hong Kong, Japan, Korea, and the Federated States of Micronesia. He has served as a consultant to the Hawaii Judiciary, the Supreme Court of the Federated States of Micronesia, the Pacific Judicial Council, and the Minister of Justice for Papua New Guinea. Professor Barkai received his BBA (1967), MBA (1968) and JD (1971) degrees from the University of Michigan.

**Kinga Goncz** is a Political Secretary of State in the Ministry of Health, Social and Family Affairs for Hungary. Formerly she served as Executive Director of the Partners Hungary Foundation and a Lecturer at Eötvös Loránd University. Dr. Goncz has extensively published in the field of social work supervision and training. She also maintains an active private practice in psychotherapy. She is a Member of the Board of the Soros Foundation and Director of the Board of the Foundation for Self Reliance. She has been a Visiting Scholar at the University of Michigan School of Social Work and a Lecturer in the Mandel

School of Applied Social Sciences at Case Western University, in Cleveland, Ohio. Dr. Goncz earned Degrees in Psychotherapy (1986) and Psychiatry (1978) from the Budapest Institute for Postgraduate Medical Training, and her M.D. from the Semmelweis Medical University, Budapest in 1972.

**Stephen J. Adler** is Judge and President of the National Labour Court of Israel, Hebrew University, and Professor of Law at Hebrew University, Faculty of Law and Tel-Aviv University, Faculty of Law. J.D. 1965 - Columbia University Law School B.S. 1962 - I.L.R. - Cornell University School of Industrial and Labour Relations. Justice Adler has several decade long experience in theory and practice of dispute resolution. Before becoming a Justice of the National Labour Court in 1985 he was a judge and from 1981 Chief Judge of the Jerusalem Regional Labour Court. Parallel with the judicial profession he has been active as a teacher in higher lever legal education. He is a Professor of Law of the the Faculty of Law of Hebrew University and the Faculty of Law of the Tel-Aviv University since 1996. His teaching experience includes lecturing at Max Planck Institute, Munich and teaching as Adjunct Professors in Cardozo Law School in 1997 as well as being a faculty and member of the Board of Directors of the Israel Judges' Training Institute. He is the President of the Israeli Chapter of the International Society for Labour Law and Social Security.

[Dana Potockova](#) received a Masters in Dispute Resolution from Pepperdine University School of Law (USA), a Masters in Peace Studies from the University of Notre Dame (USA), and a Masters in Social Policy from Charles University (Czech Republic). A former Fulbright scholar, she is the co-founder of the Czech Association of Mediators. As the principal of Conflict Management International, she is currently a consultant for dispute resolution systems design and a conflict resolution trainer and teacher. She has served as a trainer for Partners for Democratic Change in the Czech Republic where she also facilitated public meetings in situations involving ethnic tension.

**Manfred Weiss** is Professor of Law at Johann Wolfgang Goethe University, Frankfurt am Main.

Faculty of Law. Graduated in Law in 1964, Freiburg University. In 1965-66 Research Fellow at U.C. Berkeley. Prof. Weiss has been a full Professor since 1974, first at the Faculty of Law of the University of Hamburg and then from 1977 at the Johann Wolfgang Goethe University. Professor Weiss served as the Dean of the Faculty of Law from 1989 through 1990. He has held visiting professorships at, among others, Paris-Nanterre, the Sorbonne, the University of Strassburg, and New York University. He is President-of the International Industrial Relations Association.

### **Course Objectives**

This course is designed to facilitate the exchange of ideas and cooperative projects among academics, professionals and students in the East and West who are pursuing the study of conflict and conflict resolution processes. The program, set in the context of Central and Eastern Europe's emerging democracies, will focus both on mediation and arbitration, as well as other consensual methods for addressing and resolving conflict and promoting understanding between peoples.

In the first two weeks of the program, CEU participants will be joined by approximately thirty American law students and scholars to explore mediation theory and skills, as well as other processes to foster democratic dialogue. In the third week of the program, CEU students will study arbitration. All of the offerings will include multi-national perspectives and examples. This program will enable students to

critically examine the challenges of the design and delivery of ADR initiatives in multiple contexts, including countries where the "rule of law" still is being established.

**Intended Level of Instruction:**

The primary target group of this course is junior and middle career faculty as well as doctoral students at law schools or faculties of social science and public administration in the CEE region, as well as American law students pursuing the J.D. degree. Additionally, course targets include academics and professionals in psychology, social work, public policy, political science, government and labor relations. The courses are designed as introductory courses to mediation and arbitration.

**Weeks 1 and 2: Mediation and Other Methods to Foster Democratic Dialogue**

**(Lela P. Love, John Barkai, Kinga Goncz, Dana Potockova)**

**Course Description:**

Through lecture, discussion, demonstration and roleplays, students will be introduced to mediation theory and skills and examine the impact of culture and context on the mediation approach adopted. Examples will focus on mediation models and scenarios from both the United States and Central and Eastern Europe. The course will also examine a variety of strategies to foster and support democratic and constructive dialogue, particularly focusing on "high-conflict" situations involving inter-ethnic tensions. Students will study efforts in Central and Eastern Europe to promote meaningful democratic dialogue in times of national and international crisis. Participants should come prepared for a highly interactive learning experience.

**Monday**

**Principles of Dispute Settlement and Introduction to Negotiation Theory**

Lecture and general discussion examining assumptions about dispute settlement, analyzing various dispute settlement methodologies, and exploring the role of mediation within that context. A small group negotiation exercise will illuminate the principles and dynamics underlying voluntary dispute settlement procedures.

A presentation on the shift from communism towards the rule of law in Central and Eastern Europe and the role of mediation in that transition will be presented.

**Tuesday**

**An Overview of the Mediation Process and Related Mediator Skills. Beginning the Mediation Conference**

A demonstration of a mediator at work will be followed by an examination of the various functions the mediator fulfills and the types of traits/interpersonal skills required of persons discharging these functions. A presentation on how mediators create a constructive environment and open a session will be followed by practice.

A summary description of collaborative processes in former communist countries will be presented.

**Wednesday**

## **Listening Constructively to Disputing Parties and Crafting a Discussion Agenda**

Lecture and interactive exercises will focus on fact-gathering, note-taking and questioning techniques. The task of translating hostile and adversarial communication into building blocks of collaborative dialogue will be explored, as well as the mediator's role in identifying, framing and ordering the issues in dispute.

### **Thursday**

## **Dealing Effectively with Diversity and Generating Movement Towards**

### **Understanding and Agreement**

Discussion, analysis and exercises focusing on interpersonal and communication skills critical to facilitating dialogue in contexts in which issues of cultural, gender and ethnic diversity are pervasive.

Lecture, discussion and exercises examining the rationale of various settlement strategies that a mediator can use to move the parties towards agreement. Analysis will highlight persuasive techniques for moving parties from impasse to settlement.

An afternoon presentation on case studies from Hungary will explore the dynamics of multi-party and multi-ethnic disputes.

### **Friday**

## **Considerations and Strategies in Dealing with Complex, Multi-Ethnic Cases**

Professors will "accompany" participants through a conflict analysis to determine the propriety and nature of a mediation intervention in a multi-party, multi-ethnic community conflict. Elements of the analysis will include: party identification; ripeness for intervention; mediator qualifications relevant for effective service; and pre-dispute entry issues and responsibilities.

The class will view and analyze a movie portraying a variety of conflict resolution processes.

### **Monday**

## **Meeting Separately with the Parties and Working with a Mediation Team**

An examination of the purposes and strategies of meeting in caucus sessions with the parties.

Discussion and analysis of strengths and weaknesses of a co-mediation approach and the principles guiding the effective execution of team mediation. Practice will follow.

### **Tuesday**

## **Using Facilitation to Foster Democratic and Constructive Dialogue**

An examination of the relationship between facilitation and mediation and of the tasks and tools used by facilitators. Practice will follow.

### **Wednesday**

## **Bringing Closure to Sessions and Capturing Agreements between Parties**

Participants will review procedures for closing a mediation session and drafting mediation agreements.

A working lunch will follow class in which study and business-building opportunities in the field of conflict resolution in Eastern Europe will be explored.

#### **Thursday**

##### **Ethical Considerations in Mediation**

Discussion and exercises focusing on ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power.

A critical review of a mediation session will follow.

#### **Friday**

##### **Pulling the Pieces Together: Final Mediation Simulations**

Participants will conduct a mediation session and analysis will follow the completion of each simulation.

Course closure and evaluation.

#### **Week 3: Arbitration**

**(Csilla Lehoczy Kollonay, Steven Adler, Manfred Weiss)**

##### **Course Description:**

Through lecture, discussion, and other interactive teaching methodologies, students will explore the history, rationale and theory behind arbitration as a means of resolving disputes. Examples will focus on the labor and employment arena, though other areas will also be examined.

**Monday.** The first class will introduce students to the **historical and social foundations** of arbitration, together with the main motivators that have contributed to the development and spread of arbitration as the dispute resolution process of choice in many arenas. The introduction will explore the advantages and risks of arbitration for parties in various situations and will give an overview of arbitration's role in various legal regimes.

**Tuesday.** This class will examine legal grounds necessary to involve an arbitrator in a dispute. An outline and comparison of **statutory and contractual arbitration** will be provided, reviewing various legal regimes and exploring the theoretical, juridical and political principles and values behind particular approaches. The class discussion will pay special attention to the particularities of labour disputes and the consequent characteristics of labour arbitration under the common law and continental law regimes, including a survey of existing alternative labour dispute resolution methods and institutions in the transitional countries of Central and Eastern Europe.

**Wednesday.** The third day will explore the **relationship between the state judiciary system and arbitration**. The class will familiarize participants with various institutional approaches to arbitration, such as arbitration carried out by courts, by administrative judicial organs (state tribunals) and by private arbitrators. The relationship between the institutional setting and the legal status of the arbitrator's award, in particular the availability of judicial review of the decision, will be illuminated.

**Thursday.** This class will focus on the **initiation of arbitration**. The class meeting will map the paths that lead to the arbitration procedure. Both the scope of labour arbitration (with particular regard to the qualification of disputes of rights and those of interest) and the traditional and recent methods of preventing or avoiding the emergence of a dispute will be examined. Grievance procedures and decisions on arbitrability as well as the selection of the arbitrator(s) and/or umpire(s) will also be discussed.

**Friday. Legal issues connected with the arbitration process** will be the topic of the last class. Participants will review the sources of procedural rules, the burden of proof, evidence, the standards for the interpretation of contracts and agreements, and the decisions made by the arbitrator (awards, opinions, recommendations). The discussion of all these issues will be addressed within the framework of guaranteeing individual rights and due process throughout the arbitration process with special regard to situations involving a power imbalance.