



## CEU Summer University

Zrínyi u. 14, Budapest, Hungary 1051

Tel.: (36 1) 327 3069, 327 3811

Fax: (36 1) 327 3124

E-mail: [summeru@ceu.hu](mailto:summeru@ceu.hu)

Website: <http://www.ceu.hu/sun/sunindx.html>

### ***Global Perspectives on Appropriate Dispute Resolution (ADR)***

*In co-operation with Benjamin N. Cardozo School of Law, New York and Hamline University School of Law, Minnesota*

**July 5-23, 2004**

**Course Directors:** **Csilla Kollonay Lehoczky**, Central European University, Legal Studies Department

**Lela P. Love**, Kukin Program for Conflict Resolution at Benjamin N. Cardozo School of Law/Yeshiva University

**Resource Persons:** **Stephen J. Adler**, Hebrew University, Faculty of Law

**James R. Coben**, Hamline University School of Law, Saint Paul, Minnesota

**Kinga Göncz**, Ministry of Health, Social and Family Affairs for Hungary

**Julie Macfarlane**, University of Windsor, Ontario

**Bernard Mayer**, CDR Associates, Boulder, Colorado

**Dana Potockova**, Conflict Management International, Prague

**Manfred Weiss**, Johann Wolfgang Goethe University, Frankfurt am Main

**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.

**Kinga Göncz** 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. Göncz 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 and Adjunct Professor of Law at Hebrew 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 Adjunct Professor of Law of the Faculty of Law of Hebrew 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.

**James R. Coben** is Associate Professor and Director of the Dispute Resolution Institute at Hamline University School of Law. During the last decade, Professor Coben has pioneered a variety of innovative ADR clinical opportunities for law students, including mediation advocacy on behalf of clients in family law and employment cases. In addition to his law school teaching responsibilities, Professor Coben is a member of the Minnesota Supreme Court's ADR Review Board, charged with regulating the performance of court-appointed neutrals. He has published numerous ADR related articles and currently is the domestic mediation editor for the World Arbitration & Mediation Report, and previously served on the editorial board and as ethics columnist for the Journal of Alternative Dispute Resolution in Employment. Professor Coben is the immediate past chair of the ADR Section of the Association of American Law Schools ("AALS"). He received his J.D. from Northeastern University School of Law in 1986 and his B.A. from Williams College in 1979.

**Julie Macfarlane** is a Professor of Law at the University of Windsor, Ontario Canada. She also is the co-director of the master's in law (ADR) program at Osgoode Hall Law School, the only law graduate ADR program in Canada. Professor Macfarlane has mediated more than 200 disputes including workplace, community, organizational, contract, and personal injury matters. In addition, she has extensive experience as a facilitator working with government, management groups, unions, universities, professional associations, and not-for-profit organizations in developing consensus in planning, policy-making, and conflict resolution strategies. Since 1995, she has been appointed as program evaluator for a number of Canadian government ADR programs, including the Ontario Court (General Division) ADR pilot, the forerunner of Ontario's current court-connected mediation program, the Public Service Staff Relations Board grievance mediation pilot and the

Canadian Human Rights Tribunal mediation pilot program. Professor Macfarlane also researches and publishes in the area of conflict resolution and mediation. Her most recent book is *Dispute Resolution: Readings and Case Studies*, 2nd Ed. (2003). Professor Macfarlane earned her Ph.D in 1988 from the University of South Bank, her LL.M. in 1984 from London University, and her B.A. in 1979 from Durham University.

**Dr. Bernard Mayer** is a partner at CDR Associates, established in 1978 to provide democratic decision-making and conflict management assistance to businesses, governmental agencies, professionals, and organizations in the public sector. A skilled mediator, Dr. Mayer has facilitated many complex and highly controversial environmental conflicts, commercial and organizational disputes, planning and development issues, and public decision-making processes. He has been internationally recognized as a trainer and an innovative leader in applying mediation and conflict resolution to human service arenas and particularly to disputes between public agencies and involuntary clients. Dr. Mayer has consulted on conflict management procedures and trained mediators, negotiators, and conflict intervenors throughout the United States and Canada, and in Australia, Bulgaria, Bosnia, Moldova, Poland, Hungary, and New Zealand. Dr. Mayer is the author of many books and articles. His most recent publication is *The Dynamics of Conflict Resolution: A Practitioner's Guide* (Jossey Bass Publishers 2000). Dr. Mayer received his B.A. degree in 1968 from Oberlin College in Russian and Chinese History, his M.S.W. degree in 1970 from Columbia University in psychiatric social work, and his Ph.D. degree in 1987 from the University of Denver in social work, with an emphasis on conflict resolution.

### **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.

### **Applicants have the following options:**

- apply for the first two weeks only. Depending on previous experience and training, please apply for either the **introductory track** or for the **advanced track**;
- apply for participation in **all three weeks** if you have a strong interest and/or some background in the topics of week three (labour law).

Please clearly indicate in your statement of purpose which option you are applying for: two-week course or three-week course; introductory or advanced track.

### **Weeks 1 and 2 – July 5-16, 2004**

**(I) INTRODUCTORY TRACK** For students without prior course experience in mediation.

#### **Mediation and Other Methods to Foster Democratic Dialogue**

Faculty: James Coben, Kinga Göncz, Lela Love, Dana Potockova

Through lecture, discussion, demonstration and role-play, 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 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. Analysis will highlight persuasive techniques for moving parties from impasse to settlement. Special attention will be directed to the ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power. The course also will 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.

**(II) ADVANCED TRACK** for students with theory and practice background in mediation and negotiation

#### **Models for Change, Dialogue, and Individual and Social Transformation in Conflict**

Faculty: James Coben, Lela Love, Julie Macfarlane, Bernard Mayer

To be taught in two segments, week one will focus on the development of democratic dialogue and mediating modalities to support social change and address conflict. Students will examine models and processes that have been used around the globe in both emerging and stable democracies to stimulate multi-stakeholder engagement, to develop effective process and substantive agreements, to reach consensus outcomes, and to support implementation strategies. Week two will focus on advanced skills for mediator intervention in disputes. After a critical review of basic mediator skills, students will examine: theories of negotiation and their relevance for mediators; different mediation models and their underlying rationale; issues in mediating complex cases, including how to work effectively with interpreters and other professionals; concepts of justice and their impact on mediation; and methods of responding to impasse and other mediator challenges. The course will culminate in a master class where participants try out their skills to assess the impact of different approaches on party behavior. Pre-course reading in designated books and articles will be required.

### **Week 3 – July 19-23, 2004**

#### **Trends of Conflict Resolution in Labour Matters**

Faculty: Csilla Lehoczky Kollonay, Stephen J. Adler, Manfred Weiss

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.

For more detailed biographies, updated course description, syllabus, reading lists please check <http://www.ceu.hu/sun/index.html>

#### ***Non-discrimination policy statement***

*Central European University does not discriminate on the basis of--including, but not limited to--race, color, national and ethnic origin, religion, gender or sexual orientation in administering its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.*