



Mediation Options in Certain Non-litigious Court Proceedings

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‘Almost every conflict starts with someone saying something.’¹

Abstract. In my study, I seek to answer the question of whether the existence, non-existence, or incompleteness of communication in the system of relationships contributes to the emergence, escalation, and quality of conflicts. It is well known that some relationships can end in disagreement, dispute, or conflict. Our conflicts can either be resolved, or they can go to a deeper, more serious level and even result in violence. I present my conclusions from the statistics of two typical types of court cases, the initiation of which was certainly triggered by a serious relationship conflict or violent episode. During my research, I also conducted a case file analysis of non-litigious proceedings regarding the implementation of visitation rights filed with the Székesfehérvár District Court from 1 March 2020 to 31 December 2024. Furthermore, I examined the cases related to preventive restraint applications in the period from 1 January 2020 to 31 December 2024. Specific cases will also be presented in this context. I will examine the impact of conflict on relationships through the two types of court case mentioned above. I look for the links between the proceedings and mediation as an alternative option for conflict resolution. I start from the hypothesis that some of the relationship problems and conflicts can be resolved even in the judicial phase, depending on their depth and escalation. In more serious cases, mediation may not always be an alternative due to the emergence of more serious conflicts and violence and/or the lack of a legal framework. My hypothesis is that mediation can be used effectively in contact enforcement cases, given that this is also a family law case where mediation is an effective solution in the best interests of the child.

1 Backman, no date. Translation by the author. Unless otherwise specified in the footnotes, the translations of all non-English sources are by the author.

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1. Relationships

Our relationships and connections are a web of interconnectedness: we are in touch with family, friends, colleagues, and even with many people we do not know in person, for example when shopping, running errands, or in an online virtual space. Looking ahead to the not-so-distant future, interpersonal relationships created by and with the help of artificial intelligence may also be part of a networked system of relationships. Human relationships are a complex, interactive network of connections, with many powerful nodes through which a great number of network connections and information flows.

The relational system we live in is, as the name suggests, a system that requires a systemic approach. In discussing this topic, we cannot avoid Aristotle's idea that 'the whole is more than the sum of the parts',² which he arrives at by examining the nature of existence and reality. In this context, Aristotle suggests that the various elements that make up a complex system do not exist merely as separate parts but interact to form a new, complex whole.

A systemic approach also means that a change in any one element causes a change in the whole system.³ This suggests that the more complex the system, the less predictable the effect of a change in one part or element overall. All of this applies to conflicts and human relations, of course. Despite its complexity, given that it is part of our everyday lives, we learn to manage our relationship system.

It might be interesting to know if there is a way of measuring how we experience our different relationships. What makes us feel good or bad in a relationship? What is certain is that the more conflict we are involved in, the more energy we need to carry out our daily tasks and the more we become exhausted in our conflict-laden roles, which almost certainly has a negative impact on our private personality. As Judit Sass and István Síklaki write:

The burden of conflict can be exhausting and have a negative impact on personal life, because dealing with conflict can lead to mental and physical exhaustion, which can have a negative impact on both work performance and the quality of personal life.⁴

2 Arisztotelész, 2024, Chapter 1.

3 Vigvári, 2017, Chapter 10.1.3.

4 Sass and Síklaki, 2011, p. 34.

I share the views expressed in Swedish contemporary novelist Fredrik Backman's book *My Grandmother Says Sorry*, in which he explains how a relationship can be perceived by those in it as very different from how it is seen and valued by outsiders. For example, this is why it is impossible to tell from the outside who is the dominant party in a relationship or why someone is behaving the way they are. In many cases, an outsider cannot understand why the abused person does not run away from the abusive relationship. I would add to Backman's sentence: conflict starts when someone says something – well, maybe it would have been good for someone else if someone had said something because it is precisely by saying nothing – or by saying something but not saying it in a way that the other person can understand exactly what it means – that conflict arises. Let no one be fooled by the fact that, at first sight, this sounds as if we could blame conflicts solely on words or on the inadequate understanding or decoding of words.

Albert Mehrabian, a professor at the University of California Los Angeles, theorizes⁵ that only 7% of what we say is the spoken word, the verbal element of communication. When we send a message to others, 55% of the content of the message is body language and 38% is tone of voice, the vocal element. Most of the content is therefore non-verbal communication, i.e. the speaker communicates information and content without words, about his or her relationship to the topic, his or her opinion on the situation, etc.

Almost all relationships involve certain tensions, different phases of conflict, which can be natural, even progressive, as long as they do not exceed a 'healthy' level.

2. Conflict

It is well known that some relationships can – inevitably – end in disagreement, dispute, and manifest conflict. A previously good relationship between the parties can change, making life hell for one party, but most of all for all concerned, and greatly degrading their mental state and quality of life. In almost all cases, the conflict arises between those who are in contact with each other, and this is only part of the complexity of the relationship, says László Cseh-Szombathy.⁶

He writes, among other things, that as the conflict escalates over time, the problem escalates in several areas, i.e. instead of a well-defined set of issues, the parties are shifting between them. Indeed, the focus is no longer on the issue but on the partner him/herself. The next stage is when the conflict may extend to other people and the focus shifts from the present to the past. Shayne Ray

⁵ Mehrabian, 1981.

⁶ Cseh-Szombathy, 1985.

Anderson and his colleagues define ‘high conflict’⁷ in a way that distinguishes it from ordinary, i.e. less significant conflict, and also from domestic violence. The pattern of behaviour of a person in high conflict is to assert his or her own interests at the expense of the other party and to use any means of influence to gain the upper hand.⁸

There are countless methods for classifying conflict, but now I would like to turn my attention to the origins of conflict in relationships, the sources of which Christopher W. Moore has identified as follows.⁹

Information conflicts arise from lack of information, misinformation, or different interpretations of the same information by the parties. *Conflicts of interest, value conflicts*, and *structural conflicts* arise from the unequal distribution of available resources. According to Moore, *relationship conflicts* are closely linked to the behaviour and communication of the parties involved. He identifies the source of conflicts based on several factors, including unequal distribution of power and resources and divergent interests between social groups. Very often, conflicts are due to scarcity of resources. For my part, I believe that value conflicts are not primarily due to resource constraints or unequal distribution of resources but rather to psychosocial conditions and upbringing.

There can be emotional and rational elements behind the emergence of conflicts. If conflicts are based on rational principles, their level may be lower, for example, strikes or passive resistance, whereas in the case of violent conflicts, the strong presence of emotional objectives increases tension. Moore understands conflict as a complex interaction process where the interests and goals of the parties involved conflict.

Asking artificial intelligence,¹⁰ as a way of consulting an aggregate consensus, I received the following answer to a query about the chances of a good relationship between spouses being ruined. A precise answer, it seems, is not possible, as such situations may be influenced by several factors. Among them, the AI highlighted the following: fluctuations in the quality of the relationship, its duration and external stressors. Couples who experience significant fluctuations in the quality of their relationship tend to live with lower average levels of satisfaction, leading to increased anxiety and lower levels of life satisfaction. Fluctuations can create doubts and uncertainty in the couple, undermine trust, and lead to further potential deterioration over time. Loss of trust, miscommunication, lack of respect, and different priorities of the people in the relationship are major contributors to relationship failure. Maintaining mutual respect and understanding each other’s

7 Anderson, Anderson, Palmer, Mutchler, and Baker, 2010, pp. 11–27.

8 Németh, 2015.

9 Moore, 1996.

10 Perplexity, [2025].

needs is vital for a healthy long-term relationship to survive, writes Perplexity AI (which was ‘consulted’) on the subject in question.

We can either resolve our conflicts – which is the fortunate case –, or they can deepen and become more serious, and even violence between the parties can occur, and resolution becomes more and more difficult as time goes on.

3. Conflict before the Court

After the theoretical overview, I now attempt to point out the conflicts in some non-litigious cases in court so that it becomes possible to learn about and observe the relationships of parties in some special situations. The courts deal with very different relational qualities than, for example, a civil service registrar (in the Hungarian legal system), who deals with people who are predominantly happy, accepting, and loving. In contrast, we can say that (litigious, but also non-litigious) court procedures constitute a hotbed of interpersonal conflict. The parties who come to court are likely to be in dispute with each other, a dispute that has reached the depth and level where it has gone beyond the private sphere and become a legal dispute. The dispute usually reaches its final stage when the parties involved or one of them entrusts the adjudication of their case to a court with the power of public enforcement. At the same time, they assume the financial and moral burdens of the court’s decision, foregoing the possibility of resolving the conflict they have generated themselves.

There is also an institutional alternative dispute resolution procedure¹¹ that may be implemented by the courts: judicial mediation – where the decision is left in the hands of the parties –, which carries the professional characteristics of mediation. It is distinct from classical litigation and non-litigious proceedings, both in terms of its substantive and procedural rules. By its very nature, it uses the methodology of civil mediation, while seeking both to resolve conflicts and to resolve the dispute in question.

4. Serious Relationship Problems: Implementing Visitation Rights and Preventive Restraint in Case of Violent Episodes

In my research, I examined two types of non-litigious cases, from which I can generally conclude that there are serious relationship problems between the parties in the case type of claims for the *implementation of visitation rights*. *Preventive*

11 Act LV. of 2002 on the Activity of Mediation, Chapters IV/A – IV/B.

restraint cases typically involve a violent episode between the clients. In the former case, it is usually the parent with the right of visitation who brings a non-litigious action against the other parent because he or she believes that the other parent is at fault for not being able to meet with his or her child. In preventive restraint cases, where a minor is involved, the proceedings are initiated either by the abused person or by his or her legal guardian, usually one of the parents. An escalated conflict between the parties can also lead to preventive restraint proceedings on the emergence of violence, even without the involvement of a minor.

4.1. Implementation of Visitation Rights by Non-litigious Proceedings

In my research, I conducted a case analysis of the implementation of visitation rights by non-litigious proceedings brought before the court and analysed statistical indicators from 1 March 2020¹² to 31 December 2024.

The legal background of the procedure is provided by Act CXVIII of 2017 on the Rules Applicable to Civil Non-litigious Proceedings in Court and Certain Non-litigious Proceedings in Court (hereinafter: 'Pnp.').

Act CXXX of 2016 on the Code of Civil Procedure (hereinafter referred to as 'Pp.') is applied on the basis of § 1 of the Pnp., which stipulates that in civil non-litigious proceedings before the courts, unless otherwise provided by law, the rules of the Pp. shall be applied with the exceptions resulting from the specific features of civil non-litigious proceedings. Thus, the Civil Code does not have specific provisions on non-litigious proceedings, as the Pnp. determines the stipulations to be applied.

Table 1. *Case flow data of the non-litigious implementation of visitation rights cases brought to the Székesfehérvár District Court*

	From 1 March 2020 to 31 December 2020	2021	2022	2023	2024
Incoming	122	126	63	106	149
Concluded	89	148	68	81	167
Request granted in relation to completed cases	15 (17 %)	35 (24%)	16 (24%)	30 (37%)	86 (52%)

Source: data by the author

12 Section 247 of Act CXXVII of 2019 on the amendment of certain laws in connection with the introduction of single-instance district office procedures amended Act CXVIII of 2017 on the rules applicable in non-contentious civil court proceedings and on certain non-contentious court proceedings, and – with effect from 1 March 2020 – placed the procedure for the enforcement of contact arrangements within the jurisdiction of the district courts.

The table shows that in 2020 there were more cases per month in the examined 10-month period than in the subsequent years. Yet this is the year with the lowest rate of requests granted (17%). The year 2024 has the highest number of cases received and the highest completion rate (52%) on a monthly basis. Case arrivals fall sharply in 2022 (to exactly half of the 2021 arrivals!), followed by a distinct increase year by year. The number of cases concluded follows the same curve. Over time, the number of granted requests and their proportion in the total number of concluded cases increases significantly and appears to be constant. One can only infer the reasons for the increase in the number and percentage of applications completed. The increase in the number of granted requests may be an indication of the increasing substantiation of the applications received. In other words, the defendant's behaviour is increasingly hitting the threshold at which the courts must intervene in conflicts.

The case statistics on implementation of visitation right cases allow professionals to identify and publicize problematic areas and propose changes to legislation where necessary. Increases or decreases in the number of cases handled by the courts may also be linked to social trends such as divorce and parental custody cases. Contact is essential for the enforcement of both children's rights and parental rights, including the rights of grandparents. Since the implementation of visitation rights came under the jurisdiction of the courts on 1 March 2020, the case handlers have accumulated a wealth of experience,¹³ some of which may support broader conclusions, of which I will briefly highlight the following.

During the proceedings, the court must examine the applications received within 3 days. The court will send the request to the other party, who has 8 days to respond. Experience shows that parties often do not reply to or do not even receive the court's notification.

The non-litigious judicial procedure is split into two stages: the first is ordering the implementation of resolutions relating to visitation rights,¹⁴ after which the court ordering the implementation of such rights may determine the legal consequences of non-compliance or decide to take measures.¹⁵ It may also introduce special provisions in certain cases, which include the suspension of proceedings and the possibility of recourse to mediation.¹⁶

An aspect of these cases is the fact that they are not sporadic in the case of families with problems in implementing visitation rights, but they usually involve several applications. In the district court under review, there are some families who have/had 50 cases pending for the implementation of visitation

13 As part of my research, I had the opportunity to become acquainted with the experiences of those involved in handling the cases.

14 Pnp. §§ 22/A–22/C.

15 Pnp. § 22/D.

16 Pnp. § 22/E.

rights. For example, the mother refuses to allow the minor sibling to maintain contact. The court has already imposed fines in 18 cases, usually starting at HUF 50,000–75,000 and increasing in proportion to the number of cases. The mother does not pay the fine, usually does not accept the court notice, and does not allow contact with the father despite the order. In 2024, applicants were female in about 30% of the cases and male in 70%, but this proportion is not constant and changes almost every year.

According to the experience of the case handlers, the quality of communication, the emphasis on content, and the verbal elements of communication are very important for a good relationship. In most cases, a breakdown in the relationship also leads to the deterioration or even cessation of communication. The most common cause is that the people in the relationship do not communicate well with each other. Information not present in the other party's sentences is substituted with content that is present in their own, and often associated with the other party's perceived, often incorrectly identified, emotions and underlying intentions. They do this instead of asking what exactly the other person meant, whether they meant what they said, etc. They make sure that the other person meant what they interpreted the content of the words and/or behaviour to mean.

It is common in such cases that there is a *relationship conflict* at the root of the communication problems. It can be observed that, unfortunately, parties often use their child as a means of punishing the other party. In many cases, there is resentment / a feeling of being offended: the abandoning/rejecting partner should not have contact with the common child. Emotionally, they feel empowered to prevent contact. It is common for the child to be allowed to decide whether or not he/she wants to meet the other parent or grandparent. This responsibility is very stressful for the child and can lead to loyalty conflicts. Not to mention that the child may regret this decision as an adult. The disorder around the relationship may later cause irreparable damage to the child.

There is also a tendency that, even if the parties call the police, in most cases the police do not intervene in the dispute. If the child in the given situation says that he or she does not want to meet the other parent, the police almost never enforce the contact. And in many cases, the child states that he or she does not want to go because he or she feels that one of the parents – in many cases, the mother – expects him or her not to remain in contact with the other parent. Later, they may feel regret because they may lose contact with their neglected parent completely, which can cause them to feel guilty for the rest of their adult life.

Zita Ormándi argues that in the process of parental alienation 'the alienating parent breaks the dynamics of the family. He or she wants the former spouse to become only the former parent of the child.'¹⁷ The child sees the rejected parent as the abuser yet experiences the loss as pain.

17 Ormándi, no date.

However, I do not consider these types of conflicts to be irreparable, as in the course of my case analysis I have also encountered cases in which an amicable solution to the parties' relationship conflict was reached. During the court mediation proceedings, the parties can reach an agreement on the issues in question, which can also settle the practice of parent-child visiting in the long term.

I will present three typical cases below. Their interesting feature is that conflict resolution transcends the case type of implementation of visitation rights, as the parties' initiative was accompanied by the parallel judicial mediation procedure. The parties brought their conflict before a mediator, trying to resolve the dispute between them themselves. In the following, I shall present several relevant cases in which parties sought to implement visitation rights, and their outcomes.

a)

The former spouses applied for an order of implementation of visitation rights on 14 occasions, during which both parents were in the position of applicant and respondent. In one case, the respondent father did not return the child to the mother by the end of the visiting time allotted but kept the child with him. According to the father, he was entitled to this time because the mother had taken the child on holiday during the period of paternal visit and therefore made up for the time lost with the child.

The parties' claims and statements were full of perceived and real grievances that were already present in the divorce proceedings and dated back to the period before the divorce.

Taking into account that the case handler had difficulties in keeping the parties' emotions in check during their statements, the case handler called the court mediator to the hearing to inform the parties about the court mediation procedure, which can also be used in ongoing non-litigious court proceedings. After a long time, the parties finally agreed on something and decided to participate in the court mediation procedure. They decided to do so despite their previous bad experience with mediation, when they could not reach an agreement with a non-judicial mediator.

With the court mediation process underway, they rebuilt communication and finally started working together for the benefit of their child. The mediation process was concluded with an agreement, and the ongoing implementation of visitation rights case was concluded.

b)

In another case, the applicant father with visitation rights applied 14 times for the enforcement of a contact order, taking into account that the contact with his child is not possible during the week and on weekends, and the respondent mother does not provide for the missed occasions.

In one case, the child was ill and when the applicant came to collect the child after his recovery, the mother did not hand him over and did not give any reason for refusing to do so. Since the start of school, for several months now, the mother has consistently refused to hand over the child for visitation and has not taken due measures to facilitate it. Although she packs the child's belongings, she does not contribute in any other reasonable way.

In the applicant father's view, there is no good reason for the child not wanting to meet him, while the respondent is deliberately opposing the court's decision, and the father believes that the mother's aim is to permanently alienate the child from the separated parent.

The respondent mother did not contest the fact that the visitation had not happened but cited the child's own decision, which cannot be disregarded because of the child's age, as the reason for the lack of contact is that the child wishes to decide for himself when and how to meet his father. She denied that the child was being used against his father, that she was alienating him, insisting on the contrary, that she was doing everything in her power to ensure that contact was maintained, and it was the applicant who was ignoring the wishes of his teenage child. She considers that the child is already of limited capacity and therefore can go to his father when he wants to.

The respondent referred in detail to the expert opinions in the ongoing litigation between him and the applicant, the events in the litigation, the father's problematic behaviour in dealing with the child's school affairs, and the events during the applicant's and the respondent's cohabitation. She criticized the conduct of the father's partner. In the mother's view, this was the reason for the child's unwillingness to participate in contact. She also attached a statement by the child that he would like to participate in visitation whenever he wishes to.

Subsequently, the parties in this case also turned to a court mediator, trying to resolve their conflict amicably. In the mediation process, an agreement was reached, as a result of which the non-litigious proceedings for the implementation of visitation rights were terminated.

c)

In the third case, by the time of the analysis, a total of 20 proceedings had been initiated between the parties for the ordering of implementation of visitation rights and for the application of a sanction on the basis of non-compliance. Three children were involved, the eldest of whom has reached the age of majority, the middle child reached the age of majority in 2023, and in the case of the youngest child, the visitation functions well currently.

The respondent mother obstructed visitation by reinforcing in the children the view that they are not required to go to visitation to their father, should they feel uncomfortable there. The mother involved the children fully in the divorce

proceedings, showing them the visitation, guardianship office, and registration of child protection documents regardless of their age or maturity. She used the children as a tool to send a message to the ex-husband that they would lose money that could be used for the children if they paid the fine imposed in the proceedings. The dispute escalated to the point where the middle child, who was still a minor at the time, said she would go to work in the summer so that the fines resulting from the court proceedings initiated by the father could be paid.

It is worth mentioning that communication between the middle child concerned and the father 'slipped'. The father reacted nervously when the child repeated the mother's words, expressions, resentments, and there was no turning back from this, as the child was hurt (why is the father fighting, shouting, etc.). It is obvious that the father's emotional expressions created resentment in the child, and he may even have thought that the negative emotions were directed at him. Therefore, there was no longer any possibility or way to find out what the child really wanted. Another difficulty was that due to the long-lasting lack or inadequate quality of contact, the father was impatient and was also unwilling and unable to rebuild the good relationship with the child that had existed between them, at the child's pace, with paying attention to the child.

The mother's attitude also complicated the situation, as her statement 'I am the mother, I know what is good for my children and how' was not forward-looking but rather deepened the existing conflicts during the proceedings.

In this case, the parties opted for mediation too late. Their conflict has reached mediation in its heated, hateful, and destructive stage, and the mediation process did not provide a resolution to their conflict.

According to the general opinion of the case handlers in the non-litigious implementation of visitation rights cases, the most common cause of conflict is the two weak points that are felt during the separation of the couple: one is the child (or children), and the other is money and material issues. These are the two lines where the other can be hurt the most, or where everyone is 'fighting' for the child. Many people project onto the child the harm done to them by the other party and think they are protecting the child by not letting them visit the other parent.

From the case studies, it is clear that they are often unable to escape from difficulties and conflicts that are often deepened by inadequate or absent communication without help. Even the tools of mediation cannot achieve the desired result. In many cases, they do not even understand the point of the implementation of visitation rights procedure; they just want the court to punish the other party.

We also see forward-looking examples of parties recognizing the opportunity and exploring the possibility of an agreement by involving the mediator as a third, facilitating party in resolving their conflict.

The following tables show the number of court mediation procedures and settlements in court mediation cases in the period under review, related to the non-litigious cases in which the mediators have completed contact enforcement proceedings.¹⁸

Table 2. *Number of court mediation procedures and settlements in court mediation cases in the period under review*

	From 1 March 2020 to 31 December 2020	2021	2022	2023	2024
Number of concluded implementations of visitation rights ('kv.') cases	89	148	68	81	167
Number of court mediation proceedings ('bk.') initiated in connection with concluded implementation of visitation rights cases	1	1	3	0	2
Agreements reached in substantive 'bk.' proceedings	0	0	1	0	2

Source: data by the author

Table 3. *Number of non-litigious cases in which the mediators have completed contact enforcement proceedings in the period under review*

	From 1 March 2020 to 31 December 2020	2021	2022	2023	2024
Concluded 'bk.' proceedings with reference to previous implementation of visitation rights procedure	2	10	3	0	2
Number of 'bk.' proceedings of the above	1	1	3	0	2
Agreements reached in the proceedings	0	0	1	0	2
The 'bk.' procedure was concluded without an agreement	1	1	2	0	0
Non-substantive, administrative conclusion	1	9	0	0	0

Source: data by the author

¹⁸ Content prepared from statistical data used with the authorization of the Székesfehérvár Regional Court (tables 4–5).

Several conclusions can be drawn from the above tables. It can be concluded that during the period under review, a total of 17 court mediation proceedings related to the implementation of visitation rights non-litigious proceedings were concluded. Of these, only 7 cases were concluded on their merits and 10 on administrative reasons, i.e. without mediation on the merits. Of the mediation cases that were conducted on the merits, an agreement between the parties was reached in 3 cases, and 4 cases ended without an agreement.

In my opinion, as far as the nominal figures are concerned, I consider them to be very low. There was a year without a single mediation in connection with the implementation of visitation rights proceedings. One of the reasons for the low number could be that the relationship between the parties involved had become so acrimonious – i.e. they had reached a level of conflict where informing the parties about mediation was no longer effective – that they did not want to resolve the dispute themselves, and they wanted the court to decide their case.

The low number of mediation proceedings does not allow for any firm conclusions to be made, but if we look at the settlement rate in mediation proceedings conducted on the merits, 43% of them reached an amicable solution. Not necessarily for the sake of comparison, but here I refer to the fact that the percentage of mediation cases that have been settled in court compared to the number of proceedings on the merits is 52.9% on average for the first half of the period between 2012 and 2021.¹⁹

The 57% of cases in which the parties requested mediation but did not reach an agreement are not negligible. These cases could not have passed without a trace either, as cases resulting in an agreement are not the only ones that can be viewed as outcomes of successful mediation.²⁰ The emotional resolution of the parties during the process can help them to resolve their conflict(s) later on in an amicable way by themselves.

Thus, I do not consider it a far-fetched statement that court mediation – although I found very few examples of this in my file review – and the social role of mediation in supporting families are clearly evident. If but a single family or child could be helped by mediation, it was worth it. Its long-term impact, its role in protecting families and even its preventive nature in conflicts is not in doubt.

As a preventive measure, mediation is also seen by the social profession as a form of problem solving, a conflict-analysis method that can lead to results in the resolution of family conflicts arising during divorce or disputes over children.²¹ The family protection function of mediation and the preventive work of mediators

19 Turcsánné Molnár, 2022.

20 For details, see Turcsánné Molnár, 2020, p. 24.

21 Szabó, no date, p. 12.

was also emphasized by Krisztina Hunyadi; one of the aims of this is to prevent similar conflicts and situations arising between the parties in the future.²²

4.2. Preventive Restraint in the Non-litigious Procedure

Moving on, I shall now present non-litigious procedures for preventive restraint. In my research, I examined cases submitted to the Székesfehérvár District Court in the period from 1 January 2020 to 31 December 2024.

The legal background for the procedure is provided by Act LXXII of 2009 on Restraint on the Grounds of Violence Between Relatives (hereinafter: Act). § 1 of the Act defines the offence as an act or omission by the abuser which is a serious and direct threat to the dignity, life, right to sexual self-determination or physical and mental health of the abused person (hereinafter: interpersonal violence).

A preventive restraining order is granted if there are reasonable grounds to believe that violence between relatives was committed, based on all the circumstances of the case, the facts presented by the parties, the signs of violence between relatives, the behaviour and relationship between the abuser and the abused. The court may order preventive restraint for a maximum period of 60 days.

The legislator makes a distinction between temporary preventive restraint ordered by the police for 72 hours²³ and preventive restraint ordered by a court in the context of non-litigious proceedings, which falls within the jurisdiction of the court.

Temporary Preventive Restraint

The ‘precursor’ to preventive restraint is the possibility of ordering temporary preventive restraint, which is a matter for the police and is subject to the rules of administrative procedure. In essence, it allows the police officer to take immediate action to remove the abuser without delay and to decide to keep him or her away from the abused for up to 72 hours in order to prevent more serious abuse.

Preventive Restraint

The district court according to the place of the abused person’s habitual residence decides on preventive restraint in a non-litigious procedure. The procedure is initiated of its own motion at the initiative of the police or at the request of the

22 Magyar Tudományos Akadémia, 2019.

23 Pursuant to § 6 of the Act, the provisions of Act CXL of 2004 on the General Rules of Administrative Authority Procedures and Services (hereinafter: the *Ket.*) shall be applied – subject to the deviations set out in this Act – to the procedure related to the temporary preventive restraining order issued in cases of violence between relatives.

abused person or a close relative of the abused person. During the restraint period, the abuser is required to keep his or her distance from the abused person, from the property where the abused person's habitual residence lies, from any other person specified in the decision and to refrain from having direct or indirect contact with the abused person.

Table 4. *Data on preventive restraint applications received by the Székesfehérvár District Court for the period from 1 January 2020 to 31 December 2024*

	2020	2021	2022	2023	2024
Initiated	30	47	53	47	63
Concluded with a final decision at first instance	24 (82%)	39 (82%)	51 (96%)	41 (87%)	54 (86%)
Concluded with a final decision and ordering of the preventive restraint at first instance	11 (46%)	16 (41%)	15 (30%)	10 (24%)	21 (39%)

Source: data by the author

The data on the number of initiated preventive restraint cases show a fluctuating trend over the five years under review, with the number of cases increasing or decreasing each year. Compared to 2020, the number of arrivals in 2024 has doubled, with twice as many restraining order applications submitted to court than five years before.

The trend in the proportion of final decisions at first instance compared to concluded cases is striking. The similarly high rates of 82%, 87%, 86%, and even 96% show that the parties overwhelmingly accepted the court's decision and considered it to be well founded. In these cases, they did not exercise their right of appeal, i.e. they did not ask for a decision by the court of second instance. This wide acceptance is, in my view, a tribute to the high professional standard of the court judgments.

In cases that have been concluded with a final decision, the granting of a restraining order is also an indicator of the merits of the applications submitted. According to this indicator, there was a marked and steady decrease in the number of applications with a final decision at first instance between 2020 and 2023. While in 2020 46% of the applications submitted were deemed to be well founded by the court of first instance in the light of the decisions, in 2023 only 24% of the applications were granted, i.e. a restraining order was issued by the court. In these years, the number of applications for preventive restraining order that were not considered legally justified by the court increased. In 2024, the trend was similar to the increase in case inflow. In 2020, the court ordered restraint in 11 cases out of the cases that were finally completed at first instance, while in

2024 the court ordered injunctions in 21 cases out of the cases that were finally completed at first instance, i.e. nominally about double the number of cases.

Table 5. *Data of the appealed first instance decisions*

	2020	2021	2022	2023	2024
Appeal against the first instance decision	10	10	11	8	16
Ordering / upholding the restraint at the second instance	5 (50%)	5 (50%)	4 (36%)	4 (50%)	6 (37%)

Source: data by the author

The table shows the number of appeals against the decisions of the court of first instance, which, when compared with the data in *Table 4* (cases received and concluded with final decision at first instance), clearly shows that the number of appeals against the decisions of the court of first instance is very low. Nominally, the number of appeals was decreasing in the years 2020–2023, ranging between 8 and 11. In comparison, the year 2024 is also an outlier, with one and a half times the number of appeals compared to 2020 and double the number compared to 2023. Over the five years on average, the court of second instance found 43% of the appeals to be well founded and ordered – or upheld – the restraint in the cases appealed.

My case analysis focused on restraining orders and cases decided at second instance over the course of five years.

Of the 24 cases concerned, 17 were initiated by the wife / wife's partner, 5 by the mother/parent, and 2 by the police. In 70% of the cases, the female partner applied for a restraining order.

In 19 cases, i.e. in 79% of the cases, the wife/female partner was the abused person, and in the remaining 5 cases it was the mother or minor.

In 20 cases, i.e. 83%, the husband (ex-husband) / male partner was the abuser, and in the remaining 4 cases it was the father against the minor or a male descendant against his parent.

Out of the 24 cases, 17 cases involved physical violence, and 7 cases involved intimidation or threats.

Below I present some typical, particular cases.

a) The abuser is the divorcing husband – the abused is the wife

The abuser and the abused are spouses, with 3 minor children. They have regular disputes of material and moral nature, which usually end in serious arguments. The abuser keeps his earnings from working abroad in a foreign bank account,

to which he has denied the wife access. The relationship between the spouses deteriorated when the husband moved home after working abroad.

The man regularly asserted his dominance, and the dispute even reached the point of physical violence: the abuser husband hit his wife twice with his fist on the right side of her face, breaking her nose and cheekbone. She was treated in hospital for 5 days and required facial reconstruction surgery. After her hospital treatment, she filed a complaint and, on the advice of the police, contacted the local family assistance centre, whose staff initiated a procedure to place the children under protection. They considered that the abuser's behaviour was a threat to the whole family. The abused wife and the children left the abuser's home and moved in with her parents.

It was not disputed by the husband that during their regular and increasingly serious arguments, he was physically dominant, and the court therefore considered it justified to order a preventive restraining order. In accordance with the prosecutor's motion, the maximum period of 60 days was set.

The second instance court upheld the first instance decision.

b) The abuser is the divorcing husband, the abused is the wife (one of the minor children witnesses the abuse)

The parties are in divorce proceedings and live together with their two minor children. The man hit his wife, who was bathing one of the children, in the face with such force that she fell into the bathtub. The husband's behaviour caused fear in the wife by hitting, swinging at her, and verbally threatening her on a daily basis. The last time he had swung at the wife, he did not manage to hit her but broke the glass of the cupboard.

In addition to this, he daily berated his wife in front of the children, calling her a 'whore', a nobody and repeatedly saying that he wished she had never left the delivery room. When the husband went home drunk, he did not clean himself and spilled his urine and faeces on the bed linen.

His behaviour caused daily fear in his wife and children. The husband failed to appear despite being summoned in accordance with the rules of the proceedings, but the court ordered a 40-day restraint in his absence, in connection to which the local prosecutor's office announced prosecutorial action.

The second instance court upheld the first instance decision on the 40-day preventive restraint.

c) Man abusing his mother

The police ordered a temporary preventive restraint for 72 hours against a man who abused his mother. The court held a hearing, for which the abuser

was summoned through the police, as he was not available on the telephone number provided. According to the police, he was at an unknown location. The court appointed a public representative for him and, on the basis of the police documents and the application submitted, found the following:

The abuser was the biological son of the abused mother, both of whom lived at the same address in two separate areas, a few metres apart with separate entrance doors. When the abuser drank alcohol, he behaved aggressively and sometimes even took tranquillizers to accompany the alcohol. He was previously sentenced to a suspended prison term for drug possession for growing wild hemp in his residence.

One night, at midnight, the man asked his mother for food and tobacco, but she told him she could not give him anymore. Her son started kicking her door, shouting obscenities and even said he would cut off her head. The door was broken by the kicking, through which he leaned into her room and in this position continued to shout. He noticed that his mother had a phone in her hand and was calling the police.

The drunk man was aggressive with the police officers too who arrived at the scene and threw a 50-cm machete into the front door, which the officers tried to push open in order to get into his apartment. The officers called for backup when they saw the knife. The assailant was handcuffed and taken by ambulance to hospital for detoxification.

Since the police report confirmed the violent behaviour and the public representative had no objection, the court ordered a 45-day preventive restraint, which was upheld by the second instance court.

d) Father abusing his son

The spouses are in divorce proceedings, and their two minor children are staying with the mother and father on equal terms, according to the court's interim injunction. The mother, on receiving the child, noticed that the boy's mouth was swollen and bruised. She took him to the doctor, where the child stated that his father had hit him with his fist. The examination confirmed that the injury would heal within eight days.

On this basis, the mother submitted a complaint at the local police station about the father's action. At the same time, she filed for a preventive restraint at the court, claiming that the father had previously abused the child.

At first instance, the court ordered preventive restraint for the maximum period of 60 days. The second instance decision partially reversed the decision at first instance by not imposing the restraining order on the grounds that the purpose of the restraining order was not to punish but to prevent a similar act from occurring again within a short period of time.

5. Conclusions

In my opinion, the presence of conflict, while necessary and unavoidable in our lives, can be inspiring in a small way, while its excessive presence demolishes relationships and degrades the quality of life.

Courts are in a special position to display the quality of human relationships because they are typically the place where conflicting, opposing parties go to litigate. With the constant presence of conflicts, there is the possibility of alternative dispute resolution, mediation. Of course, the law excludes some types of cases from the scope of mediation, and it may not be successful in all of the remaining types either. The escalation of conflicts, their seriousness and depth, the violence of the parties, and the fact that they are beyond a certain level of violence do not allow for an amicable settlement between them.

As far as the analysis of statistical data is concerned, it is important to consider the calculation of nominal data together with the percentage ratios. Overall, the conclusion that could be drawn from the changes of the case numbers of both non-litigious proceedings was that there was a significant increase in the number of applications and cases by 2024, both in terms of case number and proportion.

This provides an important indication of the relationship dynamics between the parties, particularly in the context of domestic violence. The increasing number of cases that I have seen may also indicate a welcome increase in legal awareness among the abused, but the figures show that the number of violent episodes is on the rise.

The applications for the implementation of visitation rights show that in most cases the driving force behind the conflict is the lack of or inadequate communication between the parties. They complete and finish what the other party says according to their own system of thought, which often differs from the reality experienced by the other party. From the study, I see evidence that in this type of case, the opposing parties can still reach an amicable agreement with the help of the mediator, in case they have not yet engaged in destructive behaviour in their relationship conflict. The number of mediation procedures conducted in the period under review is non-zero, but still low. Out of the 17 cases initiated, a total of 7 court mediation procedures were carried out, of which 3 cases (43%) resulted in an agreement.

At the beginning of my study, I set out from the assumption that there was a place for mediation in non-litigious proceedings and that it could work effectively. My research confirmed this only partially. In quantitative terms, I do not consider the number of mediation proceedings initiated in connection with the implementation of visitation rights to be very high, i.e. I do not consider its use to be particularly effective. In qualitative terms, however, and based on the agreement rate and administrators' experience, mediation is undoubtedly effective and can help to

resolve the relationship conflict between the parties in the long term, not only in cases that have been settled, even without further court proceedings.

Since the qualitative indicators are encouraging, I would like to propose that the legislator implement the possibility of ordering the parties to participate in compulsory mediation during the implementation of visitation rights in non-litigious proceedings. To ensure effective informing about the mediation proceedings, I would like to propose mandatory courses for the case handlers of this case type.

In my view, there are certain obstacles for mediation in preventive restraint cases. In these types of cases, parties are usually beyond the stage of conflict, where their relationship could be salvaged or their dispute resolved amicably. In the cases investigated, violent behaviour was already present, which has many times led to physical altercations.

In the case of such high levels of domestic violence, mediation is not supported by the literature because of the violent episodes. According to Gábor Kuszing,²⁴ in the case of domestic violence, there is no prerequisite for equality of the parties, since a violent man can easily threaten or intimidate a woman (often in a way that is unrecognizable to mediators). Kuszing also considers it worrisome regarding civil matters and would even go as far as to prohibit the possibility of mediation in cases where violent episodes are present, such as in the resolution of disputes over child custody, visitation, and division of property.

In my opinion, the tight statutory time limits in restraint cases do not support the use of mediation. Judicial review of a temporary restraining order can be requested within three days of service of the order.²⁵ The court will decide on the application for a temporary restraining order within three working days of receiving it.²⁶ The time limits for injunctions are no less strict. In the case of applications received, if the court considers it necessary to rectify the deficiencies, it must invite the parties to do so within one day of receipt of the application.²⁷ Time limits are also measured in days for court proceedings, which must be completed within three days of the start date of the temporary preventive restraint ordered by the police, or within three working days of receipt of the request in the case of proceedings initiated by application.²⁸

In my view, these time limits are too tight to allow for the introduction of an alternative dispute resolution procedure, but this was not the intention of the legislator. After all, the law itself, when it came into force, already placed the emphasis on the adequacy and speed of the procedure.²⁹ Andrea Domokos also

24 Kuszing, 2009, pp. 54–55.

25 Act § 12(2).

26 Act § 12(4).

27 Act § 15(4).

28 Act § 15(6).

29 Tóth, 2023, p. 117.

refers to the timely promotion of the legal protection of the abused as a legislative objective in relation to the legal instrument.³⁰

Overall, it has been confirmed that the court mediation procedure, which has been operating in the courts since 2012 and is available nationwide, is ready to receive clients and to conduct the court mediation procedure. The legal institution provides an opportunity for clients who, before/instead of a judicial decision, attempt to reach an agreement on the settlement of their conflict with the help of a court mediator, while at the same time becoming able to resolve their dispute.

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30 Domokos, 2021, p. 111.

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