

Alternative Dispute Resolution in Hungary and in Spain. Are Conflicts Expensive for Us?

**Csilla Kohlhoffer-Mizser, Sandra Lizzeth Hernandez Zelaya,
Felix Puime Guillen, Fernando Enrique Reyes Reina**

Óbuda University Keleti Faculty of Business and Economics
Tavaszmező street 15-17., 1087, Budapest, Hungary
e-mail: mizser.csilla@kgk.uni-obuda.hu

Pontifical University of Salamanca, Faculty of Communications
Campus Champagnat, Street Henry Collet, 90-98, 37007 Salamanca, Spain
e-mail: slhernandezze@upsa.es

University of A Coruña, Faculty of Economics and Business
Campus de Elviña s/n 15.071 A Coruña, Spain
e-mail: felix.puime@udc.es

Salamanca University, Faculty of Economics and Business
Campus Miguel de Unamuno, FES Building, 37007, Salamanca, Spain
e-mail: f.reyesr@usal.es-obuda.hu

Abstract: The warnings of encouraging litigation seem to have fallen into deaf ears, as the number of incoming cases to courts are still on the rise. Nonetheless, to address disputes, there are also increasing numbers of mediation cases. This study compares alternative dispute resolutions in two different national contexts and reviews the possible advantages of this method in conflict management. Our study is intended to review if context can help explain the increasing popularity of alternative dispute resolutions? We examine the status of mediation, as an alternative dispute resolution procedure, in both Hungary and Spain, to compare this alternative to the court proceedings filed annually. The study addresses the question of whether mediation reflects a more economic driven mentality, and what the drivers for this type of resolution are. We also examine the cost to the parties involved in conflicts who choose mediation in both Hungary and Spain. The way conflict is resolved can vary, however acting on a basis of mutual trust in conflict resolution management method, helps to obtain a fairer resolution to the dispute and this can be systematically facilitated. This form of conflict management can also help enable the parties to take responsibility for themselves in resolving their disputes.

1 Conflict is everywhere

Conflict is everywhere. It can be found in human interactions as well as business interactions. Companies involved in formal conflict, search for lawyers and leaders that resolve conflict in an efficient way. This means not only to address the issue of conflict and come to a solution but also to do so with the best use of resources possible and that assures a final solution rapidly. In the last quarter century, alternative dispute resolutions (ADR) has become an increasingly efficient and popular strategy to conflict management. Among the most well-known ADR methods are mediation, conciliation, negotiation and arbitration. (Lieberman, Henry, 1986).

Litigation present a series of inherent disadvantages for companies - the parties lose control, the lawyers and the judicial system have power over the timing and procedure of the conflict resolution, and in result, disputes can take years to come to any resolution. The parties lose the ability to communicate with each other in order to resolve the problem. This causes most business relationships to be ruined and erodes trust and cooperation. Also, the costs of litigation increase significantly due to delays and (mostly) the lawyer's fees. The companies that become embroiled in litigation can lose its competitive advantage.

On the other hand, ADRs have become progressively common due to the advantages to litigation such as benefits in costs, simplicity and maintenance of the power of the entire state of affairs. In case of usage of these methods, a resolution is only reached if both sides accept to engage in this voluntarily. This own-willed approach to a conflict management implies a rationalized approach to the conflict at hand. This same rationalized approach also looks to quick conclusions that allow to construct a scheme to frame the relationship to prevent future disputes.

While there are some notable nuances between the different ADRs, they share the common feature: the dispute is mostly decided by the parties involved and less power is given to the third party involved (i.e. mediator, referees). Whereas in the case of litigation, the jury is granted absolute powers for the resolution of the conflict and to enforce this resolution. In mediation, the parties determine the result of the dispute and are in power of the conflict management the whole time while in arbitration, the result is determined in accordance with a rule, the law applicable. In both cases of ADR, when deciding on a result, the parties can take account for a wider range of rules, and in particular, their respective commercial interests. (Bercovitch & Jackson, 2001) Therefore, mediation and arbitration are procedures based on interests and rights. The fact of taking commercial interests into account also means that the parties can decide the result by reference to their future relationship rather than solely by reference to his past conduct.

As stated by Abraham Lincoln, the role of lawyers in conflict management should be that of a facilitator, and conciliator. If lawyers fail to do so, they will only

magnify the divisiveness and become part of the problem, rather than part of the solution. (Reavley, 1990, Nies, 1991), Rambo, *Lawyering: The Need for Civility in Civil Litigation*, 32 IDEA 1, 1-2. This leads the conflict to transform into a destructive phase in which the parts are adversarial and confrontative. This destructive phase is an outcome that is not desired by the parties and that results in increase of costs, resources and impedes dispute resolution. The relationship between opposing parties and their capacity to cooperate and even trust the other party in their capacity to manage conflict the conflict can be resolved more rapidly, with less cost to the parties and in a constructive manner. This type of resolutions may even help rebuild connections, restore matters to its original state, create new relations between parties and develop communications between them.

The term conflict (Coser, 1956, Dahrendorf, 1959, Pondy, 1967, Fink, 1968) Some conceptual difficulties in the theory of social conflict. *Journal of Conflict Resolution*, XII, 4, has no single clear meaning. Much of the confusion around the definition has been created by scholars in different disciplines who are interested in studying conflict. Reviews of the conflict literature show a conceptual sympathy for, but little consensual endorsement of, any generally accepted definition of conflict. There is tremendous variance in conflict definitions, which is mainly defined according to two approaches. First, a more specific approach which includes a range of definitions for more particular interests or areas. Second, a broader approach which include a variety of more wide-ranging definitions that attempt to be more all-inclusive in the subject matter. We use the definition of Rahim (2011) which is more of a broader approach. According to this author, "conflict can be considered as a breakdown in the standard mechanisms of decision making, so that an individual or group experiences difficulty in selecting an alternative". Conflict is even published by authors on the side of peace: "Peace is nothing more than a change in the form of conflict or in the antagonists or in the objects of the conflict, or finally in the chances of selection." (Coser, 1998)

Some important aspects to consider regarding the nature of conflicts are the intentions, motives and evolution of the interests of the parties involved in the dispute. If the parties are focussed on one aspect of the nature of the conflict and mistrusts the opposing party, this might escalate and impede alternative dispute resolutions. In acting as problem-solvers and looking to resolve the conflict, the parties develop some trust in the conflict management process. This can be seen as a: "agree to disagree" approach to conflict. The development of trust between parties, even though they disagree on an issue, can be an asset and may help reduce transaction costs. This approach favours ADRs methods such as mediation or arbitration. (Cserépi, 2017):

2 Price of the conflict

2.1 Hungary

In the case of Hungary, the conflict management revolves around different litigation costs. Some of the most important costs are signalled in the study. In the case of litigation, which continues as the most popular formal conflict management procedure there are several costs to bear in mind. First, one can clearly compare the type of costs a plaintiff might have during a civil procedure. To this point, a plaintiff reviews general data about court fees. Regarding the court fees, the most significant question is the cost of court fees which depends on the value of the cause of the lawsuit.

Another important cost other than court fees is the court fee duty which has to be paid before or simultaneously with the filing of the complaint. This duty can amount to 6 per cent of the disputed claim, (therefore this is not a fixed cost, rather it is proportional to the amount of the dispute).

In other alternative dispute resolution methods and civil and non-litigation proceedings, this fee is based on, unless otherwise provided by law, the value of the subject-matter of the proceedings at the beginning of the proceedings and the value of the claim or part of the claim disputed in the appeal proceedings. When the value of the subject matter of the proceedings cannot be determined, and unless otherwise provided by law, the basis for calculating the fee of civil litigation shall be:

- 1089€ in litigation before the district court and 622€ in non-litigation proceedings;

At the Tribunal:

- 1867€ for litigation at first instance and 1089€ for non-litigation proceedings,
- In appeal proceedings, in the case of litigation, 933€ and in non-litigation proceedings 529€,
- In appeal proceedings before the court of appeals, in case of litigation 1867€,

in non-litigation proceedings 933€;

- Retrial procedure: 1556€ in appeal proceedings
- 2178€ in the review process (1990:XCIII. Act on Fees)

If a party states several claims arising from a legal relationship or from several legal relationships in a proceeding, the total value of the submitted claims shall be

taken into account in determining the value of the subject matter of the proceedings.

- The fee for the divorce is 93€. It is not possible to take into account the value of the claim for the settlement of the housing usage in a marriage dissolution claim when determining the fee. If the party claims other property rights, only a portion -over divorce case fee- will be paid.
- Fees for labour disputes - if the value of the subject matter of the proceedings cannot be established - 31€.

In Hungary, the costs of the fees of experts, translators, interpreters and the compensation of witnesses are also regarded as procedural costs. Other costs in connection with the court procedure are the costs of administrator trustees, the costs of inspections conducted on premises (cost for “going over” or local inspection) and the costs of the courts' correspondence.

2.2 Spain

The conflict management for litigation processes in Spain is complex due to the combination of relations between the various legal operators and the authorities several different authorities (autonomous) that make up the public judicial administration. The judicial system is often criticized for the excessive slowness on the one hand, opaque functioning (particularly for citizens), and because its considered to be excessive or disproportionate regarding its costs.

There have been notable efforts of the Central Government and the Autonomous Communities Governments to improve the efficiency and effectiveness of the services offered by this public service. Efforts have been concentrated in two fronts: First, through the creation of public offices that provide a structure for the various legal professionals (lawyers, prosecutors, and experts to a lesser extent). Second, the governmental agencies have adopted a tariff regulation specifically designed to protect people from risks that may result from a lack of information. Nonetheless, there are still many legislative loopholes and several instances found through litigation that are seriously damaging to citizens and make processes unnecessarily long.

The total cost of a procedure depends not only on the professionals who will be involved, but also on the nature of the dispute of the type of procedure and its complexity. To any of the fees that plaintiffs face, a fixed fee for right of procedure is added that is calculated according to the dispute and the person (physical or juridical). Tax fees have to be paid before any introduction of proceedings. Intervening agents, translators and interpreters may also be involved depending on the complexity of the dispute, which will result in a higher cost than the mere intervention of a lawyer and a prosecutor. The lawyers' fees will vary according to the Autonomous Community and the territory of this according to the

province. In fact, each Bar Association (i.e., Madrid, Castile and Leon, Barcelona, Andalusia) publishes its own criteria for guidance on fees, while the rights of prosecutors are set for the entire territory of the Spanish State and the Fixed procedure fee is also a national tax.

Plaintiffs can obtain an idea of the proportion of each cost in proportion to the value of the disputed claim (even though some are not stated according to the value of the dispute and are fixed taxes). A regular litigation process in Spain is more or less reflected in these costs:

Court fees	10% - 30%
Bailiff fees	5% - 20%
Lawyer fees	80% - 95%
Expert fees	5% - 15%
Witness compensation	1% - 3%
Translation/interpretation	10% - 20%

When analysing litigation processes in a more international viewpoint, the legal costs can be considerably higher, precisely because of the cross-border nature of the dispute. In these cases, plaintiffs should consider the increase in the costs of translations and interpreters, of witnesses and lawyers travel, if deemed necessary. Increase in costs are also manifested in the more expensive costs for notification or execution of decisions, or those related to the obtaining of evidence. All of these cross-border litigation costs can be a barrier to access to justice, and increase the transaction costs for litigation, primarily to individuals and small companies.

The fixed fee for cost of procedure (bringing the conflict to the courts) mentioned previously are generated according to a fixed scale. These costs are represented in the following manner:

- In civil matters the fixed costs range from 90 to 600 € according to the procedure:
 - 90 € for civil proceedings oral and negotiable instruments.
 - 150 € for ordinary procedures, judicial liquidation of companies, or forced execution of enforceable titles of extrajudicial origin as stated in Article 517 of the Code of Civil Procedure.
 - In administrative litigation matters, the fixed cost is:
 - 120 € for a quick procedure.
 - 210 € for an ordinary procedure.

To the taxable base litigators add a variable cost according to the applicable percentage which varies, according to the rules of procedure between 0,5% to a

maximum of 1 million euros and 0,25% of the amount of the litigation decided by a judge, but never exceeding 6,000 €.

To this fixed procedural tax may be added, if the proceedings so require, costs relating to the copies of the application and the attached documents to be submitted at the same time as the lawsuit. Each copy must be accompanied by as many copies as there are parties to the proceeding, the original documents must be delivered to the judge. These other procedural costs also include obtaining, once the judgment has been rendered, original documents brought to the proceedings and that each party is entitled to be returned. While these might not seem to be elevated costs, and depend on the issue of the conflict and number of parties involved, they may prove to be relevant if there is an elevated number of parties and subject matter. These expenses are paid by the public prosecutor, who presents to his client a bill of fees that takes into account these fees and whose rates set by Royal Decree 1373/2003 of 7 November published in the Official State Gazette no. 278 of November 20, 2003 and are as follows:

- To obtain and authorize copies, the public prosecutor will receive the sum of 0,16 euros per sheet (Article 85).
- For any request to the court of restitution of the documents or obtaining a copy of the judgment rendered certified in conformity with the original the prosecutor will perceive the sum of 2.97 €, (Article 88).

Article 24 of the Royal Decree also provides that the parties shall pay the following procedural costs:

1.- For each request for the provision of a deposit, for the presentation of documents outside the time allowed for the presentation of evidence, for the lifting and cancellation of a confiscation, for the determination of the amount of the procedure, for an adjudication, a subrogation of rights or a withdrawal, the public prosecutor will receive the sum of 22,29 euros for each one of them.

2.- For each request for measures to provide a guarantee to the creditor, such as the anticipated methods of proof, the preventive entries of confiscations entered on the public registers such as those of the property and their extension, the opposition to the confiscation by a third party, confiscation of remuneration, increases in the amount of confiscation, and confiscations of convictions in absentia, the prosecutor will receive the sum of 37.15 euros.

3.- For the patrimonial investigation carried out, the public prosecutor will receive the sum of 30 euros.

One of the mentioned shortcomings of the litigation process are its many (and long) phases. After a first lawsuit is filed, there are several appeal processes that might be taken. This of course impacts in the length and duration of the conflict. Some of the costs related to these appeals are:

Fees for the payment of a fixed procedural right for judgments that may be the subject of an administrative appeal, this appeal can be both before the civil court that before the administrative court contentious in case of judgment at first instance, or an appeal in cassation against the judgments of the Court of Appeal as described in Article 35 of Law 53/2002.

As in the first instance, this right includes a fixed share according to the procedure and the jurisdictional order, and a variable rate whose result is obtained by the application, at the tax base determined by the procedural laws, of a pre-established rate according to the following scale:

- The fixed share in both the Civil Juridical Order and Administrative Litigation:
 - 300 € for appeal proceedings.
 - 600 € for the appeal in cassation (last instance/high court).
- Variable rate: From 0 to 1,000,000 € the applicable rate is 0,5%
 - For the sums above the applicable rate is 0.25%, up to a maximum of 6.000 €.

The table below provides a summary and comparison of fixed (not litigation subject matter value-based) litigation costs in Hungary and in Spain.

Hungary	Spain
When the value of the subject matter of the proceedings cannot be determined, and unless otherwise provided by law, the basis for calculating the fee of civil litigation shall be: - 1089 € in litigation before the District Court and 622 € in non-litigation proceedings.	In civil matters the fixed costs range from 90 to 600 € according to the procedure: - 150 € for ordinary procedures, judicial liquidation of companies, or forced execution of enforceable titles of extrajudicial origin as stated in Article 517 of the Code of Civil Procedure. - 90 € for civil proceedings oral and negotiable instruments.

At the Tribunal: - 1867 € for litigation at first instance and 1089 € for non-litigation proceedings, - In appeal proceedings, in the case of litigation, 933 € and in non-litigation proceedings 529 €, - In appeal proceedings before the court of appeals, in case of litigation 1867 €, □ in non-litigation proceedings 933 €; - Retrial procedure: 1556 € in appeal proceedings - 2178 € in the review process (1990:XCIII. Act on Fees)	The fixed share in both the Civil Juridical Order and Administrative Litigation: - 300 € for appeal proceedings. - 600 € for the appeal in cassation (last instance/high court). Variable rate: From 0 to 1,000,000 € the applicable rate is 0,5% For the sums above the applicable rate is 0.25%, up to a maximum of 6.000 €.
---	---

Table 1.: Comparison of fixed (not litigation subject matter value-based) litigation costs in Hungary and in Spain.

Source: own research

3 Data Collection

To go deeper into the topic of analysis, we contacted experts on the subject. The profile of the subjects were lawyers, businessmen and officials from both Spain and Hungary. We consulted them on the topic of analysis, the research tool used was a survey. The survey can be defined as a primary technique of obtaining information, based on an objective set of people. The data collection is made up of a series of questions that the researcher administers and applies to the people of analysis in order to obtain the necessary information to determine the values or responses of the variables in the study. (Malotra, 2018). The study made a questionnaire in the subject of costs of court proceedings and costs of alternative dispute resolution in the countries mentioned. In each country 20 expert people were contacted and responded the questions. The questions of the study focused in asking about the cost of litigations and cost of ADR, specifically:

1. Do you know the difference regarding the formal method of conflict resolutions:
a. litigations (Court proceeding) or b. the costs of alternative dispute resolution (ADR) such as Mediation and Arbitration?

2. Are the cost of alternative dispute resolution (ADR) inferiors to the litigations (Court proceeding)?

- The 45% of respondents know the differences between the ADRS and the cost of litigation because they have heard it from other people, such as: acquaintances, friends, colleagues, lawyers.
- The figure shows that 30% of respondents know the differences between ADRS and the cost of litigation because they experience with them.
- The rest of the participants 25% they cannot provide information about it. In many cases, companies/Businesses do not know about their existence, which is an obstacle to its potential use.

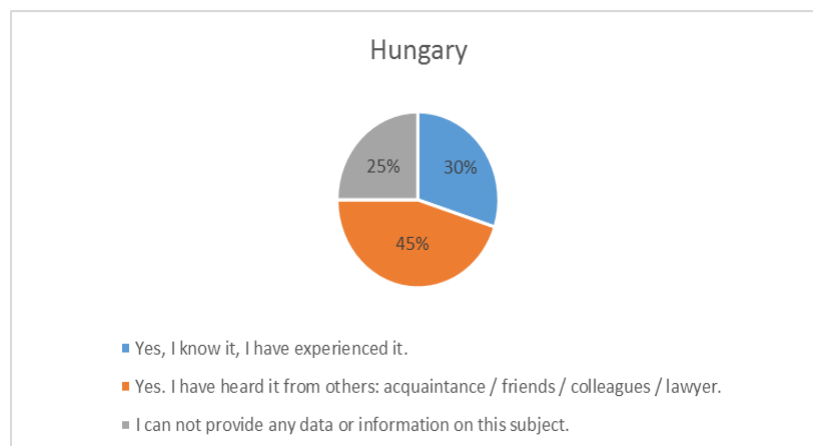


Figure 1. Identification of differences between methods of conflict resolutions (ADR/Litigation) in Hungary

Source: own research

- The figure shows that 55 % of respondents know the differences between ADRS and the cost of litigation because they experience with them.
- The 35% of respondents know the differences between the ADRS and the cost of litigation because they have heard it from other people: Acquaintance, friends, colleagues, lawyers.
- The rest of the participants 10% they cannot provide information about it. Some define ADR as parallel judgments and this positioning is detected in other interviews.

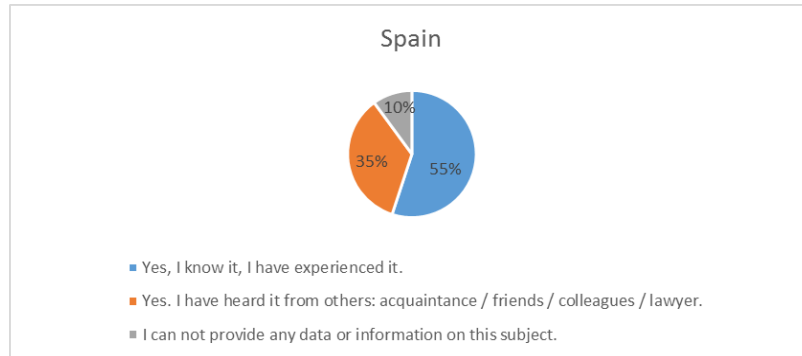


Figure 2. Identification of differences between methods of conflict resolutions (ADR/Court Proceeding) in Spain

Source: own research

In Spain most participants know the difference between ADR and Cost of litigations because they have experienced with them. Regarding Hungary most participants know about the difference because they have heard it from another person (Lawyer, colleagues, friend, acquaintance). It is important to highlight that one of the motives of the unawareness of the conflict resolution methods is the limited knowledge that exists of methods that comes from press releases and publicity campaigns from the Chamber of Commerce to advisers or articles in the press in both countries.

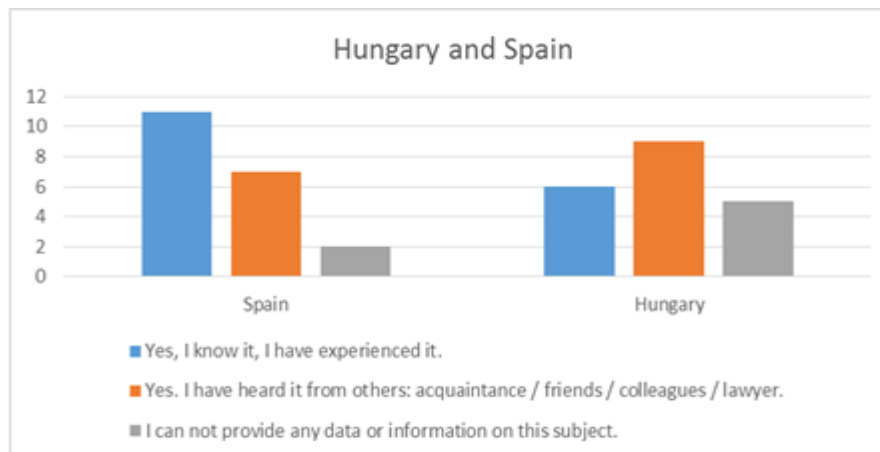


Figure 3. Comparative figure with information of both countries (Hungary and Spain) regarding question 1.

Source: own research

Once we had asked of the knowledge of the formal conflict management options, we focus on the knowledge of the cost implications of each of the strategies. We then asked about the awareness of the cost relation and to know about the reputation or experiences of the experts we have consulted. The 45% of the participants knew about the inferior cost of ADR because they have heard it from others (Acquaintance, friends, colleagues, lawyers). The 30% of participant knew that the cost of alternative dispute resolution (ADR) are inferiors to the litigations (Court proceeding) because they have experienced it. The rest of the participates (25%) can not provide information about this cost differences.

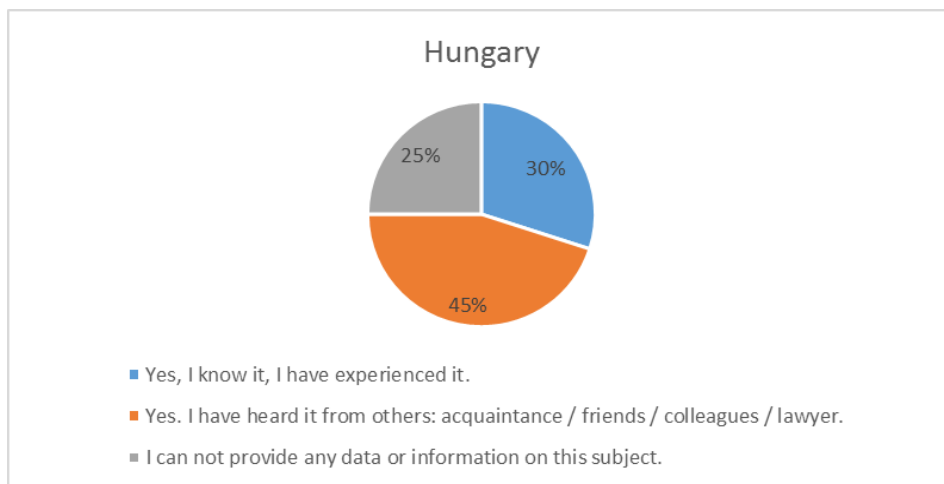


Figure 4. Perception of Cost of ADR inferiors regarding the cost of litigations in Hungary

Source: own research

In Spain the 45% of participant knew that the cost of alternative dispute resolution (ADR) are inferiors to the litigations (Court proceeding) because they have experienced it. The 35% of the participants knew about the inferior cost of ADR because they have heard it from others (Acquaintance, friends, colleagues, lawyers). The rest of the participants (20%) cannot provide information about this cost differences.

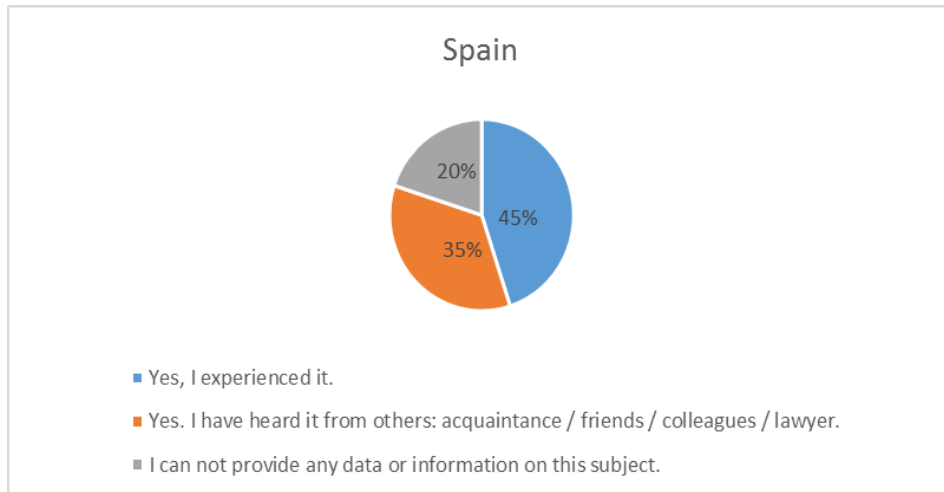


Figure 5. Perception of Cost of ADR inferiors regarding the cost of litigations in Spain

Source: own research

In Spain most participants know about the inferior cost of ADR because they have experienced with them. Regarding Hungary most participants know about the difference because they have heard it from another person (Lawyer, colleague, friend, acquaintance).

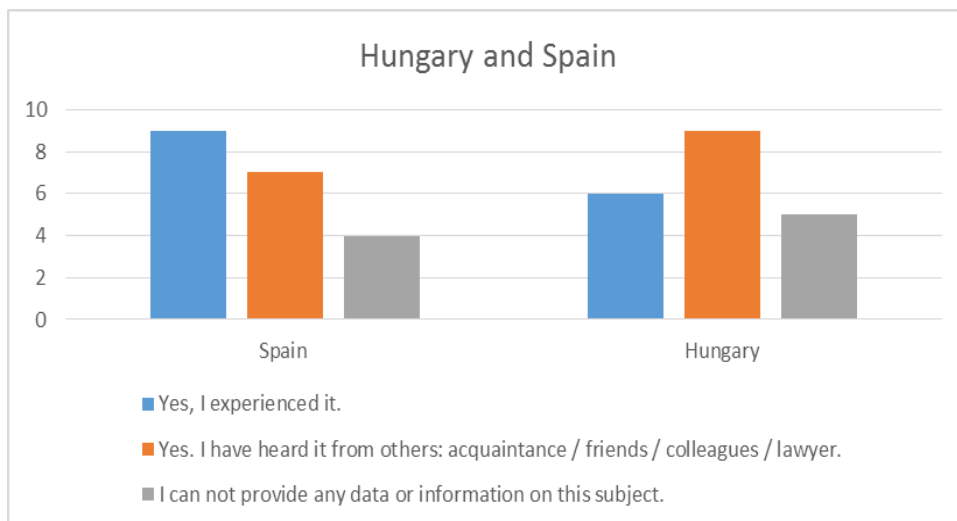


Figure 6. Comparative figure with information of both countries (Hungary and Spain) regarding question 2.

Source: own research

Conclusions

The results of this study suggest that according to the current data of proceeding fees, alternative dispute resolution in terms of cost, are a more economical alternative in conflict management as they allow a more expedite resolution. In addition to court proceedings, alternative dispute resolution (i.e. mediation, arbitration) is another way to achieve a lasting more peaceful solution to conflicts. As it allows the parties to maintain the negotiation power necessary to conduct the conflict management, it helps them keep communications open. This also seems to be hinted in the respondents' answers to the above question in this study performed in Hungary and in Spain. There is an almost 50% divide in those who prefer to compromise and will even accept a certain loss of power in order to obtain a better resolution. The study highlight the significance of power relationships in conflict management and the selection of ADR. The preference towards ADR is an indication that parties see the conflict resolution as an opportunity to grow and progress the relationship with other parties rather than a battle that must be won. As the Spanish saying suggests: "It is best to have a bad resolution than to have a good conflict". There is also indication of a 50% chance the conflicts is resolved satisfactory for the parties. Results in different contexts do not signal significant differences in the selection of ADR or litigation as conflict management strategies. The conditions under which ADR are chosen in conflicts (particularly in international conflicts) have not yet been fully reviewed. This study brings attention to the effect of context on this choice. The findings point to a general increase in ADR in both contexts, while litigation seems to be on the rise as well at a slower pace. This suggests that firms are eager to find more cost-effective solutions and that conflict management positions that are less confrontative are increasingly preferred. The study postulates that formal disputes that are characterized by willingness of the parties to settle peacefully, maintain cooperation and surrender a position of power to reach a better resolution for the parties will increasingly pick ADR over litigation procedures. This is a promising outcome as companies seem to be looking to diminish the cost of conflict in different contexts.

References

- [1] Bercovitch J. & Jackson R. (2001). Negotiation or Mediation?: An Exploration of Factors Affecting the Choice of Conflict Management in International Conflict. *Negotiation Journal* Volume17, Issue1, Pages 59-77.
- [2] Coser, L.A. (1956): *The Functions of Social Conflict*. Glencoe, Illionis, Free Press
- [3] Coser, L.A. (1998): *The functions of social conflict*. The International Library of Sociology

- [4] Cserépi, J. (2017): FIN NET and INFO Network: international networks of alternative dispute resolution schemes and entities. AKV Európai Szemle
- [5] Dahrendorf, R. (1959): *Class and Class Conflict in Industrial Society*. Stanford, California: Stanford University Press.
- [6] European Commission DG for Freedom, Justice and Security FINAL REPORT (2007) Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union.
- [7] Fink, C.F.: (1968): Some conceptual difficulties in the theory of social conflict. *Journal of Conflict Resolution*, XII, 4: 413-458
- [8] Guido Calabresi (1970). *The Costs of Accidents, a legal and economic analysis*, Yale University Press.
- [9] Jethro K. Lieberman and James F. Henry (1986) *The University of Chicago Law Review* Vol. 53, No. 2 (Spring, 1986), pp. 424-439
- [10] Malotra, N.K. (2008). *Investigación de mercados*, Quinta edición, México: Pearson Educación.
- [11] Helen W. Nies (1991), Rambo, *Lawyering: The Need for Civility in Civil Litigation*, 32 IDEA 1, 1-2.
- [12] Pondy, L.R. (1967): Organizational conflict: concepts and models.” *Administrative Science Quarterly*, 12: 296-320
- [13] Rahim, A.M. (2011): *Managing Conflict in Organizations*, Tylor & Francis.
- [14] Report on the activities of the Hungarian Arbitration Board, Budapest, 2017. <http://www.mnb.hu/letoltes/pbt-2017-hun-0301-2.pdf>
- [15] Thomas M. Reavley (1990), Rambo *Litigators: Pitting Aggressive Tactics Against Legal Ethics*, 17 Pepp. L. Rev. 637, 637.