

Sustainable Real Estate Markets Policy Framework and Necessary Reforms
Athens, Greece, 19 – 20 September 2016

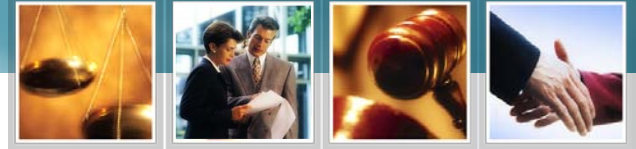


Effective management of real estate and land disputes through mediation

Constantin-Adi Gavrila

Mediator

The camels dilemma¹

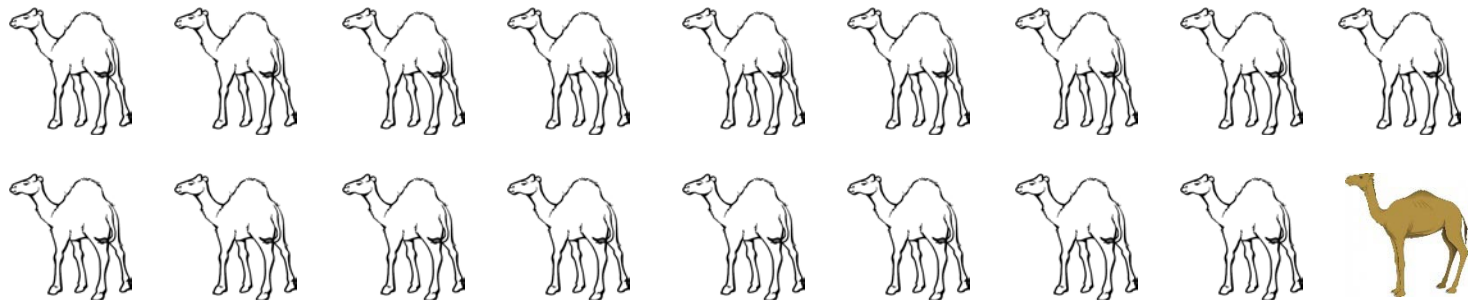


A man decided to leave whatever property he will have when he will past away to his three sons as following:

First born	$\frac{1}{2}$ of the property	9 camels
Second born	$\frac{1}{3}$ of the property	6 camels
Third born	$\frac{1}{9}$ of the property	2 camels

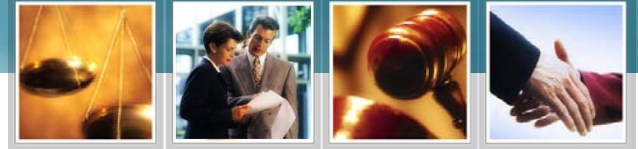
Property: 17 Camels

Total: 17 camels



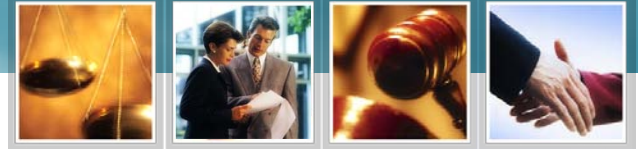
¹ Adapted from William Ury's three brothers and 17 camels

Farmer's dilemma: An example



- We all face dilemmas, challenges every day
- Sometimes is good to step back and take perspective
- Sometimes, a third side can help
- Mediation is a way

Challenges of the real-estate markets



- inefficient policies to promote the development of land and property markets;
- uncertainty of real estate markets;
- financial crisis affecting several countries;
- inadequate regulation of real estate and financial markets;
- inability to engage in effective and constructive dialogue;
- difficulties in engaging constructively with project stakeholders;
- and other causes

How are we addressing those challenges



Non-Binding

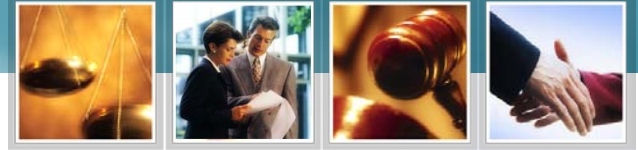
Negotiation

Binding

Arbitration

Trial

An alternative way ...



There are alternatives ...

An alternative way ...



- The term ADR is an abbreviation for "Alternative Dispute Resolution". In recent years, this term was replaced by "Appropriate Dispute Resolution" - or simply the "Dispute Resolution"
- Methods "ADR" (appropriate methods of dispute resolution) are part of a continuum of options for conflict resolution.
- In most cases, given that the parties have chosen a method of conflict resolution, there is no question of excluding other ADR methods.

An alternative way ...



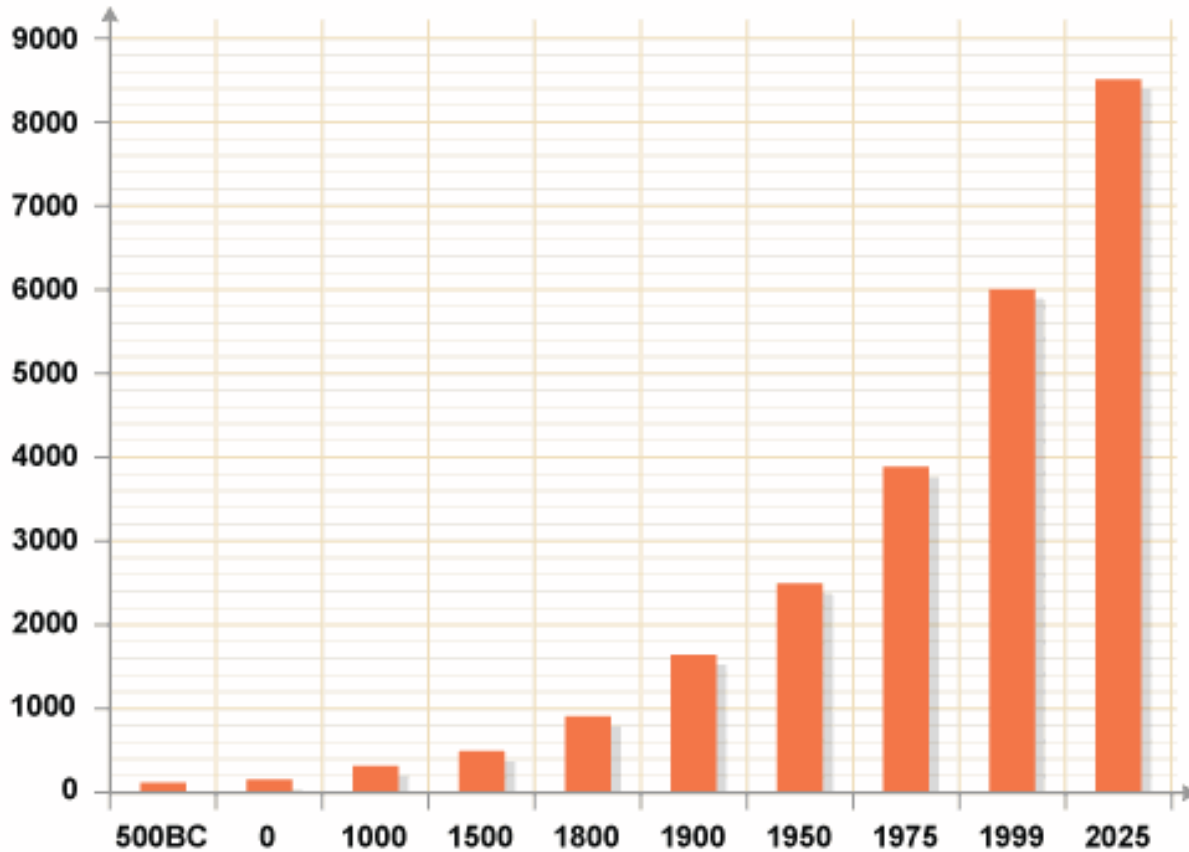
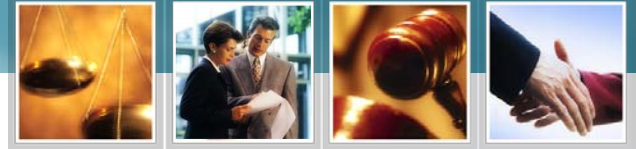
UN Report: State of World Population 2011

„The world's population is going to continue to grow and we may as well be prepared“

„We have a chance right now in our world of seven billion to build a more stable, more socially just world by the time we reach 10 billion, **but that requires us to act now**“

An alternative way ...

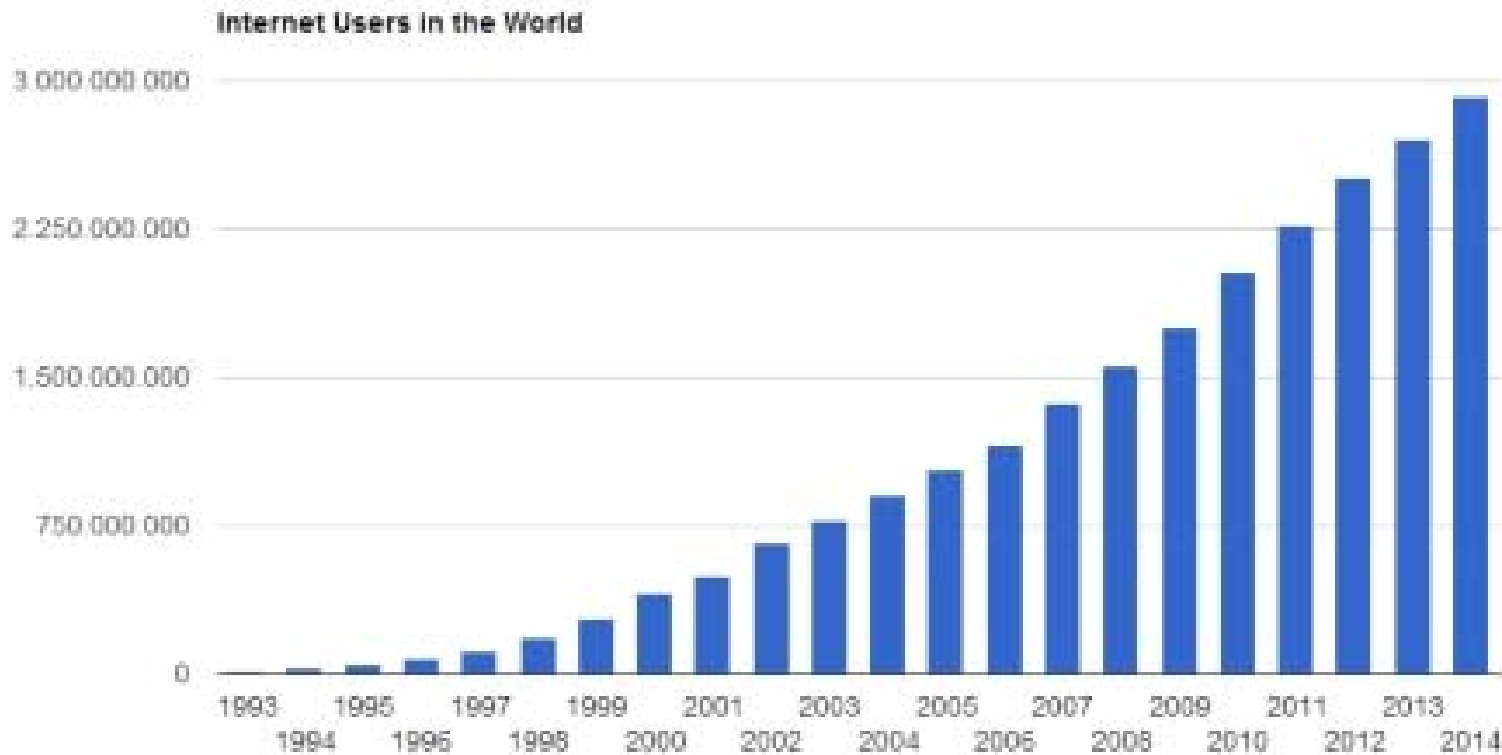
World population



Current
grow rate
1 mld / 15 y

An alternative way ...

Use of Internet

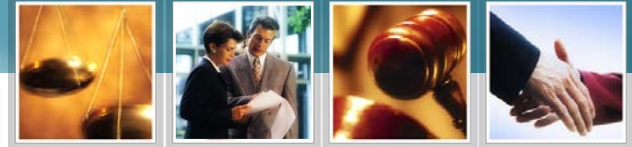


Current
growth
rate
7 users
/ sec

Source: <http://www.internetlivestats.com/>, 25 may 2014

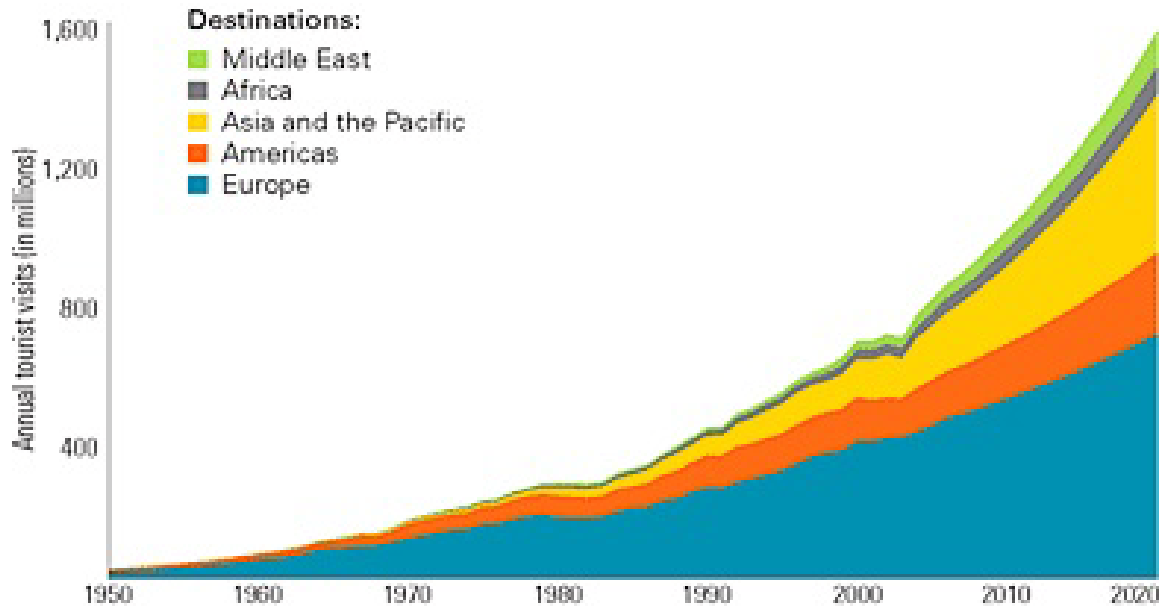
An alternative way ...

International air travel



Travel Explosion

The United Nations predicts that the annual number of international tourist visits will roughly double to 1.6 billion by 2020.

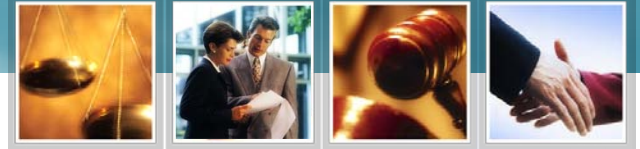


Source: United Nations World Tourism Organization, 9284400308

Source: United Nations World Organization

An alternative way ...

Conclusion

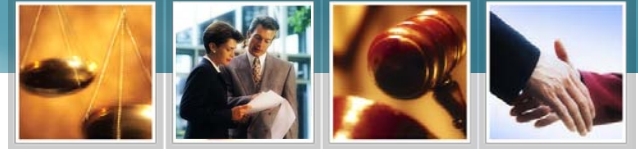


The people are changing

The world is changing

The justice is changing

An alternative way ...



PROBLEM

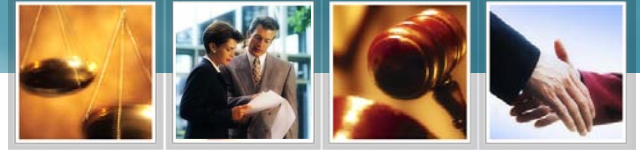


What image comes to our mind ?

An alternative way ...

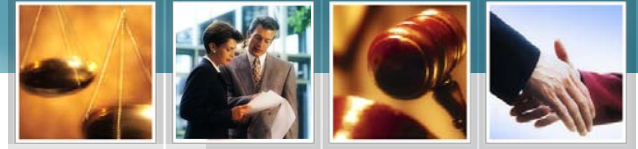


An alternative way ...

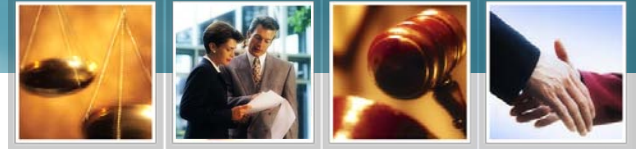


Solution ?

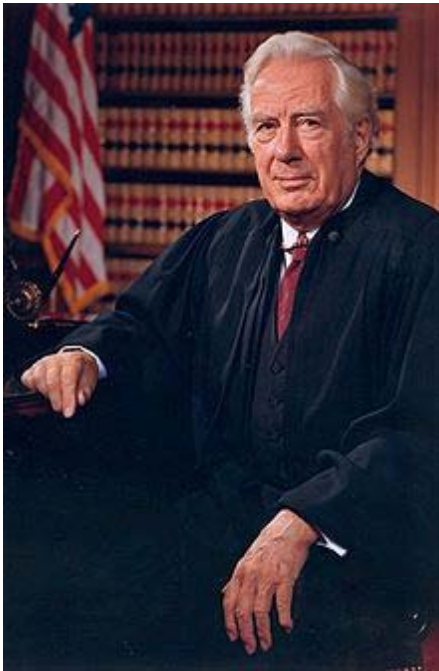
An alternative way ...



An alternative way ...



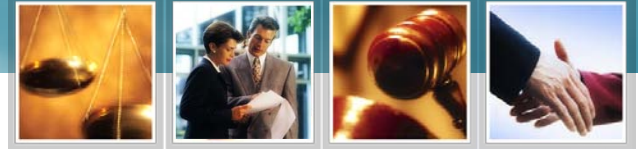
Chief Justice Warren E. Burger, (Ret.) U.S. Supreme Court



1976, Pound Conference

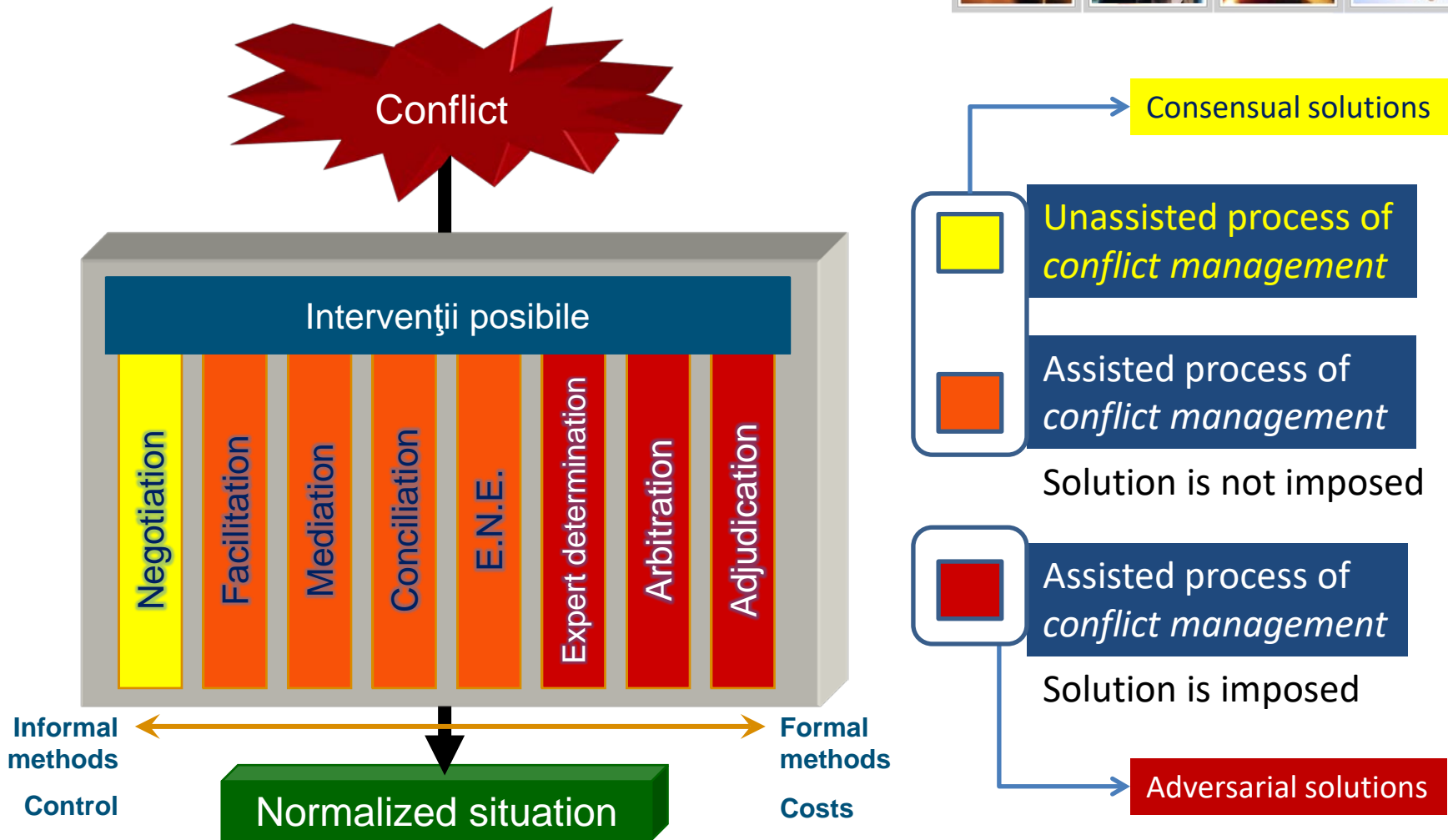
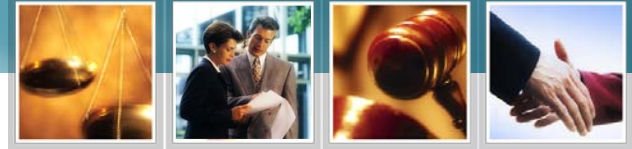
„Traditional litigation is a mistake that must be corrected... For some disputes trials will be the only means, but for many claims trials by adversarial contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for really civilized people.,,

An alternative way ...



Forms of ADR

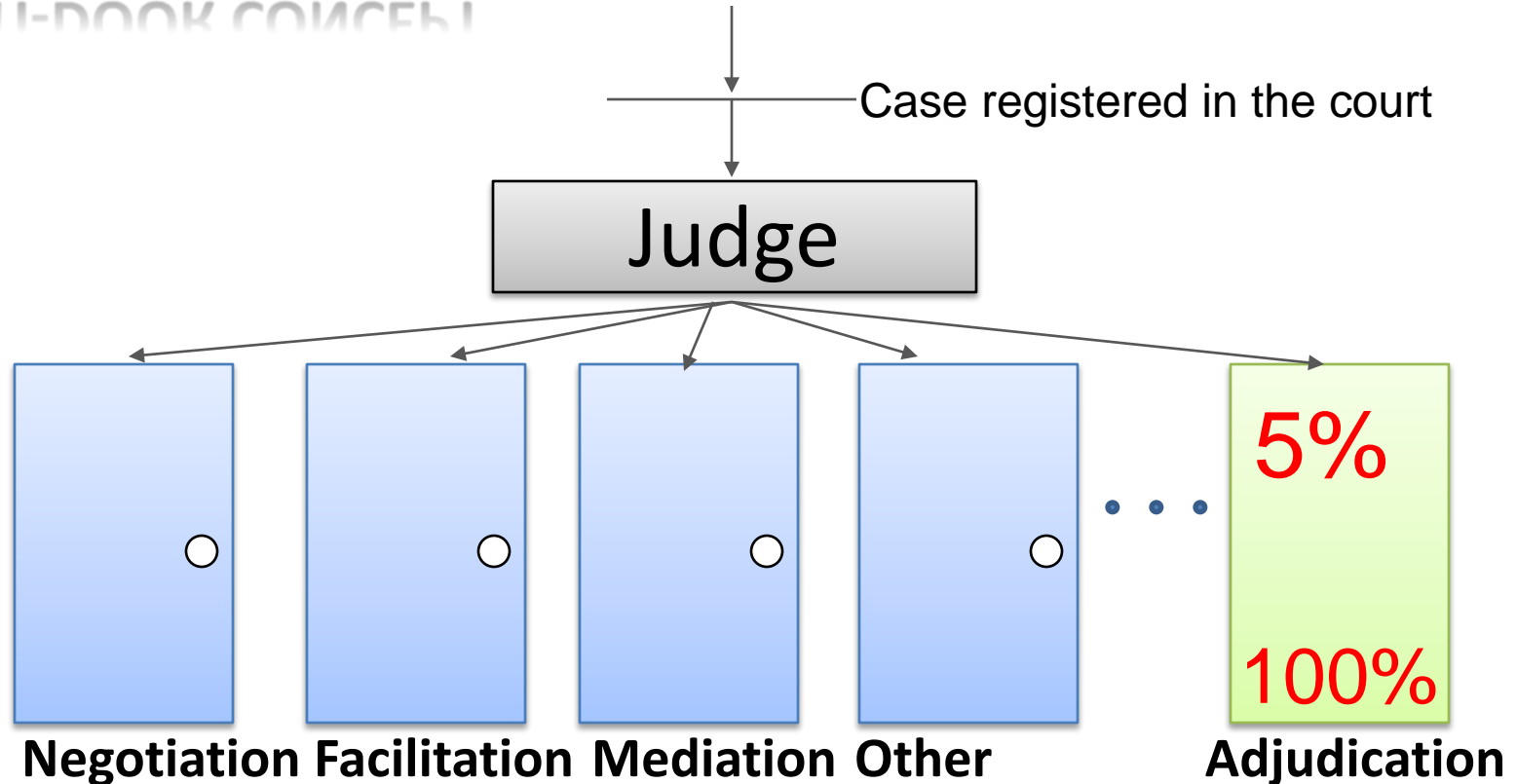
An alternative way ...



An alternative way ...



MULTI-DOOR CONCEPT



Mediation

What is mediation?

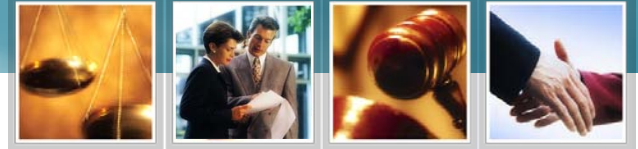


Art.3 (a) Directive 2008/52/CE

‘Mediation’ means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

Mediation

Structure of the mediation process

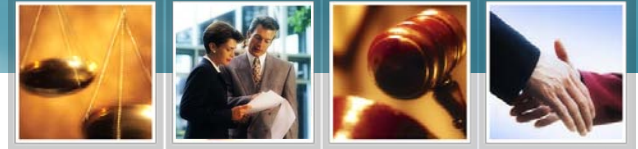


**UNDER EVERY
DEMAND / POSITION /
REQUEST**

**IS
AN INTEREST**

Mediation

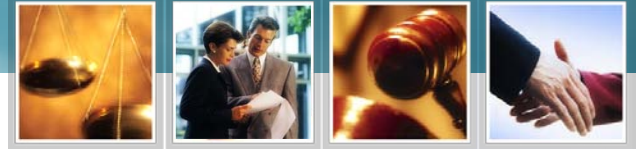
Structure of the mediation process



PEOPLE MAKE DECISIONS
DEPENDING ON HOW
THEIR INTERESTS ARE ADDRESSED
AND NOT
DEPENDING ON THE
ACCEPTANCE OF THEIR DEMANDS

Mediation

Structure of the mediation process



1. *Preparation (Mediator and parties)*

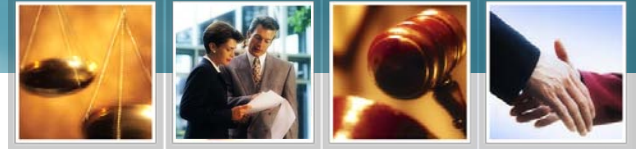
 2. **Opening statement (Mediator)**
 3. **Information exchange (parties' opening statements)**
 4. **Identification of the issues/Agenda (Mediator & parties)**
 5. **Setting of the initial positions (Mediator and parties)**

 6. **Needs exploration** (Mediator and parties)
 7. **Interests identification** (Mediator and parties)
 8. **Options generation (Parties and mediator)**
 9. **Negotiation (Parties and mediator)**

 10. **Mediation agreement (Mediator and parties)**
 11. **Closure (Mediator)**

 12. *Implementation & monitoring of the agreement (Parties)*
- Joint session
- Separate session(s)
- Joint session

When can we try mediation



- need independent facilitation for dispute prevention or resolution purposes;
- fail to communicate effectively;
- need capacity to engage in constructive dialogue;
- would like to manage the risks associated with an adjudicative process;
- and other.

Mediation

The benefits of mediation



For parties

- Risk reduction
- Time effective
- Cost effective
- Better control over outcome
- More flexible (e.g. communication rules, process)
- *And other*

Mediation

The benefits of mediation

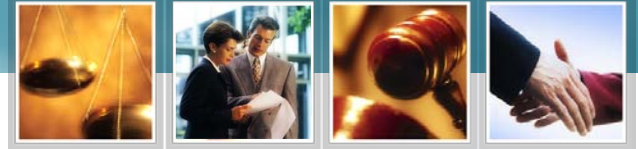


For institutions

- More effective justice
- Unburden of high caseload of the courts
- More effective use of public/private funds for the delivery of justice/conflict management
- New professional opportunities

Mediation

The benefits of mediation



The risks

- Parties' exposure
- Use of mediation in bad faith
- Use of mediation in order to learn of the other's strengths
- Growth of violence
- *Other*



Thank you !

Constantin-Adi Gavrilă
adi.gavrila@rdscv.ro