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**(In-House) Mediation as a Tool in Higher
Education Conflict Management**

The Austrian Experience

**ENOHE
(European Network of Ombudsmen
in Higher Education)**

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The **European Network of Ombudsmen in Higher Education (ENOHE)** is an informal network of academic ombudsmen in Europe. The network consists of ombudsmen at higher education institutions and individuals affiliated with institutes of higher learning who are interested in ombuds practice (www.enohe.net).

The **Office of the Austrian Student Ombudsman (OASO)** performs the following tasks:

- it is dealing with complaints about shortcomings in the performance and services of higher education institutions
- it keeps direct communication lines with representatives of the universities, the universities of applied sciences, the teacher training colleges, and with interest groups or representative bodies such as the Austrian Union of Students or other relevant organisations and groups.
- it reports directly to the Minister and to the Parliament with an report.

The inquiries and complaints submitted to the OASO are examined and efforts are made, together with the respective institutions, to find solutions to problems or to remedy acute shortcomings. The OASO runs its own web site where students are informed about the most frequent topics and where a collection of internet links refers them on to other important internet sites.

Apart from students, the OASO can also be consulted by faculty members, parents and partners of students. In cases which cannot be directly settled by the institutions concerned, the OASO tries to provide assistance through mediation. Further important tasks of the OASO are to report to the Minister of Science, Research and Economy and to the parliament, and to come up with position papers and statements on draft laws on higher education.

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1. Introduction: The Focus of the Investigation

1.1. Universities and their Current Challenges

The contextual objects of interest in this study are conflicts at universities and colleges and the tools needed to manage and deal with them. In this regard, the term "university" (from the Latin *universitas*, "entirety", which in the Middle Ages originally referred to *universitas magistrorum et scholarium*, a "community of teachers and students") refers to the oldest and, traditionally, highest-ranking form of scientific institution. Today, after appropriate differentiation and the expansion of scientific disciplines it is an educational institution with the privilege to award scientific and academic degrees and is tasked with the maintenance and the development of science through teaching and research.

The term "university" (a generic term) will be used in order to subsume various different scientific and application-oriented institutions in the tertiary sector.

Since the beginning of the new millennium, universities have been faced with the challenges presented by vast changes and, partly, long-overdue reforms, both on the national and the international level (Rüegg, 2010, p. 44; Gürüz, 2011, p. 18).

Institutions of higher education are characterized by far-reaching and daily changes both regarding their content and their organizational structures. On the national level this is due to constant reform legislation and its immediate, medium, and long-term effects.

Many elements of these reforms, including the introduction of quality assurance, accreditation and certification, and other similarly relevant issues are accelerated by the so-called "Bologna Process" (named after the Bologna Declaration of 1999 on the Harmonization of the European Higher Education Area) both at the European and the international level (Gürüz, 2011 p.183). The consequences for the national higher education systems include, among other things, the introduction of the Bachelor - Master - Doctorate System.

"Outsiders" have been increasing their demands on the universities steadily in recent years: politics, economy, and interest groups are calling for "new graduates", being produced by educating them with socially relevant, practical and directly applicable knowledge. The production of knowledge as well as the methods of knowledge-transfer (keyword e-learning) have also been subjected to drastic changes.

The tightening framework described above is also the result of a scarce and further decreasing amount of resources. As a result, individual students are faced with difficult situations, that (depending on the chosen discipline) concern only some, several, many or a vast number of students. This can already be the case at the beginning of a student's career or at the end of his or her studies while writing a thesis, given unbalanced individual teacher ratios for each student. Naturally, such a bottle neck situation also results in tense working conditions for teachers and professors.

The event-related media presence of different issues pertaining to universities, especially at the beginning of each new semester, shows that conflicts may be interesting both to the media and the public at large at any time. Examples include the closure or hiatus of certain fields of study at specific universities, as well as the discussion about the (re-)introduction of tuition fees, the restriction on the number of students, or even about the (only partly) effective scholarship system. This discussion has been interrupted time and time again for political reasons, but it has not yet been concluded and, hence, flares up constantly. All these issues have different ways to impact the individual students' lives and therefore on individual conflicts as well. And these conflicts continue to be of relevance.

1.2. Conflict Management as a Concept

The word "conflict" (from Latin *confligere*, "to clash, to fight") refers to the meeting of different interests, goals and values of individuals, groups or organizations, which is usually accompanied by (intense) feelings and leads to various kinds of behavior. In addition to the persons involved, the emergence of conflict has a lot to do with the transmission of information, when circumstances include missing or wrong elements.

"Management" (from Italian *maneggiare*, "to lead by the hand") means planning, leading, organizing, directing, controlling and is used in multiple variants in composites; for instance in the operational, or organizational context in the field of quality development in terms such as motivation management, relationship-management, design-management, improvement- or innovation-management, or proposal-management. Regarding the work of universities, the term can be found in compound nouns such as complaint-management and idea-management (Thumser-Dauth et. al., 2009, p. 4).

The concept of conflict management is central to this study and the focus of its discussion. The term is a phenomenon and a concept being used in many areas. The term conflict management will be used in the present study instead of other similar terms in use such as "conflict treatment", "conflict solving", and "dispute resolution", given that it is also the term preferred in the relevant research literature (e.g. Glasl 2002, team businessmediation, 2006 or Schwarz, 2010). In his essay regarding the various terms in the field of conflict handling Friedrich Glasl (Glasl, 2004, p. 22) writes about the technical term conflict management, which he regards as a general umbrella term, using the following words:

"Conflict management means that interventions are mainly geared towards the conflict process [...] so that the conflict may take a better course. By improving the ideas, attitudes, and behavior of the parties to the conflict one attempts to break up the increasing aggression. Often conflict management is based on the notion that opposition is an essential element of social life and, therefore, the parties should learn to deal with them in a less destructive manner."

After discussing several other methods of conflict treatment, Glasl concludes that it is impossible to say from the outset which method will be successful and which one will not. What matters most is the particular situation and the willingness of those involved, the time available to find a solution as well as their energy and expertise. The field analyzed in this study is a well-

diversified, but very hierarchically stratified social and organizational system: the system of higher education.

The willingness of the parties within a conflict to look for a solution is also very variable and dependent on considerations of hierarchy. The available timeframe varies considerably between short-lived, daily situational conflicts (e.g. the admission of a student) and long-simmering conflicts (e.g. rivalries between two professors working at the same institute), as much as the available energy (both positive and negative) that the parties want to spend in “their” conflicts and the expertise applied (mainly regarding conflict resolution itself, but also the competence of the mediator).

A Google search for "conflict management" yields 1,410,000 hits. If combined with "conflict management college university" it still yields 214,000 entries. The current developments in higher education create new and varied challenges. This in turn creates new, hitherto unknown or individual reasons for conflict for students, teachers, and administrators, as well as for all three when they interact, for governing bodies and leaders of universities and colleges, and, on the highest level, for the entire system of higher education.

In this study, the focus of the discussion will be on the institutional use of alternative conflict management instruments (as opposed to "official" methods) at universities in situ (old fashioned!)/in-house (modern!), to be used both in spontaneous personal as well as in looming systemic conflicts.

Regarding “conflict management instruments” (as opposed to “conflict solving tools” or "conflict regulation instruments"), which in this context is the most neutral term to use, the study will particularly highlight the use of in-house mediation, meaning a permanently installed and accessible internal feature, tasked with intra-organizational "mediation" and the use of mediation techniques and procedures.

Of the many recently developed conflict treatment concepts presented in the pertinent literature, "cooperative conflict resolution culture in organizations" presented by Lisa Waas and Christian Ertl (Waas/Ertl, 2008, p. 215) appears to be the most interesting model for the examination of in-house mediation at universities and colleges. In that regard, the basic assumption is that unresolved conflicts in companies, organizations and institutions have a lasting damaging effect on the work environment and social interactions. Conflicts are negated as long as possible and only once the detrimental effects have become obvious, attempts are made to bring about quick solutions using unsophisticated interventions.

A preventive approach to dealing with conflicts is necessary. Organizations therefore use an entire array of different forms within a cooperative conflict resolution system, i.e. they deliberately address problems and potential conflicts, either by negotiation, facilitation, mediation, arbitration, coaching, or supervision. According to the two authors Waas and Ertl, an ombudsman can perform essential functions:

"Whenever a cooperative conflict resolution system is implemented in a larger organization, it is advisable to establish an ombudsman office - a staff position,

completely independent from hierarchy and line management functions, that can observe the way people deal with conflict and is available as contact." (Waas/Ertl, p. 218)

The firmly established mediation bodies presented in this study have a variety of names, but have essentially very similar tasks regarding the treatment of conflicts, albeit for very different clients.

Of all the members of a university or a college, it is especially the students who require conflict mediation instruments for the protection and preservation of their individual rights vis-à-vis teachers and administrators. Given their condition in the mass colleges, they are highly exposed to potential conflict. Taking into account that students are located at the lowest level, at the base, of the traditionally strongly structure hierarchy of the universities and colleges, they are inevitably exposed to the strongest pressure within the highly hierarchical system of higher education institutions.

Due to the author's fifteen years of professional experience in higher education conflict-, relationship-, and complaint-management and the work with recurring and similar conflict situations and systemic discrepancies between the ideal and real situation in the system of higher education, one of the specific research interests of this work is the current use of informal as well as formal conflict resolution tools in higher education institutions. In the discussion of these issues an a priori distinction between individual and (large) group mediation will not be made, to better focus the topic of the discussion. interviewed experts stated that both forms of mediation are practiced, depending on the circumstances.

1.3. Hierarchy as a Phenomenon

Hierarchy (from ancient Greek *ἱεραρχία*, composed of *ἱερός*, "holy" and *ἀρχή*, "beginning, leadership, domination," according to Wikipedia), so literally "holy power", refers to a fixed system of ranking and subordination, in which the main lines of communication and decision-making powers are arranged in the form of a pyramid and run from top to bottom.

A hierarchy is considered a viable and powerful organizing principle to efficiently accomplish long-term and routine tasks. For many non-standard or rapidly changing tasks that are addressed by many different actors, involved at many different levels, hierarchy can be dysfunctional (Schmidt, 2010, p. 338).

Hierarchy is an essential factor in the structures and daily life of universities and colleges as well.

If "phenomenon" is by definition a (single) event that is to be perceived with the senses, then hierarchy in higher education manifests itself through external signs and symbols: though special garments and insignia (high- and the highest ranking officials in academic celebrations wear ermine robes and carry scepters), through certain status symbols (portrait paintings, busts, plaques of high- and highest ranking officials, usually only after the expiry of their terms of office; reserved seating at honors and celebrations; service cars, if possible even with specialized license plates), through space allocation (location of the principal's and vice-principals' offices on the best floors, corner offices, or in significant buildings such as castles, palaces, etc.) or through organizational and technical measures (offices in special parts of the building, electronic access controls with PINs/Personal Identification Numbers).

Hierarchy is manifested not only through external signs, but also in certain standardized written procedures. Hence the special phenomenon of the "administrative hierarchy", i.e. a strict structuring and subordination of organizational levels and rules, resulting in a closed pyramid composed of persons and offices, that, depending on the number of offices and persons, can have a broad or pointed form (Rechts-Lexikon, p. 2240). Written procedures have a high potential for conflict. Through fixed rules, competences are structured, rules prescribe the content of different activities, lay down relationships between the different levels of action and they establish hierarchies both of tasks and offices (Sandner, 2003, p. 190).

Hierarchy-related conflicts, whether created merely through social interaction or the execution of rules or a mixture of both, can result in multiple combinations, as shown in the matrix below:

Conflicts and hierarchies within Institutions (in this case: universities)		
	Within the same hierarchical level	Across levels
Individual - Individual	Type I: Member – Member	Type II: Member – Superior
Individual - Group	Type III: Member – Group/Team	Type IV: Superior - Group
Group - Group	Type V: Group/Team – Group/Team	Type VI: Leadership – Special Interest Group

Based on Eyer / Quinting, 2001, p. 222.

Conflict type I, the conflict between two "peers" could, for example, be inadequate or delayed or tendentious information disclosure, or a personal dispute regarding task distribution. The problem can be solved by the immediate supervisor or person in charge (depending on the circumstances).

The parties to **conflict type II** are members of different levels of hierarchy. The classic case is a conflict between an employee and a manager. The (one-sided) "solution" is often the exercise of power of the stronger party. In order to resolve the conflict satisfactorily for both sides, the assistance of a mediator is suggested (in this case preferably an in-house in-house).

Conflict type III consists of a conflict on the same hierarchical level between an individual and a group. Whether the collective is a formal entity (enshrined in the organizational structures) or an informal group (spontaneously formed, possibly even only existing for the duration of the conflict), is irrelevant. The conflict may stem from either one, it is typically resolved by hierarchical superior of both groups. In order to improve social hygiene, it is probably advisable to assign this task to an internal mediator who is familiar with the internal structures of the organization.

Conflict type IV centers around individuals (e.g. a dean, the deciding over the allocation of resources) and groups (e.g. a team of researchers, that requires those resources) pertaining to different levels. The leader will normally attempt to prevail if only because of the power differential in relation to the group and its own power position, in order to maintain his power. Here, the use of an external mediator seems to be the best idea in order to find a solution and facilitate further effective cooperation of both parties.

Conflict type V results from two groups on the same hierarchical level. The reason of the conflict could, for example, be the competition between two teams in a major common project that is important for the university's visibility. External mediation will be initiated by one of the two groups and, to be effective, will have to obtain the approval of the other group as well.

Finally, in **conflict type VI** the groups are of opposed hierarchical levels, in some concrete cases the intra-organizational distances can be vast, for example, between the principal's office (and/or his team) and the Students' Union or a student self-help group against a (as seen by students) forced change of given curriculum. In this case, mediation is dependent upon the willingness or unwillingness of the more powerful party to engage in the mediation process. Here an external mediator seems to be better able to contribute to the success of the process.

According to Gerhard Schwarz's (Schwarz, 2010, p. 328) standard work on conflict management, hierarchies suffer generally from "constipation" (as he labelled it). It is one of the major weaknesses of hierarchies, according to Schwarz, that the bottom-up communication works much worse than the top-down communication. The disadvantage of this system lies in the lack of feedback that the top receives from the bottom. Thus, a major task of conflict intervention is to establish useful feedback systems. To this end, internal institutionalized, as well as external conflict management processes in the form of mediation or mediating procedures can be essential.

Regarding the term used in the wording of this study's title "**extra-hierarchical**": this term is hardly ever used in conflict research in an overt way. There is no noun similar to this adjective ("extrahierarchy"?). "Extra-hierarchical" is therefore only to be used as adjective and adverb modifying specific activities or situations. Karl Sandner (Sandner, 1993, p. 201) used it in his book *"Prozesse der Macht. Zur Entstehung, Stabilisierung und Veränderung der Macht von Akteuren in Unternehmen"* in the context of "extra-hierarchical communication avenues". He regarded this as essential among the central elements facilitating a harmonious and conflict-free environment in companies.

Following Sandner's statement, the author wishes to use the term "extra-hierarchical conflict management" as an essential element for the creation of a conflict-free environment and cooperation, specifically at universities and colleges.

The term "extra-hierarchical" outlines the fact that even after having officially established conflict management instruments in (or for) an institution, in this context specifically universities, higher placed officials, or "hierarchs" (rectors, vice-rectors, deans, university council chairmen at universities, managing directors and directors of studies at colleges) due to the official rules that regulate the activity of these instruments, are oftentimes not able to perform such tasks. After their establishment it is not possible to intervene any longer. The independent, autonomous conflict management instrument is perceived and accepted by all members within the organization across all levels of hierarchy, as such and is accessed and used by them if the need arises.

Mediation per se is highly anti-hierarchical, because, as Klaus Rückert (Rückert, 2000, p. 268) writes:

"Intellectually, mediation is an emancipatory method [...] Conflicts are a part of life, and it is a profoundly liberating act of maturity to deal with them together with the other conflict party in an aware and responsible manner and to not delegate this task to experts or government decision makers."

In every conflict and dispute Rückert locates the same mechanism of action, both at the micro and at the macro level. Where conflicts are decided by force or by virtue of a power positions or a position in the hierarchy, a break in the life process is created with a poisoned thorn in interpersonal relationships, that strains people and often even makes them sick. If, however, the conflict is solved in a fair way, then life process's continuum will be restored (or retained), people remain mentally healthy and are free to design new life tasks.

Idealizing, he goes on to write visions of the future: "to improve the culture of conflict in all areas of life in our country, to foster the desire and the ability to deal with conflicts, in order to promote social and human growth" (Rückert, 2000, p. 269).

1.4. In-House Mediation as a Tool

In the usual German-language literature on conflict management and mediation, the term **in-house mediation** is obviously not (yet commonly) used. The adjectives "*(inner)betrieblich*" (within the company) or the prefix "*Betriebs-*" (company related) are, with few exceptions, also not used in the official communications of the academic community. The closest term in meaning to the anglicism "in-house mediation" in German is probably "*innerbetriebliche Mediation*" originating in commerce mediation.

Conflicts in companies can be solved either through hierarchy or by negotiation; "through hierarchy" means that a conflict is decided by the -due to its position- more powerful party. More and more companies are therefore developing a viable and sustainable culture of conflict management, by using either internal or external mediators, according to Eckhard Eyer (Eyer, 2003, p. 268) in his essay on internal mediators as conflict solvers in companies. The advantages of an internal mediator (i.e. a staff position consisting of an especially trained employee to resolve conflicts in a fair way and deployed specifically in that company) reveal themselves, at the latest, in the context of escalating or already highly escalated conflicts. Institutional internal mediators act as direct contacts for the conflict parties, support open and factual communication and work together to find solutions to the conflict. (Eyer, 2003, p. 269)

"In-house mediation" (also) at universities was used first in the English-speaking world, as well as several other key terms in the academic conflict management language. Its functions are those that have already been discussed above regarding internal mediators in commerce mediation. As two examples one can name the "Improving Dispute Resolution" project of the Higher Education Funding Council for England (HEFCE) as well as the University of York.

The former was concerned with raising the awareness among decision-makers in universities in England and to present mediation as a tool for better conflict management in higher education. Regarding the core issue of which areas are provided with in-house mediation, the project operators state that:

"Most HEIs [abbreviation for Higher Education Institutions; author's remark] with in-house mediation services have begun to use mediation in employment disputes or in the connection with equality and diversity work. Some have expanded the provision to include disputes involving students and other kinds of dispute. It is apparent [...] that comparatively few HEIs have created yet all-purpose mediation commission or explored the potential as a dispute-resolution method across the board, so as to include the whole range of potential disputes can arise in Which a HEI."(Working with HEIs to Develop Mediation Training, p.10)

One of the recommendations of the study is that universities should perform a detailed analysis of their conflict handling mechanisms and consider all possible applications thereof.

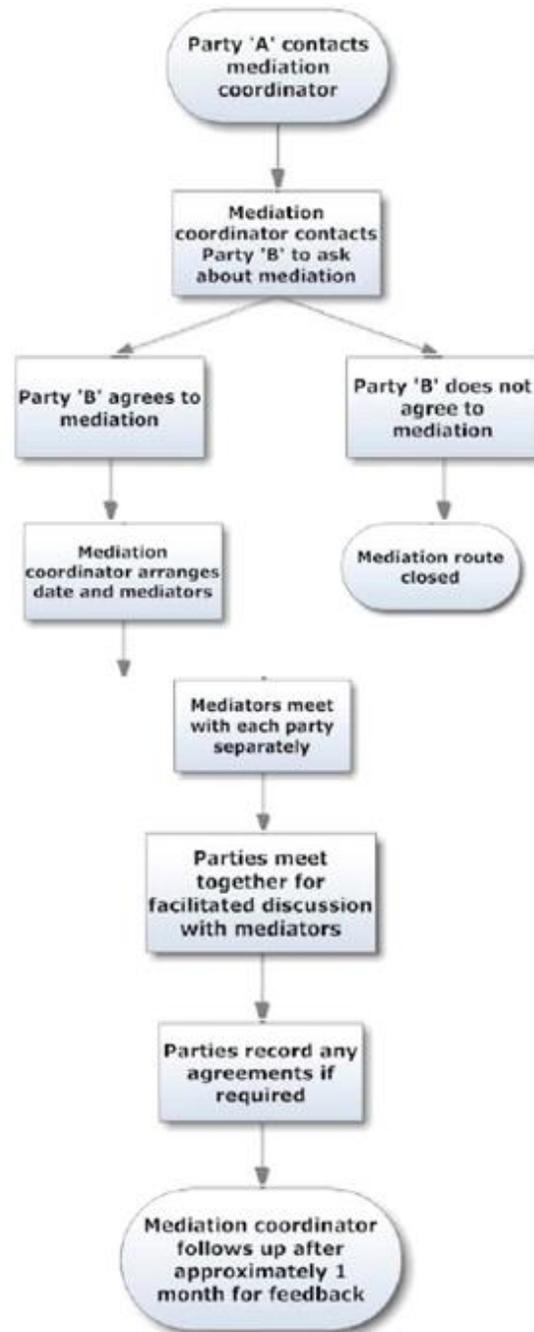
At the University of York in England the in-house mediation service originally emerged from pertinent necessities and subsequent preparatory work of the Equality and Diversity Office. Mediation was then established for employees (but not for students) in all potential areas of conflict.

There is a special homepage (www.york.ac.uk/staff/mediation) with several special services, including the details of the mediation process itself as well as a graphic representation, a "visualization" of the sequence of a mediation process (see next page).

According to the already mentioned homepage, the (highly interesting) main features of the in-house mediation process at the University of York are as follows:

- available to all staff
 - can happen at any time, with formal processes being put on hold for the duration of the mediation
 - will normally be organized within two weeks of both parties agreeing to mediation
 - will be mediated, wherever possible, by our qualified in-house mediators from across the university
 - is voluntary, informal, confidential and without prejudice
 - runs separately to any other employment related procedures
- (www.york.ac.uk/staff/mediation/what)

A typical mediation will follow the structure shown in the flow chart below.



What is interesting on the list of the main characteristics, is the composition of the mediation team, which (similar to the internal mediators mentioned above) is composed of volunteer in-house mediators with relevant training, representing a wide range of experience. The team is managed by a coordinator who provides the conflict parties with information about the mediation process as such and, after the initial contact has been established and a detailed discussion of the facts, selects appropriate mediators from the pool, together with the conflict parties. Interestingly the last step in the flowchart reads: "mediation coordinator follows up after approximately one month for feedback".

It is necessary to remark that the tool or instrument of "in-house mediation" is an instrument that has to be desired by the top of the hierarchy, therefore becoming an approved, lastingly established conflict treatment instrument. Ideally, it is easily and discreetly accessible and works, as explained above, in an "extra-hierarchical" way. Those engaged in in-house mediation have an official mandate to manage intra-organizational conflicts. Apparently, this instrument is used in more and more areas, both implicitly and explicitly.

The basic assumption is – in accordance with the contextually-discussed concepts in this chapter – that there are possibilities at universities for extra-hierarchically active conflict management instruments to operate without essential influence exercised by third parties.

The most appropriate (and already common) tool for this is the so-called "in-house" mediation, regardless of whether it is explicitly labelled and practiced as "mediation" or implicitly by statutory bodies or by autonomously appointed committees.

2. Universities and their Members: Ideal State versus Reality

2.1. The Ideal State: Legal Terms

To better understand the polygonal structures of the organizational system of a university, as well as that of the entire higher education sector in the context of conflict treatments dealt with in this inquiry, it is necessary to clearly differentiate the pertinent terms, regarding the functionalities (and any dysfunctions) of the higher education system in a more accurate manner.

2.1.1. Types of Higher Education Institutions

The common criteria that are considered to be essential for all tertiary institutions are that these institutions need to be approved by the state, certain qualified studies have to be carried out and they have to be institutions where certain qualifications are required for the admission of students and the studies offered must have a certain duration.

Similar criteria are also in place regarding the relevant EU education programs, where the so-called Lifelong Learning Program (2007-2013) contained certain modules that are either exclusively or partially accessible to universities and colleges and their related areas. The decision regarding the eligibility of certain institutions to take part in those EU programs is not made by the program itself, but by the individual participating states.

Personal interactions, as they take place in day to day life at universities as well as potential conflicts resulting from it, both administrative (registration, admission, continuation of studies) and academic (class registration and participation, voluntary/prescribed changes of curricula as well as modifications thereof, admission to and execution of exams, assistance when creating scientific work) have cursorily been taken into consideration.

Students at universities are, as members of the institution, regular "addressees" of all legal provisions in additional legislation regarding their studies and organizational matters (e.g. study and family allowances, or immigration and residence regulations) and legal frameworks (e.g. statutes of universities and curricula).

Admission to public universities is largely free, except for certain registration and admission requirements. Students enrolled in the public tertiary sector are only to a small extent subject to selection processes. Generally, these are to be found at art schools, to some extent at "scientific universities" in the so-called "mass disciplines" (psychology, sociology, journalism, and communication studies) or in "*numerus clausus*" disciplines such as human and veterinary medicine.

The student population at universities is thus very inhomogeneous, resulting in several differing groups, ranging from students younger than 18 years old and without the equivalent of a GCSE (Matura, Abitur, etc.), which is possible in art colleges, to senior students.

Additionally, there are different levels of engagement in the relation between students and the institution, given the differences of educational objectives. They range from freshmen, eager to study to long-term students.

2.2. Reality: Levels of Action and Actors in Higher Education

2.2.1. The Micro – Meso - Macro Levels

Universities, public and private, big and small, are complex entities that have many differentiated functional levels depending on the size of the institution, which in turn have a wide range of internal hierarchies due to their structural complexity.

Since university issues (can) have rather short half-lives and therefore are subject to public moods (incidentally, the three mentioned above are still dominant), the different levels of action in higher education, that are referred to in this publication appear to be highly important. After all they play essential roles in conflict theory: the macro level, the meso-level and micro-level.

The first, the macro-level, according to Spiel/Pechar/Pellert, is the educationally relevant overall system of politics, i.e. policy programs and structural relationships such as regulations concerning admission to universities and tuition fees. The meso-level is the level of the institutions themselves, their conditions and effects on issues such as the particular implementation of curricula reforms or the so-called Bologna Objectives.

At the micro-level one is dealing with individual teaching and learning conditions, i.e. the applied curricula (keyword "studyability"; in German "*Studierbarkeit*", the measuring how likely a given course of studies can be finished in the predetermined number of semesters), day-to-day conditions, etc.

In relation to this level-design in the higher education system, devised by Spiel/Pechar/Pellert, it is ideal at this point in the discussion to point to Friedrich Glasl's discussion (Glasl, 2009, p. 282)

of the conflict types according to the social arena in his essay "*Interventionsstrategien für heiße und kalte Konflikte im mikro- und mesosozialen Bereich*". There he describes micro-social conflicts as conflicts in which the parties are individuals who perceive and experience each other immediately and confront each other face to face and act in their own name.

In meso-social conflicts, the conflict parties are formal or informal members of certain social systems, their actions are guided by the norms and rules, the interests and objectives of the systems to which they belong.

In macro-social conflicts it is social institutions as such that play an active role in conflicts.

For all three levels, according to their functionalities in the field of communication, specific theories of corporate or organizational communication have been developed: micro-theoretical approaches for individuals and groups, meso-theoretical approaches for organizations as well as macro-theories for the society as a whole (Mast, 2008, p. 30).

In addition to the different hierarchical levels, there are special organizational specifics and thus challenges for potential conflict areas in universities and colleges: the decentralized, multilayered organizational structures, the fact that the majority of the highest executives act as *primi inter pares* on time (by election, nomination or appointment) and that the majority of the academic staff is traditionally highly skeptical about changes in "their" institutions (Hochmuth, 2011, p. 33).

2.2.2. The Actors

2.2.2.1. The Rector (President)

Just as there are these three levels, the main actors are distributed among these three levels. At the top, at the macro-level of management and leadership of universities, are the rectors (presidents). They are the chosen academic leaders of an institution, not monocratic organs, but leaders of the collective organ that is the rector's office with vice-rectors on equal footing at his or her side. According to the laws regulating their qualifications they should have international experience and both the skills and the ability necessary for the organizational and economic management of a university. Rectors are the highest officers and the ultimate superiors of the entire staff. Nowadays, their position and function is probably comparable to managers of medium and large industrial or commercial enterprises (Lockwood, 2010, p. 132). The rector of the University of Vienna, for example, is responsible for approximately 9,000 employees and more than 90,000 students, almost 100,000 people, albeit in very different degrees of engagement.

According to Manfred Welan (Welan 1997, p. 238), former rector of the University of Agricultural Sciences and Renewable Resources in Vienna in the late 70s and early 90s, the requirements for the position of a rector are manifold. They comprise several indispensable skills, such as: public speaking, persuasion and convincing people, being a good and attentive listener. On the practical side, (some of) the skills they require are those of an animator, an inspirator, a psychotherapist and group therapists, an arbiter, a motivator, a diplomat, a "wailing wall", an ombudsman, and an honest broker between groups.

From this enumeration, born of the daily experience of experts, it is easy to draw conclusions about the complex skills required, especially social skills, for the highest position in the university's hierarchy, especially regarding skills of conflict resolution.

It is well-known that the highest escalated conflicts between members of the university usually end up at the Rector's Office, it being the highest office. This is where autonomous and independent conflict management offices could and should be located, given that the rector, in addition to being the formal head of the macro-level is also ultimately responsible for the meso and micro-levels.

Before becoming rectors, these men and women have different characters according to their personal history and socialization within the university and possess, in part due to the size and organizational culture of the institutions they have to guide, different working styles: they are either communicative, easily accessible for everybody and responsive (especially via e-mails to which they respond personally!), or they operate without physical contact hours (i.e. consultation hours) shielded from daily university life by office and staff employees and working in remote offices with electronically secured access barriers. Accordingly, the bandwidth of communication possibilities and thus accessibility for conflict management is vast.

Not only are rectors often the arbiters of last resort on all levels of the institution's hierarchy, but sometimes become "conflict victims" themselves, despite their position at the top of the hierarchy in large, in highly-escalated conflicts in which they are involved in a personal capacity. In severe cases this can even lead to their own dismissal due to serious misconduct, which, for example, has already taken place several times at Austrian public universities since the entry into force of the University Law of 2002 (*Universitätsorganisationsgesetz* 2002). They may also and indeed have become subjected to sophisticated conflict coping strategies in the form of physical violence, when, for instance, in 2004 during a round table discussion a person from the audience threw a pie at a rector sitting on the podium.

2.2.2.2. The Vice-Rectors and Deans

The university's vice-rectors, responsible for various special management areas (e.g. research, education, human resources, international relations, etc.) who are the rector's team's department leaders with certain delegated powers, are also part of the macro-level. Together they manage the internal and external affairs of the university. Given that some vice-rectors are explicitly responsible for personnel issues, they are also supposed to tackle conflict management issues.

At the meso level, the deans are in charge of leading the faculties (as possible sub-units with certain traditional autonomies). It is up to the autonomous management of public universities to set up faculties and departments in the organizational plan. The rectors inter alia transfer to the deans the power to allocate the resources (budget, staff, premises, equipment), to the different departments/institutes. The deans are then also in charge of coordinating the aims agreed upon with the institutes and the departmental performance contracts with the rector's office.

In the departments for which they are responsible, deans assume management responsibilities for the members of the faculty and are in charge of the faculty's policies. Here too, actors in conflict resolution can become triggers of conflicts themselves.

2.2.2.3. Professors, Fellows, Lecturers

Depending on the type of institution, at the micro-level of universities one can find institutes, departments, centers, sections (universities), clinics (medical universities), master classes (art universities) or courses (universities of applied sciences). On this level the main actors (in regard to their rank) are the professors (full, associate professors, collegiate professors). They act either as directors or are in leadership positions in their respective organizational unit or contribute to its work, -although separated hierarchically. Professors conduct research, teach, and supervise their students. Ideally, they participate administratively or creatively in the university's committees to varying degrees. It lies within their competence to initiate cooperation, to submit applications for project funding, as well as student and teacher mobility within special support programs.

As leaders, they all are increasingly challenged by the permanence-reforms due to the effects of the Bologna Process and by the growing autonomy in the higher education sector. Both the expectations of professors as well as their self-image in leadership positions are changing, and in any event the hierarchical structures strengthen their systemic power position.

A study performed in Bavaria in 2009 revealed three types of professorial leadership: the laissez-faire style, the autocratic, and the cooperative style (Schmidt/Richter 2009, p. 8). This results in different categorizations for the professorial working style. Guided and unguided forms of cooperation, uninvolved coexistence or dominant leadership are the main types. This too can lead to various types of conflict, as daily life at universities has shown.

At the micro-level, apart from professors, one finds university's fellows and furthermore, the teaching staff (lecturers), this latter group having no fixed employment with the institution, but are mostly given short-term contracts that may (or may not) be renewed. On the hierarchy's pyramid they are at the base. Due to these conditions, keyword precarity, they are usually well and better organized (unions, advocacy groups, etc.) than others and are exposed to a high conflict potential.

2.2.2.4. Administrative and Technical Staff

This further group of persons is located at the micro level of higher education, has in the past been referred to by the not very charming label "varia", which might have been done for sound practical reasons, but, on the whole, shows a lack of appreciation.

Today, the standard name within the public university sector is "general university personnel". Depending on the category of the institution and the legal relations, this group is composed of private employees, contract staff, and public officials ("*Beamte*"). The members of this group deal with administrative issues (finances, premises, staff, students, etc.) and all necessary technical services (facility management, IT, telephony, internet, janitor services, energy, cars and other vehicles, safety, waste disposal, etc.). The relationships and communication situations, especially regarding staff members with direct "customer contacts" (e.g. in the study and admission departments, formerly known as "*Evidenzstelle*"), are manifold. This also applies to the often spontaneous and singular conflict configurations and conflicts that may arise especially when changes in existing internal or externally imposed regulations take place (e.g. at times of

the introduction / elimination /partial re-introduction of tuition fees and institutionally possible exceptions to this rule).

2.2.2.5. *Students*

Students represent the largest element of the higher education system (regardless of the type and size of institution). They are the "base" of the system, in more than one way.

Beyond the narrow legal definition as members of the institution, the term "student" has to be differentiated further, due to the variety of situations and circumstances: by sex, male and female, as well as transgender students; by nationality: domestic, foreign, and stateless students as well as "convention-refugees"; by legal status: ordinary, extraordinary, "co-attendants", those on leave of absence, completely or partly excluded or deregistered from their studies; students with special needs (the disabled, the elderly, those with responsibilities for children or other dependent relatives, professionals, part-time workers, distance-learning, etc.); or according to their academic status: bachelor, master, diploma, and doctoral students; as well as by the exam behavior: those actively taking exams and those who are inactive.

Within the overall "student population" there are to be included those who cannot yet be considered students, as they are prospective students only, people that have had a documented first contact with the institution at which registration and approval is sought, as well as student applicants, people which currently find themselves in an admission process for studies that require entrance exams, grading tests, and similar procedures (Leidenfrost 2012, p. 568).

In specific disciplines, students are subjected to higher pressures even before their formal studies begin, as well as in the first years of their career (keyword "*mass faculties*"). As the student progresses, several other competing challenges arise. Restricted working opportunities for many graduates of certain faculties are also a fact.

Due to the concept of lifelong learning, many graduates choose further (in-depth, or follow-up) studies after obtaining their first degree or try to develop additional qualifications and skills during their studies. Therefore, it may be the case that within the same institution, and even within the same discipline there are very different students to be found, with very different academic vitae and with a wide range of ages and experiences.

To safeguard the students' interests, official (i.e. statutory) student representative bodies have been established, some several decades ago, others very recently. In Austria it is the Federal Representation of Students (*ÖH-Bundesvertretung*) as well as the University Representatives (*Universitätsvertretungen*), which officially represent the interests of its members on different levels. They can submit proposals, surveys, and reports to government agencies, universities, and advocacy groups.

It has not been specified in detail what exactly these interests are or what subject matter the surveys, reports, and recommendations have (Leidenfrost 2012, p 573). In an open survey (i.e. without specifications of categories) of 600 students in the year 2002, the topics that students found the ÖH should concentrate on, were "advocacy", "communication", "making studying

easier", "university reform", and "tuition fees". Not even under "miscellaneous" were topics such as conflicts or mediation in conflicts mentioned.

A problem in the advocacy of student interests, are the prevailing needs on the variety of the hierarchy levels at which student representatives are active, at the macro, meso, and micro level. On identical issues there can be substantial differences of opinions between the institute representatives, faculty representatives, university representatives and the Federal Representation of Students (ÖH). So-called "self-support groups" (*Selbsthilfegruppen*, i.e. spontaneously arising student groups regarding a particular subject matter without the involvement of or even in opposition to official student representatives) are another phenomenon (Leidenfrost, 2010, p. 194).

3. Conflicts and their Treatments

3.1. General Considerations

A definition of "**conflict**" seems necessary at the beginning of this part. According to Friedrich Glasl (Glasl, 2010, p. 16), the many inflationary circulating "conflict" terms are very different regarding the variety of aspects they enclose as well as their scope and precision. From among the terms defining conflict he mentions, the definition used by Hugo Prein seems to be the best suited to discuss the social environment of universities:

"We speak of a social conflict when the interests, goals, roles and/or views of at least two parties are or seem to be incompatible. A conflict only becomes a psychological reality when least one party (whether rightly or not) is aware of the fact that the other party frustrates the achievement of its interests, goals, roles and/or conceptions, and experiences feelings of hostility and, in turn, prevents the other party from achieving her goals. "

Regarding the parties and possible constellations of opponents in conflict, it is possible to adopt almost the entire canon of conflict types categorization, listed by actors, according to Gerhard Schwarz (Schwarz 2010, p. 6):

- *couple conflicts,*
- *triangle conflict,*
- *group conflicts,*
- *organizational conflicts,*
- *institution conflicts and*
- *systemic conflicts.*

At universities, the types of conflict areas coincide mostly with the corresponding standard definitions with roll conflicts, distribution conflicts, aim conflicts, perceptual conflicts, and assessment conflicts and their triggers.

Conflict management, being the most neutral form of conflict intervention, leaves the constellation of conflicting parties and their interests untouched. According to Glasl (Glasl 2010,

p. 20), there are two main types of conflict handling: preventive and curative (healing), each one is focused on either the conflict potential, the conflict process, or the consequences of the conflict.

According to Glasl, conflict treatment needs conflict regulators, institutions, and procedures that are used for the treatment of problems and differences in order to avoid paralysis or overloading of the standard bodies and procedures within an organization.

These include, according to H. C. M. Prein, first stated in 1979, the ombudsman as an integrating figure (Glasl, 2010, p. 160, via Prein 1979, p. 106).

In mediation, as conflict intervention, (Glasl: "*Mediation in the classical sense*") a classic "mediator" tries to find a compromise, acceptable for the parties, that "*supports the interests of all involved and allows coexistence*" (Glasl 2010, p. 399).

Kurt Faller (Faller, 2007, p. 334), head of a program "*Mediation und Konfliktmanagement*" at the Ruhr University in Bochum, developed three approaches to *in-house* conflict management in his "*Einführung von innerbetrieblichen Konfliktmanagementsystemen in Organisationen*" (Introduction of Internal Conflict Management Systems within Organizations) : First, the approach "*from person-oriented to organization-oriented mediation*", second, the approach "*from the classic mediation setting to systemic conflict treatment in organizations*", and third "*from conflict treatment to conflict management in organizations*".

It is probably the second approach, the systemic conflict treatment, which is used at universities that already possess established conflict management tools. The main techniques used in that case, are, according to Faller, the classic conflict counseling and conflict coaching, classic mediation, shuttle-mediation, team conflict management, (large) group mediation, working with mediating consultants, the establishment of mediation committees, and "*management by mediation*".

3.1.1. Potential Conflicts at Universities

In conflicts between university members a broad variety of constellations is possible, as Eric Miklas and Brian Kleiner (Miklas/Kleiner 2003, p. 141) describe in their essay "*New Developments Concerning Academic Grievances*" 2003:

"Grievances are a result of conflict, and academia is, due to its nature, a perfect breeding ground for conflict [...] Conflict occurs not only between students and faculty, but also between faculty and administrators, among students themselves, and among faculty themselves."

Relatively new realities for students and therefore potential conflict triggers include the current specifically limited and restricted disciplines with access regulations that are due to the permanence-reforms, new ("*gendered*") approval processes, new introductory and orientation phases, selection criteria on different levels, expiring, old as well as modular, redesigned and comprehensive study plans and curricula (which makes it difficult for many students to continue their studies in a "*seamless*" way), and standardized, IKT-assisted examination techniques (*multiple choice tests*). 'Classic' conflict cases and triggers, however, are issues such as the

recognition of courses and credits obtained at other institutions, timely assessment of examinations and submitted coursework, plagiarism, student exchanges and changes of studies (including possible negative consequences on scholarships), different and interlinked requirements for access to study cycles and the relevant procedures.

The difference between the various groups in the higher education system in designated problem areas is essentially the fact that very many (students) are not regarded as equal "objects" *vis-a-vis* few or very few "actors" (decision-makers, process-designers, and administrators) in current developments and processes.

At the end of the day, the position the students find themselves in can be described with the simple phrase "*Speak out if you dare*". Students believe that they will have to face reprisals by the hierarchy, if they complain or articulate problems (in higher places). In a study conducted in the mid-2000s by Tyler R. Harrison (Harrison, 2007) on a Southern US University, whose core results were made accessible in an aptly named article "*My Professor is so Unfair: Student Attitudes and Experiences of Conflict with Faculty*", regarding the motivation and behavior of students in conflicts with teachers in higher education, the author states that:

"Students who uses ombuds processes tend to avoid all future contact with the professor and rarely take additional courses from him or her. In addition, students report that the conflicts often dominate their thoughts, making it difficult to focus on other courses, and occasionally lead them to seek medical care. Students also voice concerns over the impact of their conflicts on future careers, eligibility for financial aid [...] and perceptions of the university." (Harrison, p. 351)

There are many issues in real conflicts between academic and administrative staff as well as within both groups: job descriptions, time limits (e.g. of contracts), appeals, employment procedures (especially of professors), appointment of delegates to bodies, leaves of absence, jealousy (sic!), special leave for certain activities (secondary employment, conference participation, providing expert opinions, etc.), internal regulations, maternity leave, competences (personal and delegated), multiple employment, memberships, *mobbing*, envy (sic!), privileges, resource disputes (space, staff, financial resources), sexual harassment, status symbols, *stalking*, recruitment procedures, deputy regulations, qualified positions, and scientific integrity.

As has been shown, there are only few regulations and standards of definition regarding conflict, conflict treatment, and conflict resolution mechanisms at universities, which adds procedural problems in conflict treatment to the actual substantial issues and topics of the conflicts of university life themselves. These begin with the question of competence and end with problems presented by a final decision.

3.1.2.1. Conflict Management Tools in Higher Education

The regulations that rule the cooperation and life of the members of universities are found in those parts of detailed provisions, that deal with the formal, political, collective and institutional specific processes, such as the appointment procedures of rectors, of professors, or with the creation of the structure and content of curricula and regulations concerning studies and examinations.

Conflict management is *de iure* not to be found explicitly in any regulatory framework. Of course, there are already *de facto* conflict handling instruments at Austrian universities in place, but they are not being actively advertised, they are sometimes (geographically) hard to locate and, therefore, their services are at times difficult to engage.

3.1.2.2. In-house Conflict Management Instruments at Universities

As part of their newly acquired autonomy, Austrian public universities are entitled to set their own measures of "evaluation and quality assurance" (University Act - UG 2002, §14) in order to ensure a functioning (conflict-free) internal structure. These measures shall ensure the high quality of the universities' main tasks as well as their performance and secure concrete activities, processes, and structures in order to "ensure the quality of the results from the perspective of addressees of said services" (Biedermann/Strehl in, Mayer (ed.), Kommentar UG 2002, § 14, I.1., p. 33). One central focus of the commentators is explicitly on the prevention of failures (that in turn can become conflict triggers).

University staff that causes conflicts, is affected by or involved in conflicts at public universities can currently make use of various conflict treatment facilities. Four of them are presented below:

- **The Office of Conflict Management** (*Büro für Konfliktberatung*) in the Office of Administrative Coordination and Legal Issues at the University of Vienna (<http://konfliktberatung.univie.ac.at>); this facility is responsible for conflicts between employees of the University of Vienna (approx. 9,000 people), that find themselves in conflict situations at the workplace or in mentally stressing conditions and personal crises, and it offers support through mediation.
- **The Counselling Office for Sexual Harassment and Mobbing of the University of Vienna** (*Beratungsstelle sexuelle Belästigung und Mobbing*) (<http://personalwesen.univie.ac.at/frauenfoerderung/beratungsstelle/>), that functions as an access point for victims of sexual harassment and mobbing at the University of Vienna (students, teachers, administrative staff - potentially nearly 100,000 people) and offers psychosocial support and guidance by phone and through personal conversations. It works with complete discretion, protecting the anonymity of its clients and it reports to no one.
- **The Complaints and Improvement Management Service Center** (*Servicestelle Beschwerde- und Verbesserungsmanagement*) in the service unit Studies and Teaching at the University of Vienna (no website), is responsible for the difficulties and problems of the approximately 90,000 students and about 12,000 prospective students (admission to studies or continuation of studies) at the beginning of each new semester. When necessary, it reports directly to the management of the service unit Educational Affairs, which, in turn, forwards the information to the appropriate units.
- **The Ombuds Office for Safeguarding Good Scientific Practice** (*Ombudsstelle zur Sicherung guter wissenschaftlicher Praxis*) at the University of Agricultural Sciences and Renewable Resources of Vienna (<http://www.boku.ac.at/fos/themen/ombudsstelle/>), functioning as a point of contact for pointing out suspicions of scientific misconduct (i.e. theft of ideas, presumption of authorship or co-authorship, unauthorized disclosure of someone

else's research results prior to their first publication). It is accessible to approximately 10,500 students and 1,600 employees at that university, acts as an intermediary and submits recommendations to the university authorities.

Unlike the Arbitration Board, all four mentioned offices, each one responsible for specific areas, are easily accessible via phone, informal e-mail, and partly, even via their web pages. Personal interviews are usually arranged rapidly. Their responsibilities for "target groups" are clearly defined. Their work largely focuses on achieving informal solutions through mediation.

In addition to the facilities mentioned as examples, there are further university bodies and agencies for dealing with conflicts in the public sector, depending on the specific target groups and their problems or conflict situations. These are, for example, the Working Group for Equality Issues, the Board, and the Human Resources Department. On the front page of a brochure named "Contact Persons for Members of the University of Vienna in Conflict Situations" the text, revealing the "internal" view of the circumstances surrounding conflict emergence, states that:

"Daily life at university has its own share of conflicts, due to differences of opinions, interests, or practices. For the most part, stakeholders are able to solve these problems on their own. However, when this is not the case, the parties involved may use various facilities of the University of Vienna." (Brochure text)

The term "mediation" occurs in none of the brief descriptions in the brochure, even though these individuals perform their duties using meditative techniques - they operate as a kind of "crypto mediators". Similar to the Arbitration Board, there is nothing else published on the internet or in the literature informing about further material or procedural aspects of their work.

Regarding conflict management instruments at universities, it can be stated that there are several officially established facilities available on (sometimes even) different levels of institutions. They have been established for very different reasons, have different names, responsibilities, and are tasked with different issues. Mediation in the context of conflict management is their common focus. At least, meditative techniques are being used: certain inquiry techniques and communication and conversation skills such as controlled dialogue, *reframing*, the use of first person messages, the use of paradoxical interventions, metaphors, analogies, hypotheses, etc. (Mayer, 2008, p. 112).

At the end of the 1990s/beginning of the 2000s, the OECD dealt with the topic of "*Responding to Student Expectations*" as part of their program "*Institutional Management in Higher Education (IMHE)*", analyzing the changing relationships between students and institutions, how the expectations of students have changed, and how the universities are to respond to these changes. The experiences of special Ombudsmen Offices in higher education (already established) that were analyzed brought several problems to the surface: "*lack of well defined processes for handling of student complaints, poor record-keeping and a general lack of professionalism in managing the rights of students.*" (*Responding to Student Expectations*, p. 13) The study's authors concluded that universities should react according to the expectations of the students. In the following chapter concrete examples of ombudsmen offices in higher education and the use of mediation will be presented.

3.2. Alternative Dispute Resolution Methods: Mediation

Alternative Dispute Resolution (ADR) is an umbrella term to group alternative procedures and dispute/conflict resolution methods in which a resolution for a problem or dispute can be found by engaging a third party. Similar to the "birth" of the concept of the university Ombudsman in the 1960s, this idea, too, originated in the United States, but has since spread around the world and undergone further differentiation. In her study "*The Use of ADR in Ombudsman Processes*" Margaret Doyle (Doyle, 2003, p. 26) categorized the following ADR processes:

- *adjudication*
- *arbitration*
- *conciliation*
- *early neutral evaluation*
 - *mediation*
 - *negotiation*
 - *ombudsmen*

Mediation, which in 2000 was called a "new culture of debate" by Peter Geissler and Klaus Rückert (Geissler/Rückert, 2000, p. 5), the two editors of the publication of the 1999 Vienna International Conference for Mediation, has now become "old" and well established in Austria as well. "Mediation", from the Latin root "*mediare*", was first introduced in the United States as a technical term in 1970 and was then carried into German.

Overviewing the literature, it can be said that mediation as a not-so-new "discipline" of conflict treatment, after over 25 years of history, is still mostly used in the traditional, established areas such as divorce and separation mediation, business and commerce mediation, mediation in construction and environmental law, mediation in the public sphere, and neighborhood mediation as well as environmental mediation.

4. Mediation at Universities

According to Monia Ben Larbis' findings in her essay "*Mediation als Methode der internen Organisationsentwicklung installieren*" (Installing Mediation as a Method for Internal Organizational Development, Ben Larbi, 2010, p. 306), several components are essential in the (institutionalized) use of mediation: the perception of conflicts in an organization (in this case a university or college), the manner in which conflicts are dealt with once they have been realized and accepted, the opportunities for members of the organization to participate in the decision-making, as well as established experience with process support within the organization.

How well is mediation known and used as a mediative technique in higher education? How extensive and how often do universities themselves put mediation to use and in which areas? In which organizational units are they located and which means (including financial means) do they dispose of?

4.1. University Ombudsman Offices

The model of dispute resolution and conflict management of Ombudsmen Offices, both with implicit and explicit mediation, is nowadays found in many areas of public life around the world. They act as contact points for complaints and grievances in institutions, service companies, as well as in the public service and serve primarily as arbitration and resolution centers (Götz/Schäfer, 2009, p. 53).

Why and since when do university ombudsmen exist? The world's first university ombudsman offices were set up in the 1960s in North America, in 1965 at Simon Fraser University on Vancouver, British Columbia, **Canada**, to be more precise. They were established during the Civil Rights and Anti-Vietnam movements' activities to help calm the violent campus unrests whose roots lay with the American war effort in Southeast Asia, with the struggle for civil rights in the US and to help solve the resulting long-term conflicts between students and universities (Warters, 1998, p. 6). At the time its main tasks were:

"Ombuds offices were an attempt to respond to demands for a neutral, confidential, and 'safe' place to discuss concerns and voice complaints. The early emphasis of Ombuds programs was to increase the perception and reality of 'fairness' and justice of procedures and decisions made on campus, and to assist people in navigating the increasingly complex maze of procedures that were being developed." (Warters, 1998 p.8)

In the early 1980s the **Ombuds Offices in the United States** formed their own network, UCOA (University and College Ombudsmen Association). The main intentions of this association were the development of higher education Ombudsman Offices, the professional support of existing facilities, advising universities in order to create new Ombudsman Offices and the expansion of cooperation with other associations of similar intent. (The Ombuds Handbook, p. 4). In the year 2005, when the organizational merger of UCOA with the TOA (The Ombudsman Association) to IOA (International Ombudsman Association) took place, the UCOA had more than 200 universities and colleges in the US as members.

Today, after the merger of academic, business, corporate, government, health-care, international and non-governmental ombudsmen into a single association, the mission of the association has become more general and less focused: "to support and advance the global organizational ombudsman profession and ensure that practitioners work to the highest professional standards"(www.ombudsassociation.org/print/12).

In **Canada** a first informal network meeting of the university ombudsmen offices was held for the first time in 1979. As a result of their annual meetings the ACCUO (Association of Canadian College and University Ombudsmen) was created in 1983. The objectives of this network are similar to those of UCOA in the United States.

University ombudsman offices are also found in other regions and on other continents, such as **Mexico** in Central America, since 1985, where they contributed to the development of human rights in general (Lara, 2010, p. 7). **Peru** became the first South American country to have an ombudsman office in 2011 (ENOHE News 1/2011), and in **Australia and New Zealand** they have been an integral part of the national higher education systems since the late 1990s (Kamvounias, 2012, p.14).

In **Europe, Spain** is the country with the oldest tradition of university ombuds offices. In the mid-1980s the first ombudsman office was established there. Subsequently, such offices were set up autonomously at other Spanish universities (Recarey, 2005, p. 17). This was done of their own accord and as a voluntary measure of these institutions, as a result of the general societal change in post-Franco Spain and was thus, similarly to the US, a strong civil-society phenomenon, even before the term "civil society" achieved the ubiquity it did in political and social debates of the 1990s and has retained to this day. In Spain, the establishment of university ombudsman offices ("*defensores universitarios*") was regulated by law in the so-called *Ley Organica de las Universidades* in 2001. This law determined two important, closely related, elements: on the one hand the establishment of ombudsman offices as designated official bodies for the informal treatment of conflicts between all members of the university (not just for students, as is often the case in North America), and, on the other hand, contributing to the overall improvement of quality in higher education (Alcover, 2010, p. 277).

In Europe the active university ombudsmen from the Netherlands, Belgium, England, Spain, Switzerland, and Austria met for the first time in 2003 at the founding conference of the European network **ENOHE (European Network of Ombudsmen in Higher Education)**. It is a loose, informal association of higher education ombudsmen, individuals and bodies belonging to universities and colleges, who are interested in the work of university ombudsmen. The main objectives of their work are:

"The association' s goal is to expand knowledge, enhance skills, share approaches to common problems, and create a possibility for a more solid base for the ombudsman function in the European higher education field." (Leidenfrost, 2011, p. 132)

In the meantime institutions from more European countries have become ENOHE-activists, most notably institutions from countries with new legal provisions for the establishment of university ombudsman services such as England and Wales with the Higher Education Act 2004, that established the "**Office of the Independent Adjudicator**", and Croatia with the "**Studentski Pravobranitelj**" (student ombudsman), established 2007. Further European countries with university ombudsmen are Belgium, Denmark, Germany, France, Ireland, Italy, Malta, Norway, Poland, Portugal, Sweden, Switzerland, the Netherlands, and Russia.

Despite some attempts there is no Europe-wide (or international) university ombudsman for students. There were attempts made by some country delegations in the course of preparing the UNESCO World Conference on Higher Education 2009 in Paris. Regarding the need and usefulness of a university Ombudsman, the final declaration of the preparatory conference in Bucharest in May 2009 stated that:

"Malpractice in higher education needs to be addressed and counteracted also by providing education and training for such cases. The establishment of an international ombudsman for resolving conflicts related to principles and values of higher education could further help the informal resolution of conflicts."

The **European Student Union ESU**, an association of European student organizations, in its "European Students' Rights Charter" from the year 2011, regarding social and academic aspects of studying demands in Article 18 at least: "All students have the right to a free and fair appeal

against any act which they feel to be discriminatory" and in Article 22"... against any decision related to their studies"(www.esu-online.org/news/article/6064/97).

The **ERASMUS program**, the world's largest student mobility program published the "Erasmus Student Charter - Your Rights and Obligations" in which, regarding problems that students may encounter in the mobility of their studies, one finds the statement: "*Identify the problem clearly and check your rights and obligations. Contact your departmental coordinator for Erasmus and use the formal appeals procedure of your home university if be necessary.*" (http://ec.europa.eu/education/Erasmus/doc1057_en.htm)

The situation of European junior researchers is different from the one students face. **The European Charter for Researchers** from the year 2005 decidedly recommends a special Ombudsman (in accordance with relevant national legislation!).

The Charter (European Commission, Directorate-General for Research, European Charter for Researchers - Code of Conduct for the Recruitment of Researchers, Brussels 2005) provides a set of general principles and requirements that clearly delineates the competences and responsibilities for the entitlements of researchers and employers as well as research-supporting institutions. The Charter is relevant to all researchers within the European Union at all stages of their career and in all areas of research, whether in the public or private sectors, regardless of the nature of their appointment or employment, the legal form of the employer or the type of organization or institution in which research is conducted.

Among the principles of the Charter are ethics, professional responsibility, dissemination of results, good working relationship with supervisors, intellectual property rights, support, assessment and evaluation systems, and, especially relevant and interesting in the context of conflict management, "complaints and appeals procedures". The Charter states specifically that:

"Employers and funders of researchers should, in accordance with national rules and regulations, establish appropriate procedures, possibly in the form of an impartial individual (an Ombudsman) to deal with complaints/appeals of researchers, including those concerning conflicts between supervisors and young researchers. Those procedures should provide all research staff with confidential and informal assistance in resolving work-related conflicts, disputes and grievances, with the aim of promoting fair and equitable treatment within the institution and improving the overall quality of the work environment." (Charter, p. 23)

The widespread establishment of ombuds offices men for good scientific practice at Austrian universities is one of the results of this Charter, the creation of the **Austrian Agency for Scientific Integrity** (www.oeawi.at) for (theoretically) all academic areas is another.

For completeness' sake the author wants to nota a special form of yet one other student conflict treatment instruments, first in Europe. In Germany there is a special on-site **ombudsman for international students**. A concrete example of this is the Technical University of Darmstadt, who is specifically responsible for the concerns and problems of almost 3,000 international students, who live and study in relative isolation from German students (www.tudarmstadt.de/studieren/aktuelles/campus_aktuell_archiv/campus_aktuell). Franz

Bockrath, the new ombudsman at the TU Darmstadt as of winter semester of 2011/12, outlines the special charm of this function as follows:

"That is exactly what excites me about the Office of the Ombudsman. To be able to work at university on the human level, i.e. beyond regulations concerning studies and examinations" (hoch3 1/2012, p. 5)

In Australia, there is a very similar office, the **Overseas Student Ombudsman**. This conflict mediation office for international students was established due to repeated attacks by right-wing extremists against international students, especially from China and Southeast Asia.

Currently, at last, there are local university ombudsman offices at some Austrian universities, which are at least partially referred to as such, for concerns, complaints, problems, and resulting conflicts of all kinds. So far, they are either exclusively responsible for student issues (as has already been described) or have been set up in the context of the above mentioned Charter for young researchers to maintain good scientific practice.

A special case is the **Ombudsman for Students at the Austrian Federal Ministry of Science and Research** (originally founded already in 1997 as a Student Advocacy, "*Studierendenanwaltschaft*"). In the year 2000, following the announcement of the (re)introduction of tuition fees in Austria, the establishment of this institution was announced, which was then carried out in March 2001. Regarding all students of the higher education sector it was originally commissioned with the following specific tasks:

- The competent treatment of complaints about maladministration and shortcomings in matters concerning studies
- Regular reports on the inquiries and on the steps and measures taken
- The implementation of an institutionalized communication with representatives of universities, colleges, teacher training academies, the Federal Student Union and other relevant organizations and groups (Leidenfrost, 2011, p. 124)

It therefore acted as a central appeals body for everyday problems in the teaching, examinations, and administration of universities. The mediating role in cases and problems that could not be solved at the higher education institution, was a key element of the supporting work. In the law's drafting process, the office was originally intended to function as a "central access point for alleged malpractice", which finally has not been realized (Hauser/Hauser, 2011, p. 158).

Effective as of March 2012, the original "Student Advocacy" was renamed into "Ombudsman for Students" (www.hochschulombudsmann.at) enshrined in law (in § 31 of the Higher Education Quality Assurance Act 2011). Since then it has been responsible for all "issues" of the students. The Austrian Student Ombudsman Office provides advice and submits recommendations to the organs of higher education institutions, it issues annual reports to the Minister of Higher Education and to the Parliament. (Leidenfrost, 2011, p. 136).

Even though the term "conflict management" does not appear contextually in publications of and about the Austrian Student Ombudsman Office, it is precisely conflict treatment what it exercises. The experiences of the office were submitted with its first annual report to Parliament and the

Minister for Science and Research in the autumn of 2013 (in accordance with the provisions of §31, para. 7 HS-QSG 2011).

4.2. Mediation by University Ombudsmen Offices and other Offices at Universities

Mediation at universities, i.e. the explicit use of mediation there, is used by many of the ombudsmen offices already described in this work as the primary conflict treatment technique. The basis for their work are laws and regulations. In **Spain**, where, on the one hand, §46 of the *Ley Organica de las Universidades* of 2001 (www.boe.es/dieas2001/A49400-49425.pdf) relates to the rights and responsibilities of students that it is the ombudsman office's task *"to secure and safeguard their rights through appropriate procedures and, if need be, through the intervention of a university ombudsman"* (*defensor universitario*). On the other hand, the twenty-fourth additional regulation of the mentioned Spanish law sets out the principles for the general structure of such a body:

"In order to monitor the respect for and to safeguard the rights and duties of professors, students, and administrative staff with regard to the actions of the different institutions and offices of the university, the university will establish the office of the ombudsman within its organizational structure. [...]"

It is a prerogative of each university to define in its own statutes on those processes that govern his nomination, designation, or election as well as to set the limits of its mandate, its functioning, and the ombudsman's terms of office."

Some ombuds offices that were already established at that point and others that have been established since at Spanish universities have institutionalized mediation as a possible intervention technique and refer to it in their marketing campaigns or annual reports, such as the **University of Navarra**: *"Functions [of the Ombudsperson]: [...] to mediate in the solution of disagreements and differences between different components of the university community."* (www1.unavarra.es/conocerlauniversidad/the-governing-structure/general/university-ombudsman/), or the **University Rovira i Virgili**: *"Once the complaint or application for mediation has been accepted, the ombudsman takes steps to attempt to reach compromise solutions to the conflicts put to him/her."* (www.urv.cat/universitat/sindicatura_greuges.html), or the University of Alicante: *"The university Ombudsman can perform your queries or complaints, the latter by written request, individually and collectively. The university Ombudsman can therefore act as a mediator at the request of the parties to the conflict"* (<http://web.ua.es/en/oia/questions/university-ombudsman.html>).

In its presentation brochure for potential students "University of León" (León, no date), the **University of León** notes:

- *"The University Ombudsman:*
- *The University of León was the first Spanish university to establish the post of a university Ombudsman. The particular usefulness of seeking a person to act as a go-between for the various interests present in the university has led to highly efficient actions and recognition of the office's effectiveness in resolving conflicts between*

members of the university. The Ombudsman acts as a mediator between all sectors of the university community and is therefore a crucial support for students."

In other, non-European countries of Latin culture, the local university ombuds offices regard mediation as a prime method of conflict intervention, for instance the **Universidad Nacional Autónoma de México** (that has a *defensoría universitaria* since 1985):

[...] impartial in order to defend students and scholars. He or she must therefore be easily accessible for students or scholars in trouble. ...] Mediation is always the preferred way to solve a problem and is used whenever possible. If mediation is not possible, the ombudsman gives out a recommendation in the sense of 'strongly urging the authority to follow a specific course of action in order to amend the affected students' and scholars' rights.'" (University Ombudsman: The Mexican Model, 2010,p. 6)

Naturally, in the United States and Canada, the countries of origin of mediation and university Ombuds Offices, mediation and mediative techniques are applied in conflict management. Although nowadays, the focus is more on individuals than on groups and is not only performed with students but with a much wider circle of university staff and members (Griffin, 2002, p. 2). The US has several resource centers, that offer online advice and literature, training services or mediation services themselves, such as the *American University Mediation Services* (AUMS; <http://www.american.edu/ocl/scrcs/Mediation.cfm>) or the *Campus Conflict Resolution Resources Project* (www.campus-adr.org) at the Wayne State University or blogs such as "**The Ombuds Blog. News and Information for and about Organizational Ombuds**" (<http://ombuds-blog.blogspot.co.at/>).

How blurred the boundaries between mediation and ombuds services can become is shown by the example of the **University of Arkansas**. In 2007, the "*Office of Student Mediation and Conflict Resolution*" was renamed the "*University Ombuds Office*," because:

"The change reflects the broader range of conflict resolution services provided by the Ombudsman. In addition to conflict resolution services, the Ombudsman gives presentations, holds workshops [...] and provides feedback to administrators and members of the campus community." (The Ombuds Blog, March 1, 2007).

Regarding Europe, the following two examples of mediation in higher education should be mentioned: that of the Netherlands and that of the ETH Zürich. Concerning The situation in **the Netherlands** Kristl Holtrop (Holtrop, 2003, p. 3), then coordinator of the Dutch University Ombudsman Network and Ombudsperson at the Universiteit van Amsterdam herself, writes: "*It is important to note that, although we all have the authority to implement a formal investigation, we all solve by far most of our cases through mediation.*"

According to Article 15 of the Organizational Regulation (*Organisationsverordnung*) of the **ETH Zürich**, the tasks of the ombudsperson regarding all and every university member of this prestigious technical university are defined as follows:

"The Ombudsperson

a. will, after having received complaints by members of the ETH Zürich, examine whether the institutions and bodies of the ETH Zürich have been working properly and lawfully;

b. his / her counselling services are available to members of the ETH Zürich in conflicts, crises, and emergency situations, as well as on a daily basis, giving general advice;

c. acts as registration office in the sense of Article 4, para. 2 of the instructions of the ETH Board (of July 4, 2006) regarding the handling of reports, submitted by members of the ETH area regarding illegal and unethical behavior."

The homepage of the ombudsman (www.ombudsstelle.ethz.ch/index_EN) shows the motto "*Ombudspersons may provide qualified help and mediation in case of conflict*" and in an interview for ETHlife the two ombudsmen described their main task as avoiding the escalation of conflicts.

An example of an English university, the **University of York**, that offers institutionalized mediation for their employees, has already been presented elsewhere (see chapter 1.4.). The *Office of the Independent Adjudicator OIAHE* (England and Wales), as well as the Austrian Student Ombudsman's Office (*österreichische Ombudsstelle für Studierende*), a central office for students in conflicts at English or Welsh universities, is considering the increased use of mediation at an earlier stage (*OIAHE Pathway Report*, 2009, p. 56).

As has already been mentioned, in Austria explicit university mediation at universities is increasingly used, even though the offices are not yet officially called Ombuds Offices and mediation is not used for the entire university community, but is performed by other bodies and only for very specific members of the university.

When searching for mediation at universities in Austria at offices other than Ombuds Offices it is significant that one mostly finds the departments of personnel or staff positions for human resources development that offer mediation (for staff!) or help organize it. Consider the following example, taken from the **University of Innsbruck**: Under the, then, Vice-Rectorate for Personal, mediation was introduced (even set down as part of the operation agreement) as a conflict intervention technique. On the homepage www.uibk.ac.at/personalentwicklung/mediation under the heading "dealing with conflict and mediation" one finds the following explanation:

"Mediation offer at the University of Innsbruck:

The law defines mediation in § 1 para. 1 ZivMediatG as a: "an activity based on the voluntary involvement of the parties, in which a professionally trained, neutral agent (mediator), using established methods systematically promotes the communication between the parties with the aim to enable the parties to resolve the conflict themselves in a responsible manner. [...] Target group: All employees of the University of Innsbruck, which find themselves in a conflict within the university and want professional support in the management of the conflict".

Below are direct links to four mediators, registered on the list of the Federal Ministry of Justice. All conflicts with a professional component are considered possible issues for mediation, for example "*Conflicts within the framework of cooperation in the institute or in research projects,*

regarding the allocation of resources and the distribution of tasks, conflicts regarding the attribution of research results, disagreement on information flows, regarding different communication styles, etc."

The process of mediation is described as well. The offer is restricted to four to six sessions of 120 minutes each. At the end there may be a written agreement between the parties. Six months after the successful completion of the mediation, a review of the implementation of agreements takes place which, if necessary, can be adjusted. The costs borne are capped at €1.680,- per mediation.

The "Mediation Request" form can be freely accessed under www.uibk.ac.at/personalentwicklung/mediation/antragsformular.doc (it bears the interesting remark "*The application must be made strictly in advance!* [sic!]") The form's boxes include the names of the participants to the mediation, their function and membership/position within the organization, the issues of the mediation, the requested start date and the name of the mediator (!).

According to information supplied by the University of Innsbruck, there have been up to ten mediation processes for employees per calendar year.

There are also external entities (companies, agencies, etc.) that (according to their own informations) offer professional mediation at universities.

4.3. Mediation in Higher Education and Power

In his classic "*The Mediation Process*", Christopher W. Moore (Moore, 1996, p. 81) writes about the initial contact in a mediation process that:

"Mediators enter disputes as a result of (1) direct initiation by the parties, (2) referrals by secondary parties, (3) direct initiation by the mediator, or (4) appointment by a recognized authority."

Referral and appointment are of special interest in the following discussion. One of the essential requirements for a (successful) mediation is the voluntary participation of the parties to the conflict. Precisely in conflicts within the framework of hierarchical structures it may be the case that the choice of instrument to resolve the conflict is not made by the participants themselves, but by some third party. This in turn (often) causes massive opposition from the parties, which may be detrimental to conflict resolution from the very outset.

Therefore it is highly important, in the preparation for the mediation, to resolve, without exerting power, the tension between the attitudes towards mediation of those in a higher hierarchical position and the intimidating demands to participate. The person of the mediator and the power to choose said person, is essential as well. Regarding this issue, the term "extra-hierarchical" was discussed earlier in greater detail and placed in the context of mediation.

Real voluntariness, according to Alexandra Knell (Knell, 2006, p. 98) writing about *Voluntariness in Mediation*, is only given, once the parties themselves have recognized the value

of conflict resolution and the associated (possibilities for) change and have taken the independent decision to participate in the mediation process.

Regarding the issue of **unbalanced distribution of power** in mediation processes Carlos Alcover (Alcover, 2009, p. 282), in his analysis "*Ombudsing in Higher Education*" arrives at the following conclusion:

"When power is unequally distributed, mediation is challenging, and the chances of reaching a mediated settlement are slim [...] In this situation, high powers holders have little interest in the needs of low power holders; and therefore high power holders are not willing to accommodate generally, and are not likely to initiate a win win situation "

Walter Otto Ötsch (Ötsch, 2009, p. 4) derives similar conclusions in his ten statements about power and mediation. Given that status, hierarchy, and power constitute the "social glue" for organizations, and thus power being an everyday phenomenon, power is the source of many conflicts:

"In conflicts, power aspects are made manifest, experienced directly and usually addressed [...] parties have a tendency to mutually attribute to each other 'negative power'. Often, they experience the other party as (too) powerful and themselves as helpless."

Mediation, according to Ötsch, can only succeed if it is possible to refrain from domination-games, something for which consent to mediation is a first step.

Regarding voluntary participation in mediation at higher education Rachael Field and Michael Barnes (Field/Barnes, 2003, p. 7), in an essay on fair and equal conflict resolution at universities, state that, according to their experience:

"Involvement with the university Ombud[sman] in relation to a dispute or grievance is ostensibly completely voluntary for all parties. There is no compulsion for students to access the office, and no compulsion for academics of other staff to engage in the complaints resolution processes administered by the ombud[sman]. [...] Voluntary participation is linked in informal processes to party satisfaction and compliance with agreed outcomes. That is, the fact that a person voluntarily choose to participate is-considered as in indicator of their commitment to process and did to reaching agreed on outcome."

In the end, it is the experience of the mediator herself, regarding power and hierarchy, which delineate the possibilities and boundaries of conflict resolution with regard to power-motivated influences within the organization.

Especially in higher education, as has been stated earlier, there are many, partly also traditional powers due to the different layers of hierarchy and dependencies. According to Ötsch's ten statements, the mediator herself has an own and independent power basis by virtue of *being* the mediator. Due to her role she is in the socially most powerful position within the mediation

process. The trust and respect afforded by the parties, gives the mediator power. It is her task to subtly navigate the proper and gentle use of power.

4.4. Higher Education Mediation and Field Expertise

The **mediator's field expertise**, i.e. detailed knowledge and honed skills of the applications of mediation and the field in which the mediation is performed, is quite obviously a *conditio sine qua non*, given the already referred complexity of the higher education system. There may be substantial differences in the potential areas of conflict only considering the different micro, meso, and macro levels within an institution. To complicate things further, there may be conflicts involving at least two levels and even conflicts across institutions of different categories (universities and colleges).

The discussion of field expertise is mainly confined to the literature regarding comprehensive mediation training, such as in Klaus Rückert and Harald Picker's essay entitled "*Voraussetzungen und Inhalte für die Ausbildung in Mediation*" (Prerequisites and Contents of Mediation Courses). About whether field expertise is necessary or not, they state that:

"One can argue that actual mediation, the important mediation process, is independent of the field of application and is to be managed independently of factual issues by the mediator. Consequently, based on this notion, it would follow that the mediator should best not be acquainted with the environment of the concrete mediation and should be introduced to the substantive matters by the parties in the course of the mediation. This approach is interesting insofar as it leads the parties to explain the problem as well as the entire context to the mediator, which implies a certain commonality of the parties and would lead them to rethink the facts and the structures of their action as well."
([emphasis in the original] Rückert/Picker, 2000, p. 258)

The two authors arrive at the conclusion that, on the one hand, mediators with field expertise (such as lawyers, psychotherapists, business consultants) already possess a special reputation due to their basic profession, and that, on the other hand, it is indeed necessary to make provisions for field expertise in mediation training, which should result in an additional visible title or description of the mediator.

A study conducted in 2008-09 on the impact of mediation training (in this concrete case the training provided by ARGE Bildungsmanagement) on their graduates, did not specifically address the issue of "field expertise". But one of the statistics on "*distribution of professional practice of mediation, yes or no*" indicates that of the 171 graduates of this study, 16% of those that specified their "source occupation" (not "basic occupation" as in Rückert/Picker, 2000) as (conceptually unspecified) "teaching at higher education" performed professional mediations (Neumann et. al., 2010, p. 104). Given that these 16% work in *academia*, they should be at least moderately familiar with the higher education system and thus dispose of field expertise regarding the specifics of their professional environment. The study does not state whether the subjects were involved as parties themselves in mediations at universities.

The Spanish social psychologist and Ombudsman of the *Universidad Rey Juan Carlos* in Madrid, Carlos Alcover, draws similar to Rückert/Picker in his discussion of "field expertise". He opines that after a thorough analysis of the nature of the conflict, the specifics of the conflict parties as well as information regarding the history of the conflict, it is necessary to make a decision on the nature of the mediation process:

"As indigenous conflict resolvers, University Ombudspersons bring distinctive knowledge and skills to university-based conflict solutions. It is necessary to recall that the University Ombudsperson who acts as a mediator must possess an adequate preparation and repertory of specific characteristics and skills that guarantee his suitability. Likewise, it is understood that he is perfectly acquainted with the specificities of the university context and the normal relationship established within it, as well as, eventually, the characteristics of the parties in conflict and of the specific problem." (Alcover, 2010 p. 284)

5. Empirical Investigation

5.1. Main Question

The main question in the expert interviews for this publication was the question "Which framework is required for in-house mediation at universities/colleges to make it work?"

5.2. Selection and Description/Characteristics of the Interviewees

The **main topical focus of this publication** required **interviewees** to possess basic knowledge about mediation and the use of mediation techniques in conflict cases, and, on the other hand, personal experience of conflict in their work at higher education institutions. A total of seven people were interviewed, three female and seven male, all of them working at Austrian higher education institutions. Three of them have received and completed mediation training and are registered mediators in the register of the Ministry of Justice. They have been able to apply mediation at least temporarily but never at the institutions in which they work professionally.

The interviewees were decision-makers and practitioners coming from the management of higher education institutions, from teaching as well as from administration. The interview situation was individual conversations and not the group discussion with students and their representatives, although the author considered this in the process of "topic identification" for this study. The interviewer was most interested in the reflections and experiences of conflict management of the interviewees in the process of conflict management, as well as their willingness to facilitate the application of mediation and the possible consequences for systemic changes within their given environments.

The interviewees were members of different hierarchical levels and long-term relevant professional work, in some cases decades, with conflict situations, including two rectors, two

vice-rectors, a dean, a member of the Workers Council, a member of the Arbitration Board, as well as an assistant professor.

5.3. Method of Data Collection

In order to obtain information as meaningful and authentic as possible regarding the core issues and central questions, the most appropriate method was deemed to be personal interviews (as opposed to telephone interviews or questionnaire interviews). The list of questions was generally the same in all conversations. Spontaneous communications, however, were also given the needed scope (e.g. concrete examples for the application of mediation techniques).

5.4. Interview Guide

The interviews were initiated with **two general questions**:

- Which conditions are required for in-house mediation at universities/colleges to make it work?
- Thinking about ways to deal with internal conflict so far: What have you experienced as supportive or as hindrance?

More detailed questions were as follows:

- Which offices or organs are available at your institution to deal with conflicts between members of the university community?
- In what way are they identifiable or accessible for conflict parties within the institution?
- What mechanisms are the most effective in conflict resolution?
- When and how often are you contacted by the conflict parties in the case of a conflict?
- At what level of your institution is the establishment of an office for conflict management feasible and how should it work?
- How well-known and how commonly is mediation considered as a resolution technique at universities and colleges?
- Has mediation been used specifically at your institution and, if so, in which areas?
- Who decides/who should decide whether mediation should be performed?
- What is your personal experience regarding the use of mediation at your institution?

5.5. Discussion of the Results

The **key messages** of the interviews were subjected to qualitative analysis and ultimately resulted in seven main categories, which will be dealt with below, in order to determine the general framework for in-house mediation at universities and colleges and to identify supporting as well as hindering factors in conflict treatment. Mediation already implicitly used within existing conflict management tools as well as the explicit use of mediation, will both be highlighted.

5.5.1. Conditions for (in-house) Mediation in Higher Education

Willingness to participate in mediation has emerged as one of the key elements of the framework conditions for (in-house) mediation, which requires trust in the process and the voluntary nature of the parties' participation as basics. Evidently, this willingness varies widely across the various types of universities and colleges. It depends substantially on the specific power structures in the respective organizational units or institutions. According to some of the interviewees, the mutual appreciation of the conflict parties is an important prerequisite for the success of mediation.

Further essential elements for the success of mediation is the acceptance of the **orientation of the mediation process towards a balanced outcome** and a solution of the problem/problems of the conflict parties as well as their voluntary participation. The classical requirements for mediation, confidentiality, independence, and impartiality as well as complete autonomy have also been repeatedly highlighted.

The basic structural conditions deemed important comprised **clearly communicated structures** in the form of institution-wide arrangements including **transparency and permanent accessibility**. An adequate amount of time for mediation was considered essential as well.

Finally, the question of **remuneration of the mediators** was discussed several times, even cost sharing, with a partial contribution to the costs of the mediation process by the parties was suggested (even for students!). To quote one of the interviewees: "If it costs nothing, it isn't worth anything."

On the subject of **personal and professional skills of mediators** as framework, inter alia, the ability to obtain an overview of conflicts and then bring in order (e.g. clear separation of material and personal conflicts), was highlighted by the interviewees. Similarly, several interviewees regarded the skill to perceive and abstract the different positions of the parties as important, given that each position is tied to certain needs. Finally, the mediators are also responsible for all the communicating of all aspects of the conflict to those concerned for the purpose of transparency of the dimensions of the conflict for all involved.

5.5.2. Institutional Instruments in Higher Education Conflict Management and their Effectiveness

Almost all interviewees described the instruments that are already institutionally established in higher education conflict management, depending on the provisions of the organization and their previous experience. At Austrian public universities these mainly include the so-called Arbitration Boards. According to one expert, its central function is to establish a constant presence, so that in many conflicts, merely the mention of the possibility to involve the Arbitration Board may lead to proper conflict treatment and compromise. The harmfulness of recriminations and blaming in conflicts has been mentioned several times by the interviewees. Regarding the resolution of hierarchy-related conflicts by the Arbitration Boards, personal meetings between the chairman and high ranking officials were said to be advantageous.

In general, the **hearing of both sides**, as classical intervention technique, in these personal meetings is recommended as well as a **feedback loop** to the Arbitration Commission. Only at the end of the process should both parties be directly involved. According to the experience of two interviewees, Arbitration Commissions are primarily invoked in cases of discrimination (gender, ethnicity, religion) by the Working Groups for Equality, only rarely by university and college employees or students.

Another body important for conflict handling at Austrian public universities is the Working Group for Equality (Arbeitskreis für Gleichbehandlungsfragen - AKG). It is usually invoked when protests are voiced in appointment negotiations and operates according to its own rules.

Furthermore, the tasks of the Workers' Council (*Betriebsrat*, formerly *Dienststellenausschuss*) are also standardized at all Austrian public universities. Neither body was discussed in detail in the interviews and will not be discussed further, as they are organized on a very formal basis.

Rectors, being the highest internal disciplinary office, are usually only appealed to as mediators in the case of highly escalated conflicts. To quote one of the interviewees: "Of course the rector's office is a mediation office too, because the conflicts that could not be solved elsewhere come to this office and will at some point end up on this table. That's the nice thing about the rector's office; you always get the almost hopeless cases because they were not manageable."

Deans and other senior officials serving in management jobs work in similar ways on their hierarchical level.

At public universities it is the Arbitration Board that represents the conflict management office of last resort and it is only engaged in the highest escalated cases, not the trivial ones. Regarding its efficiency, an interviewee noted that disputes have always been handled by the Board, "*it's just a question of how the Board behaves, how much time, how much interest and willingness it has, indeed, how many opportunities it has to pick up a case*".

In spontaneous conflicts it is often the student advocacy groups, the Student Union, that try to manage the conflict, either through their (local) presidents or faculty representatives, who have special communication channels through *jours fixes* with central administrative offices and officials, especially with the rector.

At universities of applied sciences (*Fachhochschulen*) it is the program directors who serve as the first reference in conflict at lower levels. At the next level, it is the college collegium that deals with conflicts.

Another interviewee mentioned yet another specialized Ombudsman's Office. In this case the office was tasked with ensuring sound scientific practice at his institution, to ensure fair behavior in science, to which end it had developed and now applies a code of conduct. This is definitely a case of a "self-imposed" permanent in-house conflict treatment site, perfectly present in the minds of the staff.

5.5.3. Supportive Elements in Conflict Management at Higher Education Institutions

Several interviewees identified **sufficient knowledge about the causes of the conflict**, which highlights the need for a broad explanation of the conflict, i.e. sufficient information as well as traceability of the course of the conflict as central supporting mechanisms for conflict resolution.

The **establishment of conflict management instruments** in the minds of those involved and **good observation and exploration of potential improvements** are important as well. At colleges this relates directly to the so-called evaluation talks, which can be requested by students as part of the course evaluation.

The **(early on) involvement of people of high standing within the institution** has proven to be an asset for successful conflict management. Even people who have good personal relationships and possess a sufficiently large network within institutions can positively influence the process. At universities, the constructive participation of decision-makers, such as the rectors, can significantly contribute to conflict resolution; at colleges this role would be assumed by the program directors.

Several interviewees considered the need for a **mandatory conflict management training** for managers advantageous.

An absolutely necessary condition is the **mutual respect of all parties on all hierarchical levels**. An important contribution to de-escalation are the personal and individual conversations (shuttle-mediation) at an early stage of the conflict.

External conditions that can support conflict resolution were enumerated as follows: the good image of the relevant bodies, correct information (e.g. clearly stated definitions of the tasks) regarding the bodies themselves and about the competent contact persons and the correct procedures. An easy, low-level accessibility of the conflict management institutions has also been mentioned as relevant. Time constraints can build up a pressure in a conflict resolution process that can be viewed as positive, under certain circumstances, in that it the involved people feel the urge to come to a solution.

5.5.4. Hindering Elements in Conflict Management at Higher Education Institutions

A particular disadvantage for conflict management was seen by the interviewees in **the reluctance to participate in the process** and **exaggerated expectations regarding the possible outcomes**. The personal attitudes of conflict opponents may have a negative effect on the conflict treatment. Some of these potential conflict-parties could be highly sensitive agents such as artists and individuals that are highly resistant to criticism and advice from the beginning.

Further obstructive elements are **attempts by third parties to influence the process** (e.g. representatives of different groups, other stakeholders, lawyers) as well as **an emotionally charged conflict handling** (e.g. in the framework of appointment negotiations).

Divergent group interests are detrimental to finding a solution to conflicts - these differences may even lead to fragmentations according to hierarchy levels or even on the levels themselves. To further escalate the conflict one might add "proxy wars" as well as a written expression of conflict positions, especially in the form of (reckless and widely distributed) e-mails!

The **framing of personal conflicts as material conflicts and the blending of different aspects** (e.g. different legal issues pertaining to studies on the one hand and to employment on the other) can delay or prevent conflict resolution. The lack or unwillingness to proactively tackle problematic issues results in postponing, delaying, procrastinating, or the problems being "swept under the rug".

The **general abandonment of conflict counselling** and the avoidance and shift to alternatives as a consequence of that abandonment can lead to "inner emigration" or to people "sitting out the conflict" and, in the most extreme case, to a factual emigration of involved persons to another institution.

Just as **time pressure** can be positive for conflict treatment it may also have a negative impact on the process.

Given that current job descriptions for executives and managers rarely require conflict management skills and experience it is no wonder that they are missing in many executives, who in turn may underestimate or disparage the importance of conflicts which may be regarded as a **lack of professionalism** at least in that respect.

According to statements made by the experts interviewed for this study, the systemic deficits are the **inconsistency and therefore the disunity of the university system**.

Institutional problems are inter alia the lack of information in the highest offices of the students' true needs, which is partly due to the low regard for basic needs and the increasing dominance of top-down requirements coming from the top.

5.5.5. Conflict Management Processes/Mediation Processes and their Positioning at Higher Education Institutions

The **positioning of conflict resolution methods** (in the form of mediation or by means of mediation techniques as well) was a topic frequently brought up by the interviewees. As one interview partner put it, conflicts mainly take place on the micro level, in the units "*where real life is actually happening*": institutes, departments, clinics.

Depending on the dimension of the conflict, experts consider solutions of "minor cases" to be possible with goodwill on the lower levels (micro-level!). Solutions for central issues can only be settled at the highest levels. In the latter case, it is essential to consider and respect the inter-institutional relations and the conflicts of interest that may arise due to the variety of responsibilities and competences. Furthermore, it is also important to engage the contact points of conflict resolution (if there are any) in the correct hierarchical order and to clearly delineate the circle of involved individuals.

The **faculty** seems the appropriate level to achieve an objectification of situations that threaten to create factions at the institute level. Regarding conflicts between faculties, conflict management has to be carried out by a higher office (e.g. the rector's office).

As far as universities are concerned, the interviewed experts have identified both the **deans** in their position as heads of faculties (meso level!) as well as **collegiate bodies** (such as the Senate and the University Board or the college-committees at universities of applied sciences, the "FH-Kollegien") as possible mediators.

The **decentralized university ombudsmen** (working directly at the institutions) were regarded as possible extra-hierarchical mediators. The direct contacts with the student representatives at the periodic *jours fixes* and spontaneous meetings with the staff of the rector's office are extra-hierarchical as well. Another interviewee demanded the absolute closeness of conflict management to the students.

Regarding a **centrally established conflict management body** on institutional level, that also should have the power to decide on the use of mediation, it is advisable to share the costs within the institution. The interviewees warned that such a body might be possibly misused or become overburdened due to its general competence.

5.5.6. Public Awareness and Acceptance of Conflict Management Processes/Mediation Processes at Higher Education Institutions

Overall, the expert interviews showed that mediation, as conflict intervention at universities and colleges is not well-known and has barely taken root in the minds of academics and students alike and, therefore, "**proper mediation**" is very rarely used.

Allegedly, **mediation has a bad image because it is often equated with criticism of the institution**, especially regarding conflicts between members of the staff/students and leading figures of the same institution.

The expectation of success in the case of mediation is generally low. On the other hand mediation is also perceived as positive, especially as a possible starting point for a better conflict-culture at the institution. The acceptance depends largely on the specific communication situation in each organizational unit. The trust that is placed in the person of the mediator is essential.

The lack of willingness to participate in the mediation process, mentioned by some interviewed experts, can stem from several reasons, all of which are based on hierarchy-related considerations: Given unequal power relations (power gap) due to the prevailing hierarchy, mediation seems difficult from the outset. Those conflict partners involved look for alternatives in the form of avoidance, which can lead them to leave or to migrate to other institutions.

Voluntary participation of higher ranking officials in mediation was described by one of the interviewees as "rather utopian." The acceptance of mediation, expressed by the willingness to participate, seems to be highly dependent on the specific personality of the (hierarchically) superior.

A concrete example of the publicizing of conflict handling instruments, the establishment of the ombudsman for good scientific practice, was described by one of the interviewed experts. The office developed its own code of conduct for its work, the complete document available on the internet. This creates as much transparency as possible which helps to raise the acceptance of the instrument as such.

5.5.7. Implicit/Explicit and Internal/External Mediation at Higher Education Institutions

Implicit mediation, as a technical term, was repeatedly used by the interviewees. While it is not yet commonly used in the literature, implicit mediation was one of the central topics of the 13th German Mediation Congress of 2009 (Creutz/Engler, 2009, p. 94). "Implicit mediation" refers to the use of mediation techniques in a conflict without explicitly labelling them as "mediation" - mediating without an official mandate. The opposite to this is, of course, "**explicit mediation**", the official and authorized mediation with the proper setting and the individual appropriate steps, whether carried out by internal or external mediators. One of the interviewees spoke of an internal-external hybrid position between the institutionally established avenue to use mediation, but finally being carried out by an external mediator.

Several interviewed experts mentioned that all official conflict management offices at universities carry out implicit mediation. Leading officers also exert functions in conflict management. One of the interviewees used the term "**crypto-mediation**", which modified as "**secret mediators**" can be found in a completely different context in the literature. Gerda Klammer and Peter Geissler (Klammer/Geissler, 1999, p. 34) use it in describing the activities of the staff of the Psychological Service of the Office for Youth and Family within the Office of the Municipality of Vienna. Their central task is to promote the personal and social development of minors. Many of them are active as "secret mediators", in that sense that only four relevant Counseling Centers Divorce and Separation Issues of the Municipality of Vienna dispose of the official services of official mediators.

The interviewees emphasized multiple times that implicit mediation could be successful in a purely internal conflict mainly if performed by persons of high standing within the institution and that in small-scale conflicts or in so-called "trivial cases" informal solutions are achievable using mediation, without engaging the own institutionally established instruments.

This is completely different in the curious case of the **Arbitration Board** under the Austrian Universities Act 2002, where implicit and purely internal mediation is even mandated by law. In the commentary to this bill, the term mediation is explicitly used, which leads to confusion of potential applicants, according to one of the interviewed experts, himself a member of an Arbitration Commission.

Regarding the terms **internal/external mediation** it has generally been found that in both cases a written agreement should necessarily be made. External mediation is indeed well-known, but very rarely performed, probably partly because external, "foreign" (and possibly also individuals not well versed in the material aspects) mediators are not well-received.

The desire for mediation, the decision to participate and the subsequent decision on the specific person of the mediator should be taken by the conflicting parties themselves. Some interviewees had also perceived that "voluntary" mediation versus mediation "under pressure" had taken place and that mediation was sometimes even used as pressure to achieve specific goals.

External conflict mediators, according to some of the interviewees were definitely indispensable in highly-escalated individual cases and in conflicts between management bodies at the same hierarchical level. Furthermore, also large-group mediations in highly-escalated material conflicts with many stakeholders can only be performed by external mediators.

Examples of this include **location issues** (merger of units, moving of institutions or entire faculties) and large-scale effects of legal amendments of higher education related laws (e.g. the implementation of the "Bologna Goals, "compulsory changes" of curricula etc.).

Both for implicit and explicit, internally organized and externally commissioned mediation, a certain level of knowledge regarding the system of higher education is an asset.

Based on their own experience and observations, the interviewed experts stated that different treatment methods, depending on the hierarchical status of those involved are used.

Especially interesting was the finding of several interviewees that a balance of power by mediators is possible in every case in conflicts with large hierarchical differences, whether internal or external, implicit or explicit mediation.

Regarding mediation skills, basic training in mediation and even an official diploma was considered desirable for all four categories. Several institutions hire professionals for coaching, supervision and meditative techniques and are offered for the staff members only.

As one of the interviewees put it, mediation training offers a different perspective on social and interpersonal realities and has positive effects on one's own personality.

6. Resumé: Is In-House Mediation a / the Only Possible Tool for Conflict Management at Higher Education Institutions?

In his provocatively named article "*Braucht die Universität einen Ombudsman?*" ("Does a University Need an Ombudsman?") the legal economist Wolfgang Weigel (Weigel, 2000, p. 3) wrote about potential conflicts at his university, the University of Vienna thus:

"Conflicts are evidently inevitable. Dealing with conflict situations is a skill that belongs to the basic equipment of social competences of every human being. But there are many situations where emotions, lack of imagination, and mental barriers stand in the way of conflict resolution ...

In a large and deeply structured, "service office" such as the University of Vienna with thousands of employees there is obvious potential for conflict. The handling of conflicts between employees is part of the specific duties of the respective superiors. But the

dispute may be too serious and, secondly, the superior might be perceived as a party to the conflict and, thirdly, he may actually be a party."

After a thorough discussion of (then pertinent) legal instruments for the handling of complaints, Weigel's final wish for the future is an "access point, free for all", which can act as an information center, an advisory body and as a mediation instrument". In his *"Rechtsökonomik"* Weigel (Weigel, 2002, p. 158) has since created an economically inspired theory of the Ombudsman which he has then further developed in the higher education context.

More than ten years later, "his university", the University of Vienna, as has been explained in detail in Chapter 2 of this study, already disposes of several permanently established conflict treatment offices, even quasi in-house quasi mediation offices partly working with meditating techniques, one of which is actually compulsory by law (the Arbitration Board, *"Schiedskommission"*).

As has already been stated in this publication, there are currently organizations, private companies (www.uni-mediation.at), and offices that (either implicitly or explicitly) perform mediation services or at least "offer" them in higher education institutions as well as organizations within the universities (such as the Student Union, ÖH).

Ombudsmen offices established decentralised at universities as is the norm in other European and overseas countries, have only been installed in few cases in Austria.

There is a very wide variety of ombuds offices using established and accepted in-house mediation, some even guaranteed by law, such as in Spain (with a strongly established mediation offer). They are characterized by a clear hierarchical intra-organizational position, clearly defined public mission statements, easy accessibility, and transparent processes.

All these points came up as general themes in the expert interviews, but as suggestions rather than as facts, given that in the reality of universities and universities of applied sciences, hierarchy and power continue to play significant roles. The idea of bringing in external experts to manage and resolve conflicts finds little support with members of the universities or universities of applied sciences.

Through autonomous decisions it is possible for higher education institutions to create conflict management offices officially offering mediation (or bundle existing ones), accessible to all university members. Mediation tools present in these networks (including graphical display of the processes) such as the one of the University of York provide optimal conditions for persons in need of mediation to inform themselves beforehand about mediation and would be easy to emulate. Another example is taken from the University of California, San Francisco that has published a "Fact Sheet Mediation Services" (www.MedFactSheet2011-2012-pdf) and the webpage button "How to start mediation?"

Several interviewees noted the leaders' lack of competence in small-scale conflict resolution (i.e. at the micro-level), as well as escalation scenarios in the direction of meso and macro-levels. Hence the importance of continuous expansion education and training opportunities in conflict handling is a given fact and an urgent need. This has been clearly shown by Oliver Ruppel

(Ruppel, 2007, p. 103) in his overview: *"Interdisziplinäre Schlüsselqualifikation Mediation"* covering Germany, Switzerland, Liechtenstein, and Austria *en detail*. By now, at the European University Viadrina in Frankfurt an der Oder, Germany, there is a special Institute of Conflict Management, which proves that the subject of conflict management is finally seriously considered an academic discipline.

Klaus Rückert writes about "Mediation - a new way to deal constructively with conflict":

"We are hesitant to make our conflicts public because they imply weakness and are also charged with the image of a zero-sum game. There are many conflicts, but the practice of mediation not yet widespread. That will change soon. Mediation is establishing itself! It is not only a method of conflict resolution, but also an expression of a new attitude towards and political philosophy for interpersonal communication in modern society. That is what is truly fascinating about mediation."

This study examines the use of mediation and mediation techniques in conflict management at universities and other institutions of higher education. The central question was: what framework conditions are necessary for introducing and practicing in-house mediation, i.e. an internal access point and instrument for mediation within the organization.

Through interviews with experts in the field at various university levels, who have relevant experience in mediation processes, implicit instruments as well as those explicitly used to deal with conflicts at higher education institutions were analyzed and compared.

The key messages of the interviewees were categorized and discussed, whereby the main issues addressed were the introduction of mediation instruments at institutions of higher education, the way in which internal and external mediation functions and the overall acceptance of mediation by members of institutions of higher education.

The quintessence of this study is that successful mediation, either upon request from outside or an institutionalized at universities must be conducted extra-hierarchically, i.e. as freely and independently as possible from institutional power relations and on the basis of transparent and generally accessible rules of procedure.

With this study, the authors wish to make a contribution to raise awareness for the establishment of (in-house and external) mediation in higher education among university officials in general and Austrian and international ombudsman colleagues in particular. We hope that we were successful, even if only just a bit.

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