



Viadrina-Schriftenreihe zu Mediation und Konfliktmanagement

Marcel Voitalla

To what extent do institutional mediation rules in the sports sector contain the principles of mediation?

A comparative analysis of selected mediation regulations from the sports sector



Band 17

Viadrina-Schriftenreihe zu Mediation und Konfliktmanagement

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Wolfgang Metzner Verlag

Master-Studiengang Mediation
und Konfliktmanagement
Masterarbeit
Studiengang 2016/2018



EUROPA-UNIVERSITÄT
VIADRINA
FRANKFURT (ODER)

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Printed in Germany

ISBN 978-3-96117-048-7

ISSN 2365-4155

Bibliografische Information der Deutschen Bibliothek

Die Deutsche Bibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

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Preface

This thesis was submitted as master thesis at the Faculty of Law of the European University Viadrina Frankfurt/Oder in spring semester 2018. The date of the oral examination was 10th October 2018.

In addition to my interest in mediation and ADR, I am also interested in sports and its legal issues. Therefore, it was a special concern of mine to write the master thesis on a topic that combines mediation, sports, and law.

During the literature research I noticed that mediation rules in sports are largely unexplored. In this regard, the idea came up to examining to what extent the mediation principles are contained in the mediation rules in the field of sports and working out the underlying understanding of mediation, including the similarities and differences between the individual mediation codes.

Since most mediation codes in the field of sports are written in English, the present thesis was written in English.

At this point I would like to thank all the people who supported me during the preparation of the master thesis, both professionally and personally:

I thank my advisor, Mr. Christof Berlin, for his professional impulses and suggestions in connection with this work. I am also grateful to Mr. Arno Gotting for preparing the second opinion.

Furthermore, I would like to thank my fellow students of the Master's Program in Mediation and Conflict Management at the European University Viadrina Frankfurt/Oder for their numerous suggestions and ideas during the implementation of the master thesis.

Finally, my greatest thanks go to my family and friends, who supported me unconditionally not only during the preparation of the master thesis, but throughout the entire time of my studies.

Marcel Voitalla, March 2019

1. Introduction

In order to introduce the topic, the research question and the research objective is discussed below. Subsequently, a survey refers to the existing literature. Finally, the procedure of investigation is shown.

1.1. Research Question and Research Objective

The field of sports is a complex matter involving a large number of participants, including athletes¹, managers, clubs, sponsors, and sports organizations. In this respect, it is not surprising that conflicts often arise between these participants. In the field of sports, a multitude of emerging conflicts is often resolved through arbitration procedures.²

However, the Woodhall/Warren case has also shown that mediation is suitable for resolving sports-related disputes.³ In this case, Woodhall, the current World Boxing Council (WBC) Super Middleweight Champion, and Warren, the Boxing Promoter, opted to resolve their contractual dispute by mediation rather than pursue it through litigation. The mediation process enabled Woodhall and Warren to resume their working relationship after settling the dispute. Following the procedure, Warren said: “It was important to all concerned to have brought this matter to a speedy conclusion. We have shaken hands and look forward to resuming our successful partnership.”⁴

The purpose of the mediation procedure – the activation of the self-responsibility of the parties – is based on the assumption that no one can evaluate

¹ For simplicity's sake and to support ease of reading, the use of the male gender in this thesis applies to both males and females.

² Many sports-related arbitration procedures are carried out at the Court of Arbitration for Sport (CAS). For more information about the CAS, see McLaren, *The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes*, Valparaíso University Law Review, Vol. 35, No. 2, 2001, 379 ff, retrieved from <http://scholar.valpo.edu/vulr/vol35/iss2/3> (last visited Aug. 08, 2018).

³ Blackshaw, *Mediating sports disputes*, in Nafziger/Ross (eds.), *Handbook on International Sports Law* (2011) 81f; Shair Mohamad/Kamarudin, *Mediation as an effective tool for resolving sports disputes*, *International Journal of Business, Economics and Law*, Vol. 7, Issue 4, August 2015, 81 (84), retrieved from http://ijbel.com/wp-content/uploads/2015/09/KLIBEL7_Law-31.pdf (last visited Aug. 08, 2018).

⁴ Centre for Effective Dispute Resolution (CEDR), *Mediation – Boxing Clever!*, <https://www.cedr.com/press/?item=Mediation-Boxing-Clever> (last visited Aug. 08, 2018).

the elements that should be part of a conflict resolution even approximately as well as the parties themselves.⁵ Because of this, it is not unexpected that different bodies and institutions in the field of sports (e.g. the CAS), have created their own mediation rules and codes in order to help participants solve their sports-related disputes within the family of sports.

However, mediation contains certain principles that are characteristic of this type of conflict resolution, especially in order to enable the delimitation to other Alternative Dispute Resolution (ADR) procedures. Therefore, this thesis shall examine the following question: “To what extent do institutional mediation regulations in the sports sector contain the principles of mediation?” In order to answer the raised research question, it is necessary to examine the regulatory treatment of the principles of mediation in selected mediation regulations from the sports sector. Furthermore, the similarities and differences between the regulatory treatment of the individual bodies and institutions are identified as well. From the researcher's point of view, it is also of interest to investigate to what extent sports-specific peculiarities are represented in the mediation regulations to be investigated. For example, sports often require “quick” decisions, which could affect the rules governing the time frame of mediation. It is also exciting to examine whether the institutions and bodies make special demands on the expertise of the “sports” mediator in their rules and codes.

The research objective is to strengthen mediation as an ADR process in the field of sports and to raise awareness of the importance of the principles of mediation. A further objective is to highlight the similarities and differences between the regulations of the enacting institutes and associations in the field of sports in order to help them to reflect upon their own rules. Therefore, this thesis should help to stimulate a discussion between the bodies and institutions in the field of sports on the handling of the principles and regulatory treatment in their codes.

⁵ Wendenburg, *Mediation – flexible Gestaltung innerhalb fester Strukturen*, ZKM 2014, 36; cf. Hesse, *Is mediation suitable to resolve sports related disputes?*, <https://www.lawinsport.com/topics/articles/item/is-mediation-a-suitable-to-resolve-sports-related-disputes> (last visited Aug. 08, 2018).

1.2. State of Research

A great deal has been written and said about mediation and sports. While *Marschner*⁶ has compared the different procedural leaders at soccer games, *Ribler*⁷ has described the management of conflicts in sports and the practical application of mediation in amateur and youth soccer. *Pulter/Ribler*⁸ have explained how mediation can be anchored in the sports system by presenting the project “Inter-cultural Conflict Mediation/Mediation in Soccer.” *Grabowski*⁹ has discussed why mediation may offer a remedy for solving of sports-related conflicts by establishing a forum for open communication, which is from his point of view currently missing in many sports negotiations. *Shair Mohamad/Kamarudin*¹⁰ have highlighted some advantages of mediation in order to show that mediation is the most effective and resolution-friendly procedure to settle sports disputes. *Sandu*¹¹ has researched why mediation has the potential to succeed where arbitration has failed by describing the arbitration procedures of national and international institutions and their arbitral responsibilities. Furthermore, based on 40 interviews with athletes and staff, and from his own professional and academic experience as mediator, he has presented the main benefits of mediation that can be used in sports disputes.¹²

Within the field of “mediation and sports”, some authors have already dealt with the institutionalization of mediation in sports. *Mironi*¹³ has mapped the state of mediation in sports, especially the degree of institutionalization of mediation on the international level, such as in the CAS, European Club Association (ECA),

⁶ Marschner, Fußball ohne Schiedsrichter – ein Beitrag zu einer besseren Welt? Ein Vergleich unterschiedlicher Verfahrensleiter im Fußballspiel (2011).

⁷ Ribler, Mediation im (Fußball-) Sport, in Trenczek/Berning/Lenz/Will (eds.), Mediation und Konfliktmanagement² (2017) 5.18 m.n. 1 ff.

⁸ Pulter/Ribler, Mediation im Sportsystem, ZKM 2003, 15 ff.

⁹ Grabowski, Both Sides Win: Why Using Mediation Would Improve Pro Sports, Journal of Sports and Entertainment Law, Vol.5, No.2, 2014, 189 ff, retrieved from <http://harvardjssel.com/wp-content/uploads/2014/11/Grabowski.pdf> (last visited Aug. 08, 2018).

¹⁰ Shair Mohamad/Kamarudin, International Journal of Business, Economics and Law, Vol. 7, Issue 4, August 2015, 83.

¹¹ Sandu, ADR in Sport Disputes: Should Mediation be Used over Arbitration?, Conflict Studies Quarterly, Issue 11, April 2015, 57 ff, retrieved from <http://www.csq.ro/wp-content/uploads/CSQ-11.-Sandu.pdf> (last visited Aug. 08, 2018).

¹² Sandu, Conflict Studies Quarterly, Issue 11, April 2015, 57 ff.

¹³ Mironi, The promise of mediation in sport-related disputes, The International Sports Law Journal 2017, 131 (144).

WBC, and International Ice Hockey Federation (IIHF); he has also provided recommendations for promoting the idea of mediation in sports. *Godin*¹⁴ has examined multiple case studies of mediations conducted through the Sport Dispute Resolution Centre of Canada (SDRCC) with the goal of identifying successful mediation strategies for high-performance sports disputes.¹⁵ Furthermore, *Blackshaw* has already emphasized that mediation is not only offered by commercial organizations such as CEDR, but also by sports bodies, such as the CAS, SDRCC, Sport Resolutions (UK) (SRUK), or the Fédération Internationale de Football Association (FIFA) Dispute Resolution Chamber.¹⁶ In this context, *Blackshaw* has ascertained that mediation services provided by sports bodies are a complete subject in their own right and worthy of further study.¹⁷ Therefore, this thesis shall contribute to closing this research gap.

1.3. Procedure of Investigation

The first Chapter deals with the research question and the research objective. Furthermore, the state of research is presented.

The second Chapter presents the measure of investigation. First, the understanding of mediation shall be determined in order to be able to differentiate between mediation and other ADR procedures; thus, the principles of mediation are also explained. In this context, the principle of focusing on interests is also discussed and the five-phase model as the predominant mediation model in Ger-

¹⁴ Godin, Sport Mediation: Mediating High-Performance Sports Disputes, Harvard Negotiation Journal, Vol. 33, 2017, 25 ff, retrieved from <https://naarb.org/wp-content/uploads/2018/06/Sports-Mediation-Mediating-High-Performance-Sports-Disputes.pdf> (last visited Aug. 08, 2018).

¹⁵ Godin mentions that, from his point of view, currently, most professional sports do not widely use mediation as a formal part of their dispute resolution processes, although informal forms of dispute resolution may well be used, and parties do sometimes opt to mediate in individual cases, see Godin, Harvard Negotiation Journal, Vol. 33, 2017, 26f.

¹⁶ Blackshaw in Nafziger/Ross, Handbook on International Sports Law 82; also worth reading: Blackshaw, Mediating Sports Disputes, National and International Perspectives (2002) 49 ff; Blackshaw in Nafziger/Ross, Handbook on International Sports Law 65 ff; Blackshaw, The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively, Within the Family of Sport, Entertainment Law 2003, 61 ff; Blackshaw, ADR and Sport: Settling Disputes Through the Court of Arbitration for Sport, The FIFA Dispute Resolution Chamber, and the World Intellectual Property Organization (WIPO) Arbitration & Mediation Center, Marquette Sports Law Review, Vol. 24, Issue 1, 2013, 1 ff, retrieved from <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1609&context=sportslaw> (last visited Aug. 08, 2018).

¹⁷ Blackshaw in Nafziger/Ross, Handbook on International Sports Law 82.

many is presented. Since there are different institutions and bodies in the field of sports, which have enacted their own mediation rules, these institutions and bodies, along with their manner of regulating mediation, are presented. In addition, the investigation requires choosing certain institutions and bodies that enable comparability of their rules and codes.

In the third Chapter, the research question is discussed. For this purpose, the regulatory treatment of the principles in the selected mediation codes from the sports sector is examined. It should be noted that the set of rules is composed of both principles and rules. Therefore, it is appropriate to discuss the relationship between “principles” and “rules”. Subsequently, the regulatory treatment of mediation principles in the selected mediation codes is examined. In order to provide comparability between the mediation codes of the selected bodies and institutions, therefore, some regulatory areas are to form by the author.

Finally, in fourth Chapter, the key findings are summarized and some suggestions about the regulatory treatment of the principles are offered to the bodies and institutions in the field of sports.

2. Measure of Investigation

Gläßer has already noted that comparison of the individual definitions and the diversity of the procedures (which are referred as “mediation” both in literature and in practice) shows that there is no full agreement as to the constitutive process characteristics of mediation.¹⁸ Therefore, with regard to the raised research question, it is necessary to create a measure of investigation. The understanding of mediation and the principles of mediation are discussed. Finally, the institutions and bodies that have issued mediation rules in their codes are presented. In addition, in order to discuss the raised research question, some of these institutions and bodies, along with their rules and codes, must be explored.

2.1. Understanding of Mediation

Even if definitions always have a limited range and may not claim absoluteness,¹⁹ it is nonetheless necessary to determine the understanding of mediation in this thesis in order to delimit mediation from other ADR procedures such as conciliation. Describing a distinction between mediation and other ADR procedures is made more difficult by the fact that the international mediation literature has not formed a universal terminology for mediation.²⁰ Nevertheless, in the international review, the definition of mediation has a common core: according to this core, mediation is a procedure, which is performed on the voluntary basis of the parties, in which a mediator without power of decision systematically promotes

¹⁸ Cf. Gläßer, *Mediation und Beziehungsgewalt* 61; for the different styles and goals of mediation, see Gläßer, *Mediation und Beziehungsgewalt* 67 ff; Wendenburg, *Der Schutz der schwächeren Partei in der Mediation* (2013) 17 ff; Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, *Harvard Negotiation Law Review*, Vol. 1, No. 7, 1996, available at <http://scholarship.law.ufl.edu/facultypub/668> (last visited Aug. 08, 2018).

¹⁹ Trenczek, *Außergerichtliches Konfliktmanagement (ADR) und Mediation – Verfahren, Prinzipien, Modelle*, in Trenczek/Berning/Lenz/Will (eds.), *Mediation und Konfliktmanagement*² (2017) 1.1. m.n. 23.

²⁰ Hopt/Steffek, *Mediation – Rechtsvergleich, Regelungsmodelle, Grundsatzprobleme*, in Hopt/Steffek (eds.), *Mediation* (2008) 16; Gläßer, *Mediation und Beziehungsgewalt* (2008) 61; Rabe/Wode, *Mediation: Grundlagen, Methoden, rechtlicher Rahmen* (2014) 15; for more on diversity in mediation practice, see Alexander, *Global Trends in Mediation*, in Trenczek/Berning/Lenz/Will (eds.), *Mediation und Konfliktmanagement*² (2017) 6.2. m.n. 8 ff.

communication between the parties with the objective of facilitating a self-responsible conflict solution by the parties themselves.²¹

In this respect, mediation and conciliation agree that the third party has no binding decision-making power in both cases, which makes a distinction between these procedures additionally difficult.²² In order to be able to differentiate between these procedures, *Röthemeyer* has proposed the “measure of solution activity” as a criterion of delimitation.²³ According to this criterion, a mediator, in principle, does not propose solutions and recommendations.²⁴ By contrast, a conciliator proposes concrete recommendations for a solution and for this reason simultaneously assumes (co-) responsibility for the conflict resolution.²⁵ A major criticism of the missing distinction between mediation and conciliation is that the conversational behavior of the parties varies significantly depending on whether it is their goal to persuade a third party of the plausibility and legality of their point of view, or whether they wish to develop an interest-based and amicable solution together with the other conflict party.²⁶ This criticism is comprehensible and justified. Therefore, the definition of mediation for the purposes of this thesis reads as follows: mediation is a confidential and structured procedure in which the parties voluntarily and self-determinately, with the support of a multipartial third party who is not allowed to propose solutions and has no decision-making power (“the mediator”), strive for an amicable conflict resolution based on the parties’ needs and interests.

It should also be noted that the mediation comprehension of the author is based on § 1 MediationsG²⁷ and *Gläßer*²⁸. Furthermore, the author’s definition is

²¹ Hopt/Steffek in Hopt/Steffek, Mediation 12.

²² Furthermore, demarcation problems arise from the fact that the terms in practice and science are often used identically; e.g. in Ireland, where the terms “conciliation” and “mediation” are often used synonymously, see Hopt/Steffek in Hopt/Steffek, Mediation 17.

²³ Röthemeyer, Die Schlichtung – ein Stiefkind der Gesetzgebung, ZKM 2013, 47 (49).

²⁴ Röthemeyer, ZKM 2013, 49.

²⁵ Klowait/Gläßer, Einführung, in Klowait/Gläßer (eds.), Handkommentar-MediationsG² (2018) Einl. m.n. 37.

²⁶ Wendenburg, Mediationsgesetzgebung: Regelung eines flexiblen Verfahrens im internationalen Vergleich, in Haft/Schlieffen (eds.), Handbuch Mediation³ (2016) § 58 m.n. 17.

²⁷ § 1 MediationsG, available at <https://www.gesetze-im-internet.de/mediationsg/BJNR157710012.html> (last visited Aug. 08, 2018):

“(1) Mediation ist ein vertrauliches und strukturiertes Verfahren, bei dem Parteien mit Hilfe eines oder mehrerer Mediatoren freiwillig und eigenverantwortlich eine einvernehmliche Beilegung ihres Konflikts anstreben.

(2) Ein Mediator ist eine unabhängige und neutrale Person ohne Entscheidungsbefugnis, die die Parteien durch die Mediation führt.”

significantly influenced by the Master's Program in Mediation and Conflict Management at the European University Viadrina in Frankfurt (Oder).

2.2. Principles of Mediation

It is generally accepted that the process of mediation is determined by specific principles. On one hand, these principles are important in order to differentiate mediation from other procedures²⁹; on the other hand, adhering to these principles (in addition to the procedural structure) can ensure that the mediation parties are permanently pacified after termination of the mediation.³⁰ An inobservance with the principles risks that a party feels disadvantaged or even is disadvantaged.³¹ In this regard, it is primarily the task of the mediator to ensure that the principles are observed in every phase of the process.³² From the aforementioned understanding of mediation, some of these principles can be derived. The principles of mediation are as follows: voluntariness, self-determination, confidentiality, multipartiality, and focusing on the interests. These principles are described below.

2.2.1. Principle of Voluntariness

Voluntariness is one of the central values of mediation.³³ The principle of voluntariness refers to the voluntary participation of the parties in the mediation process.³⁴ The conflict parties shall decide for themselves and without external coercion whether a mediation process should even be initiated and when it should be carried out.³⁵ Only a volitional mediation procedure of the parties can lead to success.³⁶ The voluntary participation of the parties should create an “open nego-

²⁸ See Hagel, Begriffsbestimmungen, in Klowait/Gläßer (eds.), *Handkommentar-MediationsG²* (2018) § 1 m.n. 10; Gläßer, Verfahren; Aufgaben des Mediators, in Klowait/Gläßer (eds.), *Handkommentar-MediationsG²* (2018) § 2 m.n. 82; siehe auch Rabe/Wode, *Mediation* 9 ff.

²⁹ Cf. Gläßer, *Mediation und Beziehungsgewalt* 61.

³⁰ Kracht, *Rolle und Aufgabe des Mediators – Prinzipien der Mediation*, in Haft/Schlieffen (eds.), *Handbuch Mediation³* (2016) § 13 m.n. 98.

³¹ Kracht in Haft/Schlieffen, *Handbuch Mediation³* § 13 m.n. 98.

³² Cf. Kracht in Haft/Schlieffen, *Handbuch Mediation³* § 13 m.n. 98.

³³ Keydel, *Zum Prinzip der Freiwilligkeit der Mediation*, ZKM 2011, 61.

³⁴ Cf. Marx, *Das Prinzip der Freiwilligkeit der Mediation*, ZKM 2010, 132.

³⁵ See Hagel in Klowait/Gläßer, *Handkommentar-MediationsG²* § 1 m.n. 14.

³⁶ Marx, ZKM 2010, 132.

tiation atmosphere.”³⁷ Furthermore, the principle of voluntariness also includes the ability of the parties and the mediator to terminate the mediation process at any stage.³⁸

2.2.2. Principle of Self-Determination

The principle of self-determination emphasizes the importance of the autonomy of the parties in the mediation procedure.³⁹ The purpose of the mediation procedure – the activation of the self-responsibility of the parties – is based on the assumption that no one can evaluate the elements that should be part of a conflict resolution even approximately as well as the parties themselves.⁴⁰ For this reason, comprehensive information is an indispensable prerequisite for a self-determined solution of the parties.⁴¹ The respective parties are only able to weigh and decide if they are also fully aware of all of the information that is necessary to make a decision.⁴²

Furthermore, a self-determined conflict resolution requires active participation of the parties.⁴³ A mere passive presence of one or more parties is unlikely to lead to an amicable conflict resolution, as the interests⁴⁴ of the passive party are not necessarily considered.⁴⁵ In this respect, the conflict parties retain responsibility for both the mediation’s content and its results⁴⁶ (i.e. it is ultimately the responsi-

³⁷ Marx, ZKM 2010, 132.

³⁸ Cf. Marx, ZKM 2010, 132.

³⁹ Rabe/Wode, Mediation 21.

⁴⁰ Wendenburg, ZKM 2014, 36.

⁴¹ Cf. Rabe/Wode, Mediation 21; the principle of awareness of all necessary information can be seen as an own principle as well, e.g. see 2.3.3. Richtlinien der Bundesarbeitsgemeinschaft für Familienmediation e.V. (BAFM) für die Mediation in Familienkonflikten, available at: <https://www.bafm-mediation.de/verband/richtlinien-der-bafm-fur-die-mediation-in-familienkonflikten/#Ziele> (last visited Aug. 08, 2018) or Duss-von Werdt/Mähler/Mähler (eds.), Mediation: Die andere Scheidung (1995) 120; Kracht in Haft/Schlieffen, Handbuch Mediation³ § 13 m.n. 114 ff; Rabe/Wode, Mediation 21f.

⁴² Rabe/Wode, Mediation 21; in order to receive and evaluate the necessary information, it is also conceivable to involve other parties in the proceedings, see Rabe/Wode, Mediation 21.

⁴³ Cf. Rabe/Wode, Mediation 21.

⁴⁴ Interests in the sense of mediation can be defined as “the relevant criteria in the individual case, which must be taken into consideration in a conflict resolution, so that the result is comprehensively satisfied for the parties.”, see Gläßer, Mediation und Beziehungsgewalt 81; Gläßer/Kirchhoff, Lehrmodul 2: Interessenermittlung, ZKM 2005, 131.

⁴⁵ Rabe/Wode, Mediation 21.

⁴⁶ According to Marx the content-related responsibility for the results can be seen as an expression of the principle of voluntariness, see Marx, ZKM 2010, 132.

bility of the parties to exchange all relevant information, identify the interests at hand, and develop creative solutions).⁴⁷ Nevertheless, the mediator is responsible for control of the procedure (i.e. he has the duty to determine the procedure in such a way that the parties can each voice their issues, relevant beliefs, and interests to the same extent).⁴⁸ The mediator is also responsible for the structuring, the communicative and methodological design, the visualization, and, as a rule, the documentation of the mediation process.⁴⁹ Thereby, a significant added value of mediation compared to a negotiation lies in the discharge, which results from the fact that the parties yield the responsibility of the determination of the procedure to the mediator and can therefore concentrate entirely on the discussion of the conflict themes.⁵⁰

2.2.3. Principle of Confidentiality

Blackshaw has referred to the principle of confidentiality as “all-important requirement” of ADR procedures.⁵¹ Confidentiality is also a fundamental principle of mediation.⁵² The work of the parties on an amicable solution is facilitated if the parties do not remain in mutual distrust caused by the conflict, but are able to cooperate with trust and frankness.⁵³ Furthermore, the principle of confidentiality must also be observed in the relationship between the mediator and the parties.⁵⁴ This essentially refers to the treatment of information from the parties and the mediator in relation to external parties, who are not involved in the mediation

⁴⁷ Cf. Gläßer, *Mediation und Beziehungsgewalt* 78; cf. Rabe/Wode, *Mediation* 21; therefore, through the principle of self-determination, mediation can also be distinguished from other procedures, in which a third party can settle the entire conflict, e.g. judicial and arbitral proceedings.

⁴⁸ Cf. Montada/Kals, *Mediation: Psychologische Grundlagen und Perspektiven*³ (2013) 63.

⁴⁹ Gläßer, *Mediation und Beziehungsgewalt* 78.

⁵⁰ Wendenburg, *ZKM* 2014, 37.

⁵¹ Blackshaw, *Mediating Business and Sports Disputes in Europe*, *ESLJ* 2008, 6 (2), 4, retrieved from <https://www.entsportslawjournal.com/articles/10.16997/eslj.61/> (last visited Aug. 08, 2018).

⁵² See Lilja/v. Lucius/Tietz, *Blick auf die Rechtsprechung zum Thema Mediation*, in Klowait/Gläßer (eds.), *Handkommentar-MediationsG*² (2018) Einl. m.n. 100; Wendenburg criticizes the term of confidentiality as a defining feature of mediation, see Wendenburg, *ZKM* 2014, 38; Wendenburg, *Der Schutz der schwächeren Partei in der Mediation* 14.

⁵³ Hilbert, *Die Sicherung der Vertraulichkeit des Mediationsverfahrens* (2006) 5.

⁵⁴ Cf. Rabe/Wode, *Mediation* 18.