



FROM THE IUSTORIA BLOG

When to Go to Court and When to Mediate

Court, mediation, or arbitration? Four factors to help you choose the right forum — and save time and money.

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"I want to take this to court." I hear this from clients regularly. And my first response is always the same: "Why?"

Not because court is a bad choice. Sometimes it is the only right choice. But because most clients automatically assume that court is the only path to resolving a dispute. It is not. It is one path. And not always the best one.

Choosing the right forum — court, mediation, or arbitration — is a strategic decision that fundamentally shapes the process, the costs, and the outcome. And yet it receives surprisingly little attention. Let us change that.

Four Factors for the Decision

1. Nature of the dispute: principle or money?

This is the first question you need to ask. Are you fighting for a principle, or for money?

If it is about principle — about precedent, about an acknowledgment of fault, about public confirmation that the other side acted unlawfully — then court is likely the right choice. A court judgment is authoritative. It says: "This is how it is." A mediation agreement says: "This is what we agreed." These are fundamentally different outputs.

But if it is primarily about money — recovering a debt, compensation for defective performance, a financial settlement — then you need to consider whether court is truly the most efficient route to the money. Because court is expensive. It is slow. And the outcome is not guaranteed.

I had a client who wanted to sue a former business partner for two million Czech crowns. He was right — the partner had breached the contract. But litigation would have taken two to three years, legal costs would have climbed into the hundreds of thousands, and there was a risk the partner would have stripped assets in the meantime. In mediation, they agreed on 1.6 million within three months. The client received less than he demanded — but he received it quickly, with certainty, and without further costs.

2. Relationship with the other side: will you meet again?

This is a factor clients completely ignore when emotions run high. But it matters enormously.

Litigation is inherently adversarial. It creates a winner and a loser. And even if you win, the relationship with the other side is typically damaged beyond repair.

If the other side is someone you will never see again — a former supplier, a random debtor — that may not matter. But if the other side is your business partner, a neighbouring firm, a subcontractor you work with on other projects — then litigation may cost you more than you recover. Because you will lose a business relationship that had value.

Mediation, by contrast, preserves relationships. It does not ask "who was right" but "how do we solve this." And in a business context, that is often far more valuable.

3. Evidence: do you have enough for a court to decide?

Courts decide based on evidence. Not on what you know. Not on what is "fair." On what you can prove.

Before you opt for litigation, ask yourself: do I have evidence? Do I have a contract? Do I have email correspondence? Do I have witnesses? Do I have an expert opinion?

If yes — court is a viable path. If no — court is a gamble. And no responsible lawyer should advise you to gamble with your money and your time.

In mediation, there is no evidentiary standard. The mediator does not decide who is right. They help the parties find a solution that is acceptable to both. This means that even in a situation where you lack sufficient evidence for court, you can still achieve a reasonable result in mediation — because the other side also has a motivation to end the dispute.

4. Time and money: how much can you afford?

This is the factor that is discussed least, yet decides the most.

Court proceedings in the Czech Republic take on average one to three years at first instance. With an appeal, easily five years. With a further appeal to the Supreme Court, even longer. Throughout that entire period, you are paying a lawyer. Paying court fees. Paying experts. And you have no certainty of the outcome.

Mediation typically takes a few weeks to a few months. Costs are a fraction of litigation. And you control the outcome — because the agreement is reached by consensus, not by a third-party decision.

Comparison: Court vs. Mediation vs. Arbitration

For clarity — the key differences from the client's perspective:

Duration. Court: 1–5 years. Mediation: weeks to months. Arbitration: months to a year.

Costs. Court: court fees + legal representation + experts. Mediation: mediator's fee (shared between parties) + optional legal representation. Arbitration: arbitration fees + legal representation.

Control over outcome. Court: none — the judge decides. Mediation: full — the agreement is reached by consensus. Arbitration: none — the arbitrator decides.

Enforceability. Court: judgment is directly enforceable. Mediation: agreement is enforceable if drawn up as a notarial deed or approved by a court. Arbitration: award is directly enforceable.

Publicity. Court: public (with exceptions). Mediation: confidential. Arbitration: private.

Impact on relationship. Court: typically damages it. Mediation: typically preserves it. Arbitration: depends on the proceedings.

When Arbitration Is the Third Way

Arbitration sits somewhere in between. It is faster than court but more formal than mediation. It is private, which you will appreciate if you prefer your dispute to stay out of the public eye. And an arbitral award is directly enforceable — unlike a mediation agreement, which requires an additional step.

But it has its downsides. Arbitration is generally a single-instance process — the award cannot be appealed (except in rare cases). This means that if the arbitrator gets it wrong, you have nowhere to turn. And arbitration fees for larger disputes can exceed court fees.

Arbitration makes sense for international disputes, for disputes governed by an arbitration clause in the contract, or where confidentiality is paramount.

Choosing the Forum Is Half the Strategy

I tell my clients this regularly: choosing the right forum is half the strategy. You can have an excellent lawyer, strong evidence, and a legitimate claim — but if you choose the wrong forum, you waste time, money, and energy.

And conversely — sometimes a weaker position in mediation is stronger than a strong position in court. Because in mediation, the willingness of both sides to find a solution is what decides. And willingness tends to be a more powerful motivator than any statute. If, after reading this, you suspect litigation is more prestige than sense in your case, see [Not every battle is worth fighting](#). If you are going to court, look at [what you can ask for in a civil lawsuit](#) and at how much of [your attorney's fees the court will actually award back](#). Mediation, incidentally, works precisely because it neutralises the psychological effect of "reactive devaluation" — for that and other behavioural-science findings about disputes, see my popular-science piece [Statutes are just the foundation: psychology and tactics in a legal dispute](#). Forum choice depends heavily on *who* will actually be deciding — a judge subject to decision fatigue, anchoring biases and own interests is a different variable from a mediator; that is the subject of [The Psychology of the Parties](#). And if you are wondering whether you actually need a different professional altogether — a crisis-PR specialist, mediator, therapist — rather than a lawyer, I recommend the text on [the lawyer as illusionist and the triage of the problem](#).

Before you decide where to take your dispute, pause. Ask yourself those four questions. And then decide — not with emotion, but with strategy.

Trying to decide between court, mediation, and arbitration? In our [dispute practice](#) we walk you through all three paths and pick the one that actually helps your case — not the one that best suits the lawyer. [Get in touch](#).

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