

COMMUNICATION PERSPECTIVES IN MEDIATION AND CONFLICT RESOLUTION

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Abstract

The paper presents some ways to resolve conflicts and interpersonal disputes, as a result of the communication blockage, that prevents their resolution. Mediation is presented as the main form of amicable settlement of a conflict, using the specific elements of communication by the mediator or facilitator, which restores the dialogue of the parties involved and assists in the amicable negotiation of a mediation agreement, which can resolve the dispute by generating solutions unanimously accepted by the participants. The work highlights the importance and role of communication in the mediation process and the specific ways of communication used by the mediator, as a specialized facilitator, and recognized by society.

Keywords: *mediation, communication, dialogue, conflict, dispute, mediator.*

1. INTRODUCTION

The paper represents a communicative approach to mediation, a regulated institutional process in Romania, which aims to resolve interpersonal conflicts and it represents a real alternative for resolving disputes, with the help of a recognized professional who is able to carry out the mediation process. The dispute is the result of a conflict that occurs between people, usually where communication of any kind failed, with reference to interpersonal communication or organizational and institutional communication; a situation that facilitates the appearance of the consequences resulting from the conflict, manifested in the form of damages created to the people involved.

Mediation is the process that can restore the communication of the parties involved, in order to facilitate the resolution of the conflict, through a specialist called mediator, who has communication skills that will be used in the mediation process. The mediator is a professional empowered by the law to facilitate dialogue

between people or parties regarding a particular conflict or dispute, parties who may voluntarily turn to the mediator or who may be directed to this mediation process by a judicial entity, within a process, if by they reaching an agreement their dispute can be finalized, in accordance with the law. The conflict or dispute is a result of the interaction between people or between the individuals and the organization or institution they interact with, and which occurs when communication no longer takes place or occurs in a defective manner, and overcoming the state of conflict depends on the ability of those involved to resume the communication and try to resolve their dispute. Conflict resolution can be achieved with help of the mediator, who supports both parties to reach an agreement together, whereby the conflict is resolved, thus conducting an *assisted negotiation* between them.

The agreement or understanding of the parties is facilitated by the specialized mediator, and his terms and conditions are generated by the parties involved in the conflict, who decided to voluntarily participate in the mediation process, generating the premises for the amicable settlement of their conflict. Completing the mediation process by reaching an agreement defines the nature of the new relationships established by the parties, in the sense that "mediation establishes future behaviours and maintains relationships between them" (STOICA, 2004).

2. THE PREMISES FOR MEDIATION EMERGENCE -AN ALTERNATIVE TO CONFLICT RESOLUTION

One of the first studies published in Romania on mediation, seen as an alternative to conflict

resolution, shows that the mediation process and arbitration have been used since ancient times for the peaceful resolution of interpersonal conflicts, in order to achieve community stability, procedures that have been extended to trade disputes or between states, in the sense that arbitration “developed as a creation of the Greek community” and where “the arbitrator had a dual role. First of all, they tried to mediate the conflict, and if it could not be resolved through mediation, then they resorted to the arbitration process (ȘUȘTAC, 2013).

If we look at antiquity, Aristotle has a first exploration of the conflict, manifested between reason and human emotion, and in his work on the *Constitution of Athens*, the Greek philosopher refers to Solon as a peacemaker interposed between the conflicting camps. The period of the Middle Ages follows, where the predominant conflict is represented by the confrontation between the angelic and demonic levels, presented by theologians; or by the dispute over virtue and sin, specific to the Christian philosophy of the whole era (ȘLUȘARENCO, 2018). Another recent reference to antiquity leads us to Confucius, who “considered that the best way to resolve disputes was in a kind way rather than coercion” (LAZARI, 2013). The attestation of the first standards specific to an international mediation has taken place since 1680. In 1694 the term mediation is introduced in *The Dictionary of the French Academy*, being taken over by the famous author La Fontaine in one of his fables (LEMPEREUR, et al., 2011).

The tradition of mediation is also present in the Romanian area, often manifested by the symbolic “advice of the elders” or applied by other prominent figures of the Romanian village, involved in mediation or extinguishing conflicts between members of a community, and here we refer to the priest, teacher or even the mayor, fulfilling the current duties of a mediator, to resolve or overcome a conflict or dispute in his community.

The most current concept about conflict appeared in 1980, under the name of *The Alternative Dispute Resolution*, noted in some papers under the acronym ADR, which is currently taken over and implemented in several countries around the world, including in the Romanian training schools

of mediation. It was included in their agenda as “voluntary, amicable settlement of disputes, in which the parties decide to resolve their differences through direct involvement in obtaining agreed, solid and lasting solutions, having decision-making power to resolve the conflict” (ȘUȘTAC & IGNAT, 2008).

3. WAYS TO RESOLVE CONFLICTS AND DISPUTES

The consecrated form of resolving a conflict is usually reserved for the judiciary, organized by the state and ensures compliance with the social norms of coexistence, being based on laws and regulations governing a company, are opposable to all people within a society. We refer to some aspects of alternative dispute resolution, in which the judiciary can be circumvented, through alternative procedures accepted by the state and society, which have the effect of relieving the courts specific to the first system mentioned, and which is exercised through specializations and distinct professions, which become alternatives with real chances of success in resolving a dispute or conflict. The main alternative forms of dispute resolution are specific to being outside the courts and they are found in practice in various forms, such as: negotiation, mediation, arbitration, conciliation (IGNAT & ȘUȘTAC, 2010), all having as a main characteristic the achievement of the needs and interests of the parties involved in the conflict, without pursuing their legal rights, as happens in the judiciary, which are focused on this form of resolving any conflict. In a singular approach, however, the mediator Zeno Șuștac considers arbitration as a traditional form of dispute resolution that “does not belong to the category of alternative means of dispute resolution” (ȘUȘTAC, 2013) and he introduces a *reconciliation* form that can be applied within the community, but also *the good offices* concept, as other forms of dispute resolution, used at diplomatic level, especially in international conflicts (ȘUȘTAC, 2013).

Mediation occupies a dominant place, with over 60% of all disputes resolved outside the courts, due to the fact that it can intervene during a judicial procedure, if the parties accept the

intervention of a mediator or if the legal norms allow this express form of cessation of the dispute before the court. All these stated solutions have a common characteristic, given by the voluntary participation of the parties, who turn to a specialist, appointed according to each specialization, to be: negotiator, mediator, arbitrator or conciliator, and who use in their practice all forms of interpersonal communication. The differences between these procedures are given by the way the conflict is approached by the facilitator, who in the case of mediation turns the conflict into an agreement; in the negotiation the parties are concerned with finding a solution, maximizing their own interests; in arbitration the solution is decided by the arbitrator, who imposes it on the parties by his decision; and the conciliator is concerned with clarifying the individual perceptions expressed by the parties to the dispute, thereby restoring dialogue and trust between them.

Referring to the forms of resolving a conflict, the mediation presents some differences from the other mentioned forms, which can be expressed as following: the negotiator can support the interests of the party that represents it, compared to the impartiality of the mediator in mediation; in the arbitration process, the solution is given by an arbitrator, whereas in mediation the solution is generated by the participants, being mutually advantage; in conciliation, the facilitator analyses the conflict in order to facilitate the generation of a solution, not being expressly concerned with clarifying the positions of the participants of dispute (IGNAT&ŞUŞTAC, 2010; ZECHERU, 2013).

The communication that takes place in these processes is facilitative, by stimulating interpersonal communication with the help of the facilitator, and it is a collaborative type, being generated by the voluntary involvement of the parties in resuming the dialogue as the main form of communication, through which the solution can be identified. In mediation, the collaboration of the parties through the communication assisted by the mediator leads to the final situation (win-win), when the participants in the process can conclude the dispute and sign the agreement generated in the mediation process.

4. COMMUNICATION IN THE MEDIATION PROCESS

Mediation is a process based on communication between the parties, which is part of the collaborative strategy for resolving a conflict and which can result in both parties winning when the mediation process ends by reaching a mutually beneficial agreement (win-win). This strategy of approaching a conflict is becoming more and more specific to the mediation process, it being mostly acquired by all practitioners in mediation, as a form of conflict management, adapted to this approach to resolving disputes of any kind. The facilitation process performed by the mediator is achieved through the communication approaches used in mediation, which becomes an assisted negotiation process, where the mediator is concerned with restoring the communication between the parties, that can generate the agreement or understanding of the parties, which will implicitly lead to overcoming the dispute and resolving the conflict for the people who appealed to the mediator. The restoration of the communication process will start first of all from the identification of the communication errors that appeared during the dispute, and that led to the conflict, which can be analysed in the mediation process, along with facilitating the resumption of communication of the participants or clarifying the conflict situation, avoided until then for various reasons.

An extensive analysis by researchers in France refers to the beneficial effects of mediation, as a way of overcoming past blockages, which place lack of communication on the first place, as the one that prevents the resumption of an interpersonal relationship, followed by the negative emotion generated by the conflict, which amplifies the risk of its escalation or the emergence of other problems accumulated by maintaining the conflict; or mutual misunderstanding between the parties involved, as well as mistrust towards each other or towards other people involved in the conflict (LEMPEREUR, et al., 2011).

In order to highlight the importance of communication in the mediation process, we present the definition given by the author of a

special course, in which this role is emphasized, in the sense that "Mediation is a private, voluntary and integrative part of the dispute resolution process, relatively informal and structured on the collaborative and efficient interpersonal communication, in which one or more specially trained and accredited professionals assist the parties in the dispute resolution process, taking into account their needs and interests" (LOGHIN, 2016).

The most common communication errors are the kind of criticism expressed about a certain person or situation; value judgment which usually also leads to the attribution of an accusation for one of the parties involved, or the confrontation of the parties involved in the dispute, in various ways. All can lead to the development of a conflict, which immediately results in the establishment of communication barriers between the parties, but it is important to know that "effective communication involves awareness and overcoming the communication barriers" (IGNAT&ȘUȘTAC, 2010). The same authors identify in their textbook some of the communication barriers, resulting from the verbal disputes present in the mediation process, and which lead to neglecting the subject or the arguments expressed, as the following: deaf dialogue, egocentric monologue, prescriptive language, ignorance, subject change, ambiguity, inattention, self-centeredness, the use of false feedback, resistance to criticism, language difficulties or the choice of when to mediate (IGNAT&ȘUȘTAC, 2010).

All these communication barriers generate personal attitudes that can block the dialogue or communication of the participants, which manifests itself in various forms, especially through: stubbornness in supporting a certain idea, inability to engage in dialogue with the other, inability to overcome a namely the time or lack of trust in other people, as well as the inability to work together to restore communication and overcome conflict. Overcoming these communication barriers requires the mediator to make major efforts to adapt his working methods, by giving clear pauses for reflection to those involved in mediation, or by requesting arguments that could lead to some clarifications or stop the

immediate effects of the dispute subject to mediation, aiming at resuming the process in optimal conditions, which would facilitate communication, highly necessary for the mediation process.

5. SPECIFIC WAYS OF COMMUNICATION USED BY THE MEDIATOR

In the mediation process, the specialist called mediator uses a wide range of communication techniques and methods, based on his communication skills developed throughout his professional career. A first form of communication is to stimulate the expression of feelings and needs of the parties involved in the process, as an expression of non-combative communication specific to mediation, where the mediator is based on their own language, generating communication between the parties, followed by numerous moments of active listening. The parties may express opinions or make personal reports about their dispute, and the specialist remains neutral, avoiding any personal judgments on the case, which highlights the impartiality of the mediation process (BLOHORM-BRENNEUR, 2014).

From the analysis of the whole process, we can see that the specific elements of an interview are taken in mediation, by the fact that the mediator uses sets of questions in order to initiate the development of the subject, and bring clarifications through the personal interpretations given by facts of interested parties, express opinions and feelings related to the conflict; and the mediator can also make certain interpretations or reformulations on the reports obtained by the mediation in order to clarify the conflict. Another important element in achieving a good communication in the mediation process is given by the adaptation of the language used by the mediator to the specifics of the case, with the granting of its own rhythm of communication to the participants, in order to achieve the objective of mediation from the parties in mediation, leading to the resolution of their conflict and the achievement of an amicable agreement, which will be written by the mediator at the end of the mediation process. The French author includes in

the communication techniques all the mediator's abilities to overcome some difficult situations, such as: highlighting emotions related to the case, refusal to speak, non-compliance with the specific rules of mediation, achieving an unbalanced agreement; all these situations can occur during mediation, generating a real stalemate in communication, and their resolution would actively contribute to the successful closure of disputes (BLOHORM-BRENNEUR, 2014).

The mediation process aims at restoring the dialogue between the parties involved in the conflict, like an initiated dialogue between the mediator and each party, either during the joint mediation meeting or also at the mediator's separate meetings with the parties involved, which may have the effect of negotiating an amicable solution, which will implicitly lead to the realization of the communication between the parties, by generating the agreement that will be signed and adopted by them. The dialogue, seen as an essential premise of mediation, leads the parties to reconciliation and the elimination of communication blockage situations.

"Goodwill and good faith between people, they took a root again, precisely because of the dialogue within the mediation process, a dialogue in which the mediator generates together with the parties discussions on conflict analysis (causes, history, effects, solutions) exclusively for an extinct solution to the conflict" (DORIN&DORIN, 2018).

These authors highlight, from the title of their paper on the mediation process, the fact that any conflict can be transformed into a mediation agreement through communication, which can be reworked by the mediation specialist, who is concerned with identifying the needs and interests of the conflict participants. The mediator tries to support them to overcome or eliminate existing divergences, and create a convergence, which can take the form of an agreement, so that the solution found by the parties involved is a win-win one for each person. As a specific communication technique used by the mediator in the process, a specific forms of rhetoric can be included, when preliminary he makes an argumentative exposition of the role and benefits of mediation in resolving the conflict,

where he will include the personal exposition of the rules, so that the parties can decide on their voluntary participation in the mediation process and thus be involved in a dialogue, initiated by the mediator, in order to generate a good solution, materialized in the agreement of the parties. The whole mediation process requires the elimination of any value judgments or criticisms of the case, which will once again strengthen the neutral approach of the mediation specialist, who is concerned with achieving a balance of the entire mediation process, using active listening of the parties and encouraging active reporting from the people participating in the trial, so that mediation can be expressed as "an incursion into conflict" (DORIN&DORIN, 2018).

Reaching an agreement, by generating a unanimously acceptable solution by all participants in the mediation, requires the mediator to pursue, throughout the process, the generation of dispute resolution options, in which way he will be concerned to help participants identify their interests, and the specialist, by summarizing and reformulating the opinions expressed, will point out the steps taken by each person involved, thus obtaining from each one the solution offers, which are then sent to the other person, including the strategy of separate meetings with each person, for obtaining a unanimously accepted result, materialized in the form of a final agreement, which will be signed by all, including the mediator (IGNAT&ŞUŞTAC, 2010).

The mediation agreement is subsequently subject to a legality check, by submitting it to a Notary Office or the competent judiciary Court, which will issue a decision certifying the agreement assisted by the specialist, giving it once again the character of assisted negotiation, in the way that the parties of the conflict have generated and mutually agreed on the solution, so that the effects of the conflict can cease, by the immediate application of their agreement.

6. CONCLUSIONS

The aspects presented in the paper show the role and importance of communication in mediation, as a defining element of its success,

in terms of overcoming differences and reaching an amicable agreement, becoming an essential premise in restoring communication and dialogue between the people involved in the dispute, thus highlighting unlimited resources communication, as a way of overcoming and resolving an interpersonal conflict. The mediation process, through the use of various communication methods applied by the mediation specialist with the participants in the process, becomes a facilitative process, in which they are positioned in the centre of the mediation process, through the communication thus developed, and mediator's action not being oriented to result, but it is an action that facilitates a solution generated from all participants, included in the kind agreement accepted and signed by them at the end of the mediation procedure.

Restoring communication through mediation between the participants in the conflict is the basic feature of a mediation process, which once completed, helps the people involved to find those options that will lead them to an agreement, which largely contains the achievement of the interests of those who agreed to participate in the mediation process.

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