Mediation - a Method to Resolve Conflicts Without Going to Justice

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Abstract
Conflict in a society such as the present, where disputes are born every minute, whether it is minor conflicts inherent in community life, or it is a major conflicts involving large groups of people, communities or even states, it takes more effort to restore peace. Appeal to the court or an authoritarian leader to judge and decide who are right, is not a long term solution because there will always be dissatisfaction with the solution found.

Thus alternative methods are needed to restore the natural order, moving into the conflict to find a compromise solution to please all parties. And one of the methods that can do this is mediation, seen as a quick and confidential way of resolving conflict and finding a viable solution.

This study aims to present the main techniques used to obtain the desired result in mediation: a durable peace between the parties.

Key words: conflicts, judge, mediation, peace.

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1. Introduction
A conflict is an essential and inevitable phenomenon of social life, because existence of human interaction involves a series of agreements or disagreements between individuals or social groups, and they may easily entail a conflict, which always affects the parties involved, even if there are perceptions that consider conflict as a constructive process.

In fact, no conflict is constructive or destructive – the way it is resolved can have positive or negative effects, so there are many interpretations of the notion of conflict because of its assimilation with the circumstances leading to various conflicts.

The attitude towards the conflict and its resolution depends on the situation which caused strict conflict, so that an organization can identify the following types of potential conflict: intrapersonal (individual relationship with him - inner conflict, this conflict can be resolved by a third party), interpersonal (among members of same group - because of differences in attitude, personality, values, goals, experience, education, an important factor in interpersonal conflict is adapting correct the situation so that you can achieve the goal) and inter-group (between groups belonging to the same organization, for reasons of cohesion - causing hostility outside the group structure - the type of leadership and individual status within the group, actions of power takeover - cause conflict with weaker groups).

A conflict has always a cause which determines the nature and intensity of that conflict, including possible sources of conflict such as: poor communication, competition...
for common, but limited resources, incompatible purposes and desires, inequality and social discrimination, access to competitive opportunities or increased desire for domination, power or prestige.

2. The structure of conflict
Many analysts have described the development model of conflict through five relatively distinct stages with disagreement as a starting point that begins with simple misunderstandings, differentiating individuals or groups by their way of being and thinking, minor insignificant differences for social interaction or for the group, but which can degenerate into real conflict if uncontrolled in time. The confrontation, mentioned in the next phase, widens the differences between individuals, groups or classes. They are perceived by the parties in conflict as important for group interaction, group threatening unit. In this phase each side presents its position, emphasizing an ideology based on evidence (engagement parties intensify the line initial disagreement, each side pointing out errors of the others’ way of thinking, the phase in which each side convinces itself that it is necessary to persuade the opponents to change their opinion or give up their position, accepting his argument. Persuasive action is exaggerated, it may degenerate into action force, coercion, because the emotional side prevails over logical arguments, thus resulting in a tense atmosphere, which leads to chain successive frustrations, hostilities, acts of violence, language aggression and a solution must be found. The escalation triggers negative elements that support an over competitive behavior, tensions and hostilities in the group increased in intensity, self-defense reaction of each party raises physical and symbolic violence, maximum aggression, at this stage the conflict reaches its climax which may completely destroy the group interaction or may rebuild it through structural change.

Interference, inherent in the conflict escalation, is naturally followed by orientation towards rational solutions to resolve conflicting condition, the institutional legal interventions through negotiation and compromise, by encouraging open communication possibilities between the parties, the emergence of a third person as mediator, moderator or negotiator, all of them aiming at restoring normal social interaction and de-escalation.

To be successful in time and efficient in the social interaction group, the final solution for conflict resolution should not be regarded as a compromise by either party, but there should be identified the positive-integrative function for the organizational unit. The failure to adopt constructive, mutually acceptable solutions may result in the dissolution of the organization or may generate a temporary balance, based on force. Various responses to conflict, come up in the last phase, the conflict resolution and its many roles are strictly derived from the existence of multiple types and causes of generating misunderstandings. If the conflicts are resolved constructively they create a satisfactory outcome for all parties and improve the relationship between opposing parties and the ability to resolve future conflicts in a constructive way. Conflict resolution can be defined as a philosophy and a set of skills that help individuals or groups to better understand the concept of conflict and resolve it, as long as it occurs in every aspect of our life, being part of our life. However, if we can’t stop conflicts it’s up to us if we use the energy around a conflict or if we uselessly waste our efforts.

3. Mediation
Resolving conflicts involves entrusting their traditional justice and conflict resolution on the principle of win-loss (winner-defeated) solution still unresponsive to the

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1 Tomescu Madalina Considerations on conflict and conflict classification, „Revista Romana de ADR”, 1/2012, p. 61
Various conflicts we know in the current society, mainly because of economic diversification and social relationships and the very fast rhythm of our present life.

Starting from these considerations a conflict resolution can be achieved through mediation, with great success in family conflicts, divorce, collective labor disputes, inheritance, co-ownership, contracts, conflicts between students, between employees, political parties or even countries, bringing a better response to the parties to the conflict by focusing on the interests at stake, as mediation aims at finding affordable and realistic solutions for both sides in the conflict, in accordance with the law, unlike the traditional conflict resolution where the focus is mainly on the legal aspects of the case.

Participation in the mediation process is voluntary, because mediation does not establish guilt or innocence of the conflicting parties, the mediator's role is not one decision, but by providing procedural information, it stimulates the dialogue, facilitates exchange of views and information between parties, helping the parties to clarify the needs and interests, to overcome communication barriers and get to solving disagreements by finding mutually beneficial solutions.

This environment is based on the parties’ trust in the mediator, the person able to facilitate negotiations between them and support them to resolve the conflict, by obtaining a mutually agreed solution, efficient and sustainable, an optional way of solving conflicts in a friendly way, with a specialized third party as mediator, in terms of neutrality, impartiality and confidentiality.

Thus mediation is, above all, the mediator’s art to turn a conflict in an agreement as a result of options generated and selected by the parties, the conflict management process, allowing prevention or resolution of a conflict due to third person’s intervention, being impartial and with no decision power, who guarantees communication between partners and thus helps to restore the social bond.

Methods and techniques used by the mediator shall serve only the legitimate interests and objectives of the parties to the conflict, so the mediator can not impose a solution on parties to the conflict submitted to mediation.

Conflicting parties are entitled to be assisted by a lawyer or other persons, as provided by mutual agreement, but the submissions made during the mediation by the parties to the conflict and by the mediator are confidential to third parties and can not be used as evidence in legal proceedings or arbitration unless the parties make another agreement or the law stipulates something else.

The mediator will inform the persons who participate in mediation on the obligation of maintaining the confidentiality and will be required to sign a confidentiality agreement, and if, during mediation, there is a situation likely to affect its purpose, neutrality and impartiality of the mediator, he is required to bring it to parties who will decide on maintaining or breaching the mediation contract.

The mediator has the right to abstain and close the mediation being required to return the fee proportional to the not covered stages of mediation, or, if appropriate, to ensure the continuation of the mediation, the mediation contract terms.

If the dispute submitted to mediation presents difficult or legally controversial aspects or from any other specialized field, the mediator, the parties' agreement, may request the standpoint of a specialist in that field, only highlighting controversial issues, without disclosing the parties' identity.

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3 Lisman Fanuta Mediation in civil trial, Universitara Publishing House, Bucharest, 2011, p. 40
When the conflicting parties reached an agreement, the mediator will assist parties in drafting the final agreement for mediation, which specifies the commitments of each party to settle the conflict, and that is equivalent to a written document under private signature.

4. Resolving conflicts through mediation

Regardless the type of conflict, mediation has its own time during the conflict, usually in the next phase of confrontation, when the conflict begins to escalate, but the later the intervention the more difficult the situation can be relieved so that this intervention would ideally take place when the disagreement comes up when without waiting for a confrontation.

Sensitivity of a part in choosing the time to use mediation is sufficient to determine the stage of the conflict, as mediation aims at getting a cognitive response that provides a rational solution for each side, accompanied by an affective and behavioral response used by each party to change their attitudes and feelings, moving from hatred, desire of fighting and destruction of each other to an atmosphere of peace where they can live together without conflict.

Therefore the results putting away a conflict depend not so much on the content, skills and knowledge as on the parties involved - management relative to the situation as "fleeing" from the conflict (or avoid it) is important to avoid a conflict escalation.

The parties’ collaboration leads to an acceptable and realistic solution and it is related to honesty, openness and life attitudes of those involved, who choose correctly to describe the events that led to the conflict, otherwise, you do not want to find out the causes, and the discussion is limited just to the visible effects of the conflict and by creating a greenhouse "gases" effect conflict resolution efficiency decreases.

A thorough analysis of events is necessary so that the effect on parties to occur after mediation by preserving and accepting solutions found together, otherwise, in the best case, a fragile peace will be broken by a mere misunderstanding, since the problems are in fact unresolved.

The best way to achieve sustainable results in mediation is the dialogue between the parties, which implies their willingness to get together on a common solution, according to a realistic approach that would remove existing prejudices and preconceived ideas, based on authentic values making it relevant to the expectations of the parties).

A dialogue involves the parties desire to communicate, knowing that most of the conflicts occur because of the lack of communication or poor ways of performing it, to clear the problems, namely to determine the positions of the parties to the addressed issues, as an effective way for a better knowledge and mutual understanding and a necessity also in the process of evolution to find solutions – which instead of cancelling differences of principles between the parties it relies on finding common ground to allow their joint action in some sense).

The work style of mediation depends on the parties’ behavior and personality, but also on the mediator skill to facilitate communication and above all, on how well he knows what actually happened, because knowing the cause he is likely to facilitate the proper conduct of both mediation and the positive results which lead to final peace agreement.

In order to solve the conflict the mediator and the parties must especially understand the motivation, know the feelings, motivations and concerns of each of them, just as the parties must know the methods discussed in mediation, to interact with each other as and with the mediator as well.
Only when the parties know well the methods and styles approached in mediation there is a communication likely to substantially contribute to positive developments in addressing the current conflict, through a rational understanding of the contribution of each party, without making them give in to reasoning not to pressure. 

The other reason that parties demonstrate in mediation is often seen as a starting point for dialogue, the actors involved can be centered on existing conjunctures and their transformation processes. 

Thus, the negotiated procedure is optimal when the parties do not want only to make or obtain concessions consented subjective negotiation positions, but rather - they try to settle the basic dispute, being unbiased, their position being of neither parties. In this respect there should be clearly defined the mutual interests in a transparent and total sincerity, without the slightest recourse to dissimulation or fear, and that’s why it begins with wording out the problems to be solved as answers to questions such as: what does not work, what happened and what was the evolution of conflict, which are the elements that prevent the solving of the situation. 

Analyzing the answers to these questions we can get a diagnosis of the current situation, insisting on the causes that prevent the problem, because depending on this we can find solutions to solve the theoretical and practical ways agreed upon. Once established these measures and their implementation way there can be approached the methods of defusing conflict and peace between the parties, going to be established the guarantees to make this peace long-last, respectively what these parties do when the mediation is over so that the last conflict would no longer appear. 

5. Conclusions 

A conflict is an inevitable phenomenon of social life, because we live in the society with an unprecedented people’s closeness, through the existence of urban life in the communities exceeding one million. 

In these conditions the conflict is less important than the way it is approached, namely whether the solution found is positive or negative. Thus we can solve a conflict by resorting to a court where a judge will decide who is right and who is wrong, doing “justice”, even if through this method both parties get to be pleased with the solution and conflict is more amplified than put down. 

We also appeal to a leading authority, and this is specific to closed communities to settle the dispute based on moral or religious authority available, but that does not guarantee either the solving of the conflict, as it only establishes a winner and a loser. So the best way of resolving the conflict seems to appeal to mediation, the parties, in the presence of a mediator, a third specialist, impartial and neutral, to try to clarify the underlying causes of conflict to achieve a settlement thereof. 

Note that this is a method where no one loses, everyone gets a benefit because besides the conflict solved even by the parties, themselves, its causes are found, so the future this can be avoided, by restoring communication between the parties. The mediator neither gives solutions nor decides who is right or wrong he only restores, through way used in mediation, a safe and communication for the parties to be able to reach, through dialogue, from a state conflict to one of collaboration, which can be maintained even after the mediator’s departure, because only the parties can determine what is best for them and especially how they want to "exploit" the conflict in their interests by using the energy created around a conflict, to rediscover communication with others or to waste their energy.
References