SYNTHESIS
COMMUNICATION AND CONFLICT.
COMMUNICATION MANAGEMENT
IN THE ALTERNATIVE DISPUTE RESOLUTION

Laura MARUŞCA

Abstract

The premises of this project are that approximately 90% of the conflicts in the modern society and not only, are based on poor communication.

Any type of miscommunication (due to cultural, linguistic, politic or religious differences) can and will generate conflicts of various intensities going from simple quarrel to diplomatic incidents and all the way to wars.

The mediator has the role to solve any existing conflict and to help repair the breaches from the communicational system between parts, in order to preserve the relationship.

Keywords: ADR, agreement, alternative dispute resolution, conflict, communication, ethics, legislation, manipulation, mediation, mediator, miscommunication, techniques.

Weather we like it or not, we live in an era of globalization, an era which requires us to do all it takes in order to survive and in order to stay on top of things. In our days, it is necessary for a product to have more than the best of qualities, in order to survive on the market, and power becomes the main element of reference when it comes to measure the level of success in any field. Everything, starting with the interpersonal relationships, work relationships, business interactions, and even the dialogue and the relations between states is based on

Laura MARUŞCA

Babeş-Bolyai University, Faculty of Political, Administrative and Communication Sciences, Department for Communication and PR, Cluj-Napoca, Romania
Email: laura805ro@yahoo.com

relationships and power, which automatically involves the need to be acquainted with the communication, negotiation and mediation techniques.

We have already established that in our world, communication plays a great part. In order to adjust to this new trend, and in order to survive on a market that has become more and more aggressive and filled with potential conflicts, the political and economic organizations of any nature develop specific structures within them in order to deal with the communication challenges, or they hire a specialized company to deal with this issues. Companies of this sort have also emerged on the Romanian market lately.

Many studies from this field showed the importance of various aspects of communication in the amicable settlement of conflicts of any nature, and because of that, they developed many theories that take into account the psychological and sociological elements combining the scientific accomplishments from various research fields with field studies. Lately, new areas of research have emerged, in the social science and the humanities field which took a great interest in the communicational techniques used to solve a conflict.

The approach of my thesis is to understand the way in which the mediation process works, the evolution of the principles that stand behind this process and the extent of it.

Combining different theories, used in social physiology, sociology, in manipulation, or in publicity, statistic research and marketing studies – the negotiation and the mediation specialists is in fact the one who controls the conflict of any kind, by conflict understanding, any type of relationship that involves two sides and the existence of an argument.

Communication, mediation and the negotiation techniques have become one of the main elements required to survive in an era of globalization dominated and built upon relations of power.

Returning to the initial assumption that the trigger and the development of the phenomenon of globalization is information we reach the conclusion that its dissemination would not be possible without communication. Global recognition in any field is therefore subject to the development of communication and public relations, crucial areas of the age of globalization.

The introduction of mediation and alternative conflict resolution (ADR) in daily life is not just a procedural change, it represents a change in the culture and in the mentality. In a manner more or less formal, mediation has always existed in traditional societies formed by smaller groups of people. Within these groups there has always been an authority or a wise person whose role was at one time or another, to intervene as a mediator when a conflict of any kind has requested this.

When the size of the human communities grew, a new situation appeared, where two people representing the two parties involved in the conflict, didn't necessarily have a common acquaintance to serve as mediator. Since that time, conflict resolution was achieved by decisions of state enforcement this task falling in the hands of the

same state. The growing internationalization of life and increased business and the need for temporal compression of all actions, in particular disputes that block trade or relations of this sort, have led to an attempt to avoid by the parties, the use of the traditional courts which have been replaced by arbitration. However, arbitration soon showed his limits, especially due to high costs.

Currently, domestic and international business environment evolves too quickly to allow the necessary time for the authorities to find a solution. They show increasingly less desire to accept that a third party can interfere with their rights and deprive them of the autonomy which allows them to adapt quickly to various changes and take their own decisions.

Mediation represents a fundamental change in the level of mentality and is considered to be a major progress of civilization because it allows parties to adopt again, freely their own decisions, with the help of a neutral party, when they failed in the attempt to find a solution.

The first chapter of this research entitled *Communication Barriers. Modern techniques of communication and manipulation*, will present various techniques of communication whose failure can lead to conflicts of any kind and to the deterioration of relations on to a certain level, which requires the existence and the use of mediation techniques to avoid any further development of the conflict.

The analysis will include a presentation and considerations relating to intercultural communication, whose deficiencies can and often will lead to the emergence of conflicts. The analysis will also be considering the manipulation issue as one of the main sources of tension and as one of the main reasons for which conflicts escalade.

I will also present, the theoretical elements of manipulation, the definitions, the functions, the assumptions and the conditions of dissemination of the most widespread practices in this field, such as word manipulators, poisoning, misinformation, propaganda, and manipulation by the press, one of the most popular and refined current handling techniques. The manipulation done by the press uses the entire arsenal at the use of the "one who broadcasts" the information: selection of news, news orientation, influencing the placement of news, influencing the titles, selecting events which can create a certain flow communication, the selection of media photographs, editorials, production and dissemination of information in a very biased way.

In the second chapter, entitled *Conflict Analysis. The Origins, Evolution and the Role of Mediation*, the paper will attempt to provide a definition of conflict, to present various types of conflicts, starting with the existing criteria of selection. We can therefore distinguish different types of conflicts depending on the stakes of conflict, the parties, and the relationship between adversaries, the means and outcome of the conflict.

On the other hand, the thesis will present and analyze various sources of conflicts, which are divided into several main categories: internal sources – human nature, social interaction, culture and social external sources – culture and institutions, the system size, the power distribution system, the consistency and stability, derived sources related to – inequality and differences.

A great importance in the analysis of conflicts is held by the structure of conflict, which will be analyzed according to the bases of conflict - and the source, manifestation - expression, construction, awareness, positioning, assessment, definition of the parties; escalation - the mobilization, expansion, radicalization, persuasion, coercion, and violence, the escalation, resolution and consequences.

The section targeting the *Techniques of mediation* is designed to study different techniques of mediation applied depending on the nature of the conflict, taking into account the analysis of crisis decision-making processes in crisis situations, emergency planning and standard operating procedures, methods alternatives to resolve potential conflicts, communication strategies for overcoming the crisis and communication bottlenecks.

The analysis follows different types of conflicts that require the triggering processes of amicable settlement of conflicts and applications of different techniques of mediation: personal and professional disputes, political disputes, diplomatic tensions, armed conflicts. Each of these types of conflicts requires a distinct type of mediation, in which it regards the means employed and the technique which are used for settling the conflict.

The paper presents various types of procedures used in conflict resolution, in order to find an optimal structure of the mediation process

The chapter on *International and Romanian law* regarding alternative dispute resolution includes a comparative analysis of Romanian and international law in an amicable settlement of conflicts from the first attempt to create the legal framework up to date, while the section entitled Ethics process on alternative conflict settlement, presents the main frame of the way that the conflicts are mediated, from an ethical perspective.

In order for a mediator to support the decision if and when, how and why ultimately to mediate, there are a number of important considerations to be considered. The most important reasons to support the decision to mediate are to minimize as much as possible the cost in solving the customer's problems and in improving the customer's satisfaction through professional mediation.

These are the two main issues in terms of ethics and practice within the reason of mediation, which we will present in this analysis: the duty to save the clients costs and the concern to improve the customer's satisfaction.

It is obvious even from the beginning that the ethics of mediation concerns a matter more difficult to implement in the Romanian society, but considered to be very important in the countries that have already accumulated some experience – and the matter is best exemplified by the motto "The customer is our master."

The last chapter of this paper presents a comparative analysis of constitutional provisions on the procedure of mediation, comparing some of the fundamental laws of the countries with a long tradition in resolving conflicts amicably.

Also, the chapter presents a case study on the involvement of the President of Romania, proclaimed to be a mediator by the Constitution, to settle amicably conflicts

triggered during October-November 2005, between the Education Unions and the Government of Romania.

The involvement of the President as a mediator in the conflict triggered by the wage claims of teachers and students while our budget was not able to support those claims followed almost all the theoretical recommendations regarding the amicable settlement of conflicts through the intervention of a third party.

The third part of the last chapter of the paper carried out an analysis on the involvement of the European Union and some of their representatives to settle amicably the conflict triggered at the end of 2008 and the beginning of 2009 between Ukraine and Russia on the supply, transport and especially on the price of Russian gas intended for the European countries.

The *conclusions* that are drawn from the research are that mediation, as a relatively new field of activity in Romania, still needs to be researched in order to get it to compete in the real world, with the traditional means and in a realistic way in order to be able to manage various types of conflicts in different branches or areas: personal, interpersonal, human resources, the economical field, the political field, the diplomatic field or even in the religious area.

A more thorough knowledge of this field should determine the development and the osmosis of various communicational patterns that could eventually help in finding a solution to a conflict without damaging or deteriorating a relationship but it can also determine a significant reduction of the costs involved in resolving a conflict.

Hypothesis

The main concern of this paper is to debate the existence / or the lack of effective communication in the amicable settlement of the conflict. Starting from the premise that any conflict is based on issues starting from miscommunication, we will take as benchmark the main barriers of communication and the communication techniques, taking also into consideration, the legislative framework used in the mediation of a conflict, to reach the relevant conclusions and recommendations on the efficient management of communication and to avoid conflict states in the amicable settlement of conflicts.

The hypothesis of the research approach would be as it follows:
– The external communication (the image) has a greater importance than the internal communication (direct relationship)
– Communication as a way to gain power has started to be seen as an essential element in the process of obtaining power / supremacy, becoming the subject of a legislative framework specifically and increasingly coherent, which in Romania, has begun to be more and more closer to the standards and requirements set by the countries with a long lasting tradition in this field.
– The presence of institutional players (the structures of mediation / mediators) on the domestic market leads to the development and determines an increasing importance of mediation.

Objectives

This paper has both general and specific objectives. Some of these objectives that will be formulated more precisely, and expanded throughout the study are:
- the awareness of the importance of communication management in the amicable settlement of conflicts
- the awareness of the necessity and importance of organized structures of communication, mediation and negotiation
- the promotion of the technical elements used in the mediation process/ effective ways of negotiation as seen at local level

Mediation has benefited, especially in recent decades, from an explosion of interest and hence from an increase in the number of books written on this topic. This is characteristic for not only for America but also for the European space. The market books, articles and studies specialized in mediation and in the amicable settlement of the conflicts of public relations is constantly enriched with various titles: some are addressed to practitioners and discuss the issues of strict interest for the ones who are familiar with this topic, and others, are addressed to the faculties interested in the field or for the public wishing to understand this process, the social role and the characteristic techniques of this activity. In recent years, the mediation field has developed quite large and even in Romania, a lot of departments and structures have occurred in all public institutions, major businesses, NGOs, etc., also it is important to notice that during the past years a lot of professional specialized structures were formed (the Mediation Council, The Mediators Union of Romania), specialized departments in the field of higher education have been created , it is important to mention that it has been created the legal bases for the mediation professionals and also, professional standards, rules of conduct and ethics principle for mediators have been established.

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